Submission by Chambers Ireland to the Department of Enterprise, Trade and Employment regarding the Corporate Sustainability Reporting Directive

Submission by Chambers Ireland

March 2023

Contents

About Chambers Ireland

Chambers Ireland is an all-island business organisation with a unique geographical reach. Our members are the Chambers of Commerce in the cities and towns throughout the country – active in every constituency. Each of our member Chambers is central to their local business community and all seek to promote thriving local economies that can support sustainable cities and communities.

Our Network has pledged to advocate for and support the advancement of the United Nations Sustainable Development Goals (SDGs). Accordingly, we use the Goals as a framework to identify policy priorities and communicate our recommendations. We have a particular focus on five of the goals encompassing decent work and economic growth (SDG 8), sustainable cities and communities (SDG 11), Gender Equality (SDG 5), Industry, Innovation and Infrastructure (SDG 9) and climate action (SDG 13).[1]

In the context of the current consultation, Goal 8 is the most relevant. We previously submitted our views on the Corporate Sustainability Reporting Directive,[2] in our submission on Quality Procurement and Sustainability Requirements. In our submission, we emphasised that many firms reported that they have to participate in sustainability reporting if they want to be part of the supply chain of larger firms, NGOs, and state bodies (such as our contracting bodies). A solution we proposed centred on developing a simplified standard for reporting on social and environmental information. Nearly four years on, many of our concerns and requests in relation to reporting requirements remain the same. We accordingly welcome the opportunity to share our updated views in relation to the Directive and its far-reaching effects again.

---

[1] The Chambers Ireland SDGs. Available at: https://www.chambers.ie/policy/sustainable-development-goals/chambers-ireland-sdgs/

[2] https://www.chambers.ie/wp-content/uploads/2021/08/Chambers-Irelands-Submission-on-Quality-Procurement-and-Sustainability-Requirements.pdf

Key Points

- Chambers Ireland supports the aims of the Corporate Sustainability Reporting Directive and its attempt to encourage companies to develop more responsible, sustainable approaches to business.
- With regard to the practicality of someone who is entering the supply chain of companies obliged by the Directive to undergo reporting requirements, it is vital the State provides assistance to help them meet those requirements.
- Standardised templates should be made available to companies who are subject to reporting requirements.
- Smaller firms in value chains may be unfairly affected by reporting requirements, even where the Directive does not specifically make reference to those firms, or where they are not classified as an in-scope undertaking.
- We hold concerns that a lack of standardisation in relation to reporting means that larger firms will likely forego the services of smaller firms in favour of larger firms who do have the capacity to successfully meet their reporting requirements.
- The Department ought to establish a Working Group to monitor the implementation of the Directive and its effect on businesses as a matter of urgency. This is vital considering the cumulative requirements and consequent effects the EU Taxonomy regulation and the Corporate Due Diligence Directive will have on businesses in terms of capacity.

Concerns of Chambers Ireland regarding the Directive

Chambers Ireland position on corporate sustainability reporting

Chambers Ireland supports the aims of the Directive. As a business organisation with sustainability at the heart of our policy priorities, we support measures that aim to improve the flow of capital towards sustainable activities across the European Union. We welcome the attempt to ensure that investors and stakeholders have access to information that will help them assess investment risks arising from sustainability issues. They will also create a culture of transparency about the impact of companies on people and the environment.

With this in mind, the Directive should be viewed as a positive revision of the EU's Non-Financial Reporting Directive which will encourage European companies to adopt more sustainable processes. It will help to realise the potential of the European Union in its transition to a more sustainable economic and financial system, in accordance with the UN Sustainable Development Goals and the European Green Deal.

However, we hold concerns that the Directive will have an adverse effect on smaller businesses, if action is not taken to support them in meeting their reporting requirements. The goal must be to achieve a regulatory framework that places as little burden as possible on entrepreneurs. As detailed in our submission, Chambers Ireland is concerned with numerous aspects of the Directive. We have proposed actions to this effect, so the aims of the Directive can be achieved more equitably and effectively.

The effect on businesses

Our Network holds the primary concern that while the Directive promotes sustainable practices, it may be unduly onerous on them. This is particularly relevant for small businesses. Accordingly our submission proposes that full advantage by the State - where appropriate - should be taken of the options listed in the Directive to mitigate same.

One of our main concerns, is the disproportionate burden businesses will be placed under. Over the course of the design of the Directive, we voiced the concern that companies obtaining information from SMEs within their value chain should not be required to obtain information that exceeds the minimum required to be disclosed under the sustainability reporting standards. Hence we welcome the provision within the Directive which attempts to ensure that sustainability reporting standards applying to SMEs is *proportionate* to their capacity and resources and relevant to the scale and complexity of their activities. On the face of it, this appears in line with the Commission's "One In, One Out" approach, where any increase of administrative burdens should go hand in hand with an equivalent reporting relief. However, reporting requires extra processes and will be challenging for reporting companies, as data collection and auditing are arduous processes requiring time and resources. We hold concerns that this was not achieved meaningfully in the legislative design, and on a practical level, the Directive will place demands on businesses which they may not be equipped capacity-wise to deal with.

We welcome the application of the Directive to SMEs being delayed until 1 January 2026, along with the possibility to opt-out for two years. Such businesses will eventually have to report; they in particular will face a significant challenge in attaining compliance with the Directive, and this necessitates that they begin preparations at the earliest opportunity. They will have to implement processes and policies immediately; indeed many smaller businesses will have to look to the larger companies falling under the scope of the Directive now for best practices.

Similarly, for strategic reasons, smaller businesses will be forced to align earlier to sustainability reporting standards set by the Directive - such as supply chain requirements, access to finance, or talent attraction. Accordingly, even though the Directive may not ostensibly apply to such businesses for a period of time (i.e until 1 January 2026 for listed SMEs), they are nonetheless indirectly affected. Larger businesses may not deal with other businesses that cannot validate their supply chain all the way down, meaning they will need to apply the same measures as a consequence.

Cumulative effect with other EU legislative requirements

Serious consideration has not been given to the cumulative requirements of numerous legislative instruments on businesses. Coupled with the Directive are the additional reporting requirements which will come imminently under the EU Taxonomy regulation, which sets rules and guidelines for how businesses report on their climate and environmental impact. As with the Corporate Sustainability Reporting Directive, we support its legislative aims to meet our ambitious climate targets, such as achieving carbon neutrality by the year 2050. In principle, we support its aim of positively affecting how businesses invest and helping to unlock financing for businesses that can prove a clear sustainability impact. Additionally, businesses will be subject to extra requirements under the Corporate Due Diligence Directive, which lays down rules on obligations for companies regarding adverse impacts on human rights and the environment. We support the aims of that Directive also.

However, though both legislative instruments are well-intentioned and we agree with their aims, the requirements they place on the business community mean that the effects of the two legislative frameworks should not be viewed as separate to the Directive, rather *in addition to* it. All three will have a substantial cumulative effect on the businesses that are within their scope, and those that are outside their scope but nonetheless indirectly affected by them.

Chief among our concerns for SMEs is that the development of numerous reporting regimes will place great strain on small businesses especially. The consequence may be that it would only be possible for large firms with dedicated reporting teams to compete on the market, as only they will have the resources to tailor their data to respond to the requirements of each of the client bodies. The European Single Access Point[3] will aid businesses to prepare their management report in the electronic reporting format and mark-up their sustainability reporting, however this will not substantially lessen the burden on businesses. Variance across reporting regimes

[3] https://www.europarl.europa.eu/legislative-train/theme-an-economy-that-works-for-people/file-european-single-access-point#:~:text=The%20ESAP%20will%20offer%20a,up%20more%20sources%20of%20financing.

compounds the requirement to report and will constitute a massive undertaking for those businesses across the board.

Actions to lessen the burden on businesses

We are of the view that the cumulative, additional reporting requirements will necessitate a Working Group to track and monitor the progress and likely challenges the business sector will face in meeting their requirements. This ought to be chaired in a similar fashion to the Working Groups established for managing the effects of Brexit and COVID-19 as part of our national response. The Working Group could help to voice the concerns of affected businesses and mitigate problems as they arise.

Through our collaboration with Eurochambres,[4] we actively advocated for non-mandatory reporting requirements for SMEs. In the new Directive, non-listed SMEs and micro-businesses will not be subject to mandatory reporting obligations, however in our view, not extending the voluntary reporting requirement to all SMEs is a mistake. We welcome the fact that Member States are encouraged (in the recitals of the Directive) to consider measures to support voluntary reporting for such businesses in accordance with the simplified standards prescribed by the Directive. However, the fact this does not extend to all SMEs is regrettable and we fear that they will be burdened with an extraordinary reporting workload which is disproportionate to what they can practically carry out.

In addition, though non-mandatory reporting may in theory exclude some businesses from the scope of reporting requirements, the ever-increasing focus of investors on sustainability impact will nonetheless impact such businesses. The evidence that those with positive sustainability attributes are likely to outperform their peers means that such businesses will likely find themselves motivated for strategic reasons to carry out voluntary reporting. Standardised templates for reporting will be essential to ensure they are as equipped as they possibly can be

[4] https://www.eurochambres.eu/wp-content/uploads/2021/07/ECH-Position-Paper-on-CSRD-proposal-Final.pdf

to do so. The small business community in particular need assurances that larger businesses accept such templates as part of their supply chain relationship management. The usefulness of templates, estimates, and other tools prepared by the Commission should therefore not be underestimated. This is consistent with our request as part of the Eurochambres network to mitigate the pressure on SME suppliers involved in large companies' supply chains, by ordering the use of simplified standards.[5]

Finally, larger businesses are already carrying out environmental, social and governance reporting as part of their annual filings, with the consequence that smaller businesses who deal with such businesses are - by extension - *already* a part of their reporting chain. Smaller businesses are hence burdened with the same reporting requirements as in-scope businesses. Smaller businesses would not normally be accustomed to producing large volumes of such detailed reporting and may be disproportionally affected in terms of cost and their administrative workflows. Similar to our previous comment, standardisation by way of reporting templates would help ease this reporting burden for those affected businesses.

[5] Ibid, page 4.

Key Aspects of the Directive

Double materiality

Chambers Ireland welcomes the double materiality prong for in-scope undertakings under Article 19a of the new Directive. We support the requirement for undertakings to disclose not only how sustainability matters affect them, but also how the undertaking affects sustainability matters. We also support the emphasis on forward-looking reporting, which includes how an undertaking intends to be compatible with the transition to a sustainable economy. This is in line with our support of the Sustainable Development Goals, insofar as it examines matters in which the undertaking is having a material impact on society in a manner that may not ostensibly impact the undertaking's bottom line. This will fundamentally change how businesses engage with sustainability in a meaningful, rather than superficial way.

Reporting requirements for value chains

The Directive extends reporting requirements to include the broader value chain, which presents challenges for small businesses. We have concerns that this will lead to potentially significant data requests of businesses that are themselves not within the scope of the Directive. Similarly, this will affect businesses that are not based in the EU, and regardless of a grace period, it will be difficult for businesses to adequately procure and present requests related to their operations. Unfortunately, it is unclear how this challenge will be overcome once the grace period ends, as no practical solution has been put forward to this end.

Assurance of sustainability reporting

We welcome the final significant change which the Directive introduces which is that reporting for in-scope undertakings will be assured by an independent third party. Until the European Commission adopts specific assurance standards for undertakings to adhere to, Member States may apply national assurance standards, procedures, or requirements. Consistent with our earlier point regarding what requirements are practical for smaller businesses to undertake, we request that the standards adopted by the State are proportionate to their capacity and resources.

The perspective of Chambers Ireland regarding specific questions

Article 1 Scope (Amended)

New point 3 last subparagraph (New)

The list of undertakings listed in Article 2 (central banks; post office institutions; the Strategic Banking Corporation of Ireland, credit unions and friendly societies) is not contentious. We therefore have no reason to find an issue with excluding these undertakings on a case-by-case basis, should the State exercise this option.

Article 19a – Sustainability Reporting (New)

Point 3 last subparagraph (New)

Chambers Ireland supports implementing the option to exclude commercially sensitive information from the sustainability reporting requirements under certain circumstances. Commercially sensitive information should only be included in the most extreme cases. Publishing such information has the potential to prejudice the interests of individuals or companies to an unreasonable degree. This will require having to ensure the public interest concerns relating to the benefits of publishing are balanced against the interests of the businesses concerned.

Point 9 subparagraph three (New)

Many businesses do not possess the capacity nor resources to undertake tasks such as reporting, which are outside the norm of their usual workflows. In order to implement effective reporting requirements, the maximum that should be asked of undertakings is that which is proportionate to their capabilities. To increase efficiency for businesses and prevent unnecessary double-work, we believe it is appropriate to allow for exemptions from sustainability reporting for subsidiary undertakings, where a parent in the EU includes information on the subsidiary in the consolidated management report. The same should apply where the parent is in a third country equivalent consolidated sustainability report.

Article 29a. – Consolidated Sustainability Reporting (New)

Point 8 subparagraph (New)

Regarding point 8 and the substantially enhanced requirements for consolidated sustainability reporting by undertakings, we recommend the State permits undertakings to exclude commercially sensitive information from the sustainability reporting under certain circumstances. The test for determining exclusion (i.e where "the disclosure of such information would be seriously prejudicial to the commercial position of the group, provided that such omission does not prevent a fair and balanced understanding of the group's development, performance, and position, and the impact of its activity") is reasonable.

Article 30 General Publication (Amended)

Point 1 subparagraph 2 (New)

We agree with the option to require that the consolidated management/sustainability report is published in an accepted language.

Point 1 subparagraph 4 (Existing)

The reporting information which is requested should be readily available to the public, to encourage transparency. We accordingly support the option to allow Member States to require undertakings to publish the management report on their website, or alternatively to make a copy available upon request. It is appropriate to make it optional for undertakings to have the management report filed with the Companies Registration Office, where it may be easy to download along with other company documents where necessary. Similar to our previous point, doing so will make reports readily available and easily accessible to those requiring them. Where such undertakings do not wish to submit their reports using the Companies Registration Office, it is appropriate to exempt them from this requirement, provided the report can be obtained from the undertaking at a price that does not exceed its administrative cost.

Article 34.3 General Requirement Auditing (Amended)

Point 3 (New)

We recommend the State takes advantage of the option to permit undertakings to engage separate statutory auditors and audit firms to carry out the statutory audit of financial statements and the assurance of the sustainability reporting.

Points 4 and 5 Independent Assurance Services Provider (New)

We do not hold a position on the State - were it to introduce IASPs – being required to permit separate statutory auditors/audit firms to carry out the audit of financial statements and assurance of sustainability reporting.

Article 40a Sustainability Reports concerning third-country undertakings (New)

Point 1 last subparagraph (new)

Where necessary, the State should require subsidiary undertakings and branches to send information about net turnover generated in the Member State and in the EU. The number of businesses affected will likely not be significant particularly as it relates to large subsidiaries and branches operating in the EU (with a turnover of more than €40 million) of non-EU companies (with a turnover in the EU of over €150 million). We do not envisage this being a matter of contention for the overall business community.

Article 3 Amendments to Directive 2006/43/EC the Audit Directive

Article 12 Combination of practical training and theoretical instruction (replaced)

Point 1 (existing)

Regarding point one, we believe the State should permit periods of study to count towards professional activity periods, required in Article 11, which governs qualifications through long term practical experience of statutory auditors. This will be necessary to ensure there is not a gap in the number of qualified people and resources available.

Article 26a Assurance Standards for sustainability reporting (New)

Point 2 (New)

Chambers Ireland does not have a position as to the option permitting Member States to apply national standards in the event that the Commission has not adopted a standard on the same subject matter.

Article 28a Assurance Report on sustainability reporting (New)

Point 5 (New)

Efficiency will be key to effective reporting. In our view, the State should take full advantage of qualified persons and professional bodies to expedite the reporting processes. Therefore we believe the State should take advantage of the option to provide that where the same statutory auditor or audit firm carries out the statutory audit of the financial statements and the assurance of sustainability reporting, the assurance report may be included as a separate section of the audit report.

Article 29 Quality Assurance Systems (Amendment)

Point 2a (New)

Given that businesses will require a considerable amount of time to prepare and carry out reporting, advantage should be taken of transition periods for persons carrying out quality assurance reviews on sustainability reporting. We are supportive of the option for the State to exempt them until the end of 2025 from the requirement to a) have relevant experience in sustainability reporting; or b) the assurance of same. To echo our previous point, we envisage the intervening timeframe as being a critical period for those businesses to prepare for compliance by gaining the requisite expertise and implementing the appropriate reporting strategies.

Article 30 Systems of Investigations and Sanctions (Amended)

Point 2 second subparagraph (existing)

Regarding the investigation and sanctions systems as to the assurance of sustainability reporting, we believe it is unnecessary for the State to provide for an administrative sanction regime where criminal law already applies.

Article 39 Audit Committee (Amended)

Paragraph 4a (New)

Chambers Ireland does not hold a view on the option to extend certain auditing/assurance functions to administrative or supervisory bodies, or by a dedicated body established by them.