SLAUGHTER AND MAY/

THE SUSTAINABILITY OMNIBUS

Streamlining Sustainability Regulation

HORIZON SCANNING
Governance & Sustainability

On 26 February 2025, the European Commission published its proposals for the first in a series of ‘omnibus’ packages, aimed at streamlining the EU’s sustainability and value chain due diligence legislation. The proposals hope to reduce sustainability reporting burdens on corporates and financial institutions by 25% through a process of simplification and make the EU more globally competitive.

The Commission is focussing on legislating for the very largest companies and reducing what it is they have to do - whilst ensuring small and medium-sized enterprises (SMEs) are shielded from the burden of much of this legislation. The proposals also signal a recognition that companies need more guidance from the EU, sooner, on how to meet their obligations, and that assurance remains an ongoing challenge.

This first sustainability package reopens previously settled flagship sustainability legislation, including the Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive (the CSRD and CS3D respectively). It also lays out plans to simplify and improve the usability of the European Sustainability Reporting Standards (ESRS) significantly, launches a four week call for evidence on a draft delegated act to amend the EU’s Taxonomy regime, and gives some detail on plans to reduce the number of Carbon Border Adjustment Mechanism (CBAM) reporters by 90% whilst still covering 99% of relevant emissions.

The proposals now need to go through the EU’s usual legislative process, which means further changes may be proposed. EU Member States will also have to transpose any changes to existing EU directives into national law in order for those to be applicable to companies. Whilst the proposals may increase uncertainty in the medium term, they could lead to lighter obligations in the long term.

We outline the relevant timescales, the main changes proposed, and how companies can respond to the uncertainty.

When the changes can be expected to take effect

Given the various aspects of the omnibus are divided up into different pieces of implementing legislation, each of which have to work their way through the EU's legislative processes, expected timing for the proposals to take effect is uncertain.

However, it would be reasonable to expect there to be a lot more clarity on the proposed delays to the application of legislation like CSRD within the next few months, and on the other aspects of the omnibus by the middle or end of this year.

Political agreement on the amending legislation itself is expected within the year. The Commission has set out its proposed changes in respect of the CSRD and CS3D in two separate directives. One contains new, postponed, dates on which these directives are expected to apply, and the other sets out the substantive amendments to the obligations arising from those directives.

This split should make it easier to agree and bring into force the proposed delay to the CSRD and CS3D in the first directive, allowing it to be enacted more swiftly, possibly as early as March or April this year. The proposal as drafted then requires Member States to enact the proposed postponement domestically by 31 December 2025.

The second directive, which sets out changes such as reducing trickle-down effects on SMEs and small mid-cap companies and replacing the obligation for the Commission to adopt standards for sustainability assurance with guidelines, may prove harder to agree. The European Parliament and Council may also seek to introduce further amendments during negotiations. However, it is understood that the Commission's target is to reach political agreement by mid-July and if not, by the end of the year. Member States would then be required to enact these changes within 12 months of the second directive's entry into force.

The changes to the ESRS can be made by way of delegated regulations, which can be brought into law more quickly using a simplified 'no objection' process and applied directly without the need for the amendments to be written into domestic laws. The Commission may well have already started work on a proposal for updated ESRS, on which they will consult with the European Financial Reporting Advisory Group (EFRAG). The process will likely start after the substantive changes to the CSRD have been politically agreed, meaning it could also be finalised by the end of 2025.

The changes to the Taxonomy regime (made by amending the delegated acts made under the Taxonomy Regulation), will be adopted after public feedback and will apply at the end of the scrutiny period by the European Parliament and the Council.

The changes to the CBAM will enter into force once legislators have reached an agreement on the proposals and they have been published in the EU Official Journal.

The proposals involve a two-year delay to certain CSRD application dates. Importantly, for companies who are already required to report under the domestic legislation that implements the CSRD (so called 'wave 1'), they will likely continue to need to do so. This is on the basis that since the EU's legislation has not yet changed, there is no basis for Member States to amend their domestic implementing legislation, meaning the reporting obligations will remain in place for now.

Complicating the picture slightly is that some Member States have not yet transposed and implemented the CSRD domestically, despite the deadline for doing so having passed. It is not clear yet whether the EU will deploy the mechanisms it has at its disposal in order to force compliance, or whether it will hold off on this for the time being.

Reporting requirements for companies currently within scope of CSRD who are required to report for financial years beginning on or after 1 January 2025 and on or after 1 January 2026 will be postponed by two years (until financial years beginning on or after 1 January 2027 and 1 January 2028 respectively) if the changes go through as proposed.

For non-EU parent companies that have business in the EU above certain thresholds that are required to report under the current version of the CSRD, the timing of their reporting remains the same. That is, they must report in 2029, in respect of financial years beginning on or after 1 January 2028.

The most significant proposed changes include:

CSRD will apply to 'large undertakings' with over 1000 employees, and to certain non-EU parent companies with a turnover of over EUR 450 million in the EU. Application dates are to be pushed back by two years for some of those not yet required to report. SMEs are to have greater protection from obligations being passed onto them by larger companies. The ESRS will be significantly simplified.

CS3D will apply a year later than before, and its value chain due diligence obligations will no longer include indirect suppliers (subject to an exception where there is "plausible information" of an adverse environmental or human rights impact). Union-wide (but not national) civil liability has been removed, and guidance on the level of fines is to follow. Obligations relating to transition plans remain, and plans must include implementing actions, but no longer need to be "put into effect".

EU Taxonomy reporting will be simplified, and companies will not need to assess Taxonomy-eligibility and alignment of their economic activities where those activities are not financially material for their business (e.g., those not exceeding 10% of their total turnover, capital expenditure, or total assets).

CBAM will still apply to 99% of relevant emissions, but the changes will eliminate 90% of reporters from scope.

The CS3D will start to apply from 26 July 2028, a year later than under the existing legislation. As a result, the transposition deadline for Member States will also be postponed by one year, to 26 July 2027, to account for possible delays due to the omnibus process.

In addition, the Commission will be required to make available its general guidelines on how to conduct due diligence in accordance with the CS3D sooner than before. The deadline for the guidelines is now 26 July 2026 (rather than 26 January 2027 as it is currently).

The CSRD's main changes

The scope of the CSRD's remit has been reduced. The current threshold criteria that bring different tiers of company into scope at different times have been simplified with the aim of ensuring reporting obligations apply to large undertakings only, which can include EU undertakings and large groups, and non-EU issuers:

1. **A large undertaking which has to report under the CSRD** will change to become an undertaking that has a turnover above EUR 50 million or a balance sheet above EUR 25 million, and more than 1000 employees on average during the financial year.
2. **Similarly, in the group context**, only parent undertakings of a large group that has a turnover above EUR 50 million or a balance sheet above EUR 25 million, and more than 1000 employees on average during the financial year, will need to report on a consolidated basis under the proposals.
3. **Non-EU parent companies**, at present, must report sustainability information at the group level if they (a) for each of the last two consecutive financial years, generate over EUR 150 million in the EU and (b) have either a subsidiary in the EU that is subject to the CSRD, or have an EU branch that generated over EUR 40 million in turnover in the preceding financial year. In this case, the legal obligation to publish the report falls on the EU subsidiary or branch. The proposals would amend this to raise the net turnover threshold from EUR 150 million to EUR 450 million. For reasons of consistency, the threshold for EU branches is raised from EUR 40 million to EUR 50 million, and the threshold for the EU subsidiary is limited to large undertakings as defined in Article 3(4) of the Accounting Directive. The applicable thresholds do not include an employee threshold requirement in respect of the non-EU parent.

'Synthetic consolidated reporting' under the current CSRD allows an EU subsidiary, with a non-EU parent, to report on behalf of the other EU subsidiaries within its parent's group until 6 January 2030. The reporting EU subsidiary must have generated the greatest turnover in the group in the EU in at least one of the preceding five financial years. This remains unchanged in the proposals.

The 'double materiality' approach is not proposed to be changed, meaning that companies remaining in scope will still have to report on how sustainability risks affect their business and on their own impacts on people and the environment. However, it is possible that simplifications to the ESRS could limit how double materiality works in practice.

Greater protection for SMEs. Reporting companies will not be permitted to ask companies in their value chain that are not required to report (i.e., SMEs) for any information that goes beyond what is specified in the newly added article on 'sustainability reporting standards for voluntary use', except for additional sustainability information that is commonly shared between undertakings in the sector concerned. The standard will be based on the Voluntary Standard for Non-Listed SMEs ("VSME"), developed by EFRAG.

No sector-specific reporting standards. The CSRD currently recognises that companies in the same sector are often exposed to similar sustainability-related risks, and that comparisons between companies in the same sector are especially valuable to investors and other users. EFRAG has been developing standards across nine sectors, but the sector-specific standards requirement would be removed by the proposals.

Assurance guidelines will replace assurance standards. Currently, the Commission is required to provide limited assurance standards by 1 October 2026, and reasonable assurance standards by 1 October 2028. Both obligations will be removed. Instead, the Commission will be required to issue targeted assurance guidelines by 2026. It is conceivable that these could be informed by the Committee of European Auditing Oversight Bodies' previously published non-binding guidelines on limited assurance on sustainability reporting.

A Taxonomy reporting opt-in is being made available. Large undertakings and large parents, with more than 1000 employees, and a net turnover not exceeding EUR 450 million, who claim that their activities are aligned or partially aligned with the EU Taxonomy, must disclose under the CSRD their turnover and CapEx KPIs, and may choose to disclose their OpEx KPI. This 'opt-in' approach is designed to provide greater flexibility and should reduce Taxonomy compliance costs for companies who use it. The opt-in under the CSRD is distinct from proposals being put forward by the EU to limit and simplify the Taxonomy more generally by way of amending regulations (see section below on the Taxonomy).

Improving the ESRS

The Commission has recognised the need for substantial reductions and improvements to the ESRS in terms of scope and usability. This is to be effected through future legislative proposals which may include: (a) removing datapoints deemed least important; (b) prioritising quantitative datapoints over narrative text; (c) further distinguishing between mandatory and voluntary datapoints; (d) improving consistency with other pieces of EU legislation; (e) providing clearer instructions on how to apply the materiality principle; (f) simplifying the structure and presentation of the standards; and (g) enhancing interoperability with global sustainability reporting standards.

The CS3D's main changes

The thresholds determining which companies will be within scope of the CS3D remain untouched. As mentioned above, the date from which it will start to apply would be 26 July 2028 under the proposals, and the Commission will be required to make available general guidelines on how to conduct due diligence in accordance with the CS3D by 26 July 2026.

The other most significant changes are:

1. **The due diligence obligation is suggested to be limited, as a general rule, to a company's own operations, those of its subsidiaries and its direct business partners ("tier 1"), both up and downstream.** It no longer includes indirect business partners - unless there is "plausible information" of an indirect business partner's activities having an adverse impact. Plausible information in this context means information of an objective character that allows the company to conclude that there is a reasonable likelihood that the information is true. This may be the case where the company concerned has received a complaint or is in the possession of information, for example through credible media or NGO reports, reports of recent incidents, or through recurring problems at certain locations about likely or actual harmful activities at the level of an indirect business partner. Where the company has such information, it should carry out an in-depth assessment. The amendments also include specific anti-gaming provisions that would require an in-depth assessment to be carried out where the indirect, rather than direct, nature of the relationship is as a result of "artificial arrangements that do not reflect economic reality".
2. **Companies are still expected to map out their "chain of activities" in order to identify adverse impacts, but only need to carry out in-depth assessments of direct business partners.** In doing so, they can focus on areas where adverse impacts are most likely to occur and are most severe. To limit the passing-on of obligations and the 'trickle-down' effect this might have on companies with fewer than 500[1] employees (i.e., SMEs and small mid-cap companies) during the mapping process, large companies must limit their information requests to the information that will be specified in new standards for voluntary use in the CSRD, which will be based on the VSME developed by EFRAG, where they cannot obtain it in any other way. It is not clear yet how this restriction interacts with the "plausible information" due diligence requirements.
3. **Companies should also seek to ensure that their code of conduct is followed throughout their chain of activities** in accordance with 'contractual cascading' and taking into account SME support measures under the CS3D, which are quite extensive and include enabling capacity-building, training or upgrading management systems and, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME, providing targeted and proportionate financial support.
4. **Companies must review their approach every 5 years**, rather than annually, unless there are reasonable grounds to believe that the measures are no longer adequate, or new risks have arisen, in which case a review must be carried out sooner.
5. **EU-wide civil liability has been removed**, but national laws will still apply, and Member States will be required to ensure access to justice for victims. The specific requirement in the CS3D allowing action to be taken by a representative has been deleted.
6. **The maximum fine level of 5% of net worldwide turnover has been removed, and the Commission is to issue fining guidelines.** Member States will be prohibited from setting caps on fines that would prevent supervisory authorities from imposing penalties in accordance with the factors and principles set out in Article 27 of the CS3D, which includes taking account of the nature, gravity and duration of the infringement; any remedial actions undertaken; and the financial benefits gained, amongst others. In addition, the proposal deletes the requirement for the fine to be commensurate to the company's net worldwide turnover.
7. **Transition plan requirements remain, but have been rephrased.** Companies must still adopt a transition plan, but the language has been changed to say that this must include implementing actions, without the requirement to "put [the plan] into effect". This has been done with a view to "ensuring more legal clarity and alignment of the CS3D with the CSRD".
8. **"Stakeholders" and the level of engagement with them is now more narrowly defined**, being limited to "directly" affected people, and engagement only needs to happen at specific points in the due diligence process – identifying harm, developing action plans and designing remediation measures.
9. **The duty to terminate a business relationship, if engagement measures fail, has been removed.** Instead, as a last resort, the company should suspend the business relationship, whilst continuing to work with the supplier towards a resolution (using the suspension as leverage where

[1] This could create a mismatch, where companies within scope of the CS3D are able to pass on information requests to companies with 500-1000 employees, who are not otherwise required to report under the CSRD (if the proposed amendments take effect).

possible). There is an exemption from this requirement in circumstances where the adverse impacts (on people or the environment) of doing so would be manifestly more severe than not doing so.

10. **There will be closer harmonisation of core requirements**, to ensure there is a level playing field across Member States. In particular, the duties to identify and address adverse human rights and environmental impacts, and provide for a complaints and notification mechanism. However, the proposal also recognises that there are legal limits of what can be harmonised fully in a cross-sectoral framework directive and that extending maximum harmonisation beyond this scope would risk undermining human rights and environmental standards, be they existing or still to be developed.
11. **Downstream due diligence for regulated financial undertakings has been permanently removed**. The review clause, that would have required the EU to review the applicability of the CS3D in respect of investment activities and the provision of financial services, has been deleted (although other obligations remain). This is on the grounds that the current review clause does not leave enough time to take into account the experience with the newly established general due diligence framework.

The EU Taxonomy is to be simplified

The EU Taxonomy is a key part of the EU's sustainable finance framework and is a classification system that defines criteria for economic activities that are aligned with a net zero trajectory by 2050, and the EU's broader environmental goals other than climate. Its aim is to help direct investments towards economic activities needed for the transition, in line with the European Green Deal objectives.

The proposed changes to the CSRD envisage a Taxonomy 'opt-in' as mentioned above, and would allow certain companies that have made progress towards sustainability targets, whilst only meeting certain Taxonomy requirements, to report on their partial Taxonomy-alignment.

In parallel, a separate four week call for evidence has been launched on proposed amendments to the Taxonomy Disclosures Delegated Act and the Taxonomy Climate and Environmental Delegated Acts. These will, amongst other things (a) simplify the reporting templates, which should lead to a reduction of data points by almost 70%; and (b) exempt companies from assessing Taxonomy-eligibility and alignment of their economic activities that are not financially material for their business (e.g., those not exceeding 10% of their total turnover, capital expenditure, or total assets). As the changes can be made via regulation, they could be agreed and in force by June.

The main Taxonomy-based key performance indicator for banks, the Green Asset Ratio (GAR), would also be adjusted. Banks would be able to exclude from the denominator of the GAR exposures that relate to undertakings which are outside the future scope of the CSRD.

The Commission is also asking for feedback on two alternative options for simplifying the most complex "Do No Significant Harm" (DNSH) criteria for pollution prevention and control related to the use and presence of chemicals that apply horizontally to all economic sectors under the Taxonomy, as a first step in revising and simplifying all such DNSH criteria.

Far fewer companies will need to report under CBAM

The CBAM is an instrument designed to tackle the problem of 'carbon leakage' (i.e., the relocation of production to non-EU countries with laxer emissions constraints due to costs related to EU climate policies, resulting in an overall increase in total emissions) by putting a carbon price on imports of selected goods (cement, iron and steel, aluminium, fertilisers, electricity and hydrogen). The CBAM's transitional phase commenced in 2023, with its full financial implications scheduled to apply from 2026.

The EU's experience during the transition phase has shown that the compliance burden is particularly onerous for occasional importers of small quantities of CBAM goods – which are often SMEs. The proposed simplifications to the CBAM aim to reduce burdens on smaller importers whilst ensuring that the overwhelming majority of emissions targeted by the CBAM remain in-scope. This tracks with the overarching messaging surrounding the omnibus proposals, of focussing on the largest, most carbon intensive and most well-resourced entities, thereby sparing SMEs.

By way of specific proposals:

1. **Small importers will be exempted from CBAM obligations via a *de minimis* exemption**. This will be achieved by introducing a new CBAM cumulative annual minimum threshold of 50 tonnes of covered goods per importer, which would eliminate approximately 90% of importers from scope, while still covering over 99% of emissions. Importers falling below this threshold will need to self-identify as "occasional CBAM importers" and monitor that they do not exceed the threshold over the year. The proposal also includes a mechanism that will review and, if necessary, adjust the mass-based threshold as market conditions and emissions profiles evolve.
2. **Delay to sales and surrender of CBAM certificates**. This proposed postponement of CBAM certificate sales to February 2027, and surrender requirements to 31 August 2027, will simplify importers' financial liabilities during the first year of the CBAM definitive period. Combined with a revision of the "80% rule" to a "50% rule" (requiring importers to hold a minimum number of CBAM certificates at the end of each quarter covering at least 50% of the embedded emissions in all goods imported since the start of each year), the amendment would reduce uncertainties for

stakeholders pertaining to how final obligations will be calculated.

3. **The proposed simplifications will allow authorities to focus their efforts on ensuring compliance among large importers**. To support with this, the Commission proposes improving monitoring systems, strengthening anti-abuse provisions and providing extended powers for authorities to act on non-compliance and circumvention activities. One circumvention risk that the Commission particularly seeks to avoid is artificially splitting imports to remain below thresholds. Under the proposed amendments, unintentional non-compliance may result in reduced penalties. However, deliberate non-compliance or avoidance may result in higher penalties of three to five times the norm.
4. **Further simplified processes for in-scope entities**. The proposals introduce further simplifications regarding (i) the authorisation of declarants, (ii) emissions calculations, (iii) reporting procedures, and (iv) financial liabilities. For example, the proposals exclude indirect emissions of electricity from the CBAM. In addition, authorised CBAM declarants may delegate responsibilities, such as calculating emissions, to a trusted third party (e.g., consultants or environmental experts), but would retain overall CBAM liabilities.
5. **Preparatory measures for future scope extension**. The proposed refinements foreshadow a broader extension of CBAM coverage, which will eventually incorporate additional sectors within the EU Emissions Trading System and certain downstream goods. A new legislative proposal on the scope extension of the CBAM will follow in early 2026.

The proposals will be achieved by an amending regulation. Adoption requires agreement between both the European Parliament and the Council – which we anticipate will occur no later than the end of 2025 – ensuring a smooth transition before the CBAM's financial obligations commence in 2026.

How companies can respond

Whilst the changes proposed are subject to change, in the meantime, companies can look to:

1. **Monitor developments closely as the current proposals may change during the EU's legislative process**. It is important to bear in mind that these changes are proposals, and have not yet become law. Keeping up with the twists and turns of the process, and engaging with public consultations, should support internal planning, compliance preparations and a strategic approach. In the meantime, companies operating in Member States that are in the process of transposing the existing CSRD may want to track progress there as well.
2. **Revisit current scoping analyses, but keep this under review**. The proposals aim to change who is in-scope of the CSRD, with the most obvious ramifications being for listed SMEs and companies with fewer than 1000 employees, who would fall out of scope if the changes are passed. The turnover threshold changes for non-EU parents are also likely to reduce the number of non-EU groups who will need to report. Companies who are not yet in-scope of the CSRD, but who have currently assessed that they will be, may wish to revisit their scoping analyses. Strategic decisions about when to report and at which entity level, made under the existing scoping provisions, may also need to be re-evaluated.
3. **Engage in the process and seek opportunities to provide feedback**. Whilst the removal of sector-specific CSRD reporting standards may reduce burdens for reporting entities, it may also be harder for companies to determine where to focus reporting efforts. Companies may wish to engage with industry counterparts (with appropriate guardrails in place to address competition concerns) to understand how peers are approaching the materiality exercise. The anticipated amendments to the ESRS are also likely to involve a consultation process – if so, it would be well worth contributing to this to ensure that pain points can be highlighted and addressed as part of the ESRS streamlining process.
4. **Consider how the proposed changes fit together.** To the extent that companies were looking to, for example, address the CSRD and CS3D in a joined-up way, thought could be given to how the proposed changes could interact. If CSRD reporting becomes more limited, its value in helping map out a business' 'chain of activities' for CS3D purposes may be reduced. At the same time, this impact may be softened by the more limited nature of the due diligence requirements proposed under the CS3D. No mention has been made of changing the EU's Forced Labour Regulation or Deforestation Regulation amongst others (which can often be connected to value chain due diligence considerations) as part of an omnibus package, so any processes being put in place to prepare for these should continue.
5. **Think about how the changes might apply to the specific business in question**. The impact of the proposed changes will vary depending on a range of factors that will be company- and sector-specific. For example, the views of the company's investors, customers and other important stakeholders; how far advanced a company's progress is on responding to the current iterations of the CSRD and CS3D; how central the matters covered by the omnibus are to the business model and strategy and the extent to which these areas remain important regardless of what the legislation says; as well as what a company's peers are doing.
6. **Keep the business up to date on progress, to maintain buy-in.** Ensuring there is a good understanding of what the omnibus proposals mean within the business, and the process and anticipated timings for agreeing them, should help to maintain engagement and ensure strategic

discussions and considerations of risk are based on the latest available facts and assumptions.

7. **Maintain a broad perspective.** The proposals should be seen in the wider context of other developments in sustainability reporting and value chain due diligence. For example, the UK's plans to introduce Sustainability Reporting Standards based on the International Sustainability Standards Board's disclosure standards, and shifts in the US in terms of the approach to sustainability-related requirements. In addition, international soft law approaches on which the CSRD and CS3D draw heavily, such as the UN's Guiding Principles and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, are still influential and are likely to remain so irrespective of any changes that are to be made to the EU's legislative landscape.

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