

CLEARY GOTTLIB



17 September 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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- Environmental Action Germany (DUH) sues the German government again at Higher Administrative Court Berlin/Brandenburg, 7 August 2024

General

7 August 2024 [EU] – **Commission publishes FAQs to support stakeholders in the implementation of the EU corporate sustainability reporting rules**

The European Commission published a draft Commission Notice containing a set of replies to frequently asked questions (FAQs) regarding the interpretation of certain provisions on sustainability reporting introduced by the Corporate Sustainability Reporting Directive. [Press release available [here](#).]

The FAQs cover issues such as the scope of the rules, application dates, and exemptions. For instance, they clarify when companies may use estimates rather than having to collect value chain information from suppliers or partners.

In particular, the FAQs provide precisions regarding individual and consolidated sustainability statements (Articles 19a and 29a of the Accounting Directive) or non-EU undertakings with an EU subsidiary or branch (Article 40a of the Accounting Directive).

Other Sections of the draft Commission notice include FAQs on the assurance of sustainability reporting, FAQs on key intangible resources, Additional FAQs on requirements for third country undertakings, as well as an FAQ on SFDR. [Full draft notice available [here](#).]

9 August 2024 [EU] – **Commission Recommendation on the energy efficiency first principle published in the Official Journal**

The Commission Recommendation (EU) 2024/2143 setting out guidelines for the interpretation of Article 3 of Directive (EU) 2023/1791 as regards the energy efficiency first principle was published in the Official Journal of the European Union. [Final text available [here](#).]

The Recommendation provides guidance on how to interpret Article 3 of Directive 2023/1791, which notably requires Member States to ensure the assessment of energy efficiency solutions in planning, policy and major investment decisions in both energy and non-energy sectors.

In particular, the guidelines available in the Annex to the Recommendation state that energy efficiency solutions should go beyond end-use energy savings, covering also demand-side resources and the efficient conversion, transmission and distribution of energy.

Member States are expected to incorporate the principle in their decision-making and permitting processes and apply it in all relevant future planning, policy and major

investment decisions.

10 September 2024 [UK] – Welsh Government consults on sustainable investment principles for funding nature recovery

The Welsh Government launched a consultation on a set of sustainable investment principles. This approach is intended to increase and diversify the funding available, to effectively tackle the nature emergency and the pressures that drive biodiversity loss.

The proposed principles [available [here](#)] emphasize that funding should support integrated land use and the equitable sharing of the benefits, deliver public, private, community and cultural well-being benefits. Additionally, the principles stress the importance of being values-driven and upholding high standards of integrity.

Moreover, it is submitted that investment in natural resources should be measurable and verifiable, that the benefits of carbon and nature-based credits should be robustly assessed, that there should be no double-counting of carbon or nature-based credits and that transparent registers should register, track and permanently retire verified credits.

The consultation closes on 3 December 2024 [full consultation available [here](#)].

30 July 2024 [EU] – Climate Resilience Dialogue publishes Final Report

The Climate Resilience Dialogue, a temporary group of stakeholders set up by the European Commission, has published its Final Report, following an interim publication in July 2023.

The Climate Resilience Dialogue was set up to propose solutions aimed at narrowing the climate protection gap (i.e., the gulf between how much is lost and how much is insured) and increasing the resilience of economies and societies against climate change impacts.

The Final Report provides a brief overview of the main climate-related risks to which people, businesses and assets are currently exposed in Europe, and presents an overview of existing insights, lessons and learnings with the aim of proposing actions.

In particular, the Report analyses the key contributing factors of the climate protection gap and puts forwards possible solutions focusing on risk reduction, risk sharing and risk transfer approaches (such as public-private partnerships and other insurance-based solutions). [Full report available [here](#).]

10 September 2024 [Italy] – The Italian Decree transposing the CSRD has been published in the Official Gazette

On 10 September 2024, the Italian Legislative Decree No. 125 of 6 September 2024 (the “CSRD Decree”) transposing Directive (EU) No. 2022/2464 on Corporate Sustainability Reporting (“CSRD”) was published in the Official Gazette [[link](#)], following the final approval by the Italian Council of Ministers.

The draft of the CSRD Decree was preliminarily approved by the Italian Government on 10 June 2024, following the public consultation that ended on 18 March 2024. It was then transmitted to the parliamentary committees, which expressed their

favourable opinions with observations. The Italian Council of Ministers approved the final text of the CSRD Decree on 30 August 2024, incorporating minor amendments based on the parliamentary committees' observations (e.g., regarding the transitional period for sanctions on sustainability auditors).

Although the CSRD Decree will formally enter into force on 25 September 2024, the application of its provisions will be phased-in according to the schedule outlined in the CSRD:

- FY 2024: Companies already required to report under the NFRD;
- FY 2025: Large EU companies and parents of large EU groups not subject to the NFRD;
- FY 2026: Listed SMEs; and
- FY 2028: In-scope third-country undertakings.

29 July 2024 [Italy] – Consob issues call for attention to intermediaries on sustainable finance and ESG information

On 29 July 2024, Consob intervened with a call for attention to intermediaries, emphasizing the need to provide clear, concise and understandable information, on sustainable finance and ESG issues, even for less sophisticated clients. According to Consob, intermediaries must consider clients' preferences on these issues within investment suitability assessment and product governance with a view to avoiding greenwashing and mis-selling risks.

Specifically, Consob's call for attention aims to highlight these crucial aspects in the current stage of implementation of Regulation (EU) No. 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR), as amended by EU Taxonomy Regulation, as well of the relevant Delegated Acts. Therefore, this call for attention does not provide new ESG rules, but emphasizes prescriptions already in force, considering the huge production of EU-related law developed over the past few years.

In this regard, Consob's call for attention also includes a list of positive and negative operational practices that have emerged, in order to assist intermediaries to adopt more consistent implementing methods.

Following such communication, Consob will continue to supervise intermediaries, in coordination with ESMA, to ensure full compliance with the EU sustainable finance and ESG regulatory framework [[link](#)].

Asset Management

21 August 2024 [EU] – ESMA publishes the official translations of its guidelines on funds' names using ESG or sustainability-related terms

ESMA published the official translations of its guidelines on funds' names using ESG or sustainability-related terms [available [here](#)], initially published on 14 May 2024, in English only.

The Guidelines, applying from 21 November 2024, aim to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names. [Please refer to our newsletter available [here](#) for more information.]

NCAAs must notify ESMA by 21 October 2024 whether they comply, do not comply but intend to comply, or do not intend to comply with the guidelines.

Insurance

11 September 2024 [EU] – EIOPA proposes reform of the Pan-European Pension Product, to tackle Europe’s pension gap and support the digital and green transitions

The European Insurance and Occupational Pensions Authority (EIOPA) published a Staff Paper on the future of the Pan-European Pension Product (PEPP), suggesting improvements to its design to, as stated in the EIOPA Press release, “*overcome supply-side, demand-side and structural barriers hindering its broader adoption*”. [Press release available [here](#).]

The Pan-European Pension Product (PEPP) was launched in 2022 to offer a transparent and cost-efficient retirement savings option for European citizens, as well as to supply vital capital to finance, amongst others, the green and digital transitions. The Staff Paper is aimed at taking stock of why PEPP has not developed further, and proposes corresponding enhancements [Staff Paper available [here](#).]

Litigation

9 September 2024 [Germany] – Environmental Action Germany (DUH) wins injunction against Tui Cruises GmbH and Shell Germany at Hamburg Regional Court (Az. 315 O 9/24 and Az. 315 O 108/22)

In response to an action brought by Deutsche Umwelthilfe under Sections 8(1), 3(3), 3(1) and 5(1) of the German Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb*), the Regional Court of Hamburg has ordered cruise company Tui Cruises GmbH to cease and desist from a particular form of climate-related advertising. Tui Cruises GmbH had used the phrase “2050 Decarbonised Cruise Operation (Net-zero)” on its website. The Court prohibited the defendant from using this term on the grounds that the climate-related wording was misleading. It was not clear whether the cruise operation would be completely CO₂-free in 2050 or whether a neutral carbon balance would be achieved through offsetting measures. The Court reiterated the strict requirements for accuracy, unambiguity and clarity of environmental claims. [See further [here](#), [here](#) and [here](#).]

In further greenwashing proceedings, Shell Germany was prohibited from advertising its motor oil as “CO₂ neutral”. In addition, the defendant was prohibited from promising motorists that their CO₂ emissions could be offset by a price of 1.1 cents per liter of fuel. The claimant (DUH) criticized the lack of transparency behind the claims, in particular how CO₂ neutrality would be achieved. [See further [here](#) and [here](#).]

Both decisions can be appealed.

7 August 2024 [Germany] – Environmental Action Germany (DUH) sues the German government again at Higher Administrative Court Berlin/Brandenburg

After their most recent success in July (OVG 11 A 16.20), DHU has sued the German government again. DUH is particularly concerned with compliance with the EU Climate Change Regulation and the LULUCF (Land Use, Land Use Change and Forestry) Regulation. The latter contains rules for the reduction of emissions and CO₂ in the above-mentioned sectors. Germany is obliged to achieve clear targets for the sequestration of greenhouse gases by ecosystems. DUH alleged its certainty that Germany will miss this target. The claimant also sees breaches of the Climate Change Regulation. This requires member states to reduce their emissions in the transport, buildings, small industry, waste and agriculture sectors by 50 per cent by 2030 compared to 2005 levels. In both cases, DUH says the German government has not taken sufficient corrective measures to meet the targets. According to DUH, appropriate measures to prevent this have been on the table for a long time. It is explicitly referring to speed limits on German motorways, allegedly saving more than 11 million tons of CO₂ a year. [See further details [here](#).]



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

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