

Raising Ambition through Regulation: *The Role of Law for Realising Net Zero Imperatives*

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*Climate law
and governance*

The Paris Agreement: Goals

Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

Implications?

- Art 2.1(c) Paris Agreement + 2022 IPCC report (science)
 - All finance must become sustainable.
 - *‘Financing the [net zero] transition by transitioning the financial system itself’*: (Aviva Investors 2022; COP28 Presidency)
 - Massive implications for ‘business as usual’

The Challenge:

Why can't markets voluntarily 'figure it out'?

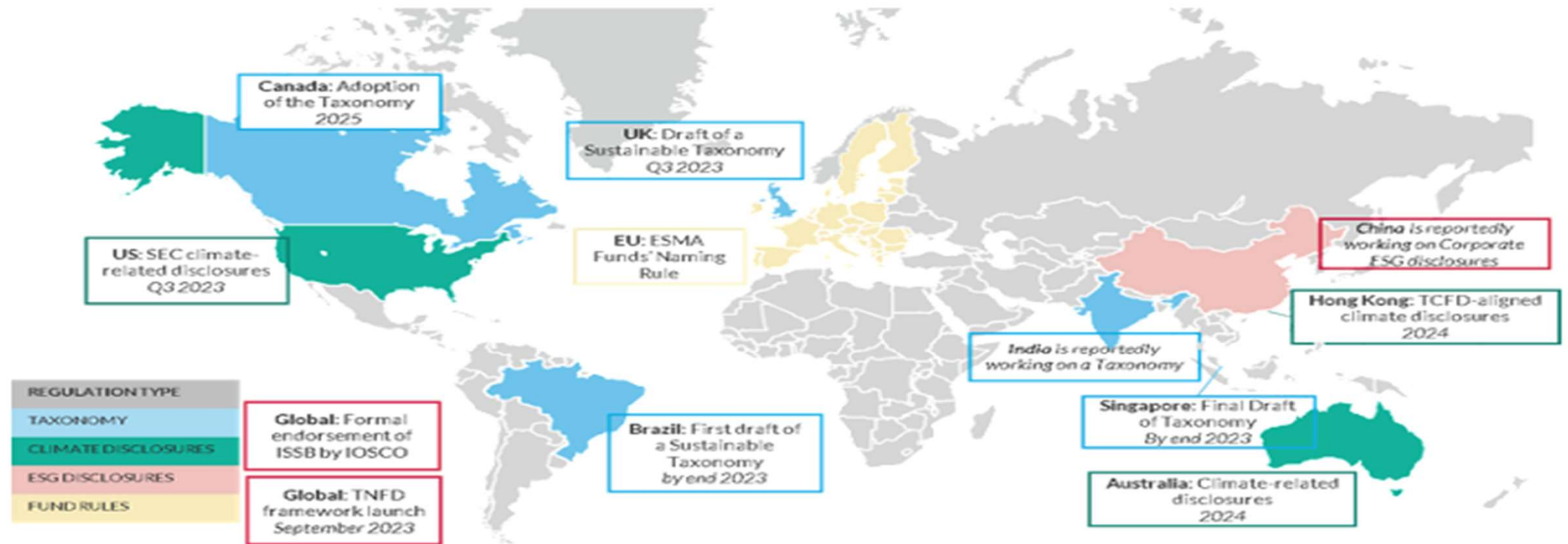
- Climate change is the 'greatest market failure' due to externalities (Stern 2007) & limits to business case logic (Bowman 2015)
 - Markets need to be *regulated and governed* to achieve public interest objectives.
 - More than policy! Critical role for national/regional law and regulation
- This is a nascent space: 'unprecedented, uncertain & urgent' (Bowman 2022)

The Zeitgeist: Climate-related Disclosure

UK	France	EU	Sector-specific
<p>FCA 2021 Listing Rules: Listed companies</p> <p>Companies Act 2006</p> <p>Regulations 2022: UK-registered public companies, large private companies, partnerships</p>	<p>Article 29 of the Energy and Climate Law 2019 (LEC)</p>	<p>Corporate Sustainability Reporting Directive 2023 (CSRD)</p> <p>Companies:</p> <p><i>Double materiality & taxonomy-aligned</i></p>	
<p>FCA 2021/22 Rules : Asset managers and FCA-regulated life insurers and pension providers (absolute obligation)</p>		<p>Sustainable Finance Disclosure Regulation 2021 (SFDR)</p> <p>Financial institutions firms + products</p>	<p>IMO Poseidon Principles 2019 (Voluntary)</p> <p>Lenders (banks) can assess and disclose the climate alignment of their shipping portfolios</p>
<p>Pension Schemes Act 2021 Regulations: Trustees of certain occupational pension schemes</p>		<p>Corporate Sustainability Due Diligence Directive 2023 (CSDDD)</p> <p>EU & non-EU firms & Supply chains</p> <p>Identify & prevent/mitigate enviro and human rights impacts</p> <p>1.5°C compatible business strategy (big firms)</p>	

ESG Regulations – What Is Next?

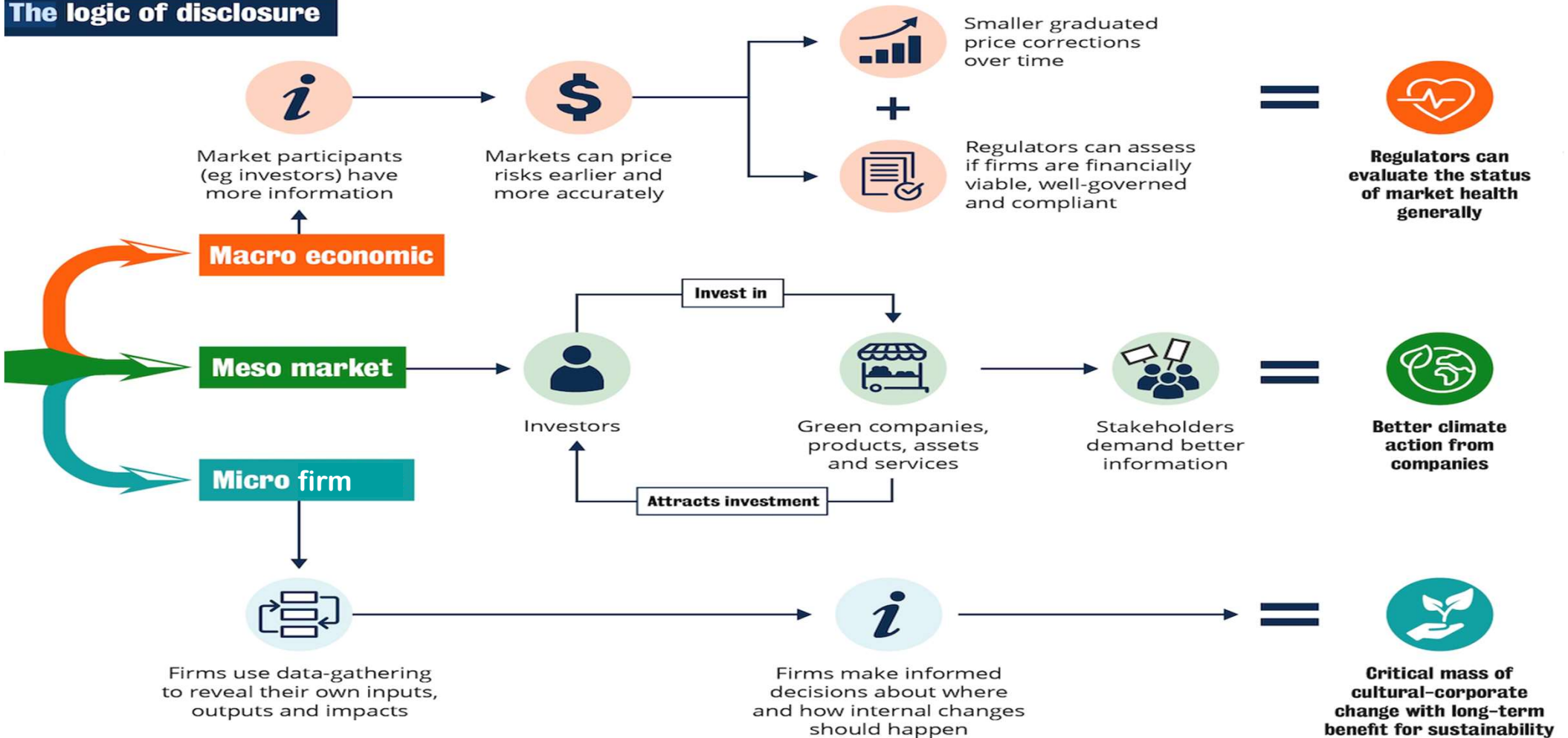
Upcoming ESG Regulations



Note: The map represents Sustainable Fitch's view of some of the most material upcoming regulation changes, the list is not exhaustive. As of September 2023. Dates are tentative, based on the latest available update.

Source: Sustainable Fitch's ESG Regulation and Reporting Standards Tracker.

The logic of disclosure



Source: Bowman, *Regulatory Leadership for a Net Zero Transition: Central Banks and Financial Regulators: Levers and Limits* (King's College London, September 2022)

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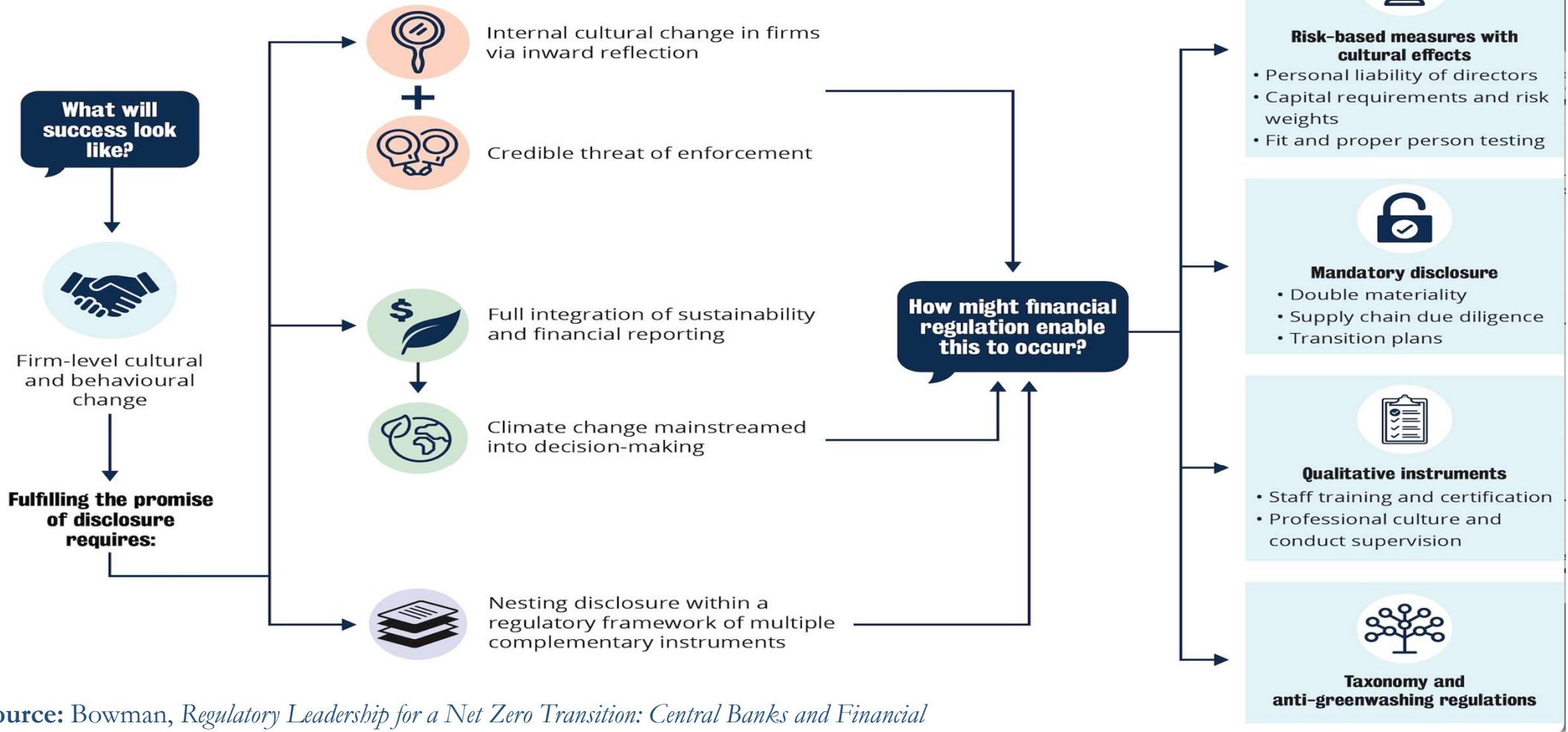
Levers & Limits of Disclosure

LEVERS	LIMITS
Mandatory eg. UK and EU Financial Regs	Legal form: ‘Comply or Explain’?
Logical and necessary: A first step in the transition process → Building block for other regulatory activities	Logistics: data (availability and quality); international divergent standards
Internal cultural change in firms via inward reflection (micro prong)	Timeliness: Time lags and know-how gaps
Equal status & Integration: sustainability reporting + financial reporting → internalise externalities	Scope: TCFD does not include social dimensions (just transition) or double materiality (biodiversity reporting)

→ *“You cannot green the whole financial system just through disclosures”*

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Fulfilling the promise of disclosure



Source: Bowman, *Regulatory Leadership for a Net Zero Transition: Central Banks and Financial Regulators: Levers and Limits* (King's College London, September 2022)

Way Forward: Increasing complementary /alternative regulatory approaches

Rising litigation & regulatory enforcement:

- Disclosure obligations eg *McVeigh v REST* (2018)
- Supply chains/ scope 3 eg *Milieudefensie v Shell* (NL 2021); *Danone* (French Duty of Vigilance law 2023); CSDDDD?
- Company strategy/ Director Liability eg *ClientEarth v Shell* (UK 2023)
- Greenwashing eg *HSBC* (UK Advertising Standards Authority 2021)

Looking Ahead:

- Mandatory Net Zero Transition Plans (multi-jurisdictional)

02 NEW WAYS OF THINKING AND DOING

PARADOX 3

The climate crisis heralds unprecedented and dynamic impacts that require experimental and iterative regulating; yet the urgency of the crisis requires immediate and decisive action.

Source: Bowman, *Regulatory Leadership for a Net Zero Transition: Central Banks and Financial Regulators: Levers and Limits* (King's College London, September 2022)

FINDING

Regulators are embracing experimentalism and cooperation, evidenced by the emergence of *regulator ecosystems for sustainable finance* (central banks, financial market regulators, government agencies).

Such regulator ecosystems will be key to countering the complexity of systems change and ensuring timely action along the full value chain which undergirds regulatory goals for net zero.