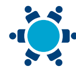
ecoDa 20 YEARS


The European Voice of Directors

Two Decades of Corporate Governance:

A Retrospective on EU Initiatives

20 YEARS

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Statement

The history of ecoDa is intrinsically linked to the history of European institutions and the initiatives driven by various European Commissioners responsible for Corporate Governance. For example, the first Action Plan in 2003 for Modernizing European Company Law and Enhancing Corporate Governance set the stage for the creation of ecoDa. As the Commission focused on Corporate Governance and began proposing legislative texts, it encouraged national institutes to come together and form a European confederation.

On the occasion of ecoDa's 20th anniversary, we felt it was important to retrace these developments by highlighting the most significant legislative texts that have influenced the functioning and best practices of boards of directors in Europe. This document offers a retrospective of these texts, explaining the context and developments that led to their final versions.

It is intended for any board member who wishes to gain a comprehensive understanding, as well as for other Corporate Governance professionals curious about the historical background of the European legislative framework that underpins today's board practices.

We would like to thank A&O Shearman for their review of the document.

Enjoy your reading !

Béatrice Richez-Baum
ecoDa's Director General

Rytis Ambrazevičius
ecoDa's Chair

Preamble

Since 2003, the European Commission has played a crucial role in shaping corporate governance across the European Union, with each European Commissioner emphasizing different aspects based on the political and economic climate of their time.

In 2003, under Commissioner Frits Bolkestein, the European Commission introduced the **Action Plan for Modernizing European Company Law and Enhancing Corporate Governance.** The "Winter" Committee[1] was the origin of this action plan. This plan was initiated in the wake of major financial scandals like Enron and Parmalat, which highlighted the need for stronger corporate governance frameworks. The key objectives of the action plan included improving the role of institutional investors in governance, addressing the balance between capital and control, offering companies the choice between one-tier and two-tier board structures, and enhancing the accountability of directors for both financial and non-financial statements. This led to significant regulatory changes, including recommendations on the notion of independent directors, transparency in executive remuneration, the introduction of the Takeover Bids Directive to protect minority shareholders, and the Directive on Transparency Obligations, which aimed to improve the quality of information available to investors.

This first Action Plan in 2003 for Modernizing European Company Law and Enhancing Corporate Governance truly set the stage for the creation of ecoDa. With the Commission focusing on corporate governance and beginning to propose legislative texts, it encouraged national institutes to come together and form a European confederation. At the same time, many national institutes were also established.

When Commissioner Charlie McCreevy took office in 2004, he was seeking a balance between regulation and allowing businesses time to adjust to the existing framework. Under McCreevy's leadership, several directives were introduced, including amendments to the Statutory Audit Directive and regulation requiring public oversight of auditors. The Directive on the Shareholders' Rights Directive ensured shareholders could access relevant information in advance of general meetings and vote remotely, encouraging more active shareholder participation.

At that time, ecoDa advocated for maintaining the diversity of corporate governance models.

In 2004, Commissioner Charlie McCreevy set up the EU Corporate Governance Forum[2] to identify and promote exchange of best practices in corporate governance and to provide high-level policy advice to the Commission. Additionally, in 2005, an Advisory Group on CG was created. Its technical work was complementary to the more strategic role in the convergence of corporate governance in Europe carried out by the European Corporate Governance Forum.

1 Composition of the "Winter" group: Jaap WINTER [Chairman], José Maria GARRIDO GARCIA, Klaus J. HOPT, Jonathan RICKFORD, Guido ROSSI, Jan SCHANS CHRISTENSEN, Joëlle SIMON, Dominique THIENPONT [Rapporteur].

2 Composition of the EU CG Forum: Antonio Borges (PT), Chairman of the Hedge Fund Standards Board and of the European Corporate Governance Institute; board member for several corporations, Bistra Boeva (BG), University for national and world economic studies Sofia,Niklas Bruun (FI), Swedish School of Economics and Business Administration, (Hanken),Bertrand Collomb (FR), Honorary Chairman of Lafarge and former Chairman of 'Association Française des Entreprises Privées' (AFEP), David Devlin (IE), Partner PricewaterhouseCoopers,Jose Maria Garrido Garcia (ES), University of Castilla - La Mancha, member of the Spanish Commission for Corporate Governance, Peter Montagnon (UK), Head of Investment Affairs, Association of British Insurers, Klaus-Peter Müller (DE), Chairman of the Supervisory Board of Commerzbank, President of the German Corporate Governance Code Commission, Colette Neuville (FR), Chairman of the Association de défense des actionnaires minoritaires (ADAM),Roland Oetker (DE), Chairman of Deutsche Schutzvereinigung für Wertpapierbesitz (DSW),Marek Sowa (PL), President of the Management Board of Agora SA, Rolf Skog (SE), University of Stockholm,Trelawny Williams (UK), Director Corporate Finance, Fidelity International, Jaap Winter (NL), Partner at De Brauw Blackstone Westbroek and Professor at the University of Amsterdam, Eddy Wymeersch (BE), Chairman of the Belgian Banking, Finance and Insurance Commission (CBFA) and of the Committee of European Securities Regulators.

With the onset of the global financial crisis, Commissioner Michel Barnier, who took office in 2010, adopted a more active stance on corporate governance. His tenure was marked by the belief that "business as usual is not an alternative." One of the significant shifts was the decision to drop the one-share, one-vote debate following a risk metrics report and an impact assessment. Barnier prioritized addressing executive remuneration and promoting long-term, sustainable growth. His efforts included publishing a Green Paper on Corporate Governance that addressed the need for high-performing, effective boards with diverse members and for shareholders to focus on long-term performance rather than short-term profits. In 2012, the Commission introduced **an action plan on corporate governance framework,** which included a renewed emphasis on the comply or explain principle, urging companies to improve the quality of their explanations when deviating from governance codes. Additionally, Barnier's tenure saw a renewed focus on corporate social responsibility (CSR), with the Commission adopting a renewed CSR strategy in 2011 that emphasized both horizontal and sector-specific approaches to promoting responsible business practices.

From 2014 to 2019, under the leadership of Commissioner Vera Jourová (and Vice-President Valdis Dombrovskis), the Commission began integrating sustainability into its corporate governance framework. In 2016, the Commission established the High-Level Expert Group (HLEG) to develop a comprehensive EU strategy on sustainable finance. The final report from HLEG, published in 2018, emphasized the need to improve the contribution of finance to sustainable growth and the importance of incorporating environmental, social, and governance (ESG) factors into investment decisions. Building on this, the Commission published the **Action Plan on Financing Sustainable Growth,** which aimed to reorient capital flows towards sustainable investments and foster transparency in financial markets. This period also saw the introduction of the **Capital Markets Union (CMU) Action Plan**, which aimed to create a single, integrated capital market in Europe to improve corporate governance and investment practices.

Finally, Commissioner Didier Reynders, who assumed office in 2019, continued to embed sustainability into corporate governance as part of the broader **European Green Deal.** The Green Deal, unveiled in December 2019, set a roadmap for Europe to achieve net-zero emissions by 2050, with implications for corporate governance practices across the EU. The Commission's recovery plan also emphasized the importance of embedding sustainability into corporate governance, reinforcing the long-term vision of responsible business practices and societal impact.

Past European Commissioners, responsible for Corporate Governance:

- Frits Bolkestein (Netherlands) – 2004–2007
- Charlie McCreevy (Ireland) – 2004–2010
- Michel Barnier (France) – 2010–2014
- Vera Jourová (Czech Republic) – 2014–2019
- Didier Reynders (Belgium) – 2019–2024

I. General Principles & Legal Frameworks in Corporate Governance development

I.1. The G20/OECD Principles of Corporate Governance

First released in 1999 and revised for the first time in 2004, the OECD CG Principles are one of the key standards for sound financial systems of the Financial Stability Board. In 2014, the OECD launched a further review of the Principles to ensure the continuing high quality, relevance and usefulness of the Principles taking into account recent developments in the corporate sector and capital markets.

The OECD CG Principles were endorsed by the G20 meeting of the Finance Ministers and Central Bank Governors in Ankara on 4-5 September 2015. The Principles included a new chapter on "Institutional investors, stock markets and other intermediaries".

The OECD CG Principles were last revised in 2023. A new chapter on new Sustainability and Resilience Chapter was added, which includes recommendations on disclosure and integration of sustainability in corporate governance.

The OECD CG Principles serve as guidance for policymakers to both evaluate and improve the regulatory and institutional frameworks on corporate governance.

The overarching aim of the OECD CG Principles is to enhance stability in the financial system and strengthen market trust and confidence of the investors (notably through transparency and accountability of board members), in order to foster access to financing for the companies.

I.2. Capital markets

I.2.A Comply or Explain Principle

In 2006, under Commissioner Charlie McCreevy, the European Corporate Governance Forum issued a public statement on the 'comply or explain' principle according to which companies must justify when they deviate from corporate governance codes. It was already mentioned at that time that the concept would be key in corporate governance.

A large majority of **respondents** to the 2011 Green Paper were in favour of requiring companies to pro-vide better explanations for departing from codes' recommendations

The Securities Markets Association issued on 20 January 2012 guidelines on explanations that companies should provide.

An independent study on the quality of explanation issued a number of practical recommendations in 2012.

In the UK, the Financial Reporting Council introduced guidelines in 2021 on the 'comply or explain approach' in the Corporate Governance Code.

The Recommendation on the quality of corporate governance reporting ('comply or explain') was issued on April 9, 2014. The Commission's Recommendation aimed to provide guidance to listed companies, investors and other interested parties in order to improve the overall quality of corporate governance statements published by companies.

I.2.B The Shareholders Rights Directive

The SRD was passed in 2007 with the aim of enhancing shareholders' rights in listed companies.

On engaging shareholders:

- In March 2013 a Green Paper on Long-term financing of the European Economy was issued.
- On 27 March 2014 a Communication on long term financing of the European economy was published.

On better shareholder oversight of related party transactions:

- In March 2011 the European CG Forum issued **a statement on related party transactions** recommending of common principles across Europe.
- The 2011 Green Paper raised the question of providing more protection against related party transactions.
- In the 2012 Action plan the Commission proposed an initiative aimed at improving shareholders' control over related party transactions, possibly through an amendment to the shareholders' rights Directive.

On proxy advisors:

- In 2012, ESMA issued a discussion paper on proxy advisors requesting views on possible regulatory options for proxy advisors, ranging from no action and voluntary measures to quasi-binding or binding EU instruments.
- In 2012 Action plan, the Commission considered an initiative to improve the transparency and conflict of interest frameworks applicable to proxy advisors.
- In 2013, the Drafting Committee of the Best Practice Principles for Governance Research Providers launched a public consultation on the draft Principles which concern activities associated with the provision of shareholder voting and analytical services. Deadline for submitting responses to the consultation was 20 December 2013.
- In March 2014, the 6 Charter Signatories published Best Practice Principles for Shareholder Voting Research & Analysis service providers. The main principles issued were the following: 1) Signatories should aim to offer high-quality services that are delivered in accordance with agreed-upon client specifications. Signatories should have and publicly disclose their research methodology and, if applicable, house voting policies; 2) Signatories should have and publicly disclose a conflicts-of-interest policy that details their procedures for addressing potential or actual conflicts of interest that may arise in connection with the provisions of services; 3) Signatories should have and publicly disclose their policy (or policies) for communication with issuers, shareholder proponents, other stakeholders, media and the public. Signatories will publish a Statement of Compliance, on a comply-or-explain basis.

- New shareholders' rights directive requires proxy advisors to adopt and implement measures to guarantee that their voting recommendations are accurate, reliable and not affected by conflicts of interest; to annually disclose to the public information in relation to the preparation of their voting recommendations and sets out information proxy advisors need to disclose.

On shareholders' identification:

- The 2011 Green Paper asked whether stakeholders saw a need for a European mechanism to help issuers identify their shareholders in order to facilitate dialogue on corporate governance issues. In addition, the Green Paper enquired whether this information should also be made available to other investors. A clear majority of respondents were in favour of such a mechanism.
- The new shareholders' rights directive requires Member States to provide that companies have a right to identify their shareholders, even when shareholders use intermediaries and ensures that data protection rules are taken into account.
- In March 2014, the **European Post Trade Group** (EPTG) was set up on the recommendation of the European Group on Market Infrastructures (EGMI).
- In April 2017, ESMA recognized some areas of improvements in shareholders' identification in its report.

On acting in concert:

- On 12 November 2013, in response to a request of the EU Commission, ESMA clarified shareholder cooperation in takeover situations, publishing a statement on practices governed by the Takeover Bid Directive (TBD), focused on shareholder cooperation issues relating to acting in concert and the appointment of board members. The statement contains a White List of activities that shareholders can cooperate on without the presumption of acting in concert. It also contains information on how shareholders may cooperate in order to secure board member appointments by setting out factors that national authorities may take into account when considering whether shareholders are acting in concert.
- In 2014 EU institutions, in close cooperation with ESMA and competent national authorities, issued a guidance to increase legal certainty on the relationship between investor cooperation on corporate governance issues and the rules on acting in concert.

On disclosure of voting and engagement policies:

- Research conducted in preparation for the Commission Green Papers of 2010 and 2011 and the responses to them highlighted a need for improvement in the transparency of voting policies adopted by institutional investors, including asset management firms, and the exercise of these policies.
- Consequent developments: UK Stewardship Code; Dutch Eumedion best practices; EFAMA Code; ICGN Principles.

On executive remuneration:

- In 2010 the European Parliament agreed on a resolution on remuneration of directors of listed companies and remuneration policies in the financial services sector.
- In the Green Paper on CG it was made clear that shareholders needed clear, comprehensive and comparable information on remuneration policies and individual remuneration of directors.

- The new shareholders' right directive ensures that shareholders have the right to vote on the remuneration policy for directors, requires remuneration policy to be submitted to the approval of shareholders every three years, requires criteria for the award of fixed and variable remuneration, and requires remuneration policy to be publicly disclosed on the company's website after approval by the shareholders. These requirements establish in practice the 'say on pay' approach adopted by the directive.
- In May 2016, the Dutch Presidency published its proposal on the Shareholders' Rights Directive with statements related to remuneration topic: including with relation to corporate governance, and disclosure and reporting.

In June 2017, the European Commission set up an expert group on technical aspects of corporate governance. The group's overall task shall be to assist the Commission with its work on technical aspects of corporate governance of listed companies, including the use of modern information and communication technologies in corporate governance.

In October 2017, a consultation was launched by Best Practice Principles for Shareholder Voting Research Providers seeking views from investors and companies on whether the Best Practice Principles for Shareholder Voting Research and Analysis have been effective in ensuring the integrity and efficiency of the services provided by proxy advisers.

The EC then issued Implementing acts in the areas of shareholder identification (Art. 3a), transmission of information (Art. 3b) and facilitating exercise of shareholder rights (Art. 3c) aiming at specifying minimum requirements to ensure uniform implementation and avoid emergence of diverging standards.

The Shareholders Rights Directive II (SRDII) or Directive (EU) 2017/828 of the European Parliament, published by the European Commission in June 2017, aims to improve the dialogue and long-term share-holder engagement with issuers to stimulate good corporate governance.

SRD II was later complemented in September 2018 with a SRD II EC Implementing Regulation (IR), which lays down the minimum requirements in regards to shareholder identification, the transmission of information and the facilitation of exercise of shareholders rights with an implementation deadline of 3 September 2020.

On March 2019, the European Commission organised a public consultation on its proposed Guidelines on the standardised presentation of the remuneration report under Directive 2007/36/EC. In July, the European Commission published its Draft on the same guidelines.

The final adoption of the Guidelines on the standardised presentation of a remuneration report under Directive EU 2017/828 has been postponed since then. In January 2025, the Guidelines were still not available.

In July 2023, ESMA published a Report on SRD2. In January 2024, the European Commission commissioned a Study on the application on some part of SRD2 (considers possible barriers to shareholder engagement in the EU and ensure that the regulatory framework keeps pace with new technology and contributes to the realisation of a Capital Markets Union in the EU).

I.2.C Strengthening sustainability disclosure & accounting rule-making: NFRD & CSRD

The European Commission announced an initiative in non-financial reporting in its Communication on A renewed strategy 2011–2014 for Corporate Social Responsibility.

In 2011, the European Commission set up an **Expert Group** on Disclosure of Non-Financial information by EU Companies and commissioned the Centre for Strategy and Evaluation Services a specific study aiming at providing some qualitative analysis of current reporting practices in the EU.

The EU 2020 Agenda on sustainable growth and jobs promoted the renewal of corporate social responsibility (CSR). The Single Market Act (SMA), which was adopted in April 2011, aimed at opening the doors to new, greener, and more inclusive growth. It stressed the importance of strengthening consumer trust and confidence in the EU market and achieving a highly competitive social market economy with sustainable economic growth. In this framework, the Commission developed a Social Business Initiative (SBI). Since 2006, the European Parliament had also called on the Commission to put forward initiatives to strengthen the EU legal framework on social and environmental reporting.

On 6 February 2013, the European Parliament adopted two resolutions **("Corporate Social Responsibility: accountable, transparent and responsible business behaviour and sustainable growth" and "Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery"),** acknowledging the importance of company transparency on environmental and social matters.

Since 2018, the EU Directive on the disclosure of Non-Financial Information (NFI) required large public interest entities to disclose material information on key environmental, social, and governance aspects and how risks stemming from them were managed. The Directive allowed companies to report sustainability information in a flexible manner. Going forward, an appropriate balance needed to be struck between flexibility and the standardisation of disclosure necessary to generate the data needed for investment decisions. In terms of disclosure by the financial sector, there was merit in enhancing transparency of asset managers and institutional investors, including the way in which they considered sustainability risks and their exposures to climate-related risks.

On 11 December 2019, in its Communication on the European Green Deal, the Commission announced its intention to review the Non-Financial Reporting Directive (NFRD) as part of the strategy to strengthen the foundations for sustainable investment. The principal aim of the NFRD was to enable the investment community, consumers, and other stakeholders to evaluate the non-financial performance of large companies and to encourage those companies to develop a more responsible approach to business.

Under the NFRD Directive (Directive 2014/95/EU), large listed companies, banks, and insurance companies with more than 500 employees were required to publish reports on the policies they implemented in relation to: environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, and diversity on company boards (in terms of age, gender, educational, and professional background).

Reporting under the Directive first began in 2018. The Directive was complemented by two sets of non-binding guidelines: one aimed at helping companies report relevant, useful, and comparable information, and the other aimed at helping companies report climate-related information and integrating the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).

However, as highlighted by the Commission, it was important that companies and financial institutions improved their disclosure of non-financial information. Users of this information, mainly investors and civil society organisations, were demanding more and better information from companies about their social and environmental performance and impacts. Moreover, there was a global trend which saw a wide variety of different organisations and stakeholders calling for a consideration of a new regulatory approach to non-financial reporting.

There were also growing concerns that the current accounting rules were not conducive to sustainable investment decision-making. In particular, the European Parliament's resolution on International Financial Reporting Standard (IFRS) 9, adopted on 6 October 2016, raised concerns about the impact the new ac-

counting standard on financial instruments (IFRS 9) might have on long-term investments. The Commission recognised the importance of ensuring that accounting standards did not directly or indirectly discourage sustainable and long-term investments. In this regard, consideration was needed about whether there could be more flexibility regarding the endorsement of IFRSs wherever specific adjustments would have been more conducive to long-term investment.

In 2020, a report on: "How to improve climate-related practices -A summary of good practices from Europe and beyond" was issued by the Project Task Force on Climate-related Reporting at the European Corporate Reporting Lab.

Then, the European Commission launched a public consultation to review the Non-Financial Reporting Directive as part of the strategy to strengthen the foundations for sustainable investment. In a joint letter, ESAs highlighted certain key messages which are of particular importance for Europe's future non-financial reporting regime.

The three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) issued a Consultation Paper seeking input on proposed environmental, social and governance (ESG) disclosure standards for financial market participants, advisers and products, in the context of the Sustainable Finance Disclosure Regulation (SFDR) which aim is to increase transparency of financial market participants on sustainability information towards investors. Furthermore, the joint consultation paper proposed a series of indicators to identify negative effects on the environment at the company's level. The ESAs WERE empowered to develop Regulatory Technical Standards on the content, methodology and presentation of ESG disclosures both at entity level and at product level. In addition, the consultation paper contained proposals under the recently agreed Regulation on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation), on the "do not significantly harm" principle.

EFRAG was mandated to develop European Standards: Progress report by the end of October and the final report accompanied by a tentative work programme by the end of January 2021.

In 2021, EFRAG published two reports (**1** and **2**) submitted to the European Commission setting out recommendations on the development of EU sustainability reporting standards. The reports set out rec-ommendations to the European Commission for the elaboration of possible EU sustainability reporting standards and for possible changes to ERFRAG's governance and funding if it were to become the EU sustainability reporting standard setter.

In April 2021, the Commission has published a proposal for a Corporate Sustainability Reporting Directive (CSRD), replacing the Non-Financial Reporting Directive. This proposal aimed to improve the flow of sustainability information in the corporate world. It will make sustainability reporting by companies more consistent, so that financial firms, investors and the broader public can use comparable and reliable sustainability information. A public consultation followed.

The Corporate Sustainability Reporting Directive was adopted in January 2023. The Delegated Acts (ESRS) were then adopted on 31 July 2023 (followed by Implementation Guideline on 20 December 2023).

I.2.D Fostering Sustainable Corporate Governance and Attenuating Short-Termism in Capital Markets / The Corporate Sustainability Due Diligence Directive (CS3D)

In 2013, the London Business School conducted a study on the duties and liabilities of board members.

To promote corporate governance that was more conducive to sustainable investments, by Q2 2019, the Commission had carried out analytical and consultative work with relevant stakeholders to assess: (i) the possible need to require corporate boards to develop and disclose a sustainability strategy, including

appropriate due diligence throughout the supply chain and measurable sustainability targets; and (ii) the possible need to clarify the rules according to which directors were expected to act in the company's long-term interest.

The Commission invited the ESAs to collect evidence of undue short-term pressure from capital markets on corporations and consider, if necessary, further steps based on such evidence by Q1 2019. More specifically, the Commission invited ESMA to collect information on undue short-termism in capital markets, including: (i) portfolio turnover and equity holding periods by asset managers; (ii) whether there were any practices in capital markets that generated undue short-term pressure in the real economy.

Corporate governance could significantly contribute to a more sustainable economy, allowing companies to take the strategic steps necessary to develop new technologies, strengthen business models, and improve performance. This would, in turn, improve their risk management practices and competitiveness, creating jobs and spurring innovation. Many companies had corporate governance strategies to this end, even though they were not always easily comparable.

EY published a study for EC DG Justice and Consumers on directors' duties and sustainable corporate governance, on which the Commission would base the launch of a public consultation. The British Institute of International and Comparative Law (BIICL) undertook the final tasks of the study on due diligence throughout the supply chain (commissioned by DG Justice) and planned to submit the final report to the Commission in November/December.

The European Parliament launched an own-initiative on Sustainable Corporate Governance, aiming to put an end to short-term capitalist visions. Many MEPs wanted to force massive investments in innovation and wished to make a link with the goals of the Green Deal.

In 2019, ESMA published the responses it had received to its call for evidence on potential short-term pressures on corporations stemming from the financial sector.

In 2020, BIICL published its report on due diligence throughout the supply chain for the European Commission.

EY published a report for the European Commission DG Justice & Consumer on Directors' Duties and sustainable corporate governance. The objective of the study was to assess the root causes of short-termism in corporate governance, discuss their relationship with current market practices and/or regulatory frameworks, and identify possible EU-level solutions.

The European Commission called for feedback on the impact assessment on the EY report mentioned.

Various studies were published by the EPRS: "Corporate due diligence and corporate accountability" and a briefing on "Towards a mandatory EU system of due diligence for supply chains."

The European Commission launched a public consultation on Sustainable Corporate Governance, which opened until February 8, 2021.

The European Parliament approved a non-legislative report calling for more sustainable business conduct and addressing shortcomings in existing laws. Parliament wanted upcoming corporate governance proposals from the Commission to include a series of mandatory obligations for companies and incentives to act rather than relying on the voluntary disclosure of information. A clear set of rules strengthening the duties of company boards regarding sustainability was also requested. The final text abandoned those objectives.

In September 2022, the Commission put forward a legislative proposal in the form of a regulation.

On 1 December 2022, the Council adopted its general approach. On 14 December 2023, the Council and the Parliament reached a provisional agreement.

The EU's Corporate Sustainability Due Diligence Directive ("CSDDD"), was formally adopted, and was published in the EU Official Journal on 5 July 2024. The CSDDD finally aims towards achieving responsible corporate behaviour by the companies in scope (only large companies) throughout their entire value chain.

I.2.E Capital Requirements Directive (CRD IV)

In July 2011, the Commission published the revised Capital Requirements Directive (CRD IV).

The directive included the proposed requirements:

- The roles of chairman and CEO cannot be combined unless authorised by the competent authority.
- No individual can hold more than four non-executive directorships or one executive and two non-executive directorships, unless authorised by the competent authority.
- Boards must have a policy "promoting gender, age, geographical, educational and professional diversity" on the board.
- Competent authorities are to ensure that the board undertakes periodic reviews of its effectiveness and takes appropriate steps to address any deficiencies. While it is clear that the board will undertake the review, it is less clear whether it is the board or competent authorities who will judge whether appropriate steps have been taken.
- The board's responsibilities for risk were described.

Following the last technical adjustments, the Parliament's controversial proposal to introduce an EU-wide cap on bankers' bonuses remained in the text. Member States were required to transpose the Directive by 31 December 2013.

In practical terms only significant institutions fall under the strict limitation of mandates provided by the Art 87 CRD, while in other cases the appropriate number of directorships needs to consider the proportionality aspects, but still the number should be limited. One mandate in a significant institution would lead to the application of the strict limitation. All this should ensure a sufficient time commitment. Obviously in small and less complex institutions a director needs less time to understand the business and the risks compared to a large one and therefore may be able to cope with more than 4 (or given additional approval 5) mandates.

EBA developed guidelines in 2014 and in 2015 on remuneration and governance issues.

I.2.F Prospectus

In the context of its efforts to build a Capital Markets Union, the Commission proposed on 30 September 2015 a regulation which lays down common rules on securitisation, and provides a framework for simple, transparent and standardised (STS) securitisations. This framework is accompanied by an amendment to the treatment of regulatory capital requirements for credit institutions that originate, sponsor or invest in securitisations. The proposal applies to securitisations issued as of 1 January 2011, as well as those issued before that date where new exposures have been added or substituted after 31 December 2014. The first part of the proposal harmonises the rules that apply to all securitisations with regard to due diligence, risk retention, and transparency, while the second part sets out the criteria for long- and short-term STS securitisations, as well as rules regarding supervision and sanctions.

As part of its capital markets union action plan, in June 2017 the EU adopted a Regulation (EU) 2017/1129 to improve the prospectus regime. The regulation aims to make it easier and cheaper for smaller companies to access capital introduce simplification and flexibility for all types of issuers, in particular for secondary issuances and frequent issuers which are already known to capital markets improve

prospectuses for investors by introducing a retail investor-friendly summary of key information, catering for the specific information and protection needs of investors.

On 18 February 2015, the European Commission launched two consultations alongside the Green Paper: one on the Prospectus Directive, the other on securitisation. The consultation on the Prospectus Directive covered a very broad range of issues, for example, the scope of the prospectus requirement and the exemptions thereto, the appropriate level of investor protection, possible ways to reduce administrative burden and costs that seem unnecessary, cross-border issues and the possibility to make the regime more appropriate for small and medium-sized enterprises and companies with reduced market capitalisation.

The second consultation represented a first step towards a possible initiative on creating an EU framework for simple, transparent and standardized securitisation.

On 30 September 2015, the European Commission launched a proposal for a regulation of the European Parliament and of the council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation. On 6 June 2016, the draft report was published, introducing several amendments to the original proposal. The text was adopted on 26 October 2017.

On 30 November 2015, the EC proposed a regulation which focuses, among other things, on creating a lighter prospectusfor smaller companies, shortening the length of the document and focusing on information that is more pertinent to investors, simplifying secondary issuance for listed firms, fast-tracking the regime for frequent issuers and providing, through ESMA, a single access point for all EU prospectuses. The European Parliament adopted the compromise agreement in plenary on 5 April 2017 and the Council on 16 May 2017. The Regulation was published in the Official Journal of the European Union on 30 June 2017.

In July 2016, the European Commission published an update Q&As about prospectus.

In this area, the Commission was assisted by the Expert Group of the European Securities Committee (EGESC) and by the European Securities Committee.

On 14 November 2024, the EU Listing Act was published, which aim is to contribute to marking the EU capital markets more attractive, and which includes amendments to the Prospectus Regulation (including a change of threshold for prospectus exemptions from 20% to 30%). It entered into force on 4 December 2024.

I.2.G Proxy Advisors

In 2012, ESMA issued a discussion paper on proxy advisors requesting views on possible regulatory options for proxy advisors, ranging from no action and voluntary measures to quasi-binding or binding EU instruments

In 2013, the Drafting Committee of the Best Practice Principles for Governance Research Providers launched a public consultation on the draft Principles which concern edactivities associated with the provision of shareholder voting and analytical services. The Committee drafted the Principles following ESMA's 19 February 2013 Final Report which stated that the proxy advisory industry would benefit from increased disclosure and transparency regarding how it operates.

In March 2014, six Charter Signatories published Best Practice Principles for Shareholder Voting Research & Analysis service providers.

In 2014, the Commission reviewed the shareholders' rights Directive, with a view to improving the transparency and conflict of interest frameworks applicable to proxy advisors.

The updated 2019 Principles were developed within the framework of a structured Independent Review Process.

I.2.H Market abuse

MAD was intended to guarantee the integrity of European financial markets and increase investor confidence. Any unlawful behaviour in the financial markets is prohibited. The concept of market abuse typically consists of insider dealing, unlawful disclosure of inside information, and market manipulation.

Regulation No 596/2014 on market abuse (MAR), repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC and Directive 2014/57/EU on criminal sanctions for market abuse (CS MAD) were published in the Official Journal of the European Union on 12 June 2014 and entered into force on 3 July 2016. MAR seeks to:

- enhance and harmonise the EU regime on market abuse;
- increase the scope of existing offences and introduce new offences such as attempted insider dealing, manipulation of benchmarks and commodities;
- enhance requirements on firms operating in the EU financial markets.

CSMAD requires each Member State to implement legislation to ensure that market abuse is a criminal offence which can be effectively punished. Together, MAD II seeks to improve confidence in the integrity of the European financial markets.

The European Securities and Markets Authority (ESMA) was at the forefront of issues related to market abuse and has taken a central role to the role out of the Market Abuse Directive (MAD) and the Market Abuse Regulation (MAR) by providing expertise obtained through consultations.

Their consultation ended on the 29th of November 2019 with the objective to submit a final review report to the EC by spring of 2020.

- Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC entered into force on 2 July 2014.
- Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) entered into force on 2 July 2014.
- On 24 July 2020 the Commission adopted a proposal to amend EU rules on financial benchmarks to ensure that when a widely used benchmark is phased out it does not cause disruptions to the economy and harm financial stability in the EU.
- On 30 November 2020 the European Parliament and the Council reached an agreement on the Commission's proposal.
- On 10 December 2020, the text agreed at 1st reading interinstitutional negotiations was approved by the ECON committee. When it voted on 19 January 2021, the EP plenary adopted the compromise amendment (number 2) to the proposal for a Regulation. The Commission's proposal, as thus amended, constitutes the Parliament's first-reading position, which reflects what had been previously agreed between the institutions.
- The Act was adopted by the Council on 2 February 2021 and it was published in the Official Journal of the EU on 12 February.

On 14 November 2024, the EU Listing Act was published, which aim is to contribute to marking the EU capital markets more attractive, and which includes amendments to the MAR (including changes in insider trading rules, amendments to the conditions of delay of disclosure and reduced inside information disclosure requirements). It entered into force on 4 December 2024.

I.2.I The Transparency Directive

The Transparency Directive (TD) issued in 2004 and revised in 2013 aims to ensure transparency of information for investors through a regular flow of disclosure of periodic and on-going regulated information and the dissemination of such information to the public. Regulated information consists of financial reports, information on major holdings of voting rights and information disclosed pursuant to the Market Abuse Directive (2003/6/EC).

The transparency directive (2004/109/EC) required issuers of securities traded on regulated markets within the EU to make their activities transparent, by regularly publishing certain information. The information to be published included: yearly and half-yearly financial reports, major changes in the holding of voting rights, and ad hoc inside information which could affect the price of securities.

The transparency directive was amended in 2013 by Directive 2013/50/EU to reduce the administrative burden on smaller issuers, particularly by abolishing the requirement to publish quarterly financial reports and improve the efficiency of the transparency system, particularly regarding publishing information on voting rights held through derivatives.

Under the revised transparency directive, it was decided to develop a central European electronic access point (EEAP) providing access to the different storage mechanisms. The European Securities and Markets Authority (ESMA) is now developing this central access point and will be responsible for its operation.

ESMA is also developing a harmonised electronic format for reporting. The format for annual financial reports will be mandatory as from 1 January 2020. It will make reporting easier and facilitate accessibility, analysis and comparability of reports.

In May 2016 a Regulatory Technical Standard on access to regulated information at Union level was adopted and published.

In March 2021, ESMA proposed improvements to transparency Directive after the Wirecard case.

I.2.J The Capital Markets Union (CMU)

The capital markets union (CMU) was a plan of the European Commission to mobilise capital in Europe. It channelled it to all companies, including SMEs, and infrastructure projects that needed it to expand and create jobs. Deeper and more integrated capital markets provided businesses with a greater choice of funding at lower costs, offered new opportunities for savers and investors, and made the financial system more resilient.

The creation of a true single market for capital in the EU by 2019 was a key element of the Investment Plan announced by the Juncker Commission in November 2014. While progress had been made since 2015, EU capital markets remained fragmented. This meant that European citizens and businesses were not able to fully benefit from the deep, competitive, efficient, and reliable sources of funding and investment that capital markets could offer. A strong and complete CMU was needed now more than ever, in order to support the economic recovery following the COVID-19 crisis and finance the green and digital transitions.

Against this backdrop, the Commission on 24 September 2020 adopted a new CMU action plan. The plan set out 16 legislative and non-legislative measures to deliver on three main objectives: support a

green, inclusive, and resilient economic recovery; make the EU an even safer place to save and invest long-term; and integrate national capital markets into a genuine single market.

On 18 February 2015, the Commission published a Green Paper on Capital Markets Union, which laid out the Commission's priorities and the rationale for a CMU (to link investors and savers with growth). It proceeded in describing how European capital markets are currently structured and provided a preliminary analysis of some of the barriers, while the rest of the document sought stakeholders' views on the priority initiatives laid down by the Commission and on existing barriers.

On 9 July 2015, the European Parliament adopted a resolution on building a Capital Markets Union.

On 30 September 2015 the Commission published its Action Plan on Building a Capital Markets Union, which aims to achieve, by 2019, the Commission's goals through various legislative and non-legislative proposals, that should overcome information barriers to SME investment, strengthen access to public markets, support infrastructure investment and facilitate cross-border investing. The Action Plan is built around the following key principles:

1. Creating more opportunities for investors: the CMU should help mobilise capital in Europe and channel it to companies, including SMEs, and infrastructure projects that need it to expand and create jobs. It should give households better options to meet their retirement goals.
2. Connecting financing to the real economy: the CMU is a classic single market project for the benefit of all 28 Member States. Member States have a lot to gain from channeling capital and investment into their projects.
3. Fostering a stronger and more resilient financial system: Opening up a wider range of funding sources and more long-term investment, ensuring that EU citizens and companies are no longer as vulnerable to financial shocks as they were during the crisis.
4. Deepening financial integration and increasing competition: the CMU should lead to more cross-border risk-sharing and more liquid markets which will deepen financial integration, lower costs and increase European competitiveness

On 19 January 2016, the European Parliament adopted a resolution. It acknowledged the role that capital markets can play in fostering growth in a competitive European economy and in addressing the financing needs of Member States, and welcoming the CMU action plan.

On 14 September 2016, the Commission issued a communication setting out the steps needed to make sure the CMU has a tangible impact on the ground as soon as possible. On the occasion of President Juncker's 2016 State of the Union address, the European Commission has set out the next steps to accelerate the completion of the Capital Markets Union (CMU), a flagship project of the Juncker Commission to boost jobs and growth in Europe.

On 8 June 2017, the Commission mid-term review updated and complemented the CMU action plan by strengthening existing actions and introducing new measures in response to evolving priorities and challenges.

In March 2019, the Commission published a Communication: Progress on building a single market for capital for a strong economic and monetary union

In March 2019, The European Parliament and Member States reached an agreement on the reform of the European supervision in the areas of financial markets including anti-money laundering

In December 2019, The European Commission published results of an analysis of individual and collective loan enforcement laws in Member States.

In June 2020, the Commission brought together 28 highly experienced industry executives and top international experts and scholars in the High-Level Forum on CMU. The Forum published its final report with 17 recommendations to the Commission on the way forward to completing CMU.

In September 2020, the Commission adopted a new capital markets union action plan.

I.3. Company Law and Digitalisation

The European company law was partially codified in Directive (EU) 2017/1132 relating to certain aspects, and Member States continued to operate separate company acts, which were amended from time to time to comply with EU directives and regulations. The ongoing efforts for establishing a modern and efficient company law and corporate governance framework for European undertakings, investors, and employees aimed to improve the business environment in the EU.

The new EU company law package consisted of two legislative proposals, one on Cross-border Mobility, and one on Digitalisation. The proposals aimed to make it easier for companies to merge, divide, or move within the Single Market, and to facilitate the digital creation of new companies.

Directive 2019/1151 of 20 June 2019 covered provisions on the use of digital tools and processes in company law. Member States needed to transpose this Directive by August 2021 (with a longer deadline for some specific provisions). Directive (EU) 2019/2121 of 27 November 2019 laid down new rules on cross-border conversions and divisions and amended the rules on cross-border mergers. Member States needed to transpose this Directive by January 2023. This new set of rules enabled companies to use digital tools in company law procedures and to restructure and move cross-border, while providing strong safeguards against fraud and protecting stakeholders. These new Directives revised and complemented Directive 2017/1132.

In 2014 the Informal Company Law Expert Group was created: the group assists the Commission in the preparation of new company law initiatives. ICLEG issued in 2016 a Report on digitalisation 2016, where member states' actions concerning digitalization of company law are taken into consideration (see point 6).

The Digital Single Market Strategy adopted on 6 May 2015 includes a set of targeted actions to be delivered by the end of 2016. Having reached the middle of its mandate, the European Commission has published the mid-term review of its Digital Single Market strategy in May 2017.

On 3 December 2015, the Commission adopted a proposal to codify and merge a number of existing company law Directives. The aim of this proposal is to make EU company law more reader-friendly and to reduce the risk of future inconsistencies. It does not involve any change to the substance of these Directives.

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Report on information on groups in March 2016. The Commission's action plan of December 2012 an-nounced an initiative on simplified communication of a group's structure to investors. This announcement is based inter alia on the Report of the Reflection Group from 2011, which recommends making basic information on the group structure readily available to investors and presenting that information in an investor-friendly manner.

In 2017, there was the Tallinn Digital Summit 2017

On 25 April 2018, the Commission presented a package of proposals concerning the reform of EU company law. The package comprises two directives, both amending Directive (EU) 2017/1132. One of the

proposals amends it with regard to the use of digital tools and processes in company law, and the other - with regard to cross-border conversions, mergers and divisions of companies.

The Council of the European Union adopted the amending directive on 13 June 2019 with all Member States voting in favour. The final act was signed on 20 June 2019.

The COVID-19 pandemic has shown the importance of digital tools and processes in EU company law, including the Business Registers Interconnection System.

This EU company law initiative aims to:

- improve transparency on EU companies by making more information available on a cross-border basis
- enable the cross-border use of trustworthy company data
- further modernise EU company law rules to make them fit for the digital age.

Furthermore, on 19 December 2024, the EU adopted the Directive (EU) 2025/25 of 19 December 2024 which further expands and upgrades the use of digital tools and processes in company law. The aim is to reduce administrative burden for companies and provide "digital by default" solutions. For example, it introduces the EU Company Certificate (an EU corporate passport for companies). Finally, this initiative will also increase transparency by facilitating and expanding publicity of company information. The Directive entered into force on 30 January 2025.

I.4. Insolvency

Insolvency matters have a relevant European dimension. Indeed, an increasingly interconnected single market with a strong digital character implies that insolvency and corporate crisis involve companies working in different sectors and different countries. These companies operate as single economic subjects, but in the case of cross border crisis or insolvency, the responses should take into account the necessity to protect each legal subject's creditors, balancing it with the need to guarantee an efficient restructuring or insolvency process for the involved economic group. Given the divergences among national legislations as regards insolvency, in order to achieve a good functioning of the European single market and the realization of an authentic Union of capital markets, a deeper harmonization and convergence of insolvency proceedings within the EU is required.

Thus, on 22 November 2016 the European Commission drafted a first proposal for a Directive of the European Union of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (2016/0359). The text elaborated by the European Commission is made up of three distinct parts: 1) Preventive restructuring procedures available for debtors in financial difficulty when there is a likelihood of insolvency; 2) Procedures leading to a discharge of debts incurred by over-indebted entrepreneurs and allowing them to take up a new activity; 3) Measures to increase the efficiency of the procedures relating to these points as well as of insolvency procedures.

As follow-up to the 2014 recommendation, the Commission came up with a new insolvency initiative, namely the Directive 2016/0359 (COD). The proposal aims at harmonizing various aspects of insolven-cy and restructuring procedures in order to improve recovery by European Companies. While leaving the core aspects of insolvency, such as thresholds to launch the procedure, to Member States, the directive does provide a framework and obligations for people involved in restructuration plans. The draft report was issued by the JURI Committee in September 2017, with the latest amendments on 16 November 2017. Both **ECON** and **EMPL** Committees have contributed with their opinions. The JURI vote is planned on 25 January 2018. In June 2017, the ECB has also drafted an opinion about the proposed directive.

On 6 June 2019, the act was adopted by the Council after the Parliament 1st reading of the 28 March 2019. Finally, on 20 June 2019, the Directive on preventive restructuring frameworks, on discharge of debt and disqualifications and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt was published. Role of directors in Insolvency (art. 18): I*n case of insolvency, directors must: 1. take steps to minimize losses from shareholders, stakeholders, creditors and employees; 2. have regard for shareholders and creditors' interests; 3. take reasonable steps to avoid insolvency; 4. avoid "deliberate or grossly negligent" conduct threatening business viability.*

In 2022, the Commission proposed a Directive to harmonise insolvency law, including simplified winding-up proceedings for insolvent microenterprises to ensure an orderly liquidation, even for microenterprises without assets, through a streamlined and cost-effective process, reducing administrative burdens.

I.5. Anti-money Laundering

Money laundering is a global phenomenon. Therefore, collaboration in this field was essential. Efforts within such fora as the United Nations, the Council of Europe and the Financial Action Task Force have led to the drafting of international anti-money laundering (AML) standards, whose most recent revision took place in February 2012.

The EU took part in drawing up international AML norms and standards and incorporated them into EU law by a series of AML directives following the successive revisions of the FATF recommendations. The third AML Directive (2005/60/EC) contained detailed provisions on 'due diligence'.

To bring the EU legal framework in line with the FATF recommendations, fundamentally revised in 2012, the Commission put forward, in February 2013, a package composed of two legislative instruments based on Article 114 TFEU:

1. Directive 2015/849 on the prevention of the use of the financial system for the purpose of money laundering (the fourth AML Directive), and
2. Regulation 2015/847 on information accompanying transfers of funds.

Both acts were published in the Official Journal on 5 June 2015 and entered into force in the same month. With a two-year window for transposition, the EU Member States had to adopt relevant provisions by 26 June 2017.

Even though the fourth AML Directive had to be transposed by Member States only by 26 June 2017, its revision was already well under way. A fifth revision of the current directive was proposed on 5 July 2016: the proposal is part of a Commission action plan against terrorist financing, announced in February 2016. It also responds to the Panama Papers revelations of April 2016. The draft report was presented on 7 November 2016 and adopted by joint committee vote on 28 February 2017. The Council Presidency presented a first compromise text on 28 October 2016, and revised texts on 14 and 25 November 2016 as well as on 13 December, ultimately agreeing on its negotiating position on 20 December 2016. On 14 March 2017, the Parliament plenary confirmed the joint Committees' decision to enter into interinstitutional negotiations.

The European Parliament set up on 1st March 2018 a Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance.

Finally, a package of new proposals were adopted in 2021 in order to further harmonize rules on AML.

I.6. Cybersecurity

The European Supervisory Authorities (ESAs) published two pieces of Joint Advice in response to requests made by the European Commission in its March 2018 FinTech Action Plan:

- Joint Advice on the need for legislative improvements relating to Information and Communication Technology (ICT) risk management requirements in the European Union (EU) financial sector. Advice on ICT legislative improvements
- Joint Advice on the costs and benefits of a coherent cyber resilience testing framework for significant market participants and infrastructures within the EU financial sector. Advice on a coherent cyber resilience testing framework

In June 2019, IOSCO issued a report looking into the application of three internationally recognised cyber standards and frameworks by IOSCO member jurisdictions. The report identifies potential gaps in the standards application. IOSCO aims for this report to serve as a resource for financial market regulators and firms, raise awareness of existing international cyber standards and frameworks and encourage the adoption of good practices to protect against cyber risk, which is one of main threats to financial markets today.

In May 2020, the Commission adopted a new Communication Europe's moment: Repair and Prepare for the Next Generation. As part of the package, the new Cybersecurity Strategy will look at how to boost EU-level cooperation, knowledge and capacity. It will also help Europe strengthen its industrial capabilities and partnerships, and encourage the emergence of SMEs in the field. This will accompany the review of the Directive on security of network and information systems and a proposal for additional measures on Critical Infrastructure Protection. Together with the ongoing work on cybersecurity as part of the EU Security Union, this will increase capabilities within Member States and boost the EU's overall cybersecurity.

I.7. Collective Redress

On 11 April 2018, the Commission published a proposal for a new Directive on representative actions for the protection of the collective interests of consumers. The proposal – published as part of the New Deal for Consumers – aims to modernise and replace Directive 2009/22/EC (the Injunctions Directive). The proposal was announced in the 2017 State of the Union speech by the Commission President Jean-Claude Juncker and was included in the 2018 Commission Work Programme. It follows the REFIT Fitness Check of EU consumer and marketing law, published on 23 May 2017, which showed that due to globalisation, the rise of cross-border trading and e-commerce, the risk of infringements affecting large numbers of consumers is increasing.

The proposal has the following aims:

- to expand the scope of the injunctions system in order to cover other horizontal and sector-specific EU instruments relevant for the protection of collective interests of consumers in different economic sectors such as financial services, energy, telecommunications, health and the environment;
- to lay down procedures for compensatory redress – all Member States would be required to introduce procedures for obtaining redress orders, which could include compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid.
- to modify the rules on qualified entities – building upon the approach of the current Injunctions Directive, which enables so-called 'qualified entities' designated by the Member States to bring

representative actions on behalf of consumers, the new proposal would add a requirement that the qualified entities need to have a non-profit-making character.

- to make the procedure more efficient – Member States would have to ensure 'due expediency' of procedures and avoid procedural costs becoming a financial obstacle to bringing representative actions;
- to promote collective out-of-court settlements – the proposal promotes collective out-of-court settlements, subject to court or administrative authority scrutiny.

Within the European Parliament, the proposal was referred to the Committee on Legal Affairs which adopted the report on 7 December.

Work on the proposal started in the Council in April 2018. On 28 November 2019, the Competitiveness Council adopted a general approach. The general approach proposes:

- distinguishing between domestic and cross-border representative actions. Member States would decide the criteria for designation of qualified entities for domestic actions by themselves, while the criteria for cross-border actions would be common in the whole of the EU;
- additional criteria for the designation of qualified entities for cross-border actions, including requiring them to prove that they had existed at least 18 months prior the designation request and to demonstrate 12 months of actual public activity in the protection of consumers' interest;
- not allowing courts the possibility to issue a declaratory decision instead of a redress order;
- not requiring a final injunction order before allowing an action for a redress order;
- less stringent requirements for Member States to assist qualified entities;
- deleting the provision on redistributing small amounts of financial compensation to public purposes serving consumer protection;
- delaying the application of the directive by a year and a half.

On 9 January 2020, the JURI committee voted to open negotiations on the basis of the EP first-reading position. The decision was announced in plenary on 13 January 2020. The first informal trilogue took place on 14 January and the second one on 2 March.

The final act was signed on 25 November 2020 and was published in the Official Journal on 4 December 2020. Directive (EU) 2020/1828 entered into force on 24 December 2020. Member States have two years to transpose it and are required to apply it from 25 June 2023.

I.8. Whistleblowing

In recent years, whistleblowers played a key role in exposing serious breaches of the public interest, such as the leaking of the Panama Papers. As a result, whistleblower protection became a prominent issue at various political levels. However, the level of protection remained inadequate and varied significantly among EU institutions and Member States. These disparities led to legal uncertainty and the risk of unequal treatment.

In November 2013, Transparency International published an extensive and in-depth report on Whistleblower protection in the EU, noting that four countries (UK, Luxembourg, Slovenia and Romania) included comprehensive or near comprehensive provisions and procedures for whistleblowers in the public and/or private sectors while seven others (Bulgaria, Finland, Greece, Lithuania, Portugal, Slovakia and Spain) had very little legislation on the subject. Other countries occupied an intermediate state.

All the EU institutions have been obliged since 1 January 2014 to introduce internal rules protecting whistle-blowers who are officials of the EU institutions, in accordance with new Staff Regulations. In December 2015, the Parliament adopted its own internal rules, which entered into force in January 2017.

In its 2016 communication on the fight against tax evasion and avoidance, the Commission expressed its full support for the protection of whistle-blowers, and announced that it would continue to monitor Member States' provisions and facilitate exchange of best practice to encourage improved protection at national level.

This commitment was reaffirmed in its 2017 work programme.

A public consultation on whistle-blower protection was also organised in 2017.

On 14 February 2017, the Parliament adopted a resolution on the role of whistle-blowers in the protection of the EU's financial interests. It deplored the fact that the Commission has so far failed to submit any legislative proposals aimed at establishing a minimum level of protection for European whistle-blowers.

On 2 October 2017, the Committee on Legal Affairs (JURI) adopted an own-initiative report on legitimate measures to protect whistle-blowers. It calls on the Commission to present a horizontal legislative proposal before the end of 2017, with a view to protecting whistle-blowers effectively in the EU. It suggests that EU legislation should support current international standards developed to protect whistle-blowers. Five points are of particular importance:

- to set a definition of 'whistle-blower' broad enough to cover as many scenarios as possible;
- to protect not only reports of unlawful acts, but also, more broadly, disclosures of a breach of the public interest;
- to introduce clear reporting mechanisms in public and private organisations;
- to create an EU agency specifically dedicated to advise, guide and collect reports from whistle-blowers;
- and to extend the role of the European Ombudsman in order to supplement and coordinate Member States in protecting whistle- blowers.

The report was discussed and approved during the October plenary session of the European Parliament (resolution 2016/2224(INI) of 24 October 2017), which in this way urged the European Commission to issue a EU-wide legislation to protect whistle-blowers, as promised by the EC President Juncker at the public hearing of the PANA Committee in May 2017.

On the 23rd of April 2018, the European Commission announced its Proposal for a New Directive Strengthening the Protection of Whistleblowers.

This proposal was implemented and entered into force in 2019 in the Whistleblower Protection Directive, which sets minimum standards at EU level in order to guarantee a balanced and effective protection for whistleblowers, including the requirements to have effective channels of reporting, proper investigation of such reporting, and protection from retaliation.

The Whistleblower Protection Directive had to be transposed by the Member States by 17 December 2021. On 3 July 2024, a report was adopted by the Commission which assess the compliance of the national measures of the Member States with the Directive. Based on the assessment, certain areas requiring improvement have been identified. The Commission is currently pursuing action for the enforcement of the Directive, and is continuously monitoring compliance.

I.9. Interconnection of business registers

On 8 June 2017, a system of interconnection of business registers ('BRIS') became operational following the Directive 2012/17/EU and Commission Implementing Regulation (EU) 2021/1042.

BRIS implements a system of access to company information and documents stored in Member States' business registers on an EU level, via the European e-Justice Portal. Such system also allows for an exchange of information between several national business registers, and is useful to gather information on cross-border operations

The implementation report on the development of BRIS was published on 29 March 2023.

I.10. Takeover bids

In 2004, the Takeover Bid Directive was adopted, which aims to coordinate the rules of the Member States with respect to takeover bids.

The Amending Directive (EU) 2023/2864 has now been adopted, which inserts a new article in the initial Takeover Bid Directive requiring the Member States to submit any regulated information that has been made public to the relevant collection body for the purpose of making it accessible on the European single access point, set up under Regulation (EU) 2023/2859.

I.11. EU Listing Act

On 14 November 2024, the EU Listing Act was published, which aim is to contribute to marking the EU capital markets more attractive.

The EU Listing Act includes, amongst others:

- Changes to the Market Abuse Regulation (MAR) (as explained above);
- Changes to the Prospectus Regulation (as explained above);
- New rules on multiple-vote shares, which will allow founders to maintain influence over decisions and control over their company, whilst being able to list their company on public stock exchanges.

II. Corporate Governance pillars

II.1. Boad Composition

II.1. A Independence of non-executive directors

In 2003, the European Commission proposed a framework for Corporate Governance in order to enhance protections and disclosures. In 2005 it published its Recommendation on "the role of non-executive or supervisory Directors of listed companies and on the committees of the (supervisory) Board" [1] applicable to listed companies in the European Union (the "2005 EU Independence Recommendation") and integrated into various stock exchange codes across Europe. The 2005 EU Independence Recommendation which applies to listed companies in the EU, defines independence as *"The absence of close ties with management, controlling shareholders, or the company itself. It recognises that the determination of what independence is, should largely be an issue for the board itself to determine, based on the key parameters set out in national CG Codes".* At a national level, however, not all member states have adopted a definition of independence and, if such definition exists in national law, such definitions are not identical between these member states.

Disclosures should be made regarding the conclusions reached by the board about the independence of particular directors. Where the applicable criteria are not met, the listed company should disclose its reasons for nevertheless considering that director to be independent. The Recommendation also states that listed companies should disclose annually in their Corporate Governance statements (as a part of annual reports), which directors they consider to be independent.

The aim of having non-executive directors which should meet requirements of independence, is to control conflicts of interest within the governance of the company as well as to ensure the interests of all relevant stakeholders in the decision-making of the board of directors.

II.1. B Board-level employee representation

Board-level employee representation involves employees' representatives who sit on the supervisory board, board of directors, or similar structures, in companies. These employee representatives are directly elected by the workforce, or appointed in some other way, and may be employees of the companies, officials of organisations representing those employees, or individuals considered to represent the employees' interests in some way. The presence of employee representatives in the board-level structures of a company is an indirect, or representational, form of participation. It involves the expression of employees' collective interest through the intermediary of representatives and differs from other forms of direct and indirect participation.

Board-level representation is a widespread form of employee participation across Europe. Systems of board-level employee representation in different national industrial relations systems vary widely.

2015 Report on workers representation on board level in Europe of the EMPL Committee advocates introducing EU minimum rules in existing directives, including the requirement that a company's registered offices must be identical with its actual place of business, to avoid circumvention of employee representation rights on supervisory boards. The draft report calls for standard rules on employee representation on supervisory boards, which could be applied as a universal model to all European corporate law directives. It further recommends minimum standards, for instance on the equal rights of workers' representatives as compared to management representatives, and gender balance on the supervisory board.

In its resolution of 19 January 2017 on a European Pillar of Social Rights, the European Parliament recalled the value of involving workers in decision-making and company management. Another resolution on cross-border mergers and division emphasised that legislative proposals of the Commission on mergers (Directive 2005/56/EC) and divisions (82/891/EEC) should establish minimum standards of information, consultation and codetermination of workers to improve their protection, in particular against social dumping.

At EU-level, the CJEU ruling in 2017 stated that Art. 45(2) TFEU does not require national legislation to give equal Board Level Employee Representatives (BLER) rights to employees working inside and employees working outside the territory. There is no recognition of board-level representation as a fundamental social right in EU law.

Since the 5th Company Law Directive was abandoned in 1988, small steps have been taken towards ensuring BLER in EU law.

At the 26th European Corporate Governance Conference, organised under the auspice of the Germany Presidency of the Council, the European Commission stressed the importance of the topic.

In July 2016, a working paper from ECGI investigates the impact of employee participation on the board of directors or supervisory board (particularly codetermination) on corporate social responsibility (CSR).

In January 2017 the UK Government launched consultation on worker representatives on company boards.

II.1. C Gender Diversity in Boards

In 2011, Vice-President Viviane Reding launched the 'Women on the Board Pledge for Europe' calling for publicly listed companies in Europe to voluntarily commit to increasing women's presence on their boards to 30% by 2015 and 40% by 2020. A year later, only 24 companies had signed the pledge.

The European Parliament called for legislation in its resolutions of 6 July 2011 and 13 March 2012 on equality between women and men in business leadership in the European Union.

A European Commission report published in March 2012 shows limited progress towards increasing the number of women on company boards has been achieved one year after EU Justice Commissioner Viviane Reding called for credible self-regulatory measures. Just one in seven board members at Europe's top firms is a woman (13.7%). This is a slight improvement from 11.8% in 2010. However, it would still take more than 40 years to reach a significant gender balance (at least 40% of both sexes) at this rate.

The Commission's Legislative Work Programme for 2012 announces a legislative initiative on improving the gender balance in companies listed on stock exchanges. Matrix Insight Ltd, a European Public Policy Consultancy based in London, carried out an external Impact Assessment.

The issue had been the focus of intense public debate initiated by the European Commission, which led to the proposal for a directive on gender balance among non-executive directors of companies listed on stock exchanges in November 2012.

The directive was intended to be based on Article 157(3) TFEU, which ensured the application of the principle of gender equality in employment and occupation. Article 157(4) TFEU and Article 23 of the Charter of Fundamental Rights of the EU recognized positive action as a method of achieving gender equality. The proposal set the aim of a minimum of 40% of non-executive members of the under-represented sex on company boards, to be achieved by 2020 in the private sector and by 2018 in public-sector companies. Companies were required to make appointments based on pre-established, clear, and neutral criteria. If candidates were equally qualified, advantage would be given to the under-represented sex. Member States were required to ensure companies issued annual reports on the composition of their boards and

imposed sanctions in the event of negative evaluations. The directive did not apply to SMEs. Companies that had not reached the 40% target were required to continue to apply the procedural rules, as well as to explain what measures they intended to take to reach it. For Member States that chose to apply the objective to both executive and non-executive directors, a lower target (33%) would apply.

The first Von der Leyen Commission was set to unveil a new ambitious gender equality strategy that would potentially include measures to put more women in boardrooms. More information on the past, current, and future gender equality strategies could be found on the Commission's website.

Kristalina Georgieva, the new head of the IMF, mentioned that she backed quotas for the private sector to accelerate better representation of women in C-suites, citing IMF studies that showed companies boosted results by 8% to 11% if they had women on their boards or senior management.

The Commission's Legislative Work Programme for 2012 announces a legislative initiative on improving the gender balance in companies listed on stock exchanges.

On 14 November 2012, the Commission presented its proposed legislation on gender balance in boardrooms. The proposal sets a quantitative objective of at least 40% representation for each gender among nonexecutive directors (supervisory board members in a dual board system) by 2020 (or 2018 for State-owned undertakings). To move ahead, more flexibility has been introduced:

- Member states can choose their own means to achieve the objective,
- If Member States choose to apply the objective to both executive and non-executive directors, a lower target (33%) would apply.

The European Parliament adopted its position, by a substantial majority, on 20 November 2013. The European Parliament notably:

- backed the key objective for listed companies in the EU to aim to reach a target of at least 40 % of non-executive directors of the under-represented sex by 1 January 2020 at the latest (and by 2018 for public companies);
- went beyond the Commission's proposal, by calling for additional measures, including stronger penalties, such as exclusion from public tenders, for companies which failed to introduce transparent appointment procedures; the removal of exemptions for companies employing less than 10 % of the under-represented sex; the extension of reporting to the EU's own institutions and agencies; and an examination of whether the scope of the directive should be extended to cover non-listed public companies;
- pointed out that, although the directive would not apply to SMEs or micro-enterprises, Member States should support these companies and give them incentives to improve gender balance at all levels of management and on their boards;
- stressed that, to achieve gender equality in the workplace, companies should develop a gender-balanced model of decision-making at all levels, whilst taking steps to eliminate the gender pay gap and introducing flexible working conditions for all employees.

Since adopting its position, the European Parliament has continued to push for progress in subsequent resolutions, including its resolution of 9 June 2015 on a new post-2015 EU strategy on gender equality, and its resolution of 14 March 2017 on equality between women and men in the European Union in 2014-2015. The latter once again urged the Council for a swift adoption of the women on boards directive.

The resolution on Women's economic empowerment in the private and public sectors in the EU, adopted in October 2017, once again addressed the issue. As well as revising the proposed target dates and

reporting deadlines, Presidencies of the Council of the European Union drafted compromise texts with a view to breaking the deadlock on the directive. The progress report adopted under the Maltese presidency (January-June 2017), noted that although all delegations are in principle in favour of improving gender balance on company boards.

The Gender Balance on Corporate Boards Directive entered into application at the end of 2024, aiming for a more balanced gender representation on the boards of listed companies across all EU Member States. The Directive sets a target for EU large listed companies of 40% of the underrepresented sex among their non-executive directors and 33% among all directors. The rules to be transposed include measures on transparency and gender neutrality, preference rules and disclosure rules.

The deadline for the transposition by Member States was 28th December 2024, and companies must meet the targets by 30 June 2026. The Commission will now verify whether the measures transposed and notified by the Member States correctly transpose the Directive.

Building on the aforementioned initiatives, a Roadmap for Women's Rights will be adopted by the Commission next year, with the aim of providing the groundwork on the strengthening and empowerment of women's rights and role in the labour market and leadership positions.

II.2. Remuneration

II.2. A Remuneration of executives

Recommendation 2004/913/EC stipulated that each listed company must publish a statement on its remuneration policy.

Recommendation 2009/385/EC in regard to the remuneration of company directors supplemented existing EU guidance by giving additional recommendations on the way in which best practices can be defined in order to prepare an appropriate remuneration policy for directors of companies listed on the stock exchange. To this end, it deals with some aspects of the structure of the remuneration of directors and governance thereof.

In order to ensure that remuneration is performance-related, the new recommendation requires a balance to be established between fixed and variable remuneration and makes the allocation of the variable component conditional upon predetermined and measurable performance criteria.

In addition to the aforementioned recommendation, the Commission issued a communication of Guidelines on the standardised presentation of the remuneration report under Directive 2007/36/EC, as amended by Directive (EU) 2017/828, as regards the encouragement of long-term shareholder engagement. Although non-binding, these guidelines aim to provide guidance for companies on the disclosure of comprehensive, clear and consistent information on director's remuneration.

II.2. B Employee Share Ownership

Financial participation of employees can take a variety of forms:

- Individual employee share ownership (employee shares or stock options);
- Employee stock ownership plans (ESOPs);
- Profit sharing (PS).

In 2013, EFES managed to convince the European Parliament last year to add a specific budget line in the 2013 budget for a pilot project (on the model of what was done for the creation of Eurofinus and Finan-

zWatch). This pilot project was deemed necessary to develop training and education centers for share ownership in national European countries.

The Commission released in 2014 an overview of the development of employee financial participation, share ownership, across EU-28 over the last decade (the survey was carried out by Stiftung Europa-Universität Viadrina Frankfurt).

The study describes and analyses in depth a range of policy options to be considered at EU level to reduce the main obstacles to transnational employee financial participation and to encourage it throughout the EU. These options include the creation of a virtual information Centre and establishing an optional European legal regime for employee share ownership. Overcoming cross-border barriers to employee financial participation schemes is particularly important in view of the potential for EU companies to implement such schemes and to benefit from their impact. Companies which are partly or entirely owned by their employees may generate more profit, create more jobs and contribute more to tax revenue than companies without employee ownership. These companies also tend to relocate less and favour local production and business succession.

According to EFES survey, more and more European companies are organizing employee share plans. In 2018, 87.3% of all large European companies had employee share plans, while 52.3% had plans for all employees. Finally, 33.4% of all large European companies launched new employee share plans, a proportion that increases from year to year.

The rise is back for the number of employee shareholders, with 7.5 million people in large European companies. However, the decline in the democratization rate of employee share ownership has still to be stopped.

Following the crisis, some European countries (including the UK) had chosen for stronger incentive policies, promoting employee share ownership and long-term savings as an investment for the future.

Read more

EU interest in employee financial participation was evident in the publication of the so-called PEPPER reports of the Commission on the Promotion of employee participation in profits and enterprise results.

This series of reports was followed by Council Recommendation 92/443/EEC of 27 July 1992 concerning the promotion of employee participation in profits and enterprise results, including equity participation.

Arising from the findings of these PEPPER reports, and other work, the European Commission launched a Communication on a Framework for the Promotion of Employee Financial Participation, in July 2002 (COM (2002) 364). This established a working group of independent experts to analyse legal and legislative obstacles to the transnational diffusion of employee financial participation, with concrete proposals for actions to tackle them. The Commission also proposed the following framework for Community action: to include financial participation in the peer review programme under the EU **employment guidelines**; to support cross-national research into employee financial participation; and to support transnational net-works of financial participation experts and practitioners.

- In 2004, the European Commission published the **report** of the high-level expert group on 'cross-border obstacles to financial participation of employees for companies having a transnational dimension'.
- In 2007, the European Foundation published a report on Employee financial participation in the New Member States.

- In 2011 the **Green Paper on CG Framework** led employee share ownership schemes to be seen as a good way of increasing the proportion of long-term oriented shareholders.
- In 2012 Action plan the Commission identified and investigated potential obstacles to trans-national employee share ownership schemes, with the purpose of taking appropriate action to encourage employee share ownership throughout Europe.
- In December 2013, the European Parliament published a Final report on financial participation of employees in companies' proceeds. Moreover, EFES convinced the EP to introduce a specific budget line in the 2013 budget for a pilot project deemed to develop training and education centres for share ownership in national European countries.
- 2013: Call for tender, consisting in 1) mapping and analysis, 2) information sharing strategy and other policy initiatives, 3) an outreach event.
- On 29 October 2014, the Commission published a study on "The Promotion of Employee Ownership and Participation".
- In 2017 the Deutsches Aktieninstitut published Employee Share Ownership as Pivotal Part of the Capital Markets Union

The European Federation of Employee Share Ownership (EFES) published regular reports on employee ownership policies.

II.3. Reporting and Auditing

II.3.A Audit Reform

In October 2006, the Commission published an economic impact study prepared by an external consultant, London Economics. On the basis of this study, the Commission invites stakeholders to give their views on four possible options for reforming auditors' liability:

- The introduction of a fixed monetary cap at European level, but this might be difficult to achieve.
- The introduction of a cap based on the size of the audited company, as measured by its market capitalisation.
- The introduction of a cap based on a multiple of the audit fees charged by the auditor to its client.
- The introduction by Member States of the principle of proportionate liability, which means that each party (auditor and audited company) is liable only for the portion of loss that corresponds to the party's degree of responsibility.

The Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts set out in detail specific rules as to how the statutory auditor presents the results of the statutory audit and of the assurance of sustainability reporting. The PIEs had to put in place an audit committee which has a key role in appointing the auditor and monitoring the audit.

In 2014, the audit reform aimed to improve audit quality and restore investor confidence in financial information, an essential ingredient for future investment and economic growth. The main objectives of the reform were to:

1. Ensure further transparency on the financial information of companies;
2. Provide statutory auditors with a strong mandate to be independent and exert professional scepticism;

3. Contribute to a more dynamic audit market in the EU;
4. Improve the supervision of statutory auditors and the coordination of audit supervision by competent authorities in the EU.

The reform rested on both horizontal measures (applying to all statutory auditors and audit firms):

- Introducing stronger requirements on independence, notably by improving the organisational requirements of statutory auditors and audit firms;
- Making the audit report more informative for investors, providing them with relevant information about the audited company beyond a mere standardised opinion on the financial statements;
- Strengthening the competences and powers of the competent authorities responsible for the public oversight of the audit profession;
- Establishing a more effective sanctioning regime by harmonising the types and addressees of sanctions as well as, for instance, the criteria to be taken into account by competent authorities when applying sanctions;
- Renewing the competence of the European Commission to adopt the International Standards on Auditing (ISAs) at EU level.

And specific requirements (applying to the statutory audit of PIEs):

- Strengthening the requirements on the audit report, and introducing an additional, more detailed, report to the audit committee, containing thorough information about the performance of the audit;
- Introducing mandatory rotation of statutory auditors and audit firms;
- Establishing a list of non-audit services that could not be provided by the statutory auditor or audit firm to the audited entity;
- Imposing limitations on the fees charged for non-audit services;
- Enhancing the role and competences of the audit committee, giving it a prominent direct role in the appointment of the statutory auditor or the audit firm, as well as in the monitoring of the audit;
- Establishing a dialogue between the statutory auditor or audit firm of a PIE on the one hand and the supervisor of that given PIE on the other hand.

On May 31st 2016, the European Commission published a new additional Questions and Answers on the EU rules on statutory audit. These answers should be read together with the ones published on September 2014 and February 2016.

In September 2016, the ECG (European Contact Group - composed of big 4 and biggest mid-tier firms) launched its EU Audit Legislation implementation website, which shows how each of the 28 EU Member States and 3 EEA countries have implemented the original Statutory Audit Directive 2006/43/EC as per the most recent Directive 2014/56/EU.

The Committee of European Auditing Oversight Bodies (CEAOB) was established in 2016 to improve cooperation between European national audit authorities in the EU.

Regulation No 537/2014 requires national authorities responsible for audit oversight and the European Competition Network to draw up reports. In September 2017 the Commission published its first joint report on monitoring developments in the EU market for the provision of statutory audit services to PIEs, based on the national reports.

In November 2017, DG Fisma asked a consultancy company « Milieu Ltd » to compile information on the different member states options and on how the regulation had been transposed.

As required by Regulation No 537/2014, in September 2017, the Commission published a joint report based on the national market monitoring reports prepared by the national competent authorities and the European Competition Network. On audit committees, the report stated that the some NCAs had already started meeting ACs (and have even provided guidelines) to make them aware of the new framework and of their additional responsibilities. However, a great deal of work clearly remains to be done.

In April 2019, the European Parliament produced an in-depth analysis of the evolution of market concentration, competition, and costs in the EU market for statutory auditing before and after the Audit Reform. The results for non-financial PIEs showed that even though there was a positive increase in audit fees (+3.1%) and a strong decrease in non-audit fees (-27.5%), the total fees did not change significantly post-Audit Reform. In total, it was found that 20 Member States had at least one PIE client that engaged in a joint audit, and the average percentage of joint PIE audits in the EU equated to 9.1% before the Audit Reform (excluding France). Interestingly, Member States that had the highest percentage of joint audits before the Audit Reform were also those that adopted the joint audit extension.

In 2019, the CEAOB issued **Guidelines on duration of the audit engagements** as well as **Guidelines on auditors' involvement on financial statements in ESEF.** The Committee of European Auditing Oversight Bodies (CEAOB) launched annual questionnaires addressed to Audit Committees Chairs and issues annual reports.

In 2021, the Commission published its second joint report on monitoring developments in the EU market for the provision of statutory audit services to PIEs. The report can be found **here**. Other reports have followed since then.

In November 2021, DG FISMA launched a **consultation** concerning three pillars of corporate reporting: (i) corporate governance; (ii) statutory audit; and (iii) the supervision of statutory auditors and audit firms.

In November 2022, the European Contact Group issued a related **report** *(Oxera)*

The CEPS (Centre for European Policy Study) and Milieu Consulting are conducting a study for DG-FISMA on the effectiveness of the framework for corporate governance. The purpose of the study is to understand how corporate governance pillars shape the quality of corporate reporting.

- A regulatory mapping for 10 countries European countries was conducted, to analyze their corporate governance architecture. Among them: Croatia, France, Germany, Ireland, Italy, Latvia, the Netherlands, Poland, Portugal and Sweden + two non-EU countries (US and Japan). A survey based on the results of the mapping will be published for each country.
- Interviews of stakeholders
- The study is supposed to be finalized by early Spring 2025

II.3.B Country-by-Country Reporting

Country-by-country reporting (CBCR) was a tax transparency tool that aimed at requiring sufficient data to be able to distinguish the part of the activity of a business with multinational reach (multinational enterprises - MNEs) that was related to a specific jurisdiction.

The objective was to remedy non-transparent practices, such as corporate tax avoidance and aggressive tax planning, which resulted in an erosion of the taxpayer's tax base and thus the loss of resources for countries.

This practice concerned all Multinational (MNE) Groups located in the EU or with operations in the EU, with total consolidated revenue equal to or higher than €750,000,000.

The Country-by-Country Report had to be filed in the Member State in which the ultimate parent entity of the MNE Group or any other reporting entity was a resident for tax purposes. The Member State communicated the report to any other Member States in which one or more Constituent Entities of the MNE Group were either resident for tax purposes or were subject to tax with respect to the business carried out through a permanent establishment.

MNE groups filed the Country-by-Country report in accordance with the standard template as included in the Action 13 Report of the OECD.

Country-by-country reporting differed from regular financial reporting in that companies had to publish information for every country they operated in rather than providing a single set of information at a global level.

On 13th September 2019, German Finance Minister Olaf Scholz announced that he had agreed with the other SPD Ministers to support the proposal for country-by-country reporting, which would require companies to disclose certain accounting data, such as their revenues, profits, or even taxes paid. The subject was completely blocked in the EU Council.

In October 2019, MEPs adopted a resolution urging member states to work on long-overdue rules obliging multinationals to disclose what taxes they paid in each country. The resolution urged member states to agree on a position on the legislative proposal requiring public country-by-country reporting of taxes paid by multinationals. This would allow talks between member states and the European Parliament to begin, in view of agreeing on a final text of the rules. Parliament had already backed this proposed legislation in 2017. EU ministers, however, failed to adopt a position and, as a result, no law had been adopted as yet. The Finnish EU Council Presidency made no promises to the European Parliament regarding country-by-country reporting.

On 12 April 2016, the Commission presented a proposal for a public CBCR for businesses with multinational reach and with a total consolidated group revenue of at least €750 million. The proposal is an amendment to the Accounting Directive 2013/34/EU, adopted by the Parliament and the Council (which already includes CBCR elements for some sectorial industries - logging and extractive).

At the Parliament, after the vote on the report in a joint committee meeting (ECON/JURI) on 12 June 2017, the amendments were adopted by Plenary on 4 July 2017 and the file was referred back for inter-institutional negotiations to the committees responsible.

On 17 January 2019, a state of play was published in the Council register. In November 2019, a note presenting a possible General Approach was issued. It was discussed on 28 November 2019 in the Competitiveness Council. A joint statement by ten Member States was attached to the minutes by which the latter state that 'the proposal must be approved in ECOFIN Council, taking due account of the relevant procedural rules'.

In December 2019, the finance ministers also discussed public country by country reporting (CBCR). The discussion was a repetition of the earlier discussions in the competitiveness Council (see feature story), with same country positions expressed.

A qualified majority was reached on the proposal for CBCR at the meeting of EU Competitiveness Ministers on 25 February 2021.

II.4. Sustainability/Purpose

II.4.A Better integrating sustainability in ratings & market research

Starting in Q2 2018, the Commission engaged with all relevant stakeholders to explore the merits of amending the Credit Rating Agency Regulation to mandate credit rating agencies to explicitly integrate sustainability factors into their assessments in a proportionate way to preserve market access for smaller players. Commission services reported on the progress made on this by Q3 2019.

The Commission invited ESMA to: (i) assess current practices in the credit rating market by Q2 2019, analysing the extent to which environmental, social, and governance considerations were taken into account; (ii) include environmental and social sustainability information in its guidelines on disclosure for credit rating agencies by Q2 2019 and consider additional guidelines or measures, where necessary.

The Commission carried out a comprehensive study on sustainability ratings and research by Q2 2019. It analysed methodologies and explored aspects like the market structure of sustainability ratings and market research services, the depth and breadth of sustainability research assessments and scoring, and the independence of those research/scoring providers. The study also explored possible measures to encourage sustainability ratings and market research.

In recent years, market research providers and sustainability rating agencies had stepped up their efforts to assess companies' environmental, social, and governance performance and their ability to manage sustainability risks. Such assessments contributed to a more sustainable allocation of capital and improved the information flow between issuers and investors. The lack of broadly-accepted market standards to assess companies' sustainability performance made the transparency of the methodology used by research providers particularly important. Additionally, some stakeholders argued that the focus of sustainability research providers on very large issuers had a negative impact on the attractiveness of smaller issuers for institutional investors.

Credit ratings were also an important element of well-functioning financial markets, as they provided investors with assessments of the creditworthiness of companies and public institutions. Credit rating agencies operated in a highly concentrated market and adopted their credit ratings based on the relevant available information. However, it remained unclear to what extent sustainability factors were being considered. The Commission monitored developments in the credit rating market and acknowledged the need for greater understanding of and transparency about how credit rating agencies took sustainability factors into account. The Commission invited ESMA to promote solutions which would ensure that credit rating agencies fully integrated sustainability and long-term risks. The Commission also continued engaging on those issues with all relevant stakeholders, including regarding the possible emergence of new credit rating agencies that would meet this objective.

In 2019, ESMA released a report «Technical Advice to the European Commission on Sustainability Considerations in the credit rating market».

In 2019, the European Commission's DG FISMA appointed a Sustainability Group to conduct a study on Sustainability Ratings and Research.

In 2021, the Strategy for financing the transition to a sustainable economy announced a need to assess the scope for further policy initiatives on sustainability ratings and credit ratings. This initiative is composed of 2 separate parts focusing on: 1) the operations of Environmental, Social and Governance (ESG) ratings providers; 2) how credit rating agencies (CRAs) incorporate ESG risks in their creditworthiness assessment.

In 2022, the European launched a call for evidence and then, in 2023, a public consultation was organized on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities.

On the 19 November 2024, the Council adopted the regulation on environmental, social and governance (ESG) rating activities. The new rules aim to:

- make EU rating activities more consistent, transparent and comparable in order to increase investor confidence in sustainable financial products.

- enhance the reliability and comparability of ESG ratings by improving the transparency and integrity of the activities carried out by ESG rating providers and preventing potential conflicts of interest. In particular, EU-based ESG rating providers will need to be accredited and supervised by the European Securities and Markets Authority (ESMA).

II.4.B Clarifying institutional investors and asset managers duties

Clarifying institutional investors and asset managers duties

The Commission tabled a legislative proposal to clarify institutional investors' and asset managers' duties in relation to sustainability considerations by Q2 2018. The proposal aimed to (i) explicitly require institutional investors and asset managers to integrate sustainability considerations in the investment decision-making process and (ii) increase transparency towards end-investors on how they integrated such sustainability factors in their investment decisions, in particular as concerns their exposure to sustainability risks.

The proposal laid down sustainability disclosure obligations for manufacturers of financial products and financial advisers toward end-investors. It did so in relation to the integration of sustainability risks by financial market participants (i.e. asset managers, institutional investors..., all entities offering financial products where they managed clients' money) and financial advisers in all investment processes and for financial products that pursued the objective of sustainable investment.

In addition, the co-legislators added disclosure obligations regarding adverse impacts on sustainability matters at entity and financial product levels, i.e. whether financial market participants and financial advisers considered negative externalities on the environment and social justice of the investment decisions/ advice and, if so, how this was reflected at the product level. The reason was that investment decisions and financial advice might have caused, contributed to, or been directly linked to negative material effects on the environment and society, regardless of whether the investment strategy pursued a sustainable objective or not, such as investments in assets that polluted water or devastated biodiversity, to ensure the sustainability of investments.

It consisted of a directly applicable regulation introducing additional disclosure requirements to the existing elements of relevant sectoral legislations (AIFMD, UCITS, Solvency II, IDD, and MiFID II), via a self-standing text (lex specialist) providing full harmonization, cross-sectoral consistency, and regulatory neutrality.

APPENDIX:

ecoDa's main publications over the past twenty years (in addition to its position papers):

- 2023 - Non-Executive Director Remuneration in Europe Time for a change? In partnership with WTW
- 2023 - Directors' duties and liabilities survey in partnership with Allen & Overy
- 2023 - ESG Governance: questions boards should ask to lead the sustainability transition – in partnership with Accountancy Europe and ECIIA
- 2023 - Report and Recommendations on Independent Directors
- 2023 - Brainstorming Paper on The G dimension of ESG
- 2022 - Brainstorming Paper on Innovation: is the EU corporate governance framework fit for purpose?
- 2021 - Five Corporate Governance Guidelines to accelerate change and sustainable growth in Europe
- 2021 - A practical guide for boards and leadership teams on sustainability in partnership with Mazars
- 2021 - ecoDa Corporate Governance Guidance and Principles for Unlisted Companies in Europe – and related questionnaire (issued initially in 2010)
- 2020 - Time for sustainability to be at the heart of business – sustainability in partnership with Mazars
- 2020 - Cyber-Risk Oversight - Key Principles and Practical Guidance for Corporate Boards in Europe – in partnership with ISAlliance and AIG
- 2018 - The board's role in designing an effective framework of Corporate Governance in partnership with Mazars
- 2016 - ecoDa – PwC Guidance for audit committees
- 2015 - Corporate Governance Compliance and Monitoring Systems across the EU (3 phases)– to understand how the self-regulatory approaches of the different European governance codes are monitored, at the level of the different Member States, within the corporate boards and by the stakeholders involved
- 2015 - Guide to Directors' Duties and Liabilities in partnership with AIG
- 2015 - Beyond The Old Boys' Network in partnership with Korn Ferry
- 2015 - A Guide to Corporate Governance Practices in the European Union in partnership with IFC
- 2014 - A Directors' Note on the one-tier and two-tier system in partnership with Nautadutilh
- 2012 - Making the most of the Internal Audit Function in partnership with ECIIA
- 2012 - Comply or Explain: preserving governance flexibility with quality explanations

- 2011 - Audit Committees Guidance in partnership with KPMG
- 2010 - Corporate Governance Guidance and Principles for Unlisted Companies in Europe
- In 2009, ecoDa together with RiskMetrics, BusinessEurope and Landwell performed an initial analysis on Practices in CG in the Member States, commissioned by the EC. The consortium was initiated by ecoDa.

Author :

Béatrice Richez-Baum

ecoDa
Director General
contact@ecoda.eu
www.ecoDa.eu

The document was reviewed by: A&O Shearman

A&O SHEARMAN