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Insights and perspectives on governance, disclosure & litigation

ESG Matters

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In this month's highlight, we discuss NGFS' report on the interaction between real economy and financial institutions' transition plans and its relevance for both financial institutions and corporates. Our monthly Spotlight section brings you up to date with the latest developments in ESG governance, disclosure, financial regulation and litigation.

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1 Highlight – Linking real economy and financial institutions' transition plans

Climate transition plans are seen as a key tool for an orderly economy-wide transition and are receiving increasing attention from international standard-setters and voluntary market-led initiatives. They not only reflect where companies stand in terms of ESG impact and development, but also enable the financial system to mobilise capital and manage climate-related financial risks. In this respect, the information contained in non-financial companies' transition plans is crucial for financial institutions.

The Network for Greening the Financial System (NGFS) discussed the significance of the link between real economy and financial institutions' transition plans in a [report](#) published in May 2023. The NGFS further explored this relationship in a

follow-up study, resulting in the report [‘Connecting Transition Plans: Financial and Non-Financial Firms’](#) released in April 2024. The report highlights the importance for financial institutions to understand and use the information provided by non-financials in their transition plans. By analysing and using this information effectively, financial institutions can better assess climate-related risks, respond to sustainability developments and optimise the allocation of capital.

Five challenges

The NGFS has gathered information from financial institutions through various roundtables and questionnaires. The NGFS recognises that financial institutions face significant challenges that prevent them from making full use of the information that is or may become available. Five challenges were identified.

- #1. **Lack of standardisation** - Information from non-financial companies’ transition plans is currently difficult to apply to financial institutions’ own operations due to limited data availability and issues of comparability and consistency. Many companies do not provide data because their transition plans are either non-existent or still under development. Furthermore, information from non-financial companies’ transition plans is often not comparable due to a lack of standardisation. This even applies to the carbon accounting methodology used within the same industry.
- #2. **Focus on strategy rather than stress scenarios** - Non-financial companies’ plans may focus primarily on business strategy and decarbonisation goals. Financial institutions would want to focus on how the company would cope with extreme stress scenarios such as floods or droughts.
- #3. **Uncertainty of execution** - Forward-looking information in transition plans has a high degree of uncertainty from internal and external factors. This means that ongoing assessment of transition plans is required, leading to assessment burdens and requirements for flexible data sets and data infrastructure.
- #4. **Heterogeneity of portfolios** - Information in non-financial companies’ transition plans may be difficult to aggregate and compare due to heterogeneity of financial institutions’ portfolios.
- #5. **Translation into risk assessment processes not yet fully developed** - Financial institutions may not be ready to use information in non-financial companies’ transition plans for credit risk evaluation processes at this stage, because methodologies for translating climate-related factors into credit risk assessment processes are not yet fully developed.

NGFS recommendations

The NGFS highlights that financial institutions currently use information from their clients’ transition plans mainly to account for their own decarbonisation pathways, and only to a limited extent for risk management or portfolio management purposes. The NGFS recommends a much more extensive use of transition plans from the real economy. It has compiled a list of recommendations aimed at promoting both the development and the quality of non-financial companies’ transition plans. These are addressed to financial institutions, but also to other key stakeholders.

Financial institutions could derive more value from the transition plans of their clients and the entities in which they invest. They could increase their engagement and focus on specific elements of non-financial companies' transition plans. Not only for their own decarbonisation objectives, but also for risk management purposes. Due diligence and stress testing of these transition plans could provide valuable data to improve the robustness of risk management processes. It is also recommended that they look closely at the governance and soundness of their clients' transition plans. Robust governance increases the likelihood that non-financial companies will follow through on their transition plans and enhances their ability to respond to stress scenarios.

Governments, policymakers and standard-setters are also strongly encouraged to play their part. The NGFS believes that they should facilitate the alignment of transition plans by developing standardised templates for such plans. They can encourage non-financial companies to include different aspects of climate change in their transition plans, such as adaptation and biodiversity. Importantly, they should also provide clarity on the way forward for the real economy. Governments should aim to ensure policy consistency and coherence so that corporates and SMEs can allocate resources to tailored and effective transition plans. Governments could also set sectoral decarbonisation pathways. Each of these would contribute to the usefulness of transition plans for the financial sector, enabling the financial sector to allocate capital to these transition pathways and to engage with the real economy.

Regulatory authorities are recommended to contribute to consistency and clarity on where they stand and where the financial institutions are expected to go. This could be done by providing guidance on best practices (while allowing for flexibility and individualisation - one size does not fit all). Regulators are also recommended to coordinate standards and timelines globally and across the real economy to avoid fragmentation and duplication and to reduce compliance burdens. It is important for regulators to recognise that while financial institutions may be expected to engage with their key clients and partners, their influence over the actions and operations of non-financial firms is limited. Regulatory action against financial institutions should not impede with the role of financial institutions as capital mobilisers.

What it means for you:

- **Financial institutions** need to consider whether they can make greater use of the transition plans of non-financial companies. Can they be used more extensively for risk management purposes? Are the plans mature? Is governance up to standard? Can stress scenarios be managed? Can engagement lead to stronger transition plans, more useful data and better execution? Which sectors are heavily invested in and what are the expected transition plans for these sectors? How does this translate into the prudential approach of the financial sector?
- For **corporates**, it can be expected that the attention of funders to corporate transition plans will continue to increase. How well developed is the transition plan? How mature is the governance around it? Is the transition plan and the data produced useful to funders? Can engagement with financial partners lead to better planning and execution?

- The NGFS seems to recognise that financial institutions cannot be expected to implement all recommendations immediately. Not only the heterogeneity of portfolios and the availability of data, but also the number of clients and transition plans to be digested are challenges. In addition, financial institutions and corporates cannot effectuate all recommendations without a good framework. Let's hope with the NGFS that governments, policy makers and regulators will also do their part.

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2 Spotlight on ESG developments



Governance & transition



EP adopts CSDDD

On 24 April, the European Parliament (EP) [adopted](#) the Corporate Sustainability Due Diligence Directive (CSDDD) in a plenary vote. The proposal now has to be formally approved by EC bodies on 15 and 23 May. The CSDDD will then be published in the Official Journal of the European Union. Member states will then have two years to transpose the directive into national law. Please see our [update](#) on the CSDDD for more information, including application timelines.

EP adopts regulation on packaging and packaging waste

On 24 April, the EP [adopted](#) the regulation on packaging and packaging waste. The regulation concerns the full life-cycle of packaging. It sets requirements to ensure that packaging is safe and sustainable, by requiring that all packaging is recyclable and that the presence of substances of concern is minimised. It also sets binding re-use targets for 2030, restricts certain types of single-use packaging and requires economic operators to minimise the packaging used. Furthermore, it contains harmonised labelling requirements to improve consumer information. The regulation will apply approximately 18 months after its publication in the Official Journal.



EP adopts right to repair directive

On 23 April, the EP [adopted](#) the directive on the right to repair of goods for consumers, also known as the Right to Repair Directive (R2RD). It will apply to products already in scope of EU repair requirements and aims to improve the reparability of these goods, including after the warranty period. The directive (i) obliges manufacturers to repair in-scope goods; (ii) introduces a European consumer information form on repair services; and (iii) establishes an EU online repair information platform. After repair, the manufacturer's liability is extended for at least 12 months. Member States will have to apply the Directive approximately 24 months after its publication in the Official Journal.

EP adopts ecodesign regulation

On 23 April, the EP [adopted](#) the proposed Ecodesign for Sustainable Products Regulation (ESPR). While the existing Ecodesign Regulation only applies to energy-related products, the new regulation will cover almost all product categories. It establishes a framework for setting requirements for product groups to make them energy and resource efficient, as well as more durable, reliable and circular. On the basis of this framework, the EC will adopt delegated acts setting requirements for specific product groups. The regulation also introduces a ban on the destruction of unsold clothing and footwear, which could later be extended to other product groups. It also provides for mandatory green procurement requirements. Lastly, the regulation introduces a 'digital product passport' containing information on the product's environmental sustainability. The ESPR will apply 20 days after its publication in the Official Journal.

EP adopts regulation on forced labour

On 23 April, the EP [adopted](#) the proposed regulation on forced labour. The regulation will ban the placing on the EU market, making available on the EU market and export to third countries of products made with forced labour. It will apply to all products made with forced labour inside or outside the EU, and across all sectors. Competent national authorities will have to investigate reasonable indications that products have been made with forced labour. Most of the regulation will apply 36 months after its publication in the Official Journal.



EP adopts directive and regulation on hydrogen and low-carbon gas markets

On 11 April, the EP adopted a [regulation](#) and a [directive](#) on hydrogen and low carbon gas markets. The package provides much-needed clarity for investors and market players on the transition to hydrogen and low-carbon networks. The regulation sets out harmonised market access requirements and mechanisms for fair pricing and stable energy supply. The directive focuses on market organisation, consumer rights and energy poverty. The proposals include a definition of low carbon hydrogen and its derivatives. The EC will develop a methodology to assess the carbon footprint of blue hydrogen, hydrogen leakage and actual carbon capture rates. Once published in the Official Journal, the directive will have to be transposed into national law within two years. The regulation will apply six months after its publication.



Disclosure



EP adopts regulation on ESG rating activities

On 24 April, the EP [adopted](#) the regulation on ESG rating activities. It addresses how ESG ratings are undertaken and communicated. As a rule, separate E, S and G ratings will be provided rather than a single aggregated ESG metric. This breakdown is intended to enable investors to focus their investments more effectively on one of the three areas and to gain a fuller understanding of the credentials of the rated company. The rules will require rating agencies to explicitly disclose whether the rating provided assesses how the rated entity impacts and is impacted by E, S and G factors (double materiality). Once the translated texts of the proposal have been confirmed by the EP, the Council will have to formally agree to the proposal.



Corrigendum to ESRS published in Official Journal

On 19 April, a corrigendum to the European Sustainability Reporting Standards (ESRS) was [published](#) in the Official Journal. The corrigendum contains minor textual amendments to ESRS 1 ('General requirements'), ESRS 2 ('General disclosures') and the topical ESRS.



EP adopts directive to postpone adoption of new ESRS

On 10 April, the EP [adopted](#) the directive on the deadlines for the adoption of sustainability reporting standards (ESRS) for certain sectors and for certain third-country undertakings in scope of the Corporate Sustainability Reporting Directive (CSRD). The directive will delay the adoption of these standards until 30 June 2026, giving companies more time to prepare for the sectoral European Sustainability Reporting Standards (ESRS) and specific standards for large non-EU companies. On 29 April, the directive was formally approved by the EC. It will soon be published in the Official Journal and will apply 20 days after publication.

PSF publishes report on monitoring capital flows to sustainable investments

On 4 April, the EU Platform on Sustainable Finance (PSF) published an [intermediate report](#) on the monitoring of capital flows, proposing a methodological framework for monitoring private capital flows towards the objectives of the European Green Deal. The report outlines the conceptual framework underlying the methodology, as well as the proposed conceptual framework for characterising and measuring capital flows into investments in activities, products, technologies, and sectors that contribute to the environmental and strategic autonomy objectives of the EU Green Deal (i.e., capital expenditures by real economy entities). The report is accompanied by annexes containing an analysis of the Green Deal investment gap, which will serve as a reference for the implementation of the proposed framework.

ESRB publishes report on climate-related risks and financial reporting

On 3 April, the European Systemic Risk Board (ESRB) published a [report](#) on how International Financial Reporting Standards (IFRS) can reflect climate-related risks from a financial stability perspective. The report identifies four areas where financial stability can be improved: (i) the incomplete incorporation of climate-related risks in market prices; (ii) the impact of climate-related risks on the initial and subsequent valuation of non-financial assets and liabilities; (iii) the incorporation of climate factors in models used to estimate expected credit losses; and (iv) disclosure requirements on how climate-related risks are reflected in financial statements. The ESRB proposed corresponding amendments to existing IFRS accounting standards.



Financial institutions & regulation



ECB updates climate-related indicators

On 18 April, the European Central Bank (ECB) updated its [climate-related indicators](#), providing systemic insights, both into how financial markets are tackling the green transition and how financial institutions may be affected by climate change. The modifications relate to green bonds and banks' credit portfolios. For green bonds, the indicator now distinguishes between self-declared sustainable bonds and those that have undergone a second external assessment in order to provide more information to investors. For banks' loan portfolios, the updated version allows the data to be analysed as a consistent time series. In addition to these changes, the ECB has introduced the Collateral Adjusted Exposure at Risk (CEAR) indicator, which aims to quantify potential losses in financial terms and to allow comparison across different exposures. The ECB published also a [paper](#) about climate-related indicators, outlining the methodology, underlying data, and findings in three areas: sustainable finance, carbon emissions, and physical risk, respectively.

NZAOA releases new edition of Target-Setting Protocol

On 18 April, the Net-Zero Asset Owner Alliance (NZAOA) [published](#) the fourth edition of its Target-Setting Protocol, accompanied by a [background document](#). The Protocol now covers all private asset classes, and the majority of all major asset classes. It requires members to set targets for the period 2025-2030 aiming for a 40-60% reduction by 2030 compared to 2019 on a comply-or-explain basis. The NZAOA also launched a pilot project to assess the climate impact of sovereign debt using the [ASCOR](#) database.

NGFS publishes transition plan package

On 17 April, the Network for Greening the Financial System (NGFS) published the [report](#) 'Connecting transition plans: financial and non-financial firms'. The report explores the relationship between financial institutions and the transition plans of their clients and counterparties. It is published alongside two other reports: [Tailoring transition plans: considerations for EMDEs](#) and [Credible transition plans: the micro-prudential perspective](#). The reports provide complementary perspectives on related topics and help to establish further foundational understanding of the relevance of transition planning and plans for micro-prudential authorities.



BCBS publishes discussion paper on climate scenario analysis and risk management

On 16 April, the Basel Committee on Banking Supervision (BCBS) published a [discussion paper](#) on how climate scenario analysis (CSA) can be used in practice to strengthen the management and supervision of climate-related financial risks. In 2022, the BCBS published the [Principles for the effective management and supervision of climate-related financial risks](#) to encourage banks and supervisors to use CSA to assess the resilience of business models and strategies to a range of climate-related pathways and determine the impact on their overall risk profile. However, differences in the scope, features and approaches of CSA exercises across jurisdictions and banks limit the harmonisation of supervisory expectations and the comparability of results. The BCBS is therefore seeking stakeholder feedback, which may lead to complementary work to strengthen bank regulation, supervision and practices worldwide with a view to enhancing financial stability. Feedback can be [submitted](#) until 15 July.

UNEP FI launches resources to support banks with CSRD implementation

On 4 April, the United Nations Environment Programme Finance Initiative (UNEP FI) [released](#) a UNEP FI - PRB / ESRS Interoperability Package. It aims to assist banks in leveraging the alignment between the Corporate Sustainability Reporting Directive (CSRD) and the Principles for Responsible Banking (PRB) by using the UNEP FI Holistic Impact Methodology. The package includes a user guide, topic and data point mappings, and a conversion tool to extract relevant data points from the [UNEP FI Portfolio Impact Analysis Tool for Banks \(Version 3\)](#) for CSRD reporting.

EIOPA launches consultation on natural catastrophe risk reassessments under Solvency II

On 3 April, the European Insurance and Occupational Pensions Authority (EIOPA) launched a [consultation](#) on the reassessment of natural catastrophe risks in the standard formula under Solvency II, as to better capture the risks posed by certain perils. New risk factors have been proposed for 25 perils/regions across five perils (flood, hail, earthquake, windstorm, subsidence). Additionally, EIOPA has proposed to extend the standard formula to countries with natural catastrophe risks not previously covered, such as flood exposure in the Netherlands. EIOPA is also monitoring emerging perils (beyond the five included in the standard formula) across Europe that could have a significant impact on the region's insurance sector, including wildfire, coastal flooding, and drought. The consultation period ends on 20 June.



ESMA consults on possible changes to the regulatory framework for credit rating agencies

On 2 April, the European Securities and Markets Authority (ESMA) launched a [consultation](#) on proposed amendments to Commission Delegated Regulation (EU) No 447/2012 and to Annex I of the Credit Rating Agencies Regulation (CRAR). The proposals aim to ensure a better incorporation of ESG factors into credit rating methodologies and subsequent disclosure to the public, and to enhance transparency and credibility of the credit rating process. In particular, they aim to (i) ensure that the relevance of ESG factors within credit rating methodologies is systematically documented; (ii) enhance disclosure on the relevance of ESG factors in credit ratings and rating outlooks; and (iii) provide a more robust and transparent credit rating process through the consistent application of credit rating methodologies. The consultation closes on 21 June.



Litigation



EU authorities launch greenwashing investigation in the aviation industry

On 30 April, the EC and the EU Consumer Protection Cooperation (CPC) Network [announced](#) a coordinated anti-greenwashing enforcement action against 20 European airlines. The EC and CPC Network are concerned that certain green claims made by these airlines qualify as misleading under the Unfair Commercial Practices Directive (UCPD). The EC and the CPC Network will now enter into discussions with the airlines, on the basis of which the CPC authorities will decide on any further enforcement action. The enforcement action follows a complaint by EU consumer organisation BEUC, and a Dutch court ruling on similar legal grounds against a Dutch airline.



Anti-SLAPP directive published in Official Journal

On 16 April, the directive on protection from strategic lawsuits against public participation (SLAPP) was [published](#) in the Official Journal. The directive aims to protect natural and legal persons who engage in public participation, such as journalists, human rights defenders and NGO's, from manifestly unfounded claims and abusive court proceedings in civil or commercial matters with cross-border implications. It introduces procedural minimum safeguards, rules on early dismissal, remedies against abusive court proceedings and procedural rules protecting from third-country SLAPP-proceedings. Member States have to transpose the directive into national law by 7 May 2026.



ECtHR rules on three climate cases

On 9 April, the European Court of Human Rights (ECtHR) [ruled](#) on three climate change cases. The cases of *Carême v. France* and *Duarte Agostinho et al v. Portugal and 32 other States* were declared inadmissible on formal grounds. In *Verein Klimaseniorinnen v. Switzerland*, the Court ruled that Switzerland's climate laws violated Article 8 of the European Convention on Human Rights (ECHR) and found a violation of Article 6 ECHR. Notably, the Court ruled that states have a limited margin of appreciation when setting climate targets, but a wide margin of appreciation when choosing the measures to achieve those targets. The Court also provided criteria for determining whether states have acted within their margin of appreciation in relation to climate policies. See [last month's Highlight](#) for more information.

Australian court declares investment manager's green statements misleading

On 28 March, the Federal Court of Australia [ruled](#) that several sustainability-related statements made by Australian investment manager Vanguard are misleading. Vanguard had stated in various ways that it excluded bond issuers with significant activities in certain industries. 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 Court will consider the penalty at a hearing on 1 August.

Supreme Court of India establishes constitutional right relating to climate change

On 21 March, the Supreme Court of India [established](#) a right 'to be free from the adverse effects of climate change' under the Indian Constitution. The Court had previously recognised a constitutional right to a clean environment in earlier decisions. In the light of the increasing impacts of climate change, the Court now established a 'right to be free from the adverse effects of climate change' as a distinct constitutional right. This new climate-related human right is grounded on (i) the right to life and personal liberty and (ii) the right to equality under the Indian Constitution. In the case at hand, the Court emphasised that this right must be balanced with other constitutional interests relating to India's economic development, social equity, physical environment and biodiversity. An expert committee was appointed to advise the Court on how to balance these constitutional interests in this particular case.

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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