Special Section:
Environmental, Social and Governance, edited by Navajyoti Samanta, pages 664-855

Editorial: Environmental, Social and Governance

Navajyoti Samanta
University of Leicester

Environmental, social and governance (ESG) has lost a bit of its shine in recent months, as "viewpoint diversity" seems to have made managers and investors wary of it, particularly in the United States (US). However, the foundation of ESG remains firm. This is because it draws upon the notion that businesses have some intrinsic social purposes/responsibilities apart from making profits for the providers of their financial capital. The primary reason for the durability of this idea can be attributed to the neuroanatomy of human beings who in general have a brain networked for moral behaviour. This of course can be shaped, sharpened or dampened by social and environmental factors, which also explains our differing preferences and pathways for reaching a conclusion favouring an ethical outcome. A utilitarian may explain ESG in terms of rational, outcome-focused thinking about the future and intergenerational equity, a deontologist would project a societal level manifestation of universal moral considerations and empathy onto ESG rules, while contractarianists may seek solace in concession theory in using ESG to hold businesses accountable beyond just paying their fair share of tax and abiding by established laws.

Given the physiological roots of business ethics and responsibility, the resilience of the idea that a business needs to be a net social good is expected to outlast the current turmoil precipitated by the orange hand in the market. Eberstadt traces the idea of responsible business to Classical Greece; *Artha-shastra* provides a primary source for business conscience in first-century CE India; divine command provides the normative backing in the medieval era, while the European mercantile period makes a social contract with either God or society or both; moving through the industrial revolution, Carroll finds rich pickings in philanthropy; coming to the early twentieth century most readers would be aware of the Berle–

Dodd debates; some of us have now simply repackaged this fundamental idea and call it ESG.

However, the expression and implementation of ESG, by whatever name called, varies by jurisdiction. You can pick the reason as per your leaning—Savigny (*Volkgeist*), LLSV (legal origin), Posner (economic), Griffiths (pluralism) etc. The scholarly literature in corporate law generally tends to follow the Global North, however, that overlooks the huge variety of heterodox ESG in the Global South, diverging in both form and enforcement. This special section focuses on the ESG practices in seven primary jurisdictions—the United Kingdom (UK), Germany, Japan, India, China, Nigeria and Ghana. It balances between the "flagbearers" of ESG in the high-income countries and contrasts them with the "emerging" ESG innovations in the middle and low-income countries.

The first article in the special section is written by Horace Yeung and Omar Tahir and focuses on the UK's approach to ESG practices. It traces the evolution of the enlightened shareholder value model while raising the query of whether companies genuinely embrace more socially and environmentally responsible business practices. It conducts case studies on ESG scores and suggests that quantitative metrics should be used with caution to avoid spurious comparisons. It finds that the flexibility of a "comply or explain" approach has resulted in inconsistent compliance among companies. This may in the future reduce the stature of the UK as a "global standard setter".

The second article is written by Alina Ganser and Andreas Rühmkorf and focuses on ESG/sustainability practices in Germany in the context of EU harmonization. It looks at the political economy of the ESG rules and traces its evolution from the European Green Deal to the Supply Chain Due Diligence Act. The case studies show that ESG rules in Germany have become more legalistic and have increased the need for mechanical compliance. The authors conclude that the Supply Chain Due Diligence Act falls short of its potential, as demonstrated by its failure to mandate stakeholder engagement.

Next the special section moves to Japan, with Kohei Miyamoto and Mikiko Takara focusing on how ESG is reshaping the managerial decision-making there. The article starts by showing how the United Nations-led Principles for Responsible Investment influenced the modern ESG regulations in Japan which is primarily governed by the Corporate Governance Code. It then critically analyses the disclosure route taken by the regulators. It zooms onto ESG failures at Kobayashi Pharmaceutical as a case study to illustrate the limitations. The authors conclude that

Japanese managers increasingly focus on ESG rules primarily as a vehicle to contribute to company's profitability.

The fourth article, written by Dakshina Chandra and Navajyoti Samanta, focuses on the ESG innovations in India. It starts with a politico-economic analysis of state-led development and planning and the slow liberalization of the wider economy. It weaves in the development of stakeholderism, ESG and corporate law alongside innovations like mandatory corporate social responsibility (CSR) and the like. It provides a snapshot of four state-operated enterprises implementing the disclosure requirements and finds that the ESG framework in India suffers from limited accountability, greenwashing, and bureaucratic box-ticking. It concludes by highlighting the lack of any real corporate cultural shift in regards to sustainability and proposes stronger internal audits, clearer metrics, and meaningful stakeholder engagement for the future.

The fifth article, written by Xue Pang, Ning Liu and Carlos Wing-Hung Lo, focuses on the challenges of navigating the ESG rules across the dual jurisdictions of mainland China and Hong Kong. As dual-listed Chinese companies expand outwards this creates a tension between the top-down approach of the mainland and the market-led comply-or-explain approach of Hong Kong. They use the case study of an automobile company to effectively highlight this. They also use the Hong Kong Business Sustainability Index to compare the implementation and performance of the companies across the two markets. They show that a unique hybridization has developed out of harmonization pressures. Please note that the article was drafted before the 2025 tariff turmoil.

The penultimate article in this section is written by Adaeze Okoye, Adeolu Idowu, Temitayo Ogundare, Oluwatamilore Sowunmi, Chiamaka Ezenwa and Gideon Edem. It focuses on the multilayered multistakeholder-focused ESG regulations in Nigeria. It starts by tracing out the development of ESG-related rules across different regulations in Nigeria focusing on issues relating to environmental protection, social obligations and corporate governance. It uses multiple case studies illustrating sustainability reporting, financing, governance and implementation of environmental measures, dividing them up into successes and failures. They provide ample evidence of achieving excellent ESG practices, however, the main challenge is to replicate the success and minimize the failures. Although, several of the ESG regulations are inspired by international standards, Nigeria has ably adapted them to work within the local milieu which can act as global model for *sui generis* ESG-driven transformation.

The final article in the special section focuses on Ghana and is by Priscilla Akua Vitoh and Jude Serbeh-Boateng. The article focuses on the question as to what extent Ghana has successfully integrated ESG principles into its national governance and development frameworks, utilizing its banking sector as a case study. The article starts by focusing on Ghana's ESG reporting framework, regulatory structure and disclosure requirements. The article then showcases the promotion of gender equality through sustainable banking principles, highlighting "concerns about their genuine integration of ESG principles into sustainable development frameworks". This provides an excellent example of how ESG is treated more like an appendage to commercial activities rather than as a core principle.

If we are to find a few commonalities in the articles in this special section, we can observe the following:

a) All jurisdictions have taken steps for formalizing the role of ESG, focusing mainly on disclosures which have become a form-filling exercise.
b) Barring a few mandatory regulations like compulsory CSR spending, gender diversity in boards and so on, most directives are unclear as to the target and ambiguous as to the steps to achieve them.
c) Corporates often use ESG as a brand exercise either to greenwash credentials or to rebadge philanthropy. There is little recognition of ESG within the culture of the organizations.
d) The problems of implementing ESG are not a compliance issue but rather a gap in the norm. ESG is seen by the managers as a distraction. Until this is changed, ESG shall remain a box-ticking exercise.