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OBSERVATORY
ON SUSTAINABLE
FINANCE AND THE
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Issue 5



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CRCCD OBSERVATORY ON SUSTAINABLE FINANCE AND THE GREEN ECONOMY

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SMES BECOME THE TARGET OF ESG REPORTING

On 24 June, the [MoF Platform on Sustainable Finance \(Tavolo per la Finanza Sostenibile\)](#) (the “**Platform**”)¹ – which aims at fostering shared initiatives of institutions and the Italian economic system in developing sustainable finance – issued a [consultation document](#) titled The Sustainability Dialogue between SMEs and Banks (*Il dialogo di sostenibilità tra PMI e banche*) up to 2 August 2024 (the “**Document**”), drafted by the working group on “*Supporto alle PMI nella Disclosure di Sostenibilità*” (Supporting SMEs in Sustainability Disclosure) set up as part of the Platform and coordinated by the Italian Companies and Exchange Commission (CONSOB).

The small and medium-sized enterprises (SMEs) targeted by the Document are micro, small and medium-sized enterprises that fall within the size parameters set out in the EU regulations. On the basis of the [European Commission Recommendation of 6 May 2003](#) and the requirements of the [Decree of the Italian Ministry of Productive Activities of 18 April 2005](#), the following entities qualify as SMEs:

- (i) “Micro-enterprises”, defined as enterprises which, even taking into account any associated and/or affiliated enterprises, employ fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed EUR 2 million;
- (ii) “Small enterprises”, defined as enterprises which, even taking into account any associated and/or affiliated enterprises, employ fewer than 50 persons and whose annual turnover or annual balance sheet total does not exceed EUR 10 million;
- (iii) “Medium-sized enterprises”, defined as enterprises which, also taking into account any associated and/or affiliated enterprises, employ fewer than 250 persons and which have either an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million.

The Document seeks to support these SMEs in using their respective credit reports to provide banks with information on the environmental, social and governance sustainability performance of their businesses.

The Document represents a clearly important development in the perspective of achieving the objectives of the European [Green Deal](#), the [National Sustainable Development Strategy](#) and the [UN 2030 Agenda for Sustainable Development](#). Indeed, as also recognised by the Document, the central function that SMEs play in the Italian economic-productive fabric gives them a role as

¹ The establishment of the Platform was promoted in Autumn 2022 by the Italian Ministry of Economy and Finance (MEF). The Platform, chaired by the Treasury Department of the MEF, includes the Italian Ministry of the Environment and Energy Security, the Italian Ministry of Enterprise and Made in Italy, the Bank of Italy, the Italian National Commission for Companies of the Stock Exchange (CONSOB), the Italian Institute for Insurance Supervision (IVASS) and the Commission for the Supervision of Pension Funds (COVIP).

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potential key players in the pursuit of these objectives, first and foremost being the 2050 climate neutrality commitment made by the European Union.

The Document is part of the broader framework of the European Commission's request to the EFRAG (formerly the European Financial Reporting Advisory Group) to develop a voluntary sustainability reporting standard for unlisted SMEs. The [exposure draft](#) of such a Voluntary sustainability reporting standard for non-listed small- and medium-sized enterprises (the "VSME ED"), prepared by EFRAG, was available for consultation until 21 May 2024.

The EFRAG's exposure draft covers substantially the same areas of sustainability as the European Sustainability Reporting Standards (or "ESRS") adopted on the basis of the Corporate Sustainability [Reporting Directive \(EU\) 2022/246](#) (or "CSRD")², albeit with less detail. More specifically, the VSME ED provides for three modules that an SME can adopt as the basis for preparing its sustainability report, according to its specific characteristics:

- (i) a "Basic Module", dedicated to micro enterprises but also aimed at small and medium-sized enterprises as a minimum reporting requirement, divided into basic metrics on environment, social matters and business conduct;
- (ii) a 'narrative' "Policies, Actions and Targets (PAT) Module", which is suggested to those companies that have formalised and implemented ESG policies, actions and targets, indicating the minimum elements to be included in their disclosure;
- (iii) a "Business Partners Module" which includes additional ESG metrics that are generally required by the business partners, investors and financiers of the enterprise concerned.

Guidance is provided for each module, in addition to three annexes: a list of definitions, a list of matters relevant to the sustainability assessment of the enterprise, and – more importantly – a table comparing the metrics set out in the three modules with the sustainability-related disclosures required for financial market participants by [Regulation \(EU\) 2019/2088](#) on sustainability reporting in the financial services sector (Sustainable Finance Disclosure Regulation or "SFDR"), by [Delegated Regulation \(EU\) 2020/1816](#) supplementing [Regulation \(EU\) 2016/1011](#) on indices used as benchmark statements in financial instruments and financial contracts or to measure the performance of investment funds (Benchmark Regulation), by the disclosure requirements of the so-called [Pillar 3](#) under the authority of the European Banking Authority and by the taxonomy under [Regulation \(EU\) 2020/852](#) (Taxonomy Regulation).

Therefore, the Platform's Document is in addition to the VSME ED, partly overlapping and supplementing the latter's three modules by focusing more on disclosure for lenders of SMEs.

This is also visually highlighted in the first part of the Document, entitled "Sustainability Dialogue between SMEs and Banks" (*Le informazioni di sostenibilità dalle PMI alle banche*). This part of the Document contains a table divided into five sections that, similarly to the VSME ED, quite closely

² For a discussion of the CSRD and ESRS, see [Section 3](#) of [Issue 2](#) of the Observatory, [Section 11](#) of [Issue 4](#) of the Observatory, as well as Sections 4 e 8 of this Issue.

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resemble the structure of the ESRS³. The table collects the relevant sustainability information, and also expressly associates each of them to one or more of the modules of the VSME ED (leaving a blank space in the appropriate section of the table if there is no correspondence, even partial, with the VSME ED forms).

Furthermore, similar to the third annex of the VSME ED, the first part of the Document establishes an explicit correlation between the information listed in the table and the disclosure aspects that are (also) imposed on banking intermediaries under the CSRD, the SFDR and the so-called Pillar 3.

The second part of the Document is called “Methodological Guide” (*Guida metodologica*) (identical to the VSME ED guidance) and also contains three annexes (glossary, list of economic activities eligible for the European taxonomy, and a comparison document between the first part of the Document and the National Strategy for Sustainable Development).

The EU’s VSME ED and the domestic Document, both of which are aimed at supporting and incentivising the inclusion of, and the more transparent disclosure by SMEs of ESG issues, ultimately appear not to reflect but rather to complement each other, in terms of ESG expectations and appeal that is relevant not only for accessing bank credit, but also for developing the broader relationship between SMEs and their current or potential business partners, customers and investors.

* * *

UPDATES

I. *The ESAs’ Joint Opinion on the SFDR*

On 18 June 2024, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) – jointly, the “European Supervisory Authorities” or “ESAs” - published a **Joint Opinion** (the “**Opinion**”) as part of the review process of **Regulation (EU) 2019/2088** (Sustainable Finance Disclosure Regulation or SFDR).

The Opinion builds on some tests conducted on investors, which revealed critical issues in applying the SFDR. In this context, the ESAs highlight the need to improve transparency on the sustainability features of financial products, in order to protect investors (especially retail investors) also

³ The sustainability disclosure in the first part of the Document is divided into the following five sections:

- (i) general information (with information such as, for example, the address and the Economic Community Activity Code – NACE – for each business or administrative and management unit, the indication of the contact person for sustainability issues and the annual turnover per business unit);
- (ii) climate change mitigation and adaptation (with information such as whether or not the enterprise has a climate or environmental rating, an indication of turnover related to high climate impact sectors, and the level of energy efficiency and performance of the real estate pledged as collateral);
- (iii) environment (with information such as annual air, water and soil pollutant emissions and targets for their reduction);
- (iv) society and workforce (with information such as whether or not the enterprise has adopted human rights policies or processes to identify, prevent and mitigate the negative impact of its activities on human rights);

corporate governance and conduct (with information such as, for example, whether or not the enterprise has adopted a code of ethics, an organisational, management and control model pursuant to Italian Legislative Decree No. 231 of 8 June 2001, or other systems for reporting criminal offences, breaches of laws or regulations or other situations that endanger the health and safety of workers).

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by preventing so-called greenwashing. To this end, the Opinion makes some recommendations to the European Commission.

Firstly, the ESAs highlight the positive aspects that could derive from the introduction of a classification system for financial products based on categories and/or sustainability indicators which would assist investors navigating the wide choice of sustainable financial products. In this respect, the ESAs suggest the introduction of two new categories of financial products: the “sustainable” and the “transition” categories, to be used by financial operators for simplified disclosures. These categories should be simple with clear objective criteria or thresholds to identify which category a given financial product falls into. The “sustainable” products category should also be able to refer to environmental sustainability, social sustainability or both.

Secondly, the Opinion recommends a review of the definition of “sustainable investment” in Article 2 (17) of the SFDR⁴, and an analysis of the interaction of this definition with the taxonomy provided by the [Taxonomy Regulation](#).

Thirdly, the ESAs point out in the Opinion that the scope of financial products falling under the SFDR should be broadened and the related documentation simplified.

Finally, the Opinion proposes a number of technical changes that the European Commission could consider as part of a comprehensive review of the SFDR implementation framework.

2. *The ESMA’s consultation on the EuGBR*

14 June 2024 marked the end of the [consultation](#) process opened on 26 March 2024 by the ESMA with the aim of gathering views, comments and opinions from economic operators and authorities on the implementation status of [Regulation \(EU\) 2023/2631](#) on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (the “EuGBR”)⁵.

The consultation concerned some of the draft Regulatory Technical Standards (“RTS”) and Implementing Technical Standards (“ITS”) that the EuGBR empowered the ESMA to develop further.

In particular, this consultation paper covered four draft RTS and one draft ITS concerning the external reviewers which, according to the EuGBR, will have to ensure compliance with the requirements for the use of the EU term “European Green Bond”. The consultation paper was divided into five sections in which the ESMA addresses: (i) the criteria to be assessed by the ESMA for registering an entity as an external reviewer, with reference to its senior management, board members and its employees and analysts; (ii) the criteria for assessing the sound and prudent management of the external reviewer and the appropriate identification and elimination or management of any actual or potential conflicts of interest and their disclosure in a transparent manner;

⁴ “[...]investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance”.

⁵ The main contents of this regulation were examined in [section 1](#) of [Issue 3](#) of the Observatory.

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(iii) criteria for assessing knowledge and experience of the employees and analysts of the external reviewer; (iv) criteria applicable to outsourcing of assessment activities; and (v) the standard forms, templates and procedures for the provision of registration information of external reviewers.

The ESMA will publish its Final Report on the consultation paper in last quarter of 2024, while the draft RTS and ITS are to be submitted by the ESMA to the European Commission by 21 December 2024.

3. *The final approval of the CSDDD*

On 13 June 2024, the presidents of the European Parliament and of the Council of the European Union signed the [Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937 and Regulation \(EU\) 2023/2859](#) (Corporate Sustainability Due Diligence Directive or “CSDDD”).

The CSDDD is the result of a [complex legislative process](#)⁶ that started in February 2022 (with the publication of the original [proposal for a directive](#) by the European Commission) and resulted in the approval of a compromise text by the European Parliament and the Council respectively in [April](#) and [May](#) 2024.

The following is a non-exhaustive summary of the main features of the CSDDD:

- (i) subjective scope: the following fall within the scope of application of the CSDDD:
 - (a) companies incorporated under the law of a Member State that had more than 1,000 employees (500 in the original proposal) on average and a net worldwide turnover exceeding EUR 450 million (150 million in the original proposal) in the last financial year, even if at consolidated level only in the case of parent companies;
 - (b) companies incorporated under the law of a Member State which, alone or in groups controlled by them, (i) had a net turnover in the European Union exceeding EUR 80 million in the last financial year and (ii) had entered into franchising or licensing agreements in the Union with independent third-party companies where those agreements ensure “*a common identity, a common business concept and the application of uniform business methods*” in exchange for royalties amounting to more than EUR 22.5 million in the last financial year;

⁶ Which was partly reported on in [Section 4](#) of [Issue 3](#) of the Observatory and in the [in-depth discussion on ESG-related litigation](#) in [Issue 4](#) of the Observatory.

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- (c) companies incorporated under the law of a non-Member State which (i) generated in the territory of the Union a net turnover exceeding EUR 450 million (EUR 150 million in the original proposal) in the financial year preceding the last financial year, even if only at consolidated level in the case of a parent company, and/or (ii) met the requirements set out in point (i)(b)(ii) above,

provided these conditions are met for two consecutive financial years, and until they are no longer met for two consecutive financial years;

- (ii) **mere holding companies:** in the case of parent companies falling within the scope of application of the CSDDD as a result consolidating the financial statements, but which “*do not engage in the taking of management, operational or financial decisions affecting the group or one or more of its subsidiaries*”, it is provided that such parent companies may apply to the competent national supervisory authorities for their own exemption from the CSDDD obligations, subject to the designation of a subsidiary established in the European Union to fulfil those obligations on their behalf; in such a case, the parent company remains jointly and severally liable with the subsidiary for the latter’s failures;
- (iii) **transition plan:** in addition to the obligations discussed in **section 4.2 of Issue 3** of the Observatory, the CSDDD includes an obligation for companies to adopt, implement and update every 12 months a transition plan for climate change mitigation which aims to ensure, on a best efforts basis, that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the aim of limiting of global warming to 1.5 °C with respect to the pre-industrial era (in line with the 2016 **Paris Agreement**), but also the climate neutrality target as set out in **Regulation (EU) 2021/1119** (including its intermediate and 2050 climate neutrality targets), by means of time-bound targets and, where appropriate, absolute greenhouse gas emission reduction targets of scope 1, scope 2 and scope 3 emissions⁷;
- (iv) **transposition and application:** the CSDDD shall be transposed by the Member States within two years of its entry into force (coinciding with the 20th day following its publication in the Official Journal of the European Union) and the national transposition measures will apply from three, four or five years after the entry into force of the CSDDD (depending on the size of the companies or groups concerned).

⁷ For the distinction between scope 1, scope 2 and scope 3 emissions, see **footnote 7** in **Issue 4** of the Observatory.

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4. *The approval of the draft legislative decree transposing the CSRD*

Following the public [consultation](#) procedure opened by the Treasury Department of the Italian Ministry of Economy and Finance in February 2024 and in March 2024⁸, on 10 June 2024, the Council of Ministers approved the [draft legislative decree](#) aimed at transposing the CSRD⁹ into Italian law, by virtue of the mandate contained in the [European Delegation Law 2022-2023](#).

The draft legislative decree, accompanied by the illustrative report and the technical report, has been submitted for parliamentary opinion and is expected to be finally approved by 6 July, the deadline for the transposition of the CSRD under Article 5 thereof.

With the CSRD and the legislative decree approved by the Council of Ministers, sustainability reporting will become an integral part of the management report, of which it will be a specially marked section, structured according to timeframes and contents, that – starting from the EU harmonised basis at EU level in the CSRD – are to be specified by national legislation.

5. *The ESAs' Final Reports on Greenwashing in the Financial Sector*

On 4 June 2024, the ESAs published their respective [Final Reports](#) containing guidance on enhanced supervision to combat greenwashing and on improving market practices on sustainability-related claims.

These Final Reports follow the so-called Progress Reports published by the ESAs between May and June 2023¹⁰, and are the response to a specific 2022 mandate issued by the European Commission to the ESAs. They investigate the role of supervisory bodies in mitigating the risks associated with greenwashing and also provide a forward-looking view of how supervisory activities in this area can be gradually strengthened over time.

In particular, the Final Reports highlight that, although the investigations carried out focus on the financial sector, combating greenwashing requires a global response through close cooperation between supervisory authorities, including through the development of sustainability disclosure standards.

In this respect, it is particularly important that the ESMA reiterates the priority to oversee sustainability claims and reports that it has adopted monitoring measures against greenwashing in various sectors and through various supervisory activities. Based on the actions taken, the ESMA will issue an opinion on possible improvements to the EU regulatory framework, including from a long-term perspective.

⁸ On this consultation, see [section 1](#) of the [updates](#) in [Issue 4](#) of the Observatory.

⁹ See footnote [Errore. Il segnalibro non è definito.](#) above.

¹⁰ The EBA's Progress Report can be viewed [here](#), the EIOPA's one [here](#), and ESMA's [here](#).

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6. *The ESRS Implementation Q&A Platform and the EFRAG ESRS Implementation Guidances*

Between 30 and 31 May 2024, the EFRAG published two resources to assist operators in implementing the cross-sectoral European Sustainability Reporting Standards (ESRS) set out in [Delegated Regulation \(EU\) 2023/2772](#)¹¹:

- (i) a document entitled [ESRS Implementation Q&A Platform](#), which consolidates 68 EFRAG responses (24 of which were already been published between February and March 2024) to technical questions from stakeholders on the implementation of cross-sectoral ESRS. The EFRAG's responses are ordered by the reference ESRS principle, whether cross-sectoral (ESRS 1 *General requirements* or ESRS 2 *General disclosures*) or thematic (ESRS E1 *Climate Change*, ESRS E2 *Pollution*, ESRS S1 *Own Workforce*, ESRS S2 *Workers in the value chain* or ESRS G1 *Business conduct*). Each EFRAG response is accompanied by key terms summarising the question's subject matter, while the document comes with a key word index to facilitate key word referencing. The Q&As in such document include, but are not limited to, the EFRAG's answers according to which (i) for the purposes of the so-called double materiality criterion¹² the actual or potential impact of the business activity on the environment and people is relevant also when only positive, and (ii) in private equity structures, general partners and limited partners are similarly bound to sustainability reporting on the business activities of consolidated portfolio companies;
- (ii) three [implementation guidelines](#) (IGs) on common profiles for cross-sectoral ESRS, namely (i) [materiality assessment](#) (IG 1), (ii) [value chain](#) (IG 2) and (iii) [detailed data points](#) for sustainability reporting, with [explanatory notes](#) (IG 3). In particular, IG 1 analyses the concept of materiality for ESRS purposes, the criteria and methods for carrying out the materiality assessment, as well as the correlation between the materiality (assessment) for ESRS purposes and other sources of sustainability reporting (such as the [GRI Standards](#) and [ISSB Standards](#)). IG 2, which is to be read in conjunction with IG 1 and which makes extensive reference to the latter, outlining the concept of value chain for ESRS purposes and the related levels of sustainability reporting. IG 3 contains an Excel list of all the elements subject to mandatory or optional reporting under cross-sectoral ESRS other than ESRS 1 *General requirements*, whether they are "narrative", "semi-narrative" or numerical. Both

¹¹ The main contents of this regulation (the publication of which was reported in [Section 11](#) of [Issue 4](#) of the Observatory) were examined in [Sections 3.2 and 3.3](#) of [Issue 2](#) of the Observatory.

¹² In this respect, see [Section 4.1](#) of [Issue 2](#) of the Observatory.

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Implementation Guidance IG 1 and IG 2, on materiality assessment and value chain, are accompanied by an executive summary and answers to FAQs that are not already included in the ESRS Implementation Q&A Platform.

7. *ESMA guidelines on funds' names using ESG or sustainability-related terms*

On 14 May 2024 the ESMA published its final report containing its [guidelines](#) on the use of ESG or sustainability-related terms in the naming of investment funds, aimed at ensuring greater transparency in investor relations and preventing greenwashing.

These guidelines recommend that investment fund managers use ESG or sustainability-related terms in the name of a fund only when at least 80 per cent of the fund's investments are allocated, at the time of establishing the portfolio, to the fulfilment of sustainable or environmental or social investment objectives, and provided that the following exclusion criteria are met:

- (i) with reference to the terms related to the concept of “environment”, “impact” or “sustainability”, exclusion criteria for the Paris Agreement-aligned benchmarks, as referred to in Article 12(1)(a) to (g) of [Delegated Regulation \(EU\) 2020/1818](#)¹³;
- (ii) with reference to the terms related to the concept of “transition”, “social” or “governance”, exclusion criteria for the climate transition benchmarks, as referred to in Article 12(1)(a) to (c) of Delegated Regulation (EU) 2020/1818.

With specific reference to funds that use terms related to the concept of “sustainability”, the ESMA also points out that there must be a commitment on the part of the fund to make significant sustainable investments as defined in Article 2(17) of the SFDR¹⁴. Conversely, with regard to funds using terms related to the concepts of “transition” or “impact”, the ESMA emphasises the need for the management of the fund to clearly and measurably pursue social or environmental transition objectives, or to invest with the objective of generating an effectively measurable and positive social or environmental impact, as well as a financial return.

These guidelines will enter into force three months after the ESMA publishes their translations in all official languages of the European Union.

¹³ “Administrators of EU Paris-aligned Benchmarks shall exclude all of the following companies from those benchmarks: (a) companies involved in any activities related to controversial weapons; (b) companies involved in the cultivation and production of tobacco; (c) companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises; (d) companies that derive 1 % or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal and lignite; (e) companies that derive 10 % or more of their revenues from the exploration, extraction, distribution or refining of oil fuels; (f) companies that derive 50 % or more of their revenues from the exploration, extraction, manufacturing or distribution of gaseous fuels; (g) companies that derive 50 % or more of their revenues from electricity generation with a GHG intensity of more than 100 g CO₂ e/kWh”.

¹⁴ See footnote 4 above.

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8. *The postponement of certain deadlines for the adoption of ESRS*

On 8 May 2024, [Directive \(EU\) 2024/1306](#) of the European Parliament and of the Council was published in the Official Journal of the European Union, amending [Directive 2013/34/EU](#) (the so-called Accounting Directive) with regard to the deadlines for the adoption of certain ESRS.

In particular, in order to reduce the reporting burdens on companies (as set out in a European Commission [communication](#) of 16 March 2023) and to allow them to focus first and foremost on the proper fulfilment of the sustainability reporting obligations set out in [Delegated Regulation \(EU\) 2023/2772](#), the Directive in question postponed from 30 June 2024 to 30 June 2026 the deadline set for the European Commission to adopt the delegated acts that should contain, *inter alia*:

- (i) sustainability reporting standards relating to individual economic sectors (so-called sectoral standards);
- (ii) the additional information to be provided by companies in relation to environmental, social, human rights and governance factors and the related areas of reporting;
- (iii) sustainability reporting standards for companies from non-EU countries *(i)* that generate net sales and service revenues in the EU of more than EUR 150 million and that have subsidiaries in the EU that are either large or small and medium-sized enterprises whose securities are admitted to trading on EU regulated markets, or *(ii)* that have branches in the EU that generate net sales and service revenues of more than EUR 40 million¹⁵.

Recital (3) of this Directive specifies that this two-year extension should not, however, prevent the European Commission from publishing the delegated acts containing the sectoral principles before 30 June 2026. To this end, the Directive adds to the Accounting Directive the provision that the European Commission should endeavour to adopt the delegated acts containing eight of the sectoral sustainability standards as soon as each of them is ready.

9. *The 2023 Annual Report of the Sustainable Finance Platform*

On 19 April 2024, the Sustainable Finance Platform published its [Annual Report](#) on its activities during 2023.

The Platform, organised into four working groups, identified as priority topics in 2023: *(i)* the identification and availability of data on climate and natural risks through the mapping of local and national databases of ESG risks to which households and companies are exposed; *(ii)* sustainability reporting by unlisted small and medium-sized companies through the development of standardised templates for the collection of ESG information; and *(iii)* insurance protection against climate-related and environmental risks.

¹⁵ It should be noted that the sustainability reporting requirements for such non-EU companies will apply as of the 2008 financial year, as already envisaged.

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Working Group 1 (“Improving access to data on climate-related and environmental risks”), coordinated by the Bank of Italy, conducted a survey of the available databases for assessing the impact of climate-related and environmental risks¹⁶, identifying as objectives for 2024 an assessment of the feasibility of a public data hub for collecting data on climate risks and the presentation of a generalised methodology for assessing such risks.

Working Group 2 (“Improving access to data on the energy performance of buildings”), coordinated by the Italian Ministry of Economy and Finance, focused on a survey of existing databases on the real estate assets of households and businesses in relation to energy efficiency aspects and setting as its goal for 2024 a feasibility study on the publication of information on energy performance certificates of buildings and real estate units in open data format.

Working Group 3 (“Supporting SMEs in sustainability disclosure”), coordinated by CONSOB, mapped the regulatory ESG reporting obligations of financial and non-financial companies and the most relevant sustainability disclosures for unlisted SMEs, preparing the document *The Sustainability Dialogue between SMEs and Banks*, which is currently available for public consultation (see the focus of this Issue, above).

Working Group 4 (“Reducing the insurance protection gap towards environmental risks”), coordinated by IVASS, addressed the problem of underinsurance of natural catastrophe risks in Italy. The working group focused its activities on the twofold objective of identifying the fundamental characteristics of a national mixed public-private insurance scheme against natural disaster risks, and of reducing the data gap on catastrophe cover through the acquisition and processing of data and information on insurance cover against catastrophic events offered by insurers in Italy.

10. *The update of the ECB’s statistical indicators for assessing the impact of climate-related risks on the financial sector*

On 18 April 2024, the European Central Bank (ECB) published **Statistical Paper No. 48** of the Statistics Paper Series on Climate change-related statistical indicators, which, also based on the collaboration with experts from a number of European central banks (including the Bank of Italy), provides an update on the indicators for assessing the impact of climate-related risks on the financial sector¹⁷.

This paper analyses the methodology and main results of statistical indicators developed in three areas: (i) sustainable finance; (ii) carbon emissions; and (iii) physical risk.

The updated statistical indicators are aimed at improving data transparency when analysing climate change, by providing useful information for monetary policy, financial stability and banking supervision. The indicators were constructed from harmonised aggregate datasets, mainly related to the financial sector in the eurozone and are mainly compiled from public sources.

The sustainable finance indicators are based on statistical data on securities and represent a more advanced stage of development than the other two groups of indicators, although the paper

¹⁶ The survey was mainly based on the research work [Data and methods to evaluate climate-related and environmental risks in Italy](#) published by the Bank of Italy in November 2022.

¹⁷ In this regard, it should be noted that in January 2023, the ECB published a [first set of experimental and analytical statistical indicators](#) for measuring the impact of climate-related risks on the financial sector and monitoring the development of sustainable finance.

highlights that there are still some shortcomings in the underlying data sets. The indicators provide a benchmark for comparing financial performance across countries, time horizons and different climate scenarios, as well as a tool for monitoring the issuance and holding of sustainable securities in the eurozone, by providing useful indications of capital allocated to sustainable assets and tracking progress on the transition to a zero-emission economy.

Carbon emissions indicators are used to analyse the exposure of the eurozone financial sector (particularly of securities and loan portfolios) to counterparties with carbon-intensive business models, thus providing useful indications of possible misalignments of the sector with transition targets and the associated financial risks.

Finally, physical risk indicators outline the impact of natural disasters caused by climate change on the performance of financial institutions' securities and loan portfolios. The relevant metrics cover a wide range of acute and chronic hazards, providing indications of risk scores and expected losses, and also allowing comparisons between historical data and different climate-related scenarios.

II. The decision of the European Court of Human Rights in the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland

On 9 April 2024, the Grand Chamber of the European Court of Human Rights (the "ECtHR") rendered an important and articulated **judgment** in the settlement of the action brought against the Swiss Confederation by the association (*verein*) KlimaSeniorinnen Schweiz (meaning: "Seniors for Climate Switzerland") and four elderly Swiss citizens.

This judgment and the related application stand out as being of particular interest in the broad and currently expanding scenario of so-called climate-related litigation, which often hinges on the alleged infringement of fundamental human rights¹⁸. In this case, the claimants' argument was that the Swiss State, by being negligent in mitigating climate change and by failing to provide adequate domestic laws to remedy this negligence, had infringed the applicants' recognised rights under Articles 2 (*Right to life*), 6 (*Right to a fair trial*), 8 (*Right to respect for private and family life*) and 13 (*Right to an effective remedy*) of the **European Convention on Human Rights** (the "ECHR")¹⁹.

The ECtHR declared the applications of the four individual claimants to be inadmissible, deeming that in the climate change scenario, given its impact on all citizens, the notion of "*victim*" entitled to bring an individual action (under Article 34 ECHR) before the ECtHR must be interpreted restrictively²⁰, otherwise the floodgates would be open to an endless number of actions that could

¹⁸ See the extensive **discussion of ESG-related litigation** in [Issue 4](#) of the Observatory.

¹⁹ The proceedings before the European Court of Human Rights were preceded by unsuccessful attempts by the applicants to obtain, before the Swiss administrative and judicial authorities, under the provisions of the Swiss Constitution and the ECHR, even an order that the Swiss Confederation adopt numerous and detailed measures (including legislative ones) to curb greenhouse gas (GHG) emissions, so as to mitigate the adverse effects on the health of the individual applicants and their associated peers in KlimaSeniorinnen. These domestic initiatives had resulted in declarations of inadmissibility, on the grounds of by (i) the impossibility of identifying sufficiently specific and direct harms to individual rights and (ii) the impossibility, under Swiss law and under the ECHR itself, for individual claimants to bring actions (by means of a so-called *actio popularis*) in the general public interest of all citizens.

²⁰ "(a) [T]he applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and (b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm. The threshold for fulfilling these criteria is especially high" (Judgment, paragraphs 487-488).

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upset the balance between the legislative and judicial powers. Instead, the ECtHR admitted KlimaSeniorinnen's application on the basis of a less stringent criterion for the *locus standi* of representative associations²¹, which is essentially due to the particularly nature of climate change as an emergency for humanity and of obvious intergenerational importance.

On the substantive level, the ECtHR has, for the first time, established that States that are parties to the ECHR have a positive obligation under Article 8 of the Convention to mitigate the adverse consequences of climate change on the health and well-being of their residents. In this regard, the ECtHR made a crucial distinction between the obligation of states to set and achieve climate objectives²² (characterised by a limited margin of appreciation on the part of States)²³ and the choice of each State as to the means designed to achieve these objectives (characterised by a wide margin of appreciation).

On this basis, the ECtHR found that Switzerland had infringed Article 8 of the ECHR by failing to prepare an adequate plan for quantifying and reducing greenhouse gas emissions and by failing to achieve the reduction targets gradually set out in its legislation; and that the administrative and judicial authorities of the Swiss Confederation had also infringed Article 6 of the ECHR by declaring the internal applications of the KlimaSeniorinnen association to be inadmissible without adequately appreciating the distinction between claimants acting individually and in an association.

In view of the complexity of the case before it, the ECtHR, however, considered that it could not impose specific measures on the Swiss Confederation to comply with the judgment, referring the matter to Switzerland itself with the assistance of the Committee of Ministers of the Council of Europe.

²¹ "In order to be recognised as having locus standi to lodge an application under Article 34 of the Convention on account of the alleged failure of a Contracting State to take adequate measures to protect individuals against the adverse effects of climate change on human lives and health, the association in question must be: (a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention" (Judgment, paragraph 502).

²² On the contrary, the European Court of Human Rights went so far as to identify in Article 8 ECHR an obligation for States which are parties to the ECHR to achieve so-called net neutrality within, "in principle", the next three decades (see judgment, paragraph 548).

²³ "When assessing whether a State has remained within its margin of appreciation [...], the Court will examine whether the competent domestic authorities, be it at the legislative, executive or judicial level, have had due regard to the need to: (a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments; (b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies; (c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see subparagraphs (a)-(b) above); (d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and (e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures" (Judgment, paragraph 550).

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12. *The Intermediate report on monitoring capital flows to sustainable investments of the Platform on Sustainable Finance*

On 4 April 2024, the [Platform on Sustainable Finance](#) – an advisory body of the European Commission established on the basis of Article 20 of the [Taxonomy Regulation](#) - published an [intermediate report](#) on the monitoring of capital flows towards sustainable investments, with the aim of providing a tool to measure the effective contribution of the financial sector towards the objectives of the European Green Deal.

This intermediate report aims to provide a rigorous and comprehensive mapping of the relevant data sources and gaps, by analysing a bottom-up representation of financial transition that is extended to the real economy, primary financial markets and secondary financial markets of the entire European Union, with a systematic monitoring of the practices adopted by operators. The intermediate report is primarily based on EU sustainable finance regulatory data and definitions, with market standards and definitions complementing the analysis where appropriate. It is expected that the mapping provided by the intermediate report will be refined over time as definitions and data become more standardised and available.

This paper is composed of three chapters. The first chapter outlines with the methodology used, while the subsequent two chapters are devoted to the real economy and the financial sector respectively. In addition, there is a series of annexes containing a specific analysis of the gap between the development of financial investment flows in the European Union and the objectives of the European Green Deal.

Following the release of the intermediate report, the Platform on Sustainable Finance is scheduled to publish a final report containing not only refinements in the methodological approach and data analysis, but also proposals for the structuring and implementation of periodic monitoring.

13. *The decision of the Federal Court of Australia in Australian Securities and Investments Commission v. Vanguard Investments Australia Ltd*

On 28 March 2024, the Federal Court of Australia rendered its [judgment](#) in *Australian Securities and Investments Commission v. Vanguard Investments Australia Ltd*, brought by Consob’s Australian counterpart for allegedly misleading disclosures by Vanguard about the sustainability characteristics of securities included in the mutual fund “Vanguard Ethically Conscious Global Aggregate Bond Index Fund (Hedged)” (the “**Fund**”).

The case in question represents one of the most important and emblematic judgments dealing with ESG sustainability claims specifically concerning financial products, and as such is part of a strand of so-called ESG-related litigation that is bound to also develop in European legal systems²⁴.

In its judgment, the Federal Court of Australia found that, contrary to Vanguard’s representations in multiple venues (product fact sheets, a press release, its website, a video interview published online, and statements made by a Vanguard representative at an industry event that was also reproduced on the Internet) a portion of the bonds held in the Fund had either not been subject to

²⁴ In this respect, see [Section 3](#) of the [in-depth study on ESG-related litigation](#) in [Issue 4](#) of the Observatory.

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any ESG screening or to a seriously defective ESG screening process with respect to Vanguard's advertised monitoring²⁵ (thus, *inter alia*, leading to the inclusion and retention in the Fund of bonds issued by issuers not meeting the advertised ESG criteria). On this basis, and without prejudice to the circumstance that the performance of the ESG screening had been entrusted by Vanguard to a different intermediary (MSCI), the Federal Court of Australia found Vanguard to have infringed Section 12DB(1), (a) and (e), of the Australian Securities and Investments Commission Act 2001²⁶, adjourning the matter for a subsequent decision on the quantification of the correlative civil monetary sanctions.

²⁵ For example, although Vanguard had represented that bonds issued by issuers active in the fossil fuel sector in the Fund were not included, it turned out that the ESG screening process that was actually applied omitted consideration of the coal mining and transport sectors.

²⁶ "A person must not, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services: (a) make a false or misleading representation that services are of a particular standard, quality, value or grade; [...] (e) make a false or misleading representation that services have sponsorship, approval, performance characteristics, uses or benefits; [...]".

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The previous issues of the Observatory are available at the following links:

[Issue 1 \(March 2021\)](#)

[Issue 2 \(November 2023\)](#)

[Issue 3 \(December 2023\)](#)

[Issue 4 \(March 2024\)](#)

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