

Draft Law on Corporate Sustainability Information

On 15 November 2024, the Draft Law on Corporate Sustainability Information was published in the Official Gazette of the Spanish Parliament, transposing Directive (EU) 2022/2464 (CSRD) and amending the Commercial Code, the Companies Law and the Audit Law in order to establish the legal framework applicable to the reporting and assurance of sustainability information. This briefing addresses the most notable aspects of the current draft, which could be modified during the ongoing parliamentary process. The full text of the Draft Law is available [here](#).

- **Undertakings obliged** to submit a sustainability report (substituting the current “statement of non-financial information”):
 - **Large undertakings** and **parent undertakings of large groups**, i.e. those that – at the closing of two consecutive financial years – meet, on an individual or consolidated basis, at least two of the following requirements: (i) assets exceeding EUR 25 million; (ii) turnover exceeding EUR 50 million; and (iii) an average number of employees exceeding 250. Large undertakings must submit an individual report, while parent undertakings of large groups must submit only a consolidated report (considering the obligation of the parent company to provide individual information to have been met).
 - **Small and medium-sized undertakings** (classified as such by the auditing regulations) that are issuers of **securities admitted to trading** on an **EU-regulated market** (except micro-undertakings, i.e. those that – at the closing of two consecutive financial years – meet at least two of the following requirements: (i) assets not exceeding EUR 450,000; (ii) turnover not exceeding EUR 900,000; and (iii) average number of employees not exceeding 10) (“**SME Issuers**”). SME Issuers must submit an individual report.
 - **Spanish subsidiaries** (that are large undertakings or SME Issuers) or, if there are no subsidiaries, **branches** (with turnover exceeding EUR 40 million in the preceding financial year) whose ultimate parent is a **third-country** undertaking (non-EU and non-EEA) with EU turnover exceeding EUR 150 million in each of the two preceding financial years. Such entities must submit a sustainability report containing specific information – at the group level – on the ultimate parent undertaking in the third country or, in the case of a branch, if not applicable, at the individual level of the third-country undertaking.

There are **exemptions** from the obligation to submit individual or consolidated sustainability reports for, as the case may be, **subsidiaries** and **parent undertakings of a subgroup** if certain requirements are met, including having published in Spanish the sustainability report of the parent undertaking that includes the information of the exempt undertaking. These exemptions **do not apply** to public-interest entities that are **large undertakings** and that have **issued securities** admitted to trading on an EU-regulated market.

The obligations related to the submission of sustainability information also **apply to insurance and reinsurance** undertakings and **credit institutions** that are large undertakings, parent companies of large groups or SME Issuers; special rules are established for these cases. **Alternative investment funds** and **undertakings for collective investment** in transferable securities **fall outside** the scope of the Draft Law.

- **Content and filing of the information**

- Among other information, the sustainability report must include information on the impact of the undertaking or group on sustainability matters and how these matters affect its development, performance and position (**double materiality** perspective), as well as on its **operations** and **value chain**, including its products and services, business relationships and supply chain, and on **goals** with a time horizon, including relevant **key indicators**.
- The management or sustainability report, as the case may be, must include information on key **intangible resources** and an explanation of how the business model relies on them and how they constitute a value creation source.
- The management report (which must include the sustainability report in a specific section) must be prepared in a single **electronic format** (XHTML) and sustainability information must be **tagged**.
- Undertakings must report sustainability information in accordance with the **European Sustainability Reporting Standards** (ESRS). Notwithstanding the requirements related to the approval, publication and filing applicable to the sustainability report, the report must be made **available to the public** – free of charge and easily accessible **on the undertaking's website** – **within six months** of the end of the financial year and remain available for five years.
- The undertaking must inform the **workers' representatives** and discuss with them the relevant information, as well as the means of obtaining and verifying the sustainability information, establishing an exchange of views to obtain the workers' opinions, which will be communicated, if applicable, to the management body.
- SME Issuers may **limit** their sustainability **information** reporting.

- **Assurance of information**

- The mandatory sustainability information will be **subject to assurance** in accordance with the provisions of the Audit and Assurance of Sustainability Information Law. Two levels of

verification are foreseen: **limited or reasonable** assurance. However, until standards for reasonable assurance have been adopted, limited assurance will suffice.

- The assurer must be appointed at the **general shareholders’ meeting** for an initial period of not less than three years and before the end of the financial year that is being assured. For financial year **2024**, the appointment may be made by the **management body** and ratified at the first general meeting to be held following appointment. If an auditor has already been appointed and the assurer is the same person, the assurer can be appointed for a period of less than three years to ensure that the period coincides with the remaining period for which the auditor has already been appointed.
- The appointment of the assurer and the assurance activity will be subject to requirements similar – but with some differences – to those established for auditing activity. Assurers may be **auditors or audit firms** or any other **person or assurance company authorized by the ICAC** that meets specific conditions.
- The assurer **will corroborate** the sustainability information’s **compliance with the sustainability reporting standards** set out in the Commercial Code and the Companies Law, the **process** carried out by the undertaking **to determine the information** presented in accordance with these standards and **compliance** with the requirement to prepare the information in the **electronic reporting format** and to **tag** the information.
- **Shareholders** of undertakings **obliged** to submit the sustainability information holding more than **5%** of the voting rights or capital may request, as a supplement to the notice of the call, the inclusion of a point on the agenda of the general meeting proposing that an **accredited independent third party** (other than the auditor and the assurer) prepare a report on specific elements of the sustainability information and make it available at the general meeting.
- **Shareholders** of undertakings that are **not obliged** to submit sustainability information, but that do so voluntarily, representing at least **5%** of the share capital may **request** that the **commercial registrar** appoint an assurer in connection with the sustainability information.
- **Progressive implementation** of the new obligations pursuant to the type and size of the undertaking:
 - **Report to be submitted in 2025** (with respect to financial year 2024): large undertakings and parent undertakings of large groups that are public-interest entities and have over 500 employees in 2024.
 - **Report to be submitted in 2026** (with respect to financial year 2025): all other large undertakings and parent undertakings of large groups.
 - **Report to be submitted in 2027** (with respect to financial year 2026): (i) SME Issuers; and (ii) small and non-complex credit institutions, and captive insurance and reinsurance undertakings that are considered large undertakings or are SME Issuers. Up to, but not including, financial year 2028, SME Issuers are entitled to omit sustainability information from their management report if the management report explains the reasons for doing so.

- **Report to be submitted in 2029** (with respect to financial year 2028): Spanish subsidiaries and branches of undertakings from third countries. Until 6 January 2030, the EU subsidiary that generated the highest turnover in the EU in at least one of the previous five financial years may submit the consolidated sustainability information and merely refer to the EU subsidiaries that are obliged to submit sustainability information.
- Until the new rules apply to them, undertakings must continue to prepare – and submit for assurance – the **statement of non-financial information** in accordance with Law 11/2018.

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