



# Conference on Climate Change and Financial Risk

**Climate Change and Financial Law**

16-17 January 2020, University of Zurich

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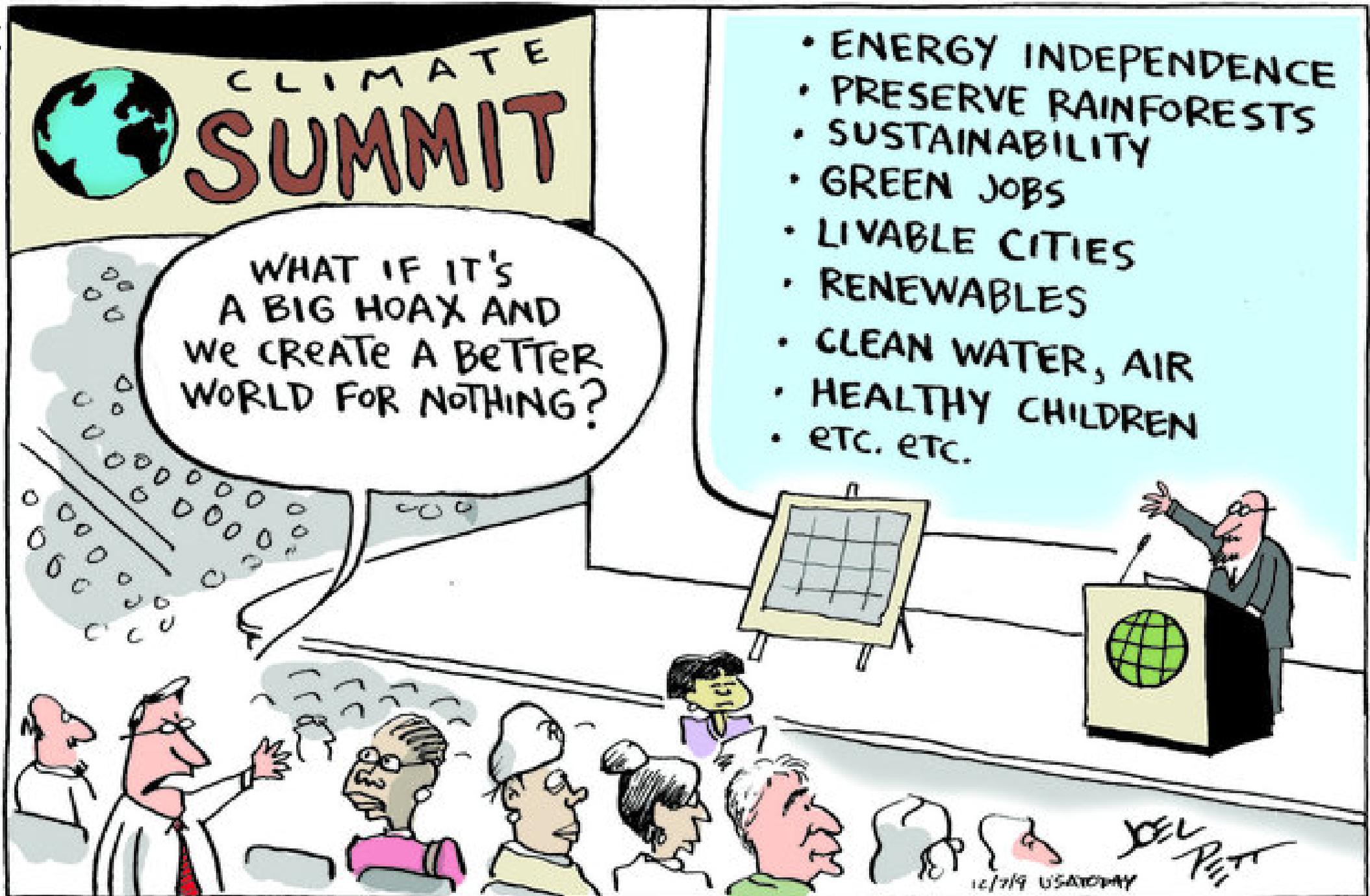
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Is it a social,  
ethical, moral,  
political  
issue?

Yes, of course  
it is.

But I am going  
to assume it  
isn't for this  
talk!





## Main areas of research

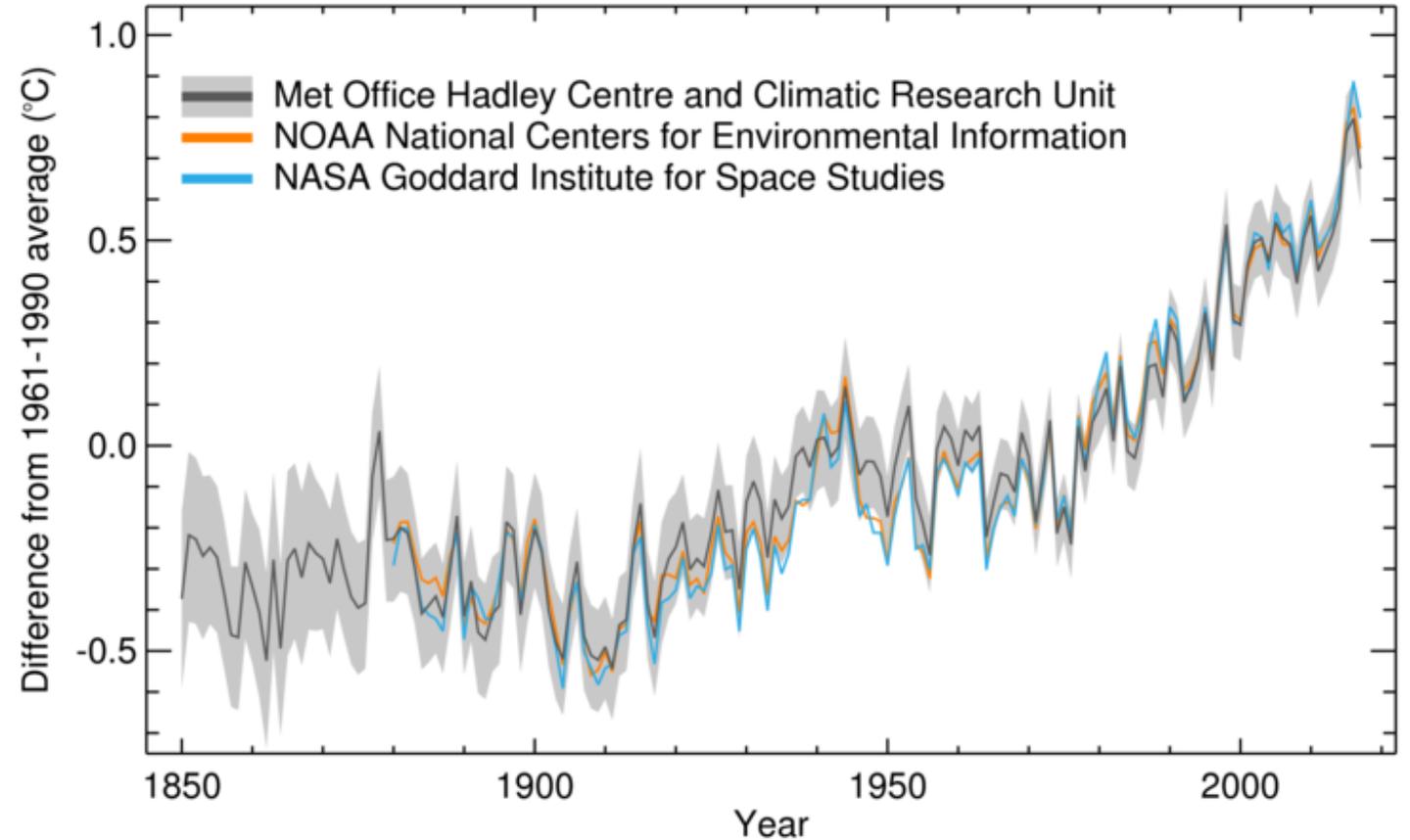
1. Climate change and the relevance to legal research
2. Investment regulation, fiduciary duties and transition to low carbon economy
3. Financial regulation and climate finance risks
4. EU legal developments
5. Research Network for Sustainable Finance – [www.rnsfin.com](http://www.rnsfin.com)



The planet is  
warming,  
over +1°  
already



Global average temperature anomaly  
(1850-2017)





***Positive proof of global warming.***

***18th  
Century***

***1900***

***1950***

***1970***

***1980***

***1990***

***2006***



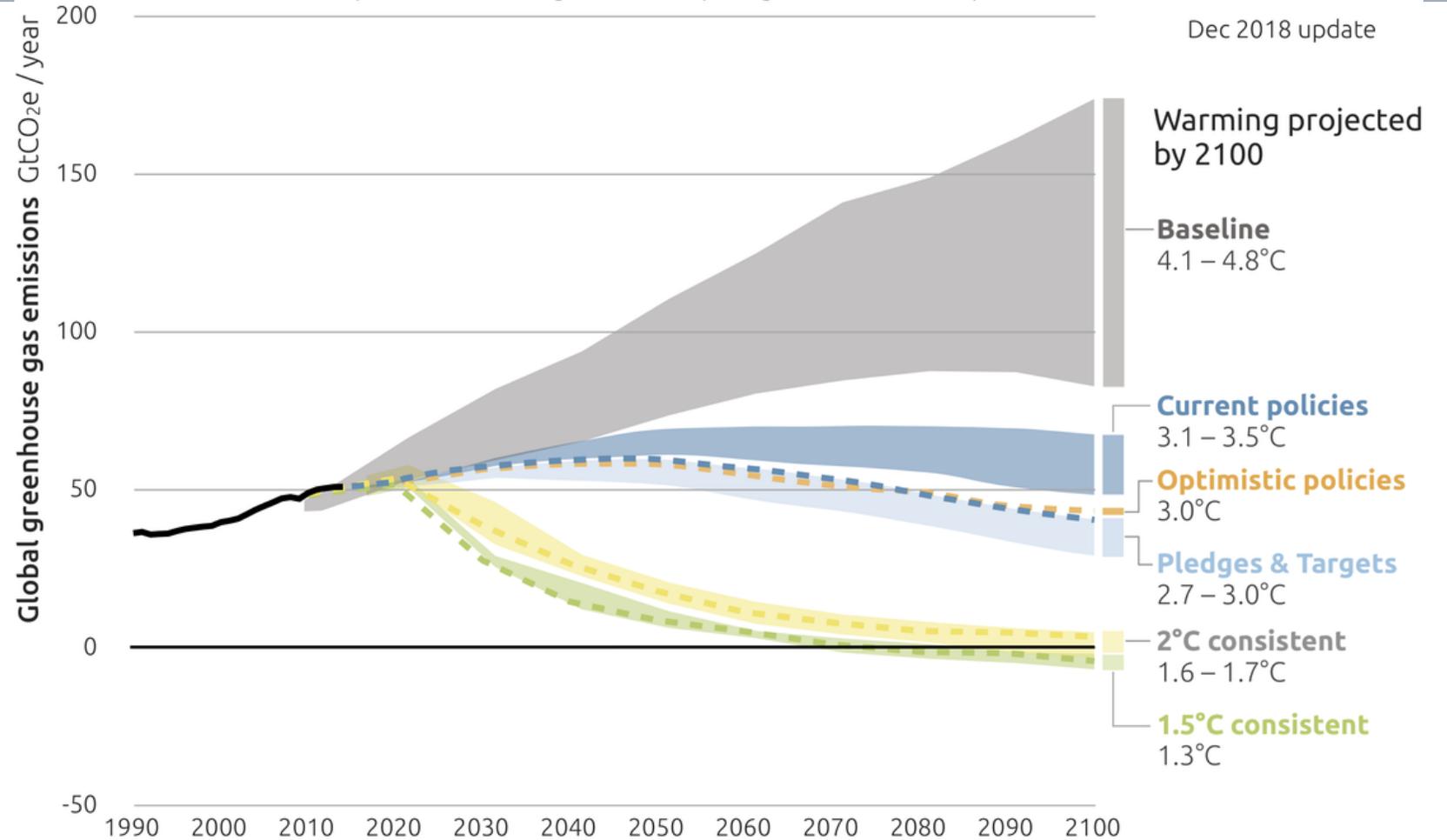
# The Physical Risks: Scenarios for global temperatures

## 2100 WARMING PROJECTIONS

Emissions and expected warming based on pledges and current policies



Dec 2018 update





# WHAT ARE THE RISKS?

Bank of England:

*“The impact of climate change on the insurance sector”* (PRA 2015)

*“The Bank of England’s response to climate change”* (QB2017)

*“Transition in Thinking: The impact of climate change on the UK banking sector”* ( PRA 2018)

- Physical
- Transition
- Legal (Liability)

<http://www.bankofengland.co.uk/prd/Documents/supervision/activities/pradefra0915.pdf>

<https://www.bankofengland.co.uk/prudential-regulation/publication/2018/transition-in-thinking-the-impact-of-climate-change-on-the-uk-banking-sector>

<http://www.bankofengland.co.uk/Pages/reader/index.aspx?pub=qb17q2article2&page=1>



# Transition risk: structural change

- Technical disruptions : when several technologies come together:
    - + Batteries,
    - + Solar & other renewables,
    - + Artificial Intelligence
    - + Economics and its distributive consequences
- = driverless, electric cars in next 3-5 years

See Tony Seba for inspiration: <https://youtu.be/2b3ttqYDwF0>



# Macroprudential policy issues (financial stability)

- Asymmetric information means that sudden crystallization of risks - physical, structural change & policy transition, legal – could cause:
  - Widespread, large changes in asset values – could impact banks and insurers systemically eg RWE, EON, Peabody energy.
  - Assets becoming uninsurable eg houses built on flood plains
  - Unexpected increase in insurers' liabilities eg super-storm Sandy in NY;
  - Wrong-way collateral risks for banks  
eg property destruction affecting credit of borrower and value of collateral.
  - Sovereign risks for countries that have concentrated climate-related assets  
eg agricultural producers, fossil fuel producers, tourist centres (water).
  - Need to ensure appropriate risk management by financial firms  
(Basel Accord Pillar II)



# Insurance

- Need to look at general, life and re-insurance sectors. And both sides of balance sheets.
- **Liability risks:**
  - GI: Property (24% of GI premiums) - climate-related payouts rising.
  - Global supply chains, 'officers and directors' liability insurance.
  - Life: mortality rates.
  - Reinsurers: changing correlations esp. weather patterns.
- **Asset risks:** especially to Life which needs long-dated assets such as property.  
Market and credit risks from carbon-intensive assets subject to new regulations or structural change in the economy.  
Reduced business from carbon-emitting sectors. Disclosure costs.
- **Opportunities:** GI can write more climate-related insurance (adaption).  
But some risks may become uninsurable?
- **Mitigation effects:** pricing model of GI; catastrophe risk modelling;  
1 in 200 yr event capital regime in Europe.



## EU law

### 1. Capital Requirements Directive V

- > risk-weightings for regulatory capital – green factors (carrots) and brown factors (penalties)
- > bank risk governance and business model analysis

### 2. Institutions for Occupational Retirement Provision (IORP II Directive)

- > Transformation in the interpretation of the prudent person standard: funds may take account of ESG factors (art. 19 IORP II).

However: proportionality criterion allows pension fund managers to conclude that the costs involved in considering ESG factors are disproportionate to the nature, scale and complexity of its activities.

- Limited scope of approach to ESG factors in IORP II: the integration of sustainability issues does not necessarily mean that the outcome of the decision-making process is sustainable!
- Consequence: Some institutional investors and asset managers still do not systematically consider sustainability factors and risks in the investment process



## EU Action Plan: Financing Sustainable Growth (2018)

### Paradigm Shift

#### **Action 7 : Clarifying institutional investor's and asset managers' duties**

The EU aims to clarify the fiduciary duty of asset managers and institutional investors to take sustainability into account in the investment process and enhance disclosure requirements.

#### **Legislative proposal by Commission, May 2018:**

##### Explicit requirements

- integrate ESG considerations in the investment decision-making process
- increase transparency on the integration of ESG factors and related risk exposure towards end-investors



## – Corporate law

- > Shareholder wealth maximization
- > Board duties to the company (and shareholder)
- > Corporate social responsibility – duties to stakeholders?

## - International Law

- > Stockholm Declaration on Human Environment 1972 – Principle 21 – states have a responsibility to ensure that ‘activities under their jurisdiction or control do not cause harm to areas outside their jurisdiction or control’ – cf Restatement (Third) US Foreign Relations Law, sec. 601 (1)(b)
- > Sustainable Development as a legal principle (Brundtland Report/WCED, 1987)
- > Rio Declaration on Environment and Development (1992), Principle 27 commits states to further develop ‘international law in the field of sustainable development’
- > UN Framework Convention on Climate Change & Convention on Biological Diversity (1992) – reflect customary international law (Sands, 1995)

Principle of Equitable Use – between states and between generations



## Publications of Zurich law academics on the law and regulation of sustainable finance

- Dr Karametaxas paper ‘The Role of Pension Funds in the Low-carbon Transition’ in the “Liber amicorum for Prof. Henry Peter (Geneva, Schulthess, 2019). Paper analyses the duties of those who manage pension funds, as those duties relate to investment decision-making, and how investors can overcome legal/regulatory hurdles in selecting and integrating ESG measures to enhance returns.
- Dr Anne M Schneuwly (2016), [‘Corporate Social Responsibility at the Interface of Business, Law and Politics: Transnational CSR Soft Law in the Global Context’](#)
- Professor Marco dell’Erba papers on the corporate and regulatory law aspects of digital finance
- Dr Xenia Karametaxas and Professor Alexander will publish a paper in the *Journal of Law and Society* (Sept 2020) – financial inclusion through digital finance

<https://www.rnsfin.com/papers-and-publications>



## Research Network for Sustainable Finance - RNSFIN

- Research project to analyse the implementation of EU taxonomies into banking regulation and investment regulation (with Luxembourg/UCD/Edinburgh)
- Funding from the Swiss Association of Social Sciences and Humanities to organize the first annual conference of the Research Network in December 2020, with peer-reviewed papers on the theme: 'Climate Change and Sustainable Financial Markets: A Global Regulatory Imperative' <https://www.rnsfin.com/conferences-and-lectures>
- International Working Group on Sustainable Finance (with Nijmegen, Genoa, Milan, Erasmus, Frankfurt, Oxford, Cambridge)
- See research projects, publications and policy initiatives – <https://www.rnsfin.com/papers-and-publications>

An aerial photograph of a dense, lush green forest. The trees are packed closely together, creating a vibrant, textured canopy of various shades of green. The lighting is bright, highlighting the individual needles and branches. In the center of the image, the words "THANK YOU" are written in a large, white, serif font, standing out prominently against the green background.

THANK YOU