

Business Stakeholders Are Asking Attys For ESG Data

By Michele Gorman

Law360 (December 19, 2022, 4:15 PM EST) -- As corporate legal departments face demand from business partners to disclose information about their environmental, social and governance initiatives, more businesses are devoting resources to their ESG priorities, according to a report released Monday.

Business law firm Thompson Hine LLP's second annual ESG survey, conducted in October, found that 34% of participating companies' customers and other stakeholders are asking for data on greenhouse gas emissions, 25% on diversity, equity and inclusion, and 21% on human capital. The report, titled "ESG: An Intensifying Focus," included responses from 128 in-house counsel and senior business executives across a variety of industries, company sizes and locations.

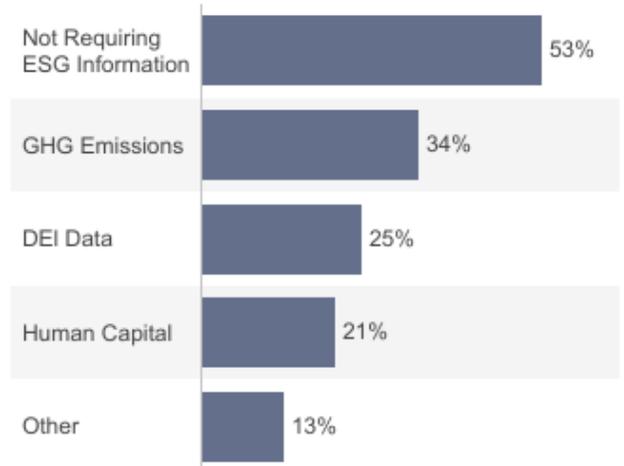
The data components of ESG and green initiatives are currently top of mind for lawyers at both private and public companies, according to the survey. The most pressing concern for private companies is data collection, at 20%, followed by green initiatives and staffing, both at 12%. At public companies, it's green initiatives, at 23%, data verification, at 15%, and regulatory activity, at 13%.

Businesses across sectors are facing increased regulatory activity and mounting pressure from investors, customers, employees and job candidates to pay attention to ESG issues.

Already struggling with regulatory activity, both private and public companies expect the concern over this area to increase in the next two years. Lawyers from both private and public businesses ranked regulatory activity as the first issue that will continue to be a challenge, at 18% and 21%, respectively, according to the survey.

Business Customers Ask For ESG Information

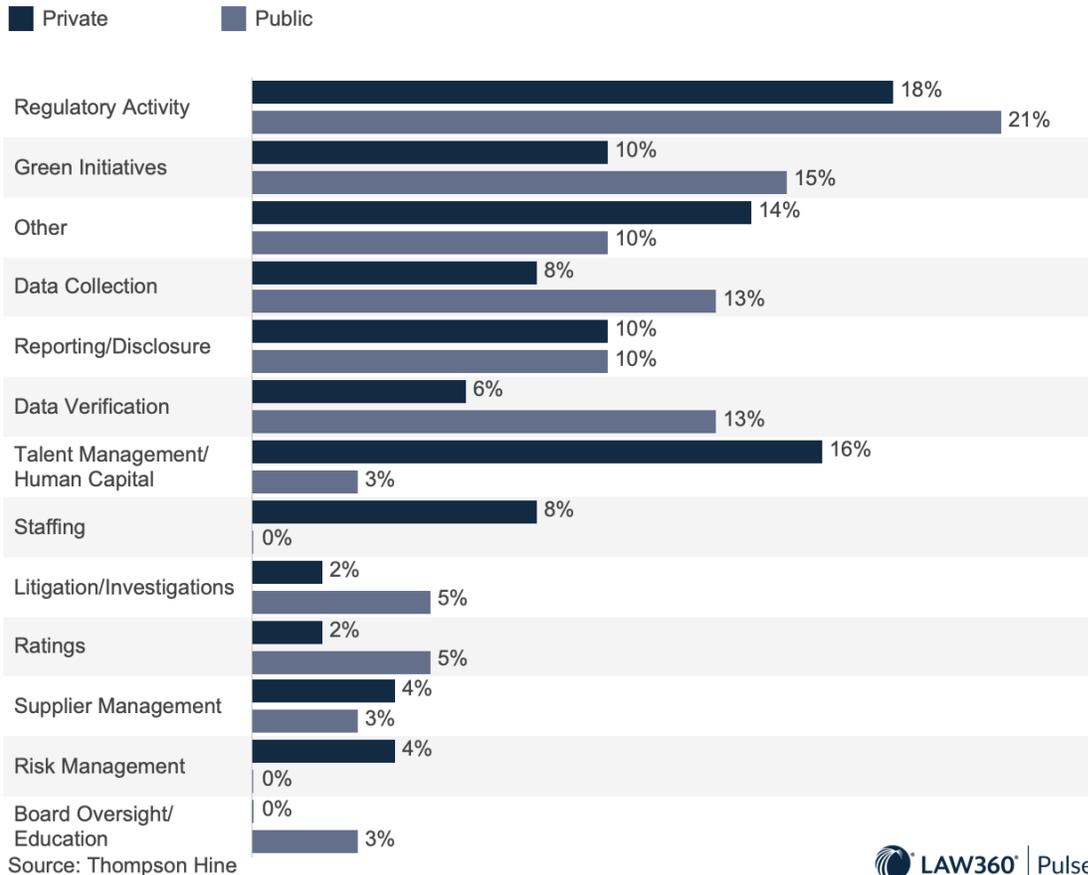
Corporate legal departments are facing pressure from business partners to share information about ESG issues, including details about greenhouse gas emissions and diversity, equity and inclusion.



Source: Thompson Hine

Regulatory Activity Is Top of Mind

In-house lawyers at both private and public companies identified regulatory activity as their most pressing challenge over the next two years.



"Companies are working hard to achieve greater certainty around their ESG focus while aligning their ESG targets to their company's values," Heidi Friedman, Thompson Hine partner and co-chair of its ESG Collaborative, said in the report. "The consequences of getting it wrong are simply too great."

In particular, the U.S. Securities and Exchange Commission's proposed rule on climate disclosures "has created a particular buzz among businesses," said Jurgita Ashley, also a firm partner and ESG Collaborative co-chair.

In March, the SEC released a climate risk-related plan that is among the most contentious under Chair Gary Gensler. The plan would require public companies to disclose a range of data related to greenhouse gas emissions, the business risks associated with severe weather events and those tied to the transition to a smaller carbon footprint.

The proposal became increasingly contentious as a cast of ex-SEC heavy-hitters, advocacy groups, lawmakers and attorneys expressed starkly diverging opinions about the merits of the proposal, including the agency's authority to impose the plan, the constitutionality of the requirements, the costs and burdens to companies, and the impacts on everyday investors.

The debate over whether to require more climate-related disclosures has revealed deep divides

between Democrats, who have generally favored the rules, and Republicans, who have not.

There's also a split in the corporate world, between private and public companies. Thompson Hine found that while the majority — 79% — of public businesses in the survey said they are planning to follow the mandates of the proposed SEC rule, 70% of private companies said they are not.

The survey also looked at how legal departments allocate ESG responsibilities. Thirty-five percent of private companies said their CEO typically has primary ESG oversight, up four percentage points from last year's survey, according to the data.

But for public companies, while a quarter of the law departments that participated in the 2021 survey said their CEO had primary ESG responsibility, that number dropped to just 8% in 2022. Instead, the chief sustainability officer has the role at 28% of those companies, Thompson Hine discovered.

The survey is in line with other recent reports conducted as the range of ESG risks expands. A report earlier this year found that one of the biggest challenges on the minds of participating general counsel was managing risks where they lack clear guidance from regulators. Some 92% of law departments who took part in the study said that they face challenges creating policies to tackle social issues, where there are no specific regulations; and 90% made the same point in relation to environmental issues.

--Additional reporting by Sue Reisinger. Editing by Alex Hubbard.