

# Sustainability & ESG

## Quarterly Roundup

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### December 2023

In this quarterly newsletter, we highlight key developments relating to environmental, social and governance (“ESG”) topics over the past quarter, with a focus on developments of interest to U.S. public and private companies, and companies operating in the United Kingdom and European Union. We also provide links to significant ESG developments that are expected in the near future. Our previous newsletter is available [here](#).

#### As described below, this Quarterly Roundup addresses significant developments relating to:

- Emissions and emissions reductions disclosure
- ESG enforcement and greenwashing
- Corporate compliance
- Sustainable financing and investment
- Diversity, equity and inclusion
- AI and cybersecurity
- Pro-ESG and anti-ESG at the US state level
- International ESG disclosure frameworks

### Key Quarterly Developments

- **New California Laws Requiring Climate-Related Disclosures by Large Public and Private Entities.** On October 7, 2023, California Governor Gavin Newsom signed into law the Climate Corporate Data Accountability Act ([SB 253](#)), which requires entities (corporations, partnerships, limited liability companies and other business entities) formed in the U.S. that have total annual revenues exceeding \$1 billion and that do business in California to publicly disclose, starting in 2026, their annual scope 1 and scope 2 greenhouse gas (“GHG”) emissions, and, starting in 2027, their annual scope 3 GHG emissions. Such disclosures will also need to be verified by an independent auditor. Also on October 7, 2023, Governor Newsom signed into law the Climate-Related Financial Risk Act ([SB 261](#)), which requires entities (corporations, partnerships, limited liability companies and other business entities) formed in the U.S. that have total annual revenues exceeding \$500 million and that do business in California to annually disclose a report disclosing the entity’s climate-related financial risk and measures adopted to reduce and adapt to climate-related financial risk. Under both statutes, disclosure will be required by public and private entities. The new laws, collectively referred to as the “Climate Accountability Package,” are estimated to affect up to 10,000 companies doing business in California and will raise the bar significantly on corporate climate disclosure in the U.S. irrespective of the finalization by the U.S. Securities and Exchange Commission (“SEC”) of its proposed climate disclosure rules. In signing both bills, Governor Newsom questioned the feasibility of the current implementation deadlines, among other things. For more information, see our prior alert, [A New Benchmark for Corporate Transparency on Climate](#).
- **New California Law Requiring Disclosures Relating to Carbon Offsets and Emissions Reductions Goals.** On October 7, 2023, Governor Newsom signed into law [AB 1305](#), which requires businesses operating in California that market or sell voluntary carbon offsets, or make claims regarding the achievement of net zero emissions, carbon neutral status about the company or a product, or significant carbon emissions reductions to

make certain disclosures regarding these activities on the company's website including whether data and claims have been verified by an independent third-party. AB 1305's effective date is January 1, 2024; however, the bill's author, Assemblymember Jesse Gabriel, has indicated in a [letter](#) to the Chief Clerk of the Assembly that the intended effective date is January 1, 2025, and that he intends to submit a formal letter to the Assembly Daily Journal when the State Assembly reconvenes on January 3, 2024.

- **Corporate Sustainability Reporting Directive Developments.** On October 17, 2023, the European Commission adopted a [delegated act](#) that would, among other things, amend the Accounting Directive to increase the size thresholds for "large undertakings" that are required to provide sustainability disclosures under the Corporate Sustainability Reporting Directive ("CSRD"). Under the delegated act, the balance sheet test would increase from €20 million to €25 million, and the turnover test would increase from €40 million to €50 million; the average number of employees (250) test would not change. The European Parliament and Council have two months to review and object to the amendments. Also on October 17, 2023, the European Commission issued its [2024 Work Programme](#), which included a [proposal](#) to amend the CSRD to delay by two years (to June 30, 2026) the adoption date for sector-specific European Sustainability Reporting Standards ("ESRS"), and the adoption date for the ESRS to be used by certain non-EU companies with business in the EU; the underlying compliance dates were not extended. Both sets of ESRS are currently under development. Comments are due December 19, 2023. On October 23, 2023, EFRAG [announced](#) that the ESRS that have been issued to date are now final because the European Council did not exercise its right to veto the ESRS by the October 21, 2023 deadline. On October 24, 2023, EFRAG launched a [Q&A Platform](#) to answer questions about ESRS implementation, with responses to be made public.
- **Final Recommendations and Implementation Guidance Issued by the Taskforce on Nature-related Financial Disclosures.** On September 18, 2023, the Taskforce on Nature-related Financial Disclosures ("TNFD") launched its final [recommendations](#) and accompanying [implementation guidance](#) for companies to report and act on nature-related dependencies, impacts, risks and opportunities. The recommendations are voluntary and aim to help operationalize the Global Biodiversity Framework. The recommendations are based on those used in the Taskforce on Climate-related Financial Disclosures ("TCFD"), which in many respects have formed the basis for mandatory disclosure standards issued by the International Sustainability Standards Board ("ISSB") and the ESRS.

## United States

### ESG-Related Enforcement & Greenwashing

- **SEC Enforcement Results for Fiscal 2023 Highlight ESG Actions.** On November 14, 2023, the SEC released its [enforcement results](#) for the fiscal year ended September 30, 2023. The release highlights several ESG-related enforcement actions, including two against financial institutions for misstatements regarding ESG investments.
- **SEC Enforcement Action Applies Broad Interpretation to Internal Controls Requirements.** On November 14, 2023, the SEC [announced](#) settled charges against a public company for violating internal controls requirements relating to its stock buybacks. As discussed in [dissenting statements](#) by SEC Commissioners Pierce and Uyeda, the SEC's [order](#) broadly interprets the "internal accounting controls" that are required by Section 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), to include controls to ensure compliance with trading plan conditions set forth in Exchange Act Rule 10b5-1. According to the dissenting Commissioners, "[c]ontrols designed to answer a legal question—compliance with the regulatory conditions necessary to qualify for an affirmative defense—are simply not internal accounting controls within Section 13(b)(2)(B)'s scope."

- **SEC Enforcement Actions Targeting Separation Agreements that Violate Whistleblower Protection Rules.** During 2023, the SEC has announced several enforcement actions against public and private companies for using separation agreements that violate the whistleblower protection rules in Exchange Act Regulation 21F (specifically, Rule 21F-17(a)). Examples of separation agreement provisions that the SEC has determined violate the whistleblower protection rules include:
  - Requirement that departing employees attest that they have not lodged any complaints against the company (see orders [here](#) and [here](#)).
  - Waiver of the right to receive monetary incentives in connection with filing a claim or participating in a government investigation (see orders [here](#) and [here](#)).
  - Requirement that former employees notify the company if they receive a request from a government agency in connection with a report or complaint (see [order](#)).

The SEC also found the whistleblower protection rules were violated by a firm whose employment agreements prohibited employees from disclosing confidential information, including any information gained through employment that could be deleterious to the firm, to anyone outside the firm unless authorized by the firm or required by law or an order of a court or other regulatory or governmental body (see [order](#)). For more information, see our prior alert, [SEC Settles Charges Regarding Adviser's Violation of Whistleblower Protection Rules](#).

- **SEC Division of Examinations Priorities for 2024 Do Not Specifically Include ESG.** On October 16, 2023, the SEC posted its [2024 priorities for its Division of Examinations](#), which for the first time since 2019 do not specifically mention ESG. The 2024 priorities, which are targeted towards investment advisers, investment companies, self-regulatory organizations, clearing agencies, and certain other market participants, are non-exhaustive and include cybersecurity, financial technology, money laundering and compliance programs. For more information, see our prior alert, [SEC's Division of Examinations Announces 2024 Examination Priorities for Private Fund Sponsors](#).
- **California Sues Major Oil Companies Over Fossil Fuel-Related Risks.** On September 16, 2023, the California Attorney General [announced](#) that he has filed a [lawsuit](#) in San Francisco County Superior Court charging five major oil companies and their trade group, the American Petroleum Institute, with creating a public nuisance, damaging natural resources and state property, and violating California law by misleading state residents with false advertising. Similar claims have been filed against oil companies by Baltimore, Rhode Island and Honolulu.

## Corporate Compliance

- **DOJ M&A Safe Harbor Policy to Encourage Self-Reporting of Criminal Misconduct.** On October 4, 2023, the Department of Justice ("DOJ") [announced](#) a new Mergers & Acquisitions Safe Harbor Policy, as another tool to promote corporate compliance. Under the policy, where an acquiring company: 1) timely and voluntarily discloses criminal misconduct of a business it acquires within six months of closing (regardless of whether the misconduct was discovered pre- or post-acquisition); 2) cooperates with any necessary investigation; and 3) timely remediates the problem (with a one year baseline) and makes the required restitution and disgorgement, the acquiring company will receive the presumption of a declination of criminal prosecution. If the company does not perform effective due diligence or self-disclose misconduct at an acquired entity, it will be subject to full successor liability for that misconduct under the law. For more information, see our prior alert, [DOJ Announces New Safe Harbor Policy for M&A Transactions](#).

## Sustainable Financing and Investment

- **Amended SEC Names Rule Targeting Greenwashing by Investment Funds.** On September 20, 2023, the SEC adopted [amendments](#) to the rule under the Investment Company Act of 1940 (Rule 35d-1) that requires asset managers to invest at least 80% of an ESG fund's assets in accordance with the investment focus that the fund's name suggests. The rule amendments also include enhanced prospectus disclosure requirements for terminology used in fund names. The rule amendments became effective December 11, 2023. Fund groups with net assets of \$1 billion or more will have 24 months to comply with the amendments, and fund groups with net assets of less than \$1 billion will have 30 months to comply.
- **Climate-Related Guidance for Financial Institutions.** On September 19, 2023, the U.S. Department of the Treasury released [Principles for Net-Zero Financing and Investment](#) for financial institutions. Among other things, the principles recommend net-zero commitments be in line with limiting the increase in the global average temperature to 1.5°C and assess client and portfolio alignment to this target, and that declarations should be accompanied or followed by the development and execution of a net-zero transition plan. On October 24, 2023, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency issued final interagency [Principles for Climate-related Financial Risk Management for Large Financial Institutions](#) (i.e., those with \$100 billion or more in total consolidated assets). The principles cover six areas of climate-related financial risk management: governance; policies, procedures and limits; strategic planning; risk management; data, risk measurement and reporting; and scenario analysis. The principles also describe how climate-related financial risks can be addressed in the management of traditional risk areas, including credit risk, liquidity risk, operational risk, legal and compliance risk, and other financial and non-financial risks.
- **Proposed New NYSE Listing Standards for Natural Asset Company Equity Securities.** On September 27, 2023, the NYSE filed with the SEC a [proposal](#) to adopt new listing standards for common stock of a new type of public company, a Natural Asset Company ("NAC"), which is defined in the proposed rules as "a corporation whose primary purpose is to actively manage, maintain, restore (as applicable), and grow the value of natural assets and their production of ecosystem services, and whose value is based on those natural assets and ecosystem services." NACs would be required to file an Ecological Performance Report addressing topics such as carbon emissions and the "economic value of each of the ecosystem services" their natural assets produce, with such report to be overseen by the audit committee. NACs would also be required to adopt an Environmental and Social Policy, a Biodiversity Policy, a Human Rights Policy, and an Equitable Benefit Sharing Policy. The comment period closed November 19, 2023. In a November 7, 2023 [filing](#), the SEC designated January 4, 2024 as the date by which the SEC shall either approve or disapprove the proposed rule change.

## Diversity, Equity & Inclusion, Labor & Human Rights

- **Nasdaq Board Diversity Rule Survives Challenge.** On October 18, 2023, the U.S. Court of Appeals for the Fifth Circuit rejected a petition to review a Nasdaq Stock Market rule requiring corporations that list on the exchange to disclose board diversity data, ruling that the exchange is a private entity and not a government actor subject to constitutional scrutiny and its rule cannot be attributed to the SEC ([Alliance for Fair Board Recruitment and the National Center for Public Policy Research v. SEC \(Case 21-60626\)](#)). On October 25, 2023, the Alliance for Fair Board Recruitment filed a [petition](#) requesting a rehearing en banc.
- **California Statutes Strengthening Prohibitions on Non-Compete Agreements.** On October 13, 2023, Governor Newsom signed [AB 1076](#), which renders unlawful—rather than merely void, as was previously the case—contracts that restrain any individual from engaging in a lawful profession, trade, or business, generally including (with exceptions) post-employment non-compete agreements. The law also requires employers to provide written notification to certain current and former employees that existing non-compete agreements are void, by February 14, 2024. In addition, pursuant to [SB 699](#), which takes effect on January 1, 2024, employees

now have a private right of action against employers who enter into or seek to enforce unlawful restrictive covenants.

- **Diversity-Related Disclosures Required by Venture Capital Firms in California.** On October 8, 2023, Governor Newsom signed [SB 54](#), which requires venture capital firms headquartered or operating significantly in California to report to the Civil Rights Department on March 1, 2025 and annually thereafter the number of diverse founders they invest in and disclose aggregated data about their race/ethnicity, sexual orientation, gender identity, disability, veteran status and California residency status. Such firms must also report the dollar amount given to firms with diverse founders and as a percentage of total investments. Reports are to be posted on the Civil Rights Department website. When signing the bill, Governor Newsom expressed concern about the bill's "problematic provisions and unrealistic timelines," and proposed amending the language.

## Emissions, Climate Change & Public Health

- **EPA Rulemaking.** The U.S. Environmental Protection Agency ("EPA") has engaged in extensive rulemaking activity over the past several months relating to emissions and public health measures, including:
  - On November 30, 2023, the EPA [proposed](#) strengthening its Lead and Copper Rule that would require water systems across the country to replace lead service lines within 10 years. EPA is also proposing additional improvements to protect public health, such as lowering the lead action level and improving sampling protocols utilized by water systems. Comments on the proposed rule are due February 5, 2024.
  - On November 20, 2023, the EPA [proposed](#) a rule that would impose workplace safety protections and restrict water releases so as to protect people from exposure to two chemicals that are toxic, remain in the environment for long periods of time, and accumulate in the body -- decabromodiphenyl ether (decaBDE) and phenol, isopropylated phosphate (3:1) (PIP (3:1)); both are used as flame retardants, among other things. The proposed rule would also address broader implementation issues affecting the supply chains of various industry sectors including the nuclear energy sector, transportation, construction, agriculture, forestry, mining, life sciences, and semiconductor production. Comments on the proposed rule are due January 8, 2024.
  - On October 20, 2023, the EPA [finalized](#) a rule that improves reporting on per- and polyfluoroalkyl substances ("PFAS") to the Toxics Release Inventory by eliminating an exemption that allowed facilities to avoid reporting information on PFAS when those chemicals were used in small concentrations.
  - On October 6, 2023, the EPA [announced](#) two actions to phase down hydrofluorocarbons ("HFCs") under the American Innovation and Manufacturing Act. The first action is a [final rule](#) to accelerate the ongoing transition to more efficient and climate-safe technologies in new refrigeration, heating and cooling systems and other products by restricting the use of HFCs where alternatives are already available. The rule bans HFCs in certain equipment and sets a limit on the global warming potentials of the HFCs that can be used in each subsector, with compliance dates ranging from 2025 to 2028. The second action is a [proposed rule](#) to better manage and reuse existing HFCs, including by reducing wasteful leaks from equipment and supporting a growing American industry for HFC recycling and reclamation. Comments on the proposed rule are due December 18, 2023.

## Cybersecurity / Privacy / Technology

- **Executive Order and G7 Code of Conduct on AI Development and Use.** On October 30, 2023, President Biden issued an [Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#). The Executive Order directs actions relating to AI safety and security standards, privacy preservation, advancement of equity and civil rights, responsible use of AI including by the government and in the healthcare industry, impact of AI on the workforce, promotion of innovation and competition, modernization

of federal AI frameworks, and development of multilateral standards relating to AI. Also on October 30, 2023, the Group of Seven nations issued [guiding principles](#) and a [voluntary code of conduct](#) for companies developing advanced AI systems. For more information, see our prior alert, [SEC Disclosures of Artificial Intelligence Technologies](#).

- **SEC Enforcement Action Against Software Company and Chief Information Security Officer Relating to Cyber Breach Disclosures.** On October 30, 2023, the SEC announced [charges](#) against a software company that was impacted by a two-year cyberattack, and the company's chief information security officer ("CISO"), for fraud and internal control failures relating to allegedly known cybersecurity risks and vulnerabilities. The complaint alleges that the company and the CISO defrauded investors by overstating the company's cybersecurity practices and understating or failing to disclose known risks.
- **New York Department of Financial Services Amends Cybersecurity Rules.** On November 1, 2023, the New York Department of Financial Services ("NYDFS") announced [amendments to Cybersecurity Regulation, 23 NYCRR Part 500](#). The amendments should be of interest to all companies, not just financial services firms regulated by the NYDFS. The amendments include enhanced governance requirements and guidance for boards providing oversight of cybersecurity, additional controls to prevent unauthorized systems access and to mitigate an attack's spread, requirements for more regular risk and vulnerability assessments and more robust incident response and resiliency planning, updated notification requirements, and guidance around training.
- **New Delaware Personal Data Privacy Act.** On September 11, 2023, Delaware Governor John Carney signed into law House Bill 154, known as the [Delaware Personal Data Privacy Act](#) ("DPDPA"), which will take effect on January 25, 2025. The new law will require business to provide consumers with the ability to access, correct, delete and stop the sale of their personal information. The DPDPA applies to organizations that control or process personal data of (1) 35,000 or more Delaware residents in a given year or (2) 10,000 or more Delaware residents and derive more than 20% of their gross revenue from the sale of personal data; the DPDPA does not include a revenue threshold. Most nonprofit organizations are not exempt from its requirements.

## Compensation Clawbacks

- **NYSE and Nasdaq Clawback Now Rules In Effect; NYSE Notification Required by December 31, 2023.** On October 12, 2023, the New York Stock Exchange ("NYSE") [emailed](#) listed issuers reminding them that they must adopt a clawback policy no later than December 1, 2023 and confirm via the Listing Manager web platform by December 31, 2023 that the company has adopted such a policy by that date or is relying on an exemption. For more information, see our prior alert, [NYSE and Nasdaq Propose Compensation Clawback Listing Standards](#).

## ESG / Sustainability Stakeholder Views

- **Glass Lewis Proxy Voting Policy Guidelines Requiring Disclosure of Committee Responsible for Oversight of Environmental and Social Risks.** On November 16, 2023, Glass Lewis issued its [proxy voting policy guidelines](#) for the upcoming United States proxy season, effective January 1, 2024. The policy guidelines provide that given the importance of the board's role in overseeing environmental and social risks, this responsibility should be formally designated and codified in the appropriate committee charters or other governing documents. For Russell 3000 companies and in instances where Glass Lewis identifies material oversight concerns, Glass Lewis will review a company's overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues. Glass Lewis will generally recommend voting against the governance committee chair of a Russell 1000 company that fails to provide explicit disclosure concerning the board's role in overseeing these issues. In addition, Glass Lewis may recommend voting against directors at S&P 500 companies with material exposure to climate risk stemming from their own operations (in industries as determined by the Sustainability Accounting

Standards Board) where the company does not disclose board-level oversight responsibility for climate-related issues or if the company does not provide disclosure in line with TCFD recommendations.

## Other ESG / Sustainability

- **PCAOB Sanctions Against China-Based Accounting Firms for Widespread Auditing Standard Violations and Training Exam Misconduct.** On November 30, 2023, the Public Company Accounting Oversight Board (“PCAOB”) announced far-reaching [disciplinary orders](#) sanctioning three China-based firms and four individuals for a wide range of violations of the U.S. securities laws and PCAOB rules and standards, including around auditor independence, reliance on a predecessor auditor’s work and improper sharing of training exam answers.

## Pro-ESG – Selected State Developments

- **New York.** On October 16, 2023, [SB 7704](#) and [SB 7705](#) were introduced into the New York Senate. The bills would require extensive emissions and climate-related financial risk disclosures, and are virtually identical to SB 261 and SB 253, respectively, that were recently enacted in California and discussed above.

## Anti-ESG – Selected State Developments

- **26 Republican Attorneys General.** On September 21, 2023, in [Utah, et al. v. Walsh, No. 2:23-CV-016-Z \(U.S. District Court for the Northern District of Texas \(September 21, 2023\)\)](#), a federal court held that the U.S. Department of Labor’s [ESG rule](#) issued in 2022 regarding the duties of employee benefit plan fiduciaries in selecting investments did not violate the Employment Retirement Income Security Act of 1974 and was not “arbitrary and capricious” under the Administrative Procedure Act. On October 26, 2023, the plaintiffs, including 26 Republican attorneys general, filed a [notice of appeal](#) to have the case heard by the U.S. District Court of Appeals for the Fifth Circuit.
- **Texas.** On October 17, 2023, the Texas Attorney General issued [enforcement guidance](#) for state laws prohibiting public contracts with companies that maintain ESG policies considered unlawful under Texas law. On November 1, 2023, the Texas Comptroller’s office [announced](#) the addition of five new firms to its [list of financial companies](#) (now 15) that “boycott the oil and gas industry,” which are subject to state divestment by state governmental entities pursuant to Texas Government Code Chapter 809.

## UK / EU

- **UK Financial Conduct Authority Policy Statement on Sustainability Disclosure Requirements and Anti-Greenwashing Guidance Consultation.** On November 28, 2023, the UK Financial Conduct Authority (“FCA”) issued a [Policy Statement, Sustainability Disclosure Requirements \(SDR\) and Investment Labels](#), that sets forth comprehensive ESG disclosure, sustainable product labelling and fund naming rules. Also on November 28, 2023, the FCA launched a [consultation](#) on proposed [Guidance on the Anti-Greenwashing Rule](#). The rule (ESG 4.3.1R of the FCA Handbook) helps ensure that sustainability-related claims are not misleading and are consistent with the product’s characteristics. The consultation ends January 26, 2024.
- **UK Department for Energy Security and Net Zero (“DESNZ”) Call for Evidence: Scope 3 Emissions.** On October 19, 2023, DESNZ published a [call for evidence](#), which seeks views on the costs, benefits and practicalities of standardized Scope 3 emissions reporting against the current Streamlined Energy and Carbon Reporting framework, introduced in 2019 and applicable to all UK listed companies and large UK private companies and LLPs. The call for evidence closes December 14, 2023.
- **English Court of Appeal Refuses Permission to Appeal High Court’s Judgment on Fiduciary Duty Claim Regarding Climate Change.** On November 14, 2023, the English Court of Appeal refused permission for ClientEarth to appeal the previous [judgment](#) that they had failed to make out a prima facie case to enable them

to proceed with a derivative action against Shell's directors for alleged fiduciary duty breaches relating to climate change risk management.

- **UK Competition and Markets Authority Guidance on Environmental Sustainability Agreements.** On October 12, 2023, the UK Competition and Markets Authority issued [Green Agreements Guidance](#), to help businesses understand how competition law applies to environmental sustainability agreements. The guidance describes types of agreements that are unlikely to raise competition concerns, which include among others agreements to set non-binding industry-wide environmental sustainability targets or ambitions, and agreements to phase out unsustainable products.
- **EU Consultation Seeking Feedback on SFDR.** On September 14, 2023, the European Commission launched a [targeted consultation and a public consultation](#) seeking feedback on the Sustainable Finance Disclosure Regulation ("SFDR"). The consultation closes December 15, 2023.
- **EU Green Bond Standard.** On November 30, 2023, the [EU Green Bond Standard Regulation](#) was published in the Official Journal of the EU. The regulation lays down uniform requirements for issuers of bonds that wish to use the designation "European green bond" or "EuGB" for their environmentally sustainable bonds. The voluntary standard relies on the EU Taxonomy Regulation to define sustainable economic activities and would require disclosure on how proceeds are to be utilized.
- **EU Proposed Directive Banning Greenwashing and Regulating Consumer Advertising.** On September 19, 2023, the European Parliament and Council reached a [provisional agreement](#) on new rules to ban misleading advertisements and provide consumers with better product information. The agreement updates the existing EU list of banned commercial practices and adds to it several problematic marketing habits related to greenwashing and early obsolescence of goods. Among other things, the rules as proposed would prohibit generic environmental claims (such as "environmentally friendly", "natural", "biodegradable", "climate neutral" or "eco") without proof of recognized excellent environmental performance relevant to the claim, and claims based on emissions offsetting schemes that a product has neutral, reduced or positive impact on the environment. To become law, the provisional agreement must be approved by both the Parliament and the Council. Parliament's Committee on Internal Market and Consumer Protection approved the deal on November 28, 2023. The final plenary vote by members of the European Parliament is expected to take place in January 2024.
- **Revised EU Renewable Energy Directive.** On November 20, 2023, the [revised Renewable Energy Directive \(EU/2023/2413\)](#) entered into force. The revised Directive sets an overall renewable energy target of at least 42.5% binding at EU level by 2030 (up from 32% under the 2018 version of the Directive), but aiming for 45%. Most of the Directive's provisions are required to be transposed into national law within 18 months, with a shorter deadline of July 2024 for certain provisions related to permitting for renewables.
- **EU Carbon Border Adjustment Mechanism Regulation.** Since October 1, 2023, the first reporting obligations under the (EU) 2023/956 on the establishment of a [carbon border adjustment mechanism](#), which came into force on May 17, 2023, have applied. The regulation aims to price greenhouse gases from imports at the same level as products manufactured in the EU in order to prevent domestic industry, which has to bear rising CO<sub>2</sub> costs under the EU Emissions Trading System, from relocating to countries without comparable CO<sub>2</sub> pricing.
- **EU Restrictions on Methane Emissions.** On November 15, 2023, the European Parliament and Council reached a [provisional agreement](#) on new restrictions on methane emissions. As drafted, the regulation would provide for reducing energy sector methane emissions in Europe and in its global supply chains. It also aims to stop the avoidable release of methane into the atmosphere and to minimize leaks of methane by fossil energy companies operating in the EU. To become law, the provisional agreement must be approved by both the Parliament and the Council.

- **EU “ReFuelEU” Aviation.** On October 9, 2023, the EU Council adopted a new [legal act](#) on the decarbonization of the aviation sector. The main objective is to increase both the demand for and the supply of sustainable aviation fuels – which produce less CO<sub>2</sub> emissions than fossil kerosene – while ensuring a level playing field across the EU aviation market. The legislation is to apply from January 1, 2024.
- **EU Proposed Changes to the Energy Performance of Buildings Directive.** On December 7, 2023, Representatives of the European Parliament, the member states and the EU Commission reached a [provisional agreement](#) on the key points of the new [EU Buildings Directive](#) in the so-called trilogue procedure. The agreement still has to be formally approved by the respective EU institutions. In terms of content, instead of requirements for individual buildings, there are now to be overall targets for the building stock.

## International

- **Proposed Climate Disclosure Rules for Banks.** On November 29, 2023, the Basel Committee on Banking Supervision [proposed a disclosure framework for climate-related financial risks](#) for banks. The rules as proposed would take effect January 1, 2026 and include quantitative and qualitative metrics that complement the ISSB framework and provide a common disclosure baseline for internationally active banks. Comments are due February 29, 2024.
- **CDP Standards to Align with ISSB Climate Disclosure Standard and TNFD Recommendations.** On October 18, 2023, CDP [announced](#) that it will align its voluntary 2024 questionnaire with the ISSB's climate disclosure standard (IFRS S2) and from next year will start to reflect the TNFD framework, encouraging more companies to report across both climate and nature matters. CDP has also committed to reflecting in its disclosure standard the SEC's upcoming climate disclosure rule and the ERSRs (CDP's cooperation with EFRAG is discussed [here](#)). In its announcement, CDP stated that a record 23,000+ global companies – including listed companies worth over two thirds of market capitalization – reported environmental data through CDP in 2023.

# ESG Developments On the Radar

Listed below are significant forthcoming ESG-related rulemaking and other developments that are expected in the near future. We have provided links to current materials to facilitate real-time tracking. Dates (where provided) reflect current guidance and are subject to change.

## United States

- **SEC rulemaking:**
  - Final rules on [climate change disclosure](#) (April 2024)
  - Final rules on [enhanced disclosures by certain investment advisers and investment companies about ESG investment practices](#) (April 2024)
  - Proposed rules on [human capital management disclosure](#) (April 2024)
  - Proposed rules on [board diversity disclosure](#) (October 2024)
  - Final NYSE listing standards on [Natural Asset Company equity securities](#) (January 2024)
  - Final amendments to PCAOB Auditing Standards related to a [company's noncompliance with laws and regulations](#)
- **Other federal agency rulemaking:**
  - Final [Federal Supplier Climate Risk and Resilience Rule](#)
  - Final [Federal Sustainable Products and Services procurement rule](#) (April 2024)
  - Final EPA standards on [car](#) and [truck emissions](#) (March 2024)
  - Final EPA [drinking water](#) regulation (September 2024)
  - Final EPA standards limiting [power plant GHG emissions](#)
  - Final U.S. Federal Trade Commission ("FTC") rules on [non-compete clauses](#) (2024)
  - Revised FTC [Guides for the Use of Environmental Marketing Claims](#) ("Green Guides")
- Decision on [petition](#) for rehearing en banc of U.S. Court of Appeals for the Fifth Circuit decision on challenge to Nasdaq board diversity rules (*Alliance for Fair Board Recruitment and the National Center for Public Policy Research v. SEC* (Case 21-60626))
- [U.S. Supreme Court](#) decision on whether shareholders can sue companies for fraud when they fail to disclose trends and uncertainties as required by Item 303 of SEC Regulation S-K, even in the absence of an otherwise misleading statement (*Macquarie Infrastructure Corp. v. Moab Partners, L.P.* (Case 22-1165))
- [U.S. Supreme Court](#) decision on challenge to constitutionality of SEC administrative enforcement proceedings seeking civil penalties (*SEC v. Jarkesy, et al.* (Case 22-859))
- **State legislation:**
  - New York [SB 7704](#)
  - New York [SB 7705](#)

## UK/EU

- Final revised UK [Corporate Governance Code](#) (January 2024)
- Proposed [UK Sustainability Disclosure Standards](#) (endorsement of ISSB by July 2024)
- Final EU [Corporate Sustainability Due Diligence Directive](#)
- Draft [sector-specific](#) and foreign parent-specific European Sustainability Reporting Standards
- Final EU [Green Claims Directive](#)
- Final [EU Directive Banning Greenwashing](#)
- Final [IFRS Sustainability Disclosure Taxonomy](#)
- Final [EU Regulatory Technical Standards under the Sustainable Finance Disclosure Regulation](#) (Q1 2024)
- Proposed [revised SFDR](#)
- Final European Securities and Markets Authority [guidelines on funds' names using ESG or sustainability-related terms](#)
- Proposal for an EU regulation [prohibiting products made using forced labor](#), including products made in the EU for domestic consumption and export, and imported products
- Final EFRAG Implementation Guidance for [Materiality Assessments](#), [Value Chain](#), and [ESRS Data Points](#) (Q1 2024)

## International

- Final [UN Business and Human Rights Treaty](#)
- Proposed [UN Global Plastics Treaty](#)
- Final [International Standard on Sustainability Assurance \(ISSA\) 5000, General Requirements for Sustainability Assurance Engagements](#) (2024)

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