

EU Sustainability Developments

Implication of sector-specific ESRS and third country ESRS delay: no postponement for CSRD

What you need to know

- ▶ The application date of the CSRD has not changed. However, the adoption of the sector-specific ESRS and the third country company ESRS has been postponed by two years.
- ▶ The definition of 'large' companies that fall within scope of the CSRD has changed. The definition was modified by the Delegated Act at the end of 2023, which had the effect of increasing by 25% the amounts in Euro of turnover and assets stated in the CSRD.

Background

EU law requires all large companies and all listed companies to disclose information on what they see as the risks and opportunities arising from social and environmental issues, as well as the impact of their activities on people and the environment.

The Corporate Sustainability Reporting Directive (CSRD), as part of the European Green Deal, entered into force on 5 January 2023 and expanded the scope and concept of the Non-Financial Reporting Directive (NFRD), the previous EU non-financial reporting regime.

Scope of the CSRD

The companies within the scope of the CSRD are all 'large' companies and most listed EU companies, as well as non-EU companies with listed securities on an EU-regulated market, as defined by EU law.

'Large' companies are those that fall within the scope of the CSRD and which exceed at least two of the following criteria in two consecutive years:

- ▶ More than 250 employees
- ▶ A turnover of more than EUR50 million (previously EUR40 million)
- ▶ Total assets of EUR25 million (previously EUR20 million).

The definition of 'large' companies that fall within scope of the CSRD has changed. The definition was modified by the Delegated Act at the end of 2023, which had the effect of increasing by 25% the amounts in Euro of turnover and assets stated in the CSRD.

Also in scope of the CSRD are large non-EU companies which have a turnover of EUR150 million or more in the EU, and at least one subsidiary or branch (the latter with at least EUR40 million turnover) in the EU (so called 'third country companies'). In contrast to the above, these Euro amounts for large non-EU companies stated in the CSRD were not modified by the Delegated Act at the end of 2023.

Effective date of the CSRD

For financial years starting on or after **1 January 2024**, the CSRD applies to all companies that were already subject to the Non-Financial Reporting Directive (NFRD) - that is, public interest entities (PIEs) with more than 500 employees - with the first reports expected to be produced in 2025, based on 2024 data.

For financial years starting on or after **1 January 2025**, the CSRD will apply to companies that were not subject to the NFRD, which fall into the definition of 'large' companies, as described above, with the first reports expected to be produced in 2026, based on 2025 data.

For financial years starting on or after **1 January 2026**, the CSRD will apply to listed small- and medium-sized companies (SMEs), with the first reports expected to be produced in 2027, based on 2026 data (subject to an opt-out until 2028).

For financial years starting on or after **1 January 2028**, the CSRD will apply to third country companies, with the first reports expected to be produced in 2029, based on 2028 data.

The EU's sustainability disclosure standards

One of the main pillars of the CSRD is the requirement for in-scope companies to produce sustainability disclosures in accordance with the **European Sustainability Reporting Standards (ESRS)**. The ESRS contain reporting requirements for a broad range of sustainability topics, applying a double materiality approach.

The first set of ESRS are **sector-agnostic, general reporting standards (also known as ESRS 'Set 1')**. These standards were adopted by the European Commission (the Commission) on 30 June 2023, for use by all companies within the scope of the CSRD. These sector-agnostic ESRS must be applied by companies within the scope of the CSRD from 1 January 2024.

This first set of ESRS was expected to be followed by **specific reporting standards for sectors ('sector-specific standards', also known as ESRS 'Set 2')**, such as oil and gas, mining, road transport, textiles, agriculture and fishing. Also expected to follow were the **third country company ESRS**. Both the sector-specific ESRS and the third country company ESRS were due to be adopted by 30 June 2024.

February 2024 deferral of release of sector-specific ESRS and third country company ESRS

In October 2023, the Commission proposed to postpone the release of the sector-specific ESRS and the third country company ESRS for two years, to June 2026. The European Parliament and the Council of EU member states subsequently provisionally agreed on 7 February 2024 to grant the proposed two-year adoption postponement for the sector-specific standards (Set 2) and the third country company ESRS. The Commission stated that this would give companies time to implement the general sector-agnostic ESRS, and to prepare for the sectorial ESRS.

The two-year adoption postponement should not prevent the Commission from releasing the sector-specific ESRS before June 2026. The European Parliament and Council of EU member states confirmed in the agreement reached on 7 February 2024, that the Commission should endeavour to adopt eight of the sector-specific ESRS as soon as they are ready, particularly in the case of oil, gas and mining sectors.

How we see it

The change in the definition of 'large' companies means that fewer entities meet the definition of 'large' and are, therefore, no longer in scope of the CSRD.

In addition, the postponement of the adoption of third country company standards from June 2024 to June 2026 means that these companies effectively will have less time to prepare for the third country company standards (which have not yet been published), because the first reports are still expected for financial years starting on or after 1 January 2028.

Companies need to monitor the development of sector-specific standards that are relevant to their business, so that they are prepared to apply these standards after they are adopted.

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