

CLEARY GOTTLIB



5 December 2023

Climate and the Financial Sector

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

General

29 November 2023 [Global] – **BCBS Launches a Consultation on Climate Risks Disclosure**

The Basel Committee on Banking Supervision (BCBS) has published a consultation paper on the disclosure of climate-related financial risks. The BCBS is seeking views from banks on the creation of a new Pillar 3 disclosure framework for these risks, which will complement the other existing standards (including the ISSB). In particular, the BCBS proposal includes:

- Proposals for qualitative (e.g., governance, strategy, ...) and quantitative (e.g., exposure by sector, financed emissions, ...) disclosure requirements;
- The establishment of specific metrics for banks on quantitative climate disclosure;
- Forecast disclosure standards.

Feedback is expected by 29 February 2024, with a view to publishing a final proposal during the second half of 2024. [\[link\]](#)

28 November 2023 [UK] – **The FCA Launches a Consultation on Greenwashing**

The Financial Conduct Authority (FCA) has published a consultation on its guidance setting out the FCA's expectations for authorized firms making sustainability claims about their products or services. The anti-greenwashing rule requires authorized firms to ensure that any reference they make to the sustainability features of their financial products or services is consistent with the sustainability features of the product or service and is fair, clear and not misleading. The FCA proposes that firms' sustainability claims are (i) correct and capable of being substantiated, (ii) clear and presented in an understandable manner, (iii) complete, and (iv) fair and meaningful in relation to any comparisons with other products or services.

Feedback is expected by 26 January 2024, with a view to issuing final guidance that will become effective on 31 May 2024. [\[link\]](#)

29 November 2023 [UK] – House of Commons' Publishes a Report on financial sector and UK's net zero transition

The House of Commons Environmental Audit Committee has examined the role of financial institutions in winding down the financing of fossil fuel extraction and promoting the transition to green energy. The recommendations provided by the Audit Committee to the UK Government under the report include notably:

- The publication by the UK Government of quarterly reports on the moving towards energy independence while staying on track to the net zero target by 2050;
- The introduction of regulations to ensure that UK companies develop and disclose transition plans in accordance with the transition plan taskforce guidance;
- The publication of a timetable for the implementation of the UK's sustainability disclosures requirements rules (see news below in the Asset management section)
- The introduction of the UK Green Taxonomy as soon as possible, with a mandatory reporting within two years after the beginning of the voluntary period.
- The development of a UK carbon border adjustment mechanism, as the Audit Committee note the Minister's view that it is better to encourage other countries to develop their own carbon mechanism than to introduce a UK-specific mechanism. [\[link\]](#)

30 November 2023 [EU] – EBA Commits to Improving Climate and Sustainability Considerations in the Banking Industry

The European Banking Authority has published its environmental statement in the context of COP28, reiterating that ESG considerations are a priority for the EBA. The EBA stated that supervisors are committed to providing a sound regulatory framework to support the climate change transition, to which banks can contribute by providing the financing needed to achieve net-zero targets and to green their clients' activities. The EBA also explained that it is currently conducting a one-off "Fit-for-55" system-wide climate risk scenario analysis to assess the resilience of the financial sector in line with the EU's 2030 climate target. [\[link\]](#)

30 November 2023 [EU] – The European Supervisory Authorities Publish Consumer Education Paper on Sustainable Finance

The three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) have published an interactive and educational factsheet that provides answers to consumers considering buying financial products with sustainability features (e.g., loans, investment products, insurance and pensions). The factsheet also provides tips that consumers should consider before choosing a financial product with sustainability features, such as paying attention to the sustainability features and not being misled by greenwashing. [\[link\]](#).

28 November 2023 [Global] – Voluntary Carbon Markets Integrity Publishes a Claims Code of Practice

Voluntary Carbon Markets Integrity (VMCI) is an international initiative established to help ensure that voluntary carbon markets make a significant, measurable, and positive contribution to achieving the goals of the Paris Agreement. VMCI has published a “Claims Code” that provides guidance to companies on making credible claims about using carbon offsets to achieve their voluntary climate change targets. [\[link\]](#)

30 November 2023 [EU] – European Green Bonds Regulation published in Official Journal

The European Union has published the Regulation (EU) 2023/2631 of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability linked bonds. Subject to certain exceptions, the European Green Bonds Regulation will apply from 21 December 2024. [\[link\]](#)

Asset Management

27 November 2023 [EU] – ESMA Publishes a Speech on the role of Asset Management Industry and Sustainability

Verena Ross, ESMA Chair, gave a speech on 24 November 2023 at the European Fund and Asset Management Association (EFAMA) investment management forum where Verena Ross discussed the links between the asset management industry and sustainability. Key points in the speech include, namely, that ESMA:

- Has decided to enhance ESG disclosures as one of its two EU-wide strategic supervisory priorities. Effective ESG disclosures are considered as one of the keys to address the risk of greenwashing.
- Is currently reviewing existing guidelines to reflect ESG considerations with a view to ensure that investors receive accurate information and advice. The updated guidelines will help the industry to properly consider the sustainability preferences of the investors.
- Is closely monitoring the progress of the ESG rating process. ESMA expects that an agreement on that front can be reached before the end of the Parliament’s term. [\[link\]](#)

28 November 2023 [UK] – UK’s Sustainability Disclosures Requirements Rules Published

The UK’s Sustainability Disclosure Requirements (SDR) and investment labels rules have been published by the FCA today, following a consultation period that started in Autumn 2022. The SRD include:

- An anti-greenwashing rule for all FCA-authorized firms requiring that sustainability-related claims must be fair, clear and not misleading. The FCA is consulting on supporting guidance.
- Naming and marketing rules for investment products, to ensure the use of sustainability-related terms is accurate.
- Four “labels” to help consumers navigate the investment product landscape and enhance consumer trust: (i) “sustainability focus” for products with an objective to maintain high standards of sustainability, (ii) “sustainability improvers” for products which are not currently sustainable but for which there is room for improvement, (iii) “sustainability impact” for products with an aim to achieve a pre-defined positive impact to environmental or social outcome, and (iv) “sustainability mixed goals” for products with an objective to invest in a combination of sustainability objectives of the other three labels.
- Consumer-facing information to provide consumers with better, more accessible information to help them understand the key sustainability features of a product.
- Detailed information targeted at institutional investors and consumers seeking more information in pre-contractual, ongoing product-level, and entity-level disclosures.
- Requirements for distributors to ensure that product-level information (including the labels) is made available to consumers.

These published rules form a framework governing the marketing of sustainable funds and investment products by UK firms, with similar aims to those of the EU’s Sustainable Finance Disclosure Regulation (SFDR). In terms of timing, (i) the general anti-greenwashing rule coming into force on 31 May 2024, (ii) the use of the four labels permitted from July 2024, (iii) specific naming rules for funds and other investment products coming into force on 2 December 2024, and then (iv) a staggered implementation of the information disclosure requirements between 2025 and 2026.

[\[link\]](#)

4 December 2023 [EU] – The European Supervisory Authorities Publishes Final Report on Principal Adverse Impacts and Disclosures under SFDR

The three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) have published a final report containing draft regulatory technical standards (RTS) on the review of principal adverse impacts (PAIs) and disclosure of financial products in the SFDR Level 2 Delegated Regulation. This final report responds to a mandate from the European Commission in April 2022 to review several aspects of the Delegated Regulation, including the disclosure of PAIs of investment decisions on sustainability

factors. The draft RTS cover the topics included in the European Commission's mandate:

- Extending the list of social indicators for PAIs;
- Refining the content of a number of the other PAI indicators and their respective definitions, applicable methodologies, metrics and presentation; and
- Introducing new disclosures on greenhouse gas (GHG) emission reduction targets for financial products. [[link](#)]



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