



# The EU's Corporate Sustainability Framework & CBAM

11 October 2023

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# Ales Bartl

- ◆ Ales has a broad experience in EU product regulatory law, including REACH, CLP, POPs, biocidal legislation, medical devices, electronic products, and product safety. He advises on regulatory compliance of a broad range of products marketed in the EU and represents clients before EU and national competent authorities on compliance and enforcement issues. Ales represents clients before the European Court of Justice and the Board of Appeal of ECHA



# Marie Escorneboueu

- ◆ Marie Escorneboueu counsels clients on regulatory and compliance matters related to food and drug law, with an emphasis on food and drug packaging, cosmetics, chemical control, and environmental issues.
- ◆ She assists companies in obtaining regulatory clearances for food-contact materials at the European Union (EU) and Member State level and advises clients with respect to mutual recognition. She also advises companies on sustainability initiatives; REACH matters; the Classification, Labelling, and Packaging (CLP) Regulation; and Biocidal Products Regulation (BPR).



# The EU's Sustainability Framework

- ◆ **Set of initiatives addressing corporations' environmental and social governance**
  - ◆ Information gathering:
    - Proposal for a Corporate Sustainability Due Diligence Directive ('**CSDDD**')
    - Regulation (EU) No 2020/852 ('**Taxonomy Regulation**')
  - ◆ Reporting:
    - Directive (EU) No 2022/2464 on Corporate Sustainability Reporting ('**CSRD**')



# Corporate Sustainability Due Diligence Directive (CSDDD)



# CSDDD

## ◆ Corporate Sustainability Due Diligence Directive

- ◆ Proposal issued on 23 February 2022
- ◆ **Status:** pending before the EP and the Council, partial vote at 1<sup>st</sup> reading by the EP on 1 June 2023

## ◆ **Goals**

- ◆ Establish certain minimum requirements for companies to **identify**, disclose, monitor, and **remediate** any negative impacts of their activities on the environment and human rights

# CSDDD - Scope

	EU	Non-EU
Very Large Companies	<ul style="list-style-type: none"> <li>◆ &gt; 500 employees on average</li> <li>◆ Net <b>worldwide</b> turnover &gt; €150 million</li> </ul>	<ul style="list-style-type: none"> <li>◆ Net <b>EU</b> turnover &gt; €150 million</li> <li>◆ No employee threshold</li> </ul>
Large Companies	<ul style="list-style-type: none"> <li>◆ &gt; 250 employees on average</li> <li>◆ Net <b>worldwide</b> turnover &gt; €40 million, 50% of which generated in one or more of the “high-impact sectors”                             <ul style="list-style-type: none"> <li>◆ Textile, agriculture, forestry, fisheries</li> <li>◆ Minerals extraction, metals manufacturing, incl. intermediate products (e.g., chemicals)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>◆ Net <b>EU</b> turnover &gt; €40 million, 50% of which generated in one or more of the “high-impact sectors”</li> <li>◆ No employee threshold</li> </ul>
SMEs	<ul style="list-style-type: none"> <li>◆ <b>Not covered</b></li> </ul>	<ul style="list-style-type: none"> <li>◆ <b>Not covered</b></li> </ul>

## ◆ Obligations

- ◆ **Identify** actual or potential adverse ESG impacts of their extended supply chain;
- ◆ Take appropriate and proportionate **measures to prevent** potential adverse ES[G] impacts;
- ◆ Take appropriate and proportionate **measures to end or minimize** the extent of actual adverse ESG impacts;
- ◆ **Complaints procedures:**
  - Enable individuals, trade unions, and civil society organizations to submit complaints re: actual or potential adverse environmental and HR impacts on the company
- ◆ **Monitoring** the effectiveness of their due diligence measures at least once a year
- ◆ **Publicly communicating** a due-diligence statement on the company's website by 30 April each year



# Climate Transition Plans for Very Large Companies

- ◆ **Very large companies** are required to also adopt a plan to ensure that their business model and strategy are compatible with the transition to a sustainable economy and the **limiting of global warming to 1.5°C**
  - ◇ For companies in which case climate change has been identified as a principal risk for or a principal impact of their operations, the transition plan shall include emission reduction objectives
- ◆ **Timeline**
  - ◇ **Very large companies:** compliance obligations starting immediately
  - ◇ **Large companies in high-impact sectors:** compliance obligations starting two years after the end of the transposition period (2026?)
  - ◇ There could be delays in the approval



# Taxonomy Regulation



# Taxonomy Regulation

- ◆ Regulation (EU) 2020/852 “on the establishment of a framework to facilitate sustainable investment” (the “**Taxonomy Regulation**”)
  - ◆ In force as of **1 January 2022**
  - ◆ **Scope:** Companies that fall under the NFRD / CSRD
- ◆ **Content:**
  - ◆ Provides companies, investors, and policymakers with appropriate definitions for which economic activities can be considered environmentally sustainable (e.g., contribute to the objectives listed and do no significant harm to the other objectives)
  - ◆ Classification system for economic activities, with mandatory disclosure of:
    - 1) The proportion of their turnover derived from products and services; and
    - 2) The proportion of their capital and operating expenditure ...
      - ... which are related to assets or processes that are associated with environmentally sustainable activities



# Corporate Sustainability Reporting Directive (CRSD)



# The CRSD in a Nutshell

- ◆ **Amends existing EU framework on financial and non-financial reporting**
  - ◇ [Directive \(EU\) No 2013/34](#) on the annual financial statements, consolidated financial statements, and related reports of certain types of undertakings
    - Already amended by [Directive \(EU\) No 2014/95](#) (Non-financial Reporting Directive 'NFRD')
  - ◇ [Regulation \(EU\) No 537/2014](#) and [Directive \(EC\) No 2006/43](#):
    - Regulating auditing
  - ◇ [Directive \(EC\) 2004/109](#) on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (of an EU MS)
    - Accounting standards

# Implementation Calendar

- ◆ **Directive in force since 5 January 2023**
  - ◇ Transposition deadline: 6 July 2024
- ◆ **Progressive implementation calendar**

Undertaking	Financial Year	Report Due
Large EU (Public-interest Entity)	2024	2025
Large EU (Other) and EU Parent of a Large Group	2025	2026
EU SME (Public-interest Entity)	2026	2027* *Opt-out from sustainability reporting possible until 2028
Reporting Re: Third-country Parent Company	2028	2029

# Scope of the Directive

## ◆ Principle:

- ◆ Applies to **EU companies** (e.g., incorporated under the law of an EU Member State)
- ◆ Extended to non-EU companies with securities listed on EU markets
- ◆ **EU subsidiaries/branches** may, however, also be required to **report on their non-EU parent company** if:
  - ◆ It generated, at the group level, > EUR 150 million in the EU, for each of the last two consecutive years; AND if
    - For subsidiaries: the EU subsidiary qualifies as ‘large’, or is a small or medium-sized public-interest undertaking
    - For branches: it generated a net turnover > EUR 40 million in the previous year

# Scope – Sustainability Reporting Requirements Under the CSRD

	Is the EU undertaking a public-interest entity?	
	YES	NO
Large	<p><b>In scope</b> if it meets at least two of the following:</p> <ul style="list-style-type: none"> <li>◆ Balance sheet (total) &gt; EUR 20 MN</li> <li>◆ Net turnover &gt; EUR 40 MN</li> <li>◆ <b>NEW</b> - Employees number &gt; 250</li> </ul>	<p><b>NEW - In scope</b> if it meets at least two of the following:</p> <ul style="list-style-type: none"> <li>◆ Balance sheet (total) &gt; EUR 20 MN</li> <li>◆ Net turnover &gt; EUR 40 MN</li> <li>◆ Employees number &gt; 250</li> </ul>
Medium & Small ('SMEs')	<p><b>NEW - In scope</b> if they meet at least two of the following:</p> <ul style="list-style-type: none"> <li>◆ Balance sheet &gt; EUR 350 k</li> <li>◆ Net turnover &gt; EUR 700 k</li> <li>◆ Employees number &gt; 10</li> </ul>	<p><b>Not in scope</b></p>
Micro	<p><b>Not in scope</b></p>	<p><b>Not in scope</b></p>



# Reporting Obligation: Management Report

## ◆ General principles

- ◆ Obligation for all companies in the scope of the Directive
- ◆ Content: review of the development and performance of the undertaking, including main risks and uncertainties
  - Includes both financial and non-financial indicators
- ◆ **NEW - Sustainability reporting requirement**
  - ◆ Dedicated section of the management report
  - ◆ Addresses the company's impacts on sustainability matters and how they affect its development, performance, and position
  - ◆ Full value chain approach (incl. services, business relationships, and supply chain)

# Reporting Obligation: Sustainability Report



## ◆ **Content of the report**

- ◆ Impact assessment
- ◆ Setting of time-bound targets (e.g., reduction of greenhouse gas emissions)
- ◆ Role of management re: sustainability
- ◆ Policies and incentive schemes
- ◆ Due diligence process implemented re: sustainability matters

## ◆ **Transitional period**

- ◆ Three-year tolerance period: if not all the information can be gathered, possibility to only report efforts made to obtain it
- ◆ Derogations for SMEs

# Reporting Obligation: ESRS & Publicity

- ◆ **European Sustainable Reporting Standards ('ESRS')**
  - ◇ Mandatory template for sustainability reporting
  - ◇ Established via an act of the Commission, drafted by EFRAG
  - ◇ For now, only draft versions available on EFRAG's [website](#)
  
- ◆ **Report must be audited** (in principle same auditor who carries out the financial audit)
  
- ◆ **General publication requirement:**
  - ◇ Report published (towards authorities) within maximum 12 months after date of the balance sheet
  - ◇ Member States **may** require publicity of the sustainability report to the general public, on the undertaking's website, free of charge



# Carbon Border Adjustment Mechanism (CBAM)



# CBAM - Goals

- ◆ **Regulation (EU) 2023/956 establishing a carbon border adjustment mechanism ('CBAM')**
  - ◇ Published on 10 May 2023
  
- ◆ **The CBAM in a nutshell**
  - ◇ Introduces import tariff on carbon-intensive industries by subjecting goods from third countries (non-EU and non-EFTA) to a carbon levy
  - ◇ Price linked to carbon price under EU Emissions Trading System (ETS)

# CBAM - Scope

- ◆ **Imports into the EU of goods listed under Annex I**, corresponding to sectors with a **high risk of carbon leakage and high carbon emissions**
  - ◇ Cement, fertilisers, iron, steel, aluminium, chemicals (hydrogen), and electricity
  - ◇ Plan to include certain precursors and certain downstream products (however currently no chemicals besides hydrogen)
- ◆ **In principle, covering imports from all non-EU countries**
  - ◇ Exception for Iceland, Liechtenstein, Norway, and Switzerland
  - ◇ List may be extended in the future

# CBAM - Declarant

- ◆ **Goods under the scope of the CBAM may only be imported by an 'authorized CBAM Declarant'**
  - ◇ I.e., importer established in an EU Member State (or alternatively, an EU-based customs representative)
  - ◇ Information gathered in the CBAM registry
  
- ◆ **Transition period**
  - ◇ Obligation to obtain the status of authorized CBAM Declarant applicable from 31 December 2024
  - ◇ Before that, importers to comply with reporting obligation nonetheless

# CBAM - Declaration

- ◆ **Starting from reporting period 1 October 2023 – 31 January 2024, declarants shall report through the CBAM registry by 31 May each year:**
  - 1) The total **quantity** of each type of good imported in the preceding year
  - 2) The total **embedded emissions** in those goods: calculation method set out under Annex IV, verified by an accredited verifier
  - 3) **(From 1 January 2026 onwards)** the total number of CBAM certificates to be surrendered:
    - Importers will buy carbon certificates **corresponding to the carbon price that would have been paid**, had the goods been produced under the EU's carbon pricing rules (ETS)
    - Possibility to deduct carbon price paid in a third state (e.g., Canada)
    - **Before January 2026**, transition period, no obligation to buy certificates
- ◆ COM to review CBAM declarations



# CBAM – CBAM Certificates

- ◆ **Characteristics of the CBAM certificates**
  - ◆ Sold by Member States to the declarants
  - ◆ Priced on the basis of the EU Emission Trading System's carbon price
  - ◆ Price will evolve over time



Please join us at 1:00 PM Eastern U.S.  
Wednesday, October 18, 2023  
<https://www.khlaw.com/OSHA3030>



Please join us at 10:00 AM Eastern U.S.  
Wednesday, December 6, 2023  
<https://www.khlaw.com/REACH-3030>



Please join us at 1:00 PM Eastern U.S.  
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Thank You

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