

# ESG View

June 2024

20 June 2024



Welcome to the June Edition of ESG View!

Despite a resolve to adopt a 'brace, brace' position in what promises to be an explosive election year, this month still left the markets in a tailspin with election outcomes in India, South Africa, Mexico and Europe in particular, making headlines. The abrupt announcement of imminent elections in France and the UK added yet another dimension to the political frenzy. At this rate, it might be a sleepy summer ahead of the fireworks in November as the US presidential elections is aptly scheduled for [Guy Fawkes Day](#). We will shortly be hosting a podcast to unpack what these election results could mean for ESG policy making, so watch this space.

Early indications from Europe suggest that the gains made by the more right-leaning parties, though not as large as first expected, do create uncertainty for the green legislative agenda. Scientists have [voiced their concerns](#) to policymakers this month, citing the likes of the Common Agricultural Policy and the Sustainable Use Regulation as instances where politics has prevailed over the science. The letter calls for greater ambition and action both from policymakers and civil society to adopt responsible policymaking. However, not all is lost. In the wake of its parliamentary elections, the European Council has displayed a valiant show of resolve this month by adopting the EU Nature Restoration Law (see below for a full update) and confirming its [position](#) on the Green Claims Directive (read more in our client note: [Navigating EU rules on greenwashing and deceptive environmental claims](#)).

This month, we celebrated World Ocean Day. Whilst the theme for this year is Awaken New Depths, it is clear that bottom-trawling is certainly not the way to achieve this ambition, and Sweden became the latest country to [announce](#) a historic ban on bottom-trawling this month. Other key announcements included a [G7 commitment](#) to end plastic pollution and reduce the global production of consumption of primary plastic polymers throughout the full life cycle of plastic, and Brazil launching its [ProManguezal Decree](#), establishing a national program for the conservation and sustainable use of mangroves.

In case you were looking for some extra reading, this month saw publication of key UNEP FI guidance documents including Climate Risk Briefs for seven sectors ([Power Generation](#), [Agriculture](#), [Industrials](#), [Real Estate](#), [Oil and Gas](#), [Transportation](#), [Metals and Mining](#)), and [Guidance on Managing Physical Climate-Related Risk in Loan Portfolios](#). We'll be sharing a full summer reading list in next month's edition, so do send through any recommendations you'd like to see make the list!

In this month's ESG View, in addition to the usual round-up of ESG regulations, disputes and consultations, we have multiple updates from around the world on voluntary carbon markets, which invite some cautious optimism around the revival of the market.

Best wishes,



**Sonali Siriwardena**

Partner, Global Head of ESG

T +44 20 7825 4595

E [Sonali.Siriwardena@simmons-simmons.com](mailto:Sonali.Siriwardena@simmons-simmons.com)



## GLOBAL DEVELOPMENTS

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### 1. IFRS publishes Inaugural Jurisdictional Guide for the adoption or other use of ISSB Standards and Outline of Regulatory Implementation Programme (multi-sector)

 **What:** In May, the IFRS Foundation published the [Inaugural Jurisdictional Guide for the adoption or other use of the ISSB Standards](#). It is intended to support jurisdictions in designing and planning the adoption of, or use more broadly of the [International Sustainability Standards Board \(ISSB\) Standards](#).

 **Key details:** The publication aims to establish the global baseline of sustainability disclosures for capital markets, outlining the various approaches that jurisdictions could take to adopt and use the ISSB Standards while tying in the framework with existing legislation and policy. This underscores the importance of promoting consistent and comparable climate and sustainability-related disclosures for capital markets.

The IFRS Foundation has also published its [Regulatory Implementation Programme](#), summarising the tools, educational materials and capacity building the IFRS Foundation intends to provide, to support the growing number of jurisdictions seeking to make policy decisions and design and execute their roadmaps for the adoption or other use of ISSB Standards.

 **Our view:** These developments mark another step towards encouraging a harmonised approach to financial and sustainability reporting standards. It is likely that an increasing number of jurisdictions will look to adopt these standards to enable more alignment on sustainability reporting standards.

### 2. SBTi publishes the second version of the Financial Institutions' Near-Term Criteria (financial institutions)

 **What:** On 28 May, the Science Based Targets initiative (SBTi) published its updated [Financial Institutions' Near-Term Criteria Version 2](#). Some of the key changes made in the criteria include:

- alignment with the [SBTi Corporate Net-Zero Standard](#), notably by increasing minimum Scope 1 and 2 mitigation ambition from well-below 2°C to 1.5°C;
- enhanced clarity, actionability and usability regarding existing criteria;
- streamlined coverage requirements; and
- added Fossil Fuel Finance Targets criteria, with option to disclose, halt, transition and phase out financial institution's fossil fuel-related activities.

A detailed comparison of the updated criteria is provided by SBTi [here](#).

 **Next steps:** The new criteria will come into effect on 30 November 2024. Financial institutions submitting targets before this can choose to voluntarily adopt this new criteria, or use the [Criteria and Recommendations for Financial Institutions Version 1.1](#).

### 3. All eyes on the voluntary carbon markets (multi-sector)

 **What:** There have been a flurry of papers recently on the voluntary carbon market (VCM), and two in particular caught our attention. Last month, International Swaps and Derivatives Association (ISDA) published a paper called “[Navigating the Risks of Greenwashing in the Voluntary Carbon Market](#)”. The International Emissions Trading Association (IETA), meanwhile, published their own paper on “[Guidelines for High Integrity Use of Voluntary Carbon Credits](#)”.

 **Key details:** ISDA’s analysis seeks to identify the root causes of “greenwashing” in the VCM. It breaks the problem down by distinguishing two key categories of risks:

- the “system-level risks”, based on overstating the overall positive effects of voluntary carbon credits (VCCs); and
- the “credit-level risks”, based on overstating the positive effects of particular VCC-generating activities.

These are timely contributions to the greenwashing debate, which has of course moved rapidly up the regulatory agenda of late, notably via the FCA’s newly minted [Anti-Greenwashing Rule](#) and the EU’s new [Greenwashing Directive](#). IETA’s Guidelines, meanwhile, are more of a “how-to” guide for companies looking to use the VCM to decarbonise their business.

 **Our view:** These papers come at an uncertain time for the VCM, which remains dogged by questions of quality and integrity around VCCs. It is heartening to see the likes of ISDA and IETA lend their weight to addressing these issues, but only time will tell whether these efforts will be sufficient to galvanise the action needed to scale the VCM.

### 4. Tech giants form Symbiosis Coalition with an advance market commitment for nature-based carbon removal credits (technology sector)

 **What:** On 22 May, Google, Meta, Microsoft and Salesforce announced the formation of the [Symbiosis Coalition](#) (the Coalition) and their joint advance market commitment to contract up to 20 million tonnes of high-quality nature restoration carbon credits by 2030.

 **Key details:** In its formation, the Coalition has acknowledged both the vital role that nature-based projects play in tackling the climate crisis and the current challenges of financing these projects through the voluntary carbon market (VCM). The Coalition states that the nature-based VCM “*has been hampered by a perceived lack of high-quality restoration projects and uncertainty around willingness to pay, keeping investors on the sidelines and eroding public trust in nature-based credits’ potential for climate and social impact*”. The Coalition aims to partner with investors, NGOs and standard setters to tackle some of these challenges and to signal its willingness to pay the real cost that it takes to develop these high-quality projects.

 **Our view:** This announcement shows an ambitious commitment to the VCMs and could be a market-based solution to re-building trust in the market. This month, the Integrity Council for the Voluntary Carbon Market (ICVCM) announced it has approved the first set of [carbon credit methodologies](#) aligned with its best-in-class ‘Core Carbon Principles’ (CCPs), following its April program announcement (covered in our [April ESG View](#)).

## EUROPEAN DEVELOPMENTS

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### 1. European Financial Reporting Advisory Group publishes implementation guidance on the ESRS and updated Q&A (multi-sector)

 **What:** On 31 May, the European Financial Reporting Advisory Group (EFRAG) published the final versions of its first three European Sustainability Reporting Standards (ESRS) [Implementation Guidance \(IG\)](#) documents: EFRAG IG 1 *Materiality Assessment*, EFRAG IG 2 *Value Chain*, and EFRAG IG 3 *ESRS Datapoints*. EFRAG also released a third [set of answers](#) to 44 questions submitted by users of the ESRS on its ESRS Q&A Platform.

 **Key details:** The IG documents reflect public feedback collected from December to February and aim to address the most challenging aspects of implementing the ESRS. The EFRAG IG 1 provides an illustrative process for corporates, explaining the concepts of impact and financial materiality with practical examples. EFRAG IG 2 outlines the reporting requirements for the value chain, covering aspects from materiality assessment to metrics and targets. EFRAG IG 3 comprises an Excel, translating the ESRS Set 1 list of detailed requirements in each disclosure requirement. The Q&A platform is intended to support preparers in the implementation of the ESRS by providing clarity across the spectrum of E, S, and G issues.

 **Our view:** These guidance documents along with the Q&A, though non-binding, will be crucial for helping organisations implement ESRS effectively, promoting transparency and consistency in sustainability reporting.

### 2. EU Nature Restoration Law receives final green light (multi-sector)

 **What:** After months of setbacks, on 17 June, the EU Council formally adopted the [Nature Restoration Law](#). This first-of-its-kind regulation sets a bold objective for the EU: to restore at least 20 per cent of the EU's land and sea areas by 2030, and all ecosystems requiring restoration by 2050. It also establishes legally binding targets for nature restoration across all ecosystems, from terrestrial to marine, freshwater, and urban. This law is a pivotal step towards long-term biodiversity recovery, climate change mitigation and adaptation, and effective management of natural disasters.

The new rules will facilitate the restoration of degraded ecosystems across Member States' land and sea habitats, prioritising [Natura 2000 sites](#). Special attention will be given to reversing the decline of pollinator populations, while multiple targets have been set for wetlands, forests, peatlands, rivers and lakes, agricultural ecosystems, marine ecosystems and urban green space expansion. Adjustments and flexible clauses were introduced to accommodate food security concerns and renewable energy considerations.

Member States are required to submit national restoration plans to the Commission within two years of the regulation coming into force, detailing the measures they intend to establish and implement to achieve these targets, and to report on progress towards the targets.

 **Next steps:** The regulation will soon be published in the Official Journal and will come into force 20 days after publication, thus becoming directly applicable across the EU.

### 3. New Energy Performance of Buildings Directive in force (construction and real estate sector)

 **What:** On 28 May, the [Energy Performance of Buildings Directive](#) (EPBD) came into force, marking a significant step towards a fully decarbonised building stock by 2050. This is crucial, given the substantial contribution of the real estate sector to greenhouse gas emissions (40 per cent of carbon dioxide emissions, according to [UNEP FI](#)).

 **Key details:**

- The EPBD sets clear targets for Member States, allowing discretion on how to achieve these results. Several key details of the new rules will be determined by national legislation, to be adopted within two years.
- From 2030, the new standard for new buildings will be the Zero-Emissions Building, replacing the current Nearly-Zero-Energy Building. States shall also progressively limit the cumulative life-cycle global warming potential for all new buildings.
- Buildings undergoing major renovation will need to meet minimum energy performance requirements, set nationally. Additionally, the least energy-efficient non-residential buildings will be progressively renovated to achieve minimum energy performance standards. For residential buildings, States will establish a national trajectory for their renovation to achieve increasing reductions in average primary energy use.
- Other provisions include a new common methodology for energy performance certificates, incorporating additional information; the adoption of a voluntary scheme for renovation passports; and support for deploying sustainable mobility infrastructures, solar energy, and smart technology.
- To facilitate its implementation, the EPBD has established a 5-year planning cycle where each State shall prepare a National Buildings Renovation Plan, integrated into the National Energy and Climate Plan, and submit it to the Commission for its assessment.

### 4. ESAs final Reports on greenwashing in the financial sector (financial institutions)

 **What:** On 4 June, the European Supervisory Authorities (ESAs) published their final [Reports](#) on greenwashing in the financial sector.

 **Key details:** Outlined below are some key updates from the reports.

- National competent authorities (NCAs) are already taking steps to prioritise the supervision of sustainability-related claims, but it was noted that there have been a limited number of reported actual or potential occurrences of greenwashing. This may reflect multiple factors, including low level of signals (e.g. complaints) reaching NCAs, limited financial literacy, constraints on NCAs' resources and expertise for detection, and NCAs' difficulties in accessing good quality data.
- [ESMA's report](#) recommended market participants take steps to further integrate ESG risks into risk management systems and controls. Validation and diligence on ESG data should be addressed as robustly as financial information and increasing external verification of ESG data and enhancing transparency on ESG data methodologies were also highlighted.

- Firms were reminded to ensure governance structures and processes to mitigate greenwashing risks (e.g. committees and guidance) are adopted.
- The [EBA's report](#) provides an analysis of greenwashing risks in the banking sector, and among other things urged institutions to substantiate forward-looking sustainability commitments such as net-zero pledges with credible plans and strategies and to provide clear and granular information on their green and sustainable finance targets.
- [EIOPA's opinion](#) sets out four key principles that NCAs should consider when probing undertakings' sustainability claims and provides practical examples of good and bad practice for the insurance and pensions lifecycle.

 **Next steps:** Across the three reports, greenwashing continues to be a key theme driving the ESA's supervisory approach. ESMA will continue monitoring greenwashing risks and supervisory intends to publish an opinion with views on how the EU regulatory framework for sustainable finance could further facilitate the investors' journey.

## 5. ESMA report on the 2023 Common Supervisory Action and Mystery Shopping Exercise on marketing (financial institutions)

 **What:** On 27 May, ESMA [published](#) its final report on the 2023 Common Supervisory Action with national competent authorities (NCAs) and accompanying Mystery Shopping Exercise on the application of marketing disclosures under MiFID.

 **Key details:** ESMA's report sets out its findings, following its assessment of the content of firms' marketing communications and its request of NCAs to assess firms' procedures for marketing communications, including sustainability related claims and the use of third parties.

A number of NCAs reported instances where ESG-related information and claims were not backed up with data or sources. Examples include:

- references to ESG ratings or to self-set ESG scorings without providing clients with information to understand such ratings;
- referring to sustainability statements in regulatory documents without linking these documents; and
- making general statements about a fund's impact (e.g. referencing the UN's sustainability goals) without a precise description of what this means in concrete terms for the specific promoted product.

The report identified several areas for improvement, including the need for an approval and review process for marketing communications, and stronger involvement of senior management in the marketing and design process.

 **Next steps:** Given the continued efforts by ESMA and the NCAs in monitoring marketing activities, firms should consider implementing ESMA's recommendations around sustainability (and more generally) into their processes to ensure that they remain compliant with the MiFID II requirements.

## UK DEVELOPMENTS

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### 1. FCA market Bulletin 49 - Updates on implementation of ISSB and TCFD (financial institutions)

 **What:** On 21 May, the FCA published [Primary Market Bulletin 49](#) (Bulletin 49) which provides guidance for market participants. Bulletin 49 includes among other things, an update on the changes to sustainability reporting standards and changes to ethnicity categories for diversity and inclusion reporting.

 **Key details:** The Bulletin outlines that the FCA has set out a revised timetable for its consultation process following the [update](#) from the UK government on the timing for the UK endorsement of the International Sustainability Standards Board (ISSB) disclosure standards. Once the government has completed its endorsement process (expected in Q1 2025), the FCA will consult on moving from TCFD-based reporting to UK sustainability reporting standards-based reporting. At the same time, the FCA will consult on introducing mandatory disclosure of transition plans by listed companies, following the publication of the transition plan framework by the Transition Plan Taskforce in April 2024 (covered in our April ESG View [here](#)).

The FCA has also engaged with the Office for National Statistics (ONS) to better understand views on changes suggested to diversity reporting and how those falling within the category of 'Other' Ethnic Group (in the current categorisation), can report their ethnicity. As a result, it is proposing to make a change to this category in its board diversity rules to align it with the ONS Other Ethnic Group category description. These changes will be expected in Q3 alongside wider Listing Rule changes and application of these revised rules to companies is expected shortly after that.

## MIDDLE EAST AND AFRICA DEVELOPMENTS

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### 1. Qatar Central Bank publishes financial sector sustainability strategy (financial services)

 **What:** On 12 June, the Qatar Central Bank (QCB) published its [ESG and Sustainability Strategy for the Financial Sector](#) (the Strategy), in alignment with [Qatar's National Vision 2030](#) and in accordance with the [Third Financial Sector Strategy Plan](#).

 **Key details:** The Strategy is anchored around three pillars, each of which includes some key initiatives that QCB plans to undertake. Below is a snapshot of the pillars and some of the key initiatives.

#### 1. Pillar 1: Financial sector climate, environmental and social risks management.

- Issue prudential regulation on climate, environmental and social risks management applicable to banks and insurance companies and conduct stress-testing to assess climate risk for the banking industry.
- Set sustainability disclosure requirements for financial institutions and for capital markets.

#### 2. Pillar 2: Capital mobilisation towards sustainable finance.

- Release a taxonomy of sustainable economic activities.
- Release a sustainable finance framework that offers guidelines on the issuance of sustainable products including loans, bonds and sukuks among other products.
- Support the issuance of sustainable sovereign debt on behalf of the government.
- Create incentives for financial institutions and capital market participants to issue sustainable products.

#### 3. Pillar 3: A Central Bank leading by example on ESG and sustainability.

- Integrate sustainability considerations in the investment policies of QCB.
- Report on the sustainability performance of QCB and the progress against the ESG and sustainability strategy.

 **Our view:** This is an exciting development for Qatar and the broader region as it shows a continued commitment and a growing momentum to support and scale sustainable finance. Watch this space as initiatives under the Strategy begin to be implemented.

### 2. Kenya introduces the Climate Change (Carbon Markets) Regulation 2024 (multi-sector)

 **What:** On 17 May, the [Climate Change \(Carbon Markets\) Regulation 2024](#) (the Regulation) was published in the Kenya Gazette, marking a significant milestone for carbon markets in Kenya. This Regulation comes as part of wider legal reform aiming to create greater clarity to carbon market framework in the country.



**Key details:** Some of the key proposals in the Regulation are highlighted below.

- It creates a role of a Designated National Authority (DNA) to oversee carbon market activity, including overseeing the National Carbon Registry, approval of new carbon project applications, and providing guidance on operationalising Article 6.2 and 6.4 of the Paris Agreement, among other things.
- It outlines key procedures for developing carbon market projects (set out in Part V), including how to submit applications, the required documentation and templates, application fees and procedures to requests international transfers of mitigation outcomes.
- It provides for an annual Social Contribution charge on carbon projects on public and community land of 40 per cent of the aggregate earnings of the previous year less the cost of doing business in respect of land-based projects or 25 per cent for non-land-based projects (and 0 per cent for projects on private land).
- Ongoing projects (those operational in Kenya and developed before the commencement of the Regulation) need to be compliant within two years of commencement of the Regulation, but must undertake an environmental audit within six months of commencement of the Regulations.

## AMERICAS DEVELOPMENTS

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### 1. U.S. White House releases new Policy Guidelines on Voluntary Carbon Markets (multi-sector)

 **What:** On 28 May, the U.S. White House released a [Voluntary Carbon Markets Joint Policy Statement and Principles](#) (the Statement) expressing support for Voluntary Carbon Markets (VCMs) playing a vital part in reaching net-zero by 2050 and outlining voluntary principles for market participants, including the U.S. Government, to use when engaging with VCMs.

 **Key details:** The Statement highlights key areas of concern around VCMs, including questions around the integrity of credits, the need to ensure that projects respect local communities, human rights and avoid any negative environmental or social impacts, and credible use of credits. The Statement also communicates a note of optimism in the developments made to overcome these areas of concern and encourages the market to participate in VCMs, using the below principles.

- Carbon credits and the activities that generate them should meet credible atmospheric integrity standards and represent real decarbonisation.
- Credit-generating activities should avoid environmental and social harm and should, where applicable, support co-benefits and transparent and inclusive benefits-sharing.
- Corporate buyers that use credits should prioritise measurable emissions reductions within their own value chains.
- Credit users should publicly disclose the nature of purchased and retired credits.
- Public claims by credit users should accurately reflect the climate impact of retired credits and should only rely on credits that meet high integrity standards.
- Market participants should contribute to efforts that improve market integrity.
- Policymakers and market participants should facilitate efficient market participation and seek to lower transaction costs.

### 2. State of Vermont in the U.S. passes a first of its kind climate damages law (fossil fuel sector)

 **What:** On 30 May, the Vermont [S. 295 Bill](#), commonly referred to as the Climate Superfund Act, (the Act) passed into law. The Act will allow the State of Vermont (State) to collect compensation from fossil fuel companies retroactively for the costs of adapting to climate impacts caused by the company's activities.

 **Key details:** Under the Act, the Vermont Treasurer will have until January 2026 to assess the total costs to the State from greenhouse gases emitted between 1995 and 2024, including the impacts on public health, biodiversity, flood preparedness, housing, and economic development. The State will use federal data (collected by the Environmental Protection Agency) to determine the emissions attributable to each fossil fuel company and how much to charge individual polluters for the cost to the State.

 **Our view:** It is expected that the Act will be challenged in the courts by the fossil fuel industry, particularly as there has already been [opposition](#) to the passage of the Act. Despite the potential legal challenges, this type of legislation may become a blueprint for other states and jurisdictions given the

growing cost of climate impacts globally and an appetite for greater climate accountability. We saw another example of this in California, with Attorney General Rob Bonta filing an amended complaint in a lawsuit against five of the largest fossil fuel companies using a new California Consumer Protection law. See our Disputes round-up for more detail on this.

## APAC DEVELOPMENTS

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### 1. Japan revises legislation that may encourage greater collaboration on stakeholder activism (asset management)

 **What:** On 15 May, the legislature of Japan passed into law an [amendment](#) to the Financial Instruments and Exchange Act and to the Concerning Investment Trusts and Investment Corporations Act. The Financial Services Agency (FSA) has published briefing materials on the amendment in English, available [here](#).

 **Key details:** The amendment contains many significant developments aiming to revitalise Japanese capital markets. A notable development on the ESG front is greater clarity around reporting collaboration efforts relating to shareholder engagement and proxy voting. Japan has strict transparency requirements relating to “acting in concert” making it more onerous for investors to align on ESG-related engagement efforts. The updated legislation excludes collaborative engagement and proxy voting from requiring additional requirements for large shareholders. The FSA is expected to release more guidance in this area following this amendment, so keep an eye out for further developments.

## ESG DISPUTES ROUND-UP

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Before we dive into our disputes round-up this month, some notable mentions are outlined below.

- On 18 June, the Paris Court of Appeal [deemed admissible the lawsuits](#) filed by environmental NGOs against TotalEnergies and EDF under the French Duty of Vigilance Law. These are the first rulings from the newly established chamber 5-12 of the Paris Court of Appeal, specifically dedicated to "emerging" disputes related to the duty of vigilance and corporate ecological responsibility. This pivotal decision paves the way for a detailed examination of allegations that these companies neglected to publish sufficient plans addressing human and environmental risks associated with their operations.
- On 24 May, the [first hearing](#) in Shell's case against Greenpeace took place. Shell is suing the environmental group for damages arising from climate protests in 2023. Details of the case were covered in our [November ESG View](#).
- On 17 June, the Texas District Court [dismissed](#) Exxon's lawsuit against the shareholder proposal filed by Arjuna Capital, having already [dismissed the case](#) against Follow This in May (citing a lack of personal jurisdiction to proceed for the Dutch association). Exxon had chosen to continue with the lawsuit despite the shareholder proposal being withdrawn by the parties and the Court decided that without a live proposal and with a commitment by Arjuna Capital to not resubmit the proposal, Exxon's case was moot and could not proceed. You can read the background of this case in our [March ESG View](#).
- A climate protestor in the UK has been [jailed for 10 months](#) for damaging JPMorgan's offices in London. We may see growing numbers of these types of sentences as a [Court of Appeal case](#) in March decided that protestors will no longer be able to use the defence of consent. This defence argued that defendants believed the property owner would have consented to the destruction / damage to the property if they were fully aware of the "circumstances", which in the case of climate protests would be the implications of climate change.

Remember, you can keep up to date with contentious ESG news as and when it happens by signing up to our [ESG Disputes Radar](#).

### 1. Active Super found guilty of misleading representations in Australia (asset management)

 **What:** Active Super, managed by LGSS Pty Limited, has been [found guilty](#) of contravening the law by making misleading representations about its ESG credentials.

 **Key details:** The Australian Securities and Investments Commission (ASIC) initiated civil penalty proceedings against Active Super in August last year, accusing it of greenwashing in its Impact Report. Active Super, with \$13.5 billion in superannuation assets and 89,000 members, claimed on its website to have eliminated investments posing significant environmental and community risks, including tobacco manufacturing, oil tar sands, and gambling. It also claimed to have excluded Russia following the invasion of Ukraine.

However, ASIC alleged that Active Super continued to expose its members to the investments it claimed to have restricted or eliminated. The Federal Court ruled that from February 2021 to June 2023, Active Super invested in securities it had claimed to have removed via ESG investment screens. Justice David

John O’Callaghan rejected Active Super's argument that consumers would differentiate between direct and indirect investment exposures. The court upheld most of ASIC's allegations but found that Active Super did not mislead regarding its holdings in tobacco packaging companies and certain representations in its Sustainable and Responsible Investment Policy.

**Our view:** ASIC deputy chair Sarah Court stated that this case sends a strong message against greenwashing, and we expect ASIC enforcement action on greenwashing to continue this year. The case will now proceed to a further hearing to decide the appropriate form of declaratory relief and the penalty for the conduct.

## 2. California AG Bonta files amended complaint against fossil fuel companies (fossil fuel)

-  **What:** The Attorney General of California recently filed an amended [complaint](#) in a lawsuit against some of the world’s largest fossil fuel companies (Exxon Mobil, Shell, Chevron, ConocoPhillips, and BP – and the American Petroleum Institute (API)).
-  **Key details:** In September last year, the Attorney General filed a lawsuit accusing the companies of being involved in a decades-long campaign of dishonesty in relation to the impact of the combustion of fossil fuels on climate change, which has caused climate change-related harms in California. The amended complaint includes additional evidence of recent false advertising and greenwashing by the companies and seeks disgorgement of profits for violating consumer protection laws. If the court rules that the companies have broken the law and orders disgorgement, the companies will have to surrender substantial profits gained from their conduct and deposit the same into the Victims of Consumer Fraud Restitution Fund to provide future compensation to victims of consumer fraud in California.
-  **Our view:** This case reflects a wider trend of legislators and regulators implementing penalties for greenwashing based on revenue generated by the relevant companies. In the UK, the newly passed Digital Markets, Competition and Consumers Act 2024 provides the Competition and Markets Authority with powers for direct enforcement and to impose penalties for breaches of consumer protection law, in respect of greenwashing, of up to 10 per cent of annual turnover.

## ESG CONSULTATION ROUND-UP

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Some notable ESG policy consultations in flight across the globe that are currently open for comment. Engagement is a great opportunity to influence the direction of travel for ESG matters.

### 1. Australian Sustainable Finance Institute consults on Sustainable Finance Taxonomy (multi-sector)

 **What:** On 28 May, the Australian Sustainable Finance Institute (ASFI) published a [public consultation paper](#) for the Australian Sustainable Finance Taxonomy (the Taxonomy). The consultation is the first of two and invites feedback from stakeholders on the draft headline ambitions that have been developed for each of the taxonomy's environmental objectives, and the draft climate change mitigation criteria for the first three priority sectors under development. The first three priority sectors for the Taxonomy are: the built environment; minerals, mining and metals; and electricity generation and storage.

Further details and supporting resources can be found on the ASFI website [here](#) and responses can be submitted through this [survey](#).

 **Timing:** Submissions must be made before 9pm on Sunday 30 June (AEST). The second round of public consultation will take place in Q4 2024.

### 2. China publishes Corporate Sustainability Disclosure Standard (Basic Standards) (multi-sector)

 **What:** On 27 May, China's Ministry of Finance has begun soliciting opinions on a [draft guideline to Corporate Sustainability Disclosure Standards](#) (CSDS). The disclosure standards consist of a basic standard, specific thematic standards and detailed application guidance, and aim to ensure that businesses disclose essential information regarding their ESG impacts. The draft was established using the International Sustainability Standards Board (ISSB) standards as a foundation, ensuring alignment with global best practices.

 **Key details:** The Ministry of Finance has set a timeline for the rollout of these standards. By 2027, China will have issued the climate-related disclosure standard and its accompanying guidance, and it is expected that CSDS, including all thematic standards and application guidance, will be fully issued by 2030. The disclosure standards apply to all companies established in China irrespective of listing or size.

The disclosure standards will not have an immediate legal impact on companies as for the time being, they are not mandatory requirements. However, companies should familiarise themselves with the requirements set by these standards.

 **Timing:** The deadline for soliciting opinions is 24 June.

### 3. Abu Dhabi Global Market discussion paper on enhancements to its Sustainable Finance Framework (financial institutions)

 **What:** On 20 May, the Financial Services Regulatory Authority (FSRA) and the Registration Authority (RA) of Abu Dhabi Global Market (ADGM) [released](#) a discussion paper titled "*Enhancing the Sustainable Finance Regulatory Framework for ADGM*." The discussion paper seeks to gather insights to further develop the ADGM's sustainable finance regulatory framework.

 **Key details:** The paper is divided into two parts, as outlined below.

- **ESG Labelling, Greenwashing, and Climate-Related Risks:** This section invites feedback on the FSRA's proposed guidance for ESG-labelled investment vehicles, emphasising the need for clearer regulatory expectations for ESG investment products.
- **Climate-Related Risks and Transition Planning:** This section focuses on the role of ADGM-licensed entities in identifying and managing climate-related risks, along with efforts the ADGM might employ to motivate these entities to undertake transition planning. Topics for feedback include:
  - the adoption of the Sustainable Finance Working Group's (SWFG) Principles into binding rules;
  - applying the SWFG Principles to all ADGM-licensed entities or only financial services companies;
  - addressing proportionality in climate-related risk management regulations;
  - developing a guidance on transition planning; and
  - creating separate transition planning guidance for financial and non-financial services entities.

 **Timing:** The closing date for comment is 19 July 2024.

## LATEST SIMMONS ESG INSIGHTS

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### Podcast series

- *Seas of opportunity: Navigating the Blue Economy; Ep. 8 - [What does ocean restoration look like?](#)* (11 June 2024)
- *Data Dive: Navigating Data Centres with Simmons* (4 June 2024)

### Webinars On-Demand

- [Global insights - UK General Election 2024](#) (29 May 2024)

### Recent Publications

- We are pleased to announce the first of our six sector articles, derived from our report, "[A Sustainability State of Mind: Unlocking Growth and Opportunity](#)", launched last year. This article, '[Technology drives sustainability, but the sector must fix its impact](#)', delves into the reports healthcare and life science data, exploring where the opportunities in ESG lie for the sector, the barriers that stand in the way, and how they can be overcome. Keep an eye out as we will be publishing our other sector deep dives articles over the next few months. (22 May 2024)
- [ESG: Greenwashing – ESMA publishes a Final Report](#) (5 June)
- [Sustainability agreements: French competition authority Guidance](#) (5 June)
- [UK withdraws from the Energy Charter Treaty](#) (3 June 2024)
- [GreenTech Fund 2024 Winners](#) (29 May 2024)
- [DEI View - May 2024](#) (24 May 2024)
- [Newsflash on EBA benchmarking exercise on Gender Pay Gap](#) (23 May 2024)

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Our ESG approach is not to have an ESG practice but to adopt an integrated, holistic, cross-discipline approach so that we can combine ESG experts and deep technical knowledge with product/business line expertise.

If you need help understanding the current and upcoming ESG legislative and regulatory landscape or your supply chain obligations or supply chain best practice, or you would like assistance in mitigating your supply chain risk, we can help.



**Sonali Siriwardena**

Partner, Global Head of ESG

T +44 20 7825 4595

E [Sonali.Siriwardena@simmons-simmons.com](mailto:Sonali.Siriwardena@simmons-simmons.com)



**ESG Team**

T +352 26 21 16 23

E [esg@simmons-simmons.com](mailto:esg@simmons-simmons.com)

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