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Berlin, XX October 2026

Exposure Draft: ESRS for Certain Non-EU Undertakings in Accordance with Article 40a of the Accounting Directive

Dear Kristian, dear Chiara,

On behalf of the Deutsches Rechnungslegungs Standards Committee (DRSC) I am writing to comment on the Exposure Draft *ESRS for Certain Non-EU Undertakings in Accordance with Article 40a of the Accounting Directive* (ED ESRS-40a) issued for public consultation by EFRAG on 23 July 2026. Please note that, in addition to this comment letter, we have submitted our responses on the dedicated questions raised by EFRAG via the online questionnaire provided through EFRAG's website.

The DRSC's Sustainability Reporting Technical Committee strongly supports EFRAG's work on the sustainability reporting standards for third-country undertakings, enabling them to meet the reporting obligations laid down in Article 40a of Directive 2013/34/EU (Accounting Directive). We further acknowledge that the ED ESRS-40a marks an important step toward holding third-country undertakings accountable for their EU-related impacts, as well as fostering parity and fair competition among undertakings operating in the EU market.

That said, the DRSC is convinced that there is a need for a worldwide mutual acceptance of national, supranational or international standards to jointly promote high-quality sustainability reporting. While we acknowledge the call for a level playing field between third-country undertakings and EU undertakings (for example, in recital 20 of the CSRD), we believe that the final ESRS-40a needs to be significantly less complex than the present ED ESRS-40a in order to facilitate the mutual acceptance of various sustainability reporting standards. In our view, such a simplification will foster worldwide sustainability reporting, and in particular the acceptance and implementation of the ESRS-40a.

This is an essential prerequisite as the regulatory mechanics governing third-country undertakings under Article 40a of the Accounting Directive differ significantly from the framework

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applicable to EU undertakings. Specifically, unlike their EU peers, third-country undertakings are not directly targeted by the reporting obligations set out in Article 40a of the Accounting Directive, which instead apply indirectly by holding their EU subsidiaries or EU branches accountable.

Consequently, as provided in Article 40a (2) of the Accounting Directive, third-country undertakings can refrain from reporting under this reporting regime by failing to provide their in-scope EU subsidiaries or EU branches with all information necessary to meet the reporting obligations. Given these diverging Level 1 provisions, we recommend that EFRAG avoid seeking to impose a level playing field through Level 2 reporting standards. Instead, we argue that the ESRS-40a must feature proportionate disclosure requirements to ensure buy-in and acceptance from third-country undertakings, and we strongly encourage EFRAG to reflect this balance in its forthcoming technical advice to the European Commission.

Having considered and thoroughly discussed the direction of EFRAG's draft standards, we conclude that the current proposal to apply either the global approach or the mixed approach option in ED ESRS-40a 1.28 raises complexity for sustainability reporting requirements for third-country undertakings. We further believe that the condition set out in ED ESRS-40a 1.29 would rarely allow third-country undertakings to apply the mixed approach option. Combined with the subsequent disclosure requirements that would apply under both ED ESRS-40a 2 and the draft topical standards, which are very complex to apply in practice, the mixed approach option does not seem an adequate approach to proportionate requirements.

Instead, in order to effectively streamline the reporting process and thereby ensure the necessary buy-in and acceptance, we propose a staggered approach for the global approach. While we acknowledge that ultimately the global approach should include all aspects of ESRS sustainability reports, we suggest at this point that the ESRS-40a's global approach requires third-country undertakings to report only in accordance with ESRS-40a 2 ('General Disclosures') together with the topical standards ESRS-40a E1 ('Climate Change'), ESRS-40a S1 ('Own Workforce'), and ESRS-40a G1 ('Business Conduct'). Other environmental or social topics would not fall within the scope of the ESRS-40a at this stage but should be subject to the regular review process.

To this end, we encourage EFRAG not to pre-empt the decision on further sustainability topics, if any, within the current draft standards, but rather to postpone such a decision until the completion of a later review followed by a careful post-implementation assessment. We argue that such a staggered approach would fully meet the requirements of Article 40a of the Accounting Directive to provide a sustainability report covering the information specified in points (a)(iii) to (a)(v), points (b) to (f) and, where appropriate, point (h) of Article 29a (2) of the Accounting Directive. At the same time, we believe that it offers a viable bridge for third-country undertakings that would be widely accepted within the international community, as it represents a conceptual and practical simplification compared to a full-scope global approach covering all sustainability topics.

In the event that the ESRS-40a retains a mixed approach option in EFRAG's technical advice to the European Commission, we call for a more straightforward provision. While we



acknowledge the effort to include all EU-related impacts, we believe that the current approach to determine all EU-related impacts lacks practical feasibility. In particular, the 'customer component' of EU-related impacts as currently defined in ED ESRS-40a 1.28(a) is hardly practical due to numerous application issues, ambiguous requirements and unresolved questions. While we also acknowledge that a customer component could, in principle, provide valuable information as well, it seems too complex at this point to yield meaningful or comparable information. Therefore, we advocate for a mixed approach option based only on the 'location-based component' of EU-related impacts as set out in ED ESRS-40a 1.28(b). This would ensure that all impacts of third-country undertakings' EU activities (own operations and value chain) are covered, while at the same time enabling actual implementation.

As a final remark, we encourage EFRAG to reconsider the design of feedback templates for future consultations. The 300-word limit for responses to individual consultation questions seems inappropriate if stakeholders are expected to provide substantive feedback. The ED ESRS-40a introduces novel concepts, such as the mixed approach option, and contains numerous complex requirements that require thorough deliberation. Against this backdrop, we believe that a blanket 300-word restriction per response is neither adequate nor fit for purpose.

Beyond our remarks on the ED ESRS-40a, we would like to emphasise that several open questions remain regarding the underlying Level 1 provisions, which need to be clarified by the European Commission on a timely basis. Examples include how the €450 million threshold of 'net turnover in the Union' in Article 40a (1) of the Accounting Directive is to be determined in order to identify in-scope third-country undertakings, and the treatment of diverging fiscal years between third-country parent undertakings and their EU subsidiaries.

Our detailed responses to the questions raised by EFRAG are laid out in the appendix to this letter. If you would like to discuss our comments further, please do not hesitate to contact me or the responsible DRSC project manager, Dr. Denny Kutter (kutter@drsc.de).

Yours sincerely

Georg Lanfermann