

Newsletter

ESG Update

CSRD ante portas – Key Points for Swiss Companies

The EU's Corporate Sustainability Reporting Directive (CSRD) is set to reshape the global corporate reporting landscape. Many Swiss companies doing business in the EU bloc are directly or indirectly affected by CSRD and need to prepare accordingly.

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Sustainability Reporting: The New Normal



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Aiming to overcome the traditional divide between financial reporting and non-financial reporting, CSRD specifies the concept of double materiality. In comparison to its predecessor, the Non-Financial Reporting Directive (NFRD), CSRD entails increasingly detailed and standardized reporting on sustainability matters, introduces new requirements, and affects many Swiss businesses.

I. Background

The EU Corporate Sustainability Reporting Directive (CSRD; Directive 2022/2464) entered into force on 5 January 2023. It significantly strengthens and extends the requirements for corporate reporting on social and environmental information (together, sustainability information) well beyond its predecessor, the Non-Financial Reporting Directive (NFRD) of 2014 (Directive 2014/95).

CSRD amends existing corporate reporting requirements in the EU as set out, in particular, in the Accounting Directive (Directive 2013/34) and the Transparency Directive (Directive 2004/109). It will be phased in gradually, starting with reporting in 2025 for financial years starting on or after 1 January 2024 for some companies (see Section II below). EU Member States have until July 2024 to transpose the Directive into national law.

CSRD has extraterritorial reach and will affect many Swiss companies directly or indirectly (see Section IV below).

II. Scope of Application (Overview)

The scope of application of CSRD is complex in detail. Determining whether a company falls within the scope of CSRD often requires a case-by-case analysis.

CSRD is applicable to all entities (including SMEs) **listed** on EU-regulated markets (with certain limited exceptions), “large undertakings” and “large groups”. It also applies to “third-country undertakings”, meaning non-EU companies with significant activities in the EU (see Section IV below).

Large undertakings are entities that meet two of the following three thresholds in two consecutive financial years:

- net turnover of more than EUR 50 mio;
- balance sheet total of more than EUR 25 mio; and
- more than 250 employees on average

Large groups are groups which, on a consolidated basis, reach at least two of the three thresholds above.

CSRD will be phased in gradually, the earliest year of reporting being 2025 (for the financial year 2024) for companies that are already in scope of NFRD:

	First year of CSRD reporting	Concerning Financial Year
Companies in scope of NFRD	2025	2024
Large undertakings and large groups	2026	2025
Listed SMEs	2027	2026
Third-country undertakings	2029	2028

There are several exemptions, in particular, for micro-companies, UCITS and AIFs. Further, special rules apply to credit institutions and insurance undertakings. There are also exemptions for subsidiaries, if they are included in the consolidated report of their parent undertaking prepared in accordance with ESRS or an equivalent standard (see Section III.3 below).

III. Key Points

1. Double Materiality

CSRD is an important step towards a unified approach to Sustainability Reporting. With the aim of overcoming the financial/non-financial reporting divide, CSRD seeks to consolidate the concept of double materiality within mainstream corporate disclosures. This means that companies report both on the impact of their activities on people and the environment (inside-out perspective) and on how sustainability issues affect the company (outside-in perspective). Notably, in comparison to NFRD, CSRD clarifies that companies should disclose information that is material from both perspectives (financial or impact materiality) as well as information that is material from only one perspective. Double materiality further entails that material sustainability information will be subject to the same scrutiny as material financial information (see Section III.4 below).

2. Scope of Disclosed Information (Overview)

CSRD requires detailed descriptions of several sustainability matters in the management report, namely in relation to:

- **business model and strategy** relating to sustainability and how this strategy has been implemented; this includes aspects such as resilience, opportunities related to sustainability matters and plans to ensure alignment with the transition to a sustainable economy and the goal of limiting global temperature increase to 1.5°C in line with the Paris Agreement as well as the objective of

reaching climate neutrality by 2050 as established in EU law, and, where relevant, the undertaking's exposure to coal-, oil- and gas-related activities;

- time-bound **targets** related to sustainability matters including, where appropriate, absolute greenhouse gas emission reduction targets at least for 2030 (interim target) and 2050;
- sustainability related **roles, expertise** and skills at the level of the administrative, management and supervisory bodies, as well as any relevant **incentive schemes**;
- relevant **policies**;
- **due diligence process**, including identifying and monitoring the principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain, products and services, business relationships and supply chain, and any actions to prevent, mitigate, remediate or end these impacts; this implies a gradual strengthening as compared to NFRD and will be closely related to due diligence expectations under the newly adopted Corporate Sustainability Due Diligence Directive (CSDDD, see Section V below);
- **exposure** of the undertaking to sustainability risks and how it manages them; and
- **indicators** relevant to the above disclosures.

Overall, CSRD strengthens the focus on quantification, standardization and comparability of sustainability information and goes well beyond the requirements under NFRD (which followed a comply-or-explain approach). To ensure coherence, reporting under CSRD needs to be aligned, where appropriate, with other obligations under EU law to disclose sustainability information, in particular as laid out in the EU Taxonomy (Regulation (EU) 2020/852) and the EU Climate Law (Regulation (EU) 2021/1119).

3. Standardisation (ESRS)

Given the current fragmented and largely non-standardized sustainability reporting landscape, CSRD aims to foster a level playing field through standardization. In-scope entities must report according to the **European Sustainability Reporting Standards (ESRS)**. Listed SME undertakings and third-country undertakings will need to report on the basis of (yet to be developed) simplified or non-EU dedicated ESRS standards, respectively.

The draft ESRS were developed by EFRAG (formerly known as the European Financial Reporting Advisory Group), a private association established in 2001 at the initiative of the European Commission. A [first set of \(sector-agnostic\) ESRS](#) was published on 22 December 2023. On 8 February 2024, the European Parliament and the Council agreed to postpone the deadlines for the adoption of sector-specific ESRS by two years, until mid-2026.

Efforts are underway to align the ESRS with the IFRS Sustainability Disclosure Standards (ISSB Standards), with a particular focus on climate change reporting (see the [Interoperability Guidance](#)). Notably, while ESRS adopts the concept of double materiality, the ISSB Standards use a single (financial) materiality concept.

4. Assurance

Currently, a commonly agreed standard for the assurance of sustainability information is lacking. Adopting a progressive approach to enhancing the level of assurance required for sustainability information, CSRD introduces a requirement to obtain **limited assurance**, meaning an opinion issued by an auditor about the compliance of sustainability reporting with EU requirements. By no later than 1 January 2028, the European Commission will adopt assurance standards for **reasonable assurance** of sustainability reporting, which entails a significantly greater degree of testing on the part of assurance providers.

5. Sanctions

Possible sanctions for non-compliance with CSRD requirements (against companies and possibly their directors and officers) will be determined by Member States and must include, at the minimum and without prejudice to their civil liability regimes, the following administrative measures and sanctions:

- public statement indicating the natural person or the legal entity responsible and the nature of the infringement;
- cease and desist order; and
- pecuniary sanctions.

IV. Relevance for Swiss Companies

Even though Switzerland is not an EU Member State, Swiss companies will be substantially affected by CSRD, either directly or indirectly. Swiss-incorporated companies fall within the scope of CSRD as third-country undertakings (as of financial year 2028) under the following conditions (slightly simplified):

- net turnover (at group level, or, if not applicable, individual level) of more than EUR 150 mio in the EU for each of the last two consecutive financial years; and
- large or public-interest subsidiary undertaking on EU territory; or
- branch on EU territory with net turnover of more than EUR 40 mio in the preceding financial year.

In these cases, the EU subsidiary (or the EU branch, as applicable) will be required to publish a sustainability report based on (yet to be developed) non-EU dedicated ESRS standards or, alternatively, an equivalent standard. Notably, there are several scenarios in which Swiss businesses will be directly affected by CSRD before 2028, such as where an EU subsidiary of a top Swiss holding company itself meets the large undertaking threshold, where several EU subsidiaries together form a large group, or where its securities are listed in the EU (see Section II above).

In addition, many Swiss companies, including SMEs, will be affected **indirectly**, particularly if they are suppliers or other business partners of a company in scope of CSRD. To comply with their obligation to report on their supply chain due diligence (see Section III.2 above), companies in scope of CSRD will request information from their suppliers on sustainability issues such as greenhouse gas emissions or working conditions in their supply chain. Accordingly, suppliers will need to have such information readily available.

Swiss companies should assess, in a first step, whether they (or their EU subsidiaries, if applicable) fall within the scope of CSRD, and, if so, as of which year.

Further, it is advisable to initiate relevant internal measures, including an assessment of the applicable regulatory framework and the building up of internal or external competences. This is all the more important in view of various forthcoming regulatory developments in addition to CSRD (see Section V below).

In addition, evolving best practices and market standards in the EU will affect how companies implement the relevant Swiss reporting and due diligence obligations under the Code of Obligations (art. 964a et seqq.), the Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour (DDTrO) as well as the Ordinance on Climate Disclosures (TCFD Ordinance).

V. Outlook

While CSRD will be phased in gradually, various details are still to be determined by the EU and the Member States implementing the Directive.

In view of the new Directive, Switzerland is considering revising its non-financial reporting requirements (art. 964a Code of Obligations et seqq), which were drafted based on, inter alia, NFRD and were first applied to sustainability reports published in 2024. The Federal Council has

announced that it will submit a consultation draft by the end of July 2024. This draft will likely propose:

- a lowering in the employee threshold from 500 (current) to 250 (cf. art. 727 Code of Obligations);
- a requirement to obtain assurance on sustainability information (currently not mandatory);
- the abandonment of the comply-or-explain approach; and
- a requirement to report based on ESRS or an equivalent standard.

The draft will also clarify whether non-Swiss companies operating in Switzerland will be subject to the revised requirements.

At the EU level, another important step is the EU Corporate Sustainability Due Diligence Directive (**CSDDD**), which will substantially strengthen due diligence obligations for companies. After lengthy political debates, CSDDD was finally adopted on 24 May 2024. Like CSRD, CSDDD has an extraterritorial scope and will therefore affect Swiss companies with significant business activities in the EU. Against this backdrop, the political debate in Switzerland on the introduction of due diligence obligations for multinational enterprises, which failed by a narrow margin in 2020, has regained momentum. Please see our upcoming Newsletter discussing the CSDDD.

Environmental, Social and Governance (ESG) & Sustainability have become key strategic issues for companies and their boards. The transition to more sustainable business practices presents both challenges and opportunities for companies. Walder Wyss can help you navigate the complex and rapidly evolving ESG & Sustainability landscape. [See here](#) for more information.

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