TRACKING CLIMATE ACCOUNTABILITY:
LEGISLATIVE PROGRESS AND FUTURE CHALLENGES FOR AGRIBUSINESS

The pressure is mounting for corporations to be transparent about their contribution to the climate crisis. Legal actions against major livestock companies for false climate claims are on the rise, with the New York Attorney General suing the world's largest meat producer JBS[1] for misleading consumers about the company's net-zero plans as the most recent example.

Both the European Union (EU) and the United States (U.S.) have been updating and developing policies to hold companies accountable for their climate impact.[i] This article provides an overview of how the EU and U.S. are approaching consumer and investor protections, climate disclosure regulations and due diligence legislation, highlighting their implications for agribusiness:

1. **Strengthening consumer protections:** Updates of existing legislation to protect consumers against misleading marketing claims have been discussed by policymakers with the aim of strengthening legislative guidance for climate-related claims. Increasingly, governments and consumers alike are scrutinizing corporate pledges of "climate neutrality" or "net zero," with many pledges criticized as greenwashing tactics. These pledges are often judged to be misleading because they misrepresent the company's actual climate impacts, often covering only a small portion of the supply chain and relying heavily on ineffective carbon offsets. Most major livestock companies[2] investigated by IATP use some form of climate-related marketing, making net-zero pledging particularly relevant to the meat and dairy industry.

   In response, the EU has finalized its **Empower Consumers for the Green Transition Directive (ECGT)** and is working on its **Green Claims Directive (GCD)**. Meanwhile, in the U.S., the Federal Trade Commission (FTC) is expected to update its **Green Guides in 2024,** possibly also applying stricter rules to climate-related claims.

2. **More transparency and accessibility of climate-related data:** Multiple reports by IATP[3] have found that the emissions reporting by major livestock companies often lacks transparency and credibility. Companies typically do not provide verifiable emissions data from their current operations and entire supply chains. Moreover, an independent, credible third party seldom verifies this data, and companies often rely too heavily on scientifically questionable carbon offsets. To address these issues, legislators in both the U.S. and the EU are updating regulations to increase transparency or have already done so.

   The EU has recently agreed on its **Corporate Sustainability Reporting Directive**, while in the U.S., the Securities and Exchange Commission (SEC) has published its final **Climate-Related Disclosures Rules**. California has passed its legislation on **Climate Financial Risk and Emissions Disclosures**, with rules for its implementation expected by early 2025.

i. Disclaimer: This article reflects the status of negotiations before May 29, 2024.

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3. **Adapting business models:** Additionally, corporate due diligence regulations have the potential to obligate companies to take better action within their supply chains to mitigate emissions.

   The EU has agreed on its **Corporate Sustainability Due Diligence Directive**, also known as the "supply chain law," which to date only includes minimal provisions specifically addressing climate impacts.

These legislative changes are steps in the right direction to ensure greater transparency regarding the climate impact of corporations, including those in agribusiness. However, further regulation will be necessary to hold these companies accountable for the environmental ramifications of their business models. As consumer and regulatory pressure continues to mount, more robust actions will be required in the future to ensure that companies not only report their climate impacts honestly but also take meaningful steps to reduce them.

GREEN CLAIMS: NO MORE "CLIMATE NEUTRAL" BEEF?

EU — Empower EU Consumers for the Green Transition Directive

The EU is tightening its rules to stop companies from making misleading climate claims in their marketing through its consumer protection legislation. In January 2024, the EU adopted the **Empower EU Consumers for the Green Transition Directive**[4] (ECGT), which updates laws on unfair commercial practices[5] and consumer rights. This new directive adds several unfair practices to the list of banned practices, especially those related to climate claims.

Three newly banned practices are particularly important for climate-related claims:[6]

1.) Unsubstantiated generic claims: Companies can no longer make vague, broad claims about their environmental performance without adequate proof.

2.) Misleading scope of claims: Claims about the entire product or business are banned if they only apply to certain parts.

3.) Offsetting claims: Companies cannot claim that a product or service has a neutral, reduced or positive environmental impact based on carbon offsetting.

The ban on offsetting claims is a significant step, but it only applies to claims about products and services, not to overall company claims of being "climate neutral."

Furthermore, companies will need to be more transparent about their climate performance. If a company claims it will be "climate neutral by 2050," it must now provide clear, objective, publicly available and verifiable commitments. It must also offer a detailed and realistic implementation plan and public third-party verification.

Timeline: *Member States now have two years to translate this directive into national laws. The requirements will likely be applicable by early 2026.*[7]

EU — Green Claims Directive

Building on the ECGT, EU policymakers are currently negotiating the **Green Claims Directive** (GCD).

As a "lex specialis" (specific rules), the GCD is designed to add specific rules to the ECGT, acting as a how-to guide for companies to substantiate their voluntary "green claims," such as those used in marketing. This directive would cover a wide range of environmental claims,[8] not just those related to climate, and would likely apply to all products and services available in the EU market.

When the European Commission published its proposal for the GCD[9] in March 2023, Commissioner Virginijus Sinkevičius stressed that the EU would not ban offsetting.[10] The proposal acknowledges the problems with offsetting but does not prohibit it. Instead, companies would need to provide extra information, such as making their emissions and purchased carbon credits publicly available online. The Parliament recently voted on its position[11] to replicate a restriction on offsetting in the GCD similar to the ECGT.[12]

Regardless of these restrictions, companywide claims can also be used to greenwash a lack of ambition. Companies often argue that they rely on offsets to counterbalance only their "residual emissions" (i.e., those emissions remaining after all emission reduction measures have been implemented). Yet, the level of emissions that should count as "residual" is often disputed. Are there, in fact, no options available to cut the remaining emissions, or is it just inconvenient or undesirable for a company to do so? In other words, labeling something as "residual" may enable polluters to justify a lack of climate ambition in their sector.

The Parliament[13] maintains that a company can make a climate compensation claim drawing on carbon credits if the carbon credits balance out a company's residual emissions only. For that purpose, the Commission should establish methods for defining residual emissions. Whether or not those methods will be robust remains to be seen.

The Parliament further proposes that any credits used for these climate claims need to come from the EU Carbon Removal Certification Framework (CRCF) or comparable certification schemes recognized by the Commission. This could make the CRCF the de facto voluntary carbon market standard for companies operating in the EU market. IATP has analyzed[14] and scrutinized[15] the CRCF in depth.

Timeline: *With a decision from the negotiations between the EU institutions expected in the upcoming months, the GCD will follow a similar timeline as the ECGT for implementation.*

U.S. Federal Trade Commission — Green Guides

In 2023, the U.S. Federal Trade Commission (FTC) began a process to update its Guides for Use in Environmental Marketing Claims, also known as the Green Guides.[16]

The Green Guides are designed to help prevent companies from making misleading claims to consumers. While the Green Guides are not regulations per se, they provide a basis for regulatory and legal action against deceptive marketing, including potential enforcement actions from the FTC. The FTC had not updated its Green Guides since 2012, and at the time, companies were not using many current climate-related claims, such as "climate neutral," "net zero" or "zero carbon."

In updating its Green Guides, the FTC requested input on climate claims and carbon offsets. IATP's comments[17] to the FTC urged the agency to strengthen its guidance for climate-related marketing claims, which too often do not reflect measurable emission reductions; rely exclusively on the marketer for verification rather than independent third-party certifiers; and rely on offsets or removals that lack scientific credibility.

Timeline: *The FTC is expected to issue updated Green Guides in 2024.*

CLIMATE RISK AND DISCLOSURE: PUTTING AN END TO SHADY EMISSIONS REPORTING

In multiple reports, IATP's analysis of the global meat and dairy industry's emissions[18] has found that big livestock companies' emissions reporting: 1) does not transparently reflect verifiable emissions from their current (not future) operations, including from their entire supply chains; 2) is often not verified by an independent, transparent and credible third party, with ongoing monitoring; 3) relies on carbon offsets or removals that are not scientifically credible and lack integrity.

EU — Corporate Sustainability Reporting Directive

The EU's new **Corporate Sustainability Reporting Directive**[19] (CSRD) extends the scope of information companies need to disclose. It requires companies to disclose extensive information, including the companies' supply chain emissions, as so-called "non-financial reporting" for each fiscal year. Such reporting is important for investors in the companies, as well as the media, public and other stakeholders. Reporting will use a new standardized electronic format. This legislation's requirements are detailed in the European Sustainability Reporting Standards[20] (ESRS).

The EU's new standards are noteworthy because the reporting requirements are based on the "double materiality" concept. This means companies must not only disclose the sustainability risks affecting them but also how the company impacts society and the environment. The ESRS cover a broad range of topics, such as pollution, workers, affected communities, water, biodiversity and climate change.[21]

ESRS E1 sets out which information companies need to disclose in relation to climate change, including information about their transition plan for climate mitigation, the material impacts of climate-related risks and opportunities and their anticipated financial effects, relevant company policies, actions and resources, as well as their energy consumption during the reporting year. The following sections highlight some climate-related disclosure requirements of the CSRD.

Criteria for more transparent climate targets

The CSRD does not require companies to set climate targets, but it aims to ensure that any targets set are more transparent and meaningful. The requirements include:

- **Targets must be expressed as absolute values, not just emissions intensity targets.** This means that targets cannot only be expressed, e.g., as emissions per liter of milk or kilogram of meat. The requirement is critical because many livestock companies use emissions intensity targets to claim progress while still increasing overall emissions.[ii] IATP's assessment of European livestock companies found that six out of 10 companies with climate targets only had emissions intensity targets[22] for their supply chain emissions. Those emissions make up about 90%[23] of livestock companies' supply chain emissions.
- **Companies must specify which emission scopes (Box 1) are covered by their targets.** Targets must be based on a company's emissions reporting. This rule would prevent companies from stating general emission reduction targets if they base it on a limited scope of emissions, e.g., only the emissions from the energy consumption of the company's slaughterhouses and production.
- **Climate targets must be a "gross targets."** Carbon removals, carbon credits and avoided emissions cannot be included as a way to achieve the target.

ii. The rules state: "This may result in a situation where an undertaking is required to disclose an increase of absolute GHG emissions for the target year and interim target year(s), for example because it anticipates organic growth of its business." (E 1-4)

The full scope of livestock companies' emissions

Emissions calculations are highly dependent on where one sets system boundaries. To properly capture and quantify all emissions from a given food product or corporation, it is important to count all emissions, including those categorized as:

Scope 1: Direct emissions from company-owned and controlled resources such as offices, processing plants and machinery. This could include use of natural gas or coal combustion and energy used in company transport; some companies may include emissions generated by animals' digestive systems (enteric fermentation) at company-owned farms.

Scope 2: Indirect emissions generated from purchased electricity, heating and cooling consumed by the company.

Scope 3: Upstream and downstream supply chain emissions consisting of on-farm emissions from livestock, manure, farm machinery fuel, livestock feed production, production of inputs needed to produce that feed (e.g., nitrogen fertilizer), land-use changes triggered by the expansion of livestock grazing and feed production, and other sources.

- **Companies must at least set a target for 2030.** Many companies set their targets well into the future, making it more challenging to assess their progress.

The CSRD attempts to enforce more stringency and transparency of net-zero targets. As such, it requires companies to explain how their net-zero target relates to absolute emission reduction targets and "how the residual emissions (After approximately 90-95% of GHG emission reduction) are intended to be neutralized."

More comparable and verifiable emissions data

The CSRD aims to improve transparency in corporate emissions reporting. Companies must report their scope 1, 2 and 3 emissions, as well as their total emissions in absolute numbers. Emissions intensity data can be reported as additional information. Emissions data does not have to be disaggregated by greenhouse gas. Companies must also disclose changes in the value chain to explain their effect on emissions, ensuring that emissions reporting can be compared over the years.

As the EU lacks its own calculation guide, companies should follow the principles and requirement of the GHG Protocol Corporate Standard.

In coherence with the ESRS principles for climate targets (see above), the CSRD prohibits integrating "any removals, or any purchased, sold or transferred carbon credits or GHG allowances" into emissions reporting. Instead, removals and carbon credits must be reported separately.

- **Carbon removals:** Carbon removals must be disclosed separately for those related to a company's own operation and for those in its upstream or downstream value chain (i.e., carbon sequestration through the agricultural activities of their suppliers). In addition, companies must report different carbon removal activities (e.g., technological removals vs. land-based removals) separately. The CRCF would be an underlying methodology for reporting these carbon removals as soon as it becomes operational.
- **Carbon credits:** The CSRD defines carbon credits as resulting from mitigation projects "outside the value chain that are verified against recognized quality standards and cancelled in the reporting period." Companies must report the proportion of credits from carbon removal vs. emission reduction projects, the accounting

standard used, the projects located within the EU and if the credits result in a corresponding adjustment under Article 6 of the Paris Agreement.[iii]

These requirements will significantly increase transparency in emissions reporting, as actual emissions are often hidden behind "net" emissions, which incorporates climate action elsewhere financed through carbon credits or carbon removals.

Attempt to fill gaps in the Green Claims Directive

The CSRD also sets additional requirements for companies making public claims of climate neutrality based on carbon credits. Companies must explain how these claims relate to their emission reduction target, whether reliance on carbon credits affects the achievement of this target, and the credibility and integrity of the carbon credits used.

Timeline: *The first companies required to report under the new rules for the fiscal year 2024 are large EU companies with over 500 employees. The rules will be phased in until the fiscal year 2028 to include small and medium-sized undertakings.[iv] By then, non-EU companies with a large EU branch will also need to comply with the rules.*

U.S. Security and Exchange Commission (SEC) Climate-Related Disclosures

On March 6, the U.S. Securities and Exchange Commission (SEC) released its final climate-related disclosures rule.[24] The rule aims to provide essential information for investor decision-making and the efficient allocation of capital. It mandates SEC-registered companies trading equity shares on SEC-regulated exchanges to include detailed, standardized and comparable climate-related disclosures in their annual and quarterly reports, which such companies have made for 90 years. Agribusiness companies, such as Archer Daniels Midland, Tyson and JBS, would be covered under the rule, while privately held companies, such as Cargill, would not.

Two kinds of information must be disclosed:

1.) Climate-related losses and expenditure in financial statements

2.) Non-financial information, such as emissions reporting, the reduction and risk management of which entails short-term costs and longer-term financial estimates

This information can help investors better determine whether a company is effectively managing its climate-related financial and operational risks and impacts. Companies will have to report in their annual 10-K reports and financial statements to the SEC and the public.

Rule does not require supply chain emissions in reporting

One critical shortcoming of the SEC rules is that companies will not have to disclose all their supply chain emissions. A major point of contention was whether the SEC would include scope 3 emissions in obligatory emissions reporting. These emissions from a company's upstream and downstream supply chain account for up to 90% of a company's total emissions (see Box 1). Although the SEC's proposed rule included this requirement and was supported by investors, the final rule does not mandate scope 3 emissions reporting.

iii. Corresponding adjustments are an accounting mechanism intended to prevent sellers and buyers of a carbon credit from claiming the same credit. It is a concept introduced through Article 6 of the Paris Agreement.

iv. Small and medium-sized enterprises (SMEs) must report latest for the fiscal year 2028 if they have securities listed on a regulated EU market and meet two out of the tree following criteria: (1) > 4 million € balance sheet, (2) minimum 8 million € net turnover, (3) average 50 employees during the fiscal year. Non-EU companies must report for fiscal year 2028 if they had a net turnover of >150 million € from the EU market for the last two fiscal years and if they meet certain thresholds of employees and their balance sheet.

Scope 3 reporting is an important metric for investors trying to assess how well companies are managing their climate-related risks. IATP has criticized corporations, such as the global meat processor JBS,[25] for making sustainability claims to investors while increasing their absolute emissions. On behalf of agribusiness companies opposed to the rule, commodity groups with farmer members falsely claimed[26] that the scope 3 reporting requirement applied to their members. For example, the American Farm Bureau Federation mischaracterized the scope 3 requirement[27] in its statement about the final rule. Liberty Energy, a fracking company, framed its litigation[28] against the rule as "defending family farms."

On April 4, the SEC voluntarily paused[29] the rule's implementation due to lawsuits brought by at least 30 plaintiffs, mostly industry lobbies and Republican Party state attorneys general. Because these lawsuits were filed in different jurisdictions, the SEC said they raised "procedural complexities" that would impede the SEC's legal defense and the administrative implementation of the rule. Nevertheless, the SEC order stated,[30] "the Commission will continue vigorously defending the Final Rules' validity in court and looks forward to expeditious resolution of the litigation." IATP believes the final rule is well-drafted to withstand legal challenges, including a likely case brought before the U.S. Supreme Court.

Key reporting requirements

The 886-page final rule indicates the complexity of the new disclosure requirements.[v] The following is a simplified summary:

The SEC rules require companies to disclose different types of information, such as scope 2 emissions, i.e., emissions resulting from a company's purchased energy sources.

Whether a company must disclose a specific piece of information depends, however, on whether the company, not the investor, considers the information to be "material" to the company's financial and operational viability. If a company determines that a piece of information has a financially "material" impact on its business, it must disclose it, as this would influence a reasonable investor's decision. This stands in contrast to the EU CSRD, which requires a "double materiality" analysis that includes the effect a company has on the environment and society (not simply whether the company itself is affected).

For example, a company must disclose its scope 1 emissions (see Box 1) if it determines that the estimated cost of reducing those emissions is financially material.[vi] If deemed material, the company not only needs to report these emissions, but also the disclosure must include a third-party auditor's statement verifying the accuracy and completeness of the reporting. IATP believes that because the registrant is allowed to determine if financial impacts are material, a court case accusing the SEC of "compelling speech" in violation of the U.S. Constitution would be unlikely to succeed.

A key improvement from this rule is that companies will need to report fiscal year expenditures for purchasing offset credits and Renewable Energy Credits (RECs).[31] This is particularly relevant information because voluntary disclosures do not require it. Investors may regard companies that spend more on carbon credits and RECs than on technological or operational innovations to manage their climate risks to be imprudent managers.

Other information must be disclosed regardless of materiality. This includes losses and expenditures related to stipulated extreme weather events and longer-term trends, such as droughts, without necessarily having to attribute them to climate change. Companies must also report "recoveries," such as private insurance and government

v. This section is mainly derived from a preliminary analysis of the rule by the Sierra Club, Americans for Financial Reform Educational Fund, Public Citizen, Sunrise Project and Carbon Tracker published on March 20, 2024. https://www.sierraclub.org/sites/default/files/2024-03/Preliminary-Analysis-of-Climate-Risk-Disclosure-Rule.pdf

vi. The SEC last published staff guidance on making materiality determinations in 1999. That guidance will almost surely be updated. https://www.sec.gov/interps/account/sab99.htm indemnifications, using reportable estimates and assumptions. This information helps investors understand a company's exposure to climate risk and the extent of their insurance coverage.

Timeline: *The start dates for compliance with the final rule have been pushed back to fiscal year 2029 for the largest registrants and to 2033 for the smallest. These dates may be further postponed due to litigation outcomes. By then, companies that have not adjusted their business plans in response to climate change likely will face much higher costs to become climate resilient.*

U.S. — California Climate Financial Risk and Emissions Disclosures

California is falling far behind its state-mandated target of reducing greenhouse gases (GHGs) 40% by 2030 from a 1990 baseline.[32] Two new laws aim to decrease corporate GHGs in California by mandating their disclosure and corresponding financial risks to investors, insurers and others who can help enable emissions reductions: SB 253 and SB 261, jointly, the Climate Accountability Acts.

In October 2023, California's Governor Gavin Newsom signed the two bills:[33]

1.) SB 253, which requires companies to publish annual standardized reporting of greenhouse gas emissions of the covered corporations and their subsidiaries doing business in California. (Insurance companies are exempt but covered by a separate bill.)

2.) SB 261, which mandates that companies publish biennial reports disclosing their climate financial risk.

These laws will require companies doing business in California, including food and agriculture companies, to report their annual greenhouse gas emissions, climate-related financial risk exposures and climate risk management plans. The laws, to be implemented by California Air Resource Board (CARB) regulations, are additions to California's "Health and Safety Code."

Rules will focus on big corporations, not small businesses

Unlike the final SEC climate disclosures rule,[34] the California bills cover both privately held companies and publicly traded companies registered with the SEC. Many food processing, food retail chains and agribusiness companies, such as Cargill, are privately held.

SB 253 applies to companies, including subsidiaries, with annual revenues of $1 billion *and* that "do business in California." These requirements are expected to impact about 5,300 companies.[35] SB 261 covers businesses that generate annual revenues of $500 million *and* that "do business in California."

"Doing business in California" is defined by three criteria, including taxable sales, which, for example, in 2022 must have exceeded US$690,144.[36] Opponents, including fossil fuel giants, have willfully mischaracterized SB 253 as a "hidden tax on small business."[37] However, the "and" ensures that a "small business" must have annual revenues of $1 billion or more to be subject to the law.

Both laws will affect many companies that are already reporting their emissions. According to CDP (formerly the Carbon Disclosure Project), about 45% of U.S. and Canadian publicly traded companies with more than $1 billion in revenue already disclose annually and voluntarily their emissions and other climate-related financial risk data through CDP.[38]

What is in SB 253, California's GHG emissions disclosure law?

Covered companies must use the Greenhouse Gas Protocol's methodology (see above) for reporting all emissions. This requirement includes "guidance for scope 3 emissions calculations that detail acceptable use of both primary and secondary data sources, including the use of industry average data, proxy data, and other generic data in its scope 3 emissions calculations."[vii] The corporations will report their emissions estimates to the climate reporting organization that CARB chooses to implement the reporting requirement.

CARB may decide that large corporate emitters need not have their emissions reports audited by an independent third party for accuracy, comprehensiveness and compliance with the reporting format. Industry lobbyists persuaded legislators to lower the penalty for non-compliance with SB 253 to $500,000, a small amount for a multi-billion-dollar revenue corporation. However, non-compliant companies will face reputational risk and possible litigation, as California suffers damages and costs from increasingly frequent and severe weather events.[39]

What is in SB 261, California's climate-related financial risk law?

Whereas SB 253 is about corporate emissions reporting, SB 261 deals with the reporting of itemized financial consequences of short-term and long-term impacts of climate change. This includes losses, expenditures, insurance indemnifications, capital reserves, costs of enhancing corporate physical and operation resilience to climate change.[viii]

The format for reporting must follow the International Sustainability Standards Board's (ISSB) Sustainability Disclosure Standards. The ISSB's reporting format incorporated the internationally recognized Task Force on Climate Related Financial Disclosures (TFCD) framework, which was published in September 2023 according to TFCD's sixth and final status report.[40] The ISSB standards, which were finally agreed in June 2023, have a broad base of corporate and government regulator support.

SB 261 requires a "non-profit climate reporting organization" contracted by CARB to produce a biennial climate financial risk report. Each covered corporation must also deliver a biennial climate financial risk report to CARB and publish that report on its website. Besides reporting on climate financial risks, companies must also disclose "measures adopted to reduce and adapt to climate-related financial risk."

SB 261 gives the covered companies numerous options for reporting their climate-related financial risk. For example, a covered company could satisfy the law's requirements by reporting according to the SEC climate disclosure rule, once that rule enters into effect. Some companies could meet their reporting obligations by complying with the EU's climate disclosure rules[41] (CSRD) that went into effect in January 2024. The rules are expected to apply to over 3,000 U.S.-based companies with significant business in the EU.

For companies unable or unwilling to comply, the law allows them to "provide the recommended disclosures to the best of its ability, provide a detailed explanation for any reporting gaps, and describe steps the covered entity will take to prepare complete disclosures."[ix] If this is too "burdensome" or revealing, companies can pay a mere $50,000 fine, a concession the bill's authors apparently made to secure the final votes for SB 261's passage. However, the disparity between the puny fine levied on non-compliant companies and the huge taxpayer-funded costs of implementing California's climate adaptation strategy[42] will continue to rise, and those costs will pressure companies to comply.

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vii. (Sec. 2.c.A.ii)

viii. SB 261 defines climate-related financial risk as the "material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health." (Section 2.a.2)

ix. (Section 2.b.B)

Agribusiness and other opposition to SB 261 and SB 253

On January 1, 2024, the U.S. Chamber of Commerce, the American Farm Bureau Federation and other members of a business coalition filed a lawsuit in U.S. federal court in central California.[43] They declared the laws invalid as violations of the U.S. Constitution's prohibition against "compelled speech" and the Constitution's interstate commerce clause. As of the end of February, California had not responded to the lawsuit, but according to a Harvard Law School analysis,[44] the state has strong grounds for a legal defense. On April 30, 35 California businesses wrote to Governor Newsom and legislative leaders to secure full funding for the administration of the rules to ensure their implementation can move forward.[45]

Agribusiness and other opponents of SB 253 already are attempting to invalidate the bill. For example, the California Chamber of Commerce and the Western States Petroleum Association[46] will challenge the SB 253 scope 3 reporting mandate, alleging that the requirements will be impossibly burdensome for California small businesses and farmers who are not corporate subsidiaries but are claimed by opponents to be part of corporate supply chains. However, there is nothing in SB 253 that requires small or medium-sized businesses, farmers or ranchers to report emissions. Some of the agribusiness criticisms of the proposed SEC rule, summarized last year by IATP,[47] are repeated about the California legislation.

Overall, these new laws aim to standardize corporate climate financial reporting and disclose corporate emissions estimates, risks and measures taken to reduce those risks. However, ongoing legal challenges and the significant costs of climate adaptation will shape the implementation of the laws.

Timeline: *CARB has until January 1, 2025, to approve rules so that businesses covered by the laws can begin complying in 2026. Disclosure of scope 3 emissions is not required until 2027. Governor Newsom announced[48] that the state's updated budget would have funds to implement SB 253 and 261.*

TRANSITIONING TOWARDS 1.5°C: EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

In May 2024, after years of negotiations, EU policymakers finalized the Directive on corporate sustainability due diligence[49] (CSDDD), known as the "supply chain law."[x]

The directive creates legal liability for companies regarding environmental and human rights violations within their supply chain.[50] It "aims to foster sustainable and responsible corporate behavior and to anchor human rights and environmental considerations in companies' operations and corporate governance."[51]

The CSDDD requires companies to identify, prevent, end or mitigate adverse impacts of their activities on human rights (such as child labor and exploitation of workers) and on the environment (such as pollution and biodiversity loss). Companies must integrate "due diligence" into their policies and risk-management systems, detailing their approach, processes and code of conduct.

This includes the obligation to adopt and implement a "climate transition plan" to align their business model and strategy with the Paris Agreement. The reporting requirements for the CSDDD correspond with the CSRD (see above) to prevent double reporting.

In comparison, the EU Deforestation Regulation (EUDR),[52] which is designed to "prohibit companies from putting products on the EU market unless they are deforestation-free and legally produced,"[53] focuses on specific commodities, such as wood, palm oil, soy, coffee, cocoa and beef. The CSDDD does not limit responsibilities to certain commodities; the EUDR doesn't limit its requirements to certain companies only. Yet, both laws are mutually supportive.

X. The CSDDD still needs to be formally approved by the EU Council in May 2024.

Initially, the CSDDD was to cover 16,000 companies, but the final version of the law, due to the last-minute opposition from the German liberal party and other EU Member States at the beginning of 2024,[54] will apply only to 5,500 companies.[55] The law will gradually phase in from 2027, eventually covering more companies by lowering the thresholds for the required employee numbers and annual turnover.[xi]

Timeline: After formal adoption in May 2024, EU Member States have two years to implement the CSDDD at the national level, meaning it will take effect in mid-2026. The largest companies will begin compliance in 2027.

CONCLUSION

Thousands of European and U.S. corporations are covered by these laws and regulations. A 2021 study estimates[56] that companies trading on regulated exchanges account for about 40% of all GHG emissions.

If these measures survive corporate litigation intact, full government implementation of all these rules will not be phased in fully before 2030. However, companies are already responding to pressure from investors to report on climate risk and their emissions, and more will likely follow now that regulatory frameworks in the U.S. and EU are in motion.

However, given the market power and global reach of U.S. and EU-headquartered companies, robust implementation has the potential to improve capital allocation by investors and companies, benefiting climate adaptation and GHG reduction beyond corporate operations. There is a need for discussions about global standards and a place to engage for countries that will be affected. The U.S. and the EU have a responsibility to aid other countries to meet these standards.

There is a lot of room for improvement. A study by the global data analytics firm Wood McKenzie[57] warned that a five-year investment delay in the renewable energy transition could lead to a catastrophic 3ºC average global temperature increase.

Theoretically, these laws and rules should promote climate risk management and investment performance beyond mere compliance. At the very least, they will provide data for effective climate risk management and improve corporate performance in sectors through data comparability. The severe consequences of unmanaged climate risks make the frequent corporate complaint that regulation is "overly burdensome and costly" seem petty and out of touch with current realities.

xi. Covered EU companies: > 1,000 employees and a global net turnover of > 450 million € in the last fiscal year, or franchising/licensing agreements in the EU in return for royalties > 22.5 million € and global net turnover of > 80 million €.
Covered non-EU companies: > 450 million € net turnover within the EU within the last two fiscal years, or franchising/licensing agreements in the EU in return for royalties > 22.5 million € and global net turnover of > 80 million €.

ENDNOTES

1. James, Letitia, "Attorney General James Sues World's Largest Beef Producer for Misrepresenting Environmental Impact of Their Products," February 28, 2024, https://ag.ny.gov/press-release/2024/attorney-general-james-sues-worlds-largest-beef-producer-misrepresenting (accessed May 29, 2024).

2. Feedback, DeSmog, Institute for Agriculture and Trade Policy, "Big Livestock's Big Greenwash," 2024, https://biglivestockgreenwash.com/ (accessed May 29, 2024).

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