CADWALADER

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In this week's edition, we look at a report which sets out claims that some of the world's largest financial institutions are greenwashing their Amazon-related ESG claims. In Switzerland, the European Court of Human Rights' decision imposing a legal duty on the country to do more to tackle climate change was rejected. With CSRD reporting timelines looming, global consultancy firm PwC has surveyed the first wave of companies due to file their reports in six months' time.

Report Claims that Financing of Oil and Gas Extraction in Amazon Continues to Cause Destruction

In a report published in June 2024, Exit Amazon Oil and Gas (EAOG) claims that the policies of a small group of the largest financial institutions in the world fail to address the impact their continued financing of oil and gas extraction in the Amazon is having on people and nature. EAOG found that over the course of the last 20 years, just six banks account for 46% of all direct financing of oil and gas operations in Amazonia. In particular, save for one named institution, the group finances the operations of state-owned and private oil and gas companies across Brazil, Peru, Colombia and Ecuador. This is, EAOG reports, despite the fact that much of the group's marketing and promotional material gives the impression that they are upholding ESG values, such as protecting the environment, through their due diligence processes.

Using an approach developed inhouse, EAOG, a coalition that aims to halt the financing by banks of oil and gas projects anywhere in the Amazon, mapped the environmental and social (E&S) values including biodiversity, forest cover, protected areas, and Indigenous Territories of the group of banks, and found that with the exception of one, 71% of the Amazon on average lacked any risk management. EAOG accuses the banks of greenwashing their commitments to protect the Amazon by, for example, claiming that they are committed to protecting UNESCO World Heritage Sites in Amazonia, but such sites comprise just 2% of the region.

As well as analysis from a geographical perspective, EAOG undertook analysis in a financial context and claims that Amazon-related transactions are structured in ways that ensure that enhanced due diligence requirements would not be triggered. The transactions are collected on the **Amazon Banks Database** which is described as a database that "queries loan and bond underwriting deals in Bloomberg for companies with oil and gas activities in the Amazon regions of Peru, Ecuador, Brazil and Colombia" and is developed and maintained by the Stand.earth Research Group, a coalition that conducts investigative research supporting ESG-focused philanthropists, advisors and campaigners.

EAOG calls on the banks to exit Amazon oil and gas and commit to protecting 80% of the region by 2025. In particular, banks are urged to: (i) commit to no new oil and gas financing and investment; (ii) end current oil and gas financing and investment, end trade financing for oil and gas; (iii) end corporate financing for oil traders; and (iv) adjust financing portfolios to address an imminent tipping point scenario in Amazonia and support the protection of 80% of the Amazon by 2025.

EAOG's report is one example of many that demonstrate the impact that greenwashing allegations can have on an organization. Even where such allegations have not necessarily led to enforcement action by regulatory authorities, for example, they carry risk of litigation such as by investors or by environmental activist groups, as well as other consequences, such as adverse publicity and reputational damage, **as we discuss frequently**.

Switzerland Rejects European Court of Human Rights' Climate Ruling

On June 12, 2024, Switzerland's lower house of parliament voted to reject a ruling handed down by the European Court of Human Rights (ECtHR), which ordered the country's government to set more rigorous climate change policies. In April, the ECtHR held that Switzerland had violated the human rights of KlimaSeniorinnen Schweiz (Swiss Senior Women for Climate Protection) as a result of "critical gaps" in its climate policies. Earlier this month, Switzerland's Senate also voted to dismiss the ruling. The move attracted criticism and the Senate outlined that it was not ignoring the ruling but that it did not need to take action as it viewed its climate change strategy as effective.

Article 46 of the ECHR confers an obligation on Member States to action judgments handed down by the ECtHR but it remains within the discretion of the Member State as to how they do this. However, in countries where parliamentary sovereignty applies, it can choose to adopt or reject the judgment altogether.

The ECtHR's verdict sets out that the Swiss citizens group's right to respect for private and family life (Article 8 of the European Convention on Human Rights (ECHR)) was violated. The ECtHR held that Article 8 encompasses a right to effective protection by State authorities from the serious adverse effect of climate change on life, health, well-being and quality to life. Further, the judges noted in the majority opinion that Switzerland failed to comply with its positive obligations concerning climate change and also failed to meet its greenhouse gas emissions reduction targets in the past. **As we observed previously**, the case is considered to be significant because it effectively created a new legal duty on governments that are party to the ECHR to take action against climate change. The case had received mixed reactions and attracted considerable controversy which has been added to by these recent rejections.

Switzerland is reportedly not on course to comply with its obligations under the Paris Agreement and limit global warming to 1.5oC above pre-industrial levels. The Senate and lower house's votes may therefore come as a surprise to some given also that Swiss citizens largely voted in favor of the country taking stronger action against climate change in 2021, **as we discussed previously**.

Climate litigation by groups of citizens on the basis of human rights violations is likely to continue both against public and private entities. We have discussed a number of these previously **here** and **here**.

PwC Publishes Survey on Companies' Compliance with Corporate Sustainability Reporting Directive

On June 13, 2024, **PwC published** the results of a survey of companies that had been reporting under the EU's Corporate Sustainability Reporting Directive (CSRD) noting that they see multiple business benefits flowing from the process. Companies that are currently subject to the EU's Non-Finance Reporting Directive (NFRD) must report under the CSRD for financial years starting on or after January 1, 2024, filing for the first time in FY 2025. PwC surveyed this first wave of companies, three-quarters of which say there are, or plan to, incorporate sustainability into their decision-making processes to a greater extent. The companies reported that they see multiple tangible benefits flowing from CSRD reporting including better environmental performance, improved engagement with stakeholders and risk mitigation.

The survey responses do also reveal potential challenges, such as low completion rates for some early-stage activities, lack of senior stakeholder involvement and low rates of adoption for tech that supports efficient ongoing reporting. Although 97% of companies due to start reporting in FY2025, and 93% due for FY2026, are confident that they will be ready to report under the CSRD by the required date, PwC also found that there is some disparity in the level of confidence companies have from topic to topic, with more confidence attached to reporting on more popular topics like climate change, and less confidence on less popular topics, such as biodiversity, circularity, pollution and workers in the value chain. Somewhat unsurprisingly, some of the biggest obstacles facing respondents include data availability/quality (59%), value chain complexity (57%) and staff capacity (50%). The sheer scale of CSRD reporting has some companies engaging eight business functions and departments on average including sustainability, finance, operations, procurement, technology and legal. **We have also observed** previously that investor-facing information, whether it be in the form of sustainability reports or for example, ESG ratings, are only as reliable as the quality and availability of the underlying data.

The CSRD is underpinned by the European Sustainability Reporting Standards (ESRS), which outline disclosure requirements in detail. The aim of the CSRD is to bring sustainability reporting on par with financial reporting and, as such, are obligated to provide information on sustainability-related impacts, risks and opportunities across their value chains. We discuss the ESRS and CSRD in further detail **here** and **here**.

Reporting timelines are staggered throughout the period between 2025 and 2028: unlisted EU companies meeting certain size thresholds commence reporting on financial years starting on or after 1 January 2025, filing for the first time in 2026. Listed small- and medium-sized entities and certain financial institutions will have to report for financial years starting on or after 1 January 2026. Non-EU entities with significant activities in the EU will have to report for financial years starting on or after 1 January 2028.

The CSRD and ESRS represent a significant achievement for the EU's sustainable finance agenda. **We frequently discuss** the importance of reporting and disclosure frameworks, without which investors are unable to compare sustainability credentials from company to company. Even after reporting commences, however, there remains a need to further align such frameworks with other global models, such as the International Sustainability Standards Board (ISSB). Mandatory reporting obligations compel companies to gather data on their ESG investments and decisions, allowing them to see the tangible benefits it can have, as PwC's survey demonstrates.