



Risk, Resilience
and Reputation

Focus on Funds | Risk, Resilience and Reputation

ESG litigation risk

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| **Laura Houët**
| **Kenny Henderson**
| **Tilman Niedermaier**

Presenting today



Moderator



Laura Houët
Partner | CMS UK
CMS Funds Group
T +44 20 7367 3582
E laura.houet@cms-cmno.com

Speakers



Kenny Henderson
Partner | CMS UK
Dispute Resolution
T +44 20 7367 3622
E kenny.henderson@cms-cmno.com



Tilman Niedermaier
Partner | CMS Germany
Dispute Resolution
T +49 89 2380 7196
E tilman.niedermaier@cms-hs.com

What will we cover?

The advent of
ESG regulation

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Behaviours and
litigation risks

2

SFDR/
Taxonomy risks

3

Corporate
sustainability
due diligence

4

Evolving
ESG risks

5

1

The advent of ESG regulation

The advent of ESG regulation

| | | | | |
|---|---|---|--|--|
| UN PRI – global approach (voluntary) | TCFD – global approach (voluntary ex UK) | The EU Green Deal – and updates: Fit for 55 | EC Sustainable Finance Package and updates: revised finance strategy | Sustainable Finance Disclosure Regulation |
| EU Taxonomy | New Benchmarks: Paris Aligned and Carbon Transition | UCITS, AIFMD and MiFID changes | UK Stewardship Code – all new, all change | Changes to the Non-Financial Reporting Directive |
| Jurisdictional differences: Germany, France and Spain | UK differing approach: TCFD and SDR | Directive on Corporate Sustainability Due Diligence | Asset level regulation | The list goes on... |



ESG Regulation Timeline



2

Behaviours and litigation risks



Behaviours and litigation risks

| Behaviour | Subject matter | Types of claim | Potential consequences |
|--|----------------------|---|--|
| Non provision of disclosure <ul style="list-style-type: none">Conscious choiceInsufficient data | | Injunction to require disclosure | Forced disclosure |
| Inaccurate information | Corporate conduct | Investor claim (Typically for listed companies) | Damages |
| | | Injunction requiring compliance (Disclosure may be in/voluntary) | Behavioural change (Possibly significant) |
| Inaccurate advice | Product/service | Misrepresentation | Damages Recission |
| | | Breach of contract | Damages - <u>contractual measure of harm</u> |
| Inaccurate advice | Investment decisions | Tort | Damages |
| | | Breach of contract | Damages |

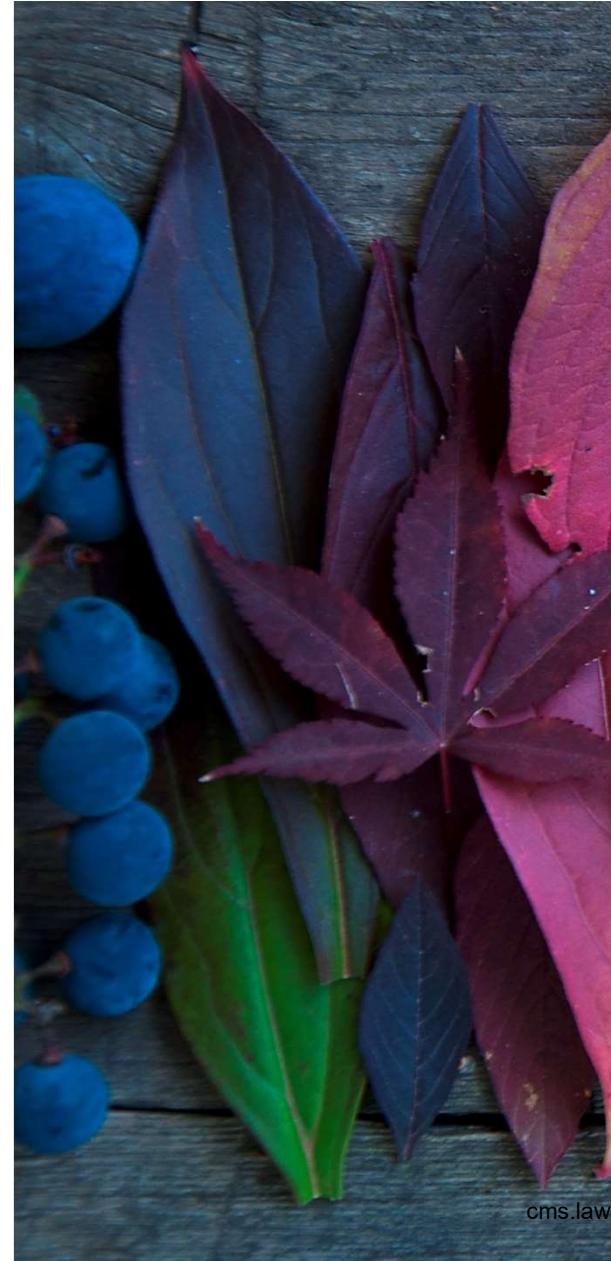
3

SFDR/ Taxonomy risks

Legal entity level disclosure

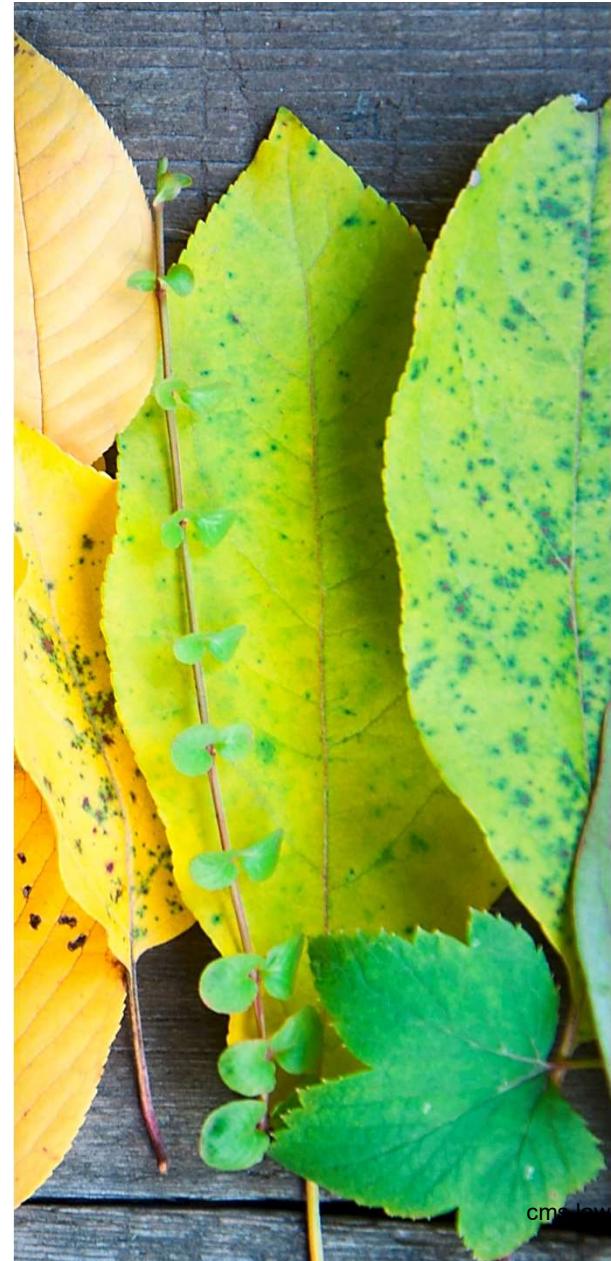
Information to be disclosed on the website

| Financial Market Participants | Financial Advisers |
|---|--|
| Sustainability Risk Policy (Art.3 SFDR) | Sustainability Risk Policy (Art.3 SFDR) |
| Adverse Sustainability Impact (Art.4 SFDR) Mandatory for large entities and large holdings Comply or explain for all other entities | Adverse Sustainability Impact (Art.4 SFDR) Comply or explain for all other entities |
| Remuneration Policies (Art.5 SFDR) | |



Product level disclosure

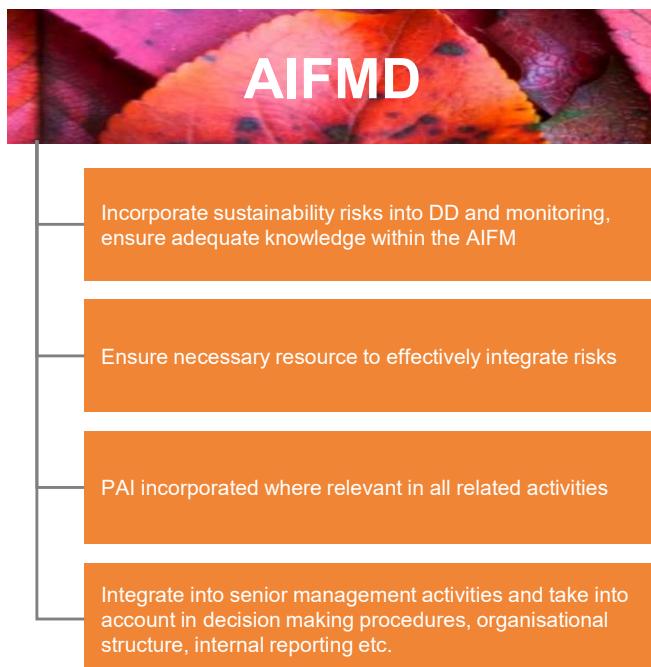
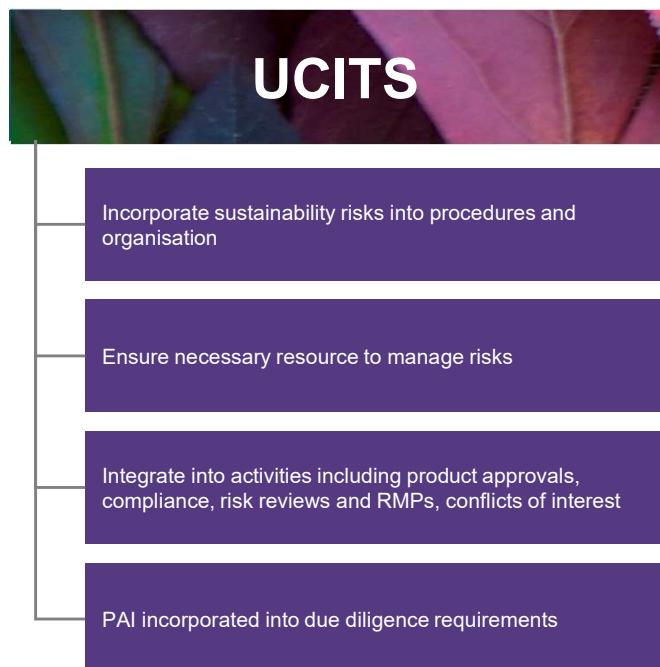
| Product-level disclosure | Mainstream products | Article 8: Products promoting environmental or social characteristics | Article 9: Products with sustainable investment objective | |
|---|--|---|---|------------|
| Pre-contractual disclosure | Integration of sustainability risks (Art.6 SFDR) | | | FMP and FA |
| | Principal adverse impact (Art.7 SFDR) | | | FMP |
| Product website disclosure obligations | N/A | Product website disclosures (Art.8 SFDR) | Product website disclosures (Art.9 SFDR) | FMP |
| Product periodic reports (Art.11 SFDR) | Principal adverse impact | | | FMP |
| | | Additional sustainability disclosures | Additional sustainability disclosures | FMP |
| Taxonomy aligned disclosures | “The investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities” | Additional taxonomy-related information | Additional taxonomy-related information | FMP |



Changes to UCITS / AIFMD / MiFID

Focus on governance to support the requirements of SFDR / Taxonomy

Organisation, resource, conflicts, product governance



4



Corporate sustainability due diligence

Directive on Corporate Sustainability Due Diligence

- Imposes significant obligations on companies to identify, then avoid/eliminate “adverse human rights impacts” and “adverse environmental impacts”
- Will apply to company with:
 - 500+ employees and turnover €150m+; or
 - 250+ employees and turnover €40+ with 50% or more turnover derived from certain manufacturing or extractive activities; or
 - non-EU companies with EU turnover of
 - €150m+; or
 - €20m+ derived from certain manufacturing or extractive activities
- Applies to companies’ own conduct and also their value chains
- “Adverse human rights impacts”
 - Range of international treaties/obligations, including
 - Universal Declaration of Human Rights
 - International Covenant on Economic, Social and Cultural Rights
 - Right to a fair wage, safe working conditions
 - Right to Organise and Collective Bargaining Convention
 - Causing measurable environmental declaration, including impacting drinking water and normal conduct of economic activity of a person
- “Adverse environmental impacts”
 - Range of international treaties/obligations, including
 - Minimising harm to biodiversity
 - Improper treatment of mercury
- Companies must have a plan to ensure their activities are compatible with limiting global warming to 1.5C

Directive on Corporate Sustainability Due Diligence | Litigation risk / enforcement

Companies are liable in damages if:

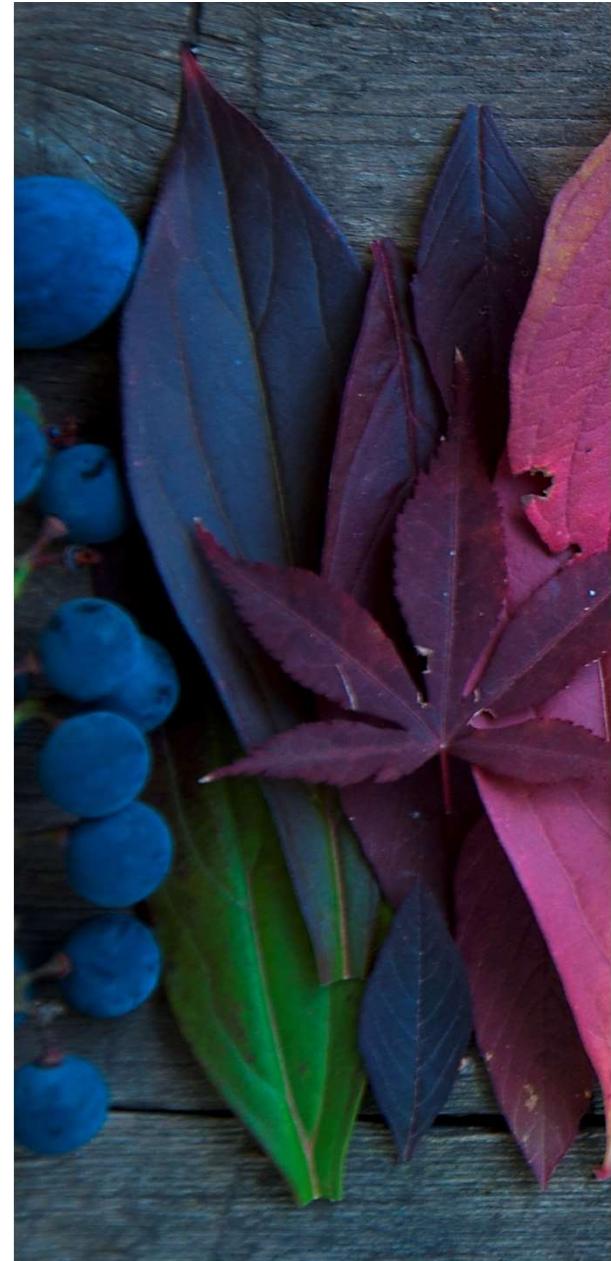
- They fail to take appropriate measures to prevent “adverse human rights impacts” and “adverse environmental impacts” from their own conduct and their value chain
- They fail to take appropriate measures to bring “adverse human rights impacts” and “adverse environmental impacts” to an end

Examples:

- European company causing identifiable environmental degradation in Europe
- U.S. company with poor working conditions in Asia

Regulatory enforcement:

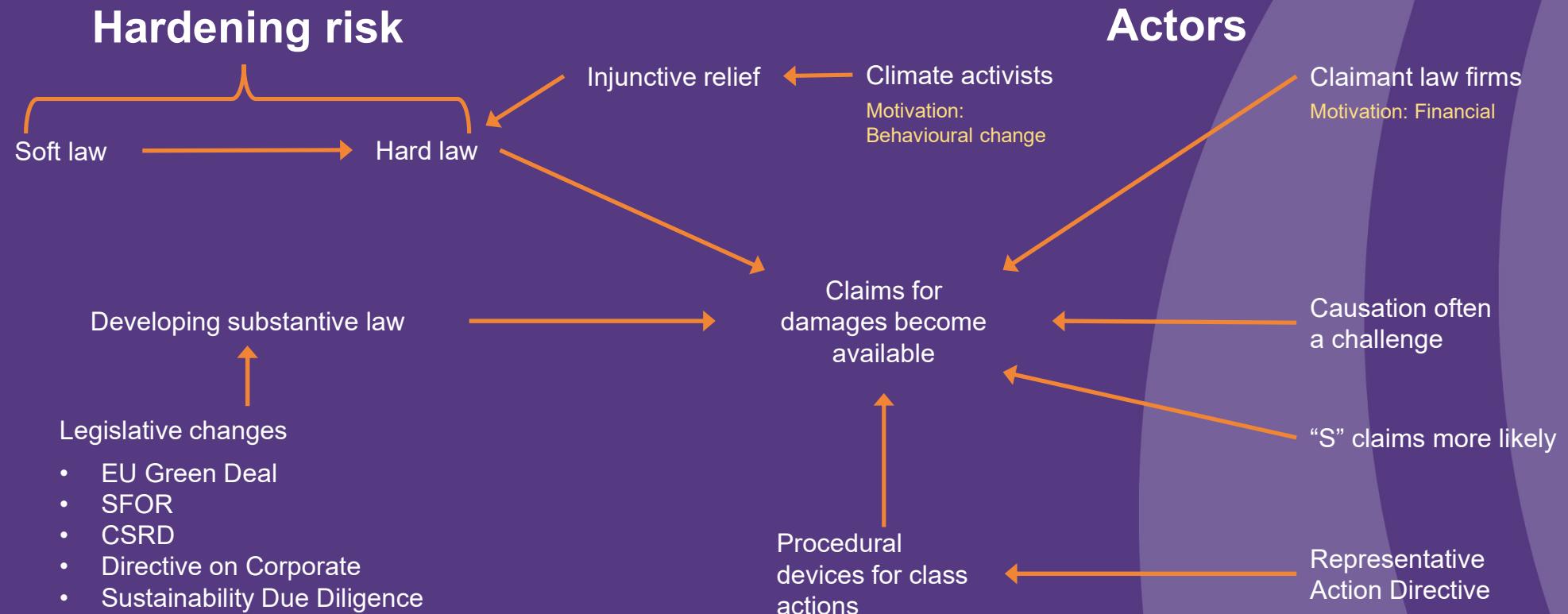
- Regulator can investigate, require cessation of infringement and can impose “proportionate and dissuasive” fines based on company’s turnover



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Evolving ESG risks

Evolving ESG Litigation Risk



Example: Dutch court ordered Shell to reduce carbon emissions by 45% (1) NGO claimant (2) Injunctive relief (3) Soft law → Hard Law (4) Damages risk +

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Kenny Henderson
Partner | CMS UK
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Tilman Niedermaier
Partner | CMS Germany
Dispute Resolution
T +49 89 2380 7196
E tilman.niedermaier@cms-hs.com



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