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WHITE PAPER

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Who, What, When: The Impact of the EU CSRD on Non-EU Companies

Detailed reporting rules now adopted, non-EU companies required to provide extensive disclosure

The EU's Corporate Sustainability Reporting Directive ("CSRD") requires the most detailed and onerous ESG reporting and disclosures anywhere in the world. All told, it is estimated that more than 50,000 companies, including at least 10,000 non-EU headquartered companies of which more than 3,000 are U.S. companies, will be required to provide granular disclosures across a broad set of ESG topics.

This *White Paper* discusses when, and to which companies, the requirements will apply; analyzes hot-button issues around the required disclosure topics; highlights key areas of concern for issuers of EU-listed securities; and gives six key takeaways for companies seeking to understand and, ultimately, comply with the CSRD.

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INTRODUCTION

The European Commission (the "EC") recently adopted detailed reporting standards applicable to the first groups of companies required to report under the CSRD.[1] These companies will need to begin reporting on information for the period beginning on January 1, 2024. Going forward, EU Member States must pass legislation implementing the CSRD into domestic law by July 6, 2024, at the latest, potentially impacting the scope, form, and sanctions for noncompliance. Guidance is also expected from the EC. This will require companies to nimbly and quickly put in place the necessary procedures for compliance.

> The EC adopted the first set of European Sustainability Reporting Standards ("ESRS") on July 31, 2023, containing nearly 300 pages of detailed reporting requirements under the CSRD that apply to all reporting companies (i.e., are "sector agnostic").

The new reporting requirements are more detailed than nearly all companies' current ESG reporting requirements. As a result, companies should identify the gaps in their current reporting, establish their data collection and reporting strategies, and understand how the new EU rules apply to their EU group companies and, potentially, their worldwide group.

The reporting requirements will be phased in (see *CSRD Phase-in Timeline* below) with the first group of covered companies having to report in 2025 for the year beginning January 1, 2024.

Covered companies will need to: (i) reexamine their current ESG reporting strategies, including risk analysis and management and (ii) develop and deploy processes for obtaining information from throughout the value chain that will be required to be reported in their sustainability reports. Issuers of securities listed on a regulated market in the EU, including non-EU companies, are subject to a relatively short period for coming into compliance. If they fail to comply, or are unable to do so, they will need to consider other measures, such as delisting.

WHEN WILL THE CSRD (AND ESRS) APPLY, AND TO WHOM?

The CSRD requires companies, including U.S. and other non-EU companies with substantial activity in the EU or EU-listed securities, to provide far-ranging ESG disclosures. The disclosures are keyed off of detailed reporting standards adopted by the EC.

At a high level, companies will need to understand the application of the CSRD as follows:

- *Who* (i.e., which entity) triggers the reporting requirement and must be covered by the CSRD report—including non-EU groups;
- *What* information must be reported (i.e., sustainability information for the relevant financial year); and
- *When* the sustainability report must be published.

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WHO			WHAT	WHEN
LARGE EU SUBSIDIARIES OF NON-EU COMPANIES	NON-EU GROUPS WITH SUBSTANTIAL BUSINESS IN THE EU	NON-EU COMPANIES WITH SECURITIES LISTED IN THE EU	SUSTAINABILITY REPORTING REQUIREMENTS: 250+ PAGES	EARLIEST REPORTS: DUE '25 FOR FY '24 INFORMATION

Applicability and Timeline Depends on Type of Company

Depending on the entity and group corporate structure, some companies will need to comply for reporting periods starting in 2024:[2]

<table>
<tr><th colspan="8">CSRD Phase-In Timeline</th></tr>
<tr><th colspan="2">Organization Type</th><th>2024</th><th>2025</th><th>2026</th><th>2027</th><th>2028</th><th>2029</th></tr>
<tr><td rowspan="2">>500 employees and “Large”*</td><td>EU “public-interest” companies</td><td rowspan="2">First Financial Reporting Year</td><td rowspan="2">Reports Due</td><td rowspan="2"></td><td rowspan="2"></td><td rowspan="2"></td><td rowspan="2"></td></tr>
<tr><td>All companies (<u>including U.S.</u>) with EU-listed securities**</td></tr>
<tr><td rowspan="2">“Large”</td><td>EU companies and groups</td><td rowspan="2"></td><td rowspan="2">First Financial Reporting Year</td><td rowspan="2">Reports Due</td><td rowspan="2"></td><td rowspan="2"></td><td rowspan="2"></td></tr>
<tr><td>All companies (<u>including U.S.</u>) with EU-listed securities</td></tr>
<tr><td rowspan="2">Small- and medium-sized+</td><td>EU “public-interest” companies and groups</td><td rowspan="2"></td><td rowspan="2"></td><td rowspan="2">First Financial Reporting Year</td><td rowspan="2">Reports Due</td><td rowspan="2"></td><td rowspan="2"></td></tr>
<tr><td>“Issuers” (EU and non-EU) with EU-listed securities</td></tr>
<tr><td>Substantial EU activity***</td><td>All companies (<u>including U.S.</u>) - Consolidated, worldwide report</td><td></td><td></td><td></td><td></td><td>First Financial Reporting Year</td><td>Reports Due</td></tr>
<tr><td colspan="8">* “Large” group or company is defined in EU law as meeting two of the following three criteria on the last balance sheet date: more than 250 employees of the covered company or group; €40 million in turnover; and €20 million in total assets.
** “EU listed” means having a debt or equity security listed on a regulated market in an EU Member State. Also applies to parent companies of “large” groups. Subject to limited exemptions.
*** The worldwide group (i) on a consolidated basis generated a net turnover of more than €150 million in the EU in each of the last two consecutive financial years and (ii) has either: (a) at least one EU subsidiary or group that is “large” or is a designated “public-interest entity” or (b) a branch that generated more than €40 million of turnover in the EU in the preceding financial year.
+ Certain “small- and medium-sized enterprises” can defer application of certain reporting requirements to the financial year 2028. This phase-in period includes other entities such as “small and non-complex institutions” and “captive insurance undertakings,” as defined in EU law.</td></tr>
</table>

Portions of the ESRS contain a separate phase-in schedule. For example, covered companies with less than 750 employees on average during the financial year may omit disclosure of scope 3 emissions and “own workforce” information in their first year of CSRD reporting (see *Table 2 – Social- and Governance-Related Disclosure Topics* below).

Rollout Is Faster Than May Appear—and Will Apply Progressively to the Worldwide Group

There are some complexities to consider when understanding the applicability of the CSRD to international companies or groups:

- For most international groups doing business in the EU, the ESRS will initially apply to EU subsidiaries (and their operations) and EU parent companies of a group of companies that meet the thresholds of a “large” company or group (and all their respective subsidiaries, including non-EU subsidiaries).
- Non-EU (including U.S.) groups with substantial activity in the EU will need to report the ESRS information for the global group as a whole, starting in 2029 for FY2028 information. The CSRD permits, during a transitional period, such non-EU groups to publish a single CSRD report for all covered EU subsidiaries.

At least two factors will make the CSRD apply sooner than might be expected for companies outside the EU:

1. First, as early as in 2025 for FY 2024 information for “issuers” of securities listed in the EU (as late as 2029 for FY 2028 for non-EU groups with substantial activity in the EU), companies will need to report the ESRS information for the worldwide group as a whole. This means, if the non-EU parent is the “issuer,” a single, global report covering the entire international group’s business and operations and all of its worldwide subsidiaries.

2. Second, since the ESRS also applies to the material parts of a covered company's "value chain," which is an expansive concept under the CSRD, it is likely that information will need to be analyzed and collected on a global basis, depending on the group's scope of EU operations. Value chain information will in any case be sought from EU and non-EU companies operating in the EU, so data collection and transmission processes will be necessary.[3]

Exemptions May Apply, Such as "Deemed Equivalence"

Limited exemptions may apply, such as for companies that report their sustainability information under standards that are "deemed equivalent" to the ESRS. The EC will make the determination of "deemed equivalence" to the ESRS on a case-by-case basis, and is reportedly in talks with the U.S. Securities and Exchange Commission's ("SEC") as to whether the SEC's long-expected but much-delayed final rules on climate change disclosures will be "deemed equivalent" to the ESRS—a decision that may hinge at least in part on whether the final SEC rules require reporting on scope 3 emissions.

WHAT DISCLOSURES ARE REQUIRED?

The below describes some of the main topics that will need to be considered in seeking to comply with the CSRD reporting requirements.

The First Set of ESRS Will Require Extensive Environmental Disclosures

The ESRS is voluminous and complex, requiring covered companies and their advisors (the sustainability report must be accompanied by a third-party limited review assurance report) to take a deep dive into the required reporting data, including disclosure on the environmental-related topics summarized in Table 1.

Table 1 – Environmental-Related Disclosure Topics

Topic	ESRS Number	Required Disclosure
Climate Change	ESRS E1	Climate change, including processes to identify and assess material risks and impacts related to climate change, mitigation targets related to climate change, energy consumption and mix, GHG emissions (Scopes 1, 2 and 3), and removal and mitigation projects. Unlike the other ESRS, if a reporting company determines that this climate change disclosure is not material, it must include a detailed explanation describing how and why it reached that conclusion.
Pollution	ESRS E2	Air, water, and soil pollution, broken down by facility over which the reporting company has either operational control or financial ownership, as well as disclosure on the policies, targets, identified risks, and resources used to address that pollution.
Water	ESRS E3	Impacts, risks, and opportunities involved in water consumption, conservation efforts, and discharge, and the company's use of and impact on other marine resources (such as microplastics emissions, fishing activity, and emissions in water).
Biodiversity and Ecosystems	ESRS E4	Impacts on biodiversity and ecosystems broken down by each site under operational control, any impacted "biodiversity-sensitive" areas, and the "ecological status" of surrounding areas.
Resource Use and Circular Economy	ESRS E5	In one of the most hotly discussed topics during the public consultation (due to the potentially sensitive commercial information required in such disclosure), requires extensive disclosure around resource use and the circular economy. This includes, among other things, resource consumption, recycling, reuse and waste processing, including a product-by-product breakdown of "resource inflows" from the upstream supply chain (e.g., packaging) and "resource downflows" throughout its value chain (e.g., waste generation).

Covered Companies Must Provide Unprecedented Social and Governance Disclosures

Unlike other reporting regimes, such as the SEC's proposed rules on climate change disclosures (see our *Alert*, "SEC Releases Proposed Rule on Climate Risk Disclosure," and *Commentary*, "SEC Climate Rules Will Significantly Impact Foreign Private Issuers," on their application to foreign private issuers), the ESRS also require disclosure on "S" (social) and "G" (governance) matters, including those summarized in Table 2 below.

Table 2 – Social- and Governance-Related Disclosure Topics

Topic	ESRS Number	Required Disclosure
Own Workforce	ESRS S1	Actual and potential impact of the company's strategy and business model on the company's own workforce. Process for engaging with workers and their representatives on such impacts, including details on collective bargaining at the company, whether an agreement is in place with respect to human rights, whether workers enjoy "adequate wages" and "social protection," and a detailed breakdown of employees by country, gender, and type of employment.
Workers in the Value Chain	ESRS S2	Workers in the entire "value chain," including suppliers and customers, and what (if any) protections, engagements, and policies the company has put in place to mitigate actual or potential adverse impacts.
Affected Communities	ESRS S3	Affected local communities, including indigenous peoples, and whether engagement with them occurred while respecting their "right to free, prior and informed consent."
Consumers and End Users	ESRS S4	Actual and potential negative impacts of a company's operations throughout its value chain on end users and consumers, including vulnerable populations, such as minors.
Policies and Actions	ESRS 2	Certain policies and actions adopted in relation to identified material impacts or, if a company has not adopted these policies, a negative statement to that effect (regardless of whether the relevant policy is considered "material").
Business Conduct	ESRS G1	Management and board members' expertise on sustainability issues and policies on business ethics, anticorruption, whistleblowers, lobbying activities, and the prevention and detection of bribery.

The CSRD Requires Atypical Disclosure and Analysis

The new reporting rules include a number of complexities and atypical disclosure obligations, which are expected to receive significant attention from companies when preparing their CSRD disclosure. Certain of these issues are summarized in Table 3.

Table 3 – Selected CSRD-Specific Disclosure Issues

Issue	Description	Takeaway
"Double" Materiality	The ESRS requires covered companies to report on sustainability matters based on the "double materiality" principle. This means that covered companies are required to identify and report the impacts, risks, and opportunities that meet the definition of either (i) "financial" materiality (i.e., the item has or could reasonably be expected to have a "material influence" on the company's "development, financial position, financial performance, cash flows, [or] access to finance") or (ii) "impact" materiality (i.e., "material actual or potential positive or negative impacts on people or the environment over the short-, medium-, or long-term").	This materiality assessment is likely to be a *de novo* analysis for many companies requiring an overhaul of current ESG disclosure processes.
Value Chain Reporting	The ESRS requires covered companies to analyze "double materiality" impacts throughout their value chain, which include suppliers, marketing and other service providers, customers, and distributors, theoretically comprising hundreds or even thousands of entities and relationships. The "value chain" may also, in some contexts, include indirect business relationships, as well as financing and regulatory third parties. Covered companies may omit unavailable value chain information for the first three reporting years, subject to disclosure about how and why the information is missing and will be obtained going forward.	Value chain reporting is anticipated to require significant new processes and policies, including supply chain diligence on a larger and more specific scale than generally was previously conducted.
Due Diligence	The "double materiality" assessment is meant to be informed by the company's own sustainability due diligence, which in turn should be informed by existing international frameworks. Due diligence is defined to include engaging stakeholders, such as workers, suppliers, customers, end users, local communities, regulators, and central banks.	While the ESRS states that it does not impose prescriptive conduct requirements on covered companies, it is clear that the underlying impetus is to "name and shame" reporting companies that do not conduct due diligence on sustainability matters in their value chain. Going forward, the EU Corporate Sustainability Due Diligence Directive will set prescriptive requirements for due diligence with respect to sustainability matters.
Taxonomy Regulation	The ESRS requires covered companies to provide disclosures required under the EU Taxonomy Regulation 2020/852 (the "Taxonomy"). The Taxonomy provides a calculation or "screening" method to determine which business activities are "aligned" with the objectives of the Taxonomy, e.g., fulfilling one or more objectives of the European Green Deal while doing no significant harm to the other objectives. This will require, among other things, that covered companies disclose their capital and operating expenditures on activities that are considered Taxonomy-"aligned."	The ESRS will force at least the first set of covered companies, including non-EU issuers and EU subsidiaries of non-EU groups, to provide Taxonomy-aligned disclosures, in many cases for the first time.[4]
Sensitive Information	The ESRS contains a limited disclosure exception for classified and sensitive information, which is defined as information not generally known or readily accessible, has commercial value because it is secret, and for which reasonable steps have been taken to keep such information a secret.	The ESRS does not make an exception for generally "confidential" information, such as information subject to a nondisclosure agreement, which could create tensions between disclosure and contractual obligations.

WHAT IMPACT ON "ISSUERS" OF SECURITIES LISTED IN THE EU?

There is a growing recognition that large EU companies will be required to report under the CSRD (as will large EU groups and, eventually, groups of companies with non-EU parent companies). But it is less immediately obvious that the rules also apply to non-EU companies that have chosen to list a debt or equity security on a regulated market in the EU, such as the Luxembourg Stock Market, Euronext Paris, or the Frankfurt Stock Exchange. This may be particularly burdensome for companies who are caught by the rules in this way, for three principal reasons.

In light of potentially being caught by the EU ESG reporting requirements, non-EU companies or their subsidiaries with listed securities (shares or bonds) in the EU may wish to begin engaging regulatory authorities about a potential delisting of their securities from the relevant EU regulated markets.

"Issuers" Will Be Among the First to Report Under the CSRD

"Issuers" will have to report under the CSRD. The defined term "issuer" used in the CSRD refers to the EU Transparency Directive 2004/109 (as amended, the "Transparency Directive"), which encompasses both EU companies and non-EU companies that have listed securities on a regulated market in an EU Member State.

This means that, for example, U.S. companies with a non-exempt debt security listed on the regulated market of an EU Member State will have to report under the CSRD starting in 2025 for FY2024 information (assuming a December 31 year-end), if the U.S. company meets the thresholds of a "large" company or group and has an average number of 500 employees during the financial year.

Since this will be the first reporting year under the CSRD, these companies will have no benchmarking, industry standard or precedent when drafting their CSRD-compliant sustainability reports.

Non-EU "Issuers" May Have to Report Under the Expansive, European-Centric First Set of the ESRS

Subject to clarification or guidance on this issue from the EC, it appears that non-EU "issuers" (including U.S. companies) will be required to report under the full set of ESRS adopted in the first Delegated Act, even though this set of ESRS was originally drafted to apply primarily to EU companies.

This first set of ESRS contains extensive EU-oriented data points, including the Taxonomy, which are expected to be dialed back in subsequent iterations of the ESRS that will be designed for groups with non-EU parent companies.

CSRD Reports by "Issuers" Must Cover Their Entire Consolidated Group

"Issuers" will be required to report on their entire consolidated group, including all consolidated subsidiaries worldwide. This means that a large U.S.-based "issuer"—with potentially hundreds or even thousands of subsidiaries throughout the world—may be required to provide the ESRS disclosure for their entire consolidated accounting group in 2025 on FY2024 information.

As a consequence of the severe impacts described above, companies that are considered "issuers" under the Transparency Directive should take steps to either become CSRD-reporting compliant or seek other measures, such as engaging regulatory authorities about a potential delisting of their securities from the relevant EU regulated markets.

SIX KEY TAKEAWAYS

Applying the CSRD in practice may be even more complex than understanding the CSRD on paper. Below are six key takeaways on CSRD compliance.

1. **Worldwide Applicability Is on the Horizon—Especially for Companies With Listed Securities in the EU.**

   The CSRD-required disclosures under the ESRS will create significant new disclosure obligations for "issuers" and multinational groups with substantial activity in the EU. Companies—including U.S. companies—with securities listed on an EU regulated market will be particularly impacted and should consider engaging now with regulators to ensure either CSRD compliance or delisting, as appropriate.

   Disclosure may cover not only the group's operations in the EU but, ultimately, all worldwide operations, "value chains," and sustainability impacts. The detailed disclosure topics include the "E" (such as circular economy and marine environment), "S" (such as own work force and workforce of the entire value chain), and "G" (such as policies and expertise). The time is now to understand CSRD applicability and put the appropriate controls and procedures in place to be in a position to report, if applicable, the required information in the applicable timeframe.

2. **Understanding the Scope of Applicability Is a Complex Exercise.**

   The scope of applicability of the CSRD is currently not well understood by companies doing business in the EU. This is made more difficult by the highly technical ESRS and broad scope of information required to be collected and disclosed. Companies should take steps to understand whether and how the CSRD applies to them and put in place action plans, including engaging with local regulatory authorities. This is particularly important for companies with listed securities on an EU regulated market.

3. **ESRS-Mandated Disclosure Will Be Costly and Time-Consuming.**

   The ESRS will require companies seeking to become CSRD-compliant to make costly and sometimes painful disclosure and data-collection decisions. If not already done, we recommend promptly designing and implementing an overarching strategy that includes an analysis of potential liability concerns and adopting appropriate practices for due diligence and other sustainability policies.

4. **The CSRD Will Be "Transposed" Into Local Law, Increasing the Risk of "Gold Plating."**

   Because the CSRD is a directive under EU law, the CSRD and ESRS represent a floor of what EU Member States are required to implement into local law, not a ceiling. Therefore, EU Member State law may "gold plate" (i.e., enhance) or otherwise amend the CSRD's scope of application or disclosure requirements (as done for prior iterations of the EU ESG reporting rules, e.g., in France). The CSRD will also interact with existing local laws, such as supply chain due diligence (Germany) and the duty of vigilance (France).

5. **U.S. Companies Should Engage on the CSRD and Understand the Resources Required to Comply.**

   U.S. companies should analyze whether their activity in the EU triggers any of the reporting requirements under the CSRD. They will need to apply the threshold tests to determine whether any of their EU subsidiaries (or groups of subsidiaries, including non-EU subsidiaries and joint ventures owned or controlled by covered EU subsidiaries) must report under the CSRD, or feed data into a parent company's report. This may require collecting financial and operational data that may not be readily available.

6. **Consider Advising Boards and Other Administrative and Supervisory Bodies.**

   Consider advising boards and other administrative and supervisory bodies of the risks and responsibilities for them under the new rules. For example, the CSRD requires EU Member States to impose "collective responsibility" on the board or other supervisory body of the company that actually publishes the CSRD report. The board (or equivalent) of an EU subsidiary publishing on behalf of a non-EU group will be liable for the report's compliance with the CSRD, pursuant to the applicable EU Member State's law.

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ENDNOTES

1 Now that the EC has adopted the Delegated Act containing the first set of ESRS, the European Parliament and the Council of the European Union will examine the draft (deadline this fall before expected entering into force).

2 All dates assume a December 31 financial year-end.

3 Non-EU group reporting will be keyed off of a separate set of ESRS requirements to be published by June 30, 2024. Cf. CSRD, Article 1 (amending Accounting Directive, Art. 40b). In addition, the expert group tapped by the EU to develop the ESRS is preparing a first draft of sector-specific ESRS. We expect EC guidance on how the various sets of ESRS should be applied.

4 We are aware that some have argued that the CSRD's amending language of the Transparency Directive does not require non-EU "issuers" to report under the Taxonomy. However, subject to clarification and/or guidance by the EC, we assume here the plain reading of the CSRD and the ESRS as applying generally to "issuers," including non-EU companies. See also ESRS 1, paras. 112–117; ESRS E1, AR 4.