Corporate responsibility (CR) and environmental, social and governance (ESG): policy and legal measures

This note provides an introduction to corporate responsibility (CR) (also known as corporate social responsibility (CSR) or environmental, social and governance (ESG)) and summarises the key policy measures and legal initiatives. It includes the key legal and policy drivers for corporates, pension funds and the financial services industry.

Scope of this note

This note summarises the key policy and legal developments in corporate responsibility (CR) (also known as corporate social responsibility (CSR)) at a UK and EU level.

The main focus of the note is on the legal obligations on companies that relate to CR issues and can drive CR performance. It also covers legal obligations and related developments on pension funds that require them to engage with environmental, social and governance (ESG) issues.

The note also summarises national and international policies driving the CR, CSR and ESG agendas.

CR, CSR and ESG

CR is also known as CSR or corporate citizenship. In some contexts (particularly investment contexts) it is referred to as environmental, social and governance (ESG).

These terms are used to refer to the decisions and behaviour of a company or financial organisation in the context of social responsibility, including areas such as ethics, the environment, diversity, human rights, integrity, labour chain, climate change, philanthropy, accountability, sustainability, values, community, transparency, fair trade and the long term.

For more information on what these terms mean and the differences in how they are used, see Corporate responsibility (CR) and environmental, social and governance (ESG) toolkit: CR, CSR and ESG.

UK legal and policy initiatives on CR

Definitions of CR tend to emphasise its voluntary nature but there is a body of relevant law and regulation and other initiatives that provide part of the framework for CR, especially for reporting.

UK Corporate Governance Code

The UK Corporate Governance Code issued by the Financial Reporting Council (FRC) consists of principles of good governance in the areas of leadership, division of responsibilities, composition, succession and evaluation, audit, risk and internal control and remuneration, to ensure that a company operates effectively, complies with legal requirements and reports reliably.

The UK Corporate Governance Code applies to all companies with a premium listing, whether incorporated in the UK or elsewhere. The UK Corporate Governance Code is a "comply or explain" code. The Listing Rules require UK listed companies to include in their annual corporate reports and accounts a disclosure statement setting out how they have applied the main principles, whether they have complied with the Code's provisions, and explaining and justifying any non-compliance.

The April 2016 version of the Code applies to accounting periods beginning on or after 17 June 2016 and before 1 January 2019. The July 2018 version of the Code applies to accounting periods beginning on or after 1 January 2019.

As well as setting principles of good governance, the July 2018 version of the Code extends somewhat into other aspects of ESG. For example, it refers to companies "contributing to wider society" (Principle A).

UK FRC Stewardship Code

Institutional investors are subject to the UK Stewardship Code, which is published by the FRC and sets out good practice for institutional investors on engagement with investee companies (see Practice note, UK Stewardship Code).

Principle 4 of the current version of the Stewardship Code requires institutional investors, among other things, to set guidelines on how they will engage with an investee company on, among other things, environmental risks when they think that the company's own approach is inadequate. They must also implement the guidelines (for example, through discussions with the company or submitting resolutions at shareholders' meetings).

In October 2019, the FRC published the UK Stewardship Code 2020. The revised code applies from 1 January 2020.

The revised Code has a greater focus on ESG (including climate change) matters than the previous version. The key changes on the ESG aspects include:

Amendments to the definition of stewardship, to clarify that the purpose is to create value for clients and beneficiaries (rather than to create value for beneficiaries, the economy and society). Stewardship is now defined as "the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society".

Signatories are expected to take ESG matters, including climate change, into account and to ensure their investment decisions are aligned with their clients' needs.

The principles for asset managers and asset owners include that:

Signatories systematically integrate stewardship and investment, including material ESG issues, and climate change, to fulfil their responsibilities.

Signatories' purpose, investment beliefs, strategy and culture enable stewardship that creates long-term value for clients and beneficiaries, leading to sustainable benefits for the economy, the environment and society.

The principles for service providers include that signatories support clients' integration of stewardship and investment, taking into account material ESG issues and communicating what activities they have undertaken.

These are "apply or explain" principles, with reporting expectations. In applying the principles, signatories should consider (amongst other things) environmental and social issues, including climate change.

Directors’ duties and enlightened shareholder value (Companies Act 2006)

Under section 172 of the Companies Act 2006 (CA 2006), the directors have a duty to promote the success of the company. This means that a company director must act in the way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. In doing so, they are to have regard (among other matters) to the:

Likely consequences of any decision in the long term.

Interests of the company’s employees.

Need to foster the company’s business relationships with suppliers, customers and others.

Impact of the company’s operations on the community and the environment.

Desirability of the company maintaining a reputation for high standards of business conduct.

Need to act fairly as between members of the company.

The wording of section 172 of the CA 2006 makes clear that a director is only under a duty to act in a way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members. However, in fulfilling that duty they should also "have regard to" the non-exhaustive list of factors. This reflects the concept that has become known as "enlightened shareholder value"; namely, that it will be to the advantage of companies that directors, in coming to their decisions, also consider other factors, including certain other "stakeholder" groups (for example, employees, suppliers, customers and others) and also the likely consequences and impact of their decisions (for example, in the long term and on the community and the environment). The ICSA and IA stakeholder voice guidance sets out matters for boards to consider in relation to stakeholders (see Practice note, Shareholder and stakeholder liaison).

Section 172 tries to engender an idea of CR that reflects wider expectations of responsible business behaviour and that, while still only involving one duty to promote the success of the company for the benefit of members, requires directors to have regard to additional CR-type factors.

For financial years beginning on or after 1 January 2019, large companies must include a separate "section 172(1) statement" in their strategic report describing how the directors have had regard to the matters set out in section 172(1)(a) to (f) of the CA 2006 when performing their duty under section 172; and unquoted companies must publish their section 172(1) statement on a website (maintained by or on behalf of the company).

Non-financial reporting in the strategic report and directors' report

Companies (other than those subject to the small companies regime) must prepare a strategic report in accordance with sections 414A to 414D of the CA 2006.

The strategic report must contain a fair review of the company’s business, and a description of the principal risks and uncertainties facing the company. To the extent necessary for an understanding of the development, performance or position of the company’s business, the fair review must include analysis using financial key performance indicators (KPIs), and where appropriate, analysis using other KPIs, including information relating to environmental matters and employee matters.

For quoted companies, when disclosing information necessary for an understanding of the development, performance or position of the company's business, the strategic report must include information about: environmental matters (including the impact of the company's business on the environment), the company’s employees, and social, community and human rights issues, and it must include information about any policies of the company in relation to those matters and the effectiveness of those policies.

For financial years beginning on or after 1 January 2017, large public interest entities with more than 500 employees must include a non-financial statement as part of their strategic report. The non-financial information statement must contain information, to the extent necessary for an understanding of the company’s development, performance and position and the impact of its activity, relating to, as a minimum, environmental matters (including the impact of the company’s business on the environment), the company’s employees, social matters, respect for human rights and anti-corruption and anti-bribery matters. This requirement implements the EU Non-Financial Reporting Directive 2014 (Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups). From 1 January 2019, large companies must include a section 172(1) statement in their strategic report (see Directors’ duties and enlightened shareholder value (Companies Act 2006)).

Quoted companies are also required to make certain disclosures regarding greenhouse gas emissions in their directors' report under the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410). The directors' report must state the annual quantity of emissions in tonnes of carbon dioxide equivalent resulting from each of the following: activities for which the company is responsible, including the combustion of fuel and the operation of any facility and the purchase of electricity, heat, steam or cooling by the company where it is for its own use.

The government has introduced new and extendedd requirements on quoted companies, large unquoted companies and limited liability partnerships to report on their energy use and carbon emissions from financial years beginning in or after April 2019, as part of annual corporate reporting obligations (see Practice note, Streamlined energy and carbon reporting (SECR) for businesses).

From 1 January 2019, certain large companies are required to disclose in their directors' report, a statement on engagement with employees and a statement on engagement with suppliers, customers and others in a business relationship with the company.

UK climate change legislation

Concern over the effects of climate change has become one of the key drivers for increased adoption of CR principles. For more information, see Practice note, Climate change issues for companies.

Anti-corruption and bribery

The Bribery Act 2010 has prompted commercial organisations to assess whether they have adequate procedures to ensure that they are not involved in bribery and corruption. It is widely accepted that corruption causes poverty and suffering, inhibits economic growth, is damaging to business, both financially and in relation to reputation, and may result in criminal and civil liability and penalties for organisations and individuals. Most major companies already have in place an anti-corruption policy that should be reviewed regularly to ensure that it is fit for purpose. For more information, see:

Equality Act 2010: mandatory gender gap reporting

For financial years beginning on or after 6 April 2017, large employers (with at least 250 relevant employees) are subject to mandatory gender pay gap reporting under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (SI 2017/172). For further details, see Practice note, Gender pay gap reporting obligations and Checklist, Web-based reporting disclosures for companies.

A company may also wish to voluntarily disclose gender pay gap information in its CR report or its strategic report (see Practice note, Strategic report). The UK government has developed a voluntary framework for gender equality reporting called Think, Act, Report, to which a number of leading UK companies have signed up.

Modern Slavery Act 2015: slavery and human trafficking statement

The Modern Slavery Act 2015 includes an obligation on large commercial organisations to state publicly each year what action they have taken to ensure their business and supply chains are slavery free. For further details, see Modern Slavery Act 2015 toolkit and Checklist, Web-based reporting disclosures for companies.

Government consultation on CR (2013-14)

In June 2013, the government published a call for views on CR (see Legal update, Corporate responsibility: BIS call for views). In April 2014, the government published its response to the consultation (see Corporate Responsibility: Good for Business & Society: government response to call for views on corporate responsibility).

Human rights: UK action plan (2013)

In September 2013, the UK government published Good Business: Implementing the UK Guiding Principles on Business and Human Rights setting out its action plan for UK implementation of the UN Guiding Principles (see Legal update, Business and human rights: the UK's action plan and Article, Human rights reporting: the tip of the iceberg, PLC Magazine, 2014).

Joint Committee on Human Rights: recommendations for reporting on human rights abuses

In April 2017, the House of Commons and House of Lords' Joint Committee on Human Rights published a report on human rights and business, Human Rights and Business 2017: promoting responsibility and ensuring accountability.

The Joint Committee's recommendations on human rights include:

Making reporting on due diligence compulsory for large businesses for all relevant human rights, not just the prohibition of modern slavery.

Imposing a duty on all companies to prevent human rights abuses, as well as a criminal offence of "failure to prevent" human rights abuses for all companies, including parent companies, along the lines of the Bribery Act 2010.

Excluding from public sector contracts any companies that have been found to have been responsible for abuses.

The government published its response to the Joint Committee report in January 2018. The government partially agrees with the Joint Committee and points to the strategic report requirements for disclosure of human rights issues (see Practice note, Strategic report) and its proposals on reform of section 172 (see Corporate governance reform: toolkit). The government is concerned that overlaying further requirements for due diligence on human rights may not be proportionate at this stage.

Independent government advisory group report on social impact investing

A November 2017 report (Growing a Culture of Social Impact Investing in the UK) from an independent advisory group on developing a culture of social impact investing in the UK makes recommendations for developing a culture of social impact investing in the UK. For further details, see Legal update, Corporate governance: independent government advisory group report on social impact investing (corporate aspects).

Pension funds and ESG

For information on ESG issues as they affect investment decisions made by trustees of occupational pension schemes, including the requirements in respect of the contents of an occupational pension scheme's statement of investment principles (SIP), see Practice note, Environmental, social and governance (ESG) issues for pension schemes.

ESG legal and policy drivers for financial services industry

The following sections summarises the key legal and policy initiatives relating to ESG for the financial services industry, particularly measures requiring investors to integrate ESG into their investment decisions.

To track initiatives by the financial services regulators to drive action on climate change and sustainability, see Climate change and sustainability initiatives from financial services regulators: tracker.

Green Finance Strategy

In July 2019, the government published its Green Finance Strategy, Transforming finance for a greener future, in response to the Green Finance Taskforce's March 2018 report. The measures proposed in the Green Finance Strategy cover a wide range of areas (see Legal update, Government launches Green Finance Strategy).

EAC recommendations on greening finance

In June 2018, the Environmental Audit Committee (EAC) published its report, Parliament: Greening Finance: embedding sustainability in financial decision making (June 2018) (see EAC press release, Climate risk reporting should be mandatory by 2022, 4 June 2018). Key recommendations of the report include:

The government should propose a change in the law to require pension fund fiduciaries to actively seek the views of their beneficiaries when producing their Statement of Investment Principles or Investment Strategy Statements. It should set out guidance on how to ensure that evidence of members' views is gathered robustly.

Asset owners (such as pension funds) and investment managers should be subject to mandatory climate change reporting in accordance with the framework of the Financial Stability Board's (FSB) task force on climate-related financial disclosures (TCFD), by 2022 (see Practice note, Task Force on Climate-related Financial Disclosures (TCFD): recommendations for disclosing climate-related financial information: overview).

The Financial Reporting Council's (FRC) Corporate Governance Code and UK Stewardship Code, and the Financial Conduct Authority's (FCA) listing rules should be amended to require climate-related financial disclosures on a comply or explain basis by 2022.

Embedding climate risk reporting in all relevant UK corporate governance and reporting frameworks could negate the need for new legislation. However, if UK regulators do not improve how they monitor the management of climate risk then the government should pass new sustainability reporting legislation similar to France's Article 173.

The Secretary of State for Environment, Food and Rural Affairs should use the adaptation reporting powers under the Climate Change Act 2008 to require the FCA, FRC and the Pensions Regulator to produce adaptation reports (see Practice note, Climate Change Act 2008: Part 4: Adaptation to climate change).

Treasury Committee inquiry

In June 2019, the Treasury Committee launched an inquiry, Decarbonisation of the UK economy and green finance, to explore the economic opportunities that decarbonisation presents for the UK, the potential of the green finance sector, HM Treasury's strategy, green finance issues for financial services firms and the green financial product landscape and associated regulatory environment.

The government has indicated that the Committee will publish its findings in autumn 2020 (see Treasury Questions, 7 January 2020).

FCA and PRA work on ESG in finance

FCA response to EAC recommendations on green finance

In July 2018, the Financial Conduct Authority (FCA) published its response to the EAC's recommendations on green finance (see Legal update, Financial Conduct Authority responds to Environment Audit Committee recommendations on green finance). The FCA's comments include that it will:

Consult on rule changes requiring independent governance committees (IGCs) to report on their firm's policies on evaluating ESG considerations and take account of members' ethical concerns (see Extending remit of independent governance committees (IGCs) below).

Highlight to issuers the need to make adequate disclosure on materially important information, including on ESG. However, it will not amend the listing rules to require climate-related financial disclosures.

FCA discussion paper on climate change and green finance

In October 2018, the FCA published a discussion paper on climate change and green finance (DP18/8) (see Legal update, FCA discussion paper on climate change and green finance). The paper sets out:

How the different impacts of climate change could impact the FCA's long and short-term objectives.

Some of the opportunities and risks the transition to a low carbon economy presents to the UK's financial services markets.

The specific actions the FCA will take in the near-term to ensure that markets function well and deliver good consumer outcomes, including:

addressing the recommendations of the Law Commission's June 2017 report on pension funds and social investment (see Legal update, Government final response to Law Commission report on pension funds and social investment: financial services aspects);

enabling competition and market growth for specialist green products;

exploring whether greater encouragement is needed to ensure issuers of securities admitted to trading on a regulated market give investors appropriate information and whether issues require further clarity over what is expected (see Legal updates, Task Force on Climate-related Financial Disclosures publishes final recommendations) and Financial and narrative reporting: FCA discussion paper on the disclosure of climate change risks by listed companies); and

seeking views on introducing a new requirement for financial services firms to report publicly on how they manage climate risks to their customers and operations.

Climate Financial Risk Forum

The Prudential Regulation Authority (PRA) and the FCA have established the Climate Financial Risk Forum (CFRF) to support the integration of climate-related factors into financial decision making, which had its first meeting in March 2019 (see Legal update, First meeting of FCA and PRA Climate Financial Risk Forum). The outputs from the CFRF, supervisory engagement, and the PRA's international work with the central banks and supervisors network for greening the financial system will inform the PRA's approach to supervising its expectations and the PRA will keep its climate change policy under review.

PRA supervisory statement on enhancing banks' and insurers' approaches to climate-related financial risk

In April 2019, the PRA published a policy statement (PS11/19) and a supervisory statement (SS3/19) setting out its expectations for how banks and insurers address the financial risks from climate change. This follows an October 2018 consultation (see Legal updates, PRA consults on draft supervisory statement on enhancing banks' and insurers' approaches to managing financial risks from climate change and PRA policy and supervisory statements on enhancing banks' and insurers' approaches to managing financial risks from climate change). The PRA's desired outcome is that firms take a forward-looking, strategic approach to managing the financial risks from climate change. The PRA's expectations include that:

A firm’s board understands and assesses climate-related financial risks that affect the firm, with evidence of how the firm manages and monitors those risks.

Firms have clear roles and responsibilities for the board and relevant sub-committees in managing climate-related financial risks, including allocating responsibility for identifying and managing those risks to the relevant existing senior management function.

Firms address climate-related financial risks through existing risk management frameworks, including identifying, measuring, monitoring, managing and reporting on their exposure.

Firms conduct scenario analysis to inform strategic planning and determine the impact of climate-related financial risks on their overall risk profile and business strategy.

All firms within the scope of the supervisory statement consider disclosing how climate-related financial risks are integrated into governance and risk management processes, including the process by which a firm has assessed whether these risks are considered material or principal risks.

The PRA intends to publish more detailed expectations relating to climate-related financial risks in due course.

Extending remit of independent governance committees (IGCs)

In December 2019, the FCA published a policy statement confirming its decision to extend the remit of IGCs (PS19/30), as proposed in its April 2019 consultation paper (CP19/15) (see Legal update, FCA consults on proposed extension to remit of independent governance committees). PS19/10 outlines the FCA's final rules and guidance, which are set out in the Conduct of Business sourcebook (Independent Governance Committees) Instrument 2019.

The final rules, which come into force on 6 April 2020, broadly reflect those consulted on, with some amendments to the detail to reflect feedback. In summary, this means that the FCA is introducing two new duties for IGCs:

To report on their firm's policies on ESG issues, consumer concerns and stewardship, for the products that IGCs oversee.

To oversee the value for money (VfM) of investment pathway solutions for pension drawdown.

PS19/30 also confirms related guidance for providers of pension products and providers of investment-based life insurance products on how firms should think about ESG risks and consumer concerns when making investment decisions on behalf of consumers.

The FCA sets out next steps for firms, which includes ensuring that they have in place, by 6 April 2020, a governance advisory committee (GAA) or IGC (the FCA's guidance is intended to help firms decide which is the most appropriate).

2021 Biennial Exploratory Scenario on climate-related risks (BoE)

The 2021 Biennial Exploratory Scenario on climate-related risks will test the resilience of the largest banks, insurers and the financial system to different possible climate pathways and provide a comprehensive assessment of the UK financial system's exposure to climate-related risks. In December 2019, the BoE published a discussion paper setting out the proposal for the 2021 Biennial Exploratory Scenario on climate-related risks. The response period closes on 18 March 2020 (see Legal update, Joint PRA and FPC discussion paper on 2021 biennial exploratory scenario on financial risks from climate change).

European Commission action plan on financing sustainable growth

In March 2018, the Commission published a communication on its action plan for financing sustainable growth (see Legal update, Capital Markets Union: Commission action plan on financing sustainable growth (corporate aspects) and Legal update, European Commission communication on financing sustainable growth action plan).

The action plan aims to reorient capital flows towards sustainable investment to achieve sustainable and inclusive growth. This is to address the fact that current levels of investment are not sufficient to support an environmentally and socially sustainable economic system. It will also manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues, and foster transparency and long-termism in financial and economic activity. The action plan includes the following measures:

Carry out a fitness check on public corporate reporting. Later in March 2018, the Commission published a consultation on whether the EU framework for public reporting by companies is fit for purpose (see Legal update, Financial and narrative reporting: Commission consultation on public reporting by companies).

Revise the guidelines on non-financial information as regards climate-related information to further align them with the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures (see Practice note, Environmental reporting for companies: voluntary: Financial Stability Board task force on climate-related financial disclosures).

Promote corporate governance that is more conducive to sustainable investments by assessing the possible need to (i) require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout the supply chain, and measurable sustainability targets; and (ii) clarify the rules according to which directors are expected to act in the company's long-term interest.

Establish an EU classification system for sustainable activities.

Create standards and labels for green financial products.

Develop sustainability benchmarks.

Clarify institutional investors' and asset managers' duties.

Incorporate sustainability in prudential requirements.

The action plan was prepared with the help of a high-level expert group (HLEG) on sustainable finance, which was established to help develop an overarching EU roadmap on sustainable finance. For information on the HLEG's work, see Legal update, Final report by European Commission expert group on sustainable finance.

The Commission's work on sustainable finance is part of its programme to establish a capital markets union (CMU) in the EU (see Practice note, Capital markets union (CMU): overview: Sustainable finance).

EU sustainable finance Regulations

In May 2018, the Commission published legislative proposals for three EU Regulations relating to sustainable finance (see Legal update, European Commission legislative proposals on sustainable finance). The aim of the reforms is to integrate ESG considerations into the investment and advisory process in a consistent manner across sectors.

Two of the three Regulations have been published in the Official Journal. They are:

Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (Disclosure Regulation). It lays down harmonised rules for financial market participants and financial advisers on transparency regarding the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes, as well as the provision of sustainability-related information on financial products. It came into force on 29 December 2019. Most of the provisions will apply from 10 March 2021. However, certain provisions listed in Article 20(3) will apply from 29 December 2019, and others listed in the same Article will apply from 1 January 2022. For more information, see Practice note, Sustainable finance: Disclosure Regulation: overview.

Regulation (EU) 2019/2089 amending Regulation (EU) 2016/1011 (BMR) as regards EU climate transition benchmarks, EU Paris-aligned benchmarks and sustainability-related disclosures for benchmarks (Low Carbon Benchmarks Regulation). It amends Regulation (EU) 2016/1011 by introducing a regulatory framework that lays down minimum requirements for EU climate transition benchmarks and EU Paris-aligned benchmarks at the EU level, to ensure that these benchmarks do not significantly harm other ESG objectives. It came into force on 10 December 2019.

The third draft Regulation on the establishment of a framework to facilitate sustainable investment is progressing through the EU legislative process. It will establish an EU-wide classification system or taxonomy intended to provide businesses and investors with a common language to identify what degree economic activities can be considered environmentally-sustainable. It is intended to ensure that financial market participants who offer financial products as environmentally sustainable investments or as investments with similar characteristics make it clear to investors why such products can be considered environmentally sustainable, building on uniform criteria established at EU level.

Non-financial Reporting Directive 2014

The EU Non-Financial Reporting Directive 2014 requires large EU listed companies (of more than 500 employees) to draw up an annual statement relating to environmental, social and employee-related matters, respect for human rights, anti-corruption and bribery matters. The statement must include a description of the policies, outcomes and risks relating to those matters and the company will be required to explain why, if that is the case, it has not pursued policies in relation to these matters. The UK has implemented this requirement as part of the strategic report requirements (see Non-financial reporting in the strategic report and directors' report above).

Commission definition and strategy for corporate social responsibility

In October 2011, the European Commission published a Communication on a renewed EU strategy 2011-2014 for corporate social responsibility. The strategy set out the Commission's definition of CR as "the responsibility of enterprises for their impacts on society". It outlined what an enterprise should do to meet its CR responsibility and put forward an action agenda for 2011-14.

International initiatives

UN 2030 Agenda for sustainable development

In September 2015, the countries at the UN Sustainable Development Summit 2015 formally adopted the 2030 Agenda for Sustainable Development. The Agenda includes 17 Sustainable Development Goals (see Sustainable Development Goals (SDGs) below) and 169 targets designed to stimulate action over the next 15 years (see Legal update, UN adopts the 2030 Agenda for Sustainable Development).

Sustainable development has been defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

The Agenda follows from the 1992 UN Conference on Environment and Development (UNCED, frequently referred to as the Earth Summit), and the 2012 Rio Declaration, both of which set broad environmental goals on a wide range of areas, including biodiversity, energy, forests and sustainable agriculture (see Legal update, Outcome of the Rio+20 conference).

Sustainable Development Goals (SDGs)

The 17 SDGs relate to:

Social issues (ending poverty and hunger, ensuring clean water and sanitation, good health and well-being, quality education and gender equality and reducing inequalities).

Economics (decent work and economic growth, industry innovation and infrastructure).

The environment (affordable and clean energy, sustainable cities and communities, responsible consumption and production, climate action, marine life and life on land).

Governance (peace, justice and strong institutions and partnership for the goals).

The SDGs are not legally binding, but governments are expected to take ownership and establish national frameworks to achieve them. The SDGs applied from January 2016 and will guide the decisions that the UN takes in the period to 2030.

CR and sustainability guidance published since the UN adopted the SDGs tend to incorporate them into their frameworks, for example, the World Benchmarking Alliance, which is preparing benchmarks to rank companies on their sustainability performance and contributions towards achieving the SDGs (see Practice note, Corporate responsibility (CR) and environmental, social and governance (ESG) guidance: reference guide: World Benchmarking Alliance).

In its Work Programme for 2019, the European Commission announced that it was planning a paper on the follow-up to the UN SDGs, in preparation for a sustainable Europe by 2030 (see Legal update, European Commission Work Programme 2019: environmental aspects).

<u>Shareholder activism</u>

Traditionally, shareholder activism has had a greater impact in the US than in the UK. However, shareholder resolutions in climate change have increased recently.

US

Shareholder resolutions are increasingly being used in the US by shareholders concerned about the environmental impact of their investments, to encourage companies to combat climate change.

In October 2009, the SEC issued a bulletin setting out its approach to shareholder resolutions seeking disclosure from US companies on their financial risks from social and environmental issues, including climate change. The SEC bulletin states that, where the subject matter of the proposal goes beyond day-to-day business matters, and raises significant policy issues that would be appropriate for a shareholder vote, it will not allow the company to exclude the proposal from the proxy statement for a general meeting sent to shareholders (see Legal update, US SEC increases environmental power of shareholders).

In November 2016, it was reported that the first legal claim had been brought by US shareholders against a company for inadequate disclosure of climate change risk. The shareholders of Exxon Mobil Corporation filed a legal claim against it, in the US, claiming that information that Exxon disclosed to the market about its existing oil reserves was materially false and misleading, and led to a 13% drop in Exxon's overall value. The claimants argued that Exxon should have written down its oil reserves, because of the continuing low oil price and because it knew there was a risk of those assets becoming stranded due to increased regulation of greenhouse gas emissions and the adoption of the

Paris Agreement on climate change. For more information, see Legal update, First legal claim brought in US for inadequate disclosure of climate change risk.

UK

Shareholder resolutions on climate change are less common in the UK than in the US. Possible reasons for this could be that:

UK institutional fund managers prefer a more "softly, softly" approach to influencing boards of directors, partly because of the sophisticated corporate governance framework, which allows pressure to be put on management behind the scenes.

The EU and the UK have introduced considerably more climate change legislation than the US federal government, so pressure groups may feel there is less need to take direct action.

There are already mandatory requirements for directors to have regard to the impact of the company's operations on the community and the environment (section 172, CA 2006) (see Directors' duties and enlightened shareholder value (Companies Act 2006) above).

In January 2015, a coalition of investors filed shareholder resolutions with BP and Shell, asking them to combat climate change, including by investing in renewables, changing bonus structures and testing their business models against the target to limit global warming to two degrees Celsius (see Legal update, Shareholder resolutions seek to require BP and Shell to take climate action). In April 2015, a majority of shareholders at BP's AGM voted in favour of this shareholder resolution (see Legal update, BP AGM approves shareholder resolution on climate change).

BP and Shell have since worked with shareholders on climate change issues, resulting in:

In December 2018, Shell announced that it would set short-term carbon reduction targets, from 2020, to feed into the firm's longer-term green goals, announced in 2017, to reduce the carbon footprint of its energy products by around half by 2050. The targets will be linked to executive pay, pending the approval of shareholders at its 2020 annual general meeting (AGM) (see Campaigners cheer as Shell binds climate targets to executive pay, Businessgreen.com, 3 December 2018).

In February 2019, BP announced that, in its spring AGM, it will support a new shareholder resolution from Climate Action 100+ calling on it to set out a corporate strategy that is consistent with the goals of the Paris Agreement. It also confirmed that its target to achieve 3.5 million tonnes of sustainable GHG emissions reductions by 2025 would be linked to employee and executive pay (see Good news for both investors and the planet : BP pledges to deliver Paris Agreement consistent strategy, Businessgreen.com, 1 February 2019). However, BP did not support a second shareholder resolution at its 2019 AGM, from Follow This. This resolution would have required BP to set and publish intermediate and long-term targets for BPs GHG emissions from its operations and from the use of its energy products (including by the end-user) that were aligned with the Paris Agreement to limit global warming to below 2 degrees

In January 2020, ShareAction, an NGO that promotes responsible investment, filed a shareholder resolution for consideration at Barclays Plc's May 2020 AGM, calling on it to set and disclose targets to phase out the provision of financial services to the energy sector and to electric and gas utility companies that are not aligned with the Paris Agreement (see ShareAction: We've filed a climate resolution at Barclays – now it's time for investors to back it (8 January 2020)).

Australia

In August 2017, Commonwealth Bank of Australia (CBA) shareholders filed proceedings with the Federal Court of Australia in connection with the disclosure of climate change risks by CBA in its annual report.

The shareholders alleged that CBA failed to:

Give a true and fair view of its financial position and performance by not disclosing the risks that climate change poses to its business in its 2016 annual report, in contravention of section 297 of Australia's Corporations Act 2001.

Adequately disclose climate change risks in its annual report.

For more information, see Legal update, Shareholders take first ever legal action over bank's disclosure of climate change risks in annual report (Federal Court of Australia).

However, in September 2017, the shareholders dropped their proceedings, on the basis that CBA's 2017 annual report included an acknowledgement for the first time from CBA directors that climate change posed a significant risk to the bank's operations (see Commonwealth Bank shareholders drop suit over nondisclosure of climate risks, The Guardian, 21 September 2017).