



By Email (CSR@enterprise.gov.ie)

Our ref SMcM/UMcM

9 March 2023

Dear Minister

Corporate Sustainability Reporting Directive

We write in relation to the public consultation on the Corporate Sustainability Reporting Directive (EU) 2022/2464 (the "**CSR**") and in particular the Department of Enterprise, Trade and Employment's (the "**Department**") request for the views of stakeholders and interested parties on the transposition of the CSR into Irish law.

We welcome the aims of the CSR and thank the Department for opening this consultation and for giving interested parties an opportunity to engage in the process.

Scope and Phasing

In addition to seeking the views of interested parties with regard to the Member State options set out in its Appendix 1, we note that the consultation document encourages questions on all aspects of the CSR. It cites, by way of example, 'Scope and Phasing'. On this note, we seek clarification in relation to the type of entities to be captured within the first phase of reporting under the CSR. There appears to be ambiguity on this point when one looks at:

1. the text of Article 5 of the CSR itself;
2. the entities subject to Ireland's non-financial reporting rules following the transposition of the Non-Financial Reporting Directive 2014/95/EU (the "**NFR**") into Irish law; and
3. the Department's description, in the public consultation document, of the phasing of the reporting requirements.

Article 5 (2) of CSRD provides that:

"Member States shall apply the measures necessary to comply with Article 1, with the exception of point (14):

- (a) *for financial years starting on or after 1 January 2024:*
 - (i) *to large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU **which are public-interest entities** as defined in point (1) of Article 2 of that Directive exceeding on their balance sheet dates the average number of 500 employees during the financial year;*
 - (ii) *to **public-interest entities** as defined in point (1) of Article 2 of Directive 2013/34/EU which are parent undertakings of a large group within the meaning of Article 3(7) of that Directive exceeding on its balance sheet dates, on a consolidated basis, the average number of 500 employees during the financial year;*
- (b) *for financial years starting on or after 1 January 2025:*
 - (i) *to large undertakings within the meaning of Article 3(4) of Directive 2013/34/EU, other than those referred to in point (a)(i) of this subparagraph;*
 - (ii) *to parent undertakings of a large group within the meaning of Article 3(7) of Directive 2013/34/EU, other than those referred to in point (a)(ii) of this subparagraph;...."*

CSRD is expressed to expand the scope of existing non-financial reporting arising under the NFRD. NFRD was implemented in Ireland by the European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017 (as amended) ("**NFR Ireland**"). Companies which are "ineligible entities" as defined by the Companies Act 2014 are within the scope of NFR Ireland. The definition of "ineligible entity" includes all public companies, regardless of where they are listed. This results in certain large Irish incorporated companies listed outside the EU currently being required to report non-financial information under NFR Ireland. The application of NFR Ireland is broader than that of the NFRD which applies to "public-interest entities". On that basis, it is clear that Ireland's current non-financial reporting rules under NFR Ireland cast their net wider than NFRD.

The Department states the following in the public consultation document:

"Ireland and other Member States now have 18 months to transpose the Directive i.e., July 2024, with a view to mandatory requirements commencing for financial years on or after:

- *1st January 2024 for companies and public interest entities **in scope of the existing rules** (greater than 500 employees);*
- *1st January 2025 for other large companies and public interest entities (greater than 250 employees); and*
- *1st January 2026 for listed SMEs, with an 'opt out' possible until 2028.*
- *1st January 2028 for subsidiary undertakings and branches of non-EU companies"*

Clarification sought

On the basis of the above, it is currently unclear as to whether Ireland's legislation to transpose the CSRD proposes to capture, in the first phase of reporting, large Irish incorporated companies listed outside the EU which are currently reporting under NFR Ireland but which are not, in fact, public-interest entities under NFRD. Article 5 of the CSRD indicates that these entities would instead be captured one year later, within the second reporting phase of the CSRD.

Given the expansion in depth and scope of reporting under the CSRD regime, and the level of preparedness required to comply with its requirements, your clarification on this point would be most welcome.

Yours sincerely

Sent by email, bears no signature

MATHESON

ⁱ Only undertakings already reporting under NFRD. Under Ireland's rules these are 'ineligible entities' in the Companies Act 2014