

CLIENT ALERT

Sustainability Reporting Under the CSRD for EU and non-EU Companies

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The Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464 – “**CSRD**”) is one of the EU's key policy initiatives on sustainable finance and materially revises the provisions of the EU Accounting Directive (Directive 2013/34/EU – “**Accounting Directive**”)¹ to expand the obligation for companies to report on sustainability and environmental and social information. Such information will be important for funds and companies that need to prepare reports under the Taxonomy Regulation (Regulation (EU) 2020/852 – “**Taxonomy Regulation**”) and the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088 – “**SFDR**”).

The reporting obligations under the CSRD may apply to non-EU companies, for example US companies, that have an EU subsidiary or an EU branch and/or generate significant net turnover in the EU. This alert provides an overview of the companies that fall within the scope of the CSRD, the scope of the reporting requirements, and the application dates of the new reporting requirements for in-scope companies.

¹ Provisions introduced by the entry into force of the Non-Financial Reporting Directive (Directive (EU) 2021/2101).

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Companies Within the Scope of the CSRD

	Category of Undertaking	Application Date	Reporting Standards
<p><u>In-scope entities</u></p> <p>(The companies covered also include insurance companies and credit institutions of whatever size.)</p>	<p>Large EU undertakings already subject to the Non-Financial Reporting Directive , i.e. that are:</p> <ul style="list-style-type: none"> • public interest entities; and • have more than 500 employees. 	2025 (reporting on the 2024 financial year)	Reporting will need to be undertaken in accordance with the concept of double materiality, European Sustainability Reporting Standards (“ ESRS ”) and contain information on the undertaking’s value chain (including products, services, business relationships and supply chain).
	<p>Non-EU undertaking that has securities listed on an EU-regulated market</p>	2025 (reporting on the 2024 financial year)	As above.
	<p>Large EU undertakings and EU parent undertakings of large groups (i.e. that exceed at least two of the following criteria on a single entity or consolidated group basis):</p> <ul style="list-style-type: none"> • 250 employees; • EUR 40 million net turnover; • EUR 20 million balance sheet total. 	2026 (reporting on the 2025 financial year)	As above.
	<p>Category of undertaking</p>	Application date	Reporting standards
	<p>Small and medium-sized undertakings ("SMUs") whose securities are admitted to an EU-regulated market. Medium-sized</p>	2027 (reporting on the 2026 financial year)	Whilst the concept of double materiality is still applicable to sustainability reports produced by these

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	Category of Undertaking	Application Date	Reporting Standards
	<p>undertakings range between large and small undertakings and small undertakings are defined as undertakings that do not exceed at least two of the following criteria:</p> <ul style="list-style-type: none"> • 50 employees; • EUR 8 million net turnover²; and, • EUR 4 million balance sheet total.³ 		<p>undertakings, they are subject to lighter disclosure requirements and are able to opt out of sustainability reporting for financial years starting before 1 January, 2028.</p>
	<p>Non-EU parent undertaking that has net turnover of more than EUR 150 million in the EU for two consecutive years and has at least either:</p> <p>(i) an EU subsidiary that is in-scope of the CSRD (i.e. either a large undertaking or an EU-listed SMU subsidiary); or</p> <p>(ii) an EU branch generating net turnover of EUR 40 million in the EU.</p>	<p>2029 (reporting on the 2028 financial year)</p>	<p>Potentially may be able 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.</p> <p>If no equivalence determination, report to be produced on same basis as for their EU equivalents.</p>
<p><u>Out-of-scope entities</u></p>	<p>Micro-undertakings, which are defined as companies that do not exceed at least two of the following criteria:</p> <ul style="list-style-type: none"> • 10 employees; • EUR 700,000 net turnover; or, 	<p>N/A</p>	<p>N/A</p>

² EU Member States may set this threshold up to EUR 12 million.

³ EU Member States may set this threshold up to EUR 6 million.

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	Category of Undertaking	Application Date	Reporting Standards
	<ul style="list-style-type: none">• EUR 350,000 balance sheet total.		

Companies shall assess whether they meet any of the above categories by reference to the previous two years' balance sheet.

General scope of sustainability reporting and the concept of “Double Materiality”

Sustainability reporting forms a mandatory part of the management report and follows the so-called concept of “double materiality”, which requires in-scope companies to report on (i) how sustainability issues might create financial risks for the company; and (ii) the company's impacts on people and the environment. This is known as the concept of “**double materiality**”, the latter limb of which will be relevant to Principal Adverse Impact reporting under SFDR.

Within this framework, the following information regarding the effects of the undertaking's activities on sustainability matters and the effects of sustainability matters on the undertaking's business development, performance and position is required:

- a brief description of business model and strategy including information on:
 - the resilience of the business model and strategy in relation to risks related to sustainability matters;
 - the undertaking's opportunities related to sustainability matters;
 - the way the undertaking intends to ensure that its business model and strategy are compatible with the transition to a sustainable economy, the limiting of global warming to 1.5°C in line with the Paris Agreement and the EU's climate neutrality target by 2050;
 - the way in which the undertaking accounts for the concerns of its stakeholders and the impact of its activities on sustainability matters in its business model and strategy; and
 - the way in which the undertaking's strategy has been implemented with regard to sustainability matters;
- a description of the time-bound targets related to sustainability matters, including greenhouse gas emission reduction targets for 2023 and 2050, together with a description of the progress towards achieving those targets and a statement of whether the targets related to environmental factors are based on conclusive scientific evidence;
- a description of the role of the administrative, management and supervisory bodies in relation to sustainability matters and their expertise and skills that enable them to fulfill that role or their access to such expertise and skills;

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- a description of the undertaking's policies in relation to sustainability;
- information on the existence of incentive systems linked to sustainability matters for members of the administrative, management and supervisory bodies; and
- a description of:
 - the due diligence process implemented with regard to sustainability matters;
 - the principal actual or potential adverse impacts connected with the undertaking's operations and the value chain, including products and services, business relationships and the supply chain, the actions taken to identify and monitor those impacts, and other adverse impacts that the undertaking has identified pursuant to other EU requirements on undertakings to conduct a due diligence process; and
 - any actions taken by the undertaking to prevent, mitigate, remedy or end actual or potential adverse impacts and the result of such actions;
- a description of the principal risks to which the undertaking is exposed in connection with sustainability matters, the principal dependencies on those matters and the management of those risks; and
- indicators relevant to the disclosure of all above-mentioned items.

According to the Taxonomy Regulation, sustainability reporting must also disclose to what extent the undertaking's economic activities are to be classified as environmentally sustainable. This requires an in-depth analysis of all economic activities pursuant to the technical screening criteria for environmental objectives.

In-scope companies are required to make their reports publicly available which will enable interested stakeholders to assess a company's impact/performance.

Reporting range for SMUs and small and non-complex institutions

SMUs and small and non-complex institutions within the meaning of the Capital Requirements Regulation (Regulation (EU) No. 575/2013 – “**CRR**”) as well as captive (re)insurance companies within the meaning of the Solvency II Directive (2009/138/EG) can limit their sustainability reporting to the description of the following:

- business model and strategy;
- policies regarding sustainability;

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- principal actual or potential adverse impacts on sustainability matters and the actions taken to identify, monitor, prevent, mitigate or remedy them;
- principal risks the company is exposed to in relation to sustainability matters and how these risks are managed; and
- key indicators necessary for the disclosure of the above items.

Exemptions

Under certain conditions, subsidiaries are exempt from the obligation to report on sustainability. The exemption applies if the subsidiary and in turn its own subsidiaries are included in the consolidated management report of a parent company that is prepared in accordance with the Accounting Directive.

An exemption also applies to subsidiaries of a parent company established in a non-EU country if the subsidiary and in turn its own subsidiaries are included in the consolidated sustainability reporting of the parent company and such reporting corresponds to the standards adopted pursuant to the Accounting Directive or is carried out in an “equivalent manner”, which will need to be determined by an equivalence decision of the European Commission. The European Commission has not yet decided on the equivalence of sustainability reporting standards used by non-EU country entities.

The exemption for subsidiaries is subject to certain detailed prescribed conditions not set out here.

Undertakings for the Collective Investment in Transferable Securities (“**UCITS**”) and Alternative Investment Funds (“**AIFs**”) are explicitly exempt from CSRD.

Consolidated Sustainability Reporting

The parent company of a large group must prepare reports on a consolidated basis. A large group is categorised as a parent company and subsidiaries that are to be included in the consolidation which, on a consolidated basis, exceed at least two of the following criteria:

- 250 employees;
- EUR 40 million net turnover; or,
- EUR 20 million balance sheet total.

The content of the consolidated sustainability reporting reflects the content of the sustainability reporting in the management report of subsidiary undertakings with the difference that all such aspects now relate to the group.

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If, in the first three years following the implementation of the CSRD by EU Member States, not all required information on its value chain is available to a parent company, it must explain in its report what efforts have been taken to obtain such information, the reasons why it was unable to obtain the information and the plans to obtain all necessary information in the future.

To the extent a subsidiary or parent company is exempt from CSRD reporting, this shall be made clear in the consolidated report.

European Financial Reporting Standards

For purposes of the CSRD sustainability reporting, a uniform EU reporting standard, the ESRS, is to be used. Following technical advice of the *European Financial Reporting Advisory Group*, the first set of ESRS addressing the sustainability reporting obligations for in-scope companies and parent companies of large groups was adopted by the European Commission as a delegated regulation on 31 July 2023. The ESRS are now subject to a two-month scrutiny period (extendable by up to a further two months) by the European Parliament and Council. If approved by the European Parliament and Council, this first set of ESRS will apply from 1 January 2024.

In order to facilitate compliance of financial market participants, benchmarks administrators and financial institutions with disclosure obligations under the SFDR, the Benchmark Regulation (Regulation (EU) 2016/1011) and the CRR (particularly the “pillar 3” disclosure requirements), the adopted ESRS contain a series of data points that correspond to specific information that is needed for reporting purposes under such regulations.⁴

The ESRS have been developed in parallel with the first sustainable disclosure standards (IFRS S1 and IFRS S2) of the ISSB that were published on 26 June 2023 (“**ISSB Standards**”)⁵. According to the EU Commission, the ESRS have a “very high level of alignment” with the ISSB Standards with the intention being that companies required to report under the ESRS would not need to report separately under the ISSB Standards. However, the scope of the ESRS goes beyond the ISSB Standards and requires companies to report on their impacts on people and the environment as well as how social and environmental matters create financial risks and opportunities for them (“double materiality” concept) while the ISSB Standards require companies only to disclose material information on how social and environmental issues create financial risks and opportunities for them.

⁴ Appendix B to the ESRS 2 in Annex 1 to the ESRS entails a list of data points in cross-cutting and topical standards that derive from other EU legislation such as the SFDR (with respect to the required disclosure of principal adverse impacts (“PAI”).

⁵ https://www.willkie.com/-/media/files/publications/2023/07/ifrs_foundation_introduces_new_sustainability_and_climate_disclosure_requirements.pdf

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In the future, special ESRS will be adopted with regard to the simplified reporting obligations of SMUs, small and non-complex institutions and certain insurance companies. In addition, the European Commission will adopt special ESRS with regard to the reporting requirements that apply towards subsidiaries and branches of non-EU companies.

Auditing / Assurance

Compliance of the sustainability reporting with the applicable rules will initially be subject to auditing with limited assurance. Prospectively, at a later date, audits may need to be carried out with reasonable assurance after corresponding auditing standards have been adopted. EU Member States may allow auditors other than the auditor carrying out the statutory audit of the financial statements or independent providers of assurance services (provided that such service providers are subject to equivalent regulatory requirements) to provide assurance in respect of the sustainability reporting.

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