



DECEMBER 2022

6 Sustainability Takeaways in EU Antitrust & Regulatory

Latham lawyers highlight key takeaways and developments in the sustainability space from the second half of the year.

1

European Parliament and European Council Adopt CSRD

European Parliament and European Council | 10 November 2022

The Corporate Sustainability Reporting Directive (CSRD) is one step closer to being enacted into EU law after the European Parliament adopted it on 10 November 2022.

The EU intends that the CSRD will make large businesses more publicly accountable for their sustainability performance by requiring them to make regular public disclosures on their social and environmental impact. The CSRD will apply to both large businesses in the EU and large global businesses with significant operations in the EU, meaning the legislation has global importance.

The specific reporting requirements under the CSRD are being determined in a set of reporting standards (the European Sustainability Reporting Standards, or ESRS), the first set of which are to be adopted by the European Commission by 30 June 2023. On 15 November 2022, the technical group advising the Commission on the ESRS published its final recommended draft ESRS, which the Commission will now consult on ahead of adoption (likely in 2023).

The European Council adopted the CSRD on 28 November 2022, and the CSRD has now been published in the *Official Journal*. Reporting requirements will begin to apply to companies in stages, starting in 2024. See more [here](#) and [here](#).

2

European Commission Moves to Ban Products Made With Forced Labour on EU Market

European Commission | 14 September 2022

The European Commission proposed to prohibit products made with forced labour on the EU market. The proposal covers all sectors and applies to goods produced in the EU, imports into the EU, and exports from the EU. According to the Commission, this comprehensive approach is important given the International Labour Association's estimate that more than 27 million people are in forced labour, in many industries and on every continent.

The proposal builds on internationally agreed definitions and standards, and underlines the importance of close cooperation with global partners. If approved, national authorities would have the ability to investigate the risk of forced labour and make a decision on the withdrawal of products made with forced labour from the EU market. Under the proposal, EU customs authorities would identify and stop products made with forced labour at EU borders. See more [here](#).

3

ESMA Proposes Stricter Guidelines on Use of ESG or Sustainability-Related Terms in Funds' Names

European Securities and Markets Authority | 18 November 2022

ESMA launched a consultation on guidelines applying quantitative thresholds for the use of ESG or sustainability-related terms in funds' names. The consultation is inspired by various legislation under scrutiny in certain EU Member States, the UK, and the US. The proposal would require that a fund with an ESG-related word in its name use at least 80% of its investments to meet the environmental or social characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy as disclosed in the Sustainable Finance Disclosure Regulation (SFDR) pre-contractual and periodic disclosures. Under the proposal, if a fund uses the word "sustainable" or any other sustainability-related term in its name, it will need to meet an additional proposed threshold within the 80% threshold, where at least 50% of the minimum proportion should be "sustainable investments" as defined under SFDR.

The consultation is open for comment until 20 February 2023. ESMA has said that it expects to issue final guidelines by Q2/Q3 2023. ESMA is proposing a six-month transition period for funds launched prior to the guidelines' effective date to either bring their investments into line with the guidance or change their name to remove any ESG or sustainability-related terms. See more [here](#).

4

ESAs Launch Joint Call for Evidence on Greenwashing

European Supervisory Authorities | 15 November 2022

The three ESAs (the European Banking Authority, the European Insurance and Occupational Pensions Authority, and the European Securities and Markets Authority) published a Call for Evidence regarding greenwashing. The call will gather input from stakeholders to understand the main drivers of greenwashing and to collect potential examples of greenwashing practice, to help enable the ESAs to determine the scale of greenwashing.

As demand grows for sustainability-related products and regulatory regimes and sustainability-related product offerings rapidly evolve, the call is also motivated by the need to better understand which areas may become more prone to greenwashing risks. In addition, the call seeks input on potential greenwashing practices relevant to various segments of the sustainable investment value chain and of the financial product lifecycle. See more [here](#).

5

FCA Releases Consultation Paper CP22/20 on UK Sustainable Disclosure Requirements

UK Financial Conduct Authority | 25 October 2022

The FCA published a consultation paper on proposed investment labelling and disclosure rules under the UK's equivalent to the EU Sustainable Finance Disclosure Regulation (SFDR), the proposed Sustainability Disclosure Requirements (SDR).

The proposals in the consultation paper introduce a package of measures that aim to clamp down on greenwashing. These measures include sustainable investment labels (which identify three types of sustainable investment products); disclosure requirements (both in relation to consumer-facing and more detailed investor-facing disclosure); and restrictions on the use of sustainability-related terms in product naming and marketing. The proposals would also include disclosure requirements for corporates, which are likely to be consulted on in the coming months. See more [here](#) and [here](#).

6

European Commission Adopts More Flexible Antitrust Informal Guidance Notice

European Commission | 3 October 2022

The European Commission has adopted a revised Informal Guidance Notice that sets out the circumstances under which the Commission could provide companies with informal guidance on the application of EU competition law. Companies will be able seek informal guidance from the Commission if they have doubts about the compliance of certain practices or agreements with EU competition rules. Informal guidance will take the form of "guidance letters". This revision is in line with the Commission's numerous statements, in particular in the context of the EU Green Deal — a roadmap for making the EU's economy sustainable by turning climate and environmental challenges into opportunities across all policy areas, setting out a modern growth strategy, and making the transition just and inclusive for all.

Olivier Guersent, Director-General of the Commission's Directorate General for Competition, recently stated that companies seeking to work together for environmental aims can usually do so without slipping into anticompetitive conduct. He added that no companies had yet taken up the opportunity to discuss such agreements, meaning that the suspected friction between environmental goals and antitrust law was "maybe not such a large problem in real life". See more [here](#).

Additional News

European Council Adopts Position on Due Diligence Rules for Large Companies

European Council | 1 December 2022

The European Council adopted its negotiating position on the European Commission's proposal of the Corporate Sustainability Due Diligence Directive. The proposal seeks to enhance the protection of the environment and human rights in the EU and beyond.

The proposal would lay down rules on obligations for certain large companies based in the EU or that do business in the EU regarding actual and potential adverse impacts on human rights and the environment, with respect to their own operations, those of their subsidiaries, and those carried out by their business partners. It also lays down rules on penalties and civil liability for violating those obligations. Lastly, it lays down obligations for companies to adopt a plan ensuring their business model and strategy are compatible with the Paris Agreement.

The directive will help the EU transition towards a more climate-neutral and green economy as described in the European Green Deal and the UN Sustainable Development Goals. See more [here](#) and [here](#).

ISSB Confirms That Scope 3 Emissions Will Be Included in IFRS's Climate Disclosure Standard

IFRS | 21 October 2022

Reporting on Scope 3 emissions — those originating in a company's value chain and beyond its direct control — will be included as part of required company disclosures under new standards being developed by the International Sustainability Standards Board (ISSB) of the IFRS Foundation, according to an ISSB statement on 21 October 2022.

The decision marks a significant milestone in the development of climate and sustainability-related reporting standards for companies, as investors and other stakeholders increasingly demand information on companies' management of climate risks and impact. See more [here](#).

ESAs Propose Disclosures for Fossil Gas and Nuclear Energy Investments

European Securities and Markets Authority | 30 September 2022

The ESAs have delivered to the European Commission their Final Report with draft Regulatory Technical Standards regarding the disclosure of financial products' exposure to investments in fossil gas and nuclear energy activities under the Sustainable Finance Disclosure Regulation.

The proposal is to add specific disclosures to provide transparency about investments in taxonomy-aligned gas and nuclear economic activities. These disclosures, which are in line with the definitions in the Complementary Climate Delegated Act, will help investors make informed decisions. See more [here](#).

GFANX and UK Transition Plan Taskforce Issue Transition Plan Guidance

Transition Plan Taskforce | 8 November 2022

The UK Transition Plan Taskforce launched a draft of its proposed Transition Plan Disclosure Framework (the TPT Framework), alongside the associated Implementation Guidance (the TPT Guidance) and a Technical Annex. The TPT Framework and Guidance are intended to provide a "gold-standard" set of guidance for companies in the UK developing net zero transition plans. The TPT Framework and Guidance are particularly relevant for UK listed entities and financial institutions that are required to publish transition plans (or explain why they have not been able to publish such a plan) from 2023.

A number of the aspects of the GFANX Framework mirror those of the transition plan guidance for financial institutions published by the GFANZ on 1 November 2022. Both frameworks focus on five core "themes" or "elements" that set out the steps entities are recommended to take in developing transition plans. See more [here](#), [here](#), and [here](#).

Austria Publishes Final Guidelines Exempting Sustainable Cooperation Agreements From Competition Laws

Austrian Federal Competition Authority | 28 September 2022

Austria's competition authority issued guidelines for businesses that plan to enter into sustainability agreements to help them properly apply relevant competition provisions. The guidelines should help companies planning to enter into sustainability agreements to better understand the application of cartel law. If doubts remain after self-assessment as to the correct application of the relevant provisions, companies should contact the authority. The authority may give its assessment, and in this context will also regularly consult with the Federal Cartel Prosecutor (Federal Ministry of Justice). See more [here](#).

ACM Fights Misleading Sustainability Claims

The Netherlands — Authority for Consumers and Markets | 13 September 2022

The ACM initiated a number of investigations to verify the compliance of companies regarding their sustainability claims. The ACM has published commitments by Decathlon and H&M to change their claims, better their behaviour, and donate to sustainable causes as a form of compensation. It subsequently closed its investigations against these companies. The ACM has stated that misleading sustainability claims are an enforcement priority, since a successful transition to a more sustainable economy depends on consumers' confidence in companies' claims. See more [here](#).

Contacts

Should you have any questions or would like further information in relation to any of these topics, please do not hesitate to contact us.



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