



Capital Markets Radar

In this deck, we highlight ten key developments which 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 2023.

In 2023, many SPACs continue their search for a suitable target to avoid having to wind-down or request shareholders to extend their life-span.

10 Key Developments:

- ESG reporting
- Digitalisation and Cybersecurity
- Gender diversity at the top
- Sustainable financing
- Listing Act
- Cross-border mobility
- Recession and risk of insolvency
- Infrastructure exchanges
- FDI screening
- 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.



ESG reporting

Pressure from investors and stakeholders will keep ESG high on corporate agendas in 2023. Despite volatile economic and political surroundings, 2023 will see major legal and regulatory measures coming into effect: non-financial undertakings will start 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, by 30 June 2023, release their first ever report on Principal Adverse Impacts (PAIs) of investment decisions over the reference year 2022.

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.

On the horizon too, although no precise timeline has been shared yet, is the EU proposal for the Corporate Sustainability Due Diligence Directive (CS3D) which will require companies to take into account the human rights, climate and environmental impacts of their businesses.



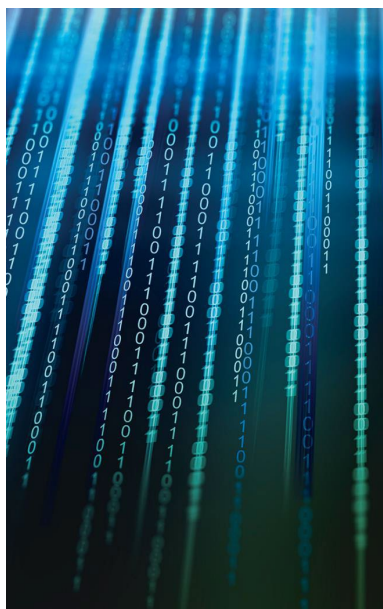
Digitalisation and Cybersecurity

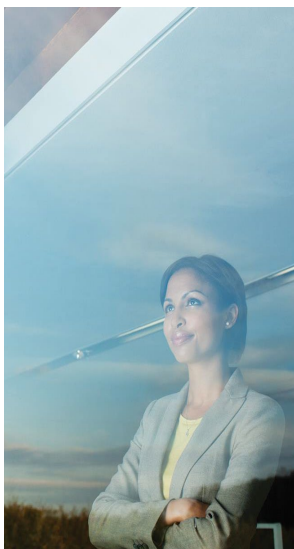
The structure of the markets and the behaviour of capital market participants are not only being impacted by sustainability, but also by technological developments and extensive digitalisation.

Key areas of focus for market participants in 2023 are:

- new technologies and innovation: removing obstacles to digitisation in existing EU regulation, preparation for a more harmonised EU regulatory treatment of crypto-assets and a road to a clear and risk-based framework for AI;
- cybersecurity and operational resilience: preparation for new EU and national regulatory requirements while ensuring a principles and risk-based approach (not only through statutory requirements but also via corporate governance codes);
- data-sharing: implementing a cross-sectoral approach for data-sharing, coordinating greater standardisation of data types and formats, ensuring the secure transmission of data.

These developments place different demands on firms, senior executives and operations. Timely preparation is therefore key.





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.

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

The current high demand for sustainable financial Euro products in the market will continue to rise in 2023, 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 is currently developing a European Green Bond Standard. Following the latest negotiations, the EU Green Bond label would serve as a voluntary standard that will establish an EU label that will co-exist with the existing international market standard. One of the key pillars of the EU Green Bond Standard is the EU Taxonomy-alignment of the bonds issued under the EU label.

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.



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.

Cross-border mobility

Cross-border mergers already have a statutory basis in European law and national legislation. For other cross-border reorganizational transactions no harmonized regime exists as of yet within the EU/EEA. In practice, cross-border conversions have been implemented by applying EU case law regarding the freedom of establishment and movement.

The EU Mobility Directive (Directive (EU) 2019/2121) provides for a (more) uniform legal framework for conducting cross-border mergers, conversions and demergers within the EU/EEA. The deadline for implementation of the directive is 31 January 2023. To the extent this deadline is not met, certain provisions of the directive – i.e. those that are unconditional, sufficiently clear and precise – shall have direct legal effect in the relevant EU/EEA Member State.

Once the directive is implemented, in addition to cross-border mergers, cross-border conversions and demergers may become a helpful addition to the transactional toolbox.

Recession and risk of insolvency

The EU will further develop the Capital Markets Union (CMU) by, among others, harmonizing certain corporate insolvency rules across the EU. A first step will be the ongoing implementation of the Restructuring Directive in all Member States where this has been delayed. The EU will submit to the Parliament a Directive on corporate insolvency which, among others, aims to harmonise conditions for “transaction avoidance”, to make it easier to trace assets across borders by facilitating insolvency practitioners' access to asset registers, to allow for pre-pack proceedings and to improve representation of creditors' interests through creditors' committees.

To increase financial stability, the Commission made a proposal in September 2021 for a new directive establishing a framework for recovery and resolution of insurance companies – the ‘IRRD proposal’ which establishes harmonised recovery and resolution tools and procedures, with enhanced cross-border cooperation between national authorities.



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 proposal; and
- ii) a Regulation 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 fall of FTX may lead to proposals to strengthen the regulation of trading venues for digital assets. The crypto markets still lack many of the characteristics of more mature and traditional exchanges.

FDI screening

Following the definitive entry into force of the EU Foreign Direct Investment Regulation on 11 October 2020 and the European Commission's call for a coordinated economic response by all member states in the field of FDI screening, legislative initiatives have been taken which have recently or may soon become law in our home markets.

Non-EU persons aiming to invest in certain key and strategic sectors within the EU, should therefore take additional clearance conditions and related (administrative) sanctions into account potentially impacting transaction timelines and outcome.



Tax developments in the Netherlands, the EU and beyond

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. The Netherlands itself has launched a public consultation on a draft bill to implement Pillar Two as per the end of 2023, which has recently closed.

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 a year ago. 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.

Initially, it was envisioned that that the Directive would become effective as from 2024, however currently 2025 is generally perceived as the more likely effective date. 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 will introduce 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 per 2021.

Although this withholding tax is not aimed at targeting dividend payments made to third-party investors, Dutch entities in 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.

Amsterdam



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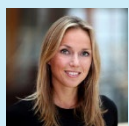
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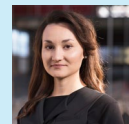
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We have an integrated team of capital markets, private equity, tax advisors and corporate lawyers focused on IPOs, secondary offerings, convertibles/exchangeables and other ECM and equity-linked products as well as on public M&A and deSPAC transactions.



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Our team works on all types of liability management transactions, including solvent and insolvent restructurings, tender and exchange offers and consent solicitations where Dutch, Luxembourg, Belgian or Swiss entities are involved.



ESG

We have ample experience supporting clients on ESG matters and navigating emerging soft law and regulatory standards in capital markets. Integrating ESG factors into disclosures for issuers and investment decisions making for financial market participants has become increasingly important. Expertise covers green, social and sustainability-linked bonds, but also implementing sustainable finance regulation at issuers and buy and sell-side.



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Our market-leading group advises on all aspects of regulatory compliance and disclosure/reporting obligations involving listed companies. We also provide extensive assistance and advice on listings and ongoing obligations, including market abuse, resulting therefrom.

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