

# GIBSON DUNN

ESG: Risk, Litigation, and Reporting Update

April 14, 2025

## Gibson Dunn ESG: Risk, Litigation, and Reporting Update

We are pleased to provide you with Gibson Dunn's ESG update covering the following key developments during March 2025. Please click on the links below for further details.

### I. GLOBAL

#### 1. Fidelity updates voting guidelines regarding director diversity

As discussed in our [February 2025 ESG Update](#), Institutional Shareholder Services, Glass Lewis, and institutional investors State Street, BlackRock, and Vanguard released updates to their proxy voting policies for 2025 with implications for how they intend to analyze director diversity. In March, Fidelity also published updated [proxy voting guidelines](#) that no longer set numeric expectations for director diversity but instead reflect Fidelity's policy to "consider factors that [it] believe[s] are relevant to achieving effective governance practices, which may include the range of experience, perspectives, skills, and personal characteristics represented on the board."

### II. UNITED KINGDOM

#### 1. Loan Market Association (LMA) publishes its revised Green, Social, and Sustainability-Linked Loan Principles

On March 26, 2025, the LMA [published](#) its revised Green, Social, and Sustainability-Linked Loan Principles and related guidance. The principles provide a recommended framework of market

standards and guidelines, while also promoting the development of each of the three different types of loans (i.e., green, social, and sustainability-linked). The principles and related guidance are voluntary recommended guidelines to be applied on a deal-by-deal basis, depending on the nature of the transaction. These are mostly clarifying revisions, but there are also more detailed revisions relating to distinctions between what the principles consider to be mandatory requirements to comply with the principles compared to recommendations and optional courses of action. We previously reported on these principles [here](#) and [here](#).

## **2. UK Home Office publishes updated supply chain guidance**

On March 24, 2025, the UK Home Office published [updated statutory guidance](#) on transparency in supply chains. This guidance follows the December 2024 Policy Paper in which the Government stated that it was reviewing how it can strengthen penalties for non-compliance with its supply chain requirement. The updated guidance is intended to assist in-scope commercial organizations with preparing their mandatory modern slavery statements. The guidance sets out the Government's expectations and provides practical advice based on learnings from the last ten years since the Modern Slavery Act 2015 came into force.

## **3. The Financial Conduct Authority (FCA) issues survey to Environmental, Social, and Governance (ESG) rating providers 2025**

On March 21, 2025, the FCA [distributed](#) a voluntary survey to ESG rating providers to gather information the FCA hopes will help inform the future regulatory regime for ESG rating providers and sustainability disclosures. The survey aims to facilitate the FCA's understanding of the ESG rating market, including the business models and methodologies of ESG rating providers, and the policies and processes of ESG rating providers. The FCA also expects the survey to help inform its approach to climate-related disclosure rules for listed companies, including possible incorporation of International Sustainability Standards Board (ISSB) standards and the Transition Plan Taskforce Disclosure Framework. Responses to the survey are due by May 16, 2025.

## **4. UK Government consults on mandatory ethnicity and disability pay gap reporting**

On March 18, 2025, the UK Government published a [consultation paper](#) on its proposal to introduce mandatory ethnicity and disability pay gap reporting for large employers (defined as those with at least 250 employees). The proposed reporting obligation will be included in the upcoming Equality (Race and Disability) Bill and is expected to create a similar reporting framework to existing gender pay gap reporting (including the same "snapshot dates" and pay gap measures) in order to enhance transparency for both employers and employees. The consultation, which remains open until June 10, 2025, seeks views on several items, including how data should be collected and calculated taking into account the data privacy of individual employees.

## **5. Prudential Regulation Authority (PRA) and FCA will not pursue proposals relating to diversity and inclusion at financial services firms**

On March 12, 2025, the [FCA](#) and the [PRA](#) announced that they will not proceed with their proposals to improve diversity and inclusion in financial services firms, which they consulted on in

September 2023. The regulators cited feedback, expected legislation, duplication and regulatory burden as reasons for their decision and noted they will continue to support voluntary industry initiatives. The FCA also confirmed that it will continue to prioritize its work on non-financial misconduct in firms and will set out next steps by the end of June 2025. The regulators also referred to their review of the impact of removing the bonus cap on gender pay and inequality, which is likely to take place in 2026/27.

#### **6. FCA clarifies sustainability rules and UK defense**

On March 11, 2025, the FCA issued a [statement](#) explaining that its sustainability rules do not prevent investment in or financing for defense companies. The FCA said that its rules apply to financial products and services and some listed companies, but do not require them to treat defense companies differently. The FCA also noted that financial institutions can decide their own policies and risk appetites regarding support for the defense sector.

#### **7. FCA publishes findings from review of firms' treatment of vulnerable customers**

On March 7, 2025, the FCA [published](#) its findings from its multi-firm review of firms' treatment of customers in vulnerable circumstances. The review assessed how firms have implemented the FCA's guidance on the fair treatment of vulnerable customers (FG21/1) and the consumer duty. The FCA found that many firms had taken positive action and made good progress, but also identified areas for improvement, such as outcomes monitoring, staff support, communications, and product and service design. The FCA decided not to update FG21/1 and encouraged firms to use the [examples of good practice](#) it published.

### **III. EUROPE**

#### **1. Germany plans to drop German Supply Chain Due Diligence Act (SCDDA)**

On April 9, 2025, Germany's new two-party coalition government presented its coalition agreement, including plans to suspend the SCDDA, which came into effect in 2023. The government announced that the SCDDA will be replaced by the Corporate Sustainability Due Diligence Directive (CSDDD), once it comes into effect (*i.e.*, July 2028). Until then, due diligence obligations in the supply chain will not be sanctioned, except for severe human rights violations. Reporting obligations under the SCDDA for companies will be revoked immediately.

#### **2. Green light for "Stop-the-Clock" EU proposal**

On April 3, 2025, the European Parliament approved the so-called "Stop-the-Clock" proposal (the Postponement Directive), following the EU Council's endorsement on March 26, 2025. As anticipated in our previous [client alert](#), the proposal has progressed swiftly and is now expected to move toward formal adoption without further legislative negotiations. The Postponement Directive is likely to be formally adopted by the EU Council soon and to be transposed into national law by member states by December 31, 2025. While broad support for the Postponement Directive was expected, the forthcoming debate on the separate Amendment

Directive addressing substantive changes to existing requirements—also outlined in our earlier coverage—is expected to be significantly more contentious.

A first draft of the Amendment Directive is currently expected in early June 2025. As with the Postponement Directive, the EU Parliament intends to apply a fast-track procedure. The aim is to resolve on the Amendment Directive as soon as October 2025, if possible.

### **3. Commission letter tasks the European Financial Reporting Advisory Group (EFRAG) to review European Sustainability Reporting Standards (ESRS) and reduce its datapoints**

In a [letter](#), the Commission has tasked EFRAG with reviewing the ESRS by October 31, 2025, suggesting that technical refinements to the sustainability framework will proceed regardless of the legislative timeline. The letter asks EFRAG to initiate the process to develop technical advice for the modification of the ESRS, with a particular focus on substantially reducing the number of mandatory datapoints. Proposed revisions include the removal of less relevant datapoints for general-purpose sustainability reporting, prioritization of quantitative over narrative disclosures, and ensuring continued interoperability with global standards without undermining the materiality assessment.

### **4. Several cases targeting greenwashing and climate change in Germany**

**Litigation:** Greenwashing claims continue to significantly impact companies and courts in Germany. Environmental Action Germany (*Deutsche Umwelthilfe e.V.* – DUH) has brought five new claims against major companies in Germany (e.g., Tchibo and Toom) challenging slogans such as “ocean-friendly,” “sustainable,” and “sustainable commitment.” Since the end of 2024, the DUH has taken action against approximately 20 companies’ ESG claims. Additionally, three German courts have ruled in favor of claimants in greenwashing cases tackling companies’ claims regarding net-zero aims, carbon offsetting, and recyclability (e.g., Adidas).

**Public prosecution:** German public prosecutors have fined asset management company DWS EUR 25 million (USD 27 million) for greenwashing. Claims such as “ESG is an integral part of our DNA” or about being a leader in the ESG context were considered misleading, as they could not be proven to be accurate. The company had already been fined USD 25 million in the United States for greenwashing at the end of 2023.

### **5. CSRD Transposition: French Senate votes on delay of implementation for four years**

No countries transposed the CSRD in March. In France, the Senate voted in favor of a proposal to delay the implementation of CSRD requirements by four years, citing major operational challenges for companies, but the measure still needs approval from the National Assembly to take effect. If adopted, the delay could put France in potential conflict with EU obligations, as companies may still be required to comply with CSRD under EU law. An overview of the current transposition status of CSRD into national laws can be found [here](#).

## **IV. NORTH AMERICA**

### **1. Securities and Exchange Commission (SEC) ends its defense of climate disclosure rules**

On March 27, 2025, the SEC [announced](#) that it had voted to end its defense of the climate disclosure [rules](#) it adopted in March 2024 that would have required public companies to disclose certain climate risk-related information in their SEC filings. As discussed in our [April 2024 ESG Update](#), the SEC had [stayed](#) effectiveness of the new disclosure rules pending legal challenges brought by states and private parties, which had been consolidated for review by the Eighth Circuit. Following the vote, the SEC sent a letter to the court withdrawing its defense of the rules.

On April 3, 2025, 18 states filed a [motion](#) to intervene in the cases, and on April 4, 2025 the same states filed a motion to hold the cases in abeyance until the SEC takes action to amend or rescind the rules.

### **2. New York Department of Environmental Conservation (DEC) releases draft regulations establishing greenhouse gas (GHG) emissions reporting program**

On March 26, 2025, the DEC [announced](#) the release of [draft regulations](#) that would establish a mandatory reporting program requiring certain entities to annually report GHG emissions data to DEC, starting with reporting calendar year 2026 emissions data by June 1, 2027. Entities that meet “large emission source” thresholds will be required to verify their emissions data by DEC-accredited third-party verifiers and submit verification reports by August 10, 2027. Covered entities would generally include the following, subject to certain reporting thresholds: (i) owners and operators of electricity generation, stationary combustion, landfill, waste-to-energy, natural gas compressor station, and other facilities in New York; (ii) fuel suppliers, including natural gas, liquid fuels, petroleum, and coal; (iii) waste haulers and transporters; (iv) electric power entities; (v) suppliers of agricultural lime and fertilizer; and (vi) owners and operators of anaerobic digestion and liquid waste storage facilities. The public comment period on the draft regulations is open from April 2 to July 1, 2025, and final regulations are anticipated by the end of the year.

### **3. Sustainalytics publishes diversity, equity, and inclusion (DEI) rollback metrics and investor implications**

On March 19, 2025, Sustainalytics published a [report](#) highlighting the potential impacts of the recent rollback of corporate DEI initiatives. In its report, Sustainalytics noted that not all rollbacks will have the same impact, and differences may depend on which of three categories the rollbacks fall into: (i) substantive changes to corporate policies, initiatives, or programs, (ii) reframing of existing policies, programs, or teams, and (iii) discontinuation of DEI-adjacent initiatives.

Sustainalytics's ESG Risk Rating framework considers diversity programs, discrimination policies, gender pay equality programs, and gender pay disclosure, with the heaviest weight being placed on diversity programs. However, Sustainalytics notes that because human capital is only a portion of its ESG Risk Rating, the weight of human capital (and thus of DEI programs) on a company's ESG Risk Rating can vary depending on the materiality of the workforce to the

company's business. This means that, in practice, DEI rollbacks are likely to have a greater impact on ESG Risk Ratings in more labor-intensive or knowledge-intensive industries that are more exposed to human capital-related risks, such as information technology, real estate, and healthcare, than in more capital-intensive industries, such as energy and utilities.

#### **4. Environmental Protection Agency (EPA) initiated funding freeze blocked**

On March 18, 2025, a federal judge issued an order granting a temporary restraining order blocking the EPA's efforts to cancel \$20 billion in grants issued under the Greenhouse Gas Reduction Fund. The funds were initially frozen prior to the cancellation of the grant. In the [memorandum opinion](#), federal judge Tanya Chutkan stated that the EPA had failed to follow proper procedures related to the grant cancellations and that "based on the record before the court, and under the relevant statutes and various agreements, it does not appear that EPA Defendants took the legally required steps necessary to terminate these grants, such that its actions were arbitrary and capricious." The ruling ordered Citibank, which held the funds for grant recipients, to process and disburse all funds requested under the Account Control Agreement and prohibited the funds from being moved to other accounts without further court order. The suit is ongoing.

#### **5. Canada eliminates consumer carbon tax**

On March 15, 2025, Canadian Prime Minister Mark Carney signed an [order](#) eliminating the country's consumer carbon tax. This was Carney's first act as Prime Minister (as the Liberal Party's successor to Prime Minister Justin Trudeau). The new policy goes into effect on April 1, 2025.

Previously, under the Greenhouse Gas Pollution Pricing Act (GGPPA), Canadian citizens paid a charge for using or consuming any of 21 greenhouse gas-producing fuels. The charges varied by fuel type and were offset by a refundable tax credit provided to eligible individuals and small and medium-sized businesses. While this change in carbon tax policy affects the majority of Canadian provinces, British Columbia and the Northwest Territories impose their own provincial carbon tax regulations and will not be directly affected by the new policy.

#### **6. U.S. Minister Counselor to United Nations (UN) Criticizes Sustainable Development Goals (SDGs)**

On March 4, 2025, Edward Heartney, U.S. Minister Counselor to the UN Economic and Social Council, delivered [remarks](#) at the UN's 58th Plenary Meeting of the General Assembly regarding the UN 2030 Agenda and Sustainable Development Goals, stating that "Agenda 2030 and the SDGs advance a program of soft global governance that is inconsistent with U.S. sovereignty and adverse to the rights and interests of Americans." Heartney's remarks made clear that the "United States rejects and denounces the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, and it will no longer reaffirm them as a matter of course."

***In case you missed it...***

The Gibson Dunn [Workplace DEI Task Force](#) has published its updates for March summarizing the latest key developments, media coverage, case updates, and legislation related to diversity, equity, and inclusion, including a dedicated alert describing the Equal Employment Opportunity Commission and Department of Justice [guidance](#) regarding discrimination related to DEI at work.

A collection of our analyses of the legal and industry impacts from the presidential transition is available [here](#).

## **[V. APAC](#)**

### **1. Sustainability Standards Board of Japan (SSBJ) finalizes sustainability disclosure standards**

On March 5, 2025, the SSBJ issued [three sustainability disclosure standards](#) (SSBJ Standards), which align with the ISSB's International Financial Reporting Standards Sustainability Disclosure Standards. The SSBJ Standards are composed of a universal sustainability disclosure standard and two theme-based standards on general and climate-related disclosures. The SSBJ anticipates that Tokyo Stock Exchange Prime Market-listed companies will eventually be required to adhere to the SSBJ Standards, with specific timelines to be set through a future amendment to the Japanese Disclosure Ordinance.

### **2. New Australian Environmental Claims Code took effect March 1, 2025**

On March 1, 2025, the new [Australian Environmental Claims Code](#), which is aimed at combating greenwashing, became effective. This code establishes standards for businesses making environmental and sustainability claims in advertisements. The implementation of the code reflects a broader effort to enhance transparency and accountability in environmental advertising.

*Warmest regards,*  
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