CENTRE DE DROIT
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Sustainability reporting

What impact does CSRD have on Swiss companies ?

Par Teymour Brander le 12 December 2022

On November 28, 2022, the Council of the European Union approved the Corporate Sustainability Reporting Directive (CSRD). What is this directive, and to what extent are Swiss companies – including banks and financial institutions – affected by it ?

The CSRD replaces the Non Financial Reporting Directive (NFRD) adopted in 2014. The new directive introduces a number of important new features. This commentary will confine itself to a brief overview of the CSRD, with a particular focus on its extraterritorial scope.

I. Scope of (European) companies subject to the directive

The CSRD will apply to the following (EU-based) companies :

Companies currently subject to the NFRD, i.e. public interest entities with more than 500 employees (art. 2 par. 1 let. f of the Accounting Directive 2013/34/EU) ;
Companies meeting two of the following three criteria : 20 million balance sheet, 40 million sales and/or 250 employees (referred to as “large companies” ; art. 19a par. 1 CSRD and 3 par. 4 of the Accounting Directive 2013/34/EU). These “large companies” will be subject to the CSRD whether or not they are listed on a regulated market in the EU.
Companies (i) whose securities are listed on a regulated market in the EU and (ii) meeting two of the following three criteria : 4 million balance sheet, 8 million sales and/or 50 employees (referred to as “listed SMEs” ; art. 19a par. 1 CSRD and 3 par. 2 and 3 of the Accounting Directive). Unlisted SMEs are not subject to the CSRD.

Compared with the NFRD, the CSRD significantly expands the scope of companies subject to sustainability reporting, from the current 11,000 to 50,000.

II. What information must be disclosed ?

At first glance, one might think that the CSRD brings little change in terms of the content of the information to be disclosed. These still relate to the three now well-known factors (environmental, social and governance ; cf. art. 19ter par. 2 CSRD).

However, the CSRD introduces new, detailed and harmonized standards at European level. These reporting standards are currently being drawn up by the European Financial Reporting Advisory Group (EFRAG), which submitted its first package of standards on November 15. Final publication is scheduled for June 2023. In parallel, EFRAG is working on sector-specific standards covering so-called “sensitive” sectors. Streamlined standards for SMEs are also expected.

III. When do we start ?

Given the complexity of the reporting requirements, a phased implementation is planned (art. 5 CSRD) :

Financial years starting on or after January 1, 2024 : application to “large companies” with over 500 employees and public interest entities already subject to the NFRD ;
Fiscal years beginning on or after January 1, 2025 : application to “large companies” ;
Financial years starting on or after January 1, 2026 : application to listed SMEs, with the proviso that they may opt out of the directive until 2028 ;
Financial years starting on or after January 1, 2028 : application to non-European entities.

IV. Extraterritorial application

Above a certain threshold, non-European companies with significant activities within the EU have been added to the scope of the CSRD. The criteria for including these non-European companies are as follows (art. 40a CSRD) :

Sales (at group level) of 150 million euros or more in the European zone for each of the last two consecutive financial years ; and
An EU subsidiary (which meets the thresholds of a “large company” or is a listed SME) or branch with EU sales of 40 million euros or more.

To avoid double disclosure, subsidiaries or branches of a non-European parent company may be exempted from the reporting obligation under certain conditions. In particular, the non-European parent company’s sustainability report must be subject to standards considered equivalent to the CSRD standards (art. 40a par. 2 CSRD).

What does this mean for Swiss companies ? Subsidiaries or branches of Swiss companies meeting the above-mentioned thresholds will be fully subject to CSRD reporting obligations. However, it is difficult to estimate the number involved, as there is no publicly available data on the net sales of Swiss companies within the EU. According to a recent report by the Federal Office of Justice, the bulk of Swiss companies subject to the CSRD will already be subject to Swiss rules (art. 964a to 964c CO). If so, could these companies be released from their obligation on the grounds that their parent company already publishes a report in accordance with art. 964a to 964c CO ? This would require the Swiss rules to be considered equivalent to the CSRD standards. For the time being, such equivalence remains uncertain, but seems compromised given the major differences between the two regimes.

What about Swiss SMEs ? Given the thresholds set, the above-mentioned FOJ report notes that very few Swiss SMEs are likely to be directly subject to the CSRD. That said, they could be indirectly affected as subcontractors of European companies subject to the CSRD. The latter will be required to disclose information on their entire value chain, and will demand this information from their Swiss subcontractors.

The CSRD will therefore be directly applicable to Swiss companies with significant activities within the EU. The “indirect” implication of the CSRD on Swiss subcontractors of European companies should not be ignored either. This directive supports the EU’s drive towards sustainable corporate governance. Continuing in this vein, on December 1 the EU Council adopted its position on the Corporate Social Responsibility (CSRD) Directive.
