

SUSTAINABILITY: RECENT ESG DEVELOPMENTS (MARCH 2023)

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](#).

Headlines this month

- The [SFDR RTS](#) on gas and nuclear energy activities entered into force 20 February 2023 and impose transparency and disclosure requirements on, amongst others, alternative investment fund managers who manage or market their funds in the EU.

LEGAL AND REGULATORY DEVELOPMENTS

European Union

(20 February 2023) Various organisations responded to [European Securities and Markets Authority’s](#) Guidelines on funds’ names using ESG or sustainability-related terms consultation which closed for comments on 20 February 2023. | [AIMA response](#) (Members login required) | [Better Finance response](#) | [EFAMA response](#) | [Eurosif response](#) | [ICMA response](#) | [Invest Europe](#) | [Investment Association](#) | [ISDA response](#) | [Moody’s Analytics response](#)

Environmental Social Governance | Asset managers

(20 February 2023) A [Delegated Regulation](#) (EU 2023/363) amending regulatory technical standards (RTS) to include the disclosure of investments in taxonomy-aligned gas and nuclear economic activities under the Sustainable Finance Disclosure Regulation (SFDR) has been published in the Official Journal. The amendments are intended as limited adjustments of the existing regulatory framework and include revised pre-contractual and periodic disclosure templates and minor technical revisions.

Environmental Social Governance | Market-wide

(1 February 2023) The [European Commission](#) published a Communication document on ‘[A Green Deal Industrial Plan for the Net-Zero Age](#)’ (COM(2023) 62 final). The

Key issues

- [Legal and regulatory developments](#)
- [Official publications](#)
- [Industry guidance, voluntary codes and publications](#)
- [Advocacy group publications](#)
- [Clifford Chance briefings and blogs](#)
- [Clifford Chance awards](#)
- [Clifford Chance events](#)
- [Clifford Chance podcasts](#)
- [Contacts](#)

Plan aims to provide a more supportive environment for the scaling up of the EU's manufacturing capacity for the net-zero technologies and products required to meet Europe's ambitious climate targets. The Plan proposes a Net-Zero Industry Act, a Critical Raw Materials Act, it will amend the Temporary State aid Crisis and Transition Framework and it will revise the General Block Exemption Regulation in view of the Green Deal, increasing notification thresholds for support for green investments amongst other things. | [Press release](#) | [Statement](#) | [Factsheet](#) | [Q&A](#)

Environmental | Market-wide

(30 January 2023) The [European Parliament](#) published an [Opinion](#) on the proposal for a directive on corporate sustainability due diligence, which called for stricter obligations in relation to environmental and climate impacts of companies. The opinion proposes that companies ensure that their value chains are aligned with the objectives of the Paris Agreement and the European climate law. The European Parliament will confirm its final position in May 2023.

Environmental Social Governance | Market-wide

France

(13 February 2023) The [Autorité des Marchés Financiers](#) is proposing the [introduction](#) of minimum environmental requirements in European law that must be met by financial products in order to be classified as Article 8 or Article 9 under the Sustainable Finance Disclosure Regulation.

Environmental Governance | Market-wide

India

(22 February 2023) The [Securities and Exchange Board of India](#) released a consultation paper, [Regulatory Framework for ESG Rating Providers \(ERPs\) in Securities Markets](#) proposing an enforceable regulatory framework for ERPs along with an industry association to be introduced in order that ERPs can play an active role in the development of the framework. The consultation closed 8 March 2023.

Environmental Social Governance | Financial institutions

(6 February 2023) The [Securities and Exchange Board of India](#) (SEBI) updated its [rules for issuers](#) on green debt securities in India to align with the International Capital Market Association Green Bond Principles and they will come into force from the start of April. SEBI also issued [guidance](#) (3 February 2023) to issuers on how to avoid occurrences of greenwashing.

Environmental | Market-wide

Philippines

(2 February 2023) The [Philippines Securities and Exchange Commission](#) launched a [consultation](#) on issuance of sustainability-linked bonds in the country under ASEAN standards. Comments closed 17 February 2023.

Environmental Social | Market-wide

Singapore

(15 February 2023) The Green Finance Industry Taskforce convened by the [Monetary Authority of Singapore](#) launched its third and final [public consultation](#) seeking

industry feedback on a green and transition taxonomy for Singapore-based financial institutions. Comments on the consultation are due by 15 March 2023.

Environmental | Financial institutions

Spain

(21 February 2023) The **Ministry of Economic Affairs and Digital Transformation** published the **Preliminary Public Consultation** on the Preliminary Draft Law on Sustainability Information (in Spanish). The main objective is to adapt the Spanish legal system to the provisions introduced by Directive (EU) 2022/2464 to improve the quality, comparability and reliability of sustainability information published by companies.

Governance | Corporates

(20 February 2023) The **Spanish Government** issued a regulation (**Law 1/2023**) (in Spanish) to update the Spanish policy on the cooperation for sustainable development and global solidarity. It aims to respond to global economic, social, and environmental challenges, as well as to peace, justice and the effectiveness of institutions through strengthening financial cooperation, and improving the management of resources (institutional, material and human).

Social | Market-wide

(27 January 2023) The **Spanish Mobility Bill** (in Spanish) was registered into the **Spanish Parliament** on 27 January 2023. One of its main objectives is to contribute to achieving the reduction targets for greenhouse gases, and pollutant emissions in transport, in line with the international agreements assumed by Spain to achieve the Sustainable Development Goals set in the UN's Agenda 2030 and the Paris COP21 targets, and also in line with the European Green Deal and the European Commission's Sustainable and Smart Mobility Strategy.

Environmental | Market-wide

United Kingdom

(22 February 2023) The **Department for Environment Food & Rural Affairs** published a **consultation** on the approach to the fourth round of reporting under the Adaptation Reporting Power (APR4 strategy) to identify what improvements can be made to the reporting process to ensure that reporting organisations are taking appropriate action to adapt to climate change. The consultation closes 5 April 2023.

Environmental | Market-wide

(14 February 2023) The House of Commons, **Treasury Sub-Committee on Financial Services Regulation** opened a new inquiry on **Greenwashing: sustainability disclosure requirements** and will examine proposals from the Financial Conduct Authority setting out what counts as a 'sustainable' investment.

Environmental Social Governance | Market-wide

(10 February 2023) The **Financial Conduct Authority** published a **discussion paper** on firms' sustainability-related governance, incentives, competence and stewardship arrangements (DP23/1). The paper is seeking views to highlight good, evolving

practices while considering whether there is a case for further regulatory measures. Comments are due by 10 May 2023.

Environmental Social Governance | Financial institutions

United States of America

(24 February 2023) U.S. **House of Representatives** approved **legislation** to block the implementation of a **U.S. Department of Labor (DOL) rule** governing how retirement plan managers can consider ESG while making investment decisions. It was argued that the DOL's final rule on ESG violated workers' protections established under the Employee Retirement Income Security Act (ERISA). The DOL rule aims to impose fewer restrictions on ERISA plan managers regarding ESG.

Environment Social Governance | Market-wide

(16 February 2023) **President Joe Biden** signed an **Executive Order** aimed at strengthening racial equity and supporting underserved communities across the federal government by among other things improving economic opportunity in rural and urban communities and addressing emerging civil rights risks, including data inequity, AI discrimination, and other developing threats to civil rights.

Social | Market-wide

(7 February 2023) The **Securities and Exchange Commission's** Division of Examination **announced** its annual examination priorities for 2023. The announcement reiterated that the Division will continue its focus on ESG-related advisory services and fund offerings and will turn its attention to ensuring that ESG products are appropriately labelled to protect retail investors.

Environmental Social Governance | Market-wide

OFFICIAL PUBLICATIONS

International

(17 February 2023) The **International Sustainability Standards Board** (ISSB) stated that now the Standards are substantially agreed they **will focus efforts** on developing further guidance and training material, as well as working with partners to deliver a core capacity building programme across different economic settings, so that all market participants can access its benefits. The ISSB agreed that its initial IFRS Sustainability Disclosure Standards, S1 and S2, will become effective starting January 2024.

Environmental Social Governance | Market-wide

(10 February 2023) Various organisations responded to the **IOSCO consultation** on recommendations for establishing sound Compliance Carbon Markets and on key considerations for enhancing the resilience and integrity of Voluntary Carbon Markets. The consultation closed for comments on 10 February 2023. | **EFET response** | **Europex response** | **FIA response** | **GFMA response** | **IATP response** | **ISDA & IIF response** | **World Federation of Exchanges response**

Environmental | Market-wide

(9 February 2023) The **United Nations Environment Programme Finance Initiative** published an **article** on strengthening the definition of the Principles for Responsible

Banking's climate ambition to specify that signatory banks, in accordance with the Paris Agreement, are expected to align their portfolios with a 1.5 degrees pathway.

Environmental | Banks

(6 February 2023) The Network for Greening the Financial System launched its first user feedback survey on climate scenarios. The survey closed 27 February 2023. The key findings will be published in Spring 2023 and will serve as input for the scenario development work plan.

Environmental | Market-wide

(1 February 2023) The International Finance Corporation announced in its Green and Social Bond Impact Report for 2022 that it had updated its green bond framework to include blue and biodiversity-related projects.

Environmental Social | Market-wide

European Union

(13 February 2023) The European Banking Authority launched a survey to receive input from credit institutions on the green loans and mortgages as well as market practices related to these loans. The deadline for input is 7 April 2023.

Environmental | Financial institutions

France

(24 February 2023) The Banque de France published a bulletin, 'Debt-for-nature swaps: a two-fold solution for environmental and debt sustainability in developing countries?' The bulletin looks at debt-for-nature swaps and how they can improve environmental sustainability and lower public debt. Although these two elements help strengthen the stability of the international financial system, their implementation poses financial and governmental challenges.

Environmental | Sovereigns

The Netherlands

(8 February 2023) The Netherlands government (in Dutch) published a position paper on EU competitiveness and the 'Green Deal Industrial Plan for a Net-Zero Age'.

Environmental | Market-wide

United Kingdom

(24 February 2023) The Green Finance Institute published a report entitled Promoting the international interoperability of a UK Green Taxonomy. The report notes the challenge of numerous taxonomies in development or implemented having an impact on market fragmentation and transparency risk where taxonomies are not aligned. The paper suggests that this has created an opportunity to develop a UK taxonomy delivering clarity on what is a green and sustainable investment.

Environmental Social Governance | Market-wide

(21 February 2023) The Chief Secretary to the Treasury, John Glen, delivered a speech on biodiversity and mobilising resources towards sustainable finance, stating that the government's Environmental Improvement Plan and Green Finance Strategy aims to unlock private sector investment in the domestic natural environment.

Environmental | Market-wide

(20 February 2023) The [Financial Reporting Council](#) (FRC) published [Corporate Governance and Stewardship mythbuster](#) to dispel common misconceptions about corporate governance and stewardship. The 'mythbuster' addresses the meaning of 'corporate governance' and 'stewardship', the role of the FRC and the purpose of the UK Corporate Governance Code and the UK Stewardship Code. | [Press release](#)
Governance | Market-wide

(17 February 2023) The [Scottish Government](#) and [NatureScot](#) through the Facility for Investment Ready Nature in Scotland announced a [grant scheme](#) that will help support and leverage private investment in natural capital projects in the country.
Environmental | Market-wide

INDUSTRY GUIDANCE, VOLUNTARY CODES AND PUBLICATIONS

International

(15 February 2023) [Fitch Ratings](#) published a discussion report inviting comments on [climate vulnerability in corporate ratings](#). The report lays out a proposal to support consistency and transparency in addressing potential credit-relevant climate risks in its credit rating process. Comments close 31 March 2023.

Environmental | Market-wide

(14 February 2023) The [Global Business Initiative on Human Rights](#) published a [project report](#) on effective downstream human rights due diligence. The briefing offers an overview of human rights due diligence expectations in international standards and sets out key questions for companies to ask when establishing downstream human rights due diligence processes.

Social | Market-wide

Europe

(22 February 2023) The [Association for Financial Markets in Europe](#) published their [Q4 2022 and Full Year 2022 ESG Finance Report](#). This report gives detailed data and analysis on the sustainable finance market in Europe highlighting the growth of ESG bonds and loans.

Environmental Social Governance | Market-wide

(17 February 2023) The [European Banking Federation](#) published a paper entitled '[An EU framework for financing the transition](#)' where they suggest that a transition finance framework including guidelines and roadmaps would give a clearer understanding of what is required along with probability of diminishing the risk of greenwashing. | [Press release](#)

Environmental | Market-wide

United Kingdom

(28 February 2023) [FTSE Women Leaders](#) published the second government-backed [FTSE Women Leaders Review 2022: Achieving Gender Balance](#) highlighting the steady progress of an increase of women on boards and in leadership. The Review sets four recommendations for the end of 2025, increased gender balance, women in

leadership roles, further representation on FTSE 350 Boards and to extend beyond FTSE 350 to include the largest 50 private companies.

Social Governance | Market-wide

(20 February 2023) The Private Equity Reporting Group published its fifteenth Annual Report and latest Good Practice Reporting Guide highlighting examples of good practice to help portfolio companies to improve the transparency and disclosure of their financial and narrative reporting.

Governance | Corporates

United States of America

(9 February 2023) The Loan Syndications and Trading Association (LSTA) published exposure drafts of drafting guidance for sustainability-linked loans (SLLs) and sustainability structuring agent (SSA) engagement letter inserts. The drafts have been added to the LSTA's sustainable finance library. The LSTA published the documents in final form on 17 February 2023.

Environmental Social | Market-wide

ADVOCACY GROUP PUBLICATIONS

International

(15 February 2023) Global Canopy published their annual deforestation report stating that action from financial institutions and companies with the most influence on deforestation had barely improved since last year. Out of those companies tracked, 40% hadn't set a single deforestation policy and 61% had no policies covering lending and investments.

Environmental | Corporates Financial institutions

(14 February 2023) The Science Based Targets Network launched a consultation to help companies adopt a roadmap on science-based targets for nature protection and ecosystem restoration equipping companies to prioritise environmental impacts and setting targets. The consultation closed 7 March 2023.

Environmental | Corporates

(7 February 2023) The Global Reporting Initiative published a consultation GRI Sector Standards Project for Mining seeking comments to ensure that the topics identified reflect the mining sector's most significant impacts on the economy, environment and people and that the disclosures included for each topic are relevant. Consultation closes 30 April 2023.

Environmental Social Governance | Market-wide

(7 February 2023) The Assessing Sovereign Climate-Related Opportunities and Risks (ASCOR) published a consultation on how its investor framework would assess sovereign bond issuers on climate change. The framework will result in an assessment tool intended to support investors achieve their net zero goals and help issuers engage. The ASCOR Project is led by asset owners, asset managers and investor networks. The consultation closes 31 March 2023.

Environmental | Sovereigns

(2 February 2023) The **Business and Human Rights Resource Centre** published a **briefing** which analyses human rights protections in the UK's post-Brexit Free Trade Agreements (FTAs). The briefing advocates that any future FTAs negotiated by the UK should commit to upholding human rights and labour rights and contain an enforcement mechanism which allows for trade sanctions if either party fails to satisfy these commitments.

Social | Market-wide

CLIFFORD CHANCE BRIEFINGS AND BLOGS

- (27 February 2023) Clifford Chance Blog: **Another Turn on the Catwalk: Refocusing on Greenwashing in the Fashion Industry**
- (23 February 2023) Clifford Chance Comment: **Energy Arbitration Trends 2023**
- (23 February 2023) Clifford Chance Comment: **Mining and Commodities Arbitration Trends 2023**
- (23 February 2023) Clifford Chance Comment: **Construction Arbitration Trends 2023**
- (23 February 2023) Clifford Chance Comment: **Arbitration Trends for Financial Investors 2023**
- (22 February 2023) Clifford Chance Comment: **Digital Real Estate and its Impact on the Planet**
- (21 February 2023) Clifford Chance Comment: **Focus on hydrogen: Australia's Go Scheme and hydrogen certification**
- (20 February 2023) Clifford Chance Comment: **Going beyond carbon reductions: The proposed EU carbon removals certification regulation**
- (15 February 2023) Clifford Chance Blog: **Delaware Chancery Court Confirms: Officers Have a Duty of Oversight Over "Mission Critical" Compliance Programs**
- (14 February 2023) Clifford Chance Blog: **Whistle-blowers: Beware the blowbacks (Singapore)**
- (14 February 2023) Clifford Chance Comment: **Forced labour: New regulations are changing contractual obligations across the world**
- (14 February 2023) Clifford Chance Insights: **Energy Transition Trends 2023**
- (9 February 2023) Clifford Chance Comment: **ESG: What to expect from financial regulators in 2023 – Disclosures, Data and 'Greenwashing' in the spotlight**
- (7 February 2023) Clifford Chance Insights: **Tech Trends 2023** (comments on Net Zero tech)
- (2 February 2023) Clifford Chance Comment: **Focus on hydrogen: Belgium is leading the way in regulating the hydrogen midstream**
- (1 February 2023) Clifford Chance Comment: **Focus on hydrogen: current regulatory framework for green hydrogen in Spain**
- (1 February 2023) Clifford Chance Comment: **Focus on hydrogen: The impact of the US Inflation Reduction Act's hydrogen incentives on trade**

CLIFFORD CHANCE AWARDS

- (8 February 2023) [Clifford Chance attains Gold Medal status in EcoVadis sustainability assessment](#). Clifford Chance has been recognised with a gold medal for its sustainability efforts, which highlights progress made over the course of the last year, and places the firm in the top 5% of companies assessed by EcoVadis and top 2% of those firms assessed within the legal and accounting services sector.

CLIFFORD CHANCE EVENTS

Recordings (Recordings older than three months can be found on the [Financial Markets Toolkit](#))

Asia Funds Conference 2022 (Singapore)

- (7 December 2022) [ESG: Plotting coordinates for uncharted waters](#)

COP27 Perspectives Series

- (1 December 2022) [What happened at COP27?](#)

ESG Insights

- (15 February 2023) [CSDR and horizon scanning for year ahead](#)
- (25 January 2023) [2023, the year ahead in ESG regulation](#)

European Perspectives Series

- (20 March 2023) [Gender Balance on Corporate Boards: Targets for Equal Representation across Europe](#). Contact David Charles (awaiting link)

Hosted by Clifford Chance – London

- (25 April 2023) [SCI's 2nd Annual ESG Securitisation Seminar](#)
- (31 May 2023) [Legal ESG: London](#), leaders of the legal profession will address the future of ESG and how the legal profession is relating to it.

CLIFFORD CHANCE PODCASTS

Podcasts older than three months can be found in the [Podcasts Library](#)

- (30 December 2022) The Climate Lawyer: [Of Human Rights and Fundamental Rights](#) (with Janet Whittaker and Carla Lewis)

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C L I F F O R D

C H A N C E

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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