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Developments in ESG governance, disclosure, financial regulation and litigation

ESG Matters

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In this edition of ESG Matters, we share insights regarding the EU Green Bond Standard and its upcoming implementation in Dutch legislation. Our Spotlight section keeps you up-to-date on the latest developments in ESG governance & transition, disclosure, financial regulation and litigation.

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1 Highlight – The European Green Bond Standard – Dutch implementation act

In the Netherlands, we see a growing number of green capital market transactions, including green securitisations, green covered bonds and sustainability linked bonds. Dutch issuers generally follow ICMA's Green Bond Principles, the Sustainability Bond Guidelines, or the Sustainability-Linked Bond Principles when issuing these bonds.

The [European Green Bond Regulation](#), effective from 21 December 2024, introduces the European Green Bond Standard (EuGBS) which is a voluntary Taxonomy-aligned green bond standard for bond issuers. The proposed Dutch implementing act, required for the supervision in the Netherlands, has now been published.

The ICMA Principles can still be used by issuers of green bonds.

European Green Bonds

With the EU Green Bond Standard, the EU aims to set a voluntary gold standard for fully Taxonomy-aligned green bonds which are made available to investors in the EU. The EU Green Bond Standard provides for transparency requirements in line with market best practice and establishes supervision of parties carrying out pre- and post-issuance reviews at a European level. The designation 'European Green Bond' or 'EuGB' can only be used for bonds that comply with EU Green Bond Standard. Issuers of European Green Bonds must allocate the issuance proceeds to certain assets or expenditures that comply with the detailed criteria of the EU Taxonomy on a gradual or, in relation to fixed or financial assets, optionally a portfolio basis prior to the maturity date of the European Green Bonds.

However, the EU Green Bond Standard also provides issuers with certain flexibility, grandfathering and exemptions regarding the allocation requirements. For example, an exception applies to green securitisations whereby the issuer (a special purpose entity or SSPE) is not necessarily required to use the proceeds of the bonds for Taxonomy-aligned activities, but instead the originator must use the proceeds of the securitised exposures sold to the SSPE for Taxonomy-aligned activities. This provides originators the option to securitise their current assets to finance green projects and is seen as an important tool for the transition phase to a green economy. However, additional transparency obligations are applicable to green securitisation bonds, and certain fossil fuel related exposures cannot be securitised under the EU Green Bond Standard..

Disclosure requirements for European Green Bonds

Transparency requirements for EU Green Bonds include the following pre-issuance and post-issuance disclosures which must be made available by issuers:

- Pre-issuance EuGB factsheet
- Pre-issuance review with positive opinion from an external reviewer
- Post-issuance EuGB allocation reports
- Post-issuance EuGB review report drawn up by an external reviewer
- Post-issuance EuGB impact report

The required elements and templates for these factsheets and reports are either accessible in the EuGBS or will be provided by the European Securities and Markets Authority (ESMA).

External reviewers

External EuGB reviewers must register with ESMA. The EuGBS outlines application and organisational prerequisites for external reviewers before they can take up their activities. ESMA will issue draft regulatory or technical standards to detail the standard forms, templates and procedures for registration requirements. The first set of these standards is expected by 21 December 2024.

Optional disclosure templates

In addition to the EU Green Bond Standard, by 21 December 2024, the European Commission (EC) will publish guidelines establishing templates for voluntary pre-

issuance disclosure for issuers of ‘*bonds marketed as environmentally sustainable*’ or ‘*sustainability-linked bonds*’. These bonds are explicitly not designated as ‘European Green Bonds’ or ‘EuGBs’ and the EU Green Bond Standard does not apply thereto. These guidelines should facilitate common standardised disclosure templates for issuers of environmentally sustainable or sustainability-linked bonds to report on the alignment of the bond proceeds with the Taxonomy requirements and will align with the disclosure requirements under EU law. This should make it easier for investors to assess the Taxonomy-alignment of these bonds and to comply with their disclosure requirements.

The Dutch Implementing Act on EU Green Bonds – the AFM as the Dutch competent authority

While the EuGB Regulation directly applies to all EU member states, specific enforcement powers need to be specified in the Dutch legislation in order for a Dutch regulatory authority to impose administrative supervision or sanctions under the EuGB Regulation. The Dutch legislator has now proposed an implementing act ([Uitvoeringswet verordening Europese groene obligaties](#)). Once effective, the act designates the AFM as the primary authority for green bond issuances and DNB as the authority for certain green securitisations meeting the EuGBS. The act is expected to take effect on 21 December 2024.

Administrative powers

The following administrative powers will be available to the AFM if issuers do not comply with the EuGBS:

- The power to suspend or prohibit an offer or admission to trading on a regulated market of European green bonds for up to ten consecutive working days under certain conditions.
- Powers related to advertising, such as the ability to suspend advertisements for up to ten consecutive working days.
- Disclosing that an EuGB issuer is not complying with its obligations under the Regulation.
- Requiring the offender to publish information included in the public statement on their website.
- Powers allowing competent authorities to prohibit the issuance of European Green Bonds for up to one year.

What it means for you:

- The green bond market is growing, with more issuers exploring the issuance of bonds that meet the Taxonomy criteria. This has not necessarily led to lower funding costs (often called ‘greenium’). Some market participants believe that future changes such as market developments, new regulations, capital benefits, and investor preferences could have an upwards effect on the greenium compared to non-green bonds.
- The introduction of the EuGBS has certainly provided a noteworthy voluntarily framework for green bond issuers with a harmonised regime available in the EU, which can support EU green bonds issues which are Taxonomy-aligned.

- It remains to be seen how the EU green bond market will evolve and which standard will prevail in EU capital markets.

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2 Spotlight on ESG developments



Governance & transition

EC proposes postponement of Deforestation Regulation application date

On 2 October, the EC [proposed](#) to postpone the application date of the EU Deforestation Regulation by one year. If approved by the EP and Council, this would make the regulation applicable from 30 December 2025 for large companies and from 30 June 2026 for micro- and small enterprises. The EC also published [guidance documents](#) and an [international cooperation framework](#).

Call for input on CSDDD implementation and guidelines

On 30 September, Greta Koch, a policy advisor to MEP Axel Voss, shared a [LinkedIn post](#) requesting input regarding the implementation of and guidelines for the Corporate Sustainability Due Diligence Directive (CSDDD). Companies and other stakeholders are encouraged to share which hurdles they experience relating to the CSDDD and indicate areas where further legal clarification is needed. They can also provide suggestions on the content of the guidelines. Input will be submitted to the responsible contacts in the EC and to member states.



EP briefing: 'Potential economic impact of European sustainable finance'

On 19 September, the European Parliament published a [briefing](#) discussing the relationship between sustainability efforts, a country's economic growth, and the impact on business and financial performance. It reviews (i) the current EU sustainable finance regulation framework; (ii) the remaining questions and challenges and what the EU could do, and (iii) the potential economic impact on countries and businesses.

ISO publishes guidelines for contributing to SDGs

On 12 September, the International Organization for Standardization (ISO) and the United Nations Development Programme (UNDP) published [guidelines](#) to help companies manage and enhance their contributions to the UN Sustainable Development Goals (SDGs). The guidelines take a holistic approach to sustainable development, providing tools to enhance business performance while optimising companies' impacts on people and the planet. They cover topics such as SDGs-aligned target-setting, stakeholder engagement to identify and prioritise actual and expected impacts, collecting relevant data, and understanding and managing trade-offs to increase impact.

EC publishes Draghi report on the future of European competitiveness

On 9 September, the EC presented a [report](#) on Europe's future competitiveness by Mario Draghi. The report will feed into the new EC agenda for the next five years. The report identifies three main areas for action to reignite sustainable growth: (i) closing the innovation gap between the US and China; (ii) adopting a joint plan for decarbonisation and competitiveness; and (iii) increasing security and reducing dependencies. The second part the report examines barriers for growth, such as high energy costs in Europe and the need for more generation and grid capacity to support the spread of digital technology and transport electrification. Draghi states that Europe must make fundamental decisions on balancing decarbonisation with industrial competitiveness, and needs to employ a mixed strategy that combines different policy tools and approaches tailored to different industries.



Climate Resilience Dialogue publishes final report on solutions to narrow the climate protection gap in Europe

On 2 September 2024, the EC presented the [final report](#) by the Climate Resilience Dialogue, a temporary group of stakeholders established by the EC. The report follows an interim report of July 2023. It consolidates the main climate-related risks currently affecting people, businesses and assets in Europe, and provides an overview of existing knowledge, lessons, and insights to suggest actions and solutions for narrowing the climate protection gap. The proposed solutions, which can be implemented by different stakeholders (e.g., public authorities, insurance companies and consumers), include (i) promoting risk awareness; (ii) improving risk assessment; (iii) enhancing insurance cover affordability (iv) reducing mistrust; and (v) intensifying collaborations between stakeholders and supervisory authorities.

EC Joint Research Centre releases tools to assess credibility of climate transition plans

On 29 August, the EC's Joint Research Centre issued a [policy brief](#) introducing tools to assess geographical dependencies pertinent to the credibility of corporate climate transition plans. These tools enable companies to identify and disclose geographic dependencies at the asset-within their climate transition plans. Examples of such geographical dependencies include the local availability of secondary materials or skilled workers. In 2025, the Joint Research Centre will publish a technical report on this matter.

SBTi publishes framework to accelerate buildings sector's alignment with net-zero targets

On 28 August, the Science Based Targets initiative (SBTi) introduced a science-based decarbonisation framework for companies and financial institutions in the buildings value chain. The [framework](#) sets emissions reduction targets aligned with the 1.5°C goal to address climate challenges and achieve a net-zero future. Key actions include: (i) halting fossil fuel use by 2030 at the latest; (ii) reducing in-use operations emissions; (iii) cutting upfront embodied emissions; and (iv) retrofitting inefficient buildings.



Disclosure

EC takes action to ensure complete and timely transposition of EU directives

On 26 September, the EC started [infringement procedures](#) by sending letters of formal notice to 17 EU member states for having not (yet) fully transposed the CSRD into their national laws. The transposition deadline expired on 6 July 2024. Belgium, Czechia, Germany, Estonia, Greece, Spain, Cyprus, Latvia, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia and Finland now have two months to respond and complete their transposition.

SBTN publishes pilot outcomes, proving the concept of science-based targets for nature

On 23 September, the Science Based Targets Network (SBTN) published the [outcomes](#) of its year-long corporate pilot program. The findings show that science-based targets for nature provide a solid pathway for ambitious action, with most participants receiving validation for some or all their goals. While some companies used the pilot as a chance to gain insights for future commitments, others are now preparing to publicly adopt their targets. SBTN is calling on companies to begin their journey toward science-based targets by using its methods to understand their impacts on nature.

Taskforce on Inequality and Social-related Financial Disclosures launched

On 23 September, the Taskforce on Inequality and Social-related Financial Disclosures (TISFD) was [launched](#). The TISFD serves as the 'social' equivalent of the Task Force on Climate-Related Financial Disclosures (TCFD) and the Task Force on Nature-related Financial Disclosures (TNFD). It will commence work on an evidence-based reporting framework that addresses on inequality and social-related topics. The framework aims to help companies measure, report, and disclose the financial impacts of social inequality. Stakeholders can [join](#) the TISFD Alliance to contribute to its technical work and share knowledge.



IAASB approves new international standards on sustainability assurance

On 20 September, the International Auditing and Assurance Standards Board (IAASB) approved the new International Standard on Sustainability Assurance ([ISAA 5000](#)). This principle-based standard aims to serve as an internationally applicable reference point that should guide future assurance practices concerning sustainability information, independently of the reporting framework used. The final text of the ISSA 5000 still needs to be certified by the Public Interest Oversight Board and is expected to be published by the end of the year.



Financial institutions & regulation



UNEP FI and Finance for Biodiversity Foundation publish discussion paper on the concept of 'nature positive'

On 25 September, the UNEP Finance Initiative and the Finance for Biodiversity Foundation published a [discussion paper](#) titled 'Finance for Nature Positive: Building a Working Model'. It provides a working model for feedback that aims to operationalise the definitions and the guide practices in the private financial sector to contribute to the implementation of the Global Biodiversity Framework (GBF). The paper underscores the financial sector's role in transformative actions and the importance of sustainable taxonomies, measurable outcomes, and traceable financial flows to advance GBF goals.



EIOPA proposes PEPP reform to tackle Europe's pension gap and aid in digital and green transitions

On 11 September, the European Insurance and Occupational Pensions Authority (EIOPA) released a [staff paper](#) on the future of the Pan-European Pension Product (PEPP). Introduced in 2022, the PEPP aimed to offer a straightforward, transparent, cost-efficient and portable retirement savings option for European citizens to supplement their state pensions. However, its uptake has been limited, due to various supply, demand, and structural factors, necessitating a re-assessment. This staff paper takes stock of why PEPP has not lived up to its potential and proposes enhancements that could revitalise supplementary pensions across the EU.



Keynote speech of Frank Elderson's on nature related risks for central banks, supervisors and financial institutions

On 6 September, Frank Elderson, a member of executive board of the ECB, delivered a [keynote speech](#) on the economic and financial sector risks posed by nature degradation. He outlines the growing trend of nature-related litigation, noting that litigants are bringing court cases to address the biodiversity crisis, protect carbon sinks, limit deforestation and ocean habitat loss, and prevent ecosystem degradation, building on past successes. He then discusses how nature-related risk should be considered in the context of the mandates of central banks and supervisors. He concludes by emphasising that “Time is running out to prepare for the materialisation of nature-related risks”, and “we need to be ready for the impact of these risks, just like we are for climate-related risks – or indeed for any other risk driver.”



Litigation



Greenpeace admissible in claim against Dutch State on climate change in Bonaire

On 25 September, the Dutch District Court [held](#) that Greenpeace is admissible as representative of the inhabitants of Bonaire in its collective climate change claim against the Dutch State. Greenpeace alleges that the Dutch State violates its duty of care by not taking sufficient measures to protect the people of Bonaire from climate change and not sufficiently reducing CO2 emissions on Dutch territory. While the court declared Greenpeace admissible, it declared eight individual claimants inadmissible. The Dutch State has to submit its statement of defence by 6 November 2024.



Penalty of USD 12.9 million awarded to Vanguard Investments Australia

On 25 September, the Federal Court of Australia [ordered](#) Vanguard Investments Australia to pay a USD 12.9 million penalty for misrepresenting the ‘ethical’ characteristics of its Ethically Conscious Global Aggregate Bond Index Fund. Vanguard falsely claimed that it screened bond issuers and excluded those with significant activities in certain industries, including fossil fuels.



German court declares energy company's climate-neutral claims misleading

On 3 September, the Landgericht Hamburg ruled on a case brought by the Deutsche Umwelthilfe against energy company BP for misleading advertisements. The company had advertised its motor oils as 'climate neutral' and product imprints of 'certified carbon neutral product' based on the usage of carbon credits, including from a forest protection project in Zambia. The court found that the use of carbon credits was not clearly communicated, and noted that the offsetting project only runs for 30 years whereas the product-related GHG emissions will remain in the atmosphere for much longer. Additionally, the calculation methods used raised questions. The ruling follows two recent greenwashing rulings by the same court in which similar communications were also declared misleading.

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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