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Executive Summary

This report is the third in a series of Industry Data Reports, which leverages CUBE's proprietary inventory of standardised regulatory data to draw meaningful insights from global regulatory activity. The data explores 52,920 data points relating to the topic of ESG from global regulators and issuing bodies over the last five years.

Environmental, Social and Governance (ESG) is a hotly debated topic. The environmental aspect has been significant in the past few years with climate change being at its peak and societies being affected by the detrimental effects of global warming. Fast forward a few years and the three pillars of ESG have been further defined:

- **Environmental** covers the conservation of natural wildlife and ecosystems. Companies are responsible for their impact on the planet, from carbon emissions to pollution, energy efficiency, and waste management.
- **Social** is the effect on people and society. Customer protection, data privacy, treatment of employees and staff, and human rights all go under this category.
- **Governance** involves how a business is managed. How does the board conduct its operations? Are there auditing procedures and protections against bribery and corruption? How does the organisation participate in political initiatives?

ESG supports the fight against climate change, upholds standards for a better society and high governance standards for financial institutions. The regulations concerning ESG build a more transparent and accountable industry. New terms such as ‘sustainability’ and ‘greenwashing’ in regulatory content emphasise regulators’ attempts in accentuating ESG policies.

ESG

Of the 52,920 ESG-related issuances included in this study, ‘Environmental, Social and Governance’ or ‘ESG’ was mentioned 22,495 times across global regulatory content. This accounts for 43% of all analysed data. ‘Sustainability’ was referenced 15,995 times across regulatory content which accounts for 30% of all issuances. Of those 52,920 issuances, 30,224 (57%) were referenced by European issuing bodies, who are at the forefront of ESG regulatory messaging.

Key insights

- ESG regulations vary globally because nations have differing interpretations and agendas.
- When comparing regulatory announcements by country, how developed a nation is, does not always translate to proactive ESG regulatory behaviour. For example, Indonesia references ‘ESG’ 615 times in regulatory content such as news, announcements, and consultations, which is far more than the UK (318), Japan (257), and Austria (125). Whilst Indonesia is less developed, the high number of references could be due to it being one of the world’s largest carbon emitters. Given its substantial contribution to the problem, Indonesia would perceive ESG as an issue that requires urgent attention.
- New ESG-related terms such as ‘diversity and inclusion,’ ‘greenwashing,’ and ‘sustainability’ have made their way onto the regulatory agenda as the parameters of ESG become more defined.

Sustainability

- Sustainability is a hotly debated topic. The references to ‘sustainability’ in regulatory content have drastically increased from 2021 to 2022. Europe alone has published 11,446 issuances referencing ‘sustainability,’ however, only 724 of these are in-force regulations.
- In terms of specific issuing bodies, the European Commission mentioned ‘sustainability’ in regulatory content such as news, announcements, and publications 5,374 times. Whereas the US Government takes the lead in regard to in-force regulations and references ‘sustainability’ 288 times.
- Are regulators practising what they preach? The US appears to be the only nation with current enforcement actions against firms that report misleading ESG attainment.
Executive summary

RegSections and RegInsights: in-force regulation vs horizon scanning

CUBE adopts an inclusive approach to monitoring and collecting global regulatory issuances and extracts them directly from the source. This includes everything from proposed legislation through to final and enacted regulation, and everything in between, including blogs, speeches, notices, and consultation papers. All content that is pertinent to financial regulation is identified and categorised by issuing body, issuance type and so on.

In-force regulation, legislation and laws are grouped and tagged as ‘RegBooks.’ Issuances that are not in force, blogs, news, and speeches, for example, are tagged as ‘RegInsights.’ By comparing the two, we can build a clearer picture of the issuing bodies that are regulating, and those that are simply discussing climate-related topics or are doing both.

Where possible, CUBE will cite the most specific issuing body, for example, US Congress or a specific Government department. Where this is not possible, the report will refer to the umbrella term US Government, which can include federal agencies, boards, and commissions. CUBE’s data finds that the US Congress and US Government have published different regulatory content and are not duplicative, as such they are treated as separate entities.

Benefits of using CUBE’s data

CUBE has access to regulations from all around the globe. We’ve accumulated the world’s largest and most comprehensive regulatory inventory from over 5,000 issuing bodies, across 180 countries which cover 712 jurisdictions. Using Artificial Intelligence and Machine Learning, we provide unrivalled depth and breadth of regulatory intelligence, tried, and tested by the biggest banks in the world. Using horizon scanning, we know which regulations are emerging and which issuing body is enacting the most regulatory obligations.

By comparing RegInsights and RegSections, CUBE can assess which issuing bodies are just engaging in regulatory discussion and which ones are taking action.

Key terms

| RegBook® | in-force regulation, rules, legislation etc. |
| RegInsight® | regulatory content which is not in force e.g blogs, speeches, consultations |
| Issuing body | a regulator, government or other organisation that publishes content for the consideration of financial institutions |
| Issuance | published content by issuing bodies - both RegBooks and RegInsights that concerns the operation of financial institutions |
| Issuance type | the category of issuance published by the issuing body. Issuance types include blogs, speeches, consultations, regulations, legislation etc. |
Key Findings

References to ‘ESG’ dominate regulatory issuances

- 43% of all collected issuances made direct reference to ‘ESG’
- References to ‘greenwashing’ featured least frequently, amounting to 113 times
- References to ‘ESG’ amounted to 22,495 regulatory issuances

The EU is leading the way in the Environmental, Social and Governance regulatory movement with the most ESG-related issuances

- The EU are responsible for 57% (30,224) of all ESG-related issuances made globally in the last five years
- North America accounts for 19% (10,297)
- South America accounts for 3% (1,518)
- Asia accounts for 12% (6,493)
- Oceania accounts for 7% (3,883)
- Africa accounts for 1% (512)
The most active issuing bodies for ESG regulations

- **The US Congress:** 7% (726) of ESG-related in-force regulations
- **US Government:** 5% (507) of ESG-related in-force regulations
- **UK Government:** 5% (498) of ESG-related in-force regulations
- **Delaware Government:** 2% (234) of ESG-related in-force regulations
- **German Government:** 2% (250) of ESG-related in-force regulations

ESG-related regulation on the horizon

Out of 32,007 ESG-related insights, 1,932 were ‘Bills’ and 10,466 were ‘News’
Foreword

Over the past year, CUBE’s data has shown that ESG is a top priority for many governments and regulators. As such, we are delighted to present this report, the second in our data-driven series relating to ESG, which examines an area that continues to be an increasingly hot topic on the regulatory agenda. This report leverages data and analysis gathered using CUBE’s proprietary technology and AI, analysing regulatory content from across the globe.

The 2008 global financial crisis left the world with shrinking economies, increasing unemployment rates and many lost their homes. It was a time of economic turmoil due to a lack of controls, scrutiny, and accountability, reflecting failings in the global regulatory framework. Everything had to change, and it did. The industry was hit with immense volumes of regulations and a relentless pace of regulatory developments. This volume and velocity of regulatory change in financial conduct have put a spotlight on emerging themes and we are seeing ESG as one of those that will continue to be scrutinised for some time.

CUBE’s previous report on ‘Climate Change Risk,’ published a year ago, established that ESG regulations were merely beginning to fall under the global regulatory radar. A slowdown could have been expected in ESG regulatory developments because of broader global issues such as Russia’s invasion of Ukraine, oil prices soaring, inflation and the increased cost of living impacting economies across the globe.

However, this report proves that ESG remains very much a critical objective for governments and regulators, with an increased number of regulations around ESG, sustainability, diversity and inclusion, and greenwashing. The rise in ESG-related regulatory content is driven by the fact that climate change is a very real challenge shared across every corner of the globe, with 2022 being the hottest year on record. The ESG agenda is not just driven by climate change risk but also by placing greater focus on products and services that support social equality, sustainability, and longevity, which can derive more investor value in the long run.

ESG regulation aims to promote sustainability in financial services globally by encouraging firms to prioritise ESG considerations in their ethos and policies, drive investment towards sustainable companies and ensure that firms consider the long-term impact of their investments on society and the environment. ESG helps stakeholders and investors alike to understand how a firm manages its environmental, social and governance risks. These three central factors are now used to evaluate corporations and help determine their future financial performance.

Regulatory enforcement activity is also set to continue through better supervision of greenwashing and other false claims. Issuing bodies require firms to be more transparent and accountable for their ESG impact, empowering investors to make informed decisions. This awareness and regulatory environment mean investors are seeking a much more sustainable approach when choosing their stocks and which firms to support, providing a further shift towards greater transparency, sustainability, and environmental and social responsibility.

At CUBE, we are dedicated to building and maintaining the world’s largest repository of regulatory data, a golden source of topics such as climate change, crypto and cyber. We hope this report provides valuable insights into the world of ESG regulation. We welcome your feedback and comments.

Ben Richmond
CEO and Founder, CUBE
Climate change poses a significant economic risk. It presents a risk to physical assets such as property and reduces the value of investor profiles for fossil fuels. It also causes supply chain disruptions, increases food prices through reduced agricultural productivity and increases financial market volatility.

Historically, much of the attention on ESG was steered towards the ‘Environment’ aspect of ESG.

Global regulators have since advanced to defining the intricacies associated with ‘S’ – Social and ‘G’ – Governance, which aim to address issues of diversity and inclusion, transparency, and accountability to mitigate the financial risks associated with climate change and promote social responsibility.

ESG has created new investment opportunities, altered the expectations of stakeholders, investors and employees and motivated firms to develop sustainability strategies. As investor attitudes shift from solely prioritising returns to considering a company’s ESG footprint, the financial services industry undergoes a transformation.

In total, ESG has been referenced 22,495 times across regulatory content from 2018-2022, this includes in-force regulations, blogs, speeches, and consultations.
As displayed below, ESG regulatory content consists of concepts such as diversity and inclusion, sustainability, and new concepts such as greenwashing. Usage of these terms will increase.

Figure. 1 Cumulative total of ESG-related references by continent over the last five years

The first chapter will analyse Figure 1 which examines the cumulative total number of all financial regulatory issuances published by all issuing bodies, broken down by topic and concept. This includes news, announcements, publications, and in-force regulations. ‘ESG’ accounts for 43% of all entries (22,495) and ‘sustainability’ accounts for 30% (15,995) of all entries. For Europe (EU), ‘ESG’ and ‘sustainability’ are the most frequently referenced topics.
ESG regulations across the globe

The EU is at the forefront of all issued ESG regulatory content, making 11,446 references to ‘ESG,’ 11,329 to ‘sustainability,’ and 6,702 to ‘climate change risk.’ This is followed by North America, which makes 4,101 references to ‘ESG,’ 3,379 to ‘climate change risk’ and 2,444 to ‘sustainability.’ In total, the EU accounts for 51% of all references to ‘ESG’ in regulatory content.

In a previous CUBE report on ESG, published a year ago, the EU was also leading the way for climate-related issuances. It was responsible for 47% of all climate-related issuances made globally to date, compared to North America which accounted for 23% of climate-related issuances. Once again, North America continues to lag behind and only accounts for 18% of references to ‘ESG’ in regulatory content. This pattern of behaviour indicates that ESG is not as prominent for this continent compared to the EU.

Following the EU and North America, Asia (4,362), Oceania (1,720), South America (656) and Africa (210) trail the pack. Asia has made 261 more references to ‘ESG’ than North America – this indicates that Asia has ramped up its ESG regulation in the past year. The difference between Europe and Africa’s number of references to ‘ESG’ could be due to socioeconomic disparities which CUBE will delve into further in chapter 7.

Oceania’s relatively low number of references to ‘ESG,’ ‘sustainability,’ and ‘climate change risk,’ likely reflects the continent’s overall lower production of regulatory content compared to North America and the EU. Both New Zealand and Australia conventionally follow in the regulatory footsteps of North America and Europe – this has been palpable in all ESG-related regulations. Notably, Oceania has made 1,729 references to ‘diversity and inclusion,’ surpassing all other continents and accounting for 65% of all references to ‘diversity and inclusion.’

The question of ESG regulatory development in countries beyond Europe should prompt the questions of both quality and interoperability. It is not just a quantitative application of regulation that defines championing the cause, but most importantly, it is a qualitative consideration of which regulation would be more effective in the country of application. It is most encouraging to see Europe championing the cause and there is a lot to learn from a work that spans many years. Equally, we have to consider the advantage of being a follower, as opposed to an incumbent, as far as implementing ESG, sustainability and climate action. This translates into taking a pragmatic approach to ESG regulation that facilitates endorsement by corporate, financial institutions, and ecosystem players in general. Undoubtedly, facilitating interoperability among regulatory bodies and jurisdictions would incentivize alignment and speed up the adoption of best practices.
Figure 2 shows the volume of references to ‘ESG’ within all regulatory content in comparison to other key ESG-related concepts. It demonstrates that ‘ESG’ is the most frequently referenced concept within all regulatory content and solidifies the connection between ESG, sustainability, climate change risk or climate risk and diversity and inclusion.

The sheer volume of ESG regulations and rules is an indication of global regulatory efforts towards creating a financially responsible industry that considers its ESG impact.
Which regulatory bodies use ‘ESG’ the most?

Stock exchanges are the issuing body type that makes the most frequent references to ‘ESG’ in regulatory content. The top issuing bodies that use ‘ESG’ include:

- New Zealand’s Exchange (NZX) 766 times
- Indonesia Stock Exchange 613 times
- Stock Exchange of Hong Kong Limited (SEHK) 473 times
- Ministry of Labour and Social Affairs (Czech Republic) 395 times
- Department of Banking (Connecticut, United States) 379 times

This is likely because ESG investing is becoming increasingly popular, and exchanges are responsible for listing rules. The high number of references from exchanges aligns with the global regulatory efforts towards an ESG-friendly industry.

What do current ESG regulations mean for investments?

Current approaches to ESG regulation are typically focussed on investments, not investors. It is good that regulations require investor preferences to be taken into account, but because the regulation errs towards detailed and technical, it frequently requires investors to express preferences for things, they for the most part, couldn’t possibly have preferences for. Much regulation has been developed without an understanding of what preferences investors actually have, or could reasonably express, and without a behavioural understanding of what truly matters to investors, and is instead built around investments, not investors. This raises several problems, such as regulation being so complicated to enact that meeting the letter of the law often means failing to meet the spirit of the law. Spuriously complicated preference measurement means not only that investors’ real preferences are not being measured, but that the processes that are introduced are largely ineffective box-ticking exercises.
Global approaches to ESG-related issuances

Figure 1 above represents a broad-brush approach to ESG concepts. To provide a clearer picture, Figure 3 breaks down the concepts by continent. This offers a clearer picture of global issuances and accentuates the more significant regulatory topics.

Figure. 3 Cumulative total of in-force regulations referencing ESG concepts broken down by continent

- **Europe**
  - ESG or Environmental, Social and Governance: 6088
  - Sustainability: 724
  - Climate change risk or climate risk: 406
  - Diversity and Inclusion: 95
  - SFDR or Sustainable Financial Disclosure Regulation: 7
  - Greenwashing: 2

- **North America**
  - ESG or Environmental, Social and Governance: 983
  - Sustainability: 854
  - Climate change risk or climate risk: 493
  - Diversity and Inclusion: 1
  - SFDR or Sustainable Financial Disclosure Regulation: 1
  - Greenwashing: 0

- **Asia**
  - ESG or Environmental, Social and Governance: 218
  - Sustainability: 51
  - Climate change risk or climate risk: 49
  - Diversity and Inclusion: 1
  - SFDR or Sustainable Financial Disclosure Regulation: 0
  - Greenwashing: 0

- **South America**
  - ESG or Environmental, Social and Governance: 196
  - Sustainability: 47
  - Climate change risk or climate risk: 25
  - Diversity and Inclusion: 0
  - SFDR or Sustainable Financial Disclosure Regulation: 0
  - Greenwashing: 0

- **Oceania**
  - ESG or Environmental, Social and Governance: 95
  - Sustainability: 12
  - Climate change risk or climate risk: 16
  - Diversity and Inclusion: 0
  - SFDR or Sustainable Financial Disclosure Regulation: 0
  - Greenwashing: 0

- **Africa**
  - ESG or Environmental, Social and Governance: 16
  - Sustainability: 0
  - Climate change risk or climate risk: 0
  - Diversity and Inclusion: 20
  - SFDR or Sustainable Financial Disclosure Regulation: 0
  - Greenwashing: 0
Europe has published more in-force regulations referencing ESG-related concepts compared to the other continents, with 6,088 rules referencing the keyword ‘ESG.’ North America has published 983 in-force regulations referencing ‘ESG.’ Asia has published 218 rules referencing ‘ESG,’ and South America has published 196. Notably, the region of Oceania has the lowest number of regulations currently in effect referencing ‘ESG.’

As ‘greenwashing’ is a relatively new concept, there are very few regulations. The progress of sustainability regulations is evident in the EU with 1,713 references, 983 references from North America, 51 from Asia, 47 from South America, 12 from Oceania and 16 from Africa.

It is worth mentioning that the introduction and implementation of regulations can be a long process and in less developed nations, lack of resources may be a factor for the lower numbers of ESG-related regulations, which could explain Africa’s figures.

“Progress on ESG-related regulation to date is most advanced in regions and countries where a combination of political will, the rule of law and sophisticated financial markets are present. In Europe, ESG-related legislation at the member state level has been present for a few years with France’s Energy Transition Law (2015). EU-wide initiatives have included the European Green Deal and the EU Commission’s Action Plan on Financing Sustainable Growth and Sustainable Financial Disclosure Regulation (SFDR) which came into effect on 10 March 2021. Considerably more regulations, relevant to both companies and financial institutions will follow.

The US Securities & Exchange Commission (SEC) is, by comparison, playing ‘catch up’ in the wake of the Trump Administration’s lack of engagement with the climate change and sustainability agenda. In Australia, ESG and sustainability strategy only received lip service under its prior Liberal government. The election of Anthony Albanese’s Labour leadership in May 2022 is seeing a rapid escalation of climate and ESG on the political and regulatory agenda. Although a ‘western’ country and economy in outlook and market exposure, Australia also lags behind Europe and the US in its implementation of corporate compliance and financial services regulation as highlighted by the February 2019 findings of its national Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.”

Michelle Witton
Senior Compliance and ESG Lawyer, MW Ethics & Compliance
Global ESG harmony: is there such a thing?

Collaboration from governments and regulators worldwide is essential to agree on the definitions and implications attached to each pillar of ESG within financial services.

Regulations such as the Sustainable Finance Disclosure Regulation (SFDR) have proved to be challenging for firms, due to a lack of shared understanding, they have found it difficult to fully grasp and implement the regulation. As the SFDR does not apply to countries outside of the EU, it is not mentioned in other continents’ regulatory content.

The challenges of implementing a consistent ESG approach are similar to the ones faced by regulators looking to implement a unified crypto assets regime. In both instances, a cohesive global approach would avoid confusion and inconsistencies. Both ESG and crypto are not localised and require jurisdictions to join forces to adequately address the risks and better understand their obligations.

Let’s delve into the most prominent regulations worldwide to gain an understanding of how fragmented ESG regulation is.

North America

In the United States, there are currently no mandatory ESG disclosures at a federal level, but the SEC does require public companies to disclose information on ESG-related risks and diversity and has proposed a ‘Fund Names’ rule that would require funds with ESG terminology to invest 80% of their assets in holdings that reflect that language.

The SEC also proposed new rules including mandating climate-related disclosures in annual reports and registration statements – the reporting of climate-related risks and carbon emissions. In January 2022, Canada released its ESG-related Investment Fund Disclosure to deliver guidance on ESG risk disclosures for investment funds. The guidance addresses the increased potential for “greenwashing,” and aims to ensure communications about ESG funds are accurate and not misleading for investors.

The Canadian Securities Administrators (CSA) Chair and President and CEO of the Autorité des Marchés Financiers, Louis Morisset, said, “interest in ESG investing is on the rise and this enhanced and practical guidance will play an important role in helping investors make informed decisions about ESG products, as well as preventing potential greenwashing.”
Europe

The EU has played a significant role in ESG regulations with the introduction of the SFDR. This regulation mandate that insurance firms, asset managers and pension funds disclose how they are incorporating ESG risks into their investment decisions, as well as revealing the negative impacts of investments on sustainability factors such as carbon emissions and board diversity.

The EU Taxonomy which was enforced in July 2020, "is a classification system, establishing a list of environmentally sustainable economic activities" to assist in promoting sustainable investments, safeguarding investors from greenwashing, and encouraging firms to adopt climate-friendly practices.

Some forward-thinking countries have already established their own preliminary taxonomies for ESG. For example, the Netherlands has had green lending definitions since 1995. In the UK, the government has announced the implementation of a ‘Green Taxonomy’ for financial services, which will likely align with the EU version. Additionally, the UK has introduced various ESG-positive rules such as disclosure regulations and amendments to Listing Rules to encourage board diversity.

Asia

Japan launched its Green Bond Guidelines in 2017. It also revised its Corporate Governance Code in April 2021 to ensure good governance practices. Likewise, other countries such as Kazakhstan and Indonesia have begun developing their own taxonomies to ensure accountability in financial services.


South America

There have been developments in Chile and Brazil. In November 2021, Chile brought out its Sustainability and Corporate Governance Requirements in Annual Reports which mandates firms to disclose ESG goals and progress towards them. Brazil has introduced its Management and Disclosure of Social, Environmental and Climate Risks to help firms improve their ESG risk management frameworks, looking at general requirements related to ESG risks.

Oceania

Australia has also taken action by publishing guidelines to promote diversity, proxy voting and superannuation. New Zealand has enacted regulations that require climate-related disclosures by publicly listed firms, insurers, banks, non-bank deposit takers and investment managers.

Africa

Egypt published its Mandatory ESG and Climate Disclosure Regulation in July 2021, mandating companies listed on the Egyptian Stock Exchange to submit ESG disclosure reports. South Africa also published Sustainability and Climate Disclosure Guidance in June 2022.
Are there global approaches to ESG regulation?

There has been an attempt towards a global approach with the creation of the Task Force on Climate-Related Financial Disclosures (TFCD). The Task Force consists of global businesses across the G20 as well as senior executives from PwC, HSBC, and Deloitte amongst others. The Financial Stability Board (FSB) established the TCFD to improve and increase the reporting of climate-related financial information and provide recommendations on the types of ESG information firms should disclose to advise investors.

The similarly-named Taskforce on Nature-related Financial Disclosures, published in November 2022, is another example of global collaboration in managing ESG risks and advises on how to integrate nature into decision-making at the top. This forum is “a global gathering of 700 institutions from across sectors” coming together to learn about nature-related risk management, disclosure trends and developments including pension funds.

Nevertheless, as the diverse regulations above demonstrate, the regulatory landscape is fragmented. Regulations for different countries vary, with a plethora of reporting standards and compliance obligations that organisations must comply with.

Prudential supervisors are broadly convergent in terms of the themes they are focussed on and the measures they expect firms to adopt when managing ESG-related risks. Likewise, conduct regulators such as the SEC, ESMA and the FCA, are also exhibiting convergence in their enforcement priorities and focus on greenwashing. However, the broader ESG regulatory landscape remains largely fragmented.

The EU is still the most advanced region in terms of enacting conduct-based ESG legislation as it continues to churn out impactful developments with prodigious frequency. In the US, by contrast, ESG remains a divisive issue with the SEC’s proposed Financial Product and Corporate Disclosure rules poised to trigger intense political battles later in the year. Meanwhile, in the UK, the influence of, and search for Brexit’s ‘competitive opportunities’ has led to a rather confused picture with a muddled set of corporate reporting rules accompanied by a mass of ambitious but largely half-formed product and conduct-based proposals.

A mixed picture also characterises developments across the rest of the world, where divergent sets of risk and reporting requirements continue to emerge and develop, particularly from Asia-Pacific nations such as Japan, Singapore, and China, for instance, but equally from less developed jurisdictions facing the brunt of climate change, such as Pakistan.

In short, the global ESG regulatory landscape remains ‘patchy’ and ‘evolving’ but there are some signs of convergence, albeit modest, starting to emerge in some areas.
Building a sustainable future with ESG regulation

’Sustainability’ refers to the ability of a system, such as an environment or an economy, to continue over a long period of time whilst maintaining the ability to support functioning without depleting or degrading essential resources. Good sustainability balances present needs with the needs of future generations, considering the impact of our actions on the environment and society.

Figure 4 shows that ‘sustainability’ is the most frequently mentioned concept among regulatory bodies in news, publications, and announcements. The European Commission alone has referred to ‘sustainability’ a total of 5,374 times, this includes key regulations such as Corporate Sustainability Reporting and the Common Agricultural Policy (CAP) and Social Responsibility. Many of the other regulatory bodies that have published sustainability-related regulatory content are based in Europe. This supports earlier findings that Europe is at the forefront of sustainability regulations.
Figure 5 Cumulative total of concept references in RegSections broken down by issuing body

Figure 5 refers to in-force regulations and rules. It demonstrates that the US Government has published the most rules that reference ‘sustainability’ in regulations. The US Congress, US Government and Delaware Government combined have made the most notable references to ‘sustainability’ in their legislature, with a total of 651 references. This suggests that the US has been actively developing sustainability regulations and is committed to being sustainable for long-term growth.
As illustrated below, the prevalence of the term ‘sustainability’ across regulatory content has increased from 2021 to 2022. This could be fuelled by several factors such as the November 2022 UN Climate Change Conference (COP27), growing concern over climate change risk and increasing pressure for nations to reach their net-zero emission goals. Additionally, societal shifts towards sustainability could have played a role.

Figure 6 The total number of references to ‘sustainability’ over three years
The Evolution of ESG Regulation

Our analysis of regulatory data indicates the EU is at the forefront of ESG and has integrated the most climate change considerations into their financial services sector. Whilst North America currently lags behind the EU, it is actively taking steps to bridge the gap, which we will delve into below. Meanwhile, Asia, Oceania and Africa are yet to make significant strides towards the implementation of comprehensive ESG regulations.

Figure 7 is a visual representation of the regulatory authorities that have issued the most regulations within the financial services sector, referencing key ESG concepts. The size of the circles corresponds to the number of ESG-related regulations issued by each regulatory body.

The visual representation demonstrates that Europe is ahead of other regions in terms of ESG regulations, with the UK’s Financial Conduct Authority (FCA) occupying the top spot.
Figure 8 illustrates the FCA has issued a significant number of ESG-related regulations, with a total of 3,992 over a five-year period.

The graph indicates that the US has issued a greater number of regulations incorporating ESG concepts than other European issuing bodies. Furthermore, the combined US total surpasses that of the European Commission and the German Government. This is noteworthy as it indicates that the US is making considerable strides in ESG financial regulation.

The FCA’s leadership across 2020-2022 can be attributable to the re-orientation of the UK and London, in particular, as a financial services hub in the wake of Brexit, and the necessity to introduce new, more stringent regulation as the UK exited the EU and closed its doors (perceived or actual) to illicit funds.

Michelle Witton
Senior Compliance and ESG Lawyer, MW Ethics & Compliance
As depicted in Figure 9, regulatory activity related to ESG began to increase in 2020 and continued to grow in the following two years. Notably, 2021 saw the highest number of ESG regulations published by regulators.

The slowdown in regulatory activity in 2022 is attributable to various factors such as the aftermath of Brexit, the ongoing effects of the Covid-19 pandemic, disruptions to Chinese supply chains, the ongoing economic recession, rising prices, and the cost-of-living crisis. These global economic challenges likely resulted in ESG regulations falling off the priority list for many regulators.
Figure 10 Comparison of ESG-related RegInsights and RegBooks published by top-performing issuing bodies

Figure 10 shows a significant amount of blue, indicating that ESG is a widely discussed topic. However, only a limited number of issuing bodies have implemented actual regulations. This demonstrates that there is more ESG talk than action.
In simplistic terms, RegInsights means ‘talk’ and RegSection means ‘action.’ Here again, we see the strong regulatory work of the UK’s FCA and the European Commission. However, let’s not mistake action for impact or scope.

A particular aspect to consider regarding the European Commission is its unique process. An initial proposal for an EU Directive is the subject of Commission discussion over a protracted period (the ‘talk’ phase). This may eventuate in the Commission issuing an EU Directive to its member states. Member states are then provided at least a year to implement the EU Directive into national legislation (the ‘action’ phase). Once an EU Directive is issued it is then, given time, implemented across twenty-seven EU countries - impacting the economic and institutional growth and development of all.

Michelle Witton
Senior Compliance and ESG Lawyer, MW Ethics & Compliance
Are regulators practising what they preach?

To determine the level of commitment of global regulators towards ESG regulations, the data can be explored at a deeper level within RegInsights and RegSections across continents. This will reveal which regions are actively pursuing ESG in both speeches and in-force rules.

Figure 11 Cumulative total of RegInsights split by regions

Figure 11 conveys Europe produced 6,346 news articles, 4,149 press releases, 2,672 laws, 2,242 publications, 1,279 speeches and 883 reports. The EU is clearly taking the lead when it comes to regulatory content that is not yet in effect.
Figure 12 below reinforces the EU’s position regarding the output of regulatory content for ESG. Out of the 4,866 rulebooks and 3,422 legislations, the EU is responsible for 75%, demonstrating that it is practising what it preaches as a continent. North America is also making developments in ESG in both RegInsights and RegSections.

Figure. 12 Cumulative total of in-force regulations split by regions

A large portion of ESG regulatory content (RegInsights and RegSections combined) is published in the EU and North America. While it’s encouraging to see advancements in the ESG movement, it’s important to assess whether both continents are following through on their regulatory commitments.
EU
When asked about their approach to greenwashing, the UK’s FCA has promised that if they “see egregious bad behaviour then we would consider enforcement action,” as they vow to protect consumers and improve trust in sustainable investment products. However, there have been no recorded ESG-related enforcement actions to date.

There is a lot of talk in the EU around ESG regulation but there have been few examples of ESG enforcement. This suggests that regulators are merely offering empty words of support for ESG policies, without making any significant efforts to implement them.

US
The US Securities and Exchange Commission launched the Climate and ESG Task Force within the Division of Enforcement to combat ESG-related misconduct. Already, there are several enforcement actions against established firms for failing to follow their ESG investment policies, misstatements of ESG considerations and misleading investors. It is intriguing that despite the EU publishing the most regulatory content, the US seems to be following up its regulations with action - there may be less regulatory chatter in North America compared to Europe, but there is more enforcement action in North America.
The complexity of ESG claims: greenwashing

“Greenwashing is the process of conveying a false impression or misleading information about how a company’s products are environmentally sound.” – Investopedia

An example of this might be a firm making unsubstantiated claims such as it being environmentally friendly and emphasising its positive environmental impact.

As shown in Figure 13 below, the use of the term “greenwashing” in regulatory content has increased since 2021. This trend is likely a result of increased global focus on climate change and financial services firms’ efforts in addressing environmental risks within ESG strategies.

Figure 13 Cumulative total times the term ‘greenwashing’ has been used in RegInsights

The term ‘greenwashing’ is commonly used in regulatory content by Switzerland, New Zealand, the United Kingdom, Canada, and Australia. ‘Greenwashing’ is most frequently cited in regulatory content in Switzerland with 23 instances, and least widely used in the United States, with only two instances of usage in regulatory content.
There may be a correlation between a country’s carbon emissions and its use of the term ‘greenwashing.’ The larger the emissions, the more likely a country would be tempted to conceal its ESG progress as greenwashing forces countries to be held accountable for their ESG footprint.

For example, Switzerland, known for its environmentally friendly attitudes, low pollution levels and generally being one of the cleanest places to live, emits 37 million tons of carbon dioxide, according to My Climate. Whereas Climate Trade reports that the US emits a much larger amount at 5,416 million tons and references the term ‘greenwashing’ the least.

But how often are firms greenwashing and hiding behind false environmental claims? And are regulators practising what they preach through greenwashing enforcement actions?

Recent research from the likes of the IMF and the HKMA (Hong Kong Monetary Authority) has found the extent of greenwashing in the financial services sector to be significant. This is also reflected in announcements from regulators such as the FCA and ESMA (European Securities and Markets Authority) who have put combatting greenwashing at the top of their enforcement agendas for 2023 and beyond. Despite this, the term has yet to be enshrined in law as evidenced by proposals to adopt formal definitions by both regulators and others such as the Swiss Federal Council.

By contrast, the term greenwashing is much less prevalent in regulatory announcements in the US, even though this is the only jurisdiction where enforcement action against greenwashing in the financial services sector has arisen to date, with several notable cases announced by the SEC in mid and late 2022.

This rather muddy and muddled picture is ripe for reform and one can expect this fast-developing, high-profile area to remain a key issue in the financial regulatory arena over the coming years and more, with the market on high alert for imminent announcements from regulators of yardstick fines for greenwashing.

Barrie Ingman
Financial Regulatory Lawyer with 20 years of experience
The financial services industry is embracing sustainability through ESG regulation to promote environmentally friendly, ethical, transparent, and accountable business practices. Adopting these values not only benefits the planet but also has long-term positive effects for firms through customer loyalty and investor confidence in products or services.

Many investors are seeking to achieve the most returns over a period of time whilst concurrently promoting sustainability. To encourage fairness and transparency within the financial services sector, regulators must act against firms engaging in greenwashing. This will serve as a deterrent to companies that falsely present themselves as sustainable and will pave the way for a fairer and more transparent financial services industry.

When discussing greenwashing, the act of investing is generally talked about rather than the investors. How do investors feel in this age of ESG investing?

“If regulations are divorced from the reality of investor preferences, or the reality of an evolving and complex field, then firms will tick the boxes they’re forced to tick, leading to the dangers of greenwashing. The vast majority of investors want to feel that their investments are not harmful, but also are unwilling to spend a lot of time and energy digging under the surface of what is presented to them. On the one hand, this means getting ESG measurement exactly right before investors will engage is much less important than the industry seems to think. Most investors don’t care about the detail as long as they think they can trust the green labels on products. This is encouraging as we can engage investors without having to have perfect ESG measurement systems. The flip side, however, of investors not looking under the bonnet, is that greenwashing becomes easier – investors want to believe their funds are green and thus firms can frequently get away with putting a lick of light green paint on investments without doing very much different from what they were doing anyway.”

Greg Davies
Head of Behavioural Finance, Oxford Risk
Despite being hardly referenced in regulatory content compared to terms like ‘ESG,’ ‘climate change risk,’ and ‘sustainability,’ ‘greenwashing’ is a growing concern for regulators. Figure 13 and 14 indicate that nations are actively taking steps to address the issue and have begun to incorporate it within their regulatory agendas.

The Commerce Commission, a New Zealand government agency, references ‘greenwashing’ a total of 19 times. Switzerland’s Swiss Financial Market Supervisory Authority (FINMA) references ‘greenwashing’ 16 times in regulatory content.

New Zealand’s result may be surprising as previous data illustrates that Oceania lags behind on ESG regulatory developments, even though Australia and New Zealand are recognised to be environmentally aware. The ranking of the Swiss regulatory body in second place aligns with the country’s overall high frequency of the term ‘greenwashing’ in regulatory content, more so than any other nation. Once again, US regulatory bodies have not been mentioned in Figure 15, despite the high prevalence of enforcement actions in this area. This supports the earlier hypothesis of there being a low number of references to ‘greenwashing’ in US regulatory content.

Greenwashing may be a new ESG concept, but it will be a popular term as more firms are penalised for making unsubstantiated claims.

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**Figure 14 Cumulative total times ‘greenwashing’ was referenced by issuing bodies in RegInsights**

<table>
<thead>
<tr>
<th>Regulatory Body</th>
<th>Number of Times</th>
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</thead>
<tbody>
<tr>
<td>Commerce Commission</td>
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<tr>
<td>Swiss Financial Market Supervisory Authority (FINMA)</td>
<td>🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢🟢 16</td>
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<tr>
<td>European Securities and Markets Authority (ESMA)</td>
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</tr>
<tr>
<td>Bloomberg Trading Facility (BMTF)</td>
<td>🟢🟢🟢🟢🟢🟢🟢 6</td>
</tr>
<tr>
<td>European Commission</td>
<td>🟢🟢🟢🟢🟢🟢🟢 6</td>
</tr>
<tr>
<td>HM Treasury</td>
<td>🟢🟢🟢🟢🟢🟢 5</td>
</tr>
<tr>
<td>Borsa Italiana SpA</td>
<td>🟢🟢🟢🟢🟢 4</td>
</tr>
<tr>
<td>Asset Management Association Switzerland</td>
<td>🟢🟢🟢🟢🟢 4</td>
</tr>
<tr>
<td>Switzerland Government</td>
<td>🟢🟢🟢🟢 3</td>
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<td>Sweden Government</td>
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The correlation between economic growth and ESG regulation

Recent climate-related events, workplace discrimination, lack of equality and the impact of the pandemic have led nations to approach ESG issues in a more structured manner. The economic prosperity of a country is tied to the development and promotion of greener products and services, for example, electric cars, solar panels and so forth. As society places more importance on sustainability, it becomes important for countries to demonstrate a stronger commitment to developing ESG-friendly products and services.

How is ESG good practice linked to macroeconomic performance?

The Smith School of Enterprise and the Environment at the University of Oxford, discovered that firms in the private sector can improve their macroeconomic performance through positive ESG practices. High ESG performance was linked to an improvement in GDP per capita, higher living standards, and a reduction in unemployment in both developed and emerging economies.

As an example, they predicted that if the worst nations on environmental performance (e.g. Indonesia, with an average score of 43.5) matched the highest performing (France, average score of 71.8), there would be a 15% increase in Indonesian GDP per capita, from around US$4,300 to US$4,900.

Dr Xiaoyu Zhou, Lead for Sustainable Investment Performance at the Oxford Sustainable Finance Programme said that the research makes a "compelling case to industry stakeholders, investors, and policymakers that ESG policy implementation across the corporate sector will generate macroeconomic benefits."

Global ESG regulations published over the past years have benefitted economies and societies greatly. These regulations provide a framework for financial services to align with and drive investors to make more sustainable choices, ultimately contributing to macroeconomic growth.

What does ESG economic growth mean for less-developed countries?

ESG regulations are primarily driven by developed countries such as the United Kingdom, Switzerland, Spain, France, and the United States. Whereas, less developed nations such as those in Africa and Asia have not yet shown as much attention towards ESG.
As shown above, most of the regions on the list are developed, apart from Indonesia, which is considered a developing nation. Less developed countries may not be on the list due to a lack of resources to address climate change risks, as they often face greater risks from global warming and may not be able to keep up with the pace of change.

These nations may not be advanced enough to develop ESG regulation in financial services and, instead, their economies may rely on tourism and basic materials such as rice, agriculture, timber, oil reserves, and textiles. Additionally, developing countries use less energy and emit less carbon dioxide into the atmosphere, thus, ESG is not prioritised.
Being ESG compliant and reaping the economic benefits of ESG does seem to have a direct correlation with economic growth. The top 15 countries with the most GDP in 2022 include:

<table>
<thead>
<tr>
<th>Country</th>
<th>GDP (Trillion)</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$20.89</td>
</tr>
<tr>
<td>China</td>
<td>$14.72</td>
</tr>
<tr>
<td>Japan</td>
<td>$5.06</td>
</tr>
<tr>
<td>Germany</td>
<td>$3.85</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>$2.67</td>
</tr>
<tr>
<td>India</td>
<td>$2.66</td>
</tr>
<tr>
<td>France</td>
<td>$2.63</td>
</tr>
<tr>
<td>Italy</td>
<td>$1.89</td>
</tr>
<tr>
<td>Canada</td>
<td>$1.64</td>
</tr>
<tr>
<td>South Korea</td>
<td>$1.63</td>
</tr>
<tr>
<td>Russia</td>
<td>$1.48</td>
</tr>
<tr>
<td>Brazil</td>
<td>$1.44</td>
</tr>
<tr>
<td>Australia</td>
<td>$1.32</td>
</tr>
<tr>
<td>Spain</td>
<td>$1.28</td>
</tr>
<tr>
<td>Indonesia</td>
<td>$1.05</td>
</tr>
</tbody>
</table>

By comparing the above list to Figure 15, there may be a correlation between GDP and the frequency of ESG regulation. This suggests that countries with stronger economic performance measured by GDP also tend to have a greater number of ESG regulations. Consequently, considering socioeconomic disparities when investigating the number of ESG-related concepts in global financial regulation is important.
What’s on the horizon?

ESG will become more expansive as the financial services industry responds to the climate change and sustainability movement. As such, there will be increased regulatory scrutiny of ESG investing and company ESG policies.

Recently, the SEC charged “a prominent asset manager for policies and procedures failures involving two mutual funds and one separately managed account strategy marketed as ESG investments.” This is indicative of the growing demand for accurate reporting and declaration of ESG investments, from regulators and investors alike. Following in the footsteps of the SEC, other regulatory bodies will also step up greenwashing litigation.

Investors are also becoming increasingly interested in biodiversity, which will be a theme in the coming years. This is driven by the awareness that biodiversity loss poses risks to businesses and society. Social taxonomies are also being developed to create a set of standards for investors, regulators, and firms to follow and abide by. Touching on the ‘S’ – Social of ESG, social taxonomies aim to paint a clearer picture of what is sustainable from a social perspective.

The introduction of the International Social and Sustainability Standards (ISSB) will establish international standards for ESG reporting, with a focus on helping companies manage their risks. The ISSB will help harmonise ESG regulations and overcome fragmentation across borders. Whilst the EU is particularly dedicated to ESG, the US’ progress is affected by its divided political system and other countries, such as the UK’s commitments, have been depicted as unreliable.

This report has revealed that Europe, much like last year, is at the forefront of ESG regulation. Even if North America does not appear to be doing as much as Europe, several US regulatory bodies have made significant strides compared to others. The UK’s FCA continues to outshine all issuing bodies with the most ESG-related regulations, but notably, the SEC is the most active with ESG enforcement. Whereas the ‘greenwashing’ regulatory data shows that this concept is still in its infancy.

A formal and clearly defined ESG strategy will no longer be optional. Key stakeholders not only want explanations of how firms are addressing ESG risks but are also formally mandating them.

Firms must act now and incorporate ESG principles into their business models to ensure compliance.
About CUBE

CUBE is a SaaS-based RegTech designed to take the complexity out of regulation using artificial intelligence and automation to deliver Automated Regulatory Intelligence. Born out of the 2008 financial crisis, Founder and CEO, Ben Richmond, has led CUBE to become the world’s most comprehensive and robust source of classified and meaningful AI-driven regulatory intelligence, with 5,000 issuing bodies covering 180 jurisdictions and 60 languages.

In short, we track, capture, and monitor every regulatory change across the globe and make sense of it for our customers. Drawing on ten years of experience, we have a mature data set which covers the length and breadth of global regulatory content. As displayed in this report, CUBE has a golden source of regulatory data, covering emerging regulatory topics as well as more traditional areas, from AML to prudential and more.

This means that we make accurate inferences and intelligently link regulatory changes across different regulations and regulators, spot trends and make predictions rooted in data. This can all then be automatically mapped to our customers’ policies and controls – leaving compliance officers to implement regulatory change across the organisation.

With operations across Europe, North America, Asia, and Australia, CUBE serves a diverse and global base of customers and partners including the largest financial institutions in the world who leverage CUBE’s RegPlatform to streamline their complex regulatory change management and compliance processes.

Whether you’re a large, multinational bank, or a small financial organisation with up to a handful of compliance officers, we’ve got a suite of products tailored to you.

Speak to the team
With thanks to Michelle Witton, Greg Davies, Barrie Ingham, and Maria Lombardo.

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