

CLEARY GOTTLIB



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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.

General

15 March 2024 [EU] — **New Compromise on CSDDD**

Following the failure to adopt the provisional text of the Corporate Sustainability Due Diligence Directive (CSDDD) (see our alert [here](#)), a new compromise text has been proposed by the EU Council. In particular, it includes the following changes:

- Increase of the in-scope thresholds (1,000 employees and €450 million turnover) and deletion of the high-risk sectors approach;
- Narrower definition of the chain of activities;
- Removal from the recitals of the reference to a joint political statement of the European Parliament and the Council concerning the necessity to develop additional appropriate sustainability due diligence requirements for regulated financial undertakings;
- Introduction of an additional exemption concerning the responsibility of ultimate parent companies for meeting the CSDDD due diligence requirements, where the parent company does not engage in taking “*management, operational or financial decisions*” affecting the group or its subsidiaries;
- Further adjustments to the civil liability regime;

- Removal of the requirement for large companies to offer financial incentives for managers linked to “*promoting the implementation of*” climate transition plans; and
- Update of the timeline for the phasing-in of the CSDDD requirements, starting 3 years after the entry into force of the CSDDD.

The revised CSDDD is now on the Parliament’s plenary agenda for adoption on April 24, 2024. [\[link\]](#)

18 March 2024 [EU] — **Commission Consultation on EU Emissions Trading System**

The Commission has published a consultation on a draft implementing regulation amending the existing implementing regulation on the verification of dates and the accreditation of verifiers under the EU Emissions Trading System (EU ETS). The main changes include:

Expansion of the scope of activities for which verifiers are accredited;

New requirements for the verification of emissions and accreditation of verifiers in relation to the new emissions trading system for fuels used for heating buildings and road transport.

Feedback is expected by April 15, 2024. [\[link\]](#)

21 March 2024 [UK] — **UK Consultation on Carbon Border Adjustment Mechanism Proposal**

The UK government had previously announced that it would introduce a Carbon Border Adjustment Mechanism (CBAM) on imports of certain carbon-intensive goods in a number of sectors, including aluminium, cement, fertilizers and steel, from 1 January 2027. His Majesty’s Treasury and His Majesty’s Revenue & Customs have now jointly published a consultation on a proposal for a UK CBAM mechanism. The consultation invites comments on:

- The list of sectors and goods that should be covered by the CBAM;
- The calculation methodology and the UK carbon price and adjustments for overseas carbon prices.

Feedback is expected by June 13, 2024. [\[link\]](#)

5 March 2024 [EU] — **European Commission adopts delegated regulation concerning environmental disclosure standards for STS securitisations**

The European Commission adopted a delegated regulation ([link](#)) to supplement the EU’s Securitisation Regulation (2017/2402). The delegated regulation sets out regulatory technical standards (RTS) concerning the environmental disclosure standards for Simple, Transparent and Standardised (STS) securitisations. The RTS aim to ensure alignment between the European Supervisory Authorities’ (ESAs’) development of sustainability-related disclosures in financial services and the position with STS securitisations.

Under the Securitisation Regulation, originators of STS securitisations are allowed to voluntarily make disclosures concerning the principal adverse impacts on sustainability factors from assets backed by residential loans, auto loans or leases. The RTS lays down certain standards for these voluntary disclosures, specifically for their content, methodologies and presentation of information. Originators of STS securitisations can comply with the requirements of the Securitisation regime or the alternative requirements in the RTS.

The RTS will come into force on 25 March 2024.

13 March 2024 [EU] — European Commission publishes mid-term review on 8th Environment Action Programme

The European Commission has published a report ([link](#)) setting out the mid-term review of the 8th Environment Action Plan (EAP) alongside a commission staff working document ([link](#)) which provides some more detailed analyses. The 8th EAP established a framework for the EU's action on environment and climate policy until 2030. The Commission's mid-term review presents the EU's progress in meeting the programme's priority objectives.

Within a broader analysis of the progress made by the EU towards its environmental goals, the mid-term review highlighted the important role of public and private-sector financing for the green transition. In particular, the report highlighted the impact of the EU sustainable finance framework in helping to reallocate private capital flows and to drive down capital costs for sustainable activities and investments. The Commission also notes the “strong increase in green bonds: from 0.6% in 2014 to 8.9% in 2022 of all EU bonds”. At the same time, the Commission is clear that action still needs to be taken to address financing gaps in the funding of the green transition, noting in the staff working document that “the EU will need to invest €447 billion more per year in 2021-2030 than it did in 2011-2020 to meet its emissions-reduction targets in the energy and transport sectors”.

Separately, the Commission and the EU Platform on Sustainable Finance are organising a workshop on the uptake of the EU's sustainable finance framework and to discuss the Platform's work, which will be held on 22 April 2024 ([link](#)).

Insurance

19 March 2024 [EU] — IAIS Consultation on Climate Risk Supervisory Guidance

Following the first and second consultations in 2023, the International Association of Insurance Supervisors (IAIS) has published its third consultation on climate risk supervisory guidance. This consultation includes changes to the ICP guidance (i.e., guidance materials designed to facilitate understanding of the Principles and Standards) and is intended to cover issues related to corporate governance, risk management and internal controls, valuation of assets and liabilities, investment activities of insurers, and risk management frameworks. Feedback is expected by June 19, 2024. ([link](#))

14 March 2024 [EU] — EIOPA publishes factsheet showing how occupational pension funds' investments align with EU Taxonomy

EIOPA published a factsheet summarising the sustainable characteristics of investments by EEA-based occupational pension funds ([link](#)). The data covers investments by Institutions for Occupational Pensions Provisions (IORPs) in corporate bonds and equities, which make up 29% of IORP's €2.5 trillion of investments as at Q3 2024.

EIOPA's analysis shows that some 4.5% of the investments issued by EEA-based issuers were aligned with the EU Taxonomy, with another 26.1% eligible for alignment with sustainable criteria. Breaking the analysis down shows that (i) 9% of corporate bonds were Taxonomy aligned (42% eligible), and (ii) 1% of equities were Taxonomy aligned (15% were eligible).

Asset Management

5 March 2024 [International] — LMA, APLMA, LSTA and Fund Finance Association publish guidance on application of Sustainability-Linked Loan Principles in fund finance

A Guide to the Application of the Sustainability Linked Loan Principles in Fund Finance was jointly published by the Loan Market Association (LMA), the Asia Pacific Loan Market Association (APLMA), the Loan Syndications and Trading Association (LSTA) and the Fund Finance Association ([link](#)). The guide builds upon the Sustainability-Linked Loan Principles (SLLPs) that were launched in March 2019 ([link](#)) by providing practical advice on how Sustainability-Linked Loans (SLLs) can be more easily incorporated into the fund finance market.

The guide discusses (i) challenges in applying the SLLPs to fund finance transactions (including limited historical data for borrowers in fund finance transactions and diversity of investments), (ii) the selection of key performance indicators (KPIs) and an indicative list of KPIs used in the fund finance context, (iii) the calibration of sustainability performance targets (SPTs), (iv) reporting, and (v) verification.



Amélie Champsaur
Partner, Paris
achampsaur@cgsh.com



Andreas Wildner
Associate, London
awildner@cgsh.com



Pierre Mathé
Associate, Paris
pmathe@cgh.com



Camille Kernevès
Associate, Paris
ckerneves@cgh.com



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