

## Our position

# Corporate Sustainability Reporting Directive Implementation challenges

## FAQ recommendations to the European Commission DG FISMA

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

## Executive summary

In light of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union's (DG FISMA) ongoing work in compiling an FAQ document to guide Member States in the implementation of the Corporate Sustainability Reporting Directive (CSRD), the European Commission should be aware of shared challenges related to the differences between fiscal years of subsidiaries and parent undertakings and transitional consolidation that many American companies have been facing and address these issues with proposed solutions.

## Introduction

DG FISMA is currently drafting a FAQ document to offer guidance for the implementation of the CSRD. This provides a unique opportunity to address implementation challenges and clarify the interpretation of the CSRD provisions. To facilitate smoother and consistent implementation, the FAQ document should include the issues and questions identified by different stakeholders. In this spirit, two key challenges experienced by American businesses and proposed solutions are outlined in the following sections.

## The challenges

### Differences between fiscal years of subsidiaries and parent undertakings

As companies prepare for consolidation of reporting under one single entity, whether incorporated in the EU or not, they are often faced with the challenge of varying financial year end dates of their other in-scope entities and multiple inconsistent filing deadlines. The Accounting Directive (article 19(9) and 29a (8)) addresses in a general manner how a subsidiary in scope of the CSRD should claim that it is exempted from the CSRD's sustainability reporting obligation because its activities fall within the consolidated sustainability report of its parent company.

However, the Accounting Directive, as amended, does not explicitly address how a subsidiary undertaking is to make use of this exemption for sustainability reporting where the subsidiary has an obligation to adopt its management report before the parent company's sustainability report is available, nor does it provide guidance to Member States regarding how to interpret the requirement for consolidated reports by non-EU parents to be published. This situation may arise because of earlier financial year end dates of the subsidiary or divergent national rules on the maximum permissible time between the end of the financial year and the adoption of the management report or the filing of consolidated reports by a non-EU parent.

### Transitional consolidation

In addition to the potential challenge of varying financial year end dates of the in-scope entities, challenges can arise with the application of CSRD article 48i for transitional consolidation by one of the largest in-scope entities in the EU when the different in-scope entities are not all owned by the same direct parent company incorporated outside of the EU. This is due to the current ambiguity in the text of article 48i, which is likely an unnecessary barrier to consolidation as the transitional consolidation rule is likely not intended to exclude such groups from applying the rule.

## Addressing these ambiguities in DG FISMA's FAQ for the CSRD implementation

### Differences between fiscal years of subsidiaries and parent undertakings

The DG FISMA's FAQ document offers an opportunity to bring clarity to the interpretation for companies and Member States authorities as they transpose the CSRD into national laws. To ensure the effective and consistent operation of the CSRD's consolidated reporting for corporate groups that have in-scope subsidiaries facing this situation, **the European Commission should make clear that the**

**timing for large groups, EU subgroups or non-EU ultimate parent company's sustainability report remains unchanged and is set solely by the parent company's financial year and the national rules in the parent company's country of incorporation (where relevant) – whether an EU Member State or not – in line with similar rules that apply to financial reporting.**

If the parent undertaking is established in a third country, article 30 applies, as does the law of the Member State by which the exempted parent undertaking is governed, in accordance with articles 19a(9)(b) and 29a(8)(b). This means that Member States can allow a period of up to 12 months after the balance sheet date for the consolidated sustainability report to be published. It is not clear, however, whether that (up to) 12 months deadline applies to the balance sheet date of the EU subsidiary or the non-EU parent company. It would be helpful if the European Commission could clarify that this will be interpreted as applying to the balance sheet date of the non-EU parent company and to further clarify by setting the specific deadline suggested below. It should also be clarified that these exemptions are available through the consolidated reporting at the level of the EU subgroup parent company and that the scope of consolidation for sustainability reporting purposes does not have to be identical to the scope of reporting for accounting purposes.<sup>1</sup> The exemption could also apply to reporting by the ultimate EU parent under the CSRD applying the European Sustainability Reporting Standards (ESRS).<sup>2</sup>

As a matter of fact, for financial reporting, the Accounting Directive (article 24(8)) addresses the issue of different year-end dates between subsidiaries and parent companies in a manner that facilitates group level reporting. It clearly establishes the general rule that the consolidated financial statement must be drawn up at the same time as the annual financial statement of the parent company. The same should be the case for sustainability reporting.

This clarification would ensure that the sustainability reporting obligations are applied in the same manner as the financial reporting obligations. It would also be consistent with the Accounting Directive's legal basis (ie article 114(1) of the Treaty on the Functioning of the European Union) and its corresponding harmonisation objective, as well as with the warning in Recital 16 of the CSRD that identifies divergent reporting requirements in different Member States as a source of additional costs and complexity for undertakings operating across borders that undermine the internal market and the right of establishment. Moreover, the ESRS also acknowledge this interpretation as they require that companies' reporting periods for their sustainability statement be consistent with that of their financial statement (Commission Delegated Regulation 2023/2772, sec. 6.1).

This is especially relevant in two respects. Firstly, article 19a and 29a of the Accounting Directive require that subsidiary undertakings wishing to be exempted from an obligation to publish a (consolidated) sustainability report must also include in their management report 'the weblinks to the consolidated management report of the parent undertaking or, where applicable, to the consolidated sustainability reporting of the parent undertaking, (...) and to the assurance opinion (...)'.<sup>1</sup>

Therefore, in order to achieve the aforementioned objectives of harmonisation, costs reduction and administrative simplification, it should be clarified that such weblinks are allowed to be URLs to a webpage that would be 'blank' until such time as the consolidated sustainability report of the parent undertaking is available.

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<sup>1</sup> An explicit statement to this effect would be helpful to issuers, given the importance of these exemptions and the understanding of in-scope reporting 'large groups.' See also ESRS 1, para. 62 ('The sustainability statement shall be for the same reporting undertaking as the financial statements. For example, if the reporting undertaking is a parent company required to prepare consolidated financial statements, the sustainability statement will be for the group. This requirement does not apply where the reporting undertaking is not required to draw-up financial statements or where the reporting undertaking is preparing consolidated sustainability reporting pursuant to Article 48i of Directive 2013/34/EU.').

<sup>2</sup> See CSRD, preamble para. 25; article 19a(9)(b).

Secondly, article 19a and 29a of the Accounting Directive require that, when the consolidated report is that of a non-EU parent, this ‘consolidated sustainability reporting and the assurance opinion (...) are published in accordance with Article 30 [of the Accounting Directive], and in accordance with the law of the Member State by which the exempted subsidiary undertaking is governed’. However, improperly interpreted, this obligation could basically require non-EU companies to prepare their global consolidated reports either before the end of the parent's financial year or unduly soon thereafter.

Therefore, it is necessary to clarify that the 12-month deadline enshrined in Article 30 of the Accounting Directive is linked to the end of the financial year of the non-EU parent preparing the consolidated sustainability report. It would also be helpful if the European Commission would require Member States not to adopt early filing deadlines for such non-EU parent reports, but instead to accept that the exemption for subsidiaries would be granted as long as the filing of the consolidated sustainability report takes place before the latest filing deadline of the non-EU parent's EU subsidiaries.

### **Transitional consolidation**

On the transitional consolidation under CSRD article 48i, **the European Commission should make clear that the intent is for the transitional consolidation to apply for all in-scope entities which are part of the same group of entities and which are owned by the same ultimate parent.** It is common for the ownership structure of multinational groups of companies that entities established in different countries have different direct parent undertakings which are held by the same ultimate parent. The ambiguity in article 48i for in-scope entities with more than one direct parent company arises from the language that ‘Member States shall permit a Union subsidiary undertaking (...) **whose parent undertaking** is not governed by the law of a Member State to prepare consolidated sustainability reporting (...) that includes all Union subsidiary undertakings **of such parent undertaking** (...)’. Improperly interpreted, this could imply that in-scope entities, which are owned by different direct parent undertakings but share the same ultimate parent company, cannot be included in the same consolidated report, as article 48i only references the ‘parent undertaking’ (which could be interpreted as the EU parent of an EU subgroup) and not the ownership by the same ‘ultimate parent’. This could lead to the necessity for several reports to be drawn up under CSRD article 48i, one for each group of in-scope entities (ie all large groups or large companies and their subsidiaries) owned by the same direct parent company. Therefore, it is necessary to clarify that the consolidating EU subsidiary can include all in-scope subsidiaries owned by the same ultimate parent, not only the subsidiaries which share the same direct parent.

### **Proposed questions and answers**

For the purpose of the FAQ document, below is a proposal for two questions and answers with a practical and workable approach to the issues addressed above:

#### **Differences between fiscal years of subsidiaries and parent undertakings**

**Q:** How should an undertaking claim the CSRD's exemption for subsidiary undertakings that have their sustainability information included in their parent undertaking's consolidated sustainability report, where the subsidiary undertaking has an obligation to adopt its management report before the parent undertaking's sustainability report is available, in accordance with the national law of the country in which the subsidiary undertaking resides?

**A:** Articles 19a(9)(a)(ii) and 29a(8)(a)(ii) of the Accounting Directive, as amended, require an undertaking or a parent undertaking that is making use of the subsidiary, EU subgroup or ultimate non-EU parent company group exemptions to sustainability reporting to provide weblinks to the parent undertaking's consolidated management report or where applicable, to its consolidated

sustainability report and to the relevant assurance opinion. Where these documents are not yet available because the parent company has not yet adopted its sustainability report for the corporate group, the undertaking claiming the exemption can make reference in its management report to a general weblink at which the relevant documents will be available in the future. The timing for the adoption of the EU subgroup or ultimate group parent undertaking's management report or where applicable, its consolidated sustainability report, shall be governed by the rules applicable to the parent undertaking, where relevant.

If the parent undertaking is established in a third country, articles 19a(9)(b) and 29a(8)(b) and 30 of the Accounting Directive apply and permit exemptions for ESRS-compliant reporting by the parent company of an EU subgroup or ultimate non-EU parent company group that is otherwise in accordance with articles 19a(9) or 29a(8). For such non-EU parents preparing consolidated sustainability reporting, the filing timeline enshrined in articles 19a(9)(b), 29a(8)(b) and 30 of the Accounting Directive is linked to the end of the financial year of the non-EU parent preparing the consolidated sustainability report, not that of the subsidiary undertaking. Member States are also encouraged to implement national transposition rules for the publication by subsidiary undertakings of consolidated sustainability reports of their non-EU parents in a way that grants the exemption of such subsidiaries as long as the consolidated sustainability report of their non-EU parent is filed in the subsidiary's national registry before the deadline applicable to the EU subsidiary of the non-EU parent whose filing deadline for its management report is latest.

### **Transitional consolidation**

**Q:** Can an undertaking claim the CSRD's exemption for in-scope entities under article 48i when another in-scope entity in the EU, which does not share the same direct parent undertaking, provides a consolidated sustainability report? Is CSRD article 48i also applicable to in-scope entities which are owned indirectly by the same ultimate parent undertaking when they are owned by a different direct parent undertaking?

**A:** CSRD article 48i requires that Member States shall permit a Union subsidiary undertaking whose parent undertaking is not governed by the law of a Member State to prepare consolidated sustainability reporting that includes all Union subsidiary undertakings of such parent undertaking. This shall be interpreted and clarified (where necessary) in the Member States' transposition rules such that consolidated sustainability reporting under CSRD article 48i can include all Union subsidiary undertakings which are owned by the same ultimate parent and that such consolidated reporting leads to exemption for reporting by the in-scope entities included in this consolidated report during the transition period.

## **Conclusion**

There are challenges in the CSRD's implementation related to differences in fiscal years among subsidiaries and parent undertakings, as well as challenges with transitional consolidation. This paper provides suggestions for questions and answers to address these complexities in DG FISMA's forthcoming FAQ document, emphasising the need for clarity and consistency in interpretation. By addressing these challenges and providing clear guidance, the European Commission can facilitate smoother implementation of the CSRD, promoting sustainability reporting across the EU.