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Insights and perspectives on governance, disclosure & litigation

# ESG Matters

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In this month's Highlight, we discuss the EU Nature Restoration Law. Our Spotlight section brings you up to date with the latest developments in ESG governance, disclosure, financial regulation and litigation.

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## Highlight – The Nature Restoration Law: what will it mean?

On 17 June 2024, the environment ministers of EU member states adopted the new Regulation on nature restoration. The new law had been fiercely debated. In March, the Netherlands withdrew its support following a parliamentary motion, because Dutch MPs considered the targets unachievable and wanted to meet existing obligations first. However, unexpected support from Austria tipped the vote in favour. Now that the Regulation has been adopted, what will it mean in practice?

### Europe's nature is declining

The reason for introducing the Regulation is that Europe's nature is seriously and continuously declining. Assessments show that 15% of habitats show a good conservation status, while the vast majority show an unfavorable conservation status: 45% moderate and 36% poor. The situation in the Netherlands is even worse, with around 90% of habitat types and 75% of Habitat Directive species showing an unfavorable conservation status, of which only 21% and 14% respectively show a positive trend.

## Current framework

Current policies and regulations, including the Birds and Habitats Directives and the Water Framework Directive, already impose obligations to maintain and restore natural habitats, wild animal and plant species of community interest and water quality. In addition, Member States are already required to ensure that the quality of natural habitats, habitat species and water does not deteriorate.

## Binding restoration targets

The Regulation can be seen as the operationalisation of these general obligations. Whereas the Habitats Directive establishes the goal to achieve a favourable conservation status for habitats and includes the obligation to take appropriate measures, the Regulation on nature restoration sets out where and when these measures should be taken in order to gradually improve the conservation status. It also concretises how this goal is to be achieved by setting deadlines and targets.

The Regulation establishes a framework for Member States to implement effective and area-based restoration measures, covering at least 20% of the Union's terrestrial and marine areas by 2030 and all ecosystems in need of restoration by 2050. It also contains obligations to reintroduce habitat types in areas in order to achieve a favourable baseline situation. It also includes effort obligations to take measures aimed at preventing significant deterioration of sites in order to achieve the restoration targets for habitat types. Where satisfactory status is achieved for species, measures must be taken to ensure that their habitats do not deteriorate significantly.

## What it means for you:

- Member States are required to submit a draft national recovery plan to the European Commission within two years of the entry into force of the Regulation. This plan must assess the condition of ecosystems and include a description of the recovery measures to be taken, a timetable for the implementation, a monitoring plan, and a financing plan.
- The Netherlands has carried out an impact assessment of the implementation requirements of the Regulation, which shows that significant investments will be required to meet the objectives of the Regulation, in the order of magnitude of EUR 76 billion. However, the societal cost of not implementing the Regulation is estimated to be at least EUR 129 billion.
- As space is at a premium in the Netherlands, the implementation of the Nature Restoration Law will require more decisive choices on which space is used for what. It is therefore expected that the interest of nature restoration will play a more central role in permitting, and that the implementation of the Regulation may also affect existing activities.

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# Spotlight on ESG developments



## Governance & transition



### UN Working Group presents report on responsible investing

On 17 June, the UN Working Group on Business and Human Rights presented its [report](#) 'Investors, ESG and Human Rights' to the UN Human Rights Council. The report examines the use by investors of ESG and sustainability approaches around the world. In particular, the report considers the alignment of these approaches with the United Nations Guiding Principles on Business and Human Rights (UNGPs). Key findings include that ESG and sustainability approaches vary widely across different investors, lack consistent definitions and are not linked to specific global standards. This leads to risks of greenwashing and human rights-washing. The report makes several recommendations to states, investors and other stakeholders.

### Council adopts position on revised waste framework directive

On 17 June, the Council adopted its [position](#) on the targeted revision of the waste framework directive, focusing on food and textile waste. The proposed directive sets binding targets for the reduction of food waste by 2030 compared to 2020: 10% in processing and manufacturing and 30% per capita in retail, restaurants, food services and households. The Council's opinion endorses these targets and provides for the possibility to set targets for edible food waste by 31 December 2027, when the EC will review the 2030 targets. The Council's opinion states that the EC will consider setting specific targets for waste prevention, collection, preparing for re-use and recycling of the waste textile sector by the end of 2028. This position will form the basis for negotiations with the European Parliament on the final shape of the directive, which are expected to start in the new legislative cycle.



## Disclosure



### ISO starts work on international net zero standard

On 27 June, the International Organization for Standardization (ISO) [announced](#) that it has launched a working group to develop the first International Standard on Net Zero. This independently verifiable standard will build on the ISO Net Zero Guidelines and is expected to be launched at the 2025 UN Climate Change Conference (COP30). Experts that wish to contribute can [contact](#) the ISO member of their country.



### Council adopts position on green claims directive

On 17 June, the Council adopted its [position](#) on the green claims directive, which aims to combat greenwashing and help consumers make greener choices when buying a product or using a service. Of interest are: (i) the requirement of independent third-party verification of environmental claims, to be completed before the claim is made; (ii) rules on carbon credits, more specifically the distinction between emission reductions and removals, and (iii) new rules on transparent labelling. The Council's position *inter alia* provides more flexibility in the use of carbon credits and introduces a simplified verification procedure for certain types of explicit claims. The position will form the basis for negotiations with the European Parliament, which are expected to start in the new legislative cycle.



### Dutch CSRD implementation decree submitted to Parliament

On 12 June, the Dutch Minister for Legal Protection submitted a [draft decree](#) for the partial implementation of the Corporate Sustainability Reporting Directive (CSRD) to both houses of the Parliament. The houses have four weeks to comment on the draft decree before it will be submitted to the Council of State for consultation. The draft decree implements a significant part of Article 1 of the CSRD (reporting requirements), selected parts of Articles 15, 18, and 27 of Article 2 of the CSRD (assurance statements and audit committees), and paragraph 2 of Article 5 of the CSRD. Further implementation will take place through the CSRD Implementation Act (*Wet implementatie richtlijn duurzaamheidsrapportering*), which is currently being drafted. Officially, the CSRD must be fully implemented by 6 July 2024.



## Financial institutions & regulation

### EFRAG publishes paper on interplay between connectivity and boundaries of annual report sections

On 28 June, the European Financial Reporting Advisory Group (EFRAG) published the paper '[Connectivity considerations and boundaries of different annual report sections](#)'. The paper outlines the conceptual foundations, categories and benefits of connectivity, which is a relatively new and multi-dimensional concept that has only recently been introduced into the mandatory sustainability reporting requirements. It also analyses reporting boundaries and identifies several grey areas regarding the location of information. These grey areas include the disclosure of climate-related commitments, unrecognised intangible assets, and synergies from M&A transactions. EFRAG suggests steps to enhance connectivity and reduce the expectation gaps around reporting boundaries. A [short version](#) is also available.

### ICMA publishes guidance on sustainable bonds

On 25 June, the International Capital Market Association (ICMA) [published](#) guidance for green enabling projects and guidelines for Sustainability-Linked Loan financing Bonds (SLLB). The guidance supports the Green, Social, Sustainability, and Sustainability-Linked Bond Principles. Furthermore, ICMA published (i) an update of the SLLB and a new SLB disclosure data checklist, (ii) an expansion of the SLB KPIs Registry related to environmental themes and additional KPIs for sovereign issuers, and (iii) a new annex of the Impact Reporting Handbook covering environmental and social risks.

### TNFD and EFRAG publish correspondence mapping for ESRS and TNFD reporting

On 20 June, the Taskforce on Nature-related Financial Disclosures (TNFD) and EFRAG have jointly published a [correspondence mapping](#) for the European Sustainability Reporting Standards (ESRS) under the Corporate Sustainability Reporting Directive (CSRD) and the TNFD's recommended disclosures. The mapping is intended to help companies understand the commonalities between the two reporting frameworks for nature-related information and to encourage them to complement their mandatory ESRS reporting with voluntary TNFD reporting.





## NGFS publishes second edition of its guide on climate-related disclosure for central banks

On 19 June, the Network for Greening the Financial System (NGFS) published an updated [guide on climate-related disclosure for central banks](#), calling on central banks to lead by example by disclosing their climate-related risks and opportunities. The updated guide is organised around four thematic areas: governance, strategy, risk management, and metrics and targets. Disclosure recommendations within these categories are grouped according to their level of detail, and a distinction is made between foundational ('baseline') and complementary ('building block') recommendations, acknowledging that there is no one-size-fits-all solution.

## ESAs propose improvements to SFDR

On 18 June, the European Supervisory Authorities (ESAs) published a [joint opinion](#) on the assessment of the Sustainable Finance Disclosure Regulation (SFDR), calling for a coherent sustainable finance framework that addresses both the green transition and enhanced consumer protection. In formulating this opinion, the ESAs drew on lessons learnt from the functioning of the SFDR. The proposal outlines a framework for the introduction of simple and clear categories for financial products. The proposed simplifications include the introduction of two voluntary product categories: 'sustainable' and 'transition'. These categories are intended to ensure that consumers can understand the purpose of the products. The rules for the categories should be clearly defined and include objective criteria to reduce the risk of greenwashing. Other key elements of the proposal are the adoption of an indicator similar to the PRIIPs KID risk indicator, a tailored approach to documentation based on the principle that differentiation does not inherently restrict standardisation, and the application of disclosure requirements to all products. This opinion could prove valuable to the EC as it evaluates and improves the SFDR.

## Christine Lagarde delivers speech on ECB's role in the face of climate and environmental risks

On 7 June, ECB President Christine Lagarde delivered a [speech](#) at the Maurice Allais Foundation in which she emphasised the particular challenge that climate and nature risks pose to central banks. She highlighted the important role that central banks can play, particularly in the fight against climate change. She outlined this role as threefold. First, the ECB must analyse how climate change affects the economy, the financial system, and its own activities; second, it must advise on the implications of climate change for monetary policy; third, it must act to mitigate the effects of climate change. Subsequently, the results of this analysis may influence the ECB's internal thinking and guide its approach to policymaking (e.g., in relation to carbon pricing, climate disclosure, the completion of the EU's Capital Markets Union).



## ESAs publish final reports on greenwashing

On 4 June, the [European Banking Authority](#) (EBA), the [European Insurance and Occupational Pensions Authority](#) (EIOPA), and the [European Securities and Markets Authority](#) (ESMA) (together the ESAs) separately released their final reports on greenwashing in the financial sector. The reports adopt a coordinated approach to addressing greenwashing risks, outlining each ESA's current supervisory response to greenwashing risks and reiterating the common high-level understanding of greenwashing. In addition, each report outlines a forward-looking approach to gradually enhance sustainability-related supervision in the future.

## Council adopts amendments to CRR and CRD

On 30 May, the Council adopted the new banking package ([CRR III](#) and [CRD VI](#)), amending the Capital Requirement Regulation (CRR) and the Capital Requirements Directive (CRD). The new regulatory framework introduces enhanced requirements for management bodies of banks. It contains significant changes, including (i) the introduction of new definitions such as 'ESG risks' and different types of these risks (environmental, transitional and physical), 'ESG factors' and 'fossil fuel sector entity', (ii) amendments to the infrastructure supporting factor, (iii) requirements relating to transition plans, (iv) disclosure requirements, (v) amendments to the SREP process, and (vi) provisions for carbon trading under the alternative standardised approach. Member states will have 18 months to implement CRD VI in national legislation, while CRR III will (mostly) apply from 1 January 2025. The EBA has also published [draft Regulatory Technical Standards](#) on the conditions for assessing the materiality of extensions and changes to the use of alternative internal models and changes to the subset of the modellable risk factors referred to in Article 325bc under Article 325az(8)(a) of the CRR.

## SBTi publishes updated near-term criteria for financial institutions

On 28 May, the Science Based Target initiative (SBTi) released an updated version of its [Financial Institution's Near-Term Criteria](#), which enables financial institutions to set ambitious near-term emission reduction targets. The changes include an increase in ambition from 2.0°C to 1.5°C, the introduction of fossil fuel finance criteria and general improvements for usability and clarity. A more detailed and longer list of revisions can be found in the [main changes document](#). The new criteria will take effect on 30 November 2024. Financial institutions submitting targets before this date can choose to voluntarily adopt the new criteria or use the [previous version](#).



## ESMA publishes report on marketing disclosure requirements under MiFID II

On 27 May, ESMA published a combined [report](#) on its 2023 Common Supervisory Action (CSA) and the accompanying Mystery Shopping Exercise (MSE) on marketing disclosure rules under MiFID II. Overall, the report deemed that firms are compliant and have adequate procedures in place to observe the requirements under MiFID II. However, the ESMA identified a need for greater transparency and accuracy in sustainability claims made in marketing communications. It is crucial that potential investors have a clear understanding of which instruments meet their ESG investment criteria when making their investment decisions. In order to mitigate greenwashing risks, it is necessary to involve control functions and senior management in internal procedures relating to the development, design and oversight of marketing communications where sustainability-related claims are made.



## Litigation



### Grantham Research Institute publishes annual climate litigation report

On 27 June, the Grantham Research Institute on Climate Change and the Environment published its sixth annual [report](#) on global trends in climate change litigation. At least 230 new climate cases were filed in 2023, slightly fewer than in previous years. In corporate climate litigation, 230 corporate climate cases have been filed since 2015. Last year saw particular increase in greenwashing cases, with a success rate of over 70%. For the first time, this year's report includes transition risk cases, which relate to the management of climate risks, as a separate category of cases. Anti-ESG cases are on the rise, particularly in the US. More litigation is expected in relation to post-disaster cases, ecocide and criminal law, and a convergence is expected of environmental and climate litigation.





## German Supreme Court rules that liquorice manufacturer's climate-neutral claims are greenwashing

On 27 June, the German Federal Supreme Court (Bundesgerichtshof) [ruled](#) on a greenwashing case brought by the German Centre for Protection against Unfair Competition against a fruit gum and liquorice manufacturer. The manufacturer had advertised in a trade magazine stating that it had been producing all products in a climate-neutral manner since 2021, using a logo with the term 'climate-neutral' and referring to the website of a 'climate partner'. The court of first instance and the court of appeal ruled that the claims were not misleading because the advertisement referred to an explanatory website. The Supreme Court overturned the appeal decision, stating that in the field of environment-related advertising, the risk of misleading is particularly high. Ambiguous environmental terms such as 'climate neutral' must therefore be explained in the advertisement itself. In particular, the term 'climate-neutral' must be explained because - from a climate protection point of view - CO2 reduction takes precedence over compensation. The court also notes that the misleading advertising was relevant from a competition point of view, as the alleged climate neutrality of a product is of considerable importance for consumers' purchasing decisions.

## Hawaii Transportation Department settles climate case with Hawaii youth

On 20 June, the Hawaii Department of Transportation [announced](#) the settlement of the Navahine climate case relating to transportation-related climate pollution, brought by 13 young people against the State of Hawaii. The settlement agreement acknowledges the rights of Hawaii's youth to a life-sustaining climate, and confirms the Hawaii Transportation Department's commitment to plan and implement changes to Hawaii's transportation system to achieve net-zero emissions by 2045.

## Paris Court of Appeal declares two diligence law cases admissible

On 18 June, the Paris Court of Appeal ruled on three cases brought against TotalEnergies, EDF and VIGIE Group for violation of the French diligence law. This law requires large companies to draft and implement diligence plans to identify, prevent and mitigate the risks of serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment resulting from their business activities. The Paris Court of Appeal [ruled](#) that the claims against VIGIE group are inadmissible. In contrast to the district court, the Court of Appeal ruled that claims by certain plaintiffs in the cases against TotalEnergies ([ruling](#)) and EDF ([ruling](#)) are admissible, allowing the district court to rule on the merits of the claims (after Supreme Court proceedings, if any).



### **Texas court dismisses climate shareholder proposal case**

On 17 June, a Texas court [dismissed](#) the case brought by ExxonMobil against NGOs Arjuna Capital and Follow This. ExxonMobil sought a declaratory judgment that it may exclude the NGOs' shareholder proposal relating to ExxonMobil's climate policy from its proxy statement. The NGOs had already withdrawn their proposal. In a preliminary ruling, the court dismissed the case against Follow This, but accepted jurisdiction over the case against Arjuna Capital. Subsequently, Arjuna Capital unconditionally and irrevocably promised not to submit shareholder proposals relating to ExxonMobil's greenhouse gas emissions in the future. The Court therefore ruled that there is no longer a 'live controversy' in this case, so that the case should be dismissed.

### **Australian federal court rules that pension fund claims are greenwashing**

On 5 June, the Federal Court of Australia [ruled](#) that several sustainability claims made by the trustee of the Australian pension fund Active Super were misleading. The case was initiated by the Australian Securities and Investments Commission (ASIC). The trustee stated on its website, in reports and in disclosure documents that it excluded investments in gambling, tobacco, oil tar sands, coal mining and Russia. At the same time, it did not apply these exclusion criteria to a significant proportion of the securities included in the index in which it invested. The trustee's argument that consumers would distinguish between direct and indirect investments was not accepted. The Court will consider the penalty at a further hearing.

Do you have any questions or comments on a specific ESG topic? Do not hesitate to contact our [Sustainable Business & Climate Change team](#). If you or members of your team would like to receive our updates, please [subscribe](#).

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