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Europe's Road to Green Deal Continues

A number of climate-related initiatives continue to emerge from Europe: last Wednesday, Members of the European Parliament agreed to delay sector-specific requirements of the European Sustainability Reporting Standards (ESRS) by two years, until June 2026, with the proviso that they publish reports as soon as they are ready. The delay is intended to enable companies to focus on the implementation of the first set of general ESRS adopted on July 31, 2023. The sector-specific ESRS are designed to clarify what (and to what detail) companies in particular sectors should disclose about their impact on people and the planet, including decarbonisation, biodiversity or human rights. **We have discussed the ESRS in detail previously**.

MEPs have been active generally this month: on January 17, they **voted in favour of adopting the Directive on Empowering Consumers for the Green Transition**, a new law banning exaggerated and unfounded claims relating to a company's environmentally friendly actions, including carbon neutral claims. After final approval from the European Council, it will be published into the Official Journal and Member States will have 24 months to transpose it into national law. The new rules are part of the EU's wider goal to reach net zero by 2050 and represent another step towards the bloc's tightening of existing, or introduction of new, greenwashing rules and regulations creating a comprehensive anti-greenwashing regime.

On January 25, the European Financial Reporting Advisory Group (EFRAG) announced the release of two new exposure drafts containing proposed sustainability reporting standards for small and medium enterprises, pursuant to the Corporate Sustainability Reporting Directive (CSRD). Mandated to do so by the European Commission in June 2020, EFRAG's proposed standards aim to prepare SMEs for new sustainability reporting standards such as the ESRS.

On January 30, the European Central Bank (ECB) announced that it would be expanding its work on climate change, and released its new **"climate and nature plan 2024-2025,"** outlining a roadmap for action over the next two years. The ECB's work will focus on three key areas: (i) impact and risks of transition to green economy, particularly the associated costs and investment needs; (ii) increasing physical impact of climate change; and (iii) risks stemming from nature loss and degradation.

The European Banking Authority (EBA) **published a set of proposed requirements** for banks to identify, measure, manage and monitor ESG risks, including setting plans to address risks from the EU's transition to a climate-neutral economy. The guidelines purport to take a different approach relative to other sustainability-focused regulation such as the CSRD and the Corporate Sustainability Due Diligence Directive, which focus on the compatibility of business models with the EU's climate and sustainability objectives. In contrast, the EBA's proposal focuses on ensuring ESH risks are assessed and embedded in strategies and policies, rather than requiring them to align with specific goals or pathways. **The consultation runs until April 18 of this year**.

Broader Global Developments

According to Morningstar, in Q4 2023, global sustainable funds experienced net outflows of USD 2.5 billion, marking the first time they entered negative territory. The ratings agency noted that the decline is driven by more investors exiting ESG funds in the U.S. and Japan. Despite overall decline, European sustainable funds attracted USD 3.3 billion of net new money, primarily driven by passive funds. U.S. sustainable funds saw net outflows of USD 5 billion, contributing to total USD 13 billion outflows for the year, **suggesting that the anti-ESG backlash we have reported on frequently is gaining momentum**.

The International Ethics Standards Board for Accountants (IESBA) launched a public consultation on a new ethical benchmark for sustainability reporting and assurance. The proposed standards "aim to foster greater trust in all publicly communicated sustainability information through the application of a consistent ethical approach." IESBA published two new exposure drafts related to the consultation: the "International Ethics Standards for Sustainability Assurance," which proposes a framework of expected behaviors and ethics provisions to be used by all sustainability assurance practitioners regardless of their professional backgrounds, as well as professional accountants, and the "Using the Work of an External Expert" draft which proposes an ethical framework to guide professional accountants or sustainability assurance practitioners in evaluating whether an external expert has the necessary competence, capabilities and objectivity in order to use that expert's work for the intended purpose. Stakeholders are encouraged to provide feedback on the former by May 10, 2024, and the latter by April 30, 2024 **via IESBA's website**. **We have discussed sustainability reporting assurance from the perspective of companies previously**. The ethical framework proposed by IESBA will likely provide companies with reassurance that external experts are themselves required to abide by an agreed set of principles.

United States: Climate Disclosure and Shareholder Activism

In April 2023, **we wrote about a survey conducted by Workiva and PwC** which showed that most large companies are preparing to comply with the Securities and Exchange Commission's proposed climate disclosure rule, despite the rule itself not having been finalized. After a longer-than-anticipated delay, **the SEC submitted an updated agenda** to the White House confirming a planned final release date of around April 2024. The delay has not hindered everyone however; **as we reported in October 2023, California signed two Senate Bills into law** (the corporate data accountability act SB 253 and the GHG emissions bill SB 261).

On January 22, **ExxonMobil filed a suit against Follow This** to try to stop a shareholder climate resolution going to a vote at its annual investor meeting. The motion put forward by Follow This calls on the oil major to accelerate the pace of reductions in GHG emissions, and states that the effort should include targets and timetables. Exxon argues that the motion violates SEC rules for investor petitions, which prohibit resubmission of shareholder proposals year after year if they fail to gain support. The suit has been filed at a Texas U.S. district court. Exxon's annual meeting will be held on May 29 and the company has asked the court for a decision by March 19 before it is due to file its shareholder materials.

United Kingdom: Increasing Regulation for Financial Sector

Across the pond, **the UK's Financial Conduct Authority (FCA) established an industry-led working group for financial advisors**, aimed to support them to advise consumers on products marketed to have sustainable characteristics. The group has been asked to draft a set of recommendations by H2 2024. Notably, in November 2023, the FCA introduced a set of measures to tackle greenwashing alongside a fund labelling regime. This included four investment labels and new rules and guidance on the marketing of funds on the basis of sustainability characteristics. A fast-evolving ESG landscape means that advisors are faced with an increasingly long list of challenges, which the working group aims to provide support for.