CLEARY GOTTLIEB

12 November 2024

Climate and the Financial Sector

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

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- TNFD publishes draft guidance on nature transition planning.
- GFANZ publishes consultation papers on its nature in net-zero transition plans and real-economy decarbonization guidance.
- ESAs publish final report on rules to facilitate access to financial and sustainability information on the European Single Access Point.
- ESAs publish 2024 annual Joint report on PAI disclosures under the SFDR.
- European Commission publishes EU Climate action progress report for 2024.
- EFRAG publishes early draft of Implementation Guidance on Transition Plan for Climate Change Mitigation under the ESRS.
- UK FCA confirms intention to consult on mandatory transition plans for listed companies and adoption of ISSB standards.

Banking

- NGFS publishes Phase V of its climate scenarios for central banks and supervisors, along with accompanying guidance.

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- Council of the European Union publishes text of the ESG rating activities regulation.

Insurance

- EIOPA publishes factsheet on insurers' green investments in 2024.
- EIOPA publishes final report on prudential treatment of sustainability risks under the amended Solvability II framework.

General

27 October 2024 [Global] – **TNFD publishes draft guidance on nature transition planning**

The Taskforce on Nature-related Financial Disclosures (TNFD) published a discussion paper laying out draft guidance on nature transition planning, open for feedback until February 2025 [full report and feedback form available here].

The draft guidance, which is aimed at corporates and financial institutions developing and disclosing a transition plan, focuses in particular on the content of the nature transition plan, its presentation and the manner in which it should be disclosed.

Regarding the content, the TNFD clarifies that a nature transition plan should cover the same five themes as those recommended by the Glasgow Financial Alliance for Net Zero ("GFANZ") for net zero transition plans: (i) foundations, including the framing and scope of the plan and its priorities, (ii) implementation strategy, (iii) engagement strategy, (iv) metrics and targets, as well as (v) governance, covering the roles, responsibilities, remuneration, skills and culture. Disclosure requirements are adjusted based on the specific theme addressed.

The draft guidance covers all aspects of nature apart from climate change, greenhouse gas emissions as drivers of nature loss, and natural carbon stocks. The TNFD explained that these topics are already covered in guidance from other organizations, amongst which is the GFANZ.

29 October 2024 [Global] – **GFANZ publishes consultation papers on its nature in net-zero transition plans and real-economy decarbonization guidance**

The GFANZ has published two consultation papers on its voluntary guidance, one relating to nature in net-zero transition plans [available here], the other dedicated to supporting real-economy decarbonization [available here]. Stakeholders may respond to the first consultation until 27 January 2025, and until 9 January 2025 for the second.

The supplemental guidance on "nature in net-zero transition plans" covers opportunities (i) for natural climate mitigation, in particular through the reduction of nature emissions or the increase of nature sinks, and (ii) for natural climate enablers, i.e., supporting emissions reductions and sequestration through nature-related activities. While the GFANZ notes that different financial institutions will naturally take different approaches to achieving net-zero targets, the guidance is intended as a toolkit for institutions to achieve those targets and identify more potential net-zero financing opportunities.

The index guidance "to support real-economy decarbonization" provides index providers, data providers, stock exchanges, asset managers, asset owners and other investors with advice on "transition-informed" indices that may help facilitate real-economy decarbonization. Covering the different categories of transition-informed indices, as well as areas for further work, the guidance refers to a set of case studies on transition finance and decarbonization contribution methodologies, which were initially published in September 2024 [available here].

29 October 2024 [EU] – **ESAs publish final report on rules to facilitate access to financial and sustainability information on the European Single Access Point**

The ESAs (EBA, ESMA and EIOPA) published a final report on the draft implementing technical standards (ITS) specifying certain tasks of collection bodies and certain functionalities of the European single access point (ESAP) [full report available here].

Under Regulation 2023/2859 (the ESAP Regulation), ESMA shall establish and operate the ESAP by 10 July 2027, to facilitate access to financial and sustainability information disclosed by companies. The ESAP is expected to start collecting information in July 2026.

In this context, ESMA must ensure that the ESAP portal provides a minimum set of functionalities, such as a user-friendly web portal, an Application Programming Interface (API) to enable access to information, a search function in all EU languages, an information viewer, a machine-translation service and a notification service.

The final report, which has been sent to the European Commission for adoption, covers two sets of ITS. The ITS on the tasks of collection bodies specify detailed requirements for them, while the ITS on the functionalities of the ESAP specify the requirements for making information easily accessible to users. These requirements define, among other things, how reporting entities should be categorized by industry and size, which identifier should be used, and what types of information should be made available.

30 October 2024 [EU] – **ESAs publish 2024 annual Joint report on PAI disclosures under the SFDR**

The ESAs (EBA, ESMA and EIOPA) published their third annual report on disclosures of principal adverse impacts (PAI) under the Sustainable Finance Disclosure Regulation (SFDR). The report refers to PAI disclosures published by 30 June 2023, regarding the reference period from 1 January 2022 to 31 December 2022 [full report available here].

The Joint report is based on (i) the survey sent to National Competent Authorities (NCAs) gathering their input on the current state of entity-level and product level voluntary PAI disclosures, on (ii) a qualitative assessment of the 65 entity-level PAI statements and on (iii) a quantitative assessment of some of the PAI indicators, based on European ESG Template disclosures data obtained via Morningstar in July 2024.

The Joint Report sets forward the ESAs' own assessment of the statements currently available in the market, and a list of good and bad practices identified by NCAs, as well as an overview of lessons learned from the third year of implementation of the voluntary disclosure. The final section highlights the recommendations to the European Commission and NCAs.

In particular, the ESAs found that while the level of compliance with SFDR provisions is not fully satisfactory, both NCAs and financial market participants have made significant improvements. Also, the ESAs reiterated that they would like the frequency of their assessment of the PAI disclosures under the SFDR to be reduced from an annual report to one published every two or three years.

31 October 2024 [EU] – **European Commission publishes EU Climate action progress report for 2024.**

The European Commission published a Climate Action Progress Report for 2024 [available here], which in particular revealed that EU greenhouse gas emissions fell by 8.3% in 2023 (as compared to 2022). Since 1990, EU gross domestic product grew by 68% and greenhouse gas emissions fell by 37%, outlining the compatibility of emissions reduction and economic growth.

In particular, findings reveal that, with respect to emissions under the EU Emissions Trading System, there was a 16.5% decrease in emissions from power and industrial installations and a 24% decrease in emissions from electricity production and heating. The EU Emissions Trading System also generated €43.6 billion in revenues in 2023, earmarked for climate action investments.

Quite importantly, the Report confirms that the EU remains on track to reach its goal of reducing emissions by at least 55% by 2030, although its reference to recent extreme weather events highlights that continued work is required.

4 November 2024 [EU] – **EFRAG publishes early draft of Implementation Guidance on Transition Plan for Climate Change Mitigation under the ESRS**

In the context of its Sustainability Reporting Technical Expert Group on 4 November 2024, the European Financial Reporting Advisory Group (EFRAG) published draft implementation guidance for transition plans for climate change mitigation, aimed at providing support for undertakings required to report on their climate transition plans.

The guidance is focused on clarifying climate transition plan disclosure requirements under ESRS E1 (the climate change reporting standard), linking them to EU laws such as the Corporate Sustainability Due Diligence Directive (CSDDD) and EU Taxonomy.

Amongst key points, undertakings conducting activities covered by the EU Taxonomy for sustainable finance must disclose their alignment with taxonomy criteria. This includes climate-related objectives and compliance with technical screening criteria. They are also required to provide updates on the progress of implementing their transition plans.

The implementation guidance [available here] is accompanied by a cover note [available here] containing an updated workplan, which targets April 2025 as a deadline for finalization.

6 November 2024 [UK] – **UK FCA confirms intention to consult on mandatory transition plans for listed companies and adoption of ISSB**

standards

In a speech delivered at the UK Sustainable Investment and Finance Association Leadership Summit [available here], the UK Financial Conduct Authority's (FCA) chief operating officer re-confirmed the FCA's commitment to several green finance initiatives, including: (i) the FCA's plans to consult on strengthening listed companies' transition plan disclosure requirements, (ii) the adoption of the International Sustainability Standards Board's (ISSB) IFRS S1 and S2 standards and (iii) the monitoring of the ISSB's next 2-year work plan, including a new project on nature-related financial disclosures.

Banking

5 November 2024 [Global] – **NGFS publishes Phase V of its climate scenarios for central banks and supervisors, along with accompanying guidance**

The Network for Greening the Financial Sector (NGFS) published an updated version of its climate scenarios for central banks and supervisors, already revised four times since their initial publication in 2020 [available here]. It was accompanied by an explanatory note on damage functions, NGFS scenarios and the economic commitment of climate change [available here], a technical documentation note [available here] and a high-level overview [available here].

Those climate-related scenarios aim to create a common picture of what economies may look like under different assumptions in terms of transition policies and physical risks, so as to help financial institutions assess and manage climate-related risks.

The scenarios were brought up to date with new economic and climate data, policy commitments and model versions, reflecting the latest available data. Also, the damage function used to capture physical risk has been updated to be aligned with the latest climate science research. These updates result in higher physical risk estimates and higher carbon prices required for an orderly transition, confirming and strengthening results of previous scenarios.

Asset Management

8 November 2024 [EU] – **Council of the European Union publishes text of the ESG rating activities regulation**

The Council of the European Union published the text of the Regulation on the transparency and integrity of Environmental, Social and Governance rating activities, and amending Regulations 2019/2088 and 2023/2859 [full text available here].

The proposed Regulation, dated 6 November 2024, contains regulations relating to the provision of ESG ratings in the EU, including organizational, transparency and independence requirements applicable to ESG rating providers.

The publication comes after the European Parliament voted to adopt the Regulation in April 2024 [see the previous issue of our newsletter here for further information].

The next step is for the Council to formally adopt the Regulation, which will enter into force 20 days after its publication in the Official Journal of the European Union. It will begin to apply 18 months following its entry into force.

Insurance

5 November 2024 [EU] – **EIOPA publishes factsheet on insurers' green investments in 2024**

The European Insurance and Occupational Pensions Authority (EIOPA) published a factsheet on the green investments of insurers in 2024, showing that the share of green investments in the portfolios of EEA insurers has edged higher [factsheet available here].

EIOPA collects and publishes statistics on solo insurance undertakings, with the most recent factsheet providing an overview of EEA-based insurance groups. The analysis is based on data from Solvency II quarterly group reporting for Q2 2024, and concerns eight asset classes, i.e., government bonds, equity, mortgage & loans, investment funds, cash & deposits, property and corporate bonds.

The data reveals that 4.5% of insurers' direct corporate bond and equity investments are currently aligned with the EU Taxonomy for environmentally sustainable activities. When considering only non-financial exposures, the share of Taxonomy-aligned investments rises to 10.7%, up from 5.7% in 2022. An additional 20.5% of direct corporate bond and equity investments are in sectors eligible for the Taxonomy.

7 November 2024 [EU] – **EIOPA publishes final report on prudential treatment of sustainability risks under the amended Solvability II framework**

EIOPA published its final report on the prudential treatment of sustainability risks under the amended Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance, also known as the Solvency II framework [final report available here]. The report covers three areas of analysis, as follows:

- Potential link between prudential market risks in terms of equity, spread and property risk and transition risks: To ensure insurers set aside enough capital to withstand potential losses from investments in assets with high transition risks (such as fossil fuel-related stocks and bonds), EIOPA recommends additional capital charges for the assets.
- Potential link between non-life underwriting risks and climate-related risk prevention measures: While there is a possibility that preventive, climate-related adaptation measures may lower insurers' underwriting risks, EIOPA proposes to repeat the analysis once higher quality data is available.
- Potential link between social risks and prudential risks, including market and underwriting risks: Since data and risk models enabling a proper analysis of how

social risks can translate into prudential risks on insurers' balance sheets are still lacking, the EIOPA is not recommending any specific prudential treatment at this stage.

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