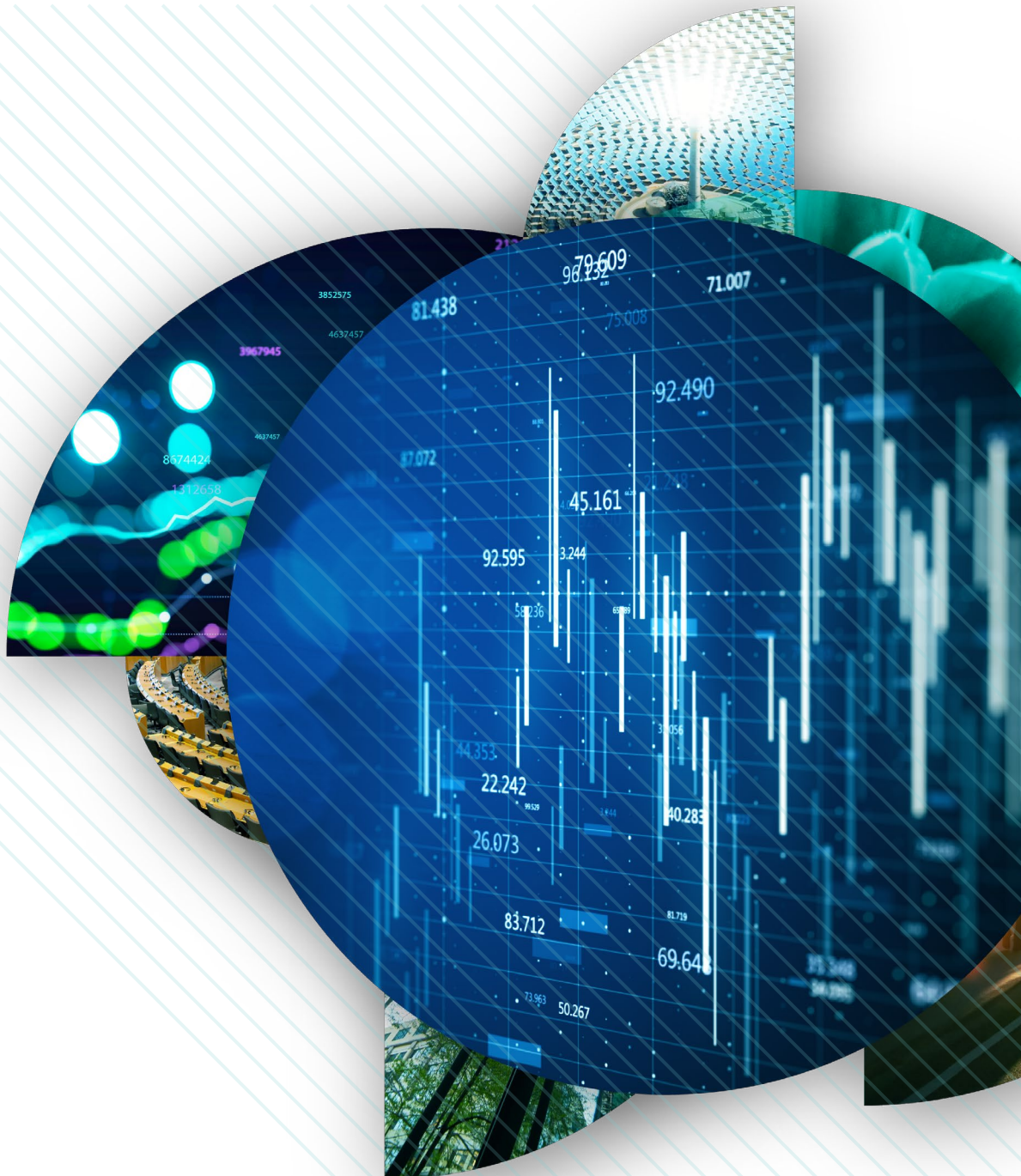


Financial Services regulatory ESG updaters

April - May 2024



Introduction

Environmental, Social and Governance (ESG) is changing the landscape for financial institutions as a wide range of stakeholders including investors increasingly expect them to make their operations more sustainable. Financial services regulators also view ESG as a priority, embedding the principles of climate-related financial risks into their supervisory frameworks and dealing with institutions that may be making exaggerated or unsubstantiated sustainability-related claims that do not stand up to closer scrutiny (so-called 'greenwashing'). However, the key problem for institutions, particularly those operating cross border, is that there is limited uniformity in regulation, financial services regulators are at different stages in developing their ESG regulatory framework particularly in relation to disclosures and taxonomy. It is therefore critical that institutions monitor the latest announcements from the regulators.

The purpose of this updater is to track ESG regulatory developments from the period 4 April 2024 to 4 May 2024, from UK, France, EU, US, Australia, and certain international regulators.

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This month's highlights

23 April 2024 – FCA publishes finalised guidance on the anti-greenwashing rule

The Financial Conduct Authority (FCA) published its [finalised non-handbook guidance \(FG24/3\)](#) on the anti-greenwashing rule. The guidance is intended to help firms understand and comply with the anti-greenwashing rule, which comes into force on 31 May 2024.

Background

The anti-greenwashing rule is part of a package of measures the FCA finalised in 2023 and published in its Policy Statement on sustainability disclosure requirements and investment labels (**PS23/16**). When the FCA published PS23/16, it also launched a consultation on draft general guidance to support the implementation of the anti-greenwashing rule – for more details, see our [briefing](#).

By introducing the anti-greenwashing rule, the FCA aims to clarify to firms that sustainability-related claims about their products and services must be fair, clear and not misleading. It gives the FCA an explicit rule on which to challenge firms if it considers they are making misleading sustainability-related claims about their products or services and, if appropriate, take further action. The guidance in FG24/3 is designed to help firms understand and implement the anti-greenwashing rule, in light of feedback from some respondents to previous consultation paper [CP22/20](#) on the SDR and investment labels who asked for guidance.

The finalised guidance

The FCA explains that feedback to its guidance consultation was broadly supportive of both the guidance and the initiative to minimise greenwashing. The main areas of feedback related to the examples set out in the draft guidance and requests for further clarity on the FCA's expectations – e.g. calls for more examples covering a broader range of sectors, examples of good practice, and examples that include social as well as environmental scenarios. Many respondents also asked the FCA to clarify the scope of the anti-greenwashing rule and its interaction with other parts of the FCA Handbook.

In FG24/3, the FCA provides a summary of the feedback to the consultation and its response, as well as setting out its finalised guidance in Chapter 2. The guidance includes sections on scope, how the anti-greenwashing rule interacts with existing requirements and related guidance, and the FCA's expectations under the rule along with examples of good and bad practice.

The FCA flags that the guidance is consistent with existing expectations and does not create new obligations for firms. Firms may consider the guidance as appropriate, depending on the nature of their business and the sustainability related claims they make.

Next steps

The guidance in FG24/3 comes into force at the same time as the anti-greenwashing rule itself, on 31 May 2024.



United Kingdom

9 April 2024 - TPT – Latest transition plan resources published

The Transition Plan Taskforce (TPT) published the [final set](#) of transition plan resources to help businesses unlock finance for net zero.

In October 2023, the TPT published its final [Disclosure Framework](#), as part of a wider suite of Implementation Guidance which included guidance to help preparers explore the disclosure recommendations and technical mapping to the final climate-related disclosures standards (**IFRS S2**) issued by the International Sustainability Standards Board and the Task Force on Climate-Related Financial Disclosures' recommendations and guidance.

On 13 November 2023, the TPT launched a [consultation](#) on its sector-specific guidance for preparers and users of climate transition plans. The deadline for feedback on the consultation was 29 December 2023.

The materials now published are a final sector deep dive which follow the consultation and include:

- Sector-specific transition plan guidance for asset owners, asset managers, banks, electric utilities and power generators, food and beverage, metals and mining and oil and gas.
- Sector summary guidance, with high level guidance for 30 sectors of the global economy.
- Guidance on the how to undertake a transition planning cycle.
- A paper on the opportunities and challenges of transition plans in emerging markets and developing economies.
- Independent advisory pieces from TPT Working Groups on Adaptation, Nature, JustTransition and SMEs, exploring how transition planning can extend beyond realising net zero.

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Background

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Next steps

The guidance in FG24/3 comes into force at the same time as the anti-greenwashing rule itself, on 31 May 2024.

23 April 2024 – FCA consults on extending the SDR regime to portfolio management

The FCA published [Consultation Paper 24/8 'Extending the Sustainability Disclosure Requirements regime to portfolio management'](#) (CP24/8). In CP24/8 the FCA sets out proposals to extend the Sustainability Disclosure Requirements (SDR) and investment labels regime to portfolio management services.

Background

On 25 October 2022, the FCA published [Consultation Paper 22/20 \(CP22/20\)](#) setting out proposals for a new anti-greenwashing rule and SDR and investment labels regime. In CP22/20 the FCA consulted on including portfolio management in the SDR and investment labels regime. On 28 November 2023, the FCA published [Policy Statement 23/16 \(PS23/16\)](#) in which it set out final rules and guidance for these measures. The anti-greenwashing rule applies to all FCA-authorized firms that make sustainability-related claims about products and services, while the SDR and investment labels regime applies to UK asset managers. The SDR and investment labels requirements do not currently apply to portfolio management products and services. In PS23/16 the FCA reported that it had received feedback that its proposed approach for portfolio management would not be suitable, particularly as most portfolios are diversified and unlikely to invest only in UK funds with labels. Among the suggestions to address the matters raised were requests to allow portfolio managers to assess the assets within their portfolio against the

criteria for labels – to follow a similar approach for portfolio management as was proposed for funds. The FCA stated that it would consult on proposals to follow a similar approach for portfolio management, with a focus on where portfolio management is undertaken for UK retail clients, including managed portfolios and discretionary wealth management services, in early 2024.

Scope

The proposals in CP24/8 will be of interest to firms providing portfolio management services. The FCA defines this in the consultation as a service provided to a client which comprises either managing investments or private equity or other private market activities consisting of either advising on investments or managing investments on a recurring or ongoing basis in connection with an arrangement, the predominant purpose of which is investment in unlisted securities. The proposed scope does not include services where the clients are based overseas (i.e., those that either normally reside outside of the UK or have their registered office (or head office) outside of the UK). It also does not include portfolio management provided to a client that is a fund, or an Alternative Investment Fund Manager or management company for or on behalf of a fund (i.e., where the portfolio manager acts as a delegate).

Proposals

The FCA proposes that firms providing portfolio management services are subject to a similar SDR and investment labels regime as UK asset managers. These proposals are covered in chapter 3 of CP24/8. They are also summarised in Table 1 in Annex 2 of CP24/8 and a comparison of the proposals against those in CP22/20 can be found in paragraph 2.6 of chapter 2 of CP24/8. A table providing a summary of the labelling criteria and considerations for portfolio managers is located in paragraph 3.23 of CP24/8.

Given that the SDR and labelling regime have been developed primarily for retail investors the FCA's proposals to extend the regime are primarily aimed at wealth management services for individuals and model portfolios for retail investors. Firms offering portfolio management services to professional clients (or institutional investors) may also opt into the labelling regime.

Key elements of the proposals include:

- **Investment labels** – The FCA is proposing to apply a broadly similar approach to labelling for portfolio managers as introduced for UK asset managers. This includes the introduction of a fourth label in response to comments about the mutual exclusivity of labels. The four labels are ‘Sustainability Focus’, ‘Sustainability Improvers’, ‘Sustainability Impact’, and ‘Sustainability Mixed Goals.’ To use a label, portfolio management offerings must meet general and specific criteria relating to that label on an ongoing basis and prepare associated disclosures. The labelling criteria applies to the agreement or arrangement under which a firm provides portfolio management to a client. At least 70% of the overall arrangement would need to be invested in accordance with the sustainability objective, and other qualifying criteria would need to be met, for it to be considered for a label. Where clients want more than 30% of their arrangement to pursue only financial objectives, the portfolio manager would not be able to use a label but may be subject to the FCA’s naming and marketing rules. The portfolio manager is responsible for ensuring that the general and specific criteria are met. This includes where the management of any assets within the portfolio is carried out by a third party.
- **Naming and marketing rules** – The FCA proposes that these rules apply only to portfolio management offerings that are marketed to retail investors. Sustainability-related terms can be used in names and marketing if: (i) the portfolio uses a label – provided that, where the ‘Sustainability Focus’, ‘Sustainability Improvers’ or ‘Sustainability Mixed Goals’ labels are used, the word ‘impact’ is not used in the name of the offering, or (ii) it does not use a label but complies with the naming and marketing rules, as set in CP24/8.
- **Consumer facing disclosures** – The FCA proposes that portfolio managers must produce consumer-facing disclosures summarising the key sustainability characteristics for both labelled portfolio management offerings and those that use sustainability-related terms in their names and marketing. The disclosure must be provided in a new, standalone document, alongside other documents that provide key investor information. As with the approach for UK asset managers, the FCA is not proposing a specific template for the information

but, to promote consistency, it has set out the categories of disclosures that firms would be required to make. As with the approach for UK asset managers, the FCA is not proposing a specific template for the information but, to promote consistency, it has set out the categories of disclosures that firms would be required to make.

- **Product level disclosures** – All portfolio management offerings using a label or using sustainability-related terms in their naming and/or marketing without a label must include sustainability information in: (i) pre-contractual disclosures by 2 December 2024 for products using the terms without a label, and (ii) ongoing product-level disclosures annually. For the ‘Sustainability Mixed Goals’ label, the disclosures must include the proportion of assets invested in line with each of the relevant labels, and the information required for those labels.
- **Entity level disclosures** – As per the Task Force on Climate-Related Financial Disclosures and the International Sustainability Standards Board four pillars, firms with over £5 billion in assets under management (AUM) are required to make certain annual disclosures including their governance around sustainability-related risks and opportunities. Firms that use labels or sustainability-related terms in the names and marketing of their portfolio management offerings, must also include details on their resources, governance and organisational arrangements for them.
- **Distributors** – The FCA proposes to keep the requirements for distributors the same as under the final rules for UK asset managers with regards to communicating the labels and consumer facing disclosures.

Next steps

The deadline for comments on CP24/8 is 14 June 2024.

The FCA plans to publish final rules in the second half of 2024.

The FCA proposes that the labelling and naming and marketing requirements, and the associated consumer-facing and pre-contractual disclosures, come into force on 2 December 2024. Firms will need to start producing ongoing product-level disclosures from one year later. Firms with AUM greater than £50 billion will need to produce

entity-level disclosures by 2 December 2025. Firms with AUM greater than £5 billion will need to start producing entity-level disclosures by 2 December 2026. Apart from the start date for labelling and the associated disclosures, these dates are consistent with the measures for UK asset managers.



European Union

8 April 2024 - European Commission Progress Report: Platform on Sustainable Finance Monitoring Capital Flows to Sustainable Investments

The European Commission (the **Commission**) published a [Progress Report](#) on the Platform on Sustainable Finance's Monitoring Capital Flows to Sustainable Investments.

The Report outlines that the European Union must scale up its investments in reaching climate and environmental targets by at least two thirds by 2030, relative to average levels mobilised during the last decade. The majority of relevant financing is expected to come from private financial markets and as such, the Report highlights that a methodological framework is needed to monitor the flow of private capital, to fill the investment gap.

The Report therefore offers a methodology which mainly rests on capital flows. Two types of flows are considered:

1. Capital expenditures in real economy entities, which shed light on progress towards filling the investment gap.
2. Flows in and from financial markets, as this represents an important source of capital in support of real economy investments.

In the methodology's first iteration, regulatory definitions and disclosures are default data sources where available and are complemented by market definitions and data until the regulatory frameworks are fully developed. Furthermore the methodology encompasses EU-based entities chiefly reporting under the Corporate Sustainability Reporting Directive (public expenditure is excluded).

Finance and investment flows are analysed in relation to companies in transition and the European Sustainability Reporting Standards indicators will be used to identify such companies.

Financial sector flows will in a first instance focus on loans; bonds; equity; and investment funds. Instruments claiming certain sustainability features will be measured, such as green bonds as well as funds disclosing their sustainable investments under the Sustainable Finance Disclosure Regulation. General-purpose financing (bonds and equity) will also be characterised based on activities of the underlying entity. Loans are analysed using aggregate data from banks, and for the transition of banks, the Green Asset Ratio and ESG Pillar 3 data will be used on inter alia financed emissions and targets. As regulatory-demanded reporting expands to encompass more entities and financial instruments, the Platform aims to refine its methodology over time. Progress in data collection and other areas will also facilitate extending the methodology, for example to cover some public sector funding and capital flows from beyond the EU.

Next steps

The Platform on Sustainable Finance will release a final report at the end of its mandate, which will include methodological refinements, an analysis of preliminary data and a proposal for operationalising the periodical monitoring.

10 April 2024 - European Parliament: Sustainability reporting standards delayed for some companies

The European Parliament (**EP**) [issued](#) a press release confirming that MEPs have approved delaying sector specific sustainability reporting standards, as well as general reporting standards for non-EU companies.

The press release outlined that:

- Sector specific standards for EU companies and general standards for non-EU companies are to be adopted in 2026, as opposed to 2024.
- Reporting timelines do not change, however less reporting is required as the later adoption of sector specific standards for EU companies affects the extent of reporting. This is because the section on particular impact in their area of activity will not be required before 2026.

- The European Commission will endeavour to publish sector specific sustainability reporting standards for eight non-specified areas before the deadline.

Following the plenary vote, lead MEP Axel Voss said *"We will delay the deadline for sector specific standards under the [Corporate Sustainability Reporting Directive \(CSRD\)](#) by two years in order to give European Financial Reporting Advisory Group the time to develop quality standards and give companies the time to put them into practice. Companies have been putting up with too much bureaucracy in years of crisis, from Covid to inflation."*

Next steps

The text must be formally approved by the Council of the EU before being published in the Official Journal of the EU (OJ).

25 April 2024 - MEPs adopt new rules to regulate ESG ratings

The EP issued a [press release](#) stating that it had adopted the text of the proposed [Regulation](#) on the transparency and integrity of environmental, social and governance rating activities. The legislative measures still need to be formally adopted by the Council of the EU. Following this they will be published in the OJ. In terms of timing, the draft Regulation enters into force on the twentieth day following its publication in the OJ. It applies 18 months from its entry into force.

25 April 2024 - MEPs adopt Corporate Sustainability Due Diligence Directive

The EP [adopted](#) the text of the proposed Corporate Sustainability Due Diligence Directive. The draft Directive still needs to be formally adopted by the Council of the EU. Following this it will be published in the OJ. The Directive enters into force on the twentieth day following its publication in the OJ. Member States shall adopt and publish, by 2 years from the Directive's entry into force, the laws, regulations and administrative provisions necessary to comply with the Directive. These measures shall apply in accordance with the transposition provisions set out in Article 37 of the Directive.



France

There has been no reported activity in France this month.



United States – SEC and CFTC

5 April 2024 – The Securities and Exchange Commission (SEC) [issued](#) an Order staying its climate reporting rules for public companies in light of the fact that "petitions seeking review of the Final Rules were filed in multiples courts of appeals." The Order identifies legal changes in the 5th Circuit, the 6th Circuit, the 8th Circuit and the 11th Circuit. The various challenges have now been consolidated in the 8th Circuit.

In the Order, the SEC said that the stay will remain in force as the 8th Circuit reviews legal challenges in order to avoid "potential regulatory uncertainty." The SEC said it would continue "vigorously defending" the validity of its climate rule. The SEC further said that it "is not departing from its view that the Final Rules are consistent with applicable law and within the Commission's long-standing authority to require the disclosure of information important to investors in making investment and voting decisions."

Prior to the consolidation in the 8th Circuit of the multiple legal challenges to the Final Rules, the 5th Circuit had issued a stay. The SEC was likely anticipating that the 8th Circuit would do the same. Many companies may still be subject to the recently enacted California climate disclosure rules and various international disclosure requirements that remain in effect.



Australia

23 April 2024 – ASIC’s early guidance on the mandatory climate disclosure regime

The Chair of ASIC, Joe Longo, delivered a [speech](#) providing ASIC’s early guidance on its expectations for reporting entities regarding the proposed mandatory climate disclosure regime.

It is expected that reporting under the regime will commence from 1 January 2025 for some entities. Mr Longo stressed that all entities should take action now to implement the necessary systems and capabilities to ensure that they are in a position to report under the mandatory reporting regime. Mr Longo noted that the proposed regime will operate under modified liability settings which will restrict private proceedings in relation to certain protected statements made under the regime for a period of three years.

To assist entities to comply with the new reporting obligations, ASIC have foreshadowed:

1. The release of a new regulatory guide for the climate reporting regime which will address ASIC’s approach to relief from those obligations, and interactions of the regime with existing legal and regulatory requirements; and
2. Additional resources including information about new sustainability reporting obligations, ASIC’s regulatory functions in relation to the regime and types of information found in sustainability reports.

ASIC noted that it expects this to be an evolving space, and it will take into consideration market practice and regulatory developments when making and updating its guidance.

2 May 2024 – ASIC: ‘Greenwashing – a view from the regulator’

ASIC Chair, Joe Longo, also recently delivered the [keynote speech](#) at the Responsible Investment Association Australasia (RIAA) Conference, and provided insight as to ASIC’s ongoing enforcement approach to greenwashing, particularly in light of regulatory change.

ASIC expects that the introduction of the proposed mandatory climate reporting regime in Australia will reduce greenwashing through more standardised, consistent and comparable climate-related information. Greenwashing is also expected to be reduced through Australia’s proposed sustainable finance strategy which will see the development of an Australian sustainable finance taxonomy and labelling system for ‘sustainable’ investment products.

ASIC stressed that it would continue to take a proportionate regulatory and enforcement response to greenwashing, and entities who provide clear, accurate and transparent disclosures to the market will not be at risk of enforcement action. ASIC has also foreshadowed a wider focus on governance issues around sustainable representations, including a broadening focus on director’s duties.

3 May 2024 – Senate Economics Legislation Committee Report on the climate-related disclosure regime

The Australian Senate Economics Legislation Committee (the **Committee**) has tabled a report on the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024* (Cth) (the **bill**) which proposes the introduction of mandatory climate-related disclosure obligations for large entities. The Australian Senate referred the bill to the Committee for inquiry and report at the end of March 2024.

The report notes that evidence received by the Committee illustrated broad support for the proposed climate-related reporting regime by key stakeholders including the Australian Securities Exchange (**ASX**), Australian Council of Trade Unions (**ACTU**), Chartered Accountants Australia and New Zealand and CPA Australia. In particular, stakeholders expressed support for the phased-in approach for mandatory reporting.

However, stakeholders expressed concern with the following aspects of the bill (among others):

- 1. Three-year modified liability:** While some stakeholders have been supportive of this approach, some stakeholders such as the Environmental Defenders Office and the Carbon Markets Institute expressed concern that it would limit important accountability mechanisms and could lead to widespread greenwashing during the modified liability period.
- 2. Scope 3 emission disclosures:** Some stakeholders raised concerns about how Scope 3 emissions disclosures would be undertaken, the potential value of this information and the potential costs associated with gathering the necessary information.
- 3. The Minister's discretionary powers:** Some stakeholders expressed concern that the Minister's discretionary powers in the bill to potentially use delegated legislation to require disclosure of financial matters beyond climate matters were "significant policy matters which are inappropriate for delegated legislation".

However, noting the overwhelming support for the reforms and the benefits high-quality climate-related financial disclosures will have on Australia's economic opportunities, the Committee ultimately recommended that the bill be passed. In a dissenting report, the Coalition have expressed concern that the compliance and regulatory costs associated with the regime could reach up to \$2.3 billion to the economy and noted that the regime would place a disproportionate compliance burden on smaller entities.

International regulators – FSB, ISOCO, Basel Committee, NGFS, SASB, IFRS, ISSB

16 April 2024 - Basel Committee Discussion Paper on the role of CSA

The Basel Committee on Banking Supervision (**Basel Committee**) issued a [Discussion Paper](#) on how climate scenario analysis (**CSA**) can be practically used to help strengthen the management and supervision of climate related financial risks. The Discussion Paper considers the objectives of CSA exercises and relevant features to design and use them.

In 2022, the [Principles for the effective management and supervision of climate-related financial risks](#) encouraged banks to use CSA to assess the resilience of their business models and strategies to a range of climate-related pathways and determine the impact on their overall risk profile. Supervisors were also encouraged to determine whether banks were applying CSA, where appropriate. However, discrepancies in the scope, features and approaches of CSA exercises across jurisdictions and banks have limited the harmonisation of supervisory expectations and the comparability of results.

The Basel Committee is therefore seeking stakeholder feedback that, in conjunction with the work under way in other global forums such as the Financial Stability Board and Network for Greening the Financial System, may lead to additional complementary work in pursuit of its mandate to strengthen the regulation, supervision and practices of banks worldwide.

Next steps

The Basel Committee welcomes feedback on the Discussion Paper, which should be submitted by 15 July 2024.

Resources

ESG is high on the regulatory agenda. Businesses, governments, regulators, financial services firms and individuals all have a part to play in tackling climate change and this view is increasingly shared across society. In terms of financial markets, investors are increasingly seeking sustainable financial products and ESG investing, traditional investing combined with sustainable or otherwise philanthropic aims, has seen huge growth in recent years. Regulated firms are also seeking to improve their own ESG performance more generally to build stronger relationships with their stakeholders, including those who use their services. Whilst the growing emphasis on ESG presents opportunities for financial services providers, it also brings with it a number of risks, which need to be properly managed with a view to avoiding future regulatory investigations and enforcement.

We have produced a number of resources, including articles, podcasts and newsletters, to help clients navigate this evolving, complex landscape:



Financial services: Regulation tomorrow

Our blog, Financial services: Regulation tomorrow offers a convenient resource for those keeping track of the evolving and increasingly complex global financial services regulatory environment.



Financial Services Regulatory Developments in ESG

Developed by our global financial services regulatory lawyers and integrated risk advisory group, our Financial Services Regulatory Developments in ESG Hub provides resources and insights to help clients stay informed of key regulatory developments in the sector.



ESG and Sustainability Insights newsletter

Our ESG and Sustainability Insights newsletter brings together recent insights and resources on key topics affecting your business, including climate change and regulation, business and human rights, sustainable finance, energy transition and more.



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