Sustainability is being increasingly associated with cross-jurisdictional legal risks

US investigations

- State AGs continue coordinated anti-ESG actions, increasingly relying on antitrust, fiduciary duty and consumer protection theories.
- ESG-related investigations and settlements demonstrate continuing enforcement risk.
- For example, in H1 2026, Vanguard settled litigation with a coalition of State Attorneys General for USD 29.m, illustrating that ESG-related litigation and investigations can generate tangible financial exposure even outside climate disclosure claims.

Emerging European case law

- Claims increasingly target financial institutions, insurers, investors and parent companies.
- Litigation is moving from declaratory relief towards injunctions, damages and business conduct remedies.
- For example, in H1 2026, regulators and courts maintained their scrutiny on ESG risk management and implementation, as illustrated by the ECB's sanction against Crédit Agricole for deficiencies in climate risk materiality assessments (fine of EUR 7.5m) and French court decisions in the *Yves Rocher* and *TotalEnergies* cases examining the alignment between ESG commitments, corporate frameworks and implementation measures.

Other market developments

- In August 2026, China designated the Responsible Business Alliance, the Responsible Minerals Initiative, and four other US entities (e.g. Veritas) under its Anti-Foreign Sanctions Law for or "assisting and supporting" US Xinjiang-related sanctions.
- in H1 2026, the Swiss Federal Council issued a consultation on the draft Federal Act on Sustainable Corporate Governance (NUFG), which proposes a new Swiss parent company liability regime for overseas harm, and a new supervisory authority empowered to impose sanctions of up to 3% of global turnover.

Excerpt of letter sent by 16 AGs to Unilever and others in October 2025 (*see also* letter from US Ambassador to the EU in August 2026)

By requiring ambiguous and often unascertainable reporting requirements reliant upon independent third parties' actions, the CSRD and CSDDD threaten to expose companies like Unilever to lawsuits and government enforcement actions in the United States, such as deceptive trade practice actions. In addition, corporate alignments with the European Green Deal implicate antitrust issues. Moreover, the CSRD and CSDDD require an about-face for many U.S. companies who have reoriented their ill-begotten DEI and ESG practices under the current policies of the Trump Administration. Indeed, the CSRD and CSDDD seek to require companies to comply with the Paris Agreement and similar accords, notwithstanding the fact that President Trump has removed the United States from these agreements.

Cutting through the noise: Key trends to have in mind

Parent companies and liability across the value chain

Liability is being tested across the value chain, including parents, shareholders, downstream operators, financiers and insurers. Courts are increasingly looking at group-level strategy, targets, oversight and due diligence rather than relying solely on separate legal personality.

Sherpa v Laboratoires de Biologie Végétale Yves Rocher, Mar. 2026

Consistency and coherence from commitment to implementation

Courts increasingly expect companies to demonstrate that ESG commitments, policies, frameworks and objectives (ESG frameworks) are reflected in governance, risk management and day-to-day implementation, not just in policies or public statements.

Notre Affaire à Tous et al. v TotalEnergies, Jun. 2026

Reporting is an output not a shaper of corporate action

Courts increasingly distinguish between sustainability reporting and implementation efforts. Reporting should reflect the governance and processes already in place, it cannot replace them.

ASIC v Fiducian Investment Management Services Limited (FIMS), Aug. 2026

Disclosures need to be duly substantiated

ESG claims must be specific, verifiable and supported by evidence. Even genuine sustainability efforts do not protect broad or absolute claims from greenwashing scrutiny.

Swiss Post greenwashing challenge, Switzerland, Jun. 2026