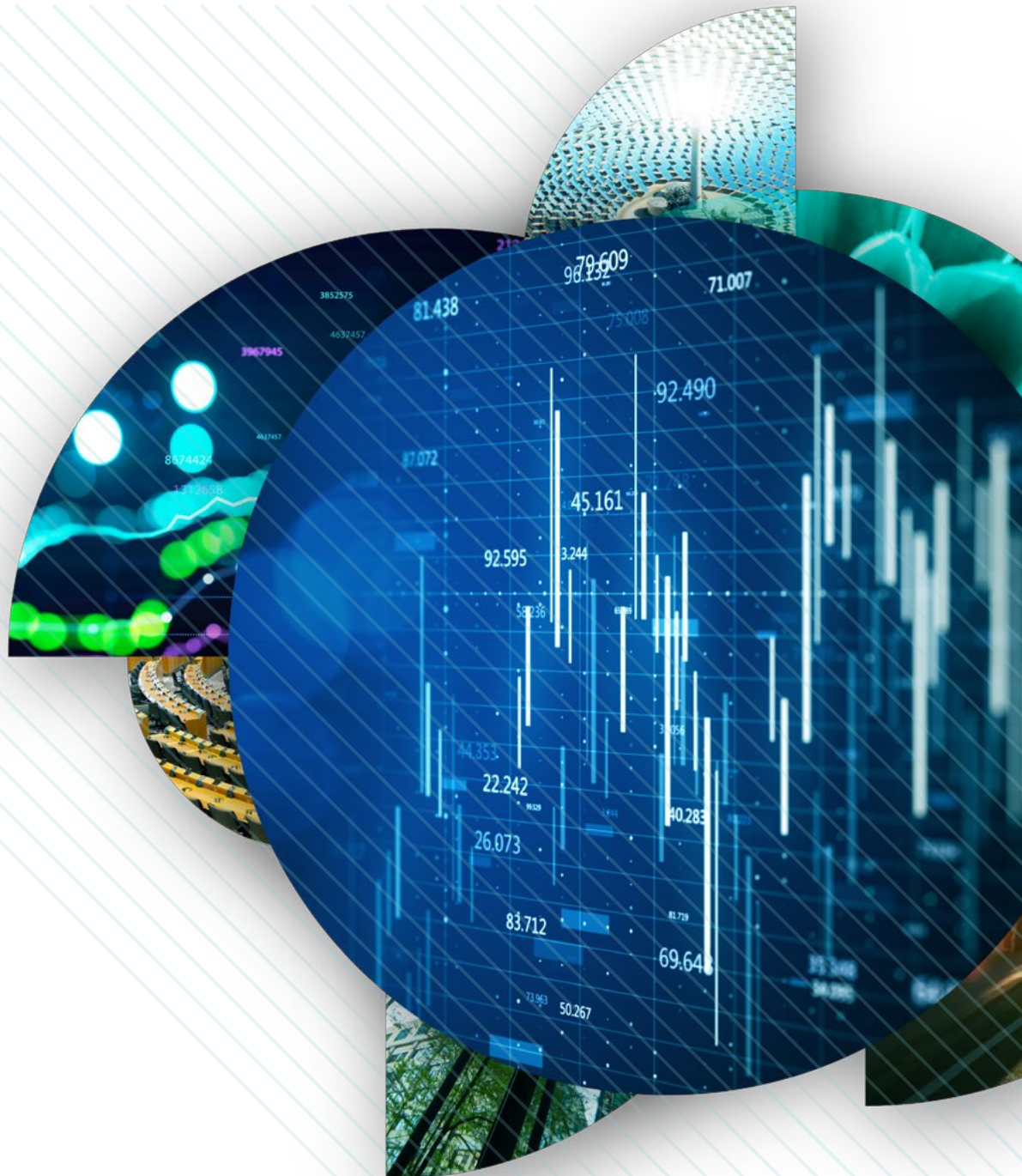


# Financial Services regulatory ESG updaters

June 2023



# Introduction

**Environmental, Social and governance-related (ESG) matters are high on the global agenda with a focus not only on climate change, but also on wider environmental issues, for example, biodiversity and social governance issues, such as, diversity and inclusion accountability.**

Greenwashing is the term given to a practice of making misleading statements about the environmental credentials of a business and/or product in order to attract investment or customers more broadly. Mitigating the risks of greenwashing is a particular focus for regulators.

The purpose of this updater is to track ESG regulatory updates from the period 22 April – 14 June 2023, from UK, EU and global regulators.

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## This month's highlights

### 13 June 2023

The European Commission (**Commission**) has [published](#) a sustainable finance package.

The package contains measures to build on and strengthen the foundations of the EU sustainable finance framework.

The aim of the package is to ensure that the EU sustainable finance framework continues to support companies and the financial sector, while encouraging the private funding of transition projects and technologies. Specifically, the Commission is adding additional activities to the EU Taxonomy and proposing new rules for Environmental, Social and Governance (**ESG**) rating providers, which will increase transparency on the market for sustainable investments.

Furthermore, the package aims to ensure that the sustainable finance framework works for companies that want to invest in their transition to sustainability. In addition, the package aims to make the sustainable finance framework easier to use, thereby continuing to contribute effectively to the European Green Deal objectives.

The package includes:

- Targeted amendments to the EU Taxonomy Climate Delegated Act, which expand on economic activities contributing to climate change mitigation and adaptation not included so far – in particular in the manufacturing and transport sectors. The Commission has also adopted amendments to the EU Taxonomy Disclosures Delegated Act, to clarify the disclosure obligations for the additional activities.
- A Commission Recommendation which illustrates how the sustainable finance framework encompasses transition finance and explains how companies, investors and financial intermediaries can voluntarily use the current sustainable finance framework to finance their transition to a climate neutral and sustainable economy, while enhancing their competitiveness, with practical examples and explanations.
- Staff working document on the usability of the EU Taxonomy and the wider EU sustainable finance framework which provides an overview of the key pillars of the framework now in place, and takes stock of recently adopted usability.

The package also includes a proposal for a Regulation on the transparency and integrity of ESG rating activities.

The key aim of the draft Regulation is to increase transparency on ESG ratings methodologies, objectives, characteristics and data sources. It also aims to increase clarity on the operations of ESG rating providers, in particular to prevent and mitigate potential risks associated with conflicts of interest. The draft Regulation is based on the recommendations for ESG rating providers and regulators published by the International Organization of Securities Commissions in November 2021. It provides for the authorisation and supervision of ESG rating providers by the European Securities and Markets Authority. It also provides requirements on disclosures around their methodologies and objectives of ratings, and introduces principle-based organisational requirements on their activities.

### 24 May 2023

A new briefing note on the draft Directive on Green Claims is available [here](#). In March 2023, the Commission adopted a proposal for a Directive on substantiation and communication of explicit environmental claims. The draft Directive is commonly known as the Directive on Green Claims.

The proposal complements and further operationalises the Commission's proposal for a Directive on empowering consumers in the green transition. It also complements other pieces of EU legislation like the Unfair Commercial Practices Directive (**UCPD**) by setting specific rules on the substantiation, verification and communication of voluntary environmental claims and environmental labelling schemes on the EU market. In particular, it introduces verification requirements before green claims can be made and put on the market. Being a Directive, Member States would be obliged to enact legislation putting the new requirements into their domestic law. Once adopted the draft Directive will prevail over the UCPD in instances of conflict.



## United Kingdom

23 May 2023

The Lending Standards Board (**LSB**) has published a [report](#) on access for d/Deaf customers in banking and credit. The report includes insights and considerations aimed at helping the financial services industry to understand d/Deaf cultures and address remaining areas of inaccessibility for d/Deaf people. Within the report, the LSB looks at key considerations to deliver the tailored and responsive support required.

The report highlights the following points:

- It is vital that banking and lending products are inclusive for the different types of customers across the UK. For d/Deaf customers and those with hearing loss, there is a risk of financial exclusion, i.e., being left unable to access the products and services they need.
- There is a need for an understanding of d/Deaf cultures and the different ways d/Deafness and hearing loss can affect people. This is not currently thought to be well understood and can lead to inaccessible and inappropriate communication options for some customers.
- Due to challenges faced when accessing banking and credit, many d/Deaf customers rely on the support of third parties. Firms need to be confident that their processes and practices relating to third parties are effective, especially in relation to d/Deaf customers.
- Firms should raise the awareness of staff as to how d/Deaf customers may require support and how a tailored approach should be taken.
- Appointing champions within firms who can educate and advise colleagues on specific needs, including for d/Deafness and hearing loss, could help raise standards and contribute to an inclusive culture.

The report forms part of the LSB's inclusion report series for banks and lenders registered with the LSB's best practice standards and codes, and those yet to sign up.



## France

26 May 2023

The Autorité des Marchés Financiers (**AMF**) has published a [speech](#) by Maria-Anne Barbat-Layani, AMF Chair, delivered at the General Assembly of the French Association of Corporate Treasurers. The speech focuses on the challenges facing the AMF.

During her speech, Ms Barbat-Layani made the following comments concerning sustainable finance:

- To achieve the EU's objectives of reducing greenhouse emissions by 55% by 2030 and achieving carbon neutrality by 2050, there is a need for a profound and rapid transformation of the economy, which requires the commitment of all.
- It is essential that investors know precisely whether what is presented to them as sustainable really is sustainable.
- It is important that the companies represented by the treasurers represent make a strong commitment to the transition, and report on their non-financial risks, impacts and opportunities.
- The transposition of the Corporate Sustainability Reporting Directive (**CSRD**), via an ordinance, should be published by the end of the year, and its application is planned from 2024. This will be a more rigorous transparency exercise in terms of corporate ESG reporting. It will also apply to a larger number of companies. For example, small and medium-sized listed companies will be affected, but with reduced standards and with reporting expected only from 2026 onwards.
- The transparency exercise will require companies to provide accurate, detailed and forward-looking information. With respect to the transition plan, companies will have to disclose, in particular, their long-term objectives and intermediate targets, their levers for action, the financial resources mobilised in this perspective and information on the monitoring of progress over time.

- Meeting the obligation of the CSRD will have to be accompanied by strategic thinking to adapt business models, strategies, policies and actions to ESG risks and opportunities.
- In the case of financial products, it seems crucial to take new steps to avoid any ambiguities there might be in the application of the Sustainable Finance Disclosure Regulation (SFDR) and to better meet investors' expectations. The AMF has proposed a targeted revision of the Regulation to characterise responsible investment more clearly. This proposal aims to introduce minimum environmental criteria that financial products would have to meet in order to be classified as 'Article 8' or 'Article 9'. The AMF has also proposed introducing the notions of transition and commitment policy into the approach.
- The AMF continues to call for European-level regulation of ESG data, ratings and service providers. The Commission is expected to submit a legislative proposal in this respect, and it is important to ensure that the scope of the players covered is as broad as possible, including not only ESG ratings providers, but also ESG data and service providers more generally.

#### 12 June 2023

The AMF has [published](#) a summary of a study and its findings following a series of short thematic inspections called SPOT.

The study analyses the responses to a detailed questionnaire from 176 generalist portfolio asset management companies (AMCs) that have at least one contractual non-financial commitment for at least one of their funds. The inspection campaign targeted five of these 176 AMCs, whose ESG funds or socially responsible investment funds account for between 20% and 90% of their total assets under collective management.

The AMF highlights the following findings:

- The five institutions inspected had put in place important and increasing human and technical resources to define, review, manage and monitor non-financial contractual commitments.
- Although their ESG rating systems were often deployed by the AMCs themselves, they remain dependent on external ESG data providers. Only one of the five AMCs checks the quality of this non-financial data before it is incorporated into the ESG rating algorithm.

- The permanent controls to justify corrections made to ESG ratings calculated by the rating algorithm (known as override) were found to be inadequate. Only 40% of the AMCs on the SPOT panel have a satisfactory process for this diligence.
- With regards to the checks carried out on compliance with commitments before and after investments, of the 176 AMCs that responded to the questionnaire, 77% had implemented manual checks and 74% had implemented automatic checks. However, not all firms use a combination of these two types of checks.



## EU

#### 21 April 2023

The European Central Bank (ECB) has published a [report](#) containing the results of its third review of the disclosure of climate-related and environmental risks among significant institutions (SIs) and a selected number of less significant institutions (LSIs). The review was conducted by the ECB and Member State competent authorities and covered 103 SIs and 28 LSIs. In addition, the disclosures of 12 global systematically important banks established outside the EU were benchmarked against the disclosures of the EU banks within the scope of the assessment. The report describes the main findings of the review for all these institutions.

#### 24 April 2023

The European Banking Authority (EBA) has published a [consultation paper](#) on draft guidelines on the benchmarking of diversity practices including diversity policies and gender pay gap under the Capital Requirements Directive IV and the Investment Firms Directive. The draft guidelines are addressed to Member State competent authorities. The deadline for comments on the consultation paper is 24 July 2023.

#### 5 May 2023

The European Securities and Markets Authority (**ESMA**) has published a speech by Natasha Cazenave (Executive Director, ESMA) entitled [ESMA's role in enabling the transition to a low carbon economy](#). The speech focuses on what ESMA is doing to contribute to an orderly transition to a low carbon economy.

Among other things the speech notes that there is a clear need to step up ESMA's efforts to combat the risk of greenwashing. It also mentions that in parallel there could be merit in exploring whether labels could help better channel savings according to investor needs and preferences and therefore support an orderly transition. In coordination with the other European Supervisory Authorities (**ESAs**), ESMA is carrying out a thorough analysis of the greenwashing phenomenon. It will deliver a Progress Report at the end of May 2023 (see below) and a Final Report in May 2024, which will present the results of its findings regarding greenwashing risks and their drivers, and the associated financial risks.

#### 17 May 2023

The ESAs have published [consolidated questions and answers](#) on the SFDR and its Delegated Regulation (Commission Delegated Regulation 2022/1288).

The document combines responses given by the Commission to questions requiring interpretation of Union Law according to Article 16b(5) of the ESA Regulations, which are colour coded in blue, and responses generated by the ESAs relating to the practical application or implementation of the SFDR under Article 16b(1) of the ESA Regulations, which are not colour coded.

#### 31 May 2023

The ESAs have published their [Progress Reports](#) on greenwashing in the financial sector. In these reports, the ESAs put forward a common high-level understanding of greenwashing applicable to market participants across their respective remits – banking, insurance and pensions, and financial markets.

The reports follow a request from the Commission to the ESAs, to provide input on the phenomenon of greenwashing, first in the form of Progress Reports by May 2023.

The ESMA Progress Report sets out the following:

- **Risk areas:** The findings show that misleading claims may relate to all key aspects of the sustainability profile of an entity – from governance aspects to sustainability strategy, targets and metrics or claims about impact. The report also provides sector-specific assessments for key sectors under ESMA's remit such as issuers, investment managers, benchmark and administrators and investment service providers.
- **The causes of greenwashing:** Greenwashing is the result of multiple inter-related drivers. Market participants across the sustainable investment value chain (**SIVC**) face challenges in implementing the necessary governance processes and tools that support high-quality sustainability disclosures and transition efforts. In this context, market participants also have difficulties in producing and accessing relevant, high-quality sustainability data. Furthermore, a fast-moving regulatory framework has created implementation challenges for both market participants and for NCAs and highlighted the need to build sustainability expertise.
- **Preliminary remediation actions:** To mitigate greenwashing risks, market participants across the SIVC have to live up to their responsibility to make substantiated claims and communicate on sustainability in a balanced manner. Comprehensibility of sustainability disclosures to retail investors needs to be improved, including by establishing a reliable and well-designed labelling scheme for financial products. Finally, the regulatory framework needs to gain in maturity, key concepts need to be clarified and sustainability impact or engagement better integrated.

The report lays the ground for mitigating greenwashing risks in the future, throughout the SIVC and in key sectors under ESMA's remit.

The ESAs will publish final greenwashing reports in May 2024 and will consider final recommendations, including on possible changes to the EU regulatory framework.



## United States

No reported SEC updates this month.

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

### 4 May 2023

The International Sustainability Standards Board (ISSB) is seeking feedback on its [priorities](#) for its next two-year work plan. The Request for Information Consultation on Agenda Priorities is open for comments until 1 September 2023.

### 11 May 2023

The ISSB is seeking feedback on its [proposed methodology](#) for enhancing the international applicability of the SASB Standards. The consultation is open for comments, preferably by online survey, until 9 August 2023.

### 19 May 2023

A [full summary](#) of the May 2023 ISSB meeting was published in the ISSB Update. Also, the latest episode of the ISSB podcast featuring Vice-Chair Sue Lloyd and Chair Emmanuel Faber also became available. The topics discussed include the new consultations on the ISSB's agenda priorities and the international applicability of the SASB Standards.

### 24 May 2023

Erkki Liikanen, Chair of the IFRS Foundation Trustees, delivered a [speech](#) at the welcome reception for the European Accounting Association Conference in Dipoli, Finland, on 24 May 2023. The speech covers global accounting standards and global sustainability disclosures.

### 31 May 2023

The Network for Greening the Financial System (NGFS) published a [report](#) taking stock on financial institutions' transition plans and their relevance to micro-prudential authorities.

Building on the conclusions of the previous NGFS report on 'capturing risk differentials from climate-related risks' which emphasised the importance of a forward-looking approach to assess climate-related risks, the NGFS took stock of the available frameworks and literature on transition plans from external bodies and an analysis on the current state of play in the regulatory landscape as it relates to transition plans among NGFS members. The NGFS also examined the relevance and extent to which financial institutions' transition plans (i) relate to micro-prudential authorities' roles and mandates, and (ii) could be considered and used most effectively within their supervisory toolkit and in the overall prudential framework.

The report highlights the following key findings:

- While the potential of transition plans is widely recognised, there are multiple definitions of transition plans, reflecting their use for different purposes.
- There is merit in distinguishing transition planning (understood as a process to design a transition strategy) from a transition plan (transparency to a specific audience).
- Existing frameworks speak to a mix of objectives, audiences and concerns for transition plans but predominantly relate to climate-related corporate disclosures.
- Transition plans could be a useful source of information for micro-prudential authorities to develop a forward-looking view of whether the risks resulting from an institution's transition strategy are commensurate with its risk management framework.
- There are some common elements to all transition plans which are relevant to assessing safety and soundness.
- The roles those micro-prudential authorities play needs to be situated in the context of the actions of other financial and non-financial regulators rather than acting in isolation.

Following these findings, the NGFS will engage with relevant international authorities and standard setters, in order to advance their respective work on transition plans and planning in a coordinated manner. Furthermore, the sub-team will take forward additional work to advance the discussion on the relevance of transition plans to micro-prudential authorities' mandates, supervisory toolkit, and the overall prudential framework.

### 9 June 2023

The NGFS published the results of its first public feedback survey on climate scenarios, conducted in February 2023. The publication comprises a [summary note](#) and a [presentation](#).

The survey collected 213 responses from 57 countries. The survey reached both the private and public sectors, with most responses coming from non-central banks, and around a third from NGFS members. Among other things whilst respondents confirmed that they are familiar with a wide range of climate scenarios, by comparison they self-assess themselves as more experienced with NGFS scenarios. As for the development and application of climate scenario analysis, 29% of respondents are already at an advanced stage or have just started.



# 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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