

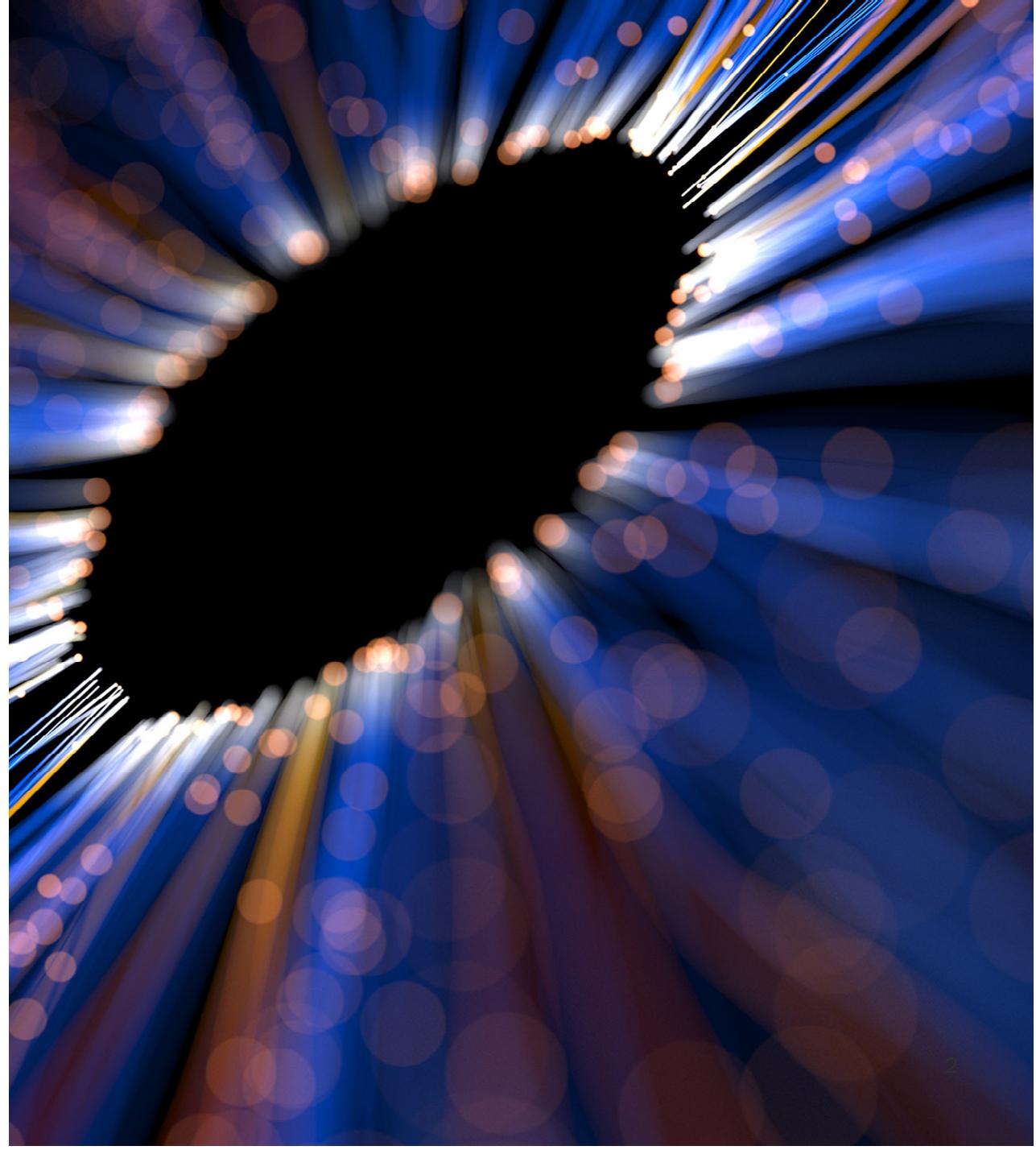
How will ESG rules affect the financial markets?

Financial Markets Legal Update
– the webinar series

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30 June 2020

Agenda

- 1 Introduction: ESG Rules for the financial markets
- 2 The “E” in ESG
- 3 The “S” in ESG
- 4 A brief discussion of the “G” in ESG
- 5 Key takeaways and Q&A



1. Introduction: Environmental, Social & Governance

- Environmental:

Impact on climate and greenhouse gas emissions, climate change risks, energy efficiency and use, hazardous materials and waste, biodiversity and habitat protection, air and water pollution, etc.

- Social:

Human rights and modern slavery, impact on indigenous peoples, employee relations, employee diversity, discrimination, health and safety, consumer relations, data security and privacy, sustainability within supply chain, etc.

- Governance:

Alignment of interests between executives and shareholders, Board independence, Board oversight of ESG Risks, Systemic and critical risk management, transparency and disclosure, anti-corruption, business ethics, financial policies, etc.

1. Introduction

ESG Rules for the financial markets:

- Dutch and EU law
- Soft law: corporate governance, risk management/
prudential supervision, supervisory practices of regulators

Example: Dutch corporate governance code, Principle 1.1.1: “*Het bestuur ontwikkelt een visie op lange termijn waardecreatie van de vennootschap en de met haar verbonden onderneming en formuleert een daarbij passende strategie (...) in ieder geval aandacht besteed aan (...) relevante aspecten van ondernemen, zoals milieu, sociale en personeelsaangelegenheden, de keten waarin de onderneming opereert, eerbiediging van mensenrechten en bestrijding van corruptie en omkoping”.*

Example: CRD/CRR: governance provisions, risk management, disclosure

- Case law: *Urgenda, Stikstof*
- Market practice: ICMA Green Bond Principles, Social Bond Principles, Sustainability Bond Principles, LMA Green Loan Principles, Sustainability Linked Loan Principles, Equator Principles (due diligence by lenders on project (related) finance, E&S) Stock exchange Green/ESG Listings, ESG indices

2. The “E” in ESG



06/2020: EU Framework (Taxonomy) Regulation to facilitate sustainable investment:

- classification system (or taxonomy) to identify whether economic activity (and investment therein) is “environmentally sustainable”.
- applicable to EU, EU member states, corporate issuers, financial services firms, when assessing, and disclosing information on, environmental sustainability.

12/2019: EU Sustainable Finance Disclosures Regulation:

- decision making policy/product governance, “sustainability DD”, disclosure,
- applicable to financial market participants (asset managers).

06/2020: draft amendments to MiFID2, AIFMD and

UCITS: Integration of sustainability into existing organisational rules and conduct of business rules.



2. The “E” in ESG (continued)



05/2020: NGFS publications (incl. DNB):

- Guide for Supervisors
- status report on experiences from working with green, non-green and brown financial assets and potential risk differential.

05/2020: draft ECB Guide on climate-related and environmental risks

- safe and prudent management of climate-related and environmental risks under the current prudential framework CRD, CRR, EBA Guidelines.
- consultation ends 25 September 2020.

04/2020: AFM report on sustainable bonds in NL:

- market for sustainable bonds is growing rapidly;
- more attention to transparency is required; and
- more standardisation welcome.



2. The “E” in ESG (continued)



05/2020: ICMA Sustainable Finance Committee publishes high-level definitions for sustainable finance:

- objective: ensure market participants and stakeholders are using a common and transparent vocabulary.

05/2020: joint guidance (FAQ) from LMA (EMEA), Asia-Pacific Loan Market Association (Asia-Pac) and Loans Syndication and Trading Association (North America):

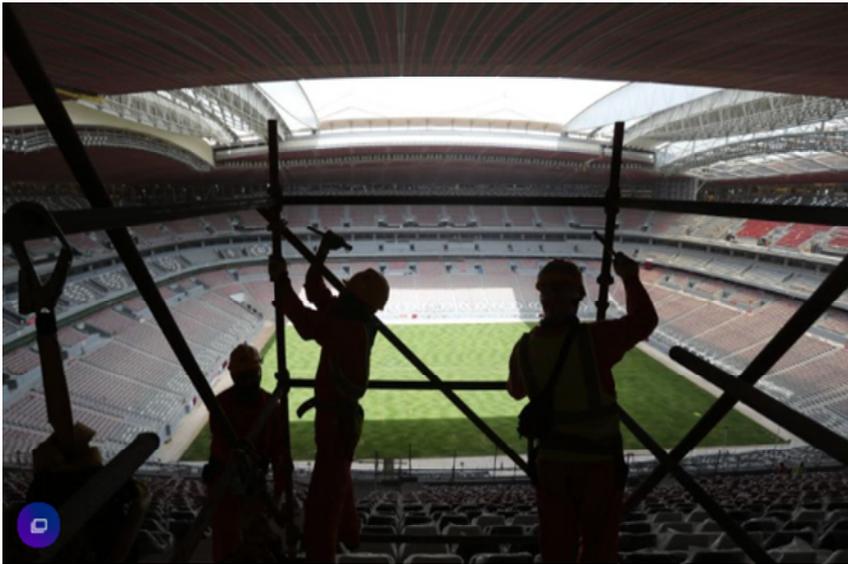
- objective: practical guidance for transactions
- Green Loan Principles and Sustainability Linked Loan Principles



3. The “S” in ESG



Topics: Human rights, Modern Slavery, Discrimination, Consumer Relations



Workers remove scaffolding at Al Bayt Stadium in Al Khor, Qatar. (AP Photo/Kamran Jebreili)



3. The “S” in ESG

Recent developments on Human Rights and Modern Slavery legislation



(photo: Hoshang Hashimi/AFP);
FD, 25-6-2020)



Dutch Child Labour Due Diligence Law



Summary

- Published on 13 November 2019, date of going into effect still unknown (mid 2022?)
- In scope: every company (domestic and foreign), supplying goods and services to end users in the Netherlands
- Obligation to exercise due diligence
- Preventing goods or services from having been created with the aid of child labour
- Declaration to the regulator
- Penalties: regulatory fine, in case of recidivism: criminal offense
- Relevant period for contracts in the supply chain: from 13 November 2019 onwards

International legal context

Guidelines:

-
- UN Guiding Principles on Business & Human Rights (2011)
-
- OECD Guidelines for Multinational Enterprises (2011)
-
- ILO Child Labour Guidance Tool for Business (2015)

Laws:

- California Transparency in Supply Chains Act 2010
- UK Modern Slavery Act 2015
- New South Wales Modern Slavery Act 2018,
- Australian Modern Slavery Act 2018
- Upcoming: Hong Kong, Canada (modern slavery); UN Business and Human Rights Treaty (legally binding)
- French Duty of Vigilance Law 2017
- EU Directive 2014/95/EU → NL Decree on reporting of non-financial information, 14-3-2017 (section 2:391, para 5 Dutch Civil Code)

The relevance of 'Social' due diligence issues § for financial institutions and financial markets

Changing landscape

- Risk appetite: Systematic Integrity Risk Analysis (SIRA) → institutions and third parties, risk-based approach of non-ethical and criminal behaviour
- Market trend: *'From corporate values to Company Value'*
- Legislation (e.g. EU Sustainable Finance Disclosure Regulation, EU Conflict Minerals Regulation (1-1-2021))

4. The “G” in ESG



- Trend: anti-corruption not only G but also S: from ‘level playing field’ from economic and competition perspective, towards ‘Ethics and Sustainability’
- 05/2020: ECB Guide: 13 priorities, of which at least 6 directly related to governance

5. Key takeaways and Q&A



- 1 ESG is not slowing down: legislators and supervisors keep the foot on the pedal.
- 2 Regulatory compliance and risk & liability management are must-haves.
- 3 Board room awareness is a top priority.
- 4 Need to ask: what are we not financing anymore? (Brown assets, anti-social etc.)
- 5 Call us! See our Sustainable Financing and ESG microsite.

Thank you for joining

For further information, please contact us or visit our website simmons-simmons.com.



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