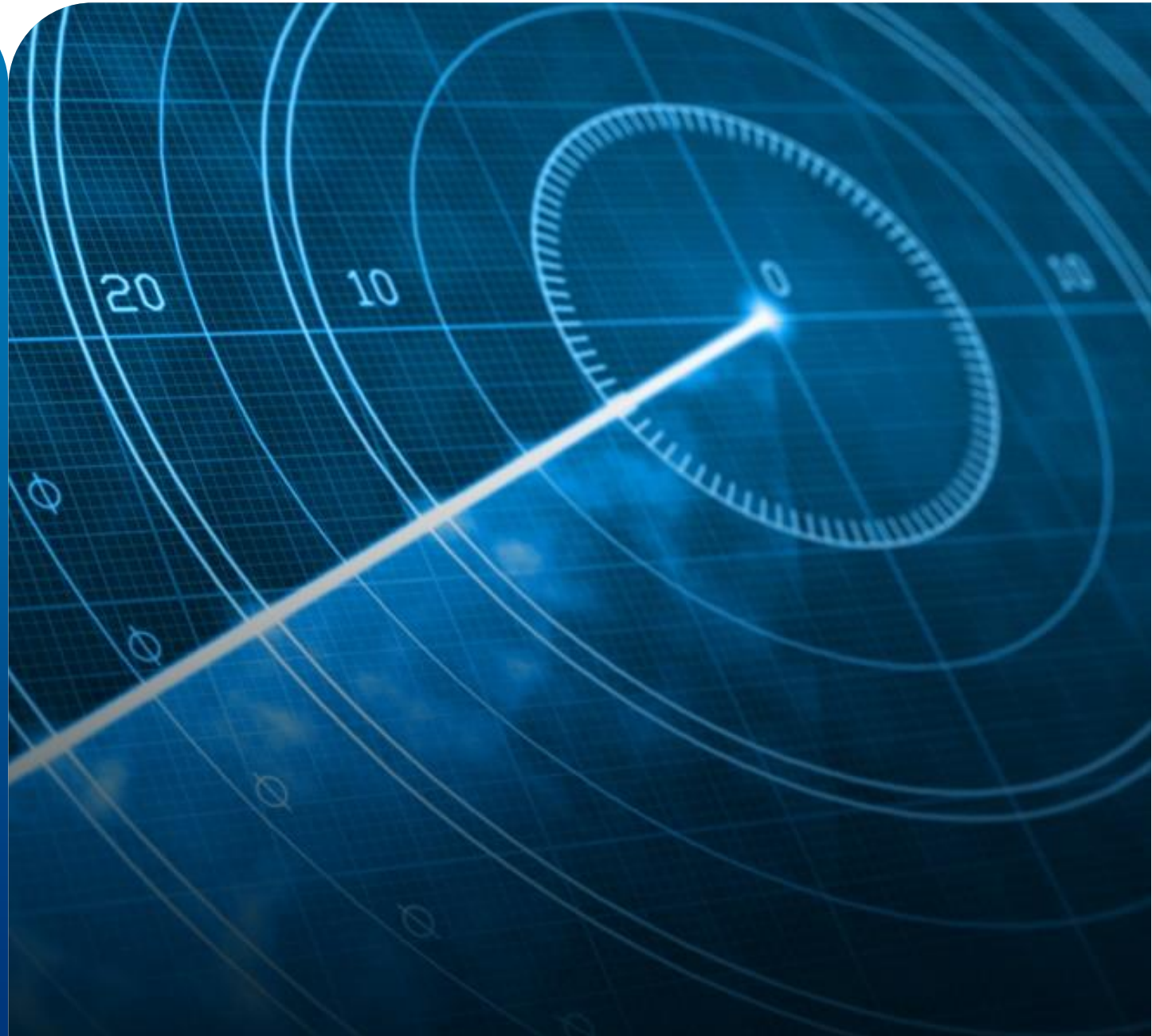

Capital Markets Radar

Outlook 2024

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In this deck, we highlight some key developments that should be on the radar of parties active in the capital markets of our home markets (the Netherlands, Belgium, Luxembourg and Switzerland) and provide our outlook for 2024.

As the capital markets continue to operate in a volatile economic and geopolitical environment (including presidential elections in the U.S. the recent Taiwanese elections and the EU parliamentary elections), 2024 will see important legal and regulatory measures come into effect and loom on the horizon. These developments place different demands on companies, leaders, and operations. Timely preparation is critical.

Key Developments

- Sustainability reporting and Human Rights and Environmental Due Diligence (HREDD)
- Digitalisation, Technological innovations and Cybersecurity
- Gender diversity at the top
- Sustainable financing
- Public-to-Private
- FDI screening
- Listing Act
- Infrastructure exchanges
- Shareholders Rights Directive
- Anti-Money Laundering & Sanctions
- Tax developments in the Netherlands, the EU and beyond

Please let us know if you are interested in discussing any of these developments in more detail – we would love to engage with you.



Sustainability reporting and HREDD

Pressure from investors and stakeholders will keep ESG high on corporate agendas in 2024. Non-financial undertakings have started disclosing the full Key Performance Indicators (KPIs) on alignment with Taxonomy Regulation, financial market players will have to apply the regulatory technical standards for sustainability-related disclosures for financial services under the Sustainable Finance Disclosure Regulation (SFDR) and, in June 2023, the first ever reports on Principal Adverse Impacts (PAIs) of investment decisions over the reference year 2022 were published. Moreover, for the large 'public interest entities' (including listed companies) subject to the Corporate Sustainability Reporting Directive (CSRD) 2024 will be the first year in respect of which they need to prepare a sustainability statement which will undoubtedly result in many practical questions as to the application and interpretation of the CSRD. ESMA will also deliver its final report on greenwashing in 2024.

On the horizon too, although no precise timeline has been shared yet, is the EU proposal for the Corporate Sustainability Due Diligence Directive (CSDDD) which will require qualifying companies to conduct a human rights and environmental due diligence (HREDD) and, where relevant, address human rights and environmental impacts of their businesses and up- and downstream value chain so identified. On 14 December 2023, the EU agreed on a potential carve-out in the CSDDD for the downstream value chain of financial entities. This carve-out is still subject to an impact assessment and is not yet definitive.

In Switzerland, prudentially supervised large financial institutions and larger listed companies must produce a report on non-financial matters (including environmental, social, employment, human rights and anti-corruption matters) for the first time in 2024 regarding the financial year beginning in 2023.

Digitalisation and Cybersecurity

The structure of the markets and the behaviour of capital market participants are not only being impacted by sustainability, but also by technological developments and extensive digitalisation.

Key areas of focus for market participants in 2024 are:

- **New technologies and innovation:** removing obstacles to digitisation in existing EU regulation, preparation for a more harmonised EU regulatory treatment of crypto-assets (MiCAR on its second consultation package as of October 2023) and a road to a clear and risk-based framework for AI based on the provisional agreement on the AI Act reached by the EU Parliament and Council in December 2023. The growth in electronic trading is expected to impact both the fixed income and broader capital markets, leading to significant changes in business processes and market structures to be compliant with the existing regulatory framework.
- **Cybersecurity:** preparing and implementing DORA. The Joint Committee of the ESAs will finalise the work on the DORA technical standards, report and guidelines to be delivered in 2024. Additionally, the NIS2 Directive pursuing risk-management ownership by the board, security requirements and supply chain security, has been adopted in 2023. By October 2024, Member States will have to implement the NIS2 directive in their national legislation.
- **Data-sharing:** implementing a cross-sectoral approach for data-sharing, coordinating greater standardisation of data types and formats, ensuring the secure transmission of data.

Gender diversity at the top

In November 2022, the European Parliament adopted Directive (EU) 2022/2381 on improving gender balance among directors of EU companies listed on a regulated market. By the end of 2024, Member States shall adopt national rules requiring listed companies to ensure that 40% of their non-executive director positions or 33% of all their board member positions are occupied by the "under-represented sex", currently being women. Legislation to implement this directive is currently being designed by the Member States.

Listed companies will have until the end of June 2026 to meet these requirements. To ensure compliance, listed companies will have to provide competent authorities with information about gender representation on their boards annually. If the requirements are not met, companies will need to explain how they plan to meet these objectives. Member States will be imposing penalties for companies that fail to comply with the requirements. Penalties may include fines or the ability for a judicial body to declare a board appointment decision void.

In Switzerland, listed companies are required to have a minimum representation of 30% of both genders on their board of directors from 2025, and, from 2030, a minimum representation of 20% on the executive board. Non-compliance must be explained in the compensation report which must state the measures taken to promote the underrepresented gender.

Sustainable financing

We expect the current high demand for sustainable financial Euro products in the market to continue to rise in 2024, potentially providing for more favourable financing terms than their non-sustainable counterparts. While in the past years, the COVID crisis has boosted the issuance of sustainable financial products, for the year(s) to come, it is expected sustainable financial products will continue to be considered key to accelerate the transition towards climate neutrality and support companies' decarbonisation.

At present, no national legal framework for such sustainable financing exists in the Benelux but lenders tend to follow the widely used voluntary principles and guidelines formulated by the International Capital Market Association ICMA (Green Bond Principles; Social Bond Principles; Sustainability-Linked Bond Principles). This means that in order for a financing to be considered "sustainable", certain pre-set conditions must be met. Depending on the product, those can relate to the use of the proceeds, the achievement of certain KPI's, tracking of funds, reporting and third-party verification.

The EU has developed European Green Bond Standard. On 30 November 2023, the new Green Bond Regulation, which is fully aligned with EU taxonomy, was published in the Official Journal of the European Union. ESMA is preparing for the delivery in 2024 of technical standards under the European Green Bond Regulation. In Switzerland sustainable finance instruments are also on the rise and in August 2022, the Swiss Federal Council adopted a framework for the issuance of green Confederation bonds, which is likewise based on the Green Bond Principles developed by ICMA. The first green CHF 766 million Confederation bond was issued in October 2022. A second CHF 346 million green Confederation bond followed in March 2023 and a third CHF 325 million green Confederation bond in September 2023.

Public-to-private

2023 saw an uptick in public-to-private activity with both strategic and sponsor-backed buyers seeking to utilise the poorer performance on the stock exchanges by taking certain companies private. We expect this trend to continue in 2024, at least as long as the markets remain volatile. The implementation of certain new legislations imposing additional reporting and compliance burdens on (listed) companies (such as the CSRD and the Country-to-Country tax reporting) may accelerate this development.

FDI screening

The Foreign Direct Investment Regulation (adopted 2020) called for a coordinated economic response on FDI screening by all Member States. Non-EU persons aiming to invest in certain key and strategic sectors should therefore take into account new (administrative) sanctions and additional clearing conditions in their impact assessment of transaction timelines and outcomes.

In Switzerland, on the other hand, the draft Investment Control Act published by the Government on 15 December 2023 (which is expected to enter into force in 2025 at the earliest) has a rather limited scope and only requires the acquisition of a Swiss company to be notified if (a) a foreign state acquires control, (b) a (security-) critical sector is concerned and (c) certain *de minimis* turnover thresholds are exceeded.

Listing Act

In December 2022, the EU Commission released a proposal called the Listing Act. The aim of the proposal is to introduce technical adjustments to the EU rulebook that reduce regulatory and compliance costs for companies seeking to list or that have already listed, with a view to streamlining the listing process and enhancing legal clarity, while ensuring an appropriate level of investor protection and market integrity. The proposal contains amendments to the Prospectus Regulation and the Market Abuse Regulation. These include relaxations such as (i) setting the level of disclosure of the EU Growth prospectus regime as the new standard, (ii) the increase of the prospectus exemption for secondary issuances from 20% to 40% and (iii) some flexibility regarding the obligation to disclose inside information in relation to the intermediate steps of a protracted process.

In addition, the following two additional legislative proposals were put forward in relation to the Listing Act: a proposal for a directive on multiple-vote share structures, and a proposal for a directive intended to amend MiFID II and to repeal the Listing Directive. The most recent development in this process is an adopted motion in the European Parliament on 14 December 2023. This motion calls upon the European Commission and Member States to focus on the hindrances that innovative scale-ups and start-ups (those addressed in the Listing Act) face. These are: limited access to funding, regulatory burdens, talent acquisition, market access and competition, innovation ecosystem and support structures. These five focus points form the backbone of the listing act and its goals to develop and strengthen the EU's position as a global leader in innovation and technology.

Infrastructure exchanges

The EU will further develop the Capital Markets Union (CMU) by making EU clearing services more attractive and resilient.

On the agenda to reach more resilient clearing services are:

- i) a Communication from the Commission on the path towards a stronger EU clearing system accompanying the legislative proposals; and
- ii) a Regulation and Directive amending the European Market Infrastructure Regulation (EMIR) and making targeted amendments to the prudential frameworks for banks (the Capital Requirements Regulation and the Capital Requirements Directive) and for investment firms (the Investment Firms Directive) as well as to the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive and the Money Market Funds (MMF) Regulation.

Regarding crypto-markets, the ongoing implementation of MiCAR and accompanying Technical Standards are aimed to strengthen regulation of trading venues for digital assets.

2024 should also see the completion of the authorisations of the first consolidated tape provider(s) (CTP).

Shareholders Rights Directive

The European Commission requested ESMA and the EBA to provide input on certain provisions in the Shareholders Rights Directive II (SRDII).

The report was delivered on 27 July 2023 and contained recommendations to clarify some terms and harmonise some processes. These included:

- i. A clarification on the term 'proxy advisor'. SRDII does not lay down specific requirements to identify a party as proxy advisor. In light of the evolution of market practice concerning proxy advisors, more stringent definitions are advised.
- ii. A clarification on the term 'shareholder'. The report suggests introducing a harmonised definition of the term shareholder. If this advice is followed by the European Commission, this could have serious repercussions for company, securities and tax legislation across Member States.
- iii. The introduction of a 'golden operational record' requirement on share issuers regarding shareholder identification and the transmission of information along the chain of intermediaries.
- iv. A suggestion to align deadlines concerning corporate events and shareholder identification processes with compliance duties.
- v. Harmonisation of relevant documentation is recommended in respect of exercising voting rights.

These updates will be integrated in the European Commission its report to the EU Parliament and Council and may lead to legislative changes in the future.



Anti-Money Laundering Regulation and Directive

In July 2021, the European Commission published a proposal for a European Anti-Money Laundering Regulation and the sixth Anti-Money Laundering Directive. The Regulation aims to streamline Member States rules and procedures relating to Customer Due Diligence, Beneficial Ownership transparency and Data and Record-keeping. The Commission aims to make the European AML framework more effective and robust by streamlining these rules. In conjunction with the new Regulation, the Commission has proposed the establishment of a new Anti-Money Laundering Authority (see below).

Additionally, the sixth Anti-Money Laundering Directive aims to establish and streamline the infrastructure of Financial Intelligence Units (FIUs) across all Member States. These FIUs are the first points of contact for national financial institutions in the notification process concerning suspicious transactions and other behaviour covered under the AML Regulation.

Anti-Money Laundering Authority

The current planned timeline includes the establishment of a groundwork in 2024, to reach full staffing in 2025 and to be fully operational and functional by 2026. However, this is still a rough timeline and can be subject to alteration.

The supervisory duties currently with the National Competent Authorities will transfer to the new AMLA, supported by the necessary data, knowledge and tools provided by both the national and European competent authorities.

Sanction law

The European Union, as part of its Common Foreign Security Policy, has imposed numerous sanctions (restrictive measures) on actors such as Russia and Iran. Due to rising global tensions, the sanction legislation has been developing at a high pace over the last years.

For example, the latest round of sanctions (Twelfth round) concerning Russia was adopted on 18 December 2023, with additional sanctions added on 3 January 2024, relating to the Russian diamond trade. As further development is still unknown, more sanction rounds could be announced and adopted. Finance streams from Russian and other sanctioned actors, both legal and natural, should be scrutinised in light of the latest sanction developments.

DEBRA Directive

The European Commission has published a Directive proposal to tackle the tax bias in favor of debt funding, effectively aiming to reduce the difference in tax treatment of equity and debt financing. The proposal includes both a notional deduction on growth in equity and an additional limitation on interest deduction for corporate income tax purposes.

The DEBRA proposal applies to all taxpayers in the EU, save for certain financial undertakings. According to the initial indented timing, the DEBRA proposal, once adopted, would have to be implemented into Member States' national law by 31 December 2023 and should come into effect as of 1 January 2024. The examination of the DEBRA proposal however has recently been suspended until other proposals in the area of corporate income taxation have been put forward.

Nonetheless, if adopted, these rules may impact on an enterprise's choice to issue either equity or debt instruments, as well as the pricing of either instruments, which in turn may have an impact on investors' decisions.

OECD Pillar Two

The OECD initiative Pillar Two basically encompasses a minimum effective taxation of 15% in each jurisdiction where multinational enterprises with a global turnover of at least EUR 750 million have a taxable presence. Pillar Two consists of a mix of measures giving taxing rights to the jurisdiction of the group's ultimate parent and to the jurisdictions of entities making intragroup payments to low-taxed group companies.

Following the OECD initiative, the EU has issued a directive with certain extensions to its scope in order to comply with the EU fundamental freedoms. In The Netherlands, the legislative proposal was adopted in 2023 and entered into force as of 31 December 2023.

Although political agreement at OECD and EU level has been reached, implementation of the rules has yet to take place. The exact impact on multinational enterprises is, therefore, still unclear, however this should be closely monitored by enterprises active in the capital markets with a requisite global turnover.

ATAD 3: the “Unshell Directive”

The draft anti-shell EU Directive (ATAD3) was published in 2021. The Directive aims to prevent the misuse of 'shell entities' (companies with no or very limited presence and economic activity) by introducing rules on reporting obligations, exchange of information between Member States and denial of tax benefits. An entity is regarded as a 'shell entity' if it cumulatively meets certain gateways, i.a. based on type of income and substance, with a reference period of the two preceding years.

In May 2022, the European Parliament proposed several amendments to the Unshell Proposal, including a postponement until 2025. On 17 January 2023, the European Parliament approved the Unshell Proposal.

Initially, it was envisioned that the Directive would become effective as from 2024, however currently 2025 is generally perceived as the earliest the Unshell Proposal may become effective. Given the potentially far-reaching implications for investment structures and the reference period effectively looking back two years, this development should be closely monitored.

NL: Additional dividend withholding tax

The Netherlands has introduced an additional withholding tax on intragroup dividends (ultimately) paid to entities in low-taxed jurisdictions and/or jurisdictions included on the EU-blacklist, and to certain hybrid entities, effective from 1 January 2024. The additional dividend withholding tax is similar to the conditional withholding tax on interest and royalty payments that was introduced as of 2021. Although this withholding tax is not aimed at targeting dividend payments made to third-party investors, Dutch entities in both debt and equity capital market transactions will have to deal with this in their transaction (documentation), mainly from a risk allocation and administrative perspective.

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