

# JDP

Newsletter

**ESG reporting**  
in a nutshell.  
All the reporting  
undertaking needs  
to know and more.

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In our **third ESG Newsletter**, we outline the assumptions for sustainability reporting, and answer the key questions: **who must report, when, what and how**. And if no reporting is required, what other requirements or challenges related to the reporting arise from the ESG regulations.

Most of the legal acts that we refer to below were described in our **second ESG Newsletter**. You can read it [HERE](#).

## **i** Non-financial reporting (NFRD<sup>1</sup>)

In Poland, non-financial information must be obligatorily disclosed since 2018 (in reports for 2017) under the Accounting Act (AccAct); the act amending the AccAct transposed the NFRD into Polish legislation.

The obligation to disclose information in the management report applies to certain large businesses that meet the criteria of the employment rate and one out of two financial conditions (Article 49b(1) AccAct). In other words, these are **large undertakings primarily engaged in financial activities**, such as banks, insurance companies, and listed companies.

Undertakings that are also parent undertakings in a group of companies disclose non-financial information in the group management report. In that case, the financial criteria that trigger the reporting obligation are higher than those set out in Article 49b(1) AccAct if the limits are exceeded before and not after consolidation exclusions are applied (Article 55(2b) AccAct).



<sup>1</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ EU L of 2014 No. 330, p. 1, as amended).



## Sustainability reporting (CSRD<sup>2</sup>)

The CSRD directive, effective as of **5 January 2023<sup>3</sup>**, considerably expands the scope of the NFRD by introducing more detailed and ambitious reporting requirements. It must be **implemented** into Polish legislation **by 6 July 2024**, and it is expected to revolutionise the non-financial reporting.

Additionally, the Polish legislature may decide on enacting **further changes** and more stringent requirements (both in terms of to which entities they apply and what they cover) than those set out under the CSRD.

A bill addressing these issues (UC14) has already been listed in the legislative agenda of the Council of Ministers, with adoption scheduled for **Q2 2024**.

### Major changes introduced by the CSRD compared to the NFRD:

- **expanded group of entities required to disclose non-financial information (sustainability – according to the new nomenclature)**
- **expanded scope of the reportable information**
- **requirement to report the ESG financial impacts on the business operations (double materiality principle)**
- **introduction of mandatory sustainability reporting standards (ESRS)**
- **inclusion of operational activities, impact areas, risks and opportunities in the value chain**
- **requirement to take into account the ESG impacts in the business strategy and model**
- **obligatory verification of the reported information by statutory auditors**

<sup>2</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (OJ EU L of 2022 No. 322, p 15).

<sup>3</sup> Except Article 4 CSRD that came into force on 1 January 2024.

## Who and when must report ESG impacts?

In short, reporting obligation has been expanded to certain groups of entities<sup>4</sup> as follows:

<p><b>In 2025 for 2024</b></p>	<p><b>Undertakings obliged under the NFRD or the AccAct in Poland, i.e.:</b></p> <ul style="list-style-type: none"> <li>▪ large public-interest entities (Article 3(1e)(1)-(6) AccAct) that employ more than 500 employees and meet one of the following criteria: total assets exceeding <b>PLN 85 million</b> or net revenue exceeding <b>PLN 170 million*</b>;</li> <li>▪ large public-interest undertakings being parent undertakings meeting the above criteria considering consolidation exclusions or meeting higher financial criteria (the employment criterion is the same) in the absence of such exclusions: total assets exceeding <b>PLN 102 million</b> or net revenue exceeding <b>PLN 204 million</b>.</li> </ul> <p><b>*Note:</b> This is the status as of today. The bill (UC14) proposes to increase by 25% the limits for certain categories of undertakings triggering the obligation to audit the financial statements. You can find out more <a href="#">HERE</a>.</p>
<p><b>In 2026 for 2025</b></p>	<p><b>Other large undertakings (listed and non-listed) and parent undertakings of large groups of companies:</b></p> <ul style="list-style-type: none"> <li>▪ meeting two out of the following criteria: over 250 employees, balance sheet total exceeding <b>EUR 25 million</b> or net revenue exceeding <b>EUR 50 million</b>;</li> <li>▪ in the case of parent undertakings: large groups that meet two out of the above criteria on a consolidated basis.</li> </ul>
<p><b>In 2027 for 2026</b></p> <p>(with the possibility of an additional two-year opt-out)</p>	<ul style="list-style-type: none"> <li>▪ <b>SMEs: public-interest undertakings</b> meeting two out of the following criteria: more than 10 employees, balance sheet total exceeding <b>EUR 450,000</b> or net revenue exceeding <b>EUR 900,000</b>;</li> <li>▪ small and non-complex institutions, captive insurance undertakings and captive reinsurance undertakings if they are large undertakings or SMEs – public-interest undertakings.</li> </ul>
<p><b>In 2028 for 2027</b></p>	<p><b>Certain third-country undertakings (indirectly):</b></p> <ul style="list-style-type: none"> <li>▪ EU subsidiaries of ultimate third-country parent undertakings*;</li> <li>▪ EU branches of third-country undertakings if the third-country undertaking does not have a subsidiary, as mentioned above, and if the branch generated a net turnover exceeding <b>EUR 40 million</b> in the previous financial year*;</li> <li>▪ EU subsidiaries falling under the CSRD.</li> </ul> <p>*Provided that the third-country undertaking, at its group level, or, if not applicable, the individual level, generated in the EU a net turnover of more than <b>EUR 150 million</b> for each of the last two consecutive financial years.</p>

<sup>4</sup> Guidelines regarding the undertakings and legal bases are set out in Article 5 CSRD.



## What and how to report?

Companies falling under the CSRD are required to disclose information on sustainability in a dedicated section of the management report, the so-called sustainability statement, in the XHTML format. The statement must consist of four parts covering the following areas:

1. General information,
2. Environmental issues,
3. Social issues,
4. Corporate governance.

The reporting undertakings will have to provide a list of all disclosure requirements they have met, with a page number or a paragraph in the sustainability statement where the related disclosure can be found.

**Note:** The ESRS take into account the existing EU requirements (including the Taxonomy Regulation<sup>5</sup> and SFRD<sup>6</sup>).



## Reporting standards

Undertakings falling under the CSRD are **required** to use the European Sustainability Reporting Standards (ESRS) as the basis for preparing sustainability-related disclosures. The ESRS are enacted as delegated acts supplementing the CSRD.

It is at the discretion of each member state to determine whether other standards must be complied with as well.

The first set of the ESRS includes **12 standards that apply as of 1 January 2024**<sup>7</sup> for financial years commencing on or after **1 January 2024**.



Simplified standards for SMEs listed on regulated markets (the Warsaw Stock Exchange, etc.) are planned to be released by **30 June 2024**. Public consultations on this matter are ongoing until 21 May. Currently, voluntary standards for non-listed SMEs are also undergoing consultations.



Further sectoral ESRS for entities from various industries and ESRS for third-country undertakings are planned to be published by **30 June 2026**.

<sup>5</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ EU L of 2020 No. 198, p. 13, as amended).

<sup>6</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ EU L of 2019 No. 317, p. 1, as amended).

<sup>7</sup> Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards (OJ EU L of 2023 item 2772).

## About ESRS



Currently, there are **12 standards** including **2 cross-cutting standards** and **10 topical standards**.

They set out the general requirements which companies should meet when preparing their sustainability reports.

## «« Cross-cutting standards

**ESRS 1** describes the key reporting principles and concepts (especially double materiality, due diligence, value chain).

**ESRS 2** sets out disclosure requirements regarding the undertaking's general characteristics, business model, strategy and governance structure, assessment of impact materiality, risks and opportunities, and sustainability due diligence process.

## Topical standards



They include standards related to the **environment, social issues and corporate governance**; each of them covers a different area.

**Note:** The materials prepared by the EFRAG, the European Financial Reporting Advisory Group, are a helpful tool when it comes to the practical implementation of the CSRD and ESRS. You can find them [HERE](#).



## How to prepare to ESG reporting?

Moving on from the **cross-cutting standards** to **topical standards**, below we present the **key phases of preparing** to compile a sustainability statement.

### **Assessment of the financial materiality and impact materiality:**

- The initial step involves defining information whose absence or distortion might impact the economic decisions of the report's recipients.
- Considered should be the actual or potential material risks, and positive and negative impact of the undertaking on its social and environmental surrounding, taking into account its value chain and different time perspectives. An ESG matter is considered financially material if it affects the assets and the liabilities, and the revenues and the costs of the undertaking.

### **Characteristics of the governance, strategy and model of the undertaking in the ESG context:**

- The reporting undertaking describes its value chain, operations, key products and services, markets on which it operates, and explains how ESG issues affect its business model; it also describes its governance processes, including in terms of roles and responsibilities, or powers of corporate body members in the ESG context.

### **Description of previous ESG projects and objectives:**

- This step involves describing the object and objectives of the implemented policies, disclosure of action plans and key measures already taken. The reporting undertaking tracks the effectiveness of the measures it has taken and assesses the progress on ESG issues.
- Disclosures cover key metrics, the methodology used to calculate them, targets, sustainability-related risks and opportunities.



## What if you don't report but your contractor does, part I

The ESG impacts should be assessed in the context of the reporting undertaking's **value chain**. This entails assessing impacts at each stage of the value chain.

The assessed impacts refer to activities, resources and relationships that the undertaking uses and relies on to create its products or services.

Next, interactions upon product or service delivery should be assessed.



## What if you don't report but your contractor does, part II

Generally, **suppliers of materials, contractors involved in production and distribution, as well as subcontractors**, should be aware that they may become involved in the process of obtaining pertinent value chain information by the reporting undertakings they collaborate with.

Most likely, **smaller entities** entering into contracts with reporting undertakings will be required by the latter to comply with their requirements and guidelines more extensively than in the past, regarding all three ESG areas.

This transition is already underway, with certain major market participants establishing good contractor practices and supplier codes and incorporating **ESG clauses** in agreements requiring compliance with ESG principles.

Under the proposed CSDD<sup>8</sup> (Article 3(g)) (any moment now to be examined at the first reading by the European Parliament)<sup>9</sup>, a **value chain** means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company.

We can expect that the **CSDD**, which introduces a due diligence obligation for certain groups of companies to mitigate the adverse impact of their operations on human rights and the environment, will notably **expand the rules in place in individual member states regarding the obligations of companies-participants in the value chain**.



For this reason, it is often necessary to engage experienced advisors, including ESG specialists and lawyers, to assess the compliance of an undertaking's operations. They will comprehensively audit an undertaking's operations from various perspectives and identify key responsibilities and areas for improvement.

**Status as of: 12 February 2024**

<sup>8</sup> Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final.

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX%3A52022PC0071> (retrieval: 13.2.2024).



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