

The Corporate Sustainability Reporting Directive and its impact on EU and non-EU companies



Introduction

On November 28, 2022, the European Council approved the adoption of the Corporate Sustainability Reporting Directive (the CSRD). The CSRD was subsequently published in the Official Journal on December 16, 2022 and entered into force on January 5, 2023.

The CSRD requires 'in scope' businesses to report and disclose information on their societal and environmental impact and external sustainability factors affecting their business.

The move from "non-financial disclosures" to "sustainability" disclosures represents a significant shift by the EU towards a sustainable economy with increased corporate accountability and places financial and sustainability reporting on an equal footing.

The CSRD amends:

- the existing Non-Financial Reporting Directive (2014/95/EU) (the NFRD) and introduces mandatory sustainability reporting standards including qualitative and quantitative information on environmental, social and governance matters;
- the existing Transparency Directive (2004/109/EC) (the TD), whereby the sustainability reporting requirements set out in the NFRD are extended to (EU and non-EU) issuers with debt or equity securities listed on an EU regulated market.

Summaries of the key CSRD requirements under the NFRD and the TD are set out below.

Scope of the CSRD

The CSDR requirements will apply to the following undertakings:

EU undertakings	<ul style="list-style-type: none">• Any EU undertaking whose securities (debt or equity) are admitted to trading on an EU regulated market, unless it is a “micro undertaking” (being an undertaking which has at least two of the following:<ul style="list-style-type: none">— a net turnover of less than €700,000;— a balance sheet total of less than €350,000;— an average number of less than 10 employees per financial year).• Any EU undertaking which does not have any securities admitted to trading on an EU regulated market but is a “large undertaking” (being an undertaking which has at least two of the following:<ul style="list-style-type: none">— a turnover of above €40m;— a balance sheet total of over €20m;— an average number of over 250 employees per financial year.)
Non-EU undertakings	<ul style="list-style-type: none">• Any non-EU undertaking whose securities (debt or equity) are admitted to trading on an EU regulated market, unless it is a “micro undertaking” (see criteria above).• Any non-EU undertaking which does not have any securities admitted to trading on an EU regulated market but which has:<ol style="list-style-type: none">a. a turnover at group level of over €150m in the EU; andb. an EU subsidiary that is subject to the CSDR requirements because it has securities admitted to trading on a regulated market or is a large undertaking (see above) or an EU branch that has generated a net turnover of more than €40m in the EU.

Summary of key requirements

Requirement	CSRD
Reporting requirements	<p>Information must be clearly identifiable in a section of the management report and will cover sustainability matters including (amongst others):</p> <ul style="list-style-type: none">• The undertaking's business model and strategy, noting resilience to risks and opportunities.• The plans of the undertaking to (including implementing actions and investment plans) to ensure its business model is compatible with the transition to a sustainable economy and with limiting global warming to 1.5°C in accordance with the Paris Agreement and achieving climate neutrality by 2050.• Relevant policies and roles of administrative, management and supervisory bodies.• The principal risks to the undertaking related to sustainability matters, including a description of the undertaking's principal dependencies on those matters, and how the undertaking manages those risks. <p>Where applicable, the information included in the management report shall also include information about the undertaking's own operations and about its value chain, including its products and services, its business relationships and its supply chain.</p> <p>Small and medium-sized undertakings, small and non-complex institutions and captive insurance and reinsurance undertakings may choose to limit its sustainability reporting as long as certain standards are met.</p>
Reporting requirements at consolidated level	<p>Sustainability reporting will be done at group level by parent entities of a large group (meeting the same criteria as for large undertakings but at group level). The sustainability reporting should be reflected in a dedicated section of the consolidated management report and include information necessary to understand the group's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the group's development, performance and position.</p> <p>If a parent's consolidated management report contains all relevant information, 'in scope' subsidiaries may be exempt from sustainability reporting.</p>

Standards

Undertakings will be required to report on sustainability according to mandatory reporting standards. The European Financial Reporting Advisory Group (EFRAG) are developing a framework of reporting standards which will apply to (i) topics and (ii) sectors.

Topical standards were drafted by EFRAG on November 23, 2022, which cover to the following topics:

- Environmental: climate change, pollution, water and marine resources, biodiversity and ecosystems and resource use.
- Social: information on the use of the workforce, diversity and inclusion, communities impacted by business operations.
- Governance: business conduct internally including for example diversity and company boards, and externally including anti-corruption and bribery.

Sectorial standards will be developed by EFRAG to cover:

- Global Reporting Initiative (GRI) sectors: agriculture, coal mining, mining, oil and gas (separately for upstream and mid-to downstream);
- High-impact sectors: energy production, road transport, motor vehicle production, food and beverages, and textiles.

Separate reporting standards for small and medium-sized undertakings and third-country undertakings will also be developed.

The European Commission is expected to adopt the standards in their final form in June 2023 and 2024 respectively.

Auditor's assurance

Mandatory requirement for review of disclosures and assurance by a statutory auditor or independent assurance services provider that there has been no material misstatement in company's disclosures.

Until the appropriate standards for a reasonable assurance of sustainability reporting are put in place (expected to be in place no later than October 1, 2028), assurance will need to be given on a limited assurance basis. In such case, the conclusion would be provided in a negative form of expression by stating that no matter has been identified to conclude that the matters in the sustainability reporting are materially misstated. Once the relevant standards have been adopted, assurance will need to be given on a reasonable assurance basis whereby more procedures and substantive testing will be involved and a conclusion is provided in a positive form of expression and results measured against pre-defined criteria.

Additional disclosure for issuers having issued low-denomination (i.e. less than €100,000 or equivalent) securities

Issuers are required to make public the annual report at the latest four months after the end of each financial year and continue to make it available for at least 10 year. The annual report must include a statement by persons responsible within the issuer to the effect that, to the best of their knowledge, the management report is prepared in accordance with the applicable sustainability reporting standards.

The auditor's sustainability related assurance report must also be disclosed in full to the public together with the annual financial report.

Under the proposed EU Listing Act's amendments to the EU Prospectus Regulation, any sustainability reporting included in the management reports and audit reports would be able to be incorporated by reference in a prospectus.

Digital Tagging

Requirement to prepare annual financial reports in XHTML format and mark sustainability information in financial statements and management reports with a digital 'tag' so that it is machine readable.

Equivalence for 'in scope' non-EU undertakings

Non-EU undertakings subject to the CSRD will be permitted to report on sustainability matters using 'equivalent standards' to those set out under the CSRD. Guidelines as to which standards will be deemed 'equivalent' for this purpose will be developed by the European Commission.

Timeline for impacted undertakings

Even though the CSRD entered into force on January 5, 2023, its requirements will be gradually phased in for 'in scope' undertakings between 2024 and 2029:

Relevant 'in scope' undertakings	Financial year	Report due in
EU and non-EU undertakings whose securities are admitted to trading on an EU regulated market and that satisfy both of the following: <ul style="list-style-type: none"> • More than 500 employees; • Net turnover that exceeds €40m and/or a balance sheet that exceeds €20m. 	2024	2025
EU undertakings that meet the criteria for large undertakings (see above) but whose securities are not admitted to trading on an EU regulated market. Non-EU undertakings whose securities are admitted to trading on an EU regulated market and who meet the criteria for large undertakings (see above) but have less than 500 employees.	2025	2026
All other EU and non-EU undertakings whose securities are listed on an EU regulated market (i.e. those who are neither large nor micro undertakings – see above).	2026 (or 2028)*	2027 (or 2029)*
* For a transitional period of two years, small- and medium sized EU and non-EU undertakings with securities on an EU regulated market have the possibility to opt-out from CSRD reporting requirements, provided that they briefly explain in their management report why the required sustainability information has not been included.		
Non-EU undertakings who do not have securities listed on an EU regulated market but which have (i) a turnover at group level of over €150m in the EU and (ii) a subsidiary that is a large undertaking or a branch having a net turnover of at least €40m in the EU.	2028	2029

Final remarks

It is estimated that 50,000 companies will be covered by the new rules, compared to about 11,700 companies covered by the current rules under the NFRD and the TD. Both EU and non-EU groups and companies will need to assess the implications of the CSRD on their reporting and disclosure strategies and develop mechanisms to collect and monitor relevant, verifiable sustainability related data as well as disclose relevant information in a transparent and efficient manner backed by an independent verification.

The Norton Rose Fulbright Environment team will continue to monitor the CSRD as it gradually comes applicable and we will keep a close eye on the accompanying standards as they are developed. The Norton Rose Fulbright Capital Markets team is also on hand to assist issuers with any queries they may have.

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