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Introduction

Many businesses are recalibrating or reversing their environmental, social and governance ("**ESG**") commitments, including those concerning climate and diversity, as ESG has become a subject of political and other scrutiny. Nevertheless, ESG factors remain important considerations in M&A deals. Investors, boards and other stakeholders often view ESG factors as material to long-term value creation and risk management, notwithstanding recent developments.

The term "ESG" encompassing environmental, social and governance considerations, includes a wide range of topics of varying degrees of importance for business. 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 equality and diversity.
- **Governance**: bribery and corruption; taxation; transparency; executive pay; political lobbying and donations; shareholder rights; board independence, diversity and structure; and ESG governance, including supply chain management and customer engagement.

Over the last 15 years, businesses increasingly have sought to integrate ESG considerations into their strategies, operations, investment decisions and communications. More recently, ESG has become further polarised and, in conjunction with that polarisation, the legal and regulatory landscape has become increasingly fragmented. This fragmentation intensified considerably in 2025, with the EU, the United States and many other countries globally taking divergent paths on key ESG policies, laws and regulations. In the United States, fragmentation also exists at the state level. The result is a complex and often contradictory patchwork for businesses to navigate.

United States

Over the past year, the United States has witnessed a dramatic transformation in the federal government's approach to ESG regulation and policy, largely due to policies advanced by the second Trump Administration. Since taking office on January 20, 2025, a series of sweeping executive orders have fundamentally reoriented the federal government's stance on ESG and diversity, equity and inclusion ("**DEI**") matters. These executive actions have not only rolled back federal involvement in ESG and DEI initiatives but have also set a new course prioritising energy independence.

Among the most consequential executive orders are those terminating all federal government DEI mandates, policies, programmes and offices, as well as all related action plans and performance requirements.[1] The Administration revoked prior executive orders aimed at combatting climate change and promoting electric vehicles and paused all disbursements under the Inflation Reduction Act of 2022.[2] In addition, the Trump Administration ordered all federal agencies to actively combat private sector DEI preferences and policies and revoked President Johnson's Executive Order 11246, which established equal opportunity requirements for federal contractors.[3]

Of particular note, the Administration withdrew the United States from the Paris Agreement and all other agreements under the United Nations Framework Convention on Climate Change.[4] This move, coupled with declaring a national energy emergency, authorised federal departments and agencies to expedite the development of domestic energy resources, including approving energy production on federal and state lands.[5] The Administration also issued a memorandum ordering the cessation of approvals for new onshore and offshore wind projects.

At the state level, 2024–25 saw a proliferation of legislative and regulatory activity, resulting in a patchwork of approaches to ESG across the country. The divide between "pro-ESG" and "anti-ESG" jurisdictions continues to be a defining feature, with states like California, Illinois, New York and Minnesota advancing robust ESG mandates in a number of areas:

- **California** has enacted landmark climate-related legislation, including the Climate Corporate Data Accountability Act ("**SB 253**"), the Climate Related Financial Risk Act ("**SB 261**") and the Voluntary Carbon Market Disclosures Act ("**AB 1305**"). These laws require large companies to disclose greenhouse gas emissions, climate-related financial risks and information related to their participation in the voluntary carbon market.[6] In addition, California's public pension funds remain subject to ESG integration mandates and the state's regulatory leadership on automobile emissions and cap-and-trade regulations, among others, continues to influence regulatory developments in other "blue" states.
- **Illinois** has built on its Sustainable Investing Act (2020) by requiring all managers of state pension funds to integrate sustainability factors into investment decisions and disclosures. In addition, Illinois is developing climate disclosure regulations similar to California's.
- **New York City** has committed to achieving net-zero greenhouse gas emissions across its pension funds' investment portfolios by 2040, with New York City Comptroller Brad Lander recently announcing standards for evaluating the net zero plans of asset managers for the city's pension funds.[7] Asset managers refusing to submit their plans or failing to satisfy the Comptroller's requirements may lose their investment mandates.[8] New York State also is developing climate disclosure regulations for businesses operating in New York.
- **Minnesota and other states** have adopted or are considering laws mandating carbon-free electricity and other sustainability measures.

By contrast, anti-ESG states continue to enact legislation restricting or prohibiting the consideration of ESG factors, particularly in state investment decisions:

- As of early 2025, more than 30 states have introduced over 100 anti-ESG bills since 2020, with roughly 26 bills active or pending as of June 2025.[9] The most active states include **Oklahoma**, **Florida**, **Missouri** and **Texas**.
- **Florida**, **Texas**, **Utah**, **Indiana**, **Arkansas** and others have passed laws requiring fiduciaries of state pension plans and public funds to base investment decisions solely on pecuniary (financial) factors, explicitly barring ESG considerations unless directly tied to financial returns.
- Anti-boycott legislation is widespread, prohibiting state entities from contracting with or investing in companies that "boycott" certain industries, such as fossil fuels and firearms. Asset managers and financial services firms are often required to certify that they do not engage in such boycotts.
- ESG discrimination laws prohibit financial institutions from denying services to companies based on ESG criteria.

Europe

Europe remains a global leader in ESG regulation, though it too has begun to reevaluate its policy and regulatory positions:

- The EU's Corporate Sustainability Reporting Directive (the "**CSRD**") and the Taxonomy Regulation in particular have set rigorous standards for ESG due diligence and reporting, impacting both EU-based and multinational companies. These regulations require detailed disclosures on environmental and human rights impacts, supply chain due diligence and climate risk.
- Nevertheless, 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 completely eliminating certain requirements, particularly in response to rising economic and competitiveness concerns.

Global developments

Aside from Europe and the United States, countries around the world continue adopting the International Sustainability Standards Board (the "**ISSB**") standards as part of their mandatory domestic sustainability reporting regimes, further harmonising ESG reporting expectations for multinational corporations. According to a June 2025 study published by the ISSB, 36 jurisdictions worldwide have adopted, are using or are finalising the adoption of the ISSB standards within their regulatory frameworks.[10] Seventeen jurisdictions have finalised their approach to sustainability reporting – meaning their frameworks are no longer under consultation and formal decisions have been made regarding the adoption or use of ISSB standards. Fourteen of these jurisdictions have set a target of fully adopting the ISSB standards, two jurisdictions aim to adopt only the climate requirements of the ISSB standards and one plans to incorporate partially the ISSB standards. The United Kingdom is among the jurisdictions currently implementing a sustainability reporting regime that will require significant transparency from companies.

Antitrust

Regulators in both the United States and Europe are increasingly scrutinising the intersection between companies' ESG activities and antitrust law. ESG collaborations, such as joint climate initiatives or sector-wide sustainability commitments, have been a focus of antitrust scrutiny, with lawsuits brought by U.S. state attorneys general related to asset managers' participation in climate initiatives currently underway.

M&A considerations

The ESG regulatory and policy environment has significant implications for M&A due diligence and risk management, including:

- The global proliferation of mandatory ESG due diligence and reporting obligations increasingly applies to both acquirers and targets in control transactions.

- Purchasers in cross-border and multinational deals must navigate a patchwork of ESG regulations and policy positions, particularly in the United States, balancing the requirements of pro-ESG jurisdictions (which may mandate affirmative diligence and disclosure) with the prohibitions and restrictions of anti-ESG jurisdictions.
- Many buyers view ESG due diligence as essential for identifying and managing legal, reputational and operational risks.
- ESG metrics and ratings agencies continue to play a critical role in evaluating performance, but the lack of standardisation among the ratings agencies presents ongoing challenges.

This chapter focuses on current legal developments and market practice affecting ESG due diligence in M&A transactions. It begins by discussing ESG diligence requirements in selected markets, then highlights certain risk-management concerns, addresses benefits to businesses from robust ESG diligence and concludes with a consideration of ESG metrics and ratings agencies.

ESG regulations mandating ESG due diligence

EU regulatory initiatives

*European Union Corporate Sustainability Due Diligence Directive (the "**CSDDD**")*

The CSDDD is a significant EU law requiring companies to conduct supply chain due diligence in their own operations and along their "chains of activities". Although the CSDDD was adopted and came into force on July 25, 2024, giving Member States two years to transpose the CSDDD into national law, the European Commission published its Simplification Omnibus Package on February 26, 2025 (the "**Omnibus Package**"). The Omnibus Package proposes significant amendments to several sustainability-related EU laws, including the CSDDD, and delays the implementation of several requirements under these laws, as discussed below.[11]

Overview: Following the entry into force of the EU's "Stop-the-Clock" Directive on April 17, 2025, which forms part of the Omnibus Package (and which will be implemented by Member States by end of 2025), the deadline for Member States to transpose the CSDDD into national law has been extended by one year, from July 2026 to July 2027. The "Stop-the-Clock" Directive has also delayed the first phase of the application of the CSDDD for one year, meaning its implementation will now be phased in between 2028 to 2029, depending on company size. As currently drafted, the CSDDD will require both EU companies and non-EU companies operating within the EU and meeting certain turnover thresholds to identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights and the environment. Unlike previous drafts referring to the entire "value chain" of a company, the current text of the CSDDD centres on the company's "chain of activities". "Chain of activities" is defined as (a) the activities of "upstream" business partners related to the production of goods or provision of services by the company, including design, extraction, sourcing, manufacture, transport, storage or supply of products or services, and (b) the activities of "downstream" business partners related to the distribution, transport or storage of products, where undertaken for the company or on its behalf. Excluded from this definition are product disposal and activities of downstream business partners related to company services. Business partners include entities with whom the company has a commercial agreement (direct business partners) and indirect business partners, though under the Omnibus Package, this generally would be limited to direct business partners only. The current text also provides for civil liability of companies for damage caused at home or abroad by their own business activities or by those of their subsidiaries, though the Omnibus Package may remove this. EU Member States will be responsible for supervising compliance with these new rules and are required to develop rules on sanctions for noncompliance.[12]

Primary objectives: The CSDDD outlines the following primary objectives: (i) identifying and assessing potential adverse impacts on human rights, the environment and good governance in a company's own operations, those of its subsidiaries and those of its direct and indirect upstream and downstream business partners; (ii) preventing, mitigating or bringing to an end such adverse impacts; (iii) ensuring that companies can be held accountable for such impacts; and (iv) providing anyone who has suffered harm caused by a business's activities effective remedies in accordance with national law. In addition, companies are required to have a plan for ensuring their strategies align with the goal of limiting global warming to 1.5°C, in line with the Paris Agreement.[13]

Applicability: As currently drafted (and the Omnibus Package does not suggest changes to CSDDD's scoping criteria), the directive will apply to:

(1) EU companies with more than 1,000 employees and a net worldwide annual turnover of over EUR 450 million (or ultimate parent companies of such a corporate group);

(2) EU companies with (a) EU franchising or licensing agreements for annual royalties exceeding EUR 22.5 million, and (b) an annual net worldwide turnover of over EUR 80 million (or ultimate parent companies of such a corporate group);

(3) non-EU companies generating at least EUR 450 million in net turnover in the EU; and

(4) non-EU companies with (a) EU franchising or licensing agreements for annual royalties exceeding EUR 22.5 million in the EU, and (b) an annual net turnover of over EUR 80 million in the EU (or ultimate parent companies of such a corporate group).

For both EU and non-EU companies, the thresholds must have been met for at least two consecutive financial years in order 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 will require companies to understand the details and actors within their chains of activities, particularly where they may face risks in the areas of: (i) human rights (e.g., charters and conventions relating to social rights, trade union activities and investment chains); (ii) environment (e.g., climate change, deforestation, water quality, use of sustainable resources, biodiversity and ecosystems); and (iii) good governance (e.g., bribery, anti-money laundering and tax-compliance issues).

The current text of the CSDDD establishes a corporate due diligence obligation and requires in-scope companies to implement certain human rights and environmental due diligence measures. These include the following:

- 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, where appropriate, mitigating potential adverse impacts, including implementing prevention action plans, seeking contractual assurances from direct business partners that they will ensure compliance with the company's code of conduct and prevention action plan (including obtaining similar contractual assurances from their respective partners if their activities are part of the company's chain of activities), investing in management or production processes, providing targeted and proportionate support to enable small- and medium-sized enterprises ("**SMEs**") to comply and, where relevant, collaborating with other entities to end the adverse impact;
- bringing actual adverse impacts to an end or minimising their severity through appropriate measures;

- establishing a complaints procedure enabling affected individuals, trade unions and civil society organisations to raise concerns about actual or potential human rights and environmental impacts of the company's operations and within its chain of activities; 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 already subject to certain other reporting requirements must publish an annual statement on their websites, reporting on matters in scope of the CSDDD. The EU Commission has been tasked with adopting delegated acts by March 2027, providing further information on the content and criteria of such disclosures.

The definition of "chain of activities" excludes downstream business partners in respect of services. As a result, service providers, including financial sector undertakings, are not required to apply the due diligence obligations to their clients, borrowers and other users of their services. Financial sector undertakings are required to apply the due diligence obligations to their upstream suppliers, but there is some uncertainty as to the relevant types of suppliers and the scale of their due diligence.

Recital 51 notes that the OECD Guidelines for Multinational Enterprises and ancillary financial sector guidance provide "indications of the types of measures that are appropriate and effective for financial undertakings to take in due diligence processes" and states that "[r]egulated financial undertakings are expected to consider adverse impacts and to use their so-called 'leverage' to influence companies". Recital 51 further explains that "[t]he exercise of shareholders' rights can be a way to exercise leverage". However, it remains unclear precisely to which operative obligations in the directive these statements refer.

Civil liability: As currently drafted, companies can be held liable in accordance with national law for any violations arising out of adverse impacts on human rights, the environment and governance that either they or their subsidiaries have caused or contributed to by acts or omissions. While a company will not incur civil liability for damage caused solely by a business partner in its chain of activities, the final compromise text of the CSDDD specifically includes provisions for joint and several liability where the damage was caused "jointly by the company and its subsidiary, direct or indirect business partner". Claims can be brought by stakeholders, who include: the company's employees; the employees of its subsidiaries; trade unions and workers' representatives; consumers and other individuals, groupings of communities or entities whose rights or interests are or could be affected by the products, services and operations of the company, its subsidiaries and its business partners; national human rights and environmental institutions; and civil society organisations whose purposes include environmental protection. However, the list of stakeholders eligible to file claims is likely to be restricted further under the Omnibus Package. The CSDDD sets out procedural provisions relating to disclosure of evidence, injunctive measures and costs.

Unlike the Commission's and the Parliament's original proposals, the current text of the CSDDD does not extend directors' duty of care to act in the best interest of the company to encompass the short-, medium- and long-term consequences of their decisions on human rights, climate change and the environment.

Areas of consideration: Companies will incur administrative and financial burdens in connection with changes required to implement the obligations imposed by the CSDDD. These burdens include engaging with potentially different tools to understand and track their chains of activities.

*European Union Deforestation Regulation (the "**EUDR**")*

On June 29, 2023, the EUDR came into force.[14] The EUDR aims to curb the EU's contribution to trade-induced global deforestation by keeping products linked to illegal production and deforestation off the EU market. Though it was initially intended to apply from December 30, 2024, in October 2024, the European Parliament approved the Commission's proposal to delay its application by one year.[15] From December 30, 2025 (or June 30, 2026 for micro or small businesses), the EUDR prohibits the placing and making available on the EU market, as well as the export from the EU market, of certain commodities (cattle, cocoa, coffee, palm oil, rubber, soya and wood ("**Commodities**")) as well as products that contain, have been fed with or have been made using these Commodities ("**Products**"). There are exceptions where the Commodities or Products are: (i) deforestation-free (i.e., produced on land that was not subject to deforestation or forest degradation after the cut-off date of December 31, 2020); (ii) produced in accordance with the relevant legislation of the country of production (including human rights and Indigenous Peoples' rights laws); and (iii) covered by a due diligence statement containing sufficient information demonstrating that the Commodities and Products are deforestation-free and compliant with all relevant applicable laws.[16] Notably, the EUDR only applies to Commodities and Products produced on or after June 29, 2023 (except for timber and timber products, which may be produced before that date and placed on the EU market after December 31, 2028).[17,18]

The EUDR applies to any natural or legal person who, in the course of a commercial activity, places Products on or exports Products from the EU market ("**Operators**") as well as any person in the supply chain who trades Products already available on the EU market ("**Traders**").[19]

Operators and non-SME Traders must ensure traceability to the level of individual plots and implement a due diligence system to avoid sourcing Commodities or Products that are neither deforestation-free nor produced in accordance with the relevant legislation of the country of production. The regulation sets out three steps of the due diligence process:

(1) 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);

(2) assessing the risk of noncompliance with this regulation; and

(3) mitigating risks, if present, to a negligible level.[20]

In addition to the due diligence requirements, Operators and non-SME Traders must annually report on their due diligence system and steps taken to fulfil their due diligence obligations.[21]

Member States must designate competent authorities responsible for (i) verifying compliance of Operators and Traders with due diligence requirements, and (ii) verifying compliance of relevant goods and Products with this legislation. Risk analysis information and the benchmarking system, among others, are intended to support and guide this process.[22] The EUDR also provides a list of sanctions to be established in national legal systems, including fines, seizure of goods and products, confiscation of revenues, prohibition of economic activities and exclusion from public tenders.[23]

On April 15, 2025, the European Commission opened a consultation on whether to introduce a new Delegated Regulation clarifying the scope of the EUDR. The proposed Delegated Regulation would amend Annex I of the EUDR to clarify that certain products, such as waste, second-hand and used products, as well as packing materials clearly suitable for multiple uses and used to protect other products, are not covered by the Deforestation Regulation.[24]

EU Forced Labor Regulation

The EU's Forced Labor Regulation entered into force on December 13, 2024, with most provisions applying from December 14, 2027. It prohibits products made using forced labour from either being placed and made available within or exported from the EU. The Regulation empowers the European Commission and Member State authorities to undertake investigations into suspected violations, potentially resulting in product bans from sale or export. Although the Regulation does not create any additional due diligence obligations for companies, the Commission will issue guidance on how to conduct due diligence in relation to forced labour, as well as best practices for ending and remediating instances of forced labour.

EU Member State regulatory initiatives

French Vigilance Law

In 2017, France introduced into law a duty of 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, which is part of the chapter of the French Commercial Code on joint-stock companies (*sociétés anonymes*) and simplified joint-stock companies (*sociétés par actions simplifiées*) governed by French law. However, it does apply to foreign companies' French subsidiaries if they meet the relevant thresholds.[25]

The law provides for a civil liability proceeding, whereby companies failing to comply can be sued and ordered to compensate for losses the compliance with vigilance obligations could have prevented. An increasing number of claims have been brought on that basis, but there have been no final decisions to date.

The vigilance law also provides for injunctive relief, whereby the Paris civil courts can order companies to comply with their duties. Any person with a "legitimate interest" has standing to initiate such proceedings. There are two stages to any application for an injunction under the vigilance law: (i) the party with standing must first send the relevant company a *formal notice* demanding that it comply with its obligations (i.e., to correctly establish and implement a vigilance plan); and (ii) if the company does not comply within three months, the notifying party can then file an injunction request with the Paris civil courts.[26]

Eight years after France adopted the vigilance law, the Paris civil courts have rendered several decisions in injunction proceedings brought by nongovernmental organisations ("**NGOs**") to compel compliance by companies with their obligations under the law. On December 5, 2023, the decision in the *La Poste* case marked the first time a company was mandated to comply with the vigilance law through an injunction. The Paris civil court held that the French Postal Service company offered insufficient protection for its employees and ordered the company to confer with employees' representatives to adopt a new plan for subcontractors to minimise the risk of employing undocumented workers. On June 17, 2025, the Paris court of appeal upheld that decision.

On June 18, 2024, the Paris court of appeal's chamber dedicated to the duty of vigilance issued decisions on three injunction requests previously dismissed by the lower court as inadmissible (on the basis that the requirements regarding the formal notice had not been complied with). In the TotalEnergies and EDF cases, the court of appeal overturned the lower court's decisions, clarifying key procedural aspects of injunction requests.

These decisions will now make it easier for claimants to obtain vigilance injunctions in the French courts. In the *Suez* case, the court of appeal dismissed the NGOs' injunction request on the ground that the NGO had improperly targeted a subsidiary and not the parent company responsible for the vigilance plan.

German Act on Corporate Due Diligence in Supply Chains

On July 22, 2021, the German Parliament adopted the Act on Corporate Due Diligence Obligations in Supply Chains. This human rights due diligence act implements the 2016 "National Action Plan for Business and Human Rights in the Federal Republic of Germany", which was based on the 2011 UN Guiding Principles on Business and Human Rights. The act establishes binding due diligence obligations for companies to appropriately identify, address and report on human rights risks in their supply and value chains. It also requires companies to set up accessible complaints procedures or grievance mechanisms, enabling individuals to report risks or violations.

The German due diligence obligations extend to the company's own business operations and direct suppliers and – where the company has substantiated knowledge of potential violations – indirect suppliers. As defined by the act, the "supply chain" includes all steps, both domestically and internationally, required to manufacture a company's products and provide its services, starting with the extraction of raw materials and ending with delivery to the end customer. The actions required under the German Act vary based on factors such as the nature and scope of the business, the in-scope company's ability to influence entities in their supply chain, the extent and expected severity of a violation, the possibility of reversing an error and the probability of a reoccurrence.

The Act entered into force on January 1, 2023. Initially, it applied to companies – regardless of their legal form and including German subsidiaries of foreign companies and German branches of foreign companies (if such branches themselves meet the threshold) – that had their registered office or principal place of business in Germany and regularly employed more than 3,000 employees. As of January 1, 2024, the threshold was lowered to 1,000 employees, significantly expanding the number of companies subject to the law. For group companies, all employees employed in Germany across the group are counted toward this threshold. The Act has already led to increased scrutiny of supply chain practices, greater demand for transparency from suppliers and the need for robust compliance systems. However, in April 2025, the incoming German coalition government announced that Germany will repeal the Act by the end of 2025 and replace it with a new act implementing the CSDDD into German national law. According to this announcement, the reporting requirements under the original Act are to be immediately repealed.

U.S. regulatory initiatives

Dodd-Frank Act Section 1502

Section 1502 of the Dodd-Frank Act – implemented as a rule by the U.S. Securities and Exchange Commission (the "**SEC**") in 2012 – requires all publicly listed companies to disclose their use of tantalum, tin, gold or tungsten sourced from the Democratic Republic of the Congo and its neighbours if "necessary to the functionality or production" of a product manufactured or contracted to be manufactured by the company.[27] While companies are not required to stop sourcing these materials from the region, they must disclose due diligence efforts – including tracing and auditing – and any other steps taken to ensure their purchasing is not funding armed groups or human rights abuses and to address identified risks.[28]

Under the rule, a company must conduct a reasonable "country of origin" inquiry, performed in good faith and reasonably designed to determine the source of the material.[29] If the company either knows the mineral did not originate in the covered countries or has no reason to believe the minerals originated in the covered countries, then the company must disclose this determination along with a description of its inquiry.[30] If, however, the company knows or has reason to believe that the minerals originated in the covered countries, the company must undertake due diligence on the source and file a "Conflict Minerals

Report" outlining the chain of custody of the mineral.[31] Both determinations must be made publicly available on the company's website.[32]

*2010 California Transparency in Supply Chains Act (the "**Supply Chains Act**")*

The Supply Chains Act became effective in January 2012, making it the first supply chain disclosure act directed toward consumer transparency in the United States.[33] The Supply Chains Act requires all retailers and manufacturers doing business in California with annual worldwide gross receipts exceeding USD 100 million to disclose "efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale".[34]

More specifically, the disclosure must outline whether and to what extent the retailer or manufacturer: (i) verifies, evaluates and addresses the risks of human trafficking and slavery in its product supply chain; (ii) audits suppliers to ensure compliance with company standards; (iii) requires direct suppliers to certify that the supply chains for all constituent parts comply with human-trafficking prohibitions enshrined in domestic law where the part is produced; (iv) maintains internal accountability standards and procedures in case of violation; and (v) trains employees and managers with direct responsibility for supply chain management.[35] At a minimum, the Supply Chains Act requires disclosure on the company's website "with a conspicuous and easily understood link" or written disclosure within 30 days of receiving a request for disclosure from a consumer.[36]

With this focus on disclosure, the Supply Chains Act aims to give consumers information to enable the eradication of slavery and trafficking through their purchasing decisions. Thus, the Act aims to encourage consumers to reward companies with stronger practices and penalise those that fail to effectively monitor their supply chains.[37] Like other reporting statutes, the Supply Chains Act does not require that companies monitor their supply chains or eradicate forced labour. It also does not outline what effective monitoring looks like or what adequate due diligence entails. A company that states that it takes no efforts in any of the required reporting areas therefore remains in compliance with the Act.

The Supply Chains Act also does not create a private right of action but instead provides that the exclusive remedy for violation "shall be an action brought by the Attorney General for injunctive relief".[38] However, some consumers and their attorneys have begun to bring cases under California consumer protection statutes focused on unfair competition and false advertising.[39]

*Uyghur Forced Labor Prevention Act (the "**UFLPA**")*

The UFLPA took effect on June 21, 2022.[40] The UFLPA imposes various restrictions related to China's Xinjiang Autonomous Region, including prohibiting certain imports from Xinjiang and imposing sanctions on actors responsible for human rights violations there.

Securities issuers required to file annual or quarterly reports with the SEC must disclose certain information related to their activities in Xinjiang, 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.[41] 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.[42] 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.[43]

The scope of activities covered by the UFLPA may compel companies to examine their supply chains. In particular, the act covers transactions with entities or affiliates that themselves engage in activity in Xinjiang, even if the issuer itself is not engaging in such activity.

Accompanying the UFLPA is the Strategy to Prevent the Importation of Goods Mined, Produced or Manufactured with Forced Labor in the People's Republic of China (the "**UFLPA Strategy**"), promulgated by the Forced Labor Enforcement Task Force of the Department of Homeland Security. The UFLPA Strategy provides guidance to importers on the nature of due diligence, including supply chain management controls expected of importers seeking to comply with the UFLPA and types of evidence required to rebut the presumption.

Since the enactment of UFLPA in 2022, Customs and Border Protection has reviewed products in 9,000 shipments valued at over USD 3.5 billion and denied entry of almost 4,000 shipments.[44] In 2024 alone, the value of UFLPA-detained shipments exceeded USD 1.63 billion.[45]

The countries of origin of UFLPA-detained shipments rank as follows: Malaysia first at USD 1.54 billion; Vietnam second at USD 1.01 billion; and Thailand third at USD 0.50 billion.[46]

*New York Fashion Sustainability and Social Accountability Act (the "**FSSAA**")*

New York legislators have introduced the FSSAA, which would require fashion retail sellers and manufacturers to disclose environmental and social due diligence policies. The bill aims to target "fast fashion" and to create legislation to govern the fashion industry. Under the bill, fashion retailers doing business in the state and with global revenue of at least USD 100 million would be required to disclose their environmental and social impacts, diligence policies and outcomes.

Disclosures would include, at a minimum, the following:

(1) supply-chain mapping and disclosure, including information on suppliers at all stages of production throughout the supply chain;

(2) due diligence disclosures, including social and environmental sustainability reports and identification of risk areas; and

(3) impact disclosures.

The bill would allow citizens to commence civil actions against a business in violation of the legislation. The bill would also amend the state finance law to establish a community benefit fund, enabling the U.S. Department of Environmental Conservation to expend funds for implementing environmental benefit and environmental justice projects.

Senate Bill S7428 was introduced in October 2021 and referred to the Consumer Protection Committee on January 5, 2022.[47] The bill was discharged by the Committee and twice amended and recommitted to the Consumer Protection Committee (now Senate Bill S4746B).[48] The Assembly version of the bill (Assembly Bill A4333B) passed both the Consumer Affairs and Protection Committee and the Ways and Means Committee.[49] However, it did not reach the assembly floor in time for a vote during this legislative session[50] and therefore was reintroduced in February 2025.[51]

ESG regulations mandating ESG disclosure

Europe

EU CSRD

As noted previously, in February 2025, the European Commission published the Omnibus Package, which, among other things, proposed significant amendments to the CSRD. As with the CSDDD, the bulk of these amendments currently remain subject to ongoing negotiation. They broadly encompass: (i) raising the thresholds for EU and non-EU companies to be in scope; and (ii) simplifying and reducing data points that companies are required to report under the European Sustainability Reporting Standards (the "**ESRS**"), as described further below.

The CSRD came into force on January 5, 2023, superseding the Non-Financial Reporting Directive (the "**NFRD**") as of the fiscal year 2023, and applies starting from the financial year 2024. As currently drafted, the CSRD applies to all "large" EU companies (meeting two of the following criteria: balance sheets greater than EUR 25 million; net worldwide turnover exceeding EUR 50 million; or more than 250 employees) and all EU-listed companies (including SMEs but excluding micro-enterprises). EU subsidiaries or branches of non-EU parent companies are also in scope of the CSRD if the parent company generates EU turnover of more than EUR 150 million and the former is a large or listed EU company or a significant EU branch (generating more than EUR 40 million in turnover).

The CSRD introduces two important assessments. First, the so-called "double materiality" test, requiring companies to consider their material impacts on the environment, society (e.g., human rights) and governance. It also requires that companies consider the impact of a sustainability matter on the company's financial health (e.g., development, financial position, financial performance, cash flows, access to finance or cost of capital). Second, companies must assess their value chain and the extent to which their upstream and downstream activities should be considered as part of their "operations" for the double materiality assessment.

In-scope companies must report under the detailed ESRS framework. Currently, the general standards (ESRS 1 and 2) are mandatory for all in-scope companies. All other standards are subject to a materiality assessment. However, a company concluding that the climate-change standard (ESRS 1) is "not material" must provide a detailed explanation for this determination. Market consensus suggests all in-scope companies are likely to consider climate reporting as material. For the first three years a company is subject to the CSRD, it may elect to "comply or explain", citing its efforts made and reasons for the lack of data in the value chain. Additionally, companies with less than 750 employees may omit reporting on scope 3 emissions for the first reporting period.

Reporting requirements under the CSRD will apply on a phased basis. As noted above, on April 17, 2025, the EU's "Stop-the-Clock" Directive entered into force, with Member States required to implement it by December 31, 2025. The "Stop-the-Clock" Directive delayed the application of the CSRD to certain companies, with the overall timeline now as follows: from January 1, 2024, for large public interest companies with over 500 employees that are already subject to the NFRD; from January 1, 2027, for large companies not currently subject to the NFRD (exceeding at least two of these three criteria: 250 employees; EUR 50 million in net turnover; or EUR 25 million on their balance sheet); and from January 1, 2028, for listed SMEs. Starting January 1, 2028, for in-scope EU companies with non-EU parents, consolidated sustainability reports at the non-EU parent level will be subject to certain thresholds (please see above). However, where an in-scope EU subsidiary is included in its non-EU parent's sustainability report (prepared in accordance with the ESRS), the application of the CSRD is deferred until January 2030 and the in-scope EU subsidiary may rely on the group reporting exemption.

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

In December 2019, the SFDR entered into force. It requires all EU financial market participants and financial advisors (including non-EU firms marketing in the EU) to make ESG disclosures about their financial products, sustainability risks and adverse sustainability impacts in their investment processes. The level of disclosure and obligations depends on the degree of ESG integration in the financial product. Products promoting environmental or social characteristics (Article 8 products) and products aiming for sustainable investments (Article 9 products) are subject to pre-contractual and ongoing disclosures on sustainability indicators used to monitor performance.[52]

The SFDR's Level-1 requirements have applied since March 2021. These Level-1 disclosures are entity-level and product-level disclosures, requiring fund managers to: (i) assess the potential for ESG factors to negatively impact the returns of funds under management; and (ii) disclose the outcome of that assessment to investors both in the funds' prospectus documents and on the firm's website. Additionally, in-scope firms must publish an adverse impacts statement on their website. Firms with 500 employees or more have been required to publish a statement describing due diligence policies applied to identify adverse impacts of investment decisions on sustainability factors; firms with fewer than 500 employees have the option either to publish a statement or clearly state that adverse impacts are not taken into account, detailing why and future intentions, where relevant.[53]

In September 2023, the European Commission conducted a consultation for a general revision of the SFDR. The Commission suggested a new categorisation system for sustainable products based on four sustainable investment strategy categories, including "products aiming to meet credible sustainability standards" and "products with a transition focus". Any such system could be directed at retail and/or professional investors. The criteria for such categories may be based on matters such as degree of Taxonomy alignment, engagement strategies and exclusions. The criteria may even be based in predefined and measurable environmental or social outcomes such as minimum year-on-year improvement of chosen Key Performance Indicators. In addition, in December 2024, the EU Platform on Sustainable Finance published a detailed paper on replacing the SFDR with a categorisation scheme, with three categories of products: "Sustainable"; "Transition"; and "ESG Collection" (all other products would be "uncategorised").[54] The European Commission is expected to publish a proposal on revising the SFDR Level-1 by the third quarter of 2025 at the earliest, which may incorporate the EU Platform on Sustainable Finance's recommendations. The new SFDR Level-1 regime would be unlikely to come into effect before 2026 at the earliest.

The SFDR's Level-2 disclosures were published in April 2022 and applied from January 2023. They provide regulatory technical standards specifying the details of the Level-1 disclosures, notably including the disclosure templates for Article 8 and Article 9 products. In December 2023, the European Supervisory Authorities (the "**ESA**") proposed amendments to the Level-2 regulatory technical standards, with the key changes being: (i) new mandatory and opt-in (voluntary) social PAIs; (ii) changes to the overall PAI reporting framework such as reporting on the use of estimates; (iii) changes to the way in which fund managers report on the outcome of the DNSH test; (iv) a new set of disclosures for funds with greenhouse gas emission reduction targets; and (v) simplifications and new layout for the disclosure and reporting templates. The European Commission is expected to propose amending the SFDR's Level-2 disclosures in line with the ESA's proposed amendments by the second quarter of 2025, at the earliest.

Alongside the SFDR, the EU adopted the EU Taxonomy Regulation, applying from January 1, 2022.[55] The Taxonomy Regulation provides a common set of technical screening criteria to test and measure to what extent an economic activity qualifies as environmentally sustainable. It applies where financial market participants make available products that promote specific environmental characteristics or products that have sustainable investment as an objective. The Taxonomy Regulation (and associated technical screening criteria) initially focused on climate change issues, with the Taxonomy Regulation applying from January 1, 2022 in respect of the two climate change objectives, and on January 1, 2024 for another four environmental objectives.[56]

Together with the SFDR, the Taxonomy Regulation helps to ensure that investors investing in financial products in scope will obtain adequate information about the alignment of their portfolios to the Taxonomy. Moreover, together with the CSRD, the Taxonomy Regulation ensures that companies falling under the CSRD's scope disclose information about a company's Taxonomy-aligned economic activities. Under the Omnibus Package, only the largest companies in scope of the CSRD would have to report information on their Taxonomy-aligned economic activities.

The EU has also adopted the Low Carbon Benchmark Regulation. This regulation seeks to ensure that low-carbon benchmarks comply with a standard methodology to limit the possibility of presenting outcomes without a proper basis (otherwise known as greenwashing).[57]

EU CSDDD

The CSDDD requires in-scope companies that are not subject to the reporting obligation under the EU Accounting Directive (Directive 2013/34/EU of the European Parliament and of the Council) to publish an annual statement on their compliance with its requirements on their website. The statement must be published within 12 months of the financial year-end, covering the previous calendar year.

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.[58]

Germany

German Act on Corporate Due Diligence in Supply Chains

The German Act on Corporate Due Diligence in Supply Chains requires in-scope companies to continuously document the compliance with due diligence requirements and prepare an annual report on these activities, which must be made publicly available on the company's website and electronically transmitted to the German Federal Office of Economics and Export Control.

United Kingdom

*UK Modern Slavery Act 2015 (the "**MSA**")*

In 2015, the United Kingdom implemented the MSA, one of the first global modern slavery regulations. The MSA requires large businesses to produce a statement each financial year stating the steps an organisation has taken during that year to ensure that slavery and human trafficking are not taking place in any part of its own business or in any part of its supply chains. Alternatively, large businesses may produce a statement that the organisation has taken no such steps. This requirement applies to all commercial organisations (wherever formed) that carry on a business (or part of a business) in any part of the United Kingdom that supply goods or services and have an annual turnover of at least GBP 36 million (calculated on a group-consolidated basis).[59]

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 the homepage.[60]

Following a House of Lords Select Committee Report in October 2024 that suggested "insufficient guidance or engagement with companies, as well as ... the lack of mandated topics for statements to cover" may have led to inconsistencies in the quality and content of modern slavery statements, the Home Office issued updated MSA statutory guidance in March 2025. The guidance closely aligns with and cross-references the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidelines for Responsible Business Conduct. Notably, this guidance contains much more detail than previous guidance and delineates "baseline" and "best practice" disclosures in modern slavery statements. It also recommends "key actions" that organisations should consider taking to combat modern slavery and underlines the need for continuous, measurable improvement year-on-year.

*Task Force on Climate-Related Financial Disclosures (the "**TCFD**") and forthcoming Sustainability Reporting Standards*

The United Kingdom has implemented legislation to make the voluntary disclosure framework under the TCFD mandatory for UK companies, UK asset managers and certain types of regulated investors. This requires entities in scope to publish detailed TCFD reports covering their approach to climate risks (the impact of climate change) and opportunities (the transition to a lower-carbon economy) in terms of governance, strategy and risk management. Entities in scope will also be required to collect and disclose data on carbon emissions and climate-related targets. The United Kingdom has also signalled its intention to adopt Sustainability Reporting Standards (the "**UK SRS**"), in line with the ISSB's International Financial Reporting Standards (the "**IFRS**") S1 and S2 standards, which cover general sustainability and climate-specific disclosures, respectively. In December 2024, the United Kingdom's Sustainability Disclosure Technical Advisory Committee, which was established by the government to review the inclusion of ISSB Standards in UK law, formally recommended adoption of the standards with only minor amendments.[61] The United Kingdom indicated it would consult on the drafts of UK SRS during the first quarter of 2025, though these have not yet been published.[62] Once the United Kingdom adopts UK SRS, this presumably will replace the requirement to report under the TCFD framework.

Transition Plan Taskforce

In November 2021, the UK government committed to requiring certain companies to publish climate transition plans detailing their efforts to decarbonise by 2050. A Transition Plan Taskforce was created with the goal of identifying the "gold standard" for transition plans. The taskforce published its final Disclosure Framework in October 2023 and additional sector-specific guidance in April 2024.[63]

United States

California SB 253

On October 7, 2023, California Governor Gavin Newsom signed into law SB 253, which requires public and private companies doing business in California with more than USD 1 billion in annual revenue to disclose, among other things, their Scopes 1, 2 and 3 greenhouse gas emissions. Starting in 2026, in-scope companies must provide annual disclosures of their Scopes 1 and 2 emissions; disclosure of Scope 3 emissions starts in 2027.[64] The California Air Resources Board ("**CARB**") is developing regulations implementing the law. While the law does not define "doing business in California", CARB has indicated that the definition contained in the state revenue and tax code is a reference point, encompassing any business that:[65]

(1) engages in a transaction for financial gain within California;

(2) is organised or commercially domiciled in California; or

(3) has California sales, property or payroll exceeding set thresholds or 25% of total sales, property or payroll in the state.

California is the first U.S. state to enact laws requiring climate-related disclosures. New York,[66] Colorado,[67] New Jersey[68] and Illinois[69] have recently introduced similar legislation, though none have yet become law.[70]

California SB 261

SB 261, also signed into law in October 2023, applies to public and private companies doing business in California with more than USD 500 million in annual revenue. The law requires in-scope companies to prepare biennially a climate-related financial risk report aligned with reporting to the Task Force on Climate-related Financial Disclosures. In-scope companies must publish their first climate risk reports on their website by January 1, 2026.

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

AB 1305, effective January 1, 2025, governs the sale, purchase or use of voluntary carbon offsets ("**VCOs**") as well as "claims" by businesses regarding the achievement of "carbon neutrality" or the reduction in greenhouse gas emissions. The law has three main elements:

- Section 44475, requiring disclosure of certain information by "a business entity that markets or sells VCOs in California";
- Section 44475.1, requiring 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, requiring 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.

U.S. executive action related to ESG

Inflation Reduction Act (the "IRA")

The IRA was signed into law by President Biden in August 2022. The U.S. Environmental Protection Agency (the "**EPA**") under President Biden described the IRA as the most ambitious climate-related legislation in U.S.' history.[71] Most of the Act's provisions took effect on January 1, 2023. The IRA introduced reduced renewable energy costs for "Green Power Partners", a voluntary programme that encourages businesses, non-profits, educational institutions and state, local and tribal organisations to buy green energy. The IRA's provisions include: clean energy tax credits, which allow taxpayers to deduct a percentage of the cost of renewable energy systems from their federal taxes; an emphasis on support for disadvantaged populations and communities with environmental justice concerns; and a range of mechanisms for tax credit monetisation. The IRA also supports projects that facilitate the use of electric vehicles and allocates funds to climate resilience efforts and green power infrastructure. However, under the Trump Administration and with Republican control of Congress, the IRA is currently under scrutiny. Recently, House Republicans moved forward with a tax bill that would eliminate billions of dollars in climate-related funding.[72] Several House and Senate Republicans have cautioned against the full repeal of the IRA, stating that repeal would disrupt businesses that have invested based on the IRA's tax framework and would lead to higher energy costs.[73] According to the Clean Investment Monitor, the IRA has led to USD 321 billion worth of completed climate investment, with USD 522 billion worth of investments underway.[74]

In his second term, through various executive orders, President Trump has reshaped the federal government's stance on ESG. On his first day in office, he signed more than 100 orders, including several that significantly changed U.S. policy on climate and energy by:

- withdrawing the United States from the Paris Climate Agreement;
- declaring a national energy emergency, which allows executive departments and agencies to facilitate the exploitation of federal lands for energy resources;
- eliminating the electric vehicle mandate;

- pausing all disbursements under the IRA; and
- ceasing approval of any new wind energy projects.

Challenges to these executive orders are underway. A coalition of 18 state attorneys general sued the Trump Administration over its suspension of permits and issuance of stop-work orders for wind-energy projects. While the state attorneys general suit is still underway, on May 20, 2025, the Trump Administration lifted its stop-work order for Empire Wind, a wind-energy project off the coast of New York that previously received its required permits and approvals.

EPA's final rules to reduce pollution from fossil fuel-fired power plants

On April 25, 2024, the EPA announced final rules to reduce pollution from fossil fuel-fired power plants under the Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act.[75]

The rules provide that:[76]

(1) existing coal-fired plants and new gas-fired plants must control 90% of their greenhouse gas emissions by using available control technologies (effective July 8, 2024);

(2) coal-fired power plants must comply with the updated Mercury and Air Toxics Standards, which tighten emissions standards for toxic metals by 67% and reduce the emissions standard for mercury from existing lignite-fired sources by 70% (effective July 8, 2024);

(3) coal-fired power plants must limit discharge of pollutants in wastewater (effective July 8, 2024); and

(4) coal ash must be safely managed in areas that previously were unregulated at the federal level (effective July 8, 2024).

In late March 2025, the EPA initiated a series of deregulatory actions related to the Clean Air Act and other environmental regulations. Further, the United States Senate voted to overturn an EPA rule connected to the Clean Air Act designed to limit seven of the most hazardous air pollutants emitted by heavy industry.[77] Republican Senator John Curtis of Utah introduced the resolution, arguing that the rule disincentivised companies from deploying new technologies to reduce pollution.[78]

On June 11, 2025, the EPA proposed repealing all greenhouse gas emissions standards for the power sector under Section 111 of the Clean Air Act stating that doing so would "ensure affordable and reliable energy supplies and drive down the costs of transportation, heating, utilities, farming and manufacturing while boosting our national security".[79] EPA Administrator Lee Zeldin said the EPA will decide whether fossil fuel power plants are "significant contributors" of these emissions and whether such emissions endanger public health and/or the environment.[80]

Benefits of robust ESG due diligence

Despite recent backlash against ESG initiatives and some companies recalibrating or even withdrawing their ESG commitments, the potential benefits of ESG due diligence in M&A transactions remain significant. Many dealmakers and investors continue to recognise how ESG factors relate to core value drivers.

Valuation premiums and competitive advantage

ESG due diligence can directly impact deal valuation. According to a 2024 KPMG survey, two-thirds of dealmakers would pay a premium for a target that demonstrates a high level of ESG maturity in areas that align with their own ESG priorities. Roughly 55% of all respondents estimated the premium at between 1% and 10%.[81] A recent McKinsey survey of investment professionals found that most would pay a premium of about 10% for a company with a positive ESG profile compared to one with a negative profile.[82] One FactSet study[83] suggested that companies in the Ethical Sustainability Index Europe and the MSCI Global Environment Index trade at about 12x the EV/EBITDA (enterprise value to earnings before interest, taxes, depreciation, and amortisation) enterprise multiple, compared to 10x EV/EBITDA for the Stoxx Europe

600. This demonstrates that, even in a challenging environment, strong ESG performance can translate into higher valuations and greater deal competitiveness.

Risk mitigation and downside protection

ESG due diligence is a critical tool for identifying and mitigating risks that could erode value post-acquisition. Poor ESG performance has been a decisive factor in dealmaking: the vast majority of market participants have either reduced the valuation of an acquisition target or abandoned a deal altogether due to ESG concerns.[84] In fact, 54% of private equity partners reported reducing a bid price after ESG due diligence, while 32% increased the bid price, underscoring the material impact of ESG findings on deal terms.[85]

Long-term performance and governance

Companies with robust ESG practices are often better positioned for long-term success. A study by the *Financial Times* Moral Money Forum found that a long-term approach to corporate governance – often a key focus of ESG due diligence – can have a positive effect on both corporate and financial performance, as well as long-term productivity.[86] KPMG's 2024 Global ESG Due Diligence Study found that leading global investors tie ESG to their investment thesis for a company, thereby generating financial value.[87] Such investors are more likely to tie ESG factors into their deal strategy.[88] Their approach includes comprehensive ESG baselining, integrated 100-day action plans and systematic scans for financing opportunities, especially in light of evolving ESG regulations.[89]

Financial incentives and disincentives

There have been numerous recent efforts to link ESG performance with financial incentives (or disincentives), including:

- 77% of **S&P 500 companies** tie executive compensation to some form of ESG performance as of 2025.[90]
- The **Net Zero Banking Alliance**, representing over 40% of global banking assets, committed to align the group's lending and investment portfolios with net-zero emissions by 2050.[91] However, JPMorgan, Citigroup, Bank of America, Morgan Stanley, Wells Fargo and Goldman Sachs have left since the start of December 2024.[92]
- **Nordea** committed to facilitate over EUR 200 billion in green and sustainable financing by 2025.[93]
- **BlackRock**'s USD 4.4 billion lending facility linked borrowing costs to staff diversity targets.[94] (However, BlackRock disclosed in March 2024 that it amended the credit facility to "update the sustainability-linked pricing mechanics to remove existing metrics".)[95]
- **Gibson Energy**'s USD 750 million revolving credit facility with borrowing costs linked to the diversity of its board and workforce has been renewed and now matures in 2027.[96]
- **Carlyle Group**'s USD 4.1 billion credit facility linked to achieving 30% diversity on the boards of the companies it controls within two years of ownership.[97]

Alignment with evolving regulatory and market expectations

Even as some companies step back from public ESG commitments, regulatory frameworks and investor expectations continue to evolve. In KPMG's 2024 Study, global investors discussed how they use evolving ESG regulations and stakeholder behaviours to drive their financial strategy for an investee.[98] They combine a deep understanding of the commercial, operational and financial risks and opportunities triggered by these changing regulations and trends to increase performance.[99] ESG due diligence helps acquirers anticipate and adapt to these changes, reducing the risk of future compliance costs or reputational damage. The establishment of clearer legal frameworks and standards, as seen in the ongoing development of global sustainability disclosure requirements, further underscores the importance of ESG integration in M&A.

ESG metrics

When conducting ESG due diligence in an M&A context, it is important to understand how the buyer intends to account for and potentially disclose ESG information. For example, diligence conducted for an impact-focused fund will likely serve as the baseline from which the fund can measure and report ESG changes during its period of ownership. Similarly, a social impact fund aimed at improving financial inclusion will want to know the number of "unbanked" people currently served by a target company so that it can measure the shift in access to financial services during the life of its investment.

As discussed above, some regulators have mandated ESG-related reporting on specific matters, such as supply-chain or climate risks. Beyond those legally mandated, various ESG reporting standards have arisen over the last few years. Most notable is that of the ISSB. Launched during the 2021 COP26 summit in Glasgow, the ISSB published its inaugural standards – IFRS S1 and IFRS S2 – in June 2023 with the aim of creating a "high-quality, comprehensive global baseline of sustainability disclosures focused on the needs of investors and the financial markets".[100] The ISSB enjoys global support from coalitions such as the G7, the G20, the International Organization of Securities Commissions and the Financial Stability Board. The new ISSB standards are expected to help improve trust and confidence in company disclosures about sustainability to inform investment decisions.

Other recent examples of ESG reporting standards include the Value Reporting Framework (which resulted from the merger of the Sustainability Account Standards Board (the "**SASB**") and the International Integrated Reporting Council) and the Global Reporting Initiative (the "**GRI**"). The SASB's set of 77 Industry Standards identifies "the minimal set of financially material sustainability topics and their associated metrics for the typical company by an industry".[101] The GRI Standards are divided by topic: every organisation that prepares a sustainability report uses the three universal standards; and the remainder are chosen by an organisation from topic-specific Standards.[102]

Efforts are currently underway to harmonise these standards to allow better direct comparisons of ESG reporting (see, for example, the discussion above regarding the Taxonomy Regulations). Certain sustainability accounting standards are designed to be aligned with other ESG projects. One example is the Climate Disclosure Standards Board Framework, which has been explicitly designed to be aligned with the TCFD recommendations. Others seek to provide a high-level reporting framework to improve harmonisation more broadly, such as the International Integrated Reporting Council Framework or the Institutional Limited Partners Association ESG Data Convergence Project.

There are also public and private efforts to create resources by which investors can incorporate ESG into their activities and reporting, as well as compare different investments according to ESG performance. For instance, the UN Principles for Responsible Investment are aimed at investors seeking to incorporate ESG issues into their investment decision-making. The Impact Management Project is a collaboration among environmental accounting standards organisations, impact organisations and investment managers to create norms to measure ESG impacts, against which companies and investors can assess their impact performance.

ESG ratings

As sustainable investments continue to become increasingly integrated into the financial ecosystem, many investors have come to rely on ESG ratings agencies to provide data points that assist in comparing companies' ESG credentials. ESG ratings are frequently used to validate the ESG characteristics of financial products or companies and to indicate the ESG risk exposure of an equity or debt issuer. The Big Three credit ratings agencies – namely Standard & Poor's, Moody's and Fitch Ratings – all provide ESG rating services. Specialised ESG ratings agencies have also gained prominence, including Sustainalytics and the Carbon Disclosure Project.

In 2022, there were increasing calls in the United States for government regulation of the ESG ratings industry, though these have not yet resulted in government action despite recent updates by Britain and the EU.[103]

In the United Kingdom, the Financial Conduct Authority (the "**FCA**") intends to provide greater oversight through regulation to bring ESG data and rating providers within its purview. It also suggested that a globally consistent regulatory approach should be adopted, aligned with the International Organization of Securities Commissions' recommendations on ESG data and ratings.[104] In 2024, the FCA confirmed, subject to the UK government's endorsement of the ISSB standards and subsequent adoption of UK SRS, that it planned to consult on amending its climate-related disclosure rules for listed companies to refer to the UK SRS standards.[105] Furthermore, HM Treasury published a draft statutory instrument in November 2024 proposing to make the provision of ESG ratings a regulatory activity as defined in the Financial Services and Markets Act 2000, which would require ESG ratings to be provided by individuals or entities authorised by the appropriate regulator.[106]

In December 2024, the EU adopted a regulation on ESG ratings activities (the "**ESG Ratings Regulation**") requiring ESG ratings providers operating in the EU to comply with transparency requirements, including regarding their ratings methodologies and information sources. The ESG Ratings Regulation applies to ratings opinions regarding a company's or financial instrument's sustainability, societal and environmental impact and risk exposure. It aims to (i) enhance the transparency, reliability and comparability of ESG ratings, (ii) address concerns over inconsistencies and potential conflicts of interest due to ownership structure, controlling interests or activities of the ESG ratings provider, and (iii) boost investor confidence. The ESG Ratings Regulation also requires EU-based ratings providers to be authorised and supervised by the European Securities and Markets Authority ("**ESMA**"). Non-EU ESG ratings providers must meet equivalence criteria or obtain endorsements to operate in the EU. ESMA is designated as the enforcement authority and may impose fines and "periodic penalty payments" to entities found in breach. In May 2025, ESMA published draft Regulatory Technical Standards that set out the information required for ESG ratings providers' applications for authorisation to operate in the EU, measures and safeguards to be implemented by ESG ratings providers that also carry out other activities to mitigate risks regarding conflicts of interest and guidance on the information that ESG ratings providers must disclose.[107]

Final thoughts

In 2025, the ESG landscape is more polarised and complex than ever, with the United States and Europe exemplifying divergent approaches to ESG policy and regulation. Companies engaged in M&A and other cross-border transactions must remain vigilant, ensuring that their ESG diligence and compliance programmes are tailored to the rapidly evolving – and often contradictory – regulatory frameworks in which they operate. As new national and supranational legislation emerges, ongoing monitoring and adaptation will be essential to manage risk and capture the benefits of robust ESG integration.

ESG due diligence helps in evaluating both the value and appropriateness of potential transactions, particularly in the context of M&A. In today's environment – characterised by heightened regulatory scrutiny, rising stakeholder expectations and rapidly evolving legal frameworks – effective ESG due diligence goes beyond traditional risk identification. It demands a rigorous, targeted assessment of material ESG exposures, the credibility of mitigation strategies and the authenticity of a company's sustainability commitments.

The regulatory landscape is rapidly shifting from voluntary ESG disclosures and self-regulation to mandatory due diligence and standardised reporting. Jurisdictions worldwide – including the EU, United Kingdom, individual U.S. states and countries around the world – are enacting or proposing robust ESG regulations that require companies to systematically identify, manage and disclose ESG risks throughout their operations and value chains. These requirements are designed not only to increase transparency and comparability but also to address persistent issues of inconsistent reporting and greenwashing that have undermined trust in ESG claims. However, this broad uptake has also led to increased scrutiny, scepticism and a more critical global attitude toward ESG claims, with concerns about greenwashing and the actual impact of ESG initiatives now at the forefront.

In this more critical and regulated ESG environment, robust due diligence can unlock significant opportunities for businesses. These include enhanced valuations, improved governance, more resilient and sustainable value chains and greater access to capital and markets. At the same time, companies that fail to meet evolving ESG expectations face heightened risks of regulatory enforcement, litigation, reputational damage and loss of stakeholder trust.

The ever-increasing legal requirements around ESG due diligence are likely to help level the playing field amongst businesses as the momentum shifts from voluntary due diligence and self-regulation towards mandatory diligence and disclosure along the lines discussed above. As the ESG landscape continues to evolve, there are significant opportunities for businesses to reap the rewards of more stringent due diligence, including through gains in valuations, improvements in governance, strengthened value chains and incentive-based dealmaking.

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Endnotes

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