

For What It's Earth

Global ESG Headlines from Step toe

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Litigation

A group of 25 Republican attorneys general sued the US Labor Department over its introduction of the 2022 Investment Duties Rule, which gives retirement plan sponsors increased freedom to consider ESG factors when selecting investments, arguing that the rule undermines key protections for retirement savings and oversteps the department's statutory authority. The lawsuit reflects a growing tension at federal and state level regarding the permissibility and desirability of considering non-pecuniary factors when making investments.



Standards

The SEC is reportedly gauging whether to pare down its public company disclosure rule proposal in the face of threatened litigation and concerns expressed by companies and investors. Controversial elements of the proposed rule, including Scope 3 disclosure requirements and climate-related financial statement metrics, are allegedly being considered for revision ahead of a final SEC vote. The SEC expects to issue a final rule by April 2023.



Supply Chain

The UK National Crime Agency has accepted a novel prosecution theory put forward by the World Uyghur Congress in High Court litigation that companies importing goods made or assembled using forced laborers could be pursued under the UK's money laundering laws on the grounds that these products may constitute the proceeds of crime, offering a potential blueprint for holding businesses in the UK responsible for crimes occurring in their overseas supply chains.



Legislation

On February 1, the European Commission presented its new Green Deal Industrial Plan. The communication is widely seen, and generally acknowledged to be the basis for what will constitute the EU's response to the US Inflation Reduction Act. The proposed measures include a future "Net-Zero Industry Act", the "Critical Raw Materials Act", the adaptation of state aid rules, and EU funding made available primarily through REPowerEU. The devil is in the details – and it remains to be seen if, and to what extent, the new measures would be agreeable to all Member States.



Statement

"We can help ensure that competition law is not an unnecessary barrier to companies seeking to pursue environmental sustainability initiatives."

UK Competition and Markets Authority CEO Sarah Cardell, Scottish Competition Forum, January 24, 2023

Speaking at the Scottish Competition Forum last month, UK Competition and Markets Authority (CMA) CEO Sarah Cardell announced the regulators plans to ease some competition laws to ensure firms working towards a net zero economy "are not unnecessarily or erroneously put off collaborating in this space by fears about competition law compliance."