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Steward ownership and sustainability-related European legislation: a benevolent neutrality?

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Steward ownership

- Steward ownership: a multi-faceted concept
  - corporate structures designed to prioritize long-term purposes over short-term profit maximization.
  - an alternative to "shareholder primacy model"
    - corporate decision-making is disentangled from economic rights
  - an alternative to "shareholder value" purpose

Steward ownership

Bosch GmbH

- Robert Bosch passed away in 1942
- According to his will, in 1964 the Vermögensverwaltung Bosch (since 1969 "Bosch Stiftung") acquires 92% of Bosch GmbH shares
- Voting rights are transferred to a trustee company
- Now Bosch GmbH shareholders are:
    - 92% Bosch Stiftung without voting right
    - 8% Bosch family, 7% of voting rights
    - Bosch Industrietreuhand KG, 0,01% shares, 93% of voting rights
- Most profits are re-invested or given to the Bosch Stiftung for charitable purposes

Steward ownership

FAAC SpA

- Michelangelo Manini passed away in 2012: in his testament 66% of FAAC shares were given to the Archdiocese of Bologna (in 2015 it reached 100% of shares)
- The owner acts in "God's name" (by definition a long-term investor)
- The company doubled its profits and employees under the Church' ownership
- 100% of the dividends are re-invested in the business or given to charity purposes
  - R&D investments
  - Employees' welfare (nurseries, summer camps for children, health care insurances)

EU law and «other purposes»

- Starting point: “Action Plan: Financing Sustainable Growth” (2018)
  - Market-oriented strategy
- Directive on non sustainability reporting (CSRD)
- Directive on corporate sustainability “due diligence” (CSDDD)

Corporate Sustainability Reporting Directive (CSRD)

- The first step: Directive 2014/95/EC
  - "non-financial statement" attached to the directors report
  - "environmental, social, personnel, human rights, active and passive anti-corruption information".

- Directive 2022/2464
  - Duty to publish sustainability reports
  - Impact on environment and society as a whole, not only "internal sustainability" (ie: viability) of business activities

Corporate Sustainability Reporting Directive (CSRD)

- Large companies and small and medium-sized listed companies
  - CSRD does not apply to «micro-enterprises» that do not exceed two of three criteria: balance sheet total 450,000 €; net revenues: 900,000 €; average number of employees: 10
- Parent companies of a large group
  - on a consolidated basis exceeds at least two of three limits: balance sheet 25m€; net revenues 50m€; 250 employees
- Large companies and listed SMEs established in the EU and controlled by a parent company subject to the law of a third country
  - Staggered application depending on company or group size

Corporate Sustainability Reporting Directive (CSRD)

- Minimum content of sustainability statement
  - describe the “due diligence” procedures applied “in relation to sustainability issues” in line with the EU framework on due diligence procedures
  - describe the possible negative impacts of the company’s activities along its “value chain”

Corporate Sustainability Reporting Directive (CSRD)

- Definition of «value chain»
  - Level 2 Regulation 2023/2772 identifying the analytical standards for such reporting Annex 2:
  - "value chain" includes "the activities, resources and relationships that the enterprise uses and relies on to create its products or services, from conception to delivery, consumption and end-of-life", including human resources, supply, marketing and distribution channels and the "financial, geographical, geopolitical and regulatory environment in which the enterprise operates".

Corporate Sustainability Reporting Directive (CSRD)

- Plans and actions envisaged to «ensure that the business model and strategy are compatible with the transition to a sustainable economy and the limitation of global warming to 1.5°C in line with the Paris Agreement»
  - Not an obligation to implement such plans
  - Duty of transparency

Due Diligence Directive (CSDDD)

- Directive on «due diligence of companies for sustainability» (2024/1760)
  - large EU-based companies
    - more than 1,000 employees and worldwide net sales of 450m€
    - Holding company of a group that reaches these limits
    - franchising or licensing agreements in the EU that create «common identity» of relevant entities

Due Diligence Directive (CSDDD)

- «Chain of activity» (not «value chain»)
  - activities of an upstream trading partner of a company relating to the production of goods or the provision of services by that company [...]; and
  - activities of a downstream business partner of a company relating to the distribution, transport and storage of that company's product, where the business partners perform such activities for the company or on behalf of the company [...].

Due Diligence Directive (CSDDD)

- Companies should exercise a «risk-based duty of care with regard to human rights and the environment» (Art. 5)
  - integrated into company policies and risk management system
  - duty to identify risks of negative impacts on human rights and the environment
  - duty to prevent, mitigate and repair potential or actual negative impacts
  - dialogue with stakeholders
  - duty to monitor the effectiveness of policies

Due Diligence Directive (CSDDD)

- Duty to adopt «a transition plan for climate change mitigation».
  - ensure that the business model and strategy are compatible with the transition to a sustainable economy and the limitation of global warming to 1.5 °C in line with the Paris Agreement as well as the goal of achieving climate neutrality [...].

Bosch, FAAC and EU law

- Bosch and FAAC are likely to fit into CSRD and CSDD
  - In practice: they do not need to change much in their activities and reporting

- New rules
  - Duty to consider the whole value-chain (or chain of activities)
  - Duty to consider climate change mitigation purposes

Benign neglect or nudge?

- Steward ownership is not explicitly regulated by EU law
- CSRD and CSDDD:
  - provide legitimacy to “steward ownership” companies
  - Benign neglect (rather than a “nudge”)

Thank you!