ESG AND LAW

Sustainability Remains a Political Focus

Enterprises should prepare for increased also regulatory measures to promote a sustainable economy and the announced transition to a "Green Economy". At present, this is also particularly true with regard to the German law on due diligence in the supply chain which has now been explicitly announced.

In our newsletter "Corona vs. CSR: Does the Virus also Stop Sustainability?" we concluded at the beginning of April 2020: The coronavirus crisis will not stop sustainability, on the contrary, it may even promote it. The new decade will therefore continue to be in the spotlight of sustainability (see fundamentally our newsletter "Outlook Corporate Social Responsibility 2020: More Sustainability, More Acts, More Risk" of February 2020). The current developments since then further point in this direction. The corona crisis has highlighted the vulnerability of a globalised world at its most sensitive spots, thus highlighting the importance of strengthening the resilience of companies with regard to possible future crises. The consideration of climate change and climate protection is a prominent example of this (see also our newsletters above).

So it remains a fact: a diligent and far-sighted CEO will do well to keep the issue of sustainability in mind. This is more than confirmed by current political and regulatory developments in the field of sustainability:

We therefore report below on the main sustainability-related aspects of the **Trio Programme (No. 1)** and the **national programme** for the current **EU Council Presidency** based on it **(No. 2)**. Sustainability is and remains a very important factor on the political stage, even in times of pandemics. We then go into detail about the rapid developments in the area of human rights due diligence, key word **"German Supply Chain Act" (No. 3)**. Not only have the key features of a national Supply Chain Act of March 2020 become public knowledge in the meantime. In view of the results of the second round of monitoring of the National Action Plan, German Federal Ministers Müller and Heil have announced a national supply chain law for this legislative period. The plans for an EU supply chain law are also rapidly gaining momentum: In view of the high financing requirements for the transition to sustainable management, the topic **Sustainable Finance** also remains a high priority on the agenda **(No. 4)**. In addition to the EU Commission's Renewed Sustainable Finance Strategy, the revision (expansion) of non-financial reporting is under discussion. Of particular relevance in this area is the **EU Taxonomy** which has most recently been finally adopted, the world's first classification system for ecologically sustainable economic activities **(No. 5)**. And finally, a recent World Economic Forum (WEF) white paper on **Stakeholder Capitalism** provides an outlook on how the EU Commission's plans in the field of **Sustainable Corporate Governance** announced in the European Green Deal could take shape **(No. 6)**.

1. EIGHTEEN-MONTH PROGRAMME FOR THE CURRENT TRIO PRESIDENCY

On 16 June 2020, the 'General Affairs Council', which prepares and follows up on the meetings of the European Council, discussed the 18-month programme for the forthcoming Trio Presidency of Germany, Slovenia and Portugal in the EU (in short: Trio Programme). Since the Treaty of Lisbon of 2009, the so-called trio presidency has been formulating long-term goals and developing a joint programme for the European Council's activities in the respective eighteen-month period. The three participating countries draw up their own more detailed six-month programme on the basis of this Trio Programme (see No. 2.).

It came as no surprise that the final agenda of the Trio Programme was strongly influenced by the coronavirus crisis and its management. Nevertheless, or perhaps precisely for this reason, the Trio Programme continues to be based on the main priorities of the strategic agenda 2019–2024, agreed by the Heads of State and Government of the EU last year:

- protecting citizens and their freedoms
- developing a strong and vibrant economic base
- building a climate-neutral, green, fair and social Europe
- promoting European interests and values on the global stage.

Already the introduction shows clearly that (also) the Trio of Presidencies continues to give top priority to the goal of sustainable and inclusive growth and a green economy. This is what it says

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about overcoming the corona crisis and restoring the economies of Europe:

"*...a lot more remains to be done, in particular as regards controlling the pandemic and getting Europe's societies and economies back to full functionality by fostering sustainable and inclusive growth, integrating inter alia the green transition and the digital transformation, and by drawing all lessons from the crisis and tackling its socio-economic consequences. To this end, as an overarching priority, the three Presidencies are determined to implement all appropriate measures serving a robust recovery of the European economy, in line with a sustainable and inclusive growth strategy, that takes account of the goal to achieve climate-neutrality by 2050 and addresses the significant social impacts and human dimensions.*"

Section IV. of the Trio Programme on "*Building a Climate-Neutral, Green, Fair and Social Europe*" lists specific goals: Achieving a climate-neutral EU by 2050, while ensuring that the transition is costeffective, just, socially balanced, fair and achieved in a way that preserves the EU's competitivenes, as well as the protection and sustainable use of biodiversity and natural resources are called "*key elements in the green transition*". This is framed by the commitment to implement the 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals (SDGs) enshrined therein. In addition, the following paragraph in particular stands out, which clearly aims in the direction of an EU-wide supply chain law (for details see also No. 3).

"*The three Presidencies will drive forward efforts to achieve an EU-wide coherent implementation of the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the ILO's Tripartite Declaration of Principles on Multinational Enterprises and Social Policy. They call for the development of a new communication on "Corporate Social Responsibility (CSR)" including an EU action plan on responsible business conduct and taking into account experience and lessons from the COVID-19 crisis.*"

2. NATIONAL PROGRAMME OF THE GERMAN FEDERAL GOVERNMENT FOR THE EU PRESIDENCY

On 30 June 2020, the Federal Government of Germany published its national programme for Germany's presidency of the Council of the EU, called

"Together for Europe's recovery." In line with the Trio Programme, the German government is also placing the management of the economic and social consequences of the COVID-19 pandemic at the centre of its efforts in the national programme. To this end, it announces to pursue a "*sustainable and inclusive growth strategy*". The German government seeks to ensure that the transition to a sustainable economy on the basis of the European Green Deal is accomplished and that the digital transformation plays a key role in this regard.

The pandemic was turning the spotlight on the vulnerabilities of global supply chains and the people working in them. A comprehensive risk management system for enterprises that is in line with the global agenda for sustainability could help to increase the resilience of supply chains. Therefore, the government is committed to an EU action plan to strengthen corporate social responsibility in global supply chains that promotes human rights, social and environmental standards and transparency, and which takes the experiences and lessons learned from the COVID-19 pandemic into account. This supported the coherent implementation of the Guiding Principles on Business and Human Rights of the United Nations and the OECD Guidelines for Multinational Enterprises.

An EU supply chain law with binding due diligence requirements in the supply chain, as EU Commissioner for Justice, Didier Reynders, had announced some weeks ago (for details see also No. 3), is however not explicitly mentioned in the programme. On 14 July 2020, however, with a view to the planned national supply chain law, the German government reaffirmed that it also intended to use the **EU action plan** to **strengthen corporate responsibility in global supply chains**, "*that promotes human rights, social and ecological standards and transparency in the supply chain and takes account of the experience of the COVID-19 pandemic*" (for more details see No. 3). It remains to be seen whether the German government will also address the issue of sustainable corporate governance.

In its national programme for the German presidency of the EU Council, the government dedicates a separate chapter to further sustainability aspects: "IV. A sustainable Europe". It reads literally as follows:

"*Our goal is to overcome the economic and social consequences of the COVID-19 pandemic sustainably and inclusively and thereby help shape the transition to a sustainable economy. Our priorities to this end are an ambitious climate, environmental and biodiversity policy, a focus on the United Nations 2030 Agenda for Sustainable Development and sustainable agriculture. The German Presidency of the Council of the EU will also work to ensure that the European Union and its Member States continue to fulfil their role in the international arena as ambitious and active players in the area of climate diplomacy, sustainability and European values.*"

Specifically, that means:

- **Support for the Green Deal** by the EU Commission as a "comprehensive and ambitious strategy";
- Adoption by the European Council of conclusions on the EU Commission's new **Circular Economy Action Plan**;
- Launching of Council conclusions on the new **EU Biodiversity Strategy** (in view of the relationship between biological diversity and human health);
- Conclusion of the deliberations on the draft of a **European Climate Law** in the European Council which will specifically write into law the goal for the European Union to become climate-neutral by 2050, and agreement on the increase of its nationally determined contributions for the year 2030; here the government welcomes the European Commission's goal to increase the EU's reductions target for 2030 to 50 to 55 percent compared with 1990 levels;

- In the **transport sector**, the government intends to continue to work towards climate-friendly, sustainable and affordable mobility;

- In the **energy sector**, the government aims to formulate Council conclusions on the European framework conditions for joint renewable energy projects by the Member States, in particular in the area of offshore wind power. The government has further set out to contribute to a secure and sustainable supply of carbon-neutral and preferably carbon-free gases, such as hydrogen derived from renewable energies. At an international level the German government will work to establish a level playing field in the prevention of CO_2 emissions, taking account of the principle of joint but differentiated responsibility, as well as striving as far as possible to avoid the creation of incentives for carbon leakage to third countries;

- The **2030 Agenda for Sustainable Development** and the Sustainable Development Goals (SDGs) are guiding principles for Germany's Presidency of the Council of the EU. The German government works towards the submission of the concept announced by the Commission for the comprehensive implementation of the 2030 Agenda, so that the relevant Council consultations can begin in the second half of the year;

- The German government intends to contribute to implement the SDGs through a **modern and sustainable agricultural and fishing industry**. In the negotiations on the common agricultural policy (CAP) after 2020, a general approach of the Council is aimed at. In the spirit of sustainable development, the common agricultural policy and other policy areas ought to make a greater contribution to safeguarding the future of rural spaces, tapping the development potential of rural areas and preserving and developing them as attractive places;

- Finally, the German government is calling for the Council to be involved from an early stage in drafting the new Consumer Agenda which the Commission wants to present in the second half of 2020. The Agenda must contribute to adapting **consumer protection** in the European Union to the current digital and environmental challenges.

3. DUE DILIGENCE OBLIGATIONS IN THE SUPPLY CHAIN

As described in our newsletter "Corona vs. CSR" in April, the German government had put plans for a **German supply chain law** on hold until the second round of monitoring of the National Action Plan on Business and Human Rights ("NAP") was completed. This was not due to the corona crisis but to the heated debate that had already flared up over the introduction of binding supply chain due diligence obligations. Not so long ago, the Ministry of Economics referred to a "clear timetable": The intention was to wait until the second round of monitoring was completed. After that, the government would decide on "*further measures, such as a statutory regulation*" – if it should turn out "*that the voluntary commitment of companies is not sufficient*". This is exactly what has now happened. On July 14, 2020, the German Federal Ministers Dr Gerd Müller and Hubertus Heil informed the press about the "again disappointing" results of the second company survey: Considerably less than 50 percent of the companies would comply with their corporate duty of care. Compared to the 2019 Company Survey, the group of "fulfillers" has not changed significantly in terms of size (i.e. only one in five companies is still considered a "fulfiller"). According to the Federal Minister of Labour and Social Affairs, Hubertus Heil, the results of the company survey show that the concept of voluntariness is not sufficient here. Now a national law was needed to ensure fair competition. Federal Minister of Economic Cooperation and Development Dr Gerd Müller explained: "*The exploitation of people and nature and child labour must not become the basis of a global economy and our prosperity*". That would be a boomerang that would strike back at us. Our eco-social economic model can be a model for a global economy." In conclusion, both ministers stated, "Now the coalition agreement for a supply chain law is taking effect. The aim is to achieve a conclusion before the end of this legislative period". In view of the unsatisfactory results of the first round of monitoring for the implementation of the NAP, it had become apparent that Minister of Economic Cooperation and Development Gerd Müller and Minister of Labour and Social Affairs Hubertus Heil would present a draft or key issues for a Supply Chain Act in February or March 2020 However, this did not happen. Shortly before the press conference mentioned above, however, the key issues paper of March 2020 has already been unofficially announced: According to the "*Draft for cornerstones of a BunFederal law on strengthening corporate due diligence obligations to prevent human rights violations in global supply chains (Due Diligence Act)*", companies with more than 500 employees based in Germany will in the future be obliged to meet their responsibilities in the supply chain. According to the draft, companies would have to examine whether their activities have a negative impact on human rights and take appropriate measures for prevention and remedy. The law is to establish an obligation to make an effort and not a duty to succeed, as is customary with due diligence legislation. Nevertheless, a violation of the law should be able to form the basis for claims for damages by affected parties; the liability risk for companies remains limited, though. The German Council for Sustainable Development (RNE) recommended in *mid-May that Germany should play a "pioneering role in supply chain legislation in Europe"*. In its statement "Sustainable Supply Chains" it advocates, among other things, "*anchoring the perception of care for social and ecological aspects in globally networked supply chains and business relationships by means of a smart mix*". This smart mix should consist of "*legal requirements and binding framework conditions, the description of minimum requirements and voluntary initiatives by industry and civil society*".

The EU Commission wants to push ahead with the project of a European supply chain law, whereas the further course of action is based on a study of several hundred pages on supply chain due diligence obligations (see Daily News 24/02/2020 of the EU Commission with the meaningful title "*Commission study shows the need for EU-level legislation on due diligence throughout the supply chain on human rights and environmental impacts*"). A substantial result of the study points in a similar direction as the first round of the German NAP monitoring: EU-wide, only one in three companies carries out assessments on human rights and environmental impacts. Voluntariness as a concept is therefore not sufficient in the view of EU Justice Commissioner Didier Reynders who is now addressing two issues: A public consultation in 2020 following the study and the presentation of a legislative proposal for a European supply chain law in 2021. According to Didier Reynders, the proposed regulation will provide for sanctions in the event of "non-compliance" and, if necessary, the possibility of legal action for parties concerned. "*A regulation without sanctions is no regulation*", said Reynders. The EU Commission's deliberations could thus move in the direction of the French "Loi de Vigilance" (2017), which to date is considered worldwide to be the toughest national law in connection with human rights due diligence obligations, as it imposes not only reporting obligations on companies (though only large French companies with 5,000 employees in France or 10,000 employees worldwide) but also extensive obligations to act, which are also sanctioned (see our "*Update Corporate Corporate Social Responsibility: Binding CSR due diligence obligations on the rise*" of July 2019).

On 22 June 2020, the members of the three European Parliament committees DROI, JURI and INTA exchanged views at a Joint Committee meeting on human rights due diligence legislation. At the Committee meeting, both the above-mentioned study on supply chain due diligence and two new Briefings were presented: On the one hand Briefing No. 1 "*Substantive Elements of Potential Legislation on Human Rights Due Diligence*" by Prof. Dr. Markus Krajewski and on the other hand Briefing No. 2 "*EU Human Rights Due Diligence Legislation: Monitoring, Enforcement and Access to Justice for Victims*" by Claire Methven O'Brien and Prof. Olga Martin-Ortega:

Briefing No. 1 provides an overview of existing legislative approaches to mandatory human rights due diligence and proposals from non-state actors on the scope of possible EU legislation on mandatory human rights due diligence (HRDD) for companies. The Briefing discusses the main substantive elements of possible EU legislation on HRDD. The legislation should cover all companies regardless of their size and take a non-sector-specific approach. Furthermore, the legislation should apply not only to the company's own activities but also to its business relationships, including the value chain. Finally, the legislation should provide for a substantive due diligence model and require companies to actively participate in the analysis, mitigation and remediation of any negative human rights impacts arising from their own activities and related to them in their business relationships. lthough the development of HRDD is a very complex undertaking, it should be borne in mind that its objective is to ensure respect for human rights which should not be sacrificed for the sake of corporate profits and the accumulation of wealth.

- The Briefing No. 2 examines options for the monitoring and enforcement of EU human rights due diligence legislation and access to justice and redress for victims of human rights violations related to the business activities of companies within or from EU Member States. Such legislation should provide for effective monitoring through obligations at company level, national and EU measures and delegated legislation or guidelines to further develop the legal due diligence. With regard to enforcement, Member States should set appropriate sanctions for non-compliance and create enforcement rights for interested parties. Moreover, in addition to the obligation for companies to set up complaint mechanisms, the law should also provide for national and EU measures, including the obligation for Member States to ensure effective remedies and redress for victims and to establish or designate bodies to investigate abuses, initiate enforcement and assist victims.

It is highly probable that the plans for a European supply chain law will materialise in 2021. Avoiding a national hotchpotch is also an understandable concern, a reliable framework that is a "level playing field" for everyone. It should thus not be a question of "whether" but of "when" and "how" a European solution is to be structured. The relevant statements in the Trio Programme and the national programme for the German EU Presidency also suggest this. It remains to be seen, however, how this will actually be structured in practice.

- Many companies support a regulatory approach at EU level to cross-sectoral, binding supply chain due diligence obligations. For instance, Bayer Group has only recently advocated an EU-wide supply chain law. "*We support a supply chain law but one at European level, not only in Germany,*" says Matthias Berninger, Global Head of Public Affairs & Sustainability of Bayer Group. As early as December 2019, 42 German companies had already Statement for a legal regulation of human rights and environmental due diligence obligations signed up to the law, and a further 19 companies have now joined the list. The signatories include among others Hapag-Lloyd, Nestlé Deutschland, Ritter Sport, Tchibo and Vaude. However, in light of the heated debate about a German supply chain law, it cannot be argued that this would be in line with the "mainstream" in the economy.

Irrespective of future binding human rights obligations and, if applicable, environmental due diligence obligations in the supply chain, however, companies are already well advised to address their corresponding risks in the supply chain as part of comprehensive risk management. There are two reasons for this: On the one hand, public awareness is becoming more intense; human rights violations in the supply chain can also cause considerable damage to the reputation of companies at the end of the supply chain, as some examples have already shown in the past. On the other hand, the number of so-called human rights litigation is increasing. This can result in substantial financial risks for companies. This is particularly true for the area of climate change litigation (see our latest newsletter "Corona vs. CSR: Does the Virus also Stop Sustainability?"). A binding supply chain law should further increase the potential of such processes, as the considerations in the above-mentioned Briefing No. 2 in particular show, but also the comments in the key issues paper for a German Supply Chain Act.

Companies should therefore keep an eye on this further development and to prepare themselves for the introduction of binding supply chain due diligence obligations. The first sector-specific due diligence obligations will come into force anyway at the beginning of 2021 as a result of the Conflict Minerals Regulation (see our "*Update Corporate Social Responsibility: Binding due diligence obligations in the supply chain for conflict minerals*" of

November 2019). The actual layout of a European supply chain law project would also have an impact on the existing compliance structures of companies. Companies would then also have to map human rights and environmental impacts with a supply chain due diligence. Which companies will be covered by the new regime that are trusted to be able to afford mandatory and sanctioned due diligence processes and compliance structures is another issue with potential for conflict.

4. MORE INVESTMENT IN SUSTAINABLE DEVELOPMENT

In her Video message to the Annual Conference of the German Council for Sustainable Development (RNE) on 15 June 2020, German Chancellor Angela Merkel emphasised that in dealing with the coronavirus crisis it was important to "*bring together short-term crisis management and long-term future planning*". The German Government's comprehensive economic stimulus package served these goals. On the one hand, the Federal Government is concerned with "*strengthening the resilience of the economy and society to pandemics, climate change and other major challenges*". On the other hand, it aims "*to achieve a sustainable economy and lifestyle in our country*". The 2030 Agenda with its Global Sustainability Targets was the compass "*to set the course for sustainability in the future*".

This – as well as the Trio Programme and the national programme for the German Council Presidency – strengthens the European Green Deal. In this respect, the focus is on work on the announced **Renewed Sustainable Finance Strategy**. On 8 April 2020, the EU Commission has launched the consultation on the Renewed Sustainable Finance Strategy which had been announced in the European Green Deal. In the Consultation document the EU Commission had reaffirmed its intention to adhere to the European Green Deal and the Sustainable Finance Project, especially in view of the corona crisis.

AlsoIt was as well announced in the European Green Deal that the EU Commissionmission will revise the CSR Directive on Non-Financial Reporting. With this initiative, the EU Commission wants to ensure that investors, civil society and other interested parties have access to the information they need without imposing excessive reporting obligations on companies. In the course of the EU Commission's ongoing online survey on the *Review of the Non-Financial Reporting Directive*, the Institute of Public Auditors in Germany (IDW) recently advocated a moderate expansion of the group of companies covered by non-financial reporting. However, this is to be connected with corresponding transition periods (see Press Release of the IDW of 22 June 2020).

In addition, an update of the German sustainability strategy is pending. The draft of the German Sustainability Strategy 2020/2021 is expected to be published for comment after mid-September 2020. The RNE presented initial recommendations for the further development of the German sustainability strategy 2020/2021 in its Statement "Decade of Sustainability to be ambitiously opened" in May 2020.

5. EU TAXONOMY

On 10 and on 18 June 2020, the European Council and the European Parliament adopted the Regulation establishing a framework to facilitate sustainable investment (Regulation (EU) 2020/852). This so-called **Taxonomy Regulation** is intended to promote private investment in green and sustainable projects and thus make a significant contribution to the European Green Deal, which the EU Commission presented on 11 December 2019 (for details on the European Green Deal, see our newsletter "Outlook Corporate Social Responsibility 2020: More Sustainability, More Acts, More Risk").

In the Press Release of the European Commission of 18 June 2020, the Executive Commission Vice-President Valdis Dombrovskis, responsible for financial stability, financial services and the Capital Market Union, made the same statement:

"*The adoption of the Taxonomy Regulation today marks a milestone in our green agenda. It creates the world's first ever classification system of environmentally sustainable economic activities, which will give a real boost to sustainable investments. It also formally establishes the Platform on Sustainable Finance. This Platform will play a crucial role in the development of the EU Taxonomy and our sustainable finance strategy over the coming years.*"

The taxonomy should enable investors to focus their investments more strongly on more sustainable technologies and businesses, thus making a decisive contribution to making the EU climate neutral by 2050. To this end, it provides an EU-wide classification system with standardised terms. The taxonomy will be of particular relevance for financial market participants and financial advisors as well as for all businesses that are or will be obliged to provide non-financial reporting:

IMPORTANCE OF THE TAXONOMY REGULATION FOR FINANCIAL MARKET PARTICIPANTS AND FINANCIAL ADVISORS

Under Regulation (EU) 2019/2088 on Sustainable Finance Disclosure Regulation (SFDR), financial market participants and financial advisors will be required to disclose sustainability-related information both on the Internet and in their product documentation as from 2021/2022. In this respect, implementation is not required under national law; the SFDR is directly applicable law (for more details on the SFDR, see our newsletter "Outlook Corporate Social Responsibility 2020: More Sustainability, More Acts, More Risk" published in early February 2020). However, the SFDR authorises the three European supervisory authorities (EBA, EIOPA and ESMA, in short: ESAs) to develop so-called Regulatory Technical Standards (RTS) on the content, methodology and presentation of ESG (Environment Social Governance) disclosures at both company and product level. To this end, the ESAs published a Consultation paper on 23 April 2020 in which they request contributions to the RTS they propose for the disclosure of ESG factors for financial market participants, advisors and products.

IMPORTANCE OF THE TAXONOMY REGULATION FOR NON-FINANCIAL REPORTING

In addition, the taxonomy is relevant for all companies that are required to supplement their management report with a non-financial statement in accordance with the so-called CSR Directive (Non-Financial Reporting Directive, or NFRD for short) and the German CSR Directive Implementation Act (CSR-RUG) for fiscal years starting 1 January 2017. In their non-financial reporting they will in future also have to include information on how and to what extent the activities of the company are linked to economic activities that are to be classified as environmentally sustainable economic activities pursuant to Articles 3 and 9 of the Taxonomy Regulation, cf. Art. 8 Taxonomy Regulation. In particular, non-financial businesses must indicate the following:

- the share of their sales proceeds generated from products or services that are linked to economic activities that are to be classified as environmentally sustainable in accordance with Articles 3 and 9 of the Taxonomy Regulation; and
- the share of their investment expenditure and, where applicable, the share of operating expenditure related to assets or processes associated with economic activities that are to be classified as environmentally sustainable in accordance with Articles 3 and 9 of the Taxonomy Regulation.

According to Article 3 of the Taxonomy Regulation, an economic activity

is considered ecologically sustainable if, among other things, it makes a significant contribution to achieving one or more of the following environmental objectives set out in Article 9 of the Taxonomy Regulation:

- Climate change mitigation;
- Climate change adaptation;
- 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.

The EU Commission will adopt delegated legal acts with specific technical evaluation criteria to supplement the principles laid down in the Taxonomy Regulation and to define which economic activities are eligible for each environmental objective. According to the above-mentioned press release, the first two criteria for climate change mitigation and adaptation should be adopted by the end of this year and the criteria for the other four environmental objectives by the end of next year.

With the Taxonomy Regulation and the SFDR, the EU Commission has implemented key elements of its 2018 Sustainable Finance Action Plan. The tendency towards more regulation in the area of sustainability is thus continuing.

6. STAKEHOLDER CAPITALISM AND SUSTAINABLE CORPORATE GOVERNANCE

Since this year's World Economic Forum in Davos already focused on stakeholder capitalism (see our newsletter "Outlook Corporate Social Responsibility 2020: More Sustainability, More Acts, More Risk, the World Economic Forum (WEF) has now published a White Paper on the topic "Integrated Corporate Governance: A Practical Guide to Stakeholder Capitalism for Boards of Directors" in June 2020.

The technological, ecological, geopolitical and socio-economic changes of the last two decades, together with the global crisis in the wake of the COVID-19 pandemic, are thus forcing companies to review their corporate governance. This profound transformation in the field of corporate activity is making environmental, social, governance and data management (ESG&D) considerations increasingly relevant for the fundamental purpose of companies, namely sustainable value creation. As a result, the traditional distinction between the shareholder primacy model (with corporate governance focused on financial and operational opportunities and risks) on the one hand and a stakeholder-driven model (with corporate responsibility for society focused on environmental and social risks and opportunities) on the other is being increasingly eroded. The increased substantiality of ESG&D factors requires that they be fully integrated into the core strategy, operations and management of the company, instead of being segmented and de facto subordinate, as has often been the case to date. Such integrated corporate governance is the essence of stakeholder capitalism.

This assessment of the WEF is supported by a Fortune 500 survey among US CEOs, which led to the following results:

- It will take some time for the economy to fully recover, with three-quarters believing it will not be before the first quarter of 2022 and some believing it will not be before the first quarter of 2023.
- Nationalism will increase and supply chains will become less global.
- More than half do not believe that business travel will ever return to pre-pandemic COVID-19 levels.
- The crisis has accelerated the pace of technological change in 75 percent of companies.
- 48 percent of CEOs believe that the pandemic will accelerate the move to stakeholder capitalism.

The commitment to stakeholder capitalism, as expressed in last year's declaration of the US Business Roundtable (see our blog post "*Update Corporate Social Responsibility: US companies are abandoning the strict shareholder value approach*"), seems to have been strengthened. Only 18 percent believe that it will be slowed down by the pandemic. At the same time, however, more than 40 percent of CEOs believe that environmental concerns will decrease as a result of a more immediate focus on economic problems. This may indicate the increasing importance of the social aspects of sustainability.

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