CLEARY GOTTLIEB

26 November 2024

Climate and the Financial Sector

This newsletter highlights climate-related regulatory, litigation and enforcement developments relevant to the financial sector.

General

- President Van der Leyen announces work aimed at combining the CSRD, CSDDD and EU Taxonomy Regulation into an “omnibus regulation”
- European Commission notice on Taxonomy-related disclosures published in the Official Journal of the European Union
- ESAs and ECB publish report on the results of the ‘Fit-For-55’ climate stress test
- IFRS Foundation publishes report setting out global progress on corporate climate-related disclosures.
- European Commission publishes FAQs on the interpretation of certain CSRD and SFDR provisions as regards sustainability reporting
- IOSCO Publishes Report on Transition Plans Disclosures
- NGFS publishes Conceptual Note on Adaptation and Synthesis Report on the greening of the financial system
- IOSCO Publishes Final Report on Promoting Financial Integrity and Orderly Functioning of Voluntary Carbon Markets
- Taskforce on Net Zero Policy publishes first report on net zero policies progress
- UK Government publishes draft legislation on regulatory regime for ESG rating providers
- UK Government publishes consultation on UK Green Taxonomy
- UK Government calls for evidence on Financial Services Growth and Competitiveness Strategy

- UK Government calls on regulators to support sustainable growth and innovation of the UK financial services sector
- IFRS Foundation publishes guide on sustainability-related risks and opportunities and the disclosure of material information
- Council of the European Union adopts new regulation on ESG rating activities
- iCI publishes Private Markets Decarbonization Roadmap 2.0

General

8 November 2024 [EU] – **President Van der Leyen announces work aimed at combining the CSRD, CSDDD and EU Taxonomy Regulation into an "omnibus regulation"**

European Commission President Ursula Von der Leyen announced that, in an effort to reduce red-tape, certain regulations could be regrouped in so-called "omnibus regulations", amongst which CSRD, CSDDD and the Taxonomy Regulation. The announcement was made during a press conference held by Viktor Orban in the context of an informal heads-of-EU summit, [the video of which was published by Reuters, and is available here]. Ms. Van der Leyen, while she insisted on the quality of the current legislations' content, noted that too many data points were collected, and that several information requirements were redundant.

This announcement was closely followed by the publication of a Budapest Declaration on the New European Competitiveness Deal [available here], which mentions that "Key objectives to be implemented by the Commission without delay include making concrete proposals on reducing reporting requirements by at least 25 % in the first half of 2025". There was however no clear timeline set for the publication of an omnibus CSRD/ CSDDD/ Taxonomy regulation proposal.

8 November 2024 [EU] – **European Commission notice on Taxonomy-related disclosures published in the Official Journal of the European Union**

The European Commission published a notice [available here] in the EU Official Journal on the interpretation and implementation of certain legal provisions of the Taxonomy Disclosures Delegated Act (Regulation 2021/2178) on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets. This follows a draft Commission notice published on 21 December 2023 [available here].

The notice clarifies the scope of entities subject to the reporting obligations, amongst which large financial undertakings and financial undertakings admitted to trading on EU markets. It also specifies the taxonomy assessment of specific exposures such as to retail clients, local authorities and exposures to individual undertakings and groups. The notice provides FAQs clarifying the rules already contained in the applicable legislation, and does not by itself aim to extend or limit the rights and obligations deriving from such legislation.

12 November 2024 [International] – **IFRS Foundation publishes report setting out global progress on corporate climate-related disclosures.**

The IFRS Foundation, a standard-setting nonprofit organisation, issued a detailed progress report on the implementation of both mandated and voluntary corporate climate-related disclosures, which was presented to the Financial Stability Board (FSB) [full report available here].

The report continues the work of the FSB's Task Force on Climate-related Financial Disclosures (TCFD) to record the progress of companies reporting on its 11 recommended disclosures. Companies are said to be making the transition from disclosures prepared using the TCFD recommendations to disclosures prepared using the two inaugural Standards issued by the International Sustainability Standards Board (ISSB) in June 2023.

While 82% of companies disclosed information in line with at least one of the 11 TCFD recommendations, less than 3% of these companies reporting in line with all 11 TCFD recommended disclosures. As such, the IFRS Foundation notes that few companies provide disclosures that cover the company's climate-related governance, strategy, risk management or metrics and targets. If the omitted information is material, it indicates investors are not currently receiving the information needed to assess and price climate-related risks and opportunities.

13 November 2024 [EU] – **European Commission publishes FAQs on the interpretation of certain CSRD and SFDR provisions as regards sustainability reporting**

The European Commission published in the EU Official Journal a notice on the interpretation of certain legal provisions as regards sustainability reporting, consisting of FAQs on Directive 2022/2464 (CSRD) and Regulation 2019/2088 (SFDR) [full notice available here; please refer to our newsletter of 17 September 2024 available here for information on the draft notice]. The FAQs include the following guidance on sustainability reporting requirements introduced by the CSRD:

- Overview of the requirements, with a focus on the sustainability information to be reported under Articles 19a, 29a and 40a of the Accounting Directive.
- Guidance on the assurance of sustainability reporting, notably confirming that third-country assurance providers are allowed to provide assurance of sustainability reporting in the EU.
- Information about reporting key intangible resources, with the FAQs confirming that this information may be provided in a section other than the sustainability statement of the management report.
- Guidance for third-country undertakings, in particular in relation to opt outs, reporting under the Taxonomy Regulation or about individual and consolidated sustainability statements.

As concerns the SFDR, the notice confirms that when an indicator is reported as non-material by an investee undertaking subject to the CSRD, financial market participants may assume that it does not contribute to the corresponding indicator of principal adverse impacts in the context of the SFDR disclosures.

13 November 2024 [International] – **IOSCO Publishes Report on Transition Plans Disclosures**

The International Organization of Securities Commissions (IOSCO) has released a report on transition plan disclosures, developed by its Sustainable Finance Taskforce (STF) [full report available here].

The report outlines how transition plan disclosures can enhance investor protection and market integrity, while proposing future actions in four key areas: (i) ensuring consistency and comparability of disclosures, (ii) promoting assurance of transition plan disclosures, (iii) enhancing regulatory clarity, and (iv) building capacity.

The report highlights the importance of standardized guidance to facilitate understanding and comparison of transition plans across jurisdictions. In particular IOSCO considered alignment between global and jurisdictional standards (at ISSB-standards' level) of paramount importance. It also calls for clear markers of forward-looking and climate-related information to aid entities in balancing transparency with liability management.

IOSCO targeted five key components for effective transition plan disclosures, namely (i) ambition and targets, (ii) decarbonization levers and action plans, (iii) governance and oversight, (iv) financial resources and human capital, and (v) financial implications. Additionally, IOSCO explained that it would continue working with stakeholders to mitigate greenwashing risks, strengthen standards, and support capital allocation.

14 November 2024 [International] – **NGFS publishes Conceptual Note on Adaptation and Synthesis Report on the greening of the financial system**

In the context of COP29, the Network for Greening the Financial System (NGFS) has published two documents: a Conceptual Note on Adaptation and a Synthesis Report on the greening of the financial system.

- The Conceptual Note on Adaptation [available here] highlights the importance of climate adaptation for financial stability, and thus for the mandates of central banks and supervisory authorities, and in particular explores the links between adaptation finance, insurance gaps and prudential risks for the financial sector. It includes six national case studies and also outlines four areas where central banks and supervisors can do more to limit risks and help advance climate adaptation efforts: the role of metrics and tools to better measure and disclose adaptation; exploring the need to enhance policy, supervisory and regulatory frameworks; fostering an enabling environment for adaptation finance; and collaborating at the international level, with actions focused on local considerations.
- The Synthesis Report on the Greening of the Financial System [available here] provides an up-to-date view of climate finance, synthesising knowledge and data from NGFS members, stakeholders and observers to provide an overview of the financial system's progress towards the Paris goals. The Report finds that while the financial sector has made progress in aligning with climate goals, significant work remains to build a truly green financial system. It makes nine recommendations for further action to advance the greening of the financial system, including improving

the quality and availability of climate-related data, improving labels and standards, strengthening the integration of climate risk into financial regulation and supervision, supporting the adoption of climate disclosure standards and advancing transition planning and plans.

14 November 2024 [International] – **IOSCO Publishes Final Report on Promoting Financial Integrity and Orderly Functioning of Voluntary Carbon Markets**

IOSCO released its Final Report on promoting the financial integrity and orderly functioning of the Voluntary Carbon Markets (VCMs), containing a comprehensive set of 21 Good Practices aimed at ensuring financial integrity in VCMs, which could be applicable across all carbon credit markets [full report available here].

The Good Practices rely on three overarching objectives, i.e., (i) supporting the establishment of sound market structures, (ii) promoting transparency and (iii) advocating for adequate market conduct and behaviour. They address five key principles of financial market regulation:

- Clear and effective regulatory frameworks that provide legal certainty and proportional oversight.
- Enhanced transparency in carbon credit creation, trading and use.
- Strong governance standards, risk management frameworks, and policies to address conflicts of interest within the carbon credit ecosystem.
- Comprehensive market surveillance to detect and prevent fraud, abuse, and disruptive behaviors.
- Open, fair, and accessible trading for all participants, and standardization to boost market liquidity.

In addition, IOSCO and the World Bank have published a policy note [available here] outlining high level elements for promoting financial integrity in carbon markets generally, using the occasion to announce a new partnership in 2025.

14 November 2024 [International] – **Taskforce on Net Zero Policy publishes first report on net zero policies progress**

The Taskforce on Net Zero Policy – established at COP28 to further the aims of the High-Level Expert Group (HLEG) on the Net Zero Emissions Commitments of Non-State Entities – released its inaugural report on Net Zero Policy Matters (assessing progress and taking stock of corporate and financial net zero policy) [available here].

At the outset, the findings highlight progress, with net zero policies expanding across all G20 nations, especially in the EU, and the number of policies tripling since 2020. Efforts in sustainable finance, such as taxonomies and transition plans, are said to be advancing globally, with notable progress in Brazil, Indonesia, and Mexico.

Despite this, the report points out that global policy frameworks remain insufficient to align with the Paris Agreement's 1.5°C target. None of the UN HLEG's nine key recommendations for high-integrity net zero action are fully reflected in G20 policies. A minority of corporate and financial policies explicitly tie corporate actions to a 1.5°C future, and issues like adaptation, nature, and social objectives lack systematic inclusion.

The report calls for urgent action to close these gaps. It underlines the importance of integrating climate justice principles to protect vulnerable communities and ensure sustainable development in emerging economies.

14 November 2024 [UK] – **UK Government publishes draft legislation on regulatory regime for ESG rating providers**

In a response [here] to an earlier consultation, HM Treasury confirmed its plans to bring ESG rating providers within the scope of the regulatory regime under the Financial Services and Markets Act 2000 (FSMA). The consultation response was accompanied by draft legislation [available here].

The new regime will, subject to exclusions, cover both ESG ratings produced in the UK and those produced overseas and made available to UK users by way of a business relationship (including as part of a subscription or other contractual relationship). HM Treasury is considering creating alternative access routes into the UK market for overseas providers, which may include overseas regimes for ratings issued in other jurisdictions.

The deadline for comments on the draft legislation is 14 January 2025, with the legislation expected to be presented to Parliament in early 2025. The FCA will consult on specific standards and regulatory requirements that will need to be met by ESG ratings providers.

14 November 2024 [UK] – **UK Government publishes consultation on UK Green Taxonomy**

HM Treasury published a consultation [available here] to establish whether a UK Green Taxonomy would complement the existing sustainable finance policies, including in supporting participants in making sustainable investment decisions. In particular, the consultation seeks views on various market and regulatory use cases for a UK Green Taxonomy, including its potential to support the mobilisation of transition finance, and its key design features.

The consultation closes on 6 February 2025.

14 November 2024 [UK] – **UK Government calls for evidence on Financial Services Growth and Competitiveness Strategy**

HM Treasury launched a call for evidence [available here] on its new Financial Services Growth and Competitiveness Strategy. This strategy is aimed to serve as the guiding framework to foster sustainable, inclusive growth within the financial services sector and secure the UK's status as a leading international financial center.

The consultation seeks views on:

- the strategy's objectives, including in relation to the attractiveness of the UK as a financial centre, innovation and start-ups, a highly-skilled workforce, and green finance.

- the strategy's five core policy pillars: innovation and technology, the regulatory environment, regional growth, skills and access to talent, and international partnerships and trade; and
- identified priority growth opportunities within the sector, such as FinTech, sustainable finance, capital markets, insurance and reinsurance markets, and asset management.

The call for evidence closes on 12 December 2024 and will inform the final strategy, expected to be published in spring 2025.

15 November 2024 [UK] – **UK Government calls on regulators to support sustainable growth and innovation of UK financial services sector**

HM Treasury issued letters outlining the remit, recommendations, and priorities for the FCA [available here], and the Bank of England's Prudential Regulation Committee [available here] and Financial Policy Committee [available here]. Amongst other things, the letters highlight the challenges posed by climate change and request regulators to have regard to the government's policy objective of leading the world in sustainable finance.

19 November 2024 [EU] – **ESAs and ECB publish report on the results of the 'Fit-For-55' climate stress test**

The European Supervisory Authorities (i.e. EBA, EIOPA and ESMA) and the European Central Bank (ECB) (together, the Authorities) have released a report setting out the results of the Fit-for-55 climate risk scenario analysis [press release available here; full report available here]. This follows a request from the European Commission to assess the impact of three transition scenarios on the EU banking, investment funds, occupational pension funds and insurance sectors, as well as the potential for contagion and spill-over effects across the financial system.

The Authorities found that, under the scenarios examined, the estimated losses stemming from a "Run-on-Brown" scenario, i.e. short-term climate-related risks in the form of asset price corrections are triggered by a sudden reassessment of transition risk, have a limited impact on the EU financial system. However, they also note that the interaction of adverse macro-financial developments with transition risk factors could disrupt the evolving transition and significantly increase financial institutions' losses, thereby affecting their financing capacity.

19 November 2024 [International] – **IFRS Foundation publishes guide on sustainability-related risks and opportunities and the disclosure of material information**

The IFRS Foundation, a standard-setting nonprofit organisation, has published its guide to help companies identify sustainability-related risks and opportunities, as well as identify the material information to provide [available here].

The Guide is intended to support the implementation of the first two ISSB standards published in June 2023: IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures.

The first Chapter sets out a definition for "material information" and its application in ISSB Standards. The main components of the definition are analyzed to enable materiality judgements in that context. Chapter two describes the sustainability-related risks and opportunities that could reasonably be expected to affect an entity's prospects and its application in ISSB Standards. This part contains examples and sets out useful factors to considers when identifying sustainability related risks and opportunities. Chapter three builds on the first two and explains the requirements associated with identifying and disclosing material information about sustainability-related risks and opportunities.

The guide also addresses the importance of aligning sustainability disclosures with financial statements to ensure consistency. IFRS Standards use aligned definitions and supporting requirements, which facilitates connectivity in an entity's general purpose financial reports.

19 November 2024 [EU] – **Council of the European Union adopts new regulation on ESG rating activities**

The Council of the European Union published a new ESG rating regulation, adopted on November 6, 2024 [regulation available here].

The new rules aim at making rating activities in the EU more consistent, transparent and comparable in order to boost investors' confidence in sustainable financial products. This also means a greater oversight of ESG ratings providers and the operation that they carry out, especially as concerns potential conflicts of interest. To prevent such conflict, the regulation introduces as a principle a separation of business and activities.

One major change introduced is that ESG rating providers established in the Union will need to be authorised and supervised by ESMA. They will have to comply with transparency requirements, in particular with regard to their methodology and sources of information.

Alternatively, ESG rating providers established outside the Union that wish to operate in the Union, will need to obtain an endorsement of their ESG ratings by an EU authorised ESG rating provider, or be included in the related EU registry on the basis of an equivalence decision.

The regulation is expected to enter into force 20 days after its publication in the EU's Official Journal. Its provisions will be applicable 18 months after that.

20 November 2024 [International] – **iCI publishes Private Markets Decarbonization Roadmap 2.0**

The Initiative Climat International (iCI), an investor-led initiative supported by the Principles of Responsible Investment (PRI), released a second version of its Private Markets Decarbonization Roadmap (PMDR), drafted in partnership with Bain & Company [full roadmap available here].

The PMDR is presented as providing a "common language" enabling private markets firms to disclose the decarbonization progress of their assets. It recognizes early-stage decarbonization progress and allows flexibility for firms to decide the manner of sharing this information with stakeholders. Applying the PMDR does not require a public commitment and although funds can use the PMDR approach to set a target, doing so is optional.

Since its initial launch, the roadmap has experienced extensive adoption and broad engagement across private markets, with this new version thus addressing key insights and feedback from industry stakeholders. Key enhancements include:

- Content additions, including further asset-class specific considerations for Growth funds, VC funds and Real Estate funds.
- Simplifications, in particular to the categorization flow of decarbonization enablers (assets with economic activities enabling the net zero transition)
- New PMDR support tool enabling portfolio classification and disclosure of key insights internally and/or externally through automated visualisations directly in Excel or through PowerPoint templates.

Amélie Champsaur
Partner, Paris
achampsaur@cgsh.com

Camille Kernevès
Associate, Paris
ckerneves@cgsh.com

Eléonore Azaïs
Associate, Paris
eazais@cgsh.com

Alberta Giannotti
Associate, Rome
agiannotti@cgsh.com

Sebastian Kummler
Associate, Frankfurt
skummler@cgsh.com

Marco Gustavo Minati
Associate, Frankfurt
mminati@cgsh.com

Marc Christopher Baldauf
Associate, Cologne
mbaldauf@cgsh.com

Andreas Wildner
Associate, London
awildner@cgsh.com