February 2025

Developments in ESG governance, disclosure, financial regulation and litigation

ESG Matters

In this February edition of ESG Matters, we Highlight the EU Environmental Crime Directive and its impact for the Netherlands. Our Spotlight section updates you on recent developments in ESG governance, disclosure, financial regulation, and litigation.

1 January in brief

It is almost impossible to pick one main ESG event from all developments in January. Our Spotlight section below is already a summary of key topics that stand out. Most notable, of course, are the developments at EU level. The **EU Competitiveness Compass** was published and there are various leaked frameworks relating to the **Omnibus Directive.** The final Omnibus proposal is expected by the end of this month, and we will discuss it in next month's ESG Matters. Focus has also been on **CSRD** – will implementation be postponed and if not, what does this mean for the **delayed implementation in the Netherlands?** In other words, a lot of focus on form, approach and timing of ESG regulations.

At the same time, we also see important **stakeholders calling for action and effective, consistent and coherent policy making**, instead of resorting to discussions on how ESG regulations should be adjusted. At European level, we saw a group of major businesses urge the Commission **to ensure that the Omnibus approach will not allow renegotiation** of agreed texts. In the Netherlands, **farmer organisations, business representatives and environmental NGOs** jointly called on the Dutch government to come up with **clear and targeted climate and energy policy**: '*doing nothing is not an option (…) Decisive action is necessary to stay on track*'.

It will be interesting to see how these two forces will interact in the coming month – can the EU prove itself to be a true leader in creating a clean industry and coherent ESG policy?

These and other developments are discussed in the **Spotlight section** in part 3, below. In the **Highlight section** in part 2, we discuss an ESG topic that is gaining focus: the fight against environmental crime, ecocide and deforestation.

2 Highlight: The Environmental Crime Directive – impact for the Netherlands

Environmental crime causes significant damage to the environment, public health, and the global economy. However, the number of successfully prosecuted cases remains low, sanctions lack deterrence, and cross-border cooperation is insufficient. To tackle these issues, the new European Environmental Crime Directive ("ECD") came into force on 20 May 2024. Member states must transpose the ECD into national law within the next two years. For the Netherlands, this means introducing new environmental criminal offences, increasing maximum penalties, and imposing a new duty of care for companies holding permits.

New offences

The ECD requires all Member States to criminalise certain offences, such as circumventing environmental impact assessment requirements, serious breaches of EU chemical regulations and violations in offshore oil and gas operations. Specifically for the Netherlands, new criminal offences will target the market placement of products that (may) cause substantial environmental harm and illegal trade in commodities under the Deforestation Regulation. Most other amendments and offences are already covered under Dutch law, requiring only minor adjustments. For instance, this includes marketing products that cause significant environmental or human health damage, serious breaches of EU chemical regulations, or circumvention of environmental impact assessment requirements.

Introduction of ecocide?

The ECD introduces qualified offences for offences causing widespread and substantial damage which is irreversible or long-lasting to i) ecosystems or protected habitats, or ii) the quality of air, soil, or water. Individuals face a maximum prison sentence of at least eight years, while legal persons could face more severe sanctions than those for non-qualified criminal offences. This offence, although not standalone, includes similar but less far-reaching conduct as described in the pending proposal for a Dutch bill on ecocide. The Dutch proposal is expected to be adjusted based on the ECD.

Higher penalties

What stands out are the higher penalties the ECD introduces. Companies face a maximum (criminal) fine of EUR 40 million or at least 5% of the worldwide annual turnover for the most severe cases. Natural persons could receive a prison sentence of up to 10 years for offences resulting in the death of a person.

For the Netherlands, this means that the maximum penalty for these environmental offences will need to be adjusted from six up to ten years. This significant increase may impede out of court settlements, which are only permitted for offences with a maximum sentence of six years.

Impact on permits

Environmental damage caused while acting in accordance with a lawfully obtained environmental permit generally precludes criminal liability. However, under the ECD, conduct can still be unlawful if it results in clear and substantial violations of relevant laws or obligations not covered by the permit, even if authorised by a competent authority.

Permit holders should comply to both EU and national environmental laws under the ECD, including the obligation to update and renew existing permits as needed. The responsibility to regularly assess the sufficiency of the permit currently applies mainly to national authorities. The new obligation for companies to update permits, along with the changes regarding criminal liability even when acting within the bounds of a permit, introduces a new duty of care for companies.

Protection of whistleblowers and stakeholders

Worth mentioning is that the ECD protects whistleblowers, environmental activists, and others who provide information or evidence for environmental crime investigations. It also ensures that individuals with a sufficient interest, including environmental NGO's, are granted procedural rights and are properly informed in proceedings.

It remains to be seen how the ECD will be incorporated into national legislation. In any case, it aligns with the societal trend of environmental criminal law increasingly becoming part of public debate and the application of criminal law to attempt solving social problems.

What this means for you

- **Stay informed and compliant**
  The ECD introduces new criminal offences in the Netherlands for goods that (threaten to) cause substantial environmental damage and illegal commodity trading

under the EU Deforestation Regulation. Keeping up with new legislation and understanding the environmental impact of your company's actions, can ensure your compliance with both your permit and European environmental criminal regulations.

- **Proactively review permits**
  Regularly assess your environmental permits to stay compliant with evolving environmental criminal laws. This proactive approach mitigates non-compliance risks and ensure that your operations meet the latest requirements.
- **Recognise increased protection of whistleblowers and stakeholders**
  Be aware that whistleblowers and NGO's may receive greater protection and procedural rights after implementation of the ECD. This could impact your company's legal and operational strategies.

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3 Spotlight on ESG developments

Governance & transition

EC publishes a competitiveness compass

On 29 January, the European Commission (EC) published the 'Competitiveness Compass', which serves to translate the Draghi report's recommendations to increase the EU's competitiveness into actionable steps. It focuses on innovative technologies, sustainable production, and achieving a climate-neutral economy. It states that the omnibus proposal for the EU Taxonomy, CSDDD, and CSRD is expected on 26 February and will involve 'far-reaching simplification', in line with the broader goal to reduce 25% of recurring administrative burdens for all corporates and 35% for SMEs. The EC will focus on (i) proportionate timelines, (ii) tight data alignment, (iii) focus on most harmful activities, and (iv) a new category of 'small mid-caps' (between SMEs and larger firms) who will benefit from regulatory simplifications. See also EC President Von der Leyen's statement on the compass.

Packaging and Packaging Waste Regulation published in the Official Journal

On 22 January 2025, the Regulation on packaging and packaging waste was published in the Official Journal of the EU. It aims to reduce the generation of packaging waste by setting binding re-use targets, restricting certain types of single-use packaging and requiring economic operators to minimise the packaging used. It covers the full life cycle of packaging. It will apply from 12 August 2026.

PSF publishes draft report and consultation on Taxonomy technical screening criteria

On 8 January, the Platform on Sustainable Finance (PSF) released a draft report on the revision and addition of review of technical screening criteria (TSC) under the EU Taxonomy Regulation. The proposed new TSC cover the economic activities of refining, mining, close-to-market research, development and innovation, and digital services. Stakeholders are invited to provide input via the call for feedback, including on the usability of the current TSC and Do No Significant Harm criteria, as well as the TSC proposed in the report and the prioritisation of forthcoming TSC. The call for feedback is open until 5 February 2025.

Gender balance on corporate boards applicable

On 3 January, the Gender Balance on Corporate Boards Directive to improve gender balance started to apply. By 30 June 2026, members of the underrepresented sex must hold at least 40% of non-executive director positions or 33% of all director positions on boards of large EU-listed companies. The Directive also aims to improve the transparency of appointment processes. For instance, candidates for director positions can request the specific qualification criteria and the objective comparative assessment applied in the selection process.

Disclosure

ISSB publishes guide on climate only IFRS disclosures

On 30 January, the International Sustainability Standards Board (ISSB) released a guide 'Applying IFRS S1 when reporting only climate-related disclosures in accordance with IFRS S2'. This guide is designed to help companies report only climate-related information, when applicable, using the ISSB Standards. It specifies which IFRS S1 should be reported on when companies apply the ISSB's climate-first transition relief. The guide addresses investors' feedback, highlighting the urgent need for climate-related information and the challenges in data availability and companies' readiness for other sustainability-related risks and opportunities.

Dutch Ministry of Economic Affairs publishes ESRS navigator 2025

On 25 January, the Dutch Ministry of Economic Affairs and Climate (EZK) published the ESRS Navigator 2025. The navigator aims to help companies reporting under the CSRD's European Sustainability Reporting Standards (ESRS). It provides insights into the context and structure of the ESRS, practical guidance, and a case study. The Ministry also released an Excel overview of datapoints to be collected for ESRS reporting.

TNFD publishes sectoral guidance on nature disclosures

On 23 January, the Taskforce on Nature-related Financial Disclosures (TNFD) published sectoral guidance for four industries: (i) apparel, accessories and footwear; (ii) beverages; (iii) construction materials; and (iv) engineering, construction and real estate. This guidance aims to help organisations to identify, assess and report on their nature-related dependencies, impacts, risks and opportunities. It the TNFD's principal Guidance on the assessment of nature-related risks. TNFD also initiated consultations on new sectoral guidance for (i) fishing; (ii) marine transportation and cruise lines; and (iii) water utilities and services. These consultations are open until 3 April 2025.

EC and EFRAG publish paper on ESRS and EMAS synergies

On 16 January, the EC and EFRAG published a joint paper on the synergies between the ESRS and the voluntary Eco-Management and Audit Scheme (EMAS) framework. This paper aims to streamline sustainability reporting for companies already reporting under EMAS, by providing a detailed overview of overlapping disclosures. It allows for incorporation by reference of companies' EMAS disclosures in their ESRS disclosures under the CSRD.

Dutch CSRD implementation act submitted to House of Representatives

On 13 January, Dutch Parliament submitted the proposal for the Dutch CSRD Implementation Act to the House of Representatives. This proposal includes the explanatory memorandum, the advice of the Council of State, and the Minister's further report. The act implements the CSRD's rules on accountants and accounting firms, and the general availability of sustainability reporting by listed companies. The specific sustainability reporting obligations for companies (ESRS) will be detailed in a separate Order in Council (AMvB) based on Book 2 of the Dutch Civil Code (*Implementatiebesluit richtlijn duurzaamheidsrapportering*). Key aspects of the proposed implementation act include: (i) retroactive application of the CSRD requirements as of 1 January 2025 for the first batch of in-scope companies; (ii) companies can appoint another external auditor, either from the same firm that performs the statutory financial audit or a different audit firm, to undertake the assurance examination of sustainability reporting; (iii) independent assurance services providers (IASP) are for now not allowed to carry out the assurance examination; (iv) additional regulations on the involved accountants and accounting firms; and (v) provisions for enforcement and disciplinary measures. The exact date of entry into force remains unknown, while the directive was supposed to be transposed into national legislation by 6 July 2024.

Financial institutions & regulation

EIPOA recommends new risk factors for flood, windstorm and hail

On 30 January, EIOPA released its updated recommendations on the incorporation of natural catastrophe risks into insurers' standard formula calibrations. The recommendations are based on a comprehensive reassessment conducted in 2023 and 2024, considering new scientific research, recent climate data, and advanced risk modelling. EIOPA suggests adjusting risk factors for events like floods, hail, earthquakes, and windstorms in specific regions, as well as expanding the scope to include more countries. These proposals have been submitted to the EC, for potential recalibration of the relevant standard formula parameters.

UNEP FI publishes practical guide for 1.5°C scenarios for financial sector

On 23 January, the United Nations Environment Programme Finance Initiative (UNEP FI) published a practical guide to 1.5°C scenarios for the financial sector. This extensive guide aims to help the sector effectively interpret and apply climate scenarios. It addresses the role of IPCC-assessed 1.5°C scenarios for financial actors, their relation to NGFS and IEA climate scenarios, required emissions reductions for 1.5°C pathways, carbon capture and storage, energy demand across various sectors (including energy, transport, agriculture, industrials, and real estate), actions needed for financing the transition to net zero (including sector-specific analyses), and socioeconomic considerations.

PSF publishes report on assessment of corporate transition plans

On 23 January, the Platform of Sustainable Finance published a report on the assessment of corporate climate transition plans. The report provides financial market participants with guidance on assessing transition plans, based on four core elements aligned with EU requirements: (i) science-based and time-bound targets; (ii) key levers and actions; (iii) financial planning; and (iv) governance and implementation. It also examines how incorporating the EU Taxonomy and other sustainable finance tools into transition plans can enhance these plans and improve access to transition finance. The report emphasises that companies can integrate other ESG objectives like climate adaptation, biodiversity, and just transition principles in their plans.

AFM publishes supervisory agenda for 2025

On 16 January, the Dutch Authority for the Financial Markets (AFM) released its agenda for 2025. Regarding sustainability, the AFM aims to support (financial) companies and consumers to consider sustainability risks and impacts in their decisions. The AFM's supervision of sustainability in financial services focuses on two main goals:

1. Ensuring that retail investors can invest in sustainable products based on high-quality information and trust that these products perform as advertised.
2. Ensuring that consumers and households are aware of climate risks and understand their options when facing such risks.

Key activities outlined in the agenda include investigating compliance with the Sustainable Finance Disclosure Regulation (SFDR) and investigating sustainability claims made by financial institutions.

EBA consults Guidelines on ESG scenario analysis

On 16 January, the European Banking Authority (EBA) launched a public consultation based on a consultation paper on its draft Guidelines for ESG scenario analysis. The EBA highlights the need for forward-looking methods to assess the financial and business model risks associated with ESG issues. The guidelines focus on using scenario analysis to improve institutions' resilience to environmental risks, particularly climate change.

They outline two primary applications of scenario analysis: assessing short to medium-term financial resilience, and evaluating long-term business model resilience. The guidelines are structured into three sections: Integrating scenario analysis, setting scenario criteria, and conducting climate stress tests aligned with the institution's strategy and business model adaptation. The consultation is open until 16 April 2025.

FSB introduces an analytical framework to assess climate-related vulnerabilities

On 16 January, the Financial Stability Board (FSB) published the report 'Assessment of Climate-related Vulnerabilities: Analytical framework and toolkit'. This report explains how climate-related shocks from policy changes, technological innovations, changing consumer preferences (transition risks), or physical hazards like floods and droughts (physical risks) pose challenges to financial institutions and threaten financial stability. The FSB presents a framework to identify and amplify these risks within the global financial system, building on the existing financial stability surveillance framework. The report also specifies metrics to monitor climate-related vulnerabilities from a forward-looking perspective.

Net Zero Asset Managers initiative suspends its activities

On 13 January, the voluntary Net Zero Asset Managers (NZAM) initiative announced it will suspend its activities referring to political developments in the U.S. and differing regulatory and client expectations across investor jurisdictions. The announcement follows the departure of several major signatories on 10 January 2025. NZAM is now reviewing its initiative and will consult with signatories throughout the review process.

EBA publishes Guidelines on prudential ESG risk management

On 9 January, the European Banking Authority (EBA) published its final Guidelines on the management of ESG risks. These guidelines specify the CRD requirements on internal ESG risk management processes. They specify the content of plans that institutions should develop to monitor and address financial risks arising from ESG factors, including those arising from the transition towards the EU's climate neutrality target for 2050. EBA expects institutions to adopt a holistic ESG planning process on ESG legislation covering all regulatory requirements, such as CSRD, CSDDD and sector-specific legislation. The guidelines will be supplemented by the Guidelines on ESG scenario analyses (see our spotlight above) and will apply from 11 January 2026. For small and non-complex institutions, they will apply from 11 January 2027.

ECB publishes working paper on climate-linked bonds

On 9 January, the European Central Bank (ECB) released a working paper on climate-linked bonds. These bonds tie bond payouts to measurable climate factors like temperature or greenhouse gas levels. This encourages issuers to align their actions with climate goals and provide investors with a hedge against long-term climate risks. Governments can use these bonds to integrate climate accountability into fiscal policies, while reducing the cost of servicing bonds if climate outcomes improve. Investors benefit from long-term protection against climate risks, and these bonds help enhance financial system resilience by addressing the insurance gap for climate-related damages. The paper introduces an asset pricing model for these bonds, highlights a growing demand amid climate risks, and explores the challenges such as clear climate metrics, ensuring market liquidity, and international coordination.

ESMA publishes 2024 ESEF XBRL files and ESEF conformance suite

On 8 January, the European Securities and Markets Authority (ESMA) released the 2024 European Single Electronic Format (ESEF) XBRL taxonomy files and updated the ESEF Conformance Suite. This aims to helps software vendors and issuers prepare 2024 IFRS consolidated financial statements using the latest ESEF format. It also helps EU issuers listed on US capital markets comply with SEC reporting obligations. The 2024 ESEF taxonomy files and Conformance Suite apply to annual financial reports for financial years starting on or after 1 January 2024, once the 2024 ESEF Regulation update is in force. Alternatively, issuers may use the 2022 ESEF taxonomy files and conformance suite for annual financial reports relating to financial years beginning on or after 1 January 2024.

Litigation

European Court of Human Rights rules on environmental pollution case

On 30 January, the European Court of Human Rights (ECtHR) ruled that the Italian State violated the right to life under Article 2 of the European Charter of Human Rights (ECHR) by not exercising sufficient diligence to address systematic, large-scale environmental pollution that harmed the claimants' health. The case involved illegal dumping of waste and hazardous materials in the Campania region as of the 1990s. This judgment marks the first time that the ECtHR finds a violation of Article 2 ECHR in relation to environmental pollution. Additionally, The ECtHR ruled that the less stringent standing criteria for associations, as applied in the *KlimaSeniorinnen v. Switzerland* case, are limited to climate cases, and do not apply to other environmental cases.

District Court of The Hague rules on Dutch nitrogen case

On 22 January, the District Court of The Hague ruled that the Dutch State acts unlawfully by failing to stop the deterioration of nitrogen-sensitive nature in Natura 2000 areas in a timely manner and by not meeting statutory nitrogen targets for 2025, and, most likely, 2030. The legal proceedings were initiated by NGO Greenpeace. The Court ordered the State to ensure that 50% of the nitrogen-sensitive nature areas meet the applicable nitrogen limits by 2030 at the latest, prioritising the most urgent habitats. If the State fails to comply, it must pay EUR 10 million to Greenpeace. Due to the urgent environmental interests, the State must immediately execute the judgment regardless of any potential appeal proceedings.

Blackrock and Tennessee reach settlement on ESG disclosures case

On 17 January, Blackrock settled with the state of Tennessee over a lawsuit brought by the Attorney General of Tennessee regarding Blackrock's ESG disclosures. The Attorney General alleged that Blackrock failed to adequately disclose its integration of ESG considerations into asset management decision-making, and overstated the financial benefits of its ESG-related strategies. As part of the settlement, Blackrock agreed to increase the transparency of its voting processes, implement compliance measures, and ensure that for funds focused solely on financial performance it will cast shareholder votes aimed exclusively at financial interests.

Milieudefensie sends updated notice of liability to Dutch bank

On 16 January, NGO Friends of the Earth Netherlands (*Milieudefensie*) sent an updated notice of liability to Dutch bank ING (English translation),based on the appeal judgment in *Milieudefensie v. Shell*. The updated claims are that the bank:

i. reduces its total operational, financed and facilitated CO2 emissions with 48% by 2030, 65% by 2035, 80% by 2040 and 99% by 2050, with separate CO2-eq emissions reduction percentages, compared to 2019 emission levels;
ii. reduces its financed and facilitated emissions in nine high-emitting sectors in line with scientific scenarios;
iii. reduces its emissions intensity in at least two of these sectors in line with scientific scenarios;
iv. stops new financing within three months, and ends all financing within twelve months, of companies starting new oil and gas projects;
v. requests climate plans including intermediate scope 1-3 reduction targets towards 2050 from all large corporates financed by ING.

The demands address the bank's (i) own accounts; (ii) assets and loans; and (iii) facilitation of capital market instruments issuances. The NGO still considers claiming periodic penalty payments. On 4 February, the bank rejected implementation of the NGO's demands.

If you have any questions or comments on a specific ESG topic, please contact our Sustainable Business & Climate Change team. To receive ESG Matters, please sign up.

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