



SUSTAINABILITY: RECENT ESG DEVELOPMENTS (NOVEMBER 2023)

Environmental, Social and Governance ("ESG") factors are now at the top of the board agenda across all sectors, with 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 all make this a complex area to manage.

This newsletter is intended to assist all types of public and private sector entity 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

- COP28 is taking place in Dubai from 30th November to 12th December 2023. Clifford Chance is attending and will be hosting various events, starting with our COP28 Perspectives webinar [Looking ahead to COP28](#). This session will be held online on Thursday 16 November at 1:00PM GMT. Our international panel will offer insights on what COP can achieve against a complex geopolitical backdrop, covering major themes including renewable energy, financing and the role of private capital and carbon markets. If you would like to attend, [register here](#).
- The European Council has adopted the [regulation on European green bonds](#)
- Clifford Chance held a webinar on [Sustainability reporting across borders – best practice in addressing global trends](#) as part of their Global Financial Markets Perspectives Series.
- Clifford Chance published a [briefing](#) on the Taskforce on Nature-related Financial Disclosures recommendations.

Key issues

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

LEGAL AND REGULATORY DEVELOPMENTS

European Union

(25 October 2023) The **European Securities and Markets Authority** (ESMA) published the results of a fact-finding exercise evaluating the quality of the disclosures under the Taxonomy Regulation. ESMA reminded issuers of the importance of providing qualitative information as required by the Disclosures Delegated Act.

Environmental Social Governance | Market-wide

(24 October 2023) The **European Council** has adopted the regulation on European green bonds (EuGB). The EuGB establishes uniform requirements for issuers of bonds that wish to use the designation EuGB for their environmentally sustainable bonds that are aligned with the EU taxonomy. Certain of the disclosure requirements, which are set out in template formats, can also be used by companies issuing bonds which are not yet able to adhere to all of the standards of the EuGB, but still wish to signal their green aspirations. The regulation will enter into force on the twentieth day following its publication in the Official Journal, and will start applying 12 months after its entry into force. (A Clifford Chance Client Briefing was drafted following the publication of the co-legislator provisionally agreed version of the regulation in May 2023. There have been no substantive changes to the regulation as adopted by the European Council since our briefing.)

Environmental | Market-wide

(20 October 2023) The **European Commission** published two notices on the interpretation and implementation of certain provisions under the EU Taxonomy Climate Delegated Act ((EU) 2021/2139) and the Disclosures Delegated Act ((EU) 2021/2178). The notice on the Climate Delegated Act contains responses to frequently asked questions (FAQs) on the technical screening criteria for economic activities that contribute substantially to climate change mitigation or adaptation, and the notice on the Disclosures Delegated Act contains FAQs setting out further guidance to non-financial undertakings on disclosures regarding the eligibility and alignment of their activities under Article 8 of the Taxonomy Regulation.

Environmental Social Governance | Market-wide

(14 September 2023) The **European Commission** launched a targeted consultation and a public consultation to seek feedback on the Sustainable Finance Disclosure Regulation (SFDR). The Commission is interested in understanding how the SFDR has been implemented and any potential shortcomings, including in its interaction with the other parts of the European framework for sustainable finance, and in exploring possible options to improve the framework. The consultations will be accompanied by a series of workshops, beginning on 10 October 2023. Comments on both consultations are due by 15 December 2023. | Press release

Environmental Social Governance | Market-wide

(17 October 2023) The Platform on Sustainable Finance and the **European Commission** launched the EU Taxonomy Stakeholder Request Mechanism. The stakeholder request mechanism allows stakeholders to submit suggestions based on scientific and/or technical evidence on new economic activities that could be added to the EU taxonomy or on potential revisions of technical screening criteria of existing activities by 15 December 2023.

Environmental Social Governance | Market-wide

(12 October 2023) The [European Banking Authority](#) has [published](#) a report on the role of environmental and social risks in the prudential framework. The [report](#) puts forward recommendations for short-term actions to be taken over the next three years as part of the implementation of the revised Capital Requirements Regulation and Capital Requirements Directive (CRR3/CRD6),
Environmental Social | Banks

(9 October 2023) The [European Commission](#) welcomed the [adoption](#) of the two final pillars of the 'Fit for 55' legislative package for delivering the EU's 2030 climate targets which now legally binds the climate targets to all key sectors of the economy. The implementation of the 'Fit for 55' legislation is now underway in Member States.
Environmental | Market-wide

(6 October 2023) The [European Securities and Markets Authority](#) published an [article](#) on the European sustainable debt market, analysing the existence of an ESG pricing effect – also known as 'the Greenium' – across different types of sustainable-labelled debt instruments. The article analyses the existence of a 'Greenium' for various types of ESG-debt instruments and includes an overview of the current state of play of the European sustainable debt market.
[| Press release](#)

Environmental Social Governance | Market-wide

(3 October 2023) The [European Securities and Markets Authority](#) announced that it intends to launch a [common supervisory action](#) (CSA) with national competent authorities on the integration of sustainability in firms' suitability assessment and product governance processes and procedures following the amendments to the MiFID II Delegated Acts. The CSA will be conducted over the course of 2024.
Environmental Social Governance | Market-wide

Brazil

(21 September 2023) The [Brazilian Ministry of Finance](#) launched a consultation on the [Brazilian Sustainable Taxonomy](#) (in Portuguese). The plan of action presents strategic, environmental and social objectives intended for the Brazilian taxonomy as well as an overview of the governance for the taxonomy development and the planned schedule for implementation. The Action Plan will be launched at COP28. [| Press release](#) (in Portuguese).
Environmental Social Governance | Market-wide

Kenya

(1 September 2023) The [Kenyan Senate](#) passed the [Climate Change \(Amendment\) Bill 2023](#) for Royal Assent. The Climate Change Act, 2016 did not provide a legal framework for carbon trading and carbon markets for achieving emission reduction goals and fulfilling commitments under the international agreements. Among the international agreements that the Bill addresses is the Paris Agreement that Kenya ratified in December 2016.
Environmental | Market-wide

Luxembourg

(25 October 2023) The Luxembourg financial sector supervisory authority, the [Commission de Surveillance du Secteur Financier](#) issued a [communiqué](#) on the launch of a common supervisory action (CSA) by the European Securities and Markets Authority (ESMA) with national competent authorities (NCAs) on the integration of sustainability in credit institutions' and investment firms'

MiFID2 suitability assessment and product governance processes and procedures in 2024. The CSA will cover the amongst other things how firms collect information on their clients' sustainability preferences and how firms ensure the suitability of an investment with respect to sustainability.

Environmental Social Governance | Financial institutions

The Netherlands

(16 October 2023) The Dutch National Bank (DNB) published Good Practices for Financial Market Infrastructures (FMI) (in English) providing non-binding guidance on how an FMI can organise its processes and procedures to manage climate and environmental risks. The good practices can serve as a basis for an internal and external dialogue with the ecosystem of which FMIs are part and will serve as input for the supervisory dialogue between Dutch FMIs and DNB. | [Press release \(in Dutch\)](#) ([in English](#))

Environmental | Financial institutions

(4 October 2023) The Dutch Authority for the Financial Markets published Guidelines on Sustainability Claims for financial institutions and pension providers. The Guidelines provide guidance to market participants on how to make correct, clear and non-misleading sustainability claims.

Environmental Social Governance | Financial institutions Pensions

Singapore

(18 October 2023) The Monetary Authority of Singapore (MAS) published a set of consultation papers proposing guidelines on transition planning by banks, insurers, and asset managers to enable the global transition to a net zero economy. The proposed Guidelines on Transition Planning set out the MAS's supervisory expectations for financial institutions (FIs) to have a sound transition planning process to enable effective climate change mitigation and adaptation measures by their customers and investee companies in the global transition to a net zero economy. Comments on the consultations are due by 18 December 2023.

Environmental | Financial institutions

South Africa

(22 September 2023) The Portfolio Committee on Forestry, Fisheries and Environment adopted the Climate Change Bill [B9-2022] and the Committee Report. The Bill's primary purpose is to facilitate coordinated responses to climate change and to ensure a just transition to a low carbon and climate resilient economy. The committee is expected to table the Bill in the National Assembly shortly.

Environmental | Market-wide

Spain

(6 October 2023) The Government of Spain published a Draft Royal Decree amending the Regulation of Collective Investment Institutions (CII) which was submitted for public hearing. The articles incorporate, among others, the transposition of the Directive (EU) 2021/1270 regarding sustainability risks and sustainability factors to be considered by CIIs. The first version of this text was submitted for public consultation in 2021, although subsequently the legal text it seeks to implement has undergone a series of modifications, while some aspects of the European regulations have yet to be transposed.

Environmental Social Governance | Financial institutions

United Arab Emirates

(26 September 2023) Members of the UAE Sustainable Finance Working Group launched a consultation on 'Principles for Sustainability-Related Disclosures for Reporting Entities'. The Disclosure Principles promote transparency in sustainability-related matters to allow investors to evaluate the investment risks. The consultation closed for comments on 20 October 2023.

Governance | Market-wide

United Kingdom

(16 October 2023) The Department for Business and Trade announced the government had withdrawn the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations laid in Parliament on 19 July 2023 after consultation with companies raised concerns about imposing additional reporting requirements on large UK listed and private companies. The Business Secretary will now propose options to reform the wider framework to reduce the burden of red tape on businesses and simplify regulation.

Governance | Market-wide

OFFICIAL PUBLICATIONS

International

(18 October 2023) The UN-Convened Net-Zero Asset Owner Alliance released its third annual Progress Report, demonstrating increased climate action and calling on governments to implement and accelerate policies that will unlock the flow of capital towards the net-zero transition.

Environmental | Market-wide

(12 October 2023) The Taskforce on Climate-related Financial Disclosures (TCFD) published its sixth and final status report. Amongst other things, key findings from the report included the fact that the percentage of public companies disclosing TCFD-aligned information continues to grow and disclosure of climate-related financial information in financial filings is limited. | Clifford Chance Briefing

Environmental Governance | Market-wide

(12 October 2023) The Financial Stability Board published its annual progress report on climate-related disclosures ahead of the G20 Finance Ministers and Central Bank Governors meeting on 11-12 October. Amongst other things, the report notes that significant further progress has been achieved on climate disclosures over the last year, including the publication of the International Sustainability Standards Board (ISSB) Standards. | Press release

Environmental Governance | Market-wide

(3 October 2023) The Network for Greening the Financial System published a Conceptual Note on Short-term Climate Scenarios proposing five different climate scenario narratives to help central banks better understand the near term macro financial impact of transitioning to a net zero economy.

Environmental | Banks

European Union

(25 October 2023) The European Securities and Markets Authority published a report on disclosures of climate-related matters in financial statements. The report is intended to assist and to enhance the ability of

issuers to provide more robust disclosures and create more consistency in how climate-related matters are accounted for in financial statements drawn up in accordance with IFRS.

Environmental Governance | Market-wide

(2 October 2023) The **European Securities and Markets Authority** (ESMA) published an article exploring the use of language relating to ESG factors in EU investment fund names and documentation.

Environmental Social Governance | Asset managers

(28 September 2023) The **European Insurance and Occupational Pensions Authority** (EIOPA) published its revised single programming document 2024-2026 including its work programme for 2024. One of the areas that EIOPA will continue to focus on is climate change risk and the reporting and disclosure of those sustainability risks and factors.

Environmental Social Governance | Pensions

Italy

(16 October 2023) **The World Bank**, through the International Bank for Reconstruction and Development (IBRD), announced a new fixed rate Sustainable Development Bond which is an investment solution aimed at retail investors in Italy. Proceeds from the Sustainable Development Bond will be used to support the financing of sustainable development activities aimed at achieving positive social and environmental impact in developing countries, in line with the World Bank's mission to reduce poverty and increase shared well-being across a sustainable planet.

Environmental Social | Market-wide

France

(4 October 2023) The **Autorité des Marchés Financiers** (AMF) published its first social and environmental responsibility report (in French) listing the actions taken by the AMF in the areas of employer liability, environmental liability and citizen liability.

Environmental Governance Social | Market-wide

Singapore

(28 September 2023) The **Monetary Authority of Singapore's** Sustainable Finance Advisory Panel (SFAP) discussed possible financing mechanisms to accelerate the phase-out of coal-fired power plants in Asia and support the decarbonisation of the aviation and maritime transport sectors. The SFAP also discussed how private capital could be better mobilised to finance the region's climate adaptation needs.

Environmental | Market-wide

United Kingdom

(9 October 2023) The UK **Transition Plan Taskforce** published its Disclosure Framework, which provides a set of good practice recommendations intended to help companies across the economy make high quality, consistent and comparable transition plan disclosures.

The framework recommends disclosure of a company's strategic climate ambition, and how this is reflected in its implementation and engagement approaches, its governance and accountability arrangements, and its financial plans. Clifford Chance advised TP Taskforce along with Slaughter & May and

Linklaters. | [Clifford Chance Briefing](#)

Environmental Social Governance | Market-wide

(5 October 2023) The **Green Technical Advisory Group** (GTAG), an expert group chaired by the Green Finance Institute, published '[Creating an institutional home for the UK Green Taxonomy: exploring options](#)' completing the suite of nine GTAG papers that have summarised the advice to the UK Government. In this paper GTAG raises questions about the long-term governance arrangements for the UK Green Taxonomy including how and by whom it will be updated. | [Press release](#)

Environmental Social Governance | Market-wide

(28 September 2023) **HM Treasury**, NS&I and **United Kingdom Debt Management Office** released the [UK Green Financing: Allocation and Impact Report](#) demonstrating how the proceeds from green gilts and Green Savings Bonds help tackle climate change, biodiversity loss and other environmental challenges. It also includes [guidelines](#) on the type of expenditure that can be included in the UK's Green Financing Programme.

Environmental | Market-wide

INDUSTRY GUIDANCE, VOLUNTARY CODES AND PUBLICATIONS

International

(10 October 2023) The **International Capital Market Association** (ICMA) released a paper on '[Market integrity and greenwashing risks in sustainable finance](#)'. The ICMA paper looks at the main areas of concern regarding greenwashing with selected examples and concluding with recommendations for regulators and policy makers. | [Press release](#)

Environmental Social Governance | Market-wide

Switzerland

(5 October 2023) The **Swiss Bankers Association** in partnership with the **Geneva Financial Center** and the **Asset Management Association Switzerland**, hosted a [Building Bridges workshop](#) to discuss the role of data and standards in the assessment of climate-aligned financial flows.

Environmental | Asset managers Banks Financial institutions

United Kingdom

(13 October 2023) **The Law Society** published a guide providing information to solicitors who advise companies on climate risk governance and greenwashing risks, and how risks might impact solicitors' and directors' duties. The [guide](#) deals with solicitors' duties to advise on companies' duties under the Companies Act 2006 and climate-related disclosures.

Environmental Governance | Corporates

(9 October 2023) The **Loan Markets Association** published an '[Updated Best Practice Guide to Sustainability-Linked Leveraged Loans](#)'.

Environmental Social Governance | Market-wide

CLIFFORD CHANCE BRIEFINGS AND BLOGS

- (13 October 2023) Clifford Chance Comment: [The corporate sustainability reporting directive became part of the government's budget consolidation package](#)
- (12 October 2023) Clifford Chance Comment: [Taskforce on Nature-related Financial Disclosures \(TNFD\) recommendations published](#)
- (12 October 2023) Clifford Chance Comment: [Focus on hydrogen: European Hydrogen Bank: First pilot auction](#)
- (10 October 2023) Clifford Chance Thought Leadership: [Across the Board Article: Climate Transition Plans - launch of the UK's Transition Plan Taskforce's Disclosure Framework](#)
- (5 October 2023) Clifford Chance Comment: [FCA and PRA Consultation on Diversity and Inclusion in the financial services sector](#)
- (5 October 2023) Clifford Chance Blog: [Shareholder engagement. AGMS: What the latest trends?](#)
- (4 October 2023) Clifford Chance Comment: [The European Commission consults on the SFDR framework: five key takeaways](#)
- (1 October 2023) Clifford Chance Comment: [DCM Round Up - October 2023](#) – has a section on ESG and Sustainability.

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

- (1 September 2023) Construction Law Conversations: [Energy Transition projects in Asia Pacific – Wind projects \(Part 2\)](#)
- (17 August 2023) Construction Law Conversations: [Energy Transition projects in Asia Pacific - Wind projects \(Part 1\)](#)

CLIFFORD CHANCE EVENTS - Upcoming

COP28 Perspectives Series

COP28 is taking place this year in Dubai from 30th November to 12th December. Clifford Chance is attending and will be hosting various events, starting with our COP28 Perspectives webinar [Looking ahead to COP28](#). This session will be held online on Thursday 16 November at 1:00PM GMT. Our international panel will offer insights on what COP can achieve against a complex geopolitical backdrop, covering major themes including renewable energy, financing and the role of private capital and carbon markets. | [Register](#)

ESG Perspectives Series

Clifford Chance (Paris) is holding [a series of breakfast events](#) (in French) from November 2023 to June 2024 to help understand the ESG issues currently and in the future. Each session provides concrete experiences to help nurture your ESG strategy. | [Register](#)

- (23 November 2023) First Session: Les outils juridiques au service de la stratégie ESG des entreprises | [Register](#)

Global Construction Conference

Clifford Chance's Global Construction Conference is taking place in Tokyo on November 14th. Our global **construction** practice members, along with industry specialists, will share insights on recent legal updates and emerging trends in the dynamic construction sector. Available to attend in person or virtually, this year's theme is **Energy Transition** and will cover *Structuring of new projects, ESG and Resolving renewable energy disputes*. | **For registration and information**.

Global Financial Markets Perspectives Series

(5 December 2023) Global: Space tech for smart cities (online). | **Register**

Insights on ESG Series

Clifford Chance is pleased to present 'ESG Insights', a series of calls focusing on the latest EU and UK ESG regulations. Each call lasts for around 30 minutes and focuses on specific topics. If you would like further information, please contact the **ESG Insights team**.

Legal ESG

(15 – 16 November 2023) Clifford Chance (New York) are hosting The Legal ESG: New York event (in person). ESG has become a priority for the legal profession. The in person event will look at navigating the politics of ESG, building an ESG culture and the convergence of AI and ESG in the Legal Profession. | **Register**

CLIFFORD CHANCE EVENTS - Recordings (Recordings older than three months can be found on the **Financial Markets Toolkit**)

Global Financial Markets Perspectives Series

- (7 November 2023) Legal challenges for the fashion, luxury brand and retail sectors (online). | **Register**
- (2 November 2023) **Energy transition – opportunities and challenges in offshore wind**
- (17 October 2023) **Sustainability reporting across borders – best practice in addressing global trends**
- (3 October 2023) AI Series: **Responsible AI – navigating evolving law, policy and public perception**.
- (26 September 2023) Ethics Series | AI Series: **Applied ethics and generative AI – challenges and prospects for businesses**.

Insights on ESG Series

- (20 October 2023) **Regulation of ESG data and ratings providers / ESG data and ratings in the debt and equity capital markets**
- (21 September 2023) **Back to School Round-up**

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