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A Step Closer to CSRD’s Non-EU Group Reporting Standards

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On 30 October 2024, the Corporate Sustainability Reporting Directive ("**CSRD"**) standards for global groups with a significant European footprint took a notable public step forward. The European Financial Reporting Advisory Group’s ("**EFRAG"**) Sustainability Reporting Board ("**SRB"**), who are responsible for overseeing the CSRD reporting standards, met and discussed the non-EU standards, first in private and then set out the direction of travel in an open, public meeting[1] and published draft non-EU Reporting Standards (“**NESRS**”)[2].

There has been a trend towards revisiting and assessing the proportionality and appropriateness of the EU Green Deal’s requirements on businesses recently and this was captured in the overview provided by the EFRAG SRB on the non-EU standards. Some notable examples of this trend include:

- Maria Luis Albuquerque, the new EU Commissioner for Financial Services, Financial Stability and the Capital Markets Union committed to working towards “streamlining requirements to alleviate unnecessary burdens without compromising on our common European Green Deal objectives”[3].
- Mario Draghi's recent Report to the European Commission on the future of European Competitiveness set out that the CSRD is “a major source of regulatory burden” with estimated compliance cost of CSRD-reporting ranging from EUR 150,000 for non-listed businesses to EUR 1 million for listed companies.[4]
- Tom Dodd, a team leader with the European Commission’s sustainability reporting unit is reported at a conference to have urged CSRD to be applied in a “proportionate” and “pragmatic” way.[5]

Following this theme of calls for proportionality, we set out the proposed EFRAG SRB optional exclusion in the NESRS for global group reporting under CSRD that will be subject to public consultation and approval by the European Council in 2025.

What is the optional exclusion to be proposed in the draft non-EU standards?

The EFRAG SRB discussed that generally non-EU companies, where they are the non-EU parent of a global group, will be expected to follow the same CSRD reporting standards as EU companies, however, with one significant optional exclusion. The EFRAG SRB will propose in its consultation in Q1 2025 (with an aim for January) on the draft NESRS limiting language to allow such global groups to exclude:

- sustainability-related "impacts connected with operations and revenues other than those connected with EU customers", whether indirect or direct; and
- reporting on financial materiality at group level,

the "**Proposed Optional Exclusion**").

Therefore, for non-EU headquartered global groups in scope of CSRD, the default position will be to provide global reporting under CSRD's impact materiality assessment. This would cover all global group operations and sustainability-related impacts connected to the group's products or services, across their value chain, however with no requirement to report on financial materiality at global group level (sustainability-related risks and opportunities). However, global groups may choose to exclude via the Proposed Optional Exclusion non-EU operations, revenues, products or services across their value chain from CSRD reporting   If a global group was to choose to utilise the Proposed Optional Exclusion it would need to clearly state that it is doing so in this sustainability report.

The EFRAG SRB had a majority vote in favour of proposing the draft NESRS with the Proposed Optional Exclusion for consultation.

Did the EFRAG SRB unanimously agree to the Proposed Optional Exclusion to certain of CSRD's European Sustainability Reporting Standards (ESRS)?

The EFRAG SRB set out their intention that the NESRS 1, covering the general requirements of CSRD reporting and NESRS 2, on the general disclosures, would apply to global groups as the ESRS to EU entities and groups. Therefore, a global group report would have to cover the overall sustainability-related approach to governance, strategy, risk management metrics and targets and other mandatory reporting requirements under NESRS 2.

However, SRB members were divided in the public session with some setting out that the topical reporting standard E1 on Climate Change should also be mandatory for a global group and we note that the draft NESRS currently published do no provide for the Proposed Optional Exclusion to cover E1 on Climate Change This means that sustainability-related impacts connected to climate change would need to be assessed and, where deemed material, disclosed for the entire operations of the group.

Further division and votes of abstention were cast by members of the EFRAG SRB on the Proposed Optional Exclusion, for reasons including:

- Potential to undermine the aim to have a “level playing field” between EU and non-EU entities (which is set out in a CSRD recital);
- Reduced transparency on sustainability-related matters for non-EU headquartered groups;
- Practical implementation issues where there are global policies and procedures; and
- Overstepping the EFRAG SRB mandate as CSRD by law does not provide this optionality.

Despite these concerns, the Proposed Optional Exclusion was voted through to be included in the public consultation on the NESRS.

What is the timing of the non-EU CSRD standards?

Following direction from the European Council, EFRAG delayed the publication of NESRS from 2024 to 2026. With EU parliamentary elections in July 2024, there has also been further delay from EFRAG to await expectations on the NESRS from the reshaped EU leadership.

This 30 October 2024 meeting of the EFRAG SRB and publication of the draft NESRS is therefore a positive sign of movement for the NESRS, with a commitment to consult the public in Q1 2025 (with an aim for January). Following the consultation period, EFRAG will consider responses and any amendments to the NESRS before submitting the standards to the European Council for approval in November 2025. The deadline for the adoption of NESRS is June 2026.

Which non-EU groups are in scope of CSRD?

To recap, there is a phasing in of CSRD from 2024 to EU entities depending on the size and the EU entity type, which we set out in our alert here. Non-EU companies are in scope of CSRD if they generate a minimum of €150 million net turnover derived in the EU, and the non-EU entity has either:

- an EU subsidiary in scope of CSRD; or
- an EU branch with a minimum of €40 million turnover.

In the draft NESRS there is also an exclusion of the transitional provisions that apply to the first three reporting years on the basis that this would provide global groups substantially more time to prepare their CSRD reports in comparison to in-scope EU entities and groups.

What are the next steps for global groups on CSRD?

Affected businesses are advised to review and provide feedback on the NESRS to help shape their development following the launch of the consultation. This review could include assessing the practicality of global group versus European-only reporting and evaluating the potential use of the Proposed Optional Exclusion if finalized. If the Proposed Optional Exclusion was relied upon, it would mean that EU subsidiaries in-scope of CSRD would still need to report on CSRD more broadly on a standalone basis.

Ahead of the consultation, global groups should also, if not carried out already, scope their international structures to determine which entities are in scope of CSRD and when the reporting obligation would apply, including ongoing monitoring of CSRD thresholds.

For further CSRD support, please reach out to ukreg@proskauer.com.

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[1] EFRAG SRB meeting 16 October 2024 | EFRAG

[2] https://www.efrag.org/en/projects/noneu-groups-standard-setting/research-phase?page=meeting_documents

[3] albuquerque_writtenquestionsandanswers_en.pdf

[4] EU competitiveness: Looking ahead - European Commission

[5] Don't over-implement CSRD: EU official urges firms to use 'common sense' with reporting law - Real Economy Progress

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