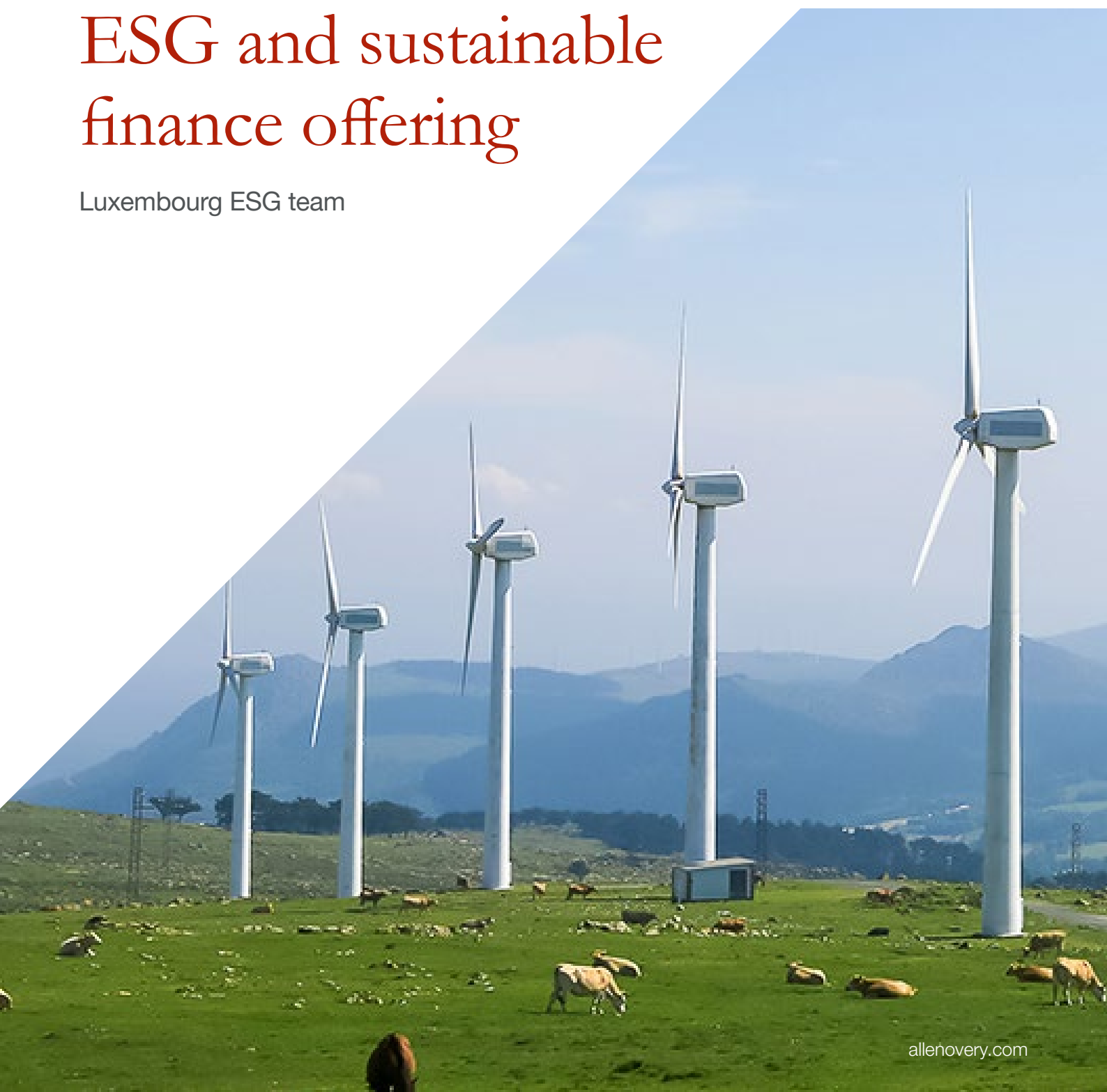


ALLEN & OVERY

# ESG and sustainable finance offering

Luxembourg ESG team



# ESG in a nutshell

Looking back, the key milestone which originally started the ESG\* and sustainability trend was the creation of the UN Global Compact in 1999 and the UN Principles for Responsible Investing in 2006, followed by the 17 UN Sustainable Development Goals and the UNFCCC Paris Agreement in 2015.

Changing investor sentiment as well as greater regulation, increased litigation, and shareholder activism in the human rights and environmental space worldwide over the past decade, have combined with these global initiatives to create a snowball effect.

The pandemic has further focused the minds of governments, regulators, market players and investors on sustainability.

Sustainable finance products are becoming increasingly varied and innovative. Although in the past investors tended to focus on green investments, we have now seen, for example, the issuance of blue bonds and diversity bonds (proceeds being applied towards marine conservation and companies with gender balanced boards, respectively).

One of the main objectives of sustainable finance is to support companies in the transition to sustainable development and to invest in companies, services and products that comply with a certain set of criteria in favour of solving ESG issues. Those ESG issues are reflected in the UN Sustainable Development Goals as shown below:



\* ESG stands for "Environmental, Social and Governance".

Source: Source Intelligence

# International engagement

With greater interest in ESG comes the need to established regulatory supervisory bodies. To see the scope of the move towards sustainable finance one just has to look at the wide array of different bodies on the international stage.



## Disclosure

TCFD – Task Force on Climate-related Financial Disclosures

IFRS – International Financial Reporting Standards

CDSB – The Climate Disclosure Standards Board

SASB – Sustainability Accounting Standards Board



## Standard-setters

Basel Committee on Banking Supervision, Bank for International Settlements

OICU-IOSCO – International Organization of Securities Commissions



## Capability building

NGFS – The Network of Central Banks and Supervisors for Greening the Financial System

Sustainable Insurance Forum



## Industry

UNEP Finance Initiative

IIGCC – The Institutional Investors Group on Climate Change

The Net-Zero Asset Owner Alliance



## Government

COP26 Glasgow

The Coalition of Finance Ministers for Climate Action

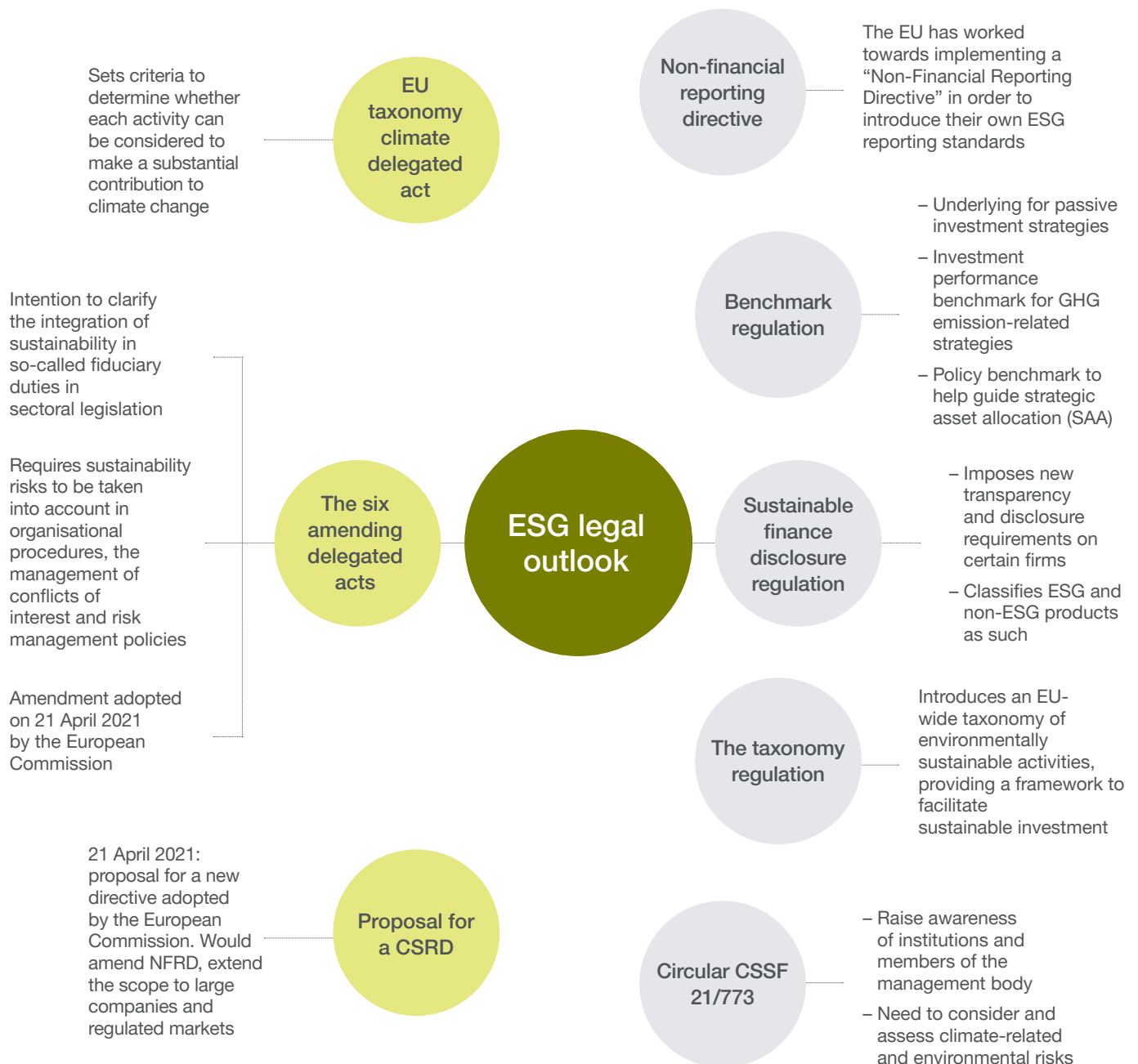
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# The legal outlook

With major and frequent changes occurring in the sustainable finance area during the last two years, it has become more and more important to stay aware of the legal developments. To make things easier, we've created a Mind Map giving you a global view on the applicable legal framework and upcoming statutory, regulators and industry developments.

## To be adopted

## Applicable legal framework





# Regulatory impact

## An overview of the regulatory landscape

The year 2021 has seen the implementation of a number of ESG regulations and legislation, and there is more to come as interest in ESG financial products keeps on growing.

The new EU Taxonomy Regulation, which aims at setting a standard for categorising and identifying what can and cannot be called ESG or sustainable products/activities, was implemented by the end of 2020. The regulation was set up as a tool for use by the financial market participants when looking for data or for indicators to incorporate into their investment decision-making processes or when fulfilling their disclosure obligations under the SFDR rules, and is effective from 10 March 2021.

Looking at the regulatory landscape, we have noticed a trend towards transparency and a will to create common standards cross the ESG market. This has had a range of impacts on the way investors and asset managers' handle ESG matters.

In addition, ESG factors are an increasingly common feature in the loan market. The European corporate lending market was the first to see the introduction of ESG and sustainable loans, but more recently the concepts have spread to other loan products, including leveraged finance, REF and fund finance. ESG factors are becoming a standard feature of many loan products.

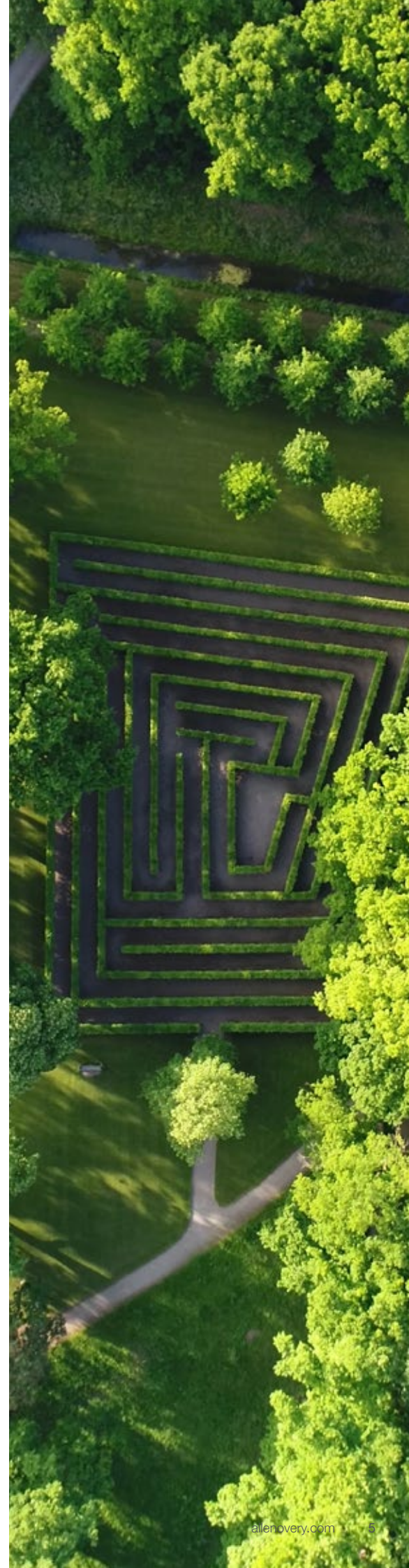
The two main barriers to the adoption of ESG products in the last few years have been the lack of a common reporting standard and the lack of responsibility placed on data providers. The search for reliable, comparable and usable data on ESG continues, not to mention the difficulties in assessing ESG issues and the impact on ESG products in resolving them.

These barriers are seen as a risk when investing in ESG and form a considerable deterrent to interested actors. The lack of transparency around financial products has also led to greenwashing<sup>1</sup> or social washing<sup>2</sup>.

However, with the SFDR tackling the issue of the categorisation of ESG products, the Taxonomy Regulation addressing the issue of common standards in identifying ESG products/activities or data, MiFID II tackling reporting standards, and the UCITS, NFRD and TCFD all striving to create a more uniform, low-risk and transparent market, the financial market participants can now foresee the possible evolution of a sustainable finance market. Moreover, as these regulations also identify non-ESG products and provide for transparency on topics such as voting decisions, this has put pressure on market participants to include ESG issues in their decision making, whether from an investment or a voting perspective. The appetite of market participants for green and sustainable finance led international bodies such as the Loan Market Association to standardize and give guidance for green and sustainable finance documentation.

<sup>1</sup> Promoting a product as more environmentally friendly than it actually is.

<sup>2</sup> Promoting a product as having a higher good societal impact than it really has.



# Luxembourg's sustainable finance map

Luxembourg has taken many of the steps to establish itself as a hub for sustainable finance and expressed interest in the topic long before it became a focal point for the financial sector. This leaning towards green finance led to the grand opening of the Luxembourg Green Exchange, the first green stock exchange in the world, in 2016.

The map on the right shows the efforts put into becoming Europe's Sustainable Finance hub.

The world's largest ESG fund domicile with a market share of 21.2%

PwC (2020)

76% of all European microfinance funds are domiciled in Luxembourg

KPMG (2019)

57% of assets under management in European environmental strategy funds

KPMG (2019)

- 
- 1 CSSF – Sustainable Finance
  - 2 European Commission's Platform on Sustainable Finance
  - 3 Luxembourg's High Council for Sustainable Development
  - 4 LuxFlag label  
LPEA – Environmental, Social and Governance (ESG) Club
  - 5 LSFI – Luxembourg Sustainable Finance Initiative  
LHoFT – Label R Corp
  - 6 Luxembourg Green Exchange
  - 7 Ellergronn natural reservation

# Our experience

Our ESG team has extensive experience in advising funds and fund investors, investment managers, corporates, banks and capital market players on a broad range of ESG-related matters. This experience includes advising the likes of, among others:

## Funds

- FundPartner Solutions (Europe) S.A. in the context of their white label UCITS, RAIF and SIF platforms.
- On the launch of Althelia Climate Fund and Althelia Sustainable Ocean Fund.
- BlueOrchard Asset Management S.A. on its range of impact funds.
- Sustainable Development Umbrella Fund.
- Prime Green Energy Infrastructure Fund.

## ICM-BK

- The issuance of a Green Bond under the **Atrium EMTN** programme, which is listed on the Lux Green Exchange.
- CrossLend, a digital marketplace lending platform, on a securitisation transaction of bicycles lease receivables. The transaction has been rated by Scope ESG Analysis and has received the second highest score in its ‘Leaf Score’ system.

## Corporate

- The review of a client’s documentation in the face of the Sustainable Financial Disclosure Regulation.

## Impact funds

- **Althelia Funds** (part of Mirova Natural Capital – an affiliate of Natixis Investment Managers): the establishment and ongoing legal operation and closing of the Althelia Sustainable Ocean Fund.
- BlueOrchard: the establishment of its Japan ASEAN Women Empowerment Fund.
- BlueOrchard and KfW: the establishment and closing of the InsuResilience Investment Fund (IIF) – Private Equity Sub-Fund.
- BlueOrchard and KfW: the relocation to Luxembourg of the Regional Education Finance Fund for Africa (REFFA).
- Clarmondial: launch of the Food Securities Fund.
- Calvert Social Investment Foundation, Inc. on its investor due diligence in relation to the Eco-Business Fund.
- The European Investment Bank on its investment/participation in:
  - The Feelsgood Fund.
  - Fonds Européen de Financement Solidaire (FEFISOL).
  - A Luxembourg microfinance fund, together with International Finance Corporation.

- International Finance Corporation: the launch of the Amundi Planet Emerging Green One (EGO) in partnership with Amundi.
- KfW: investment in Lightsmith Climate Resilience Partners SCSp RAIF.
- Investing for Development (IforD) SICAV: the structuring of its Luxembourg Entrepreneurs Alliance Fund (LEAF) sub-fund, designed to support the revival of the Luxembourgish economy, post the Covid-19 pandemic, by investing in small and medium size enterprises.
- EIF-EaSI Funded instrument: assisting EIF with drafting of the standard terms of senior and subordinated loan agreements in relation to the implementation of the European Union Programme for Employment and Social Innovation. The objectives of this programme are to promote employment and social inclusion by increasing the availability and accessibility of microfinance for vulnerable people who wish to start up their own micro-enterprises, as well as for existing micro-enterprises, and by increasing access to finance for social enterprises.
- EFSI – Skills and Education pilot: assisting EIF with drafting the standard terms of guarantee and counter-guarantee agreements and also in respect of specific transactions entered into by EIF with intermediaries in relation to the implementation of a new facility for education and skills under EFSI, which aims to provide finance for the benefit of the knowledge economy through education, training and skills transformation to facilitate a new wave of innovation and productivity in Europe.

## Social

Here is a short summary of our social work. We help build a fair and equitable society that fits right in with A&O’s commitment to its people, culture and clients. Our Pro Bono Committee helps individuals, local and wider communities to access justice, education, and employment in Luxembourg and beyond via various partnerships with local and global associations.

### Pro Bono work of Allen & Overy Luxembourg includes:

- Stemm vun der Stross
- SOS Village d’Enfants
- Dress for Success
- Jonk Entrepreneuren
- Relais pour la vie
- #ReAct
- La Maison “Le Temps des Femmes”
- Le vieux moulin
- Partenaires
- Passerell
- Street child



# How A&O can assist you

Allen & Overy's ESG team has the subject matter expertise to guide you safely through the increasingly legal ESG landscape and assess the key ESG-related milestones.

Our ESG team'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 around the world. We bring together global expertise in specialist practice areas in Sustainable Finance, Corporate Governance, Employee Engagement and Data Protection and Cybersecurity.

The team's experience will enable you to take advantage of ESG-related business opportunities by helping you find ways to integrate ESG factors into your due diligence practices, portfolio analysis and investment decisions; design and roll out financial products that have a positive social or environmental impact; and monitor and report on your successes in a manner that meets regulatory requirements.

We can also help you navigate the ESG landscape and help you find ways to identify risks across your portfolio; avoid involvement in adverse ESG impacts; assess the ESG related credit and other risks of your potential clients; gain a competitive advantage as regulation and litigation develop; design and roll out compliance processes and contractual mechanisms to mitigate risks; and obtain assurance and develop reports on your ESG performance.

## Sustainable finance

### Investment funds

- Assisting in developing ESG policies and practices.
- Advising Boards and C-Suites on the regulatory landscape and litigation risks.

### Banking and capital markets

- Advising on all aspects of sustainable finance, be this on:
  - the capital markets side: green bonds, social bonds, sustainable bonds, sustainability-linked bonds and green derivatives; or
  - the banking side: green loans, sustainability-linked loans and finance for renewable energy projects.
- Assisting clients in setting up sustainable frameworks in accordance with the relevant ICMA Principles.

### Securitisation

- Structuring of ESG-compliant securitisation.
- Creation of ESG-compliant commercial mortgage-backed securities (CMBS).



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## **Global presence**

Allen & Overy is an international legal practice with approximately 5,600 people, including some 580 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at [www.allenoverly.com/global\\_coverage](http://www.allenoverly.com/global_coverage).

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