

50 THINGS ABOUT **ESG** GENERAL COUNSEL MUST KNOW FOR 2024



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New regulations, investor demands, customer expectations . . . pressures around ESG are mounting.

But where should you even start?

If you are a general counsel looking to come up to speed on ESG quickly . . . **here is what you need to know right now.**

ESG regulations have arrived.

3/13

01

2024 is the first reporting year under the EU's Corporate Sustainability Reporting Directive (CSRD)

02

The EU's Corporate Sustainability Due Diligence Directive (CSDDD) is not far behind.

03

California adopted climate risk disclosure laws applying to companies doing business in CA over certain thresholds.

04

As of January 2024, the SEC's climate disclosure requirements are now expected to be released in April 2024.

05

Several countries are in the process of adopting the new IFRS Climate Disclosure Standard



The CSRD is the most 4/13 impactful new regulation.

- 01** It is estimated that the CSRD will apply to 50K+ companies including 10K+ outside the EU - of which 3K+ will be US companies.
- 02** The CSRD goes beyond climate reporting - requiring disclosure across 12 environmental, social, and governance topics.
- 03** Companies subject to the CSRD will be required to collect data from their supply chain for reporting purposes.
- 04** Indirect reporting requirements spread through the supply chain will make the CSRD as globally impactful as the GDPR.
- 05** The primary focus in 2024 is likely to be the collection of carbon emissions data from supply chain members for “Scope 3” reporting.



Investors are requiring ^{5/13} ESG action.

01 Investors and portfolio managers have their own ESG reporting needs. They are requesting ESG data from companies to meet these needs.

02 Investors are concerned about the impact of supply chain sustainability requirements on competition and revenues.

03 Both corporate and financial investors are looking closely at ESG data in M&A transactions.

04 Investors are requiring companies to put in place ESG governance at the board and executive level.

05 Investors expect leadership teams to identify and manage their material ESG risks and provide accurate ESG data.



Clients expect ESG data.

01

As more clients become subject to reporting requirements, they expect their suppliers to provide ESG data.

02

ESG data is being requested as part of RFPs in B2B sales and through questionnaires in established client relationships.

03

Clients are requiring that suppliers make contractual representations about their ESG data.

04

Some clients are requiring specific ESG actions like setting carbon reduction targets.

05

ESG data is coming up in pricing negotiations, and a lack of data hurts a company's ability to compete.



Greenwashing risks are real.

Climate change related litigation has more than doubled since 2015. You can protect your company with a few key steps.

01 Review all public statements on climate - press releases, sustainability reports, collateral - everything.

02 Learn key terminology related to carbon targets like net zero, carbon neutral, offsets, and scopes 1, 2, and 3.

03 Consider (with legal counsel) whether any clarifications are needed to make your past public statements consistent.

04 Build a process for review of sustainability statements that includes trained legal counsel.

05 Seek expert advice before adopting new terminology to describe your climate goals.



ESG governance is critical.

01

Escalating ESG risks - regulations, greenwashing, political conflicts - have landed ESG on corporate board agenda.

02

To execute their fiduciary duties, board members must understand the material ESG risks of the company.

03

ESG board leadership models are diverse - some leveraging the oversight of the full board and others delegating to a committee

04

Boards are up-skilling for ESG with board trainings and considering ESG background in board appointments.

05

ESG should be included in the long-term risks considered by corporate boards.



General counsel are taking on ESG.

In 2023, general counsel reported in studies that:

- 01** 61% of legal departments are involved or very involved in ESG strategy.
- 02** 52% of company leaders / boards are “very focused” on environment.
- 03** 55% of ESG programs are led by compliance and 20% by GCs / legal departments.
- 04** 62% rated themselves only slightly or somewhat prepared for ESG risks.
- 05** More than 50% of general counsel rated ESG as a top 5 legal risk.



You can integrate ESG in Legal processes.

01

Integrate ESG into how you manage corporate governance and compliance at the executive and board level.

02

Establish a process for legal review of all public statements on ESG topics.

03

Update your supplier code of conduct to support ESG compliance throughout your supply chain.

04

Include ESG in your risk management processes.

05

Update company policies to address emerging ESG issues.



You can starting an ESG program.

- 01** Bring together your key internal leaders (operations, finance, sales, HR, compliance, legal etc.) on an ESG task force.
- 02** Leverage your ESG task force to identify the ESG issues that are material to your business. Carbon emissions? Supply chain? DEI?
- 03** Bring material issues to your executive team for review. Identify 2-3 focus areas for 2024 and assign resources.
- 04** Develop a roadmap, set KPIs, and report on progress regularly.
- 05** Review, improve, and repeat annually.



You must manage ESG in contracts.

01 Your clients are probably asking you to make ESG representations and commitments in your contracts? Make sure you can live up to them.

02 You may be required to report ESG data from your suppliers. If so, add requirements to your templates.

03 At minimum, add a provision requiring climate data into key supplier agreements. You will need this to report on Scope 3 emissions.

04 Will you need to track ESG provisions in your contracts? If so, look at how your CLM system can help (or look at getting a CLM).

05 Remember that your contracts can help support compliance with new ESG regulations. Have your legal team brainstorm connections.



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