

Strelia ESG Series

April 2023

Sustainability in Practice – Legal Insight and Best Practices

In this first edition of our ESG Series, we cover a range of topics that are crucial for today's businesses. From sustainable M&A and finance to managing human capital, driving sustainability through public procurement, ESG considerations impacting competition law, combatting unfair commercial practices and sustainable tax strategies. Our multidisciplinary approach provides valuable insights and strategies for navigating the complex ESG landscape. A must-read for anyone looking to stay ahead of the curve and drive positive change in their organization.

ESG's Growing Influence on M&A: Risks and Opportunities

The growing importance of ESG considerations in M&A has become a top priority for companies, as they seek to address ESG risks and opportunities. M&A deals are now being used to advance ESG strategies, and companies are integrating ESG considerations into their due diligence and post-closing integration processes. With the requirement for more detailed ESG reporting, companies are facing mounting pressure to disclose not only the risks they face but also the impacts they may cause in terms of climate change, human capital, and governance. Including ESG in any due diligence would cover the assessment of these disclosures and the internal company processes that a target uses to identify and remedy any ESG risk. ESG considerations will also affect post-integration processes as the existing ESG goals, policies, and procedures of both the buyer and the target need to be consolidated and aligned.

The Rise of Sustainable Finance: Why Investors Should Pay Attention

The EU is taking sustainable finance seriously and has introduced new rules to improve transparency and ensure investment opportunities are sustainable. Considering that green bonds, which fund environmentally friendly projects, are becoming more popular for supporting low-carbon transition, the EU has proposed an ambitious European Green Bond Standard to enable the transition to green finance. This standard has four key requirements, including making sure funds raised through the bond go to EU Taxonomy-aligned projects and improving transparency in the allocation of bond proceeds. This legislative development is important for investors, as it establishes a framework for sustainable investments and makes sure funds raised through green bonds are used as intended. It also stimulates the creation of new environmental projects and supports the transition to a low-carbon economy. Investors and stakeholders should keep an eye on this development to make informed investment decisions.

Breaking the Glass Ceiling: Advancing Gender Pay Equality

Equal pay for equal work is a fundamental principle of ESG and is embedded in EU law. However, putting this principle into practice remains a challenge. To address the gender pay gap, the European Parliament recently adopted the Pay Transparency Directive on March 30, 2023. This new legislation requires employers to fulfill new obligations, including using objective and gender-neutral criteria for pay structures, informing workers about pay levels, reporting on pay gaps, and conducting joint pay assessments if the gender pay gap is over 5%. Non-compliance will result in penalties. While the Council has yet to approve the text, companies should not procrastinate and should start taking proactive measures to ensure timely compliance and promote wage equality within their organization.

Driving Sustainability through Public Procurement: What You Need to Know

Public procurement is a powerful tool for promoting sustainable development. That's why the EU Public Procurement Directive (2014/24/EU) sets out rules for integrating social and environmental factors into public contracts. As a result, sustainability considerations are now a key part of the procurement process, from selection and award criteria to technical specifications and performance conditions. This means that businesses and public bodies alike need to understand sustainable public procurement (SPP) and its three pillars: economic, social, and environmental sustainability.

Prioritizing Sustainable Development: How ESG Considerations Impact Competition Law

The EU prioritizes sustainable development, and businesses are encouraged to consider ESG factors when making decisions. When it comes to competition law, ESG considerations are not a separate category, as they can be used, for example, to assess the compliance of agreements with the Vertical Block Exemption Regulation. The updated Regulation recognizes the importance of ESG and suggests that it is possible to use ESG criteria as a selection criterion for distributors if certain conditions are met. Therefore, businesses considering restructuring their distribution networks to improve ESG standards can factor in these criteria.

Cracking Down on Greenwashing: Combatting Unfair Commercial Practices

The European Commission recently proposed a directive to combat greenwashing, imposing new requirements on environmental claims targeting the proliferation of public and private environmental labels. It requires that “green claims” be substantiated and verified by a third-party before they are announced publicly. Companies would have to mention the environmental aspects, impact or performance covered by the claim. These rules would apply to most companies doing business in the EU. The proposal includes enforcement measures such as fines, revenue confiscation, and temporary bans from public procurement processes. In addition to the public enforcement of these rules, we expect a significant increase in private anti-greenwashing enforcement initiatives, since: (i) the proposal explicitly allows “natural or legal persons or organisations regarded under Union or national law as having a legitimate interest”, including “non-governmental entities or organisations promoting human health, environmental or consumer protection” to file complaints with the competent authorities; and (ii) the proposal will facilitate unfair trade practice suits considerably when a green claim is made without ex ante approval.

Sustainable Tax Strategies: How the EU will “unshell” tax-evasion conduit vehicles

Last months witnessed a frenzied activity around the questions raised by the not-yet adopted ATAD 3 Directive. The future new piece of EU-legislation aims at enhancing the detection of “shell companies” that might be used to facilitate tax evasion. Its implementation into national law is scheduled to be 30th June 2023 and formal entry into force for 1st January 2024. As of next year then, companies resident of a EU Member State will have to report (via their annual tax returns) on their level of economic substance, which includes the disclosure of their key corporate governance principles. Although much unclarity remains before the adoption of the final text, the fight against tax evasion will shed a renewed light on the “G” of Governance – from a tax viewpoint.



Gisèle Rosselle



Cédéric Devroey



Frédéric Heremans



Stefanie Tack



France Vlassembrouck



Pierre Goffinet



Gaetano Jannone



Joanna Kolber



Jean-Luc Dascotte