

Matheson

Ireland's New Mandatory Sustainability Reporting Regulations Come Into Effect

8 August 2024

CSRD

At A Glance

On 6 July 2024, [new Irish regulations](#) came into force to give effect to the EU's Corporate Sustainability Reporting Directive (the "CSRD") for Irish companies, their non-EU incorporated parent companies and branches of non-EU incorporated companies that are established in Ireland.

The CSRD comes into effect on a phased basis from 1 January 2024, but the significant majority of our clients will be required to report extensive sustainability information in respect of their financial year beginning on or after 1 January 2025. Preparing for the CSRD involves considerable effort and resources and input from stakeholders from across the business (including external stakeholders, such as customers and suppliers). Directors of Irish companies should act now to consider the impact of the CSRD on their company.

This memo provides a high-level overview of the requirements of the CSRD, as applicable to Irish companies. Ireland's regulations differ in some respects to the EU law; we are considering the implications.

The EU Commission has also (on 7 August 2024) issued a draft notice on the interpretation of the CSRD. This draft notice can be accessed [here](#).

Is my company in-scope for CSRD reporting in Ireland?

Overview

Irish companies come into-scope for CSRD reporting on a phased basis. In summary:

Reporting entity	Commencement of reporting year
Any "large" Irish-incorporated company that (i) has an average of more than 500 employees and (ii) is a "public-interest entity".	Reporting in respect of financial years commencing on or after 1 January 2024.
All other "large" Irish-incorporated companies.	Reporting in respect of financial years commencing on or after 1 January 2025.
Small and medium Irish-incorporated companies that have securities listed on an EU-regulated market. Small, medium or large Irish-incorporated companies that constitute "small and non-complex institutions" or captive insurance undertakings within the meaning of certain EU financial services legislation.	Reporting will commence in respect of financial years commencing on or after 1 January 2026.
Irish branches of non-EU incorporated companies, if (i) the branch has turnover in the EU in excess of €40m; and (ii) the non-EU company has turnover in the EU in excess of €150m.	Reporting in respect of financial years commencing on or after 1 January 2028. This report must include sustainability information in respect of the non-EU company and all of its subsidiaries; not just the branch in Ireland.
Irish-incorporated companies that are in-scope for CSRD reporting that have a non-EU incorporated parent undertaking, where that parent company's turnover in the EU exceeds €150m.	Reporting in respect of financial years commencing on or after 1 January 2028. This report must include sustainability information in respect of the entire worldwide group of the non-EU parent company.

Irish partnerships, limited partnerships and co-operatives are not in-scope for CSRD reporting under the new regime. Irish unlimited companies that benefit from the exemption from annexing their financial statements to their annual returns are not currently exempted from CSRD reporting. Charities and sports clubs (that meet the required thresholds) are also not excluded from reporting.

The new Irish regulations specifically exclude:

- (a) entities that are alternative investment funds (AIFs) and most Undertakings for the Collective Investment in Transferable Securities (UCITS), but this exclusion

does not extend to entities into which AIFs or UCITS entities may invest; and

- (b) credit unions and friendly societies.

For corporate groups with multiple companies, it is necessary to undergo a scoping analysis to determine which entities are in-scope for reporting and when, on an entity-by-entity basis. Multinational companies that are headquartered outside of the EU frequently have optionality with respect to the approach to their reporting structure, which will need to be considered carefully.

What is a “public-interest entity”?

Irish companies can come into-scope for CSRD reporting on an accelerated basis (ie, reporting in respect of financial year 2024) if they meet the thresholds to be considered “large” and are “public-interest entities” that will have an average of more than 500 employees in their 2024 financial year. Under the new Irish regulations, an Irish company is a “public-interest entity” if it:

- (a) has securities that are admitted to trading on an EU “regulated market” (including, Euronext Dublin, Bourse de Luxembourg, Euronext Amsterdam or Euronext Paris SA but excluding NYSE, NASDAQ or the London Stock Exchange);
- (b) is a “credit institution” or “insurance undertaking” (within the meaning of certain EU financial services legislation); or
- (c) is otherwise designated under any law to be a public-interest entity.

What does it mean for a company to be “large”?

The most common way in which an Irish company will come into scope for CSRD is by virtue of being “large”. An Irish-incorporated company can be considered “large” if:

- (a) the Irish company has no subsidiaries and it meets any two of the following three criteria:
 1. the amount of turnover of the company exceeds €50m;
 2. the balance sheet total of the company exceeds €25m; and / or
 3. the average number of employees exceeds 250; or
- (b) the Irish company has subsidiaries and it meets any two of the following three criteria when consolidated with its subsidiaries (ie, the Irish-company’s ‘group’):
 1. the aggregate amount of turnover of the group exceeds €50m net (or €60m gross);
 2. the aggregate balance sheet total of the group exceeds €25m net (or €60m gross); and / or
 3. the aggregate average number of employees of the group exceeds 250.

In this context, “net” means after set-offs and other adjustments made to eliminate group transactions (in accordance with Irish GAAP or IFRS, as applicable) and gross means without those set-offs and other adjustments.

Certain companies are deemed “large”

Under the Irish regulations:

- (a) all Irish public limited companies (PLCs), public unlimited companies (PUCs) and public unlimited companies with no share capital (PULCs); and
- (b) many companies that are authorised for financial services regulation eg, by the Central Bank of Ireland (including approved market operators, insurance intermediaries, management companies or trustees of UCITS) or in certain cases are associated with such companies,

are deemed to be “large” irrespective of their turnover, balance sheet total or the average number of their employees. This was not envisaged by the EU when the CSRD was adopted.

What must be reported?

Content of the reporting

If an Irish company is in-scope for CSRD reporting, a new dedicated section must be included in the directors' report that discloses (i) information necessary to understand the company and its subsidiaries' impacts on sustainability matters and (ii) information necessary to understand how sustainability matters affect the company's development, performance and position. Broadly, these disclosures include:

- (a) a brief description of the company and its subsidiaries' business model and strategy, including:
 - (i) resilience of the business model and strategy to risks related to sustainability matters;
 - (ii) opportunities relating to sustainability matters;
 - (iii) plans (including implementation 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 limiting global warming in line with the Paris Agreement, and the exposure of the company and its subsidiaries to coal, oil and gas-related activities;
 - (iv) how the company and its subsidiaries' business model and strategy take account of the interests of stakeholders and the impacts on sustainability matters; and
 - (v) how the company and its subsidiaries' strategy has been implemented with regard to sustainability matters;

- (b) a description of the time-bound targets related to sustainability matters set by the company and its subsidiaries, including where appropriate absolute greenhouse gas emission reduction targets for at least 2030 and 2050 and a description of the progress of the company and its subsidiaries towards achieving those targets and a statement of whether the company and its subsidiaries targets are based on conclusive scientific evidence;
- (c) a description of the role of the administrative, management and supervisory bodies of the company and its subsidiaries with regard to sustainability matters and of their expertise and skill in relation to fulfilling that role and the access to expertise and skills;
- (d) a description of the company and its subsidiaries' policies in relation to sustainability matters;
- (e) information about the existence of incentive schemes linked to sustainability matters that are offered to members of the administrative, management and supervisory bodies of the company and its subsidiaries;
- (f) a description of:
 - (i) the due diligence process implemented by the company and its subsidiaries with regard to sustainability matters (where applicable in line with EU laws on due diligence, which will include the Corporate Sustainability Due Diligence Directive);
 - (ii) the principal actual or potential adverse impacts connected with the company and its subsidiaries' own operations and with their value chain, including their products and services, business

relationships and supply chain, actions taken to identify and monitor those impacts and other adverse impacts which the company and its subsidiaries are required to identify pursuant to other EU law; and

- (iii) any actions taken by the company and its subsidiaries to prevent, mitigate, remediate or bring to an end actual or potential adverse impact and the result of such actions;
- (g) a description of the principal risks to the company and its subsidiaries related to sustainability matters, including a description of the company and its subsidiaries' principal dependencies on those matters, and how the company and its subsidiaries manage those risks; and
- (h) indicators relating to the above disclosures.

The information that is required to be disclosed must include information related to short-term, medium-term and long-term time horizons and must include information about the company and its subsidiaries' own operations and value chain, including its products and services, its businesses and its supply chain. There is, however, a temporary concession available until 2027: if all the necessary information regarding the company and its subsidiaries' value chain is not available, the directors of the company must explain the efforts made to obtain the necessary information, the reasons why not all the information could be obtained and the plans to obtain the information in the future.

If a company is reporting in respect of itself and its subsidiaries and the directors identify significant differences between the risks for, or impacts of, the group and risks for, or impacts of, one or more of the company's subsidiaries, the directors must provide an adequate understanding of

the risks / impacts of the relevant subsidiaries.

Irish companies are permitted to, in exceptional cases, omit information from their reporting regarding "impending developments" or "matters in the course of negotiation" where, in the duly justified opinion of the directors, the disclosure of the information would be seriously prejudicial to the commercial position of the company and its subsidiaries. However, such information may only be excluded where the omission does not prevent a fair and balanced understanding of the company and its subsidiaries' development, performance and position and the impact of its activities.

Publishing reporting in Ireland

Irish companies that are required to report under CSRD will include their reporting in their directors' report, which must be filed with the Companies Registration Office with the company's annual return. The directors' report must be prepared in electronic reporting format.

Methodology of reporting

Irish companies in-scope for CSRD reporting must report in accordance with the 'European Sustainability Reporting Standards' ("ESRS") that are adopted by the European Commission. The first set of 'sector-agnostic' ESRS, that apply to all Irish companies that must report under CSRD, were adopted by the European Commission in July 2023 and came into force in December 2023.

The 'sector-agnostic' ESRS provide for twelve standards, comprising two 'cross-cutting' standards and then ten standards relating to environmental (E), social (S) and governance (G) matters:

ESRS 1 – general requirements

ESRS 2 – general disclosures

ESRS E1 – climate change

ESRS E2 – pollution

ESRS E3 – water and marine resources

ESRS E4 – biodiversity and ecosystems

ESRS E5 – resource use and circular economy

ESRS S1 – own workforce

ESRS S2 – workers in the value chain

ESRS S3 – affected communities

ESRS S4 – consumers and end-users

ESRS G1 – business conduct

The sector-agnostic ESRS envisage up to approximately 1,400 reportable data points. While many of these data points are mandatory for all in-scope companies, companies are required to undergo a 'double materiality assessment' to determine the extent to which other disclosures are required.

Further sector-specific ESRS and ESRS for companies incorporated outside of the EU were due to be adopted

before July 2024 but the EU has extended this deadline until 2026. The sector-specific ESRS are expected to provide for additional requirements and more specific reporting approaches for a range of industries.

Artificial consolidation: multinationals

The CSRD provides for a temporary concession (available until January 2030), allowing Irish companies to engage in 'artificial consolidation' ie, the consolidation of the reporting of entities where they are not strictly in a parent / subsidiary relationship but instead share a common parent undertaking. This concession is designed to allow businesses with a parent undertaking outside of the EU, with several EU-incorporated subsidiaries that are required to report under the CSRD, to choose one entity (provided it meets certain turnover thresholds) as the 'reporting entity' into which all of the other EU-subidiaries' CSRD reports will be consolidated. The concession is particularly useful for multinational businesses, that may see artificial consolidation as a stepping stone to full-group reporting that may be required from in respect of financial year 2028 onwards.

However, the Irish regulations provide that the artificial consolidation concession is not available until financial years beginning on or after 1 January 2028. This delays the concession in a way not envisaged by the CSRD.

Assurance

Every Irish company that is in-scope for CSRD reporting must appoint a statutory auditor to carry out assurance of its sustainability reporting. The sustainability auditor does not need to be the same as the company's financial auditor.

The sustainability auditor will be required to prepare an assurance report on the Irish company's CSRD reporting, based on a limited assurance engagement. It is envisaged that this limited assurance standard will move to reasonable assurance in future.

Exemption from reporting

There is an exemption from sustainability reporting for Irish companies if their (and their subsidiaries') sustainability information is included in the consolidated sustainability report of a parent company and certain conditions are met. These conditions generally include that the directors of the Irish company that is benefiting from the exemption must confirm, in their own directors' report, that the company is exempt and include details of the parent company into whose reporting the exempt Irish subsidiary is consolidated (including a link to the parent company's report).

The exemption is not available for any Irish company that is a public-interest entity. In this regard, the Irish regulations have diverged from the EU law; the EU law envisaged that only public-interest entities with securities listed on an EU regulated market would be blocked from using the exemption.

Consultation with employees' representatives

The directors of Irish companies that are in-scope for CSRD reporting are required to provide information to, and consult with, employees' representatives at the appropriate level in relation to the sustainability information that is to be disclosed and the means of obtaining and verifying the information. The opinion of the employees' representatives must be communicated to the directors.

Non-compliance and penalties

Each director of an Irish company is under a duty to ensure that the Irish CSRD reporting requirements are complied with.

CSRD reporting forms part of a company's directors' report, which must be approved by the board of directors and signed by two directors (or one director, if the company has only one director). While there is no express penalty included in the new regulations, failure to prepare a directors' report in accordance with law can be a "category three" offence for a director. A category three offence is punishable, on summary conviction by a "class A fine" (up to €5,000) and / or up to six months imprisonment.

It is also an offence for any person to intentionally make a statement that is false in any material particular, knowing it to be false, in the company's directors' report. Doing so is a category two offence, which is punishable on summary conviction by a class A fine and / or up to 12 months imprisonment or on conviction on indictment to a fine of up to €500,000 and / or imprisonment for a time of up to 10 years.

Next steps

We recommend that all directors of Irish companies act now to determine whether they will be required to report under the CSRD by undergoing a scoping analysis in respect of their group, so that the required "double materiality assessment" can be completed and systems and procedures for reporting put in place before the company's reporting year begins (ie, in most cases before financial year 2025).

If you have any queries in relation to the CSRD, please get in touch with your usual Matheson contact or with [Susanne McMenamin](#), [Susan Carroll Chrysostomou](#) or [Michael Sinnott](#).

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