

THE EUROPEAN VOICE OF DIRECTORS

#EUALERT

Week 43



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EUROPEAN INSTITUTIONS DEVELOPMENTS

EP: Letter to the Commission to ensure access to justice as part of the Sustainable Corporate Governance proposal

Members of the European Parliament sent a letter to the Commission stressing the need to ensure in the upcoming Sustainable Corporate Governance legislative proposal that victims of corporate human rights violations have access to justice. Their recommendations are that:

- The directive must include a parent company and value chain liability regime;
- The future directive must provide for collective redress making affected people automatically eligible to join a claim without complex registration procedures;
- The future directive must establish a harmonised statute of limitations that is reasonable and appropriate to the challenges claimants face;
- The future directive must ensure that, at the request of a claimant that has presented reasonably available evidence, the court shall order that further evidence be presented by the defendant to determine the breach and the causal link.

EP: JURI's debate on the CSRD

The JURI Committee members exchanged views on the European Commission's proposed Corporate Sustainability Reporting Directive. The main points discussed were:

- While the rapporteur, Pascal Durand, is in favor of extending the scope to medium sized companies, many MEPs are calling for the exclusion of SMEs from the scope to avoid extra burdens;
- A phased approach should be privileged with, for example, simplified audit requirements at the start;
- Clear rules have to be defined to protect information disclosed;
- The European Parliament should ensure that the umbrella entity takes on the reporting for all of its subsidiaries and associate businesses;
- The standards should not create competitive disadvantages for European companies.

The European Parliament final vote on the file should happen in March 2022.

ESMA/EBA: Guidelines on the assessment of the suitability of members of management bodies

ESMA and EBA published [draft guidelines](#) aiming to remedy weaknesses that were identified during the financial crisis regarding the functioning of the management body and its members. The Guidelines aim to further improve and harmonise the assessment of suitability within the EU financial sector, and to ensure sound governance arrangements in institutions. The Guidelines provide common criteria to assess the individual and collective knowledge, skills and experience of members of the management body as well as the good repute, honesty and integrity, and independence of mind.

ESAs: Propose new rules for Taxonomy

The three European Supervisory Authorities (EBA, EIOPA and ESMA) have delivered to the European Commission their [Final Report](#) with draft Regulatory Technical Standards regarding disclosures under the Taxonomy. The disclosures relate to financial products that make sustainable investments contributing to environmental objectives. ESAs recommend:

- Periodic disclosures identifying the environmental objectives to which products contribute and how and to what extent the product's investments are aligned with the EU Taxonomy;
- An assurance provided by an auditor or a review by a third party that the economic activities funded by the product qualified as environmentally sustainable are compliant with the Taxonomy.

EP: A European withholding tax framework discussed

MEPs discussed with experts about the best ways of reforming withholding tax systems in Europe, after the presentation of a [draft report](#) on establishing a European withholding tax framework. This proposal includes:

- Setting up a system to ensure that all dividend, interest and royalties payments flowing out the EU are taxed at a minimum effective tax rate;
- Adopting an effective minimum tax rate for dividend payments to shareholders in the EU;
- Including an effective minimum tax rate for royalties;
- A harmonised EU procedure for withholding tax refunds for all Member States to address concerns about regulatory discrepancies.

EBA: Standards on voting disclosures

The EBA has published a [set of standards](#) for investment firms (with assets above €100m) to adopt to increase transparency surrounding the extent of influence over companies in which they hold voting rights. Firms will be expected to report on voting behaviour and their ratio of approved proposals, among other things. The new rules are expected to shine a light on whether the voter is an active shareholder, and how it uses its votes. The standards also include information on the use of proxy advisory firms, following some concerns around conflicts of interest.

EC: 2021 Banking Package

The European Commission has adopted a [review of EU banking rules](#) which consists of:

- Implementing Basel III – strengthening resilience to economic shocks;
- Sustainability: the proposal will require banks to systematically identify, disclose and manage ESG risks as part of their risk management;
- Stronger supervision – ensuring sound management of EU banks and better protecting financial stability.

INTERNATIONAL DEVELOPMENTS**The Science Based Target's Net-Zero Standard**

The SBTi's Corporate Net-Zero Standard is the world's first framework for corporate net-zero target setting in line with climate science. It includes the guidance, criteria, and recommendations companies need to set science-based net-zero targets consistent with limiting global temperature rise to 1.5°C.

ICGN: Recommendations in light of the COP26

ICGN recommends investors, companies, auditors and governments to focus on a set of priorities to better integrate natural and human capital considerations into stewardship activities, strategies, and upcoming policies. Regarding companies, ICGN recommends to:

- Publicly commit to science-based targets on how the business will adapt to net-zero carbon emissions by 2050 aligned with the company's purpose and long-term strategy;
- Ensure robust governance procedures and board competence in overseeing how management identifies, monitors, measures, and manages climate change risks and opportunities aligned with company purpose and long-term strategy;
- Align CEO and senior executive pay and incentives fairly with the company's purpose, strategy and workforce while respecting global best practices based on quantifiable financial, human, and natural capital related performance metrics.

Benchmarking: ESG in banking and finance

The New Financial think tank released a report measuring the penetration of ESG in different sectors of banking and finance around the world and highlights the challenges ahead for the industry. The main findings are:

- The value of assets in sustainable investment funds today is almost four times higher than in 2016 and annual flows into these funds have increased 10 times;
- In most sectors of capital markets, measurable ESG activity is less than 6% of all activity globally;
- Only a third of the largest firms globally have a clear engagement strategy for climate reporting and targets with their portfolio companies or customers;
- Europe has a clear global lead with the highest proportion of ESG financing.

Global investors calling for transparent human rights commitments

The Investor Alliance for Human Rights (representing 77 investors managing early US\$6 trillion in combined assets) sent letters to 26 companies—including Facebook, Google, Alibaba and Microsoft—urging them to publicly disclose their human rights commitments, give users control over their data and account for harms from algorithms and targeted advertising. Many companies targeted in the campaign faced recent shareholder votes pressing for better human rights practices. If firms aren't required to adopt shareholder proposals, the investor alliance warned of increasing "reputational, regulatory, financial, and possibly legal risks" for firms that ignore mounting human rights concerns.

NATIONAL DEVELOPMENTS**UK: Preparing for mandatory TCFD reporting (FRC)**

The Financial Reporting Lab has published a report to help companies prepare for mandatory TCFD reporting. It includes practical advice and examples that better address aspects of TCFD reporting from those companies already adopting the framework on a voluntary basis. In addition, the FRC has also published research investigating climate-related scenario analysis in more detail. The research highlights the various approaches companies have adopted, instances of good practice, typical challenges faced, and the common steps taken to conduct the analysis.

UK: Consultation on climate and investment reporting

It is proposed that the Occupational Pension Schemes Regulations 2021 are amended to require trustees subject to those regulations, to calculate and disclose a portfolio alignment metric setting out the extent to which their investments are aligned with the Paris agreement. The consultation also seeks views on draft non-statutory guidance describing trustees' climate change and stewardship policies and how they should implement them. The consultation will close on the 6th of January 2022.

Netherlands: A new law for gender equality in leadership positions

The Dutch senate has recently approved a bill for a more balanced ratio between men and women in the board of directors and supervisory board. The bill is likely to come into force on 1 January next year. Large businesses (estimated around 5 000 in the Netherlands) will be required to set a target to achieve a more balanced ratio of men and women on the supervisory board, board of directors and second-tier management. Businesses must report annually on their targets and progress.

An additional rule applies for listed Dutch companies, if the appointment of a supervisory board member unbalanced the ratio of at least $\frac{1}{3}$ men and $\frac{1}{3}$ women, the person cannot be appointed.

France: New quota for female representation in executives position under discussion

The French senators adopted a proposal to establish a quota of female representation in senior executives positions in companies with at least 1,000 employees. It forecasts a proportion of at least 30% women in 2027, and 40% in 2030. If a company fails to comply with the quota by 2032, it will face a financial penalty capped at 1% of the payroll. The senators also approved the obligation for companies to publish the gender representation gaps each year (5 years after the publication of the law).

French Report: The French State as shareholder

The French government issued a report on the activities of the "Government as Shareholder" between 2020 and 2021. It depicts the role the State has played in the crisis, the recovery and how it has driven state-controlled entities towards more sustainability oriented business models. The report also contains the full combined financial statements of the main state-controlled companies.

ARTICLES

5 Factors to ensure a successful ESG and sustainability strategy (Korn Ferry)

This Korn Ferry's article elaborates on 5 elements to define and implement a sustainability strategy which is efficient and successful:

- Align leaders on the purpose, material issues & publicly voice the intent;
- Understand & quantify the downside risks & upside opportunities;
- Mobilize people behind the purpose;
- Find out what needs to change in your leadership, ways of working, organization, talent and culture;
- Evaluate what works and scale that across the organization.

Boards face growing pressure from ESG petitions (Financial Times)

The average level of shareholder support for all environmental and social petitions increased to a record 34% in the 12 months to July 2021 in the US. Diversity, equity and inclusion resolutions won an average of 43% backing.

In addition, investors also revolted against big bonuses for executives. A record number of “say-on-pay” votes went against the companies in 2021.

ecoDa's NEWS

- **28th of October:** ecoDa participated in the GNDI Policy Committee meeting: the idea of organising a GNDI global Summit in 2022 was raised. Such an event would be an opportunity to gather board members from all over the world to discuss current Corporate Governance trends;
- **SAVE THE DATE:** ecoDa and Mazars are organising a series of event to focus on how to respond practically to the sustainability related challenges and, as importantly, how to spot the opportunities. The first event in the series will take place on the **19th of November (from 10.00 to 12.00)** and will look at how supply chains have been impacted by sustainability.
- **8th of November:** ecoDa's Education Working Group meeting;
- **9th of November:** The 2021 European Corporate Governance Conference, organised by ecoDa, EY and the Slovenian Institute of Directors. The programme can be found here.