

# The Sustainability Regulatory Horizon



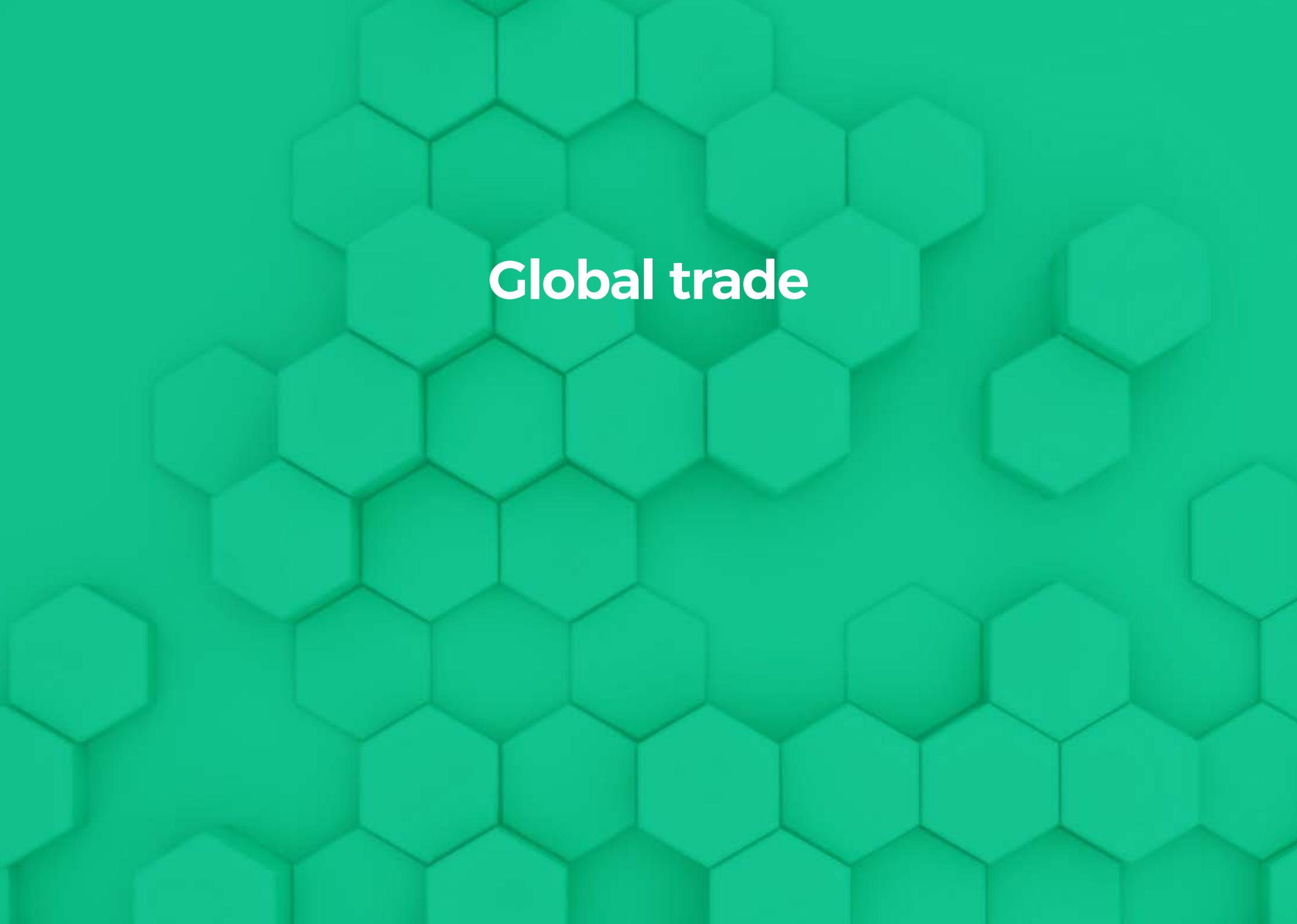
Freshfields Bruckhaus Deringer



# The Sustainability Regulatory Horizon

The grid to the right outlines the main areas of sustainability-related regulation. You can click on each topic to learn more about forthcoming developments and explore our in-depth insights. We are pleased to present our research and insights on the regulatory framework impacting key developments in sustainability. We would love to discuss with you recent policy and regulatory developments and answer your questions around financing the transition to a sustainable future, the impact on M&A and potential collaboration projects.



The background is a solid teal color with a subtle, embossed pattern of interlocking hexagons. The hexagons are slightly recessed, creating a 3D effect. The text "Global trade" is centered in the upper half of the image.

# Global trade



GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# Global trade

## What regulatory developments do we see relating to global trade?

- Free trade agreements (FTAs) increasingly include ambitious provisions on sustainability (eg the revised Nafta pact enables US and Canadian companies to petition an ad hoc panel if Mexico, for example, fails to uphold labour obligations).
- The EU has also contemplated unilateral trade policy tools to promote sustainability in global trade via:
  - a carbon border adjustment mechanism planned for Q2 2021, which would price carbon content into imports;
  - the recent action plan for secure access to critical raw materials which considers partnerships with resource-rich countries for sustainable and responsible sourcing; and
  - potential measures (including mandatory and voluntary labelling, due diligence and verification schemes) to minimise the EU's contribution to deforestation.

## What's on the horizon?

- More rigorous enforcement of the sustainable development commitments in the EU's trade agreements via the post of chief trade enforcement officer.
- Additional unilateral EU trade policy measures to promote sustainability in trade.

## How can Freshfields help?

- We alert our clients to potential opportunities and risks that flow from trade regulation.
- We advise them on how to comply with domestic and international sustainability regulations that affect their supply chains.
- Our EU regulatory and public affairs team helps our clients navigate and shape legislative and regulatory processes in the EU and Germany.
- Our teams track legislative and regulatory developments for specific sectors and help our clients prepare for what's around the corner – whether they are EU-headquartered or based outside the bloc.

## Related blog posts and links

- [Sustainable supply chains: one step closer to UK legislation on deforestation risks](#)
- [Tax policy as catalyst for sustainable economic recovery after COVID-19: a first glimpse](#)
- [EU Commission's tax policy 2019-24: what can we expect?](#)
- [UK Modern Slavery Act: changes on the horizon](#)
- [EU mandatory supply chain due diligence: European Parliament publishes draft directive](#)
- [Business and human rights: navigating the legal landscape: a joint report with UN Global Compact](#)

## Related topics

EU Green Deal, Horizontal collaboration, Merger control, Human rights.



# The EU Green Deal



GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# The EU Green Deal

## What are the goals of the EU Green Deal?

- To make Europe carbon neutral by 2050.
- To decouple economic growth from resource use.
- To ensure no person or place is left behind in the process.

## What are the main initiatives to reach those goals?

- Climate law to enshrine climate neutrality ambitions.
- Financing the sustainable transition, notably by mobilising private investments.
- Sustainability of food systems.
- Decarbonising energy.
- Protecting ecosystems.
- Sustainable and smart mobility.
- Industrial strategy for a clean and circular economy.

Each initiative includes a number of sectoral and horizontal strategies with concrete actions for implementation, from binding regulation to recommendations. The measures would apply to non-EU-headquartered businesses with subsidiaries or operations in the EU.

## Further important actions?

- Review of state aid guidelines [[see State Aid section](#)].
- [Just Transition Mechanism](#) (which includes a [fund](#)).
- Initiatives to screen and benchmark green budgeting practices of member states and the EU.
- Integration of the SDGs in the [European Semester](#).

## Outlook: what's on the horizon?

- Many individual pieces of legislation have yet to be published and are being prepared by the European Commission. Delivering the Green Deal remains one of the Commission's top priorities, as evidenced by its [work programme for 2021](#).
- The Green Deal could also impact global trade, notably due to a Carbon Border Adjustment levy to be adopted in the EU. Our teams are tracking developments in this space to help our clients be ready. [[see Global Trade section](#)].





Freshfields Bruckhaus Deringer

GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# The EU Green Deal

## How can Freshfields help?

- Our EU Regulatory and Public Affairs team, which has strong credentials on sustainability, helps our clients navigate and shape legislative and regulatory processes in the EU and Germany.
- Our Legal and Regulatory teams track legislative and regulatory developments for specific sectors and help our clients prepare for what's around the corner – whether they are EU-headquartered or based outside the bloc.

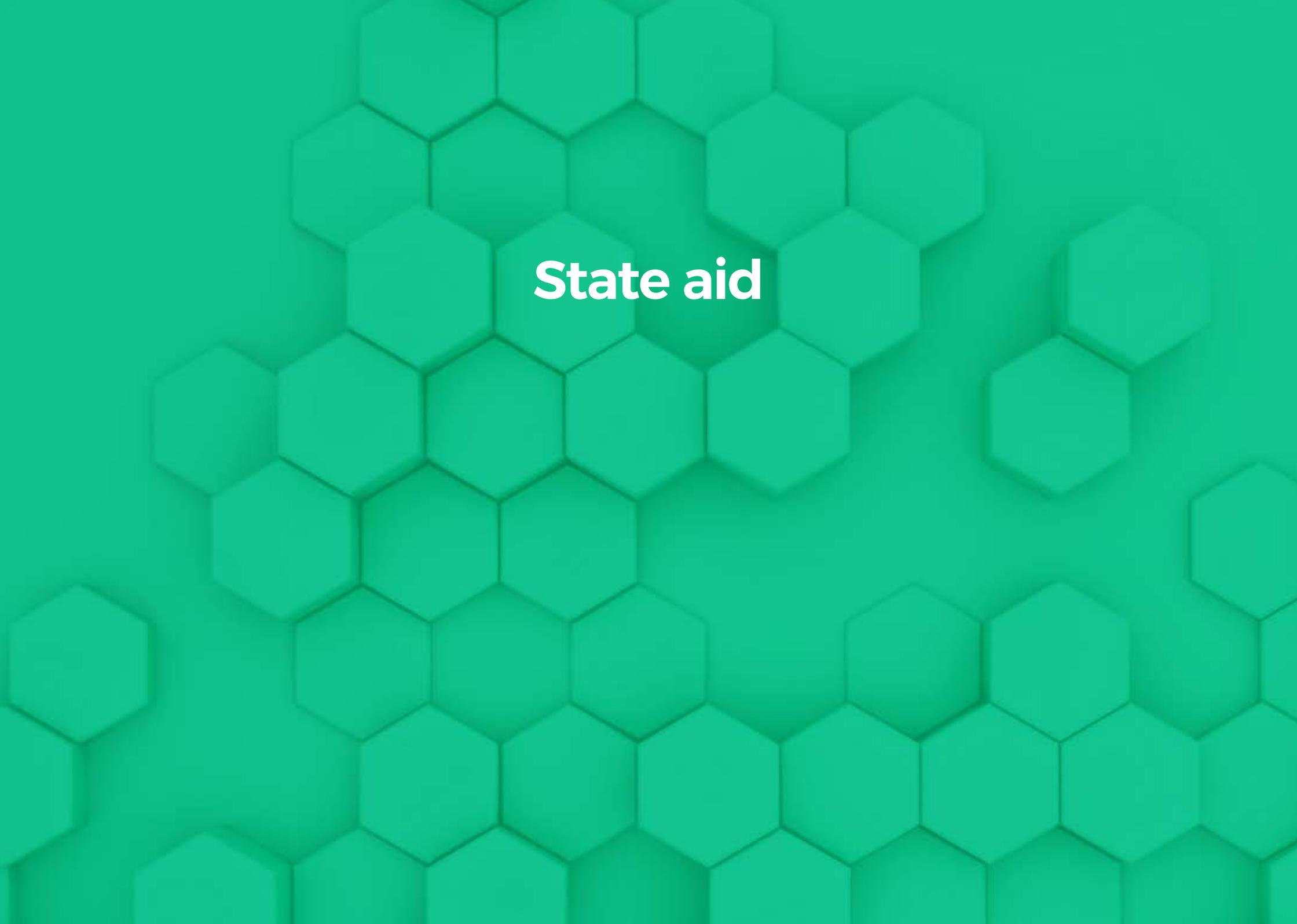
## Related blog posts and links

- [Revised state aid guidelines in relation to EU Emissions Trading System](#)
- [Competition law and the EU Green Deal](#)
- [The European green stimulus for real estate: EU Commission announces plans on a sustainable renovation wave](#)
- [European Commission launches a timely consultation on state aid for environmental protection and energy](#)
- [The New Consumer Agenda: a glimpse of EU consumer law in 2025](#)
- [\(Re-\)shaping EU state aid rules for a green transition: the European Commission opens a new public consultation on the IPCEI framework](#)
- [EU Commission announces new chemicals strategy](#)

## Related topics

Global trade, State aid, Sustainable finance, Horizontal collaboration.



The background is a solid teal color with a subtle, embossed pattern of hexagons. The hexagons are arranged in a staggered grid, creating a textured, honeycomb-like appearance. The lighting is slightly darker at the corners, giving it a subtle gradient.

**State aid**



GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# State aid

## What regulatory developments do we see relating to state aid?

- Europe's state aid rulebook will be adapted to cater for the new regulatory and political environment under the EU Green Deal. [\[see Green Deal section\]](#).
- The EU Commission is, however, already open to receiving sustainability-related state aid notifications based on the currently existing rulebook.
- State aid granted under the EU COVID-19 Recovery Plan may be tied to the obligation that the recipient actively contributes to the EU Green Deal's goals.
- Member states' subsidies will not only be available for EU-based companies, but also for non-EU companies that have business activities within the EU.

## Outlook: what's on the horizon?

- Guidelines on the EU's Emissions Trading System were updated in September 2020.
- Further guideline updates are expected in other areas by the end of 2021, for example on environmental and energy aid.
- The European Commission will make more use of so-called important projects of common European interests' (IPCEIs), which bring together 'knowledge, expertise, financial resources and economic actors throughout the Union ... to overcome important market or systemic failures and societal challenges which could not otherwise be addressed'.

## How can Freshfields help?

- Our EU regulatory and public affairs team helps our clients navigate and shape legislative and regulatory processes in the EU and Germany.
- Our state aid team has established working relationships with the EU Commission, DG Competition, and supports clients navigating the existing and the new state aid environment and rulebook, including advising on individual notifications for grants.

## Related blog posts and links

- [Global antitrust in 2021: 10 key themes – sustainability and antitrust](#)
- [Revised state aid guidelines in relation to EU Emissions Trading System](#)
- [European Commission launches a timely consultation on state aid for environmental protection and energy](#)
- [Climate change and state aid: making 'green investments' great \(again\)](#)
- [\(Re-\)shaping EU state aid rules for a green transition: the European Commission opens a new public consultation on the IPCEI framework](#)

## Related topics

Green Deal, Sustainable finance.



# **Sustainable finance**



GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# Sustainable finance

The growth in sustainable finance is driven by several factors.

- The need to deliver on global initiatives such as the [UN Sustainable Development Goals](#) (SDGs) and the [Paris Agreement](#).
- Measures such as the [EU sustainable finance action plan](#) and the EU Green Deal. [[see Green Deal section](#)].
- The growth potential for investors in sustainability projects.

## What regulatory developments do we see in relation to sustainable finance?

- Regulators and governments see the financial sector playing a vital role in funding sustainable development, with moves to encourage this shift by integrating sustainability into the day-to-day business of financial institutions.
- Financial regulators increasingly recognise climate change as a material threat to financial stability, and are demanding more from financial institutions around how they test, plan for and disclose the climate change risks they face.
- Policymakers are seeking ways to help investors assess the sustainability of certain financial instruments. Borrowers can negotiate sustainability-linked loans based on bespoke metrics, but there are growing calls for an international standard to reduce 'greenwashing' and increase trust in sustainable investments.

## Outlook: what's on the horizon?

- We expect more hard-edged regulatory enforcement as expectations and firms' capabilities in this area increase.
- The EU's sustainable finance strategy will have a major impact, while in Asia the Hong Kong Monetary Authority is set to start consultations with the banking industry on developing a green financing supervisory expectation framework.

## How can Freshfields help?

- We help our clients structure financing transactions to deliver sustainable development in three main areas
  - project finance;
  - green bonds and social impact bonds; and
  - impact investments.
- We keep our clients up to date with sustainability linked legislative changes around the world, and were recently appointed by PRI (Principles for Responsible Investment), the UN Environment Programme Finance Initiative (UNEP FI) and the Generation Foundation to explore how legal frameworks might change to help investors drive the sustainable transition. Our report, A legal framework for the consideration of sustainability impact in investor decision-making, will be published in 2021.





GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# Sustainable finance

- We advise organisations on how to effectively disclose their sustainable finance activities to stakeholders, and help our clients navigate regulators' expectations in relation to sustainable governance and risk management procedures. We also have market-leading expertise in regulatory investigations and litigation.

## What regulatory developments do we see in the sustainable finance space?

- Regulators and governments see the financial sector playing a vital role in funding sustainable development, with moves to encourage this shift by integrating sustainability into the day-to-day business of financial institutions.
- Financial regulators increasingly recognise climate change as a material threat to financial stability, and are demanding more from financial institutions around how they test, plan for and disclose the climate change risks they face.
- Policymakers are seeking ways to help investors assess the sustainability of certain financial instruments. Borrowers can negotiate sustainability-linked loans based on bespoke metrics, but there are growing calls for an international standard to reduce 'greenwashing' and increase trust in sustainable investments.

## Related blog posts and links

- [Climate and environmental risks to financial stability: updates from the ECB, EBA and ESB](#)
- [Green ambitions for post-Brexit UK financial services](#)
- [A new tool in the sustainable finance toolkit – the Sustainability-Linked Bond Principles](#)
- [Sustainability still on the agenda despite COVID-19: Commission consults on broad and ambitious Renewed EU Sustainable Finance Strategy](#)
- [Green finance: taxonomy is done but the real work is only starting](#)
- [The rise of ESG disputes against financial institutions](#)

## Related topics

Green Deal, state aid, horizontal collaboration.



The background is a solid teal color with a subtle, embossed pattern of hexagons. The hexagons are arranged in a staggered grid, creating a textured, honeycomb-like appearance. The lighting is slightly darker at the corners, giving it a 3D effect.

# Horizontal collaboration



GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# Horizontal collaboration

## What regulatory developments do we see in relation to horizontal collaboration?

- Any company considering a collaboration with one or more competitors to further sustainability goals (eg joint research into green technologies, committing to minimum or pro-sustainability standards, combining resources and/or operations) should seek specialist competition law advice.
- Breaches of competition law can result in harsh penalties (eg in the EU potential fines of up to 10 per cent of annual worldwide turnover) and follow-on damages claims.
- Competition law and policy is in flux. Regulators are considering calls for reforms to allow (or at least not prevent) greater collaboration to further sustainable development. Businesses, however, walk a fine line between legitimate collaboration and anticompetitive collusion

## Outlook: what's on the horizon?

- Competition regulators will continue to grapple with the possibility of reforms to enable greater collaboration on sustainability initiatives. Several European competition authorities have published papers and guidance for businesses, while their counterparts in the US, Asia and beyond are also considering the issue.
- Authorities will be keen to ensure a degree of consistency across the world, particularly given the cross-border nature of many sustainability projects. But some degree of divergence is inevitable, creating risks for business.

## How can Freshfields help?

- We can help you navigate this complex (and shifting) terrain by:
  - advising on how to reduce the competition law risk associated with joint initiatives and collaborations;
  - liaising with all relevant authorities; and
  - helping you navigate and shape legislative and regulatory processes across different jurisdictions.

## Related blog posts and links

- [Global antitrust in 2021: 10 key themes — sustainability and antitrust](#)
- [‘Green’ competition law: sustainable collaboration or anticompetitive collusion?](#)
- [Competition law and the European Green Deal - friends not foes](#)
- [Competition policy and the EU Green Deal: Freshfields responds to the Commission’s call for contributions](#)

## Related topics

Global trade, EU Green Deal, Sustainable finance, Human rights, Worklife 2.0.



# Merger control



GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# Merger control

## What regulatory developments do we see in the merger control space?

- There is no consistent approach between regulators on the way sustainable development is considered in merger control processes, potentially raising uncertainty when clearance is required in multiple jurisdictions.
- The European Commission is looking at the role sustainability should play in competition law, including in relation to corporate transactions. There is theoretical scope for this under the EU Merger Regulation, which enables the EC to consider the 'development of technical and economic progress provided that it is to the consumers' advantage and does not form an obstacle to competition' when reviewing a merger.
- There are early signs of environmental factors becoming relevant in the Commission's deal reviews and the acceptability of remedies, particularly in cases involving heavy industry. Similar trends are evident at a national level across Europe.
- The Commission has consulted on how competition rules (including merger control) and sustainability policies should work together. (We have submitted a response which you can [read about here](#).)
- In Asia sustainability is expected to have a role in competition law but it remains to be seen how different authorities may define sustainability. Sustainability is a key policy priority in some jurisdictions, such as China, with the country aiming to be carbon neutral by 2060.

## Outlook: what's on the horizon?

- The European Commission is analysing responses to its consultation. In addition, the EU's chief economist has already proposed developing tools for the analysis of 'green/out-of-market efficiencies'.

- Further changes are possible across the world, with the pandemic pushing sustainability up the agenda for some authorities.

## How can Freshfields help?

- We develop global strategies to ensure our clients get the best possible outcomes in merger control proceedings. This includes in relation to cross-border deals with sustainability components, where we have market-leading expertise in developing efficiency arguments and/or remedies to address regulators' concerns.
- We help our clients making submissions in response to consultations by the EC and other authorities into competition law reforms.

## Related blog posts and links

- [Global antitrust in 2021: 10 key themes – sustainability and antitrust](#)
- [The future of merger control: could, and should, competition authorities consider sustainability factors?](#)
- [Competition policy and the EU Green Deal: Freshfields responds to the Commission's call for contributions](#)

## Related topics

Global trade, EU Green Deal, Sustainable finance.



The background is a solid teal color with a subtle, embossed pattern of interlocking hexagons. The hexagons are slightly recessed, creating a 3D effect. The text 'Worklife 2.0' is centered in the upper half of the image.

# **Worklife 2.0**



GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# Worklife 2.0

## What regulatory developments do we see in relation to the future of work?

- Urgent measures – including regulation – implemented in response to COVID-19 have had a major impact on workplaces. Some, such as permanent home working, will have long-term consequences.
- Looking ahead, more regulation will be needed to address these changes.
- In regulated industries (eg financial services) regulators are keen for employers to treat a worker's home as if it was the office from an oversight point of view.
- As well as working practices, the pandemic has changed attitudes, for example towards executive remuneration. It has also highlighted inequalities, shining a spotlight on issues such as D&I and the need for companies to pay a living wage.
- New working practices could have a positive impact on the fight against climate change, for example by reducing travel.

## Outlook: what's on the horizon?

Regulatory changes are expected, with a focus on the following areas.

- **Home working.** Several jurisdictions are considering introducing rules in relation to permanent home working, which may see home working included in a business's sustainability efforts.
- **Wages.** The pandemic has fuelled debate about what constitutes a decent wage, with the EU proposing a directive to establish a Europe-wide framework.
- **Diversity and inclusion.** D&I remains a focus for authorities in the EU, the US (California), the UK and Japan.

## How can Freshfields help?

We advise clients on long-term strategies to create more sustainable workplaces, including in relation to:

- remote performance assessment, remote investigations, renewed oversight arrangements, D&I and more;
- regulatory compliance, reviewing and amending global HR policies (including health and safety, home working, business travel, equal treatment/discrimination and disciplinary sanctions); and
- assessing employment-related costs/footprint (reduced office space, reduced commute, other salary adjustments etc).

We deliver this advice either standalone or as part of bigger projects such as M&A deals and corporate restructurings.

## Related blog posts and links

For our thought leadership on the future of the workforce please visit the WorkLife 2.0 website: [Worklife 2.0 | Freshfields Bruckhaus Deringer](#)

## Related topics

Global trade, Human rights, Horizontal collaboration, Sustainable finance.



# Human rights



GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# Human rights

## What regulatory developments do we see in the human rights space?

- The legal landscape for business and human rights has changed dramatically over the past decade.
- Multinationals now face a complex array of obligations, with laws requiring that they disclose efforts to identify human rights risk in their supply chains and in some cases the specific steps they are taking to address them.
- Some legislation goes further still, for example France’s Duty of Vigilance legislation, which makes human rights due diligence mandatory.
- Claimants, often backed by NGOs, are targeting companies through the courts over alleged failures to respect human rights, including by pursuing parent companies for the actions of businesses in their group. National courts are having to decide whether they can hear such cases, or whether they should proceed in the courts of the country where the alleged misconduct occurred.
- The way companies respect human rights is increasingly in the public eye, in part thanks to specific benchmarks used by investors.

## How can Freshfields help?

We advise on operational human rights compliance issues, such as:

- human rights policies and procedures;
- internal and external capacity-building and reporting requirements;
- the impact of national legislation such as the UK Modern Slavery Act and the French Corporate Duty of Vigilance Law;
- grievance and remediation issues, including where claims are brought in court or via

- OECD National Contact Points; and
- human rights due diligence.

## Outlook: what’s on the horizon?

- Further legislative change is expected (for example with the UK Modern Slavery Act). Germany and the EU are considering their own mandatory human rights due diligence laws.
- Companies are under increasing pressure from stakeholders over their human rights record, including investors and shareholder activists.

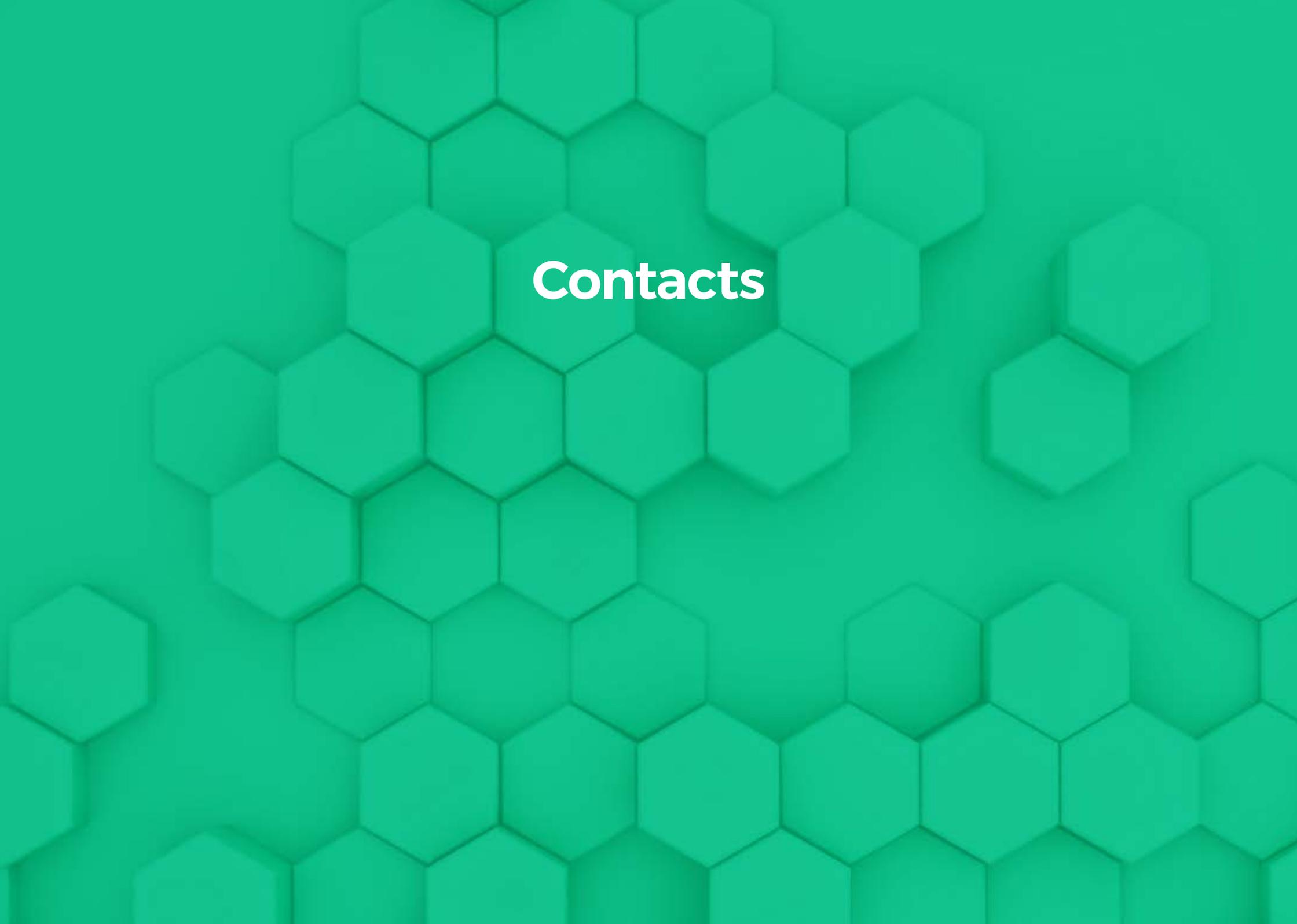
## Related blog posts and links

- [Freshfields hosted International Human Rights Day panel: “Human rights due diligence – what challenges do global companies face?”](#)
- [UK Modern Slavery Act: changes on the horizon](#)
- [EU mandatory supply chain due diligence: European Parliament publishes draft directive](#)
- [Taking stock after 20 years of OECD National Contact Points cases](#)
- [Business and human rights: navigating the legal landscape: a joint report with UN Global Compact](#)
- [UN Forum on Business and Human Rights 2020 – part 1 – ‘Building forward’ from COVID-19, EU supply chain legislation, climate change](#)
- [UN Forum on Business and Human Rights 2020 – part 2 – establishing a level playing field through legislation](#)

## Related topics

Global Trade, Worklife 2.0, Horizontal collaboration, Sustainable finance.



The background is a solid teal color with a subtle, embossed pattern of hexagons. The hexagons are arranged in a staggered grid, creating a textured, honeycomb-like appearance. The lighting is soft, giving the hexagons a slight 3D effect.

# Contacts



Freshfields Bruckhaus Deringer

GLOBAL TRADE

THE EU GREEN DEAL

STATE AID

SUSTAINABLE FINANCE

HORIZONTAL COLLABORATION

MERGER CONTROL

WORKLIFE 2.0

HUMAN RIGHTS

# Contacts



**Tim Wilkins**  
Global Partner for Client Sustainability,  
New York  
E [timothy.wilkins@freshfields.com](mailto:timothy.wilkins@freshfields.com)



**Oliver Dudok van Heel**  
Head of Client Sustainability and  
Environment, London  
E [oliver.vanheel@freshfields.com](mailto:oliver.vanheel@freshfields.com)





**freshfields.com**

This material is provided by the international law firm Freshfields Bruckhaus Deringer LLP (a limited liability partnership organised under the laws of England and Wales authorised and regulated by the Solicitors Regulation Authority (SRA no. 484861) and associated entities and undertakings carrying on business under, or including, the name Freshfields Bruckhaus Deringer in a number of jurisdictions, together referred to in the material as 'Freshfields'. For further regulatory information please refer to [www.freshfields.com/support/legal-notice](http://www.freshfields.com/support/legal-notice).

Freshfields Bruckhaus Deringer has offices in Austria, Bahrain, Belgium, China, England, France, Germany, Hong Kong, Italy, Japan, the Netherlands, Russia, Singapore, Spain, the United Arab Emirates, the United States of America and Vietnam.

This material is for general information only and is not intended to provide legal advice.

© Freshfields Bruckhaus Deringer LLP 2021