Legal Framework for Impact

**Collaborative action policy briefing**

July 2024

**DRAFT FOR COMMENTS**

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To inform this briefing, the following investor group has been consulted: PRI Global Policy Reference Group. This consultation is not an endorsement or acknowledgement of the views expressed in this briefing.

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# executive summary

Financial investments drive real-world outcomes on issues such as climate change, sustainable development and human rights – whether are intended or not. Investors can intentionally pursue sustainability outcomes or impact goals in three main ways: through leveraging investment powers, stewardship activities, and public policy engagement. Legal attention has, until recently, focused on the use of investment powers. However, there may be a specific role for stewardship and policy engagement in public markets, especially if undertaken collectively. This is known as investor collaboration or collaborative engagement.

This policy briefing examines the role of investor collaboration in stewardship and considers how related regulations affect the financial sector. It concludes with recommendations for policymakers to reassess the existing legal framework for investor collaboration to provide clarity for investors seeking to utilize this tool.

[A Legal Framework for Impact](https://www.unpri.org/policy/a-legal-framework-for-impact/4519.article), authored by Freshfields Bruckhaus Deringer and commissioned by the PRI, UNEP FI and the Generation Foundation, finds that in the 11 jurisdictions analysed**,** while there are differences across jurisdictions and investor groups, where investing for sustainability impact approaches can be effective in achieving an investor’s financial goals, the investor will likely be required to consider using them and act accordingly.

Investor collaboration to achieve sustainability impact goals can allow for a more impactful approach and help to spread the cost of engagement. This will reduce the unit costs for individual investors, ultimately benefiting consumers. The case for investor collaboration is even stronger for addressing systemic risks, which are caused by what are sometimes called ‘collective action problems’. These require widespread cooperation to resolve.[[1]](#footnote-2) Our research on regulations relevant to investor collaboration in four markets (the UK, Germany, South Africa and the US) echo the findings of the Legal Framework for Impact research. While there are limits to collaborative activities, the findings show that current regulation should not be interpreted by institutional investors as preventing investor collaboration on ESG issues.

However, some investors hesitate to engage in investor collaboration on ESG issues due to a perceived risk of triggering competition or acting in concert regulations. Our analysis suggests that existing regulatory frameworks may fall short of providing sufficient clarity and predictability to guide good practices for investor collaboration. Additional clarity from regulators could provide crucial predictability to support investors to collaborate in their efforts to address sustainability goals.

Further policy updates are needed to mitigate enduring uncertainty relating to acting in concert and competition rules, and ensure that investors feel confident to undertake sufficient related action to manage ESG risks and achieve sustainability goals. This policy briefing sets out possible reforms for policymakers to consider in reforming regulatory frameworks governing investor collaboration and also highlights examples of good policy practices. Key policy reform options include:

* clarifying that investors can consider collaborating in seeking to achieve their sustainability objectives in compliance with acting in concert and competition rules.
* reviewing rules that could inhibit investor collaboration aiming to address sustainability-related risks
* considering a whole-of-government approach to better integrating sustainability impacts in the legal analysis under acting in concert rules and competition law

# KEY TERMS

The following terms are used throughout this report:

* **Engagement**: interactions and dialogue conducted between an investor, or their service provider and a current or potential investee (e.g. company), or a non-issuer stakeholder (e.g. an external investment manager or policy maker) to improve practice on an ESG factor, make progress on sustainability outcomes, or improve public disclosure. In private markets, engagement also refers to investors’ dialogue with management teams and/or Board of portfolio companies and/or real assets.
* **Collaborative engagements:** also known as, **investor collaboration** in the context of stewardship. It refers to investors or their service providers working together, and/or with other stakeholders, to pool resources and enhance their effectiveness in pursuing their stewardship objectives. It must comply with all applicable laws and regulations, and must not include the exchange of non-public, competitively or commercially sensitive information. Collaboration can include sharing best practices on how to approach an issue with peers, collaborative engagements or initiatives, or the use of an external service provider (e.g. engagement overlay service) that pools resources from multiple investors.
* **Stewardship:** the use of investor rights and influenceto protect and enhance overall long-term value for clients and beneficiaries, including the common economic, social and environmental assets on which their interests depend. Effective stewardship includes Active Ownership 2.0, a form of stewardship that prioritises actions to shape sustainability outcomes in order to address system-level risks, instead of a narrow focus on the inputs and processes used in stewardship.
* **Sustainability outcomes**: the real-world sustainability outcomes of human activity, which includes actions by investors. Positive sustainability outcomes are those aligned with global sustainability goals, such as the goals of the Paris Agreement and the UN Sustainable Development Goals (SDGs), as well as with the UN Guiding Principles on Business and Human Rights, the International Bill of Human Rights and International Labour Organization conventions.
* **System-level risks:** a catch-all term for systematic risk and systemic risk, both of which have implications for investment performance.
* Systematic risk: risk transmitted through financial markets and economies that affects aggregate outcomes, such as broad market returns. The term is interchangeable with ‘market risk’ or ‘market-wide risk’. Because systematic risk occurs at a scale greater than a single company, sector or geography, it cannot be hedged or mitigated through diversification. One example of a sustainability-related systematic risk is the risk of reduced global economic growth due to sustained physical impacts of climate disruption; another is the opportunity cost associated with failing to meet the SDGs.
* Systemic risk: the risk that an event at a particular point in time or a chronic economic condition destabilises the financial system or leads to its collapse. An example of a systemic risk materialising would be a number of ‘too-big-to-fail’ financial institutions defaulting on obligations to their creditors or investors. An example of a sustainability-related systemic risk would be a sudden repricing of assets across the fossil fuel sector, resulting in cascading defaults that destabilise financial markets – this is sometimes referred to as a potential ‘climate Minsky moment’.

# The case for stewardship and investor collaboration

## Sustainable investment and stewardship

Financial investments drive real-world outcomes on issues such as climate change, sustainable development and human rights – whether these outcomes are intended or not. Investors increasingly recognise that financial returns depend on the stability of social and environmental systems, especially in the long term. This is driving investors to consider what they can do to improve sustainability outcomes and, in particular, to address system-level risks that will not only have an immediate impact on society but could also have significant, unpredictable, and non-linear consequences for economic performance and investors’ financial returns.

To maintain and improve long-term financial performance in the best interests of clients and beneficiaries, institutional investors have a responsibility to consider whether any of the sustainability risks mentioned above have a bearing on their ability to meet their legal obligations and, if so, how they can mitigate those risks.[[2]](#footnote-3) This may require them to consider how their individual and collective actions can shape sustainability outcomes, contributing to what can be called ‘better beta’ – or reduced system-level risks – which could improve financial outcomes over the long term.[[3]](#footnote-4)

Investors can pursue improved sustainability outcomes/impacts through their use of investment powers, and stewardship. These can also be focused on investees, policymakers, and other stakeholders. Which of these it is appropriate for an investor to deploy in pursuing a given sustainability impact goal, and in what combination, will depend upon the precise circumstances and the investor’s discretion. In practice these approaches are inter-connected and likely to be most effective when used in combination. Legal attention has until recently tended to focus on the use of investment powers. However, in public markets, there is likely to be a particular role for stewardship and policy engagement, especially when undertaken collectively. This is known as investor collaboration or collaborative engagements.

This policy briefing highlights concerns about current regulations and stresses the importance of investor collaboration in stewardship and the way it is currently regulated. It aims to call on relevant policymakers to re-examine the current legal framework for investor collaboration. This policy briefing also highlights examples of good policy practices to support future reform, aiming to remove perceived policy or regulatory barriers to effective and pro-competitive investor collaboration targeting sustainability challenges.

### Stewardship as a key strategy for sustainable investment

Stewardship, also referred to as active ownership, is the use of investor rights and influenceto protect and enhance overall long-term value for clients and beneficiaries, including the common economic, social and environmental assets on which their interests depend.[[4]](#footnote-5) Stewardship complements and supports diverse aspects of sustainable investment, including ESG incorporation.[[5]](#footnote-6)

Effective stewardship, with an explicit focus on delivering better sustainability outcomes, delivers real benefits for investors and for society as a whole. By pursuing sustainability outcome objectives through stewardship, investors can mitigate system-level risks (such as climate change, biodiversity loss and inequitable social structures) to improve the long-term performance of economies and their investment portfolios, as well as improve social and environmental outcomes in line with their beneficiaries’ objectives.[[6]](#footnote-7)

The term stewardship encompasses a multitude of activities. Investors – depending on the asset class, geography and investment strategy – can exercise their stewardship obligations by:

* engaging with issuers (whether current or potential investees)
* voting at shareholder meetings or equivalent meetings of other asset classes
* filing or co-filing shareholder resolutions or proposals
* holding positions on investee boards and board committees
* litigating or seeking legal recourse, where necessary.

Stewardship can also be implemented by investors through active engagement with policy makers and other non-issuer stakeholders. This can be achieved by, for example:

* engaging with policy makers
* engaging with standard setters
* contributing to public goods (e.g., research) and public discourse (such as media) that support stewardship goals.

### Collaboration, a key element of effective stewardship

Collaborative efforts between investors can take many forms, with variations on aspects such as:

* size (number of investors involved or number or engaged stakeholders)
* structure and governance (simple or complex and formal or informal governance structures such as presence or absence of a separate secretariat)
* open or closed collaboration (limited or unlimited number of participants)
* scope of collaboration (from issuer performance to wider sustainability risks and outcomes)
* breadth (single sector v multi-sector; single-issue v multi-issue; issuers only or engaging a broader set of stakeholders)
* depth of objectives (focus on disclosures, commitments, and/or action)
* length of collaboration
* range of activities (from multi-year sectoral engagement initiatives to one-off sign-on letters, the range of stewardship activities available to an investor depends on the level of structure, duration and scope of the collaboration effort. Individual investors ultimately exercise discretion over which activities they participate in).

In the context of stewardship, collaboration refers to investors or their service providers working together and/ or with other stakeholders to pool resources and enhance their effectiveness in pursuing stewardship objectives. It must comply with all applicable laws and regulations, and must not include the exchange of non-public, competitively, or commercially sensitive information. Collaboration can include informal means, such as sharing insights on how to approach an issue with peers, as well as formal mechanisms such as collaborative engagements or initiatives, or the use of an external service provider (e.g., engagement overlay service) that pools resources from multiple investors.

Collaboration amongst investors, particularly in relation to investee and public policy engagement, is viewed within the industry as an effective way for investors to conduct stewardship that maximises long-term value for clients and beneficiaries.[[7]](#footnote-8)

Box 1: **PRI’s Active Ownership 2.0**

The PRI’s [Active Ownership 2.0](https://www.unpri.org/download?ac=9721) programme supports evolving stewardship practices to develop an aspirational standard for improved stewardship and helps investors to more effectively contribute to positive sustainability outcomes. It builds on existing practice and expertise but prioritises systemic goals and collective effort aimed at concrete outcomes. The three central elements for an effective stewardship approach adopting Active Ownership 2.0 are set out below.

|  |  |
| --- | --- |
| A flag on a pole  Description automatically generated | OUTCOMES, NOT INPUTS OR PROCESSES  Active ownership 2.0 prioritises the pursuit and achievement of positive real-world goals. While resources, activity metrics, and intermediate goals are among the levers available to investors, these are neither sufficient nor universally relevant in the delivery of outcomes. |
| A colorful target with arrows in center  Description automatically generated | COMMON GOALS  System-level risks require a deliberate focus on and prioritisation of outcomes at the economy- or society-wide scale. This means stewardship that is less focused on the risks and returns of individual holdings, and more on addressing system-level or ‘beta’ issues such as climate change and corruption. It means prioritising long-term, absolute returns for universal owners, including broader real-term financial and welfare outcomes for beneficiaries. |
| A close-up of hands holding each other  Description automatically generated | COLLABORATIVE ACTION  Focusing on collective goals and the delivery of positive real-world outcomes is possible only through enhanced collaboration among investors, service providers and other broader stakeholders. Challenges inherent in addressing collective system-level risks can weaken the pursuit of collective goals compared to scenarios in which the distribution of costs and benefits is more equitable. One such challenge is the free-rider problem, in which some avoid the costs of addressing collective problems, while reaping the benefits. |

## The value of investor collaboration

Collaboration can enable investors to enhance legitimacy and more effectively achieve stewardship objectives while allowing them to pool resources and reduce costs. This in turn facilitates participation by smaller and resource-constrained investors, which is advantageous in markets with highly fragmented ownership. Collaboration is particularly important in the case of stewardship that seeks to address systemic, market-wide risks. Complex market transformation is more likely to be achieved by investors acting collaboratively rather than a single institution, even a very large one, acting alone.[[8]](#footnote-9)

### System-level risks

The World Economic Forum has identified inaction on climate change, human-induced environmental damage, biodiversity loss, erosion of social cohesion, and livelihood crises as some of the most severe global risks.[[9]](#footnote-10) Similarly, the International Corporate Governance Network has stated that environmental risks (such as climate change, water scarcity and pollution), social risks (including human rights violations and income inequality) and governance risks (such as corruption) pose significant systemic threats to the stability of the global financial system.[[10]](#footnote-11)

Institutional investors tasked with securing long-term financial returns need to evaluate whether system-level risks may affect their ability to meet investment objectives and secure sustainable returns and, if so, how they can mitigate these threats.[[11]](#footnote-12)

System-level risks cannot be diversified away given their economy-wide implications. There are more effective approaches investors might take, for example, addressing the drivers of system-level sustainability risks by improving the sustainability impact of their investments or carrying out policy engagement. This can be done across the portfolio rather than targeting only particular companies through investment decisions and stewardship. Institutional investors who have diversified investments across asset classes, sectors, and geographies with long term time horizons have both a responsibility and a market incentive to address system-level risks to which their portfolio is exposed, and to take appropriate action.[[12]](#footnote-13) The sheer scope and scale of action needed to address system-level risks requires collaboration to enable investors to amplify the sustainability impacts of a large group of companies or to support the policy developments needed to drive changes across economic sectors or national borders.

### Collective action problem

Tackling system-level risks is affected by ‘collective action problems’. For example, action to mitigate climate change results in concentrated costs, while the benefits of taking action are spread out among multiple parties across various levels and regions. Such a situation makes efforts to tackle climate change and other system-level risks vulnerable to the challenges of free-riding and the prisoners’ dilemma. Furthermore, these benefits can only be fully realized through widespread collaboration because significant emissions reductions require large-scale and cross-border efforts. Consequently, taking action without effective collaboration mechanisms is very challenging.

Timely government action, particularly concerted regulatory efforts at the global level, is the best way to address the issue. However, as recognized by the Nobel prize laureate Elinor Ostrom, ‘devising policies related to complex environmental processes is a grand challenge and reliance on one scale to solve these problems is naïve.’[[13]](#footnote-14) Ostrom proposed a ‘polycentric’ approach to climate governance in which not only regulators, but also non-state actors, like investors, can come together to facilitate standard setting, monitoring, certification and reporting. Even profit-seeking actors, such as institutional investors, will voluntarily reduce environmental harms in a way that could limit their individual short-term profits, but only if they know that other actors will behave in the same way. While this leaves room for individual actors within the network to effectively compete, collaboration is a necessary and foundational element of governing public goods, the consumption of which is non-excludable or non-rivalrous, or both.[[14]](#footnote-15)

### Efficiency gains from investor collaboration

Investor collaboration has proven to be one of the most effective non-state collaborative mechanisms for tackling ‘collective action problems’. Working through collaboration and drawing on the perspectives and expertise of a range of organisations can be beneficial in the following ways.[[15]](#footnote-16)

* Building knowledge on best practices and skills

This collective expertise can be particularly helpful when engaging with a company on a highly complex issue or with a company that operates in a challenging or multi-jurisdictional environment.

* Increasing efficiency

Examples include avoiding duplication of effort, allowing cost sharing, sharing tasks and responsibilities according to expertise and location, and offering smaller and resource-constrained investors the ability to lend their names and shares to the collaboration process.

* Enhancing outcomes

Research has shown that collaborative action can help institutional investors to achieve more impactful engagement for ESG issues in the eyes of corporate management.[[16]](#footnote-17) A group that includes different types of organisations (asset owners, investment managers and service providers with varying investment strategies, shareholdings and roles in the investment chain) will be more likely to formulate robust engagement strategies and promote change.

### Examples of investor collaborative engagements

Some leading responsible investors are expanding their toolkit to achieve positive sustainability impacts through increasingly ambitious stewardship and engagement with policy makers, as well as through their asset allocation. Effective action relies on stewardship by many institutional investors rather than a leading few attempting to mitigate these risks by themselves. Many PRI-led and investor-led collaborative investor engagements on environmental, social and governance issues have had positive sustainability impacts.

[Advance](https://www.unpri.org/investment-tools/stewardship/advance) is a stewardship initiative in which institutional investors work together to take action on human rights and social issues. The initiative, which primarily seeks change through investors’ engagement with portfolio companies, has three key expectations for the focus companies. These expectations include implementing the United Nations Guiding Principles on Business and Human rights; aligning their political engagement with their responsibility to respect human rights; and deepening progress on the most severe human rights issues in their operations and across their value chains. Advance is endorsed by 255 investors, of which 111 participate in engagements with companies, and 38 are companies being engaged.

[Climate Action 100+](https://www.climateaction100.org/) is an investor-led initiative with more than 700 investors engaging with the world’s largest corporate greenhouse gas emitters on improving climate change governance, cutting emissions and strengthening climate-related financial disclosures. Five years after the launch of the initiative, 91% of focus companies have now aligned with TCFD (Task Force on Climate-Related Financial Disclosures) recommendations, either by supporting the TCFD principles, or by employing climate scenario planning. Ninety-two per cent of focus companies have some level of executive oversight, and 75% of companies have committed to net zero by 2050. To put this in perspective, when Climate Action 100+ launched at the end of 2017, only five focus companies had set net zero commitments.[[17]](#footnote-18)

[The Net Zero Asset Owner Alliance (NZAOA)](https://www.unepfi.org/net-zero-alliance/) was launched at the UN Climate Ambition Summit in September 2019. It supports members in setting and reporting on their net-zero targets. Robust engagement with investee companies, sectors, value chains, and asset managers are among the most important mechanisms at asset owners’ disposal for delivering real-world emissions reductions. The Engagement Track of the Alliance focuses on enhancing asset manager engagement by members and supporting peer-to-peer exchange around best practices. The Alliance has published a series of discussion papers on principles for asset managers’ [engagement](https://www.unepfi.org/wordpress/wp-content/uploads/2023/11/NZAOA_Engagement-expectations_final.pdf), [voting](https://www.unepfi.org/wordpress/wp-content/uploads/2021/04/16-Elevating-Climate-Diligence-2.pdf) and [policy engagement](https://www.unepfi.org/wordpress/wp-content/uploads/2023/03/Aligning-Climate-Policy-Engagement-with-Net-Zero-Commitments.pdf) practices, as well as supporting collaborative dialogue and engagement with managers. The guidance and workstreams of the Engagement Track support members in communicating the systemic risk posed by climate change to their managers and beyond.

Storebrand Asset Management initiated and established the Investors Policy Dialogue on Deforestation ([IPDD](https://www.tropicalforestalliance.org/en/collective-action-agenda/finance/investors-policy-dialogue-on-deforestation-ipdd-initiative/)) in 2020, a collaborative initiative to engage with public agencies and industry associations in selected countries. The IPDD seeks to ensure long-term financial sustainability of investments by promoting sustainable land use and forest management and respect for human rights. As of April 2022, IPDD is supported by 58 global institutional investors from 18 countries.[[18]](#footnote-19)

Another industry-led initiative is the Platform Living Wage Financials ([PLWF](https://www.livingwage.nl/)), an alliance of 18 financial institutions (banks, insurers, pension fund asset managers, and asset managers). PLWF uses it financial leverage to engage investee companies to address the non-payment of a living wage to workers in their global supply chains. PLWF understands that individual companies cannot solve systemic issues on their own so their strategy is to address entire sectors. They have focused on more than 50 companies across three sectors to date: garment and footwear; food production; and food retail.[[19]](#footnote-20)

# The legal framework for collaborative engagement

[A Legal Framework for Impact](https://www.unpri.org/policy/a-legal-framework-for-impact/4519.article) (LFI), authored by Freshfields Bruckhaus Deringer and commissioned by the PRI, UNEP FI and the Generation Foundation, is a ground-breaking legal study on whether the law in 11 jurisdictions around the world **permits** and even in some cases **requires** investors to tackle some of the world’s most urgent sustainability challenges, by setting and pursuing sustainability impact goals.

The report found that, in the 11 jurisdictions analysed, investors are broadly permitted to consider pursing sustainability impact goals if this would contribute to their financial return objectives. While financial return is generally regarded as the primary purpose and goal of investors, investors are likely to have a legal obligation to consider pursuing sustainability impact goals where doing so can contribute to achieving their investment objectives, or where a sustainability risk bears on investors’ duties to pursue financial goals.

In some circumstances investors can pursue sustainability goals in parallel with financial goals but this depends on the jurisdiction and investor type. Investors are legally required to pursue sustainability impacts if they have committed to do so in the stated objectives of the financial product. This report also provides further insights about whether collaborative engagements are expected or permitted in different jurisdictions.

## Expectations for investors to participate in collaborative engagements

The findings of *A Legal Framework for Impact* show that, if an investor concludes that one or more sustainability factors poses a material risk to its ability to achieve its financial investment objectives, the investor will generally have a legal obligation to consider what, if anything, they can do to mitigate that risk (using some or all of their investment powers, stewardship, policy engagement or otherwise) and to act accordingly. This means that investors have an obligation to consider pursuing sustainability impact goals if doing so can contribute to managing risks and achieving their financial objectives.

An investor may decide to act individually but a number of considerations may lead to a decision to participate in collective investor action that targets the same sustainability impact goal. Factors include the direct and indirect costs and risks of pursuing the course of action, and the likelihood that collaboration will be more effective in addressing the issue.

While an investor may decide to act individually, collaboration is a significant additional lever for investors to encourage investee companies or the real economy to address system-level risks. It is more foreseeable that a group of investors, acting collectively and holding in aggregate a substantial portion of the securities of relevant investee enterprises could achieve transformative sustainability impacts[[20]](#footnote-21).

The LFI research found that investor cooperation is clearly permitted at some level across jurisdictions but there are legal constraints that must be respected.[[21]](#footnote-22)What investors’ duties permit with regard to collective action will depend on their circumstances. Some large investors may be in a position to catalyse wider collective action because of the way their portfolio is exposed to sustainability risks, the resources at their disposal, and the broader influence they wield. Smaller investors may find that joining established collaborative initiatives is a cost-effective way to serve beneficiaries whose interests may be threatened by declining sustainability.

## Policy or regulatory Barriers to investor collaboration

Our research on regulations relevant to investor collaboration in four markets (the UK, Germany, South Africa and the US) echoes the findings of the Legal Framework for Impact research. While there are limits to collaborative activities, the findings show that regulation should generally not be interpreted by institutional investors as preventing pro-competitive investor collaboration on ESG issues, including system-level issues affected by investment outcomes. In fact, it seems that the regulatory environment in the markets covered gives more room for investors to collaborate on engagement activities than is currently practised.

However, some investors are undecided about engaging in such action due to a perceived risk of competition scrutiny or triggering acting in concert. Our findings do suggest that existing regulatory frameworks may fall short of providing sufficient clarity and predictability to guide good practices for investor collaboration under acting in concert rules and possibly under competition law as well.

Acting in concert rules and competition rules may be potentially relevant to investors’ collaboration. Acting in concert rules under securities and corporate law typically aim at safeguarding shareholder rights and good corporate governance by promoting transparency around shareholding and shareholder controls. These rules come into play in situations in which concerted action might affect company controls. Concerns related to antitrust and competition law arise mainly in cases in which investors might inappropriately share or discuss strategic or competitively sensitive information, or through the potential anticompetitive effects of investor behaviour, particularly where they hold shares in competing firms within a concentrated industry.

Importantly most of these rules were set up before systemic risks were recognised as an issue that required stakeholders to act at their level, and before governments had committed to global sustainability goals to align financial flows with them. As such, it is now necessary for regulators and lawmakers to ensure these rules are updated to be sufficiently clear when such collaboration will trigger regulatory requirements or exemptions under securities law, corporate law and competition law, and to what extent sustainability outcomes can be considered under the existing legal framework.

In addition, without clarifying how competition laws or acting in concert rules will apply, even encouragement by regulators or government bodies for investors to engage in collaborations will not necessarily shield them from competition law scrutiny, or from private competition actions brought by companies whose businesses are impacted by collaboration between asset owners and/or investment managers with a view to improved sustainability outcomes.

As a result of this uncertainty, there remains a perceived risk that certain collaborative stewardship activities may trigger acting in concert or competition regulations. This is particularly the case for larger investors that may trigger such provisions due to the size of their funds.

Investors also noted that the uncertainty prevents internal legal functions from developing a clear internal interpretation of those rules, contributing toward the perception of this risk arising and disincentivising collaborative action. Such concerns have impacted various net zero alliances aimed at supporting climate action, in which antitrust concerns, though unfounded, have been cited. Additional guidance is required from competition authorities to explain in more detail their attitude to investor collaboration to address sustainability risks and how sustainability outcomes can be quantified and assessed within the existing horizontal collaboration regime.

However, many law academics and lawyers have unequivocally argued that there remain a wide range of collaborative actions that relevant investors may take.[[22]](#footnote-23) The PRI’s research on regulations relevant to investor collaboration in four markets (the UK, Germany, South Africa and the US) aimed to help investors understand behaviours that are likely to be acceptable as part of collaborative engagement and take reasonable precautions to manage potential risks.

Box 2: **Confusion over the ill-defined concept of ‘acting in concert’**

***Antitrust and competition law***

*Concerns related to antitrust and competition law arise mainly in cases in which investors might inappropriately share or discuss strategic or competitively sensitive information or through the potentially anticompetitive effects of investor behaviour, particularly where they hold shares in competing firms within a concentrated industry. Investors conducting collaborative engagement should consider:*

* *having compliance policies and procedures in place to ensure the proper handling, and prevent the unlawful sharing, of inside information*
* *ensuring that they do not share or discuss strategic or competitively sensitive information about their own organisation with other investors who may be potential or actual competitors*
* *ensuring that they do not share or discuss strategic or competitively sensitive information about investee companies either between themselves or with other investee companies*
* *restricting discussions with investee companies to the objectives of the engagement and remaining focused on how the company is managing ESG issues*
* *gauging whether engagement objectives, commentary on engagement activities, or company behaviour could constrain competition or encourage anti-competitive behaviour.*

# what is the role of policy?

The findings of [*A Legal Framework for Impact*](https://www.unpri.org/policy/a-legal-framework-for-impact/4519.article) highlighted that, while collaborative action is possible or permitted in all jurisdictions, those engaging in collective activity need to do so in a way that does not breach competition, insider dealing and market manipulation, takeover, and other relevant rules.[[23]](#footnote-24) At the level at which much collective stewardship is currently undertaken, these regimes do not generally create significant impediments to action in most jurisdictions.

As this report describes in detail below, regulators in a number of jurisdictions have noted the importance of investor cooperation in the context of stewardship activity, in particular, and have stated that it is not the intention of such rules to prevent legitimate stewardship activities.[[24]](#footnote-25) Regulators in some jurisdictions have gone further to acknowledge the importance of collaboration on sustainability issues and to set out new or updated guidance on the ways in which companies and investors may collaborate to achieve sustainability objectives.

However, as investor collaborations become more common as dictated by growing system-level risks, there is a greater need for regulatory clarity that is fit for the modern era in which investors are seeking to operate. Furthermore, jurisdictions that constrain the actions of investors in some markets, notably the US, may also be creating renewed uncertainty for investors internationally, including in more permissive jurisdictions like the UK and the EU. Further policy interventions are needed to eliminate ongoing uncertainties relating to acting in concert and competition rules, and to ensure that investors are able to undertake sufficient collaborative action to manage ESG risks and achieve sustainability goals.

## Policy recommendations

### Clarify that investors can consider collaboration in seeking to achieve their sustainability objectives

Addressing sustainability challenges through collaboration is widespread. However, guidance is needed to clarify that investors can consider collective action in seeking to achieve their objectives and that this can assist in discharging their duties even if their contribution and the portfolio benefit cannot be precisely measured. This is because, like political security, the benefits of sustainable systems as a whole are enjoyed by every person that relies on them. As an alternative, this could be in the form of a prima facie legal presumption in favour of cooperation unless there are solid reasons against it.

Example 1. **Clarifying expectations on investors to participate in collaborative engagement and make disclosure—**[**UK stewardship code**](https://www.frc.org.uk/library/standards-codes-policy/stewardship/uk-stewardship-code/)

Policy makers can use a stewardship regulation or policy to provide clear guidance on collaborative engagement and disclosure.

The UK Stewardship Code 2020 sets high stewardship standards for those investing on behalf of UK savers and pensioners. Principle 10 of the Code asks that ‘Signatories, where necessary, participate in collaborative engagement to influence issuers.’ As part of their disclosure, signatories should not only report on what collaborative engagement they have participated in and why but also the outcomes of the collaborative engagement. This requires signatories to reflect on the efficacy of the initiative and, where the desired outcome has not been achieved, what could be improved.

### Review rules that could inhibit investor collaboration aimed to tackle sustainability-related issues

Review competition law and rules on handling price-sensitive information, shareholder concertedness and collective action in relation to a legal entity, and rules on requisitioning shareholder votes to ensure that they do not unnecessarily restrict stewardship activity on sustainability factors. Where necessary, adjust to provide greater freedom, reflecting the risks or providing guidance to reassure investors that freedom already exists. For example:

* Regulators who welcome investor collaboration approaches could better reflect actual practices in regulatory frameworks and guidance, could consider formats similar to the ESMA White List which clarifies shareholder cooperation in takeover situations, and align with it where applicable.
* Regulators should provide clarity on which engagement-related activities are allowable and how these activities (and assorted escalation measures) can be differentiated from takeovers and purely financially motivated control-seeking bids.
* Competition regulation (and regulatory bodies) should more clearly accommodate the changes to business practice that are needed to urgently address climate, environmental, and social risks and issues. Particularly, safe harbour clauses could be introduced to specify that certain activities would be deemed allowable, provided their objectives are related to the advancement of or alignment with sustainability objectives and public policy goals.

Example 2. **Guidance on what investor collaboration is permissible**

**[UK CMA Green Agreements Guidance](https://www.gov.uk/government/publications/guidance-on-environmental-sustainability-agreements)** (2023)

The UK Competition and Markets Authority (CMA) published its ‘[Guidance](https://assets.publishing.service.gov.uk/media/6526b81b244f8e000d8e742c/Green_agreements_guidance_.pdf) on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements’ (CMA Guidance).

The CMA states that the guidance is intended to ‘ensure that competition law does not impede legitimate collaboration between businesses that is necessary for the promotion or protection of environmental sustainability.’ More specifically, the CMA Guidance sets out how the prohibition on anticompetitive agreements among businesses applies to environmental sustainability agreements among competitors.

**[European Commission Guidelines on the applicability of Article 101 of the Treaty on the Functioning of European Union to horizontal co-operation agreements](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0721(01)" \l ":~:text=Article%20101%20aims%20to%20ensure,undertakings%20and%20associations%20of%20undertakings.)** (2023)

In the Guidelines, the Commission provides guidance for investors to assess how compatible several categories of sustainability agreements are with Union competition rules while ensuring effective protection of competition. The Guidelines also provide concrete examples of how sustainability agreements can be designed to minimise the risk of restricting competition, so as to make it easier for undertakings to cooperate in ways that are economically desirable, thereby contributing, for example, to green transitions and promoting the resilience of the internal market. The guidelines will help the European Court of Justice, the European Commission and the national regulators interpret the prohibition on cartels.

Example 4. **Safe harbour**

[**UK CMA Green Agreements Guidance**](https://www.gov.uk/government/publications/guidance-on-environmental-sustainability-agreements) **(2023)**

The CMA Guidance sets out how exemptions are likely to be applied to environmentally sustainable agreements.

More broadly, the CMA Guidance also emphasized that by-object restrictions may nevertheless meet the exemption conditions and that parties to such agreements ‘should not automatically assume that they are prohibited.’

The Guidance sets out a more permissive approach to exemptions for climate change agreements by taking account of the benefits to all UK consumers, instead of only the consumers in the relevant market, when balancing the harm to competition against the benefits that result from the agreement.

[**European Commission Guidelines on the applicability of Article 101 of the Treaty on the Functioning of European Union to horizontal co-operation agreements**](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0721(01)#:~:text=Article%20101%20aims%20to%20ensure,undertakings%20and%20associations%20of%20undertakings.) **(2023)**

The EC will put in place a soft safe harbour for companies that collaborate to solve sustainability issues. Companies can enter into sustainability standardisation agreements (SSAs) even if such collaborations would push up prices. SSAs are agreements between competitors to adopt and comply with certain sustainability standards.

Example 3. **Establishing a favourable presumption**

[**ESMA White List on shareholder cooperation and acting in concert**](https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-1645_esma_clarifies_shareholder_cooperation_in_takeover_situations.pdf) **(2015)**

In November 2013, the European Securities and Markets Authority (ESMA) published a White List of activities on which shareholders can cooperate without the presumption of acting in concert. Even if the White List does not provide examples of specific issues that shareholders can collaborate on, it clarifies that *engaging in any of the activities below will not, in and of itself, lead to a conclusion that the shareholders are acting in concert:*

1. entering into discussions with each other about possible matters to be raised with the company’s board
2. making representations to the company’s board about company policies, practices or particular actions that the company might consider taking
3. other than in relation to the appointment of board members, exercising shareholders’ statutory rights
4. other than in relation to a resolution for the appointment of board members and insofar as such a resolution is provided for under national company law, agreeing to vote the same way on a particular resolution put to a general meeting.

Also, ESMA helpfully clarified in the same document that shareholder cooperation in activities not included in the White List would not result in an automatic assumption of acting in concert.

Example 6. **Leniency towards good faith practitioners**

Netherlands Authority for Consumers and Markets (ACM) – [**Guidelines regarding Sustainability Claims**](https://www.acm.nl/system/files/documents/guidelines-sustainability-claims_1.pdf)

With regard to sustainability agreements that have been published, and where these Guidelines have been followed in good faith, but later turn out not to be compatible with the Dutch Competition Act, adjustments to such agreements may be agreed on in consultation with ACM, or following an ACM intervention. In such cases, ACM will not impose any fines. This also applies to agreements that have been discussed with ACM well in advance, and for which ACM, at that point, did not identify any major risks.

Example 5. **Open door policy to further provide support for investors facing uncertainties**

[**UK CMA Green Agreements Guidance**](https://www.gov.uk/government/publications/guidance-on-environmental-sustainability-agreements) **(2023)**

The CMA is operating an open-door policy whereby businesses considering entering into an environmental sustainability agreement can approach the CMA for informal guidance on their proposed agreement if there is uncertainty on the application of this Guidance. This could be because businesses have questions or concerns that are not covered by this Guidance or in order to seek clarity or reassurance on how this Guidance will be applied in particular circumstances.

The CMA does not expect to take enforcement action in relation to an agreement that was discussed with the CMA in advance under the open-door policy and where the CMA did not raise concerns (or where any concerns that were raised by the CMA have been addressed by the parties). However, if the CMA were to conclude that further consideration of the agreement was necessary, the CMA would not issue fines against the parties that had implemented the agreement if it were to subsequently conclude that the agreement infringed the Chapter I prohibition of the Competition Act 1998.

* **Adopt a whole-of-government approach to better integrating sustainability concerns in the administration of acting in concert rules and competition law**

Competition law and acting in concert regulations should evolve and adapt to the new market reality to meet twenty-first century challenges, particularly system-level risks such as climate change. A whole-of-government approach is crucial to strike the right balance between enabling investors to pursue sustainability impacts and ensuring the concerted investor power is not abused to the detriment of fair competition and market integrity. Historically, competitor collaborations have been assessed using the lens of maximizing efficiency, rather than wider sustainability benefits. Competition or securities regulators need insights from other government departments, such as agencies that govern environmental protection, climate change, or human rights, to consider and recognize sustainability gains when assessing the benefits and harms of investor collaboration. They also need to develop new tools for measuring when and how investor collaboration can produce sustainability gains and collect more evidence to inform tailored decision making.[[25]](#footnote-26)

Example 7. **A whole-of-government approach to the administration of competition law**

US Department of Agriculture (USDA) – [**More and Better Choices for Farmers**](https://www.ams.usda.gov/about-ams/fair-competitive-seed): Promoting Fair Competition and Innovation in Seeds and Other Agricultural Inputs

In July 2021, President Biden issued an Executive Order on Promoting Competition in the American Economy. The order established a historic whole-of-government approach to competition policy, recognizing the sweeping problem of consolidation across industries in the United States. In consultation with the Patent and Trademark Office (USPTO), the Department of Justice Antitrust Division, and the Federal Trade Commission, USDA in the report discussed competition dynamics in the seed industry, detailing its cross-over effects on systems resiliency, sustainability, and environmental protection. To deliver on its recommendations, USDA and the U.S. Patent and Trademark Office (USPTO) will form a Working Group on IP & Competition in Seeds and Other Agricultural Inputs, in which USDA and USPTO, together with Department of Justice and the Federal Trade Commission, will work together to promote fair competition in the seed market.

# appendix: Policy frameworks and recent developments in key markets

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| --- | --- |
| Country | Policy framework and recent development |
| Australia | ASIC’s regulatory guidanceRG 128: Collective action by investors, aims to facilitate collaborative action while clarifying when investors can expect certain conduct to trigger takeover and substantial holding provisions under the Corporations Act. RG 128 notes that while in some instances it can be clear whether conduct falls within or outside the scope of the legal provisions, due to the nature of concepts like ‘relevant agreement’ and ‘associate’, there can be uncertainty about their application to a variety of conducts.  Australian industry associations appear to encourage some form of cooperation between Asset Owners and Investment Managers in relation to stewardship. |
| Canada | Collaborative engagements are permitted under Canadian law, but not required. There is currently no regulatory oversight of investor stewardship or investor collaboration activities. In the absence of regulatory expectation, the Canadian Coalition of Good Governance has published voluntary [Stewardship Principles](https://ccgg.ca/stewardship-principles-endorsers/) to articulate ownership responsibilities. Climate Engagement Canada (CEC), a voluntary, investor-led initiative, was developed to facilitate collaborative stewardship activities with high-emitting Canadian companies. |
| China | There is no law or regulation explicitly prohibiting or encouraging institutional investors from collaborating with others for stewardship activities. However, there may be material impediments or deterrents to cooperation of this sort, including:   * competition law * merger control * reporting requirements * insider and short-swing trading * mandatory tender offer   A public interest exemption is available under the competition law. Chinese competition law provides an exemption for collaboration arrangements that are intended to realize public interests such as energy efficiency and conservation, environment protection, and the provision of disaster relief and assistance, which may include joint efforts designed to achieve sustainability impact. Exempt arrangements must also allow consumers a fair share of the resulting benefits, and must not significantly restrict competition in the market. |
| Japan | The Principles for Responsible Institutional Investors, known as Japan’s Stewardship Code, has been instrumental in legitimising stewardship activities in the market. Japan’s Stewardship Code supports the use of collaborative methods, stating that ‘in addition to institutional investors engaging with investee companies independently, it would be beneficial for them to engage with investee companies in collaboration with other institutional investors (collaborative engagement) as necessary.’  In practice, however, some aspects of the Japanese legal framework may make investors cautious of collaborative action. For example, acting in concert rules under the Financial Instruments and Exchange Act (FIEA). The Financial Service Agency has addressed this issue by clarifying the rule. Nonetheless, the existing mode of practice still poses limitations, especially as investors pursue stronger stewardship actions to meet sustainability impact goals. The FSA has committed to reviewing the relevant rules and has begun this process in its Financial System Council, but has not provided clear updates yet on the outcomes of these discussions. |
| EU | Collaboration between investors designed to wield collective ‘shareholder’ influence over the ESG strategy of a company in which they are invested is likely to fall outside the scope of competition law, assuming no competitively sensitive information is shared between investors. Co-operation between investors beyond this is possible but needs to be structured in a way that complies with competition law.  In November 2013, the European Securities and Markets Authority (ESMA) published a White List of activities on which shareholders can cooperate without the presumption of acting in concert. It was also clarified that shareholder cooperation in activities not included in the White List would not result in an automatic assumption of acting in concert.  In June 2023, the EC issued guidelines ‘’on the competitive assessment of agreements between competitors that pursue sustainability objectives’’[[26]](#footnote-27). The guidelines cover climate change and wider ESG objectives such as human rights, child labour etc. The guideline helpfully clarified whether sustainability agreements will fall in or out of the scope of competition law. It also provides safe harbours for sustainability standardisations agreements (SSAs) that comply with the certain specified conditions. However, even if the SSA does not meet the safe harbour condition, participants can still defend collaboration on the basis that it does not negatively affect competition or that it leads to efficiency gains. |
| UK | The UK Competition and Markets Authority (CMA) in 2022 concluded that there isn’t sufficient evidence that the current competition and consumer law is an obstacle to sustainability initiatives and therefore there is no need for fundamental changes to the frameworks. However, the CMA does acknowledge that there would be benefits to providing clarity on how these frameworks are applied in a sustainability context.[[27]](#footnote-28)  The Sustainability Taskforce was subsequently launched, and recently published the [Green Agreements Guidance](https://www.gov.uk/government/news/cma-launches-green-agreements-guidance-to-help-businesses-co-operate-on-environmental-goals) which explains how competition law applies to environmental sustainability agreements between firms. The Guidance provides examples of environmental sustainability agreements that are unlikely to infringe UK antitrust laws and those that, while capable of restricting competition, may be permitted because of the benefits that they create. The CMA will also be operating an ‘open door policy’ to give informal guidance to businesses to understand how the Guidance would be applied to specific initiatives. It is important to note that the Guidance is limited in scope to environmental sustainability agreements.  The [UK Stewardship Code 2020](https://media.frc.org.uk/documents/The_UK_Stewardship_Code_2020.pdf) established a high, albeit voluntary, standard of stewardship practices among financial actors in the UK. The Code is supportive of collaborative engagement and Principle 10 requests that ‘Signatories, where necessary, participate in collaborative engagement to influence issuers’. |
| US | As a general principle, from a securities law perspective, the current US federal legal framework does not prevent shareholders from conducting engagement activities in a collaborative manner. However, shareholders must understand when and how coordinated efforts carry legal, regulatory or contractual implications.  The U.S. Securities and Exchange Commission (‘SEC’ or ‘the Commission’) has recently provided guidance to entities seeking to act in collaboration. This guidance is included as part of a [final rulemaking](https://www.sec.gov/files/rules/final/2023/33-11253.pdf) on beneficial ownership. The original proposal included changes to rules on collaboration, but the SEC did not adopt them in the final rulemaking.  Under the guidance in the ‘Modernization of Beneficial Ownership Reporting’ (October 2023) final rule, the Commission provides scenarios in the form of questions and answers on when a group can be considered ‘formed’ or not. Under US competition law, investor collaboration may be scrutinized if a group is formed, and therefore beneficial ownership is aggregated. This results in increased regulatory compliance, namely increased reporting obligations, but also subjects the group to possible investigations. |

1. Freshfields Bruckhaus Deringer, PRI, United Nations Environment Programme Finance Initiative, Generation Foundation (2021), [A Legal Framework for Impact: Sustainability impact in investor decision-making](file:///C:\Users\kelly.krauter\Downloads\unpri.org\download%3fac=13902), at 84. [↑](#footnote-ref-2)
2. Freshfields Bruckhaus Deringer, PRI, United Nations Environment Programme Finance Initiative, Generation Foundation (2021), [A Legal Framework for Impact: Sustainability impact in investor decision-making](file:///C:\Users\kelly.krauter\Downloads\unpri.org\download%3fac=13902) (p.154-p.192) [↑](#footnote-ref-3)
3. Hawley, J., Lukomnik, J. (2019), [Modernising modern portfolio theory](https://www.unpri.org/pri-blog/modernising-modern-portfolio-theory/4765.article) [↑](#footnote-ref-4)
4. PRI, CFA Institute and the Global Sustainable Investment Alliance, [Definitions for Responsible Investment Approaches](https://www.unpri.org/investment-tools/definitions-for-responsible-investment-approaches/11874.article). [↑](#footnote-ref-5)
5. The definition and scope of stewardship is evolving. For example, the UK Stewardship Code states that: ‘Stewardship is the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society.’ (Financial Reporting Council (UK) (2022), [UK Stewardship Code 2020 Application and Assessment](https://www.frc.org.uk/getattachment/Investors/UK-Stewardship-Code/UK-Stewardship-Code-%E2%80%93-How-to-apply/Stewardship-Code-Application-and-Assessment-March-2022.pdf), p. 4). This wider definition suggests that the scope of stewardship could include activities such as asset allocation, the integration of ESG considerations into investment decision-making and understanding beneficiary and client needs and interests. In Box 26, we offer some reflections on trends in stewardship codes and on how these might evolve over time. [↑](#footnote-ref-6)
6. PRI (2019), [*Active Ownership 2.0*](https://www.unpri.org/download?ac=9721)*;* PRI (2021), [*A Legal Framework for Impact*](https://www.unpri.org/policy/a-legal-framework-for-impact/4519.article)*.* [↑](#footnote-ref-7)
7. See [PRI-led engagement initiatives](https://www.unpri.org/investment-tools/stewardship/collaborative-engagements). Collaborative engagements can [catalyse changes](https://www.unpri.org/collaborative-engagements/investor-initiative-for-sustainable-forests-engagement-results/9595.article) at the portfolio level. Participants of collaborative engagement can also [engage with policymakers](https://www.unpri.org/collaborative-engagements/collaborative-sovereign-engagement-on-climate-change/10525.article) to support the government tackling systemic challenges. [↑](#footnote-ref-8)
8. Thamotheram, R. and Wildsmith, H., 2007. Increasing Long-Term Market Returns: realising the potential of collective pension fund action. Corporate Governance: An International Review, 15(3), pp. 438-454. [↑](#footnote-ref-9)
9. World Economic Forum (2022), [The Global Risks Report 2022](https://www3.weforum.org/docs/WEF_The_Global_Risks_Report_2022.pdf) [↑](#footnote-ref-10)
10. International Corporate Governance Network (June 2019), [Investor Framework For Addressing Systemic Risks](https://www.icgn.org/sites/default/files/2021-05/1.ICGN%20Viewpoint%20on%20Systemic%20Risk.pdf) [↑](#footnote-ref-11)
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13. Elinor Ostrom, World Bank Policy Research Working Paper 5905, [A Polycentric Approach for Coping with Climate Change](https://documents1.worldbank.org/curated/en/480171468315567893/pdf/WPS5095.pdf). [↑](#footnote-ref-14)
14. Amelia Miazad, *UC Davis Law Review, Vol 56 (2023),* [From Zero-Sum to Net-Zero Antitrust](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4459549), 2071. [↑](#footnote-ref-15)
15. PRI, [Getting Started with Collaborative Engagement.](https://www.unpri.org/download?ac=4156)  [↑](#footnote-ref-16)
16. Gond, J.P. and Piani, V., 2013. [Enabling Institutional Investors’ Collective Action: The Role of the Principles for Responsible investment](https://journals.sagepub.com/doi/abs/10.1177/0007650312460012#:~:text=This%20article%20analyzes%20the%20process,with%20corporations%20on%20environmental%2C%20social%2C). Business & Society, 52(1), pp. 64-104. [↑](#footnote-ref-17)
17. [Progress Update 2022: Five Years of Climate Action 100+](https://www.climateaction100.org/wp-content/uploads/2023/01/CA-100-Progress-Update-2022-FINAL-2.pdf) [↑](#footnote-ref-18)
18. For the full case study: <https://www.unpri.org/active-ownership-20/storebrand-asset-management-leading-the-investors-policy-dialogue-on-deforestation/9980.article> [↑](#footnote-ref-19)
19. For the full case study: <https://www.unpri.org/active-ownership-20/mn-collaborating-through-platform-living-wage-financials/8756.article> [↑](#footnote-ref-20)
20. Especially in relation to publicly traded investee enterprises, stewardship and public policy engagement are likely to be a particular focus for investors considering instrumental IFSI. [↑](#footnote-ref-21)
21. Freshfields Bruckhaus Deringer, PRI, United Nations Environment Programme Finance Initiative, Generation Foundation (2021), [A Legal Framework for Impact: Sustainability impact in investor decision-making](https://www.unpri.org/download?ac=13902), 15. [↑](#footnote-ref-22)
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23. A Legal Framework for Impact, page 90. [↑](#footnote-ref-24)
24. For example, in Australia see ASIC’s Regulatory Guide 128: Collective Action by Investors, 23 June 2015. In Japan, see section 2 of the ‘Clarification of Legal Issues Related to the Development of the Japan’s Stewardship Code’ (accessible via https://www.fsa.go.jp/en/ refer/councils/stewardship/20140226.pdf). In South Africa, see the approach to collaboration under CRISA. In the UK, see the approach to collaboration under the Stewardship Code 2020. [↑](#footnote-ref-25)
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26. [2023\_revised\_horizontal\_guidelines\_en\_0.pdf (europa.eu)](https://competition-policy.ec.europa.eu/system/files/2023-06/2023_revised_horizontal_guidelines_en_0.pdf) [↑](#footnote-ref-27)
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