BritCham Talks – ESG in the UK and Germany – what next?

For the fourth time, BritCham Talks, the new format established by the BCCG's Regional Committee Northern Germany, were run. This time on a very topical subject: ESG - Environmental, Social Governance.
In this BritCham Talk, the BCCG Regional Committee Northern Germany informed members and guests about the current status of the dynamic "ESG Regulation", their implementation requirements and implications for companies in Germany with a connection to the United Kingdom.

As appropriate to the format, the number of participants – BCCG members and guests alike – had to remain fairly small to allow for intensive discussions and the exchange of views and standpoints, something that made the BritCham Talk a very lively one. But more of that later. The event was sponsored by BDO and took place at BDO's conference offices.

A precise description of the topic set the stage already in the invitation mailed to invitees, marking the salient points to be addressed:

> 'Hiding, covering up, avoiding was yesterday. Anyone who wants to move into the future signals one thing above all: transparency.
> Transparency about the business model, strategy, key figures, emissions, risks, measures and goals – the list is long.
> Companies in Europe have to prepare for extensive reporting obligations, which they will have to fulfil with enhancing their management reports in the future, also by integrating an encompassing sustainability report. That means: gathering data, measuring success, and above all, sticking with it.'

Two key-noters, Irina Paschke, LL.M., Senior Manager BDO Sustainability Services and WP Stefanie Skoluda, BDO Partner National Office Audit & Assurance, provided the necessary background, insights and relevant key issues relating to expected regulations emerging from the European Commission, the European Parliament and their potential ramifications for businesses in both jurisdictions – the European Union and the United Kingdom.

The overview of past and upcoming EU regulations covered the years from 2021 through to 2028. It started with the Non-financial Reporting Directive (NFRD) which has been obligatory since 2017and will be replaced from 2024 by the Corporate Sustainability Reporting Directive (CSRD). Implementation into national law is expected by mid-2024, to be followed by the Corporate Sustainability Due Diligence Directive (CSDDD). The latter is subject to final acceptance by the EU Parliament.

The number of acronyms used in the presentation was a bit of a challenge, yet one of the most interesting aspects in delineating the time sequence of completed and proposed regulations were their relevance for businesses. Initially targeted by the EU were large listed corporations but the further the regulatory scene develops, the smaller the size of companies for which adherence to regulations becomes a legal obligation. As of 2029 even companies with just more than 1,000 employees, will have to adopt the rules laid down by CSDDD.
As we know, there are a lot of 'Mittelstand' companies that employ more than 1,000 employees, so the Corporate Sustainability Due Diligence Directive's extensive reporting requirements will place quite a bureaucratic burden on their management.

In the past, there were different standards for sustainability reporting and reporting requirements were only for large, capital market-oriented companies and content-limited reporting according to the current guidelines (NFRD). There was no obligation for external audits.

However, as of 2024 there will be uniform sustainability reporting standards, extended scope according to the new directive (CSRD) for all major and capital market-oriented small and medium-sized companies, which will include mandatory external audit and electronic tagging (ESEF).

Companies affected by CSRD are those that fulfil 2 of these 3 criteria: a balance sheet total of over Euro 25 million, sales of more than Euro 50 million, 250 employees or more or capital market-oriented SMEs.
The CSRD also applies to affiliates of foreign corporations operating in Germany with a turnover exceeding Euro 150 million.

In addition to all these upcoming reporting requirements, further emphasis will be put on companies, once the new Supply Chain Act (Supply Chain Due Diligence Act) will be passed into law. This particularly applies, since violations can come with potential hefty fines.
It is feared – as was pointed out during discussions – that the large operators will just pass the statutes and requirements of the Supply Chain Act down to their own suppliers without allowing them to charge for the additional workload.

ESG Reporting and the United Kingdom

Reporting for UK based subsidiaries from 2025 has to follow ESRS and EU Taxonomy Rules, albeit consolidated/summary sustainability reports for all EU Subsidiaries (artificial consolidation) effected by the largest EU subsidiary is permitted until January 2030.

Provided turnover in the EU is above EUR 150 million, subsidiaries of UK based corporations in Germany will have to issue reports according to ESRS or according to equivalent standards. On review, exemptions of the German subsidiary from reporting requirements might be possible.

As to German subsidiaries of UK based Holdings, the following regulations apply:

- If a UK Holding itself is subject to ESG reporting requirements, but no Group sustainability report is available or the report does not comply with EU requirements, a declaration by the management board of the subsidiary has to be delivered. In addition, the management board of the subsidiary has to prepare a Group sustainability report based on available and/or obtainable information.

- If the UK Holding prepares a group sustainability report, but does not have it formally audited, then a declaration by the management board of the subsidiary has to be supplied that an audit report is not available.

To summarize, this means that whenever a UK based company does business with a European customer, the UK Company will more or less have to adhere to European reporting standards. What kind of repercussion this will have in terms of future trade and collaborations will have to be seen. The outlook might not be all too positive, particularly if there are other potential customers elsewhere.

All in all the evening offered a lot of insights, food for thought and opened the road to some hefty discussions. Some of which were centered on the applicability of the overarching regulatory European framework. In general terms, it was found that European legislation is again in the process of creating a bureaucratic leviathan that may seriously obstruct European companies' competitive position among Non-European competitors.

A little bit more of flexibility on rule-interpretation and adherence would be called for in the run-up to introducing these into national laws.
In the United States there are only two ESG rules compared to 20 in the EU. But on the other hand, investors in Europe have seven times as much capital invested in green funds than US

investors, with US funds largely flowing away from ESG. Many more EU's public pensions are prioritizing green investments compared to the US pension funds[1].

But Europe has so far largely resisted the anti-ESG tide, due to greater political and consumer support for greener products and a swathe of regulations that underpin the operations of the finance industry and companies in the real economy.

The BCCG Regional Committee Northern Germany thanks BDO for their hospitality in supporting the BritCham Talks in such a generous way. Participants found the event both in terms of content and networking well worth their while.

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1 Please also see: https://www.reuters.com/sustainability/sustainable-finance-reporting/europe-stands-firm-against-us-driven-esg-backlash-2024-04-12/?utm_medium=email&_hsenc=p2ANqtz-9nGKROhAjQ2gSqNOzE4FADNxmeKMzYEmfTa61n5nwnFrALvJj6Oo08vDoJzwVCSY7479PVJMjVfYWLQPoPh066f