RAAD VOOR DE JAARVERSLAGGEVING
Dutch Accounting Standards Board

DASB secretariat:
Mercuriusplein 3, 2132 HA Hoofddorp
Postbus 242, 2130 AE Hoofddorp

Tel: +31 (0)88 4960 391
secretariaat@rjnet.nl
www.rjnet.nl

EFRAG
Attn. EFRAG Financial Reporting Board
35 Square de Meeûs
B-1000 Brussels
Belgique

Our ref: RJ-EFRAG 644 G
Direct dial: +31 (0)88 4960391
Date: Hoofddorp, 30 October 2026
Re: EFRAG Exposure Draft ESRS for Certain Non-EU Undertakings in Accordance with Article 40a of the Accounting Directive

Dear members of the EFRAG Sustainability Reporting Board,

The Dutch Accounting Standards Board (DASB) appreciates the opportunity to respond to EFRAG's Exposure Draft *ESRS for Certain Non-EU Undertakings in Accordance with Article 40a of the Accounting Directive* (ED ESRS-40a), issued for public consultation on 23 July 2026. The DASB highly values the continuous efforts of EFRAG in the field of corporate sustainability reporting.

Generally speaking the DASB understands and supports EFRAG's choices in the ED, being based on the requirements in the EU CSRD(Directive (EU) 2022/2464) as amended by Directive (EU) 2026/470). Our answers to the high level questions can be found in our survey responses. This letter contains our main observations, some specific concerns and suggestions for possible improvement in a broader perspective.

Legal framework and related attention items

Legal background

Recital 20 of the EU CSRD pursues two objectives in relation to third-country undertakings[1] with significant activities in the EU: ensuring a level playing field with EU undertakings that are subject to sustainability reporting requirements, and ensuring that those third-country undertakings are held accountable for their impacts on people and the environment.[2] As a legal baseline, a regulator's jurisdiction is generally bounded by territorial limits. In other

[1] Third-country undertakings (art. 40a Accounting Directive) are ultimate parent undertakings outside the EU with a subsidiary within the EU that meet the reporting thresholds of a net turnover of € 450 million in the last two consecutive reporting years in the EU by the entire group and a net turnover of the EU subsidiary of € 200 million in the preceding reporting year.

[2] Recital 20: "*Third-country undertakings which have a significant activity on the territory of the Union should also be required to provide sustainability information, especially on their impacts on social and environmental matters, in order to ensure that third-country undertakings are accountable for their impacts on people and the environment and that there is a level playing field for companies operating in the internal market*".

words, the EU regulator and/or national regulators cannot directly impose and enforce reporting obligations on third-country (parent) undertakings in the same manner as they can on (subsidiary) undertakings established in a EU member state.[3]

The EU CSRD limits the obligation of the EU subsidiary to publishing and making accessible the group-level sustainability report under article 40a of the Accounting Directive. For an EU subsidiary with a third-country parent undertaking the EU subsidiary is obliged to request the required sustainability information from its third-country parent undertaking. In the situation that no or not all information is provided by the third-country parent undertaking, the EU subsidiary must draw up, publish and make accessible a sustainability report containing the information in its possession, obtained and acquired. This could, in practice, mean that very limited or even no information on the group level is available for the subsidiary, in spite of its best efforts.

Unclarity in the requirements for EU-subsidiary in sustainability reporting

The subsidiary, when applicable, must issue a statement indicating that the third-country parent undertaking did not make the necessary information available. The DASB is on one hand concerned that the text of the law does not clarify the content and requirements of a statement by an EU subsidiary that its third-country parent undertaking did not make some or all of the necessary information available. Similarly, we are concerned that the EU CSRD may leave room for various interpretations of the efforts to be expected from the EU subsidiary to obtain group-level information for the preparation and filing of the article 40a sustainability report. However, on the other hand more guidance on this matter may give rise to new questions and unclarities. A less prescriptive approach may allow the market to gradually adapt to and find an appropriate equilibrium for this new reporting framework. This equilibrium could provide a useful basis for an assessment if guidance is needed in the future. This attention area may be further assessed as part of the post- implementation review.

Dependency on willingness of the third-country parent undertaking

Based on the above analysis the DASB carefully concludes that in (upcoming) reporting practice, corporate sustainability reporting under article 40a of the Accounting Directive depends on the willingness and/or ability of the third-country parent undertaking to provide the necessary information (to the EU subsidiary). Given the regulator's jurisdiction, article 40a provides no direct measures to enforce the third-country parent undertaking to provide the sustainability reporting information.

---

[3] Recital 20: *"The subsidiary undertaking or branch of a third-country undertaking should also be able to report in accordance with the standards applying to undertakings established in the Union, or in accordance with standards which are deemed equivalent pursuant to an implementing act. In the event that not all the information required under this amending Directive is provided by the third-country undertaking, despite the best efforts of the subsidiary undertaking or branch of that third-country undertaking to obtain the necessary information, that subsidiary undertaking or branch should provide all the information in its possession and issue a statement indicating that the third-country undertaking did not make the rest of the required information available.*"

Level playing field

Scope ESRS 40a and ESRS

The ESRS 40a objective of ensuring a level playing field is difficult to achieve. As set out above, the reporting by the third-country undertaking itself cannot be enforced under article 40a of the Accounting Directive (Directive (EU) 2013/34) as amended by the EU CSRD. Furthermore, the EU CSRD prescribes specific sustainability reporting standards for third-party undertakings (ESRS 40a), which standards are more limited than those for the EU undertakings (ESRS). The different scopes of application of ESRS 40a and ESRS result in diverging reporting requirements for EU undertakings (depending on whether or not they are a subsidiary of a third-country undertaking) of similar size. Furthermore, the size of an undertaking is assessed using different reference dates when determining whether it falls within the scope of ESRS 40a and the ESRS. In addition, we are also uncertain whether the value chain cap applies to sustainability reporting under ESRS 40a in the same way as it does under ESRS.

The scope of the ESRS 40a differs from the other reporting requirements of the EU CSRD. Under ESRS 40a the reporting thresholds of a net turnover of € 450 million in the last two consecutive reporting years in the EU by the entire group and a net turnover of the EU subsidiary of € 200 million in the preceding reporting years differ from the ESRS reporting requirements for ESRS of more than 1,000 employees and a net annual turnover of € 450 million in the current reporting year. Consequently EU subsidiaries with a third-country parent undertaking might not be required to draw up a sustainability report for their own entity (for instance because they do not meet the employees threshold and/or net turnover threshold), but could nevertheless be required to draw up, publish and make accessible a sustainability report on the group (headed by a third-country parent), based on the information in their possession, if the third-country parent does not further provide this information. In this scenario, the EU subsidiary may even be required to report more information on its own activities, than would be required for a comparable EU undertaking without a third-country parent. The DASB understands that this follows from the EU CSRD, however this could be brought to the attention of the European Commission since it may hamper the objective of ensuring a level playing field.

Use of ESRS (2026) as starting point for ESRS 40a

The DASB supports EFRAG's choice to use the revised ESRS (2026) as the basis for the proposed ESRS 40a. The focus on impacts (and therefore not requiring disclosures related to Risks, Opportunities, Resilience and Dependencies) in the draft ESRS 40a is in line with EU CSRD-requirements (art. 40a(1) of the Accounting Directive)). By using the revised ESRS as the basis in the ED, EFRAG fosters a level playing field as much as possible given the legal constraints.

Interoperability

The DASB is of the opinion that securing interoperability is a major point of attention, especially for undertakings in the scope of ESRS 40a which are also active outside the EU. According to the DASB interoperability indicates that the ESRS 40a facilitates the possibility to simultaneously apply IFRS Sustainability Disclosure Standards as much as possible.

A level playing field could be further promoted through additional guidance on how ESRS 40a reporting complements the IFRS Sustainability Disclosure Standards. For instance, by way of interoperability tables in an appendix to ESRS 40a, showing which parts of the ESRS 40a requirements are already covered by IFRS Sustainability Disclosure Standards. Some further clarification and flexibility regarding the presentation of sustainability information could be helpful.

Mixed approach

Consideration in respect of the possibility to apply a mixed approach

We have received differing views from our constituents on the mixed approach proposed in the ED. On the one hand we have heard that the mixed approach will impair the decision-usefulness of the reported information for users, the level playing field and comparability with EU-headed groups required to report under ESRS, as well as the question whether the EU CSRD (Level 1) text supports the possibility of such a mixed approach, given its explicit reference to reporting at the group level. On the other hand we have heard that increasing the proportionality and reducing the reporting costs for the third-country undertakings may increase the likelihood that this information will actually be prepared, assured and provided by the third-country undertaking to its EU-subsidiary (see above discussion on legal framework).

Although our constituents clearly have different views, based on the DASB's overall assessments considering the factors mentioned above we are not fundamentally opposed against the mixed approach as proposed in the ED as we consider the mixed approach to be a pragmatic step within corporate sustainability reporting legislation towards the ultimate goal of achieving a level playing field. It would require a comprehensive post-implementation review to examine whether the reported information actually provides decision-useful information for the relevant users/stakeholders. It could be stipulated that the general approach is the preferred sustainability reporting option and that the mixed approach may be used in some specific situations as an (temporary) alternative.

Practical implementation challenges of the mixed approach

Assuming the mixed approach will be retained in the final ESRS 40a, it is important that this approach is actually suitable to be applied in practice in a proportionate manner. We have identified a number of attention items that would need to be addressed:

- One of the complicating factors in practice might be that the current wording refers to the impact of EU-activities only. In practice it may be very difficult to identify such an EU-only boundary, especially when those activities are strongly integrated with other European activities in non-EU countries, such as the UK and Switzerland[4]. A workable alternative may be to require that the reporting at least includes the activities of all EU-countries, but may also include impacts in non-EU-countries when these are closely interrelated. Of course, transparent disclosures would need to be provided on

[4] For instance, for multinational groups which consider the European Continent (from its business perspective) as a single (reporting) segment, it might be unpractical or even impossible to really exclude – for instance – information/business in Switzerland or the UK from that in EU member states.

the reporting boundary actually applied. This approach may for example address the following practical challenges:
    - the level of granularity required under the customer-based approach in identifying its EU-related products or -services and whether this approach should be applied consistently to all relevant products, services and related impacts;
    - the meaning and application of the "undertaking's EU activities" under the location-based approach, including situations where activities, employees or other resources are connected with both EU and non-EU operations;
- Further clarifying the extent to which impacts arising throughout the non-EU value chain (which may include other group companies) of products and services sold in or otherwise connected with the EU fall within the reporting scope under the mixed approach.

If you have any questions, please do not hesitate to contact me.

Yours sincerely,

drs. G.M. van Santen RA
Chairman Dutch Accounting Standards Board