DATA CENTRES AND SUSTAINABILITY – KEY US, EU AND UK INVESTMENT CONSIDERATIONS

1. **Surging demand for power-intensive digital infrastructure and artificial intelligence is driving private fund strategies and capital deployment into data centres across the US and Europe and the UK**. When assessing investment opportunities and hold periods, and negotiating contracts and pricing, sustainability-related regulatory requirements must be considered. Any assessment should focus, for example, on data centre energy consumption, and the consequential increase in emissions of greenhouse gases (GHGs) and other pollutants against applicable legal frameworks and commitments regarding limiting such emissions and carbon footprint. Failing to do so can create material risk for investors, and expose them (and other stakeholders in the data centre supply chain) to potential regulatory enforcement, litigation, activist and/or reputational harm.

2. **Bespoke due diligence will be required in the context of M&A transactions, to address both conventional and novel environmental and broader sustainability risks impacting data centres**. In addition to climate change and water usage, potential environmental considerations relevant to data centres relate to battery use and management, water consumption and discharges, fuel storage, electrical safety, air quality, industrial hygiene, emergency response, hazardous materials (including the use and management of per- and polyfluoroalkyl substances (PFAs) and fluorinated gases (F-gases), and impacts to soil and groundwater. Communication and reporting around these considerations, both in mandated reports (including under chemical and hazard reporting laws), and in voluntary reporting, should also be assessed to ensure that any targets or claims made can be fully substantiated to mitigate greenwashing risk. These risks should also be addressed in lease agreements, data sharing agreements and disclosure (or non-disclosure) agreements, including among developers, landowners, co-locators, and customers.

3. **The US federal government is seeking to promote the buildout of data centres and satisfy the energy demands of artificial intelligence**. This includes efforts to streamline the environmental permitting process associated with data centres and energy projects. For example, the National Environmental Policy Act (NEPA), a federal law that plays a central role in energy, infrastructure and other projects, continues to undergo changes due to a series of developments from all three branches of the federal government. In 2023, Congress passed the first substantive amendments to NEPA since the law was originally enacted in 1970. In January 2025, the White House Council on Environmental Quality (CEQ) formally rescinded its NEPA regulations. As a result, individual federal government agencies are now responsible for promulgating their own NEPA policies and procedures, and most agencies have pivoted to non-binding guidance rather than codified regulations. Additionally, the U.S. Supreme Court issued an opinion in May 2025 calling for a course correction with regard to how courts adjudicate NEPA suits, and emphasized that NEPA is purely a procedural statute that does not dictate substantive agency determinations. Despite these changes, the federal government is working to further streamline the environmental permitting process for energy, infrastructure and other projects. Congress is continuing to discuss additional legislation to streamline the environmental permitting process for data centres and energy projects. The federal Environmental Protection Agency (EPA) released a revised interpretation of regulatory requirements for Clean Air Act construction permitting in September 2025 that allows for idled facilities like power plants to be brought back online without undergoing the type of extensive review of air emissions that EPA had previously required. EPA indicated that this change was needed to speed construction of both new data centres and power plants that supply data centres with electricity.

4. **EU regulations are evolving to promote the improvement of data centre sustainability and energy efficiency**. In March 2024, pursuant to the EU Energy Efficiency Directive (EED), the European Commission published a new delegated regulation for establishing an EU-wide scheme to rate the sustainability of EU data centres. It also requires data centre operators to report energy performance KPIs to a specific European database on an annual basis. Certain

EU Member States have "gold-plated" the EED's reporting obligations by requiring data centre operators to publicly disclose these sustainability KPIs (not just submit to the secure European database), which can give rise to operators' concerns around disclosing commercially sensitive metrics. Other relevant regulations and standards relate to data centre classification under the EU Taxonomy Regulation and energy reporting under the EU Artificial Intelligence Act and the Ecodesign Regulation (in this context, for the energy consumption and operating temperature of servers and data storage products), as well as the revised Energy Performance of Buildings Directive 2024 (EPBD), which is seeking to decarbonise the EU new and existing building stock by 2050. The EU Code of Conduct on Data Centre Energy Efficiency (see here for 2025 Best Practice Guidelines) is a voluntary initiative aimed at reducing energy consumption in data centers in a cost-effective manner. Although there is no legal requirement for European based data centers to be Code signatories, or to comply with the Code, market leaders have signed up to it. Investors may want to encourage data centres in the EU to comply with it because to do so would be a significant step towards meeting the criteria of different EU ESG laws.

5. **Horizon scanning across relevant jurisdictions for forthcoming legislative and policy developments is also important, to ensure that both fund managers and investors have visibility of future requirements which could impact compliance costs and operations and increase risk**. For example, in 2026, the EU is expected to publish a new strategic roadmap for digitalisation and artificial intelligence in the energy sector and a new Data Centre Energy Efficiency Package, which will aim to streamline the EED, the EPBD and Ecodesign Regulation, noted above. We also expect to see the Commission's release of a new "Environmental Omnibus" following a call for evidence in summer 2025, which will aim to "reduce administrative burdens stemming from environmental legislation in the areas of circular economy, industrial emissions and waste management". More broadly, investors should ensure that EU-based data centre owners and operators are strategically positioning themselves to be able to adapt proactively not reactively, bearing in mind their expected obligations under other European Green Deal regulations. These include the laws impacted by the various existing or forthcoming "Omnibus" packages (such as the EU Corporate Sustainability Reporting Directive (CSRD) and the EU Corporate Sustainability Due Diligence Directive (CSDDD)), and the Industrial Emissions Directive), but also supply chain-related laws such as the EU Forced Labour Regulation, the EU Deforestation Regulation and the EU Batteries Regulation. Investors and other stakeholders might consider implementing a system to map existing obligations, prepare for future requirements, as well as monitor relevant regulatory or court actions.

6. **In the UK, specific legal regimes or policies for data centers are relatively rare, however, the regulatory landscape is evolving**. An example of relevant sustainability-related regulation which does not target, but indirectly impacts data centres, includes the Energy Saving Opportunities Scheme Regulations 2014 (so called "ESOS") under which in-scope UK organisations, must conduct comprehensive energy audits every four years to assess energy consumption and identify energy-saving opportunities. Notably, in September 2024, data centres became designated as UK Critical National Infrastructure (CNI) (see press release) – the first addition to the UK's CNI list since 2015. While the government has not yet announced any definite regulatory plans or changes, the press release notes that the CNI designation will have implications for "*physical data centres and the cloud operators that use them to supply ordinary services like iCloud on your iPhone, including companies such as Microsoft, Amazon and Google.*" The CNI designation will likely require operators to implement more rigorous security measures, and to report incidents with greater speed and detail. The UK is also developing a framework for "heat network zones" that may require some data centres to supply waste heat to local heat networks. The precise requirements of this regime for data centres are not yet clear, however, the Energy Act 2023 establishes the basic framework for the heat network regime across the UK. The UK government is likely to enact secondary legislation in 2025/2026 that will clarify the impact of this regime on data centres. Meanwhile, investors should be aware that data centres located within these zones may be incentivised or mandated to supply waste heat in the future.

7. **Beyond transactional diligence and regulatory horizon scanning, practical risk mitigation options might be relevant to sustainability issues likely to arise in data centre transactions**: for example, using renewable energy and reducing GHG emissions, offsetting emissions, improving energy, waste heat and water efficiency, implementing circular economy principles and factoring biodiversity or nature-based considerations. Data centres also face significant risks from climate change, including extreme weather events, power disruptions, and (as outlined in this Briefing) regulatory changes. Adopting sustainable practices not only reduces these risks but also helps create a competitive advantage in the market, including in public procurement. The Weil team can assist companies in devising corporate reporting and due diligence strategies and value creation frameworks for managing: (i) energy and environmental-related risks and opportunities in the context of data centre transactions; (ii) social and environment, health and safety risks, such as those relating to the impact of a data centre on employees, local communities and end-users; and (iii) governance risks relating to companies' frameworks for managing ESG issues.

For More Information

For further information on considerations involved in data centre investments, or any of the regulations referred to above, please contact the authors.

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