CLEARY GOTTLIEB

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Climate and the Financial Sector

This weekly newsletter highlights climate-related regulatory, litigation and enforcement developments relevant to the financial sector.

EU Updates

Banking

17 October 2022: EBA issues opinion on implementing rules for ESG risk disclosures, applicable to large listed EU banks under art. 449a CRR

Last January, the EBA published final draft Implementing Technical Standards (ITS) on prudential disclosures of environmental, social and governance (ESG) information. On 31 August, the European Commission sent a letter to the EBA about its intention to endorse the ITS with amendments. The Commission's proposed amendments focus mainly on the calculation and disclosure of the Banking Book taxonomy Alignment Ratio (BTAR). The amendments emphasise: (i) that institutions 'may' choose to disclose this information, instead of being required to do it on 'a best effort basis', and (ii) that the collection of the information from the counterparties will be on a 'voluntary basis', including that institutions need to inform the counterparties about the voluntary nature of this request of information.

Recognising the importance of proportionality, the EBA, in its 17 October Opinion, accepted the amendments proposed by the European Commission. The EBA also highlighted that the aim of the BTAR is to prevent an asymmetric treatment of exposures towards counterparties which may raise similar level of riskiness to the institution and emphasises the importance that institutions make every effort to disclose this ratio and to collect the relevant information from their counterparties (here).

18 October 2022: EU Commission amendments to ESG risk disclosures implementing rules proposed under art. 449a CRR are published by the EU Council

The Implementing Technical Standards (ITS) on Pillar 3 disclosures on ESG have been amended and propose comparable quantitative disclosures on climate-change risks and quantitative disclosures on the mitigating actions set-up by the institutions in order to support their counterparties in the adaptation to climate change (here).

24 October 2022: EBA addresses new report to NCAs on the incorporation of ESG risk in the supervision of investment firms through SREP

Building on an earlier EBA Report on management and supervision of ESG risks for credit institutions and investment firms, the 24 October Report, which is addressed to competent authorities, sets out the foundations for integrating ESG risks-related considerations in the supervisory review and evaluation process (SREP) of investment firms. The report covers the main SREP elements including: (i) business model analysis, (ii) assessment of internal governance and risk management, and (iii) assessment of risks (risk to capital and liquidity risk). The report also emphasises the need for proportionality, concluding that the integration of ESG risks should be carried out taking into account not only an investment firm's business model, size, internal organisation and the nature, scale, and complexity of its services and activities, but also the materiality of its exposure to ESG risks.

Whilst competent authorities are expected to monitor and encourage further developments in the data and methodologies allowing more accurate measurement and management of ESG risks by investment firms, the EBA acknowledges the current limitations related to data and methodologies in the assessment of ESG risks. Accordingly, the EBA recommends that the integration of ESG aspects in the supervisory process could follow a gradual approach, prioritising the recognition of ESG risks in investment firms' strategies, governance arrangements and internal processes, and later incorporating them in the assessments of risks to capital and liquidity (here).

24 October 2022: Mark Carney (GFANZ) recognises need to address tensions among alliance members on shared net zero commitments

On 24 October 2022, the UK's Environmental Audit Committee of the House of Commons questioned Mark Carney, former Bank of England governor and now co-chair of the Glasgow Financial Alliance for Net Zero (GFANZ) on rumours that certain members were considering leaving the alliance. The reason behind the threatened withdrawal of some institutions were the proposed restrictions on GFANZ members in respect of financing of gas, oil and coal.

Mark Carney dismissed these rumours, although he acknowledged that "tension" within the group needed to be addressed. In response to the concerns by some GFANZ members, Race to Zero withdrew its proposal that GFANZ members commit to a fossil-finance phase-out. A key observation from Carney is: any move by the financial industry towards net zero should be underpinned by legislative/regulatory frameworks (here).

25 October 2022: AMF / ACPR publication on monitoring and evaluation of climate commitments

On 25 October 2022, the AMF and the ACPR publish their third report on the monitoring and evaluation of the climate commitments made by financial institutions on the Paris financial market. While the last two reports focused on assessing all the climate commitments made by financial institutions, this edition focuses on the governance of these commitments. The two authorities also review the findings on fossil fuel policies (here).

26 October 2022: Exclusion of oil and gas financing by a French public institution

The Caisse des Dépôts Group, the French major public financial institution makes new commitments in terms of climate change mitigation, including by ceasing the financing of new oil and gas projects. In addition, the CDC will cease to invest (through equity investments or bonds issuances) or to finance (through loans) companies with more than 5% of their turnover linked to coal, compared to 10% previously (here).

Asset Management

Verena Ross (ESMA) acknowledges mis-selling of ESG funds in EU Parliament hearing

In a hearing in the European Parliament's economics committee, Verena Ross, chair of ESMA, acknowledged that significant complexities and challenges remain in respect of sustainable finance, and also expressed concerns about greenwashing.

According to Ross, ESMA is committed to facilitate the transition towards sustainable finance, including by increasing comparability, reducing complexity, and generally ensuring that investors are put in the position to make informed choices. She also highlighted that ESMA launched a call for evidence relating to the methodologies underpinning ESG ratings, expressing her hope that the Commission would pick the issue of ESG ratings up in form of a legislative proposal (here).

25 October 2022: Greenpeace releases report singling out 4 German

asset managers for their investments in fossil fuel industries and public net zero pledges

The joint report issued by Greenpeace, Reclaim Finance and Urgewald examines the gap between the commitments to climate actions and the fossil fuels policies of the 4 German asset managers. The report notably calls the 4 German asset managers to set-up plans to cease all investments in companies involved in coal and in oil and gas. The report claims also for a reinforcement of the applicable policies of the 4 German asset managers in order to include phase out dates and to cover a larger portion of the asset manager's activities (here).

Insurance

25 October 2022: Greenpeace speaks to insurers

A few weeks before COP27, Greenpeace is asking insurers to act as a lever to reduce fossil fuel. Through a press release issued on 19 October 2022, Greenpeace states that *"insurers must now fully exit new coal, oil and gas"*. The press release also provides a scoring of insurers on the quality of their fossil fuel exclusions policies: *"This year Allianz, AXA and Axis Capital rank best for their coal exit policies, while Aviva, Hannover Re and Munich Re come out on top for their oil and gas exclusions.*

At the bottom *of fossil fuel rankings are a group of insurers which have yet to adopt any restrictions on providing cover to coal, oil or gas projects, including US insurers Berkshire Hathaway and Starr and Bermudian carrier Everest Re"* (here).

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