ESG View

May 2024

23 May 2024

Welcome to the May Edition of ESG View!

This spring has seen an abundance of ESG policy news, with regulators globally delivering long-anticipated updates, from the final UK FCA Greenwashing Guidance, to ESMA's guidelines on sustainability-related fund names to Hong Kong's new sustainable finance taxonomy and finalised climate-disclosure rules.

The ocean agenda also made waves this month with momentum on the ratification of the Biodiversity of Areas Beyond National Jurisdiction Treaty (BBNJ), otherwise known as the High Seas Treaty. With Monaco being the latest to ratify the treaty, the total number of ratifying states has reached 5 of the 60 needed to bring the treaty into force. While progress is relatively slow, there's reason to be optimistic, with the EU Parliament also voting in favour of ratification at the end of April. This month also saw the penultimate round of negotiations for a Global Plastics Treaty (INC-4), with a mixed bag of outcomes (some commentary on the developments can be accessed here). Notably, the final negotiations scheduled for the end of the year, will need to finalise agreement on the scope of the treaty and whether it will capture and regulate the full lifecycle of plastic, including its production.

Meanwhile in the UK, in an effort to paint a vision for the blue agenda the Crown Estate, in partnership with a consortium of ocean stakeholders including the Blue Marine Foundation, published a roadmap to unlock vital investment in the protection and restoration of marine and coastal ecosystems - an insightful read for those looking to accelerate investment into this space. Don't forget, you can dive further into the blue economy by tuning into our podcast series Seas of opportunity: navigating the Blue Economy *where you can check out my recent conversation with Mere Takoko, founder of the Hinemoana Halo Ocean Initiative as we explore the power of Indigenous voices and local communities in safeguarding our blue ecosystems.*

In breaking news, just this week, the International Tribunal for the Law of the Sea (ITLOS) issued a ground-breaking advisory opinion on the legal duty of states to mitigate climate change. Having been a humble intern at ITLOS nearly 20 years' ago, it is wonderful to see ITLOS lead the charge as the first international court to issue such an explicit opinion. Now the baton passes to the ICJ who is also due to opine on the topic.

From blue to black, this month saw the G7 make its first collective and time-bound commitment to phase out unabated coal power, which could mark a significant step change for global climate progress, as G7 economies account for 25% of global CO2 emissions. This news comes in the wake of an encouraging analysis by the IEA that clean energy represented 10% of global GDP growth and accounted for around 80% of new capacity additions to the world's electricity system in 2023.

Our cup overfloweth with regulatory updates in this edition of ESG View. Europe has been particularly prolific with its Parliament in a sustainability sprint to make as much progress as possible ahead of the impending summer and election hiatus. We see a similar sentiment from the US with the Biden administration introducing a slew of policies in a last hurrah attempt to progress the green agenda ahead of the November electoral showdown.

Best wishes,

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GLOBAL DEVELOPMENTS

1. International Sustainability Standards Board (ISSB) updates (multi-sector)

Developments on biodiversity, ecosystems and ecosystem services and human capital

What: On 24 April, the ISSB announced it will commence projects to research disclosure about risks and opportunities associated with biodiversity, ecosystems and ecosystem services and human capital. The ISSB will focus on the common information needs of investors in assessing whether and how these risks and opportunities could reasonably be expected to affect a company's prospects. The ISSB will look at how it might build from relevant pre-existing initiatives, including the SASB Standards, CDSB guidance and the Taskforce on Nature-related Financial Disclosures (TNFD).

Next steps: The ISSB expects to publish a summary of market feedback and its work plan for the next two years in June, as an output from its Request for Information Consultation on Agenda Priorities which closed on 1 September 2023.

ISSB Taxonomy

What: On 30 April, the ISSB published the IFRS Sustainability Disclosure Taxonomy (ISSB Taxonomy), which aims to enable investors and other capital providers to efficiently analyse sustainability-related financial disclosures.

Key details: The ISSB Taxonomy is designed to be consistent with the IFRS Accounting Taxonomy and compatible with other digital taxonomies, so that companies can provide a holistic digital financial reporting package to investors. As such, it does not introduce new requirements and is developed to complement a company's compliance with the IFRS S1 and IFRS S2, enabling companies to consistently tag information prepared using ISSB Standards. The process of tagging will make the information computer-readable, enabling investors to extract, compare and analyse it more efficiently and will allow investors to compare sustainability-related financial information in a digital format.

2. NGFS publishes package of reports relating to transition plans (financial institutions)

What: On 17 April, the Network for Greening the Financial System (NGFS) published three reports and a cover note, furthering its work on transition plans. These updates address the role of transition plans in enabling the financial system to mobilise capital, manage climate-related financial risks, and the relevance of transition plans to micro-prudential supervision.

Key details: The three reports published comprise:

- Tailoring Transition Plans: Considerations for EMDEs which explores the needs and challenges of emerging market and developing economies (EMDEs) related to transition plans;
- Connecting Transition Plans: Financial and non-financial firms which assesses the interlinkages between the transition plans of the real economy and financial institutions; and
- Credible Transition Plans: The micro-prudential perspective which examines the credibility of financial institutions' transition plans and processes from a micro-prudential perspective.

The reports identify three key action areas that can support the global adoption of transition plans:

1. developing international guidance for transition planning and interacting frameworks for the disclosure of transition plans,
2. holistic transition plans which integrate both transition and physical aspects of climate change while considering the ongoing loss of nature; and
3. enabling conditions for adopting plans, such as national climate frameworks and economy wide incentives to develop and disclose transition plans.

The reports are intended to deepen collective understanding on issues and to help firms to mature their approach to transition planning.

3. Update of Basel Core Principles for effective banking supervision (financial institutions)

What: On 24-25 April, the revised *Core Principles for effective banking supervision* were endorsed at the 23rd International Conference of Banking Supervisors in Basel, Switzerland and are now the minimum standard for sound prudential regulation and supervision of banks and banking systems.

Key details: The Core Principles are:

- universally applicable;
- accommodating various banking systems; and
- regulating a broad range of banks.

These principles are used by supervisors to evaluate the effectiveness of their regulatory and supervisory frameworks and by the International Monetary Fund (IMF) and World Bank in the Financial Sector Assessment Program (FSAP) to assess banking supervisory systems and practices.

The recent update to the global banking supervision principles includes, for the first time, climate change as a potentially material risk to financial stability. This means that both regulators and banks are now required to identify and address risks associated with climate change. This inclusion underscores the growing recognition of environmental factors in financial oversight.

Timing: The updated Core Principles standard is effective immediately as they have been embedded within the consolidated Basel Framework.

EUROPEAN DEVELOPMENTS

1. A flurry of sustainability-focused progress by the European Parliament (multi-sector)

What: This month saw a surge of activity in Europe with several initiatives being voted through European Parliament (EP) across multiple sectors, representing a leap forward in the drive for more sustainable outcomes.

Key details: Outlined below are some key EU sustainability updates observed over the past few weeks.

- EP approved the CSDDD, with 374 votes against 235 and 19 abstentions. Following its publication in the Official Journal, it will start to apply to in-scope firms from 2027. (See our latest briefing here). The final sign-off from the European Council on the regulation is scheduled for 24 May.
- The EP adopted measures to make packaging more sustainable and reduce packaging waste in the EU. The rules include packaging reduction targets: 5% by 2030, 10% by 2035 and 15% by 2040.
- EP approved the Net-Zero Industry Act (NZIA) which aims to bolster EU production in technologies needed for decarbonisation. The NZIA sets a target for Europe to produce 40% of its annual deployment needs in net-zero technologies by 2030, based on National Energy and Climate Plans and to capture 15% of the global market value for these technologies.
- EP approved new eco-design rules, to make products sold in the EU more reusable, repairable, upgradeable and recyclable.
- Following our recent update in April ESG View, the Environmental Crimes Directive was published in the Official Journal and entered into force on 20 May. Member States are required to implement the requirements by 21 May 2026 and publish a national strategy on combatting environmental criminal offences by 21 May 2027.
- The EP granted its final approval to a new regulation enabling the EU to prohibit the sale, import, and export of goods made using forced labour.
- The EP also agreed to withdraw from the Energy Charter Treaty as it considers the Treaty to be no longer compatible with the EU's climate goals under the European Green Deal and the Paris Agreement, predominantly due to concerns over continued fossil fuel investments.
- In May, there has also been advocacy for momentum on the stalled EU Nature Restoration Law (see our April ESG View for details), with 11 EU Member States signing a letter urging other States to approve the regulation at the upcoming Environmental Council meeting on 17 June. We will be tracking this development into next month.

Our view: This was a final push by the EP ahead of the long slumber that will likely prevail over the EU policy-making machinery given the summer break and upcoming EU parliamentary elections.

2. ESMA has published its Guidelines on fund names using ESG or sustainability-related terms (asset management)

What: On 14 May the European Securities and Markets Authority (ESMA) published its Final Report containing guidelines (the Guidelines) on fund names using ESG or sustainability-related terms.

Key details: The Guidelines are applicable to asset managers, including UCITS Management Companies, Alternative Investment Fund Managers (AIFMs) and self-managed collective investment schemes, imposing a minimum threshold of 80% of investments which should be used to meet environmental, social characteristics or sustainable investment objectives. The Guidelines also include a number of exclusion criteria for different terms used in fund names. Funds that include ESG terms in their name will need to either comply with the restrictions or amend their name. For more detail and our Top 10 talking points arising from the Guidelines, see our latest note here.

Next steps: The Guidelines will apply three-months after the date of their publication on ESMA's website in all EU official languages and as this timing may vary, firms are advised to monitor progress of the updated published translations. Managers of any new funds created after the date of application of the Guidelines should apply them immediately in respect of those funds. Managers of funds existing before the date of application should apply the Guidelines in respect of those funds six months from the application date.

3. European Commission summary report of SFDR consultations (asset management)

What: On 3 May, the European Commission published a Summary Report of the responses to its September 2023 consultations on the Sustainable Finance Disclosure Regulation (SFDR), (see our previous briefing here).

Key details: Whilst the report does not provide the substantive views of the Commission, the feedback provides useful insights on perceived areas of uncertainty and potential areas of development for SFDR 2.0. Outlined below are a few key insights from the report.

- *Uniform disclosures:* There is clear support for setting uniform disclosures for all financial products in the EU as well as additional reporting for products making sustainability claims. 89% of respondents support the broad objectives of the SFDR and the need for sustainability disclosures and 94% supported measures at EU, rather than national, level.
- *Entity-level disclosures:* Most financial market participants and financial advisers did not consider it appropriate to include entity-level disclosure requirements in the SFDR. There were also split opinions on how useful such disclosures are in practice. Most respondents supported simplifying the entity-level requirements and streamlining these across other pieces of EU legislation.
- *Support for a categorisation system:* There was support for a new EU-wide voluntary classification system for financial products. The majority of investment management industry respondents supported removing the Articles 8 and 9 categories in the SFDR and creating new categories of products based on investment strategy. It was also suggested that any criteria and indicators should, where possible, leverage the existing sustainable finance framework.

Next steps: The report does not provide timing for when any new rules might be published but we expect this is unlikely to be before the end of 2024 following the appointment of the new EU Commission in autumn.

UK DEVELOPMENTS

1. FCA anti-greenwashing guidance (financial institutions)

What: On 23 April, the FCA published its finalised guidance (FG24/3) on its new "anti-greenwashing rule" which was introduced as part of the package of measures establishing the Sustainability Disclosure Requirements (SDR) regime.

Key details: The guidance is intended to help firms understand the FCA's expectations under the anti-greenwashing rule and provides examples as to how to implement the rule in practice. The rule itself provides that all communications an authorised firm makes to UK persons about the 'sustainability' characteristics of its financial products and services must be consistent with the sustainability characteristics of their financial product or service. It must also be fair, clear, and not misleading in respect of all communications (including financial promotions communicated by the firm) about financial products or services where they refer to environmental and/or social characteristics. The scope is therefore broad and is intended to complement existing provisions in the FCA Handbook concerning client communications. The rule applies to all UK authorised firms and in respect of any UK client.

Next steps: The rule and guidelines will apply from 31 May. Noting the fast-approaching deadline, firms should review their investor communications to ensure compliance with the anti-greenwashing rule and guidance and should ensure that existing measures taken to substantiate claims are documented in their policies and procedures are sufficient. See more on this development here.

Firms should also note the upcoming FCA TCFD reporting deadline of 30 June for in-scope Phase 2 asset managers. For how we can help, see here.

2. UK framework on sustainability reporting standards (multi-sector)

What: On 16 May, the Department for Business and Trade published a framework and terms of reference for the development of UK Sustainability Reporting Standards. The framework sets out the assessment, endorsement and implementation process for the IFRS Sustainability Disclosure Standards published on 26 June 2023 (IFRS S1 and IFRS S2).

Key details: The framework clarifies that each standard issued by the ISSB requires analysis and assessment to determine its appropriateness for use within a UK context, prior to an endorsement decision. To assist with the assessment and endorsement of IFRS S1 and IFRS S2, the government has established:

- an independent Technical Advisory Committee (TAC), whose purpose is to assess IFRS Sustainability Disclosure Standards on a technical basis and provide independent recommendations on endorsement to the Secretary of State for Business and Trade; and
- a Policy and Implementation Committee (PIC), which is formed of UK government and regulator representatives.

Next steps: The government aims to make endorsement decisions on IFRS S1 and IFRS S2 by the first quarter of 2025.

MIDDLE EAST AND AFRICA DEVELOPMENTS

1. ICMA, IsDB and LSEG publish Guidance on Green, Social and Sustainability Sukuk (financial institutions)

What: On 29 April, the International Capital Market Association (ICMA), the Islamic Development Bank (IsDB), and the London Stock Exchange Group (LSEG) published the *Guidance on Green, Social, and Sustainability Sukuk* (the Guidance). This initiative, first developed at COP28 in December 2023, aims to stimulate the sustainable sukuk market which, as of 2023, has seen seven consecutive years of growth.

Key details: The Guidance aims to:

- inform issuers and other market participants about the criteria for classifying sukuk as green, social, or sustainable, in line with the ICMA Principles;
- improve global investor understanding of sukuk as an asset class; and
- enable global bond and sukuk issuers to access sustainable capital more easily, thereby supporting the achievement of the United Nations' Sustainable Development Goals.

The Guidance outlines the application of the three sukuk types including: the Green Sukuk (instruments that fund or refinance eligible green projects); the Sustainability Sukuk (instruments where the proceeds are allocated to a combination of Sharia-compliant green and social projects); and the Social Sukuk (instruments that fund or refinance eligible social projects that are sharia compliant).

The Guidance provides a high-level step-by-step process for issuers to issue a sustainable sukuk. It emphasises the creation of a sustainable financing framework based on four key pillars: Use of Proceeds; Process for Project Evaluation and Selection; Management of Proceeds; and finally Allocation and Impact Reporting.

2. South African Reserve Bank publishes Guidance Notices on climate risk and disclosure for banks and insurers (financial services)

What: The Prudential Authority (PA) of the South African Reserve Bank (the supervisory arm of the bank), has published finalised Guidance Notices on how to manage climate-related governance and risk practices for banking and insurance, as well as on climate-related disclosures for banking and insurance. This Guidance was previously published for public consultation in August 2023.

Key details: Both Guidance Notices have been designed to align closely with international standards, including the ISSB framework. The guidance on climate-related governance and risk practices requires that banks and insurers adopt appropriate governance foundations for climate-related risks and ensure an integrated approach to climate risk management. Notably, the guidance states that firms should undertake climate transition planning as part of their climate risk management processes.

The climate-related disclosure Guidance Notices mirror the structure and pillars of TCFD and ISSB frameworks by including: "governance", "strategy", "risk management", and "metrics and targets". The Notices also include "*additional considerations*" with country-specific requirements, including reporting on whether and how scenarios consider South Africa-specific context and transition pathways and references to the South African green finance taxonomy.

Our view: The Guidance Notices, while not legally enforceable, provide "*minimum expectations*" of firms and the PA will be monitoring implementation. The PA has said that "*climate-related disclosures are expected to become mandatory over time*"; therefore firms should be proactively engaging with the guidance and looking to implement.

APAC DEVELOPMENTS

1. Hong Kong publishes a Taxonomy for Sustainable Finance (multi-sector)

What: On 3 May, the Hong Kong Monetary Authority (HKMA) published the Hong Kong Taxonomy for Sustainable Finance (Hong Kong Taxonomy) to enable informed decision-making on green and sustainable finance and facilitate relevant financial flows.

Key details:

- The Hong Kong Taxonomy encompasses 12 economic activities under four sectors namely power generation, transportation, construction, and water and waste management. It provides a standardised framework for classifying and labelling financial products and investments based on their environmental sustainability.
- The Hong Kong Taxonomy considers taxonomy developments in other jurisdictions, including Mainland China, the EU and the ASEAN. The key taxonomies referenced are the Common Ground Taxonomy (CGT), the EU Taxonomy, the Green Bond Endorsed Projects Catalogue, ASEAN Taxonomy and the Climate Bonds Taxonomy (CBT).
- To cater for the local circumstances and activities in Hong Kong, some metrics or thresholds have not been previously featured in any other taxonomies, have been included for example, "Construction of New Buildings".
- To facilitate users to understand and apply the Hong Kong Taxonomy, a supplemental guidance has been prepared to provide background information, cases for illustrative purposes, and responses to frequently asked questions.

Next steps: The financial sector is urged to use the Hong Kong Taxonomy to assess the greenness of projects and assets when labelling and developing products and making disclosures. The HKMA will seek to expand the coverage of the taxonomy to include more sectors and activities, including transition activities.

2. Hong Kong publishes conclusions to its consultation on climate-related disclosures (multi-sector)

What: On 19 April, the Stock Exchange of Hong Kong (the Exchange) published the conclusion paper to its consultation on climate-related disclosures (the New Climate Requirements), undertaken last year (see our May 2023 ESG View), along with Implementation Guidance for Climate Disclosure. The New Climate Requirements were closely informed by the ISSB's IFRS S2 standards and align with Hong Kong's vision statement for sustainable disclosure (as covered in our April ESG View).

Key details: Some of the key developments to note are outlined below.

- The New Climate Requirements were adjusted to take greater account of IFRS S2. In particular, implementation reliefs including proportionality and scaling-in measures have been introduced to address concerns over the reporting challenges that some issuers may face. Full details of amended text are outlined within the conclusion paper.

- The Exchange has opted to introduce disclosure requirements with a phased approach:

	New Climate Requirements Effective Date	
	Disclosure on Scope 1 and scope 2 greenhouse gas emissions	Disclosure other than scope 1 and scope 2 greenhouse gas emissions
LargeCap Issuers (Hang Seng Composite LargeCap Index constituents)	Mandatory disclosure (Financial years commencing on or after 1 January 2025)	"Comply or explain": in financial years commencing on or after 1 January 2025 Mandatory disclosure: in financial years commencing on or after 1 January 2026
Main Board Issuers (other than LargeCap Issuers)		"Comply or explain" (Financial years commencing on or after 1 January 2025)
GEM issuers		Voluntary disclosure (Financial years commencing on or after 1 January 2025)

Next steps: To prepare for the new requirements, issuers should look to familiarise themselves with the New Climate Requirements and Implementation Guidance, and review existing governance and processes with the new requirements in mind. The Exchange has said it will provide further guidance and training as appropriate, based on its observations and review of issuers' compliance.

3. ASEAN publishes Version 3 of its Taxonomy for Sustainable Finance (multi-sector)

What: In case you missed it, on 27 March, the Association of Southeast Asian Nations (ASEAN) Taxonomy Board (ATB) has published a Version 3 ASEAN Taxonomy for Sustainable Finance (ASEAN Taxonomy). The ASEAN Taxonomy adopts a multi-tiered framework which allows assessment of sustainable activities through either the principles-based Foundation Framework, or the Plus Standard with a more detailed methodology using application of technical screening criteria (TSC).

Key details: Version 2 of the ASEAN Taxonomy came into effect on 19 February 2024 (which was covered in our February ESG View) and introduced TSC for the Electricity, Gas, Steam and Air Conditioning Supply (Energy) sectors. Notably, Version 3 introduces TSC for two additional focus sectors, namely Transportation & Storage and Construction & Real Estate. The Green classification for these new focus sectors have been aligned, where appropriate with relevant international sectoral guidelines and regulations and makes reference to widely used international taxonomies such as the EU Taxonomy. For those focusing on transition finance, the ASEAN Taxonomy's Amber classification serves as a transition category.

Next steps: The ATB will conduct targeted consultations on this new version with key stakeholder groups and users of the ASEAN Taxonomy, so keep your eyes peeled for these in future editions.

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AMERICAS DEVELOPMENTS

1. The U.S. Federal Government releases new climate regulation on multiple fronts (multi-sector)

What: The last month has seen a buzz of activity from the U.S. government on various climate-related regulations and policies. Some notable developments are outlined below.

- On Earth Day (22 April), President Biden announced $7 billion in federal grants for residential solar projects serving 900,000-plus households in low- and middle-income communities and 2,000 corps positions are being offered across 36 states as part of his New Deal-style American Climate Corps green jobs training program.
- On 25 April, the Environmental Protection Agency (EPA) introduced a suite of new rules to reduce pollution from fossil fuel-fired power plants, including requiring all coal-fired plants that plan to run in the long-term (beyond 2039) to control 90% of their carbon pollution. Sector analysts have described this rule as "probably terminal" for most coal plants that are not already planning to retire.
- On 30 April, the U.S. Department of Treasury released final tax credit guidance for sustainable aviation fuel (SAF) production. The new guidance allows corn-based ethanol to qualify for the subsidy program under the Inflation Reduction Act, if the production adopts and demonstrates certain climate-smart practices. Notably, on 25 April, the UK Government also shared its SAF ambition, announcing a new target for 10% of jet fuel to come from sustainable sources by 2030.

Our view: With greater pressure in an election year for candidates vying for political office to rebuild economies, fight inflation and reduce unemployment in the short-term, the sustainability policy agenda can, at times, appear less immediate and costly. However, we have seen that the choice does not need to be an "*either / or*" proposition, as we have seen with the U.S. administration positioning itself as supporting the triple bottom line: people, planet and profit.

ESG DISPUTES ROUND-UP

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

- On 21 May, NGOs filed a criminal complaint against French oil giant TotalEnergies and its top shareholders in Paris. Find out more in our ESG Disputes Radar.
- On 7 May, an Oklahoma Court granted a temporary injunction, blocking the enforcement of "anti-ESG" legislation, the Oklahoma Energy Discrimination Act of 2022, which prohibits government retirement systems from investing in companies that "boycott energy companies". The Court found there was "substantial likelihood" that the case challenging the legislation would succeed on multiple fronts.
- Ecodefense, one of Russia's oldest environmental organisations, has filed an application with the Russian Constitutional Court, challenging the government's inadequate climate policies. Ecodefense, joined by 18 others, argues Russia's current approach violates fundamental rights like the rights to life, health, a clean environment, freedom from discrimination, and protection for Indigenous peoples. A summary of the case can be accessed here.

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. UK Government Climate Plan found unlawful (multi-sector)

What: Following legal challenges in the High Court by Friends of the Earth, ClientEarth and Good Law Project, the UK government's climate strategy has been found unlawful for the second time. The Court found that the government has breached the Climate Change Act 2008 by adopting the Carbon Budget Delivery Plan. As a result, the Secretary of State will have to revise the plan. The government's previous climate action plan, the Net Zero Strategy, was also ruled to be unlawful following legal challenges by the same three organisations in July 2022.

Key details: The Court held the Government's assumption that all its policies would achieve 100% of their intended emissions cuts was wrong and the quantified savings for each policy must represent what the Government realistically believes can be achieved. The UK is currently not meeting its domestic climate targets, and its 2030 international goal is unlikely to be met with the current plan.

Our view: This judgment shows greater scrutiny into the environmental transitional plans established by public bodies and governments. Against this backdrop, private companies will have to consider their own transition plans to ensure they contain realistic and achievable targets to avoid similar litigation.

2. Legal appeal after TotalEnergies refuses to table its advisory shareholder proposal (multi-sector)

What: On 18 April, the Ethos Foundation and a coalition of 19 international investors, supported by the FrenchSIF and representing 0.9% of TotalEnergies' share capital, filed a shareholder resolution at TotalEnergies' Annual General Meeting (AGM) to request the separation of the functions of Chair of the Board and CEO. The Board of Directors of TotalEnergies unanimously decided not to include the proposed resolution on the agenda of the AGM. This decision led several shareholders to the Nanterre Commercial Court to attempt to impose their proposal.

Key details: The Board of Directors refused to register the resolutions for its AGM on the basis of its legality (as opposed to a judgement of its substance). An AGM can neither change the mode of governance in the articles of association of TotalEnergies (a power reserved to the extraordinary general meeting) nor be used to switch to dual governance (a power reserved to the Board of Directors). The activist shareholders have requested the inclusion of the resolution not with the intent of a vote having any binding legal consequences but rather to allow shareholders to express their views on the company's governance. It is now up to the Nanterre Commercial Court to decide whether it is possible for the AGM to take a consultative vote on the company's governance.

Our view: The question before the Court is interesting from a legal perspective because it is representative of a current and wider debate on the possibility for minority shareholders to express their views and influence company policy. Increasingly "dissenting" resolutions are being submitted for the AGMS of major companies, particularly on environmental issues. This increasing trend can constitute a growing ESG risk for firms to consider.

3. Unilever found to be violating OECD - OECD Guidelines (multi-sector)

What: On 7 May, the Dutch National Contact Point (NCP) found that Unilever was in breach of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) by failing to engage in the OECD mediation process in good faith. The Dutch NCP has recommended that Unilever update its policies and practices on good faith engagement.

Key details: In April 2018, a group of former workers of Unilever in the Democratic Republic of the Congo, filed a complaint against Unilever, alleging that in 2001 it unjustifiably dismissed 802 employees in the DRC and then failed to provide them a complete severance package. The parties agreed to commence mediation, although they were unable to come to an agreement. The Dutch NCP found that during the mediation process Unilever created a "*pattern of hurdles*" which frustrated the mediation process. Although the Dutch NCP could not uphold the underlying complaint, it nevertheless concluded that Unilever had conducted itself in an overly "*legalistic*" manner, which was "*contrary to the spirit of the OECD Guidelines, which specifically ask from companies that they look beyond what the law requires*".

Our view: The Dutch NCP's decision that Unilever should look beyond what the law requires in respect of its obligations under the OECD Guidelines serves as a stark warning that NCPs will interpret companies' obligations in a broad manner. When assessing their own risk exposure, particularly in high risk jurisdictions, companies should avoid taking an overly-legalistic approach and should instead assess their activities against the spirit of the Guidelines. An adverse finding on an OECD complaint could lead to associated civil litigation, as well as potential reputational risk and exclusion from financing opportunities.

ESG CONSULTATION ROUND-UP

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. Taskforce on Inequality and Social-related Financial Disclosures call for feedback (multi-sector)

What: In April 2023, Taskforce on Inequality and Social-related Financial Disclosures (TISFD) was created and aims to develop recommendations that enable businesses and investors to effectively identify, assess, and report on their inequality and social-related risks, opportunities, and impacts.

TISFD has a Working Group looking to operationalise the taskforce, which is made up of 20 organisations, including the Organisation for Economic Co-operation and Development (OECD), the United Nations Development Programme (UNDP) and the International Labour Organisation (ILO) among others. Aside from international organisations, the likes of Schneider Electric and Generation IM are also on the Working Group.

In advance of the TISFD launching in September 2024, the Working Group is seeking feedback from across sectors on the emerging governance structure and technical scope of TISFD. Topics open to feedback include: thematic scope; materiality approach; alignment with international standards; interoperability with existing standards and frameworks; governance principles; and outputs.

Timing: No closing date is listed.

2. International Advisory Panel on Biodiversity Credits (IAPB) consultation on Archetypes (multi-sector)

What: On 18 April, IAPB launched its second consultation on archetypes for biodiversity credits, which are a simple set of models as to how a biodiversity credit market could operate. It follows on from IAPB's previous Call for Views, which took a broader approach with the aim of attracting a wide range of views on what the IAPB sees as the five design priorities for biodiversity credit markets. The feedback and results from the initial Call for Views can be found here.

This consultation builds on the issues highlighted through the Call for Views and focuses on understanding the range of possible market models for biodiversity credits and the key features that could influence their success. The aim of the consultation is to gather the most information possible on a range of different possible models, which will then be analysed and integrated into IAPB products and recommendations.

Timing: Consultation period closes at midnight on Friday 24 May.

3. UK FCA consults on extending SDR to portfolio management services (asset management)

What: On 23 April, the UK Financial Conduct Authority (FCA) published a consultation paper (CP24/8) which considers extending the Sustainability Disclosure Requirements (SDR) and investment labels regime to portfolio management services.

Key details: The FCA is proposing to extend the SDR and investment labels regime to all to all forms of portfolio management services, indicating that as the SDR and labelling regime has been developed primarily for retail investors, the proposals to extend the regime are primarily aimed at wealth management services for individuals and model portfolios for retail investors. Firms offering portfolio management services to professional clients (or institutional investors) can also opt into the labelling regime. More details on the SDR can be found in our client note. For more detail on the implementation of SDR, on 16 May the UK government has published a helpful implementation update on SDR.

Next steps: If the rules are implemented as planned, portfolio managers will be able to use the sustainability labels from 2 December 2024. In-scope portfolio managers will also need to make the accompanying disclosures from this point and the naming and marketing rules will also come into force on the same date as for fund managers, which means portfolio managers will have considerably less time to prepare. The consultation is open until 14 June 2024.

4. Hong Kong ESG data and ratings code of conduct (rating agencies)

What: On 17 May, the Voluntary Code of Conduct Working Group (the VCWG) (sponsored by the Hong Kong Securities and Futures Commission) published a consultation seeking feedback on the draft Code of Conduct for ESG ratings and data products providers.

Key details: The Code of Conduct includes a framework of proposed actions for users which are underpinned by six key principles: good governance; ensuring high quality; conflicts of interest; transparency; confidentiality; engagement with rated firms. These principles were based on IOSCO's recommendations from its November 2021 final report. Notably, the VCWG reached a consensus that no Hong Kong-specific consideration are required for this Code.

The consultation invites responses to three key questions:

- Does the Code comprehensively address aspects pertinent to the Hong Kong market (for providers, users, covered entities)?
- Is the Code sufficiently clear to ensure adherence?
- Do users find the self-attestation document included within the Code useful?

Timing: The consultation period will run until 17 June 2024.

5. Consultation on the Exposure Draft of the 'Korean Sustainability Disclosure Standards' (multi-sector)

What: On 2 May, the Korea Sustainability Standards Board (KSSB) of the Korea Accounting Institute (KAI) has published the Exposure Draft of the 'Korean Sustainability Disclosure Standards' (the Standards) for consultation. KSSB has used the IFRS Sustainability Disclosure Standards established by the ISSB as the foundation for the Standards, as well as taking into account country-specific circumstances and preparedness of domestic companies and industries.

Key details: The Standards consist of:

- two mandatory disclosure standards: KSSB 1 *General Requirements for Disclosure of Sustainability-related Financial Information* (based on IFRS S1) and KSSB 2 *Climate-related Disclosure* (based on IFRS S2); and
- one non-mandatory disclosure standard: KSSB 101 *Sustainability Disclosure Standard 101, Additional Disclosure aligned with Policy Objectives*. This is a unique country-specific standard that allows companies to selectively disclose additional sustainability-related information as required by domestic laws or to meet/ promote the implementation of government sustainability-related policy objectives.

Timing: Consultation period closes on 31 August 2024.

6. UK consults on measures to simplify corporate reporting (multi-sector)

What: On 16 May, the UK government announced it is consulting on introducing new measures to simplify corporate reporting as part of its Smarter Regulation programme.

Key details: The proposals aim to reduce reporting burdens on medium-sized companies and introduces 2 key proposals:

- exempting medium-sized companies from producing a Strategic Report; and
- amending the definition of a medium-sized company for corporate reporting so that the threshold for the maximum number of employees is increased from 250 to 500, aligning the employee threshold to a level that reflects what the government considers to be a medium-sized.

The Non-financial reporting review: impact assessment published on 18 March 2024 estimated that the monetary uplift would save business around £150 million per year.

Next steps: The government has also committed to consulting later in the year on further proposals to reduce the reporting burden on medium-sized companies. The consultation is open until 27 June 2024.

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