ESG:

Rapidly Evolving Risks, Legal/Regulatory Requirements and Stakeholder Expectations

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What is ESG?

- Corporations are facing growing pressure from investors, shareholders, stakeholders, and regulators to identify, assess, and disclose ESG-related risks.
- **Environmental**, **social**, and **governance** ("ESG") is a term used to represent an organization's **corporate financial interests** that focus mainly on sustainable and ethical impacts.
- Capital markets use ESG to evaluate organizations and determine future financial performance.

What is ESG?

Environmental	Social	Governance	Human Rights
GHG emissions/ energy usage	Executive compensation and human capital	ESG/HR governance and oversight systems	Forced labor
Renewables	Gender pay gap	Board diversity and independence	Child labor
Water and waste	Turnover	Business ethics/ anti-corruption	Workplace health and safety
Environmental oversight (operations and supply chain)	Diversity & inclusion/ non-discrimination	Cyber security and data privacy	Fair & living wage
Climate impact/mitigation	Worker health and safety	Supplier code of conduct	Access to affordable health care
Scope 1, 2 and (potentially) 3 emissions	Child and forced labor (operations and supply chain)	External assurance	Worker rights (who is a “worker”?)
Board and management oversight	Human rights (operations and supply chain)	Human capital reporting and disclosures	Right to a sustainable environment and future

Expectations for ESG

How Did We Get Here?

Growing Demand for ESG Disclosures

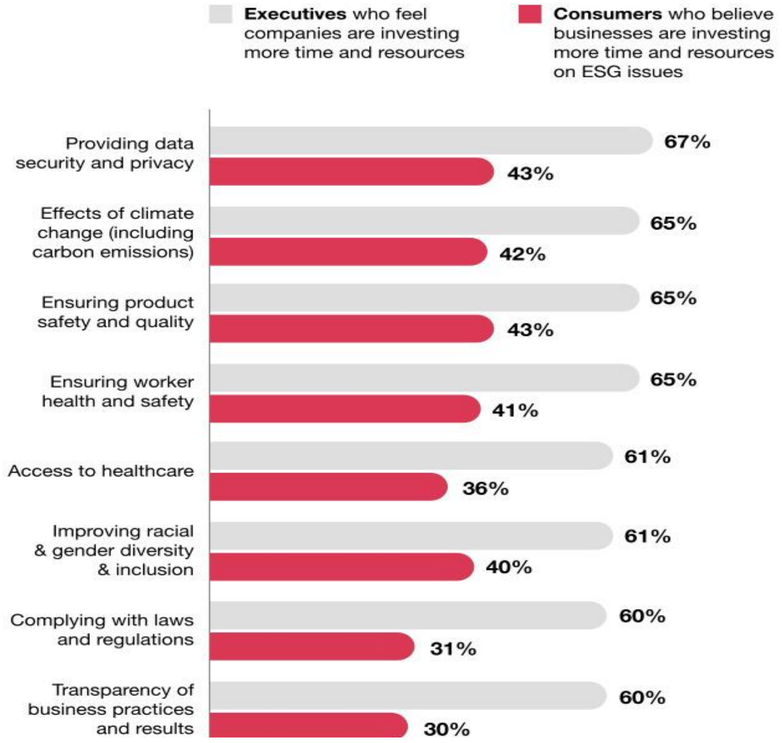
- Stakeholders, including investors, consumers, and the market, are **increasingly prioritizing ESG disclosures and risks in evaluating investment opportunities.**
- In addition to investors, regulators and stock exchanges are similarly developing requirements around ESG disclosures.

How Did We Get Here?
Consumers and Investors' Expectations

- In the United States, over $68 trillion in wealth will transfer to millennial investors by 2030. Seven out of ten of them expect their wealth managers to screen investments based on ESG criteria.
- According to a survey of limited partners (LPs) by Bain & Company and the Institutional Limited Partners Association (ILPA):
  - 93% of limited partners would walk away from an investment opportunity if it posed an ESG concern;
  - 50% cite better investment performance as a key reason to incorporate ESG.
- In recent years, there has been a shift towards the creation of sustainability-focused funds and investments within PE.
- Regulators, in turn, are promoting consistent, comparable, and reliable information for investors concerning funds' and advisers' incorporation of ESG factors into their portfolios.

How Did We Get Here?
Consumers and Investors' Expectations

Consumers are not convinced that businesses are making adequate investments in ESG issues



Source: *PwC Consumer Intelligence Series*, June 2, 2021

Key findings

51%

of respondents say environmental sustainability is more important to them today than it was 12 months ago.

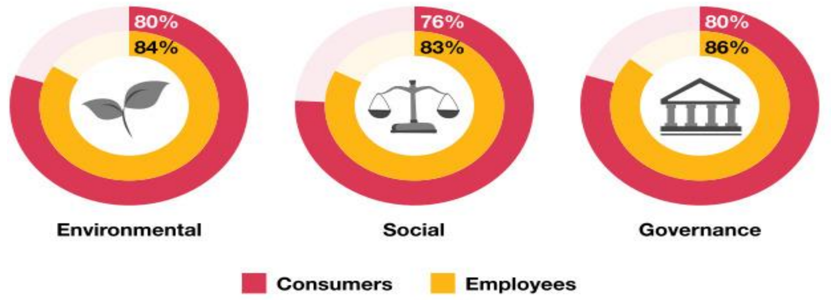
49%

of consumers say they've paid a premium for products branded as sustainable or socially responsible in the last 12 months.

Source: *Research Brief: Balancing sustainability and profitability*, IBM Institute for Business Value (2022).

ESG commitments are driving consumer purchases and employee engagement

I am more likely to buy from / work for a company that stands up for...



Source: *PwC Consumer Intelligence Series,* June 2, 2021

88%

of investors believe companies that prioritize ESG initiatives represent better opportunities for long-term returns than companies that do not

Source: Edelman Trust Barometer Special Report: Institutional Investors

How Did We Get Here?
Expectations of Boards

Boards owe a duty of care to shareholders to address "mission critical" risks, including ESG

- **In re Caremark International Inc. Derivative Litigation (Del. Ch. 1996):** Directors breach their duty of care when they fail to make a good faith effort to oversee a corporation's operations and compliance with the law.

- Recent Cases: Courts willing to seriously consider and find Caremark violations for failure to oversee mission critical risks.

- Given evolving and increasing risk landscape including in ESG-related areas, could constitute "mission critical".

- Is on agenda of every corporate board.

The ESG Regulatory Landscape

The SEC's Increasing Focus on ESG

March 2021

Establishment of the **Climate and ESG Task Force** in the SEC's Division of Enforcement.

March 2022

New **proposed rules** on **climate-related disclosures.**

March 2022

New **proposed rules** on **cybersecurity risk management** and **incident disclosure.**

April 2022

Mining company charged over **misleading statements** about safety.

May 2022

New **proposed rules** on **disclosures by investment companies and advisers & fund names.**

May 2022

Investment charged over **ESG misstatements and omissions.**

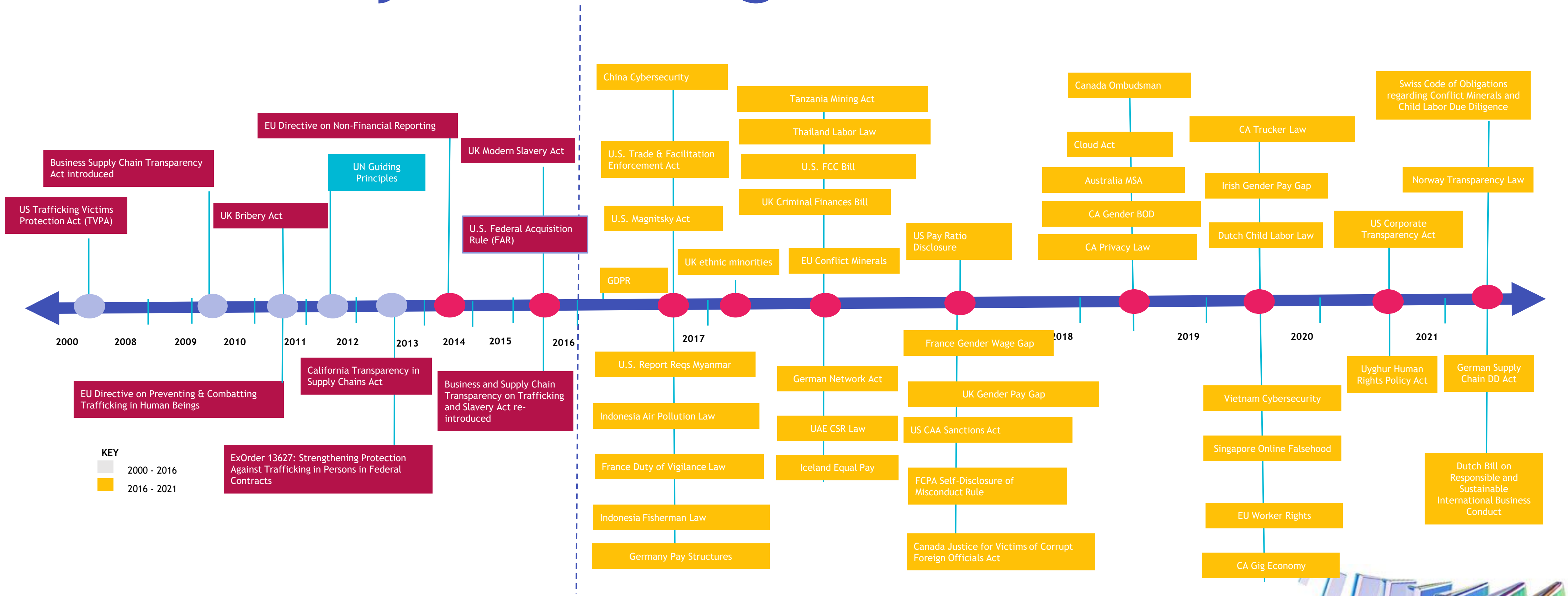
November 2022

Goldman Sachs Asset Management settles with SEC for pol/proc failures in marketing ESG funds ($4M penalty).

Q1/Q2 2023

Expected issuance of **final rules** on **climate-related disclosures.**

International Bellwether Laws on Mandatory Due Diligence



International Bellwether Laws on Mandatory Due Diligence

Mandatory legislation in force:
- *French Corporate Duty of Vigilance Law (2017)*
- *Swiss Mandatory Human Rights Due Diligence (2022)*

Mandatory legislation adopted:
- *Dutch Child Labor Due Diligence Act (TBD)*
- *German Supply Chain Due Diligence Act (2023)*
- *Norway Transparency Act (July 2022)*

Mandatory legislation in a draft stage:
- *Dutch Parliamentary Proposal on Responsible and Sustainable International Business Conduct*
- *Belgium Parliamentary proposal on the corporate duty of vigilance and care in value chains*
- *Austrian Parliamentary Proposal for a Supply Chain Law*

Mandatory legislation discussions are advanced:
- *The Netherlands: Announced desire for due diligence law to go beyond the existing Child Labor Due Diligence Act*
- *Luxembourg and Finland: Government commitment to mandatory human rights due diligence law*
- *Spain: Government plan for due diligence legislation*
- *Denmark, Sweden, Italy, Portugal, Switzerland, UK, Ireland: Civil society seeking human rights due diligence laws*

Anti-ESG

Anti-ESG Developments in the United States

Starting in 2021 and gaining momentum in 2022 – expected to accelerate in 2023

- Conservative Republican members of Congress, Governors, state attorneys general, legislatures, moving to stop or interfere with ESG-related investing and corporate action.
- Recent spike in anti-ESG shareholder proposals – predominantly in the social and environmental spaces. Some researchers have estimated twice as many proposal submissions (52) in the 2022 proxy season that were from anti-ESG proponents as in 2021 (26).
- While anti-ESG proposals haven't historically garnered the same levels of backing as their pro-ESG equivalents, more conservative-leaning ESG proposals are here to stay for the foreseeable future.
- Companies with operations in states with Anti-ESG initiatives need to be fully informed and brief boards about evolving risk landscape and strategies to address, such as Texas, Arizona, Florida, Pennsylvania, South Carolina, Missouri.
- Anti-ESG investors and activists are on the rise. With Universal Proxy Card, boards and management should expect increased ESG/Anti-ESG activity and engagement.

Questions?