TDi Sustainability

Regulation Mapping

Corporate Sustainability Reporting Directive

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Corporate Sustainability Reporting Directive

Applies to:

From financial year 2024, companies with more than 500 employees that were previously required to report under the NFRD are affected. First report to be published in 2025.

From financial year 2025, companies with more than 250 employees and/or a balance sheet of over €20m and/or a net turnover of over €40m are affected. First report to be published in 2026.

From financial year 2026, EU-based, listed SMEs will be affected. However, they can choose to opt-out until reporting year 2028.

From financial year 2028, non-EU companies, with a net turnover of over €150m in the EU and with at least one EU subsidiary or branch office with a turnover of over €40m are affected.

What it says:

Large EU companies and listed companies operating in the EU must publish annual reports in which they report on how sustainability matters impact their business and how their operations are impacting people and the environment. Companies must carry out a "double materiality" assessment to identify material topics, must follow the European Sustainability Reporting Standards (ESRS)* and implement third-party assurance of their reporting.

Penalty:

Penalties will differ based on individual member state transpositions. France has been the first to transpose the directive into law as of this publication, introducing fines of up to €75,000 and the potential of five years imprisonment for directive infringements

Proposed:

Effective since 2023

Overview - Corporate Sustainability Reporting Directive

Law / Country	Corporate Sustainability Reporting Directive (amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting) (the "Directive") (European Union)
Goal	Enhanced reporting on sustainability issues.
Adoption / Status	The Directive was published in the European Union Official Journal on December 14, 2022 and entered into force on January 5, 2023. EU Member States will have until June 16, 2024 to transpose the Directive into their national laws. The Directive does not directly contain obligations binding on companies. The reporting standards under the Directive are developed by the European Financial Reporting Advisory Group ("EFRAG") at the direction of the European Commission (the "Commission"). The standards are referred to as European Sustainability Reporting Standards (the "ESRS"). The Commission adopted twelve ESRS, consisting of two general cross-cutting ESRS and ten topical ESRS, as further described below, on July 31, 2023. Companies are required to comply with the requirements of the Directive on the following timeline: • For companies already subject to the Non-Financial Reporting Directive (the "NFRD"), more specifically, large undertakings and parent undertakings of a large group that are public interest entities with an average of 500 employees during the financial year: Financial years starting on or after January 1, 2024, with the first report to be produced in 2025. • For large undertakings not subject to the NFRD: Financial years starting on or after January 1, 2025, with the first report to be produced in 2026. • For SMEs: Financial years starting on or after January 1, 2026, with the first report to be produced in 2027. However, for the first two years following 2026, SMEs will have the option to opt out from the reporting requirements, so long as they indicate in their management report why they did not disclose sustainability information. • For Third-Country Companies: Financial years starting on or after January 1, 2028, with the first report to be produced in 2029.
Issues Addressed	• Environmental rights • Social and human rights • Governance factors

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Covered Entities	The reporting requirements under the Directive will apply to each of the below. EU companies that meet at least two of the following three criteria (a "large undertaking"): • An average of at least 250 employees annually; • At least €40 million annual net turnover; and/or • A balance sheet of at least €20 million. Non-EU companies that meet the following two criteria (a "Third-Country Company"): • Over €150 million in EU annual turnover for the trailing two financial years; and • At least one subsidiary that is a large undertaking (or listed entity that is not a micro undertaking) or EU branch that generated net turnover of more than €40 million in the prior financial year. • Companies with securities listed on an EU regulated market, including small- and medium-sized enterprises ("SMEs"). • Captive insurance and reinsurance undertakings as well as small and non-complex institutions provided that they are also large-, medium- or small-sized enterprises (the phase in for those undertakings is not discussed in this summary). "Net turnover" means 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.
Mandatory	Yes
Reporting Requirements	Companies generally are required to include in their management report a non-financial statement containing information necessary to understand the company's impacts on sustainability matters and how sustainability matters affect the company's development, performance and positions. "Sustainability matters" broadly encompass environmental, social and human rights and governance factors. Such information must be clearly identifiable through a dedicated section of the management report. The Directive provides an exemption for subsidiaries, if the subsidiary's parent company includes the required subsidiary information in the parent company's consolidated management report. As noted above, the specific disclosures required to be made are set out in the ESRS. The Directive more generally states that sustainability matters to be addressed in the management report are required to include the following: • A brief description of the company's business model and strategy, including: • The resilience of the company's business model and strategy to risks related to sustainability matters; • The opportunities for the company related to sustainability matters; • 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 the limiting of global warming to 1.5°C in line 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; • How the company's business model and strategy take account of the interests of the company's stakeholder and of the impacts of the company on sustainability matters; and • How the company's strategy has been implemented with regard to sustainability matters;

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Reporting Requirements (cont)	A description of the time-bound targets related to sustainability matters set by the company, including where appropriate absolute greenhouse gas emission reduction targets at least for 2030 and 2050, a description of the progress the company has made towards achieving those targets and a statement of whether the company's targets related to environmental matters are based on conclusive scientific evidence; • A description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills to fulfil this role or access to such expertise and skills; • A description of the company's policies in relation to sustainability matters; • Information about the existence of incentive schemes offered to members of the administrative, management and supervisory bodies which are linked to sustainability matters; • A description of: • The due diligence process implemented by the company with regard to sustainability matters, and where applicable in line with EU requirements on companies to conduct a due diligence process; • The principal actual or potential adverse impacts connected with the company's own operations and with its value chain, including its products and services, its business relationships and its supply chain, actions taken to identify and track these impacts, and other adverse impacts which the company is required to identify according to other EU requirements on companies to conduct the due diligence process; and • 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; • 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; and • Indicators relevant to the disclosures referred to above. Under the Directive, companies are required to report on the process used to identify the information included in the management report. The information listed above must include information related to short-, medium- and long-term time horizons, as applicable. Additionally, where applicable, the information referred to above must contain details about the company's operations and its value chain, including products and services, its business relationships and its supply chain. For the first three years of the application of the Directive, in the event that not all the necessary information regarding the value chain is available, the company can explain the efforts made to obtain the information about its value chain, the reasons why this information could not be obtained and the plans of the company to obtain such information in the future.

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Additional Reporting Requirements	**SME Reporting Requirements:** There are reduced reporting requirements for SMEs. SMEs are only be expected to provide sustainability reporting that is proportionate to their size and resources. The reduced reporting standards for SMEs are to be included in the ESRS referenced below to be adopted by June 30, 2024. **Third-Country Company Reporting Requirements:** The Directive also contemplates different reporting standards for Third-Country Companies; however, Third-Country Companies may choose to report according to the same standards that apply to EU companies or according to standards that are deemed equivalent. In particular, under the Directive, Third-Country Companies are not required to address as part of the description of the group's business model and strategy (1) the resilience of the group's business model and strategy in relation to risks related to sustainability matters, and (2) the opportunities for the group related to sustainability matters. The reporting standards for Third-Country Companies are to be included in ESRS adopted by June 30, 2024. **Double Materiality Approach:** The Directive takes a "double materiality" approach to reporting. Subject companies are required to report both on how sustainability matters affect their business and the external impacts of their activities on people and the environment. **Forward Looking Information:** The Directive explicitly requires companies to disclose forward-looking information. The Directive indicates that this information should: • Be based on conclusive scientific evidence where appropriate; • Be harmonized, comparable and based on uniform indicators where appropriate, while allowing for reporting that is specific to individual companies and does not endanger the commercial position of the company; and • Take into account short-, medium- and long-term time horizons and contain information about the company's whole value chain, including its own operations, products and services, business relationships and supply chain, as appropriate. **Confidential information:** In their adopting legislation, Member States may allow information relating to pending developments or matters in negotiation to be omitted if its disclosure would be seriously prejudicial to the commercial position of the company, so long as the omission does not prevent a fair and balanced understanding of the company's development, performance and position and the impact of its activity. In addition, the recitals note that the Directive is not intended to require companies to disclose intellectual capital, intellectual property, know-how or the results of innovation that would qualify as trade secrets under the EU trade secrets directive.

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The ESRS	General Topics and Standards: Cross-cutting ESRS provide for general requirements (ESRS 1) and general disclosures (ESRS 2). The Commission also has adopted the following 10 topical standards: **Environment:** • Climate Change (ESRS E1) • Pollution (ESRS E2) • Water and Marine Resources (ESRS E3) • Biodiversity and Ecosystems (ESRS E4) • Resource Use and Circular Economy (ESRS E5) **Social:** • Own Workforce (ESRS S1) • Workers in the Value Chain (ESRS S2) • Affected Communities (ESRS S3) • Consumers and End-Users (ESRS S4) **Governance:** • Business Conduct (ESRS G1) EFRAG will periodically publish additional non-binding technical guidance on the application of the ESRS. Additional Standards: EFRAG also was in the process of developing draft sector-specific ESRS. These were to include the following five sectors covered by GRI sector standards: • Agriculture • Coal Mining • Mining • Oil and Gas (upstream) • Oil and Gas (mid- to downstream) As part of this set of ESRS, EFRAG also was developing standards for the following sectors it has characterized as high impact: • Energy Production • Road Transport • Motor Vehicle Production • Food/Beverages • Textiles

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Third-party Assurance	Sustainability information will require limited assurance (i.e., negative assurance that no matter has been identified by the assurance practitioner to conclude that the subject matter is materially misstated). Assurance will be required to address, among other things, (1) compliance with the applicable ESRS and (2) the processes carried out to identify the reported information. Assurance standards are to be adopted by the Commission before October 1, 2026. The European Union has indicated that its goal is to eventually adopt a "reasonable assurance" standard, potentially as early as 2028. A reasonable assurance engagement would entail more extensive procedures, including consideration of internal controls of the reporting company and substantive testing.
Publication Requirements	Member States may require companies to make the management report available to the public on their website. If a company does not have a website, Member States may require it to make a written copy of its management report available upon request. Member States should ensure companies publish management reports within twelve months of the balance sheet date. Member States will be required to require that a subsidiary or branch of a Third-Country Company established in its territory publish and make accessible a sustainability report. The applicable subsidiary or branch is required to publish a Third-Country Company's sustainability report in the Member State's central, commercial or companies register. If the report is not made accessible, free of charge, to the public on the website of the register, the report is required to be made available on the website of the subsidiary or branch. Reporting will be required to be in XHTML format. Companies also will be required to follow additional data tagging requirements specified by the Commission. This will facilitate packaging and comparability of data, especially by third-party data providers used by asset managers.
Enforcement	Member States will determine the penalties, administrative measures or sanctions necessary for infringements of the national provisions adopted in accordance with the Directive.
Reporting Exemptions	**Subsidiary Exemption:** Subsidiaries (including an intermediate parent company) generally will be exempt from reporting if they are included in the consolidated reporting of a parent company that complies with the reporting requirements of the Directive. The subsidiary reporting exemption applies to both subsidiaries of EU parent companies and subsidiary companies included in the consolidated sustainability reporting of a parent company established outside of the European Union. This exemption generally will require the subsidiary to include in its management report the name and registered office of the parent company that is reporting sustainability information at the group level, the web link to the consolidated management report of the parent company and a reference in its management report indicating it is exempt from sustainability reporting. In connection with this exemption, Member States may impose a language requirement on the parent company consolidated management report. **<u>Equivalence Exemption:</u>** The Directive allows for substituted compliance under non-EU disclosure regimes determined to be equivalent by the Commission. **<u>Transitional Period Exemption:</u>** Until January 6, 2030, Member States will be required to allow an EU subsidiary of a Third-Country Company to prepare consolidated sustainability reporting that includes all of the Third-Country Company's EU subsidiary companies' disclosures. The EU subsidiary preparing the report must be one of the EU subsidiaries of the Third-Country Company that has generated the greatest turnover in the EU in at least one of the preceding five financial years.