ESG View

September 2025

25 September 2025

Welcome to the September ESG View!

I have always had a soft spot for spring but this year, I am embracing the spirit of autumn which comes adorned in change with windswept leaves dancing in the rain. For this, dear readers, will be my last edition of ESG View as I am leaving my role shortly for new adventures, although I am happy to say that part of that new life is likely to entail ongoing consultancy work with Simmons. It has been a tremendous joy to compile this monthly missive on the wins and warts of sustainability over these past years spurred on by the spontaneous feedback we often receive from the fans of this newsletter.

Therefore, it gives me great pleasure to sign-off highlighting two seminal developments this month that have been decades in the making. The first is the news of the High Seas Treaty, also known as the Biodiversity Beyond National Jurisdiction (BBNJ) Agreement, securing sufficient ratifications to come into effect following a recent surge of signatures by several countries, including my motherland Sri Lanka, establishing a legal framework for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, a landmark step forward in global ocean governance. The second is the entering into force of the WTO Agreement on Fisheries Subsidies, which is significant both for being the first multilateral trade agreement with environmental sustainability at its core and for also being crucial to stop harmful government subsidies that contribute to illegal fishing, overfishing, and overcapacity.

But big beautiful (as superlatives are the current rage) international treaties do not a movement make. The market needs clear pathways to embrace the change. To that end, earlier this month, there was a welcome convergence of global carbon accounting standards through the strategic partnership of the ISO and GHG Protocol. In the meantime, the debt markets were gifted with a refreshed set of Blue Finance Guidelines by the IFC with the publication of version 2.0 of their influential framework providing updated guidance on blue bonds, loans, sustainability-linked instruments, and performance tracking through blue KPIs.

The extreme weather events of summer 2025, which caused an estimated €43 billion in losses for the European economy alone (according to a study published-on 17 September), are a stark reminder that protecting our planet is urgent and non-negotiable. As the UN General Assembly convenes this week in New York, there is every hope that global discussions will continue to elevate the fight against climate change and biodiversity loss.

I look forward to seeing the future of ESG at Simmons grow under Rob Allen, the head of Pro Bono and a dispute resolution partner, as he takes over.

Thank you for your continued readership. I wish you all power and strength to stay resolute in your quest, however big or small, to champion sustainability and carve out a role on the right side of history.
Best wishes,

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GLOBAL DEVELOPMENTS

1. Global: SBTi launches a net-zero standard for financial institutions

What: Following a flurry of state ratifications at the United Nations last week, the High Seas Treaty has now reached the 60 state ratifications required for entry into force. After nearly two decades of negotiations, the BBNJ Agreement – will become legally effective on 17 January 2026.

Key details:

The BBNJ Agreement addresses the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction – the two-thirds of the world's ocean lying beyond the 200-nautical mile limit of Exclusive Economic Zones (EEZs). It establishes international rules across four key areas:

- access and benefit-sharing of marine genetic resources;
- area-based management tools including marine protected areas (MPAs);
- environmental impact assessments (EIAs) for activities in the high seas; and
- capacity-building and technology transfer for developing states.

Our view: The BBNJ Agreement is a seismic win for ocean governance and a cornerstone for future biodiversity protection. Its entry into force will extend regulatory oversight into the high seas, with implications for sectors from shipping and offshore energy to marine biotechnology and blue finance. Companies should anticipate stricter requirements around protected areas, EIAs, and benefit-sharing frameworks. Moreover, investors will increasingly be expected to integrate ocean sustainability into risk assessments and financing structures.

Next steps: The first Conference of the Parties (CoP) must convene within one year of the BBNJ Agreement's entry into force, likely towards the end of 2026. Preparatory work is already underway at the UN to design the governance structures, compliance mechanisms and institutional processes needed to operationalise the BBNJ Agreement's ambitions.

2. WTO Agreement on Fisheries Subsidies enters into force (all sectors)

What: On 15 September, and after more than two decades of negotiations, the WTO Agreement on Fisheries Subsidies (Agreement) entered into force following ratification by 111 countries.

Key details: The Agreement establishes binding rules prohibiting the most harmful fisheries subsidies, targeting practices that drive illegal, unreported and unregulated (IUU) fishing, the overexploitation of depleted stocks, and unregulated high seas fishing. Its scope is limited to wild marine capture fisheries, excluding aquaculture, inland fisheries, and certain government-to-government access arrangements.

A Committee on Fisheries Subsidies will oversee implementation, ensuring transparency, monitoring compliance, and facilitating regular dialogue among members. Members must notify their subsidy programmes, providing detailed data on objectives, beneficiaries, and financial support. Developing countries and least-developed countries benefit from special and differential treatment, supported by the WTO Fish Fund, to assist them in meeting obligations.

The Agreement also includes a dispute settlement mechanism under WTO rules, providing legal recourse to address violations. It complements other international frameworks, including the BBNJ Agreement, extending sustainability disciplines into areas beyond national jurisdiction.

Our view: The Agreement represents a landmark in trade law and ocean governance, signalling the growing enforceability of sustainability objectives in multilateral frameworks. For companies in fishing, seafood processing, shipping, and related supply chains, subsidy regimes will face heightened scrutiny, with potential implications for contracts, licensing, and reporting obligations. Investors and lenders should anticipate shifts in the economics of overcapacity and unsustainable fishing, creating clearer incentives for sustainable aquaculture, certification schemes, and blue finance.

3. ISO and GHG Protocol unify emissions standards (all sectors)

What: On 9 September 2025, standards-setting organisations the International Organization for Standardization (ISO) and Greenhouse Gas Protocol (GHG Protocol) announced a partnership to harmonise their carbon accounting standards.

Key details:

The initiative combines ISO 1406X standards with GHG Protocol Corporate, Scope 2, and Scope 3 standards, and introduces a new product carbon footprint standard.

The co-branded framework reduces fragmentation and provides a single global "language" for GHG accounting, making emissions measurement and reporting more consistent, comparable, and easier to use across industries and borders.

The product carbon footprint standard is expected to support compliance with carbon border adjustment mechanisms (CBAM) in Europe, the UK, and other jurisdictions.

Our view: This partnership is a major step toward simplifying and standardising GHG accounting. By providing a unified framework, it helps businesses manage the complexities of emissions reporting, enhance transparency, and improve accountability.

The product carbon footprint standard is particularly timely, equipping companies to assess and mitigate the environmental impact of their products, which is increasingly critical in global markets with stringent climate and ESG regulations.

4. NZBA pauses activities amid member exodus (financial institutions)

What: On 27 August, the Net Zero Banking Alliance (NZBA) announced the suspension of its operations and launched a vote among members on its future structure. The initiative, now four years old, has been hollowed out by a wave of departures, prompting consideration of transforming NZBA into an advisory group rather than a formal membership alliance.

Key details: The membership crisis accelerated post the election of US President Donald Trump, when major North American banks exited the Alliance. Subsequent departures followed in Japan, Australia, and Europe, particularly after the NZBA removed its requirement to target a 1.5°C pathway.

In response, remaining members are being asked to consider a shift in mandate, with a proposal to continue in an advisory capacity to "support banks globally to remain resilient and accelerate the real economy transition in line with the Paris Agreement." Independent research, including by the European Central Bank, has highlighted that voluntary initiatives such as NZBA have had limited impact on reducing financed emissions, while banks continue to provide significant financing to fossil fuel firms. Observers have also noted widespread "greenhushing", where institutions avoid public disclosures to minimise political or legal scrutiny.

The outcome of the vote will be announced at the end of September 2025.

Our view: The NZBA's suspension underscores the fragility of voluntary climate initiatives when faced with political and legal pressures. For financial institutions, it raises questions about the credibility of self-regulation and the ability to sustain climate commitments without mandatory policy frameworks.

From a legal perspective, banks may face heightened fiduciary, disclosure, and reputational risks, particularly where prior public net-zero pledges are not met. The exodus signals that regulatory bodies and central banks may intervene with mandatory measures, including enhanced reporting, risk alignment requirements, and enforceable climate-related obligations.

EUROPEAN DEVELOPMENTS

1. The Spanish government has just approved a new "Climate Emergency Plan" (multi-sector)

What: In September, Spain launched its Climate Emergency Plan (Plan), introducing comprehensive climate measures across multiple sectors. The plan is backed by Royal Decree 214/2025, which makes carbon emissions reporting legally mandatory for large private companies and public institutions. This represents a decisive move from voluntary to compulsory climate governance, positioning Spain as a leader in Europe ahead of EU-wide implementation timelines.

Key details:

- Scope of application applies to:
  - Large private companies (generally over 250 employees or meeting at least two of the following thresholds: assets exceeding €20 million or turnover exceeding €40 million).
  - Public sector bodies.
  - Event organisers hosting over 1,500 attendees.
  - SMEs are indirectly affected through supply chain pressures.
- Mandatory carbon reporting:
  - Scope 1 & 2 emissions reporting begins in 2026, based on 2025 data.
  - Scope 3 emissions (value-chain emissions) become mandatory from 2028.
  - Emissions must be reported according to international standards, including ISO 14064-1 or the Greenhouse Gas Protocol.
- Five-year emission reduction plans: Companies must submit detailed, measurable strategies aligned with national climate targets
- Climate resilience measures: Establishes a State Agency for Civil Protection and Emergencies, climate refuges, stricter land-use and forest management rules, and limitations on construction in high-risk areas.
- Investment in clean technologies: Over €32 billion allocated to renewables, green hydrogen, and clean technologies, supporting Spain's clean energy transition and 100% renewable electricity target by 2050.
- Compliance and enforcement: Reports must be submitted annually within six months of fiscal year-end. Non-compliance may result in financial penalties or exclusion from public procurement. Oversight is conducted by MITECO, ensuring technical alignment and enforcement.
- EU alignment: Spain's plan is aligned with the Corporate Sustainability Reporting Directive (CSRD) but introduces earlier timelines, broader sector coverage, and stricter obligations, potentially serving as a model for other member states.

Our view: Spain's Climate Emergency Plan represents a major leap forward in climate regulation, shifting from voluntary initiatives to legally enforceable obligations. By mandating Scope 1, 2, and eventually Scope 3 emissions disclosures, the Plan embeds climate accountability at the heart of business strategy, risk management, and corporate governance.

Crucially, Spain has recognised that there is no sustainable alternative: the country has been severely affected by climate disasters, with Prime Minister Pedro Sánchez noting, early September, that extreme weather events caused €32 billion (US$37.4 billion) in damage over the past five years. The Plan goes well beyond reporting, establishing a national agency for civil protection and introducing stricter land-use and forest management rules to enhance climate resilience. This demonstrates that climate risk is no longer peripheral, it is a strategic, operational, and legal imperative.

In a broader regulatory context, Spain sets itself apart from EU-level delays and simplifications, such as the CSRD and Omnibus package, by raising the bar for corporate climate action. Its decisive move may serve as a model for other member states seeking to accelerate the transition, showing that ambitious climate regulation can both protect human lives and the economy, and create a framework for businesses to manage long-term climate risks proactively.

2. EU finalises revised Waste Framework Directive (food and fashion)

What: On 9 September, the European Parliament adopted the revised Waste Framework Directive (WFD, 2008/98/EC), introducing binding targets to reduce food waste and expanding Extended Producer Responsibility (EPR) obligations to textiles. While EPR is an established principle under EU waste law, the revision represents a notable expansion, creating new legal obligations for producers and businesses across multiple sectors. The legislation also strengthens alignment with EU circular economy objectives, reinforcing the principle that sustainable waste management is a core regulatory and business requirement.

- Food waste reduction targets:
  - 10% reduction in food waste from processing and manufacturing sectors.
  - 30% per capita reduction at retail, restaurant, and household levels by 31 December 2030, relative to the 2021–2023 average.
  - Member states must implement measures to facilitate safe food donation, establishing a legal framework for redistribution.
- Textile Waste Management / EPR expansion:
  - All producers, including e-commerce platforms, are now legally required to cover the full cost of collecting, sorting, and recycling textiles, regardless of whether they are based within or outside the EU. The financial burden of Europe's textile waste now falls squarely on the brands that create it.
  - Member states must implement EPR schemes within 30 months, with an additional year for micro-enterprises.
  - Financial contributions under EPR schemes may be modulated to discourage fast fashion practices, creating potential compliance and financial exposure for non-compliant producers.
- Circular Economy Alignment:

- Promotes reuse, repair, and recycling of materials to reduce resource consumption and environmental impact.
- Businesses will need to integrate circular economy principles into operational and supply chain strategies to remain compliant.

Next steps: The revised WFD will be signed by co-legislators and published in the EU Official Journal. Member states will then have 20 months to transpose the rules into national law, creating binding obligations at the domestic level.

Our view: The revised WFD goes beyond regulatory compliance, requiring companies to factor end-of-life costs into pricing, restructure supplier relationships, and accelerate circular product design.
It presents opportunities to innovate in sustainable materials, implement traceability systems, and improve operational efficiency, while creating clear legal obligations and financial, reputational, and contractual risks for non-compliance. Companies that integrate waste and resource efficiency at the strategic level can turn compliance into a competitive advantage.

3. Switzerland announces due diligence law aligned with EU CSDDD (multi-sector)

What: On 3 September, the Swiss Federal Council announced plans to introduce a corporate due diligence law. The legislative proposal will be presented by March 2026 and coordinated with the EU's final Corporate Sustainability Due Diligence Directive (CSDDD), following adoption of the first Omnibus package.

Key details: The move follows a new popular initiative launched in summer 2025, which gathered support from more than 280,000 citizens and was backed by a cross-party coalition of civil society groups. It revives momentum after the Popular Initiative 'For responsible businesses – protecting human rights and the environment' of 2020, which achieved a majority of popular votes but fell short of cantonal approval.

Our view: The Swiss government's decision highlights the EU's continued influence as a global standard-setter in sustainability and responsible business conduct. Even as the EU Commission explores deregulatory adjustments through the Omnibus package, countries in the region are aligning their frameworks with the CSDDD and Switzerland's position as the fourth largest European headquarters location for multinationals adds weight to the decision. For companies headquartered or operating in Switzerland, this signals increased pressure to adopt robust due diligence processes in line with EU standards. Multinationals with cross-border operations should anticipate convergence between Swiss and EU regimes and prepare for more stringent compliance expectations by 2026.

ASIA DEVELOPMENTS

4. Singapore delays mandatory climate reporting for smaller companies (multi-sector)

What: On 25 August, Singapore's Accounting and Corporate Regulatory Authority (ACRA) and Singapore Exchange Regulation (SGX RegCo) announced delays in the implementation of mandatory climate-related reporting for smaller listed companies. The move extends timelines for most companies to align with International Sustainability Standards Board (ISSB) standards, giving additional time to develop the necessary capabilities for comprehensive disclosures.

Key details: Under the revised framework:

- Scope 1 and 2 emissions: All companies listed on the Singapore Exchange (SGX), including those on the Straits Times Index (STI), must report Scope 1 and 2 emissions for FY2025.
- Scope 3 emissions: Reporting remains voluntary for non-STI listed companies with a market capitalisation below S$1 billion.
- Other ISSB-based disclosures: Companies with a market capitalisation of S$1 billion or more will need to comply with other ISSB-aligned climate-related disclosures starting from FY2028, while those with a market capitalisation below S$1 billion will have until FY2030.
- External assurance: The requirement for external assurance on Scope 1 and 2 emissions reporting is deferred to FY2029 for all companies.

These adjustments reflect a differentiated approach, acknowledging the varying levels of readiness among companies. The regulators cited the uncertain global economic landscape and feedback from companies indicating the need for more time to prepare for complex disclosures.

Our view: While the extended timelines provide additional time for smaller companies to develop their climate reporting capabilities, this should not be interpreted as a regulatory licence to defer action. Regulatory expectations for credible, consistent, and comparable sustainability disclosures remain high, and failure to prepare may expose companies to compliance scrutiny, reputational risk, and potential investor or stakeholder challenge.

2. China to impose absolute emissions caps from 2027 (multi-sector)

What On 25 August, China's State Council and the Central Committee of the Communist Party unveiled a significant reform of the national carbon market. This reform introduces absolute emissions caps for selected industries starting in 2027, marking a shift from the current carbon intensity-based framework to fixed emission limits. The plan aims to establish a fully operational nationwide emissions trading scheme (ETS) by 2030, encompassing all major industrial sectors and expanding participation to banks and financial institutions to enhance market liquidity and effectiveness.

Key details:

- **Absolute emissions caps:** Industries such as steel, cement, aluminium, chemicals, petrochemicals, papermaking, and domestic aviation will face fixed emission limits, transitioning from the previous intensity-based targets.
- **ETS expansion:** By 2030, China plans to establish a nationwide ETS covering all major industrial sectors, including those responsible for approximately 60% of the nation's greenhouse gas emissions.
- **Market mechanism:** Companies will receive carbon emission allowances (CEAs); exceeding these allowances will require the purchase of additional CEAs, while surplus allowances can be sold. Initially, a portion of allowances will be allocated for free, with a gradual tightening of the system over time.
- **Financial sector participation:** Banks and other financial institutions will be permitted to trade in CEAs, aiming to boost liquidity and support price discovery in the market.
- **Global implications:** As the world's largest carbon market, these reforms may influence global carbon pricing and investor expectations regarding corporate decarbonisation strategies.
- **Regulatory context:** This reform builds upon China's 2021 pilot ETS system, transitioning from declining carbon intensity targets to absolute caps

Our view: China's decision to move from intensity targets to absolute caps is a regulatory game-changer, not just a technical adjustment. For corporates in carbon-heavy industries, this shifts emissions from being a relative performance metric to a legally binding liability. The move will likely accelerate the repricing of carbon risk in Asia, just as the EU Carbon Border Adjustment Mechanism (CBAM) begins to bite. Companies that fail to align could face a double penalty: constrained domestic allowances in China and higher border taxes abroad.

For financial institutions, the opening of the ETS to banks is equally significant as it will enable carbon allowances to become a new asset class in the region, raising questions of governance, hedging strategies, and even potential systemic risk if trading volumes surge. Regulators elsewhere – from Singapore to the EU – will watch closely, and convergence pressures could reshape cross-border finance.

BEST OF THE REST

- **Global**: The International Finance Corporation (IFC) unveiled the second edition of its Blue Finance Guidelines. This updated framework expands the scope of eligible blue finance activities, encompassing sectors like water security, plastics recycling, shipping, aquaculture, and marine conservation. It also provides practical guidance on designing blue bonds, loans, and sustainability-linked instruments, along with sample blue key performance indicators (KPIs) to support performance tracking.
- **Africa**: Second Africa Climate Summit in Addis Ababa – From 8 to 10 September, over 45 African heads of state convened to prepare a unified stance ahead of COP30 in Belém, Brazil. Three priorities emerged: accelerate renewable energy development; create a coalition of countries holding strategic minerals; and protect the continent's natural and cultural heritage, including forests. A major outcome was the launch of the Africa Climate Innovation Compact and the African Climate Facility, aiming to mobilise $50 billion annually to support climate solutions across the continent.
- **Africa**: Ghana launched its FLEGT licensing system - On 18 August, Ghana officially launched its Forest Law Enforcement, Governance and Trade (FLEGT) licensing system, marking it as the first African country to do so and placing it as the second globally to provide FLEGT-licensed timber to the European market. This move aims to improve forest governance, legality, and traceability of timber products, aligning with the European Union's FLEGT Action Plan.
- **Americas**: EPA proposes ending GHG reporting program – On 12 September 2025, the U.S. Environmental Protection Agency (EPA) proposed eliminating the mandatory Greenhouse Gas Reporting Program, which requires around 8,000 facilities, including power plants, refineries, and industrial suppliers, to report annual emissions. This move comes despite a new National Academies report confirming that human-driven climate change is beyond scientific dispute.
- **Americas**: Youth challenge Trump energy orders – On 16–17 September, 22 young Americans presented live testimony in *Lighthiser v. Trump*, a landmark lawsuit challenging federal actions they say threaten their fundamental right to life. Held in Montana, the hearing marks the first time in U.S. history that a federal court has heard in-person testimony in a youth-led constitutional climate case.
- **APAC**: Australia plans sustainable fund-labelling regime – On 29 August, Australia announced plans to roll out a sustainable fund-labelling framework, with implementation targeted for 2027. The development of the labelling framework is intended to improve regulatory clarity over financial products marketed as 'sustainable' or similar, facilitate comparison of different financial products, and increase investment appetite overall.
- **APAC**: Australia targets 62–70% emissions cut by 2035 – The government of Australia just announced a new climate target, aiming to reduce greenhouse gas emissions by 62% to 70% by 2035, on a 2005 baseline. Alongside the target, it announced over USD 5.3 billion in climate-related investments, focusing on industrial decarbonisation, clean electricity, low-carbon fuels, and EV charging infrastructure.
- **APAC**: China launches green foreign debt financing pilot – On 21 August, China has announced a pilot programme across 16 provinces and cities to channel global capital into its green industries, with policies to expand the upper limit on cross-border financing.
- **Europe**: New measures to make the EU more water resilient - On 23 September, a provisional political agreement was reached between the European Parliament and the Council on the Commission proposal to update the lists of water pollutants.

- **Europe**: **Denmark plans sovereign green bond** – Denmark is preparing to issue its first sovereign green bond under the European Green Bond Standard. The bond, targeting up to 10 billion kroner ($1.56 billion), is expected to be opened in the second half of 2025, with the first issuance to take place via syndication. Thereafter, the bond will become part of the central government's list of on-the-run bonds and will be offered regularly through auctions during the remainder of 2025.
- **Europe**: **Albania appoints AI minister to combat corruption** – On 12 September, Albania introduced Diella, the world's first AI-generated cabinet minister, to oversee public procurement. Developed in collaboration with Microsoft, Diella aims to ensure transparency and eliminate corruption in government tenders.
- **Europe**: **EU–US Trade Agreement: Concessions on ESG regulations** - On August 21, 2025, the EU and US announced a Framework Agreement to enhance trade relations. As part of this deal, the EU agreed to ensure that its sustainability regulations, including the Corporate Sustainability Reporting Directive (CSRD), Corporate Sustainability Due Diligence Directive (CSDDD), EU Deforestation Regulation (EUDR), and Carbon Border Adjustment Mechanism (CBAM), do not impose undue restrictions on US trade. This has raised concerns about potential rollbacks in ESG commitments.

ESG DISPUTES ROUND-UP

1. Switzerland sees first climate liability case against cement major (energy)

What: On 3 September, the Cantonal Court of Zug, Switzerland, held a pivotal hearing in *Asmania et al. v. Holcim*. Four residents of Pari Island, Indonesia, have filed the lawsuit against Swiss cement giant Holcim, alleging that the company's substantial carbon emissions contribute to climate change, threatening their homes and livelihoods. This is the first climate case targeting a cement producer, signalling a broader shift in climate litigation beyond traditional fossil fuel companies.

Key details:

- Plaintiffs and Support: The four Pari Island residents are backed by Swiss Church Aid (HEKS/EPER), the European Center for Constitutional and Human Rights (ECCHR), and Friends of the Earth Indonesia (WALHI). They allege that Holcim's operations have exacerbated environmental changes, leading to severe flooding on their island.
- Claims: The lawsuit seeks compensation for damages and demands that Holcim reduce its CO_2 emissions in line with the Paris Agreement targets. The case was formally filed in January 2023 after unsuccessful conciliation attempts.
- Why Switzerland? The case is brought in Switzerland because Holcim is headquartered there, giving Swiss court's jurisdiction. Swiss law allows foreign plaintiffs to seek remedies against domestic corporations for transnational harm, and the country's courts have historically shown openness to climate and human rights litigation.
- Expanding Scope of Climate Litigation: Historically, climate lawsuits targeted oil and gas companies. Holcim's case signals that heavy industry, including cement production–which is responsible for roughly 8% of global CO_2 emissions–is now in the spotlight.

What's Next: The Cantonal Court of Zug is expected to decide on the admissibility of the case in the coming months. If accepted, the proceedings will delve into the substantive issues, potentially reshaping the landscape of corporate accountability in environmental matters.

Our view: From a legal standpoint, the Holcim case is emblematic of an emerging trend in climate litigation: plaintiffs increasingly seek to hold corporations in the Global North accountable for climate impacts experienced in the Global South. This transnational approach raises complex questions of jurisdiction, choice of law, and evidentiary standards, marking a potential expansion of liability beyond traditional fossil fuel majors.

The case highlights the growing exposure of carbon-intensive companies to legal and reputational risk. A recent study in Nature Climate Change links emissions from 180 "carbon majors," including cement producers, to 213 major heatwaves between 2000 and 2023 across 63 countries, providing a stronger evidentiary basis for attributing harm to corporate activity. Litigation teams should anticipate increased scrutiny of operational emissions, both in domestic and cross-border contexts.

2. French Court orders State to reform pesticide approval processes (chemical)

What: On 3 September, the Paris Administrative Court of Appeal ruled that the French state bears responsibility for widespread ecological harm resulting from inadequate pesticide regulation. The court mandated the government to overhaul its pesticide approval procedures to align with the latest scientific findings, particularly regarding biodiversity impacts.

Key details:

- **Ecological harm confirmed:** The court upheld the earlier ruling that pesticide use has caused chronic and pervasive contamination of soil and water, adversely affecting biodiversity and ecosystem services.
- **State's responsibility:** The court found that the French Agency for Food, Environmental and Occupational Health & Safety (ANSES) failed to base its risk assessments on the most recent scientific data, constituting a breach of its duty.
- **Reform mandated:** The state must revise pesticide evaluation protocols to incorporate up-to-date scientific knowledge and reassess existing market authorisations within 24 months.

Our view: This ruling highlights the increasing willingness of courts to hold states accountable for environmental harm where regulatory frameworks fail to reflect current science. For HLS clients, the decision signals a heightened regulatory risk environment, particularly for agrochemical companies and users of pesticides, as authorities may now face judicial pressure to enforce stricter approval and monitoring procedures.

Companies should anticipate:

- Reassessment of existing product authorisations: ANSES is required to review market approvals within 24 months, which could affect products currently in circulation.
- Alignment with updated scientific standards: Legal and compliance teams must ensure that pesticide use policies and approvals align with evolving scientific guidance to mitigate potential regulatory or liability exposure.
- Potential precedent for transnational accountability: While this case is domestic, it may influence regulatory and litigation trends in other jurisdictions, particularly across the EU, where courts increasingly factor biodiversity and ecosystem protection into administrative oversight.

HLS clients are advised to proactively review risk management, monitoring, and reporting practices in pesticide use and approvals. Embedding compliance with the latest science will be critical not only to meet regulatory obligations but also to limit potential civil liability exposure and reputational risk.

3. EU General Court upholds nuclear and gas in Taxonomy (mutli-sector)

What: On 10 September, the EU General Court dismissed Austria's challenge to the inclusion of nuclear energy and natural gas as environmentally sustainable activities under the EU Taxonomy. The Court confirmed that, under strict technical screening criteria and transitional conditions, both energy sources can contribute substantially to climate change mitigation and adaptation. On the same day, the Court also upheld the Commission's classification of bioenergy and wind power, providing broader legal certainty for businesses across multiple sectors navigating sustainable finance obligations.

Key details: Nuclear Energy: The Court recognised nuclear energy as a near-zero greenhouse gas emission source and confirmed the Commission's view that there are currently no technologically and economically feasible low-carbon alternatives at scale.

- Natural Gas (Fossil Gas): Austria had challenged the inclusion of natural gas, arguing that as a fossil fuel it could not qualify as sustainable. The Court ruled that, under specific transitional conditions and emissions thresholds, natural gas can contribute to climate change mitigation and adaptation while supporting security of energy supply.
- Bioenergy and Wind Power: The Court upheld the Commission's lifecycle assessment methodology and technical screening criteria, confirming the Commission's discretion in balancing scientific evidence, regulatory objectives, and evolving technology.

European Union seeks input on proposed Circular Economy Act (mutli-sector)

Our view: The General Court's ruling provides much-needed clarity for businesses, particularly in the energy, finance, and heavy industry sectors, on the Taxonomy status of nuclear energy and natural gas. Companies can now plan projects with greater confidence that, if they comply with the EU's technical screening criteria, these activities may qualify as Taxonomy-aligned and potentially access sustainable finance.

From a strategic perspective, this decision offers an opportunity for companies to integrate transitional energy sources into long-term investment and financing strategies.

4. US: Texas court halts enforcement of anti-ESG proxy advisor law (mutli-sector)

What: On 29 August, the US District Court for the Western District of Texas issued a preliminary injunction halting enforcement of Texas Senate Bill 2337 (SB 2337) against Institutional Shareholder Services (ISS) and Glass Lewis. The law, set to take effect on 1 September 2025, imposes disclosure obligations on proxy advisors when their recommendations involve ESG or other "non-financial" factors. Together, ISS and Glass Lewis represent approximately 95% of the US proxy advisory market. The ruling effectively neutralises the law's impact for now.

Key details:

- Scope of SB 2337 – Applies to proxy advice concerning publicly traded companies headquartered (or seeking to be headquartered) in Texas. Triggers disclosure obligations when advice:
    - relies on "non-financial factors" (e.g. ESG, DEI),
    - diverges from board recommendations without an economic analysis,
    - or provides differing advice across clients.

- **Disclosure regime** – Firms must notify clients and issuers, publish disclaimers on their websites, and inform the Attorney General when advice is not "solely in the financial interest" of shareholders.
- **Sanctions** – Violations constitute deceptive trade practices, enforceable by the Attorney General, affected companies, shareholders, and clients, with penalties of up to USD 10,000 per violation.
- **Legal challenges** – ISS and Glass Lewis argue the law:
  - compels speech and discriminates by viewpoint (First and Fourteenth Amendments),
  - is unconstitutionally vague (undefined terms such as "non-financial interest", "ESG", "DEI"),
  - violates the Dormant Commerce Clause by applying extraterritorially,
  - and is pre-empted by federal laws (Investment Advisers Act and ERISA).
- **Court's reasoning** – Judge Albright agreed plaintiffs had standing, found the terms potentially vague, and considered the law a compelled state-scripted message undermining professional judgment. The injunction applies only to ISS and Glass Lewis but may encourage other advisors to seek similar relief.

Next steps: The Texas Attorney General may appeal to the Fifth Circuit seeking to lift the injunction. Trial is set for 2 February 2026, likely influencing the next proxy season.

Separately, on 16 September, Attorney General Ken Paxton announced an investigation into ISS and Glass Lewis under Texas consumer protection law, issuing Civil Investigative Demands. While formally distinct from the SB 2337 litigation, this move underscores the heightened scrutiny proxy advisors face in Texas and may be viewed as a parallel or retaliatory step.

If SB 2337 is upheld, proxy advisors could face broad disclosure burdens affecting timing, consistency and content of recommendations relied on by institutional investors. If struck down, the existing federal regime will remain the sole framework.

CONSULTATION

1. UK government consults on modernising environmental permitting (industry, energy)

What: The UK government has launched an eight-week consultation on reforming environmental permitting for the industrial and energy sectors. This follows the Corry Review published in April 2025, which concluded that the UK's environmental regulations are outdated, inconsistent, and highly complex. The consultation seeks views on proposals to simplify the permitting system, making it more flexible and outcomes-focused while maintaining strong environmental protection.

Key details: The main proposal is to introduce flexible permits, which would set an overall cap on emissions at individual installations rather than regulating emissions separately for each process within a facility. The government argues that this approach could reduce duplication and administrative burden, while also providing incentives for facilities to reduce overall emissions. Stakeholders are invited to comment on the design of the flexible permitting framework, the proposed regulatory approach, and potential environmental impacts. The consultation is open to industry participants, environmental groups, and the general public.

Next steps: This consultation closes on 26 August.

2. EBA consults on updating POG guidelines for retail banking products (financial institutions)

What: On 9 July, the European Banking Authority (EBA) opened a public consultation on revisions to its Guidelines on Product Oversight and Governance (POG) arrangements for retail banking products. The proposed updates aim to make the consideration of ESG features more explicit and to mitigate the risk of greenwashing in retail banking products.

Key details: The revisions address multiple aspects of product oversight, including the roles and responsibilities of manufacturers' internal control functions, defining the target market, and the responsibilities of distributors. Updates also cover information provision to distributors and arrangements for ongoing monitoring and support by product manufacturers.
The changes are intended to enhance transparency, ensure that ESG claims are substantiated, and strengthen consumer protection by reducing the risk of misleading ESG-related product information.

Next steps: The consultation is open until 9 October. Market participants, including banks, distributors, and consumer organisations, are encouraged to submit feedback. Financial institutions should review the proposed revisions carefully, as they may influence governance, disclosure, and compliance practices for retail banking products with ESG characteristics.

CONTACT US

Simmons & Simmons is a leading international law firm with over 320+ partners and 2,500 employees throughout our network of 23 offices in Europe, Asia, the Middle East and the US*.

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.

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