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Deciphering France's Proposal on Sustainability Reporting and Diligence Matters

The first EU country to transpose the CSRD has proposed a course correction to reduce the regulatory burden on in-scope and medium-sized companies.

Key Points:

- As part of the European Commission's consultation for the preparation of the "Omnibus Package" for the potential simplification of sustainability reporting, France has proposed amendments to the Corporate Sustainability Reporting Directive (CSRD) to simplify regulation and reduce the burden on small to medium-sized enterprises (SMEs), including a new category for "mid-cap" or medium-sized enterprises (MSEs) with less stringent reporting standards.
- The Proposal suggests a two-year delay in implementing the CSRD for SMEs and MSEs, and a postponement of the Corporate Sustainability Due Diligence Directive (CSDDD) to address competitiveness concerns.
- The Proposal reflects a shift in France's stance on sustainable finance, aiming to balance regulatory demands with economic competitiveness.

Building on the work undertaken by Mario Draghi, who issued a report on the need for reforms to improve European competitiveness ("The future of European competitiveness: Report by Mario Draghi" (the Draghi Report)), the European Commission is currently preparing an Omnibus Package concerning the simplification of sustainability reporting that is due to be published by the end of February.

In this context, the French authorities submitted a proposal (Proposal) to the European Commission (Commission), providing specific recommendations aimed at simplifying regulation and enhancing competitiveness for European companies, particularly those that are small to medium-sized.[1] While the Proposal covers a range of regulatory topics, this Client Alert focuses on sustainable reporting and diligence matters. The Proposal represents a shift in the French authorities' willingness to integrate further environmental, social, and governance (ESG) considerations into corporate governance and company reporting generally. If the European Commission was to incorporate the recommendations set out in the Proposal, this would be a further sign of the dynamic ESG regulatory landscape.

The Proposal's Recommendations for Amendments to the CSRD

France was the first EU Member State to transpose the CSRD in December 2023, and French regulators were early proponents of sustainable finance regulation and the need to introduce harmonized climate and other ESG metrics to permit investors to benchmark between listed companies.

As previously described in our Client Alert dated January 24, 2024, the French implementing legislation requires the following in-scope companies to publish their first reporting package in 2025 based on year-end 2024 data: French and foreign companies with shares or retail debt[2] listed on regulated markets in the European Union, and certain public sector companies, that meet two of the following three criteria: (1) more than 500 employees, (2) at least €25 million in assets, or (3) at least €50 million in turnover. In-scope companies are expected to start publishing their CSRD reports in the next few months when they also publish their 2024 audited financial statements and related annual reports.

Under the French transposition of the CSRD, the next phase of in-scope European and non-European companies required to report in 2026 on year-end 2025 data would include unlisted companies that meet two of the following three criteria: (1) more than 250 employees, (2) at least €25 million in assets, or (3) at least €50 million in turnover. All SMEs, both EU-based or third-country companies that are listed on a European regulated market, except micro-undertakings, would be required to report in 2027 on year-end 2026 data (with a voluntary opt-out until 2028 for smaller SMEs), while all other non-EU company groups with branches or subsidiaries in the EU would be required to report in 2029 on year-end 2028 data.

The Proposal includes the following recommendations for amendments to the CSRD and its implementation:

- Allow MSEs[3] to apply a simplified version of the European Sustainability Reporting Standards (ESRS), similar to what is provided for listed SMEs under the CSRD
- Call on the reporting burdens to be significantly lightened through: (1) "drastically" reducing the number of indicators and focusing such indicators on climate objectives; and (2) the European Financial Reporting Advisory Group (EFRAG)[4] simplifying the voluntary ESRS applicable to listed SMEs and for the Commission to adopt a delegated act applicable to such companies
- Introduce a principle into the CSRD to cap reporting that affects participants in the value chain of large companies, which would limit the reporting obligations of such suppliers and subcontractors to the simplified reporting requirements for listed SMEs
- Require disclosure in a company's audited financial statements of the fees for assurance related to CSRD information
- Require a clarification that transition plans as defined by ESRS E1-1 do not require setting greenhouse gas (GHG) emissions reduction targets in line with the Paris Agreement, but require a comparison of the company's targets with a trajectory considered to be compatible with the Paris Agreement
- A freeze on further standards (such as the sectoral standards) to permit companies to adopt the existing ESRS, without adding new incremental obligations to certain sectors

In addition to these amendments, France has also stated that the French authorities are "open to" a two-year delay to the implementation of the CSRD and in particular, to stave off the reporting requirements by SMEs and the new category of MSEs that France suggests in the Proposal.

The Proposal's Recommendations for Amendments to the CSDDD

The Proposal recommends that the implementation of the CSDDD be postponed for the foreseeable future, citing the loss of competitiveness in relation to the EU's main competitors, in particular in the absence of a level playing field, as set out in the Draghi Report.

During the postponement, France calls on the Commission to use this time to improve the CSDDD and promulgate the following amendments and clarifications to the CSDDD:

- Clarify that the obligations in the CSDDD are an "obligation of means" rather than an "obligation of results," i.e., that companies are to implement procedures and processes to integrate CSDDD considerations into their decision-making as a safeguard against the risk of increased litigation from the CSDDD
- Set thresholds for in-scope companies at high levels[5]
- Apply the duty of vigilance at the group level to centralize risk identification and risk management
- Create a European authority to supervise CSDDD at an EU-wide level
- Remove specific requirements for regulated financial services firms

The Proposal's Recommendations for Amendments to the EU Taxonomy

While acknowledging the importance of the EU Taxonomy as a tool for measuring sustainability and incentivizing investment in aligned activities, nonetheless, the Proposal observes that adoption of the EU Taxonomy has caused technical difficulties in practice. In particular, the green ratio required by the EU Taxonomy for credit institutions is highlighted as a focus of review to ensure harmonization of the numerator and denominator, as the current methodology renders the ratio irrelevant based on the bank's business model, and may have consequences on SME financing.

Implications of the Proposal

The Proposal represents a considerable change to the French position on sustainable finance and corporate reporting. Previously, France had generally been a proponent of sustainability-related regulation, indicated by the fact that its national legislation pre-CSRD and CSDDD were considered among the most robust in the EU, and relevant French authorities were prepared to intervene to address investor concerns regarding greenwashing.

The Proposal indicates that the "gold-plating" of ESG legislation, and divergent implementation requirements and standards between Member States, is a risk to the competitiveness of the European economy. The Proposal further states that simplification of regulation would promote general prosperity and a more predictable regulatory environment, especially for SMEs and mid-sized companies.

The proposed delay of the subsequent reporting phases of the CSRD and the pause on the implementation of the CSDDD in particular would, if adopted, have the following implications:

- Solidify a two-track environment where large companies with equity or retail debt listed on regulated markets, and certain public sector companies, are providing a full CSRD reporting package, while other market participants are not. If the new MSE definition is adopted, relatively large companies with global operations may be in a position to provide a lower degree of CSRD data.
- A pause on the CSDDD may exacerbate differences between Member States that have relevant national legislation, and those without it. For example, the French Duty of Vigilance law already imposes obligations on certain large French companies to perform risk assessments.
- Illustrate that sustainability reporting matters may be a lower priority as the EU focuses on concerns regarding competitiveness, trade, energy, and security policy.
- Provide another example of the focus on reducing the regulatory burdens associated with becoming a listed company, particularly for MSEs that will likely make up the next wave of IPO candidates, in addition to loosened regulations associated with the Listing Act[6] that have commenced coming into effect.
- Provide a reminder that the work around the Capital Markets Union remains unfinished, and for the need to urgently address SME financing, as set out in the Draghi Report.

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Endnotes

[1] This Client Alert is prepared on the basis of a version of the Proposal dated January 20, 2025.

[2] Meaning debt with a minimum denomination of less than €100,000 (or equivalent in other currencies) in accordance with Article 8(2) of Commission Delegated Regulation (EU) 2019/980 of March 14, 2019 supplementing Regulation (EU) 2017/1129.

[3] The Proposal calls on the Commission to create a new dedicated statistical category of MSEs, in addition to existing categories (micro, small and medium-sized companies) which, following more in-depth analysis, the Proposal suggests could be defined according to the following threshold criteria: (1) between 250 and 1,500 employees and (2) financial criteria: sales not exceeding €1.5 billion or total assets not exceeding €2 billion.

[4] EFRAG is a private association that advises the Commission on financial reporting standards, and prepares the ESRS.

[5] The Proposal suggests a threshold of global sales exceeding €1.5 billion and more than 5,000 employees for European companies, and European sales exceeding €1.5 billion for non-European companies.

[6] The Listing Act is a package of measures designed to review the Prospectus Regulation, Market Abuse Regulation, Markets in Financial Instruments Regulation, and Directive (MiFIR/MiFID II), and to introduce a new Directive on multiple-vote share structures. It was enacted as Regulation (EU) 2024/2809, Directive (EU) 2024/2810, and Directive (EU) 2024/2811, and implemented in France through Law No. 2024-537 of June 13, 2024 aimed at increasing the financing of companies and the economical attractiveness of France.