

SUSTAINABILITY: RECENT ESG DEVELOPMENTS

February 2021

Environmental, Social and Governance ("ESG") factors have fast risen to the top of the board agenda across all sectors, with increasing awareness that a failure to address these matters can be detrimental both financially and reputationally. Investor pressure, internal governance and the proliferation of regulatory requirements and voluntary standards across the globe makes this a complex area to manage.

This newsletter is intended to assist banks, financial investors and corporates in keeping up to date with ESG developments.

Further details of these and previous developments can also be found on our [Green and Sustainable Finance Topic Guide](#) on the [Clifford Chance Financial Markets Toolkit](#) and further related resources can be found on our [Clifford Chance ESG page](#).

This regular newsletter is a digest of key developments on Sustainability and ESG from around the Clifford Chance network, including:

- Legal and Regulatory Requirements
- Industry Guidance, Voluntary Codes and Publications
- Official Publications
- Rating Agency, Index Provider and Data Services
- Clifford Chance Briefings and Blogs
- Clifford Chance Events

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LEGAL AND REGULATORY REQUIREMENTS

European Union

(27 January 2021) The European Parliament's Legal Affairs Committee adopted a draft report calling on the Commission to present a new EU law that would require companies to comply with human rights and environmental standards within their value chains and to be held accountable when they harm people or the planet. The draft report is expected to be voted in a plenary of the Parliament in early March 2021. | [Press release](#) | [Legislative file](#)
Environment Social Governance | **Corporates**

(21 January 2021) The European Parliament published recommendations to the Commission on workers' right to disconnect from digital tools, including information and communication technology for work purposes as a fundamental right forming an inseparable part of the new working patterns in the digital era. | [Report](#)
Social | **Market-wide**

(7 January 2021) The Joint Committee of the European Supervisory Authorities (ESAs) wrote to the EU Commission on areas of uncertainty in the interpretation of the Securities Finance Disclosure Regulation (SFDR). The ESAs have requested urgent clarifications from the Commission on specific priority areas in order ensure an orderly application of the SFDR from 10 March 2021. | [Letter](#)
Environment Social Governance | **Market-wide**

France

(3 February 2021) Four French environmental associations brought a case to the Paris administrative Court accusing the State's shortcomings in the fight against global warming. The Court considered that the partial failure of the French State to comply with the objectives that it had set itself with regards to the reduction of greenhouse gas emissions engaged its

liability and that the State should be held liable for failing to fully meet its goals in reducing greenhouse gas emissions. The judges ordered an additional investigation and set a two-month time limit to decide on measures to repair the problem. | [Press release](#) (in French) | [Judgment n° 1904967-1904968-1904972-1904976/4-1](#) (in French)
Environment Social | **Market-wide**

United States of America

(20 January 2021) US President Joe Biden signed a letter authorising the re-entry of the United States to the Paris Agreement on climate change. | [Statement](#)
Environment Social | **Market-wide**

INDUSTRY GUIDANCE, VOLUNTARY CODES AND PUBLICATIONS

International

(19 January 2021) The Loan Market Association (LMA) jointly published a Guide for Company Advisers to ESG Disclosure in Leveraged Finance Transactions with the European Leveraged Finance Association (ELFA). The Guide outlines for company advisers, including law firms, banks, and private equity sponsors, how to best integrate ESG information into offering materials and ongoing company reporting. | [Guide for Company Advisers to ESG Disclosure in Leveraged Finance Transactions](#)
Environment Social Governance | **Market-wide**

(11 January 2021) The International Swaps and Derivatives Association (ISDA) published a paper to help derivatives market participants understand the potential role of derivatives in sustainable finance. The paper outlines the range of product structures and transaction types that make up ESG-related derivatives, including sustainability-linked derivatives, ESG-related credit default swap (CDS) indices, exchange-traded derivatives on listed ESG-related equity indices, emissions trading derivatives, renewable energy and renewable fuels derivatives, and catastrophe and weather derivatives. | [Press release](#) | [Report](#)
Environment Social Governance | **Market-wide**

China

(14 January 2021) The Chinese National Information Security Standardisation Technical Committee of China (TC260) released a cybersecurity practice guide on AI ethical security risk prevention. The guide highlights ethical security risks associated with AI, including social risks and infringement of basic human rights including privacy and discrimination and sets out basic requirements for AI ethical security risk prevention. | [Press release](#) (in Chinese) | [Guide](#) (in Chinese)
Social | **Market-wide**

United Kingdom

(29 January 2021) The Confederation of British Industry (CBI) published a discussion paper on sustainable finance and the importance of facilitating the flow of capital to support business leaders in the transition to more sustainable businesses. Following the CBI's Green Finance paper in June 2019, this paper focuses on the social and governance criteria. | [Press release](#) | [Discussion paper](#)
Social Governance | **Corporates**

(29 January 2021) Loan Market Association (LMA) publishes response to EBA discussion paper on management and supervision of ESG risks for credit institutions and investment firms. | [Response](#) | [EBA discussion paper](#) (30 October 2020)
Environment Social Governance | **Market-wide**

(25 January 2021) The Association of Investment Companies (AIC) announced that it will start giving member investment companies the opportunity to share their ESG policies on its website. The companies' disclosures should become available in Q2 2021 and will be found on member companies' profile pages. | [Press release](#)
Environment Social Governance | **Asset managers**

(18 January 2021) The Investment Association (IA) published a paper setting out its shareholder priorities for listed companies in 2021, investors' expectations and the approach its corporate governance research service, IVIS, will take to assess companies against these expectations. The paper indicates that there is a greater focus on companies' plans to meet the Parker Review targets for ethnic diversity on boards. IVIS will amber top any FTSE 350 companies that do not disclose either the ethnic diversity of their board or the credible action plan they have in place to achieve the Parker Review targets. | [2021 Shareholder priorities](#)
Governance | **Asset managers Corporates**

(13 January 2021) The Investment Association (IA) and the Pensions and Lifetime Savings Association (PLSA) launched a new steering group to examine how stewardship can be better integrated into the investment process. There is an ongoing task in implementation as different EU countries such as Netherlands looked at a similar issue in November 2020. | [UK press release](#)

Environment Social Governance | **Asset managers Pension Funds**

OFFICIAL PUBLICATIONS

International

(26 January 2021) World Economic Forum (WEF) announced that 61 top business industry leaders including International Business Council (IBC) members are supporting their commitment to the Stakeholder Capitalism Metrics, a set of environmental, social and governance (ESG) metrics and disclosures released by the WEF in September 2020. Clifford Chance is a signatory. | [Press release](#) | [September 2020 report](#) | [Stakeholder Capitalism webpage](#)

Environment Social Governance | **Corporates**

(26 January 2021) European Banking Federation (EBF) and the United Environment Programme Finance Initiative (UNEP FI), launched a report that assesses how the EU Taxonomy can be applied to core banking products and outlines eight recommendations to facilitate application of the EU Taxonomy. | [Press release](#) | [Report](#) | [Case Studies](#)

Environment Social Governance | **Banks**

(20 January 2021) The Financial Stability Board (FSB) published its 2021 work programme, setting out its planned work and publications for 2021. In the area of climate change and sustainable finance, the FSB plans to explore ways to promote globally comparable, high-quality and auditable standards of disclosure based on the TCFD recommendations, review and potentially develop principles or recommendations on regulatory and supervisory approaches to addressing climate risks at financial institutions. | [Press release](#) | [2021 work programme](#)

Environment Social | **Market-wide**

(20 January 2021) Commissioner McGuinness delivered a speech at the United Nations (UN) Roundtable on Extractive Industries and Sustainable Development in the United Nations Economic Commission for Europe (UNECE) region. The Commissioner highlighted the need of shifting investment towards raw material projects that are sustainable as well as support UN initiatives that raise public awareness of the role of extractive industries and set expectations as a large consumer region for sustainable and responsible sourcing by the extractive industry. | [Transcript](#)

Environment Social | **Market-wide**

European Union

(29 January 2021) European Securities and Markets Authority (ESMA) wrote to the European Commission (EC) highlighting the challenges in the area of ESG ratings and assessment tools along with the need to match the growth in demand for these products with appropriate regulatory requirements. | [Press release](#) | [Letter](#)

Environment Social Governance | **Market-wide**

(28 January 2021) European Securities and Markets Authority (ESMA) appoints chairs to its Investor Protection and Intermediaries Standing Committee (IPISC) and Coordination Network on Sustainable Finance (CNS). | [Press release](#) | [Statement](#)

Environment Social Governance | **Market-wide**

(25 January 2021) The European Central Bank (ECB) has decided to set up a climate change centre to bring together the work on climate issues in different parts of the bank. The new unit will report to ECB President Christine Lagarde and will start work in early 2021. | [Press release](#)

Environment Social Governance | **Banks**

(21 January 2021) The EU Commission launched a consultation on its proposals to establish a European single access point (ESAP) for the financial and sustainable investment-related information that is publicly disclosed by companies under EU legislation. Comments are due by 3 March 2021. | [Press release](#) | [Consultation](#)

Environment Social Governance | **Corporates**

France

(4 February 2021) The French Treasury published a public consultation on a decree aiming to specify ESG disclosure requirements in respect of the article 29 of the Law no. 2019-1147 dated 8 November 2019 on the energy and the climate. Consultation closes 21 February 2021. | [Consultation](#) (in French)

Environment Social Governance | **Market-wide**

(20 January 2021) The Autorité des Marchés Financiers (AMF) provided clarification on various provisions of the new Sustainable Finance Disclosure Regulation (SFDR) for asset management companies that will come into force on 10 March 2021. The AMF explained the relationship between these new obligations and national requirements, and the position-recommendation DOC-2020-03 on the information to be provided by collective investment schemes integrating non-financial approaches. | [Press release](#)
Environment Social Governance | Asset managers

Hong Kong

(27 January 2021) The Hong Kong Monetary Authority (HKMA) announced that The Government of the Hong Kong Special Administrative Region of the People's Republic of China (the 'HKSAR Government') has issued a successful offering of US\$2.5 billion of green bonds under the Government Green Bond Programme. The offering comprises of the first 30-year green bond issued by an Asian government. | [Press release](#)
Environment | Market-wide

(18 January 2021) Mr Ashley Alder, Chief Executive Officer of the Hong Kong Securities and Futures Commission (SFC), delivered a speech to the Asian Financial Forum 2021 highlighting various key environmental action points for Hong Kong such as the alignment with the Task Force on Climate-related Financial Disclosures (TCFD) no later than 2015, the adoption of a universal taxonomy for green finance and the promotion of climate-focused scenario analysis by industry participants. | [Transcript](#)
Environment | Market-wide

Japan

(20 January 2021) Japan's Ministry of Economy, Trade and Industry requested feedback on the first version of its AI Governance report. The report examines domestic and international trends in AI governance including AI principles, risk assessments, classifications, and governance structures. The report also considers current and desired AI governance in Japan such as the introduction of non-legally binding corporate governance guidelines and legally binding regulations. | [Press release](#) (in Japanese) | [Report](#) (in Japanese)
Social | Market-wide

Singapore

(8 January 2021) The Monetary Authority of Singapore (MAS) announced the successful conclusion of the first phase of the Veritas initiative, a framework for financial institutions to promote the responsible adoption of artificial intelligence and data analytics (AIDA). The first phase saw the development of the first two use cases to help financial institutions validate the fairness of their AIDA solutions according to the fairness, ethics, accountability and transparency (FEAT) principles. The Veritas Consortium, comprising MAS and industry partners, also published white papers on the fairness assessment methodology and the open source code of these two use cases. Phase two of the initiative will look into developing the ethics, accountability and transparency assessment methodology for the two use cases in phase one, and will additionally include use cases for the insurance industry. | [Press release](#) | [FEAT fairness principles assessment methodology](#) (92 pages) | [FEAT fairness principles assessment case studies](#) (124 pages)
Social | Market-wide

Spain

(25 January 2021) The Banco de España is to participate in the second open-ended investment fund launched by the Bank for International Settlements (BIS) to encourage central bank investment in green bonds. The aim of this initiative is to further help central banks' incorporation of environmental sustainability objectives into the management of their investment portfolios, in response to the growing demand for climate-friendly investments. | [Press release](#) (in Spanish) | [Press release](#) (in English)
Environment | Market-wide

United Kingdom

(3 February 2021) The UK Government joins the International Platform on Sustainable Finance (IPSF). | [Press release](#) | [Statement](#) | [Factsheet](#)
Environment Social Governance | Market-wide

(27 January 2021) The Department for Work and Pensions (DWP) published a consultation 'Taking action on climate risk: improving governance and reporting by occupational pension schemes – response and consultation on regulations', which comprises a response to the DWP's August consultation (which sought views on proposals to require occupational pension scheme trustees to assess and report on the financial risks of climate change within their investment portfolios), together with a new consultation on two sets of draft regulations to implement the new requirements, along with some draft statutory

guidance. The consultation closes 10 March 2021. | [Consultation page](#) | [Consultation](#) | [Guidance](#) | [Draft regulations](#) | [Draft regulations \(misc. provisions\)](#) | [Impact assessment](#)
Environment Social Governance | Market-wide

(19 January 2021) The UK Competition and Markets Authority (CMA) published a new research paper on algorithms, showing how they can reduce competition in digital markets and harm consumers if they are misused. The publication also marks the launch of a new CMA programme of work on analysing algorithms. The paper is accompanied by a call for evidence from academics and industry experts on the potential harms to competition and consumers caused by the deliberate or unintended misuse of algorithms. The CMA also requested intelligence on specific issues with particular firms that the CMA could examine and consider for future action. | [Press release](#) | [Paper](#) | [Call for evidence](#)
Social | Market-wide

(18 January 2021) The Bank of England (BoE) hosted a webinar entitled 'Sustainable Recovery and Sustainable Growth in the Global Economy: a crucial decade for the world and a year for UK leadership' in which Governor Andrew Bailey and Professor Lord Stern, Chair of the Grantham Research Institute of Climate Change and Environment at LSE, discussed the opportunities to create a sustainable recovery, the transition to net zero, and the role and impacts on various economic sectors. | [Seminar page](#) | [Recording](#)
Environment Social | Market-wide

(6 January 2021) The UK government's AI Council published its AI Roadmap. The roadmap shortly follows the end of the Brexit transition period, outlining 16 recommendations to help the UK government's strategic direction on AI (including for developing the UK National AI Strategy). The recommendations are based around research, development and innovations, skills and diversity, data, infrastructure and public trust, and national, cross sector adoption. | [AI roadmap](#) | [Recommendations](#)
Social | Market-wide

(29 December 2020) Bank of England (BoE) published a comment letter responding to the International Financial Reporting Standards (IFRS) Foundation Consultation Paper on Sustainability Reporting, supporting the proposal to establish a new sustainability reporting standard setting body. | [BoE press release](#) | [BoE comment letter](#) | [IFRS Foundation Consultation Paper](#) (September 2020)
Environment Social Governance | Market-wide

RATING AGENCY, INDEX PROVIDER AND DATA SERVICES

International

(28 January 2021) S&P Global publish 'Sustainability In 2021: A Bird's-Eye View Of The Top Five ESG Topics'. | [S&P Global Ratings homepage](#)
Environment Social Governance | Market-wide

(27 January 2021) S&P Global publish 'Sustainable Debt Markets Surge As Social And Transition Financing Take Root' expecting that issuance of sustainable debt including green, social and sustainability-linked bonds will surpass \$700bn in 2021. | [S&P Global Ratings homepage](#)
Environment Social Governance | Market-wide

(15 January 2021) Fitch Ratings identifies five key ESG trends for 2021 that are relevant to credit ratings and highlight these in their new report 'ESG Impact on Strategy, Financing, Policies Will Grow in 2021'. | [Fitch Ratings homepage](#)
Environment Social Governance | Market-wide

(14 December 2021) Moody's publishes updated rating methodology replacing 'General Principles for Assessing Environmental, Social and Governance Risks Methodology' which includes sector-based classification of environmental, social and governance risks. | [Moody's homepage](#)
Environment Social Governance | Market-wide

ADVOCACY GROUP PUBLICATIONS

European Union

(27 January 2021) Eurosif responds to the FSB Task Force on Climate-related Financial Disclosure (TCFD) public consultation saying that forward-looking metrics could have a key role in the Net-Zero race. | [Press release](#)
Environment Social Governance | Market-wide

United Kingdom

(26 January 2021) The All-Party Parliamentary Group (APPG) on Fair Business Banking published a statement from Bankers for NetZero Initiative (BNZI) proposing to develop a set of policy recommendations ahead of COP26 designed to create a regulatory environment that enables banks to play their part in financing the net zero transition. | [Statement](#)
Environment Social Governance | **Banks**

ESG TRENDS EMERGING FROM COVID-19

European Union

(21 January 2021) The European Investment Bank (EIB) states in 'EIB Investment Report 2020/2021: Building a smart and green Europe in the COVID-19 era' that although the European Union is a global leader in green innovation the COVID-19 pandemic is green investment at risk. | [Press release](#) | [Report](#) | [Key findings](#)
Environment Social Governance | **Market-wide**

CLIFFORD CHANCE BRIEFINGS AND BLOGS

- (3 February 2021) Clifford Chance Briefing: [Evergreen bonds: an introduction to post-issuance green bond reporting in Europe](#)
- (27 January 2021) Clifford Chance Blog: [New FTC Enforcement Action Reveals Novel Facial Recognition Settlement](#)
- (21 January 2021) Clifford Chance Briefing: [EU Digital Services Act and Digital Markets Act: What are the implications?](#)
- (20 January 2021) Clifford Chance Comment: [ESG – an Enhanced Decommissioning Framework in Australia's Offshore Oil & Gas Sector](#)
- (19 January 2021) Clifford Chance Briefing: [Mandatory Human Rights and Environmental Due Diligence: What an EU-level law will mean for business](#)
- (13 January 2021) Clifford Chance Blog: [Climate change actions against corporations: Milieudefensie et al. v. Royal Dutch Shell plc.](#)
- (11 January 2021) Clifford Chance Blog: [Legal action based on the French Vigilance Law triggered by a wind farm project in Mexico](#)
- (6 January 2021) Clifford Chance Blog: [European Union adopts Magnitsky-Style Global Human Rights Sanctions Regime](#)
- (4 January 2021) Clifford Chance Briefing: [Sweeping AML Reform Legislation enacted as part of the National Defense Authorization Act for Fiscal Year 2021](#)

CLIFFORD CHANCE EVENTS

(20 January 2021) European Perspectives | ESG Series: [Towards Sustainable Corporate Governance and New Due Diligence Duties in Europe](#)

(14 January 2021) Clifford Chance European Perspectives | Tech Series - [New EU Digital Services Act and Digital Markets Act: the Commission's proposals and what they could mean for you.](#)

CONTACTS

Clare Burgess
Partner
London (Capital
Markets)

T +44 20 7006 1727
E clare.burgess
@cliffordchance.com

Gregor Evenkamp
Partner
Frankfurt (Funds &
Investment
Management)

T +49 69 7199 3158
E gregor.evenkamp
@cliffordchance.com

Kate Gibbons
Partner
London (Global
Knowledge)

T +44 207006 2544
E kate.gibbons
@cliffordchance.com

Nadia Kalic
Partner
Sydney (Corporate)

T +61 2 8922 8095
E nadia.kalic
@cliffordchance.com

Rae Lindsay
Partner
London (Litigation &
Dispute Resolution)

T +44 207006 8622
E rae.lindsay
@cliffordchance.com

Alexandra Davidson
Partner
London (Funds &
Investment
Management)

T +44 207006 2581
E alexandra.davidson
@cliffordchance.com

Thais Garcia
Partner
New York (Corporate)

T +1 212 878 8497
E thais.garcia
@cliffordchance.com

Nigel Howorth
Partner
London (Environment)

T +44 207006 4076
E nigel.howorth
@cliffordchance.com

Daud Khan
Partner
London (Corporate)

T +44 207006 6069
E daud.khan
@cliffordchance.com

Viola Lui
Partner
Hong Kong (Funds &
Investment
Management)

T +85 22825 8842
E viola.lui
@cliffordchance.com

Caroline Dawson
Partner
London (Global
Financial Markets)

T +44 20 7006 4355
E caroline.dawson
@cliffordchance.com

Christine Gärtner
Partner
Frankfurt (Litigation)

T +49 69 7199 1414
E christine.gaertner
@cliffordchance.com

Jacqueline Jones
Knowledge Director
London (Editor)

T +44 20 7006 2457
E jacqueline.jones
@cliffordchance.com

Roger Leese
Partner
London (Litigation &
Dispute Resolution)

T +44 207006 8710
E roger.leese
@cliffordchance.com

Steve Nickelsburg
Partner
Washington (Litigation)

T +1 202 912 5108
E steve.nickelsburg
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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London, E14 5JJ

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C L I F F O R D
C H A N C E

Jeroen Ouwehand
Global Senior Partner
Amsterdam

T +31 20 711 9130
E jeroen.ouwehand
@cliffordchance.com

Thomas Voland
Partner
Dusseldorf (Corporate)

T +49 211 4355 5642
E thomas.voland
@cliffordchance.com

Sonya Pauls
Partner
Munich (Corporate)

T +49 89 21632 8550
E sonya.pauls
@cliffordchance.com

Cheng Li Yow
Partner
London (Corporate)

T +44 207006 8940
E chengli.yow
@cliffordchance.com

Natsuko Sugihara
Partner
Tokyo (Corporate)

T +81 3 6632 6681
E natsuko.sugihara
@cliffordchance.com

Deborah Zandstra
Partner
London (Global
Financial Markets)

T +44 207006 8234
E deborah.zandstra
@cliffordchance.com