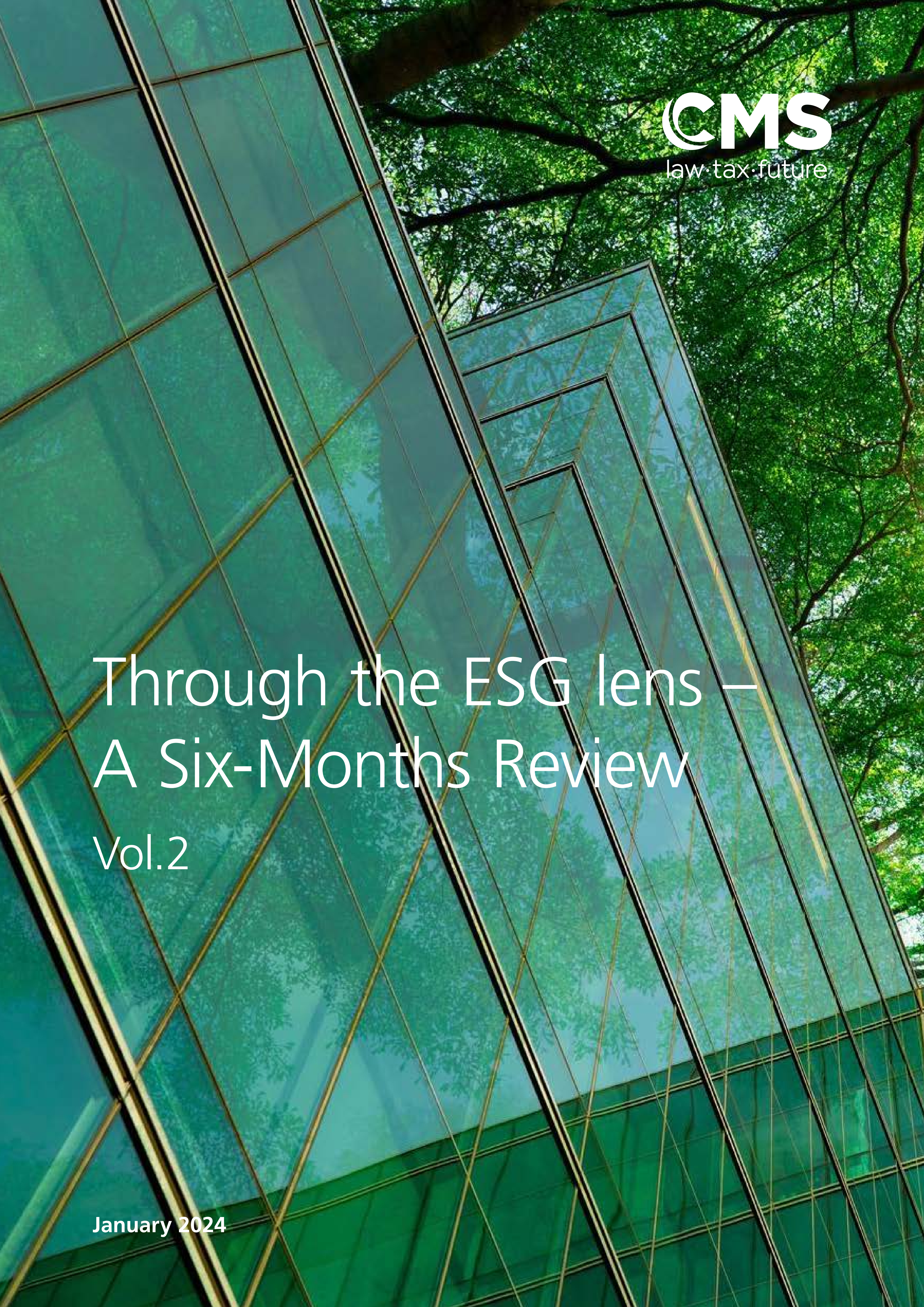

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Through the ESG lens – A Six-Months Review

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Our collection of monthly reviews is organized into two sections. The first section, named 'Legislation & regulation', includes all significant ESG legislation updates within the EU. This ensures that you are kept up to date with the advancement of new laws that fall under the EU Green Deal and the Fit for 55 plan. The second section, named 'News & reports', brings to your attention a variety of fascinating sustainability publications and reports that are released by NGOs, international organizations, and others.

Introduction

"Through the ESG Lens – A Six-Month Review" is our new publication filled with articles covering the latest legal developments on environmental, social, and governance (ESG) issues. The articles in this guide are regularly published on our blog, and we've curated them to provide you with a comprehensive overview of the key legal trends in the past six months.

Every business is deeply intertwined with ESG concerns, and staying informed on the latest developments is critical to mitigate risks of non-compliance. By using information from this publication, you can stay ahead of the curve and ensure that your business is operating within the bounds of the law.

In this edition we cover many recent developments regarding various EU ESG legislation such as the CSDDD, CSRD and the European Sustainability Reporting Standards. Moreover, a wide range of topics, from regulatory changes to institutional views and emerging legal challenges. Our team of CMS experts, writers and editors has worked hard to provide insightful articles that offer practical guidance and analysis on the latest trends in the ESG space.

We have created this publication as a lookback resource for legal professionals and anyone interested in staying up to date on the latest legal developments in the ESG arena. By regularly checking in and using the information from the publication, you can mitigate risks and ensure that your business is on the right side of compliance.

We hope you find this guide informative and useful, and welcome your feedback and comments.

Our monthly reviews are published regularly in the form of Sustainability blogs and can be accessed by signing up for our newsletter to receive regular updates by following cms.law/en/hrv/innovation/online-services/sustainability-blog

Gregor Famira
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May 2023

Legislation

The beginning of May saw important developments regarding the directives on unfair commercial practices. On 3 May, the Council of the EU adopted its position on the proposed directive to empower consumers for the green transition by amending the Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive (CRD). The objective of these amendments is to provide consumers with the tools and information they need to make sustainable choices and actively participate in the transition to a greener economy. This now provides the Council presidency with a mandate for negotiations with the European Parliament, which can start as soon as the EP has adopted a position.

In the final few days of the month, significant developments also unfolded regarding the Corporate Sustainability Due Diligence Directive (CSDDD). While the Council had agreed on a common position on the text of the directive last December, the European Parliament had yet to agree on its position before final "trilogue" talks with the EU Commission could begin. Although it had seemed like a done deal, on Wednesday 31 May (just one day before the vote), the European People's Party decided to vote against the CSDDD position during the plenary session unless a specific amendment was added to the text. The amendment would require the European Commission to transform the directive into a regulation six years after its implementation. However, despite this unexpected last-minute setback, the EP ended up voting in favour of its position on the CSDDD.

On 17 May, the European Supervisory Authorities (ESAs) published consolidated questions and answers (Q&A) relating to the Sustainable Finance Disclosure Regulation (SFDR) and the SFDR Delegated Regulation. The consolidated Q&A combined the European Commission's Q&A from July 2021, May 2022 and April 2023, and the ESAs' Q&A from November 2022. The answers provided give greater insight into PAI disclosures, financial product disclosures, various issues regarding scope, etc. You can find the consolidated Q&A here.On 23 September, ESMA published final report on updated Guidelines on sustainability-related aspects of the MiFID II suitability assessment. The Guidelines provide instructions to national competent authorities and financial advisors on how client 'sustainability preferences' should be gathered.

News and reports

On 9 May, the UN PRI issued a responsible investment due diligence questionnaire for real estate investors. The due diligence questionnaire (DDQ) has been developed to help investors better understand and evaluate real estate managers' approaches to responsible investment. The questionnaire can be used by investors in two scenarios: when choosing an investment manager for a new real estate mandate, or when overseeing an investment manager to whom they have allocated funds. The questions specifically target managers who engage in direct real estate investment. You can find the DDQ here.

A fascinating study called "The Effect of Multinational Enterprises on Climate Change" has been published by the World Bank. By combining fresh data, empirical analysis, and the latest literature, the report explores the challenges and opportunities that multinational enterprises (MNEs) present in the context of climate change mitigation. The findings highlight that while a small number of MNEs significantly contribute to global emissions, they also possess the potential to rapidly initiate meaningful change in their global suppliers' emissions by encouraging them to adopt sustainable practices and green technologies. Additionally, MNEs emerge as crucial contributors to climate transition through their increasing investment in green sectors. However, the report raises concerns about potential inaction and resistance from MNEs, underscoring that many of them presently lack adequate corporate commitment to decarbonize their own production and supply chains. You can find the study here.

Sustainability-linked financing is still in its infancy, but it is already an integral part of today's financing landscape and looks set to remain into the future. Plenty of data and information exists, particularly on the KPIs of sustainability-linked financings, but it is scattered. Hence, CMS has published a brand-new report on Sustainability KPIs in finance transactions, offering an analysis and comments on all aspects of sustainability-linked financing.

This includes a detailed study of over 100 SLBs issued on the "public" (Eurobonds and EMTN) and "private" bond markets in Europe between January 2020 and April 2023. Apart from relevant and up-to-date market data on: KPIs used and impacts on the characteristics of the financing, this report provides best practices, common KPIs as well as practical experiences from clients. Check out the full report here.

June 2023

This June was packed with interesting developments in ESG legislation and regulation in the EU. It all started on the first day of the month, when the European Parliament adopted its stance on the CSDDD ahead of the trilogue, while later in the month, the European Commission published the revised draft of the ESRS, containing some significant changes. The highlight of the month was definitely the Commission's new sustainable finance package, which includes new TSC for four further economic activities in the EU Taxonomy and new regulations for ESG rating providers.

Legislation

On 1 June, the European Parliament adopted its position on the Corporate Sustainability Due Diligence Directive (CSDDD). Despite some bumps along the way, the EP managed to find a common stance, and the CSDDD got the green light from the MEPs. The final vote was 366 votes for, 225 against and 38 abstentions. This was a major step forward, as the EP took a fairly ambitious stance that incorporated almost all of the Committee on Legal Affairs' proposals ahead of the trilogue discussions between the Parliament, the European Commission and the European Council. The trilogue started on 8 June.

On 13 June, the European Commission put forward a new package of measures to build on and strengthen the foundations of the EU sustainable finance framework. This sustainable finance package aims to ensure that the EU sustainable finance framework continues to support companies and the financial sector, while encouraging private funding of transition projects and technologies. Specifically, the European Commission has expanded the scope of the EU Taxonomy by incorporating additional activities. This means that in principle, the Commission has approved a new set of technical screening criteria (TSC) for four further economic activities in the Taxonomy (sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, protection and restoration of biodiversity and ecosystems). Complementarily, the Commission has adopted specific amendments to the EU Taxonomy Climate Delegated Act, expanding on economic activities contributing to climate change mitigation and adaptation that were not included so far, in particular in the manufacturing and transport sectors. More information, including the new delegated acts, can be found here.

Additionally, the Commission is introducing new regulations for ESG rating providers. Their aim is to enhance transparency in the market for sustainable investments by providing investors with clearer information and guidelines. The introduction of these new regulations will empower investors with improved information for making informed choices on sustainable investments. Furthermore, the proposal includes a requirement for ESG rating providers offering their services to investors and companies in the EU to be subject to authorization and supervision by the European Securities and Markets Authority (ESMA). This crucial step aims to guarantee the quality and reliability of their services, protecting investors and upholding market integrity.

The Commission was also very busy with the European Sustainability Reporting Standards as it has published 12 updated draft ESRS. Although the general structure of the standards remains the same, the EC made a number of changes in order to reduce reporting obligations and simplify first-time application of the ESRS. One of the most important changes is that all standards (except the ESRS 2) are subject to a double materiality assessment. Undertakings must determine which standards should be considered material on the basis of their materiality assessment. Previously, the drafts by the European Financial Reporting Advisory Group (EFRAG) provided for mandatory disclosures, independently of any materiality assessment. Moreover, the EC has introduced phase-in provisions in addition to those proposed by EFRAG, which will make initial adaptation to the new standards a bit easier. Also, some disclosures are now voluntary (for example, the transition plan for biodiversity and ecosystems in ESRS E4, and information on non-employee workers in ESRS S1).

News and publications

On 7 June, Principles for Responsible Investment (PRI) issued a new technical guide called Human Rights Due Diligence for Private Markets Investors. The guide is intended to provide tools and resources to help private markets investors adopt consistent human rights practices and make more informed investment decisions. You can find the guide here.

The Sustainable Development Report 2023 (SDR 2023) was published on 21 June. The SDR reviews progress made each year on the Sustainable Development Goals (SDG) since their adoption by the 193 UN Member States in 2015. At the halfway point to 2030, the SDR 2023 takes stock of progress made and discusses priorities to restore and accelerate SDG progress. The best ranked country is Finland, followed by Sweden and Denmark. Croatia is ranked 12th (same as in 2022), Slovenia is 13th and Slovakia is 23rd. You can find the full report here.

July 2023

Legislation and regulation

The European Sustainability Reporting Standards (ESRS) were one of the main topics this month, as the public consultation on the initial set of ESRS has been concluded by the European Commission. These standards will encompass the precise disclosure criteria that companies falling under the scope of the EU's upcoming Corporate Sustainability Reporting Directive (CSRD) must adhere to when reporting. Subsequently, the European Commission will review the feedback received, with the targeted adoption date for the ESRS set in the third quarter of 2023.

However, recently proposed changes to the ESRS, which would ease several aspects of the CSRD, have not been entirely welcomed by some stakeholders. A coalition of investment and sustainable investing groups, including Eurosif, PRI, IIGCC, EFAMA and UNEP FI as well as more than 90 asset managers, announced the publication of a joint statement calling on the European Commission to reconsider its recently proposed changes to the ESRS. One of the main points of the statement emphasizes that, "the proposed approach would limit investor access to the consistent, comparable and reliable information needed to inform decisions and allocate capital in line with sustainability goals, including those of the European Green Deal, the EU Biodiversity Strategy for 2030 and the EU Climate Law."

You can find the statement here.

On 3 July, the European Commission changed the comment deadline for its proposal concerning ESG ratings and sustainability risks in credit ratings to 30 August 2023. It announced that the feedback period, initially set at eight weeks, will be extended daily until the proposal is available in all EU languages. All feedback received will be condensed by the European Commission and subsequently presented to the European Parliament and Council, aiming to contribute to the legislative discussion.

On 12 July, the European Parliament adopted its position on the EU Nature Restoration Law (NRL), approving the European Commission's proposal. The NRL focuses on restoring damaged ecosystems and includes a key target for the European Union to have restoration measures in place by 2030 covering at least 20% of its land and sea areas. However, the process of adopting this position wasn't exactly smooth sailing. The European People's Party (EPP) led a campaign opposing the proposed law, which has significantly jeopardized its future. The Environment Committee of the European Parliament voted on its version of the law last month, but it failed to secure a majority. As a result, a motion to reject the law was tabled for a full vote in Parliament. The motion to dismiss the proposals narrowly failed with a vote of 312 to 324 and 12 abstentions. Subsequently, Parliament approved its position with a vote of 336 to 300 and 13 abstentions. The adopted text incorporated various modifications aimed at addressing the concerns of opponents. Notably, a new article was included, emphasizing that new renewable energy infrastructure installations that serve a significant public interest will be safeguarded to prevent any obstruction by the new law.

On July 25, the European Council announced the adoption of a series of laws and regulations under the Fit for 55 package, aimed at achieving the EU's climate goals. These new laws will regulate energy efficiency, alternative fuels infrastructure, and the decarbonisation of the maritime sector, aiming to reduce final energy consumption by setting more ambitious energy efficiency targets. This package includes:

1. adoption of the Energy Efficiency Directive (EED), which will help member states collectively reduce final energy consumption by at least 11.7% by 2030, compared to the energy consumption forecasts for 2030 made in 2020;
2. adoption of the Alternative Fuels Infrastructure Regulation (AFIR), a new law for more recharging and refuelling stations across Europe;
3. adoption of the FuelEU maritime initiative, a regulation with the goal of increasing demand for and consistent use of renewable and low-carbon fuels, and reducing greenhouse gas emissions in the shipping sector, while ensuring the smooth operation of maritime traffic and avoiding distortions in the internal market.

News and publications

On 27 July, the new head of the Intergovernmental Panel on Climate Change, Jim Skea, emphasized that the governments have not put in place policies that are ambitious enough to allow the goals of the Paris agreement to be met. Consequently, we are "committed to at least some degree of overshoot" he said.

Also, the United Nations Global Compact has issued an interesting guide with 6 tips to improve your supply chain's social sustainability. These tips are intended to offer practical guidance that goes beyond internal operations, helping companies enhance social sustainability across their supply chains.

You can find more information here.

August 2023

One of the drawbacks of finishing our blog posts a couple of days before the end of the month is that sometimes it results in omitting the latest news – in this case, the analysis of the newly issued final version of the European Sustainability Reporting Standards (ESRS), which was published on the last day of July. Therefore, the main focus of our August blog will be on the ESRS.

Legislation and regulation

On 31 July, the European Commission published the final text of the Delegated Act containing the first set of European Sustainability Reporting Standards, including cross-cutting and sector agnostic standards covering all ESG matters. Companies within the scope of the Corporate Sustainability Reporting Directive (CSRD) are required to report on sustainability in accordance with the ESRS. The ESRS specify the information, format, and standards for in-scope companies' disclosures regarding sustainability matters, which cover a wide range of environmental, social, and governance (ESG) matters. Anticipated to take effect on 1 January 2024, this Delegated Act (and consequently the ESRS) aligns with the initial stage of implementing the CSRD for EU-listed businesses that were previously under the scope of the Non-Financial Reporting Directive (NFRD), along with non-EU listed enterprises with over 500 employees. These entities are mandated to release a sustainability report in 2025, covering activities for financial years beginning on or after 1 January 2024. The draft ESRS were published in November 2022, and there have been a lot of negotiations and discussions since then about what the final version of the standards would look like.

What are the main characteristics of the official ESRS?

The ESRS retain the mandatory nature of some sustainability disclosures but introduce a materiality-based reporting approach. While all reporting entities must provide general disclosures under ESRS 2, specific disclosure obligations will only be applicable if they are considered relevant to a company's business model and operations. The evaluation of materiality must undergo external verification.

There is also a provision in the materiality section that requires a detailed explanation if a reporting entity concludes that climate change is not a material topic. Moreover, in acknowledgement of input from the feedback period back in June, there have been some changes to the terminology around financial materiality to better align with the definition of financial materiality in the IFRS standards. By this and some other adjustments, the ESRS are now much more compatible with other sustainability standards such as GRI and IFRS.

The Commission has also introduced additional phase-ins for certain reporting requirements, particularly for companies with fewer than 750 employees. This approach aims to ease compliance for smaller companies. The phase-ins mainly apply to reporting on biodiversity and social issues.

Here are the 12 final standards:

Cross-cutting	ESRS 1	General requirements
Cross-cutting	ESRS 2	General disclosures
Environment	ESRS E1	Climate change
Environment	ESRS E2	Pollution
Environment	ESRS E3	Water and marine resources
Environment	ESRS E4	Biodiversity and ecosystems
Environment	ESRS E5	Resource use and circular economy
Social	ESRS S1	Own workforce
Social	ESRS S2	Workforce in the value chain
Social	ESRS S3	Affected communities
Social	ESRS S4	Consumers and end users
Governance	ESRS G1	Business conduct

You can find the full standards here.

Following the adoption of the Delegated Act, there will be a two-month period (potentially extendable by two months) for examination by both the European Parliament and the Council of the European Union. Assuming neither of the co-legislators raises objections after this period, the Delegated Act will come into effect on 1 January 2024. Simultaneously with the legislative process, the European Financial Reporting Advisory Group (EFRAG) is working on developing additional guidance to facilitate the implementation of the ESRS. This forthcoming guidance is expected to address aspects such as the materiality assessment and the inclusion of information related to the value chain. Furthermore, EFRAG has announced its intention to establish a platform for ESRS stakeholders to submit queries regarding the application of the ESRS.

News and publications

On 29 August, the UN Environment Programme and the Net Zero Asset Owner Alliance (NZAOA) opened a public consultation on the fourth edition of their Target Setting Protocol. The Protocol outlines how the Alliance members are to set their science-based intermediate targets. Each new version is intended to make the target-setting framework more robust and sophisticated through the incorporation of new methodologies and approaches.

On the same day, the CDP published an interesting article on the upcoming ESG rating regulation in order to address potential confusion. In the article, the CDP's Global Director for Policy Engagement and External Affairs, Pietro Bertazzi, welcomes the prospect of heightened attention to ESG ratings and data products, and their ability to leverage data for the benefit of the public. However, he cautions against the potential danger of regulatory fragmentation, which could undermine the intended objectives.

September 2023

Legislation and regulation

On 14 September 2023, the European Commission initiated two consultations regarding Regulation (EU) 2019/2088, also known as the Sustainable Finance Disclosure Regulation (SFDR). These consultations, which will run until 15 December 2023, involve a targeted and public feedback-seeking process. Their aim is to assess if the SFDR effectively meets investors' requirements and if it remains suitable for its intended purpose. The consultations have the potential to result in a significant overhaul of the SFDR because the European Commission is consulting on whether to build out Articles 8 and 9 into fund labels or possibly develop entirely new investment strategy-based labels.

More news on the SFDR developed on 28 September, as the European Supervisory Authorities (ESAs) jointly issued the 2023 Joint ESAs Report on the extent of voluntary disclosure of principal adverse impacts (PAIs) under the SFDR. The report's primary findings highlight significant variability in compliance with disclosure requirements across financial market participants and jurisdictions. Nevertheless, the most recent survey conducted by national competent authorities reveals overall improvement in the implementation of voluntary disclosures. Additionally, such disclosures are now more readily accessible on websites. However, there remains a need for more comprehensive and satisfactory explanations in cases where PAIs are not considered. The ESAs plan to conduct further analysis of voluntary PAI disclosures by financial products, recognising the limited understanding in this area. Furthermore, they suggest that the European Commission should take the ESAs' findings into account when conducting the comprehensive assessment of the SFDR's performance mentioned above. You can find the Annual Report here.

On 19 September, the European Parliament announced a provisional agreement on a proposed directive that will ban generic environmental claims (e.g. "environmentally friendly", "natural", "biodegradable", "climate neutral" or "eco") if there is no proof of recognised, excellent environmental performance relevant to the claim. Moreover, it will also ban claims asserting that a product has a neutral, reduced, or beneficial impact on the environment due to emissions offsetting schemes. Finally, advertising messages for products incorporating design elements that suggest sustainability will only be permitted to use sustainability labels from authorised certification programmes. The proposed directive now requires final approval by the Council of the EU and the EU Parliament.

News and publications

On 18 September, the Taskforce on Nature-related Financial Disclosures (TNFD) published its framework and final recommendations for managing and disclosing nature-related risks. The framework draws inspiration from the framework established by the Task Force on Climate-related Financial Disclosures (TCFD) but concentrates on aiding businesses in evaluating their nature-related impacts, dependencies, risks, and opportunities. Slated for publication next year, the finalised guidance for financial institutions will encompass specific metrics pertaining to exposure in high-impact sectors and environmentally sensitive areas.

Norges Bank Investment Management (NBIM) has issued an interesting report on expectations of companies regarding climate change. The report strongly emphasises that company boards should ensure that climate risks and opportunities are integrated into corporate strategy and risk management. You can read the report here.

October 2023

Legislation and regulation

Although the European Sustainability Reporting Standards (ESRS) were adopted back in July, they were once again in the centre of attention during October. In July, the European Commission adopted the ESRS as a delegated act supplementing the Corporate Sustainability Reporting Directive (CSRD), after an open consultation that solicited feedback from the private sector, NGOs, and international organisations. Following the end of the consultation period, however, the European People's Party (EPP) and the Renew political group filed a motion to raise objections to the standards' approval, thus requesting a full plenary vote on the matter. The goal of this motion was to either postpone the implementation of the standards or to significantly relax the obligations that companies will face under the ESRS. However, the motion was rejected with 359 votes against and 261 in favour. As a result, the ESRS have been formally adopted, which means that mandatory sustainability reporting will apply to 50,000 companies from January 2024 onwards. From 2028, non-EU companies operating in Europe will also need to report in accordance with the ESRS or equivalent standards.

On 24 October, the Council of the EU announced the adoption of a regulation that establishes a new European Green Bond Standard. This represents the final significant milestone in the establishment of the European Green Bonds (EuGB) label. Its primary objectives are to combat greenwashing and facilitate the growth of the sustainable finance sector in the EU. Earlier this year, the Council and Parliament had reached an agreement on the new regulation, establishing the EuGB standard as voluntary, while also including a voluntary framework for sustainability-linked bonds and green bonds not issued with the EuGB designation. The regulation will be signed and entered in the EU's Official Journal, and will enter into force twenty days later. Application starts twelve months after entry into force.

The European Commission also published its work programme for 2024, listing several sustainability and climate actions related to the EU Green Deal as one of the EU's headline ambitions. The plan includes various initiatives, such as kickstarting the process to establish a 2040 climate target, introducing the European wind power package to expedite the deployment of wind turbines, initiating a programme focused on industrial carbon management, including a strategy for sustainable carbon capture, utilisation, and storage (CCUS), and adopting an initiative to enhance water resilience.

News and publications

The Task Force on Climate-related Financial Disclosure has issued its 2023 status report.

This report discusses the advances made by companies in their efforts to provide financial disclosures related to climate matters. It also sheds light on the difficulties they encounter while attempting to make these disclosures, particularly when it comes to integrating climate-related risks into their financial statements. The report states that the percentage of companies disclosing TCFD-aligned information continues to grow, though more progress is needed. For fiscal year 2022 reporting, 58% of companies disclosed in line with at least five of the eleven recommended disclosures – up from 18% in 2020. However, only 4% of companies disclosed in line with all eleven recommendations. Moreover, the percentage of companies reporting on climate-related risks or opportunities, board oversight, and climate-related targets increased significantly between the fiscal years 2020 and 2022, by 26, 25 and 24 percentage points, respectively. You can find the report here.

November 2023

Legislation and regulation

On 8 November, the European Financial Reporting Advisory Group (EFRAG) released a draft voluntary European Sustainability Reporting Standard (ESRS) for small and medium-sized enterprises. The paper was prepared by the EFRAG Secretariat for a public discussion at the meeting of EFRAG's Sustainability Reporting Board (SRB). It includes a call for micro-, small, and medium-sized enterprises to play a pivotal role in fostering a sustainable and inclusive economy. The focus is on elevating their approach to managing sustainability challenges, including issues like pollution and workforce health and safety, which are among their everyday concerns. By addressing these concerns, businesses can pave the way for competitive expansion and fortify their resilience in the short, medium, and long term. Moreover, the standard aims to fulfil the data requirements of lenders, credit providers, and investors, offering valuable insights that can help businesses secure financial support. Furthermore, it serves as a resource to meet the sustainability information needs of larger corporations, enabling suppliers to respond to the data requirements of their business partners.

On 22 November, the European Parliament (EP) adopted its position on new rules on packaging, aimed at tackling constantly growing waste and boosting reuse and recycling. The EP's stance on the proposed revision of the Packaging and Packaging Waste Directive was passed with 426 votes in favour, 125 against, and 74 abstentions. With the Parliament's position now adopted, negotiations can start with the EU member states to finalise the legislation in so-called trilogue talks also involving the European Commission. The Parliament aims to reduce the amount of plastic packaging in Europe by 5%, 10%, and 15% by 2030, 2035, and 2040, respectively. Specific measures, such as prohibiting lightweight plastic carrier bags (except when necessary for hygiene or to prevent food waste) and imposing strict limits on single-use formats like miniature hotel toiletries, are proposed to reduce plastic packaging.

News and publications

The United Nations Environment Programme (UNEP) has published an interesting report called the Global Climate Litigation Report: 2023 Status Review. The report provides an overview of the current state of climate change litigation and an update on global climate change litigation trends, following previous UNEP reports published in 2017 and 2020. It serves as an essential resource to understand the current state of global climate litigation, including descriptions of the key issues that courts have encountered in such cases. The report emphasizes the importance of an environmental rule of law in combating the triple planetary crisis of climate change, biodiversity loss, and pollution. You can find the report here.

The European Commission has announced the launch of its pilot auction under the European Hydrogen Bank. This initiative is designed to foster the growth of the renewable hydrogen market, a crucial component of the strategy to reduce carbon emissions in heavy industry and transportation. The launch of the Hydrogen Bank auctions marks a step in the EU's efforts to build a market for renewable hydrogen, stimulate investments in production capacity, and bring production to scale.

December 2023

Legislation and regulation

On 14 December, a provisional agreement was reached between the Council of the EU and the European Parliament regarding the Corporate Sustainability Due Diligence Directive (CSDDD). The directive will impose mandatory due diligence requirements on both EU and non-EU companies and lay the groundwork for companies to face liability for breaches of these obligations. The provisional agreement has led to a reduction in the CSDDD's scope, but it includes stronger provisions on civil liability and sanctions. The agreement defines the scope of the directive to cover large companies that have more than 500 employees and a net worldwide turnover over EUR 150 million. For non-EU companies, it will apply if they have over EUR 150 million net turnover generated in the EU, three years from the entry into force of the directive. The Commission will have to publish a list of non-EU companies that fall under the scope of the directive.

The provisional agreement reached with the European Parliament now needs to be endorsed and formally adopted by both institutions.

On 5 December, three European Supervisory Authorities (ESAs) – EBA, EIOPA and ESMA – published their final report amending the draft Regulatory Technical Standards (RTS) for the Delegated Regulation supplementing the Sustainable Finance Disclosure Regulation (SFDR). The publication follows a request by the European Commission in April 2022 for the ESAs to review the RTS set out in the SFDR, including the indicators for principal adverse impact (PAI) and financial product disclosures. The ESAs' review suggests several significant modifications, including an expansion and refinement of the list of PAI indicators that outline the negative effects of investment decisions on sustainability factors. Moreover, the mandatory PAI indicators have been broadened to encompass social aspects. The European Commission will study the draft RTS and decide whether to endorse them within three months.

News and publications

December's major event was the UN Climate Change Conference (COP28) held in Dubai. Taking place from 30 November to 12 December, COP28 marked the conclusion of the first Global Stocktake (GST), the main mechanism for assessing progress under the Paris Agreement. The first GST aimed to help align efforts on climate action, including measures that need to be put in place to bridge the gaps in progress.

On the inaugural day, the parties formally launched the Loss and Damage Fund at the World Bank, concluding a three-decade journey. The fund is intended to aid developing economies in coping with the current impacts of climate change. While initial commitments to the fund have reached USD 700 million, uncertainty looms over future financing. The summit also witnessed the endorsement of a number of agreements aimed at ensuring access to essential minerals crucial for electric vehicles, renewables, and other clean energy technologies. Acknowledging the increasing demand for these materials and the geopolitical uncertainties impacting their supply, all five United Nations Regional Commissions stressed the importance of international coordination in the development of critical minerals. Also, during the conference's fourth day, around 50 countries and companies involved in oil and gas production committed to achieving nearly zero methane emissions by 2030. Given that methane's effect on global warming is 30 times greater than that of carbon dioxide, reducing methane emissions has become a pivotal objective. Building on this commitment, some of the world's highest-emitting countries announced USD 1 billion in grant funding.

CMS was honoured to be the official provider of legal services to the United Nations Climate Change Conference.

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