JDP

ESG Newsletter

Implementation of the CSRD into the Polish legal system

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On 19 April 2024, the Government Legislation Centre published a government bill implementing the CSRD[1] into Polish law. In this issue of our ESG Newsletter, we discuss the content of the bill and its potential consequences for ESG strategies in Polish companies.

1. Implementation of the CSRD into the Polish legal system

The planned amendments will cover several Polish acts, especially the Accounting Act[2], the Act on Statutory Auditors, Audit Firms and Public Supervision[3], and the Act on the National Court Register[4].

The key objective of the bill is to oblige a significantly larger group of companies to report relevant, comparable and reliable sustainability information. The intention is that the reports are addressed to all stakeholders, in particular investors and the financial sector.

The primary goal of the CSRD is to increase capital flows in such a way as to ensure the financing of companies that are growing sustainably or seeking such a transformation, and to move financing away from "non-environmental" companies. In particular, this may translate into the availability and terms of debt financing and the ability to sell bonds. In addition, greenwashing will be limited thanks to the mandatory disclosure of certain information[5].

The bill also introduces a solution that does not directly arise from the CSRD and that increases the financial thresholds defining different types of enterprises (micro, small, medium, large) by 25%. The increase in these thresholds is a response to the inflation observed in the previous years, and the changes are intended to align the existing legislation with market realities.

2. Amendments to the Accounting Act – CSRD

The major amendment to the Accounting Act is the introduction of Chapter 6c titled "Sustainability Reporting". It introduces a legal definition of sustainability issues which include environmental, social and human rights, as well as corporate governance issues.

[1] 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. 2022, No. 322, p. 15).

[2] Accounting Act of 29 September 1994 (consolidated text, Journal of Laws of 2023, item 120, as amended).

[3] Act on Statutory Auditors, Audit Firms and Public Supervision of 11 May 2017 (consolidated text, Journal of Laws of 2023, item 1015, as amended).

[4] Act on the National Court Register of 20 August 1997 (consolidated text, Journal of Laws of 2023, item 685, as amended).

[5] SJP [Polish dictionary] online: greenwashing : giving customers the impression that the product has been produced in an environmentally friendly way.

Importantly, after the amendment, the Accounting Act will refer to the European Sustainability Reporting Standards (ESRS[6]). Polish companies will be obliged to prepare sustainability reports in line with these standards. Thanks to the ESRS, the reporting standard will be uniform across the EU, which will allow for machine comparison of the quality of companies in this regard[7]. This is a fundamental change when compared to the currently published reports, which, due to the lack of a uniform format, are often not of much use to their recipients.

The government proposal regarding entities obliged to sustainability reporting, as well as the period from which they will be obliged to submit reports, is in line with the CSRD. We discussed in more detail who is subject to non-financial reporting obligations and from when in our third ESG Newsletter **"**ESG reporting in a nutshell. All the reporting undertaking needs to know and more", which you can find **HERE**.

The scope of the reportable information is set out in the ESRS and is incorporated in new Article 63r(2) of the Accounting Act. According to this provision, sustainability reporting includes numerous elements related to the company's responsibility for sustainability, in particular:

1. Concise description of the undertaking's business model and strategy, including a description of the resilience of the business model to sustainability-related risks, related opportunities for the undertaking, and the undertaking's plans (including financial and investment activities) to ensure that the undertaking's business model and strategy factor in the transition to a sustainable economy;
2. Information on the integration of the needs of the undertaking's stakeholders into the undertaking's business model and strategy;
3. Description of the undertaking's time-bound and established sustainability goals for at least 2030 and 2050;
4. Description of the role of the undertaking's manager and the supervisory board members in the context of sustainability and their expertise and skills in this area;
5. Description of the undertaking's sustainability policies;
6. Information on sustainability incentive schemes addressed to the undertaking's managers and supervisory board members;
7. Description of the due diligence process implemented by the undertaking regarding sustainability issues (if applicable);
8. Description of the major actual or potential adverse impacts related to the undertaking's own activities and its value chain;

[6] 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).

[7] In particular, a uniform reporting standard will allow for using data in big data models, which will translate into much greater ESG transparency in companies.

9. Description of the major sustainability-related risks for the undertaking and how the undertaking manages these risks;

10. Indicators used by the undertaking regarding the information in points 1-9 above.

By way of exception, it will be permissible to **omit some information** in sustainability reporting relating to expected events or matters under negotiation, subject to the reasoned opinion of the undertaking's manager and supervisory board members (if appointed). An additional condition is that the disclosure of such information would have a materially adverse effect on the undertaking's market position.

Recognising the perspective of small and medium-sized enterprises subject to non-financial reporting obligations, they are allowed to prepare a simplified sustainability report – also in

Simplified reporting places far fewer detailed requirements on undertakings, and such undertakings can report much more general issues[8].

Importantly, sustainability reporting will be subject to attestation by an auditor (so-called attestation of sustainability reporting).

The auditor will be selected by the authority empowered to approve the company's financial statements.

Due to the attestation obligation, an array of provisions have been introduced to ensure that the auditor can reliably verify the submitted reports. Therefore, for example, the undertaking's manager will be obliged to provide the auditor with access to documents, to provide comprehensive explanations and to make relevant statements. **At the same time, the auditor will be authorised to approach the attested undertaking's contractors, banks and legal advisors.**

The sanction proposed by the government for the negligence of the persons responsible for submitting sustainability reports for auditor attestation includes a fine or restriction of liberty. Such a sanction may be imposed even if the failure to submit the report did not result in damage to third parties or in misleading third parties. In certain situations, the court may also prohibit the wrongdoer, under Article 41 §1 of the Criminal Code, from holding a certain position or practising a certain profession. The proceedings are conducted by public prosecution.

Due to the attestation obligation, a broad amendment has been introduced into the Act on Statutory Auditors, Audit Firms and Public Supervision. The amendments proposed by the government are intended to ensure that auditors have the appropriate powers and conditions required to effectively attest sustainability reporting.

[8] For instance, the simplified reporting should include (i) a brief description of the undertaking's business model and strategy, (ii) a description of the undertaking's sustainability policies and (iii) the major risks for the undertaking concerning sustainability issues and how the undertaking manages these risks.

3. Summary

The changes resulting from the CSRD must be introduced into Polish law by 6 July 2024. The publication of the government bill shows that there is a chance that the Polish government will meet this deadline. The non-financial reporting obligation will cover a lot of elements, and Polish companies should already at this point start incorporating them into their operational activities.

If you have any doubts regarding the planned legislation or would like to find out more, please do not hesitate to contact us.

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