

CLEARY GOTTLIB



2 April 2024

Climate and the Financial Sector

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

General

26 March 2024 [EU] — EU Council formally adopts Directive revising the Environmental Crime Directive

The EU Council formally adopted the Directive on the protection of the environment through criminal law, replacing Directives 2008/99/EC and 2009/123/EC. In particular, the Directive extends the list of offences. First, it increases the number of criminal offences from nine to 20, including in particular illegal trade in timber, depletion of water resources, illegal recycling of polluting ship components or serious violations of EU chemicals legislation. Second, it introduces a "qualified offense" clause, where the offenses are committed intentionally and result in the destruction of, or irreversible or long-lasting damage to, the environment. In addition, as far as penalties are concerned, offences will generally be punishable by up to five years imprisonment, qualified offences by up to eight years imprisonment and intentional offences causing the death of a person by a maximum of at least ten years imprisonment. Fines for companies will be at least 5% of total worldwide turnover for the most serious offenses or €40 million. The Directive must now be published in the Official Journal before it can enter into force. Member States will have two years to transpose the rules into national law. [[link](#) - [link](#)]

26 March 2024 [EU] — ESMA consults on rules for External Reviewers of EU Green Bonds

The European Securities and Markets Authority (ESMA) has launched a consultation on draft technical standards on the registration and supervision of external reviewers under the EU Green Bond Regulation. ESMA seeks to standardise the registration and supervision requirements for entities interested in becoming external reviewers of EU Green Bonds and to contribute to the development of a level playing field by reducing the cost of entry for applicants. The draft technical standards cover (i) criteria to be assessed at the time of registration in relation to senior management, board members and analytical resources; (ii) criteria to assess sound and prudent management and the management of conflicts of interest; (iii) criteria to assess the knowledge and experience of analysts; (iv) criteria applicable to the outsourcing of assessment activities; and (v) the standard forms, templates and procedures for the provision of registration information. ESMA expects to publish a final report in Q4 and to submit the draft technical standards to the European Commission for endorsement no later than 21 December 2024. [\[link\]](#)

27 March 2024 [UK] — CMA secures undertakings from fashion retailers in greenwashing investigation

Following its announcement that it would investigate potentially misleading green claims made by three fashion retailers, the UK's Competition Market Authority (CMA) has secured formal undertakings from the companies to change the way they promote their green credentials. The undertakings include ensuring that all green claims are accurate and not misleading, that claims about materials in green ranges are specific and clear, that precise criteria are set out for including products in green collections, and that the use of 'natural' imagery, logos or icons to suggest that a product is more environmentally friendly than it actually is is prohibited. The three fashion retailers will have to report to the CMA, which will monitor compliance with the undertakings. At the same time, the CMA published an open letter to businesses in the fashion retail sector, urging them to familiarise themselves with the commitments in the undertakings and the requirements of the CMA's Green Claims Code, and to take all necessary steps to ensure that their claims comply with consumer protection law. [\[link\]](#) - [link](#)

27 March 2024 [EU] — ECB Executive Board Member and Vice-Chair of the Supervisory Board discusses the integration of climate and nature into monetary policy and banking supervision around the world

Speaking at an event on climate-related financial risks hosted by the Banco Central do Brasil, Frank Elderson discussed the role that central banks and supervisors can play in addressing climate and natural crises around the world. He began by outlining the threat that global warming and environmental degradation pose to the stability of economies and the robustness of financial systems, and that, while central banks and supervisors should not be policymakers in this area, which is the responsibility of governments, they are now forced to consider it in order to fulfil their monetary policy and banking supervision mandates. Frank Elderson also pointed out that the economic benefits of a timely transition outweigh the costs, especially as climate-related risks

translate into financial risks. He went on to describe the measures taken at the ECB to address climate and nature issues, highlighting the progress made on the 2021 Climate Action Plan, the introduction of a methodology to tilt corporate bond purchases towards issuers with better climate performance, and guidance for banks on how to better integrate climate and nature risks into their strategy, governance and risk management. Finally, he recalled the ECB's two recent announcements: (i) the launch of a new climate and nature action plan, which sets out concrete steps to examine how the ECB can further support the green transition within its mandate, assess the physical impacts of climate change and explore the materiality of nature-related risks; and (ii) the integration of climate change considerations into the design of future structural monetary policy operations. [[link](#)]



Amélie Champsaur
Partner, Paris
achampsaur@cgsh.com



Andreas Wildner
Associate, London
awildner@cgsh.com



Camille Kernevès
Associate, Paris
ckerneves@cgsh.com



Eléonore Azaïs
Associate, Paris
eazais@cgsh.com



This memorandum was intended for **Global-Client Alert**.

[Privacy Statement](#)

© 2024 Cleary Gottlieb Steen & Hamilton LLP. All rights reserved.

This message was prepared as a service to clients and other friends of Cleary Gottlieb to report on recent developments that may be of interest to them. The information in it is therefore general, and should not be considered or relied on as legal advice.