All change, no change? Corporate reporting in the post-Brexit world

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*With the COVID-19 crisis consuming most businesses' bandwidth, the passing of the deadline for extending the Brexit transition period may be easy to overlook. While both sides have sought to intensify talks, with little sign of substantive progress in the negotiations on the future of the UK-EU relationship, UK companies must once again consider preparing for the possibility of a no-deal or "minimal deal" scenario at 11 pm on 31 December 2020 ("**IP Completion Day**").*

An immediate issue for UK companies is how the expiry of the transition period will affect their corporate reporting obligations - both financial and non-financial - many of which are currently derived from EU law. From the perspective of both financial and non-financial reporting, it would appear that the position for UK companies will be one of ongoing substantive alignment with the EU framework in the post-Brexit world.

Part I: Financial Reporting

Financial reporting is naturally of central importance to investors. UK companies will be keen to ensure that any move by the UK towards having its own national accounting standards does not leave UK companies at odds with internationally-accepted standards to their detriment.

Many obligations of UK-listed companies in relation to financial reporting are derived from, or affected by, EU law. The Disclosure Guidance and Transparency Rules ("**DTRs**"), Listing Rules and the Companies Act 2006 require listed companies to prepare annual accounts and reports and half-yearly financial reports, which satisfy certain requirements regarding timing and content. UK-listed companies are also required to publish a strategic report and a directors' remuneration report, which companies usually incorporate within their annual report.

Currently, UK-listed companies (as with other publicly-traded companies governed under the law of an EEA member state) are, under the IAS Regulations 2002[1], required to prepare their consolidated group accounts in accordance with EU-adopted IFRS ("**EU-IFRS**"). For the purposes of the Transparency Directive[2] (implemented in the UK through the DTRs), a company with shares admitted to trading on an EEA regulated market must prepare annual and half-yearly financial reports, which must include consolidated accounts prepared in accordance with EU-IFRS. Given the sheer scale of preparation that would be required for companies to move from one basis of accounting to another, of immediate concern would be what accounting standards UK companies will be required to adopt, and the degree of alignment between EU accounting standards and any new accounting standards adopted by the UK.

UK companies

Following the expiry of the transition period, UK companies with shares admitted to trading on a UK regulated market must prepare consolidated group accounts in accordance with UK-adopted International Accounting Standards ("**UK-IAS**")[3]. As of 1 January 2021, UK-IAS should be identical to EU-IFRS as it applies immediately before IP Completion Day. However, UK-IAS may diverge from EU-IFRS over time.

UK companies have a choice in relation to group accounts currently prepared under EU-IFRS for an accounting period that straddles IP Completion Day (e.g. companies with March year-ends). Affected UK companies can either:

- continue to apply EU-IFRS for that period; or
- (where new or amended standards are adopted by the UK after IP Completion Day but before the relevant accounts have been filed by the company) apply the "new" UK-IAS (clearly stating the use of that option).

EU companies and UK companies with shares admitted to trading in the EEA

The UK has helpfully determined EU-IFRS as "equivalent" to UK-IAS for purposes of the Transparency Directive and the Prospectus Regulation[4] (as they are "onshored" following the end of the transition period)[5]. EU companies with shares admitted to trading in the UK can therefore continue preparing consolidated accounts in accordance with EU-IFRS for financial years beginning on or after 1 January 2021 in order to satisfy their financial disclosure and reporting obligations under the UK regime.

For UK companies with shares admitted to trading in an EEA regulated market, the position is more complicated as the EU has not made a similar determination in respect of UK-IAS. Crucially, however, the EU does currently recognise as "equivalent" IFRS as adopted by the IASB, provided that the notes to the audited financial statements state that they comply with IFRS in accordance with IAS 1, on the presentation of financial statements[6]. In the absence of a specific equivalence decision for the UK by the EU, UK companies which prepare their financial statements in accordance with UK-IAS after IP Completion Day (i.e. for financial years beginning on or after 1 January 2021) should still be able to use them to meet their EU prospectus and transparency obligations, assuming that their auditors will be able to state that they comply with IAS 1.

No change initially for most

Given the above, at least for the first financial year beginning on or after 1 January 2021, most UK companies should not have to prepare separate EU-IFRS accounts simply to satisfy EU financial disclosure and reporting obligations and can rely on UK-IAS for most purposes. This is of course particularly important for companies which have shares admitted to trading on both UK and EU markets.

UK-listed companies should also not be unduly concerned (at least initially) about the requirement to switch to UK-IAS. As UK-IAS should be virtually identical to EU-IFRS, at least immediately following IP Completion Day, minimal or indeed no change should be required to the current systems and procedures of companies which already prepare their existing consolidated accounts in accordance with EU-IFRS.

Divergence in the future?

The system for the adoption and endorsement of new IFRS standards issued by the IASB as part of UK-IAS operates in a very similar way to the current mechanism for adopting EU-IFRS. The endorsement powers are held by the Secretary of State for BEIS, but will be delegated to a new independent endorsement body expected to be hosted by the UK Financial Reporting Council. The endorsement criteria for adoption of new IFRS under the UK regime is set out in almost exactly the same terms as that set out in the IAS Regulation. This, on the face of it, would suggest that the UK might be slow to diverge, but there is potential for the EU and the UK to apply equivalent criterion differently. For example, there is the rather vague requirement that any standard must be consistent with the "public good" – what constitutes the "public good" for the UK may be interpreted differently from the "public good" for the EU.

The extent of any potential divergence therefore remains to be seen in the absence of any steer from the authorities with regard to their intentions. The prospect of divergence might be viewed as unhelpful to businesses who would want to establish with some certainty that there will be alignment in these areas going forward. However, it is worth bearing in mind that there could be advantages to having a national rather than EU-wide endorsement body, including the potential for it to take a more nimble approach towards the endorsement of any new proposed standard – possibly resulting in less lag on developments in UK reporting requirements and better alignment with international, if not always specifically EU, standards.

Conclusion

In any case, the overall picture is one of little change in 2021 – there should therefore be little of immediate concern to UK companies at least in relation to financial reporting following the expiry of the Brexit transition period.

By contrast, the picture in respect of non-financial reporting is more nuanced. As detailed in Part II, EU regulations already in place or in the pipeline in relation to non-financial reporting will require companies to start developing their reporting infrastructure from 2021. There is no certainty that the UK will adopt the EU reporting regime. However, the direction of travel in both investor disclosure duties and expectations on corporate reporting strongly pushes towards ongoing alignment with the EU framework. There is a strong case for UK companies – especially "Large PIEs" (see Annex) operating on a global stage – to make disclosures on the basis of the EU framework. That being so, it is likely that, over the 2021 financial year, they will need to get to grips with the introduction of new and wide-ranging requirements in this area.

Part II: Non-Financial Reporting

With more and more non-financial information being demanded from companies by a multitude of audiences including shareholders, lenders and other stakeholders, the shape of the non-financial reporting landscape post-IP Completion Day is possibly an even more pressing matter. While many companies are increasingly on board with the "why" of reporting on such issues, they are now having to grapple with the "how" and "what". Many commentators observe the lack of reliable, comparable and relevant disclosures on non-financial matters.

Standardisation of non-financial reporting disclosures is still in a relatively early stage of development[7]. As in the context of financial reporting, there is the question of whether and to what extent the UK will align itself with the EU non-financial reporting regime. There is also the question, given the comprehensive nature of the EU's non-financial reporting framework, of whether EU standards will affect UK companies' practices even if not formally adopted in the UK. The EU has been at the forefront of developments in the context of ESG reporting, for example, as it seeks to become a global leader in re-orienting capital towards sustainable investment. Following the publication in March 2018 of its Action Plan on Financing Sustainable Growth, the EU has since developed a substantial number of regulatory initiatives to improve and harmonise the disclosure regime particularly in relation to climate change. Will we see alignment with the EU in the reporting regime in this area or will the UK seek to go its own way?

Current framework

Under the Companies Act, UK-listed companies are required to make a substantial number of disclosures in relation to environmental matters as well as social, community and human rights issues (insofar as "necessary for an understanding of the development, performance, or position of the company's business") in their strategic report. Again, some of these requirements are shaped or supplemented by (and indeed overlap with) EU law. Several pieces of EU legislation relating to non-financial reporting are already in force and apply to the UK, including: (i) the Non-Financial Reporting Directive[8] ("**NFRD**"); (ii) the Low Carbon Benchmark Regulation[9]; and (iii) the ESMA CRA Disclosure Guidelines.

Despite the COVID-19 pandemic, EU regulatory initiatives in this area have sustained momentum. Of particular note is the recent adoption of the Disclosure Regulation[10] and the Taxonomy Regulation[11], which have both recently come into force (but are not yet operative). A consultation is also underway on the NFRD on whether, and if so, how to increase its scope to better meet the demands of key stakeholders. Any proposed changes are expected to be published in draft form in the fourth quarter of 2020 and legislation will likely only come into force in 2021/2022.

Key EU reporting requirements for companies

While many of the regulatory initiatives impose disclosure obligations on the financial and investment community (such as investment firms and asset managers) with a view to facilitating capital allocation to sustainable investments, a number also have significant effect on companies' reporting obligations.

The Non-financial Reporting Directive

The NFRD (implemented in the UK through sections 414CA and 414CB of the Companies Act 2006) already requires Large PIEs (these include companies of a certain size with shares admitted to trading on an EU regulated market– see Annex) to produce a non-financial information statement (in the UK, as part of a company's strategic report).

The Low Carbon Benchmark Regulation	This Regulation seeks to combat the risk of various indices being promoted as low carbon benchmarks, despite difference in objectives and strategies. It introduces minimum standards applicable to two new categories of benchmark (EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks) and requires administrators of such benchmarks to disclose their methodologies on calculation and asset selection and weighting. They must also make statements on how their benchmarks pursue ESG objectives.
The ESMA CRA Disclosure Guidelines	ESMA's guidance requires credit rating agencies to identify in their press releases or reports ESG factors that have been a key driver for rating/outlook changes and explain why they were material to the rating/outlook.
The Disclosure Regulation	The Disclosure Regulation harmonises transparency and disclosure requirements for certain asset managers and financial services firms as part of the EU's sustainable finance strategy. It aims to enable investors to make better informed investment decisions by requiring applicable financial firms to make more standardised and wide-ranging disclosures on how they integrate ESG and sustainability factors into their investment approach and investment products. Relevant firms must produce various: (i) website disclosures; (ii) pre-contractual disclosures for investors; and (iii) periodic reports. Elements of these include: sustainability risk policies; consideration of adverse sustainability impacts; remuneration policies; and promoting environmental or social characteristics. The EU shall develop seven regulatory technical standards that detail the content and presentation of these disclosures, with periodic reporting requirements applying from 1 January 2022.

This must include information "necessary for the understanding of a company's development, performance and position *and* the impact of its activity" relating to, "as a minimum" (among other things) environmental matters and social matters. A significant aspect of the NFRD is the additional requirement for companies to provide information that enables an understanding of the impact of the company's activity – the so-called "double materiality" concept. Essentially, this entails considering not only looking at the effect of ESG matters on the company, but also the impact of the company's business on society and the environment.

The European Commission has also published guidelines in 2017 to help companies comply with their reporting requirements under the NFRD in a more "consistent and comparable" way, which were supplemented by additional guidelines published in June 2019 on reporting climate-related information. The guidelines place a stronger emphasis on companies reporting on their impact and risks along their whole value chain (for example, a move away from just reporting on their *operational* emissions). The broader perspective with which the EU is approaching non-financial reporting is therefore already evident.

Disclosure requirements in the Taxonomy Regulation

The Taxonomy Regulation further extends the non-financial reporting obligations of Large PIEs. Article 8 of the Taxonomy Regulation requires Large PIEs to include in their non-financial statements or consolidated non-financial statements information on how and to what extent its activities are associated with "environmentally sustainable" activities (see Annex).

In particular, they must disclose:

- the proportion of their turnover derived from products or services associated with environmentally sustainable activities; and
- the proportion of their capital expenditure and/or operating expenditure related to assets or processes associated with environmentally sustainable activities.

The Commission must adopt a delegated act detailing the content and presentation of the disclosures, as well as the methodology for compliance, by 1 June 2021. The Technical Expert Group ("**TEG**"), in its final report on the EU Taxonomy published in March 2020, has provided guidance and recommendations for companies in respect of these requirements. For example, it recommends companies complete the above calculations separately for each environmental objective for which technical screening criteria ("**TSC**") have been developed[12]. While the Regulation does not expressly require any formal verification of these disclosures, the TEG considers it good practice for issuers to seek external assurance; consistent with the recommended approach in the TCFD framework. It also notes that the NFRD requirements will be reviewed, hinting at possible auditing requirements.

Beyond the transition period - what next for UK companies?

The disclosure obligations in both the Disclosure Regulation and the Taxonomy Regulation will not be on-shored automatically, as the EU (Withdrawal) Act 2018 only on-shores legislation that is both in force *and applies* immediately prior to IP Completion Day. Similarly, the UK will also have to choose whether to adopt any proposed changes to the NFRD post transition period, as the implementation deadline for changes to the NFRD will almost certainly be after the IP Completion Day.

The UK Government has signalled its intention to support a move towards a "sustainable" economy. In its Green Finance Strategy, the Government states that the UK will "*match the ambition*" of the EU's sustainable finance action plan and notes "*clear and consistent frameworks, such as green definitions and standards, will be important to ensure confidence in the effective functioning of green financial markets*". However, whether this will result in a wholesale alignment with the EU regime remains to be seen.

In light of EU developments - in particular with respect to the proposed adoption of the Taxonomy Regulation - the Government was asked earlier this year to clarify its position on the proposed EU regime and if it is considering establishing a similar legally-binding domestic sustainability taxonomy for investment products. In response, it was reported that John Glen (Economic Secretary to the Treasury) [had] "*told a House of Commons committee …. that the Treasury would reserve judgment on whether to implement forthcoming European rules*" and that while the UK shared the EU's aim of "*promoting globally consistent standards" and "preventing greenwashing*", he indicated that "*[As we] do not have clarity on the final outcome of the file, we cannot comment at this stage on the extent to which we will align with the EU after the implementation period.*"[13]

It would seem then that the general stance of the Government in relation to alignment is that while it recognises that enhanced cooperation with the EU is an important element, it clearly retains the right to establish its own priorities and to adopt or modify its laws accordingly.

There are nonetheless good reasons for thinking that the Government will introduce standards that are, if not identical, at least aligned to the EU regime to an extent[14].

The EU regime as the catalyst for coalescing around certain global standards

Unlike financial reporting, where the IASB and IFRS have become internationally established standard setters, non-financial reporting is still at a nascent stage in terms of establishing internationally accepted global standards and standard-setters.

The global "ESG landscape" contains a plethora of organisations involved in the development of standards. These include the US-based Sustainability Accounting Standards Board ("**SASB**"), the Global Reporting Initiative ("**GRI**"), the International Integrated Reporting Council, the Climate Disclosure Standards Board ("**CDSB**") and the Task Force on Climate-related Financial Disclosures ("**TCFD**"). These organisations have produced a range of "frameworks" (which provide overarching principles and structures for presenting disclosures) and "standards" (setting out concrete requirements and metrics within those frameworks) on aspects of ESG.

There is some coalescing around certain frameworks and standards. The TCFD framework which sets out four high-level types of climate-related disclosures (governance, strategy, risk management, and metrics and targets) and 11 more specific "recommended disclosures", for example, has gained much traction. Indeed, the FCA is introducing proposals requiring all premium-listed companies to disclose whether and how it complies with the TCFD framework on a 'comply or explain' basis[15]. Similarly, in its guide to climate-related financial risk management published 29 June 2020, the Climate Financial Risk Forum, co-chaired by the FCA and PRA, expressly draws on the TCFD framework and its recommendations.

In relation to more granular metrics, the GRI has developed fairly well-established modules of specific standards covering economic, environmental and social impacts of company activities, which are designed to capture their contributions to sustainable development. SASB's 70+ industry-specific standards, containing disclosure topics to elicit material information and quantitative and qualitative accounting metrics with accompanying technical protocols and activity metrics across a range of industries, are also well-recognised. It should also be noted that, given each organisation has taken different approaches with different end users and purposes in mind, there is scope for standards to be used in a complementary manner. Interestingly, SASB and GRI's most recent joint statement on how their standards can be used to complement each other highlights the differences in their respective approaches which reflect the "double materiality" perspective already built into the NFRD's framework. SASB's standards focus on the financial impact of ESG matters on the company, while GRI's standards focus on the contribution of a company's "economic, environmental and social impacts" towards sustainable investment.

Nevertheless, the landscape remains relatively fragmented and confused. In this respect, the outcome of the current consultation on revisions to the NFRD will be of interest to UK companies. The consultation is wide-ranging and seeks views on key areas including the quality and scope of non-financial disclosures, standardisation and assurance. Many respondents have acknowledged the EU's leading role in the area of non-financial reporting and a number of respondents, notably including non-EU industry and trade bodies involved in the setting of standards, have commented that the review of the NFRD may potentially be the catalyst to drive global alignment and provide an important point of reference for other jurisdictions. The ICAEW, for example, has stated its belief that given the particular momentum in the EU in this area, the review of the NFRD and other EU initiatives may "catalyse international alignment and the establishment of a new corporate reporting framework"[16].

In addition, there is already an element of integration of existing frameworks and standards within the NFRD. The Commission expressly stated that the 2019 guidelines on reporting climate-related information integrate, and are consistent, with the TCFD recommendations. The Commission has also set out the relationship of the guidelines with other reporting initiatives, noting the fact that it takes into particular account the standards and frameworks developed by (among others) GRI, CDSB and SASB as well as the possibility of using the different existing frameworks in a complementary way. The existing guidelines are, of course, non-binding but they serve to show the EU's approach in its application of the existing requirements and the shape of any future changes.

In its response to the current consultation on a review of the NFRD, SASB has suggested that it would be helpful for any amendments to be built on the foundation of existing standards that already attract fairly widespread support (including, of course, those developed by SASB), as that would lead to development of standards that are not just EU-centric but act as a driver for international alignment. The Commission committed to reviewing the NFRD as part of its strategy to strengthen the foundations for sustainable investment. In doing so, it noted the wide variety of different organisations and stakeholders calling for a consideration of a new regulatory approach to non-financial reporting. If the review does, as expected, therefore introduce a stricter reporting regime which builds on and consolidates the existing work of the most commonly accepted standards while providing a level of regulatory coherence (even if, at least initially, only at the EU level), that may provide an impetus for the consolidation and harmonization of standards. If so, there is much to support the case for the UK taking an aligned approach with the EU. The notion that the UK would seek to independently construct its own separate regime seems improbable in this context.

Growing investor demand for a common criteria

With the adoption of the Taxonomy Regulation, the EU is also at the forefront of developing a classification system of environmentally sustainable economic activities. This is key as it provides a common criteria against which investors can clearly assess the sustainability credentials of a given company and drive their investment decisions accordingly.

The growing demand among institutional investors for products that satisfy ESG criteria has been well-documented, driven by growing numbers of large institutional investors incorporating critical ESG considerations into their capital allocations and stewardship criteria. Demand, in itself, does not result in alignment of standards. Nevertheless, the need for a common criteria to assess the ESG credentials of investments is clear.

The Taxonomy Regulation and the Disclosure Regulation will require EU asset managers and investment firms, as well as non-EU firms marketing funds into the EU, to disclose the degree to which their funds and other financial products that are promoted as having environmental or social characteristics are "environmentally sustainable" under the criteria established by the Taxonomy Regulation. Further, the Taxonomy Regulation represents the most ambitious and comprehensive attempt yet to establish a common ESG criteria and may very well influence practice *outside* the EU. It is notable that the UK Sustainable Investment and Finance Association (UKSIF)[17], which includes many of UK's largest asset managers and institutional investors, has recently urged the Government to act quickly to adopt rules on sustainable finance that are "*at least as ambitious and [which do] not radically diverge from the EU framework*" to ensure the UK remains a leading hub for sustainable investments.

While the reporting requirements for 'in-scope' companies under the Taxonomy Regulation may not be implemented by the UK, widespread adoption of the taxonomy may drive companies towards reporting such information to address data gaps in order to meet the demands of the investment community both in and outside the EU.

Existing UK reporting requirements and trajectory of developments to a broader stakeholder-centric model of reporting

Quite apart from EU developments, the trend in the UK is towards more disclosure in the sustainability arena. As mentioned, the FCA has recently proposed that premium-listed companies be required to make climate-related disclosures based on the TCFD framework. However, the focus of many disclosure frameworks is still very much on the reporting of such matters insofar as they have a material effect on the performance of the company – in other words, the extent to which they present risks (and primarily financial risks) to the company. For example, the emphasis in TCFD literature is on climate change as a "financial risk" – the need for disclosures given the potential financial impact of climate-related risks on companies and the extent to which this may result in financial loss. While this is certainly an important aspect of non-financial reporting, this may be too narrow.

The purpose of the strategic report under UK company law is to inform members to help them assess how directors have performed their section 172 duty (to "promote the success of the company for the benefit of its members as a whole"). There is impetus among some sections of the institutional investment community to consider how companies take into account the considerations of other stakeholders as part of their assessment of a company's success. The strength of the conceptual framework established by the NFRD lies in its principle of "double materiality". This sits well with a move towards this wider "stakeholder"-centric model of reporting. Of course, both perspectives are linked – the impact of a company's activity on society or the environment will change a business' opportunities and affect its reputation which will have a financial impact on the company's performance. As this "double materiality" perspective already underpins the NFRD's conceptual framework, it may serve as the most coherent framework under which many companies, including UK companies, seek to base their disclosure regime.

There is, in any event, no suggestion that the existing requirements under the NFRD that already and will continue to apply to the UK (as set out in sections 414CA and 414CB of the Companies Act 2006) will be diluted post-Brexit. That being so, any developments with respect to reporting requirements under the NFRD will likely influence how UK companies report non-financial information under these existing requirements, even if those developments are not formally adopted in the UK regime.

Conclusion

Given ever increasing demand for ESG-type information from investors and lenders, there is an urgency for UK companies to get to grips with the developing non-financial reporting landscape. The reporting burden on companies may be high – and growing – and companies which have a developed ESG reporting infrastructure will find themselves ahead of the curve. There is little doubt though that, whatever stage a company's reporting systems are at, a diverging disclosure regime will simply add to that burden if companies find themselves having to disclose against different standards. With the number of initiatives in this area spearheaded by the EU, UK companies may lobby for a degree of alignment with the EU (or at least be unenthusiastic about divergence).

Broad alignment does not, of course, necessarily mean wholesale adoption. Much may depend on the technical details of the proposed legislative changes and any regulatory technical standards and technical screening criteria drawn up by the relevant European supervisory authorities. At the more granular level, there may be a case for some divergence.

The reaction of the investor community to the EU regime will also be important. Given the significant demand for a common set of standards, there is much to be said about the "first mover" advantage. Indeed, the UKSIF's recent statement suggests that there is already industry pressure for UK to follow suit. The lead the EU has in developing non-financial reporting may result in it becoming a "de facto" standard. If so, UK standards may develop along similar lines, Brexit or no Brexit.

If you would like further information about this topic, please speak to your usual Slaughter and May contact.

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Annex: EU ESG Framework - Key Concepts	
The EU's framework for non-financial reporting is wide-ranging, complex and in the process of development. The key concepts that underpin the framework and are of particular interest to UK companies are summarised below.	
Large PIEs	Public Interest Entities ("**PIEs**") are certain EU undertakings, including those with transferable securities listed on an EU regulated market. A PIE is "large" where it has: (i) at least 500 employees (averaged over the financial year); and (ii) a balance sheet of at least EUR 20 million or net turnover of at least EUR 40 million; OR it is a parent undertaking of a large group satisfying limbs (i) and (ii). UK companies listed on the LSE are therefore likely to be within scope as "Large PIEs". The concept is important as it represents the standard reporting unit for the EU non-financial reporting framework. Large PIEs are subject to various reporting and disclosure requirements.
The EU Taxonomy and its Environmental Objectives	The Taxonomy Regulation aims to provide a common language (or taxonomy) to describe how environmentally sustainable (see below) a given economic activity is. It is designed to encourage investors to direct their capital towards companies with stronger sustainability credentials by requiring asset managers to make greater disclosures about their investment portfolios. To facilitate this, companies will in turn be required to disclose better information about their sustainability and climate change risks and opportunities (See section on *Disclosure Requirements in the Taxonomy Regulation* for requirements placed on the companies). A key element of this taxonomy is the establishment of six categories of environmental objective: (i) climate change mitigation; (ii) climate change adaptation; (iii) the sustainable use and protection of water and marine resources; (iv) the transition to a circular economy; (v) pollution prevention and control; and (vi) the protection and restoration of biodiversity and ecosystems.
Environmentally Sustainable Activity	Under the Taxonomy Regulation, an activity is environmentally sustainable if: i. it contributes substantially to one or more environmental objectives (see above) or is an 'enabling activity'; ii. it does not significantly harm ("**DNSH**") any environmental objectives; iii. it is carried out in compliance with the minimum safeguards; and iv. it complies with the technical screening criteria ("**TSC**"). The Regulation sets out how an activity may substantially contribute to each objective. The Commission is required to adopt TSC which will provide greater granularity on these requirements. The "climate change mitigation" and "climate change adaptation" TSC must be adopted by the end of this year, with a view to their application from 1 January 2022. The minimum safeguards include, in addition to compliance with the DNSH principle (see below), alignment with OECD Guidelines for Multinational Enterprises; the UN's Guiding Principles on Business and Human Rights; the ILO's Declaration on Fundamental Principles and Rights at Work; and the International Bill of Human Rights.
"Do no significant harm" (DNSH) principle	Under the DNSH principle, no investment can qualify as environmentally sustainable in cases where the economic activities benefitting from those investments cause harm to the environment to an extent that outweighs their contribution to an environmental objective. The Taxonomy Regulation sets out how an activity would be considered to significantly harm each environmental objective, for example, an activity that results in significant greenhouse gas (GHG) emissions would cause significant harm to the objective of "climate change mitigation". Both the environmental impact of the activity itself, as well as of the products and services provided by that activity throughout their life cycle, should be taken into account, considering in particular their production, use and end life.

Endnotes

[1] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002.

[2] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004.

[3] Section 403(1) of the Companies Act 2006 (as amended by the International Accounting Standards and European Public Limited-Liability Company (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/685)). Note: other (non-listed) UK companies can prepare their accounts either in accordance with UK GAAP (FRS 102) or UK-IAS.

[4] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017.

[5] HM Treasury has issued a Ministerial Direction (the Prospectus Directive and Transparency Directive Equivalence Directions 2019) to this effect pursuant to powers provided under the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019.

[6] See Commission Decision 2008/961/EC.

[7] SASB's and GRI's recent announcement on developing a collaborative work plan to help stakeholders use and understand their standards notes the current lack of clarity in the sustainable reporting ecosystem, and reflects how the standard setters themselves are still working to establish their remit.

[8] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014.

[9] Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019.

[10] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019, otherwise known as the sustainable finance Disclosure Regulation.

[11] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020.

[12] Proposed Technical Screening Criteria for substantial contribution to climate mitigation for 67 economic activities were drafted by the TEG in its technical report in June 2019 and updated in the Technical Annex to the TEG's final report in March 2020.

[13] See Financial Times: 'UK delays pledge to follow EU green finance rules post-Brexit' (6 June 2020)

[14] By way of further context, it seems clear that the UK Government under Theresa May had originally intended to adopt the Disclosure Regulation, Taxonomy Regulation and Carbon Benchmark Regulation. These were all listed as "in-flight" legislation (which the Government intended to adopt post-Brexit) in the Financial Services (Implementation of Legislation) Bill [HL] 2017-19. This Bill would have granted Treasury the power to onshore certain "in-flight" (legislation which has entered into force, but not started to apply) EU financial services legislation listed in the Bill in the form of Statutory Instruments. The Bill completed passage through the House of Lords and completed the committee stage in the House of Commons in February 2019, but a date was not set for the report stage. It fell through following the prorogation of Parliament on 8 October 2019.

[15] See our publication: Disclosure of climate-related information by listed companies – FCA proposals (6 May 2020)

[16] See ICAEW paper (published 15 June 2020) available at https://www.icaew.com/insights/viewpoints-on-the-news/2020/june-2020/europe-could-set-the-standard-for-nonfinancial-reporting

[17] Members of the association are reported to manage or oversee nearly £7 trillion in assets, and include Aviva Investors, Columbia Threadneedle, Schroders, Standard Life Aberdeen and M&G. See Financial Times: 'Fund Groups urge UK to back EU green finance rules' (19 July 2020).