THE EUROPEAN VOICE OF DIRECTORS

#EUAlert | Week 48

What's in this issue:

EUROPEAN INSTITUTIONS DEVELOPMENTS

Trilogue Update on CS3D

Agreements achieved:

- Confirmation that Art.25 on directors' duties is deleted (together with art.26);
- Naming and shaming: No public list of those who have been sanctioned;
- Public procurement: EP text agreed: "shall be excluded from public procurement processes if they fail to appoint an authorised representative under Article 16"
- Transposition: cascading timeline will prevail (but implementation will depend on when the EC guidelines will be ready)
- Scope: parent companies included;
- Downstream value chain: downstream transport/storage/disposal done on behalf of the company might not be considered;
- Downstream value chain: Sales should now be out of the definition, but must be kept if sales in the value chain are within most severe and likely risks

Agreements subject to confirmation from the working parties - the Spanish presidency taking positions without being ensured of the full Member States' support(!):

- Sanctions: maximum level fixed at at least 5% of the turnover!
- Responsible disengagement: no specific exceptions for critical sectors and in case that no alternatives can be found.

Discussions happened but no formal agreement reached:

- Scope: no agreement on the extension of the high-risk sectors' list;
- Causality: the definitions of "causing jointly" and "contribution" were discussed: Causing jointly is encompassing not only acts but also omissions. Problem as we are referring to an obligation of means and not of results.

Not discussed yet:

- Civil liability
- Climate plan (Art 15 and 15.3)
- Financial sector (still a red line for the rapporteur Lara Wolter – she wants the financial sector to be covered - a new EC compromise?)

Next steps: 3 technical meetings before the next trilogue.

EP: COP28: MEPs want to end all subsidies for fossil fuel globally by 2025

The resolution calls for an end of all direct and indirect fossil fuel subsidies, at national, EU and global levels, "as soon as possible and by 2025 the latest". MEPs also support a global target to triple renewable energy and double energy efficiency by 2030, together with a tangible phasing out of fossil fuels as soon as possible, and halting all new investments in fossil fuel extraction. The text asks all countries to strengthen their climate commitments and contribute their fair share to increase international climate financing.

EP: At COP28, Europe must grapple with consequences of carbon tariff (Euractiv)

The resolution calls for an end of all direct and indirect fossil fuel subsidies, at national, EU and global levels, "as soon as possible and by 2025 the latest". MEPs also support a global target to triple renewable energy and double energy efficiency by 2030, together with a tangible phasing out of fossil fuels as soon as possible, and halting all new investments in fossil fuel extraction. The text asks all countries to strengthen their climate commitments and contribute their fair share to increase international climate financing.

ESMA: Publications on Sustainable Finance

With the publication date of 22 November 2023, ESMA published three documents on sustainable finance: (1) 'Do No Significant Harm' definitions and criteria across the EU Sustainable Finance framework, (2) Concepts of sustainable investments and environmentally sustainable activities in the EU Sustainable Finance framework, and (3) Concept of estimates across the EU Sustainable Finance framework.

INTERNATIONAL DEVELOPMENTS

IASB: Consultation on improved accounting requirements

The International Accounting Standards Board (IASB) has proposed amendments to address the challenges in companies' financial reporting on instruments that have both debt and equity features. The IASB proposes:

- to clarify the underlying classification principles of IAS 32 to help companies distinguish between debt and equity;
- to require companies to disclose information to further explain the complexities of instruments that have both debt and equity features; and
- to issue new presentation requirements for amounts—including profit and total comprehensive income—attributable to ordinary shareholders separate to the amounts attributable to other holders of equity instruments.

Not discussed yet:

- Civil liability
- Climate plan (Art 15 and 15.3)
- Financial sector (still a red line for the rapporteur Lara Wolter – she wants the financial sector to be covered - a new EC compromise?)

Next steps: 3 technical meetings before the next trilogue.

EP: COP28: MEPs want to end all subsidies for fossil fuel globally by 2025

The resolution calls for an end of all direct and indirect fossil fuel subsidies, at national, EU and global levels, "as soon as possible and by 2025 the latest". MEPs also support a global target to triple renewable energy and double energy efficiency by 2030, together with a tangible phasing out of fossil fuels as soon as possible, and halting all new investments in fossil fuel extraction. The text asks all countries to strengthen their climate commitments and contribute their fair share to increase international climate financing.

ESMA: Publications on Sustainable Finance

With the publication date of 22 November 2023, ESMA published three documents on sustainable finance: (1) 'Do No Significant Harm' definitions and criteria across the EU Sustainable Finance framework, (2) Concepts of sustainable investments and environmentally sustainable activities in the EU Sustainable Finance framework, and (3) Concept of estimates across the EU Sustainable Finance framework.

INTERNATIONAL DEVELOPMENTS

IASB: Consultation on improved accounting requirements

The International Accounting Standards Board (IASB) has proposed amendments to address the challenges in companies' financial reporting on instruments that have both debt and equity features. The IASB proposes:

- to clarify the underlying classification principles of IAS 32 to help companies distinguish between debt and equity;
- to require companies to disclose information to further explain the complexities of instruments that have both debt and equity features; and
- to issue new presentation requirements for amounts—including profit and total comprehensive income—attributable to ordinary shareholders separate to the amounts attributable to other holders of equity instruments.

BIS: Global watchdog proposes detailed climate disclosures from banks (Reuters)

The proposals provide more detailed banking sector climate-related disclosures to supplement broader corporate disclosures agreed at the global level by the International Sustainability Standards Board. Not all countries will apply ISSB disclosures, however, and it is unclear how Basel's disclosures would dovetail with corporate climate disclosures the European Union has finalised. Draft U.S. corporate climate disclosures from the Securities and Exchange Commission face heavy pushback from companies which want to ditch the inclusion of so-called Scope 3 greenhouse gas emissions produced by a company's customers. The proposed Basel framework includes Scope 3, as well as Scope 1, covering direct emissions from a bank, and Scope 2, or indirect emissions from purchases of energy, such as for heating or cooling premises.

BIS: Global watchdog proposes detailed climate disclosures from banks (Reuters)

The proposals provide more detailed banking sector climate-related disclosures to supplement broader corporate disclosures agreed at the global level by the International Sustainability Standards Board. Not all countries will apply ISSB disclosures, however, and it is unclear how Basel's disclosures would dovetail with corporate climate disclosures the European Union has finalised. Draft U.S. corporate climate disclosures from the Securities and Exchange Commission face heavy pushback from companies which want to ditch the inclusion of so-called Scope 3 greenhouse gas emissions produced by a company's customers. The proposed Basel framework includes Scope 3, as well as Scope 1, covering direct emissions from a bank, and Scope 2, or indirect emissions from purchases of energy, such as for heating or cooling premises.

EUROPEAN DEVELOPMENTS

Summary of the EFRAG Conference, 28 November 2023

At the EFRAG Conference held on November 28 in presence of Commissioner McGuiness, it was said that "sustainability reporting framework is now a reality".
EFRAG reaffirmed its willingness to ensure the interoperability between the European Sustainable Reporting Standards (ESRS) and international initiatives (an IFRS / ESRS index and interoperability with IASB to avoid double reporting / identification of common data points).

On the most recent developments, it was announced:

- The SME standards should be ready in 2025;
- The sector specific standards should be finalized by June 2026 (the classification system out for consultation);
- Sector specific guidance will remain a must have;
- A public consultation on Digital ESRS X BRL Taxonomy is announced in January 2024;
- EFRAG is calling for candidates for the rotation of the EFRAG Sustainability Reporting TEG.

Panel discussions revealed that concerns about the implementation and short timeframe to implement the ESRS exist. Main concerns lie in:

- The capacity to collect data from the supply chain especially with the resource scarcity for SMEs. EFRAG should listen to the companies' specificities. Companies should be allowed to put limits in the value chain (difficulty to get data on scope 3 emissions);
- It should be up to the companies to decide when to move from limited assurance to reasonable assurance;
- EFRAG should at least review the standards regularly as well as the data points and envisage simplification;
- More guidance is requested;
- Internal control will have to be brought to the same level as for financial reporting.

EuropeanIssuers' Position Paper on ESMA & EBA's Report on the Implementation of SRD2

By the position paper, EuropeanIssuers welcomes ESMA & EBA's report on the implementation of SRD2, and comments on the following points

- Investment chain: shareholder identification, transmission of information, facilitation of the exercise of shareholders rights, and non-discrimination, proportionality and transparency of costs;
- Proxy advisors: definition, recourse mechanism, conflicts of interest, Proxy advisors operating via establishments, requesting more specific disclosure of information sources, including ESG data;
- And highlights the need for improved communication between proxy advisors and issuers.

NATIONAL DEVELOPMENTS

US securities regulator signals it may curb climate rule ambitions (Reuters)

U.S. Securities and Exchange Commission (SEC) officials have told lobbyists and corporate executives in recent days that the agency's long-anticipated climate rules may scale back some of the most demanding greenhouse gas emissions disclosure requirements that it had proposed. At issue are so-called Scope 3 emissions that account for greenhouse gases released in the atmosphere from a company's supply chain and the consumption of its products by customers, according to people familiar with the conversations.

PUBLICATION/ARTICLE

Climate change: Boards of Directors fall far short of expectations

The article highlights a study titled "Changing the Climate in the Boardroom." The study, conducted by Heidrick & Struggles and INSEAD, reveals a significant gap between what board members say about the importance of climate change for their companies and the actual actions taken by boards. While 75% of directors acknowledge the importance of climate change for their company's strategic success, only 43% state that their company has specific targets for reducing carbon emissions. The article emphasizes the need for boards to proactively address climate issues and provides a critical analysis of the study's findings, pointing out areas of optimism, pessimism, and genuine concerns.

ICGN Viewpoint: Reflecting climate-related matters in financial statements

This Viewpoint focuses on climate change and explores whether climate-related matters are adequately reported, specifically in financial statements. Among the broad range of sustainability issues, climate change is a material topic for companies in nearly all economic sectors, and on which reporting is relatively more advanced. For several years, investors have encouraged companies to account for material climate-related risks and decarbonisation commitments in their financial statements. To help companies and auditors, standard-setters have clarified how climate-related matters may impact key accounting assumptions under existing standards.

Family involvement in ownership and governance and internal audit quality

Family ownership is positively associated with the quality of internal auditing, while later generational stages of family businesses have the opposite effect. Furthermore, the presence of a sustainability board sub-committee moderates the relationship between generational stages of family businesses and the quality of internal auditing function.

Spillover effects of CS3D in Brazil, Chile, Kenia and Uganda

The report focuses primarily on the European Union's (EU) supply chain legislation, notably the EU's Corporate Sustainability Due Diligence Directive (CSDDD) proposal and its implications for business and human rights in the Global South. Overall, Brazil, Chile, Kenya and Uganda are engaged with the EUs supply chain legislation, with varying degrees of involvement and accompanying challenges. The laws are seen as tools to enhance transparency, protect human rights and improve labour conditions. The EU's influence on global trade is a motivating factor for compliance and engagement in these countries.

ecoDa News

- **1st of December**: ecoDa European Board Diploma module Dialogue between boards and stakeholders - with ICGN
- **7th of December**: Kick-off meeting: Sharing group on publications
- **8th of December**: ecoDa European Board Diploma module ESG matters - with Chapter Zero Brussels