

Focus: VSME ESRS

EFRAG draft for a VSME ESRS

The Union legislator is called upon!

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- Sustainability reporting
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On January 24, 2024, the European Financial Reporting Advisory Group (EFRAG) submitted a draft standard for CSRD sustainability reporting by non-listed SMEs, the VSME ESRS, for consultation until the end of May 2024. This, in its core welcome initiative by EFRAG, although not included in the CSRD, cannot on its own remedy the

CSRD's incomplete SME concept and at the same time reveals that the EU legislator itself would do well to immediately revise and supplement the CSRD with SMEs in mind.

1. The lack of obligation for non-listed SMEs

In the European Union, the Corporate Sustainability Reporting Directive¹, the CSRD, has obliged a total of 49,000 companies to report annually in their management report on how their activities affect certain aspects of sustainability and, conversely, how these aspects affect the company, its business performance, results and position.² However, this sustainability reporting obligation only applies to a very small fraction of all the more than 24 million EU companies.³ **All non-listed SMEs remain exempt**; these are just under 200,000 medium-sized enterprises with up to 250 employees, 1.3 million small enterprises with up to 50 employees and 22.7 million micro-enterprises with up to 10 employees, the so-called micros.⁴ This means that these non-listed **SMEs**, are **not** (at least so far) **directly obliged** to protect the public good, ranging from human and employee rights to the environment and the climate, through the reporting process.

The considerations that guided the Union legislator in imposing this limited obligation on companies can at best be indirectly inferred from the recitals in the explanatory memorandum, with which it has now extended sustainability reporting beyond the particularly large public-interest entities that were previously obliged to report non-financially to all large corporations, i.e. regardless of whether they seek funds on the capital market or not. According to recital 18, they are subjectified to reporting obligations due to the **impact of their activities on the general interest on the one**

¹ Directive 2022/2464 of the European Parliament and of the Council of December 14, 2022 amending Regulation (EU) No 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU with regard to corporate sustainability reporting, OJ No L 322 of 16.12.2022, p. 15 et seq.

² On the effects of the CSRD on the organizational constitution of these companies *Hommelhoff/Allgeier/Jelonek*, NZG 2023, 911 et seq.

³ On the scope of application of the CSRD instead of many *Allgeier*, NZG 2023, 195; *Harbarth/Reichenbach* in *Hommelhoff/Hopt/Leyens* (eds.), HdB Unternehmensführung, 1st ed. 2023, § 6 para. 11 et seq.; *E. Vetter*, *ibid.*, § 42 para. 16 et seq.; *Lanfermann/Baumüller*, IRZ 2023, 89 (90 et seq.); critical of the scope of application of the CSRD draft *Hommelhoff*, DB 2021, 2437 et seq.

⁴ *Di Bella/Katsinis/Laguera Gonzalez/Odenthal/Hell/Lozar* in European Commission (ed.), Annual Report on European SMEs 2022/2023, p. 14 (<https://t1p.de/z73zt>, all internet sources were last accessed on 7.3.2024). Following on from this, EFRAG, Basis for Conclusions: Voluntary ESRS for Non-Listed Small and Medium Sized Enterprises (VSME ESRS), BC 19 (<https://t1p.de/uvthe>).

hand and the **public accountability for their actions**, including those in value chains, on the other. Conversely, the Union legislator evidently does not consider the impact of non-listed SMEs to be grave/impactful enough and, moreover, does not want to make these companies publicly accountable, at least for the time being (arg. Art. 6 para. 1 lit. c CSRD). The fact that the legislator wanted to spare these SMEs the oppressive burdens of extensive and detailed sustainability reporting⁵ is only mentioned cautiously, if at all, in the recitals to the CSRD.

This is all the more surprising given that, during the preparation of the draft directive, the Commission dealt in detail with the consequences of imposing direct legal obligations on non-listed SMEs as part of its **CSRD impact assessment**. In this assessment the Commission explains in detail why this option was abandoned at an early stage of the legislative process. On the one hand, the intention was to protect SMEs from **disproportionate burdens**; making them directly obliged would have caused **additional administrative costs of €145 billion**. On the other hand, the intense reporting obligation program of the CSRD in the case of non-listed SMEs is **not matched by a corresponding need for information** of report addressees. Investors, who need sustainability data regardless of the size of the company in order to assess the resulting opportunities and risks for their investments, simply do not exist. According to the Commission's surveys, the interest of other stakeholders in sustainability information, particularly that of the civil society and the NGOs that represent it, decreases with the size of the company.⁶

Despite not being required to report and address the human rights and environment in their organization and value chains, all non-listed SMEs are nevertheless affected by the CSRD reporting obligations, albeit only indirectly - on the one hand as companies in the value chains

⁵ On the smallest CSRD reporting requirements for large companies *Hommelhoff*, NZG 2023, 1631 (1633 f.); cf, AG 2023, 742 f.; *Hommelhoff/Allgeier/Jelonek*, NZG 2023, 911 (916 f.) in each case with further references. *Baumüller/Sopp*, PiR 2023, 258 (262) assume a total of 1,144 data points in the November version of the ESRs for large companies; there is talk of a "tsunami of reporting obligations" in *Fink/Schmidt*, KoR 2023, 105 (116); also *Lanfermann*, BB 2023, 1515 (1516).

⁶ On the whole, European Commission, Commission Staff Working Document: Impact Assessment SWD(2021) 150 final, Annex 18, p. 6. Following on from this, *Allgeier/Feldmann*, NZG 2023, 491 f.; *this*, ECFR 2023, 438 (439).

of those directly required to report and on the other hand as borrowers (or credit demander) from a financial institution .

2. Reporting obligations

Despite not being required to report and address the human rights and environment in their organization and value chains, non-listed SMEs are all, without exception, affected by the CSRD reporting obligations, even if only **indirectly** - on the one hand as companies in the **value chains** of those directly required to report and on the other hand as **borrowers** (or borrowers) from a financial institution⁷ . This is the "**shadow effect**" of the CSRD or, in the language of accountants, the "**trickle down**" effect (BC 31 ff.).⁸ As part of the value chain, these SMEs are affected by the request to provide information by companies obliged to report in their sustainability report on the most important actual or potential impacts associated with the value chain and on the measures taken to identify and monitor such impacts. With regard to that, the report is therefore also about the companies within the value chain and their activities. They are required to provide the reporting company with the necessary information at its request. The CSRD does not set any requirements for the size of these "chain" companies, meaning that micros are also included.

Practical example:

The "Butchery Stephan" in Ingelheim became famous: As a supplier of sandwiches to a large company, the butchery was requested by the company in a five-page letter to, among other things, "type, monitor, check and, if necessary, treat wastewater from operating procedures,

⁷ In detail on the obligation of SMEs by their financiers in the context of the legal acts on the Sustainable Finance Initiative *Löher et al.*, IfM-Materialien No. 294 (October 2022): The promotion of sustainable finance by the EU - effects on SMEs.

⁸ *Allgeier/Feldmann*, NZG 2023, 491 (492 f.); *this*, ECFR 2023, 438 (439 f.); see also *Müller/Needham/Warnke*, BB 2022, 1899 (1900 f.) on the indirect factual obligation of SMEs that are not active on the capital market by their business partners and lenders.

production processes and sanitary facilities
prior to discharge or disposal"⁹. In case of
refusal: termination of the business relationship!

3. The reporting burdens of non-listed SMEs

These reporting obligations of credit institutions or large companies in the middle of a value chain result in reporting requirements for non-listed SMEs. These requirements will generally be based on the information obligations of the respective directly obliged company and their scope. This is due to the fact, that the obligated company will want to avoid any appearance of not providing complete information on the sustainability aspects in its area of responsibility to the addressees of the sustainability report, i.e. investors, asset managers, customers, lenders, employees and the general public, represented by NGOs and the social partners. Otherwise, there is a risk of reputational damage.¹⁰

All of this has several unfortunate consequences for non-listed SMEs as suppliers of information: Firstly, they are at risk of simply being overburdened and overwhelmed by the scope, the **level of detail** and the **depth of the information required** - especially when micro-enterprises, such as a roofing company with four employees in addition to the managing director, are required to provide such information in order to obtain a credit line.

Secondly, it is not uncommon for there to be a **diversity of information requests** from the group of reporting entities to which the SME supplies. Take the example of a medium-sized family business with 100 employees in Swabia, which supplies the automotive industry with sports rims. This company is confronted with the different information requirements of more than five vehicle manufacturers. Accordingly, the personnel, financial and time expenditure for documentation, information collection and organization as well as the supply of information according to the required content and specified form increases for this SME.

⁹ WirtschaftsWoche v. April 7, 2023.

¹⁰ On the enforcement of CSRD reporting requirements by means of the reputation mechanism *Hommelhoff*, NZG 2023, 1631 (1634 f.); *Hommelhoff/Allgeier/Jelonek*, NZG 2023, 911 (913 f.) in each case with further references. In general on the importance of corporate reputation in law *Eger*, Unternehmensreputation als rechtlicher Parameter, 2020, p. 156 et seq.

In addition, this SME may itself act as a purchaser of raw materials in the value chain of the sports rims it sells. In view of its **limited economic power**, however, the SME will in fact not be able to force its raw material suppliers to provide the necessary information; the CSRD does not provide any legal instruments that would enable the SME to request such information from its "large" business partners. Even the envisaged **industry cooperations** are not able to change this initial situation: Establishing them is not only **cost-intensive**, but also **highly problematic in terms of antitrust law**.¹¹

None of non-listed SMEs will be able to escape these informational burdens by simply refusing to do business.¹² Breaking off the business relationship is no serious alternative. SMEs must generate sufficient income in order to keep up with the competition.

4. Previous relief approaches for SMEs

The EU legislator has been aware of the burdens placed upon non-listed SMEs. In recognition of SMEs as the "backbone"¹³ and "heart"¹⁴ of the European economy, the commission has consistently provided a range of SME-specific relief mechanisms in the CSRD.¹⁵ In addition to the few SMEs that are directly subject to reporting requirements because they are listed, these also affect the majority of non-listed SMEs. For example, **Art. 29b para. 4 sentence 3 of the Accounting Directive** stipulates that EFRAG and the EU Commission must not include any information from small and medium-sized enterprises in the reporting standards for large reporting companies that the SMEs would not have to report themselves, if they were listed entities(BC 21).¹⁶ However, from the perspective of non-listed SMEs, this regulation

¹¹ On the handling of sustainability cooperations under antitrust law *Holle*, ZHR 188 (2024), 98 (102 ff.).

¹² *Allgeier*, NZG 2023, 195 (198); *Allgeier/Feldmann*, NZG 2023, 491 (492) already comprehensively on this issue.

¹³ For example, European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An SME Strategy for a Sustainable and Digital Europe of 10.3.2020, COM(2020) 103 final, p. 1; *Berghoff*, The Business History Review, Vol. 80 Iss. 2, 263.

¹⁴ For example, European Commission, User guide to the definition of SMEs, p. 3.

¹⁵ *Allgeier*, NZG 2023, 195 ff. on the protection mechanisms and simplifications for SMEs under the CSRD.

¹⁶ *Allgeier*, NZG 2023, 195 (198) provides detailed information on this.

falls short in several respects: firstly, it does not protect these SMEs from being overburdened, but rather eases the reporting obligations of large companies. Secondly, the large companies are unlikely to make use of this exemption because the categorical differentiation between the companies in the value chain and the consequences of this differentiation merely burdens the large companies with additional work and exposes them to the risk of being confronted with the accusation of an incomplete and therefore reputationally damaging report.

The requirement of **Art. 29b para. 4 sentence 1 Accounting Directive**¹⁷, which is evidently tailored to non-listed SMEs, also makes little contribution to relieving the burden on these companies. According to this provision, the standards for large companies¹⁸ must take into account, that these large companies cannot always easily collect information within their value chain, especially if the respective actors themselves are not obliged to submit a CSRD report. Once again, the primary aim is to protect large companies from an inadequate sustainability report and the associated consequences. Whether the reporting pressure on SMEs is reduced at the same time is once again at the discretion of the large companies, which *can*, but do not *have to*, pass this relief on to the SMEs.

Equally unhelpful are the recent requests made in a Commission recommendation¹⁹ to **support SME business partners** in providing sustainability information.²⁰

EFRAG, as the EU Commission's "foreman" appointed by the legislator, is attempting to counter this unsuccessful protection concept of the legislator for non-listed SMEs with its VSME ESRS, which was recently tailored to the "voluntary" reporting of non-listed SMEs .

¹⁷ *Allgeier*, NZG 2023, 195 (198 f.) for more details.

¹⁸ On the standards for sustainability reporting by large companies *Hommelhoff/Allgeier/Jelonek*, NZG 2023, 911 (915 f.).

¹⁹ European Commission, Commission Recommendation (EU) 2023/1425 on simplifying financing for the transition to a sustainable economy, OJ No. L 174 of 7.7.2023, p. 19 et seq.

²⁰ Recommendation (EU) 2023/1425, recital 16, sentence 3.

5. The VSME ESRS

EFRAG, as the EU Commission's "groundworker" appointed by the legislator, is attempting to counter this unsuccessful protection concept for non-listed SMEs with its VSME ESRS²¹, which was recently tailored to the "voluntary" reporting of non-listed SMEs.

5.1 No legal basis in the CSRD

With its regulatory proposal for a VSME ESRS, EFRAG contradicts the approach of the CSRD envisaged by the Union legislator, which provides for the design of a uniform **"2 in 1 standard"**²² for both listed and non-listed SMEs, but tailors its content and scope to the capacities and needs of listed SMEs and their stakeholders.²³

At first glance, one might be inclined to accuse EFRAG of at least questionable interference in the **area of competence of the legislator**, with which it contravenes its declared intentions of not declaring non-listed SMEs to be the primary obligated parties in the CSRD. However, this assessment negates the initial CSRD situation found by EFRAG (l. above): With the VSME ESRS, it simply takes into account the indirect factual inclusion of SMEs in the overall economic reporting and protection system, which was recognized by the CSRD legislator but merely insufficiently taken into account, lacking a reporting standard specifically aimed at non-listed SMEs.

5.2 SME relief provision as a desirable objective of the VSME ESRS

As can be seen from their *"Basis for Conclusions"*, the VSME ESRS are intended to **relieve** this group of SMEs from reporting requirements for large reporting entities because of several reasons: Firstly, these reporting standards are clearly differentiated from the other standards for listed SMEs (see BC 23 ff.). Secondly, in developing the VSME ESRS, EFRAG is committed to achieving an appropriate balance between the expectations of preparers and addressees of reports by applying the **principle of proportionality** (BC 5). Third, EFRAG strives for a **simplified structure** and **language** of reporting standards (BC 27 et seq.). Fourthly, the classification criterion

²¹ EFRAG is an association under private law established under Belgian law that advises the Commission on the adoption of international accounting standards, see Recital 39 CSRD; on the structure, fields of activity and role of EFRAG (<https://t1p.de/xszkp>) instead of many *Nettesheim* in Stiftung Familienunternehmen (ed.), *Nachhaltigkeitsberichterstattung: Zur Unionsrechtskonformität des CSRD-Standardsetzungsverfahrens*, 2022, p. 25 et seq.

²² In detail *Allgeier/Feldmann*, NZG 2023, 491 (493 f.).

²³ On the capital market definition of Art. 29c Accounting Directive *Allgeier/Feldmann*, NZG 2023, 491 (494); *this*, ECFR 2023, 438 (441 f.).

of "materiality" has been replaced by that of "**applicability**" (BC 40(a), BC 60). And finally, fifthly, the uniform VSME ESRS are intended to protect non-listed SMEs from the many different information requirements of large reporting entities (BC 3). All in all, EFRAG and its committees are therefore clearly concerned with **reducing the reporting burden** for non-listed SMEs and creating **coherent reporting requirements**.

In this endeavour and with this relief approach, EFRAG must be firmly supported. In order to protect the more than 24 million small and medium-sized enterprises, including micro-enterprises, the Commission's "groundworker" is performing outside of its legal mandate with this draft standard, which would have been the actual task of the EU legislator and its politically responsible institutions. EFRAG cannot be reproached for acting outside of its role as set out in the CSRD. On the contrary, in view of the **insufficient consideration of non-listed SMEs' interests** given their indirect factual exposure to the CSRD, EFRAG is forced to take their needs into account, at least to some extent, in terms of corporate and economic policy.

5.3 Extensive SME reporting requirements to ensure consistency with CSRD requirements

Although the VSME ESRSs are intended for SMEs that are not required to submit reports, EFRAG's draft standards and the accompanying documents are **surprisingly extensive** and **detailed**. The draft VSME ESRS²⁴ itself is over 50 pages long, plus the "*Basis for Conclusions*"²⁵ with an additional 100 pages, which should also be consulted for the report, as this document contains various *principles* for preparing the report in addition to the recitals. In view of the companies affected by the VSME ESRS, most of which have fewer than 10 employees and limited human and financial resources to cope with the reporting requirements, the requirements are by no means *simple*.

The reason for this extensive regulation is primarily to be seen in the objectives that EFRAG is pursuing with the VSME ESRS. Although these are also aimed at **relieving the burden on non-listed SMEs**, as already mentioned, the primary intention is to

²⁴ EFRAG, Exposure Draft: Voluntary ESRS for Non-listed Small and Medium-sized Enterprises (VSME ESRS), January 2024 (<https://t1p.de/po3m5>)

²⁵ EFRAG, Basis for Conclusions: Voluntary ESRS for Non-Listed Small and Medium Sized Enterprises (VSME ESRS) (<https://t1p.de/uvthe>).

embed these companies in the **overall system of market-wide sustainability reporting**. The millions of non-listed SMEs should also contribute to a more sustainable and inclusive economy with improved management of sustainability issues and be able to meet the information needs of creditors and investors as well as those of large companies in the value chain that are subject to reporting requirements (see BC 2 and BC 6 in particular). There is no mention of the purpose to relieve non-listed SMEs of the VSME ESRS in this context.

This purpose only faintly shines through in the "**market acceptance**" of the reporting standards (BC 3, BC 5), which is the main concern of EFRAG's proposal: the SMEs as preparers of sustainability information accept the VSME ESRS as a *simple* reporting tool; in return, business partners of the SMEs refrain from using their individual (multiple) questionnaires and instead use the VSME ESRS to collect sustainability data (BC 31). This saves the companies subject to reporting requirements the time-consuming development of their own questionnaires and at the same time ensures that their own sustainability reports comply with the requirements of the ESRS for large companies. The desired market acceptance of the special SME reporting standards thus also puts the burden on non-listed SMEs into perspective.

The principle that EFRAG has endeavoured to implement throughout the VSME ESRS is referenced several times with almost identical passages: "The VSME was developed as a stand-alone standard specifically designed to address the complexity and needs of non-listed SMEs and not as a simplification of the corresponding disclosure requirements in ESRS 1 (for large reporting entities). However, in defining the detailed metrics, EFRAG has taken care to ensure consistency with the concepts in ESRS1 without compromising on simplification, including in terms of language" (see for example BC 66, BC 78, BC 90).²⁶

EFRAG therefore aims to achieve **coherence** between the reporting systems for large companies on the one hand and small and medium-sized enterprises on the other. The SME information from the value chain is to be presented in an optimally processable

²⁶ The original English version of the BC 66 quoted here reads: "VSME has been developed as an independent standard, developed specifically for the complexity and needs of non-listed SMEs and not as a simplification of the corresponding disclosure requirements in ESRS Set 1. However, in consistency with ESRS concepts has been maintained to the maximum extent possible without compromising on simplification including language."

form for the large companies subject to reporting requirements.²⁷ This is not surprising, as EFRAG has based the drafting of the VSME ESRS on the **needs of users**, i.e. large companies or financial institutions, as they have emerged in the practice of their previous data requests from SMEs. In this respect too, their **relief is of secondary importance**.

The VSME ESRS are primarily aimed at coherence with the CSRD sustainability reports of large companies and only secondarily at the SME Discharge.

That leaves the practical test:

Which micro-enterprise, which craftsman GmbH or which bicycle dealer UG & Co. KG, will be able to fulfill the requirements of this VSME ESRS at all, even with the help of their consultants (which ones?) - and if so: with what personnel and financial commitment? Will there still be sufficient income to maintain the competitiveness of the SME and to be able to adequately remunerate the work of the managing partner?

6. Conclusion: The European Union legislator is called upon

Even before this practical test is carried out, however, the Union legislator is called upon to act: With the adoption of the VSME ESRS, it is evident that SMEs are neither completely excluded nor confronted with merely selective requests for information regarding the sustainability of their business activities. Rather, the CSRD already *de lege lata* amounts to a **CSRD sustainability report for non-listed SMEs**,²⁸ without, however, anchoring this to a sufficient extent in secondary legislation.

It is true that the Commission has the option of raising the VSME ESRS to a certain level of institutional legitimacy, albeit still legally non-binding, in compliance with the minimum democratic and procedural requirements as a **communication** (Art. 288 (5) TFEU). But even then, the VSME ESRS are only suitable as an **interim solution** for non-listed SMEs born out of necessity. EFRAG's initiative to create a VSME ESRS for **24 million SMEs** outside of the CSRD scope, which is de facto induced by the CSRD's incomplete SME concept, makes it clear that the revision of the CSRD planned for

²⁷ As here also *Rottke*, GmbHR 2024, R 84 (85).

²⁸ This is also the finding of *Rottke*, GmbHR 2024, R 84, 85 - albeit with the misguided restriction that the alignment with the "big brother" is not only obvious and appropriate, but also necessary.

2029 comes far too late from the point of view of a direct legal obligation for non-listed SMEs (Art. 6 para. 1 CSRD).

The EU legislator is called upon! The reporting obligations for SMEs must be carefully and precisely tailored to the performance of micro-enterprises with no more than ten employees.

The Commission's attempts to make SME-specific adjustments to the CSRD by way of its "SME relief package"²⁹ from last fall are also inadequate from the outset.³⁰ Due to its legal nature as a Commission recommendation (Art. 288 (5) TFEU), this "relief package" cannot stipulate any legally binding protective and facilitating measures for SMEs.

However, such a concept for dealing with non-listed SMEs, which is already required *de lege lata*, must and can **only** be presented by **legislator** itself in the secondary legislation. Otherwise, it would mean leaving the "health" of the "SME" patient, which is so extraordinarily important for the European economy but whose existence is threatened by the deficient sustainability regulation, to the capable but limited "nurse" EFRA, while the "doctor" waits inactively for the "heart problems" to resolve themselves, contrary to all medical knowledge.

It seems all the more urgent for the EU legislator to take action, as it should deal with sustainability regulation after the European elections when **the CSDDD**³¹ is **revised**. In particular, it must then assess the question of whether such comprehensive reporting obligations, as the final building block of the material obligations to act that are already envisaged, and their enforcement with the elements of *private* and *public*

²⁹ European Commission, Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, SME Relief Package, COM(2023) 535 final.

³⁰ See, for example, measure 14 SME relief package.

³¹ On the contents of the CSDDD draft instead of many *Hübner/Habrich/Weller*, NZG 2022, 644 et seq.

*enforcement*³² are still needed at all in order to successfully orient the European economy towards sustainability and climate neutrality. The reporting obligations on intangible resources are also in need of review; due to the inadequate protection of business secrets, they endanger small and medium-sized enterprises in particular.³³

These key points could be helpful for an early update of the CSRD: On the path to an **eco-social market economy**, which is prescribed by primary law in Art. 3 Para. 3 of the EU Treaty,³⁴ **non-listed SMEs** cannot be left out now, if only because of the outstanding importance that this group of companies has in the European economy. They too must be made aware of the public interest through reporting obligations. However, these reporting obligations must be carefully and precisely tailored to the performance of micro-enterprises with a maximum of ten employees.³⁵ In terms of subject matter and scope, the **Union legislator** should define these reporting obligations itself and not delegate this to the Commission. In substance, this amounts to some **easily ascertainable ESG core data in/out**, but **not** (yet) a **comprehensive sustainability report**. The companies subject to reporting requirements may and should (be allowed to) request this core data from non-listed SMEs.

³² On this in the context of the CSDDD draft *Hübner*, KlimaRZ 2023, 238 ff.; see also *Poelzig*, KlimaRZ 2023, 244 ff.

³³ For more on this, see *Allgeier*, Nachhaltigkeit und Mittelstand, Diss. Jur. Heidelberg, Chapter 5.

³⁴ On the plans for an eco-social market economy, see *Hommelhoff*, FS Grunewald (2021), p. 389 ff.; NZG 2023, 1631 f.; but see also *Becker*, FAZ of 02.04.2024, p. 7: The welfare state must respond to the necessary climate protection policy through social policy.

³⁵ The legal policy guideline of *Rottke*, GmbHR 2024, R 84 (86), that the difference between voluntary reporting and mandatory reporting by large companies should not be too great, is therefore completely misguided.