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2024 | The Annual Benchmark Study

GCs and ESG

Practices, Priorities, and Perspectives

Corporate Counsel's annual survey reveals that ESG efforts are still a main focus for GCs. However, other areas, such as governance, are regaining attention as priorities shift.

By Mary Smith Judd | Pamela Brownstein

Introduction

In Spring 2024, *Corporate Counsel* once again partnered with international law firm Morrison Foerster to study the extent to which environmental, social, and governance (ESG) policy and compliance development, implementation, and reporting fall to corporate legal departments.

Launched in 2022, the now-annual benchmark study further seeks to measure practical and cultural shifts as well as ascertain best practices surrounding ESG. To that end, *Corporate Counsel*'s research arm launched a 27-question survey of in-house counsel, canvassing organizational, individual, and departmental approaches to ESG.

2024 Survey

Responses were collected by invitation online and via telephone interviews. The anonymous survey was open from February 1 to April 19, 2024, and was completed by 97 respondents.

Respondents' titles included general counsel (GC), chief legal officer, vice president of legal, chief compliance officer, and the like. The size of the respondents' legal departments ranged from a single lawyer to more than 60 lawyers.

This annual study measures shifts, values, and best practices used by U.S. corporations, governmental agencies, and nonprofits.

- An overview of survey respondents, including title, most recent annual revenue, entity type, number of lawyers in their legal departments, and their companies' Sustainability Accounting Standards Board sectors.
- Personal and departmental leadership roles of organizational ESG initiatives.
- Company and/or board leadership's practices and priorities, including depth of focus on individual ESG components (environmental, social, governance, and human capital); whether and how companies altered their approach to environmental action during the year; factors motivating adoption of environmental goals; status of environmental performance goals; ESG metrics (KPIs) tied to executive compensation and types of incentives; and the impact or observance of ESG backlash.
- Legal department practices and priorities, including involvement in ESG strategy and compliance; consideration of vendors' environmental records and policies; materiality assessments; and ESG disclosures.
- Personal opinions and observations, including respondents' confidence that their organization has a comprehensive ESG program in place; challenges to ESG implementation; and stakeholders' understanding of how ESG relates to the organization's culture.

Introduction

Key Findings

Organizations and especially their legal departments are still making ESG efforts a priority, with the pillar of governance regaining attention.

- Though C-suite leaders make up the largest group steering ESG strategy, in-house legal departments and GCs are increasingly becoming more involved.
- Governance is regaining more attention in organizations.
- DEI and climate-change issues remain key factors among KPIs tied to executive pay.
- More organizations, almost one-quarter in 2024, are changing or not using the term ESG. Yet more than half say that they are not encountering ESG backlash.
- Confidence that organizations have a comprehensive ESG program fell significantly. But confidence is highest when organizations conduct materiality assessments that weigh priorities, goals, and risks.
- Far fewer companies, including those that are publicly held, provide ESG disclosures.
- Almost half, about double from the year before, say that their internal stakeholders do not know how to "own" ESG as part of the company culture.

In addition, this report includes insights, observations, and comments derived from interviews with the following GCs and others who are also ESG legal thought leaders:

- **Chris Benjamin**, director, corporate sustainability at PG&E in San Francisco.
- **Mark Maurice-Jones**, general counsel and compliance officer for Nestlé UK and Ireland in London.
- **Ling-Ling Nie**, deputy general counsel, chief compliance officer, chief ESG officer, and head of government affairs at Aura, a family online safety startup headquartered in Boston.
- **Linda Weber**, global sustainability engagement manager at Jabil, a provider of engineering, manufacturing, and supply chain solutions based in St. Petersburg, Florida.
- **Gregory L. Wilkinson**, senior vice president and general counsel at Electro Rent, a global provider of testing and technology solutions based in West Hills, California.

Survey Results

Overview of Respondents

A vast majority of respondents, 68%, hold senior-level titles of GC, vice president, or chief legal officer. That compares with 84% in 2023 and 45% in 2022. GCs constituted the largest group in 2024: 21%. The figures were 27% in 2023 and 14% in 2022.

What is your full title? (Include all that apply.)

	2024	2023	2022
General Counsel (global, organization-wide, etc.)	21%	27%	14%
General Counsel (division)	19%	20%	13%
Senior Vice President/ Vice President of Legal	20%	23%	13%
Chief Legal Officer	8%	14%	5%
Corporate Secretary	4%	6%	15%
Senior Counsel	8%	13%	13%
Associate General Counsel/ Deputy General Counsel	10%	6%	53%
Chief Compliance Officer	10%	16%	6%
Other	11%	6%	13%

Note: Totals exceed 100% because of respondents with multiple titles.

Survey Results

Entity Types

Nearly half, 47%, of this year's respondents work at publicly held companies, compared with 41% the year before. The figures for privately held companies were 40% in 2024 and 51% in 2023.

Which best describes your company or organization? (Select one.)

	2024	2023
Publicly held	47%	41%
Privately held	40%	51%
Closely held (More than 50% stock owned by small group)	6%	3%
Nonprofit	4%	2%
Governmental	1%	2%
Other	1%	—

Survey Results

Revenue

A total of 67% of respondents represent companies with more than $1 billion in revenue, compared with 72% the year before, which was the first year the question was asked. The largest group of respondents, 38%, work at companies with annual revenue of more than $4 billion. That total was 57% in 2023.

At the other end of the spectrum, 15% of respondents work at companies with annual revenue of less than $250 million, down from 19% the year before.

What was your company's most recent (FY 2022—23) annual revenue?

	2024	2023
Greater than $4 billion	38%	57%
$2.01 billion—$4 billion	18%	7%
$1.01 billion—$2 billion	11%	8%
$501 million—$1 billion	6%	3%
$250 million—$500 million	11%	6%
Less than $250 million	15%	19%

Survey Results

Industries

Respondents work in a broad spectrum of industries. The largest group, 21%, said that “financials” best describes their company’s Sustainability Accounting Standards Board classification. Those totals were 34% in 2023 and 8% in 2022. The next most-mentioned category in 2024 is “services” (advertising and marketing, casinos and gaming, and education, among others) at 20%. That is up from 6% in 2023 and 13% in 2022. In third place is “technology & communications”: 14% in 2024, 7% in 2023, and 23% the year before.

Which of the following Sustainability Accounting Standards Board classifications best describes your company?

	2024	2023	2022
Consumer Goods/Retail	11%	15%	5%
Extractives & Minerals Processing (including coal operations, construction materials, iron and steel production, metals and mining, and all phases and services related to oil and gas)	3%	5%	10%
Financials	21%	34%	8%
Food & Beverage	4%	3%	4%
Health Care	7%	16%	11%
Infrastructure	9%	2%	5%
Life Sciences	0%	6%	0%
Renewable Resources & Alternative Energy	1%	1%	1%

Survey Results

Industries continued

This year's representation showed 20% of respondents working in the services industries, compared with just 6% in 2023.

	2024	2023	2022
Resource Transformation	2%	0%	6%
Services (including advertising and marketing, casinos and gaming, education, hotels and lodging, media and entertainment, professional and commercial services)	20%	6%	13%
Technology & Communications	14%	7%	23%
Transportation	7%	2%	8%
Other	0%	2%	6%

Personal and Legal Department Roles in ESG

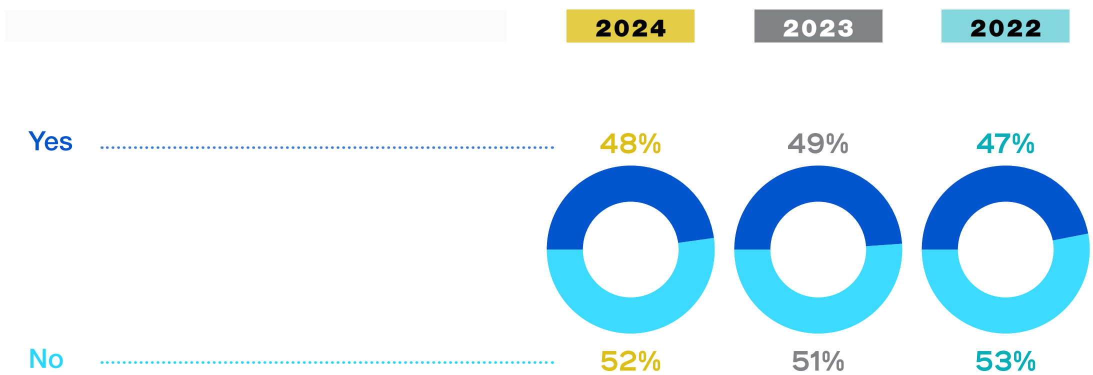
The results show very little year-to-year change in the percentage of respondents who personally lead a material portion of their organization's ESG initiatives. The total was 48% in 2024, 49% in 2023, and 47% in 2022.

A continued decline in personal leadership on ESG is likely, as regulations require more robust programs and more resources to carry them out.

Legal departments are less highly involved (scores of 4 or 5) in leading ESG in 2024 than in 2023. More than half of the respondents, 53%, reported above-average scores of 4 or 5, down from 61% the year before. (The question was asked differently in 2022.)

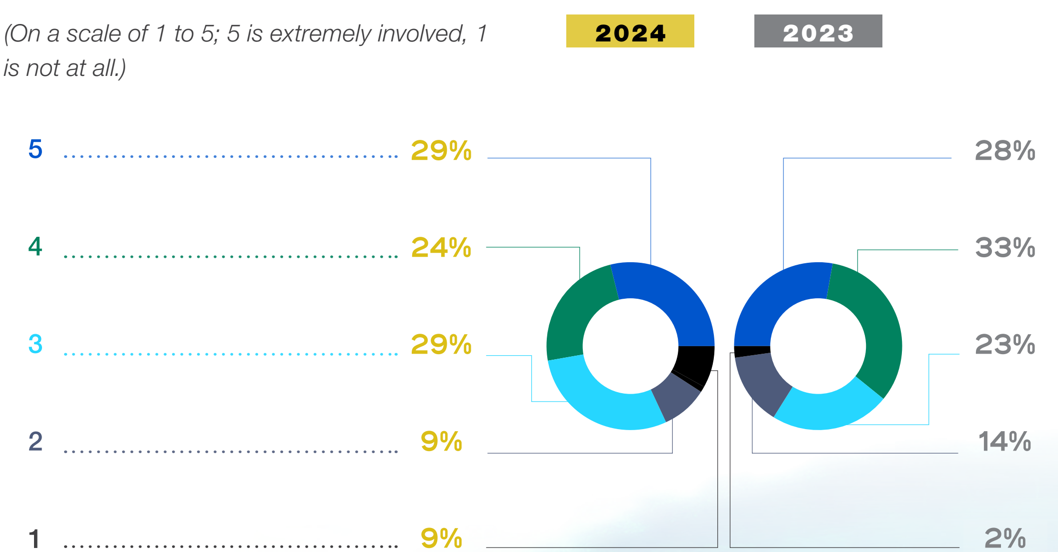
ESG Leadership: Personal

Do you personally lead a material portion of ESG initiatives in your organization?



Legal Departments' Involvement in Leading ESG Strategy

(On a scale of 1 to 5; 5 is extremely involved, 1 is not at all.)



Personal and Legal Department Roles in ESG

Leading the ESG Strategy

CEOs, CFOs, and other C-suite leaders continue to make up the largest group steering their organization's ESG strategy. But their role fell markedly to 27% in 2024 from 56% the year before.

In-house legal department members and GCs helped fill that gap. Legal departments were in the driver's seat 25% of the time in 2024, up from 9% the year before and down from 54% in 2022. And respondents identified GCs as taking the lead 15% of the time in 2024, compared with 9% in 2023 and 23% in 2022.

"The C-suite may feel more comfortable having the GC do it," added Gregory L. Wilkinson, senior vice president and general counsel at Electro Rent, a global provider of testing and technology solutions in West Hills, California.

Please identity the business unit or position in your organization leading your organization's ESG strategy.

	2024	2023	2022
CEO/CFO/C-Suite Leaders	27%	56%	10%
Chief Compliance Officer or equivalent	18%	16%	0%
General Counsel or equivalent	15%	9%	23%
Legal Department	25%	9%	54%
Public Relations/ Corporate Communications	8%	3%	9%
Other	7%	6%	9%

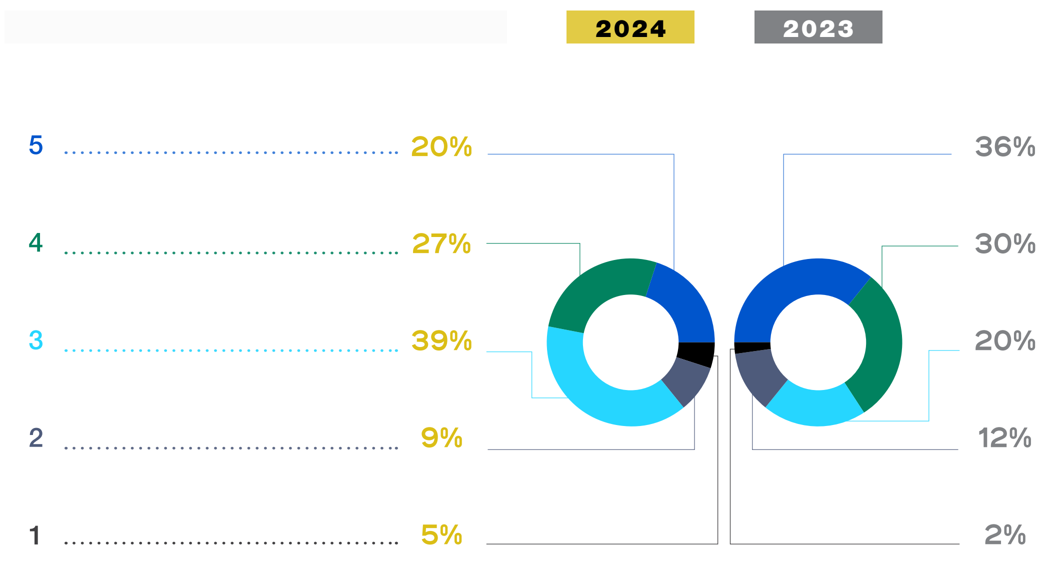
> "What's changed is an increase in legislation, and reporting regulations."

Mark Maurice-Jones, London-based general counsel and compliance officer for Nestlé UK and Ireland, referring to the increased role of legal departments.

ESG and Compliance

Legal Departments' Involvement in Leading ESG Compliance

How involved is your legal department in leading ESG compliance?
(On a scale of 1 to 5; 5 is extremely involved, 1 is not at all.)



In the wake of recent regulatory developments, some compliance leadership has moved to other departments, given the need to include ESG data in financial reports and to increase assurance levels. Consequently, fewer legal departments are responsible for leading ESG in 2024 than during the year before. Respondents reported that 47% of legal departments had above-average involvement (scores of 4 or 5), compared with 66% the year before, the first year the question was asked.

ESG and Compliance

ESG leadership roles moved in a different direction in 2024 for chief compliance officers and C-level officers. Both were identified by 28% of respondents as their organizations' ESG compliance leaders.

However, C-level officers were on the upswing, rated as leaders by 16% in 2023 and 5% in 2022. The figures for chief compliance officers fell from 55% in 2023 and 22% the year before.

Legal departments moved to 15% in 2024, up from 8% the year before, but still far from 54% in 2022.

Units/Positions Leading ESG Compliance

Please identify the business unit or position in your organization leading ESG compliance. (Select one.)

	2024	2023	2022
CEO/CFO/C-Suite Leaders	28%	16%	5%
Chief Compliance Officer or equivalent	28%	55%	22%
General Counsel or equivalent	13%	12%	9%
Legal Department	15%	8%	54%
Public Relations/ Corporate Communications	8%	5%	6%
Other	7%	5%	4%

Company and/or Board Leadership Practices and Priorities

Company/Board Leadership ESG Focus

Fifty-four percent of respondents report an above-average focus (scores of 4 or 5) in 2024 on the environment, down from 78% in 2023 and 63% in 2022. (This differs from a jump in board emphasis on climate issues as a KPI for executive pay, as shown on page 18. The gap may underscore different priorities between the legal department and the board.)

Respondents have a similarly above-average, though also declining, focus on the social pillar: 53% in 2024, 73% in 2023, and 78% in 2022. (This drop differs from an uptick in DEI as a KPI shown on page 18. Again, possibly a priority contrast between legal and the board.)

Above-average scores for a focus on the governance pillar were 61% in 2024, 53% in 2023, and 84% in 2022. Wilkinson, of Electro Rent, sees the increased focus as "more a matter of attention on immediate business, such as the credit market contracting."

How focused is your company/leadership/board on the following? (On a scale of 1 to 5; 5 is extremely involved, 1 is not at all.)

Focus	Environmental			Social		
	2024	2023	2022	2024	2023	2022
5	28%	52%	29%	22%	23%	24%
4	26%	26%	34%	31%	50%	54%
3	28%	10%	27%	34%	17%	16%
2	12%	6%	9%	10%	5%	4%
1	6%	6%	1%	4%	5%	1%

Focus	Governance			Human Capital (includes diversity)		
	2024	2023	2022	2024	2023	2022
5	32%	15%	38%	21%	17%	23%
4	29%	38%	46%	36%	57%	54%
3	25%	40%	14%	24%	19%	22%
2	10%	6%	3%	12%	5%	1%
1	4%	1%	0%	7%	2%	0%

Company and/or Board Leadership Practices and Priorities

Altering Approaches

More than half the respondents, 52%, report that ESG drove their organizations to alter strategic business decisions, compared with 37% in 2023 and 64% the year before. More than a third, 39%, said that ESG drove climate-risk changes, an upward trajectory from 27% in 2023 and 3% in 2022.

In what ways has your company altered its approach to ensure ESG alignment? (Select all that apply.)

Factors	2024	2023	2022
Driven changes in strategic business decisions	52%	37%	64%
Increased environmental regulatory compliance budget	34%	49%	41%
Driven changes in purchasing decisions	38%	15%	31%
Driven changes in operations, such as manufacturing practices	21%	9%	33%
Driven supply chain changes	28%	24%	26%
Driven changes in our approach to climate risk	39%	27%	3%
Driven emissions changes	28%	27%	44%
Increased public transparency	38%	43%	49%
Increased reporting to federal regulators	23%	30%	3%
No meaningful changes (added in 2023)	12%	10%	N/A
Unsure	3%	1%	3%
Other	3%	1%	5%

Company and/or Board Leadership Practices and Priorities

ESG Motivation

Organizations are adopting environmental goals in the wake of pressures/changed behaviors from customers, investors/shareholders, regulators, and employees, among others. Motivating factors increased or remained roughly the same in 2024, except for much less emphasis on staying competitive and a dip in the area of managing risk and regulatory compliance.

Improving brand image and reputation among customers was the top factor, mentioned by 59% of respondents. And in 2024, for the first time in their comments, respondents noted factors outside the corporate realm, such as moral obligation or health of the planet.

Which of the following factors are motivating your organization to adopt environmental goals, beyond required compliance with environmental laws? (Select all that apply.)

Factors	2024	2023	2022
Improve brand image and reputation among customers	59%	57%	85%
Stay competitive in the market	41%	51%	73%
Increasing pressure from investors and shareholders	35%	20%	54%
Changing consumer purchasing behaviors	33%	12%	20%
To achieve cost efficiencies	28%	28%	42%
To manage risk and regulatory compliance	51%	56%	8%
Increasing pressure from federal regulators	22%	15%	10%
Increasing pressure from activist groups	11%	1%	16%
To attract and retain employees	37%	28%	47%
To mitigate litigation or fines	28%	6%	19%
Increasing pressure from state regulators	15%	8%	15%
Tax benefits or state aid incentives	25%	22%	25%
Other	12%	5%	6%

Company and/or Board Leadership Practices and Priorities

ESG Motivation continued

"Businesses have realized that prioritizing environmental sustainability can distinguish their brands, create greater consumer loyalty, and enhance their competitiveness in the global market."

Linda Weber, global sustainability engagement manager at Jabil, a provider of engineering, manufacturing, and supply chain solutions based in St. Petersburg, Florida, looks to the increased consumer demand for eco-friendly products.

Company and/or Board Leadership Practices and Priorities

Environmental Performance Goals Status

Fewer organizations are identifying and adopting environmental performance goals: 34% in 2024, 44% the year before, and 22% in 2022.

The next-largest group, 26%, say their organizations have identified key areas to improve, but do not have set environmental goals. That was a jump from 17% in 2023 and 18% in 2022.

It's important to keep in mind the time factor involved with ESG issues, said Ling-Ling Nie, deputy general counsel, chief compliance officer, chief ESG officer, and head of government affairs at Aura, a family online safety startup headquartered in Boston.

Which of the following statements best describes the current status of your organization's environmental performance goals, beyond required compliance with environmental laws? (Select one.)

	2024	2023	2022
My company has identified and adopted environmental performance goals.	34%	44%	22%
My company has set carbon neutrality/net zero emissions goals.	19%	17%	51%
My company has identified key areas to improve but does not have set environmental performance goals.	26%	17%	18%
My company does not currently have environmental performance goals or key areas to improve but is in the planning phase.	11%	8%	5%
My company does not have environmental performance goals or key areas to improve and does not plan to identify/adopt any goals in the near future.	10%	13%	5%

Company and/or Board Leadership Practices and Priorities

Tying ESG KPIs to Executive Compensation

The highest ESG KPI score in 2024 is 54%, at organizations of more than $4 billion in revenue, on the issue of tying pay to human rights. That is up from 31% the year before.

DEI is second among KPIs used for executive pay, mentioned by 37% of respondents; it is a bit higher than the 33% reported in 2023. (This upward trend differs from the decline in company/board focus on ESG's social pillar, shown on page 13. The gap may underscore different priorities between the legal department and the board.)

Third place in 2024 is a tie. Mentioned by 29% is climate change as a KPI, up from 13% in 2023. Board oversight of environmental and sustainability issues also is mentioned by 29%, but this category is almost stable with the 30% in 2023 and therefore appears to be out of sync with the trend of the climate-change KPI percentage.

What focus areas or KPIs are tied to incentives or mandates for ESG performance for your company's executive compensation? (Select all that apply.)

	All		>$4 billion		$1.01—$4 billion		<$1 billion	
	2024	2023	2024	2023	2024	2023	2024	2023
Climate change	29%	13%	38%	16%	46%	15%	0%	0%
Diversity, equity, and inclusion	37%	33%	35%	43%	39%	31%	13%	8%
Board oversight of environmental and sustainability issues	29%	30%	38%	39%	36%	54%	9%	0%
Human rights issues	20%	20%	54%	31%	32%	0%	19%	4%
Supply chain management	21%	14%	24%	22%	29%	8%	6%	0%
Other environmental matters	14%	12%	30%	16%	21%	15%	9%	8%
Community involvement or charitable giving	28%	21%	14%	27%	18%	31%	13%	4%
I don't know	8%	7%	14%	4%	4%	15%	3%	17%
Our organization does not incentivize ESG performance	26%	23%	0%	6%	14%	8%	59%	67%
Other issue(s)	2%	1%	5%	2%	11%	0%	6%	0%

Company and/or Board Leadership Practices and Priorities

ESG Backlash Impact

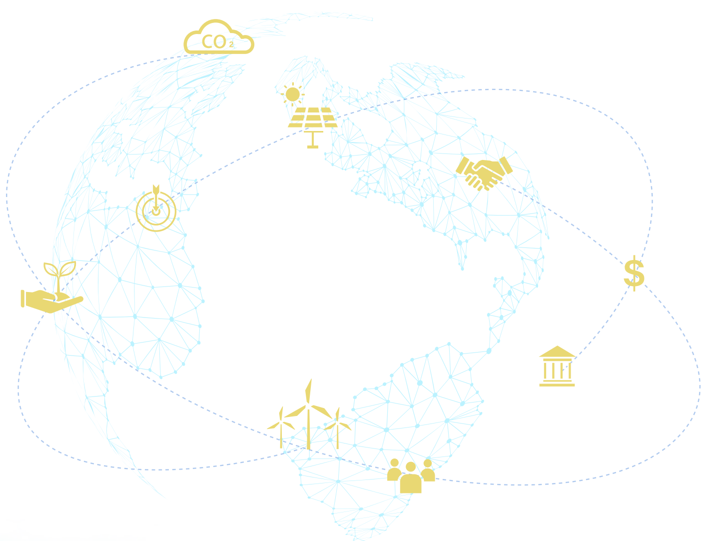
More organizations, 23% in 2024 compared with 15% the year before, are changing or not using the term "ESG". The move is occurring in both the public and the private sectors, though more so among public companies.

In addition, fewer organizations are focused on granular areas such as climate, human rights, and DEI.

Regardless, overall 56% in 2024 are not encountering ESG backlash, up from 47% in 2023. This is especially the case among private companies in 2024.

How has ESG backlash affected your organization's approach to ESG?

	All		Public		Private	
Response	2024	2023	2024	2023	2024	2023
Change in terminology / not using the term "ESG"	23%	15%	28%	20%	15%	7%
Focused on specific granular areas of concern (i.e., climate, human rights, DEI, etc.)	32%	47%	46%	49%	23%	45%
We have not experienced or been impacted by ESG backlash	56%	47%	46%	46%	67%	45%
Other	3%	5%	2%	3%	3%	5%



Company and/or Board Leadership Practices and Priorities

Confidence

When respondents are asked whether they had above-average confidence that their organization's ESG program is comprehensive, scores plummet to 44% in 2024, from 69% in 2023 and 62% in 2022.

Public companies rate their above-average confidence at 60% in 2024, compared with 77% the year before. For private companies, the score is 34%, down from 73% in 2023.

And at the other end of the confidence scale, 21% of private companies do not believe they have a comprehensive program, while only 7% of public companies feel the same way.

On a scale of 1 to 5, where 5 is extremely confident and 1 is not confident at all, how confident are you that your organization has a comprehensive ESG program in place?

	All			Public		Private	
Rating	2024	2023	2022[1]	2024	2023	2024	2023
5	11%	24%	15%	17%	31%	3%	23%
4	33%	45%	47%	43%	46%	31%	50%
3	31%	16%	13%	17%	14%	36%	11%
2	13%	8%	9%	15%	6%	10%	11%
1	11%	6%	4%	7%	3%	21%	5%

[1] 13% did not answer in 2022.

Company and/or Board Leadership Practices and Priorities

Confidence by Materiality Assessment

Organizations that measure their ESG impact, risks, and performance—through a materiality assessment—report above-average confidence (scores of 4 or 5) in their ESG programs.

Almost three-quarters, 74%, of organizations that did an assessment report in 2024 above-average confidence in their programs, compared with 24% of those with no assessment. The figures were 85% and 47%, respectively, for 2023.

PG&E has conducted several materiality studies and made them publicly available, said Chris Benjamin, director, corporate sustainability at PG&E in San Francisco. Those two steps "can generally be viewed as a proxy for a company's level of maturity with its ESG programs and, therefore, its confidence in the programs," Benjamin added.

On a scale of 1 to 5, where 5 is extremely confident and 1 is not confident at all, has your company conducted a materiality assessment?

	All		Yes (my company has conducted a materiality assessment)		No (my company has not conducted a materiality assessment)	
Rating	2024	2023	2024	2023	2024	2023
5	11%	24%	23%	33%	3%	12%
4	33%	45%	51%	52%	21%	35%
3	31%	16%	18%	8%	40%	29%
2	13%	8%	8%	6%	17%	12%
1	11%	6%	0%	2%	19%	12%

For the purposes of this report, a materiality assessment identifies, ranks, and prioritizes the ESG factors material to operations, measuring shareholders' and stakeholders' expectations relative to the associated risks and opportunities.

Company and/or Board Leadership Practices and Priorities

Organization Size and Materiality Assessments

Has your company conducted a materiality assessment?

Assessment	>$4.01 billion		$1.01—$4 billion		<$1 billion	
	2024	2023	2024	2023	2024	2023
Yes	59%	100%	36%	92%	22%	13%
No	41%	0%	64%	8%	78%	88%

The larger the company, the more likely it has run a materiality assessment, though the numbers are dropping. In 2024, 59% of companies with revenue of more than $4 billion said they had run an assessment, compared with 100% the year before. Similarly, the figures were 36% in 2024 and 92% in 2023 for companies with revenue of $1.01 billion to $4 billion. The trend is rising for companies with less than $1 billion in revenue: 22% in 2024, up from 13% the year before.

Weber, at Jabil, which has conducted an assessment, said larger and higher-profile companies have "a broader range of stakeholders to satisfy, more risks to address and more international regulations to adhere to."

"I think these assessments are critical for companies who want to have a long-term ESG strategy because they help identify what your most important priorities are. It does take time to do them, so resources and bandwidth can be an issue (less of a hurdle for larger companies), and it also requires a lot of input from stakeholders, which means you need to educate them on ESG. The drop in percentage of companies conducting materiality assessments could reflect that they aren't doing them annually, which is fine, but on a different cadence that works better for their particular risk exposures."

Nie, at Aura, whose company is among those that have conducted a materiality assessment.

The Future of ESG: Materiality, Good Governance, and Data Will Shape Success

By Suz Mac Cormac

ESG is currently front-page news in America—for all the wrong reasons. Considerable financial support has been funneled to the "anti-woke" movement, primarily from China and Russia, attempting to discredit U.S. businesses, as well as to the "anti-climate change" campaign, primarily from entrenched traditional energy companies and related interests. What does this mean for in-house counsel at U.S. and multinational companies? Survey results indicate that in-house counsel continue to prioritize ESG for a variety of reasons and that ESG, with a particular focus on its individual environmental, social, and governance components, is here to stay for the long term.

Why In-House Counsel Remain Focused on ESG

First, we are witnessing a rapidly rising tide of regulation. When the term "ESG" was introduced in 2004, there was minimal regulation and most of the disclosure by companies and investors was voluntary, set forth in glossy CSR or ESG marketing pieces separate from financial reports. However, over the past decade, an increasing number of jurisdictions have passed legislation focused on both corporate action and corporate and investor ESG disclosure. Further, the regulations that have been promulgated so far are extra-jurisdictional, requiring compliance and disclosure not only from the company that operates (or is listed) in the jurisdiction that has passed the regulation, but also from all companies within its "value chain": suppliers, partners, and customers. For example, the EU's Corporate Sustainability Reporting Directive (CSRD) and Corporate Sustainability Due Diligence Directive (CS3D) implicate companies outside the EU, and value chain requirements expand disclosure requirements beyond large EU-issuers companies to small suppliers around the world. Nevertheless, compliance is only one piece of the ESG puzzle for in-house counsel.

Many in-house lawyers are also focused on ESG as a result of findings from their materiality assessments, particularly given the direct correlation between certain ESG risks and opportunities and shareholder value. However, the survey confirms that more companies need to conduct these assessments. To ensure that ESG initiatives are tailored to a company's needs and contribute to valuation, it is important for more companies to identify material topics that will inform initiatives; in fact, certain regulations require materiality assessments to frame the required disclosure. Understanding material topics that are critical to valuation and important to stakeholders will inform the most effective ESG initiatives, which will provide the best results.

Finally, because of the rapid pace of change in the natural environment, in technology (including AI), in the investment climate, and in business operations expected over the next decade, there will be an even greater need for ESG strategies that are tied to operations, including strategies to navigate the energy transition, accurately assess risk, and identify business opportunities. Therefore, in-house counsel will continue to focus on the elements of ESG—from cybersecurity to privacy to human rights to climate change—for tactical as well as compliance reasons.

Leveraging Existing Compliance and Governance Programs

While companies focus on the individual elements of ESG—specifically climate, diversity, equity, and inclusion, anti-money laundering, anti-bribery and corruption, cybersecurity, human rights, and sanctions—there are benefits to considering them all under a broader ESG umbrella. In-house counsel are discovering that the compliance programs adopted to address regulations, such as the Foreign Corrupt Practices Act, are very similar to what is required under the regulations for "newer" ESG compliance areas, such as cybersecurity, climate, and human rights. In addition, the process of ensuring compliance with, and receiving data from, suppliers and customers needs to be coordinated across ESG subject areas, or there is risk of, at best, overwhelming the participants in a company's value chain or, at worst, sending conflicting signals to, and possibly alienating, counterparties that are driving value to the corporation.

In terms of a compliance program, smart in-house counsel are (i) identifying the most arduous regulation and then adjusting for nuances in regulatory requirements and (ii) determining what data and information are required by their key suppliers and customers, as opposed to guessing at what they may need over the duration of the contract. It may seem at first glance that regulatory requirements are consistent around the world (most generally following the International Sustainability Standards Board's IFRS S1 and S2 standards), but MoFo conducted an analysis of the global climate regulations and found that there are more nuances than synergies across the regulations. Fortunately, data can be replicated. To make the best use of corporate resources, we recommend that companies identify the most robust applicable regulation or requirement, replicate data across other regulations, leverage existing internal policies (since most companies have established policies on the crosscutting material topics, *e.g.*, cybersecurity), and adjust for different requirements where necessary.

Internal ESG Coordination

So how can companies continue to focus on ESG from a compliance perspective **and** beyond? First, in-house counsel can help shape and lead consistent and coherent programs through collaborative efforts that touch on all business lines of the organization. Avoiding a siloed approach, each team and function should take ownership of ESG as it impacts their business or operational area while communicating with other functions in the organization. This ensures that companies develop uniform strategy and representations.

Second, in addition to the internal coordination, ESG ownership should remain at the "C suite" level, as our survey indicates there is an evolving trend of placing ESG leadership in the CEO and CFO functions. However, there remains a need for board oversight that is also not siloed in a specific ESG or CSR committee but is shared by the entire board and examined from a finance, audit, compensation, and governance perspective, and the CEO and CFO need a strong coordinated team to whom they can delegate. There is a critical need for ESG leadership to be tailored to subject matter expertise and decentralized across functions. For example, assurance and data management may be well suited to the audit function, but compliance direction and strategy are better handled in the legal department, and both functions must be aligned on strategy and direction.

Third, priorities and strategy must be coordinated across the entire organization. In this report, we identify a dissonance between the board's and the legal department's priorities. For example, while climate emerged as a top *legal* priority, boards of directors appear to place less emphasis on climate than other strategic initiatives. This dissonance is risky and opens doors to both legal and reputational risks, particularly with respect to greenwashing claims made to shareholders and customers. Internal alignment on priorities, as well as coherent and consistent strategy, is key to mitigating risk and maximizing opportunities.

Looking Ahead

ESG—and particularly its environmental, social, and governance components that are material to assessing risk and opportunities—is here to stay, although there will likely be a shift to the use of different language, such as Sustainability and Risk Management. Further, both new technology and data will play an increasingly critical role in mitigating the attendant risks that are inherent in all ESG programs. Companies must ensure that both their internal programs and their disclosures are backed by quality data. Disclosure to investors, customers, and counterparties must be properly scoped to ensure that all recipients understand the extent and limitations of corporate representations.

The need for strong internal systems—similar to the policies and procedures underlying financial reporting—is even more important as we anticipate the outcome of this year's U.S. presidential elections. Policy direction on ESG may be impacted, and there will likely be more fuel added to the already hot anti-ESG fire, regardless of who wins. Therefore, companies must be able to support their representations, and those that do it well will find themselves with a competitive advantage not only in reduced litigation and compliance costs, but also in greater attractiveness in the market for their goods, services, and securities.

Click here **to view MoFo's additional ESG resources.**

Company and/or Board Leadership Practices and Priorities

DEI continues to be the top ESG-related priority for legal departments, though it has fallen to 56% in 2024, from 64% in 2023, and from 72% in 2022.

The second priority is board oversight of environmental and sustainability issues, mentioned by 51%, practically the same as the 52% in the previous two years. Climate change is ranked third at 45%, making a comeback from 29% in 2023, but still less than the 61% in 2022.

Weber, at Jabil, notes that organizations simultaneously have an eye on competing goals. "Balancing ESG objectives with other legal priorities can be challenging, especially in cases where ESG considerations may be in conflict with short-term financial goals or other business requirements," she said.

Top Three Legal Priorities Related to ESG

Please identify your legal department's top three legal priorities related to ESG.

Legal Department Priority	2024	2023	2022
Diversity, equity, and inclusion	56%	64%	72%
Board oversight of environmental and sustainability issues	51%	52%	52%
Climate change	45%	29%	61%
Community involvement or charitable giving	40%	41%	16%
Supply chain management	34%	27%	28%
Human rights issues	33%	31%	42%
Other environmental matters	3%	24%	18%
Other issues	3%	5%	1%

Company and/or Board Leadership Practices and Priorities

The results remain similar when taking into consideration whether a company is public or private. More than half, 54% for public companies and 51% for private entities, prioritize DEI in 2024. Those figures were 60% and 64% in 2023.

But climate change as an ESG-priority factor made a huge jump to 52% from 26% for public companies and a more modest one, to 41% from 32%, for private ones, during those same two years.

Top ESG Legal Priorities: Public vs. Private

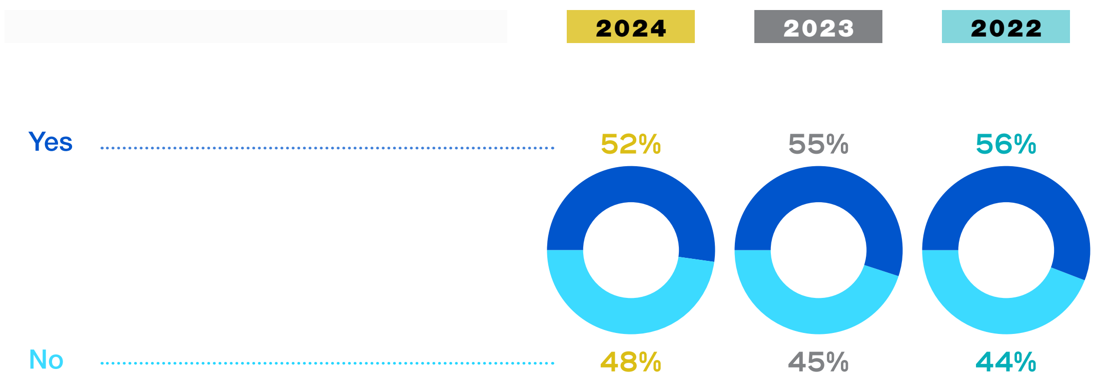
	Public		Private	
Factor	2024	2023	2024	2023
Climate change	52%	26%	41%	32%
Diversity, equity, and inclusion	54%	60%	51%	64%
Board oversight of environmental and sustainability issues	50%	60%	51%	30%
Human rights issues	33%	37%	33%	30%
Supply chain management	37%	34%	31%	20%
Other environmental matters	15%	17%	21%	27%
Community involvement or charitable giving	28%	43%	54%	36%
Other issue(s)	4%	0%	3%	5%

Company and/or Board Leadership Practices and Priorities

Consideration of Vendors' ESG Policies

This has remained stable in recent years, with more than 50% saying that they take the issue into account when selecting vendors.

Do you consider the environmental policies and records of your vendors in your decision-making?



"It also involves organizations asking themselves, 'Do you know where your raw materials are coming from?'"

Maurice-Jones, at Nestlé UK and Ireland.

Company and/or Board Leadership Practices and Priorities

ESG Disclosures

This question shows a steady falloff at organizations that provide ESG disclosures, to 57% in 2024, from 76% in 2023, and 86% in 2022. Public and private companies experienced this across the board.

In 2023, 94% of all public companies provided ESG disclosures. This year, the figure slid to 78%. Similarly, private companies reported 70% in 2023, falling to 44% in 2024.

Does your company provide ESG disclosures?

	All			Public		Private	
	2024	2023	2022[1]	2024	2023	2024	2023
Yes	57%	76%	86%	78%	94%	44%	70%
No	43%	24%	14%	22%	6%	56%	30%

"In response to this negative publicity and the potential for undesirable government regulatory attention, some companies may have chosen to scale back their voluntary ESG disclosures to avoid the risk of this type of scrutiny."

Weber, at Jabil, adds that shifts in economic conditions, business priorities, social and regulatory trends, and resource constraints might also influence a company's decision to publish a voluntary report.

Company and/or Board Leadership Practices and Priorities

Greatest ESG challenge

The top challenge to implementing ESG is understanding its materiality and scope, noted by 15% of respondents, compared with 10% the year before.

In second place is data collection and verification, 14% in 2024 and 17% the year before.

For Wilkinson, at Electro Rent, data collection is particularly frustrating. “There’s not a set standard,” especially when trying to guide internal companies. “It would be helpful if we had global standards.”

The chart’s biggest jump was in companywide buy-in, at 13% up from 7%.

What is your SINGLE biggest challenge around implementing ESG in your organization?

Challenges	2024	2023	2022
Data collection and verification	14%	17%	44%
Supply chain monitoring	11%	15%	4%
Staffing	11%	12%	5%
Regulations	9%	12%	8%
Understanding materiality and the scope of ESG	15%	10%	**
ESG talent and staffing	8%	8%	**
Companywide buy-in	13%	7%	8%
Board approval	2%	7%	3%
Putting internal control frameworks in place for ESG data because of the variety of data sources	7%	6%	28%
Other	7%	6%	1%

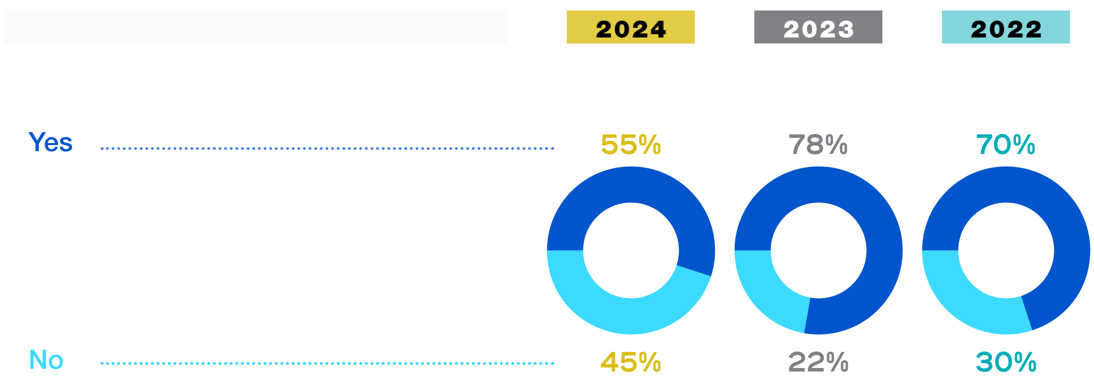
** *Options added in 2023.*

Company and/or Board Leadership Practices and Priorities

Owning ESG

In a big drop, only 55% of respondents say internal stakeholders understand how to effectively own ESG as part of the company culture, compared with 78% in 2023 and 70% in 2022.

Do you feel your internal stakeholders understand how to effectively own ESG as part of the company culture?

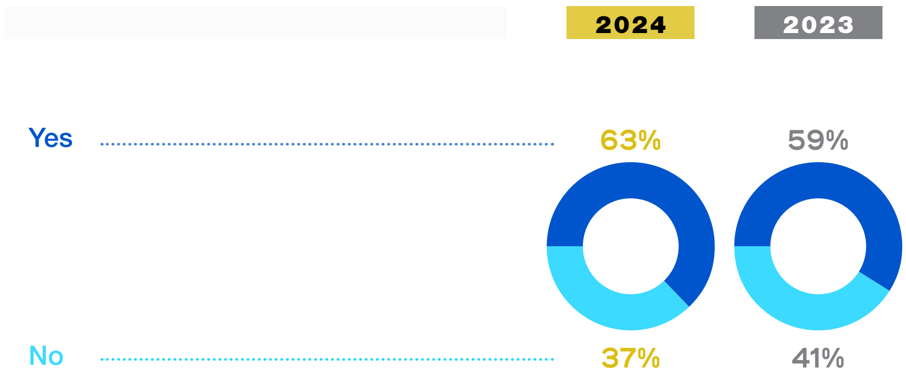


Company and/or Board Leadership Practices and Priorities

Public ESG Strategies

Concern over the downside of publicizing an ESG strategy remains high, in the eyes of 63% of respondents.

With increased regulation scrutiny and the rise of greenwashing litigation, do you view touting a public ESG strategy as a risk?



"A public ESG strategy is a risk because of increased scrutiny by consumers, investors, and regulators, and like most risks, you need to have a plan to manage it. Make sure it is included in your enterprise risk assessment activities and those exposures should be regularly measured and mitigated. I expect more coordination and more rigorous review by the legal function of the company's statements and claims in order to manage the risk exposures of having a public position on ESG."

Nie, of Aura, notes the need to prepare in the face of the challenge.

Conclusion

In one of the nation's more recent ESG regulatory developments, the U.S. Securities and Exchange Commission (SEC) in April 2024 voluntarily stayed its adopted rules.

At issue is the Enhancement and Standardization of Climate-Related Disclosures for Investors. Delay will impact compliance timelines, but the status of the SEC Rules does not significantly impact the state of ESG today. Many companies, regardless of their size, still need to gather data and disclose climate-related risks due to other prevailing laws and directives, such as California's SB 261 and 253, and the EU's Corporate Sustainability Reporting Directive.

It is likely that while the SEC Rules remain stayed, many U.S. companies will rely on the International Sustainability Standards Board's (ISSB) S1 and S2 standards for their climate-related disclosure needs as regulators worldwide continue to integrate the standards into their regulatory frameworks.

ESG continues to be a relevant topic for in-house counsel, compliance officers, and others who shape organization policy. Some are looking for clarity on how to proceed, while some are concerned about what they perceive as a tidal wave of new rules and legislation and potential litigation.

To that end, many organizations are cautiously re-evaluating their strategies, emphasizing financial materiality, treading, and sometimes scaling back or delaying their ESG initiatives to avoid possible legal pitfalls and financial risks.

So some organizations are at a crossroads on how to pursue ESG initiatives. Survey respondents report a significant drop in confidence that their organization has a comprehensive ESG program in place. This is no surprise as regulations and the anti-ESG backlash caused companies to think deeply about their ESG program credibility.

In addition to keeping an eye on risks posed by external developments, in-house counsel continue to spend a great deal of time focusing inward on how to advance buy-in of something as broad in scope as ESG.

"How do you present that to managers in a way that understands what's important? What do they need to communicate?" asks London-based Mark Maurice-Jones, general counsel and compliance officer for Nestlé UK and Ireland.

Meanwhile, the push for credible data and outside corroboration/substantiation will remain, notes Ling-Ling Nie, deputy general counsel, chief compliance officer, chief ESG officer, and head of government affairs at Aura, a family online safety startup headquartered in Boston. "I think there will be a greater demand for third-party verification services to evaluate a company's ESG goals, achievements, and disclosures and also a demand that they provide transparency into their vetting process and expertise that is easily consumable by non-ESG professionals," she said.

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