

CLEARY GOTTLIB



21 May 2024

Climate and the Financial Sector

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

General Regulatory

- Revised Environmental Crime Directive (ECD) to enter into force on 20 May 2024;
- Directive on the postponement of European sustainability reporting standards published in Official Journal;
- IOSCO comments on IESBA consultation on Proposed International Ethics Standards for Sustainability;
- Commission registers European Citizens' Initiative on the taxation of greenhouse gas emissions;
- UK Finance publishes report '*Unlocking the SME Net Zero Transition*';
- UK government publishes implementation update and framework for UK sustainability reporting standards;
- NGFS publishes technical documents on sustainable and responsible investment for central banks;

Asset Management

- ESMA publishes final report containing Guidelines on funds' name using ESG or sustainability-related terms;

Insurance

- The Italian Insurance Supervisory Authority joins the Forum for Insurance Transition to Net Zero set up by the UN Environment Programme;

Litigation

- German federal government ordered to stricter climate protection measures;
- Criminal suit filed against TotalEnergies and its shareholders.

General

30 April 2024 [EU] – Revised Environmental Crime Directive (ECD) to enter into force on 20 May 2024

Directive (EU) 2024/1203 of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (the Revised ECD) was published in the Official Journal on 30 April 2024, and entered into force on 20 May 2024. It replaces the former 2008 ECD by providing a complemented and up-to-date list of environmental offences, which Member States will have to incorporate as criminal offenses in their national framework. Amongst new categories of offense are unlawful ship recycling or water abstraction and serious breaches of EU chemicals and mercury legislation. The Revised ECD also sets maximum and minimum fines, i.e., at least 3 or 5% of the worldwide turnover or more than 24 or 40 million euros, depending on the type of offence, with enhanced mitigating and aggravating circumstances to be taken into account. Member States are expected to establish qualified offences, subject to more severe penalties in the event of serious widespread and substantial damage or destruction of the environment. Member States will have to transpose the new offences by 21 May 2026 and publish national strategies on combatting environmental criminal offences by 21 May 2027. [[link](#) - [link](#)]

8 May 2024 [EU] – Directive on the postponement of European sustainability reporting standards published in Official Journal

Directive 2024/1306 amending Directive 2013/34/EU as regards the time limits for the adoption of sustainability reporting standards for certain sectors and third countries was published in the Official Journal on 8 May 2024. It will enter into force on 28 May 2024. [[link](#)]

This Directive will postpone the deadline for the Commission to adopt specific standards (sector-specific and relating to certain third-country undertakings) until 30 June 2026. For more information, please refer to our latest newsletter available [here](#).

10 May 2024 [EU] – IOSCO comments on IESBA consultation on Proposed International Ethics Standards for Sustainability

IOSCO has responded to the International Ethics Standards Board for Accountants (IESBA)'s consultation on its "*Proposed International Ethics Standards for Sustainability Assurance (IESSA) and Other Revisions to the Code Relating to Sustainability Assurance and Reporting*" with key areas and priority topics for the

IESBA's consideration. IOSCO recommends better coordination amongst IESBA and IAASB as concerns mutually used definitions, such as that of “sustainability information”, to promote interoperability. Other recommendations concern the scope of the International Independence Standards as applied to sustainability assurance engagements and applicable criteria, and a better definition of the requirements for the communication of actual or suspected non-compliance with laws and regulations between the auditor and the sustainability assurance practitioner. [[link](#) - [link](#)]

13 May 2024 [EU] – Commission registers European Citizens’ Initiative on the taxation of greenhouse gas emissions

The European Citizens’ Initiative ‘Save the Planet by Shifting Taxation from Labour to Greenhouse Gas Emissions’ has been registered by the European Commission. The initiative calls for the strengthening of the ‘Fit for 55’ package and the EU carbon pricing system, through a faster phase-out of free allowances, and an uncapped carbon price, along with a better redistribution of carbon pricing revenues to low-income households. This registration merely means that the formal conditions were met, but bears no meaning on the Commission’s appreciation of its substance, which will be considered if the initiative receives one million statements of support within one year of the signature collection’s launch, in at least seven Member States. [[link](#) – [link](#)]

14 May 2024 [UK] – UK Finance publishes report ‘Unlocking the SME Net Zero Transition’

UK Finance, an industry group for UK financial services firms, has published a report ([here](#)) highlighting the role of small and medium-sized enterprises (SMEs) in the UK’s transition to a net-zero economy. According to the report, SMEs account for between 43% - 53% of the UK’s greenhouse gas emissions, yet their appetite to implement carbon-reducing policies is waning, with (as of 2023) only 19% of SMEs planning to take steps to significantly reduce their carbon footprint.

Drawing on interviews with SME owners and staff, UK Finance identified three main barriers to the introduction of sustainability initiatives, namely (i) resourcing (time, information and capacity); (ii) finance; and (iii) policy clarity.

To address these hurdles, the report recommends that government, financial services firms and larger companies take action to help SMEs. The specific proposals include a recommendation that the UK Government relaunch its UK Business Climate hub, that it issue £5,000 “Help to Green” vouchers, that banks provide guidance and financial products to support green initiatives and that larger companies support their SME suppliers with training and resources to improve their environmental practices.

16 May 2024 [UK] – UK government publishes implementation update and framework for UK sustainability reporting standards

The UK Government has published (i) the framework ([here](#)) that will govern the endorsement and implementation of the International Sustainability Standard Board’s (ISSB) IFRS Sustainability Disclosure Standards in the UK, creating the UK Sustainability Reporting Standards (SRSs), as well as (ii) an update ([here](#)) on the implementation timeline of the UK Sustainability Disclosure Requirements (SDRs) of

which the SRSs form a part (together with the work of the Transition Plan Taskforce, sustainability disclosures and investment labels for funds, the UK Green Taxonomy, and nature-related disclosures).

The framework document provides for (i) the establishment of a new UK Sustainability Disclosure Technical Advisory Committee to support and advise the Department for Business and Trade (DBT) on the endorsement and creation of the SRSs, and (ii) a UK Sustainability Disclosure Policy and Implementation Committee to co-ordinate the implementation of the SRSs between the Financial Conduct Authority (FCA) and DBT.

According to the implementation update, the UK government aims to endorse the SRSs by Q1 2025, which will then allow the FCA to create new requirements for listed companies on sustainability reporting based on the endorsed SRSs. In Q2 2025, the UK government will consider implementing the SRSs for companies outside the FCA's regulatory perimeter, though no legislation on this topic is expected to be effective prior to 1 January 2026.

16 May 2024 [International] – NGFS publishes technical documents on sustainable and responsible investment for central banks

The Network for Greening the Financial System (NGFS) published a cover report and two technical documents on 'Sustainable and Responsible Investment (SRI) in central banks' portfolio management'. These documents put forward 10 recommendations for central banks to better understand SRI policies and to improve their SRI practices, notably based on earlier NGFS publications, case studies and internal surveys. They also provide deep dives into different ways central banks may account for climate change within their non-monetary investments in corporates or in sovereign debt, presenting both decarbonization strategies and common challenges faced by central banks when implementing the latter.

Paolo Angelini, Co-chair of the NGFS Workstream on Net Zero for Central Banks, Member of the Governing Board and Deputy Governor of the Bank of Italy, said of the report: *“Leveraging on the progress and experiences of central banks in SRI practices, these documents provide insightful analyses on climate-related risks for investment. They delve into implementation issues with a practical, hands-on type orientation, but they also give investors (not only central banks) food for thought on several challenges and unanswered conceptual issues that are still present in this field.”* [[link](#) - [link](#)]

Asset Management

14 May 2024 [EU] – ESMA publishes final report containing Guidelines on funds' name using ESG or sustainability-related terms

ESMA published Guidelines aimed at establishing harmonised criteria for use of ESG and sustainability terms in fund names, following its related public statement of 14 December 2023 (for more information on this statement, please refer to our newsletter available [here](#)).

The Guidelines aim to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims in fund names. For this purpose, and to provide asset managers with clear quantitative criteria, the Guidelines establish that where a fund has any ESG-related words in its name, a minimum proportion of at least 80% of its investments should be used to meet the environmental or social characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy. The Guidelines also apply exclusion criteria for different terms used in fund names, based on the Paris-aligned benchmarks for terms such as “environmental”, “impact” and “sustainability”, and based on the Climate Transition Benchmarks for terms such as “transition”, “social” and “governance”. Where those terms are combined, further criteria are specified.

Next steps include publication on the ESMA’s website, two months after which the national competent authorities shall notify whether they intend to comply, and three months after which the Guidelines will become applicable. Existing funds will benefit from a six-month transitional period from this date. [[link](#) - [link](#)]

Insurance

25 April 2024 [Italy] – The Italian Insurance Supervisory Authority joins the Forum for Insurance Transition to Net Zero set up by the UN Environment Programme

IVASS is among the new members of the Consultative Group of Insurance Regulators & Supervisors (CGIRS) of the Forum for Insurance Transition to Net Zero (FIT), along with 16 other international insurance regulators and supervisors, including the Bank of England’s Prudential Regulation Authority, European Insurance & Occupational Pensions Authority, Central Bank of the Netherlands, German Federal Financial Supervisory Authority (BaFin) and French Prudential Supervision & Resolution Authority (ACPR). [[link](#)]

The FIT, chaired by UNEP, is a multi-stakeholder forum set up by the United Nations Environment Programme (UNEP) with the aim to promote climate action by the insurance industry and accelerate transition to a net-zero economy, by allowing dialogue with insurance market participants and insurance regulators and supervisors, the concerned institutions and the scientific community. FIT intends to move forward from the current practice of self-regulation implemented by insurance market participants to create its own net-zero framework, working towards soft regulation and ultimately hard regulation.

The FIT will work closely with the Consultative Group of Insurance Regulators & Supervisors (CGIRS), as well as a second group made up of academic, research and civil society organizations.

The mission of the FIT consists in:

1. Advancing frameworks for net-zero insurance metrics and developing new net-zero insurance concepts;
2. Developing a net-zero transition plan framework for insurance market participants;
3. Engaging with the real economy on the development of net-zero transition plans by corporates across different sectors;

4. Tackling challenges and opportunities to develop insurance products that would support the net-zero transition.

Litigation

16 May 2024 [GER] – **German federal government ordered to stricter climate protection measures**

The Higher Administrative Court in Berlin has ordered the German federal government to step up its climate protection program. Current measures are not sufficient to achieve the climate targets (i.e. a 65% reduction in emissions by 2030 compared to 1990 levels). With the exception of agriculture, all sectors are expected to miss the targets of the Climate Protection Law. The specific measures to be taken are at the discretion of the federal government.

If the ruling withstands an expected appeal to the Federal Administrative Court, it is likely to have far-reaching consequences for the current government's policies in all departments. [[link](#), only German]

21 May 2024 [France] – **Criminal suit filed against TotalEnergies and its shareholders**

A criminal suit was filed against TotalEnergies by eight individual claimants and three NGOs, alleging “manslaughter,” “endangering others,” “failing to combat a disaster,” and “harming biodiversity.” The complaint also targets TotalEnergies’ CEO, Board of Directors, as well as ten of its largest shareholders, who are alleged to have systematically voted in favour of the proposed climate strategy and always opposed resolutions calling for more ambitious strategies for combating climate change.



Amélie Champsaur
Partner, Paris
achampsaur@cgsh.com



Camille Kerneves
Associate, Paris
ckerneves@cgsh.com



Eléonore Azaïs
Associate, Paris
ezais@cgsh.com



Alberta Giannotti
Associate, Rome
agiannotti@cgsh.com



Sebastian Kummeler
Associate, Frankfurt
skummeler@cgsh.com



Marco Gustavo Minati
Associate, Frankfurt
mminati@cgsh.com



Marc Christopher Baldauf
Associate, Cologne
mbaldauf@cgsh.com



Andreas Wildner
Associate, London
awildner@cgsh.com



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

[Privacy Statement](#)

© 2024 Cleary Gottlieb Steen & Hamilton LLP. All rights reserved.

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.