

Our position

EU Corporate Sustainability Reporting Directive (CSRD)



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2020, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Corporate Sustainability Reporting Directive

AmCham EU supports the objectives of the European Commission's proposal for a Corporate Sustainability Reporting Directive (CSRD). The proposal would improve environmental, social and governance (ESG) disclosures and lead to greater relevance, comparability and reliability of ESG reporting across the EU.

We also recognise that the new reporting requirements would entail a significant change for preparers of disclosure. A proportionate approach which balances the growing demand for ESG data from the investment and wider stakeholder community with the growing burden companies face in gathering, preparing, assuring and reporting such data is therefore needed. AmCham EU's engagement with the Sustainable Finance agenda is guided by our three core principles: regulatory certainty and economic stability; evidence-based policy; and international openness.

International convergence

We welcome the explicit reference to the need for the Commission and the European Financial Reporting Advisory Group (EFRAG) to take account of international standards. The alignment – to the extent possible – of the CSRD with existing global disclosure frameworks and standards that provide decision-useful information like Task Force on Climate-Related Financial Disclosures (TCFD), Sustainability Accounting Standards Board (SASB) and Global Reporting Initiative (GRI) would leverage existing capabilities to best effect. Such alignment would allow third-country firms to disclose relevant information consistently using well-established practices.

The specific reference to international standards in the CSRD raises the prospect of increased global consistency of sustainability reporting and reduced fragmentation between jurisdictions. In the context of the International Financial Reporting Standards Foundation's proposals for an International Sustainability Standards Board¹ and the recent G7 communiqué², the Commission and EFRAG should seize this unique opportunity for cooperation at the international level on a global baseline for sustainability reporting standards.

By contrast, the creation of an entirely new additional standard that is only applicable in the EU would significantly increase the compliance burden and may lead to fragmented and less meaningful reporting. It will therefore be of utmost importance to ensure connectivity and convergence with the international workstream and seek to align on significant issues such as double materiality. We therefore urge international consistency in the development and application of the EU taxonomy with other non-EU taxonomies under development.

Double materiality

The EU's focus on double materiality is an important innovation. The Commission should ensure that guidance on how to identify material information is available in a timely manner within the EU reporting standard. It is important for the EU's approach to remain as conceptually consistent as possible with international frameworks and developments in other jurisdictions.

¹ <https://www.ifrs.org/news-and-events/news/2021/03/trustees-announce-strategic-direction-based-on-feedback-to-sustainability-reporting-consultation/>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991640/FMCBGs_communique_-_5_June.pdf

Subsidiaries of third country undertakings

We welcome the attempt to provide an exemption for an EU subsidiary undertaking of a parent undertaking which is established in a third country if said undertaking (and its subsidiary undertakings) is included in the consolidated management report.

We note that a condition of this exemption is that an equivalence decision must be adopted about the reporting standard used by the company in question. However, given the granularity of the reporting requirements envisaged by the CSRD, it must be considered whether this mechanism would be available to third country undertakings in practice.

Companies would be significantly impacted by any decisions about equivalence. Further clarification from the Commission is needed on how they expect the equivalence mechanism to work - including the minimum notice period it would intend to provide of its equivalence decisions – in order to ensure that companies do not face conflicting disclosure requirements internationally. Equivalence should be outcome based and should take account of recognised international standards.

In this context, it is vital to underline the importance of consolidated reporting on sustainability information at the parent company level (or as required for any issuing subsidiary under applicable listing rules). Providing this information as much as possible at parent level allows for a more holistic view of a company's sustainability strategy and transition path, as well as more efficient reporting processes and proportionality for smaller companies. Third country parent reporting is especially relevant for corporate groups with multiple EU subsidiaries but no common EU sub-parent. If companies have to provide different sustainability reports only for their EU operations, this will produce an incomplete and therefore misleading picture of a group's sustainability profile for investors and consumers, in addition to extremely complex internal reporting processes.

We welcome the possibility for the Commission to allow the use of a different reporting standard during an appropriate transitional period in the absence of an equivalence decision. However, the Commission and the co-legislators should still provide third country undertakings with a practical route to reporting on sustainability at the level of the ultimate parent using agreed international standards. This could take the form of a sustainability document which covers CSRD requirements separate from the parent consolidated management report, without prejudice to the obligations of the group's EU subsidiaries to publish sustainability information in their management reports.

Forward looking information

Consideration should also be given to the uncertain legal risk faced by companies in providing forward looking information, especially as science and data methodologies continue to evolve. Articles 19a and 29a of the CSRD proposal state that sustainability reporting should contain retrospective as well as forward-looking information. Given its nature, forward-looking information relates to future conditions which cannot be predicted with complete accuracy. The CSRD should acknowledge this in the text.

The CSRD proposal appears to recognise the potential conflict between requirements to provide forward-looking information and the need to safeguard commercially sensitive information or avoid breaching confidentiality obligations. However, the Article 19a(3) exception – as drafted – is overly narrow and it would be preferable if this safe harbour were established within the CSRD itself rather than leaving the interpretation to the discretion of Member States.

Supply and value chains

The CSRD introduces reporting requirements on supply and value chains. It must be recognised that there are limits to the ability of companies (both EU and third country) to apply disclosure regimes to suppliers outside of their own group.

These limits are especially challenging when suppliers operate completely outside of the EU. Given the global nature of supply chains, a degree of proportionality should be introduced to recognise these limits in the description of the principal actual or potential adverse impacts connected with the group's value chain. For example, the company could be required to report only on its risk-based supply chain due diligence procedures and their consistency with the overall sustainability strategy; rather than collecting granular data from their suppliers, which would likely be an impossible task.

Alignment with the EU Financial Services Regulation

We recognise and support the need for the CSRD to address specific information needs arising from EU legislation - such as the EU taxonomy - where data gaps need to be filled (for example the taxonomy key performance indicators and the Sustainable Finance Disclosure Regulation (SFDR)'s Principle Adverse Indicators). Financial market participants and service providers are already subject to several detailed ESG reporting requirements. We therefore support the Commission's attempts to align the CSRD with existing regulatory requirements placed on EU financial markets by aligning the definitions of sustainability matters with the sustainability factors under the SFDR, as well as the structure of the environmental reporting to the taxonomy objectives.

However, the CSRD should also seek to align and appropriately sequence reporting timelines. The Taxonomy Regulation, SFDR and Pillar 3 of the Capital Requirements Directive (CRD) disclosures will already impose disclosure requirements in 2022 and 2023, before the CSRD takes effect. As financial institutions can only incorporate ESG considerations after receiving sustainability information from corporates, we advocate for financial corporates to report after non-financial corporates (for example, with a 12-month gap).

Dual listed securities

The Commission should also consider the impact of applying CSRD requirements to non-EU corporates who have dual listed debt and/or equity securities on EU exchanges. Applying CSRD rules to these dual listed securities could make EU markets less attractive for dual listing. In many cases, trading volumes in these securities can be thin, therefore overly prescriptive requirements could result in non-EU firms withdrawing from EU secondary listings rather than incur additional costs associated with CSRD disclosures.

Timing and consistency in implementation

To support the development of disclosures it is important that the Commission recognise the significant operational requirements that CSRD will place on companies relative to existing reporting under the Non-Financial Reporting Directive (NFRD). This will include the need for skilled professionals to support the new disclosure requirements. Both preparers of information – whose numbers relative to those currently in scope under the NFRD are expected to increase greatly – and assurance providers will need time, guidance, clarity and confidence in the new CSRD requirements to invest in and develop the significant new skills, capabilities and technologies that it will require.

Appropriate notice should be given to market participants and assurance providers and should allow for a transition period of 24-36 months (once the new European Reporting Standards have been adopted) for new requirements. Rapid adoption and enforcement of disclosure standards would create implementation risks, which may lead to consistency issues. High quality information that is decision useful for investment decisions and facilitates investment flows should be the goal in line with the objectives of the Capital Markets Union, the Sustainable Finance Agenda and the EU Green Deal.

Finally, given the legal instrument chosen is a Directive, the Commission and the co-legislators should ensure that the final CSRD is drafted and agreed in a manner that will support harmonised implementation and enforcement across the EU.