

2024 Insurance Sector  
Webinar Programme

# ESG litigation risk in Europe: why companies, their directors, and insurers should take notice

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**Panel:**  
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# Your speakers today



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# What we will cover

**01** An overview of  
ESG litigation risk  
in Europe

**02** Significant court  
cases

**03** Corporate  
Sustainability Due  
Diligence Directive

**04** Recent or  
anticipated  
legislation

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# An overview of ESG litigation risk



# An overview of ESG litigation risk

## UK

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- Government & regulators have introduced new disclosure & anti-greenwashing rules
- Activist claimants using litigation to effect change
- New corporate offences introduced

## Belgium

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- Increasing trend of stakeholder activism (although less developed than UK & Netherlands)
- Claims against government
- Further legislation/regulations expected

## Netherlands

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- Soft law instruments introduced & new legislation/regulations expected
- Very active ESG litigation environment
- Activist claims against Shell & ING

## Italy

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- Increase in ESG regulation in relation to the financial sector in compliance with the principle of sustainability
- ESG litigation for environmental crimes and misleading advertising campaign for sustainability



## 2 Significant court cases

# Significant court cases

## UK

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- Shareholder derivative claim
- Alleged board failed to adopt reasonable strategy to achieve net zero by 2050
- Alleged breach of s172 & s174 CA 2006
- Comprehensively rejected by court

## Belgium

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- *VZW Klimaatzaak* case against Belgium state/local government (similar to first wave of litigation in other jurisdictions)
- Multinational chemical company held responsible for environmental impact

## Netherlands

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- *Milieudefensie v Shell* appeal due in November
- Financial institutions next to be targeted?
- Litigation against airline alleging misleading claims about sustainability

## Italy

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- *Giudizio Universale* case against Italian state for the failure to implement the legislation promoted by the Paris Agreement
- D&Os responsibility for the breach of the Emission Trading Directive





## Potential impact of CSDDDD



# Potential impact of CSDDD

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- CSDDD passed by European Parliament on 24 April 2024
- Establishes mandatory human rights & environmental obligation on in-scope EU and non-EU companies from 2027
  - Identify & assess adverse impacts
  - Prevent, mitigate & bring to an end such impacts
  - Put in effect a climate transition plan
- EU companies with 1000+ employees & worldwide turnover of €450m+
- Non-EU companies with turnover in EU of €450m+
- Breach of CSDDD obligations may lead to fines and civil liability for damages
- Trade Unions & NGOs will be able to bring claims on behalf of affected persons
- No direct duty on directors but still potential impact on D&O risk

# CSDDD Navigator

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A technical solution to help you perform a gap analysis to proactively prepare your business to be ready to comply with the ESG due diligence requirements proposed by the Corporate Sustainability Due Diligence Directive.

[CMS | CMS CSDDD Navigator](#)







## Recent or anticipated legislation



# Recent/anticipated legislation

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## UK

- Economic Crime and Corporate Transparency Act
- Latest in a series of '*failure to prevent*' offences
- Expands identification principle
- Creates new (corporate) offence of failure to prevent fraud
- More corporate investigations = more senior managers seeking legal representatives = more D&O policy notifications

## Italy

- *Corporate Sustainability Reporting Directive*
- Obligation of a corporate governance in compliance with the principle of sustainability
- Expands the responsibilities of D&Os with respect to the commercial relationships maintained
- *Carbon Border Adjustment Mechanism*
- New price cap on CO2 emissions = decarbonisation of European industry

# 5 Conclusions