

ESG Regulations – Developments, news and trends

ACC

21 October 2024

This session

- CMS and CMS Wistrand at a glance – who we are
- A brief introduction to ESG
- Corporate Sustainability Reporting Directive (CSRD)
- Corporate Sustainability Due Diligence Directive (CSDDD)
- Green Claims
- ESG Trends



**CMS and CMS
Wistrand at a glance
– who we are –**

Staff

> 9,800

59,3% female

Lawyers

> 6,300

51,1% female

54 new partners
in 2023, taking the
total to over
1,300



19 Practice and Sector Groups
working across offices

offices

84

cities

79

countries

47

EUR
1.957bn
turnover for 2023



The Americas

Bogotá
Cúcuta
Lima
Mexico City
Rio de Janeiro
Santiago de Chile
São Paulo

Europe

Aberdeen	Barcelona	Berlin	Brussels	Funchal	Lyon	Sarajevo
Amsterdam	Belgrade	Bratislava	Bucharest	Geneva	Madrid	Sheffield
Antwerp	Bergen	Bristol	Budapest	Glasgow	Manchester	Skopje
			Cologne	Gothenburg	Milan	Sofia
			Dublin	Hamburg	Monaco	Stavanger
			Duesseldorf	Istanbul	Munich	Stockholm
			Edinburgh	Kyiv	Oslo	Strasbourg
			Frankfurt	Leipzig	Paris	Stuttgart
				Lisbon	Podgorica	Tirana
				Liverpool	Poznan	Vienna
				Ljubljana	Prague	Warsaw
				London	Reading	Zagreb
				Luxembourg	Rome	Zurich

Africa

Casablanca
Johannesburg
Luanda
Maputo
Mombasa
Nairobi

Middle East

Abu Dhabi
Dubai
Muscat
Riyadh
Tel Aviv

Asia-Pacific

Beijing
Brisbane
Hong Kong
Shanghai
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CMS Wistrand



Full-service business law firm



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200+ employees, 52 partners



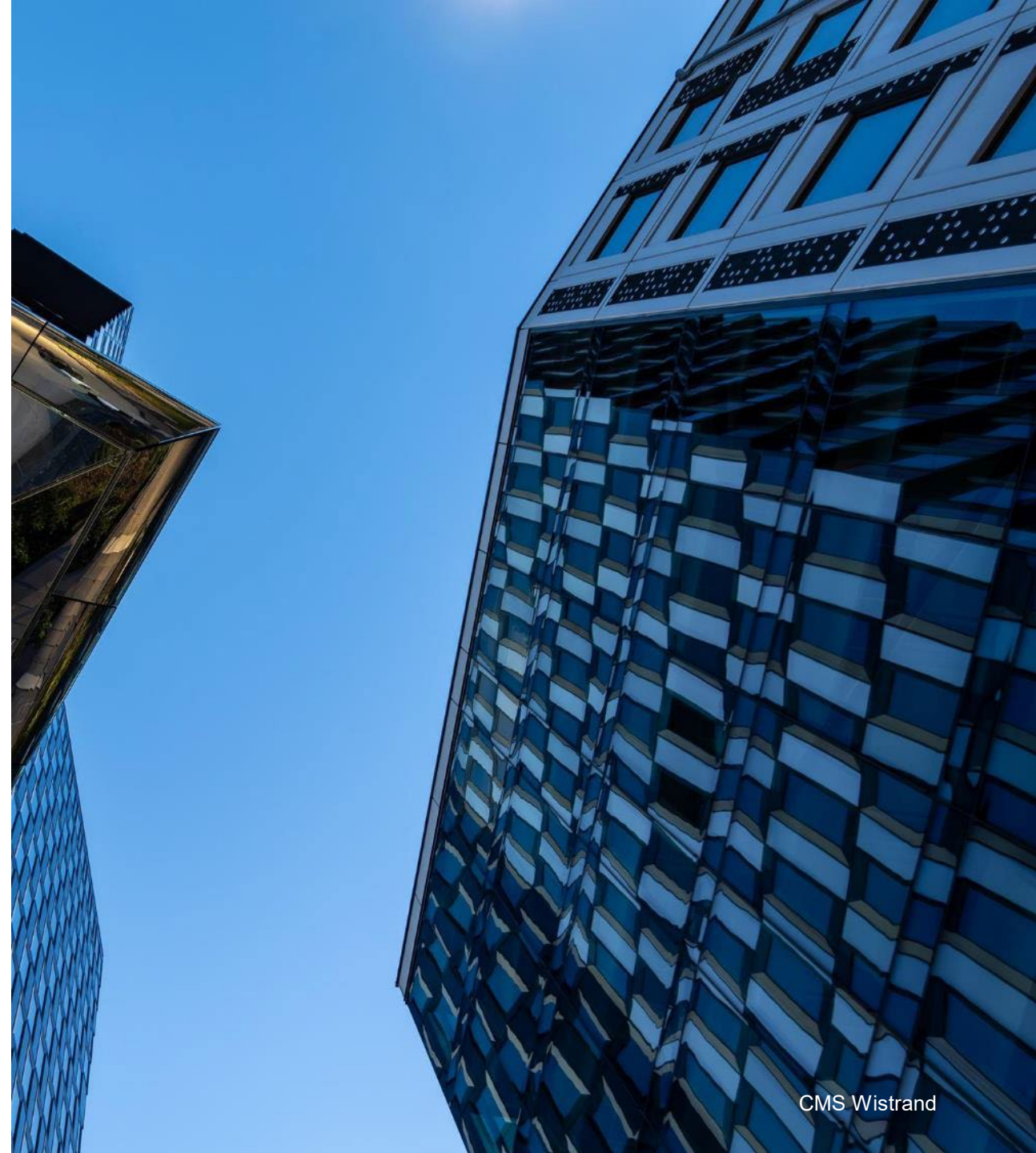
Offices in Stockholm and Gothenburg













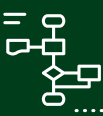

Leading law firm in Sweden



Top ranked in multiple practices



Our key expertise

	Construction, Infrastructure & Projects <p>Collaborated on major projects across diverse sectors, extending beyond our robust Real Estate construction team. Our engagements span significant initiatives in areas such as energy, renewables, data centers, battery technology and other industrial buildings.</p>		Insurance <p>Recognised for our top-tier status in insurance law, we excel in advisory and contentious matters, serving a diverse range of clients of Swedish and international insurance entities.</p>		Tax <p>One of the largest Lawyer-led Tax practices in Sweden, actively engaged across multiple sectors, with specific expertise in real estate tax.</p>
	Corporate/M&A <p>A large Corporate/M&A practice comprising lawyers with experience spanning a wide range of transactional work across industries and handling cross-border transactions. Ranked #6 in Deal Count 2023 by Merger Market.</p>		IP/Technology, Media & Communications <p>A longstanding position as experts within Intellectual Property Rights (IP) and Technology, Media and Communications (TMC).</p>		Corporate & Commercial <p>Our deep understanding and bilateral teams ensure tailored expertise for each contract, promoting robust business relationships and legal frameworks.</p>
	Dispute Resolution <p>An esteemed Dispute practice, recognised as one of the leading Swedish firms, handling the highest-profile cases in Sweden within the evolving field of professional liability.</p>		Real Estate <p>A leading Real Estate practice in Sweden, securing the #2 spot in transaction value rankings by Fastighetsvärlden 2023.</p>		Banking & Finance <p>We excel in real estate finance, leveraged acquisition finance, corporate lending, refinancing, and debt capital market transactions.</p>
	Energy & Climate Change <p>Dating back to the 90's, with reputational expertise in the energy and environment sector our lawyers work across practices to advice and lead the way for major projects within renewable energy, battery manufacturing, waste management and more.</p>		Restructuring & Insolvency <p>With a well-renowned Insolvency practice, CMS Wistrand is a key player in Sweden's largest bankruptcies. We excel in both traditional insolvency work and complex financial restructuring, offering dual capabilities.</p>		Employment & Pensions <p>We assist Swedish and international entities with all employment law matters. Our Employment practice group brings a wealth of experience to the table, and we are distinguished by our broad expertise across various sectors.</p>

CMS ESG Taskforce

120 partners and counsels globally
with a strong focus on ESG matters



Offering
innovative
legal tech
solutions

CMS has a **cross-sector**
and **cross-practice**
approach to ESG

Over
45
Jurisdictions



CMS is listed as a
recommended firm in
the Legal 500
Green Guide:
EMEA 2023.



‘The team’s **real strength** is
the ability to act for clients
across the breadth of
environmental law. They are
very knowledgeable about the
latest developments.’
Chambers 2023

CMS provides an **interactive**
report for clients in relation to
the European Green Deal and
UK Net Zero policy
developments and legal
requirements.

‘Firmwide measures include the
launch of the **CMS Green Globe**
initiative, a platform which aims to
keep clients updated about trends and
developments relating to
sustainability.’
Legal 500, Green Guide EMEA 2023

Global coverage, local
knowledge. We are the sixth
largest law firm globally and
the largest in Europe.

CMS is **ranked** in Chambers
and Partners Global-wide
ESG Risk Guide
2023.



‘The team has advised a wide
variety of clients in respect to
the **full spectrum of ESG**
needs.’ *Chambers, Global-
wide ESG Risk Guide 2023*.

One-stop shop for multijurisdictional
clients. Due to our in-depth expertise,
we **can advise clients on all aspects**
of ESG-related law. CMS is at the
forefront of ESG developments.

Sector-focused ESG Advice (there is more)

At CMS, our approach is integrated and multidisciplinary

Environmental	Social	Governance
Circular economy	Supply chain management	ESG Responsibility of directors
Environmental and species protection/biodiversity	Fair labour conditions	Integrity and compliance management
Renewable energy	Diversity, equality and inclusion	Hazard regulation
Carbon emission trade	Health, safety and wellbeing	Whistleblowing
Energy transition (wind, solar, hydro etc.)	Corporate digital responsibility	Corporate transparency and ownership
Biodiversity	Compulsory licensing and patent waivers	ESG reporting and disclosure
De-forestation	Socially focused investment funds	Corruption and AFC

CMS Regulatory Mapping Services



Modular step-by-step plan that supports ESG compliance – digital access, industry-specific assessment and individual recommendations for your ESG strategy



On 24 April 2024, following intense discussions, the European Parliament enacted a heavily revised version of the Corporate Sustainability Due Diligence Directive ([the CSDDD](#)).

<https://cms.law/en/int/innovation/legal-tech-tools-and-teams>



CMS Green Globe

Stay informed about the latest sustainability claims trends and developments

The **CMS Green Globe** is an **interactive platform** that allows businesses and clients to stay aware and duly informed about all the main rapidly changing trends and developments in relation to sustainability claims. The **CMS Green Globe** helps you to avoid greenwashing your consumer. Here you find:



Asset managers are faced with multiple challenges and significant **regulatory and reputational risks** when implementing sustainability frameworks to their governance processes, launching new ESG funds or uplifting existing funds to be more sustainable, particularly when subject to the **Sustainable Finance Disclosure Regulation (SFDR)**.

ESG – a brief introduction

ESG

- ESG - a subset of the broader sustainable development concept

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs”

World Commission of Environment and Development’s Brundtland report, “Our Common Future”, 1987

- ESG - a framework or criteria to measure the sustainability and ethical impact of an investment or a company focusing on three components: Environmental, Social and (corporate) Governance.

The three ESG components

Environmental

- Companies' environmental impact, including *Inter alia* pollution, greenhouse gas emissions, waste generation, energy use and the impact on biodiversity.

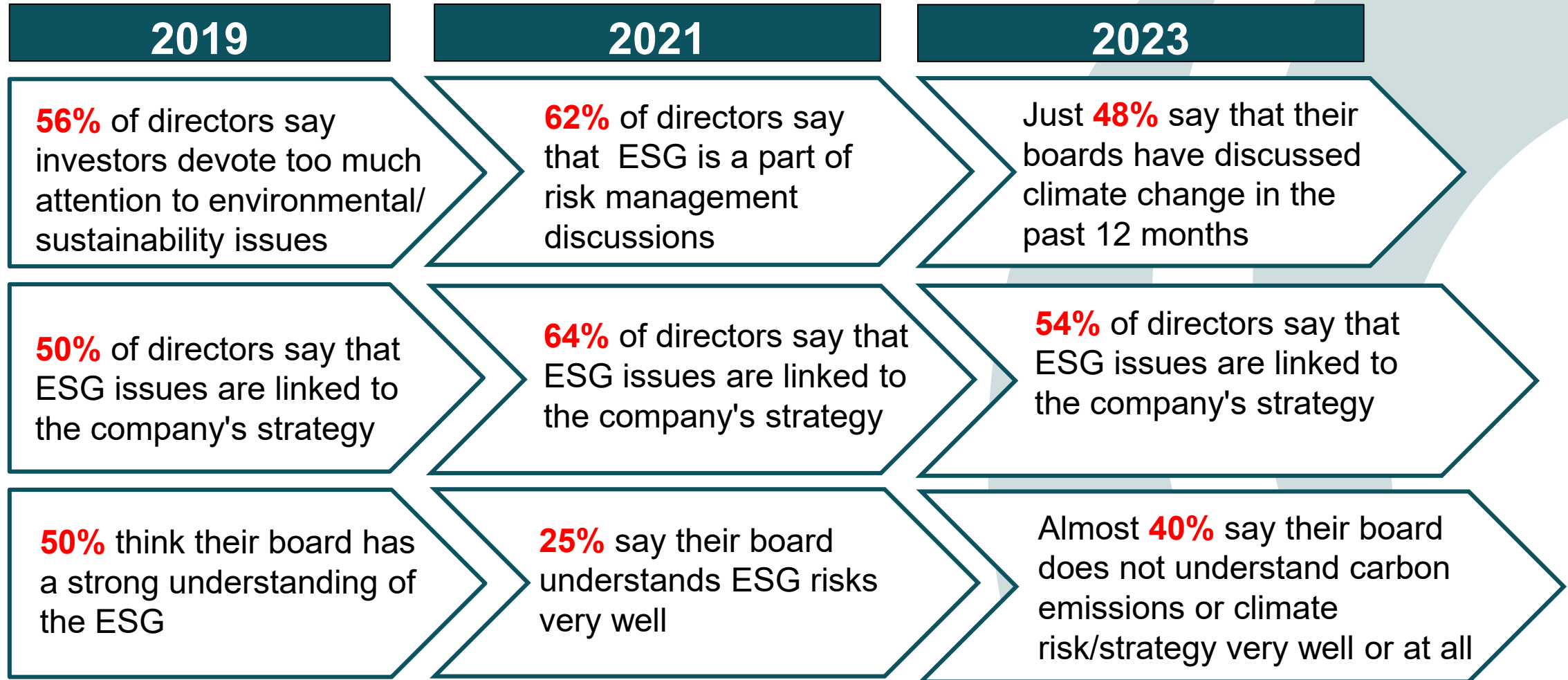
Social

- Companies' relationships with their stakeholders (employees, customers, suppliers, communities) - with regard to *inter alia* human rights, labour practices and diversity.

Governance (corporate)

- Governance covers how companies are managed, including *inter alia* risk management, boardroom diversity and gender equality, shareholder rights, remuneration and transparency.

Key figures over the years



Source: PwC, 2019 Annual Corporate Directors Survey, Oct 2019

Source: PwC, 2021 Annual Corporate Directors Survey, Oct 2021

Source: PwC, 2023 Annual Corporate Directors Survey, Oct 2023

EU – a very ambitious legislator

The EU has a very ambitious approach to sustainability - operationalized through various EU initiatives and policies, which impacts the Nordics, most notable are

- **The European Green Deal** – launched 2019, a suite of EU laws and policies with the ultimate aim to achieve EU climate neutrality by 2050, which includes “Fit for 55”-legislation adopted in order to reach EU’s climate target of reducing its net greenhouse gas emissions by at least 55% by 2030.
- **The EU Taxonomy Regulation** – aims to establish common definitions of economic activities that can be considered environmentally sustainable. A social taxonomy is planned for the purpose of classifying economic activities that are sustainable from a social perspective.

EU – a very ambitious legislator

Three parts of legislation which are especially important for a large range of corporations - directly and indirectly.

- **Corporate Sustainability Reporting Directive** (the "CSRD") entered into force 5 January 2023.
- **Corporate Sustainability Due Diligence Directive** (the "CSDDD") entered into force 24 July 2024.
- **Regulation on sustainability-related disclosures in the financial services sector** (SFDR) – entered into force 2019.

Other EU-regulatory initiatives 2023-2026 (there is more...)

- **Regulation on Deforestation-Free Products** (applicable as of 30 December 2025 for large and medium companies; 30 June 2026 for micro-/small companies)
- **Carbon Border Adjustment Mechanism (CBAM)** (transitional period 2023-2025; definitive regime 2026)
- **Regulation on Nature Restoration** (Nature Restoration Law) (in force August 2024)
- **Eco-design for Sustainable Products Regulation** (in force July 2024)
- **Right to Repair Directive (R2R)** (adopted May 2024, two years to transpose into national law)
- **Directive on Empowering Consumers for the Green Transition** (adopted March 2024, two years to transpose into national law, apply from 2026)
- **Directive on Substantiation and Communication of Explicit Environmental Claims** (Green Claims Directive) (proposal 2023)

Corporate Sustainability Reporting Directive (CSRD)

DIRECTIVE (EU) 2022/2464

CSRD - Characteristics

- CSRD (2022/2464/EU) entered into force on 5 January 2023
- CSRD was due to be implemented into national law by 6 July 2024
- Harmonized EU requirements for company reporting of sustainability matters
- Significantly wider scope and detail in reporting
- Introducing mandatory sustainability reporting standards (ESRS)
- Double Materiality Assessment
- Introducing an assurance (audit) requirement
- The member states decides on sanctions

CSRD - Scope

Large companies (and banks, insurance undertakings etc.)

To be classified as large, companies must meet at least two of the following criteria:

1. **Balance sheet:** Total assets exceeding €25 million
2. **Turnover:** A net turnover exceeding €50 million
3. **Employees:** More than 250

Listed small and middle-sized entities excluding micros

All companies listed on regulated markets in the EU, including small and medium-sized enterprises (SMEs)

Non-EU companies (subsidiaries and branches)

1. Non-EU company with a net turnover > 150 million euro in the EU and
2. A subsidiary office with a net turnover > 40 million euro or large or listed subsidiary

CSRD – Reporting timeline

1 January 2024: large companies and large EPI's (> 500 employees) already subject to the NFRD (first report 2025)

1 January 2025: large companies and EPI's (> 250 employees) (first report 2026)

1 January 2026: listed small and medium enterprises (> 10 employees) 700 000 EUR in turnover and/or 350 000 EUR in assets (first report 2027/2028)

1 January 2028: non-EU companies > 150 MEUR turnover and at least one subsidiary or branch in the EU (first report in 2029)

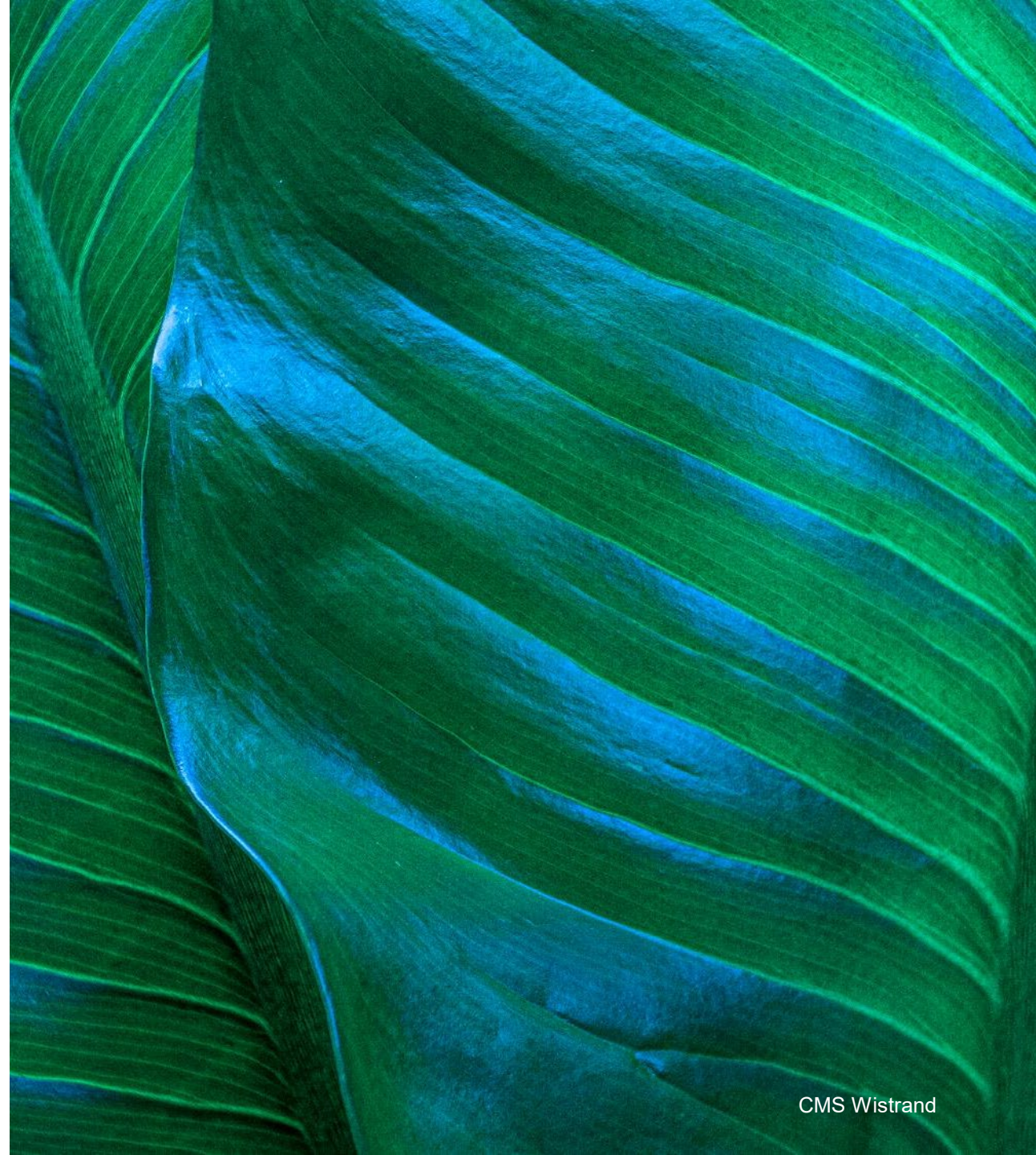


Report requirements

Annual report on sustainability matters i.e. environmental, social and human rights, and governance factors

Information to be clearly identifiable within the management/directors' report in a dedicated section

Characteristics include **double materiality**, forward looking information, information on the value chain etc.



DIVE BRIEF

European Commission warns 17 member states to incorporate CSRD into national law

The Commission will not be able to achieve the “necessary level” of reporting harmonization without the full incorporation of the directive across the EU, it said last week.

Published Oct. 1, 2024

2024-10-01

EU Commission Warns 17 Member States for Failing to Implement CSRD Sustainability Reporting Rules

by [Aga Manhao](#)

The European Commission has issued warnings to 17 EU member states, including Belgium, Germany, and Spain, for failing to implement the Corporate Sustainability Reporting Directive (CSRD) by the July 2024 deadline. The CSRD is critical for harmonizing sustainability reporting across Europe, requiring companies to disclose detailed environmental, social, and governance (ESG) data. Non-compliance risks slowing down progress toward the EU’s sustainability goals and could result in legal action. Businesses must prepare for the expanded reporting requirements.



News & Analysis

ESG round-up: EC calls on 17 member states to fully transpose CSRD

The latest developments in sustainable finance: AXA IM launches PAB ETF focused on emerging market debt; impact on returns biggest barrier for AOs implementing SI strategy, survey says.

RI Journalists - 26 September 2024

Share A+ 100%

The European Commission has called on 17 member states to fully transpose the **Corporate Sustainability Reporting Directive (CSRD)**. The Commission opened infringement procedures by **sending a letter of formal notice** to Belgium, Czechia, Germany, Estonia, Greece, Spain, Cyprus, Latvia, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia and Finland for failing to fully transpose the directive. In the absence of transposition of these new rules it will not be possible to achieve the “necessary level of harmonisation of sustainability

Corporate Sustainability Due Diligence Directive (CSDDD)

DIRECTIVE (EU) 2024/1760

EU-Commission on the CSDDD

*“The aim of the CSDDD is to foster sustainable and responsible corporate behavior in companies’ operations and across their global value chains. The new rules will ensure that companies in scope identify and address **adverse human rights and environmental impacts** of their actions inside and outside Europe.”*

In-scope?



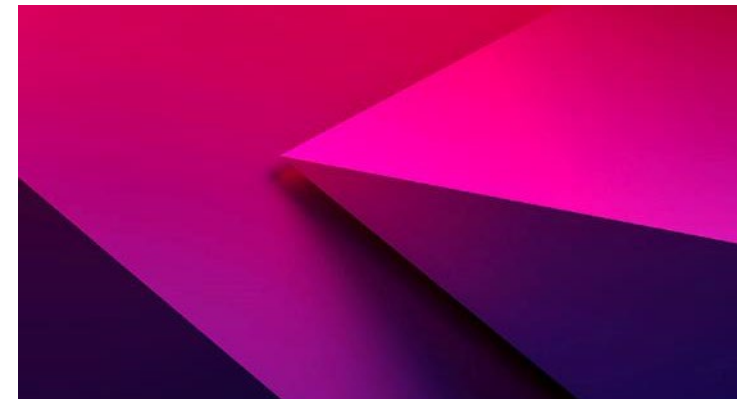
General rule

Companies with more than **1 000 employees** on average and with a net worldwide turnover of **> MEUR 450** and certain franchising/licensing agreements in the EU **> MEUR 22.5** royalties; **> MEUR 80** net worldwide turnover



Parent company rule

Ultimate parent company of a group that reach the thresholds if there are consolidated annual financial statements (even if the company itself does not reach the thresholds).



Non EU-entities

Non-EU companies that generate a net turnover of **> MEUR 450** in the EU and certain franchising/licensing agreements in the EU with **> MEUR 22.5** royalties and **> MEUR 80** turnover in the EU

Out-of-scope?

- Cascadisation of the CSDDD-regulations down to out-of-scope subsidiaries and business partners of in-scope companies (indirect impact)
- Micro companies and small and medium sized enterprises (SMEs) are not covered by CSDDD

But

- Due to cascadisation, SMEs in the chains of activities of in-scope companies can also be affected
- CSDDD provides that in-scope companies shall provide for support and protective measures for SMEs, which could be indirectly affected as business partners in the chains of activities

Status of CSDDD

Proposal

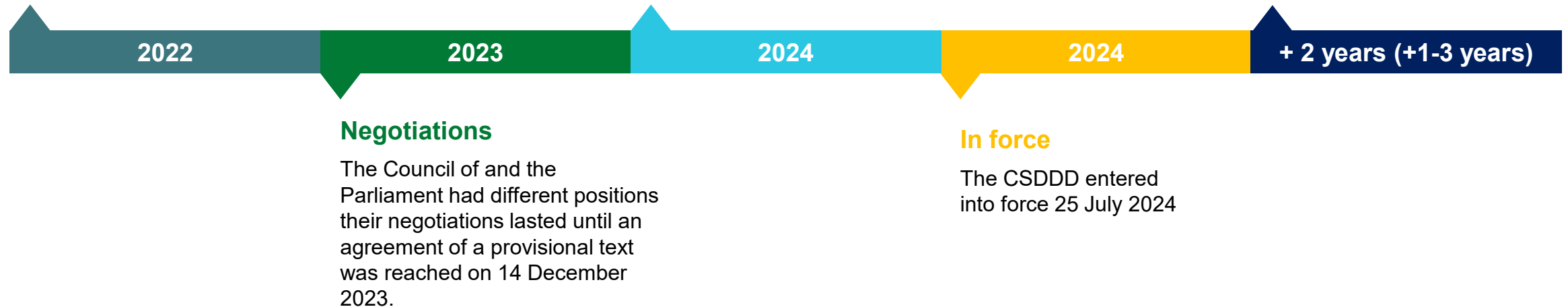
As part of the European Green Deal, the Commission proposed CSDDD in 2022.

Further Negotiations and agreement

After multiple postponements and negotiations between parliament and Council, the Council eventually gave its approval with material adjustments to the text on 15 March 2024. The Parliament adopted a proposal on 30 April 2024.

Implementation.

Member states shall implement CSDDD into **national law** 2026
National law to apply in steps:
2027 - >5000 employees/ MEUR 1 500 turnover
2028 - >3000 employees/MEUR 900
2029 – the “rest”



Companies shall conduct **risk-based** human rights and environmental due diligence

Integrate due diligence into policies and risk management systems - Art 7

Companies shall integrate due diligence into all relevant policies and risk management systems and have in place a policy that ensures risk-based due diligence

Bringing actual adverse impacts to an end - Art 11

Companies shall take **appropriate measures** to bring actual adverse impacts to an end



Identifying and assessing potential adverse impacts - Art 8

Companies shall take appropriate measures to identify and assess potential adverse impacts arising from their **own operations**; those of **their subsidiaries** and, where related to their **chains of activities**, those of their **business partners**.

Preventing potential adverse impacts - Art 10

Companies shall take **appropriate measures** to prevent, or adequately mitigate, potential adverse impacts.

Implement a notification mechanism and complaints procedure – internal and external complaints

Assessing **chains of activities** and **business partners**

Identify and assess actual and potential adverse impacts arising from **own operations** or **their subsidiaries** and, where related to **chains of activities**, those of **business partners**.

Chains of activities:

- (i) activities of a company's **upstream** business partners related to the production of goods or the provision of services
- (ii) activities of a company's **downstream** business partners related to the distribution, transport and storage of a product of that company. Thus, not the use or end use of products.

Required appropriate measures to prevent or stop adverse impact

Neutralise

**Prevention/
correction action
plan**

**Contractual
assurances and
cascading**

**Investments/
Modify business
plan**

Collaborate

Support to SMEs

**Suspend or
terminate
relationship
- as last resort**

Appropriate measures to prevent or stop adverse impacts

- An obligation to take appropriate measures, i.e. a proportionate approach.
- **Appropriate measures:**
 - reasonably available to the company,
 - proportionate to the severity and likelihood of adverse impacts, and
 - effective in addressing the adverse impacts.
- Who **causes** the adverse impact is relevant:
 - Only company or caused jointly by the company and a subsidiary?
 - Caused by a business partner in the chain of activities?
 - What is the possibility to influence the business partner?





#1

#2

#3

#4

#5

#6

Prioritisation of identified actual and potential adverse impacts

Where it is not feasible to prevent, mitigate, bring to an end or minimise all identified adverse impacts at the same time and to their full extent, companies shall prioritise adverse impacts identified.

This shall be based on the severity and likelihood of the adverse impacts.

Once the most severe and most likely adverse impacts are addressed [as they must be] within a reasonable time, the company shall address less severe and less likely adverse impacts.

Combating climate change

Companies shall put into effect a transition plan for climate change mitigation which aims to ensure, **through best efforts**, that the business model and strategy of the company are compatible with;



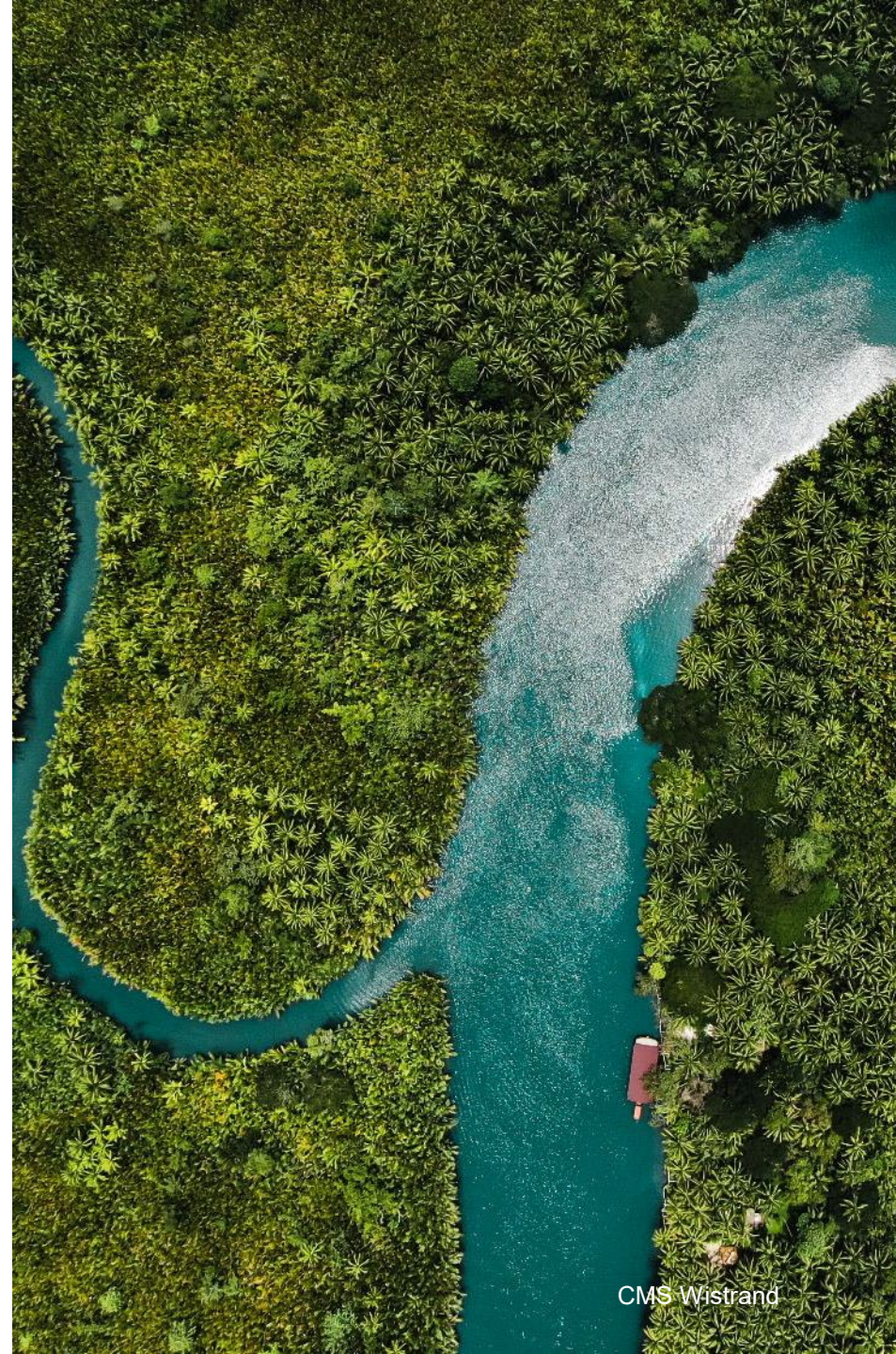
limiting global warming to 1.5 °C in line with the Paris Agreement



the objective of achieving climate neutrality as established in the European Climate Law



(where relevant), the exposure of the company to coal-, oil- and gas-related activities.





Model contract clauses

Commission to provide model contract clauses for “contractual cascading”



Support from EU and Member States

Single help-desk to be established



Collaboration

Industry associations or through multi-stakeholder initiatives.



Communication

Publish annual report
If a sustainability report is published pursuant to CSRD – no requirement to publish report under the CSDDD-regime.

Why is it a big deal to follow the obligations – claims and litigation risks



Remediation obligation of actual adverse impacts



**Administrative penalties –
Max penalty not less than
5 % of net worldwide
turnover**



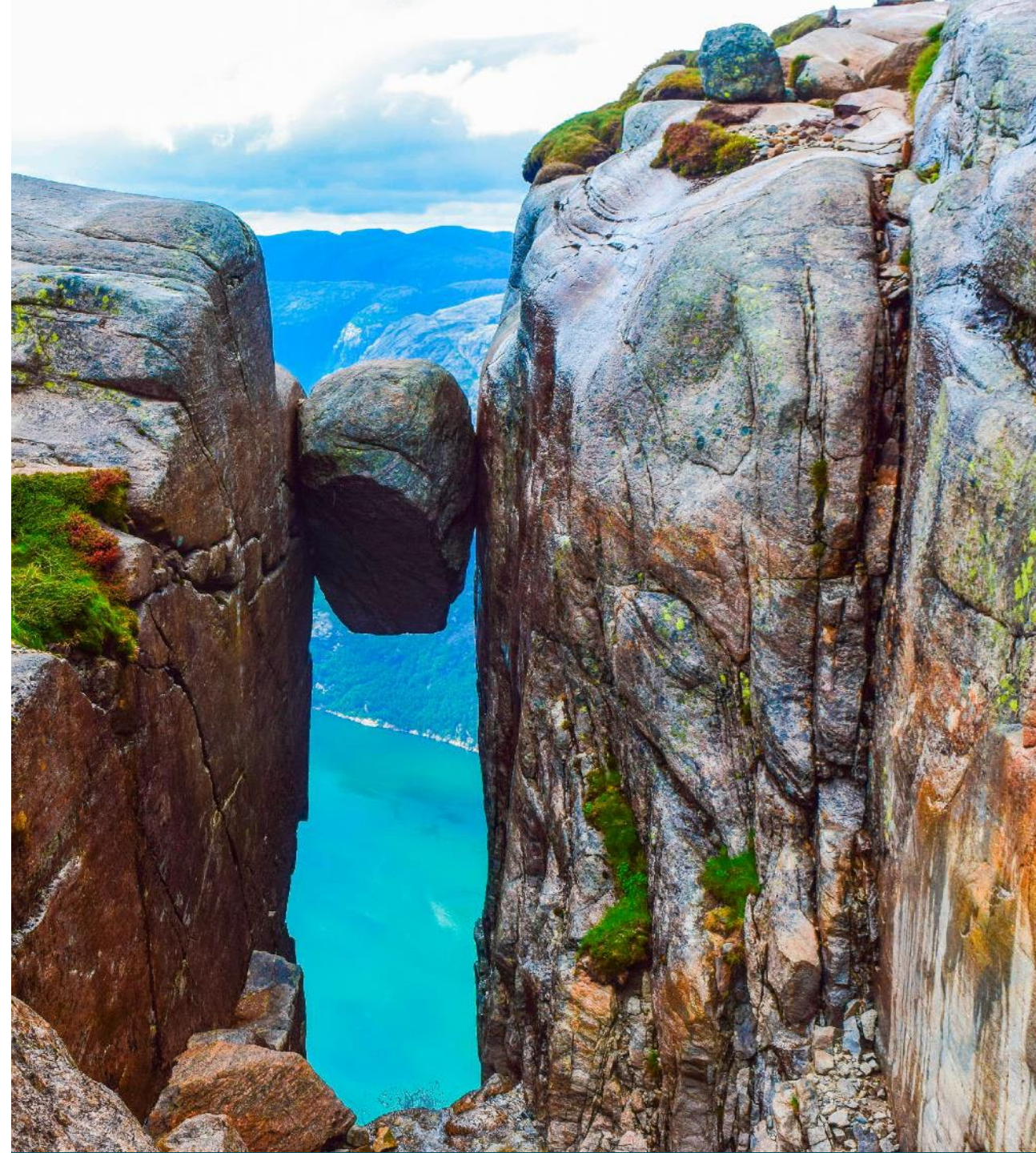
**Civil liability for damages
– trade unions and NGOs
able to bring claims**

Green Claims

What is a green claim?

A green claim gives the impression that a product or service

- a) has a positive environmental impact
- b) has no environmental impact; or
- c) is less harmful to the environment than competing products or services



Upcoming directives

DIRECTIVE (EU) 2024/825 ... of 28 February 2024 ... as regards empowering consumers for the green transition through better protection against unfair practices and through better information ("Empowering Consumers Directive"; "**ECD**")

Must be implemented in national law of the Member States by 27 March 2026 and applied from 27 September 2026

(Draft) Directive ... on substantiation and communication of explicit environmental claims ("Green Claims Directive"; "**GCD**")

Still "under construction". Final version not before 2025.

Important provisions - ECD

- **Sustainability claims and labels** must meet requirements of a certification scheme or be approved by public authorities
- **Generic** Environmental Claims are prohibited unless it could be verified or the "excellent recognised environmental performance" could be demonstrated
- Environmental claims related to **future environmental performance** (e.g. "net zero by 2030") now expressly misleading under certain conditions

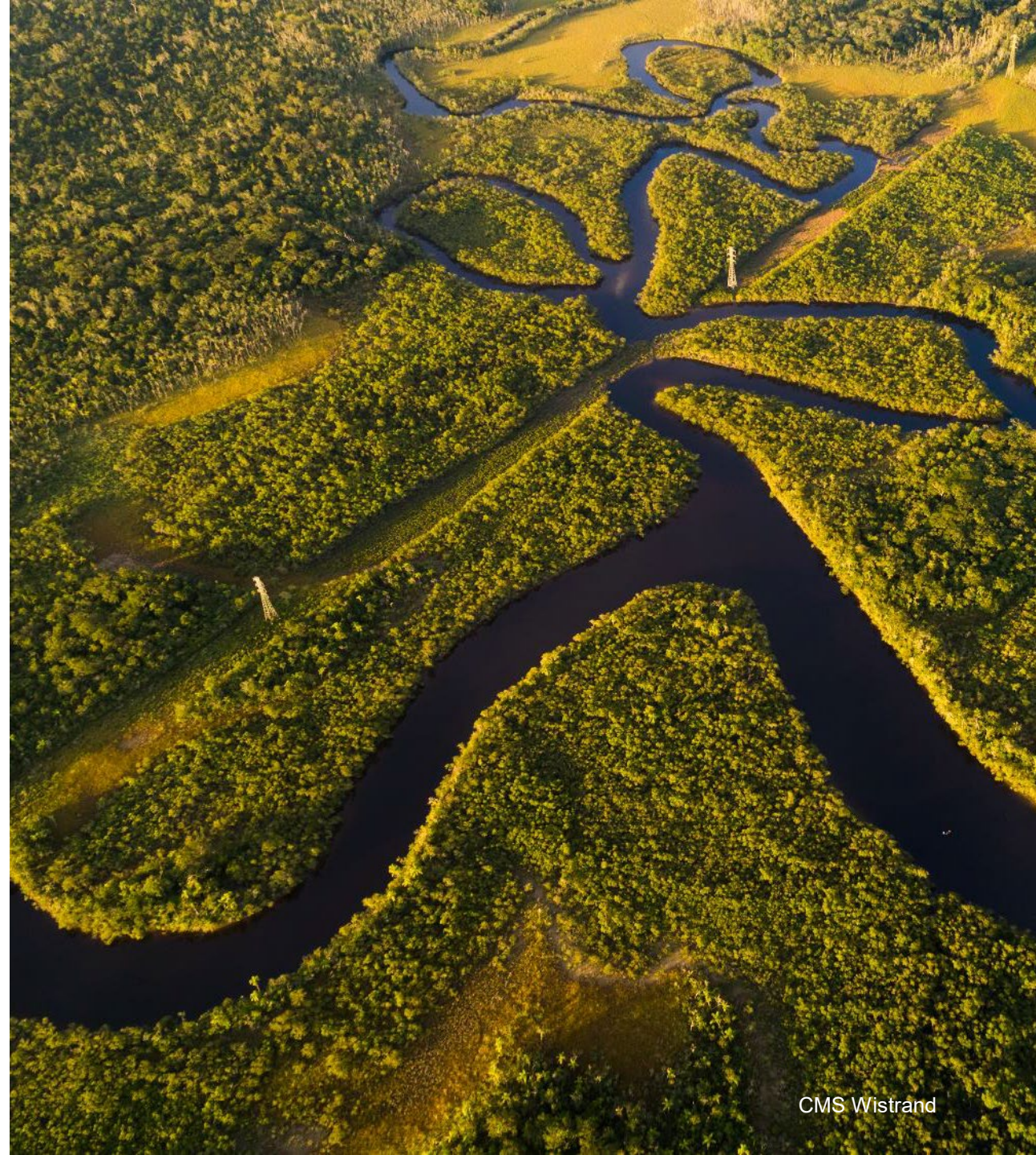
Key measures - GCD

- Clear criteria for how companies should substantiate their environmental claims and labels
- Environmental claims and labels must be subject to prior approval by an independent and accredited third party verifier
- New official eco-labelling schemes will only be allowed if they are developed at EU level
- Infringements should be penalized by public authorities - not by competitors

Non-compliance risks

- Fines (article 17 GCD)
- Confiscation of revenues
- Temporary exclusion from public procurement
- Reputational risks

→ Risk for greenhushing?



ESG Trends



ESG

Can ESG come back from the dead?



Is ESG Dead? An Investigation Of Investor Returns

ESG Is Over – As We Know It

Greenwashing - is ESG dying or evolving?

ESG Is Dying Its Inevitable Death

ESG 1.0 is dead. Welcome to ESG 2.0



OPINION | 14 APR, 2023
ESG is dead. It's time for more useful language
We need – and can have – something better to define the good that a company does.

Opinion **Markets Insight**
ESG is beyond redemption: may it RIP
The investing framework is now facing a mountain of troubles, almost all of them of its own making

ENVIRONMENTALISM
Is ESG Already Over?
CEOs are beginning to wonder what to do when environmental, social, and governance factors are at odds with performance.

ESG is dead: long live Rational Sustainability!

CLIMATE CHANGE, INVESTMENTS
Is ESG investing dead?

ESG investing is dying. That's not a bad thing

ESG Is A Dead End. Do We Care?

Backlash?

Reality bites Europe's green ambitions; Deforestation rules pushed to 2025” (Bloomberg Green News 3 October 2024)

Most companies see German Supply Chain Act as compliance exercise - not value driver, survey finds” (Environmental Finance 20 August 2024)

ECB's approach fails to recognise credit risk of transitioning too fast” (US banks 15 August 2024)

Draghi report warns of regulatory burden from EU sustainability rules (The future of European competitiveness: Report by Mario Draghi 9 September 2024)

”SFDR is an utter disaster” (Environmental Finance 20 September 2024)

American Airlines Faces Class Action over ESG Investments Breaching Fiduciary Duty (May 2024)

ESG - does it matter for businesses?

Top three expected business outcomes from ESG (Deloitte):

- reduced risk - 53%
- increased efficiencies, ROI - 52%
- talent attraction and brand enhancement - 51%

Climate litigation has doubled since 2015, bringing the total number of climate lawsuits to about 2,000, 25% of which were initiated between 2020 and 2022 (CMS).

Supply chain disruptions can cost companies between 6% and 20% in revenue loss (IBM). CSDDD is an opportunity to integrate sustainability into core strategies and mitigate the risk of supply chain limitations.

71% of leaders anticipate the growing significance of ESG in corporate performance

38% declare it will have a high or transformational impact on their business (TR)

Regulatory and Disputes have the largest proportion (41% and 37%) of buyers anticipating an increase in legal spend in the next 12 months (Thomson Reuters)

Global ESG assets are on track to surpass \$40 trillion by 2030 – exceeding 25% of projected global assets under management and with over \$18 trillion in Europe. (Bloomberg)

Is ESG more relevant to decision-making than it was three years ago?

In the Gartner Survey, CEOs ranked environmental sustainability 8th among their top 10 strategic priorities.

Up from 14th in 2019 and 20th in 2015.

By 2024, it had risen to 7th place.

For 50% of CEO's compensation is tied to sustainability goals, up from only 15% in 2022 (IBM)

72% of companies have abandoned potential acquisitions due to ESG concerns, up from 42% in 2022 (Deloitte).

99% of executives in 2024 Deloitte's Sustainability Action Report declared that they are preparing for increased disclosure requirements. Up from 81% in 2022.

On the horizon from the EU

- “Clean Industrial Deal” – policy commitment from the new EU Commission
- Regulation on ESG rating activities (provisional agreement between Council and Parliament 2024)
- Social taxonomy (when?)
- Aim to simplify rules on environmental protection
- Market-based system of ‘nature credits’

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