What is board's role and responsibility for sustainability? 1/7/24

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Terms such as sustainability, the Corporate Sustainability Reporting Directive (CSRD) and the European Sustainability Reporting Standards (ESRS) are increasingly mentioned in public debates and corporate meetings. The more conscientious companies are not only well-versed in sustainability matters but they have set up a corporate structure that will help them report more efficiently on their sustainability performance. Other companies are still looking for a sustainability expert to help them deal with their sustainability obligations. But can hiring a sustainability expert solve all the problems? And what is the board's role and responsibility for sustainability performance? Read on to find out.

Various governance models and the board's role

Neither the CSRD nor the ESRS provide for a single ideal corporate governance model to make sustainability reporting more efficient or even more correct. These documents aim to offer guidance for companies to navigate various areas of sustainability reporting. In practice, companies adopt different governance models depending on their size and level of maturity in sustainability matters.

To carry out the EU Green Deal commitments, the sustainability space sees a variety of new EU enactments relevant to any company seeking to meet requirements that are already applicable or will become mandatory in the near future. Given the fast-paced development of this area, companies are mostly facing two challenges:

1. Lack of sustainability expertise – your board may lack expertise in sustainability matters and your company does not employ a sufficient number of sustainability experts. Efficient corporate governance needs both levels. Unless your top executives, sustainability experts or both groups together are involved in handling sustainability matters, the gaps in sustainability expertise will increase, and this may pose significant threats to the successful operation of your company.
2. When your company has already developed its overall awareness of sustainability matters, it needs a variety of skills – in-depth expertise, intuitive action and the ability to make decisions quickly. That's why traditional models where experts presented their insights, problems and possible solutions to the board and the board having no expertise in the particular area made decisions, may not work today.

Companies are trying out various governance models:

1. The model that provides for full integration of sustainability matters in the company's operations and units according to their line of business is certainly suitable for companies that have a high environmental impact and want to become more sustainable as soon as possible.
2. The model that places responsibility for sustainability matters on a particular unit or expert who does not usually sit on the board and reports to the board on his activities, will be convenient for companies that are not in the first wave of mandatory sustainability reporters and want to become sustainable in their own sweet time.

3. The model where an appointed board member responsible for sustainability matters works with a particular unit or expert who is responsible for sustainability matters will fit companies wishing to implement changes quickly enough to become more sustainable.

Our experience suggests that sustainability matters can be managed more efficiently if the board is actively involved in handling sustainability matters – not only making decisions in this area but also gaining expertise in sustainability matters, which leads to faster and better decisions. Of course, the board is not expected to duplicate the same expertise and obligations applicable to sustainability units or experts, yet greater board involvement can help solve problems more efficiently. The model below illustrates a possible split of roles between the board and the unit/expert:

Task	Board	Sustainability unit
Identification of significant sustainability risks		✓
Educating on your company’s inherent risks, including sustainability risks	✓	
Prioritising sustainability risks		✓
Integrating sustainability risks in board processes	✓	
Supervising measures taken to mitigate sustainability risks	✓	
Making various decisions in the sustainability area	✓	✓
Reporting on sustainability matters	✓	✓

Board responsibility for sustainability matters

Board responsibility has a twofold meaning. It can mean the extent to which the board members are responsible for meeting sustainability obligations in the company’s operations and for filing sustainability reports on time. We can also talk about whether board members may be held legally liable (subject to a penalty) for failure to meet sustainability obligations.

When it comes to analysing the extent to which the board is responsible for meeting sustainability obligations in the company’s operations, we need to consider the company’s policies and goals in this area. If sustainability goals are set for a board member to achieve, the board will be accountable to the shareholders or council members for achieving those goals. However, if a board member has no particular goals to achieve, then board responsibility is in fact to follow statutory sustainability requirements binding on the company. In this case, too, how the company meets those requirements is at the board’s discretion, with every board member having to act as a careful steward under the Commerce Act.

If we look at board responsibility in terms of penalty, the CSRD for instance does not charge a direct penalty on the company or its board. This is left within the member states’ competence, and some member states are planning to introduce even criminal liability for breaches of sustainability reporting obligations. However, the sustainability area will also have some legislation that charges a direct penalty or provides clear guidelines for penalties for particular breaches in the sustainability area the member states should legislate for.

Anyway, the sustainability obligations prescribed by EU law (e.g. the sustainability reporting obligation) can definitely motivate the company and its board to act more vigorously. For example, the obligation to report on the company’s plans for ensuring its commercial activity minimises the environmental impact is a precondition for drawing up these plans, something the board is responsible for.

Conclusions

We need to bear in mind that it’s not only compliance with CSRD requirements that will affect companies’ activities in the sustainability area. In fact, other sustainability requirements will directly or indirectly affect companies’ plans and activities. Mandatory disclosure of such information is certainly a good incentive to switch to more sustainable operations, but not every company will be required to file sustainability reports. At the same time, other stakeholders such as the public, NGOs and hedge funds could use any publicly available information on particular companies to compare different companies and speak publicly about the inadequate speed at which they are transitioning to a more sustainable commercial activity.

EU decisions on sustainability are definitely posing serious challenges to companies and their boards. Yet it’s worth trying to improve your sustainability plans and make your business strategies more resilient and future-proof.

To learn more about various sustainability aspects, we encourage you to acquire our expert lecture recordings (link) as part of ESG Academy, or reach out to PwC sustainability experts.