

<https://www.law.com/corpocounsel/2021/03/29/10-ways-corporate-counsel-can-contribute-to-their-companys-esg-efforts/>

10 Ways Corporate Counsel Can Contribute to Your Company's ESG Efforts

By E. Leigh Dance and Anna Livia Mazzoni | March 29, 2021



Pictured left to right, top to bottom is: E. Leigh Dance, David Golden, Paul Lalli, Carmen Nuzzo, Hugh Welsh and Anna Livia Mazzoni (quoted in this article)

2020 saw rapid growth in stakeholders' engagement with environmental and social issues as well as corporate governance. More in-house Legal leaders and their teams actively support their organization's ESG efforts today, yet we're finding that most of you have not yet defined how you can or will contribute.

Legal teams increasingly recognize that ESG is both an opportunity for the legal function and a major new risk. Obviously Legal can clarify ESG regulatory requirements and ensure compliant reporting. More importantly, in-house counsel and legal operations professionals have competencies to contribute far more to their company's ESG effort.

Corporate counsel often hesitate to get involved because of many companies' lack of structure in ESG roles and responsibilities, with unclear accountability. Here we suggest 10 ways that you can start contributing. You may already be practicing a few. We hope these suggestions will help you and your legal team get more involved. You have a golden opportunity to add value to your company by supporting the organization's ESG efforts.

These recommendations draw from our ESG conversations with corporate counsel leaders across diverse industry sectors globally, gathered in preparing the first comprehensive REPORT ON ESG ISSUES FOR CORPORATE LEGAL & COMPLIANCE LEADERS. Lots more info, resources, definitions and case examples can be found in the report.

Our key premise is that general counsel have both a bird's-eye view of the organization and understand its wiring. You can connect the dots and suggest ways to implement strategic ESG change across the supply chain, R&D, manufacturing, service delivery and every other business and function.

While the likely ESG leader will not be the chief legal officer, corporate counsel play a vitally important role given your enterprise knowledge and your advocacy and influence skills. We recognize that ESG is ultimately a Board & C-Suite level responsibility and cannot be delegated to one function-- it must be woven into the fabric of your business. You can help make that happen.

1. Ensure that Legal's role goes beyond late stage ESG disclosure review.

Accusations of greenwashing presents an important and growing risk in ESG reporting. Without integral involvement of ESG-knowledgeable in-house counsel, you can expose the company to risk of incomplete or misaligned ESG disclosures—and thus trigger litigation, regulatory inquiries and potential damage to reputation.

Paul Lalli, Global Counsel of Labor and Human Rights at GE, states “We need to involve lawyers as part of the ESG process full-time, not just hand them a disclosure statement and ask them to review it at the last minute. This narrow view also under-leverages the key competencies that experienced counsel can bring to the table. Lawyers can be valuable assets in helping lead a company's ESG efforts, especially as the space becomes more regulated globally.”

2. Advocate for your company's ESG goals through day-to-day governance.

In-house legal teams should learn and internalize their company's targets, metrics and priorities on ESG and help ensure that the company uses them in decision-making at every level. Understanding the impact of ESG on supply chain and procurement is an increasing area of importance for legal and compliance teams.

You must know what the company has identified as material ESG issues, why those issues matter to stakeholders, how they impact the business and how they are measured. This knowledge enables you to encourage consideration of adjustments to the business model in order to improve product and service sustainability and socially responsible practices. Business model changes are increasingly expected by ESG-focused investors and regulators.

3. Participate in your company's materiality assessment.

Materiality assessments define the ESG topics that matter most to your business and stakeholders, so that the company can prioritize internal efforts and report primarily on the material topics. The legal team must be involved in the materiality assessment, in part because

relevant regulation often dictates what ESG issues are material for the company's sector or locations.

As dynamic and cross-functional thinkers, legal leaders can identify ESG issues that may become material over time. You might ask questions such as:

- *Do our views on current and future material issues inform our strategy-setting process at the enterprise and business levels? And are we incorporating this into how we develop products and services?*
- *Are we successfully implementing the changes needed to perform well against future material issues? Is the speed and impact of our execution sufficient?*

4. Integrate ESG risk assessment and reporting into business strategy meetings and discussions.

ESG management is risk management – a natural disaster near a production plant can damage production; a cyber breach can threaten customer relationships; a lawsuit over gender or racial discrimination can harm your brand. According to David Golden, former SVP, Chief Legal and Sustainability Officer at Eastman Chemical Company, the company's legal chief is "Chief Risk Strategist and Chief Persuader" and thus has a crucial role in ESG.

Golden argues that the proactive Legal leader can identify future threats and opportunities (which inherently include ESG issues) and do what lawyers do best – analyze the complex system and suggest a strategy. Golden often saw his role as encouraging the company to create more value than the resources his company consumed.

5. Help identify and oversee your company's ESG metrics.

Hugh Welsh, President, General Counsel and Secretary at DSM North America, suggests that an important job for the GC is defining the best metrics for the company to use, to ensure that ESG goals align with corporate strategy. The biggest impediment to transparent ESG reporting is the lack of well-developed, secure data tracking and collection mechanisms across the company. Legal teams can help the business define and articulate responsibilities for collecting, storing and tracking diverse ESG data, understand the system(s) used to store it and how it's reviewed or audited. You may also contribute to evaluating if data is reliable, and whether your company should hire a third-party provider to streamline ESG data collection.

6. Help introduce training and education across the enterprise on ESG strategy and reporting.

Taking the Social in ESG, many legal leaders recognize that training and regular communication to build awareness of your company's specific ESG goals is crucial to success. It will foster a culture that owns and supports ESG efforts— and leverages the power of ESG to inspire and motivate employees. According to GE's Lalli, legal departments must spread the word on their companies' broad ESG framework and strategy and why it's important, not just for the regulatory issues. He adds, "Sustainability managers must make Legal a substantive part of the company's ESG program."

7. Help choose an ESG disclosure framework that is relevant and appropriate for the material issues your company has identified.

Who are your stakeholders? What ESG information do they require? What are they using the information for? Are there particular ESG frameworks/standards relevant to your industry? What standards are your industry peers or competitors using? What are the most common reporting frameworks/standards in the markets where you operate? What are the relevant regulatory requirements? General Counsels have a broad overview of the organization and are critical thinkers and communicators. You can help ensure that various stakeholder perspectives are addressed in reporting.

8. Take an advocacy role in your company, with executive and Board support, to engage with stakeholders: investors, employees, customers, industry peers, NGOs, communities.

More general counsel are participating in the effort to understand which ESG issues concern stakeholders most, including the info they expect the company to provide and the progress they want to see, as stated above. These Legal leaders then often recommend a plan and are tasked to lead partnerships with stakeholders and interested organizations to advocate for the company.

An example: a global industrial company's legal and compliance leader is partnering with its sector's primary trade association to provide training on material ESG issues that those in the sector must report on. The company also works with the trade association to discuss with ESG regulators the key challenges of current reporting requirements for the sector.

9. Help your executives navigate fast-changing ESG expectations by investors, consumers, communities, NGOs, media, suppliers etc.

While so many ESG regulations are in their early stages, ESG regulation in Europe and the UK have advanced significantly, and it's important to understand the fundamental elements. Failure to meet expectations or misleading ESG disclosures can result in legal challenge. In-house legal teams are wise to have 1-2 individuals or external advisors to track ESG developments in their sector both from the investor and regulator perspectives. This will help them educate the company in advance of possible reporting and rating changes and challenges.

10. Identify the top priority legal/reputational risks in your organization's ESG disclosures by adhering to ESG reporting best practices.

This requires knowing and collaborating effectively with responsible professionals in your company. When interviewed in our Report, Carmen Nuzzo, Head of Fixed Income Investment Practices at Principles for Responsible Investment (PRI) pointed out that "Companies' ESG data dissemination must be consistent with what is in the legal report given to investors. Often companies have a CSR report, an annual report and a legal document that don't match because they are pulled together by different people in the company to serve different stakeholders."

Current best practices are:

- provide the highest-possible level of clarity and completeness,
- make disclosures easily accessible to stakeholders online,
- ensure methodological consistency over time,

CORPORATECOUNSEL

- carefully monitor outgoing content, make all assumptions clear,
- impose rigorous reviews,
- establish an owner for all ESG statements.

We hope these suggestions are helpful to you. Let us know what is working best for your legal team, and do inform us about additional ways you are contributing value on ESG!

Thanks to those quoted, who have shared their ESG challenges and best practices with us. Leigh Dance is founder and executive director of Global Counsel Leaders, publisher of the Report mentioned and quoted in this article, which she co-authored with Anna Livia Mazzoni, an LSE graduate in Environment and Development who led the research and Report production. Contact us and find more info at www.GlobalCounselLeaders.com.