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Framework for an ESG Approach in Europe

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In an era where environmental, social, and governance (ESG) considerations are becoming increasingly critical, the ACC Europe ESG Working Group has taken a proactive step by developing a comprehensive *Framework for an ESG Approach in Europe*. Introduced in 2024, this framework is designed to help in-house counsel navigate the intricate landscape of ESG challenges.

In this Q&A article, members of the ESG Working Group share their insights and experiences on various topics. They discuss the urgent ESG issues that are top of mind for them and their companies, the crucial role of culture in driving ESG changes, and how the legal department can influence and shape this culture to ensure a unified and effective approach to ESG.

What ESG-related challenges are keeping you up at night? How are they impacting your day-to-day responsibilities?


Nasser Alreshaid, Senior Legal Advisor, OPEC

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While acknowledging that the ESG field is continuously evolving, two key challenges can be highlighted in connection with the level of monitoring needed from in-house counsel.

Firstly, some government regulated standards shaping corporate ESG policies are significantly complicated, running into the risk of overregulating and losing market participants. These government standards — for instance environmental reporting requirements — need to be simplified to allow corporate actors, especially small- and medium-sized enterprises equipped with less resources, to better understand them and meet their requirements.

Secondly, and this is the flip side of the complexity challenge above, corporations need leeway to efficiently construct and implement ESG policies where these are consistently being transformed. Frameworks, like ACC Europe's *Building a Framework for an ESG Approach in Europe*, provide general guidelines that reflect best practices yet enable private entities to fine tune them. ESG-related regulations are sometimes fragmented and located in various instruments, on occasions, even emerging from other jurisdictions with an extraterritorial reach. This regulatory approach would excessively burden in-house counsel having to navigate a web of relevant binding standards. This is costly and can trickle down to operational then product or services costs. The consumer's welfare is consequently impacted.


Irina Michkina, Senior Legal Counsel Sustainability and Accessibility, Booking.com

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Staying up to date on the latest ESG regulations and case law worldwide is critical to managing legal risks. For legal teams, the challenge extends beyond regulatory compliance to identifying areas for growth, market differentiation, and efficiencies that support broader business. To tackle these challenges effectively, it's essential to maintain a broad perspective and connect the dots across different areas. Here are some key considerations:

Multi-jurisdictional legal developments

ESG regulations are evolving globally, and even if a company operates in only one jurisdiction, it's crucial to have a global perspective. ESG related laws often have extraterritorial effects, and many regulators tend to follow similar logic. A great example of this is the rise in greenwashing litigation where similar claims are being challenged not only across the globe but also across various industries. By staying informed on global trends, legal teams can anticipate regulatory shifts.

Business opportunities and efficiencies

As an example, instead of creating new processes from scratch, legal teams could help integrate ESG due diligence into existing risk management frameworks or advise on ways of using certifications, which not only differentiate the brand in the market but also help meet evolving regulatory requirements.

Stakeholders impact

ESG risks should be evaluated through a cross-functional lens, involving relevant functions to ensure a coordinated approach across the organization. Additionally, identifying relevant external stakeholders such as regulators, investors, or NGOs and managing relationships with them is key to ensuring initiatives are effectively aligned with broader business strategies.

How do you collaborate with other departments (e.g., compliance, corporate social responsibility, operations, supply chain, finance, marketing, etc.) to ensure a cohesive approach to ESG challenges?

Mark Maurice-Jones, General Counsel UK & I, Nestlé

Mark Maurice-Jones, General Counsel, Nestlé

Having a cohesive approach to ESG planning involving all parts of the business is crucial in driving sustainable and responsible practices across the company. This can be achieved by following the principles:

Establish a cross-functional ESG team including legal which meets regularly and serves as a forum for collaboration, idea sharing, and decision-making on ESG initiatives.

- The ESG team may lead the conduct of regular materiality assessments to identify where an organisation has the greatest impact on society and the environment and which impacts are most important to an organisation's success.

- ESG considerations identified in the materiality assessment should then be built into the company's risk management framework. This will involve identifying and assessing emerging ESG risks, establishing mitigation strategies, and monitoring ongoing performance to ensure compliance with relevant regulations and standards and voluntary/early compliance with certain aspects of emerging regulatory requirements.

- The company can then develop a comprehensive ESG Action Plan for each affected business area with clear functional or business owners, targets, and KPI (Key Performance Indicators) metrics. Action plans should be continuously reviewed and refined by different function.
- In order to facilitate regular communication and alignment sessions across the organisation ESG challenges and best practices should be shared. This will help ensure that ESG initiatives are integrated into day-to-day operations.
- Implement incentives and recognition programs to reward contributions from different functions to address ESG challenges. This encourages active participation and commitment to ESG goals across functions.

Elena Takou, Legal Director, EMEA, Zebra Technologies

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Addressing ESG opportunities and challenges requires a team. It's not a one-function job, as it cuts across many different disciplines and requires collaboration to be effective. That's why having a cross-functional Sustainability Council with executive sponsorship to advance ESG initiatives and reporting is so important.

Zebra's Sustainability Council provides ESG program oversight, coordinates ESG goals, and ensures accurate and centralized internal and external reporting. We also have a number of informal teams working on or interested in specific subtopics who remain connected across various levels of the organization to stay updated on other teams' efforts and where they can add value.

Goal	How To Do It	Internal Policies	Legislation & Standards	Reporting & Metrics
Climate				
A company may set a voluntary goal in relation to greenhouse gas (GHG) emissions, for ex.: • Significant reduction of GHG, • Net zero target, • Decouple business from emissions	**Step 1:** Calculate GHG emissions. Understand where, in operations and the value chain, most GHG emissions occur. **Step 2:** Set voluntary goal. Many standards[5] are available to choose from. **Step 3:** Create, implement and follow-up action plan.	Implementation depends on ambition for ex.: • Value chain emissions. • Significant GHG reductions over offsets. • Purchase high quality offsets.	• ***CSRD*** and ***Taxonomy*** establish mandatory reporting. • Other standards[6] may be applied voluntarily. • **Note:** Some sectors may be required to take part in emissions trading system. • Mandatory **energy efficiency criteria** for some products.	***CSRD*** and ***Taxonomy***: • ESRS E1. • Delegated Regulation (EU) ***2021/2139*** as amended by Delegated Regulation (EU) ***2023/2485*** (Climate Delegated Act). GHG metrics are key (scopes 1, 2, and 3): • Direct emissions. • Indirect emissions. • Value chain emissions.
Pollution				
•As a minimum, comply with mandatory rules, such as: site operations industrial emissions control and permitting, safe chemicals management, harmful events reporting and remediation (“polluter pays”), and information about substances of very high concern (SVHC) in products. • Setting a voluntary ambition is similar to what is described for climate.	As a minimum, comply with **mandatory** rules, such as: site operations industrial emissions control and permitting, safe chemicals management, harmful events reporting and remediation (“polluter pays”), and information about substances of very high concern (SVHC) in products. • Setting a **voluntary** ambition is similar to what is described for climate.	As part of legal compliance, a company may need internal documents to describe its routines, for ex.: • Environmental, health and safety in operations, • Incident management, • Product design and sourcing standards. Further policies depend on ambition and material impacts.	***Industrial Emissions Directive 2010/75*** (IED),[8] under review. • ***Best available techniques*** reference documents (BREFs),[9] which provide non-binding guidance to interpret the IED. • Chemicals regulations as listed on the European Chemicals Agency’s ***(ECHA)*** webpage[10] including SVHC. • ***Science Based Targets Network initiative for nature***[11] (SBTN).	***CSRD*** and ***Taxonomy***: • ***ESRS*** E2. • ***Delegated Regulation (EU) 2023/2486*** (Environmental Delegated Act) and its Annex III.[12] Metrics include pollution to air, water and soil, and substances of concern and of very high concern (SVHC).

What is the importance of culture in driving ESG changes? How can the legal department impact this culture?

Katya Bos, Ethics and Compliance Manager, Group Strategy and Corporate Relations, Shell


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A strong culture is crucial for the successful implementation of ESG initiatives. Given the increasing complexity of ESG laws and regulations, relying solely on a rules-based approach is insufficient. ESG considerations permeate the entire company and its value chain, requiring the adoption of new practices and the challenging of existing norms, including core values and DNA.

To achieve a successful ESG transformation, it is really important to define clear roles, responsibilities, and accountability, and to ensure that ESG considerations are integrated into the decision-making processes. Lawyers are particularly well-equipped to support the various governance measures that enable business decisions. This includes developing relevant policies, management systems, and decision-making frameworks, as well as designing and delivering necessary training and support to business colleagues.

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For example, in 2020, Shell's Legal Department led the creation of a new decision-making framework that aims to ensure that ethical decisions are made in line with the company's code of conduct. This framework, which has been externally reviewed, is intended to help staff consider various stakeholder perspectives and the potential consequences of their decisions in a structured way in their daily work, and is a recommended tool for the effective management of business opportunities.

In the ESG working group, we have developed *Framework for an ESG Approach in Europe* to assist in-house counsel in considering the different ESG elements when supporting the development of a company's ESG strategy.

A compliance mindset alone is not enough, even in jurisdictions where ESG is regulated.

Ceci Pizzorno, Senior Legal Counsel Operations & Sustainability, Nestlé

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Culture is key in driving ESG changes. A compliance mindset alone is not enough, even in jurisdictions where ESG is regulated. Incorporating ESG in a company strategy requires in many cases the transformation of the business model of the entity. If such transformation is to succeed, it needs to be accompanied with a certain set of values, to be embraced by all or most levels of the organization.

The legal department can play a crucial role in that culture transformation. On many occasions, the legal department is more exposed to trends outside of the company, may be the first to start thinking about how ESG developments may impact the company and, consequently, on how to influence its management and strategy. In other cases, while not necessarily the "trailblazer," the legal department will have an influential role by performing activities like providing inputs to the design of the strategy of the company (based on legislation and litigation trends, but not only), drafting policies and guidelines that will guide the rest of the organization in its ESG journey, and supporting the related compliance processes.

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