

Environmental, Social and Governance

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Product Lifecycle Regulation – The Future of EcoDesign

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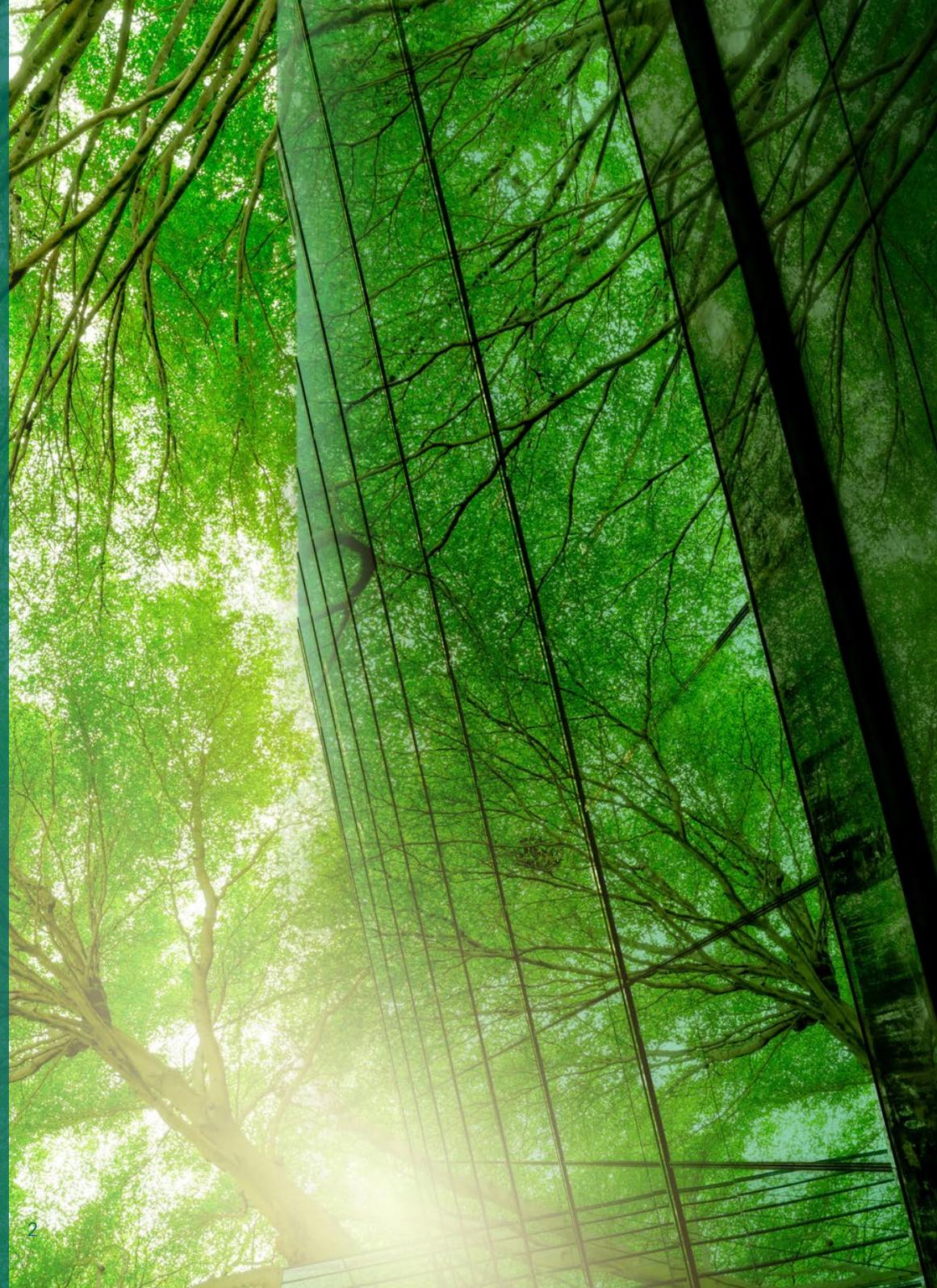
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The EU economy is slowly but inexorably shifting from a linear to a circular model. The goods offered are to be durable, repairable and yet easily recyclable, while being produced in a sustainable and environmentally friendly manner. All of this is tailored to meet the needs of the modern consumer – providing information about the environmental performance of the product, to be readily available at hand. To further develop this trend, future regulatory instruments in the EU will focus on the entire life cycle of products and require the use of digital product passports. Being aware of this shift is crucial for making informed and future-proof business decisions.



The tendency is already evident in legislative proposals of the EU Commission, such as the flagship Ecodesign for Sustainable Products Regulation (ESPR) – a framework that aims specifically to reduce the environmental impact of products throughout their whole life cycle. Future ecodesign requirements stemming from this initiative might impact global clients' supply chains by requiring compliance with new sustainability standards (regarding use of water, level of emissions, etc.). That could drive need of further innovation and redesign of products and processes, again making relevant information available to the value chain through digital passports.

ESPR will repeal the successful Ecodesign Directive, which covers energy-related products commonly used in homes or offices (such as displays, cooking appliances, etc.), but will be wider in scope, and its requirements will be potentially applicable to almost any goods, including intermediate products (except for cars, food, feed, and medicinal products). What is more, unlike the current Ecodesign Directive, which primarily focuses on energy efficiency, the ESPR will regulate products more comprehensively, covering a wider range of sustainability-related aspects.

The ESPR will serve as a general framework – the product group-specific eco-design requirements will be established in the EU Commission's secondary legislation.

ESPR requirements will regulate products' design aspects impacting all stages of their (circular) life cycle. They could potentially regulate products':

- **Composition** – The presence of substances of concern and required levels of recycled content.
- **Life span** – Durability, upgradability, reparability and possibility of maintenance.
- **Sustainability** – Water use and water efficiency, energy use and energy efficiency, pollution of water, air, and soil, land use, and contribution to climate change.
- **End-of-life management** – Reusability, possibility of refurbishment, possibility of recycling and expected generation of waste.

The ESPR will allow horizontal requirements to address one of the above aspects for several product groups together.

Under the ESPR proposal, information on the product's performance in relation to aspects covered by the product group-specific eco-design requirements will have to be available through a machine-readable digital product passport. The digital product passport will need to carry different sets of data for consumers, the value chain and public authorities (details to be specified per product group in the EU Commission secondary legislation).

The ESPR is still subject to political negotiations, so its final provisions might still differ from the ones outlined above. However, it definitely shows the tendency of future EU legislation. Businesses have to prepare to comply with more stringent product design criteria but also be ready to assess and share information on the environmental performance of their products throughout their lifetime. The EU initiative might soon inspire other legislators to follow suit and introduce their own sustainability requirements for products placed on their local markets.



Our Public Policy Team helps clients to navigate complex and often technical provisions of EU environmental legislation. We provide a comprehensive service – guiding our clients from the very early stages of the EU proposals until their implementation into national law. We provide tailored advocacy support, regular policy updates and legal advice to help your business prepare for a greener future. We focus on initiatives such as the Packaging and Packaging Waste Regulation, ESPR, Carbon Border Adjustment Mechanism, Deforestation Regulation, Construction Products Regulation, Corporate Sustainability Due Diligence Directive (CSDDD), Corporate Sustainability Reporting Directive (CSRD), Waste Shipment Regulation, and EU Emissions Trading System. We closely follow chemicals-related dossiers such as the revision of the Classification, Labelling and Packaging Regulation (CLP), the per- and polyfluoroalkyl substances (PFAS) ban proposal, or revision of the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (REACH). To find out more about our expertise, you can read our latest [EU Sustainability Outlook](#).

The Growing Field of the EU's ESG Regulations – Does It Impact Your Company?

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ESG regulations are government standards for ESG related actions, reporting or disclosures. While the ESG space is, so far, globally mainly unregulated, various legal requirements are being passed in different states and at different paces. Some are already in force, and certain businesses may already find themselves having to undertake ESG reporting and disclosures depending on their size and industry. Leading in this regard is the EU. These regulations have global ramifications and an ever-expanding range, and, if neglected, could catch several corporations by surprise.



The EU has introduced already several regulations concerning ESG (Taxonomy Regulation, Non-financial Reporting Directive (NFRD)/Corporate Sustainability Reporting Directive (CSRD), Sustainable Finance Disclosure Regulation (SFDR), and Corporate Sustainability Due Diligence Directive (CSDDD)):

- The EU Taxonomy can be described as a green classification system that translates the EU's climate and environmental objectives into criteria for specific economic activities that are aligned with the net zero goal by 2050. It was published in the Official Journal of the European Union on 22 June 2020 and entered into force on 12 July 2020. It establishes the basis for the EU taxonomy by setting out four overarching conditions that an economic activity has to meet in order to qualify as environmentally sustainable. At the core of the Taxonomy Regulation is the definition of a sustainable economic activity. This definition is based on two criteria. An activity must (i) contribute to at least one of six environmental objectives listed in the taxonomy; and (ii) do no significant harm to any of the other objectives, while respecting basic human rights and labour standards.
- The NFRD was adopted in 2014 by the EU, requiring certain companies to provide non-financial disclosure documents along with their annual reports. As of 2018, all 28 member states of the EU have adopted the directive into their national law, which means that companies operating in their territories with more than 500 employees may need to comply with the requirements of the directive. It requires public-interest companies in EU member states to disclose in their public disclosure documents environmental matters, social and employee aspects, respect for human rights, anticorruption and anti-bribery issues, and diversity on boards of directors.

The CSRD broadens the existing NFRD and looks to fix key structural weaknesses in current ESG regulation around reporting. The new regulation has a wider reach, affecting a higher number of large EU-listed entities, including businesses, banks and insurance companies. Approximately 50,000 entities will be impacted by the CSRD, almost five times as many as the old NFRD legislation. Each is required to report more broadly on sustainability-focused topics, including environmental matters, social responsibility, respect for human rights, anticorruption measures and board diversity. Entities will also now need to report on how environmental and social matters influence their own development – this is called “[double materiality](#)”. Companies that meet two of these three conditions will have to comply with the CSRD – €40 million in net turnover, €20 million in assets, or 250 or more employees. In addition, non-EU companies with a turnover of above €150 million in the EU will also have to comply. Affected companies will have to apply the new rules for the first time in the financial year 2024 for reports that will be published in 2025. As the CSRD will cover all listed companies in EU-regulated markets (except listed microenterprises), it's not a bad idea to start getting familiar with it now. The sooner you get CSRD-compliant, the better prepared you'll be for 2024.

- The SFDR is an EU regulation mandating ESG disclosure obligations for asset managers and other financial market participants, with substantive provisions of the regulation effective from 10 March 2021. The regulation aims at increasing transparency and boosting environmental and social responsibility in the finance industry. The SFDR requires banks, insurers, investment firms and other financial institutions to report their sustainable investment practices to investors in a standardised format so that they can make informed decisions about their investments. The SFDR mandates that investment products be categorised into three distinct groups based on their degree of sustainability and related features. Additionally, financial market participants that are now subject to these regulations are required to comply with specific disclosure obligations. The SFDR requirements are linked with those under the EU Taxonomy by including environmentally sustainable economic activities as defined by the Taxonomy Regulation in the definition of “sustainable investments” in the SFDR.
- The CSDDD is an EU proposal that will require companies to exercise reasonable due diligence in their own business lines and in their “value chains” to prevent or minimise human rights or certain environmental risks, and to end human rights violations or certain environmental violations. As of 1 June 2023, the [draft proposal has been approved](#) by the EU Parliament. Following the vote, negotiations with EU member states will begin. These negotiations will focus primarily on disagreements around the scope of the new rules and the timeline for their implementation. Depending on the results of negotiations, it is quite possible that the due diligence obligations could begin to apply as soon as 2025.



What Regulations Applicable in the EU Should Most Corporations Be Considering Now?

Compared with the current NFRD, under the CSRD there will be a near fivefold increase in companies affected – from approximately 11,700 to 50,000. This is how the CSRD breaks down in terms of who will comply and when:

- If your organisation is already subject to NFRD, the CSRD regulation will apply from 1 January 2024, with reports due the following year (2025). This applies to European “large public interest entities” with more than 500 employees, such as credit institutions, insurers, and organisations with EU regulated market listed securities.
- If you are a large organisation that is not already subject to NFRD, the CSRD regulation will apply from 1 January 2025, with reports due the following year (2026). This also applies to companies that usually have more than 500 employees, or turnover exceeding €40 million (£34.4m), or a balance sheet total exceeding €20 million.
- If you are a smaller organisation listed on an EU-regulated market that is not already subject to NFRD, the CSRD regulation will apply from 1 January 2026, with reports due the following year (2027).

Under the CSRD, the management report needs to disclose both actual or potential impacts related to a company’s own operations, as well as across the value chain, including products, services, business relationships and supply chain. It needs to discuss any management or supervisory boards the company is utilising regarding matters of sustainability, and it needs to be wrapped up in a forward-looking, time-bound manner and provide progress on achieving environmental targets. There is also an obligation for “double materiality”, meaning sustainable activities of the company and sustainability activities affecting the company need to be reported and those reports need to be freely available.

What Do Organisations Need To Do Now?

Getting the ball rolling with ESG reporting efforts – if not started already – will be beneficial.

What Are We Doing for Our Clients in This Area?

The reporting obligations arising from the CSRD are significant compared to the NFRD, and we can help to fulfil those. In addition, the CSRD’s scope is much broader given the breadth and relative sizes of many US, UK and other non-EU entities with significant operations in various EU jurisdictions. As a result, the CSRD may lead to a marked increase in additional substantive disclosures (and increased costs), including multiple subsidiary-level reporting obligations, and the associated risks of divergent reporting. With the CSRD’s adoption, the Securities and Exchange Commission’s (SEC) proposed expanded climate change requirements in the US, and the UK government and relevant agencies rolling out mandatory Task Force on Climate-related Financial Disclosures (TCFD)-aligned climate disclosure requirements while also pushing for enhanced non-climate related disclosures, it will be important for US and UK companies with significant EU operations to start compiling and developing standards and procedures to confirm the accuracy of sustainability information.



In the Know

Real Estate

How Green Is Your Lease?

“Green leases”. What exactly are they and are we seeing greater demand for them?

A green lease incorporates provisions that encourage or legally bind a landlord and tenant to reduce the environmental impact of the property.

Almost a decade after the Better Buildings Partnership launched its [Green Lease Toolkit](#), within which time there has been little cause to refer to it, we are suddenly seeing a significant increase in the number of instances of tenants being asked to sign up to green clauses that go well beyond the aspirational, data-sharing and “work towards” obligations more common to date. Compliance with such clauses potentially exposes tenants to capital outlay or higher running costs that may benefit the landlord, but not necessarily the tenant, especially over shorter-term leases.

The driver may well not be coming from landlords themselves. Lenders and capital markets appear to be imposing strict ESG requirements that are filtering through to the landlord and tenant relationship.

Cost, and who bears it, has always been the main stumbling block to establishing green leases as the norm, and that has not changed. However, while this revived interest is in its early days, the signs are very much that the market could be moving.

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