



Always Innovating



ESG: An Intensifying Focus

This is the second Thompson Hine survey tracking companies' ESG programs, priorities and progress. While last year's survey served as a baseline, our 2022 survey, "An ESG Snapshot: As Pressure Increases, Who's Doing What and How?" is more focused on the trend to businesses narrowing and intensifying their ESG focus. Additionally, our second annual survey takes a deeper dive into the ESG areas and protocols that are both actionable and imminently on the minds of companies' management teams to allow for further benchmarking and analysis in a space that seems to be changing daily.

Since our 2021 survey was finalized, we have seen a flurry of fast-tracked regulatory activity, with the SEC's proposed rule on climate disclosures (and the thousands of comments the SEC received) at the forefront and international frameworks that are much closer to implementation. Plus, many states have issued regulations and guidance that provide another layer of complexity.

Overall, reporting obligations continue to increase, whether mandated by law or stakeholders. These obligations cover a range of areas from GHG emissions and environmental impact to supply chain issues such as human rights, anticorruption and diversity. In addition, some companies must now prepare for new global due diligence and reporting directives such as the CSRD and the CSDDD if they do business in the EU, have EU investors, or are in the supply chains of companies that do business in the EU.

And the ratings agencies continue to watch over all of it, focusing on both transparency and impact. But while much of the culture surrounding ESG has surged ahead, some remain frustrated at the inability to understand how best to identify, track and meet ESG goals. The absence of a single, uniform ESG reporting framework continues to challenge the best-intentioned of companies, while other frustrations, political and ideological divisions, and an increasingly vocal anti-ESG sentiment also seem to be forming, as evidenced by the growth of such things as "anti-ESG" funds.

Some companies must now prepare for new global due diligence and reporting directives such as the CSRD and the CSDDD if they do business in the EU, have EU investors, or are in the supply chains of companies that do business in the EU.



The ESG Collaborative utilizes Thompson Hine's proprietary SmartPaTH system, which prioritizes predictability, efficiency and transparency to maximize value in client service delivery.

Atlanta | Chicago | Cincinnati | Cleveland | Columbus
Dayton | New York | Washington, D.C.

THOMPSONHINE.COM

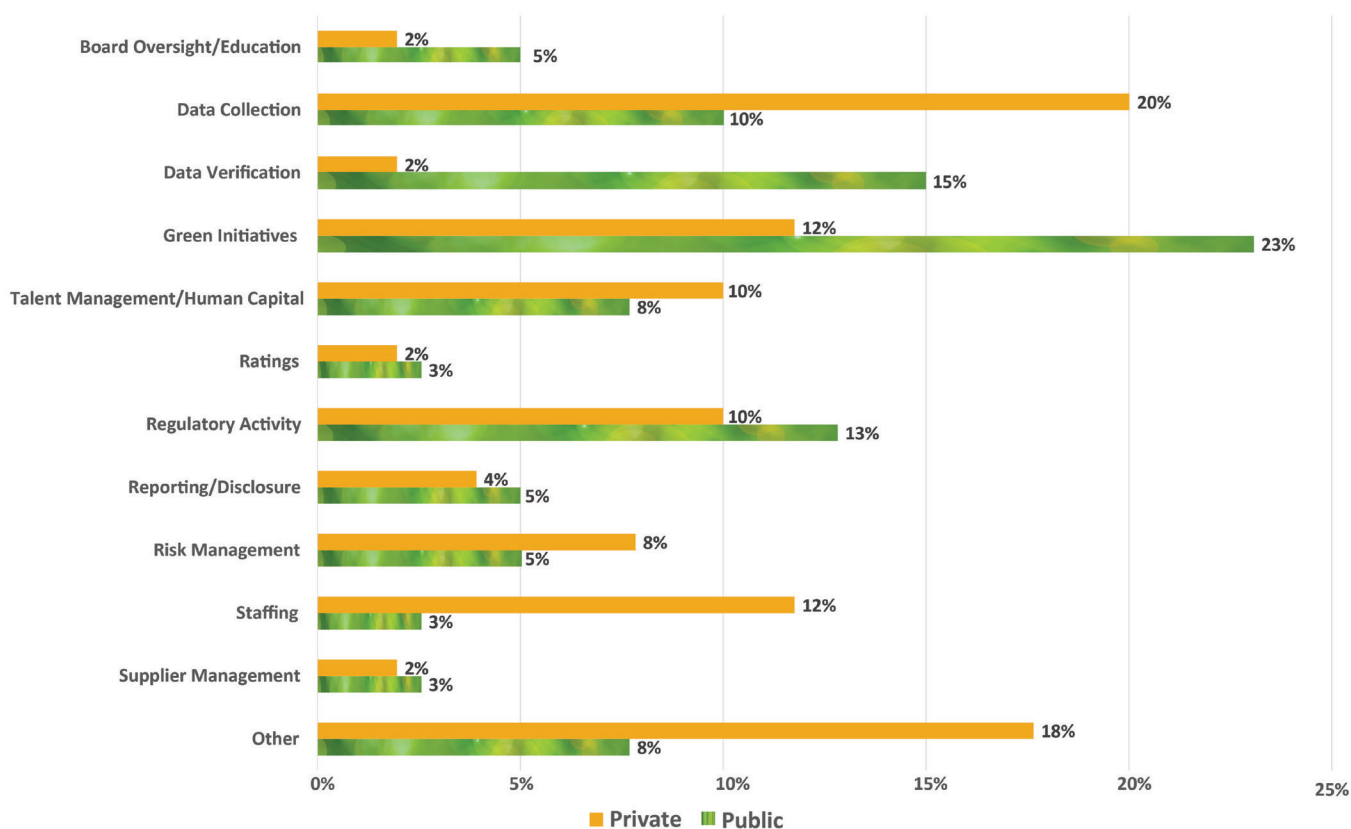
This year's survey asked in-house counsel and other senior corporate leaders to share thoughts and experiences related to a number of key ESG issues, including:

- Their biggest current and expected challenges
- How they allocate ESG responsibilities
- Whether they are preparing to follow the draft SEC rule's mandates
- Their current or planned reporting on Scope 3 GHG emissions
- Whether they are using or planning to use third-party verification for any reported data
- Whether they have committed to the Science Based Targets initiative (SBTi)
- The extent to which they are seeking to obtain ESG information through contractual arrangements
- The level of customer demand, if any, for reported ESG information
- Their use or planned use of third-party consultants
- If operating outside the U.S., whether they are preparing for EU CSRD, ISSB or other ESG-related regulations and initiatives

BIGGEST CHALLENGES—CURRENT AND EXPECTED

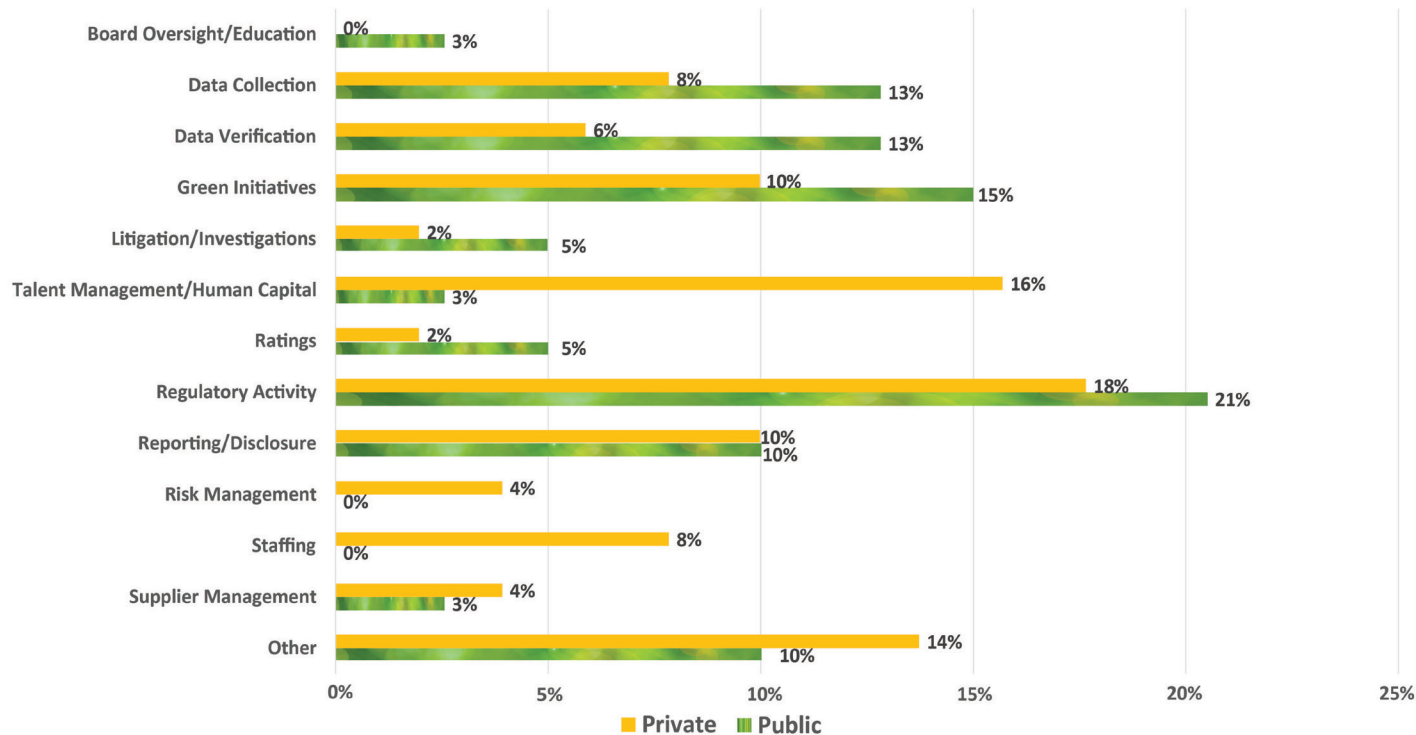
In our 2021 survey, Data Collection and Verification (combined) was the most pressing concern for both private (43%) and public companies (52%) in the coming year. Private companies were also most acutely concerned about Green Initiatives (30%) and Staffing (24%), while Regulatory Activity (27%) and Staffing (27%) rounded out the top three significant near-term concerns for public companies last year.

This year, the top current challenge for respondent private companies is Data Collection (20%) (but not Data Verification (only 2%)), followed by Green Initiatives and Staffing (12% each), and Talent Management/Human Capital and Regulatory Activity (10% each). Risk Management is also a concern (8%). Public companies report currently being most concerned with Green Initiatives (23%), followed by Data Verification (15%), Regulatory Activity (13%) and Talent Management/Human Capital (8%).



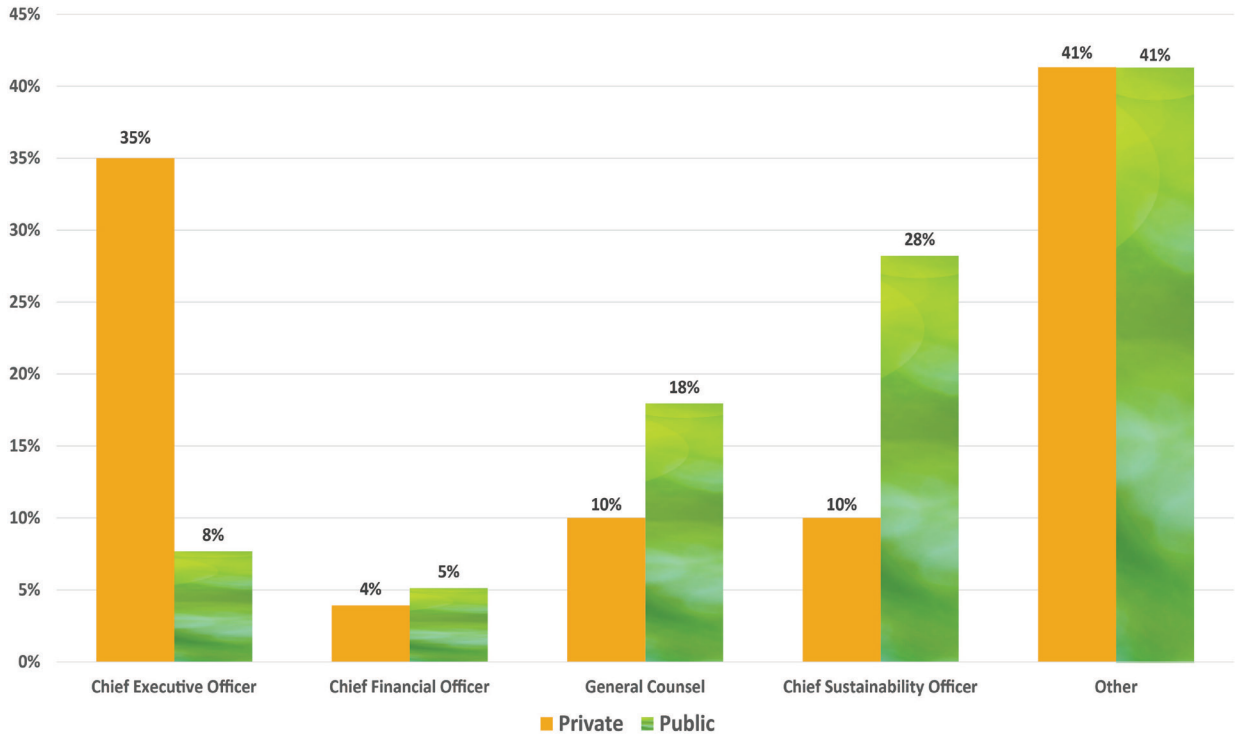
Public companies expect regulatory activity will continue to be a concern, followed by green initiatives, data collection and verification, reporting/disclosure and ratings and litigation/investigations.

When asked to look ahead to the next two years, 18% of private companies predict that Regulatory Activity will continue to be a challenge, followed by Talent Management/Human Capital (16%) and Reporting/Disclosure and Green Initiatives (tied at 10%). Future litigation and investigations are also a stated concern here (2%). Twenty-one percent of public companies say they expect Regulatory Activity will continue to be a concern, followed by Green Initiatives (15%), Data Collection and Verification (13% each), Reporting/Disclosure (10%), and Ratings and Litigation/Investigations (5% each).

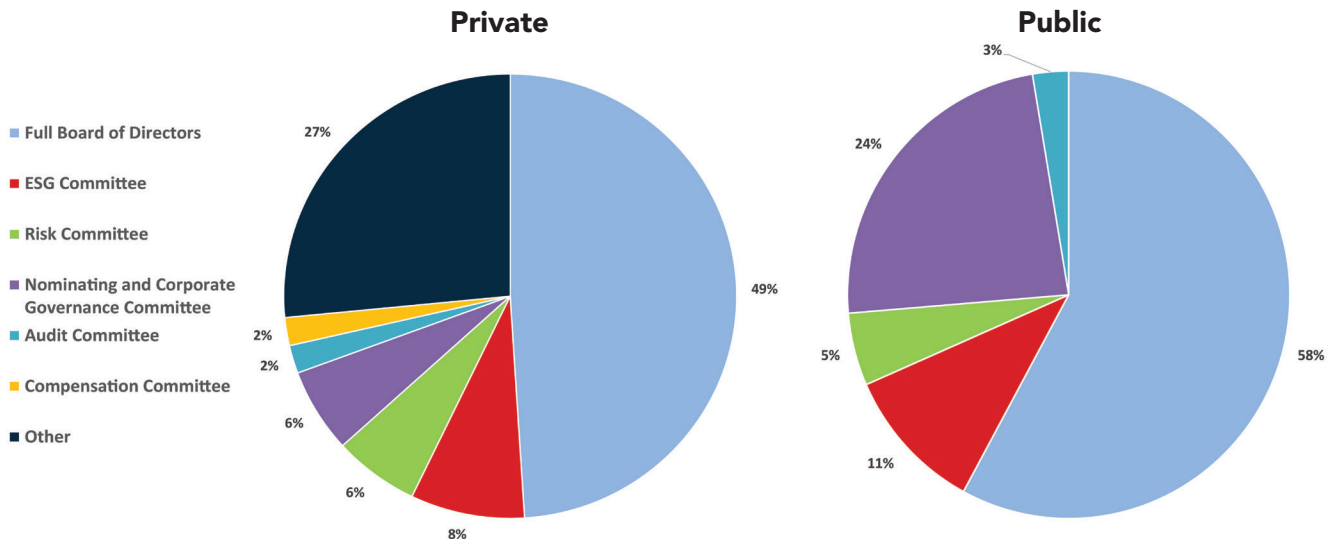


PRIMARY RESPONSIBILITY

Just as they did last year, private company respondents reveal that their CEO usually has primary responsibility for ESG oversight (35%, compared to 31% last year). However, while 25% of public companies surveyed last year said their CEO had primary ESG responsibility, this year that number dropped to only 8%, with the Chief Sustainability Officer assuming that role 28% of the time.



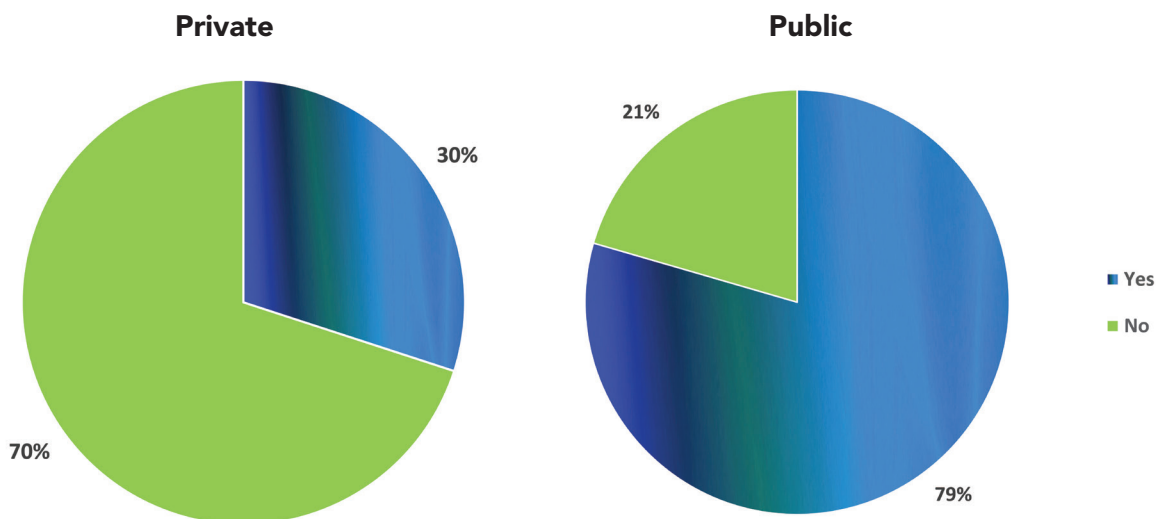
At the board level, 49% of private companies report that their full board leads ESG efforts, followed by the ESG Committee (8%) and the Risk and Nominating and Corporate Governance Committees (6% each). Fifty-eight percent of public companies say ESG efforts are led by their full board, followed by the Nominating and Corporate Governance Committee (24%) and the ESG Committee (11%).



SPECIFIC NEW MANDATES AND REPORTING

Proposed SEC Rule

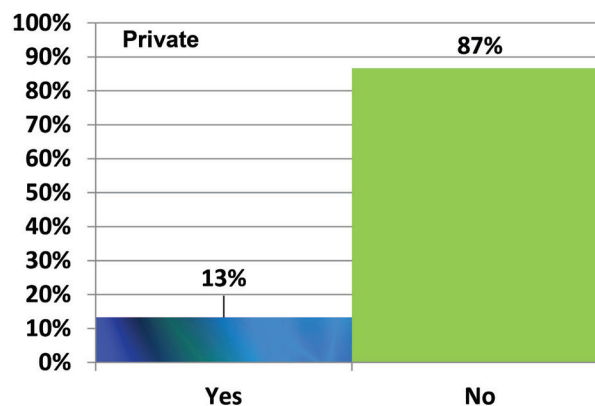
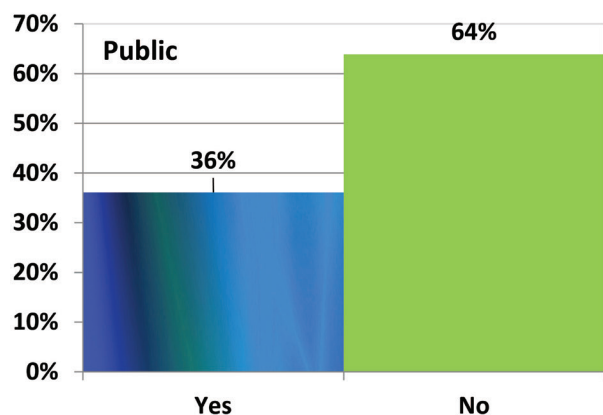
When asked if they are preparing to follow the mandates of the draft SEC rule, 30% of private companies say they are (70% have no such plans). By contrast, 79% of public companies report that they are undergoing preparations (with only 21% not currently doing so).



Scope 3 GHG Emissions

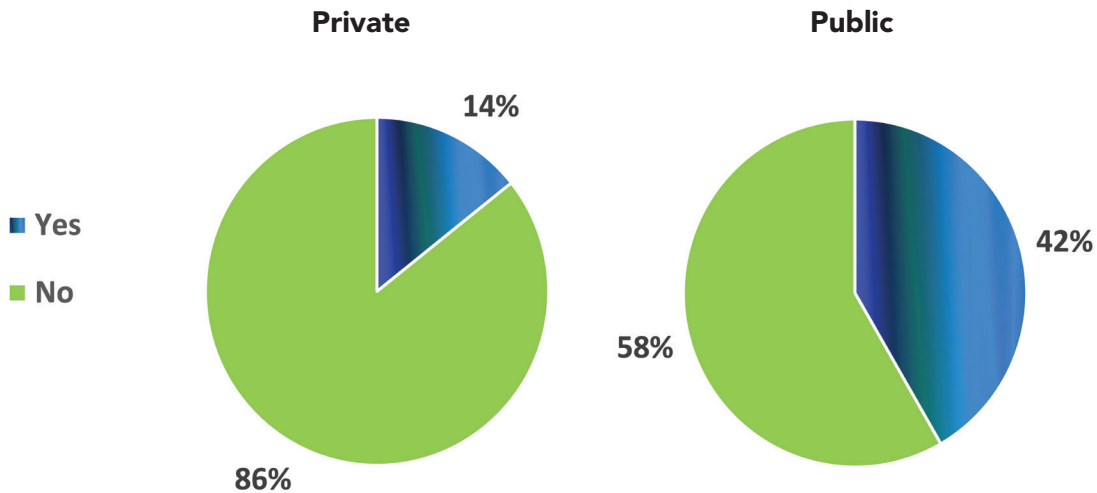
A majority of respondent companies (collectively 77%) say they are neither reporting nor planning to report on Scope 3 GHG emissions in 2022. Thirteen percent of respondent private companies are or will be reporting on their Scope 3 GHG emissions, compared to 36% of public companies.

An industry breakdown (of private and public companies combined) reveals that 39% of manufacturing companies and 14% of professional services companies are reporting or planning to report on Scope 3 GHG emissions.



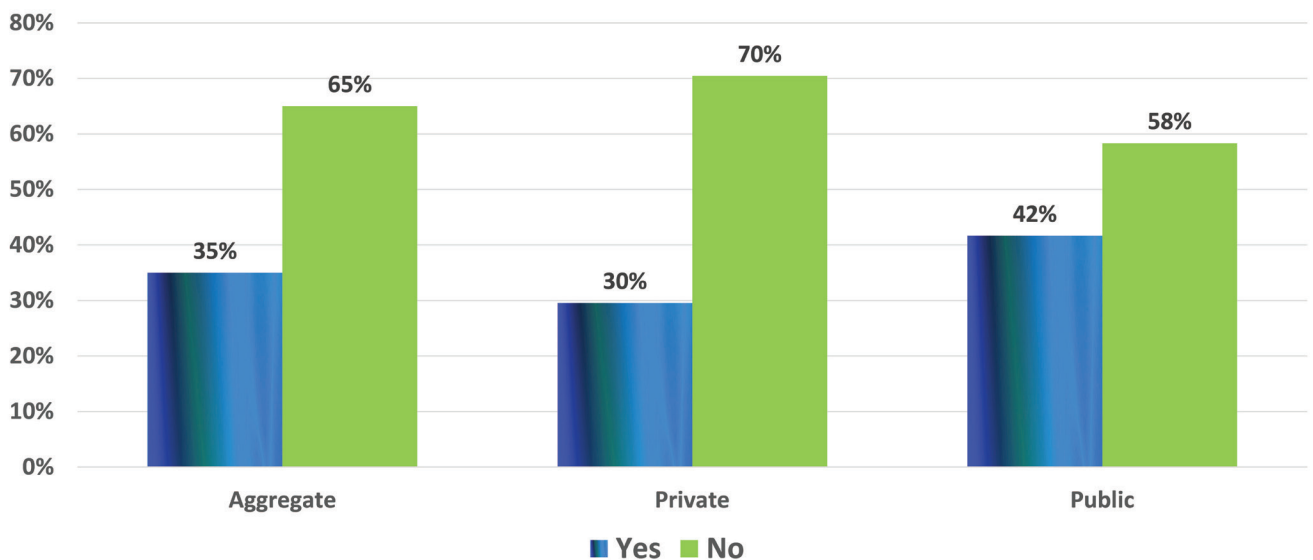
SBTi

When asked if they have committed to the SBTi, only 14% of the private companies that answered say they have (with 86% reporting they have not). Of the public companies that answered the question, 42% reported committing to the SBTi, leaving 58% that have not.

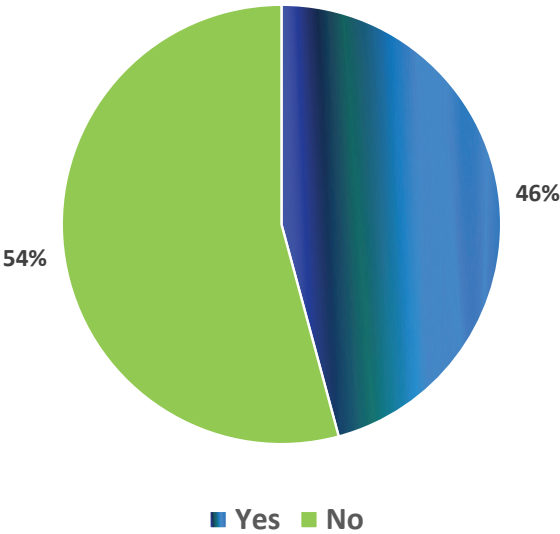


Third-party Assistance

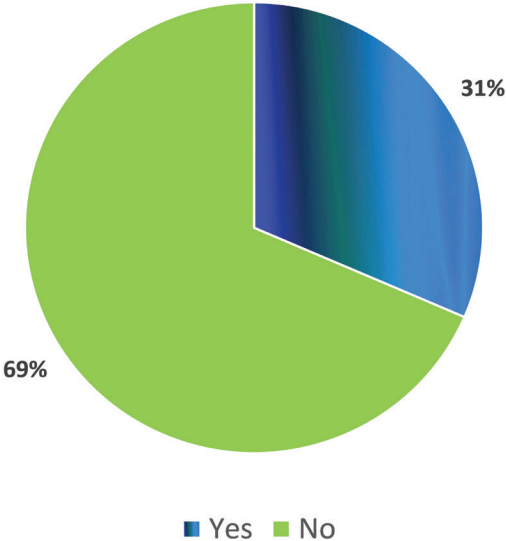
Most (65%) respondent companies, and 58% of public company respondents, report that they are not using or planning to use third-party verification for the data they report in 2022.



Forty-six percent of respondents say they are currently using a third-party consultant to support some aspect of their ESG programs.



Of those who are not yet using a third-party consultant, 69% say they don't plan to use one in 2023 either.

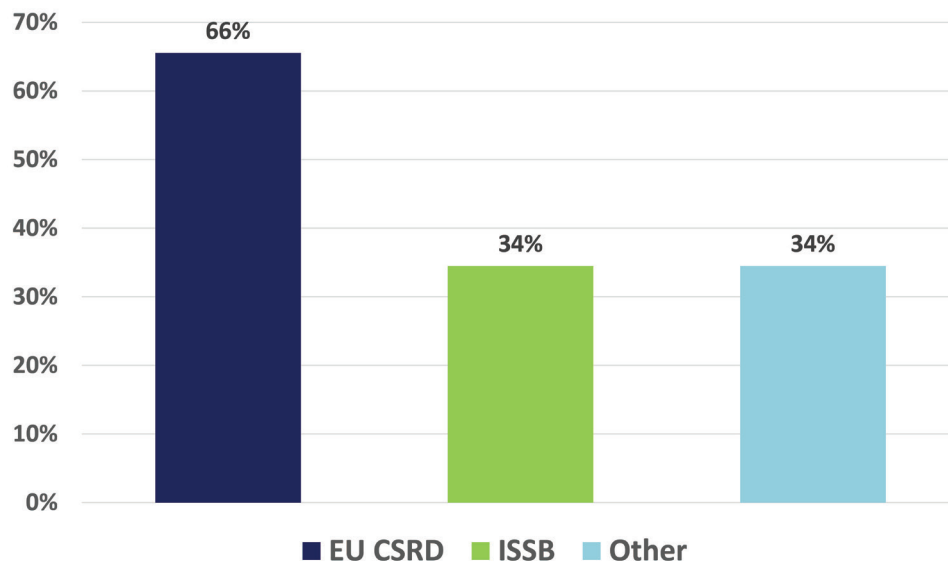


Those who are currently using a consultant shared that they are doing so for the following specific aspects:

- ESG program development
- ESG framework/policy development
- ESG priority/materiality assessment and determination of metrics and goals to be reported
- ESG strategy and Scope 1 and 2 baseline carbon emissions calculations
- Initial work and assessment to establish ESG baseline
- Scenario analyses for TCFD reporting
- Data collection
- GHG emissions calculations
- Data verification and validation
- Data controls and procedures in anticipation of SEC rules
- Issues of race and disadvantaged populations
- Human rights
- Environmental sustainability
- Energy audits
- REC purchases
- Green energy review
- Advisory services related to Scope 3, TCFD and the SBTi
- ESG report production
- General consulting work
- CDP reporting
- Best practices

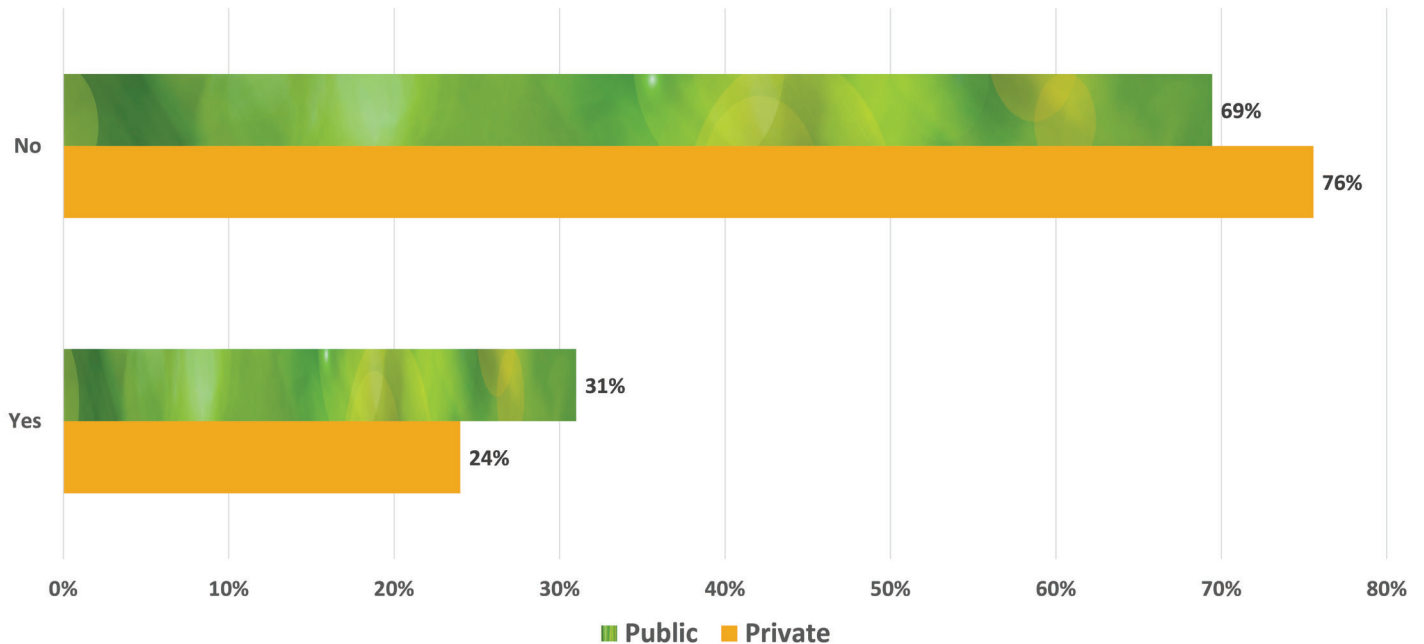
THINKING GLOBALLY

Of those companies with operations in foreign countries (23% of total survey respondents), 66% say they are preparing for EU CSRD, 34% for ISSB and 34% for "Other," which (via write-in responses) includes India, EU Taxonomy, Brazil and Germany Supply Chain Act on Forced Labor.



CONTRACTUAL ARRANGEMENTS

While the majority of respondent companies are not yet seeking ESG information or obligations through their contractual arrangements, 24% of private companies and 31% of public companies report they are doing so.

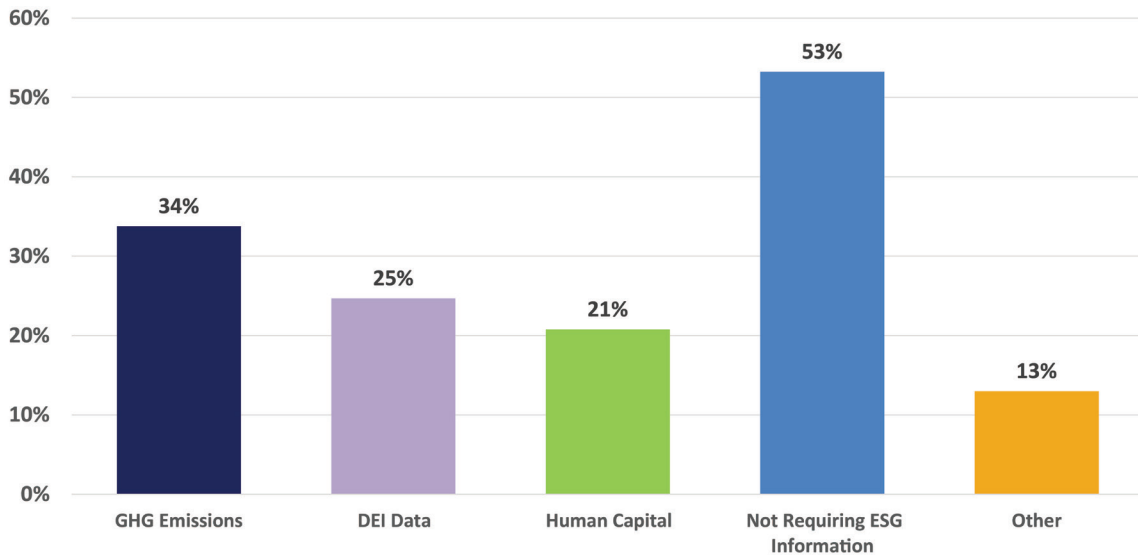


These companies shared (via write-in responses) some of the types of information they are asking for:

- Key supplier ESG initiatives
- Supplier environmental and sustainability efforts
- Supplier information on carbon, human rights, human capital issues, and diversity, equity and inclusion (DEI)
- Scope 3 data
- CDP
- Conflict minerals info
- ESG questionnaires developed to establish baseline for measurements of environmental, climate, and diversity and inclusion efforts
- Racial disparity and economic development opportunities for disadvantaged populations
- Supplier and customer information on all ESG areas
- Compliance best practices

CUSTOMER DEMANDS FOR ESG INFO

Fifty-three percent of respondent companies' customers are not currently requiring them to report ESG information, but 34% of customers are asking for information on GHG emissions, 25% want DEI data and 21% are concerned about human capital.



Companies also report (via write-in responses) customer requests in the areas of:

	Safety	Sustainability and other "green" and safety attributes at a product level and information about supply chain transparency and ethics at a company level
Walmart and project Gigaton	Conflict minerals	OECD goals
CDP	Ecovadis reporting	

CONCLUSION

In sum, and as the findings in this report confirm, every company is trying to find certainty around its ESG focus in a very uncertain environment. There are still many challenges, but in the last year, so many more businesses have devoted staff, dollars and programs to setting, meeting and disclosing their ESG priorities. At Thompson Hine, we understand the continuing ESG evolution and stand ready to meet our clients wherever they are and help them implement ESG best practices.

This report is a summary of survey responses collected from 128 in-house counsel and other senior business executives nationwide representing a diverse mix of industries, company sizes and locations with a public/private ratio of 43% to 57%. Industries included Manufacturing (24%), Financial Services (15%), Professional Services (9%), Tech/Software (7%), Retail (3%), and Transportation (2%). Breakdown by revenue was <\$50k (7%), \$50k–\$500 million (43%), \$500 million–\$1 billion (11%), and >1 billion (39%) and employee counts were 50 or fewer (28%), 51–500 (20%), 501–2,000 (15%), 2,001–10,000 (13%), and more than 10,000 (25%). Seventy-three percent of respondents reported operating primarily in the United States, but 27% operate globally.

Please note that the survey underlying this report was not a scientific survey. This communication and the survey results are intended to inform clients about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in them without professional counsel.

© 2022 THOMPSON HINE LLP. ALL RIGHTS RESERVED.



Always Innovating

The ESG Collaborative



As businesses, boards and investors increasingly prioritize ESG criteria, our experienced multidisciplinary ESG team of transactional, regulatory and other practitioners helps clients identify material risks and growth opportunities by evaluating their sustainability; diversity, equity and inclusion; and social stewardship efforts.

With additional regulatory rulemaking expected in the United States and abroad, many of the current administration's priorities tied to ESG, and several regulatory agencies and other organizations creating additional standards to further incorporate ESG factors into the investment process, we can help businesses navigate the compliance and reporting challenges.

The list of stakeholders concerned with businesses' ESG performance grows daily. Corporate leadership teams know that public reputation and consumer and investor confidence can rise or fall depending on how they incorporate ESG strategies into their policies and practices. We develop and implement comprehensive strategies to integrate ESG criteria into a company's business model while preserving value and mitigating risk, and we focus on continuous innovation to serve clients with greater predictability, efficiency and transparency.

ESG Collaborative Leadership



Jurgita Ashley
216.566.8928
Jurgita.Ashley@ThompsonHine.com



Heidi B. (Goldstein) Friedman
216.566.5559
Heidi.Friedman@ThompsonHine.com

Visit www.ThompsonHine.com/services/ESG-Collaborative



The ESG Collaborative utilizes Thompson Hine's proprietary SmartPaTH system, which prioritizes predictability, efficiency and transparency to maximize value in client service delivery.

Atlanta | Chicago | Cincinnati | Cleveland | Columbus | Dayton | New York | Washington, D.C.



Always Innovating

Thompson Hine LLP, a full-service business law firm with approximately 400 lawyers in 8 offices, is dedicated to delivering innovative, cost-effective solutions that align with clients' goals and has been recognized for innovation by:

- ABA Journal
- The American Lawyer
- The Financial Times
- BTI Brand Elite
- BTI State of Alternative Fee Arrangements
- Legal Services Innovation Index
- Litera Microsystems