U.S. Lawmakers Urge DOJ to Investigate Oil and Gas Companies

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On July 25, 2023, Representative Ted Lieu and 19 other Democratic lawmakers from the U.S. House of Representatives and Senate **sent a letter** to U.S. Attorney General Merrick Garland, requesting that the Department of Justice open an investigation into certain oil and gas companies. As alleged in the letter, one of these companies "had a deep, structural understanding of climate change as early as the 1970s and yet proceeded to sow doubt about the science and the need for action." Its knowledge was purportedly based on research performed by in-house scientists who warned that increases in carbon emissions could "induce major climatic changes" that could in turn lead to "drastic economic consequences" and "severe stresses on human societies." Yet the company "continued to publicly promote the use of fossil fuels and participate in trade associations and other groups that pushed climate denial and opposed solutions."

Although these companies no longer deny climate change, the lawmakers accuse them of widespread greenwashing through "efforts to convince the public they are part of the solution." Specifically, lawmakers allege that oil company pledges to "move away from fossil fuels were not supported by 'concrete actions'" and that these companies have "slash[ed] investments in low-carbon projects" even while earning record profits.

Based on these allegations, the group of lawmakers urge the DOJ to take action. Drawing parallels to the tobacco industry's efforts to mislead the public about the health effects of smoking—which efforts the DOJ successfully prosecuted under the RICO Act—the letter urges the DOJ to investigate "members of the fossil fuel industry to determine whether they violated RICO, consumer protection, truth in advertising, public health, or other laws."

Taking the Temperature: It remains to be seen what influence, if any, this letter will have on the DOJ. On one hand, there is little new about these allegations. The letter is similar to a request that Representative Lieu sent to the DOJ in 2016. That letter also alleged a scheme by certain oil companies to deceive the public and urged the DOJ to prosecute oil companies using theories similar to those that were applied against tobacco manufacturers. On the other hand, this letter may be received differently because there is greater momentum now regarding climate-related enforcement than there was in 2016. Representative Lieu's 2016 letter had only three signatories; his 2023 letter has 20.

The DOJ has recently expressed a greater willingness to take action on sustainability issues, as evidenced by the formation of the TIMBER Enforcement Working Group to combat illegal timber trafficking. It would also be consistent with the DOJ's stated goal in its 2022-2026 strategic plan "to prioritize enforcement actions that will reduce greenhouse emissions, achieve emission reductions and relief that mitigate the impact of past violations, and hold violators accountable for committing environmental crimes."

Outside of the U.S., the allegations in the letter are similar to an action filed in the Italian courts earlier this year by Greenpeace Italy, ReCommon and 12 Italian citizens against the oil major ENI S.p.A., accusing the company of having known that fossil fuels would harm the climate.

UK Announces Plans to Publish Sustainability Disclosure Standards by July 2024

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In August 2023, the UK's Department of Business and Trade (DBT) **announced** the creation of new sustainability rules that are intended to align with the IFRS Sustainability Disclosure Standards issued by the **International Sustainability Standards Board (ISSB)**, the first two of which (IFRS S1 and IFRS S2) **were published** earlier this year and are supported by the UK.

The UK's Sustainability Disclosure Standards (SDS) will form the basis for any future requirements under UK law and regulation for corporate sustainability reporting and disclosure – including risks and opportunities arising from climate change.

The DBT's announcement follows the UK government's plans under its **green finance strategy** to assess the IFRS S1 and S2 for endorsement in the UK and to form the UK SDS. As part of this process, the DBT established two committees:

- UK Sustainability Disclosure Technical Advisory Committee (TAC), whose role is to assess the IFRS on a technical basis and provide recommendations as to its endorsement. This committee is supported by the UK's reporting regulator, the Financial Reporting Council (FRC), and has published a **call for evidence** which closes on October 11, 2023. The call for evidence seeks to establish whether the application of IFRS S1 and S2 in the UK will result in disclosures that are "understandable, relevant, reliable and comparable for investors"; and
- UK Sustainability Disclosure Policy and Implementation Committee (PIC), managed and overseen by DBT, will provide advice on an endorsement decision based on recommendations from TAC and PIC. If endorsed, PIC will coordinate implementation of the SDS by the UK government and the Financial Conduct Authority (FCA), the UK's financial markets regulator. PIC is comprised of a number of government departments and regulators, including, among others, the Bank of England, the FCA, the FRC, HM Treasury, and the Foreign, Commonwealth and Development Office.

Once endorsed, UK SDS can be referenced in any legal or regulatory requirements for UK entities, for UK registered companies and limited liability partnerships, and by the FCA for UK listed companies, although any mandates regarding disclosure will be made by the UK government.

In response to the official consultation regarding the SDS, in August 2023, two of the UK's accounting bodies, the Institute of Chartered Accountants of Scotland (ICAS) and the Association of Chartered Certified Accountants (ACCA), called on the government to adopt a broader approach to non-financial reporting, echoing concerns about confusion and additional administrative burdens for businesses if the UK pursues an independent path.

The ISSB standards are primarily geared towards meeting the interests of financial investors and the UK has not yet addressed alignment with European standards.

The DBT's announcement of its plans to introduce the SDS comes after the FCA confirmed that it would be updating its existing rules on climate-related reporting for listed companies to "refer" to the UK-endorsed ISSB standards.

Taking the Temperature: Given that the ISSB has finalized and published IFRS S1 and S2, the UK's July 2024 timeline seems to be a long way off. It is therefore possible that the delay is due in part to consideration and consultation being afforded regarding which companies will be subject to the SDS. Whatever companies ultimately wind up in scope, the need for global alignment of the SDS is an important consideration so as to attempt to promote consistency in reporting obligations across emerging global standards. The time between now and July 2024 should allow the UK to observe how other frameworks evolve and are adopted. Following their calls on the UK government to align sustainability reporting rules with the approach the EU has taken, organizations like the Institute of Chartered Accountants of Scotland (ICAS) and the Association of Chartered Certified Accountants (ACCA) are likely to be supportive. We have frequently discussed the importance of a coherent global reporting framework here, here, and here and it is likely reassuring for companies that this appears to be a primary consideration for those responsible for developing national reporting and disclosure standards.

Amazonian Nations Sign Joint Declaration but Fail to Agree Joint Target to End Illegal Deforestation

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On August 9, 2023, the Brazilian city of Belém hosted a summit of the Amazonian Cooperation Treaty Organization (ACTO) with the participation of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela. The summit resulted in a 10,000 word joint declaration (the Belém Declaration) containing **113 objectives and principles**. However, the Belém Declaration failed to include a joint pledge to end illegal deforestation in the Amazon region by 2030. This omission attracted criticism and raised questions concerning whether Amazonian countries have sufficient political will and enforcement capabilities to effectively protect the vast region from illegal activity with significant environmental impact, among the most problematic being deforestation for agriculture and wildcat gold mining.

The ACTO summit represents the first meeting of Amazonian nations in more than a decade and has been reactivated at the initiative of the Brazilian President, Luiz Inácio "Lula" da Silva. Regional cooperation between Amazon nations dates back to the signing of the Amazon Cooperation Treaty in 1978, which aimed to promote harmonious and sustainable development of the Amazon region. The ACTO was formed in 1995 to strengthen and implement the objectives of the Amazon Cooperation Treaty. The ACTO has been inactive recently and the summit in Belém represented the organization's first meeting in 14 years. As set out in the Belém Declaration, "ACTO is the only intergovernmental coordination body of the eight Amazonian countries for the joint development of projects and actions that produce equitable and beneficial results for the Amazonian countries, due to its institutionality, its extensive knowledge of the region and the relevant experience of its Permanent Secretariat in coordinating dialogue and implementing development cooperation initiatives."

In May, the UN confirmed that Belém will also host the 30th UN Conference of Parties on Climate Change (COP30) in November 2025. The ACTO summit represents a statement of intent from the Lula administration in the buildup to COP30 and follows up on a package of eight environmental protection decrees **announced** on World Environment Day in June.

The full **Belém Declaration** covers a wide range of topics including the:

- development of a joint negotiating position at climate summits;
- development of Amazonian cities, sustainable infrastructure and regional entrepreneurship;
- promotion of science, education and innovation including the establishment of a regional scientific body (akin to the UN International Panel on Climate Change) to meet annually and produce reports on science related to the Amazon rainforest;
- protection of indigenous rights including sovereignty and food, health and social security;

- promotion of environmental protection covering forests, coastal zones, vulnerable ecosystems, biodiversity and water resources; and
- enhancement of international police and judicial cooperation in combatting illegal activity.

However, due to insufficient consensus among ACTO members, the Belém Declaration did not contain a joint pledge to end illegal deforestation by 2030; a fixed deadline to end illegal gold mining; or a commitment to halt new oil exploration in the Amazon region.

Taking the Temperature: As we have covered extensively this year, President Lula placed environmental initiatives near the top of his agenda and he has been especially focused on highlighting these aspects of his governmental program to international counterparts in the U.S. and Europe. He has secured notable successes, including a pledge of $500 million from the Biden Administration for the Amazon Fund. One of Lula's longstanding geopolitical ambitions is to increase international cooperation among South American nations and, more broadly, countries in the global South. The reactivation of ACTO represents a potentially important step in Brazil's efforts to position itself as the regional leader on environmental protection but the failure of other members (holdouts, reportedly Bolivia and Venezuela) to match its commitment to end illegal deforestation by 2030 is an obstacle.

Looking beyond ambitious declarations of future intent, the international community remains focused on Brazil's on-the-ground efforts to revitalize environmental protection enforcement activity. The first raids under the new administration took place in January this year. The reactivation appears to be showing some early success. In the first seven months of 2023, deforestation dropped by 42% compared to 2022. On September 5, the Lula administration announced a federal program to provide up to $120 million in financial support to Amazonian municipalities that have the greatest reductions in deforestation rates. The initiative will be financed from the Amazon Fund and funds must be invested in land titling, monitoring and control of deforestation and fires, and sustainable production. As organized crime groups responsible for illegal deforestation and wildcat mining operate across national borders, regional cooperation between ACTO members will be important as these efforts continue.

Illegal economic activity in the Amazon region remains a priority for legislators and regulators outside of Brazil. As we covered in June, the European Parliament adopted amendments to the Corporate Sustainability Due Diligence Regulation requiring large companies operating in the EU to conduct due diligence to identify, prevent, mitigate or end negative impacts on human rights and the environment, including biodiversity loss and environmental degradation such as occurs in the Amazon. Amazonian deforestation is also driving civil litigation. Earlier this year, a complaint was filed in the U.S. against Cargill, one of the world's largest soy and grain traders, over alleged deforestation and related human rights issues in Brazil.

Investor Groups Raise Concerns Over European Sustainability Reporting Standards

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On July 31, 2023, the European Commission adopted the long-anticipated **European Sustainability Reporting Standards (ESRS)** for use by all companies subject to the **Corporate Sustainability Reporting Directive (CSRD)**. The version of the ESRS published by the Commission in June 2023 made a number of significant changes to the first draft prepared by EFRAG in November 2022.

The European Sustainable Investment Forum (Eurosif), the Principles for Responsible Investment (PRI), the Institutional Investors Group on Climate Change (IIGCC), the European Fund and Asset Management Association (EFAMA), the United Nations Environment Programme Finance Initiative (UNEP FI), as well as 92 investors and other financial market participants expressed concerns about these changes in a **joint statement** published on July 7, 2023, in which they urged the Commission to reflect the integrity and ambition of the first set of ESRS as set out in **EFRAG's final proposals** of November 2022. Despite this, the final ESRS do not reflect the recommendations of various investor groups and remains largely unchanged from June 2023.

The Commission has emphasized that the standards adopted seek to address the regulatory burden on reporting companies while enabling companies to demonstrate their ESG credentials and access sustainable finance. The ISSB has also highlighted that collaboration between the Commission, EFRAG and the ISSB has resulted in a high degree of alignment among standards, which reduces complexity and duplication for reporting companies. Further assistance will be provided to companies through the publication of non-binding technical guidance by EFRAG.

The joint statement's signatories, however, point out that making disclosure requirements subject to a materiality assessment (as opposed to outright mandating disclosure in certain areas) has led to a misalignment between what companies are obligated to report under ESRS and the reporting obligations of market participants and investors under EU sustainability reporting frameworks. This threatens to adversely affect the ability of investors to access comparable data and information and therefore inform decisions and ultimately mobilize sustainable capital and investment. In addition, according to the joint statement, it is also likely to affect their ability to accurately comply with sustainability-related reporting and disclosure

requirements, including under EU's Sustainable Finance Disclosure Regulation and **Basel Pillar 3**, potentially increasing greenwashing risk: "In light of the EU's climate objectives and investors' own climate commitments, reporting on GHG emissions, transition plans and climate targets should always be considered material and hence mandatory. This would ensure that investors can access information from their holdings to support the alignment of their portfolios with net-zero and the Paris Agreement targets." Other market participants have also criticized the decision to make some biodiversity and social indicators voluntary.

The ESRS are subject to a two-month scrutiny period (extendable by a further two months) and are intended to apply from January 1, 2024 (for fiscal years beginning on or after that date).

Taking the Temperature: We have frequently emphasized the importance of aligning reporting and disclosure frameworks to enable investors to compare sustainability credentials and make fully informed investment decisions. Greater collaboration among international standard setters also enhances interoperability and avoids duplication, as we have discussed here, here, and here.

California Lawmakers Pass Bill Requiring Greater Climate Accountability

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California lawmakers seek to raise the bar on climate regulation through the California Climate Corporate Data Accountability Act (Senate Bill 253), which would require large public and private companies to disclose their carbon emissions. The California Senate delivered the bill to Governor Gavin Newsom, who has already announced his intention to sign it. If enacted, **this bill will require** all companies doing business in California with revenues upward of $1 billion to disclose Scope 1 and 2 (direct) emissions starting in 2026 and Scope 3 (indirect) emissions beginning in 2027. All emissions must be reported in line with the Greenhouse Gas Protocol (the most widely used greenhouse gas accounting standards), and reporting entities must engage a credentialed independent third-party assurance provider to audit their reports starting in 2026 for Scope 1 and 2 emissions and 2030 for Scope 3 emissions. Finally, the state will set an annual filing fee that will fund the oversight of the program, and reporting entities who fail to timely file will incur administrative penalties of up to $500,000.

These requirements are notably more strict than those announced in the **SEC's proposed emissions disclosure rule** last year. Indeed, the bill would not only require disclosures from public companies, but would also require disclosures from privately held companies that currently fall outside the purview of the SEC's proposed rule. Unlike the SEC's proposed rule, the **California bill** would also require disclosure of Scope 3 emissions, regardless of whether the company's Scope 3 emissions are material or the company has set Scope 3 emissions reduction targets.

This variance from the proposed SEC standard comes as no surprise, as California has historically led the nation in enacting the most stringent emissions and air quality regulations. For example, decades ago, California was granted a waiver by the EPA permitting the state to adopt and enforce GHG emissions standards—the "tailpipe rule"— that allows for fewer emissions than the national standards. And, last September, Governor Newsom signed the California Climate Crisis Act that requires the state to reach net zero GHG emissions by 2045.

Taking the Temperature: California's move reflects a global push for greater emissions transparency and comes after a long period of waiting for the SEC to publish a final rule on climate disclosures. In that time, many companies have already started to report their emissions either because they are subject to the reporting requirements issued by the EU and/or UK or have voluntarily done so in response to investor demand and/or in anticipation of the imminent SEC regulation. If the bill becomes state law, it may pave the way for other states to follow suit by using the California Climate Corporate Data Accountability Act as a template for emissions disclosure regulation.