

Corporate Sustainability Reporting Directive 2021/0104 – new reporting rules for large companies and large groups of companies

On 10 November 2022, the European Parliament voted to adopt the Corporate Sustainability Reporting Directive (2021/0104) (CSRD). The Council needs to formally adopt the text and is expected to do so on 28 November 2022. All large companies in the EU will need to disclose data on the impact of their activities on people and the planet and any sustainability risks they are exposed to.



Background

Directive 2014/95/EU of 22 October 2014 (the “**Non-Financial Reporting Directive**” or “**NFRD**”) amending Directive 2013/34/EU, together with the Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector (the “**Sustainable Finance Disclosure Regulation**” or “**SFDR**”) and the Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a frame-

work to facilitate sustainable investment (the “**Taxonomy Regulation**”) are the central components of the sustainability reporting requirements underpinning the EU’s sustainable finance strategy.

The NFRD introduced the obligation on certain large undertakings and groups to disclose information on sustainability such as social and environmental factors, with a view to identify sustainability risks and to increase investor and consumer

trust. In particular, any environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters have to be disclosed to the public. It introduced a requirement for companies to report both on how sustainability issues affect their performance, position and development (the 'outside-in' perspective) and on their impact on people and the environment (the 'inside-out' perspective). This is known as 'double materiality'.

Companies within the scope of the NFRD had to report in accordance with its provisions for the first time in 2018 (covering financial year 2017).

The NFRD was transposed into Luxembourg law by the Law dated 23 July 2016 amending the Law of 10 August 1915 on commercial companies (the "**1915 Law**") and the Law dated 19 December 2002 on the Register of Commerce and Companies, accounting and the annual accounts of companies (the "**2002 Law**") by introducing (i) a new chapter III (*Consolidated non-financial statement*), articles 1730-1 and following in the 1915 Law and (ii) a new article 68bis in the 2002 Law.

In accordance with article 68bis of the 2002 Law, all SAs, SEs, SCAs, Sàrls and SCSs (under certain conditions) that meet all the following conditions:

- Any entity qualifying as a "public interest entity" withing the meaning of article 2 point 1) of the Directive 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of companies;
- Any entity exceeding, at the balance sheet closing date and for two consecutive financial year, the numerical limits for at least two of the following three criteria:
 - Balance sheet total: EUR 20 million;
 - Net turnover: EUR 40 million;
 - Number of staff employed full-time and on average during the year: 250; and
- Any entity exceeding, at the balance sheet closing date, the criterion of an average number of 500 employees over the financial year, shall include in their management report a non-financial statement.

The primary users of sustainability information are investors and non-governmental organisations, social partners and other stakeholders. But investors, including asset managers, as well wish to better understand the risks of and the impacts of those investments on people and the environment.

However, the current legal framework does not ensure that the information needs of these users are met.

This is because some companies from which users want sustainability information do not report such information, while many that do report sustainability information do not report all the information that is relevant for users. When information is reported, it is often neither sufficiently reliable, nor sufficiently comparable, between companies. The information is often difficult for users to find and is rarely available in a machine-readable digital format.

The CSRD introduces more detailed reporting requirements on companies' impact on the environment, human rights and social standards, based on common criteria in line with the EU climate goals. The Commission will adopt the first set of standards by June 2023.

To ensure companies are providing reliable information, they will be subject to independent auditing and certification. Financial and sustainability reporting will be on an equal footing and investors will have comparable and reliable data. Digital access to sustainability information will also have to be guaranteed.

The CSRD also extends the scope of application of the new sustainability reporting requirements:

Scope

The new EU sustainability reporting requirements will apply to all large companies, whether listed on stock markets or not. Non-EU companies with substantial activity in the EU (with a turnover over EUR 150 million in the EU) will also have to comply. Listed SMEs will also be covered, but they will have more time to adapt to the new rules.

For nearly 50,000 companies in the EU, collecting and sharing sustainability information will become the norm, compared to about 11,700 companies covered by the current rules.

Application of the new reporting rules

The different rules will start applying as from January 2024:

- For financial years starting on or after 1 January 2024 for large public-interest companies (with over 500 employees) already subject to the non-financial reporting directive, with reports due in 2025 (including parent undertakings (PIEs) of a large group on a consolidated basis);
- For financial years starting on or after 1 January 2025 for large companies that are not presently subject to the non-financial reporting directive (with more than 250 employees and/or EUR 40 million in turnover and/or EUR 20 million in total assets), with reports due in 2026 (including parent undertakings of a large group on a consolidated basis);
- From 1 January 2026 for listed SMEs and other undertakings, with reports due in 2027. SMEs can opt-out until 2028.

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