Allianz Launches Net-Zero Transition Plan Including Intermediate 2030 Goals

November 28, 2023

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On September 7, 2023, Allianz SE unveiled its first **net-zero transition plan** for its core business segments, featuring 2030 intermediate targets to achieve net-zero emissions by 2050. The Munich-based insurance firm's intermediate goals focus on decarbonizing its proprietary investments and Property & Casualty (P&C) underwriting in the company's commercial and motor retail businesses. While this is the first time Allianz has set 2030 goals, the firm reports that it has already surpassed its 2025 targets.

The plan's 2030 decarbonization goals include:

- Portfolio reduction targets for proprietary investments, including the reduction of "absolute owned" emissions by 50%. In addition to the portfolio targets, the plan also prioritizes emission reduction targets for four high-emitting sectors: electricity utilities, oil and gas, steel, and automobiles.
- Reduction of client-generated emissions in Allianz's P&C commercial insurance sub-portfolio of large companies that already report their emissions and are insured by the Allianz Global Corporate & Specialty division. The plan aims to reduce the emission intensity of the sub-portfolio by 45% by 2030 through a gradual phase-out of coal-based companies by 2040; expansion of renewable energy and low-carbon technology insurance; and encouraging corporate clients to transition to net-zero emissions.
- Reduction of carbon emissions by 30% in nine European markets of Allianz's P&C retail insurance motor line of business—Austria, Belgium, France, Germany, Italy, Netherlands, Spain, Switzerland and the United Kingdom—by expanding its range of electromobility and multi-modal mobility products and services; advocating for low-emission mobility; and advising customers on eco-friendly driving behavior, electronic vehicles and charging infrastructure.
- Continuing to focus on achieving net-zero emissions in Allianz's operations in 70 countries through reduction of climate emissions per employee by 70%, purchasing 100% green electricity as of 2023 and shifting to a fully electric corporate car fleet over time.

Allianz's plan further establishes a committee to achieve 150% growth in revenue from renewable energy and low-carbon technology in the commercial insurance segment by 2030. Allianz noted in a statement that it is a leading insurer of onshore and offshore solar photovoltaic and wind farms, and intends to offer coverage for emerging hydrogen technologies. The firm will also invest €20 billion in climate solutions in line with the EU's green policy agenda.

Taking the Temperature: Allianz was one among several insurers in the spotlight earlier this year when it withdrew from the Net-Zero Insurance Alliance (NZIA), along with other insurers including Munich Re, Zurich and Hannover Re. As we reported, Munich Re cited "material antitrust risks" as the reason for withdrawing from the NZIA, likely referring to U.S. antitrust challenges to climate initiatives by, among others, Republican State Attorneys General.

Allianz's climate action plan announcement comes as the insurance industry is grappling with business risks associated with climate change. We have reported on the findings in Goldman Sachs Asset Management's 12th annual insurance survey, where just over one-third of insurance executives surveyed stated that climate change could also affect their ability to insure for extreme weather events. Likewise, an Allianz report cited as risks for carriers increasing climate-focused litigation against companies and their boards, noting that "the cumulative number of climate change-related litigation cases has more than doubled since 2015." Particular types of cases cited included those asserting claims for greenwashing, failure to comply with international agreements such as the Paris Agreement, and claims based on companies making insufficient progress toward articulated sustainability targets.

Court Declares Austrian Airlines Liable for Greenwashing

November 28, 2023

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An Austrian regional court found Austrian Airlines AG (AUA), a subsidiary of German airline Lufthansa, liable for greenwashing for advertisements offering carbon-neutral flights that used 100% sustainable aviation fuel (SAF), **according to a statement** by the Vienna-based Association for Consumer Information (Verein für Konsumenteninformation) (VKI). On September 25, 2023, AUA published information about the decision on its website and social media, as mandated by the court in its June ruling, concluding that the ads misled consumers about the airline's use of SAF.

VKI sued AUA in the Korneuburg Regional Court, flagging an ad the airline published on its website and Twitter account for flights from Vienna to Venice for the 2022 Biennale Arte exhibition. The ad stated: "Fly to the Biennale CO2-neutrally? No art for us! 100% SAF." The association argued the ad misled consumers about the SAF's environmental benefits. AUA also imposed a "hefty surcharge" of more than 50% of the ticket price for the alleged carbon-neutral flights, with the airline purchasing SAF to be added to future flights, VKI said.

"In principle, we welcome all corporate efforts that serve to protect the environment," VKI lawyer Barbara Bauer said in the association's statement. "But promoting flights as CO2-neutral when this is not technically possible and it cannot even be ensured that sustainable aviation fuel is used in the specific flight is definitely going too far."

SAF is mixed with conventional kerosene fuel. Currently, the admixture proportion of SAF in fossil kerosene is a maximum of 5%, according to ASTM D1655, the standard specification for aviation turbine fuels. Therefore, conducting carbon-neutral flights with 100% percent SAF is not possible at present, said Bauer, and the court agreed.

In 2021, member airlines committed to net-zero carbon emissions by 2050 at the 77th International Air Transport Association (IATA) Annual General Meeting. To achieve net-zero emissions, 65% of the total emissions reductions will "in all probability need to be achieved" by using SAF, **according to IATA**. However, IATA estimated that the global production of SAF in 2022 covered only 0.1% to 0.15% of the aviation fuel used. IATA represents approximately 300 airlines comprising 83% of global air traffic.

In a statement following the publication of the June judgment, AUA said: "It follows from the ruling that Austrian Airlines should have provided clearer information about the use of sustainable aviation fuels (SAF), its possible uses and advantages with regard to the advertising statement in question. Austrian Airlines takes the ruling into account in current and future advertising statements." No financial penalties were imposed on AUA, but the court ordered AUA to remove information on its website that contained the claims about the carbon-

neutral flights to Vienna. Advertisements about flights using SAF now include references to carbon offsetting.

Taking the Temperature: As we have previously discussed, litigation against airlines relating to alleged greenwashing has increased in the European Union and the United States this year. In July 2023, the Bureau Européen des Unions de Consommateurs (BEUC), an umbrella entity for European independent consumer organizations, filed a complaint on behalf of itself and 23 of its member organizations from 19 countries with the European Commission and relevant consumer protection agencies, accusing 17 European airlines of greenwashing in connection with their marketing practices, in violation of the EU regulations governing unfair commercial practices.

In the United States, a consumer class action was filed in California federal court, alleging that Delta Air Lines falsely claimed that it is the world's "first carbon-neutral airline." The plaintiff, on behalf of a putative class of California consumers who purchased a ticket on Delta Airlines after March 6, 2020, claims that Delta relied on carbon credits to offset its reported emissions, but the benefits from those carbon credits are exaggerated, rendering Delta's reported emissions data misleading.

The "penalty" imposed on AUA is comparable to the approach taken by the UK's Advertising Standards Authority (ASA) in relation to ads by a global bank in which it was deemed to have misled consumers by omitting material information in connection with use of terms such as "carbon neutral" and "net zero," or its ban of advertisements by three oil and gas companies that contained accurate statements about the companies' "green" climate and environmental profiles but were deemed misleading in the context of their overall operations.

The Austrian court's ruling against AUA as well as other pending actions come at time when both the EU and the U.S. are considering measures to regulate marketers' environmental claims. In the U.S., for instance, the Federal Trade Commission (FTC) is considering public comments received on proposed revisions to its Green Guides for the Use of Environmental Marketing Claims. Among the questions posed is whether current guidance on carbon offsets and renewable energy claims is sufficient. Although the guidance in the Green Guides is non-binding, the FTC and others have cited the guidance in enforcement actions and litigation. Meanwhile in September, the EU Parliament and Council reached a provisional agreement updating a list of banned commercial practices, including marketing practices related to greenwashing.

KPMG Research Shows Significant Proportion of Companies Not Ready for ESG Data Assurance Requirements

November 28, 2023

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According to a survey conducted by KPMG, 75% of companies are not in a position to obtain third-party assurance on their published ESG data. This is despite the fact that two-thirds of companies must disclose such data, or will soon be expected to do so, on a mandatory basis. The survey was conducted of senior executives and board members of 750 companies across a range of industries, global regions and revenue sizes. Respondents were ranked, with the top 25% as "Leaders," the next 50% as "Advancers" and the bottom 25% as "Beginners."

The results of the survey were announced by KPMG simultaneously with the launch of their inaugural ESG Assurance Maturity Index, which the firm says has been designed to help inform companies, investors and other stakeholders on a company's assurance preparedness across five key areas: governance; skills; data management; digital technology; and value chain. In turn, the metrics will allow companies to see which of these areas requires improvement.

Among the top drivers for obtaining assurance, respondents cited primarily regulatory pressure (64%) followed by a wider range of benefits such as improved profitability (54%), greater shareholder value (46%), and a greater market share with customers and investors looking to make more ESG-conscious investments (56%).

Respondents were also asked about the main challenges in preparing for ESG assurance, among which were high initial costs (44%), lack of internal skills and experience (44%), lack of clarity/evolving regulations (42%), and lack of clear metrics/measurement tools (36%).

Taking the Temperature: As new and emerging disclosure and reporting frameworks, such as the EU's European Sustainability Reporting Standards (ESRS) and the U.S. Securities and Exchange Commission's (SEC) proposed climate-related reporting rule, come into force, companies could increasingly be required to obtain independent assurance on their ESG reporting. The ESRS, for instance, mandates external assurance with respect to materiality assessments. California's recently enacted climate disclosure legislation mandates external assurance with respect to scope 1 and 2, and ultimately scope 3, emissions. The proposed SEC climate disclosure rule likewise would mandate external assurance for scope 1 and 2 emissions information. And, in August 2023, the International Auditing and Assurance Standards Board issued its proposed International

Standard on Sustainability Assurance (ISSA) 5000, "General Requirements for Sustainability Assurance Engagements." ISSA 5000 is described as a comprehensive sustainability assurance framework designed to enhance the trust that investors, regulators and other stakeholders can place in corporate sustainability information.

Taskforce on Nature-Related Disclosures Publishes Final Recommendations

November 28, 2023

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On September 18, 2023, following a two-year development process, the Taskforce on Nature-related Financial Disclosures (TNFD) **published its final recommendations** (the Recommendations) to help market participants with nature-related assessment and corporate reporting. The Recommendations have been designed to better inform companies and investors and direct capital flows towards nature-related investment.

The Recommendations are structured around four key areas:

- **Governance** – This category relates to disclosure concerning an organization's governance of nature-related dependencies, including organizational impacts, risks and opportunities. Disclosure topics addressed include details surrounding board oversight, management's role in assessing nature-related dependencies, impacts, risks and opportunities, and the organization's human rights policies and engagement activities with respect to Indigenous Peoples and Local Communities.
- **Strategy** – The TFND offers recommendations relating to disclosure of the impacts, risks and opportunities associated with nature-related dependencies on the organization's business model, strategy, and financial planning, where such information is material. This would include short-, medium- and long-term outlooks, assessments of the company's value chain, and any net zero transition plans. Disclosures would also need to describe the resilience of the organization's strategy to nature-related risks and opportunities in different scenarios and the locations of assets and/or activities in the organization's direct operations subject to nature-related risks.
- **Risk and impact management** – The TFND offers disclosure recommendations describing the processes used by the organization to identify, assess, prioritize, and monitor nature-related dependencies, impacts, risk and opportunities, including in direct operations and downstream and upstream value chains. Guidance is also provided for disclosure of how the processes for identifying, assessing and prioritizing and monitoring nature-related risks are integrated into overall risk management processes.
- **Metrics and targets** – The final recommendations concern disclosure of metrics and targets with respect to nature-related dependencies.

In addition, the TFND provides six general disclosure requirements regarding: (i) the application of materiality; (ii) the scope of disclosures; (iii) the location of nature-related issues; (iv) integration with other sustainability-related disclosures; (v) the time horizons considered; and

(vi) the engagement of Indigenous Peoples, Local Communities and affected stakeholders in the identification and assessment of the organization's nature-related issues.

Adoption of the TNFD Recommendations is voluntary and the TNFD will track voluntary market adoption, with an aim to report on progress in early 2024. A list of inaugural adopters of the Recommendations will be announced at the World Economic Forum at Davos in January 2024, and the TNFD reports that of 239 organizations surveyed, 70% expressed their intention to commence TNFD-aligned disclosures by their financial year 2025, or earlier.

Taking the Temperature: The TNFD Recommendations are timely and reinforce the current focus in numerous jurisdictions on businesses' dependence and impact on nature and biodiversity. Regulators have urged financial institutions to assess nature-related climate change impacts as another aspect of risk to financial stability; in March this year the EU announced its carbon sinks initiative, pursuant to which member countries will implement stricter national targets relating to emissions reduction and the protection and expansion of CO2-absorbing natural ecosystems; the UK has launched an inquiry into directing capital towards nature recovery and earlier this year, announced jointly with France, that the two countries had developed a roadmap to boost the biodiversity credits market; and the United Nations announced the formation of a 35-member bank-led working group to promote nature- and biodiversity-related target setting that is aligned with the Global Biodiversity Framework, as well as to implement other climate-related market standards such as the recommendations of the TFND. At the same time, significant challenges remain, including, for instance, continuing illegal deforestation, and questions surrounding the sources of capital to fund nature-related conservation efforts.

In light of the fact that compliance with TNFD Recommendations is currently voluntary, our observation that companies and their directors should increase their assessments of governance and disclosures concerning nature-related impacts, regardless of whether they are mandated by government regulation, remains relevant. Organizations will undoubtedly face challenges with nature-related reporting. For example, the need to disclose nature-related issues across both upstream and downstream value chains necessarily will depend on the data provided by suppliers. Some regions are already acting. The EU is currently in the process of adopting the Corporate Sustainability Due Diligence Directive, which would require 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 in particular pollution, biodiversity loss and environmental degradation, as well as labor exploitation, slavery and child labor, particularly within their value chains.

EU Market Regulator Finds 400% Increase in Use of ESG Language in Fund Names

November 28, 2023

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On October 2, 2023, the EU markets regulator, the European Securities and Markets Authority (ESMA), **published a study** indicating that the proportion of investment funds in Europe using ESG-related terms in their fund names has grown by 400% over the past ten years.

Funds with ESG-related language in their names have grown to represent 14% of assets under management in the EU in 2023, reaching €974 billion out of a total €6.8 trillion AUM. The use of the terminology gained momentum after the 2015 Paris Agreement was signed and escalated from 2018 to 2022, although the pace of new ESG investment product development slowed in 2023. The report highlights the increasing demand for funds with ESG-related terms in their names, surpassing demand for other funds consistently over the past six years. Global sustainable fund assets have tripled to over €2.1 trillion in the last three years.

The study also notes a preference among fund providers for more generic ESG terms, potentially posing challenges for investors in verifying whether fund investments align with the ESG claims in their names. This trend has implications for both retail and institutional investors. ESMA's natural language processing techniques reveal that funds sold to retail investors are associated with more ESG claims in standardized documents compared to funds sold to institutional investors. ESMA emphasizes the importance of monitoring such communication channels for investor protection.

Taking the Temperature: It is notable that ESMA continues to be highly focused on the use of ESG-related terms in fund names and investor and marketing communications. This is consistent with two of its strategic priorities: (i) strengthening the supervision of EU financial markets, and (ii) enhancing the protection of retail investors. The findings of ESMA's study and the significant increase in the use of ESG language in fund names bring into further focus ESMA's delayed fund names rules. These were initially proposed in November 2022 for a Q3 2023 publication but are still awaited.

As we covered earlier this year, another significant recent issue that highlights the difficulties around ESG fund names, classifications and sustainability descriptions is the controversy around the classification of funds under Article 8 and Article 9 of the EU's Sustainable Finance Disclosure Regulation (SFDR), and the use of the disclosure categories as de facto labels. The resulting mass downgrades by asset managers of funds previously classified as Article 9-compliant – i.e., those that have specific sustainable goals as their objective – to less restrictive Article 8-compliant funds prompted the European Commission to launch a review of the SFDR in September 2023.

One of the primary concerns around the use (and potential misuse) of ESG-related terms in fund names is greenwashing. In February 2023, ESMA announced the launch of a common supervisory action (CSA) to cover the application of MiFID II (Markets in Financial Instruments Directive) disclosure rules to marketing communications for financial products across the EU. One of the objectives of the CSA was to ensure that such communications are fair, clear and not misleading. ESMA, the European Banking Authority, and the European Insurance Occupational Pensions Authority agreed on a common, high-level definition of greenwashing and outlined greenwashing risks, impacts, proposed mitigation efforts and challenges for their respective industries, providing much sought clarity for EU operators. ESMA then issued a public statement outlining its expectations for sustainability-related disclosures to be incorporated into prospectuses. In September this year, it was announced that EU institutions are to vote to ban misleading advertisements and enhance product information provided to consumers. The so-called Green Claims Directive will prohibit companies from making statements such as "carbon neutral" or "environmentally friendly" unless they can substantiate those claims.

ESMA's focus on potentially misleading practices in marketing materials for ESG-linked financial products across the EU is consistent with a global trend and echoes similar initiatives by other financial regulatory authorities. As we previously reported, the SEC adopted amendments to the Investment Company Act of 1940, most notably to the "Names Rule" governing the names of funds to ensure that they do not mislead investors regarding the fund's risks and investment characteristics. The SEC commented that the updates are designed to "address materially deceptive and misleading use of ESG terminology in fund names." In the UK, the Financial Conduct Authority announced its intention to publish rules around the use of ESG terms in investment product sustainability labels and how these can be used.