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Client Alert Commentary

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Corporate Governance in Italy: ESG Issues to Consider for the 2025 Assembly Season

The key ESG topics for the 2025 assembly season include the CSRD and CSDDD, which promote transparency and accountability in EU sustainability reporting.

Key Points:

- With the first sustainability reports pursuant to new EU standards becoming due this year, and amid ongoing discussions on potential amendments to ESG-related regulations, dynamism in the ESG and sustainability landscape is expected to intensify in 2025. In the process of defining business strategies and incorporating environmental, social, and governance (ESG) issues, companies and, in particular, directors and senior managers will need to remain agile and informed of the development of regulatory obligations and market expectations on governance and sustainability goals.
- Directive (EU) 2022/2464 (the Corporate Sustainability Reporting Directive, or CSRD), which came into force on January 5, 2023, broadened the scope of organizations subject to sustainability disclosure requirements and introduced new reporting requirements, including a requirement to audit the information provided. The CSRD was implemented in Italy by Legislative Decree 125/2024, and is applied in a staggered approach to listed and certain non-listed entities based on a number of factors, with the first group of companies subject to the CSRD due to issue their first reports in 2025. Companies will be required to report in accordance with the European Sustainability Reporting Standards (ESRS) developed by the European Financial Reporting Advisory Group (EFRAG) and approved by the European Commission.
- Directive (EU) 2024/1760 (the Corporate Sustainability Due Diligence Directive or the CSDDD or the DDS Directive), entered into force on July 25, 2024, and is yet to be implemented in Italy. It establishes a corporate due diligence duty for large EU and non-EU undertakings, and will also be applied following a staggered approach starting from 2027. Similar to the Legislative Decree implementing CSRD in Italy, the CSDDD's Italian implementation will likely influence the scope and standards of directors' existing duties and obligations, and may have an impact on their potential liabilities. The CSDDD will also indirectly affect the role of the board of directors, as the interests and risks that the governing body must consider are expanded.

Background: Adherence to the Corporate Governance Code

The Corporate Governance Code recommends that the board of directors promote, in the most appropriate forms, dialogue with shareholders and other stakeholders relevant to the company, thus tying the goal of "sustainable success" to the relationship that the company establishes with all those involved in the business.

The market has provided increased attention to management practices that take into account issues related to sustainable development and corporate environmental and social responsibility, with an increasing focus on the link between governance and sustainability goals of business operations. This increased attention has highlighted the need for effective identification of key figures within companies that can oversee the transition to a sustainable economy.

As indicated in the Corporate Governance Report, reports published in 2024 show that almost all listed companies adhering to the Code (96%) state that they adhere to the recommendation on the pursuit of sustainable success, a figure that is up slightly from last year (when it was 93%) and thus consolidates the doubling from 2021 (when it was 43%). Moreover, 80% of all companies adhering to the Code not only generically stated their adherence to the recommendation on pursuing sustainable success, but also provided information on the ways in which this guiding principle is embodied in their corporate governance.

In addition, although the Code does not recommend the establishment of a committee with specific sustainability functions, indicating only the possible support that a committee, either board or mixed composition, could provide to the board of directors in analyzing issues relevant to sustainable success, during 2024, 74% of Code member companies opted to assign sustainability functions to a committee. This figure, too, signals an evolution in the sustainable governance of companies adhering to the Code, considering that, in 2021, a committee with sustainability-related functions was indicated by 43% of Code adherents, while in 2022, the percentage had already risen to 60% of adherents (and to 68% in 2023).

CSRD: Expanded Reporting Requirements

The CSRD, which effectively replaces previous and less specific sustainability reporting requirements pursuant to Directive 2014/95/EU (the Non-Financial Reporting Directive or the NFRD), updates, strengthens, and extends the rules for corporate sustainability reporting, aligning with other EU law and internationally recognized frameworks. On August 30, 2024, the Council of Ministers issued Legislative Decree 125/2024 implementing the CSRD. The Decree itself came into effect on September 25, 2024, repealing the previous Legislative Decree 254/2016, which had transposed the Non-Financial Reporting Directive (NFRD) in Italy.

The CSRD requires the production of an annual sustainability report and extended sustainability reporting requirements, including for small and medium-sized (SME) listed companies.

To ensure greater comparability, companies subject to the requirement will have to report in accordance with the European Sustainability Reporting Standards, or ESRS, which are currently being developed by the European Financial Reporting Advisory Group (EFRAG), and the first set of which were approved by the European Commission in July 2023 and came into effect on January 1, 2024.

Key Changes

The CSRD and, more specifically, the Italian Decree that transposed the CSRD have:

- introduced more detailed reporting requirements that may include information necessary for understanding the impact of the company's activities on environmental, social, personnel-related, human rights, and anti-corruption aspects, with prospective and retrospective views in the short, medium, and long term. Companies will be required (a) to specify both (1) how sustainability factors affect business development and performance, and (2) how the company's activities impact people and the environment (the so-called double materiality assessment); and (b) to report on how they carried out such assessment;

- introduced a requirement to disclose sustainability information in a clearly identifiable section of the management report. The choice of information placement, which was mandatorily introduced in the management report, tightens the reporting system and creates a potential overlap with the contents of the corporate governance report. In order to increase the dissemination of sustainability disclosures, companies will be required to prepare the management report in electronic format (using XHTML and XBRL markup language);

- introduced a requirement that sustainability reporting be certified for compliance with Union provisions in a dedicated report by an accredited statutory auditor or audit firm. Previously, the statutory auditor or audit firm only certified the submission of the non-financial character statement (DNF) by companies covered by the NFRD; and

- placed the responsibility for providing the information in sustainability reporting on the company's directors.

Additionally, in connection with the CSRD, in-scope EU entities will also be required to report on how and to what extent (in terms of turnover and capital expenditure) their activities are associated with economic activities that qualify as environmentally sustainable pursuant to the standards of Regulation (EU) 2020/852 (the EU Taxonomy Regulation) and its delegated acts.

Liability and Scope

As mandatory sustainability information will be included in the management report, generally applicable civil, administrative, and criminal liability for false or misleading statements can apply to private and listed entities. However, for entities subject to the supervision of the *Commissione Nazionale per le Societa e la Bors*a (CONSOB), the relevant Italian Decree establishes that, for the two years following its entry into force, the administrative fines provided for in Legislative Decree No. 58 of February 24, 1998 (the TUF) may not exceed €2,500,000 for the company and €150,000 for individuals.[1]

The CSRD expanded the disclosure requirement to a broader range of enterprises, and the scope is graduated according to the type of enterprise:

- From January 1, 2024 (first reporting in 2025): large public interest undertakings[2] with more than 500 employees

- From January 1, 2025 (first reporting in 2026): all other large enterprises that exceed two of the following three criteria: €25 million total assets, €50 million net revenue, or 250 average annual employees

- From January 1, 2026 (first reporting in 2027): listed SMEs (excluding microenterprises)[3]

- From January 1, 2028 (first reporting in 2029): non-EU companies with annual turnover exceeding €150 million in the EU and having a subsidiary or branch in the EU that exceeds certain thresholds

CSDDD: Expanded Accountability and Transparency

Another important new development is the CSDDD (or DDS Directive) on corporate due diligence for sustainability, published on July 5, 2024. The CSDDD fits alongside the CSRD and extends accountability and transparency obligations on specific ESG matters, introducing obligations to establish, supervise, and incorporate certain due diligence processes into corporate strategy. Complying with the CSDDD will eventually require companies and their directors to include considerations of human rights and environmental impacts in their decisions, and establishes certain obligations in connection with climate change.

Scope

The application of CSDDD will also be staggered as follows:

- From 2027: companies with more than 5,000 employees and a turnover of more than €1,500 million
- From 2028: companies with more than 3,000 employees and a turnover of more than €900 million
- From 2029: all other companies within the scope of the directive (i.e., those with more than 1,000 employees and a turnover of more than €450 million)

Key Changes

The main obligations introduced by the CSDDD concern the following areas:

1. The adoption of a code of conduct, corporate policies, and a description of the processes put in place to integrate due diligence, and the identification and assessment of negative human rights and environmental impacts that may arise from the activities of companies and their value chains

2. Periodic assessments of due diligence measures in the company's own operations and value chain

3. Obligations for businesses related to combating climate change[4]

4. Effective engagement with stakeholders (i.e., employees of the company and its subsidiaries, labor unions, and employee representatives, as well as consumers) through effective and transparent consultations

5. Reporting of due diligence policy and measures in accordance with the provisions of the CSRD

Next Steps

The European Commission recently announced that it is working on an "omnibus" initiative including proposals to simplify EU ESG reporting rules, potentially covering the CSRD and CSDDD. However, according to the latest remarks, this initiative would not imply substantive changes to the incoming obligations. Significant uncertainty currently persists as to the initiative and any potential proposed amendments to these frameworks. With the first sustainability reports pursuant to the CSRD expected to be published between the first six to eight months of 2025, companies will need to stay vigilant, plan ahead, and monitor the situation closely for any developments with short- or longer-term implications.

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Endnotes

[1] Under the general regime, fines may rise up to €10 million or, if greater, 5% of turnover, for entities, and up to €2 million for individuals.

[2] The definition of "public interest undertaking" includes EU companies that either: (1) are listed on a regulated EU stock market; (2) are a specific form of financial services company (e.g., an insurance company or credit institution, meaning that unlisted financial institutions may also be subject to the requirements of the CSRD); or (3) have been specifically designated a public interest entity by their country of incorporation.

[3] SMEs are subject to simplified reporting standards and can be exempted until 2028 to the extent that they include a brief justification in the management report.

[4] In particular, large companies subject to the CSDDD will be required to adopt and put into effect, through best efforts, a transition plan for climate change mitigation aligned with the 2050 climate neutrality objective of the Paris Agreement as well as intermediate targets under the European Climate Law.