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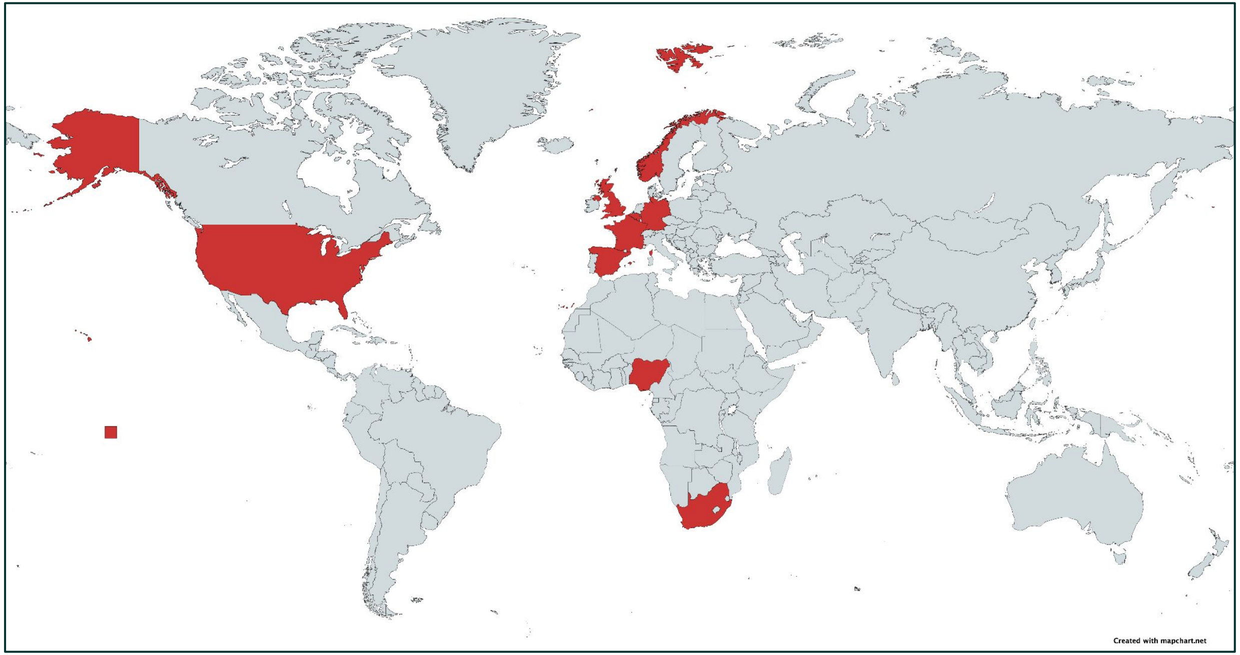
Recent Trends in Corporate Governance Policy

Our Analysis

We found more than **30 significant corporate governance policy developments** enacted since 2015 across 9 countries, the EU, and the AU.



We reviewed policy developments in the European Union, the African Union, the United States of America, Nigeria, South Africa, the United Kingdom, France, Belgium, Spain, Norway, and Germany

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ESG Policy Across Regions

Human Rights

Focuses on workers rights, supply chain ethics, child labor, displacement of communities, slavery, and many others.

Environment

Focusing on Climate change impacts, carbon footprints, sustainability, supply chain ethics.

Social Issues

Employee wellness, DEI, training, wages, benefits, corporate participation in community issues.

Government

Elections, responsible investments, corporate ethics, due diligences, reporting standards, etc.

ESG Policy Across Regions

From our Analysis – what becomes most notable is the cultural and economic differences between countries and regions. This becomes essential in the writing of their ESG Policy. For example, ESG policy in South Africa particularly responds to the social inequities resulting from apartheid, and in the U.S. it is colonialism.

Defining Corporate Responsibility by Region

European Union: EU citizens rightly expect that companies understand their positive and negative impacts on society and the environment. And, therefore, prevent, manage and mitigate any negative impact that they may cause, including within their global supply chain.

United Kingdom: As it stands, company directors hold a responsibility to factor in the community and environmental impact of their actions when considering their wider duty to promote the success of their company. This obligation is widely drafted, so you do not have to follow any prescribed rules for evaluating your impact. They are considered good practices and good responsibility but are not legally mandated.

United States of America: Corporate social responsibility (CSR) is the idea that corporations have a moral responsibility to voluntarily integrate environmental, social, and governance (ESG) improvements into their business operations for the benefit of stakeholders, society as a whole, and the environment.

Nigeria: the commitment shown by companies to contribute to the economic and social development of a local community and the society at large.

South Africa: South Africa takes the approach of 'comply/apply or explain' by not legally mandating most ESG policy but expecting it from companies who want to continue business in the country under a good rating.

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Africa

The African Union is studying ESG on the continent and the implementation of the African Continental Free Trade Area would be an opportunity for more standardized governance policy. The study aims to review requirements for ESG within the African context so regulations are not inappropriate or barriers to economic investments.

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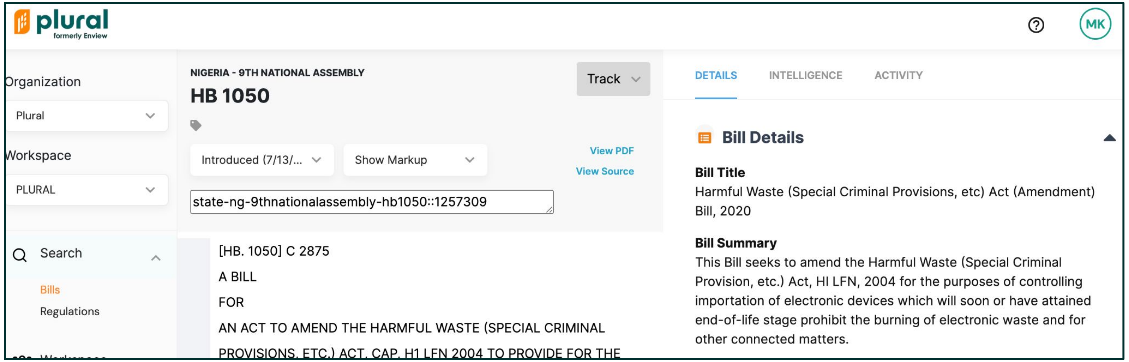
Nigeria and ESG

Nigeria has taken multiple steps to strengthen and standardize its corporate governance and ESG policies recently, and more actions are anticipated to follow.



CAMA (2020) – Includes regulations mandating directors to consider environmental impact.

Climate Change Act (2021) – Mandates carbon emission reduction plans and reporting.

PIA (2021) – Overhauls regulation of the petroleum industry in Nigeria including policies that encourage sustainable local development, governance structure changes, and some environmental protections

South Africa and ESG

While there are no statutory requirements for most South African corporations to disclose ESG criteria, recent standards (King IV in 2016) and guidance (JSE Sustainability Disclosure Guidance in 2022) encourage more disclosure, especially by those corporations listed on the Johannesburg Stock Exchange.

Additionally, as of 2021, the The Public Investment Corporation Amendment Act requires state-owned companies (including Africa’s largest asset manager, the Public Investment Corporation) to consider sustainability in their investments.

South Africa's BEE Legislation:

Black Economic Empowerment Legislation Implemented in 2023:

The BEE Act forces South African-based companies to consider all stakeholders when performing their internal and external operations in an effort to eradicate social and economic inequalities inherited from the Apartheid days and to help previously discriminated groups to actively participate in the country's economy.

Companies that refrain from complying with the BEE scorecard can obtain negative ratings, therefore complicating their ability to operate in the country.

European Union

The European Union has been a leader in corporate governance policy developments over the past fifteen years. Notable recent actions include:

2017	2018	2020	2021	2023	2025
Governance - Shareholder Rights Directive II	**Privacy - GDPR**	**Climate - European Green Deal**	**Climate - European Climate Law**	**Sustainability Reporting - NFRD**	**Due Diligence - CSDDD**
Rights for shareholders to reduce short termism and excessive risk taking within companies	Law becomes effective, making it the strictest privacy laws in the world.	Policy package to set the EU on the path to a green transition, works with the EU Climate Law	Includes many objectives but its largest is a legal objective for the Union to reach climate neutrality by 2050	Requires companies in scope to publish a non-financial report on their ESG performance	Ensures companies take proactive measures re: human rights and environmental impacts within operations and supply chains.

Europe - Notable Domestic Actions

UK - Although the UK now sits outside of the EU, recent developments including the UK Modern Slavery Act (2015), disclosures mandated by the Financial Conduct Authority (2022), and the Environment Act (2021) have kept the UK mostly aligned with Europe.

Spain - In recent years Spain has taken numerous steps to implement EU directives (like NFRD and SRD 2) but has also passed a tax on the manufacturing and importation of single-use plastic (2022) and adopted decrees (2020) regulating gender equity plans.

France - French leadership in this space has continued recently with the passage of anti-waste legislation (2020), anti-greenwashing policy (2021), legislation imposing gender quotas in business leadership (2021), and more.

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US - Congressional Inaction and Regulatory Response

- At the federal level, with robust action in Congress blocked by opposition from Republicans, new developments have primarily come from regulatory bodies.
    - In 2022, the Department of Labor finalized rules allowing for ERISA fiduciaries to consider ESG factors.
    - Under President Biden, the SEC has also increased rulemaking activity for ESG.

On Anti-ESG Resolution, Biden Issues First Veto

Alexandra Walsh

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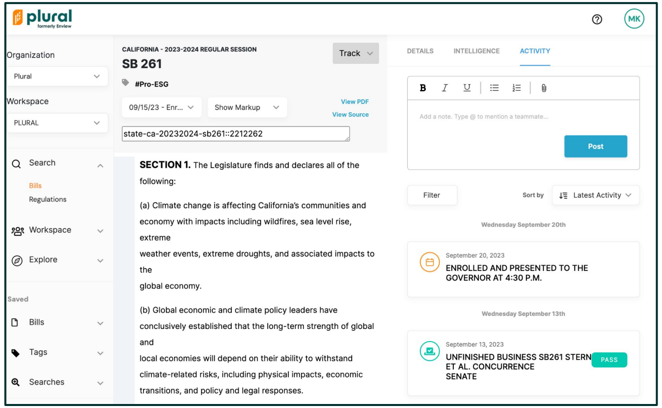
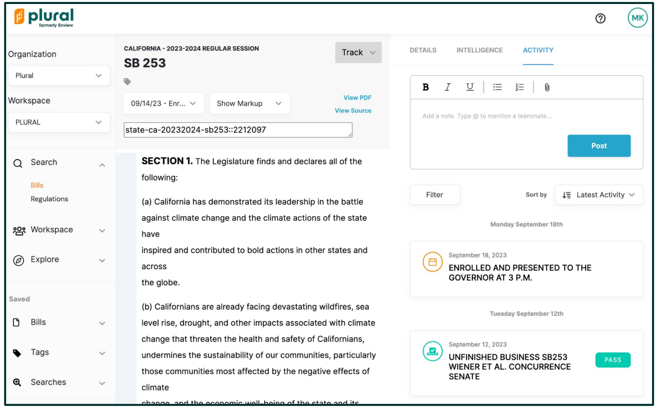
California follows Europe's Lead

In the absence of action at the Congressional level, California has become a leader in advancing ESG regulations.

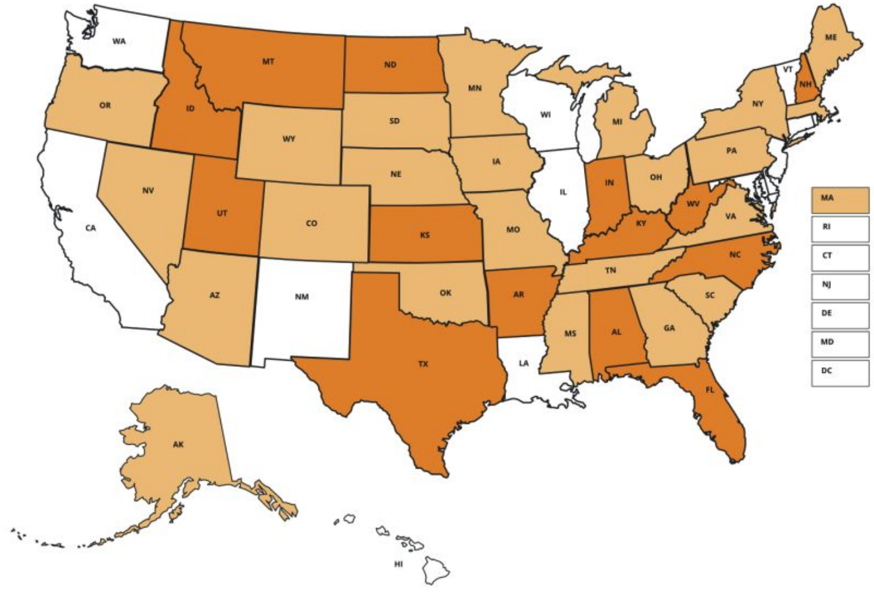
Governor Newsom signed SB 253 and SB 261 into law this month. Both new laws will require large companies to disclose greenhouse gas emissions and climate-related financial risk.





At the State-level, ESG Opposition Grows

In 2023, 11 states passed laws prohibiting or restricting the consideration of ESG factors in investing public funds.



States that have introduced (light orange) and passed (dark orange) anti-ESG legislation so far in 2023.

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Making Comparisons

- These ESG policies are positive developments, though the lack of a common sustainability disclosure standard between the U.S., EU, Nigeria and South Africa could impede trade and investment flows across the Atlantic and hold back the diffusion of sustainability disclosure globally." (Brookings 2023)

- Among the reviewed countries, there is not a nationally recognized structure for reporting or analyzing environmental, social or governmental impacts of corporations. Instead there are varying, voluntary levels of reporting making the data incomplete and incomparable for adequate public use.

Trend 1: Expansion Across Jurisdictions

Especially in Europe, regulation of corporate governance policy has quickly moved across jurisdictions.

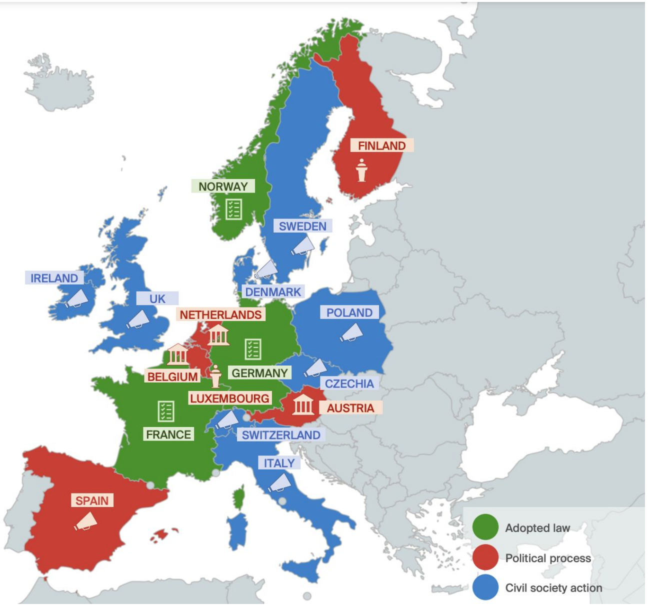
Several corporate governance policies, including supply chain due diligence, extended producer liabilities, and ESG reporting requirements, have passed first in one country before quickly being adopted in others, and eventually, at the EU level.

EU Member States

Case Study: Supply Chain Due Diligence

ECCJ
European Coalition for Corporate Justice

FRANCE	Law on the duty of vigilance of parent and outsourcing companies
GERMANY	Law on the corporate duty of care in supply chains
NETHERLANDS	Law on child labour due diligence
NORWAY	Law on business transparency and human rights and decent working conditions
AUSTRIA	Parliamentary proposal for a supply chain law
BELGIUM	Parliamentary proposal on the corporate duty of vigilance and care in value chains
FINLAND	Government commitment to due diligence legislation
LUXEMBOURG	Government commitment to due diligence legislation
NETHERLANDS	Government commitment to due diligence legislation Parliamentary proposal on responsible and sustainable international business conduct
SPAIN	Government's Annual Regulatory Plan includes a legislative initiative on due diligence



U.K. Adopts Modern Slavery Act

2015

2017

French Duty of Vigilance Law Passes

This expands supply chain vigilance and includes sustainability regulations.

Netherlands Child Labor Due Diligence Law is Passed.

2019

2021

Norway, Germany and the E.U. all advance Due Diligence Policies.

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Trend 2: Expansion Across Organization Types

Policies initially limited to certain organizations are often expanded, or face pressure to expand to cover more organization types and sizes.

German Supply Chain Act

	Affected Companies	Employee Size Cutoff
Phase 1 - January 2023	~600	3,000+ employees
Phase 2 - January 2024	~3,000	1,000+ employees

French Duty of Vigilance Law

Recommendation No. 1 : publish annually the list of companies subject to the law.
Recommendation No. 2 : designate an administration in charge of monitoring the implementation of the law, which guarantees centralized access to company vigilance plans.
Recommendation No. 3 : create an independent monitoring body to ensure effective implementation of the law.
Recommendation No. 4 : Lower the thresholds to include more companies operating in sectors at risk of human rights and environmental violations, on the one hand, and by reversing the burden of proof, on the other go.
Recommendation No. 5 : Provide proactive and constructive support for the draft treaty on multinationals and human rights currently being negotiated at the United Nations.
Recommendation No. 6 : work, within the European Union, towards adherence to the process and an ambitious contribution from the European Union to the draft treaty.
Recommendation No. 7 : promote the adoption of binding European legislation regarding the vigilance of multinationals.

Report to the National Assembly Recommends Lowering Applicability Thresholds

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Case Study - NFRD -> CSRD

The mandatory reporting requirements established by the EU's NFRD will expand in scope and applicability throughout the 2020's.

2018 — **Non-Financial Reporting Directive (NFRD)**

- Companies can select standards
- No auditing requirements
- Approx. 11,000 entities covered

2023 — **Corporate Sustainability Reporting Directive (CSRD)**

- Specific format for reporting standards
- Required 3rd party reporting
- Approx. 50,000 entities covered

CSRD Timeline

The CSRD is undergoing review and will have phased implementation. The timeline below summarizes major milestones and is subject to change.

- **April 2021**: European Commission presents CSRD proposal
- **June 2022**: Final agreement between EU institutions on CSRD
- **August 2022**: EFRAG concludes consultation on the first ESRS draft
- **November 2022**: EFRAG sends the first draft of ESRS to European Commission for consideration of adoption
- **November 2022**: EU Council gives final approval to the CSRD.
- **December 2022**: The final text on CSRD is published in the Official Journal of the EU; Member States will have 18 months to integrate the CSRD in their respective national law
- **November 2023**: EFRAG to propose the second draft of ESRS to the Commission that will include standards for sectors, non-EU companies, and listed SMEs; voluntary guidance for non-listed SMEs; and an amendment to the first draft to implement a cap on value chain emissions
- **June 2024**: Anticipated adoption of the second draft of ESRS, which are set to include sector-specific standards; Specific reporting standards for SMEs are also due to be adopted by June 2024
- **January 2025**: First CSRD reporting required (for the fiscal year 2024) from companies currently subject to NFRD
- **January 2026**: First CSRD reporting required (for the fiscal year 2025) for all other large EU companies
- ***January 2027**: First CSRD reporting required (for the fiscal year 2026) for SMEs
- **October 2026**: Anticipated adoption of limited assurance standards by the Commission
- **October 2028**: Anticipated adoption of reasonable assurance standards by the Commission
- **January 2029**: First CSRD reporting required (for the fiscal year 2028) for non-EU companies with EU branches or subsidiaries

Source: Persefoni

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Trend 3: Pushback against ESG Policy in the U.S.

The successful opposition to many ESG reforms by conservatives has resulted in the U.S. not following in Europe's footsteps on corporate governance policy.

- Supply Chain Due Diligence – While Fed H.R. 6256, passed into law in 2021, implemented reporting requirements on companies importing goods from Xinjiang, this is far more targeted than supply chain due diligence regulation in Europe.

- ESG Disclosures – Proposals for robust mandatory ESG disclosure rules, like those that have recently been enacted in Europe, have stalled in the U.S.

	TRACKING	TAGS	BILL ID	BILL TITLE	BILL STATUS	SESSION	LATEST ACTION
	TRACK		FED H.R. 4759	Environmentally Sustainable Growth Act of 2023	REFERRED TO COMMITTEE	118th Congress	Introduced in House

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Case Study: State-level Restrictions on Pension Investment Consideration of ESG Principles

KANSAS - 2023-2024 REGULAR SESSION

HB 2100

Track

#Expanding **#Anti-ESG**

Enrolled - Law effec... | Show Markup | View PDF | View Source

state-ks-2023_2024-hb2100::1250723

AN ACT concerning environmental, social and governance criteria involving public
contracts and investments; enacting the Kansas public investments and contracts
protection act; prohibiting the state or a political subdivision from giving preferential
treatment to or discriminating against companies based on environmental, social and
governance criteria in procuring or letting contracts; requiring fiduciaries of the
Kansas public employees retirement system to act solely in the financial interest of
participants and beneficiaries of the system; restricting state agencies from adopting

DETAILS | INTELLIGENCE | ACTIVITY

Bill Details

Bill Title

Enacting the Kansas public investments and contracts protection act concerning environmental, social and governance (ESG) criteria, prohibiting the state and political subdivisions from giving preferential treatment to or discriminating against companies based on such ESG criteria in procuring or letting contracts, requiring KPERS fiduciaries to act solely in the financial interest of the participants and beneficiaries of the system, indemnifying KPERS with respect to actions taken in compliance with such act, restricting state agencies from adopting ESG criteria or requiring any person or business to operate in accordance with such criteria and providing for enforcement of such act by the attorney general.

AI Bill Summary *preview*

The bill is proposing to amend the Kansas insurance code regarding risk-based capital requirements for insurance companies. Specifically, it is updating the version of instructions referenced in the code from 2021 to 2022. The instructions refer to the risk-based capital instructions promulgated by the National Association of Insurance Commissioners. The bill repeals the existing section of the code and replaces it with an updated version that references the 2022 instructions. In summary, the bill is updating the risk-based capital requirements for Kansas insurance companies by adopting the latest version of the NAIC instructions.

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