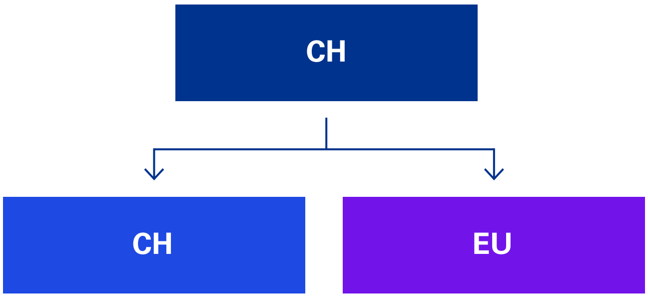
CSRD:
Applicability for Swiss Companies

Reporting requirements for non-EU companies become clearer
December 2022

Agreement reached by European legislative bodies, and further reporting clarity for non-EU companies.

Source and applicability

- Corporate Sustainability Reporting Directive (CSRD) (pdf (europa.eu))
- Companies with listed securities in the EU, some non-EU parents (including Swiss parent companies) of EU subsidiaries, and non-EU subsidiaries of EU parents that meet the scoping requirements.



Fast facts, impacts, actions

The CSRD will amend and significantly expand the existing EU requirements for sustainability reporting. The directive was adopted by the European Parliament and the European Council in November 2022. After signature and publication in the EU Official Journal member states of the EU have 18 months to transpose the CSRD into national law. The rules will start applying between 2024 and 2028. Notwithstanding that the CSRD is an EU Directive, there are considerable ESG reporting implications for Swiss and other non-EU based companies, in addition to local (Swiss) requirements in the Code of Obligation.

The following overview highlights the impact on a Swiss (or other non-EU) parent of an EU subsidiary.

- The CSRD includes **different scoping requirements** for non-EU parent companies, which are based on a combination of physical presence in the EU (e.g. a subsidiary) and net turnover (revenue) generated in the EU.
- There will be a **separate disclosure standard** for non-EU parent companies in the scope of the CSRD; such reporting will cover the parent's consolidated group – i.e. not just its EU subsidiaries.
- **Reporting exemptions** will reduce – but not eliminate – the reporting obligations of EU subsidiaries and non-EU parent companies.

For Swiss and other non-EU based companies that had been waiting for further clarity on the scope and reporting requirements under the CSRD, that clarity has been provided. **Get started** by analyzing your group structure to identify potential reporting obligations.

Background

The existing EU requirements to publish nonfinancial statements from the Non-Financial Reporting Directive (NFRD) – EU Directive (2014/95/EU) will significantly expand. The NFRD currently applies to so-called 'public interest entities', meaning listed companies, banks, and insurance companies with more than 500 employees.

The CSRD will amend and significantly expand the existing EU requirements for sustainability reporting – both in terms of the number of companies in scope and the nature of the sustainability reporting. It is estimated that the scope will extend from 12,000 to around 50,000 companies just in the EU. The European Commission originally proposed the CSRD in April 2021. After various counter-proposals, the European legislative bodies reached provisional agreement on the CSRD in June 2022, leading to he final approval by the European Comission in November 2022.

One of the provisions in the CSRD introduces the requirement for companies in scope to report sustainability information based on European Sustainability Reporting Standards (ESRSs). Further, it requires the European Commission to adopt an initial set of ESRSs (drafted by the European Financial Reporting Advisory Group, or EFRAG) by June 2023 and additional standards in following years.

In April 2022, the newly created EFRAG Sustainability Reporting Board issued its first set of draft ESRSs for public comment (find our comment letter here). After the analysis of the received comments in August 2022 and its submission to the EFRAG Sustainability Reporting Board and the EFRAG Sustainability Reporting technical expert group (TEG) in September 2022, the finished proposals were handed over to the European Comission in November 2022. To understand this first set of draft ESRS, see our break down of the topic here. There will be a separate standard for reporting by an ultimate non-EU parent company that is in scope of the CSRD – an exposure draft is expected in the first half of 2023.

The CSRD is just one component of a number of sustainability-related regulations under the European Green Deal that include reporting obligations – e.g. EU Taxonomy disclosures. Read our publication on Taxonomy Regulation: Impact on Swiss Financial Institutions.

Scoping requirements

The CSRD applies different scopes for EU versus non-EU based companies – referred to in this Defining Issues as 'general' vs 'non-EU parent' scoping. Whereas the general scoping depends on listing status or size, the non-EU scoping is based on a combination of physical presence in the EU and net turnover (revenue) generated in the EU. This interplay of requirements, plus related reporting exemptions, can make the scoping analysis complex.

General scoping

The CSRD applies to all companies operating in the EU and their subsidiaries (EU-based companies) that meet the following general scoping requirements.

- Large companies or large groups (i.e. a company including all its subsidiaries on a consolidated level) that meet at least two of the following:
  > 250 employees;
  > €40M net turnover (revenue);
  > €20M total assets.

- Companies with listed securities in the EU other than 'micro-companies'. A micro-company meets at least two of the following: < 10 employees; ≤ €2M net turnover; ≤ €2M total assets.

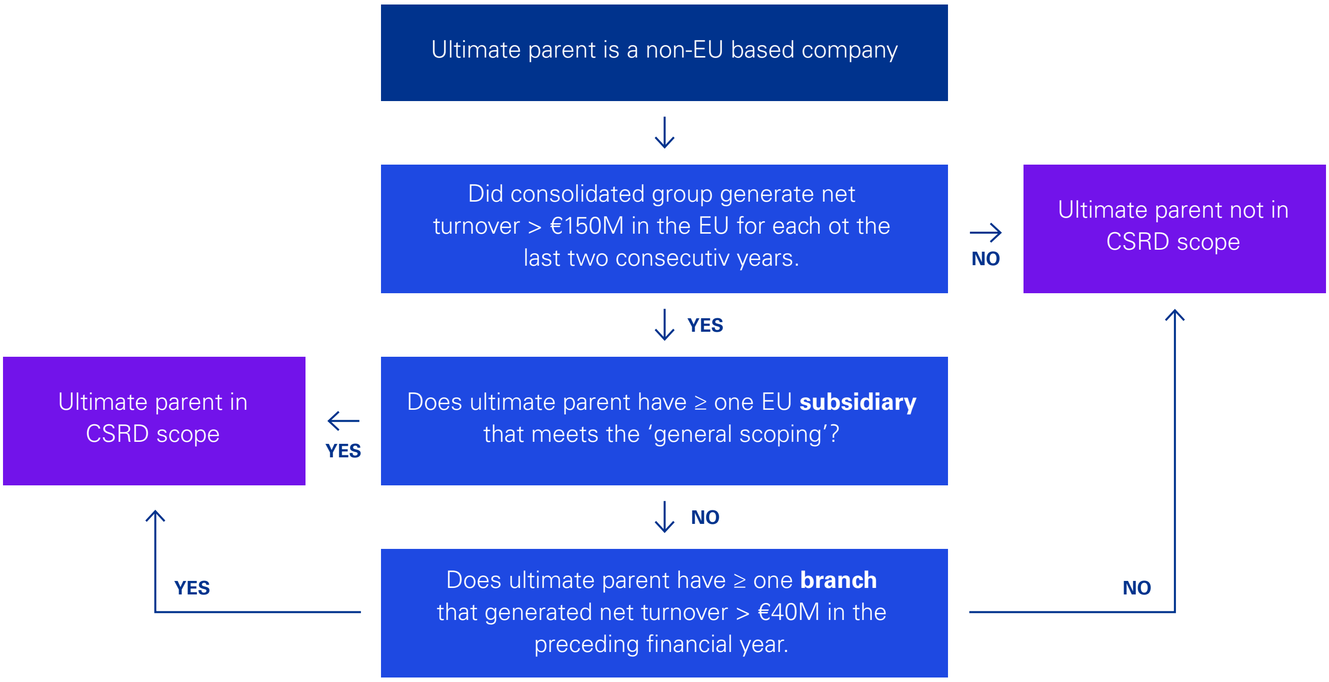
The general scoping includes large subsidiaries of non-EU parents – i.e. all EU companies will be subject to testing under the above criteria regardless of the origins or domicile of their ownership.

Non-EU parent scoping

Irrespective of the general scoping described above, an ultimate non-EU parent company will be subject to the CSRD if it has:

- substantial activity in the EU – i.e. it generated net turnover greater than €150M in the EU for each of the last two consecutive years; and
- at least:
– one subsidiary that meets the general scoping of the CSRD; or
– one branch (in general, a physical presence) that generated net turnover greater than €40M in the preceding year.

The following decision tree summarizes application of the non-EU parent scoping.



For an ultimate non-EU parent company that is subject to the CSRD, reporting will cover the entire group – i.e. from the perspective of the parent. However, there will be a separate disclosure standard. The disclosure requirements under the non-EU parent scoping are expected to be slightly reduced compared to those under the general scoping for which the first set of exposure drafts has been submitted.

Further, any subsidiary that meets the general scoping will nonetheless be in the scope of the related disclosures that apply to EU-based companies.

Reporting exemptions

The exemption regime for consolidated sustainability reporting operates independent from the exemption regime for consolidated financial statements and consolidated management reports.

The following exemptions will be available under the CSRD:

- **The group exemption.** If a parent makes available a CSRD-compliant sustainability report that includes the entire group, all in-scope subsidiaries will be exempt from preparing their own sustainability reports. However, this exemption will not apply to subsidiaries under the general scoping that are large public interest entities (e.g. entities whole transferrable securities are admitted to trading on regulated markets governed by the law of a member state of the EU but excluding credit institutions, insurance companies and companies designated as PIE by Member States). Therefore, these subsidiaries will still be required to prepare a stand-alone CSRD-compliant report.

It is **not yet clear** whether the group exemption would apply to:

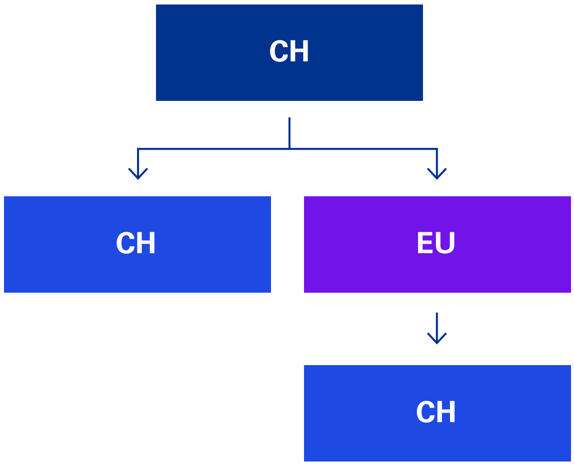
- reports that comply with the full set of ESRSs under the general scoping and reports prepared by an ultimate non-EU parent company under the non-EU parent scoping; or
- only CSRD reports that comply with the full set of ESRSs.

- **The ultimate non-EU parent exemption.** If a non-EU parent has multiple subsidiaries in the EU that meet the general scoping, for the first seven years one of the largest EU subsidiaries will be allowed to prepare a consolidated sustainability report that includes only those subsidiaries that fall under the general scoping. This report will need to follow the reporting requirements specific to the general scoping.
- **The equivalency exemption.** The European Commission has the power to designate individual sustainability reporting frameworks or reporting regimes as 'equivalent' to reporting under the CSRD. See: Use of other sustainability reporting frameworks.

Examples

The following examples highlight the proposed requirements for Swiss and other non-EU based companies.

Example 1: EU activity is not substantial

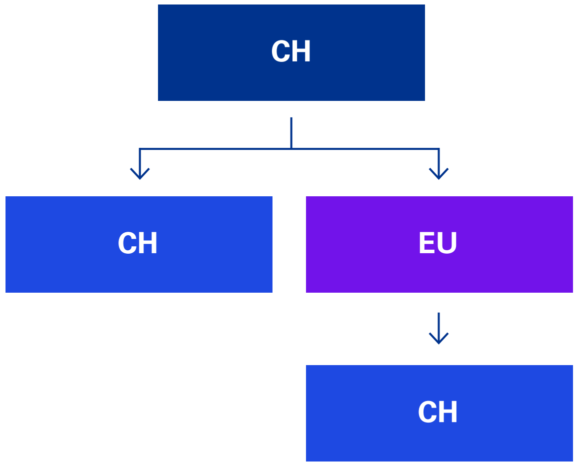


The EU subsidiary (not a public interest entity) with 300 employees had average net turnover of €60M in each of the past two years and has total assets of €30M. Neither the Swiss parent nor the other subsidiaries generate turnover in the EU.

Analysis

- The EU subsidiary (i.e. including the CH subsidiary) will be required to prepare a stand-alone CSRD-compliant report under the general scoping.
- The Swiss parent will not be subject to the CSRD because it does not meet the non-EU parent scoping – i.e. Swiss consolidated group did not generate net turnover of €150M in the EU in each of the past two years.

Example 2: EU activity is substantial



The same as Example 1 except that the group had net turnover generated in the EU of €175M in each of the past two years.

Analysis

- Like Example 1, the consolidated EU subsidiary (i.e. including the CH subsidiary) will be required to prepare a stand-alone CSRD-compliant report under the general scoping.
- Unlike Example 1, the Swiss parent will be subject to the CSRD because it meets the non-EU parent scoping – i.e. the Swiss consolidated group generated net turnover of over €150M in the EU in each of the past two years. However, if the Swiss parent files a CSRD-compliant sustainability report that includes the entire group, then the consolidated EU subsidiary can apply the group exemption. But see insight on the form of the report.

Use of other sustainability reporting frameworks

A non-EU company can fulfill its reporting requirements by applying either:

- the CSRD as drawn up (i.e. applying ESRSs); or
- a similar sustainability reporting framework that is considered 'equivalent' by the European Commission.

Although the Commission has not yet determined what will be considered an equivalent sustainability reporting framework, it will likely use the following criteria:

- whether the other framework requires companies to disclose information on environmental, social and governance matters; and
- whether the other framework requires companies to disclose information necessary to understand the company's impacts on sustainability matters, and how sustainability matters affect the company's development, performance and position (so-called double materiality).

Effective dates

Large public interest entities with more than 500 employees that are also large under the general scoping need to apply ESRSs for 2024 year-ends (reporting in 2025); other companies, including small and medium-sized companies with listed securities in the EU, would follow in a phased application. An ultimate non-EU parent company under the non-EU parent scoping would need to apply the applicable ESRSs for its 2028 year-end (reporting in 2029). Limited assurance over the entire CSRD-compliant report – under both the general and non-EU parent scoping – would be required initially, with the intent of moving to reasonable assurance in time.

Further considerations for Swiss companies

Swiss companies can be affected by newly introduced reporting requirements in Switzerland (amended Code of Obligation) in addition to the CSRD. Swiss companies will therefore need to analyze carefuly, whether they are in scope of Swiss requirements, EU requirements or both and how to address potential gaps best.

Next steps

The following are next steps for the items discussed in this Defining Issues.

- **CSRD approval.** The CSRD was approved by the European Parliament and the European Comission in November 2022. After publication in the Official Journal of the EU plus 20 days, member states (which will also enforce the CSRD) have 18 months to transpose it into national law.
- **ESRSs under the general scoping.**
  - **First set of ESRSs.** Following the submission of EFRAG's technical recommendations ('advice') to the European Commission in November 2022, it will have to adopt the ESRSs for them to become effective. These ESRSs are expected to be adopted by the Commission by June 30, 2023.
  - **Additional sets of ESRSs.** Exposure drafts of additional standards have not yet been released. They are expected to contain sector-specific proposals, and proposals for small and medium-sized entities. ESRSs for small and medium-sized entities and for the first high-priority sectors are expected to be adopted by the Commission by June 30, 2024.
- **ESRS under the non-EU parent scoping.** An exposure draft relevant to the non-EU parent scoping is expected in the first half of 2023, and is expected to be adopted by the Commission by June 30, 2024.

Resources

For further guidance on the CSRD and related developments, we recommend the following KPMG resources as a starting point:

- KPMG comprehensive collection of thought leadership around ESG
- Talk book with Top 10 Q&A, Get ready for European Sustainability Reporting Standards

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