



Department of Enterprise, Trade and Employment
Company Law - Accounting and Audit Policy Unit
6 Earlsfort Terrace
Dublin 2
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9 March 2023

By email to: CSR@enterprise.gov.ie

Dear sir/madam

PwC welcomes the opportunity to respond to Consultation by the Department of Enterprise, Trade and Employment on Member State Options under the Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

Our responses to the matters on which views are sought are included in the Appendix.

Please contact the undersigned if you have any questions on this response or require any further information.

Yours sincerely

A handwritten signature in blue ink that reads 'Paul O'Connor'.

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Appendix - Matters on which DETE is consulting

	Member State Option	PwC Ireland Comment
<p>Article 1 – Amendments to Directive 2013/34/EU the Accounting Directive</p> <p>Article 1 Scope (Amended) New point 3 last subparagraph (New)</p>	<p>Member States may choose not to apply the coordination measures referred to in the first subparagraph of this paragraph to the undertakings listed in points (2) to (23) of Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council.</p>	<p>We do not have a position on this Member State Option.</p>
<p>Article 19a – Sustainability Reporting (New) Point 3 last subparagraph (New)</p>	<p>Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking’s development, performance and position, and the impact of its activity.</p>	<p>Yes. We believe that companies should not be obliged to publish such information in the circumstances outlined in the Directive.</p>
<p>Point 9 subparagraph three (New)</p>	<p>The Member State by whose national law the exempted subsidiary undertaking is governed may require that the consolidated management report or, where applicable, the consolidated sustainability report, of the parent undertaking is published in a language that that Member State accepts, and that any necessary translation into such language is provided. Any translation that has not been certified shall include a statement to that effect.</p>	<p>We recommend the same approach is adopted as for the filing requirements applicable to companies availing of an exemption from preparing consolidated financial statements, in that the consolidated sustainability report that is used for availing of an exemption from preparing a sustainability report should be translated into English or Irish for filing.</p>

<p>Article 29a. – Consolidated Sustainability Reporting (New) Point 3 last subparagraph (New)</p>	<p>Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the group, provided that such omission does not prevent a fair and balanced understanding of the group’s development, performance, and position, and the impact of its activity.</p>	<p>Yes. We believe that companies should not be obliged to publish such information if the circumstances described apply.</p>
<p><i>Point 8 subparagraph (New)</i></p>	<p>The Member State by whose national law the exempted parent undertaking is governed may require that the consolidated management report or, where applicable, the consolidated sustainability report of the parent undertaking is published in a language that that Member State accepts, and that any necessary translation into such language is provided. Any translation that has not been certified shall include a statement to that effect.</p>	<p>We recommend the same approach is adopted as for the filing requirements applicable to companies availing of an exemption from preparing consolidated financial statements, in that the consolidated sustainability report that is used for availing of an exemption from preparing a consolidated sustainability report should be translated into English or Irish for filing.</p>
<p>Article 30 General Publication (Amended) <i>Point 1 subparagraph 2 (New)</i></p>	<p>Member States may require undertakings subject to Articles 19a and 29a to make the management report available to the public on their website, free of charge. Where an undertaking does not have a website, Member States may require it to make a written copy of its management report available upon request.</p>	<p>As the annual report and financial statements are already required to be filed and available with the Companies Registration Office we believe that this is sufficient, but note the practice whereby most companies will provide this document on a company website.</p>
<p><i>Point 1 subparagraph 4 (Existing)</i></p>	<p>Member States may, however exempt undertakings from the obligation to publish the management report where a copy of all or part of any such report can be easily obtained upon request at a price not exceeding its administrative cost.</p>	<p>As the parent company’s annual report and financial statements are required to be filed and available with the Companies Registration Office we believe that this is sufficient but note the practice whereby most companies will provide this document on a company website.</p>

<p>Article 34.3 General Requirement Auditing (Amended) <i>Point 3 (New)</i></p>	<p>Member States may allow a statutory auditor or an audit firm other than the one(s) carrying out the statutory audit of financial statements to express the opinion referred to in point (aa) of the second subparagraph of paragraph 1.</p> <p>(i.e. the opinion on the compliance with sustainability reporting)</p>	<p>Given the need to ensure that there are appropriate resources in this area, to the extent that the framework ensures high quality of assurance, we are supportive of this option to enable Member States to authorise independent assurance service providers (IASPs) to provide assurance over sustainability reporting. This will leave companies the freedom to choose the assurance provider which best suits their needs, as well as opening the sustainability assurance market to additional participants.</p> <p>We suggest that the relevant articles of the EU legislation on independence apply to IASPs similar to statutory auditors so that reporting is unaffected by any other relationships, the level of fees or other threats to independence. In addition, we recommend that IASPs are subject to the IESBA Code of Ethics, including the new requirements that will arise from the IESBA's Sustainability Project. The purpose of this project is to take timely action to develop fit-for-purpose, globally applicable ethics and independence standards as a critical part of the infrastructure needed to support transparent, relevant, and trustworthy sustainability reporting and assurance.</p>
<p>Points 4 and 5 Independent Assurance Services Provider (New)</p>	<p>Member States may allow an independent assurance services provider established in their territory to express the opinion referred to in point (aa) of the second subparagraph of paragraph 1, provided that such independent assurance services provider is subject to requirements that are equivalent to those set out in Directive 2006/43/EC of the European Parliament and of the Council as regards the assurance of sustainability reporting as</p>	<p>As dealt with above.</p>

	<p>defined in point 22 of Article 2 of that Directive, in particular the requirements on:</p> <ul style="list-style-type: none"> (a) training and examination, ensuring that independent assurance services providers acquire the necessary expertise concerning sustainability reporting and the assurance of sustainability reporting; (b) continuing education; (c) quality assurance systems; (d) professional ethics, independence, objectivity, confidentiality and professional secrecy; (e) appointment and dismissal; (f) investigations and sanctions; (g) the organisation of the work of the independent assurance services provider, in particular in terms of sufficient resources and personnel and the maintenance of client account records and files; and (h) reporting irregularities. <p>Member States shall ensure that, where an independent assurance services provider expresses the opinion referred to in point (aa) of the second subparagraph of paragraph 1 of this Article, that opinion is prepared in accordance with Articles 26a, 27a and 28a of Directive 2006/43/EC and that, where applicable, the audit committee, or a dedicated committee, reviews and monitors the independence of the independent assurance services provider in accordance with point (e) of Article 39(6) of Directive 2006/43/EC.</p> <p>Member States shall ensure that independent assurance services providers accredited before 1 January 2024 for the assurance of sustainability reporting, in accordance with Regulation (EC) No 765/2008, are not subject to the training and examination requirements referred to in point (a) of the first subparagraph of this paragraph.</p> <p>Member States shall ensure that independent assurance services providers that on 1 January 2024 are undergoing the accreditation process in accordance with the relevant national requirements</p>	
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	<p>are not subject to the training and examination requirements referred to in point (a) of the first subparagraph as regards the assurance of sustainability reporting, provided they complete that process by 1 January 2026.</p> <p>Member States shall ensure that the independent assurance services providers referred to in the third and fourth subparagraphs acquire the necessary knowledge in sustainability reporting and the assurance of sustainability reporting via the continuing education requirement referred to in point (b) of the first subparagraph.</p> <p>If a Member State, pursuant to the first subparagraph, decides to allow an independent assurance services provider to express the opinion referred to in point (aa) of the second subparagraph of paragraph 1, it shall also allow a statutory auditor other than the one(s) carrying out the statutory audit of financial statements to do so, as provided for in paragraph 3.</p> <p>5. From 6 January 2027, a Member State that has made use of the option provided for in paragraph 4 (the “host Member State”) shall allow independent assurance services provider established in a Member State other than the host Member State (the “home Member State”) to carry out the assurance of sustainability reporting.</p> <p>The home Member State shall be responsible for the supervision of the independent assurance services providers established in its territory, unless the host Member State decides to supervise the assurance of sustainability reporting carried out by independent assurance services providers in its territory.</p> <p>If the host Member State decides to supervise the assurance of sustainability reporting carried out in its territory by independent assurance services providers registered in another Member State, the host Member State shall:</p> <p>(a) not impose more stringent requirements or liability on such independent assurance services providers than those required for assurance of sustainability reporting by the national laws for the independent assurance services providers or auditors established in that host Member State; and</p>	
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	(b) inform other Member States about its decision to supervise the assurance of sustainability reporting carried out by independent assurance services providers established in other Member States.	
Article 40a Sustainability Reports concerning third-country undertakings (New) Point 1 last subparagraph (new)	This is a new Article 40a inserted into the Accounting Directive on sustainability reports concerning third country undertakings. This option underpins the requirement for sustainability reports by large subsidiaries and branches operating in the EU (turnover > €40 million) of non-EU companies (turnover in the EU > €150 million). It permits Member States to require subsidiary undertakings and branches to send information about net turnover generated in the Member State and in the EU.	We do not have a position on this Member State Option.
Article 3 Amendments to Directive 2006/43/EC the Audit Directive Article 12 Combination of practical training and theoretical instruction (replaced) Point 1 (existing)	1. Member States may provide that periods of theoretical instruction in the subjects referred to in Article 8(1) and (2) shall count towards the periods of professional activity referred to in Article 11, provided that such instruction is attested by an examination recognised by the Member State. Such instruction shall not last less than one year, nor may it reduce the period of 1. Member States may provide that periods of theoretical instruction in the subjects referred to in Article 8(1) and (2) shall count towards the periods of professional activity referred to in Article 11, provided that such instruction is attested by an examination recognised by the Member State. Such instruction shall not last less than one year, nor may it reduce the period of professional activity by more than four years. 2. The period of professional activity and practical training shall not be shorter than the course of theoretical instruction together with the practical training required under the first subparagraph of Article 10(1).';	We do not have a position on this Member State Option.
Article 26a Assurance Standards for sustainability reporting (New) Point 2 (New)	2. Member States may apply national assurance standards, procedures or requirements as long as the Commission has not adopted an assurance standard covering the same	We believe that Ireland has no option but to avail of this Member State Option. The reason for this is that there are no such standards at an EU level and without the appropriate standards, no assurance can be provided. If the option is taken locally, then standards can be set by



		IAASA, or those of the IAASB could be applied through legislation.
<p style="text-align: center;">Article 28a Assurance Report on sustainability reporting (New) <i>Point 5 (New)</i></p>	<p>5. Member States may require that, where the same statutory auditor carries out the statutory audit of annual financial statements and the assurance of sustainability reporting, the assurance report on sustainability reporting may be included as a separate section of the audit report.</p>	<p>We do not support availing of this Member State Option. We believe that it is appropriate to have a separate audit report and a separate assurance report.</p> <p>There are several reasons why we believe that this option should not be taken, including;</p> <ol style="list-style-type: none"> 1. Separate reports allow for greater comparability between entities. For example, it may be difficult for a reader to compare a single audit/assurance report for one entity which has used the same provider to two separate audit and assurance reports for an entity which has used different providers. We believe that separate reports will be more beneficial for the reader. 2. The combining of the two reports could create the perception that the sustainability assurance report is an “add-on” to the audit, which may diminish its importance to the reader and increase the existing expectation gap if the nature of the two engagements is not understood by a user. 3. The audit report is already quite long. Adding another section will lengthen this further. 4. Combining the two reports could cause signature issues. For example, an assurance report could be signed in the name of the firm (and not the individual), whereas the audit report is required to be signed in the name of the responsible individual. 5. In the initial period, the audit report is providing reasonable assurance whereas the sustainability report is providing limited assurance in a single report explaining this difference may cause significant confusion for the reader of the report.



<p>Article 29 Quality Assurance Systems (Amendment) <i>Point 2a (New)</i></p>	<p>2a. Member States may exempt, until 31 December 2025, persons who carry out quality assurance reviews relating to the assurance of sustainability reporting from the requirement to have relevant experience in sustainability reporting and in the assurance of sustainability reporting or in other sustainability-related services.’;</p>	<p>Given the relative newness of the sustainability reporting frameworks, but the importance that assurance over such reporting is subject to quality assurance from the outset, we believe that this option is sensible, on an appropriately time limited basis.</p>
<p>Article 30 Systems of Investigations and Sanctions (Amended) <i>Point 2 second subparagraph (existing)</i></p>	<p>Member States may decide not to lay down rules for administrative sanctions for infringements which are already subject to national criminal law. In that event, they shall communicate to the Commission the relevant criminal law provisions.’;</p>	<p>We believe that there should be a common system of investigations and sanctions in place.</p>
<p>Article 39 Audit Committee (Amended) <i>Paragraph 4a (New)</i></p>	<p>Member States may allow the functions assigned to the audit committee relating to sustainability reporting and relating to the assurance of sustainability reporting to be performed by the administrative or supervisory body as a whole or by a dedicated body established by the administrative or supervisory body.</p>	<p>Where an entity has an audit committee we believe that the audit committee should be tasked with overseeing sustainability reporting and the assurance of same: where there is no audit committee due to exemption, we believe that the administrative or supervisory body as a whole should be able to perform the functions.</p>