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1 Setting the Scene – Sources and Overview

1.1 What are the main substantive ESG-related regulations and who is driving the regulatory agenda in your jurisdiction?

In recent years, ESG law has primarily been initiated by the European Commission, inspired by the United Nations Paris Agreement of 2015, to keep the increase in global average temperature well below 2°C above pre-industrial levels and to make efforts to limit the temperature increase to 1.5°C. The aim of the underlying European Green Deal is for Europe to become the first climate-neutral continent by 2050. To get on with the Green Deal and understand the systemic implications of climate issues, the Green Deal touches on the whole of the economy in multiple ways. This is further laid down in the European Climate Law Regulation (EU 2021/1119), which came into force on 29 July 2021, as well as various other Regulations and Directives, such as: the Corporate Sustainability Reporting Directive of 14 December 2022 (EU 2022/2464) (CSRD) regarding corporate sustainability reporting; the EU Taxonomy Regulation (EU 2020/852) (EUTR), which provides a classification system so that environmental sustainable activities can be determined; the Sustainable Finance Disclosure Regulation (EU 2019/2088) (SFDR) on sustainability-related mandatory disclosures and the classification of products in the financial services sector; and the Corporate Sustainability Due Diligence Directive (EU 2024/1760) (CSDDD) that entered into force on 25 July 2024. In particular, the CSDDD establishes an obligation for companies to: (i) identify and assess adverse human rights and environmental impacts; (ii) mitigate and bring an end to such adverse impacts; and (iii) adopt and implement a climate change mitigation transition plan.

Since 26 February 2025, the European Commission has announced several proposals to simplify EU legislation and to boost the competitiveness of European entities by trying to avoid overly stringent regulations and to reduce complexity. These simplification packages have been laid down in Omnibus I–VI. The Omnibus I simplification package seeks to alleviate the reporting and/or due diligence burden for small and medium-sized enterprises (SMEs) and companies below certain thresholds with regard to the CSRD, CSDDD and Carbon Border Adjustment Mechanism Regulation (EU 2023/956) (CBAM), while Omnibus II deals with the simplification of the EUTR and the InvestEU Regulation (EU 2015/2017). Pursuant to the so-called Stop-the-Clock Directive (EU 2025/794), which came into force as of 17 April 2025, Member States will have extra time to transpose the rules into national laws. As a result hereof, the reporting obligations under the CSRD of so-called wave 2 and 3 companies have been delayed to 2027 and 2028. On 14 November 2025, the European Parliament rejected the full adoption of the European Commissions' Omnibus I proposal and took the position that less companies should stay in scope of the CSRD by raising the employee threshold for (listed) large undertakings to 1,750 employees and a turnover above EUR 450 million and simplifying and reducing fewer details and sector-specific reporting would become a voluntary exercise. With regard to the CSDDD, the position of the European Parliament is that the due diligence requirements would only apply to large corporations with more than 5,000 employees and a net annual turnover of more than EUR 1.5 billion. The European Parliament further proposes to delete the mandatory requirement for climate transition plans. Liability for breaches of due diligence obligations would no longer be governed through a collective EU liability regime and will be construed according to the laws of the individual Member States. Trilogue started on 18 November 2025, with the aim of finalising legislation by the end of 2025. When writing this chapter, the finalising of legislation is still under discussion.

Other main regulations include the CBAM, which is the EU's tool to put a fair price on carbon emitted during the production of carbon intensive goods such as steel and fertilisers. As part of Omnibus I, the European Commission announced to exempt small importers from the CBAM obligations importing below the annual mass-based threshold of 50 tonnes. The principal beneficiaries are importers of modest quantities of CBAM products and importers who are still covered by the scope of applicability, for whom declarant permission, emission estimates, reporting obligations, and financial liability are simplified by the amended Regulation. CBAM enters into force in stages between 1 October 2023 and 1 January 2026, whilst the amended Regulation (EU/2025/2083) including simplifications entered into force on 20 October 2025. Other important regulations include:

(i) the Battery Regulation (EU 2023/1542), which will enter into force in stages between 18 February 2024 and 18 February 2027, concerning the requirements on sustainability, safety, labelling, marking and information to allow the placing on the market or putting into service of batteries within the EU and how to deal with waste batteries. As part of the Omnibus IV package, which was published on 21 May 2025, it was announced that some due diligence obligations, which were to be applied from 18 August 2025, will be postponed by two years;

(ii) the Mercury Regulation (EU 2017/852), which entered into force on 1 January 2018, concerning the trading use and storage of mercury, mercury compounds and mixtures of mercury, and the trading, manufacture and use of mercury-added products, as well as the management of mercury

waste, in order to ensure a high level of protection of human health and the environment from anthropogenic emissions and releases of mercury and mercury;

(iii) the F-gas Regulation (EU 517/2014), which entered into force in January 2015, generating a quota system to stimulate a steeper reduction in the amounts of hydrofluorocarbons (HFCs) that importers and producers may place on the EU market, effectively phasing out HFCs in the EU by 2050; and

(iv) the Deforestation Regulation (EU 2023/1115) focusing on minimising the risk of deforestation and forest degradation associated with products placed on the EU market. Since 29 June 2023, the Deforestation Regulation has been in force, and its provisions would initially take effect on 30 December 2024. The European Parliament later announced that this Regulation would be postponed with one year to take effect as from 30 December 2025. Meanwhile, further delay is expected until 30 December 2026.

From a corporate governance perspective, with respect to Dutch listed companies, it is worth noting that besides the statutes as laid out in the Dutch Civil Code (DCC), the Dutch Corporate Governance Code (Code), itself being a soft law instrument, also plays an important role. The Code provides guidance for effective collaboration and management and provides rules to regulate relations between the management board, the supervisory board and its shareholders. Compliance with the Code is based on the comply or explain principle. Unlike legislation, the Code provides flexibility to deviate from the principles. The principles of ESG and sustainable long-term value creation have been weaved into the Code since December 2022. Pursuant to the latest version of the Code of March 2025, the management board is required to provide a board statement on risk management (*verklaring omtrent risicobeheersing*) regarding operational, compliance and reporting risks, including ESG risks. Large Dutch shareholders, such as institutional investors, are required to adopt a voting policy and an engagement policy in line with these principles, or to provide a reasoned statement as to why they deviated from it. For Dutch non-listed companies, the Code functions as a best practice guide.

A further push to adopt new European disclosure rules and regulations comes from the Dutch foundation Eumedion offering its members – institutional investors such as pension funds, asset managers, investment fund managers and insurance companies – various services in the field of corporate governance and sustainability regarding Dutch listed companies. Taking into account that the total assets of Dutch pension funds amount to EUR 1,771 billion, the voice of Eumedion is very powerful. Recently, Eumedion conveyed their expectations for Dutch listed companies to align their climate action plan with at least the minimum requirements of the CSDDD by 2025. Furthermore, Eumedion called on Dutch listed companies to provide a high-quality sustainability statement under the CSRD through executing a proper double materiality analysis, and obtain a non-binding advisory shareholders' vote on the sustainability statement of the company involved at its shareholders' meeting as of 2025.

1.2 What are the main ESG disclosure regulations and how have they evolved during the past 12 months?

On 5 January 2023, the CSRD entered into force, amending the Non-financial Disclosure Regulation (EU 2014/95), under which large listed companies were obliged to produce a non-financial statement, creating mandatory reporting obligations and assurances on sustainability information for in-scope companies. As of the reporting year 2024, large listed companies with a balance sheet in excess of EUR 25 million and/or a net turn over in excess of EUR 50 million and with more than 500 employees must report on their social and environmental activities and provide mandatory limited assurances on their reported information. Companies subject to the CSRD will have to report according to European Sustainability Reporting Standards (ESRS), a delegated regulation (EU 2023/2772) that creates a digital taxonomy of sustainability information within the EU. The ESRS consists of 12 standards and corresponding datapoints.

Pursuant to Article 2:391 of the DCC, directors of large companies are required to make a statement on non-financial performance as part of the yearly accounts. If the published management report gives a misleading presentation of the company's situation, directors may face civil proceedings and may be held jointly and severally liable *vis-à-vis* third parties for any damages suffered by them as a result thereof on the basis of tort, as set out in Article 2:249 of the DCC. In these cases, the burden of proof is shifted to the directors. Consequently, directors should be cautious with respect to ESG claims in their yearly accounts and management reports, and should make sure to substantiate these claims with evidence.

With regard to administrative measures and sanctions, we note that the CSRD introduced a new Article 28d in the Transparency Directive (EU 2004/109) obliging the European Securities Markets Authority (ESMA) to issue guidelines regarding reporting breaches on ESG information, in accordance with Article 16 of the ESMA Regulation (EU 1095/2010). Meanwhile, ESMA has issued Guidelines on Enforcement of Sustainability Information. These guidelines are applicable to the supervision of undertakings whose securities are admitted to trading on a regulated market in the EU. According to the Transparency Directive, infringements of the legal obligation to make the audited financial statements and the management report public, in accordance with the ESG reporting standards, may expose those responsible to the following administrative measures and sanctions: (a) a public statement indicating the natural person or the legal entity responsible and the nature of the breach; (b) an order requiring the natural person or the legal entity responsible to cease the conduct constituting the breach and to desist from any repetition of that conduct; or (c) administrative pecuniary sanctions of (i) in case of a legal entity, up to EUR 10 million or up to 5% of the total annual turnover according to the last available annual accounts where the legal entity is a parent undertaking or a subsidiary of a parent undertaking that has to prepare consolidated financial accounts pursuant to the Accounting Directive (EU 2013/34), or up to twice the amount of the profits gained or losses avoided because of the breach, or (ii) in case of a natural person, up to EUR 2 million or up to twice the amount of the profits gained or losses avoided because of the breach.

Specific disclosure regulations apply to financial market participants and financial advisors pursuant to the SFDR on sustainability related disclosures in the financial services sector and the presentation of the information relating to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, such as principal adverse impact (PAI) statements on websites and in periodic reports. The Commission Delegated Regulation (EU 2022/1288) provides regulatory technical standards and specifies the details of the content and presentation of the information in relation to the principle of "do no significant harm", whereby the EUTR and the corresponding delegated regulations provide standards for various economic activities by setting out criteria for environmentally sustainable economic activities. In this way, the EUTR creates a framework to facilitate sustainable investments. The EUTR supplements the rules on transparency as set out in the SFDR by introducing precontractual and periodic disclosures on the proportion of investments that fund

environmentally sustainable activities within the meaning of the EUTR. For the purposes of establishing the degree to which investments are deemed to be environmentally sustainable, an economic activity qualifies as environmentally sustainable when it contributes substantially to, and does not significantly harm, one or more of the following environmental objectives: (a) climate change mitigation; (b) climate change adaptation; (c) the sustainable use and protection of water and marine resources; (d) the transition to a circular economy; (e) pollution prevention and control; and (f) the protection and restoration of biodiversity and ecosystems. On the other hand, an economic activity is deemed to significantly harm these environmental objectives if, for instance, maintaining the particular economic activity leads to significant greenhouse gas emissions. However, it should be noted that while writing this chapter, a first draft for a proposal of SFDR 2.0 was leaked. The proposal puts forward amendments to the SFDR, the EUTR and the key information documents for packaged retail and insurance-based investment products (EU 1286/2014) (PRIIPs). The amendments with respect to the SFDR include, *inter alia*, the scope whereby investment advice and portfolio management is removed from the reporting obligations. Furthermore, the definition of "sustainable investment", the separate product website disclosure and the obligation to disclose a PAI at the entity level have been removed. Four new sustainability-related financial product categories have been introduced, replacing the current Article 8 and 9 disclosures. These new financial product categories relate to: (i) transition-related objectives (Article 7 of the SFDR); (ii) sustainability factors (Article 8 of the SFDR); (iii) sustainability-related objectives (Article 9 of the SFDR); and (iv) combined category (Article 9a of the SFDR).

1.3 What voluntary ESG disclosures, beyond those required by law or regulation, are customary?

Companies, cities and states may use voluntary disclosure platforms such as the Global Reporting Initiative (GRI). The GRI offers a universal set of standards for comprehensive sustainability reporting based on the double materiality principle. The European Commission has always maintained that they prefer to build upon pre-existing, established standards rather than re-inventing the wheel. The first drafts of the ESRS achieved tight alignment with the GRI standards. This essentially means that companies that have been seriously using the GRI standards in recent years have a huge advantage in their reporting burden. The CDP platform (formerly the Carbon Disclosure Project) also enables parties to work towards a sustainable net-zero, deforestation-free and water-secure world. Companies can disclose their environmental information through CDP's full corporate and SME corporate questionnaires. Another platform is provided by the International Sustainability Standards Board (ISSB), which was created by the International Financial Reporting Standards (IFRS) Foundation for developing the IFRS Sustainability Disclosure Standards providing a global baseline of sustainability disclosures to further inform economic and investment decisions. The ISSB collaborates closely with the GRI. Through this partnership, the goals of meeting the demands of the capital markets with investor-focused baseline sustainability information from the ISSB and a wider range of stakeholders with information from the GRI are to be as compatible as possible. This work will help reduce the reporting burden for companies and further harmonise the sustainability reporting landscape at an international level. Ultimately, it is expected that the voluntary initiatives will be overtaken in Europe by the European legislation completely overhauling the sustainable reporting landscape.

1.4 Are there significant laws or regulations currently in the proposal process?

Please see question 1.1 with respect to the Omnibus simplification package. Further, on 20 June 2025, the European Commission announced its intention to withdraw from the proposal for a Green Claims Directive (2023/0085 COD) (GCD), being a *lex specialis* to the existing Unfair Commercial Practices Directive (EU 2005/29) (UCPD). The GCD sets out requirements for the substantiation, communication and verification of specific environmental claims by traders aiming to protect consumers. The GCD applies to explicit environmental claims regarding products in business-to-consumer commercial practices and specifies the conditions that must be met in order to support clear environmental claims. It is expected to have a huge impact on the retail industry. These requirements include the need for specifications, for instance, whether the claim: (a) is related to the whole product, or to all of the trader's activities or only a certain part or aspect of the activities; (b) relies on widely recognised scientific evidence; and (c) is significant from a life-cycle perspective. The GCD will not apply to certain environmental labelling schemes already regulated by specific EU rules, such as environmental labelling schemes relating to the CO_2 emissions of new passenger cars offered for sale or lease in the EU, which fall under the regime of Directive EU1999/94, which was transposed into Dutch law by the Decree on labelling energy consumption of passenger cars (*Besluit etikettering energiegebruik personenauto's*). Member States will be responsible for enforcing the GCD. The possible withdrawal of the GCD will leave the UCPD unchanged. The UCPD was transposed into Dutch law as *Wet oneerlijke handelspraktijen* and implemented in the DCC, on which basis consumers affected by a misleading claim can issue complaints and seek legal action. Moreover, the Green Transition Directive (EU 2024/825) that entered into force on 26 March 2024, to be transposed into national law by 27 March 2026, and which measures will apply as from 27 September 2026, will further enhance consumer protection. In the Netherlands, the Dutch supervisory authority *Autoriteit Consument & Markt* (ACM) has published a guide on how to deal with green claims.

1.5 What significant private sector initiatives relating to ESG are there? To what extent are private companies reporting on ESG issues?

A significant private initiative is the so-called Principles for Responsible Investment (PRI). An international group of institutional investors developed the six ESG investment principles reflecting the increasing relevance of environmental, social and corporate governance issues to investment practices. The process was convened by the United Nations Secretary-General, and the principles are incorporated into the investment analysis and decision-making processes. See further under question 1.3.

2 Principal Sources of ESG Pressure

2.1 What are the views and perspectives of investors and asset managers toward ESG, and how do they exert influence in support (or in opposition) of those views?

Pursuant to the SFDR and the EUTR, financial market participants and financial advisors are required to report on the impact of their investments on ESG issues in their annual financial reports. They are also required to publish a statement on their

website with respect to their due diligence policy regarding PAI (see also question 1.2). Financial market participants and financial advisors must account for the extent to which their investments have negatively impacted social and environmental issues. These obligations are intended to promote transparency and enable investors to make informed decisions based on the disclosed ESG information. However, the SFDR (level 1) is under review and various amendment are proposed in SFDR 2.0 (see question 1.2). In addition, asset managers are required to incorporate sustainable risks into their business operations pursuant to the Alternative Investment Fund Managers Directive (AIFMD) and the Markets in Financial Instruments Directive (MiFID II) and the associated delegated regulations.

In 2018, the Dutch Pension Funds Agreement on Responsible Investment was concluded. This sectoral agreement is based on the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and the United Nations Guiding Principles. In addition to the financial risks that pension funds face, the risks of a negative impact on stakeholders in the investment value chain must also be considered. Stakeholders in this context are, for instance, people who live near or work on a factory or plantation. Applying due diligence to the investment portfolio in accordance with the OECD Guidelines for Multinational Enterprises and United Nations Guiding Principles puts these stakeholders into focus.

2.2 What are the views of other stakeholders toward ESG, and how do they exert influence in support (or in opposition) of those views?

There is a growing demand of retail investors in ESG-aligned investments. The Dutch Financial Markets Authority (*Autoriteit financiële markten*) (AFM) has published a guideline on green claims made by financial market participants and investment advisors. The AFM is the designated regulator for financial services rendered to consumers and pension fund participants. When assessing sustainability claims, the AFM will also consider case law and future legislative changes in its supervision.

2.3 What are the principal regulators with respect to ESG issues, and what issues are being pressed by those regulators?

Greenwashing is considered to be one of the major risks endangering the Green Deal and the economic system within the EU. For the financial services industry, the fight against misleading green claims is led by the ESMA. As set out in the previous question, the AFM plays an important role in protecting consumers and pension fund participants against misleading ESG claims of financial markets participants, whereas the ACM plays an important role in protecting the interests of consumers in the real economy.

2.4 Have there been material enforcement actions with respect to ESG issues?

Over the past few years, there have been some material enforcement actions. In 2023, DWS Group, a German asset manager and part of Deutsche Bank, settled with the U.S. Securities and Exchange Commission (SEC) for $19 million over greenwashing allegations. It has been said that the legal cost involved greatly exceeded the settlement amount. In 2023, a former CEO of Audi who was accused of having knowledge of Audi using illegal software to cheat on environmental emissions tests admitted before the court that he should have taken more care. The particular CEO received a 21-month suspended sentence and a fine of EUR 1.1 million for fraud and negligence.

2.5 What are the principal ESG-related litigation risks, and has there been material litigation with respect to ESG issues, other than enforcement actions?

There are various kinds of ESG litigation initiatives on the rise, mainly class actions initiated by non-governmental organisations (NGOs) and action groups started at the Dutch District Courts.

The first category concerns strategic litigation, which forces companies to change their corporate governance model by reducing their polluting business activities and ultimately bringing them to an end in the interest of protecting future generations. An example is the case of the Dutch association Milieudefensie against oil company Shell, accusing Shell of committing a tort by violating an unwritten standard of care pursuant to Article 6:162 of the DCC. The Hague District Court decided that the existence of such unwritten standard of care should be interpreted on the basis of all relevant facts and circumstances, the best available science on dangerous climate change and how to manage it, and the widespread international consensus that human rights offer protection against the impacts of dangerous climate change and that companies must respect human rights. The Court concluded that Shell is obliged to reduce the CO_2 emissions of the Shell group activities by net 45% by the end of 2030, relative to 2019, through the Shell group's corporate policy. This reduction obligation relates to the Shell group's entire energy portfolio and to the aggregate volume of all emissions (Scope 1 through to 3). The Hague Court of Appeal dismissed the claim of Milieudefensie imposing Shell to reduce its CO_2 emissions by 45% by 2030 relative to 2019 levels. The Court hereby considered that, since the judgment of The Hague District Court, many new EU regulations have been created, such as the CSRD and the CSDDD, which should provide a legal framework for combatting climate change. According to these new EU regulations, Shell must prepare a credible climate transition plan that is consistent with the EU's climate objectives including absolute reduction targets, whereby the Court of Appeal noted that these regulations do not preclude a duty of care based on the social standard of care on the part of individual companies to reduce their CO_2 emissions. The Court of Appeal further observed that too many investments in new oil and gas fields could lead to a carbon lock-in. A carbon lock-in happens when existing or new fossil fuel assets or infrastructure are exploited in spite of the possibility of replacing them with low-emission alternatives, postponing or obstructing the shift to near-zero emission alternatives. With a view to this, the Court of Appeal held that Shell's planned investments in new oil and gas fields might be in violation with its standard of care. It remains to be seen whether the new EU regulations, pursuant to which companies like Shell will have to transparently disclose on their material impacts, risks and opportunities, will provide for a balanced framework in this respect. Managing material risks such as the risk of asset stranding caused by changes in the market, public opinion and regulations may be an incentive for further divestments in fossil fuels. On the other hand, lock-in risks might expose new investments in oil and gas fields to be in violation with a social standard of care and could lead to accusations of greenwashing and material misstatements at disclosure level. In March 2025, Milieudefensie started legal procedures against ING Bank claiming that ING is in breach with its duty

of care and demanding that ING lowers the financed and facilitated greenhouse gas emissions of the ING Group related to its operations in the fossil fuel sector, which is made up of companies that explore, mine, extract, produce, process, distribute, and/or put oil, coal, and/or gas on the market, to the point where, at the end of 2030, 2035, 2040, and 2050, these emissions will have been reduced in a way that is absolutely consistent with the goal of keeping global warming to 1.5°C.

The second category concerns greenwashing litigation forcing companies to make no misleading environmental claims towards consumers. An example is the case of the Fossielvrij foundation, which accused KLM of committing a tort by making environmental claims based on vague and general statements about environmental benefits in order to mislead consumers. The Amsterdam District Court held that KLM committed a tort by violating the rules of unfair commercial practices as laid down in Book 6 of the DCC. It was held that KLM painted too rosy a picture of the consequences of its environmental measures, such as with regard to the impact of using sustainable aviation fuels and reforestation. It was further held that the disputed measures only marginally reduced negative environmental aspects and falsely created the impression that flying with KLM is sustainable.

The third category concerns litigation initiated by the government. Several local municipalities in the neighbourhood of Dordrecht argued that they have suffered damages due to the emission into the air of perfluorooctanoic acid (PFOA) and GenX substances from Chemours' plant, formerly Du Pont, in Dordrecht. The Rotterdam District Court held in an interlocutory judgment that the emissions of PFOA by Du Pont into the air between 1 July 1984 and 1 March 1998 constitutes a tort against the municipalities, creating liability for damages. Due to the fact that Du Pont, having a licence, did not sufficiently inform the municipalities about the possible risks of these emissions during this period, Chemours cannot rely on the licences granted with respect to this period. Moreover, it was held that Du Pont also failed to limit its emissions of PFOA into the air despite their knowledge of the possible risks this would cause.

2.6 What are current key issues of concern for the proponents of ESG?

The ESG regulatory landscape is developing fast, as is evidenced by the introduction of an enormous amount of mandatory ESG legislation. It is a concern for auditors to provide assurance on the vast amount of data concerned, while the growing amount of ESG legislation and implementation thereof will have its effect on the strategy and business model of companies in the coming years. In his report, "The Future of European Competitiveness", Mario Draghi emphasised the need to create a regulatory landscape that facilitates competitiveness, resilience and cutting compliance costs. The European Commission confirmed in its communication entitled "A simpler and faster Europe: Communication on implementation and simplification" to simplify ESG legislation and, as a result hereof, proposed six Omnibus simplification packages. Please see also question 1.1.

2.7 Have ESG issues attracted shareholder activism, and from whom?

In the Netherlands, NGOs and action groups are trying to influence corporate ESG behaviour by attending general shareholder meetings of multinational enterprises, such as ING and Shell, as minority shareholders, in order to influence the public opinion. Pursuant to the Financial Supervision Act, professional investors such as asset managers and institutional investors have a legal obligation to publish their engagement policy on their website. If ESG engagement is not successful, investors may ultimately decide to sell their shares. At the end of 2021, Dutch pension fund PME was the first large pension fund to announce that it would sell its fossil portfolio, and was then followed by other large pension funds in recent years. See question 2.5 for more information on this topic.

3 Integration of ESG into Strategy, Business Operations and Planning

3.1 Who has principal responsibility for addressing ESG issues? What is the role of the management body in setting and changing the strategy of the corporate entity with respect to these issues?

Although the management board has a principal responsibility for addressing ESG issues, it is expected that board members and supervisory board members alike assume a collective responsibility for ensuring that the annual financial statements, the management report and the ESG report are drawn up and published in accordance with the Accounting Directive, hence the CSRD requirements relating to ESG issues. Pursuant to the CSRD, the boards of in-scope companies are expected to disclose certain governance factors, such as: (i) the role of the undertaking's administrative, management and supervisory bodies with regard to sustainability matters and their composition, as well as their expertise and skills in relation to fulfilling that role, or the access such bodies have to such expertise and skills; (ii) the main features of the undertaking's internal control and risk management systems, in relation to the sustainability reporting and the decision-making process; (iii) business ethics and corporate culture, including anti-corruption and anti-bribery, the protection of whistle-blowers and animal welfare; (iv) activities and commitments of the undertaking related to exerting its political influence, including its lobbying activities; and (v) the management and quality of relationships with customers, suppliers and communities affected by the activities of the undertaking, including payment practices, especially with regard to late payment to small and medium-sized undertakings.

3.2 What governance mechanisms are in place to supervise management of ESG issues? What is the role of the board and board committees vis-à-vis management?

The directors are responsible for the daily management of the company. Dutch corporations with listed shares or depositary receipts for shares often have a two-tier board with a supervisory board that monitors the management. In cases where the company has a one-tier board, the non-executive directors *de facto* fulfil the role of the supervisory directors. The supervisory board oversees the management board's policy and the general operations of the company and its related ESG matters. In this way, the supervisory board assesses the efficiency of the company's internal risk management and control systems, as well as the integrity and quality of its financial and ESG reporting. The audit committee advises the supervisory board on the integrity and quality of financial and sustainability reporting. It focuses, among other things, on managing the board's interaction with, and comments from, the internal auditor, the external auditor and, if applicable, another external party involved in supervising the ESG-related reporting. In addition to the audit committee, several companies have set up an ESG committee to deal with sustainability issues relating to the company.

3.3 What compensation or remuneration approaches are used to align incentives with respect to ESG?

Since 1 January 2020, the remuneration policy of listed companies must comply with the remuneration aspects of the revised Shareholders' Directive (EU 2017/8280), as implemented in Articles 2:135a and 2:135b of the DCC. The remuneration policy must contribute to the company's business strategy and long-term interests and sustainability and explain how it does so. This policy must be clear and understandable and describe the different components of fixed and variable remuneration, including all bonuses and other benefits, and apply to both members of the management board and members of the supervisory board. In the case of a one-tier board, it involves both the executive board and the non-executive directors. Pursuant to the SFDR, in-scope financial market participants and financial advisors are required to include information in their remuneration policies on how those policies are consistent with the integration of sustainability risks and publish that information on their websites. This requirement has been deleted in SFDR 2.0.

3.4 What are some common examples of how companies have integrated ESG into their day-to-day operations?

Financial market participants and asset managers are increasingly implementing ESG criteria in their investment decisions and when formulating their Key Performance Indicators. Companies can change their policies for the company's business strategy and long-term interests by including sustainability goals and working on ESG disclosures.

3.5 How have boards and management adapted to address the need to oversee and manage ESG issues?

Managing ESG issues is complex as it is a very broad topic. The level of integration depends on various factors, such as the kind of business activities the company is employing. However, there is a growing awareness of the importance of embedding ESG across the business. Some companies have included a chief sustainability officer in their organisation, while others weave ESG throughout the various departments.

4 Finance

4.1 To what extent do providers of debt and equity finance rely on internally or externally developed ESG ratings?

It is becoming an important part of mainstream finance that providers of debt and equity finance rely on internally and externally developed ESG ratings. Notably, this has led to a considerable increase in the development of ESG ratings. However, the downside is that this has also led to inconsistency in rating methodologies and an increase in greenwashing. Therefore, with the increase in demand for the developing of ESG ratings comes a demand for more transparency and more reliable ESG data, especially as it is expected that the market for ESG ratings is set to continue growing substantially in the coming years. In order to enhance the quality, integrity, transparency and independence of ESG rating activities, on 25 April 2024, the European Parliament adopted the text of the ESG Rating Regulation (ESGRR). The ESGRR introduces authorisation and disclosure requirements as well as rules on organisation and conduct of ESG rating providers. The ESGRR applies to ESG ratings issued by ESG rating providers who are operating in the EU. It should be noted that the ESGRR uses a wide definition of both ESG rating providers and ESG ratings. ESG rating for instance includes an opinion or score (or a combination of both) regarding characteristics with regard to ESG factors or exposure to such risks or the impact on ESG factors based on an established methodology and defined ranking system of rating categories.

4.2 Do green bonds or social bonds play a significant role in the market?

In 2019, the Netherlands was the first country with a triple-A rating to issue a green bond, and in October 2023, a new 20-year green bond was issued. The market has rapidly developed since 2019. According to *Bloomberg*, the sustainable bond issuance topped more than a trillion dollars in 2023. The green and social bonds market is expected to continue to rise. In addition, the European Investment Bank, as a worldwide leading issuer of green bonds, remains committed to gradually aligning its green bond programme with the European Green Bond Standard. The regulations on green and social bonds at a European level have likewise developed, directly affecting the Netherlands. On 21 December 2023, the Green Bond Regulation (GBR) entered into force and will apply as of 21 December 2024. It is envisaged that the GBR will foster consistency in the green bond market and mitigate the risks of greenwashing and the distortion of investment decisions. Hence, issuers of green bonds must comply with the rules as set out in the GBR. The rules under the GBR relate, *inter alia*, to (i) the allocation of proceed requirements, which must be aligned with the EUTR (with a flexibility of up to 15%), (ii) external review requirements, and (iii) mandatory disclosure requirements. Moreover, guidelines will be published in relation to voluntary disclosures for other environmentally sustainable bonds and sustainability-linked bonds issued in the EU that are not designated as European Green Bonds.

4.3 Do sustainability-linked bonds play a significant role in the market?

Please see question 4.2.

4.4 What are the major factors impacting the use of these types of financial instruments?

It is perceived that a lack of common standardised disclosure templates for issuers of environmentally sustainable bonds or sustainability-linked bonds makes it difficult for investors in such bonds to easily and reliably locate the information they need, and to compare and aggregate data on such bonds, especially due to the lack of common methodology. In order to provide investors with all the relevant information to assess the environmental impact of European Green Bonds, impact reports should clearly specify the metrics, methodologies and assumptions applied in the assessment of the environmental impact and the amount of Taxonomy alignment. With the entering into force of the GBR, it is envisaged that these present constraints will be effectively reduced, and that the GBR framework will enhance investors' confidence in green bonds leading to an increase in capital inflow to be allocated to sustainable goals.

4.5 What is the assurance and verification process for green bonds? To what extent are these processes regulated?

With the introduction of the GBR, it is envisaged that uniformity will be enhanced, creating a level playing field for issuers. Prior to the issuing of a green bond, the issuer must complete the European Green Bond factsheet, which is a mandatory template. Furthermore, the issuer must ensure that the European Green Bond factsheet is subject to a pre-issuance opinion of an external reviewer. Every 12-month period an allocation report of the proceeds must be issued, which must be made public within 270 days after the end of a 12-month period. Issuers must also draw up and make public a European Green Bond impact report on the environmental impact of the use of the bond proceeds by using a mandatory template. The issuer must also publish a prospectus pursuant to Regulation EU 2017/1129, as well as certain information that should be made available, free of charge, on their website. Issuers of bonds marketed as environmentally sustainable and of sustainability-linked bonds can, on a voluntary basis, issue pre-issuance disclosures. However, the guidelines for a template on voluntary disclosures has not been published yet.

4.6 What other developments and factors are driving or hindering the financing of green projects?

EU-based institutional investors are increasingly demanding EU Taxonomy (EU 2020/852)-aligned investments. Financial market participants offering products in the EU with an environmental objective are striving to transparently assess and report on the sustainability of their instruments, for example by: (i) benchmarking these instruments against the International Capital Market Association's Green Bond Principles and the Loan Market Association's Green Loan Principles; (ii) disclosing to what extent green projects contribute positively to the United Nations Sustainable Development Goals and how they perform against specific Key Performance Indicators; and (iii) determining if the instruments contribute to the climate change mitigation criteria and do no significant harm criteria of the EU Taxonomy and delegated acts.

5 Trends

5.1 What are the material trends related to ESG?

From a legal risk perspective, there are several trending topics.

New anti-greenwashing rules are being introduced, such as the upcoming GCD, which are the emerging focus of local supervisory authorities such as the AFM and the ACM, both of which published guidelines on how to deal with ESG claims and regulations that will force companies and directors to make claims that are not misleading and are well substantiated (i.e., backed by credible evidence). The ACM has already fined some companies in order to discourage them from making misleading sustainability claims and to actively encourage them to change their marketing behaviour.

New mandatory reporting rules, stemming from the CSRD and ESRS, force in-scope companies and their directors to carefully consider their public ESG disclosures from a liability risk perspective. Pursuant to Articles 2:139 and 2:249 of the DCC and Articles 19a and 29a of the CSRD, the (consolidated) accounts, interim figures and management report must not give a misleading impression of the state of the company, including a climate-transition plan to ensure that its business model and strategy are compatible with the transition to a sustainable economy, the limiting of global warming to 1.5°C in line with the United Nations Paris Agreement of 2015 and the objective of achieving climate neutrality by 2050. Furthermore, the company must ensure that the quality of the information is understandable, relevant, verifiable, comparable and represented in a faithful manner. In the event that the ESG disclosures of the company, as published in annual accounts, interim figures or the management report give a misleading impression, the directors could be held jointly and severally liable for committing a tort towards third parties for violating a duty of care, for which claims may be brought before a Dutch court by third parties, such as individuals, trade unions, NGOs or governmental bodies.

New ESG case law will further force companies and directors to continuously assess the scope of their duty of care in relation to ESG disclosures. In general, according to Article 2:9 of the DCC, directors are obliged to perform their duties towards the company with due care. In the event they violate this internal duty of care, a director could be held personally accountable when serious misconduct has occurred. Serious misconduct is deemed to have occurred if no other reasonably acting and fully experienced director could have taken the particular director's decisions in their place, whereby all the circumstances of the case must be considered. The yardstick for assessing whether a director has met this internal duty of care is more or less the same as is used to assess compliance with their external duty of care towards third parties on the basis of committing a tort, whereby the claimants in principle have the burden of proof, which is quite a hurdle. However, in case of misleading annual accounts and/or management reports, it is up to the management board to prove that they are not culpable (Article 2:249 of the DCC). Moreover, under the upcoming rules of the CSDDD, a company that intentionally or negligently fails to comply with the obligations to prevent or to bring adverse impacts in its operations, the operations of a subsidiary, direct business partner or indirect business partner to an end, may face civil proceedings for violating a duty of care under the local laws of the EU Member States.

Finally, we note that pursuant to the CSRD, the sustainability statement in the management report prepared in accordance with sustainability reporting guidelines must be faithful, which means that the data must always be: (i) accurate; (ii) neutral; and (iii) complete. In July 2024, the Royal Netherlands Institute of Chartered Accountants (NBA) updated its guidance on identifying and evaluating the risks of possible fraudulent misstatements in the auditing practice (NBA Guidance). Eumedion, making reference to the NBA Guidance, urges external auditors to give careful consideration to two-way consistency checks between the financial statements and the entire management report, including the sustainability statement, whereby Eumedion expects that the findings and insights from the audit of the financial statements should be considered in the assurance activities in relation to the sustainability statement and *vice versa*.



Nicole Batist is a highly skilled and experienced lawyer in the field of financial and corporate law as well as ESG law. In 1998, she began her career as a lawyer (*advocaat*) with a global leading law firm, after which she moved to an investment bank, heading the legal department. She was a member of the working group of the Dutch Federations of Banks (NVB) and chairman of the expert pool EMIR within DACSI. She has earned her reputation as an excellent practical lawyer within the field of cross-border financial transactions. She is committed to assisting clients with their business goals, understands their language and has a pragmatic approach. Nicole is admitted to the Dutch Bar as a registered lawyer (*advocaat*).

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Under the Green Swans initiative, Keijzer & Cie offers strategic consultancy services for the sustainability transition through a network of dedicated consultants. This allows Green Swans to scale its services to meet the demands of clients, whether on a temporary or structural basis, tailored to specific needs and preferences. Green Swans is dedicated to help clients to understand and to implement European sustainability legal transition frameworks (like the EU Green Deal legislation, reporting standards, etc.) in the area of strategic business management and positioning, legal advice, regulatory change, corporate governance issues, due diligence and legal risk management and implementation through change management, training and instruction.

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