

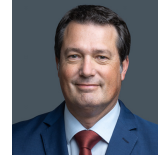
ESG reporting and liability risks: companies between a rock and a hard place

The introduction of Environmental, Social, and Governance (ESG) reporting has significantly increased liability risks for companies and senior management. Companies must report comprehensively and truthfully, even if such reporting would expose them to civil or criminal liability. Recently, a number of ESG claims have been filed against major corporations. This newsletter showcases these developments and suggests risk mitigation measures.

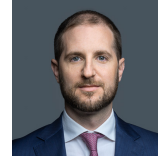
ESG reporting and liability risks

- Sustainability matters as there is only one planet and resources are finite. This reality is increasingly reflected in legislation. Since the early 2000s, expanding human rights and environmental regulations have progressively transformed ESG considerations from voluntary commitments to mandatory obligations for companies.
- The European Union has adopted a far-reaching approach. In January 2023, the Corporate Sustainability Reporting Directive (CSRD) entered into force, extending sustainability reporting duties for large companies. The EU's subsequent Omnibus package simplified CSRD sustainability reporting, but the focus remains on transparency and accountability. The CSRD requires comprehensive ESG disclosures and introduces mandatory external audit of sustainability information. Also, directive 2024/1203 on the criminal protection of the environment broadens the scope of environmental offences, introduces harsher sanctions, and mandates transposition by Member States into domestic law by no later than 21 May 2026.
- Switzerland has also introduced ESG reporting obligations, including a supply chain act regarding child labour and conflict minerals. Since 2023, companies of public interest in Switzerland must further report annually on non-financial matters such as CO₂ goals, social issues, employee-related issues, respect for human rights, and corruption. Individuals who provide false information in the reports are subject to a fine of up to CHF 100,000. And since 2018, the Federal Coordination Group on Environmental Crime has been tasked with improving the investigation and prosecution of cross-border environmental offences.
- As a result of these developments, cases where companies face criminal and civil liability for matters subject to reporting requirements, such as serious environmental offences and human rights violations, are becoming increasingly frequent.

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Case studies:

• **Kashef et al. vs. BNP Paribas**

- Three former Sudanese refugees representing a class of potentially 20,000 victims sued BNP Paribas in New York, alleging the bank aided and abetted genocide committed by Omar al-Bashir's regime from 1997 to 2011 by systematically concealing illegal financial transactions for Sudanese entities (removing origin details and routing payments via BNP Paribas' New York branch and vostro accounts of other institutions).
- Although most of the transactions concerned were processed through the bank's Geneva branch, the New York court asserted US jurisdiction, stating that genocide is universally prohibited and therefore cannot be considered a sovereign act immune from US judicial review. The jury applied Swiss civil law because of the Geneva branch's violations and awarded USD 20.5 million in damages to the plaintiffs. Further possible claims may exceed a hundred billion USD. BNP Paribas has appealed the verdict.

• **Lafarge trial: terrorism financing in Syria**

- On 4 November 2025, criminal proceedings began before the *Tribunal correctionnel de Paris* against Lafarge SA and former executives for alleged terrorism financing and sanctions violations. For Lafarge and its former CEO, prosecutors are seeking high fines and the confiscation of assets amounting to several million EUR. In the case of the former CEO of Lafarge, they are also requesting a six-year suspended prison sentence.
- The company is accused of paying around EUR 5 million to armed groups to maintain operations at a cement plant in Syria, located in territory controlled by the Islamic State and an al-Qaeda-affiliated organisation.
- In October 2022, Lafarge admitted in a settlement with the US Department of Justice to making payments to terrorist groups between 2013 and 2014 during the Syrian war and accepted a fine of nearly USD 778 million.

• **Chocolate companies and the cocoa supply chain**

- From three ESG reports for 2025 by Swiss chocolate multinationals, only one discloses confirmed cases of child labour in the cocoa supply chain (specifically, more than 20,000 cases). The other two reports do not state whether any single substantiated suspicion of child labour was identified, even though under Swiss law companies are required to assess and document whether one or more reasonable suspicions are identified.
- In 2025, Swiss media have repeatedly documented the use of child labour in the cocoa supply chain. The evident ESG 'information asymmetry' constitutes a legal and reputational risk for companies and Board members.

Risk mitigation measures

Companies find themselves caught between a rock and a hard place. LALIVE assists its clients in mitigating ESG risk and recommends that companies:

- Establish an ESG governance framework that covers people, resources, and processes.
- Assess supply chain risks, identifying and analysing material negative ESG impacts.
- Manage supply chain risks, take corrective action and document it.
- Remediate issues and report truly and fairly.