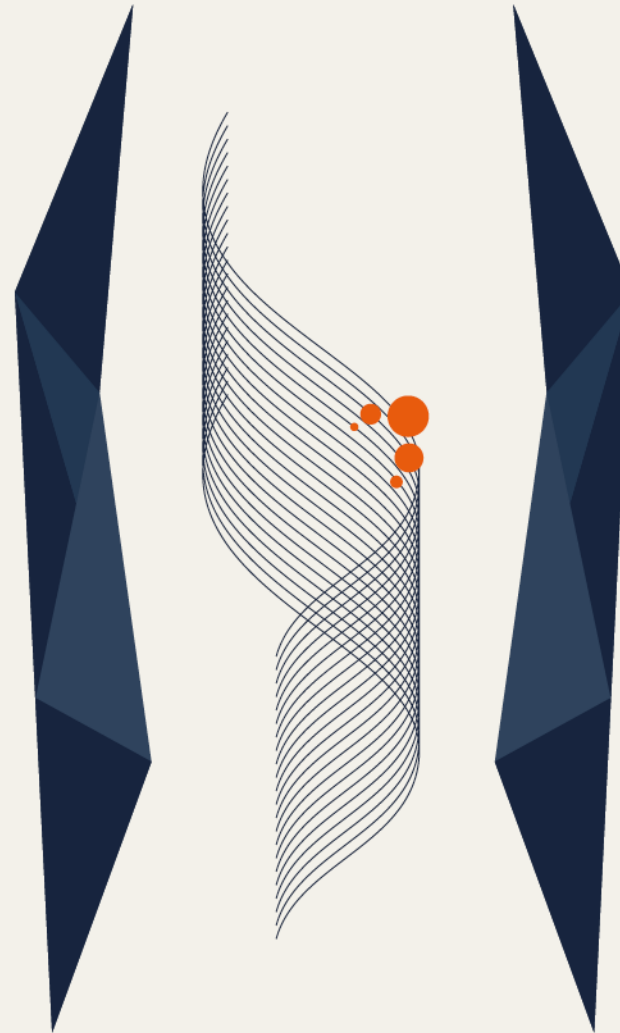


/ ESG fraud and risk mitigation

24 November 2022

Oana Piticas



Alicante
Berlin
Bratislava
Brussels
Bucharest
Budapest
Dresden
Düsseldorf
Frankfurt/M.
Hamburg
London
Munich
New York
Prague
Warsaw

noerr.com

/ ESG Fraud: Why the fuss?

▶ ESG funds reached a value of **\$ 2.7 trillion** in 2021

▶ 121 new ESG funds launched in 2021, up from 73 in 2020

▶ Asset managers earned **\$ 1.8 billion** for managing ESG Funds in 2021

/ From ethical aspirations to a fraud ripe environment

- Standard and Poor (S&P) Index of companies with top ESG ratings dropped Tesla in 2022, but maintained oil & gas companies, like ExxonMobil, due to „lack of carbon strategy” and poor safety and working conditions
- ESG ratings consider a vast amounts of data into one single (global) score and value disclosed goals more than actual achievements
- ESG requirements: Are they really linked to sustainable businesses or are they instruments used by “phony social justice fighters”?

/ Brace yourselves, ESG Fraud is coming

- *“From July 2018 to September 2021, BNY Mellon Investment Adviser represented or implied in various statements that all investments in the funds had undergone an ESG quality review, even though that was not always the case (...) Numerous investments held by certain funds did not have an ESG quality review score as of the time of investment”* – the U.S. Securities and Exchange Commission fined BNY Mellon **\$ 1.5 million** for **“misstatements and omissions about ESG considerations”**
- The U.S. Securities and Exchange Commission is investigating **Goldman Sachs** over its E.S.G. investment funds — funds that invest in companies that say they are committed to environmental, social and governance principles
- **Deutsche Bank and DWS** offices in Frankfurt have been raided in May 2022 by the German Police after greenwashing allegations
- The entire Fashion Industry took a hit in light of new supply chain transparency requirements after the Uyghur scandal
- ESG investigations have been initiated in their vast majority through whistleblowing reports, while whistleblower protection is to drastically increase on European level after EU Whistleblowing Directive is to be fully transposed by all member states

/ ESG Fraud: All sorts of washing

Greenwashing

Misleading/misinforming stakeholders and the public about the organization's environmental impact and/or initiatives

Bluewashing

Misleading information on coastal, oceanic and marine development initiatives, that actually harm the aquatic environment

Whitewashing

Misleading internal investigations performed by companies in order to cover up ESG related scandals

Pink-, Red-, Brown- and Purplewashing

Misleading/false information with regard to activities undertaken by a company in order to allegedly support DEI practices

/ Implications & Recommendations

- ACFE stated in 2022: *“Environmental, social, and governance fraud issues will be faced by most organizations. **While these risks may be inevitable, fraud losses and reputational damage are not.** Anti-fraud and risk management practitioners can help protect against these new vulnerabilities, and they can establish a strong foundation for navigating the complex ESG environment for years to come”*
- ESG disclosure, assessments, statements and verifications expose a company to tremendous legal implications, if not backed up by proper investigations and risk assessments
- ESG data should be collected directly through internal operational systems
- Supply chain transparency should be subject to proper Due Diligence, especially in light of the Directive proposal 2022/0051, as of 23.02.2022
- ESG matters are handled efficiently only if not subject to whitewashing
- A true competitive advantage can be gained by prioritizing conformity, and not compliance

/ Implications & Recommendations

- Investing in ESG anti-fraud programs is key
- ESG anti-fraud programs should consider at least the following guidelines:
 - ✓ Fraud Risk Governance: defining ESG materiality thresholds & setting the right tone at the top
 - ✓ Fraud Risk Assessment: conducting recurring ESG focused risk assessments, with a special focus on supply chain risks
 - ✓ Fraud Control Activity: ESG disclosure reporting controls
 - ✓ Fraud Investigation & Corrective Action: ensure whistleblowing and investigation capabilities
 - ✓ Monitoring Activities: KPIs & management reporting

/ Contact



Oana Piticas

Avocat

Senior Associate, White Collar
Crime Practice Coordinator

+40 213125888

oana.piticas@noerr.com

/ Offices

Alicante

Noerr Alicante IP, S.L.
Avenida México 20
03008 Alicante
Spain
T +34 965 980480

Berlin

Noerr PartGmbH
Charlottenstraße 57
10117 Berlin
Germany
T +49 30 20942000

Bratislava

Noerr s.r.o.
AC Diplomat
Palisády 29/A
81106 Bratislava
Slovakia
T +421 2 59101010

Brussels

Noerr PartGmbH
Boulevard du Régent 47-48
1000 Brussels
Belgium
T +32 2 2745570

Bucharest

S.P.R.L. Menzer & Bachmann - Noerr
Calea Victoriei nr. 174
Corp A, Sector 1
010097 Bucharest
Romania
T +40 21 3125888

Budapest

Kanzlei Noerr & Partner
Fő utca 14-18
1011 Budapest
Hungary
T +36 1 2240900

Dresden

Noerr PartGmbH
Paul-Schwarze-Straße 2
01097 Dresden
Germany
T +49 351 816600

Düsseldorf

Noerr PartGmbH
Speditionstraße 1
40221 Düsseldorf
Germany
T +49 211 499860

Frankfurt am Main

Noerr PartGmbH
Börsenstraße 1
60313 Frankfurt am Main
Germany
T +49 69 9714770

Hamburg

Noerr PartGmbH
Jungfernstieg 51
20354 Hamburg
Germany
T +49 40 3003970

London

Noerr PartGmbH
Tower 42
25 Old Broad Street
London EC2N 1HQ
United Kingdom
T +44 20 75624330

Munich

Noerr PartGmbH
Brienner Straße 28
80333 Munich
Germany
T +49 89 286280

New York

Noerr PartGmbH
Representative Office
885 Third Avenue, Suite 2610
New York, NY 10022
USA
T +1 212 4331396

Prague

Noerr s.r.o.
Na Poříčí 1079/3a
110 00 Prag 1
Czech Republic
T +420 233 112111

Warsaw

Noerr Żelich sp.k.
Al. Jerozolimskie 93
02-001 Warsaw
Poland
T +48 22 378 85 00

info@noerr.com
noerr.com
© Noerr PartGmbH

Noerr