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Environmental sustainability: a snapshot of a changing regulatory landscape

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The ESG regulatory landscape is evolving – and fast – in response to increasing pressure from shareholders, regulators and consumers. These changes are particularly acute for companies in the retail and consumer brands sectors which typically have complex global supply chains, rely heavily on natural resources and are consumer-facing. Sophie Tuson charts the key legal developments in the UK and EU across the product lifecycle and flags practical considerations for businesses.

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Legal developments

Sourcing raw materials

New legislation is in force, or imminent, which will require companies to understand their interface with nature in their supply chains, particularly in the sourcing of raw materials, and take meaningful action to reduce, and report on, their impacts.

EU

Under the EU's new Deforestation Regulation (**EUDR**), from 30 December 2024 it will be unlawful for EU companies to import, export or sell forest-risk products (cocoa, coffee, oil palm, rubber, soya, cattle and wood) into/ from the EU unless they are 'deforestation-free' – meaning they have been produced on land that has not been converted from forest to agricultural use since 31 December 2020 and that they have been produced in compliance with applicable local laws. Companies will need to conduct comprehensive due diligence of their supply chains and submit a due diligence statement confirming this (note SMEs can benefit from certain exemptions or reduced requirements). Certain companies (typically large or listed companies meeting specific thresholds) may also need to start disclosing their material nature-related impacts, risks, dependencies and opportunities, including those linked to deforestation, as part of new annual reporting requirements under the Corporate Sustainability Reporting Directive (**CSRD**) (see our blog here).

UK

In the UK, the government has proposed its own set of anti-deforestation rules under the Environment Act 2021 (exact timing tbc). The rules will require companies with a global annual turnover of >£50m and which use >500 tonnes of beef, leather, cocoa, palm or soy (or any derived products) per year in their UK commercial activities to conduct due diligence to ensure those products were produced in compliance with relevant local laws. The UK requirements are limited to 'legality' only and are therefore narrower than their EU counterpart. Businesses with commercial activities in both the UK and EU will need to navigate a disjointed regulatory landscape to ensure compliance. The UK government is also considering introducing nature-related reporting requirements for the largest UK companies as part of its Sustainability Disclosure Requirements (**SDR**) regime, with further updates on that expected this year.

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Manufacturing and distribution

There is a swathe of emerging legislation requiring companies to address the environmental impact of their products across their full lifecycle. This includes requirements around climate transition plans, 'scope 3 reporting' and supply chain due diligence.

The majority of retailers and consumer brands' greenhouse gas emissions are likely linked to their supply chains (so called 'scope 3' emissions), including manufacturing and distribution processes. In both the UK and EU, listed and large private companies will increasingly be expected to report on these emissions and disclose their climate transition plans showing how they intend to reduce scope 3 emissions in line with the Paris Agreement's 1.5°c target – whether that's under the EU's CSRD (see our blog here) or as part of the UK's evolving SDR regime (see our blog here).

A new Corporate Sustainability Due Diligence Directive (CSDDD) has also recently been agreed in the EU which, once adopted, will require EU and non-EU companies over specific thresholds (broadly 1000 employees and €450m worldwide annual turnover) to address the environmental impacts of their business and supply chains (including impacts from their manufacturing and distribution processes) through due diligence, supplier codes of conduct and contracts, and improvements to business models. Companies face the risk of significant fines up to 5% of worldwide turnover and litigation for failure to comply. The obligations are expected to start applying for the largest in-scope companies from 2027 onwards. Whilst the UK is a step behind the EU, it is not inconceivable that similar supply chain laws could soon be introduced with growing support from both MPs and businesses. A private members' bill has recently been introduced in the House of Lords which, if passed into law, would introduce mandatory environmental due diligence for any company carrying on a business in the UK.

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Packaging

With growing concerns around waste and a bigger focus on shifting to circular business models, companies are facing increased responsibility and costs relating to their use of product packaging.

UK

In the UK, extended producer responsibility (EPR) for packaging has been delayed by a year until October 2025. It will require companies importing or supplying packaged products under their own brand in the UK (amongst others) to report packaging data and finance the cost of recycling, and will apply to large producers if they have >£2m annual turnover and are responsible for >50 tonnes of packaging each year (note small producers with £1-2m annual turnover and responsible for 25-50 tonnes of packaging will also have data reporting (but not financing) obligations). Large producers must start reporting packaging data from 1 April 2024 (however the regulator has effectively extended this to 31 May 2024. Meanwhile, the UK government is pushing ahead with its proposed deposit return scheme for drinks containers which is expected to be rolled out from 2025 at the earliest.

EU

In the EU, the regulatory landscape for packaging is set for a big shake-up. At the time of writing, a new Packaging and Packaging Waste Regulation had been provisionally agreed and is expected to introduce much stricter rules for companies including: new requirements for minimum recycled content in plastic packaging; limits on the space ratio in packaging; restrictions on the use of certain types of single-use packaging; labelling requirements on the composition of packaging; a general requirement that all packaging placed on the EU market must be recyclable by specified deadlines; and obligations on companies to move towards re-use and refill models.

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Environmental sustainability: a snapshot of a changing regulatory landscape continued

Legal developments

Marketing

There is increasing regulatory scrutiny of green advertising and marketing claims. Brands that get green claims right can build brand trust, credibility and engage purpose-driven consumers. Brands that get green claims wrong risk regulatory fines, reputational damage and consumer disengagement.

UK

The UK's consumer regulators, the Competition and Markets Authority (**CMA**) and the Advertising Standards Authority (**ASA**) are continuing their enforcement activity around green claims with recent CMA investigations into the fast fashion, and the fast-moving consumer goods sectors, and near-weekly rulings by the ASA against brands for misleading green claims. This year the CMA will launch a third arm of its green claims investigation work (scope tbc) and the ASA will focus on green disposal claims and green claims in the food and drink sector. Meanwhile, the DMCC Bill continues to make its way through Parliament and, once passed, will give the CMA the power to fine companies up to 10% of global annual turnover for consumer law breaches.

EU

In the EU, new rules are now in force banning specific green claims outright (eg unsubstantiated, vague claims like "green" "environmentally-friendly" and "carbon-neutral"). Member states must apply these rules in national law from 27 September 2026. In tandem, the EU has proposed a new 'Green Claims Directive' which, if adopted, will introduce much stricter rules on making and substantiating green claims, including requiring independent third-party verification of claims before they are made. These new rules will apply to all companies (including UK companies) that sell products in the EU (see our blog here).

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Product disposal/recycling/reuse

There is a growing legislative push towards circularity with new rules in the offing to encourage companies to design for, and to facilitate, greater repair, recycling and reuse of products by consumers, and to minimise product waste.

EU

The EU has recently agreed a new Ecodesign Regulation which is expected to come into force this year. It will introduce a new framework for setting minimum ecodesign requirements for products placed on the EU market, to improve their durability, reusability and recyclability. Specific product requirements will be outlined by the European Commission through secondary legislation with products like clothing, footwear and furniture, flagged as priorities. All companies will need to report the numbers of unsold goods they destroy and there will be an outright ban on the destruction of unsold clothing and footwear in the EU two years after the regulation comes into force (or six years for medium-sized companies meaning those with between 50 and 250 employees and an annual turnover of between €10m and €50m).

The EU has agreed a new Right to Repair Directive (**RtR Directive**) which will require manufacturers to repair in-scope products (such as certain household appliances and tech products) outside the legal warranty and amend the legal warranty rules in the Sale of Goods Directive to make repair more attractive than replacement. The RtR Directive will sit alongside the EU's new Directive on Empowering Consumers for the Green Transition which will require traders to provide better information to consumers on the durability and repairability of products. Finally, proposed changes to the EU's Waste Framework Directive could see the introduction of an extended producer responsibility (EPR) scheme for household textiles, clothing and footwear in the EU as part of a wider push to improve the circularity of textiles, and new targets to reduce food waste in processing and manufacturing.

UK

The UK is a step behind the EU with regulation in this space still largely at policy proposal and consultation stage (see the government's Waste Prevention Programme).

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Practical considerations

Sourcing raw materials

- Legal and procurement teams should map the company's supply chains to identify group companies and products in-scope of the EU's new anti-deforestation rules. They should conduct an 'audit' of existing due diligence systems to identify necessary changes – eg updating supplier questionnaires and creating internal check-lists of the new traceability data required.
- Businesses assessing their material nature-related impacts should consider the GRI's new biodiversity standard (GRI 101) and guidance from the Science Based Targets for Nature on how to do this.
- Businesses in the UK should review the Taskforce on Nature-Related Financial Disclosures (TNFD) framework which is the likely direction of travel for nature reporting in the UK.

Manufacture and distribution

- Businesses should review and update their supplier questionnaires, contracts and procurement processes to help collect scope 3 emissions data and ensure confidentiality around this. Start with the top ten suppliers and work down.
- Businesses should consider aligning their transition plans and net zero targets with the Science Based Targets Initiative's Net Zero Standard and the UK's Transition Plan Taskforce's disclosure framework which are increasingly seen as the gold standard.
- Ahead of the CSDDD's due diligence rules, businesses in-scope should review their existing due diligence systems and make a list of priority changes.

Packaging

- Businesses importing or supplying packaged products in the UK should check they can comply with the new EPR data reporting requirements given the impending deadline.
- Review any green disposal claims (eg that packaging is "recyclable" or "biodegradable") as a priority given the ASA's focus on these.
- Businesses operating in the EU should get on top of the new requirements in the Packaging and Packaging Waste Regulation now. Whilst there will be a window of time to comply once the new rules come in, they could require significant changes to packaging design, processes and supply chains.

Marketing

- As a rule of thumb, always start with the facts first and build green claims around those. This helps ensure claims are specific, evidence-based and can be properly substantiated.
- Steer clear of red flag terms like "eco", "sustainable", "green", and "carbon neutral" which are high risk.
- Marketing teams should get legal advice on any proposed green claims as early as possible to avoid having to row back later.
- All businesses should familiarise themselves with the ASOS, Boohoo and Asda undertakings (see here) as these give important insight into the CMA's areas of concern and expectations.

Product disposal/recycling/reuse

- Given the early stage of the legislative proposals, businesses should keep an eye on legal developments and work with legal teams to map the new requirements once in force.
- The contractual frameworks for new circular business models (like rental or resale) are likely to be different and brands entering this space should review and update their existing T&Cs and consumer-facing policies to ensure they are fit for purpose.