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1. General comments

On 9 June 2023, the European Commission published an amended version of the draft Commission Delegated Regulation (EU) supplementing Directive 2023/34/EU of the European Parliament and of the Council as regards sustainability reporting standards ("**ESRS**"). The ESRS aim to provide clear, substantive and practical tools for the implementation of the CSRD within business operations. In conducting our legal advice, we have found that there are certain gaps in terms of identifying ESG risks and opportunities. We believe that further clarification of these matters could help businesses to determine the scope of their value chain and improve their annual reporting accordingly.

By means of this letter, Houthoff Coöperatief U.A. (contact persons: Jacques Kröner / Yentl Coenradie) would like to take the opportunity to engage in the consultation. We have chosen to respond to three more general aspects of the draft ESRS, which to this day we have found are particularly relevant in relation to our legal advice.

2. Specific comments on the main text of the draft delegated act

N/A

3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
<i>Example:</i> ESRS 1	Para 16	1. Clarification of terminology 1.1. The draft ESRS contain extensive, detailed and with that complex terminology. We also see that the same terms are described differently, causing questions on if the legislator intends to introduce a different concept. In practice, e.g., the need for companies and their legal advisors to interpret terms such as 'all' and 'any' may lead to undesirable results in scope, quality and consistency of reporting and may contribute to legal uncertainty for the reporting

		<p>companies (e.g., "all material information related to the reporting areas of governance; strategy; impact, risk and opportunity management; and metrics and targets" in ESRS 1, par. 16). Several reporting requirements also have substantive overlap (e.g., reference to and elaboration on scope 1, 2 and 3 GHG emissions all throughout ESRS E1), which makes it difficult to filter which information is necessary, and under which category information has to be reported. As a result of the overlap and the use of open and comprehensive terminology within the ESRS, interpretation differences may lead to discussions with the auditor and will likely detract from the comparability of annual reports, which is disadvantageous for the users of this information and ultimately the goals that the CSRD and the ESRS pursue.</p> <p>1.2. To prevent legal uncertainty and other ambiguities, we suggest limiting the use of vague and broad terms and provide further context in relation to the interpretation of these requirements. We further suggest including a clear list of definitions, to ensure consistent use of terminology. To be able to provide further advise on the reporting requirements, it would be preferable that the terminology of the ESRS is clear and requires limited interpretation.</p>
ESRS E1	Par. 45(c)(d)	<p>2. Exemption scope 3 GHG-emissions</p> <p>2.1. It follows from Appendix C to ESRS 1 that undertakings or groups that on their balance sheet dates do not exceed the average number of 750 employees during the financial year (on a consolidated basis where applicable), may leave out the datapoints on scope 3 GHG-emissions and total GHG-emissions for the first year of preparation of their sustainability reporting (exemption of ESRS E1-6 par. 45 (c)(d)).</p> <p>2.2. In practice, we see two potential difficulties in relation to this exemption. Firstly, this exemption is applicable on a voluntary basis. Secondly, this exemption is not applicable to large companies which exceed the average number of 750 employees during the financial year. The result of this is that many small- and medium-sized enterprises ("SMEs"), that are in the value chain of companies which do not (or do not want to) fall under the exemption, may need to deliver the necessary detailed GHG-information on short notice.</p> <p>2.3. As many SMEs either (i) do not fall within the scope of the CSRD or (ii) fall within the scope of the CSRD but are only required to report from 2027 over the financial year 2026 onwards, this would mean that such SMEs within the value chain of reporting companies are still required to collect data which they could otherwise not report on at that moment in time. As a result, such SMEs would be 'dragged along' in the reporting obligations of large companies, which would go against the intention of the European Commission to reduce the administrative burden for SMEs in the CSRD.</p>

		<p>2.4. To safeguard the initial aim of the CSRD, we have three suggestions. Firstly, we suggest allowing for a materiality assessment regarding reporting on scope 3 GHG-emissions and to with that allow reporting companies to disregard non-material members of their value chain. Although not fully in line with the completeness principle behind the GHG Protocol, this would mean that SMEs which would fall beyond the scope the CSRD, would not be dragged along in the extensive reporting requirements of larger companies. Furthermore, this would also minimise the risk of insufficient reporting if a SME within the value chain is unable to provide the reporting company sufficient data on its GHG emissions. Our second suggestion therefore is that the introduced exemption should be mandatory, instead of voluntary, to aid legal certainty for companies that fall within the value chain of companies are allowed to apply the exemption. Thirdly, we propose that the exemption should apply not only for the first year of the CSRD being in effect, but also for the second year, to allow for more preparation time to report on scope 3 GHG-emissions, both for the reporting companies as well as the companies within their value chains.</p>
<p><i>Example:</i> ESRS E1 ESRS 2</p>	<p>Para 17 SBM-3</p>	<p>3. Dependencies on principal risks</p> <p>3.1. Lastly, it follows from Article 19a(2)(g) Directive 2013/34/EU (Accounting Directive) that the sustainability reporting must include <i>"a description of the principal risks to the undertaking related to sustainability matters, including a description of the undertaking's principal dependencies on those matters, and how the undertaking manages those risks"</i>.</p> <p>3.2. Whereas other aspects of the reporting requirements are further explained in the draft ESRS E1 (e.g. the <i>"resilience of the undertaking's business model and strategy"</i> in the sense of Article 19a(2)(g)(i) of Directive 2013/34/EU is explained in ESRS E1, par. 17 and ESRS 2 SBM-3), no further guidance is provided on how to report on the principal risks and principal dependencies as considered in Article 19a(2)(g). Explanation in the ESRS E1 also to this end would in our opinion be helpful, as the current wording may lead to uncertainty as to what and whether sufficient information is provided on this topic.</p>

4. Specific comments on Annex II

Defined term	Comment
N/A	N/A