The EU Omnibus Regulation: Simplification or new hurdles for sustainability reporting?

Interview with Phillip Blumenthal, Head of Sustainability at Code Gaia

Interviewer: Hanna Plümer, Head of Brand & Communications at Code Gaia

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Transcript

Phillip Blumenthal: The European Commission president gave an indication that the EU wanted to consider consolidating corporate sustainability reporting requirements. Currently, the reporting requirements are over a number of different directives. The CSRD being one of them, the Taxonomy Regulation being another one, and the Corporate Sustainability Due Diligence Directive being another. And there are also lots of other sustainability-adjacent or sustainability related compliance requirements for companies.

It seems that there is a political recognition currently that the sustainability reporting burden is somewhat higher than the market is ready to accept, and there are elements of duplication and overlap between the various directives. The political indication is that they want to streamline this, and apparently they're looking to collapse this into a single kind of regulation. That is the plan, and it is being colloquially referred to as an “omnibus” regulation. That was the phrase that was being used; an omnibus. This would be a single kind of directive which takes into account all the requirements of the current duplication of directives. What is not clear, is how much of that streamlining is going to reduce actual reporting burden for companies.

Obviously collapsing into a single directive would streamline the physical process of the reading of the legislation, it necessarily means that there will be fewer places to check in order to find out what the requirements are. The commission has been given the task, apparently, of reducing the reporting requirements by at least 25% in the first half of 2025. So, sometime during the next 6 months, 25% of the reporting requirements are supposed to be reduced; but how they will do this is not clear. It’s worth noting that the statement from the commission president indicated that they wanted the content of at least the ESRS to remain unchanged.

So if they want to reduce the reporting requirements by 25%,and it sounds like they don't want to actually take away the content of the ESRS itself, then they have limited options to do it. They can change the qualifying criteria or the thresholds for when a company must report or must not report, and just remove 25% of the companies from that requirement. They could do that. They could go after the taxonomy regulation and the sustainability due diligence directive, the CSDDD, and they could look for ways to streamline those directives more, which aren't directly changing ESRS content, or they could add new guidance and clarity for the ESRS or potentially drop the development of the tor specific standards which are yet to be developed. So if they put a halt on the sector specific standards, they could potentially reduce the future reporting burden, but it's unclear exactly what they're proposing. Finally, they could use the Auditing and Assurance requirements to lift the assurance burden and give companies more freedom to report information and data without having to go into great details about methodologies and uncertainties and document process steps which will not ever be reported anyway.

So that's the end kind of the summary of what I think is happening.

Hanna Plümer: Can I ask two questions? So first of all 25% isn't it just sounds like a random number which sounds like a lot, and it's just a show like they don't even know what to do or what to get out of the stuff and...

Phillip Blumenthal: Yes, that count of 25% sounds completely arbitrary.

Hanna Plümer: Do you think, in six months, achieving these numbers is realistic or sensible?

Phillip Blumenthal: It doesn't sound like 25% has been based on reading the standard or reading the reporting requirements and deciding which ones are less important and could be deprioritized or relaxed. There's no obvious indication that anyone has actually looked at the documents and weighed and measured the reporting burden to determine which requirements should or should not be in. So 25% seems like something completely arbitrary. One might conclude that it's just a politically driven sound bite that is not based on any kind of sophisticated understanding of the requirements. The second part is even if you got rid of 25% of the raw number of reporting requirements, this doesn't mean you've gotten rid of 25% of the reporting effort because the effort required to report each requirement is not the same.

There are some very small individual requirements, some single numbers that you have to report that could take you months to do the work to get that number. There are other reporting requirements which require pages and pages of text, but you could probably write that text in three or four hours if you just sat down and did it. If they just arbitrarily knock 25% of the reporting requirements out of

these directives, then they won't actually get rid of 25% of the reporting burden, if that's what they're trying to do. I have no idea where 25% comes from, how they're going to measure it, and how they're going to find the specific requirements that they want to ease.

Hanna Plümer: Also, this year has already started. How do they propose to achieve this?

Phillip Blumenthal: They've given themselves six months, the reports say, “in the first half of 2025”. And the new omnibus regulation is set to be published in 2025. That's what I'm reading in these press releases. The interesting thing about this is that the full and complete original sort of text from the commission president I can't actually find anywhere. All I'm able to find so far is journalists and bloggers and law firms writing about what was said and not actually providing the verbatim transcript. And as far as I can tell, at least at the point that I'm having this conversation with you, the commission itself hasn't released the full transcript of what was said. So once again, we're dealing with secondhand information that is already ambiguous.

My thinking is how to go forward from here. If Ursula von der Leyen is correct and is going to follow through on effectively preserving the content of the ESRS, then if I was already locked into doing ESRS, I would just continue doing it and I would just assume that that is what is happening. I would also assume that the principles of the Taxonomy are going to remain as it is. But I would lobby for some streamlining of the taxonomy to try and convince the EU that the taxonomy regulation is one of the areas they can do some streamlining.

A few people have talked about the DNSH and the minimum safeguard requirements in the taxonomy, that they are quite onerous and quite detailed and quite specific. And that might be one area where some streamlining of the reporting requirements could help.

Other adjustments might involve reducing the requirement for how many tiers in the supply chain a company has to look at or maybe only assessing initial risks, as they are under the CSDDD (known as value chain impacts under the ESRS) on the basis of revenue or simply allowing the double materiality process to take care of these. This would entail using the identification of impacts in the value chain under the ESRS to double as compliance with the corporate sustainability due diligence directive. So if you identify an impact in the value chain under the ESRS that should be considered the identification of an impact also under the CS D and then the management measures that you do under the ESRS or that you do under the CSR should be equivalent and vice versa.

The last area that is still definitely up for grabs is assurance standards. If the omission can define limited assurance in a way that reduces a lot of the process and documentation of content/ material

that will not actually be published anyway, then this could go a long way to reducing the burden. Currently, I see a lot of fear of assurance generating significant workload, a lot of this is being driven by the absence of these limited standards.

Apart from that, I don't really see any major areas where they can improve. But if I was caught by all these three, that's how I would do: Stay the course with my ESRS, pretty much.

For taxonomy regulation, many companies are reporting zeros anyway because reporting alignment under the taxonomy (due to the specificity of the criteria you have to comply with) is really, really onerous. Companies are just reporting zero, and there are a few strategy strategies you can deploy with your taxonomy project to get to zero as fast as possible. So the minute you can report zero, then you might as well just report zero. You can vastly reduce the amount of time you have to spend on taxonomy if you're prepared to report zeros for alignment.

Then with the due diligence directive, I would use as much as possible my value chain impact assessment under the ESRS double materiality as my kind of abstract as my desktop impact identification for CSDDD and try to make sure I didn't have a completely separate list of impacts under the ERS than what I had under the CSDDD. I would try to have the same list of impacts, just to streamline things myself. Those are the kind of ways I'd be doing it internally if I was a sustainability manager, and I was trying to reduce the burden myself because we really don't know how the EU commission is going to deal with the problem.

Hanna Plümer: Do you think the ESG managers are totally confused by now? So in the worst case, they have just this year to prepare for next year. A lot of our customers have to report next year.

Phillip Blumenthal: Pretty much everyone that's just reporting ESRS already is just sticking with what we have. The ones that have decided to report and have already locked in their teams and their processes, they're just going to stick with what they've got. If the new law effectively preserves the current processes and content and simply streamlines them into a single Directive, then the companies that have already got started will just be able to continue what they're doing. And so that's the first thing. They won't have lost anything. If they are going to change the content substantially, they're not likely going to be able to pass the Directive and make it implementable as of now. They might be able to repeal and implement immediately, but that sounds like a bit of a shock to the market; to suddenly repeal and re-implement a new set of requirements which fundamentally change the processes that companies have to go through and what they're doing currently. I think that would have to be delayed, in which case there still might be one or two years under the current regime. So I think possibly the worst case scenario is to gamble and assume that it is going to be vastly cut down and gamble on that

and then end up too late to the party if it doesn't substantially change.

Somewhat unseriously, just because we know a law is going to change doesn't mean you should not comply with the law currently. You don't start driving at 100 km an hour in a 50km/h zone just because they're planning to change the speed limit. So I think the safest bet is to stick with what we've got.