



ESG POLICY GUIDE

THE FUTURE OF SUSTAINABILITY LEGISLATION FOR LUXURY

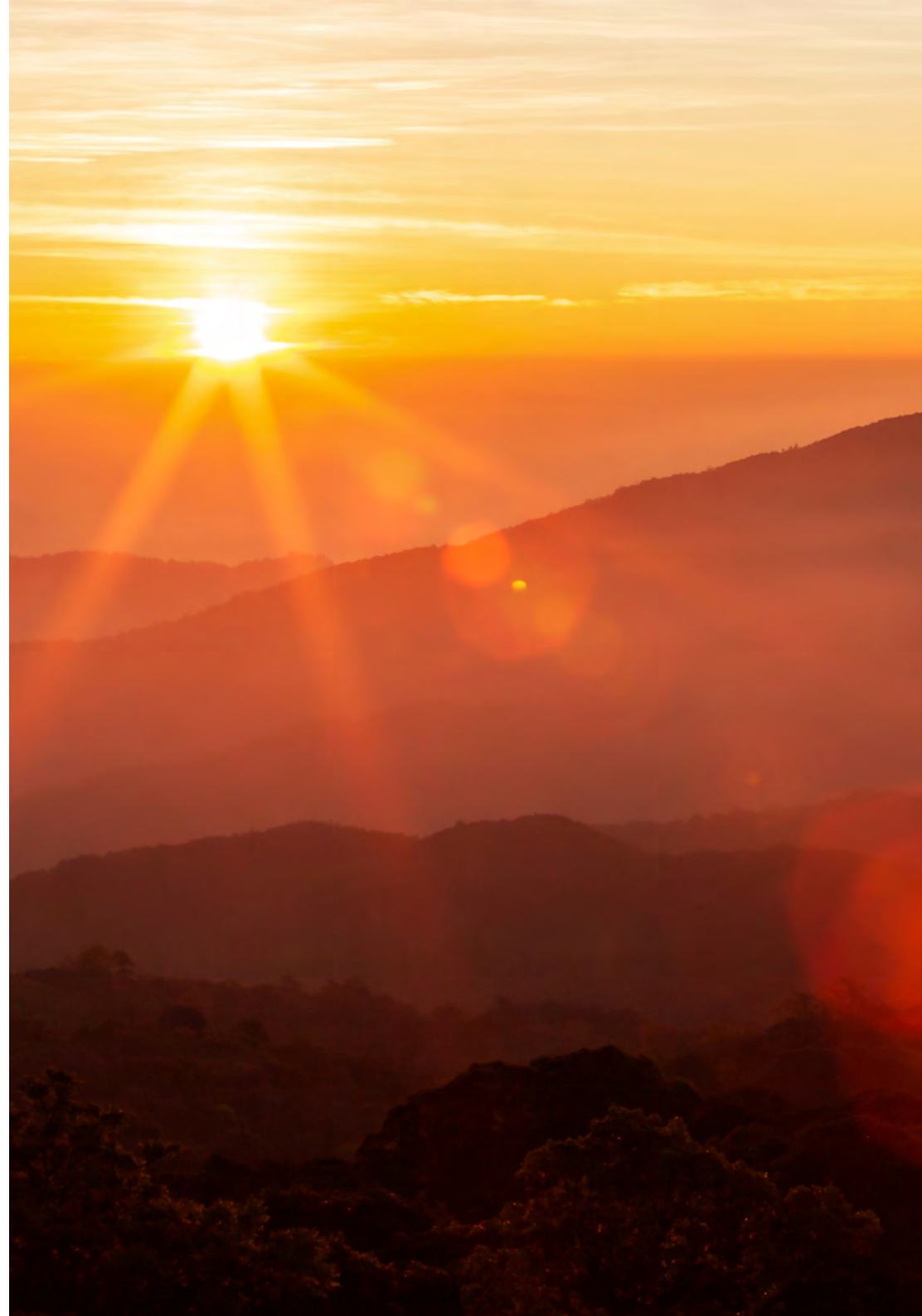
THIRD EDITION OCTOBER 2024

 Positive
Luxury

**Baker
McKenzie.**

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INTRODUCTION

Luxury brands are at the forefront of delivering a lifestyle of quality, innovation and style to their clients. The need to be sustainable, socially conscious and protect our environment is now a further and fundamental part of the luxury offering. This Guide highlights the key responsibilities that brands need to be aware of, and help brands anticipate what to expect down the road, as they navigate the environmental, social and governance (ESG) legislative landscape.

This is Positive Luxury and Baker McKenzie's third edition of **The ESG Policy Guide: The future of sustainability legislation for luxury**, which focuses on ESG legislative developments in the key markets of the European Union (EU), United Kingdom (UK) and the United States (US). The updates to this year's Guide include:

- An interactive legislative timeline
- An update on the implementation of the EU's Corporate Sustainability Due Diligence Directive
- An analysis of the deforestation regulations in the EU and the UK
- The progress of State fashion sustainability legislation in the US
- Considerations around sector collaborations and competition risks
- The advantages and tensions of utilising AI for sustainability

We hope you find this Guide helpful in your journey to achieving your brand's ESG ambitions and objectives.



[Katia Boneva-Desmicht](#)
Global Chair, Consumer Goods and Retail Group,
Baker McKenzie, Paris

THE SIX THINGS LUXURY BRANDS NEED TO KNOW ABOUT ESG

Here are six key actions for luxury brands to prepare for ESG compliance:



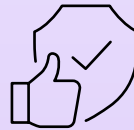
1. Prioritise transparency from start to finish:

The EU Corporate Sustainability Reporting Directive (CSRD) and the EU Corporate Sustainability Due Diligence Directive (CSDDD) emphasise the need for transparency throughout the entire product life cycle. Brands must reassess their supply chains and prepare comprehensive documentation – from raw material origins to the final product – to meet the requirements on forced labour and environmental impact.



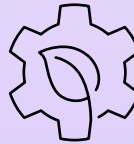
2. Prepare your climate transition plan:

The CSDDD will require very large companies (those with over 1,000 employees or a turnover of more than EUR 450 million) to adopt and implement a climate transition plan to align their business strategy to the 1.5°C target of the Paris Agreement and the EU's climate objectives.



3. Verify and substantiate green claims:

While one in four consumers are prepared to pay more for sustainability*, with the increasing scrutiny over green claims and the rise in greenwashing legislation and enforcement it is crucial for brands to meticulously verify their ESG statements to ensure accuracy and compliance. Measurable data and certifications can help build credibility, trust and avoid reputational risk.



4. Embrace new opportunity for innovation:

Environmental strategies are driving exciting innovations, including the development of new eco-friendly materials, enhanced recycling capabilities, and process improvements. These advancements open up new market opportunities for luxury brands.



5. Align functions on ESG compliance:

ESG issues are pertinent to all areas of a product or service life cycle, from research and development (R&D), suppliers, distribution, and marketing. It is essential for all departments to be aligned and communicate effectively with those overseeing ESG compliance.



6. Educate internal – and external – stakeholders:

Educating the inhouse teams about ESG obligations and opportunities is vital. Additionally, informing the public about new materials and processes, recycling methods and sharing information is an integral part of a brand's ESG journey.

*What consumers care about when it comes to sustainability | Deloitte

INTERACTIVE LEGISLATION TIMELINE

The ESG regulatory landscape is rapidly evolving, making it crucial for businesses to stay informed. Below is a timeline of some of the recent ESG regulations in key regions. The icons show whether a regulation pertains to environmental, social, or governance aspects. By clicking on the legislation, you will be directed to the first reference of the regulation in the Guide.



2022

US

- California Garment Worker Protection Act
- Oregon Plastic Pollution and Recycling Modernization Act
- Colorado Producer Responsibility Program for Statewide Recycling Act
- US Federal Uyghur Forced Labor Prevention Act
- California Plastic Pollution Prevention and Packaging Producer Responsibility Act
- California Nature-Based Climate Solutions
- California Neonicotinoid Pesticides

UK

- UK Plastic Packaging Tax

2023

EU

- German Act on Corporate Due Diligence Obligations in Supply Chains
- EU Regulation on Deforestation-Free Supply Chains
- EU Regulation Amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemical (REACH) as regards synthetic polymer microparticles

US

- California Climate Data Accountability Act
- California Climate-Related Financial Risks Act

2024

EU

- EU Corporate Sustainability Reporting Directive (CSRD)
- EU Revised Packaging and Waste Directive and updates to the Waste Framework Directive
- EU Directive to Empower Consumers for the Green Transition
- EU Regulation on Prohibited Products Made with Forced Labour on the Union Market
- EU Single Use Plastic Directive
- EU Corporate Sustainability Due Diligence Directive (CSDDD)
- EU Ecodesign for Sustainable Products Regulation
- EU Directive on Common Rules promoting the Repair of Goods
- EU Nature Restoration Law

US

- US Rules from the US Securities and Exchange Commission (SEC) on Climate-Related Disclosures
- California Responsible Textile Recovery Act of 2024
- New York The Retail Worker Safety Act

OTHER

- Canada Fighting Against Forced Labour and Child Labour in Supply Chains Act 2023

2024 ONWARDS

The following pieces of legislation were not enacted at the time of publishing this Guide but are anticipated and discussed in the Guide.

EU

- European Green Bond Standard Regulation
- EU Regulation on the transparency and integrity of Environmental, Social and Governance rating activities

US

- California Voluntary Carbon Market Disclosures Act

2025 ONWARDS

EU

- EU Revised Textile Labelling Regulation
- EU Green Claims Directive
- France Fast Fashion Act

US

- New York Fashion Sustainability and Social Accountability Act
- Washington Fashion Sustainability and Accountability Act
- Massachusetts Fashion Sustainability and Social Accountability Act
- US Federal Bill establishing the Fashioning Accountability and Building Real Institutional Charge (FABRIC) Act
- New York Fashion Workers Act

UK

- UK Forest Risk Commodities Regulations

OTHER

- UN Global Plastic Treaty

SPOTLIGHT ON: THE IMPACT OF SUSTAINABILITY AND ESG LEGISLATION ON SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

Many of the sustainability and ESG-related regulations discussed throughout this Guide require changes in current business models or investment in new processes (e.g., from manufacturing to auditing), as well as internal education for team members. Although this investment may seem more significant for SMEs, the gains from aligning their business to sustainability policies include attracting employees, stakeholders and customers and enabling greater financial investment opportunities. It also provides a stronger compliance position for growing the business.

This is a factor recognised by the EU in their recent report on the impact of EU legislation in the area of digital and green transition on SMEs. The report identifies the following pieces of legislation as having a significant impact on SMEs:

- [Corporate Sustainability Reporting Directive \(CSRD\)](#)
- [Packaging and Packaging Waste Directive \(PPWD\)](#)
- [Proposal for a new Ecodesign for Sustainable Products Regulation \(Ecodesign Regulation\)](#)
- [Proposal for a Directive on common rules promoting the repair of goods \(Right to Repair Directive\)](#)

Certain pieces of legislation may not be apparently applicable to SMEs. For example, the [Corporate Sustainability Due Diligence Directive](#) (CSDDD) primarily targets very large EU and non-EU companies with significant turnover in the EU (i.e., those with more than 1,000 employees and a net worldwide turnover exceeding EUR 450 million). However, SMEs can still be affected as direct or indirect business partners within the supply chains of these larger companies. This means that even if SMEs are not the primary subjects of the legislation, they may still need to comply with certain requirements imposed by their larger partners to ensure the entire supply chain adheres to the CSDDD.

Other legislation, such as the [UK Plastic Packaging Tax](#), also has certain thresholds, which might make SMEs exempt. Small operators who import or manufacture less than 10 tonnes of plastic packaging per year are exempt from paying the tax. Once a business meets the 10 tonnes de minimis, it must register with HMRC. All businesses are required to report plastic packaging data and pay for the tax quarterly. But again, it is important for SMEs to be aware of such thresholds so they do not inadvertently go above the limits.

SMEs should stay informed about such regulations and understand their potential impact on their operations and relationships with larger companies.

Further reading:

[The impact of EU legislation in the area of digital and green transition, particularly on SMEs](#)

[Product Risk Radar: UK Plastic Packaging Tax](#)



PART ONE:
E IS FOR
ENVIRONMENTAL

Our habitat is a key concern for most of us and its wellbeing is vital for our own health and future prosperity. Accordingly, governments are taking action to reduce the impact of both consumers and companies on the natural environment by introducing a wide range of laws and regulations. Here, we look at what luxury companies need to be aware of as they navigate this journey.

“
THE EU IS AT THE FOREFRONT OF DEVELOPING ESG LEGISLATION AND POLICY. IT IS CRUCIAL TO MONITOR EU POLICY DEVELOPMENTS, NOT ONLY FOR THEIR IMPACT ON EU OPERATIONS BUT ALSO FOR THEIR BROADER IMPLICATIONS ON NON-EU OPERATIONS THAT MAY ULTIMATELY BE PART OF AN EU SUPPLY CHAIN. ADDITIONALLY, THE STRATEGIES AND POLICIES ADOPTED BY THE EU MAY SERVE AS INDICATORS OF FUTURE TRENDS IN OTHER JURISDICTIONS.”



William-James Kettlewell
 Counsel, Baker McKenzie
 Brussels

EUROPEAN UNION

EU GREEN DEAL

What is the EU Green Deal?

The EU Green Deal, launched in 2019, is the EU's ambitious decarbonisation strategy. It sets a target of a carbon-neutral EU by 2050 with the aim to mainstream climate and environmental objectives into all sectors of the economy through legislative action.

The Green Deal is neither a piece of legislation nor a specific policy but is a collective term that covers measures and regulations introduced as part of this strategy. Such measures are already having tremendous impact on consumers and companies throughout the EU.

Although the recent EU elections that took place in June 2024 are unlikely to reverse ESG policies, we are awaiting to see if there will be some simplifications or changes in approach or pace in the adoption of legislation.

Which features of the Green Deal are most relevant to the luxury and fashion sector?

One of the Green Deal's objectives is the promotion of "longer lasting products that can be repaired, recycled and reused." To achieve this aim, the European Commission has adopted two overarching policy plans:

- The **Circular Economy Action Plan** introduces a number of legislative and non-legislative actions to improve the circularity of products in the EU market.
- The **EU Strategy for Sustainable and Circular Textiles** provides a framework for the sustainable production and consumption of textiles.

These two plans contain various legislative initiatives that will particularly affect the business of the luxury and fashion sector operating in or supplying to the EU.

IMPACT OF EU POLICY DEVELOPMENTS



Documentation of specific sustainability criteria and prevention of destruction of unsold goods

The Ecodesign for Sustainable Products Regulation was adopted in 2024.

Relevant provisions which are due to be introduced include:

1. Sustainability criteria. Before placing a product in the EU market, manufacturers must ensure that it complies with specific sustainability criteria. These will vary depending on the product type and include factors relating to energy efficiency, emissions of harmful substances (such as CO₂), recyclability, durability and recycled content. Products would have to be accompanied by a Digital Product Passport ([See Digital Product Passports](#)).

2. Prevention of product destruction.

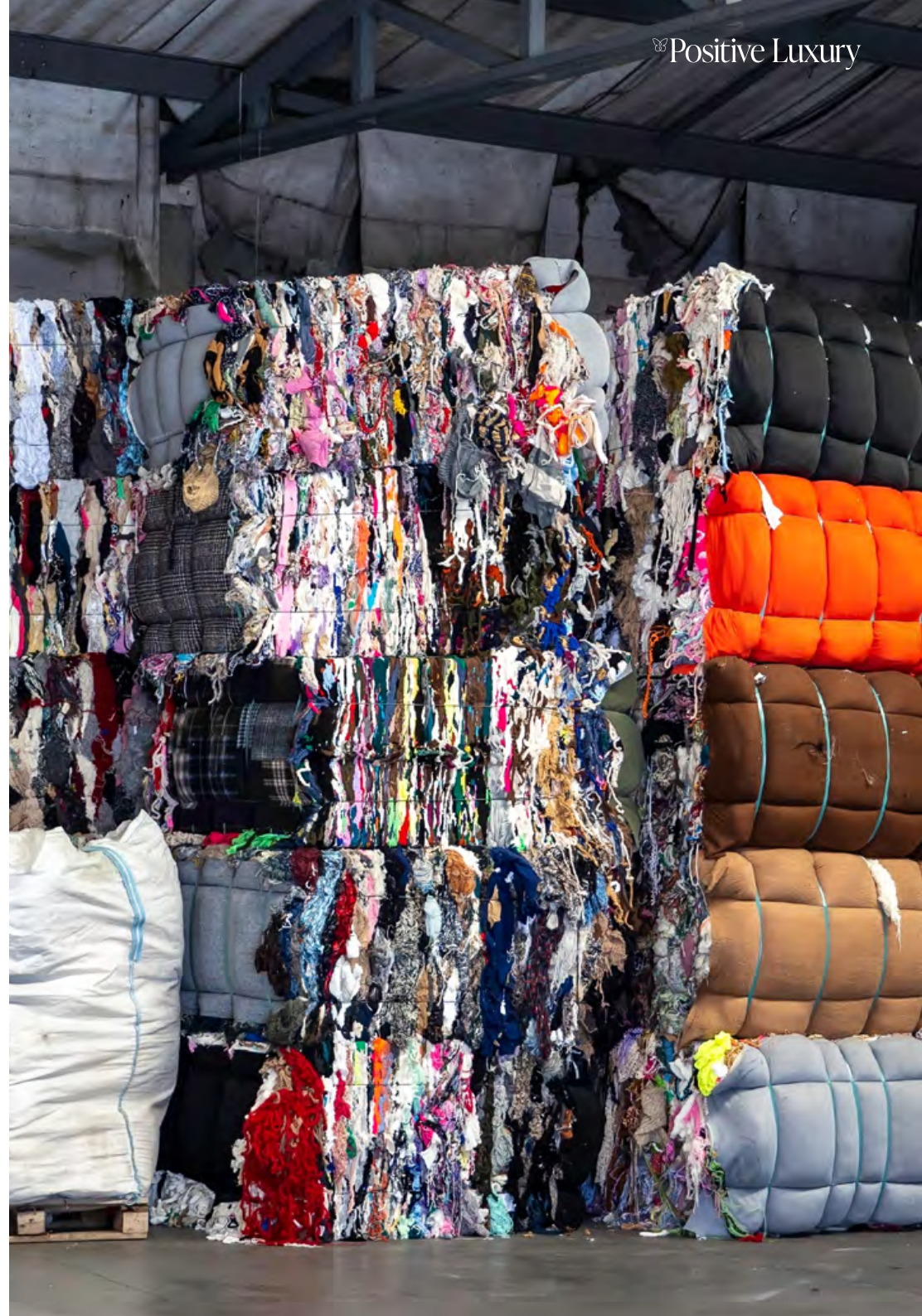
Companies must take all necessary measures to prevent the destruction of unsold consumer products (being any product that is primarily intended for consumers, excluding components and intermediate products). Products also include surplus stock, excess inventory, deadstock and products returned by a consumer. Specific categories of products (including certain types of clothing and footwear) are additionally subject to an outright prohibition on destruction from July 2026.

3. Reporting requirements. Economic operators will be required to report on (among other things) the number and weight of unsold consumer products discarded (either directly or through third parties) per year on an easily accessible page of their website.

“**THESE PROVISIONS ENCOURAGE LUXURY BUSINESSES TO CREATE PRODUCTS THAT LAST LONGER, ARE EASIER TO REPAIR, REUSE AND RECYCLE. INSTEAD OF DESTROYING STOCK, BE CREATIVE AND INVEST IN REUSE, RECYCLING OR REMANUFACTURING PROCESSES.**”



*Csenge Gulyban
Sustainability Consultant,
Positive Luxury*





Verification and substantiation of green claims

In 2024, the EU adopted a Directive "empowering consumers for the green transition." The Directive amends the Unfair Commercial Practices Directive and aims to combat greenwashing practices by providing consumers with better information on the durability and reparability of products on the EU market, as well as the product's impact on the environment. It prohibits the use of generic environmental claims such as "eco" or "green" where the excellent environmental performance of the product cannot be demonstrated or validated. It also restricts the ability of companies to create their own voluntary sustainability labels. To further support this objective, the EU has also proposed the Green Claims Directive requiring companies to substantiate claims relating to the sustainability of their products. As a result of these developments, the luxury and fashion sector will be required to be more transparent and more cautious regarding any claims made as to the sustainability of a particular product. Third-party verification will play a more important role in backing up claims.

[Being Prepared for the EmpCo Directive and the EU Green Claims Directive](#)

In the UK, in September 2024, the Competition & Markets Authority (CMA) issued a document on complying with consumer law when making environment claims in the fashion and retail sector following a number of investigations into brands and the types of claims they were making. For further information, see: [Complying with consumer law when making environmental claims in the fashion retail sector - GOV.UK](#)



Value chain due diligence and climate neutrality plan

The Corporate Sustainability Due Diligence Directive (CSDDD) establishes value chain-related due diligence requirements and the obligation that companies adopt and put into effect a climate transition plan.

The CSDDD will require the adoption and implementation of effective due diligence policies to identify, prevent, mitigate and bring to an end actual and potential human rights and environmental harms in companies' business operations and value chains (both upstream and downstream). The CSDDD applies to very large EU and non-EU companies with significant turnover in the EU, specifically those with more than 1,000 employees and a net worldwide turnover exceeding EUR 450 million. While small and medium-sized enterprises (SMEs) do not directly fall under the scope of the CSDDD, they may still be affected as direct or indirect business partners within the supply chains of larger companies that are in scope. The luxury and fashion sector, by virtue of its typically lengthy and complex value chains and its reliance on high-impact textiles, will undoubtedly be significantly affected by the CSDDD.

Moreover, impacted luxury and fashion companies will be required to adopt a plan to ensure that their business model and strategy align "with the transition to a sustainable economy and the goal of limiting global warming to 1.5°C, in line with the Paris Agreement." This effectively makes combatting climate change a legal obligation.

Find out more about the CSDDD: [CSDDD Explainer Series: What Does it Mean for Businesses?](#)



Extended Producer Responsibilities

The new Packaging and Packaging Waste Regulation, and the amendments to the Waste Framework Directive, introduce Extended Producer Responsibility (EPR) for textiles. This legislation introduces mandatory EPR requirements for textiles in all EU Member States, similar to the schemes already in place for Waste Electrical and Electronic Equipment (WEEE) and batteries. More specifically, the directive requires that EPR be imposed on household textile products, articles of apparel, certain clothing accessories and footwear. Member States would be required to establish a register of producers of covered products to monitor their compliance with the requirements of the EPR, which would be organised – as is the case with other EPR schemes – through a designated producer responsibility organisation which would notably have to establish a separate collection system for used and waste textile.

In parallel, the European Commission also launched its Textiles Ecosystem Transition Pathway – Co-creation and co-implementation process inviting input and collaboration from EU textile ecosystem stakeholders in the co-creation of a transition pathway for the textiles ecosystem and identifying what specific actions and commitments are needed.

Further information:

[Textiles Ecosystem Transition Pathway cocreation process \(europa.eu\)](https://textilescocreation.eu)



Updates to labelling requirements

There is a proposed revision to the Textile Labelling Regulation to ensure consumers are well-informed about the products they are buying. This regulation would introduce requirements for physical and digital labelling of textiles, including sustainability and circularity parameters.



Right to Repair

The recently adopted EU Directive on Common Rules Promoting the Repair of Goods seeks to achieve the product sustainability and circularity objectives of the EU Green Deal by granting consumers the right to request the repair of products that fall under its scope. At present, the proposal is not specifically directed at textiles; however, the concept of "right to repair" could eventually be applied to textiles. Therefore, it might be a good time to start considering how to incorporate repair services into the services provided, for the full remit of goods offered, as well as considering the durability of items.

WHAT IS AN EU DIGITAL PRODUCT PASSPORT?

The Ecodesign for Sustainable Products Regulation regime will require certain products sold in the EU market to have a digital product passport (DPP). This will have a big impact on brands.

A DPP is a digital record of a unique product's complete life cycle, storing key traceability data about the product. This includes product information across the entire value chain, including data on raw material extraction, production, recycling, etc. This data aims to support the circular economy, decarbonisation, and sustainability.

Requirements for the first product groups to have a DPP are expected to be adopted from 2026, with another large range of products expected to be covered between 2028 and 2030. The European Commission has already specified eight priority industries, including textiles, electronics, plastics and chemicals, in its Circular Economy Action Plan.

Customs officials will have the authority to prevent products without DPPs from entering the EU market.

“COMPANIES ARE INCENTIVISED TO USE MORE SUSTAINABLE MATERIALS, AS MORE ENVIRONMENTALLY FRIENDLY TEXTILE PRODUCTS COME WITH REDUCED EPR COSTS. THIS ENCOURAGES MORE SUSTAINABLE PRACTICES AND HELPS REDUCE WASTE.”



*Csenge Gulyban
Sustainability Consultant,
Positive Luxury*

WHAT'S NEXT?

Member States will need to transpose much of the recently adopted legislation into national law. This provides some time for brands to start identifying requirements relevant to their business and start designing a compliance strategy that is efficiently embedded into the business strategy in anticipation of the new requirements.

Watch out to see which part, if any, of the Green Deal legislation will be made weaker or more flexible as part of the current EU Commission's business simplification initiative.

“
THE CIRCULAR ECONOMY IS A FUNDAMENTAL PART OF THE EU GREEN DEAL – THE WORK YOU DO TO MAKE YOUR BUSINESS CIRCULAR IS ALSO WHAT IS GOING TO MAKE YOUR BUSINESS RESILIENT AND SUSTAINABLE FOR THE LONG TERM – SO TAKE THE TIME TO CLEARLY MAP YOUR SUPPLY CHAIN, LOOK AT YOUR PROCESSES, YOUR SOURCING, YOUR TECHNOLOGIES AND SEE WHAT CHANGES YOU CAN MAKE THAT WILL LAST AND WHICH WILL SERVE AS BUILDING BLOCKS FOR YOUR FUTURE DEVELOPMENT.”



Alyssa Auberger
 Chief Sustainability
 Officer, Baker McKenzie

OTHER APPLICABLE LEGISLATION

PLASTIC & CIRCULARITY

For many years, environmentalists and policymakers have been concerned about the impact of plastics on our environment and health. Consequently, we are witnessing increasingly stringent legislation on this issue. The introduction of the UN Global Plastic Agreement signifies that this trend will continue.

UN GLOBAL PLASTIC TREATY

In March 2022, at the UN Environment Assembly in Nairobi, representatives from UN Member States endorsed a resolution titled "End Plastic Pollution: Towards an internationally legally binding instrument" to end plastic pollution and agree an international legally binding agreement by 2024. These negotiations will continue at INC-5 in Busan, South Korea in November 2024. The treaty will be based on the Paris Agreement model, allowing Member States to adopt their own rules and regulations depending on their own national policies and plans, and their own capabilities and circumstances. **This is likely to lead to a complex collection of differing requirements for global retailers and will be something for brands to actively monitor.**

EU SINGLE USE PLASTIC DIRECTIVE

This Directive recently came into force in 2024 and provides that where sustainable alternatives are easily available and affordable, single-use plastic products cannot be placed on the markets of EU Member States. This applies to cotton bud sticks, cutlery, plates, straws, stirrers, and sticks for balloons. It will also apply to cups, food and beverage containers made of expanded polystyrene, and on all products made of oxo-degradable plastic. It is recommended that brands look closely at all their plastic components to see if these can be replaced with more sustainable alternatives.

PLASTIC TAX IN THE UK

An example of governments taking action against the use of plastic is the UK's Plastic Packaging Tax (PPT) which came into force on 1 April 2022. The tax is applied to plastic packaging that contains less than 30% of recycled plastic content. As of 1 April 2024, a rate of GBP 217.85 per metric tonne is applied to such packaging manufactured or imported into the UK. The PPT aims to encourage the use of more sustainable plastic packaging, increase the use of recycled plastic, and help reduce plastic waste.

A crucial aspect of the PPT regime is that downstream businesses that buy plastic packaging on which the tax should have already been paid may be found jointly and severally liable for any unpaid tax.

Regimes such as this will disrupt supply chains and challenge the operations of many businesses in the luxury industry — especially those in fashion that use clothes hangers, kimble tags, plastic labels and gift wrapping such as ribbon and sticky tape. Beauty businesses will also be forced to rethink primary packaging choices such as cream containers and bottles. Businesses will also have to deal with administrative reporting obligations and will have to factor in the costs associated with the implementation of such regimes, such as training employees, developing the necessary reporting framework to complete the required quarterly tax returns and keeping the appropriate accounts and records.

Further information:

[UK's Plastic Packaging Tax enters into force](#)

[UK Government's Plastic Packaging Tax to Take Effect 1 April 2022 \(Webinar\)](#)

“
THE PPT HAS BEEN PROMOTED BY THE UK GOVERNMENT AS A WORLD-LEADING MEASURE AND OTHER JURISDICTIONS ARE ALREADY PUTTING IN PLACE SIMILAR REGIMES. WE EXPECT PLASTICS REGULATION TO CONTINUE GROWING WORLDWIDE IN COMING YEARS GIVEN THE CURRENT FOCUS ON SUSTAINABILITY.”



Graham Stuart
 Partner, Baker McKenzie,
 London

MICROPLASTICS

Highly relevant to the fashion and cosmetics industry is the amendment to Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards synthetic polymer microplastics, to limit the use of intentionally added microplastics in various products. The legislation was published in September 2023 and restricts microplastics in leave-on cosmetics, including skincare products, perfume, and lip care products and nail varnishes. The legislation provides for various transitional periods, including four years for microplastics used for encapsulating fragrances and 12 years for lip care products and nail varnishes.

The European Commission has also proposed measures to prevent the unintentional release of plastic pellets, the raw material used for producing all plastics, into the environment. The proposal lays out precautionary measures for operators handling plastic pellets and will impact both EU and non-EU operators.



US

In the US, a number of developments are impacting the luxury sector:

New York – Fashion Sustainability and Social Accountability Act – SB S4746

This New York state bill requires fashion companies with more than USD 100 million in revenues doing business in New York to map their supply chains and address the human rights and environmental impacts of their operations and in their supply chain, including those related to carbon emissions, water footprint, and worker wages. This law was first introduced in 2022 and was reintroduced in 2023. If passed, this would be the first US law with sustainability requirements focused on large fashion companies. Similar pieces of legislation have been introduced in other states, such as Washington's proposed Fashion Sustainability Accountability Act and Massachusetts' proposal for a Fashion Sustainability and Social Accountability Act.

While the US does not have federal laws regulating packaging, a growing number of states are considering such legislation. Several US states have passed and are beginning to implement extended producer responsibility laws, including:

California – Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54)

Signed into law in 2022, it establishes a producer responsibility program in California for paper and plastic packaging and will require certain reductions in single-use plastic packaging. Covered producers were required to register by 1 July 2024. Producers who do not comply with the law will be banned from selling in California in 2027, or when a plan is approved by a producer responsibility organisation, whichever is sooner.

California – Responsible Textile Recovery Act of 2024 (SB 707)

Signed into law in September 2024, it requires a producer of apparel or textile articles to form and join a producer responsibility organisation. Regulations implementing this law still need to be adopted and it is predicted producers will be required to comply by 2030.

Maine – Extended Producer Responsibility Program (LD 1541)

Signed into law in 2021, it establishes a producer responsibility program in Maine for certain types of packaging material. Maine intends to approve a producer responsibility organisation in 2026, following which producers will have one year to come into compliance with the restrictions.

Oregon – Plastic Pollution and Recycling Modernization Act (SB 582)

Signed into law in 2022, it establishes a producer responsibility program in Oregon for plastic packaging, paper, and food service ware. The rulemaking process is ongoing. Covered producers must become members of a state-approved producer responsibility organisation by July 2025 in order to continue selling in the state.

Colorado – Producer Responsibility Program for Statewide Recycling Act

Passed into law in 2022, it establishes a producer responsibility program in Colorado for packaging materials that reach the consumer at the point of sale, regardless of material type. Covered producers have until October 2024 to register with the state-approved producer responsibility organisation. Covered producers who do not comply with the law will be banned from selling in the state starting July 2025.

In the US, a number of states, including Maine, Minnesota, Vermont and Rhode Island, have passed regulations banning the use of per- and poly-fluoroalkyl substances (PFAS) in textiles. A growing number of states are proposing similar bans, including New York (S1322), which would prohibit the use of PFAS in apparel and outdoor apparel for severe wet conditions. Also known as "forever chemicals," PFAS are often used in clothing to provide water, stain and grease resistance.

PLASTIC AND RECYCLABILITY LITIGATION: BEST PRACTICES TO MINIMISE RISK

In a recent trend, citizen advocates and environmental groups have been filing lawsuits asserting novel theories against major companies that use or rely on plastic, even if the companies do not produce plastic products or are not involved in the disposal of plastic products. The disruptive increase in plastic-related ESG litigation is poised to affect companies in virtually all industries, including luxury and fashion and food and beverage (F&B) and hospitality, as environmental organisations target companies that use plastic anywhere in their supply chains, even if the use of plastic is ancillary to their actual business.

The steep increase in lawsuits against companies suggests that recyclability and other plastics-related litigation is only going to continue to increase. Companies should become actively involved in overseeing and helping mitigate the litigation risks that have arisen or may arise in the future. [Click here](#) to read Baker McKenzie's article discussing some notable developments around plastic litigation and recommended best practices that companies should consider to mitigate the risk of litigation.

Further information:

[Plastic and Recyclability Litigation: Best practices to minimize risk](#)

BIODIVERSITY

Biodiversity and its importance for current and future generations continue to be a key focus.

In 2022, the UN established access to a clean, healthy and sustainable ecosystem as a human right. While the resolution is not legally binding on the 193 UN Member States, advocates are hopeful it will have a trickle-down effect, prompting countries to enshrine the right to a healthy environment in national constitutions and regional treaties, and encouraging businesses to implement those laws.

At COP15 of the Convention on Biological Diversity in December 2022, world leaders adopted the Kunming-Montreal global biodiversity framework, encouraging public and private sectors to align their financial flows and nature-related commitments.

It will influence the next decade – hopefully changing our relationship with nature into the more harmonised one our planet deserves. COP16, held in Cali, Colombia, focused on reviewing the implementation of the biodiversity framework and resource mobilisation for advancing biodiversity conservation.

Even though TNFD entails an initial investment in environmental assessment and data gathering, the benefits are likely to outweigh the short-term costs. Understanding your nature-related impacts and risks leads to identifying opportunities to reduce impact, innovate and overall enhance your resilience as you mitigate vulnerabilities.

The Taskforce on Nature-related Financial Disclosures (TNFD) is a global initiative established in 2021. Its primary goal is to help businesses and financial institutions understand and disclose their impacts and dependencies on nature. This initiative aims to shift financial flows from nature-negative to nature-positive outcomes. The TNFD framework published in September 2023 is structured around four key pillars, similar to the Task Force on Climate-related Financial Disclosures (TCFD):



Governance: How an organisation's governance structure manages nature-related risks and opportunities.



Strategy: The actual and potential impacts of nature-related risks and opportunities on the organisation's business, strategy, and financial planning.



Risk & Impact Management: How the organisation identifies, assesses, and manages nature-related risks and impacts.



Metrics & Targets: The metrics and targets used to assess and manage relevant nature-related risks and opportunities.

The TNFD's recommendations are designed to align with the goals of the Global Biodiversity Framework, supporting businesses in making informed decisions that contribute to biodiversity conservation.

It is clear biodiversity is an area where more regulation and reporting are expected.

Further Information:

[Positive Luxury's Biodiversity Report](#)

HOW COUNTRIES ARE REACTING

DEFORESTATION

EU – Regulation on Deforestation-Free Supply Chains (EUDR)

With the intention of preventing further biodiversity loss, the EUDR entered into force on 29 June 2023. The Regulation requires companies to conduct due diligence if they export or place on the EU market a wide range of products made from or containing commodities such as palm oil, cattle, soy, coffee, cocoa, timber and rubber, to ensure that they have not been obtained as a result of deforestation. This is particularly relevant to luxury and fashion companies as it would potentially cover a wide range of imported materials and ingredients used in EU manufacturing processes, including leather (to be used, for example, in leather jackets or handbags) and rubber (to be used in rubber soled footwear) as well as various ingredients used in cosmetic products such as cocoa, soy and palm oil.

Under the EUDR, such commodities must be produced on land that has neither been deforested after 31 December 2020, nor has seen primary and naturally growing forests converted into plantations.

Importantly, before placing on the market or exporting such commodities, businesses will be required to undertake due diligence and submit to the EU's newly created Information System a due diligence statement to confirm that the relevant checks have been undertaken and identify the specific geolocation of all plots of land where the relevant commodities were produced to help facilitate compliance checks. Further, commodities must have been produced in compliance with all applicable and relevant laws in force in the country of production and that the rights of affected indigenous peoples have been respected.

On 2 October 2024, after months of speculation, the EU Commission announced a proposal for a further 12 months of "phasing-in" time for the implementation of the EUDR, as well as the publication of its long-awaited guidelines and updated FAQs relating to the EUDR (see press release [here](#)). Under this proposal, large companies will have until 30 December 2025, and small and micro enterprises have until 30 June 2025, to implement the requirements of the EUDR.

Further information:

[EU Commission proposes a 12-month extension to implementation of the EU Deforestation Regulation and confirms publication of new guidance](#)

Penalties will be established at Member State level for non-compliance potentially leading to products being confiscated and access being denied to the EU market. Fines can also be issued, with the maximum fine corresponding to 4% of total annual turnover in the EU. The EUDR further reinforces the need for companies to have a transparent and well-documented supply chains and put in place appropriate processes to ensure that signed due diligence statements can be prepared in respect of all shipments.

Further information:

[European Union: Deforestation Regulation - New due diligence requirements to tackle deforestation and forest degradation](#)

UK – ENVIRONMENT ACT 2021

Under this act, all planning permissions granted in England (with a few exemptions) will have to deliver at least 10% biodiversity net gain (BNG) from November 2023, and smaller sites from April 2024. BNG will be measured using Defra's biodiversity metric and habitats will need to be secured for at least 30 years. The aim is to help halt the decline in species abundance by 2030.

Probably of more relevance to the luxury and fashion sector is that the act also provides the basis for the UK Forest Risk Commodities (FRC) regime, which aims to tackle deforestation by making it illegal for larger businesses operating in the UK to use key commodities, such as leather, cocoa, palm oil and soy, produced on land illegally occupied or used, with in-scope businesses required to undertake due diligence and report on this exercise annually. Secondary legislation to fully implement these requirements in the UK is still awaited.

EU – BIODIVERSITY STRATEGY 2030

The European Commission has adopted the new EU Biodiversity Strategy for 2030 and an associated Action Plan – a comprehensive, ambitious, long-term plan for protecting nature and reversing the degradation of ecosystems. It aims to put Europe's biodiversity on a path to recovery by 2030 with benefits for people, the climate and the planet.

A key element of the EU's Biodiversity Strategy is the Nature Restoration Law, which officially came into force on 18 August 2024. This landmark legislation aims to put measures in place to restore at least 20% of the EU's land and sea areas by 2030, and all ecosystems in need of restoration by 2050. It sets specific, legally binding targets and obligations for nature restoration in each of the listed ecosystems – from terrestrial to marine, freshwater and urban ecosystems.

EU SOIL STRATEGY FOR 2030

Soil and the multitude of organisms that live in it provide us with food, biomass, fibres and raw materials. It regulates the water and carbon and nutrient cycles and makes life on land possible. Healthy soil is essential to reverse biodiversity loss, provide healthy food and safeguard human health. A key deliverable of the 2030 strategy, the EU soil strategy for 2030, provides the framework and concrete steps to restoring soils and ensuring sustainable use – and will contribute to several objectives of the European Green Deal. Find out more [here](#).

US

There are a number of state laws addressing the restoration and preservation of biodiversity. Below are specific to California:

Nature-Based Climate Solutions – AB 1757:

Requires the state to set targets for 2030, 2038, and 2045 to remove greenhouse gas emissions from the atmosphere with nature-based methods such as planting trees and restoring wetlands.

Neonicotinoid Pesticides – AB 2146:

Prohibits the sale, possession, or use of neonicotinoid pesticides for most non-agricultural uses.

“**ALL IN ALL, IT IS CLEAR THAT THE STAKES ARE HIGH AND A LOT REMAINS TO BE DONE. A GLOBAL CONCERTED EFFORT IS NECESSARY IF WE ARE TO ACHIEVE THE GOAL OF STEMMING AND REVERSING THE NEGATIVE RAMIFICATIONS OF CLIMATE CHANGE AND LOSS IN BIODIVERSITY.**”



Renata Amara
Partner, Trench Rossi
Watanabe*, Sao Paulo

Further information:

[Positive Luxury's Biodiversity Report](#)

FRANCE'S FAST FASHION BILL

The French Parliament has approved a bill that aims to promote sustainability and protect France's fashion industry from the threat posed by 'fast fashion'. The provisions include requiring companies to be transparent about their impact on the environment, restrictions on advertising and a surcharge on fast fashion products, starting at EUR 5 and going up to EUR 10 in 2030. Detailed provisions on implementation are yet to be provided. If adopted this type of legislation will cause disruption to the fast fashion model.

FOR UPDATES ON COP29, VISIT:

[Baker McKenzie's COP29 Hub: STEPS TO Net Zero](#)

FURTHER READING:

[CSDDD Explainer Series: What Does it Mean for Businesses?](#)

[UK's Plastic Packaging Tax enters into force](#)

[UK Government's Plastic Packaging Tax to take effect 1 April 2022 \(Webinar\)](#)

[United States: Plastic and recyclability litigation - Best practices to minimize risk](#)

[EU Commission proposes a 12-month extension to implementation of the EU Deforestation Regulation and confirms publication of new guidance](#)

[European Union: Deforestation Regulation - New due diligence requirements to tackle deforestation and forest degradation](#)

[Views from Climate Week NYC 2024 – Navigating Industrial Decarbonization, Carbon Markets, and ESG Challenges](#)



SPOTLIGHT ON: GREEN UP YOUR LEASE

Improving the sustainability and efficiency of retail space is an important part of a brand's sustainability strategy. In January 2024, the UK's Better Buildings Partnership introduced significant updates to its [Green Lease Toolkit](#), providing stakeholders and advisers with a more robust legal framework for drafting sustainability-focused provisions in commercial leases. The toolkit contains suggested legal clauses (and detailed explanatory notes) at levels ranging from "light" to "dark" green depending on the level of commitment agreed upon by the parties across environmental action areas.

Further information:

[Global Sustainable Buildings Guide, 3rd edition](#)

[United Kingdom: Green up your lease](#)



PART TWO:
S IS FOR SOCIAL

HUMAN RIGHTS AND FORCED LABOUR

New and developing legislation around the world is forcing organisations to address issues of human rights and forced labour more closely in both their own businesses and their supply chains. As well as legislation specifically on forced labour, the issue of forced labour and modern slavery is increasingly being included in more general ESG legislation.

Failure to comply with international labour and human rights standards can have a lasting impact on business strategies, legal risk profile and brand reputation. Companies can also face civil and criminal legal liability for labour and human rights abuses. These risks are only increasing as the direction of travel of legislation in this area is for voluntary frameworks to become the basis for mandatory regulations. Consequentially, this will increase the burden on companies, for example, to not only report on labour and human rights issues but also to take steps to address the identified risks in their supply chains. Companies are also realizing that making a conscious effort to promote basic rights among their workforces can create greater business value.

THE EU CSRD AND CSDDD

The EU Corporate Sustainability Reporting Directive (CSRD) and the EU Corporate Sustainability Due Diligence Directive (CSDDD)

The CSRD and CSDDD expand the range and detail of existing sustainability reporting requirements and supply chain due diligence. These include the organisation's approach to identifying and managing any actual and potential material impact of its operations on the human rights of its own workforce and workers in its value chain including in relation to child labour and forced labour.

The EU Forced Labour Regulation

In April 2024, the European Parliament approved the proposal of the EU Forced Labour Regulation. Under the Regulation, all products (including their components) manufactured using forced labour are banned from being placed or made available on the market in the EU or exported from the EU. The prohibition applies to products regardless of the sector, origin, or whether they are made domestically or imported, and also applies to each stage of a product's supply chain, including its manufacture, harvest and extraction, and any working or processing related to the products. Once this Regulation enters into force, EU Member States will have three years to implement it into local law.

A number of jurisdictions across Europe have already introduced mandatory due diligence requirements.

- **France's** Duty of Vigilance law requires large companies in France to identify and prevent risks to human rights and the environment.
- In **the Netherlands**, the Dutch Child Labour Due Diligence Law obliges companies to investigate whether their goods or services have been produced using child labour.
- **Germany's** Supply Chain Due Diligence Act 2021 imposes due diligence obligations on companies with a footprint in Germany.
- In **Switzerland**, the Ordinance on Due Diligence and Transparency mandates that companies comply with due diligence and reporting obligations concerning conflict minerals and metals from conflict-affected and high-risk areas, as well as child labour. Companies are required to adopt a child labour supply chain policy, implement a supply chain traceability system related to child labour, establish a grievance mechanism, and adhere to annual reporting requirements.

Other EU legislation, such as the **EU Deforestation Regulation**, imposes obligations around forced labour ([see page 16 above](#)). This regulation's objective is to ensure that commodities imported into the EU are not causing deforestation anywhere in the world. But there is also the obligation to verify that such goods are produced in compliance with local labour laws and brands can be held accountable for labour rights violations that take place in their supply chain.

UK

UK Modern Slavery Act 2015

This Act requires certain commercial organisations to publish an annual modern slavery statement setting out the steps they have taken to ensure that their business and supply chains are slavery-free, or a statement that they have taken no steps to do this. The legislation is due to be significantly updated. Some of the expected updates to the legislation include mandated specific reporting topics that modern slavery statements must cover and the introduction of financial penalties for organisations that fail to meet their obligations.

US

In the US, as in the EU and the UK, forced labour is an area with an established regulatory framework. Increased enforcement in this area is driving further regulatory reform:

Uyghur Forced Labor Prevention Act (UFLPA)

Taking effect in 2022, the UFLPA established a rebuttable presumption that any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People's Republic of China are made with forced labour and therefore not entitled entry to the US. A little more than two years into its implementation, there are significant lessons learned for the luxury goods industry,



including surrounding the documentation and due diligence required to satisfy the US government that imports are out of scope of the UFLPA.

Compliance with the UFLPA requires companies to maintain – and potentially submit – clear and complete documentation tracing the origin of the parts, components and materials. If goods are detained by US Customs, such documentation must be provided within a short time limit to secure the release of the shipment. The UFLPA has identified certain sectors as "high priority." Cotton is included in this high-priority list and, therefore, key trends surrounding UFLPA compliance are relevant to any company exporting cotton or cotton items, such as clothing, to the US. Any company importing goods into the US that originate, even in part, from the Uyghur region should consider pre-emptively preparing the compliance documentation to expedite the release of any detained goods.

Further, in 2024, there has been increased enforcement of the UFLPA on goods that are shipped through third countries, such as Mexico or Canada, and then arriving in the US. It is, therefore, essential that a holistic review of supply chains and shipping routes is undertaken to ensure compliance.

However, there is tension with Chinese legislation. From a Chinese legal perspective, companies risk violating the Anti-Foreign Sanctions Law (AFSL) and Unreliable Entities List Regulations (UEL) if they (i) terminate or suspend contractual relationships or transactions with Chinese entities or individuals due to Xinjiang-related concerns, or (ii) impose due diligence or compliance requirements to address these concerns. In September 2024, China's Ministry of Commerce (MOFCOM) announced an investigation into a US fashion and apparel company under the UEL Regulations for allegedly violating normal market transaction principles, disrupting normal transactions, and implementing discriminatory measures against Chinese entities and individuals regarding Xinjiang-made products. Therefore, we advise seeking guidance on navigating this sensitive area.

UFLPA FAQs [Click here](#)

The Fashioning Accountability and Building Real Institutional Change (FABRIC) Act

The FABRIC Act was introduced in the Senate on 12 May 2022. As the first federal fashion bill, it seeks to improve conditions for US garment workers by, among others, eliminating piece-rate pay, holding brands accountable for wages in their supply chain, and encouraging brands to re-shore manufacturing. The bill was reintroduced in the Senate on 14 September 2023 and is still pending committee review.

US State legislation relevant to the Luxury sector includes:

- **California – Transparency in Supply Chains Act 2010**

This Act is now well established and imposes reporting obligations on companies around forced labour.

- **California – The Garment Worker Protection Act**

Senate Bill 62, also known as the Garment Worker Protection Act, came into effect in 2022. The law addresses the proper payment of garment industry employees in California and the responsibility of contracting parties for garment operations performed on their behalf. These new accountability precedents include clarification that manufacturers, brands, and contractors that have their garments manufactured may be liable as guarantors for the unpaid wages and overtime of the workers, even if they are not the employer. For further information, [click here](#).

Highly relevant to the luxury and fashion sector are three proposed pieces of legislation in New York:

- **The Fashion Workers Act** - which is a groundbreaking piece of legislation designed to protect creatives in the fashion industry, including make-up artists, stylists, models, and photographers. The Act is designed to improve labour protections, improve health and safety, and prevent exploitation.
- **The Retailer Worker Safety Act** – designed to enhance the safety of retail workers and mitigate violence against retail workers.
- **The Fashion Sustainability and Accountability Act** – covers a wide range of sustainability obligations and contains provisions against labour exploitation. See above at [\(page 14\)](#) for a discussion around a number of Sustainability and Accountability Acts in the US.

Other relevant legislation

There are also similar reporting obligations in Australia under the Modern Slavery Act 2018 and Canada's Fighting Against Forced Labour and Child Labour in Supply Chains Act.

Further information:

[Australia's Modern Slavery Act - legislative shackles to be broken?](#)

[Canada: Revised guidance on supply chain reporting due May 2024](#)



SUPPLY CHAIN AUDITS FOR FORCED LABOUR COMPLIANCE

For many brands, the greatest risk of forced labour violations comes from their supply chain. Knowing your supply chain is vital to ensuring compliance:

- ☑ **Map your supply chain** – Map who supplies every material and component to your product including suppliers and sub-suppliers. Know that if any of your materials are from a Conflict-Affected and High-Risk Area, your risk is higher.
- ☑ **Conduct due diligence** – Conduct due diligence to identify, prevent and mitigate any labour violations. Review supplier practices through self-assessments or site audits and understand labour conditions at the location.
- ☑ **Engage with your suppliers** – Clearly share your ambitions, strategy and expectations with your suppliers and include supplier obligations in contracts where necessary.
- ☑ **Implement technology solutions** – Use technology to enhance the traceability and transparency of your supply chain.
- ☑ **Monitor and audit** – Regularly monitor and audit suppliers. Consider reputable third-party auditing.
- ☑ **Stay informed** – Stay up to date on developments and update communications with suppliers as necessary.

“
**INCREASED ENFORCEMENT AND THE WAVE OF
 NEW LEGISLATION IN THE FORCED LABOUR SPACE
 REINFORCE THE NEED FOR A BRAND TO HAVE FULL
 TRANSPARENCY AND EVIDENCE OVER THEIR SUPPLY
 CHAIN, GOING BACK TO THE ORIGINS OF RAW AND
 COMPONENT MATERIALS.”**



*Christine Streatfeild
 Partner, Baker McKenzie
 Washington, DC*

FURTHER READING:

[Australia's Modern Slavery Act - legislative shackles to be broken?](#)

[Canada: Revised guidance on supply chain reporting due May 2024](#)

[Delivering on Labor and Human Rights Commitments](#)

[Workforce Redesign in the Age of Transparency](#)

SPOTLIGHT ON: RISE IN OECD ESG-RELATED COMPLAINTS

The Organisation for Economic Co-operation and Development (OECD) has established a complaint procedure for breaches of the Multinational Entities (MNE) Guidelines, which are recommendations from governments to multinational companies covering all business areas and sectors, including consumer goods and retail, and luxury. The MNE Guidelines cover a wide range of business responsibilities, including human rights, labour rights, environmental protection and consumer interests. These complaints, known as Specific Instances, can be filed against both multinationals and the private equity entities that own them, carrying significant reputational and legal consequences. Specific Instances can be brought by a variety of stakeholders, including:

- **Individuals or communities** affected by the activities of a multinational enterprise
- **Non-governmental organisations (NGOs)** advocating for responsible business conduct
- **Trade unions** representing workers' rights
- **Businesses or industry associations** concerned with fair competition and ethical practices

Specific Instances typically involve mediation or good office procedures before the National Contact Points (NCPs), which are usually governmental bodies in OECD countries. There have been cases where a multinational had to defend itself against alleged breaches in up to 10 countries.

Following the general trend of an increase in activism around such issues, in 2023 there was a 400% increase in Specific Instances, with the same increase continuing into 2024. International institutions, such as the OECD and the ILO in the labour field, have been advocating for the use of international tools and actions to control non-compliance by international companies.

[Access the database of Specific Instances.](#)

“
FOLLOWING THE GENERAL TREND
OF AN INCREASE IN ACTIVISM
AROUND SUCH ISSUES, IN 2023
THERE WAS A 400% INCREASE IN
SPECIFIC INSTANCES...”



*Jose Prieto
Partner, Baker McKenzie,
Madrid*





PART THREE:
G IS FOR
GOVERNANCE

The recognition of the impact of business on society and the environment has led to increased demand for sustainability reporting and disclosures to support the transition to net zero. Banks and larger companies have been encouraged for a number of years to make climate-related financial disclosures on a voluntary basis. In more recent times, these disclosures have become mandatory as governments and regulatory bodies in the UK, US, EU and elsewhere have imposed their own sustainability reporting frameworks.

STRATEGY FOR FINANCING THE TRANSITION TO A SUSTAINABLE ECONOMY

The Paris Agreement introduced the concept of Transition Finance (TF), which is defined by the OECD as "the dynamic process of becoming sustainable or reaching net-zero, rather than for already sustainable or net-zero activities based on a point in time assessment."

The concept has now firmly established itself in the lexicon of financial market participants; however, there continue to be differing perspectives around the scope of the term's definition. Some consider TF to encompass climate transition across all sectors of the economy, whilst others take the narrower view that it should primarily concern financing aimed at assisting higher emitting organisations, such as those involved in energy production, transportation, mining, and cement, on their transition towards decarbonization.

Alongside the financial markets that have been shaping the products and services needed to implement TF, governments and regulatory bodies have been striving to engage with and support transition through conducting market reviews, developing standards and implementing disclosure requirements.

“**LUXURY AND FASHION COMPANIES BASED OR ACTIVE IN THE EU WILL THEREFORE BE REQUIRED – OR, EVEN IF THEY ARE NOT CAUGHT BY THE LEGAL OBLIGATIONS, WILL COME UNDER INCREASED PRESSURE FROM INVESTORS AND LENDERS – TO REPORT DETAILED ESG INFORMATION ON THEIR BUSINESS AND ON THE SUSTAINABILITY OF THEIR ECONOMIC ACTIVITIES, OFTEN IN RESPECT OF THEIR VALUE CHAIN AND NOT ONLY THEIR OWN ORGANISATION.**”



Jo Hewitt
Partner, Baker McKenzie
London

ESG DISCLOSURES

Greater consistency and transparency in TF products is expected to develop on a foundation of consistent comparative data resulting from improved reporting standards. The International Sustainability Standards Board (ISSB) standards, published in June 2023, are anticipated to act as a global baseline that many jurisdictions are likely to adopt.

The ISSB project is an illustration of the potential for international co-operation in this area. Existing sustainability disclosure requirements in the EU and UK already provide a repository of data to feed into the development of TF products, with further harmonisation with ISSB standards expected.

Borrower-level disclosures, for example those required by the CSRD and CSDDD, should help lenders to work together with borrowers, including those in the luxury and fashion sector, to establish appropriate KPIs and monitor compliance with them more effectively.

Corporate reporting rules are increasingly requiring the disclosure of transition-related metrics: for example, the CSRD requires disclosure of sustainability-related targets, including whether the target is absolute or relative, scope of the target and applicable methodologies and assumptions. The ISSB standards will mandate disclosure of quantitative and qualitative sustainability-related targets set to monitor progress towards achieving strategic goals, along with any targets the disclosing entity is required to meet by law or regulation.

Further, the taxonomies underlying disclosure requirements – such as the EU Taxonomy – can also be used as transition tools themselves, to define transition targets, compare current with planned performance, and identify transition finance needs.

EU

Luxury and fashion companies based or active in the EU will therefore be required – or, even if they are not caught by the legal obligations, will come under increased pressure from investors and lenders – to report detailed ESG information on their business and on the sustainability of their economic activities, often in respect of their value chain and not only their own organisation. For these companies, the CSRD and CSDDD requirements should be key areas of focus. These Directives cover climate-related disclosures, for example those relating to the production of fabrics. Importantly for the fashion and luxury industry, they also cover human rights disclosures in relation to supply chains, including child labour and forced labour practices.

UK

Along with the existing disclosure requirements in the UK, there are specific regulations applying to banks and funds that will affect investor expectations in the luxury and fashion sector. Over time, 'unsustainable' companies that are not on a transition pathway may find it more difficult to access private finance.

US

These pressures may also soon affect fashion and luxury companies required to file 10-K reports with the US SEC. In March 2024, the SEC adopted final rules regarding climate-related disclosures which will require companies to disclose in their Form 10-K, among other things, information about climate-related risks and risk management, mitigation or adaptation activities, and climate-related targets and goals. Large accelerated filers and accelerated filers would also be required to disclose information about direct (Scope 1) and indirect (Scope 3) GHG emissions. Notably, the final rules have been challenged in federal court and the SEC has stayed the rules pending the outcome of the litigation.

California law will go even further once implementing regulations are made, requiring covered companies to report on their Scope 1, Scope 2 and Scope 3 GHG emissions under the Climate Corporate Data Accountability Act, as well as their climate-related financial risks and measures taken to reduce and adapt to those risks (aligned

to the TCFD recommendations) under the Climate-Related Financial Risk Act. Further, under the California Voluntary Carbon Market Disclosures Act covered companies making net zero claims will be required to make public disclosure obligations on the substance of those claims.

“
OVER TIME, 'UNSUSTAINABLE'
COMPANIES THAT ARE NOT ON A
TRANSITION PATHWAY MAY FIND
IT MORE DIFFICULT TO ACCESS
PRIVATE FINANCE.”



Caitlin McErlane
Partner, Baker McKenzie
London

TRANSITION PLANS

Carefully considered, robust transition plans will also play a key role in the harmonisation of the TF market: the Network for Greening the Financial System has urged closer engagement and coordination between financial and non-financial institutions to build credibility in the TF market and enhance investment opportunities. In the UK, the Transition Plan Taskforce (TPT), which aims to develop the gold standard for private sector climate transition plans, has indicated that the TPT Disclosure Framework, published in October 2023, is also designed to align with and build on the ISSB reporting standards. Furthermore, in its recently published implementation update on Sustainability Disclosure Requirements (SDR), the UK Government announced that the Financial Conduct Authority (FCA) will be consulting on "strengthening its expectations" for transition plan disclosures. Industry commentary indicated that this announcement had been welcomed by investors but that some were pushing for transition plans to be mandatory for UK companies and for the timetable for implementation overall to be swift and pushed up the agenda.

In the EU, transition plans are voluntary, but the European Commission considers them one of the key tools that businesses can use to set targets and anticipate financing needs. The CSRD requires organisations to disclose their transition plan if they already have one at the time of their disclosures. Companies in-scope of the CSDDD will be required to adopt and put into effect climate transition plans, with those reporting a transition plan under the CSRD deemed to have complied. In the US, the SEC rules would require disclosure of an in-scope company's transition plan, if any (but would not mandate that a transition plan is in place).

The key implication for luxury and fashion companies is that those with credible TF plans should increasingly be able to access products and services financing and investment tailored to low-carbon business models at lower cost. In contrast, companies that do not have credible transition plans may face higher costs and/or restricted access to financial products and services depending on the underwriting process of their lender. It is also worth noting that regulatory approaches to sustainability-related product labelling are likely to have an increasing impact on TF. In the UK, the FCA has specifically factored in transition funds to the SDR (through the "Sustainability Improvers" label), and asset managers launching such funds will be

particularly focused on investee companies' transition planning; this is particularly relevant to luxury and fashion companies seeking to raise finance from such managers. In the EU, the European Supervisory Authorities have recently proposed a new retail-driven label for EU transitional funds. As regulators refine their approach to transitional investment strategies, investor expectations may change or become more rigorous over time.

While only a limited number of businesses have developed and published credible transition plans that allow their alignment with the Paris Agreement to be assessed, there are a growing number of initiatives to support those that chose to do so, including disclosure frameworks and services such as validation, assessment, data collection and analysis to support the development and disclosure of plans. To be noted, in Asia, Japan is leading the way in the adoption of TF products and initiatives.



GREENWASHING AND TRANSITION FINANCE

Addressing the risk of greenwashing is a key concern as financial institutions expand their transition finance offerings and adapt the business models to meet sustainability challenges. Both the FCA and the European Banking Authority have raised concerns about greenwashing in the sustainability-linked loans market, where a lack of prescriptive regulation and potentially weak targets and KPIs disconnected from transition plans raise the threat of greenwashing accusations. For example, firms may wish to be cautious about linking group-level transition policies to individual products and services to avoid the risk of misleading end-clients and investors. Greenwashing accusations also raise the risk of reputational damage, for example through vague, aspirational language in business plans, investment and lending misaligned to net zero targets, or weak targets using unscientific methodologies.

Regulators are beginning to respond to these risks through prescriptive action: the FCA's anti-greenwashing rule, applying to all authorised firms (including banks and asset managers) requires firms to ensure that any reference to the sustainability characteristics of a product or service is indeed consistent with the sustainability characteristics of the product or service, and is fair, clear and not misleading.

California's Voluntary Carbon Market Disclosures Act will also require companies making net zero claims to substantiate those claims in public disclosures, including information on how the claim was determined to be accurate or actually accomplished.

ESG AND CREDIT RATINGS

The fashion and luxury sector should also take note of the increasing body of regulation affecting credit rating agencies, particularly around the manner in which they assess and incorporate ESG into rating processes. In June 2023, the European Commission proposed a Regulation on ESG rating activities, which would lay down transparency requirements related to ESG ratings, as well as rules on the organisation and conduct of ESG rating providers. According to the Commission, ESG ratings are increasingly used by investors and benchmark administrators to take into account risks and/or impacts linked to ESG issues in their sustainable investment strategies. Given the fact that in some cases voluntary ESG reporting by undertakings is based on – or inspired by – ESG rating, the new proposal laying down rules to regulate ESG rating activities could limit or at least affect voluntary reporting approaches by certain companies. Political agreement was reached on the proposed Regulation in February 2024, with the legislation expected to be finalised in late 2024 or early 2025.

GREEN BONDS

Green bonds are committed to financing or re-financing investments, projects, expenditure or assets helping to address climate and environmental issues. Both governments and companies use them to finance the transition to a more sustainable

and low-carbon economy. Since the European Investment Bank (EIB) inaugurated the green bond market in 2007, the International Capital Markets Association (ICMA) has set the standard with its Green Bond Principles (GBPs), which allow market participants to determine whether a bond is green by examining:

- Use of proceeds (typically being to finance or refinance "eligible green projects").
- Process for project evaluation and selection.
- Management of proceeds (e.g. ringfencing or tracking).
- Reporting (using third-party verifier or self-reporting, annually and publicly available if possible).

The European Green Bond Standard (EUGBS) marks the first major "competitor" to the GBPs. It is another voluntary standard, based on the recommendations of the Technical Expert Group on Sustainable Finance, but it is aimed at scaling up and raising the environmental ambitions of the green bond market to create a "gold standard". The EUGBS is, for example, more prescriptive than the standard set down by the GBPs. The EUGBS Regulation will apply from December 2024.

It is unclear whether the EUGBS will displace the issuance of green bonds that are only ICMA GBP compliant, particularly for EU issuers. It is possible that the ICMA GBPs will remain in place as an easier hurdle for brands to clear – however, brands should be prepared to comply with the reporting requirements set out by the EUGBS to ensure they meet the "gold standard" for green bonds.

SPOTLIGHT ON: COMPETITION AND SUSTAINABILITY

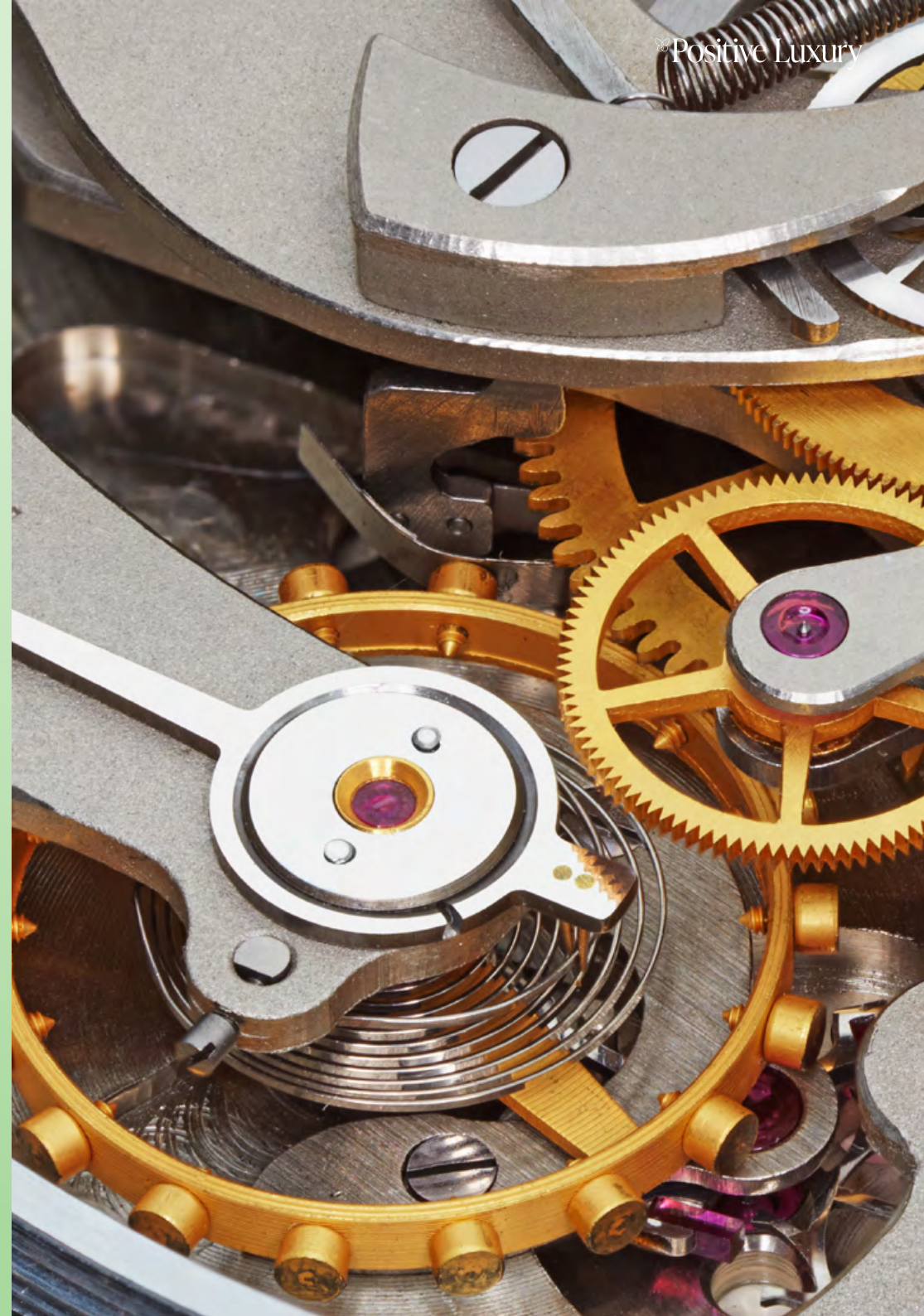
Luxury brands may list competition law as a reason why they are hesitant to undertake joint initiatives with competitors that might help to address climate change. However, legitimate collaboration on production processes, ESG standards, sustainable input materials, research and development and so on can often yield better sustainability results to the benefit of the population at large than when businesses act on their own. Recognising this, regulators including the European Commission and the UK's Competition and Markets Authority have recently stepped up to provide guidance on how existing competition law frameworks apply to agreements pursuing sustainability objectives.

There are of course significant risks here – and the competition rules may differ from country to country – so brands should always seek legal advice on specific projects. A first step in the right direction is to make sure that a company's sustainability function is linked up with its Legal department. Competition law safeguards should also be in place for any sustainability project with competitors and should also be routinely checked for scope-creep to manage the risks inherent in any form of cooperation with market players, including with regard to: (i) exchanging competitively sensitive information; and (ii) agreeing on common approaches that could restrict competition (e.g., price-fixing, boycotting or blacklisting certain supply chain actors, wage-fixing, etc.).

“**COMPETITION LAW SAFEGUARDS SHOULD ALSO BE IN PLACE FOR ANY SUSTAINABILITY PROJECT WITH COMPETITORS AND SHOULD ALSO BE ROUTINELY CHECKED FOR SCOPE-CREEP TO MANAGE THE RISKS INHERENT IN ANY FORM OF COOPERATION WITH MARKET PLAYERS.**”



Imogen Green
Associate, Baker McKenzie
London



SPOTLIGHT ON: AI AND SUSTAINABILITY

The rapid advancement of artificial intelligence (AI) in the luxury and fashion sector, as with other industries, presents a significant tension between technological progress and sustainability. On one hand, AI has the potential to drive efficiency, innovation and solutions to complex global challenges, including climate change and supply chain transparency. However, the development and deployment of AI systems require substantial computational power, leading to increased energy consumption and carbon emissions. Data centers are major contributors to this high energy consumption. This creates a tension where AI, a tool that could be an aid to achieving sustainability goals, at the same time exacerbates the problem. Therefore, balancing the benefits of AI with its environmental impact necessitates a concerted effort to develop more energy-efficient technologies and to integrate renewable energy sources into AI infrastructure.

“
ON ONE HAND, AI HAS THE POTENTIAL TO DRIVE EFFICIENCY, INNOVATION AND SOLUTIONS TO COMPLEX GLOBAL CHALLENGES, INCLUDING CLIMATE CHANGE AND SUPPLY CHAIN TRANSPARENCY. HOWEVER, THE DEVELOPMENT AND DEPLOYMENT OF AI SYSTEMS REQUIRE SUBSTANTIAL COMPUTATIONAL POWER...”



Julia Hemmings
Partner, Baker McKenzie,
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ACKNOWLEDGEMENTS

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*Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting with foreign law.

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Positive Luxury are the leading sustainability experts for the global luxury industry. From beauty, fashion and jewellery to premium drinks, interiors and travel, we help businesses meet higher standards for people and nature. We work with over 200 global brands, retailers and suppliers to shape a sustainable future. Contact our team to discuss how our comprehensive sustainability services can unlock value for you.

- Fast track sustainability
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