ARTICLE | JANUARY 9, 2025

ESG and Sustainability Insights: 10 Things That Should Be Top of Mind in 2025

Mandatory ESG reporting, new AI tools for ESG data management, and rising litigation risk are just some of the hot topics this year.

Through the course of 2024, the development of the ESG and sustainability landscape was dynamic. We anticipate that this dynamism will intensify in 2025, given the implementation and potential amendment of ESG-related regulations and significant geopolitical developments around the globe. Companies, investors, and asset holders will need to remain agile and informed to adequately respond to these trends, while navigating the energy transition, greater scrutiny of value chains, and the "greenlash." Integrating ESG and sustainability into corporate strategies and operations will require ever more sophistication and careful consideration, in particular by the directors and senior managers who are responsible for oversight of such matters.

1. US Developments

Many observers are wondering how the incoming Trump administration may affect ESG and sustainability. Regardless of the speculation, the bottom line is that these topics will continue to be an evolving area and critical for business resilience in 2025.

With a Republican-led Congress, we expect congressional efforts to scrutinize climate member organizations or coalitions to continue apace. As early as 2022, conservative state attorneys general wrote to certain asset managers questioning their memberships in various net zero and climate action initiatives and alliances, alleging violations of antitrust and/or fiduciary duty, as well as consumer protection laws. A related lawsuit filed by Texas and 10 other states will continue into 2025. Further, demand letters sent by US Representatives to various asset managers relating to climate change memberships filed in late 2024 will carry over into 2025. Boards of entities that have received, or could reasonably receive, letters or be subjected to this scrutiny should continue to be briefed regularly on these developments in 2025. Boards should also continue to ask management questions on how it is managing risk while still progressing and staying true to its publicly disclosed business strategy.

In 2023, some US states advanced so-called "fair access" laws that prohibit businesses from using social, ideological, or political interests when doing business with certain customers. In 2025, we expect to see similar federal legislation reintroduced or Office of the Comptroller of the Currency regulations proposed. We also anticipate debates on whether such a new federal law or regulation can preempt state laws, which preemption could reduce compliance burdens on financial institutions or other affected entities. In addition to fair access laws, the incoming Trump administration may remove some of the legal uncertainty in the ESG and sustainability space that was created by the push and pull of differing laws and policies adopted during the Biden administration. Republican control of the US executive and legislative branches, along with recent aligned changes in the judicial branch, could arguably reduce uncertainty and tension, at least on the federal level.

Nonetheless, like the EU and other international jurisdictions, many progressive states are expected to go in the opposite direction. For instance, California is pushing hard for climate change disclosure obligations to continue, with several other states looking to follow suit. New York recently passed a climate superfund law, pursuant to which the state would impose new fines on companies deemed responsible for climate change. Moreover, depending on their industries and locations, some companies will need to continue to manage physical risks to their assets or business due to extreme weather as well as comply with non-US climate and sustainability laws and requirements.

Further, given that many US entities also operate in a global context, there will be a need to navigate US federal and state trends against the backdrop of potential reputational or operational risks associated with diverging from global ESG trends. This is especially the case if the US seeks to counter the extraterritorial impact of ESG and sustainability regulations (particularly from the EU) through trade negotiations, legislation, or other mechanisms.

2. EU Developments

The EU parliamentary election results, changing dynamics within Member States, and the new European Commission meant that 2024 resulted in a bumpy path for a number of the EU's leading ESG-related legislative initiatives. For example, at the start of 2024, there was considerable uncertainty about the likely implementation of the Corporate Sustainability Due Diligence Directive (CSDDD). While CSDDD was eventually agreed and entered into legislation, the protracted negotiations set the tone for subsequent pushback on ESG- and sustainability-related regulations, which culminated in a year's delay in the entering into force of the EU's Deforestation Regulation (EUDR).

The focus for 2025 was established by comments from Ursula von der Leyen, president of the European Commission, regarding the potential for an "omnibus" initiative to simplify the EU Taxonomy, the Corporate Sustainability Reporting Directive (CSRD), and CSDDD. Suggestions from von der Leyen that any such omnibus initiative is about simplification and not substantive change indicate that the EU is seeking to strike a balance between maintaining high ESG and sustainability standards and ensuring economic competitiveness.

However, experience from the CSDDD and EUDR negotiations, as well as the transposition of the CSRD in some Member States, indicates that there is considerable uncertainty as to whether change will be more substantive in 2025. Potentially, change could to some degree reflect a trend toward the dilution of ESG and sustainability regulatory requirements. This shift toward simplification is partly driven by concerns over the economic impact of stringent regulations on businesses, particularly small- and medium-sized enterprises, and reflects the Draghi report on the future of European competitiveness, in addition to continued criticism from some non-EU countries about extraterritorial implications of the legislation. Entities will therefore need to closely focus on the European Commission's actions in its first 100 days and remain informed about the potential for regulatory changes and any longer-term implications.

3. Mandatory ESG Reporting

2025 will mark a milestone in mandatory ESG and sustainability reporting, with the first year of reporting under the EU's CSRD. The first reports, mainly produced by large EU financial institutions or entities that have listed securities in the EU, are anticipated to be produced in the first six to eight months of 2025. This moment represents a shift away from voluntary ESG and sustainability reports, which traditionally have been largely qualitative, toward mandatory and data-driven ESG and sustainability reports that are subject to limited third-party assurance. Publication of such reports will be closely watched, given the larger number of companies that will be required to produce their first reports in 2026. Such companies will look to the approach adopted for the required double materiality analysis, reporting on climate change targets (in particular 2050 targets), the approach to reporting on value chains, the attitude of limited assurance providers, and the extent (if any) of enforcement by relevant Member State authorities.

In addition, we will see companies addressing various other reporting obligations, such as under California's AB 1305, and the further rollout of national reporting requirements in connection with the implementation of the International Sustainability Standards Board (ISSB) standards. Robust data collection, reporting processes, and appropriate governance and oversight will be needed to respond to these reporting requirements.

4. Value Chains

The focus on near-shoring and reshoring value chains is expected to intensify, driven by geopolitical tensions, ongoing supply chain disruptions, and regulatory requirements such as CSDDD, EUDR, the EU Batteries Directive, the Uyghur Forced Labor Prevention Act, modern slavery reporting requirements, and similar. This area will also likely be influenced by broader antitrust/trade developments, particularly in the context of China.

Entities need to continue to reevaluate their supply chains to enhance resilience, reduce risk, and ensure compliance with evolving standards. This requires a comprehensive understanding of value chain dynamics, including the environmental and social impacts of sourcing and production, especially as regulatory trends increasingly establish an expectation to trace value chains back to source. For many, the likely time and resource needed to unravel such value chains is unmanageable and/or unrealistic. Alternatively, entities may consider the potential cost implications and strategic opportunities associated with reconfiguring their value chains.

In particular, critical minerals are essential for the global economy, for renewable energy and the military. China is the leading supplier of certain critical minerals, and these commodities will become subject to ever further scrutiny in their customers' supply chains (likely in both the US and the EU). The demand for critical minerals is expected to increase due to legal requirements or corporate commitments to reduce carbon emissions. There is, however, a focus on responsible sourcing from a human rights perspective for these materials. For instance, the International Energy Agency has warned that failure to consider ESG matters may limit the supply of minerals that are critical to the energy transition. As a result, entities may look to support their value chain partners through training and additional resources, and countries (particularly in Latin America and sub-Saharan Africa) may consider developing frameworks to encourage the responsible production and processing of such minerals in anticipation of future increased demand. These initiatives could have an impact on the energy transition, trade arrangements, and geopolitical tensions.

There will likely continue to be litigation and reputational risk associated with any adverse environmental and social issues identified in the context of an entity's value chain. Such risk may affect an entity's decision about which markets to operate in (e.g., certain entities are openly considering avoiding the EU market as a result of CSDDD). For certain key commodities, a shift could have significant implications, representing opportunities for other economic regions.

5. Rise in Importance of "Traditional" Environmental Topics

"Traditional" environmental topics, such as pollution control, chemicals stewardship, and waste management, are gaining prominence as a result of growing regulatory and consumer focus and ESG and sustainability disclosure trends. Regulatory and legislative bodies are increasingly focusing on these issues, driven by a growing public awareness and scientific evidence of these issues' impact on human health and ecosystems.

For example, heightened awareness and consideration of per- and polyfluoroalkyl substances (PFAS) is impacting transactional diligence, given those substances' widespread presence. Circular economy initiatives are driving an increased focus on the use of plastics (notwithstanding the breakdown in the negotiations concerning the potential plastics treaty) as well as packaging and packaging waste. Notably, detailed rules agreed by EU political institutions in 2024 will gradually bring in rules that require more sustainable packaging to be used across the bloc, and entities doing business in the EU will need to adapt their processes accordingly.

Companies are expected to proactively address these traditional environmental topics, not only to ensure compliance with stricter environmental regulations, but also to meet stakeholder expectations and address risks during transactions. This may involve investing in cleaner technologies and the build-out of research and development processes, enhancing waste management practices, and adopting sustainable materials and processes.

6. Refocus on Net Zero and Transition Plans

The refocus on net zero commitments and transition plans continues to intensify as companies strive to meet ambitious climate goals. There is a growing recognition of the complexities involved in measuring and reducing Scope 3 emissions, which encompass indirect emissions from a company's value chain. Companies are adopting more pragmatic approaches to Scope 3 emissions, focusing on collaboration with suppliers and customers to drive meaningful reductions.

Mandatory reporting requirements are increasingly compelling companies to reassess and critically evaluate their net zero commitments and climate-related targets. With the CSRD and other emerging reporting frameworks, companies falling within the scope of these regulations will be obligated to disclose a substantial amount of data concerning their measurement processes and progress toward achieving net zero targets. These disclosures require preparation against the backdrop of heightened stakeholder scrutiny with respect to alleged greenwashing. In this context, companies are likely to evaluate their net zero commitments, including those made as part of sector alliances, to ensure that disclosures are reflective of genuine progress and to maintain credibility and trust with investors, consumers, and regulatory bodies.

In addition, companies are increasingly expected to disclose detailed plans outlining how they intend to achieve net zero targets. The CSRD will require detailed disclosures on companies' transition plans, and the same will likely be required under the new UK Sustainability Disclosure Requirements framework. Moreover, globally operating companies will need to balance regulations (such as CSDDD) that are driving transition plan adoption and a focus on limiting global warming to 1.5°C, in line with the Paris Agreement, with the changing priorities of the incoming Trump administration. In particular, while climate change remains a driver in business, financial markets, and regulation, the incoming Trump administration is expected to once again exit the Paris Agreement. In addition, the incoming US Securities and Exchange Commission (SEC) is expected to reevaluate the climate change and diversity agendas of the outgoing SEC. Relatedly, support for oil and gas in the US is expected to increase under the new administration.

In this context, businesses will need to consider global frameworks while balancing the financial implications of transitioning to a low-carbon economy and the potential opportunities for innovation and growth.

7. The Importance of AI and Its Connections With ESG

Artificial intelligence (AI) is playing an increasingly central role in ESG strategies, offering new opportunities for data collection, analysis, and reporting. These AI technologies can be a powerful tool to enhance the accuracy and efficiency of ESG data management, enabling entities to better understand and address their environmental and social impacts and performance. As a result, ESG- and sustainability-focused AI technology and products have grown in number and complexity in recent years, which is a trend that is expected to continue in 2025.

As ESG and sustainability reporting increasingly becomes mandatory in 2025 and beyond, a growing number of entities, including smaller companies with key roles in corporate supply chains, will likely be drawn to these AI tools to accurately and reliably collect data in a structured and efficient way.

However, the use of AI is not without challenges from an ESG perspective, all of which need to be considered. In addition to the significant amount of energy required to power and develop AI systems — ethical and social considerations, such as potential algorithmic bias, privacy issues, ensuring that outputs are vetted so they are not misleading or controversial — all need to be considered with many AI tools, including those that have been developed to assist with ESG goals.

New legal regimes, such as the EU AI Act, which entered into force on August 1, 2024, introduce additional regulatory requirements in relation to AI programs, including prohibiting the use of AI in certain contexts. As regulatory requirements and stakeholder focus develops in 2025, companies must ensure responsible AI governance, addressing these challenges while leveraging AI's potential to drive ESG performance. This includes developing clear policies and frameworks for AI use, as well as engaging with stakeholders to build trust and transparency.

8. Growing Connection Between Antitrust and Trade Policy and ESG Policies

The intersection of antitrust, trade policy, and ESG is becoming more pronounced, as companies strive to align their global operations with sustainable practices while navigating the challenges posed by extraterritorial regulations. Meanwhile, regulators globally are intensifying their focus on ensuring that ESG initiatives do not inadvertently lead to anti-competitive behavior or trade distortions, highlighting the potential conflicts between ESG goals and trade policies. This dynamic requires careful consideration of compliance and strategic alignment, as businesses seek to balance competing priorities.

In the context of the broader "greenlash," antitrust enforcement is increasingly becoming a tool to scrutinize ESG initiatives, particularly concerning potential antitrust violations arising from collaborations and agreements aimed at advancing climate, environmental, and social goals. In the US, lawmakers may intensify this scrutiny following President-elect Trump's inauguration.

In the EU, Teresa Ribera's appointment as Competition Commissioner and Executive Vice-President for a Clean, Just, and Competitive Transition may prompt greater integration of ESG considerations in EU State aid and competition enforcement. Commissioner Ribera has the strongest "green" credentials of any Competition Commissioner to date; she served as Minister for the Ecological Transition of Spain and played a key role in the negotiation of the Paris Agreement and as the EU's chief negotiator at COP28. Commissioner Ribera is expected to examine how EU State aid and competition laws may incorporate or promote sustainability objectives in competition enforcement. The start of her tenure coincides with the publication of the Draghi report and the European Commission's renewed focus on the bloc's economic and industrial competitiveness. Commissioner Ribera has indicated plans to promote the competitiveness agenda, inter alia, by creating a new State aid framework under the Clean Industrial Deal to expedite renewable energy deployment, industrial decarbonization, and clean tech manufacturing.

Against this complex backdrop, companies should be aware of the potential for regulatory scrutiny and enforcement actions related to anti-competitive practices and trade restrictions in the ESG space. This may involve engaging with policymakers and industry groups to advocate for fair and consistent regulations that support sustainable business practices.

9. ESG and Sustainability, Greenwashing, and DEI Litigation

Litigation risk, in particular greenwashing risk, continues to be on the rise as stakeholders demand greater transparency and accountability. Companies are under increased scrutiny to substantiate their ESG claims and avoid misleading stakeholders, including consumers. Despite controversy around ESG, addressing greenwashing is expected to be an area of continued support and increased scrutiny on all sides of the political spectrum.

In the US, climate commitments made by major corporations are increasingly under scrutiny from a consumer protection perspective, reflecting a broader trend of legal actions targeting companies for allegedly misleading customers about their sustainability efforts and forward-looking ambitions.

Further, we are likely to see additional workplace discrimination cases following the Supreme Court decision in *Muldrow v. City of St. Louis* in April 2024, which upheld a workplace discrimination claim under Title VII of the Civil Rights Act. As the courts apply *Muldrow*'s holding that a Title VII plaintiff must show only "some harm" to a term or condition of employment, we expect to see "reverse discrimination" cases targeting initiatives that were not previously a focus of Title VII litigation, like training or leadership programs made available only to certain groups.

In light of the policy priorities of the incoming Trump administration, federal agencies such as the Department of Justice, the Department of Labor, and the Department of Health and Human Services are likely to harness enforcement authorities to investigate and target a range of diversity initiatives. We also anticipate that private "reverse discrimination" cases will continue. But businesses need to be mindful that traditional discrimination cases remain a risk. Businesses that depend on diversity of skill, background, age, etc. (especially businesses in the technology, healthcare, and financial services industries) are likely to reevaluate and update their practices and policies.

In the EU and its Member States, high-profile greenwashing cases based on alleged misleading ESG claims have been brought against companies across sectors, including food, airlines, automobiles, and fashion, with increased coordination through the EU Consumer Protection Cooperation Network. While cases are typically brought based on the Unfair Commercial Practices Directive (UCPD), the EU is strengthening its greenwashing protection framework with the adoption of the Directive on Empowering Consumers for the Green Transition (which adds specific environmental-related terms to the UCPD) and the potential adoption of the Green Claims Directive in 2025. Increased fines for violations of consumer protection frameworks and greenwashing linked to turnover in the UK and the EU, potentially tied to annual turnover/revenue, are expected to create an enhanced focus from businesses in this area.

Entities will need to be prepared to respond to potential legal challenges and regulatory investigations related to ESG claims. Robust verification processes and transparent communication are critical to mitigating legal and reputational risks. This includes conducting thorough due diligence on ESG initiatives, ensuring accurate and consistent reporting, and engaging with stakeholders to address concerns and build trust.

10. Biodiversity and Natural Capital

Nature is emerging as a key focus area within ESG, as companies recognize the importance of preserving natural ecosystems and their role in long-term sustainability. This trend is driven by both regulatory requirements and growing stakeholder awareness of biodiversity's critical role in supporting ecosystem services and mitigating climate change.

The UN Convention on Biodiversity COP 16, suspended in 2024 in Cali, Colombia, will reconvene in February 2025 in Rome, Italy, to address agenda items left unresolved following the suspension. These discussions will include a proposed new Resource Mobilization Strategy aimed at securing US$200 billion annually by 2030 from all sources for biodiversity initiatives and reducing harmful incentives by at least US$500 billion per year by 2030, as well as the potential establishment of a global financing instrument for biodiversity that is designed to mobilize and distribute funding effectively.

In the private sector, companies are integrating natural capital considerations into their sustainability strategies, assessing their impacts on natural habitats and developing plans to protect and restore biodiversity. This may involve collaborating with conservation organizations, investing in nature-based solutions, and engaging with local communities to promote sustainable land use practices. These practices may become an even greater focus for certain companies throughout 2025. The emergence of mandatory ESG reporting frameworks such as the CSRD, as well as the increasing proliferation of voluntary reporting under mechanisms such as the Taskforce on Nature-related Financial Disclosures (TNFD), indicate that companies will continue to publish an increasing amount of public-facing information about their impacts on nature and biodiversity.

Conclusion

As we move through 2025, the ESG landscape is characterized by both challenges and opportunities. Companies must remain vigilant and adaptable, embracing integrated and strategic approaches to ESG and sustainability (including in relation to the terminology used) to ensure business resilience. By staying informed and proactive, organizations can navigate the complexities of ESG and sustainability matters and position themselves for long-term success in an ever-evolving global environment.

Contacts

Paul A. Davies
London
paul.davies@lw.com
+44.20.7710.4664

Betty M. Huber
New York
betty.huber@lw.com
+1.212.906.1222