International Association of Oil & Gas Producers

CONSULTATION RESPONSE | JULY 2021

IOGP position on the "European Commission proposal on the update of the Corporate Sustainability Reporting Directive"

Introduction

IOGP, the International Association of Oil and Gas Producers whose member companies account for approximately 90% of oil and gas produced in Europe, supports the goals of the Paris Agreement and the EU's ambition to reach climate neutrality by 2050. We are committed to provide input and expert advice to the EU Institutions, Member State Governments and the wider community, to contribute in a constructive and pro-active way to the development and implementation of EU policies and regulations.

We acknowledge the growing needs and expectations of stakeholders for more transparency and communication on business activities and impacts on social, environmental, consumer and human rights aspects, amongst others.

Corporate reporting will play an important role in this endeavour. Therefore, our industry supports meaningful corporate reporting policies relating to the disclosure of non-financial information pertaining to sustainability issues. We believe that effective non-financial reporting is in the interest of the industries' shareholders as much as in the interest of society.

In view of the European Commission proposal on the update of the Corporate Sustainability Reporting Directive (CSRD) we would like to make the following recommendations:

1. Materiality and flexibility

- **Disclosures should focus on 'material' and relevant information**. Companies must continue to be able to determine what is material and relevant information for investors and other stakeholders.
- **A flexible approach is needed**. We recommend retaining the right of Member States to allow companies to report sustainability matters in a separate report or in the annual report.

2. Sustainability reporting standards

- **European standards should build on existing standards and flexibility in the use of sector-specific standards should be granted**. In particular, we would like to call for the recognition of existing sector-specific reporting frameworks, such as IPIECA-IOGP-API Guidance on Sustainability Reporting for the Oil and Gas Industry.
- To ensure fair and full scrutiny of the CSRD from the co-legislators, **the sustainability-reporting standards should not be decided on before the conclusion of the co-decision process**. Therefore making sure the final agreement is reflected in the delegated acts setting the standards.

3. Giving companies enough time to adapt

- **Extend the timeline for the disclosure obligation to ensure an effective and efficient implementation of the delegated acts. The reporting obligations under the CSRD should start no earlier than 2 years after the publication of the first delegated act.** Companies will need time to review their reporting processes and establish new systems/reporting functionalities enabling the changes in data collection, processing, and assurance to be in line with the new requirements.
- **Companies should be given enough time to adapt to the single electronic reporting format requirements.** We also support simplified ways of reporting and making the information in reports easily accessible and comparable. The digitalisation of non-financial information should resemble the European Single Electronic Format (ESEF) for financial information, which entered into force on 1 January 2020.

4. Some definitions still need to be clarified

- **The scope of "operating" should be clarified to enhance the understanding of the overall application of the CSRD.** It should be clarified whether this refers to operating fixed assets located in an EU member state only, or also to companies operating globally. We would suggest that companies not involved in manufacturing or product sales should be excluded from the scope of CSRD coverage. We also do not believe that the Commission should seek to impose extra-territorial obligations.
- **Our industry supports the Paris Agreement goals and we would recommend the proposal to follow precisely the Paris Agreement's language**: "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".
- **More clarity on the references to "value chain" disclosures and "business relationship" is needed**. We recommend clarifying the concept "business relationship" and providing a limited and exact scope for any reporting obligations in relation to the supply chain and value chain more generally. Any requirements should be aligned with the provisions of supply chain legislation at EU level.
- **Fully align the environmental objectives definitions with the ones provided in the Taxonomy Regulation** to avoid confusion and the potential for changes to the scope of the Taxonomy Regulation environmental objectives through misinterpretation.
- **Fundamental rights requirements should not lead to misunderstanding the reporting obligations**. The reference to human rights seems very broad. Rather than setting unclear requirements in the proposal, the EU should focus on international cooperation on supply chain due diligence.
- **Unclear information requirements such as "political engagements" and "lobbying activities" should be avoided**, for the sake of materiality.

5. Recognition of sensitive information, assurance, penalties and sanctions, and alignment with existing legislation

- **Reporting obligations on future plans should better recognise the need for protection of commercially sensitive and confidential information**. The directive should clearly acknowledge the fact that forward-looking information cannot, by its nature, be 100% supportable and that there should be no expectation that it should be 100% accurate. It should be recognised that including forward-looking information in reporting requirements will increase both the cost and complexity of even limited assurance.
- **IOGP supports the approach of limited assurance.**
- **The proposal should allow for a grace period of one year during which penalties and sanctions will not be imposed. This way, companies, especially after the extension in scope, will be able to better accommodate the new regime.**
- **The European Commission should ensure coherence and alignment between different EU legislation.**

1. Materiality and Flexibility

• Disclosures should focus on 'material' and relevant information

Our industry acknowledges the intent of the proposed directive to clarify the "double materiality principle" and we would like to ask European policymakers to ensure disclosures focus on 'material' and relevant information in order to enable socially responsible investment analysis and sustainable investment decisions. It should be recognised that 'material issues' vary greatly based upon a company's size, local regulations on reporting obligations at national and regional levels, operating locations and customer base, among other factors.

We recommend that companies must continue to be able to determine what is material and relevant information for investors and other stakeholders.

• A flexible approach is needed

Paragraph (3) of Article 1 removes the possibility for Member States to allow companies to report the required information in a separate report that is not part of the management report.

Making reporting on sustainability matters obligatory in the management report takes away important flexibility for companies in terms of when and where to publish the information. This depends on the company's general internal processes and reporting systems, as well as on the users of the information such as investors and other stakeholders. Companies should be allowed flexibility in defining how best to address the needs of their stakeholders; the more prescriptive a disclosure regime for non-financial reporting is, the more likely it is to become a "tick-box exercise". Particularly for non-financial reporting, companies should feel encouraged to focus on sector-specific and company-relevant topics to the benefit of a wide stakeholder group.

Therefore, we recommend retaining the right of Member States to allow companies to report sustainability matters in a separate report or in the annual report.

2. Sustainability reporting standards

• European standards should build on existing standards and flexibility in the use of sector-specific standards should be granted.

IOGP would encourage the Commission to give companies the flexibility to align their reporting against existing standards/frameworks. As an example, our industry would recommend alignment with:

- **existing international standards. In particular, we would encourage the Commission to play an active role in bringing the global community along, e.g. through the IFRS Foundation's work to develop a sustainability standards board and international sustainability standards;**
- **climate-related disclosure frameworks such as the TCFD and SASB frameworks.**

Flexibility in the use of sector-specific standards should be granted and companies should be allowed to use existing frameworks, such as the IPIECA-IOGP-API framework.

As an example of industry-specific guidance, we would like to point to the IPIECA-IOGP-API Guidance on Sustainability Reporting for the Oil and Gas Industry (since 2005, 4th edition 2020) which provides practical advice for companies of our sector across ESG topics. This Guidance aims for continuous improvement of sustainability reporting and performance across the sector as it provides a robust, industry-developed framework to help companies shape the structure and content of their sustainability reporting that reflects current expectations on non-financial reporting by investors and civil society. It supports companies across our sector globally to improve the quality and consistency of their sustainability reporting, providing better comparability of information. IPIECA is the only global association involving both the upstream and downstream industries. It is also the industry's principal channel of communication with the United Nations. Because of its experience in developing sustainability guidelines, we believe that IPIECA has much to offer in a dialogue with European policymakers on reporting issues, including the Corporate Sustainability Reporting Directive.

• Allowing a fair and inclusive implementation process

IOGP notes a growing trend in the use of delegated acts. In this case, sustainability-reporting standards are going to be defined by EFRAG and then adopted unilaterally by the European Commission through delegated acts. This risks weakening the role of the Parliament and the Council as co-legislators regarding a very important part of this legislation.

To ensure fair and full scrutiny of the CSRD from the co-legislators, we recommend the sustainability-reporting standards be adopted only at the end of the co-decision process. By doing so, the final agreement between the co-legislators is respected and can be fully reflected in the delegated acts.

3. Giving companies enough time to adapt

• Setting reasonable timelines to implement the CSRD in an effective manner

IOGP would like to emphasise that companies will have to review their reporting processes and establish new systems/reporting functionalities enabling the changes in data collection, processing, and assurance to be in line with the new requirements.

Delegated acts implementing the CSRD are likely to introduce additional external and internal obligations, and, together with the timing of the upcoming delegated act on Article 8 of the Taxonomy Regulation by the end of this year, will make it extremely difficult to meet CSRD disclosure obligations for financial year 2023 in the course of 2024. Not only are the reporting obligations under the proposed CSRD a significant expansion of reporting scope relative to the existing Non-Financial Reporting Directive, but with the lower qualification thresholds for reporting under the CSRD the number of companies brought within scope will also be greatly increased. Given this short timeline and the increase in the proportion of companies within company groups which will have to report under the CSRD as currently proposed, it will be very challenging for companies to adapt their reporting systems in time. To ensure the smooth and proper implementation of future requirements, a realistic and well-sequenced application timeline is needed, especially regarding the corporate disclosure obligations.

We therefore recommend to extend the timeline for the disclosure obligation to ensure an effective and efficient implementation of the delegated acts. The reporting obligations under the CSRD should start no earlier than 2 years after the publication of the first delegated act. We also recommend that reporting should be initially restricted to those companies that currently have to report under the Non-Financial Reporting Directive.

• Time-consuming adaptation to single electronic reporting format

Paragraph (4) of Article 1 of the draft CSRD inserts a new Article 19d into the Accounting Directive which requires companies to prepare their financial statements and their management report in a single electronic reporting format in accordance with Article 3 of Commission Delegated Regulation (EU) 2019/815 and to mark-up sustainability information as and when specified in that Regulation.

The precise requirements are unclear as currently formulated, given that the final words of Article 19d(1) ambiguously reference a Delegated Regulation which could either be Regulation (EU) 2019/815 or 2020/852. It is also not clear whether the final words of Article 19d(1) have been deliberately omitted from the end of article 19d(2).

At a higher level, the provision could be problematic considering the significant company efforts required to introduce a consistent electronic reporting format and digital tagging of financial information. In the case of non-financial data, there is not even a consistent standard for reporting in place.

While the cost of tagging is likely to be manageable, the initial time investment for tagging purposes can be significant. Having enough lead time matters too. We expect it will take at least 6 months for software companies to adapt their systems once the detailed requirements are available in a definitive form, and from then on further lead time is necessary to train personnel and familiarize them with the data to be tagged.

Given the above, **we recommend giving companies more time to adapt to proposed changes.**

We support simplified ways of reporting and making the information in reports easily accessible and comparable. The digitalization of non-financial information should resemble the European Single Electronic Format (ESEF) for financial information, which entered into force on 1 January 2020.

4. Some definitions still need to be clarified

• More clarity around the concept of "operating" is needed

IOGP would like to ask for the text to clarify some concepts related to the entities implied by the obligations:

- **"operating" companies/undertakings**: it is not clear whether this refers to operating fixed assets located in an EU member state only, or also to companies operating globally which would face the challenge of complying with multiple reporting obligations.

We recommend to clarify the concepts of "operating" to enhance the understanding of the overall application of the CSRD and would suggest that companies not involved in manufacturing or product sales, e.g. those providing services, should be excluded from the scope of CSRD coverage. We also do not believe that the Commission should seek to impose extra-territorial obligations.

• A proper reference to the Paris Agreement

We acknowledge that Article 19a(2)(a)(iii)) requires reporting companies to provide information on their plans to ensure that their business models and strategies are compatible with the transition to a sustainable economy and with limiting global warming to 1.5°C in line with the Paris Agreement. **Our industry supports the Paris Agreement goals and we would recommend the proposal to follow precisely the Paris Agreement's language: "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".**

• More clarity on the references to "value chain" disclosures and "business relationship" is needed

Article 19(a)(2)(e)(ii) requires reporting on "adverse impacts connected with the undertaking's value chain including its [...] business relationships and supply chain". IOGP is concerned that there is a risk of going beyond strictly material and relevant information requirements in the absence of clarity on what "business relationship" means and the exact obligations for the supply chain. For companies to have to report on their entire supply chain would be excessively burdensome.

We recommend clarifying the concept "business relationship" and providing a limited and exact scope for any reporting obligations in relation to the supply chain and value chain more generally. Any requirements should be aligned with the provisions of supply chain legislation at EU level.

• A coherent definition of the Taxonomy environmental objectives is needed

We observe that the taxonomy environmental objectives are subtly different in some cases (notably the following points c), d), e) and f):

- (a) climate change mitigation;
- (b) climate change adaptation;
- (c) the sustainable use and protection of water and marine resources *vs water and marine resources*;
- (d) the transition to a circular economy *vs resource use and circular economy*;
- (e) pollution prevention and control *vs pollution*;
- (f) the protection and restoration of biodiversity and ecosystems *vs biodiversity and ecosystems*.

We recommend fully aligning such definitions with the ones provided in the Taxonomy Regulation to avoid confusion and the potential for changes to the scope of the Taxonomy environmental objectives through misinterpretation.

• Fundamental rights requirements should not lead to misunderstanding the reporting obligations

Article 19b(2)(b)(iii) includes "respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the ILO fundamental conventions and the Charter of Fundamental Rights of the European Union".

Not only are companies committed to protecting human rights and the environment to meet the expectations of responsible business conduct since the adoption of the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, but also all member states are required to have in place rules for compliance with basic human rights. Companies should not however be required to assess and report on their compliance with obligations which operate at an international level, such as the International Labour Organization's core conventions.

While IOGP welcomes the reference to human rights, this reference seems very broad. Rather than setting unclear requirements in the proposal, the EU should focus on international cooperation on supply chain due diligence. This is important to ensure a global level playing field, support the competitiveness of European companies that operate in a global market, and at the same time promote a more coordinated and effective global response to due diligence questions, building on the progress achieved through the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.

• Unclear information requirements should be avoided

In Article 19b(2)(c)(iii), the proposal refers to "political engagements" and "lobbying activities" while Article 19b(2)(c)(iv) mentions "management and quality of relationships with business partners, including payment practices".

These statements are unclear and therefore do not help companies to understand what needs to be disclosed. **Unclear and, in the case of relationships with business partners and payment practices, potentially commercially sensitive information requirements that are difficult to report on should be avoided. The CSRD should instead focus on strictly material and relevant information requirements.**

5. Recognition of sensitive information, assurance, penalties and sanctions, and alignment with existing legislation

• Reporting obligations on future plans to better recognise the existence of commercially sensitive and confidential information

Article 19(a)(3) on the requirement to make disclosures about future plans is too broad in scope and could require the disclosure of commercially sensitive information and/or confidential information. For any company, there is likely to be certain information which if disclosed would undermine its market position or breach obligations of confidentiality. The proposed directive attempts to recognise this in the final paragraph of Article 19(a)(3) but the conditions that need to be met for the exception to apply are so stringent that in practice it is hard to envisage circumstances in which the exception would be applicable as currently drafted. The exception should be established at the level of the directive rather than leaving this to the discretion of member states, and should be amended to remove (a) the requirement for validation by the members of the administrative, management, and supervisory bodies and (b) the final caveat ("provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity").

Forward-looking reporting is not standard for companies at present and introducing requirements for detailed forward-looking reporting represents a significant increase in the scope of the reporting burden. Given the inherent lack of certainty in forward-looking information, taking steps in this direction may encourage litigation including of a frivolous, speculative or vexatious nature. The directive should clearly acknowledge the fact that forward-looking information cannot, by its nature, be 100% supportable and that there should be no expectation that it should be 100% accurate. It should be recognised that including forward-looking information in reporting requirements will increase both the cost and complexity of even limited assurance.

IOGP recommends relaxing the requirements for the Article 19(a)(3) exception and recognising the inherent uncertainty of forward-looking information.

• Limited assurance of sustainability information

IOGP supports the approach of limited assurance but the timeframe should be clarified in order to allow sustainability standards to be prepared and internal systems to adapt. Mandatory full assurance for companies would lack an acknowledgement of the differences between financial and non-financial information, and would entail significantly increased costs and excessive administrative burdens. It is not clear that auditors have the necessary expertise and capability to move to assurance of sustainability information within the timescale needed for a successful implementation of the directive, given also the additional complexity introduced by the requirements under the directive for the provision of forward-looking information.

We recommend that the requirement is phased in, allowing companies to focus initially on compliance. After two years of experience with reporting, companies will be able to better explain the approach taken, and the auditing itself will be more efficient and meaningful.

• Penalties and sanctions

We are concerned that the penalties and sanctions included in the proposal go too far without a phased approach or grace period allowing companies to accommodate to the new regime. The proposal substantially amends Article 51 of the existing accounting directive to add a requirement on Member States to provide for at least the following administrative measures and sanctions in case of a breach of the national provisions transposing Articles 19a, 19d and 29a:

a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement;

b) an order requiring the natural person or the legal entity responsible to cease the conduct constituting the infringement and to desist from any repetition of that conduct;

c) administrative pecuniary sanctions.

These penalties and sanctions are severe, especially from a reputational point of view. Companies should have time to adapt to the extensive new requirements and provide the best reporting possible without the risk of incurring significant financial and reputational costs during the first year of reporting under this new regime. Furthermore, thousands of companies will have to report non-financial information for the first time due to the proposed extension of scope.

The proposal should allow for a grace period of one year during which penalties and sanctions will not be imposed. This way, companies, especially after the extension in scope, will be able to better accommodate the new regime.

• Alignment with EU legislation is needed

The European Commission should ensure coherence and alignment between different EU legislation. Firstly, several regulations are currently being implemented (e.g. the Taxonomy Regulation, the Sustainable Finance Disclosure Regulation), and it is important to avoid any overlap or duplication of reporting obligations stemming from these different pieces of legislation. Secondly, simplification of the existing regulatory framework in terms of coherence between the different pieces of legislation (Taxonomy Regulation, Sustainable Finance Disclosure Regulation, and CSRD) is needed. Thirdly, synergy with future initiatives such as the Renewed Sustainable Finance Strategy and the Sustainable Corporate Governance initiative is essential. Finally, overlapping/contradicting complementary legislation must be avoided *"to reduce unnecessary costs of sustainability reporting for companies, and to enable them to meet the growing demand for sustainability information in an efficient manner"*[1], to quote the Explanatory Memorandum to the CSRD proposal. An example of unnecessary costs is the possibility for Member States to require publication in multiple languages and the certification of translations, provided by the draft legislation. **We encourage the European Commission to consider the additional costs this would imply.**

1 Brussels, 21.4.2021 COM(2021) 189 final 2021/0104 (COD) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting – page 4 of the Explanatory Memorandum.

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