

ESG View

July 2024

24 July 2024



Welcome to the July Edition of ESG View!

As anticipated, election fever reached peak levels earlier this month in both the UK and France with varying results: one decisive and the other less so. While the clouds of a hung parliament loom large over Paris as the city prepares to host the 2024 Summer Olympics later this week, across the water in the UK, the electoral sentiment was more definitive. In fact, buoyed by their overwhelming victory at the polls, the new UK Labour government has hit the ground running, announcing a suite of Bills with relevance to the ESG agenda (see our UK section below).

It appears that UK regulators have also been energised by these winds of change which mark an end to a period of political limbo, with the UK Financial Conduct Authority (FCA) publishing [new UK listing rules](#) (tune in to our [upcoming webinar](#) on the key updates) and the Financial Reporting Council (FRC) announcing significant [changes to the UK Stewardship Code](#). This will include a formal public consultation on the content of the Code later this year and changes designed to significantly reduce the reporting burden (effective immediately). Read our recent client note on this [here](#). We will be following up with further detail on these changes, so watch this space.

It is not just in Europe where politics and sustainability have crossed paths. This month saw the conclusion of China's third plenum, a meeting that takes place every five years, where the Central Committee of the Chinese Communist Party (CCP) makes decisions that guide policymakers in the coming years. This plenum [communiqué](#) urges officials to "make concerted efforts to cut carbon emissions" and "actively respond to climate change". Notably, it was the first time that a CCP plenum document has mentioned carbon emissions reductions. It will be interesting to watch how China's policymakers respond to this positioning of climate and carbon in the future.

As many of our readers are taking a well-earned rest over the summer months, ESG View will also be taking a break in August, only to return refreshed for our September edition. We leave you with a bumper edition of ESG updates from policy, regulation, litigation and consultations. Plus, as an extra treat: this edition includes an ESG summer reading list. Enjoy responsibly!

Books

- [The High Seas](#) by Olive Heffernan
- [Price is Wrong: Why Capitalism Won't Save the Planet](#) by Brett Christophers
- [The Inequality of Wealth: Why it matters and how to fix it](#) by Liam Byrne
- [Not the End of the World](#) by Hannah Ritchie
- [Human Rights](#) by Shami Chakrabarti

Reports

- [Global trends in climate change litigation: 2024 snapshot](#) by Joana Setzer and Catherine Higham. LSE Grantham Research Institute (June 2024)
- [Scaling Ocean Finance: Blue bonds and innovative debt instruments for a sustainable ocean economy in MENAT and APAC](#) by Marieta Stefanova, Jennifer Ring, Meyke Nering Bögel and Katherine Stodulka. Systemiq (June 2024)
- [2024 Social Benchmark Insights Report](#) by the World Benchmarking Alliance (July 2024)

Best wishes,



GLOBAL DEVELOPMENTS

1. ICMA update new criteria and further guidelines to support the Green, Social, Sustainability, and Sustainability-Linked Bond Principles (multi-sector)

 **What:** On 25 June, the International Capital Market Association (ICMA) introduced [new criteria](#) and further guidelines to support the Green, Social, Sustainability, and Sustainability-Linked Bond (SLB) Principles (the Principles). Read a full summary of the update [here](#).

 **Key details:** In particular, the new materials and guidance include:

- amended [guidelines applicable to “Green Enabling Projects”](#): the document targets those projects that, while not explicitly green themselves, facilitate the implementation or development of a Green Project; and
- amended [guidelines for Sustainability-Linked Loans financing Bonds \(SLLBs\)](#): these additions have been developed in collaboration with the Loan Market Association (LMA) and aim to improve the transparency and credibility of the SLLB market.

Additional updates and guidance on the Principles include:

- 2024 update of the [SLB Principles](#): this amendment clarifies KPI selection, ensuring KPIs align with the issuer’s sustainability strategy;
- updates to the [SLB KPIs Registry](#): this amendment adds KPIs related to environmental matters like biodiversity, the circular economy, water management, additional KPIs for sovereign issuers; and
- 2024 edition of the [Guidance Handbook](#): the document now incorporates two new questions about the newly published materials, refers to the new SLB disclosure data checklist, and recommendations for disclosing intermediate targets along with long-term goals, even if not stated as an SPT.

Additionally, ICMA has also published a new Annex in the Handbook – [Harmonised Framework for Impact Reporting](#): it highlights processes for identifying environmental and social risks associated with eligible project categories for green bonds.

2. IIGCC publishes the Net Zero Investment Framework 2.0 (asset owners and asset managers)

 **What:** On 24 June, the Institutional Investors Group on Climate Change (IIGCC) published the second iteration of the [Net Zero Investment Framework](#) (NZIF 2.0), the most widely used resource by investors to develop their individual net zero strategies and transition plans. The NZIF 2.0 is a voluntary guide that is designed to be implemented at an organisational level and can be applied flexibly at fund or asset class level. The NZIF 2.0 embeds requirements within the TCFD and ISSB frameworks and is designed to be used in conjunction with supplementary guidance and materials.

 **Key details:** Some key updates to NZIF 2.0 are outlined below.

- Financed emissions: “Portfolio Decarbonisation Reference Targets” have now been repositioned as “Objectives” rather than “Targets” to better support the intended purpose of “*financing reduced emissions*” rather than “*reducing financed emissions*”.
- Asset class and thematic guidance: There is new guidance for Sovereign Bonds, Real Estate, and Private Debt, in addition to the inclusion of guidance published after the NZIF launched in 2021 for Infrastructure and Private Equity.
- Other additions: There are new emissions performance criterion for listed equities and corporate fixed income, and new certificate deposits guidance to support net zero cash management. Best practices shared by investors, collected from three years of implementation

 **Next steps:** The NZIF 2.0 is considered a living document so further iterations of supplementary guidance can be expected. The IIGCC’s future workplan also includes guidance around investment themes including nature, emerging markets, just transition and index investing.

3. Round-up of developments highlighting global momentum on nature-related global initiatives (multi-sector)

 **What:** As the market gets to grips with climate-related disclosures, we’re seeing continued and increasing developments around nature-related disclosures.

- This month the Taskforce on Nature-related Financial Disclosures ([TNFD](#)) published finalised guidance for [financial institutions](#), providing disclosure metrics for banks, re/insurance companies, asset managers and owners, and development finance institutions and [sector guidance for](#) eight real economy sectors, along with additional guidance on [value chains](#), detailing how organisations can analyse their upstream and downstream value chain activities. TNFD also published five further guidance documents that are open for consultation (see our consultation section below). To help navigate these developments and more, check out our own [TNFD & TCFD: Checklist & Delta Review](#) tool!
- The Science Based Targets Network (SBTN) has published new and updated [technical guidance and resources](#) for companies to set science-based targets for nature. This includes a new [target-setting guide](#) breaking down five key steps to the target setting process: assess, prioritise, set targets, act and track and a [Corporate Manual](#) for setting science-based targets for nature. SBTN will publish outcomes of its pilot of the guidance in September.
- On 26 June, the Principles for Responsible Investment (PRI) launched “[Spring](#)” a new initiative to help investors target key corporations to halt or reverse nature loss by 2030. A coalition of 200 investors managing a combined \$15trn in assets will focus on engaging with 40 key companies as well as an additional 20 focus companies to drive better corporate practices and political engagement on nature-related risks.

4. Network for Greening the Financial System resources on climate and nature (financial institutions)

 **What:** Over the last month, Network for Greening the Financial System (NGFS), a network of 114 central banks and financial supervisors, published a selection of guides and reports on nature and climate.

 **Key details:**

- On 19 June, NGFS published the [second edition](#) of its guide on climate-related disclosure for central banks. The revised guide is organised around the four Task Force on Climate-Related Financial Disclosures (TCFD) pillars, providing additional guidance for central banks. It distinguishes between foundational (referred to as "baseline") and complementary (referred to as "building block") disclosure recommendations, acknowledging there is no one-size-fits-all solution. It provides additional support on disclosing internal operations, as well as covering disclosure on institutional functions (that is, monetary policy, supervision and financial stability).
- NGFS also published on 2 July [a conceptual framework on nature-related financial risk](#) for central banks and supervisors. The Framework offers a principle-based risk assessment to help operationalise incorporation of nature-related financial risks and does reference the TNFD framework.
- On 2 July, NGFS published a [report](#) on the emerging trend of nature-related litigation. The report identifies categories of cases brought against corporates and financial institutions, including corporate sustainability due diligence legislation cases, tort, shareholder rights and anti-money laundering. These trends will continue to evolve as jurisdictions introduce new laws creating nature-related obligations, including the EU Corporate Sustainability Due Diligence Directive (EU CSDDD) and Deforestation Regulation (see our [client note](#)). The report highlights the substantial financial risks including legal costs, damages, fines, and increased insurance premiums. Even where cases fail, there can be "spillover effects" to entire sectors and to financial services.

EUROPEAN DEVELOPMENTS

1. ESAs joint opinion on SFDR outcomes (asset management)

-  **What:** On 18 June, ESMA, the EBA and EIOPA (together, the European Supervisory Authorities or ESAs) published a [joint opinion](#) “*On the assessment of the Sustainable Finance Disclosure Regulation (SFDR)*” (Opinion), calling for a sustainable finance framework that caters for both green transition and enhanced consumer protection whilst taking into account lessons learned from how the SFDR is currently functioning. Notably this month, the Autorité des Marchés Financiers (AMF) published [findings of supervisory actions](#) on sustainable finance, including outcomes of [SFDR “SPOT” inspections](#). One of the main findings being that none of the asset managers investigated fully complied with the regulatory requirements under SFDR in their disclosures.
-  **Key details:** The Opinion explores the merits of introducing two voluntary product categories for financial products, “sustainable” and “transition”, with each category having a clear objective and criteria to reduce greenwashing risks. It also includes recommendations around simplifying the presentation of the disclosures for investors, improving definitions such as what comprises “sustainable investments” and the need to conduct consumer testing before proposals to review SFDR are put forward. The ESAs make nine further recommendations which are set out in detail in our [client note](#).
-  **Our view:** While the Opinion is not legally binding on any entity, it provides plenty of content for the Commission to ponder on as it considers next steps in its review of SFDR, though it remains to be seen whether the Commission will take up these recommendations. Timing on any next steps remains unclear at this stage and will be confirmed by the Commission in due course.

2. EFRAG and TNFD publishes correspondence mapping between ESRS and TNFD (multi- sector)

-  **What:** On 20 June, the Taskforce on Nature-related Financial Disclosures (TNFD) and European Financial Reporting Advisory Group (EFRAG) jointly [published](#) correspondence, mapping the commonalities between the European Sustainability Reporting Standards ([ESRS](#)) and the TNFD framework.
-  **Key details:** The correspondence highlights that there is a strong consistency between the TNFD and the ESRS related disclosure metrics, including in the areas outlined below.
- [Concepts and definitions](#): both the TNFD and ESRS recommend disclosures on nature-related impacts, risks and opportunities as well as dependencies on nature (where risks are material).
 - [Approach to materiality](#): the ESRS adopt a double materiality approach, whilst TNFD enables the use of different materiality approaches.
 - [LEAP approach](#): the TNFD developed the LEAP (Locate-Evaluate-Access-Prepare) approach for firms to identify and assess their nature-related issues. The ESRS specify that companies may conduct their materiality assessment on the sustainability constituents of pollution, water, biodiversity and ecosystems, and circular economy using the LEAP approach, although this step is voluntary under the ESRS.

- Reporting pillars: both the TNFD framework and ESRS are organised around the four TCFD disclosure pillars (i.e., governance, metrics and targets, strategy and risk management), now also incorporated into the ISSB's IFRS Standards.



Next steps: EFRAG and the TNFD intend to develop guidance and tools to support the disclosure of nature-related information, although no specific deadlines are mentioned.

UK DEVELOPMENTS

1. King's Speech announces key Bills to be introduced by the UK Government (multi-sector)

 **What:** On 17 July, the [King's Speech](#) and the accompanying [background briefing notes](#) set out the new Government's legislative agenda and plan to introduce forty new Bills. Outlined below are those of relevance to the UK sustainability agenda.

Key details:

- [Great British Energy Bill](#): A new publicly owned clean power company will be created. It will be headquartered in Scotland and aim to help accelerate investment in renewable energy, such as offshore wind.
- [National Wealth Fund \(NWF\) Bill](#): A new fund will be set up to invest £7.3bn over five years in infrastructure and clean energy, with the goal of deploying public capital to unlock private investment. It aims to align the existing strategy of the UK Infrastructure Bank and British Business Bank under the new NWF.
- [Sustainable Aviation Fuel \(SAF\) Bill](#): The Government will mandate the supply of SAF in the UK by obliging suppliers to have at least 10 % SAF in their fuel mix supplied to airlines. The Bill also introduces a revenue certainty mechanism for SAF producers who are looking to invest in new plants in the UK.
- [Planning and Infrastructure Bill](#): The Bill aims to accelerate house building and infrastructure delivery by speeding up and streamlining planning processes and increasing local planning authorities' capacity. Notably, the Bill also includes mention of using developments to fund nature recovery.
- [Water \(Special Measures\) Bill](#): The Bill aims to strengthen regulation of the water sector, giving regulator new powers to ban the payment of bonuses if environmental standards are not met, and increase accountability for water executives. This includes personal criminal liability for executives for lawbreaking.
- [The Crown Estate Bill](#): The Crown Estate will be modernised to enable the body to borrow, widen existing investment powers, changing the source of funding for expenses, and increase the maximum number of commissioners.
- [Audit Reform and Corporate Governance Bill](#): Changes to the audit, corporate report and corporate governance regimes had been proposed by the previous Government following a series of high-profile collapses of large corporates. However, work on these changes had been halted following concerns about the increasing reporting burden facing companies. We assume that the changes to be introduced by the draft Bill will be based largely on the proposals included in the previous Government's white paper. You can read our summary of the proposals included in the white paper [here](#).

2. FCA guidance on notifications under SDR regime (asset management)

 **What:** On 1 July, the FCA added a new section to its webpage, “*Sustainability disclosure and labelling regime*”. The section, relevant for funds using (or intending to use) a label under the Sustainability Disclosure Requirements (SDR) regime, sets out how firms should notify it when a fund is using an investment label and how to apply to make associated changes to the fund’s name, investment aims or policy. For more information on the SDR, see our client note [here](#). When using an investment label, firms should notify the FCA using the form on [Connect](#), its online notification and applications system.

- What steps a firm should take will depend on whether the fund is:
- an authorised fund considered to meet the label criteria without changes;
- an authorised fund considered to require changes;
- a new fund considered to meet the label criteria; or
- an in-scope unauthorised AIF.

 **Next steps:** Investment labels can be displayed from 31 July, while firms must meet the naming and marketing rules from 2 December.

MIDDLE EAST AND AFRICA DEVELOPMENTS

1. SFWG launches Principles for Sustainability-Related Disclosures for Reporting Entities (multi-sector)

 **What:** On 14 June, the UAE Sustainable Finance Working Group (SFWG) introduced the '[Principles for Sustainability-Related Disclosures for Reporting Entities](#)' (the Disclosure Principles). The Disclosure Principles serve as a declaration of common understanding among the UAE SFWG members of the minimum expectations in this area, within their respective jurisdictions, to ensure the development and implementation of disclosure frameworks in line with these principles. The Disclosure Principles build on previous initiatives, like the '[Principles for the Effective Management of Climate-Related Financial Risks](#)' from 2023.

 **Key details:** The Disclosure Principles outline four core principles for reporting entities:

- Implementing appropriate policies, procedures and systems: Reporting entities should establish internal systems to monitor and report material sustainability-related risks, addressing data gaps within their data governance framework. They should ensure timely delivery of data and analysis to the board of directors and senior management for informed decision-making, and issue timely public reports containing data and sustainability-related information.
- Considering key factors when disclosing climate-related risks and opportunities: Within disclosures, reporting entities should consider factors such as: transparency, materiality, consistency and comparability, verification and assurance and continual review and improvement.
- Ensuring disclosures accurately represent the entity's operations: Disclosures should cover the reporting entities: governance, strategy, risk management, metrics and targets.
- Enhancing transparency and quality of sustainability-related disclosure: For product-level disclosures, market participants should address the following elements: labelling and classification, objectives disclosure, strategies disclosure, risk disclosure, marketing materials and monitoring and reporting.

 **Next steps:** The UAE SFWG member authorities are now expected to officially release the principles for licensed financial institutions to encourage adoption.

APAC DEVELOPMENTS

1. Australia Sustainable Finance Roadmap (financial institutions)

 **What:** On 19 June, the Australian Government, as part of its wider [Sustainable Finance Strategy](#), released the [Sustainable Finance Roadmap](#) (the Roadmap), setting out its goals for the implementation of key sustainable finance reforms.

 **Key details:** The Roadmap sets out the Government's sustainable priorities, which have been split into three pillars and focuses on the following:

- **Pillar 1: Improve transparency on climate and sustainability:** This includes implementing mandatory climate-related financial disclosure requirements for large businesses and financial institutions; developing the [Sustainable Finance Taxonomy](#); developing and publishing best practice guidance for the disclosure of transition plans by the end of 2025; and the development of sustainable investment product labels.
- **Pillar 2: Financial System Capabilities:** Focusing on enhancing market supervision and enforcement; Identifying and responding to systemic financial risks; and enhancing sustainability related data challenges.
- **Pillar 3: Government leadership and engagement:** Supported by initiatives such as issuing Australian sovereign green bonds. The first of which was issued on 4 June and was oversubscribed. The green bond programme is intended to help mobilise additional climate-aligned capital and support the development of Australia's broader sustainable finance markets, whilst reinforcing the commitment to climate, environmental and other sustainability-related goals.

 **Next steps:** The Roadmap will likely result in a stream of policy activity for Australia in the year ahead. Certain initiatives will be subject to consultation. Meanwhile, firms (particularly those with global footprints) should monitor progress, as these priorities move through the legislative process and be prepared to have a say on the industry consultation coming up in the months ahead.

2. New Zealand Sustainable Finance Taxonomy Recommendations published (multi-sector)

 **What:** On 3 July, the New Zealand Centre for Sustainable Finance (CSF) published [Key Design Recommendations](#) for developing a Sustainable Finance Taxonomy (NZ Taxonomy). The recommendations were prepared by an independent technical advisory group (ITAG), comprised of climate, iwi/Māori, academia, data and sustainable finance experts to assist in the framing of the NZ Taxonomy.

 **Key details:** The NZ Taxonomy recommendations are based on five core guiding principles:

- **Credibility:** the NZ Taxonomy needs to be transparent in its governance structure and content;
- **Usability:** to be easily understood by a spectrum of different end users and promote data and metrics that are easy to report against.

- Interoperability: as much as possible, it should align with international standards and best practices for the design of its structure, the components of the technical screening criteria (TSC) and do no significant harm.
- Culture: establish and learn from cultures in which nature is not seen simply in monetary terms. Indigenous cultures and rights are a core principle underlying the entire NZ Taxonomy. Iwi and Māori leaders will be represented in all governance tiers, and indigenous views of nature will be integrated in the design of the TSC.
- Prioritisation: regarding social objectives, the NZ Taxonomy should follow international convention by focusing initially on environmental objectives. Some taxonomies (e.g. Mexico) have sought to include social objectives, but they are considered at the entity level rather than at the activity level, which is not the current mandate or focus of the proposed NZ Taxonomy. Any expansion of the NZ Taxonomy to include social objectives could be further addressed in the next phase of its development process.



Next steps: The ITAG's recommendations will be reviewed for the future phases of the NZ Taxonomy as it moves through the legislative process.

AMERICAS DEVELOPMENTS

1. Canada amends its Competition Act with new green provisions (multi-sector)

 **What:** On 20 June, Canada gave Royal Assent to [Bill C-59](#), amending the Canadian Competition Act (the Act), which includes a flurry of new provisions, notably including a prohibition on greenwashing.

 **Key details:** The Act introduces a stand-alone prohibition on greenwashing. It prohibits “*statements, warranties or guarantees*” of a product’s benefits or benefits of a business or business activity for “*protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change*” that are not based on an “*adequate and proper test*” or “*adequate and proper substantiation in accordance with internationally recognised methodology*”.

In particular, the Act contains key enforcement measures, including fines up to CA\$10 million (CA\$15 million for subsequent orders); or three times the benefit derived from the misrepresentation, or if that cannot be reasonably determined, up to 3 percent of the corporation’s annual worldwide gross revenues. It also introduces a means by which private parties may be able to bring cases to the Competition Tribunal to enforce provisions of the Act from June 2025.

ESG DISPUTES ROUND-UP

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

- On 2 July, the New York County Supreme Court [dismissed *Wong et al v. NYCERS*](#), a case that challenged the decision by three of New York City's pension funds to divest from publicly traded fossil fuel reserve owners (see further detail in our [June 2023 ESG View](#)). The Court dismissed the case due to lack of standing, finding that the plaintiffs had not demonstrated that they suffered an "injury in fact". The pension plans at issue were "defined benefit" plans, therefore the plaintiffs would receive a fixed benefit regardless of the outcome of the case.
- On 27 June, the German Federal Court of Justice prohibited advertising with the statement "climate-neutral" as misleading if no explanation is given whether the advertised climate neutrality is achieved by actual CO2 savings in the production of a product or merely by compensation ([Case Ref: IZR 98/23](#)). See full details of the decision in our [client note](#) on the case.

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 Supreme Court rules that Scope 3 emissions should be considered by new fossil projects (fossil fuel)

 **What:** The UK Supreme Court has [ruled](#) that Surrey County Council acted unlawfully by failing to require an environmental impact assessment for a new crude oil extraction project to include the impacts of using the final oil products.

 **Key details:** Sarah Finch, on behalf of the Weald Action Group, initiated proceedings against the expansion of the Horse Hill oil well in Surrey, which was granted planning permission in 2019. The Supreme Court found that Surrey County Council should have evaluated the 'downstream' environmental impacts of burning the extracted oil, prior to granting permission to UK Oil and Gas Plc. Known as 'Scope 3' or 'downstream' emissions, burning the extracted oil is estimated to produce over 10 million tonnes of carbon emissions.

The Supreme Court rejected the argument that the refinement of the crude oil extracted broke the chain of causation to the ultimate use of fossil fuel and resulting greenhouse gases and held that, but for the extraction of the oil, the oil would stay in the ground and so would not be burnt. The Court also rejected the argument that the assessment of the emissions produced should be limited to those occurring at the project's site, holding that there are no such geographical limits in the underlying legislation and that the impact of greenhouse gases on the global climate does not depend on the location of their release.

 **Our view:** This ruling will have a significant impact on the assessment of new fossil projects in the UK, which must now disclose estimates of their downstream emissions. It may also influence the legal challenges which are being brought against in-development projects, such as the proposed coal mine in Whitehaven, Cumbria, and the North Sea Rosebank oil field. Whilst companies will not be precluded from seeking licences for new projects, this ruling may make it harder to structure projects to keep scope 3 emissions under the prescribed limits.

2. US Supreme Court overturns the Chevron Doctrine (multi-sector)

-  **What:** On 28 June, the US Supreme Court overturned the requirement for judges to defer to administrative agencies' reasonable interpretations of ambiguous federal statutes (*Chevron v Natural Resources Defense Council*), holding in its ruling in *Loper Bright Enterprises v Raimondo* that judges are to rely on their own judgment in determining whether an agency's regulation falls within its authority.
-  **Key details:** The 'Chevron deference doctrine', established in 1983, favoured federal agency expertise in regulatory interpretation and went on to appear in up to 60% of Supreme Court opinions by the 1990s. However the *Loper* case, alongside its companion case *Relentless Inc. v Department of Commerce*, overturned this principle.
-  **Our view:** The Supreme Court's decision to repeal the Chevron deference doctrine is expected to impact how regulators implement and defend rulemaking across an array of topics including, for example, financial regulation, health and safety in the workplace, environmental protection and public health. We've already seen federal agency rulemaking be challenged in the courts, and this decision may embolden further litigation whilst deterring agencies from being overly ambitious in politically contentious areas.

While further litigation may be foreseeable, it is unclear how impactful the *Loper* decision will be in practice. For example, the Securities and Exchange Commission (SEC) has not relied on the Chevron deference doctrine in its Climate Disclosure Rules (see our [March ESG View](#)) therefore it's unlikely to be the lynchpin for challenges in the courts.

3. First decisions by the new Due Diligence Chamber at the Paris Court of Appeal under the French Corporate Duty of Vigilance Law (multi-sector)

-  **What:** On 18 June, the Paris Court of Appeal ruled claims brought against [TotalEnergies](#) and [EDF](#) based on French Corporate Duty of Vigilance Law as admissible. These are the first rulings from the newly established Chamber 5-12 of the Paris Court of Appeal specifically dedicated to "emerging" disputes related to the duty of vigilance and corporate ecological responsibility. This pivotal decision paves the way for a detailed examination of allegations that these companies neglected to publish sufficient plans addressing human and environmental risks associated with their operations.
-  **Key details:** In 2020, French NGOs launched proceedings against TotalEnergies on the grounds its conduct should be aligned with the goal of the Paris Climate Agreement to limit global warming to 1.5°C. The same year, another two NGOs launched proceedings against EDF arguing that EDF did not take action within its vigilance plan to identify and mitigate risks of human rights infringements associated with its Gunaa Sicarú wind farm project. In each of the cases, the NGOs' claims were ruled inadmissible for procedural reasons and the NGOs appealed. The Court of Appeals has now ruled the cases as admissible and clarified the function and content of the "formal notice" and the requirement of an interest to launch proceedings under the French Corporate Duty of Vigilance Law. The Court will now evaluate the cases on the merit.
-  **Our view:** These new decisions are important because it opens the door to proceedings being brought on the merits, based on the French Corporate Duty of Vigilance Law in the specific context of climate and human rights litigation.

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. TNFD consults on new sector guidance (multi-sector)

 **What:** This month, the TNFD published a flurry of updates (see the Global Updates section), including five [draft sector guidance](#) documents on:

- fishing;
- engineering, construction and real estate;
- construction materials;
- beverages; and
- apparel, accessories and footwear.

The consultation is asking for responses on how the LEAP approach will apply to sectors, feedback on the proposed guidance and metrics, and insights on nature-related dependencies, impacts, risks and opportunities commonly facing organisations in the sectors. As well as general feedback on the approach taken in the guidance and the core TNFD global disclosure metrics.

 **Timing:** Feedback is due by 27 September 2024.

2. Hong Kong consults on Corporate Governance Code changes (multi-sector)

 **What:** On 14 June, the Stock Exchange of Hong Kong Limited published a [consultation paper](#) with proposed enhancements to the Corporate Governance Code (the Code) and related Listing Rules.

 **Key details:** Some of the key proposals are outlined below.

- Board effectiveness improvements
 - capping “overboarding” independent non-executive directors (INEDs) so they don’t hold more than six Hong Kong-listed issuer directorships simultaneously (mandatory rule);
 - annual director training on specific topics, with a minimum of 24 hours’ training for first-time directors within the first 18 months of an appointment (mandatory rule); and
 - regular board performance reviews and the disclosure of a board skills matrix (“comply or explain” basis).
- Strengthening board independence. Cap of nine years on the tenure of INEDs (mandatory rule).
- Promoting diversity. Requiring
 - the nomination committee to comprise directors of different genders (“comply or explain” basis);
 - annual reviews of board diversity policy (upgraded to mandatory disclosure requirement); and
 - a workforce diversity policy (mandatory rule).

- Enhancing risk management and internal controls. At least an annual review of these systems and enhanced disclosures of the review and findings (upgraded to mandatory disclosure requirement).
- Better capital management. Enhanced disclosures of an issuer's dividend policy and its board's dividend decisions (new mandatory disclosure requirement).

 **Timing:** The proposed amendments will apply to corporate governance reports for financial years commencing on or after 1 January 2025, with a three-year transition period for the proposals on overboarding INEDs. Responses must be submitted by 16 August.

3. Switzerland proposes expansion in sustainability reporting requirements for companies (multi-sector)

 **What:** On 26 June, the Swiss Federal Council (the Council) opened a consultation to amend the Swiss Code of Obligations and propose an expansion of sustainability reporting obligations for companies. The proposals aim to align the country's sustainability-related rules with the EU's Corporate Sustainability Reporting Directive (CSRD).

 **Key details:** While some Swiss companies ("public interest entities" that include listed companies and financial institutions) are already expected to disclose the risks of their business activities from an ESG perspective, the Council's proposal would expand firms captured and mandate reporting for Swiss companies that meet two of the following three thresholds:

- over 250 employees;
- a balance sheet total of CHF20 million; or
- a turnover of CHF40 million.

The proposal also introduces external auditing requirements for the disclosures. The number of companies covered by Swiss mandatory reporting can be expected to increase by more than 3,000 companies. Notably, there will be exemptions for subsidiaries of companies that will make disclosures under the Swiss law or that already produce equivalent disclosures as required by foreign law.

The Council recognises that these proposals will be costly for companies and are analysing financial options to assist the implementation of new regulations.

 **Timing:** The consultation closes on 17 October 2024.

LATEST SIMMONS ESG INSIGHTS

Podcast series

- [UK General Election and ESG: new government, new frontiers for finance & beyond](#) (3 July 2024)
- [Seas of opportunity: navigating the Blue Economy:](#)
 - Episode 9 - [How the UK Government can deliver a Sustainable Blue Economy](#) (2 July 2024)
 - Episode 10 - [Understanding marine natural capital](#) (23 July 2024)

Webinars On-Demand

- [Global insights - UK government: First 100 days](#) (5 July 2024)
- [EU infrastructure insights: Energy efficiency & motorway contracts](#) (27 June 2024)

Recent Publications

- We are pleased to announce the third of our six sector articles, derived from our report, "[A Sustainability State of Mind: Unlocking Growth and Opportunity](#)", launched last year. This article, titled "[Energy and natural resources: the opportunity in responsibility](#)", delves into the report's data on the energy and natural resources sector. (27 June 2024)
- [FCA provides guidance on notifications under SDR regime](#) (5 July 2024)
- [The new UK government: the first 100 days](#) (5 July 2024)
- [New German rules on "green" advertising](#) (3 July 2024)
- [ICMA's new guidelines on Green, Social and Sustainability Bonds](#) (28 June 2024)
- [The ESAs publish a joint Opinion on the future shape of the SFDR](#) (19 June 2024)

CONTACT US

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

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



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