News Alert

2022 Wrap-Up on ESG Reporting

European Union Adopts New ESG Reporting Requirements and Other Global Developments

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As 2022 comes to a close, mandatory Environmental, Social, Governance (ESG) reporting in the United States remains the subject of much debate and political scrutiny. The European Union (EU) and other jurisdictions are moving forward with enacting and strengthening such ESG laws. The EU's approval of the Corporate Sustainability Reporting Directive (CSRD) in 2022, which creates new mandatory ESG reporting obligations, along with Germany and Norway's adoption of mandatory supply chain due diligence legislation, aligns with global trends regarding ESG due diligence and reporting requirements.

Looking forward to 2023, regardless of the outcome of mandatory ESG reporting proposals in the United States, companies with a global presence should consider how these new requirements and other emerging legislation will impact their ESG reporting obligations and practices.

Corporate Sustainability Reporting Directive (CSRD)

On December 16, 2022, the Official Journal of the European Union published the Corporate Sustainability Reporting Directive (CSRD) after signature by the President of the European Parliament and President of the Council. The CSRD enters into force on January 5, 2023, and will begin phasing in new ESG reporting requirements for many companies, ultimately including non-EU companies with "significant activity" in the EU.

The CSRD is a major cornerstone of the European Green Deal; it expands the Non-Financial Reporting Directive (NFRD) scope by requiring more companies to report and mandating reporting on environmental, human rights, and social impacts. In-scope companies will need to submit reports as early as 2025 for the financial year 2024 (with a graduated implementation timeline for companies new to the NFRD or small to medium size enterprises).

Companies Regulated

The CSRD increases the scope of entities obligated to report from an estimated 11,700 currently reporting to an estimated 50,000. The NFRD is limited to large public interest entities (PIEs) with more than 500 employees, which include companies listed on an EU-regulated exchange, banks, insurance companies, and other entities designated by member states as PIEs. The CSRD expands reporting requirements to all large EU companies, regardless of stock market listing. Importantly, the CSRD also imposes requirements on non-EU companies with "significant activity" in the EU. "Significant activity" includes generating a net turnover of 150 million EUR in the EU with at least one subsidiary or branch in the EU that meets certain additional criteria.

Updated Disclosure Requirements

The NFRD requires reporting on five Key Performance Indicators (KPIs) relating to various ESG topics. These topics are elaborated upon in the European Commission guidelines, which serve as non-binding guidance. The CSRD imposes significantly expanded and more detailed disclosures pursuant to mandatory sustainability reporting standards, which the European Financial Reporting Advisory Group (EFRAG) is developing. EFRAG recently submitted its first draft of sustainability reporting standards to the European Commission for review. The European Commission must adopt the first set of standards by June 30, 2023.

Proposed Corporate Sustainability Due Diligence Directive Moves Forward

On November 30, 2022, the European Council adopted its negotiating position on the proposed Corporate Sustainability Due Diligence Directive (CSDDD). The CSDDD is another key aspect of the European Green Deal. On February 23, 2022, the European Commission submitted a proposal for a CSDDD that would obligate in-scope companies to carry out due diligence regarding actual and potential adverse impacts to human rights and the environment with respect to their operations, the operations of their subsidiaries, and their value chain. The proposal also established rules on liability for violations of these obligations. The CSDDD proposal includes obligations for companies to adopt a plan to ensure their business model is compatible with the Paris Agreement.

The Council's negotiating position includes notable changes from the Commission's proposal:

- Phased-in approach for application of the rules.
- Replacement of "value chain" with "chain of activities," thus limiting companies' due diligence obligations by leaving out the use of the company's products or provision of services.
- Removal of provisions that would have regulated directors' duty of care.
- Revision of civil liability provisions.
- Makes optional applicability of the CSDDD to the financial services industry.
- Alignment with reporting requirements in the CSRD.

Next, the European Parliament will establish its initial negotiating position. Once established, the Parliament and Council will negotiate to reconcile their respective positions to develop a final CSDDD. While these negotiations continue, there is an opportunity for input; there has already been significant lobbying by civil society, corporate and industry representatives, and investor groups.

EU Taxonomy Regulation

In addition to the recently sought expansion of ESG requirements, the EU's Taxonomy Regulation and related acts also play a role in achieving the goals of the European Green Deal. The Taxonomy Regulation established the "EU Taxonomy," a classification system that, through Delegated Acts, defines environmentally sustainable economic activities using technical screening criteria based on six environmental objectives:

1. Climate change mitigation
2. Climate change adaptation

3. The sustainable use and protection of water and marine resources
4. The transition to a circular economy
5. Pollution prevention and control
6. The protection and restoration of biodiversity and ecosystems

EU Taxonomy intends to serve as a transparency tool requiring certain financial market participants and companies, including those companies subject to the NFRD (and ultimately, the CSRD), to disclose their Taxonomy-aligned activities for public awareness. The Delegated Act supplementing Article 8 of the Taxonomy Regulation has been effective since January 1, 2022. It specifies the content, methodology, and presentation of information required to be disclosed by financial and non-financial undertakings to show the proportion of environmentally sustainable economic activities in their business, investments, or lending activities consistently and comparably.

Other Emerging Disclosure Requirements around the World

Additional jurisdictions that are considering new or updated requirements for climate change and related ESG disclosures, supply chain due diligence requirements, human rights laws and related import restrictions, or other ESG-related legislation include:

- **The United States:**
  - Securities and Exchange Commission proposed rulemaking on the Enhancement and Standardization of Climate-Related Disclosures for Investors (ESG disclosure obligation) (see additional information here); and
  - Uyghur Forced Labor Prevention Act (import prohibition) (see additional information here).
- **Canada:**
  - Proposed National Instrument 51-107 Disclosure of Climate-Related Matters (ESG disclosure obligation); and
  - Proposed Fighting Against Child Labour and Child Labour in Supply Chains Act (import prohibition and reporting)
- **Japan:**
  - Proposed Financial Services Agency corporate governance code climate disclosures (ESG disclosure obligation)
- **Germany:**
  - Germany Supply Chain Act, which goes into effect January 1, 2023 (supply chain due diligence and reporting)
- **Norway:**
  - Norway Transparency Act, which went into effect in 2022 (supply chain due diligence and reporting)
- **The European Union:**
  - Proposed regulation on prohibiting products made with forced labor on the EU market (import prohibition)

- **The Netherlands:**
  - Proposed Responsible and Sustainable International Business Act (supply chain due diligence and reporting)

Beveridge & Diamond's Sustainability, ESG and Product Stewardship, Global Supply Chains practices advise companies on all aspects of sustainable supply chain and product stewardship management, including responsible sourcing, human rights due diligence and disclosures, product compliance, and reuse and recycling. We help the legal, corporate, communications, and environmental, health, and safety teams at large and small companies to identify, understand, and comply with the complex regulatory requirements impacting the hyper-competitive and evolving consumer goods market. For more information, please contact the authors.

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