How Companies Can Address ESG Backlash

ESG backlash is gaining momentum, and many companies expect it to further increase in the immediate future. While this opposition can be challenging to navigate, companies can view it as an opportunity to clarify their ESG strategies, priorities, commitments, and communications.

Trusted Insights for What's Ahead™

- **Expect the level of ESG backlash to increase in the next two years.** To date, about half of surveyed companies have experienced backlash, with the most intense opposition focused on asset managers and other financial institutions. The increase in backlash will likely be driven by emotionally charged topics, such as hot-button social issues and the transition to more sustainable forms of energy that raises fear of job losses.
- **Companies should view backlash as an opportunity to clarify their ESG strategy and communications.** ESG backlash can be based on empirical skepticism, philosophical opposition, and political opportunism. While ESG backlash often has an emotional component, companies should objectively assess the legitimate empirical and philosophical objections rather than react emotionally to the more opportunistic aspects of ESG opposition.
- **The most effective response to backlash is to ensure the company's ESG and sustainability goals align with core business strategy**, are supported by empirical evidence, and serve the long-term welfare of the company itself as well as those of stakeholders and society. Sixty-three percent of companies that reported experiencing backlash in our survey are increasing focus on how ESG connects with shareholder value. In addition to

Teneo

tying ESG initiatives to business strategy, companies should explain how they are a natural extension of a historic commitment to corporate responsibility.

- **In the US, federal and state policymakers have been, and will likely continue to be, the leading sources of vocal ESG backlash.** Companies should proactively engage with key policymakers, out of the limelight, to explain their ESG strategies and how they serve the interests of the business and constituents.
- **Businesses should be cautious of retreating from the broader public conversation about ESG.** Almost a third of companies who have experienced backlash are reducing their level of external communication on "E" and "S" issues, but this runs the risk of forfeiting the opportunity of telling the company's story to stakeholders who are focusing on ESG for the first time.
- **It is important for companies to avoid dramatic shifts in how they talk about ESG issues and clearly explain any changes to avoid perceptions of insincerity or succumbing to pressure**. Forty-eight percent of companies experiencing backlash have adjusted their ESG-related terminology, typically from "ESG" (a term favored by investors) to "sustainability" (a term that may be better understood by employees, customers, and the public).
- **Companies can consider joining forces to make the business case for ESG to amplify their messaging and reach.** While each company is usually best positioned to explain its own governance and history of social and environmental responsibility, as well as how ESG currently advances its business strategy, trade associations can be effective vehicles for making the broader business case to policymakers. Smaller firms can be especially effective allies in explaining the benefits of ESG, as they are critical to the US economy and are well regarded by policymakers across the political spectrum.
- **Companies should keep backlash in perspective and remember the reasons why they focused on ESG in the first place, which are likely to remain valid.** There are strong forces in capital, labor, business-to-business, and consumer markets that justify a continued focus on ESG. Moreover, those market trends are being reinforced by increased sustainability disclosure and reporting obligations in the US and Europe.

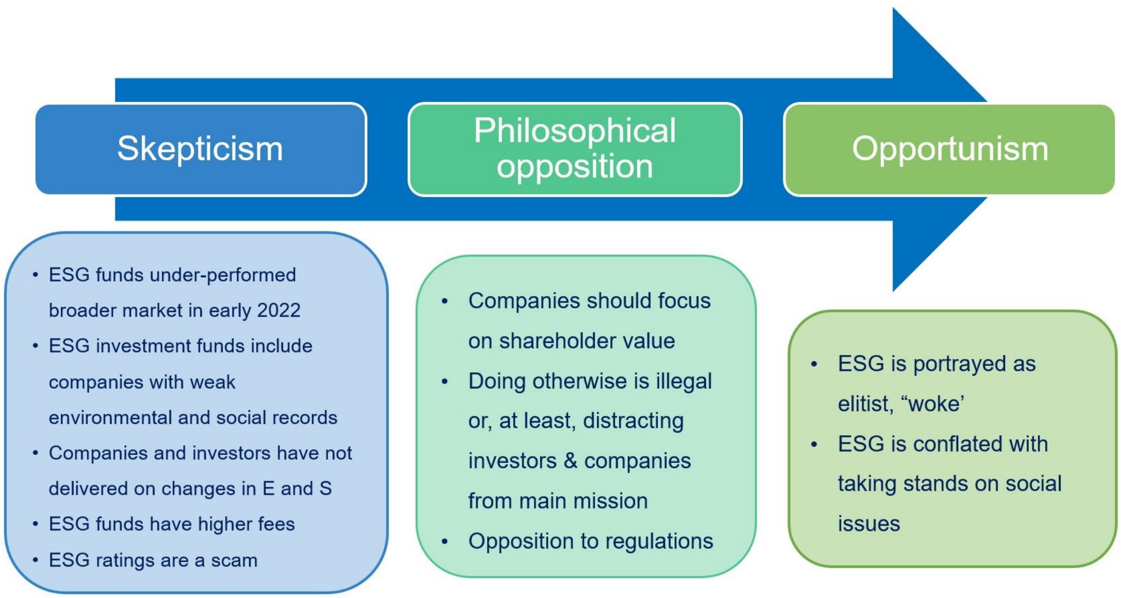
The Current Scope and State of ESG Backlash, and What the Future May Hold

Strains of ESG backlash

"ESG backlash" is an umbrella term that encompasses several types of opposition to ESG.[1] These include *healthy skepticism* that questions the effectiveness of ESG initiatives (such as the performance of ESG investment funds); *philosophical opposition* that challenges the emphasis on ESG in the context of operating and financial performance, as well as some of the practices that companies have had in place in the name of ESG; and *opportunistic opposition* that arises when individuals or entities use ESG backlash to further their own personal or political fortunes.

ESG backlash also comes with different degrees of intensity—while at some companies opposition may be limited to decreasing support for diversity, equity, and inclusion (DEI) initiatives, at others backlash may represent a significant risk to their entire business model.

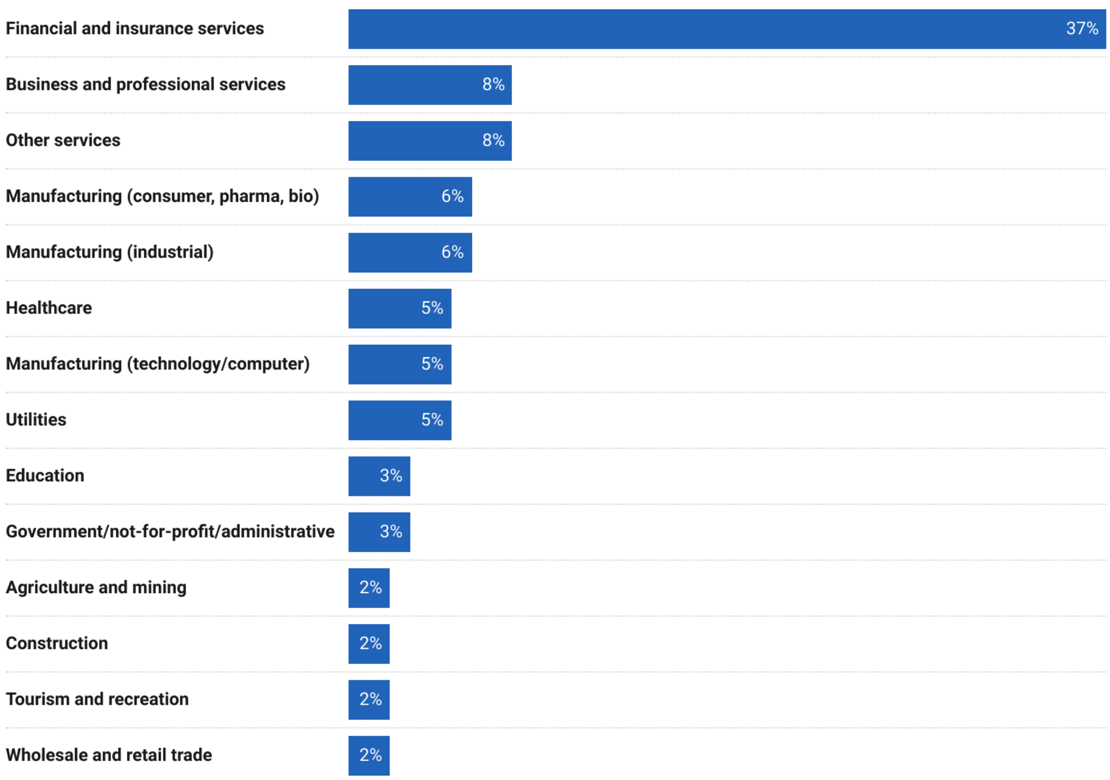
"ESG backlash" is an umbrella term for several strains of opposition to ESG



In a survey by The Conference Board of 125 firms, nearly half of companies reported they have experienced backlash. Most often the backlash has been directed against an industry or companies in general rather than against their firm specifically.

The financial and insurance services industry is the sector most affected by ESG Backlash to date

Primary Industry of Respondent Companies Who Have Experienced Some Type of ESG Backlash



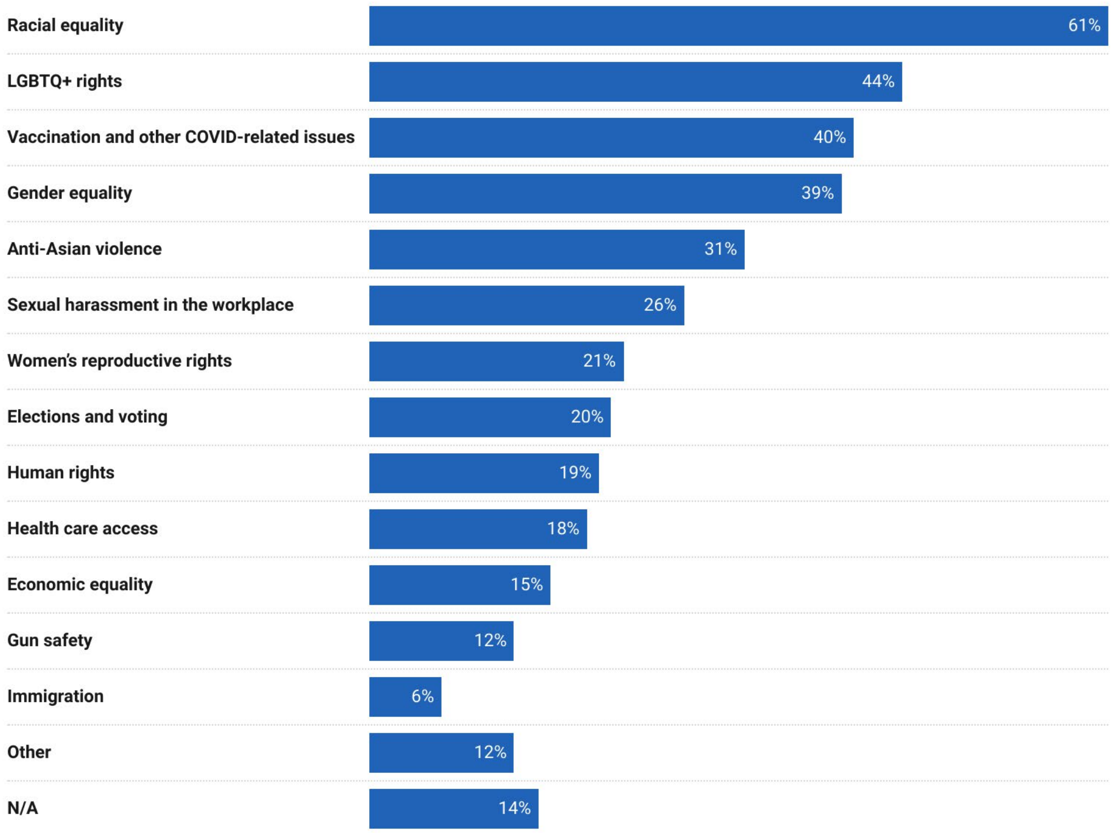
n=60
Note: Numbers reflect those respondents who experienced some type of ESG backlash
Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

According to our survey, financial and insurance services has been the industries most targeted by ESG backlash to date. Asset managers in particular have been perceived as the gatekeepers of ESG investing and have faced pressure and opposition from both sides of the debate—including sustained criticism from politicians that ESG is not in the best interests of investors or the economy. While corporate issuers have not yet encountered the same level of backlash, many are observing anti-ESG sentiment emerge from multiple constituencies and are concerned that they will be targeted next.

Most backlash has focused on companies' "E" and "S" initiatives. Backlash against company stances on social issues can be emotionally charged, especially when relating to politically or culturally sensitive topics such as racial equality, LGBTQ+ rights, reproductive rights, and gun regulation. Many companies have taken public stands on these issues in the last three years.

Racial, LGBTQ+, and gender equality—and COVID-related topics—were the predominant focus of corporations' public statements on social issues in 2020 – 2022

Q: On which of the following social issues has your company taken a public stance since the beginning of 2020? (select all that apply):



Survey conducted June / July 2022
n=273

Source: The US Corporate Response to Recent Supreme Court Decisions, The Conference Board, 2022 • Created with Datawrapper

Environmental issues can also provoke an emotional reaction, especially when they may affect jobs. For example, an ongoing transition toward renewable energy sources in the US is perceived by some communities as an additional threat to their established way of life, particularly in regions where fossil fuel industries are rooted.

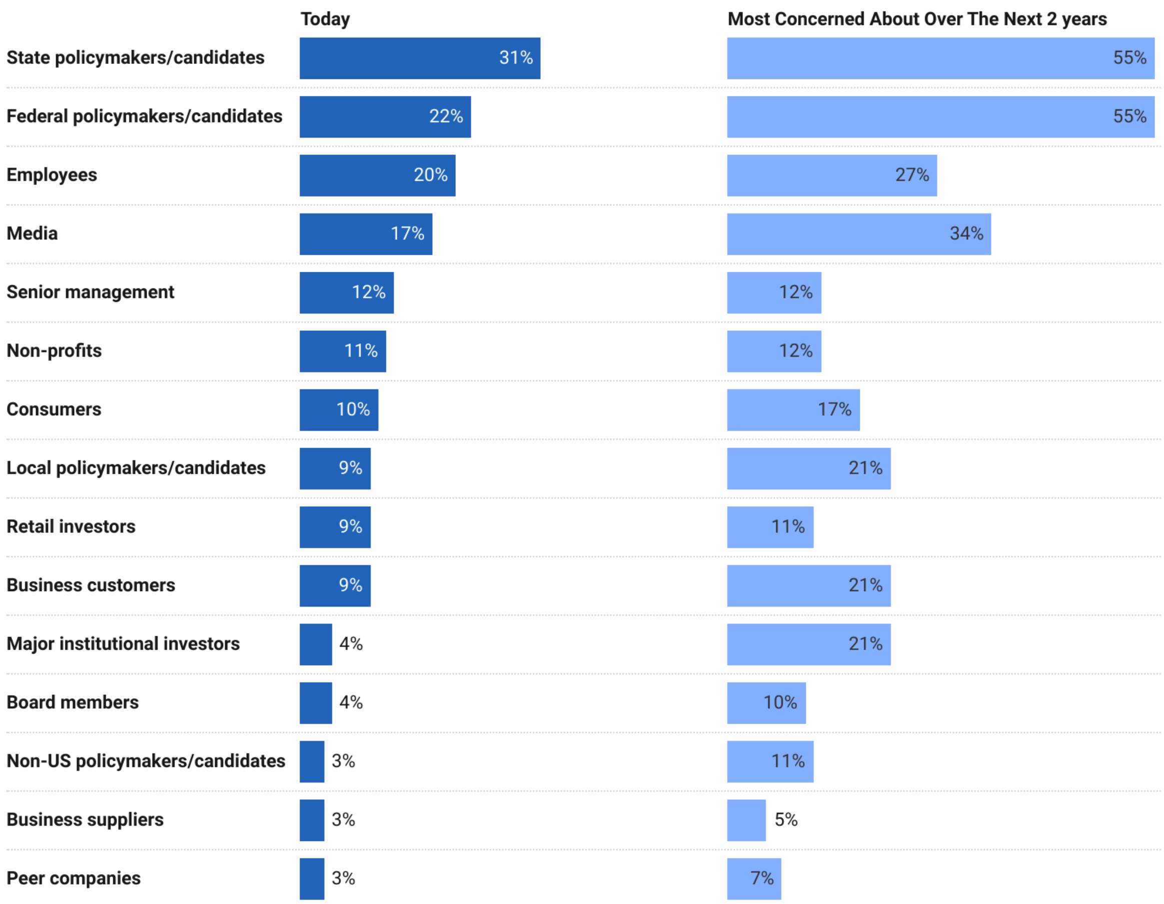
The backlash towards the "G" in ESG is less emotionally driven. Opposition toward certain corporate governance policies has always existed, reflecting divergent perspectives on the purpose of corporations and the appropriate roles of the board, management, and shareholders. Today, even some current corporate governance initiatives that have overwhelming support within board rooms, such as the effort to diversify boards, can face quiet opposition.

Sources of ESG Backlash

ESG backlash emanates from multiple sources. According to our survey, the most significant players are policymakers and candidates at the federal and state levels, followed by employees and the media. Over the next two years, companies are also concerned about increasing backlash from consumers, business customers, institutional investors, and local policymakers.

State and Federal politicians are the leading sources of ESG Backlash against companies

Q: What have been the sources of backlash affecting your organization? (choose all that apply):



n=117 / 121

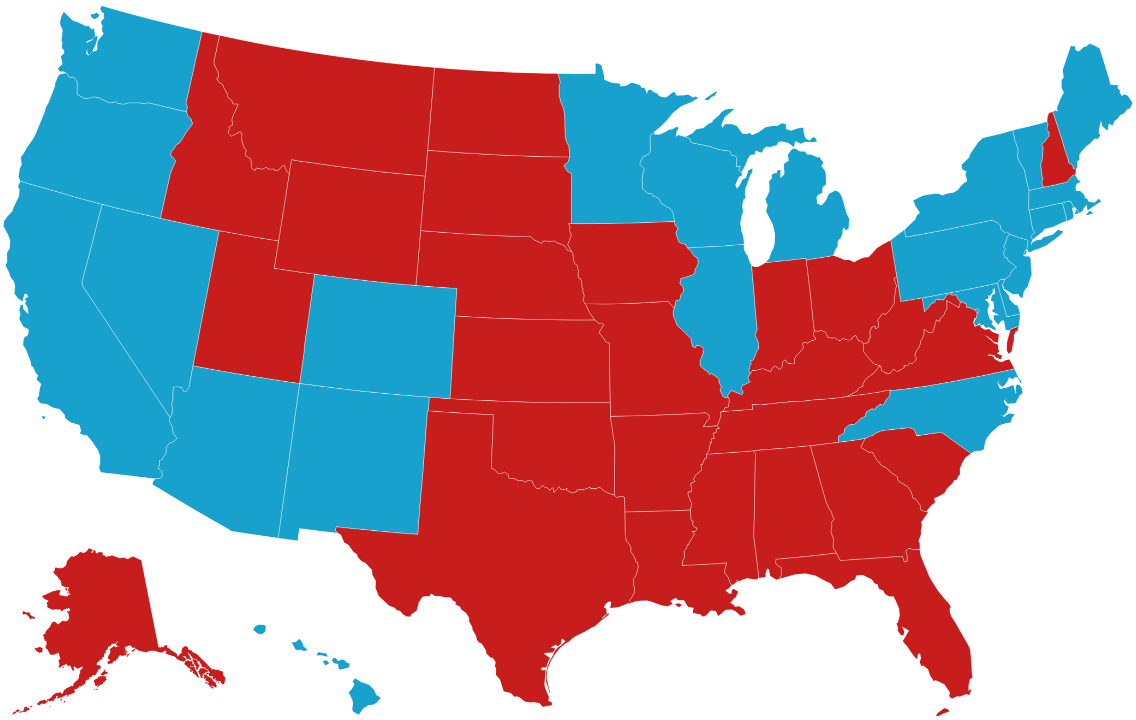
Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

ESG opposition from federal and state policymakers reflects a broader challenging political environment for US businesses, characterized by polarization, volatility, anticorporate sentiment, and denunciations of “woke” capitalism. For example, in March 2023 a group of governors from 19 states issued a joint statement that they will work together to “[ensure] corporations are focused on maximizing shareholder value rather than the proliferation of woke ideology.”[2]

Companies believe the greatest risk from ESG backlash is that anti-ESG policies will be codified at the federal and state level, and that divergent ESG approaches at the state level will result in dividing the US into “red” and “blue” regulatory regimes and economies, making it harder for companies to plan and operate across the country. Recent anti-ESG actions at the state level have largely focused on asset managers and financial institutions and include restrictions on the consideration of ESG factors in government pension funds, investments, and the awarding of public contracts.

Along with state legislatures, state attorneys general are also significant players in ESG backlash, and increasingly the most vocal. State attorneys general have been a rising national legal (and therefore political) force since the landmark Supreme Court decision of *Massachusetts v. EPA* in 2007, which granted them enhanced legal standing to challenge federal policies and regulations on a wide range of issues.[3] Recent examples of joint action by state attorneys general include open letters to important market actors (such as the US Municipal Securities Rulemaking Board, asset managers, proxy advisory firms, and BlackRock) challenging their ESG practices and threatening legal action if they do not change course.

27 Republicans and 24 democrats are currently in office as state attorneys general, including the District of Columbia.



Opposition to ESG initiatives also exists within companies. At the board and senior management levels, leaders may appreciate the need for a focus on ESG but can be frustrated by burdensome disclosure requirements and the threat of over-regulation. Leaders may also be concerned by the way a discussion of ESG topics (if not done correctly) can draw attention away from traditional core business strategy and performance.

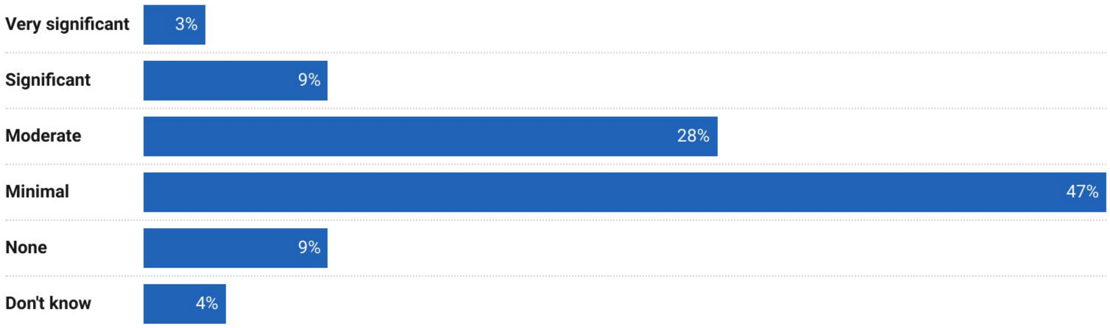
Opposition to ESG from employees is complex. In the past few years, companies—often responding to pressure from employees—have taken stands on social issues such as racial equality, LGBTQ+ rights, gender equality, reproductive rights, voting rights, economic equality, and gun safety. As The Conference Board has previously documented, many employees expect their organization to engage with several social issues. But at the same time, employees—like the broader population—have divergent views on these issues and while some employee constituencies may feel the company is not doing enough to address social and environmental challenges, others may push back against stances or initiatives that they disagree with—including through litigation.[4] We have recently seen companies shift to increase the focus of their communications on employees, and company leaders should always keep a pulse on current social issues that affect their workforce.

The Impact of ESG Backlash on Companies

According to our roundtable participants, ESG backlash has had a modest impact to date.

Most companies have experienced minimal ESG Backlash to date

Q: How would you describe the extent of ESG backlash you have experienced at your organization on your firm to date? (choose one):



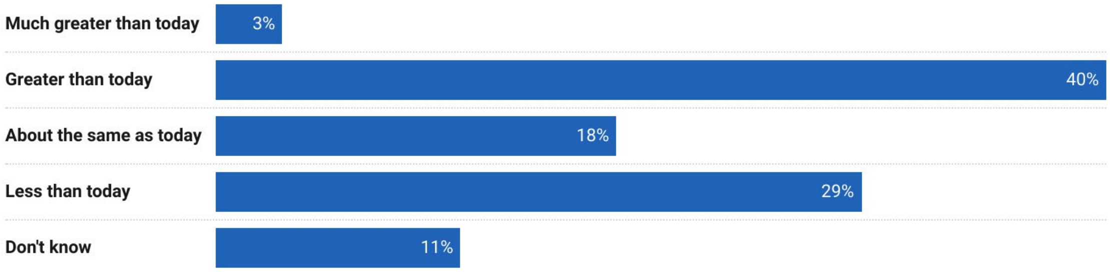
n=113

Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

While ESG backlash has generally been mild, many companies expect it to persist or increase over the coming years. Forty-three percent of executives expect the level and intensity of opposition to be greater in 2025 than it is today.

61 percent of companies think ESG Backlash will stay the same or increase over the next two years

Q: Two years from now, do you think ESG backlash will be (choose one):



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Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

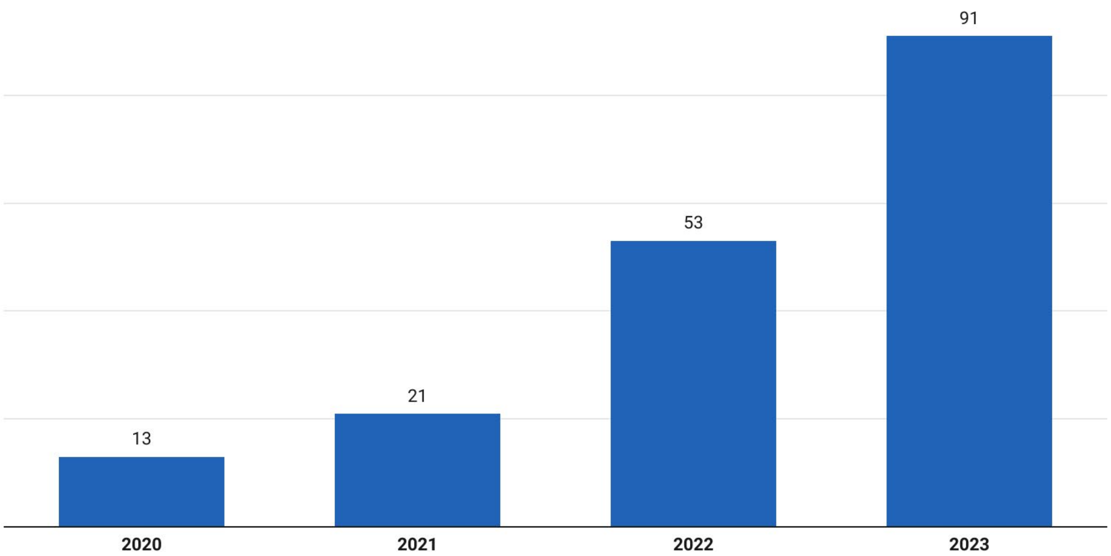
The impact of ESG backlash can extend beyond just the companies that have been directly targeted or publicly criticized to permeate more broadly through industries and the private sector. It can influence boards and executives to slow down momentum for ESG and sow seeds of doubt among employees who may question whether ESG will continue to be prioritized within the firm.

At the same time, a survey from The Conference Board in January 2023 of over 1,100 C-suite executives found that most CEOs globally and in the US are not curtailing their sustainability-related investments due to ESG backlash. However, a minority of chief executives (17 percent in the US) are proactively refining their priorities or realigning their focus to ensure their sustainability efforts remain effective and impactful.

ESG opposition has not yet garnered significant support or reaction among institutional or retail investors, although there is a growing subsector of anti-ESG proponents. Certain investors, such as Strive Asset Management, have taken a stance against what they perceive as pro-ESG bias within the “big three” institutional investors (BlackRock, Vanguard, and State Street). However, their influence remains limited: in 2022, Strive’s total assets under management were equivalent to only 0.006 percent of those managed by BlackRock.[5]

The number of shareholder proposals by anti-ESG groups is increasing

Number of Shareholder Proposals to S&P 500 by the National Center for Legal and Policy Center, National Center for Public Policy Research, Steven Milloy, Bahnsen Group, David Bahnsen, Inspire Investing, William Hild, American Conservative Values ETF, Ridgeline Research, and Burn More Coal.



Source: ESGUAGE, 2023

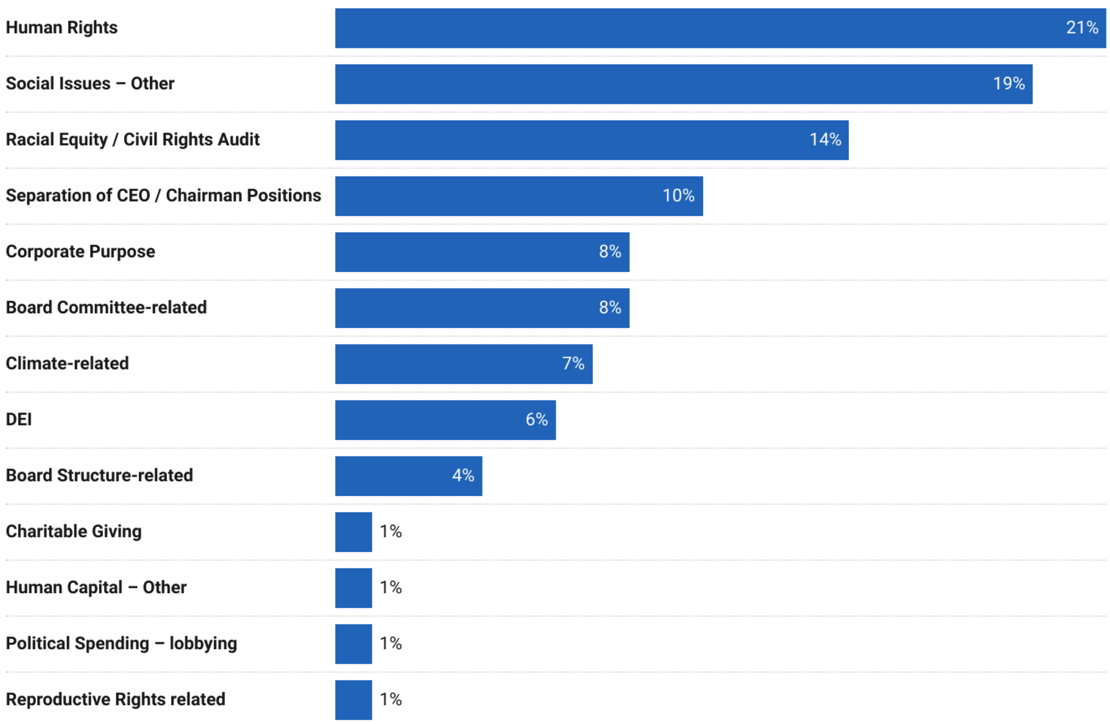
Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

Additionally, certain shareholders are submitting a growing number of shareholder proposals to public companies that oppose certain ESG initiatives. The number of anti-ESG proposals has risen significantly in recent years, including a 72 percent increase between 2022 (53 proposals) and 2023 (91 proposals). Many of these proposals offer resolutions that are similar to “pro-ESG” proposals but contain supporting statements with vastly different rationales.

Anti-ESG proposals cover a wide range of “E,” “S,” and “G” topics. In 2023, these proposals were largely focused on “S” issues, including human rights, free speech, civil rights audits, and public positions on social issues. Many of the resolutions reflect hot-button political topics, such as challenging perceived suppression of “disfavored speech” on social media platforms or calling for audits into the impact of DEI policies on religious and political freedoms.

Most anti-ESG shareholder proposals in 2023 focused on Human Rights, Civil Rights Audits, and other “S” Issues

Focus of Anti-ESG Shareholder Proposals to S&P 500 in 2023



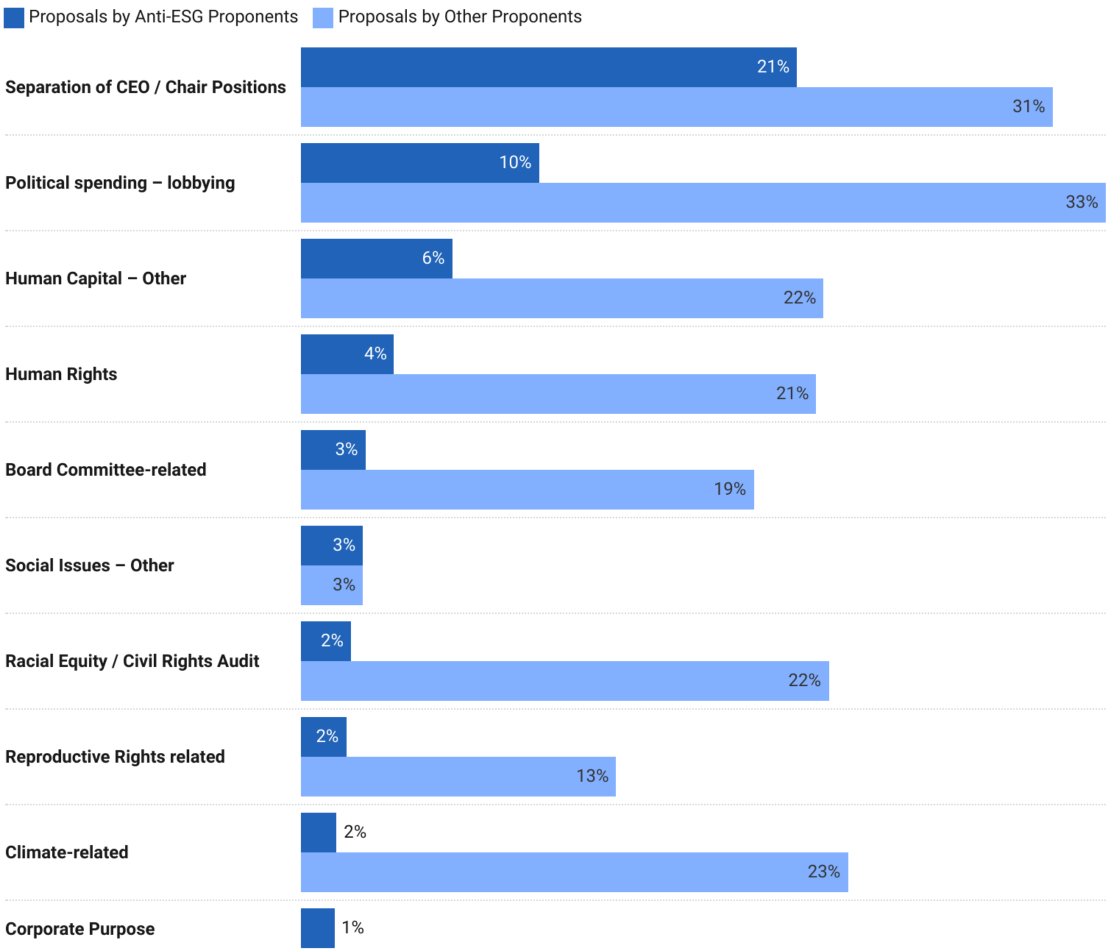
Anti-ESG shareholder groups: National Center for Legal and Policy Center, National Center for Public Policy Research, Steven Milloy, Bahnsen Group, David Bahnsen, Inspire Investing, William Hild, American Conservative Values ETF, Ridgeline Research, Burn More Coal.
Source: ESGUAGE, 2023

Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

Anti-ESG proposals largely underperform their pro-ESG counterparts. The only topic for which anti-ESG proponents have gained traction in 2023 is calling to separate the CEO and board chair positions—a conventional “G” topic—directed at CEOs whom the proponents believe are overly focused on ESG. Even when these proposals do not go to a vote or receive significant support, they can force companies to take a public stand that then serves as fodder for further anti-ESG activism. Company strategy for dealing with anti-ESG shareholder proposals should therefore go beyond narrowly responding to the proposal itself and explain how the company’s position is “good for business.”

Anti-ESG shareholder proposals have failed to gain traction, except for calls to separate the CEO / Chair of the Board positions

Average Support Level of Anti-ESG Proponents vs other Shareholder Proponents, to S&P 500 in 2023



Anti-ESG shareholder groups: National Center for Legal and Policy Center, National Center for Public Policy Research, Steven Milloy, Bahnsen Group, David Bahnsen, Inspire Investing, William Hild, American Conservative Values ETF, Ridgeline Research, Burn More Coal.
Source: ESGUAGE, 2023

Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

ESG backlash extends beyond corporations themselves. For example, a group of major credit card companies recently paused plans to use a “merchant category code” for gun stores, following opposition from state attorneys general. Gun control advocacy groups have been lobbying for such a category code for several years to enable the identification of suspicious firearm purchases and potentially serve as a preventive measure against mass shootings.

Strategies Used to Address ESG Backlash and Reduce the Risk of It in the Future

Turning adversity into advantage

ESG backlash can be a clarifying moment for corporations and prompt reevaluation of their ESG strategies, priorities, and commitments. To do so requires candid discussions between the CEO, board, and senior management to determine if the company is still committed to its ESG strategy and multistakeholder capitalism, and if so, how it will move forward on its commitment. Importantly, companies need to avoid reacting emotionally and instead focus on empirical evidence and objective analysis. Neither side of the ESG debate should operate in a fact-free environment.

By viewing ESG backlash as a clarifying moment, companies have an opportunity to strengthen their ESG initiatives. They can review their existing practices, identify areas for improvement, and align their strategies with their core values and long-term goals. This process enables companies to demonstrate their commitment to sustainability, responsible governance, and societal impact in a more meaningful and transparent manner.

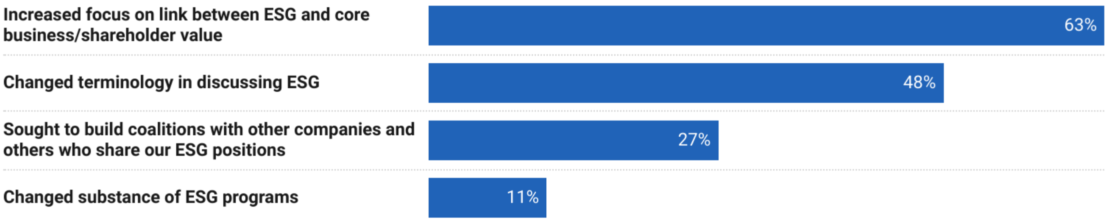
Communications and terminology

ESG backlash can also help sharpen how companies talk about ESG, prompting clearer articulation of the business case for ESG integration and how it drives value creation and shareholder returns. While there is empirical research on both sides of the subject, a large body of research has shown that a company can be rewarded for adopting ESG in the form of higher profits and stock return, a lower cost of capital, and better corporate reputation scores. Our survey shows that many companies have recognized this, with 63 percent of backlash-affected companies increasing their focus on the links between ESG and shareholder value.

Half of companies that have experienced backlash are also proactively adjusting their terminology when discussing ESG-related matters—typically by referring to “sustainability” instead of ESG. While “ESG” resonates well with investors, “sustainability” tends to be more readily understood by employees, customers, and policymakers. For some audiences, familiar concepts such as clean air, clean water, equal economic opportunity, and quality of life may be even more effective than terms such as sustainability.

Companies that have experienced ESG Backlash are responding by increasing focus on value creation, and changing terminology

Q: How has your company responded to ESG backlash to date? (choose all that apply):

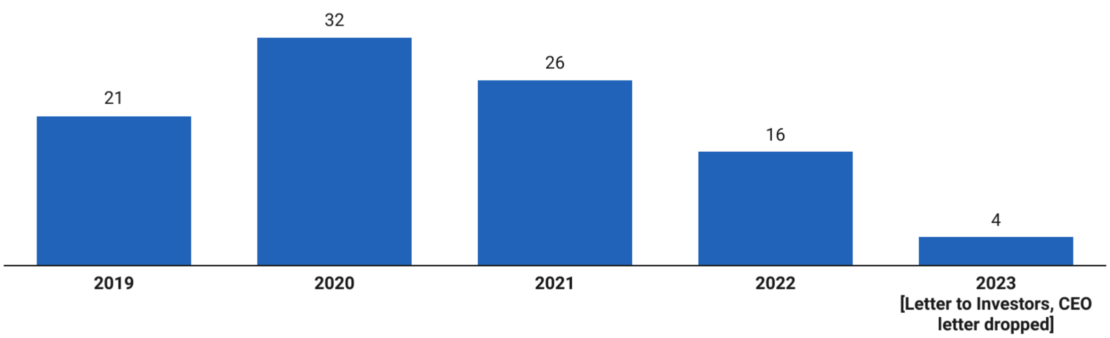


n=62
Numbers reflect those respondents who have experienced some type of backlash
Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

While it is sensible to exercise caution and adjust terminology in the context of backlash, it is important for companies to avoid dramatic shifts in how they talk about ESG issues. Abrupt changes can create the perception that the company is either succumbing to political pressure or was not genuinely committed in the first place. Any modifications in how ESG is discussed should be accompanied by clear explanations that articulate the underlying rationale behind the shift to mitigate potential skepticism.

BlackRock's annual CEO letter has shifted terminology away from climate change, ESG, sustainability, and societal purpose

Mentions of “Climate”, “ESG”, “Sustainability”, and “Purpose” in Larry Fink's Annual Letter to CEOs



Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

Along with changes in terminology, companies are also adjusting their level of communications. According to our survey, 27 percent of companies that have experienced backlash are opting to decrease their level of external communication on “E” and “S” topics. This may be counterproductive. While it is neither feasible nor advisable for companies to comment on every social issue, there are many individuals who are just beginning to familiarize themselves with ESG concepts. Rather than retreating from the conversation, companies should consider ways in which they can still effectively share their ESG story. It may be particularly helpful to articulate the company's history of social and environmental responsibility, which can reinforce the message that the company has not suddenly become "woke," but rather that serving multiple stakeholders has long gone together with profitable performance.

Companies that have experienced ESG Backlash are reducing their external communications while increasing internal communications on "E" & "S" topics

Q: How has your company responded to ESG backlash to date? (choose all that apply):

n=62
Numbers reflect those respondents who have experienced some type of backlash
Source: How Companies Can Address ESG Backlash, The Conference Board ESG Center, 2023 • Created with Datawrapper

Many companies may benefit from more explicitly tying their ESG initiatives to the firm's long-standing commitments to responsible governance and business practices. Corporate leaders may often wish to present their ESG initiatives as something "new" to highlight their fresh responsiveness to stakeholder concerns or to demonstrate their forward-looking leadership. But in both developing and communicating a company's ESG strategy, firms would be well advised to begin not with what is new but with the company's existing strengths and capabilities. Building on the company's longstanding record is a useful way of ensuring that ESG initiatives are tied to the company's core strategic strengths. Such an approach enables employees and other stakeholders to view those initiatives as something familiar and not a radical rejection of the past and dispels notions that the firm's ESG commitments are a form of faddish "woke" capitalism.

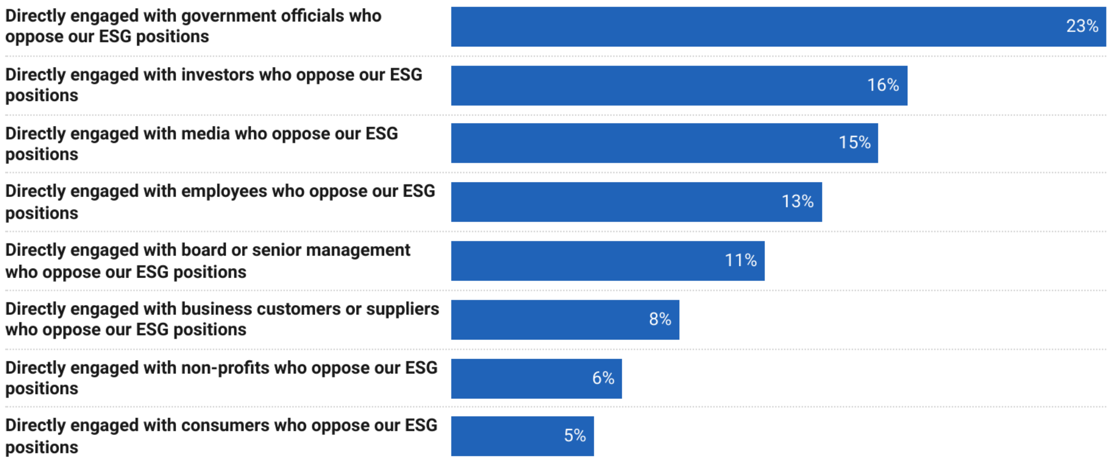
Partnerships and engaging with stakeholders

Recognizing that the most significant risk of ESG backlash is the codification of anti-ESG sentiment in legislation and regulation, companies should consider allocating increased resources to track policy developments and engage at the state level.

It is important for companies to engage in direct one-on-one conversations with influential state-level policymakers, such as attorneys general, governors, and comptrollers. These personal interactions represent an opportunity to articulate the company's position on ESG and share how its strategy serves the business and the jurisdiction's constituency. By engaging in private discussions, companies can foster a deeper understanding of their intentions, build relationships based on trust and collaboration, and potentially influence the direction of state policies. Our survey results indicate that this is an area where many companies can increase their focus, as only a quarter of firms that have experienced backlash have engaged directly with government officials.

For companies that have experienced ESG Backlash, engagement with objectors is low across the board

Q: How has your company responded to ESG backlash to date? (choose all that apply):



n=62
Numbers reflect those respondents who have experienced some type of backlash
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Moreover, companies should consider forming alliances and collaborating with industry peers, trade associations, and advocacy groups to amplify their voice and (when appropriate) challenge specific anti-ESG legislation. To maximize the potential of trade associations as allies, companies should actively engage in these organizations, participate in relevant committees and working groups, and help shape the association's advocacy strategies.

Enlisting small businesses as allies can also be an effective strategy when making your case for ESG. While anti-ESG sentiment is often directed at large corporations, there are over 33 million small businesses in America, which constitute 99.9 percent of all US businesses. Small business is consistently found to be the most trusted institution in America, representing a significant economic and public force.

Antitrust risk

While coalitions and alliances are important for mitigating the impacts of backlash, companies should be mindful of antitrust risk and ensure that any collaboration has a clear, procompetitive rationale. The risk of antitrust violations is low but increasing: for example, some members of the US House of Representatives have recently begun a probe into whether Climate Action 100+ (an investor-led initiative to engage major corporate greenhouse gas emitters) is violating antitrust laws. The UN-convened Net Zero Insurance Alliance—a coalition of major insurance companies committed to reach net zero emissions by 2050—lost over half of its members between March and June 2023 after being targeted by 23 state attorneys general for perceived violations of federal and state antitrust laws.[6]

To avoid antitrust concerns, companies should ensure that their collaborations do not compromise the quality of goods or services, reduce output, or lead to price increases that harm consumers or restrict competition. It is crucial to maintain a clear and demonstrable procompetitive rationale behind the collaboration, aligning it with broader industry objectives or the pursuit of common sustainability goals.

Targets, data, and strategy

When pulling back on ESG and sustainability investments due to economic or business considerations or disengaging from coalitions and partnerships, it is important to clearly communicate the rationale behind it.

For example, several companies have recently adjusted their net-zero emissions targets (e.g., from 2030 to 2040) in the light of improved capacity for measurement and evaluation. While delaying net-zero commitments may be a rational and evidence-based decision, companies should be transparent about their reasons for doing so to avoid the perception of caving into backlash.

Companies can also do a better job of collecting and analyzing data relating to ESG backlash. As The Conference Board has previously noted, companies can collect more information about the response of consumers and employees to the company's stances on social issues, and there are steps that companies can take to ensure that their boards have a more complete picture of the expectations, interests, and relationships with stakeholders.

Furthermore, companies can adjust the "materiality" analyses that can be used to sort through a vast array of over 200 ESG topics. Typically, these tools are used to assess what is important to the company and its stakeholders, and those that score high on both measures are regarded as the most material. These tools should be viewed as only a starting point in developing a company's ESG strategy; and to the extent companies use them, they may wish to ensure that when evaluating what is important to stakeholders they include both pro- and anti-ESG perspectives among those stakeholders.

Continued momentum for ESG

Despite growing backlash, it is important for companies to not lose sight of the powerful pro-ESG market and regulatory forces shaping the business landscape. These include demand from investors for sustainable investment options, growing consumer preferences for sustainable products and services, the importance of purpose-driven work for attracting and retaining talent, the perceived importance of ESG factors in risk management, and the increasing implementation of ESG-related regulations and reporting requirements by governments and regulatory bodies.

Regulatory developments that will strengthen the American corporate community's focus on ESG include:

- Finalization of the SEC's climate-related disclosure rules in the US, which will require companies to disclose more information about their climate-related risks and emissions.
- Implementation of the European Union's Corporate Sustainability Reporting Directive (CSRD) in Europe, which will have broad extraterritorial reach.
- Further standard setting for sustainability reporting by the International Sustainability Standards Board (ISSB), which will help to harmonize several of the leading voluntary frameworks.

Conclusion

While ESG backlash is likely to be a persistent challenge, it is important for companies to keep a balanced perspective. Stakeholders will continue to expect companies to operate in a socially and environmentally responsible manner and have effective governance practices. Rather than undertaking dramatic shifts in positioning or retreating from the conversation entirely, CEOs should instead take the opportunity to engage the board and C-suite in reevaluating and refreshing their strategies and commitments. This will enable companies to not only navigate backlash but also position themselves strategically to thrive in capital, labor, and products markets that continue to value good governance, social responsibility, and environmental stewardship.

About This Report

The Conference Board held a Chatham House Rule roundtable in April 2023 on **How Companies Can Address ESG Backlash**, convened jointly by the ESG Center, Marketing & Communications Center, and Human Capital Center. At the roundtable, 202 executives, directors, and others from 107 leading companies discussed: (i) the current scope and state of ESG backlash, and what the future may hold; (ii) the impact of ESG backlash on companies; and (iii) strategies used to address ESG backlash and reduce the risk of it in the future.

This report presents key insights from the roundtable, supplemented with the results from a confidential survey into how 125 companies are experiencing and responding to ESG backlash (undertaken in April 2023), as well as further primary and secondary research.

This report, and the roundtable that preceded it, were generously sponsored by Teneo.

About Teneo

Teneo is a global CEO advisory firm that draws upon its global team and expansive network of senior advisors to provide advisory services across five business segments, helping clients to solve complex business challenges. Teneo's clients include a significant number of the Fortune 100 and FTSE 100, as well as other corporations, financial institutions, and organizations.

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Acknowledgments

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Endnotes

[1] ESG stands for "environmental, social, and governance." It stems from a 2004 report, *Who Cares Wins*, issued under the auspices of the United Nations and endorsed by 18 financial institutions, largely from outside the US. The report's premise was that focusing on these three categories of factors would improve company performance, strengthen investment markets, and lead to sustainable global development. The authors deliberately eschewed terms such as sustainability and corporate citizenship for a simple listing of types of factors. Over time, the list of ESG issues has grown to encompass more than 200 distinct issues that fall under approximately 30 different categories. Given its origins, and its somewhat clinical nature, ESG is often used by investors, nonprofits, and academics. It does not tend to resonate as well with employees or consumers. For more on the terminology used to discuss ESG, see: Paul Washington, *ESG Essentials: A Guide to Terminology*, The Conference Board, 2022.

[2] The 19 states represented were Florida, Alabama, Alaska, Arkansas, Georgia, Idaho, Iowa, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, and Wyoming.

[3] In the landmark case of *Massachusetts v. EPA* in 2007, the Supreme Court held that Massachusetts and other states had the right to sue the Environmental Protection Agency (EPA) to regulate greenhouse gas emissions from automobiles, asserting that the states had standing based on the injuries they would suffer from climate change impacts. This ruling established that states could assert harm to their interests because of federal inaction on environmental issues, broadening the avenues for state attorneys general to challenge federal policies and regulations that they believed violated state rights or harmed their constituents.

[4] For example, a participant lawsuit (*Spence v. American Airlines, Inc., et al*) was filed in the US District Court for the Northern District of Texas in June 2023 against American Airlines, by a putative class of current and former pilots. The putative class (represented by a former Texas Assistant Solicitor General) allege that American Airlines "breached their fiduciary duties" by investing employee retirement savings with "investment managers and funds that pursue leftist political agendas through environmental, social and governance ("ESG") strategies, proxy voting, and shareholder activism."

[5] As of December 2022, BlackRock had $8.6 trillion assets under management (AUM), compared to $0.5 billion managed by Strive Asset Management.

[6] As of July 2023, the Net-Zero Insurance Alliance is comprised of 12 member organizations. This is down from a height of 30 members in late March 2023.

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