December 2024

Developments in ESG governance, disclosure, financial regulation and litigation

ESG Matters

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In the December edition of ESG Matters, we highlight the new Hydrogen Guide, published last October. Our Spotlight section updates you on the latest developments in ESG governance, disclosure, financial regulation, and litigation.

1 Highlight – Navigating the hydrogen economy - insights from the Hydrogen Guide

Navigating the hydrogen economy - insights from the Hydrogen Guide

In October, the updated Ashurst Interactive Global Hydrogen Guide was released. It covers global hydrogen developments in 37 jurisdictions, answering 16 key questions with input from industry experts. Pages 100–108 feature our team's chapter, providing specific guidance on regulations and market opportunities in the Netherlands.

The Dutch government hydrogen policy

The Dutch government's general hydrogen strategy is detailed in the Climate Agreement and the Government Strategy on Hydrogen. The strategy aims to scale renewable (green) hydrogen through offshore wind integration and includes blue hydrogen, supported by carbon capture and storage (CCS), to achieve climate neutrality by 2050. The National Hydrogen Programme provides a framework with financial instruments and supportive legislation.

Key goals include achieving 3-4 GW of electrolysis capacity by 2030 and repurposing existing gas infrastructure for hydrogen transport. The Hydrogen Roadmap aligns national targets with the energy transition, addressing legislative, economic, and research challenges. Investments like EUR 354 million allocated for hydrogen in 2025, and initiatives such as the Hystock storage project (where hydrogen is stored in underground salt caverns), illustrate the government's ambition to expand infrastructure for the hydrogen economy.

Dutch legislative framework under construction

The Netherlands currently lacks a comprehensive regulatory framework for hydrogen production, storage, transportation, and supply. The EU Hydrogen and Gas Decarbonisation Package, comprising Directive (EU) 2024/1788 and Regulation (EU) 2024/1789 establishes a framework for developing hydrogen networks both onshore and offshore. It requires EU member states to implement regulated third-party access to hydrogen networks based on published tariffs by 1 January 2033. Until then, member states may use systems of negotiated access supervised by regulatory authorities. The Dutch legislator aims to integrate this package into Dutch law by 2025 or early 2026 as part of a new Dutch Energy Act (***Energiewet***). A full regulatory framework is expected to be in place by 2033.

Primary sectors advanced by hydrogen

Using hydrogen will help several industry sectors in the Netherlands to decarbonise effectively.

Industry – Transitioning from natural gas-derived hydrogen to renewable alternatives will reduce CO2 emissions. Although industrial clusters have included renewable hydrogen in decarbonisation plans, slow electrolyser rollout and infrastructure upgrades present challenges for a complete transition by 2030. A national hydrogen transport network is being developed to connect coastal industrial clusters with inland regions like Chemelot, supporting production, imports, and storage.

Mobility – Hydrogen benefits heavy transport, shipping, and aviation. By 2025, at least 50 hydrogen refueling stations are planned. Hydrogen also supports zero-emission inland shipping, targeting 150 such ships by 2030, and climate-neutral inland navigation by 2025. In aviation, renewable hydrogen-based fuels target a 14% sustainable fuel blend by 2030 and fossil-free flying by 2050.

Carbon capture and storage

The Dutch government's hydrogen strategy emphasises the use of green hydrogen and acknowledges blue hydrogen with carbon capture and storage (CCS) as a transitional step for hydrogen infrastructure development. The Climate Agreement considers CCS an essential CO2 reduction measure. Through financial mechanisms like the Stimulation of Sustainable Energy Production and Climate Transition and projects, the Netherlands supports CCS to meet climate goals and advance hydrogen and CCS technologies. Projects include Aramis, focusing on CO2 transport to offshore storage, and Porthos, focusing on capturing CO2 from Rotterdam industries. The Porthos system is expected to be operational in 2026.

Market support, developments, and opportunities

The Netherlands is advancing the hydrogen economy through a combination of strategic funding, policy incentives, and pilot projects. The government has introduced various subsidies, such as SDE++ for general low-carbon solutions and OWE for large-scale hydrogen production using electrolysis. The SDE++ provides subsidies for up to 15 years for hydrogen production via electrolysis, subject to conditions such as a minimum plant capacity of 500 kW, the use of renewable electricity, compliance with EU regulations, and operational deadlines. Additionally, specific schemes like SWIM target the transport sector. Pilot projects like PosHYdon, Groene Hart Waterstof, and H2 Hollandia demonstrate practical applications, ranging from offshore green hydrogen production to biomass conversion and solar-integrated systems.

What it means for you:

- Hydrogen plays a key role in European and national strategies for achieving climate neutrality by 2050. With developments in both the public and private sectors, it is important to monitor regulatory and funding updates to understand opportunities in this field.
- While a comprehensive framework is still under construction, private initiatives are advancing hydrogen projects, making it advisable to stay informed about regulatory changes.
- Subsidies and funding programs offer opportunities to support hydrogen projects. Evaluating the suitability of these programs and understanding restrictions on combining funding sources can help align projects with available resources.

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2 Spotlight on ESG developments

Governance & transition

Provisional agreement on delay of EU Deforestation Regulation

On 3 December, the European Parliament (EP) and Council reached a provisional agreement on the proposal to postpone the application date of the EU Deforestation Regulation by one year. This will make the regulation applicable from 30 December 2025 for large companies and from 30 June 2026 for micro- and small enterprises. The proposal now has to be formally approved by the Council and the EP. It is expected to be published in the Official Journal before 30 December. Earlier this year, the EC published guidance documents and an international cooperation framework on the regulation.

ISO publishes principles for ESG implementation

On 22 November, the International Organization for Standardization (ISO) published a framework on ESG implementation principles: ISO IWA 48:2024. It provides a (non-certifiable) high-level framework for a wide range of organisations worldwide on embedding ESG into their culture.

Council adopts EU certification framework for carbon removal

On 19 November, the Council adopted the proposal for an EU Regulation on carbon removal certification. It provides a voluntary framework for EU certification of carbon removal activities, based on the following four criteria: they must (i) result in a quantified net carbon removal or soil reduction benefit; (ii) be additional, meaning they exceed statutory requirements and have a financially viable incentive effect; (iii) aim to ensure long-term storage of carbon while minimising the risk of carbon release; (iv) do no significant harm to the environment and potentially co-benefit other sustainability goals. Verification will be conducted by third-party certification bodies. Liability mechanisms will address any release of captured carbon into the atmosphere. The regulation will now be published in the Official Journal and enter into force 20 days after its publication. It will then be directly applicable in all EU member states.

Council adopts Forced Labour Regulation

On 19 November, the Council adopted the EU Forced Labour Regulation. This regulation bans products made with forced labour from being placed or made available on the EU market, and from being exported to third countries. It will apply to all products made with forced labour, both within and outside the EU, across all sectors. Competent national authorities are required to investigate reasonable indications that products have been made with forced labour. The regulation will be published in the Official Journal and will apply 36 months later.

Council adopts regulation on ESG ratings

On 19 November, the Council adopted a new regulation on ESG rating activities. This regulation aims to make rating activities in the EU more consistent, transparent and comparable in order to boost investors' confidence in sustainable financial products. It includes an authorization requirement and supervision by ESMA for ESG rating providers. It will enter into force 20 days after its publication in the Official Journal and will apply 18 months later. Please see our highlight for more information on this topic.

Dutch draft implementation act of CSDDD published

On 18 November, the Dutch Ministry of Foreign Affairs commenced a public consultation on the Dutch draft implementation act of the Corporate Sustainability Due Diligence Directive (CSDDD) along with the accompanying explanatory memorandum. The Ministry intends to implement the text of the Directive without amendments to minimise the workload and costs for companies. Consequently, the proposal retains the CSDDD's application timelines and maintains the restricted definition of the 'chain of activities' for financial institutions. The Authority for Consumers and Markets (ACM) will be designated as the supervisory authority in the Netherlands. The Ministry is particularly seeking input regarding ACM's role in supervising financial institutions. The public consultation will close on 29 December 2024. Please see our update for more information on the CSDDD implementation in the Netherlands.

EC publishes EU climate action progress report

On 31 October, the EC published the EU Climate Action Progress Report 2024. It shows an 8.3% decrease in net EU GHG emissions compared to 2023. This is the largest annual reduction in decades, excluding the GHG decrease in 2020 due to COVID-19. Net GHG emissions were 37% below 1990 levels, while GDP increased by 68%, showing a continued decoupling of emissions from economic growth. To meet future goals, an average annual reduction of 134 million tonnes of CO_2 equivalent is needed until 2030 (about 2.8 percentage points of 1990 emissions, or half of the emission reduction shown in 2023). Continued action by the EU and its member states is necessary to achieve these objectives and build resilience against the intensifying impacts of the climate crisis.

Disclosure

EC publishes draft FAQs on Taxonomy Regulation

On 29 November, the European Commission (EC) published Draft Frequently Asked Questions (FAQs) on the EU Taxonomy Regulation. The FAQs address general issues such as interoperability with NACE codes, ESRS and CSRD, CSRD reporting on Do No Significant Harm (DNSH) regarding pollution, biodiversity, adaptation, and third-party verification. Most FAQs clarify the Technical Screening Criteria (TSC) and issues related to climate risk and reporting under the Disclosures Act. See the Financial institution section below for the FAQ on the Taxonomy Regulation specifically focussing on disclosures by financial institutions.

EFRAG approves draft reporting standards for non-EU companies

On 21 November, EFRAG's technical expert group approved the draft sector-agnostic reporting standards for non-EU companies, called Non-European Sustainability Reporting Standards (NESRS). They are available here under 'Meeting documents', 03-03 and further. The draft NESRS largely adhere to the ESRS but exclude reporting on financial materiality, sustainability-related financial impacts, and Taxonomy-related datapoints at group level. Global groups can omit reporting on their non-EU value chain. The NESRS do not allow incorporation by reference. Non-EU parents may voluntarily apply ESRS reporting to allow EU subsidiaries to apply the exemption based on their parents' sustainability report. A public consultation on the drafts will take place in the first quarter of 2025, running for 120 days.

IFRS Foundation publishes guide on sustainability-related risks and opportunities and the disclosure of material information

On 19 November, the IFRS Foundation published a guide designed to assist companies in identifying and disclosing material information about sustainability-related risks and opportunities that could reasonably be expected to affect their cash flows, access to finance, or cost of capital over the short, medium or long term. The guide also outlines considerations on connectivity between sustainability-related financial disclosures and a company's financial statements. Furthermore, it provides considerations for those applying ISSB Standards alongside the ESRS or GRI Standards.

ESMA launches webpage on external reviewers of EU Green Bonds

On 14 November, the European Securities and Markets Authority (ESMA) launched a new webpage titled 'External reviewers of European Green Bonds'. External reviewers provide an independent opinion on whether European Green Bond issuers meet the Taxonomy requirements. ESMA will directly supervise these external reviewers, and registration will be mandatory from 21 June 2026, with a transitional period from 21 December 2024 to 21 June 2026. ESMA has also published an updated implementation timeline.

EC publishes FAQs on CSRD, ESRS and SFDR

On 13 November, the EC published FAQs on the CSRD, ESRS, SFDR, Accounting Directive, Audit Directive and Regulation, and Transparency Directive. It contains FAQs on the CSRD scope and phased application, including flow charts, its application to specific types of financial institutions, exemption rules, and the definition of 'reasonable efforts' to collect data under the ESRS. Additionally, it covers transition rules and exemptions from Article 8 Taxonomy Regulation, including various other topics. It also contains a section on CSRD reporting by non-EU companies, and a question on the relation between CSRD and SFDR's Principal Adverse Impacts (PAI) disclosures.

IFRS Foundation publishes progress report on corporate climate-related disclosures

On 12 November, the IFRS Foundation published a detailed report on the implementation of mandated and voluntary corporate climate-related disclosures, which was presented to the Financial Stability Board (FSB). Based on a sample of 3,814 public companies, the report indicates that in fiscal year 2023, 82% of companies disclosed information in line with at least one of the 11 TCFD recommended disclosures. However, few companies are disclosing climate-related financial information that provides information about the company's governance, strategy, risk management, and metrics and targets, particularly regarding the effect of climate change on their businesses, strategies and financial planning. This could affect investors', lenders' and other creditors' ability to assess and price climate-related risks and opportunities.

Von der Leyen seeks to consolidate ESG reporting obligations

On 8 November, EC president Von der Leyen stated in a speech that an informal meeting of the Council agreed to present an omnibus regulation of the CSDDD, CSRD, and Taxonomy in 2025. It would integrate existing EU sustainability reporting rules into one law, reducing bureaucracy. Von der Leyen stated that the current number of data points to be collected is 'too much' and 'often overlapping'. At the same time, the content of the CSDDD, CSRD and Taxonomy would be 'correct' and will remain unchanged. The agreement aligns with the Council's goal for the EC to reduce reporting requirements by at least 25% in the first half of 2025.

EFRAG publishes draft implementation guidance on transition plan for climate change mitigation

On 4 November, the European Financial Reporting Advisory Group (EFRAG) released an early draft implementation guidance for climate change mitigation transition plans. This document clarifies climate transition plan disclosure requirements under ESRS E1, the climate change reporting standard. Once finalised, it will provide support for undertakings required to report on their climate transition plans under CSRD. The draft guidance is divided into several chapters, addressing the European framework for climate transition plans, ESRS disclosure requirements for these plans, connections to other European regulatory frameworks and international standards (e.g., CSDDD, EU Taxonomy, CRD/CRR, Solvency II), and FAQs. Key points to note are the FAQs that clarify that undertakings must disclose their (i) climate targets and explain how they are compatible with the 1.5°C target set by the Paris Agreement; (ii) investments and funding supporting their climate transition plans, including EU Taxonomy-aligned CapEx; (iii) updates on the progress of implementing transition plans, which includes tracking the effectiveness of planned actions and their contribution toward emissions reduction targets.

Financial institutions & regulation

AFM report on 'State of the auditing and reporting industry'

On 28 November, the Dutch Authority for the Financial Markets (AFM) published the report 'State of the Auditing and Reporting Industry 2024', in which the regulator outlines several significant developments regarding market infrastructure, sustainability, fraud, discontinuity, and technology in the accountancy sector. It provides insights obtained from data reports of accountancy firms and issuers back to the sector through this publication. For example, the report shows that the number of companies required to comply with the CSRD will increase from 95 to 3,000 by 2025; this necessitates timely preparation by the involved accountancy firms. The report should be considered as a supplement to the AFM's 'Trendmonitor 2025'.

ESAs and ECB publish 'Fit-For-55' climate stress test

On 19 November, the European Supervisory Authorities (ESAs: EBA, EIOPA, ESMA) and the European Central Bank (ECB) published a Fit-For-55 climate scenario analysis. It concludes that from 2022 to 2030, transition risks alone are unlikely to threaten financial stability. However, combined with macroeconomic shocks, these risks can cause first-round losses of 10.9 to 21.5% for financial institutions, depending on the sector, potentially leading to disruption. The ESAs call for a coordinated policy approach to transition financing, and reiterate that they expect financial institutions to integrate climate risks into their risk management in a comprehensive and timely manner.

Speech by ECB's Frank Elderson on integrating nature in the financial system

On 19 November, Frank Elderson, member of the Executive Board of the ECB, delivered a speech on ECB's views on integrating nature into the financial system. ECB found that the EU economy heavily relies on ecosystem services, which may trigger instability. The ECB thus expects banks under its supervision to manage all material nature-related risks consistent with its Guide on climate-related and environmental risks, and has made nature a focus area in its 2024-2025 climate and nature plan. Elderson highlighted the need for an integrated approach to climate and nature, referring banks to work by the Network for Greening the Financial System (NGFS) and the Financial Stability Board (FSB).

NGFS publishes conceptual note on adaptation and synthesis report on greening the financial system

On 14 November, the Network for Greening the Financial System (NGFS) published a conceptual note on adaptation and a synthesis report on the greening of the financial system. Adaptation refers to the adjustment of natural or human systems in response to actual or expected climatic stimuli, aimed at mitigating harm or exploiting beneficial opportunities. The note highlights the costs and benefits of adaptation, its importance as a form of risk management for both the financial system and society, and explores the challenges in scaling up financing for adaptation efforts. The synthesis report aims to provide a comprehensive overview of critical data points, strategic insights, and progress in greening the financial system, with an emphasis on aligning the financial sector with global climate goals. Both publications were released in connection with COP29.

Speech by AFM's Laura van Geest on CSRD supervision

On 12 November, Laura van Geest delivered a keynote speech on AFM's ten waypoints regarding the CSRD's double materiality analysis (DMA). AFM aims to serve as a point of contact (*coöperatieve wijkagent*), offering guidance through examples and by setting clear expectations. Discussions on transparent sustainability reporting should prompt critical questions, helping companies to adjust their strategies and support the transition to a sustainable economy. AFM expects listed companies to better justify their contributions to sustainability in future reports. Three identified challenges for CSRD implementation are: (1) companies need time to gather information for their DMA; (2) perfect transparency across entire value chains won't be immediate, but companies should be transparent on what they cannot report, as well as on their double materiality assessment and net-zero targets; and (3) the role of auditors.

AFM: 'Sustainability preferences of investors are not yet always included in the KYC process'

On 12 November, the AFM published its annual Consumer Monitor Investors. On sustainability, the report notes that asset managers and advisors do not always ask investors about their sustainability preferences, despite this being required under MiFID II. Only 25% of investors report being asked about this, while 40% wanted their sustainability preferences to be considered and 34% indicate that they are investing sustainably. The primary motivation for (potential) sustainable investors is their desire to contribute to positive change in the world. They primarily consider the name of the financial product and the website when assessing an investment's alignment with their sustainability preferences.

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EC publishes FAQs for financial institutions on Article 8 Taxonomy

On 8 November, the EC published Frequently Asked Questions (FAQs) for financial institutions on the Disclosures Delegated Act (DDA) under Article 8 Taxonomy Regulation. The FAQs provide detailed information on how financial institutions should report on their KPIs, including the Green Asset Ratio (GAR). It addresses inter alia reporting requirements for specific types of financial institutions, Taxonomy-assessment of (financial) groups and conglomerates including subsidiaries, specific types of exposures (such as SPVs, non-EU companies, real estate, derivatives, securitisations), compliance with the Technical Screening Criteria (TSC), and minimum safeguards.

EIOPA publishes final report on prudential treatment of sustainability risks under Solvency II

On 7 November, EIOPA published its final report on the prudential treatment of sustainability risks under the amended Solvability II framework. EIOPA's analysis concentrates on three conceptual areas deemed appropriate for a risk-based analysis. The first area addresses the potential link between prudential market risks in terms of equity, spread and property risk and transition risks. The second area investigates the potential link between non-life underwriting risks and climate-related risk prevention measures. The third area examines the potential link between social risks and prudential risks, including market and underwriting risks.

IIGCC publishes guidance on investing in renewable energy

On 7 November, the Institutional Investors Group on Climate Change (IIGCC) published guidance that aims to support investors investing in climate solutions, especially in renewable energy generation infrastructure. It addresses the quantification of investors' contribution to climate targets, alignment with the Net Zero Investment Framework (NZIF), target-setting, and metrics. The guidance is targeted at investors who apply the NZIF, Paris Aligned Asset Owner (PAAO), or Net Zero Asset Manager (NZAM) initiatives.

NGFS publishes latest long-term climate scenarios for central banks and supervisors

On 5 November, the Network for Greening the Financial System (NGFS) released the fifth vintage of its climate scenarios for central banks and supervisors. This update includes an explanatory note on damage functions, NGFS scenarios, the economic implications of climate change, a technical documentation note, and a high-level overview. The climate-related scenarios provide a unified view on how economies might evolve under various transition policies and physical risks, helping financial institutions to effectively assess and manage climate-related risks. The update incorporates new economic and climate data, policy commitments, model versions, and a revised damage function to capture physical risk based on the latest climate science research.

EIOPA factsheet: increasing share of green investments in EU insurer's portfolios

On 5 November, EIOPA published a factsheet showing that the proportion of green investments in the portfolios of insurers in the European Economic Area has edged higher in 2024.

Litigation

ICJ hears Vanuatu-led climate case

From 2 December until 13 December, the International Court of Justice (ICJ) will hear testimonies from 98 countries and 12 organisations relating to a request for an advisory opinion on international law by a Vanuatu-led coalition of small states of the UN. The ICJ is requested to advise (i) whether states are obliged under international law to protect the climate and environment from GHG emissions, for the benefit of states and present and future generations; and (ii) what the legal consequences are if states caused significant harm to the climate and environment, with respect to (small island) states and present and future generations. Vanuatu, which initiated the case, faces increasing threats from rising sea levels and fears that the human rights of its citizens may be compromised. The ICJ's advisory opinion is expected after the summer of 2025 at the earliest. The request relates to an earlier opinion of the International Tribunal for the Law of the Sea (ITLOS) and a pending case at the Inter-American Court of Human Rights.

Court of Appeal of The Hague rejects climate case against Shell

On 12 November, the Court of Appeal of The Hague rejected the claims of Milieudefensie in its climate case against Shell. Please see the previous edition of ESG Matters for a summary of the judgment.

New York State Supreme Court dismisses plastic pollution claim

On 31 October, the New York Supreme State Court dismissed a claim lodged by the attorney general of New York against PepsiCo. The attorney general sought to hold PepsiCo liable for plastic pollution in the Buffalo River. She argued that PepsiCo is responsible for third parties discarding PepsiCo's products and packings in the river. It was not argued that PepsiCo itself polluted the river. The Court saw no legal basis for the claim and criticised the attorney general for bringing the claim in the first place.

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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