RPC

Retail Compass

Issue 12 October 2024

YOUR QUICK REFERENCE GUIDE TO LEGAL DEVELOPMENTS IN THE RETAIL AND CONSUMER SPACE

ESG and the reputational microscope: how do you deliver beyond compliance, reporting and risk mitigation?

Welcome to this edition

Welcome to the autumn edition of Retail Compass. We're back to keep you informed on the legal and policy changes in the pipeline for retail and consumer brands and to share our insights on those must-know topics.

Recent trends suggest that a number of green shoots are appearing after a particularly tumultuous time for the retail and consumer market. Nevertheless, after the significant changes brought on by several "once in a lifetime" events in recent years, the market remains hugely competitive and those who remain customer-focused are seeing the benefits of that strategy.

By no means a new topic on the agenda, ESG remains an integral issue when it comes to pursuing a consumer-facing strategy. As the retail regulatory landscape develops at pace and affordability and sustainability continues to be increasingly important to consumers, ESG poses a variety of opportunities and challenges for those in the retail and consumer market. In order to build trust and loyalty with customers, brands are increasingly put under the reputational microscope and told to "put their money where their mouth is" in meaningful and accountable ways.

Jessi Baker MBE, CEO and Founder of Provenance, has kindly provided our foreword for this edition, setting the tone with a discussion of how to turn ESG efforts from a cost centre to a profit driver through marketing. We are also delighted to have guest contributions from Evan Gwynne Davies and Mikey Pasciuto – respectively CEO and Chief Sustainability Officer at Scrapp – who take a closer look at the Green Claims Directive and the practical ramifications for businesses. Jessica Ramos, Philanthropy & Partnerships Coordinator at Hestia, the largest provider of modern slavery support services in the UK, also gives us her thoughts on the current UK anti-slavery legislation, the changing landscape and the importance of vigilance. None of us should think that this isn't a problem in the UK.

We also take a closer look at numerous developments including the incoming EU Ecodesign for Sustainable Products Regulation; how to prepare for the EU Deforestation Regulation; the likely impact of AI on businesses and their workforces; the renewed focus on social responsibility and modern slavery; and much more.

This edition also includes a section focusing on some key territories in the Asia market and some of the issues that are likely to be important to businesses. We are hugely grateful to each of the expert contributors for this section – Tae-Jong Kim, Joo-Hyuk Yoon and Ha-Eun Jang of Kim Chang Lee law firm in South Korea; Ranjana Adhikari, Sarthak Doshi, and Vidhi Udayshankar of IndusLaw in India; and Nicholas Lauw and ChingPu Fang from our own Singapore office.

We also include key statistics and links to our busy legislation tracker which list all of the consultations and inquiries relevant to retail and consumer brands, introduced by the new UK Government.

Following on from the success of our previous events, we will again be hosting Retail Compass Live! on 9 October 2024. Titled "ESG evolution: leading beyond compliance, reporting and risk mitigation", it promises to be our biggest and best yet and a really engaging afternoon delving into some of the key topics in this issue (and beyond) and we hope to see you there. If you would like to join us, please click **here** to register. In the meantime, we hope you find this publication useful, and as always, please do not hesitate to contact us if you have any comments or queries.

FROM TOP
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Retail Compass is edited by Georgia Davis (Of Counsel), Harpreet Kaur (Associate) and a team from RPC Retail. Thanks go to Joshy Thomas, Leonia Chesterfield, Ed Warren, Andy Hodgson , Sophie Yantian and Dorian Nunzek for their additional contributions. Designed by Jenni Lungley-Down.

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Foreword by Jessi Baker MBE

CEO and Founder of Provenance

CEO AND FOUNDER OF PROVENANCE, THE DATA AND SOFTWARE PLATFORM THAT VALIDATES AND AMPLIFIES SUSTAINABILITY CREDENTIALS FOR CONSUMER PACKAGED GOODS

Green claims become table stakes and the future of ESG in retail marketing

Products from brands with sustainability-related claims are growing 2.7x faster than the rest of the market[1]. It's no surprise when 64% of global consumers are very or extremely concerned about environmental sustainability[2]. Using green credentials – including purpose and social impact-related stories – is now a proven brand-building strategy, but it's not without its challenges.

Turning ESG efforts from a cost centre to a profit driver through marketing can be a no brainer and certainly post the COP 2015 flurry of Net Zero commitments we saw retailers and brands appointing sustainability professionals and upskilling their teams – from procurement to marketing – on what appeared to be something akin to the new "digital".

Yet in the past year, we've seen 2030 Net Zero targets cancelled and a spike in "greenhush" amidst fears of greenwash. The UK's consumer watchdog, the Competition and Markets Authority (CMA), predicted 53% of green claims in marketing today are misleading or potentially greenwash[3]. The ESG investment market has also slumped, and there's a creeping disillusion with brands and governments.

Commerce – and the culture it shapes – continues to drive a broken system today, but has huge potential to be an agent of positive impact. I'm hopeful for change for several reasons.

One reason is new technology and innovation, and the resulting rise of a smarter citizen.

AI and social shopping can replace search and traditional retailer discovery methods, driving more bespoke and nuanced results. Shoppers will have shortcuts to find businesses and products that fit their particular needs and values helping them to identify more sustainable brands and products. These changes in interface will also impact investors and employees.

Blockchains could enable retailer loyalty tokens, which operate like interoperable social networks, as showcased by startups like Blackbird – the crypto powered loyalty network used by restaurants in NYC. Smart interoperable incentives can shift pounds based on a myriad of conditions that can include things impacting retailer ESG targets. Choose the lower carbon refillable option and earn double points on refill? Win win.

Sustainability initiatives – from materials to reporting – become increasingly open source and indexable by large language models driving smarter business operations.

With data interoperable, technology can empower better decision-making across the board. Examples of tech innovation today include Scrapp (page 55) helping consumers recycle smartly and my business Provenance bringing transparency on the impact of products to retailer ecosystems.

Another reason to be hopeful is regulation. The UK and EU are leading the charge with a myriad of game-changing regulatory developments, many of which are discussed in this issue (including the EU Ecodesign for Sustainable Products Regulation; the EU Deforestation Regulation and the increased focus on Green Claims both in the UK and EU) that is and will require large businesses to invest further in credible sustainability, privacy and social impact initiatives.

At Provenance, we work closely with the CMA's Green Claims Code and its sister in Europe, the Green Claims Directive, both of which present a very real impact for retailers and brands with the potential for fines of 4% of annual turnover[4] for businesses found guilty of greenwashing. We also dovetail with other types of mandatory reporting and compliance on carbon, packaging and more, including design-focused regulations like the Ecodesign for Sustainable Products Regulation (see page 5).

> "64% of global consumers are very or extremely concerned about environmental sustainability."

We are seeing mandatory retailer 'Scope 3' carbon reporting starting to drive retailers to be more transparent and use data about the climate impact of products to incentivise customers to make sustainable switches – a change initiative that can grow revenue rather than costs while also cutting carbon.

As a retailer, if ESG investments are necessary due to regulation, you can use this to your commercial advantage. This is why we are seeing brands and retailers wanting to surface their initiatives at the point of purchase. Online – from search to filter to product pages – we're seeing hundreds of brands and retailers from Unilever to Holland & Barrett bringing sustainability into commerce as a table-stakes addition akin to consumer reviews in 2014. Going beyond this, values-driven campaigns will remain albeit with more care – driving us to believe in brands and retailers as a force for good more than ever before.

The 2030 Net Zero goals might be pushed out for now but sustainability has no less of a place in retail, and a smarter citizen will expect to filter on values as easily as price.

Sources

1. Stern NYU CSB (2022)
2. Bain Consumer Lab ESG Survey (2023)
3. Nielsen
4. EU Commission

Retail and consumer timeline 2024 and beyond

TIMELINE

Immediate

Following on from the ICO's report into how organisations can learn from the data security mistakes of others, we highlight some common data privacy pitfalls and how retailers can avoid them.

Immediate

The staggered introduction of CSDDD obligations from July 2027 onwards means that now is the time for businesses to prepare for compliance to avoid costly fines of a maximum level of 5% of the company's net worldwide turnover and/or civil claims.

18 Jul 24

The ESPR entered into force. It will introduce new minimum ecodesign requirements, digital product passports and rules on the destruction of unsold products.

1 Aug 24

The EU AI Act came into force with its provisions primarily coming into force across the next two years.

1 Sept 24

20% VAT will be charged on the sale of voluntary carbon credits from this date.

Late 24

EU Council and Parliament will begin negotiating the final form of the Green Claims Directive; CMA will soon receive new powers under the DMCC Act.

Late 24

The Home Office is soon expected to publish statutory guidance for companies on reasonable fraud prevention procedures, after which, companies will likely have until early 2025 to meet those standards.

Oct 24

First powers under the Digital Markets, Competition and Consumers Act expected to come into force in October 2024.

Nov 24

A conference will be held in Riyadh in November this year to finalise negotiations of the proposed Design Law Treaty.

13-19 Nov 24

Trans awareness week. Retailers should act now to promote authentic trans inclusion by listening to the trans and non-binary community, promoting allyship, and educating the wider workforce on lived experience and day-to-day challenges.

13 Dec 24

A new regulation on product safety comes into force, widening the scope of product safety regulation to include more digital services.

30 Dec 24

Obligations under the EU's Deforestation Regulation (EUDR) will apply, making it unlawful for EU companies to import, export or sell "forest-risk" products into/ from the EU unless they can show they are 'deforestation-free'.

28 Jun 25

Member States' implementing legislation must come into force, imposing a detailed series of obligations on any product manufacturers and importers, and service providers in the EU.

Rollout of new European regulation on product liability.

Mar 26

Largest EU companies/non-EU companies with largest EU turnover required to comply with Corporate Sustainability Due Diligence Directive.

2027

Corporate Sustainability Due Diligence Directive will apply to all in-scope companies.

2029

JUL AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC 2026 2027 2028 2029

24 25

Horizon scanning

In this section we consider the key legal, regulatory and policy changes being faced by retail and consumer brands and what steps to consider taking in light of these. We cover both purely domestic aspects and some which tie closely to European Union law and, as such, may impact upon retailers' European operations.

Strictly, when discussing these changes, we may not always be talking about the jurisdictions in which we advise as a firm. Therefore, whilst the following is intended to offer a helpful flag, we recommend tailoring your consideration of the changes to your own specific circumstances as there may be other local law considerations which affect you (and taking local advice where necessary).

A new era for sustainability consumer products: the EU's new Ecodesign for Sustainable Products Regulation (ESPR)

by Sophie Tuson and Sophie Parkinson

18 JULY 2024

WHAT IS HAPPENING?

On 18 July 2024 the ESPR entered into force setting a framework for new ecodesign rules in the EU. It will have significant impacts for retailers and consumer brands selling products in the EU. It will introduce new minimum ecodesign requirements for specific product categories (with an initial focus on textiles), make digital product passports mandatory and set rules on the destruction of unsold products. Companies face the risk of fines, consumer claims and reputational damage for non-compliance.

WHY DOES IT MATTER?

The ESPR is the cornerstone of the EU's 2020 Circular Economy Action Plan which aims to accelerate the EU's shift to more environmentally sustainable and circular products. The ESPR's new rules will apply to a broad range of actors involved in the product lifecycle including: manufacturers, importers, distributors and retailers who will need to verify products' compliance with new sustainable design and transparency requirements.

Minimum ecodesign requirements: The ESRS introduces a new framework for setting minimum ecodesign requirements for products placed on the EU market to improve their sustainability. Specific ecodesign requirements for different product categories will be outlined by the European Commission through secondary legislation with textiles (specifically clothing and footwear) flagged as a priority product. For example, new requirements could include minimum or maximum thresholds for a product's durability, recycled content, water use, carbon footprint or use of certain chemicals. The European Commission will publish a working plan by 19 April 2025 setting out further details and timelines for the new product requirements.

Digital product passports: The ESPR will introduce mandatory digital product passports (DPP) for products entering the EU market, to increase transparency and help consumers make more informed choices. The DPP will act as a digital identity card for products storing detailed information about a product's environmental impact which must be accessible to consumers, eg through a QR code on the product. The specific DPP information requirements will be set out in secondary legislation but this could include information about the materials used and their origins, the product's energy efficiency and disposal guidelines.

Rules on the destruction of unsold discarded products: Retailers will also need to report yearly on the number and weight of unsold discarded products (including those returned by customers), the reasons for discarding these, and the proportion directed towards reuse, remanufacturing, or recycling. This information must be publicly available on the retailer's website.

The ESRS also introduces an outright ban on the destruction of unsold apparel, clothing accessories and footwear in the EU from 19 July 2026. For medium sized companies (ie those with 50-250 employees and €10-50m annual turnover) this ban will take effect from 19 July 2030. There is an exemption for small and micro companies.

Speed read

A new era for sustainability consumer products: the EU's new Ecodesign for Sustainable Products Regulation (ESPR)

- The ESPR is now in force and sets a framework for new ecodesign rules in the EU.
- This will include minimum ecodesign requirements for specific product categories (with an initial focus on textiles), digital product passports and requirements to report on unsold discarded products.
- It will introduce an outright ban on the destruction of unsold apparel, clothing accessories and footwear in the EU in two years' time (with certain exemptions).

WHAT ACTION SHOULD YOU CONSIDER?

Many of the ESRS's requirements will be introduced through secondary legislation and will then need to be transposed in the national Member State law, giving businesses some time to adjust their product design, operations and supply chains accordingly.

However, proactive preparation will be important. To stay on top of developments and prepare for the changes, retailers and consumer brands should:

- take time to familiarise themselves with the new rules now
- look for opportunities to input to consultations to help shape the new rules. The EU is setting up an 'Ecodesign Forum' to consult stakeholders on the development of rules under ESPR, with an open call for membership applications. Businesses should consider applying, or otherwise sharing their views via industry associations
- ahead of the ban on unsold apparel, clothing accessories and footwear, look for ways to reduce the volume of unsold products – for example investing in more sophisticated supply chain and forecasting solutions, or offering consumers more tailored product size recommendations or the use of 'virtual fitting rooms' to reduce the number of returns
- review existing design, procurement and quality control processes to ensure these are sufficiently robust to verify manufacturers' compliance with the new ecodesign rules once in force. Commercial agreements should also provide for enforcement mechanisms that can be realistically and quickly implemented against non-compliant suppliers.

Nearly 80%

of 16-24 year olds bought clothes, accessories and shoes online in 2022; young adults (aged 18-24) have the highest rate of return of any age group. The return rate for online products is up to three times higher than in-store products, with one in every five pieces of clothing being returned.

(Sources: EEA, Statista, Postnord)

HORIZON SCANNING

Horizon scanning (continued)

Seeing the wood for the trees: what businesses can do to prepare for the EU Deforestation Regulation (EUDR) by Sophie Tuson and Noonie Holmes

30 DECEMBER 2024

WHAT IS HAPPENING?

The EU has brought in new regulations aimed at reducing global deforestation by ensuring that retailers monitor the origins of certain "forest-risk" products. From 30 December 2024, companies caught by the EUDR will be prohibited from selling forest-risk products in the EU unless they are certified as "deforestation free".

WHY DOES IT MATTER?

"Forest-risk" is a more catch-all term than one might think: obligations under the EUDR will affect all products originating from land where there is a risk of deforestation, such as cocoa, coffee, oil palm, rubber, soya, cattle, wood and derived products. This means retailers and consumer brands importing anything from beef mince to wooden furniture will need to ensure their supply chains are deforestation-free.

To show that a supply chain is "deforestation-free", businesses will need to evidence that the entirety of the land used to produce the product has not been converted from forest to agricultural use since the 31 December 2020, and that the products 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). The rules are strict, and if a large batch of product is found to partially originate from even a single producing plot that was deforested after the cut-off date, the entire batch will be deemed non-compliant.

The consequences of non-compliance may be far-reaching for businesses, who may be subject to fines (with a maximum level of at least 4% of total annual EU-wide turnover) or confiscation of the products or of the revenues obtained from them. The specific penalty imposed will depend on the EU Member State and national regulator investigating.

Getting such granular information about supply chains is a big ask for many businesses, and despite there being increasing calls for the regulation to be delayed over concerns around global preparedness for implementation, the European Commission has given no indication that it will hit pause on the new measures. This means that retailers and consumer brands trading in or with the EU need to be ready for its impact on their supply chains.

Speed read

Seeing the wood for the trees: what businesses can do to prepare for the EU Deforestation Regulation

- Obligations for businesses under the EU Deforestation Regulation will apply from 30 December 2024.
- Businesses importing certain goods into the EU will need to conduct supply chain due diligence to ensure their products are "deforestation free" and report compliance to Regulators.
- In-scope products are wide ranging, including anything from cocoa to wooden furniture.

WHAT ACTION SHOULD YOU CONSIDER?

Conduct a due diligence audit. Conduct an 'audit' of the business's existing due diligence systems to identify necessary changes – eg updating supplier questionnaires, creating internal checklists of the new traceability data required, and updating risk assessment processes to build in the specific criteria under EUDR.

Map your supply chains. Legal and procurement teams should map the business's supply chains to identify suppliers and products in-scope of the EUDR. This will be particularly challenging for larger businesses with complex global supply chains. Businesses can use traceability software, trading data and supplier questionnaires to identify relevant suppliers, producing countries and plots of land where relevant commodities were produced.

Collect geolocation data. Businesses must provide geolocation coordinates for all plots of land where relevant commodities were produced. This can be done using digital apps (eg Geographic Information Systems (**GIS**)), geospatial technology, and handheld satellite devices. Businesses can leverage existing datasets and tools like Global Forest Watch (**GFW**) to identify potential deforestation at relevant plots of land.

Start collecting evidence now. Although the law doesn't come into effect until December 2024, it applies to products being produced right now. For products with longer lead times, like footwear and apparel, businesses should start collecting the required evidence and data now to prove they are deforestation-free to avoid penalties at the end of this year.

Monitor EU guidance. There is currently still limited guidance from the EU about the EUDR. Whilst the EU has launched the EU observatory on deforestation and published a helpful FAQs document, further detailed guidance is expected.

A 2024 report by CDP suggested that only

30%

of companies surveyed had achieved 100% deforestation-free sourcing in their supply chains.

(Source: CDP)

Horizon scanning (continued)

EU Council adopts Green Claims Directive negotiating position

by Ciara Cullen and Lewis Manning

LATE 2024

WHAT IS HAPPENING?

The EU Council has put forward its negotiating position for the Green Claims Directive; arguably less burdensome for businesses than the EU Parliament's proposal. In the UK, the DMCC Act has passed into law and will give the CMA new powers of investigation, enforcement and fines.

WHY DOES IT MATTER?

Green Claims Directive

Each of the EU Parliament and Council have proposed several changes to the Commission's original proposal for the Directive.

Carbon credits

On claims relating to an organisation's overall impact on the climate, the Parliament has proposed that compensation claims based on carbon credits will only be permissible in relation to an organisation's residual emissions (ie those left after a reduction of approximately 90-95% of GHG emissions). The Council feels differently, proposing that organisations simply provide more information on their use of carbon credits, such as whether they relate to emissions reductions or removals. Remember that the incoming Empowering Consumers Directive prohibits the use of claims based on carbon credits in relation to the environmental impact of specific products (as opposed to that of the organisation as a whole).

Third party verification

The Council has proposed a simplified verification procedure for certain types of environmental claims, following the Commission's initial proposals.that any green claims would need to be verified by an independent third party before being made. The Council's proposed simplified procedure would involve the completion of a technical document prior to making the claim. The Parliament has suggested that the Commission propose a simplified procedure of its own design.

Environmental labelling schemes

In relation to environmental labelling schemes, the Commission had proposed that Member States be banned from establishing new schemes. Both the Parliament and the Council disagree with this proposal, however each would require the Commission to approve any new scheme. The Council further proposes that some schemes would be exempt from the third-party verification procedure if they meet certain standards and have been officially recognised by one or more Member States.

Penalties

Whereas the Commission had proposed maximum fines of at least 4% of an organisation's global annual turnover (which the Parliament accepted), the Council wants Member States to be able to determine penalties for themselves.

DMCC Act

In the UK, the DMCC Act 2024 has passed into law, meaning the stage is now set for the CMA to receive its new powers through a series of secondary legislation. The powers include the ability to directly enforce against organisations for breach of consumer protection legislation (including for misleading actions such as making unsubstantiated green claims), whereas previously the CMA had to apply to court.

Stop press!

On 18 September, the CMA published new green claims guidance for fashion retailers following its investigation into green claims in the sector earlier this year. The CMA has also written to 17 brands (undisclosed) advising them to review their practices. The guidance broadly reiterates the principles from the CMA's undertakings recently agreed with ASOS, Boohoo and George at Asda (details here). It also includes illustrative examples of good/bad practice to help retailers comply. We'll report more in our next addition..."

HORIZON SCANNING

Speed read

EU Council adopts Green Claims Directive negotiating position

- The EU Council has put forward its negotiating position on the upcoming Green Claims Directive.
- The Council and Parliament will now negotiate on the final form of the Directive.
- In the UK, the DMCC Act has passed into law and will greatly expand the CMA's powers.

WHAT ACTION SHOULD YOU CONSIDER?

Though we are still some way from knowing what the final form of the Directive will look like (negotiations are expected to run until at least the end of 2024), some things are becoming clearer. Namely, the Directive will include some form of verification requirement for green claims, environmental labelling schemes will be more regulated and the use of claims relating to carbon credits will be restricted. Whilst we await the final form, businesses should consider their procedures for making green claims, and ensure that such claims are adequately substantiated and not misleading.

Though the EU Council's softer position may appear more appealing to retailers and consumer brands, those that are already making legitimate and substantiated green claims may prefer to see something akin to the Parliament's harder approach, to ensure that competitors are being held to the same high standard.

In the UK, organisations should note that the CMA's new investigatory, enforcement and fining powers are imminent and ensure that any green claims being made are compliant with consumer protection law (in addition to ASA requirements). Additional practical considerations can also be found in the complimentary article from Scrapp in this issue.

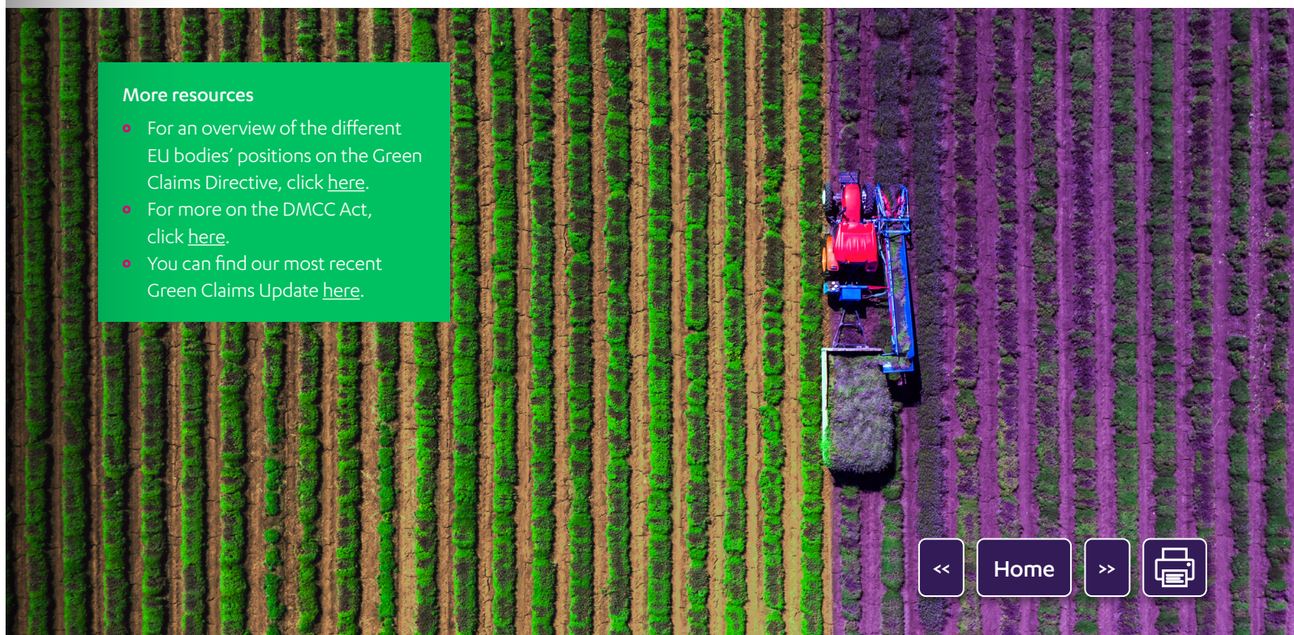
47%

of fashion shoppers in the UK strongly or somewhat agreed that they would not buy from fashion retailers found to be making misleading sustainability claims about their products.

(Source: Statista)

More resources

- For an overview of the different EU bodies' positions on the Green Claims Directive, click here.
- For more on the DMCC Act, click here.
- You can find our most recent Green Claims Update here.



Horizon scanning (continued)

EU AI Act: where are we now? by Helen Armstrong, Caroline Tuck and Jani Ihalainen

1 AUGUST 2024

WHAT IS HAPPENING?

The AI Act came into force recently and has started the progressive coming into force of its provisions. Both businesses deploying AI tools and their developers need to ensure that they comply with the requirements under the Act as its provisions come into force.

WHY DOES IT MATTER?

Following a long legislative process, the EU's AI Act was published in the Official Journal of the EU on 12 July 2024 and came into force on 1 August 2024, starting the implementation of the Act across the EU.

As discussed in our spring edition last year, the AI Act will set regulatory parameters to AI systems depending on their risk profile (the higher the risk, the stricter the requirements will be).

Timeline for the application of the AI Act

The AI Act became law on 1 August 2024, with most of the operative parts of the Act coming into effect after a two-year period on 2 August 2026, with a few rules coming into force before and after this date:

- ban on AI systems posing unacceptable risks (ie Prohibited Practices) (in force six months after entry into force (2 February 2025))
- publication and application of Codes of Practice (in force nine months after entry into force (2 May 2025))
- application of the transparency provisions relating to General Purpose AI systems (**GPAI**) (in force 12 months after entry into force (2 August 2025))
- general applicability of the AI Act on all AI systems, including high risk systems listed in Annex III (in force 2 August 2026)
- application of provisions relating to GPAI models placed on the market before 2 August 2025 (in force 2 August 2027)
- applications of requirements for high-risk AI systems intended to be used as a safety component of a product or are themselves products (in force 2 August 2027)
- AI Act applies to AI systems that are a part of large-scale IT systems that were placed on the market or put into service before 2 August 2027 (in force 31 December 2030).

Most of the onus for compliance will fall on providers of the AI systems, however, if a deployer of these systems puts their name or trade mark on these systems, substantially modifies them or uses a high-risk purpose for the system not foreseen by the provider, they may be deemed to be a provider and therefore will have to comply with the relevant requirements.

Intersection with data protection laws

The need to comply with the AI Act will sit alongside any existing obligations that an organisation has under data protection laws, including the EU General Data Protection Regulation (the **EU GDPR**). Any personal data that is inputted into an AI system will be subject to the EU GDPR, as will any personal data generated by an AI system. The EU GDPR also contains protections against automated decision making, meaning that an individual generally has a right not to have decisions made about them using their personal data by a machine without a "human in the loop".

It is very likely that AI systems will process personal data from time to time, and it may be challenging in practice to separate this from non-personal data.

This may leave organisations in the position of needing to assume that the EU GDPR and other applicable data protection laws apply generally to the development and use of the system.

This will attract a significant compliance burden, given that contrary to the EU GDPR's principles of data minimisation, an AI system is likely to be trained on a large volume of data. Given the need for risk and impact assessments under both the data protection and AI legislation, retailers should invest time in setting up governance structures that comply with these obligations and take advantage of any overlap in the compliance steps required.

Enforcement

Non-compliance with certain requirements of the AI Act can lead to tremendous fines, with the Act imposing fines of up to the higher of €7.5m and 1% of global turnover, €15m and 3% of global turnover, or €35m and 7% of global turnover depending on the type of infringement and the size of the company in question.

However, it is up to EU Member States to set the specific rules on penalties and enforcement measures in line with the AI Act and any future guidance.

The future

The EU will undoubtedly develop the AI Act through secondary legislation in the future, due to the complexity of the Act. Any users or developers of AI systems should keep an eye out for these developments, in particular the Codes of Practice slated to be released by no later than 2 May 2025.

WHAT ACTION SHOULD YOU CONSIDER?

While UK businesses and AI developers will not be directly impacted by the legislation following Brexit, compliance with the AI Act will be necessary for any AI systems to be used in the EU.

There are, however, some steps that all organisations should consider:

- identify any software and/or hardware that may qualify as an AI system under the AI Act used by service providers or your company
- consider the application of the AI Act to the relevant software/hardware and identify the risk profile of those AI systems (especially those classed as high risk or even prohibited)
- put in place a plan for compliance with the applicable obligations on your business and integrate compliance measures business wide
- ensure that appropriate contractual obligations are or have been put in place with your providers
- conduct ongoing monitoring of compliance within your business and/or any providers
- consider if additional data protection governance steps are required, based on the high likelihood that an AI system will process personal data, and whether the system will need to be structured to make sure there is a human in the loop where any decisions are made about individuals using their personal data.

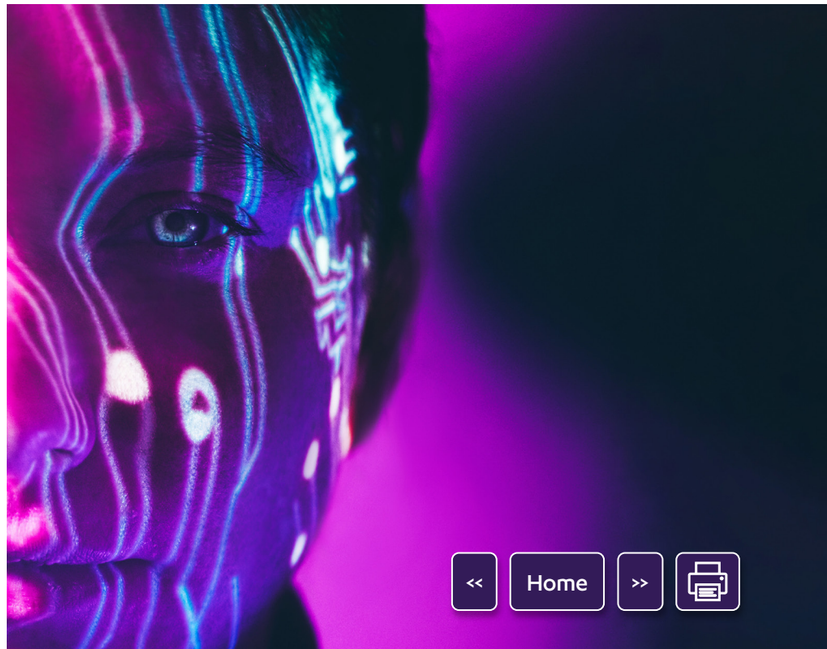
Want to know more?

Click here to read our AI guide – a one-stop shop of practical AI advice covering global regs, governance, privacy, IP, procurement, AIaaS and disputes.

Speed read

EU AI Act: where are we now?

- The EU AI came into force on 1 August 2024.
- The various provisions of the Act will come into force in phases over the coming months and years.
- Both businesses deploying AI systems, and their respective developers, should plan accordingly to ensure compliance.



Horizon scanning (continued)

November 2024 will bring designers closer to a streamlined global system for protecting industrial designs

by Georgia Davis and Ellie Chakarto

NOVEMBER 2024

WHAT IS HAPPENING?

Following years in the planning, the World Intellectual Property Organization (WIPO) has agreed to hold a diplomatic conference (ie a conference to negotiate and adopt treaties) in November 2024 in Riyadh, Saudi Arabia, to finalise negotiations of the proposed DLT.

According to WIPO:

"Domestic industrial design applications accounted for 82% of the total design filings in 2021, showing potential for increased filing across borders that would be made easier through streamlined registration processes."

(Source: WIPO)

WHY DOES IT MATTER?

Unlike patent and trade mark law, design law does not have its own international legal treaty and design procedures lack global consistency.

WIPO has been alive to this for many years, with a design treaty first proposed over a decade ago. Initial negotiations stalled for several years but in 2022 the WIPO General Assemblies agreed to convene a diplomatic conference to try to agree a treaty. The diplomatic conference is scheduled to take place between 11 and 22 November 2024.

It is hoped that the DLT will streamline the registered design system globally, establish minimum global standards and eliminate the red tape which may be associated with design procedures.

Some key changes proposed by the DLT include mandatory grace periods and alignment on how designs can be represented within an application. The draft treaty includes requirements that contracting parties can impose on design applicants and owners relating to:

- **grace periods**: all jurisdictions must choose between offering a six-month or a 12-month grace period (during which an applicant's own disclosures or disclosures made with an applicant's consent, would not prejudice their ability to protect a new design)
- **priority claims**: design applicants must be able to correct or add a priority claim to an application in certain circumstances
- **time limits**: certain flexibilities will be provided in certain circumstances for applicants who miss a time limit during the application process
- **representation of the design**: the use of broken lines to represent matter which is not intended to form part of the claimed design in an application must be allowed.

While the DLT does go some way to harmonise the global design system, there are some aspects which the DLT currently fails to address. For example, it is likely that gaps will remain in the duration of protection afforded to a registered design. Further the DLT only concerns registered design rights and there is, therefore, no consistency afforded for designs for which no formal application is made.

WHAT ACTION SHOULD YOU CONSIDER?

While it could still be some time before changes introduced by the DLT take effect and there are some aspects which it is unlikely to address, the DLT is anticipated to be a step in the right direction to resolving global design law differences.

The UK IPO has indicated that it is keen to agree a treaty in the interests of further harmonising global systems (and discussions on the DLT are likely to coincide with the IPO's own design law review) but not at any price. The IPO has also said that it would welcome input from stakeholders on the current text to be discussed in November.

Designers in the retail industry may therefore benefit from this opportunity to input their own views, as well as keeping an eye on any proposed changes arising from the upcoming discussions.

In the meantime, if you are considering protecting the design of your products – particularly if you are seeking protection across several jurisdictions – it is important to obtain legal advice so that you are aware of differences across the regimes.

HORIZON SCANNING

Speed read

November 2024 will bring designers closer to a streamlined global system for protecting industrial designs

- World Intellectual Property Organization (**WIPO**) Member States have now agreed the location and date of the diplomatic conference to negotiate the proposed Design Law Treaty (**DLT**).
- It is hoped that the future treaty will streamline the registered design system and establish minimum global standards, making it easier, faster and more affordable for designers to protect their designs.
- The changes proposed under the DLT are likely to benefit designers worldwide with most impact likely to be felt by smaller-scale brands and designers with less access to legal support to register designs and obtain protection overseas.

Horizon scanning (continued)

The Corporate Sustainability and Due Diligence Directive: a renewed focus on social responsibility

by Jeremy Drew and Eve Matthews

JULY 2024

WHAT IS HAPPENING?

The entry into force of the Corporate Sustainability and Due Diligence Directive (**CSDDD**) earlier this year marks not only a significant merging of environmental and social ESG regulation under a central EU Directive, but also introduces significant new penalties for non-compliance, raising the stakes around how social issues have historically been regulated in the region.

WHY DOES IT MATTER?

With extraterritorial effect, the CSDDD requires both EU and non-EU companies that meet specific thresholds (broadly 1000 employees and €450m worldwide annual turnover) to address the adverse human rights and 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.

As part of this, the CSDDD's scope is intended to comprehensively cover human rights issues and, in order to achieve a "meaningful contribution to the sustainability transition", the Directive prescribes that any due diligence carried out under the Directive should have regard to adverse human rights impacts resulting from abuses of the rights set out under the Directive's Annex. This includes, amongst others, international legal prohibitions on child labour, forced or compulsory labour, and all forms of slavery and slave trade.

National regulators are now empowered to investigate potential breaches of the CSDDD and impose penalties, ranging from "naming and shaming" non-compliant companies and relevant individuals to issuing significant fines with a maximum level of no less than 5% of the company's net worldwide turnover, likening the CSDDD's enforcement regime to that of the GDPR.

WHAT ACTION SHOULD YOU CONSIDER?

Fortunately, compliance is not expected to take place overnight, and the staggered introduction of obligations from July 2027 onwards means that there is still time to prepare proactively.

Now is the time for retailers to prepare by reviewing and update their existing due diligence processes and supplier contracts, and ensuring appropriate governance processes are in place. CSDDD compliance presents an exciting opportunity for businesses to invest in the right digital solutions, geared toward efficiency and sustainability.

You can read more about these elements and how to prepare for compliance with the CSDDD as part of our expert briefing here.

Speed read

The Corporate Sustainability and Due Diligence Directive: a renewed focus on social responsibility

- As shown throughout this issue, the ESG regulatory landscape is evolving – and fast – often in response to increasing pressure from stakeholders, both at a UK and EU level.
- The "social" (or "S") element of ESG has historically often been overlooked by companies in favour of targeting efforts towards environmental and governance factors, which are often better defined under legislation and more highly regulated.
- The recent entry into force of the Corporate Sustainability and Due Diligence Directive may mark a sea change in this regard, introducing greater focus on social injustices and significant penalties for failed compliance.

Over $140 bn

worth of garments thought to be linked to forced labour production are imported by G20 countries annually. Retailers across all industries should therefore remain live to this issue within their supply chains.

(Source: Unseen UK)

HORIZON SCANNING

Horizon scanning (continued)

Product liability and safety legislative refurb by Gavin Reese and Sally Lord

13 DECEMBER 2024

WHAT IS HAPPENING?

The current legislation governing product safety is the General Product Safety Directive (**GPSD**), but its shortcomings, especially on tech, are evident.

On 13 December 2024 the EU will be replacing the GPSD with the General Product Safety Regulation (**GPSR**), and the latest King's Speech indicated it will be replaced in the UK by a Product Safety and Metrology Bill.

Separately, EU Member States are rolling out a revised Product Liability Directive (**PLD**) which captures the provision of software, digital services and online marketplaces.

WHY DOES IT MATTER?

The EU's GPSR includes a variety of changes to update the GPSD, focusing on its deficiencies on product recalls and products on the digital markets:

- the definitions of "product" and "safety" are being widened to include emerging digital technologies and cyber safety components of products
- obligations are imposed on digital marketplaces to try to prevent the sale of dangerous products and deal with the removal of products (including incident reporting and product recall)
- risk assessments to be undertaken before placing a product on the EU market.

A further element of the GPSR will be of particular interest to UK retailers:

- a "responsible person" must be appointed in each member state products will be sold in, to be responsible for the safety of the product – including providing technical documentation and managing any safety risks suspected by the market surveillance authorities.

Whilst figures or percentages on financial penalties were proposed, the GPSR instead refers to the penalties being "effective proportionate and dissuasive" with Member States being responsible for laying "down the rules on penalties applicable to infringements of this Regulation". That Article also requires Member States to notify the Commission of those rules, so we will need to wait to see what those rules are and whether there is much disparity between them.

The UK Government acknowledges the shortcomings of the GPSD but has been slower than the EU at implementing new regulation. In August 2023 the government launched a consultation on product safety and standards, and on 17 July 2024 the King's Speech announced a Product Safety and Metrology Bill, intended to target some of the same issues as the GPSR.

That Bill will allow the UK to align with or depart from the developing EU regulation as it sees fit. Due to the Windsor Framework, Northern Ireland will be subject to the GSPR regardless, so if the UK pursues alignment, there will be a consistent standard applicable to UK-wide businesses.

On product liability, the EU has published two proposals to manage digital market risks:

- revisions to the Product Liability Directive (**PLD**)
- tackling harm caused by AI systems.

The PLD will replace "producer" with "manufacture" to encompass those providing software, digital services and online marketplace, significantly increasing the number of retailers that have to comply with product liability directives.

WHAT ACTION SHOULD YOU CONSIDER?

- Review the GSPR and PLD to determine if your business will be caught by the extended definitions around digital services.
- If you sell to the EU, consider how you will be complying with the requirement to have a "responsible person" in each relevant member state.
- Consider the impact of increased regulatory expectations around digital services (eg risk assessments, incident reporting) to ensure you are in compliance.
- Ensure you have procedures in place in the event that a product recall is required, even in relation to digital products.

HORIZON SCANNING

Speed read

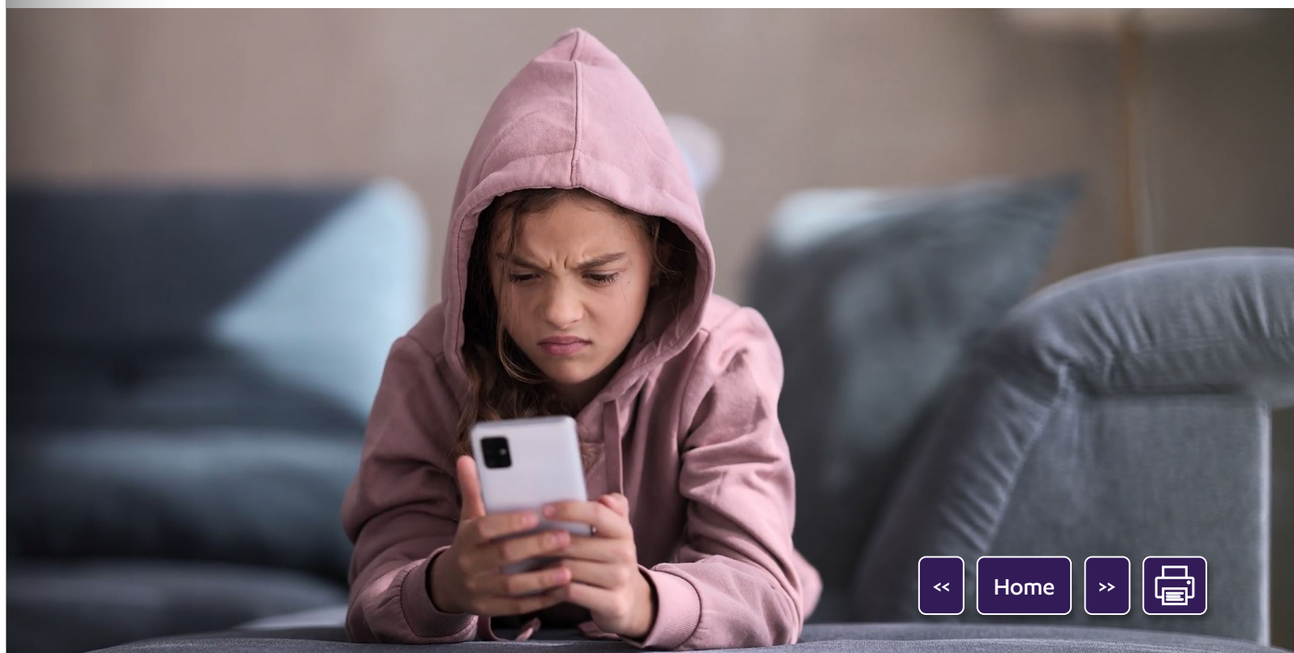
Product liability and safety legislative refurb

- A new EU regulation comes into force on 13 December 2024, widening the definitions of "product" and "safety" to include emerging digital technology and cyber risks.
- After confirmation in the King's Speech, a new UK regulation will likely follow the EU, likely to broadly cover similar ground.
- EU Member States are in the process of implementing changes to regulations aimed at managing risks imposed by the digital markets.

2,814

number of product safety notifications to the UK government in FY 2023.

(Source: gov.uk)



Horizon scanning (continued)

EU Accessibility Act: where are we now? by Olly Bray and Hettie Homewood

JUNE 2025

WHAT IS HAPPENING?

It is now less than a year until the EU Accessibility Act (**EAA**) comes into force, which will require businesses to ensure a range of products (eg smartphones and computers) and services (eg e-commerce services, consumer banking services, and ebooks) are accessible for persons with disabilities.

WHY DOES IT MATTER?

The provisions of the EAA apply to 'economic operators' that place in-scope products and services on the EU market. Businesses based outside the EU but selling to consumers in the EU will be caught

In-scope products and services are those which have been identified as being most important for persons with disabilities while being most likely to have diverging accessibility requirements across EU Member States. A focus of the EAA is on harmonising requirements across the EU.

Some of the key products and services for retailers to be aware of include:

- smartphones
- computers
- TVs
- e-readers, ebooks and related software
- e-commerce services
- online shops
- bricks and mortar shopping services such as payment terminals in shops and restaurants, ATMs, and information displays.

See our Retail Compass Autumn 2023 edition for more details of what businesses need to do to ensure they comply with the EAA.

These compliance requirements are in some places burdensome and sometimes complex, but businesses are still awaiting detailed guidance from the European Commission and/or local guidance to assist with preparing for compliance.

Further, the relevant technical standard for ICT goods and services (EN 301549 from the ETSI) hasn't yet been updated to reflect the EAA requirements.

This leaves economic operators without a great deal of clarity on how to comply with the EAA, and compliance is expected from 28 June 2025.

WHAT ACTION SHOULD YOU CONSIDER?

Pending more specific guidance on compliance, the sensible starting position is to ensure compliance with the current version of the ETSI standard EN 301549 v3.2.1, and then keep an eye out for updates from the European Commission and ETSI as guidance and standards are brought in line with the impending regulation.

Businesses should also get their house in order to the extent possible now, rather than wait until guidance comes in and face a mountain of compliance work at once:

- get the EAA on the boardroom agenda, so c-suite decision makers have this regulation in mind when making key decisions
- consider bringing in a third-party expert to provide initial analysis on compliance steps
- optimise existing products and services for accessibility, not forgetting the EAA's harmonisation efforts offer an opportunity to streamline compliance to fit across all Member States
- future-proof new products and services by keeping accessibility front of mind
- engage all levels of the business on accessibility, for example by briefing sales teams on accessibility features
- provide internal training to educate employees on the importance of accessibility and why these steps are being taken.

HORIZON SCANNING

Speed read

EU Accessibility Act: where are we now?

- New EU laws are about to bring in a sweeping set of obligations on businesses to ensure products and services are accessible to those with disabilities.
- Many Member States are yet to publish guidance on how the new rules will be interpreted and enforced in practice (with less than a year before it comes into force).
- Sanctions for non-compliance could include fines and mandatory product or service withdrawal/bans.

HORIZON SCANNING

Horizon scanning (continued)

Key learnings: avoiding data breaches/protection issues

by Jon Bartley and Amy Blackburn

MAY 2024 (ICO REPORT) | ONGOING (THE ISSUE GENERALLY)

WHAT IS HAPPENING?

In May 2024, the Information Commissioner's Office (**ICO**) published updated guidance on the protection of personal data online named "Learning from the mistakes of others: a retrospective review".

The report focuses on the most common origins of security breaches and steps that organisations can take to reduce these. Below we consider how these recommendations affect retailers, and other privacy pitfalls that have impacted businesses in the sector.

WHY DOES IT MATTER AND WHAT ACTION SHOULD YOU TAKE?

Anticipate the most common forms of cyber attack

The ICO does not dwell too much on malware – and particularly ransomware, by which a threat actor encrypts an organisation's files to make them inaccessible – due to the amount of previous guidance in this area. The report does however acknowledge that "most ransomware attacks are usually the result of poor cyber hygiene rather than sophisticated attack techniques", and gives a worked example of an attacker that was able to enter a retailer's systems and collect payment card details from over 5,000 point of sale terminals.

As the report suggests, improving an organisation's cyber hygiene is the key to reducing the damage an attack will inflict (even if dissuading such an attack entirely is likely). This would include deploying techniques like firewalls, multi-factor authentication and encryption, and ensuring that systems are patched and software up to date. Awareness within the organisation and staff training on cybersecurity issues are also essential, particularly to reduce the risk of social engineering attacks such as phishing.

Watch out for surveillance

Retailers often find surveillance technologies to be a useful way to safeguard their businesses and employees, such as CCTV on shop floors or equipping staff with body-worn cameras. The use of these technologies can present a high risk if not implemented with privacy in mind. This is particularly where biometric special category data is processed (such as the use of facial recognition) or when the personal data of employees is processed, as they may have an expectation of confidentiality in the context of their employment.

Data protection authorities in the EU have been known to bring actions against retailers using surveillance technologies in a way that does not comply with data protection laws. In July 2024, the Garante in Italy fined a car dealership €120k for its processing of personal and biometric data of its employees to determine work performance, breaks and downtimes. This followed the French data protection regulator's €32m fine levied against Amazon France in December 2023, for "excessively intrusive" employee monitoring in its warehouses. Where using surveillance technologies, retailers should ensure that these are designed and deployed with privacy at the forefront, and that particular care is taken around transparency requirements or where special category data is processed.

Make sure you comply with data subject rights

The rights of individuals under the GDPR – including access, deletion and correcting inaccurate data – are one of the fundamentals of data protection compliance. Retailers will often receive requests to exercise these rights from their employees and consumers, and may have to divert internal resources to complying with these requests.

Retailers must ensure that the rights set out under GDPR can be fully exercised by their consumers, including where the user journey to do so is through an app. The preloved clothing retailer Vinted was fined over €2m by the Lithuanian data protection authority in July 2024, for breaches of GDPR including a failure to fully justify not complying with requests for deletion of data. It is worth investing time into establishing clear processes to address data subject requests in a compliant way, as and when they are received.

Don't retain too much data

The amount of personal data held by retailers and consumer brands about their customers can be a valuable asset, but to comply with data protection laws that data should not be retained for longer than is necessary.

If an organisation is investigated by a data protection authority for another reason, it is not uncommon for sanctions to be increased if the regulator finds that personal data is also being retained for longer than is necessary. This was the case in the Garante's investigation of the clothes retailer Benetton in July 2023. The retention of personal data indefinitely until the customer asks for it to be deleted should not be the default, as the online retailer Verkkokauppa found when it was fined €856k by the Finnish data protection authority in June 2024.

It is vital for a retailer to adopt an effective data retention and deletion policy, another positive side effect of which could be a lower compliance burden when responding to requests for access to or deletion of data.

Keep an eye on your supply chain

Retailers and consumer brands typically have extensive supply chains, and so are more exposed to weaknesses that arise in those supply chains. The ICO's report identifies supply chain attacks as a growing threat, particularly increasing in the aftermath of the COVID-19 pandemic, and it's possible for one threat actor to infiltrate several organisations through the same link in a supply chain. Any part of a retailer's supply chain can be vulnerable to a breach that may be exploited to access and attack the retailer's systems, and third-party IT service providers can make a retailer especially vulnerable.

It is essential for retailers to have robust supply chain management, including conducting thorough due diligence on any supplier that may have access to customer personal data. While it won't be fully eliminated, a retailer can reduce the risks of supply chain weaknesses by regularly reviewing the personal data that is processed in the supply chain and ensuring that sufficient contractual protections are in place.

Be intelligent around the use of AI

Many retailers are increasingly using AI within their businesses, including generative AI and AI systems procured from open sources. Data protection regulators in the UK and EU are becoming alive to the risks of AI technologies, and the newly-introduced EU AI Act is the first comprehensive piece of legislation globally that is aimed at addressing the specific risks in this space.

AI and data privacy often sit uneasily together. While data protection laws aim to minimise the amount of data an organisation processes, AI technologies are often dependent on processing large volumes of data and perhaps even generating more. AI models can also present unique risks to retailers processing large volumes of consumer data, such as datasets being "poisoned" with inaccuracies but this not being apparent due to the black box nature of the technology.

The regulatory landscape in this area is still very uncertain and largely untested. Retailers using AI should consider drawing up internal guardrails for its use in the absence of regulatory guidance. It may also be possible to practically mitigate the risk, such as by building their own systems rather than sourcing these elsewhere.

$3.8m

the average cost of a data breach to a consumer brand, March 2023.

(Source: Statista)

Speed read

Key learnings: avoiding data breaches/protection issues

- The UK's data protection regulator has published a report highlighting ways in which organisations can learn from the privacy and security mistakes that others have made.
- These include issues that are relevant to retailers and consumer brands, such as poor cyber hygiene and supply chain attacks.
- We look beyond this to other key privacy missteps that may affect retailers, including around data subject rights, surveillance and the use of AI.

Horizon scanning (continued)

Sustainability: new European due diligence and reporting requirements by Connor Cahalane and Rosamund Akayan

Speed read

Sustainability: New European due diligence and reporting requirements

- On 24 April 2024, the EU adopted the Corporate Sustainability Due Diligence Directive (**CS3D**), which will impose significant due diligence, transition planning and reporting obligations on certain EU and non-EU companies.
- The CS3D reporting obligations align with those required by the Corporate Sustainability Reporting Directive (**CSRD**) and double reporting will not be required, but some companies not covered by the CSRD may fall within the CS3D's scope.

ONGOING

WHAT IS HAPPENING?

The EU adopted the CS3D on 24 April 2024. It will require in-scope companies to adopt and put into effect:

- effective due diligence measures for identifying, preventing, mitigating and ending actual and potential adverse human rights and environmental harms across their value chains
- a transition plan for climate change mitigation
- publication of an annual report demonstrating compliance.

The retail supply chain currently contributes to

25%

of greenhouse gas emissions globally.

(Source: Deloitte)

WHY DOES IT MATTER?

Who does it apply to?

The CS3D will apply to EU companies (or the ultimate parent company of a group):

- with more than 1,000 employees and a global net turnover of at least €450m or
- which have franchising or licensing agreements in the EU in return for royalties of more than €22.5m in the last financial year and with global net turnover of more than €80m in that financial year.

The CS3D will also apply to non-EU companies (or the ultimate parent company of a group):

- which have generated over €450m net turnover in the EU or
- which have franchising or licensing agreements in the EU that meet the same criteria for franchising or licensing agreements entered into by in-scope EU companies.

Even if a business does not fall within the scope of the CS3D, it may well fall within the value chain of companies which do and be impacted by its business partners' due diligence and transition planning requirements.

Due diligence obligations

Due diligence obligations for in-scope companies include:

- adopting a risk-based due diligence policy (including a code of conduct) which describes the company's approach to due diligence and the processes in place to implement due diligence measures
- updating the due diligence policy if a significant change occurs or at least every two years
- integrating human rights and environmental due diligence into relevant policies and risk management systems to identify, assess and prioritise actual or potential adverse impacts across their value chains
- taking appropriate measures to prevent or mitigate potential adverse impacts or, where that is not possible, minimise actual adverse impacts (including by terminating the relationship with a business partner in relation to a severe potential or actual adverse impact where other prevention and mitigation measures have failed
- remediating adverse impacts that have been caused, or jointly caused, by the company
- carrying out meaningful engagement with stakeholders concerning actual or potential adverse impacts
- reporting on how they implement human rights and environmental due diligence (see Reporting obligations below)
- establishing a publicly available and transparent notification mechanism and complaints procedure in relation to actual or potential adverse impacts
- monitoring the implementation and effectiveness of the due diligence policy.

Transition planning obligations

In-scope companies will be required to adopt and implement a transition plan for climate change mitigation which is compatible with the transition to a sustainable economy, the limiting of global warming to 1.5°C and the objective of achieving climate neutrality.

Reporting obligations

Unless an exemption applies, the CS3D will require in-scope companies to publish an annual report on their website, including a description of their due diligence policies and processes, the identified potential and actual adverse impacts, the measures taken to address those impacts and their transition plan for combating climate change.

The CS3D reporting obligations align with those required by the CSRD. Companies within the scope of CSRD's reporting obligations will be exempted from publishing a separate CS3D report and double reporting will not be required.

While most companies falling within the scope of CS3D are likely to fall within the scope of the CSRD and be able to rely on this reporting exemption, companies may fall within the CS3D's scope but not that of the CSRD if they are:

- large non-EU companies which have generated a turnover of €450m in the EU but which do not have a physical presence in the EU or
- businesses with a franchising or licensing business model which satisfy the CS3D thresholds but not the CSRD thresholds.

Timeline

In-scope companies will be required to comply with the CS3D in stages according to their workforce size and revenue as follows:

- from 2027 for EU companies with over 5,000 employees and a turnover of €1.5bn (or non-EU companies with an EU turnover of €1.5bn)
- from 2028 for EU companies with over 3,000 employees and a turnover of €900m (or non-EU companies with an EU turnover of €900m)
- from 2029 for all other companies falling within the CS3D's scope.

CSRD reporting obligations (which will exempt relevant companies from the equivalent CS3D reporting obligations) will be phased in for EU companies from 2025, with reporting for non-EU companies expected to start from 2029.

WHAT ACTION SHOULD YOU CONSIDER?

Retailers and consumer brands which fall within the scope of the CS3D and/or CSRD should work out the expected timeline for their obligations under these Directives; start preparing for any required changes to processes and systems; engage with their supply chains in relation to due diligence and transition planning requirements; and consider what further assistance they will require to comply with their obligations.

The CS3D and CSRD sit alongside other international sustainability reporting standards such as the standards adopted by the International Sustainability Standards Board (ISSB) in 2023. Companies within the scope of these Directives may be able to use interoperability guidance (such as the ESRS-ISSB interoperability guidance published by EFRAG and the IFRS Foundation) to identify and prepare for additional disclosure obligations.

Companies not directly caught by the Directives (but which trade with companies which will fall within their scope) should expect their business partners to engage with them and request information to enable them to comply with their obligations. They may also want to consider taking initial steps towards compliance as there may be risk management and reputational benefits in doing so.

Horizon scanning (continued)

Establishing "reasonable" procedures for the failure to prevent fraud offence: practical steps for companies by Jonathan Cary and Tom Jenkins

SECOND HALF OF 2024

WHAT IS HAPPENING?

The Home Office will soon be releasing its much anticipated official guidance on what constitutes reasonable fraud prevention procedures for the purposes of the corporate offence of failure to prevent fraud.

Companies will then only have limited time to ensure their processes and controls meet those standards before the offence comes into force.

WHY DOES IT MATTER?

Last year's landmark Economic Crime and Corporate Transparency Act 2023 (**ECCTA**) introduced a new corporate offence of "Failure to Prevent Fraud". Under the offence, large companies can be held criminally liable for frauds committed by associated persons (including employees, subsidiaries and third party service providers) for their benefit. Read more in our Autumn 2023 edition.

The only defence available to a company charged with failure to prevent fraud is to show that it had "reasonable procedures" in place to prevent fraud at the time the underlying offence occurred.

The statutory guidance, which is expected to be released in the coming months, will provide detail to companies on the steps they can take to reduce the risks of themselves and their associated persons committing fraud offences for the company's benefit.

Once the guidance is published, companies are likely to have between six and nine months to ensure their procedures meet those standards before the failure to prevent fraud offence comes into force.

Not having such procedures in place could mean that companies are unable to establish the only defence to the failure to prevent fraud offence, which is subject to a penalty of an unlimited fine.

WHAT ACTION SHOULD YOU CONSIDER?

Although the guidance is still being finalised, there are a number of steps companies can take already to ensure preparedness. The guidance is expected to adopt a broadly similar principles-based approach to that used in the guidance to the UK Bribery Act in 2011.

Perhaps the key first step for companies to consider is to conduct some form of review or risk assessment into "outward facing" fraud risks and controls in response to ECCTA's passage. Risk assessment is likely to be a central principle in the guidance and many of the other steps companies are likely to take will follow from the outcome of such a review.

Companies should also consider how their anti-fraud policies are communicated across the business and whether they are doing enough to raise awareness of those policies and enforce them. The mere existence of relevant policies, or reliance on employees' common sense understanding not to commit fraud, is unlikely to be deemed sufficient to constitute reasonable anti-fraud procedures.

A further step that companies should consider is clearly assigning responsibility for anti-fraud controls to someone suitably senior within the business. This will demonstrate the seriousness with which the company is taking its anti-fraud programme.

HORIZON SCANNING

Speed read

Establishing "reasonable" procedures for the failure to prevent fraud offence: practical steps for companies

- The Home Office is expected soon to release its much anticipated guidance on establishing reasonable prevention procedures for the purposes of the new failure to prevent fraud offence.
- Following the publication of the guidance, the offence will come into force after an implementation period expected to be between six and nine months, meaning companies will only have a short period of time to ensure their fraud processes and controls meet those standards to establish the only defence to the new offence and to mitigate new criminal risks.
- Companies can begin to take practical steps already, including by conducting a fraud risk assessment, reviewing their anti-fraud policies, and implementing clear responsibilities for anti-fraud controls within the business.

Horizon scanning (continued)

Trans inclusion: five steps to support employees and customers

by Kelly Thomson and Ellie Gelder

ONGOING

WHAT IS HAPPENING?

When we deliver our diversity, equity, inclusion and belonging (DEIB) workshops for employers, the topic of trans inclusion comes up often, particularly in the retail sector.

Retailers need to address the dual perspectives of the workforce and customer base in delivering trans inclusion. They need to balance a raft of conflicting or unclear law, difference of opinion and of (sometimes protected) belief and often hostile debate around specifics like changing and toilet facilities.

WHY DOES IT MATTER?

- Against a backdrop of increasingly toxic narratives against the trans community, there are some stark statistics which provide an insight into the lived experience of many trans people. In 2023, a report by Just Like Us and Deloitte found that three in ten people surveyed revealed that they weren't open about their transgender status at work. And according to research by the TUC in April 2019 on Sexual harassment of LGBT plus people in the workplace, trans women were more likely than other women to experience sexual assault and rape at work.
- Retailers must ensure trans inclusion is implemented thoughtfully and visibly if employees and customers alike are to feel psychologically safe to be themselves at work or in store.
- Failing to embed effective trans inclusion risks your organisation's ability to attract and retain the best talent as well as how customers perceive your brand.

WHAT ACTION SHOULD YOU TAKE?

Earlier this year, we were joined on The Work Couch podcast by Emma Cusdin, speaker, facilitator and champion for trans and non-binary rights and director of Global Butterflies, an organisation which helps businesses become more trans and non-binary inclusive. Emma provided her top tips for authentic and effective trans inclusion.

1. **Remember trans inclusion is an "and" not an "or"** – Emma explained that trans and non-binary inclusion involves adding something in, rather than taking something away. For example, a titling system that includes a gender-neutral title such as "MX", or toilet facilities that include a gender-neutral option. As trans inclusion is an internal and external DEIB issue, retailers must adopt a cross-functional approach, including customer services, people teams, trans and non-binary communities, property management and so on to be most effective. Ensure all perspectives are taken into account when formulating solutions and implement initiatives consistently throughout the organisation.
2. **Consider how you use pronouns** – Emma cautioned against making it compulsory for employees to state their pronouns, for example on a uniform badge. However, voluntarily stating your pronouns can be an effective and visible sign of allyship to colleagues and customers. Emma says: "As a trans and non-binary person, when I see pronouns, I see friend, ally, somebody I can have a conversation with. It's not the only visible sign but it's a great sign".
3. **Educate your whole workforce** – educating and signposting all employees to information, for example the genderbread person infographic, can help them understand the different aspects of gender, related terminology and the challenges that the trans and non-binary communities face. Remember that particular news stories or other events may adversely affect the wellbeing of trans and non-binary colleagues. As Emma says: "The vast majority of trans and non-binary people get negativity on social media and there are times throughout the year when it can be incredibly heavy, for example Transgender Day of Remembrance, where we remember all those that are killed around the world. All these things can be oppressive and impact peoples' mental health".
4. **Understand generational expectations** – as with many effective DEIB priorities, visible and authentic trans inclusion can also generate tangible commercial benefits, including improved brand perception and market share. As Emma notes, "The data we see around generation Z is that they are the most trans and non-binary inclusive generation coming into society. They are the most LGBTQI identifying generation...even those that don't identify as LGBTQI are really supportive of those that do".
5. **Zero tolerance for discrimination and harassment** – Emma advises communicating your organisation's stance on trans inclusion to all employees. Where a colleague is transitioning, for example, it is important for the employer to make clear what will happen and when. Emma says: "If transphobic comments are made, or people use a person's previous name repeatedly, the manager should step in respectfully."

As reported in Retail Week,

47%

of businesses in the retail sector are unlikely to employ a transgender person.

(Source: Retail Week)

Trans people feature in less than

1%

of adverts according to a report by Channel 4 'Mirror On Transgender'.

(Source: Retail Week)

Speed read

Trans inclusion: five steps to support employees and customers

- As well as meaningfully supporting your people, authentic trans and non-binary inclusion can drive innovation, increase revenue and boost your brand.
- However, recent research found that the transgender community feels "unsupported" by brands.
- Retailers must therefore act now to embed trans inclusion on a cross-functional basis if they want to ensure that employees and customers feel genuinely supported and included.

On 4 July, RPC was delighted to partner with the British Retail Consortium to host our second annual diversity and inclusion conference. The theme of the conference was the cost of untapped talent: unlocking opportunities with a diverse workforce and featured a full programme of thought-provoking and interactive sessions.

Live Work Couch podcast

Trigger warning: The following content deals with some challenging themes including racism, crime, and alcohol and drug addiction.

Kicking off the conference, we recorded our first live episode of The Work Couch podcast. Host Ellie Gelder was joined by a panel of three inspirational guests who shared their own powerful stories and experiences of employment barriers, emphasised the importance of role models, and explored practical measures for advancing untapped talent:

- Trevor D Sterling, Senior Partner at Moore Barlow, first black Senior Partner in a top 100 UK law firm and founder of social mobility platform U-Triumph
- Tskenya-Sarah Frazer, Entrepreneur, Author and Diversity & Inclusion Consultant, Founder and CEO of TSKENYA Footwear and Pride of Britain award winner and
- Mark Ash, who from being unable to read or write, to sleeping rough after over a decade of addiction, now supports others as a Lived Experience Coordinator at Forward Trust.

It was a privilege to hear our guests share such moving stories. Listen to the full episode here.

You can subscribe on Apple Podcasts and Spotify to stay up to date with the latest episodes.

The Work Couch is not a substitute for legal advice.

Other sessions at the conference

Attendees then delved into roundtable discussions on meeting BRC D&I charter pledges, exploring perspectives on disability, gender, ethnicity, neurodiversity, and mental health. Keynote speaker Matt Gupwell, Neurodiversity Consultant, shared his insights on improving DEI efforts within retail. To close the day, and back by popular demand, Kelly Thomson and Rachel Pears held their myth-busting session, challenging common diversity and inclusion myths.

Horizon scanning (continued)

Landscape reforms to digital markets, competition and consumer regimes become law by Olly Bray and Hettie Homewood

OCTOBER 2024

WHAT IS HAPPENING?

Representing the biggest overhaul of the competition and consumer law regimes for decades, the DMCC has now been enacted. Providing greater powers for the UK's Competition and Markets Authority (**CMA**) in relation to its competition law and consumer law toolkits, the DMCC also introduces a new pro-competition regime for digital markets overseen by the CMA's Digital Markets Unit (**DMU**).

WHY DOES IT MATTER?

The DMCC ushers in substantial reforms across the UK's competition and consumer law regimes as well as introducing a new pro-competition digital markets regime.

On the competition side, the DMCC makes wide-ranging enhancements to the CMA's competition powers and changes to the UK's merger regime including the merger control thresholds. The DMCC extends the CMA's extraterritorial reach, enhances international collaboration and bolsters the CMA's investigatory powers. For instance, penalties are made tougher and there is greater flexibility for the CMA's dawn raids including inspections carried out at domestic premises.

On the consumer side, there is a new enforcement regime for consumer protection law. Tougher penalties will be applicable for breaches of consumer law, and the CMA will gain powers to enforce against these breaches directly without requiring court orders. Key regulatory changes under the DMCC include extensive requirements for subscription contracts, and a ban on drip pricing and fake reviews.

For the UK's digital markets, the DMCC introduces a new pro-competition regime. For the largest tech firms which have been designated with 'strategic market status' (**SMS**) a raft of new enforcement powers will be available to the CMA's DMU. These include bespoke conduct requirements and pro-competition interventions. New merger reporting obligations will apply to firms with SMS designations.

For further details on the new digital markets regime and recent CMA guidance consultation, click here.

For details of the competition changes brought in by the DMCC, click here.

For a round up of the consumer law changes, click here.

WHAT ACTION SHOULD YOU CONSIDER?

Marking the most significant overhaul to the UK's competition and consumer regimes in decades, it is important businesses are ready for the sweeping changes brought in by the new DMCC.

Businesses should refresh their internal compliance policies and procedures ensuring they are kept up to date. In the event of CMA investigations, including dawn raids, it is important staff are well prepared. This includes the possibility of unannounced inspections taking place at domestic premises.

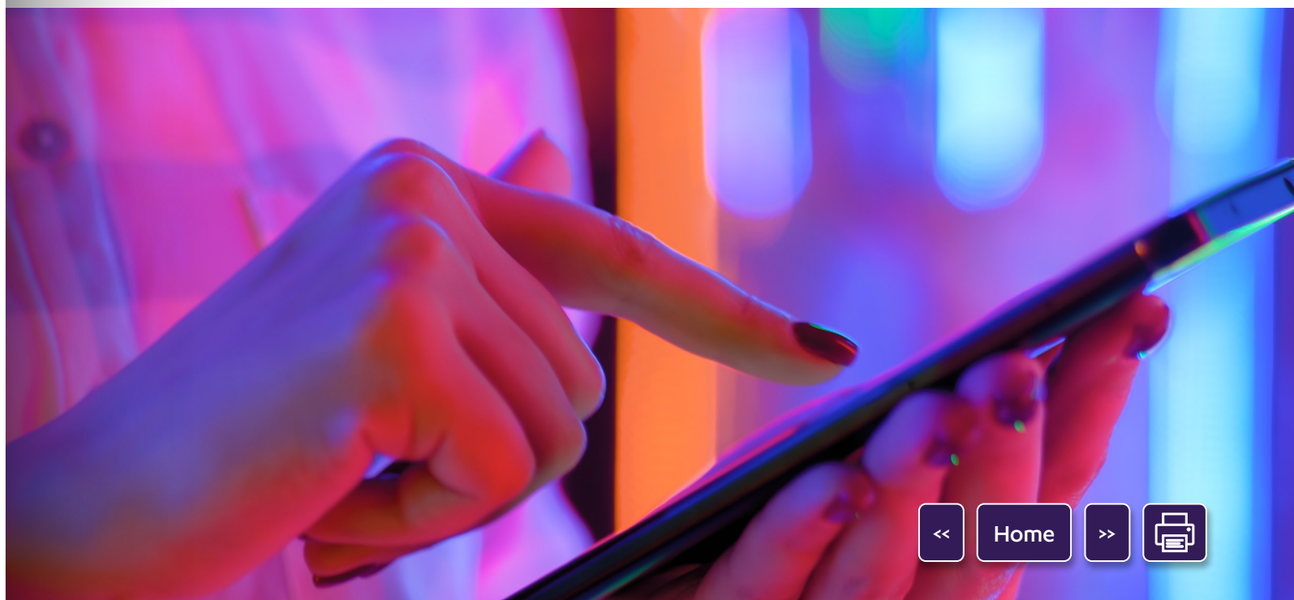
The DMCC is coming into force in stages, with the first new powers expected to commence in the autumn. Businesses should take early steps to prepare for the changes under the DMCC.

HORIZON SCANNING

Speed read

Landscape reforms to digital markets, competition and consumer regimes become law

- On 24 May 2024, the Digital Markets, Competition and Consumers Act (DMCC) was passed.
- The DMCC makes sweeping reforms to the UK's competition and consumer regimes as well as introducing a brand new pro-competition regime for digital markets.
- The new powers under the DMCC are broad and represent a significant milestone in the regulation of digital markets and the UK's competition and consumer law landscape. With some of the new powers expected to come into force in the autumn of 2024, businesses are gearing up for the changes.



Snapshot of retail statistics

General

CONSUMER SENTIMENT

38% of consumers expect to spend more on grocery shopping over the next 12 months.

Source: PWC – UK "Consumer Sentiment Survey", July 2024

20% of consumers said they planned to spend more this Christmas than last Christmas.

Source: PWC – UK "Consumer Sentiment Survey", July 2024

52% of consumers said they feel better about their financial security than they did last year.

Source: KPMG – "UK Consumer Pulse Snapshot", July 2024

62% of retail fashion executives consider geopolitical instability to be the top risk to growth.

Source: McKinsey

RETAIL TRENDS

Retail sales rose by **2.9%** in May 2024.

Source: Drapers

91% of UK retailers have experienced an increase in the rate of returns fraud or policy abuse in the past 12 months.

Source: Business Wire

89% of retailers globally anticipate revenue growth in 2024, with European retailers being the most positive.

Source: Deloitte – Global Retail Outlook 2024 report

By 2030, **75%** of consumers in emerging markets will be between the ages of 15 and 34.

Source: McKinsey

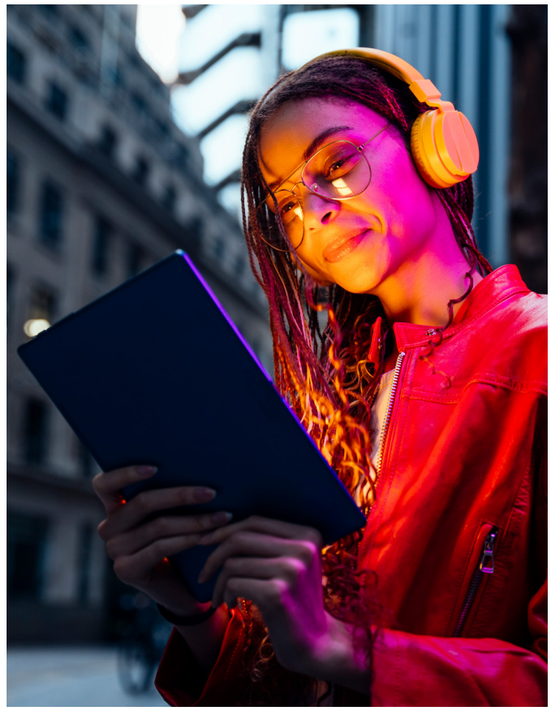
AI

73% of retail executives said AI would lead to faster time to profitability, increased productivity, increased revenue streams and operation cost reduction.

Source: Statista

46% of retailers consider the most useful priority for AI is to enhance end-to-end supply chain visibility (Deloitte's Global Retail Outlook 2024 report)

Source: Deloitte – Global Retail Outlook 2024 report



ONLINE

20.1% of retail purchases are expected to take place online in 2024.

Source: Forbes Advisor

25% of online shoppers abandon their cart because the site wants them to create an account, rather than allowing them to checkout as a guest.

Source: Forbes Advisor

ESG

- **85%** of major retailers outline sustainability as a business driver.
- **72%** of major retailers have a roadmap to go beyond minimum compliance.
- **74%** of retailers lack the tools to simulate the effects of sustainability-related changes.
- **87%** of retailers collect sustainability data.
- **70%** of retailers have taken steps to communicate the sustainability of their products.
- **45%** of retailers were unable to state what percentage of their revenue was derived from sustainable products and services.

Source: From a survey of BRC members by BearingPoint: "The Imperative to Act: Advancing Sustainability Maturity within the UK Retail Industry"

The "intention-behaviour gap" – Consumers express greater concern over sustainability across essential categories – energy (**48.7%**), food (**35.1%**) and transport (**22.5%**) – as opposed to non-food retail (**17.1%**) and holidays (**13.2%**).

Source: Retail Economics

Seven in ten luxury shoppers in Europe found the adoption of sustainable luxury policies very or somewhat important.

Source: Statista

Climate-related disasters increased **83%** from 2000 to 2020.

Source: UN

25% of consumers said they think renting goods like clothes is very sustainable and environmentally friendly.

Source: Statista

87% of fashion executive expect sustainability regulation to impact their businesses in 2024.

Source: McKinsey

- **22%** of retailers put becoming more environmentally sustainable as a top priority.
- **23%** of retailers consider improving supply chain resilience to be a top priority.
- **68%** of retailers are certain that climate change will significantly increase the cost of doing business in the next five years.
- **60%** of retailers expect companies to rely heavily on certification schemes such as B Corp over the next five years.

Source: Deloitte – Global Retail Outlook 2024 report

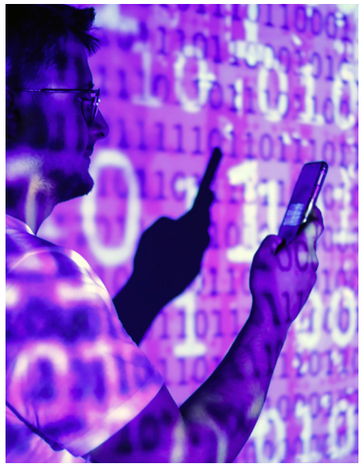
Other developments | UK and Europe

Here we round up some other developments which have occurred since our last publication of Retail Compass (April 2024). In the first few developments, we look at hot topics for retailers and consumer brands in the UK and Europe. The final few developments should be of particular interest to retailers operating in (or considering operations in) Asia, specifically Singapore, South Korea and India. As always, we recommend tailoring your consideration of these international topics to your own specific circumstances as there may be local law considerations which affect you.

Data Protection: The PSTI comes into force in the UK, with retailers, smart products and cyber-security firmly in scope by Jon Bartley and Preetkiran Dhoot

The Product Security and Telecommunications Infrastructure Act 2022 (**PSTI**) came into force on 29 April 2024, accompanied by regulations that sit alongside the act. The PSTI and associated regulations apply to most consumer products which can connect to the internet or a network, and introduce a number of new security obligations on those who bring smart devices to market in the UK.

In summary, manufacturers, importers, and distributors (all of whom UK guidance considers to fall under the umbrella term "retailers") must comply with the new obligations set out in PTSI and the regulations in relation to connected devices. There are three key obligations, all broadly relating to the security of these devices: (i) banning universal default and easily guessable passwords; (ii) a process for how to report security issues; and (iii) publishing information on minimum security update periods. The Office for Product Safety and Standards is responsible for enforcing these obligations. There are additional requirements for retailers relating to compliance and record keeping, and ensuring that in-scope products are accompanied by a "statement of compliance" containing certain minimum mandatory information.



Whilst there has been some time between the publication of the PSTI and its entry into force, there may still be some risk to retailers arising through stocking legacy products which have not yet been reviewed for compliance with the security standards, especially given the wide scope of smart devices covered by the PSTI. Retailers would also breach the new law if they supply in-scope products from manufacturers that they know or believe have not complied with the relevant security standards, requiring an additional level of due diligence into retail supply chains.

Tips

- Businesses should ensure that current in-scope products on the shelf and in the pipeline comply with PSTI, and that appropriate due diligence is taken for upstream suppliers to avoid any suspected or potential non-compliance with the security requirements set out in the new law.
- In particular, if a business uses a supplier due diligence questionnaire, this should be updated to confirm that the supplier has implemented the new security requirements.
- A rolling audit programme may also be helpful for retailers to review existing stock for compliance, starting with products already on the shelves, progressing to then include products in the pipeline at a later date.

The future of data protection reform in the UK by Joe Lippitt and Helen Yost

On 17 July 2024, the government's new Digital Information and Smart Data Bill (**DISD Bill**) was announced in the King's Speech. This follows the former Conservative government failing to pass the Data Protection and Digital Information Bill (**DPDI Bill**) before the dissolution of Parliament.

The new DISD Bill's stated aims are to "harness the power of data for economic growth, to support a modern digital government, and to improve people's lives".

Whilst the exact content of the DISD Bill has not yet been established, key proposals in the Bill include:

- establishing Digital Verification Services to use "innovative and secure technology" to assist with matters including "moving house, pre-employment checks and buying age restricted goods and services"
- creating Smart Data Schemes to securely share customer data with authorised third-party providers
- enabling scientists to ask for broad consent for areas of scientific research and facilitating commercial scientific research, thereby improving research capabilities
- enhancing the powers of the ICO in addition to reforming data laws to ensure that data is well protected.

Tips

- Those working within the Artificial Intelligence (**AI**) space should note that the new government's approach to AI regulation is yet to be seen. While the King's Speech did not set out any specific plans for the new government to introduce an AI bill, it referred to the government seeking "to establish the appropriate legislation to place requirements on those working to develop the most powerful artificial intelligence models", a proposal that was also included in the Labour Party's manifesto. This appears to be more in-line with the pro-regulation approach adopted by the EU compared to the pro-innovation approach taken by the former Conservative government.
- The King's Speech promised "targeted reforms to some data laws" where "the safe development and deployment of some new technologies" is impeded. It remains to be seen if any of the broader reforms of data protection outlined in the DPDI Bill will make it into the new proposed law.
- Exact timeframes have not yet been announced but it is likely that the government will prepare draft legislation for the House of Commons in the upcoming months which will then follow the parliamentary process to become an Act of Parliament. Those working in the data and AI spaces should be on the lookout for further updates on content and timing in relation to the Bill.

Other developments | UK and Europe (continued)

Construction: Suite, a new JCT has landed... but does it do enough?

by Arash Rajai and Josh Green

The JCT is the provider of the most widely used standard form suite of contracts in the UK construction industry. These are used by parties procuring all types of building work across all industries including real estate, retail, manufacturing, energy, healthcare and education. In April, for the first time since 2016, the JCT released their updated suite of contracts and to date have released the design and build, minor works, intermediate and standard building contracts. Some notable amendments to the D&B contract include:

- key legislative changes to capture changes brought about by the Building Safety Act 2022 (albeit, very light in nature), the Corporate Insolvency and Governance Act 2020 and recent case law
- changes to design risk allocation which includes a new exclusion for fitness for purpose in respect of design
- expanded events which would allow the contractor additional time which now include the discovery of asbestos, contaminated materials and UXBs
- a greater focus on environment and sustainability of projects and collaborative working.

Tips

- The JCT have drafted their contracts to allow implementation across multiple types of building projects, this means, when in use, contracts may require amendment to bolster certain terms to reflect the commercial market, individual businesses expectations or for specific types of construction.
- One key example is in relation to the construction of higher-risk buildings (buildings +18m in height or seven storeys with two residential units) which has additional requirements under the Building safety Act 2022, by way of example amendments some employers could include into the contract provisions that address the allocation of risk in respect of any delays arising from changes that would need to be approved by the regulator and potentially an appropriate limitation period to reflect the nature of the project.

Retail M&A: What to expect in the year ahead

by Karen Hendy and Rosamund Akayan

While 2023 saw some notable brand acquisitions such as Mars snapping up Hotel Chocolat and Next expanding its portfolio with FatFace and an increased stake in Reiss, overall M&A activity in the retail sector was more subdued. The cost-of-living crisis, higher interest rates, and ongoing economic uncertainty kept deal-making at bay throughout 2023 and early 2024. Now, the tide is starting to turn. Retail M&A is beginning to pick up, driven by a few key factors:

- lower valuations, particularly for online-first businesses, are making opportunities more attractive
- big-name retailers, like Wilko, Ted Baker, and The Body Shop, have faced distress or even administration, creating openings for savvy buyers
- many retailers are keen to offload non-core assets, offering further acquisition possibilities
- cash-rich private equity firms and strategic investors are seeking out brands in sectors poised for growth
- economic conditions are showing signs of stabilisation, giving investors more confidence.

Looking ahead, we anticipate more deals designed to help retailers achieve their strategic goals – whether that's adopting AI for better customer experiences, improving sustainability, securing supply chains, or boosting customer engagement.

Intellectual Property: Navigating copyright when using Generative AI tools by Sarah Mountain and Sam Coppard

Design, advertising, communication and marketing teams are increasingly using Generative AI (**GenAI**) tools such as ChatGPT, Midjourney, and DALL-E to create unique and innovative digital content. These creative teams have some pressing issues to consider such as: is the output they have produced protectable, who owns it, has any right or valuable know-how been lost in creating it and does it infringe any third party rights?

On the issue of protectability, GenAI tool users who produce content are subject to a web of UK copyright laws, and the GenAI's tool's terms and conditions – never has there been a better time to read them on who owns the rights to the inputs and outputs. Users will also need to weigh up whether input content in their prompt risks a breach of confidence or loss of proprietary information into the AI tool.

The as yet unresolved issue of whether the way GenAI models are trained using web content and whether their outputs infringe the copyright of content creators, is also worth careful consideration. While the EU AI Act allows copyright owners to check if their work is in a dataset, the UK has not yet addressed this issue. The new Labour government is however indicating that it will consult on an AI Bill, and transparency requirements may be coming. Some providers of GenAI tools, such as Microsoft, Google, and OpenAI, are offering to indemnify certain users if they are sued for copyright infringement as a result of using an AI tool, but the conditions attached to these indemnities and whether they fit the particular business use should be examined closely.

Tip

When using GenAI models, be mindful of potential copyright infringement risks, stay informed about legal developments and consider whether AI providers offer indemnities to mitigate risks. Where indemnities are offered (and this is more likely to be in paid for services) it's worth checking both the product's general indemnities and any additional indemnities specific to GenAI use. Understanding the conditions attached to use of the GenAI tool will allow users to better judge the risks involved in using a particular model.

Other developments | UK and Europe (continued)

Competition: Snack manufacturer's €337m fine for illegal distribution and refusal to supply by Tom McQuail and Melanie Musgrave

On 23 May 2024, after a lengthy investigation commencing with dawn raids in 2019, the European Commission fined Mondelēz €337.5m for restricting EU cross-border trade of various chocolate, biscuit and coffee products in breach of EU competition law. The illegal practices enabled Mondelēz to maintain higher product prices in some Member States "to the ultimate detriment of consumers in the EU". This Decision was made under the Settlement procedure.

The Commission found that Mondelēz had engaged in 22 separate anti-competitive agreements or concerted practices in breach of Article 101 TFEU, including:

- restricting the territories or customers to which wholesale customers could resell the products
- contractually requiring one customer to impose higher resale prices for exports than for domestic sales
- imposing a passive sales ban on exclusive distributors in certain Member States, preventing them from accepting orders from customers located in other Member States without prior permission.

Additionally, Mondelēz was found to have abused its dominant position in breach of Article 102 TFEU by refusing, or ceasing, to supply chocolate products to certain entities in Germany and the Netherlands to prevent their export to other jurisdictions where prices were higher.

A day later, the Commission announced its intention to initiate a fact-finding exercise on "territorial supply constraints" with brand manufacturers, retailers and consumers "to see what the issue is and whether to do something about it".

Tip

The risk that parallel export restrictions and other territorial supply constraints may breach EU competition law is not new. However, Brands are now on notice that the Commission is determined to identify and stop commercial practices which result in, or maintain, artificial price differences between markets. The Commission's current 'fact-finding' is likely to result in further investigations targeting individual Brands. There is no legal obligation for a Brand to set identical prices for the same product in different countries/regions, but Brands should take competition law into account in determining their pricing initiatives (especially in their commercial arrangements to support their pricing).

In light of the Commission's renewed focus, it is an opportune time for Brands, and all those in the customer supply chain, to audit their existing commercial arrangements to ensure that they are not falling on the wrong side of competition law. Going forward, before launching any new initiatives, it is important to consider competition law implications.

Cyber: Navigating the muddy waters of security regulatory compliance

by Richard Breavington and Elizabeth Zang

A challenge posed by the increase in cyber-attacks is the difficulty navigating the volume and complexity of applicable international legislation.

The most well-known legislation relating to data compliance is perhaps the UK GDPR and EU GDPR. Where organisations are marketing their goods/services throughout the EU, the regulatory notification burden imposed by the EU GDPR in particular could be considerable.

Retailers are in a particularly difficult space here as they may need to make notifications in the full range of EU jurisdictions in which they offer goods/services. Ordinarily, the "One Stop Shop" mechanism allows companies with a main establishment in the EU to make one notification to the regulator of that jurisdiction, rather than individual notifications to every regulator across Europe where individuals are affected.

However, if retailers do not have a main establishment in the EU but might market their goods or services throughout the EU, notifications might be needed in that range of EU jurisdictions. It would not necessarily be possible to take advantage of the "One Stop Shop" mechanism. This could significantly increase the burden of compliance with the GDPR, particularly for mid-size retailers.

In addition, there is a multitude of other current and upcoming legislation that businesses need to comply with. In the UK, this includes the NIS Regulations, the Privacy and Electronic Communications Regulations and the Online Safety Act. Across Europe, this includes the NIS 2 Regulations, the Digital Operational Resilience Act and the EU AI Act. Whilst not all of this legislation will apply to all retailers, it will be important to know what is applicable and what is not.

Tip

Compliance can be streamlined by creating a pragmatic compliance plan. This would involve determining which regulations apply to an organisation and its sector and then understanding the various requirements that exist as a result, including any international elements. To the extent possible, it is worth trying to find consistent processes and standards that will allow compliance across the board, even if that means potentially going above and beyond what is needed for some of the regulations.

The sheer amount of legislation, coupled with the fact that it is being updated rapidly, means it can be a challenge for organisations to ensure compliance.

Financial Services: Under the finfluence – promoting investments on social media by Ed Colville and Whitney Simpson

Influencers speaking about or promoting financial products, called "finfluencers", are on the rise. Celebrity endorsements are an increasingly popular marketing tool for banks, insurance and investments. Social media has now become a central part of firms' marketing strategies.

In the UK, communications inviting individuals to take out a financial product are known as financial promotions, and are regulated. Communicating unauthorised financial promotions is a criminal offence.

Nine finfluencers have recently been charged in relation to the promotion of contracts for difference (**CfDs**), high risk investment products, through an unauthorised investment scheme.

The FCA alleges that an Instagram account was used to provide unauthorised advice on buying and selling CfDs. This advice was then leveraged using other social media accounts of stars from TOWIE, Love Island and Geordie Shore to promote the advice across the group's 4.5m followers (BBC). Those involved face up to two years in prison if convicted.

FCA rules require that promotions of authorised investments can only be issued when approved by individuals or firms that are authorised or exempt.

Finfluencers might still be a valuable marketing tool, but promotions for any regulated financial product need to be carefully thought through.

Tips

If you promote regulated financial products:

- make sure all promotions of these products are clear, fair and not misleading, are balanced and carry risk warnings so people can make well informed financial decisions
- put in place policies and procedures which reflect the FCA's social media guidance published earlier this year.

Other developments | UK and Europe (continued)

Regulatory: An Inspector calls! by Gavin Reese and Andrew Martin

An Environmental Health Officer (**EHO**) can visit your business at any time without notice during regular business hours and will usually visit if a serious incident has occurred at the premises. Given the potential impact a decision from an EHO can have on your business, it is always best to try and maintain good relations with the enforcement authority.

Food safety, including compliance with the appropriate legislation on food allergens, will be one of the aspects that is considered by an EHO when they visit. The EHO will be looking closely at any relevant health and safety procedures on site, which may include consideration of:

- any relevant risk assessments
- personal hygiene and cleaning practices
- the maintenance regime for equipment on site
- the condition of the premises
- where required, any food management systems in place, and the records kept to evidence those systems.

The powers of the EHO are extensive and they could issue one of the following types of notice:

- **Improvement Notice** – this notice will set out the item(s) that need improving or require attention, along with the time limit for any actions to be taken
- **Prohibition Notice** – this notice will prohibit certain operational activities until recommended actions/improvements are put in place. A Prohibition Notice is likely to be issued in the case of severe breaches.

Should the breach of legislation found be considered severe, it is likely that the EHO will consider prosecution. The consequences of prosecution for a business or any individuals involved could be significant.

Tips

As an EHO can visit your business at any time it is recommended that you ensure that systems and documents are kept up to date so that you are always prepared for a visit. Here are some basic steps that can be taken to ensure you are prepared for an unexpected visit from an EHO:

- providing regular and appropriate training to all employees to ensure that they understand the relevant health and safety documents required for their role
- ensuring that staff are aware about the steps that should be taken in the event an EHO arrives on site
- ensuring that there is always someone on site, or able to get to the site quickly, who is suitably trained in health and safety management who will be available to answer any questions an EHO may have
- keeping the external and interior of the premises clean and clear of obstruction at all times
- ensuring equipment and machinery is serviced regularly and is operational
- providing staff with appropriate access to handwashing facilities, hot water, and adequate ventilation and drainage at the site
- checking that any health and safety/food safety management documentation is up to date and is easily accessible.

Martyn's Law (Protect Duty): preparation is key by Fiona Hahlo and Mamata Dutta

Martyn's Law is a draft Bill introduced under the former Conservative government, which seeks to impose a new duty on owners and operators of publicly accessible premises to address the evolving issue of terrorist threats.

The new legislation will apply to locations with a "qualifying activity", and this includes retail outlets, entertainment venues and visitor attractions. Venues will fall into one of two tiers:

1. standard – with a capacity of 100-799, and
2. enhanced – with a capacity exceeding 800.

Whilst this Bill wasn't included in the legislation wash-up, the Labour government committed to making it law in their Manifesto albeit with a delay a new government brings.

A Consultation began in February seeking views from those responsible for standard tier venues. The BRC met with the Home Office to discuss the consultation in February 2024 (and discussions are ongoing). Revised requirements, welcomed by members, include:

- notifying the Regulator they are in scope
- having in place reasonable measures to reduce the risk of physical harm in the event of attack, and
- procedures for workers in place of formal training.

The Consultation closed in March 2024 and we await the response.

Tips

Premises can start to prepare now by taking the following steps, don't wait:

- undertake training already available. ProtectUK, a collaboration between the National Counter Terrorism Security Office (**NaCTSO**), Home Office and Pool Reinsurance, has a website which provides free advice and training. You need to set up a free account but this can be done with a few easy steps. PoolRe also has a Martyn's Law hub containing useful information and guidance
- directors and officers should ensure they understand their new enhanced duty obligations (including appointing a senior officer under the enhanced tier) so as not to fall foul of the new legislation. This is likely to lead to an increase in demand for Directors and Officers (D&O) insurance in response to the enhanced risks faced by directors
- undertake a risk assessment – ProtectUK has an example template available for use. If you do not feel comfortable competing the assessment yourself, you could consider appointing a risk assessor for an initial report
- consider whether there is appropriate insurance cover in place due to standard terrorism exclusions. The government recognised there could be implications for insurance policies and premiums for in scope premises and The Home Office undertook an Impact Assessment available here. If a premise has a good risk rating, premiums may be reduced accordingly. However, those with failings may see premiums rise. Results are unknown at present
- notify insurers of any changes to premises (specifically capacity) as this could affect policies.

Other developments | UK and Europe (continued)

Tax roundup by Michelle Sloane and Keziah Mastin

UK Carbon Border Adjustment Mechanism (CBAM)

The UK Government has consulted on the design and delivery of a UK CBAM to be implemented by 2027 and a response from the government is awaited.
The CBAM is aimed at addressing carbon leakage and supporting decarbonisation.
The UK CBAM targets products from the cement, fertiliser, iron and steel, aluminium, ceramics, glass and hydrogen sectors.

VAT treatment of voluntary carbon credits

Currently, voluntary carbon credits are outside the scope of UK VAT. However, since 1 September 2024, 20% VAT is charged on the sale of voluntary carbon credits. Certain activities will remain out of scope of VAT such as the first issue of a voluntary carbon credit by a public authority and the holding of voluntary carbon credits as an investment, where there is no economic activity.

Tip

Many of the products that are targeted by the UK CBAM will be used in supply chains and incorporated into the products that retailers sell. The application of the new tax will therefore impact on prices. UK businesses would be well advised firstly to review their supply chains and secondly to assess the likely impact of the new regime. RPC's tax team can work with legal, compliance and procurement teams to assist with that process.

VAT Retail Export Scheme

Following a review by the Office for Budget Responsibility, the previous government did not reintroduce tax-free shopping in the spring 2024 budget. It remains to be seen whether the new government will listen to calls by the British Fashion Council and others in the industry, to restore the scheme.

Customs Declaration Service

It is now mandatory for all import declarations to be made through the Customs Declaration Service (**CDS**). Export declarations can also be submitted using the CDS.

In addition, there is a new service enabling traders to claim back VAT and import duty on import declarations made through the CDS.

AI and its impact on the retail workforce by Patrick Brodie and Ellie Gelder

AI continues to feature highly on the business agenda and leaders will need to navigate a number of significant people challenges, including: AI's impact on jobs and skills; the adoption of AI ethics policies and impact assessments; bias and discrimination in recruitment and predictive decision making; and legal challenges in relation to employee rights and AI.

At the same time, AI will augment human capabilities, skills and qualities creating a new working environment that will improve analysis, achieve efficiencies and nurture creativity. Achieving this aspirational goal will require a clear-sighted understanding of what AI's true rather than promoted capabilities are and equally the risk that certain AI might pose without proper ongoing safeguards.
For an insightful and thought-provoking discussion of the risks and opportunities that AI presents for employers, listen to our recent Work Couch podcast mini-series:

- AI (Part 1): Impact on litigation, responsible use, and the regulatory landscape, with Olivia Dhein and Joshy Thomas (RPC)
- AI (Part 2): Privacy, bias and discrimination, with Patrick Brodie (RPC) and Jake Wall (techUK)
- AI (Part 3): The role of emotional intelligence and AI's impact on wellbeing, with Patrick Brodie (RPC) and Jake Wall (techUK).

Tip

Retailers should monitor the progress of the government's plans to introduce a new Employment Rights Bill. The King's Speech, which was delivered on 17 July 2024, states that part of the Bill will seek to establish the appropriate legislation to place requirements on those working to develop the most powerful artificial intelligence models.

AI in the supply chain: risks for retailers by Nigel Wilson and Luke Stewart

AI solutions are presenting retailers with wide-ranging opportunities to increase efficiencies, add value and improve customer experiences – as demonstrated by Tesco's recent announcement that it is exploring the use of generative AI within its Clubcard loyalty scheme to improve a customer's shopping experience. In the supply chain, AI solutions are being implemented in areas such as demand forecasting, inventory management, waste reduction etc. Each AI system presents its own particular opportunities and risks and their procurement, implementation and operation should be carefully managed. Below we have set out some of the key issues to consider in the use of AI solutions.

- **Outputs and quality assurance** – AI solutions are increasing in their accuracy but errors can be costly and brand-damaging. AI solutions should be monitored and evaluated as rigorously as appropriate to the use of the relevant system. Human oversight may be required particularly for customer-facing tools but, in any event, all solution outputs should be evaluated and subject to quality assurance.
- **Intellectual Property (IP)** – when procuring any IT system, there is a risk that use of the system by the customer could infringe third party IP rights. Your contract with a supplier should protect you from this risk. Additionally, in an AI context, customers should verify (i) that they have the requisite rights to input data to the AI solution, and (ii) do not accidentally cede ownership in the data by doing so. Equally, customers of AI solutions should ensure their contracts provide them with all necessary rights to use the output from their solution.
- **Data Protection** – particular care should be taken when any AI solution might process employee or customer personal data. The consequences of not complying with applicable data protection laws can be severe. In the UK, this means complying with the Data Protection Act and obligations such as there being a lawful basis to process personal data, personal data being only processed for a permitted purpose and compliance with rules on automated decision making. Appropriate data governance arrangements are of critical importance.
- **AI bias** – certain AI products have been shown to contain inherent biases, often as a result of flawed training data, developer biases or issues with the algorithm itself. Such biases risk discriminating against particular groups, and can more broadly bring into question the quality and reliability of AI output. Retailers would be prudent to check AI solutions for such biases, take steps to address any biases that are identified and contract to allocate risks appropriately.
- **Liability** – many AI suppliers impose restrictive liability regimes through their standard terms. The result is that customers can be left with limited recourse if performance issues arise. The terms of contracts for AI solutions do require specific consideration – whilst suppliers may present reasonable-looking contracts which include traditional software warranties tied to specifications, these may be of little benefit when it is the outcomes that are more important.

Tip

Retailers might consider adopting the following practices:

- conducting technical due diligence on AI providers and solutions ahead of procurement
- ensuring there are robust contractual protections in place to address known risks
- conducting regular audits and monitoring to ensure legal, operational and contractual compliance
- obtaining insurance to mitigate financial risks associated with potential liabilities
- adopting robust data governance practices to ensure compliance with data protection laws.

- **Regulatory** – Some retailers will be subject to sector specific regulations that impose governance and reporting obligations in relation to product safety, quality and traceability. Retailers operating in any regulated space should ensure that any AI solution functions with sufficient transparency and that there is sufficient "explainability" of results to allow compliance with their regulatory duties.

AI tools are bringing market disruption and rapidly increasing in sophistication and availability. Their use has the opportunity to deliver real business efficiencies and returns. Those same tools also bring many of the risks of "traditional" IT procurements but also a number of new risks to manage.

Other developments | Spotlight on Asia

In this section we are delighted to welcome contributions from our partners within the TerraLex network, who consider some key legal, regulatory and policy changes being faced by retail and consumer brands in Asia, in particular Singapore, South Korea and India.

Whilst the following is intended to offer a helpful flag, we recommend tailoring your consideration of the changes to your own specific circumstances as there may be other local law considerations which affect you (and taking local advice where necessary).

These articles should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.

Singapore: New Digital Infrastructure Act to bolster resilience and security of digital infrastructure and services in Singapore

by Nicholas Lauw and Ching Pu Fang of RPC

In March of 2024, the Singapore Ministry of Communications and Information announced that the inter-agency Taskforce on the Resilience and Security of Digital Infrastructure and Services (**Taskforce**) is studying the introduction of a Digital Infrastructure Act (**DIA**) to bolster the resilience and security of key digital infrastructure and services.[5] This announcement comes off the back of a recent spate of cyber outages that led to widespread disruption in the delivery of digital services in Singapore. A four-hour outage at a data centre on 14 October 2023 caused by a fault in the cooling system is blamed for widespread disruption to banking services lasting more than 12 hours. Less than a month later, the websites of major public hospitals, polyclinics and healthcare clusters were rendered inaccessible as a result of a distributed denial-of-service attack for more than seven hours on 1 November 2023.

Currently, owners and operators of computers or computer systems necessary for the continuous delivery of essential services in Singapore are governed by the Cybersecurity Act 2018 (**CS Act**), alongside regulatory levers in sector specific regulation such as the Telecommunications Act 1999 and the Banking Act 1970. The CS Act has undergone amendments earlier this year to keep pace with developments in the cyber threat landscape and Singapore's evolving technological operating context (further info). However, the CS Act, which focuses on mitigating cyber-related risks and enhancing Singapore's cybersecurity defences, was not designed to deal with disruptions and outages that were not caused by cyber attacks.

As such, the Taskforce intends for the DIA to tackle a wider range of risks encountered by digital infrastructure and service providers, such as misconfigurations in cloud architecture and outages caused by fires, water leaks, and cooling system failures. The DIA will focus on mitigating the risks of digital service disruptions that can cause significant impact on the economy and society. It is expected that the DIA will regulate digital infrastructure and service providers such as cloud service providers and data centre operators as they power and support a wide array of digital services that enterprises and consumers use daily, including online banking and payments, e-government services, ride-hailing and digital identity management.

The requirements to be included in the DIA are likely to follow international regulatory trends. Jurisdictions such as the European Union, Germany and Australia have introduced incident reporting requirements and baseline resilience and security standards which regulated entities must comply with, and it appears likely that the DIA will incorporate similar requirements. As the DIA is intended to complement the CS Act, players that could come under both legislations in Singapore include data centre operators such as Equinix and Microsoft, as well as cloud service providers such as Google and Amazon Web Services.[6]

At this time, the Taskforce will continue to consult industry players and relevant stakeholders in developing and scoping the DIA, while also exploring non-regulatory measures in addition to regulatory measures, such as providing digital infrastructure and service providers with guidance on best practices for resilience and security to ensure business continuity.

South Korea: Guidelines issued on the application of the Personal Information Protection Act to foreign business operators by Tae-Jong Kim, Joo-Hyuk Yoon and Ha-Eun Jang of Kim Chang Lee, South Korea

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In April 2024, the Korean Personal Information Protection Commission issued Guidelines on Applying the Personal Information Protection Act (**PIPA**) to Foreign Business Operators. The Guidelines establish clear standards for determining whether and when foreign business operators engaging in business in Korea are subject to PIPA, which is the main Korean statute regulating personal data protection matters. The Guidelines also address noteworthy compliance issues that foreign business operators should be aware of.

In recent years, South Korea has faced a rash of personal data breaches in relation to the rapid expansion of foreign business operators, including foreign online retailers that collect personal data from Korean consumers in e-commerce transactions. This surge in e-commerce transactions in South Korea involving foreign business operators has led to a significant increase in the processing of personal data by entities outside Korea, heightening legal risks associated with potential personal data breaches affecting Korean consumers.

To foreign business operators, it is often unclear how the PIPA applies to foreign business operators and their business operations in South Korea, which sometimes gives rise to compliance issues in connection with their collection and processing of personal data from Korean consumers. The publication of the Guidelines, which is available in both Korean and English, should assist foreign business operators, particularly companies in the retail sector which extensively interact with consumers and collect personal data from them, to comply with South Korea's stringent personal information protection regulations.

5. Read more.
6. Read more.

Other developments | Spotlight on Asia (continued)

India: New self-declaration requirements for advertisements of food and health beverages and regulatory scrutiny for packaging disclaimers by Ranjana Adhikari, Sarthak Doshi and Vidhi Udayshankar of IndusLaw, India

In May 2024, an order from the Supreme Court of India (**SC**) in the case of *Indian Medical Association v Union of India* (**Patanjali Case**) caused a furore amongst the food and health industry of India. While the case primarily focussed on the misleading advertisements ran by 'Patanjali' (a leading provider of ayurveda products), it has brought multiple ramifications for the entire food and health sector.

Through its order, the SC required all advertisers (ie sellers) and advertising agencies to file a mandatory 'self-declaration certificate' (**SDC**) before publishing any advertisements in India. It was mandated that the SDC must: (i) confirm that the proposed advertisement is not misleading; (ii) confirm that it complies with all regulations, and (iii) is submitted to the broadcaster/publisher for records. Soon after, the Ministry of Information and Broadcasting in India (**MIB**), via a press release, made the Broadcast Seva Portal available to file SDCs for television and radio advertisements and the Press Council of India's portal available to file SDCs for print and digital/internet advertisements.

The SDC requirements have thereafter been a subject of immense discussion in India with multiple representations between the Supreme Court, the MIB, industry bodies, advertisers and advertising agencies. In July 2024, an MIB advisory narrowed the SDC requirements to the 'food and health' sector only, instead of all sectors as directed by the SC. Further, in late August 2024, the MIB reportedly filed an affidavit before the SC recommending the same, plus requesting that they (i) make the SDC compliance annual; (ii) exempt advertising agencies and start-ups; (iii) merge the two portals and instead require a single SDC across all mediums.

The SC is expected to hear MIB's affidavit sometime in October 2024, and whilst the SDC requirements may only be clarified by year-end, the Patanjali Case has been a watershed moment for advertisements in India. Regardless of the outcome and specifics of the SDC, the courts, government agencies and adjudicatory bodies will take instances of misleading advertisements seriously and may not shy away from reprimanding businesses who fail to abide by the Consumer Protection Act 2019 and other related advertising laws.

Tip

Businesses, especially in the food and health sector, should carefully design their advertising content and be conscious of how they are being perceived by the regulators as well as the public at large. The content should be clear, honest, and transparently communicate the efficacy of the product, in line with relevant labelling and metrology norms. It is important that advertising content is vetted in line with applicable laws pre-publication and that broadcasters/publishers are communicating them to the audience in similar fashion.

India: Consumer autonomy at the forefront as India scales regulation of dark patterns by Ranjana Adhikari, Sarthak Doshi and Vidhi Udayshankar of IndusLaw, India

It has been almost nine months since the Indian government released guidelines to regulate 'dark patterns' under the overarching Consumer Protection Act 2019. 'Dark patterns' are essentially deceptive practices on any digital platform that intentionally mislead or trick consumers into making decisions which they might not otherwise make. A non-exhaustive list of 13 (thirteen) dark patterns are called out under the guidelines, which include basket sneaking, hidden charges, disguised advertisements, among others.

While there have been limited enforcement actions against potential violators so far, relevant government departments and adjudicatory bodies have started amping up their scrutiny and calling out the bad actors. In June 2024, the Ministry of Consumer Affairs (the relevant body that issued the dark pattern guidelines), through its secretary, reportedly cautioned e-commerce platforms against the use of dark patterns on their platform and suggested reliance on consumer feedback, audits, and use of dark patterns-detection technologies. In October 2023, the Ministry of Civil Aviation had also reportedly asked a leading aircraft carrier to rectify 'false urgency' with respect to pre-booking of flight seats and equated such practices as being close to being 'cybercrime'. Per recent reports, the government is also planning to launch an application to track dark patterns on its own and take suitable actions. Adjudicatory bodies in India too, such as the State Consumer Dispute Redressal Commissions, have imposed penalties against leading e-commerce platforms in India for engaging in dark patterns.

Presence of dark patterns may have several ramifications for companies. It can lead to loss of reputation, create distrust among consumers; or attract significant monetary penalties under the Consumer Protection Act 2019. Considering that scrutiny of dark patterns has picked up and instances of government and adjudicatory bodies prioritising investigations against dark patterns have increased; it is an ideal time for platforms, both domestic and overseas, to take stock of their user-interface and user-experience to weed out issues that may potentially attract a regulator's eyeball.

Tip

Companies should prioritise undertaking a UI/UX analysis of their platform to spot instances of dark patterns and keep track of what practices in their sector are being called out by the regulator as being deceptive. Companies should also invest in periodically training their business and product teams on 'dark patterns' and avoid such features during development and release. Seeking feedback from current users of the platform may help companies in avoiding bias and maintaining transparency.

Snapshot of retail statistics

Asia

Gen Z consumers in APAC are willing to pay a **28%** premium for luxury brands that prioritise sustainability initiatives

93% of APAC consumers are prepared to spend more on luxury brands that actively promote and communicate sustainability initiatives

88% of APAC luxury consumers said they would spend less on a luxury brand that creates excessive waste

80% of APAC luxury consumers said they would consider switching to another luxury brand that offers a similar product in less packaging

Source: Delta Global study "Navigating greener future"

56% of retailers in Asia say that global economic factors are the biggest challenge that they currently face.

Source: Inside Retail

83% of Southeast Asian consumers are cutting down on discretionary spending to save money.

Source: Shopify

Luxury brands account for **66%** of all retail spaces certified on ESG considerations.

Source: Retail Asia

The estimated revenue of the second-hand luxury goods market in Asia is forecast to hit **US$4.7bn** in 2025.

Source: Statista

China, India and Thailand have the highest rate of live social commerce shoppers. Over **7 in 10** buy products from social media sites in real time.

Source: Forbes Advisor/Statista

45% of Chinese consumers used social media to purchase online in the past three months

Source: McKinsey

68% of Southeast Asian retailers plan to increase investment in social commerce in the next 12 months

Source: Shopify

96% of Southeast Asian consumers would stay loyal to a brand if offered an incentive

Source: Shopify

India's e-commerce market set to grow **23.8%** in 2024.

Source: Retail Asia

OTHER DEVELOPMENTS

Insights and opinions

Changing consumer behaviours: what's hot and what's not?

In recent years, the retail, consumer brand and hospitality industries have faced unprecedented challenges, including the COVID-19 pandemic, economic instability and geopolitical tensions, which have reshaped consumer behaviours and market dynamics. Technological advancements and evolving consumer preferences and expectations, continually push these industries to innovate and adapt at an unparalleled pace. Research by RSM UK shows that spending habits and preferences vary greatly between different generations. This adds another layer of complexity to factor into their approach to attract and retain customers. In this section, we explore the forces reshaping consumer behaviour and how retailers, consumer brands and the hospitality industry can succeed in a highly competitive market.

A snapshot into consumer trends and market pressures in 2024

According to Deloitte's Consumer Confidence Index, consumer confidence in the UK economy was at a three-year high in Q2 2024. This significant improvement in sentiment has been driven by inflation finally easing, rising disposable incomes and a recovering economy which together have boosted consumers' confidence in their personal finances.

Research carried out by RSM UK also found that discretionary spending on leisure, such as dining out, drinking, and takeaways, had a significant recovery in Q2 2024. This has also been predicted to continue into Q3 2024 with the 'summer of sports' (the Olympics, the Euros etc) anticipated to have provided a £233m boost to the UK economy.

Unlike retailers, leisure and hospitality businesses have largely not been able to pass on inflationary costs out of fear of alienating their customers. This has led to them absorbing more of these costs themselves, resulting in tighter profit margins. To mitigate these challenges, businesses have been leveraging technology to streamline their operations and cut costs, including by introducing digital ordering systems and optimising supply chain efficiencies.

So, how are the retail, consumer brands and hospitality sectors maintaining and building their customer base?

Loyalty is key

The **hospitality and leisure** sectors have been focusing on enhancing their customer experiences and offering value-added services to retain patronage. This includes the implementation of loyalty schemes which provide price sensitive consumers with incentives to spend more on eating and drinking out.

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Loyalty schemes are rapidly becoming essential in the hospitality industry, fostering mutually beneficial relationships between businesses and customers. Successful programs can boost customer spend and enhance the dining experience, encouraging repeat patronage over competitors. According to RSM UK's research, 42% of consumers are more likely to frequent a restaurant which offers a loyalty program. By way of example, Azzurri Group has recognised the importance of rewarding its loyal customers, having introduced loyalty schemes tailored to each of its brands, including Zizzi's "Zillionaire's Club", Coco Di Mama's "Club Coco" and ASK Italian's "Ask Perks".

Taking Zizzi as an example, the Azzurri Group has invested in developing leading technology which benefits both its team and its customers. According to Zizzi, the Zillionaire's Club has enabled the Azzurri Group to better understand its customers and the personalised reward system the company has developed has seen an increase in customers' spend and loyalty. The Azzurri Group has focused on building proprietary technology, aligned with customer needs, and is now looking at how the platform can potentially be introduced across other areas of the business's portfolio, such as to ASK Italian (source).

However, **bars and pubs** have generally experienced lower interest in loyalty schemes, except among younger consumers. This suggests that such venues need to approach these schemes carefully, and tailor them accordingly, to ensure they have the right impact. For example, bars often focus on social and experiential rewards and experiences, such as exclusive access to events or membership to a special area within the bar.

Loyalty schemes are also becoming a strategic priority for retailers as brands seek meaningful ways to engage consumers and offer tailored experiences and deals. With 51% of consumers more likely to choose a retailer with a loyalty program, these schemes have become expected and are offered in various forms to cater to diverse preferences and needs:

Point-based systems: traditional point-based systems, such as Tesco Clubcard and Nectar, allow customers to earn points on purchases that can be redeemed for discounts, vouchers or other rewards. These programs are straightforward and incentivise repeat purchases.

Tiered loyalty programs: implemented by clothing brands, such as Mango and Abercrombie & Fitch, these programs offer different levels of benefits based on customer spending or engagement. Higher tiers provide more exclusive rewards, encouraging increased spending and fostering customer loyalty.

Paid membership programs: examples include businesses such as Beauty Pie, where customers pay a fee to access exclusive pricing and discounts. This model creates a sense of exclusivity and provides significant value to loyal customers.

Even without implementing a formal loyalty program, retailers, consumer brands and hospitality operators can leverage customer data to provide their consumers with personalised experiences and exclusive offers based on individual shopping habits. Younger consumers, particularly Gen Z, appreciate tailored experiences and unique shopping and dining opportunities. Data-driven personalisation, such as recommending products based on past purchases or offering special offers or a gift on a customer's birthday, can be a powerful tool for enhancing customer engagement and satisfaction.

Insights and opinions

Changing consumer behaviours: what's hot and what's not? continued

Seamless shopping

Data-driven decision-making is also likely to be increasingly important in omnichannel retail in 2024 and beyond. Omnichannel retail involves engaging customers through multiple touchpoints, including online, mobile and in-store. Customers expect a seamless shopping experience, with the ability to purchase a branded product from anywhere, and have their orders fulfilled quickly and conveniently. To meet these expectations, retailers have needed to create and deliver a consistent brand experience across all channels, enabling customers to start a purchase on one channel and finish it on another. This includes offering a variety of delivery options, such as in-store pick up and same-day delivery. Brands such as Zara and H&M have been able to successfully implement this omnichannel strategy, allowing their customers to check product availability online, pick up items in-store, or to return online purchases at physical locations, thus providing their customers with a cohesive and convenient shopping experience.

Nick Wheeler, Founder & Chairman of Charles Tyrwhitt, told the RPC team that:

"Retail is polarising. It is the same for retailers, high streets, and shopping centres. You are either doing well because you are giving customers what they want or you are doing badly because you have forgotten that the customer now has real choice (especially online). You must choose the perfect location, you must sell great quality products at a fair price and you must do it all with a smile. Get one of these things wrong and your lights could well be going out shortly!"

Influencer marketing remains a powerful tool in achieving omnichannel success in the retail, consumer brands and hospitality sectors. Influencers can drive the online-to-offline conversion by creating engaging online content on social media platforms to promote in-store events, turn restaurants into overnight hotspots or spark consumer interest in finding the latest "viral" product. For example, the Devonshire in Soho, London is one of the latest eateries which has gained popularity on social media, while traditional bricks-and-mortar stores like B&M and TK Maxx have gained traction by social media users hunting down the latest trending items featured by both influencers and organic content creators.

A report from Retail Economics, in partnership with TikTok, found that 54% of online shoppers find browsing for products on social media platforms more satisfying than shopping retail websites or physical stores. Additionally, 56% of UK social media users have made a purchase directly through social media in the past twelve months. Consumers, particularly in the younger demographics, are prioritising interactive and social shopping experiences. Platforms such as TikTok blend entertainment with shopping, either by influencer or organic content or via the TikTok Shop feature, whereby users can browse and purchase products directly within the app and by live shopping events, which offer real-time engagement and convenience.

What are we buying?

Research by RSM UK has found that 62% of men feel financially comfortable compared to only 42% of women, leading to a discrepancy in spending priorities in 2024. The UK's women apparel market (which is over 80% larger than the men's) is predicted to see 36% of women reduce their spend in

clothing and fashion accessories compared to a reduction of 18% of men in 2024. In addition, the unpredictable weather last year and continuing in 2024, has seen seasonless fashion emerge as a key fashion trend, with consumers seeking out timeless products that can be worn year-round and styled in multiple ways.

To combat these trends, some retailers are choosing to scale back their ranges and levels of stock. Brands such as Marks and Spencer opted for a slimmed down product offering in 2023, choosing instead to focus on value and style, as well as modernising their supply chain in order to support growth in sales. This strategy saw the brand achieve the leading market share position for womenswear in summer 2023 for the first time in four years.

One area that is set for significant growth for retail, consumer brands and hospitality is the wellness industry, with the global wellness market worth an estimated $1.8tn in 2024.

Given the noticeably heightened consumer interest, the global wellness market is expected to grow 5 to 10% annually. From pub-goers seeking alcohol-free and sustainably sourced food and drink options, to the rising demand for advanced biomonitoring and fitness wearables, consumer appetite for wellness and science-backed solutions is on the rise. However, as consumer interest in wellness increases, so does the competition. Brands are having to be strategic about how and what they create in order to stand out. However, omnichannel experiences and offerings will likely be key.

BDO consumer trends research has also found that there is heightened UK consumer interest in staycations. With economic uncertainty and rising travel costs, more people are choosing to holiday within the UK. Wellness-focused staycations offer a perfect blend of these two consumer trends, presenting opportunities for the retail and hospitality sectors to offer targeted promotions and packages, such as bundling wellness experiences with dining and shopping discounts.

By understanding and adapting to these evolving consumer behaviours, retailers, consumer brands and hospitality operators can better position themselves for success in a dynamic market landscape.

Market pressures on consumers

A variety of factors have influenced consumer spending over recent years, largely led by a mixture of turbulent geopolitical factors, higher prices owing to inflation, and concerns around the housing market.

What is affecting consumers the most?

For the retail, consumer brand and hospitality industries, inflation is proving to be a key factor affecting consumers' decision-making and spending habits. In recent years, inflation has fluctuated significantly, with a high of 11% in 2022, easing to around 2% in June 2024, due, in large part, to the Bank of England increasing interest rates.

Jonathan Neame, Chief Executive of Shepherd Neame (Britain's oldest brewer and owner of nearly 300 pubs) told RPC that:

"The inflation outlook for cost of goods is improving and pricing in food, raw materials, energy and energy-related products is stabilising, albeit at a level around +10% higher than the prior year. Whilst we do face new inflationary challenges, such as logistics, packaging waste and further rises to the National Living Wage (which took effect on 1 April 2024), real net disposable income is now starting to grow again. Whilst consumers have recently favoured saving over spending, falls in interest rates and a greater sense of political stability, should lead to a rise in consumer confidence. Hospitality businesses are likely to be the principal beneficiaries of any additional discretionary spend."

Inflationary pressures have applied across the board for businesses in recent years. However, the market looks set to continue to improve.

Despite inflation easing and consumer confidence in the UK economy improving, the knock-on effects of high inflation continue to influence consumer decision-making and discretionary spending.

Even though inflation has eased greatly, it remains a top concern when it comes to consumer spending, with 91% of respondents to a survey in July 2024, having said that higher prices are their primary concern, which is only a 1% improvement since Q4 of 2023. Consumers therefore remain *cautiously* optimistic and frugal when it comes to spending, suggesting retailers, consumer brands and hospitality operators need to continue offering value-driven promotions and a high-quality service to maintain customer engagement.

Additionally, The Labour Party's emphatic victory in the General Election on 4 July 2024 is likely to have an impact on consumer habits in the upcoming months. For example, housing reforms, aimed at making home ownership more affordable, are expected to free up disposable income for other expenditure. A potential increase in minimum wage in line with Labour's proposal under its 'Make Work Pay' plan to ensure that the minimum wage reflects the cost of living may also lead to increased spending. The actual effects of The Labour Party's new government policies on consumer spending remain to be seen. However, this, together with the increase in consumer confidence and the Bank of England expecting to cut rates further by the end of 2024, will hopefully further stimulate consumer spending.

Insights and opinions

Changing consumer behaviours: what's hot and what's not? continued

However, while consumer spending shows resilience, retailers are still finding ways to pass on some of their increased costs to consumers. An example of this is the introduction of return fees by retailers such as Shein and Zara. While this is not a popular decision among consumers, retailers have introduced these fees in an effort to curb the trend of customers bulk buying items online, only to return these items in store which raises costs for retailers.

High business rates have also put pressure on businesses, including those in the retail and hospitality sectors. In April 2024, the British Property Federation called for business rates to be capped at 35% of rental levels.

Importantly for retailers, Labour proposed a reform to the business rates system as part of their manifesto. Whilst the government is yet to announce and implement these reforms, they will undoubtedly be welcomed by businesses.

While consumers and businesses alike are facing pressures, the notable resilience in consumer spending habits offers a significant opportunity for retailers, consumer brands and hospitality industry operators. To capitalise on this consumer confidence, businesses will need to focus on strategies that attract and retain customers.

By understanding consumer behaviours, investing capital and resources wisely, and staying on top of future trends, businesses in the retail, consumer brands and hospitality sectors can ensure they remain the go-to brands for consumers.

What might the future hold and how can businesses maintain their competitive edge?

The future of retail, consumer brands and hospitality will be shaped by those who are willing to innovate and adapt to changing consumer behaviour.

1 **Investing in innovation**: the retailers who invest in data analytics and technology systems will lead the way in omnichannel retail. Advanced analytics and AI can optimise pricing, improve product recommendations, personalise customer experiences, and enhance in-store conversion rates. In the hospitality sector, the use of industry-specific data orchestration platforms enables quick service restaurants and pubs alike to harmonise management across brands and venues (including menus, pricing and ordering systems), resulting in enhanced efficiencies, operational improvements and sales growth. Simultaneously, integrating technology systems for real-time inventory management and establishing micro-fulfilment centres in urban areas can reduce delivery times and costs, leading to improved customer satisfaction. The smaller footprint of micro-fulfilment centres also allows for quick adaptation to changing market trends and customer demands.

2 **Embracing the new (augmented) reality**: virtual and augmented reality technologies can also provide a role in facilitating a seamless shopping experience, allowing customers to visualise products in their own environments and try on items virtually. These technologies can reduce return rates and enhance customer satisfaction.

3 **The personal touch**: according to Adobe's Digital Trends Report, which surveyed more than 1,000 UK consumers about how they want brands to engage with them online, 64% of consumers feel personalised recommendations are important and nearly 30% of consumers felt that personalised recommendations are one of the top ways that brands can improve their overall digital experience. However, in delivering these personalised experiences, customer information must also be protected, with 92% of surveyed consumers citing that brands must use their data responsibly. Successful Brands and hospitality operators will be those that balance technological innovation with customer trust, leveraging data to enhance the customer experience without compromising privacy and authenticity.

4 **Loyalty rewards**: with the lingering effects of the cost-of-living crisis, consumers will continue to seek value. Effective loyalty schemes can help retain customers by providing tangible benefits and enhancing their shopping experience. Brands that fail to adopt such programs risk losing out on a market share.

5 **Staying agile**: retail and hospitality businesses must remain agile and open to exploring new opportunities. This includes exploring options such as TikTok Shop and influencer/brand collaborations. It is essential that brands stay ahead of emerging trends, such as the growing wellness industry and the rise in seasonless, streamlined fashion collections, to allow for new growth opportunities.

"Effective loyalty schemes can help retain customers by providing tangible benefits and enhancing their shopping experience."

INSIGHTS AND OPINIONS

Insights and opinions

Scrapp and the Green Claims Directive

As a society, we started to hold companies accountable for their advertising claims in 1961 – six years after commercial television began broadcasting (ASA, 2024). Regulators quickly clamped down on misleading claims to ensure that consumers, like you and I, could be confident they were purchasing from companies that could verifiably back up what they were saying about their products or services.

As the sustainability movement gained momentum, more companies began promoting their 'green' credentials to attract a growing number of more ethically-conscious consumers. With this, the term "greenwashing" was born – officially part of the Oxford dictionary in 1987 (Oxford Dictionary, 2024) – to describe green claims that were false or misleading. In the last few years, we've seen increasing attempts to regulate greenwashing with the EU's Green Claims Directive – the latest step to ensure companies are accountable for the claims they make about the environment.

The Green Claims Directive

The EU Green Claims Directive was first proposed by the EU Commission in March 2022, with the aim of protecting consumers from greenwashing and helping them contribute to the green transition (EU, 2024). More detail on the directive and its current status can be found elsewhere in this issue. What's clear is that, under the directive, transparency and communication are now king.

Evolving communication of green claims

In an ever-growing digitally connected world, the way in which companies communicate their green claims are constantly evolving and now include:

- **on-pack labelling**: labels such as "100% recyclable" or "50kg less CO2" can be printed onto packaging and are therefore visible to consumers at the point of sale
- **scannable QR codes**: QR codes allow dynamic content to show through a mobile device so that claims can be updated in real time with no changes to the packaging necessary
- **sustainability reports**: companies are increasingly publishing standalone sustainability reports or including sustainability claims in their annual reports. These reports also often link out to dedicated sustainability 'hubs' on their brand websites which contain consumer-facing information about the brand's sustainability efforts
- **advertising campaigns**: companies can make direct reference to sustainability in their green advertising or marketing campaigns to consumers
- **website integrations**: technology means claims can be integrated on to multiple web platforms, to make communication across multiple access points of a business far easier.

The Scrapp platform: empowering brands and consumers to verify sustainability claims

Scrapp takes a similar approach to the evidence-based processes for substantiating green claims as introduced by the EU's Green Claims Directive.

Scrapp is a digital platform that enables organisations to monitor and measure their waste footprint. From operational waste, to product line waste, we specialise in the verification and communication of zero-waste practices. Part of the technology uses a barcode scanning feature that enables businesses with a product line to communicate to their customers how to correctly dispose of their product based on their local rules, by simply scanning the barcode of the product.

For example, one of Scrapp's customers – Avon – needed a way to communicate to consumers how to dispose of their beauty and cosmetics packaging. Keen to avoid a simplistic "this package is 100% recyclable" claim, knowing that their packaging could only be recycled at specific recycling programs, Avon needed a tool that would make it easy for their customers to access specific product disposal information. Through Scrapp's free mobile app, consumers can now simply scan or search for an Avon product and quickly learn how to dispose of it based on their local recycling rules. This hyper-specific approach, providing the user with substantiated, accurate information on the waste disposal of the product, aligns with the desired outcomes of the Green Claims Directive and empowers the consumer to participate in the green transition.

Scrapp's mobile app is focussed on influencing a specific moment in the customer journey – at the bin. However, information and data from further upstream in the supply chain are required to inform the consumer of correct disposal. Let us look at the "this is 100% recyclable" claim a bit further.

Waste disposal is a broad subject that varies significantly, depending on the end-market (eg if packaging can be recycled, reused, repaired etc), making it challenging for brands to provide accurate claims. A third-party data provider, like Scrapp, can provide the data to help brands back-up green disposal claims, which can, in turn, support compliance with the requirements under the Green Claims Directive. Companies can highlight their sustainability initiatives to offer consumer education beyond the bin. Other experts like Provenance (see Provenance founder Jessi Baker's foreword on page 1 of this edition) use complimentary technology to look further up the supply chain to communicate and verify sustainable practices.

> The impact of the EU Green Claims Directive transcends not just how the consumer interacts with a product or service – it also impacts how companies handle marketing strategies, advertising campaigns and sustainability compliance processes more generally.

It requires adaptation from companies in a way not seen before, particularly due to the requirements to have sufficient data to back-up any green claims made.

Lack of data is a serious problem within the sustainability space. Incredibly granular data has been collected over decades within Sales, Marketing, HR and Finance teams, but sustainability is a new field that has only recently become mainstream. As a result, regulations like the EU Green Claims Directive are difficult to navigate, as companies don't have an existing foundation of sustainability data or well-established internal processes for getting this. The costs and technical challenges in getting this data can be significant, particularly for retail businesses that are already struggling with rising costs. Whilst the support for SMEs under the Green Claims Directive is promising to see, navigating this evolving sustainability landscape and complying with new regulations like the Green Claims Directive may present particular cost and logistical challenges for many companies.

Tapping into the ethical consumer market

There are real opportunities for companies that invest in sustainability. Consumers are starting to actively seek sustainable alternatives – and are willing to pay for the difference. Analysis from McKinsey found that the sales of products making sustainability-related claims have grown 8% over the last five years compared to the same products not making those claims (McKinsey, 2023). Such economic growth is evidence enough that consumers need to be protected through green claims regulation, to enable them to make more sustainable purchasing decisions.

One of the criticisms of the EU Green Claims Directive is that it amounts to more 'red tape', creating additional hoops for businesses to jump through. This can delay sales cycles, reduce the pace of market growth and prevent business expansion, due to the additional costs associated with compliance. In turn, there is a risk that these increased costs could be passed down to consumers, pricing them out of the sustainable product market. However, if we are to truly incentivise more sustainable consumer behaviour, this must be avoided.

Sustainable alternatives are still gathering momentum. Consumers are still learning about the space and what it means to be more 'sustainable'. With so many nuances, communication becomes paramount. Statistically, nine out of ten people do not know what the 'circular economy' is (Forbes, 2022), so the first barrier to adoption of sustainable products is education. The EU Green Claims Directive is making that education easier by levelling the playing field and increasing transparency which will in turn allow consumers to make more informed purchasing decisions.

The EU's Green Claim Directive is one of the EU's most critical, sustainability-focussed regulations. By enabling the consumer to participate in the transition to a sustainable future, it will create a wider impact than just influencing consumers' adoption of sustainable products and services. It could act as a catalyst, helping to ensure that sustainable products cross the chasm from the early adopters to the early majority of the innovation-adoption curve (Upstream, 2023). Like with all information verification, this directive starts with data. The appropriate sourcing, managing and publishing of accurate data is paramount to any business that is embarking on compliance with the EU Green Claims Directive. It is part of a multitude of new legislation that will ensure businesses stay on top of their data, while reducing any misleading claims or practices.

Insights and opinions

RPC Retail Compass x Hestia

INSIGHTS AND OPINIONS

Earlier in this issue we addressed the reporting requirements under the Corporate Sustainability Due Diligence Directive (CSDDD), and commentary has often focussed on its environmental impacts rather than its groundbreaking impact in the field of fighting modern slavery in global chains. While some larger UK businesses may fall within the CSDDD's scope through its extraterritorial application, the question remains whether the UK will now take steps to introduce its own corresponding legislation, specifically targeting businesses operating within the UK market.

At the time of writing, the UK's most prominent anti-slavery legislation remains the Modern Slavery Act 2015 (the **Act**). Lauded as a world leading piece of legislation when it entered into force in 2015, the Act requires companies that fall within its scope produce an annual slavery and human trafficking statement explaining the steps that they have taken during the financial year to ensure that slavery and human trafficking are not taking place within their supply chains or in any part of their business. The Act recommends (but does not mandate) that statements address the business's: (i) structure and supply chains; (ii) policies to address slavery and human trafficking; (iii) due diligence processes; (iv) risk assessment and management; (v) key performance indicators to measure the effectiveness of any steps being taken; and (vi) training on modern slavery and trafficking.

Changing tides

In the years since the Act came into force, critics have frequently decried the Act's lack of "teeth" and what is perceived as a failure to enforce the Act's requirements, resulting in a documented lack of compliance amongst in scope companies (in 2022 it was reported that around one in ten in-scope companies failed to provide a slavery and human trafficking statement at all). Increasingly, and especially over the past year the UK has exhibited encouraging moves towards addressing the issue of modern slavery more directly, for example:

- in April, the House of Lords Modern Slavery Act 2015 Committee met and heard from academic and sector expert witnesses as part of its investigation into the effectiveness of the Act. As part of these hearings, the Committee considered how section 54 of the Act could be updated and leveraged to better tackle modern slavery through supply chain management (eg through increased enforcement powers)
- in May 2024, the Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Bill (**COPAD**) went through its second reading, following the European Parliament's approval of the CSDDD, and was positioned as the UK's first law requiring companies to conduct human rights and environmental due diligence. The similarities between COPAD and the CSDDD were notable.

Sadly, these efforts were cut short as a result of the UK's general election and washup period in June and July. It remains to be seen whether a similar Bill will be reintroduced for consideration by the new Labour government but the King's Speech has notably referenced: (i) the introduction a Bill to "modernise the asylum and immigration system, establishing a new Border Security Command and delivering enhanced counter terror powers to tackle organised immigration crime [Border Security, Asylum and Immigration Bill]"; and (ii) the Government's intentions to bring forward plans to "halve violence against women and girls".

Vigilance and training

The increased focus on this issue should serve as a useful nudge to companies whose compliance efforts require revisiting; now is the time to engage with obligations under the Act, before increased enforcement is introduced and the penalties become potentially significant.

The importance of seeking and offering appropriate training on this issue within the business cannot be overstated.

The Government's guidance flags how "training is a fundamental way of raising awareness and ensuring that people understand the importance of a particular issue. It also helps people to understand what they need to do, and how to work together internally or externally if they encounter something that raises concerns."

Whilst training may take different forms (eg ranging from a detailed course to a broader awareness-raising programme), businesses should consider where to target their training for maximum impact. What may be appropriate and necessary to train a procurement manager in a high-risk sector may not be suitable for the CEO or other C-suite members, however, it's important to increase knowledge across all sectors of the business and so, where the training needs of different stakeholders diverge, businesses will need to determine how best to maximise the effectiveness and efficiency of their training.

Modern slavery training

Hestia is the largest provider of modern slavery support services across England and Wales, supporting around 2,000 survivors at any given time via outreach support and 10 specialist safehouses. As the only pan-London service, Hestia can confidently share intel on what modern slavery looks like in our capital. The organisation champions survivor voice, and through groups like Empowered Voices, ensure the needs and opinions of survivors are at the heart of their response. Hestia have led the way in a variety of influencing efforts in the Modern Slavery sector over the past year, following changes in immigration legislation which negatively impacts the access to safety for survivors of Modern Slavery. These include tabling amendments to the Illegal Migration Bill, Victim & Prisoners Bill, attendance at the GRETA roundtable, written evidence submitted to the Home Affairs Select Committee on Modern Slavery and Trafficking.

Hestia's Innovation Team have created the accredited Hestia Modern Slavery Awareness Training package. Based on the over a decade of experience of supporting survivors or modern slavery, and 50 years of supporting people in crisis, this bespoke accredited training package is available to support companies to stay informed and vigilant. Babette Clarke, Hestia's Modern Slavery Awareness Training Manager says: "Our trainings are designed to provide your staff with an in-depth understanding of the scale and nature of exploitation in the UK and globally today. Through real life case studies, discussions and interactive tasks, attendees will gain the skills they need to navigate the current UK modern slavery landscape. Making them able to confidently identify when someone might be a victim of modern slavery and how to address it."

Hestia's modern slavery training programme is flexible and can be delivered online or on-site at your offices. Whether you're seeking group bookings for your organisation or are an individual looking to take action, we invite you to visit our website for more information on how you can make a difference.

Key UK consultations and inquiries tracker

There are numerous ongoing Government consultations and inquiries affecting retailers. You can view all of the up-to-date information here.

Legislative bills tracker

We maintain a list of bills, currently in the UK Parliament, which are relevant to the retail sector. These bills are not yet in force as law, but they give a flavour of developments to come.

RPC contacts

For further information or guidance, please get in touch with one of our Partners below or your usual RPC contact.

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An overview of RPC and TerraLex

Full service firm

RPC is an innovative law firm, providing a full service to UK and international clients. Retail and Consumer is one of five key focus areas for RPC – and serviced by every single practice area of the firm. We have a fantastic retail practice – ranked Tier 1 for Retail and Consumer by Legal 500 – which provides expert sectoral focus and transparent and honest advice.

Retail through and through

We have over 70 retail lawyers (30+ of those partners) engaged on retail issues across our four offices (London, Bristol, Singapore and Hong Kong). More broadly, with over 300 lawyers across offices – and as a founder-member of global network TerraLex and co-chair of its Retail Sector group – RPC offers a seamless service in more than 100 jurisdictions across the world.

We are recognised as a leading voice on retail issues

Twenty of our lawyers have been quoted or mentioned across 58 publications, including FT, The Telegraph, The Times, The New York Times, The Business of Fashion, Luxury Law Alliance, The Grocer, Drapers and Retail Gazette in the last 12 months.

What others say about us

Retail clients quoted in Legal 500 2024

"This is a group with real sector expertise; they get it. As well as high-end legal advice, I am consistently impressed by the insights Iget from their experience elsewhere."

"A very personable, interested and interesting firm that has a keen awareness of the commercial and business context in which legal questions, problems and opportunities play out."

Retail clients quoted in Chambers and Partners 2024

"RPC have a wide bench of expertise across different areas and take a holistic approach, which consistently adds value."

"The team are very commercial and concerned with providing advice in a way that our business will find digestible and understandable."

"RPC have responded rapidly and effectively to a wide range of complex technical matters."

2024
Top ranked
Ranked Tier 1 for Retail & Consumer
LEGAL 500

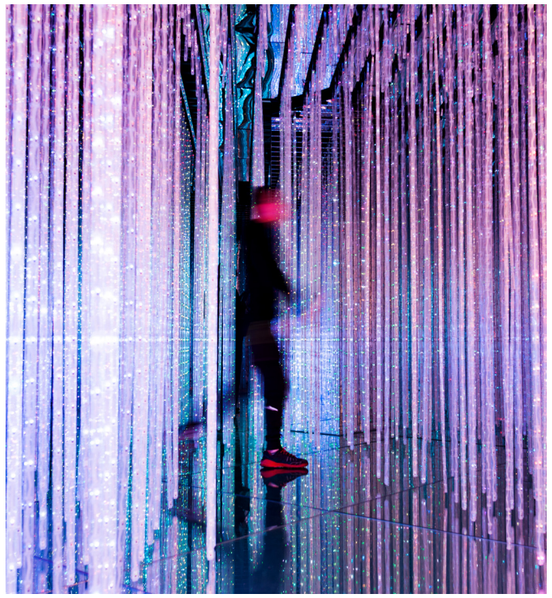
2023
Winner
Outstanding Trainning Innovation
RETAIL AND CONSUMER LEGAL INNOVATION AWARDS

2023
Winner
Responsible Business of the Year
WOMEN AND DIVERSITY IN LAW AWARDS

2021
Winner
Consumer & Retail Law Firm
CHINA BUSINESS LAW AWARDS

2023
Listed
TMT Law Firms of the Year
THE TIMES

2024
Top ranked
Leading Technology Firm
CHAMBERS AND LEGAL 500



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