THE EUROPEAN VOICE OF DIRECTORS

ecoDa
The European Voice of Directors

#EUAlert | Week 36

What's in this issue:

INTERNATIONAL DEVELOPMENTS

US: ESG ratings in the S&P 500

According to an analysis by the nonprofit The Conference Board and the research firm Esgauge, now three-quarters of companies in the S&P 500 have incorporated environmental, social and governance metrics that contribute to executive pay, compared with two-thirds of companies in the 2021.

Yet, despite the importance that ESG issues have recently assumed in setting executive bonuses, several asset managers say they are skeptical about using ESG factors for compensation purposes, because they believe metrics could be chosen not so objective or relevant and capable of being easily manipulated.

US: The Well's Fargo case (Reuters)

Shareholder lawyers in the Well's Fargo case argue that latest regulatory mishaps reflect continued oversight failures by the bank's directors. Big plaintiffs' firms like Robbins Geller Rudman & Dowd, Kessler Topaz Meltzer & Check, and Scott + Scott have taken a variety of different approaches to derivative breach-of-duty claims against the Wells Fargo board for allegedly botching the bank's regulatory compliance. They're now jostling for control of those potential claims and for the fees that will accompany any settlement with the bank. In the last two weeks, each of the three firms has told U.S. District Judge Jon Tigar of Oakland that they deserve to lead derivative litigation against the bank's board.

EUROPEAN DEVELOPMENTS

EU due diligence report raises hope for activists but worries foreign companies (Euractiv)

The corporate sustainability due diligence directive (CSDDD) yields dividing viewpoints between civil society and businesses in third countries. Foreign companies voice concerns over the lack of harmonisation of the draft rules and their extraterritorial dimension. According to activists, stakeholder engagement envisaged by the draft law is a "promising element". By contrast, liability provisions in the law, which would hold companies liable for damage if they fail to comply with due diligence obligations, worry foreign business representatives who see them as too far-reaching.

European shareholders contest more executive pay reports (Reuters)

European shareholders are increasingly contesting corporate executive pay reports, as investors unhappy with companies' approach to environmental and social issues vote against director remuneration. They remain reluctant to vote against directors because it is considered more confrontational, but it might change as investors' environmental and social concerns grow. The percentage of remuneration reports disputed by investors across seven countries reached 42.9% during the 2023 annual general meeting season, the highest in at least five years, according to an annual review by shareholder engagement firm Georgeson.

NATIONAL DEVELOPMENTS

UK: IoD report: Boards of directors must take back control of their organisations!

The main conclusions of the report are:

- The cumulative impact of the challenges they face has put many boards on the back foot, reacting to events rather than setting their own direction.
- Combined with an increase in the pressure from policymakers, regulators, investors and other stakeholders, this has left some board members feeling that they are no longer in control of their organisations.
- Now that governance is increasingly viewed as part of the broader ESG agenda, debate has become noticeably more politicised and views more polarised. This makes life more complex for boards, but they have to find ways to deal with it.
- Boards need to step up, re-establish their leadership role and engage more effectively with stakeholders and issues of concern to wider society. But there also needs to be a debate on how the policy framework for governance operates, with the aim of having a clearer delineation of responsibility for decision-taking between boards, regulators, investors and others.

PUBLICATION/ARTICLE

EY Global risks survey

The latest EY Global Board Risk Survey examines how to promote resilience in boards in order to modernize and thrive in a world of increasingly interconnected risks. The risk environment, risk management and the role of a CRO are assessed. EY concludes “Boards need a strategy that is not simply reactive but rather anticipates and adapts to emerging disruptions before they happen. They need to be resilient.”

2023 Edelman Trust Barometer Global Report

A lack of faith in societal institutions triggered by economic anxiety, disinformation, mass-class divide and a failure of leadership has brought us to where we are today – deeply and dangerously polarized.

- Business is the only institution seen as competent and ethical (Government Less Trusted than Business)
- Fifty-three percent of respondents globally say that their countries are more divided today than in the past.
- CEOs are obligated to improve economic optimism and hold divisive forces accountable.

The audit committee and dividend policy: an empirical study of the post-SOX era

A new survey concludes that there is a positive relationship between the size and gender diversity of the audit committee and the propensity to pay dividends suggesting that a larger audit committee with substantial women representation improve the information environment in firms leading to higher dividend distribution. The extent of busyness of the audit committee impacts negatively on the propensity to pay dividends. The results are driven by high-performing firms and not driven by specific levels of firm size.

Mc Kinsey - Four essential questions for boards to ask about generative AI

Board members can equip their C-suite to harness this potential power thoughtfully but decisively by asking the following four broad questions:

How will generative AI affect our industry and company in the short and longer term?
Are we balancing value creation with adequate risk management?
How should we organize for generative AI?
Do we have the necessary capabilities?

ecoDa News

- **11th of September:** ecoDa response to the OECD public consultation of the Guidelines on SOEs and publication of press release
- **13th of September:** ecoDa Education Committee meeting in Milan
- **15th of September:** ecoDa Advocacy Committee meeting
- **20th of September:** BIAC, ecoDa, IFAC webinar on “Revised OECD/G20 Corporate Governance Principles- What can companies do to promote sustainability and investor confidence?” that will be held virtually from 3:00pm-4:30pm CEST. More than 900 registrations so far ! Register **here**