
Dealmaking in the ESG Era:

Trends, Legal Risks and Strategic Insights in the Belgian M&A Market





Integrating environmental, social and governance (ESG) factors into the M&A process has become standard practice in both cross-border and domestic transactions. Whether you are a seasoned investor or a first-time buyer or seller, understanding the impact that ESG may have on your next deal is key. In this whitepaper, we take stock of how Belgian M&A practice has been influenced by ESG so far, and what evolutions to expect in the future.

Contents

1. **What is ESG and why should dealmakers care?**
2. **ESG as a strategic filter in Target screening and selection**
3. **ESG due diligence**
4. **Deal Structuring: Pricing, Risk Allocation, and ESG-Linked Terms**
5. **Post-Closing Integration: Aligning ESG Across the Business**
6. **Looking Ahead: ESG as a Driver of Sustainable Deal Value**

Key Takeaways

1. **ESG considerations are reshaping deal strategy**
Buyers and sellers increasingly screen targets based on ESG criteria, not only to manage risk but to align with broader strategic and reputational goals.
2. **ESG due diligence is evolving beyond compliance**
Due diligence increasingly includes a dedicated ESG workstream covering both legal exposure and operational sustainability risks and opportunities.
3. **Non-financial performance impacts valuation**
ESG profiles influence price negotiations, financing terms, and even post-closing adjustments like ratchet mechanisms based on sustainability KPIs.
4. **Contractual terms are adapting to ESG realities**
Representations, warranties, indemnities, and interim covenants are increasingly tailored to ESG-related risks and commitments.
5. **Regulatory and stakeholder expectations are growing**
Investor scrutiny and the EU's evolving ESG framework (CSRD, SFDR, CS3D, Taxonomy) mean that even domestic deals require forward-looking ESG strategies.
6. **Post-closing integration must include ESG alignment**
To maintain compliance and deliver on ESG promises, buyers should plan for harmonising ESG policies and performance tracking immediately after closing.

What is ESG

and why should dealmakers care?



While “ESG” is a widely used term, it is not particularly well-defined. The term was first used in a report by the World Bank Group, as shorthand for environmental, social and corporate governance risks and opportunities that could be better integrated in the financial services industry.¹ Today, ESG is often used more broadly and is sometimes conflated with the generic concept of sustainability. For professional investors, it represents a framework for assessing non-financial performance. For corporate executives, ESG provides a practical approach to improving business sustainability. In general, ESG can be considered as an **action-oriented framework for assessing, evaluating, and improving a company’s non-financial performance.**

¹ *Who cares wins : connecting financial markets to a changing world* (English). Washington, D.C. : World Bank Group. <http://documents.worldbank.org/curated/en/280911488968799581/Who-cares-wins-connecting-financial-markets-to-a-changing-world>.

As a system for assessing risks and opportunities related to non-financial factors, ESG is important in decision-making by businesses and investors alike. This is especially true for decisions related to investment strategies and corporate responsibility. ESG’s importance for M&A thus becomes obvious. While there are many reasons to buy or sell a business, it is virtually always a **high-impact decision**. Accordingly, ESG factors affecting the buyer, the seller or the target may impact the M&A investment decision and, by extension, all aspects of the deal from sourcing through closing, even if the deal itself is not specifically motivated by impact or sustainability objectives.

Below, we explore the influence of ESG factors on each step of the M&A process.

ESG as a strategic filter in Target screening and selection

ESG factors influence M&A from the outset, playing a crucial role in evaluating whether buying or selling a specific target is a sound business decision. This shows in two ways in particular.

Firstly, **M&A can be a means to enhance a group's or portfolio's overall sustainability profile.** For example, we've seen mature companies acquiring a target with specific activities or know-how that increase the sustainability of the buyer's existing operational activities. Companies could also acquire activities with a positive sustainability profile, thereby improving the group's overall sustainability profile considered on a consolidated basis.

Similarly, at the sell-side, some businesses screen their portfolio for holdings with negative ESG profiles in view of their divestment. This can lead to the phenomenon of "brown spinning", in which companies divest their "brown" (non-green) activities, in particular those companies that are subject to sustainability reporting rules. Although this strengthens the company's individual ESG profile, such divestment merely displaces the issue and has no real-world positive sustainability impact.²

Naturally, dealmakers should be attentive to the objectives underpinning the deal for both the buyer and the seller, and bear these in mind throughout the entire process. They affect e.g. which information to include in information memoranda or other pre-deal marketing materials, and how to approach discussions with the opposing party during process updates and negotiations.

Secondly, investment firms and seasoned corporate acquirers increasingly **incorporate ESG criteria in their investment strategies.** We've seen this take many forms, both as regards scope and legal effect.

² For this reason, other businesses engage in so-called "green spinning", keeping their "brown" activities to actively improve real-world sustainability performance.

→ As regards scope, the options differ mainly based on the buyer's goals, which can range from the intent to simply account for the financial consequences of ESG-related risks, to the ambition to achieve a real-world positive sustainability impact. Common strategies include:

- + **ESG Integration:** ESG risks and opportunities are measured and factored into financial modelling, translating into the traditional monetary target valuation. Complex ESG issues such as climate impact and human rights present financial risks as well as opportunities to achieve competitive advantages.
- + **Restrictions:** exclude targets that are based in certain jurisdictions (e.g., where human rights are not respected), or that are active in certain industries that are considered to have a negative ESG profile (e.g., fossil fuels, tobacco, or weapons manufacturing).
- + **Sectoral Investing:** invest exclusively (or a majority of committed capital) in targets that are active in certain industries that are considered to have a positive ESG profile (e.g., renewable energy or CleanTech).
- + **Active Stewardship:** invest in (usually publicly traded) targets where the buyer can use its shareholder power to influence corporate behavior on ESG issues.
- + **Impact Investing:** direct capital to projects or companies that generate measurable positive sustainability impact, alongside financial return.

→ As regards legal effect, investment strategies range from non-binding intentions to hard commitments. Non-binding investment strategies can be found in **internal M&A policies**. Harder commitments are usually set out in corporate documentation such as shareholder agreements, or in restrictions on the use of proceeds from certain types of funding (e.g., sustainable bonds). For investment funds, they are usually elaborated in the **limited partnership agreement (LPA)** or side letters with cornerstone investors.

If ESG criteria are defined, leadership should be mindful to take these into account, even if they are non-binding. For example, if a company publishes a corporate sustainability report, this may also include a section on how ESG is factored into M&A decision-making. Such statements can create expectations from investors, giving rise to liability risks if they turn out to be inaccurate or misleading.

ESG due diligence

Prudent buyers conduct due diligence on their acquisition target. In addition to traditional financial, legal and operational diligence workstreams, more buyers conduct some form of ESG due diligence, although what this entails in practice, varies strongly.

At a minimum, **ESG affects the legal due diligence**. Compliance with “hard” labor law (e.g., wages and social security) and environmental regulations (e.g., environmental violations and soil remediation obligations) was already a part of traditional legal due diligence due to the major financial risks that are involved. But the scope of legal due diligence increasingly includes more reputational risks that, until recently, were often only diligenced by private equity and other professional investors, such as those related to sanctions and anti-bribery and corruption (ABC), and whistleblowing regulations. Nowadays the scope is often expanded further to include matters such as (external) sustainability information reporting and ESG-related claims. Furthermore, with the advent of new ESG-inspired regulations such as SFDR, CSRD, CS3D, and the EU Taxonomy Regulation, the scope of legal due diligence will undoubtedly broaden further to also cover compliance with these regulations.

A significant trend is the increasing consideration of ESG as a core part of the due diligence phase, beyond a mere liability risk. In that case **ESG due diligence becomes a standalone workstream**, handled by in-house experts of the buyer, the legal advisor’s ESG team, or a dedicated ESG advisor.

Such an ESG due diligence covers areas beyond traditional legal diligence, since the buyer and their advisors may not only wish to identify ESG factors to mitigate legal risks (e.g., liability, compliance, and expected changes in the regulatory framework), but also to uncover potential **operational risks and opportunities**, such as cost increases or savings (e.g., around energy consumption and resource scarcity). Thus, for instance, these types of ESG due diligence tend to include assessing sustainability information, ethical entrepreneurship, leadership, and benchmarking with peers. Of course, if ESG factors played a role in the buyer’s target selection, the assumptions supporting the buyer’s offer also need to be verified.

We see more and more investors developing their own ESG screening policies and tools, including KPIs and scoring systems. The practice is most developed with respect to carbon footprint and greenhouse gas (GHG) emissions. Other key focus areas include:

- + Environmental: policies around water management and waste management
- + Social: human rights and safe working conditions
- + Governance: transparency, anti-corruption measures, and integration of non-financial considerations in corporate decision-making.

Due to time and budget constraints, a full ESG due diligence is not befitting for every transaction. Currently this remains relatively uncommon for domestic transactions on the Belgian market. Even so, certain investors may still want some view on the target’s stance towards ESG. Incidentally, a due diligence process may also be influenced by demands of acquisition finance providers, who may themselves be subject to internal or external ESG requirements.

We find that much information can be retrieved through relatively limited inquiries about the presence of environmental policies or a dedicated ESG lead or team, which signal awareness and commitment to minimising environmental impact and promoting sustainability. For example, in the context of legal due diligence, document request lists and questionnaires can be supplemented by information requests regarding:

- + The target’s assessment of its ESG-related risks.
- + The target’s ESG statement, ESG-related certifications, environmental policy or other policies regarding detection and mitigation of ESG-related risks.
- + The extent that ESG issues are regularly discussed at board level, or the corporate body or committee that is authorised to monitor and update the target’s ESG statement, and copies of meeting minutes.
- + The target’s standard operating procedures for the safe use, handling, storage and disposal of toxic chemicals and other hazardous substances.
- + Any past, pending or threatened ESG-related claims.
- + Whether the target has identified and engaged with any affected stakeholders, and whether it has identified, assessed and addressed actual and potential negative impacts on people and planet.
- + Whether the target has a crisis management plan and a communication strategy for potential ESG-related issues.

Deal Structuring: Pricing, Risk Allocation, and ESG-Linked Terms

The growing importance of ESG factors in target selection means that a business's valuation may be influenced by its non-financial performance, positively or negatively. Thus, even if a business does not have outspoken ESG objectives, it may still want to improve its non-financial performance, to become more attractive towards certain potential investors.

Furthermore, impact investors may expressly **factor in so-called “impact return”** alongside financial return when valuing potential targets, through various metrics, such as Impact Multiple of Money (IMM), the Impact Rate of Return (IRR) or Social Return on Investment (SROI).

ESG may also impact target valuation indirectly. If the buyer intends to finance part of the deal with debt, it should be mindful that banks and other acquisition finance providers have ESG policies too. They could affect the availability of acquisition finance, or the terms thereof, increasing cost of capital.

Due to uncertainties around measurement of non-financial performance, the fast-evolving and sometimes fickle regulatory framework, and the large dependence on management's continued efforts, ESG objectives may also steer more parties to agree on **post-closing valuation adjustments**, such as earn-outs, milestone payments and ratchet mechanisms, where the triggering events are not limited to financial KPIs but include under- or overperformance of specific sustainability metrics.

Beside target valuation and price mechanisms, ESG risks and opportunities can also affect the other deal terms.



Firstly, if an ESG-related issue is identified during due diligence and cannot be resolved prior to closing, a risk allocation between the buyer and the seller should be agreed. Customary clauses on **warranties and indemnities** can be expanded with ESG risks in mind. For instance, specific representations can be included regarding compliance with sustainability reporting obligations, the accuracy of (external) sustainability reporting, the absence of ESG-related claims, the presence of appropriate ESG-related codes of conduct (and compliance with them), etc. Sellers should be aware that, through these contractual mechanisms, non-binding ESG ambitions and recommendations effectively can become hard compliance requirements. Indeed, depending on the drafting, if a buyer demands a warranty that the target has taken certain ESG initiatives, the legal status of the target's underlying commitments may be irrelevant for the materialisation of the seller's indemnification obligation in case the warranty is breached.

On the buy-side, acquirers should be mindful that in case of breach of a warranty, acquisition agreements typically provide that the buyer's only remedy is a right to be indemnified. Under Belgian law, the buyer would have to prove the damage that it has incurred, which is expressed in monetary terms. Traditional indemnification obligations for breach of warranty thus may not be a perfect solution to ensure that the target exhibits a certain non-financial performance level, in which case the acquisition agreement should be amended accordingly.

Secondly, for the **period between signing and closing** of the deal, the seller's traditional obligation to ensure that the target continues its operations in the ordinary course of business may be extended to include **arrangements on high-impact ESG-related risks or decisions** (e.g., obligations to inform the buyer, requiring their prior approval, or triggering a right to abort the deal).

Finally, in the event of an investment round or a joint acquisition, there will be **shareholders' agreement** among the shareholders. This document may also be affected by ESG factors:

- + ESG could be the subject of **governance arrangements** (e.g., reserving certain matters to the board, such as defining the sustainability strategy, or responsibility for disclosure and communication of sustainability matters).
- + Management's financial reporting requirements can be supplemented with specific **ESG reporting**.
- + ESG factors can be integrated in arrangements on **director and employee remuneration and incentivisation**, such as the inclusion of non-financial KPIs. Like their traditional financial counterparts, "sustainability", "ESG" or "impact" KPIs should be kept relevant and manageable, but they come with the additional complexity that they should also be research-based and objectively measurable.
- + ESG performance could be integrated in the **business plan**, e.g., by including a roadmap to transition towards sustainable economic activities, becoming or staying aligned with applicable legislative requirements or industry-specific ESG benchmarks, and allocating the necessary budgets to these objectives.
- + Certain investors may insist on **ESG-related conditions**, such as net-zero commitments, or actively striving for increased diversity and inclusion in the workplace.

Post-Closing Integration: Aligning ESG Across the Business

If a buyer must report on ESG performance (e.g., to comply with the EU Taxonomy Regulation or the CSRD, or to meet stakeholder expectations), it will need information from the newly acquired target. The target will be more attractive for such a candidate-buyer if the data is already available.

If no procedures are in place yet at the level of the target, the new ownership should consider conducting periodic sustainability assessments to track relevant ESG metrics. In the event of a buy-out, it is crucial to integrate the target into the buyer's existing procedures, and more generally into the buyer's ESG strategy, by harmonising ESG policies.

Post-closing, consideration could also be given to establishing an action plan for addressing specific ESG risks that were identified during the diligence phase.



Looking Ahead: ESG as a Driver of Sustainable Deal Value

The increasing focus on ESG in recent years has rapidly influenced the dealmaking process. Buyers and sellers should consider ESG factors in target screening and selection, valuation, due diligence, risk allocation, other deal terms, and post-closing integration.

However, at every stage of the process, this can be done to very different degrees. Indeed, for now, no clear market practice has emerged. For instance, there is no “standard” ESG due diligence or ESG subsection of the usual legal due diligence. Given the very different sustainability footprints of different businesses, and the varying importance that different investors attach to non-financial performance, it is doubtful whether distinct market practices will come about. Hence, investors do well to discuss in advance with their stakeholders and advisers the expectations with respect to ESG factors in anticipated M&A transactions.

Without a doubt, ESG’s effects on M&A have been accelerated by regulatory initiatives such as the European Green Deal. However, the regulatory framework around ESG remains unpredictable. In April 2025, the European legislator approved the so-called “Stop-the-clock” - mechanism, postponing the dates of application of certain corporate sustainability reporting and due diligence requirements. More generally, legislators’ sustainability ambitions have lost some of their momentum in light of the prevailing economic and geopolitical context.

Yet, in the end, for many businesses and investors ESG is not a mere compliance issue, but a part of sound decision-making in a sustainability-conscious world. It is here to stay, in one form or another, and so will ESG considerations continue to shape the M&A landscape. Understanding how these considerations impact dealmaking will remain critical to executing successful transactions.



At Eubelius, we remain at the forefront of these developments, advising clients on the legal and strategic implications of ESG in M&A. Our team closely monitors market trends, regulatory shifts and emerging best practices to help clients make deals that create the value they seek – financial and other.

Contacts



Joris De Wolf
Partner
+32 2 543 31 46
Joris.dewolf@eubelius.com



Michiel Stuyts
Senior Attorney
+32 2 543 31 87
Michiel.stuyts@eubelius.com

About Eubelius

Eubelius is Belgium's largest independent law firm, with offices in Brussels, Kortrijk and Antwerp. Our 25 partners, 18 (senior) counsels and more than 100 associates offer counselling and representation on Belgian and European law.

We have privileged working relationships with outstanding independent law firms in many foreign jurisdictions. Our practice has a strong national and international focus, and a significant proportion of our work is cross-border (both inbound and outbound). We serve a very diverse client base, ranging from Fortune 500 multinationals to local entrepreneurs, a large number of companies with public law status, and numerous Belgian companies which are part of large international groups. We represent all Belgian language communities and handle matters in English, Dutch, French and German.

Our offices



Brussels

Louizalaan 99 Avenue Louise
B-1050 Brussels
+32 2 543 31 00

Antwerp

Cockerillkaai 18
B-2000 Antwerp
+32 3 260 86 70

Kortrijk

President Kennedypark 30A
B-8500 Kortrijk
+32 56 23 51 11

Follow us:

