INVEST EUROPE

Mr. Valdis Dombrovskis
Commissioner for Economy and Productivity; Implementation and Simplification
Rue de la Loi 200
1040 Brussels

25 February 2025

Dear Commissioner Dombrovskis,

We are confident that the upcoming European Commission's Omnibus Package on Sustainability will represent a significant step toward streamlining corporate sustainability reporting. We fully support the initiative's aim to reduce bureaucratic burdens while enhancing the effectiveness of sustainability disclosures and maintaining a competitive level-playing field. To achieve this, clarity, consistency, and proportionality are essential in both drafting and implementation.

While the CSRD, CSDDD, and Taxonomy legislation aim for long-term value creation and transparency, they have also introduced regulatory complexity and inefficiencies. This could shift focus from value to compliance, potentially impacting investment in key sectors, especially innovative, high-growth companies.

In addition, the current lack of clarity around the specific amendments the Commission intends to pursue and their varying impact, depending on factors such as the transposition of the CSRD into national legislation, only adds to the existing uncertainty. The Commission's proposal set for 26 February should provide a clear path forward to ensure the private equity, venture capital and infrastructure (PE/VC) industry can prepare effectively and continue driving innovation and competitiveness. Concrete measures and clear timelines are needed for our members.

The Annex outlines recommendations – relating to both the actual Omnibus proposal and the interim transition period – based on our members' challenges, aiming to balance reduced compliance burdens with meaningful sustainability disclosures.

A. Recommended reforms within the Omnibus Package on Sustainability
B. Urgent adjustments before the Omnibus Package on Sustainability takes effect

To ensure the Omnibus proposal brings about meaningful change, we recommend:

- Excluding PE/VC fund managers which are subject to the Sustainable Finance Disclosure Regulation (SFDR) from CSRD reporting
- Excluding funds and investment structures from CSRD reporting
- Introducing a new category of small mid-cap companies subject to reduced reporting obligations under CSRD
- Clarifying that the scope of consolidation for CSRD purposes is by default the same as for financial reporting
- Providing standards or reliable guidance on sector-wide materiality
- Reducing datapoints in the European Sustainability Reporting Standards (ESRS) to capture what is really material for stakeholders

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- Limiting assurance to material topics and permitting unlisted companies to opt out in the first three years of application
- Clarifying how due diligence for the purposes of the CSRD materiality assessment and due diligence under CSDDD interact
- Permanently excluding all financial institutions from any kind of downstream due diligence under CSDDD
- Suspending the implementation of CSDDD until the regulatory procedure has been completed and main issues have been solved

Urgent adjustments needed before the Omnibus takes effect include:

- Addressing uncertainty for NFRD companies during the transition period by "freezing" obligations and continuing to issue guidance on issues that are still relevant
- Recognizing equivalence of globally accepted frameworks and permitting companies with relevant international links to choose such frameworks instead of ESRS

As you finalize the Omnibus Package on Sustainability in the coming days, the Commission should carefully consider the time required to implement changes to Level 1 legislation. We propose that the Omnibus Package suspends the effective date of mandatory reporting for non-NFRD companies under the CSRD, and due diligence obligations and climate transition plans under the CSDDD until the legislative process is completed, plus an adequate implementation period. This will permit companies to (re)start their implementation process in an efficient way and on a solid foundation. In the meantime, it will be crucial to provide clear direction to Member States and guidance on interpreting existing rules and resolving areas of uncertainty for those companies that are already caught under CSRD. This is particularly important for companies and groups operating cross-border in countries in which CSRD has yet to be transposed.

Finally, the Commission should adopt a stakeholder-driven approach with balanced and inclusive engagement. Recent discussions, like the Simplification Round Table on 6 February, lacked representation from all relevant stakeholders, and the timeline for the publication of the Omnibus proposal remains tight. It is important that all relevant stakeholders – including private equity, venture capital, and infrastructure investors, who play a key role in financing and growing companies across sectors – have sufficient opportunity to contribute to the discussions now and in the coming months. Direct engagement with our members will ensure targeted and tailored measures, considering diverse perspectives and addressing challenges related to divergent national transposition.

We recognize and appreciate the Commission's ongoing efforts to simplify the sustainability reporting framework and remain committed to supporting this process. We would be pleased to arrange a meeting with you and your team or any other relevant colleagues to explore the below points in greater depth.

Yours sincerely,

Martin Bresson
Director of Public Affairs

Please note that similar letters have been sent to Executive Vice-President Séjourné, Commissioner McGrath, and Commissioner Albuquerque.

ANNEX

A. Recommended reforms within the Omnibus Package on Sustainability

- ***Excluding PE/VC fund managers which are subject to the Sustainable Finance Disclosure Regulation (SFDR) from CSRD reporting***

Given the interplay of the sustainability disclosure regulation for the funds industry (SFDR) and CSRD, and the Taxonomy Regulation to which both regimes refer, the Commission should ensure that the outcomes of the Omnibus Package address the fact that the PE/VC industry already complies with comprehensive disclosure requirements which govern PE/VC fund managers as a firm as well as the funds and portfolios they manage.

The SFDR was designed with investment structures in mind. The Commission should address that and ensure that CSRD reporting is reserved for corporate-level disclosures only. Since the main sustainability topics for **PE/VC fund managers are related to their investments, we believe that PE/VC managers which are in scope of SFDR should be exempt from CSRD, with SFDR being the more specialized regime for reporting on sustainability topics relating to investment structures and their portfolio**. Information reported under SFDR at the level of the firm already accounts for the needs of stakeholders in PE/VC fund managers.

If the Commission does not consider it appropriate to grant a full exemption under CSRD for PE/VC fund managers that are in scope of SFDR, it should at least be clarified that investments managed by such fund managers do not have to be included in their CSRD reporting since they are already covered by SFDR. This would also be in line with the exemption for funds and investment structures from own reporting obligations (see below). Having PE/VC fund managers report on all their funds and investment structures as if they formed a single group is not in line with the actual role and powers of a PE/VC fund manager and that was accordingly taken into account under SFDR, which should prevail as the more specific regulation to those managers.

- ***Excluding funds and investment structures from CSRD reporting***

Funds are already exempt from CSRD and CSDDD. In line with the above argument that PE/VC fund managers should be exempt from CSRD reporting, **we specifically ask for holding entities established by funds to opt to be exempt from CSRD if they are held and controlled by one or more funds**. Such holding entities should be permitted not to classify themselves as ultimate parent companies, as they are not the "ultimate" parent, because they do not exercise operational control over their subsidiaries (with uniform policies, procurement terms, etc.). Bringing such holding companies into the scope of CSRD and CSDDD is inconsistent with their role and function and does not advance the policy aims of the regimes. **Under our proposal, special purpose vehicles created by private equity AIFs should be able to opt to be exempt entirely from CSRD, with responsibility for compliance resting on their EU or non-EU subsidiaries, if any, where those EU or non-EU subsidiaries are large enough to be in scope.**

- ***Introducing a new category of small mid-cap companies subject to reduced reporting obligations under CSRD***

We fully support the Commission's proposal for a new definition of small mid-cap companies, which are larger than SMEs, but do not have the systemic relevance or resources of larger entities. Establishing a mid-cap category with proportionate reporting requirements will provide a solution that aligns with capacity, minimizes disruption and ensures a smooth transition into the sustainability reporting framework. If this category is introduced, the Commission should ensure the definition does not include undue constraints relating to the way these companies are financed or invested in, which could limit eligibility or access to regulatory benefits. For example, the current limits for what is considered an "autonomous" company under the EU's SME definition have been challenging for venture capital investors in the past.

Replacing the existing ESRS for mid-caps with the standards for listed SMEs, small banks, and captive insurers (LSME), or the voluntary sustainability reporting standard for non-listed micro, small, and medium enterprises (VSME) would reduce required data points and alleviate reporting burdens. Further work may need to be done to ensure that these standards are well-suited to meet the needs of the new category.

- ***Clarifying that the scope of consolidation for CSRD purposes is by default the same as for financial reporting***

We also recommend clearly aligning the scope of consolidated reporting in CSRD with the scope of consolidated financial reporting in the Accounting Directive by default. Companies using consolidation exemptions in the Accounting Directive should have the same exemptions for CSRD. Similarly, determining whether a group is in scope of CSDDD on a consolidated basis should be based on the company's financial reporting consolidation. However, companies should be allowed to choose a different consolidation boundary for sustainability reporting if it better represents their impacts, risks, and opportunities (e.g., if a service company with many employees is excluded from financial consolidation because of financial immateriality but the parent company would still like to report on social topics associated to these employees). Such deviations from the financial consolidation boundary should be on a voluntary basis only.

- ***Providing standards or reliable guidance on sector-wide materiality***

We recommend introducing sector-wide materiality mapping standards or guidance, similar to the approaches taken by GRI and SASB. Companies should be able to follow the sector-wide approach and limit their own assessment to sense-checking whether their materiality assessment needs to deviate from the sector-wide approach.

In practice, the open concept of materiality assessment across all topics and datapoints has proven to be extremely burdensome for even the largest companies, with many uncertainties and compliance issues attached to the lack of clear guidance. Industry associations have contributed to voluntary guidance, but this does not exonerate companies from performing and demonstrating the full materiality assessment across all topics, sub-topics and sub-sub-topics, as requested by their advisors and auditors. Sector-wide materiality approaches will also accelerate standardization of reporting, one of the paramount objectives of the CSRD framework.

- ***Reducing datapoints in the ESRS to capture what is really material for stakeholders***

We recommend revising and refocusing datapoints under CSRD to capture what is really material for the stakeholders of a company. This will be essential to achieving the ultimate goals of the CSRD framework without endangering the competitiveness of European companies. Within the PE/VC industry, market participants have worked for many years to identify what ESG-related information is material from the perspective of a financial investor. Guidance can, for example, be found in Invest Europe's ESG Reporting Template (available here) which is widely used by PE/VC fund managers and investors like the European Investment Fund (EIF). As an example, information relating to GHG emissions, decarbonization and energy management only requires 13 datapoints as compared to ESRS E1.

- ***Limiting assurance to material topics and permitting unlisted companies to opt out in the first three years of application***

Implementing the ESRS and the concept of double materiality uniformly across all topics and data points has been challenging. The Omnibus Package can reduce this burden, in particular in relation to assurance. A progressive assurance approach is needed to ensure that companies can implement assurance requirements efficiently while maintaining high-quality reporting. The need for such an approach is already outlined in the CSRD itself, with the transition from limited to reasonable assurance.

We propose that the Commission designates only specific topics as mandatory for assurance in case and to the extent they have been identified as material by the individual company, similar to topic E1 (Climate change), while extending audit timelines. Such should comprise E1 (Climate change), S1 (Own workforce) and G1 (Business conduct), which are central to understanding risks and opportunities for companies and investors across industries and geographies and should be subject to uniform limited assurance. Other sustainability issues should have voluntary assurance.

Auditors currently apply inconsistent or overly cautious interpretations, leading to inefficient assurance processes. The demand for assurance services exceeds available expertise, and sustainability reporting assurance is still maturing. To avoid overburdening entities with limited operational capacity, such as portfolio companies, we recommend a phased implementation of assurance requirements. **We specifically recommend that the Commission allows non-listed companies to opt out of limited assurance for the first three years of CSRD's application.**

- ***Clarifying how due diligence for the purposes of CSRD materiality assessment and due diligence under CSDDD interact***

While the ESRS connect the CSRD double materiality assessment (DMA) and the more traditional risk-based due diligence under the OECD Guidelines and UN Guiding Principles which are at the core of CSDDD, the relationship between both approaches is not entirely clear. The ESRS make reference to the OECD Guidelines/UN Guiding Principles approach (implemented in CSDDD) in order to identify material impacts, but the scope of the ESRS/CSRD is much broader, covering, e.g., also topics which are not protected positions under CSDDD, as well as the full value chain. Moreover, CSDDD permits to take a risk-based approach when identifying and assessing actual and potential adverse impact, focusing on business relationships which are most likely to be connected to adverse impacts. In addition, when taking measures to prevent, bring to an end or minimize identified adverse impacts,

companies can prioritize adverse impacts based on severity and likelihood. On the contrary, the initial assessment under the CSRD DMA extends to all actual and potential impacts across the entire value chain, leading to a significantly higher burden for companies. **We would recommend that the European Commission clarifies in its guidance on CSDDD that a risk-based approach is available under both regimes.**

- ***Permanently excluding all financial institutions from any kind of downstream due diligence under CSDDD***

The current text of CSDDD acknowledges the unique role of financial institutions – including private equity and venture capital firms – by limiting their due diligence obligations to upstream activities. However, this exclusion is currently subject to review rather than being established as a permanent feature of the directive. **The exclusion of these activities for financial institutions should be made permanent**. On the one hand, when making investments, financial institutions are subject to specialized due diligence obligations such as the Minimum Safeguards under SFDR and EU Taxonomy. On the other hand, it should be acknowledged that financial institutions lack direct operational control over investee companies, and broad downstream due diligence requirements could impose disproportionate legal liability and compliance burdens.

- ***Suspending the implementation of CSDDD until the regulatory procedure has been completed and main issues have been solved***

The CSDDD implementation should be suspended or delayed until the legislative procedure on the Omnibus Package has been completed and an appropriate period for implementation has passed. Depending on timing, this can be achieved by removing the first two implementation deadlines in 2027 and 2028.

B. <u>Urgent adjustments before the Omnibus Simplification Package takes effect</u>

- ***Addressing uncertainty for NFRD companies during the transition period by "freezing" obligations and continuing to issue guidance on issues that are still relevant***

While the legislation in the Omnibus Package undergoes reviews and modifications, solutions need to be found to support NFRD companies that are already subject to the CSRD framework and cannot profit from the suspension for non-NFRD companies. **We recommend that the Commission "freezes" their obligations under the CSRD framework, ensuring that phased-in obligations are suspended until the legislative process has been completed and an adequate implementation period has expired. This "freeze" should also extend to enforcement, auditing and further compliance since it makes no sense to have companies work on refining obligations under a framework which may be subject to changes.** This is also needed to prevent Member States from adopting temporary stop-gap measures, which could create operational and compliance inefficiencies. This is especially important for businesses already aligning with the CSRD and CSDDD, and in jurisdictions where these have been transposed, as further changes could cause confusion. In Member States where transposition is pending, the Omnibus Package might delay implementation, creating an uneven playing field across EU Member States.

Nevertheless, the Commission should continue to give guidance on aspects of the current legislation that are raising issues for our members, for example, confirming that current exemptions under the

Accounting Directive also apply for CSRD purposes. It would also be helpful for the Commission to provide guidance on how the industry should handle situations where Member States fail to implement the CSRD and CSDDD on time.

- ***Recognizing equivalence of globally accepted frameworks and permitting companies with relevant international links to choose such frameworks instead of ESRS***

The Commission should rapidly recognize mutual equivalence between the CSRD and globally recognized frameworks, such as the ISSB and the GRI to eliminate duplicative reporting and reduce administrative and financial burdens.

We ask the Commission to grant equivalence of GRI and ISSB (as a combined package of sustainability reporting standards) to CSRD for the benefit of EU companies (reporting under Articles 19a and 29a of CSRD) which have relevant links to international business (e.g., being the parent company of substantial non-EU operations or part of an international group that reports using these frameworks). It would greatly benefit, for instance, EU parent companies with substantial non-EU operations, to use international standards for the entire group, in place of ESRS standards.

We also ask the Commission to grant equivalence of GRI alone for non-EU companies (reporting under Articles 29a and 40a of CSRD). This is particularly relevant for the upcoming ESRS for Non-EU Groups (NESRS), which focus on impact materiality and do not require reporting on financial materiality. A clarification that GRI standards are equivalent to the NESRS would provide clarity and consistency, ensuring that NESRS obligations do not overlap or conflict with existing global reporting requirements. In addition, tables of correspondence should be drafted, adopted and maintained in order to further facilitate interoperability.

Despite differences in focus (ISSB on financial materiality, GRI on impact materiality, and ESRS on both), a globally aligned approach is essential to facilitate capital flows, enhance sustainability insights, and prevent unnecessary duplications.