Sustainable Business Group Urges EU to Cut GHG Emissions 90% by 2040

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On September 5, 2023, the Corporate Leaders Group Europe (CLG Europe) published a **position paper** urging the European Union to cut its greenhouse gas (GHG) emissions by at least 90% by 2040, and asked EU member states to commit to a list of specific actions and strategies to achieve this goal. In **"Raising European Climate Ambition for 2040,"** the organization **appealed to the EU** to set a net reduction target of at least 90%, compared to 1990 levels, to avoid passing irreversible tipping points, stipulating that no more than 8-10% should come from carbon removal. **CLG Europe** is a cross-sector group of Europe-based businesses collaborating to accelerate climate action. Its members include Amazon, French energy company EDF, Microsoft and Unilever, among others.

The position paper outlines ten actions the EU should take to take to reduce GHG emissions by 90% by 2040:

1. Accelerate electrification, promote energy efficiency and phase out fossil fuels.
2. Ensure that the costs and benefits of a green transition are equitably distributed.
3. Embed the principle of competitive sustainability into the EU's industrial strategy and climate policies.
4. Deploy all available levers to rapidly reduce emissions from the buildings sector.
5. Harness circular economy and eco-design solutions for environmental and climate benefits.
6. Harness synergies between climate and nature objectives.
7. Adopt a realistic and evidence-based approach to carbon removals.
8. Significantly increase EU and national budgetary allocations for climate and nature.
9. Develop a post-2030 climate and energy political framework building on the successful implementation of the Fit for 55 package.
10. Lead decarbonization efforts globally.

Under the Paris Agreement, parties are required to periodically set emissions reductions targets. In 2021, the EU introduced the **European Climate Law** and became legally bound to reach net-zero by 2050. By 2030, the EU's ambition is to reduce greenhouse gas emissions to at least 55% below 1990 levels – the **"Fit for 55"** package of measures sets out how the bloc aims to achieve its goal. The next interim target to be set is for 2040, and under the European Climate Law the EU must set it by June 2024. In April 2023, stakeholders were **invited to comment** on the 2024 target-setting process.

Taking the Temperature: The 90% target put forward by CLG Europe originates from a recommendation by the European Scientific Advisory Board on Climate Change

(ESABC), which claimed that a 90-95% reduction target was both feasible and fair, although the ESABC recommendation was not accompanied by any estimate of the costs to achieve this target. Whether this is the case or not, many regions are reportedly not on track to meet Paris Agreement-aligned goals according to the United Nations' first global stocktake of Paris Agreement ambitions. In order to achieve 90% by 2040, the EU's advisory board on climate change stated that Europe would have to produce almost no carbon emissions from power generation. This would mean no coal burning from 2030, and almost no gas-fired power without carbon capture equipment installed by 2040; renewables would need to be producing 70-90% of electricity; and oil imports would need to decrease between 50-100%.

U.S. Treasury Unveils Principles to Guide Financial Institutions' Net-Zero Commitments

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On September 19, 2023, the U.S. Treasury Department introduced nine guiding principles for private sector financial institutions that have made net-zero commitments. The principles are intended to highlight and encourage the adoption of best practices and promote consistency and credibility in the approaches taken to set and achieve net-zero commitments. The **"Principles for Net-Zero Financing & Investment"** are also intended to help attract private sector capital to address the **economic and environmental impacts of climate change**.

The nine principles focus on Scope 3 greenhouse gas emissions, which generally comprise the majority of financial institutions' GHG emissions.

- **Principle 1.** A financial institution's net-zero commitment is a declaration of intent to work toward the reduction of greenhouse gas emissions. The Treasury Department recommends that commitments be in line with limiting the increase in the global average temperature to 1.5°C, consistent with Paris Agreement goals. To be credible, this declaration should be accompanied or followed by the development and execution of a net-zero transition plan.
- **Principle 2.** Financial institutions should consider transition finance, managed carbon emission phaseout, and climate solutions practices when deciding how to achieve their commitments.
- **Principle 3.** Financial institutions should establish credible metrics and targets and endeavor, over time, to assign metrics and targets for all relevant financing, investment, and advisory services.
- **Principle 4.** Financial institutions should assess client and portfolio company alignment to their (i.e., financial institutions') targets and to limiting the increase in the global average temperature to 1.5°C.
- **Principle 5.** Financial institutions should align engagement practices—with clients, portfolio companies, and other stakeholders—to their commitments.
- **Principle 6.** Financial institutions should develop and execute an implementation strategy that integrates the goals of their commitments into relevant aspects of their businesses and operating procedures.

- **Principle 7.** Financial institutions should establish robust governance processes to provide oversight of the implementation of their commitments.
- **Principle 8.** Financial institutions should, in the context of activities associated with their net-zero transition plans, account for environmental justice and environmental impacts, where applicable.
- **Principle 9.** Financial institutions should be transparent about their commitments and progress towards them.

More than 100 U.S. financial institutions have independently made voluntary net-zero commitments, according to the Department. Alongside publishing its principles, the Treasury Department also highlighted key announcements related to transition planning. This included the Glasgow Financial Alliance for Net Zero's (GFANZ) announcement that over 50 U.S. financial institutions – and more outside the U.S. – had committed to independently publish their net-zero transition plans over the coming year. The Treasury Department also **applauded a $340 million commitment** by philanthropic organizations, including the Bezos Earth Fund, Bloomberg Philanthropies, ClimateWorks Foundation, Hewlett Foundation and Sequoia Climate Foundation, to help financial institutions develop and execute their net-zero commitments.

Taking the Temperature: The Treasury Department's voluntary principles could encourage more U.S. financial institutions to make their own net-zero commitments. The principles build on existing guidance, including from the Science Based Targets Initiative, GFANZ, and the UK's Transition Plan Taskforce (TPT) Disclosure Framework. This promotes the global alignment of various standards and frameworks, the importance of which we often discuss. But the federal government-backed principles have also drawn criticism amid the increasing politicization of climate-related issues in the U.S. One critic, West Virginia Treasurer Riley Moore, called the principles a bid to convince financial institutions "to leverage their economic power to transition the country away from the coal, oil and natural gas industries." He added that "[t]his policy framework is a direct shot at West Virginia's economy."

We have written frequently about political criticisms of and challenges to climate and ESG-related initiatives, in particular in connection with the financial services sector, including federal efforts such as the launch of an ESG Working Group comprised of nine Republican members of the House of Representatives, led by Oversight and Investigations Subcommittee Chair Bill Huizenga, to "combat the threat to our capital markets posed by those on the far-left pushing environmental, social, and governance (ESG) proposals;" the introduction of a bill by two House Republicans to restrict investment managers from taking into account ESG considerations in investing on behalf of retirement funds; Republican members of the House Committee on the Judiciary sending letters to the steering committee members of Climate Action 100+, Ceres and CalPERS, requesting documents and seeking information regarding antitrust compliance by virtue of their participation in climate-related industry initiatives; and the introduction of four bills by Republican members of the House Financial Services Committee targeting various business and market activities that implicate ESG issues. At the state level, several Republican-controlled state legislatures, including Oklahoma and West Virginia, have enacted laws mandating divestment of state funds from asset

managers deemed to "boycott the energy industry" or restricting investment managers from casting proxy votes for the purpose of furthering "non-pecuniary interests."

However, as we commented in the context of the UK's TPT Disclosure Framework, developing and implementing transition plans will enable organizations to direct strategy, promote coordinated, purposeful actions, support organizational transformation and enhance the information available to investors, allowing them to price risk and make capital allocation decisions. Elsewhere, in Hong Kong, for example, the Monetary Authority's Executive Director urged banks to ramp up their net zero transition planning, providing them with high-level principles to guide such planning. As the U.S. Treasury principles emphasize, "appropriate transparency is part of a credible commitment and is necessary for external accountability."

UN-Convened Plastic Pollution Committee Proposes Zero Plastics Treaty

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On September 4, 2023, the Intergovernmental Negotiating Committee on Plastic Pollution (INCPP) released a draft proposal on the reduction of global plastic pollution. The so-called **"Zero Draft"** proposes measures to address issues associated with plastic pollution, with a specific focus on reducing production and minimizing the use of dangerous chemicals.

The draft treaty outlines several key strategies for countering plastic pollution:

- **Reduction of Production:** Encouraging countries to set targets for reducing plastic production and considering bans on certain types of plastics.
- **Economic Measures:** Recommending the elimination of subsidies for plastic production and introducing plastic taxes to discourage its use.
- **Microplastics:** Focusing on the eradication of microplastics and suggesting strategies for reusing, repairing, repurposing, and refurbishing plastic products.
- **Chemical Control:** Proposing enhanced transparency and restrictions on the export of materials containing hazardous substances used in plastic production.

The Zero Draft has been subject to criticism on the grounds that it contains options for action ranging from what organizations have characterized as "strongest" to "weakest," the apprehension being that countries will opt for the "weakest" options. There has long been a call to introduce regulation around plastic pollution, and in 2022, 175 countries endorsed a resolution at the UN Environment Assembly to end plastic pollution and sign an international legally binding agreement by 2024. The draft treaty is set to undergo detailed discussions during the upcoming International Negotiating Committee on Plastic Pollution negotiations in Nairobi, Kenya, in November.

Among the detrimental effects of plastics production, **the UN Environment Programme cites** harm to human health, affecting fertility, hormonal, metabolic and neurological activity; harm to more than 800 marine and coastal species through ingestion, entanglement and other dangers; and 11 million tonnes of plastic waste flowing into oceans annually. By 2050, absent change, GHG emissions associated with plastics production, use and disposal would account for 15% of allowed emissions under the Paris Agreement 1.50C goal.

The current emphasis on recycling, while important, is regarded as insufficient to combat the plastic problem. A significant proportion of plastics remains unrecyclable due to diverse composition and additives. Chemical recycling technologies are still in their infancy, making the transition to a circular plastic lifecycle challenging. Recycling is more cost-intensive than producing new plastic, making it an unsustainable solution. Only 2% of plastic is recycled more than once, emphasizing that most plastic is ultimately destined to become waste.

Taking the Temperature: Organizations increasingly are seeking to address climate-related challenges associated with plastics. In May this year, the Dutch Association of Investors for Sustainable Development called for companies to take action to reduce plastics and the CDP introduced plastics-related disclosure guidance. Environmental advocacy groups also have launched challenges, creating potential legal and reputational consequences of inaction. For instance, we previously reported on a case involving Danone, where environmental nonprofit ClientEarth, with support from other activist groups, commenced litigation in a Paris court claiming that Danone breached France's Corporate Duty of Vigilance Law in that the company does not have an adequate plan to reduce its plastic footprint. Prior to filing the claim in Paris, ClientEarth served "legal warnings" on Danone and certain other French companies, including Auchan, Carrefour, Casino, Lactalis, McDonald's France, Les Mousquetaires, Picard, and Nestlé France.

Climate Action Group Publishes First Net Zero Standard for Mining

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On September 6, 2023, climate-focused investor engagement initiative Climate Action 100+ (CA100+) published the **Net Zero Standard for Diversified Mining (the Standard)**, allowing investors to assess the transition plans of companies in the mining sector. CA100+ acknowledged that while mining companies' exposure to coal, the most emissions-intensive fossil fuel, poses a transition risk, mining companies can play a crucial role in enabling the net zero transition by providing power to produce materials essential for clean energy technologies. The Standard is a first-of-its-kind for the sector, and has been designed to complement CA100+'s existing sector-agnostic **Net Zero Company Benchmark**.

Due to the diversity of commodities and their broad impact on a net zero transition, the Standard is designed to assess them separately. Materials deemed important to the transition will be further categorized into "key transition materials," such as commodities going into batteries (lithium copper and nickel), and "other transition materials" (aluminum, silicon and titanium). This is intended to provide investors with a more accurate understanding of a company's overall exposure to the risks and opportunities presented by a net zero transition. To further inform analysis, the transition materials are screened to determine whether their production is consistent with social and environmental criteria.

Demonstrating the potential importance of this approach, the Institutional Investors Group on Climate Change (IIGCC) cited the difference between metallurgical coal, used in the production of steel, and thermal coal, which is burned for power generation. Although reducing coal consumption levels is viewed as important to tackling climate change, thermal coal is easier to replace given the availability of alternatives for electricity production; in contrast, finding alternative, low-carbon ways to produce steel requires more time. The International Energy Agency's Net Zero Emissions scenarios are based on a 50% thermal coal consumption reduction by 2030, compared to a 30% reduction for metallurgical coal consumption. The two types of coal therefore have separate net zero paths and the Standard recognizes and accounts for this.

The Standard will be piloted by assessing selected miners. Among the companies to be assessed are Anglo American, ANTAM, BHP, Glencore, Grupo México, Rio Tinto, South32, Teck Resources, Vale, and Vedanta. Feedback gathered from the pilots will then be used to refine the Standard and with that, public assessments will be made.

Taking the Temperature: According to some reports, the mining sector is responsible for 4-7% of greenhouse gas emissions globally. Like other emissions-intensive sectors, it is under considerable pressure to focus on decarbonization. But decarbonization efforts need significant investment. Producing a standard that better informs investors of companies' net zero transition plans may, to an extent, help alleviate criticism of continued investment and encourage more capital to be directed toward the sector. Additionally, any such standard, provided that it is robust, could reduce instances of greenwashing, requiring companies to back up their net zero claims. Investors and other stakeholders have for some time encouraged companies to be more transparent about their transition plans, with some exerting significant pressure on shareholders of multinational companies. One such example is a shareholder resolution filed by a group of institutional investors and NGO ShareAction at Glencore PLC's AGM. The groups sought details of the "specific plan" the company had "to align thermal coal production with emissions reductions commitments." At Glencore's 2022 AGM, concern over its coal production led to shareholders voting against its climate action plan. The importance of transparency and disclosure in the mining sector is underscored by the fact that investors are not only exposed to the mining sector but to other sectors enabled by mining, such as automotive, property, steel and manufacturing, given their dependence on commodities produced by miners.

Although the Standard is the first-of-its-kind for the mining sector, it will not be the only one for long. The European Financial Reporting Advisory Group (EFRAG) approved the European Sustainability Reporting Standards (ESRS). While the ESRS are sector-agnostic, EFRAG subsequently announced that it had been working on sector-specific standards for a number of sectors including mining.

EU Institutions to Vote on Greenwashing Ban

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On September 19, 2023, **the European Parliament and European Council agreed on a proposed set of rules** to ban misleading advertisements and enhance product information provided to consumers. “Empowering Consumers for the Green Transition Directive” (the Proposed Directive) will prohibit companies from making statements such as “carbon neutral” or “environmentally friendly” unless they can substantiate those claims. In addition, unless a sustainability label used is based on an approved certification scheme, or established by public authorities, it will also be contrary to the new set of rules.

The rules set out in the Proposed Directive are set to amend two existing EC Directives - 2005/29/EC, **the Unfair Commercial Practices Directive**, and 2011/83/EU, **the Consumer Rights Directive**.

Specifically, the Proposed Directive will prohibit:

- generic environmental claims, e.g., “environmentally friendly,” “natural,” “biodegradable,” “climate neutral” or “eco,” without proof of recognized environmental performance relevant to the claim;
- claims based on emissions offsetting schemes that a product has neutral, reduced or positive impact on the environment;
- sustainability labels not based on approved certification schemes or established by public authorities;
- durability claims in terms of usage time or intensity under normal conditions, if not proven;
- prompting the consumer to replace consumables, such as printer ink cartridges, earlier than necessary;
- presenting software updates as necessary even if they only enhance functionality features; and
- presenting goods as repairable when they are not.

The Proposed Directive is set to be voted into law in November 2023 and member states will have two years to implement the rules. Given that the rules amend existing legislation, the national bodies that currently monitor and enforce that legislation will likely continue to do so

after the amendments are implemented. Such national bodies include competition, marketing, and advertising authorities.

Taking the Temperature: We initially reported on the EU's intention to enhance consumer protection laws, particularly in relation to misleading advertising, as outlined in the Proposed Directive in May this year. Although Parliament and member states have not yet voted the Proposed Directive into law, this step is often a formality. Aside from the ban on generic environmental claims, one of its key features is the regulation of claims based on carbon offsets. Carbon offsetting schemes have been criticized due to concerns around the credibility and effectiveness of the offsets. In some instances companies have been accused of funding projects that either fail or were due to be undertaken anyway.

The new rules are part of the EU's wider goal to reach net zero by 2050 and represent another step towards the bloc's tightening of existing, or introduction of new, greenwashing rules and regulations creating a comprehensive anti-greenwashing regime. The EC recently proposed the Green Claims Directive, which attempts to implement measures designed to provide "reliable, comparable and verifiable information" to consumers, with the overall high-level goal to create a level playing field in the EU. In June this year, three EU financial regulators published an agreed definition of greenwashing.

Greenwashing encompasses a broad range of activities. Misleading advertising is only one aspect of greenwashing and it is largely consumer-focused. The EU's greenwashing regulation, although broad, addresses just this type of greenwashing. This is partly due to the perceived vulnerability of many consumers as opposed to recipients of information in other contexts such as institutional and/or sophisticated organizations, but also because encouraging consumers to make sustainable choices is viewed as important to the net zero transition. Outside the EU, the UK's Advertising Standards Authority (ASA) earlier this year released updated guidance for advertisers making environmental sustainability-related claims to consumers, including use of the terms "carbon neutral" and "net zero." The advertising regulator has also publicly censured several companies and required the discontinuation of certain advertising campaigns, as we discussed here and here earlier this year. In the U.S., the Federal Trade Commission announced that it is seeking public comment on potential revisions to its Green Guides for the Use of Environmental Marketing Claims, in particular to address carbon offsets and climate change-related marketing claims. Likewise, in July 2023, the Australian Competition and Consumer Commission released draft guidance for businesses making environmental and sustainability claims. The Draft Greenwashing Guidance establishes best practices under the Australian Consumer Law setting out how businesses operating in Australian jurisdictions can avoid greenwashing.