

## Going green: Compliance issues are mounting for corporates

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Sustainability has been the buzz phrase for the last couple years. The narrative that green energy is good and fossil fuels are bad has gone mainstream. Lots of investors now only want exposure to companies they consider to be socially conscious, and customers of energy companies want reassurances that their footprint is net zero carbon. This is good news for the environment, however, it opens the door to fraud. How much can we trust that

companies are telling the truth about how sustainable they really are, especially when there is now so much money on the line?

Trevor Horwitz, a senior compliance and legal consultant from Consilio, sat down with a number of lawyers from across the energy industry to discuss the compliance issues they are facing and how they make sure their businesses don't commit fraud, either intentionally or accidentally.

### **Difficulty communicating with the consumers**

Customers want to know the energy they consume is green. In the UK, Renewable Energy Guarantees (REGOs) are issued to confirm the origins of the energy. Guarantees of Origin (GoOs) have the same function in the EU. These are well understood within the industry but less so by most household consumers. "The regulator has set up REGOs as a form of green credentials for suppliers but not in a way consumers understand. This is an inherent challenge in demonstrating that you are doing a good thing," said one lawyer.

As REGOs and GoOs are fundamentally quite complex, some companies are bringing in marketing and corporate affairs specialists to help communicate them clearly to both investors and consumers. "Someone has just joined our corporate affairs team on a full-time basis to focus on green communication to the public, focusing particularly on REGOs," shared a lawyer.

Another lawyer explained that their consumers had trouble understanding the difference between "net zero" and "carbon neutral". "We do our due diligence to pick the right suppliers but we then need to put it on our website so the public understands," she said. The consensus amongst the group was that energy companies need to bridge the gap between the regulators and consumers themselves, rather than waiting for the regulator to make sustainability concepts more user friendly.

### **Supply chain concerns**

There is increasing scrutiny on renewable energy supply chains. Horwitz likened it to when mobile phones emerged and there was concern about where and how the individual components of the phones were created. People said that it would be impossible to track them back to the source but over time protocols were put in place. The renewable market doesn't have mature regulation yet but the CMA investigations into green washing is "taking the full life cycle into account".

One of the main issues is the potential for bribery of local authorities when energy companies are getting permission for infrastructure projects. The regulation on this is likely to tighten in the coming years and because of this, energy providers are increasing their internal audit capabilities to better understand their providers' supply chains. "We have a responsibility to know where the energy comes from but it is difficult to know how energy originates if it comes from a country far away," bemoaned one of the panellists.

### **Working from home throws up new challenges**

Working from home has become the norm and even when the pandemic is over most companies will still likely operate with hybrid models. This creates compliance issues for employees that need to keep their work secret. One panellist works for a company that has a number of traders that were sent home to work. To make sure they weren't sharing sensitive information they set communication monitoring software that recorded their messages and

websites they visited. "The traders are used to being closely monitored so there wasn't much push back," said the panellist.

Compliance teams have also been worried about the physical security of homes compared to the office. "In the office we had passes to stop people coming in but at home anyone can stroll in. It is easy to forget about security issues working from home," said a lawyer. To manage this, he set up regular online security seminars and constantly reminded the traders to have a clear desk policy like they would in the office.

One of the lawyer's companies decided to keep all their customer care team in the office because of concerns over personal data breaches. "We decided to keep the customer call centre open in the office for security reasons but one of the benefits was that kept customer service at a high quality," he said. "I had rumours of a drop in quality at energy providers that sent their customer care teams home," he continued.

It is great that the public are turning their attention to green energy but with it comes more scrutiny, and ultimately more work for the lawyers involved.

#### **Comment from Trevor Horwitz, Consilio**

Most organisations, large and small, are grappling with a four-fold Environmental, Social and Governance ("ESG") challenge where sustainability remains key. The first of which is how to convert long term vision and strategic objectives into actionable goals that can be achieved within timeframes set; the second challenge revolves around how to manage and influence the perceptions of consumers and wider stakeholders, especially in a culture of immediacy. The penultimate challenge is how to agree and set common accepted standards for ESG KPI's, while measuring and reporting performance both internally and externally. Lastly, organisations must decide how to successfully embed sustainability transformation in an organisation and its supply chain, given ever increasing uncertainty and tightened budgets.