

ESG & SUSTAINABILITY

# Ireland's Sustainability Reporting Regulations

10 MIN READ

Ireland's European Union (Corporate Sustainability Reporting) Regulations 2024 (the Regulations) came into force on 6 July 2024. The Regulations transpose the Corporate Sustainability Reporting Directive (CSRD) into Irish law.

In this briefing, we set out the types of entities that will fall within scope of the sustainability reporting obligations introduced by the Regulations and when these obligations will apply. We also highlight where provisions of the Regulations currently appear to differ from those contained in CSRD.



## Transposition

In transposing CSRD, the Regulations amend two existing pieces of Irish legislation, the Companies Act 2014 (the **2014 Act**) and the Transparency (Directive 2004/109/EC) Regulations 2007. For the purposes of this article, we are focusing on the sustainability reporting obligations being introduced into the 2014 Act. A new Part 28 on sustainability reporting has been inserted and amendments have been made to various existing provisions of the 2014 Act.

While the Regulations generally transpose the sustainability reporting provisions in a way that is consistent with CSRD, certain anomalies have been identified. ALG, along with other law firms, is liaising with the Department of Enterprise, Trade and Employment (**DETE**) to seek clarity on these inconsistencies and how they are intended to be interpreted. The DETE is also expected to issue guidance on the operation of the Regulations, which may remedy any current uncertainty.

## Scope and reporting timeline

The Regulations apply to certain 'applicable companies'. A number of the anomalies between the Regulations and CSRD stem from how "applicable company" is defined in the Regulations. This definition draws on provisions in Part 6 of the 2014 Act (on financial statements, annual return and audit). This has knock-on consequences for the companies brought within scope of CSRD, as we will highlight in this article.

<b>"APPLICABLE COMPANY"</b>
<ol style="list-style-type: none"> <li>1. a company that qualifies as a <b>large company</b>* under section 280H of the 2014 Act, or</li> <li>2. a company that:                             <ol style="list-style-type: none"> <li>a. qualifies as a <b>small company</b>* under section 280A or a <b>medium company</b>* under section 280F (excluding a company that qualifies as a <b>micro company</b>* under section 280D), and</li> <li>b. has securities traded on an EU regulated market</li> </ol> </li> </ol> <p>The definition includes an unlimited company that is a "designated ULC" within the meaning of section 1274 of the 2014 Act.</p>

As under CSRD, sustainability reporting obligations will apply on a phased basis. The table on the next page sets out the scope and reporting timeline of the Regulations as they relate to individual companies while indicating where differences between CSRD and the Regulations arise.

Consolidated reporting obligations also apply to groups of companies where the holding company meets the "applicable holding company" definition. The reporting timeline for those reporting on a consolidated basis follows that set out in phases 1 and 2 overleaf.

\* A **large company** per section 280H exceeds at least two of the following criteria for two consecutive financial years: (i) €50m net turnover, (ii) €25m balance sheet, (iii) 250 employees.

A **medium company** per section 280F does not exceed at least two of the following criteria for two consecutive financial years: (i) €50m net turnover, (ii) €25m balance sheet, (iii) 250 employees.

A **small company** per section 280A does not exceed at least two of the following criteria for two consecutive financial years: (i) €15m net turnover, (ii) €7.5m balance sheet, (iii) 50 employees.

A **micro company** per section 280D must qualify for the small companies regime, and not exceed at least two of the following criteria for two consecutive financial years: (i) €900,000 net turnover, (ii) €450,000 balance sheet, (iii) 10 employees.



## ENTITIES IN SCOPE

### Phase 1: financial years starting on or after 1 January 2024

- i. large Irish companies with more than 500 employees that are “public-interest entities”
- ii. large issuers with securities listed on an EU regulated market and more than 500 employees

### Phase 2: financial years starting on or after 1 January 2025

- i. large Irish companies outside the scope of phase 1, whether public or private, listed or unlisted
- ii. large issuers outside the scope of phase 1

## COMMENT

Under the 2014 Act, certain companies (“ineligible entities”) are deemed to be large regardless of whether they satisfy the ‘large company’ size criteria detailed on the previous page. This includes all PLCs, whether listed or unlisted, and public unlimited companies. Some of these

companies may be captured in an earlier reporting phase under the Regulations contrary to CSRD.

### Phase 3: financial years starting on or after 1 January 2026 (with an opt out until 2028)

- i. small and medium Irish companies (SMEs) and issuers listed on an EU regulated market
- ii. small and non-complex institutions per the Capital Requirements Regulation (575/2013) and issuers defined as small and non-complex institutions
- iii. captive insurance and reinsurance undertakings per Solvency II (Directive 2009/138/EC) and issuers defined as captive insurance and reinsurance undertakings

## COMMENT

SMEs that are unlisted, listed on a secondary market (such as Euronext Growth), or listed on a non-EU market, are not intended to be in scope of CSRD. Micro companies are also expressly exempt from CSRD.

However, under the 2014 Act, a company with securities listed on an EU regulated market is considered an ‘ineligible entity’ which cannot qualify as a small or medium company and is deemed to be large

Therefore, it seems that no Irish SME listed on an EU regulated market falls within phase 3 as currently drafted in the Regulations. Such companies may be obliged to report in phase 2 contrary to CSRD.

### Phase 4: financial years starting on or after 1 January 2028

- i. Irish subsidiaries of third-country parent companies generating net turnover of more than €150m in the EU for each of the preceding two financial years
- ii. Irish branches of third-country companies with net EU turnover exceeding €150m for each of the preceding two financial years, where the branch generated more than €40m in the preceding year

If the statutory mechanism deeming certain companies to be large regardless of size and/or listing status remains unchanged, the Regulations will have a scope and reporting timeline that differs from the intended scope and timeline of CSRD for individual EU companies. Irish SMEs, in particular, would be treated less favourably than their EU counterparts if they were obliged to report according to an accelerated timescale, or to comply with CSRD when they should be exempt.



## GLOSSARY

**EU regulated market:** a stock market authorised by the Markets in Financial Instruments Directive. E.g. Euronext Dublin.

**Issuer:** a natural person or legal entity (EU or non-EU) with securities admitted to trading on an EU regulated market. An issuer may be exempt from CSRD where it exclusively lists wholesale debt securities above a certain value.

**“Public-interest entities”** means undertakings that: (i) have securities admitted to trading on an EU regulated market, (ii) are credit institutions, (iii) are insurance undertakings, or (iv) are otherwise designated as public-interest entities.

**Third-country company:** a company incorporated outside the EU.



### ***Subsidiary exemptions***

In-scope Irish subsidiaries may be exempt from the obligation to report sustainability information in their directors' report where the subsidiary and its subsidiaries (if any) are included in the group directors' report of their Irish holding company or the consolidated sustainability reporting of their third-country holding company. As currently drafted in the Regulations, this exemption is limited to the Irish subsidiaries of Irish or third-country holding companies, but CSRD intended the exemption to be available to the subsidiaries of EU holding companies.

In-scope Irish holding companies that are intermediate holding companies (i.e. they are subsidiaries of other companies further up the chain) may be exempt from the obligation to conduct consolidated reporting on behalf of their group where the holding company and its subsidiaries are included in the group directors' report or the consolidated sustainability reporting of that other holding company, as applicable. Where a third-country company is reporting on behalf of a group, it must comply with either the European Sustainability Reporting

Standards (**ESRS**), or with reporting standards deemed equivalent to the ESRS in order for its subsidiaries to avail of this exemption. To date, no sustainability reporting standards have been declared equivalent to the ESRS.

In order to avail of these exemptions, a subsidiary must comply with a number of conditions, including that the directors of the subsidiary benefiting from the exemption confirm, in the subsidiary's directors' report, that the company is exempt and include details of the holding company reporting on the subsidiary's behalf. All large public-interest subsidiaries are precluded from availing of these consolidated reporting options under the Regulations at present, whereas CSRD intends only large companies listed on an EU regulated market to be excluded.

Until 6 January 2030, an in-scope EU subsidiary may prepare a consolidated sustainability report on behalf of all the in-scope EU subsidiaries that share a common third-country parent with it.

This is a transitional concession which, in effect, allows EU companies to engage in

'artificial consolidation' where they are not strictly in a parent-subsidiary relationship but instead share a common ultimate parent. The consolidated reporting must be done by one of the subsidiary companies of the group that generated the greatest turnover in the EU in at least one of the preceding five financial years.

### ***Subsidiaries and branches of third-country companies***

For financial years commencing on or after 1 January 2028:

- an in-scope Irish subsidiary of a third-country company that generated (at group or individual level) a net turnover of more than €150m in the EU for each of the preceding two consecutive financial years, or
- an Irish branch with a net turnover of more than €40m in the preceding financial year, which is the branch of a third-country company that generated (at group or individual level) a net turnover of more than €150m in the EU for each of the preceding two consecutive financial years





must publish a consolidated sustainability report for the group (or, in the case of a branch, for the third-country company) that has been produced in accordance with specific ESRS for subsidiaries/branches of third-country companies (not yet adopted). The sustainability report must be accompanied by an assurance opinion from a person or firm authorised to give an opinion on the assurance of sustainability reporting, either under the law of the third-country company or under the laws of an EU Member State.

The way these provisions are set out in the Regulations appears to be inconsistent with CSRD. While CSRD requires the relevant subsidiary to report at the level of the “ultimate parent” third-country undertaking (the company at the top of the organisation), the Regulations state simply that the applicable subsidiary must report “at the group level of the third-country undertaking”. Therefore, an Irish subsidiary could be obliged

to report at the level of an intermediary third-country company. This could result in Irish subsidiaries being obliged to prepare reports in respect of multiple third-country parents within the same group without being able to avail of any exemptions similar to the subsidiary exemptions set out above.

#### **Excluded entities**

Certain entities are excluded from the scope of the Regulations, expressly or otherwise, as follows:

- alternative investment funds (**AIFs**) and Undertakings for the Collective Investment in Transferable Securities (**UCITS**)
- credit unions and “post office giro institutions”\*
- partnerships and limited partnerships
- co-operatives and friendly societies

\* as referenced in the Capital Requirements Directive (2013/36/EU)





## Sustainability reporting

### *Sustainability statement*

In-scope companies must include a “clearly identifiable dedicated section” on sustainability reporting in their annual directors’ report which provides information necessary to understand the company’s impacts on sustainability matters and how the sustainability matters affect the company’s development, performance and position. The directors’ report must be prepared in the single electronic format and annexed to the company’s annual return, which is filed with the Companies Registration Office.

The nature of the information required is set out in eight broad categories (a-h) in section 1590 of the Regulations and includes, broadly, the following:

- a. information on the business model and strategy
- b. details of any time-bound targets related to sustainability matters
- c. a description of the role of the company’s administrative, management and supervisory bodies in sustainability matters
- d. a description of the company’s policies in relation to sustainability matters
- e. details of any incentive schemes for those responsible for sustainability matters

- f. details of the due diligence process implemented with regard to sustainability matters (including with regard to the Corporate Sustainability Due Diligence Directive when it becomes applicable)
- g. a description of the principal risks to the company related to sustainability matters, including the company’s principal dependencies and it manages those risks
- h. indicators relating to the above disclosures

### *Assurance of sustainability reporting*

Another unique feature of CSRD is the introduction of a requirement for companies to obtain an assurance opinion in relation to their sustainability information. The sustainability auditor does not need to be the same as the company’s financial auditor, but, at present, they do have to be an approved statutory auditor under Irish law. An auditor of a company’s sustainability information must provide an assurance report expressing an opinion on the company’s compliance, based on a limited assurance engagement and in accordance with the assurance standards adopted under the Audit Directive. Under CSRD, the European Commission is committed to adopting limited assurance standards for sustainability reporting by 1 October 2026 and reasonable assurance standards by 1 October 2028. CSRD introduces an option

for EU Member States to recognise, accredit, regulate and monitor independent assurance services providers (**IASPs**) and the DETE recently consulted on this. Whether or not Ireland decides to set up its own regime for IASPs, Member States must allow IASPs established in other Member States to carry out the assurance of sustainability reporting in their jurisdictions from 6 January 2027.

### *Non-compliance*

There are no specific offence and/or penalty provisions set out in the Regulations. However, as sustainability reporting for in-scope Irish companies forms part of the annual directors’ report, it is subject to the related offences and penalties provisions set down in the 2014 Act. Failure to prepare a directors’ report in accordance with the law can be a “category 3” offence for a director, which is punishable on summary conviction by a fine of up to €5,000 and/or up to six months’ imprisonment. It is also an offence under the 2014 Act for any person to intentionally and knowingly to make a false statement in a directors’ report. This is a “category 2” offence, punishable on summary conviction by a fine of up to €5,000 and/or up to 12 months’ imprisonment, or, on indictment, to a fine of up to €500,000 and/or imprisonment for up to ten years.





## KEY CONCEPTS

### KEY INTANGIBLE RESOURCES

A section on these resources must be included in the directors' report. A company must explain how the business model fundamentally depends on these resources and how they are a source of value creation for the company.

### VALUE CHAIN

The sustainability statement should capture information about the company's entire value chain, including its own operations, products, services, business relationships and supply chain.

### REPORTING STANDARDS

Companies must report according to the European Sustainability Reporting Standards (**ESRS**), which ensure that companies report comparable and reliable sustainability information.

### DOUBLE MATERIALITY

A company must report on: (i) the impacts of its activities on sustainability matters, and (ii) how sustainability matters affect the company's development, performance and position.

### EMPLOYEE CONSULTATION

Directors must provide information to, and consult with, employees' representatives in relation to the sustainability information being reported and the means of obtaining and verifying such information.

### TAXONOMY REGULATION

Disclosure obligations under Article 8 of the Taxonomy Regulation will apply at the same time as sustainability reporting obligations under the Regulations kick in.

For further information on the Regulations and how they impact your business, please reach out to the authors or your usual ALG contact. Keep up to date with ESG developments through our [ESG & Sustainability Hub](#) and by signing up to our quarterly [ESG Bulletin](#).





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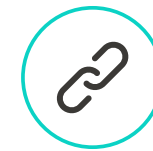
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