The Corporate Sustainability Reporting Directive (CSRD): the EU's new sustainability reporting regime and US-multinationals

CSRD is the EU's new, ground-breaking ESG disclosure law, which will require publicly accessible ESG reporting for many EU and non-EU-incorporated companies. Globally, companies are now starting to grapple with how CSRD will affect their businesses – both inside and outside the EU. This article outlines, in particular, how US-headquartered multinationals can be subject to the demanding requirements of the new regime.

What is CSRD?

The Corporate Sustainability Reporting Directive ("**CSRD**") is part of a package of EU legislation arising out of the European Green Deal.

The CSRD introduces a new requirement for in-scope companies to include a dedicated section in their annual report on sustainability matters (ie, environmental, social, human rights and governance factors). The new sustainability section is required to include an extensive range of sustainability related disclosures (involving up to approx. 1,400 data points), which must be made in accordance with detailed European sustainability reporting standards. Disclosures under the CSRD will need to be audited; initially audits will be to a limited assurance standard but over time this will progress to full reasonable assurance.

Who does CSRD apply to?

Subject to certain exceptions and derogations, the new rules will require the audit and disclosure of sustainability information in respect of:

- all EU-incorporated "large" companies or EU-incorporated parent companies of a "large" group;
- all companies (including US-incorporated companies) with securities listed on an EU regulated market (excluding micro undertakings);
- certain non-EU incorporated parent companies that have EU-incorporated subsidiaries or EU branches, where they exceed certain turnover thresholds; and
- certain EU-regulated banks and insurance companies.

"Large" in this context means companies / groups that meet two of the following three criteria, calculated on a worldwide, consolidated basis: (i) balance sheet of greater than €20 million (subject to an EU proposal to be increased to €25 million); (ii) net turnover of greater than €40 million (subject to an EU proposal to be increased to €50 million); and / or (iii) more than 250 employees.

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CSRD for US-incorporated companies

In addition to their EU-incorporated subsidiaries which may be directly in-scope for CSRD reporting, sustainability information relating to US-incorporated companies may also need to be audited and reported in accordance with the European sustainability reporting rules if:

1. the US-incorporated company has securities listed on an EU-regulated market; or
2. the US-incorporated company generates (on a group level) net turnover of over €150 million in the EU and has:
   (a) any "large" subsidiary in the EU;
   (b) a branch in the EU that itself generates net turnover of more than €40 million; or
   (c) an EU-incorporated SME subsidiary that has securities listed on an EU-regulated market or is a regulated insurance undertaking or credit institution.

If a US-company is brought 'in-scope' for CSRD, the reporting must be conducted on a global basis for all of the US-company's subsidiaries – not just in respect of subsidiaries or operations in the EU.

Timelines

CSRD reporting comes into effect on a phased basis. The key CSRD dates for most US-incorporated companies are as follows:

- **Reporting in 2025 in respect of FY 2024**: US corporates that have 500+ employees and securities listed on an EU-regulated market.
- **Reporting in 2026 in respect FY 2025**: "Large" EU-incorporated subsidiaries of US corporates and "large" US-corporates with securities listed on an EU-regulated market.
- **Reporting in 2027 in respect of FY 2026**: EU and US-incorporated SMEs with securities listed on EU-regulated markets.
- **Reporting in 2029 in respect of FY 2028**: US-TopCos with in-scope EU-subsidiaries and US-corporates with branches in the EU with turnover of €40 million+, where the US-corporate (on a consolidated basis) has €150m turnover in the EU.

EU subsidiaries that are EU-regulated insurance companies or credit institutions may also come into scope across this time period, depending on their size.

CSRD in context: a step beyond existing sustainability reporting standards

The CSRD and the European sustainability reporting standards go significantly beyond the existing voluntary reporting frameworks that many US-multinational businesses will be familiar with (eg, GRI, SASB, CDP, TCFD).

One of the key differentiators of the CSRD reporting regime is its 'double materiality' approach. In addition to the more traditional 'financial materiality' method of reporting (which is similar but not identical to the approach for determining disclosures in financial reporting), CSRD requires reporting from an 'impact materiality' perspective. Impact materiality concerns the impact of the business on people and the environment over the short, medium and long term. It also includes impacts directly caused or contributed to by the business and impacts linked to the business's upstream and downstream value chain.

In adopting the 'double materiality' approach, the CSRD differs from the new, voluntary sustainability disclosures regime introduced by the ISSB, which uses the more traditional definition of materiality from IFRS accounting.

Recognition of equivalent reporting standards

CSRD includes mechanisms to allow the EU to recognise other reporting standards as equivalent to those under CSRD and therefore to allow, in certain circumstances, reporting to be conducted under those equivalent standards instead.

However, at this early stage it is not clear which standards may be deemed equivalent to the EU's regime and what the timeline might be for recognising any equivalence. Given the difference of approach between the EU and (in particular) the ISSB, there is no clear path to equivalence between these two important rival standards.

Preparations and next steps

The first step for any business that may be subject to CSRD is to undergo a scoping analysis across its structure to determine what entities are in-scope and on what timeline.

Preparing for CSRD can be a daunting task for companies, involving stakeholders from across the business, with project lead-in times of 12+ months in many cases. We recommend that all companies that may be affected by CSRD engage as soon as possible with what will be a significant journey for all stakeholders.

If you have any queries or would like to discuss any of the above or CSRD more generally, please contact: Susanne McMenamin or Michael Sinnott.

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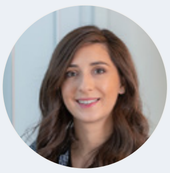

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