

In the European Union, the UK and elsewhere, key questions are being asked by EU-based companies caught by the CSRD in their financial year 2025, as well as entities with parent companies outside of the EU that are caught by CSRD (CSRD Impacted Companies).

Background on New ESG Reporting Requirements

The CSRD entered into force on 5 January 2023 and is part of a plethora of legislation intended to drive progress towards net zero carbon emissions as quickly as possible. EU Member States (MS) that are bound by the CSRD had 18 months from that date to transpose it into national law. During transposition, governments in MS can make revisions that go above and beyond the CSRD as drawn up (e.g. expanding the scope for their respective MS).

The CSRD extends the scope of the non-financial reporting for EU entities that were previously caught by the Non-financial Reporting Directive (NFRD), which will now have to report in accordance with the European Sustainability Reporting Standards (ESRS) issued by the European Commission.

The CSRD's requirements will also apply to other companies that pass the relevant thresholds set out below and are implemented through the ESRS, which essentially require forward-looking and detailed environmental, social and governance (ESG) information to be disclosed in an assured sustainability report each year.

The Headlines on CSRD

- Notably, sector-specific ESRS exposure drafts have not yet been released. The European Commission has delayed the adoption deadline for sector-specific standards to 30 June 2026. Exposure drafts for the general approach to sector ESRS and certain high-impact sectors (e.g. oil and gas, mining) are expected to be exposed for consultation in quarter four 2024. Other sectors (e.g. agriculture, farming) are expected to be exposed for consultation at later dates. Companies are still required to make relevant sector-specific disclosures from the first year of reporting and may do so by leveraging other standards (e.g. the Global Reporting Initiative).
- An exposure draft relevant to the non-EU parent scoping is expected by the end of 2024 or early 2025. The European Commission has delayed the adoption deadline for non-EU parent standards to 30 June 2026. This delay has no impact on the FY28 effective date for non-EU parent reporting.
- Furthermore, newly established companies that pass relevant CSRD thresholds will also have to provide the non-financial information in the same way.
- In both cases, there will be a requirement for limited assurance of CSRD reports. In practice, this will dramatically increase the quality of the non-financial reporting, as the accountancy firms assuring the information will push for comprehensive disclosure of material liabilities.

What are the CSRD Thresholds?

The CSRD has a wide reach. EU companies (including subsidiaries of companies with foreign parents) that meet at least two of the following three conditions will have to comply with the CSRD:

- €50 million in net turnover.
- €25 million in total assets.
- 250 or more employees (in average over the relevant financial year).

In addition, non-EU companies with substantial activities in the EU will also have to comply – i.e. those with:

- Net turnover in the EU of more than €150 million for each of the last two consecutive financial years and
- Either one EU subsidiary that qualifies as a “large undertaking” (see below) or a branch that generated net turnover more than €40 million in the preceding financial year.

The qualification tests for a large undertaking are the same as those set out above for EU companies.

Furthermore, companies with listed securities (including debt and equity) on an EU-regulated market, other than “microcompanies” are also caught by the CSRD. A microcompany is one that meets at least two of the following (including subsidiaries), for each of the last two consecutive years: 10 or more employees; €900,000 or more net turnover (revenue); €450,000 total assets or more.

These tests for application of the CSRD are giving rise to a new body of legal advice, particularly for clients with complicated legal structures, where the answers to the above questions are not obvious.

When Will the Obligations Apply to Impacted Entities?

There is a lot of confusion around the date on which reporting obligations will apply to companies that pass the relevant thresholds. In summary, they have been/will be phased in on a staggered basis between 2024 and 2029; and apply irrespective of the sector in which a company operates, as set out below:

- From 1 January 2024 for **large public-interest companies** (with over 500 employees) that were already subjected to the NFRD, with reports due in 2025.
 - The definition of “public interest undertaking” includes EU companies that are:
 - Listed on a regulated EU stock market.
 - A specific form of financial services company (e.g. insurance company or credit institution, meaning that unlisted financial institutions may also be subject to the requirements of the CSRD) and
 - Have been specifically designated a public interest entity by their country of incorporation.
- From 1 January 2025, for large non-EU companies with listed debt or equity on a regulated market in the EU and for large companies that are not presently subject to the NFRD (with more than 250 employees and/or €50 million in turnover and/or €25 million in total assets), with reports due in 2026.
- From 1 January 2026 for certain non-EU small and medium sized enterprises (SMEs) listed on a regulated market in the EU, and certain EU SMEs, small and non-complex credit institutions and captive insurance undertakings, with reports due in 2027. SMEs can opt out until 2028.
- Non-EU companies must start reporting only in 2029, for the financial year 2028, where (as mentioned above) they have:
 - Net turnover in the EU of more than €150 million for each of the last two consecutive financial years and
 - Either have at least one EU subsidiary that qualifies as a large undertaking (see below) or a branch that generated net turnover more than €40 million in the preceding financial year.

In practice, many in-house lawyers and relevant teams are first forming their own view on the applicability of the CSRD, then asking external legal teams to verify that they have interpreted the thresholds correctly.

CSRD Impacted Companies will need to make fundamental changes in ESG management, reporting and due diligence, and we have suggested some immediate practical steps later in this article.

Companies with US or UK parent companies (or parent companies in other non-EU countries) are impacted by the CSRD if they have listed securities on an EU regulated market or pass these relevant thresholds. More detail on this is provided in the section below entitled ‘How could my company be caught if it is listed on an EU regulated market?’.

As a broad generalisation, we are seeing that large EU undertakings typically have much better awareness of their obligations under the CSRD than US headquartered clients. In our view, this is partly due to the proximity of reporting dates and also due to lack of awareness in the US of the reach of these new EU sustainability reporting laws, which is rapidly changing.

Can Reporting Take Place Along Business (Not Legal Entity) Lines?

The legal requirements set out in the CSRD require reporting of material ESG liabilities by **legal entities**, not business units. In many cases we have found that this causes difficulties for our clients as their governance structures are set up according to their corporate activities, not legal structure.

Furthermore, depending on the material liabilities identified, reporting to disclose material liabilities can even be required to site level by a legal entity, where this is necessary to comply with the relevant ESRS.

As a result, these new requirements and the potential granularity of disclosures are leading to companies reviewing:

- Their governance structures and considering the tax and other implications of restructuring to facilitate compliant CSRD reporting.
- ESG records to identify and prepare for disclosure of historic breaches of law, where enforcement can still take place as limitation periods have not expired (e.g. in the environmental space, for breach of chemicals regulations) or where there are no limitation periods for claims (e.g. for criminal breaches of permit, contaminated land or water pollution issues).

What are the Reporting Options For My Company and How Should We Decide Which Option to Use?

In summary, there are four reporting options available to EU legal entities that are defined as large undertakings and have a legal requirement to comply and report in accordance with the CSRD, which are set out in the table below.

Whichever reporting is chosen, it must take place in accordance with the requirements of the CSRD and the Taxonomy Regulation. Additionally, no matter which entity is reporting within a corporate group, there is always the option for other companies in a corporate group to report on a voluntary basis:

Option	Very Brief Description
Individual Entity Reporting	<p>Each entity identified as a large undertaking can report individually under the CSRD.</p> <p>Where that entity is a parent entity, subgroup consolidation will be required, increasing the reporting burden and creating duplication, which discourages many companies from choosing this option.</p>
Subgroup Reporting	<p>Each EU holding entity (that is a large undertaking) can prepare its own consolidated sustainability report individually.</p> <p>Subsidiaries of the EU holding entities that fall under the scope of the CSRD and are included in their reports are exempted from their own sustainability reporting, however they can of course report voluntarily.</p> <p>EU large undertakings that have non-EU parent companies and do not have any subsidiaries can just prepare their own sustainability reports.</p> <p>As with individual reporting, this option can increase administrative costs and create duplication between practices and procedures to enable reporting on material liabilities.</p>
Artificial Consolidation	<p>Within a corporate group structure, the EU legal entity with the largest turnover in the EU can report on a single consolidated basis for all EU-incorporated legal entities that have to comply with the CSRD.</p> <p>If a company chooses this option, all other EU legal entities within the group that fall under the CSRD are exempt from preparing their own sustainability reports.</p> <p>However, this exemption does not apply to subsidiaries under the general scoping that are large public interest entities with securities listed on EU-regulated markets. Therefore, these subsidiaries are still required to prepare their own sustainability reporting.</p> <p>Further, we believe this group exemption is also available for non-EU companies with securities listed on an EU-regulated market.</p> <p>To qualify for the group exemption, an exempted EU subsidiary must include the following information in its management report:</p> <ul style="list-style-type: none"> • That it is exempt from sustainability reporting requirements. • The name and registered office of its parent that reports the exempting consolidated sustainability reporting. • A link to the website with the exempting consolidated management report (or consolidated sustainability report) and related assurance opinion. <p>Additionally, if a subsidiary's sustainability impacts, risks and opportunities are significantly different from those of the parent, the consolidated sustainability reporting must contain sufficient detail to provide an adequate understanding of both the group and the subsidiary.</p>
Global Consolidated Reporting	<p>An EU or non-EU parent entity (the ultimate parent entity) can prepare a consolidated sustainability report for its corporate group, provided that it is prepared in accordance with the ESRS or in a manner equivalent to the ESRS (Art 29a.8 of the Accounting Directive, as inserted by Art 1(7) of the CSRD).</p> <p>The consolidated report should contain disclosures required under the EU Taxonomy Regulation covering activities carried out by EU subsidiaries that are large entities and subject to the CSRD.</p> <p>If a non-EU parent has multiple subsidiaries in the EU that meet the general scoping, until 2030, one of the EU subsidiaries that generated the greatest revenue (consolidated where applicable) in the EU in at least one of the preceding five financial years is allowed to prepare consolidated sustainability reporting that includes only those subsidiaries (including holding companies) that fall under the general scoping. This report needs to follow the reporting requirements specific to the general scoping and must include all subsidiaries (both EU- and non-EU-based) of the subsidiaries that fall under the general scoping.</p>

In practice, companies impacted by the CSRD are reaching out for specialist technical guidance on the most suitable options for reporting – and our experience is that multinational companies are tending to focus on artificial reporting or global consolidated reporting.

How Could My Company be Caught if it is Listed on an EU Regulated Market?

The CSRD thresholds apply to all large and most listed companies (see defined thresholds on page two) in the EU (and their subsidiaries), irrespective of their sector. This includes companies outside the EU with listed securities on an EU-regulated market.

Therefore, if a non-EU company has securities listed on an EU-regulated market, it is subject to the same sustainability reporting obligations as listed EU companies. We recommend checking for debt and equity securities listed on an EU-regulated market. If only debt securities have been issued, also consider the denomination. For example, the CSRD does not apply to issuers of debt securities admitted to trading on a regulated market where the denomination per unit is at least €100,000 (or €50,000 for debt issued before 31 December 2010).

The general scoping includes large subsidiaries of non-EU parents – i.e. all companies based in the EU or listed on an EU-regulated market are subject to testing under the above criteria regardless of the origins or domicile of their ownership. We believe the general scoping also applies to an EU holding company even if it is not required to prepare consolidated financial reports – e.g. because the holding company qualifies for exemptions from consolidated financial reporting.

Interaction Between CSRD and Other Sustainability Reporting, Including SEC Rules

The CSRD will not operate in a vacuum. CSRD Impacted Companies will need to consider whether the ESG disclosures prepared to comply with CSRD are consistent with earlier public disclosures (including notifications and disclosures to relevant regulators), for example in relation to environmental or health and safety laws. Furthermore, CSRD Impacted Companies will need to consider connected ESG reporting regulation, such as:

- The EU Taxonomy Regulation which provides businesses and investors with a common language to identify to what degree economic activities can be considered environmentally sustainable.
- The Corporate Sustainability Due Diligence Directive (CSDDD), if they're caught by CSDDD thresholds.
- The overlaps or divergence from reporting of ESG liabilities outside of the EU, where non-EU companies will also need to comply with the developing and overlapping sustainability reporting rules in their local jurisdiction.

By way of example, the US Securities and Exchange Commission's (SEC) proposed Climate Change Disclosure Rules also focus on climate-related risks. The CSRD, however, goes far beyond the SEC's proposed rules. In addition to reporting on climate-related risks, companies are asked to report under CSRD on (among other things) breaches of environmental permits, health and safety offences, water and marine resources-related risks, biodiversity and ecosystems-related risks and risks in relation to workers in the value chain, all on a "double materiality" basis.

Finally, there are also international standards to consider. While efforts have been made to ensure that there is a high level of interoperability between the ESRS and the global International Sustainability Standards Board (ISSB) standards, there will not be full alignment, and disclosures made will need to account for the range of local and international standards.

Next Steps

In our experience, many EU-headquartered entities have already completed their entity analysis and confirmed the timeframe for the impact of the CSRD. Preparations for such companies have moved on to identification of material liabilities to report under CSRD for their financial year 2025.

However, we have found that a significant number of non-EU headquartered companies in a range of sectors still have not completed their entity analysis to identify if they're impacted by the CSRD and need to report on relevant data for their financial year 2025. In practice, this could cause real difficulties, as preparations for cost-effective and accurate ESG reporting by larger multinational entities are, in a number of cases, taking a number of years.

In terms of next steps, after entity analysis, companies typically need to:

- Identify the most suitable technical and legal advisers to guide them through the labyrinth of new regulations and give examples of current practice.
- Carry out gap analysis to ensure reporting takes place across the right organisational structure (having confirmed the impacted entities).
- Assess their material ESG liabilities, down to site level as necessary.
- Review disclosures to Regulators in relation to breaches of ESG laws that could give rise to material ESG liabilities.
- Consider value chain impacts and the commercial implications of CSRD reporting (and CSDDD practices and procedures in due course).
- Prioritise reviewing and updating ESG practices and procedures to ensure appropriate management and reporting in light of new regulatory requirements.

- Change governance structures and ESG reporting lines, over and above ESG practices and procedures, as necessary to flag material liabilities as quickly as possible.
- Begin implementing ESRS at the agreed level of reporting, including determining the reporting boundary (i.e. the value chain) and conducting a double materiality assessment.
- Understand the significant volume of new disclosure requirements in ESRs.
- Prepare to identify impacts, risks and opportunities and perform a double materiality assessment that covers not only the reporting company but also its upstream and downstream value chain.
- Ensure proper governance structures are in place early in the implementation.

We understand from discussions with clients that, in a number of cases, accountancy firms are now offering to assure CSRD reports even for clients that they audit. This contrasts with the initial position, where the “Big 4” were not agreeing to assure ESG reports for audit clients, due to the potential conflict in interest.

Finally, in many cases, companies are carrying out practice runs of limited assurance checks of draft CSRD reports with accountancy firms, to ensure that problems that may be highlighted when such assurance is carried out for CSRD reports for the 2025 financial year are identified and addressed as soon as possible.

For more information on compliance with the requirements of the CSRD, please contact one of our CSRD multinational team, namely:



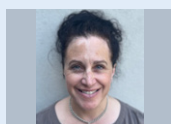
Georgie Messent

Partner, London
M +44 787 059 8098
E georgie.messent@squirepb.com



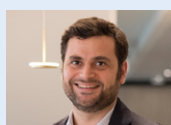
Begonia Filgueira

Director, London
T +44 20 7655 1296
E begonia.filgueira@squirepb.com



Lizzie Grounds

Associate, London
T +44 20 7655 1426
E lizzie.grounds@squirepb.com



Thomas Delille

Partner, Brussels
T +32 2 627 1104
E thomas.delille@squirepb.com



Nina Herrera Barrios

Associate, Brussels
T +32 2 627 1102
E nina.herrera@squirepb.com



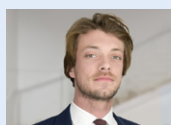
Marion Seranne

Partner, Paris
T +33 1 5383 7400
E marion.seranne@squirepb.com



Saeid Abedi

Associate, Paris
T +33 1 5383 1176
E saeid.abedi@squirepb.com



Charles Monnot

Associate, Paris
T +33 1 5383 7402
E charles.monnot@squirepb.com



Andreas Fillmann

Partner, Frankfurt
T +49 69 17392 423
E andreas.fillmann@squirepb.com



Leo Koltsoff

Associate, Frankfurt
T +49 69 2097 36070
E leo.koltsoff@squirepb.com