

# The Extra-Territorial Impact of the Corporate Sustainability Reporting Directive—Broadening the Scope of Sustainability Reporting to World-Wide Groups

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The European Union’s (“EU”) Corporate Sustainability Reporting Directive (“CSRD”) is the EU’s ambitious scheme for corporate sustainability reporting. It takes effect for financial years beginning on or after 1 January 2024 for companies (EU and non-EU) with securities listed on an EU “regulated market”. From 2025, large private EU companies will be in scope. The CSRD requires in-scope companies to include a large body of sustainability information in their annual reporting, in accordance with the detailed European Sustainability Reporting Standards (“ESRS”), combined with external “assurance” of the information provided.

The impact of the CSRD is not limited to EU companies. To level the playing field between EU and non-EU companies, the CSRD extends in important ways to the activities of companies outside the EU’s borders. Most notably, EU companies which are in scope of the CSRD, and whose ultimate parent company is incorporated in a “third country”, are subject to an additional obligation beyond producing their own sustainability reporting. From 2028, such companies are required to produce a sustainability report at the group level of the ultimate parent company, provided the group as a whole generates more than €150 million of turnover in the EU—effectively, a sustainability report for the entire world-wide group. These reports will follow separate reporting standards, expected to be adopted by the European Commission in 2024.

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## World-Wide Sustainability Reporting from 2028

For financial years starting on or after 1 January 2028, Member States will require in-scope EU subsidiary companies and branches whose ultimate parent company<sup>1</sup> is incorporated in a third country to publish a sustainability report at the group level,

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<sup>1</sup> Note that the CSRD uses the term “undertaking” to encompass companies and other types of entities, including partnerships. For simplicity, we have used the term “company” in this Debevoise In Depth.

containing similar information as is required for consolidated group sustainability reporting for EU companies.<sup>2</sup>

In scope EU subsidiary companies and branches must publish their reports (and a related external “assurance” opinion) within 12 months of their balance sheet date in the commercial or companies’ register in the relevant jurisdiction. Where the sustainability report is not publicly available through the website of the commercial or companies register, the EU company must publish the report on its website. It does not appear that data in the reports is made available in electronic format to the European single access point, established to receive the data published by EU companies from 2025.

This requirement applies to all EU companies, with a non-EU parent company, that come into scope of the CSRD prior to 2028: namely, all “large” EU private companies<sup>3</sup> and large companies listed on an EU regulated market; and “small and medium sized” EU subsidiary companies,<sup>4</sup> except micro companies, that are listed on an EU regulated market.<sup>5</sup>

Non-EU companies with EU operations will usually conduct those operations from an EU subsidiary, but may on occasion establish EU branches that are permanent establishments of the non-EU company in the EU, and registered in the relevant Member State as such. In this case, the obligation to prepare a world-wide sustainability report also applies to the EU branch, where the branch generated a net turnover of more than €40m in the preceding financial year.

The requirement in either case is conditional on the third country company at the group level (or, if not applicable, at the individual level) having generated a net turnover of more than €150 million in the EU for each of the last two consecutive years.

The CSRD does not apply this requirement directly on the non-EU parent company, which would raise questions of extra-territoriality and enforcement. Instead, it requires the EU subsidiary or branch itself to prepare the consolidated sustainability report at the group level of its ultimate third-country parent company.

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<sup>2</sup> Article 40a of Accounts Directive, as amended by CSRD.

<sup>3</sup> Large undertakings are undertakings that exceed (on their balance sheet date) at least two of the following three criteria: balance sheet total: €20m; net turnover: €40m; and average number of employees during the financial year: 250.

<sup>4</sup> Small and medium-sized undertakings are undertakings that do not exceed (on their balance sheet date) at least two of the following criteria: balance sheet total: €20m; net turnover: €40m; average number of employees during the financial year: 250.

<sup>5</sup> Public interest entities are EU undertakings with equity or debt listed on an EU regulated market, EU credit institutions and insurance undertakings, and other companies designed as public interest entities by EU Member States.

These provisions extending the scope of the CSRD did not appear in the Commission's original proposal in April 2021 (and therefore were not part of the original "impact assessment" of the original proposal). Instead, they were introduced in June 2022 as part of the "trilogue" process between the EU institutions, which are informal, private and unrecorded negotiations.

The final text of the CSRD justifies the broadening of its scope on the grounds that there should be a "level playing field" between "third country undertakings which have a significant activity on the territory of the EU"<sup>6</sup> and EU companies in scope of the CSRD. The European Council, in an earlier [note](#), referred to "European citizens [having] access to information minimum requirements on the goods and services they buy in the EU".

However, non-EU companies have raised concerns about the extra-territorial scope of the CSRD. For instance, members of US House and Senate Committees [wrote](#) to U.S. Secretary of the Treasury Janet Yellen in June 2023 to express their concerns that European governments planned "to impose onerous extra-territorial climate mandates on American businesses", estimating that over 3,000 U.S. companies will be scoped into the CSRD. It should also be borne in mind that the CSRD requires companies in scope to report material sustainability information about their entire value chains, in particular those value chains with high sustainability risks, and not just their own group's operations. Moreover, since reporting by non-EU companies will be under separate reporting standards, it is not yet clear how comparable their reports will be to those of EU companies, and whether a level playing field will be in fact exist.

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## Key CSRD Compliance Questions

The 2028 reporting obligation raises some important practical compliance questions.

### **How Does a Company Determine if the Group Meets the €150 Million Turnover Threshold?**

The key trigger for third country parent companies to be caught in scope of the CSRD is net turnover of €150 million in the EU for the last two financial years, at the group or individual level. "Net turnover" is defined in the EU Accounting Directive as the amount 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. However, in the context of 2028 CSRD reporting, it means "the revenue as defined by or within the meaning of the financial reporting framework on the basis of which the financial statements of the undertaking are prepared." As such, the precise basis for calculating

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<sup>6</sup> Recital 20 of CSRD.

turnover generated in the EU for the purposes of the CSRD is not entirely clear, but is directed at turnover derived from EU customers.

### **What Reporting Standards Will Apply to the Group-Wide Sustainability Report?**

As above, the Commission is required to adopt a set of sustainability reporting standards for third-country companies by 30 June 2024. There is no clear indication yet as to the scope and contents of these standards, although it is reasonable to assume that the reporting standards will be simplified, to some degree, compared to the full ESRS. As an alternative to using the ESRS, the CSRD allows the group-wide sustainability report to be drawn up according to sustainability reporting standards which have been determined as “equivalent” to the ESRS for third country companies. In its [guidance](#) issued in August 2023, the European Financial Reporting Advisory Group (“EFRAG”) confirmed that a company that applies the ESRS is expected to be able to comply with the sustainability reporting standards currently being produced by the International Sustainability Standards Board (“ISSB”) of the IFRS. However, that leaves open the question of whether the EU will determine that the ISSB standards are equivalent to the ESRS. The EU’s decision in this regard will presumably be influenced by the degree to which in-scope groups are reporting on the basis of the ISSB standards prior to 2028, either voluntarily or as a matter of local law. It is notable in this regard that the United Kingdom has signalled its intention to apply ISSB reporting on a mandatory basis to the “most economically significant” UK companies, and will make a final decision on implementation of ISSB reporting standards by June 2024.

### **Should Each In-Scope EU Subsidiary or Branch Publish a Group-Wide Report?**

The EU has not widely acknowledged that the 2028 reporting requirement will leave EU companies with two overlapping obligations: first, to produce a sustainability report in respect of their own operations, in accordance with the full EU reporting standards; and second, to produce a group-wide sustainability report in respect of their non-EU parent’s group-wide operations, in accordance with the presumably simplified reporting standards for third country companies.

This gives rise to a further question. All EU subsidiary companies in scope of the CSRD are required to publish both types of report, assuming they meet the 2028 reporting thresholds. For groups with more than one EU subsidiary company in scope of the CSRD, is each EU subsidiary required to publish their own report and a group-wide report? In this regard, the CSRD provides that an EU subsidiary of a non-EU parent company is exempt from the obligation to produce a sustainability report where (i) the parent and subsidiary companies are included in a single consolidated sustainability report and (ii) the consolidated sustainability reporting is carried out in accordance with

the full EU reporting standards, or according to reporting standards which have been determined as “equivalent”. It follows that an EU company can be relieved of any obligation to report under the CSRD if the non-EU parent company produces its own, world-wide sustainability report, either in accordance with the full EU reporting standards or according to “equivalent” reporting standards. As above, it remains to be seen whether the Commission will consider ISSB standards as equivalent.

Companies should discuss with their auditors whether, in practice, each EU subsidiary will satisfy the requirement by arranging for the ultimate non-EU parent company to publish the group consolidated sustainability report on its behalf.<sup>7</sup>

### **Who Provides the Necessary Assurance Opinion?**

The world-wide sustainability report will need to be published with an assurance opinion, in the same manner as EU sustainability reports, provided by a firm authorised to give an opinion on assurance reporting, either under the national law of the relevant EU company in scope, or of the third country parent, or of another EU Member State. The reference to firms authorised to act as assurance providers under the national law of the third country parent is interesting: whilst the CSRD contains new provisions on the qualifications and standards for the assurance of sustainability reporting, it does not contain any procedure to determine the equivalence of third country firms providing assurance reporting.

### **What Happens if the Third-Country Parent Refuses to Provide the Necessary Information to Its EU Subsidiary or Branch?**

The CSRD requires each EU company in scope of the 2028 reporting obligation to request its third country parent to provide the necessary information to draw up the group-wide sustainability report. The CSRD recognises that, as a matter of law, an EU company cannot compel its parent to comply with this request. As such, it states that if the EU company cannot obtain the required information, it must draw up and publish the group-wide sustainability report containing all information in its possession, and issue a “naming and shaming” statement that its non-EU parent did not provide the necessary information.

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<sup>7</sup> Note that, until 6 January 2030, Member States may permit an EU subsidiary company which is subject to Article 19a (Sustainability reporting for large undertakings and small and medium sized entities which are public interest entities) or Article 29a (consolidated sustainability reporting) and whose parent company is not governed by the law of a Member State to prepare a consolidated sustainability report that includes all EU subsidiary undertakings of such parent undertaking that are subject to Article 19a or 29a. The EU subsidiary undertaking that prepares the report must be one of the EU subsidiary undertakings that generated the greatest turnover in the EU in at least one of the preceding five financial years, on a consolidated basis where applicable. It is unclear whether this transitional provision also applies to the obligation for each EU subsidiary also to publish a sustainability report at the world-wide group level for the financial year starting on 1 January 2028.

In practice, it is expected that the non-EU parent will draw up the group-wide sustainability report independently, and then make it available to the EU company in scope of the obligation. If the non-EU parent does not draw up the sustainability report, there are open questions about the practicality and utility of the EU company producing the group-wide sustainability report on the basis of information “in its possession”.

### **Does the Group-Wide Report Include Taxonomy Reporting?**

Where an EU company is in scope of the CSRD, it must also report on the degree of alignment of its activities under the Taxonomy Regulation, the detailed EU classification system for environmentally sustainable activities. The Taxonomy is capable of applying to non-EU activities. However, the CSRD provisions dealing with group-wide reporting do not refer to the Taxonomy Regulation, and it therefore appears that the group-wide reporting obligation does not include reporting under the Taxonomy Regulation. In this regard, the Commission’s June 2023 [User Guide](#) to the EU Taxonomy states that “[t]he CSRD also applies to non-EU companies with activities in the EU above a certain threshold, but Taxonomy rules will not apply to these companies”.

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## **Conclusion**

A large number of groups headed by non-EU companies will have EU operations of a size that triggers CSRD reporting on a group-wide basis. The scale of the reporting required will depend on the reporting standards that the EU ultimately produces. However, the standards are likely to be extensive, covering the same governance, environmental and social topics as the full reporting standards, albeit with a reduced number of data points. Some companies may see this obligation as “over-reach” by the EU. The EU may well consider it proportionate, in view both of the group’s size in the EU and the growing adoption of sustainability reporting across the globe. In any event, the EU is unlikely to repeal or lighten the obligation. In-scope groups should begin preparations for group-wide sustainability reporting from 2028.

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Please do not hesitate to contact us with any questions.



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