CLEARY GOTTLIEB

15 October 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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- Consob publishes 6th Report on Non-Financial Reporting by Italian Listed Companies.
- Joint Committee of the ESAs publishes its 2025 Work Programme.
- FCA's Climate Financial Risk Forum publishes new guides on key areas of climate risk.

Banking

- Net-Zero Banking Alliance publishes 2024 Progress Report.
- UNEP FI publishes Responsible Banking Blueprint.

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- Climate Bonds Initiative and European Covered Bond Council (EMF-ECBC) announce partnership to certify bonds in line with the EU Taxonomy.
- Consob adopts new Regulation on the authorization and supervision of the operators eligible to apply for admission to bid in the greenhouse gas emission allowance auction market.
- ESMA publishes Public Statement on Accounting for Carbon Allowances in Financial Statements.
- French Markets Regulator publishes a Report on the readability of information on responsible funds and ESG index-linked structured products.

- ESMA publishes a TRV Risk Analysis on the assessment of portfolio exposures to climate physical risks.

Litigation

- New climate constitutional complaint submitted to the German Federal Constitutional Court.
- Lawsuit by a German environmental action group blocks North Sea Gas Drilling amid environmental concerns.

General

2 October 2024 [Italy] – **Consob publishes 6th Report on Non-Financial Reporting by Italian Listed Companies**

The Italian Financial Market Authority (Consob) released its Report on non-financial reporting by Italian listed companies for 2023 [link, in Italian and English].

The Report examines the evidence on the implementation of Directive 2014/95/EU, which was transposed into Italian law through Legislative Decree No. 254/2016. It also aims to highlight the progressive cultural shift driven by the integration of sustainability into corporate decision-making processes. The Report, now in its sixth edition, shows that listed companies are increasingly attentive to issues relating to the environmental and social impact of business activities and good corporate governance practices.

The Report includes an Addendum presenting data on the second year of implementing disclosure requirements under Article 8 of the Taxonomy Regulation. It shows that in 2023, 100% of listed companies conducted the taxonomy analysis, up from 97% in 2022. Consob noted that most companies used the mandatory reporting templates, though compliance levels varied, with some companies relying on estimates or providing incomplete KPIs.

7 October 2024 [EU] – **Joint Committee of the ESAs publishes its 2025 Work Programme**

The Joint Committee of the European Supervisory Authorities ("ESAs") published its work programme for 2025 [available here]. The related press release noted that it placed particular emphasis on ongoing collaboration to tackle cross-sectoral risks, promoting sustainability in the EU financial system and strengthening financial entities' digital resilience. [press release available here].

In particular, the ESAs will continue to play a significant role under the Sustainable Finance Disclosure Regulation ("SFDR"), and will contribute further Q&As on sustainability disclosures, as well as a report on the reporting of principal adverse impact under Article 18 of the SFDR. The ESAs also announced that they may start working towards new technical standards on ESG rating disclosures.

This Joint Committee report was published shortly after the ESAs published their own individual work programs, between 30 September and 1 October 2024:

- The EIOPA, which included its 2025 Work Programme in its Single Programming Document, listed the integration of sustainable finance considerations across all areas of work as a priority [work programme available here].
- ESMA noted that it would intensify its focus on implementing the sustainable finance legal and supervisory framework, combating greenwashing and promoting transparency in sustainable investments [work programme available here].
- The EBA noted that it would continue building its ESG risk assessment tools to enable efficient monitoring of ESG risks in the banking sector and development of the green financial market, with a primary focus on environmental risks [work programme available here].

10 October 2024 [UK] – **FCA's Climate Financial Risk Forum publishes new guides on key areas of climate risk**

The Climate Financial Risk Forum (CFRF), a consultative body set up by the FCA in 2019, comprising members from, amongst others, the asset management, insurance and banking industries, published a further set of documents relating to the management of climate-related risk. These include a handbook for financial institutions on nature-related risk to help financial institutions frame nature as a risk and incorporate nature into financial risk management [here]; a guide on short-term scenarios for banks/asset managers/insurers [here]; and a guide on "Mobilising Adaptation Finance to Build Resilience" aimed to help the industry in assessing physical risks faced by it [here]. Supporting documentation, including summaries of each guidance document, are available on the FCA's website [here].

Banking

1 October 2024 [International] – **Net-Zero Banking Alliance publishes 2024 Progress Report**

The Net-Zero Banking Alliance (NZBA) published a 2024 Progress Report [available here], which provides an overview of the NZBA member banks' efforts towards reaching net zero by 2050. The Report summarises information received from 122 member banks up to the end of May 2024 on target setting and transition planning.

The NZBA outlined that banks were positioning themselves to understand and finance the transition to net zero. In particular, the Report highlights that nearly two-thirds of the 91 banks due to publish transition plans by May 2024 have done so, with 25% more banks planning to publish their transition plans by the end of 2024.

However, it has also identified areas where additional support is needed. In particular, setting decarbonisation targets for banks remains a challenging exercise due to the quality of client greenhouse gas emissions data and unclear decarbonisation pathways. The Report includes a call-to-action for policymakers, including requests for removing barriers to bankability, improving access to data, levelling the playing field and incentivising investment.

8 October 2024 [International] – **UNEP FI publishes Responsible Banking Blueprint**

The United Nations Environment Programme Finance Initiative (UNEP FI) published a Responsible Banking Blueprint, presented as a roadmap for action on climate, nature and biodiversity, healthy and inclusive economies as well as human rights [available here].

The Blueprint advises having, amongst other goals:

- A sustainability strategy, covering several criteria and based on the results of a holistic portfolio analysis to assess impacts, risks and opportunities related to sustainability.
- Internal sustainability policies and processes, which should be implemented across all aspects of financing and investment processes.
- Competence on climate, nature and social and development-related issues at Board-level.
- Relevant climate, nature, social and human rights policies for all identified sectors with a high impact.
- Sustainable targets, and delivering them by reporting on progress against pre-defined milestones and KPIs.
- Disclosures regarding the proportion of funding in a portfolio, aligned with relevant international and national framework.

Inter-related thematic priorities are threaded through the Blueprint, and include supporting the transition towards net-zero and climate resilient development, as well as the halt and reversal of nature loss.

Asset Management

7 October 2024 [EU] – **Climate Bonds Initiative and European Covered Bond Council (EMF-ECBC) announce partnership to certify bonds in line with the EU Taxonomy**

The European Mortgage Federation – European Covered Bond Council (EMF-ECBC) and the Climate Bonds Initiative have formalized a partnership to certify bonds that meet the EU Taxonomy for sustainable activities in certain large EU economies, namely Germany, France, Ireland and Hungary [press release available here].

The collaboration, based on a Memorandum of Understanding, aims to enhance transparency, disclosure and investment in energy-efficient finance by aligning covered bonds—securities backed by assets like mortgages—with EU sustainability standards.

Key objectives include developing best practices, promoting market adoption of sustainability criteria and raising awareness among stakeholders about the benefits of green finance. The initiative combines the EMF-ECBC's Energy Efficient Mortgage Label (EEM Label) and Climate Bonds' Certification Scheme.

Both EMF-ECBC Secretary General Luca Bertalot and Climate Bonds CEO Sean Kidney highlighted the collaboration's potential to drive capital towards the climate transition, improve market transparency and reduce greenwashing.

7 October 2024 [Italy] – **Consob adopts new Regulation on the authorization and supervision of operators eligible to apply for admission to bid in the greenhouse gas emission allowance auction market**

The Italian Financial Market Authority (Consob), through Resolution No. 23270 of 3 October 2024 [link, in Italian], adopted the Regulation on the Authorization and Supervision of Operators Eligible to Apply for Admission to Bid in the Greenhouse Gas Emission Allowance Auction Market pursuant to Article 20-ter of the Italian Financial Market Act.

This Regulation, in accordance with Delegated Regulation (EU) 2023/2380, sets out the procedures for operators, other than credit institutions and banks, to submit bids on auctions of gas emission allowances either on their own account or on behalf of their clients. The operators concerned are not subject to the Market in Financial Instruments Directive (MiFID), as they engage in trading activities or provide investment services related to emission allowances as ancillary services to their main business that are exempted from MiFID.

This Regulation outlines the minimum content of authorization applications (including compliance with Fit & Proper and capital requirements) and the accompanying documentation, as well as the conduct of business rules (e.g., regarding conflict of interest and reporting) with which such operators must comply [link, in Italian].

8 October 2024 [EU] **ESMA publishes Public Statement on Accounting for Carbon Allowances in Financial Statements**

ESMA has published a Public Statement entitled "Clearing the smog: Accounting for Carbon Allowances in Financial Statements" [available here]. The statement, aimed at improving financial reporting for issuers engaging in carbon allowance programmes, takes stock of the different accounting approaches observed to date in the financial statements of European listed issuers regarding carbon pricing programmes.

It encourages issuers to consider which IFRS Accounting Standards could be used to account for carbon allowances in their financial reporting, and provides disclosure recommendations. The statement also calls for consistency, recommending that issuers carefully connect the information that is provided with respect to carbon allowances in the financial statements with the disclosures required under the European Sustainability Reporting Standards (ESRS).

9 October 2024 [France] – **French Markets Regulator publishes a Report on the readability of information on responsible funds and ESG index-linked structured products**

The French *Autorité des Marchés Financiers* (the « AMF ») published a Study Report [available here], based on the results of a June 2024 study on the clarity the information provided to retail investors. The participants were provided documentation on two types of products, namely (i) funds that incorporate non-financial approaches (responsible funds), and (ii) structured products whose performance is linked to changes in an ESG index.

Regarding responsible funds, the Study found that the name of the product and the set of sustainability-related keywords used in the product description were important indicators of product sustainability. A similar finding was made regarding labels, although a minority of participants questioned their legitimacy.

As concerns ESG index-linked structured products, the Study found that the brochures lacked clarity on the products' sustainability. In particular, despite reading the material closely, participants still found the difference between the product and the underlying index rather vague. Additionally, the fact that the product does not allow direct investment in sustainable activities went largely unnoticed.

Overall, the Study found that investors expected transparency, exhaustivity, simplicity, readability and some sort of a summary when presented with documentation on sustainable products.

9 October 2024 [EU] – **ESMA publishes a TRV Risk Analysis on the assessment of portfolio exposures to climate physical risks**

ESMA published a Trends, Risks and Vulnerabilities ("TRV") Analysis on assessing portfolio exposures to climate physical risks [available here]. The Analysis outlined the importance of understanding the physical impacts of climate change, for both fund managers and financial sector authorities. It referred to the management of the indirect exposure to climate physical risks through financial assets as a key challenge.

However, the Analysis highlighted that the assessment of portfolio exposures to the physical impacts of climate change was subject to various limitations, amongst which data access and granularity. This is because a mapping of climate risks requires—in particular—information on the financial dependency of portfolio investments, geospatial information on the physical assets and suppliers, as well as information on the physical risk drivers that can impact these physical assets and suppliers.

The Analysis illustrates the merits and limitations of two different assessment methodologies and data sources—i.e., top-down assessment using aggregate physical risk measures applied to individual financial exposures, and full bottom-up assessment of exposures—based on an analysis of EU investment fund portfolio holdings.

Litigation

16 September 2024 [Germany] – **New climate constitutional complaint submitted to the German Federal Constitutional Court**

Greenpeace and Germanwatch (both NGOs) filed a constitutional complaint with the German Federal Constitutional Court. This complaint was joined by 54,000 people. The complainants are challenging amendments to the Climate Protection Act that the Bundestag passed in April 2024.

Prior to these amendments, all defined sectors had to comply with specific climate targets. If a sector failed to meet its climate targets, the federal government was required to take immediate action.

Under the revised law, the federal government only has to take action and issue climate protection measures if the overall climate targets for all sectors combined are not met.

The complainants want to challenge the possibility to bypass the climate targets of individual sectors (e.g. traffic) created by the amendment to the Climate Protection Act.

The timeline for a court decision is currently unknown [See further].

7 October 2024 [Germany] – **Lawsuit by a German environmental action group blocks North Sea Gas Drilling amid environmental concerns**

The Environmental Action Germany NGO ("Deutsche Umwelthilfe", or "DUH") has filed a lawsuit against the approval of gas drilling in the North Sea (Borkum) by Dutch energy company One-Days.

The Lower Saxony State Office for Mining, Energy and Geology ("LBEG") has granted One-Days approval to extract natural gas for 18 years, starting in 2024.

DUH, supported by other environmental organizations, seeks to halt the project. The group argues that LBEG failed to conduct adequate environmental impact assessments and instead relied too heavily on findings from Dutch authorities, which they claim are insufficient.

The Oldenburg Administrative Court ruled in favor of DUH in summary proceedings in August 2024. This decision temporarily prevented the deployment of an undersea cable required for the installation of the gas extraction system.

Additionally, in order for natural gas to be extracted in the North Sea, an international agreement between the Netherlands and the Federal Republic of Germany is required. Robert Habeck (Federal Minister for Economic Affairs and Climate Affairs) has already announced that he will not ratify such an agreement until the courts have made a legally binding decision.

[See further]



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This memorandum was intended for **Global-Client Alert**.

We have recently updated our external privacy statement. You can read the latest version here.

This message was prepared as a service to clients and other friends of Cleary Gottlieb to report on recent developments that may be of interest to them. The information in it is therefore general, and should not be considered or relied on as legal advice.