

MAY 17, 2022 | ROUNDTABLE

Upcoming Collision: SFDR and Human Capital Data

On May 17, the ESG and Law Institute hosted a virtual, senior level roundtable titled “Upcoming Collision: SFDR and Human Capital Data” with General Counsel, Heads of ESG, Chief Compliance Officers and other C-Suite Execs from top financial institutions and asset management firms. Dave Curran, executive director of the Institute and co-chair of the Paul, Weiss ESG Advisory Practice, facilitated the conversation. He was joined by Robert Esposito, Senior Counsel, ESG at Apollo Global Management; Karen Karniol-Tambour, Co-Chief Investment Officer for Sustainable Investing at Bridgewater Associates; T. Robert Zochowski, Program Director, Impact Investing & Sustainability Special Projects at Harvard Business School; and Marie Freier, Global Head of Cross Asset ESG Research at Barclays Investment Bank.

The roundtable explored the scope and impact of the European Commission’s Sustainable Finance Disclosure Regulation (SFDR). The featured speakers discussed what implementation means for fund managers, how they can better prepare for the constantly evolving regulation, and the current state of ESG data disclosure and assurance.

The featured speakers opened the discussion by briefly walking attendees through the scope and requirements of the SFDR. The SFDR has been complicated for counsel and ESG practitioners to fully comprehend, the speakers noted, because it is still so uncertain. Since its introduction, the regulation, and the regulatory technical standards (RTS) that underpin it, have been constantly evolving, leaving fund managers grappling to keep up with changes. Adding to the confusion, they noted, is the SFDR’s focus on product classifications – Article 6, Article 8 and Article 9 Funds. The speakers stressed that despite what it may feel like, at its core, the SFDR is not a fund labelling regime. The intention is not to classify products, but to act as a disclosure regime and ensure products that undertake certain criteria are being appropriately disclosed.

One of the major challenges, speakers shared with attendees, is that the SFDR requires specific disclosures from fund managers, often beyond the scope of the data they are currently receiving from companies. Without the Corporate Sustainability Reporting Directive (CSRD) in effect, company disclosures are not operating with the same requirements and fund’s managers are missing key source data that inform their own disclosures. With the differing implementation timelines, they felt the two regulations are currently unable to support each other as intended. Additionally, the European Commission’s focus on double materiality, rather than single financial materiality, broadens the scope of impact, the speakers noted, and managers will have to make sure the third-party data they are relying on reflects this wider net.

Another hurdle, the speakers noted, has been around implementation. The convergence of the regulation and increased investor interest around the data being derived has turned what was once an opportunity for funds to show their progress into pressure from all sides to be ahead of the class, leaving many managers feeling unprepared. Their advice – invest the time and money into the necessary resources, processes and hires. If you are not already convening meetings, speakers noted, get a group together to start talking through the requirements. For companies that are beginning to build their data collection processes, “build big,” one speaker noted, “because the data you are using here will likely be used elsewhere.” The speakers shared that the best thing managers can do to prepare is to get comfortable with the fact that, in the short term, the voracity of disclosures may not match what they are used to. “Do not be fooled,” one speaker warned, “that the data you are receiving is assured, accurate and complete, just because there is a regulatory regime in place.” “Everyone needs to start somewhere,” the speakers noted, “you cannot sit around waiting for [the data] to be perfect,” lest you risk falling behind.

The ESG and Law Institute cultivates and expands discussion on the intersection of ESG and the law, and provides a centralized forum of solutions-oriented ESG intelligence for boards, executives, institutional investors and the legal community.

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