ESG, Supply Chain and Product Compliance

11 June 2025

The turning directions of ESG & sustainability regulation for corporates: Europe & the USA

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Omnibus – Overview

On 26 February 2025, the European Commission tabled a comprehensive proposal intended to simplify and streamline the EU's three "flagship" legislative acts – CSRD, CSDDD and EU Taxonomy:

- Proposed Directive to "stop the clock" on CSRD and CSDDD.
- Proposed Directive amending substantive provisions of CSRD and CSDDD.
- Proposed amendments to EU Taxonomy.

Proposal to amend ESRS, i.e., actual content of sustainability reporting.

Omnibus – CSRD

Key changes

"Stop the clock" already in force: Two-year delay of CSRD reporting obligations: Applicable to "wave 2" companies; first report to be prepared for financial year starting on or after 1 January 2027 (instead of 2025).

"Substantive changes" – Increase of applicability thresholds:

- EU companies ("wave 2"): More than (i) 1.000 employees, **and** (ii) either EUR 50 million net turnover (i.e., revenues) **or** EUR 25 million in balance sheet total (i.e., assets) (stand-alone or consolidated basis).
- EU-listed third-country companies: More than (i) 1.000 employees **and** (ii) either EUR 50 million in net turnover (i.e., revenues) **or** EUR 25 million in balance sheet total (i.e., assets) (stand-alone or consolidated basis).
- Third-country ultimate parent companies (i) more than EUR 450 million in net turnover (revenues) in the EU on a consolidated basis (from EUR 150 million), and (ii) at least one "large" EU subsidiary or an EU branch with more than EUR 50 million (from EUR 40 million) in net turnover (revenues).

Revision of ESRS: The Commission has announced the revision of the ESRS to, among others, reduce the number of data points (proposal yet to be published). EFRAG exposure draft expected for the summer.

Omnibus – CSDDD

Key changes

"Stop the clock" already in force: One-year delay of applicability: Applicable to all "wave 1" companies; i.e., first-time applicability 26 July 2028 (instead of 2027).

Due diligence measures:

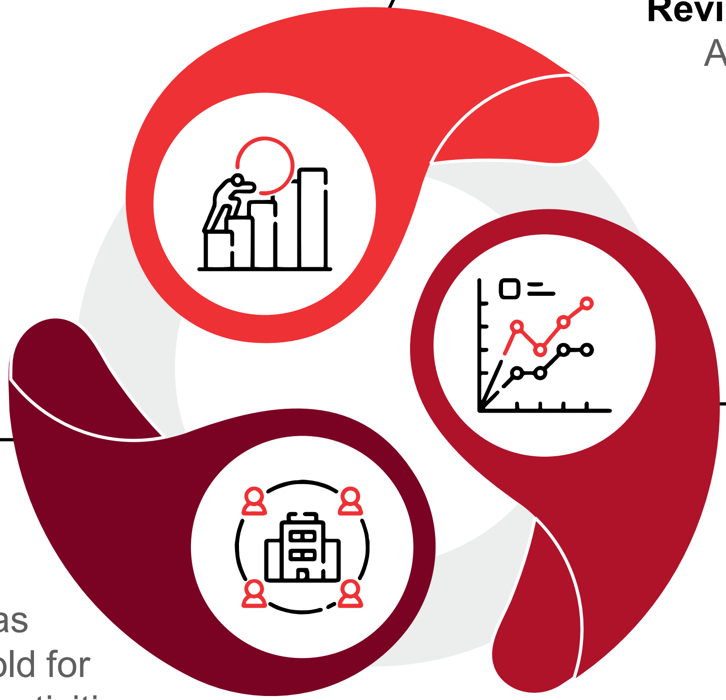
- Applicable to own business operations and direct contractual business partners (to indirect business partners only in certain cases)
- No longer an obligation to terminate supply relationships as a means of last resort
- Mandatory review of compliance systems only every five years (instead of annually)

Stakeholder engagement: Companies only to engage with stakeholders at specific stages of the due diligence process.

Administrative and Civil Liability: EU-wide civil-liability regime and 5% minimum cap for administrative fines would be removed.

Climate transition plans: Companies only obliged to adopt climate transition plans, including implementing actions (instead of adopting and "putting into effect" such plan)

Omnibus – EU Taxonomy



Review of all technical screening criteria: All TCS, including criteria for determining that an economic activity causes no significant harm (DNSH criteria), are to be reviewed and/or clarified to reduce administrative burden for companies

Reduction of data points: Reduction of the data points to be reported against by almost 70%

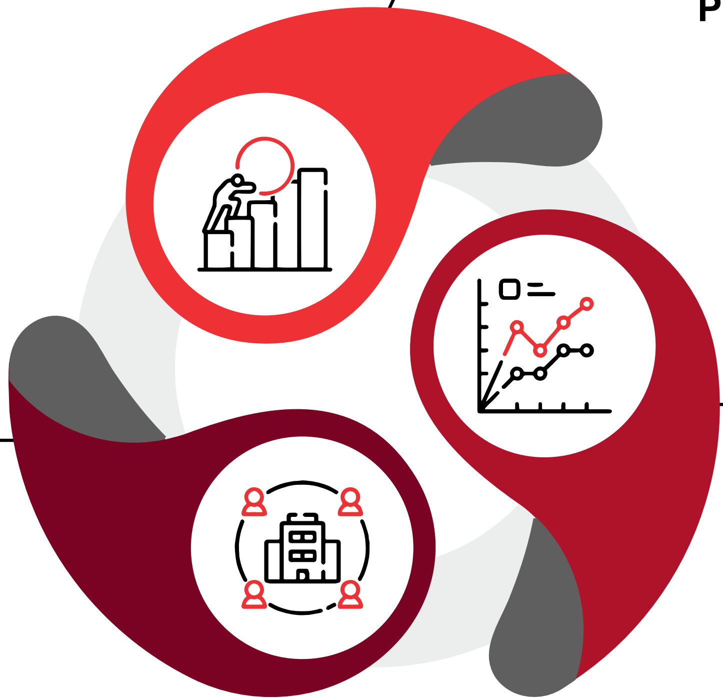
Scope of application: Mandatory only for companies with more than 1,000 employees and net turnover exceeding EUR 450 million as well as subject to a 10% de minimis threshold for financial materiality of a company's activities

EUDR

Key changes

- **EU Deforestation Regulation**
- **29 June 2023:** Entry into force
- **30 December 2024:** Initial deadline when the rules were to begin to apply for medium & large operators and traders. **Now: 30 December 2025**
- **30 June 2025:** Initial deadline when the rules were to begin to apply for micro and small enterprises. **Now: 30 June 2026**
- **Is it enough time?**

Key circular economy regulations



PPWR: Packaging and Packaging Waste Regulation

Clean Industrial Deal: Circular Economy Act in 2026

ESPR: Ecodesign for Sustainable Products Regulation

US ESG update

Federal Regulation & Policy

- Federal government aligning with anti-ESG movement
- Climate regulation and policy
  - Withdraw from Paris Climate Agreement; emphasis on domestic oil and gas exploration and production; de-emphasis on renewable technologies and projects
  - Executive Order – "Protecting American Energy from State Overreach" (April 2025)
- ESG reporting and disclosure
  - SEC ends defense of "The Enhancement and Standardization of Climate-Related Disclosures for Investors," though 8th Circuit litigation ongoing
  - Proposed Bill – Prevent Regulatory Overreach from Turning Essential Companies into Targets ("PROTECT USA") Act of 2025

Additional Anti-ESG Developments

US Federal Level

Abandonment or rescission of SEC's ESG rules:

- Staff Legal Bulletin ("SLB") 14M, rescinded SLB 14L and reinstated prior guidance empowering companies to exclude shareholder proposals under the "economic relevance" and "ordinary business" exclusions in Rule 14a-8 (Feb. 12, 2025)
- House Committee on Financial Services urges abandonment of Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (Mar. 31, 2025 Letter)

Active opposition to ESG initiatives, laws and rules:

- Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" (Jan. 21, 2025)
  - Letters from US Embassies in Europe and elsewhere cited Executive Order 14173 and demanded recipients certify compliance with US federal anti-discrimination laws and acknowledge materiality of this representation for purposes of the US False Claims Act
  - On Feb. 21, 2025, District of Maryland enjoined certain portions of the executive order (*Nat'l Assoc. of Diversity Officers in Higher Ed. v. Trump*)

What is Anti-ESG?

General backlash to investor-led trends and governmental rules allowing (or in certain instances, mandating) ESG principles to be considered in decision making, often associated with conservative lobbyists and lawmakers

Amorphous response to an amorphous concept

More of a spectrum of objections, some of which conflict with each other

Goals may be issue specific or broader in scope

Having evolved from a reactionary resistance movement, increasingly under the current US administration, anti-ESG increasingly embodies elements of US nationalism, US national security, and populist reactions to ESG's perceived origins

US ESG update

State Regulation & Policy

- Less alignment at the state level - division between "red" and "blue" states
- Anti-ESG state laws
  - Focused on financial institutions
  - 40+ laws enacted in 20+ states
  - **New** – Wyoming law requires state fiduciaries to base decisions solely on defined "pecuniary factors" (March 2025)
- Pro-ESG state laws
  - California SB 253, SB 261 and AB 1305 are the prevailing climate laws in the US
  - Similar legislation proposed in NY and CO

US ESG update

Focus on California

Climate Corporate Data Accountability Act (SB 253, Cal Health & Safety Code 38532)	**Climate-Related Financial Risk Act** (SB 261, Cal Health & Safety Code 38533)
GHG emissions (scope 1, scope 2 and scope 3) Initially limited assurance; later reasonable assurance	Climate-related financial risks and measures to reduce and adapt to those risks (incorporates TCFD)
US Companies that do business in CA with annual revenues > $1 billion	US Companies that do business in CA with annual revenues > $500 million
Report submitted to reporting organization Information posted on public database	Report must be posted on company website Possibly required to submit to state?
Scope 1 and 2 disclosures due in 2026 Scope 3 in 2027 Annually thereafter	Report due 1 January 2026 Biennially thereafter

US ESG update

Focus on California

Carbon Offset Sellers	Carbon Offset Buyers	Green Claims
Marketing or selling offsets in CA	Operates in CA Purchases or uses offsets in CA Makes public climate claims	Operates in CA Makes public climate claims in CA
Provide details about projects, including any verification	Provide details about projects, including verification	Provide info about public climate claims, including how measure progress, any SBTIs, any verification
Post on website		
Penalties up to $500,000 (with daily penalties of $2,500)		
Enforced by State Attorney General or any District Attorney or City Attorney		
Effective 1 January 2025		

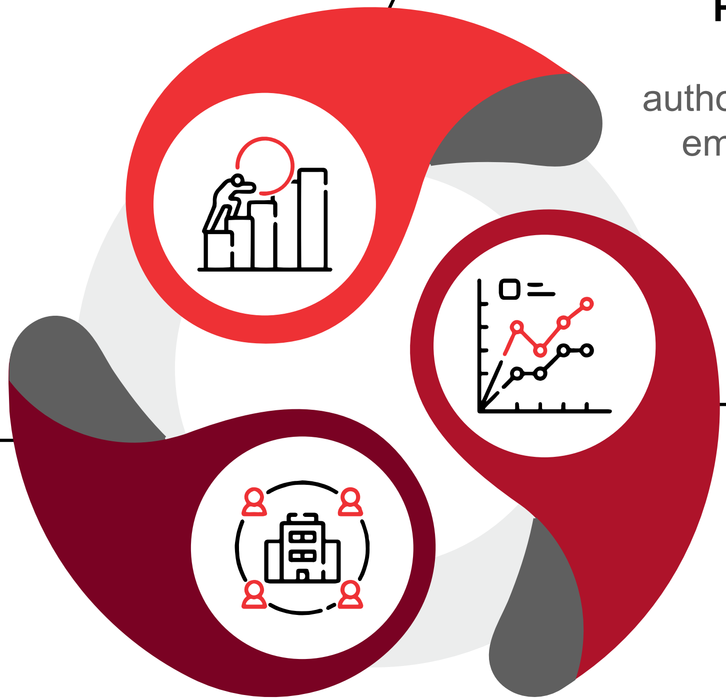
US ESG update

Focus on California

- CARB Public Workshop (29 May 2025)
  - Affirmed 2026 compliance dates for SB 253 and SB 261
  - Rulemaking/guidance not expected until end of the year
  - Plan to clarify threshold issues including "doing business in CA" and revenue thresholds
- CARB Enforcement Notice (5 December 2024)
  - No enforcement for incomplete reporting of scope 1 and 2 GHG emissions under SB 253 for initial report due in 2026, provided that good faith effort to comply and good faith effort to retain 2025 emissions data
- Litigation ongoing – one remaining free speech challenge

Omnibus – CBAM

CBAM applies in its definitive regime from 2026, while the current transitional phase lasts between 2023 and 2025



Facilitation of compliance with CBAM obligations: simplification of the authorisation of declarants, the calculation of emissions, and the management of CBAM financial liability

Making CBAM more effective: strengthening anti-abuse provisions and developing a joint anti-circumvention strategy together with national authorities

Narrowing down scope of application: new CBAM de minimis threshold exemption of 50 tonnes mass

ESG in US Proxy Season (2025)

Less enthusiasm, particularly for the “E” & the “S”

- ESG continues to be a focus (both pro- and anti-ESG)
    - Growing challenges to proxy access, even beyond SEC’s recent rescission of SLB 14L
    - Concerns about role and influence of proxy advisers (Texas rule)
- ESG themes
    - Human rights / labor issues
    - **New** – AI
    - Using “Vote No” campaigns to further ESG goals
- Anti-ESG themes
    - DEI-risk reports
    - Decoupling DEI from compensation
    - Reduced demographic data on directors
- Governance issues
    - Separation of Chair / CEO

Questions

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