

Corporate Sustainability Reporting Directive (CSRD): Irish transposition legislation published

An obligation to put employees' representatives in place?

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Ireland has officially transposed the EU's *Corporate Sustainability Reporting Directive* into Irish law as the *European Union (Corporate Sustainability Reporting) Regulations 2024* ([LINK](#)). The Regulations came into force on July 6, with the first companies in scope having to report in 2025 on 2024 data. It has been estimated that, eventually, around 50,000 companies within the EU will come into scope. We have seen a figure which suggests that there could be as many 600 companies based in Ireland covered by the new law, many of them US multinationals.

According to the Department of Enterprise, Trade and Employment (DETE), the sustainability reporting is gradually applicable across the period 2024 to 2028 commencing for financial years on or after:

- 1 January 2024 for public interest entities (greater than 500 employees)
- 1 January 2025 for other larger companies (greater than 250 employees)
- 1 January 2026 for listed SMEs, with an 'opt out' possible until 2028
- 1 January 2028 for large subsidiaries and branches of non-EU companies with a net turnover of €150 million in the EU.

However, non-EU companies could be in scope earlier if they have financial securities that are listed on an EU market. **The wording around companies in scope and on reporting obligations is not straightforward and every company will want to look at its own situations and take appropriate, expert advice.**

The CSRD requires companies in scope to report on a wide range of human rights, environmental, and employment and human resource issues in their own operations and in supplier operations in their value chain. The information provided must be independently verified and audited. The extent of the information to be provided should not be underestimated.

Employees' representatives

The CSRD Regulations requires that employees' representatives be informed and consulted at certain points during the due diligence and reporting process. To quote the relevant provisions:

The directors of an applicable company shall provide information to, and consult with, employees' representatives at the appropriate level in relation to the sustainability information required under section 1590 and the means of obtaining and verifying such information.

Any opinion of the employees' representatives in relation to the information referred to in subsection (1) shall be communicated, where applicable, to the directors of the applicable company.

For the purposes of this section, 'employees' representatives', in relation to an applicable company, means:

- (a) in the case of an applicable company to whom the Employees (Provision of Information and Consultation) Act 2006 applies, the employees' representative within the meaning of that Act, or*
- (b) in the case of any other applicable company, any persons duly appointed or elected by employees of the company as an employees' representative for the purposes of this section.*

First, it should be noted that it says that directors "shall" provide information to, and consult with, employees' representatives. The word "shall" is an imperative, an obligation to do something. To put this another way. There must be employees' representatives in place for the purposes of these Regulations. Otherwise, how can "directors" discharge their obligation of informing and consulting?

Does this impose an obligation on management to arrange for the appointment of such representatives if there are none now in place? It would seem that it does.

The Regulations then set out two options for how such representatives could be put in place. We refer to them as option (a) and option (b). See above. **However... how (a) and (b) should be interpreted is ambiguous, to say the least.**

- *What do the words in option (a) "the 2006 Act applies" mean?*
- *Does it simply mean a company within the scope of the 2006 Act, or does it mean a company which already has an Information and Consultation Forum in place?*

If it means a company simply within the scope of the 2006 Act, does that mean that management must now take active steps to set up such a Forum so that management "shall" provide information to employees' representatives serving on it as required by the CSRD regulations?

If this is the interpretation, then management in multiple companies will have to set up such Forums and, once set up, they will have all the information and consultation rights that such Forums are given. To the best of our knowledge, there are only a handful of companies with such I+C Forums in place today.

However, if option (a) only applies to companies within the scope of the 2006 Act which already I+C Forums in place, then option (b) comes into play for companies which do not have I+C Forums.

Option (b) provides no guidance on how "CSRD representatives" are to be "appointed" or "elected". It is also worth noting that (b) just says "employees". It does not say "all employees" nor does it set any minimum number of employees that are necessary to appoint a representative. As it says employees, plural, it needs to be more than one, but could just two suffice?

Nor does option (b) provide any guidance to management as to how it might go about arranging for the appointment or election of "CSRD representatives". Can it unilaterally decide how this is to be done?

There is no specific reference to trade unions, but unions could be seen to fall under (b) as "persons duly appointed or elected by employees ... for the purposes of this section". Could a group of employees in a company that does not recognise unions for the purpose of collective bargaining appoint or elect an external union representative for the purposes of being informed and consulted under the Regulations? There is nothing in the wording of option (b) to say this could not happen.

As can be seen, there is also no reference to EWCs having to be informed and consulted which suggests that EWCs based under Irish law will not have a right to be informed and consulted in relation to the CSRD due diligence process, though management could always opt to involve the EWC voluntarily.

The Regulations do not require that the management of a company within the scope of the Irish law inform and consult with employees' representatives in other EU/EEA Member States. However, the laws of other Member States may require information and consultation if there are operations of a sufficient size in the country. It will clearly take some time, and for the transposing laws in all Member States to be available, before a proper assessment can be made of what task major multinational undertakings are facing.

This note is based on a first reading of the Irish law, which is quite a complex piece of legislation. We will look at it in a lot more detail over the coming weeks and have a comprehensive note on it ready when we resume publication in September.

One final point

Could the provisions in these Regulations on employees' representatives serve as a template for other upcoming legislation, such as the *Pay Transparency Directive* or the *Platform Workers Directive* as they are transposed into Irish law? It would be strange if different approaches were to be adopted. Both of those Directives have a much wider reach than the CSRD, with all employers falling into the net. Maybe time for employers to begin to think about how best to manage these multiple information and consultation obligations? Not to forget information and consultation obligations when it comes to collective redundancies.

Tom Hayes
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We have scheduled a discussion on CSRD for our [September meeting](#) and how major EU Member States have transposed it, especially when it comes to the involvement of employees' representatives.

The role of EWCs in CSRD will be explored in our Sitges [October training program](#) (see below):

Preparing for EWC Directive III: What Can You Do Now

European
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We will hold a 2.5-day workshop in Sitges, Barcelona on EWCD III on October 8 to 10. Download the [draft program PDF](#) now.

If this program is of interest to your organisation, email tom.hayes@beerg.com

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