



# Public Consultation on the Corporate Sustainability Reporting Directive

**Ibec position**

9 March 2023

## Introduction

Ibec welcomes the opportunity to provide the views of Irish business in response to the public consultation published by the Department of Enterprise, Trade and Employment (the Department) on the Corporate Sustainability Reporting Directive (CSRD) with specific regard for the Member State options, ahead of its transposition into Irish law.

In this submission, Ibec would like to make some general comments on the CSRD and the draft standards developed by the European Financial Reporting Advisory Group (EFRAG) and to be adopted by the European Commission, as well as specific comments on the Member State options.

Irish business is fully committed to global sustainability and to driving more investment into sustainable business practices. In pursuit of this, reporting is a key tool available to achieve adequate transparency and clear communication on the integration of sustainability into business activities and impacts, while creating trust between companies and stakeholders. To this end, the CSRD is welcomed as codifying such sustainability reporting standards into legislation. To be effective, such a tool must be appropriate, proportionate, and workable. The administrative burdens must be well-balanced with the benefits, the tools must provide adequate flexibility to be tailored to specific organisations, and global competitiveness must be retained. Ibec supports the objective to have clear and coherent reporting obligations at EU level and recognises the need to reduce increasing demand for information from many different stakeholders.

This legislation marks the introduction of significant new requirements for businesses. For non-listed companies, this will be the first experience of non-financial reporting. For all companies in scope, it will represent a new departure in terms of the level of detailed information that must be reported and the corresponding increase in the amount of resources that must be dedicated to non-financial reporting. The auditing expertise to support this legislation does not currently exist at the levels required and will be challenging to meet at a time of full employment.

To implement these significant new requirements effectively, business will need adequate supports and guidance from the Department on an ongoing basis. In this regard, we welcome the initiatives of the Department in early 2023 and we look forward to supporting and collaborating with the Department to enable Irish businesses to prepare for the implementation of the new requirements effectively.

As a hub for foreign direct investment within the EU, this piece of legislation is particularly pertinent for Ireland. The Irish authorities will be responsible for the European filings of many multinational entities and as such should be prepared and resourced sufficiently. In support, Ibec recommends that DETE establish a stakeholder CSRD forum for businesses and other relevant stakeholders.

Ibec is fully committed to the principles of global sustainability and recognises the applicability of reporting as a worthwhile tool to achieve this. That being said, Irish business requests a more balanced approach between the scope of the Directive, the overall level of detail for the requirements, and the need for flexibility to ensure the feasibility and effectiveness of the sustainability reporting standards. The costs of this Directive must not outweigh the benefits, and the needs of both users and those who must comply should be considered. Only a fully transparent standard setting process will lead to the general acceptance of EU standards for sustainability reporting.

## General remarks on the CSRD

*In response to request for views in relation to the transposition and development of future policy in this area.*

To implement these significant new requirements effectively, business will need **adequate supports and guidance** from the Department on an ongoing basis. For example, clear guidance must be provided on how to fulfil the requirement to report on plans to ensure that business models are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement and the EU objective of achieving climate neutrality by 2050. Clarity is the key to reducing bureaucracy and ensuring equity for all companies who will be subject to this reporting requirement.

Further to the information provided in the public consultation document, Ibec would like to request clarification of the **scope of application** of the CSRD. On page 3 of the public consultation document, it is set out that all companies and public interest entities in scope of the existing rules would be required to report on financial years from 1 January 2024. However, according to the legal text of the CSRD, all companies and public interest entities in scope of the existing rules that are Irish incorporated and listed within the EU (greater than 500 employees) are required to report on financial years from 1 January 2024. Our understanding is therefore that the remaining companies currently in scope of the existing rules i.e., other large companies and public interest entities (greater than 250 employees) and those companies in scope of the existing rules that are Irish incorporated companies not listed within the EU would be required to report on financial years from 1 January 2025.<sup>1</sup>

The CSRD and the forthcoming standards will introduce detailed reporting requirements, in particular how and on which ESG issues companies have to report on. National transposition measures should contribute to **harmonisation within the EU single market** by supporting these requirements and not going beyond them. In this regard, Ibec does not support an expansion of the European Sustainability Reporting Standards (ESRS). In the same spirit, Ibec would like to explore the opportunity to eliminate **existing national requirements** that overlap in whole or in part with the CSRD.

Through national transposition measures or by the European Commission directly through guidance, greater clarity must be provided to multi-national companies in scope on the application of the new rules. In particular, the rules regarding **consolidated reporting** and the inclusion of subsidiaries and the specific rules for **non-EU headquartered companies** must be clarified.

In order to be successful, the sustainability reporting standards must be **proportionate**. The level of granularity required to comply with the draft standards remains very significant, especially for companies complying with this type of legislation for the first time. Therefore, the category of 'always mandatory' disclosures should be reduced strictly to what is mandated by CSRD, as Ibec has as a priority that the **materiality assessment** should be at the core of the sustainability reporting. In the CSRD, the materiality assessment is double in the sense that it weighs two components, namely the impact on the business and the impact of the business. The challenge under the CSRD is due to the approach taken in the final

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<sup>1</sup> Article 5 (Transposition), 2 (a) (i) and (ii) clarify that only large undertakings within the meaning of Article 3(4) of the existing rules under Directive 2013/34/EU which are public-interest entities as defined in point (1) of Article 2 of that Directive exceeding on their balance sheet dates the average number of 500 employees during the financial year, must report for financial years starting on or after 1 January 2024.

EFRAG standards, where reporting on a number of the standards (in particular on workforce topics, but also climate) are mandatory, whereas reporting on the other standards will be according to a company's materiality assessment. It would be preferable for reporting against all standards to be based on a materiality assessment by companies, to ensure that their disclosures are relevant.

It is important to note for environmental standards that reporting along the value chain is subject to materiality assessment, otherwise the reporting requirements would be overly burdensome. Regarding governance standards, it is important to keep optional the screening and evaluation of social and environmental performance of suppliers. Hence, the disclosure on management of relationships with suppliers should not pre-empt other legislations such as the Corporate Sustainability Due Diligence Directive (CSDDD). Finally, regarding the social standards, Ibec highlights the necessity to clarify definitions and reduce the overall granularity of the disclosures.

Finally, we hope that the steps to more closely **align the ESRS with those of the International Sustainability Standards Board (ISSB)** can be formalised to ease fulfilment of both sets of reporting requirements. It is important for business to have clarity in order to support reporting decisions and equity in any benchmarking that may result from this reporting.

## Comments on the Member State options

### **Article 1 Scope (Amended) - New point 3 last subparagraph (New)**

Ibec understands that the new sustainability reporting requirements under the Directive are intended to apply to large companies and large public-interest entities as well as listed SMEs. In that spirit, all relevant undertakings should not be excluded aside from exceptional cases.

### **Article 19a – Sustainability Reporting (New) - Point 3 last subparagraph (New)**

Ibec believes that it is important that the transposition of the Directive in Ireland retains the option to permit undertakings to exclude commercially sensitive information from the sustainability reporting under certain circumstances.

In particular, information relating to impending developments, including investments, or matters in the course of negotiation should be possible to omit in exceptional cases, where disclosing it would be seriously prejudicial to the commercial position of the undertaking. The retention of this option would help safeguard against the disclosure of sensitive business information.

In the course of transposition, the applicable rules should be made clear to assist companies in the practical implementation of the Directive.

### **Article 19a – Sustainability Reporting (New) – General**

In the context of the approach to collective bargaining in Ireland, it is important that the transposition of *Article 19 (a), Point 5* should not lead to an obligation to have workers' representatives in a company, where this is not already the case.

Ibec would like to clarify that the conditions under *Article 19a, Point 9*, set out that subsidiary undertakings are exempt from the obligations set out in Points 1-4, provided they are included in the consolidated financial reporting of the parent entity, except in cases where there are significant differences in risks and impacts.

### **Article 19a – Sustainability Reporting (New) - Point 9 subparagraph three (New)**

Where the Member State option to require that the consolidated management / sustainability report is published in an accepted language is applied, the reporting entity should be entitled to publish in English or Irish.

### **Article 29a – Consolidated Sustainability Reporting (New) - Point 3 last subparagraph (New)**

As in relation to Article 19a, Ibec believes that it is important that the transposition of the Directive in Ireland retains the option to permit undertakings to exclude commercially sensitive information from the sustainability reporting under certain circumstances.

In particular, information relating to impending developments, including investments, or matters in the course of negotiation should be possible to omit in exceptional cases, where disclosing it would be seriously prejudicial to the commercial position of the undertaking. The retention of this option would help safeguard against the disclosure of sensitive business information.

In the course of transposition, the applicable rules should be made clear to assist companies in the practical implementation of the Directive.

As regards Chapter 6b, Article 29d (Single Electronic Reporting Format), Ibec would like to be consulted on how the provisions on publishing of the management report and digitalization of reporting are transposed. To have efficient and increasingly detailed corporate reporting, data should be easily to gather and submit digitally.

#### **Article 29a. – Consolidated Sustainability Reporting (New) - Point 8 subparagraph (New)**

Where the Member State option to require that the consolidated management / sustainability report is published in an accepted language is applied, the reporting entity should be entitled to publish in English or Irish.

#### **Article 30 General Publication (Amended) - Point 1 subparagraph 2 (New) & Point 1 subparagraph 4 (Existing)**

Ibec believes that the publication requirements for sustainability reporting should be consistent with the transposition of the existing rules under Directive 2013/34/EU (Article 30) and consistent with financial reporting rules. Ibec does not support changes to where entities must provide reporting. Currently, reporting is part of an entity's management report.

#### **Article 34.3 General Requirement Auditing (Amended) - Point 3 (New) & Points 4 and 5 Independent Assurance Services Provider (New)**

Ibec would not support a mandatory requirement for use of a separate auditor for sustainability reporting from the auditor used for assurance of financial statements. However, the possibility to use the same or different auditors for sustainability and financial reporting should be the choice of the company concerned. This is particularly important given that many companies are new to sustainability reporting and their auditors may be new to sustainability reporting auditing.

#### **Article 40a Sustainability Reports concerning third-country undertakings (New), *Point 1 last subparagraph (new)***

According to Articles 19a and 29 companies could be exempted from reporting at the level of their individual entities located in the EU by reporting at a consolidated global level, but Article 40a seems to oblige reporting at the level of individual EU entities, for companies that meet the criteria outlined in the Directive. This renders the exemption redundant. The reporting for non-EU headquartered companies should be clarified and the exemption should be upheld.

Article 40a also appears to indicate that that turnover information not required for financial reporting reasons could be published for sustainability reasons. This makes very little sense. Ibec would support reporting net turnover by territory but not under a sustainability clause.

Currently, no penalty/enforcement system is listed under CSRD. The Department needs to monitor any potential changes to penalties already in force for violations of national provisions implemented under existing rules and / or newly proposed penalties tied directly to CSRD obligations. When setting penalties measures for non-compliance, Member States should consider options that can be delivered in realistic timelines. This may include proportional fines based on the breach. National authorities should ensure that there is a regime in place that allows for restatement of a report without additional penalties, to provide a realistic approach and let enterprises adjust to the new reporting requirements and improve the quality of their reporting. As Ireland's largest enterprise representative, Ibec would expect to be consulted in the development of any potential penalties relating to CSRD.

**Article 3 Amendments to Directive 2006/43/EC the Audit Directive. Section: Article 12 Combination of practical training and theoretical instruction (replaced), Point 1 (existing)**

Ibec broadly supports the ability to permit that periods of study can count towards professional activity periods but advises that the Department allows reasonable exceptions as reductions in training may be appropriate for existing statutory auditors of financial statements. Statutory auditors currently must fulfill certain criteria to sign off on financial reporting and appropriate criteria for statutory auditors of ESG should also be required.

**Article 26a Assurance Standards for sustainability reporting (New), Point 2 (New)**

The application of national standards in the event of the Commission not adopting a standard on the same subject matter could be appropriate in some circumstances. However, this should be strictly limited since national standards will differ from one Member State to another, the Commission has a responsibility to adopt standards in a timely manner. Likewise, Member States have a duty to uphold harmonisation in the EU Single Market, insofar as is possible.

**Article 28a Assurance Report on sustainability reporting (New), Point 5 (New)**

Where the same statutory auditor carries out the statutory audit of annual financial statements and the assurance of sustainability reporting, the assurance report on sustainability reporting should be included as a separate section of the audit report. Financial Statements must not be delayed due to Sustainability Reports.

It must be possible to segregate financial and sustainability reporting to the point that a delay in one should not cause a delay in the other irrespective of reporting deadlines. Late filing of Financial Statements can lead to the withdrawal of Credit Insurance which would cause massive disruption if Sustainability Reports caused delays to Financial Statements.

**Article 29 Quality Assurance Systems (Amendment)**

Member States should allow for a transition period for persons carrying out quality assurance reviews on sustainability reporting by exempting them until the end of 2025 from the requirement to have relevant experience in sustainability reporting or the assurance of same.

Businesses will struggle as sustainability reporting audit expertise is currently not well developed. Ibec recommends that the Government provide funding to enterprises as upskilling persons carrying out sustainability reporting audit will come at a cost.

**Article 30 Systems of Investigations and Sanctions (Amended), Point 2 second subparagraph (existing)**

Ibec broadly supports Member States deciding to lay down rules for administrative sanctions for infringements which are already subject to national criminal law. Relevant national criminal law provisions should be communicated to the Commission especially as they were not exercised in the transposition of Directive 2014/56/EU.

However, there is a concern that the CSRD proposal goes too far regarding penalties and sanctions despite providing useful guidance on attenuating or aggravating circumstances to be considered. Reporting is a collective responsibility of the competent bodies of the company. Singling out individuals would be neither appropriate nor justifiable in the light of the guiding principles of the GDPR.

**Article 39 Audit Committee (Amended) Paragraph 4a (New)**

Member States should allow the functions assigned to the audit committee relating to sustainability reporting and relating to the assurance of sustainability reporting to be performed by the administrative or supervisory body as a whole or by a dedicated body established by the supervisory body. This is a practical solution and should be exercised with full transparency as this was not exercised in the transposition of Directive 2014/56/EU.





### About Ibec

Ibec is Ireland's largest lobby group and business representative. We campaign for real changes to the policies that matter most to business. Policy is shaped by our diverse membership, who are home grown, multinational, big and small and employ 70% of the private sector workforce in Ireland. With 36 trade associations covering a range of industry sectors, 6 offices around Ireland as well as an office in Brussels. With over 240 employees, Ibec communicates the Irish business voice to key stakeholders at home and abroad. Ibec also provides a wide range of professional services and management training to members on all aspects of human resource management, occupational health and safety, employee relations and employment law.

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