

THE EUROPEAN VOICE OF DIRECTORS



#EUAAlert | Week 41

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ecoDa News

EUROPEAN INSTITUTIONS DEVELOPMENTS

EC: The EC adopted the first set on the European Sustainability Reporting Standards

The EC adopted delegated acts on the first set of 12 ESRs and published a Q&A on the standards:

The DA is now under a 2-month (extendable by another 2-month) scrutiny period by the EP and the Council, which can accept or reject, but not change the standards content.

EC: Streaming available: The Sustainable Finance Disclosure Regulation - what next?

An event on 10 October looking at what's next for sustainability disclosures in the EU attracted a wide attendance from regulators and industry experts. Panellists, who included representatives of the co-legislators, supervisors and financial market participants, discussed the impact that this important piece of legislation has had. They also highlighted challenges in its implementation and shared ideas about how it could evolve.

EP: European Parliament adopts European Green Bond Standard

Lawmakers in the European Parliament voted 418-79 on Thursday to approve the adoption of a new European Green Bond (EuGB) label, aimed at fighting greenwashing and providing investors with confidence that their investments are being appropriately directed towards financing sustainable business activities and technologies. Under the new standard, companies issuing bonds under the voluntary EuGB designation will be required to follow a strict set of investment and transparency criteria, including disclosures on how the proceeds from the bonds will be used, as well as committing to a green transition plan, and reporting on how the investments contribute to the those plans.

EP: Commissioner McGuinness: announcement that sectoral sustainability reporting standards will be postponed

Within an exchange with the EP JURI Committee meeting on 07 September 2023, Commissioner McGuinness commented on the Corporate Sustainability Reporting Directive (CSRD) and European Sustainability Reporting Standards (ESRS). McGuinness announced that sectoral ESRS will be postponed to 2026 to grant companies more time to adjust.

EP: Financial sector and corporate sustainability due diligence, in or out? (Euractiv)

It has been almost a year since EU ministers last met to discuss a law to make business value chains more ethical and climate-friendly. During this meeting, there was a fierce discussion on the role that finance should play, with the final agreement essentially carving out the sector. Now Member States are returning to the negotiating table, and some things have not changed: there is an emerging deadlock with Paris supporting a complete exclusion of the financial sector, meaning we risk having zero discussion on the unique opportunity the EU has to reorientate its capital markets to a more sustainable footing.

ESMA: Analysis of the existence of an ESG pricing effect ('the Greenium') across different types of sustainable-labelled debt instruments

Issuance of sustainable-labelled debt has rapidly increased over the last years (+28% in one year in 1H23 and +663% since 1H18), and the variety of debt instruments with a sustainability aspect introduced to the market has increased. Existing research suggests that sustainable-labelled debt issuers may benefit from a pricing advantage, often dubbed 'the Greenium', meaning that investors would accept lower yields in exchange for the sustainability profile of the bond or the issuer. The evidence is however not conclusive and largely focuses on green bonds only. This article therefore analyses the existence of an ESG pricing effect for various types of ESG-debt instruments, beyond only green bonds, and further investigates if issuer-level ESG credentials can serve as an explanatory variable to explain the phenomenon. ESMA's analysis also includes an overview of the current state of play of the European sustainable debt market and provides details about how ESG characteristics have in the past and present impacted bond pricing differences.

EUROPEAN DEVELOPMENTS

EFrag has launched a call for tender to assist EFRAG in developing cost benefit analysis

EFrag has launched a call for tender to assist EFRAG in developing a cost benefit analysis for

1. the Listed SMEs, small non-complex credit institutions and captive insurance/re-insurances Draft European Sustainability Reporting Standard (LSME) and
2. for the ESRS voluntary standard for non-listed SMEs (VSME).

European Issuers' position on the proposed EU Regulation on the transparency and integrity of ESG rating activities

Scope: The scope of the regulation must appropriately cover "controversy reports" and "processed ESG data." ESG data and controversy reports should be explicitly included as they play a crucial role in preserving companies' reputations and influencing investment decisions. Detailed transparency requirements should be introduced for both controversy reports and the processes used by data providers to gather ESG data to ensure transparency and data integrity.

Dialogue with and Complaints from Issuers: To ensure fair treatment, there must be reliable interaction and the fair handling of issuers' concerns. Complaints from issuers should be addressed in a professional, independent, and timely manner.

Transparency: The lack of transparency exacerbates existing problems in the market due to variations in professionalism, methodologies, and rating results. We encourage co-legislators to consider or introduce requirements that enable issuers to fully understand the methodology of an ESG rating, including granular information on metrics and expectations.

PUBLICATION/ARTICLE

Shell case analysis: a Tale of Two Courts

Doubtless, Shell Petroleum has been embroiled in litigation throughout its life and as that litigation involves a multinational company it sometimes puts in sharp relief the different approaches of the jurisdictions in which Shell operates to what are essentially similar legal issues. A pair of court decisions, one from each of the two jurisdictions which generated the companies whose merger formed Shell in 1907, shows a sharp contrast between the potential of Dutch law to operate so as to specify the commercial objectives of large companies and, by contrast, the continuing commitment of English courts to the view that the setting of commercial objectives is a matter for the company's management, not the court.

Study on the 'one in, one out' principle - a lawmaking tool

The study submits that 'One in, one out' is a tool for less, not better, regulation and legislation, and, as such, it is not a suitable instrument for better law-making. It was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee.

Conclusion 1: The OIOO cannot serve as a tool for better regulation in its current form.

Conclusion 2: OIOO is not a tool for better legislation. It does not tackle legislative quality.

Conclusion 3: OIOO can be a tool for less legislation.

Conclusion 4: For real Better law-making the Commission must undertake a holistic reform of its legislative strategy, via the application of the Better Regulation principles on to its own law-making approach.

Conclusion 5: This legislative reform can be implemented, amongst other tools, by a reform of the drafting style of EU legislative instruments, reflecting of course a reformed, citizen-focused legislative approach.

Conclusion 6: The implementation of 22 concrete recommendation spreading through all 5 of Thornton's stages for legislative drafting can revolutionise the effectiveness of EU Legislative instruments, and, consequently, the efficacy of EU Regulation.

Conclusion 7: Better legislation is a right for EU citizens, one that must be promoted and protected by the EP.

ecoDa News

- **25th and 26th of October:** Days 1 and 2 of the European Board Diploma
- **27th of October:** ecoDa / Allen & Overy Webinar on CS3D: The possible impacts on Directors' Duties - [Register here!](#)