Making Sustainability Sustainable:

Shifting from short term compliance to long term strategy

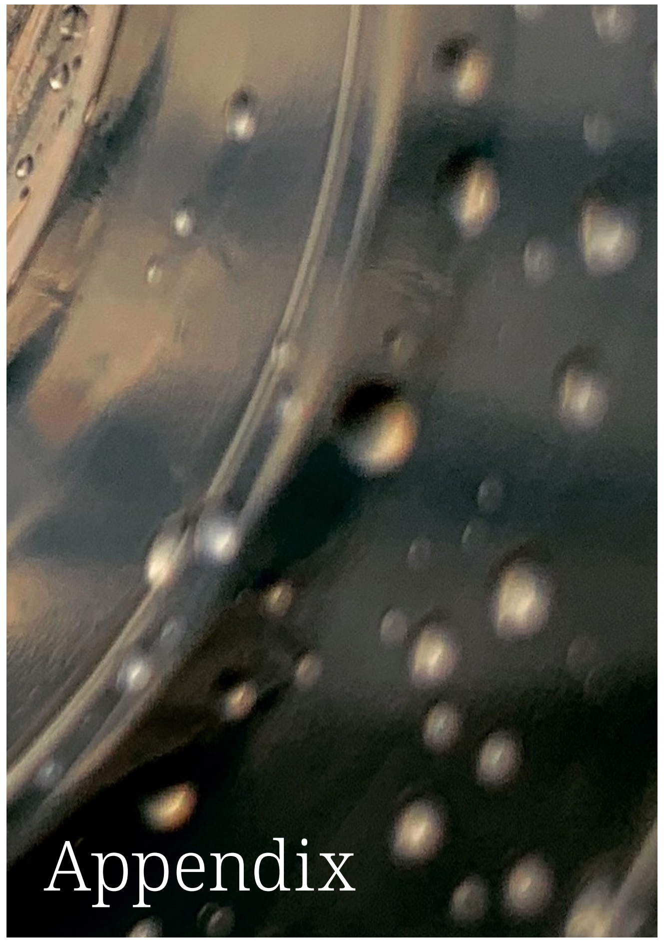
DLA PIPER

Contents

Increased sustainability risk is putting businesses under pressure to act

How are organisations responding to sustainability pressures?

How to build a more strategic response to sustainability



Introduction

Sustainability law and regulation triggers high-stakes transformation

We are at a pivotal point for sustainability.

The past decade has seen a substantial increase in regulation focused on climate, nature and social issues. Mandatory sustainability reporting requirements are coming into force around the world. New laws targeting supply chain sustainability are also on the rise. As a result, in-scope Consumer Goods, Food & Retail (CGFR) companies are increasingly compelled to understand their direct and indirect environmental and social impacts in greater detail than ever before.

But this is only the beginning. Sustainability law is only expected to grow – particularly as governments turn their attention to biodiversity collapse, with deadlines for action looming under international sustainability frameworks. At the same time, markets, consumer sentiments and other stakeholder expectations will continue to evolve, and businesses will come under increased scrutiny.

It's impossible to understate the scale of this transformation. Organisations must now address complex laws, anticipate their stakeholders' demands, and evaluate corporate decision-making in the sustainability context. From growth strategy and investments, to corporate structure and supply chains, no area is unaffected. Companies who invest now will reap the benefits for years to come, and vice versa.

Nick Rock
Partner and Global Co-chair,
Consumer Goods, Food & Retail sector, UK

Why read this report

Understand how CGFR companies are responding to new sustainability imperatives

- See where your industry peers think the biggest sustainability challenges are now, and in the future.
- Find out how they're preparing to meet growing sustainability regulation and scrutiny.
- Understand how short-term actions are creating future risks so that you can get ahead.

Benchmark your progress against your peers

Access comprehensive data on what CGFR organisations are doing to comply in three critical areas:

- Reporting data and information.
- Legal and compliance infrastructure.
- Supply chain transparency.

Understand how you can strengthen your strategic response

- Drive the right sustainability strategy, narrative and values from the board down.
- Enhance data accessibility, quality and capabilities across your company and its supply chains.
- Forge deep stakeholder relationships to reduce the threat of litigation.

71%

of respondents agree that 2024 is a "critical year" for sustainability.

54%

of respondents say that scrutiny from internal and external stakeholders means the stakes for getting sustainability right are "very high".

What do we mean by sustainability?

In this report, we use the term **sustainability** to mean actions, underpinned by good governance, which are taken to address **climate, nature** and **social issues** that are capable of disrupting or transforming the way businesses, economies and societies operate. These include core issues affecting the planet, such as climate change, biodiversity collapse and nature loss, as well as issues impacting people, such as human rights, social equity and inequality. The term **ESG** is often used interchangeably with the term sustainability.

We refer to the transition of the economy to address sustainability issues as the **sustainability transition**. This transition is being driven by multiple factors, including regulation, law and policy, changing markets and pressure from a wide variety of stakeholders.

Research methodology snapshot

This report is based on an independent survey of 600 leaders in the consumer goods, fashion, food and beverage sectors. Interviews were conducted with Chief Legal Officers, Chief Sustainability Officers, General Counsel and Heads of Legal, Compliance and Sustainability in the UK, Europe and Asia Pacific.

Read more about the research methodology here.

"As sustainability and business performance become increasingly connected, organisations must look at sustainability through a strategic lens, not a compliance one. Meeting mandatory reporting requirements is the price of entry to global markets, but for the strongest organisations, sustainability will shape and accelerate future growth. As much as there are significant opportunities, there is also risk, and the c-suite needs to ensure their sustainability strategy and commitments are matched by what the organisation says and does or they will be held to account by an increasingly wide range of stakeholders including regulators, investors, activists, the press, and their own people."

JP Douglas-Henry
Partner and Managing Director,
Sustainability & Resilience,
UK

Executive summary

Building a strategic response to sustainability

Our research confirms in stark terms the scale of the sustainability challenge for businesses in the Consumer Goods, Food & Retail sector:

68% of leaders admit that they can't meet all of their existing sustainability obligations.

66% of leaders report they don't have the financial resources to keep up with new regulation.

Over half say they need to update and expand horizon scanning capabilities, but **only 13%** have completed the exercise.

In a new era of widespread mandatory public disclosure, our research shows that **only 15%** of companies have complete oversight of their direct suppliers, falling to **just 6%** in relation to indirect suppliers.

> *"Where sustainability, brand and trust meet, companies are particularly exposed to scrutiny on sustainability – and have the biggest opportunity to lead. For resource-intensive CGFR companies, with sprawling supply chains and eco-conscious consumers, understanding sustainability obligations, building a coordinated response and anticipating future issues are now business-critical imperatives."*

Nick Rock
Partner and Global Co-chair,
Consumer Goods, Food & Retail sector, UK

To respond to tightening rules and growing stakeholder expectations, organisations in the industry are considering significant moves:

Companies are **seeking greater control over their supply chains,** with 65% of those surveyed rationalising their supplier base to maximise oversight. As many as **56% are looking to acquire sustainable suppliers** through M&A to shore up access to ethical raw materials.

70% told us they're increasing prices to protect margins.

64% are scaling back some product lines.

52% are reigning in sustainability commitments and targets.

This corroborates the existence of extensive so-called "greenhushing" in the market.

Findings in relation to strategic sustainability-driven off-shoring are also particularly striking. **A majority of businesses report that they're considering major changes to their corporate structures and operations** to try to remain under reporting thresholds, and outside the jurisdictions they perceive as having the highest regulatory standards.

While these strategies may offer short-term relief, they are not lasting solutions. Our research shows that leaders fear the actions they're taking in haste today – or areas where they're yet to act – may create problems for tomorrow particularly amplifying the threat of litigation.

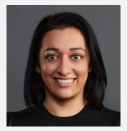
There is an urgent need for businesses to view sustainability through a long-term strategic lens, rather than just in terms of today's compliance hurdle. But taking a holistic view requires a firm and focused approach from senior leadership, and only 25% of our survey participants feel they currently have adequate buy-in for the transformation that sustainability demands.

So how can you move from a culture of compliance to one of sustainable performance? From responding to short-term pressure to building a stronger business for the long term? Recognise and face head-on the sustainability challenge. Maximise this opportunity to shine a light into the dark corners of your organisation and its value chain to address structural weaknesses, and spot new market opportunities. Use the new data and insights you are collecting to inform your decisions about how to strengthen your business.

This report is your starting point, providing guidance on the steps to build a strategic response to sustainability.

Key contacts:

Nick Rock
Partner and Global Co-chair, Consumer Goods, Food & Retail sector, UK
nick.rock@dlapiper.com



Arquette Hirani
Senior Marketing and Business Development Manager, Consumer Goods, Food & Retail sector, UK
arquette.hirani@dlapiper.com

SECTION 1

Increased sustainability risk is putting businesses under pressure to act

Compliance resources can't keep up with new regulation and growing scrutiny

This is a challenging environment for organisations in the CGFR sector. Leaders told us the primary drivers of sustainability risk are:

New legal obligations

The growing body of sustainability regulation and law is wide in scope, highly interconnected and rapidly evolving.

New requirements are directly affecting CGFR businesses at both product line and enterprise level, as well as indirectly impacting the sector through suppliers, financiers and insurers. According to one source, sustainability regulation has increased by 155% in the last decade. Leaders recognise the need to expand their horizon scanning capabilities to stay on top of these changes. But only 13% of companies have completed the exercise.

Among the wave of recent sustainability regulation, disclosure requirements and sustainable supply chain obligations are perhaps the biggest game changers.

Businesses are now required to make significant public disclosures on climate, nature and social issues and their strategies for addressing them in multiple jurisdictions. They must also carry out extensive due diligence on the environmental and social impacts, risks and opportunities in their value chains, and publicly, and transparently, report on them.

That means businesses understanding and managing their scope one, two and three emissions, and other sustainability impacts, in far greater detail than ever before.

However, they're currently a long way from achieving the required visibility.

15% of companies surveyed have complete oversight of their direct suppliers.

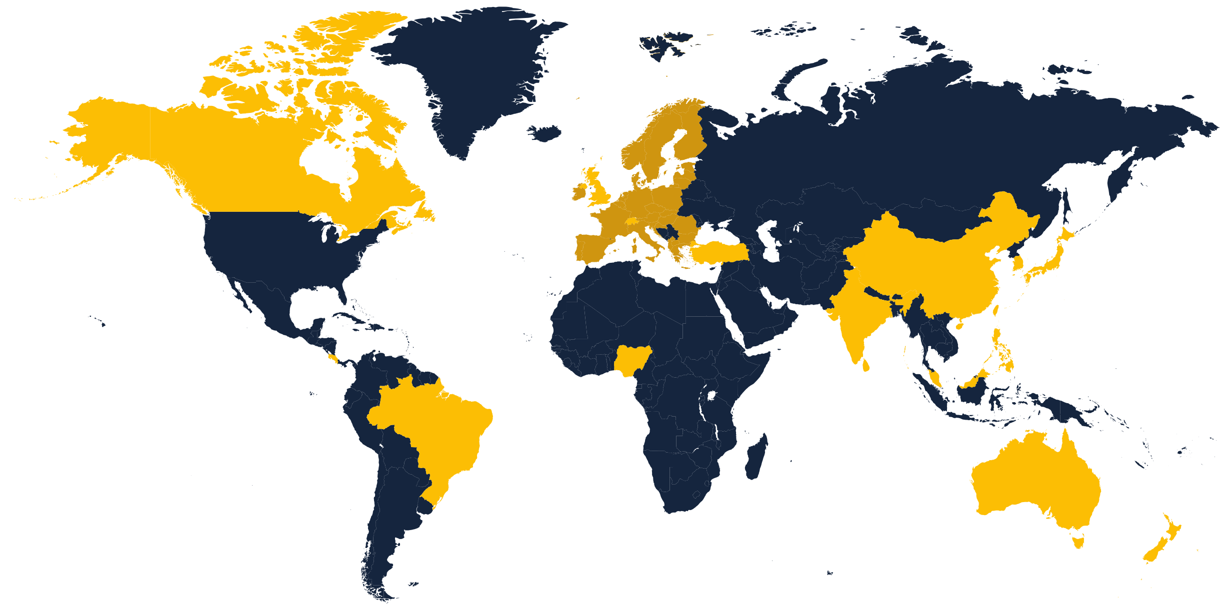
6% say the same about their indirect suppliers.

11% of organisations are also yet to complete sustainability audits of their supply chains.

Horizon-scanning: Global mandatory sustainability reporting regulation

The global sustainability landscape is changing beyond recognition. New guidelines are coming into force in Europe, Asia Pacific, the US and beyond, with a particular focus on impact reporting and disclosure.

- Countries with stringent and mandatory ESG reporting in place
- Countries with forthcoming mandatory ESG reporting / less burdensome reporting requirements in place
- Countries with no current or pending laws / position currently unknown



Canada

- Fighting Against Forced Labour and Child Labour in Supply Chains Act
- Canadian CSA Proposed National Instrument Disclosure of Climate-related Matters – *Pending*
- Canadian Sustainability Disclosure Standards – *Pending*

US

- US SEC The Enhancement and Standardization of Climate-Related Disclosures for Investors
- US Federal Contracting Proposed Disclosure Rules – *Pending*
- SB-253, SB-261, AB-1305, SB-657 (CA)
- HB 4268 (Illinois) – *Pending*
- SB S897A (NY) – *Pending*
- SB 6092 (Washington) – *Pending*

EU

- Corporate Sustainability Reporting Directive
- Taxonomy Regulation
- Green Claims Directive
- Empowering Consumers Directive
- Corporate Sustainability Due Diligence Directive
- Member State laws (LsKG, NTA, etc)

United Kingdom

- Modern Slavery Act
- Large and Medium-sized Companies and Groups Regulations
- Companies (Miscellaneous Reporting) Regulations
- Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations
- Limited Liability Partnerships) Regulations
- Companies (Strategic Report & Directors' Report) (Amendment) Regulations

Singapore & Malaysia

- Singapore Exchange Rulebooks
- Malaysia: TCFD Application Guide & Market Listing Requirements and Sustainability Reporting Guide

UAE

- UAE Securities and Commodities Authority

Australia & NZ

- Modern Slavery Act
- Australian Sustainability Reporting Standards
- Competition and Consumer Act
- Aotearoa New Zealand Climate Standards
- NZ Fair Trading Act

Further pending ISSB roll out in (currently):
UK, Brazil, Costa Rica, China, Japan, HK and others

Growing stakeholder scrutiny

These new policy interventions are both reacting to and driving further scrutiny of the sustainability performance and approach of businesses. This rise in stakeholder attention is likely to lead to increased risks for business, including reputation risk and litigation risk.

Companies in the CGFR sector fully expect to face sustainability-related litigation, especially as a result of new mandatory disclosure and reporting requirements. **Yet only 13% of CGFR leaders say their organisations have prepared litigation defence and mitigation strategies or have validated sustainability claims in their current and historic marketing and advertising.**

Understanding the litigation threat in CGFR

Sustainability litigation risk is growing, and the CGFR sector is particularly vulnerable to issues like greenwashing and forced labour. New disclosure requirements, complex supply chains and large customer bases all mean greater risk. Intense competition makes it common for businesses to refer their rivals to regulators for potential breaches.

While litigation usually aims to address damages or repair harm, we're increasingly seeing proceedings used as a tool by NGOs and activists to influence organisations and lawmakers. The objective is to force the hand of lawmakers by putting the spotlight on unsustainable practices and compliance issues. In addition, changes to democratize class actions raise the risk of high-profile, costly group proceedings.

Around half of litigation actions find in the plaintiff's favour. That number is set to increase in the sustainability arena, where case law is establishing a link between climate change and human rights.

Jeremy Sher
Partner,
UK

"Your reporting is no longer being read only by financial stakeholders. A much wider array of people and organisations are now scrutinising what you say in the public domain. These include providers of human capital. They include political leaders, who set the policies and make the rules that affect how your business operates. They include activists whose actions can impact the firm's brand, reputation and license to operate. Even more broadly – and perhaps most importantly – they include everyone affected by the company's entire product lifecycle."

Kelly Sporn
Special counsel,
International Head of Strategic Delivery
– Sustainability & ESG, UK

Emerging compliance gaps

As new regulation rapidly outpaces business's capacity to respond and the threat of litigation looms large, organisations are struggling to meet new sustainability demands:

68% of leaders surveyed admit that they simply can't meet all of their obligations.

64% said they're struggling to balance sustainability reporting with commercial priorities.

53% are concerned about their exposure to disputes risk, resulting from new disclosure and reporting requirements.

66% don't have the necessary financial resources to keep up with new regulation.

18% have completed the necessary upgrades to their compliance and reporting infrastructure.

"Organisations' immediate priorities are driven by resource constraints and regulatory deadlines. But this doesn't mean they are straightforward. In sustainability, there are no small undertakings. Even complying with vertical regulations on, for example, green product packaging can take many months and cost millions of dollars. But firms can't ignore large horizontal market issues like sustainability transition. Long deadlines belie the complexity of the task. And even businesses that are currently out of scope can quickly find that one good growth year or strategic acquisition sees them meet the thresholds for mandatory reporting."

Teresa Hitchcock
Partner, UK Head and International
Co-Head, Safety Health & Environment, UK

Dividing limited resources is opening up compliance gaps. Leaders have little option but to focus on short-term regulatory compliance at the expense of preparing for longer-term market risks.

Immediate pressure to comply with existing rules on, for example, packaging, labelling and plastics is a first-order concern for the majority of CGFR companies. However, transition planning, mandatory reporting and sustainable sourcing will fast become significant risk factors if left unaddressed, with leaders increasingly concerned about future legal issues in these areas.

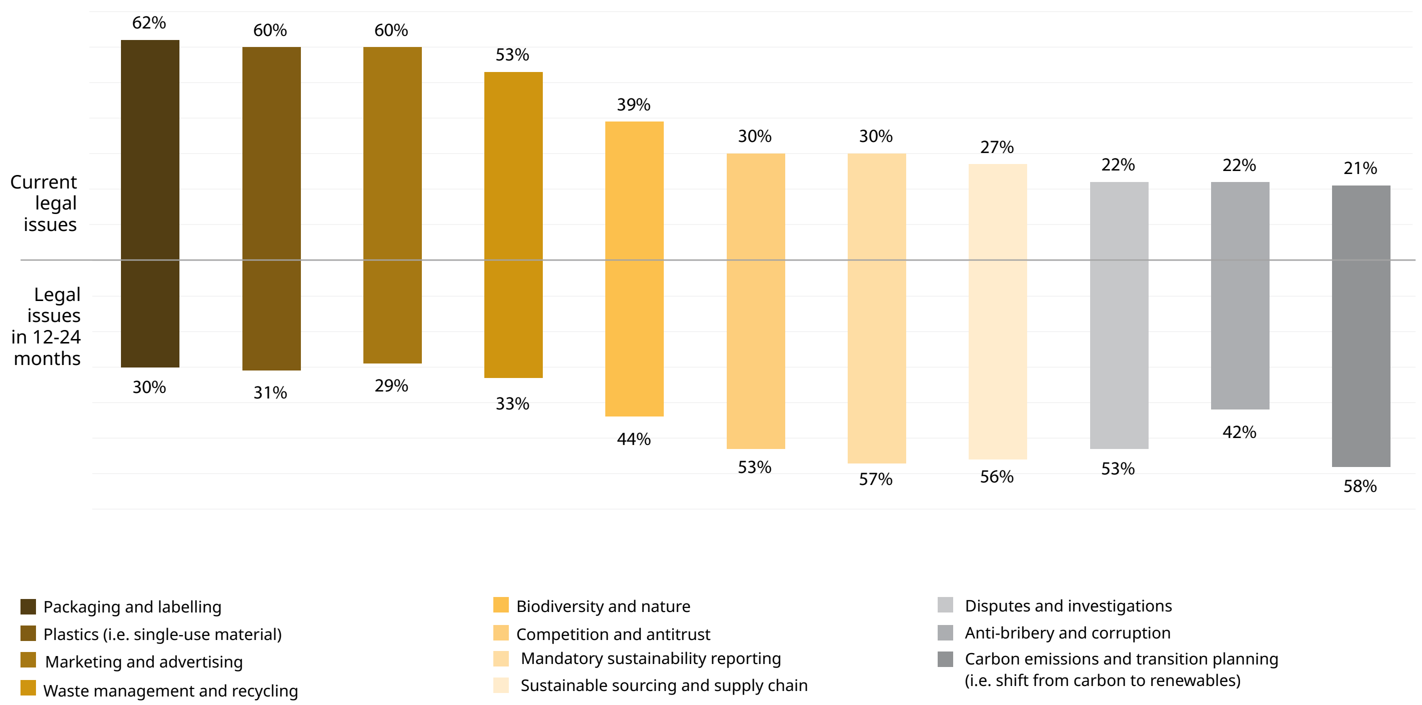
Disputes and investigations are also becoming more pressing legal issues over the coming years. Leaders predict compliance gaps will emerge as stakeholders increasingly scrutinise sustainability reports and claims.

Need to know: Climate transition plans

Climate transition plans are strategies for an organisation's transition to a lower-carbon, climate-resilient economy or for achieving Paris-aligned goals. They are essentially a time-bound roadmap for how an entity will achieve its objectives and priorities on climate action. Nature or nature-positive transition plans are the equivalent for how an organisation will refrain from adversely impacting biodiversity and natural ecosystems, or how they will work to reverse nature loss.

Policymakers around the world have introduced or are considering introducing mandatory requirements for businesses to disclose or produce transition plans.

Current legal issues vs. legal issues in 12-24 months



SECTION 2

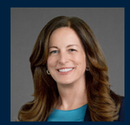
How organisations are responding to sustainability pressures

Leaders fear short-term decisions will lead to long-term problems

Organisations are considering multiple options to meet new regulatory requirements and stakeholder expectations. But faced with stretched resources and conflicting challenges, the steps they're taking, and those they're deprioritising in the short term, may be exposing them to long-term risks.

Priorities	The short: immediate actions companies are taking or considering to deliver these priorities	The long: anticipated risks arising from their actions
1 Manage sustainability risks in the supply chain	Locking in sustainable suppliers and collaborating with competitors are common strategies for improving supply chain transparency.	Leaders are concerned about the potential impact on the cost of sustainable materials, and scrutiny from competition authorities.
2 Offset the growing cost of compliance	Many companies are raising prices, scaling back product lines and reducing their sustainability commitments.	They predict reputational fallout and litigation if stakeholders expect more than they can deliver.
3 Manage growing mandatory reporting risk and complexity	Some CGFR companies are adopting dual structures, and relocating operations, to reduce their compliance burden.	This could expose them to even greater regulatory risks, while introducing significant inefficiencies.

"Between growing EU regulation and rising litigation globally, there's no hiding place for organisations. Claims about packaging, plastics use, and progress towards net-zero must be accurate and complete, and companies must work out how to validate the messages they promote, or face referral to regulators, litigation proceedings or both."



Kristy Balsanek
Partner and Global Co-Chair of ESG, US

1. Closer engagement with supply chains to mitigate sustainability risk

As the rules tighten on issues like deforestation-free products and preventing forced labour, provenance and supply chain integrity are becoming critical. Companies are getting closer to their suppliers to exercise greater control:

67% of leaders surveyed say they're locking in sustainable suppliers with exclusivity agreements.

67% are sharing sustainability data with suppliers.

56% are looking to acquire sustainable suppliers to shore up access to ethical raw materials.

As the due diligence and reporting demands on suppliers grow, leaders also see the benefit of managing a smaller universe of suppliers.

65% are rationalising their supplier base to maximise oversight.

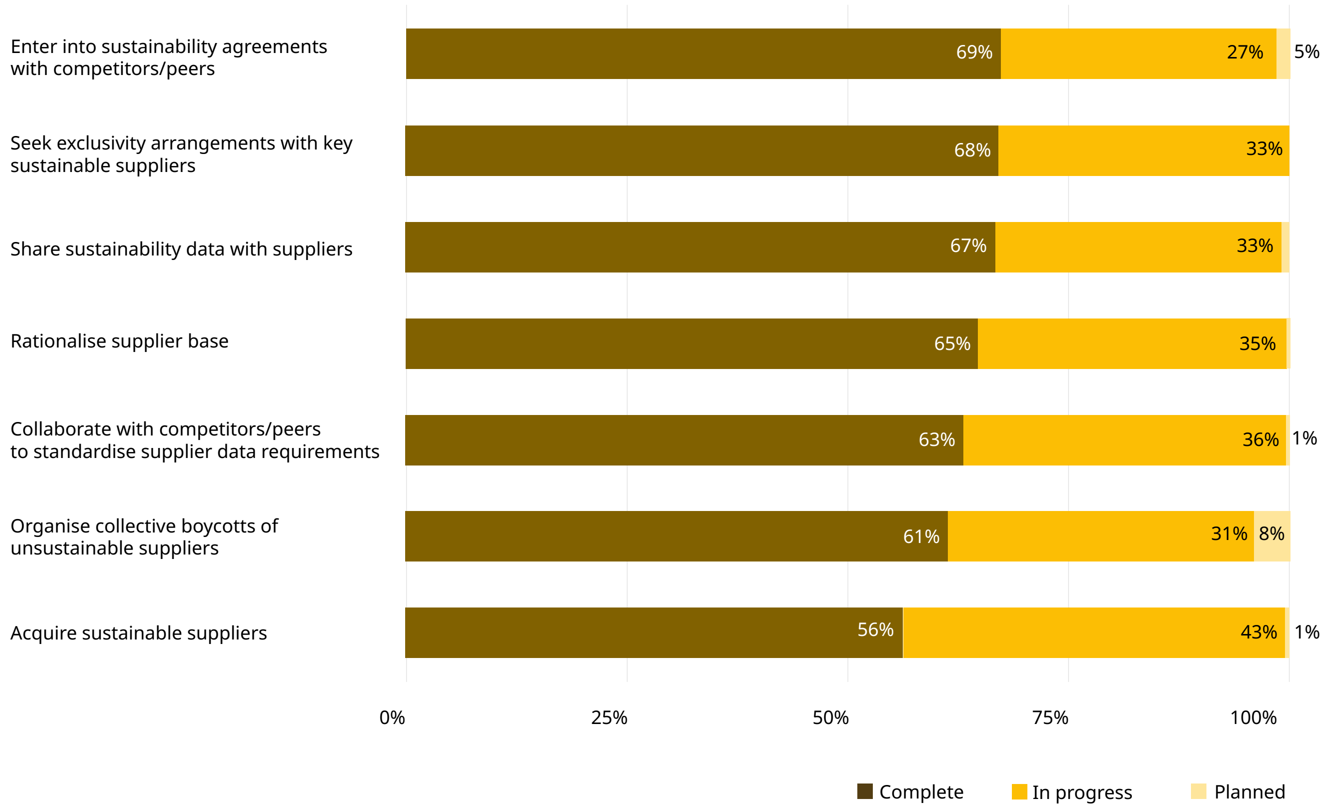
But leaders point to the long-term risk of market distortion as a consequence of these strategies:

62% are concerned that their supply chain interventions will inflate the cost of sustainable inputs.

55% expect some smaller suppliers to fall into distress because they can't provide the data that brands need to comply, concentrating the power of larger companies.

59% are concerned about exposure to antitrust risk.

Steps to improve supply chain transparency



"New sustainability obligations are placing suppliers under huge pressure. This is especially acute for smaller companies. You have more to gain from helping suppliers get in shape for the new regulation, so give them the flexibility to adapt. Allowing them to fall into distress under your sustainability disclosure and reporting demands is counterproductive and reputationally risky."

Kristy Balsanek
Partner and Global Co-Chair of ESG, US

New procurement strategies to meet the sustainability compliance challenge

This report supports what we see in practice: organisations that are exposed to sustainability risks in their supply chain are worried about how to comply with stricter regulations. They feel they have limited control over their tier one suppliers, and even less control over suppliers engaged further down the value chain.

Clients are realising that a supplier code of conduct and general contract terms are not enough to get the data they need to identify risks or to provide the leverage to change supplier behaviour. They are now figuring out how to get both. In practice, this requires managing various trade-offs:

- Developing fewer and deeper relationships to increase oversight and insight results in a less diversified supply base.
- Exclusive contracts requiring greater transparency from the supplier also require greater investments and responsibility on behalf of the customer if there is a potential or actual issue identified.
- Stricter contractual requirements, including cascading policies down the supply chain, need to be supported by increased audits and checks which can be costly.
- Vertical integration can lead to entry into new markets and jurisdictions with different sustainability risk profiles to the core business.

Since every company's supply chain and footprint is unique, a thoughtful procurement strategy needs to be underpinned by a risk-based analysis of potential and actual risks. Only then can the compliance, commercial, operational, resilience and reputational risks and impacts be understood, and changes made to supply chain composition and relationships.

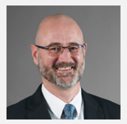
James Dancer
Head of UK and Europe DLA Piper Business Advisory, UK

"Who pays for the cost of compliance will come down to which players have the most bargaining power in the value chain. Some suppliers will be business-critical, and able to push the cost up to brands. Others may have to accept new conditions from the companies they sell to – and potentially transfer the cost of meeting them onto their own suppliers."

Jyoti Singh
Partner,
Australia

Working within antitrust rules

- Pursuit of sustainability can lead the unwary into antitrust violations. Competition authorities worldwide are struggling to apply traditional antitrust disciplines of competitor collaborations, supply chain restrictions, abuses of market power, M&A activity and joint ventures to commercial practices aimed at decarbonization and conservation. From Singapore to Tokyo and Brussels to Washington, D.C., regulators are enacting new guidelines and rules on a wide range of "green antitrust" issues.
- Niche markets for "green" products many be distinguished from broader markets for less-sustainable alternatives. Higher market shares ion smaller markets may lead to surprising outcomes in merger reviews and investigations of alleged anticompetitive practices.
- Regulators in some countries have considerable statutory authority to recognise sustainability justifications for otherwise-anticompetitive practices. Regulators elsewhere are reinterpreting rules focused on efficiency and economic welfare to account for the broader benefits of sustainability.
- Exclusivity arrangements with sustainable suppliers may be scrutinized closely. Market dominance may become more of a factor as sustainably procured resources become scarce.
- Vigilance against "greenwashing" in marketing claims and securities disclosures is on the rise.
- Collective action on supplier reporting standards may require pre-authorization from regulators.
- Coordination to boycott suppliers on the basis of sustainability may constitute a cartel.
- Organisations should heed the variations in national competition laws in their sustainability initiatives.



Nathan Bush
Partner,
Asia

2. Scaling up on price and scaling back on product range

The growing cost of compliance and threat of litigation are top challenges for organisations when it comes to meeting new sustainability obligations.

To offset risk, companies report that they're taking defensive action on pricing, product ranges and sustainability commitments:

70% are increasing prices to protect margins.

64% are scaling back some product lines.

52% are reigning in sustainability commitments and targets.

47% are cutting back R&D on sustainable products and services.

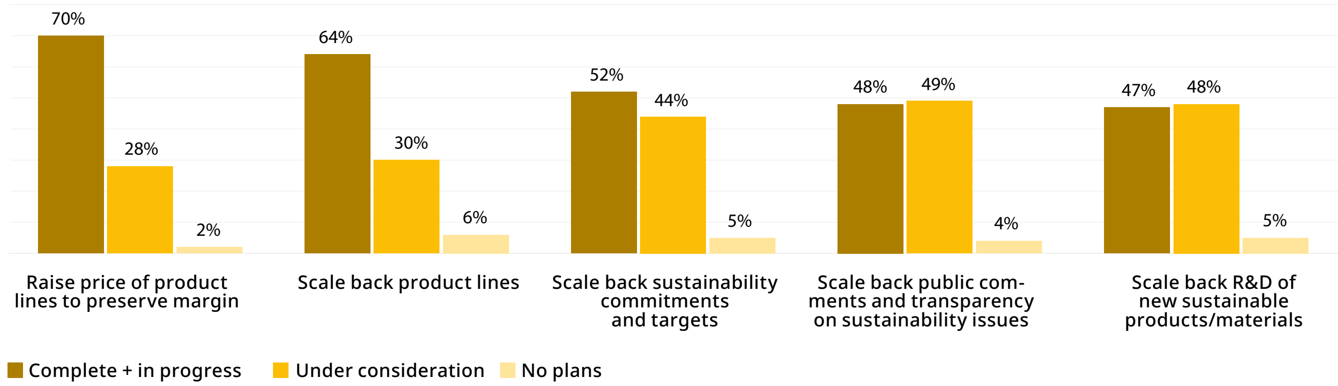
But far from insulating them from scrutiny, leaders anticipate that any retreat from sustainability will ramp up attention in the long run.

60% of those surveyed are concerned about reputational damage if investors, customers and employees question their organisation's commitment to environmental and social governance.

Eroding stakeholder confidence may also impact the bottom line.

55% of leaders fear that it will weaken their company's competitive advantage, if they can't offer the sustainable offerings customers want; or if poor sustainability performance raises their cost of capital.

Steps to manage growing cost of compliance and litigation



"CGFR organisations are hyper-aware of greenwashing risks. In the past six months, we've seen a growing number of enforcement actions and regulatory investigations and litigation proceedings related to statements on sustainability and green marketing claims. Rolling back commitments is likely a response to companies having made claims about 'green' credentials, including forward-looking goals and targets, without the necessary evidence. But silence is not a viable long-term strategy. Instead, companies must ensure that their claims are specific and quantifiable and reflect the company's broader strategic priorities."

Jessie Buchan
Partner,
Australia

3. Reconfiguring operations to reduce the compliance burden

Surprisingly, a majority of companies in the CGFR sector reported that they're considering major changes to their corporate structures and operations – the aim being to remain under reporting thresholds, and outside the jurisdictions with the highest regulatory standards.

Despite the enormous complexities involved, almost all businesses surveyed are considering dual structures to separate EU and non-EU entities. Nearly half are pushing forward with these plans, with the other half actively considering them.

At the same time, the majority say they're relocating, or considering relocating, some of their operations and manufacturing facilities outside of Europe.

These steps may represent commercial decisions that were already in motion. For example, shifting operations to mitigate higher production costs or access key talent.

But efforts to circumvent sustainability regulation may expose organisations to a range of risks and inefficiencies over the long-term:

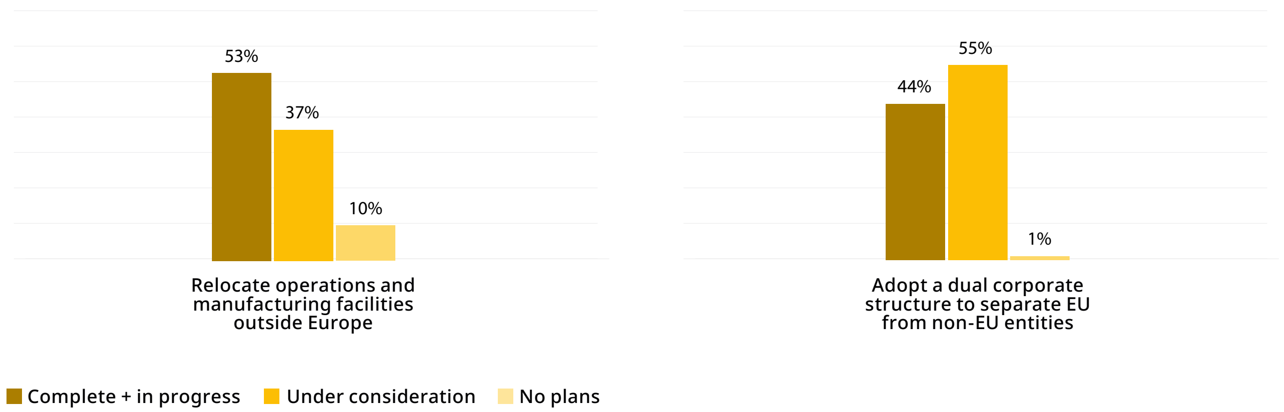
57% of the leaders we survey believe these strategies are likely to dilute their progress towards sustainability.

66% are concerned about greater regulatory uncertainty and risk stemming from changes to structure and location.

59% pointed to decentralisation risks in other compliance competencies – such as bribery and corruption, areas where many companies have centralised their compliance activities.

Adjusting corporate structures and geographical footprints may also make compliance less efficient. 60% of participants predict greater reporting complexity if they separate out their EU operations.

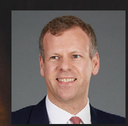
Steps to manage growing regulatory risk



"Trying to fly under the radar is an insufficient way of dealing with sustainability regulation. Your license to operate now depends on meeting rising standards and expectations, and stakeholders will want to know that you're responding to the spirit, not just the letter, of the law. So allow sustainability imperatives to inform and shape your business strategy, and take steps now that will meet your organisation's long-term goals."

Daniel Street
Partner,
New Zealand

"Dual structures may offer short-term relief, but are unlikely to be a long-term solution and may be difficult to justify to stakeholders. Restructuring of operations also gives rise to other issues, such as tax, corporate governance, employment law compliance and the cost of capital. Companies considering these strategies should understand the full range of implications before they jump in. Organisations may also find that by the time they've restructured, their situation, or the range of regulations they are subject to, have changed – if not both. The pace of regulatory change, and pressure from stakeholders, will increase as the climate crisis worsens, so the work of becoming more sustainable will need to be done."



Simon Wright
Partner,
UK

The limitations of dual structures

Adopting dual structures may work as a transitional strategy, while organisations grapple with new sustainability reporting requirements. But it's likely to come unstuck over the long term. As we saw in the banking sector following the global financial crisis, ring fencing is not without its challenges.

From a reputational perspective, removing parts of a group from EU sustainability obligations will be difficult to explain to stakeholders. Companies will still need to justify their unsustainable products, services and practices, even if they're out of scope.

And in a practical sense, it's also unlikely that CGFR organisations of any size will be beyond the reach of EU sustainability law, however they organise themselves. CSRD rules apply to non-EU entities that trade or source from within the Union. Plus, a key principle of the Directive is 'completeness'. Groups must disclose the sustainability effects of their operations, for good or bad. Where a non-EU division is having an impact within the Union, that must be reported.

Strategically, geography will not offer an escape from mandatory sustainability reporting in the long run. The rules in more lenient jurisdictions are tightening. Countries around the world are adopting the International Sustainability Standards Board's recommendations. Yes, these are less stringent than EU regulation, but given the bloc's economic power, the CSRD will surely become the global gold standard. We've seen the same happen with GDPR in the data protection arena.

At the same time, dual structures and relocation come with complex dependencies. There are huge implications for tax, employment law compliance and the cost of capital, which companies considering these strategies will need to understand before they jump in.

Stuart Murdoch
Partner,
UK

SECTION 3

Building a more strategic response to sustainability

What challenges do organisations need to overcome?

Meeting short-term demands and laying the foundations for long-term success needs a strategic response. Our research highlights three areas that are critical to building a holistic approach to sustainability, where leaders say they face big challenges.

1 Leadership and culture

Despite an awareness of the increased risk of short-termism evident from the survey, organisational culture and attitudes to risk may be hindering more strategic responses to sustainability. Low risk appetite, political apathy and creating a culture of transparency and accountability are top challenges cited by leaders in our research.

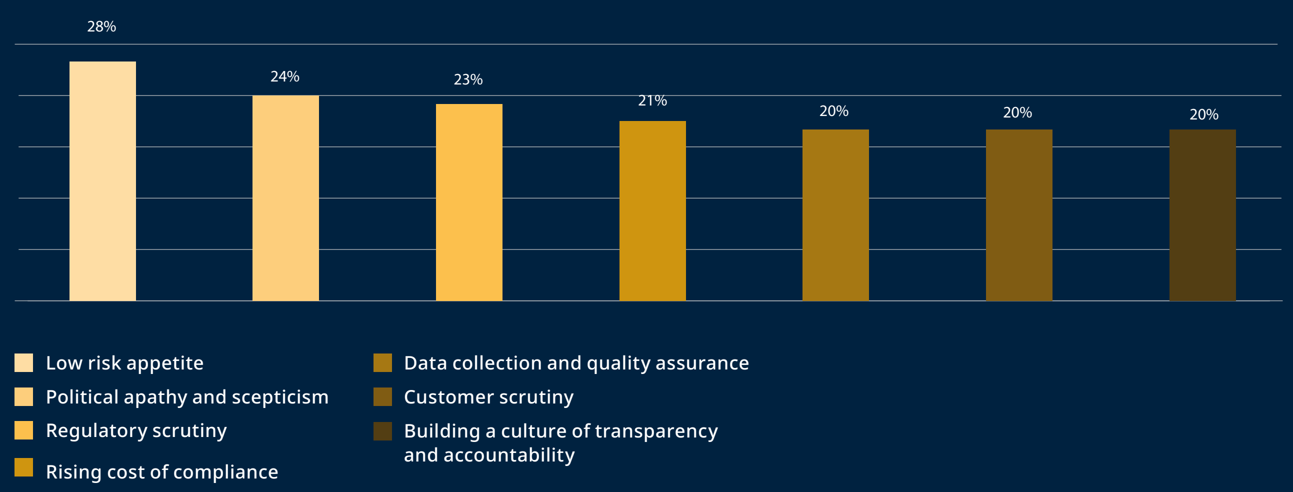
2 Data management and quality assurance

For both sustainability reporting and supply chain due diligence obligations, businesses will need a huge amount of data on not only themselves but also their supply and value chains. The ability to collect, validate, manage and analyse all that data is vital. But organisations say they lack the necessary data collection and quality assurance infrastructure, or the financial resources to build it.

3 Stakeholder engagement

The sustainability agenda is forging a different relationship between businesses and their stakeholders. In particular, leaders cite scrutiny from regulators and customers as sustainability challenges, which can lead to litigation and reputational risk. Despite a regulatory obligation to understand everybody affected by their products and services, organisations have not yet prioritised stakeholder engagement.

Highest priority challenges for meeting new regulatory requirements



1. Embedding sustainability from the top down

Embracing sustainability – and managing the associated risks – are far more than regulatory necessities or ethical niceties. Sustainability is a core business risk and a core business opportunity. It is a strategic issue squarely within the domain of the board and the executive management of businesses.

Understanding sustainability risks, taking ownership of the sustainability narrative, and accelerating efforts to embed the skills, culture and behaviours that support it are all key items that should be on the agenda at the top of the house.

But only 25% of our survey participants feel they have adequate leadership buy-in for the transformation that sustainability demands. Most (56%) see a low risk appetite within their organisation as a barrier.

What's more, this tentative position is being exacerbated by the current political environment. Several parties are running on an anti-green platform in global elections, with threats to roll back government sustainability agendas. More than half (55%) of leaders believe this is contaminating the sustainability debate and slowing progress.

25%
of our survey participants feel they have adequate leadership buy-in for the transformation that sustainability demands.

56%
see a low risk appetite within their organisation as a barrier to progress.

“A genuine commitment to sustainability from the C-suite is crucial. Without the board's engagement, reporting will be reactive and tokenistic. If leadership fails to take a holistic view, the teams working on compliance will be forever playing catch-up. To engage properly with sustainability, board executives need to understand the strategic implications and risks for the business, and they must witness the positive performance impact available to businesses which get sustainability right. That's what will secure their attention and – ultimately – catalyse the required change.”

Alex Tamlyn
Partner and Chair, Boardroom Counsel, UK

Sustainability as a financial stability issue

The Network for Greening the Financial System (NGFS) is a network of over 120 central banks and prudential supervisors committed to strengthening the global response required to meet climate targets under the Paris Agreement. Amongst other things, it is examining the implications of climate change and biodiversity collapse as financial stability issues.

The NGFS has endorsed the approach pioneered by the Bank of England in expecting banks and insurers to consider how climate change will impact them and their customers. This could ultimately impact CGFR organisations' cost of or access to capital and insurance.

Sustainability skills are in high demand

Sustainability reporting has expanded compliance teams' workload exponentially. As a result, leaders are concerned about skills gaps.

Specialists remain scarce in what's a relatively new area of compliance. At the same time, meeting increasing regulations demands new expertise from employees, executives, and board members – especially in pioneering jurisdictions like the EU. Sustainability and legal teams, for example, will need a baseline understanding of data analytics and validation procedures.

In that context, more than half of leaders (51%) say their company lacks the skills and capabilities to meet their sustainability obligations. Efforts to strengthen internal capabilities have therefore received the most attention in sustainability action plans:

25% of organisations have provided leadership training on sustainability reporting.

22% have recruited strategic legal personnel.

There's undoubtedly a strong desire among organisations to get to grips with sustainability reporting, as well as engage outside advisors across multiple jurisdictions. They're working to improve their internal skills and recruit the right people to the right roles across multiple jurisdictions. But this is a new discipline. Real experts can be hard to find.

Helen Colquhoun
Partner,
Asia

The fundamentals of sustainable governance

Organisations will struggle to meet their obligations without buy-in at the most senior level. Viewing sustainability through a strategic lens, rather than in terms of compliance frameworks, will unlock resources in line with the scale of the transformation required.

Armed with a holistic view, the board can:

- Determine the firms' strategic priorities based on its key sustainability impacts and what matters most to stakeholders.
- Develop an authentic sustainability strategy that reflects these factors.
- Communicate this strategy internally and to the market.
- Create a values framework that will drive the right behaviours.

Behavioural change has to start at the top. Your board executives must model the actions and practices that underpin a sustainable business. Without that steer from the most senior ranks, the rest of the organisation won't follow suit.

Guido Kleve
Partner,
Germany

Need to know: Competence greenwashing

Many businesses are alive to the concept of greenwashing, but a newer idea is that of "competence greenwashing". The term was devised by Professor Kim Schumacher to refer to the practice of equating immaterial sustainability and ESG knowledge, basic sustainability awareness, or passion for ESG-related issues with subject matter expertise.

Given the increased complexity of the sustainability transition, it is important that businesses consider a blend of approaches to ensuring they have access to the right expertise and advice, including using external advisers with the right skills sets, experience and expertise, ensuring their boards, management and senior leadership teams are provided with training on the core issues, risks and opportunities, as well as evolving their own talent management.

2. Scaling up data management and quality assurance across the supply chain

Much of the sustainability law and policy currently being introduced worldwide takes the form of due diligence and disclosure regimes. The frameworks demand narrative reporting and detailed metrics on a wide range of topics: from workforce demographics to carbon emissions and biodiversity. This means accessing, and getting to grips with, huge amounts of data, which the entities you need to report on may not be in the habit of gathering.

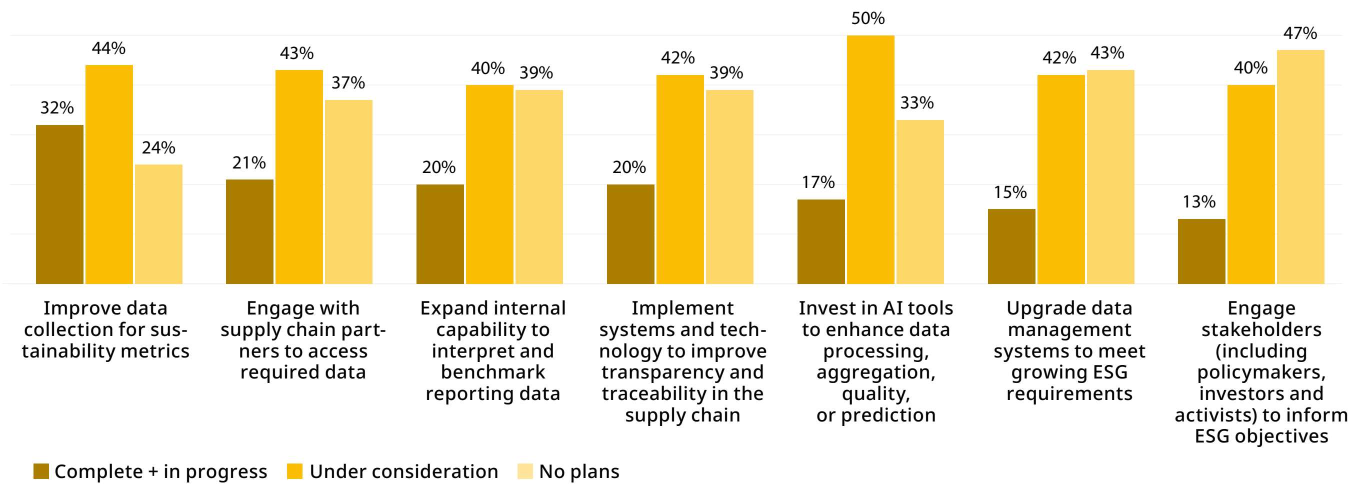
Leaders acknowledge that they're behind the curve on upgrading data capabilities:

32% feel they've made the necessary improvements to data collection for sustainability metrics.

20% have completed steps to strengthen their analytics capabilities to interpret the data they gather.

15% have finished upgrading their data management systems in line with new reporting requirements.

Reporting data priorities



> *"Establish clear governance framework and policies to support lawful collection and use of data, including privacy and other laws regulating collection and transfer of other."*

Andrew Dyson
Partner,
UK

Data management principles for mandatory reporting

By mastering data management, organisations ensure the accuracy and reliability of their sustainability data. This is crucial for compliance and gaining stakeholder trust. But it also leads to improved sustainability and business performance, enabling businesses to uncover valuable insights, drive strategic decision-making and enhance overall operational efficiency.

Collect

- Identify key metrics and determine data sources.
- Engage suppliers early and be realistic about what you're asking for.
- Work with procurement to understand contractual obligations.
- Focus on completeness of critical data – have you captured your full impact?
- Standardize procedures for consistency.
- Segment data based on geographic location and sensitivity. Ensure that data subject to cross-border restrictions is only accessed and processed locally.

Manage

- Implement robust data management systems, supporting secure storage and efficient retrieval of data.
- Establish clear data governance policies, including privacy considerations.
- Put in place a clear governance framework and policies to support the lawful collection and use of data, including privacy and other laws regulating the collection and transfer of other types of data.

Validate

- Use industry standards to determine data reliability.
- Lean on audit partners to assure calculations.
- Cross check numbers against multiple sources.
- Implement document validation processes

Analyse

- Take a holistic view using advanced analytical tools and techniques (including AI/machine learning) to identify trends, patterns and areas for improvement.
- Visualize results to communicate findings effectively.

3. Mitigating litigation risk

The interdependency of sustainability issues makes them particularly complex for organisations to manage. Decisions may impact multiple stakeholder groups and have far-reaching effects that aren't always obvious. What appears to be the sustainable option may not be.

Organisations are under unprecedented scrutiny as they decide which sustainability levers to pull, and the threat of litigation looms large. Companies in the CGFR sector fully expect to face sustainability-related litigation, especially as a result of new mandatory reporting requirements. Yet only 13% of CGFR leaders say their organisations have prepared litigation defense and mitigation strategies.

Further, engaging external stakeholders on sustainability issues is now a legal requirement under the CSDDD.

13% of organisations have completed steps to do so.

47% haven't even begun.

Managing sustainability litigation risk requires a truly holistic view. That means collaborating with a wider range of stakeholder groups than ever before; and thinking several steps ahead to understand the implications of decisions.

Expanding stakeholder engagement

The level of stakeholder engagement required by new regulation goes far beyond traditional, investor-relations style outreach. You'll need to understand your stakeholder communities in the very widest sense.

These include your providers of financial and human capital. They include political leaders, who set the policies and make the rules that affect how your business operates. They include activists whose actions can impact the firm's brand, reputation and licence to operate. Even more broadly – and perhaps most importantly – they include everyone affected by the firm's entire product lifecycle.

All of these groups must be brought into the process of developing your sustainability strategy. That will enable them to understand your narrative, along with the trade-offs it implies between commercial and sustainable goals.

How can companies gain a comprehensive overview of their stakeholder groups? The solution lies elsewhere within the new regulation: namely the CSDDD and the CSRD.

This requires you to conduct human rights and environmental due diligence and prepare double materiality assessments: evaluating the company's impact on the environment and society and how sustainability issues these in turn affect the company's ability to create long term value financially. The outputs from that analysis will give you a clear sight of the stakeholders you need to engage with.

Michiel Coenraads
Partner,
Netherlands

Reducing sustainability litigation risk

Managing litigation risk has changed considerably with increased focused on sustainability. The rise in impact litigation means businesses are facing potential claimants who are not solely focused on achieving a particular result in court but are seeking to put pressure on businesses to change their approach to sustainability. These litigants are often well-funded and well organised. We have heard many businesses say that they are taking the view that it's not a case of if they are sued, but when.

With multiple sustainability issues potentially being relevant to their businesses and their consumer focus, CGFR brands are particularly exposed to sustainability litigation risk, but a pre-litigation strategy will help you mitigate it. The best strategy for your business will depend on your particular circumstances – the size of and what markets you are in, where your operations are located, who is in your supply chain and value chain, how well you are engaged with your employees and who your wider stakeholders are in communities and beyond. Key points you should consider are:

JP Douglas-Henry
Partner and Managing Director,
Sustainability & Resilience

Anticipating your highest areas for litigation risk:

Understand your wider stakeholder footprint and map your litigation risk exposure. You need to understand the evolving landscape of sustainability case law, your regulators' positions and the concerns of key stakeholder groups.

Strengthen your governance and controls:

This should include ensuring that you are taking a cross-functional and cross-regional approach to ensure you are getting the clearest possible picture, ensuring congruence across your communications, implementing enhanced litigation hygiene and gold-plated risk policies in areas of higher risk.

Strengthen your stakeholder management and engagement:

Engaging with your key stakeholders about their concerns is just the start. Transparent communication with your wider stakeholder map, including your own employees in appropriate cases activist groups who are prepared to engage in a good faith dialogue, about your sustainability journey, including the challenges you face, should be a key part of your pre-litigation strategy.

Upskill your people to the new risks:

Greenwashing, including competence greenwashing, is changing the way many people undertake their roles. Greenhushing may create its own risks of stakeholder backlash. You need to equip your people across your organisation with an understanding of how the new sustainability risk landscape affects their roles.

Practical actions to strengthen the business, not just compliance

Sustainability is no longer a collection of non-financial objectives or simply a matter of being a good corporate citizen. Climate, nature and social issues, and how they are underpinned by good governance, are becoming issues of systemic risk and business opportunity. A new norm for businesses in scope of relevant laws and, in many instances, for those not directly in scope but part of the value chain of those that are.

The transition of our whole economy to address sustainability concerns is well underway, but there is still a long path ahead. As overwhelming as the volume of pressures from policymakers and stakeholders is on businesses right now, it is expected to escalate in the coming years. Our research indicates that the CGFR sector is feeling the strain, in a market context when they are facing more pressures than ever before. But these new imperatives should not be viewed just as a burden. The transition represents an opportunity for CGFR businesses – not only to strengthen their responses to sustainability challenges but to improve their resilience and functioning overall.

Tackle strategic questions

Understand what sustainability means to your business.

There is no single definition of what precisely is encompassed by sustainability. What it includes will depend on where your sustainability risks arise and what your strategic priorities, values and ambitions are as an organisation.

Ensure your leadership is aware of the wider context.

Your board, management and senior leadership teams will be able to make more effective decisions when they can place emerging sustainability requirements in the wider context.

Develop a cross-functional approach to managing sustainability risk.

Many of the drivers of sustainability have indirect impacts across traditional organisational structures and will affect different roles in different ways. Bringing these perspectives together will enable you to manage your risk and spot opportunities better.

Map and address exposure

Map your regulatory exposure in disclosure and reporting.

With the plethora of mandatory disclosure and reporting requirements and lack of convergence, many businesses would benefit from mapping their wider direct and indirect exposure to inform their strategic approach to compliance.

Review your communications, historic and current.

Increased stakeholder scrutiny may expose you to any gaps between what you are saying and what you are doing or inconsistencies across your organisation.

Map your supply chains and engage with suppliers.

Supplier codes of conduct will not be enough under the new rules. Understand which suppliers are the most strategically important or represent the greatest areas of risk. Work with these suppliers to invest in education and training, design monitoring and due diligence processes against key metrics, and develop escalation protocols to remediate any issues.

Get ahead of scrutiny

Strengthen your policy, legal and regulatory risk management framework.

Ensure that your approach to sustainability horizon scanning takes a holistic approach that recognises the interdependencies of the various regulations and works across your functions. Set your scope far enough in advance to allow you to effectively plan your response – the key sustainability regulations take longer to implement than many businesses assume. Consider obtaining a baseline of your current regulatory exposure to help you set your parameters for scanning in the future.

Don't let the disclosure tail wag the dog.

Don't treat disclosure and reporting as mere compliance exercises. Ensure that your materiality assessment adequately covers the topics required by sustainability diligence and reporting so that your reports reflect your actions and strategy rather than the other way around.

Get your data in order.

Put a data governance strategy in place. Understand how you are using proxies and be prepared to explain your rationale for them. Review your data infrastructure.

Use negotiation points to gain more targeted information from suppliers.

When renegotiating contracts or entering into new agreements with suppliers, use the opportunity to update your procurement protocols and due diligence questionnaires to get more targeted information on sustainability practices and impacts.

Implement pre-litigation strategies:

Assume you will be sued. Put pre-litigation strategies in place to allow you to be highly reactive to any future challenges.

APPENDIX

Research methodology

In June 2024, DLA Piper commissioned Coleman Parkes Research to conduct an independent survey of leaders in the consumer goods, fashion, food and beverage sectors. Companies included in the research have an average annual turnover of EUR664m.

600 interviews were conducted with Chief Legal Officers, Chief Sustainability Officers, General Counsel and Heads of Legal, Compliance and Sustainability in organisations representing the following jurisdictions.

COUNTRY	NO. OF INTERVIEWS
UK	86
Germany	85
Australia	86
Japan	86
Sweden	86
Spain	85
Italy	86

Contributors


Nick Rock
Partner and Global Co-chair,
Consumer Goods, Food & Retail sector,
UK


Alex Tamlyn
Partner and Chair,
Boardroom Counsel,
UK


Andrew Dyson
Partner,
Leeds

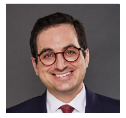

Carolyn Bigg
Partner,
Asia


Daniel Street
Partner,
New Zealand


Guido Kleve
Partner,
Germany


Helen Colquhoun
Partner,
Asia


James Dancer
Head of UK and Europe, Business Advisory
UK


Jeremy Sher
Partner,
UK


Jessie Buchan
Partner,
Australia


JP Douglas-Henry
Partner and Managing Director,
Sustainability & Resilience,
UK


Kristy Balsanek
Partner and Global
Co-Chair of ESG,
US


Simon Wright
Partner,
UK


Stuart Murdoch
Partner,
UK


Michiel Coenraads
Partner,
Netherlands


Nathan Bush
Partner,
Asia

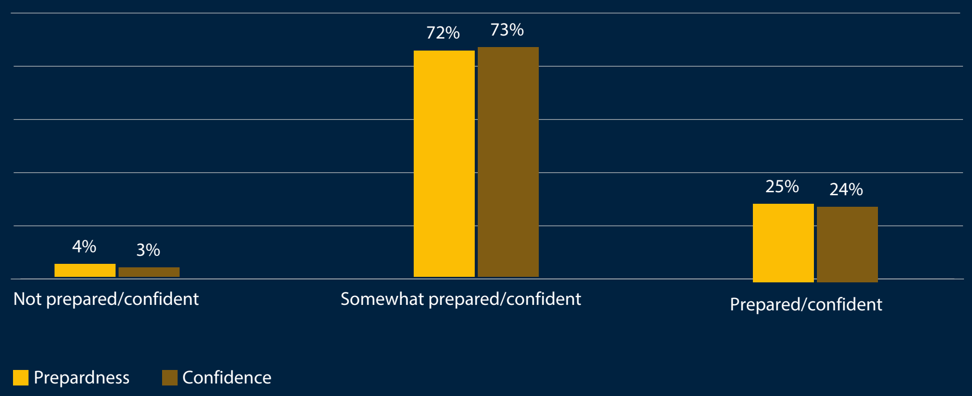

Rob Henham
Senior Advisor,
DLA Piper Business Advisory,
Australia

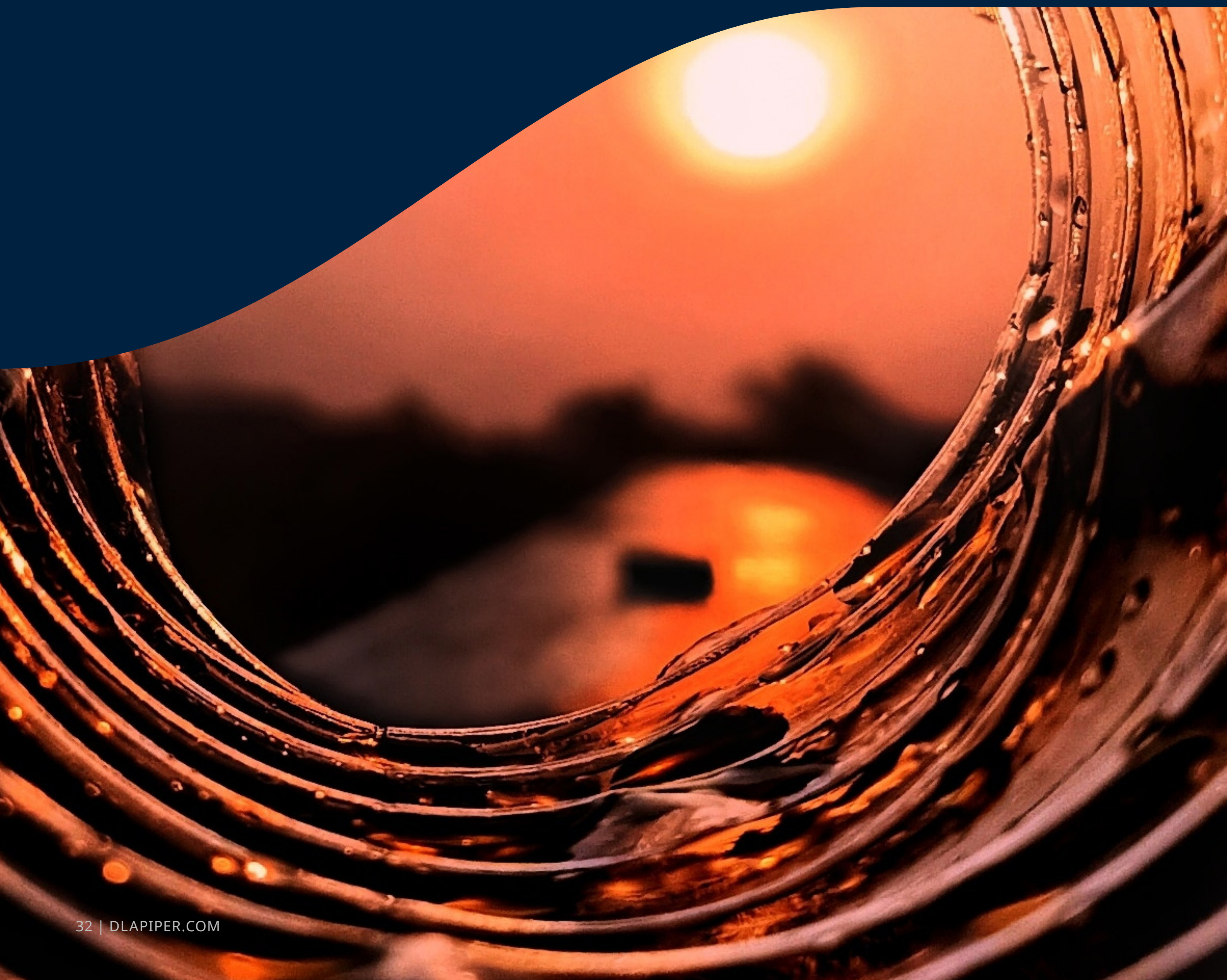
Kelly Sporn
Special Counsel, International Head of
Strategic Delivery – Sustainability & ESG, UK

Teresa Hitchcock
Partner,
UK

Additional data and benchmarking charts

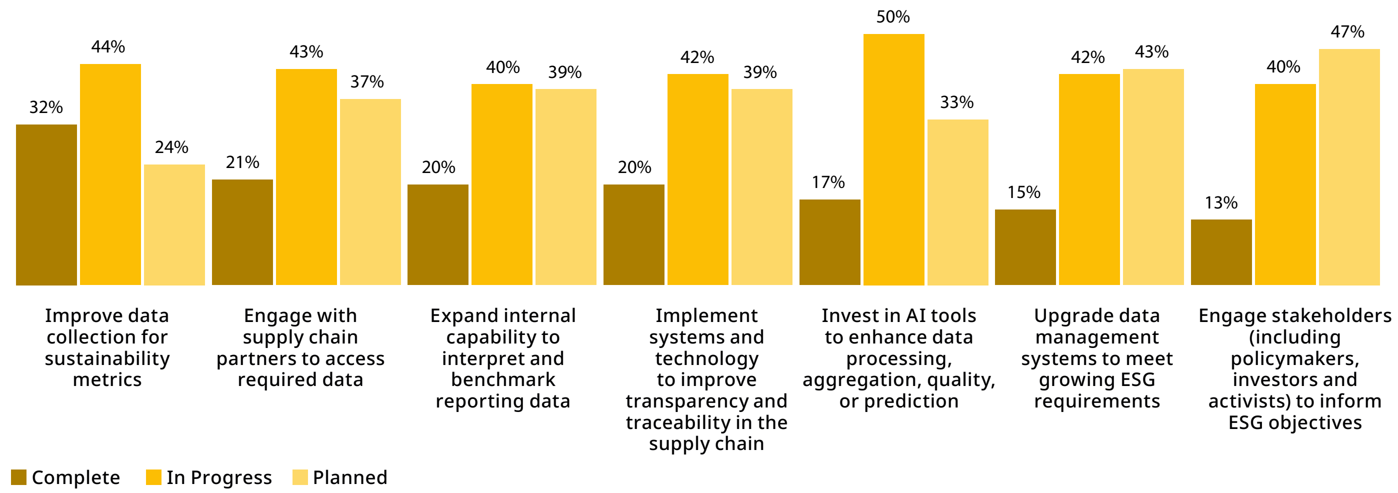
1. Confidence and preparedness to comply with mandatory sustainability reporting by the required deadlines



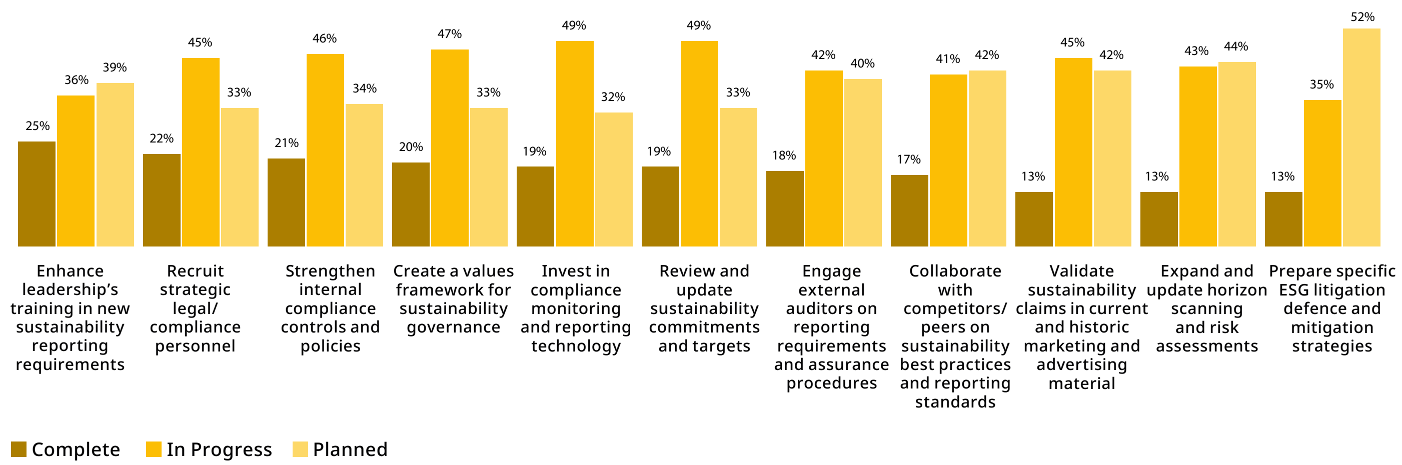


2. Progress against the key actions organisations are taking to improve and scale compliance (in order to meet mandatory sustainability reporting requirements)

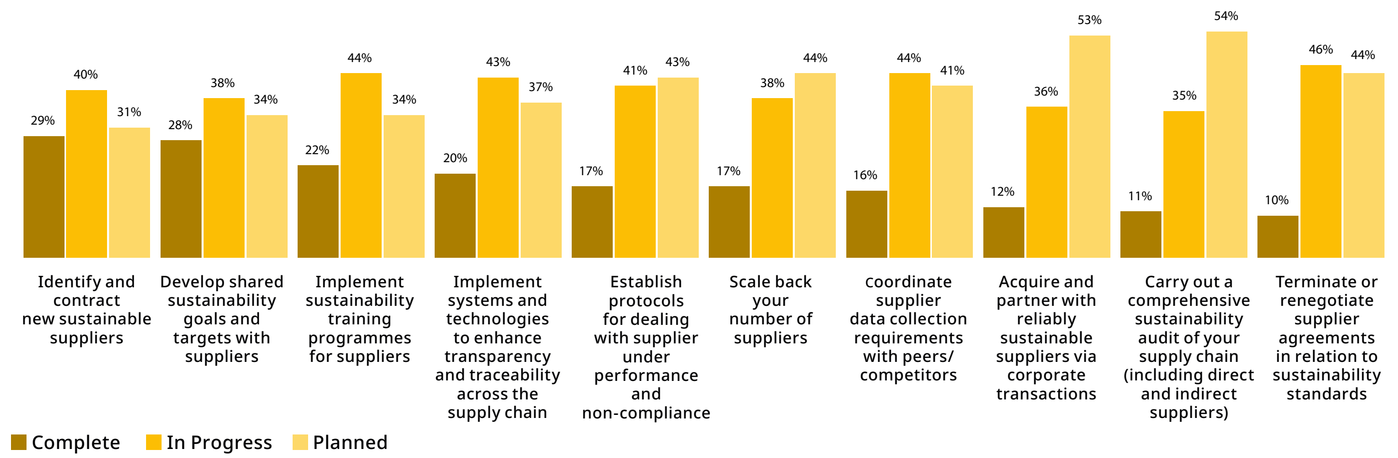
2. a) Reporting data and information in depth: Progress against key actions



2. b) Compliance infrastructure in depth: Progress against key actions

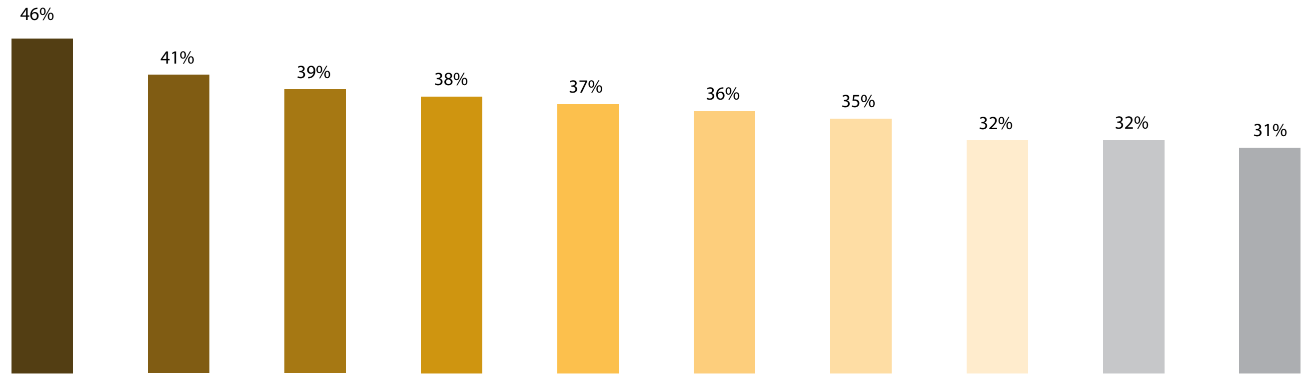


2. c) Supply chain transparency in depth: Progress against key actions



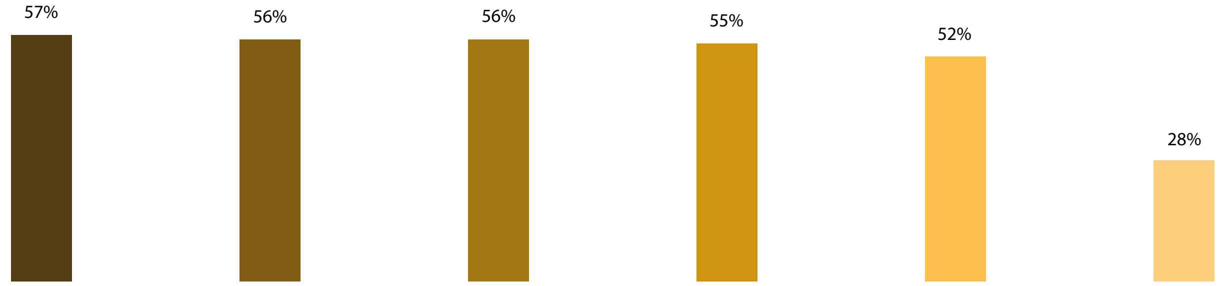
3. Key challenges associated with meeting new regulatory requirements

3. a) Risk and regulatory challenges



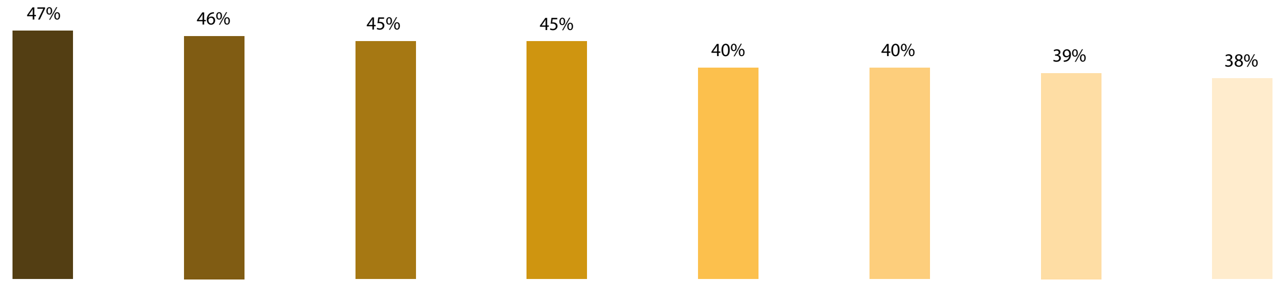
- Regulatory scrutiny
- Customer scrutiny
- Rising litigation risk
- Competitor/peer scrutiny
- Understanding new legal obligations
- Navigating an evolving regulatory landscape
- Overlapping regulation (product and enterprise level)
- Divergent regulation (across different jurisdictions)
- Shareholder/investor scrutiny
- Policy uncertainty arising from elections

3. b) Behavioural and cultural challenges



- Political apathy and scepticism
- Low risk appetite
- Building a culture of transparency and accountability
- Addressing resistance to change
- Stakeholder engagement
- "Greenhushing"/concern over getting ahead of the market

3. c) Practical and operational challenges



- Rising cost of compliance
- Data collection and quality assurance
- Access to accurate supplier data
- Building a business case for investment
- Resource and skills constraints
- Complex corporate structure
- Determining compliance priorities
- Complex supply chain

Notes

About us

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help companies with their legal needs around the world.

dlapiper.com