

17 January 2024

Mr. Axel Voss
Member of the European Parliament
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Belgium

IDW comments on proposed Amendments to the EU Commission's Amending Directive 2013/34/EU as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third-country undertakings, Proposal for a decision (COM(2023)0596 – C9-0386/2023 – 2023/0368(COD))

Dear Mr. Voss,

the Institut der Wirtschaftsprüfer in Deutschland e.V. [Institute of Public Auditors in Germany, Incorporated Association] (IDW) is a privately run organisation established to serve the interests of its members who comprise both individual Wirtschaftsprüfer [German Public Auditors] and Wirtschaftsprüfungsgesellschaften [German Public Audit firms].

We have read the proposed amendments relating to the Decision (COM(2023)0596 – C9-0386/2023 – 2023/0368(COD)) put forward by the Committee on Legal Affairs dated 15.12.2023 with interest. Whilst it would be inappropriate for us to comment on the duration of the proposed period of delay or sector prioritizations, we welcome the European Commission's initiative to postpone the introduction of sector-specific ESRS and would like to draw your attention to three significant issues, which we explain in more detail below.

In brief, we strongly suggest that the wording of any amendments made in finalizing the EU Commission's Decision be adapted to:

1. Refrain from creating the impression that sustainability reporting in compliance with the first set of ESRS (Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards) will undermine the reliability of information or

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otherwise preclude companies from being able to comply with reporting requirements.

2. Exclude any amendment that could be understood as pre-empting the possible impacts on assurance report opinions.
3. Ensure that sector-specific standards do not add to the reporting burdens but support the extant ESRS by making the reporting exercise significantly less demanding and costly and that the companies affected are given sufficient time to implement additional reporting aspects under the new standards.

Issue 1. Implications associated with the proposed amendments that refer to undermining the reliability of information and an inability to comply with reporting requirements

The Committee on Legal Affairs proposed amendment 3 states „... *The requirements in this Delegated Act, in particular with regards to decarbonisation, biodiversity, human rights and working conditions are however formulated only in a general way. Undertakings are also required to carry out a double materiality assessment on all ESG topics, including sector-specific topics, and document the process, results and thresholds. Therefore the sector-specific standards are to clarify what exactly and in what detail should be disclosed, since concrete impacts and methods are different from sector to sector. ...*“ and „... *Therefore, the need for sector-specific standards has only heightened and any further delay in their adoption will increase the uncertainty for as well as burden placed on companies, and will **undermine the reliability of information.** ...*“ (emphasis added). Amendment 7 states „... *The adoption of sector-specific sustainability standards, however, is instrumental for companies **to be able to comply with reporting requirements** and for investors to rely on comparable information. ...*“ (emphasis added).

Our concern is that the wording highlighted above could lead to the impression that until such time as sector-specific standards have been adopted the reporting obligations established by the first set of the ESRS (sector-agnostic ESRS) are so inadequate as to preclude an entity from preparing reliable information and also legally compliant sustainability reports. We note that the Committee of Economic and Monetary Affairs (ECON) voted to reject similarly worded amendments on 11 January 2024.

Paragraphs 11 and 30b of ESRS 1 specifically require reporting entities to disclose additional entity-specific disclosures when a material sustainability matter is not covered by an ESRS or is covered with insufficient granularity. This

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relates to ensuring that all information that is relevant and material to users is disclosed appropriately. It does not relate to the reliability of that information – that is, whether or not the information disclosed appropriately represents the underlying subject matter. When sector-specific ESRS have not been adopted, it is therefore the responsibility of the reporting entity to set the disclosures required to be reported to ensure that information relevant to its sector and material to stakeholders is reported.

Issue 2. Pre-emption of the possible impacts on assurance report opinions

The Committee on Legal Affairs proposed amendment 3 states “... *As long as the second set of standards is not adopted, companies have limited support to determine the sector-specific disclosures, which could lead to an **incomplete or negative qualified opinion**. ...*” (emphasis added).

We note that the ECON voted to reject a similarly worded amendment on 11 January 2024.

The wording proposed for the amendment uses incorrect wording to describe other than unmodified (that is, “unqualified”) opinions, which causes confusion, and the amendment does not reflect how auditing and assurance standards deal with opinions.

First in relation to the former, opinions without modification (that is, when auditors or practitioners conclude that the sustainability report has been prepared in all material respects in accordance with the applicable requirements and the auditors or practitioners have been able to obtain sufficient appropriate evidence) are termed “unmodified opinions”. Modified opinions are not described as “incomplete or negative qualified opinions”, since the term “qualified opinions” already refers to the incomplete or negative aspects (the inability to obtain sufficient appropriate evidence or a material misstatement, respectively). Modified opinions encompass qualified opinions (due to material misstatements in the sustainability report or the inability to obtain sufficient appropriate evidence regarding material information), adverse opinions (due to misstatements that are both material and pervasive) and disclaimers of opinion (due to the inability to obtain sufficient appropriate evidence for information that is both material and pervasive). Consequently, when reporting entities appropriately apply the reporting requirements, including the requirements we addressed in issue 1 and the auditors or practitioners obtain sufficient and appropriate evidence, there is no basis for a modified opinion.

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Second, with respect to the latter (that is, the amendment does not reflect how auditing and assurance standards deal with opinions), as in our response to Issue 1 above, we note that the lack of a second set of adopted standards does not lead to the inability of reporting entities to provide the information relevant to their sector and material to stakeholders: the entities have a responsibility to disclose the relevant and material information. Consequently, not having adopted the second set of standards does not lead to auditors or practitioners to expressing a modified opinion (that is qualified or adverse opinion, or disclaimer of opinion) unless the reporting entity does not meet its responsibilities to disclose the relevant and material information as noted. However, not having a second set of standards that provide greater specificity to the first set of standards may lead to an inherent limitation on reporting caused by the uncertainty as to whether the additional disclosures made by the entity to provide relevant and material information to users are in legal conformity with legislation and the first set of standards. While this alone would not lead to a modification of auditor or practitioner opinions, it may lead to the need to provide a description of such inherent legal limitations in the sustainability report and in the auditor's or practitioner's report as well as to increased inconsistency among the sustainability reports of reporting entities within an industry.

Issue 3. Ensuring sector-specific standards make the reporting exercise significantly less demanding and costly and companies are given sufficient time for their implementation

Several of the amendments proposed by the Committee on Legal Affairs suggest various dates and prioritizations for the adoption of sector-specific standards by the EU Commission. We would like to suggest that any possible postponement of the adoption date also be used to ensure that companies are given sufficient time to implement the provisions of the sector-specific standards.

In addition, whilst a postponement may relieve the burden on companies in terms of timing, it will also be necessary to ensure that any additional reporting requirements under the sector-specific ESRS are not overly burdensome. In particular, it should be ensured, that simplifications for companies set forth in the first set of ESRS development are not undermined.

The Committee on Legal Affairs proposed amendment 3 states: "... **Sector-specific standards will simplify preparing materiality assessment, thus making the reporting exercise significantly less demanding and costly. ...**" (emphasis added).

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We acknowledge that the proposed amendment recognizes the necessity of supporting effective sustainability reporting. In addition, we would like to emphasize that, in particular, due care will need to be taken that the simplifications achieved in finalizing the first set of ESRS are not undermined by the adoption of sector-specific ESRS. The development of the sector-specific ESRS should therefore be carefully monitored to ensure the practicability of specific requirements and focus on the benefit individual disclosure requirements bring to the users of the sustainability report.

We trust you as rapporteur will view our suggestions in the constructive light intended, and that they can be considered in the finalisation of this Decision. We will, of course, be happy to answer any questions you may have.

Best regards

Melanie Sack

Daniel Siegel