Ashurst

AGC Conference 2023

22 November 2023

AGC Conference 2023

Timings	Agenda
8:30 – 9:00	**Registration, light breakfast and refreshments**
9:00 – 9:05	**Welcome introduction**
9:05– 09:45	**Sustainability and climate disclosures and reporting – what, who and when** Rob Hanley, Florian Drinhausen, Eleanor Reeves
09:45 – 10:30	**Narrative reporting and AGMs in 2024 and corporate governance round-up** Will Chalk, Rebecca Servian
10:30 – 10:45	**Questions**
10:45 – 11:30	**Networking and refreshments**

Speakers

Will Chalk
Partner, Corporate Governance

Rob Hanley
Partner, Corporate Governance

Eleanor Reeves
Partner, Environment & Safety

Florian Drinhausen
Partner, Corporate Governance

Rebecca Servian
Senior Associate, Incentives

Ashurst

Sustainability and climate disclosures and reporting – what, who and when

1

Rob Hanley

It’s as simple as...

A

B

C

Or...

The sustainability and climate reporting lexicon

IFRS S2

ESRS

CSDDD

TNFD

TCFD

ISSB

IFRS S1

NFSI

SASB

CSRD

SDSs

TPT

EFRAG

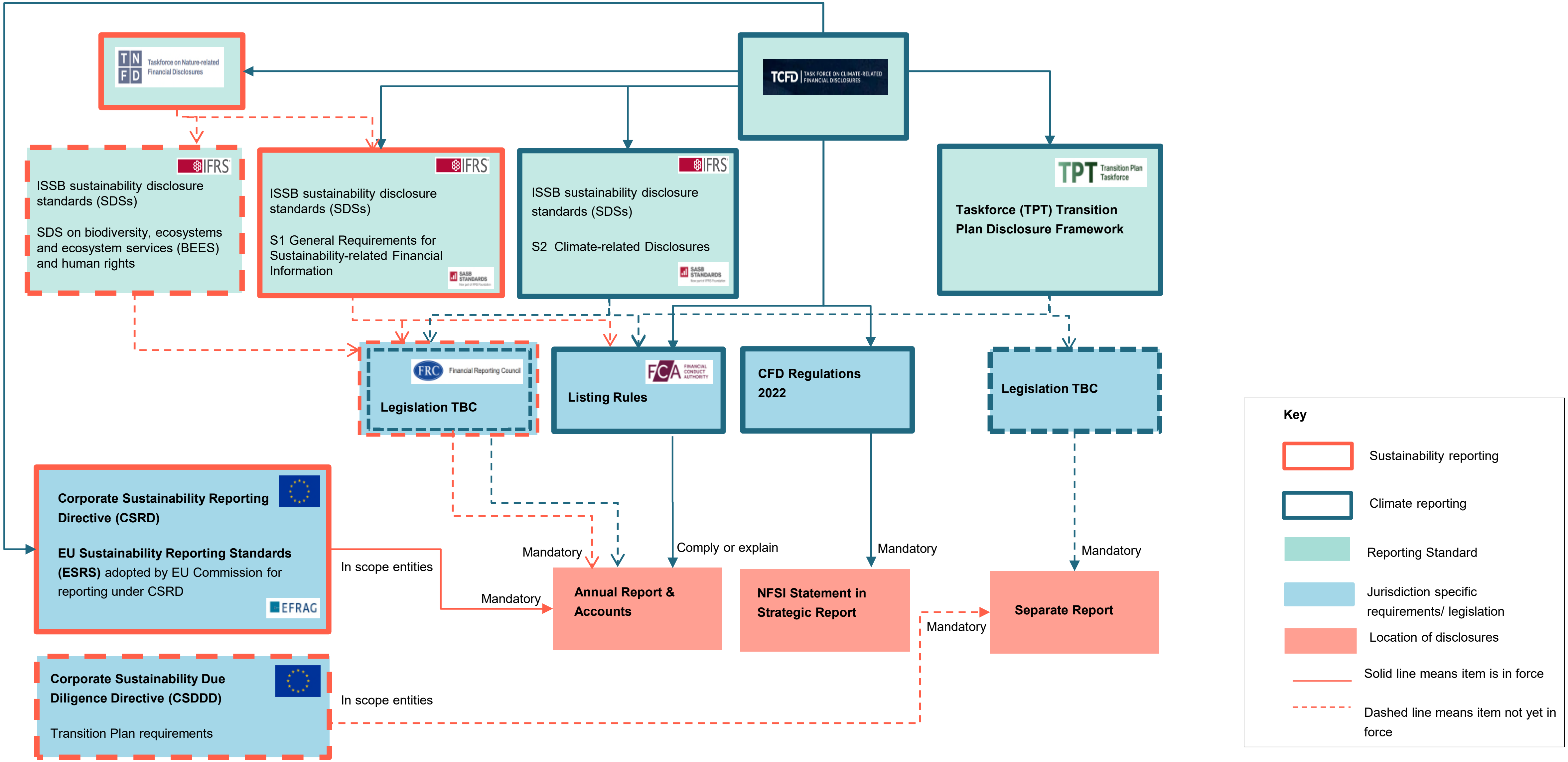
FCA

FRC

TPs/ CTPs/ CTAPs

BEES

UK overview of sustainability & climate reporting



Ashurst

Task Force on Climate Related Financial Disclosures (TCFD)

Eleanor Reeves

2

Climate change reporting under TCFD in the UK

Climate-related disclosures

WHO? Premium listed companies (**LRs**)	**WHO?** Standard listed companies and asset managers, life insurers, and FCA-regulated pension providers (**LRs**)	**WHO?** Large (with > 500 employees) 'traded' and AIM companies; and large (as above) and high turnover private companies + LLPs **(2006 Act**)
WHAT? TCFD Comply or explain (at the moment)	**WHAT?** TCFD Comply or explain (at the moment)	**WHAT?** TCFD–aligned disclosures broadly in line with TCFD Recommendations + Recommended Disclosures Mandatory
WHEN? FYs beginning on or after 1/1/2021	**WHEN?** FYs beginning on or after 1/1/2022	**WHEN?** FYs beginning on or after 6/4/2022

Regulation & guidance

- The Companies (Strategic Report) (Climate-Related Financial Disclosure) Regulations 2022
- Mandatory climate-related financial disclosures by publicly quoted companies, large private companies and LLPs
- FRC Guidance on the Strategic Report

What next?

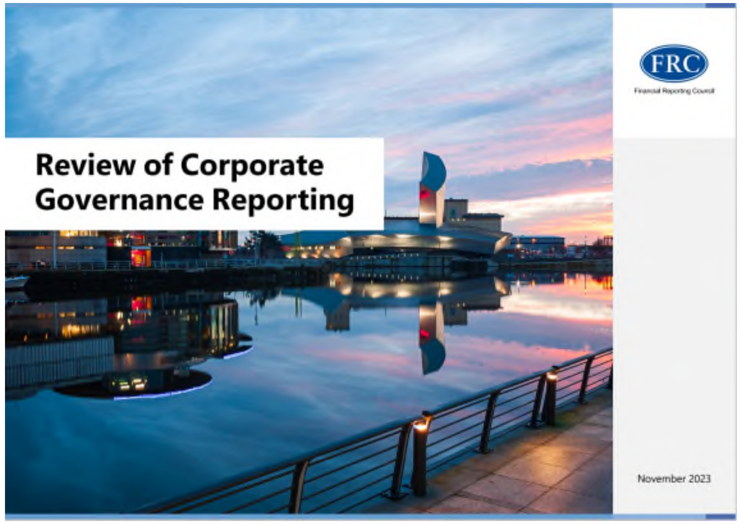
UK Sustainability Disclosure Requirements (SDRs) build on UK's TCFD implementation

FRC CRR Thematic review of climate-related metrics & targets

Key take-aways

- FRC's correspondence with companies on TCFD disclosures was most often about disclosures relating to metrics & targets (30%) and strategy (29%)
- Overall reporting of climate-related metrics and targets has improved incrementally but there is a broad range of maturity
- Companies are finding it hard to clearly present which metrics and targets are material for managing CRROs
- Metrics to track progress and what interim targets cover is not clear
- Few companies publish separate TPs although many mention aspects of TPs
- Main areas for further improvement include:
  - Metrics and targets, beyond headline 'net zero' statements
  - Transparency about internal carbon prices
- Next year tougher enforcement approach
- Greenwashing continues to be an area of concern

FRC Annual Review of Corporate Governance Reporting



Key take-aways

- Ongoing improvement in TCFD reporting and strengthening of governance of climate-related issues including on engagement with stakeholders.
- TCFD-compliant disclosers - 57% of sample companies stated they had provided full disclosures fully consistent with all the TCFD R&RD. Increase in the number of companies claiming partial compliance.
- Almost all companies outlined board and management's oversight of CROs.
- 46% of the sample now have board-level committees on sustainability, ESG and CSR - only 9% of sample companies had none of these structures in place.
- Metrics - companies reporting partial compliance with TCFD recommendations is often due to data integrity and availability of scope 3 data.
- Targets - Unclear metrics to track progress against targets and explanations of performance were not always provided.
- Board expertise - only a quarter of companies disclosed senior management expertise or knowledge.
- Assurance - 65% of the sample companies obtained some kind of extremal assurance over some aspect of their TCFD data disclosure.
- Climate change risk - 65% of companies identified climate change as a principal risk and 17% identified it as an emerging risk.

Ashurst

International Sustainability Standards Board (ISSB) sustainability and climate-related disclosures standards

3

Eleanor Reeves

International Sustainability Standards Board (ISSB) standards

What?

- March 2022, exposure drafts of first two ISSB SDS.
- 26 June 2023, ISSB published:
  - IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information
  - IFRS S2 Climate-related Disclosures
- S1 and S2 disclosures will be made as a part of a company's general financial reporting package.

Why?

- Consolidate several sustainability and climate-related disclosures including TCFD recommendations and SASB Standards.
- Provide a single global baseline for sustainability disclosures for jurisdiction-specific requirements to be built on.

When?

- Effective for annual reporting periods beginning on or after 1 January 2024 (voluntary).
- Earlier use of the standards is permitted.
- First year transitional provisions (climate-related info only, Scopes 1 & 2 only, no comparative info, report when do half yearly reporting and use different reporting frameworks).
- Sustainability and Scope 3 to be covered in future years.
- Adoption by individual jurisdictions determines if they become mandatory and which entities must report against them.

Adoption of ISSB SDS in the UK

ISSB S1 and S2 publication June 2023

DBT Guidance on UK SDS - August 2023

FRC Call for Evidence July - October 2023

FCA amendments to listed company reporting requirements

- Green Finance Strategy 2023 - The government has committed to adopt the ISSB's standards to make them mandatory for the UK
- Department for Business & Trade (DBT) published initial guidance on the UK SDS in August 2023
- FRC Call for Evidence on the prospective use of the SDS in the UK - closed 11 October 2023
- Government call for evidence on Scope 3 emissions reporting and the current SECR framework- closes 14 December 2023
- FCA will align reporting requirements for listed companies with S1 and S2 once adopted

Preparing for ISSB standards

FCA RECOMMENDATIONS


FINANCIAL CONDUCT AUTHORITY

About us | Firms | Markets

Home > Publications > Primary Market Bulletin 45

Primary Market Bulletin 45

Newsletters | **Published:** 10/08/2023 | **Last updated:** 10/08/2023

Newsletter for primary market participants

August 2023 / No. 45

- UK endorsement of ISSB S1 and S2 within a year of publication.
- FCA will consult in H1 2024 on updating disclosure rules in the Listing Rules - aim to bring new requirements into force for accounting periods beginning on or after 1 January 2025 (first reporting in 2026).
- Meanwhile, FCA recommends companies should:
    - Continue to improve climate reporting.
    - Engage early with S1 and S2 and the guidance - consider voluntary reporting.
    - Follow UK endorsement process.

Ashurst

Taskforce on Nature-related Financial Disclosures (TNFD)

4

Eleanor Reeves

Taskforce on Nature-related Financial Disclosures (TNFD)

Why?

- TNFD estimates more than half of the world's economic output is moderately or highly dependent on nature.
- Unprecedented rate of biodiversity loss and ecosystem degradation or collapse presents physical, transitional and systemic risks for businesses.
- UN Kunming-Montreal GBF targets.

What?

- A voluntary framework for organisations to identify, assess and report on nature-related risks in their financial reports.
- Intended to encourage a shift in global financial flows away from nature-negative outcomes.
- Modelled on TCFD Framework – 14 recommendations grouped by 4 TCFD pillars.

When?

- TNFD's Disclosure Recommendations and Guidance published September 2023.
- UK government will explore how to incorporate into UK policy and legislation.

Ashurst

Transition Plans (TPs)

5

Eleanor Reeves

Transition Plans: what are they?

TPT

A transition plan is integral to an entity's overall strategy, setting out its plan to contribute to and prepare for a rapid global transition towards a low GHG-emissions economy

CDP

A time-bound action plan that clearly outlines how an organization will achieve its strategy to pivot its existing assets, operations, and entire business model towards a trajectory that aligns with the latest and most ambitious climate science recommendations

Available guidance

- *TPT's Disclosure Framework and Implementation Guidance*
- *Guidance: TCFD Guidance on Metrics, Targets, and Transition Plans*
- *CDP's Technical Note: Reporting on Climate Transition Plans*
- *Glasgow Financial Alliance for Net Zero (GFANZ) recommendations on Financial Institution Net-Zero Transition Plans*

"Thousands of companies have made voluntary net-zero commitments. To implement these, firms need strategic transition plans laying out the steps they will each independently take to align their core business with a net-zero future. In doing so, it is critical that firms develop plans that are credible, comprehensive, and consistent."

TPT Disclosure Framework, October 2023

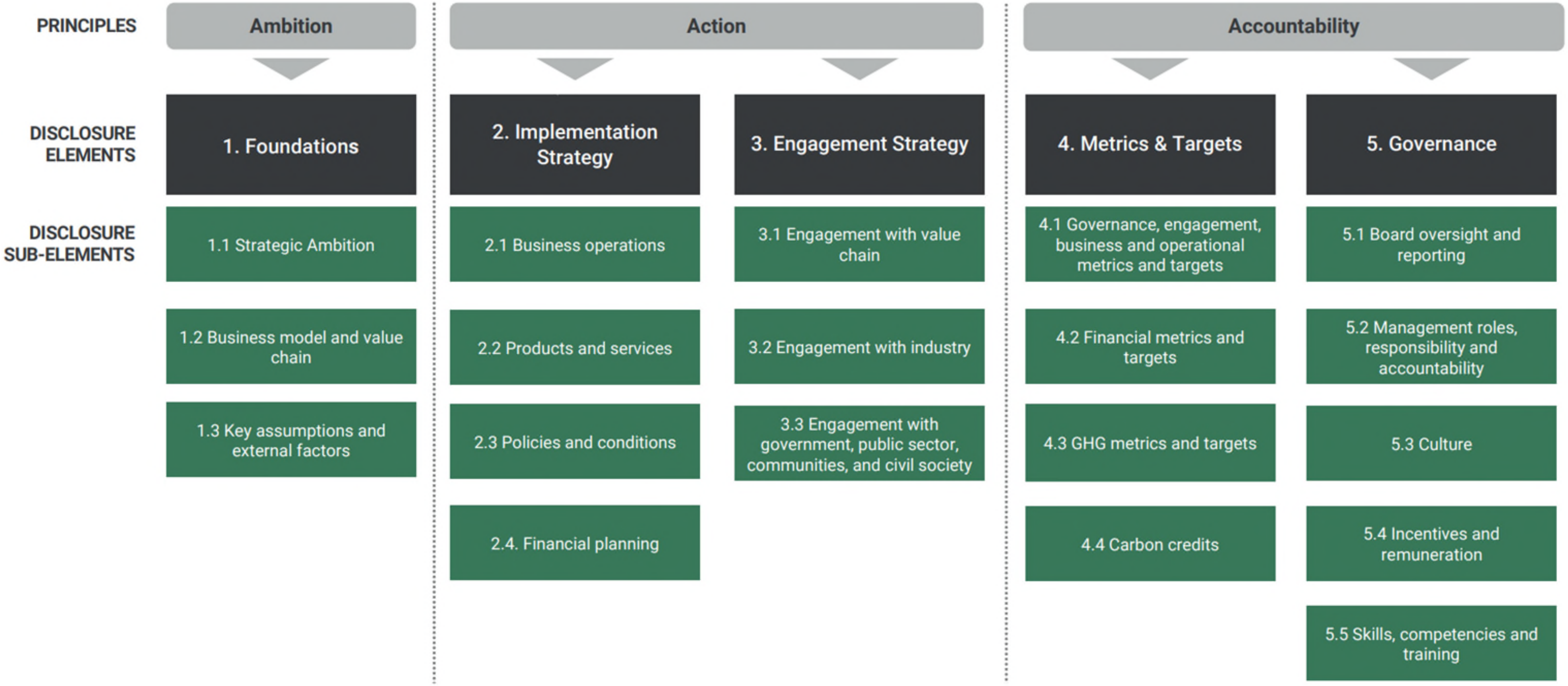
Transition Plans in the UK: where are we now?

April 2022	November 2022	October 2023	November 2023	Early 2024	2023-2024
Transition Plan Taskforce (TPT) launched	TPT published a consultation on a Disclosure Framework and Implementation Guidance.	**Final versions Disclosure Framework and Implementation Guidance** Consultation on sector-specific guidance launched	**UK government** consultation on making TPs mandatory anticipated Q4 2023 **TPT** consultation on deep dives for certain sectors	Sector-specific guidance to be published	**FCA** consultation on changes to listing rules to reference ISSB and consider TPT outputs as basis to strengthen TP disclosure expectations of listed Cos, AMs and AOs

Who will be covered?

At COP26 in Glasgow, the UK government committed to make TPs mandatory for ‘large companies’ and some financial sector firms

TPT Disclosure Framework



Transition Plans in the EU

What?

- Requirements for a TP for climate change mitigation in section E1-1 of EU Sustainability Reporting Standards (ESRS).
- Current CSDDD draft requires companies with a net turnover in excess of €150 million to adopt a TP to ensure their business model and strategy are compatible with the 1.5 °C Paris Agreement goal.

Who will be covered?

- Companies within the scope of the CSRD must report based on the ESRS.

Ashurst

Corporate Sustainability Reporting Directive (CSRD)

6

Florian Drinhausen

CSRD flow chart

Definitions

Art.: Refers to articles of the EU Corporate Sustainability Reporting Directive (CSRD)

EU undertaking: Legal entity governed by the laws of an EU member state

FY: Financial year

Micro undertaking: Not exceeding the limits of at least two of the three following criteria: (a) balance sheet total: 350,000 €; (b) net turnover: 700,000 €; (c) average number of employees during the financial year: 10

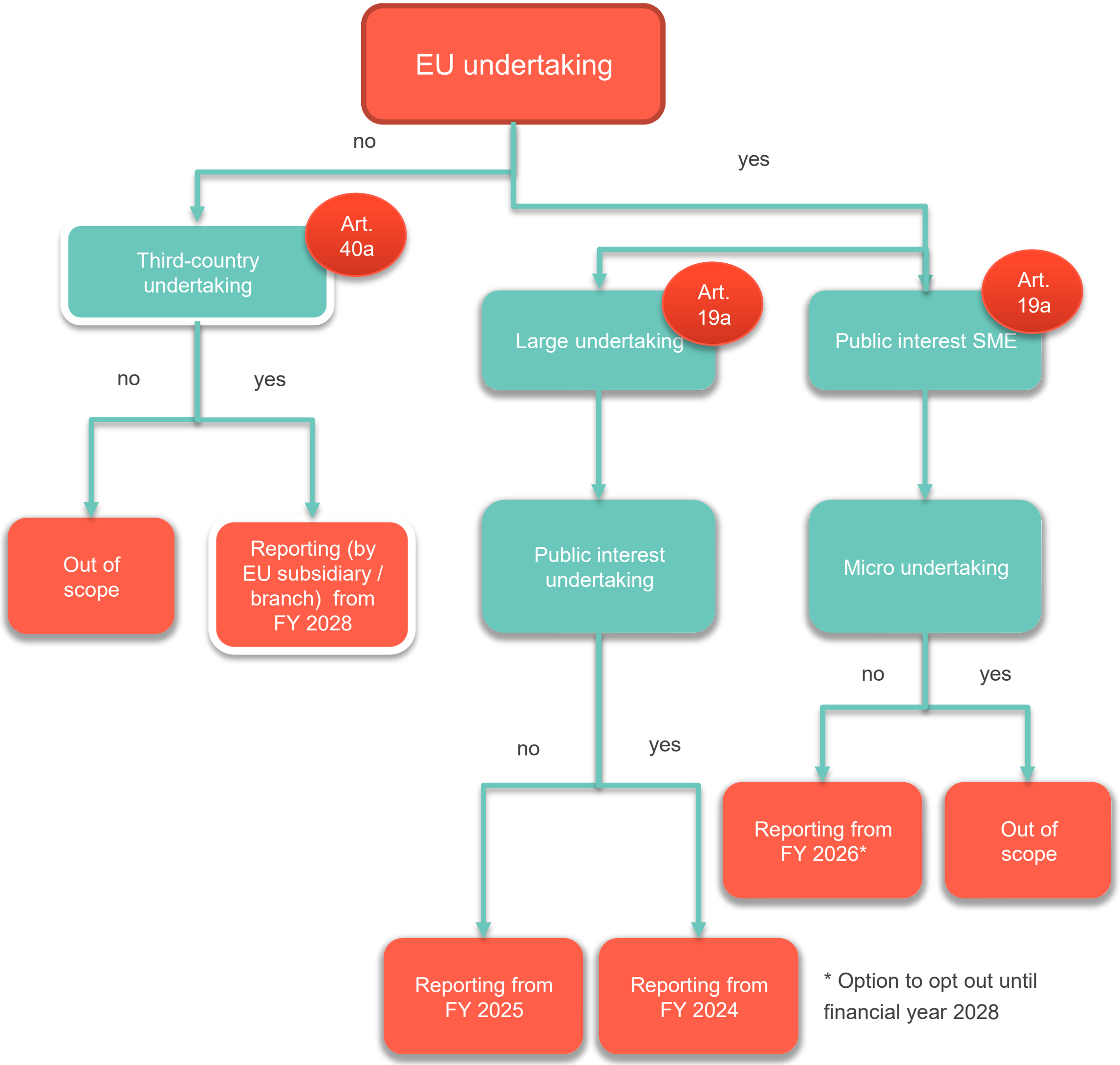
Large group: Consisting of parent and subsidiary undertaking to be included in a consolidation and exceed the limits of at least two of three criteria of large undertakings

Large undertaking: Exceeding at least two of three criteria (a) balance sheet total: 20 Mio. €; (b) net turnover: 40 Mio. €; (c) average number of employees during the financial year: 250

Public interest undertaking/SME: Legal entity governed by the laws of an EU member state whose transferable securities are admitted to trading on a regulated market of an EU member state; credit institutions, insurance undertakings and entities that are designated as public interest entities b an EU member state

SME: Legal entity not exceeding the criteria of large undertakings

Third-country undertaking: Legal entity governed by the laws of a non-EU country with (i) EU subsidiary that qualifies as large or public interest undertaking, or with EU branch, and (ii) a net turnover of more than 150 Mio. € in the EU in each of the last two consecutive financial years



Climate change reporting: where are we now?

CSRD AND CSD3

Corporate Sustainability Reporting Directive (CSRD)

What? Revises 2014 Non-Financial Reporting Directive to introduce more detailed reporting requirements on sustainability issues, incl. environmental, social and human rights and governance factors.

To be disclosed in annual report, with certification requirement.

When and who?
CSRD will apply to all large companies, whether listed or not.

Non-EU companies with substantial activity in the EU (with an EU turnover over €150m) and with a subsidiary or branch in the EU will have to comply. Proposed timetable for application:

- EU companies already subject to NFRD – PIEs (1.1.24) reports due 2025.
- 'Large EU companies' (defined) not currently subject to NFRD (1.1.25) reports due 2026.
- Listed EU SMEs and others (1.1.26) reports due 2027 (SMEs can defer to 2028).

Non-EU companies (1.1.28) reports due 2029

Current status? CSRD was published in the OJEU on 16 December 2022, required to be transposed into national laws within 18 months.

Ashurst

Draft Corporate Sustainability Due Diligence Directive (CSDDD or CSD3)

7

Florian Drinhausen

CSDDD – Overview

When?

- **Not yet in force -** currently, only a draft version of the CSDDD is available. The final version may differ (significantly). As at 1 June 2023 - European Parliament adopted its position and negotiations have started. Not due to be adopted until 2024.
- Once adopted, member states will need to implement it – these national implementing laws may also differ from each other.

What?

- Requires in scope companies to identify, prevent, end, or mitigate adverse human rights and environmental impacts arising from operations, incl. those of subsidiaries and direct or indirect business relationships in value chain.
- Requires a due diligence policy and appropriate due diligence measures to:
    - identify, prevent and mitigate adverse impacts;
    - establish and maintain a compliance procedure;
    - monitor effectiveness of due diligence policy and measures; and
    - report on due diligence
- By way of comparison, the CSDDD goes well beyond what is currently required by the UK Modern Slavery Act 2015.

CSDDD – In-scope entities

EU	Non-EU

EU

Companies governed by the laws of an EU Member State which in the last financial year:

- employed an average of more than 500 employees; and
- generated a global net turnover of more than EUR 150 million.

Companies governed by the laws of an EU Member State which in the last financial year:

- employed an average of more than 250 employees; and
- generated a global net turnover of more than EUR 40 million, whereas at least 50% of this turnover was generated in a sector particularly exposed to human rights or environmental aspects (e.g. textile sector, food and beverage sector, mineral resources sector).

Non-EU

Companies not governed by the laws of an EU Member State which in the financial year preceding the last financial year

- generated an EU net turnover of more than EUR 150 million;
- generated an EU turnover of more than EUR 40 million and at least 50% of the global turnover was generated in one of the sectors mentioned in the second bullet.

* Please note that the thresholds for the application may change during the further legislative process. The EU Parliament recently proposed significantly lower thresholds than the initial draft (turnover thresholds of EUR 40 million instead of EUR 150 million globally/in the EU or EUR 8 million and 30% instead of EUR 40 million and 50% in particularly exposed sectors).

Ashurst

Narrative reporting

Will Chalk and Rebecca Servian

8

Narrative reporting

WHAT WE WILL COVER

- TCFD and NFSIS – key developments (covered earlier)
- Reporting on diversity
- FRC Annual review of Corporate Reporting 22/23
- FRC Annual review of Corporate Governance Reporting 23
- Remuneration reporting
- Audit Committees and the External Audit: Minimum Standard
- Guidance of note

Narrative reporting – diversity

LRS, DTRS AND PARKER REVIEW TARGETS

See AGC Update, Issue 34 for FCA governance and disclosure expectations

Listing Rules: Gender and Race

FCA annual **'comply or explain'** statement in annual report as to whether targets met:

- **At least 40%** of board are **women**
- **At least one** of Chair, CEO, SID, CFO is a woman
- **At least one** board member from a **non-white minority ethnic background**

If any target is **not met**, the reasons for that

Mandatory data disclosures on gender and racial make-up of board and most senior tier of executive management. Standardised templates

Guidance contains additional disclosures companies may wish to make

NOW IN FORCE - Financial years beginning on or after 1 April 2022

- **Companies in Scope of Listing Rules -** UK and overseas companies – whether premium or standard listed (OEICs, shell companies, debt issuers NOT caught)

DTRs: Enhanced Annual Disclosure of Board Policy

Existing disclosures on board diversity policies should also describe how they apply to the **board's key committees**

The revised rules also clarify that the aspects of diversity to which such policies may apply (see bold for new considerations)

*….the diversity policy with regards to ….for instance, age, gender, **ethnicity, sexual orientation, disability** or educational, professional and **socio-economic** backgrounds*

Guidance contains additional numerical data companies may wish to give

NOW IN FORCE - Financial years **beginning on or after 1 April 2022**

- **Companies in Scope of DTRs -** Listed companies other than those qualifying as small or medium under the 2006 Act

Ethnic diversity on boards – updated Parker Review targets

- **FTSE 350 companies** to report, by end **December 2023**, a target for ethnic diversity of their senior management team, to be achieved by end 2027
- **Largest 50 private companies** to meet targets of Parker Review for FTSE 350 listed companies by December 2027 (one ethnic minority director and senior management target).

Narrative reporting - Diversity

LRS/DTRS – WHAT ARE WE SEEING?

FCA Primary Market Bulletin 44 (Mar 23)

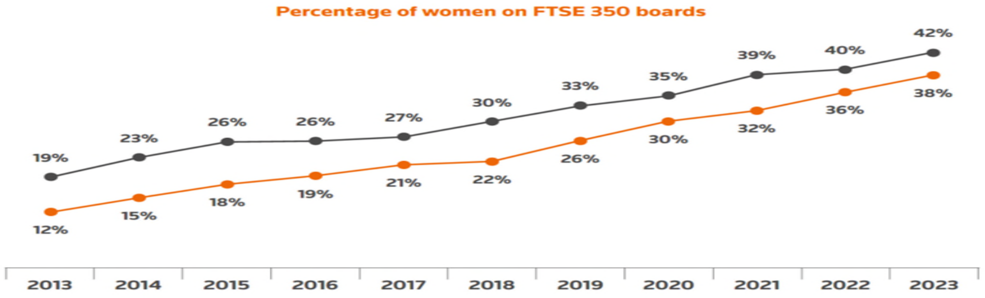
"We intend to conduct periodic reviews of [annual reports]….. We may ask the company to take corrective action …. We will request that the company publish [missing] information via an RIS…."

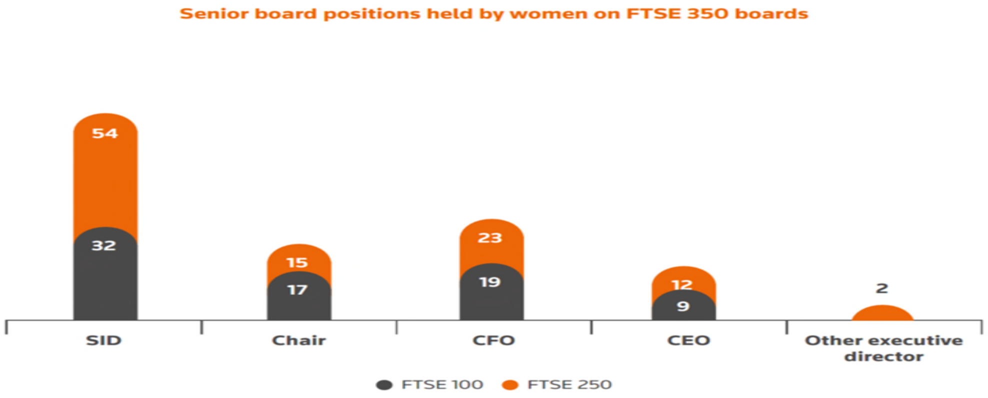
Items being missed from LR & DTR requirements

- No reference date
- No explanation for non-compliance
- No mention that diversity policy has been updated and of how it applies to board committees

Ashurst research

Note that these disclosures are **in addition to** those required by the Companies Act 2006 in the Strategic Report and the DTRs and recommended by the UK Corporate Governance Code





(Source: Practical Law Annual Reporting and AGMs 2023 – What's Market practice?)

Narrative reporting - Diversity

CURRENT VOTING INTENTIONS

Investment Association shareholder priorities (Feb 23)

- Red top: FTSE 100s without one director from a minority ethnic group.
- Red top: FTSE 350s where women represent 35% (last year – 33%) or less at Board level or 30% (last year – 28%) or less of Executive Committee and direct reports.
- Red top: FTSE Small Cap where women represent 25% or less at Board or Exco (last year – amber).
- **Amber top**: FTSE 250s that do not disclose board's ethnic diversity or a credible action plan towards one director coming from a minority ethnic group.

ISS UK Proxy Voting Guidelines (Dec 22)

- **Gender**: Will generally recommend against FTSE 350 NomCo chair where the board does not comprise at least 33% women.
- **Gender**: FTSE Small Caps and AIM companies with >£500m market cap expected to have one woman on board.
- **Race**: Will generally recommend against NomCo chair for FTSE 100 without one director from a minority ethnic group.
- **Race**: FTSE 250, FTSE Small Cap and AIM cos with market cap over £500m expected to appoint one director from a minority ethnic group by 2024. Must also publish compliance 'roadmap'.

Glass Lewis Guidelines (Nov 23)

- **Gender:** Will generally recommend against FTSE 350 NomCo chair where the Board does not comprise at least 33% gender diverse directors and no compelling explanation given. Boards should strive for 40% by 2025.
- **Gender**: All listed companies outside FTSE 350 generally expected to appoint one gender diverse director.
- **Race**: FTSE 100 companies expected to have one ethnically diverse director or provide compelling explanation why not.
- **Race**: FTSE 250 companies to include one ethnically diverse director by 2024.

PLSA Stewardship and Voting Guidelines (Feb 23)

- Will consider vote against NomCo chair and/or chair for a number of reasons incl. where company consistently fails to move closer to the latest FCA requirements on D&I (or did not successfully explain the reason for non-compliance), the FTSE Women Leaders Review and the Parker Review recommendations.

Narrative reporting – key recent FRC publications

OVERVIEW

- *Annual Review of Corporate Reporting 22/23 (Oct 23)
- *Annual Review of Corporate Governance Reporting 23 (Nov 23)
- *Audit Committees and the External Audit: Minimum Standard (May 23)
- *What Makes a Good Annual Report and Accounts (Dec 22)
- Thematic Review: reporting by the largest private companies (early 2024)

** Covered in slides which follow*

FRC focus

- **Priority monitoring 2022/23**
  - Travel, hospitality and leisure
  - Retail
  - Construction and materials
  - Gas, water and multi-utilities
- **Priority monitoring in 2023/24**
  - Travel, hospitality and leisure
  - Retail and personal goods
  - Construction and materials
  - Industrial transportation

Source: FRC Annual Review of Corporate Reporting

Narrative reporting - FRC Annual Review of Corporate Reporting 22/23

PRINCIPAL FOCUS: REPORTING AMIDST ONGOING ECONOMIC UNCERTAINTY

Enforcement highlights

Reviews – 263 annual reports (2022: **252**)

Correspondence with companies – 121 (**103**)

Required reference to correspondence in annual report – 25 (**27**)

What

A summary of key issues relevant to companies' reporting in uncertain and challenging times

Monitoring work is still weighted towards FTSE 350 but has included more AIM companies and large private companies

Includes key matters for 2023/24 Annual Reports and Accounts (previously a separate document)

Key disclosure expectations

Ensure disclosures about **uncertainty** are sufficient to meet the relevant requirements and for users to understand the positions taken in the financial statements (see text box)

Give a clear description in the strategic report of risks facing the business

Provide transparent disclosure of the nature and extent of material risks arising from financial instruments

Provide a clear statement of consistency with TCFD

Step back and perform sufficient critical review of the annual report and accounts

Conduct a robust pre-issuance review to consider issues the FRC commonly challenges

Top 10 areas (in order) where questions raised by FRC

1. Impairment of assets
2. Judgments and estimates
3. Cash flow statements
4. Strategic reports and CA06 matters (see next slide)
5. Financial instruments
6. Income taxes
7. Revenue recognition
8. Provisions and contingencies
9. Presentation of financial statements
10. Fair value measurement

Uncertainties

- High inflation
- Rising interest rates
- Supply chain stresses
- Changes in consumer demand
- Labour market constraints
- Climate change

Narrative reporting - FRC Annual Review of Corporate Reporting 22/23

STRATEGIC REPORT AND 2006 ACT MATTERS – AREAS OF FRC CHALLENGE

Fair, balanced and comprehensive?

- Not discussing material balance sheet and cash flow items, and significant changes in balances from the prior year, in the Strategy.
- Insufficient discussion of a very large impairment loss.
- Prominence given to a company's APMs over IFRS measures, and deficiencies in explanations of APMs, meaning strategic report failed to give a fair review of business.
- A company's strategic report did not contain sufficient information to meet CA 2006 requirements when it omitted a discussion of the company's performance compared to pre-pandemic levels, did not include KPIs, and did not describe how its principal risks affected the company or were mitigated.

Key 2006 Act matters raised

1. Section 172 Statements

Several companies, incl. large private companies, failed to make one

2. Lawfulness of distributions

Lawfulness of dividends and share buybacks challenged where not supported by last audited accounts / interim accounts filed at Companies House pre distribution

FRC questioned whether correct process had been followed for rectifying dividends paid in breach of the Act

3. Other

FRC also requesting further information where it was unclear whether certain transactions had been treated as realised or unrealised profits when assessing distributable profits

Other 2006 Act matters raised

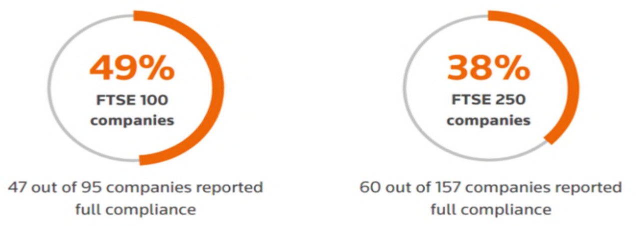
- Failing to disclose information about directors' emoluments.
- The nominal value of allotted share capital having fallen below the authorised minimum for a plc.
- Disclosure of an investment in a subsidiary but no consolidated accounts prepared nor explanation as to why not.
- Revised accounts filed but no statement giving the reasons.
- Not recognising share premium or merger relief on shares issued in connection with a business combination.

Narrative reporting - FRC Annual Review of Corporate Governance Reporting 23

FRC REPORTING EXPECTATIONS AND AREAS FOR IMPROVEMENT

UK Corporate Governance Code compliance

Disclosures on non-compliance with Provisions should be improved. Meaningful explanations are required, including **when** practices will be aligned with the Code.



Compliance with the 2018 Code

(Source: Practical Law Annual Reporting and AGMs 2023 – What's Market practice?)

See AGC Update, Issue 44 for an in-depth review of the content

Purpose, culture and values

Consider culture-related risks and opportunities, and their link with strategy. Reporting should include practice and policy, and progress towards milestones. Explain what purpose and values mean in practice. How do values translate into behaviours and how they have been embedded

Stakeholder engagement

Address the nature of the engagement, reflecting on feedback received and how this has led to high-quality outcomes, and its impact on board decisions. Report on shareholders' key priorities and, in relation to **workforce engagement**, why a chosen engagement method is effective

Narrative reporting - FRC Annual Review of Corporate Governance Reporting 23

FRC REPORTING EXPECTATIONS AND AREAS FOR IMPROVEMENT

Environment

The FRC expects improvement in the level of compliance across **all** recommended TCFD disclosures. Good reporting includes disclosure of governance structures and processes in place to manage climate-related risks and oversight by the board / management

Diversity

Companies should define their business strategy clearly and link this to their diversity strategy. Reporting should include progress made on achieving set targets and improvements year-on-year. Diversity reporting should go beyond gender and ethnicity-related disclosures

Board evaluation

Companies should report on actions and outcomes

CGI updated guidance on board reviews and related reporting – see AGC Update, Issue 38

Audit and risk

Companies should be more specific in disclosing how audit committees have assessed the independence and effectiveness of the external audit process and report on their findings. Focus on the most significant risks and report on changes to them during the year. Overall reporting on monitoring and reviewing risk management and internal control systems still needs improvement

Some companies now listing AI as a principal risk. For CGI views on the governance approach – click here

Narrative reporting – Audit Committees

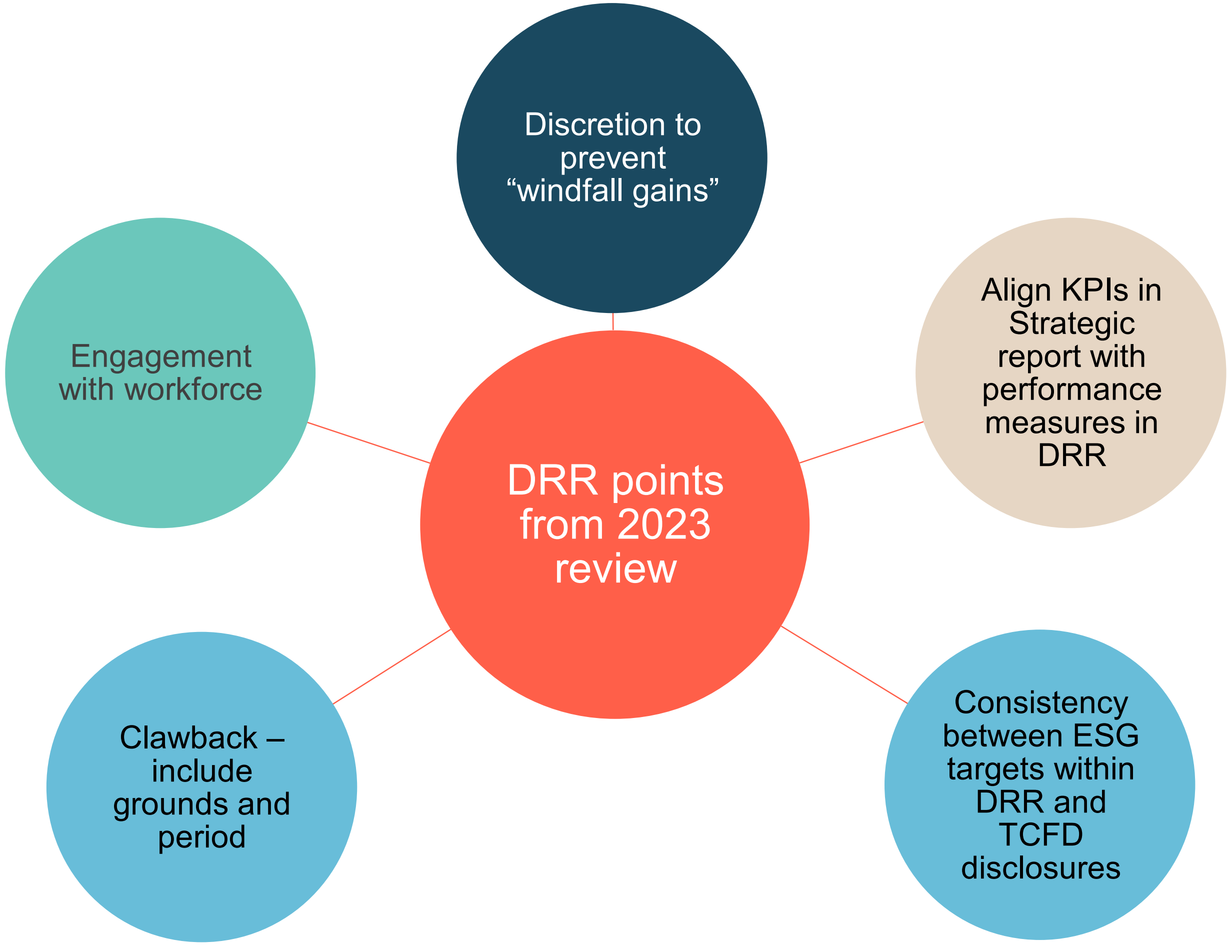
AUDIT COMMITTEES AND THE EXTERNAL AUDIT: MINIMUM STANDARD (MAY 23)

- Applies to FTSE 350 companies and those aspiring to join
- Currently voluntary; in-scope companies encouraged to apply the Standard as soon as they are able
- Contains disclosure expectations **in addition to** UK Corporate Governance Code, including:
  - Explanation of application of accounting policies
  - Where shareholders have requested certain matters be covered in audit and that has been rejected, an explanation of reasons why
  - Where a regulatory inspection as to audit quality has taken place, information about the findings of that review, together with remedial action taken

See AGC Update, Issue 37 for more detail on the Minimum Standard

Narrative reporting - FRC Annual Review of Corporate Governance Reporting 23

FRC REPORTING EXPECTATIONS AND AREAS FOR IMPROVEMENT



Narrative reporting – guidance of note

FRC: WHAT MAKES A GOOD ANNUAL REPORT

See also FRC 'Applying a materiality mindset, covered in [AGC Update, Issue 43]

Key contents

- Attributes of good Annual Report & Accounts
- Materiality
- Corporate reporting principles
- Effective communication principles

Materiality

- Quantitative factors
- Qualitative factors
- See section 5 of Guidance on the Strategic Report, June 2022

A high quality annual report & accounts

- Complies with relevant accounting standards, laws and regulations, and codes
- Is responsive to the needs of stakeholders in an accessible way
- Demonstrates the corporate reporting principles and effective communication characteristics outlined

Corporate reporting principles

- **A**ccurate
- **C**onnected and consistent
- **C**omplete
- **O**n-time
- **U**nbiased
- **N**avigable
- **T**ransparent

Four Cs of effective communication

- **C**ompany specific
- **C**lear, concise and understandable
- **C**lutter-free and relevant
- **C**omparable

Narrative reporting - guidance of note

KEY PUBLICATIONS FROM THE FRC, THE FRC LAB, AND ELSEWHERE IN 2023

CGI updated guidance on board reviews and related reporting – see AGC Update, Issue 38

FRC Thematic Reviews	FRC Lab Reports	Other FRC	QCA guidance for AIM companies
Climate-related metrics and targets (Jul 23) IFRS 13 'Fair value measurement' (Jun 23) Insurance contracts (IFRS 17) (Nov 23)	ESG data distribution and consumption report and summary (Jul 23) Materiality in practice: applying a materiality mindset (Oct 23)	Annual review of Corporate Governance Reporting (Nov 23) Annual review of Corporate Reporting (Oct 23) Corporate Governance Code 2023: The hot topics for our stakeholders (Jul 23) The influence of proxy advisors and ESG rating agencies and reporting of FTSE 350 companies and investor voting (Jun 23) Corporate Governance and Stewardship Mythbuster (Feb 23) What makes a good Annual Report and Accounts (Dec 22)	QCA 2023 Corporate Governance Code purchase page (Nov 23) Good governance and growing influence (Aug 23) The QCA Corporate Governance Code – 10 years on (Feb 23)

Ashurst

AGMs in 2024

Will Chalk and Rebecca Servian

9

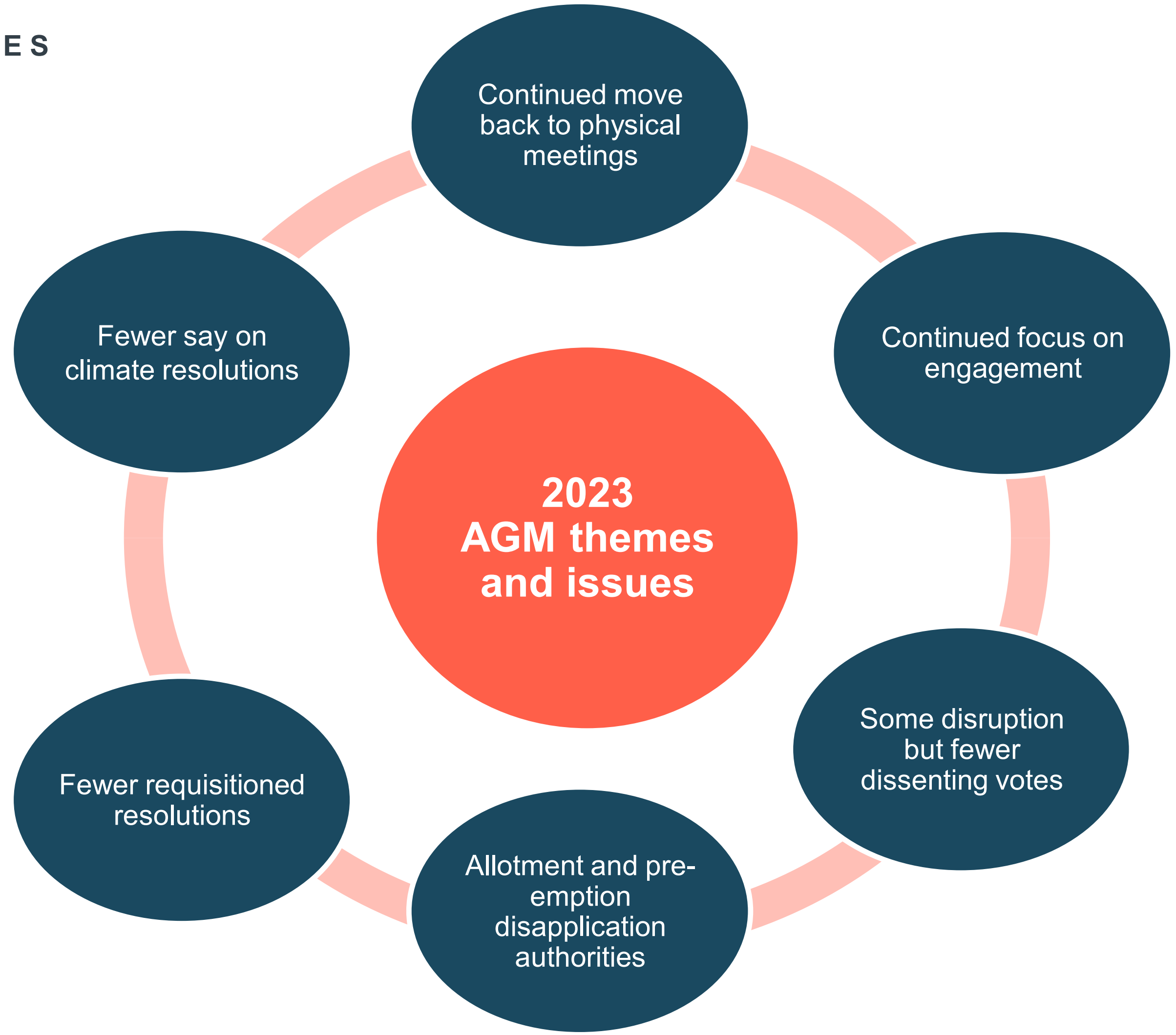
AGMs in 2024

WHAT WE WILL COVER

- A review of AGMs in 2023
- AGMs in 2024 – Preparing for disruption
- AGMs in 2024 – Business of the meeting
- AGMs in 2024 – Voting guidelines
- AGMs in 2024 - Remuneration

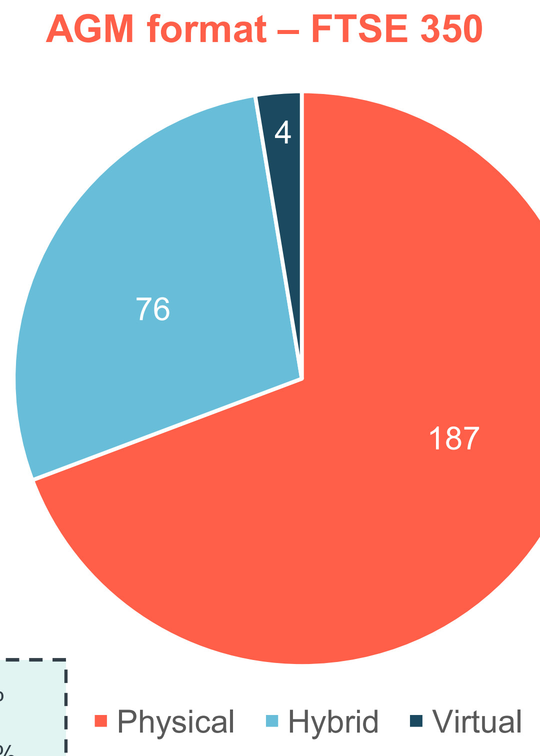
AGMs in 2023

KEY THEMES AND ISSUES



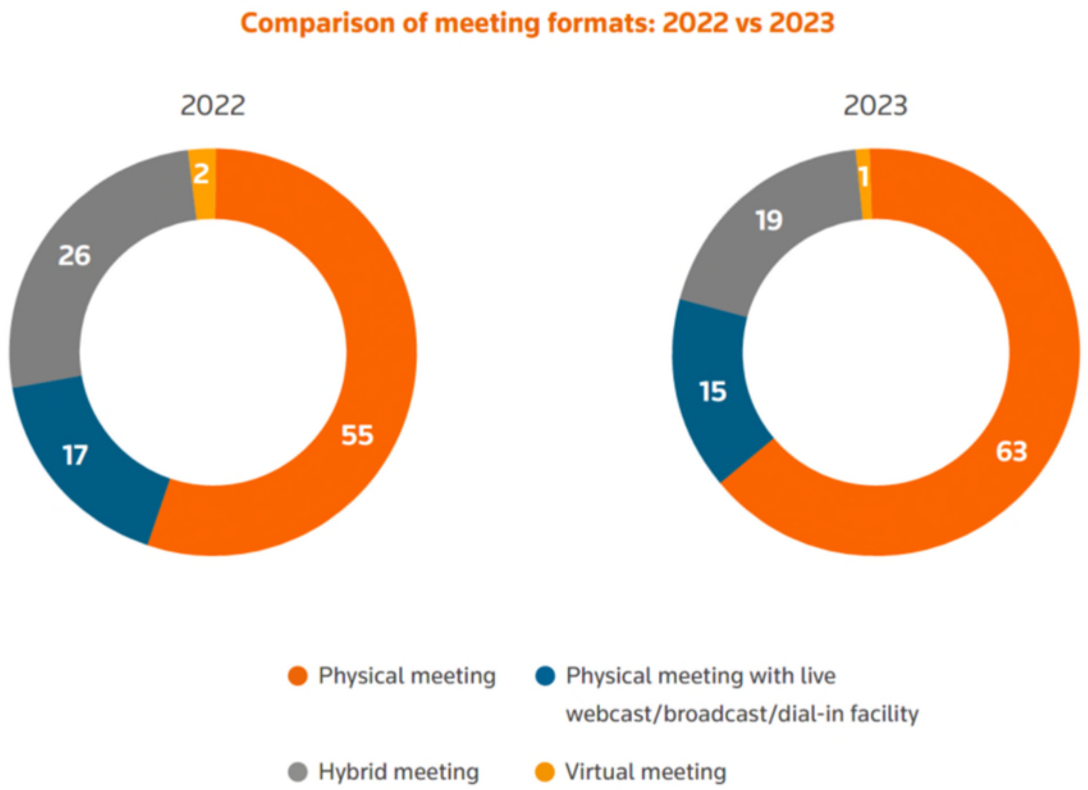
AGMs in 2023

FORMAT OF MEETING



- Physical meetings up by 28%
- Hybrid meetings down by 37%
- Virtual meetings down by 33%

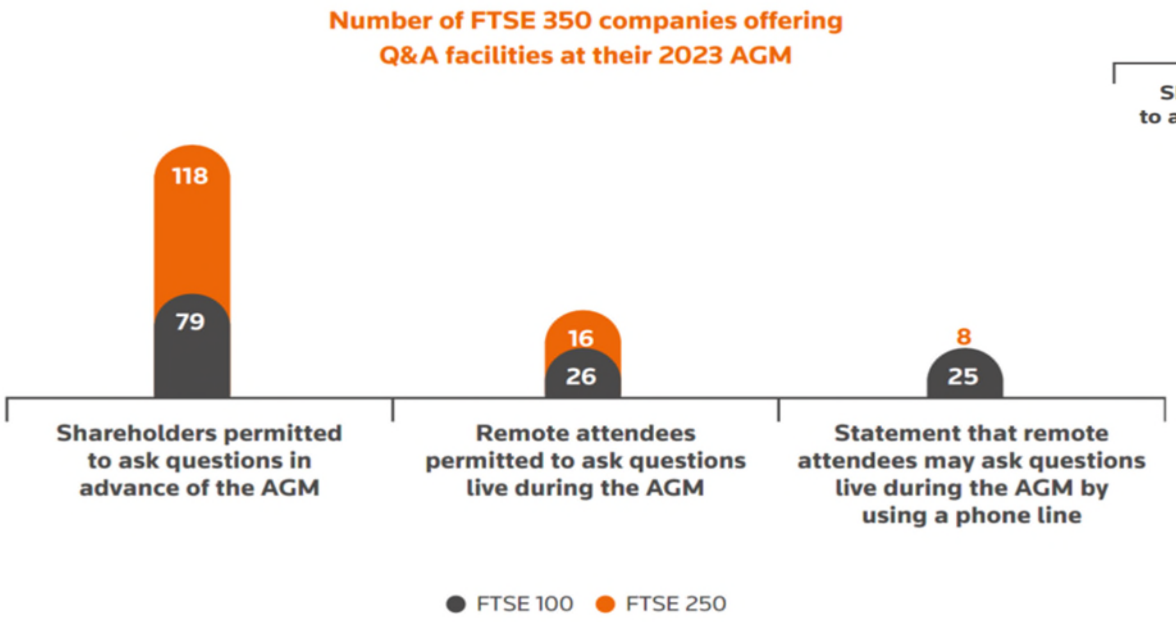
(Source: Lexis Nexis Market Standards Trends Report, Nov 2023)

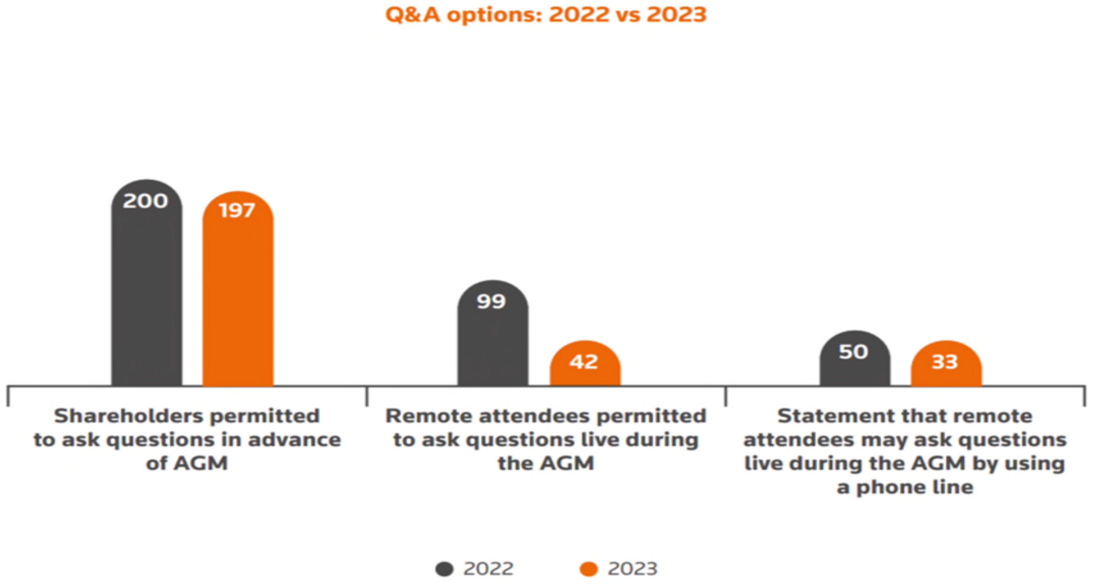


(Source: Practical Law Annual Reporting and AGMs 2023 – What's Market practice?)

AGMs in 2023

QUESTIONS AT AGMS

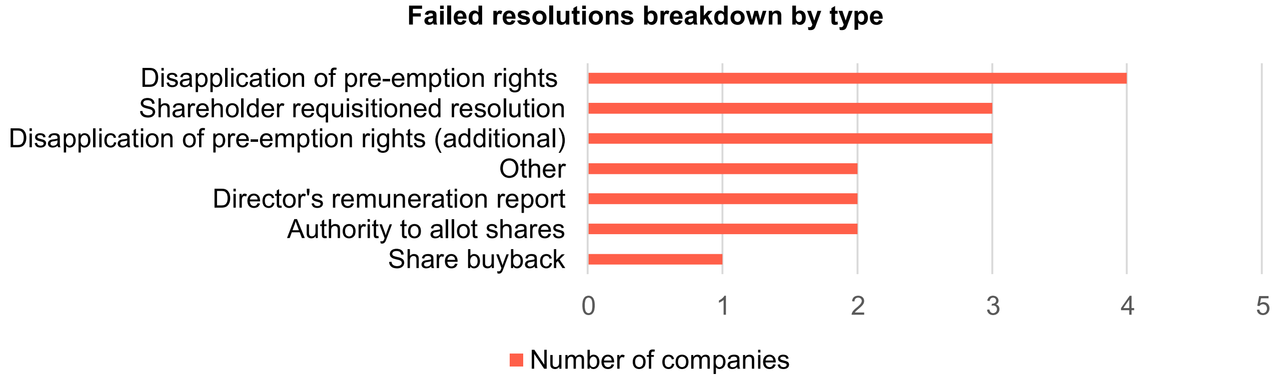


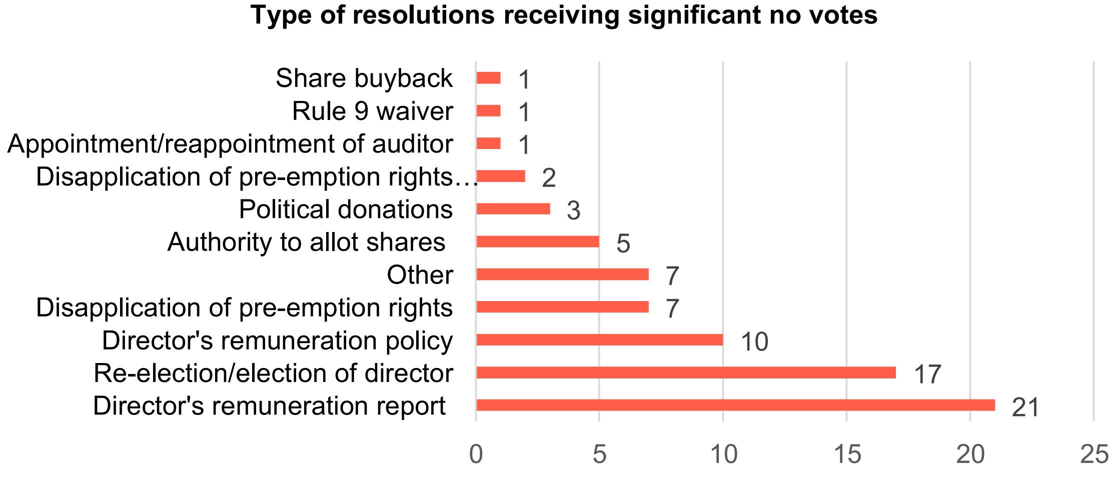


(Source: Practical Law Annual Reporting and AGMs 2023 – What's Market practice?)

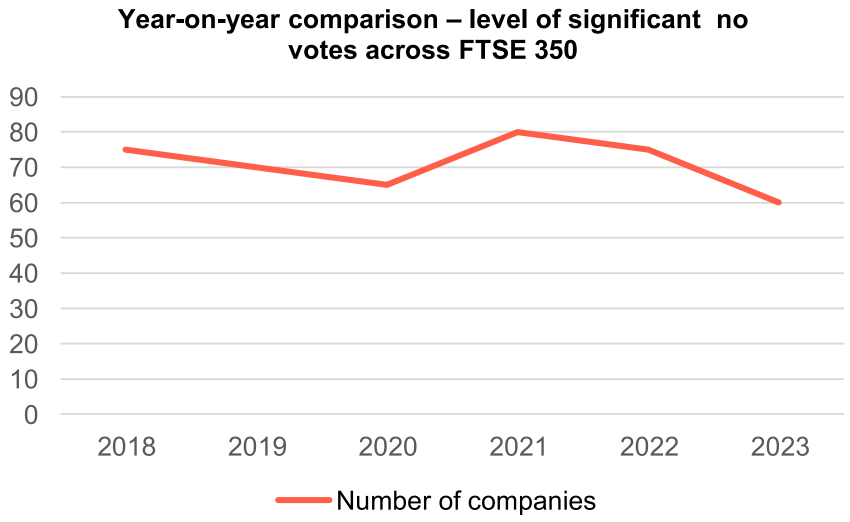
AGMs in 2023

DISSENT - LOWEST LEVEL OF DISSENT FOR 6 YEARS





(Source: Lexis Nexis Market Standards Trends Report, Nov 2023



AGMs in 2023 - lessons to learn

PROTESTS AND UNRULY DEBATES - SOME EXAMPLES

BP Plc

Reports of shouted questions and swearing, with several people removed from the meeting

Lloyds of London

Company advises shareholders on the likelihood of disruption and what to be prepared for (eg barriers, bags searches, need to follow security team's instructions etc)

Shell Plc

Reports of disruption by climate protesters including chanting and storming the stage, with some removed from the venue

Pennon Group plc

Reports of protests outside and inside the meeting including speeches and unfurling banners concerning dirty water

TESCO PLC

Reports of protests outside the meeting and questions concerning damage to the River Wye from a poultry farm supplier

Barclays Plc

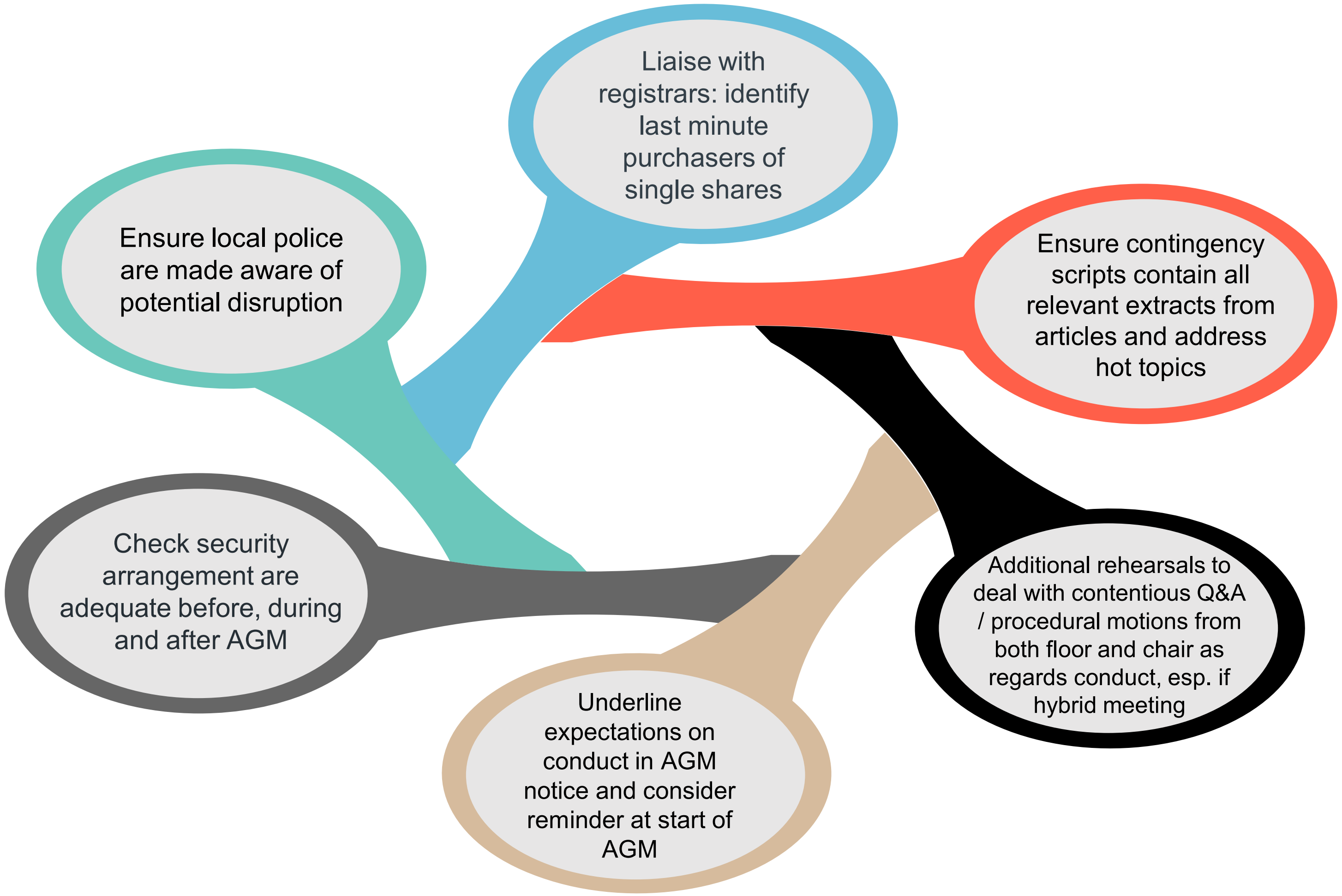
Reports of singing, shouting and swearing with some protestors removed from the meeting

abrdn plc

Reports of protest outside the meeting to inform shareholders and clients about abrdn's fossil fuel bond investments

AGMs in 2024

PREPARING FOR DISRUPTION



AGMs in 2024

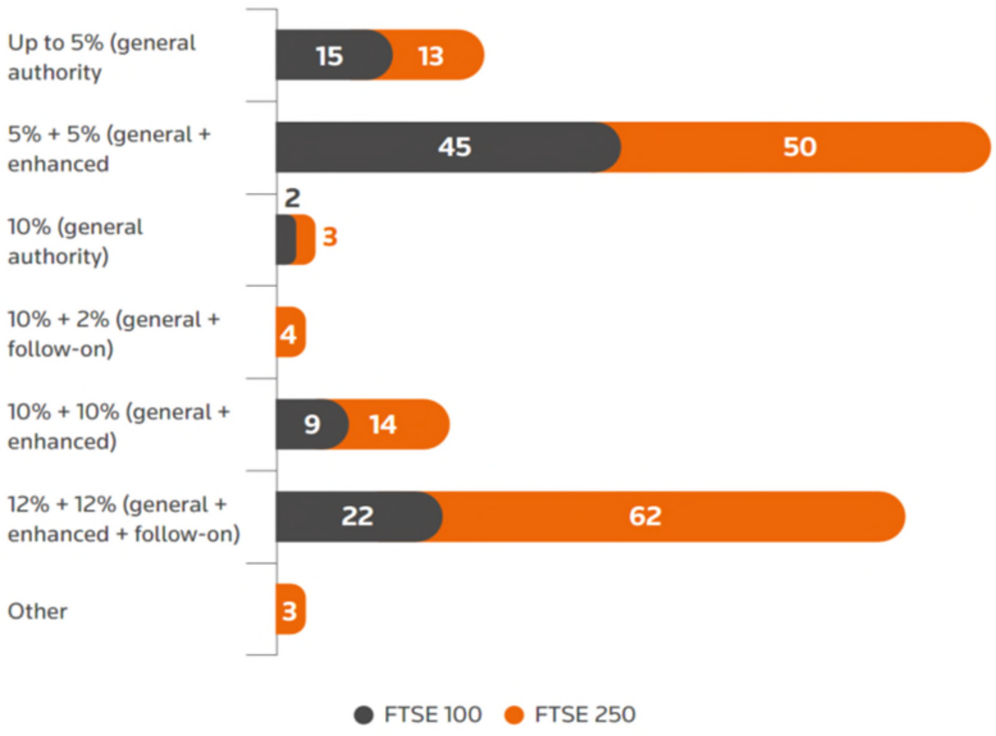
REVISED PEG STATEMENT OF PRINCIPLES AND IA SHARE CAPITAL MANAGEMENT GUIDELINES

Links	New thresholds and 'follow-on' offers	Notes
PEG Statement of Principles 22 PEG Template resolutions 22 IA Share Capital Management Guidelines 23	New regime allows companies to seek authority to issue equity securities non-pre-emptively for cash representing: • Up to **10%** for any purpose (previously 5%) ….with a further authority of up to **2%** to be used only for the purposes of making a 'follow-on' (to encourage retail shareholder participation) • Up to an additional **10% for use** in connection with an acquisition or a specified capital investment (previously 5%) ….with a further authority of up to **2%** (as above) *N.B. Conditions/Shareholder protections for use of the 20%; and expected features for a follow-on offer*	Confirmations in NoM re shareholder protections to avoid an Investment Association/IVIS **Red Top**. Be alive to changes in IA position for 2024 Remember IA SCM Guidelines allow use of 'second third' of allotment authority for any 'fully' pre-emptive offer, not just rights issues

AGMs in 2024

REVISED PEG STATEMENT OF PRINCIPLES AND IA SHARE CAPITAL MANAGEMENT GUIDELINES

Disapplication of pre-emption rights: % authority sought by FTSE 350 companies at 2023 AGM



Resolution	Number of failed resolutions	Number of resolutions receiving a substantial vote against
General authority to disapply pre-emption rights	5	2
Enhanced authority to disapply pre-emption rights	3	4

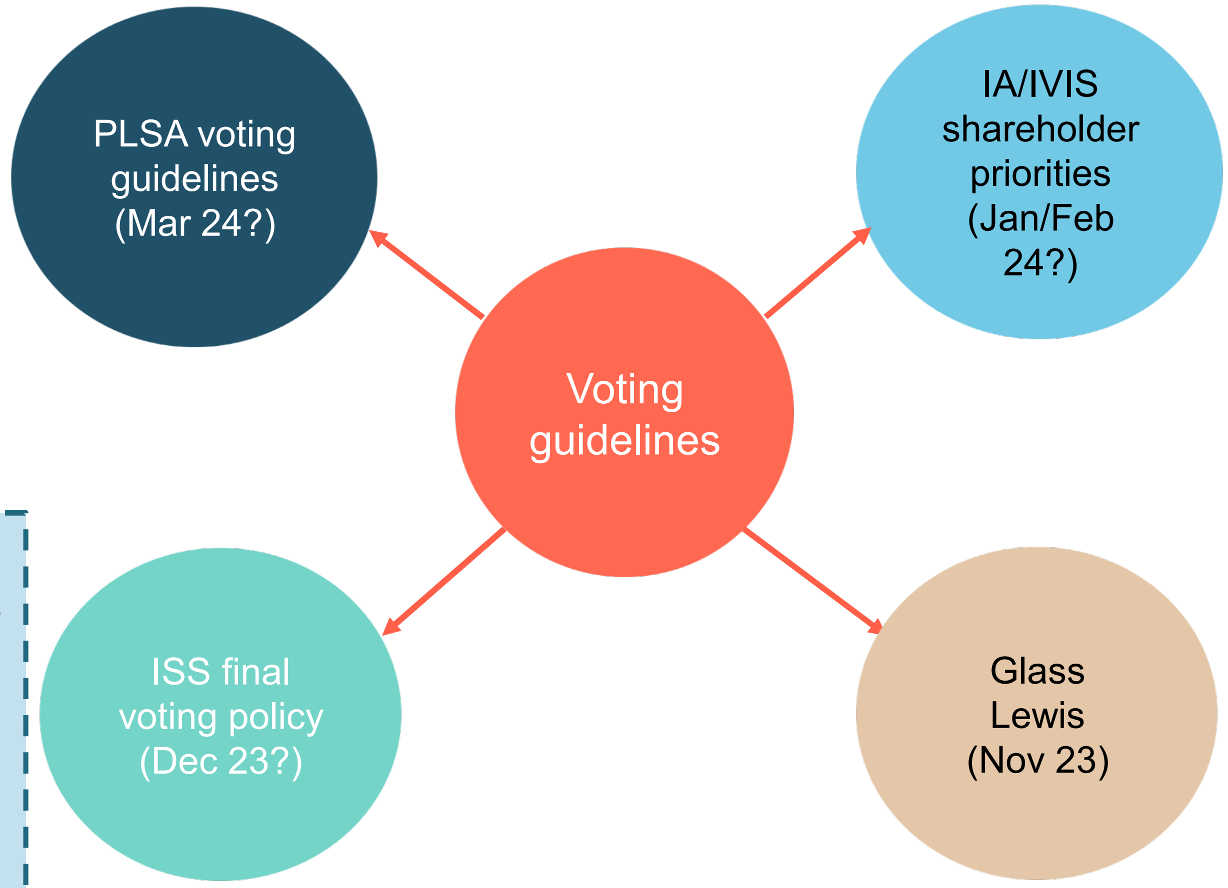
AIM UK 50

% sought	5%	10%	20%	24%	33%	34%
	3	13	7	19	1	1

(Source: Practical Law Annual Reporting and AGMs 2023 – What's Market practice?)

AGMs in 2024

VOTING GUIDELINES AND WHEN TO EXPECT THEM



Dividends

For the **LSE's Dividend Procedures Timetable for 2024 – click here**

Digitalisation – to consider

Amend articles of association to prevent issue of further paper share certificates?

Stop paying dividends by cheque?

Final report of Task Force awaited

AGMs in 2024

KEY CHANGES TO VOTING GUIDELINES

Voting guidelines – key changes

IA / IVIS Shareholder priorities for 2023 (to be updated)

- **Responding to climate change: Amber top** all commercial cos failing to disclose consistently with all four pillars of TCFD (same as 2022). However, more detail now given of how reporting needs to improve
- **Accounting for climate change:** IVIS will continue to monitor for statement that directors have considered the relevance of climate and transition risks linked with the transition to net-zero when preparing/signing off accounts
- **Audit quality:** IVIS will monitor how companies provide targeted disclosures on how the AC has assessed audit quality; how the auditor has shown professional scepticism; and how the auditor has challenged management's assumptions where necessary
- **Gender diversity: Red top** for FTSE 350 cos with less than 35% women on board/30% women on ExCos + direct reports. **Red top** for FTSE small cap cos with less than 25% women on the board and on ExCos
- **Ethnic diversity: Red top** for FTSE 100 cos which do not have one ethnic minority director. **Amber top** FTSE 250 companies that do not disclose ethnic diversity of their board or a credible action plan to achieve Parker Review targets by 2024
- **Stakeholder engagement.** IVIS will monitor and highlight areas of annual reports which reflect engagement with stakeholders on the cost-of-living crisis

ISS 2023 Proxy voting guidelines UK & IRE (to be updated)

- **Board diversity:** For FY beg. on or after 1 April 2022, ISS may consider recommending vote against the chair of the nomination committee (or other director) of a premium or standard listed co if it has not met the new FCA Listing Rules diversity and ethnicity targets.
- **Appropriate emissions reduction targets:** Appropriate GHG emissions reductions targets will be medium term GHG reduction targets or Net Zero-by-2050 GHG reduction targets for a company's operations (Scope 1) and electricity use (Scope 2). Targets should cover the vast majority of the company's direct emissions
- **Audit committee meetings:** FTSE 350 - ISS will note where there have been four or fewer AC meetings in the relevant period. FTSE All Share (other than investment companies) – ISS will note where there have been three or fewer AC meetings
- **Executive remuneration:** Annual executive salary increases to be 'low and ideally lower proportionally' than increases across the broader workforce, rather than merely 'in line with' broader workforce changes
- **Pre-emption disapplication:** Reflecting the new PEG Statement of Principles, ISS will generally recommend voting against a resolution to disapply pre-emption which exceeds 20% of ISC (or 24% if a follow-on offer authority is also sought) and where any disapplication above 10% is **not** limited to use for an acquisition or a specified capital investment. In other words, ISS has endorsed the revised Principles

AGMs in 2024

KEY CHANGES TO VOTING GUIDELINES

Voting guidelines – key changes

Glass Lewis 2023 proxy voting guidelines for 2024

- **Director attendance**: Directors failing to attend either at least 75% of board or an aggregate of 75% board and applicable board and committee meetings – GL likely recommendation to vote against
- **Climate-related accountability guidelines**: Apply to FTSE 100 companies operating in industries where the Sustainability Accounting Standards Board has determined that companies' greenhouse gas emissions represent a financially material risk
- **Cyber risk oversight guidelines**: Where a company has been materially impacted by a cyber-attack, GL may recommend against appropriate directors should it find the board's oversight, response or disclosures concerning cyber-security related issues to be insufficient, or not provided to shareholders
- **Qualified audit opinion**: GL may recommend that shareholders vote against proposals to approve or acknowledge a company's accounts and reports where the auditor did not provide an unqualified opinion on the financial statements
- **ESG guidelines**: Also updated to include consideration for engagement between companies and investors

PLSA Stewardship and voting guidelines (to be updated)

PLSA believes three themes are particularly relevant for the 2023 AGM season:

- **Cost of living crisis and executive pay:** Remuneration structures and incentives for executive directors should cascade down to, and allow all employees to share in, the success of the business. Shareholders should vote against remuneration policies which are inconsistent with the standards in PLSA guidelines
- **Climate change and the environment:** Companies should reference TCFD in their annual reports and PLSA expects to see evidence of credible transition plans. Investors should consider voting against an annual report if a company's 'operations are highly carbon intensive and there has been no disclosure of the climate-related assumptions which underlie financial calculations, or where those assumptions are not consistent with the Paris Agreement'
- **Workforce issues and impact of operations on society:** The guidelines include a new section on the workforce, highlighting that mental health should be at the heart of companies' workforce concerns; that companies should take steps to ensure that modern slavery is not taking place within their business or supply chains; the importance of workforce disclosures; and the need to progress towards ethnicity targets for 2024

New investor guidance for 2023

Glass Lewis Voting Guidelines (Nov 23)

- LTIP metrics: no re-testing of performance post-grant, minimum of 2 or more metrics, 1 comparative metric, stretching targets, limits expressed as % of base salary.
- Restricted share awards acceptable but to have 50% reduction.
- Votes against *policy* likely: high pay-outs, overreliance on benchmarks, no clawback, notice periods over 12 months, pension contributions not aligned, NED awards, dissent not addressed.
- Votes against *report* likely: outcomes not reflective of performance, pay increases, excessive bonus, performance targets lowered, lack of disclosure, inappropriate use of discretion, substantial changes not explained.
- Require in-employment and post-employment shareholding requirement (normally 2 years) defined by multiple of base salary.
- ESG measures should be sufficiently stretching.

QCA Corporate Governance Code 2023

- Now need, as a minimum, an advisory shareholder vote on remuneration policies.
- Best practice for larger companies is to put the remuneration policy to a binding shareholder vote.
- New or significant amendments to existing share schemes should be put to a shareholder vote.
- ESG metrics must be quantifiable, avoid unnecessary complexity and linked to strategy.
- Applies to financial periods beginning on or after 1 Apr 24.

Investor guidance of continued relevance

IA Principles of Remuneration 2023

- **Cost of living crisis:** take into consideration employees and customers who may be suffering as a result of the cost of living crisis
- **Windfall gains:** 2020/2021 awards which were granted during the COVID pandemic are vesting in 2023/2024. Share price was lower at that time which means a greater number of shares were awarded. Downward adjustment via exercise of discretion is encouraged
- **ESG metrics:** Encouraged but should be linked to Company's strategy and should avoid complexity. Companies should disclose progress and performance levels
- **Executive pensions:** IVIS will red top any company where executive pension contributions are not aligned
- **NED Fees:** IA supports NED fees that reflect increased time commitment, provided fee increases are explained

LGIM's UK principles on executive pay

- **Cost of living crisis:** if employee pay increased and that is used to set ED pay, consider impact on share plan, pension and bonuses which are linked to base salary
- **Bonus**: 200% of salary reserved for the largest global organisations only
- **LTIPs**: all variable pay should be capped
- **Discretion for inflight-awards:** LGIM are not supportive of retrospective changes to LTIPs if these benefit directors
- **ESG targets:** ensure relevant to company sector. If in sectors like oil & gas, autos, banks, chemicals, cement, mining, shipping, technology, utilities etc weighting for climate targets should be 20% in LTIPs

Corporate governance round-up

10

Will Chalk

Corporate governance changes on the horizon

WHAT WE WILL COVER

- Corporate governance and audit reform – what's gone and what remains?
- UK Corporate Governance Code consultation – what’s gone and what remains?
- A revised QCA Corporate Governance Code 2023
- The Economic Crime and Corporate Transparency Act
- Payment Practices reporting – proposed reforms
- Modern Slavery – proposed reforms
- Equity Capital Markets reforms
- Other issues – smarter regulation; dematerialisation etc…

Corporate governance reform - Where are we now?

KEY DEVELOPMENTS

See AGC Update, Issue 37 for government consultation on non-financial reporting regime

Oct 2023	The Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023 withdrawn
Nov 2023	King's speech did **not** contain Audit Reform Bill

Consultation on UKCGC	**Audit Committees**	**Reporting regulations for 750/750 PIEs**	**New regulator - ARGA**	**Director accountability**
Published 24 May 2023 Closed 13 September 2023 The revised Code **was** expected to apply to reporting periods beginning on or after 1 Jan 25 Key changes in Section 4 on Audit, risks and internal controls FRC policy update – Nov 23 (covered later)	Audit Committees and the External Audit: Minimum Standard, May 2023 For FTSE 350 companies with a premium listing "Assuming primary legislation is passed to bring ARGA into being, the Standard would, subject to the appropriate powers being provided in the legislation, become mandatory. Companies within scope are encouraged to begin to apply the Standard as soon as they are able."	Onerous annual reporting requirements for PIEs with 750 or more employees and £750m or more turnover (see next slide) Would have applied to private and public companies Withdrawn 16 October 2023	FRC to be replated with the Audit, Reporting and Governance Authority No Audit Reform Bill as yet The 'ARGA saga' continues…..	ARGA to have been empowered to enforce directors' duties as regards financial reporting No Audit Reform Bill as yet

Corporate governance reform – where are we now?

NEW REPORTING REQUIREMENTS '750/750 PIES' - WITHDRAWN

'750/750 PIEs?

UK public and private companies with more than 750 employees and an annual turnover of greater than £750m

Resilience Statement

Audit and assurance policy

Statements on distributions / profits

Statement on material fraud risks

The Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023

Withdrawn

UK Corporate Governance code – policy update

WHAT'S GONE AND WHAT REMAINS

See AGC Update, Issue 43 for overview of FRC policy update

Timing

- FRC policy update (7 Nov 23)
- Updated Code to be published Jan 24
- New Code was to apply to financial periods beginning on or after 1 Jan 25? Policy update talks about "allowing more time for its implementation"

What's gone

Over half the original 18 proposals consulted on will no longer be taken forward including changes as regards:

- Diversity
- Over-boarding
- Engagement with shareholders by committee chairs
- Role of audit committee re ESG
- Audit and assurance policy
- Reporting on distributable profits and reserves
- Resilience statement

What remains

Proposals on internal controls will be taken forward – i.e. providing a stronger basis for reporting on, and evidencing the effectiveness of, a company's internal control framework. These will be more targeted, more proportionate, and differentiated from the US approach

Some other changes to streamline Code and reduce duplication will also be taken forward

What we're not sure about (among other issues)

Audit Committee Minimum Standards - will this be changed given the feedback on it?

Additional guidance, esp. as regards audit and internal controls expectations??

UK Corporate Governance Code – policy update

REMUNERATION - WHAT'S GONE AND WHAT REMAINS?

Malus and clawback

Disclose:
- minimum circumstances
- minimum period and why
- clawback applied and reason
- use of malus and clawback provisions in the last five years

ESG Objectives

Code to require ESG objectives in pay arrangements for first time.

Remcos required to explain how remuneration policies support ESG objectives.

Workforce pay

Remcos to consider "workforce pay and conditions" in determining pay.

Disclose engagement with workforce and the resulting **impact** on executive pay.

Replacement of Provision 40

Consideration of the six factors is dropped. They are having no impact according to FRC.

Companies to ensure disclosures reflect specific circumstances.

The 2023 QCA Code

FOR FINANCIAL PERIODS BEGINNING ON OR AFTER 1 APR 24

See AGC Update, Issue 44 for an in-depth review of the changes

Overview

- Ten Principles with 'application' expectations and related disclosures
- New remuneration-focused **Principle 9**
- **New Principle 7** is a combination of 2018 Principles 9 and 6
- Works on same '**apply or explain**' basis
- Annual report and website disclosures expanded
- Chair's statement requirements enhanced
- Applies to financial years beginning on or after 1 Apr 24
- 'Transition period' of 12 months
- QCA will continue **not** to review compliance

Actions

Undertake gap analysis between your governance practices and 2023 Code

The 2023 Principles*

1. Establish a **purpose**, strategy and business model which promote long-term value for shareholders.
2. Promote a corporate culture that is based on ethical values and behaviours.
3. Seek to understand and meet shareholder needs and expectations.
4. Take into account wider stakeholder interests, including social **and environmental** responsibilities, and their implications for long-term success.
5. Embed effective risk management, **internal controls and assurance activities**, considering both opportunities and threats, throughout the organisation.
6. **Establish and** maintain the board as a well-functioning, balanced team led by the chair.
7. **Maintain appropriate governance structures and ensure that individually and collectively the directors have the necessary up-to-date experience, skills and capabilities**.
8. Evaluate board performance based on clear and relevant objectives, seeking continuous improvement.
9. **Establish a remuneration policy which is supportive of long-term value creation and the company's purpose, strategy and culture.**
10. Communicate how the company is governed and is performing by maintaining a dialogue with shareholders and other **key** stakeholders.

**Changes from the 2018 Code are underlined.*

Economic Crime and Corporate Transparency Act 23

FINALISED BUT NOT YET IN FORCE

- **Sept 22** Bill introduced to House of Commons
- **Oct 23** Received Royal Assent
- Much detail will be forthcoming secondary legislation and guidance notes
- Many measures will require consequential changes to existing legislation, new secondary legislation and guidance
- Significant development of Companies House systems in progress
- See Companies House blog noting that some early measures that Registrar will implement - Changes to UK company law: a big moment for Companies House

'These provisions will bear down further on criminals, kleptocrats and terrorists who abuse our financial system, strengthening the UK's reputation as a place where legitimate business can thrive, whilst driving dirty money out of the UK'

Registrar of Companies

- Aim for Registrar to become a more active gatekeeper of company information
- New powers to promote the integrity of the register including

  - Power to reject documents for inconsistencies
  - Power to require additional information
  - Power to remove material more easily from the register

Directors' identity verification

- Prohibition on a director acting unless verified - a new offence
- For new directors, identity verification must take place before applying to the Registrar for the formation of a company
- Post incorporation, directors must verify their identity as soon as possible and must do so before any appointment is notified to the Registrar
- There will be a transitional period for existing directors to verify their identity
- Penalties could include: criminal proceedings and fines; civil penalties issued by the Registrar; registration of a new company being rejected; and prohibition from acting as a director

Protecting personal information

- Goal: To prevent abuse of personal information held on the register
- These measures will extend the current limited instances where individuals can apply to have information on the register suppressed from the public register
- For example. residential address; signatures; day of date of birth for documents filed prior to 10 October 2015

See AGC Update, Issue 43 for an overview of the corporate content of the ECCTA 23

Economic Crime and Corporate Transparency Act 23

FINALISED BUT NOT YET IN FORCE

ECCTA will also bring into force Companies Act 2006 provisions banning the use of corporate directors (with exceptions)

- **Sept 22** Bill introduced to House of Commons
- **Oct 23** Received Royal Assent
- Much detail will be forthcoming secondary legislation and guidance notes
- Many measures will require consequential changes to existing legislation, new secondary legislation and guidance
- Significant development of Companies House systems in progress
- See Companies House blog noting some early measures that Registrar will implement - Changes to UK company law: a big moment for Companies

Identity verification for others

- Persons with significant control (PSCs) and relevant legal entities (RLEs)
- Authorised Corporate Service Providers (ASCPs) need to register with Companies House

Powers, sanctions and offences

New offences in relation to:

- Failure to prevent fraud (see next slide)
- The Registrar's new powers
- New requirements for Authorised Corporate Service Providers
- Identity verification
- Company names
- The protection of personal information

The government will introduce a new financial penalties regime which will sit alongside criminal sanctions and give the Registrar the discretion to impose financial penalties or pass the conduct to law enforcement to consider criminal sanctions

Other reforms include

- New requirements for registers of members
- New requirements for location of company registers
- Amendments to the register of overseas entities regime
- Reform of Limited Partnerships to prevent their abuse
- Reforms enabling government departments and agencies to share information in order to tackle economic crime
- More accurate and reliable regime for filing of accounts

Economic Crime and Corporate Transparency Act 23

OTHER KEY DEVELOPMENTS

Failure to prevent fraud offence

- New offence introduced under the ECCTA 23
- Expected to come into force in 2024
- ‘Large’ organisations will be liable if an ‘associated person’ commits a fraud offence to benefit the organisation or a person who receives services from the organisation
- An organisation will not be guilty of the offence if it was the intended victim of the fraud
- Defence to strict liability: prevention procedures in place that are ‘reasonable in all the circumstances’

Expanding scope of corporate criminal liability

- ECCTA 23 also introduces a new test for attributing criminal liability for economic crimes to corporates
- Going forward criminal conduct can be attributed to corporate where committed by a “senior manager”
- Economic crime is defined broadly and includes bribery, money laundering, terrorist financing, sanctions breaches, fraud and false accounting offences
- New test will come into force on 26 December 2023

Approach of the regulator

- The regulated sector drives governance requirements across other sectors. The FCA in particular will be a specific driver of obligations for listed entities
- The FCA Business Plan 23/24 focuses on enforcement in relation to the Consumer Duty, financial crime and market abuse
- The FCA has indicated it will be more aggressive in intervening early to enforce the Consumer Duty and are adding resource to enforcement to facilitate early interventions
- In relation to financial crime, whilst the FCA is very focussed on reducing financial fraud, the enforcement risk in relation to AML and sanctions systems and controls remains very high

Payment Practices reporting

PROPOSALS TO EXTEND AND ENHANCE REGIME

- **Jan 23** Government consultation on Payment Practices regulations
- **Oct 23** Government measures to tackle late payment and support small businesses

- Measures are to be included in the upcoming Prompt Payment & Cash Flow Review

Extension of regulations	New reporting metrics	Help to small businesses	Prompt Payment Code	Other
The Reporting on Payment Practices and Performance Regulations 2017 will be extended	• Value metric, so the value of invoices will be shown, including value of invoices paid late • Disputed invoices metric • For construction sector, reporting on retention payments	Better advice to small businesses on negotiating payment terms	To be strengthened by making signatories reaffirm their commitment every two years in order to stay on it	Broadening powers of Small Business Commissioner, e.g. to undertake investigations and publish reports (needs primary legislation)

Modern Slavery Act 2015

A MORE ONEROUS REGIME?

Announced in Queen's speech May 22 but not in King's speech in Nov 23 - not a Parliamentary priority at the moment.
Seeks to implement transparency and accountability reforms to MSA proposed over the past two years. Full details yet to be published

New Bill will make s.54 MSA reporting criteria mandatory for slavery and trafficking statements. Could also include new reporting criteria relating to (i) origin of labour, (ii) arrangements for external inspections, and (iii) use of employment agents

Introduction of civil penalties for non-compliance with legislative requirements given that 10% of organisations failed to comply with reporting obligation and 33% published poor quality statements (FRC report, Apr 22)

Mandatory publication of modern slavery statements in government registry – currently voluntary

Creation of two new criminal offences – proposed in 2021 Amendment Bill. Not yet clear if these will come forward

- Offence of supplying false information in MSA statement
- Offence of continuing to source from supply chain participants after a formal warning

Both would lead to a fine of 4% of global turnover, up to £20 million; an individual defendant could be sentenced up to 12 months' imprisonment

Timetable for reform - unclear. The Bill was **not** in King's speech in Nov 23
Enforcement – no details on how MSA 2015 reporting compliance would be monitored and enforced
A single reporting deadline (as for Gender Pay)? Not clear if this will come forward

Proposed reform of the listing regime: where are we now?

KEY ISSUES

Listing regime

- Simplified listing regime – a single 'category' for equity shares in commercial companies
- Simplified eligibility requirements
- Less onerous continuing obligations
- No shareholder approval for Class 1 or 'large' related party transactions
- Reverse takeovers would still require shareholder approval
- **New rules: H1 2024?**

Prospectus regime

- Decoupling of admissions to trading to regulated markets and offers to the public
- New public offer architecture: prohibition on offers to the public, against which there will be exemptions
- Exemptions to be based on current exemptions (e.g. offer to fewer than 150 persons) but expanded
- FCA will have enhanced rule–making powers e.g. when prospectus required, content, approval process
- Concept of prospectus to be retained as an important part of the regulation of public offers of securities admitted to trading on regulated markets
- Revised liability regime for protected forward-looking information
- **Final rules: 2025?**

Secondary Capital Raising Review

- Changes to Pre-Emption Group Statement of Principles anticipate reform of Prospectus Regime

- Further proposals include:
  - reduced regulatory involvement in raisings: increase threshold at which prospectus required – 75% of issued share capital?
  - quicker and cheaper pre-emptive fundraising structures – reduce minimum offer period, reduce minimum GM notice period and reduce instances where GM required
  - increase the range of choice of available fundraising structures

Ashurst

Questions

11

Thank you

@ashurst
ashurst.com

Ashurst

Appendix

Additional reading

12

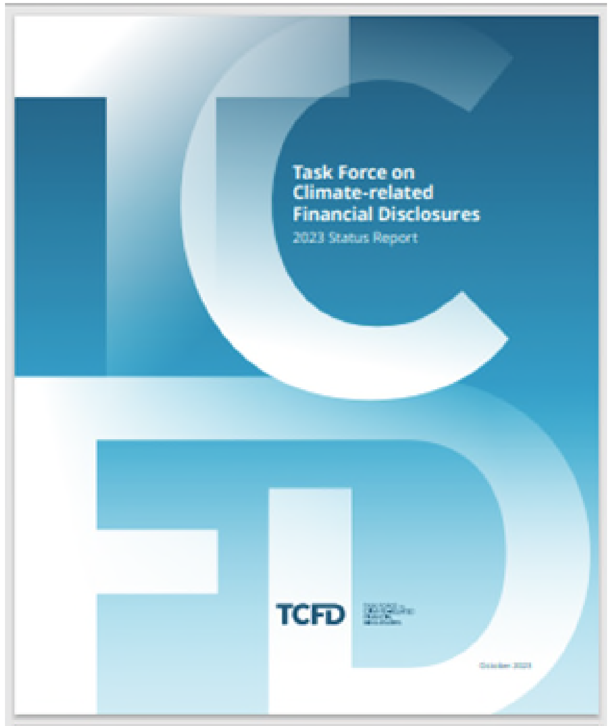
Ashurst

Taskforce on Climate-related Financial Disclosures (TCFD)

Comparison of key TCFD requirements for UK companies

Who	What	When	Requirements
• Premium listed companies (UK incorporated and overseas companies)	Listing Rules LR 9.8.6R(8)	FYs beginning on or after 01/01/2021 (first ARs published in spring 2022)	**Comply or explain** statement in Annual Report re TCFD recommendations & recommended disclosures (R&RD): - Consistency of disclosures in AR with TCFD R&RD - Explain any non-compliance - Explanation if disclosures in a separate document - Location of disclosures (in AR or separate document) FYs beginning on or after 01/01/2022 - consider national commitment to net zero when developing & disclosing **Transition Plans** or explain why not. Mandatory TCFD compliance to follow UK endorsement of international reporting standard – anticipated start for FYs beginning on or after 01/01/2025.
• Standard listed companies • Asset managers • Life insurers • FCA-regulated pension providers	Listing Rules LR 14.3.27R	FYs beginning on or after 01/01/2022 (first ARs published in spring 2023)	**Comply or explain** requirements for standard listed companies mirror premium listed company requirements.
Large companies (with > 500 employees) that are: • 'Traded' and AIM companies • High turnover private companies (£50m+ T/O) • Banking and insurance companies Large LLPs	Companies Act 2006 (as amended by the CFD Regulations 2022	FYs beginning on or after 6/4/2022 (first ARs published in summer 2023)	Non-financial and sustainability information statement (NFSIS statement) to be included in the strategic report. Climate-related financial disclosures (CFD) are **mandatory** in NFSIS. CFD requirements are broadly in line with TCFD R&RD (governance, strategy, risk management, and metrics and targets). Other information necessary for an understanding of the company's development, performance and position and impact of its activities (environmental matters, employees, social matters, human rights, anti-corruption and anti-bribery) only needs to be disclosed by banking, insurance and traded companies.

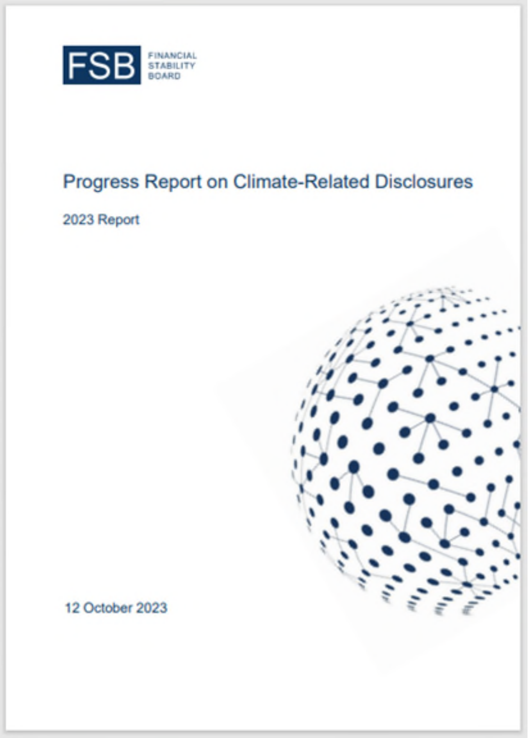
TCFD's Status Report 2023



Key take-aways

- Significant momentum around the adoption / support for TCFD recommendations
- 97 of the 100 largest companies in the world have declared support for the TCFD, report in line with the TCFD recommendations, or both
- 58% of companies disclosed in line with at least five of the eleven recommended disclosures but only 4% disclosed in line with all eleven
- Insufficient information from investee companies is a key challenge
- Progress on the development of a global assurance, ethics, and independence framework for sustainability disclosures
- **FSB will continue to focus on:**
  - Ensuring interoperability of the ISSB Standards with jurisdictional frameworks
  - Developing implementation guidance
  - Companies' disclosure of the resilience of their strategies under different climate-related scenarios
  - Disclosures on other sustainability topics

FSB's Annual Update 2023



- **Key take-aways**
- Progress made on strengthening the relevance, reliability and comparability of CRFDs.
- All FSB jurisdictions have now taken active steps towards CRFD as part of companies' mainstream disclosures.
- Interoperability of ISSB SDS with jurisdictional disclosure frameworks is key and is a significant focus.
- International Organization of Securities Commissions (IOSCO) endorsed the ISSB SDS in July 2023.
- ISSB will assume responsibility for monitoring progress on the state of CRFDs by companies from 2024.

Ashurst

International Sustainability Standards Board (ISSB) sustainability and climate-related disclosures standards

What next for ISSB?

Further SDS

- ISSB consulted on proposals for further standards during summer 2023.
- Initial proposals include biodiversity, ecosystems and ecosystem services (BEES) and human rights.
- Enhance & maintain industry-specific Sustainability Accounting Standards Board (SASB) Standards.

Sustainability Disclosure Taxonomy (SDT)

- A global baseline for tagging sustainability-related financial disclosures to facilitate digital reporting.
- Consultation on proposed SDT ran July - September 2023.
- Final SDT to be issued early 2024.

Interoperability

- Jurisdictional Working Group (JWG) to discuss the IFRS standards and jurisdiction initiatives.
- Sustainability Standards Advisory Forum (SSAF) - a technical advisory body whose members are drawn from jurisdictional and regional bodies and can input into ISSB's standards.
- S1 permits (but does not require) entities to consider the ESRS when identifying information to provide about sustainability-related risk and opportunities.

Key TCFD requirements for UK companies & possible changes

	Listing Rules	Companies Act 2006 (as amended by the CFD Regulations 2022)	UK SDS (endorsed ISSB standards)
Who	• Premium listed companies (UK incorporated and overseas companies) • Standard listed companies • Asset managers • Life insurers • FCA-regulated pension providers	Large companies (with > 500 employees) that are: • 'Traded' and AIM companies • High turnover private companies (£50m+ T/O) • Banking and insurance companies • Large LLPs	Listed companies (as FCA has said it will align reporting requirements for listed companies with the SDS once they have been adopted by the UK) DBT Guidance states the decision to require ISSB-aligned disclosures by UK registered companies and LLPs will be taken by the UK government
When	• Premium listed - FYs beginning on or after 01/01/2021 (first ARs published in spring 2022) • Standard listed and other organisations - FYs beginning on or after 01/01/2022	FYs beginning on or after 6/4/2022	ISSB S1 and S2 are effective for annual reporting periods beginning on or after 1 January 2024 Listing Rules changes to align with UK SDS likely to apply from FYs beginning on or after 01/01/2025 No timeframe for UK companies and LLPs given yet
Where	Comply or explain statement in Annual Report Explain if disclosures in separate document	Non-financial and sustainability information statement (NFSI statement) to be included in the strategic report	Call for evidence asks about location – in ARA or Strategic Report
What	**Comply or explain** statement in Annual Report re TCFD recommendations & recommended disclosures (R&RD) FYs beginning on or after 01/01/2022 - consider national commitment to net zero when developing & disclosing Transition Plans or explain why not	Climate-related financial disclosures (CFD) must be included in NFSI statement Other information necessary for an understanding of the company's development, performance and position and impact of its activities (environment matters, employees, social matters, human rights, anti-corruption and anti-bribery) only needs to be disclosed by banking, insurance and traded companies	Detailed disclosure requirements based on governance, strategy, risk management and metrics & targets in ISSB SDS likely to be adopted by UK unless specific adaptations needed for UK context
Mandatory?	Mandatory TCFD compliance to follow UK endorsement of international reporting standard – anticipated start for FYs beginning on or after 01/01/2025	CFD mandatory in NFSI statement	Mandatory TCFD compliance
Direct reference to TCFD	Yes	No direct reference to TCFD R& RD but CFD requirements are broadly in line with TCFD R&RD (governance, strategy, risk management, and metrics and targets)	Built on TCFD so use same structure of R&RD
Which guidance?	Listing Rules explain which TCFD Guidance to use (eg TCFD Annex)	BEIS non-binding guidance	TBC

Ashurst

Corporate Sustainability Reporting Directive (CSRD)

CSRD – Timing, implementation, general information

GENERAL

CSRD is not directly applicable to companies but must be implemented as national law by each EU Member State.

- The CSRD entered into force on 5 January 2023.
- Member States shall implement the CSRD into national law by 6 July 2024.
- CSRD requirements will apply to:
    - companies already subject to NFRD ("large" public interest EU companies): reporting in **FY 2025 for FY starting on or after 1 January 2024**;
    - "large" EU companies (as discussed below), reporting in FY 2026 for FY starting on or after 1 January 2025;
    - **non-EU companies subject to CSRD**, consolidated reporting in **FY 2029 for FY starting on or after 1 January 2028.**
- Individual Member States may adopt stricter reporting requirements than prescribed by CSRD.

CSRD – Scope – EU Companies

APPLICATION

Under CSRD, sustainability reporting will be required from:

- All large undertakings, i.e. entities governed by the laws of an EU Member State which meet at least **two** of the following **three** criteria:

1. balance sheet total of EUR 20 million;
2. net turnover of EUR 40 million; and
3. average number of employees of 250 during financial year.

- Small and medium-sized public-interest undertakings (except micro undertakings) (in addition to large public-interest undertakings that already have to report under NFRD), i.e. entities which are governed by the laws of an EU Member State and whose transferable securities are admitted to trading on a regulated market of an EU member state.
- Other public-interest entities, i.e. credit institutions, insurance undertakings and entities that are designated as such by an EU Member State.

CSRD – Scope: non-EU companies

APPLICATION

An EU subsidiary of an ultimate parent company which is not governed by the laws of an EU Member State (third-country parent) is required to consolidated sustainability reporting if :

- the EU subsidiary qualifies as a large undertaking or a public-interest undertaking; and
- the third-country undertaking at a group or individual level generated a net turnover of more than EUR 150 million in the EU for the last two consecutive financial years. Details of the calculation later in the presentation.

The reporting obligation in this case is addressed to the EU subsidiary, not to the third-country parent itself, i.e. the EU subsidiary has to collect the required information from the third-country parent and has to prepare and publish the report.

The same applies to an EU branch of a third-country undertaking, if:

- the third-country undertaking does not have an EU subsidiary that is required to report on sustainability; and
- the branch generated revenues of more than EUR 40 million in the EU in the last financial year; and
- the third-country undertaking at a group or individual level generated a net turnover of more than EUR 150 million in the EU for the last two consecutive financial years.

CSRD - Details and scope of individual reporting of large EU company

INFORMATION TO BE COVERED BY INDIVIDUAL SUSTAINABILITY REPORT OF A LARGE EU COMPANY

1. **A brief description of the company's business model and strategy.**
2. **A description of the time-bound targets related to sustainability matters set by the company.**
3. **A description of the role of the administrative, management and supervisory bodies.**
4. **A description of the company's policies in relation to sustainability matters.**
5. **Information about the existence of incentive schemes linked to sustainability matters.**
6. **A description of:** the due diligence process implemented by the company with regard to sustainability matters; the principal actual or potential adverse impacts connected with the company's own operations and with its value chain; actions taken to identify and monitor those impacts; and any actions taken by the company to prevent, mitigate, remediate or bring an end to actual or potential adverse impacts, and the result of such actions.
7. **A description of the principal risks to the company related to sustainability matters.**
8. **Indicators relevant to the aforementioned disclosures.**

CSRD – Equivalent ultimate parent CSRD reporting

THE NON-EU ULTIMATE PARENT COMPANY OF AN EU SUBSIDIARY CAN RELIEVE THE EU SUBSIDIARY OF ITS CSRD REPORTING REQUIREMENTS, PROVIDED

1. **The ultimate parent company prepares a consolidated sustainability report in accordance with the sustainability reporting standards pursuant to Art. 29b of the CSRD, or with reporting standards that are equivalent.**
    - Art. 29b of the CSRD provides that the EU Commission shall adopt sustainability reporting standards specifying further details regarding the information described on the preceding slides to be included in sustainability reports and the structure of the reports (a first part of the information standards shall be adopted by 30 June 2023, a second part by 30 June 2024).
    - Equivalent reporting standards shall be standards as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted by the Commission pursuant to Art. 23 para. 4 of the Transparency Directive (Directive 2004/109/EC).
2. **The reporting covers the EU subsidiaries.**

CSRD – Equivalent ultimate parent CSRD reporting

THE NON-EU ULTIMATE PARENT COMPANY OF AN EU SUBSIDIARY CAN RELIEVE THE EU SUBSIDIARY OF ITS CSRD REPORTING REQUIREMENTS, PROVIDED(CONT.)

3. **The management reports of the exempted EU subsidiaries contain the following information:**

    - Name and registered office of the ultimate parent company.
    - Weblinks to the consolidated management report (or the consolidated sustainability report) of the ultimate parent, and to the assurance opinion given by persons or accounting firms authorized to given an opinion on the assurance of sustainability reporting under the national law governing the ultimate parent.
    - The information that the EU subsidiary is exempted from the consolidated sustainability reporting requirements.

4. **The consolidated report of the ultimate parent and an assurance opinion given by persons or accounting firms authorized to given an opinion on the assurance of sustainability reporting under the national law governing the ultimate parent are published in accordance with Art. 30 of the Accounting Directive (Directive 2013/34/EU) / in accordance with the law of the EU Member State by which the "parent"´ topmost EU subsidiary is governed.**

CSRD – Equivalent ultimate parent CSRD reporting

THE NON-EU ULTIMATE PARENT COMPANY OF AN EU SUBSIDIARY CAN RELIEVE THE EU SUBSIDIARY OF ITS CSRD REPORTING REQUIREMENTS, PROVIDED(CONT.)

4. **The disclosures required under Art. 8 of the Taxonomy Regulation, covering the activities carried out by (all) EU subsidiaries are included in the consolidated management report of the "parent" EU subsidiary or in the consolidated sustainability report of the ultimate parent.**

    - The EU Member States by whose national laws the respective EU subsidiaries are governed may require that the consolidated sustainability report is published in their respective official language.

Ashurst

EU Taxonomy

EU Taxonomy - Overview

EU Regulation (Regulation (EU) 2020/852) which is directly applicable to companies and in full force since January 2023 for FY 2023

- For the first report (FY 2022), some simplifications are provided by Delegated Regulation (EU) 2021/2178, which also contains templates to be used for disclosure.

Contents:

- Extending the information to be included in the sustainability reporting pursuant to NFRD/CSRD.

Scope:

- Companies which are in scope of the sustainability reporting obligations pursuant to NFRD/CSRD.
- In the future applicable to all companies in scope of the NFRD as amended by the CSRD (see previous slides).
- Companies which are already required to produce sustainability reporting will have to include the information required by the Taxonomy Regulation into their sustainability reports as from the time these companies are required to sustainability reporting according to CSRD.

UK Taxonomy:

- UK is planning to issue its own taxonomy, but no firm details have been announced.

EU Taxonomy – Financial and non-financial undertakings

The additional information to be included in sustainability reporting varies, depending on whether the company is a financial or a non-financial undertaking.

Non-financial undertakings:

Disclosure of :

- proportion of the turnover derived from products or services associated with economic activities that qualify as environmentally sustainable; and
- proportion of capital expenditure and proportion of operating expenditure related to assets or processes associated with economic activities that qualify as environmentally sustainable.

Financial undertakings:

Disclosure of specified "green ratios", in particular:

- "Green asset ratio", i.e. proportion of assets financing / invested in economic activities that qualify as environmentally sustainable;
- "Green ratio for financial guarantees", i.e. proportion of guarantees supporting debt instruments financing economic activities that qualify as environmentally sustainable; and
- "Green ratio for assets under management", i.e. proportion of assets under management (equity and debt instruments) from undertakings financing economic activities that qualify as environmentally sustainable.

EU Taxonomy – Environmental sustainability

An economic activity qualifies as "environmentally sustainable" if it: (1) contributes substantially to one or more of the environmental objectives set out in the Taxonomy Regulation; (2) does not significantly harm any of the environmental objectives; (3) is carried out in compliance with minimum safeguards laid don in the Taxonomy Regulation; and (4) complies with technical screening criteria established by the Commission.

1. **Substantial contribution to environmental objectives: Requires that the activity substantially contributes to one or more of the following objectives:**

    - Climate change mitigation
    - Climate change adaption
    - Sustainable use and protection of water and marine resources
    - Transition to a circular economy
    - Pollution prevention and control
    - Protection and restoration of biodiversity and ecosystems

For each of these objectives, the Taxonomy Regulation and supplementing delegated acts adopted by the EU Commission further specify which activities are considered a substantial contribution.

EU Taxonomy - Environmental sustainability

EXAMPLES (ART. 10 - 15 OF THE TAXONOMY REGULATION)

- Contributions to climate change mitigation: Generating, transmitting, storing, distributing or using renewable energy; switching to the use of sourced renewable materials; increasing clean or climate-neutral mobility.
- Contributions to climate change adaption: Adaption solutions that substantially reduce an adverse impact (or the risk of such adverse impact) of the current climate/expected future climate on the respective economic activity.
- Contributions to sustainable use and protection of water and marine resources: Protecting the environment from adverse effects of urban and industrial waster water discharges, e.g. adequate collection, treatment and discharge of urban and industrial waste waters; protecting human health from adverse impacts of contamination, e.g. by ensuring that water intended for human consumption is free from any micro-organisms, parasites and substances that constitute potential danger to human health; improving water management and efficiency.
- Contributions to the transition to a circular economy: Reducing the use of primary raw materials, increasing the use of by-products and secondary raw materials; increasing durability, reparability, upgradability, reusability, recyclability of products; reducing or preventing waste production.
- Contributions to pollution prevention and control: Preventing or reducing pollutant emissions; improving levels of air, water or soil quality; preventing/minimizing adverse impact on human health and environment of the production, use or disposal of chemicals; cleaning up litter and other pollution.
- Protection and restoration of biodiversity and ecosystems: Nature and biodiversity conservation, protection of soil biodiversity, land degradation neutrality and remediation of contaminated sites; sustainable agriculture practices and forest management.

EU Taxonomy - Environmental sustainability

2. No significant harm to any of the environmental objectives (Art. 17 of the Taxonomy Regulation)

For each of the above objectives, the Regulation defines activities considered to significantly harm such objective as follows:

- Climate change mitigation: Activities leading to significant greenhouse gas emissions.
- Climate change adaption: Activities leading to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets.
- Sustainable use and protection of water and marine resources: Activities that are detrimental to the good status or good ecological potential of bodies of water, including surface water and groundwater, or the good environmental status of marine waters.
- Transition to circular economy: Activities leading to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources such as non-renewable energy sources, raw materials, water and land in the life cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability, or to a significant increase in generation, incineration or disposal of waste.
- Pollution prevention and control: Activities leading to significant increases in the emissions of pollutants into air, water or land.
- Protection and restoration of biodiversity and ecosystems: Activities that are significantly detrimental to the good condition and resilience of ecosystems, or detrimental to the conservation status of habitats and species.

EU Taxonomy - Environmental sustainability

3. Compliance with minimum safeguards provided by:

- the OECD Guidelines for Multinational Enterprises; and
- the UN Guiding Principles on Business and Human Rights.

Including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights (Art. 18 of the Taxonomy Regulation).

4. Compliance with technical screening criteria (Art. 19 of the Taxonomy Regulation)

- The technical screening criteria are/will be determined by the EU Commission in delegated regulations.
- Technical screening criteria for determining the conditions for contributing substantially to climate change mitigation or climate change adaption have already been determined in Commission Delegated Regulation (EU) 2021/2139.

EU Sustainability Reporting Standards (ESRS)

EU Sustainability Reporting Standards (ESRS): overview

What?

- Commission has adopted a Delegated Regulation and two accompanying Annexes setting out the first ESRS.
- Applies to companies covered by the CSRD.

When?

- Scrutiny of the Regulation by European Parliament and Council for two months from the second half of August.

2 cross-cutting ESRS:

- ESRS 1 covers general requirements (double materiality, the value chain, and how to prepare and present sustainability information).
- ESRS 2 covers general disclosures on governance, strategy, impact, risk and opportunity management, and metrics & targets.

An ESRS on governance

5 environmental ESRS:

- Climate change
- Pollution
- Water and marine resources
- Biodiversity and ecosystems
- Resources and the circular economy

4 ESRS on social disclosures:

- An organisation's workforce
- Workers in the value chain
- Affected communities
- Customers and end-users

What next for ESRS?

- Adoption by European Parliament and Council.
- Under CSRD, the Commission must adopt, by June 2024, sector-specific standards, proportionate standards for listed SMEs and standards for non-EU companies.
- EFRAG is working on:
    - The second set of sector-specific draft ESRSs covering the Global Reporting Initiative (GRI) sectors and high-impact sectors
    - ESRS for listed and non-listed SMEs
    - Implementation Guidance and FAQs regarding materiality assessment and reporting regarding value chains.