THE EUROPEAN VOICE OF DIRECTORS

#EUALERT

Week 32

What's in this issue:

European Institutions:

EUROPEAN INSTITUTIONS DEVELOPMENTS

Council: Compromise proposal on the CSDD by the Presidency

A Council Corporate Sustainability Due Diligence compromise proposal has been circulated by the Czech Republic. The proposal:

- Allows companies to continue buying supplies even if there's a "severe" human rights or environmental risk when "no available alternative exists and the termination would cause substantial prejudice to the company";
- Recommends deleting company directors' duty to oversee that their business sufficiently checks product sources to mitigate human rights and environmental risks;
- Recommends allowing companies to prioritise adverse human rights impacts and adverse environmental impacts based on severity and likelihood of the adverse impact.

EU diplomats are set to discuss the compromise proposal at the Council's next company law working party September 5 to 6.

EESC: Opinion on the CSDD Commission proposal

The European Economic and Social Committee published its opinion on the Corporate Sustainability Due Diligence proposal. Among the main recommendations:

- Key provisions should be fully harmonised to avoid distortive discrepancies emerging between Member States' transposition laws (due diligence requirements, sanctions, liabilities for damages...);
- Due diligence requires a risk-based approach and can involve prioritisation based on the risk-assessment;
- The practical problems emerging from the tracing of downstream activities should be better acknowledged;
- Directors' duties should be further developed and better aligned with the Green Deal objectives.

INTERNATIONAL DEVELOPMENTS

BlackRock: 2022 voting spotlight

BlackRock Investment Stewardship (BIS) 2022 Voting Spotligh, covers BlackRock's voting activities on behalf of its clients from July 1, 2021 through June 30, 2022. Some key highlights from the 2021-2022 proxy year:

- Director elections: Globally, BIS supported 90% of directors elections;
- Shareholder proposals:
  - BIS supported 21% of shareholder proposal, compared to 35% last year;
  - In the US, there was an increase in the number of environmental and social (E&S) shareholder proposals on which BIS voted;
  - Of the 250 E&S shareholder proposals BIS did not support, the majority were because the company had substantially implemented or were progressing on the issue being addressed and because the majority were overly prescriptive.

Japan: Regulator published ESG code of conduct (Minerva Analytics)

Japan's Financial Services Agency (FSA) has requested public comments on its newly released draft Code of Conduct for ESG Evaluations and Data Providers. The code of conduct identifies the current status of ESG evaluations and data provision issues and examines the actions expected to be taken by data providers in view of future market development. The comment period is open until 5 September.

EUROPEAN DEVELOPMENTS

Responses to EFRAG consultation on the first set of draft ESRS

- **ecoDa**

ecoDa submitted its response to the EFRAG consultation highlighting the following high level comments:

- The Commission should take measures to develop a similar level of capacity and expertise for financial institutions, data providers and ESG rating agencies to make sense of all extra-financial information;
- Encompassing the entire value chain is the right approach, however, it could be troublesome to include social factors in the customer part of the downstream value chain;
- The level of assurance should gradually build-up;
- Some clarifications regarding the terminology used are necessary (confusion between the role of shareholders and other stakeholders...);
- EFRAG should start thinking about developing a uniform carbon accounting system.

- **Accountancy Europe**

The organisation is concerned with the complex and inconsistent internal structure in the ESRS EDs as well as with duplicate content on cross-cutting requirements. Accountancy Europe recommends EFRAG to define and clarify the relevant terminology related to double materiality as well as to provide more application guidance. It also strongly advises against the use of the rebuttable presumption and advises EFRAG to prioritise critical disclosure requirements for each ESRS.

- **ESMA**

ESMA highlights its support for a strong materiality assessment but expresses its concern with the suggested 'rebuttable presumption' approach. ESMA also encourages EFRAG to focus on pursuing proportionality objectives by allowing for the gradual phasing-in of certain requirements or reducing the complexity of the requirements themselves. ESMA furthermore recommends that the ESRS remain focused on setting out requirements to provide for material information to fulfill the disclosure obligations set out in the CSRD. The ESRS should avoid entering into the domain of conduct obligations.

NATIONAL DEVELOPMENTS

France: Legal inventory of extra-financial instruments adopted by large companies

The High Legal Committee of the Paris Financial Center examined the reporting, prevention and transparency systems related to the extra-financial risks of large companies to draw up a legal inventory and formulate proposals. The report highlights an accumulation of texts, thought separately, which results in complex implementations. The report recommends transposing the future CSDD directive «as closely as possible» and to take the opportunity of the transposition to amend certain provisions of the national due diligence law to reach harmonization, reduce redundancies, and simplify extra-financial obligations for French companies.

UK: Further improvement needed under new climate rules

The Financial Reporting Council and Financial Conduct Authority have published reports which found that premium listed companies have made significant steps forward in the quality of climate-related information provided in their financial reports, but further improvements are needed. These include:

- Providing more granular information about the effect of climate change on different business sectors and geographies;
- Balancing the discussion of climate-related risks and opportunities appropriately;
- Linking climate-related disclosures to other risk management and governance processes;
- Explaining how they have decided which climate-related information should be disclosed;
- Explaining more clearly how the effects of different global warming scenarios, and their own net zero commitments, may affect the valuation of their assets and liabilities.

Luxembourg: Study on non-executive directors and the concept of independence

ILA (The Luxembourg Institute of Directors), member of ecoDa, has recently published a study "Non-executive directors in Luxembourg - a focus on NEDs, iNEDs and the concept of independence". As the title suggests, the study looks into the role of Non-executive directors and especially of those NEDs who are also considered to be "independent". Furthermore, the paper analyses in more detail various attributes of independence to be considered by Boards when setting their own definition of independence.

ARTICLE

EU corporate due diligence proposal: game changer or paper tiger? (European Jacques Delors)

This paper focuses on the issue of environmental due diligence, which until now has received less public attention than other issues. It is a deep dive into the legal set up proposed by the Commission regarding potential harmful environmental impacts of businesses' activities along value chains. The think tank examines whether the Commission proposal is likely to deliver on two fundamental principles: prevent first, and redress firmly if necessary.

ecoDa News

- The newt EU Alert will be sent on the 26th of August.