GT GreenbergTraurig

Alert | Environmental, Social & Governance

September 2022

EU to Make Changes to Its Sustainability Reporting Rules and Impose New Obligations on Non-European Companies

EU law requires certain large companies to disclose non-financial information on the way they operate and manage social and environmental challenges. The current disclosure regime was introduced in 2014 by Directive 2014/95/EU (*Non-Financial Reporting Directive*, "NFRD"). Recently, the European Commission conducted a review of the NFRD rules, which showed strong support for mandatory sustainability reporting standards but also highlighted deficiencies in the current regime. According to comments from investors, the existing reporting rules ignore key information, while the absence of uniform standards precludes the comparison of reports among companies and raises concerns about the reliability of the reporting system.

The European Commission proposed a new corporate sustainability reporting directive (CSRD) that would replace the NFRD and amend the reporting rules to address criticism of the current system, by, among other things:

- extending its scope to all large companies and all companies listed on regulated markets (other than listed micro-enterprises),
- introducing assurance obligations in relation to the reported information,
- providing more detailed reporting requirements; and

© 2022 Greenberg Traurig, LLP

- requiring the reported information to be published.

The new reporting regime also would apply to non-European companies that generate a net turnover of at least EUR 150 million in the EU and have at least one subsidiary or branch in the EU.

The European Parliament is expected to formally adopt the CSRD in November 2022. If adopted and published, the CSRD would become effective 20 days after its publication, and Member States would have to implement its provisions within 18 months.

If adopted, the CSRD would become effective from:

- 1 January 2024 for entities that already are covered by the NFRD,
- 1 January 2025 for the remaining large enterprises; and
- 1 January 2026 (with the possibility of opting out until 1 January 2028) for small- and medium-listed enterprises (SMEs) and non-complex credit institutions and in-house insurance businesses.

The CSRD is regarded by some market participants as a substantial advance in the scope and depth of sustainability reporting obligations, the reliability and quality of reported information, as well as accessibility by investors, financial institutions, and other users. It also would significantly increase the actual number of companies required to comply. On the other end, the CSRD would require the (EU and non-EU) companies concerned to implement enhanced internal processes aimed at tracking, monitoring, and elaborating the sustainability data to be disclosed.

As is made clear by the Explanatory Memorandum to the proposal, the CSRD aims to improve sustainability reporting at the least possible cost while ensuring that reported information is comparable, reliable, and easy for users to find and make use of with digital technologies. This would entail changing the status of sustainability information to make it more comparable to that of financial information and assure that reporting requirements are consistent with the taxonomy under the Taxonomy Regulation (which, as known, sets up a classification system for environmentally sustainable economic activities with the aim of scaling up sustainable investments and combatting the greenwashing of 'sustainable' financial products).[1]

Accordingly, under the proposal, all companies within the CSRD scope would be required to report in accordance with European sustainability reporting standards. To pursue convergence and harmonization in this connection, the CSRD would empower the Commission to adopt EU sustainability reporting standards by means of delegated acts, taking account of the technical advice of the European Financial Reporting Advisory Group (EFRAG). It also specifies the requirements for their adoption in terms of minimum quality criteria of reported information, topic standards to be covered, and instruments and initiatives that the Commission should take particular account of, including the work of global standard-setting initiatives for sustainability reporting.[2]

Compared to the existing provisions, the CSRD

- clarifies the principle of double materiality, removing ambiguity about the fact that companies should report both (i) information necessary to understand how sustainability matters affect them, and (ii) information necessary to understand the impact they have on people and the environment;

[1] Regulation (EU) 2019/2088 (Sustainable Finance Disclosure Regulation), and Regulation (EU) 2020/852.
[2] See Explanatory Memorandum, Section 5.

© 2022 Greenberg Traurig, LLP

- introduces new requirements for companies to provide information about their strategy, targets, the role of the board and management, the principal adverse impacts connected to the company and its value chain, intangibles, and how they have identified the information they report;
- specifies that companies should report qualitative and quantitative information, forward-looking and retrospective information, and information that covers short, medium, and long-term time horizons as appropriate;
- allows listed SMEs within its scope to report in accordance with EU sustainability reporting standards specific for SMEs; and
- removes the possibility of Member States allowing companies to report the required information in a separate report that is not part of the management report.[3]

In summary, the CSDR should

- enable companies in its scope to meet the growing demand for sustainability information in an efficient manner;
- bring clarity and certainty on what sustainability information to report; and
- make it easier for preparers to get the information they need for reporting purposes from their own business partners (suppliers, clients, and investee companies), thereby reducing the number of demands companies receive for sustainability information in addition to the information they publish in their annual reports.

As a result, according to the Explanatory Memorandum, the directive may improve the allocation of financial capital to companies and activities that address social, health, and environmental problems while making companies more accountable for their impacts on people and the environment, thereby building trust between them and society.[4]

Authors

This GT Alert was prepared by:

- Joanna Kuc | +48 22.690.6172 | Joanna.Kuc@gtlaw.com
- Marijn Bodelier | +31 20 301 7309 | Marijn.Bodelier@gtlaw.com
- Alessio Gerhart Ruvolo | + (39) 02.771971 | Alessio.G.Ruvolo@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.¬ Houston. Las Vegas. London.* Long Island. Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.¤ Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ¬Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg

3 *Ibidem*.
4 See Explanatory Memorandum, Section 1.

*Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¤Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2022 Greenberg Traurig, LLP. All rights reserved.*