Hogan Lovells

ESG Strategic Advisory Germany

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The rapidly developing EU and national regulatory landscape related to "Environmental, Social and Corporate Governance" ("ESG") demands increasing transparency and compliance with sustainability standards, putting pressure on businesses in the EU and globally to enhance environmental practices, social responsibility and governance structures.

Companies should align their strategies with the legislators' sustainability goals, as failure to meet these evolving standards may result in reputational damage and financial and administrative sanctions. Implementing sustainable business practices and integrating ESG considerations into decision-making processes and compliance systems becomes a necessity but poses tremendous operational challenges. At the same time, reporting requirements for ESG metrics demand robust frameworks for data collection and disclosure. The complexity of navigating ESG requirements in transition from soft law to hard law makes it more important than ever to address reputational, regulatory and civil law risks.

This brochure aims to offer you insights into both the opportunities and challenges that lie ahead for companies, and how we can assist you in navigating and capitalizing on these dynamics. In doing so, this brochure focusses on the following selected areas and regulations, whilst there are various further regulations in this space:

- ESG Compliance
  - German Supply Chain Due Diligence Act
  - Supply Chain Due Diligence: European Perspective
  - ESG Compliance Monitoring
- Corporate Sustainability Reporting
- Sustainable Products Regulations
- ESG & Real Estate
- Green Finance
- ESG Marketing and Combatting Greenwashing
- Green IP
- ESG Litigation Risks
- Legal Tech for ESG

ESG Compliance: German Supply Chain Due Diligence Act

Issues related to ESG continue to drive regulatory developments concerning supply chain compliance. The regulatory landscape is changing rapidly moving from a "soft law" to a "hard law" environment.

Germany is at the forefront setting high ESG compliance standards. Under the German Supply Chain Due Diligence Act ("SCDDA"), companies with more than 1.000 employees must comply with comprehensive due diligence requirements in order to prevent, minimize, or end certain human rights and environmental risks or violations.

Non-compliance with these due diligence obligations under the SCDDA bears risks of severe fines of up to 2 percent of the worldwide annual turnover, reputational damage and claims for damages.

The EU Directive on Corporate Sustainability Due Diligence ("CS3D") will further increase supply chain due diligence requirements in the near future.

Key compliance requirements under the German SCDDA

Scope of application – effective 1 January 2024

- Applies to companies with
  - central administration, principal place of business, administrative headquarters, statutory seat or branch office in Germany (local nexus)
  - ≥ 1,000 employees in Germany
    (including temporary workers and employees allocated abroad / attribution within affiliated companies)

Risk management and risk analysis

- Human rights and environmental risk analysis: own business area and direct suppliers (+ ad-hoc risk analysis on indirect suppliers in specific situations)
- Risk weighting and prioritization
- Appointment of a human rights officer and definition of responsibilities
- Regular update and monitoring

Human Rights strategy

- Policy statement
- Description of risk management
- Expectations vis-à-vis employees and suppliers

Preventive measures

- Implementation of human rights strategy in business processes
- Implementation of appropriate procurement strategies and purchasing practices
- Development and implementation of trainings
- Monitoring:
  - Own business area: risk-based control measures
  - Direct suppliers: contractual assurances and control mechanisms as well as risk-based use

Remedial actions

- Own business area: violation must be terminated
- Direct suppliers: termination or plan to terminate/minimise the violation
- Termination of business relationship as ultima ratio

Grievance mechanism

- Adequate and barrier-free possibility for everyone to report violations
- Determination and publication of rules of procedure
- Protection of confidentiality and against adverse consequences

Indirect suppliers

- Reduced diligence obligations, but ad-hoc risk analysis required in specific situations
- Remedial actions in case of substantiated knowledge of violation

Indirect suppliers

- Reduced diligence obligations, but ad-hoc risk analysis required in specific situations
- Remedial actions in case of substantiated knowledge of violation

Key to Implementation – ESG Compliance

- Adapt internal risk and compliance management
- Take organizational measures and adapt purchasing processes
- Allocate responsibilities clearly
- Implement reporting and escalation obligations
- Continuously raise awareness through communication and training
- Ensure proper handling of identified risks
- Respond appropriately and without undue delay to (potential) violations
- Collect, analyse and document information, identified risks and actions taken carefully

How we can help

We are advising our global clients on the implementation of and compliance with the German SCCDA, the EU CS3D as well as the quickly evolving ESG regulation landscape.

- Conduct gap analyses to assess the current status of compliance and provide practical recommendations to meet the new standards
- Design and update required supply chain risk management systems
- Develop and implement industry-specific compliance policy statements, policies and processes
- Plan and conduct risk analyses into your supply chain and advise on preventive measures and remedial actions
- Plan and conduct compliance audits into your supply chain

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ESG Compliance in Supply Chains: European Perspective

At European level, ESG regulation is becoming increasingly prominent. In recent years, the EU legislative bodies have adopted numerous regulations that have a significant impact on the business activities of both EU and non-EU companies. The Corporate Sustainability Due Diligence Directive ("CS3D"), the EU Deforestation Regulation ("EUDR"), and the Forced Labour Import Ban ("EUFLIB") have created completely new standards in the area of supply chains and the sourcing of products and raw materials and the ESG regulatory landscape is evolving further.

The aim of ESG regulation in Europe is to minimize human rights and environmental impacts and to avoid violations around the world. The various directives and regulations oblige companies to measure their organisation and their business relationships according to these objectives and require comprehensive supply chain due diligence to ensure compliance with the strict requirements.

Through the large number of regulations, the different areas of application and various due diligence obligations, it is particularly challenging for companies to take the appropriate measures while taking into account activities of their business partners und interests of their stakeholders.

Due to the threat of penalties and the risk of reputational damages in a constantly growing ESG-guarding society, it is more important than ever for companies to follow the rules of EU ESG regulation.

The Main Challenges

- **Steering the course:** Companies have to navigate a landscape of evolving ESG regulations across jurisdictions
- **End silo mentality:** Implement an overarching ESG compliance management system comprising various functions to effectively address various ESG compliance lenses
- **Intregration into strategy:** Embedding ESG considerations into decision making processes combining business needs with compliance requirements
- **Holistic approach:** Anticipating and adapting to new ESG reporting mandates
- **Stakeholder management:** Balancing of internal and external stakeholders, e.g., regulators, workforce and customers

Common key requirements of EU ESG landscape

- **Risk assessment**: Review of business activities along the supply chain for potential adverse impacts for human rights or the environment
- **Prevention**: Implement appropriate measures to reduce potential adverse impacts, e.g., trainings, contractual provisions
- **Remedial actions:** Where actual adverse impacts occur, companies must implement measures to end or minimize the adverse impact for human rights or the environment
- **Monitoring**: Constant monitoring of whether measures taken are still effective or need to be changed
- **Documentation**: Measures implemented along the supply chain must be documented diligently

Corporate Sustainability Due Diligence Directive (“CS3D”)

- **Applicable as of 2027** for the first set of EU and non-EU companies
- Due diligence approach (obligation of means)
- Refers to products and services and the chain of activities comprising **(i)** their own business area including certain subsidiaries and **(ii)** their chain of activities (upstream and limited downstream activities) until Tier-N suppliers
- Integration of due diligence in policies and risk management systems
- Assessment and prioritisation of potential and actual impacts
- Preventive and remedial measures for adverse (actual) impacts
- Adequate and barrier-free possibility to everyone to report legitimate concerns (grievance mechanism)
- Monitoring and public reporting about due diligence
- Fines and civil liability in case of non-compliance

Deforestation Regulation (“EUDR”)

- **Applicable as of 30 December 2025** for operators and large traders
- Product-based approach refers to commodities cattle, cocoa, coffee, oil palm, rubber, soya and wood and certain derived products
- EUDR requires those to be **(i)** deforestation-free, **(ii)** compliant with relevant legislation in the country of production and **(iii)** covered by a due diligence statement to be placed on the EU market (or for export)
- Stipulates due diligence (information collection, risk assessment and risk mitigation)

Forced Labour Import Ban (“EUFLIB”)

- **Applicable as of 2027** for operators
- Product-based approach (obligation of results)
- Operators are prohibited to place products made with forced labour on the EU market or export them
- Using a risk-based approach, the EU initiates product-related investigations

Key to Implementation – ESG Compliance

- Adapt internal risk and compliance management
- Take organizational measures and adapt purchasing processes
- Allocate responsibilities clearly
- Implement reporting and escalation obligations
- Continuously raise awareness through communication and training
- Ensure proper handling of identified risks
- Respond appropriately and without undue delay to (potential) violations
- Collect, analyse and document information, identified risks and actions taken carefully

How we can help

As a global, multilingual team with access to a worldwide network of ESG experts we are advising our clients on the implementation of the quickly evolving EU ESG regulatory landscape. We do this through comprehensive ESG specialised services such as AI-driven legal tech tools and our legal expertise in all sectors, enabling us to develop tailored solutions for individual businesses.

- Conduct gap analyses to assess the current status of ESG compliance and provide practical recommendations to meet the new standards
- Design and update required supply chain risk management systems as well as industry-specific policies and processes
- Plan and conduct compliance audits, risk analyses into your supply chain and advise on preventive measures and remedial actions
- Support in ESG investigations and communication with authority to boards, leadership teams, regulators and media around the globe

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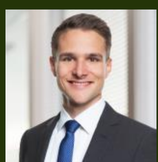
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ESG Compliance Monitoring

ESG requirements are increasing. Some of these requirements are based on specific legislation, others are based on stakeholder expectations. Not complying with these requirements can lead to fines or to criminal or civil corporate liability. Especially the Executive Management is at risk if it fails to set up procedures to ensure the implementation of the relevant ESG requirements.

One important element of ensuring the implementation of relevant ESG requirements is ESG Compliance Monitoring, i.e. a process which assesses whether a company with all its departments and subsidiaries is fulfilling the regulatory requirements and the stakeholder expectations. Such a process should be carried out regularly and needs to be documented to provide sufficient proof of the Executive Management's oversight on ESG matters. Further, regular Compliance Monitoring supports gathering the relevant information within the company to ensure correct and comprehensive Corporate Sustainability Reporting (see also Section on Corporate Sustainability Reporting Directive ("CSRD")).

Examples of regulatory and soft law requirements for ESG Compliance Monitoring

- **German Corporate Governance Code**
  - According to Principle 4 of the Code the Management has to internally monitor the appropriateness and effectiveness of the internal control system, which includes implementing the company's ecological and social objectives
- **German Supply Chain Due Diligence Act** ("SCDDA") provides for several monitoring obligations
  - Monitoring of Risk Management
  - Monitoring of effectiveness of preventive measures
  - Monitoring of effectiveness of grievance mechanism

Scope of ESG Compliance Monitoring

Defining the correct scope is key to appropriate and comprehensive ESG Compliance Monitoring. Defining the scope includes:

- Selecting a representative sample of departments/legal entities
- Identifying all relevant ESG topics to review

ESG Compliance Monitoring Methodology

The aim of ESG Compliance Monitoring is to identify potential gaps regarding the implementation of ESG requirements. Effective ESG Compliance Monitoring should include:

- Review of relevant documents
- Interviews with involved stakeholders
- Spot checks during onsite visits
- Evaluation and recommendation addressing any potential gaps

Key to Implementation – ESG Compliance Monitoring

- Understand the need for ESG Compliance Monitoring to ensure sufficient management oversight for ESG matters
- Define roles and responsibilities for ESG Compliance Monitor
- Find the correct risk-based approach (monitor sufficiently, but not too extensively)
- Define scope of activities and departments/entities to be monitored
- Design an appropriate and ESG Compliance Monitoring process
- Document the ESG Compliance Monitoring process and results and report these to Management

How we can help

We regularly carry out Compliance Monitoring in different Compliance areas and, in particular, support in the following:

- Identify the appropriate Compliance Monitoring scope and design a Compliance Monitoring concept according to the specific needs of the company
- Carry out spot checks and interviews on all relevant Compliance Monitoring matters
- Draft comprehensive Compliance Monitoring reports and issue legal reliance letters on the appropriateness and completeness of the Compliance Monitoring exercise
- Report Compliance Monitoring Results to relevant stakeholders (inc. Executive and Supervisory Board)

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Corporate Sustainability Reporting

The Corporate Sustainability Reporting Directive ("CSRD") is fundamentally changing the requirements for corporate sustainability reporting. Companies must report more comprehensively and according to standardised criteria. In this context, the quantification of reporting content by using indicators ("ESRS standards") is intended to improve the information's measurability and comparability.

Companies shall include in the management report information necessary to understand the undertaking's impacts on sustainability matters and to understand how sustainability matters affect the undertaking's development, performance and position. They need to include all of the companies' activities referring to matters of sustainability in the management report, like description of the business model, strategy and targets related to sustainability.

European Sustainability Reporting Standards ("ESRS")

The ESRS cover the full range of environmental, social, and governance issues. divided into two cross-cutting standards ("ESRS 1" & "ESRS 2") and ten topical standards

Interoperability with International Sustainability Standards Board ("ISSB") and the Global Reporting Initiative ("GRI")

ESRS 1 | ESRS 2

ESRS E1	ESRS E2	ESRS E3	ESRS E4	ESRS E5
Climate Change	Pollution	Water and Marine Resources	Biodiversity and Ecosystems	Resource use and Circular Economy
ESRS S1	**ESRS S2**	**ESRS S3**	**ESRS S4**	**ESRS G1**
Own Workforce	Workers in the Value Chain	Affected Communities	Consumers and End-users	Business Conduct

These standards are sector-agnostic. Sector-specific standards are expected to be adopted until 2026.

Scope of application

FY2024 **Large EU public-interest companies** with >500 employees (*already subject to NFRD*)

FY2025 **Other large EU companies** with > 250 employees and/or €40 million turnover and/or €20 million total assets

FY2026 **Small and medium-sized** PIEs & small and non-complex credit institutions and captive insurance companies (*opt outs available*)

FY2028 **Non-EU parents** with net sales in the EU > €150 million and at least on subsidiary/branch in the EU

Management Report

- Sustainability information is a mandatory part of the management report
- Facilitate access to sustainability information
- Sustainability reporting given the same priority as traditional financial reporting

External Audits

- Sustainability reporting must be externally audited (like financial reporting)
- EU-Commission defined gradual depth of audit standards
- At first: audit with limited assurance
- Thereafter: reasonable assurance audit will be required

Double materiality

- Companies are obliged to report on the impact of their own business operations on people and the environment (inside-out) as well as on the impact of sustainability aspects on the company (outside-in)
- Companies must disclose information that is material
- We are advising our global clients on the requirements applicable under CSRD. CSRD reporting and the execution of the materiality assessment consistent with the following multistage structure can be drastically simplified by efficient digital tools provided by our legal tech brand ELTEMATE.

Practical steps for the Materiality Assesment

1. Defining lists of topics
2. Stakeholder consultation (e.g., online survey, interviews, dialogues)
3. Evaluation of the stakeholder consultation
4. Decision on material topics
5. Documentation in the sustainability report
6. Implementation of measures: Targets and concepts

! The double-materiality assessment requires the company to obtain quantitative and qualitative inputs from a broad range of stakeholders—including employees, vendors, customers, and communities—to evaluate risks and opportunities across the CSRD reporting topics

Key to Implementation – CSRD

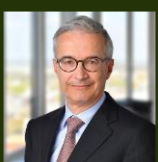
- Adapt internal reporting processes
- Take organizational measures
- Allocate responsibilities clearly
- Implement reporting and escalation obligations
- Continuously raise awareness through communication and training
- Develop a comprehensive understanding of ESRS standards
- Ensure proper handling of identified risks
- Collect, analyse and document information, identified risks and actions taken carefully
- Monitor all sustainability measures

How we can help

As a global, multilingual team with access to a worldwide network we are advising our global clients on the implementation of the CSRD. We do this through comprehensive ESG specialised services such as AI-driven legal tech tools and expertise in all sectors, enabling us to develop tailored solutions for individual businesses.

- Identifying which companies or groups fall within the scope of the directive
- Establishment and preparation of a double materiality analysis
- Support in developing a comprehensive understanding of the ESRS standards
- Aligning risk management with sustainability strategy

Our German Core Team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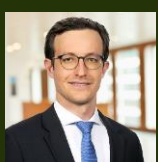
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Sustainable Products Regulations

Sustainability is more than a trend - it is a necessity. The new and constantly evolving regulations for more sustainable products require comprehensive adjustments to corporate strategies and processes along the supply chain and distribution system.

Ecodesign for Sustainable Products Regulation ("ESPR")

In its push for a greener economy, the EU has introduced a new Regulation on Ecodesign for Sustainable Products ("ESPR") to take over from the old Ecodesign Directive as the rulebook for shaping eco-friendly and circular products. This updated framework empowers the EU to institute a comprehensive set of requirements for products entering the EU market.

- **Broad scope** covering a wide product scope beyond energy related products
- **Ecodesign:** durability, reparability, energy efficiency, CO2 footprint, recyclability and recycled content
- **Digital Product Passport** bolstering end-to-end traceability throughout products' value chain
- **Labelling and consumer information requirements**
- **Ban on destruction of unsold products** for apparel and footwear (to be extended to other products)

Key Impacts of ESG Product Regulations

- ESG principles in focus of product design
- Re-use and recycling and recycled content requirements
- Enhanced transparency requirements through digital product-pass and labelling requirements
- Extension of producer responsibilities to full life cycle of products

Batteries and Waste Batteries Regulation

In a significant stride towards more sustainability, the EU Batteries Regulation replaces the old Batteries Directive and introduces a new framework aimed at enhancing the environmental performance of batteries throughout their lifecycle. The Batteries Regulation addresses manufacturers, importers, distributors and other economic operators and sets forth stringent requirements for the design, production, and disposal of industrial and consumer batteries.

- **Raw materials:** Supply chain due diligence obligations
- **Design:** durability, reparability, and recyclability - minimum recycled content thresholds for certain battery types
- **Production:** CO2 footprint and Battery Management System
- **End of life:** Extended producer responsibility and 2nd life requirements
- **Digital Battery Passport, labelling and information requirements** regarding battery composition and performance

Packaging and Packaging Waste Regulation ("PPWR")

At the same time, with the Packaging and Packaging Waste Regulation ("PPWR") the EU seeks to establish comprehensive, cross-sector requirements governing the manufacturing, utilization, and recycling of packaging materials.

- **Prohibition** of environmentally harmful substances
- **Minimization** of empty packaging space
- **Recycling, recycled content and re-use** objectives for designated packaging categories.
- **Labelling and information requirements** regarding composition, recyclability, traceability
- **Extended Producer Responsibility**

Extended Producer Responsibility Schemes

Positioned as a linchpin for the circular economy, the EU is increasingly integrating Extended Producer Responsibility ("EPR") schemes into various product-related regulations, such as the Batteries Regulation and the Packaging and Packaging Waste Regulation. These schemes necessitate manufacturers to oversee their products throughout their entire lifecycle.

The Commission proposal for an amendment of the Waste Framework Directive aims to extend the responsibility of textile producers, establishing a dedicated waste textiles collection system for reuse or recycling, managed by an organization funded by textile producers based on the quantity and eco-performance of their products distributed within the EU.

These regulatory advancements herald forthcoming challenges for companies, requiring strategic adaptation to ensure their products align seamlessly with the evolving standards of the EU market.

Key to Implementation – ESG Product Requirements

- Adapt to sustainable product design principles to meet evolving EU requirements
- Monitor laws for swift adjustments to product strategies
- Establish a culture of ongoing evaluation and improvement to adapt to evolving regulations
- Conduct regular product reviews to ensure compliance with evolving regulations
- Establish compliance measures to identify and correct non-compliance areas promptly
- Ensure internal policies and procedures are updated to reflect new requirements

How we can help

We are advising our global clients on the requirements applicable under EU und national legislation as well as the quickly evolving ESG regulation landscape.

- Identify and assess product related requirements applicable to your products
- Provide industry-specific expertise to align your products with evolving regulations
- Assistance with inquiries from business partners or authorities
- Allocate responsibilities in agreements with business partners

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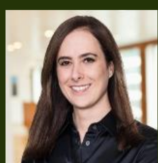
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ESG & Real Estate

The European Union has already adopted a series of laws to reduce CO_2 emissions in the real estate sector. Real estate is responsible for 40% of CO_2 emissions, so a large number of regulations and directives have been adopted not only at the level of controlling capital flows, but also at the level of energy improvement of the buildings themselves, in order to reduce CO_2 emissions in the long term. Further national and European laws are to be expected in the future. In addition to the Taxonomy Regulation and the Disclosure Regulation, there are now delegated regulations for all the environmental objectives of the Taxonomy Regulation that substantiate the environmental objectives. However, directives that must be implemented in national law must also be observed; one of the most prominent for the real estate industry is the Energy Performance of Buildings Directive.

The ESG regulations affect the entire life cycle of real estate, i.e. from construction or revitalisation to ongoing operation, sustainability criteria must be observed. This affects all players in the real estate industry, not only property owners, but also property and asset managers, as well as users. This is because ESG regulation for real estate is not limited to capital market participants, but also has a direct impact on the product itself. The focus of ESG regulation in the real estate industry is on environmental sustainability, with only a small part on social and governance.

Ultimately, everyone is affected – large companies, through the reporting requirements they face regarding their sustainability in their management reports, since the properties they use play a decisive role in determining their operational CO_2 emissions; SMEs, which will face the same reporting requirements from 2026 and 2027 respectively; investment funds, which, as capital market participants, are in any case subject to the Taxonomy Regulation and the Disclosure Regulation, the banks, which must also take into account the sustainability risks of the respective property when lending to finance it, the insurance companies, which must take into account environmental risks with regard to the insurability of the property itself, the construction industry due to increased requirements for compliance with ESG criteria and their documentation, etc.

A new challenge also arises from the link between the real estate industry and the energy industry and the use of roofs and facades for energy generation and the obligation to use waste heat.

Key Areas affected by ESG:

- Real estate transactions
- Project development
- Real estate financing
- Real estate litigation
- Real estate regulatory

Players affected by ESG

- Project developers
- Property owners
- Landlords & Tenants
- Real estate investors
- Real estate operators
- Energy suppliers

We advise investors and project developers on ESG-compliant contract design in the planning, construction and sales process, as well as on proper ESG documentation during planning and construction and during the certification process.

We are involved in the development of new standards. For example, we played a key role in the first draft and the revision of the draft model lease agreement for green leases issued by the German Property Federation (Zentraler Immobilien Ausschuss – ZIA).

We advise property owners on asset and property management agreements, focusing on sustainable management and in particular the development of corresponding schedules of services as well as the adoption of simplification clauses.

Keys to Success in Green Real Estate:

- Green Leases
- Property & Asset management
- Green Energy
- Utilisation of the property as an energy provider

How we can help

We advise on the various certification systems for green buildings, for example the German Sustainable Building Certificate (by the DGNB e.V.), the British BREEAM and the American LEED.

We advise investors and project developers on ESG-compliant contract design in the planning, construction and sales process, as well as on proper ESG documentation during planning and construction and during the certification process.

- We advise in **planning processes, creation of building rights through development plans and with the process of acquiring building permissions.**

We are involved in the development of new standards. For example, we played a key role in the first draft and the revision of the draft model lease agreement for green leases issued by the German Property Federation (Zentraler Immobilien Ausschuss – ZIA).

We advise property owners on asset and property management agreements, focusing on sustainable management and in particular the development of corresponding schedules of services as well as the adoption of simplification clauses.

We advise clients on determining the stranded asset point, the valuation and restructuring of real estate and on ESG due diligence in transactions.

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Green Finance

The ESG landscape in the EU financing market has mainly been driven by market participants and trade associations by publishing ESG criteria (and related guidance). Recently, the European Commission as well as national legislators and regulators have introduced legislative frameworks and guidance aiming to increase transparency and comparability of ESG standards in the EU financing market.

Market participants need first to identify the relevant finance product in order to implement the adequate strategies meeting the respective ESG criteria.

In particular, the ESG criteria for *loan products* are mainly driven by the socalled Green Loan Principles, Social Loan Principles and Sustainability-Linked Loan Principles (and related guidance) published jointly by the Loan Market Association ("LMA"), the Loan Syndications & Trading Association ("LSTA") and the Asia Pacific Loan Market Association ("APLMA").

For *corporate bonds*, the European Commission has published the Regulation (EU) 2023/2631 on European Green Bonds which is expressed to apply from 21 December 2024. Further details are to be developed by the European Commission and the European Securities and Markets Authority ("ESMA"). In addition, the existing international market standards such as the International Capital Market Association's ("ICMA") Green Bond Principles are still taken into account given the fact that many green bonds have aligned with them to date.

The market participants' demand for *derivatives* linked to ESG goals also increases. The International Swaps and Derivatives Association, Inc. ("ISDA") has launched a Clause Library for sustainability-linked derivatives ("SLDs") to help provide some legal certainty and standardisation and facilitate the development of this market.

Key Challenges – Green Finance

- Increased stakeholder engagement and disclosure requirements (e.g. SFDR, CSRD, EU Taxonomy Regulation)
- Tracking continued evolvement of legislative and voluntary frameworks
- Geopolitical headwinds
- Implementation of and compliance with core principles and core components for green finance products
- Green-washing and related litigation, regulatory and reputational risks

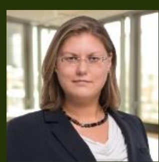
How we can help

- support sustainability strategies/commitments and implement energy transition plans
- optimise cost of and access to capital and increase investment opportunities for market participants
- improve credentials, reputation and creditability

Our German Core Team





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ESG Marketing and Combatting Greenwashing

Exploring the evolving landscape of ESG claims, the European Union has honed in on green claims and sustainability labels with a notable emphasis. With two Directives covering environmental and sustainability claims and labels – the Directive Empowering Consumers for the Green Transition and the Green Claims Directive – stringent requirements have been developed for ESG marketing, harmonising the national patchwork that has evolved in the Member States over the last years. Whilst the Directive Empowering Consumers for the Green Transition sets out claims and labels that are prohibited, the Green Claims Directive sets forth the standard how environmental claims and labels may be used.

Empowering Consumers for the Green Transition Directive

The aim of the Directive Empowering Consumers for the Green Transition is to ban greenwashing and misleading product information, in line with the European Union's objectives regarding a circular, green, and clean economy. Consumers shall be enabled to make informed purchasing decisions and contribute to more sustainable consumption. Under the new directive, sustainability (incl. environmental) labels must be certified by third parties and the use of generic and unspecified environmental claims will be added to the list of prohibited unfair commercial practices.

Key to Implementation – Directive Empowering Consumers

- **Sustainability labels are** subject to certification requirements

- **Environmental claims**
  - must specify which aspects of the product the claim applies to;
  - must provide information regarding the substantiation of the claim to consumers.

- Additional **pre-contractual information** requirements

Prohibited Sustainability Labels and Environmental Claims

- Self certification – sustainability labels without third party certification
- Generic environmental claims without specification or prove of excellent environmental performance
- Climate neutrality claims based on offsetting
- Environmental claims about the entire product/business, if environmental benefits only relate to certain aspects
- Present legal requirements as distinctive feature
- Claims on future environmental performance without third party verified implementation plan

Green Claims Directive

Historically characterized by inconsistency across European jurisdictions, the assessment of green claims is poised for a paradigm shift with the introduction of the Green Claims Directive. In the new Green Claims Directive Proposal, the European Union establishes provisions for substantiation, information and certification of Green Claims and Environmental Labels that companies must follow when marketing their products.

Non-compliance with the Green Claims Directive bears the risk of fines of up to 4% of the annual turnover and can lead to a temporary exclusion from public procurement processes for up to 12 months.

Key to Implementation – Green Claims Directive

- Certification by independent accredited verifiers
- Mandatory substantiation
- Mandatory consumer information at the point of sale

Identify Risks

- Identify where and how Green Claims and Environmental Labels are used
- Confirm specifications of the claims
- Confirm substantiation of the claims
- Identify whether the claims can be made for the whole product or certain product parts or life cycle stages

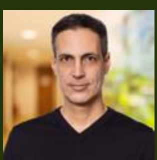
Prepare Information and Documentation

- Gather information and documentation substantiating Green Claims and Environmental Labels
- Ensure mandatory consumer information is provided
- Ensure transparency in reporting environmental impact data
- Ensure accuracy and consistency of disclosures

How we can help

- Assess trademarks, marketing campaigns, claims, and product packaging with environmental claims
- Review substantiating information for specific claims
- Provide valuable insights in industry practice standards
- Assist with verification process

Our German Core Team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Green IP

Protection of green innovations by Patents, Trade Secrets, Copyright, and Trademarks

Technical Innovations and Developments in Sustainable Products and Businesses

The new EU requirements on eco-design for Sustainable Products, waste management and climate neutrality will inevitably require the development of new technologies which are implemented in future products, their packaging and in the lifecycle management of products.
Patents and trade secrets laws enable companies to protect innovations in sustainable products and technologies. At the same time companies will have to ensure that the use of their new technologies does not violate patents, trade secrets or other intellectual property rights of their competitors.
If patents, trade secrets or copyrights protect the most efficient technologies for implementing EU requirements, other businesses may be forced to take licenses in these Green IP rights.
The imminent requirements for sustainable products may stimulate research and development cooperations between companies.

Key Challenges with Green IP rights in Technical Innovations

- Obtain protection for sustainable innovations by patents, utility models and copyrights
- Check alternatively whether innovations can be more effectively protected as trade secrets
- Obtain licenses in protected technologies if they are necessary to comply with EU regulations
- Special rules apply if the implementation of technical standards require the licensing of patents
- Violations of patents may be enforced in courts, in particular the new Unified Patent Court offers quick enforcement of patents across multiple EU Member States
- Research and development collaborations between multiple companies may facilitate the development of innovative sustainable products
- EU funding or national funding may be available to support research and innovation in sustainable technologies

How we can help

Strategy – Protection of Innovations

- Plan the strategy for optimized IP protection of technical innovations
- Advise on optimized patent protection in view of regulatory requirements – make your patents as valuable as possible by linking them to EU requirements
- Plan the most efficient territorial protection for your technical innovations

Risk management

- We support Freedom-to-Operate analyses to ensure your innovations do not violate patents of third parties
- Check whether licenses from third parties are required for your products and negotiate the necessary licenses
- Ensure that trade secrets and know-how of your innovations are protected as good as possible

Licenses and R&D Agreements

- Negotiate licenses and license agreements for your patents and know-how as well as licenses with third parties
- Negotiate R&D agreements with your collaboration partners
- Advise on available research funding, in particular on EU funding under the Horizon Europe program and national funding programs

IP Enforcement

- Enforce your patents and trade secrets in the EU courts, including the new Unified Patent Court
- Advice on defence strategies if patent, trade secret or copyright infringement claims are asserted by third parties
- Oppose third party patents before the patent offices and national courts in the EU member states

Trademarks for Sustainable Products

On top of that, trademark protection plays a crucial role for communicating to the relevant public that products or services are environmentally friendly and use sustainable technologies. Signs containing a green message can, under certain prerequisites, be protected as normal individual trademarks, collective marks, certification marks and protected designations of origin ("PDOs") or geographical indications ("Gis").

Such trademarks are considered environmental claims in the sense of the new Directive on Empowering Consumers for the Green Transition and the expected Green Claims Directive. Those EU regulations make the use of green trademarks more difficult but can create a correspondingly large competitive advantage if green trademarks are in compliance with the requirements of the Directives.

Key Impacts of the Green Claims Directive

- Environmental claims contained in the trademark must be substantiated and certified

Key Impacts of the Empowering Consumers Directive

- Green trademarks, also certification marks, serving as a sustainability label must be based on a specific certification scheme or be established by public authorities
- Other green trademarks than sustainability labels, must not contain a generic unspecified claim
- A contained claim of a neutral or positive CO2 impact must not be based on emission offsetting

Riskmanagement

- Review of the trademark portfolio to determine whether a sign states or implies environmental claims.
- Obtaining a legal opinion regarding the kind of environmental claim, which is decisive for the applicable provisions.
- Assessment of the validity of the claims and the possibility of substantiation.

Strategy

- Proactive registration of eligible green trademarks to secure a competitive advantage.
- Taking care of the necessary substantiation and certification of green claims contained in existing trademarks well in advance.
- Making sure certification marks are established by public authorities or based on a sufficient certification scheme.

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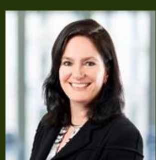

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ESG Litigation Risk

Companies are increasingly expected to report on their ESG activities and are held accountable for what they do, what impact they have or what they say about their ESG engagement. Each of these points are gateways to civil, criminal or administrative liability and disputes – and the amount of such disputes increases rapidly.

Meanwhile, in a fast-changing legal landscape, ESG Litigation presents unique challenges:

- ESG risk doesn't stop at national borders.
- ESG regulatory infractions can swiftly escalate into authority investigations and/or class or mass actions on an international scale. Parallel disputes with public authorities, environmental associations and criminal charges may ensue.
- ESG disputes tend to call into question a company's core commitments and values.

A thorough understanding of these singular needs and an individualised approach is key to handle ESG litigation risks and to navigate ESG litigation successfully.

Keys to Successful ESG Litigation

- Aligning compliance, investigations and litigation
- Tailored litigation strategy
- Quick access to an extensive network of technical and legal experts to assess risk exposure
- Competent representation through every stage of legal challenge or litigation, including disputes with public authorities, environmental associations and criminal charges

Litigation Risks

- Forum shopping
- Litigation funders
- Reputational damages
- Class & Mass Actions
- Liability for emissions
- No uniform jurisprudence
- Evolving global case law
- Conflicting regulations

ESG Litigation Hot Topics & Trends

Greenwashing & Greenhushing

Environmental claims are increasingly regulated and may lead to investigations or even proceedings. Some companies are accused of "greenhushing" for deciding not to disclose their climate targets. Others are facing lawsuits for not meeting the requirements under national and international standards and guidelines on marketing sustainability claims.

Supply Chain

ESG considerations are crucial for supply chains as they ensure sustainable practices, stakeholder trust, and regulatory compliance, yet disputes may arise over the interpretation, implementation and prioritization of ESG criteria, transparency, and the balance between short-term costs and long-term benefits.

Products & Environmental Risk

The environmental impact of a business's product is an area that's seeing increasing levels of scrutiny. Get it wrong, and businesses could face mass or product liability litigation as well as criminal prosecution and public fines.

Duty of care

Due diligence and reporting obligations of companies aiming to prevent and remedy any adverse impacts on human rights and the environment have lead to a wave of disputes on the basis of breach of a general duty of care.

Crimes against Humanity

Based on recent case law developments, companies are facing an increasing risk of liability based on complicity in human rights abuses and war crimes.

ESG Backlash

ESG backlash is gaining momentum, which makes navigating ESG risks even more challenging. Companies have to be clear on their ESG strategies, priorities, commitments, and communications.

Diversity, Equity & Inclusion

DEI is currently under attack in various jurisdictions with claimants increasingly suing corporations for their commitments to DEI.

Climate Change

Failure to make sufficient efforts to address climate change as a result of the company's activities can result in single-claimant proceedings or class/group actions brought by NGOs, public bodies, consumers or competitors.

Shareholder Activism

Shareholders are becoming increasingly active, looking to have a voice in corporate strategy and demanding businesses to look at their environmental, social and ethical standards.

How we can help

When ESG litigation globally increases in parallel with the amount of disclosure on ESG topics, Hogan Lovells is one of the only firms that can offer a truly global perspective and successfully execute a global team approach.

- Regulation and case law monitoring
- Assessment of risk exposure
- Mitigation advice
- Litigation defence
- Class and collective action defence
- Cross-border network in key jurisdictions

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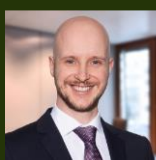
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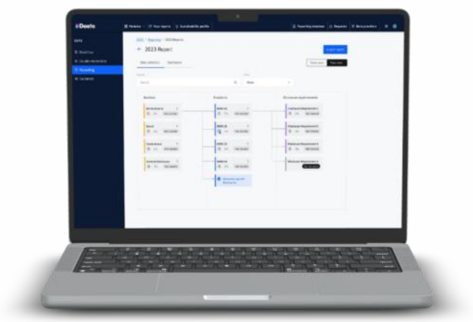
Legal Tech for ESG

Our technology company ELTEMATE unifies our legal tech offerings under one global team. Our mission is to empower clients to harness the full capacity of AI in their legal business. From generative AI and AI-driven regulatory updates to information analysis, case management and contract automation – we have products that will add value.

The **Regulatory Pilot** is a cutting-edge AI solution to simplify and automate the process of collecting, reviewing and processing regulatory updates. It can be used for any field of law around the world, including ESG.

- AI-generated summaries
- AI-powered chatbot
- Coverage of entire regulatory process
- Reduces manual review time
- Significant cost savings
- Legal sources identified by local law experts

Daato integrates all key ESG reporting frameworks, incl. supply chain sustainability, ESRS, CO2 footprint and EU taxonomy. It navigates complex reporting structures, simplifies and automates data collection, and enables efficient and audit-ready reporting.



- All-in-one integrated solution
- Faster processing
- Strong automation
- Reduces reporting effort
- Reduces compliance risks
- Increases efficiency
- Promotes consistency

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