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Contributing Editors:
Lorenzo Corte & Denis Klimentchenko
Skadden, Arps, Slate, Meagher & Flom (UK) LLP

glg Global Legal Group

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Addressing ESG considerations in the M&A context

Andrew M. Levine
Patricia Volhard
Ulysses Smith

Debevoise & Plimpton LLP

Introduction

Businesses across sectors are recalibrating their environmental, social and governance ("**ESG**") commitments, particularly on climate and diversity, as ESG remains politically and legally contested. At the same time, ESG regulation is fragmenting – narrowing in some jurisdictions, hardening in others and generally becoming a source of heightened litigation and political risk. E, S and G factors remain important in M&A, particularly as deal activity increases in areas subject to significant sustainability risk, including AI, data centres and the energy sector, which have substantial environmental and social impacts. For dealmakers, the case for ESG diligence rests not only on regulation, or broader societal considerations, but also on financial materiality, cross-border compliance, supply chain exposure, litigation and greenwashing risk, reputational considerations and exit readiness and value.

The term "ESG", encompassing environmental, social and governance considerations, includes a range of topics of varying degrees of importance depending on the nature of a given business activity. These include:

- **environmental**: climate change and greenhouse gas emissions; energy efficiency; resource depletion, including water; hazardous waste; deforestation; and air, land and water pollution and waste management;
- **social**: human rights; working conditions, including slavery and child labour; local and indigenous communities; health and safety; employee relations; and diversity, equity and inclusion; and
- **governance**: anti-bribery and anti-corruption practices; taxation; transparency and disclosure; executive pay; political lobbying and donations; shareholder rights; board independence, diversity and structure; and ESG governance, including supply chain management and customer engagement.

Globally, the business community's engagement on ESG themes has become increasingly complex, particularly from a legal and regulatory perspective.

- The EU finalised and adopted the Omnibus I Package in December 2025 (formally adopted by the Council on February 24, 2026 and published in the Official Journal as Directive 2026/470 on February 26, 2026; the "**Omnibus Package**"). This substantially narrowed the scope and eased the requirements of the EU's core sustainability legislation, including the Corporate Sustainability

Reporting Directive (the "**CSRD**") and Corporate Sustainability Due Diligence Directive (the "**CSDDD**"). The Omnibus Packages reflect a political adjustment toward competitiveness and regulatory simplification.[1]

- In the United States, federal policy has shifted toward retrenchment, as exemplified by the U.S. Securities and Exchange Commission's (the "**SEC**") efforts to dismantle the climate disclosure rules it adopted in 2024.[2]
- Alongside such U.S. federal developments, divergence at the U.S. state level has intensified. For example, California advanced ambitious corporate climate disclosure requirements even as a number of "red" states work to restrict ESG in public investing, government contracting and financial services.[3] Businesses are left to navigate this complex, often contradictory, politically fraught landscape of legal and policy requirements and expectations.

Europe

Notwithstanding its own substantial efforts to reform the regulatory environment, Europe nevertheless remains a global leader in ESG regulation. This includes the CSRD, the CSDDD and the Taxonomy Regulation, which have established rigorous standards for ESG due diligence and reporting that impact both EU-based and multinational companies. These regulations require detailed disclosures, often for the first time on a mandatory basis, on environmental and human rights impacts, supply chain due diligence and climate risk.

This robust regulatory framework has provoked political resistance in some EU Member States, with debates emerging around the cost, complexity and scope of these initiatives. Some governments and industry groups have called for delaying, scaling back or eliminating certain requirements, particularly in response to rising economic and competitiveness concerns. The EU's response through the Omnibus Package represented a significant policy shift, reflecting the recommendations of the Draghi report on EU competitiveness[4] and the Budapest Declaration of November 2024,[5] which called for a "simplification revolution" to reduce regulatory burdens.

In 2025 and 2026, the EU substantially recalibrated its sustainability regulations, raising the thresholds for companies subject to both the CSRD and the CSDDD, extending compliance timelines and initiating several other reforms. The EU has also pursued simplification of the European Sustainability Reporting Standards (the "**ESRS**"), which underpin the CSRD, and delayed key application dates.[6]

United States

In the United States, the second Trump Administration in its second year has continued to reshape federal ESG regulation and policy, advancing deregulatory initiatives on multiple fronts. Among other things, the Administration has directed agencies to pause new or renewed approvals for onshore and offshore wind projects (a move currently being litigated in federal court),[7] and worked to advance its anti-DEI agenda for federal contractors. In March 2026, Executive Order 14398 required federal contracts and subcontracts to include a clause prohibiting "racially discriminatory DEI activities", alongside reporting, records access and False Claims Act compliance obligations.[8]

Federal retrenchment has extended to rulemaking and disclosure policy. In addition to the SEC's work to rescind the climate disclosure rule,[9] the Environmental Protection Agency ("**EPA**") rescinded the 2009 Greenhouse Gas Endangerment Finding and related vehicle emissions standards. The Council on Environmental Quality meanwhile removed its National Environmental Policy Act implementing regulations from the Code of Federal Regulations.[10]

The federal government has also sought to limit state activities on ESG matters. An April 2025 Executive Order, for example, directed the U.S. Attorney General to challenge state and local climate and ESG laws that, in the words of the order, burden domestic energy resources.[11] The U.S. Department of Justice

("**DOJ**") has since sued New York, Vermont, Hawaii and Michigan over climate-superfund and climate-tort legislation.[12]

At the state level, fragmentation remains the defining feature of the U.S. ESG landscape. Some states, including Texas, Florida and Oklahoma, seek to restrict or discourage ESG considerations by businesses, particularly asset managers, while others, including California, New York and Minnesota, continue to advance sustainability mandates.

Examples include the following:

- In **California**, the Air Resources Board ("**CARB**") approved initial implementing regulations for the state's primary climate disclosure laws, known as the California Climate Corporate Data Accountability Act ("**SB 253**") and California Climate-Related Financial Risk Act ("**SB 261**"), in February 2026. Initial greenhouse gas emissions disclosures under SB 253 are due August 10, 2026, while SB 261 reporting remains voluntary under a court order.[13] California's AB 1305 regulates net-zero, carbon-neutral and similar claims.[14] In addition to its climate disclosure laws, California has extended its cap-and-trade programme, now Cap-and-Invest, through 2045.[15] California's vehicle-emissions programmes remain subject to federal challenge following Congressional Review Act disapproval of EPA waivers for several state programmes.[16]
- **New York** continues to pursue California-style emissions disclosure legislation.[17] Among other ESG-related initiatives, New York City's major public pension systems have adopted 2040 net-zero portfolio targets.[18]
- **Minnesota** and other states have adopted or are considering mandates for carbon-free electricity and other sustainability measures.

By contrast, anti-ESG states continue to restrict ESG considerations and commitments, particularly in public investment and government contracting. Recent laws generally target public-fund investment standards, anti-boycott rules, financial-services fair-access requirements and proxy-adviser regulation.[19]

For dealmakers, fragmentation at the U.S. state level is particularly important in multi-state transactions, giving rise to the following:

- **Regulatory-divergence risk**: a target operating across pro- and anti-ESG states may face both mandatory emissions disclosure and restrictions on ESG-factor investing. Buyers should map state-by-state exposure and develop a strategy for navigating the conflicting requirements and policy expectations and mitigating any risks that arise.
- **Greenwashing and greenhushing risk**: California and emerging New York requirements may create disclosure and enforcement exposure, while anti-ESG states may penalise certain public ESG commitments. Transaction documents should allocate these risks through targeted representations, covenants and indemnities. It is important to recognise that both overstating and understating ESG activities and commitments can be a source of legal and political risk, and measures should be considered to reduce the likelihood of both.
- **Anti-ESG legislative exposure**: net-zero pledges, proxy-voting policies and other ESG commitments can themselves create legal or commercial exposure in certain jurisdictions. A target's activities in these areas likewise should be considered during the due diligence process to determine any associated risk.

Global developments

Outside Europe and the United States, jurisdictions continue to adopt International Sustainability Standards Board (the "**ISSB**") standards as part of mandatory sustainability reporting regimes, creating a more common baseline for multinational companies. As of April 2026, 28 jurisdictions had adopted ISSB standards, and 12 others were taking steps toward adoption.[20] The UK has also finalised its own

ISSB-aligned standards and is implementing a sustainability reporting regime that will require significant transparency from companies.[21]

As the number of ISSB-aligned regimes increases, regulators are also considering ways to reduce duplicative reporting burdens. A key live issue is "passporting", under which compliance with sustainability reporting requirements in one jurisdiction would be deemed to satisfy equivalent requirements in other jurisdictions. The scope and availability of passporting remain under consideration, and further developments are expected as jurisdictions finalise and implement ISSB-aligned reporting frameworks.

Antitrust

Antitrust regulators and U.S. state attorneys general are increasingly scrutinising the intersection of ESG activity and competition law. ESG collaborations, joint climate initiatives and sector-wide sustainability commitments have become particular areas of focus.

The market effects of this scrutiny have been significant. BlackRock's January 2025 withdrawal from the Net Zero Asset Managers Alliance ("**NZAM**") triggered a series of exits and led NZAM to suspend operations.[22] When NZAM relaunched in early 2026, it did so under a revised framework that softened its net-zero commitment among other requirements.[23] The Glasgow Financial Alliance for Net Zero also restructured, and major U.S. and other banks departed the Net-Zero Banking Alliance.[24]

These developments were driven in part by *Texas v. BlackRock*, in which 13 state attorneys general alleged that BlackRock, State Street and Vanguard violated federal antitrust law by using their combined shareholdings in coal companies to suppress production in furtherance of climate commitments.[25] DOJ and the Federal Trade Commission (the "**FTC**") filed a statement of interest arguing that industry-wide ESG initiatives receive no special antitrust immunity, and the court denied defendants' motions to dismiss.[26] Vanguard later settled for USD 29.5 million, while the case continues against BlackRock and State Street.[27]

For M&A practitioners, a target's participation in ESG coalitions or sustainability collaborations should be assessed for antitrust risk, particularly where initiatives involve coordinated output reductions, aligned engagement strategies or competitively sensitive information. Post-closing integration plans should review coalition memberships and shareholder engagement activities, especially where the combined entity would hold positions in competing businesses.

M&A considerations

The current ESG regulatory and policy environment has several practical implications for M&A due diligence and risk allocation.

- **Fragmentation**: buyers must navigate a patchwork of mandatory ESG diligence and reporting obligations, including California climate disclosure and ISSB-aligned regimes, against federal and EU retrenchment and simplification.
- **Cross-border complexity**: multinational deals may require buyers to balance affirmative disclosure and diligence requirements in some jurisdictions with anti-ESG restrictions in others.
- **Risk management**: ESG diligence remains important for identifying legal, reputational, operational and financing risks, even where formal regulation has narrowed.
- **Greenwashing and greenhushing**: targets with climate, net-zero, emissions-reduction, green, sustainable or similar claims should be reviewed for substantiation, internal controls and litigation or enforcement exposure. Buyers should also consider whether a target has withdrawn or muted ESG statements in ways that may create investor, customer or regulatory risk.

This chapter focuses on legal developments and market practice affecting ESG due diligence in M&A. It first reviews selected diligence and disclosure regimes, then considers risk-management concerns, the business case for robust ESG diligence, ESG metrics and ratings, and greenwashing requirements in key jurisdictions.

Regulations mandating ESG due diligence

EU regulatory initiatives

EU CSDDD

The CSDDD requires large companies to conduct human rights and environmental due diligence across their own operations and chains of activities. Originally adopted in July 2024, it was materially reshaped by the Omnibus Package, which extended timelines, narrowed CSDDD's scope and raised applicability thresholds. For M&A, the Directive is particularly relevant to energy-intensive assets, data centres, AI infrastructure and renewable energy platforms, where supply chain, resource-use and transition risks are central to deal planning.[28]

Overview: under the Omnibus Package, Member States must transpose the CSDDD by July 26, 2028, with company compliance from July 26, 2029.[29] The Directive now applies only to EU companies with more than 5,000 employees and net worldwide turnover above EUR 1.5 billion, and to non-EU companies with EU turnover above EUR 1.5 billion. In-scope companies must identify, prevent, end or mitigate adverse human rights and environmental impacts across upstream activities and certain downstream activities undertaken for or on behalf of the company. The Omnibus Package also shifted due diligence toward a risk-based scoping exercise, limited many information requests to direct business partners, removed the EU-harmonised civil liability regime and capped administrative penalties at 3% of net worldwide turnover.[30]

Primary objectives: the CSDDD requires companies to identify and address adverse human rights and environmental impacts, build accountability and provide effective remedies under national law. The Omnibus Package removed the obligation to adopt climate transition plans, though CSRD reporting may still require disclosure of any existing plan. For dealmakers in energy transition and AI-related sectors, the absence of a mandatory plan does not reduce the practical need to diligence climate, energy and supply chain risk.[31]

Applicability: as amended by the Omnibus Package, the CSDDD will apply to:

(1) EU companies with more than 5,000 employees and a net worldwide annual turnover of over EUR 1.5 billion (or ultimate parent companies of such a corporate group); and

(2) non-EU companies generating at least EUR 1.5 billion in net turnover in the EU.

For both EU and non-EU companies, the thresholds must have been met for at least two consecutive financial years for the CSDDD to apply. Smaller "out-of-scope" companies that are part of the "chain of activities" of in-scope companies will also be indirectly affected by the Directive as the in-scope companies will require them to comply.

Effects: the CSDDD requires companies to understand their chains of activities, with a focus on human rights and environmental risks. These issues are especially relevant to 2026 M&A activity in data centres, AI companies and energy assets, where buyers may need to assess Scope 2 emissions from power consumption, water use for cooling, and raw material sourcing for semiconductors, batteries and related infrastructure.

In-scope companies must implement the following due diligence measures:

- developing and integrating due diligence into existing corporate policies and management systems and implementing a dedicated due diligence policy;
- identifying actual and potential adverse human rights and environmental impacts arising from the company's own operations or those of its subsidiaries and, where related to their chains of activities, those of its business partners;
- preventing or mitigating potential adverse impacts, including through prevention action plans, contractual assurances from direct business partners (cascading to their own partners), targeted support for SMEs and collaboration with other entities;

- bringing actual adverse impacts to an end or minimising their severity through appropriate measures;
- establishing a complaints procedure for affected individuals, trade unions and civil society organisations to raise concerns; and
- monitoring the effectiveness of measures for identifying, preventing, mitigating, ending and minimising adverse impacts by carrying out periodic assessments of the company's operations and measures.

Companies not otherwise subject to sustainability reporting requirements – pursuant, for example, to the CSRD – must publish an annual statement on CSDDD matters. The Commission must adopt delegated acts by March 2029 specifying disclosure content and criteria.

The definition of "chain of activities" excludes downstream business partners for services. Financial sector undertakings therefore are not required to apply due diligence obligations to clients, borrowers or service users, although they must apply them to upstream suppliers. The practical scope of that upstream obligation remains subject to interpretation.

Civil liability: the Omnibus Package removed the EU-harmonised civil liability regime. Civil liability for due diligence failures will therefore be governed by Member State law. A review clause requires the Commission to assess by July 26, 2031 whether thresholds should be revised, or sector-specific rules adopted for high-risk sectors.

Areas of consideration: in-scope companies and their acquirors should expect meaningful compliance costs. In energy and technology transactions involving complex supply chains, the cost and operational burden of CSDDD compliance may affect valuation, indemnities and post-closing integration planning.

EU Deforestation Regulation (the "EUDR")

The EUDR aims to keep products linked to deforestation off the EU market.[32] Following two delays, the EUDR applies from December 30, 2026, and from June 30, 2027 for micro and small businesses.[33] It covers cattle, cocoa, coffee, palm oil, rubber, soya, wood and certain derived products, and prohibits placing or exporting covered products unless they are deforestation-free, produced in accordance with local law and supported by a due diligence statement.[34] The EUDR is particularly relevant to M&A in agribusiness, biofuels and sustainable commodities, where buyers may seek compliant supply chains ahead of enforcement.

The EUDR applies to any person who places products on or exports products from the EU market ("**Operators**") and to persons in the supply chain who trade products already on the EU market ("**Traders**").[35]

Operators and non-SME Traders must trace products to individual plots and maintain a due diligence system to avoid sourcing non-compliant commodities or products. The process requires information gathering, risk assessment and risk mitigation to a negligible level:

- gathering all relevant information (e.g., country and geolocation of production facility/plot, adequately conclusive and verifiable information confirming the relevant products are deforestation-free and the commodities have been conducted in accordance with the relevant legislation of the country of production);
- assessing the risk of non-compliance with this regulation; and
- mitigating risks, if present, to a negligible level.

Operators and non-SME Traders must also report annually on their due diligence systems. Member State authorities will verify compliance, and sanctions may include fines, seizure of goods, confiscation of revenues, restrictions on economic activity and exclusion from public tenders.

EU Forced Labour Regulation

The EU Forced Labour Regulation entered into force on December 13, 2024, with most provisions applying from December 14, 2027. It prohibits products made with forced labour from being placed or made available in, or exported from, the EU. Although it does not create additional due diligence obligations, the Commission is expected to publish guidance on forced labour due diligence by the end of 2026. For acquirors in electronics, AI hardware, fast fashion, agriculture and other exposed sectors, the regulation creates product-access risk that should be assessed pre-signing.[36]

EU Member State regulatory initiatives

French vigilance law

In 2017, France introduced its duty of vigilance law (*Loi de Vigilance*), which requires large companies to design, implement and publish a vigilance plan that includes due diligence measures to identify risks and forestall serious infringements of, or harm to, human rights and fundamental freedoms, personal health and safety and the environment.

In-scope companies are required to implement the following vigilance measures:

- risk-mapping to identify, analyse and rank human rights and environmental risks;
- due diligence on all subsidiaries, subcontractors or suppliers with which a commercial relationship is established;
- appropriate actions to mitigate risks or prevent serious harm;
- a system to ensure alerts are raised over risks that eventuate; and
- a system to control the implementation of the above measures.

The law applies to companies with a head office in France that, for two consecutive financial years, (*i*) employ at least 5,000 employees (themselves or together with their direct or indirect subsidiaries whose head offices are also located in France), or (*ii*) employ at least 10,000 employees (by themselves or together with their direct or indirect subsidiaries, regardless of where their head offices are located).

Foreign companies (i.e., companies without a head office in France) are not subject to the law. However, the law does apply to foreign companies' French subsidiaries if they meet the relevant thresholds.

The French vigilance law creates potential civil liability for failure to comply, including compensation for losses that compliance could have prevented. It also allows injunctive relief before the Paris civil courts. Any person with a legitimate interest may bring proceedings following formal notice and a three-month cure period.[37]

French courts have now issued several decisions in NGO-led injunction proceedings under the law.

In *La Poste*, the Paris civil court ordered the company to strengthen its vigilance plan, including with respect to subcontractor risks; the decision was upheld on appeal in June 2025.[38]

In 2024, the Paris Court of Appeal clarified procedural requirements in *TotalEnergies*, *EDF* and *Suez*, including the importance of directing claims against the entity responsible for the vigilance plan.[39]

In March 2026, the Paris first instance court found that Yves Rocher breached its vigilance obligations in connection with the actions of a foreign subsidiary, the first such finding under the law.[40]

These developments underscore growing enforcement risk. Buyers of companies with a French nexus should review the adequacy of vigilance plans, NGO engagement history, supplier controls and potential successor-liability issues.

Under the revised CSDDD as amended by the Omnibus Package, France must transpose the CSDDD into national law by July 26, 2028, with companies required to comply from July 26, 2029. It remains to be seen how the French vigilance law will be impacted by the implementation of the CSDDD.

German Act on Corporate Due Diligence in Supply Chains

Germany's Act on Corporate Due Diligence in Supply Chains (*Lieferkettensorgfaltspflichtengesetz*) establishes binding human rights due diligence obligations for companies to identify, address and report on risks in their supply chains, and to maintain complaints procedures.

The obligations extend to a company's own operations and direct suppliers, and to indirect suppliers where the company has substantiated knowledge of potential violations. Required measures vary based on the nature and scale of the business, the company's leverage and the severity and likelihood of the risk.

The Act took effect in 2023 and expanded in 2024 to companies with more than 1,000 employees in Germany. Germany is now moving toward a lower-burden approach in anticipation of CSDDD transposition; a 2025 draft bill would remove the annual German Federal Office of Economics and Export Control ("**BAFA**") reporting obligation and limit sanctions to serious human rights violations, while substantive diligence obligations remain in force during the transition.

Once Germany transposes the revised CSDDD (which it must do by July 2028), the German regime is likely to narrow in scope – from the German Act's current 1,000-employee German threshold to the CSDDD's 5,000-employee/EUR 1.5 billion turnover threshold for EU companies. It will also realign its subject-matter scope from the Act's graded "supply chain" model, focused primarily on own operations and direct suppliers with indirect-supplier duties triggered by substantiated knowledge, to the CSDDD's risk-based "chain of activities" framework. This will cover own operations, subsidiaries and relevant business partners in upstream and limited downstream activities where severe or likely human rights or environmental impacts arise or may arise.

U.S. regulatory initiatives

Dodd-Frank Act Section 1502

Dodd-Frank Act Section 1502 requires SEC-reporting companies to disclose their use of tantalum, tin, gold or tungsten sourced from the Democratic Republic of the Congo and neighbouring countries if those minerals are necessary to the functionality or production of a product.[41] The rule does not prohibit sourcing, but it requires disclosure of diligence efforts, tracing, auditing and risk responses.[42]

Companies must conduct a good-faith reasonable country-of-origin inquiry.[43] If minerals may have originated in covered countries, the company must conduct further due diligence and file a Conflict Minerals Report describing the chain of custody.[44] Required determinations must be made public on the company's website.[45]

In 2026, Section 1502 entered the broader deregulatory debate. H.R. 7085 would repeal the conflict-minerals disclosure requirement if enacted.[46] Until then, Rule 13p-1 and Form SD remain in effect for covered registrants.[47]

2010 California Transparency in Supply Chains Act

California's Transparency in Supply Chains Act requires retailers and manufacturers doing business in California with more than USD 100 million in annual worldwide gross receipts to disclose their efforts to eradicate slavery and human trafficking from direct supply chains for tangible goods.[48]

Required disclosures address verification, audits, supplier certifications, internal accountability and training for supply-chain personnel.[49] Companies must publish the disclosure through a conspicuous website link or provide it in writing within 30 days of a consumer request.[50]

The Act is a disclosure statute; it does not require companies to eradicate forced labour or prescribe what adequate diligence must look like. A company can comply by stating that it takes no action in the covered areas.[51]

The Act does not create a private right of action; enforcement is by the California Attorney General for injunctive relief.[52] Plaintiffs have nevertheless pursued related claims under California consumer protection statutes.[53]

Uyghur Forced Labor Prevention Act (the "UFLPA")

The UFLPA took effect on June 21, 2022 and imposes restrictions related to China's Xinjiang Uyghur Autonomous Region, including import prohibitions and sanctions related to human rights violations.[54]

Securities issuers required to file annual or quarterly reports with the SEC must disclose certain information related to their activities in Xinjiang, if any, including certain details on: (*1*) the nature and extent of the activity; (*2*) gross revenues and net profits attributable to the activity; and (*3*) whether the issuer or affiliate intends to continue the activity.[55] Such information must be disclosed in cases where the issuer knowingly engaged in activity with an entity involved in building or running detention facilities or providing technology to create mass population surveillance systems in the Xinjiang Uyghur Autonomous Region of China.

This includes any entity on the Department of Commerce's Entity List.[56] Additional circumstances requiring disclosure are outlined in the bill, including: (*1*) knowingly engaging in an activity with an entity or affiliate of an entity described in Section 7(c)(I) of the UFLPA, including any entity engaged in the "pairing-assistance" programme that subsidises the establishment of manufacturing facilities in the Xinjiang Uyghur Autonomous Region or entities subject to a "Withhold Release Order" issued by the Department of Homeland Security; and (*2*) knowingly conducting any transaction or dealings with: (*i*) any person the property and interests in property of which were sanctioned by the Secretary of State for the detention or abuse of Uyghurs, Kazakhs, Kyrgyz or other members of Muslim minority groups in the Xinjiang Uyghur Autonomous Region; (*ii*) any person or the property and interests in property of which are sanctioned pursuant to the Global Magnitsky Human Rights Accountability Act (22 U.S.C. 2656); or (*iii*) any person or entity responsible for, or complicit in, committing atrocities in the Xinjiang Uyghur Autonomous Region.[57]

The UFLPA can require companies to examine indirect supply-chain exposure because covered activities may involve entities or affiliates that themselves operate in Xinjiang, even where the issuer does not.

The accompanying UFLPA strategy provides guidance for importers on due diligence, supply-chain management controls and the evidence needed to rebut the statutory presumption.

Since enactment, U.S. Customs and Border Protection ("**CBP**") has reviewed products in thousands of shipments, with detentions representing significant value and a meaningful source of supply-chain disruption.[58]

UFLPA enforcement continued to evolve in 2025 and 2026. The 2025 strategy update identified 144 entities on the UFLPA Entity List and added high-priority sectors including caustic soda, copper, lithium, red dates and steel.[59] In January 2026, CBP also updated its forced labour website and UFLPA enforcement dashboard, adding revised definitions, new data elements, additional filters and HTS-4 commodity visibility.[60]

Office of the United States Trade Representative ("USTR") Section 301 investigations

In March 2026, USTR initiated Section 301 investigations into whether 60 trading partners have failed to impose and enforce prohibitions on goods produced with forced labour.[61] USTR is examining whether those practices burden U.S. commerce and has sought comment on possible responses, including duties or import restrictions.[62]

These investigations make supply-chain diligence central to acquisitions of companies with international sourcing or manufacturing operations. Buyers should focus on three main issues:

- **Tariff and import-restriction exposure**: new duties or import restrictions could affect goods sourced from investigated jurisdictions. Buyers should model cost increases and supply disruption and address those risks in transaction documents.

- **Forced-labour compliance programmes**: buyers should review supply-chain mapping, supplier audits and remediation protocols against both existing UFLPA requirements and the heightened enforcement posture signalled by the Section 301 investigations.
- **Country and supplier concentration risk**: targets dependent on investigated jurisdictions present elevated risk. Diligence should identify alternative suppliers and the cost and feasibility of diversification.

Regulations mandating ESG disclosure

Europe

EU CSRD

The Omnibus Package, finalised through the Omnibus Amending Directive (which Member States must transpose by March 2027), has reshaped the CSRD by raising scoping thresholds, simplifying the reporting landscape and leading to substantial revisions to the ESRS, which companies in scope of the CSRD must report under.[63]

The CSRD came into force on January 5, 2023, with the largest companies first in scope for 2024 reporting. Under the revised thresholds, it applies to EU undertakings and parents with more than EUR 450 million net turnover and more than 1,000 employees. Non-EU groups are in scope where EU net turnover exceeds EUR 450 million in each of the two prior consecutive financial years and the group has an EU subsidiary or branch with net turnover exceeding EUR 200 million in the preceding financial year.

The CSRD uses a double materiality test, requiring companies to assess both their impacts on people and the environment and the financial effects of sustainability matters on the company. The assessment extends to upstream and downstream value chains.

In-scope companies report under the ESRS. The ESRS 1 and ESRS 2 remain mandatory, while additional topical disclosures generally depend on the materiality assessment. The Commission's 2026 revised sector-agnostic ESRS (not formally adopted at the time of writing) will reduce data points substantially, simplify the double-materiality assessment and improve interoperability with ISSB standards, although the degree of interoperability remains uncertain.[64]

CSRD application is phased: large public-interest undertakings were first in scope from January 1, 2024; other EU undertakings meeting the revised thresholds will follow from January 1, 2027; and qualifying non-EU groups from January 1, 2028. Certain EU subsidiaries covered by a non-EU parent consolidated sustainability report may rely on a group reporting exemption, delaying application to January 2030.

For M&A, CSRD matters both where the target is in scope and where the buyer must integrate target data into its own reporting. Diligence should assess reporting processes, internal controls, limited-assurance findings and compatibility with the buyer's systems. Even after the Omnibus reduced the number of in-scope companies, a separate "voluntary" standard released by the Commission (which caps the information that in-scope companies can request from not-in-scope companies in their value chains) may become a market baseline for sustainability information in diligence.

EU Sustainable Finance Disclosure Regulation ("SFDR") and Taxonomy Regulation

SFDR requires EU financial market participants and financial advisers, including non-EU firms marketing in the European Economic Area, to make ESG disclosures at the firm and product levels. Disclosure obligations depend on the degree of ESG integration in the product. Article 8 and Article 9 products are subject to pre-contractual and ongoing disclosures using Level 2 templates, while firms must also describe how sustainability risks are integrated into their business and financial-product assessments.[65]

SFDR remains important in M&A involving financial market participants. Diligence should test whether SFDR claims are supported by actual investment processes, data and controls, and whether contractual investor-reporting undertakings need to be reflected in the Share Purchase Agreement.

In November 2025, the Commission proposed SFDR 2, a replacement regime expected to apply in 2028.[66] The proposal would create three formal product categories – Article 7 "Transition", Article 8 "ESG Basics", and Article 9 "Sustainable" – with minimum criteria and exclusion lists. Further detail is expected via Level 2 rules.

Once applicable, SFDR 2 would increase diligence needs for categorised products, requiring buyers to assess whether underlying products meet category criteria and exclusions.

Alongside the SFDR, the EU Taxonomy Regulation provides technical screening criteria for determining whether economic activities are environmentally sustainable, in a range of climate and environmentally focused fields. It affects current SFDR Article 8 and Article 9 products and EU companies in scope of the CSRD, that must report Taxonomy information.[67]

The Commission's 2026 Taxonomy simplification measures introduce materiality thresholds and simplified templates, among others. For M&A, this may reduce the availability of Taxonomy information for companies with only incidental Taxonomy-eligible activities and create uneven disclosure coverage across targets. A new two-year opt out for certain financial undertakings to report on Taxonomy information will also reduce the amount of information available.

The Commission also consulted in 2026 on simplifying the Taxonomy's technical screening criteria. If adopted, the changes may improve usability and market transparency over time, although, in the short term, buyers should expect inconsistent Taxonomy data across targets. Once ready, the new, simplified technical screening criteria will be adopted by the end of Q2 2026.

EU CSDDD

The amended CSDDD under the Omnibus still requires in-scope companies that are not subject to the obligation to publish a sustainability report under the CSRD to publish an annual statement on their compliance with CSDDD's requirements on their website.[68] The statement must be published within 12 months of the financial year-end, covering the previous calendar year.[69]

EUDR

The EUDR requires Operators and non-SME Traders, on an annual basis, to publicly report on their due diligence process, including steps to implement their due diligence obligations.[70]

Germany

German Act on Corporate Due Diligence in Supply Chains

Germany's Act on Corporate Due Diligence in Supply Chains historically required continuous documentation and annual BAFA reporting. BAFA had already suspended reporting obligations, and the September 2025 draft amendment would abolish the annual reporting requirement while preserving internal documentation. Reporting is expected to return in modified form through CSDDD transposition, potentially integrated with CSRD reporting.

UK

UK Modern Slavery Act 2015

The UK Modern Slavery Act 2015 requires large businesses operating in the UK and supplying goods or services, with annual turnover of at least GBP 36 million, to publish an annual slavery and human trafficking statement. The statement must describe steps taken during the year or state that no such steps were taken.[71]

The statement may include information about the organisation's policies regarding slavery and human trafficking, its due diligence processes in relation to slavery and human trafficking in its business and supply chains and its effectiveness in ensuring that slavery and human trafficking are not taking place in its business or supply chains. The statement must be approved by the board and signed by a director. The organisation must publish this statement on its website and include a link to the statement in a prominent place on its homepage.[72]

Following a 2024 House of Lords report criticising inconsistent modern slavery statements, the Home Office issued updated statutory guidance in March 2025. The guidance aligns with the UN Guiding Principles on Business and Human Rights and OECD guidance, distinguishes baseline from best-practice disclosures and emphasises continuous, measurable improvement.

Task Force on Climate-related Financial Disclosures ("TCFD") and UK Sustainability Reporting Standards ("UK SRS")

The UK has made TCFD-aligned climate disclosure mandatory for certain companies, asset managers and regulated investors. Following the dissolution of TCFD, the UK has shifted toward ISSB-aligned reporting. In February 2026, the Department for Business and Trade published final UK SRS based on International Financial Reporting Standards ("**IFRS**") S1 and S2, and the Financial Conduct Authority (the "**FCA**") is consulting on replacing listed-company TCFD rules with UK SRS-aligned requirements.[73]

Transition Plan Taskforce

The UK Transition Plan Taskforce published its final Disclosure Framework in 2023 and sector guidance in 2024. Its framework remains relevant to voluntary and emerging mandatory expectations around climate transition planning.[74]

United States

California Climate Corporate Data Accountability Act

SB 253 requires U.S. registered entities doing business in California with more than USD 1 billion in annual revenue to disclose greenhouse gas emissions, with Scope 1 and Scope 2 reporting beginning in 2026 and Scope 3 reporting beginning in 2027.[75] CARB's implementing regulations define "doing business in California" by reference to the California Revenue and Tax Code, focusing on whether the entity is organised or commercially domiciled in California, or meets certain *de minimis* California sales or activity thresholds.[76]

Comparable emissions-disclosure bills remain pending or stalled in several other states, but to date none has become law.

California Climate-Related Financial Risk Act

SB 261 applies to public and private companies doing business in California with more than USD 500 million in annual revenue and requires biennial climate-related financial risk reports aligned with TCFD.[77] Although the first statutory publication deadline was January 1, 2026, enforcement is currently enjoined pending appeal, and CARB has treated reporting as voluntary while maintaining a public docket.[78] Notably, SB 253 is also part of the legal challenge, but the court has not enjoined enforcement of the emissions disclosure law.

Voluntary Market Disclosures Business Regulation Act ("AB 1305")

AB 1305, effective January 1, 2025, regulates voluntary carbon offsets ("**VCOs**") and claims of carbon neutrality, net zero or greenhouse gas emissions reductions. It requires disclosures by entities that market or sell VCOs in California, entities that buy or use offsets while making covered claims and entities that make covered emissions-reduction or net-zero claims about themselves, affiliates or products.

- Section 44475 requires disclosure of certain information by "a business entity that markets or sells VCOs in California";
- Section 44475.1 requires disclosure of certain information from entities that buy or use VCOs and claim to be net zero, carbon neutral or make similar statements about not increasing or significantly reducing greenhouse gas emissions; and
- Section 44475.2 requires similar disclosures from entities that make claims about achieving net zero, being carbon neutral or otherwise not adding or significantly reducing greenhouse gas emissions for themselves, related entities or their products.

Covered disclosures must be updated at least annually.[79] Violations may result in civil penalties of up to USD 2,500 per day for unavailable or inaccurate information, capped at USD 500,000.[80]

Other U.S. federal actions related to ESG

Inflation Reduction Act (the "IRA")

The IRA, enacted in 2022, created major climate-related incentives, including clean energy tax credits, electric vehicle support, green power infrastructure funding and tax credit monetisation mechanisms.[81] Those incentives have driven substantial completed and pending climate investment.[82]

The IRA is now under sustained pressure from the Trump Administration and the Republican-controlled Congress. First-day executive orders in January 2025 withdrew the United States from the Paris Climate Agreement, declared a national energy emergency, paused IRA disbursements and halted new wind-energy approvals.[83] Those actions have prompted litigation, including a successful district-court challenge to the wind-project pause, now on appeal.[84]

The most significant legislative development to date during the second Trump Administration is the One, Big, Beautiful Bill Act (the "**OBBA**"), signed on July 4, 2025, which narrowed key IRA incentives without fully repealing the statute. The OBBA:[85]

- accelerated the expiration of clean-vehicle credits (for vehicles acquired after September 30, 2025) and residential energy credits (for property or expenditures after December 31, 2025);
- added foreign-entity restrictions to certain clean electricity credits;
- extended and modified the Section 45Z clean fuel production credit for fuel sold before January 1, 2030; and
- repealed Clean Air Act Section 134 and rescinded Greenhouse Gas Reduction Fund funding, leading EPA to terminate the Solar for All programme in August 2025.[86]

Several congressional Republicans have cautioned against full IRA repeal because of potential disruption to businesses that invested in reliance on the IRA tax framework and possible energy-cost increases.[87]

For energy and cleantech deals, buyers should test whether a target's projections, project economics or investment returns depend on IRA credits that have expired, narrowed or become restricted. Targets that committed capital in reliance on now-limited credits may face margin compression or stranded-asset risk. At the same time, the decision to narrow rather than repeal the IRA suggests that some incentive structures may remain durable and should be considered in valuation scenarios.

EPA's Final Rules to Reduce Pollution from Fossil Fuel-Fired Power Plants

The Biden-era EPA's April 2024 power-plant regulatory package – covering greenhouse gas controls, mercury and air-toxics standards ("**MATS**"), wastewater discharges and coal-ash regulation – has been substantially rolled back or is being revisited by the current Administration.

Repealed or reverted. EPA has finalised the following deregulatory action:

- MATS: in February 2026, EPA finalised the repeal of the 2024 MATS amendments for coal- and oil-fired electric utility steam generating units, reverting to the prior 2012 framework.[88]

Proposed for repeal. EPA has proposed to repeal the centrepiece of the 2024 package: greenhouse gas emissions standards for the power sector under Clean Air Act Section 111, including the requirement that certain coal and gas plants control 90% of emissions.[89]

Modified or extended. Other parts of the 2024 package remain in effect but on extended timelines:

- Wastewater discharge: EPA finalised a December 2025 rule extending compliance deadlines and adding implementation flexibility for steam-electric effluent limitation guidelines applicable to coal-fired power plants.[90]
- Coal-combustion residuals: EPA finalised deadline extensions for certain CCR requirements in February 2026 and proposed further amendments in April 2026, including relief for certain dewatering structures and legacy units and a site-specific permitting pathway.[91]

The power-sector regulatory landscape remains fluid. Buyers and sellers should identify which 2024 requirements have been repealed, which are only proposed for repeal and which remain in effect on extended timelines. Targets that deferred capital expenditures in anticipation of repeal may face re-compliance costs if proposed repeals are not finalised or are successfully challenged, while targets that already invested in compliance may retain a competitive advantage.

Climate and energy policies

On climate and energy policy, the Administration has used executive action to prioritise domestic energy production and challenge state climate initiatives. In 2026, Executive Order 14386 directed federal officials to pursue long-term power purchase arrangements with coal-fired generators for military and mission-critical facilities.[92] The President also issued Defense Production Act determinations treating grid infrastructure, domestic fossil fuel capacity and large-scale energy infrastructure as essential to national defence.[93]

Benefits of robust ESG due diligence

Despite ESG recalibration, ESG due diligence remains relevant to M&A as ESG factors often map directly onto value drivers, regulatory exposure, operational resilience and exit readiness.

Valuation premiums and competitive advantage

ESG diligence can affect valuation. A 2024 KPMG survey found that two-thirds of dealmakers would pay a premium for targets with high ESG maturity in areas aligned with their priorities, and more than half estimated the premium at 1% to 10%.[94] Other studies cited in this area similarly suggest that stronger ESG profiles can support higher valuations and deal competitiveness.[95]

Risk mitigation and downside protection

ESG diligence can also help identify risks that may erode value after closing. Recent KPMG data indicates that many investors believe that ESG diligence can lead to cancelled deals or purchase-price reductions.[96] Controversies, weak controls and poor ESG performance can therefore have direct valuation and execution consequences.[97]

Long-term performance and governance

Robust ESG practices can also support long-term performance and governance. KPMG's 2024 study found that leading investors increasingly connect ESG to the investment thesis, including by using ESG baselining, integrating 100-day action plans and systematic financing scans to create value.[98]

Alignment with evolving regulatory and market expectations

Even where some companies reduce public ESG commitments, regulation and investor expectations continue to evolve. ESG diligence helps acquirors anticipate compliance costs, reputational risk, financing impacts and operational changes, particularly as sustainability disclosure standards continue to develop globally.[99]

ESG metrics

In M&A, ESG metrics should be assessed in light of how the buyer intends to use and disclose ESG information. For example, an impact-focused fund may use diligence as the baseline for post-acquisition measurement, while a financial-inclusion strategy may require reliable data on access to financial services before and after investment.

Beyond mandatory reporting, several ESG reporting standards shape market practice. The ISSB published IFRS S1 and IFRS S2 in 2023 to create a global baseline of investor-focused sustainability disclosures and has received broad support from major international bodies.[100] Other frameworks include the Sustainability Account Standards Board ("**SASB**") Standards, now part of the IFRS Foundation, and the Global Reporting Initiative ("**GRI**") Standards. SASB focuses on financially material industry-specific topics.[101] GRI is organised around universal and topic-specific standards.[102]

Market participants continue to pursue harmonisation. The Climate Disclosure Standards Board framework has been consolidated into the IFRS Foundation and ISSB Standards, while other initiatives, such as integrated reporting and the Institutional Limited Partners Association ESG Data Convergence Project, seek to improve consistency and comparability. Public and private initiatives also support ESG integration and impact measurement. The UN Principles for Responsible Investment guide investors seeking to incorporate ESG issues into decision-making. The Impact Management Project concluded its five-year term in 2021, and Impact Frontiers now stewards the Impact Management Norms.[103]

ESG ratings

ESG ratings can help investors compare ESG credentials, but they should be treated as inputs rather than conclusions. Ratings are opinions or scores based on provider methodologies and defined ranking systems, and they may be used to assess ESG characteristics, risk exposure or product claims. In M&A, buyers should review the data sources, assumptions, methodology and conflicts behind any rating rather than relying on the rating alone.

In the UK, the Financial Services and Markets Act 2000 (Regulated Activities) (ESG Ratings) Order 2025 brings certain ESG ratings within the FCA perimeter where they are likely to influence investment decisions. Full application begins in June 2028, with exclusions and transitional provisions. The UK government has also consulted on oversight of sustainability assurance engagements.[104]

In the EU, the ESG Ratings Regulation applies from July 2, 2026 and creates an authorisation and supervisory regime for ESG ratings providers, including certain non-EU providers serving EU users. It imposes organisational, conflict-management, methodology-transparency and disclosure requirements. These regimes should improve transparency, but buyers should still diligence the underlying methodology and data.

Greenwashing

Greenwashing – misleading or unsubstantiated environmental marketing – is now a central regulatory, litigation and reputational risk. As ESG claims appear in transaction materials, financing arrangements and public communications, acquirors should assess greenwashing exposure across a target's public claims, regulatory disclosures, offering materials and internal substantiation files.

EU and UK

EU and UK regulators have intensified scrutiny of environmental claims, with enforcement activity across sectors including aviation, fashion, logistics and consumer goods.

EU Empowering Consumers for the Green Transition Directive (the "ECGT")

The EU's ECGT, adopted in 2024 and applying from September 27, 2026, is the key legislative development in the EU anti-greenwashing framework. It amends EU consumer law to address environmental, social and circularity claims.[105]

The ECGT introduces several core restrictions:

- Generic environmental claims such as "eco-friendly", "green", "climate friendly" or "nature positive" are prohibited unless supported by recognised certification or robust, verifiable evidence of excellent environmental performance.
- Claims that a product has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions based solely on carbon offsetting are explicitly prohibited.
- Sustainability labels must be based on independent third-party certification schemes or be established by public authorities.
- Future environmental-performance claims must be based on clear, objective, public and verifiable commitments, supported by detailed implementation plans, measurable targets, deadlines, resources and periodic independent verification.
- Businesses must also provide consumers with enhanced pre-contractual information about the durability, reparability and legal guarantee rights associated with their products, and are prohibited from practices associated with planned obsolescence.

The ECGT is supported by existing EU enforcement mechanisms, including penalties for widespread consumer-law infringements. National authorities have already increased enforcement, including fines in Italy.[106] Coordinated EU action has also addressed airline environmental claims.[107]

Negotiations on the proposed EU Green Claims Directive were paused in June 2025, but that does not affect the existing anti-greenwashing framework. The ECGT, national enforcement and case law already give authorities significant tools to challenge misleading claims.

For M&A, acquirors should review whether a target's environmental marketing and sustainability claims comply with the ECGT. Transaction documents should increasingly address greenwashing risk and the robustness of substantiation processes.

European Securities and Markets Authority ("ESMA"), FCA and Competition and Markets Authority ("CMA") guidance on sustainability-related claims

Anti-greenwashing risk is also shaped by EU and UK regulatory guidance. ESMA thematic notes, the FCA anti-greenwashing rule and the CMA Green Claims Code differ in legal status, but they share a common expectation: sustainability claims should be accurate, accessible, complete, substantiated, fairly presented and kept under review.

ESMA, for example, expects sustainability-related claims to be accurate, accessible, substantiated and up to date. Market participants should avoid vague language, cherry-picking, inconsistent terminology, misleading imagery and unsupported comparisons, and should explain methodologies, thresholds, assumptions, data sources and limitations where relevant.

In the UK meanwhile, the FCA anti-greenwashing rule applies to FCA-authorised firms making sustainability-related claims about financial products or services. Claims should be factually correct, substantiated, clear, complete and based on fair comparisons. The CMA Green Claims Code applies more broadly to consumer-facing environmental claims. It requires claims to be truthful, clear, complete, fairly compared, lifecycle-aware and substantiated; broad claims such as "green" or "eco-friendly" should be used only where justified across the full scope of the claim.

In M&A, buyers should identify material sustainability-related claims and test them against evidence, product composition, portfolio construction, supply-chain information, substantiation files and approval processes. Transaction documents may need to address claim accuracy, third-party credentials, regulatory correspondence and obligations to update or withdraw claims.

United States

In the United States, greenwashing risk arises from a mix of federal consumer-protection principles, securities law, state environmental-marketing rules and private litigation. There is no single omnibus federal greenwashing regime.

For consumer-facing claims, the principal federal reference point remains the FTC Green Guides.[108] They are not independently binding but reflect FTC views on environmental marketing and can support enforcement under Section 5 of the FTC Act.[109] They apply broadly to claims about products, packaging and services.[110]

The Green Guides recommend marketers to identify all express and implied environmental claims and ensure each reasonable interpretation is truthful, not misleading and supported before use.[111] Substantiation often requires competent and reliable scientific evidence.[112] The Green Guides also address common claim types, including offsets, certifications, recyclability, recycled content, renewable energy and renewable materials.[113] Although the FTC is unlikely to complete its ongoing review of the Green Guides under the current Administration, the existing Guides remain the operative federal framework.[114]

For public companies and financial-market participants, greenwashing risk is addressed mainly through existing disclosure, anti-fraud and compliance obligations. The SEC's climate rules remain stayed and subject to proposed rescission.[115] The SEC also withdrew its proposed ESG rules for investment advisers and investment companies.[116] The amended Names Rule remains relevant for ESG- and sustainability-themed funds, with compliance dates in 2026.[117]

California remains the most significant U.S. state for environmental-claim regulation. AB 1305 requires disclosures for certain net-zero, carbon-neutral, emissions-reduction and VCO claims.[118] California also has broader substantiation requirements for environmental representations.[119] SB 343 restricts use of recyclability symbols for products and packaging manufactured after October 4, 2026.[120]

For M&A, buyers should diligence sustainability claims across websites, packaging, labels, investor presentations, offering materials, SEC filings, fund documents, customer communications and sustainability reports. Particular attention should be paid to: green, sustainable, recyclable, compostable, carbon neutral, net zero, renewable and ESG-integrated claims; carbon offsets; certifications; and controls for approving, updating and withdrawing claims.

Final thoughts

The ESG landscape is fragmented, politicised and subject to litigation and enforcement risk. While the United States and Europe illustrate differing approaches, cross-border transactions often require companies to navigate multiple frameworks at once. ESG diligence therefore remains important even where some requirements have narrowed or been delayed, because regulatory scope, disclosure risk, supply-chain exposure, financing considerations, litigation risk and exit readiness continue to affect deal value.

For M&A practitioners, ESG diligence should be practical, targeted and tied to the transaction thesis and can include the following steps, among others:

- **Regulatory exposure**: map the ESG laws and policy developments applicable to the target by jurisdiction, including rules that are pending, stayed, delayed or under challenge.
- **Reporting and data controls**: assess whether ESG data is complete, accurate, controlled and capable of supporting buyer reporting, financing and exit needs.
- **Greenwashing and greenhushing**: test the substantiation for environmental, sustainability and other green claims, and assess whether withdrawn or muted claims create investor, customer or regulatory risk.
- **Supply chain and forced labour**: review supply-chain mapping, supplier controls, sanctions and import-risk exposure, including forced-labour, human-rights and responsible-sourcing issues.
- **Anti-ESG exposure**: consider whether the target's ESG posture, commitments or investment policies create risk in jurisdictions opposed to ESG initiatives.
- **Antitrust**: review ESG collaborations, industry initiatives and information-sharing arrangements for competition-law risk and appropriate controls.

As the ESG landscape continues to evolve, rigorous diligence can help buyers identify downside risk, preserve deal value and capture opportunities through stronger governance, resilient value chains and better-aligned financing and integration planning.

Disclaimer

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Andrew M. Levine

Tel: +1 212 909 6069 / Email: amlevine@debevoise.com

Andrew M. Levine is a litigation partner in the New York office of Debevoise & Plimpton and a member of the firm's core group of ESG partners. He regularly defends companies and individuals in criminal, civil and regulatory enforcement matters, has conducted countless internal investigations throughout the world, and frequently advises clients on ESG and other compliance matters.

Patricia Volhard

Tel: +44 20 7786 5505 / +49 69 2097 5150 / +33 1 4073 1212
Email: pvolhard@debevoise.com

Patricia Volhard is a member of Debevoise & Plimpton's core group of ESG partners. She is a partner in the Frankfurt, Paris and London offices and is a member of the firm's Private Equity and Funds/Investment Management Groups. Her practice focuses on advising private funds, including on the full range of European regulatory issues, and structuring funds for EU insurance companies and pension funds.

Ulysses Smith

Tel: +1 212 909 6038 / Email: usmith@debevoise.com

Ulysses Smith is Debevoise & Plimpton's ESG senior adviser. He is a leading lawyer and thought leader on ESG, working at the intersection of sustainability, governance, rule of law, anti-corruption and human rights. His experience includes advising major multinationals, not-for-profit organisations, governments and multilateral institutions on a range of sustainability and governance issues.

Debevoise & Plimpton LLP

66 Hudson Boulevard, New York, NY 10001, USA
Tel: +1 212 909 6000 / Fax: +1 212 909 6836 / URL: www.debevoise.com

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