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France Transposes Corporate Sustainability Reporting Directive Into Law

As the first EU country to transpose the CSRD into national law, France will gradually replace the EFPD with sustainability reporting under the new directive.

The Corporate Sustainability Reporting Directive (the CSRD) entered into force on 5 January 2023, replacing the previous Non-Financial Reporting Directive (NFRD) and laying out specific and expanded reporting obligations around environmental, social, and governance for relevant companies.

The CSRD will be phased in between 2024 and 2028, and applies to certain large companies or certain companies with regulated securities in the EU, as well as small- and medium-sized listed companies in the EU.¹

On 22 December 2023, the Commission Delegated Regulation² (the Delegated Regulation) was published in the Official Journal of the European Union, adopting the finalised sustainability reporting standards (ESRS). The ESRS specify what information in-scope companies are required to report under the CSRD.³ Notably, the ESRS are of direct application and, therefore, directly interact with the national transposition of the CSRD.

Annex I to the Delegated Regulation sets out the following ESRS applicable to all in-scope undertakings, namely, large undertakings, small- and medium-sized undertakings with securities admitted to trading on EU regulated markets, and parent undertaking of large groups:

- Cross-cutting standards covering general requirements (ESRS 1) and general disclosures (ESRS 2)
- Specific standards on environmental disclosures covering climate change (ESRS E1), pollution (ESRS E2), water and marine resources (ESRS E3), biodiversity and ecosystems (ESRS E4), and resource use and circular economy (ESRS E5)
- Specific standards on social disclosures covering own workforce (ESRS S1), workers in the value chain (ESRS S2), affected communities (ESRS S3), and consumers and end-users (ESRS S4)
- Specific standards on governance (ESRS G1)

Annex II sets out acronyms and a glossary of terms.

At least two additional sets of ESRS will be implemented: one setting deals with the sector-specific ESRS and the other setting deals with the ESRS to be applied by non-EU companies that fall within the scope of the CSRD (other than non-EU companies with securities listed on regulated markets). However, the European Commission proposes to delay adopting these additional ESRS by two years.

Deciphering the French Transposition

Pursuant to Article 12 of Law No. 2023-1714 — which contains provisions for adjusting French law to EU law in the fields of the economy, health, labour, transport, and agriculture (2023 DDADUE Law) — French Order No. 2023-11425 (the French Ordinance) transposed the CSRD into national law. Notably, this positioned France as the first EU country to undertake such a transposition.

The French Ordinance is accompanied by a report to the President of the Republic, which details amendments to the provisions of the French Commercial Code that relate to corporate, social, and environmental responsibility.

With the publication on 31 December 2023 of a supplementing decree⁶ (the Decree) and two additional orders⁷ (the Orders), French companies and companies listed in France with more than 500 employees, more than €40 million in sales, or more than €20 million in net balance sheet have to present their reporting according to the new rules of the CSRD, as of 1 January 2025.

Sustainability information required under the French Commercial Code

Under Article L. 232-6-3 of the French Commercial Code, information to be included in the sustainability reporting shall “provide an understanding of the impact of the company's business on sustainability matters and how these matters affect the development of the company's business, results and position”. Sustainability matters include “environmental, social and corporate governance matters”.

What information must companies report?

The information is more extensive than what was required in the French Extra-Financial Performance Declaration (EFPD), and must be reliable, comparable, and accessible in order to comply with the “double materiality” principle set out under the CSRD (namely impact materiality and financial materiality), as it must represent both:

- The company's impact on the economy, the environment, or society
- The material financial impact of sustainability on the company (e.g., the company's development, performance, and position).

The Decree and the Orders provide more detail on the type of sustainability information that in-scope companies must gather and publish, including strategy, issues, impact, indicators, etc. In particular, the sustainability information shall include a description of:

- The company's business model and strategy, indicating specifically:
 - How resilient the company's business model and strategy are, with regard to the risks associated with sustainability issues
 - The opportunities that sustainability issues present for the company

- The company's plans, including actions taken or contemplated and related financial and investment plans, to ensure the compatibility of its business model and strategy with the transition to a sustainable economy, the limitation of global warming to 1,5°C in accordance with the Paris Agreement adopted under the United Nations Framework Convention on Climate Change, and the objective of climate neutrality by 2050,⁸ and, if applicable, the company's exposure to coal-, oil-, and gas-related activities
- How the company's business model and strategy take into account stakeholders' interests and the impact of the company's activity on sustainability issues
- How the company's strategy is implemented with regard to sustainability issues
- The company's time-bound sustainability objectives and progress towards these objectives, including, when appropriate, absolute greenhouse gas emission reduction targets at least for 2030 and 2050
- The role of management, administrative, or supervisory bodies with regard to sustainability issues, as well as the skills and expertise of the members of these bodies in this respect, or the opportunities available to acquire them
- The company's policies on sustainability issues
- The existence of incentives schemes a company grants to members of its management, administrative, or supervisory bodies in relation to sustainability issues
- The due diligence process implemented by the company with regard to sustainability matters and the negative impacts identified in this context, and, where applicable, in line with European Union legislation
- The main potential or actual negative impacts connected with the company's own operations and with its value chain, the measures taken to identify, monitor, prevent, eliminate, or mitigate these negative impacts, and the results obtained
- The main risks of sustainability issues to the company, including its main dependencies, and the way in which it manages these risks

What form must the reporting take?

Companies must report sustainability information in a distinct section within the management report, as provided by Article L. 232-6-3 of the French Commercial Code. This section also contains a description of the process companies must follow to gather the relevant information.

Specific rules also apply to the annual financial reports of issuers, as provided by Articles R. 451-1, R. 451-2, and R. 518-30-3 of the French Monetary and Financial Code.

Rules governing the audit and certification of the sustainability report

The French transposition modifies the structure and provisions of Title II of Book VIII of the French Commercial Code that relates to statutory auditors in order to adapt them to the task of certifying sustainability information, specifically:

- The independent public supervisory authority, the “Haute Autorité de l’Audit”

Under the French Ordinance, as a result of extending the missions and supervisory powers of the Haut conseil du commissariat aux comptes (H3C) to entities other than statutory auditors, the authority is now renamed Haute Autorité de l’Audit (H2A). The French Ordinance also amends the powers of this authority, its governance, and its organisation. Specifically, H2A’s powers now include:

- Maintaining the list of professionals authorised to carry out sustainability audits
- Supervising professionals, in conjunction with the French Accreditation Committee (COFRAC) in the case of independent third-party bodies
- Sanctioning professionals
- Standardising the sustainability audit business⁹

In addition, the French Ordinance reorganises the composition of the “college” supervising the audit profession in France, adding competencies in the area of sustainability. It also severs the members of the disciplinary body from those of the college and reforms the prosecution procedure.

- The profession of statutory auditor

The French transposition modifies the rules governing the practice of statutory auditors insofar as they may be responsible for auditing sustainability information, thus:

- Modifying the rules governing authorisation to audit sustainability information, including transitional provisions for statutory auditors registered before 1 January 2026
- Adapting the rules governing professional ethics, independence, and professional secrecy
- Adapting the rules applicable to the appointment and dismissal of statutory auditors

- Independent third-party bodies and sustainability information auditors

Under the CSRD, France elected to open its market for sustainability information to independent assurance services providers, allowing independent third-party organisations, such as chartered accountants or external lawyers (OTI), to audit and certify sustainability reporting.

These independent third-party bodies and sustainability information auditors, along with their staff and experts, are bound by professional secrecy with regard to all facts, acts, and information that may come to their knowledge in the course of certifying sustainability information (Article L822-2 of the French Commercial Code). A number of OTI likely will be certified in the coming years, and should be permitted, in accordance with European and national law, to also certify the accounts of other European companies that are in scope of the CSRD.

Harmonising and aligning CSR obligations

When transposing the provisions of the CSRD, the French Ordinance took the opportunity, as explained in the report to the President of the Republic, to “harmonize and to proceed to consistency adjustments to the framework of ESG obligations, particularly within the Commercial Code” through three measures:

- The creation of common definitions of the different sizes of companies and groups, with the aim of rationalising the approach to thresholds within Book II of the Commercial Code. These definitions set the thresholds and calculation methods for the various criteria, determining the size categories of companies and groups of companies (balance sheet total, net sales, and average number of employees during the financial year).

French thresholds are set at €20 million for the balance sheet and €40 million for the turnover, which is lower than the CSRD thresholds that were increased further to the Commission Delegated Directive (EU) 2023/2775 of 17 October 2023 amending the Accounting Directive to €25 million for the balance sheet threshold and €50 million for the turnover threshold).¹⁰

- The unification of injunction procedures in order to guarantee the effectiveness of these different measures (Article L. 238-1 of the French Commercial Code).
- Simplification and clarification of other ESG reporting systems.

The French Ordinance also amends various French Codes, such as the Insurance Code, the Mutual Insurance Code, the Social Security Code, and the Rural and Maritime Fishing Code, respectively. The aim of these articles is to extend the new sustainability transparency provisions of the French Commercial Code to companies governed by these codes. These companies include insurance and reinsurance companies, certain mutual insurers, pension funds, and agricultural cooperatives. The articles provide for technical adjustments, mirroring the accounting rules that apply to the aforementioned companies. In addition, the French Ordinance amended the French Environment Code to harmonise obligations relating to a balance sheet and a plan to measure and reduce greenhouse gas emissions on national territory, as well as measures to combat food waste.

Sanctions

Injunctions

An injunction, subject to a penalty, may be sought by any “interested party” before Court under interim proceedings to obtain the production, communication, or transmission of documents or information relating to sustainability, or the appointment of an agent to carry out such communication (Article L. 238-1 of the French Commercial Code). It is not yet clear how this will be interpreted and whether it effectively gives standing to a large number of potential parties, which could include shareholders, employees, community members, and customers (among others). Notably, this development could lead to a rise in activist litigation in France.

Criminal sanctions

French law also stipulates criminal sanctions for:

- Failing to appoint an auditor or independent third-party organisation, with a fine of up to €30,000 and imprisonment up to two years for company director(s) and a fine up to €150,000 for the legal entity
- Failing to convene the auditor or independent third-party organisation, with a fine of up to €30,000 and imprisonment up to two years for the company director(s) and a fine up to €150,000 for the legal entity
- Obstructing audits or controls by the auditor or independent third-party organisation or their experts, with a fine of up to €75,000 and imprisonment up to five years for the company director(s) and a fine up to €375,000 for the legal entity

- Refusing the auditor or independent third-party organisation or their experts on-site access to all documents required for the performance of their duties and, in particular, to all contracts, books, accounting documents, and minute books, with a fine up to €75,000 and imprisonment up to five years for the company director(s) and a fine up to €375,000 for the legal entity

In addition, specific sanctions apply in case of appointment of an auditor or independent third-party organisation in breach of the rules of independence (Articles 822-30 and 822-32 of the French Commercial Code).

Exclusion from public procurement and concession contracts

Companies that do not comply with their obligation to publish sustainability information can be excluded from public procurement and concession contracts.

This exclusion, applicable from 1 January 2026, applies to public procurement and concession contracts for which a consultation is launched or an advertising notice is sent for publication from this date (Article 36 of the French Ordinance).

No change to the civil and administrative liability regimes

As noted in the Report of the French Haut Comité Juridique de la Place Financière de Paris on the CSRD, dated 25 October 2023:

- The CSRD does not amend the French corporate civil liability regime of in-scope companies, nor that of company directors set out in Article L.225-251 of the French Code de commerce, which provides that directors and chief executive officers are liable individually or jointly and severally for statutory or regulatory provisions, breaches of the company's bylaws, and misconduct in their management.
- The publication of inaccurate sustainability information and failure to meet voluntary commitments could already constitute previous wrongful misconduct likely to give rise to civil liability for companies and their directors.
- The CSRD does not introduce new specific administrative sanctions applicable to listed companies (contrary to what was initially envisaged during the preparatory work on the CSRD). The rules applicable to the quality of information disseminated to the public and those applicable to market abuse will, therefore, continue to apply to sustainability information. The French Autorité des Marchés Financiers has presented its action plan and supervisory priorities for 2024, specifying that one of its main priorities is to assist issuers with their first publication of sustainability reports.

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Endnotes

¹ Latham Client Alert: [The EU Corporate Sustainability Reporting Directive — How Companies Need to Prepare](#).

² Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023.

³ Latham Client Alert: [ISSB Issues Global Sustainability Disclosure Standards](#).

⁴ Article 12 of Law No. 2023-171 of 9 March 2023 containing various provisions for adapting French law to EU law in the fields of the economy, health, labour, transport, and agriculture.

⁵ French Order No. 2023-1142 of 6 December 2023, on the publication and certification of sustainability information and environmental, social, and corporate governance obligations of commercial companies.

⁶ Decree No. 2023-1394 of December 30, 2023, implementing Ordinance No. 2023-1142 of December 6, 2023 on the publication and certification of sustainability information and the environmental, social and corporate governance obligations of commercial companies.

⁷ Order of December 28, 2023 amending Title II of Book VIII of the French Commercial Code and Order of December 28, 2023 implementing Article 37 of Ordinance No. 2023-1142 of December 6, 2023 on the publication and certification of sustainability information and the environmental, social and corporate governance obligations of commercial companies.

⁸ As set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council.

⁹ Notably, the previous H3C set up a working group on CSRD, chaired by the H3C chairperson and including stakeholders with a particular interest (representatives of the H3C, statutory auditors, and assurance services providers). This working group issued guidelines in June 2023 aimed at describing the work expected from practitioners and how they should express their assessments.

¹⁰ Commission Delegated Directive (EU) 2023/2775 of 17 October 2023 amending the Accounting Directive as regards the adjustments of the size criteria for micro, small, medium-sized and large undertakings or groups.