Blogs
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The ESG Disclosure Wave: Final Approval for the EU’s Corporate Sustainability Reporting Directive

On November 28, 2022, the Council of the European Union (EU) gave final approval to implement the EU Corporate Sustainability Reporting Directive (CSRD), ushering in a new, expanded environmental, social, and corporate governance (ESG) disclosure regime for many companies with a connection to Europe.

In 2025, the CSRD will require many companies to file reports disclosing certain information for the 2024 fiscal year. Companies should review the CSRD disclosure requirements now to understand the scope of their obligations.

The new disclosure requirements under the CSRD should not come as a surprise. For years, Europe and the United States have been moving toward more aggressive and expansive ESG disclosure requirements. The SEC has enacted or proposed a variety of ESG disclosure requirements for companies falling under its regulatory oversight, and individual states have even enacted their own requirements (such as California's Transparency in Supply Chains Act). Indeed, the CSRD itself has been in development since 2018, and the evolving suite of ESG disclosures required under its umbrella are best seen as a new normal to which companies should adjust.

Every company that is subject to the CSRD disclosure requirements will be required to prepare an annual report that specifically addresses the company's prior, current, or anticipated actions/action plans for a variety of ESG categories. The information from the CSRD report must be included in a separate, "clearly identifiable" section of the company's annual public management report and must be compliant with the European Financial Reporting Advisory Group (EFRAG) reporting requirements.

What does the CSRD require?

While the full breadth of information that must be disclosed in the report has not yet been identified (or, indeed, drafted), some categories of information are included in current drafts and provide a sense of the type of disclosures that will be required. These categories include the following:

1. **Business Model/Strategy Alignment:** A description of the company's business model and strategy, including: (a) the resilience of the company's business model and strategy to risks related to sustainability matters; (b) the opportunities for the company related to sustainability matters; (c) the plans of the company, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with limiting of global warming to align with the Paris Agreement and the objective of achieving climate neutrality by 2050, and, where relevant, the exposure of the company to coal, oil, and gas-related activities; (d) how the company's business model and strategy take account of the interests of the company's stakeholders and the impact of the company on sustainability matters; and (e) how the company's strategy has been implemented with regard to sustainability matters.
2. **Time-Bound Targets:** A description of the company's time-bound targets related to sustainability matters, including, where appropriate: (a) absolute greenhouse gas emission reduction targets at least for 2030 and 2050; (b) the progress the company has made towards achieving those targets; and (c) whether the company's targets related to environmental matters are based on conclusive scientific evidence.
3. **Expertise/Skills:** A description of the role of the company's administrative, management, and supervisory bodies with regard to sustainability matters, and of their expertise and skills to fulfill this role or access to such expertise and skills.
4. **Sustainability Policies:** A description of the company's policies in relation to sustainability matters.
5. **Incentive Schemes:** Information about any incentive schemes offered to members of the company's administrative, management, and supervisory bodies governing sustainability matters.
6. **Due Diligence, Supply Chain Risks, and Adverse Impacts:** A description of (a) the due diligence process implemented by the company with regard to sustainability matters; (b) the principal actual or potential adverse impacts connected with the company's own operations and its value chain, actions taken to identify and track these impacts, and other adverse impacts which the company is required to identify under other EU due diligence requirements; and (c) any actions taken by the company, and the result of such actions, to prevent, mitigate, remediate or bring an end to actual or potential adverse impacts.
7. **Principal Sustainability Risks:** A description of the principal risks to the company related to sustainability matters, including the company's principal dependencies on such matters, and how the company manages those risks.
8. **Specific Indicators:** Various indicators relevant to the aforementioned disclosures.

Which companies are subject to the CSRD disclosure requirements?

The following entities are subject to the CSRD disclosure requirements:

- **Large entities:** The CSRD applies to all companies currently subject to the EU Non-Financial Reporting Directive (NFRD), as well as other "large" EU entities and EU subsidiaries of non-EU entities, including EU parent companies and their subsidiaries, which are assessed on a consolidated basis. These latter "larger" entities are defined as those that satisfy two of the following three criteria: (a) balance sheet totals exceed €20 million; (b) net turnover exceeds €40 million, where "net turnover" is defined as the "amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover"; and (c) more than 250 employees (on average over the fiscal year).
- **Other entities listed on EU regulated markets:** All companies, excluding microenterprises, with securities listed on EU regulated markets, small and non-complex credit institutions, and captive insurance companies.
- **Non-EU companies with an EU presence:** Non-EU companies that both (a) produce over €150 million in annual net turnover in the last two fiscal years (on a consolidated basis, where applicable) and (b) have an EU subsidiary that is subject to the CSRD based on the criteria above or have a branch in the EU that

produced over €40 million in net turnover during the prior fiscal year.

What is the implementation timeline?

According to the Council of the EU, the disclosure requirements will roll out in four phases (though note that these timelines are subject to change, as the CSRD was originally expected to be effective in 2023 before being pushed back to 2024):

- For companies already subject to the NFRD, they must file reports in 2025 on the financial year 2024;
- For large companies that are not presently subject to the NFRD (as defined above), they must file reports in 2026 on the financial year 2025;
- For small and medium-sized enterprises (SME) (except micro-companies), they must file reports in 2027 on the financial year 2026 for listed SMEs (except micro undertakings), small and non-complex credit institutions, and captive insurance companies;
- For non-EU companies with net turnover above €150 million in the EU if they have at least one subsidiary or branch in the EU exceeding certain thresholds, they must file reports in 2029 on the financial year 2028.

What should companies do to prepare?

Companies should start preparing for CSRD implementation now. The CSRD will continue to evolve over the next several years as it is implemented and EU countries enact national implementing legislation. Companies would be wise to keep a careful eye on CSRD developments, national implementing legislation, and changes in reporting requirements to ensure they are prepared to comply with those requirements.

In addition, companies should ensure their legal and compliance teams are fully apprised of the evolving ESG disclosure environment, both in the EU and elsewhere.

Authors

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