ESG LITIGATION PROJECT 2026



GLOBAL TRENDS, REGULATORY FRAMEWORKS, AND PRACTITIONER PERSPECTIVES

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EXECUTIVE SUMMARY

This report, developed by the IE Law Ahead Center for the Legal Profession, provides a dynamic assessment and analysis of the current status of ESG litigation across jurisdictions and industries, taking into consideration relevant trends, updated regulatory frameworks, and practical experience reported by stakeholder groups. This report aims to identify the most effective mechanisms for reducing ESG litigation risk. It draws on global litigation data across ESG pillars and relevant legislative frameworks, as well as practical experience obtained through a proprietary questionnaire completed by member listed companies and law firms.

The empirical findings reveal that the primary triggers for ESG disputes are deficient or misleading ESG disclosures, human rights or labor violations by businesses, and governance inadequacies that limit transparency and demonstrate weak organizational structures. Furthermore, practitioners report a high degree of legal uncertainty stemming from shifting regulatory regimes and the emergence of new paradigms. The report concludes by suggesting the adoption of thorough risk mitigation strategies and mechanisms to adapt to the changing ESG litigation landscape. It also argues that a balance can and should be struck between advancing ESG objectives through proper corporate accountability and oversight while maintaining regulatory certainty and market efficiency. ■

TABLE OF CONTENTS

- **Executive Summary** 3

- **Table of contents** 5

1 **Introduction** 7

2 **Global Trends in the Evolving ESG Litigation Landscape: Procedural Milestones and Regulatory Anchors in 2026** 10

2.1. Trends in Terminology and Ideological Concepts 12
2.2. Trends in Regulatory Responses 13
2.3. Trends in Artificial Intelligence (AI) and its Development with Respect to ESG 14
2.4. Relevant and Actual Cases 16

3 **Regulatory Framework: from CSR to ESG** 22

3.1. ESG Framework in the EU 23

4 **ESG Litigation Practices in the USA and the Trump Package** 30

5 **Cross-Jurisdictional ESG Regulation across Asia and Emerging Economies** 35

5.1. Asia 36
5.2. Emerging Economies 38

6 **ESG Litigation across Economic Sectors** 40

6.1. Expansion of Greenwashing and Carbon Offset Litigation 41
6.2. ESG Litigation in the Financial Sector 43
6.3. Risk Matrix: ESG Litigation 46

7 **ESG Litigation Funding and Disputes** 50

8 **Practitioner Perspectives: Insights from Law Firms and Listed Companies** 53

8.1. Law Firm Questionnaire 54
8.2. Questionnaire Results and Analysis 55
8.3. Listed Companies Questionnaire 62
8.4. Questionnaire Results and Analysis 62
8.5. Survey Insights 64

9 **Expansion and Transformation of ESG Litigation** 66

9.1. Spread of ESG Litigation Following the Emergence of One Suit (Domino Effect of ESG Claims) 68

10 **ESG Litigation as an Enterprise Risk** 70

11 **Conclusion** 73

- **Bibliography** 76

1 INTRODUCTION

Over the past decade, ESG litigation has become an important mechanism for compelling entities to take action, from implementing reporting standards and complying with norms, to adopting more responsible practices overall. The field continues to diversify in terms of legal theories, actors, and strategic approaches. Strategic litigation, where claimants seek to win an individual case while simultaneously influencing public debate, remains a powerful tool and constitutes the backbone of many collective actions against companies today. This policy report utilizes recent legislative and judicial developments to illustrate the shared trends and stakeholder interests in integrating ESG principles. It examines the history and evolution of ESG in the regulatory world, from the previous model of CSR to the current dynamic three-pillar model widely referenced today, especially in the context of the European Union's (hereinafter EU) robust regulatory framework. The newfound recognition of the need to balance private sector interests with ESG objectives is also addressed through the discussion of the EU Omnibus Package and what its adoption suggests for future productivity and economic flexibility.

The report adopts an international perspective in which existing practices are examined through the prism of comparative law. It highlights how, despite the varied regulatory landscape across the areas examined, one commonality persists: the drive to adapt and shape existing internal frameworks and guidelines of companies and financial entities in response to the increasing prioritization of ESG objectives. It examines how the standards for reporting compliance with these interests have become increasingly scrutinous and leave less margin for discernment, contrasted with the roles played by hard and soft law, respectively. The role of ESG litigation across economic sectors is also assessed, along with how different industries and their practices are impacted by the identified trends. Specifically, the position of financial entities and banks is discussed, alongside an evaluation of the potential risks posed to these entities by growing trends in ESG litigation and the corresponding mitigation measures.

The report follows by discussing the results of the questionnaires administered to various partner law firms and listed companies at the IE Law Ahead Center, together with their practical experience of engaging in ESG litigation. The results have been synthesized and reveal several perceptions among private-sector actors of how reforms and regulatory changes affect their current internal ESG policies, and how the increase in ESG-related disputes in recent years has signaled a shift in the landscape. In addition, practitioners provided crucial insights into appropriate risk management strategies integrated into internal policies for firm adaptation to litigation risk.

The uncertainty expressed by respondents reveals several key findings regarding the relevance and role of ESG litigation for companies today: its deployment has become more frequent than previously observed, and this consolidates its position as an increasingly desired tool for claimants and affected groups to seek accountability.

Regulatory bodies have proposed reform as a solution to simplify ESG compliance and ease the burden of reporting and disclosure requirements. However, these reforms have been received with varying degrees of optimism in our research and in the responses reported in the questionnaires. Given these conclusions, the report includes several tools and suggestions for private entities to reduce their exposure to ESG litigation within their respective sectors, while adapting to the constantly evolving nature of these disputes. The results highlighted in this report show that the growth of ESG litigation poses a risk to businesses and financial entities that do not adapt their reporting and accountability practices to reflect their actual position. However, prioritizing transparency, preparing thorough and reflective risk mitigation strategies, and ensuring strong internal governance all contribute positively to the continuity and stability of entities and businesses in the face of uncertainty caused by a marked shift in regulatory and litigation practices.

We would like to express our sincere gratitude to Gergana Rosenova Papazova, Helena Barguil Ribeiro, and Cansu Gürcan for their invaluable contribution to this university research project on litigation. Their dedication, intellectual curiosity, analytical skills, and commitment to academic excellence have played an important role in the development of this work. Through their rigor, initiative, and careful approach to the legal issues under examination, they have demonstrated not only a strong aptitude for legal research but also an admirable sense of responsibility and a genuine enthusiasm for scholarly inquiry. Their contributions have enriched the project and highlighted the importance of nurturing young talent in the pursuit of rigorous legal scholarship and the advancement of litigation practice. We extend to all three our deepest appreciation for their outstanding work, their engagement, and the academic and personal qualities they have brought to this project. ■

2

GLOBAL TRENDS IN THE EVOLVING ESG LITIGATION LANDSCAPE: PROCEDURAL MILESTONES AND REGULATORY ANCHORS IN 2026

ESG litigation has transitioned to an advanced phase of institutional maturity. Over the preceding decade, public interest litigation primarily sought macro-level adjustments to state emissions pathways. In 2026, however, significant developments have been observed in several key dimensions: emerging trends in ESG-related terminology, regulatory responses to company behavior or noncompliance, and case filings and outcomes. To perform an adequate analysis of the ESG litigation landscape, these aspects must be taken as its current foundations. The marked shift from slights in previous years in favor of plaintiffs and claimants demonstrates that it is no longer sufficient for private entities to simply publish sustainability reports under the guise of being transparent and dedicated to social responsibility. Accountability is now increasingly being demanded through the courts, with claimants seeking jurisprudential redress for reported ESG-related grievances. ESG litigation has, as such, been used as a tool by claimants, expanding from broad claims based on carbon emissions or human rights principles to encompass claims involving fiduciary mandates and compliance.

ESG law roots itself in both soft and hard law sources. Companies tend to follow ESG reporting frameworks and soft law instruments such as materiality assessments, key performance indicators in ESG topics (KPIs) and governance anchoring.[1] International frameworks include the UN Global Compact, the Principles for Responsible Investment (PRI), and other existing ISO standards.[2] However, the expectations imposed onto companies by these frameworks are largely heterogeneous and vary between them. In the realm of hard law instruments, which can be largely referenced as Directives and Regulations of the European Commission, such as Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on corporate sustainability reporting (CSRD), and Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (CSDDD).[3] As such, companies implement internal ESG objectives differently, but are subject to common regulatory requirements, including the codified targets they must meet and the ESG standards they must comply with.

1 Corinna Irina Ketterling, "From Voluntary CSR to Binding ESG Frameworks: A Legal Perspective on Sustainability Disclosure Standards," *Future Business Journal* (2026): 9. Link.

2 Ketterling, "From Voluntary CSR to Binding ESG Frameworks," 9.

3 Ketterling, "From Voluntary CSR to Binding ESG Frameworks," 9.

2.1. Trends in Terminology and Ideological Concepts

The term greenwashing is hardly something novel in the discussions on ESG enforcement. In fact, Directive 2024/825 of the European Parliament and of the Council on amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information (hereinafter "EU Directive on Empowering Consumers for the Green Transition") combines climate transparency with consumer protection. In stating that "it is essential that consumers can make informed purchasing decisions" to "contribute to sustainable consumption patterns," there is a fundamental synonymity between adequate reporting and the ethics behind misleading buyers.[4] The EU Directive on Empowering Consumers for the Green Transition develops the notion of greenwashing as environmental claims that mislead consumers about the true extent of the sustainability of products or services provided.[5]

Greenhushing, on the other hand, is the practice of outwardly not disclosing environmental activities or footprints as a means of hiding company practices for fear of reproach or accusation of supposed greenwashing. Companies engage in this behavior as a means of avoiding critique and scrutiny from external sources, investors, or relevant stakeholders.[6] The difference between the two lies in what is disclosed, if anything at all: with greenwashing, companies present various claims about their sustainability practices that are inflated or often false to garner a better reputation. Greenhushing is abstaining from publicizing any environmental sustainability efforts or work implemented by the company as a means of limiting the risk of climate disputes. In certain cases, greenhushing can actually stem from the effects of greenwashing concerns, underscoring how a fragmented regulatory framework can lead to adverse effects for companies when gray areas exist.

This omission is a shift away from previous practices of overinflating efforts and favorably utilizing existing data; it shows an incentive to directly underreport ESG reforms made in the last years and forfeit transparency practices. Indeed, a survey conducted by the climate consultancy group South Pole in 2022 indicated that out of 1,200 companies investigated across 12 countries, 25% of respondents reported being unwilling to publicly disclose their science-backed net zero emissions targets. Despite this resistance, the same group indicated that their targets had increased annually to 72%, showing engagement with the topic.[7] This concern is not unfounded: following COP26, there was a surge in allegations that company targets were misleading or unsupported, and a steady stream of greenwashing lawsuits deterred entities even further, alongside a growing ESG backlash.[8]

Finally, bluewashing mirrors the concept of greenwashing, but centers on making misleading claims about corporate social responsibility (CSR) practices, commitments to human rights, or social targets and ambitions such as those set by the United Nations (hence the name, which derives from the colors of the UN Flag).[9] As such, companies make misleading statements about the ethics of their supply chains or the extent to which UN Sustainable Development Goals are implemented as a means of improving their corporate image.[10] This practice is closely related to the drivers behind greenwashing and the effects of such behavior in undermining ESG disclosures and increasing exposure to litigation.

The concept of forum shopping now being applied within the context of ESG litigation is another trend.

4 European Parliament and Council of the European Union, "Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 Amending Directives 2005/29/EC and 2011/83/EU as Regards Empowering Consumers for the Green Transition Through Better Protection Against Unfair Practices and Through Better Information," *Official Journal of the European Union*, March 6, 2024, link, recital 1.

5 European Parliament, Directive (EU) 2024/825, recital 1.

6 Rob Fisher, Maura Hodge, and Bridget Beals, "Greenwashing, Greenhushing and Greenwishing: Don't Fall Victim to These ESG Reporting Traps," KPMG, 2023, posted on ESG Today, link.

7 Madeleine Speed, "'Green Hushing' on the Rise as Companies Keep Climate Plans from Scrutiny," *Financial Times*, October 18, 2022, link.

8 Speed, "'Green Hushing' on the Rise."

9 Samuel Pryde and Justine Nolan, "Explainer: What Is Greenwashing and Bluewashing, and Why Should We Care about It?," Australian Human Rights Institute, UNSW Sydney, 2023, link.

10 Pryde and Nolan, "Explainer: What Is Greenwashing and Bluewashing."

Forum shopping occurs when plaintiffs seek out the most favorable jurisdiction or court to file a lawsuit to give them the greatest advantage.[11] In this scenario, there must be multiple possible jurisdictions in which a case can be initiated on the same grounds, and the options in terms of its chances of success and the economic cost of filing it must vary enough to create more beneficial options.[12] Accordingly, the objective of forum shopping does not pertain to the exploitation of favorable legislation, but rather to the selection of courts themselves as a means of advancing litigation. Several concerns have been raised about forum shopping and its outcomes, including the undermining of consistency in decision-making, whereby similar cases mirror each other's outcomes, inefficiency and the potential for courts to skew rulings in favor of domestic plaintiffs.[13] The measures which have been taken by legal systems to counter the risk of forum shopping vary from the doctrine of *forum non conveniens* (the dismissal of cases in favor of more appropriate jurisdictions) and higher thresholds to prevent opportunistic claims to international treaties such as Regulation (EU) No 1215/2012 of the European Parliament and Council on forum shopping in cross-border disputes.[14]

Similarly, the concept of a litigation or enforcement gap is also relevant to the discussion. This refers to a disparity between the stated legislative objectives and protections compared to the enforcement of these principles by regulatory bodies, hence creating a rise in litigation as a means of imposing accountability.[15]

2.2. Trends in Regulatory Responses

In addition to the former, the growing prioritization of new concepts and terminology which have taken shape in the ESG regulatory landscape has subsequently received support through executive enforcement. Notably, the UK's Advertising Standards Authority (ASA) issued multiple bans in February 2026 pertaining to misleading consumer advertising. As the main regulatory advertising body in the jurisdiction, the organization upheld two significant rulings: those pertaining to allegations raised against Kit & Kin, and The Cheeky Panda Ltd., respectively. In the case of Kit and Kin, Procter & Gamble UK challenged several of the claims stated on the website of the children´s products manufacturer, specifically those pertaining to the use of terms "better for our world" and "protecting acres of rainforest" together with the claim that products were "sustainable."[16] ASA stated that, since the advertisement had not elaborated on the context or basis of the environmental claims being made by the entity, it contained absolute claims about the environmental benefits of the products and omitted evidence that there would be no ecological harm.[17]

Similarly, in the decision on The Cheeky Panda Ltd, Procter and Gamble UK raised concerns about whether there was greenwashing not only pertaining to the effects of the products, but also to their material composition.[18] The respondent represented that the product in question was currently being delisted, with references to biodegradability being removed, and that claims promising environmental protection were in reference to a specific element of the good rather than its entirety.[19] ASA upheld that the representations made by the company were not only misleading and broad sweeping, but also made comparisons with normal wipes, indicating that said products decomposed in a much shorter timeframe.[20]

Both cases highlight a crackdown on sweeping statements made by companies, and not only out of interest to maintain ESG interests but also as a symbiosis between environmental protection regulations and consumer protection law. This shows how misleading climate claims, along with

11 International Bar Association, "Forum Shopping: The Italian Experience," International Bar Association. April 4th, 2025. Link.
12 International Bar Association, "Forum Shopping: The Italian Experience."
13 International Bar Association, "Forum Shopping: The Italian Experience."
14 International Bar Association, "Forum Shopping: The Italian Experience."
15 Filippo Lancieri, "Narrowing Data Protection's Enforcement Gap," *Maine Law Review* 74, no. 1 (2022): 15.
16 Advertising Standards Authority, "ASA Ruling on Kit & Kin Ltd," February 4, 2026, link.
17 Advertising Standards Authority, "ASA Ruling on Kit & Kin Ltd."
18 Advertising Standards Authority, "ASA Ruling on The Cheeky Panda Ltd," February 4, 2026, link.
19 Advertising Standards Authority, "ASA Ruling on The Cheeky Panda Ltd."
20 Advertising Standards Authority, "ASA Ruling on Kit & Kin Ltd."

the importance of transparency for consumers, are addressed by regulatory bodies in the novel ESG litigation landscape.

2.3. Trends in Artificial Intelligence (AI) and its Development with Respect to ESG

Any discussion of ESG-related topics today is incomplete without considering the role of AI. As sustainability reports constitute an important component of corporate reputation and investor confidence, companies are focusing more on the accuracy and timeliness of this reporting. In this sense, AI offers a transformative approach to achieving corporate sustainability goals, adapting to the new decade's needs.[21] Before, adhering to ESG standards was mostly voluntary, however, many countries now require obligatory sustainability disclosures. From tracking emissions and energy use to monitoring supply chains, companies require additional resources, which can be AI-driven tools.[22] The latter can, in this context, automate data collection, validate disclosures, enhance transparency in the supply chain and predict climate risks.[23] AI can play an important role in reducing the environmental impact of organizations through machine-learning algorithms that are deployed to optimize energy consumption and waste.[24] It also contributes to transparency and traceability in supply chains, while making human rights issues such as child labor more visible.[25] From a governance perspective, it enhances corporate governance practices by automating compliance monitoring and detecting fraud and unethical behavior.[26] Overall, AI helps organizations comply with ESG standards across many areas and topics.

However, the use of AI in ESG practices comes with risks such as algorithmic bias, lack of transparency, data privacy, greenwashing, and bluewashing.[27] AI systems can develop biased outcomes based on the data they are trained to work with, and this can have a negative impact on decision-making processes and lead to unfair treatment of certain groups and communities. In this context, it is difficult to understand how these systems reach their conclusions due to a lack of transparency. Moreover, AI relies on data, sometimes putting personal and sensitive information at risk. Companies should therefore ensure appropriate safeguards to protect individuals' privacy.[28]

Lastly, there is a risk of companies using AI for ESG practices as a form of greenwashing or bluewashing. Greenwashing is explained above as companies making unsubstantiated or misleading claims about their products, services, or practices to appear more environmentally sustainable.[29] Bluewashing is similar to greenwashing and encompasses misleading claims about the human rights practices of organizations.[30] Therefore, the adoption of AI-driven systems in ESG-related topics should be carefully considered.

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (hereinafter the "AI Act") guides

21 Feyisayo Michael Ogunyemi, "AI-Powered Carbon Accounting: Transforming ESG Reporting Standards for a Sustainable Global Economy," April 2023, ResearchGate, link.

22 Ibtissam Zejjari and Issam Benhayoun, "The Use of Artificial Intelligence to Advance Sustainable Supply Chain: Retrospective and Future Avenues Explored through Bibliometric Analysis," *Discover Sustainability* 5, no. 174 (2024).

23 Mansi Wang, Xinxin Yu, Shuran Feng, and Chaohui Xu, "The Application of Artificial Intelligence in Corporate Climate Risk: Information Disclosure, Information Advantage, and Information Prediction," *Journal of Cleaner Production* 534 (2025): 147040.

24 Velibor Božić, "Environmental, Social, and Governance (ESG) & Artificial Intelligence (AI)" (preprint, ResearchGate, May 2025), link.

25 Imad Antoine Ibrahim, Esmat Zaidan, Jon Truby, and Thomas Hoppe, "The AI Act and Its Green Blind Spots: Hidden Environmental Risks in the AI Lifecycle," *Technology in Society* 86 (2026): 103284.

26 Velibor Božić, "Environmental, Social, and Governance (ESG) & Artificial Intelligence (AI)."

27 Božić, "Environmental, Social, and Governance (ESG) & Artificial Intelligence (AI)."

28 Božić, "Environmental, Social, and Governance (ESG) & Artificial Intelligence (AI)."

29 J. MacLennan and W. Catelle, "The Revision of EU Greenwashing Laws: A New Framework of Analysis," *Business and Human Rights Journal* 20, no. 2 (2025): 3.

30 Alexander V. Laskin, Vilma Luoma-aho, and Alina Artis, "Greenwashing, Bluewashing, Pinkwashing, and 50 Shades of Washings in Strategic Financial Communication," *International Journal of Strategic Communication* 20, no. 2 (2026): 160.

companies in their use of AI for their business practices. Even though the text does not clarify AI deployment in relation to ESG activities, it classifies them according to their risk level which includes unacceptable risk, high risk, limited risk and minimal risk.[31] The risk levels are used to better address regulatory concerns. A deployed AI tool will generally fall into the high-risk, limited-risk or minimal-risk category, as unacceptable risk covers prohibited systems. The most frequently used AI models for ESG are categorized as limited-risk or minimal-risk AI systems, such as general purpose AI and basic AI chatbots that do not constitute high risk to users.[32] However, there are some AI tools that could be classified as high-risk AI systems as laid out in Article 6 of the AI Act,[33] as some of these systems are used during CSRD reporting, which heavily influences reporting and related processes. Therefore, a distinction should be made between the different types of AI used during ESG practices and reporting.

Currently, there are not many court cases related to the use of AI in ESG-related activities. However, recently, the *Mobley v Workday Inc.* case was filed in the United States, where the plaintiff started a class-action lawsuit alleging that Workday's AI applicant screening process discriminated based on race, age, and disability. This shows that AI systems can exhibit biases when implemented in business practices, potentially leading to human rights violations.[34] In another case in Australia, Deloitte was obliged to repay the Albanese government after using AI in a $440,000 report in which several errors and hallucinations were found.[35] Today, it is difficult to find similar cases; however, more will likely arise in the future if the integration of AI into ESG practices and reporting is not carried out in accordance with responsible AI principles.

On April 8, 2019, the High-Level Expert Group on AI presented the *Ethics Guidelines for Trustworthy AI*. The guidelines explained that AI systems should meet seven key requirements, namely, human agency and oversight; technical robustness and safety; privacy and data governance; transparency; diversity, non-discrimination and fairness; societal and environmental well-being, and accountability.[36]

These guidelines constituted a soft law, with the EU finally publishing its first binding legal framework for AI in 2024.[37]

Overall, the EU AI Act aims to improve the functioning of the internal market and promote the development of human-centric and trustworthy AI, support innovation, and ensure a high level of protection in terms of health, safety, and fundamental rights, including environmental protection and the rule of law, against the harmful effects of AI systems in the EU.

Therefore, adherence to the AI Act could prevent litigation arising from AI's adverse consequences, as explained above. However, the AI Act will require updates as AI technology evolves. Otherwise, regulatory gaps could become new sources of ESG litigation.

Consideration must also be given to the Digital Omnibus proposal made in November 2025. This set of amendments seek to reduce the burden of digital legislation on important actors and to stimulate competitiveness.[38] The amendments to

31 European Commission, Directorate-General for Communications Networks, Content and Technology, "Regulatory Framework on Artificial Intelligence," *Shaping Europe's Digital Future*, n.d., link.

32 European Commission, "Regulatory Framework on Artificial Intelligence."

33 European Parliament and Council of the European Union, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence and Amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), *Official Journal of the European Union* L 2024/1689, July 12, 2024, link.

34 *Mobley v. Workday, Inc.*, No. 3:23-cv-00770 (N.D. Cal. 2026).

35 Josh Butler, "Deloitte to Pay Money Back to Albanese Government After Using AI in $440,000 Report," *The Guardian*, October 6, 2025, link.

36 European Commission, "Ethics Guidelines for Trustworthy AI," *Shaping Europe's Digital Future*, 2019, link.

37 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), OJ L 1689 (2024), art. 1(1).

38 European Commission, Proposal for a Regulation of the European Parliament and of the Council Amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as Regards the Simplification of the Digital Legislative Framework, and Repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868, and Directive (EU) 2019/1024

the Digital Omnibus aim to reduce compliance and administrative costs and center on the use of data, the full integration of AI systems under the AI Act and the optimization of cybersecurity incident reporting mechanisms.[39] The proposed changes aim to improve efficiency by simplifying provisions and procedures, and to support small and microenterprises, much as the EU Omnibus Package does for SMEs.[40] Importantly, the European Commission asserts that "stakeholders have stressed repeatedly that, in many instances, the simplification effort is less about modifying the rules, and more about providing clarity on their application."[41] The Digital Omnibus reflects the intersection between AI and ESG litigation in its ambitions to further facilitate compliance for private actors.

2.4. Relevant and Actual Cases

2.4.1. Environmental Disputes

Several aspects are assessed within the environmental pillar of ESG in terms of business activity. This dimension encompasses all of the actions that a company takes with respect to the physical environment and its ecological footprint, including carbon footprint, climate change, and impact on biodiversity and ecosystems.[42] In fact, the range of various climate litigation disputes which have been filed pertain to violations or a lack of duty of care in the aforementioned areas.

The following table illustrates the cumulative global evolution of climate and ESG-related cases. These data have been provided by the Sabin Center for Climate Change Law, the LSE Grantham Institute, and UNEP.

Year	Cumulative Cases
2020	1,550
2022	2,180
2024	2,967
2025	3,099

Table 1. Cumulative Global Climate Litigation Cases[43] [44]

Similarly, the following graph shows the following values for EU-wide climate cases constructed using 2025 data provided by The Climate Litigation Database facilitated by the Sabin Center for Climate Change Law.[45]

In its latest report published on June 25, 2026, the Grantham Institute indicated an increase in this figure, signaling that over 3,600 climate cases had been filed in 62 different countries.[46]

The broader European landscape, including EU and non-EU jurisdictions, has registered a marked increase in cases over the past decade as questions of compliance and CSR have moved to the forefront of business initiatives and values. One notable case to

(Digital Omnibus), COM(2025) 837 final, November 19, 2025, link.

39 European Commission, Digital Omnibus Proposal, COM(2025) 837 final.

40 European Commission, Digital Omnibus Proposal, COM(2025) 837 final.

41 European Commission, Digital Omnibus Proposal, COM(2025) 837 final.

42 KPMG Slovenia, "ESG & Sustainability," KPMG, accessed June 29, 2026, link.

43 Sabin Center for Climate Change Law, "Sabin Center & UNEP Release New Climate Litigation Report," Columbia Law School, October 3, 2025, link.

44 Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2025 Snapshot* (London: Grantham Research Institute on Climate Change and the Environment, 2025), link.

45 Sabin Center for Climate Change Law, Columbia Law School, and Climate Policy Radar, *The Climate Litigation Database*, accessed July 6, 2026, link.

46 Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2026 Snapshot* (London: Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, 2026), link.

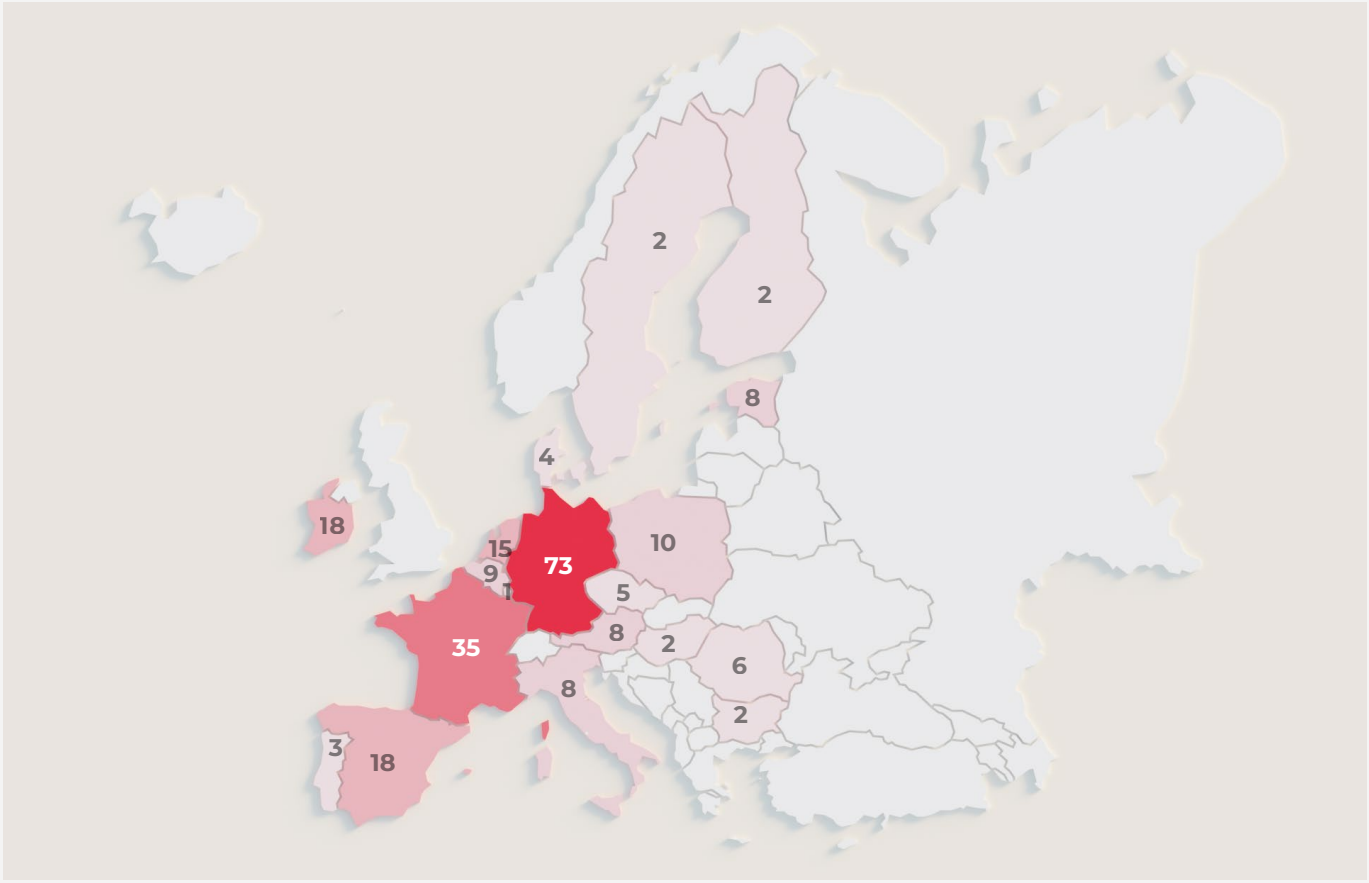


Figure 2.4.1. EU-Wide Climate Litigation Cases by Member State. Source: The Climate Litigation Database.

be discussed before entering EU specifics regarding the EU Omnibus Package is *KlimaSeniorinnen v. Switzerland* (2024). The applicants, as part of a Swiss climate protection association, challenged Switzerland's failure to meet climate goals under Articles 2 and 8 of the European Convention on Human Rights (ECHR).[47] The articles invoked, the right to life and the right to respect for private and family life, were used by KlimaSeniorinnen to argue that the Swiss state had adversely affected the lives of the association's members through its failure to establish proper legislation and mechanisms to combat the effects of climate change. "Embedded emissions" pertaining to greenhouse gas emissions (GHG emissions) arising from Switzerland's import and export economy were also considered in the case.

While not addressing the case under Article 2, the Court concluded by sixteen votes to one that there had been a violation because the State had failed to meet its climate obligations due to insufficient measures taken to calculate national GHG emissions limits and thus had not acted within an adequate time frame to impose legal measures to combat the effects of climate change.

This precedent is worthy of consideration as it establishes that environmental conservation and more importantly protection from the effects of climate change through active mitigation measures are included within the scope of the human rights to private life and autonomy. It effectively provides a lens through which authorities can consider ESG issues and their gravity at a supranational level. The European Court of Human Rights (ECtHR) followed a growing trend toward progressive legislation

47 *Verein KlimaSeniorinnen Schweiz v. Switzerland*, App. No. 53600/20 (European Court of Human Rights, April 9, 2024).

and national restrictions, which many states had already been building on through climate targets and carbon-neutrality goals. Notwithstanding this, the EU Omnibus Package directly counters this incentive through its reduction of ESG litigation pressures and the reform of standards applicable to private entities.

Regardless of the intended effects it seeks to achieve for advancing the European Market, it is undeniable that the EU dissents from the view of the ECtHR on how high the stakes for climate regulation should truly be.

The Netherlands specifically has remained at the center of corporate climate litigation. This centrality is best illustrated through the collective suit filed by the Dutch environmental organization Milieudefensie against Shell and the ING Group.[48] Although the Hague Court of Appeal overturned the original 2021 ruling requiring Shell to reduce its emissions by 45% by 2030, the appellate judgment reaffirmed that corporations may have a duty of care to contribute to climate change mitigation. In 2025, Milieudefensie appealed the decision to the Dutch Supreme Court, seeking clarification on corporate climate obligations and emissions-reduction responsibilities.[49] Simultaneously, the organization initiated a new legal strategy focused on preventing Shell from setting up additional oil and gas fields, arguing that continued fossil fuel expansion is incompatible with international climate objectives and the company's broader duty of care. This litigation case reflects an important change in climate accountability strategies, shifting from demanding specific emissions reduction targets to directly challenging new fossil fuel investments and expansion projects.

Strategies to minimize exposure to climate litigation vary from preventative to risk-assessment measures. Of course, when it comes to meeting targets and publishing sustainability information, many entities are already engaging in this behavior and implementing existing frameworks as a means of demonstrating their sustainability efforts. Yet, as shown in the terminology section, this is not necessarily enough for an entity to prepare for a collective action suit in an era where greenwashing allegations and claims of misleading environmental representations are increasingly common. For this reason, the Sabin Center toolkit introduced to measure climate litigation risk for insurers, entities, and attorneys, provides a novel means of addressing risk. Based on a non-exhaustive review of existing literature on climate litigation and interviews with several specialists, the report provides a mechanism for identification and mitigation.[50] Notably, various factors are introduced as drivers of climate litigation risk in the context of reinsurers, but can be largely extended to other entities, including transition events, legal characteristics and patterns within jurisdictions, and policy terms whose interpretation may increase the risk of litigation.[51]

Several approaches can be identified for companies to reduce climate litigation risk using the Financial Stability Board (FSB)'s recommendations issued by the Task Force on Climate-related Financial Disclosures (TCFD). These include integrating climate litigation risk assessments into governance processes, financial planning and evaluation, and existing risk-management frameworks, along with identifying targets specifically aimed at managing litigation.[52] This mechanism provides a new perspective on how companies may address the risk of collective action and uses forward-looking tools in order to prepare entities rather than relying on the established practice of damage control. This framework is also useful for entities given the prevalence of climate litigation in many jurisdictions today and prepares private actors for this growing risk.

2.4.2. Social Disputes

Conversely, the "social" pillar is dedicated to business compliance and ethical practices within human-centric contexts. These include the treatment of employees and the workforce, supply chain due diligence, and the representation of diversity.[53]

48 Herbert Smith Freehills Kramer, "Milieudefensie Takes Legal Action Against ING Over Climate Impact," HSF Kramer, 2025, link.
49 Sabin Center for Climate Change Law, "Milieudefensie et al. v. Royal Dutch Shell plc.," Climate Change Litigation Databases, Columbia Law School, accessed June 28, 2026, link.
50 Martin Lockman, "Modelling Climate Litigation Risk for (Re)Insurers" (Sabin Center for Climate Change Law, July 18, 2023), SSRN. link.
51 Lockman, "Modelling Climate Litigation Risk for (Re)Insurers," 4.
52 Lockman, "Modelling Climate Litigation Risk for (Re)Insurers," 13.
53 KPMG Slovenia, "ESG & Sustainability."

This dimension has historically been a focal point for disputes even before full ESG integration, stemming from its intersection with areas of labor law and anti-discrimination statutes. Nevertheless, collective action taken against larger entities has begun to gain greater traction in courts and has found a stronger legal footing as companies have begun publicizing sustainability reports and targets. One recent case which can be used as a point of reference for offshore human rights violations and workers' rights is *Limbu v. Dyson* (2025), heard by the U.K. Supreme Court. The facts of the case pertain to the alleged trafficking of workers from Nepal and Bangladesh in Malaysia and their subjection to forced labor and abusive conditions while manufacturing components for a supplier to the Dyson Group.[54]

However, the appeal before the court did not pertain to the facts of whether the abuse had occurred, but rather to which jurisdiction was most appropriate to address the issue. In February 2025, the Court of Appeal overturned the High Court's ruling that Malaysia was the most appropriate forum, and stated that England was the appropriate jurisdiction.[55] Significantly, and despite a settlement agreement having been reached, this case represents a landmark ruling for the social pillar of ESG as it indicates that liability can be extended to offshore violations for a parent company, despite its not being directly involved in the alleged violations. This extends the material belongingness of company misconduct in the field of ESG to overseas suppliers and manufacturers when proper due diligence is not performed as a precedent.

Social disputes can also arise through discrepancies between a company's internal diversity policy and the interests of stakeholder groups as to how said policy should be implemented. Such is the case of *National Center for Public Policy Research v. Schultz et al.*, which is better known as the dispute surrounding Starbucks' DEI policy and its alleged exclusion of groups.[56]

The NCPPR filed a complaint against Starbucks in August 2022, alleging that Starbucks' DEI (diversity, equity, and inclusion) programs and targets had purportedly violated Section 1981 of the 1866 Civil Rights Act and Title VII of the 1964 Civil Rights Act, as they promoted and advantaged minority groups in terms of their careers and access to leadership positions through representation.[57] The plaintiffs further alleged that they were dissatisfied with their investment in such a socially oriented or politically progressive entity, claiming that this could expose the company to litigation threats and breach Starbucks directors' fiduciary duties.[58]

In 2023, the Court held that the complaint had no basis as it was primarily an attack on inclusion policies rather than any larger attempt to raise a valid concern about a corporation's social themes. There was also no basis for judicial intervention in shareholder or internal interest disputes, which is why a motion to dismiss was filed rather than engaging materially with the substance of the claims. This judgment indicates the inverse manner in which the social pillar can be attacked by stakeholders seeking to divest from ESG initiatives out of fear of legal action or overdedication of resources and policies to social equity.

Within the context of *Limbu v. Dyson*, it must be considered that the EU is now operating in a post-Omnibus regulatory reality. As such, and considering the cuts made to the CSDDD, novel perspectives must be adopted with regard to supply chain due diligence that do not simply impose more regulations on private companies. Indeed, the mandatory human rights due diligence (HRDD) laws in the EU have various ambiguities and areas that need improvement, as they recognize the vulnerabilities of groups in supply chains but do not fully address their circumstances.[59] In this sense, information asymmetry and a lack of awareness of workers' rights mean that most cases of abuse across supply chains do not even have the opportunity that the plaintiffs in *Limbu v. Dyson* had to raise concerns before a court of law.

54 *Limbu and others v Dyson Technology Limited and others*, UKSC/2025/0019, UK Supreme Court, permission to appeal refused, link.

55 *Limbu v Dyson*, UKSC/2025/0019.

56 Jason Schwartz, Jessica Brown, Brian Lutz, Elizabeth Ising, Ronald Mueller, Lori Zyskowski, and Anna Ziv, "Washington Judge Dismisses Challenge to Starbucks Diversity Policies in Decisive Order Upholding Business Judgment Rule," Gibson, Dunn & Crutcher LLP, September 2023, link.

57 Schwartz et al., "Washington Judge Dismisses Challenge to Starbucks."

58 Schwartz et al., "Washington Judge Dismisses Challenge to Starbucks."

59 Surya Deva, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" *Leiden Journal of International Law* 36, no. 2 (2023): 389–414, link.

As such, the tools which should be employed are not simply the implementation of more due diligence monitoring and practices but rather a redesign of the current frameworks so that they are holistic. Facilitating access to remedies through courts or compensation by firms, establishing firmer boundaries and "red lines" regarding human rights abuse, and addressing power imbalances between plaintiffs and companies in a dispute setting are much more effective means of mitigating the risk of social litigation in the context of human rights and due diligence.[60]

Considering the internal dimension of the social pillar of ESG, as shown through the DEI and representation policy dispute in *National Center for Public Policy Research v. Schultz et al.,* codes of ethics and conduct in businesses must also be developed and strengthened through proper risk assessment of social litigation. The scope of anti-harassment and discrimination issues accordingly falls within what boards and internal organizations already oversee in companies with regard to operational and cultural risks.[61] As such, the choice by entities to overlook DEI or social risks is not only rash; it exposes them to greater risk of social disputes since boards are not adequately assessing risks and internal policies. Furthermore, having internal protocols for ethical and diversity codes that do not just outline what these processes are, but actually examine how they engage with existing firm compliance, disclosure, and workforce obligations and values provides an effective means of avoiding this branch of social dispute-related litigation.[62] Although having a diversity program in place can put companies at the intersection of various business, financial, and reputational risks, the alternative of not reporting or not having robust policies and structures in place carries a higher cost for entities.[63] As seen in *National Center for Public Policy Research v. Schultz et al.,* some stakeholders are looking to challenge these existing schemes through litigation in a different way: what was formerly a pattern of filing suits for noncompliance with social integration objectives has now evolved into challenges to the frameworks themselves. Notwithstanding this shift, it must be noted that companies are advised to improve their internal risk management systems to strengthen codes of conduct and diversity programs as a means of reducing exposure to social litigation.

2.4.3. Governance Disputes

Finally, governance within ESG involves an expansive view of organizational structure within companies. Companies must ensure transparency, accountability, effective management and leadership within firms to demonstrate good governance practices.[64] *Spence v. American Airlines* is a case that reflects several of these important concepts. In September 2025, following a bench trial and earlier findings that American Airlines had breached ERISA's duty of loyalty, Judge O'Conner imposed an injunction on the company to improve its governance, stewardship and transparency measures despite denying the plaintiffs monetary compensation.[65] The injunctive relief was detailed to include prohibiting proxy voting on any matters motivated by nonpecuniary aims, the appointment of independent employment benefits committee (EBC) members, and public disclosure of memberships in varied climate coalitions, and to bar the company from using as an asset manager any entity that was either a significant shareholder with over 3% of the shares or a holder of fixed debt in the firm to manage asset plans.[66] The judgment reaffirmed the role of courts in imposing injunctive relief when firms' internal organizational structures are largely faulty and result in conflicts due to a lack of transparency.

Similarly, transparency was also at issue in *Securities and Exchange Commission (SEC) v. Activision Blizzard*, though in the broader context of disclosures pertaining to its workforce and its whistleblower

60 Deva, "Mandatory Human Rights Due Diligence Laws in Europe," 404-405.

61 Lisa M. Fairfax and Veronica Root Martinez, "The Miscalculation of Corporate DEI Risk," European Corporate Governance Institute Law Working Paper No. 896/2026, January 20, 2026, link.

62 Fairfax and Root Martinez, "The Miscalculation of Corporate DEI Risk," 12-13.

63 Fairfax and Root Martinez, "The Miscalculation of Corporate DEI Risk," 26.

64 KPMG Slovenia, "ESG & Sustainability."

65 Joshua A. Lichtenstein, Michael R. Littenberg, Brian D. McCabe, George B. Raine, Amy D. Roy, Robert A. Skinner, and Jonathan M. Reinstein, "Final Judgment in Spence v. American Airlines: Judge Denies Monetary Damages but Imposes Targeted Equitable Relief," Ropes & Gray LLP, October 2025, link.

66 Lichtenstein et al., "Final Judgement in Spence v. American Airlines."

protection policy.[67] Despite the fact that the attraction and retention of employees was identified as a risk, Activision Blizzard lacked controls across its business units to implement a proper misconduct complaint mechanism. As such, the company did not have proper insight into workplace misconduct.[68] Additionally, the company signed separation agreements between 2016 and 2021 in violation of an existing Commission whistleblower protection rule by requiring former employees to notify the company when receiving a request for information from Commission staff. The SEC found Activision Blizzard in violation of several Exchange Act rules (13a-15 (a) and 21F-17(a)). The company paid a $35 million penalty without admitting or denying the findings.[69]

Governance within ESG extends far beyond functions related to board diversity, accountability, strength, shareholder rights, and data protection. It fuses the aforementioned concepts together to ensure the long-term viability of a firm and its flexibility in the face of change. It minimizes risk and volatility through long-term reporting mechanisms. Indeed, the paradigm of board capital can be presented as a relevant prism through which the discussion can be further assessed. The concept refers to the role that the board of directors plays by providing social and human capital to firms through its resources and expertise.[70] The manner in which this value is relayed to firms is twofold: breadth in the board through heterogeneity of directors' functional and industry experiences, and depth with regard to the embeddedness of directors in the firm's primary industry.[71] Both these aspects make board capital an essential intangible asset for entities in the realm of strategic deviation, which is perceived as being invaluable for competitive advantage.[72]

In practice, this becomes apparent in various ways in corporate decision-making processes. The board of directors acts as a guiding hand in strategic change by providing important resources and expertise.[73] As such, board diversity is essential: heterogeneous boards, whose members are differentiated from each other, notably tend to have "more breadth of knowledge, creativity, and experiences."[74] As such, not only are more options considered, but there is also more variety in the executive decisions taken, meaning that a much larger array of strategies is considered than in firms with more homogeneous boards.[75] This variety and the resulting deviation from past strategies are especially important within the context of ESG litigation and disputes: applying the theoretical framework to the novel manifestations of ESG litigation, firms with deeper and broader boards will naturally face a much lower risk of lawsuits. This is because the diverse nature of boards that follow the aforementioned model allows for greater transformation and adaptability to ever-changing regulation.

Indeed, the relationship between board size in this context, as an indicator of depth, and its influence on reducing ESG controversies and litigation has been empirically investigated. ESG-related controversies and litigation cases relate to important theories of corporate governance, including legitimacy theory, agency theory, and stakeholder theory.[76] One study investigating 8,321 firm-level observations between 2002 and 2019 in the United States found that larger boards faced significantly fewer ESG controversies and withstood challenges much better than firms with smaller boards, leaning on resource dependence theory.[77] The results revealed that larger boards were better equipped to minimize negative externalities and claims raised against them through resourceful governance.[78] This evidence reaffirms the role of governance as a functional tool for reducing the risk of litigation and as an evolving mechanism for transparent operations within firms. ■

67 U.S. Securities and Exchange Commission, "Activision Blizzard to Pay $35 Million for Failing to Maintain Disclosure Controls Related to Complaints of Workplace Misconduct," Press Release No. 2023-22, February 3, 2023, link.
68 SEC, "Activision Blizzard to Pay $35 Million."
69 SEC, "Activision Blizzard to Pay $35 Million."
70 Katalin Takacs Haynes and Amy Hillman, "The Effect of Board Capital and CEO Power on Strategic Change," *Strategic Management Journal* 31, no. 11 (2010): 1145–1163, link.
71 Takacs Haynes and Hillman, "The Effect of Board Capital," 1148.
72 Takacs Haynes and Hillman, "The Effect of Board Capital," 1148.
73 Takacs Haynes and Hillman, "The Effect of Board Capital," 1148.
74 Takacs Haynes and Hillman, "The Effect of Board Capital," 1148.
75 Takacs Haynes and Hillman, "The Effect of Board Capital," 1148.
76 Sirimon Treepongkaruna, Khine Kyaw, and Pornsit Jiraporn, "ESG Controversies and Corporate Governance: Evidence from Board Size," *Business Strategy and the Environment* 33, no. 5 (2024): 4218–32, link.
77 Sirimon Treepongkaruna, Khine Kyaw, and Pornsit Jiraporn, "ESG Controversies and Corporate Governance: Evidence from Board Size."
78 Sirimon Treepongkaruna, Khine Kyaw, and Pornsit Jiraporn, "ESG Controversies and Corporate Governance: Evidence from Board Size."

3

REGULATORY FRAMEWORK: FROM CSR TO ESG

Corporate social responsibility (CSR) in the EU refers to the obligation of businesses to act in ways that benefit society and the environment beyond the generation of profit. CSR in the EU is closely linked to environmental, social, and governance (ESG) criteria and has evolved from a voluntary, philanthropic concept into a comprehensive framework of binding regulations aligned with international standards such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and ILO standards.

The EU began formalizing CSR expectations in the early 2000s. The 2001 Green Paper on CSR was the European Commission's first major engagement with businesses on voluntary social and environmental integration. The 2006 and 2011 EU CSR strategies progressively emphasized transparency, business ethics, and stakeholder partnerships. The 2019 European Green Deal further embedded CSR within the EU's climate-neutrality and sustainability agenda.

The EU's CSR architecture rests on several pillars. In the area of reporting and transparency, the Non-Financial Reporting Directive (NFRD, 2014) required large public-interest companies to disclose social, environmental, and governance information. Its successor, the CSRD, broadens this obligation to all large companies and listed SMEs, mandating reporting under the European Sustainability Reporting Standards (ESRS) developed by the European Financial Reporting Advisory Group (EFRAG), aligned with international frameworks such as the Global Reporting Initiative (GRI) and the TCFD.

The transition from CSR to ESG is a cornerstone of many EU practices today and constituted a shift that reflected public morals and interests as an imposition on stakeholders. ESG materialized the principles of fairness and equity that CSR presented to entities through the prism of quantifiable data in the environmental, social, and governance pillars.[79]

The use of numbers and statistics as a means of reflecting ecological footprint, internal governance transparency, and organizational structure, as well as workforce treatment, kickstarted a new era in which it was much easier to understand trends and gain a holistic perspective on a company's standing and compliance.[80] ESG adds value to the organizational structure of companies in a manner that CSR was not able to. ESG "centers on the fact that companies that truly embrace their stakeholders and invest in their needs have lower risk and higher performance."[81] It must be noted that the current concept of ESG may also pose challenges when combining all three pillars into a single framework.[82] This consolidation of environmental, social, and governance considerations into one term has resulted in an outcome whereby ESG is highly flexible and can vary across contexts, time, and various investor and stakeholder interests.[83]

3.1. ESG Framework in the EU

3.1.1. Legislative History: CSDDD and the Regulation Preceding Omnibus

The EU originally adopted the CSDDD[84] to establish robust corporate accountability standards regarding

79 Stephen M. Bainbridge, *The Profit Motive: Defending Shareholder Value Maximization* (Cambridge, UK: Cambridge University Press, 2023), 21.

80 Bainbridge, *The Profit Motive*, 21.

81 Bainbridge, *The Profit Motive*, 103.

82 Elizabeth Pollman, "The Making and Meaning of ESG," *Harvard Business Law Review* 14 (2024): 1.

83 Pollman, "The Making and Meaning of ESG," 1.

84 European Parliament and Council of the European Union, Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June

human rights, environmental protection, and sustainability across global value chains. The Directive aimed to impose binding obligations on large companies to identify, prevent, and mitigate adverse impacts in their operations and supply chains.

The CSDDD originally applied to EU companies with over 1,000 employees and more than €450 million in net worldwide turnover, or whose parent company exceeded those thresholds, as well as franchisors generating €22.5 million in EU royalties or €80 million in total turnover.[85] Non-EU companies exceeding €450 million in EU turnover, operating through a large subsidiary or a branch with a turnover above €50 million, were also included, along with equivalent franchise arrangements.[86]

Due diligence under the CSDDD is a structured, ongoing, risk-based process aligned with the UN Guiding Principles and OECD Guidelines.[87] Companies must take "appropriate measures," namely, those capable of effectively addressing adverse impacts in a manner commensurate with their severity and likelihood.[88] The Directive imposes obligations of means, not of result: companies are not required to guarantee that adverse impacts will never occur.[89] The process follows six steps from the OECD Guidance: (1) integrating due diligence into policies; (2) identifying and assessing impacts; (3) preventing or mitigating impacts; (4) monitoring effectiveness; (5) communicating, and (6) providing remediation.[90]

Directors face no direct personal duties or liability under the CSDDD. However, they are indirectly involved through governance obligations, including the integration of due diligence into corporate policies[91] and, under the CSRD, the approval of sustainability disclosures in management reports (Arts. 19a(1), 29a(1) CSRD). ESRS 2 GOV-2 and GOV-3 require disclosure of board-level engagement with sustainability matters, including whether remuneration is linked to sustainability performance.[92]

Companies must integrate due diligence into policies, identify and prioritize adverse impacts, prevent and mitigate them, provide remediation, engage stakeholders, establish complaint mechanisms, monitor effectiveness, and publicly communicate (Art. 5(1) CSDDD). Parallel CSRD obligations require sustainability reporting aligned with ESRS. Public companies, particularly those with over 500 employees, are among the first required to report under the CSRD. They must obtain external limited assurance on disclosures (Art. 34(1) CSRD) and must fully comply with ESRS disclosure requirements.

Member States must designate independent supervisory authorities to monitor compliance[93] with jurisdiction based on the company's registered office or, for non-EU companies, branch location or highest net turnover.[94] Authorities may order cessation of infringements, impose penalties, and adopt interim measures.[95] Penalties must be effective, proportionate, and dissuasive.[96] Companies face civil liability where an intentional or negligent failure to comply with Articles 10–11 (identification and prevention of adverse impacts) causes damage, entitling victims to full compensation, subject to a minimum five-year limitation period.[97]

However, it must be noted that following the findings of the Draghi report, the existing trend in European regulatory practices came under major scrutiny. This report analyzes the underlying causes for stagnant competitiveness in the EU and proposes various reforms as a means of boosting productivity across sectors. One of the identified areas is sustainability regulation and its overlapping provisions, which create legislative gray areas for actors. Indeed, the

2024 on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, *Official Journal of the European Union* L 2024/1760, July 5, 2024, link.

85 Directive (EU) 2024/1760, art. 2(1).

86 Directive (EU) 2024/1760, art. 2(2), recital 27.

87 Directive (EU) 2024/1760, recitals 5 and 62.

88 Directive (EU) 2024/1760, art. 3(1).

89 Directive (EU) 2024/1760, recital 19.

90 Directive (EU) 2024/1760, art. 2(2), recital 20.

91 Directive (EU) 2024/1760, art. 5(1).

92 European Commission, *ESRS 2: General Disclosures*, Annex I to *Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as Regards Sustainability Reporting Standards* (Brussels, July 31, 2023), 6-7, link.

93 Directive (EU) 2024/1760, art. 24.

94 Directive (EU) 2024/1760, arts. 24(2)–(3).

95 Directive (EU) 2024/1760, art. 25(5)

96 Directive (EU) 2024/1760, art. 27.

97 Directive (EU) 2024/1760, arts. 29(1)-(3).

report states that "Multiple pieces of legislation have overlapped during the past decade and more can be expected in the incoming years toward 2030."[98] One example is the exclusion of Scope 3 emissions from the Carbon Border Adjustment Mechanism (CBAM) as opposed to their inclusion in the CSRD. This creates additional monitoring and reporting costs, as well as an arbitrary manner of assessing the carbon footprint in light of legislative inconsistencies.[99]

The report describes the existing framework for sustainability reporting and due diligence (CSRD and CSDDD combined) as a "major source of regulatory burden, magnified by a lack of guidance to facilitate the application of complex rules and to clarify the interaction between various pieces of legislation."[100] This is due to the compliance costs that it imposes on companies in the territory, ranging from €150,000 for nonlisted undertakings to €1 million for listed firms.[101] As a whole, SMEs reported that the burden and overall cost of complying with EU law were much greater for them than for larger entities, identifying these regulatory and administrative burdens as their greatest operational challenges.[102]

As such, the subsequent introduction of the EU Omnibus Package and its "Stop the Clock"[103] policy largely amended or, in many cases, suspended the requirements imposed by previous EU sustainability regulatory frameworks as a means of remedying the weaknesses identified in the Draghi report.

3.1.2. New EU Commission Omnibus Package

In February 2025, in response to mounting concerns from businesses and Member States regarding excessive administrative burdens, high compliance costs, and reduced EU competitiveness, the European Commission introduced the "Omnibus I" package. Following its adoption by the European Parliament and the Council, Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 (CSRD), and (EU) 2024/1760 (CSDDD) as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements (Directive 2026/470), was published in the Official Journal on February 26, 2026 and entered into force on March, 18, 2026.[104] This legislative initiative radically reshapes the ESG litigation landscape by significantly modifying the original CSDDD. Important areas that are covered include sustainable finance legislation, the carbon border adjustment mechanism, and investment. The EU Omnibus Package is based on the conclusion that regulatory burdens in these areas are hindering competitiveness in the EU market, and features efforts to scale back administrative requirements by 20% for large businesses and by 35% for SMEs.[105] The overarching aim is to reduce regulatory complexity and compliance requirements for all businesses in the EU-27 except those categorized as having the greatest environmental footprint. It amends the scope of application of key texts such as the CSRD and the CSDDD, especially in relation to compliance.[106]

The implications for EU companies are largely related to reregulation, with economic growth as the primary driver of this push against current EU interventionism on a broad scale. In practical terms, this will be demonstrated by reducing the number of actors that remain subject to or fall within the scope of the CSRD; only those with over 1,000 employees and a turnover of over €450 million will be subject to the Directive.[107] The scope of the CSDDD has also

98 Mario Draghi, *The Future of European Competitiveness: Part B—In-Depth Analysis and Recommendations* (Brussels: European Commission, September 9, 2024), 146, link.
99 Draghi, *The Future of European Competitiveness*, 146.
100 Draghi, *The Future of European Competitiveness*, 318.
101 Draghi, *The Future of European Competitiveness*, 318.
102 Draghi, *The Future of European Competitiveness*, 321.
103 "Stop the Clock" is a proposal made within the first EU Omnibus Package seeking to postpone the application of indicated reporting requirements within the CSRD Directive for identified companies and push back the transposition deadline and for the application of the CSDDD directive to 2028. See Stefano Spinaci, "Omnibus I – Sustainability Reporting – 'Stop the Clock' Proposal," *European Parliament Legislative Train Schedule*, last modified June 20, 2026, link.
104 European Parliament, "Omnibus I – Simplification of the Directives on Corporate Sustainability Reporting (CSRD) and Due Diligence (CSDDD)," *Legislative Train Schedule*, updated June 20, 2026.
105 European Commission, Directorate-General for Financial Stability, Financial Services and Capital Markets Union, "Omnibus Package," April 1, 2025, link.
106 European Commission, "Omnibus Package."
107 Council of the European Union, "Council Signs Off Simplification of Sustainability Reporting and Due Diligence Requirements to Boost EU Competitiveness," February 24, 2026, link.

been reformed, and from July 2029, it will apply only to companies with more than 5,000 employees and net worldwide turnover exceeding €1.5 billion.[108] Another key aspect which has been amended is the extent to which reporting standards for compliance and ESG impact smaller companies in the value chain; voluntary reporting measures will be implemented for companies with less than 1,000 employees.[109] This is an essential indicator of changes in policy instruments which the EU is considering, and it must be highlighted; company size in terms of workforce can provide valuable insight into operational capacity and, thus, output and impact.

Additionally, the European Sustainability Reporting Standards (ESRS) will also be simplified and revised extensively, along with the removal of "sector-specific" standards for auditing requirements. The "Stop the Clock" proposal has also been introduced, whereby companies that currently come under the legal framework of the CSRD will have their reporting requirements postponed by two years as a means of assisting them in this transition.[110] This strategy of reduction and reregulation has tangible benefits for the EU economy; the estimated administrative cost reductions stand at an impressive €4.4 billion annually.[111] There are also important changes in the realm of the Carbon Border Adjustment Mechanism (CBAM), a carbon tariff on energy-intensive products such as steel, cement, and electricity that are imported into the EU. The measures will include simplification for importers, including the adjustment of data collection processes, with consideration given only to the direct emissions of these products from electricity use.[112] This is important; energy-intensive industries both within the EU and involved in outsourced production all generate significant amounts of the emissions which environmental laws are intended to address. Thus, the areas concerned are not only business operations and secondary footprints; they are also direct sources of impact.

What can be inferred thus far is that the EU Omnibus Package could bring positive trends in productivity, leadership efficiency, and market growth for firms which have thus far been slowed by the overabundance of legislation. Yet the impact on regulation and litigation has received mixed responses.

Stakeholder concerns have centered on the fact that reopening previously established and enshrined sustainability directives could create legal uncertainty and undermine the previous efforts of companies to ensure that they align with the former requirements.[113] This can be traced back to specific concerns. While a large number of financial institutions have expressed support for the reduced legislative presence of the EU in economic activity, some have argued that this simplification could result in the aggravation of persistent issues in the EU concerning the quality and availability of ESG and due diligence data, especially data on human rights in supply chains.[114] Especially given the leniency provided for SMEs, it will be harder to bring cases and initiate investigations into those who face potential allegations of poor due diligence and compliance, and the lack of monitoring facilitates the potential assumption that smaller businesses have fewer resources at their disposal to ensure ethics and transparency.

There is also an important point to highlight for entities: the EU Omnibus Package requires no implementation of CSDDD provisions in cases of smaller companies, thus "businesses will only be producing more paperwork, with little or no real impact on their environmental footprint."[115] A letter sent to Ursula von der Leyen by Commissioner Valdis Dombrovskis, along with several other signatories, expressed these concerns, underscoring the fact that the Omnibus Package entails an "increase in the legal uncertainty, leading to a regulatory gap, increased judicial intervention and further fragmentation of the EU legal framework."[116] This not only points to the

108 European Commission, "Corporate Sustainability Due Diligence Directive (CSDDD)," *International Partnerships*.
109 European Commission, "Omnibus Package."
110 European Commission, "Omnibus Package."
111 European Commission, "Omnibus Package."
112 Sobla Jemal and Alexander Schmidt, "The Omnibus Simplification Package: Explained," Normative, April 24, 2025, link.
113 Sobla Jemal and Alexander Schmidt, "The Omnibus Simplification Package: Explained," Normative, April 24, 2025, link.
114 Maximilian O'Driscoll, "The EU Omnibus and Business and Human Rights Risks," International Bar Association, August 21, 2025, link.
115 O'Driscoll, "The EU Omnibus and Business and Human Rights Risks."
116 Maja Frontczak, "The Omnibus Package: A Simplification of EU

undermining of the legal codification of sustainability texts in the EU, but also to the process of reimagining litigation as something that could lead to increased jurisprudence or the emergence of more *stare decisis* in continental Europe. Yet this is not presented as positive for the manner in which the EU's legal system operates; in fact, it is the opposite: legislation and the drafting of legal provisions and bills are an essential part of lawmaking in the institution. Could it be that representatives are conflating lawmaking with overregulation? It is undeniable that the practice of administrative legal drafting is highly praised within the EU.

The EU Omnibus Package has also introduced further changes to the judicial aspect of ESG regulation, namely, the removal of the harmonized civil liability regime under Article 29(1) CSDDD.[117] This shift would now mean that companies which have failed to meet their compliance responsibilities or have been found to have caused ESG-related harm will no longer be subject to accountability at the EU level. Instead, these cases would be referred back to national laws and the jurisdiction of local courts. This could significantly undermine due process efforts, taking into account the reality of EU countries which are less synchronized and diligent in the prosecution of ESG abuse or face corruption in domestic lawmaking or courts. Furthermore, penalties for ESG abuse are now capped at 3% of a company's net worldwide turnover.[118]

Certain voices assert that the "EU Omnibus Package can be perceived as a major retreat from sustainability commitments, jeopardizing the achievement of the EU's climate objectives."[119] Experts who hold the same position will continue to push back against this deregulation of EU markets. What must be noted is that the quantity of regulation is not equal to its quality, and this inference can be applied more broadly. Reducing pre-existing legislation does not inherently mean that it will be more impactful or will better target the EU's environmental goals; it only indicates that economic success will be greater. Under a more liberal market model in the framework of ESG, this could encourage a greater number of firms to engage in sustainable finance. In both cases, the key moment for assessing the impact of the changes to legislative practices within the EU comes with implementation; this is where litigation is most prevalent. What is clear is that this is a novel position for the EU institutions, moving away from the actions of private actors in attempts to foster growth and combat the climate crisis. Perhaps this interplay of trust and a lingering presence is the future of regulation in many other areas of the EU as well.

Of course, beyond academic interpretations, there are important considerations to be made about the perspectives of private actors and other affected associations following the adoption of the EU Omnibus Package. Before the adoption of the simplification initiative, the European Commission's online feedback forums revealed generally positive responses from most companies to the general proposal. Companies such as Airbus France, Bouygues, and a number of business associations have shown their support and made relevant suggestions about the Taxonomy Delegated Act within the EU Omnibus Package.[120] Input from private actors and associations indicates that they "welcome" the European Commission's initiative as a means of "simplify(ing) sustainability reporting and disclosure requirements while keeping the core elements and sustainability objectives as is." [121] Furthermore, there is widespread appreciation of the Commission's "overarching goal of addressing complexity in, and enhancing the interoperability of, sustainability-related regulation."[122]

Some actors have shown continued support for CSRD reporting and oppose its postponement, claiming that "it is important for companies to report on sustainability issues, especially carbon

Legislation or a Step Backward in Achieving Climate Goals?," British Institute of International and Comparative Law, May 22, 2025, link.

117 Directive (EU) 2026/470, art. 3(20), February 26, 2026.

118 Directive (EU) 2026/470 of the European Parliament and of the Council, art. 3(19), February 26, 2026.

119 Directive (EU) 2026/470 of the European Parliament and of the Council, art. 3(19), February 26, 2026.

120 European Commission, "Have your say–Public Consultations and Feedback: Taxonomy Delegated Acts–Amendments to Make Reporting Simpler and More Cost-Effective for Companies," 2025. Link.

121 European Commission, "Have your say–Public Consultations and Feedback: Taxonomy Delegated Acts–Amendments to Make Reporting Simpler and More Cost-Effective for Companies," 2025.

122 European Commission, "Have your say–Public Consultations and Feedback: Taxonomy Delegated Acts–Amendments to Make Reporting Simpler and More Cost-Effective for Companies," 2025.

footprint and sustainable financing."[123] This could be due to companies' own interests in the discussion surrounding environmental regulation, as other sources argue there is a "consensus among investors, regulators, and advocates alike that climate change risk is a financial risk which affects the wider economy."[124] This is consistent with how the nature of the European commercial landscape in the international market may be perceived: the trend of overregulation may have been burdensome, but it was nonetheless what the EU had been accustomed to in previous decades.

The #WeAreEurope association, in tandem with HEC Paris, carried out a survey among 1,000 enterprises of various sizes to gauge initial reactions to the Package. It came as no surprise to find that the current non-financial reporting framework enjoys majority support.[125] The study found that 86% of respondents called for the automation of reporting indicators, 75% would prefer a centralized European approach to ESG obligations, and 69% sought better coordination with other regulations in place, such as the Taxonomy Act.[126] This is actually a request for efficiency, not a complete overhaul; "companies are calling for targeted simplification and not a rethink."[127] Most of these notions also correlate with the push for greater transparency and accountability in relation to environmental preservation. This cannot be guaranteed by default through either the publication of a plethora of acts or their drafting. There are also predictions that insurers will face challenges as a result of the EU Omnibus Package's swift implementation; as the "underwriters" of European private companies, these actors will certainly feel the impact of a decrease in SME reporting rates.[128]

Regarding the question of how this new simplification affects the level of ESG litigation in the EU-27, it must be noted that the existing precedents are all quite recent and some are still pending final judgment. Many of the climate violations or allegations of human rights violations involve claims brought by associations against a state, a public entity/NGO or a private company, as seen in the cases of *Milieudefensie et al. v. Royal Dutch Shell* (2021), *Notre Affaire à Tous and Others v. BNP Paribas* (2023), and *Klimaatzaak VZW v. Belgium* (2023). There are also greenwashing claims and allegations of supply chain due diligence inconsistencies, as seen in *Greenpeace France v. TotalEnergies SE* (2022). The role that private actors have assumed in the trend of legal disputes in the EU has so far been defensive, namely, taking measures to avoid false representation of environmental efforts that have not been carried out. However, for some, the simplification "weakens corporate positions against climate-motivated lawsuits."[129]

Specifically, the amendment of Article 22 of the CSDDD and its binding nature, which required companies to implement climate transition plans, were argued to provoke instability and regulatory disorder by certain legal scholars who raised their concerns in a letter to the Commission in May 2025.[130] Furthermore, respondents argued that unclear expectations would arise from diluting Article 22's requirements, leading to unmet obligations and opening entities up to legal disputes in their respective EU jurisdictions.[131] However, following the adoption of the EU Omnibus Package, businesses within the scope of the revised due diligence rules are no longer required to prepare a transition plan to make their business model compatible with the Paris Agreement.[132] The subjectivity of different environmental standards, coupled with the full margin of appreciation afforded to local courts in resolving disputes, evidently opens up opportunities for arbitrariness and challenges assumptions held under the previous legislative approach. The recurring criticism by many stakeholders is grounded in the idea that a reduction in norms does not secure rapid advancement. On the contrary, the other side of regulatory burdens and Commission red tape is a lack

123 European Commission, "Have your say–Public Consultations and Feedback: Taxonomy Delegated Acts–Amendments to Make Reporting Simpler and More Cost-Effective for Companies," 2025.
124 M. Costa, "EU Omnibus Sustainability Proposal: Why Experts Are Concerned," *Green Central Banking,* 2025.
125 S. Hadri, "The Impact of the Omnibus on Corporations and Insurers," *Kennedys Law,* 2025.
126 Hadri, "The Impact of the Omnibus on Corporations and Insurers."
127 Hadri, "The Impact of the Omnibus on Corporations and Insurers."
128 Hadri, "The Impact of the Omnibus on Corporations and Insurers."
129 L. Garden, "EU's Omnibus Package Heightens Legal Risk for Companies," *Trellis,* 2025.
130 Garden, "EU's Omnibus Package Heightens Legal Risk for Companies."
131 Garden, "EU's Omnibus Package Heightens Legal Risk for Companies."
132 Note that Article 22 has been deleted by Article 4(16) of Directive (EU) 2026/470.

of cohesion and the possibility of an increase in case law that draws new boundaries and makes sense of environmental compliance.

It is difficult to dispute the growing trend of opposition to acts seeking to codify environmental protection, and notably, the pan-European effect of *KlimaSeniorinnen v. Switzerland* (2024) seeking accountability for noncompliance. However, the stated aims of the EU Omnibus Package favor consolidation and a stronger EU market. While balancing interests may entail a trade-off, this does not necessarily imply that one of the interests held to be of continental importance should be adversely affected. In many ways, the EU Omnibus Package strives for the long-term sustainability of ESG efforts through the harmonization of these values with profitability and competitiveness. After all, the EU Omnibus Package does not conflict with other strict environmental directives; the Renewable Energy Directive adopted in 2023 is still in force and supports binding targets of "at least 42.5% renewable energy in the EU's energy mix by 2030, however still aiming for 45%."[133] On paper, it cannot be said that the proposal for this simplification is an anti-ESG policy or that it undermines all the initiatives implemented to date.

Nevertheless, now that the EU Omnibus Package is in force, it remains to be seen how successful these stated aims and objectives will prove in practice and following an impact assessment. The role of legislation is to entrench these principles in a system of checks and balances which ensures that the notion of liability retains its substance. The question of ESG goes beyond climate neutrality, social issues, and governance disputes; it is the product of various mechanisms working together to produce a specific effect on value chains. As it stands, it is clear that policymakers are pushing for a novel approach to the development of the EU. ■

133 Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 Amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as Regards the Promotion of Energy from Renewable Sources, and Repealing Council Directive (EU) 2015/652, 2023 O.J. (L 2023/2413), link.

4

ESG LITIGATION PRACTICES IN THE USA AND THE TRUMP PACKAGE

The social branch of ESG has become increasingly prominent in claims filed in the USA, particularly in terms of corporate diversity and inclusion policies.[134] The environmental litigation aspect has had an international impact, and governance disputes remain a key priority for private actors through the role of the Securities and Exchange Commission (SEC).[135] The Securities Act of 1933 and the Securities Exchange Act of 1934 have been used by the SEC as tools to focus on the governance branch of ESG and to investigate fraud, and enforce internal reporting and internal control provisions applicable to private businesses.[136] In March 2021, the SEC created the Climate and ESG Task Force within its Enforcement Division.

The goal of this task force was to proactively identify ESG misconduct in businesses and encourage the disclosure of climate risks and internal misstatements.[137] The Federal Trade Commission (FTC) has also taken a growing interest in ESG litigation and has consistently challenged private companies' environmental claims in their marketing campaigns. The FTC, in its focus on potential greenwashing, also developed the "Green Guides" to help companies understand how marketing practices could give rise to such allegations.[138]

One notable case brought by the task force was against the Brazilian mining company VALE S.A. (*SEC v. VALE S.A.*).[139] The SEC claimed that VALE had manipulated safety audits and obtained false stability certificates, and misstated its mines' compliance with safety standards to investors.[140] The case stands as one of the first ESG-based enforcement actions brought by a U.S. regulator under federal securities law concerning disclosure.[141] Beyond the involvement of the SEC, securities class action lawsuits were also brought in connection with both the Mariana (2015) and Brumadinho (2019) disasters involving VALE.[142] After the Mariana disaster in 2015, American investors sued VALE and BHP, with the case being settled in 2020 for around $25 million. Following the Brumadinho (2019) disaster, a new class action was filed against VALE in the USA, and class certification was granted in March 2022.[143] As such, the lawsuit was able to proceed on behalf of investors who alleged that they had suffered harm as a result of misleading statements made by VALE concerning risks and disclosures. Both cases are notable in that they detail how companies misled the market about risk management practices directly linked to environmental safety and protection.[144]

Consideration must also be given to *People v. Exxon Mobil Corp.*, in which Exxon Mobil was alleged to have made false disclosures regarding how climate change regulations would affect its value and overall business operations.[145] The court held that securities fraud claims could not be proven, though it noted that Exxon Mobil would not be absolved of its contribution to climate change as a result of the effects of its

134 Alex Talarides, Carolyn Frantz, Hong Tran, J. T. Ho, Michael Delikat, and Stacy Kray, "Trends in ESG Litigation and Enforcement," *Harvard Law School Forum on Corporate Governance*, August 10, 2023, link.
135 "Vale and the Rise of Securities-Based Climate Litigation," *Columbia Journal of Transnational Law Bulletin* (blog), March 25, 2023, link.
136 Victoria E. Harper, "Securities Regulation & Climate Change," in *The Oxford Handbook of Climate Change and Private Law*, ed. Douglas A. Kysar and Ernest Lim (Oxford: Oxford University Press, forthcoming 2025), SSRN, link.
137 Harper, "Securities Regulation & Climate Change."
138 Talarides et al., "Trends in ESG Litigation and Enforcement."
139 "Vale and the Rise of Securities-Based Climate Litigation."
140 U.S. Securities and Exchange Commission, *Review of Case 1:22-cv-02405*, April 28, 2022, link.
141 "Vale and the Rise of Securities-Based Climate Litigation."
142 "Vale and the Rise of Securities-Based Climate Litigation."
143 "Vale and the Rise of Securities-Based Climate Litigation."
144 Talarides et al., "Trends in ESG Litigation and Enforcement."
145 *People v. Exxon Mobil Corp.*, Sabin Center for Climate Change Law, *The Climate Litigation Database*, 2024, link.

fossil fuel production.[146] Within the context of environmental litigation, the court demonstrated through *People v. Exxon Mobil Corp.* that it would approach the protection of environmental interests with proportionate penalties and refrain from being overly punitive.

Since President Trump took office for a second term in January 2025, the U.S. administration has introduced a series of regulatory reforms in the field of climate change and environmental regulation. The federal government has taken a notably contrary stance toward state-led climate action. On April 8, 2025, President Trump issued an executive order titled "Protecting American Energy from State Overreach" (hereinafter the "Trump Package"), which illustrates this.[147] The Trump Package directed the U.S. Attorney General to take all appropriate action to prevent civil actions that hinder the development of domestic energy resources or attempt to impose liability on domestic fossil fuel producers. Following this, the Attorney General filed lawsuits to block states such as Hawaii and Michigan from filing "polluter pays" suits against oil companies.[148] Furthermore, previously anticipated rules on climate-related reporting issued by the SEC have been put on hold, and the U.S. administration has ceased to defend them in court.[149] Federal funds previously committed to climate-aligned projects under the Inflation Reduction Act have also been frozen, prompting a wave of defensive litigation from states and NGOs.[150]

The Trump Package has withdrawn $7.9 billion from international funding and $1.1 billion from public broadcasting.[151] The Trump administration has stated that these funding cuts are necessary to reduce spending.[152] The primary funding cuts have been in the areas of foreign direct investment (FDI) and in the United States Agency for International Development (USAID).[153] The administration has stated that USAID carried out "antithetical" operations, including those related to climate change, diversity, equity, and inclusion (DEI), and LGBTQ activities.[154]

In addition, critics of the Trump Package have highlighted concerns regarding the future of climate policies, foreign aid, and peacekeeping operations given the significantly reduced budget allocations.[155] Arguments center on the claim that cuts in funding pose a risk for American companies' partners in the international sphere and their development.[156] These perspectives suggest that the cuts will increase costs given multinationals' responsibility to uphold environmental policies if they wish to work in the EU.[157] [158] The Trump Package has also primarily targeted legislation passed during the Biden administration.[159] The nature of these statutes as energy-centered and climate-focused[160] could indicate a future trend in regulatory rollback in this ESG pillar as a result of federal pushback.[161]

The Trump Package has also faced state-level resistance.[162] As its content leaves a gap in federal legislation regarding ESG practices, states may seek to compensate with state laws that could very well favor or go against ESG, given the discretionary nature of how these policies are promoted across local jurisdictions.[163] This arbitrariness consequently suggests the possibility of an overall increase in litigation related to ESG disclosure at the state level.[164] It could also imply that companies within

146 *People v. Exxon Mobil Corp.*, Sabin Center for Climate Change Law, *The Climate Litigation Database*, 2024, link.
147 *Protecting American Energy from State Overreach*, Executive Order No. 14260, 90 Fed. Reg. April 8th, 2025.
148 *Protecting American Energy from State Overreach*, Exec. Order No. 14260.
149 *Protecting American Energy from State Overreach*, Exec. Order No. 14260.
150 *Protecting American Energy from State Overreach*, Exec. Order No. 14260.
151 *Rescissions Act of 2025, Pub. L. No. 119-28, 139 Stat. 467 (2025).*
152 The White House, "Historic Pocket Rescission Package Eliminates Woke, Weaponized, and Wasteful Spending," August 29, 2025, link.
153 The White House, "Historic Pocket Rescission Package."
154 The White House, "Historic Pocket Rescission Package."
155 Kaia Hubbard and Caitlin Yilek, "What Are Rescissions — and Why Does Trump Want Congress to Push Them Through?," *CBS News*, June 12, 2025, link.
156 Chris Stein, "What are rescissions – and why does Trump want Congress to push them through?," *The Guardian*, July 17, 2025, link.
157 Daniel Farber, "Climate Policy Havens: State Resistance to Anti-Environmental Presidents," *Syracuse Law Review*, 2025, link.
158 Harper, "Securities Regulation & Climate Change."
159 Stein, "What are rescissions – and why does Trump want Congress to push them through?"
160 "Monograph Series Project 2025: Implications for Climate and the Environment – The Congressional Review Act: Regulations Can Be Eliminated by Act of Congress," UC Berkeley Center for Law, Energy and the Environment, 2025, link.
161 Farber, "Climate Policy Havens."
162 "Monograph Series Project, 2025."
163 Harper, "Securities Regulation & Climate Change."
164 Farber, "Climate Policy Havens."

the USA will rely more heavily on voluntary ESG disclosure frameworks and state incentives to justify pro-climate investments in the future.

California is a particularly active state jurisdiction for ESG-related disputes, especially due to its plaintiff-friendly consumer protection framework and the presence of major national and international companies in the state.[165] The majority of ESG litigation in California tends to lean in the direction of consumer protection suits challenging environmental claims pertaining to a product's net-zero, recyclable, sustainable or carbon-neutral status. Plaintiffs tend to bring claims under California's Unfair Competition Law (UCL), False Advertising Law (FAL), and Consumer Legal Remedies Act (CLRA).[166] It is important to note that while none of these statutes are direct frameworks for ESG litigation, they indicate that claims are often brought under various legislative frameworks in the absence of harmonized regulation. This demonstrates that California continues to promote high standards for disclosure and internal review regarding ESG practices in businesses in spite of the Trump Package. It also mirrors the current litigation environment in the EU, where consumers use the Representative Actions Directive and consumer protection principles to file claims against entities.

The state of California also intersects with ESG litigation through securities fraud and disclosure claims (often filed in federal court).[167] The underpinning theory is that ESG statements may be alleged to be misleading or to omit material risks, consequently harming investors. This is an example of disclosure litigation expanding into ESG topics, particularly in terms of aspirational climate claims made by companies that can be contrasted with their operational realities.[168]

California is currently facing a constitutional challenge to its corporate climate disclosure laws, namely Senate Bill No. 253 (Climate Corporate Data Accountability Act) and Senate Bill No. 261 (Climate-Related Financial Risk Act).[169] These statutes involve emissions reporting and climate financial-risk reporting for large companies operating in the state. As of the end of 2025 and beginning of 2026, the Ninth Circuit Court of Appeals granted an injunction (pending appeal) against the enforcement of Senate Bill No. 261, the law focused on biennial reporting for large companies operating in California. This means that California will not be able to enforce the statutory deadlines under Senate Bill No. 261 while the injunction is in place.[170]

California has also adopted a mandatory approach to encouraging public companies to increase gender representation on boards. Senate Bill No. 826 was named "Women on Boards" and required publicly held corporations to meet a minimum number of women directors, scaled according to board size.[171] However, in *Crest v. Padilla* (2022), a California trial court held that Senate Bill No. 826 violated the California Constitution's equal protection clause.[172] These mandates have shown the move toward increased ESG regulation in California. However, the pushback suggests that the USA is generally deregulating ESG. Companies may still pursue diversity outcomes via voluntary governance and investor pressure, but California's quota statutes are not a stable compliance anchor.[173] Consequently, exposure to ESG litigation risk in California continues to center on greenwashing and consumer protection.

In contrast to California, Texas serves as a reference for anti-ESG litigation in the USA.[174] This litigation has taken two main routes: constitutional litigation against Texas's anti-ESG statute (Senate Bill No. 13) and Texas-led litigation targeting ESG coordination

165 Jason J. Czarnezki and Barbara Ballan, "Disclosure, Greenwashing, and the Future of ESG Litigation," *Washington and Lee Law Review* 81 (2024): 545-654, link.
166 Czarnezki and Ballan, "Disclosure, Greenwashing, and the Future of ESG Litigation."
167 Czarnezki and Ballan, "Disclosure, Greenwashing, and the Future of ESG Litigation."
168 Czarnezki and Ballan, "Disclosure, Greenwashing, and the Future of ESG Litigation."
169 Czarnezki and Ballan, "Disclosure, Greenwashing, and the Future of ESG Litigation."
170 Czarnezki and Ballan, "Disclosure, Greenwashing, and the Future of ESG Litigation."
171 "California Trial Court Strikes Down Women on Boards Law," Skadden, Arps, Slate, Meagher & Flom LLP, May 17, 2022, link.
172 "California Trial Court Strikes Down Women on Boards Law."
173 David Bell, Dawn Belt, Dean Kristy, Jennifer Hitchcock, and Ron Llewellyn, "California Court Finds California Board Diversity Law Unconstitutional," *Harvard Law School Forum on Corporate Governance*, April 23, 2022, link.
174 Rohan Naik, "States Declare War on ESG," CBLR Online, *Columbia Business Law Review*, November 28, 2022, link.

by asset managers.[175] Senate Bill No. 13 imposed restrictions on Texas state entities regarding both contracting and investing with financial firms known to boycott fossil-fuel companies.[176] In early February 2026, a federal judge in Texas held that Senate Bill No. 13 was unconstitutional, finding that it violated First Amendment protections.[177] Currently, stakeholders are framing this as a test case that could destabilize anti-ESG laws in other states.[178]

The second track of Texas's positioning includes a suit filed by the State of Texas against BlackRock, Vanguard, and State Street (*State of Texas et al. v. BlackRock, Inc. et al.* [2024]), alleging that the companies conspired to reduce coal output, consequently harming competition and raising consumer costs.[179] This case demonstrates an attempt by the plaintiff to reframe ESG engagement as horizontal collusion.[180] This further positions Texas as a state that invites shareholder and investor suits alleging that climate-driven conduct misleads investors.

What is particularly relevant in the context of ESG litigation in the USA is how jurisprudence plays a role in reflecting social attitudes toward ESG. This is because the judgments in various federal or state precedents reflect how judges apply the law and the culture of the respective jurisdiction regarding ESG litigation. It is important to consider the current political scenario and the results observed under this new administration and state-centric laws.[181] As such, one key insight that research into the situation in the USA brings to this report is that the role of judicial positioning can also have a strong influence on the frequency of ESG litigation depending on the framework that is established for addressing disputes in the field, whether this favors plaintiffs and consumers or private entities, or strikes a balance between the interests of both parties. ■

175 Simon Jessop and Ross Kerber, "Rejection of Texas Law Blacklisting 'Woke' BlackRock Could Challenge Anti-ESG Laws in Other States," *Reuters*, February 10, 2026, link.
176 Jessop and Kerber, "Rejection of Texas Law."
177 Jessop and Kerber, "Rejection of Texas Law."
178 "States Declare War on ESG."
179 Jessop and Kerber, "Rejection of Texas Law."
180 "States Declare War on ESG."
181 Talarides et al., "Trends in ESG Litigation and Enforcement."

5

CROSS-JURISDICTIONAL ESG REGULATION ACROSS ASIA AND EMERGING ECONOMIES

5.1. Asia

Asia does not have a single regulatory framework for ESG practices.[182] ESG reporting and litigation practices differ from one country to another. Some nations have introduced mandatory standards with detailed guidelines, whereas others are building on voluntary requirements. Specifically, regulators and stock exchanges are taking steps to shape ESG reporting rules, as ESG disclosure is seen as a tool to support sustainable finance and development.[183] It is evident from these facts that Asian countries are adopting more regulations to address ESG practices; however, there is still a long way to go to increase the focus on and improve ESG standards. Asia's leading economy, China, is increasingly focusing on ESG, though this focus is not novel.

The development of ESG in China can be divided into three periods. The first period (2001-2011) began with China's entry into the World Trade Organization (WTO), introducing social responsibility to businesses. In 2008, partially mandatory CSR reporting for certain firms boosted report publications. The second period (2012-2020) started after the 18th National Congress of the Communist Party of China (CPC) and continued in 2015 after the Fifth Plenary Session of the 18th CPC Central Committee when a new policy centering on innovation, coordination, green development, openness, and sharing was introduced. The third period began in 2020, when the dual carbon goal was declared. This was subsequently explained by Chinese President Xi Jinping at the General Debate of the 75th Session of the United Nations General Assembly on September 22, 2020, when China stated its aim of having its CO2 emissions peak before 2030 and achieving carbon neutrality before 2060.[184]

As more regulations are put in place, China is switching from voluntary guidance to enforceable obligations.[185] The Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE) have mandated ESG disclosure for listed companies.[186] However, for Beijing Stock Exchange (BSE)-listed companies, disclosure is not mandatory but remains voluntary.[187] This distinction reveals that there is a lack of harmonization in ESG reporting standards for listed companies. However, the Exposure Draft is stated to be a guide for Chinese companies to adopt a standardized approach to ESG reporting and enforce transparency. According to the document, China aims to create a mandatory sustainability reporting system aligned with the International Sustainability Standards Board (ISSB) by 2030.[188] In addition to the Exposure Draft, China's Action Plan has introduced twenty measures aimed at strengthening ESG practices in businesses in Beijing. The main goal of the Action Plan is to increase ESG disclosure by seventy percent by 2027 and focus on environmental protection to achieve the goal of carbon peaking and carbon neutrality.

Moreover, Basic Standards are being implemented in order to guide businesses in aligning their practices with global ESG standards. This shows that steps are being taken to unify the national ESG reporting system. Overall, China's ESG disclosure is being transformed with the introduction of these Basic Standards, which are composed of different subsections covering disclosure objectives and principles that guide businesses in considering the relevant information when preparing disclosures. These elements are similar to the International Financial Reporting Standards (IFRS S1), which provide an internationally recognized structure for ESG disclosure.[189] The number of cases in China is increasing as the focus on ESG regulations grows. *China Biodiversity Conservation and Green Development Foundation v Yalong River Basin Hydropower Development Co. Ltd.* (2020) is one of the best-known cases under Chinese Environmental Protection Law and allowed organizations to bring legal claims

182 SAM Corporate, "A Comprehensive Overview of Sustainability Reporting in the Asia Pacific," SAM Corporate, February 2, 2026, link.

183 SAM Corporate, "A Comprehensive Overview of Sustainability Reporting in the Asia Pacific."

184 Hongtao Shen, Honghui Lin, Wenqi Han, and Huiying Wu, "ESG in China: A Review of Practice and Research, and Future Research Avenues," *China Journal of Accounting Research* 16, no. 4 (December 2023): 100325.

185 Yang Cheng, Yan Yu, Juan Shang, and Chaohua Wu, "ESG 2025 – China," *Chambers and Partners Practice Guide*, last updated November 11, 2025.

186 Fei Kwok, Yang Liu, and Justin So, "China Commits to New ESG Disclosure Requirements for Listed Companies," Clyde & Co, June 28, 2024.

187 Lucia Brancaccio, "China's Stock Exchanges Announce ESG Reporting Guidelines for Listed Companies," China Briefing, March 18, 2024, link.

188 Giulia Interesse, "China Releases ESG Reporting Standards for Businesses," China Briefing, June 20, 2024, link.

189 Giulia Interesse, "China Releases ESG Reporting Standards for Businesses," China Briefing, June 20, 2024, link.

against polluters causing harm to the environment.

During this lawsuit, the Intermediate People's Court of Zhongwei City approved a mediation agreement between the parties clarifying the importance of the NGO's standing in Chinese courts and ordered the hydropower developer to take measures to prevent harm to the wild plants in question.[190] The new regulations therefore presents both an opportunity and a risk for China, as they offer better access to the global market and capital; however, challenges such as data accuracy remain an issue in China.[191] Overall, although the Chinese government has deployed some initiatives to improve and lay the groundwork for ESG standards, these are still insufficient. Some argue that developing independent ESG standards remains a subject of debate; however, it might help to increase China's influence globally.

Singapore is one of the leading countries in the region for ESG standards. The integration of ESG is accepted as a pressing issue and vital for building resilient portfolios and sustainable growth. Company stakeholders in general expect not only good financial performance but also a positive contribution to society. Historically, given the British influence on the Singaporean legal system, it is unsurprising to find that the similarities between the two jurisdictions are also reflected in the country's ESG regulatory framework. In fact, Singapore's company law was historically influenced by earlier UK company legislation, including the UK Companies Act of 1929,[192] which served as an important legislative reference prior to the enactment of Singapore's Companies Act of 1967.[193] Directors' duties in Singapore are "developed at common law and in equity, and are partially codified under the CA."[194] Given these roots in common law, Singapore, together with Australia, is beginning to experience the same ESG litigation risks that are currently present in the UK and the same pattern of lawsuits.[195] With its strong focus on sustainability, Singapore launched the Singapore Green Plan 2030 (2021) to advance Singapore's national agenda on sustainable development.[196]

This Plan is focused on creating green, livable, and sustainable homes for Singaporeans; using cleaner energy sources across all sectors, through green energy, green transport, and green buildings; increasing new opportunities and transforming industry while harnessing sustainability; reducing carbon emissions and embracing sustainability by consuming less and recycling more, and preparing to deal with climate change. In 2022, the Monetary Authority of Singapore (MAS) developed anti-greenwashing regulations for asset managers at the corporate and fund levels. At the corporate level, asset managers are encouraged to implement the necessary systems to monitor compliance with ESG goals, in line with global trends. At the fund level, the MAS issued Circular No. CFC 02/2022 on ESG Disclosure and Reporting Guidelines for Retail ESG Funds, which sets out the disclosure and reporting requirements for ESG funds for retail investors.[197] Paragraph 4 states that these apply to a recognized scheme (ESG Fund) that uses or includes ESG factors as an investment focus and strategy and represents itself as an ESG-focused scheme.[198]

The implementation of ESG regulations has facilitated ESG litigation. *Ok Tedi Fly River Development Foundation v PNG* (2022) demonstrated how courts can hold states or similar entities accountable for environmental harm. However, the court also explained in this case that Ok Tedi Fly River

190 *China Biodiversity Conservation and Green Development Foundation v. Yalong River Basin Hydropower Development Co. Ltd*. (2020).

191 Hongtao Shen, Honghui Lin, Wenqi Han, and Huiying Wu, "ESG in China: A Review of Practice and Research, and Future Research Avenues," *China Journal of Accounting Research* 16, no. 4 (December 2023): 100325.

192 Vincent Ooi and Cheng Han Tan, "Singapore Company Law and the Economy: Reciprocal Influence over 50 Years," *Asia Pacific Law Review* 27, no. 1 (2019): [2], link.

193 Vincent Ooi and Cheng Han Tan, "Singapore Company Law and the Economy: Reciprocal Influence over 50 Years," *Asia Pacific Law Review* 27, no. 1 (2019): [2], link.

194 Subcommittee on Directors' Duties, *Report on the Codification of Directors' Duties in Singapore* (Singapore: Singapore Academy of Law, March 2026), link.

195 CMS, "Future-Casting – Disputes and Sustainability in the UK, Singapore and Australia," in *CMS International Disputes Digest*, Summer 2024, link.

196 Singapore Green Plan 2030, January 23, 2026. Greenplan.gov.sg.

197 Andrea Savi and Anastasiya Ostrovnaya, "ESG Regulatory Framework for Asset Managers in the EU, UK, US, and Singapore: The Role of Social Knowledge and Value Judgement in the Asset Managers ESG Business Strategy," *University of Pennsylvania Journal of Business Law* 27, no. 1 (Spring 2025): 172.

198 Monetary Authority of Singapore, *Circular No. CFC 02/2022: Disclosure and Reporting Guidelines for Retail ESG Funds*, July 28, 2022 (Singapore: Monetary Authority of Singapore, 2022).

Development Foundation did not owe a fiduciary duty to the members of PNG as they were not parties to the relevant contracts.[199] This case reveals that although Singapore is paying more attention to ESG standards, there are still cases that run counter to this progress. However, overall, Singapore is a leading country in Asia for ESG disclosure and is a green finance hub. The Singaporean authorities, specifically the Monetary Authority of Singapore, have implemented many regulations, seeking to set an example through ESG-related policies.[200] Sustainability reporting in Singapore has evolved since the beginning of the decade, and its importance is increasing dramatically even though there are still cases which do not reflect this green stance.

Japan is witnessing an upsurge in ESG. In this context, Japanese companies are interested in ESG reporting, which has become a tool to gain trust from stakeholders. Japan aspires to become one of the leading countries in the field of ESG, aiming to accelerate its net-zero shift. In addition, Japan's Asia Zero Emission Community Initiative, which includes ten other member states, demonstrates the country's willingness to position itself as a leader in environmental and ESG policies.[201] Japanese lawmakers have made amendments to the Financial Instruments and Exchange Act (FIEA), which introduced mandatory sustainability disclosure in annual reports in 2023.[202] The new amendments require businesses to include governance, their risk management approach to sustainability, strategy, and targets in their annual reports. Furthermore, on March 29, 2024, the Sustainability Standards Board of Japan announced the release of new exposure drafts for reporting sustainability information based on recent IFRS disclosure standards. The initiative was taken to align with global disclosure standards.[203] More recently, the Sustainability Standards Board of Japan announced the release of the finalized version of the ESG disclosure standards, building on the ISSB and developing mandatory sustainability reporting for listed Japanese companies.[204]

Japan is another leading country in Asia regarding ESG litigation. However, although ESG regulations are increasing significantly, Japan is still not as active as its European counterparts. The case of Youth Climate Case Japan for Tomorrow (2024) was an example of litigation in which 16 young climate activists took the government's inaction on this matter to court. The group criticized the Japanese government for not reaching its climate goals and for not setting ambitious targets.[205] Nevertheless, it can be stated that Japan is increasingly focusing on ESG litigation, though it is still behind Europe in this respect.

5.2. Emerging Economies

As in Asia, emerging powers do not have a single ESG regulatory framework, yet the trend toward ESG regulation is growing. For example, in the case of Brazil, environmental regulation has been part of the country's legal and regulatory framework for decades. However, the recent emergence of ESG has led to increasing amounts of regulation and new practices within businesses to attract both national and international investors. The environmental element of ESG litigation has centered on large companies and government, meaning that regulation on that front has not hindered innovation or investment possibilities. The social and governance pillars are not as prominent as the environmental pillar given that the country's economy is so highly dependent on the environment. However, these areas are no less important and are seeing business reorganization and internal restructuring to comply with regulatory policies particularly focused on diversity, inclusion, and social justice. Concerns have been expressed about Brazil is aiming to implement tougher regulations for businesses in terms of ESG compliance.

199 *Ok Tedi Fly River Development Foundation Ltd v. PNG Sustainable Development Program Ltd*, [2022] SGCA 76 (Singapore Court of Appeal)

200 Asia Briefing Media Ltd., *Unlocking ESG Reporting Requirements in Singapore*, *ASEAN Briefing*, Issue 29 (March 2024), link.

201 ESG News, "Japan Drives Asia's Energy Transition with 70 New MOUs," *ESG News*, May 21, 2024.

202 Principles for Responsible Investment, *Policy Briefing* (London: Principles for Responsible Investment, 2024).

203 Alim Abasi, "ESG Rising: Recent Trends in China and Japan's Sustainable Shift," *RSM Netherlands Insights*, July 2024.

204 Mark Segal, "Japan Releases Inaugural IFRS-Aligned Sustainability Reporting Standards," *ESG Today*, March 6, 2025.

205 Sabin Center for Climate Change Law, "Youth Climate Case Japan for Tomorrow," *The Climate Litigation Database*, Nagoya District Court (Japan), 2024.

Türkiye is another country which does not have a standard, homogeneous ESG legal framework. Its standards are mostly defined by a combination of hard law, regulatory requirements, voluntary undertakings, and accepted industry practices driven by social pressures, reputational risk, and legislative necessity.[206] At the top of the hierarchy, the Turkish Constitution includes provisions on the protection of the environment, social security, health and safety rights, anti-discrimination, and gender equality.[207] Even though there is no specific ESG legal framework, Türkiye has addressed ESG concerns with the introduction of mandatory disclosure requirements for public companies. In October 2020, the Capital Markets Board of Türkiye (CMB) amended the Corporate Governance Communique to include sustainability principles in the disclosure requirements for publicly traded companies in their annual Corporate Governance Compliance Reports.

The CMB also issued the Sustainability Principles Compliance Framework, which included environmental, social, and corporate governance principles. Publicly traded companies are not required to operate in line with those principles, but they are required to disclose the reasons for and the impacts of any noncompliance with environmental and social risk management in their annual Corporate Governance Compliance Reports.[208] Türkiye and Brazil best represent the momentum of emerging economies.[209] The impact of disclosures is still unclear, yet they are expected to establish a stronger perception of transparency and accountability in emerging markets. ESG practices will likely become increasingly important in the upcoming years.[210]

As shown above, the global ESG regulatory and litigation framework is rapidly changing, and each region is adopting a different approach based on its legal and economic priorities. Asia is increasing its efforts to demonstrate alignment with ESG standards in other parts of the world, whereas emerging powers such as Brazil and Türkiye are mostly focusing on voluntary standards, albeit with growing mandatory obligations. Europe, in contrast, represents best practice with a special focus on human rights and sustainability. In short, there is currently no globally harmonized legal framework, though international cooperation on ESG framework standardization will be required. ■

206 Nadia Cansun and Merve Akkus, "Turkey: The Impact of ESG Compliance on M&A," *CEE Legal Matters*, March 26, 2021.
207 Constitution of the Republic of Turkey, Law No. 2709, arts. 10, 56, 60, adopted November 7, 1982, Official Gazette No. 17863, November 9, 1982, as amended.
208 Constitution of the Republic of Turkey.
209 Sustainalytics, "On Location: ESG Engagement in Turkey and Saudi Arabia," Sustainalytics, May 22, 2024. Link.
210 Nadia Cansun and Merve Akkus, "Turkey: The Impact of ESG Compliance on M&A."

6

ESG LITIGATION ACROSS ECONOMIC SECTORS

6.1. Expansion of Greenwashing and Carbon Offset Litigation

In 2025, there was a notable rise in cases challenging corporate environmental claims. They mainly centered on allegations of greenwashing and the reliance on carbon offsetting schemes to support climate commitments.[211] Climate litigation has traditionally focused on the actions of states, either by seeking stronger commitments to climate policies or by challenging the approval of projects with significant greenhouse gas emissions. More recently, however, attention has increasingly turned to the conduct of companies. This shift has prompted increased judicial and regulatory scrutiny of corporate representations concerning sustainability, carbon neutrality, and environmental performance, with particular attention being paid to whether such claims accurately reflect companies' actual practices. This development has been driven by concerns that some environmental claims may exaggerate climate benefits or rely on emissions reductions that are difficult to verify. In many cases, these circumstances raise questions about the transparency and credibility of companies' climate commitments.

Greenwashing litigation encompasses a broad range of legal actions alleging that companies have misrepresented their environmental performance, climate commitments, or sustainability credentials. In other words, there is a gap between what companies say about their environmental performance and what can be substantiated in practice. These claims often concern statements related to carbon neutrality, net-zero targets, renewable energy use, emissions reductions, and broader ESG performance.[212] The growing prevalence of such litigation reflects broader recognition that misleading climate communications may distort consumer choices, undermine investor confidence, and weaken public trust in companies' climate action. Consequently, courts are being called upon not only to evaluate the environmental impacts of corporate conduct, but also to determine whether climate-related representations are supported by credible evidence and are consistent with current scientific understanding.

A particularly important area of dispute triggering litigation nowadays concerns the use of carbon offsets to support carbon neutrality claims. Rather than reducing emissions within their own operations, many companies have sought to achieve or advertise climate neutrality by purchasing carbon credits generated through reforestation and renewable energy projects or activities such as forest conservation. However, the credibility of these arrangements has been questioned.[213] Critics have pointed out difficulties in demonstrating that offset projects produce genuine and lasting emission reductions. In addition to this, there are concerns regarding monitoring and verification. As scientific and regulatory scrutiny of voluntary carbon markets has intensified, litigation has increasingly challenged company claims that rely heavily on offsets rather than direct emissions reductions. Courts and regulatory authorities have shown a growing willingness to examine whether offset-based neutrality claims may create a misleading impression regarding a company's actual climate impact.

Several high-profile developments during 2025 illustrated this trend, reflecting a significant shift in how companies are held accountable for their climate claims. Major multinational companies faced legal and regulatory challenges regarding climate-related advertising and sustainability claims, while others modified or withdrew environmental marketing statements following legal scrutiny.[214]

These cases demonstrate a broader shift in climate accountability strategies, whereby litigants seek to influence corporate behavior not only through emissions-based claims but also through challenges to the narratives and representations that companies use to communicate their environmental

211 United Nations Environment Programme and Sabin Center for Climate Change Law. *Climate Change in the Courtroom: Trends, Impacts and Emerging Lessons.* Columbia Climate School, 2025.

212 Barbara Ballan, "Climate-washing Litigation: From Puffery to Material Lies," 98 *University of Colorado Law Review* (forthcoming 2026), SSRN, February 3, 2025, link.

213 Organisation for Economic Co-operation and Development, *Environmental Claims and Greenwashing: OECD Policy Perspectives* (Paris: OECD Publishing, 2024).

214 Ropes & Gray LLP, "Greenwashing Litigation Trends Update," Ropes & Gray Insights, January 15, 2026, link.

performance. What we are witnessing now is a strategic pivot by activists and watchdogs, meaning that instead of focusing solely on hard emissions data, legal challenges are targeting corporate narratives. The consequence of this is that if a business tries to polish its reputation with vague or exaggerated eco-friendly branding, it will face real pushback.

The expansion of greenwashing litigation also coincides with broader developments in sustainable finance and ESG regulation. This crackdown is therefore not happening in a vacuum. It aligns with a push for transparency across sustainable finance and ESG. Investors, shareholders, and financial regulators are placing greater emphasis on climate-related disclosures and the reliability of environmental information provided to markets. This shifting landscape is mapped out by recent international enforcement actions, such as the fast fashion crackdown on Shein (AGCM Proceeding PS12709 Infinite Styles Services Co. Ltd), the "carbon neutral" watchdog (*Dib v. Apple Inc.* 2025), or the green finance reality check (*Australian Securities and Investments Commission v. LGSS Pty Ltd* [2024]). In these cases, courts imposed heavy financial penalties on deceptive corporate narratives.

Another relevant precedent which must be examined in the context of greenwashing litigation is the case of DWS, a subsidiary of Deutsche Bank Asset Management. DWS Investment Management Americas, Inc. (DIMA), the North American subsidiary of DWS, was accused of making materially misleading statements regarding its actions to integrate ESG principles into investment recommendations of ESG-related products.[215] DIMA had portrayed itself as a leader in ESG compliance in considering ESG criteria in all of its investments, fund and account management. However, the SEC found that between 2018 and 2021, the entity had failed to implement various statements and provisions from its global ESG integration policy, rendering its claims to clients and investors largely unsubstantiated.[216] The SEC found DIMA to be in violation of Sections 206(2) and 206(4) of the Investment Advisers Act and of Rules 206(4)-7 and 206(4)-8, with DIMA agreeing to a cease-and-desist order, censure, and a $19 million penalty in this ESG misstatements action, as part of a broader $25 million settlement that also addressed anti-money laundering deficiencies.[217] Sanjay Wadhwa, Deputy Director of the SEC's Enforcement Division and Head of its Climate and ESG Task Force, stated that the case of DIMA was an important marker for investors and financial entities to ensure that their ESG compliance statements were supported and demonstrated by action.[218]

Prior to the allegations against DIMA, the Federal Financial Supervisory Authority (hereinafter, "BaFIN") launched an investigation into DWS and Deutsche Bank in Germany, with police raiding their offices in cooperation with Frankfurt public prosecutors in May 2022.[219] The impact of this operation on Deutsche Bank and DWS was immediate; the group's shares fell by 7% the day after the raids, and the entities also experienced significant reputational damage as a result.[220] Furthermore, the launch of the investigation resulted in significant governance reforms, with the then Chief Executive Asoka Woehrmann stepping down from his position as a result of the allegations.[221] In April 2025, the Frankfurt Public Prosecutor's Office imposed a €25 million fine on DWS based on the findings of a three-year investigation following the raids.[222] This penalty was imposed on the German subsidiary after it was found that, as with DIMA, DWS had made misleading statements about its leading position in ESG activity between 2020 and 2023.[223] Both cases, given their sequential nature, serve as key precedents

215 U.S. Securities and Exchange Commission, "Deutsche Bank Subsidiary DWS to Pay $25 Million for Anti-Money Laundering Violations and Misstatements Regarding ESG Investments," press release, September 25, 2023, link.

216 U.S. Securities and Exchange Commission, "Deutsche Bank Subsidiary DWS to Pay $25 Million."

217 U.S. Securities and Exchange Commission, "Deutsche Bank Subsidiary DWS to Pay $25 Million."

218 U.S. Securities and Exchange Commission, "Deutsche Bank Subsidiary DWS to Pay $25 Million."

219 Zaneta Sedilekova and Isabelle Merchat, "DWS and Deutsche Bank Raided over Greenwashing Allegations," *Lexology* (Clyde & Co LLP, June 2022), link.

220 SEC, "Deutsche Bank Subsidiary DWS"; Sedilekova and Merchat, "DWS and Deutsche Bank Raided."

221 "Deutsche Bank's DWS and Allegations of 'Greenwashing'," *Euronews*, June 10, 2022, link.

222 Simmons & Simmons LLP, "'Historically High ESG-Fine in Germany for 'Greenwashing'," Simmons & Simmons, April 2025, link.

223 Simmons & Simmons LLP, "'Historically High ESG-Fine in Germany for 'Greenwashing'."

demonstrating the need for financial entities to support ESG claims with sufficient data and evidence.

The outcome of the investigations into and penalties imposed on Deutsche Bank and its subsidiaries across jurisdictions also highlights a pattern that should be considered by entities facing their first case of ESG litigation. In particular, the process of addressing a claim may become more standardized, increasing the measurability of litigation risk. With every new claim or dispute, the uncertainty regarding its outcome and the aforementioned reputational and operational costs it may impose on a financial entity naturally lead to perceptions of poorer economic health among banks, driving investor demands for greater compensation. However, with the eventual conclusion of the dispute, familiarity with the litigation process gives financial entities the opportunity to better manage risk in the future (as indicated by DWS's reforms and modifications following claims), while investors regain confidence in banks' ability to successfully manage litigation risk in the future.

The flow chart below sequentially illustrates the changes in market responses and adaptation to litigation risk.



ESG litigation impact on credit spreads: insights visualized from the case of DWS and DIMA

A clear consequence of the above-mentioned trends is the fact that climate litigation is increasingly overlapping with other areas of law. This includes securities regulation, consumer protection, competition law and financial supervision. This diversification of legal pathways has expanded the range of actors capable of initiating climate-related claims and has increased potential legal exposure for companies across multiple sectors of the economy. Taken together, these developments indicate that climate litigation is entering a new phase in which the credibility of companies' climate commitments has become the subject of judicial scrutiny, meaning that courts are directly assessing company credibility in this area. Whereas previous litigation often focused on emissions sources and climate policy implementation, contemporary greenwashing and carbon offset cases increasingly address the quality, transparency, and evidentiary basis of climate-related communications. As regulatory standards continue to evolve and scrutiny of company climate claims intensify, this area of litigation is likely to remain a significant and expanding field within environmental law in the years ahead.

6.2. ESG Litigation in the Financial Sector

The financial sector has become one of the most significant and rapidly evolving areas of ESG-related litigation. While early environmental litigation primarily targeted governments and companies operating in carbon-intensive industries, recent developments have revealed increasing legal scrutiny of financial institutions, including banks, asset managers, pension funds, and investment firms. This shift reflects growing recognition that financial actors play a central role in directing capital flows, influencing company behavior, and supporting the transition toward a more sustainable economy. Consequently, financial institutions are increasingly expected to demonstrate that their investment decisions, financing activities, and sustainability disclosures are consistent with their stated ESG commitments.

ESG litigation trends vary according to domestic practice and cases across the EU. However, litigation

in the financial sector generally focuses on several aspects, including financing provided to clients that affects human rights and the environment, control deficiencies in asset management, and unlawful advertising in the form of greenwashing, which falls within the scope of consumer protection law. Despite the general scarcity of litigation cases in the financial sector across jurisdictions within the EU, such cases are most common in France, the Netherlands, and Germany. The French ESG regulatory framework has strong foundations under which entities have deep-rooted responsibilities. The Netherlands, meanwhile, has become the most claimant-friendly legal forum for collective actions within the EU.[224] , [225]

These patterns are not simply relevant for institutions as a means of keeping up to date with developments and litigation trends across the sector. The stakes for financial institutions involved in an ESG dispute are high considering the interests at risk. In fact, companies which face ESG litigation are prone to experiencing decreased stakeholder confidence and increased regulatory and public scrutiny.[226] This, in turn, can affect their financial performance as they become less attractive to relevant stakeholders and investors.[227] Taking this into consideration, the stability of the ordinary compliance environment that financial actors once enjoyed is gradually being eroded as the regulatory landscape grows more difficult to anticipate and navigate. Within the given context, the risk materializes in lenders' perceptions that alleged ESG controversies stemming from operational practices signal a greater tendency toward managerial and operational risks, influencing loan pricing decisions.[228] These may also signal inefficient corporate governance, reputational risk, and inadequate managerial oversight, driving demands for higher loan spreads as a defense mechanism against higher borrower risk.[229] As such, the reputational value which ESG compliance brings to actors in the financial sector is no small preventive measure against the threat of litigation. There is also a division or classification of investors that act according to their views and perceptions of environmental and social issues.[230] Investors that are more closely aligned with these values tend to support costlier and more expansive environmental and social policies within companies compared to those who do not share these values.[231] Hence, this division of investor interests and voting patterns along ideological E&S lines means that the costs of implementing these policies may outweigh the level of support shown by most investors. [232]

Another aspect which may be discussed is the impact of the duration of these lawsuits on company loan spreads. Given the nature of an ESG-related lawsuit, the outcome at the time of filing is uncertain, and there is no specific knowledge of the probability that a significant financial penalty will be imposed.[233] Given the tendency of ESG court disputes to last for years, lenders are only able to partially adjust credit spreads due to the uncertain nature of the risk. The opposite effect, naturally, is observed once the court issues its decision. If there is an adverse verdict, the process results in higher loan spreads as lenders bring pricing into line with the heightened default risk and compliance costs.[234] Overall, financial institutions that are newly involved in an ESG-related dispute and are seeking to borrow and attract investors are more likely to face higher loan spreads than those in existing cases due to lenders' perceptions of higher credit risk.[235] When relating these findings back to the effect ESG litigation has on smaller firms and entities as a whole, it logically follows that this places smaller companies at a disadvantage not only when assessing the costs, time, and resources invested in preparing for an ESG lawsuit, but also in the long term with regard to the organizational structure of the company.

224 Direction générale du Trésor, "Publication of the Implementing Decree of Article 29 of the Energy-Climate Law on Non-Financial Reporting by Market Players," June 8, 2021, link.
225 Jones Day, *ESG—Climate Change and Related Litigation Take Center Stage in Europe*, white paper, December 2022, link.
226 Andreas Beyer and Lorenzo Nobile, "The Impact of Climate Litigation Risk on Firms' Cost of Bank Loans," ECB Working Paper No. 2025/3087 (Frankfurt: European Central Bank, August 2025), link.
227 Beyer and Nobile, "The Impact of Climate Litigation Risk."
228 Beyer and Nobile, "The Impact of Climate Litigation Risk."
229 Beyer and Nobile, "The Impact of Climate Litigation Risk."
230 Kenneth Khoo and Roberto Tallarita, "Expanding Shareholder Voice: The Impact of SEC Guidance on Environmental and Social Proposals" (European Corporate Governance Institute Law Working Paper No. 822/2025, last revised September 20, 2025), link.
231 Khoo and Tallarita, "Expanding Shareholder Voice."
232 Khoo and Tallarita, "Expanding Shareholder Voice."
233 Khoo and Tallarita, "Expanding Shareholder Voice."
234 Khoo and Tallarita, "Expanding Shareholder Voice."
235 Khoo and Tallarita, "Expanding Shareholder Voice."

While there are no uniform definitions either of a "sustainable product" or of the umbrella term "sustainable" under EU regulation, the current framework under the Ecodesign for Sustainable Products Regulation (hereinafter, the "ESPR"), Regulation (EU) 2024/1781 of 13 June 2024, provides various definitions with which products must be fully compliant to be able to qualify. The ESPR provides a legislative framework for developing products so that they may contribute to the EU's overall sustainability targets by supporting a climate-neutral, circular economy.[236] Products are divided into different categories, and Article 4 of the ESPR empowers the European Commission to establish ecodesign requirements through delegated acts for specific product categories.[237] Compliance with the applicable requirements under the relevant delegated act enables a product to be placed on the EU market. Article 5 establishes these requirements by reference to various product aspects that may be relevant to a given good, including durability, reliability, and reusability, among others.[238] Articles 6 and 7 of the ESPR address performance and information requirements that products must comply with under their corresponding delegated acts, respectively, along with requirements for the content of those delegated acts in Article 8.[239]

The ESPR also outlines the role of the Digital Product Passport and its requirements in Article 9, defining it as a set of product-specific data incorporating the relevant information required under the applicable delegated act.[240] The function of the Digital Product Passport can be seen as serving both as an intersection between traceability and an anti-greenwashing mechanism through the corresponding compliance requirements and thresholds. Hence, the ESPR provides a foundation for products to be considered sustainable following the adoption and implementation of the aforementioned requirements and criteria, providing a structured framework for defining and demonstrating the sustainability of goods through product-specific delegated acts.[241] The use of delegated acts allows for updates to products' sustainability status without replacing or amending the ESPR, and mirrors the framework of the EU Taxonomy (Regulation (EU) 2020/852) whereby an economic activity demonstrates its status through various requirements (substantial contribution, do no significant harm (DNSH), and compliance with technical screening criteria).[242] From this perspective, the ESPR provides flexibility in the face of the rapidly expanding nature of ESG litigation risk, allowing greater flexibility in compliance and, in turn, reducing the uncertainty surrounding the standards against which entities can be taken to court for noncompliance or nondisclosure. The ESPR takes a dynamic legislative approach by offering what can be seen as a newfound freedom for companies and entities to demonstrate ESG efforts in their products.

ESG litigation is closely associated with tort and consumer protection law in its more expansive form, as demonstrated by current cases. The rising occurrence of class-action suits has its roots in the theory behind climate litigation, notably, the duty of care. As ESG principles become increasingly integrated into company obligations, it is no surprise to see these notions encompassed within expected and extracontractual behavior. As seen through the EU Omnibus Package, interconnectedness and dependence within EU regulatory frameworks are driving factors behind many of the developments that have taken place. Similarly, the role that transnational judicial dialogue plays within courts shapes the patterns of growing litigation. It would be remiss not to highlight the support that Directive (EU) 2020/1828 on representative actions provides as a legal basis for collective suits which can be brought within the territory as a means of empowerment for groups harmed by external entities. In fact, the legislation outlines the rights of groups of claimants within the EU and addresses aspects such as the qualified entities

236 European Parliament and Council of the European Union, Regulation (EU) 2024/1781 of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC, *Official Journal of the European Union* L 2024/1781, June 28, 2024, link.

237 Regulation (EU) 2024/1781, art. 4.

238 Regulation (EU) 2024/1781, art. 5.

239 Regulation (EU) 2024/1781, arts. 6, 7, and 8.

240 Regulation (EU) 2024/1781, art. 9.

241 European Commission, "Implementing the Ecodesign for Sustainable Products Regulation," Green Forum, link.

242 European Parliament and Council of the European Union, Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, *Official Journal of the European Union* L 198, June 22, 2020, link.

authorized to bring cross-border representative actions, the composition of a corresponding representative action, injunctive measures that courts may provide, as well as redress measures.[243] Spain only began to take major steps toward the transposition of Directive (EU) 2020/1828 in March 2025 with the drafting of a national bill, in a long-awaited integration which will transform domestic consumer protection law.[244]

With regard to the input, this can be demonstrated through the action of a consumer filing a complaint on behalf of all those who have been harmed by an entity's ESG non-compliance. Global trends in class actions and group litigation are largely driven by the legislative frameworks that support such suits, such as Directive (EU) 2020/1828 on Representative Actions, as well as the proliferation of third-party funding initiatives to finance class actions.[245] In the EU, the increase in litigation in Germany is driven by two factors: the toolkit that plaintiffs have access to in order to make claims, and the broad scope of areas which can be affected by these actions. [246] Firstly, mass individual actions are frequent in the country, whereby individuals file suits in their own name and claimant law firms file large numbers of the same cases as a means of gaining exposure.[247]

Furthermore, the extensive collective redress mechanisms available to designated organizations, as well as claim bundling, in which specialized firms group together individual claims by assigning them to a special purpose vehicle which files an individual suit, also play a significant role in this increase.[248] Third-party funding for litigation is also significant in Germany despite its 10% cap in the Consumer Rights Enforcement Act (Verbraucherrechtedurchsetzungsgesetz (VduG)), which implements the EU Collective Redress Directive.[249] For example, in 2025, Burford Capital funded a collective action against a technology company that allegedly sought to skim profits.[250] Hence, collective action and group claims are becoming increasingly consolidated, shifting the balance across EU litigation.

243 Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC [2020] OJ L 409/1.
244 Ozan Akyurek, Antonio Canales, and Marta de Cara, "Spain's Draft Law on Collective Actions to Transpose EU Directive 2020/1828," Jones Day Insights, March 2025, link.
245 Clifford Chance, *A global view on group action litigation: what lies ahead in 2026?* (March 2026), 2, link.
246 Clifford Chance, *A global view on group action litigation*, 12.
247 Clifford Chance, *A global view on group action litigation*, 12.
248 Clifford Chance, *A global view on group action litigation*, 12.

6.3. Risk Matrix: ESG Litigation

Based on the information provided in this section regarding the cross-sector reach of ESG litigation, coupled with the analysis of relevant cases, certain recurring risks which increase exposure to various types of ESG litigation for financial entities and banks can be identified:

Financial Institution Risk: Misleading Targets and Unsupported ESG Claims

Potential Litigation

1. **Greenwashing claims:** The European Banking Authority (hereinafter "EBA")'s 2024 report on Greenwashing Monitoring and Supervision indicated that for banks, reputational and operational risks are those that most frequently arise from greenwashing by financial entities, and that the risk of greenwashing-specific litigation has increased significantly over the last few years.[251]

2. **Securities litigation:** Currently, despite the growing relevance of ESG for financial entities, regulatory bodies such as the SEC and the FTC are facing barriers and challenges to imposing uniform ESG reporting practices.[252] Despite the difficulty

249 Clifford Chance, *A global view on group action litigation*, 12.
250 Clifford Chance, *A global view on group action litigation*, 13.
251 Sarah Hantscher and Julien Robert, "ESAs Final Reports on Greenwashing in the Financial Sector," CMS Law, July 8, 2024, link.
252 D. Larry Crumbley, Steven D. Grossman, and Amanda M. Grossman, "ESG Reporting Issues Perpetuating Fraud Litigation," *Journal of Forensic and*

of standardizing disclosure practices, securities class-action litigation relating to identified events or occurrences of noncompliance on the part of entities has steadily increased across a variety of jurisdictions.[253] This type of litigation brought by regulatory agencies is expected to continue to grow, creating a positive feedback loop in which the growing number of ESG-related disclosures published by entities is likely to trigger more suits related to public reporting or the absence thereof.[254] The influence of ESG soft law and voluntary disclosure guidelines also plays a role in this phenomenon, as they are a more affordable alternative for compliance despite their arbitrariness.[255]

Internal Control or Mitigation

1. **Legal validation by qualified regulatory experts prior to publishing:** In the case of Union Bank Switzerland (hereinafter, "UBS")'s 2024 Sustainability Report, for example, a dedicated Sustainable Finance Legal (SFL) team monitors regulatory developments regarding greenwashing along with relevant disputes and due diligence schemes globally, and provides UBS with support in the implementation of EU regulations with regard to ESG efforts.[256] This provides the necessary evaluation to ensure that any claims or stated policies are in line with regulatory frameworks for environmental claims, and to minimize exposure to penalties or fines for noncompliance.

2. **Scientific evidence and evaluation of company climate activity:** Internationale Nederlanden Group (hereinafter, "ING") is an industry-leading example of this; in March 2025 the financial institution announced that the Science Based Targets Initiative (hereinafter, "SBTi") had validated ING's climate targets for emissions reduction, as well as targets pertaining to its client portfolio. .[257] The specific framework under which ING's targets were evaluated was SBTi's "Financial Institutions Near-Term Criteria" standards, facilitating conformity with global climate science standards for banks and financial institutions.[258]

3. **Adequate SFDR disclosures and consistent review of public statements:** BNP Paribas Asset Management Group (hereinafter, "BNP Paribas") has continuously published sustainable finance disclosure documents in recent years, including an Entity Statement and a Statement on Principal Adverse Impacts (hereinafter, "PAI Statement"). The PAI Statement reflects and discusses the principal adverse impacts of investment decisions on identified ESG indicators, using metrics, identified quarters, and actions taken for the next reference period as a means of improving compliance.[259] BNP Paribas' annual update of SFDR disclosure statements [260] and its PAI Statement demonstrate a commitment to ensuring that no ESG claims are outdated or overstated, and to updating business policies or publications with current and relevant data provided through robust due diligence.

Financial Institution Risk: ESG Inconsistencies

Potential Litigation: Investor Claims, Class-action Suits

Investor claims against companies and financial entities for ESG inconsistencies or insufficient action to support claims become especially dynamic as ESG litigation evolves. In the United States, for example, the landmark case of *Basic Inc v. Levinson* established the form of accountability owed for misstatements made to investors;

Investigative Accounting 16, no. 2 (2024): 187, link.

253 D. Larry Crumbley, Steven D. Grossman, and Amanda M. Grossman, "ESG Reporting Issues Perpetuating Fraud Litigation," *Journal of Forensic and Investigative Accounting* 16, no. 2 (2024): 188, link.

254 D. Larry Crumbley, Steven D. Grossman, and Amanda M. Grossman, "ESG Reporting Issues Perpetuating Fraud Litigation," 188.

255 D. Larry Crumbley, Steven D. Grossman, and Amanda M. Grossman, "ESG Reporting Issues Perpetuating Fraud Litigation," 188.

256 UBS, *Sustainability Report 2024*, 2024, link.

257 ING Group, "ING's Climate Targets Validated by the Science Based Targets Initiative (SBTi)," ING, March 2025, link.

258 ING Group, "ING's Climate Targets Validated by the Science Based Targets Initiative (SBTi)."

259 BNP Paribas S.A., *SFDR Statement on Principal Adverse Impacts of Investment Decisions on Sustainability Factors*, June 2025, link, 4.

260 BNP Paribas S.A., *SFDR Entity Disclosure Statement*, 2026, link.

previously a suit could only be filed as a securities fraud claim under Rule 10b-5 where the required elements were present.[261]

However, *Basic Inc. v. Levinson* established an important causal relationship: that all material information about a company's shares is incorporated into or affects its share price; hence, there is market reliance on any misstatement that may have been made.[262] This removed the need for an individual burden of proof and made class actions much more readily accessible.

The newest trend of ESG litigation cases in the USA relying on this precedent is notable; the expansion of responsibility regarding ESG disclosures for financial entities is rooted in the notion that share prices fail to reflect a company's compliance with standards.[263] As share prices currently are not bound to reflect commitment to ESG pillars, investors may be collectively misled into buying shares at a value that is exaggerated or does not transparently reflect a company's material impact on relevant issues.[264] Hence, a lack of transparency and ESG misstatements leading to inconsistencies can generate a risk of investor claims, and in the context of *Basic Inc v. Levinson*, develop into collective-action suits.

Internal Control or Mitigation

1. **Internal ESG Committee Ensuring Transparency in Public ESG Claims**

One of Deutsche Bank's three sustainability forums is a key example of such a committee. The group's Sustainability Strategy and Steering Committee was formed in 2022 and is composed of regional and divisional ESG experts whose work is divided across the entity's functions.[265] Some of the committee's activities in the organizational structure include the integration of ESG data into the development of new products and technology, global staff training to align with ESG objectives, ESG financing, and the design of a sustainability control framework along with oversight of its implementation.[266] This shows how regular updates of ESG targets and measures to meet them as a means of standardizing these objectives allow for better auditing.

2. **Traceability of Key Performance Indicators (KPIs)**

This ensures that KPIs are measurable and achievable in line with business capacity, and that they can be consistently audited. This dovetails with measures taken by Deutsche Bank in its 2024 Double Materiality Assessment, in which energy use reports were analyzed against climate targets to ensure efforts remained on track with its stated goals.[267] KPIs, as such, can minimize the risk of investor claims as they provide a tangible form of evidence that an entity is actually complying with its ESG targets and objectives. This reduces the probability of misstatements or a failure to provide material information about compliance in the context of ESG compliance, which affects share price and value.

Financial Institution Risk: Poor Data Quality and Lack of Transparency

Potential Litigation: Regulatory Sanctions by Various Entities

One case that clearly demonstrates the aforementioned risk is the SEC's action against Goldman Sachs Asset Management for unsupported ESG claims. In 2022, Goldman Sachs Asset Management (hereinafter, "GSAM") settled a case with the SEC, incurring a penalty of $4 million due to allegations that it had failed to comply with

261 Aneil Kovvali, "ESG and Securities Litigation: A Basic Contradiction," *Duke Law Journal* 73, no. 6 (2024): 1232–33, link.
262 Aneil Kovvali, "ESG and Securities Litigation: A Basic Contradiction," *Duke Law Journal* 73, no. 6 (2024): 1233, link.
263 Aneil Kovvali, "ESG and Securities Litigation: A Basic Contradiction," *Duke Law Journal* 73, no. 6 (2024): 1234, link.
264 Aneil Kovvali, "ESG and Securities Litigation: A Basic Contradiction," 1234.
265 Deutsche Bank, "Sustainability Governance," Deutsche Bank, accessed August 23, 2026, link.
266 Deutsche Bank, "Sustainability Governance."
267 Deutsche Bank, *In-House Ecology Update 2024* (2024), link.

its ESG policies relating to separately managed accounts and mutual funds labeled as "ESG products."[268] The allegations stated that GSAM had failed to implement its ESG due diligence procedures for investments over a number of years, including the failure to provide training to advisory staff on ESG policies and to maintain ESG questionnaires completed and stored for internal auditing in a centralized location as required by registered advisers.[269] The lack of enforcement of its internal ESG policies on the part of GSAM signaled a failure to conduct adequate due diligence and proper procedural adherence when collecting data. As such, the case of GSAM illustrates the risk financial entities face if mechanisms are not put in place to uphold ESG objectives and frameworks by ensuring thorough, comprehensive data collection.

Internal Control or Mitigation: External Assurance and Accuracy in Auditing

The firm Nestlé demonstrates this through its limited assurance engagement reports drawn up by the third party, Ernst & Young (hereinafter, "EY"). EY published a limited assurance engagement report using defined criteria based on a selected set of KPIs for Nestlé in its 2023 Annual Sustainability Report.[270] The report details some of the limited assurance procedures conducted, including an assessment of the processes and systems for compiling ESG-related data, the analysis of documentation with respect to established ESG KPIs in sustainability reports, and checks of statistical calculations made based on the data collected.[271] Examples of the data reviewed include GHG emissions reductions in the environmental sphere, the number of management positions held by women in the social sphere, and whistleblower channel use within the governance pillar.[272] Similarly, in the financial sector, the Hongkong and Shanghai Banking Corporation (hereinafter, "HSBC") also references an external assurance engagement by PricewaterhouseCoopers (hereinafter, "PwC") in relation to data collected as part of its 2024 ESG Data Pack.[273] This process of outsourcing data assurance ensures that qualified and independent third-party assessments of businesses' ESG efforts are taken into account. ■

268 Kirkland & Ellis LLP, "SEC Continues Enforcement Scrutiny of ESG Claims by Investment Advisers," Kirkland AIM, December 2022, link.

269 Kirkland & Ellis LLP, "SEC Continues Enforcement Scrutiny of ESG Claims by Investment Advisers."

270 Ernst & Young Ltd., *Independent Assurance Statement on Select Environmental, Social and Governance Indicators of Nestlé S.A.*, February 2024, link.

271 Ernst & Young Ltd., *Independent Assurance Statement on Select Environmental, Social and Governance Indicators of Nestlé S.A.*, 2.

272 Ernst & Young Ltd., *Independent Assurance Statement on Select Environmental, Social and Governance Indicators of Nestlé S.A.*, 4.

273 HSBC Holdings plc, *ESG Data Pack FY 2024*, February 19, 2025, 16, link,

7

ESG LITIGATION FUNDING AND DISPUTES

Funding in ESG disputes, specifically climate litigation funding, has various drivers related to the opportunities that funding these disputes provides for capital markets and financial entities. One of the aspects that makes the field so attractive to third parties (especially financial entities) in terms of litigation funding is the growth of these cases. [274] The introduction of the EU Sustainable Finance Disclosure Regulation (hereinafter, the "SFDR") is an example of the marked shift in the regulatory environment aimed at combining both private investment and sustainability interests and providing relevant resources to stakeholder groups so that they can make green investments.[275] This suggests that facilitating funding for climate disputes has practical relevance in responding to the growth of ESG in market practice. Investors have also increased incentives to expand their portfolios by including more climate litigation risk, best demonstrated through the investment made by Gramercy Funds Management LLC in collaboration with Pogust Goodhead in 2023.[276] Gramercy's investment of $552.5 million gave Pogust Goodhead a major advantage in terms of flexibility and liquidity, as collective suits involve high costs to meet client interests, especially when upfront payment is not provided.[277] Thus, the investment provides a safety net for the firm and reflects the investor's interest in following the sustainability trend, ESG values, and regulatory developments.

Of course, the presence of third parties, and specifically financial institutions, in financing litigation is also driven by material interests with regard to the success rate and financial gains that ESG-related cases can bring. It is clear from the data presented in this paper that ESG cases, especially in the field of class actions, tend to become expansive and costly. In the case of ESG and climate litigation cases, there are several general funding risks. While third-party funding entities have historically focused their support on fields of law where trends in case outcomes are easily identified, climate and ESG litigation are both relatively new occurrences and largely challenge and shift perceptions of what litigation can achieve.[278] The lack of established patterns in ESG litigation can also affect the risk within a funder's portfolio: there must be a balance between high- and low-risk disputes, with the possibility of overconfidence bias regarding a favorable outcome by a court. This makes it difficult to diversify solely into novel cases due to this dichotomy.[279]

274 Thomas Kohlmeier and Marcel Wegmüller, "ESG and Litigation Funding – Tied at the Hip? A Practitioner's View," in *Sustaining Access to Justice: New Avenues for Costs and Funding*, ed. Xandra Kramer, Masood Ahmed, Adriani Dori, and María Carlota Ucín (Oxford: Hart Publishing, 2025), 179.

275 Kohlmeier and Wegmüller, "ESG and Litigation Funding – Tied at the Hip?," 179.

276 Kohlmeier and Wegmüller, "ESG and Litigation Funding – Tied at the Hip?," 179.

277 Kohlmeier and Wegmüller, "ESG and Litigation Funding – Tied at the Hip?," 179.

278 Kohlmeier and Wegmüller, "ESG and Litigation Funding – Tied at the Hip?," 173.

279 Kohlmeier and Wegmüller, "ESG and Litigation Funding – Tied at the

Nonetheless, climate and ESG litigation have a particular upside when examining how regulation in the field across the EU supports claimants. The incentive to rally millions of consumers as groups of claimants provides much more leverage in settlement discussions with defendants, further motivating class action suits.[280] While third-party investors are unlikely to position themselves as funders of cases where plaintiffs face significant barriers to justice, the inverse effect can be seen in jurisdictions where claimants are particularly well positioned in terms of legislation and regulation.[281] Special litigation regimes (e.g., class actions and collective suits) allow individual low-value claims to be aggregated into a much larger collective claim. This strength in numbers, combined with a regime whose imbalances favor the plaintiff's position, presents investors with excellent opportunities for potentially high returns.[282] The case of ESG litigation across the EU reflects this general practice regarding such suits: despite the introduction of the Omnibus Package, which serves to decrease the administrative burden on businesses, the strength and roots of ESG litigation have continued to grow. Applying the analysis, investors and third parties across the EU have a strong incentive to finance disputes within the sector because of the mechanisms provided by legislation and jurisprudence to guarantee success. ■

Hip?," 176.

280 Kohlmeier and Wegmüller, "ESG and Litigation Funding – Tied at the Hip?," 175.

281 Joanna M. Shepherd, "Ideal Versus Reality in Third-Party Litigation Financing," *Journal of Law, Economics & Policy* 8, no. 3 (2012), 2.

282 Shepherd, "Ideal Versus Reality in Third-Party Litigation Financing," 4.

8

PRACTITIONER PERSPECTIVES: INSIGHTS FROM LAW FIRMS AND LISTED COMPANIES

To ground these macro-trends in real-world legal practice, the IE Law Ahead Center distributed comprehensive questionnaires to partner law firms and listed companies. The objective of these studies was to develop an evidence-based understanding of current trends, challenges, and emerging patterns in ESG-related litigation, as experienced directly by legal practitioners handling disputes, regulatory matters, and risk assessments. The findings reveal important insights into the actual experience of stakeholders in the field and support the conclusions drawn from the research discussed above. The insights from IE Law Ahead partners also provide a foundation for the next steps in preparing companies for the evolving ESG litigation landscape. Overall, stakeholders reported that litigation frequency had increased moderately, with the influence of EU regulatory changes and the growing presence of greenwashing and misleading claims contributing to this increase. Similarly, the responses pertaining to risk-reduction mechanisms reflect the recommendations made in previous sections of this report.

8.1. Law Firm Questionnaire

The law firms were asked to respond to the following specific questions based on their professional experience in recent years:

1. ***In your experience, which factor most strongly shapes the way ESG-related litigation has developed in your country compared to other jurisdictions?***

   (Options included: national judicial culture or procedural rules; enforcement priorities of domestic regulators; influence of EU-level regulatory developments; civil society and NGO litigation strategies; market or investor pressure; other).

2. ***Over the past 3–5 years, how has the volume of ESG-related litigation changed in the cases you or your firm have handled?***

   (Options included: increased significantly, increased moderately, remained stable, decreased).

3. ***What is currently the main trigger for ESG litigation in your professional experience?***

   (Options included: environmental or climate-related harm; deficient or misleading ESG disclosures (greenwashing); supply chain due diligence failures; human rights or labor violations; strategic anti-ESG litigation; other).

4. ***To what extent do you believe current regulatory developments (EU Omnibus Package, CSDDD, U.S. anti-ESG measures) create legal uncertainty for companies and legal advisers?***

   Scale 1–5, where 1 = very low and 5 = very high.

5. ***Which mechanisms do you consider most effective for reducing ESG litigation risk? (Select up to two)***

   (Options included: robust supply chain due diligence; independent assurance/verification of ESG reporting; regulatory clarity and harmonization; prior ESG legal risk assessments; enhanced transparency and traceability; other).

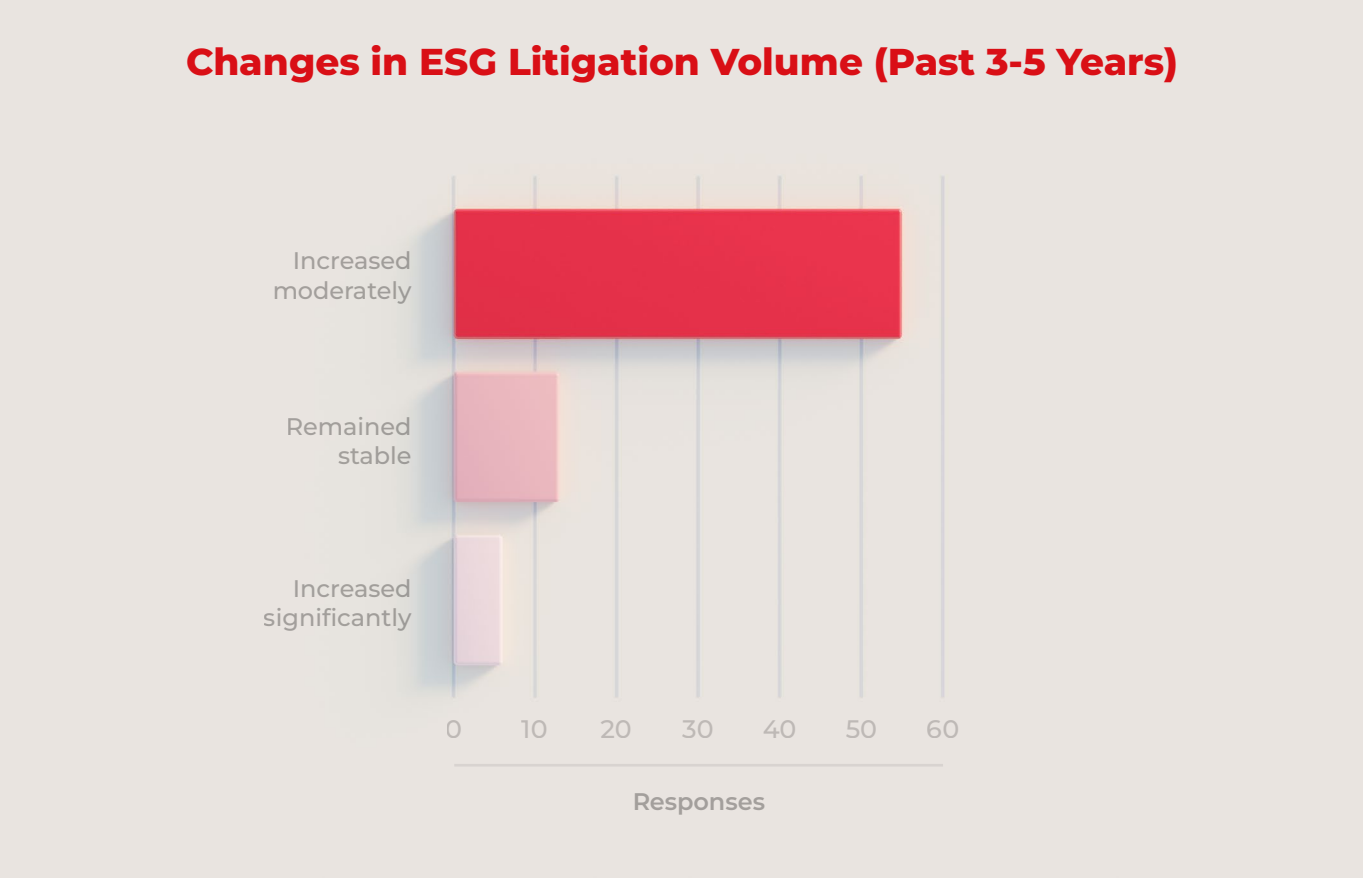


Figure 8.2.1. Source: practitioner survey.

8.2. Questionnaire Results and Analysis

An extensive review of the responses collected from the law firms surveyed reveals a clear consensus on the escalating risks and complex realities facing legal advisers today.

8.2.1. Volume of Litigation

There is a perception among legal practitioners that ESG-related litigation has been increasing over the last few years. This leads to the conclusion that ESG litigation has become a component of contemporary legal practice. Furthermore, this finding is consistent with broader trends at the international level that have been identified in Table 1.

To interpret this reported increase, it is essential to understand the driving factors behind this increase. First, ESG regulation has increased considerably in recent years. Furthermore, the legal framework prior to the EU Omnibus Package had a broader scope, under which companies and financial institutions had several additional legal duties, including sustainability reporting, supply chain due diligence obligations, and climate transition planning.[283] This trend suggests that as the number of regulatory obligations increases, the potential for disputes arising from alleged noncompliance, inadequate disclosures, or failures to meet stakeholder expectations also rises.

283 Note that the mandatory climate transition plan requirement has been removed and the scope of companies subject to due diligence obligations has been narrowed by means of Article 4(16) of Directive (EU) 2026/470.

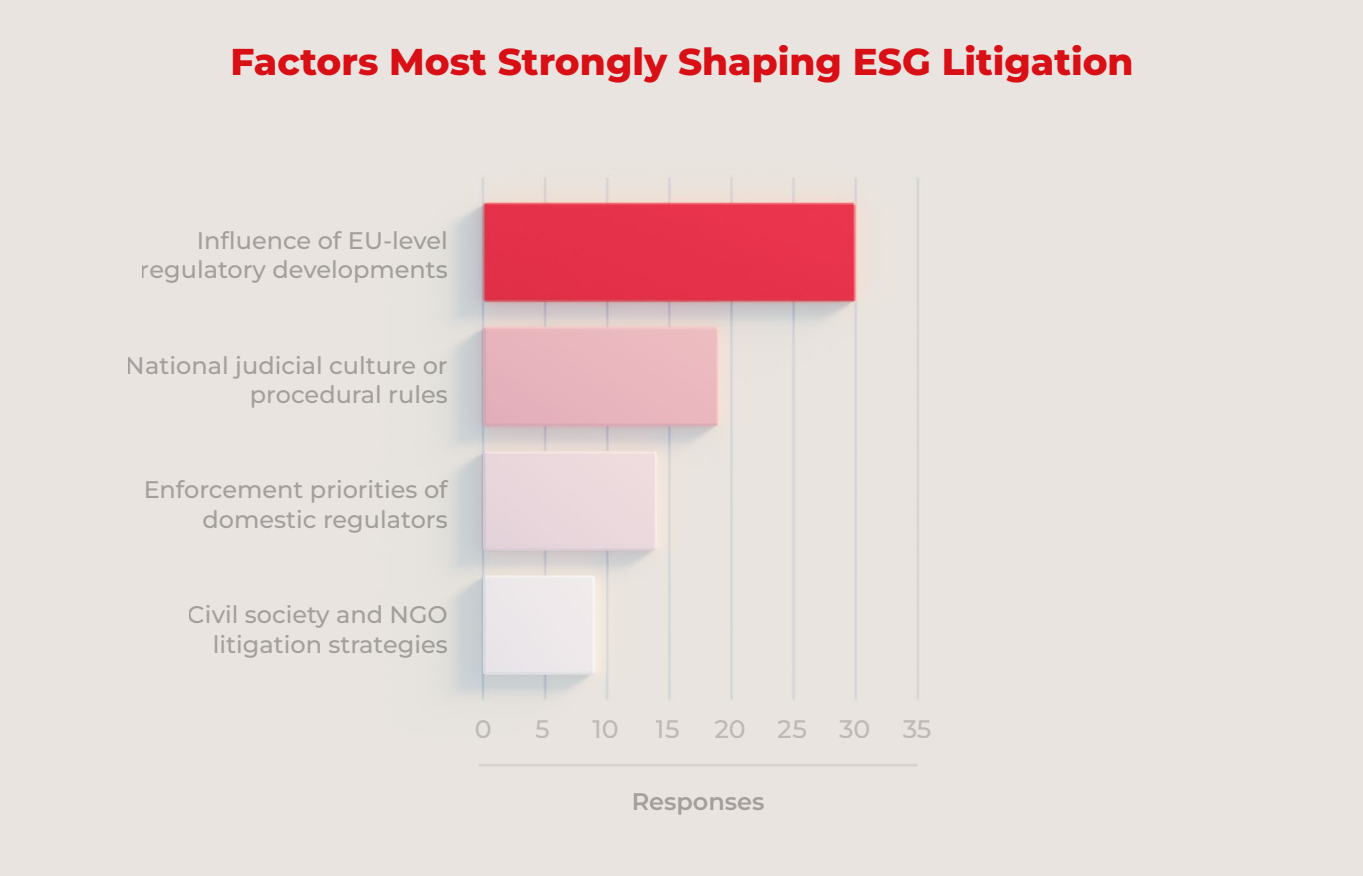


Figure 8.2.2. Source: practitioner survey.

Furthermore, it must be acknowledged that ESG issues have become increasingly pertinent to the interests of investors, consumers, and civil society organizations. As such, stakeholders demonstrate a greater willingness to challenge corporate conduct through legal mechanisms when environmental and social commitments are alleged to be insufficient or misleading. The development and refinement of sophisticated legal strategies by consumer associations, environmental organizations, and public-interest litigants further contribute to the growing trend of litigation.

Hence, the trend is reflected in successful landmark cases that are used as precedents, especially in climate and human rights litigation. Looking ahead, current global trends suggest that litigation volumes are likely to continue increasing, although the EU Omnibus Package and the Trump Package may curb this growth, while the effective implementation of representative-action mechanisms under Directive (EU) 2020/1828 may facilitate collective ESG-related claims.

8.2.2. Factors Shaping Litigation

The survey findings suggest that practitioners perceive institutional and regulatory developments to be the most common catalysts for ESG litigation at present. This, in turn, suggests that isolated disputes and sector-specific events are not considered nearly as influential in shaping the growth in disputes.

Other factors, such as national judicial culture, procedural rules, and domestic regulatory enforcement priorities, are also seen as key determinants by the practitioners in the survey. This

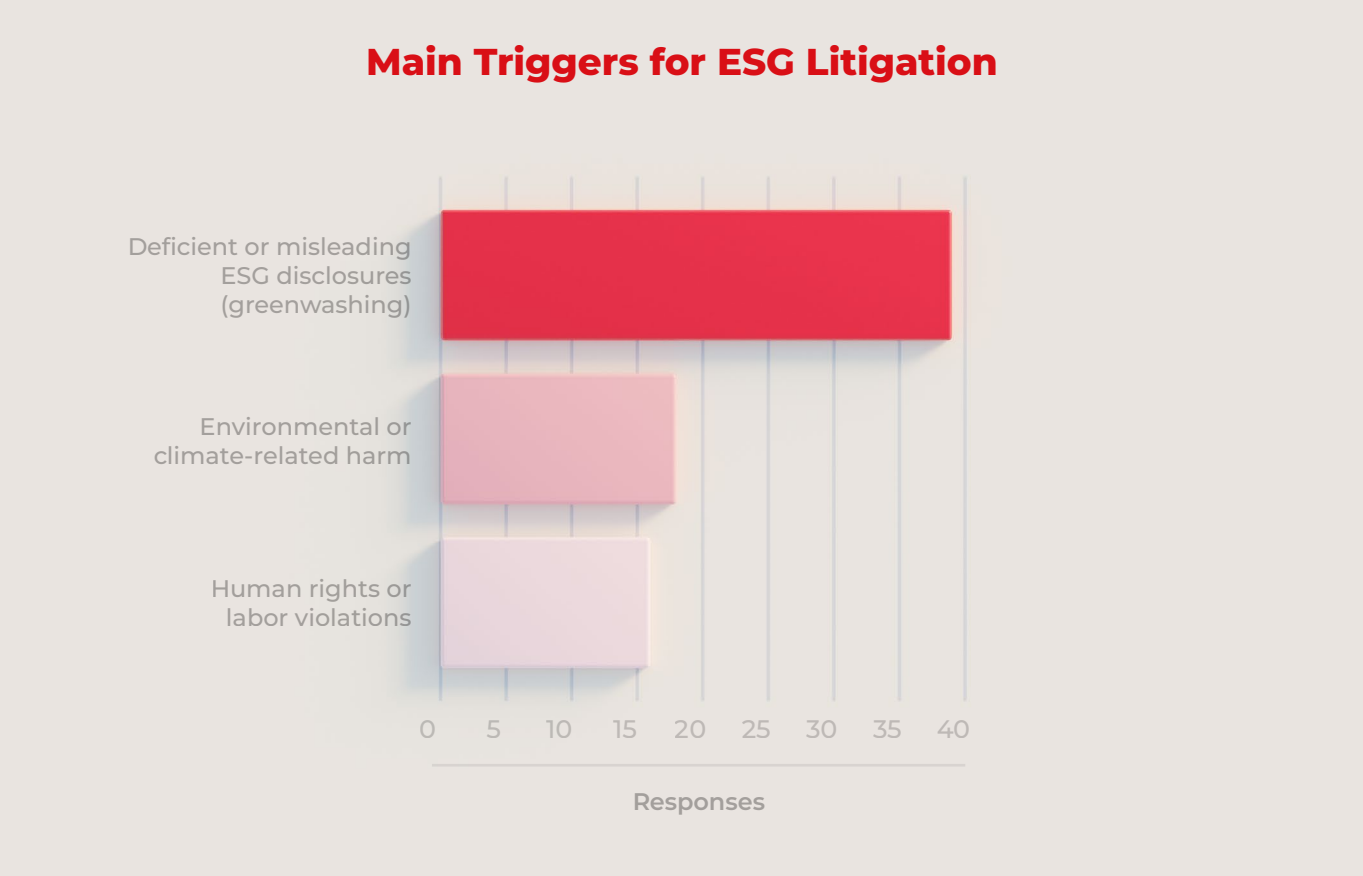


Figure 8.2.3. Source: practitioner survey.

pattern reflects the increasingly interconnected relationship between regulatory innovation and litigation risk across EU jurisdictions. The significance attributed to EU regulatory developments can hardly be considered surprising given the substantial expansion of the EU's sustainability agenda over the past decade.

From a business perspective, the results suggest that ESG litigation should be treated as a dynamic enterprise risk rather than a static legal issue. Changes in regulatory interpretation, enforcement practices, or investor expectations may rapidly alter a company's litigation exposure, even where no underlying operational changes have occurred.

8.2.3. Primary Litigation Triggers

Practitioners also perceive deficient or misleading ESG disclosures (greenwashing) and human rights or labor-related violations as the main triggers of ESG litigation in the current legal environment. Environmental and climate-related harm was also identified as an important source of disputes, although respondents generally considered it a tertiary trigger compared with disclosure and rights-based claims.

The results shown above indicate that ESG litigation is mainly caused by failures in implementation rather than by the existence of sustainability commitments themselves. This means that litigation arises when there is a disconnect between ESG statements and the company's actual practices, governance arrangements, or due diligence processes. In other words, the greatest litigation exposure stems from

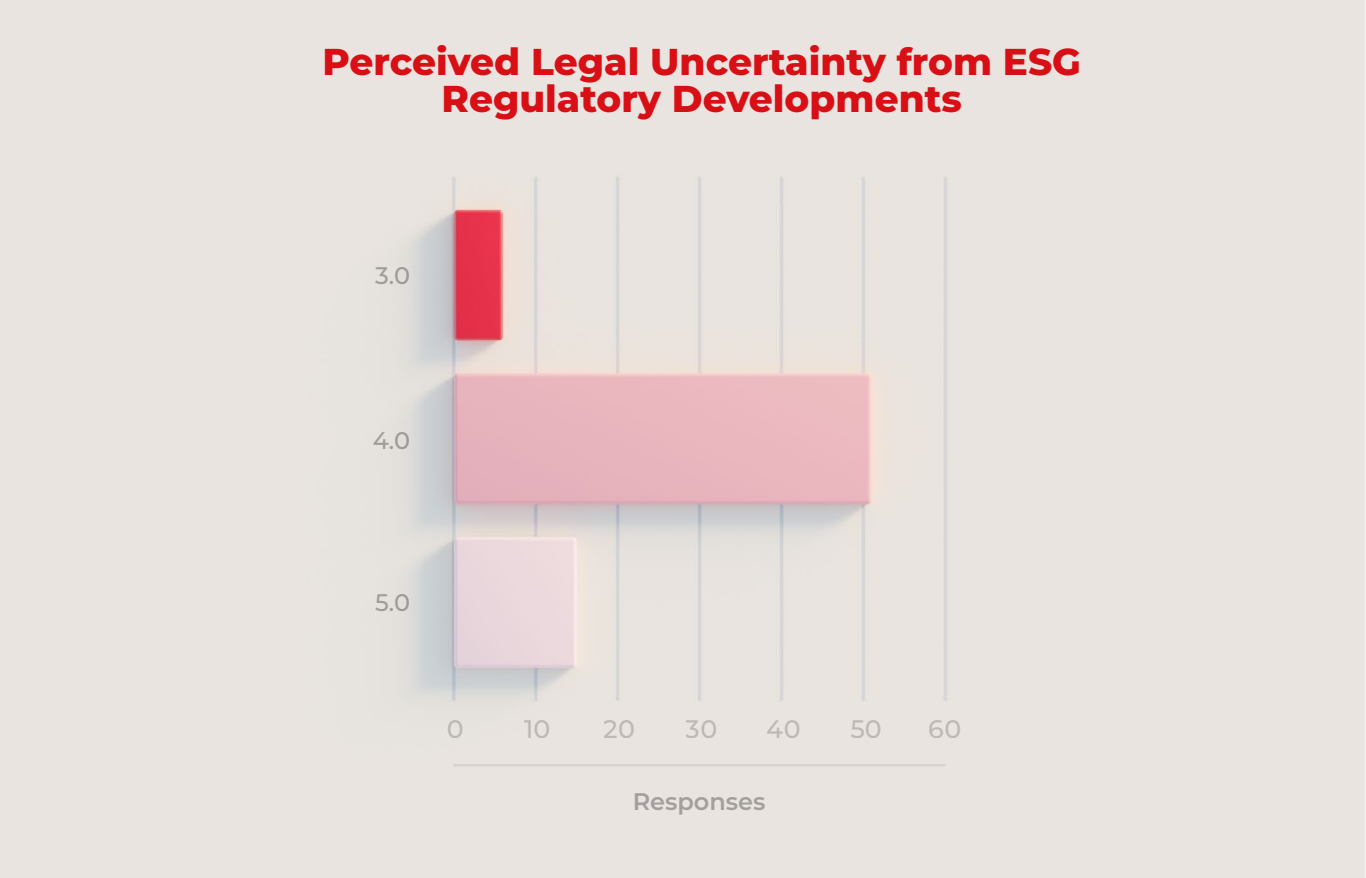


Figure 8.2.4. Source: practitioner survey.

weak internal controls rather than overly ambitious sustainability objectives.

8.2.4. Regulatory Uncertainty

The survey results reveal a remarkably strong consensus among practitioners regarding the level of regulatory uncertainty currently affecting ESG-related legal practice. The overwhelming majority of respondents rated the degree of uncertainty generated by recent regulatory developments as either high or very high, assigning scores of four or five on a five-point scale. Rather than creating a stable compliance framework, the rapid pace of legislative and regulatory change has generated a moving target for businesses attempting to align their operations with sustainability expectations.

Beyond the content of individual regulations, uncertainty also arises from ambiguity regarding future enforcement. Companies are expected to develop an internal understanding of new regulations, as well as to anticipate how regulators, courts, and administrative authorities will interpret and apply these new rules in practice. Furthermore, the limited body of judicial precedent in the realm of ESG further increases uncertainty and highlights the jurisprudential gap that must be bridged.

Additionally, in recent years, ESG-related regulation has become increasingly politicized in several jurisdictions, especially in the United States. The emergence of anti-ESG initiatives at both state and federal levels has contributed to a fragmented regulatory landscape in which sustainability-related practices may be encouraged in some jurisdictions while actively challenged in others. This divergence poses notable challenges for multinational

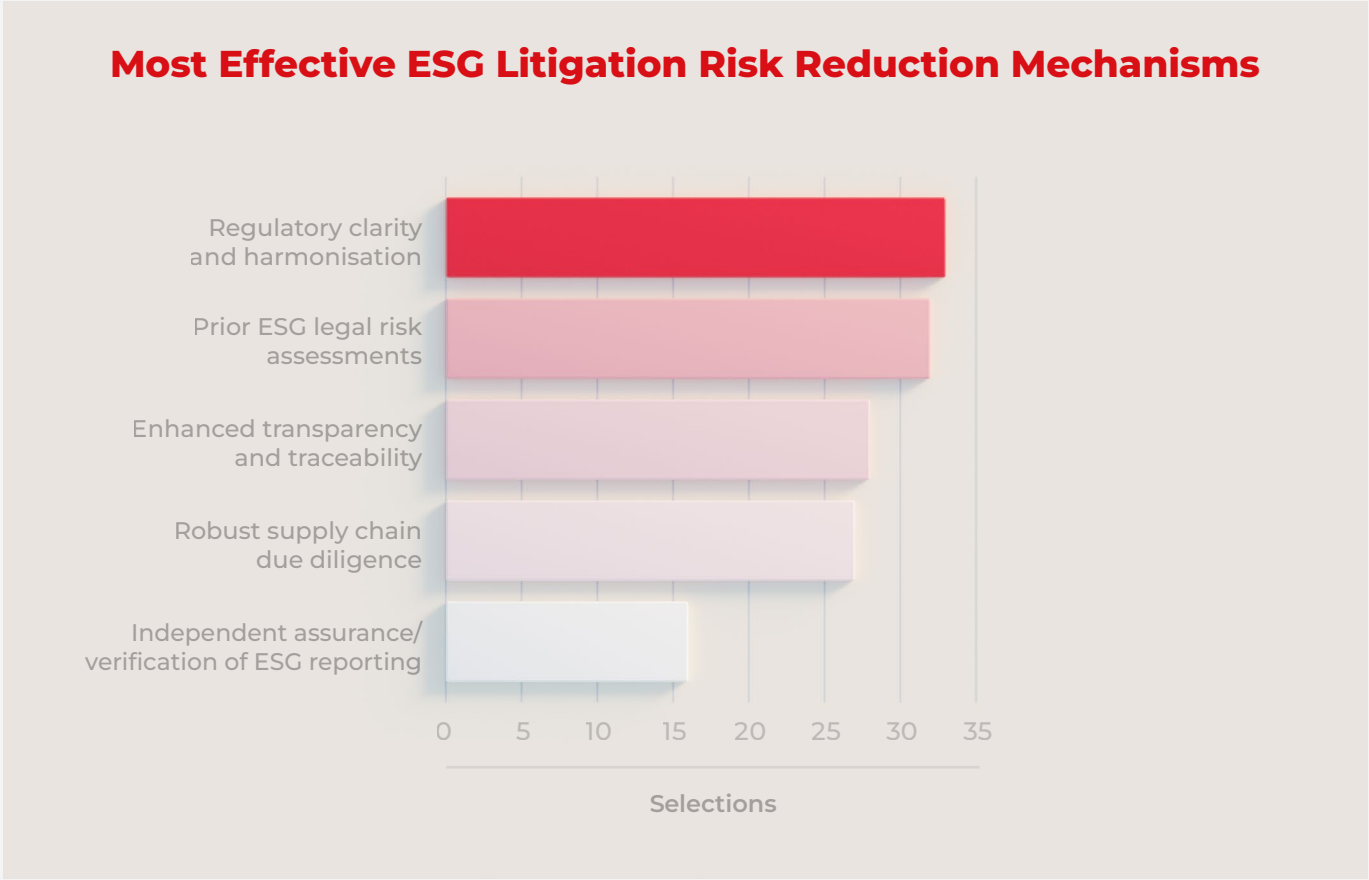


Figure 8.2.5. Source: practitioner survey.

organizations, which must navigate competing legal expectations across different markets. In some cases, actions designed to satisfy sustainability requirements in one jurisdiction may expose companies to legal or political criticism elsewhere.

Where legal standards remain unsettled, litigation often becomes a mechanism through which courts clarify the meaning and scope of regulatory requirements. In this sense, rising levels of uncertainty may not merely accompany increased litigation; they may actively contribute to it. The rapid expansion of greenwashing claims provides a clear example of this phenomenon, as courts and regulators continue to define acceptable standards for climate-related disclosures and environmental marketing practices. Likewise, forum shopping may amplify this trend by allowing opportunistic plaintiffs to transfer cases to a more favorable jurisdiction.

8.2.5. Risk Reduction Mechanisms

The survey results indicate a consensus among practitioners regarding the mechanisms that organizations can employ to reduce exposure to ESG-related litigation.

Respondents consistently identified prior ESG legal risk assessments, regulatory clarity and harmonization, robust supply chain due diligence, and independent assurance or verification of ESG reporting as the most effective safeguards against emerging legal risks. Collectively, these responses suggest that practitioners increasingly view ESG litigation not merely as a consequence of poor environmental or social performance, but as a governance and risk-management challenge that can be substantially mitigated through proactive organizational practices.

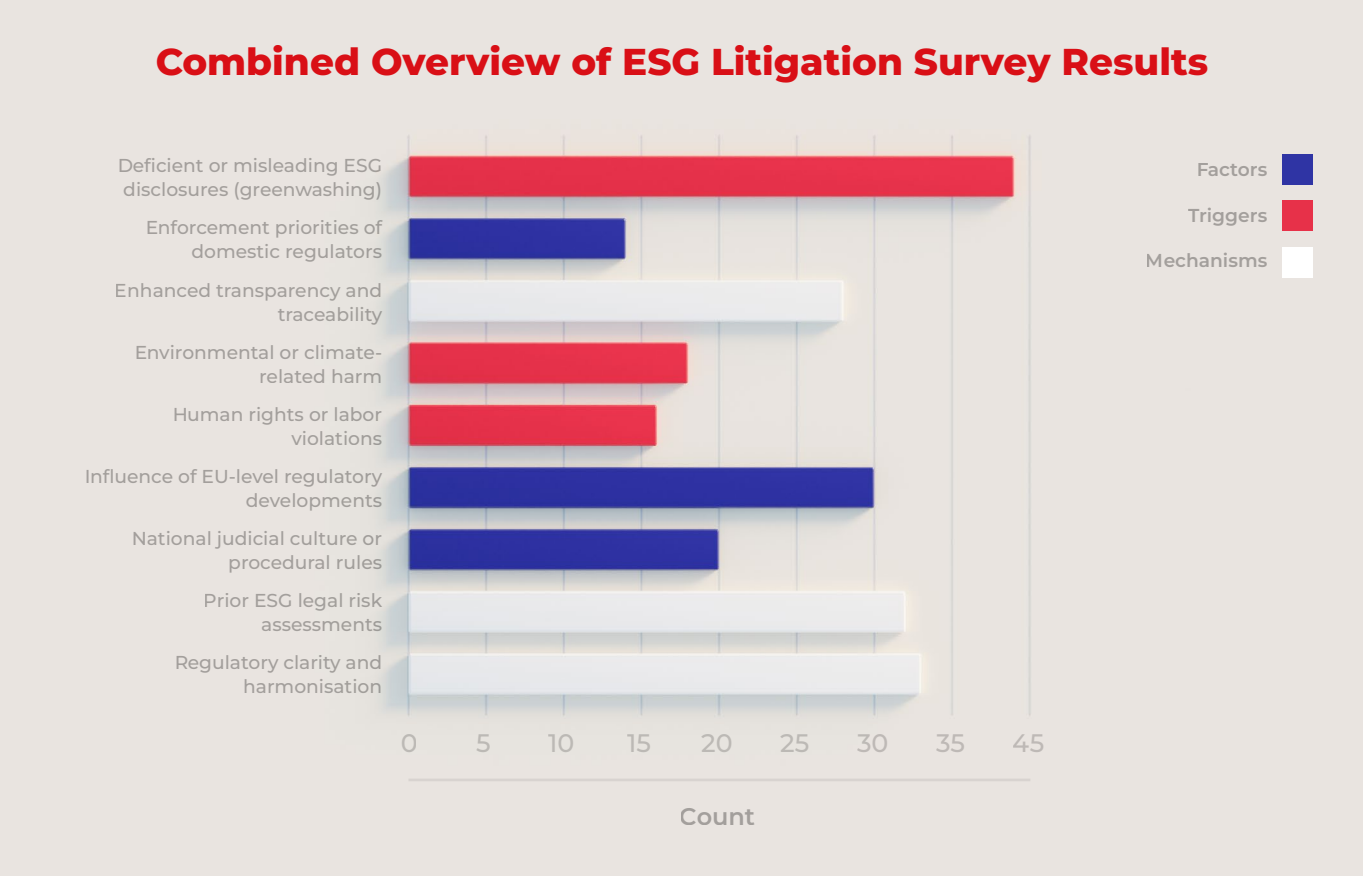


Figure 8.2.6. Source: practitioner survey.

Thus, organizations should prioritize investment in internal governance, transparency and legal oversight before disputes arise rather than investing in defense strategies when litigation occurs. These findings reinforce the idea that litigation risk is very much linked to mature governance, which means that companies lacking structured ESG controls are more likely to face regulatory investigations or shareholder claims, or suffer reputational harm.

8.2.6. Survey Insights

The findings of this survey reveal a coherent and interconnected pattern regarding the evolution of ESG-related litigation and legal risk. The importance attributed to regulatory clarity and harmonization highlights the challenges posed by the increasingly fragmented nature of ESG regulation. As discussed in previous sections, organizations are often required to navigate overlapping requirements arising from national legislation, EU directives, international standards and sector-specific regulations. Inconsistencies between these frameworks may create uncertainty regarding compliance expectations and increase the likelihood of legal disputes. The questionnaire respondents therefore appear to recognize that clearer, more harmonized regulatory standards would not only facilitate compliance but also reduce litigation risk by providing greater certainty as to acceptable company conduct. This finding aligns with broader policy debates within the EU, where efforts to simplify and streamline sustainability reporting and due diligence obligations have increasingly focused on reducing regulatory complexity while maintaining accountability objectives.

Robust supply chain due diligence emerged as another key risk mitigation strategy. This result reflects the

growing importance of value-chain accountability within contemporary ESG governance. Increasingly, companies are expected to identify, monitor and address environmental, social and human rights risks not only within their own operations but also throughout their supply chains. Consequently, organizations that fail to implement effective due diligence procedures may face legal exposure arising from labor rights violations, environmental harm, forced labor allegations or other sustainability-related failures occurring beyond their direct operational control. The prominence of supply chain due diligence within the survey findings suggests that practitioners increasingly regard comprehensive oversight of value chains as a critical defense mechanism against both regulatory enforcement and private litigation. Nevertheless, it must be acknowledged that this finding runs counter to the EU Omnibus Package's aim of reducing reporting requirements for smaller entities as a means of alleviating their administrative burden.

Those surveyed also identified independent assurance and verification of ESG reporting as a highly effective safeguard. This finding is particularly significant given the rapid growth of greenwashing litigation and the increasing scrutiny applied to sustainability disclosures. As ESG information becomes increasingly important for investors, regulators and consumers, organizations are facing growing pressure to ensure that public statements regarding sustainability performance are accurate, verifiable and supported by reliable evidence. Independent verification mechanisms can enhance the credibility of reported information, reduce the likelihood of material misstatements and strengthen stakeholder confidence in corporate disclosures. From a litigation perspective, external assurance may also provide organizations with a stronger evidentiary basis for defending claims alleging misleading ESG communications or inadequate reporting practices.

Taken together, these findings reveal an important shift in how ESG litigation is being conceptualized by legal practitioners. Rather than viewing litigation solely as a reactive consequence of environmental incidents, human rights violations or regulatory breaches, respondents appear to frame risk reduction as a proactive and integrated governance process. Effective ESG risk management increasingly requires organizations to combine legal analysis, regulatory monitoring, due diligence procedures and reporting verification within a coherent compliance framework. This reflects the broader maturation of ESG governance, whereby sustainability considerations are being embedded within core business processes rather than being treated as separate or peripheral concerns.

The findings provide compelling evidence that ESG litigation has entered a phase of sustained expansion and increasing strategic importance within contemporary legal practice. The overwhelming majority of practitioners reported a moderate to significant increase in litigation volumes over the past three to five years, reflecting broader international trends observed in climate, sustainability and corporate accountability disputes. The survey further demonstrates that this increase in litigation is being driven primarily by regulatory and institutional factors. Practitioners consistently identified EU regulatory developments, national judicial cultures and domestic enforcement priorities as the most significant forces shaping litigation trends. These findings highlight the increasingly interconnected relationship between regulation and litigation; whereby new sustainability obligations not only establish compliance requirements but also create the legal foundations upon which future disputes may be built.

As ESG regulation continues to evolve, litigation is likely to remain an important mechanism through which courts, regulators and stakeholders define the practical meaning and scope of emerging obligations. The results also reveal a notable shift in the substantive focus of ESG litigation. While environmental and climate-related harm remains an important source of disputes, the survey responses identified misleading ESG disclosures and human rights or labor-related violations as the dominant triggers of contemporary litigation. This evolution reflects a broader transformation in ESG governance, where legal scrutiny increasingly extends beyond environmental outcomes to encompass company transparency, due diligence practices and stakeholder protection. The growing prominence of greenwashing and human rights claims suggests that future litigation will continue to draw upon multiple areas of law, including consumer protection, corporate governance, financial regulation and human rights frameworks.

At the same time, practitioners expressed significant concern regarding the high levels of regulatory uncertainty characterizing the current ESG environment. The combination of rapidly evolving EU ESG regulation, ongoing regulatory reforms and increasing political polarization in certain jurisdictions has created a challenging compliance landscape for organizations. This uncertainty not only complicates strategic decision-making but may also contribute directly to litigation risk by creating ambiguity regarding legal obligations and acceptable standards of conduct. As ESG regulation continues to evolve, organizations will need to navigate an environment in which legal expectations are increasingly dynamic and subject to ongoing revision.

8.3. Listed Companies Questionnaire

An additional group of companies was also interviewed to gauge their perspectives and outlooks on the ESG litigation landscape. The questions they were asked are shown below.

1. ***Which regulatory developments currently create the greatest compliance pressure for your company?***

   (Options included: EU ESG Legislation; national ESG or sustainability legislation; international standards or soft law; U.S. anti-ESG or deregulatory movements; other).

2. ***In the past 3-5 years, how has your company's exposure to ESG-related litigation or pre-litigation threats evolved?***

   (Options included: increased significantly, increased moderately, remained stable, decreased).

3. ***What do you see as the most likely source of ESG litigation risk for your company? (Select up to two).***

   (Options included: environmental or climate-related impact; inaccurate or misleading sustainability disclosures (greenwashing); supply chain due diligence failures; workforce/DEI matters; investor or shareholder actions; other).

4. ***To what extent do you believe current regulatory developments (EU Omnibus Package, CSDDD, U.S. anti-ESG measures) create legal uncertainty for companies and legal advisers?***

   Scale 1–5, where 1 = very low and 5 = very high.

5. ***Which tools or strategies have been most effective in reducing ESG litigation or regulatory risk in your company? (Select up to two)***

   (Options included: independent assurance/ verification of ESG reporting; strengthening internal due diligence; enhanced supply chain monitoring; greater legal/regulatory; other).

8.4. Questionnaire Results and Analysis

8.4.1. Regulatory Compliance Pressure

The survey results indicate that EU ESG legislation (CSRD, CSDDD, the EU Omnibus Package and the EU Taxonomy) is the primary source of compliance pressure, with this option being selected by over half the respondents. Conversely, national legislation and U.S. anti-ESG measures were reported far less frequently. This suggests that companies are predominantly adapting their governance and compliance systems to evolving EU regulatory requirements, reflecting the central role of European legislation in shaping ESG-related legal risk. It could also lead to greater harmonization of compliance standards for companies through the primacy of EU law across EU jurisdictions, meaning that where domestic regulations provide greater latitude, EU regulations may act as a constraining force.

8.4.2. ESG Litigation Exposure

Most respondents indicated that their exposure to ESG-related litigation has remained stable over

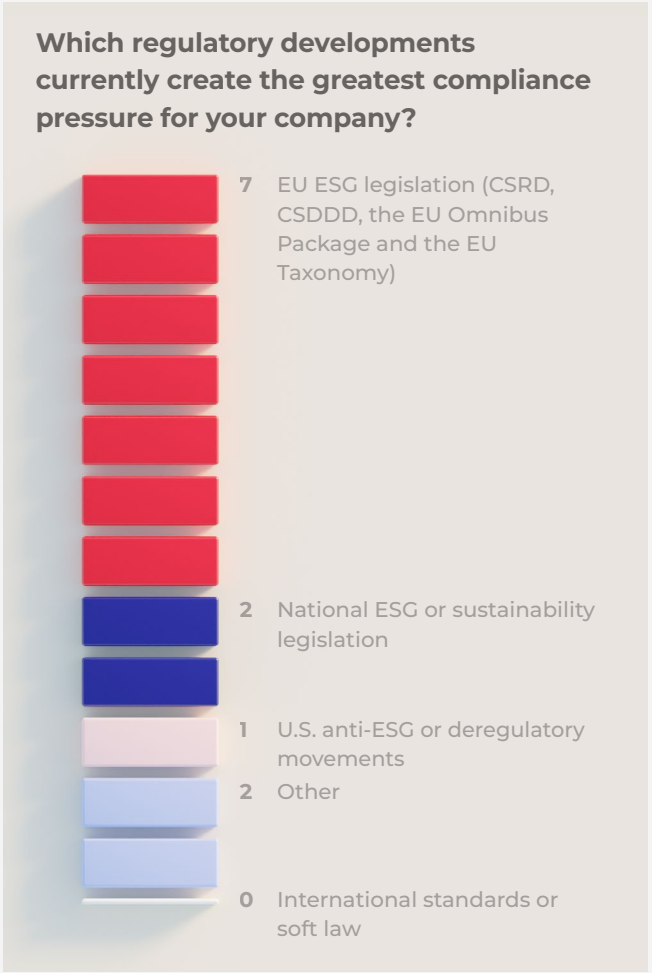
the past three to five years, although a substantial proportion reported a moderate increase. No respondents observed a decline in litigation exposure. These findings suggest that ESG legal risk is becoming progressively more significant, reinforcing the need for continuous compliance monitoring and proactive risk management. Notwithstanding this trend, however, it must be noted that "moderate" or steady growth still leaves room for companies to gradually implement mitigation measures in their internal operations as a means of responding to litigation risk. The future of ESG litigation is much easier to predict when entities have stronger ex ante procedures and internal policies.

8.4.3. Sources of ESG Litigation Risk

Environmental and climate-related issues emerged as the leading source of perceived ESG litigation risk, followed closely by greenwashing and misleading sustainability disclosures. Supply chain due diligence and human rights concerns were identified less frequently but remain relevant. The results indicate that companies view both environmental performance and the credibility of ESG reporting as the main drivers of litigation exposure, underlining the importance of accurate disclosures supported by effective internal controls. It must also be noted that environmental topics are much more easily identified by claimants due to the existence of metrics and emissions indicators that clearly demonstrate a business's position with respect to sustainability. Within the social and governance pillars, there is less established practice involving collective actions based on indicators within each category, as shown by the latest cases referenced in this report.

8.4.4. ESG Regulatory Uncertainty

Most respondents rated legal uncertainty as high (4 out of 5), with few reporting low levels of uncertainty. As previously identified, this reflects the challenges companies face in interpreting evolving ESG regulatory frameworks, particularly amid recent





legislative reforms and differing international approaches. Elevated legal uncertainty may delay strategic decision-making and initiatives, increase compliance costs, and strengthen demand for specialized legal and regulatory guidance.

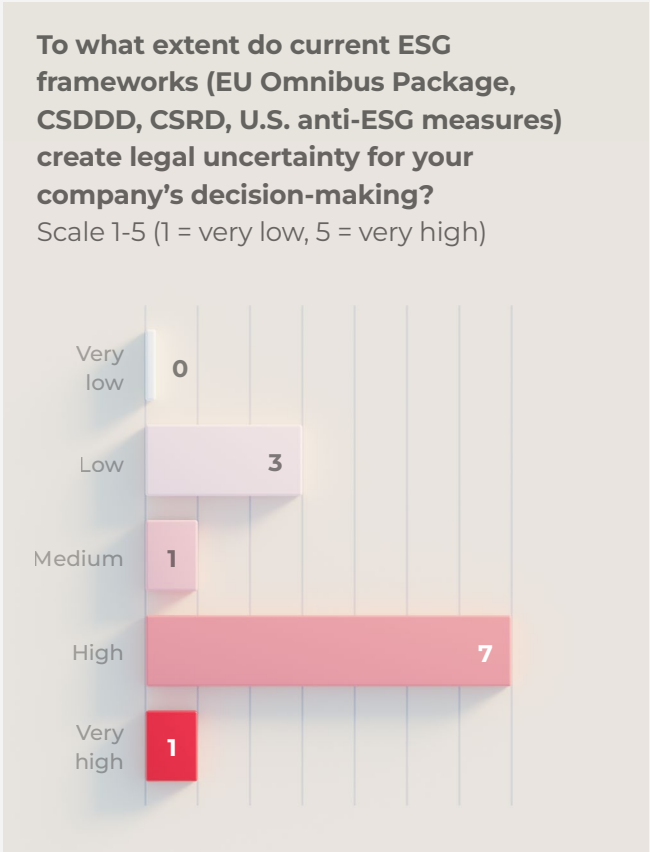
8.4.5. ESG Risk Mitigation

Companies identified strengthening internal due diligence and risk mapping as the most effective strategies for mitigating ESG litigation risk. By assessing market responses and credit-spread signals in response to existing or ongoing lawsuits, companies are able to fine-tune their internal policies to remain adaptable. Independent sustainability information, independent verification and robust governance structures were also widely regarded as valuable measures. In contrast, external factors such as greater regulatory clarity were considered less influential. Overall, the findings suggest that organizations place greater emphasis on reinforcing internal governance and compliance mechanisms to reduce litigation risk.



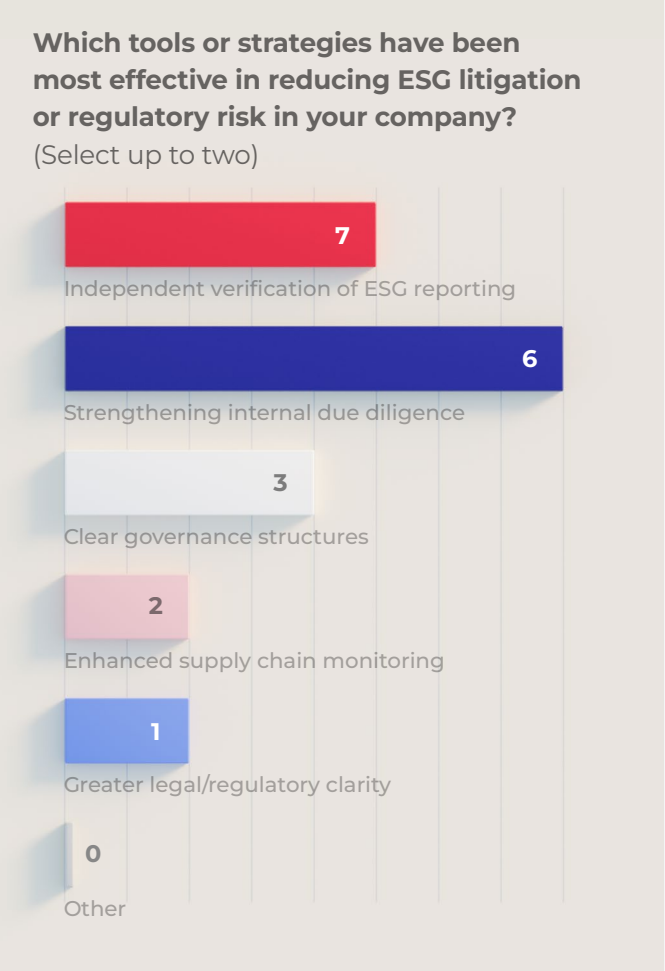
8.5. Survey Insights

Collectively, the survey responses show that ESG litigation is evolving from an exceptional form of strategic litigation into an ordinary business risk affecting companies across different sectors. The convergence of regulatory complexity, increasing stakeholder scrutiny and expanding disclosure obligations suggests that litigation exposure will increasingly depend on the quality of corporate governance rather than solely on regulatory compliance. The survey insights also have implications that go beyond the legal sector, specifically for businesses and financial institutions affected by ESG litigation and regulatory trends.



| Business Implications

Regarding implications for businesses, the findings signal that companies should consider ESG litigation as part of their enterprise risk management framework, as the associated risks continue to evolve.



Effective risk mitigation requires coordination between legal, compliance, sustainability, internal audit, investor relations and senior management as a means of knowledge-sharing. Furthermore, organizations that treat ESG exclusively as a reporting exercise are likely to face greater litigation and reputational exposure given their lack of preparation and adaptation to changes in the litigation landscape.

Implications for Financial Institutions

For financial institutions, these findings extend beyond legal risk and directly affect credit risk, operational risk, conduct risk, and reputational risk. ESG-related litigation can influence financing conditions, investor confidence, and supervisory expectations, acting as a newly identified external risk factor which may influence spreads and market patterns. Consequently, entities should incorporate ESG litigation into existing risk governance structures alongside traditional financial and non-financial risk categories to ensure adaptability and responsiveness in the face of unpredictability. ■

9

EXPANSION AND TRANSFORMATION OF ESG LITIGATION

An important question emerging from both the survey findings and the broader evolution of ESG litigation concerns whether the rapid growth in ESG-related claims represents a legitimate expansion of corporate accountability mechanisms or whether there is a risk of litigation becoming excessive, opportunistic, or strategically abusive. This issue has attracted increasing academic attention in recent years as litigation volumes have grown substantially across multiple jurisdictions and as sustainability-related obligations have become more deeply embedded within regulatory frameworks.

ESG litigation performs several important functions for stakeholders. It can enhance corporate accountability, facilitate the enforcement of regulatory standards, provide remedies for affected stakeholders and encourage greater transparency regarding environmental, social and governance performance. In many instances, litigation has served as a mechanism to address regulatory gaps and failures of public enforcement, particularly in areas such as climate change, human rights protection, and sustainability disclosures. Proponents therefore argue that the growth of ESG litigation reflects the maturation of sustainability governance and the increasing expectation that organizations should be accountable for the broader societal impacts of their activities.

However, critics have raised concerns regarding the potential emergence of what has been described in some legal and policy debates as over-litigation or strategic litigation inflation. From this perspective, expanding regulatory obligations and increasingly broad ESG standards may create opportunities for legal challenges based on technical compliance deficiencies rather than substantive misconduct. The survey findings provide an interesting lens through which to examine this debate.

The IE Law Ahead Center partners identified misleading ESG disclosures and human rights violations as the principal triggers of litigation, while simultaneously reporting high levels of regulatory uncertainty. Taken together, these findings suggest that at least part of the recent increase in ESG litigation may be attributable to the growing complexity of the regulatory environment rather than solely to increases in environmentally and socially harmful conduct. Where regulatory requirements evolve rapidly and expectations remain unclear, organizations may face greater exposure to disputes concerning interpretation, disclosure adequacy, and procedural compliance. In this sense, the findings reflect broader concerns regarding regulatory uncertainty rather than the litigation process itself.

The question of whether ESG litigation could decline in the coming years has become increasingly relevant in light of recent regulatory developments. The EU Omnibus Package and related proposals to simplify sustainability reporting and due diligence obligations have been justified, in part, by concerns regarding administrative burdens, regulatory complexity and economic competitiveness. If these reforms ultimately reduce reporting requirements, narrow due diligence obligations or delay implementation timelines, there may be a reduction in certain categories of ESG litigation. In particular, disputes relating to procedural reporting obligations, technical disclosure requirements and compliance with complex sustainability frameworks could become less frequent if the regulatory burden is substantially simplified.

Similarly, developments in the United States have introduced new uncertainty regarding the future trajectory of ESG regulation. The challenges to climate-related disclosure initiatives and efforts to limit the use of ESG criteria in investment and corporate decision-making have contributed to a more fragmented regulatory environment. At first

glance, these developments might suggest a future reduction in ESG litigation. However, the relationship between regulatory change and litigation is not necessarily straightforward. Table 1 shows that despite reductions or changes in the burden of regulatory oversight, the number of ESG litigation cases continues to rise, and thus legal changes do not inherently lead to fewer disputes. In some circumstances, regulatory retrenchment may simply shift litigation from regulatory compliance claims toward alternative legal theories, including consumer protection, fiduciary duty, securities law, human rights and common-law tort claims.

Indeed, recent environmental litigation trends suggest that legal strategies often adapt to changing regulatory environments. Where one avenue of litigation becomes less accessible, litigants frequently pursue alternative legal mechanisms. Consequently, while reforms such as the EU Omnibus Package and anti-ESG measures in the United States may alter the composition of ESG litigation, they may not necessarily reduce overall litigation volumes. Instead, litigation may become increasingly focused on areas where public expectations regarding corporate accountability continue to exceed formal regulatory requirements. Greenwashing claims, human rights disputes and climate-related tort actions may therefore remain significant sources of legal risk even in jurisdictions pursuing regulatory simplification.

Furthermore, the sweeping wave of class actions does not eliminate companies' risk of litigation in any of the three pillars: the presence of fewer individual suits does not necessarily imply a lower frequency of litigation. Despite the findings of the Draghi Report and the smaller number of addressees under the EU Omnibus Package reforms, the scope of potential claims and the range of parties entitled to engage in collective action remain broad, particularly in light of the impact of these changes on the application of Directive (EU) 2020/1828.

From an academic perspective, this debate highlights a broader tension between two competing objectives: promoting corporate accountability through legal oversight while simultaneously maintaining regulatory certainty and economic efficiency. The findings of this questionnaire suggest that practitioners recognize both dimensions of this challenge. While ESG litigation is widely viewed as an increasingly important mechanism for enforcing sustainability standards, concerns regarding regulatory uncertainty indicate that excessive complexity may itself become a source of legal risk. Future research should therefore examine not only whether ESG litigation volumes continue to grow, but also whether evolving regulatory reforms succeed in balancing accountability, legal certainty and practical compliance. Understanding this balance is likely to become one of the most important questions in the future development of ESG governance and sustainability law.

9.1. Spread of ESG Litigation Following the Emergence of One Suit (Domino Effect of ESG Claims)

Another notable aspect of ESG litigation is the apparent relationship between the frequency of disputes and businesses' awareness of ESG risk. Generally, when an entity has undergone a dispute, it has generated a whole market response. For example, the risk of litigation for failure to provide information or disclose data (the so-called "omission-risk") has served as a driver for managers or boards familiar with ESG disputes to provide an abundance of information and increase disclosure.[284] Similarly, awareness of an existing "misrepresentation risk", that is, the risk of a suit following inaccurate or false claims publicized by an entity, can push businesses to reduce disclosure in the future to avoid such litigation (which can be especially relevant in claims of greenwashing and greenhushing).[285] This ability to respond to the spread of ESG litigation, or rather, the perceived "domino effect" of ESG claims, is not simply limited to the ability of firms to prepare internally. Firms also tend to establish more forward-looking environmental

284 Scott A. Robinson and A. Nicole Skinner, "Litigation Risk and Environmental Disclosure Decisions," (working paper, University of Colorado and University of Georgia, 2024), 1, link.

285 Robinson and Skinner, "Litigation Risk and Environmental Disclosure Decisions," 1.

accountability and disclosure mechanisms after a competitor or peer firm's experience with an ESG suit.[286] This includes the adjustment or updating of ESG claims and disclosures to reduce the risk of misrepresentation in environmental claims or of overstating ESG activity and efforts to consumers.[287] Recognizing the effects and measures to adopt in response to ESG litigation risk by observing market trends and other entities' experiences has served as a means of more accurately predicting such risk. Additionally, increased voluntary disclosure on the part of business management as a response to increasing litigation faced by peer firms may also serve to ensure that investor relations do not deteriorate.[288]

Conversely, an unexpected or "novel" ESG claim tends to produce major market reaction given the lack of preparation or knowledge of how to deal with the effects of the claim.[289] As a whole, this lack of experience regarding the duration, size, or possible fines and penalties that a business may face can induce negative market reactions, with abnormal decreases in share prices and adverse court decisions accelerating this response.[290] This renders certain businesses more vulnerable to the effects of ESG disputes, especially those in their most developed form, as there are as yet no established practices for risk measurement. Thus, ESG litigation not previously encountered by firms appears as a shock and hits the market in the form of what could even be described as an externality, requiring future mechanisms for avoidance. ■

286 Robinson and Skinner, "Litigation Risk and Environmental Disclosure Decisions," 4.
287 Scott A. Robinson and A. Nicole Skinner, "Litigation Risk and Environmental Disclosure Decisions," 4.
288 Robinson and Skinner, "Litigation Risk and Environmental Disclosure Decisions," 11.
289 Misato Sato et al., "Impacts of Climate Litigation on Firm Value," Center for Climate Change Economics and Policy Working Paper No. 421 / Grantham Research Institute on Climate Change and the Environment Working Paper No. 397 (London: London School of Economics and Political Science, May 2023), 1, link.
290 Sato et al., "Impacts of Climate Litigation on Firm Value," 4–5.

10

ESG LITIGATION AS AN ENTERPRISE RISK

It must be noted that many internal functions within businesses are also subject to the effects of ESG litigation beyond their legal departments. As a whole, ESG and climate litigation claims lead to various costs (both direct and indirect) in the form of tort damages or compensatory fines, administrative fees, insurance premiums, compliance and adaptation costs, as well as reputational costs.[291] Insurance costs could manifest in the form of payouts to cover legal fees or settlements in suits, while other indirect costs include credit losses in the case of a borrower's deteriorated creditworthiness or negatively impacted solvency as a result of a lengthy and expensive suit. Similarly, businesses and financial institutions may incur reputational costs as a result of harm to their public image following the dispute.[292] Such effects extend to the control and management of departments such as compliance, auditing, communications, and public relations. Board transparency may also come under greater scrutiny, particularly where litigation affects a business's creditworthiness and raises the stakes for investor relations.

Other important impacts of climate-related litigation include effects on a business's share price and financing costs, which could result from a higher cost of capital due to reduced investor exposure or downgrades in credit ratings driving up funding costs.[293] Firm value can also be significantly impacted by unfavorable court outcomes, as indicated by recent trends in cases filed against high-emitting companies operating in sectors such as energy and raw materials.[294] This also highlights an interesting relationship with sustainability departments, especially in firms largely concerned with maintaining market leadership in the aforementioned industries. Similarly, the insurance sector also faces higher stakes due to ESG litigation. Beyond the increased use of exclusions and the withdrawal of insurers, the aforementioned increased premiums charged to account for litigation risk in policy coverage run the risk of becoming even more expensive as the number of cases increases.[295] This largely changes what coverage for businesses looks like and may look like in the future, ranging from reduced coverage to no coverage at all if costs exceed budgetary constraints.[296]

For banks and financial institutions, the consideration of operational, credit, and market risks arising from growing ESG litigation has become a driver of regulatory reforms. The integration of ESG risks into prudential rules in the EU, specifically into the Capital Requirements Regulation 3 (hereinafter, "CRR3") and the Capital Requirements Directive 6 (hereinafter, "CRD6") within the EU banking package introduced in 2024, demonstrates this.[297] The European Banking

291 Network for Greening the Financial System (NGFS), *Report on Micro-prudential Supervision of Climate-Related Litigation Risks,* 6 (Paris: NGFS, September 2023), link.

292 NGFS, *Report on Micro-prudential Supervision of Climate-Related Litigation Risks*, 6.

293 NGFS, *Report on Micro-prudential Supervision of Climate-Related Litigation Risks*, 6.

294 NGFS, *Report on Micro-prudential Supervision of Climate-Related Litigation Risks*, 7.

295 NGFS, *Report on Micro-prudential Supervision of Climate-Related Litigation Risks*, 7.

296 NGFS, *Report on Micro-prudential Supervision of Climate-Related Litigation Risks*, 7.

297 Agnieszka Smoleńska, Tsz Kin Chan, Ida Poensgen, and Catherine Higham, *Banks and Climate Litigation Risk: Navigating the Low-Carbon Transition* (London: Center for Economic Transition Expertise, London

Authority ("EBA") also published specific guidelines on how these ESG risks must be integrated into business model analysis, internal controls, and internal capital adequacy assessment frameworks to reduce regulatory and other strategic risks for banks in light of the growing number of disputes.[298] These guidelines further instruct banks on the process of evaluating ESG factors material to internal operations (how to quantify risks through the establishment of key risk indicators (KRIs) specific to exposures and activities).[299] Legal risk, viewed through the prism of losses resulting from fines, damages, penalties, or private settlements arising from disputes, is now also encompassed within the definition of operational risk under the Basel II framework, and was incorporated into CRR3 by the EU in 2024.[300] These developments in risk identification at the macro level for financial institutions demonstrate a growing response to the phenomenon of increasing ESG litigation and the tools which can be used to reduce exposure at managerial and operational levels.

Overall, the risk of ESG litigation is one that goes beyond a firm's legal department and its legal defense against mass claims: the effect of a dispute reaches various departments and undermines their effectiveness and control by weakening important internal mechanisms. The implications for these diverse functions must not be overlooked in the discussion but rather considered as a means of strengthening internal auditing and review at every level. ■

School of Economics and Political Science, June 2025), 12, link.

298 Smoleńska et al., *Banks and Climate Litigation Risk*, 12.

299 Smoleńska et al., *Banks and Climate Litigation Risk*, 12.

300 Smoleńska et al., *Banks and Climate Litigation Risk*, 12.

11

CONCLUSION

ESG litigation in 2026 is defined by a paradoxical, highly turbulent landscape. While the global volume of climate, greenwashing, and human rights litigation continues to grow rapidly and diversify across sectors, the regulatory frameworks designed to govern corporate behavior are becoming increasingly fragmented. In the EU, the Omnibus Package has significantly scaled back the immediate obligations under the CSDDD, while in the USA, federal pushback has created a less favorable environment for proactive ESG policies. While initial responses from actors suggested that deregulation would minimize the number of suits and the frequency of litigation, the findings of this report indicate that this is not necessarily the case, given the role played by consumer protection laws and collective actions and the instrumentalization of inconsistencies in internal company policies. Some of the drivers of litigation are omissions, misleading ESG claims and disclosures made by companies, and various allegedly abusive or opaque practices within the ESG pillars.

As the findings from the IE Law Ahead Center questionnaire clearly demonstrate, a rollback in statutory regulation does not necessarily mean a reduction in legal risk for companies. In fact, regulatory fragmentation is contributing to a "very high" level of legal uncertainty for legal advisers. Because deficient ESG disclosures (greenwashing) and supply chain human rights violations remain the leading triggers for disputes globally, companies cannot rely solely on shifting compliance minimums to avoid the courtroom. If statutory avenues are closed, civil society, investors, and state-level actors may continue to use consumer protection laws, tort law, and corporate fiduciary duties to hold companies accountable.

As such, companies cannot remain rely on adherence to minimum framework requirements as a means of demonstrating that their policies exist. Instead, the growing resort to litigation as a tool for enforcing accountability suggests that implementing adequate internal review mechanisms, tools, and governance strategies is more crucial than ever as a means of minimizing risk. Proactive board oversight is a countermeasure not only against suits, but also against excessive or complex regulation.

Furthermore, careful consideration must be given to the problem-solving role that legal professionals assume in aiding companies to adapt to current trends in litigation.[301] They act as the bridge between an evolving litigation landscape and companies navigating it. This responsibility is heightened by the presence of technology, which may appear to offer a quick means of automating tasks.[302] However, in line with the recommendations provided in this report regarding the minimization of disputes in each ESG pillar through proper planning and risk assessment, this technology must be used as a complement to the critical lens that legal professionals apply when helping companies adapt and succeed in the face of change.[303]

301 Antonio Aloisi, Pilar Galeote, and Nicolas Parra-Herrera, "Innovation Beyond Technology – The Crucial Role of Skills in Driving Change in the Legal Profession: Perspectives from Lawyers at Major Firms in Spain," IE University Law Ahead Center on the Legal Profession, 48.

302 Aloisi, Galeote, and Parra-Herrera, "Innovation Beyond Technology – The Crucial Role of Skills in Driving Change in the Legal Profession," 47.

303 Aloisi, Galeote, and Parra-Herrera, "Innovation Beyond Technology – The Crucial Role of Skills in Driving Change in the Legal Profession," 47.

Innovation in the legal profession today is not just about adopting new technologies; it is about cultivating the strategic foresight and interpersonal skills necessary to guide companies safely through an era of profound regulatory discontinuity and escalating public accountability. ■

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