Recent Trends in ESG and Corporate Governance Policy

Over the past fifteen years, increased focus has been paid to global trade, sustainability, and climate change. In response, many corporations have implemented policies that better assess and mitigate the negative impacts of their operations. At the same time, governments have further regulated corporate responsibilities and reporting requirements. The result of these actions is a policy environment that can feel impossible to navigate. This is true for businesses and consumers alike.

These policies are environmental, social, and governance (ESG) policies, or corporate governance policies. The ESG landscape is vast. Any one corporation could be subject to a plethora of overlapping regulations, including:

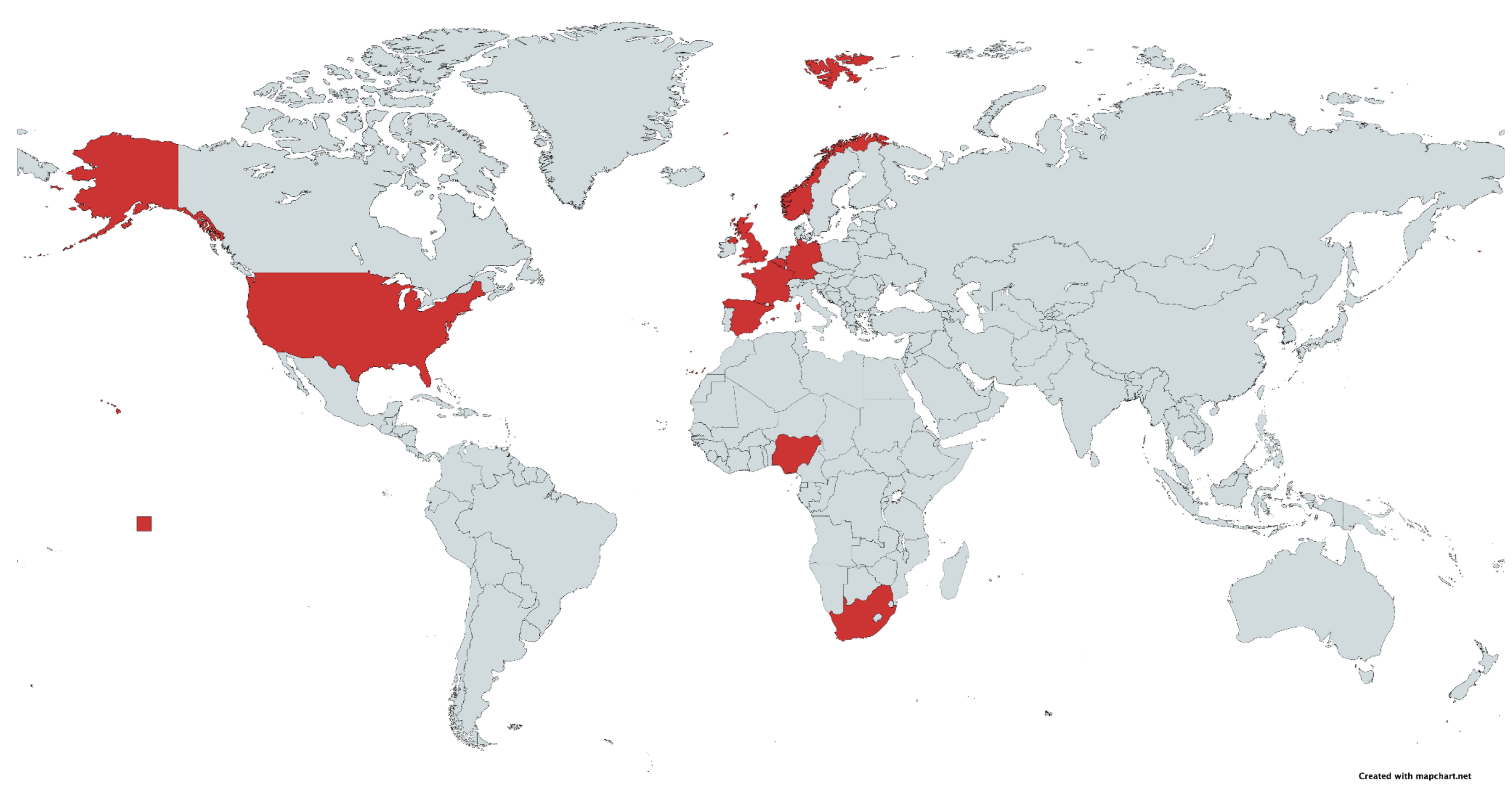
- Private regulations (business groups)
- Semi-private regulations (regulated stock exchanges)
- Public regulations (governments at the local, national, and regional levels)

Navigating this legislative environment can be difficult. There's significant regional variation in attitudes towards ESG policies by policymakers and consumers. Corporate governance policy in the U.S., for example, has been far more market-led than in Europe. In Europe, the European Union and national governments have driven policy forward.

The Plural team analyzed new developments in ESG policy to better understand this rapidly changing field. We examined more than 30 policies across nine countries, spanning the European Union and the African Union. In this report, we detailed the patterns we discovered in each region. Additionally, we laid out notable trends that could influence the development of ESG policy.

Africa

Africa has a unique vantage point in conversations around ESG, supply chains, and corporate governance. This is true both for individual African countries as well as the continent as a whole. European business, including supply chains and their environmental impact, have impacted the continent. This has led European governments to focus some of their legislative efforts on European businesses in Africa. Additionally, African lawmakers are considering their own corporate governance regulations. These regulations aim to improve transparency and corporate responsibility in the region.



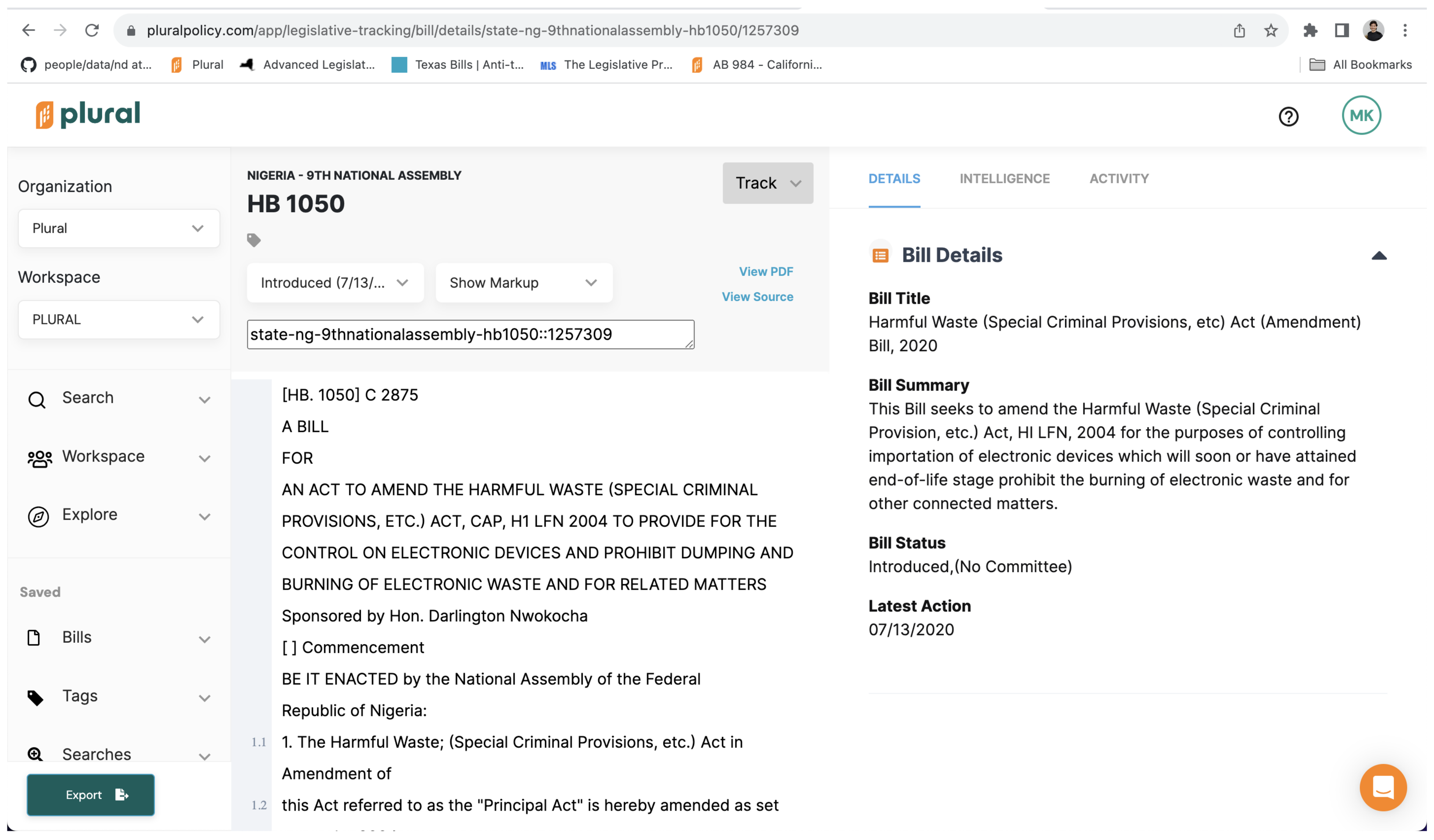
In this study, the Plural team examined ESG and corporate governance policy across the United States, the African Union, particularly Nigeria and South Africa, and the European Union.

The African Union (AU) began to study ESG in 2023. The study aims to review requirements for ESG within the African context. This study will likely result in policy proposals expanding ESG regulations in Africa. Further, the African Continental Free Trade Area could lead to the introduction of standardized corporate governance regulation.

Beyond assessing actions at the continental level, we reviewed the current state of ESG policy in Nigeria and South Africa.

ESG Legislation and Policy in Nigeria

The Nigerian government has taken steps to strengthen and



HB 1050, from Nigeria's last legislative session, is an example of policy proposals focused on environmental impact. The bill seeks to better control the import of electronic devices and prohibits burning electronic waste.

standardize corporate governance and ESG policies. More actions of this nature are anticipated soon. Some notable recent actions in on ESG and corporate governance in **Nigeria** include:

- The Companies and Allied Matters Act (CAMA), passed in 2020, includes regulations that mandate company directors to consider their company's environmental impact.
- The Climate Change Act of 2021 mandates carbon emission reduction plans and reporting for businesses.
- The Petroleum Industry Act (PIA) was passed in 2021. It was a complete overhaul of petroleum regulation and the petroleum industry as a whole in Nigeria. PIA includes measures that encourage sustainable local development. It also proposes changes to governance structures, as well as some environmental protections.

ESG Legislation and Policy in South Africa

In **South Africa**, most corporations are not required to disclose ESG criteria. However, recent standards and guidance encourage disclosure. In particular, corporations listed on the Johannesburg Stock Exchange (JSE) are strongly encouraged to disclose. This is true of the King IV Standards in 2016, as well as the JSE Sustainable Disclosure Guidance in 2022.

The 2021 Public Investment Corporation Amendment Act requires state-owned companies to consider sustainability in their investments. This includes Africa's largest asset manager, the Public Investment Corporation.

Finally, recent Black Economic Empowerment (BEE) legislation requires South Africa-based companies to consider all stakeholders when performing their internal and external operations. This is an effort to eradicate social and economic inequalities inherited from Apartheid. Further, BEE legislation seeks to enable equitable economic participation. Companies that do not comply with the BEE scorecard can obtain negative ratings. These ratings will complicate their ability to operate in the country.

Europe

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

- **Governance:** The Shareholder Rights Directive, 2017
  - The Directive outlines rights for shareholders to reduce short term-ism and excessive risk-taking within companies.
- **Privacy:** The General Data Protection Regulation (GDPR), 2018.
  - GDPR is one of the strictest privacy laws in the world.
- **Climate:** The European Green Deal, 2020
  - This policy package set the EU on the path to a green transition.
- **Climate:** The European Climate Law, 2021
  - The Climate Law outlines legal objectives for the EU to reach climate neutrality by 2050.
- **Sustainability Reporting:** The Non-Financial Reporting Directive (NFRD),2023
  - NFRD requires companies to publish a non-financial report on their ESG performance.
- **Due Diligence:** Corporate Sustainability Due Diligence (CSDDD), 2025
  - CSDDD ensures that companies take proactive measures with regards to human rights and environmental impacts, within operations and supply chains.

Many businesses that are subject to these regulations and others similar have at least some presence in Europe. As such, these actions have shaped the past and future of corporate governance around the world.

Outside of the EU, domestic action on corporate governance policy has been prevalent. These actions have been the blueprint for other countries to act on everything from environmental impact to supply chain monitoring.

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.

In addition to the UK's actions on ESG, other notable actions across Europe include Spain's efforts to reduce single-use plastic imports and enforce gender equity. In France, similar action has been taken to impose gender quotas in business leadership, as well as legislation addressing waste and greenwashing.

United States

In the United States, ESG policy is defined by Congressional gridlock and diverging trends across states. Elsewhere in the world, steady progress has been the theme of ESG policy development. However, the disjointed nature of such policy in the United States seems poised to continue.

In late 2021, Congressional leaders agreed on passage of the Uyghur Forced Labor Prevention Act. This Act prohibits the import of products, goods, and materials produced using forced labor. In particular, it prohibits goods from the Xinjiang region in China. Beyond this narrow supply-chain regulation, ESG regulatory efforts have stalled in Congress. The Biden administration has advanced ESG policy via regulation. This includes 2022 rules from the Department of Labor that allow fiduciaries of the Employee Retirement Income Security Act of 1974 to consider ESG factors.

State action on corporate governance policy has been divided along partisan lines. Eleven states introduced "pro-ESG" legislation in 2023.

At the same time, 37 generally more conservative states introduced "anti-ESG" legislation. In the absence of federal action, companies operating across states may have difficulty tracking and complying with varying state regulations.

While anti-ESG legislation has received considerable attention, California has arguably taken the most robust action on ESG. This year, the state legislature passed SB 253 and SB 261. As of October 2023, these laws require large companies to disclose greenhouse gas emissions and climate-related financial risk.

In 2023,

37 states

introduced anti-ESG legislation.

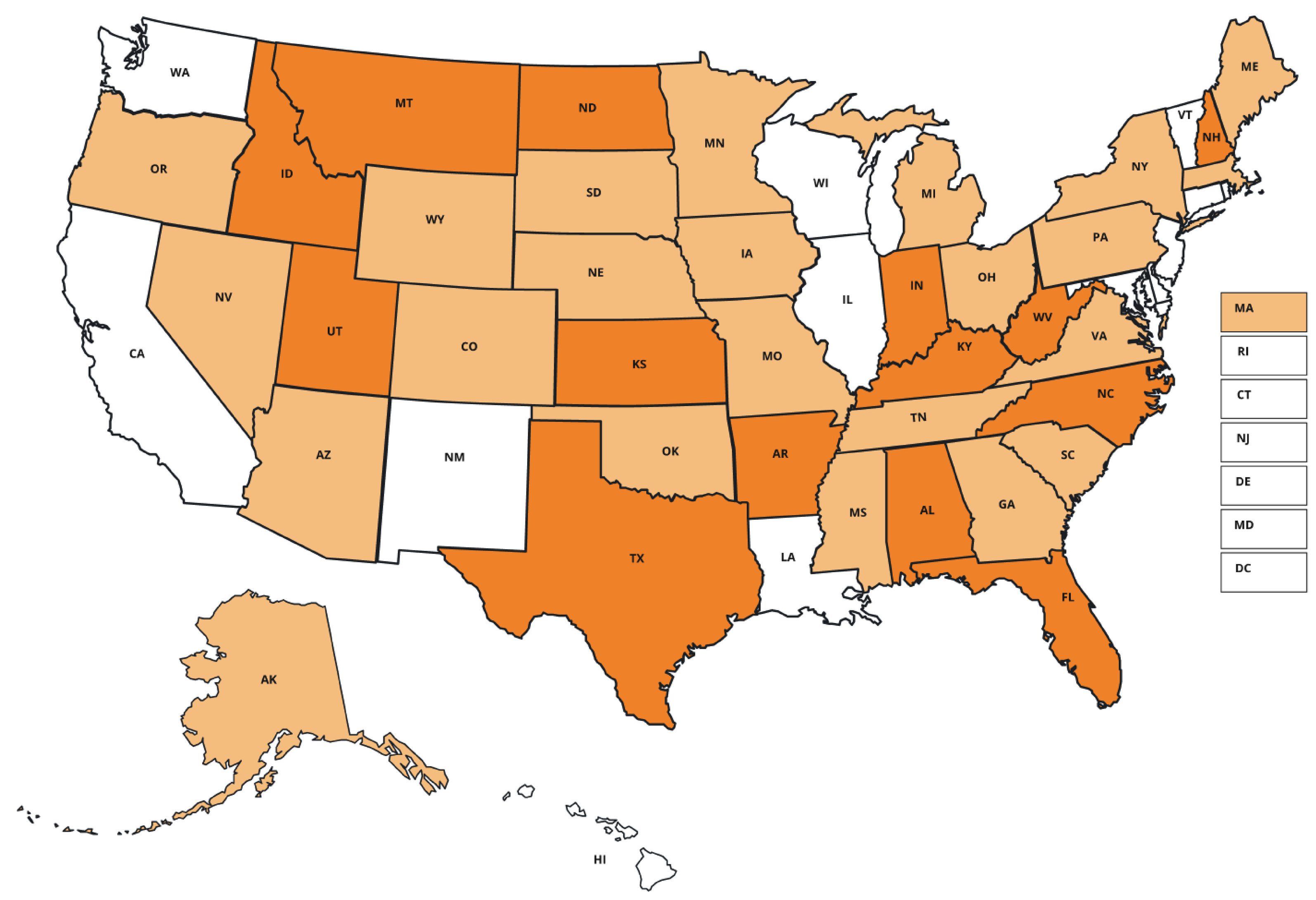
Notable Trends in ESG Policy

Throughout this research, we identified particularly interesting or useful trends. These trends may be helpful in forecasting what the next wave of ESG regulations might look like around the world.

Trend #1: Expansion Across Jurisdictions

Particularly in Europe, regulation of corporate governance policy spread across jurisdictions. Many corporate governance policies have passed first in one country, followed quickly by others. Eventually, the EU has adopted many of such policies.

An example of this can be seen with supply chain due diligence legislation in the U.K. and Europe. The U.K.'s Modern Slavery Act generated a wave of legislation throughout Europe. This eventually led



In the United States, 37 states have introduced anti-ESG legislation. This map shows the states that have introduced (light orange) and passed (dark orange) such legislation.

to more standardized reporting requirements at the EU. The same has been true with policies on extended producer liabilities and ESG reporting requirements.

Trend #2: Expansion Across Organization Types

Initially, many ESG policies may be limited to certain organizations. These are often expanded, or face pressure to expand, to cover more types of organizations. The 2017 French Duty of Vigilance Law has been criticized for its high qualification thresholds. These high thresholds reduce the number of businesses covered by the regulation. Another example of this trend is the EU's transition from the Non-Financial Reporting Directive to the Corporate Sustainability Reporting Directive.

Trend #3: Backlash Against ESG Policy in the U.S.

Finally, the United States has seen the strongest pushback against ESG regulations. While mostly isolated to the U.S., this trend is worth paying attention to. Attitudes in Europe and Africa could shift to match that of the US. This opposition is widening the gap between corporate requirements in Europe and the US. In 2023, fourteen states passed 22 anti-ESG bills into law. For businesses, focusing on ESG factors can now actually be a compliance risk.

The American Legislative Exchange Council (ALEC) has led much of the conservative backlash against ESG. ALEC released model legislation that aimed to restrict the ability of state pension fiduciaries to consider ESG criteria. In 2023, this model legislation passed in at least 11 states.

Conclusion

The insight gathered provides valuable information about what has happened where, and the patterns identified could help predict what may happen next. Plural made cataloging and analyzing recent actions on ESG policy far easier than it otherwise would have been.