

СЕКЦІЯ 7. ЗЕЛЕНА ТРАНСФОРМАЦІЯ УКРАЇНИ ТА БЕЗПЕКА СТАЛОГО РОЗВИТКУ

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EUROPEAN UNION REGULATIONS REPORTING CORPORATE DEVELOPMENT TOWARDS GREEN TRANSFORMATION

Introduction

The experience gained over the past few years by non-financial information reporters and their stakeholders has made it possible to review existing regulations in terms of achieving the goals they set out to achieve when they were enacted, and in the context of the emergence of new circumstances of business operations and new challenges facing society and the economy, particularly those related to the provisions of the European Green Deal [1]. This led to the recognition that a change in the system of reporting on environmental and social issues by companies was necessary. This position resulted in the adoption of the Corporate Sustainability Reporting Directive EU/2022/2464 (CSRD for short) by the Parliament and Council of the European Union [2]. The directive is linked to a number of European Commission regulations enacted between 2019 and 2022, primarily on environmental and climate issues. This situation inspired the preparation of this study. Its purpose is to present the assumptions of the aforementioned directive and related regulations, and to evaluate these legal acts. The study was prepared on the basis of the literature on the subject and

legal acts. The method of critical analysis of source texts, including legal texts, and the comparative method were used.

Keywords: sustainability, non-financial reporting, taxonomy, European Green Deal.

1. Aims, objectives and key provisions of Directive EU/2464/2022

In December 2022. The EU Parliament and Council adopted new regulations on corporate sustainability reporting, which is Directive 2022/2464/EU of the European Parliament and of the Council of 14/12/2022 amending Regulation (EU) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU with regard to corporate sustainability reporting. It aims to improve corporate sustainability reporting by:

- widening the circle of entities required to report, to meet the growing information needs of interested audiences,
- increasing the comparability of data from different entities,
- increasing the reliability, accessibility and detail of published sustainability information.

The CSRD requires reporting on:

(a) all large entities meeting at least two of the following three requirements as of the balance sheet date:

- balance sheet total of more than €20 million,
- net sales revenues of more than €40 million,
- average number of employees in the fiscal year above 250,

(b) small and medium-sized entities (SMEs) listed on a regulated market of a member state that are not micro entities,

(c) non-EU entities that generate more than EUR 150 million in net sales revenue in the EU and have at least one branch or one subsidiary in the Union.

As you can see, Directive EU/2022/2464 extends mandatory sustainability reporting to all large companies and all companies listed on regulated markets (with the exception of listed micro-companies). This means that all large companies would be required to produce sustainability reports under the new directive, regardless of whether they are listed or not.

It is estimated that a total of about 50,000 companies will be required to do so.

The new regulations will provide increased access for investors and other stakeholders to information on investment risks arising from climate change and other sustainability issues. They will also create a new "culture of transparency" about companies' impacts on people and the environment. The new directive also requires companies to audit their sustainability information.

The EU Directive/2022/2464 introduces the principle of dual materiality in determining what content is to be disclosed, i.e. financial materiality and environmental and social materiality. Therefore, it is necessary to firstly identify and disclose sustainability issues that are material to the company's financial position and value (over and above those issues already disclosed in the financial statements). And second, identification and disclosure of actual or potential significant impacts on people and the environment related to the company's own operations and its value chain (upstream and downstream). This means that Companies will be required to provide not only information to the extent "necessary to understand" the company's development, performance and situation," but also information necessary to understand the impact of the company's operations on environmental and social issues, respect for human rights, anti-corruption and bribery matters.

Companies will have to consider environmental, social and governance issues. They will be required to report on the following areas:

- (a) strategy and business model in relation to sustainable development;
- (b) management and organization in relation to sustainability;
- (c) assessment of the materiality of impacts, risks and opportunities related to sustainable development;
- d) implementation measures, including policies, goals, actions and action plans, resource allocation;
- (e) performance indicators.

The timetable for putting the CSRD into practice is set forth in Article 4, which states that the Directive shall apply from January 1, 2024 for fiscal years beginning on or after January 1, 2024 in 4 phases:

Phase I – for 2024 – will be reported by entities that fall under the existing NFRD 2014/95/EU. They will be required to apply the European Sustainability Reporting Standards in full (ESRS)

Phase II – for 2025 – all other large listed and unlisted entities and other large groups (i.e., all sizes of parent companies of large groups) will report. They will be required to apply the full ESRS.

Phase III – for 2026 – small and medium-sized listed companies will report. They will have the choice of applying either full or simplified ESRS.

Phase IV – the directive will cover third-country companies; the obligation to apply CSRD will be from the fiscal year beginning on and after January 1, 2028.

On behalf of the European Commission, the European Financial Reporting Advisory Group (EFRAG) has prepared the "EU Sustainability Reporting Standards" [3]. Their formal adoption by the European Commission in the form of delegated acts is expected by June 30, 2023. The standards are a set of 12 documents detailing requirements in the areas of environmental, social and corporate governance, as well as cross-cutting issues of a general nature.

The Standards are a comprehensive, comprehensive work published in 339 pages, which are supplemented by 6 Annexes contained in 132 pages. In drafting them, it was assumed that they would be aligned with EU policies while taking into account international standardization initiatives. It was assumed that SMEs would be able to submit proposals for changes to standards that would apply to large companies. The Commission plans to create separate, proportionate standards for SMEs in the future. Of course, unlisted SME companies can also benefit from these standards on a voluntary basis.

2. Legal acts linked to the CSRD directive

The European Commission has assumed that the content of corporate sustainability reports should be linked to the objectives of EU environmental, climate change and social policies. The list of these goals and the ways to achieve them have been articulated in European Commission regulations. Some of them are directly linked to the CSRD.

The key regulation whose provisions relate to the content of reporting information disclosed by companies is the following.

Regulation (EU) 2020/852 of the European Parliament and of the Council, dated June 18, 2020 [4]. This regulation relates to a classification system for environmentally sustainable business activities referred to as "Taxonomy" for short. The primary goal of the regulation is to increase sustainable investments and combat "greenwashing" of financial products that are promoted by their issuers as environmentally sustainable, which is often not true. This phenomenon is referred to as "greenwashing". Among the tools used in this practice are:

(a) hiding the opportunity cost of a project by exposing its pro-environmental features while concealing its environmentally damaging effects,

(b) failing to provide accurate information about products or activities that the recipient may misinterpret as environmentally friendly,

(c) making claims about the environmentally friendly features of products that are not relevant to the decision to purchase them, which may be due to existing regulations,

(d) lack of evidence (e.g., certificates from independent institutions) supporting the company's declarations about the pro-environmental features of the venture,

e) the use of false labeling through the creation and use by the enterprise of its own eco-labels suggesting to the buyer that the product has an eco-certificate granted by an external entity,

(f) the company's use of pro-environmental slogans for products that are inherently unfriendly or even threatening to humans or the environment,

g) the provision of false, false information by the enterprise about the pro-environmental features of its offerings or the use of processes with less environmental impact in its operations [5].

The Taxonomy system adopted by the EU:

- provides a uniform classification of economic activities, defining criteria that, if met, mean that an activity can be considered environmentally sustainable,
- sets mandatory disclosure requirements to ensure transparency on environmental performance.
- provides financial market participants, investors and companies with common criteria for determining which economic activities are considered sustainable under EU law.

The provisions of the Taxonomy Regulation explicitly address the system for reporting non-financial information by companies. According to Article 8, "Any company subject to the obligation to publish non-financial information under Article 19a or 29a of Directive EU/34/2013 shall include in its statement – information on how and to what extent its activities are related to business activities that qualify as environmentally sustainable" [6]. At the same time, Article 9 of the Taxonomy Regulation defines environmental objectives to indicate which business activities are environmentally sustainable. These goals are as follows:

- (a) climate change mitigation;
- (b) adaptation to climate change;
- (c) sustainable use and protection of water and marine resources;
- (d) transition to a closed-loop economy;
- (e) pollution prevention and control;
- (f) protection and restoration of biodiversity and ecosystems.

According to Article 3 of the said regulation, an economic activity qualifies as environmentally sustainable if the activity:

- (a) makes a significant contribution to one or more environmental objectives;
- (b) does not cause serious harm to any of the environmental objectives;
- (c) meets the technical eligibility criteria for determining the conditions under which an economic activity qualifies as making a significant contribution to climate change mitigation and does not cause serious harm to one or more of these objectives.

(d) is conducted in accordance with minimum guarantees on social and governance issues (Article 18).

The minimum guarantees consist of procedures followed by the business enterprise to ensure compliance with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set forth in the eight fundamental conventions identified in the International Labor Organization's Declaration on Fundamental Principles and Rights at Work and the principles and rights set forth in the International Bill of Human Rights. The procedures also consist of good management practices, particularly with regard to management structures, labor relations, compensation for employees and compliance with tax laws. The assumption is that companies applying these procedures will thereby comply with the "do no grave harm" principle referred to in the Commission's February 2, 2021 Notice [7].

A company reporting sustainability information under Article 8 of the Taxonomy Regulation is required to disclose the following information in particular:

(a) the percentage of their turnover derived from products or services related to business activities that qualify as environmentally sustainable;

(b) the percentage of their capital expenditures (CapEx) and operating expenditures corresponding to assets or processes related to business activities that qualify as environmentally sustainable (OpEx).

Detailed methods for calculating these indicators are contained in the Delegated Regulation of the Taxonomy Regulation, namely Commission Delegated Regulation (EU) 2021/2178 of July 6, 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by clarifying the content and presentation of information on environmentally sustainable economic activities [8].

A very important piece of legislation related to Directive 2022/2464/EU is Commission Delegated Regulation (EU) 2021/2139 of June 4, 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing technical qualification criteria for determining the conditions under which an economic activity qualifies

as making a significant contribution to climate change mitigation or adaptation, as well as whether that economic activity does not cause serious harm to any other environmental objective [9]. The regulation establishes technical qualification criteria for determining the conditions under which an economic activity qualifies as making a significant contribution to climate change mitigation and making a significant contribution to climate change adaptation, as well as for determining whether that economic activity does not cause serious harm against any of the other environmental objectives set out in Regulation (EU) 2020/852.

The technical qualification criteria established in the body of the regulation:

(a) identify the most significant potential contributions to any relevant environmental objective, respecting the principle of technological neutrality and taking into account the short- and long-term effects of the economic activity in question;

(b) identify the minimum requirements to be met in order to avoid serious harm to any of the relevant environmental objectives, taking into account the short- and long-term effects of the economic activity in question;

(c) are quantitative and, where possible, set thresholds or are qualitative in nature;

(d) be based, where applicable, on EU labeling and certification systems, EU environmental footprint assessment methods and EU statistical classification systems, and take into account any relevant applicable Union legislation;

Conclusions

The new regulatory system for corporate sustainability reporting meets the current challenges facing the society and economy of EU member states. The CSRD is a strong support in the process of sustainable economic and social development of EU member states. Improving the quantity, quality, consistency and accessibility of corporate sustainability information brings the European Union closer to achieving the goals of its members' broad social and economic sustainability agenda and the objectives of the European Green Deal. The changes introduced by the CSRD will be costly,

but are inevitable if the EU wants to achieve its environmental, climate and socioeconomic goals. Putting the provisions of these new laws into practice, due to their great complexity and voluminosity, will be a difficult process and will require considerable effort, not only organizationally but also financially, from the companies affected. It can be believed that common sustainability reporting standards in the EU will significantly increase the comparability of information and thus the relevance and efficiency of resource allocation. Common standards will make it possible to develop more comparable and reliable sustainability indicators, correctly assess sustainability risks and monitor these risks. Among the fundamental tenets of sustainability reporting standards, is the principle of dual materiality, which requires a focus on both issues affecting a company's performance, position and development ("financial materiality") and issues of environmental and social impacts of corporate activities ("environmental and social materiality"). The new directive will also expand the reporting scope of the EU taxonomy. By increasing the number of companies subject to mandatory sustainability reporting, the new directive increases the universality of regulations on business taxonomy related to environmental and climate goals.

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8. Rozporządzenie delegowane Komisji (UE) 2021/2178 z dnia 6 lipca 2021 r. uzupełniające rozporządzenie Parlamentu Europejskiego i Rady (UE) 2020/852 przez sprecyzowanie treści i prezentacji informacji dotyczących zrównoważonej środowiskowo działalności gospodarczej, które mają być ujawniane przez przedsiębiorstwa podlegające art. 19a lub 29a dyrektywy 2013/34/UE, oraz określenie metody spełnienia tego obowiązku ujawniania informacji, Dziennik Urzędowy Unii Europejskiej z 10.12.2021, L 443/9.

9. Rozporządzenie Delegowane Komisji (UE) 2021/2139 z dnia 4 czerwca 2021 r. uzupełniające rozporządzenie Parlamentu Europejskiego i Rady (UE) 2020/852 poprzez ustanowienie technicznych kryteriów kwalifikacji służących określeniu warunków, na jakich dana działalność gospodarcza kwalifikuje się jako wnosząca istotny wkład w łagodzenie zmian klimatu lub w adaptację do zmian klimatu, a także określeniu, czy ta działalność gospodarcza nie wyrządza poważnych szkód względem żadnego z pozostałych celów środowiskowych, Dziennik Urzędowy Unii Europejskiej L 442/1.