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Furthermore, at the European Parliament, I would like to thank all the shadow rapporteurs of the CSRD, their advisers, as well as my entire parliamentary team, with a special mention of Juliette Raulet-Descombey and Berthille Simon.
Last but not least, a big thank you to the Groupe Lefebvre Sarrut teams for believing in this project from the outset, and for contributing so willingly to its realisation.

Pascal Durand

European law more than ever requires clarity. I would therefore like to express my gratitude to all those who have provided their technical or moral support to enable this Directive to come to life and to this present publication to blend its complexity into a single, easy-to-read text.

Abrial Gilbert-d'Halluin

FOREWORD

Pascal Durand

Contrary to what some would have us believe, the Corporate Sustainability Reporting Directive (CSRD) was not born out of the perversity of a few technocrats driven by an evil desire to increase the administrative burden on companies and harm their competitiveness, but out of a real political and economic necessity.

I. THE NEED OF A NEW REGULATORY FRAMEWORK

This legislation has in fact become self-evident due to the inadequacies of the 2014 Non-Financial Reporting Directive (known as the NFRD), which preceded it. The relative failure of this first text stemmed from various causes, the main ones being:

- the small number of companies covered by statutory reporting;
- the absence of shared, mandatory norms and standards, and the failure to take account of the specific nature of certain sectors;
- the impossibility for the companies concerned to know precisely the nature and extent of the information to be disclosed as part of their extra-financial obligations;
- the arbitrary and often fragmented nature of the data disseminated;
- the corresponding lack of reliability, control and certification of published information;
- the absence of any relevant penalty for failing to disclose the required extra-financial information or for disseminating false information;
- the inadequate training in extra-financial issues for legal and accounting professionals, both externally and internally;
- the competing existence of different types of international standards and labels; and
- the difficulty of producing a relevant analysis of the sustainability of a company and its value chain.

From a factual point of view, despite or – in reality – because of the coexistence of numerous international voluntary standards, the absence of regulation became a handicap inasmuch as, schematically, it was the managers or certifiers' level of ambition that defined the nature and quality of the information disclosed.

This situation made the analysis of stakeholders and the information communicated to shareholders, NGOs, and customers arbitrary and random. A few virtuous companies provided too much information, while others provided none. As for the most communicative companies, they were often content to publish, sometimes with fanfare and trumpets, what they considered relevant to their image... This legal vacuum undermined the sincerity of the market and the competition, with virtuous companies whose reliable information was verified finding themselves in the same boat as much less scrupulous operators.

II. A EUROPEAN LEGISLATIVE RESPONSIBILITY

This situation, which oscillated between greenwashing and fragmented information, was becoming legally untenable and clearly could not continue. The market needs security and reliable data, especially when external funding – whether private or public – requires closer control and knowledge of the company. A European legislative reform was therefore needed to overcome this state of uncertainty.

Thus, far from a preconceived notion entertained by certain interest representatives who are often opportunely relayed, the CSRD does not constitute a 'new' administrative burden that would unnecessarily burden companies' operations. On the contrary, it can greatly simplify reporting and analysis by harmonising and standardising the data to be published.

It should therefore be seen first and foremost as an opportunity to rationalise information and create a more objective scorecard on the company's sustainability, and as the end of hemiplegic governance based on a false opposition between a 'financial' vision of the company and its 'extra-financial' counterpart.

In this respect, it is important to note the evolution, which is not just semantic, from a so-called 'extra-financial' directive to a 'sustainability' directive.

The notion of sustainability covers concepts and issues that can also have numerous financial effects; thus, it made no sense to pit the two types of reporting against each other. Impact-based materiality is one of the illustrations of this interweaving of risks and opportunities for the company, and the conditions in which it operates.

However, I do not wish to limit myself to defending the technical merits of the CSRD without pointing out that legislation is the result of a more global reflection on what constitutes the general interest and the common good.

If the representatives of private interests are in their legitimate role when they defend those interests, let me remind you that the general interest is rarely, if ever, the sum of private interests.

The job of the European legislator is to defend the general European interest and to take account of changes in society and the planet when deciding to legislate.

The global context has changed considerably in recent years. The 2015 Paris Agreement recognised the need to take effective, concerted action against the increase in greenhouse gas emissions and climate change, and to preserve resources and biodiversity. The United Nations' guiding principles remind us about the need to combat poverty, slavery, forced labour and all forms of discrimination, and to defend human, trade union and indigenous rights. These are not mere objectives among others, the illustration of a romantic idealism or utopia, but a real categorical imperative, that of preserving the future of our civilisation, of our planet, and to do so while respecting our principles and values, that of a democratic market society, committed to the rule of law and humanism.

And it is in the light of this imperative of higher and general interest that this legislation must also be understood. If Corporate Social Responsibility (CSR) and sustainability information is essential, it is also, if not above all, because the company must play its part in achieving these objectives of general interest. On the one hand, for its own sake, to protect itself from external reputational risks and from the risks that its activities may pose to third parties and to the planet; but also, because companies are key to the future, and among the most effective levers for achieving these general-interest objectives. The fact that the continental European space is one of the most determined to seek – and has been for decades – this fair balance and this temperance between the economy, the environment and society is the specificity, the safeguard and the honour of our Union.

Not legislating on sustainability would be a major political mistake for the Union. Europe's economic sovereignty depends on its ability to define its own standards and rules without waiting for them to be imposed from outside, as in the case of financial matters, for example.

Not legislating would mean refusing to anticipate the changes and upheavals of the 21st century, and leaving ourselves open to the vagaries of an uncertain future, in terms of access to resources and investment, for example.

Not legislating would nullify the collective targets set for carbon neutrality by 2050, and render meaningless a large part of the Green Deal, taxonomy and the preservation of biodiversity on land and in the sea.

Not legislating would mean refusing to listen to and take into account a major change in society regarding the intrinsic qualities of the products consumed, their manufacture and origin, and the growing desire, particularly among the younger generations, to make sustainable governance and CSR a priority for their future, and to no longer see a company's profitability alone as the alpha and omega of any industrial, commercial or service activity.

The reality is obviously complex, and not every purchase is dictated by ethical or moral considerations – far from it. On the one hand, a company's reputation can deteriorate very quickly if it is shown to have lied or concealed information about activities that are harmful to the planet, such as active participation in uncontrolled deforestation, attacks on indigenous populations or the use of forced or child labour. On the other hand, it can be extremely advantageous for a company to communicate, under objective and certified control, about the ethical nature of its production, mobility or human-relations choices; the search for meaning is not a dirty word, even in commercial matters.

III. AN OBLIGATION 'TO SAY', NOT 'TO DO'

Legally, the CSRD is not an 'obligation to do', but an 'obligation to say': it is an obligation of transparency incumbent on the company, in the very same way as for the publication of its financial statements and company accounts.

As with its free choice of investments, nothing will force a company to choose a specific transition plan or specific means of reducing its carbon footprint and limiting its emissions; but respecting its choices and its declarations on the applicability of norms and standards to its activities will help it in its governance and in its relations with all its stakeholders.

All these considerations, described earlier as technical and political, led the European Union to vote for the CSRD by a very large majority.

However, legislating in the general interest does not mean ignoring particular interests, or sidelining stakeholders in order to define rules that would quickly be seen as 'out of touch'.

IV. THE CENTRAL ROLE OF EFRAG

To avoid these pitfalls, the European Commission took care to involve business and audit professionals in its deliberations, both upstream and downstream of its proposal. The partnership between the Commission, then the Parliament and the Council, with the European Financial Reporting Advisory Group (EFRAG), to define the European standards and norms (the ESRS), was a guarantee of rigour and realism.

The task was immense but, as mentioned above, EFRAG was not starting from scratch. Numerous sustainability reporting standards already existed, different international standards were competing with each other, and large companies had become accustomed to communicating extra-financial information through the NFRD.

What was needed was 'simply' to give shape to these different standards, rationalise them and align them with the political objectives defined by the Commission and the European co-legislators, around the Green Deal, the Common Agricultural Policy and numerous specific pieces of legislation. We needed to restore coherence to the European internal market, without undermining its competitiveness, and free it from uncertainty, so that investments – particularly 'green' ones – could be made with full knowledge of the facts.

The decision to entrust this work to an independent technical body, previously responsible for drawing up financial norms and standards, was the subject of an initial political discussion in Parliament.

To shed some light on the legislative process, it is important to remember that the European Parliament does not have a stable, permanent political majority, as is the case in many national parliaments. The texts, which are initiated by the Commission alone, are the subject of close negotiations between groups representing 27 nationalities and seven political groups, not counting the non-attached Members... For some groups, it was not self-evident that, as a body with a financial culture, EFRAG should be entrusted with drafting sustainability norms and standards. However, this was the majority decision, for a major pragmatic reason: this group already existed, it functioned perfectly, it was aware of the difficulties encountered with the NFRD, and its competence was not contested. Furthermore, this choice was consistent with placing sustainability norms and standards at the same level of rigour and definition as financial norms, and not pitting one against the other. It was nevertheless decided to ask, in agreement with the EFRAG Board and the Commission, that EFRAG's governance evolve and that a board dedicated to sustainability, including more stakeholders such as certain European NGOs and trade unions, be made permanent.

This point, which was one of the first to be addressed in our legislative debates, illustrates the European culture of compromise. Many more were later negotiated in this text, some agreements being more difficult than others to reach.

V. EXTRATERRITORIALITY

The next issue, which was particularly close to my heart, concerned extraterritoriality. It was painful, not to say unbearable, to observe during

all my years as an MEP the naivety or weakness with which the European Union opened its borders to all winds, imposed rules and standards on its own nationals, legal entities and individuals alike, without having the will or the courage to impose compliance with these same norms and standards on players of non-EU nationality in our internal market.

Since the last agricultural crisis, everyone has been familiar with the mirror clauses that the EU wants to impose in its free trade agreements, but in legal or commercial terms, this was generally not even envisaged.

This lack of reciprocity was even more incomprehensible given that the other major international operators, the USA and China, did not hesitate to impose their own rules and conditions to operate in their domestic markets.

I was pleased to note, from our first meetings, that the groups unanimously shared this view and that all of them, without exception, would support a major change to the Commission's proposal: requiring non-EU companies to report in the same way as European companies if they wanted to obtain the right to operate on our internal market. Once this decision had been taken, all that remained was to defend it to an initially extremely reluctant Commission, for practical reasons of feasibility and control. The Council, for its part, agreed without major difficulty.

After tough negotiations with the Commission, a compromise was finally reached, the substance of which you will read in the body of this publication. This principle of extraterritoriality now has the great merit of existing; I am convinced it will create a precedent that will make the internal market fairer for our businesses, and make the Union stronger and more respected in the rest of the world.

VI. EXTENDED SCOPE

The third point that was the subject of heated debate was the scope of the directive, and more specifically its extension to SMEs. While there was no debate about extending the application of the directive beyond the large companies covered by the NFRD, the discussion about the limit of the extension was very open. The Commission proposed a threshold of 250 employees and EUR 40 million turnover, and wanted to be able to extend the CSRD to listed SMEs, while some parties wanted to raise the threshold, and others, to lower it.

On the face of it, this debate might seem relatively straightforward: except for a few cases, SMEs do not have the legal structures, financial or human resources to meet the CSRD's ESRS (European Sustainability Reporting Standards) reporting and certification specifications. However, the devil is often in the details.

Given that large companies subject to the CSRD or the duty of vigilance will be obliged to disseminate information relating to their value and subcontracting chains, most of which are made up of SMEs, the latter will *de facto* be subject to some of these reporting obligations. However, this information will be required and defined by the principal alone, and will be neither regulated by law nor consistent within the same sector. The patchwork of information that was one of the weaknesses of the NFRD will be repeated here. Not defining the norms and standards to be communicated by SMEs is not necessarily a service to them, as it in no way constitutes a guarantee against the complexity or cost of reporting. On the contrary, it opens the door to obligations imposed by principals without any real framework, leading to major disparities in the market, and undermining competition.

Furthermore, not providing sustainability information for SMEs risks cutting off or at least limiting their access to finance. From the moment that investors and credit institutions must account for and provide information on the sustainability of their investments or loans, they will need to analyse the situation of the company concerned. The absence of any sustainability information will then be a formidable obstacle, as investors need reliable information before making their decisions.

These points having been debated, and the desire of certain groups not to extend the scope of the CSRD to SMEs being all the more inflexible as the election period loomed, it was agreed to maintain the exemption, while asking EFRAG to define specific norms and standards for SMEs in order to define the nature and extent of the information that they will have to provide, but on a purely voluntary basis, and to postpone until 2027 the implementation of the Directive for listed SMEs. The advantage of this compromise solution is that it provides a lighter, more flexible and consistent framework for SMEs, while leaving them free to decide whether or not to comply with the reporting requirements. It also has the merit of making it possible, when the text is reviewed, to study the real impact of this voluntary framework and to refine the scope of the CSRD.

Regarding the SME topic, it is necessary to mention the influence, within the European Union, of certain interest groups. When their activities are fair and transparent, the presence of interest representatives in the legislative process is useful, if not indispensable. They know their respective sectors better than anyone else and can provide information on the risks or opportunities of legislative change. But this action becomes highly open to criticism when it is intended to block any progress and takes the form of demagoguery or public caricature to discredit the reform. In this case, certain organisations, either out of self-interest or conservative ideology, tried to oppose an ambitious implementation of the CSRD and discredited it through the press, while also mobilising their networks of political and economic influence.

These propaganda actions are harmful to democracy: journalists and the general public do not necessarily have access to all the information, so simplistic arguments can sometimes bear fruit. Fortunately, the overwhelming majority of the specialist and European press has done a great deal of work in deciphering the facts and has systematically respected the adversarial process to disentangle the true from the false.

VII. TARGETED ATTACKS ON THE TEXT

So, as the text progressed, we were subjected to targeted and concerted attacks claiming that:

- all European companies would be affected indiscriminately by reporting and that their operating and auditing costs would skyrocket because of this new administrative burden;
- European standardisation was totally unnecessary, since international standards, particularly in the field of climate, would be defined and all that was needed was to apply them;
- international standards on human and social rights and the environment were too vague to be applicable; and
- the certification of two reports, one financial, the other sustainability, would lead to blockages and uncertainty within companies.

After they failed to block or delay the implementation of the legislation, since it was eventually adopted and supported by the overwhelming majority of stakeholders, the action of these interest groups then focused on denigrating EFRAG's work on ESRS, indicating that the proposed standards constituted an incomprehensible and technocratic white elephant that would definitively undermine the competitiveness of European companies and the attractiveness of the Union.

More subtly and insidiously, others, without criticising the principle of the CSRD, wanted to considerably reduce its scope by limiting the mandatory norms and standards to climate issues alone, thus postponing indefinitely the publication of information on social and human rights, and biodiversity.

The argument most often heard, that would reappear later during the European election campaign, was the alleged administrative overload caused by European legislation and its overly technical nature.

Indeed, some politicians have used one of the mantras of the von der Leyen Commission to bolster their arguments, that of 'better' regulation, which has gradually been transformed into 'less' regulation, paving the way for the demagogues of simplistic and essentially cosmetic deregulation.

As far as norms and standards are concerned, these external interventions have finally borne fruit, albeit to a limited extent, since some standards

have been postponed while others have been reduced and some, such as the disclosure of biodiversity transition plans, have seen their mandatory nature removed.

However, the essential elements have been preserved, and are included in the final text and in the ESRSs already published or to be published for certain specific sectors from June 2026.

VIII. COMPROMISE

In order to meet expectations and maintain a large majority in Parliament and the Council while retaining almost all of the Commission's proposal, we have tried to take account of the various constructive criticisms and to ward off attempts to block the process.

We have reiterated the need to develop specifically European legislation, particularly regarding double materiality, while ensuring that the climate aspect of this legislation is compatible and interoperable with future international standards. This express intention to establish equivalence will mean that transnational companies will exempt them from declaring several types of information for different geographical sectors.

We have also taken care to list, in the recitals, the various reference texts on social and environmental matters so that operators, inspectors, certifiers and, where appropriate, administrative and judicial bodies can have certain and reliable sources and a legal basis for reporting obligations. These texts will also be of great help when it comes to examining compliance with obligations of due diligence, for example.

The issue of control and certification also occupied us for a long time. While the principle of having a certified sustainability report was self-evident, integrating and merging it with the financial report was not. Nor was it considered appropriate to entrust the same certifying body with the audit and subsequent drafting of both reports. The risk of sustainability issues being taken over by financial experts was not negligible, and the temptation to arbitrate in favour of financial imperatives and criteria is not a mere figment of the imagination. However, no majority, neither in the Parliament, nor in the Commission and even less in the Council, could be found to dissociate the audit and control of sustainability, the argument most often used being that of the alleged increase in costs.

This argument is a perfect illustration of the aforementioned difficulty of an objective and rational debate on technical subjects. Yet it is easy to see that a handful of audit firms in the EU have a virtual monopoly on financial reporting – the famous Big Four, not to name them specifically– and are keen to extend their activities to sustainability issues. Supported in this hegemonic

desire by a large proportion of EU Member States, intense lobbying – to put it mildly – has been undertaken in an attempt to limit the possibility of using independent third parties for sustainability certification and to prohibit double auditing.

A quick word about the alleged increase in costs that would result from dual auditing or the appointment of an independent sustainability certifier: while the first reports have not yet been finalised, requests from financial auditors for fees relating to sustainability do not show any significant reduction compared with those of an external expert.

Regarding the nature of reporting obligations, certification and control, we have chosen to remain moderate, with limited assurance initially, then reasonable assurance thereafter. It was not a question, particularly for medium-sized companies and auditors, of going from 'nothing to everything'. When the Directive is revised, the Commission will also examine any need to strengthen its application.

IX. MAKE IT A REALITY

The implementation of the CSRD now depends on the will of the stakeholders to make it a reality, and a useful and effective tool in our new economy. It also requires the unwavering commitment of the Member States, which retain a monopoly on the organisation of auditing, certification and sanctions for any non- or false declarations.

However, it is in the commitment of the Member States that the greatest uncertainty lies, because without political will and courage, it is rare for a legal text to be fully effective. They now have the opportunity to strengthen the power of independent control bodies dedicated to sustainability, and to make sustainability the right counterpart to mere financial logic.

This book, which aims to be educational and exhaustive, offers all the stakeholders a pragmatic and efficient CSRD perspective. The role of the legislator ends here; that of the players in this new economy of the 21st century, begins.

Pascal Durand

METHODOLOGY

This book presents the European Directive (EU) 2022/2464, known as the Corporate Sustainability Reporting Directive (CSRD). It aims to enhance comprehension by contextualising, elucidating, and commenting on the directive, article by article.

The CSRD is an amending legal act that introduces new rules concerning sustainability reporting, modifying over fifty legal articles within four major legislative texts of the European Union:

- Directive 2013/34/EU, known as the Accounting Directive;
- Directive 2004/109/EC, known as the Transparency Directive;
- Directive 2006/43/EC, known as the Audit Directive; and
- Regulation (EU) 537/2014, known as the Audit Regulation.

To properly understand and implement the EU law applicable to sustainability reporting, it is essential to refer to these four major texts as amended by the CSRD. However, these texts include numerous provisions unrelated to sustainability reporting. For the sake of readability and efficiency, this book compiles all the relevant articles or extracts from these four texts that pertain exclusively to sustainability reporting.

The initial phase of this work involved the following steps, starting from the text of the CSRD itself:

- reproducing the structure of the directive;
- integrating the amended articles from the four aforementioned texts (Parts I to IV of this book); and
- including articles specific to the implementation of the CSRD (presented in Part V of this book).

To ensure a thorough understanding and correct application of the CSRD, this book goes beyond mere reproduction of the directive's text:

- When the CSRD amends a single paragraph of an article in the Accounting Directive, for example, we have chosen to reproduce a more comprehensive extract or the entire article, thus providing its consolidated version.
- To ensure the accessibility of each provision, if an article referenced is not present in the table of contents, its title or summary is indicated in a footnote.
- Additional texts not amended by the CSRD, such as the Taxonomy Regulation, which are crucial for implementing the CSRD, have also been added.

– Furthermore, this book provides commentary – or Recitals of the CSRD – on essential articles of law that have been amended, newly introduced, or are specific to the CSRD.

This work constitutes a comprehensive compilation of all EU legal rules necessary for implementing the CSRD. It is designed to help navigate the various legal texts related to sustainability reporting or intrinsically linked to it, thereby facilitating the application of this complex body of law.

We hope this compilation will be a valuable resource for you.

TYPOGRAPHY USED

The text of the CSRD directive is reproduced using simple typography.

- Example: 'The coordination measures prescribed by Articles 19a [...]'

The additions necessary for the consolidations (Example A) and/or contextualisation of the directive (copy and paste of a mentioned Article) have been put in square brackets. Summaries of a legal provision (Example B) and titles (Example C) of the Articles not present in the table of contents have been put in footnotes.

- Example A:

> '[1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.]
>
> 2. The power to adopt delegated acts referred to in Article 1(2), Article 3(13), Articles 29b, 29c and 40b, and Article 46(2) shall be conferred on the Commission for a period of 5 years from 5 January 2023. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.'

- Example B:

> '1. Large undertakings, and small and medium-sized undertakings, except micro undertakings, which are public-interest entities as defined in point (a) of point (1) of Article 2[1] shall include in the management report information necessary to understand the undertaking's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking's development, performance and position.'
>
> [1] Listed companies on regulated markets of EU Member States.

- Example C:

> 'In the context of point (ii) of the first subparagraph, the Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a[1] and 27b[2], measures concerning the assessment of standards relevant to the issuers of more than one country.'
>
> [1] 'Revocation of the delegation'.
> [2] 'Objections to delegated acts'.

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