Climate Governance Initiative Australia

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FACT SHEET 3:

Climate reporting requirements for Australian entities with European or US operations

Sustainability reporting developments in the European Union (EU) and the United States (US) have potential worldwide reach.

Australian-based companies with activities in the EU, or which are owned by US Securities and Exchange Commission (SEC) registrants, should pay careful attention to possible reporting obligations in these jurisdictions.

EU REPORTING REQUIREMENTS

WHO IS IMPACTED

The European Sustainability Reporting Standards (ESRS), which sits within the broader legal and reporting framework known as the Corporate Sustainability Reporting Directive (CSRD), were adopted by the European Commission (EC) on 31 July 2023. These standards, will apply to:

- **Australian entities with securities listed on EU-regulated markets;**
- **'large' undertakings in the EU,** being companies listed on an EU regulated market or unlisted[1] companies which have operations or are based in the EU and subsidiaries of Australian parent companies who meet at least two of the following three criteria: (1) a balance sheet of over EUR20 million; (2) over EUR40 million net turnover; and (3) over 250 employees.
- **EU-listed small[2] and medium[3]-sized undertakings (SMEs)** (other than micro[4] undertakings) that are subsidiaries of Australian-based companies with debt or equity securities listed on an EU-regulated market; and
- **Certain Australian-based entities, being those that:** (1) have generated a net turnover of more than EUR150 million in the EU in each of the last two financial years; and (2) have at least one large or listed subsidiary on regulated markets in the EU (or branch, if there are no EU large or listed subsidiaries) in the EU with more than EUR40 million net turnover.

WHEN WILL REPORTING COMMENCE?

Reporting will be phased in from 1 January 2024, starting with companies listed on EU-regulated markets.[5] Certain phase-in relief is available.[6]

1 A company that is listed on an EU regulated market does not need to have operations within the EU to be brought into scope. A company that is not listed on an EU regulated market must have operations or be based within the EU to be brought into scope.

2 Small undertakings are those that meet at least two of the following three criteria: (1) no greater than EUR4 million balance sheet total; (2) no greater than EUR8 million net turnover; and (3) no greater than 50 employees.

3 Medium-sized undertakings are those that do not qualify as small and meet at least two of the following three criteria: (1) no greater than EUR20 million balance sheet total; (2) no greater than EUR40 million net turnover; and (3) no greater than 250 employees.

4 Micro undertakings are those that meet at least two of the following three criteria criteria: (1) no greater than EUR350,000 balance sheet total; (2) no greater than EUR700,000 net turnover; and (3) no greater than 10 employees.

5 Which may include their worldwide operations at the global ultimate parent consolidated level by 2029.

6 Deloitte, (June, 2023) European Sustainability Reporting Standards - Unpacking the Commissions first draft Delegated Act

WHAT IS REQUIRED?

The ESRS requires disclosure against two cross-cutting standards (ESRS 1 and ESRS 2) and 10 topical standards covering ESG topics (which are outlined in **Figure 1**). **All companies must comply with the general requirements of ESRS 1 and ESRS 2 regardless of materiality.** However, the 10 topical standards are subject to a materiality assessment, with some disclosure requirements voluntary regardless of materiality (such as biodiversity transition plans and certain indicators on non-employees).

Unlike IFRS S1 and S2 which adopts an investor-focused approach,[7] the ESRS requires entities to apply **'double materiality.'** Double materiality involves consideration of the organisation's impact on the environment ('impact materiality') in addition to the environment's impact on the company ('financial materiality')[8]. This approach is considered more comprehensive than the investor-focused approach to materiality required under the ISSB standards.

Figure 1: ESRS Disclosure requirements

Cross-Cutting

ESRS 1	ESRS 2
General requirements	General requirements

Environmental

ESRS E1	ESRS E2	ESRS E3	ESRS E4	ESRS E5
Climate Change	Pollution	Water and marine resources	Biodiversity and ecosystems	Resource use and circular economy

Social

ESRS S1	ESRS S2	ESRS S3	ESRS S4
Own workforce	Workers in the value chain	Affected communities	Consumers and end users

Governance

ESRS G1
Business Conduct

7 Based on financial materiality from the perspective of existing and potential investors, lenders and other creditors.
8 For more information surrounding double materiality, see Workiva blog: What Is Double Materiality? Here's What You Need To Know.

US REPORTING CONSIDERATIONS

On 21 March 2022, the SEC issued a proposed rule, for consultation,[9] which would require SEC-listed companies to make certain climate disclosures in registration statements and periodic reports. It also proposed a rule that entities disclose the financial impacts of climate-related risks for each line item of their financial statements **where the impact is one per cent or higher on a line-item basis** (known as the **bright-line test**). The SEC's consultation closed in June 2022, and the SEC is currently still in the process of finalising the proposal, following some delays.[10]

In late September 2023, California passed the *Climate Corporate Data Accountability Act* (SB 253) and the *Climate-related Financial Risk Act* (SB 261). Collectively, these bills will require all companies which 'do business in California' with annual revenues in excess of USD$500 million (for SB 261) or over USD$1 billion (for SB 253) to disclose certain climate-related information. Some commentators consider that these Bills go beyond the requirements of the SEC's proposed climate-related disclosure rule.[11]

US, EU AND ISSB CLIMATE REPORTING COMPARED

The table **below** highlights the main differences between the the US, EU and ISSB's sustainability reporting requirements/proposals.

	US (SEC)	EU (CSRD/ESRS)	ISSB
Type	Disclosure requirements developed by the securities regulator	Regulation issued by the European Commission (EC)	Standards developed by the ISSB
Scope	Detailed climate-related disclosures	Sustainability disclosures with 10 topic-specific standards	Detailed climate-related disclosures
Materiality	Investor-focused	Double materiality	Investor-focused
Assurance	Limited assurance, followed by reasonable assurance (scope 1 and scope 2 GHG emissions)	Limited assurance (potentially followed by reasonable assurance)	Local jurisdictions choose to require either limited or reasonable assurance

QUESTIONS FOR DIRECTORS TO ASK

EU operations:

- Have we evaluated how our EU operations will be affected by the EU reporting requirements?
- Have we compared our current climate reporting with the EU's double-materiality requirements?

US operations:

- Do we consider that the bright-line test will apply? If so, can we set out the financial impact of climate-risk for each line item of our financial statements?

9 SEC Proposed Rule Release No. 33-11042, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*.

10 Climate Governance Initiative US (July 2023) SEC climate disclosure briefing for board directors

11 DavisPolk (Sep 2023) Major California climate-related disclosure bills poised to become law

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