In November 2022, the Corporate Sustainability Reporting Directive (CSRD) was adopted by the EU Parliament (Parliament) and approved by the European Council (EC). It has thus taken the last hurdle in the legislative process after the European Commission (Commission) published its first proposal for it in April 2021. The CSRD will replace the previously applicable Nonfinancial Reporting Directive (NFRD).

1. TIMELINE OF LEGISLATIVE PROCESS

The original CSRD proposal by the Commission was published on April 21, 2021, and was open for debate in a consultation on this legislative process until July 14, 2021. A draft report with proposed amendments was published on November 16, 2021, and the EC draft amendment on February 24, 2022. On June 21, 2022, the EC and the Parliament reached a preliminary political agreement, the draft of which provided for amendments to the Commission's draft. This draft was adopted by a large majority in the Parliament on November 10, 2022 and approved by the EC on November 28, 2022. The CSRD will now be signed by the President of the Parliament and the President of the EC. Subsequently it will be published in the EU Official Journal and enter into force 20 days after publication. The CSRD must be transposed into the national laws of the EU Member States within 18 months.

According to the original timetable of the Commission's 2021 draft, the regulations were supposed to apply from January 1, 2024, for fiscal year 2023. However, the CSRD now provides for a later introduction in the form of a phased model (cf. no. 2 below). This gives companies with the duty to report more time to prepare.
The CSRD significantly expands the group of companies subject to reporting requirements. Subsequently, the following companies will be covered by the CSRD:

1. As of January 1, 2024, all EU companies which are already subject to the NFRD and non-EU companies listed on a regulated market in the EU within the definition of large companies with more than 500 employees will be covered.

2. As of January 1, 2025, all EU companies regardless of capital market orientation, that exceed two of the following three size criteria (large companies):
   i. 250 employees on an annual average;
   ii. balance sheet total of more than 20 million euros;
   iii. revenue of more than 40 million euros;
   as well as all large non-EU companies listed on a regulated market in the EU will be covered.

3. As of January 1, 2026, all listed small and medium-sized companies (SMEs), including non-EU companies listed on a regulated market in the EU, with the exception of micro-companies will be covered as well. According to Directive 2013/34/EU, companies are considered small if they exceed two of the three characteristics (i) 10 employees, (ii) 350,000 euros balance sheet total and (iii) 700,000 euros net revenue. Moreover, small and non-complex credit institutions and captive insurance undertakings will be covered from then on.

4. As of January 1, 2028, non-EU companies with
   i. an annual net revenue at the consolidated or individual level in the EU of more than 150 million euros for each of the last two consecutive financial years, and
   ii. at least one subsidiary (which is either a large EU company or an SME) or a branch in the EU that generated an annual net revenue in excess of 40 millions euros in the proceeding financial year
   will also be covered.

Reporting at group level will still exempt the subsidiaries from their own reporting obligations, as long as the subsidiary refers to the group report. Large capital market-oriented subsidiaries are exempted from this exemption.
3. REPORTING OBLIGATIONS

According to the CSRD, a statement containing all information necessary for an understanding of the company's business performance, results, position and the impact of its activities will be required. In particular, this statement shall provide information regarding its sustainability strategy and environmental, social and governance issues, such as a description of (i) the company's business model and strategy in relation to sustainability aspects, (ii) its sustainability objectives, (iii) the role of the administrative, management and supervisory bodies in relation to sustainability issues, (iv) its sustainability policy implemented in relation to sustainability aspects, (v) the due diligence process implemented with regard to sustainability issues as well as the main actual or potential adverse impacts (Principal Adverse Impacts) related to the company's value chain plus an indication of the measures taken and the outcome of those measures to prevent any actual or potential adverse impacts, and (vi) the main risks to which the company is exposed in relation to sustainability issues.

Moreover, the initial proposal appointed the European Financial Reporting Advisory Group (EFRAG) as the technical advisor to the Commission responsible for developing the European Sustainability Reporting Standards (ESRS). The first set of ESRS was approved by EFRAG on November 15, 2022 and then delivered to the Commission. It consists of twelve intersectoral standards. The Commission now has to adopt the ESRS drafts or revise them itself before they are to be applied as a delegated act by companies in the scope of the CSRD.

4. MANDATORY INCLUSION IN MANAGEMENT REPORT

Furthermore, according to the CSRD, organizations will no longer be able to choose where they publish the information. In the future, the required information is to be included in the management report.

5. PUBLICATION

Publication is to take place in a machine-readable format. The "Single Electronic Reporting Format" will require tagging of sustainability information in the future and is intended to establish compatibility with the "European Single Access Point" yet to be developed by the EU, a central register for digitally prepared reports.

6. AUDIT AND PENALTIES

There will be an obligation for external verification of the sustainability information - initially with limited assurance. If a company that is required to report under the CSRD does not comply with the obligation to publish the information, the CSRD sets minimum penalty types and process requirements in the penalty investigation, but does not contain a paragraph on uniform penalties, i.e., penalties for violations are left to be determined by the member states.
7. LEGISLATIVE PROCESS INFORMATION

The status of the legislative process of the CSRD can be monitored on the EU legislative observatory.

8. ACTION REQUIRED

The timetable states reporting obligations. To meet this reporting obligations, the affected companies must start collecting the relevant data in the previous year. E.g., a company that must report after January 1, 2025, must set up a process to collect the relevant data starting January 1, 2024. For this companies 2023 is a good year to start setting up the relevant processes.

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