

# Navigating the Evolving ESG Landscape: Key Insights for Global Companies

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**G**lobal companies have an increasingly delicate balancing act when considering environmental, social and governance factors (ESG) in their business decisions. The term has become controversial and political, with governments around the world taking divergent approaches to regulation.

In the EU, companies face onerous compliance and reporting obligations on pain of significant fines. Meanwhile, in parts of the U.S. there has been a backlash against ESG: companies may face litigation, enforcement action—plus negative attention from the White House and Congress—for considering ESG factors in their decision making.

The uptick in anti-ESG sentiment is only expected to rise under the Trump Administration, which has announced U.S. withdrawal from the Paris Agreement on climate change and issued Executive Orders targeting diversity, equity and inclusion (DEI) initiatives.

As positions on each side of the Atlantic become polarised, global companies may find themselves damned if they do, and damned if they don't. Multinationals that take a siloed approach to DEI, climate and human rights issues in one jurisdiction risk creating legal and public relations issues in another.

## **The 'ESG Backlash' and Case Against Compliance**

In the U.S., ESG has become a political issue, with both Senate and House committees investigating



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companies relating to their ESG initiatives.

President Trump's withdrawal from the Paris Agreement and Executive Orders aimed at rolling back clean energy and DEI initiatives have further set the tone. At state-level, over 40 anti-ESG laws have been passed, blocking financial institutions that "boycott" certain industries (fossil fuels, agribusiness, firearms, and timber) or which consider ESG factors in investment decisions from procuring public contracts or managing state pension funds.

Whilst Europe has a different political climate, there are concerns that stringent ESG reporting requirements are hurting EU commercial competitiveness. In response, on February 26, the European Commission

will publish the first of a series of Omnibus Proposals aimed at simplifying sustainable finance reporting and due diligence, though the impact of these remains to be seen.

### **The Conundrum for Global Companies**

The politicisation of ESG has left multinationals in a bind. In Europe, companies must provide transparency to investors, customers and vendors to meet their obligations to report on supply chains and sustainable investments. Failure could result in loss of business or funding. Environmental and human rights violations can lead to consumer boycotts, investor litigation, or pressure from activist investors and NGOs over “greenwashing” and “blue-washing”.

In contrast, companies promoting ESG initiatives in the U.S. may face public criticism from Capitol Hill, the White House, or Republican State Attorneys General enforcing anti-ESG laws. While global companies must comply with laws globally, including in the EU, they should be cognisant of the effect—legally and politically—of compliance elsewhere.

### **Threading the Needle—How Global Companies Can Chart a Path Forward**

Whilst the unpredictability of the current climate may tempt corporates to hedge their bets, those with pro-ESG obligations remain bound to comply under pain of sanction—regulatory, commercial, reputational or otherwise. To thread the needle through this fractured landscape, companies should consider the following:

- **Conduct a global regulatory exposure assessment** to better understand the scope of their obligations and steps needed to ensure full compliance.
- **Align ESG obligations with core business practices** by considering how compliance helps manage long-term risks for the company. For example, the environmental benefits of reducing operational costs through energy efficiency, the social benefits of improving workforce satisfaction and retention, and how good governance mitigates risks

and avoids regulatory fines in areas such as anti-corruption and money-laundering.

- **Move beyond ESG as a shorthand.** Instead, companies should break down what specific risks they seek to prevent, such as climate or forced labour, and articulate to stakeholders the financial benefits of managing these risks.
- **Develop a comprehensive compliance framework** to combat risks, including: risk mapping and impact assessments, a coordinated reporting strategy, and a global and centralised third-party management system for due diligence, risk assessments, and compliance monitoring. Climate, human rights, people and culture risks, and supply chain governance, can be integrated into existing compliance programmes if they are not already.
- **Avoid siloed thinking** and enable a strategic, centralised approach to compliance across multiple departments and jurisdictions. If the right hand does not talk to the left, companies could find themselves making unsubstantiated green claims (greenwashing) or reporting how they have sacrificed—or failed to consider—shareholder profit to combat climate change and advance DEI objectives (creating public relations and litigation risks in the United States).

Charting a path forward is possible. However, companies must think holistically about their regulatory exposure and ensure that all departments and offices work in symphony—from sustainability to legal and compliance to human resources to communications. By aligning on internal objectives at the global level, companies can protect themselves in this fast-evolving and ever political field.

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