

Legal Update

The EU Corporate Sustainability Reporting Directive is upon us – what non-EU companies should know and do

The EU Corporate Sustainability Reporting Directive (“**CSRD**”) entered into force on 5 January 2023 and the associated European Sustainability Reporting Standards (“**ESRS**”) were adopted by the European Commission on 31 July 2023. Together, the CSRD and ESRS create detailed sustainability reporting requirements that will apply to a significant number of EU and non-EU companies and substantially increase the scope of their sustainability reporting.

Application of the rules is now imminent and, for some, CSRD reporting periods will begin from 1 January 2024.

In this update, we take a look at the implications of the CSRD for non-EU companies and what companies can do to prepare.

Overview of the disclosure requirements

Under the CSRD, in-scope companies will be required to disclose a wide range of sustainability-related information, including:

1. a description of the company’s business model, strategy and sustainability risks and opportunities;
2. ESG-related targets and annual progress on meeting these targets;
3. separate sustainability statements included in the company’s management reports, containing sector-agnostic, sector-specific and company-specific information, in accordance with the ESRS;
4. implementation plans in relation to the transition to a sustainable economy, measures taken to limit global warming in line with the Paris Agreement and to achieve climate neutrality by 2050 and exposure to coal, oil and gas-related activities;
5. sustainability matters that affect the company and the impact of the company on sustainability matters (the so called “double materiality” perspective);
6. greenhouse gas emission targets;
7. policies in relation to sustainability (including incentive schemes linked to sustainability matters);
8. EU taxonomy alignment data; and
9. due diligence processes implemented by the company in relation to sustainability matters and the actual and potential adverse impacts of the company’s operations and value chain.

Significant additional detail has been provided for in the ESRS, including two cross-cutting standards (ESRS 1 and ESRS 2) that provide general reporting concepts (including double materiality and reporting boundaries) and overarching disclosure requirements, and ten topical standards with specific disclosure requirements for ESG matters. For more detail on the disclosure requirements under the CSRD and the ESRS, please read our earlier updates [here](#) and [here](#).

Application to non-EU companies

The following non-EU companies will be required to report under the CSRD:

1. Non-EU companies with securities listed on an EU regulated market. For the avoidance of doubt, the CSRD does not apply to securities listed on EU multilateral trading facilities; and
2. Non-EU companies with: (a) an annual net turnover at the consolidated or individual level in the EU exceeding EUR 150 million for each of the last two consecutive financial years; and (b) which have a qualifying EU subsidiary or a branch in the EU that generated an annual net turnover in excess of EUR 40 million in the preceding financial year (the “**EU Turnover Test**”).

In addition, non-EU parent companies of EU subsidiaries will need to assess when and whether their EU subsidiaries fall within scope of the reporting requirements – see “*Timing - EU*” below for further guidance.

It is important to note that there are a number of exemptions to CSRD, although their application is complex. In particular, the “wholesale debt” exemption under the EU Transparency Directive continues to apply. This means that non-EU companies that only have debt securities listed on a regulated market with a denomination of more than EUR 100,000 (or equivalent) may be considered out of scope of the CSRD. There are also exemptions available for non-EU companies where their parent company complies with the CSRD via a consolidated group report. Moreover, in time, there may also be exemptions for non-EU companies that report under “equivalent standards”, although the reporting standards that may be deemed equivalent to the CSRD are unclear at this time.

Timing

Understanding the phased timing of the CSRD is key to understanding how best to prepare. The application of the CSRD will take place in four stages (for financial years starting on or after):

Timing	Non-EU	EU
1 January 2024	Large non-EU companies with securities listed on a regulated market in the EU and with more than 500 employees.	Large EU “public interest entities” that are already subject to the Non-Financial Reporting Directive (“ NFRD ”).
1 January 2025	Large non-EU companies listed on a regulated market in the EU.	Large EU companies that are not presently subject to the NFRD.
1 January 2026	Certain non-EU small and medium-sized enterprises (“ SMEs ”) listed on a regulated market in the EU.	Certain EU SMEs, small and non-complex credit institutions and captive insurance undertakings.
1 January 2028	Non-EU companies falling within the rules solely on account of the EU Turnover Test.	N/A

The term “Large” applies to a company or, where that company is a parent of a consolidated group, a group meeting two of the following tests: (a) balance sheet total exceeding EUR 20 million; (b) net turnover exceeding EUR 40 million; and (c) more than 250 employees.

Interoperability with other sustainability reporting regimes

CSRD will not operate in a vacuum. Non-EU companies will also need to comply with the developing and overlapping sustainability reporting rules in their local jurisdiction. By way of example, the much publicised U.S. Securities and Exchange Commission's ("**SEC**") proposed Climate Change Disclosure Rules also focus on climate-related risks (you can read more about the SEC's proposed rules in our legal update [here](#)).

The CSRD, however, goes far beyond the SEC's proposed rules, since, in addition to reporting on climate-related risks, companies are asked to report on (among other things) water and marine resources-related risks, biodiversity and ecosystems-related risks and risks in relation to workers in the value chain, all on a "double materiality" basis.

Finally, there are also international standards to consider. Whilst efforts have been made to ensure that there is a high level of interoperability between the ESRS and the global International Sustainability Standards Board ("**ISSB**") standards, there will not be full-alignment and disclosures made will need to account for the range of local and international standards (for further information on the ISSB standards, read our update [here](#)).

How can we help?

Our team would be delighted to assist you in your preparations for the CSRD.

We recognise that new sustainability reporting requirements in the EU, US, UK and other jurisdictions are top of the agenda for many institutions. In particular, we are assisting a number of clients with:

1. Advising on the applicability of the CSRD to the EU and non-EU subsidiaries in their group. The scope and precise applicability of the CSRD is particularly complex and requires detailed analysis.
2. Conducting gap analyses to assess the overlap of the CSRD with other EU and US, UK, international and other ESG-related reporting rules.
3. Reviewing draft sustainability disclosures and associated disclaimers to ensure that data and the narrative are appropriately disclosed and disclaimed. Sustainability disclosures are increasingly subject to scrutiny from regulators and civil society and have been the target of litigation. For further detail on these matters, see our briefing "[Greenwashing: Navigating the Risk](#)".
4. Advising clients on the human rights and environmental due diligence requirements contained in the draft EU Directive on Corporate Sustainability Due Diligence, a different but overlapping upcoming piece of EU legislation (see our briefing on this [here](#)).

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