

# Thought Leadership Regulatory Resets, Divergence, Increased Litigation: Emerging Sustainability and ESG Trends



# Regulatory Resets, Divergence, Increased Litigation: Emerging Sustainability and ESG Trends

## Key takeaways

- 1 Recent policy shifts have led to regulations being reconsidered, compelling firms to contend with heightened regulatory fragmentation and persistent uncertainty across jurisdictions.
- 2 With the trend towards regulatory retrenchment, litigation risk is increasing, requiring business to prepare for legal challenges from an increasingly diverse array of stakeholders.
- 3 The shifting landscape of ESG policy presents opportunities for business to recalibrate strategies and align with evolving policy imperatives and investor demands to seize competitive advantage and maximise the revenue generating potential of sustainable investment.

Political shifts in 2025 have highlighted diverging attitudes towards ESG and the resulting tensions have had important consequences. Among the key trends to emerge are regulatory and enforcement reversals in the US, regulatory policy shifts across several jurisdictions, including the EU which has been at the forefront of sustainability regulation, and the rise of ESG-related litigation, as stakeholders increasingly turn to the courts to pursue their goals.

Building upon our theme “Between a rock and a hard place: managing diverging views of ESG,” we examine these trends, focusing on recent regulatory and enforcement developments and the rise in litigation across the US, Europe and APAC. The implications for companies are profound: navigating a labyrinth of fragmented standards, mitigating legal risks and aligning ESG strategies with the realities of each jurisdiction.

## Trend 1.

### Regulations being reconsidered, although not uniformly across borders

#### The United States

In the US, the current administration has dramatically reversed course from the approach taken by its predecessor to ESG-related topics, as demonstrated by its stance towards climate-related regulation and DE&I policies.

The administration's prioritisation of traditional energy sources and scepticism of climate change regulation and commitments have manifested in sweeping executive orders reversing prior policy in each of these areas. Key federal actions include withdrawal from the Paris Agreement, dropping support for a federal climate disclosure rule, reversing numerous environmental regulatory positions and pausing or eliminating funding for related initiatives. The federal government also has joined the Republican-led 'Red States' in anti-ESG litigation, bringing new cases and intervening in support of others challenging climate change and decarbonisation initiatives.

With this federal retrenchment, certain states have taken up the mantle on ESG- and climate-related regulations. There has been a growing trend with respect to state climate disclosure laws. California's SB 253 and SB 261 are set to take effect in 2026, despite ongoing litigation challenges, and states such as New York, New Jersey and Illinois have sought to introduce bills proposing similar laws. Other Democrat-led states are implementing rules or launching initiatives that require ESG-related reporting and mandate ESG considerations in the investment of public funds. At the same time, a federal Executive Order was issued in April 2025 that aims at curbing the enforcement of

these types of state laws. "It remains to be seen whether, and how, these state initiatives will be implemented in the face of challenges and federal pushback, but what is clear is that certain states intend to push forward in filling the gap left by the federal administration's deregulatory and anti-ESG agenda," says Ty'Meka Reeves-Sobers, Head of Clifford Chance's US Environmental Practice in Houston.

The result is a patchwork of rules and priorities. Andrew Nelson, an Associate in the New York Financial Regulatory Group says: "Across the US, state-level policies continue to show sharp divergence, with some pressing pro-ESG policies and regulations and others pressing aggressive anti-ESG approaches, creating regulatory and enforcement inconsistency." The Republican-led states are not slowing down. Rather, they are continuing to push regulatory and enforcement measures against financial institutions and other actors perceived as "boycotting" carbon-intensive sectors and restricting investment managers and proxy advisers to considering only pecuniary factors when making investment decisions, voting proxies, or providing related advice. They may also require disclosure when non-pecuniary factors, such as those which are ESG-related, are considered.

Similarly, regarding DE&I policies, the current administration is charting a dramatically different course from that of its predecessor, taking the position that previous government and corporate DE&I programs amount to discrimination. The administration is implementing this position by eliminating federal grants to programs that support DE&I,

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**Andrew Nelson**  
Associate

requiring federal contractors to certify that they are not operating "unlawful" DE&I programs, and initiating investigations and enforcement actions. The US Department of Justice (DOJ) has announced that it will use the False Claims Act (FCA) in support of these enforcement efforts. The FCA provides for significant criminal and civil penalties for submitting false certifications in connection with the receipt of government funds.

As a result, many businesses with US connections have begun moving away from DE&I-related public statements and initiatives. A recent study found that many US companies have revised how they present their workplace inclusion policies, often by eliminating references to race, identity and other "politically sensitive" terminology.

## Europe

Europe remains committed to sustainability, although not at any cost. The EU's regulatory ambitions have been tempered by economic and geopolitical headwinds. "A key driver for these developments has been the increasing pressure on European competitiveness due to geopolitical tensions, tariffs and international competition which has resulted in higher energy prices, increased defence spending, decreasing margins for exports of goods and services and the loss of technological leadership in various fundamental sectors," says Thomas Volland, a Partner in Clifford Chance's German Corporate-Energy Group and co-head of the European ESG team. Against this background, Mario Draghi, the former President of the European Central Bank, in his report 'The Future of European Competitiveness,' concluded: "The EU's sustainability reporting and due diligence framework is a major source of regulatory burden [...]. This entails a major compliance cost for companies in the EU, ranging from EUR 150,000 for non-listed undertakings to EUR 1 million for listed ones."

"The Draghi Report has triggered a comprehensive review of the foundations of the EU's sustainability framework, signalling far-reaching change," says Thomas Volland. "Many key sustainability regulations have been delayed and are being 'simplified', resulting in a substantial watering down." In February 2025, the European Commission published its first 'Omnibus Package'. This aims at simplifying the Corporate Sustainability Reporting Directive (CSRD), the Corporate Sustainability Due Diligence Directive (CSDDD), the Taxonomy Regulation and the Carbon Border Adjustment Mechanism (CBAM). Omnibus I is still being negotiated and, although the final rules are not yet certain, they are widely expected to be less rigorous than originally proposed. This has had significant knock-on effects, including delaying publication of the long-awaited Sustainable Finance Disclosure Regulation (SFDR) 2.0 legislative proposal, expected in Q4 2025, although there are rumours of the new legislation being pushed back to Q1 2026 pending the outcome of the Omnibus discussions and simplification of the European Sustainability Reporting Standards.

Further regulatory changes are in the pipeline. "The European Commission plans to issue an Environmental Omnibus in Q4 2025, although it is not clear which existing environmental legislation will be affected. Official sources maintain this will focus mainly on cutting down industrial reporting obligations, but reports suggest that its scope could be considerably expanded to other legislation," says Adam Hedley, an Environment Partner in London. Sunny Kapoor, Counsel in the Litigation & Dispute Resolution Group in Frankfurt, adds: "It is rumoured that the Environmental Omnibus package, which aims to streamline EU Green Deal regulations, may include the upcoming EU Green Claims Directive, so it is currently unclear if this Directive, which is already on hold, will ultimately be adopted by European legislators and, if so, in which form."

Transatlantic tensions are also shaping the regulatory landscape. The joint EU/US trade statement of August 2025 links the trade deal to certain EU sustainability regulations, including the Deforestation Regulation, CBAM and CSDDD. "The EU CBAM is already suffering from a see-saw of uncertainty. Complicating efforts is the high-level text in the EU/US joint statement on Transatlantic Trade. This uncertain outlook will make it challenging for affected businesses to be prepared for the first full phase of the regime beginning on 1 January 2026," says Mathias Elspaß, a Partner in the German Energy Group.

DE&I is another area where developments in the US are being felt beyond its borders. "The impact of the US administration's approach to DE&I has been felt in Europe too, including the UK," says Amy Bird, a Partner in the Employment team in London. "However, any reset is tempered by the fact that employers have new and ongoing regulatory obligations. For example, the EU Pay Transparency Directive must be implemented by Member States by 7 June 2026 (impacting companies with a European footprint, including on pay disclosures); the UK's Financial Conduct Authority is introducing new rules on non-financial misconduct (including harassment) from 1 September 2026; and the Labour government is – thus far – continuing with reforms geared at increasing DE&I data disclosures and protection for whistleblowers. Some employers are navigating this with a focus on sustainability (rather than every limb of DE&I) with flex in their local programmes to achieve compliance; others are still seeking to take a global approach where possible."

Aside from managing extra-territorial pressures, the UK is also recalibrating its sustainability policy. "Like the EU, the UK is also redefining its sustainability priorities, focusing on policies that will have the greatest impact and jettisoning others," says Paul Ellison, a Partner in the Financial Services Regulatory Group in London. "The UK government is prioritising the growth of transition finance, building on the Transition Finance Market Review, but plans for a UK Green Taxonomy have been scrapped. Work continues in other key areas, including on UK Sustainability Reporting Standards and transition plans."

There are areas where both the UK and EU are advancing legislation. Caroline Dawson, a Financial Services Regulatory Partner in London explains: "The regulation of ESG ratings requirements remains a priority for regulators in the EU and the UK. Both are creating new regulatory regimes for providers of ESG ratings which could significantly affect cross-border access to ESG ratings. The new EU regime includes a relatively restrictive third-country regime for non-EU rating providers, while the UK has yet to specify what market access regime will be available to non-UK rating providers so, crucially, there is no indication yet that the EU or the UK will recognise the other's regime as equivalent."

On the other hand, Germany leaves its contentious front-running supply chain law in place. Germany had announced it would pursue major changes to balance the stringent requirements in a new legislature, only to now limit this to reporting obligations in a new draft bill. "This is in line with new efforts alleviating administrative burdens on businesses under the new government, which we are hoping will to increasingly come to fruition this autumn. It does not change the fact, however, that local requirements gold plating elements of various EU Directives continue to remain in place for employers," says Dr. Ines Keitel, Head of Clifford Chance's German Employment Practice.

On enforcement, EU and UK financial services regulators have made strong public commitments to taking enforcement action in relation to greenwashing. Anti-greenwashing rules are now an established part of the Financial Conduct Authority's Handbook, although there have not yet been significant numbers of publicised enforcement investigations concerning the ways in which sustainable investments have been labelled or marketed.

Uncertainty over the future trajectory of sustainability regulations is weighing on enforcement priorities. "Although some companies express the need for a clear and ambitious legal framework for ESG due diligence requirements, some trade associations and politicians press for significantly restricting civil law claims due to alleged violations of ESG-related due diligence obligations and for capping administrative fines," says Alice Dunoyer de Segonzac, a Counsel in the Litigation & Dispute Resolution Group based in Paris. And Thomas Volland adds: "This is also in line with developments at national level. For example, the new German government has announced that only the most severe violations of the requirements of the German Supply Chain Act shall remain subject to sanctions."

## APAC

The sustainability regulatory landscape continues to evolve in APAC. Jurisdictions across the region are introducing regulatory frameworks, but at their own pace. As elsewhere, there are instances where regulatory requirements are being revisited, in response to the shifting ESG regulatory climate.

For example, across APAC we continue to see a diversity of positions in relation to social issues. Generally, the trend towards increased legislative protections for workers in relation to social issues continues, but we see significant variance in the speed and nature of that movement within the region. In Singapore, in January 2025 the first anti-discrimination law took effect, prohibiting discrimination in the workplace on a range of protected characteristics (but not extending to sexual orientation or gender identity). However, there is not yet a procedure for individuals to pursue workplace discrimination claims. At the other end of the spectrum, Australia is in its third year of a legislative positive duty on employers to prevent sexual harassment and sex discrimination in the workplace, with a regulator empowered to investigate and litigate breaches of that duty. "For global, multinational businesses," says Clancy King, an Employment Partner in Sydney. "The challenge remains aligning global or regional standards of conduct and behaviour with these varying local requirements, and we continue to assist clients, balancing sometimes conflicting legal standards with reputational and social expectations."

Mandatory ESG reporting is another area where new rules are being introduced, with Singapore, India and Australia introducing new requirements although, as in other parts of the world, there are instances where requirements have been delayed, the recent announcement by Singapore to delay the introduction of certain parts of its climate reporting requirements being an example.

Extraterritoriality is a continuing focus, as regulatory changes in Europe and the US ripple across the region. "Changes to the regulatory landscape are playing out across the region. Countries are advancing mandatory ESG disclosure regimes against the changing backdrop of what is happening in the EU, UK and US, where such requirements are in flux. Investors must therefore navigate regulatory divergence and prepare for multi-compliance, especially for cross-border portfolios," says Lena Ng, a regulatory Partner in Singapore.

On the enforcement side, regulators across APAC are sharpening their focus on greenwashing. Singapore now targets misleading environmental claims through a blend of consumer protection and advertising laws, with enforcement actions already under way. In Australia, watchdogs such as the Australian Securities & Investments Commission and Australian Competition & Consumer Commission, as well as consumer not-for-profit groups, have not hesitated to pursue civil penalties and court proceedings against errant firms. The threat of ESG litigation is no longer theoretical: regulators across the region are issuing stern guidance, while both activists and investors are increasingly willing to test companies' claims in court. Naomi Griffin, a Sydney-based Partner in the Litigation & Dispute Resolution Group, says: "The current shift across APAC from voluntary ESG commitments to enforceable legal standards means that the question for companies is no

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Rae Lindsay  
Partner

longer if they will face greenwashing or climate-related claims, but when.”

Yet, for all the divergence, some common threads exist. Forced labour is one such area. “A consistent theme across jurisdictions is a continuing common focus on clamping down on forced labour. The US and EU continue with bans on the import of goods made with forced labour that incentivise business due diligence to prevent that and, although the UK has not yet taken significant action beyond the Modern Slavery Act, recent policy statements relating to the June 2025 UK Trade Strategy and requirements under the Great British Energy Act, which came into force in May 2025, suggest that this is under review. “This emphasis on forced labour is a significant factor for global supply chains and trade,” explains Rae Lindsay, a London-based Partner in the Business and Human Rights practice.

### Implications

For business, the new normal is regulatory fragmentation and uncertainty. This is not a novel phenomenon, but the scale and speed of recent changes are testing even the most sophisticated compliance teams. In the private funds sector, the mood is cautious anticipation. “We are in a period of prolonged uncertainty for fund managers who are navigating a marked divergence in investor attitudes to ESG, as well as evolving sustainable finance regulation. The outcomes of the EU Omnibus I negotiations, together with the awaited proposal for SFDR 2.0, will hopefully provide welcome clarity and allow firms to properly assess the shape that EU sustainable finance legislation will take over the next few years,” says Luxembourg-based Funds Partner Maren Stadler-Tjan.

There are similar challenges for global M&A. “With ESG regulation becoming increasingly fragmented and complex, particularly in the US and Europe, companies engaged in cross-border M&A will need to align and refine their due diligence and compliance standards to manage evolving and often increasingly

conflicting global standards,” says Nadia Kalic, a Partner in the Corporate M&A Group based in Sydney.

On the other side of the coin, policy shifts can create opportunities as well as headaches. Defence is one such area. “There has been an increased focus on the role that private capital can play in investment in defence, and this is an area where we have seen helpful guidance recently. The June 2025 EU Defence Readiness Omnibus helps clarify the compatibility of defence sector investments with applicable ESG disclosure and regulatory regimes. In the UK, the Financial Conduct Authority has similarly set out its position, that sustainability regulations do not operate any differently with respect to defence as any other sector,” says Lily Marcel, a Partner in the London Private Funds Group.

Nevertheless, reputational and legal risks remain, due to associations with conflict and human rights concerns. “The clarifications within the EU Defence Readiness Omnibus and, especially, the (non-binding) ESG Notice, provide clarity, replacing the unclear reference to “controversial” weapons with “prohibited” weapons. However, manufacturers, banks and other companies in the defence value chain should carefully assess, in each project, how their products and services might be used, as compliance with applicable legal frameworks is essential to prevent reputational damage,” says Laura-Isabell Dietz, a Senior Associate in the Corporate Energy Group in Düsseldorf. “Armed conflicts, by their nature, seriously impact people and the environment. Governments emphasise the importance of the defence sector to in maintaining peace and security and deterring aggression, but there can also be potential misuse of weapons and dual-use technologies, including violations of international humanitarian law or human rights. Current and recent conflicts highlight the scrutiny that the private sector can come under if doing business in or with parties to conflicts where abuses occur. These risks need to be understood and managed,” adds Rae Lindsay.



## Trend 2.

### Filling the gaps – ESG-related litigation is increasing

With the trend toward regulatory retrenchment in the US and, to a lesser extent, the EU, litigation risk is increasing. As positions have polarised, there has been an uptick in cases driven by both pro- and anti-ESG motivations, often challenging climate policies or corporate ESG commitments. There is now a broad array of sustainability-related cases across a range of issues:

- Cases pursuing corporate climate policy change and / or damages, which largely began against energy companies and are now expanding to other sectors such as agribusiness and plastics-intensive industries.
- Cases alleging that industry climate collaborations have gone too far, focusing on antitrust-related theories that companies and financial institutions are colluding to reduce output in carbon-intensive industries. The recent Texas-led lawsuit against global asset managers is a landmark example, alleging that asset managers acted as an “investment cartel” to suppress coal production through co-ordinated climate-related positions vis-à-vis their investee companies.
- Litigation alleging the use of forced labour in supply chains. The UK Court of Appeal recently ruled that claims by migrant workers against UK and Malaysian group entities could proceed in the UK (rather than Malaysia). The workers’ claims include establishing that companies are responsible for the actions of third-party suppliers and the Malaysian police – a novel application of the law of negligence. Similarly, a recent case commenced in Australia by an advocacy group against a retail store requests documents to demonstrate whether a retail store has modern slavery in its supply chain.
- Greenwashing litigation seeking to challenge companies, financial institutions and asset managers for insufficiently rigorous or allegedly misleading commitments, especially in sectors like oil and gas, aviation, consumer products and finance. Recent cases include advertising banned in Germany for misleading carbon-neutral claims, and class actions over sustainability logos on paper products.
- Environmental and toxic tort litigation relating to a variety of alleged exposures, including with respect to chemical emissions, microplastics and PFAs.

- Litigation in international and regional courts that, when successful, may lead to responsive regulatory shifts and further litigation, including in the private sector. An example is the advisory opinion by the International Court of Justice regarding states’ obligations in respect of climate change.

However, global trends often mask significant regional differences, which means that litigation risk must be managed not only with an eye to global complexity, but also with a deep understanding at the jurisdictional level.

#### Implications

In the coming year, companies will face pressure from all quarters – shareholders, investors, customers, employees and NGOs – to align their conduct with an array of values and expectations. And actors such as NGOs stand ready to push companies to back up commitments, where they have made them, or to change their behaviour, where they have not, including through litigation.

In response to these political and legal pressures, some companies are adopting risk mitigation strategies, taking a more cautious approach to their public ESG commitments, such as withdrawing from net zero alliances, revising DE&I messaging, ESG rebranding, adopting jurisdiction-specific policies to address differences in regulation, and being less vocal about their commitments. “Greenhushing has been a growing trend, and that applies both to climate commitments and to inclusion measures – many companies are taking the steps they believe are important to their businesses and are consistent with changing legal boundaries, but are not being as vocal about it as in years past,” says Steve Nickelsburg, a partner in the Litigation & Dispute Resolution Group in Washington, DC. says.

# Conclusion

The ESG landscape, once marked by a steady march towards harmonisation, now resembles a patchwork quilt – stitched together by divergent political priorities, regulatory resets and mounting litigation. The result is a world which companies must carefully navigate. In the United States, the pendulum has swung sharply, with federal retrenchment giving rise to a multiplicity of state-level initiatives, while Europe's regulatory ambitions are being tempered by economic and geopolitical realities. Across APAC, the regulatory landscape is in flux, with countries steadily advancing their own sustainability frameworks – albeit at a differing and perhaps slower pace. At the same time, firms must grapple with the extraterritorial impact of European rules such as the CSRD and CSDDD, making cross-border compliance an increasingly complex affair.

For business, the implications are clear: moves towards regulatory convergence have stalled; firms must become adept at managing regulatory fragmentation, tailoring compliance to a mosaic of local requirements, and preparing for legal challenges from all sides. Litigation has become a central battleground as stakeholders of every stripe seek to shape corporate behaviour through the courts.

Yet, with the uncertainties come opportunities. The recalibration of ESG policy offers nimble companies the chance to redefine their approach, align with evolving investor expectations and turn compliance into competitive advantage. The challenge for business, as ever, is to maintain a steady course – navigating between regulatory and litigation risk, while maintaining credibility in a world where the only constant is change.



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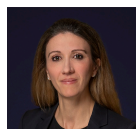
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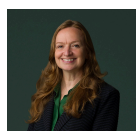
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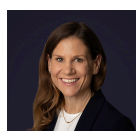
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