

Directive (ue) 2022/2464, corporate sustainability reporting directive adopted on 14 december 2022 and transposed into french law in december 2023

1. From Directive NFRD to Directive CSRD

(a) Directive NFRD

Directive 2014/95/UE dated 22 October 2014 (amending Directive 2013/34/UE) as regards disclosure of non-financial information, i.e. Non-Financial Reporting Directive (thereafter "**Directive NFRD**") requires large undertakings of more than 500 employees to include in their management report a non-financial statement containing information relating to environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters (please see article 1 of the Directive NFRD), specifying that the the scope of those non-financial disclosure requirements should be defined by reference to the average number of employees, total balance sheet and net turnover.

This Directive NFRD was transposed into French law in 2017 (articles L. 225-102-1, et R. 225-104 à R. 225-105-2 of the French Commercial Code) to require the publication, within the management report, of a "*Déclaration de Performance Extra Financière*" for the following entities:

- listed companies (article L. 22-10-36 and Article R22-10-29 of the French commercial code) exceeding:
 - total balance sheet of 20 million euros or net turnover of 40 million euros ; and
 - 500 average number of employees.
- Non-listed companies (article R. 225-104 of the French commercial code) exceeding:
 - total balance sheet of 100 million euros or net turnover of 100 million euros; and
 - 500 average number of employees.

(b) Directive CSRD

Directive UE 2022/2464 dated 14 December 2022 (amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU) as regards corporate sustainability reporting (thereafter "**Directive CSRD**") **replaces Directive NFRD as from January 1st, 2024.** Such Directive CSRD was transposed into French law on December 7th, 2023 by the Ordinance n° 2023-1142 dated December 6th, 2023 on the disclosure and certification of sustainability information and on environmental, social and corporate governance obligations of commercial companies (the "**Ordinance**").

Key issues

- From Directive NFRD to Directive CSRD
- Directive CSRD transposed into French law
- Content of the sustainability report per type of company, as from the Decree

2. Directive CSRD transposed into French law

As specified in the Ordinance, the "*Déclaration de Performance Extra Financière*" created by Directive NFRD is now replaced by the "*Rapport de durabilité*" which requires the disclosure of information related to environmental, social and governance issues. In practice this requires to provide information relating to the undertaking's strategy on sustainability matters, the goals and deadlines, the role of corporate bodies, the incentive schemes, the company's policy, the due diligence procedures, the main risks for the firm (including the main undertaking's dependencies), indicators, procedures implemented.

The Decree No. 2023-1394 of December 30, 2023 taken pursuant to Order No. 2023-1142 of December 6, 2023 relating to the publication and certification of information regarding sustainability and environmental, social and governance obligations of commercial companies (the "**Decree**") (i) specifies the thresholds applicable to the categories of different sizes of companies and groups of companies and (ii) determines the type of sustainability information to be established and published by the different categories of companies.

As a result, and pursuant to articles L. 230-1 and article D. 230-1 of the French Commercial Code:

- a micro-undertaking ("*micro entreprise*") does not exceed two of the three following criteria: total balance sheet of 350 000 euros, net turnover of 700 000 euros and an average number of employees of 10;
- a small undertaking ("*petite entreprise*") is an entity which is not a micro-undertaking and which does not exceed two of the three following criteria: total balance sheet of 6 million euros, net turnover of 12 million euros, and an average number of employees of 50;
- a mid-undertaking ("*moyenne entreprise*") is an entity which is not a micro-undertaking nor a small undertaking and which, does not exceed two of the three following criteria: total balance sheet of 20 million euros, net turnover of 40 million euros and an average number of employees of 250;
- A large undertaking ("*grande entreprise*") exceeds two of the three following criteria: total balance sheet of 20 million euros; net turnover of 40 million euros; and an average number of employees of 250.

Unless otherwise provided, these thresholds are deemed to be crossed on the closing date of two consecutive financial years on the basis of the last annual accounts closed.

Please note that the thresholds of small groups and mid-groups are described pursuant to articles L. 230-2 and article D. 230-2 of the French Commercial Code.

3. Content of the sustainability report per type of company, as from the Decree

Type of company	Content of the sustainability report	Source
<p>Large undertakings (no subsidiary)¹ (except when the company is already subject to a consolidated report of a consolidating company of a large group, as specified below)</p>	<p>The sustainability report, which is included within a separate section of the management report, shall include (i) the effects of the undertaking's activities on sustainability matters and (ii) how sustainability matters affect the undertaking's development, performance and position (the so-called double materiality principle). Sustainability matters include environmental, social and company governance matters.</p> <p>As specified by the Decree, the sustainability report mainly describes:</p> <ol style="list-style-type: none"> 1. the company's business model and strategy; 2. the company's time-bound sustainability goals and progress toward those goals, including, where applicable, absolute targets for reducing greenhouse gas emissions at least for 2030 and 2050; 3. The role of management, administrative or supervisory bodies regarding sustainability issues, as well as the skills and expertise of the members of these bodies in this regard or the opportunities offered to them to acquire them; 4. The company's policies regarding sustainability issues; 5. Incentives linked to sustainability issues granted by the company to members of management, administrative or supervisory bodies; 6. The reasonable vigilance procedure implemented by the company regarding sustainability issues and the negative impacts identified in this context, where applicable in application of European Union legislation; 7. The main potential or actual negative impacts, the measures taken to identify, monitor, prevent, eliminate or mitigate these negative 	<p>Type of companies: article L. 232-6-3 of the French Commercial Code</p> <p>Content of the sustainability report: article R. 232-8-4 of the French Commercial Code</p>

¹ As per article L. 232-6-3 of the French Commercial Code, the obligation mentioned at article L. 232-6-3 of the French Commercial Code (i.e. to publish information pertaining to sustainability) does not apply when the company and, where applicable, the companies it controls are included in the sustainability information of a consolidating company which exercises control over these companies, according to the terms and conditions defined at article R. 232-8-5 of the French Commercial Code. This exclusion does not apply to listed large undertakings, as per article L. 22-10-36 of the French Commercial Code.

Type of company	Content of the sustainability report	Source
	<p>impacts and the results obtained in this regard;</p> <p>8. The main risks for the company linked to sustainability issues, including its main dependencies, and the way in which it manages these risks.</p>	
Any consolidating company of a large group²	Consolidated report (separate section of the management report) which contains the same information as for large undertakings and related to the large group	<p>Type of companies: article L. 233-8-4 of the French Commercial Code</p> <p>Content of the Sustainability Report: articles L. 232-6-3 and R. 232-8-4 of the French Commercial Code</p>
<p><u>Large undertakings controlled by a consolidating company not headquartered in the European Union nor in the European Economic Area³</u></p> <p><u>Any company which is included in the consolidated accounts of a company not headquartered in the European Union nor in the European Economic Area and which has a branch in France whose net turnover exceeds, on the closing date of the financial year, 40 million euros</u></p>	<p>Consolidated report (separate section of the management report) which contains the same information as for large undertakings and which is related to the group of the company not headquartered in the EU nor in the EEA</p> <p>However, and as per the Decree, the following information is not required:</p> <ol style="list-style-type: none"> 1. The degree of resilience of the group's business model and strategy with regard to risks linked to sustainability issues; 2. The opportunities that sustainability issues hold for the group; 3. The main risks for the group linked to sustainability issues, including its main dependencies, and the way in which it manages these risks. 	<p>Type of companies: articles L. 233-28-5, D. 233-16-6 of the French Commercial Code</p> <p>Content of the sustainability report: articles L. 233-28-4, L. 232-6-3 and R. 233-16-7 of the French Commercial Code</p>
Listed small and mid-companies	The sustainability report, which is included within a separate section of the management report, shall include (i) the effects of the undertaking's activities on sustainability matters and (ii) how sustainability matters affect the undertaking's development, performance and position (the so-called double materiality principle). Sustainability	<p>Types of companies: article L.22-10-36 of the French Commercial Code</p> <p>Content of the sustainability report: articles L. 232-6-3 and R. 22-10-29 of the French Commercial Code</p>

² As per article L. 233-28-4 of the French Commercial Code, the obligation mentioned at article L. 233-28-4 of the French Commercial Code (i.e. to publish information pertaining to sustainability) does not apply when the group is included in the consolidated sustainability information of another consolidating company which exercises control on the companies of this group, according to terms defined at article R. 233-16-4 of the French Commercial Code. This exclusion does not apply to listed large undertakings, as per article L. 22-10-36 of the French Commercial Code.

³ As per article L. 233-38-5 of the French Commercial Code, companies not headquartered in the European Union nor in the European Economic Area are those which meet the following cumulative conditions: 1° They have a legal form comparable to joint stock companies and limited liability companies; 2° They record a consolidated net turnover in the European Economic Area which exceeds, at the closing date of two consecutive financial years, 150 million euros; and 3° They are not controlled by another company, within the meaning of II or III of Article L. 233-16;

Type of company	Content of the sustainability report	Source
	<p>matters include environmental, social and company governance matters.</p> <p>As per the Decree, the information provided by the sustainability report may be limited to describe:</p> <ol style="list-style-type: none"> 1. The business model and strategy of the company; 2. The company's policies regarding sustainability issues; 3. The main negative impacts, real or potential, of the company on sustainability issues and the measures taken to identify, monitor, prevent, mitigate or correct them; 4. The main risks for the company linked to sustainability issues and the way in which it manages them. 	
<p>Listed small and mid-companies controlled by a consolidating company that is not headquartered in the European Union nor in the European Economic Area</p>	<p>Consolidated report (separate section of the management report) which contains the same information as for large undertakings and which is related to the group of the company not headquartered in the EU nor in the EEA</p> <p>However, and as per the Decree, the following information is not required:</p> <ol style="list-style-type: none"> 1. The degree of resilience of the group's business model and strategy with regard to risks linked to sustainability issues; 2. The opportunities that sustainability issues hold for the group; 3. The main risks for the group linked to sustainability issues, including its main dependencies, and the way in which it manages these risks. 	<p>Types of companies: article L.22-10-36 of the French Commercial Code</p> <p>Content of the sustainability report: article L. 233-28-5 and R. 233-16-7 of the French Commercial Code</p>
<p>Companies not headquartered in the EU nor in the European Economic Area⁴ having a branch in France, for which the net turnover exceeds 40 million euros</p>	<p>Same information as for the large undertakings except that it is not required to publish:</p> <ol style="list-style-type: none"> 1. The degree of resilience of the company's business model and strategy with regard to risks linked to sustainability issues; 	<p>Type of companies: article L. 232-6-4 and article D. 232-8-7 of the French Commercial Code</p> <p>Content of the sustainability report: articles L. 232-6-3 and R. 232-8-8 of the French Commercial Code</p>

⁴ As per article L. 232-6-4 of the French Commercial Code, such companies have a legal form similar to joint stock companies and limited liability companies; they record a net turnover in the European Economic Area which exceeds, at the closing date of the last two consecutive financial years, 150 million euros (article D. 232-8-7 of the French Commercial Code) and they neither control nor are controlled by another company, within the meaning of II or III of Article L. 233-16.

Type of company	Content of the sustainability report	Source
	2. The opportunities that sustainability issues hold for the company; 3. The main risks for the company linked to sustainability issues, including its main dependencies, and the way in which it manages these risks.	

Please note that according to the article 1 of the Directive CSRD, the sustainability report shall cover business ethics and corporate culture, including anti-corruption and anti-bribery, the protection of whistle-blowers and animal welfare. In this respect, the Loi Sapin II creates in France an obligation of vigilance against the risks of corruption. Such obligation is more restricted in scope than the Directive CSRD as it "only" applies to companies employing at least 500 employees and to companies belonging to a group employing at least 500 employees and whose turnover is greater than 100 million euros. Furthermore, please note that such Loi Sapin II creates different obligations (e.g. implementation of a code of conduct, internal whistle-blowing system, risk mapping).

The entry into force of the Directive CSRD, the Ordinance and the Decree in France mostly starts on January 1st, 2024 but the reporting calendar is different depending on the different types of companies (from 2025 up to 2029!).

To avoid greenwashing, social-washing (or even the "governance-washing"?), Clifford Chance can help you figuring out in advance from which year your company is subject to the Directive CSRD and the Ordonnance and, from there, help you drafting or reviewing your sustainability report.

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