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ESG in Europe

November 2021

Venture Debt – An attractive alternative for start-ups?
EU Regulatory Sandboxes - The Spanish case study
What's news in....?
Andersen Europe Corporate Highlights

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Best-in-class
We aim to be the benchmark for quality in our industry and the standard by which other firms are measured.



Stewardship
We hire the best and the brightest and we invest in our people to ensure that legacy.



Transparency
We value open communication, information sharing and inclusive decision making.



Seamless
Our firm is constructed as a global firm. We share an interest in providing the highest level of client service regardless of location.



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Our platform allows us to objectively serve as our client's advocate; the only advice and solutions we offer are those that are in the best interest of our client.

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Presentation



Andersen's Corporate and M&A practice, through the member and collaborating firms of Andersen Global, has prepared this fourth edition of the European Corporate Insights' magazine which we hope will be of interest.

In this piece, we address as principal topic "ESG criteria in Europe". Even though European countries are regulated with the same principles, the considerable differences between one country and another make sometimes difficult for multinational companies to have an overview of how this works in different jurisdictions.

This publication has an overview of the ESG Criteria regulation and policies at European level. Also, each of the countries has its own report, summarizing the different guidelines and regulation specific to each jurisdiction, any benchmark that companies need to accomplish to attract investors, and if ESG criteria have an impact on investment decision and the way that transactions are structured.

The Magazine also covers two pieces of opinion from Andersen partners that on this occasion are:

- Venture Debt – An attractive alternative for start-ups?
- EU Regulatory Sandboxes - The Spanish case study

Likewise, we are happy to share with you our highlight reels where you will find the latest of our activities, credentials, ranking nominations and other news from our Andersen Corporate and M&A environment in Europe.

Our European Corporate and M&A Practice is composed of 26 different jurisdictions where we have skilled and experienced teams of lawyers and tax experts with a proven track record in delivering best-in-class and seamless service in different jurisdictions, under our one firm principle, in all matters related to Corporate and M&A, including but not limited to:

- Corporate Commercial;
- Start-ups, Venture Capital, Private Equity;
- Private Debt;
- Mergers and Acquisitions;
- Corporate Governance and Compliance;

We are confident that the European Corporate Insights, will help Multinational Companies to get an overview of different hot topics that normally generate questions when operating in different European countries.

In case you are interested in receiving more detailed information, please contact one of the members of Andersen's Corporate and M&A Practice who will be glad to give further advice.

Ignacio Aparicio · Andrea di Castri
European Corporate and M&A Coordinators

You may also be interested in:

European Corporate Insights – July 2021

How to Finance M&A transaction in Europe? Different ways to finance, possibility to issue bonds by private companies, incentives and benefits, and deduction of interest expenses in M&A transactions.

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LLC European Guide

Overview on formation and incorporation procedures for Limited Liability Companies in Europe.

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II · What's "News" in...

BULGARIA

Proposition for amendment of the law regarding Non-Profit Organizations

Amendments to the Bulgarian Non-profit Legal Entities Act have been proposed concerning the conducting of NPO's General Meetings. Under the current provision, all members have to be physically present at the General Meeting. Pursuant to a recent bill, however, it is proposed that a person may participate at a General Meeting by virtue of telephone or other connection securely establishing his/her/its capacity. Resolutions in absentia are also introduced. This amendment follows the growing need of long-distant meetings due to the various COVID-19 restrictions.

ITALY

Italy set out in its National Recovery and Resilience Plan that could improve, modernize and stabilize the "rules of the games" applicable to M&A transactions and facilitate foreign direct investments in Italy

Italy set out in its National Recovery and Resilience Plan several reforms of the civil, tax and criminal law which are currently under discussion in Parliament. Tax major proposed changes include:

- streamlining tax legislation into a single tax code;
- simplifying the rules for calculating corporate tax taxable base bringing it closer to the accounting net result;
- establishing new tax incentives for companies, such as those to promote behaviour in line with ecological transition, to encourage aggregations of smaller companies, to re-invest profits in productivity-enhancing investments;
- abolishing the Regional Tax on Productive Activities ("IRAP");
- creating a single category of financial income for tax purposes;
- restructuring of the tax litigation rules and procedures in order to higher the quality of judgments of the Tax Courts and equally reducing the time needed to reach a decision;
- encouraging tax compliance;
- improving guarantees for taxpayers dealing with Tax Authorities.

The approval of the changes being evaluated could improve, modernize and stabilize the "rules of the games" applicable to M&A transactions and facilitate foreign direct investments in Italy.

We will follow up focusing on the most relevant aspects for M&A purposes once the drafts law will be approved.

HUNGARY

Changes in the Rules of Whistleblowing

Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law ("Directive") shall bring significant changes from December 2021 for companies operating in Hungary and employing 50 or more employees regarding the whistleblowing and after the local implementation.

While currently using a whistleblowing-system is optional for all employers, pursuant to the Directive employers employing the minimum amount of 50 employees shall be required (both in the public and the private sector) to create an internal reporting channel in order to handle whistleblowing matters. First, until December 17, 2021 companies with 250 employees will be obliged to use whistleblowing-systems. For entities employing at least 50 but not as much as 249 employers the deadline to introduce the new regime is December 17, 2023.

Currently announcements can only be made by employees, or by a person in contractual relationship, or in exceptional cases, based on equitable legitimate interests, by any other person. While the Directive's effect covers in addition to the employees and contractors to announcers whose employment had been ceased after infringement and who gathered the information of infringement before the start of the employment, or during recruitment procedure or other discussions preceding the conclusion of a contract.

Opposed to the effective regulations, the Directive must be applied in defined domains consisting of public procurement, product safety, product liability, public health service, consumer protection, privacy, protection of personal data, and safety of network and information systems. Details of

the regulations will be defined by Hungary in its own scope of authority with paying respect to the mandatory elements of the Directive.

POLAND

Changes to the Central Register of Beneficial Owners

On 31 October 2021, changes regarding the Central Register of Beneficial Owners ("CRBiR") take effect. Presented below are the major changes:

- The obligation to provide information about beneficial owners to the CRBiR applies to new entities– namely: associations registered in the National Court Register, foundations, professional partnerships, cooperatives, European cooperatives, European companies, European business interest groups and trusts with registered office in Poland or which establish business relations or purchase real property in Poland for or on behalf the trust.
- The beneficial owner will be obliged to provide the entity entered in the CRBiR with all information and documents necessary to report and update the information in the CRBiR. Beneficial owners who fail to comply with this obligation will be subject to a financial penalty of up to PLN 50,000.
- The person reporting to CRBiR (usually a person authorized to represent the entity) will be obliged to provide his/her own personal details as well as the function which authorizes them to file the report.
- The beneficial owner will be obliged to disclose all citizenships .
- Entities obliged to follow the AML regulations are obliged to record discrepancies regarding the beneficial owner between the data recorded in the CRBiR and the data established by them. If the discrepancies are confirmed, the obligated entity should send the information and explanation to the Minister of Finance.

SPAIN

The figure of the Investor in the Draft Bill for the promotion of the startup ecosystem

The Government approves the Draft Bill on

Startups, which aims to boost investment in the entrepreneurial ecosystem by trying to make Spain attractive to this type of company and its investors through tax benefits, investment support instruments and attracting talent.

The Bill specifies the requirements to be considered "Start-ups" or "emerging", such as having a turnover of less than 5 million euros, being located in Spain, being less than five years old, not being a listed company and not having distributed dividends. These companies may benefit from new tax advantages such as the reduction of the tax rate on corporate income tax (IS) and non-resident income tax (IRNR), the increase in the amount of the exemption for employees of emerging companies and for business angels investing in new or recently created companies or the new requirements for access to the so-called Beckham Regime, which involves benefits for non-resident taxpayers. This Bill is pending to be discussed and passed by the Spanish Parliament.

[See more →](#)

Setback to the development of renewable projects

The renewable energy sector is booming in Spain. Supported by the need for a change of model towards more sustainable energy production, companies and investment funds have developed a profitable model far from feed-in tariff schemes.

However the promoters have to face up several issues in their day to day. Recently the Directorate General of Taxes published a resolution by which apply the tax exemption on the positive income obtained in the transfer of shares in companies (SPVs) owning merely greenfield projects (but with no material assets) shall be by far much more complicated because the tax authorities consider that this sort of companies have not carried out an economic activity and, therefore, it is of a capital nature, even if the transfer takes place in Ready-to-Build status.

"Venture philanthropy": growing interest in social impact investments

Venture philanthropy is a long-term approach

whereby an investor for impact supports a social purpose organization to help it maximize its social impact. This phenomenon, which originated in the USA, is becoming increasingly widespread in Spain. Principles of traditional venture capital financing are now applied on philanthropic efforts. Green companies, B corporations or social oriented startups are the main points of interest for these investors.

M&A insights in the Spanish market

3Q2021 data reflect the confidence that international investors are placing in the Spanish market. Up to the aforesaid period, the volume of investment in Spain reached 4,844M€ in a total of 618 investments, 18.4% more than in the same period of 2020, while VC has surpassed the record highs, with 1,228M€ in a total of 512 investments. The investment hunger of international funds – both PE and VC–, which have abundant liquidity and keep up their interest in Spanish companies, remains strong.

SWITZERLAND

New Federal Law on Data Protection

On June 23, 2021, the Federal Council put the draft of the ordinance on the new Federal Law on Data Protection for consultation. The consultation expired on October 14, 2021. The entry into force of the new law with the relative ordinance is expected for the second semester of 2022. With the entry into force of the new law, Switzerland will also ratify the updated version of the Convention 108 of the Council of Europe on data protection.

Switzerland calls for legal certainty in the implementation of the key parameters in international corporate taxation

On October 8, 2021, the Inclusive Framework of the OECD, in which 140 member countries including Switzerland participate, specified the July 2021 key parameters for future taxation of large internationally active. Switzerland demands that the interests of small robust economies are taken into account in the implementation, and that legal certainty is established for the companies concerned.

Code of Conduct in Tax Matters 2021

The Federal Tax Administration, the Swiss Tax Conference (SSK/CSI) and EXPERTsuisse (professional association) in conjunction with IFF-HSG as academic partner set out written principles and rules of conduct in the form of a Code of Ethics. The Code of Conduct is intended to facilitate the efficient application of legal provisions and to strengthen the long relationship of trust between taxpayers, tax representatives and tax administrations and is directed as a collection of recommendations for employees of tax administrations and tax advisors.

THE NETHERLANDS

The Dutch government released legislative proposals that will bring significant changes to the Dutch corporate income tax act

On budget day, the Dutch government released legislative proposals based on which some changes will be made to the Dutch corporate income tax act. The most significant changes are:

- Certain partnerships will become subject to Dutch corporate income tax;
- The application of certain downward adjustments of taxable profits will be restricted;
- For Dutch taxpayers that have incurred a loss in a financial year, it will no longer be possible to obtain a refund of Dutch dividend withholding tax due on dividends distributed to them by Dutch companies.

In addition, the Dutch government has announced that at a later stage, an amendment of the restriction on the compensation of so-called holding and financing losses has been included in one of the legislative proposals.

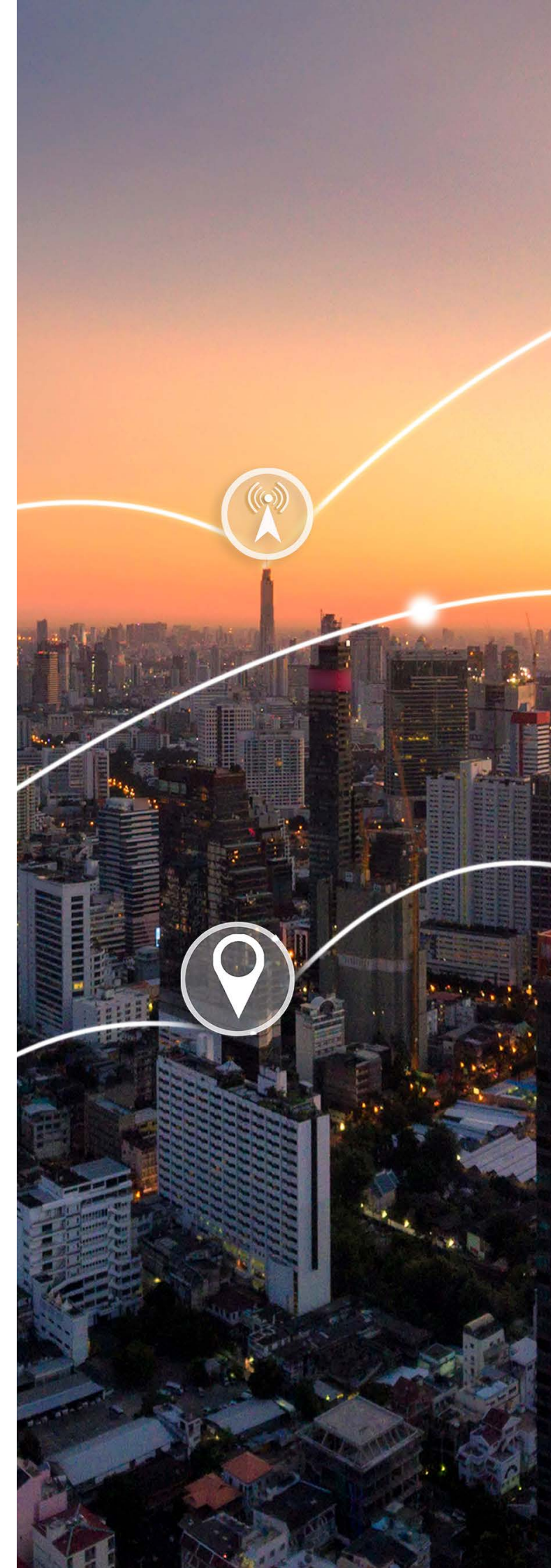
UKRAINE

Deadline for disclosure of UBOs and ownership structure postponed for nine months

The Ukrainian Parliament passed the Law that postponed the deadline for submitting ownership structure and supporting documents for disclosing ultimate beneficial owners of Ukrainian companies for nine months.

The postponement is due to numerous complaints from the business community about the inability to comply with the Law of Ukraine “On Prevention and Counteraction to Legalization of the Proceeds of Crime, Financing of Terrorism and Proliferation of Weapons of Mass Destruction” and implementing regulations.

The requirements to the UBO Package are contained in the Order of the Ministry of Finance of Ukraine and clarifications issued by the Ministry of Finance. For example, the Order establishes a general requirement to submit an ownership structure disclosing all shareholders of any direct or indirect shareholder of a Ukrainian company, including shareholders outside of Ukraine. In its clarifications, the Ministry of Finance reinforces this requirement and emphasizes the absence of any exceptions for public companies. This requirement not only imposes an unreasonable burden and unjustifiable interference into privacy but also makes compliance impossible for public companies that have their shares listed on a stock exchange where shareholders may change daily.





III · ESG criteria: a European overview

- How are ESG criteria regulated: a European overview
- Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?
- Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?
- What impact are ESG criteria having (or expected to have) on investment decisions and transaction structuring?

How are ESG criteria regulated: a European overview

Environmental Social and Governance (or "ESG" for short) is a broad and refers to three key factors when measuring the sustainability and ethical impact of a business or company investment. The most socially aware investors monitor companies using ESG criteria to screen investments.

Environmental criteria look at a company's contribution to environmental challenges (e.g. waste, pollution, greenhouse gas emissions, deforestation, and climate change) and its performance in this regard. Social criteria look at how companies treat people, for example in terms of human capital management, diversity, and equal opportunities, working conditions, health and safety, and product misspelling). Finally, governance criteria look at the manner in which companies are governed, for example in terms of executive's remuneration, tax strategy, and practices, bribery and corruption, diversity, and board structure.

At the core of ESG investing is the fundamental idea that businesses are more likely to succeed and deliver robust returns if they create value for all their stakeholders—employees, customers, suppliers, and society at large (including the environment) rather than benefiting only the company owners. Consequently, the ESG criteria examine how companies serve society and how they affect their current and future performance. The ESG analysis goes beyond what the company's current position. Considering future trends is of critical importance and should intrinsically include disruptive changes that may have a significant impact on the future profitability of a business or on its very existence.

The story of ESG investing began in January 2004 when former UN Secretary-General Kofi Annan wrote to over 50 CEOs of major financial institutions, inviting them to participate in a joint initiative under the auspices of the UN Global Compact and with the support of the International Finance Corporation (IFC) and the Swiss Government. The goal of the initiative was to find ways to integrate ESG into capital markets.

More specifically, the winds of change began to stir virtually every economic sector when the UN Paris Agreement was signed by world leaders in 2016, not long after the UN adopted their Sustainable Development Goals (UN SDGs). Those winds have since intensified for the asset management industry, first whipping up investor demands then regulatory pressure regarding their sustainability or environmental, social, and governance practices.

In the European Union, the European Commission has issued an array of regulations that touch on every type of asset manager and investment fund and other types of financial services firms. Asset managers must satisfy both regulatory and investor demands to change the way they invest and report, and the products they offer. Because asset managers are both issuers and users of financial and non-financial ESG information, these regulations bring both complexity and clarity — and possible competitive advantage — to firms that can ride the winds of change.

In March 2020 the European Commission released an Action Plan for Financing Sustainable Growth, which included clarifying institutional investors' and asset managers' duties, incorporating sustainability into the suitability assessment of financial instruments, and increasing transparency of sustainability benchmarks.

More precisely, the Action Plan includes three main objectives:

- direct private capital towards sustainable investments;
- integrating sustainability into risk management;
- promoting transparency on ESG issues in a long-term perspective.

Following the Action Plan, on June 22, 2021, the European Union has issued a Regulation on the establishment of a framework to facilitate sustainable investment (Regulation (EU) 2020/852) and amending Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector.

Such Regulation is aimed at defining general EU-recognized criteria for identifying sustainable activities. This defines the minimum criteria that enterprises should comply with in order to be considered environmentally sustainable. The Regulation provides for the issuance of certain delegated acts for its implementation, the issuance of which is still in progress.

At present, however, there is no clear and uniform regulatory framework for ESG criteria. As a result, alternative instruments such as ratings have become increasingly relevant.

ESG ratings developed by rating agencies specializing in collecting and analyzing data on the sustainability aspects of companies' activities are becoming increasingly important. Most international and domestic public (and many private) companies are being assessed and rated on their ESG performance by various third-party report and rating providers. Institutional investors, asset managers, financial institutions and other stakeholders are increasingly relying on these reports and ratings to assess and measure company ESG performance over time and as compared to their peers. There are currently a number of ESG data providers, including Bloomberg ESG Data Service, Corporate Knights Global 100, and Morningstar Sustainability Rating.

In conclusion, the number of companies incorporating ESG factors has grown rapidly since the beginning of this decade and is expected to continue to grow significantly in the decade to come. This is because investors increasingly prefer a company that is environmentally oriented and has high standards of corporate governance.

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«Albania is soon expected to catch up in the process of harmonizing Albanian legislation with European Union ESG regulations and directives.»

specific legislation/guideline has been drafted, institutions like the Bank of Albania and the Financial Supervisory Authority (“FSA”) are to be the main benchmark evaluators and authorities on ESG standards in Albania.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

There is currently no ranking or authorized benchmarking authorities for companies that are adopting ESG standards. Albanian companies mainly operate only in compliance with the current legislation in the Republic of Albania, as the application of international ESG standards is not mandatory. To satisfy EU accession requirements, the Albanian government is keen on being aligned with the relevant EU framework. For instance, the FSA is working to ensure that the legislation of the Republic of Albania is aligned with EU standards, and that ESG standards and requirements are implemented in the financial and insurance sectors.

Remarkably, some companies enforce ESG standards on voluntary basis, whether they are evaluated or ranked or not. At the same time there is a growing interest by Albanian companies and especially among subsidiaries and branches of foreign companies to be ranked by international ESG data providers to have a better opportunity to be part of the international market or to ensure successful collaborations in the future.

03 — What impact are ESG criteria having (or expected to have) on investment decisions and transaction structuring?

Although ESG criteria and standards are not mandatory under Albanian laws, they are still complied with and adopted by some large-scale Albanian companies. Compliance with ESG criteria is mostly noted among foreign companies operating in the Albanian financial and telecommunications markets. As the implementation of ESG criteria in Albania is still in its infancy, it is too soon to gauge the impact ESG criteria might have on investment decisions, especially considering that lack of reliable data may render their assessment difficult. It is not improbable that number of investors will exclude non ESG-compliant companies from their investment plans considering the increased risks

that could be associated with such failure. In the Albanian context, the impact of ESG criteria could also depend on how decisive state action for the implementation of such criteria will be, i.e. if equal importance will be given to every ESG factor or if one (e.g. environmental) will be preferred to others and if advantages or subsidies will be granted.

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

There are currently no specific ESG laws or guidelines for ESG benchmarking in Albania. However, Albania is soon expected to catch up in the process of harmonizing Albanian legislation with European Union ESG regulations and directives.

Through cross-border economic conferences and direct suggestions from EU financial institution partners, Albania has already been brought up to speed with the recent developments regarding measures to enhance ESG transparency of benchmark methodologies. In the context of a small economy, these measures are mostly envisioned to be adopted by companies operating in the financial sector (including banks, financial institutions, funds etc.) which have in place the right structure for adapting to ESG benchmarks. Although no decision has yet been made nor any



AUSTRIA



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«In its 2020-2024 program, the Austrian government introduced certain “goals” to promote sustainable investments, among others, the government is committed to issuing Green Bonds.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Austria has implemented laws requiring large companies of public interest to disclose in their management accounts relevant environmental, social, employee and anti-corruption matters referred to as non-financial reporting obligations. By introducing said obligations for large companies, Austria has implemented Directive 2014/95/EC into Austrian law.

These disclosure obligations apply to public interest enterprises (PIE), broadly speaking, publicly traded companies, financial institutions and insurance companies. Any company can also become a PIE by way of a legal act.

In their management report PIEs must disclose certain information related to non-financial measures, such as, for example, the proposed concepts to improve these non-financial matters

and the results achieved so far. The management report must also describe any existing risks arising from the implementation of non-financial matters and the manner in which the PIE will deal with such risks.

If a PIE does not disclose a concept, it must explain why it failed to disclose such concept (“comply or explain” approach).

Laws have been also enacted in relation to the “G” in ESG, i.e. the Governance part. These include protection of whistleblowers or anti-money laundering laws. Austria has not introduced laws on diversity in management boards of large (public) companies and in companies with permanently more than 1,000 employees (at least 30% of board members must be female).

In addition, guidelines in relation to matters around sustainability also exist in Austria. For example, the Austrian Financial Market Authority has issued ESG risk management guidelines, as such risks can impact company performance.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

There are currently no ECG benchmarks in Austria. However, companies will be compelled to adapt to the ESG criteria as investors will simply overlook companies that are engaged in problematic business fields.

Strict compliance with the ESG criteria will automatically lead to the exclusion of companies engaged in arms, tabaco, alcohol or coal. However, even investments into companies with mixed product portfolio might be already problematic under the ESG criteria.

03 — What impact are ESG criteria having (or expected to have) on investment decisions and transaction structuring?

ESG-compliant investments have already a massive impact on the investment landscape in Austria. Based on market research conducted in 2019, the volume of “sustainable investments” grew from 39 billion Euro to 65 billion Euro within

once year. In Austria, institutional investors and pension funds focus heavily on sustainable investments.

Also, in its 2020-2024 program, the Austrian government introduced certain “goals” to promote sustainable investments. Among others, the government is committed to issuing Green Bonds. Also, profits from ecological or ethical investments distributed to investors will be exempt from corporate gains tax. The definition of “ecological or ethical investments” is yet to be determined by the finance ministry; however, such tax exemption could provide a good incentive for the private investor to diversify his or her investment portfolio.

ESG will have a significant impact on banks, as considerable importance to ESG criteria will be placed in their financing decisions. Thus, banks will – even from a strategical viewpoint – distinguish its activities into (i) social banking (e.g. social bonds, social impact investing, social venture funds), (ii) environmental banking (e.g. green bonds, CO2 compensation, avoidance of greenwashing), and (iii) governance in banking (e.g. diversity of employees, avoidance of corruption, transparency and disclosure).

BELARUS



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«In recent M&A transactions, we have started noticing an increasing interest of investors in the ESG criteria during the due diligence process and, consequently, in making investment decisions.»

legal acts that worsen an employee's position in comparison with legislation are invalid. Also, trade unions, if created, may represent the interests of employees in collective negotiations, the entering into of a collective bargaining agreement and control over its implementation. At the moment, the creation of trade unions in business entities is not compulsory, and in private business entities, trade unions are rare. Trade unions also have the right, upon the request of their members and other citizens, to file a statement of claim in court in defense of their labor and socio-economic rights and interests. The charter of a business entity may include a representative of the employees and (or) of a trade union in its board of directors. Still, there is no such requirement at the legislative level. Business entities are free to independently determine wage conditions taking due account of the complexity of the work, skills of employees, working conditions, subject to the established minimum wage.

The primary anti-bribery and anti-corruption laws which may affect M&A activity in Belarus are the Law on Combating Corruption, the Law on the Basics of Crime Prevention Activities, Decree of the President of Belarus on Strengthening the Requirements for Managerial Personnel and Employees of Organizations, Decree of the President of Belarus on Additional Measures to Combat Corruption, the Criminal Code and the Code on Administrative Offences. These laws envisage criminal and administrative liability for various individuals, including, among others, state and local governmental officials, officers and employees of private companies and individuals.

The majority of corruption crimes carry imprisonment, deprivation of the right to hold certain positions or to engage in certain activities. Belarus has also ratified the United Nations (UN) Convention on Combating Corruption dated 14 December 2003. Within the framework of international cooperation, information exchange is carried out with thirty-nine other states. According to international experts, the level of anti-money laundering in Belarus (at the legislative level) meets the international standards of the FATF (Financial Action Task Force on Money Laundering), which is an essential condition for attracting funds from external investors.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

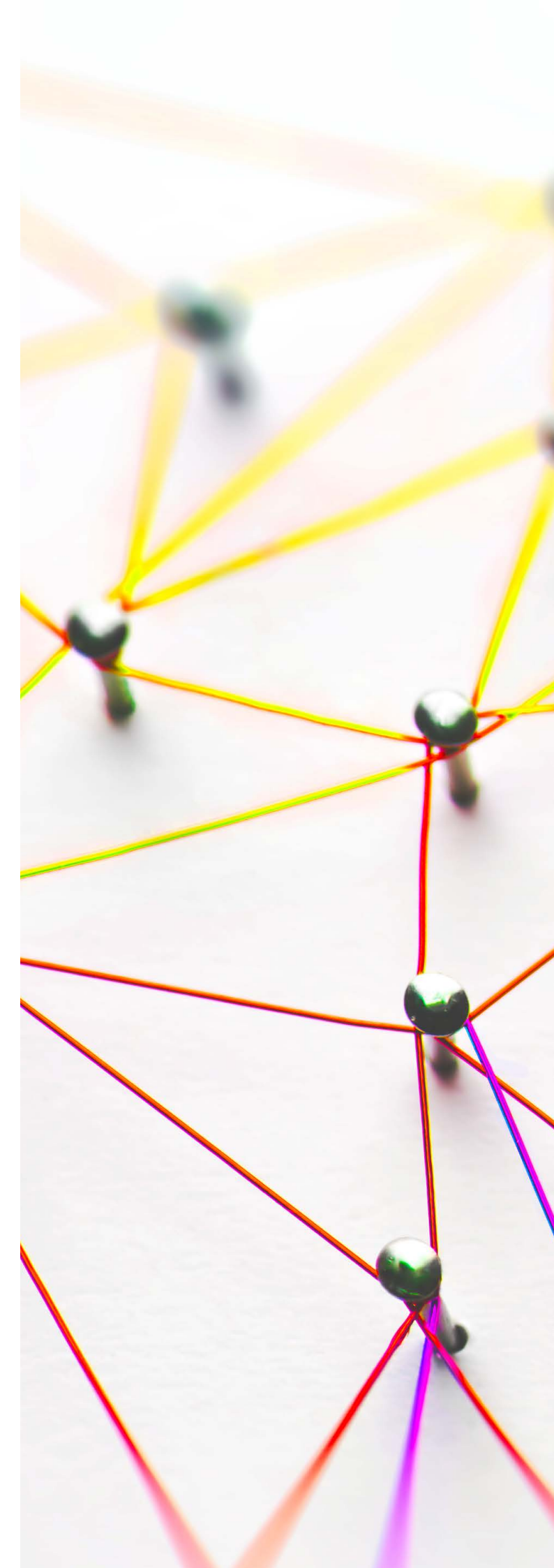
At the moment, there are no clear ESG benchmarks or criteria in Belarus. However, interest in this topic is increasingly on the rise. The first major conference with representatives of significant state and private businesses as well as UN representatives will take place in October 2021. Moreover, in recent M&A transactions, we have started noticing an increasing interest of investors in the ESG criteria during the due diligence process and, consequently, in making investment decisions.

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Belarus does not have separate national ESG guidelines, soft or hard laws. However, the relevant norms may be partially found across different laws.

The main law regulating environmental issues is the Law on Environmental Protection. The Water Code, the Land Code, the Subsurface Code, the Law on Wildlife should also be considered. Enterprises generally must obtain certain licenses and permits, and adhere to specific requirements, among other things.

Employment relations are mainly regulated by the Labor Code of Belarus, which enshrines provisions on employees' protection. Any terms and conditions of employment and any local



BOSNIA AND HERZEGOVINA



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«There are some hard laws that include many ESG principles and criteria.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

In Bosnia and Herzegovina ("BiH") there are no specific ESG guidelines or application. Since this is a relatively new topic, it can only begin to be established as a specific business standard that should be implemented in companies that wish to be better positioned in the market and among investors. An evident increase in startup companies in BiH strives to keep pace with companies at the global level, while on the other hand there are companies that have existed much earlier and gone through the process of privatization and adjustment to the new business system.

Uniformed ESG criteria in BiH, even if generally accepted, would in any case reflect already existing and binding laws and regulations in the field of environmental protection, labor law and company law. From that point of view, there are some hard laws that include many ESG principles and criteria, especially in the field of environmental protection and waste management via the polluter pays principle. As its name suggests, this principle means that polluting enterprises must pay a fee. However, other specific progress in

practice in environmental protection has not yet been achieved, which to some extent makes it easier for investors due to less obligation to which companies are exposed. In addition, energy efficiency is a hot topic that undoubtedly affects whether a given project and company will be more (or less) attractive.

Companies also vary widely in the "S" part (i.e. "Social") of ESG. In any case, it has not yet been used as an advantage.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

No specific ESG benchmark for companies would make them more attractive for investors. In other words, in BiH most investment decisions still rely primarily on the potential benefits of investing in certain sectors such as tourism, agriculture, food processing, energy, wood, metal processing, automotive, and IT.

Large-scale development programs and huge energy, transportation, and tourism investment projects require significant capital investments. Involving strategic investors and applying various business and investment models, such as concession arrangements, various PPP models, financing from specialized institutions like World Bank, EBRD, etc. offer the most common solution for achieving such investment goals. At the same time, these investments are required to be in accordance with relevant local laws and regulations, with no other imposed criteria such as ESG. In sum: ESG is not mandatory but can only represent a voluntarily accepted standard.

03 — What impact are ESG criteria having (or expected to have) on investment decisions and transaction structuring?

Although ESG is a relatively new factor in the global market, it is expected that it will become increasingly recognized (and therefore valued) in BiH. It can be observed that certain companies in BiH are promoting their business through ESG criteria; however, ESG still does not represent a relevant indicator for the companies standing out to the extent that could be considered relevant.

BULGARIA



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«It is expected that ESG will become increasingly relevant over the next few years.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

There is currently no uniform document or specific ESG guidelines that apply in Bulgaria. ESG matters are to be found across different laws and legally binding documents.

Environment – Bulgaria has adopted environment protection and waste management legislation. Still this is a rather unpopular matter. Depending on the business activity of a certain company, such obligations may be imposed (for example, management of hazardous waste). In case of violation, the applicable environmental laws provide for financial penalties for the relevant company.

Social – Bulgarian employee protection is subject to certain regulations and restrictions. Labor laws provide for strict and mandatory rules on working hours, annual (holidays) and maternity leave, salary, home working etc. Employees are also protected by a specific non-discrimination law.

Bulgarian courts strictly comply with social and labor laws and enhance employee protection. In case of violation, employers are subject to financial penalties.

Corporate – corporate governance is regulated generally on a legislative level and also in the National Corporate Governance Code, a soft law document intended for public companies. Bulgarian legislation in the field provides for general rules such as company corporate governance, shareholders' rights and obligations etc. Companies, acting via their directors, must observe ESG considerations regarding its employees on such matters as health and safety, non-discrimination, fair pay etc.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

ESG considerations do not currently play a key role on the Bulgarian market among professional investors and investment funds. Bulgarian legislation does not enhance or promote such considerations. Companies need to comply with general rules and laws, but ESG still remains an unpopular matter.

03 — What impact are ESG criteria having (or expected to have) on investment decisions and transaction structuring?

Bulgarian legislation does not provide for any specific ESG criteria that might have an impact on decision and transaction structuring. Taking into consideration the policy for financial sustainable growth on an EU level and the development of the Bulgarian capital market, however, it is expected that ESG will become increasingly relevant over the next few years. Higher ESG standards and criteria will lower the risks for international investors and investment funds and, in turn, will increase the value and interest in Bulgarian companies and businesses.

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«**At the moment, ESG in Croatia is starting to attract more attention in the corporate world and this attention is expected to take off in the near future.**»

the importance of sustainable development of companies, and to create a dialogue between the government and the private sector. As part of this project, companies and other organizations may adopt a Diversity Charter which binds them to implement diversity and non-discrimination policies in their day-to-day business activities.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

HIRO, the Croatian sustainability index, operates as a methodology that offers a comprehensive view of sustainable corporate policies in Croatia and also in comparison to other European countries through activities in six areas: governance, environment, work environment, human rights, children's rights, and community. HIRO is the only rating that systematically measures levels of sustainability of companies in Croatia. More than a hundred companies participate annually in the scheme, which has been running for fourteen consecutive years (formerly as the CSR Index).

Also, the Croatian Chamber of Commerce annually organizes a CSR Index contest in which Croatian companies with top financial results recorded in the past year are provided with an opportunity to fill out a questionnaire mainly consisting of questions on how such companies implement corporate social responsibility policies. Top-performing companies may announce the news of winning the CSR Index award and use CSR Index distinguishing signs in all forms of communication with their business partners.

03 — What impact are ESG criteria having (or expected to have) on investment decisions and transaction structuring?

At the moment, ESG in Croatia is starting to attract more attention in the corporate world and this attention is expected to take off in the near future. The main reason for somewhat later rise of attention and awareness is the fact that the Croatian market mainly consists of micro, small and medium-sized enterprises that account for more than 60% of the overall revenues.

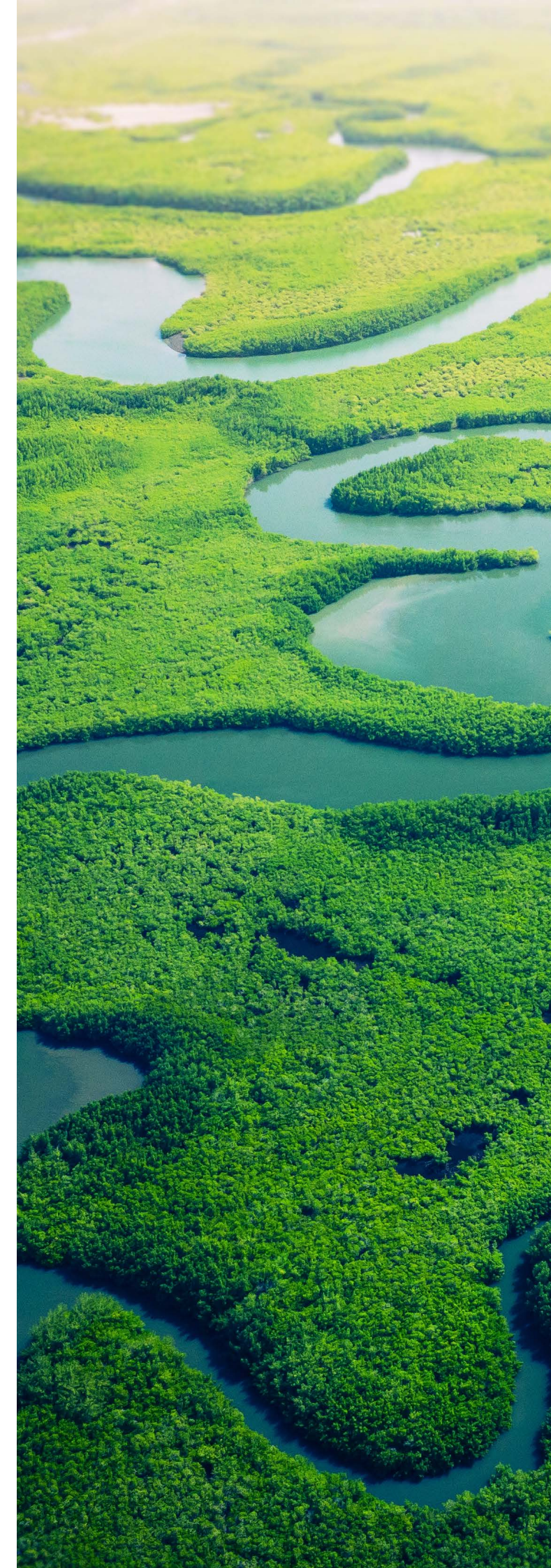
Also, research has shown that a company's reputation accounts for 75% of its value and

that 86% of the so-called "Millennials" have declared that socially responsible investment is key for making investment decisions. Investment decisions are therefore expected to be taken in greater reliance on a company's successful implementation of ESG policies.

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Unfortunately, as of this date Croatia does not have any hard laws that require of all companies to follow specific ESG rules in their business activities. However, in 2019, the Croatian Financial Services Supervisory Agency published a new Code of Corporate Governance ("CCG"). Adopting the CCG as part of each company's corporate rules is a mandatory requirement for all companies that want their shares listed on the Zagreb Stock Exchange. Some of the most important positive implications resulting from the implementation of the CCG are the increased number of women serving in management positions, an enhanced corporate transparency, and improvements made in the fields of ecology, human rights protection, and anticorruption policies.

The Croatian Business Council for Sustainable Development is a non-governmental platform intended to educate and raise awareness on



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«**The Cyprus Securities and Exchange Commission, which is the National Competent Authority and regulator for Investment Funds, Investment Firms and Asset Managers has already enforced the EU directives regarding ESG.**»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Following Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups ("NFRD", Cyprus amended the Companies' Law, Cap.113 (the "Law") on the 2 June 2017 - Amending Law (No.3) of 2017 thus transposing the said Directive into national legislation. Below are some of the most important amendments:

1. the abolition of the audit exemption, which had previously applied to small/dormant companies;
2. exceptions to certain accounting and disclosure requirements,
3. available to companies/groups categorized as being small or medium sized;
4. prohibition on payment of dividends if any development and formation costs are included

as assets in the balance sheet and have not been completely written off, unless the amount of the reserves available for distribution and profits brought forward is at least equal to that of the costs not written off, and

5. the management report must include a statement that it provides an objective review of the development and performance of the company's business, position and a description of the principal dangers and uncertainties that it faces.

- The Management Report must cover the following:
- any modifications made during the financial year in regard to the business strategy of the company or its subsidiaries or in the category of business in which the company has an interest;
- financial projections in respect of the company's activities;
- specification the company's R+D activities;
- information related to associated branches;
- disclosure of the company's use of financial instruments, if any, during the financial year;
- disclosure of the company's plans and internal policies in regards to its financial risks, including its policy for hedging all forms of projected transactions;
- disclosure of the company's recovery strategy to price risk, credit risk, liquidity risk and cash flow risk;
- changes to the company's share capital;
- particulars of any acquisition by the company of its own shares;
- substantial amendments in the structure, responsibilities or remuneration of the Board; and
- recommendations regarding the distribution of profits, absorption of losses and creation of reserves.

The NFRD lays down rules on disclosure of non-financial and diversity information by certain large undertakings and groups and has been transposed into Cypriot law.

Large public interest entities (i.e. entities listed on a regulated market, banks with more than 500 employees) must publish the following information on an annual basis:

- environmental matters;
- social and employee matters;
- respect for human rights; and
- anti-corruption and bribery;

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

The amended Benchmark Regulation introduces the EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks. It aims to ensure that benchmark administrators comply with the requirements laid down therein to use those labels when marketing EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks in the European Union.

03 — What impact are ESG criteria having (or expected to have) on investment decisions and transaction structuring?

The Cyprus Securities and Exchange Commission ("CySec"), which is the National Competent Authority and regulator for Investment Funds, Investment Firms and Asset Managers has already enforced the EU directives regarding ESG, Taxonomy, SDFR.

Education and Encouragement of Innovation

CySEC's aim is to assist market players to better understand sustainable finance, which is expected to contribute to creating a robust and compliant regime CySEC will also provide support through the CySec Innovation Hub to entities innovating in the area of Green Fintech.

GERMANY



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«**The German Financial Supervisory Authority (BaFin) is working on a directive for investment funds advertised as "sustainable" (among other similar denominations.)**»

Regulation"). The regulation aims to ensure the accuracy and integrity of benchmarks.

With the rise of financial instruments being touted as green, climate friendly, or simply being advertised with other ESG related claims, legislators and regulators alike have become concerned about "greenwashing" of financial instruments. To ensure that supposedly ESG-inspired financial products are indeed delivering on their promise, the EU legislator has – for the sub-group of index-related financial products – enacted level 2 legislation requiring index administrators to publish information on various matters, including on how exactly ESG factors like greenhouse gas intensity are taken into account as regards the index components' selection, weighting or exclusion and what impact ESG factors have with respect to an index.

In particular, Delegated Regulations (EU) 2020/1816 and (EU) 2020/1817, which entered into force on December 23rd, 2020, provide mandatory templates to ensure comparability of the ESG related disclosures. Chiefly among which, index administrators are required to calculate and disclose a score value in the form of an aggregated weighted average value in relation to a number of ESG factors with respect to their ESG-based indices.

The market practice as regards the above disclosure requirements varies significantly. The Delegated Regulations leave some room for interpretation, and there is no common market standard that applies to the disclosure requirements. It is even debatable whether or not there may be an opt-out as regards the disclosure requirements for index administrators, which do not suggest that their indices pursue ESG objectives or even merely take into account ESG factors.

Ultimately, affected index administrators should carefully consider the new disclosure requirements and their impact on their methodologies and publications.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

The German Financial Supervisory Authority (BaFin) is working on a directive for investment funds

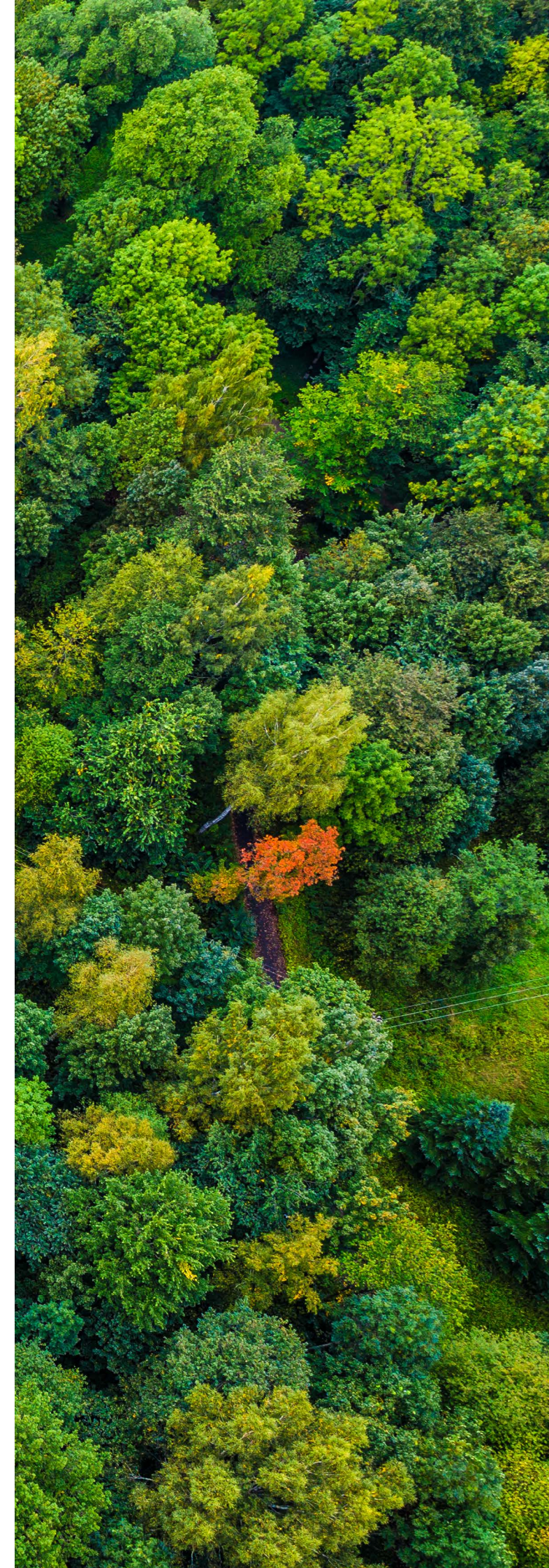
advertised as "sustainable" (among other similar denominations). The draft directive stipulates for example, that an investment fund may only call itself "sustainable" provided that a minimum investment quota of 75 percent in sustainable assets is included in the investment conditions and certain minimum exclusions are guaranteed, e.g., that portfolio companies do not derive more than 10 percent of their revenue from energy production or other use of fossil fuels (excluding gas) or nuclear power.

However, numerous critical comments had been received by the end of the consultation period with calls for a uniform European line in particular. Further developments therefore remain to be seen. Nevertheless, not only companies based in Germany should keep an eye on further developments, as the directive could also serve as a blueprint for future regulation at European level.

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Certain indexes and benchmarks like DAX, FTSE or Dow Jones are well-established indicators of economic performance all over the world. With market data and computing resources being widely available, a vast array of indexes measuring the performance of all kinds of specific sub-groups of market-traded companies, market determined interest rates, or commodities function as reference for financial instruments.

Following the LIBOR scandal in which a number of banks fraudulently manipulated the interest rate benchmark, benchmark administrators became regulated: Since 1 January 2018 benchmarks their administrators and are supervised in accordance with Regulation (EU) 2016/1011 ("Benchmark



GREECE



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«Transparent and reliable ESG data are important to institutional investors whose policies mandate the incorporation of ESG information into their capital allocation decisions.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

The European legislation adopted under the framework of the European Green deal and on the basis of the EU Sustainable Finance Action Plan (as updated) is directly applicable in Greece. The Taxonomy Regulation, the Sustainable finance disclosures regulation (SFDR), the Regulation on sustainability benchmarks, the Non-Financial Reporting Directive, and subsequent amendments to other EU financial regulation aim to integrate environmental, social and governance factors (ESG) across the financial market activities actively contributing to the EU Renewed Sustainable Finance Strategy.

The Hellenic Capital Market Commission (HCMC) is constantly informing the market in Greece and the persons/entities falling into the scope of the ESG regulation of their regulatory obligations and the applicable legislation, stressing the need to

comply in time as well as the competitive added value of sustainable companies in the international capital market. Following the Joint ESA Supervisory Statement on the application of the SFDR, the HCMC has encouraged corporations to take into consideration for compliance purposes the requirements set out in the draft Regulatory Technical Standards ("RTS") that has been submitted to the European Commission on 4 February 2021.

Furthermore, on the Governance side, the new Law on Corporate Governance (Law 4706/2020) has recently entered into force in Greece, strengthening the internal structure of listed companies in order to appeal to investors in the Greek economy and capital markets.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

The ESG Reporting guide published by the Athens Stock Exchange serves as a tool for use by companies to identify the ESG issues for consideration and management.

These are practical guidelines on the metrics to be used for the disclosure of information and communication to relevant stakeholders targeted to ATHEX listed issuers but also useful for companies of all sizes across all sectors. The Guide provides core metrics that all companies are advised to report on, advanced metrics for advanced ESG performance and sector-specific metrics.

Recently, the Athens Stock Exchange has announced the creation of the ATHEX ESG Index indicating the performance of ATHEX listed companies on environmental issues, social responsibility and corporate governance. The ESG index aims to support listed companies' improvement of their ESG status upgrading the Greek Capital Markets industry towards the ESG goals.

Thirty-five (35) companies initially participate in the ATHEX ESG Index. The goal, however, is to increase the number to 60 i.e., the same number of members forming the ATHEX General index. The ESG Index first composition has been determined

by the ESG score given to the companies based on 2019 published data and will be revised each year.

03 — Are there particular incentives or benefits depending the financing method used?

Entities that improve their performance on ESG issues that are material for their industry have the benefit of:

- an improved access to capital;
- a reduced compliance risk
- a strengthened corporate performance
- an enhanced corporate reputation, and
- stakeholder engagement (ESG reporting guidelines)

Besides traditional financing data, long-term investors look on companies' ESG performance to measure their competitive positioning and operational efficiency. Transparent and reliable ESG data are important to institutional investors whose policies mandate the incorporation of ESG information into their capital allocation decisions.

Notably, in the banking sector ESG data are essential for companies' financing. For example, the Hellenic Development Bank of Investments, when making an investment, evaluates fund managers as such based on their ESG performance, considers whether there is an ESG compliance officer and the impact investments in funds. Similar policies apply for credit institutions in Greece.

The implementation of companies' strategies in Greece to align with ESG criteria and the development of processes on how to integrate ESG criteria into their policy and also mitigate climate change risk is key to companies' long-term value creation, competitiveness and in line with the sustainability commitment applicable.

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«**To provide insight to member investors regarding ESG-ranking of target companies and funds, the HIFA has supplemented its policy for investment funds with III-tier ranking of ESG qualification. The funds are ranked as, ESG-compliant, ESG-Plus and ESG-Impact companies.**»

in the financial sector by publishing soft laws and policies, research publications and assessment reports. As part of the HNB's collaboration with the Budapest Institute of Banking (BIB) and other organizations, the HNB also facilitates research and academic programs on Green Finance.

As for soft laws, to facilitate the assessment of current market trends, the implementation of the SFDR regulation and the application of ESG principles, the HNB published a Memorandum for Executives setting out its ESG guidelines for the investment sector. The HNB has also held multiple consultations with the Association of Hungarian Investment Fund and Asset Management Companies (HIFA) and the Budapest Stock Exchange on the application and impact of ESG principles in the Hungarian market.

In the framework of market-based initiatives, the HIFA has published its III-tier ESG ranking criteria for investment funds in Hungary, and the Budapest Stock Exchange published its ESG Reporting Guide for publicly listed companies, summarizing practical issues and recommendations on ESG compliance and reporting.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

To provide insight to member investors regarding ESG-ranking of target companies and funds, the HIFA has supplemented its policy for investment funds with III-tier ranking of ESG qualification, publicly available on the HIFA website from 1 January 2021. The funds are ranked as, ESG-compliant, ESG-Plus and ESG-Impact companies: compliance means the screening and exclusion of any investments that do not comply with ESG principles, ESG-plus funds also give priority to ESG compliant investment assets in course of their investment decisions. An ESG-Impact qualification, on the other hand, applies only to themed funds that invest exclusively in those sectors that primarily serve sustainable economic development (e.g. renewable energy sector).

03 — Are there particular incentives or benefits depending the financing method used?

To assess the risks associated to new investments,

to screen financial indicators does not longer suffice. In addition to “hard” financial data, soft data that are not necessarily recorded in financial accounts must also be considered. Soft factors that are crucial for ESG—other than corporate structure and governance screening—include how corporations adapt their policies to environmental change, and how corporate operations make social contributions, as these aspects have impact on a firm's long-term success. Therefore, a full-scale assessment must be based on both hard and soft data on the target companies. As for sectorial developments, ESG criteria are of growing concern to real-estate investors: buildings with higher energy-efficiency and lower CO2 emission have received increasing attention in the past years. As of now, over 35% of stakeholders consider ESG compliance as part of their decision-making. Due to the rising interest in ESG-qualified real estate investments, the HFA plans to establish sector-specific ESG policy for real-estate funds.

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Regulation (EU) 2019/2088 of the European Parliament and Council of 27 November 2019 on sustainability related disclosures in the financial services sector ("SFDR Regulation") is directly applied in Hungary. In its capacity as central bank and financial regulator, the Hungarian National Bank (HNB) is responsible for the implementation of the SFDR Regulation in the Hungarian market.

In line with the Action Plan of the Network for Greening the Financial System, which strives to establish and share best practice and professional experience in risk assessment measures for the financial sector related to climate change, the HNB (a member of the NGFS since 2019) established its Green Program in 2019 to facilitate implementation of EU sustainability requirements



IRELAND



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«Investors are seeking to invest in companies that have the capabilities to achieve and maintain strong financial and ESG performance.»

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

Investors are increasingly looking to align their investment decisions with their personal priorities, and are not also focused on non-financial returns/outcomes. Investors are seeking to invest in companies that have the capabilities to achieve and maintain strong financial and ESG performance, such that long term incentives align investment practices with social responsibilities and principles in order to meet investor demands.

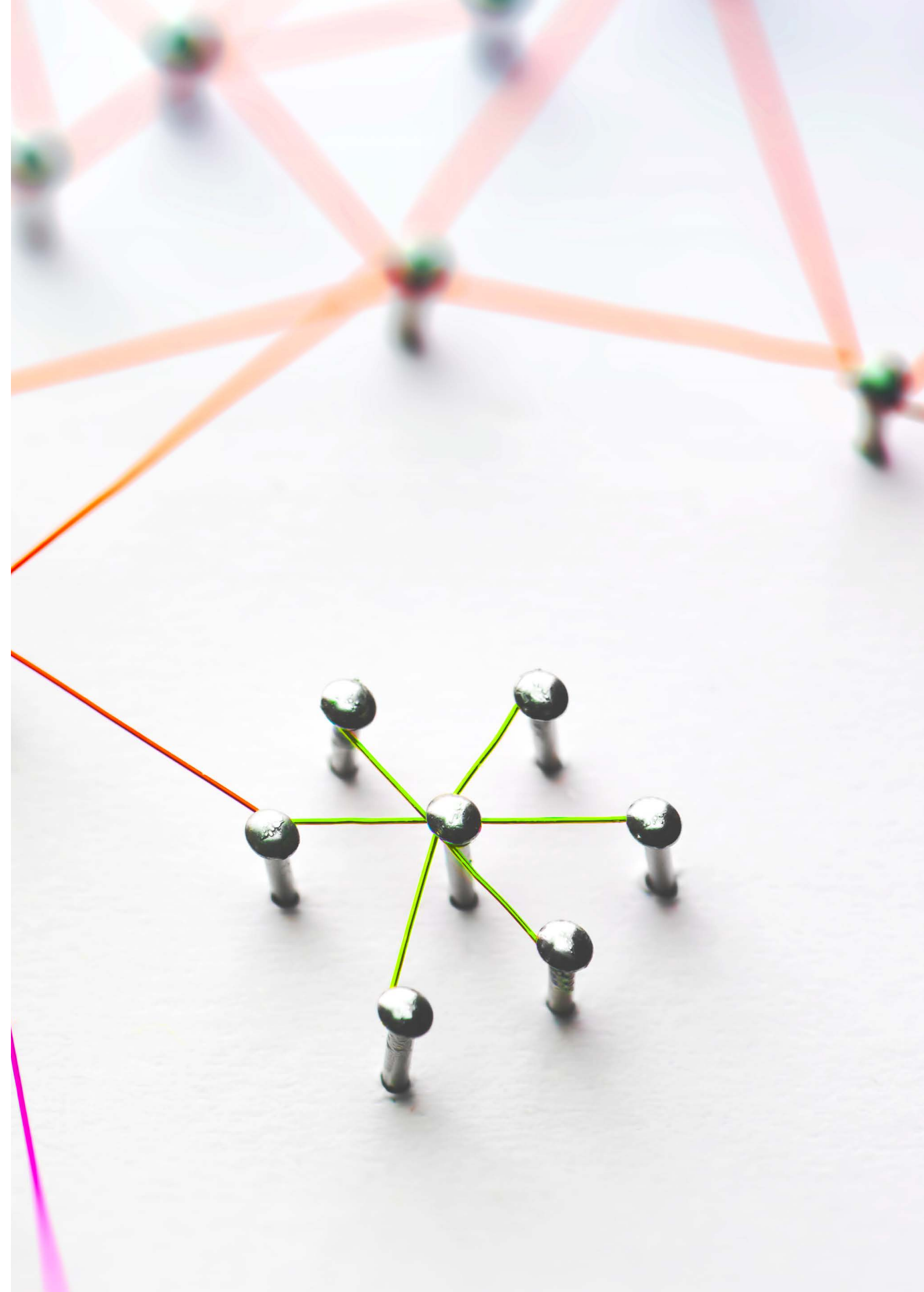
03 — Are there particular incentives or benefits depending the financing method used?

Investors are increasingly turning towards the Boards of companies for accountability. KPIS are generally put in place to supervise the management of ESG issues, used as a tangible measurement to quantify the extent to which goals are achieved.

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Yes. The main substantive ESG related regulations in Ireland are

- the Sustainable Finance Regulation (Regulation EU 2019/2088)
- the Taxonomy Regulation (Regulation EU 2020/852)
- the Low Carbon Benchmark Regulation (Regulation 2019/2089)
- the European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017 as amended, which transposed into Irish Law the Non-Financial Reporting Directive (Directive 2014/95/EU)





ITALY



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«**ESG compliance is becoming increasingly important for companies interested in obtaining funding. In fact, companies with high ESG values are generally considered to be better managed, more sustainable, and future-oriented, and are therefore preferred for access to finance.**»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Over the last few years, the Italian market has shown a growing interest in sustainable investment as a result of growing demand from institutional investors and also because of a greater awareness among managers of the opportunity represented by an active involvement in sustainable investment. Underlying the need to integrate environmental, social, and good corporate governance issues into investment decisions are risk reduction and value generation considerations.

ESG criteria do not represent a separate sphere of action from the companies' business. Risk management and the ability to seize market and growth opportunities cannot be dissociated from an analysis of environmental, social and governance elements.

As regards the regulation of ESG criteria in Italy, there are no specific ESG guidelines. Broadly speaking, there are internal association guidelines inspired by the most widespread international practices, which aim to support members in defining the investment strategy that best integrates financial elements with environmental, social and good governance considerations.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

There certainly are soft law instruments to which companies and investors refer. The new Corporate Governance Code for listed companies, recently approved by the Italian Corporate Governance Committee and published on 31 January 2020, is a clear example of soft law containing ESG principles. The main innovation is the introduction of the concept of "sustainable success", which is defined as "the objective that guides the action of the board of directors and which consists in the creation of long-term value for the benefit of shareholders, taking into account the interests of other stakeholders relevant to the company". This is consistent with the broader international context focused on a growing importance of ESG factors in company management.

In addition, the Bank of Italy has recently issued a Sustainable Investment Charter. The Charter defines the Bank of Italy's vision on sustainability, and the principles and reference criteria for the sustainable management of the Bank's financial investments, to be applied exclusively to those financial activities over which the Bank has full decision-making autonomy. The Bank prioritizes companies mindful of the responsible use of natural resources and their impact on ecosystems; that are able to maintain adequate security, health, justice, equality and inclusion; and generate income and employment in accordance with ethical principles and with the best corporate governance arrangements

03 — Are there particular incentives or benefits depending the financing method used?

ESG compliance is becoming increasingly important for companies interested in obtaining funding. In fact, companies with high ESG values

are generally considered to be better managed, more sustainable, and future-oriented, and are therefore preferred for access to finance.

A case in point is the Bank of Italy's Sustainable Investment Charter, which adopts specific exclusion criteria to identify the perimeter within which to select investments. The investment universe excludes issuing companies that do not comply with the eight fundamental conventions of the International Labour Organisation (ILO), which require companies to respecting fundamental rights, including the elimination of forced labour, trade union freedom, the abolition of child labour and the elimination of labour discrimination; international treaties on biological, chemical, anti-personnel mine, cluster, nuclear, invisible fragmentation, incendiary and laser blinding weapons. In addition, tobacco producers are excluded.

Therefore, companies that generate negative social and environmental impacts risk being excluded from access to credit, while activities with positive impacts, properly measured and reported, can benefit from privileged channels and preferential financing conditions.



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«Although North Macedonia has not yet adopted any ESG principles, in its quest to become part of the EU, North Macedonia's legislation is fully compliant with EU laws. Given the EU's leading role in the ESG trend, it is just a matter of time for North Macedonia to implement ESG-related principles in its legislation, or as soft law.»

development that takes into account the expectations of stakeholders. Specifically, the government has adopted a National Agenda for Corporate Social Responsibility and established a National Coordination Body for Corporate Social Responsibility as a permanent working group. This agency's goal is to raise awareness about social responsibility, to develop capacities and competencies, and to help establish social responsibility among companies.

In addition, although North Macedonia has not yet adopted any ESG principles, in its quest to become part of the EU, North Macedonia's legislation is fully compliant with EU laws. Given the EU's leading role in the ESG trend, it is just a matter of time for North Macedonia to implement ESG-related principles in its legislation, or as soft law.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

Since there is no common understanding on what precisely ESG is and what is expected of ESG-compliant organizations, companies are left to decide which ESG standards are relevant before making an investment. There is not precisely set ESG benchmark that companies need to adapt to if they want to attract professional investors.

However, most ESG values and principles are already part of Macedonian legislation. For example, in addition to ongoing campaigns for business ethics and corporate governance, major standards for corporate integrity are set in the Criminal Code, which provides for the criminal liability of legal entities, and also in anti-money laundering law, which is fully aligned with FATF recommendations. As for the social aspects, employment discrimination in any shape or form is prohibited by law. There is an obligation for conducting educational activities for employees in order to foster labor rights. Companies are required to implement personal data protection policies to ensure equality of opportunity, respect for human and labor rights, and to take steps to ensure employees' well-being.

As for environmental protection, North Macedonia has adopted a set of laws that incorporate many

of the international instruments. Environmental obligations vary across company activities.

03 — Are there particular incentives or benefits depending the financing method used?

Despite an increasing ESG awareness, North Macedonia is still at an early stage in ESG development compared to other EU jurisdictions. However, that does not mean that North Macedonia is not eager to catch up with the EU. It is almost certain that as the global rise of ESG criteria continues, the regulatory landscape of North Macedonia will follow. Companies that operate in North Macedonia are expected to proactively start to adopt ESG standards in their compliance programs to achieve best practices and preempt upcoming binding legislation. Having in mind the cross-border nature of these questions, it is just a matter of time before Macedonian businesses start to feel the effects of the ESG regulations, mostly because of the presence of foreign investors and the new laws that will be grounds for international litigation.

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

North Macedonia has not yet adopted any ESG-related guidelines or regulation. The lack of a standardized set of principles and reporting practices probably does not come as a surprise, especially having in mind that the ESG criteria are just now beginning to gain momentum on the world scene.

However, the lack of precisely defined principles does not mean that companies operating in North Macedonia do not comply with what is now known as ESG. For more than 10 years, the North Macedonian government has been implementing different projects and campaigns for promoting corporate social responsibility i.e. transparent and ethical behavior and sustainable



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«Polish companies, just like their international competitors, find the implementation of ESG criteria to be an opportunity to earn the trust of their environment (including investors) and to achieve long-term success.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Investing on the basis of ESG criteria is not new in Poland, but so far it has not been commonplace. Due to the growing popularity of socially responsible investing, Polish companies, just like their international competitors, find the implementation of ESG criteria to be an opportunity to earn the trust of their environment (including investors) and to achieve long-term success.

The implementation of Directive 2014/95/EU into Polish law by the Polish Accounting Act and the Regulation of the Minister of Finance on current and periodic information provided by issuers of securities had an essential impact on ESG data reporting.

Pursuant to the Accounting Act there is a requirement for large entities (e.g. banks, insurance companies, and public companies) employing at least 500 employees and fulfilling certain requirements in terms of balance sheet or net turnover to disclose certain ESG information in their annual reports, including, the company's practices in social, employment, environmental, and human rights areas and key non-financial performance indicators.

Pursuant to the Regulation of the Minister of Finance, public companies are required to provide information on their diversity policy if they meet at least two of the three requirements set forth in the Regulation, namely: (i) employment (> 250 employees) (ii) minimum balance sheet figure, and (iii) total or net turnover.

Under the Best Practice for the WSE-Listed Companies¹ (soft law), public companies listed on the Warsaw Stock Exchange (WSE) should:

- inform whether ESG criteria are taken into account in their business strategy, and
- demonstrate an equal pay policy and explain what measures they take to eliminate inequalities.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

A number of guidelines have been developed to assist companies in disclosing the ESG information, also in Poland. Attention should be given to the Polish standard of ESG reporting - the Non-financial Information Standard (SIN)² which was established at a local initiative of experts. It is intended for public and private companies.

In 2021 the WSE published the "ESG Reporting Guidelines. Guide for Issuers". The Guide was created to assist companies in disclosing ESG information and to improve the comparability and reliability of such data.

Growing interest in ESG investments is shown by the creation of the first index in Central and Eastern Europe listing top-performing companies in meeting the ESG requirements (RESPECT Index, which was replaced in 2019 by WIG -

ESG). The weight of companies in the WIG -ESG index depends on the number of free float stocks adjusted based on:

- the results of the ESG ranking (Sustainalytics) and
- assessment of adherence to corporate governance principles.

03 — Are there particular incentives or benefits depending the financing method used?

Based on a report prepared by the WSE in consultation with respondents (80% of whom were representatives of brokerage houses), an increase in investments based on the ESG criteria can be seen. Almost half of the respondents claim to take ESG best practices into account when making their investment decisions. 88% of respondents have indicated that investor's view companies applying the ESG practices as featuring a reduced level of risk.

To sum up, the global ESG investing trend can also be seen in Poland, and there are no signs of its reversal. The pressure to implement strategies and ESG reporting will probably be even greater, and companies that fail to adapt may encounter some problems e.g. in raising capital.



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«The need for relevant ESG comparable information has become a requirement for professional investors/investment funds when making real-world business decisions, including M&A decisions.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Following the Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, On 28 July Portugal published Decree Law 89/2017 amending the Portuguese Securities Code and the Portuguese Commercial Companies Code.

This Decree Law, which transposed Directive 2014/95/EU requires that some large companies disclose relevant non-financial information to provide investors and other stakeholders a picture of their development, performance and the impact of their activity. The disclosure of non-financial information and internal diversity policies is mandatory for public interest entities with more than 500 employees.

Such companies are required to give an overview of their business model, policies, outcomes, principal risks and key performance indicators, including environmental matters, social and employee aspects, respect for human rights, anti-corruption and anti-bribery issues.

Portugal also published Law 62/2017 of 1 August concerning the balanced gender representation in the management and supervisory bodies of public sector entities and of listed companies.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

Unquestionably, ESG issues and metrics are of growing interest among investors, asset managers and other stakeholders in assessing the performance of target companies. However, there is also a growing awareness of the complexity of measuring and comparing ESG performances.

The need for relevant and consistent ESG comparable information has become a requirement for professional investors/investment funds when making real-world business decisions, including M&A decisions.

Numerous ESG ratings and sustainability indices exist, and the non-standardization of ESG factors that apply to all companies makes the process of comparing ESG information very difficult. BCSD Portugal, the Portuguese entity of the Business Council for Sustainable Development, monitors and contributes to the development of ESG policies, develops knowledge and promotes debate with the importance of ESG matters. BCSD Portugal issued a guide to support companies in reporting ESG information.

Although there is no specific ESG benchmark companies are required to adopt, the following ratings and indices are the most common ones used: Sustainability indices such as MSCI ESG and Sustainalytics, and Climate Disclosure Project scoring that assesses an entity's environmental performance.

03 — Are there particular incentives or benefits depending the financing method used?

The ESG financial ecosystem is evolving. Voluntary reporting, materiality of ESG information and consistency of ESG information are critical points in evaluating and judging the long-term performance of companies.

The growing interest in ESG factors on investment decision and transaction structuring reflects the impact that environmental, social and corporate governance risks and opportunities have on the long-term performance of companies and the need to give to ESG factors appropriate consideration in investment decisions.

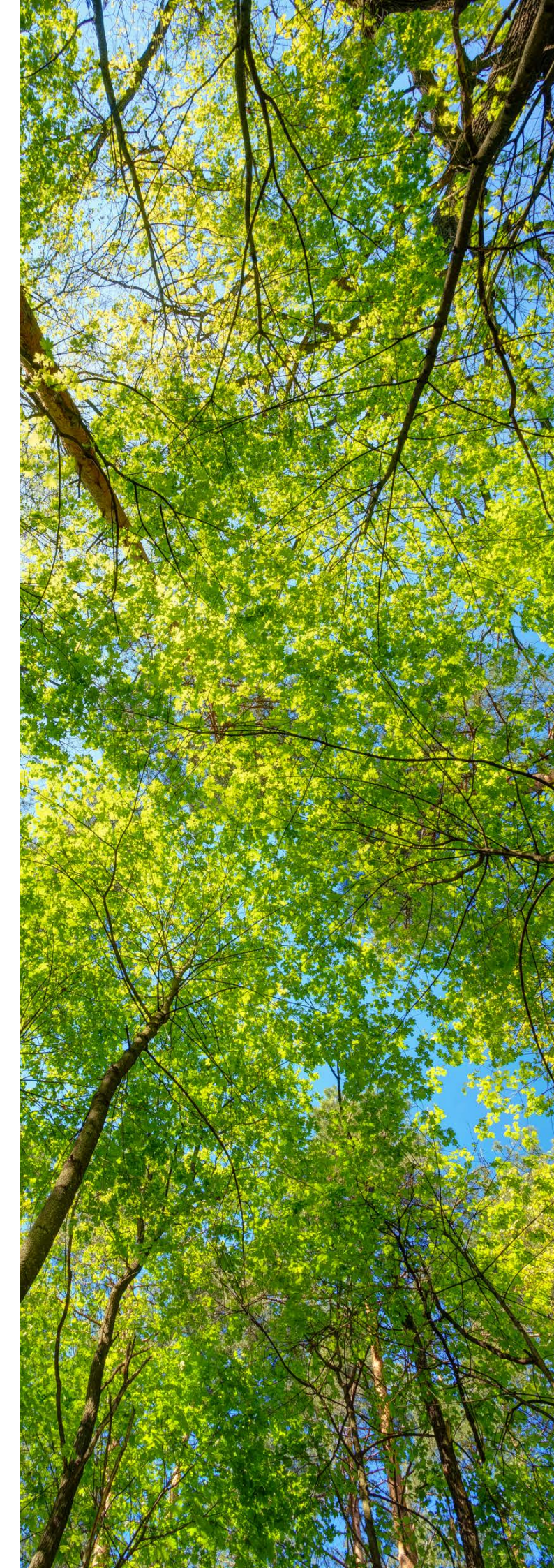
Apart from the impact ESG criteria have on investment decisions and transaction structuring, companies also benefit from recognizing the existence of good ESG practices, as a driver for attracting, motivating, and retaining talent. Besides, it also attracts consumers to the products and services provided, which leads to increased revenue and better performance.

ESG performance will be taken into consideration in the valuation and risk assessments of companies, and as a consequence, several aspects of M&A will be affected:

- ESG factors can be expected to increasingly influence how potential targets and business partners are identified;
- ESG factors will be an increasing concern in due diligence processes;
- stakeholders are increasingly scrutinizing a company's ESG performance;
- company's cost and access to capital will be increasingly tied to their ESG performance;
- investment decisions by asset managers will be driven by ESG performance.

Finally, Millennials and Gen X, the consumers and investors of the future, place increasing importance on responsible investment and believe that competitive returns can only be achieved by incorporating ESG factors.

The world is changing. Investors, employees, consumers, and other stakeholders demand a different way of doing business where ESG criteria will have an increasing impact.



**Petar Stojanović**Senior partner
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Collaborating Firm of Andersen Global

«There is no indication that ESG criteria will have an impact on investment decisions or transaction structuring in Serbia in the coming future.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

There are no specific ESG guideline and/or application in the Republic of Serbia.

No specific legislation regulates ESG criteria or their application.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

There is no ESG benchmark companies have to adapt to if they want to be able to attract professional investors/investment funds.

03 — Are there particular incentives or benefits depending the financing method used?

There is no indication that ESG criteria will have an impact on investment decisions or transaction structuring in Serbia in the coming future.

**Maja Šubic**Senior Associate
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Member Firm of Andersen Global

«The evolution and growth of ESG factors are evident as major companies in the areas of banking, insurance business, financing, and investments are adopting these principles as part of their values and codes of conduct, thus strengthening their market value.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

The values that Environmental, Social, and Governance ("ESG") criteria aim to safeguard, are already present in numerous general acts in different legal areas including, for example, the Environmental Protection Act, and the Employment Relationship Act. Nevertheless, we observe that ESG principles are increasingly on the rise in Slovenia, where EU's endeavors and legislative materials are used as role models for implementing various materials at governmental and company level.

Consequently, the Slovenian legislator already began incorporating ESG principles into specific acts. In addition to the laws indicated above, the Pension and Disability Insurance Act stipulates that individuals wishing to become part of an individual pension insurance plan must sign an

accession statement. The accession statement must provide to the client information on whether and how ESG factors are considered when selecting investments.

Furthermore, the Companies Act provides that companies subject to mandatory auditing must include the corporate governance statement in their business reports. Such statement must include a reference to the company's corporate governance code and to its diversity policy, namely a description of diversity in the management and supervisory bodies in terms of gender, age, education, and professional experience. Finally, the statement must cover goals, how the diversity policy is implemented, and its results. If there is no such policy, the company must provide reasons for this.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

The evolution and growth of ESG factors are evident as major companies in the areas of banking, insurance business, financing, and investments are adopting these principles as part of their values and codes of conduct, thus strengthening their market value. The significance of considering ESG factors became even clearer in the brink of the COVID-19 pandemic.

The leading market players have thus already adapted to the new situation as ESG can also play a deal-breaking role. For instance, pension funds operating in Slovenia began investing not only in profitable companies but are also looking for companies that incorporated ESG principles. Like investment funds, pension funds developed their own ESG factors assessment methodology and the minimum level which a target company must achieve.

The problem is that some ESG benchmarks do not derive from the same guidelines, thereby limiting the possibility of a comprehensive comparison across various companies. Once the ESG benchmark is regulated at EU level, we expect major improvements and developments in that regard.



03 — Are there particular incentives or benefits depending the financing method used?

Based on our experience, investors and purchasers are still primarily focused on business compliance when deciding on an investment. Nevertheless, an increasing emphasis on areas that are covered by ESG principles can also be observed. In the course of performing a company due diligence, we are increasingly instructed by the client to review documents related to the company's performance in environmental and social matters. As for the social aspect, clients are primarily focused on data protection. Moreover, clients are usually not satisfied if the target company operates only in accordance with the law. Clients want to see if the company provides an even higher level of protection, thus strengthening the presence of ESG principles.



SPAIN



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«ESG aspects have become an important part of due diligence processes in recent years. In addition to the financial, operational, tax and commercial analysis of target companies, the company's sustainability performance is increasingly on the spotlight.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

The Spanish government has integrated ESG principles into its political action program through the commitment to comply with the 2030 agenda for sustainable development adopted by the United Nations on September 25, 2015.

This action has been implemented through various legislative initiatives, mainly by transposing European directives or via recommendations from supervisory bodies.

The role of the National Securities Market Commission (CNMV) in the field of corporate governance should be highlighted. The CNMV is the body in charge of supervising and inspecting the Spanish securities markets and the activity of all market players and stakeholders.

Since 2006 the CNMV has been publishing recommendations in the Good Governance Code for listed companies. The objectives pursued were to ensure the correct functioning of the governing and administrative bodies of Spanish companies to maximize competitiveness, generate confidence and transparency for shareholders and domestic and foreign investors, improve internal control and corporate responsibility systems, and ensure the correct internal distribution of functions, duties and responsibilities under standards of maximum rigor and professionalism. Some of these recommendations have been included in the Capital Companies Act, approved by Royal Legislative Decree 1/2010 of July 2, 2010

Likewise, the CNMV has published the interpretative criteria on the application of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

Finally, Law 11/2018, of December 28, on non-financial and diversity information (transposed from Directive 2014/95/EU) is also applicable.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

ESG criteria used by investors and funds to justify their investments based on sustainability factors are becoming increasingly important.

The challenges faced by companies to be in a position to attract it are focused to comply with responsible investment requirements (or PRI) to generate positive ESG results

The key points to consider by companies target should be:

- Environmental issues: contribution and performance of a business in terms of environmental challenges (e.g., waste, pollution, greenhouse gas emissions, deforestation, and climate change).
- Social issues, assessing the company's relationships with people (appropriate human resources policy and fulfillment of commitments to customers and users of

- services and products).
- Corporate governance issues, examining the way in which a company is managed (e.g., employees' remuneration, executives compensation, tax practices and strategies, anti-corruption and anti-bribery, board diversity and structure).

03 — Are there particular incentives or benefits depending the financing method used?

ESG aspects have become an important part of due diligence processes in recent years. In addition to the financial, operational, tax and commercial analysis of target companies, the company's sustainability performance is increasingly on the spotlight. The purpose of a ESG due diligence is to analyze the factors that may play a role in business life, but which are not reflected in financial accounts. Here are some of the proposed key due diligence questions for 'E', 'S' and 'G':

Environmental Policy

- Organization arrangements and resources (training, projects/initiatives to improve environmental performance/standards/compliance within the company);
- issues/cases of non-compliance/enforcement action;
- resource efficiency and reduction of consumption of natural sources;
- Waste Management

Social Policy

- Health and Safety (H&S) policy;
- social claims related complaints or enforcement actions associated with employees or key stakeholders such as customers or suppliers;
- human resources: anti-discrimination, diversity policy;
- data privacy and security policy; and
- purchasing policy/Suppliers Code of Conduct

Governance

- Board structure and role;
- corruption/fraud detection procedures;
- claim/enforcement/litigation or any type of action relating to issues such as anti-bribery and corruption, cases of unfair labor practices, human rights abuses, and other malpractices



SWITZERLAND



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«**The Swiss Financial Markets Supervisory Authority issued a Circular that includes ESG risks strategy, ESG risks identification and measurement and ESG risks governance, as well as using stress-testing related to climate risks, for companies and firms active in the financial sector.**»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

In November 2020 the Swiss Financial Markets Supervisory Authority (FINMA) issued an addition to Circular 2016/01 regarding ESG risk management, which was implemented in mid-onwards and is based on the standards issued by the Financial Stability Board's (FSB) Task Force on Climate-related Financial Disclosure (TCFD).

The Circular includes expectations with regard to disclosure, but also ESG risks strategy, ESG risks identification and measurement and ESG risks governance, as well as using stress-testing related to climate risks, for companies and firms active in the financial sector.

02 — Are there any ESG benchmark companies have to adapt to if they want to be

able to attract investors?

In line with the country's policy on sustainable finance, on 12 January 2021, Switzerland officially became a supporter of the TCFD. In this context, the Swiss Federal Council called on Swiss companies from all sectors of the economy to implement these recommendations on a voluntary basis.

The Swiss federal government also decided that a regulation should be drafted to make the recommendations binding. The work will be carried out this year, with the private sector and associations being consulted. An ESG benchmark for companies of the general economy will be set upon completion of the legislative procedure.

03 — Are there particular incentives or benefits depending the financing method used?

If a financial institution gives a loan to an energy-intensive business, this business may be affected by the new regulatory frameworks around ESG that are increasing the cost pressure for the business which, in turn, can materialize into increased counterparty risk for the financial institution (outside-in perspective). The latter is a classic example of the materialization of ESG risk through classic credit and counterparty risks for Swiss banks.

ROMANIA



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«Most local M&A advisory firms have included ESG evaluation in their portfolio and are used in practice especially for medium-high scale transactions.»

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Regulation (EU) 2019/2088 of the European Parliament and the Council of 27 November 2019 on sustainability related disclosures in the financial services sector ("SFDR Regulation") is directly applied in Romania, its implementation being supervised by the Financial Supervisory Authority (FSA) – as local regulatory and supervisory authority for capital markets, insurance and private pensions.

In addition, Law no. 158/2020, which entered into force on 29 August 2021, amended the key pieces of sectorial legislation in the abovementioned fields, by specifically providing that investment firms and self-managed investment companies, asset management companies, alternative investment fund managers, private pension firms, occupational pension firms and insurance brokers and insurers (as insurance consultants) are obliged to observe the provisions of the SFDR Regulation, the breach

thereof being sanctioned as contravention.

In the framework of market-based initiatives, the Bucharest Stocks Exchange (BVB) has launched an Environmental, Social and Governance (ESG) - focused initiative on the Romanian capital market, which aims to provide high-level ESG insights for BVB-listed companies. Utilizing a flagship ESG Risk Ratings, the BVB aims to make available ESG research and ratings for the majority of listed companies, to promote responsible investing and highlight the importance of ESG standards among Romanian market participants.

Also, the Association for Stock Exchange Investors Relations (ARIR) developed a Guide for Responsible Business dedicated to listed companies.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

Currently, there is no regulated ESG benchmark relevant for differentiating the attractiveness of companies.

However, the BVB provides for the issuers listed on its platform ESG risk ratings split in five categories: negligible, low, medium, high and severe.

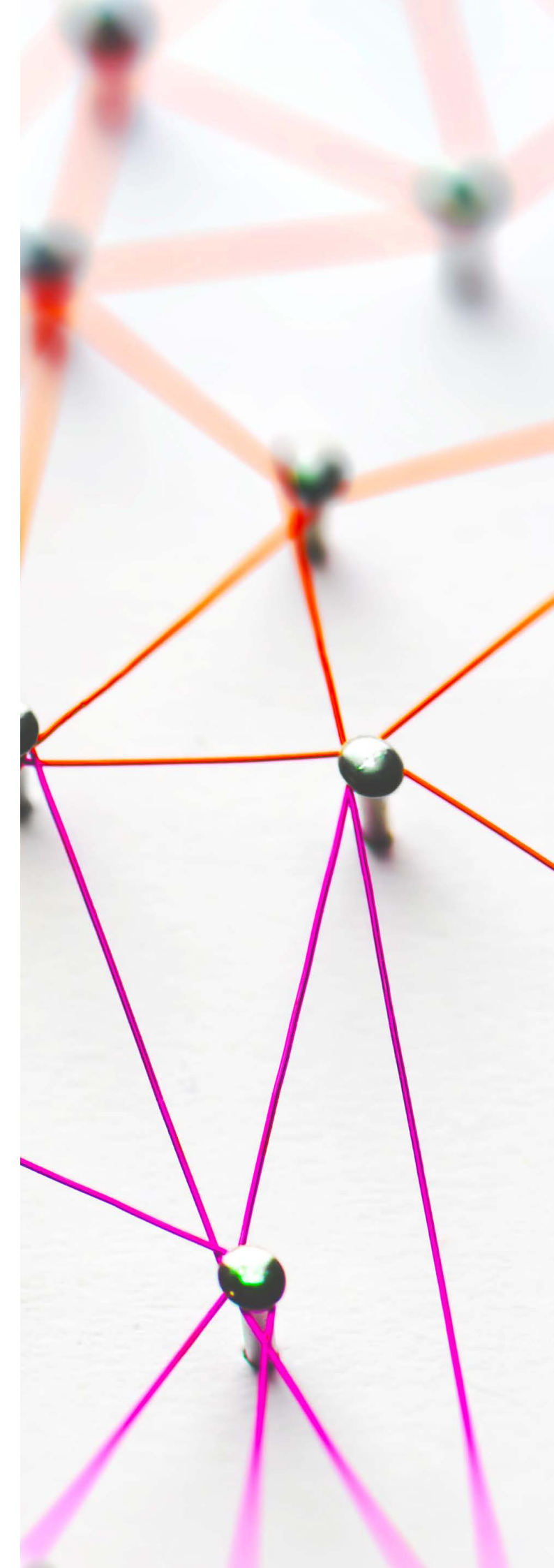
03 — Are there particular incentives or benefits depending the financing method used?

Assessing the ESG criteria when making an investment/divestment decision is on its way to become mainstream practice. Most local M&A advisory firms have included this type of evaluation in their portfolio and are used in practice especially for medium-high scale transactions. Also, there is a significant local public interest for understanding and duly assessing the ESG aspects in business, as shown by the many public events and debates on this topic.

The manner and degree of meeting ESG criteria are relevant in the context of M&A deals, as such contribute to investors' forming a grounded view on the "strength"/durability, development potential and adaptability of a company/business from a dynamic (medium-long term) perspective.

From a transaction structuring perspective, aside from including the ESG aspects in the due

diligence data, such matters may be covered via contractual representations & warranties, special indemnities (where high-risk exposure exists) and conditions precedent to a transaction's closing.



**Denis Nakonechnyi**

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«**The Ukrainian Central Bank has recently announced the development of ESG standards in cooperation with the International Finance Corporation.**»

exceptions such as private JSCs with less than 10 shareholders) must implement a two-tier board system – management and supervisory boards.

In contrast to detailed ESG rules and regulations applicable to Ukrainian companies, there are currently no hard laws that require investors to account for ESG while making investments. However, this vacuum can be filled in soon at least in respect of Ukrainian banks. The Ukrainian Central Bank has recently announced the development of ESG standards in cooperation with the International Finance Corporation.

As far as soft laws are concerned, ESG topics have been reflected recently in the revised version of the Core Code of Corporate Governance approved in 2020 by the National Securities and Stock Market Commission (the NSSMC), the Ukrainian securities regulator. Developed together with international experts, this Code aims to set a benchmark in corporate governance for all Ukrainian companies, although the primary addressees of the Code are joint stock companies that have or plan to have their shares listed on a stock exchange. It is the first time that ESG is mentioned in the Code since its first version issued in 2003 and a subsequent revision in 2014. Compliance with the Code is not mandatory, but it is strongly recommended by the NSSMC to the companies under its oversight.

The Code pays attention to ESG development in various aspects, including setting of ESG goals for a company, division of responsibilities between management bodies of a company in the sphere of ESG and ESG reporting. The NSSMC expects that the Code will become a national standard for corporate governance in Ukraine. Given that there are plans to further develop the Code to tailor it to specific players (such as state-owned enterprises) and topics (e.g. anti-corruption), ESG requirements may also be expected to evolve together with the acknowledgement of their role on the path to sustainable development.

02 — Are there any ESG benchmark companies have to adapt to if they want to be able to attract investors?

There is no universally accepted ESG benchmark for Ukrainian companies that want to attract professional investors. However, we observe that

development finance institutions (DFIs) active in Ukraine have their own sets of ESG requirements. As a result, borrowers and projects seeking financing from DFIs must comply with their respective ESG requirements. Driven by DFIs, Ukrainian banks also tend to implement a similar approach to ESG in their financings.

03 — Are there particular incentives or benefits depending the financing method used?

The impact of ESG criteria on decision making and structuring of transactions is not currently clear. At the same time, since ESG requirements are present in all financing projects of DFIs in Ukraine, they appear to be an essential part of those transactions.

01 — Is there any specific ESG guideline and/or application in your jurisdiction? Any soft and hard laws?

Ukrainian legislation imposes numerous requirements on companies in the sphere of ESG. Businesses that have an impact on land, flora and fauna, pollution and waste management must obtain environmental and safety permits from various governmental and local authorities for their operations. Usually, such permits require periodic renewal or review of their conditions as well as ongoing monitoring and compliance reporting. Social requirements such as working conditions and health and safety are also heavily regulated and may be considered as pro-worker. For instance, all Ukrainian companies with hired personnel must enter into and maintain collective bargaining agreements. There are detailed corporate governance requirements which differ based on the legal form of the company, but also contain specific rules for certain groups of entities (e.g. banks). As an example, the majority of Ukrainian joint stock companies (with a few





Hirings

SPAIN



Ivo Portabales →
Santiago Fernández →
José Garrido →
María Suárez →

Andersen in Spain incorporates law firm DA Lawyers, including four Corporate and M&A partners

Andersen in Spain takes another step forward in its expansion as the firm reaches an agreement with DA Lawyers, bolstering its capabilities and team in the Madrid office as the firm strategically plans for significant growth over the next several years.

The transaction reinforces Andersen's areas of specialization, boosting among others the department of Corporate and M&A, which adds a new team of 15 professionals, including partners Ivo Portabales, Santiago Fernández, José Garrido and María Suárez.

[Read more](#) →

THE NETHERLANDS



On September 2021, Taxture announced the tax partnership of Saskia Kamman-Vis and the joining of Huseyin Koca as a Corporate Law partner. Saskia has experience in providing international tax advice to multinational companies located in various jurisdictions, including the UK and the US. With the appointment of Saskia as a partner, Taxture targets to expand its high-quality services and high-level tax advisory standards over a wider geographical area in the years to come. Huseyin has more than 13 years of experience in assisting clients on corporate law matters relating to mergers and acquisitions, corporate restructurings, the establishment of investment structures, corporate governance, and general corporate law topics. He will build on and lead the corporate legal team of Taxture.

[Read more](#) →

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Transactions

BULGARIA

Kambourov & Partners advised on the acquisition of Dentatechnika Bulgaria

Kambourov & Partners advised on the Bulgarian aspects of the acquisition of Dentatechnika - the largest distributor of materials and equipment for the Bulgarian dental care market. Dentatechnika was acquired by one of the leading private equity funds in Central Europe – Abris Capital Partners through its Romanian portfolio company Dentotal Protect - a leading dental care distributor in Romania. Following the acquisition, Abris aims to continue building Dentotal into a regional leader through organic growth and further consolidation of local markets in Romania and Bulgaria, and will support the transformation of the business into a sustainable and scalable platform.

[Read more →](#)

ITALY

Andersen in Italy supported OMIS Group SpA in its expansion into the Indian market

The team of professionals of Andersen in Italy, led by Francesco Marconi, supported OMIS Group SpA in its expansion into the Indian market. The Italian tax, legal and advisory experts, in synergy with the professionals of Nangia Andersen India Pvt. Ltd., led by partner Suraj Nangia, took care of the corporate structuring and all phases of the incorporation of the subsidiary company OMIS India Cranes & Handling Pvt. Ltd.

Andersen in Italy advised GeMS in the acquisition of 30% of Storielibere Srl

Gruppo editoriale Mauri Spagnol (GeMS) – the second largest Italian publishing group – has been assisted by a team of tax and legal experts and advisors from Andersen in Italy, led by Andrea De Vecchi and Francesco Inturri, in the acquisition of 30% of Storielibere Srl, publishing platform of author podcasts. Andersen took care of the initial analysis of the start-up's business plan, verifying the sustainability of the business plan and preparing an accounting, legal and financial due diligence; it then followed all the contractual issues and the definition of the new governance structure.

[Read more →](#)

ROMANIA

Țuca Zbârcea & Asociații advises Electrica on buying 207 MW wind and solar projects from Monsson

Electrica has announced it bought shares in three project companies that are developing a portfolio totalling 207MW of renewable energy. The Romanian company relied on Țuca Zbârcea & Asociații for legal advice on the deal. Partner Sorin Vlădescu led the team, alongside Managing Associates Nisa Jecu, Alexandra Pereș and Andreea Opreșan.

[Read more →](#)

Real estate team from leading Romanian law firm Țuca Zbârcea & Asociații advises on record industrial investment transaction

Zacaria Industrial sold around 112,000 sqm of industrial space representing parks in four cities to CTP, the largest developer of industrial and logistics parks in the CEE region. The new capital will allow Zacaria to support an organic growth, focused on the development of industrial parks, shopping centers and residential projects.

[Read more →](#)

Țuca Zbârcea & Asociații advised Autonet Group Holding (AGH), part of the Swiss Automotive Group (SAG) in acquiring a majority stake in Augsburg International

Shareholders of Autonet Group Holding (AGH), an integral part of the Swiss Automotive Group (SAG), ranked fifth in the European aftermarket sector, have reached an agreement with Augsburg International, one of Romania's most important independent auto parts distributors. The legal team from Țuca Zbârcea & Asociații assisting Autonet Group Holding (AGH) included Partner Ciprian Dragomir and Managing Associate Andreea Opreșan, among others.

[Read more →](#)

SPAIN

Andersen advises multinational KONE in the acquisition of Ascensores Muguerza

Andersen, through its M&A department, has worked with the Finnish company KONE, one of the world's leading companies in the lift sector, in the acquisition of the Spanish company Ascensores Muguerza. The transaction means that Ascensores Muguerza, S.A. will become part of the KONE group, although it will continue to operate in the national market, maintaining both its own brand and its current headquarters in San Sebastian.

[Read more →](#)

Andersen assists NIMGenetics in the capital increase operation by Apposite Capital

Andersen has advised NIMGenetics in the capital increase operation carried out by Apposite Capital, a British Private Equity firm, for six million euros, which are added to the investment already made in 2017, becoming the majority shareholder of the company.

NIMGenetics, specialized within the biotechnology sector in the designing and commercialization of generic clinical diagnostic products and services, has allocated part of the investment to strengthen the team with new additions to accelerate growth at international level, as well as to strengthen agreements with companies in the sector.

[Read more →](#)

Andersen counsels on the merger of the Spanish listed company Mondo TV Studios

Andersen has advised on the reverse merger of the entertainment divisions Mondo TV Iberoamerica and Mondo TV Producciones Canarias, which now become Mondo TV Studios SA. The new company, which is listed on the BME Growth, now combines the services and functions of both divisions, offering entertainment projects at international level.

[Read more →](#)

Andersen advises Swiss fund MTIP on a financing round in which it becomes Mediktor's lead investor

Andersen has advised MTIP, a Swiss fund specialized in the digital health sector, on leading the financing round of the medical start up Mediktor. The deal, in which Mediktor has raised €11 million that will be used to improve its symptom assessment tool and consolidate its international expansion, positions MTIP as the main financial investor of the start up. Alta Life Science has been another company that has invested again in the company.

MTIP focuses its investment in companies specialized in digital health and digital medical devices, which offer solutions and services with economic benefits related to the health of users.

[Read more →](#)

Andersen accompanies YeePLY on its sale to Quental

Andersen has advised the partners of YeePLY, an online platform that offers services for the recruitment of experts in mobile technology for digital agencies or startups -among others-, in the operation by which it has been acquired by the company Quental, dedicated to providing technological services and solutions.

The purchase will allow YeePLY, which will remain as an independent company, keeping its business model, to boost its growth and international expansion, especially in Germany, Italy and France.

[Read more →](#)

Andersen advises Selenta Group on the sale of the group to Brookfield Asset Management

Andersen advises the Selenta hotel group on its sale to Brookfield.

The chairman and sole shareholder of the Selenta hotel chain has signed the sale of the Barcelona-based group to the Canadian asset manager Brookfield Asset Management for 440 million euros.

[Read more →](#)

Transactions

UKRAINE

Sayenko Kharenko assists Bel Group with the completion of transaction regarding the sale of its Ukrainian business to Lactalis

Sayenko Kharenko has acted as legal counsel to Bel Group with respect to the completion of the disposal of its entire shareholding in PrJSC “Bel Shostka Ukraine” to Lactalis. The transfer took place as a part of a larger transaction under which Bel Group disposed of its business in the Netherlands, Germany, Ukraine in exchange for 23.16 per cent of Bel shares owned by Lactalis.

Sayenko Kharenko provided legal support for PGNiG on the acquisition of shares in a Ukrainian company

Sayenko Kharenko has acted as a subcontractor of a polish legal counsel – Rymarz Zdort that provided legal support for Polskie Górnictwo Naftowe i Gazownictwo S.A. during its acquisition of a controlling stake in Karpatgazvydobuvannya LLC from ERU Management Services LLC, the mother company of ERU Group.

Rankings



WORLD TAX

BULGARIA

Kambourov & Partners is top ranked in M&A in the 31st edition of the IFLR1000 rankings

For another year, Kambourov & Partners has been top-ranked in the area of M&A by the international legal directory IFLR1000. The 31st edition individually features 3 of the firm's Corporate/M&A lawyers - Vladimir Rangeloff, Veronika Hadjieva and Todor Vlaykov.

[Read more →](#)

HUNGARY

Andersen in Hungary has been ranked as TIER1 according to the ITR's World Tax Guide in 2021

Andersen in Hungary has been ranked as TIER1 tax advisor firm in Hungary for the first time based on the evaluation of International Tax Review, one of the world's leading and largest international tax journal. Now, Andersen in Hungary is recognized as the 5th largest tax advisor firm in the country providing Hungarian tax consultancy services and described as a significant participant of the domestic market.

[Read more →](#)

Andersen is selected as Tax Firm of the Year in Hungary based on the professional survey of International Tax Review

Andersen has been recognised as the best tax firm of Hungary in 2021 by International Tax Review (ITR EMEA Tax Award 2021). The firm won this highly regarded professional recognition just a year after the brand returned to Hungary in July 2020 through the combination of Orientax and Szabó, Kelemen and Partners Law Firm. Andersen in Hungary currently has a team of 100 employees, including approximately 90 tax professionals and lawyers.

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Events

GERMANY

—
**ANDERSEN
IN GERMANY
HOSTS
“CHEMICAL
DAY” IN
FRANKFURT**

Themed “Challenges in the chemical industry – Making a carve out a success story” Andersen in Germany hosted the “Chemical Day 2021” on 30 September 2021.

An insightful report on the Covestro carve-out was followed by a vivid panel discussion with leaders of the Chemical Industry on typical and future carve-out challenges such as the implementation of the Supply Chain Act and ESG related issues.

[Read more →](#)



V • Venture Debt

An attractive alternative for start-ups?

Venture Debt – An attractive alternative for start-ups?

For emerging technology start-ups, gaining access to financial resources is a key challenge. Traditional bank loans are often unavailable, and the financial means of the founders are usually limited. The crisis in the brink of he Covid-19 pandemic - which also threatens the existence of start-ups in particular - has now unexpectedly strengthened the financing of start-ups via instruments that are more like repayable loans than classic equity. Venture Debt is a potentially attractive complement to equity financings for start-ups with strong investors on board. It is a highly flexible instrument with very little dilutive effect for founders and existing investors.

In Germany, Davidson Capital is currently the most relevant German-based investor offering venture debt. Incidentally, the few venture debt investments in Germany are managed by American and British banks/investors (e.g. Silicon Valley Bank and Kreos), directly from their headquarters.



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I. Venture Debt in a nutshell

Venture loans are mid-term financial debt instruments targeted to the specific needs of high-growth young technology companies which have already secured (previously or at least simultaneously) the backing of institutional VC investors. Venture loans are usually amortizing (although we also see bullet repayments) and frequently feature interest-only periods of anywhere from six months to eighteen months, carrying an interest rate of up to 15%, i.e. much higher than traditional bank loans. Economically, however, the start-ups must still be in a position to pay the debt service. In the case of venture debt, investors are compensated for the default risk with an appropriate interest rate.

II. Distinction from convertible loans

Depending on the structure of the venture debt there is only a little dilution of founders and existing investors compared to convertible loans as the two types of financing differ considerably in their objectives.

Convertible loans are equity-like instruments and are often used before the seed round or to bridge the capital needs of existing investors until the next financing round. The primary goal is not to set a valuation that has not been validated by external investors. The repayment of a convertible loan is therefore (conceptually) the exception.

Venture debts, on the other hand, are designed to be repaid in full and with interest. However, in addition to the above, an equity kicker in form of a warrant, exit payment or otherwise give the lender an additional upside. This difference in perspective - convertible loans as preparation for a further equity investment, venture debt as a substitute for a bank loan - means that the interest rates for venture debt are significantly higher than for convertible loans, ranging from 8% to 15% per year.

III. Scope of application

In order to secure the (ongoing) repayment of the venture debt, it can only be considered for start-ups that have a viable business model and do not need additional capital due to structural problems. On the other hand, it is precisely this (ongoing) repayment that can burden the company's cash flow and thus hinder the start-up's growth. In addition, debt capital in the early phase generally increases the risk of insolvency. Venture debt is therefore particularly suitable for extending the period between two financing rounds and thus either being able to make the repayment from the cash flow or significantly increasing the valuation of the start-up by reaching milestones so that the venture debt can be redeemed in a later round. To be in a position to grant venture debt as quickly as possible, investors usually do not conduct their own in-depth due diligence. Instead, they rely on the fact that the already invested (usually well-known) venture capital investors have conducted such a due diligence and ensured that the start-up's business model is viable and scalable and continue to have a positive influence on the founders. This also distinguishes venture debt from convertible loans.

IV. Structuring

The documentation of venture debt is more complex than that of traditional convertible loans. In essence, it is a loan agreement subject to certain terms, interest and repayment obligations. To make up for a rather superficial due diligence, venture debt contracts contain far-reaching representations and warranties, including covenants that impose certain conduct obligations on the founders. In addition to extensive reporting obligations, covenants usually also include a range of actions requiring investors' consent or, in the event of non-compliance, give rise to the investors' right of termination. In terms of content, founders should ensure that these obligations do not go further than the information obligations and consent requirements agreed with existing investors. At the very least, this is regularly a viable argument vis-à-vis venture debt investors to enable uniform corporate governance. Venture kickers, i.e. bonus payments in case certain targets are reached, can also be part of the financing agreement. There is

also room for negotiation here. In order to be able to regulate the debt ratio in preparation for future financing rounds, flexible termination options must be included in the contract.

V. Collateral contracts and warrants

In addition to the actual financing agreement, the venture debt agreement includes extensive collateral agreements that secure all of the start-up's assets - including IP and receivables in particular - (usually first ranking). Depending on the start-up's set-up, these collateral agreements may be subject to different legal systems, which makes expert legal advice almost indispensable. Finally, an equity kicker in the form of warrants or virtual shares is usually part of the contract. The last financing round regularly serves as the basis for valuation.

VI. Pros and cons of venture debt financing

In particular when compared to classic equity financings, venture loans can have some advantages that potential borrowers and founders need to balance against potential disadvantages and risks associated with venture debt financing.

The pros include, in particular, flexibility, liquidity runway and limited dilutive effects. The risk appetite, return expectations or sector focus of lenders differ and so do the terms offered by such lenders. Borrowers can choose from a growing number of options. Venture loans can be a flexible and attractive instrument for a start-up, especially if it has no, or only very few, financial covenants.

Venture loans extend the borrower's liquidity runway, i. e., its time until the next equity capital raise is required. A postponed equity financing round based on a higher valuation will have lesser dilutive effects on founders and existing investors (who do not exercise their pro-rata rights). Though venture loans usually feature an equity kicker component, a venture debt financing will still be less dilutive than an outright equity financing.

The cons include, in particular, cash flow consequences, organizational overload and termination rights. The requirement of periodic or,

in some cases, one-off payments may block other growth initiatives and ongoing projects which are more important for the success of the company and may shift the borrower's focus on cash generating activities. However, the (reporting) obligations and restrictions of a venture loan agreement can also have a disciplining effect on the often underdeveloped cash management of start-ups.

Although obligations imposed under a venture debt facility may have a disciplinary effect, such obligations can quickly become too burdensome for a start-up. In such a case, the start-up will be "stumbling" from one default into the other, which may in the end lead to the acceleration of the loan and, in the worst case, to insolvency.

Significantly, if the borrower becomes insolvent, third-party debt of the venture loan provider will generally rank senior to any claims of the equity holders. Thus, if the start-up gets into troubled waters, the venture loan providers may be reluctant to agree to a painful restructuring but rather want to pull the trigger (or may even be obliged to do so). By terminating the loan agreement they may potentially be sending the borrower over the cliff.

VII. Conclusion

Venture debt financing can make sense in certain situations, not as an alternative but as a supplement to venture capital financing. Precisely because it is a very flexible form of financing with numerous levers that need to be adjusted to the respective start-up, the contract should be intensively reviewed and renegotiated.





VI · EU Regulatory Sandboxes

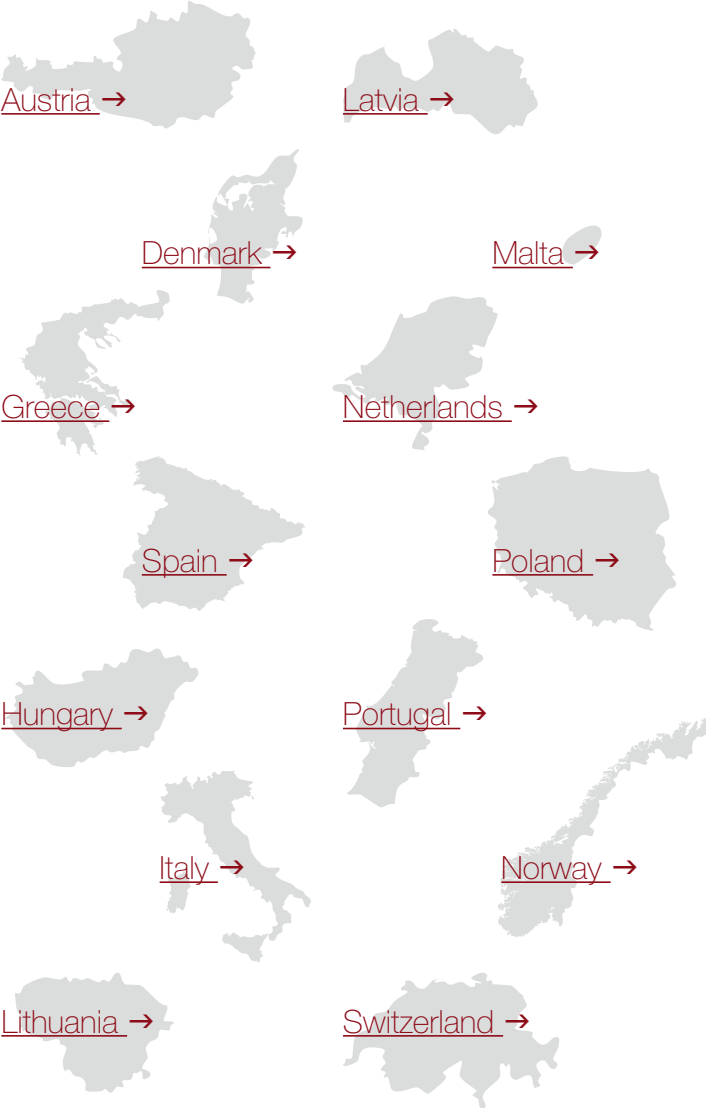
The Spanish case study

The FinTech ecosystem has recently introduced new players and innovative business models (applying new technologies) which involves new and different challenges for the financial system.

Assessing such business models requires a deep understanding by the EU Regulators of the technologies used to deliver the innovative services or products. Therefore, a significant number of jurisdictions in Europe have already introduced various types of innovation facilitators to test innovative products, services or business models. For this purpose, innovation facilitators can be broadly divided into two main categories:

- a) **Innovation hubs**: where usually firms / promoters can have direct access to the Regulator to raise questions and seek clarifications or non-binding guidance about FinTech related issues (i.e. licencing requirements, compliance functions and/or registration requirements);
- b) **Regulatory sandboxes**: a controlled environment where supervised entities and FinTech operators will be able to test, for a limited period of time, technologically innovative products and services in the banking, financial and insurance sectors.

Regulatory sandboxes have become one of the main instruments for Regulators to deal with these new innovative projects coming from different players. The below table outlines the status of the existing / planned regulatory sandboxes in the EU:



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In light of the above, Regulatory Sandboxes can be used as a “setting mechanism” for products / pilot projects that different promoters intend to launch on the market. On the other hand, Sandboxes will be a clear opportunity for local Regulators to analyze and understand disruptive products and business models (new applications, processes, products with an impact on financial markets).

The Sandbox in Spain

In Spain, the long-awaited Law 7/2020 for the digital transformation of the financial system (Ley 7/2020 para la transformación del sistema financiero) was approved on 13 November 2020 (the "Sandbox Law"), creating a regulated and monitored testing area that will allow different developers (mostly fintechs) to present and test their innovative projects in a secure environment and under the supervision and control of the regulator.

By approving its own Regulatory Sandbox, Spain has become a pioneer in continental Europe and in Latin America. This "controlled testing area" (in the words of Law 7/2020) will be a major step forward for the fintech ecosystem in Europe in terms of attracting investment and talent from other countries.

Who can access the Spanish Sandbox?

To create a reasonable filter for the Sandbox, the Spanish legislator has established certain minimum eligibility criteria that every firm / promoter (even Spanish or foreign companies) must meet, in particular:

- Technological innovation and disruption: for a pilot project to be eligible it will have to be, first and foremost, innovative. The promoter will have to justify and argue that its business model involves a clear technological innovation factor within the financial sector (either through new applications, processes or products). In addition, promoters will need to show that their proposed business model is disruptive and/or novel, sometimes having to argue the absence of other similar models in the market, either by companies of its Group or competitors.
- Minimum functionality: Likewise, to justify the viability of the project, it is also important to be able to demonstrate it has a minimum level of functionality and degree of progress. In addition, the regulator will favourably value the supply of additional (optional) information in the context of the application, including market studies, corporate presentations, and commercial documentation, showing the viability of the project in the medium/long term.
- Providing added value: in addition to being innovative, the relevant pilot project should be

of real use to and/or provide added value to the financial sector, in particular (i) facilitating regulatory compliance by improving processes; (ii) providing mechanisms for better regulation or better financial supervision; (iii) improving the quality, accessibility and availability of financial services for users; and (iv) increasing efficiency for institutions and markets.

First call for Sandbox access

On 15 December 2020, the Spanish General Secretariat of the Treasury and International Finance (Secretaría General del Tesoro y Financiación Internacional) issued a Resolution announcing the first "window" of access to the Spanish Sandbox. This call took place between 13 January and 23 February and a total of 67 projects were submitted. This represents a high number, setting the number of applications received in the Spanish Sandbox at the same level as other leading sandboxes in the world, which shows the interest of companies in promoting innovation in the financial sector.

The business models presented included projects based on biometrics and digital identity, the provision of financial services linked to blockchain technology, cloud computing, artificial intelligence (A.I.), the Internet of Things and Big Data. Many of the projects presented focus their added value on facilitating regulatory compliance through the creation of tools intended to automatize processes.

It is expected that a certain number of the projects submitted to the Spanish Sandbox in this first cohort will not finally access the "controlled testing ground" for not meeting one of the requirements mentioned above.

Other issues to be addressed

Notwithstanding the success, there are a number of issues that are generating some concern in the sector. These include, among others (i) the lack of a homogeneous criteria for evaluating the projects proposed by the different regulators; (ii) the apparent lack of human resources on the part of the regulators to effectively manage and process each of the applications/projects; (iii) the broad scope of the Sandbox, without having limited the nature of certain projects unrelated to the regulation.





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