



## SUSTAINABILITY: RECENT ESG DEVELOPMENTS

May 2021

Environmental, Social and Governance ("ESG") factors have fast risen to the top of the board agenda across all sectors, with increasing awareness that a failure to address these matters can be detrimental both financially and reputationally. Investor pressure, internal governance and the proliferation of regulatory requirements and voluntary standards across the globe makes this a complex area to manage.

This newsletter is intended to assist banks, financial investors and corporates in keeping up to date with ESG developments.

Further details of these and previous developments can also be found on our [Green and Sustainable Finance Topic Guide](#) on the [Clifford Chance Financial Markets Toolkit](#) and further related resources can be found on our [Clifford Chance ESG page](#).

This regular newsletter is a digest of key developments on Sustainability and ESG from around the Clifford Chance network, including:

- Legal and Regulatory Requirements
- Official Publications
- Industry Guidance, Voluntary Codes and Publications
- Rating Agency, Index Provider and Data Services
- Advocacy Group Publications
- Clifford Chance Briefings and Blogs
- Clifford Chance Events

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## LEGAL AND REGULATORY REQUIREMENTS

### Brazil

(12 April 2021) The Government of Brazil published its Ordinance No. 4,617 of 6 April 2021 on Artificial Intelligence (AI) Strategy with the purpose of guiding government actions in favour of strengthening research, development, and innovation in artificial intelligence solutions, as well as their conscious and ethical use by public or private entities. In particular, the strategy aims to guarantee innovation in the work and social environment, capable of facing the challenges associated with the country's development. | [Ordinance](#) (in Portuguese)

**Social Governance** | **Market wide**

### Europe

(21 April 2021) The European Commission reached provisional agreement on the European Climate Law. As one of the key elements of the European Green Deal, the European Climate Law enshrines the EU's commitment to

reaching climate neutrality by 2050 and the target of reducing net greenhouse gas emissions by at least 55% by 2030. | [Press release](#)

**Environment Social | Banks**

(21 April 2021) The European Commission adopted a package of measures to help improve the flow of private investments towards sustainable activities across the European Union. The measures adopted are:

- the EU taxonomy climate delegated act aimed at supporting sustainable investment by making it clearer which economic activities most contribute to meeting the EU's environmental objectives;
- the corporate sustainability report directive (CSRD) proposal which will alter and expand the current reporting requirements under the non-financial reporting directive (NFRD) and make sustainability reporting by companies more consistent; and
- six amending delegated acts on fiduciary duties, investment and insurance advice aimed at ensuring that financial firms include sustainability in their procedures and their investment advice to clients.

| [Press Release](#) | [Sustainable finance package overview webpage](#)

**Environmental Social Governance | Market wide**

## New Zealand

(12 April 2021) The New Zealand Government introduced 'The Financial Sector (Climate-related Disclosure and Other Matters) Amendment Bill' legislation, to make climate-related disclosures mandatory for some organisations. The requirement would apply to publicly listed companies and large insurers, banks, non-bank deposit takers and investment managers. | [Bill overview webpage](#) | [Bill](#)

**Environmental Social Governance | Market wide**

## Spain

(13 April 2021) The Spanish Official State Gazette (BOE) published Act 5/2021 amending the consolidated text of the Corporate Enterprises Act, approved by Royal Decree 1/2010 with regards to the promotion of the long-term involvement of shareholders in listed companies. The Act transposes into Spanish law the Directive (EU) 2017/828 amending Directive 2007/36/EC which, among other things, promotes effective and sustainable shareholder involvement in the corporate governance model of listed companies. | [Act 5/2021](#) (in Spanish) | [Directive \(EU\) 2017/828](#)

**Governance | Corporates**

## United States of America

(5 April 2021) The US Court of Appeals for the District of Columbia Circuit vacated two Trump Administration Environmental Protection Agency (EPA) rules. The first rule delayed deadlines to implement landfill pollution regulations; several states and the Environmental Defense Fund had filed suit to prevent the delays. The second rule prevented the EPA from implementing standards on greenhouse gas pollution from 'stationary sources' like refineries. The Biden Administration requested that the court vacate this rule. | [First rule 19-1222](#) | [Second rule 21-1035](#) |

**Environmental | Market-wide**

## OFFICIAL PUBLICATIONS

### International

(21 April 2021) United Environment Programme Finance Initiative (UNEP FI) and the Financial Services Taskforce of the Sustainable Markets Initiative announced the launch of a global alliance, The Glasgow Financial Alliance for Net Zero (GFANZ), that brings together net-zero finance initiatives into one sector-wide forum. | [Press release](#)

**Environmental Social Governance | Market-wide**

(20 April 2021) World Economic Forum (WEF) published a report entitled 'Fostering Effective Energy Transition'. The report discusses the key findings from the Energy Transition Index (ETI) 2021 and it focuses on the environmental sustainability performance dimension and how leading countries achieved progress on it even in the face of emerging risks and challenges. The ETI supports decision makers with a transparent fact-base on the progress and gaps in the energy transition, the complexity of that transition, and its interdependence with social, political, environmental, economic and institutional elements. | [Report](#)

**Environmental Social Governance** | **Market-wide**

(14 April 2021) The Basel Committee on Banking Supervision (BCBS) published two reports on climate-related financial risks. The 'Climate-related risk drivers and their transmission channels' report explores how climate-related risk drivers can arise and affect the banking system and the 'Climate-related financial risks – measurement methodologies' report provides an overview of issues related to climate-related financial risk measurement and methodologies. | [Press release](#) | [Climate-related risk drivers and their transmission channels report](#) | [Climate-related financial risks – measurement methodologies report](#)

**Environmental** | **Banks**

## Australia

(22 April 2021) The Australian Prudential Regulation Authority (APRA) launched a public consultation on its draft guidance for banks, insurers and superannuation trustees on managing the financial risks of climate change. The guidance covers APRA's view of sound practice in areas such as governance, risk management, scenario analysis and disclosure. The consultation ends on 31 July 2021. | [Press release](#) | [Consultation](#)

**Environmental Social Governance** | **Financial institutions**

## Europe

(26 April 2021) The EU Council and Parliament reached a provisional agreement on a public sector loan facility aimed at supporting the transition towards a climate-neutral economy in the European Union in an inclusive manner. The facility will benefit primarily the regions most affected by the transition towards the EU's 2030 climate targets and the objective of EU climate neutrality by 2050, such as coal- and carbon-intensive regions. The facility is the third pillar of the Just Transition Mechanism which aims to reduce the socio-economic costs for those communities that are less equipped to meet the challenges of the green transition. | [EU Council press release](#)

**Environmental Social** | **Market-wide**

(19 April 2021) The European Insurance and Occupational Pensions Authority (EIOPA) published an opinion setting out expectations to national competent authorities (NCAs) on the supervision of the integration of climate change risk scenarios by (re)insurers in their own risk and solvency assessment (ORSA). | [Opinion](#)

**Environmental Social Governance** | **Insurers**

(13 April 2021) The European Investment Bank (EIB) published its Clean Oceans and the Blue Economy Overview 2021. | [Report](#)

**Environmental** | **Market-wide**

## Japan

(6 April 2021) The Financial Services Agency (FSA) and the Tokyo Stock Exchange (TSE) published draft revisions to the Corporate Governance Code and Guidelines for Investor and Company Engagement for public consultation. Comments on the consultation on both the drafts are due by 7 May 2021. | [Press release](#) | [Consultation](#)

**Governance** | **Corporates**

## Singapore

(23 April 2021) At the invitation of US President Joe Biden, Singapore Prime Minister Lee Hsien Loong participated in the Leaders' Summit on Climate from 22-23 April 2021. Prime Minister Lee spoke on the topic of 'Unleashing Climate Innovation', and shared Singapore's experiences in harnessing innovative technologies to overcome constraints as a small city-state and fulfil its obligations under the Paris Agreement. This included the government's efforts to quadruple Singapore's deployment of solar energy by 2025 and address long-term adaptation issues such as rising urban temperatures. Prime Minister Lee also underscored Singapore's commitment to help the global push for sustainability through green finance. | [Press release](#)

**Environmental Social** | **Market-wide**

## United Kingdom

(23 April 2021) The Financial Conduct Authority (FCA) published details of its climate change and sustainable finance strategy. The strategy, which reflects the priorities set out in the feedback statement FS19/6, is based on three themes: (i) transparency: promoting appropriate disclosures along the investment chain; (ii) trust: ensuring that the market delivers sustainable finance instruments and products that meet investors' sustainability preferences; and (iii) tools: government, regulators and industry working together to share experience, develop guidance and other tools and to provide reciprocal support as they address the challenges of climate change. | [Climate change and sustainable finance strategy webpage](#) | [FS19/6](#)

**Environmental Social Governance** | **Market-wide**

(22 April 2021) The House of Commons Treasury Committee published a report as part of its decarbonisation and green finance inquiry entitled 'Net Zero and the Future of Green Finance'. The report sets out a series of recommendations for the UK Government to achieve a net-zero economy by 2050. Among other things, the Treasury Committee recommends that financial products should have climate impact labels, greenwashing of financial products must be prevented and the Financial Conduct Authority (FCA) should further encourage fintech innovation. The Pensions and Lifetime Savings Association (PLSA) submitted its response. | [Press release](#) | [Report](#) (68 pages) | [PLSA homepage](#)

**Environmental** | **Market-wide**

## United States of America

(22 April 2021) President Biden's Leaders' Summit on Climate Change took place on 22-23 April, hosting 40 world leaders. Attendees included leaders of countries responsible for major global emissions, leaders who are demonstrating strong climate leadership and are charting innovative pathways to a net-zero economy, and leaders of countries that are especially vulnerable to climate impacts. The Summit emphasised the economic benefits and critical urgency of strong climate action and served as a platform for major economies to combine efforts in tackling the climate crisis. | [Press release](#) | [Biden's remarks opening session](#) | [Biden Administration's International Climate Finance Plan](#)

**Environmental Social Governance** | **Market-wide**

(9 April 2021) The Securities and Exchange Commission (SEC) examined investment advisers and funds on their environmental, social and governance (ESG) investing activities and issued a risk alert, noting that the Commission has seen 'potentially misleading statements' and weak, unimplemented, or absent policies and procedures on ESG investing. The Commission also highlighted effective practices, showing how companies can comply with SEC requirements by making disclosures that are 'clear, precise and tailored to firms' specific approaches to ESG investing, having detailed policies and procedures in place, and having competent compliance personnel. | [Risk alert](#)

**Environmental Social Governance** | **Asset managers**

## INDUSTRY GUIDANCE, VOLUNTARY CODES AND PUBLICATIONS

### International

(22 April 2021) The International Capital Markets Association (ICMA) European Repo and Collateral Council (ERCC) published a consultation paper entitled 'Green and sustainable finance: What is the role of the repo market?' exploring the

sustainability aspects of repo and collateral as well as assessing the existing opportunities and potential risks in this area. | [ICMA homepage](#)

**Environmental** | **Banks**

(22 April 2021) The Green Finance Institute (GFI) will co-chair and coordinate the Green Technical Advisory Group which will advise the UK Government on a green taxonomy to achieve net-zero by 2050. | [GFI homepage](#)

**Environmental** | **Market-wide**

(21 April 2021) The United Nations Environment Programme Finance Initiative (UNEP FI) published its climate target setting guidelines for banks. The guidelines, drafted by the UNEP FI's collective commitment to climate action (CCCA) group, outline four key principles for target setting aimed at achieving the goals of the Paris Agreement in which banks will set and publicly disclose long-term and intermediate targets to support meeting the temperature goals of the Paris Agreement, establish an emissions baseline and annually measure and report the emissions profile of their lending portfolios and investment activities, use widely accepted science-based decarbonisation scenarios to set both long-term and intermediate targets that are aligned with the temperature goals of the Paris Agreement and regularly review targets to ensure consistency with current climate science. | [Guidelines](#)

**Environmental** | **Banks**

(21 April 2021) The Principles for Responsible Investment (PRI) published a report on why and how asset owners can incorporate beneficiary preferences on environmental, social and corporate governance (ESG) issues in investment decision-making. | [Report](#)

**Environmental Social Governance** | **Asset managers**

(21 April 2021) The Financial Markets Law Committee (FMLC) published a letter urging the HM Treasury to provide clarity on the approach it intends to take towards the Sustainable Finance Disclosure Regulation (SFDR) and other pieces of legislation post Brexit, in light to its recent membership to the International Platform on Sustainable Finance (IPSF). The FMLC suggests using either an approach which takes into account EU standards or an outcomes-based approach which is consistent with the direction of travel in the European Union and beyond, to avoid regulatory conflict. | [Letter](#)

**Environmental Social Governance** | **Market-wide**

(13 April 2021) The Loan Market Association (LMA), Asia Pacific Loan Market Association (APLMA) and Loan Syndications and Trading Association (LSTA) published the Social Loan Principles (SLP). The SLP aim to create a high-level framework of market standards and guidelines, providing a consistent methodology for use across the social loan market, whilst allowing the loan product to retain its flexibility and preserving the integrity of the social loan market while it develops. | [LMA homepage](#)

**Social** | **Banks**

(31 March 2021) The Network for Greening the Financial System (NGFS) published a report on sustainable finance market dynamics. The report identifies the key means by which financial markets can help steer the transformation of the real economy towards higher levels of sustainability and suggests takeaways for further consideration by policymakers and market participants. The NGFS also published a 'Note on the dashboard on scaling up green finance and data gaps' identifying 21 indicators that could enable tracking of the greening of national financial systems over time and sets out the available data in aggregated form. | [Sustainable finance markets dynamics report](#) | [Note on the dashboard on scaling up green finance](#)

**Environmental Social Governance** | **Financial institutions**

## Europe

(27 April 2021) Glass Lewis published its approach to companies' adoption of an annual shareholder vote on their climate strategies or Say on Climate. It noted that given the broad variety of management and shareholder proposals and the lack of standardization on how shareholders should evaluate each of the climate plans submitted to a vote, Glass Lewis will continue to maintain a case-by-case approach. It intends to codify its approach in advance of the 2022 proxy season. | [Glass Lewis homepage](#)

**Environmental Governance | Corporates**

(22 April 2021) ecoDa, an umbrella organization representing the main national institutes of directors in Europe, published an updated version of its Corporate Governance Guidance and Principles for Unlisted Companies. The updated edition provides a more modern treatment of the role that environmental, social and governance (ESG) issues must play in the governance of all kinds of enterprise in climate change. Alongside the updated version, ecoDa published a self-assessment questionnaire allowing companies to regularly measure their progress on the path to good governance. | [Press release](#) | [Corporate Governance Guidance Principles – long version](#) | [Corporate Governance Guidance Principles – short version](#) | [Questionnaire](#)

**Environmental Social Governance | Corporates**

(21 April 2021) Insurance Europe (IE) published its views on the advice provided to the European Commission by the European Insurance and Occupational Pensions Authority (EIOPA) on key performance indicators (KPIs) for the Taxonomy Regulation. | [Press release](#) | [Position paper](#)

**Environmental Social | Insurers**

(7 April 2021) The European Leveraged Finance Association (ELFA) and the Loan Market Association (LMA) are to create best practice guidance on incorporating environmental, social and governance (ESG) provisions into leveraged loan agreements including ESG-linked margin ratchets. | [Press release](#)

**Environmental Social Governance | Banks**

## Hong Kong

(16 April 2021) The Stock Exchange of Hong Kong (HKEX) launched a consultation outlining the proposed enhancements to the Corporate Governance Code and Corporate Governance Report as well as related amendments to the Listing Rules. The proposals include new measures aimed at further enhancing corporate governance standards among listed issuers in Hong Kong, specifically in the areas of corporate culture, director independence, board (gender) diversity, and in environmental, social and governance (ESG) disclosures and standards. The consultation closes 18 June 2021. | [HKEX homepage](#)

**Environmental Social Governance | Corporates**

## United Kingdom

(21 April 2021) As part of the continued regulatory drive to increase diversity and inclusion in financial services, the Bank of England (BoE) updated its Market Intelligence Charter to include reference to gathering intelligence from diverse sources and launched its 'Meeting Varied People' initiative BoE charter. | [Market Intelligence Charter](#) | [Meeting Varied People initiative – keynote speech by Andrew Bailey \(Governor of BoE\)](#)

**Social Governance | Banks**

(7 April 2021) The Pensions Regulator (TPR) published its climate change strategy calling on scheme trustees to protect savers from climate risk. | [Press release](#) | [Strategy](#)

**Environmental Social | Pensions**

## RATING AGENCY, INDEX PROVIDER AND DATA SERVICES

### United Kingdom

(15 April 2021) FTSE Russell published their second report in the 'ESG scores and beyond' series. The report provides an overview of the FTSE Russell's environmental, social and governance (ESG) dataset and rating methodology and measures the ESG theme contribution to the overall ESG performance. It also distinguishes the most contributing themes



by industry group and proposes approaches on how best to use the various themes' identified contributions. | [FTSE Russell homepage](#)

**Environmental Social Governance** | **Market-wide**

## ADVOCACY GROUP PUBLICATIONS

### International

(22 March 2021) Climate Action 100+ released its first-ever Net-Zero Company Benchmark assessing 159 companies' performance against the initiative's three high-level commitment goals: reducing greenhouse gas emissions, improving governance, and strengthening climate-related financial disclosures. | [ClimateAction100+ homepage](#)

**Environmental Social Governance** | **Market-wide**

### Europe

(13 April 2021) Climate Action, in partnership with the United Environment Programme Finance Initiative (UNEP FI) launched the 2021 Sustainable Investment Forum Europe. The forum took place virtually across four days and convened asset owners and managers, rating agencies, banks, United Nations (UN) and government policymakers, investors, development banks, think tanks, and non-governmental organizations (NGOs) committed to driving forward the sustainable finance agenda. Among other key outcomes, the panellists agreed that clear frameworks allowing for more diligent transparency are the key for investors to reach goals of the Paris Agreement. The panellists also discussed the important role of women in sustainable finance and how it is crucial that more is done to ensure they are represented across the finance sector as a whole. | [Climate Action homepage](#)

**Environmental Social Governance** | **Market-wide**

### United Kingdom

(22 April 2021) The Pensions Policy Institute (PPI) published a report entitled 'Engaging with ESG: Environmental, Social and Governance Factors'. The report explores the way in which pension investment strategies take into account the ESG factors and considers future opportunities and improved risk mitigation. | [PPI homepage](#)

**Environmental Social Governance** | **Pensions**

(20 April 2021) The Chancery Lane Project (CLP), an association of legal professionals working together to develop new contracts and model laws to help fight climate change, published 21 new clauses for its Climate Contract Playbook taking the total number of clauses to 71. The clauses cover several practice areas including corporate, commercial, finance, construction, employment and real estate. | [CLP homepage](#)

**Environmental Social Governance** | **Market-wide**

(8 April 2021) The Energy Research Partnership (ERP), a public-private partnership encouraging collaboration in energy research, published a report entitled 'How behaviour change will unlock Net Zero' highlighting that the current social environment is not conducive to the behaviour change needed for net-zero. | [Report](#)

**Environmental Social** | **Market-wide**

## CLIFFORD CHANCE BRIEFINGS AND BLOGS

- (29 April 2021) Clifford Chance Briefing: [Remuneration and ESG: What do you need to know?](#)
- (29 April 2021) Clifford Chance Blog: [FTC issues notice of intent to enforce against unfair use of AI](#)
- (23 April 2021) Clifford Chance Briefing: [ESG Trends: What the latest Paris Agreement commitments mean for U.S. climate policy](#)
- (22 April 2021) Clifford Chance Briefing: [Focus on Hydrogen: EU funding programmes for energy projects](#)

- (20 April 2021) Clifford Chance Blog: [DFS fines Insurance Company \\$3 Million for Unreported Data Breaches and False Compliance Certification](#)
- (6 April 2021) Clifford Chance Blog: [The investigation into MAPFRE cyber-attack: Spanish Data Protection Agency stresses importance of a diligent response and transparency](#)
- (6 April 2021) Clifford Chance Briefing: [Focus on Hydrogen: US Energy Challenges and Opportunities](#)
- (5 April 2021) Clifford Chance Briefing: [Industrial Decarbonisation Strategy: The path to the net zero](#)
- (25 March 2021) Clifford Chance Briefing: [UK Government publishes proposals on audit and corporate governance reform](#)

## CLIFFORD CHANCE EVENTS

- Clifford Chance's COP26 Perspectives Series – Webinar Programme will introduce and explore the campaign themes and related topics of the COP26 summit to be held in November 2021 in Glasgow, including Adaptation and Resilience, Nature, Energy Transition, Clean Road Transport and Finance and Future of Cities. The series will start with 'Nature' on Wednesday 26 May covering nature-based solutions and the crucial role that nature plays, not only in combating climate change, but also in sustaining healthy life, nutritious diets and national economies. Register [here](#).
- Clifford Chance's Spring 2021 [Perspectives webinar programme](#) will present various legal and business topics including:
  - (8 June 2021) Trade and climate change – what does the pathway to COP26 and beyond look like?
  - (22 June 2021) Asia and Europe: China's opening-up and green agenda



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