Corporate Sustainability Obligations in the EU: France Urges the EU To Postpone the Application of Adopted EU Directives

Article By:

Jacques Derenne

Oliver Heinisch

Clélia Jadot

Célia Sanchez

On 20 January 2025, France published a memorandum urging the EU to modify the Corporate Sustainability Reporting Directive (Directive 2022/2464, "CSRD"), and to postpone the application of the Corporate Sustainability Due Diligence Directive (Directive 2024/1760, "CS3D"). France's statements resonate with the series of Executive Orders aiming in the U.S. at various markets deregulations, although to a lesser degree.

The CSRD and the CS3D

Under EU law, a 'directive' (unlike a 'regulation') must be implemented by Member States into their own national legislation in order to be applicable. Member States should comply with the objectives of the directive, although they have the choice of the means to attain its objectives. Member States have a deadline to comply with this implementation obligation.

The CSRD

The CSRD entered into force on 5 January 2023 and the implementation deadline expired on 6 July 2024. France implemented it on time, but the European Commission opened infringement procedures before the Court of Justice of the European Union against 17 other Member States in September 2024. To date, the European Commission is still waiting for 8 Member States to implement the directive.

The CSRD requires EU large undertakings ("entreprises" in EU jargon), as well as EU and non-EU listed companies (excluding micro-undertakings) to report sustainability information at individual level.[1] The CSRD also provides for consolidated sustainability statements and corresponding exemptions at individual level. Moreover, non-EU undertakings with a net EU turnover above EUR 150 million are targeted if they have EU subsidiaries covered by the CSRD or branches with net EU turnover above EUR 40 million. In that case, it is up to the EU subsidiary or branch to make available the sustainability report, except if exemptions apply.

The sustainability statement is public and contains non-financial information on the social and environmental risks the company faces, and how its activities impact people and the environment. It is redacted according to the European Sustainability Reporting Standards (ESRS), and is supposed to improve the quality, consistency and comparability of sustainability information provided by companies.

The timeframe for applying the CSRD differs depending on the type of undertaking: FY 2024 for large undertakings which are public interest entities with more than 500 employees; FY 2025 for other large undertakings; FY 2026 for listed small and medium-sized undertakings (“SMEs”)[2]; and FY 2028 for non-EU undertakings with net EU turnover above EUR 150 million (through their subsidiary or branch).

For details please see our previous article here.

The CS3D

The CS3D entered into force on 25 July 2024 and the implementation deadline will expire on 26 July 2026. France has not implemented it yet.

The aim of the CS3D is to foster sustainable and responsible corporate behaviour in companies’ operations and across their global value chains. The CS3D establishes a corporate due diligence duty. The core elements of this duty are identifying and addressing potential and actual adverse human rights and environmental impacts in the company’s own operations, their subsidiaries and, where related to their value chain(s), those of their business partners.

The CS3D applies to EU limited liability companies and partnerships with more than 1,000 employees and a net worldwide turnover of more than EUR 450 million, as well as ultimate parent companies of a corporate group that meets the thresholds on a consolidated basis, and franchisors/licensors meeting certain conditions and thresholds. It also applies to non-EU undertakings of a legal form comparable to LLCs/partnerships with a net turnover of more than EUR 450 million generated in the EU, as well as ultimate parent companies of a corporate group that meets the threshold on a consolidated basis, and franchisors/licensors meeting certain conditions and thresholds.

The timeframe for applying the CS3D differs depending on the type of undertaking: July 2027 for EU companies with more than 5,000 employees and EUR 1,500 million worldwide turnover, as well as non-EU companies with more than EUR 1,500 million turnover generated in the EU; July 2028 for EU companies with more than 3,000 employees and EUR 900 million worldwide turnover, as well as non-EU companies with more than EUR 900 million turnover generated in the EU; and July 2029 for all other companies in scope.

France’s memorandum

France’s memorandum comes in the context of criticism of both directives. Member States like Italy or Germany, as well as stakeholders, recently alleged that they would hamper the competitiveness of the EU as compared to other regions. Even certain third countries have voiced concerns over the application of the CS3D, particularly if it resulted in fines. They claim that it imposes excessive compliance costs and creates unnecessary challenges for their companies, making them reconsider their involvement in the EU market.

France sees the need for action confirmed by Mario Draghi’s report[3] of 9 September 2024 on the future competitiveness of the EU and his diagnosis of loss of competitiveness vis-à-vis its main international competitors and in particular in the absence of a level playing field.

For the French authorities, the proportionality of the CSRD framework is no longer ensured in light of the very substantial competitive challenges that EU companies are facing. Therefore, they are in favour of the urgent adoption of several modifications including;

- the reduction of the number of sustainability indicators and a narrowed focus on climate objectives;
- the introduction in the Accounting Directive of the notion of “mid-caps”, i.e. intermediate-sized companies positioned above current SMEs and below large companies, to which SMEs ESRS would apply;
- the introduction in the CSRD of a principle of capping reporting in the subcontracting chain of large companies;
- the provision in the Accounting Directive for the inclusion of fees for auditing sustainability information in the annex to the company accounts.

As a subsidiary option, France is also open to a two-year postponement of the entry into force of the provisions of the CSRD.

With respect to the CS3D, France submits that the new CS3D obligations entail a number of potential risks identified by companies and likely to affect their competitiveness, including in relation to non-EU companies not subject to these same standards. Therefore, the French authorities are in favour of an indefinite postponement of the entry into force of the CS3D, to allow the incorporation of several adjustments, among which;

- the limitation of the personal scope to EU companies with more than 5,000 employees and EUR 1,500 million worldwide turnover, as well as non-EU companies with more than EUR 1,500 million turnover generated in the EU;
- the application of due diligence at group level instead of subsidiary level;
- the creation of a single EU supervisory authority, which would be explicitly endowed with a support and mediation role;
- the deletion of additional requirements for regulated financial companies, in order to treat the latter similarly to companies in other sectors.

France’s proposal goes well beyond the two above Directives and suggests comprehensive changes to other regulatory instruments including in relation to AI, Taxonomy, Environmental Data Reporting, Banking Sector Standards, State Aid Procedures, Agricultural Aid, Securitisation Market, REACH Regulation, Biomass Installations, Waste Classification Harmonisation, Agricultural Sector Simplifications.

Conclusion

France also seems to be adopting a position of reducing, or at least simplifying, regulation (to a lesser extent than the United States), in order to enable its companies to remain competitive. This approach is not limited to the issue of sustainability, but also covers areas such as agriculture and AI, which are crucial for the coming years.

To what extent France will succeed with its initiative is open. Ultimately, the proposal requires a comprehensive regulatory simplification agenda with a broad scope to enhance EU competitiveness and alleviate administrative burdens, particularly for SMEs and mid-sized companies.

While postponement might be easily achieved, substantive changes will require EU institutions to reopen the dialogue which is feared to postpone the implementation of the directives indefinitely. On the other hand, the burdensome rules have been widely criticised and de-regulation is the buzz-word of the moment. It is not unlikely that more countries will jump on the bandwagon which would give France's initiative further momentum.

Companies are well advised to monitor this development carefully. Until an EU level consensus is reached, national laws in France and across the EU will continue to apply. Independent initiatives by EU Member States to postpone or amend their rules could be in breach of their obligations of the Directive, which will make a national solo-action less likely.

FOOTNOTES

[1] Under the EU Accounting Directive 2013/34, micro-undertakings do not exceed the limits of at least two of the three following criteria: total balance sheet total of EUR 450,000; net turnover of EUR 900,000; or average number of 10 employees during the financial year. Large undertakings exceed at least two of the three following criteria: total balance sheet of EUR 25,000,000; net turnover of EUR 50,000,000; or average number of 250 employees during the financial year.

[2] Under the EU Accounting Directive 2013/34, small undertakings do not exceed the limits of at least two of the three following criteria: total balance sheet total of EUR 5,000,000; net turnover of EUR 10,000,000; or average number of 50 employees during the financial year of; medium-sized undertakings do not exceed the limits of at least two of the three following criteria: total balance sheet total of EUR 25,000,000; net turnover of EUR 50,000,000; or average number of 250 employees during the financial year.

[3] Mr. Draghi was the President of the European Central Bank and a former Italian Prime Minister; he was mandated by the European Commission to draft a report on the future competitiveness of the EU.

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