

THE EUROPEAN VOICE OF DIRECTORS

#EUAAlert | Week 1



What's in this issue:

European Institutions Developments

- EC: Sustainable finance: Guidance to help financial undertakings
- EC: Sustainability reporting podcast
- Council: Agreed negotiation mandate on ESG ratings
- ESMA: Consultation on a set of draft Guidelines on Enforcement of Sustainability Information

European Developments

- EFRAG: Publication of the first three draft ESRS guiding documents

National Developments

- France: Transposition of the CSRD as the first EU member state
- Germany: One year of Supply Chain Due Diligence Act
- Luxembourg: The end of Luxembourg VAT on director's fees

Publication/Article

- Leadership, decision-making & the role of technology: Business Survey 2024
- FERMA: The Roadmap to strategic risk management

ecoDa News

EUROPEAN INSTITUTIONS DEVELOPMENTS

EC: Sustainable finance: Guidance to help financial undertakings

The Commission adopted a guidance document, addressing frequently asked questions on the interpretation and implementation of the Taxonomy Disclosures Delegated Act. It will help the financial market participants concerned prepare their first mandatory reporting exercise in 2024. By further increasing the usability of the sustainable finance framework, it helps companies on their transition journey. There is no trade-off between competitiveness and sustainability: the financial sector, by adapting its business models to sustainability, will remain competitive.

EC: Sustainability reporting podcast

In this podcast, Thomas Dodd from the European Commission gives answers on the requirements to report on sustainability under the CSRD. Mr. Dodd explains the major three points that changed from the NFRD (Non-financial Reporting Directive), interest groups that will benefit from the new directive, its entry into force and timeline of reporting requirements.

Council: Agreed negotiation mandate on ESG ratings

In its negotiating mandate, amongst other points, the Council clarified the circumstances under which ESG ratings fall under the scope of the regulation, providing further details on the applicable exemptions. Additionally, in line with the corporate sustainable reporting directive, it clarified that ESG ratings encompass environmental, social and human rights or governance factors. ESG rating providers that wish to operate in the EU will need to comply with certain requirements, including obtaining an authorisation from ESMA. The Council also introduced a lighter, temporary and optional registration regime of three years for existing small ESG rating providers and new small markets entrants.

The agreement on the Council mandate paves the way to interinstitutional negotiations that are expected to start in January 2024.

ESMA: Consultation on a set of draft Guidelines on Enforcement of Sustainability Information

The European Securities and Markets Authority (ESMA), the EU's financial markets regulator and supervisor, has launched a consultation on a set of draft Guidelines on Enforcement of Sustainability Information and is inviting comments from interested stakeholders by 15 March 2024.

The main goals of the draft Guidelines are to:

- Ensure that national competent authorities carry out their supervision of listed companies' sustainability information under the Corporate Sustainability Reporting Directive (CSRD), the European Sustainability Reporting Standards and Article 8 of the Taxonomy Regulation in a converged manner; and
- Establish consistency in, and equally robust approaches to, the supervision of listed companies' sustainability and financial information; this will facilitate increased connectivity between the two types of reporting.

EUROPEAN DEVELOPMENTS

EFRAG: Publication of the first three draft ESRS guiding documents

EFRAG has published its first three draft ESRS Implementation Guidance documents for public feedback. Draft EFRAG IG 1 deals with the requirements on the materiality assessment in ESRS and Draft EFRAG IG 2 with the value chain aspects in ESRS. Draft EFRAG IG 3 contains the detailed ESRS datapoints as a Microsoft Excel workbook with an accompanying explanatory note. Stakeholders can provide feedback by accessing the relevant surveys by 2 February 2024.

NATIONAL DEVELOPMENTS

France: Transposition of the CSRD as the first EU member state

France is the first EU member state to transpose Directive no. 2022/2464 of December 14, 2022, the CSRD (Corporate Sustainability Reporting Directive), which replaces the NFRD (Non Financial Reporting Directive).

This transposition was carried out by ordonnance no. 2023-1142 of December 6, 2023 on the publication and certification of sustainability information by commercial companies. It simplifies and reorganizes several provisions of the French Commercial Code.

Germany: One year of Supply Chain Due Diligence Act

On 1 January 2023, the Supply Chain Due Diligence Act introduced legally binding obligations for certain German companies to respect human rights and environmental standards in their supply chains. From 2024, further companies will be covered by the Supply Chain Act, while at the same time a European law is close to finalisation.

Luxembourg: The end of Luxembourg VAT on director's fees

The Court of Justice of the European Union (CJEU) decided in Case C-288/22 that remuneration received by a director for his activity as a member of the board of directors of a Luxembourg limited company is not subject to VAT. The CJUE ruled that the activity of member of a board of directors of a limited company under Luxembourg law is not exercised independently for VAT purposes since the board member does not act on his own behalf or under his own liability and does not bear the economic risk linked to this activity. According to the CJUE, this holds true despite the fact that this member freely organizes the modalities of execution of his work, acts in his own name and is not subject to a subordination relationship.

*PUBLICATION/ARTICLE***Leadership, decision-making & the role of technology: Business Survey 2024**

AI offers huge potential to leverage data in support of governance, risk and compliance (GRC) decision-making, but only when systems can deliver the right data and when decision-makers have the skills to interpret the outcomes.

The findings reveal:

- How board and leadership access to data and business intelligence has changed in the last five years.
- The extent to which data analytics, visualisation, and AI are already in use and whether leaders are overwhelmed by the volume of data they receive.
- The effect investment in data and business intelligence technology is having on decision-making processes.
- Confidence levels in director and executive data literacy.

FERMA: The Roadmap to strategic risk management

In an ever-evolving business landscape, shaped by rapid technological advancements, geopolitical shifts, and unpredictable market forces, the need for a robust strategic risk management framework has never been more evident. Strategic Risk Management not only offers protection against potential threats, it can be a catalyst for innovation, growth, and resilience. It is a proactive approach that replaces traditional risk mitigation strategies, embracing uncertainty as an integral part of the strategic planning process.

ecoDa News

- **08th of January 2024:** ecoDa Taskforce Manifesto meeting
- **09th of January 2024:** ecoDa Working Group on SOEs meeting
- **10th of January 2024:** ecoDa meeting on the Ethics & Boards barometer
- **10th of January 2024:** ecoDa and ISAlliance Workshop on Cybersecurity
- **11th of January 2024:** ecoDa meeting on ESRS guidance
- **12th of January 2024:** ecoDa European Board Diploma: Ceremony
- **16th of January 2024:** ecoDa and WTW webinar on director's remuneration