C A D W A L A D E R

April 23, 2024

April 23, 2024

Table of Contents:

Cadwalader Climate

April 23, 2024

In this week's edition, we discuss the European Parliament's approval of a certification framework that is set to govern carbon removal activities, including the proper certification of carbon credits. Europe continues to focus on its climate goals by way of the European Green Deal and is set to introduce criteria to monitor progress towards the climate transition. In recent years we have seen an uptick in climate litigation by citizens who claim that their government's insufficient action on climate change constitutes a violation of their human rights, and on April 9, Swiss citizens were handed a win by the European Court of Human Rights. We move to the U.S. to discuss the country's latest state to introduce fossil fuel divestment legislation, and end with the UK's Transition Plan Taskforce which has published sector-specific transition plan guidance.

European Parliament Adopts Carbon Removals Certification Scheme

On April 10, 2024, Members of the European Parliament **voted in favor** of adopting a new certification framework for carbon removals. The aim of the scheme is to boost uptake in carbon removal activities to work towards the EU's goal to achieve climate neutrality by 2050. In a press release, the European Parliament noted that the framework allows for the authenticity of carbon removal activities to be quantified, monitored and verified for greater transparency and in order to counter greenwashing. Different types of carbon removal systems are covered under the proposal, including: (i) carbon storage through industrial technologies, (ii) carbon storage in long-lasting products such as wood-based construction materials or biochar, and (iii) carbon farming, such as restoring forests and soils, avoiding soil emissions, rewetting of peatlands, and more efficient use of fertilizers. Farmers in particular would be paid for carbon removals under the certification scheme. In order to comply with the framework, certification schemes will need to demonstrate that they meet a certain set of agreed criteria including storing carbon for an agreed-upon long-term period (a minimum of 35 years), contributing to broader sustainability goals, and going beyond existing practices. A registry will also be set up to increase transparency around certified carbon removals, and is due to be established within four years. The proposal is set to also include carbon credits which, if sold or purchased in the EU, will need be certified under the new scheme. **We have frequently discussed** the issues in the voluntary carbon credit market, including questions around quality, offsetting and allegations of greenwashing. A certification regime will undoubtedly be welcomed by those who call into question how effective carbon offsetting schemes are, which **we discuss in detail here**.

The proposed legislation will need to be adopted by the European Council, and will then be published in the Official Journal and enter into force 20 days later.

European Commission to Publish Green Transition Indicators

Staying on the road to Europe's Green Deal, on April 10, **the European Commission announced** that it intends to publish a set of indicators to monitor and measure the progress of the green transition. The "Clean Transition Dialogues" are a tool used by the Commission to engage with stakeholders to support the implementation of the European Green Deal, and the green transition indicators form part of this initiative. The criteria is not intended to impose any additional reporting obligations for industry, but are aimed at ensuring effective implementation of the EU's climate framework. The criteria will cover, among other things, GHG emissions reductions, enabling factors such as job creation and a skilled workforce energy efficiency, deployment of zero and low carbon energy and fuel sources, as well as infrastructure development and circularity. As at the date of the Commission's announcement, there is no implementation date for the criteria.

European Court Rules Failure to Take Climate Action Violated Human Rights

On April 9, 2024, the European Court of Human Rights (ECtHR) found in favor of a group of Swiss citizens who had claimed that their human rights had been violated by Switzerland because it failed to take sufficient measures to minimize the effects of climate change. KlimaSeniorinnen Schweiz (Swiss Senior Women for Climate Protection) argued that their right to respect for private and family life, and their right of access to court had not been properly observed by the country's climate policy. The group also claimed that the government's inaction put their lives at risk during heatwaves and that their gender and age (with the over 2,000 members being over 64) made them particularly vulnerable to such climate change consequences. The decision is the first of its kind made by an EU institution and serves as a precedent to all lower courts in countries that signed the European Convention on Human Rights (ECHR). The ruling is final and cannot be appealed. The ECtHR's decision implies that the Swiss government has a legal duty to take action against climate change. The majority of Swiss citizens will be in favor of stronger action given that in June 2023, **59% of them voted in favor of the Climate and Innovation Ac**t which promoted carbon neutrality by 2050. The Climate and Innovation Act followed a fraught debate on the adoption of stronger climate goals which, in a referendum held the year prior, had been voted down by Swiss citizens. On the same day the ECtHR handed down its decision to the KlimaSeniorinnen group, it **struck down the case** brought by a group of Portuguese citizens who alleged that the failure of 32 European governments to act fast enough against climate change violated the applicants' human rights to life, physical and mental wellbeing. The ECtHR noted among other things that there was no justification for bringing a suit against the vast number of governments they did, and that not all legal avenues had been exhausted by the group in Portugal's national courts, before filing with the ECtHR, which all applicants are required to do.

Climate litigation by groups of citizens on the basis of human rights violations is likely to continue both against public and private entities. In June 2023, **we discussed** the lawsuit filed by, among others, Greenpeace and 12 Italian citizens against ENI S.p.A. alleging that ENI knew of the detrimental effect of fossil fuel burning since around 1970 but through "lobbying and greenwashing" continued to encourage extraction, thereby contributing to climate change, and violating the citizens' rights to life, health and private and family life. Future similar cases heard by the ECtHR, which currently has approximately six climate litigation cases registered to be heard, may well be influenced by the decision in the Swiss case.

Oregon Publishes Fossil Fuel Divestment Legislation

On April 4, the State of Oregon passed the Clean Oregon Assets Legislation (COAL) Act directing the Treasury to end new state investments in thermal coal, and phase out existing investment in coal stocks. The COAL Act makes Oregon the third U.S. state to introduce fossil fuel divestment policy following Maine and California. The COAL Act would require the

Treasury's USD 98 billion fund, Oregon Public Employee Retirement Fund to divest up to USD 1 billion of its holdings. **According to the Institute for Energy Economics and Financial Analysis**, divestment from fossil fuels has "met the test of fiduciary responsibility with almost 1,600 institutional investors that manage more than $40 trillion having implemented an exclusion strategy". **We have frequently discussed** the push-and-pull of fossil fuel investment exclusion policies and the fiduciary duties owed by a trustee to its participants and beneficiaries. As the bill has been signed by Oregon's Governor, it has now become law.

Similar bills are making their way through the legislature in Illinois (H.B. 037), and in the Vermont Senate (S.42).

States adopting an opposite position include **Oklahoma and West Virginia**, which 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." The politicization of climate change issues in U.S. state legislatures shows no sign of abating, particularly as it relates to public investment in the fossil fuel industry.

UK's Transition Plan Taskforce Publishes Sector-Specific Guidance

On April 9, the UK's Transition Plan Taskforce (TPT), **published sector-specific transition plan guidance** for Asset Owners, Asset Managers, Banks, Electric Utilities & Power Generators, Food & Beverage, Metals & Mining, and Oil & Gas. The TPT was established by the UK Treasury during COP26 and in October 2023, **published its disclosure framework**. The sector-specific guidance advises firms on what to consider disclosing across the five disclosure elements in the framework: foundations, implementation strategy, engagement strategy, governance and metrics and targets. The TPT's disclosure framework was welcomed by the Financial Conduct Authority (FCA) who also committed to draw on it as it further develops its disclosure expectations for listed companies, asset managers and FCA-regulated asset owners. In 2024, the FCA is set to consult on rules and guidance for listed companies to disclose in line with the International Sustainability Standards Board (ISSB) Standards and the TPT's disclosure framework.

In a press release accompanying the published material, the TPT noted that there has been interest shown from other jurisdictions such as Australia, Brazil, the EU, France, Germany, Hong Kong, Japan, Malaysia, New Zealand, Singapore, Thailand, and the U.S., indicating that the material is likely to prove relevant to companies beyond the UK. The UK does not currently have transition plan regulation in force, but the TPT's mandate was extended to allow them to assess how the financial sector can raise much-needed climate capital.