Federal Association of Corporate Lawyers in Germany

Comments on the Public Consultation on the Revised European Sustainability Reporting Standards (ESRS)

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Task Force on ESG

Contact

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I. In a Nutshell

BUJ strongly supports a simple, proportionate and usable while effective and meaningful sustainability reporting framework. While we welcome the efforts to reduce and simplify reporting obligations for companies undertaken by the EU Omnibus I legislation ('Sustainability Omnibus'), we believe that the Commission's Draft Delegated Act on ESRS falls short of the Omnibus I objectives and deserves to be improved. Especially, complexity needs to be reduced and regulatory coherence achieved.

II. Roadmap for Improvements

1. Genuine reduction of datapoints needed

From the corporate perspective, an excessive number of ESRS-datapoints leads to complex and cumbersome reporting exercises with little or no corresponding benefits for investors and other stakeholders. Previous efforts to reduce the number of datapoints unfortunately fall short of a genuine reduction as the focus was set on merging datapoints rather than on removing them. Only a true reduction of datapoints corresponds to the objectives of simplification and dismantling bureaucratic burdens for the benefit of boosting competitiveness as laid down in Omnibus I.

2. Coherence of the regulatory ecosystem is to be achieved

Inconsistencies in the regulatory ecosystem governing ESG and related policy fields have created legal uncertainties for corporate users and led to a reduced usability. For example, the "S"-standards of the ESRS addressing social and employment issues remain overly complex and still include many unclear and insufficiently defined terms. In addition, they often collide with rules either of the same or a related regulatory ecosystem. This may be illustrated by obligations to report on employees' health or disabilities, which is sensitive against the background of data protection rules in place under the GDPR. Another example is the regulation on prohibiting products made with forced labour (EU

2024/3015), which contradicts efforts undertaken by Omnibus I to enable companies to focus their supply chain due diligence on direct suppliers in the absence of any risk indications beyond tier 1. Such inconsistencies need to be tackled and overcome.

3. Concept of fair presentation to be postponed

At present an introduction of the concept of fair presentation into sustainability reporting would be premature. Other than in financial reporting, the concept does not correspond to a primary user in the context of sustainability reporting due to the multitude of stakeholders that sustainability reports are addressed to. A sound concept of fair presentation in sustainability reporting needs to be developed first taking into account experiences gained during the first reporting cycles.

4. Concept of ‘anticipated financial effects’ to be dropped

The concept of ‘anticipated financial effects’ requires companies to provide highly uncertain forward-looking information, potentially revealing both strategically and commercially sensitive data and exposing companies to competitive disadvantages and liability risks. In addition, the risk of misinterpretation of the delivered data by users, auditors and supervisors is significant due to the lack of sufficiently mature reporting-methodologies. The concept of anticipated financial effects should therefore be removed.

We kindly ask to take our considerations into account and remain at your disposal in case of questions or for further discussions.