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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law (Attachés)
Subject:	CS3D Article 15 - Common drafting IT-FR

Delegations will find attached the common Italian - French alternative drafting on the article 15 of the CS3D.

CSDD – article 15 (draft)

Recital No 50 and 51

Proposal based on the general approach

(50) **Under the Paris Agreement, all Parties are to undertake ambitious efforts with a view to holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.** In order to ensure that this Directive effectively contributes to combating climate change, companies should ~~therefore adopt~~ **draw up a transition plan for climate change mitigation** to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. In case climate is **not** or should **not** have been identified as ~~a principal risk for or a principal impact of the company's operations,~~ **the company should include greenhouse gas emissions reduction objectives in its plan an potential or actual adverse impact that is either severe or likely, the company should not be bound to draw up a transition plan.** In such case, the company should nevertheless disclose the process it has implemented to identify and assess such an adverse impact, to allow for proper scrutiny by the public, in accordance with Article 11. To ensure that mitigation efforts undertaken by companies are ambitious, transition plans should include at its core emission reduction targets in absolute value for scope 1, 2 and, where relevant, 3 greenhouse gas ('GHG') emissions. Companies should set these targets [at least for 2030 and every five years thereafter], in consistency with the agenda set by the Union and its Member states, and base themselves on science, such as sector-specific methodologies where available. Transition plan should also include key decarbonisation actions, by referring to GHG emission reduction targets, and the resources allocated for their implementation.

(50a) On 14 December 2022, the European Parliament and the Council adopted Directive 2022/2464/EU amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting ('CSRD'), to address shortcomings in the existing rules on disclosure of sustainability information. Under the CSRD, undertakings are to disclose inter alia their mitigation efforts in line with the Paris Agreement. Such information should be reported in accordance with the sustainability reporting standards adopted by the Commission pursuant to articles 29b or 40b of Directive 2013/34/EU. Such standards should ensure that the information is understandable, relevant, verifiable, comparable and represented in a faithful manner. To avoid duplicating regulatory requirements whilst maintaining a high level of ambition as regards the fight against global warming, the implementation of this Directive should as much as possible relies on the CSRD and the European sustainability reporting standards that complete it. Thus, companies that either report a transition plan for climate change mitigation or are included in the plan of their parent company, in accordance with the CSRD, should be deemed to have complied with the obligations under this Directive regarding provisions under article 15.

(51) ~~With a view to ensure that such emission reduction plan is properly implemented and embedded in the financial incentives of directors, the plan should be duly taken into account when setting directors' variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.~~ **Corporate governance framework plays a key role to ensure that policies are into place and correctly oversighted.** In particular, the chief executive officer and its deputy, where it exists, are often both members of the administrative, management or supervisory bodies of the company and in charge of implementing the strategy of the company, including as regards climate change. Moreover, under article 9a of Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies ('SRD'), the remuneration policy of directors

should inter alia contribute to sustainability and explain how it does so. These provisions are adequate to protect the shareholders' rights and encourage them to engage with the company. Companies with more than 1000 employees on average should be encouraged to have a relevant and effective policy to promote the implementation of the plan referred to in this Article, such as variable remuneration for directors or other financial incentives for the members of the administrative, management or supervisory bodies concerned.

Article 15

Proposal based on the general approach

1. Member States shall ensure that companies referred to in Article 2(1), points (a) **and (c)**, and Article 2(2), point (a), ~~shall adopt a plan~~ **draw up a transition plan for climate change mitigation, including implementing actions and related financial and investments plans,** to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119, and where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities, ~~as referred to in Articles 19a(2), point (a)(iii), and 29a(2), point (a)(iii), of Directive 2013/34/EU.~~ This plan shall, in particular, identify, ~~on the basis of information reasonably available to the company,~~ **the extent to which climate change is a risk for, or an impact of, the company's operations.**

The transition plan referred to in the first subparagraph shall contain:

(a) time-bound targets related to climate change taking into account scientific evidence and including, where appropriate, emission reduction targets for greenhouse gas for scope 1, scope 2 and, where relevant, scope 3 greenhouse gas emissions for each significant category;

(b) a description of decarbonisation levers identified and key actions planned to reach targets referred to under point (a), including where appropriate changes in the undertaking's product and service portfolio and the adoption of new technologies

(c) an explanation and quantification of the investments and funding supporting the implementation of the transition plan;

(d) a description of the role of the administrative, management and supervisory bodies with regard to climate matters.

2. Member States shall ensure that **paragraph 1 does not apply**, in case climate change is **not** or should **not** have been identified **by the company, after having taken appropriate measures to do so**, as a ~~principal risk for, or a principal impact of, the company's operations,~~ **the company includes greenhouse gas emission reduction objectives in its plan an adverse impact that is likely or severe, provided that the company report the process implemented to identify and assess such an adverse impact, in accordance with Article 11.**

3. **Companies that report a transition plan for climate change mitigation in accordance with Article 19a, 29a or 40a, as the case may be, of Directive 2013/34/EU of the European Parliament and of the Council shall be deemed to have complied with the requirement set out in paragraph 1 of this Article.**

Companies that are included in the transition plan for climate change mitigation of their parent undertaking, reported in accordance with Article 29a or 40a, as the case may be, of Directive

Commented [A1]: Depending on a possible agreement with the EP on ultimate parent undertakings

Commented [A2]: See paragraph 3, which establishes in a more proper way the link with the CSRD, encompassing inter alia the compliance with the ESRS, which stems from articles 19a(4) and 29a(5) of the CSRD.

Moreover, some third country companies falling into the scope of CS3D are not covered by CSRD. Hence, for these companies, the reference to CSRD is not appropriate.

Commented [A3]: Stems from the EP text. Useful for third country entities covered by CS3D but not by CSRD.

This proposal draws from §16 of ESRS E1.

Commented [A4]: Translation of concepts taken from CSRD (principal risks and impacts) into a CS3D environment.

Commented [A5]: Important to have this provision, clearly stated, in a separate paragraph.

Otherwise, if kept in paragraph 1, there will be legal risks for companies regarding the content of the obligation stemming from CS3D.

2013/34/EU of the European Parliament and of the Council, shall be deemed to have complied with the requirement set out in paragraph 1 of this Article.

4. Member States shall ensure that the transition plan referred to in paragraph 1 is updated every [12 months] and contains a description of the progress the company has made towards achieving the targets referred to under paragraph 2, point (a).

5. Member States shall ensure that companies with more than 1000 employees on average have an appropriate policy to promote the implementation of the plan referred to in this Article, such as, financial incentives to members of the administrative, management or supervisory bodies concerned.

The first subparagraph is without prejudice to directive 2007/36/EC of the European Parliament and of the Council.

Commented [A6]: Compromise proposal, as an alternative to variable remuneration.

It builds on the option proposed by the Presidency.