World-Wide Sustainability Reporting—Current State of Play

28 February 2024

The European Union's (the "EU") scheme for corporate sustainability reporting, the Corporate Sustainability Reporting Directive ("CSRD"), took effect from 1 January 2024 for EU and non-EU companies with securities listed on an EU "regulated market". From 1 January 2025, large private EU companies[1] will be in scope, including those with non-EU parent companies.

ISSB Standards

Worldwide, CSRD is the first complete framework for mandatory sustainability reporting, including 12 sets of detailed reporting standards (the "ESRS") covering a range of environmental and social topics. However, it will not be the only such framework. The International Sustainability Standards Board (the "ISSB") of the IFRS Foundation is currently producing sustainability reporting standards with similar scope as the ESRS and has to date produced general and climate-related standards. The IFRS is now responsible for the climate-related reporting standards previously published by the Taskforce for Climate related Financial Disclosures (the "TCFD"), with the TCFD recently having disbanded, making the ISSB's climate-related standards the key international climate reporting standards going forward. The ISSB's objective is to build comprehensive standards for sustainability disclosures, replacing many of the existing voluntary initiatives. The ISSB has indicated that it will produce standards on topics such as biodiversity, ecosystems, human capital and human rights and will publish a work plan on the basis of a recent consultation later in 2024. However, it is not yet clear whether ISSB's standards will be arranged according to the same topics as the ESRS.

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[1] Companies that meet two of the following three criteria: (i) turnover of €50 million or more; (ii) balance sheet total of €25 million or more; and (iii) 250 employees or more.

Adoption of ISSB Standards for Mandatory Reporting

The United Kingdom already requires listed companies and large private companies to produce climate-related reports in accordance with the recommendations of the TCFD, and has announced its intention to require listed companies to report according to ISSB standards, for accounting periods beginning on or after 1 January 2025. Other jurisdictions, such as Australia and Singapore, have announced similar plans to require listed companies and large private companies to produce climate-related disclosure.

Mandatory Climate Disclosures in the United States

The United States, including at both the individual state and federal levels, is also moving toward mandatory climate-related disclosures. This includes the U.S. Securities and Exchange Commission's (the "SEC") proposed climate disclosure rule, which in its original form would require SEC registrants and foreign issuers to, among other things, include in their Form 10-K disclosure information related to their scopes 1, 2 and, where material, scope 3 greenhouse gas emissions.[2] At the state level, most prominently, California last year passed two laws, SB 253 and SB 261, that would require all companies operating in California with annual revenue above certain thresholds ($1 billion in the case of SB 253, $500 million in the case of SB 261) to, among other things, disclose their Scopes 1, 2 and 3 greenhouse gas emissions and biennially prepare a report similar to TCFD to disclose their climate-related financial risks.

Impact of World-Wide Sustainability Reporting on CSRD Implementation

World-wide groups will start their CSRD implementation work by considering its application to their EU companies. Groups that are headed by non-EU parent companies will also have regard to the separate obligation under CSRD that applies in 2028 to produce a sustainability report at the group level of the ultimate parent company, provided that the group as a whole generates more than €150 million of turnover in the EU—a sustainability report under CSRD for the entire world-wide group.

For their CSRD-implementation work, groups should also have regard to non-EU frameworks for sustainability reporting. At present, these frameworks are limited to climate disclosures under the ISSB and the SEC's and the Californian rules. In this

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[2] Note that there has been considerable lobbying in the United States against the SEC's proposed rule's inclusion of Scope 3 emissions, and it is increasingly expected that the final rule, due in early 2024, will omit the requirement to report on Scope 3 emissions.

update, we discuss the degree to which these frameworks overlap with CSRD, whether a group can produce a report under the ESRS and thereby discharge reporting under ISSB (or the other way round) and the reasons for a group to adopt a framework for reporting on a voluntary basis. We also discuss the requirement to engage an assurance provider to check the information reported, potentially under different assurance standards.

Other Sustainability Reporting Frameworks

As above, the UK already requires listed and large private UK companies[3] to produce TCFD-aligned climate-related financial disclosures. In a significant development to that requirement, the FCA, as the UK listing authority, has announced its intention to require listed companies to report according to ISSB standards, starting with the ISSB standards developed to date, namely IFRS S1 (General Requirements) and IFSR S2 (Climate-related Disclosures). The FCA has signalled its intention to apply this requirement to accounting periods beginning on or after 1 January 2025, but that is subject to the FCA producing draft rules in the consultation process. The FCA has also indicated its support for external assurance for the information reported and will confirm in due course the type of assurance and the relevant assurance standards. Similarly, as noted above, Hong Kong, Singapore, the United States and Australia have each announced plans to require large listed entities, and some financial institutions, to report climate related information.

Overlap between Reporting Standards

There is a high degree of overlap between the ESRS and the ISSB reporting standards produced to date. As a broad point, the European Financial Reporting Advisory Group (EFRAG) has confirmed that the ESRS are expected to cover all the points of reporting in the sustainability reporting standards currently being produced by the ISSB. Specifically, EFRAG has confirmed that the ESRS climate change reporting standard (ESRS E1) covers all the disclosure recommended in the ISSB climate change standard, with the same core contents (Strategy, Risk Management, Metrics and Targets), and has provided a reconciliation table that shows the correlation between ESRS E1 and the ISSB climate change standard. However, it is also clear that the ESRS climate change reporting standard includes reporting items that are not covered by the ISSB's

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3 Unless the company is a parent company, the requirement applies to UK incorporated companies that meet two of the following three criteria: (i) turnover of £36 million or more; (ii) balance sheet total of £18 million or more; or (iii) 250 employees or more.

equivalent standard. For instance, the ESRS require more details on GHG emissions,[4] and carbon offsets are generally excluded from the calculation of GHG emissions reduction targets under ESRS. As a matter of course, the ESRS will contain points of reporting by reference to EU legislation that will not be present in the ISSB standards. Finally, the principle of "double materiality" that underlies the EU standards is not contained in the ISSB standards.

Will a Single Report Be Sufficient?

In the light of overlapping reporting frameworks, the question arises as to whether a group can produce a single report to discharge reporting under more than one framework. CSRD allows non-EU parent companies of EU entities in scope of CSRD to discharge their reporting obligation, where the non-EU parent produces a group consolidated sustainability report in accordance with reporting standards that the EU determines as equivalent to the ESRS. Whilst the ESRS are expected to include all the points of reporting in the sustainability reporting standards currently being produced by the ISSB, in light of the differences between the climate standards to date, it is not a given that the EU will consider the climate standards or any future ISSB standards as equivalent to the ESRS. It is also not yet clear whether the topics under future ISSB standards will cover equivalent information as the ESRS topics.

As an example, a UK-listed company with substantial EU operations will produce both climate reports under the FCA's rules (for the entire group) and climate reports under the ESRS (for the EU entities in the group). Whilst the FCA may confirm in due course that ESRS reporting is interchangeable with the FCA's climate reporting, the EU may not make the same confirmation. One way to address this is for the UK-listed company to produce worldwide climate reports to the EU standards. Groups may find it more practicable and a better means of communication to stakeholders to produce a single worldwide climate report.

With respect to the United States, while there is considerable overlap between the types of information to be disclosed under the various frameworks—e.g., each of the SEC's proposed climate rule, California's SB 253 and ISSB broadly require the disclosure of Scopes 1, 2 and 3 GHG emissions—there is no indication that U.S. regulators will consider their disclosure requirements satisfied by a report produced under the ISSB or ESRS standards.

[4] For instance, ESRS E1 requires reporting on share of Scope 1 emissions under the EU Emissions Trading Scheme, reporting of market-based and location-based Scope 2 emissions and reporting on GHG removals through own operations and through purchase of carbon credits.

As above, the EU has an ambitious plan in 2028 for groups that are headed by non-EU parent companies to produce a sustainability report at the group level of the ultimate parent company, provided that the group as a whole generates more than €150 million of turnover in the EU. These reports will be provided according to a different set of reporting standards, to be developed. In imposing sustainability reporting on worldwide groups, it is fair to assume that the EU will have regard to the ISSB standards in both developing the reporting standards for worldwide groups and in any decision to determine the ISSB standards as equivalent to the EU's reporting standards. However, that will depend on the progress the ISSB makes in developing its standards, which is uncertain.

Voluntary Reporting

A group that is in scope of a mandatory reporting framework for part of the group should consider the benefits of reporting on a voluntary basis for the entire group under that framework. Reporting on a worldwide group basis will likely align with the way a group currently monitors and reports on sustainability matters (although noting that CSRD requires a great deal more information than groups typically currently provide) and may be a better way to meet the interests and expectations of stakeholders, such as shareholders, than reporting only in respect of part of the group. Also, when a group considers the impact of the separate (currently draft) Corporate Sustainability Due Diligence Directive (the "CSDDD"), which will likely impact worldwide groups with substantial EU operations, there will be advantages in aligning its approach to due diligence under CSDDD and its approach to reporting under CSRD.

Assurance Obligation

CSRD requires an auditor or other licensed service provider to express an opinion, based on a "limited assurance" engagement, on the compliance of the sustainability reporting with CSRD. The European Commission will adopt assurance standards by a delegated act by 1 October 2026. The IAASB has published a draft form of sustainability assurance reporting standards.[5] It is unclear whether the EU will adopt the IAASB's standards as the assurance standards under CSRD, but that is surely the practical approach to ensure worldwide consistency.

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5 ISSA 5000. https://www.iaasb.org/publications/proposed-international-standard-sustainability-assurance-5000-general-requirements-sustainability

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