

Spotlight on Sustainability: recent developments in reporting obligations and next steps towards sustainability due diligence

Following the Corporate Sustainability Reporting Directive 2022/2464/EU, which entered into force on 5 January 2023 ("**CSRD Directive**"), Order of the Ministry of Finance no. 85/2024 on regulating the aspects regarding reporting on sustainability ("**Order 85/2024**") was published on 26 January 2024, transposing in the Romanian legislation provisions set out under the CSRD Directive, referring to the annual financial statements which are applicable to economic operators.

Key aspects

Pursuant to Order 85/2024, reporting on sustainability – which includes environmental, social, human rights and corporate governance aspects – will have to be conducted by the targeted companies, as described below, for the purpose of assessing how sustainability factors impact the development, performance and status of the company. The data concerning the aforementioned factors is to be included in the company's directors' report.

Order 85/2024 targets medium and large companies, provided that they meet at least two of the following requirements:

- (i) have a total of assets summing up to RON 17,500,000 (the equivalent of EUR 3,946,953);
- (ii) have a net turnover of RON 35,000,000 (the equivalent of EUR 7,893,906);
- (iii) have an average number of 50 employees in the reporting financial year.

The implementation of the reporting obligations follows a waterfall approach:

(i) starting 1 January 2024:

- public interest medium/large entities with over 500 employees in that financial year and
- public interest parent entities of a large group with over 500 employees in that financial year.

(ii) starting 1 January 2025:

- medium/large entities which were not yet covered in 2024 and
- parent entities of a large group which were not yet covered in 2024.

(iii) starting 1 January 2028: non-EU entities.

An important effect of Order 85/2024 is the fact that the target companies will have to reflect in their sustainability reports data with respect to the activity of the company itself, as well as of companies in its value chain, including products and services, the company's business relations and supply chain.

The Romanian Code of Sustainability

For the purpose of providing an additional tool for aiding the companies in the reporting process, the Romanian Code of Sustainability ("**RCS**") entered into force on 21 November 2023, following the German model. The RCS set out the reporting methodology for entities with over 500 employees, as well as any entity that voluntarily wishes to publish data on sustainability.

The end goal of the RCS is to motivate entities to publish data on sustainability by simplifying the reporting process, *inter alia*, as follows:

- setting out a list of 20 criteria summing up relevant aspects from a sustainability perspective; further, each criterion includes a checklist that should guide the company to draft a report that is compliant with the law;
- providing a platform where companies can submit their sustainability reports, free of charge;
- the reports submitted on the platform can be downloaded and submitted as non-financial statements, pursuant to the applicable legislation.

While the use of both the RCS and/or the reporting platform is not mandatory, it is recommended that companies make use of them, as it would ensure consistency regarding the content of the reports, as well as a facile way for third parties to have access to a centralized data base of the reports of various companies.

Pending new legislation on sustainability due diligence - CSDDD

As of May 2024, the draft text for the Corporate Sustainability Due Diligence Directive ("CSDDD") has been formally adopted by both the European Parliament and the European Council and awaits to be published in the Official Journal of the European Union. The CSDDD targets both EU and non-EU companies and sets out the required due diligence steps that the targeted companies must take for strategies regarding human rights and environmental issues. CSDDD will require companies to identify and address adverse impacts on human rights and the environment within their operations, subsidiaries, and supply chains. As a result, companies would have to conduct risk-based human rights and environmental due diligence exercises, as set out below:

1. integrating due diligence into their policies and risk management systems;
2. identifying and assessing and, where necessary, prioritising actual or potential adverse impacts;
3. preventing and mitigating potential adverse impacts;
4. carrying out meaningful engagement with stakeholders;
5. establishing and maintaining a notification mechanism and a complaints procedure;
6. monitoring the effectiveness of their due diligence policy and measures;
7. publicly communicating on due diligence.

The CSDDD directly targets a reduced pool of companies, considering the rather high thresholds applicable to the companies themselves or to an ultimate parent company of a group that reaches such thresholds:

- a) EU companies with more than 1,000 employees on average and a net worldwide turnover of more than EUR 450 million;
- b) non-EU companies with a net turnover of more than EUR 450 million in the EU/EEA;
- c) EU companies that entered into franchising or licensing agreements in the EU in return for royalties amounted to more than EUR 22,5 million in the last financial year, provided that the company had a net worldwide turnover of more than EUR 80 million the last financial year;
- d) non-EU companies that entered into franchising or licensing agreements in the EU in return for royalties amounted to more than EUR 22,5 million in the EU in the financial year preceding the last financial year; and provided that the company generated a net turnover of more than EUR 80 million in the EU in the financial year preceding the last financial year.

While CSDDD directly targets large companies, SMEs could be impacted as contractors or subcontractors to targeted companies, due to the due diligence obligations imposed with respect to both upstream and downstream business partners of the targeted companies.

From a practical point of view, aside from setting in place due diligence policies, targeted companies would most likely seek to obtain contractual assurances from direct business partners, in order to ensure compliance with their due diligence requirements through their chains of activities.

Conclusions

The aforementioned regulations are a testament of the ever-growing interest on the matter of sustainability reporting and the correlative need for an appropriate legal framework, as part of the European Green Deal. Further, an important element in the reporting process is ensuring that the companies subject to conducting reporting on sustainability have a clear understanding regarding both the technical aspects of the reporting process, as well as the relevant information to be included in such reports.

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