more than law

Regular contact with an adviser?

Poland: draft bill implementing the EU Corporate Sustainability Reporting Directive (CSRD) has been published

On 19 April 2024, a draft of amendments to the Accounting Act, the Act on statutory auditors, audit firms and public supervision and certain other acts was published on the website of the Government Legislation Centre, implementing the following EU directives:

- 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 (CSRD)
- commission Delegated Directive (EU) 2023/2775 of 17 October 2023 amending Directive 2013/34/EU of the European Parliament and of the Council as regards the adjustments of the size criteria for micro, small, medium-sized and large undertakings or groups

Below, we present the most important changes.

Details of proposed changes

CSRD requires all large companies and all listed companies (except listed micro-enterprises) to disclose information on what they see as the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment. Companies subject to the CSRD will have to report according to European Sustainability Reporting Standards (ESRS). These standards apply to companies under the scope of the CSRD regardless of which sector they operate in. They are tailored to EU policies, while building on and contributing to international standardization initiatives (like Global Reporting Initiative standards).

The proposed law introduces changes consisting of:

- defining entities required to prepare sustainability reports;
- defining entities exempt from the obligation to prepare sustainability reports;
- imposing obligation to prepare reports in accordance with the ESRS;
- introducing attestation requirement for sustainability reporting;
- introducing rules for experts to acquire credentials to attest sustainability reporting.

Sustainability reports will be prepared in accordance with ESRS, which are issued as an executive act of the European Commission. Currently, the first set of standards has been issued. The standards are composed of 2 cross-cutting standards (ESRS 1 and ESRS 2) and 10 topical standards covering all environmental, social and corporate governance topics (ESRS E1-E5, ESRS S1-S4, ESRS G1).

Moreover, sectoral standards are being developed to be used alongside the basic ESRS, as well as standards for small and medium-sized listed entrepreneurs. Adoption of standards for third-country entrepreneurs is planned for 2026.

Sustainability reports will be subject to auditor's examination. It may be the same expert who audits the financial statement or another who is authorized to audit sustainability reports. According to the bill, all the auditors who were authorized to audit financial statements on January 1, 2024 will be qualified to audit sustainability reports by virtue of law. However, they will have to undergo additional training within two years. Otherwise, they will no longer be eligible to audit sustainability reports.

Entry into force

The requirement to prepare and publish the report will be introduced in stages:

- 2025 for 2024 – listed companies having more than 500 employees and meeting one of the criteria: total assets over PLN 110 [EUR 25] million or net income over PLN 220 [EUR 50] million;
- 2026 for 2025 – large companies (meeting two of the criteria: total assets over PLN 110 [EUR 25] million or net income over PLN 220 [EUR 50] million or more than 250 employees) and large groups (meeting two of the criteria: total assets over PLN 132 [EUR 30] million or net income over PLN 264 [EUR 60] million or more than 250 employees);
- 2027 for 2026 – medium (meeting two of the criteria: total assets less than PLN 110 [EUR 25] million or net income less than PLN 220 [EUR 50] million or less than 250 employees) and small (meeting two of criteria: total assets less than PLN 33 [EUR 7,5] million or net income less than PLN 66 [EUR 15] million or less than 50 employees) listed companies;
- 2028 for 2027 – subsidiaries or branches within the scope of the corporate group of the ultimate parent from a third country or an independent entity from a third country provided that:
    - the subsidiary is a listed small or medium-sized enterprise or a large enterprise and the ultimate parent has generated net revenue from the sale of goods and services exceeding 150 million EUR at the group level for each of the last 2 financial years within the European Union;
    - the branch has generated in the preceding financial year net revenue from the sale of goods and services exceeding 40 million EUR and ultimate parent's net revenue from the sale of goods and services exceeded 150 million EUR for each of the last 2 financial years within the European Union.

Korean undertakings

Sustainability reporting for third-country entities (including Korean entities) is prepared in accordance with:

1) sustainability reporting standards for third-country entities (to be adopted in mid-2026);
2) ESRS or standards recognized as equivalent by the Executive Act on Equivalence of Sustainability Reporting Standards (Executive regulations establishing equivalent standards have not been adopted yet, is not possible to determine whether the draft Korean Sustainability Disclosure Standards, which were published in April 2024, will be considered equivalent).

What is more, subsidiary is exempt from the requirement to prepare sustainability report if it is included in the sustainability report of the third-country parent's corporate group.

Exemption from the obligation to prepare corporate group sustainability report for a subsidiary parent company applies if that company and its subsidiaries will be included in corporate group sustainability report of the higher-level parent company:

- from EEA country
- from a third country

The above exemptions do not apply to a large entity that is an issuer of securities in the EEA.

Selected risks arising from CSRD implementation

Sustainability report preparation is a complicated, long-term and resource-intensive process. Part of the data will be published obligatorily, whilst the publication of the remaining data depends on conducting a double materiality analysis. It is a concept that provides criteria for determining whether sustainability information is required to be disclosed. The CSRD describes double materiality as the requirement to report both on the impacts of the activities of the undertaking on people and the environment impact materiality, and on how sustainability matters affect the undertaking financial materiality. Sustainability information meets the criteria of double materiality if it is material from the impact perspective, the financial perspective, or both perspectives.

The main risks are related to adequate time-planning to carry out the process, including arrangement of the process. Some of the reportable data must be obtained from external parties, including contractors. This involves the need to contractually guarantee access to data.
In addition, during the preparation, the report may reveal that some procedures or policies have not been implemented at a particular entity. The reports will be read by stakeholders, including financing entities such as banks that place a high emphasis on ESG issues.

Recommendation

Given the above, we recommend analyzing whether branches or subsidiaries of entrepreneurs from so-called "third countries" operating in Poland or other EU countries meet the conditions subjecting them to the new reporting obligations. Third-country entities should decide on the method of reporting.
When subject to the obligations, the process of preparing the sustainability report should be preceded by a double materiality analysis, as well as a gap analysis of the data planned to be presented in the report. Consequently, even if an entrepreneur will be obliged at a later date, he should start the process sooner.

Who will my adviser be?

Katarzyna Kuźma
Partner | Infrastructure and Energy Practice | Head of Korean Desk
E: katarzyna.kuzma@dzp.pl
M: +48 660 440 310

She has extensive experience in advising both public and private entities on projects carried out in the traditional form (public procurement) and those based on partnership structures in the broad meaning of the term (PPP, concessions). She also advises clients in the waste management sector, including on infrastructure investments.

Joanna Róg-Dyrda, PhD

Counsel | Capital Markets and Financial Institutions

E: joanna.rog-dyrda@dzp.pl

M: +48 729 055 209

Joanna advises brokerage houses, investment funds, banks and payment institutions on the preparation of private and public share offerings, bond issues and incentive programmes, and also provides day-to-day advice on the fulfilment of disclosure obligations by issuers, members of their bodies and shareholders.

Seung Joo Lee

Regional Business Development Director | Korean Desk

E: seungjoo.lee@dzp.pl

M: +48 532 724 831

Specializing in managing and supporting foreign investors for a soft landing in Poland and Ukraine, he guides clients through the initial steps of entering the Polish and Ukrainian markets and continues to provide support throughout their ongoing business operations.