

CLEARY GOTTLIB



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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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General

17 June 2024 [EU] – Council of EU adopts position on Green Claims Directive

The Council of EU adopted its "general approach" on the Green Claims Directive [available [here](#)], which aims to address greenwashing through the substantiation of publicly communicated environmental claims [the Proposal for a directive is available [here](#)]. A general approach is the first public expression of Council's view on a legislative proposal from the Commission, listing the changes that the Council is likely to make to the proposal.

Amongst proposed modifications, the general approach draws a distinction between explicit environmental claims and environmental labels, as to better specify the requirements applicable to each, and to both.

Also, while it maintains the principle of an ex-ante verification of claims, it introduces a simplified procedure to exempt certain claims from third-party verification. Similarly, certain ecolabelling schemes should be exempt if they are officially recognized in a member state.

In addition, the general approach offers a distinction between claiming to contribute to climate action and merely offsetting an emissions share, in the context of a climate-related claim.

18 June 2024 [EU] – ESAs publish joint opinion on the assessment of SFDR

The EBA, EIOPA and ESMA (ESAs) have published a joint Opinion on the assessment of SFDR [available [here](#)], calling for a coherent sustainable finance framework that caters for both the green transition and enhanced consumer protection.

The ESAs suggest introducing a product classification system, based on regulatory categories or sustainability indicators, which need to rely on clear objective criteria or thresholds. The ESAs propose, at a minimum, categories of "sustainability" and "transition". With clear product categories and sustainability indicators, consumers will

have a more readable selection, and sustainability disclosures would not need to be as detailed and extensive.

In addition, the Opinion covers the following areas: (i) appropriate disclosures for products outside the two categories to reduce greenwashing, (ii) improvements to the definition of sustainable investments and (iii) simplification to the way disclosures are presented to investors.

18 June 2024 [EU] – Delegated regulation concerning environmental disclosure standards for STS securitizations published in Official Journal

Commission delegated regulation (EU) 2014/1700 was published in the Official journal, following its adoption on 5 March 2024. The delegated regulation [[available here](#)] sets regulatory technical standards supplementing the securitization regulation, specifying the content, methodologies and presentation of information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors. It includes an Annex providing templates, definitions and formulas to be used by originators when providing information about the adverse impacts of assets financed by underlying exposures, on the environment and other sustainability factors. For more information, please refer to our newsletter available [here](#).

19 June 2024 [France] – French regulators publish new joint report on the monitoring and assessment of the climate commitments made by Paris financial centre participants

The AMF and the ACPR have published the fourth edition of their joint report on the monitoring and assessment of the climate commitments made by Paris financial centre participants [[available here](#), in French only]. The report highlights the progress and challenges faced by banks, insurers and investment management companies in meeting climate goals, influenced by the evolving European regulations such as SFDR and CSRD.

Key findings indicate that banks and insurers are making strides in exiting coal financing, with banks on track for their 2030 (OECD) and 2040 (global) targets. However, coal exposure reduction is moderate, and policies remain largely unchanged. As concerns the oil and gas sector, the report urges banks to clarify their exclusion policies and insurers to disclose more about their fossil fuel liabilities.

Investment management companies are aligning with collective climate initiatives but need to clarify objectives and improve transparency in their policies, especially regarding fossil fuel exclusions. Increased communication on voting and shareholder engagement is noted, yet formalization and transparency remain areas for improvement.

In a press release [[available here](#)], the AMF and ACPR noted that they were, as in previous years, urging banks, insurers and investment management companies to continue their efforts to take account of and manage the risks associated with climate change.

24 June 2024 [International] – **ISSB announces new work plan, including further harmonization of the sustainability disclosure landscape**

The International Sustainability Standards Board (ISSB) has announced [press release available [here](#)] further harmonisation of the sustainability reporting landscape, as part of its two-year work plan. Key initiatives in the new work plan include:

- **Transition Plan Disclosures:** The ISSB will streamline and consolidate frameworks for corporate transition plans to a lower-carbon economy, enhancing the application of IFRS S2.
- **GHG Emissions Measurement:** Partnering with the GHG Protocol, the ISSB will ensure compatibility and effective governance in GHG emissions reporting, including Scope 3 emissions.
- **Collaboration with CDP:** Aligning CDP's platform with IFRS S2 to aid companies in complying with ISSB Standards.
- **Interoperability with GRI:** Joint efforts with the Global Reporting Initiative to align common disclosures, creating a comprehensive global sustainability reporting system.
- **Biodiversity and Ecosystems:** The ISSB will integrate insights from the Taskforce on Nature-related Financial Disclosures (TNFD) into its research on biodiversity, ecosystems and ecosystem services.

The ISSB's harmonisation efforts aim to simplify sustainability reporting, providing high-quality, decision-useful information to meet the needs of investors and the financial markets.

25 June 2024 [EU] – **ECB publishes second set of climate-related financial disclosures**

The ECB has published its second set of climate-related financial disclosures [reports available [here](#) and [here](#)], revealing a decline in carbon emissions from Eurosystem corporate sector portfolios in 2022 and 2023. The reduction is largely attributed to issuers becoming more carbon efficient. Key highlights from the report include:

- **Emissions Reduction:** Carbon emissions linked to Eurosystem portfolios have significantly decreased, with approximately 20% of this reduction due to strategic reinvestment decisions.
- **Interim Targets:** The ECB's Governing Council has agreed to set interim emission reduction targets for corporate sector portfolios under the asset purchase programme (APP) and pandemic emergency purchase programme (PEPP).
- **Expanded Disclosures:** The scope of disclosures now includes public sector assets, covered bonds and the ECB's foreign reserves, covering 99.7% of assets held for monetary policy purposes. Emissions from these assets are also declining.
- **Non-Monetary Policy Portfolios:** ECB staff pension fund investments and the ECB's own funds have shown significant improvements. Corporate investments in the pension fund now track EU Paris-aligned Benchmarks, reducing associated emissions by around 50% in 2023. The ECB aims for a 7% annual reduction in carbon footprint for these investments.

- Green Bonds: The share of green bonds in the ECB's own funds portfolio increased from 13% in 2022 to 20% in 2023, providing over €4.5 billion in funding for the green transition. This share is expected to reach 25% in 2024.

27 June 2024 [International] – IFC and IFRS Foundation announce partnership to improve sustainability reporting in emerging markets

The International Finance Corporation (IFC) and the IFRS Foundation have signed a Memorandum of Understanding establishing a strategic partnership aimed at enhancing sustainable capital markets [press release available [here](#)]. This partnership will focus on improving sustainability and climate change reporting in emerging markets and developing economies. Key objectives include (i) promoting and building capacity for the consistent application of the IFRS Sustainability Disclosure Standards in these countries, and (ii) providing technical assistance and tailored support to help countries adopt and implement these Standards.

27 June 2024 [International] – UNEP FI, PRI and Climate Bonds Initiative announce a collaboration to support taxonomy efforts around the world

United Nations Environment Programme Finance Initiative (UNEP FI), Climate Bonds Initiative and the Principles for Responsible Investment (PRI) have announced a collaboration to support global interoperability and the implementation of sustainable finance taxonomies and other frameworks [press release available [here](#)]. This collaboration aims to standardize taxonomy definitions and concepts among standard setters, policymakers and taxonomy users, support the development of taxonomies addressing emissions reduction, climate resilience and other environmental objectives and provide tools for implementation.

28 June 2024 [EU] – EFRAG releases paper on interplay of connectivity and annual report boundaries

EFRAG has published a paper entitled “*Connectivity considerations and boundaries of different Annual Report sections*” [available [here](#) or, for the short version, [here](#)]. The paper outlines the conceptual foundations and different aspects of connectivity, and various aspects of connectivity, with the goal of fostering a common understanding among stakeholders. Key benefits of connectivity include improving the coherence and complementarity of information in the annual report, minimizing information gaps and overlaps in the annual report, enhancing the predictive value of sustainability reporting through links to future financial statements and promoting strategic communication of the annual report. In addition, the paper seeks to clarify reporting boundaries to help stakeholders understand what information is included or excluded in different sections of the annual report, to clarify what information can and cannot be connected and to reduce expectation gaps, particularly around what information can be reported in the financial statements.

10 June 2024 [Italy] – The Italian Council of Ministers approved the Draft Decree transposing the CSRD.

On 10 June 2024, following a public consultation, the Italian Council of Ministers preliminarily approved the draft legislative decree (“**Draft Decree**”) transposing Directive (EU) No. 2022/2464 on Corporate Sustainability Reporting (“**CSRD**”) [[link](#)], which replaced the non-financial reporting obligations set forth by the Non-Financial Reporting Directive with sustainability reporting requirements and gradually extends such reporting obligations to all large undertakings (regardless of whether they are public interest entities), SMEs (except for micro-enterprises) whose securities are admitted to trading on a regulated market in the EU and third country undertakings (provided that certain conditions are met).

Even though Member States are required to transpose the CSRD by 6 July 2024, the Draft Decree is still subject to the opinions of the competent parliamentary. Consequently, the deadline for its final approval has been postponed to 10 September 2024.

The Draft Decree clarifies that the sustainability report will be part of the management report under Article 2428 of the Italian Civil Code, to be provided as an annex to annual financial statements. Consob will supervise sustainability reporting by listed companies.

The application of the new provisions under the Draft Decree will be phased-in in accordance with the phase-in period provided for under the CSRD (*i.e.*, FY 2024 for companies already required to report under the NFRD; FY 2025 for large EU companies and parents of large EU groups not subject to the NFRD; FY 2026 for listed SMEs; FY 2028 for in scope third country undertakings).

19/25 June 2024 [Italy] – **Italian Supervisors drive forward on sustainable Investments in recent weeks**

On 19 June 2024, the Italian Financial Authority (Consob), in collaboration with Rome III University, published a comprehensive report on the advisor-investor relationship concerning sustainability and investments [[link](#)]. The report, based on a survey of investors and financial advisors, highlighted a persistent lack of understanding about sustainable investments compared to other forms, with investors expressing concerns about greenwashing.

Meanwhile, underscoring its commitment to fostering a sustainable finance culture as outlined in the 2021 “[Responsible Investment Charter](#),” the Bank of Italy released its annual report on 25 June 2024. The report detailed the 2023 results and methodologies applied to ESG criteria in managing its investments [[link](#)].

Banking

18 June 2024 [EU] – **Commissioner McGuinness gives speech on Capital Market Union and Banking Union**

In a keynote speech at the European Financial Integration 2024 joint conference of the ECB and the European Commission [[available here](#)] Mairead McGuinness discussed the Capital Market Union (CMU) and Banking Union, including remarks about the climate transition.

McGuinness outlined the need for funds and investments, citing a figure of an additional annual investment of more than €600 billion for the climate transition, aimed at investing in both renewables and other “basics”, but also new clean and green technologies.

While considered banks have a role to play in that regard, she explained that the funding will need to come mainly from capital markets, supporting the increasing need for “*a deep, liquid and unified capital market*”.

19 June 2024 [International] – NGFS publishes the second edition of its guide on climate-related disclosure for central banks

The Network for Greening the Financial System (NGFS) has published an updated guide on climate-related disclosure for central banks [available [here](#)], calling on the latter to lead by example. The Guide builds on the original recommendations made by the Task Force on Climate-related Financial Disclosures (TCFD). It focuses on four thematic areas, in which both “baseline” and “building block” disclosures are recommended, including:

- **Governance:** disclosing institutional objectives and processes for informing the board and management as concerns climate-related goals and issues.
- **Strategy:** disclosing a description of material climate-related risks to the central bank across its area and functions, as well as identification approaches of such risks.
- **Risk Management:** disclosing the processes for managing climate-related, with a focus on identification, assessment, and integration into the risk-management framework.
- **Metrics and Targets:** Disclose metrics and targets relating to adjustments—for climate-related reasons—to the monetary policy framework or to financial regulation, and relating to internal operations (e.g., intermediate and final targets for GHG emissions).

Insurance

20 June 2024 [France] – French insurance supervisor publishes article on the risks associated with biodiversity loss

The ACPR has published a report entitled “*French insurers facing the risks associated with biodiversity loss: Challenges and lessons learned for the insurance industry and supervisors*” [available [here](#)]. The report highlights the main challenges and transmission channels of biodiversity loss-related risks within the insurance industry. It explains that while the insurance business itself is not directly dependent on ecosystem services and has a very limited impact on biodiversity loss, insurers are still indirectly exposed to biodiversity loss through their investment (on the asset side) and risk coverage (on the liability side) activities. In addition, the report discusses the reporting requirements for insurers under Article 29 of the French Energy and Climate Law (Article 29 LEC) and provides an overview of the information on biodiversity-related risks included in the 2022 and 2023 reports. Finally, the report makes some

recommendations on biodiversity, highlighting three main steps to meet the requirements of Article 29 LEC in the biodiversity section: (i) risk assessment, (ii) governance and compliance with the objectives of the Convention on Biological Diversity and (iii) analysis of key pressures and impacts.

Litigation

18 June 2024 [France] – Paris Court of Appeal rules on the admissibility of injunctions under the Duty of Vigilance Law

The Paris Court of Appeal issued three rulings on appeals against the decisions of the pre-trial judge (*juge de la mise en état*) of the *Tribunal Judiciaire* de Paris declaring inadmissible the actions for injunctions brought against TotalEnergies, EDF and Vigie Groupe (Suez) under the Vigilance Law.

The Court ruled that the actions brought against TotalEnergies and EDF were admissible [available [here](#) and [here](#), in French only], and in particular that:

- while the summons must relate to the same obligations as those covered by the formal notice, it is not necessary for the summons and the formal notice to relate to the same due diligence plan in terms of dates;
- any person with an interest to act has the right to bring an action before the judge after a formal notice has been issued, regardless of whether he or she is the author of the formal notice; and
- in the case of actions brought by local authorities, only the demonstration of a local public interest, and not a global public interest, gives them the right to act.

However, the Court confirmed the inadmissibility of the action brought against the Vigie Groupe, considering that it had no quality to defend, since the vigilance plan was drawn up and implemented by its parent company [available [here](#), in French only].

18 June 2024 [Italy] – First criminal proceedings for smog-related crimes initiated in Italy against the former Turin and Piedmont Region administrators.

On 18 June 2024, the first hearing of the so-called “Smog Trial”, as it is called in the city of Turin, took place. The proceedings involve seven municipal and regional administrators who governed Turin and Piedmont from 2015 to 2019, facing prosecution for the crime of negligent environmental pollution and the corresponding civil liabilities. The charges are in relation to their alleged failure to safeguard air quality in Piedmont’s capital.

The prosecution contends that these former administrators did not implement effective measures to prevent air pollutant concentrations from consistently surpassing legal limits. This negligence is believed to have resulted in over a thousand premature deaths and numerous hospital admissions. This is the first case where that the offence of negligent environmental pollution, introduced in 2015, has been invoked by Italian courts against public administrators.

The investigations leading to this case were initiated following a complaint to the Public Prosecutor's office lodged by Turin Breathing Committee (*Torino Respira*) which alleged that the former mayor of Turin, Piedmont's President and several other local politicians were fully aware of the situation of excessive smog but failed to take the necessary measures to solve the problem. Smog is a pressing issue not only in Piedmont but also across the entire Pianura Padana area [[link](#)].

20 June 2024 [UK] – UK Supreme Court rules that environmental impact assessments must consider greenhouse gas emissions from use of end product originating from a proposed project

Before planning permission can be granted for a development project which is likely to have significant effects on the environment, legislation in the UK requires an environmental impact assessment ("EIA") to be carried out. In this case, the developer of a proposed oil production site argued that, as regards the impact of the project on climate, the scope of the EIA should be confined to the direct releases of greenhouse gases from within the well site boundary during the lifetime of the project; and that the EIA need not include an assessment of the greenhouse gas emissions that would occur when the oil extracted from the wells was ultimately burnt elsewhere as fuel. The council accepted this approach, and its decision to grant planning permission for the project was, therefore, made without assessing or taking into account the emissions that will occur upon combustion of the oil produced. The claimant, a local resident, applied for judicial review of the council's decision.

By a three-to-two majority, the Supreme Court held that the council's decision was unlawful because the emissions that will occur when the oil produced is burnt as fuel are within the scope of the EIA required by law. On the specific question of whether the combustion emissions constitute "direct or indirect ... effects of the project" within the meaning of Directive 92/11/EU (the "EIA Directive") and the UK Regulations implementing the same, the majority of the Supreme Court considered that the emissions that will occur on combustion of the oil produced are "effects of the project" because it is known with certainty that, if the project goes ahead, all the oil extracted from the ground will inevitably be burnt thereby releasing greenhouse gases into the earth's atmosphere in a quantity which can readily be estimated. The court further emphasised that the EIA Directive does not impose any geographical limit on the scope of the environmental effects of a project that must be assessed, and that the impact of greenhouse gas emissions on climate does not depend on where the release occurs.

The Supreme Court's judgment is accessible [here](#), and a press summary [here](#).

24 June 2024 [France] – French AMF publishes plea agreement concluded with Primonial Reim France in February for shortfalls in the oversight of ESG scores' traceability

Primonial Reim France (PREIM), a French real estate asset manager authorized under the Alternative Investment Fund Managers Directive, has reached an agreement with the French AMF to settle an investigation into shortcomings in its sustainability communications [available [here](#), in French only]. PREIM has allegedly failed to comply with the provisions of Article 18 of Delegated Regulation No. 231/20134 and Article 319-3 (1) of the General Regulation of the AMF. In particular, according to the

AMF, PREIM failed to ensure the traceability of the ESG scores assigned to an asset and to provide sufficient evidence to support the allocation of this asset to this fund. The AMF also found that it had included another asset that was ineligible because its ESG score at the time of acquisition was below the minimum threshold set out in the fund's prospectus. Under the terms of the agreement, PREIM undertook to pay the sum of EUR 40,000 to the French Treasury and to take remedial action.

27 June 2024 [Germany] – German Federal Court of Justice (FCJ) sets conditions for when companies may advertise with “climate neutrality”-pledge (Judgement of 27 June 2024 – I ZR 98/23)

In a recent ruling against the wine gum and liquorice manufacturer Katjes, the FCJ has clarified requirements for advertising with CO2 emission neutrality.

Advertising is considered misleading if the advertisement itself does not explain what is meant by “climate-neutrality”, as the term is ambiguous. It can refer to zero-emissions production processes or the offsetting of emissions through external projects as well as to individual processes or the company as a whole. The subject of the dispute was a statement in a trade journal and the illustration of a “climate-neutral”-pledge on packaging. Katjes merely supported climate protection projects via another company. The production itself was not climate neutral. The appellate court Düsseldorf had considered this to be sufficient, as the average consumer and reader of the trade journal would only assume a balanced—neutral—carbon footprint.

The FCJ now took a different view. Katjes’ advertising is misleading pursuant to Section 5 (1) of the Act against Unfair Competition (“UWG”). This can lead to consumers being able to demand that the advertising be stopped (Section 8 (1), 3 (1) and 5 (1) UWG). The mere reference to “climatepartner.com” and its projects on the product was not sufficient. Due to the risk of being misled, there is a particular need for detailed information in the environmental sector. The court states, that reduction and compensation of emissions are not equivalent. The exact requirements will be determined when the reasoning of the judgment is published. [See further [here](#) and [here](#), German only.]



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