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Climate and the Financial Sector

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

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- EFRAG finalizes ESRS Implementation Guidance
- German Minister for Economic Affairs considers pausing the Supply Chain Act
- ESAs publish their final reports on greenwashing in the financial sector
- ESAs publish Joint Annual Report highlighting 2023 work on SFDR
- German Ministry of Finance proposes amendments to empower BaFin for Green Bond supervision
- Joint Insurance, Banking and Savings Division of the ACPR and the AMF publishes its 2023 Annual Report

Banking

- Member of the ECB's Supervisory Board discusses the consequences of banks failing to meet the ECB's expectations on climate risks
- The AMF releases results of its study on sustainability preferences in the banking sector
- President of the ECB speaks on the role of the ECB in relation to climate and nature-related risks

General

31 May 2024 [EU] – EFRAG finalizes ESRS Implementation Guidance

Following a public consultation from 22 December 2023 to 2 February 2024, the European Financial Reporting Advisory Group (EFRAG) finalized the first three ESRS Implementation Guidance documents, which are designed to:

- assist undertakings and other stakeholders in implementing the European Sustainability Reporting Standards (ESRS);
- help them focus on the aspects of the ESRS that are more relevant to them; and
- illustrate the reporting requirements with practical language and frequently asked questions.

The guidance documents include IG 1: Materiality Assessment Guidance (MAIG), IG 2: Value Chain Implementation Guidance (VCIG) and IG 3: List of ESRS Datapoints. The EFRAG also published the feedback statements for each of the Implementation Guidance documents and, for IG 3, an explanatory note. [[link](#)]

2 June 2024 [EU & Germany] – German Ministry of Finance proposes amendments to empower BaFin for Green Bond supervision

The German Ministry of Finance has published a draft bill to implement the necessary national adjustments and accompanying regulations to align with EU Regulation 2023/2163 on European green bonds. With this regulation, the Securities Prospectus Act (*Wertpapierprospektgesetz*) will be supplemented with new sections and expanded to include key provisions and terminologies from the regulation. Issuers of European green bonds will need to comply with reporting obligations to the Federal Financial Supervisory Authority (BaFin), which will receive the necessary enforcement powers. Proposed revisions include further amendments to the Securities Trading Act (*Wertpapierhandelsgesetz*), Banking Act (*Kreditwesengesetz*), Insurance Supervision Act (*Versicherungsaufsichtsgesetz*), and Capital Investment Act (*Kapitalanlagegesetz*).

Starting 21 December 2024, EU Regulation 2023/2163 on European green bonds and voluntary disclosures for ecologically sustainable and sustainability-linked bonds will apply directly in all EU member states. This regulation governs the market for bonds that issuers wish to label as “European Green Bonds.”

For more details, see the full proposal [here](#).

4 June 2024 [EU] – ESAs publish their final reports on greenwashing in the financial sector

The European Banking Authority (EBA) [[here](#)], the European Insurance and Occupational Pensions Authority (EIOPA) [[here](#)] and the European Securities and Markets Authority (ESMA) [[here](#)] (together the European Supervisory Authorities – ESAs) separately published Final Reports on greenwashing in the financial sector, outlining each ESA’s supervisory response to greenwashing risks and providing their views on how sustainability-related supervision can be enhanced in the future.

The Final Reports reiterate the “common high-level understanding” previously outlined in their June 2023 progress reports on greenwashing, whereby greenwashing is targeted as a practice whereby sustainability-related statements, declarations, actions

or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product or financial services, potentially misleading consumers, investors or other market participants.

The EBA's final report puts forward a series of recommendations for institutions and competent authorities. ESMA also indicates priority actions enabling supervisors to better mitigate greenwashing risks, in a related press release [\[here\]](#). The EIOPA also published an opinion on greenwashing in the insurance and pensions sectors, complementing the final report [\[here\]](#).

7 June 2024 [EU] – ESAs publish Joint Annual Report highlighting 2023 work on SFDR

The EBA, EIOPA and ESMA published their Joint Annual Report 2023, which provides an account of the joint work carried out in 2023, covering joint risk assessment, sustainable finance, digitalization, consumer protection, securitization, financial conglomerates and central clearing.

In relation to sustainable finance in particular, the ESAs focused on the Sustainable Finance Disclosure Regulation (SFDR), including:

- the publication in December 2023 of the Final Report on the draft Regulatory Technical Standards on the review of principal adverse impacts (PAIs) and financial product disclosures in the SFDR Delegated Regulation; and
- the publication in September 2023 of the ESAs' second annual Report on the extent of voluntary disclosure of PAIs under Article 18 of the SFDR.

The report highlights that the ESAs are preparing a joint opinion to contribute to the European Commission's ongoing reassessment of the SFDR framework. [\[link\]](#)

7 June 2024 [Germany] – German Minister for Economic Affairs considers pausing the Supply Chain Act

Robert Habeck, German Minister for Economic Affairs and Climate Action, publicly stated that the government is considering a moratorium on the supply chain act for two years. The act came into force in January 2023. This is intended to ease the bureaucratic burden on companies until the European Corporate Sustainability Due Diligence Directive (CS3D) comes into force in 2026.

Social democrats were critical of the proposal while liberals stressed the need to support small and medium-sized businesses. Since all three governing parties suffered losses in the European elections, the plans to temporarily step back from the controversial supply chain act could be given more emphasis.

According to Habeck, a final decision will be made in two to three weeks. [\[See further here\]](#)

An analysis of the CS3D proposal is accessible [here](#), and an analysis of the CS3D and the German *Lieferkettensorgfaltspflichtengesetz* and the French *Loi de vigilance* [here](#).

12 June 2024 [FR] – Joint Insurance, Banking and Savings Division of the ACPR and the AMF publishes its 2023 Annual Report

The Joint Insurance, Banking and Savings Division of the ACPR and the AMF published its annual report for 2023, highlighting the issues that were addressed in 2023, including the prevention of financial fraud, the fight against greenwashing and the mapping of the structured products market.

With respect to sustainable finance, the fight against greenwashing and the development of a range of trustworthy sustainable products have been key concerns for the ACPR and the AMF, which have worked together in the Joint Division. In particular, they have worked to simplify the information provided to clients on sustainable products in the context of the revision of the SFDR, in order to make these products easier to understand and more marketable.

The authorities have also closely monitored the use of sustainable arguments in advertising as part of the fight against greenwashing, and have noted a decline in the use of green arguments in the advertising of financial products. [[link](#)]

Banking

5 June 2024 [[EU](#)] – Member of the ECB’s Supervisory Board discusses the consequences of banks failing to meet the ECB’s expectations on climate risks

In an interview, Kerstin af Jochnick, member of the Supervisory Board of the European Central Bank (ECB), emphasized that the ECB expects all banks to be aligned with its climate risk related expectations, by the end of 2024.

In the event of non-compliance, Mr. af Jochnick stated that the ECB would be able to take more stringent measures if necessary to enforce such expectations, including imposing capital increases of banks in certain areas or imposing fines until they meet the requirements.

In the meantime, banks are required to meet interim milestones. A few have already been notified that they have failed such milestones, and thus face the prospect of having to pay a pecuniary penalty. This penalty will be based on an assessment of the documentation submitted by the banks and the total number of days they may have been out of compliance beyond the deadlines set by the ECB. [[link](#)]

6 June 2024 [[FR](#)] – The AMF releases results of its study on sustainability preferences in the banking sector

The French AMF published a report presenting the detailed results of the mystery shopping campaigns conducted in bank branches [[here](#)]. This exercise aimed at inventorying the practices used to collect the sustainability preferences of customers during the investment advice process.

Amongst findings, the report notes that only five advisers out of twelve provided detailed explanations on sustainability preferences, with questions on those preferences only asked at a third of the appointments. And for two thirds of the appointments, there was no explanation of the Taxonomy, the SFDR, or the notion of Principal Adverse

Impact. On the positive side, the AMF noted that majority of commercial proposals were for ISR-labelled equity funds.

7 June 2024 [EU] – **The President of the ECB speaks on the role of the ECB in relation to climate and nature-related risks**

In a speech, Christine Lagarde, President of the ECB, emphasized that climate and natural risks pose a unique challenge for central banks, as:

- they constitute a new type of systemic risk, inevitable and extending globally;
- their impact is irreversible, with the risk of reaching points of no return;
- their impacts will spread throughout the economy, affecting central banks' tasks; and
- they are unique, in that central banks can help mitigate them, unlike, for instance, geopolitical risks.

Ms. Lagarde noted that the ECB has a role to play, particularly in the fight against climate change. Such role may be summarized in three points: analysing, advising and acting.

- First, the ECB must analyse how climate change affects the economy, the financial system and its own activities.
- Then, the results of this analysis may influence the ECB's internal thinking and guide its approach to policymaking (e.g. in relation to carbon pricing, climate disclosure, completion of the EU's Capital Markets Union).
- Finally, the ECB acts in various ways to contribute to the mitigation and prevention of climate risks.

The ECB's actions include, on the monetary policy front, starting to tilt the reinvestment of its corporate bond holdings towards issuers with better climate performance, while as a supervisor, the ECB ensures that banks integrate climate and nature-related risks into their strategy, governance and risk management. [[link](#)]



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