

# ALLEN & OVERY

## *Our Sustainability/ESG Group in France*

2022

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# Introduction

Today’s investors and clients are looking for ways to use their capital in a sustainable way, one focused on avoiding harm to people and the planet and creating long-term value through socially desirable activities. Financial services, insurance and other professionals must now find their way around a rapidly evolving landscape of environmental, social and governance (ESG) factors and assess businesses according to their ESG characteristics in order to support investors and clients who wish to make socially responsible investment decisions.

Allen & Overy Paris has the subject matter expertise to guide you safely through the increasingly legal and regulatory ESG landscape. Our Sustainability/ESG Paris Group’s advice is informed by decades of collective experience in environmental, social and governance matters, and by tracking the latest developments in ESG-related regulation and litigation in France, Europe and around the world.

## ESG involves complex challenges

ESG is increasingly becoming a complex form of corporate governance involving significant legal issues. As the framework becomes underpinned by legal and regulatory requirements, advice is required to head off the risks and take advantage of the opportunities this new environment presents.

### Environmental



- climate impacts
- pollution and waste
- GHG emissions and offsets
- land use and deforestation
- energy and renewables
- supply chain management



### Social

- health and safety
- diversity and inclusion
- modern slavery
- trafficking and child labour
- gender pay gap
- stakeholder and community engagement
- duty of vigilance in the employment sphere (prevention of shadow employment)
- relocation/displacement

### Governance



- anti-bribery and corruption
- anti-money laundering
- executive pay
- financial and corporate reporting
- data protection and cybersecurity
- risk management and oversight
- directors’ and officers’ duties and liabilities

# How can we help?

We want to prepare our clients for the next step in the Sustainability/ESG evolution – enabling them to stay one step ahead and navigate the ever-changing ESG landscape (e.g. in France the recent “PACTE Law”, in the EU the Taxonomy regulation). We also see significant opportunities for those clients who are adapting to these new challenges (e.g. Green Finance, Renewables).

To help clients, Allen & Overy Paris brings together expertise in specialist practice areas in Environmental Law, Business and Human Rights, Sustainable Finance, Corporate Governance, Employee Engagement, Data protection and cybersecurity.

Examples of A&O can support to mitigate ESG risks and capitalize on ESG opportunities:



### Achieving your sustainable investment goals

This team can provide you with practical advice to implement ESG considerations across your investments and help you meet your sustainable investment goals. While approaches to ESG vary depending on the particular asset class and its corresponding risks and opportunities, a few high-level ESG approaches apply across equities, fixed income, private equity, hedge funds, infrastructure investment, real estate and other investments and asset classes:

- Integration: looking at investment decisions in a wider context than traditional financial analysis and including analysis of a range of risks and opportunities related to ESG drivers.
- Active ownership and voting: actively engaging with the managers and boards of directors of investee companies on business strategy and execution, including specific sustainability issues and policies.
- Negative and positive screening: incorporating an investor's principles by excluding or involving companies involved in certain activities or industries.
- Thematic: focusing on specific trends and themes such as human rights, the environment, diversity or demographics.
- Devising sustainable investments, such as social impact or green loans.
- Furthermore, our Paris team works within a global platform of A&O experts, which is unique, and covers all regions.

### Managing ESG corporate requirements

We help clients navigate an increasingly complex web of French and EU regulations around ESG obligations for large corporations.

In France, the landmark obligation is undeniable the 2017 duty of vigilance law, which requires establishing, effectively implementing and publishing “*reasonable*

*vigilance measures adequate to identify risks and to prevent severe impacts on human rights and fundamental freedoms, on the health and safety of individuals and on the environment*”.

Understanding the requirements, the potential legal risks and integrating the best practices is something we have developed a strong expertise in.

In addition, we help clients implement structural changes into their governance, for instance by ensuring that internal risk governance systems are capable of fully understanding and mitigating ESG risks.

### Achieving your sustainable finance goals

Allen & Overy has extensive experience of working with clients (lender side and borrower side) on sustainable financing, sustainability-linked financing and financing renewable projects.

A key difference between sustainable financing and sustainability-linked financing is that in sustainable financing the financing proceeds must be used to finance sustainable projects, whereas in sustainability-linked financing the interest margin and commitment fees are linked to the achievement of ESG targets. Some transactions are a combination of both concepts when the gain made by the borrower from a margin/fee reduction must be applied towards sustainable projects.

Across the sustainable financing and more nascent sustainability-linked financing, Allen & Overy can navigate you through this fast-changing market and its evolving standards.

Through our international network of lawyers we have the experience (see our key recent transactions on page 5) and resources (see our key contacts on page 6) to help our clients achieve their ESG targets.

# Our experience advising on key sustainability topics

## Funds

**Swen Capital Partners**, benchmark player in sustainable investments in infrastructure and private equity, within the structuration of several funds implementing sustainability strategies.

Several French and foreign **funds managers** on the implementation of the requirements arising out of the Disclosure Regulation (sustainability policies, prospectus disclosures, reporting, etc.).

Advising several French and **foreign institutional investors** within the framework of their investments in French and foreign funds with a strong sustainability strategy.

Advising several French **portfolio managers** and **financial advisors** on the implementation of the Disclosure Regulation.

## Public/Environmental law

**An online retailer** on its environmental disclosure obligations in Europe with a focus on greenhouse gas emissions (scopes 1, 2 and 3).

**Several companies and banks** regarding their French ESG policy and in particular "Vigilance Plan" obligations.

**A major online marketplace** regarding the implications and upcoming revision of the Non-Financial Reporting Directive.

**A major oil & gas company** on the first major climate litigation in France, in relation to the obligation to set up a vigilance plan under the 2017 law. This includes assessing the risks in an international context and representing our client before Courts.

## Capital markets/Banking

On the issue of green bonds and social bonds by a number of French entities including: **A global financial institution, Caisse des Dépôts et Consignation, Covivio, CNP Assurances, BPCE, Icade, Icade Santé, La Banque Postale, SFIL, ENGIE, La Poste, Natixis, Suez, Orpéa.**

Advising **Natixis** and a **multinational financial institution** in relation to the **first EuroPP issue of sustainability-linked bonds** by the French energy firm **Albioma**.

**Other experience on sustainability-linked bonds through A&O offices:** Issue of sustainability-linked bonds by **CHANEL** and updates of **ENEL** and a **global retail company** to include the issue of sustainability-linked bonds under their EMTN programme and the subsequent inaugural issuances.

On a dozen of sustainability-linked loans by French entities including **ACCOR, SANOFI** and **SODEXO** (most transactions are not public).

Advising **Barings** in connection with the provision of the first ESG Unitranché financing in Europe to enable Eurazeo to acquire Utac Ceram.

Advising **the arrangers** (first and second lien) on the financing in the context of the LBO acquisition of Euro Ethnic Foods SA by PAI Partners. This financing was structured as a sustainability linked financing meeting ESG criteria.

## Social

**A major aerospace and defence industrial firm** to build a group policy on respect at work including anti-discrimination measures and preventing both moral and sexual harassment behaviours by securing whistleblowing procedures.

Conducting internal investigations regarding sensitive moral and sexual harassment claims, discrimination and unfair treatment allegations.

**A logistic company** regarding potential significant criminal and financial sanctions for concealed work of its subcontractors following an inspection by the Labour Authorities.

**A large French insurance broker** in a litigation following an inspection by the French social security authorities, questioning the business model relying on independent contractors, on the grounds of concealed work.

**A dozen of large French and multinational businesses** on Covid related health and safety issues in the workplace.

**Several industrial businesses in France** in responding to labour authorities inspections or employee representatives rights of alert following major incidents on site.

**French listed companies** on the appointment and compensation packages of CEOs and Managing Directors, including references to ESG criteria.

**Multinationals** in monitoring and reporting gender pay gap in France.

## Your key contacts in Paris

We have an in-depth knowledge of ESG matters, which enables us to offer a whole range of tailored services to our clients in France and abroad.

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## GLOBAL PRESENCE

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Bangkok	Dublin	Johannesburg	Perth	Sydney
Beijing	Düsseldorf	London	Prague	Tokyo
Belfast	Frankfurt	Los Angeles	Rome	Warsaw
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