

# GLOBAL GOVERNANCE IN THE FASHION INDUSTRY

An analysis of the Fashion Industry Charter for Climate Action as an  
instrument of transnational regulation

PAULIINA ISOKANGAS

University of Helsinki

Faculty of Law

May 2020



Tiedekunta – Fakultet – Faculty Oikeustieteellinen tiedekunta		Koulutusohjelma – Utbildningsprogram – Degree Programme Oikeustieteen maisteri (OTM)	
Tekijä – Författare – Author Pauliina Isokangas			
Työn nimi – Arbetets titel – Title Global governance in the fashion industry – An analysis of the Fashion Industry Charter for Climate Action as an instrument of transnational regulation			
Oppiaine/Opintosuunta – Läroämne/Studieinriktning – Subject/Study track International & European law			
Työn laji – Arbetets art – Level Master's Thesis		Aika – Datum – Month and year 05/2020	Sivumäärä – Sidoantal – Number of pages 96
Tiivistelmä – Referat – Abstract <p>The fashion industry is responsible for 8-10% of the world's greenhouse gas emissions – if it continues to grow at the projected rate, by 2050 it will consume more than ¼ of the world's carbon budget. In 2018, the United Nations Climate Change brought together 43 fashion industry representatives to develop a common approach to the industry's combat against climate change. The Fashion Industry Charter for Climate Action aims to address the industry's issues on a global level by establishing targets to e.g. reduce the industry's greenhouse gas emissions and to encourage the transformation towards the use of renewable energy sources throughout the value chain. The Charter, however, is not legally binding in any way – this raises questions regarding its credibility and its role as an instrument of regulation. The Charter is an example of voluntary industry-wide self-regulation; participation is voluntary, the targets were set by the original 43 signatories themselves and there are no methods for enforcement or holding actors accountable in case of non-compliance. These issues have been somewhat addressed in the Charter by e.g. tying it to other reputable initiatives and legislation, such as the Paris Agreement. The lack of accountability and enforcement methods have been partly compensated by e.g. requiring public reporting of certain greenhouse gas emissions. In the absence of traditional enforcement methods (e.g. sanctions), the Charter relies heavily on informal methods, such as reputational pressure. While the Charter is undoubtedly a positive step towards a more sustainable fashion industry, its methods of enforcement and ensuring compliance leave room for improvement. A few studies have also been conducted in relation to the Charter's targets, and it has been suggested that it may not be enough to address the climate impacts of the fashion industry adequately. The Charter is a promising start towards a more sustainable future but in order to tackle the climate change, the fashion industry needs binding targets backed up by formal enforcement methods (e.g. commercially significant sanctioning).</p>			
Avainsanat – Nyckelord – Keywords Fashion industry, climate change, global governance, transnational regulation			
Ohjaaja tai ohjaajat – Handledare – Supervisor or supervisors Jan Klabbers & Päivi Leino-Sandberg			
Säilytyspaikka – Förvaringställe – Where deposited Helsinki University Library			
Muita tietoja – Övriga uppgifter – Additional information			

BIBLIOGRAPHY .....	II
1 INTRODUCTION.....	1
1.1 Research questions and methodology .....	2
1.2 Key concepts .....	4
2 THE FASHION INDUSTRY .....	6
2.1 Short history of the fashion industry .....	6
2.2 The fashion industry in numbers .....	7
3 FASHION INDUSTRY REGULATION .....	11
3.1 An overview of the regulation in the industry .....	11
3.1.1 <i>GFA 2020 Commitment</i> .....	12
3.1.2 <i>G7 Fashion Pact</i> .....	13
3.1.3 <i>EU legislation</i> .....	14
3.2 Fashion Industry Charter for Climate Action .....	17
3.2.1 <i>Contents</i> .....	18
3.2.2 <i>The Communique</i> .....	21
3.2.3 <i>The Paris Agreement</i> .....	22
3.2.4 <i>The Greenhouse Gas Protocol Corporate Standard</i> .....	24
3.3 Summary of the regulatory framework.....	27
4 GLOBAL GOVERNANCE AND TRANSNATIONAL REGULATION .....	29
4.1 What is global governance?.....	29
4.1.1 <i>Who are the governors?</i> .....	30
4.1.2 <i>Questions of authority in global governance</i> .....	31
4.2 What is transnational regulation?.....	36
4.2.1 <i>Forms and purposes of transnational environmental regulation</i> .....	37
4.3 Self-regulation .....	42
5 GLOBAL GOVERNANCE IN THE FASHION INDUSTRY .....	52
5.1 Questions about authority in the Charter .....	53
5.2 Reasons behind the Charter and motives for participation .....	56
5.3 Credibility of the Charter .....	60

5.4	Enforcement and accountability .....	63
5.5	Summary of the analysis .....	68
5.6	The Charter in action .....	70
6	CONCLUSIONS .....	75

## BIBLIOGRAPHY

### PUBLIC AUTHORITIES

74/4 Political declaration of the high-level political forum on sustainable development convened under the auspices of the General Assembly 2019

‘Chapter XXVII 7.d. Paris Agreement’ (*United Nations Treaty Collection*, 2015)

<[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&clang=\\_en#4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en#4)> accessed 8 February 2020

Decision 1/CP.21 2016

ECHA, ‘REACH Regulation’ <<https://echa.europa.eu/regulations/reach/legislation>> accessed 8 February 2020

European Committee for Standardization, ‘CEN/TC 248 - Textiles and Textile Products’ <[https://standards.cen.eu/dyn/www/f?p=204:7:0:::FSP\\_ORG\\_ID:6229&cs=1CD56AD35AEB8C1A2E7CEE2BB715CAB9F](https://standards.cen.eu/dyn/www/f?p=204:7:0:::FSP_ORG_ID:6229&cs=1CD56AD35AEB8C1A2E7CEE2BB715CAB9F)> accessed 8 February 2020

(EU) No 1007/2011 textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council 2011

Fashion industry charter for climate action 2018

‘Fashion Industry Charter for Climate Action’ (*Climate Initiatives Platform*)

<[http://climateinitiativesplatform.org/index.php/Fashion\\_Industry\\_Charter\\_for\\_Climate\\_Action](http://climateinitiativesplatform.org/index.php/Fashion_Industry_Charter_for_Climate_Action)> accessed 8 February 2020

Paris Agreement 2015

‘Paris Agreement - United Nations Treaty Collection’

<[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&clang=\\_en#4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en#4)> accessed 8 February 2020

‘Public Communique’ (2019)

<[unfccc.int/sites/default/files/resource/Fashion\\_Charter\\_Call\\_for\\_Action\\_Communique.pdf](https://unfccc.int/sites/default/files/resource/Fashion_Charter_Call_for_Action_Communique.pdf)> accessed 8 February 2020

The 2030 Agenda for Sustainable Development 2015 ‘Summary of the UN High-Level Political Forum on Sustainable Development’ (2019)

‘The G7 Fashion Pact’ (2019) <<https://thefashionpact.org/?lang=en>> accessed 8 February 2020

The United Nations Framework Convention on Climate Change 1992

‘United Nations Conference on Environment & Development’ (1992)  
<<http://www.un.org/esa/sustdev/agenda21.htm>> accessed 8 May 2020

‘United Nations Conference on Sustainable Development, Rio+20: Sustainable Development Knowledge Platform’ (2013)  
<<https://sustainabledevelopment.un.org/rio20>> accessed 8 February 2020

## BOOKS

Avant DD, Finnemore M and Sell SK, ‘Who Governs the Globe?’, *Who governs the globe?* (Cambridge University Press 2010)

Biermann F, Pattberg P and Zelli F, *Global Climate Governance beyond 2012: Architecture, Agency and Adaptation* (Cambridge University Press 2014)  
<<https://helka.finna.fi/Record/helka.3253048>> accessed 27 February 2020

Biersteker TJ and Hall RB, *The Emergence of Private Authority in Global Governance* (Cambridge University Press 2002) <<https://helka.finna.fi/Record/helka.2773836>> accessed 27 February 2020

Black J, ‘Critical Reflections on Regulation’, *Crime and Regulation* (2019)

Bulkeley H and others, *Transnational Climate Change Governance* (Cambridge University Press 2014)

Clapp J and Dauvergne P, *Paths to a Green World: The Political Economy of the Global Environment* (2nd ed, MIT Press 2011)

Cloghesy ME, ‘A Corporate Perspective on Globalisation, Sustainable Development, and Soft Law’ in John J Kirton and MJ Trebilcock (eds), *Hard choices, soft law: voluntary standards in global trade, environment and social governance* (Routledge, Taylor & Francis Group 2016)

Committee for Development Policy, *Global Governance and Global Rules for Development in the Post-2015 Era* (2014)

Cragg W, 'Multinational Corporations, Globalisation, and the Challenge of Self-Regulation' in John J Kirton and MJ Trebilcock (eds), *Hard choices, soft law: voluntary standards in global trade, environment and social governance* (Routledge, Taylor & Francis Group 2016)

Donahue JD and Nye JS (eds), *Governance in a Globalizing World* (Visions of Governance for the 21st Century; Brookings Institution Press 2000)

Drezner DW and Lu M, 'How Universal Are Club Standards? Emerging Markets and Volunteerism' in Matthew Potoski and Aseem Prakash (eds), *Voluntary Programs* (MIT Press 2013)

Green JF, *Rethinking Private Authority: Agents and Entrepreneurs in Global Environmental Governance* (Princeton University Press 2013)

Gunningham N and Sinclair D, *Leaders & Laggards: Next-Generation Environmental Regulation* (Greenleaf Pub 2002)

Gupta J, *The History of Global Climate Governance* (Cambridge University Press 2012)  
<<https://helka.finna.fi/Record/helka.3241059>> accessed 27 February 2020

Hauffer V, 'Industry Regulation and Self-Regulation: The Case of Labour Standards' in Andrew Fenton Cooper, John English and Ramesh Chandra Thakur (eds), *Enhancing global governance: Towards a new diplomacy?* (United Nations University Press 2002)

Heyvaert V, *Transnational Environmental Regulation and Governance: Purpose, Strategies and Principles* (Cambridge University Press 2018)

Jessup PC, *Transnational Law* (Yale University Press 1956)

Lee MSW, Seifert M and Cherrier H, 'Anti-Consumption and Governance in the Global Fashion Industry: Transparency Is Key', *Governing Corporate Social Responsibility in the Apparel Industry after Rana Plaza* (Palgrave Macmillan 2017)  
<[https://www.researchgate.net/publication/317239810\\_Anti-consumption\\_and\\_Governance\\_in\\_the\\_Global\\_Fashion\\_Industry\\_Transparency\\_is\\_Key](https://www.researchgate.net/publication/317239810_Anti-consumption_and_Governance_in_the_Global_Fashion_Industry_Transparency_is_Key)> accessed 27 February 2020

Mattli W and Woods N, *The Politics of Global Regulation* (Princeton University Press 2009)

- Najam A and others, *Global Environmental Governance: A Reform Agenda* (2006)  
<<http://www.um.dk/da>> accessed 26 February 2020
- O'Rourke D, 'Bringing in Social Actors: Accountability and Regulation in the Global Textiles and Apparel Industry' in Dana L Brown and Ngaire Woods (eds), *Making global self-regulation effective in developing countries* (Oxford University Press 2007)
- Parker C, *The Open Corporation: Effective Self-Regulation and Democracy* (Cambridge University Press 2002)
- Park J, Conca K and Finger M, *The Crisis of Global Environmental Governance: Towards a New Political Economy of Sustainability* (Jacob Park, Ken Conca and Matthias Finger eds, Routledge 2008) <<https://www.taylorfrancis.com/books/9780203929100>> accessed 27 February 2020
- Schmidt R, *Regulatory Integration across Borders: Public-Private Cooperation in Transnational Regulation* (Cambridge University Press 2018)
- Scholte JA, *Building Global Democracy?: Civil Society and Accountable Global Governance* (Cambridge University Press 2011)
- Shaffer G, *Transnational Legal Ordering and State Change* (Cambridge University Press 2009)
- Sinclair TJ, *Global Governance* (Polity Press 2012)
- Slaughter A-M, *A New World Order* (Princeton, NJ: Princeton University Press cop 2004)  
<<https://helka.finna.fi/Record/helka.1914888>> accessed 27 February 2020
- Stevenson H and Dryzek JS, *Democratizing Global Climate Governance* (Cambridge University Press 2013) <<https://helka.finna.fi/Record/helka.3240887>> accessed 27 February 2020
- The Commission on Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance*. (Oxford University Press 1995)
- Vandenbergh MP and Gilligan JM, *Beyond Politics: The Private Governance Response to Climate Change* (Cambridge University Press 2017)
- Xiaopei Wu J and Li L, 'Sustainability Initiatives in the Fashion Industry', *Fashion Industry - An Itinerary Between Feelings and Technology* (IntechOpen 2020)  
<<https://www.intechopen.com/books/fashion-industry-an-itinerary-between-feelings-and-technology/sustainability-initiatives-in-the-fashion-industry>> accessed 27 February 2020



## JOURNAL ARTICLES

Andonova LB, Betsill MM and Bulkeley H, 'Transnational Climate Governance' (2009) 9  
Global Environmental Politics 52

Backer LC, 'Private Actors and Public Governance Beyond the State: The Multinational  
Corporation, the Financial Stability Board and the Global Governance Order' (2011) 18  
Indiana Journal of Global Legal Studies 751 <[http://elibrary.law.psu.edu/fac\\_works](http://elibrary.law.psu.edu/fac_works)>  
accessed 27 February 2020

Bick R, Halsey E and Ekenga CC, 'The Global Environmental Injustice of Fast Fashion'  
(2018) 17 Environmental Health  
<<https://ehjournal.biomedcentral.com/track/pdf/10.1186/s12940-018-0433-7>> accessed  
8 February 2020

Bourguignon D, 'Closing the Loop New Circular Economy Package' [2016] European  
Parliamentary Research Service 9  
<[https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573899/EPRS\\_BRI%282016%29573899\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573899/EPRS_BRI%282016%29573899_EN.pdf)> accessed 11 February 2020

Bulkeley H, 'Governance and the Geography of Authority: Modalities of Authorisation  
and the Transnational Governing of Climate Change' (2012) 44 Environment and  
Planning A 2428

Drew D and July GY, 'The Apparel Industry 's Environmental Impact in 6 Graphics'  
[2019] World Resource Institute 1 <[https://www.wri.org/blog/2017/07/apparel-  
industrys-environmental-impact-6-graphics](https://www.wri.org/blog/2017/07/apparel-industrys-environmental-impact-6-graphics)> accessed 8 February 2020

Hawkins E and others, 'Estimating Changes in Global Temperature since the Preindustrial  
Period' (2017) 98 Bulletin of the American Meteorological Society 1841  
<<https://journals.ametsoc.org/doi/pdf/10.1175/BAMS-D-16-0007.1>> accessed 8  
February 2020

Hurd I, 'Legitimacy and Authority in International Politics' (1999) 53 International  
Organization 379

Krahmann E, 'Legitimizing Private Actors in Global Governance: From Performance to  
Performativity' (2017) 5 Politics and Governance 54

<<https://www.cogitatiopress.com/politicsandgovernance/article/view/773>> accessed 27 February 2020

Lake DA, 'Rightful Rules: Authority, Order, and the Foundations of Global Governance' (2010) 54 *International Studies Quarterly* 587 <<https://academic.oup.com/isq/article-lookup/doi/10.1111/j.1468-2478.2010.00601.x>> accessed 3 March 2020

Porter T and Ronit K, 'Self-Regulation as Policy Process: The Multiple and Criss-Crossing Stages of Private Rule-Making' (2006) 39 *Policy Sciences* 41

<<http://link.springer.com/10.1007/s11077-006-9008-5>> accessed 25 March 2020

Priest M, 'The Privatization of Regulation: Five Models of Self-Regulation' (1998) 29 *Ottawa Law Review* 233

<[https://helka.finna.fi/PrimoRecord/pci.lexisnexis\\_lawreviews29OttawaLRev233](https://helka.finna.fi/PrimoRecord/pci.lexisnexis_lawreviews29OttawaLRev233)> accessed 24 April 2020

Reeve B, 'Private Governance, Public Purpose? Assessing Transparency and Accountability in Self-Regulation of Food Advertising to Children' (2013) 10 *Journal of Bioethical Inquiry* 149 <<http://link.springer.com/10.1007/s11673-013-9441-z>> accessed 23 April 2020

Scherer AG, Palazzo G and Baumann D, 'Global Rules and Private Actors: Toward a New Role of the Transnational Corporation in Global Governance' (2006) 16 *Business Ethics Quarterly* 505

<[https://www.researchgate.net/publication/228157393\\_Global\\_Rules\\_and\\_Private\\_Actors\\_Toward\\_A\\_New\\_Role\\_of\\_The\\_Transnational\\_Corporation\\_In\\_Global\\_Governance](https://www.researchgate.net/publication/228157393_Global_Rules_and_Private_Actors_Toward_A_New_Role_of_The_Transnational_Corporation_In_Global_Governance)> accessed 27 February 2020

Scott C, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design' [2001] *Public Law* 329 <[https://helka.finna.fi/PrimoRecord/pci.gale\\_legal78553547](https://helka.finna.fi/PrimoRecord/pci.gale_legal78553547)> accessed 5 March 2020

## REPORTS

Bourguignon D, 'Circular Economy Package: Four Legislative Proposals on Waste', vol 593 (2018)

<[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625108/EPRS\\_BRI\(2018\)625108\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625108/EPRS_BRI(2018)625108_EN.pdf)> accessed 8 February 2020

Commission on Global Security Justice & Governance, ‘Confronting the Crisis of Global Governance’ (2015) Common Objective, ‘Mapping the Global Fashion Industry: Key Findings’ (2018)

<[https://static1.squarespace.com/static/5c59af0590f9041e3580eff2/t/5c62d674ee6eb0235cfe246a/1549981404832/CO+DATA\\_Mapping+the+Industry\\_Key+Findings.pdf](https://static1.squarespace.com/static/5c59af0590f9041e3580eff2/t/5c62d674ee6eb0235cfe246a/1549981404832/CO+DATA_Mapping+the+Industry_Key+Findings.pdf)> accessed 8 February 2020

Council BF, ‘Fashion & Environment: An Overview of Fashion’s Environmental Impact & Opportunities for Action’ (2019)

<[inmotion.dhl/uploads/content/2019/03\\_Fashion/whitepaper.pdf](inmotion.dhl/uploads/content/2019/03_Fashion/whitepaper.pdf)> accessed 8 February 2020

‘EU Green Public Procurement Criteria for Textiles Products and Services’ (2017)

<[https://ec.europa.eu/environment/gpp/pdf/criteria/textiles\\_2017.pdf](https://ec.europa.eu/environment/gpp/pdf/criteria/textiles_2017.pdf)> accessed 12 February 2020

‘FASHION INDUSTRY CHARTER FOR CLIMATE ACTION COP 25 Event Background’ (2019) <[https://unfccc.int/sites/default/files/resource/Concept\\_Note\\_Agenda\\_Fashion\\_09122019\\_%282%29.pdf](https://unfccc.int/sites/default/files/resource/Concept_Note_Agenda_Fashion_09122019_%282%29.pdf)> accessed 8 February 2020

‘Filthy Fashion Climate Scorecard’ (2019)

<<https://www.stand.earth/sites/stand/files/StandEarth-FilthyFashionScorecard.pdf>> accessed 22 April 2020

Foundation EM, ‘A New Textiles Economy: Redesigning Fashion’s Future’ (2017)

<[https://www.ellenmacarthurfoundation.org/assets/downloads/publications/A-New-Textiles-Economy\\_Full-Report\\_Updated\\_1-12-17.pdf](https://www.ellenmacarthurfoundation.org/assets/downloads/publications/A-New-Textiles-Economy_Full-Report_Updated_1-12-17.pdf)> accessed 8 February 2020

‘Greenhouse Gas Protocol: Corporate Value Chain (Scope 3) Accounting and Reporting Standard’ (2011) <[https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard\\_041613\\_2.pdf](https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard_041613_2.pdf)> accessed 13 May 2020

H.-O. Pörtner, D.C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck AA and M. Nicolai, A. Okem, J. Petzold, B. Rama NMW (eds), ‘IPCC, 2019: Annex I: Glossary’, *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate*

(2019) <[https://www.ipcc.ch/site/assets/uploads/sites/3/2019/11/12\\_SROCC\\_AnnexI-Glossary\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/sites/3/2019/11/12_SROCC_AnnexI-Glossary_FINAL.pdf)> accessed 11 February 2020

Huntjens P and Zhang T, 'Climate Justice: Equitable and Inclusive Governance of Climate Action' (2016) 15 <<https://www.thehagueinstituteforglobaljustice.org/information-for-policy-makers/working-paper/climate-justice-equitable-and-inclusive-governance-of-climate-action/>> accessed 27 February 2020

KPMG, 'Sustainable Fashion: Committing to a Sustainable Future through the Fashion Industry Charter for Climate Action' (2019)  
<<https://assets.kpmg/content/dam/kpmg/cn/pdf/en/2019/09/sustainable-fashion-committing-to-a-sustainable-future-through-the-fashion-industry-charter-for-climate-action.pdf>> accessed 29 April 2020

Levi Strauss & Co, 'Climate Action Strategy 2025' (2018)  
<[http://www.levistrauss.com/wp-content/uploads/2018/07/LSCO\\_Climate\\_Action\\_Strategy\\_2025.pdf](http://www.levistrauss.com/wp-content/uploads/2018/07/LSCO_Climate_Action_Strategy_2025.pdf)> accessed 8 February 2020

Levi Strauss & Co., 'THE LIFE CYCLE OF A JEAN - Understanding the Environmental Impact of a Pair of Levi's 501 Jeans' (2015) <<http://www.levistrauss.com/wp-content/uploads/2015/03/Full-LCA-Results-Deck-FINAL.pdf>> accessed 7 April 2020

Morten Lehmann A and others, '2018 Pulse of the Fashion Industry' (2018)  
<[www.globalfashionagenda.com](http://www.globalfashionagenda.com)> accessed 8 February 2020

Nordic Fashion Association, 'NICE Code of Conduct and Manual: For the Fashion and Textile Industry' (2012) <<http://ethics.iit.edu/codes/NICE2012.pdf>> accessed 14 February 2020

Quantis, 'Measuring Fashion 2018: Environmental Impact of the Global Apparel and Footwear Industries Study Full Report and Methodological Considerations' (2018)  
<[https://quantis-intl.com/wp-content/uploads/2018/03/measuringfashion\\_globalimpactstudy\\_full-report\\_quantis\\_cwf\\_2018a.pdf](https://quantis-intl.com/wp-content/uploads/2018/03/measuringfashion_globalimpactstudy_full-report_quantis_cwf_2018a.pdf)> accessed 8 February 2020

Rogelj J and others, 'Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development', *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways,*

*in the context of strengthening the global response to the threat of climate change*, (2018)

<[https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15\\_Chapter2\\_Low\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_Chapter2_Low_Res.pdf)> accessed 8 February 2020

Šajn N, ‘Environmental Impact of Textile and Clothes Industry. European Parliamentary Research Service.’ (2019)

<[http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633143/EPRS\\_BRI\(2019\)633143\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633143/EPRS_BRI(2019)633143_EN.pdf)> accessed 8 February 2020

‘The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard’ (2004)

<<https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf>> accessed 30 March 2020

UNECE, ‘Fashion and the SDGs: What Role for the UN?’ (2018)

<[https://www.unece.org/fileadmin/DAM/RCM\\_Website/RFSD\\_2018\\_Side\\_event\\_sustainable\\_fashion.pdf](https://www.unece.org/fileadmin/DAM/RCM_Website/RFSD_2018_Side_event_sustainable_fashion.pdf)> accessed 8 February 2020

## WEBSOURCES

‘About the Science Based Targets Initiative’ <<https://sciencebasedtargets.org/about-the-science-based-targets-initiative/>> accessed 30 March 2020

‘Better Cotton Initiative’ <<https://bettercotton.org/>> accessed 8 February 2020

‘Catastrophe of Aral Sea Shows “men Can Destroy the Planet,” Warns UN Chief Guterres’ [2017] *UN News* <<https://news.un.org/en/story/2017/06/559232-catastrophe-aral-sea-shows-men-can-destroy-planet-warns-un-chief-guterres>> accessed 7 April 2020

‘Certification According to STANDARD 100 by OEKO-TEX’ <<https://www.oeko-tex.com/en/apply-here/standard-100-by-oeko-tex>> accessed 8 February 2020

‘Clean Cargo’ <<https://www.clean-cargo.org/>> accessed 8 February 2020

‘Clean Clothes Campaign’ <<https://cleanclothes.org/>> accessed 8 February 2020

‘Common Objective’ <<https://www.commonobjective.co/>> accessed 8 February 2020

‘Corporate Standard Greenhouse Gas Protocol’ <<https://ghgprotocol.org/corporate-standard>> accessed 30 March 2020  
‘About Us Greenhouse Gas Protocol’ <<https://ghgprotocol.org/about-us>> accessed 30 March 2020

‘Eco-Age’ <<https://eco-age.com/>> accessed 8 February 2020  
‘Condé Nast - About’ <<https://www.condenast.com/about>> accessed 6 May 2020

‘End of Life - Close The Loop’ <<https://www.close-the-loop.be/en/phase/3/end-of-life>> accessed 8 February 2020

‘EU Ecolabel: Clothing and Textiles / Textile Products’ <<http://ec.europa.eu/ecat/category/en/14/textile-products>> accessed 8 February 2020

‘EU GPP Criteria’ <[https://ec.europa.eu/environment/gpp/eu\\_gpp\\_criteria\\_en.htm](https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm)> accessed 12 February 2020

European Commission, ‘Climate Negotiations’ <[https://ec.europa.eu/clima/policies/international/negotiations\\_en](https://ec.europa.eu/clima/policies/international/negotiations_en)> accessed 8 February 2020

European Union, ‘Carbon Dioxide Equivalent’ (2013) <[https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Carbon\\_dioxide\\_equivalent](https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Carbon_dioxide_equivalent)> accessed 8 February 2020

‘Fair Wear’ <<https://www.fairwear.org/>> accessed 8 February 2020

‘Fashion Revolution’ <<https://www.fashionrevolution.org/>> accessed 8 February 2020

Gandhi S, ‘How Fast Fashion Is Greenwashing’ [2019] *Sense and Sustainability* <<https://www.senseandsustainability.net/2019/12/03/how-fast-fashion-is-greenwashing/>> accessed 26 February 2020

‘Global Fashion Agenda’ <<https://globalfashionagenda.com/>> accessed 8 February 2020

‘Global Fashion Agenda - 2020 Commitment’ <<https://globalfashionagenda.com/commitment/#>> accessed 8 February 2020

‘Global Fashion Agenda - About Us’ <<https://globalfashionagenda.com/about-us/>> accessed 8 February 2020

‘Global Organic Textile Standard’ <<https://www.global-standard.org/>> accessed 8 February 2020

‘Greenhouse Gas Protocol’ <<https://ghgprotocol.org/>> accessed 8 February 2020

Guterres A, 'Aral Sea "Probably Biggest Ecological Catastrophe of Our Time"', Secretary-General Says, Stressing Need to Act Forcefully in Preventing Tragedy from Multiplying' <<https://www.un.org/press/en/2017/sgsm18565.doc.htm>> accessed 7 April 2020

Idacavage S, 'Fashion History: The Origins of Fast Fashion' [2016] *Fashionista* <<https://fashionista.com/2016/06/what-is-fast-fashion>> accessed 8 February 2020

'Imagine' <<https://imagine.one/>> accessed 6 May 2020 'About The Fashion Pact' <<https://thefashionpact.org/?lang=en>> accessed 8 February 2020

Justice DC, 'A Brief History of the United States and the UN Climate Change Negotiations' [2017] *Medium* <<https://worldat1c.org/a-brief-history-of-the-united-states-and-the-un-climate-change-negotiations-bf7525d4ef13#sdfootnote7sym>> accessed 8 February 2020

Kenton W, 'Greenwashing' (*Investopedia*, 2020) <<https://www.investopedia.com/terms/g/greenwashing.asp>> accessed 11 February 2020

McFall-Johnsen M, 'How Fast Fashion Hurts the Planet through Pollution and Waste' (*Business Insider*, 2019) 1 <<https://www.businessinsider.com/fast-fashion-environmental-impact-pollution-emissions-waste-water-2019-10?r=US&IR=T#some-apparel-companies-are-starting-to-buck-these-trends-by-joining-initiatives-to-cut-back-on-textile-pollution-and-grow-cotton-more-susta>> accessed 8 February 2020

'NAZCA 2019' <<https://climateaction.unfccc.int/?coopinitid=85>> accessed 8 February 2020

'OEKO-TEX' (2019) <<https://www.oeko-tex.com/en/>> accessed 8 February 2020 'United Nations Millennium Development Goals' (2012) <<https://www.un.org/millenniumgoals/bkgd.shtml>> accessed 8 February 2020

'Participants in the Fashion Industry Charter for Climate Action' (*UN Climate Change*) <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/fashion-industry-charter-for-climate-action/participants-in-the-fashion-industry-charter-for-climate-action#eq-2>> accessed 8 February 2020

Petty W, 'Can Fashion Stop Climate Change?' (2019) <<https://www.commonobjective.co/article/can-fashion-stop-climate-change>> accessed 8 February 2020

Reichart E and Drew D, ‘By the Numbers: The Economic, Social and Environmental Impacts of “Fast Fashion”’ [2019] *World Resources Institute*

<<https://www.wri.org/blog/2019/01/numbers-economic-social-and-environmental-impacts-fast-fashion>> accessed 8 February 2020

Remy N, Speelman E and Swartz S, ‘Style That’s Sustainable: A New Fast-Fashion Formula’ (2016) <<https://www.mckinsey.com/business-functions/sustainability/our-insights/style-thats-sustainable-a-new-fast-fashion-formula#>> accessed 8 February 2020

‘Roadmap to Zero’ (2020) <<https://www.roadmaptozero.com/>> accessed 8 February 2020

SAC, ‘The Higg Index’ (*Sustainable Apparel Coalition*, 2014)

<<https://apparelcoalition.org/the-higg-index/>> accessed 8 February 2020

Stanton A, ‘What Is Fast Fashion, Anyway?’ (*The Good Trade*, 2020)

<<https://www.thegoodtrade.com/features/what-is-fast-fashion>> accessed 8 February 2020

‘Sustainable Clothing Action Plan’ <<https://www.wrap.org.uk/sustainable-textiles/scap>> accessed 8 February 2020

‘The Ellen MacArthur Foundation’ <<https://www.ellenmacarthurfoundation.org/>> accessed 8 February 2020

‘The EU Ecolabel for Textiles’ <[www.ecolabel.eu](http://www.ecolabel.eu)> accessed 12 February 2020

The Fashion Law, ‘Greenwashing’ (2016)

<<https://www.thefashionlaw.com/learn/greenwashing/>> accessed 26 February 2020

‘The Fashion Pact’ <<https://thefashionpact.org/?lang=en>> accessed 8 February 2020

‘The UN Alliance for Sustainable Fashion’ <<https://unfashionalliance.org/>> accessed 8 February 2020

UNECE, ‘Fashion Is an Environmental and Social Emergency, but Can Also Drive Progress towards the Sustainable Development Goals’ (*UNECE*, 2018)

<<https://www.unece.org/info/media/news/forestry-and-timber/2018/fashion-is-an-environmental-and-social-emergency-but-can-also-drive-progress-towards-the-sustainable-development-goals/doc.html>> accessed 8 February 2020



UNEP, 'Putting the Brakes on Fast Fashion' (2018) <https://www.unenvironment.org/news-and-stories/story/putting-brakes-fast-fashion> accessed 8 February 2020

UNFCCC, 'About the Fashion Industry Charter for Climate Action' (*UN Climate Change*, 2018) <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/about-the-fashion-industry-charter-for-climate-action>> accessed 4 January 2020

UNFCCC, 'About the Secretariat' <<https://unfccc.int/about-us/about-the-secretariat>> accessed 31 March 2020

UNFCCC, 'Essential Background - Durban Outcomes' (*UNFCCC*, 2010) <<https://unfccc.int/process/conferences/the-big-picture/milestones/outcomes-of-the-durban-conference>> accessed 8 February 2020

UNFCCC, 'Fashion Industry Charter for Climate Action: One Year after Its Launch', *COP25* (2019) <<https://unfccc-cop25.streamworld.de/webcast/fashion-industry-charter-for-climate-action-one-ye>> accessed 7 April 2020

UNFCCC, 'Fashion Industry Charter Working Groups' <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/fashion-industry-charter-working-groups#eq-1>> accessed 31 March 2020

UNFCCC, 'Frequently Asked Questions - Fashion' <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/frequently-asked-questions-fashion#eq-4>> accessed 5 April 2020

UNFCCC, 'Meetings of Fashion Industry Representatives' <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/meetings-of-fashion-industry-representatives>> accessed 8 February 2020

UNFCCC, 'Milestone Fashion Industry Charter for Climate Action Launched' (2018) <<https://www.un.org/sustainabledevelopment/blog/2018/12/milestone-fashion-industry-charter-for-climate-action-launched/>> accessed 8 February 2020

UNFCCC, 'Nationally Determined Contributions (NDCs)' (*UNFCCC*, 2015) <<https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs#eq-5>> accessed 8 February 2020

UNFCCC, 'Paris Agreement - Status of Ratification' (*United Nations Framework Convention on Climate Change*, 2019) <<https://unfccc.int/process/the-paris-agreement/status-of-ratification>> accessed 8 February 2020

UNFCCC, 'Strong Call to Action Issued at COP25 for First Anniversary of Fashion Industry Charter' <<https://unfccc.int/news/strong-call-to-action-issued-at-cop25-for-first-anniversary-of-fashion-industry-charter>> accessed 8 February 2020

UNFCCC, 'UN Helps Fashion Industry Shift to Low Carbon' (*UN Climate Change*, 2018) <<https://unfccc.int/news/un-helps-fashion-industry-shift-to-low-carbon>> accessed 8 February 2020

UNFCCC, 'What Is the Paris Agreement?' (*United Nations Climate Change*, 2020) 1 <<https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement>> accessed 8 February 2020

UNFCCC, 'What Is the United Nations Framework Convention on Climate Change?' <<https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>> accessed 8 February 2020

Whitehead Lohr S, '5 Truths the Fast Fashion Industry Doesn't Want You to Know' [2014] *HuffPost* <[https://www.huffpost.com/entry/5-truths-the-fast-fashion\\_b\\_5690575?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cudGhlZ29vZHRyYWRLmNvbS9mZWZ0dXJlcy93aGF0LWlzLWZhc3QtZmFzaGlvbG&guce\\_referrer\\_sig=AQAAAIUfAKuyX3aEbMQ0cpjzp9VjfX3uR4rnnf-EfTiR1JoE1J7Au-Fi50hqfspu](https://www.huffpost.com/entry/5-truths-the-fast-fashion_b_5690575?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cudGhlZ29vZHRyYWRLmNvbS9mZWZ0dXJlcy93aGF0LWlzLWZhc3QtZmFzaGlvbG&guce_referrer_sig=AQAAAIUfAKuyX3aEbMQ0cpjzp9VjfX3uR4rnnf-EfTiR1JoE1J7Au-Fi50hqfspu)> accessed 2 April 2020

'You Can Run, But You Cannot Hide: Transparency and Disclosure in Corporate Governance' (*Business Council of Canada*, 30 January 2003) <<https://thebusinesscouncil.ca/publications/you-can-run-but-you-cannot-hide-transparency-and-disclosure-in-corporate-governance/>> accessed 24 March 2020

## 1 INTRODUCTION

I am leaning against the rail looking out at the sea – or what used to be one. Now it is just an eerie sight of abandoned fishing vessels full of graffiti and sand as far as the eye can see. I estimate the drop from the edge where I am standing to the bottom to be around 10 meters, and I wonder how that amount of water could possibly vanish. The information board behind me tells me that the Aral Sea used to be the 4<sup>th</sup> biggest inland sea in the world, until the Soviets started diverting rivers leading to it to grow “white gold” – cotton. I immediately start searching for the label in my shirt and as I see the text “100% cotton” it makes me think; even though my shirt was not made of cotton for which the Aral Sea was drained, it is surely not the only example of the disastrous impacts that fabric production has on the environment. The desiccation of the Aral Sea has been called one of the planet’s worst environmental disasters<sup>1</sup> – but will it remain the worst for long?

The fashion industry is a major user of cotton. A typical pair of jeans (made entirely of cotton) is responsible for 33,4kg of CO<sub>2</sub> equivalent during its entire lifecycle;<sup>2</sup> this is more than a 100km driven in an average car.<sup>3</sup> Now imagine the amount of jeans produced and bought around the world in, for instance, a year – that 100km car drive has quickly multiplied into something way more alarming. Of course, cotton is not the only – or even the major – fibre used in the fashion industry, and the popularity of other materials, such as plastic, has grown considerably in the past decades. All fibres, whether natural or not, have some impacts on the environment. The production and treatment of textiles is especially detrimental for the climate, but a lot of clothes also end up as waste due to e.g. overproduction or low quality. The fashion industry is naturally among the biggest users of textiles and is also responsible for large amounts of textile waste being burned or landfilled.

It seems that during the 21<sup>st</sup> century, both consumers and the fashion industry itself have woken up to the negative impacts the industry has on climate. Brands have started offering

---

<sup>1</sup> Antonio Guterres, ‘Aral Sea “Probably Biggest Ecological Catastrophe of Our Time”’, Secretary-General Says, Stressing Need to Act Forcefully in Preventing Tragedy from Multiplying’ <<https://www.un.org/press/en/2017/sgsm18565.doc.htm>> accessed 7 April 2020.

<sup>2</sup> Cotton and fabric production, garment manufacturing, transportation and distribution, consumer care, recycling and end of life.

<sup>3</sup> Levi Strauss & Co., ‘THE LIFE CYCLE OF A JEAN - Understanding the Environmental Impact of a Pair of Levi’s 501 Jeans’ (2015) <<http://www.levistrauss.com/wp-content/uploads/2015/03/Full-LCA-Results-Deck-FINAL.pdf>> accessed 7 April 2020.

conscious collections and consumers seem to focus ever more on the sustainability of clothing, but one piece of the puzzle is still missing; regulation. A range of non-governmental organisations, private companies and advocacy groups have initiated campaigns and created standards in order to combat climate change within the fashion industry, but these initiatives are not legally binding and there are (usually) no methods for ensuring compliance. Among these initiatives is the UN Fashion Industry Charter for Climate Action (the ‘Charter’), which was signed in 2018 by some major fashion stakeholders. The Charter brings an interesting variation to the assortment of commitments in the fashion industry. However, the questions arising from the Charter are the same as those arising from any voluntary industry commitment; are these initiatives being used solely for utilitarian reasons?

## 1.1 Research questions and methodology

This study aims to answer the following questions:

- 1) Are the commitments in the Fashion Industry Charter for Climate Action concrete, i.e. do they really address the industry’s impact on climate?
- 2) How is compliance ensured, considering it is a voluntary instrument?
- 3) How are the actors held accountable in case of non-compliance?

One of the major concerns relating to the Charter is that it is used as a form of *greenwashing* – the act of deceiving customers by providing misleading information or creating a false impression of a company’s product being environmentally friendlier than it truly is.<sup>4</sup> By answering the research questions, this paper intends to discover the true nature of the initiative; the questions presented above represent some of the key issue areas in relation to the concept of greenwashing. The aim is to offer an industry-wide perspective of the issues relating to the Charter, which is why questions about corporate social responsibility shall not be included. Questions relating to marketing practices, the role of the media and the responsibilities of consumers shall also be left outside the scope of this paper due to two major reasons: to avoid unnecessary complication of the analysis and because each of the aforementioned issues would be worth a thorough analysis of their own.

---

<sup>4</sup> For example, a company might claim that its products are made from recycled materials when, in fact, the amount of recycled materials in the product is non-existent. Will Kenton, ‘Greenwashing’ (*Investopedia*, 2020) <<https://www.investopedia.com/terms/g/greenwashing.asp>> accessed 11 February 2020.

Research mechanisms used in this paper shall follow the doctrinal method. The core of the issue lies in questions relating to global governance – such as the authority of the governors, the role and responsibilities of the actors involved and the enforcement of private rules. As the existing research on the subject is extensive, this paper shall focus only on certain aspects of global governance; the constitution, forms and practice of authority as well as transnational regulation as a form of global governance and its forms and purposes. At the core of this research is the Charter, which is an industry specific commitment initiated by the UN Climate Change and signed by different fashion industry stakeholders (e.g. fashion brands, retail and shipping companies). Taking the nature of this instrument into account, the main points of focus in this paper shall be a) the authority of the actors involved and b) industry self-regulation as a form of global governance, and especially the issues it creates. The academic research as well as the analysis of the Charter relies on academic literature written on the subject of global governance and transnational regulation. The literature has been chosen on the basis of relevance, and further limited by examining the views of the authors. The sources used in the paper offer a variety of interpretations of the concepts, which gives the opportunity to approach the questions from slightly different angles. The intention is to combine some of the views to form an adequate description of the issue at hand.

A major part of the substance also comes from research reports and statistics by leading industry experts – e.g. Ellen MacArthur Foundation and the Global Fashion Alliance. These reports have been regularly quoted by private companies, international organisations and other researchers as well. The aforementioned entities have gained authority in the industry by promoting the mitigation of negative environmental impacts of the fashion industry, spreading information to companies and the public alike, and by actively taking part in the conversation regarding the climate consciousness of the fashion industry. The existing regulation concerning the industry is non-existent – the only legislation worth mentioning in connection with the fashion industry is the European Union (EU) circular economy legislative package adopted in 2018, which shall be shortly covered as part of the general overview of the regulatory situation in the fashion industry. In the absence of legislation and hence, case law, certain non-legal industry initiatives (for instance the G7 Fashion Pact and the 2020 Commitment by the Global Fashion Agenda) shall be utilised as part of the research. The scope of the analysis of the existing non-legal initiatives is limited to initiatives aimed specifically towards the fashion industry. Hence, other industry initiatives, which

might also have relevance in the fashion industry (relating to e.g. chemicals or logistics), shall not be covered.

This paper shall start with a short introduction to the history of the fashion industry and move on to demonstrate the impacts the industry has on the environment and specifically on climate change. Chapter 3 shall explore the range of environmental initiatives in the industry, both legal and non-legal ones, and introduce a few examples in more detail – for instance The Charter and the initiatives connected to it. Chapter 4 shall intend to offer a comprehensive understanding of the concepts of global governance and transnational regulation, and the different elements relating to those concepts which are deemed relevant in the light of the context of this paper (e.g. the constitution of authority and different forms of transnational regulation). Chapter 5 shall present the analysis of the Charter based on the terms and concepts presented in chapter 4 and shall aim to provide some answers to the research questions. It shall also include a short analysis of the Charter in practice based on a few empirical studies conducted in connection with the Charter. Chapter 6 shall summarise the main findings and offers some personal points of view of the author.

## 1.2 Key concepts

*Circular (economy) model* – a model based on the reuse, repair and recycling of materials and thus extending their lifecycle. It aims to reduce waste to the minimum and create value by reusing existing materials as long as possible. It is an alternative to the prevalent *linear model*.<sup>5</sup>

*Climate Change* – a human-induced change in climate, which results in changes in the properties of the atmosphere and which can be observed over an extended time period.<sup>6</sup>

*CO<sub>2</sub>eq* – a metric measure used to compare emissions from various greenhouse gases on the basis of their global-warming potential.<sup>7</sup>

---

<sup>5</sup> Didier Bourguignon, ‘Closing the Loop New Circular Economy Package’ [2016] European Parliamentary Research Service 9 <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573899/EPRS\\_BRI%282016%2957389\\_9\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/573899/EPRS_BRI%282016%2957389_9_EN.pdf)> accessed 11 February 2020.

<sup>6</sup> The United Nations Framework Convention on Climate Change 1992. Article 1.

<sup>7</sup> European Union, ‘Carbon Dioxide Equivalent’ (2013) <[https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Carbon\\_dioxide\\_equivalent](https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Carbon_dioxide_equivalent)> accessed 8 February 2020.

*End-of-life phase* – when a product can no longer be used in any form (whole, in part or recycled for raw materials) it is disposed of.<sup>8</sup>

*Fashion Industry* – the producing of raw materials and the manufacturing, distribution and consumption of textiles, clothing, accessories and footwear.<sup>9</sup>

*Fast fashion* – the business of transforming new trends seen on catwalks and on celebrities as quickly as possible into affordable clothing for the average consumer.<sup>10</sup>

*Greenhouse Gas Emissions* – emissions caused by the primary greenhouse gases: water vapor (H<sub>2</sub>O), carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>) and ozone (O<sub>3</sub>). The gases “absorb and emit radiation at specific wavelengths within the spectrum of radiation emitted by the Earth’s ocean and land surface, by the atmosphere itself, and by clouds”, thus causing the greenhouse effect.<sup>11</sup>

*Greenwashing* – deceiving customers by providing misleading information or creating a false impression of a company’s product being environmentally friendlier than it truly is.<sup>12</sup>

*Linear model* – the extensive use of non-renewable resources to produce garments which are oftentimes utilised for a short period of time, after which they are thrown away and landfilled / burned (the linear model is often referred to as the “take-make-waste” model).<sup>13</sup>

---

<sup>8</sup> Clare Lissaman, ‘What Is Circular Fashion?’ [2019] *Common Objective*

<<https://www.commonobjective.co/article/what-is-circular-fashion>> accessed 6 May 2020.

<sup>9</sup> UNFCCC, ‘Milestone Fashion Industry Charter for Climate Action Launched’ (2018)

<<https://www.un.org/sustainabledevelopment/blog/2018/12/milestone-fashion-industry-charter-for-climate-action-launched/>> accessed 8 February 2020.

<sup>10</sup> Audrey Stanton, ‘What Is Fast Fashion, Anyway?’ (*The Good Trade*, 2020)

<<https://www.thegoodtrade.com/features/what-is-fast-fashion>> accessed 8 February 2020.

<sup>11</sup> A Alegría H.-O. Pörtner, D.C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck and NM Weyer M. Nicolai, A. Okem, J. Petzold, B. Rama (eds), ‘IPCC, 2019: Annex I: Glossary’, *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* (2019)

<[https://www.ipcc.ch/site/assets/uploads/sites/3/2019/11/12\\_SROCC\\_AnnexI-Glossary\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/sites/3/2019/11/12_SROCC_AnnexI-Glossary_FINAL.pdf)> accessed 11 February 2020. p 687.

<sup>12</sup> Kenton (n 4).

<sup>13</sup> Ellen MacArthur Foundation, ‘A New Textiles Economy: Redesigning Fashion’s Future’ (2017)

<[https://www.ellenmacarthurfoundation.org/assets/downloads/publications/A-New-Textiles-Economy\\_Full-Report\\_Updated\\_1-12-17.pdf](https://www.ellenmacarthurfoundation.org/assets/downloads/publications/A-New-Textiles-Economy_Full-Report_Updated_1-12-17.pdf)> accessed 8 February 2020. p 19.

## 2 THE FASHION INDUSTRY

This chapter shall first shortly explore the transformation of the fashion industry to its current form and afterwards demonstrate its impacts on both the climate change and the environment in general.

### 2.1 Short history of the fashion industry

The fashion industry has not always been like this – where new clothes are bought at an unprecedented rate, and the origin as well as the final fate of a garment is a mystery for the consumer. As a matter of fact, until fairly recently, both textiles and garments were produced by hand at home – until the Industrial Revolution introduced the sewing machine. First patented in 1846, the sewing machine made garment production considerably faster and more efficient, both at home and throughout the entire industry. Indeed, the increased efficacy brought on by this new invention was one reason behind the fall in prices and the increase in the amount of clothing sold. Around the beginning of the 20<sup>th</sup> century the first so called sweatshops<sup>14</sup> emerged, but a significant part of clothing was still made at home.

It was not until the 2<sup>nd</sup> World War that the fashion industry was forced to change – standardised mass production was required for the uniforms worn by soldiers and other war-time workers. When the war ended, people were already used to the standardised clothing and became more receptive towards mass-production. This eventually led to the real craze – which began in the 1960s – when the younger generations started to see clothing as a way to express their personality, rather than having a focus on its practicality. This, and the simultaneous rise of the middle class-population around the world, lead to a rapid increase in the demand for cheap clothing. The increased demand meant that new styles had to be introduced as a constant flow – and so they were. This eventually led to the birth of the fast fashion industry; an industry which can easily and cheaply produce massive amounts of new collections and sell them with a low price to a reasonably well-earning consumer.<sup>15</sup>

---

<sup>14</sup> Small local shops, where clothing was made in teams of workers with the help of machinery.

<sup>15</sup> Sara Idacavage, 'Fashion History: The Origins of Fast Fashion' [2016] *Fashionista* <<https://fashionista.com/2016/06/what-is-fast-fashion>> accessed 8 February 2020.



The fashion industry evolved in less than a century from made to order -garments, which were intended to last for years, to standardised mass-production. Nowadays, fast-fashion brands produce up to 52 micro-seasons a year – this means new collections in stores every week – while some brands get new styles shipped in daily.<sup>16</sup> Even with the increased demand that the fashion industry has seen in the past decades, it comes as no surprise that not all of the produced garments will ever be sold. Instead, they end up in landfills or are burned with the rest of our waste. The fashion industry is responsible for many environmentally harmful practices as well as emissions contributing to climate change. The next chapter shall explore these impacts in more detail.

## 2.2 The fashion industry in numbers

The fashion industry, as defined by the United Nations (UN), “encompasses textiles, clothing, leather, and footwear industries, from the production of raw materials and manufacturing of garments, accessories and footwear to their distribution and consumption”.<sup>17</sup> The industry thus combines numerous smaller sectors, including all the steps of the value chain; from the making of the raw materials to the consumption of the final product.

Keeping in mind the broad definition of the term, it is clear that the fashion industry is a key economic sector on a global scale: its value has been estimated anywhere between \$1.3 trillion and \$2.4 trillion dollars.<sup>18</sup> Fashion is also a major employer worldwide, employing between 70 and 300 million people across the steps of the value chain.<sup>19</sup> It is thus safe to say that fashion has a major role to play in global economics and job creation, which does not make the current debate about its environmental impacts any easier – as a linear industry<sup>20</sup> with long value chains and an energy intensive production, it is bound to have negative impacts on the environment, and especially on climate.

---

<sup>16</sup> Stanton (n 10).

<sup>17</sup> UNFCCC, ‘Milestone Fashion Industry Charter for Climate Action Launched’ (n 9).

<sup>18</sup> Foundation (n 13).

<sup>19</sup> Most of whom are women. *ibid.* p 18,36. ‘The UN Alliance for Sustainable Fashion’ <<https://unfashionalliance.org/>> accessed 8 February 2020.

<sup>20</sup> See chapter 1.2.

The growing worry about the climate impacts of the industry is partly due to the increase in demand arising from the rapid growth of wealth starting in the 20<sup>th</sup> century, as explained in the previous chapter. Clothing sales have more than doubled globally in the past 20 years.<sup>21</sup> In 2016 the per capita consumption of apparel fibres was more than 30 kg in the United States and Europe.<sup>22</sup> The global consumption was estimated at 11,4 kg per capita – this amounts to 442 kg of CO<sub>2</sub>eq per capita, which is equivalent to e.g. a 4100 km-long flight or a 2400 km long car ride.<sup>23</sup> At the same time, clothing utilisation (the number of times a garment is used before disposing of it) decreased by 36% from 2000 to 2016<sup>24</sup> – according to some studies, clothes are only worn seven or eight times before throwing them away.<sup>25</sup> This results in an enormous amount of textile waste: more than 80% of clothing ends up in landfills or incineration each year<sup>26</sup> and an equivalent of a garbage truck of textiles is burned or landfilled every second.<sup>27</sup>

However, the end-of-life -phase of clothing is not the only environmentally harmful part of a garment's lifecycle. One of the major contributors to climate change in the fashion industry are the different phases of textile creation – fibre production, yarn and fabric preparation, and dyeing and finishing. Even though textiles are not solely utilised by the fashion industry, clothing makes up more than 60% of the total textile use globally.<sup>28</sup> In the 2018 study “Measuring Fashion” by Quantis these stages amount to more than 90% of the total impact of the fashion industry on climate change,<sup>29</sup> largely due to the fact that these processes are

---

<sup>21</sup> Foundation (n 13). p 18.

<sup>22</sup> Quantis, ‘Measuring Fashion 2018: Environmental Impact of the Global Apparel and Footwear Industries Study Full Report and Methodological Considerations’ (2018) <[https://quantis-intl.com/wp-content/uploads/2018/03/measuringfashion\\_globalimpactstudy\\_full-report\\_quantis\\_cwf\\_2018a.pdf](https://quantis-intl.com/wp-content/uploads/2018/03/measuringfashion_globalimpactstudy_full-report_quantis_cwf_2018a.pdf)> accessed 8 February 2020. p 19.

<sup>23</sup> According to the Quantis report, 11,4kg in fibre materials represents approximately 11 pairs of jeans and 13 t-shirts. *ibid.*

<sup>24</sup> Foundation (n 13). p 19.

<sup>25</sup> Nathalie Remy, Eveline Speelman and Steven Swartz, ‘Style That’s Sustainable: A New Fast-Fashion Formula’ (2016) <<https://www.mckinsey.com/business-functions/sustainability/our-insights/style-thats-sustainable-a-new-fast-fashion-formula#>> accessed 8 February 2020. Foundation (n 13). p 36.

<sup>26</sup> Throughout the entire life cycle of the garment. CommonObjective, ‘Mapping the Global Fashion Industry: Key Findings’ (2018) <[https://static1.squarespace.com/static/5c59af0590f9041e3580eff2/t/5c62d674ee6eb0235cfe246a/1549981404832/CO+DATA\\_Mapping+the+Industry\\_Key+Findings.pdf](https://static1.squarespace.com/static/5c59af0590f9041e3580eff2/t/5c62d674ee6eb0235cfe246a/1549981404832/CO+DATA_Mapping+the+Industry_Key+Findings.pdf)> accessed 8 February 2020. P 10.

<sup>27</sup> UNEP, ‘Putting the Brakes on Fast Fashion’ (2018) <https://www.unenvironment.org/news-and-stories/story/putting-brakes-fast-fashion> accessed 8 February 2020.

<sup>28</sup> Foundation (n 13). p 18.

<sup>29</sup> Quantis (n 22). p 19.

usually located in countries that still use hard coal and natural gas for electricity and heat production.<sup>30</sup>

The problem is not only the amount, but the kind of textiles used: 97% of the materials used in clothing production is new – plastic being the major material.<sup>31</sup> The second most widely used material, cotton, is an extremely water-intensive material: the production of one cotton shirt requires 2 700 litres of water, which is equal to the amount one person would drink in 2,5 years.<sup>32</sup> Cotton farming also requires the use of pesticides and fertilisers, the estimated amounts used in a year being 200 000 tonnes and 8 million tonnes respectively.<sup>33</sup> The chemicals used in farming are harmful both to the environment and to humans – the farmers suffer from the toxins while working with the raw materials, and some of the chemicals may be retained in the final products, thereby affecting the wearer as well.<sup>34</sup> Nevertheless, cotton is a natural fibre, and its biggest environmental impacts are concentrated on the production phase – as a natural fibre it takes only between a week and five months to biodegrade after being thrown away.<sup>35</sup> Plastic, on the other hand, is more problematic. All synthetic fibres are non-biodegradable and can take up to 200 years to break down.<sup>36</sup> Furthermore, washing synthetic textiles (such as polyester, nylon and acrylic) is a major contributor to microfibres entering into our oceans – each year 0,5 million tonnes of plastic microfibres is released into the oceans from the simple act of washing synthetic textiles.<sup>37</sup> This is equal to more than 50 billion plastic bottles.<sup>38</sup> In addition, the production of plastic-based fibres for textiles uses around 340 million barrels of oil every year, which makes the industry highly reliable on non-renewable resources.<sup>39</sup>

All in all, the fashion industry as a whole is responsible for 8-10% of the world's greenhouse gas (GHG) emissions and 20% of the industrial wastewater pollution worldwide.<sup>40</sup> The GHG

---

<sup>30</sup> *ibid.* p 19-21.

<sup>31</sup> Foundation (n 13). p 20.

<sup>32</sup> Elizabeth Reichart and Deborah Drew, 'By the Numbers: The Economic, Social and Environmental Impacts of "Fast Fashion"' [2019] *World Resources Institute* <<https://www.wri.org/blog/2019/01/numbers-economic-social-and-environmental-impacts-fast-fashion>> accessed 8 February 2020.

<sup>33</sup> Foundation (n 13). p 38.

<sup>34</sup> *ibid.*

<sup>35</sup> 'End of Life - Close The Loop' <<https://www.close-the-loop.be/en/phase/3/end-of-life>> accessed 8 February 2020.

<sup>36</sup> *ibid.*

<sup>37</sup> Foundation (n 13). p 39.

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.* p 38.

<sup>40</sup> 'The UN Alliance for Sustainable Fashion' (n 19).

emissions of the fashion industry exceed those of all international flights and maritime shipping combined.<sup>41</sup> If the fashion industry continues to grow at the projected rate, it is estimated that by 2050 it will consume more than 1/4 of the world's carbon budget (measured from the 2°C target pathway).<sup>42</sup> The amount of microfibres in oceans would increase by 0,2 million tonnes, and more than 150 million tonnes of clothing would be landfilled or burned only in 2050.<sup>43</sup> This alarming prospect has led to actions throughout the fashion industry in order to address environmentally harmful practices and to slow down the climate change – the initiatives range from raising awareness among consumers to creating tools for companies to measure their sustainability. The next chapter will shortly explore the nature of these initiatives and draw attention to the lack of legal instruments in the industry.

---

<sup>41</sup> Foundation (n 13). p 38.

<sup>42</sup> *ibid.* p 39.

<sup>43</sup> *ibid.*

### 3 FASHION INDUSTRY REGULATION

The previous chapter presented the impacts the fashion industry has on the environment and the climate change, thus demonstrating that there indeed is a problem to deal with. This chapter shall introduce the existing regulatory framework and initiatives in the industry concerning its environmental impacts.

#### 3.1 An overview of the regulation in the industry

In the past few decades, consumers as well as various industries have shifted towards a more environmentally conscious way of thinking. The possibility of the planet being irreparably damaged in the near future due to the actions (or inactions) of the humankind has risen serious concerns among many industries – including the fashion industry. At first glance, the amount of commitments and initiatives in the fashion industry on a global level might seem impressive – when examined more closely, however, it becomes evident that there is a serious lack of legal and otherwise binding rules and standards in the industry.

The existing initiatives concern an abundance of issues; such as materials,<sup>44</sup> the use of chemicals in the textile industry,<sup>45</sup> rights of the industry workers,<sup>46</sup> forums for collaboration and green consultancy companies,<sup>47</sup> initiatives to raise awareness of the public,<sup>48</sup> tools and testing systems for companies,<sup>49</sup> and some aimed to promote the mitigation of the climate impact of the fashion industry on a local or regional level.<sup>50</sup> In addition to these wider-scale environmental initiatives, some brands have started their own green campaigns – for example Levi Strauss has initiated the Climate Action Strategy 2025, with which the

---

<sup>44</sup> E.g. ‘Global Organic Textile Standard’ <<https://www.global-standard.org/>> accessed 8 February 2020. and ‘Better Cotton Initiative’ <<https://bettercotton.org/>> accessed 8 February 2020.

<sup>45</sup> E.g. ECHA, ‘REACH Regulation’ <<https://echa.europa.eu/regulations/reach/legislation>> accessed 8 February 2020. And Zero Discharge of Hazardous Chemicals, ‘Roadmap to Zero’ (2020) <<https://www.roadmaptozero.com/>> accessed 8 February 2020.

<sup>46</sup> E.g. ‘Clean Clothes Campaign’ <<https://cleanclothes.org/>> accessed 8 February 2020. And ‘Fair Wear’ <<https://www.fairwear.org/>> accessed 8 February 2020.

<sup>47</sup> E.g. ‘Global Fashion Agenda’ <<https://globalfashionagenda.com/>> accessed 8 February 2020. ‘Common Objective’ <<https://www.commonobjective.co/>> accessed 8 February 2020. And ‘Eco-Age’ <<https://eco-age.com/>> accessed 8 February 2020.

<sup>48</sup> E.g. ‘Fashion Revolution’ <<https://www.fashionrevolution.org/>> accessed 8 February 2020.

<sup>49</sup> E.g. SAC, ‘The Higg Index’ (*Sustainable Apparel Coalition*, 2014) <<https://apparelcoalition.org/the-higg-index/>> accessed 8 February 2020. ‘OEKO-TEX’ (2019) <<https://www.oeko-tex.com/en/>> accessed 8 February 2020. And ‘Greenhouse Gas Protocol’ <<https://ghgprotocol.org/>> accessed 8 February 2020.

<sup>50</sup> E.g. ‘Sustainable Clothing Action Plan’ <<https://www.wrap.org.uk/sustainable-textiles/scap>> accessed 8 February 2020. Nordic Fashion Association, ‘NICE Code of Conduct and Manual: For the Fashion and Textile Industry’ (2012) <<http://ethics.iit.edu/codes/NICE2012.pdf>> accessed 14 February 2020.

company aims to reduce their GHG emissions and switch to renewable energy across its value chain, among other things.<sup>51</sup> One of the most widely used methods for tackling the climate impacts of the industry is the promotion of a circular economy model.<sup>52</sup> The circular is model based on the reuse, repair and recycling of materials and thus extending their lifecycle. It aims to reduce waste to the minimum and create value by reusing existing materials as long as possible.<sup>53</sup> It is an alternative to the prevalent linear model: the extensive use of non-renewable resources to produce garments which are oftentimes utilised for a short period of time, after which they are thrown away and landfilled or burned (the linear model is often referred to as the “take-make-waste” model).<sup>54</sup> While the circular model might be better for the environment than the current model, it is not sufficient on its own. In order to comprehensively address the fashion industry’s impacts on climate change, other steps of the value chain, especially during the production phase, need to be taken into account as well.

To offer a clearer picture of the nature and contents of the leading initiatives in the industry, the following parts shall shortly explore a few of the most wide-spread global commitments in the industry at the moment; the Global Fashion Agenda’s (GFA) 2020 commitment to make a transition towards a circular economy and the G7 Fashion Pact (the ‘Pact’). These initiatives are among the few industry-specific actions taken so far, but unfortunately, they represent only a small part of the whole industry (the GFA 2020 commitment has 90 signatories, which represent 12,5% of the global fashion market<sup>55</sup>, and the G7 Fashion Pact has around 60 signatories<sup>56</sup>).

### 3.1.1 GFA 2020 Commitment

The GFA 2020 commitment was signed at Copenhagen Fashion Summit 2017 to support the fashion industry’s transfer towards a circular model. The commitment includes four action points, on which the participating companies have committed to take action by setting company-individual targets. The action points include 1) the implementation of design

---

<sup>51</sup> E.g. Levi Strauss & Co, ‘Climate Action Strategy 2025’ (2018) <[http://www.levistrauss.com/wp-content/uploads/2018/07/LSCO\\_Climate\\_Action\\_Strategy\\_2025.pdf](http://www.levistrauss.com/wp-content/uploads/2018/07/LSCO_Climate_Action_Strategy_2025.pdf)> accessed 8 February 2020.

<sup>52</sup> E.g. ‘The Ellen MacArthur Foundation’ <<https://www.ellenmacarthurfoundation.org/>> accessed 8 February 2020.

<sup>53</sup> Bourguignon (n 5).

<sup>54</sup> Foundation (n 13). p 19.

<sup>55</sup> GlobalFashionAgenda, ‘Global Fashion Agenda - 2020 Commitment’ (2019) <<https://globalfashionagenda.com/commitment/>> accessed 8 February 2020.

<sup>56</sup> ‘The Fashion Pact’ <<https://thefashionpact.org/?lang=en>> accessed 8 February 2020.

strategies for cyclability, 2-3) an increase in the volume of used garments and footwear collected and resold, and 4) an increase in the share of garments and footwear made from recycled textiles. Despite its good intentions, the commitment has a few major issues. First, the action points are fairly broad and do not include any specific targets. Second, and deriving from the first issue, the participating companies are required to set the concrete targets themselves. This level of freedom could motivate the companies to strive for more ambitious measures, but the lack of binding minimum targets and methods for sanctioning in case of non-compliance might also lead to sub-standard performance. These issues are not uniquely the burden of this particular commitment – as will be discussed later on in this paper, issues concerning broad objectives and lack of sanctioning methods are present in almost all self-regulatory instruments.

### 3.1.2 G7 Fashion Pact

The G7 Fashion Pact was originally initiated by the French President, Emmanuel Macron, and presented to other Heads of State at the G7 Summit in 2019.<sup>57</sup> The Pact is “a global coalition of companies in the fashion and textile industry -- including their suppliers and distributors”.<sup>58</sup> The Pact has three main areas of work: stopping climate change, restoring biodiversity and protecting oceans.<sup>59</sup> It contains concrete measures and targets that directly address the abovementioned areas, and it allows for individual companies to choose “appropriate courses of action”. The Pact also states that there should be quantitative targets based on science, which both the individual companies and the industry as a whole could achieve.<sup>60</sup> One of the most significant points that the Pact makes, is that a major part of the fashion industry’s impacts is made at farm level and in raw material sourcing locations.<sup>61</sup> The idea of the Pact is to bring together different existing initiatives and their targets, and thus form a broader framework based on those initiatives.<sup>62</sup> The Pact also creates new targets to fill the gaps which are left by the existing initiatives.<sup>63</sup> These new targets are separated to

---

<sup>57</sup> *ibid.*

<sup>58</sup> *ibid.*

<sup>59</sup> *ibid.*

<sup>60</sup> ‘The G7 Fashion Pact’ (2019) <<https://thefashionpact.org/?lang=en>> accessed 8 February 2020. p 2. This refers to the Science Based Target Initiative, which the participants commit to implement.

<sup>61</sup> *ibid.* p 3.

<sup>62</sup> The Pact specifically refers to e.g. Ellen MacArthur Foundation, the UNFCCC, ZDHC and Sustainable Apparel Coalition. *ibid.* p 3.

<sup>63</sup> *ibid.*

different levels of action: global commitments,<sup>64</sup> concrete joint initiatives<sup>65</sup> and accelerators.<sup>66</sup> The global commitments are further separated to the different areas of work mentioned earlier – climate commitment<sup>67</sup>, biodiversity commitment and ocean commitment.<sup>68</sup> The G7 Pact is a promising initiative, where the role of farming and raw materials production in creating environmental impacts is recognised. The scope of the Pact is more comprehensive than that of the Charter, since the Pact includes issues relating to biodiversity and oceans in addition to climate change. However, it is explicitly noted in the Pact that it is not a legally binding document, but rather a set of guidelines<sup>69</sup> – thus including many of the same issues mentioned in connection with the GFA 2020 commitment.

Despite the abundance of initiatives mentioned in this chapter, the fact remains that from an environmental point of view, the fashion industry is quite unregulated on a global scale. The existing initiatives and collaborations are a good start, but participation in them is voluntary and they often address only a certain material, for instance, and very few of the initiatives aim to regulate every step of the value chain. Thus, the industry lacks an instrument which would truly motivate (or oblige) the actors to address the climate impacts of their actions accordingly. This being said, there is one major legislative action concerning the industry; the EU legislative package on circular economy. The legislative package is not, however, without its issues, which shall be more thoroughly explored in the next chapter.

### 3.1.3 EU legislation

The EU is one of the few actors which have addressed (parts of) the fashion industry by means of legislation. The circular economy legislative package was adopted in 2018 in order to improve waste management within the EU – thus, it does not concern the fashion industry per se, but it does have considerable effects especially on the end-of-life-phase of clothing and other textile waste. The aim of the legislative package is to introduce new waste-

---

<sup>64</sup> The global commitments ‘respond to the priorities set by the global community’ and the targets are based on e.g. the UN SDG’s and other UN conventions. *ibid.*

<sup>65</sup> Concrete joint initiatives, which require collaboration between fashion industry representatives and other industrial sectors on a range of subjects, such as transparency and accountability.

<sup>66</sup> The aim of the accelerators is to create an environment to achieve the concrete targets. The accelerators include supporting the transition to circular economy, educating and building awareness and supporting new financial investments and cross-sector collaboration.

<sup>67</sup> The Pact specifically refers to the Charter in the Climate Commitment by stating that the signatories shall support the Charter ‘with the ambition to implement SBTs’ (Science Based Targets).

<sup>68</sup> ‘The G7 Fashion Pact’ (n 60). p 4-5.

<sup>69</sup> *ibid.* p 3.



management targets concerning the reuse, recycling and landfilling as well as the prevention of waste, to strengthen provisions on extended producer responsibility, and to establish reporting obligations and calculation methods for the introduced targets.<sup>70</sup> The package contains four legislative acts on waste management, three of which have an effect on the fashion industry: the new Waste Directive (EU) 2018/851, the Packaging Waste Directive (EU) 2018/852 and the Landfill Directive (EU) 2018/850. The main targets concerning the fashion industry arising from the new Waste Directive are the obligation to collect textiles separately by 2025, and the reuse and recycling of waste at a municipal level at different intervals in the next 15 years.<sup>71</sup> Other obligations arising from the other two directives include the management of packaging waste (e.g. material specific targets for the recycling of different packaging materials) and reducing the amount of waste landfilled (10% by 2035).<sup>72</sup>

Apart from the circular economy legislative package, the EU already has in place some regulation relevant for the fashion industry: for instance, the textile regulation of 2011 helps consumers make more sustainable choices by establishing stricter standards for e.g. marking the composition of fibres and textile products.<sup>73</sup> The textile regulation does not directly address the environmental issues of the industry, but it requires all textile products to be labelled and to include the full fibre composition of the textile. This gives the conscious consumer a chance to inspect the content of the fabrics and make more sustainable decisions – the issue here is, naturally, that the responsibility of making the conscious choice falls entirely on the consumer.<sup>74</sup>

In addition to the legal instruments mentioned above, there are some voluntary standards relating to textiles and clothing, some of which are specifically aimed at regulating the

---

<sup>70</sup> Didier Bourguignon, 'Circular Economy Package: Four Legislative Proposals on Waste', vol 593 (2018) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625108/EPRS\\_BRI\(2018\)625108\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625108/EPRS_BRI(2018)625108_EN.pdf)> accessed 8 February 2020. p 1.

<sup>71</sup> N Šajin, 'Environmental Impact of Textile and Clothes Industry. European Parliamentary Research Service.' (2019) <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633143/EPRS\\_BRI\(2019\)633143\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/633143/EPRS_BRI(2019)633143_EN.pdf)> accessed 8 February 2020. p 7.

<sup>72</sup> *ibid.*

<sup>73</sup> (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products 2011 (Official Journal of the European Union) 1.

<sup>74</sup> Šajin (n 71). Bourguignon (n 70). 'The EU Ecolabel for Textiles' <[www.ecolabel.eu](http://www.ecolabel.eu)> accessed 12 February 2020.

environmental aspects of textiles.<sup>75</sup> There are also some voluntary certification programmes, such as the EU Ecolabel for clothing and textiles. The criteria set by the EU Ecolabel guarantee a limited use of harmful substances (for health and environment), a reduction in water and air pollution, textile shrink resistance during washing and drying, as well as colour resistance to e.g. perspiration and light exposure.<sup>76</sup> Other voluntary instruments include e.g. the EU Green Public Procurement (GPP) criteria for textiles, which may be adopted by member states and public authorities for the inclusion of so-called green requirements in public tenders.<sup>77</sup> The aim of the criteria is to facilitate the reduction of environmental impacts when public authorities are purchasing goods and services.<sup>78</sup> The use of the criteria is voluntary, and the authorities may decide whether they want to include all or only certain requirements in their tenders.<sup>79</sup>

The circular economy legislative package is the main instrument within and by the EU to regulate the fashion industry. However, as it does not directly address the impacts of the fashion industry on climate change, and as it only concerns EU member states, it leaves many of the industry's main issues unresolved. While these rules on waste management undoubtedly urge actors to make environmentally friendlier decisions in this aspect, the tackling of climate change requires stricter rules on e.g. emissions reductions across the whole value chain. The transformation to a circular economy model alone is not enough to address the industry's impacts adequately. Nevertheless, it remains one of the only legal frameworks in place concerning at least parts of the industry. It also recognises the fact that the industry as a whole – all the way from producing fibres to making garments and shipping them all over the world for consumers to enjoy, to the disposal of the garments – is a major contributor to the climate change. This is also one of the main realisations behind the Charter, which is one of the few global industry-wide commitments to address the climate impacts of the entire industry in the same package.

---

<sup>75</sup> European Committee for Standardization, 'CEN/TC 248 - Textiles and Textile Products' <[https://standards.cen.eu/dyn/www/f?p=204:7:0:::FSP\\_ORG\\_ID:6229&cs=1CD56AD35AEB8C1A2E7CEE2BB715CAB9F](https://standards.cen.eu/dyn/www/f?p=204:7:0:::FSP_ORG_ID:6229&cs=1CD56AD35AEB8C1A2E7CEE2BB715CAB9F)> accessed 8 February 2020.

<sup>76</sup> 'EU Ecolabel: Clothing and Textiles / Textile Products'

<<http://ec.europa.eu/ecat/category/en/14/textile-products>> accessed 8 February 2020.

<sup>77</sup> 'EU GPP Criteria' <[https://ec.europa.eu/environment/gpp/eu\\_gpp\\_criteria\\_en.htm](https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm)> accessed 12 February 2020.

<sup>78</sup> 'EU Green Public Procurement Criteria for Textiles Products and Services' (2017)

<[https://ec.europa.eu/environment/gpp/pdf/criteria/textiles\\_2017.pdf](https://ec.europa.eu/environment/gpp/pdf/criteria/textiles_2017.pdf)> accessed 12 February 2020. 2.

<sup>79</sup> 'EU GPP Criteria' (n 77).

### 3.2 Fashion Industry Charter for Climate Action

*”The Fashion Industry Charter brings together not only fashion brands, but manufacturers and retailers, logistic and investment companies, NGOs and media companies, and seeks to expand concrete engagement with all actors across the value chain to transform to a sustainable industry.”<sup>80</sup>*

In early 2018, the UN Climate Change Secretariat brought together some major fashion industry representatives including brands, manufacturers and raw material producers to discuss the industry’s impacts on climate change. The goal was to develop a holistic, collaborative approach to the issue based on shared principles, values and goals, as well as to contribute to the fulfilment of the objectives of the Paris Agreement and the Agenda 2030.<sup>81</sup> At the UN Climate Change Conference in December 2018 (COP24), with the support of UN Climate Change, 43 fashion industry leaders launched an initiative to pressure the industry to take action in the battle against climate change. The founding signatories include well-known brands and retailers, such as Adidas, H&M Group, Inditex,<sup>82</sup> Levi Strauss & Co. and PUMA SE.<sup>83</sup> The initiative recognises the role of the fashion industry in combatting the climate change: on one hand, it is a major contributor to the GHG emissions, and on the other, it also has multiple opportunities to reduce those emissions.<sup>84</sup> During the drafting of the Charter, it was also understood that the fashion industry plays a crucial role in the global fulfilment of the Paris Agreement’s targets.<sup>85</sup> As one of the largest industries in the world and due to the effect it has on culture and perceptions, it has a unique chance of creating a more environmentally conscious culture.<sup>86</sup> Today, more than 100

---

<sup>80</sup> UNFCCC, ‘Strong Call to Action Issued at COP25 for First Anniversary of Fashion Industry Charter’ <<https://unfccc.int/news/strong-call-to-action-issued-at-cop25-for-first-anniversary-of-fashion-industry-charter>> accessed 8 February 2020.

<sup>81</sup> UNFCCC, ‘Meetings of Fashion Industry Representatives’ <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/meetings-of-fashion-industry-representatives>> accessed 8 February 2020.

<sup>82</sup> One of the world’s largest retailers including eight brands, e.g. Zara.

<sup>83</sup> ‘Participants in the Fashion Industry Charter for Climate Action’ (*UN Climate Change*) <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/fashion-industry-charter-for-climate-action/participants-in-the-fashion-industry-charter-for-climate-action#eq-2>> accessed 8 February 2020.

<sup>84</sup> See Preamble of the Charter Sections 8 & 9. UNFCCC, ‘Milestone Fashion Industry Charter for Climate Action Launched’ (n 9).

<sup>85</sup> Fashion industry charter for climate action 2018 7. See preamble Section 3.

<sup>86</sup> British Fashion Council, ‘Fashion & Environment: An Overview of Fashion’s Environmental Impact & Opportunities for Action’ (2019) <[inmotion.dhl/uploads/content/2019/03\\_Fashion/whitepaper.pdf](inmotion.dhl/uploads/content/2019/03_Fashion/whitepaper.pdf)> accessed 8 February 2020.

brands and other fashion industry actors have committed to the Charter – either as signatories or supporting organisations.<sup>87</sup>

### 3.2.1 Contents

The Charter recognises that on its current trajectory, the industry will not be able to respond to the new requirements caused by climate change, and that the industry needs a more systemic change in order to effectively fight the climate change.<sup>88</sup> The Charter’s vision is to achieve net-zero GHG emissions in the fashion industry by 2050. To achieve this, the Charter includes the following 16 targets, which the signatories aim to fulfil on their way to a cleaner future:

1. Support the goals of the Paris Agreement in limiting global temperature rise to well below two degrees Celsius above pre-industrial levels;
2. Commit to 30 per cent aggregate GHG emission reductions in scope 1, 2 and 3 of the greenhouse gas protocol corporate standard,<sup>89</sup> by 2030 against a baseline of no earlier than 2015;
3. Commit to analysing and setting a decarbonisation pathway for the fashion industry drawing on methodologies from the science-based targets initiative;
4. Quantify, track and publicly report our GHG emissions, consistent with standards and best practices of measurement and transparency;<sup>90</sup>
5. Partner with experts, businesses, investors, environmental advocates and other stakeholders to develop and implement a decarbonisation strategy for the fashion industry, including by developing a work programme and tools necessary to achieve the GHG emission reduction targets;

---

<sup>87</sup> Signatories are committed to support the implementation of the principles contained in the Charter, both within their own organisation and by collaborating with the other signatories. Supporting organisations are also professionally engaged in the fashion industry but may not be in a position to implement the principles within their own organisations (e.g. some previously mentioned other initiatives in the industry, such as the Better Cotton Initiative and Fashion Revolution). See The Charter, Modalities of Work, Sections 3-5. ‘Participants in the Fashion Industry Charter for Climate Action’ (n 83).

<sup>88</sup> See The Charter, Preamble, Section 6.

<sup>89</sup> See chapter 3.2.4 for the definition of Scopes 1, 2 and 3.

<sup>90</sup> The Charter mentions the following: Carbon Disclosure Project, Carbon Climate Registry, The Climate Group, Global Investor Coalition, UN Global Compact, Covenant of Mayors, Climate Initiative Bonds, UNEP Climate Initiatives Platform.

6. Commit to prioritising materials with low-climate impact without affecting negatively other sustainability aspects;<sup>91</sup>
7. Commit to continuously pursue energy efficiency measures and renewable energy in our value chain;
8. As soon as possible and latest by 2025, commit to not installing new coal-fired boilers or other sources of coal-fired heat and power generation, on sites within Tier one and Tier two;<sup>92</sup>
9. Support global transition to low-carbon transport by giving preference to low-carbon logistics;
10. Support the movement towards circular business models and acknowledge the positive impact this will have towards reducing GHG emissions within the fashion sector;
11. Establish a closer dialogue with consumers to increase awareness about the GHG emissions caused in the use and end-of-life phases of products, building towards changed consumer behaviours that reduce environmental impacts and extend the useful life of products;
12. Partner with the finance community and policymakers to catalyse scalable solutions for a low-carbon economy throughout the sector;
13. Together with other stakeholders, develop a strategy including targets and plans to advocate for the development of policies and laws to empower climate action in the fashion industry, especially in value chains;
14. Establish a dialogue with governments in key countries to enable renewable energy, energy efficiency and the necessary infrastructure for a systemic change beyond the fashion industry;
15. Communicate a shared vision and understanding through the development of a common strategy and messaging, including by championing climate action within the fashion industry through an enhanced and trust-building dialogue with relevant stakeholders;

---

<sup>91</sup> The Charter specifies that low-climate refers to "a measure of the full set of greenhouse gases as opposed to only carbon dioxide". Charter p. 3.

<sup>92</sup> The Charter refers to the Sustainable Apparel Coalition definitions of Tiers one and two. Tier one: final product manufacturing and assembly (or finished goods production). Tier two: material manufacturing (or finished materials production). See the Charter, p. 3.

16. Support the UN climate change secretariat in its efforts to manage the tracking and recognition of progress of the commitments outlined in the fashion industry charter for climate action.

As can be seen, the targets range from fairly specific ones (e.g. ceasing the use of coal in heat and power generation) to more general objectives (e.g. communicating a shared vision and understanding with a common strategy and messaging). In this paper, the focus shall be especially on the concrete targets – for instance, the commitment to reduce GHG emissions by 30% by 2030 (target no. 2) and the commitment to quantify, track and publicly report GHG emissions (target no. 4). By fulfilling the more general commitments included in the targets, the signatories aim to e.g. form best practices in the industry, identify gaps and strengthen collaboration between the participants, as well as to join resources and share tools to achieve the targets.<sup>93</sup>

The signatories, along with the supporting organisations, aim to achieve these goals by working together in designated Working Groups – each having a focus on one or more of the Charter’s principles.<sup>94</sup> To date, eight working groups have been established concerning the following areas of work: decarbonisation and GHG emission reductions, raw materials, manufacturing/energy, policy engagement, financial tools, promoting broader climate action, logistics<sup>95</sup> and brand/retailer owned or operated emissions.<sup>96</sup> These Working Groups aim to identify and amplify best practices, identify and address gaps, facilitate and strengthen collaboration between stakeholders, join resources and share tools and knowledge.<sup>97</sup> Resources for the Working Group activities are provided by the participating companies, and the role of the UN Climate Change is limited to supporting the participants by coordinating and facilitating communication and the delivery of the Working Groups.<sup>98</sup>

The Charter establishes a framework for the industry in order to commit to the world-wide objectives of the Paris Agreement. It does this by underlining the industry’s commitment to

---

<sup>93</sup> UNFCCC, ‘About the Fashion Industry Charter for Climate Action’ (*UN Climate Change*, 2018) <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/about-the-fashion-industry-charter-for-climate-action>> accessed 4 January 2020.

<sup>94</sup> The Charter, Modalities of Work, Section 6.

<sup>95</sup> The logistics Working Group links existing transport initiatives from the Clean Cargo Group into the Charter. ‘Clean Cargo’ <<https://www.clean-cargo.org/>> accessed 8 February 2020.

<sup>96</sup> UNFCCC, ‘Fashion Industry Charter Working Groups’ <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/fashion-industry-charter-working-groups#eq-1>> accessed 31 March 2020.

<sup>97</sup> *ibid.*

<sup>98</sup> The Charter, Modalities of Work, Section 15.

limiting the global warming as set out in the Paris Agreement, and facilitates the fulfilment of them by laying out more concrete objectives and offers methods for achieving those targets (i.e. the Working Groups).

### 3.2.2 The Communique

At the 2019 UN Climate Change Conference (COP25), the signatories of the Charter signed a Public Communique calling for governments to take a stronger role in supporting the fashion industry in its battle against the climate change.<sup>99</sup> In addition to reaffirming their commitment to the objectives of the Charter, the signatories urged the political leaders of countries with major fashion production and consumer markets to partner with the signatories in order to bring the industry in line with the goal of limiting global temperature rise to 1.5 °C (as per the Paris Agreement). The signatories' request for governments focuses mainly on the abolishment of fossil-fuel based energy sources and the transition to renewable energy by creating incentives as well as a suitable environment for companies to make the transfer. The requests include:

- Providing businesses and financial institutions with predictable, transparent and motivating planning contexts for renewable energy investment, for example by ensuring government energy roadmaps are clearly communicated;
- Responding to the urgent need for rapid scale-up of grid-connected renewable energy sources, and the swift phase-out of the highest-emitting fossil-fuel-based sources of energy, while ensuring a just and sustainable transition;
- Providing incentives for a swift transition to renewable energy, for example through the provision of feed-in tariffs to manufacturers and suppliers that generate electricity from renewable sources, and which can feed their excess electricity into the public electricity grid;
- Ensuring credible and legally recognised renewable electricity tariffs and power purchase agreements are available for fashion brands and manufacturers to purchase as part of reducing their greenhouse gas emissions;

---

<sup>99</sup> 'Public Communique' (2019)  
<[unfccc.int/sites/default/files/resource/Fashion\\_Charter\\_Call\\_for\\_Action\\_Communique.pdf](https://unfccc.int/sites/default/files/resource/Fashion_Charter_Call_for_Action_Communique.pdf)> accessed 8 February 2020.

- Creating an enabling environment for the rapid phase-out of non-renewable energy sources for all non-grid or high heat processes, for example through research and incentives for alternative biomass sources;
- Working with the fashion industry to understand and address potential barriers to sector transformation and uptake of energy efficiency and renewable energy technology, with a focus on understanding the key role of tariffs, subsidies or legal barriers at a national or state level.

The Communique is essentially a political tool to put pressure on governments. Even so, a request addressed to political leaders to act and to help the fashion industry in the transformation towards a more sustainable path sends a strong message – the role of the Communique shall be more thoroughly analysed in chapter 5.3. In addition to the Communique, there are two other instruments incorporated in the targets of the Charter; the Paris Agreement and the GHG Protocol Corporate Standards. The next chapters shall explore these instruments in more detail.

### 3.2.3 The Paris Agreement

In 1997, three years after the establishment of the United Nations Framework Convention on Climate Change (the ‘Convention’ or the ‘UNFCCC’)<sup>100</sup>, the first global environmental treaty containing a set of binding emissions reduction targets was adopted: the Kyoto Protocol. The Kyoto Protocol, however, only bound developed countries and thus the heaviest polluters were left outside the scope of the treaty.<sup>101</sup> As a result, at the COP17 the

---

<sup>100</sup> The UNFCCC is one of the three ‘Rio Conventions’, opened for signing at the ‘Rio Earth Summit’ in 1992. The UNFCCC entered into force in 1994, and to date has been ratified by 197 countries. The ultimate goal of the UNFCCC is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”. The United Nations Framework Convention on Climate Change. Art. 2. UNFCCC, ‘What Is the United Nations Framework Convention on Climate Change?’ <<https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>> accessed 8 February 2020.

<sup>101</sup> Such as China, which resulted in the US deciding to withdraw its signatory in 2001 – the US argued that the exclusion of developing countries would cause serious harm to the US economy. See: Demand Climate Justice, ‘A Brief History of the United States and the UN Climate Change Negotiations’ [2017] *Medium* <<https://worldat1c.org/a-brief-history-of-the-united-states-and-the-un-climate-change-negotiations-bf7525d4ef13#sdfootnote7sym>> accessed 8 February 2020.



signatories agreed to create a new, more comprehensive legal agreement to deal with climate change after the end of the second commitment period of the Kyoto Protocol.<sup>102</sup>

The solution was found in Paris at COP21, where the Parties to the UNFCCC reached a landmark environmental agreement to address the threats posed by climate change together. The Paris Agreement builds on the Convention and brings together nearly all nations of the world “to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty” (Art. 2). The Paris Agreement is the first universal, legally binding global climate-agreement.<sup>103</sup> The Paris Agreement entered into force on 4 November 2016, after 55 Parties to the Convention representing at a minimum 55% of the total global GHG emissions had ratified it (the ‘double threshold’). To date, of the 197 Parties to the Convention, 187 Parties have ratified the Paris Agreement.<sup>104</sup>

The main goal of the Paris Agreement, as already mentioned above in connection with the Charter, is to limit global warming to 2°C above pre-industrial levels and to pursue efforts to limit the temperature rise even further to 1,5°C (Art. 2).<sup>105</sup> Other aims include increasing the ability to adapt to the adverse effects of climate change, foster climate change resilience and low GHG emissions development, and making finance flows consistent with a pathway towards low GHG emissions and climate-resilience (Art. 2).

---

<sup>102</sup> The Kyoto Protocol has had two commitment periods: 2008-2012 and 2013-2020. UNFCCC, ‘Essential Background - Durban Outcomes’ (UNFCCC, 2010) <<https://unfccc.int/process/conferences/the-big-picture/milestones/outcomes-of-the-durban-conference>> accessed 8 February 2020.

<sup>103</sup> European Commission, ‘Climate Negotiations’ <[https://ec.europa.eu/clima/policies/international/negotiations\\_en](https://ec.europa.eu/clima/policies/international/negotiations_en)> accessed 8 February 2020.

<sup>104</sup> UNFCCC, ‘Paris Agreement - Status of Ratification’ (United Nations Framework Convention on Climate Change, 2019) <<https://unfccc.int/process/the-paris-agreement/status-of-ratification>> accessed 8 February 2020. The US has notified the UN of its intention to withdraw from the Agreement, which shall take place on 4 November 2020. ‘Paris Agreement - United Nations Treaty Collection’ <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-7-d&chapter=27&clang=\\_en#4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en#4)> accessed 8 February 2020.

<sup>105</sup> The Paris Agreement refers to ‘pre-industrial’ levels, but the exact period is not defined in the Agreement or in any other UNFCCC agreements. The IPCC uses the period between 1850-1900 as a baseline in its Special Report but it has been suggested that the period 1720-1800 would provide a more accurate ‘pre-industrial’ baseline. As the interpretation of the baseline period is not crucial for the understanding of this paper, it shall be left undefined. (J Rogelj and others, ‘Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development’, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change*, (2018) <[https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15\\_Chapter2\\_Low\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_Chapter2_Low_Res.pdf)>. p 98.) (Ed Hawkins and others, ‘Estimating Changes in Global Temperature since the Preindustrial Period’ (2017) 98 Bulletin of the American Meteorological Society 1841 <<https://journals.ametsoc.org/doi/pdf/10.1175/BAMS-D-16-0007.1>> accessed 8 February 2020. 1844.).

In the Decision through which the Paris Agreement was adopted (Decision 1/CP.21<sup>106</sup>), the COP21 also recognised the role of non-party stakeholders – such as civil society, the private sector, financial institutions, cities and other subnational authorities – in international cooperation in order to “mobilise stronger and more ambitious climate action”. The Decision states that non-party stakeholders are welcome to scale up their climate actions and they are encouraged to register these actions in the Non-State Actor Zone for Climate Action platform (NAZCA).<sup>107</sup> The Decision also urges non-party stakeholders to “support actions to reduce emissions and/or to build resilience and decrease vulnerability to the adverse effects of climate change” and recognises the role of incentives for emission reduction activities (such as domestic policies and carbon pricing).<sup>108</sup> The Fashion Industry Charter is one of the registered climate actions referred to and encouraged in the Decision.<sup>109</sup>

### 3.2.4 The Greenhouse Gas Protocol Corporate Standard

Target no. 2 of the Charter states that signatories shall commit to certain reductions in their GHG emissions in accordance with the Greenhouse Gas Protocol Corporate Standard (the “Corporate Standard”).<sup>110</sup> The GHG protocol was established in the late 1990’s as a collaboration between the World Business Council for Sustainable Development (WBCSD) and the World Resources Institute (WRI), when the aforementioned “recognised the need for an international standard for corporate GHG accounting and reporting”.<sup>111</sup> Since then, the GHG protocol has provided global standards, guidance, tools and training for different actors (such as governments, NGO’s and businesses) to “measure and manage” their GHG emissions.<sup>112</sup> The Corporate Standard establishes requirements and offers guidance for corporations and organisations in their GHG emissions inventory – its objectives include e.g. helping actors to prepare a true and fair inventory of their emissions, to simplify and reduce costs of conducting such an inventory and to increase consistency and transparency of

---

<sup>106</sup> UNFCCC, ‘Decision 1/CP.21’ (2016) FCCC/CP/2015/10/Add.1

<<https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>> accessed 8 February 2020.

<sup>107</sup> Section 117. ‘NAZCA 2019’ <<https://climateaction.unfccc.int/?coopinitid=85>> accessed 8 February 2020.

<sup>108</sup> Sections 134 & 136.

<sup>109</sup> ‘NAZCA 2019’ (n 107).

<sup>110</sup> ‘The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard’ (2004)

<<https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf>> accessed 30 March 2020.

<sup>111</sup> ‘About Us Greenhouse Gas Protocol’ <<https://ghgprotocol.org/about-us>> accessed 30 March 2020.

<sup>112</sup> *ibid.*

emissions accounting and reporting.<sup>113</sup> The Corporate Standard includes six other greenhouse gases in addition to carbon dioxide.<sup>114</sup>

The Charter refers to Scope 1, 2 and 3 of the Corporate Standard. Scope 1 includes direct GHG emissions, which are emissions occurring from sources that are owned or controlled by the company.<sup>115</sup> Scope 2 refers to the indirect GHG emissions arising from the company’s use of purchased electricity – as these emissions “physically occur at the facility where electricity is generated” they are indirect from the viewpoint of the companies purchasing said electricity.<sup>116</sup> Scope 3, in turn, includes all other indirect GHG emissions. In the Corporate Standard, these emissions are described as follows: “Scope 3 emissions are a consequence of the activities of the company, but occur from sources not owned or controlled by the company.”<sup>117</sup> They could arise from, for instance, the use of sold products and services as well as the production of purchased materials.<sup>118</sup> The contribution to emissions of the three scopes described here are illustrated in the figure below.

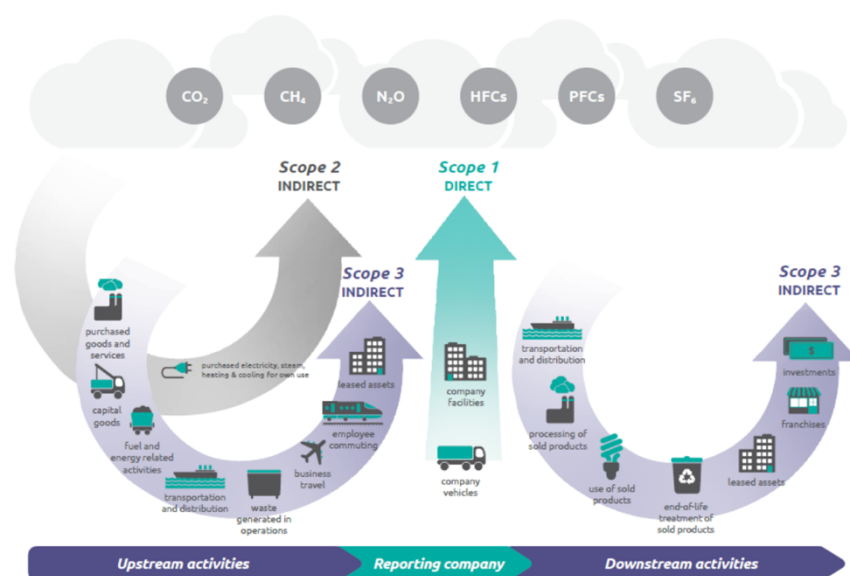


Figure 1: Scope 1, 2 & 3 emissions. Source: Greenhouse Gas Protocol: Corporate Value Chain (Scope 3) Accounting and Reporting Standard’ (2011). p 5.

<sup>113</sup> ‘Corporate Standard Greenhouse Gas Protocol’ <<https://ghgprotocol.org/corporate-standard>> accessed 30 March 2020.

<sup>114</sup> These are methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and nitrogen trifluoride. *ibid.*

<sup>115</sup> ‘The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard’ (n 110). p 25.

<sup>116</sup> *ibid.*

<sup>117</sup> *ibid.*

<sup>118</sup> *ibid.*

It is significant, that the Charter includes a link to the Corporate Standard, and moreover, that the commitment to reduce emissions 30% concerns all three of the abovementioned scopes. As can be seen from the illustration above, these scopes cover most, if not all, of the possible emission sources of fashion companies. Especially significant in the context of the fashion industry is the inclusion of Scope 3 – this way all indirect emissions, such as the production of purchased materials (e.g. cotton and other fibres), outsourced activities (e.g. the different steps of textile creation and the production of garments) and waste disposal, all fall under the Charter’s scope. However, as will be further discussed in chapter 5.6, the Charter does not specify which emissions from Scope 3 should be reported. The indirect emissions can be essentially anything and without specific requirements, the content and extent of reporting is in the hands of the participants themselves.

While some of the targets introduced by the Charter may seem lax, the inclusion of the Corporate Standard makes a difference – in addition to helping the signatories to achieve the temperature target of the Paris Agreement (target no. 1), it constitutes one of the most concrete and quantifiable targets of the Charter. However, the Charter only refers to the *definition* of the three scopes as per the Corporate Standard and makes no mention about the accounting or reporting of those emissions. Thus, to help the signatories achieve the reduction target, the Charter also includes a separate commitment to “quantify, track and publicly report” their GHG emissions in accordance with “standards and best practices of measurement and transparency” (target no. 4). These include e.g. Carbon Disclosure Project, UN Global Compact and UNEP Climate Initiatives Platform. The Charter itself does not specify which of the standards and best practices the signatories should utilise, but the Working Group on Decarbonisation and GHG Emission Reduction shall work to “define agreed methodologies for calculating and reporting scope 3 GHG emissions”.<sup>119</sup> The methods for tracking and reporting shall also be discussed in chapter 5.4.

---

<sup>119</sup> UNFCCC, ‘About the Fashion Industry Charter for Climate Action’ (n 93). The tracking and reporting shall be further explored in chapter 5.4.

### 3.3 Summary of the regulatory framework

As this chapter has hopefully been able to demonstrate, the regulation of the fashion industry lies on relatively weak grounds – the EU legislation on waste management being the only actual legislative tool which recognises the industry as a major emitter. Other initiatives are either local or concern only a certain material or a certain step of the value chain, and participation in all of the initiatives is voluntary without the possibility of using any traditional methods of enforcement or coercion. The Charter also falls into this category but differs from the other examples in a few major ways; first, the Charter was initiated by a widely known and accepted international organisation, thus gaining more attention compared to the other examples mentioned. Second, it is one of the first initiatives to commit the industry to achieving the goals of a globally known and respected convention: the Paris Agreement. Third, and as the UNFCCC itself states, the Charter includes “commitments that can go beyond anything that any industry has collectively done”.<sup>120</sup>

The reasons for and the consequences of climate change are extremely vast and far-reaching, and the traditional sources of regulation – states, international organisations and bi-/multilateral cooperation between the aforementioned – alone are not enough to tackle the issue. The question no longer is “who is responsible for the mitigation and stopping of climate change” but rather “what can each actor do to play their part in the battle against climate change”. As a consequence, climate change is increasingly being addressed by other actors, such as non-governmental organisations, multinational corporations and even individuals, by creating new ways to respond to the issue or by setting rules in areas which are not yet covered by legislation. The initiatives described above are an illustrative example of this: they include private forms of action as well as public-private cooperation, they address the fashion industry value chains in a manner which traditional state-level regulation could not, and they include methods of regulation not familiar for the traditional regulators.

The wide array of commitments and initiatives in the fashion industry is certainly auspicious, but it also raises further questions. Who are the authorities behind these commitments and with what right do they impose these rules upon others? What are the responsibilities of the participants and how are the responsibilities defined? What are the reasons behind the

---

<sup>120</sup> UNFCCC, ‘Frequently Asked Questions - Fashion’ <<https://unfccc.int/climate-action/sectoral-engagement/global-climate-action-in-fashion/frequently-asked-questions-fashion#eq-4>> accessed 5 April 2020.

voluntary participation of actors in these initiatives and what happens in case of non-compliance? These questions are relevant when the actors creating the rules are not traditional regulators (i.e. states or other public authorities) but are nevertheless in charge – that is to say, in the context of global governance. The next chapter shall explore first the concept of global governance in more detail, and then move on to defining transnational regulation and explaining the different forms in which it is practiced as well as some reasons behind it. The intention is not to provide a comprehensive understanding of the concepts but rather to offer a suitable perspective of them in light of the context of this paper by combining a few different approaches drawn from academic literature.

## 4 GLOBAL GOVERNANCE AND TRANSNATIONAL REGULATION

Questions of the constitution of authority and how it can be practiced as well as the multitude of different purposes of transnational regulation are all issues which can (and indeed, have been) interpreted differently by different academics. The views explored in this chapter have been chosen from the viewpoint of the analysis of the Charter – those viewpoints which are able to comprehensively describe the concepts and definitions needed for the analysis shall be presented here.

### 4.1 What is global governance?

The explicit definition of the term global governance is an ongoing debate. It was first defined after the Cold War in 1995 by the Commission on Global Governance as “the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest.”<sup>121</sup> The Hague Institute for Global Justice builds on the 1995 Commission’s definition by defining global governance as “a mix of bilateral, informal multilateral, and treaty-based relations among states increasingly influenced by nonstate actors’ interests and activities”.<sup>122</sup> The UN, in turn, has defined the term as follows: “global governance encompasses the totality of institutions, policies, norms, procedures and initiatives through which States and their citizens try to bring more predictability, stability and order to their responses to transnational challenges.”<sup>123</sup>

The need of global governance usually arises from the fact that there are some issues, which affect many (if not all) nations around the globe and are thereby better resolved together – such as the threats of terrorism and climate change. Where domestic legislation and international regulation are not able to close all the loopholes, different forms of global

---

<sup>121</sup> The Commission on Global Governance, *Our Global Neighborhood: The Report of the Commission on Global Governance*. (Oxford University Press 1995). p 4.

<sup>122</sup> Commission on Global Security Justice & Governance, ‘Confronting the Crisis of Global Governance’ (2015). p 9.

<sup>123</sup> Committee for Development Policy, *Global Governance and Global Rules for Development in the Post-2015 Era* (2014). VI.

governance might offer more applicable solutions to these global problems.<sup>124</sup> This is the case with e.g. climate change. States are able to intervene with environmental damage resulting from activities inside their territory: they can regulate harmful activities and impose sanctions upon non-compliers within their jurisdiction. However, since pollution and other environmental damage often cross state borders, the lack of harmonised and/or global regulation leads to the possibility of actors (especially large emitters) not bearing the cost for the pollution they are responsible for. Another issue might be the abundance of different actors participating in harmful actions – in addition to states, emitters might include e.g. private companies and international organisations, which are not necessarily under the jurisdiction of the state suffering from their actions. The possibility of some actors escaping the consequences of their actions due to a jurisdictional issue is an example of a regulatory loophole, which can potentially be filled by means of global governance.

Although not explicitly defined, based on the above analysis, three things regarding the concept of global governance are clear. It includes the instruments created as well as the institutions and actors who create them – thus, transnational regulation, which is further explored in chapter 4.2, falls under the definition of global governance. Second, the relationships and instruments covered by the term might be either formal or informal in nature – meaning that global governance covers an enormous range of different ways of organising actions. And lastly, global governance happens between a multitude of actors.

#### 4.1.1 Who are the governors?

Unlike traditional international relations, global governance does not necessarily happen between actors traditionally seen as authorised to engage in such relations on an international level – such as states. Rather than being a state-managed affair, global governance involves a set of non-state actors – non-governmental organisations (NGO's), multinational corporations (MNC's) and international organisations (IO's), for instance. Scholte, for example, has identified six different types of global regulatory bodies: intergovernmental (e.g. the UN), trans-governmental (e.g. the Organisation for Economic Cooperation and Development), interregional (e.g. EU relations with other regional institutions, such as the Southern Common Market), trans-local (e.g. United Cities and Local Governments), private (e.g. World Wildlife Fund and Amnesty International), and public-

---

<sup>124</sup> Timothy J Sinclair, *Global Governance* (Polity Press 2012). p 28.



private hybrids (e.g. the Global Fund to Fight AIDS, Tuberculosis and Malaria).<sup>125</sup> In addition to Scholte's six institutional mechanisms for global governance, Sinclair specifically mentions MNC's as key institutions in the global governance arena.<sup>126</sup> According to him, MNC's form a significant part of everyday life around the globe – they are oftentimes substantially involved in lobbying governments for better legislation and they actively take part in (self-)regulation within the industry.<sup>127</sup>

Despite the division presented above, global governors can come in any shape or form, as long as they can be seen as “authorities who exercise power across borders for purposes of affecting policy”.<sup>128</sup> This definition reveals that global governance cannot, however, be exercised by anyone – it raises the ultimate question regarding governance in general: the authority of an actor to exercise power over others. The question of authority becomes even trickier in the context of global governance, since, as was defined above, the very definition of it implies the involvement of non-state actors. From the traditional viewpoint of governance, sovereign nation states are the only actors who can exercise authority over others. The fact remains, however, that some sort of governance is indeed happening transnationally between actors other than states – in order to analyse these governance activities, it is crucial that the content of authority is given a closer look.

#### 4.1.2 Questions of authority in global governance

The previous chapter intended to demonstrate the enormous variety of actors participating in global governance – this chapter shall intend to tackle questions regarding the authority and legitimacy of those actors. In a traditional setting of practicing international law, actors with the authority to engage in legally binding actions conclude legally binding treaties between them – this is the case between states and other international entities, such as the EU. However, as explained in the previous chapter, this is not how global governance happens: there is an abundance of different actors seeking to govern instead of (or in addition to) the “traditional” governors. This is where the term private authority becomes useful; private authority refers to “situations in which non-state actors make rules or set standards

---

<sup>125</sup> Jan Aart Scholte, *Building Global Democracy?: Civil Society and Accountable Global Governance* (Cambridge University Press 2011). p 11-12.

<sup>126</sup> Sinclair (n 124). p 27.

<sup>127</sup> *ibid.*

<sup>128</sup> Deborah D Avant, Martha Finnemore and Susan K Sell, ‘Who Governs the Globe?’, *Who governs the globe?* (Cambridge University Press 2010). p 2.

that other relevant actors in world politics adopt”.<sup>129</sup> Private authority exists, if the governed recognise the authority and see them as a legitimate source of authority, and as a result consent to their rules and adopt them.<sup>130</sup> This chapter shall first aim to provide a comprehensive understanding of the term authority: the different elements constituting it, what it can be based on and finally the ways in which it can be practiced.

### *The constitution of authority*

*Authority is the “ability to induce deference in others. Authority is thus a social relationship, not a commodity; it does not exist in a vacuum. Authority is created by the recognition, even if only tacit or informal, of others. Recognising an authority does not mean one always agrees with or likes the authority. It does mean, though, that one defers to the authority. Such deference confers power.”*<sup>131</sup>

Authority is a form of power, which can be described as the ability to make someone do something they would not otherwise do. Green describes authority as a “mutually constituted” concept, where the actor who exercises authority creates rules, which the governed in turn agree to follow. Schmidt also sees power as “an inherent element of authority” but argues that authority “cannot be based on egalitarian grounds” and therefore, that power is implicit in authority.<sup>132</sup> Another element of authority is legitimacy. Bulkeley states that authority and legitimacy are inseparable in the context of global governance – this is why authority differs from other forms of power, such as coercion, self-interest and persuasion.<sup>133</sup> Legitimacy can be achieved through uncoerced consent or recognition of the authority.<sup>134</sup> Recognition happens when the subjects approve of the rules and norms made by the authority and perhaps even more importantly, consider them to be right.<sup>135</sup> By agreeing to follow the rules made by the authority, the subjects consent to the authority – thus, authority does not involve coercion, it is a right granted by the subjects.

---

<sup>129</sup> Jessica F Green, *Rethinking Private Authority: Agents and Entrepreneurs in Global Environmental Governance* (Princeton University Press 2013). p 41-43.

<sup>130</sup> *ibid.*

<sup>131</sup> Avant, Finnemore and Sell (n 128). p 9-10.

<sup>132</sup> Rebecca Schmidt, *Regulatory Integration across Borders: Public-Private Cooperation in Transnational Regulation* (Cambridge University Press 2018). p 38. Schmidt’s analysis is based on the *institutional* concept of power – where institutions and their social practices provide a framework, within which the institution may exercise power, which in turn is based on the recognition of others. In addition to providing the institution with the ability to exercise power, the institutional framework also sets limits to its arbitrary use. p 39.

<sup>133</sup> Harriet Bulkeley, ‘Governance and the Geography of Authority: Modalities of Authorisation and the Transnational Governing of Climate Change’ (2012) 44 *Environment and Planning A* 2428-2444. p 2429.

<sup>134</sup> Green (n 129). p 40.

<sup>135</sup> Bulkeley (n 133). p 2429.

### *Bases for authority*

In addition to the traditional typology of authority introduced by Weber – the rational-legal, traditional and charismatic forms of authority<sup>136</sup> – authority has been described as a social contract, where order and compliance are being exchanged between the governors and the governed.<sup>137</sup> In this social context, Bulkeley states that legitimacy can be drawn from a variety of factors, such as transparency, accountability or even popularity,<sup>138</sup> and authority may be derived from e.g. the market, morality, knowledge or issue-specific competence.<sup>139</sup> This chapter shall further explore different bases for authority presented in academic literature.

Avant, Finnemore and Sell recognise five bases of authority: institutional, delegated, expert, principled and capacity based. Institutional authority is derived from holding a certain office in some organisational entity. This form of authority is defined and limited by the rules and the purpose of the institution from which they get their authority.<sup>140</sup> Delegated authority may partly overlap with institution-based authority – it is “authority on loan” from a certain authoritative actor (e.g. states).<sup>141</sup> Delegated authority is an example of a traditional principal-agent relationship. In addition to the ‘traditional’ setting, where states delegate authority to e.g. IO’s, authority can also be delegated by an IO to a private actor.<sup>142</sup>

The institutional and delegated forms of authority pertain to the institutional setting and a certain office. Expertise-based authority, on the other hand, is quite the opposite: it derives from the actor herself. Expert authority might be combined with other forms of authority – for instance when an NGO hires experts to perform certain tasks. Expertise-based authority is also limited by the area of expertise in question<sup>143</sup> and it lacks the possibility of coercion, but it nevertheless has a great impact on shaping the global political economy “in an ever more complex, technical and knowledge-driven world”.<sup>144</sup> Principled authority can pertain

---

<sup>136</sup> In this setting an actor holds a certain position or office, which gives that actor the right to issue rules and laws. David A Lake, ‘Rightful Rules: Authority, Order, and the Foundations of Global Governance’ (2010) 54 *International Studies Quarterly* 587 <<https://academic.oup.com/isq/article-lookup/doi/10.1111/j.1468-2478.2010.00601.x>> accessed 3 March 2020. p 594-595.

<sup>137</sup> *ibid.* p 596.

<sup>138</sup> Bulkeley (n 133). p 2430.

<sup>139</sup> *ibid.* p 2430.

<sup>140</sup> Avant, Finnemore and Sell (n 128). p 11.

<sup>141</sup> *ibid.* p 11-12.

<sup>142</sup> Green (n 129). p 45.

<sup>143</sup> Avant, Finnemore and Sell (n 128). p 12.

<sup>144</sup> Schmidt (n 132). p 41.

to both actors and offices – its legitimacy is derived from widely accepted principles, morals or values. NGO's are a typical example of principled authority: other actors trust the moral claims made by the NGO's, due to the “perceived altruism” generally associated with NGO's. Whereas NGO's are trusted not to have utilitarian motives, profit-driven corporations, on the other hand, usually have a harder time convincing others of their principled authority.<sup>145</sup> Lastly, Avant, Finnemore and Sell mention capacity-based authority, which is based on “perceived competence” – the capacity to solve a problem or complete a task. The authority of an actor is rarely derived exclusively from the capacity to solve problems, but the lack of capacity for effective action may undermine the authority gained from other sources.<sup>146</sup>

In addition to Avant's, Finnemore's and Sell's findings, Green has identified entrepreneurial authority. Entrepreneurial authority occurs, for instance, as private certification schemes, information-based standards, management standards and industry-wide forms of self-regulation.<sup>147</sup> Along with entrepreneurial authority, Green also identifies authority through delegation. The two forms of authority differ e.g. in the timing of consent given by their subjects: for entrepreneurial authority it is common that consent is given afterwards, unlike in cases of delegated authority.<sup>148</sup> Green describes entrepreneurial authority as a process, which “culminates in the governed deferring to the governors”.<sup>149</sup>

### *Forms of authority practice*

Authority may be used in different ways and the pursued outcomes often vary between initiatives. Bulkeley and others have recognised three ways in which authority is usually exercised: to “bend” actors' will towards a certain outcome, to create a “common will” or consensus among the participants, and to affect the conduct of others by establishing a problem and normalizing certain responses to it.<sup>150</sup> To simplify these objectives, authority practices can be divided in three categories: consent, consensus or concord.

---

<sup>145</sup> Avant, Finnemore and Sell (n 128). p 13. Neil Gunningham and Darren Sinclair, *Leaders & Laggards: Next-Generation Environmental Regulation* (Greenleaf Pub 2002). p 109.

<sup>146</sup> Avant, Finnemore and Sell (n 128). p 13-14.

<sup>147</sup> Green (n 129). p 94-95.

<sup>148</sup> *ibid.* p 46.

<sup>149</sup> *ibid.* p 45.

<sup>150</sup> Harriet Bulkeley and others, *Transnational Climate Change Governance* (Cambridge University Press 2014). p 137.

In consent-based authority practice the governors aim to get the governed to consent to participate to a certain initiative.<sup>151</sup> This form of authority practice does not differ greatly from state authority – except for the lack of coercive measures. One of the key features of consent-based authority is the clear difference between the governors and the governed. Nevertheless, the governed are able to quite freely choose whether or not to participate in an initiative and oftentimes also how extensively they want to be bound by it. This in turn means that one of the most important tasks for the governors is to ensure compliance and secure the consent of the governed.<sup>152</sup>

The second form of authority practice is based on consensus among the participants– these initiatives might be seen as clubs, where members collectively decide to govern each other. Here the line between the governors and the governed is not as explicit than it is in the consent-based initiatives. At the core of these initiatives is a consensus about a certain outcome or process, which may bring together a variety of different actors (e.g. cities, companies and NGO's). Another key feature is the role of pre-existing norms and practices, around which consensus can be formed. In this form of authority practice the participants usually share a deep mutual understanding of a certain ideological discourse (e.g. the marketisation of climate), and thus securing the consent of the participants is not as relevant as in the consent-based initiatives.<sup>153</sup>

The last form of authority practice, concord, is associated with the deeper ways in which pre-existing norms and practices shape governance – it is a step further from consensus-based authority practice.<sup>154</sup> Authority practices based on concord oftentimes take consensus for granted and thus do not need to spend time on producing and maintaining it.<sup>155</sup>

As can be seen from the complexity of this chapter, the concept of authority is not simple. It consists of several different elements – power, legitimacy and consent/recognition – it can be based on various attributes pertaining to an entity or a person, and it can be exercised in different ways depending on the level of understanding among the actors. The next chapter shall first introduce the concept of transnational regulation, and then explore the different

---

<sup>151</sup> This is not to be confused with consent as an element of authority (explained in chapter 4.1.2).

<sup>152</sup> Bulkeley and others (n 150), p 138-139.

<sup>153</sup> *ibid.* p 139-141.

<sup>154</sup> Bulkeley and others describe concord as being closest to 'the Foucauldian notion of governmentality'. *Ibid.* p 141.

<sup>155</sup> Bulkeley and others (n 150), p 141-142.

ways in which the governors – those who have the authority to govern – may regulate matters beyond the state.

## 4.2 What is transnational regulation?

The term transnational law was first defined by Philip Jessup in 1956: "I shall use, instead of 'international law', the term transnational law to include all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories."<sup>156</sup> The traditional distinction between transnational and international law – where international law includes treaties between states, customary international law and case law issued by international courts, and transnational law includes all other legal arrangements, which cross state borders and are not included in the definition of the former – is not necessarily plausible in the globalised world we live in today.<sup>157</sup> The term has also been described as a set of "legal norms that are exported and imported across borders, and that involve transnational networks and international and regional institutions that help to construct and convey the legal norm within a field of law".<sup>158</sup> In this point of view the focus is on the production, rather than application, of norms in the transnational context.<sup>159</sup> Bulkeley and others have stated that "transnational phenomena are those that bridge, operate or extend across the boundaries of states" and that "transnational phenomena, by definition, involve non-state or substate actors".<sup>160</sup>

Since most of the initiatives discussed in this paper are not instruments of 'law' per se but are nevertheless referred to as some other form of regulation, it is important to clarify what is meant by the term in this paper. The simplified definition of regulation is "the act of steering behaviour deliberately towards a desirable goal".<sup>161</sup> A more comprehensive approach would be to describe regulation as "the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting,

---

<sup>156</sup> Philip C. Jessup, *Transnational Law* (Yale University Press 1956), p. 2.

<sup>157</sup> Veerle Heyvaert, *Transnational Environmental Regulation and Governance: Purpose, Strategies and Principles* (Cambridge University Press 2018), p. 28-29.

<sup>158</sup> Gregory Shaffer, *Transnational Legal Ordering and State Change* (Cambridge University Press 2009), p. 5.

<sup>159</sup> Heyvaert (n 157), p. 30.

<sup>160</sup> Bulkeley and others (n 150), p. 5.

<sup>161</sup> Heyvaert (n 157), p. 26.

information-gathering and behaviour-modification".<sup>162</sup> And further, it could be defined as "the deliberate exercise of influence on a target's behaviour (designed either to stabilise or modify this behaviour) performed with a certain degree of authority and persistence." One example of deliberate would be a group of actors adopting instruments and practices that modify behaviour and explicitly identify the objectives of the action taken.<sup>163</sup>

All of the definitions above have something useful to build on – regulation shall thus refer to the processes of establishing norms and any activity aimed at influencing others' behaviour, which is exercised with some sort of authority. The activities referred to as regulation shall not, in this instance, include enforcement – issues regarding this matter shall be analysed separately. Taking into consideration the context of and issue areas covered in this paper, the term transnational is likewise most useful when understood broadly: hence, in this paper it shall cover border-crossing regulation by non-state actors and the networks they form.

The next chapters shall explore transnational regulation in a more specific context and analyse in more detail the different reasons for engaging in transnational environmental regulation.

#### 4.2.1 Forms and purposes of transnational environmental regulation

Transnational environmental regulation (TER) can happen between public actors (such as states and public authorities) and private actors (such as corporations) by the formation of different types of relationships.<sup>164</sup> The public forms of TER can be addressed either to other public authorities or to the private sector. Public/public TER is developed by and addressed to public authorities.<sup>165</sup> Public/private TER in turn is developed by the state or other public authorities and addressed to the private sector – such as the EU REACH legislation and many of the UN programmes (e.g. the Global Compact).<sup>166</sup> In public/private TER initiatives the participation is voluntary, and the initiative is arranged and administered by a transnational public entity on behalf of its signatories.

---

<sup>162</sup> Julia Black, 'Critical Reflections on Regulation', *Crime and Regulation* (2019). 20. p 331.

<sup>163</sup> Heyvaert (n 157). p 34.

<sup>164</sup> Bulkeley and others (n 150). p 68, 72, 80.

<sup>165</sup> Heyvaert (n 157). p 39. Liliانا B Andonova, Michele M Betsill and Harriet Bulkeley, 'Transnational Climate Governance' (2009) 9 *Global Environmental Politics* 52. p 59.

<sup>166</sup> Heyvaert (n 157). p 42-43.

Just as with public forms of regulation, private sector initiatives can also be addressed to either the private or the public sector, although private/public regulation is quite uncommon. In some (rare) cases private governance may steer the behaviour of public authorities – this happens “when public authorities incorporate, accede to or are indirectly annexed in private/private TER”.<sup>167</sup> More common, however, is private regulation addressed to the private sector. The usual methods of private/private regulation include standard setting and certification, and participation is usually sectoral (i.e. within an industry) rather than jurisdictional. Private/private TER is therefore essentially self-regulation within an industry, where the authority is informal, and the participation of corporations can be seen as a form of corporate social responsibility.<sup>168</sup> Lastly, there is hybrid TER. The term *hybrid* is used, when a governance network is so complex that it does not fall under neither public nor private forms – the hybrid network can be referred to as a ‘regime complex’.<sup>169</sup>

There are several reasons as to why both public and private actors engage in transnational regulation. For instance, Lipschutz and Fogel have identified three incentives behind such private initiatives; normative, functional and instrumental.<sup>170</sup> Normative incentives refer to the sense of e.g. justice, equity and indigenous rights as reasons behind an initiative. Functional incentives concern the development of protection and conservation programs, and instrumental incentives refer to the benefits arising from certification or approval.<sup>171</sup> Heyvaert, in turn, has identified five main reasons to participate in TER: collective action, trade facilitation, substitute, risk management and enhancement TER. This chapter shall follow the aforementioned categorisation, and it shall also be utilised in the further analysis of the Charter in chapter 5.<sup>172</sup>

---

<sup>167</sup> *ibid.* p 46-47.

<sup>168</sup> *ibid.* p 43-46; Andonova, Betsill and Bulkeley (n 165). p 61.

<sup>169</sup> Heyvaert (n 157). p 48; Andonova, Betsill and Bulkeley (n 165). p 62.

<sup>170</sup> Ronnie D Lipschutz and Cathleen Fogel, “‘Regulation for the Rest of Us?’ Global Civil Society and the Privatization of Transnational Regulation’ in Rodney Bruce Hall and Thomas J Biersteker (eds), *The Emergence of Private Authority in Global Governance* (Cambridge University Press 2002). p 133.

<sup>171</sup> *ibid.* p 133.

<sup>172</sup> Heyvaert’s categorisation has been chosen for this analysis due to two main reasons: the different motives for engaging in TER are thoroughly explored, and the extent of the research will benefit the analysis of the Charter later on.



### *Collective Action – Public/public*

The objects of environmental protection are public goods, which are mostly non-rivalrous and non-excludable within and among states. From the viewpoint of national regulation, the protection of these goods encounters some major obstacles: pollution crossing state borders, different states having established different (and often incompatible) environmental legislation, the risk of environmentally harmful production being moved to states with less stringent measures on environmental protection and the risk of freeriding by states with less stringent environmental legislation. To overcome the abovementioned risks, states and public authorities can cooperate and establish “transboundary environmental regimes”.<sup>173</sup> An example of collective action TER is the UNFCCC. In short, the purpose of collective action TER is the effective regulation of global public goods. However, standards set forth by collective action initiatives are usually shallow, the regulatory output is modest and slow to change, and decision making is often purely expertise based. Over time collective action initiatives tend to include both voluntary and binding instruments.<sup>174</sup>

### *Trade facilitation – Public/public, public/private*

Most of the time the motives behind regulation are not exclusively related to the protection of the environment – this is where trade facilitation TER arises from. It is often adopted in situations where incompatible national environmental regulation sets obstacles for the free trade of goods (e.g. the EU Ecolabel). In short, the aim of trade facilitation TER is the environmental protection and market liberalization through harmonisation, which is usually achieved via the creation of product standards.<sup>175</sup>

### *Substitute – Private/private, private/public*

Substitute TER occurs when the state is unable or unwilling to create acceptable environmental regulation (one motivation might be the states’ inability to regulate beyond its borders). An example of substitute TER is the UN Global Compact – a UN-led voluntary initiative, which aims to motivate the private sector to engage in more sustainable activities within their corporation. This also represents a common form of substitute TER: an NGO- or IO-led initiative, where the NGO/IO either takes control of the initiative or works

---

<sup>173</sup> Heyvaert (n 157), p 56.

<sup>174</sup> *ibid.* p 55-63.

<sup>175</sup> *ibid.* p 63-70.

together with the other participants. Substitute TER works through a variety of instruments, e.g. standard setting, audits, certifications, codes of conduct, principle-based regulation and guidance.<sup>176</sup> The main issue with substitute TER is the lack of implementation and enforcement powers. The participation in and the compliance with substitute TER initiatives is essentially in the hands of the participants themselves, which affects their strength as regulatory instruments and creates an authority deficit. This vulnerability and lack of authority may be compensated by e.g. linking the initiative to a binding national or international commitment (to establish a baseline for performance) and by seeking the support of public interest groups – both of which enhance the credibility of the initiative. Substitute TER initiatives may also use other ways to boost their credibility – for instance, using trademarks, building coalitions with different actors (states, NGO's, MNC's etc.) and using consumer power in the absence of traditional means of coercion.<sup>177</sup>

#### *Risk management – Private/private*

Risk management TER is usually adopted in situations, where actors want to avoid the possible negative consequences of under-regulation. It can take the form of e.g. self-regulation or cooperation with other initiatives. Risk management TER, like substitute TER, is based on voluntary requirements and occurs mainly via standardisation, auditing and certification. The issues with risk management TER are also similar to those with substitute TER: there might be a lack of credibility of the initiative, the self-regulatory regime might not actually be maintained, and they lack enforcement methods. Risk management TER might also incentivise anti-competitive behaviour – the line is thin between working towards fulfilling the public interest and the pursuit of private interests. The credibility challenges related to risk management TER arise mainly from the nature of self-regulation within an industry, since the motives for it are (believed to be) mostly utilitarian (this will be discussed more thoroughly in chapter 4.3). In time risk management TER, if successful, may push states to create regulation similar to the private initiatives.<sup>178</sup>

---

<sup>176</sup> *ibid.* p 72.

<sup>177</sup> *ibid.* p 74-76.

<sup>178</sup> *ibid.* p 77-82.

### *Enhancement – Hybrid*

The focus in this form of TER is in enhancing the effect of existing regulation by joining forces with other regulators. Reasons for working together can be e.g. to achieve more cost-effective practices, sharing the expenses of regulation, sharing expertise and exchanging information. Enhancement TER can be initiated either by participants or they can be led by a transnational entity (such as organs of the UN or EU institutions). The aims of such a network might be more general, for instance facilitating the sharing of information and motivating learning between participants. The aims can also include e.g. specific targets, which can be more ambitious than the targets set out in international treaties or via national legislation. The participants are often given a lot of freedom in deciding their level of contribution to the initiative.<sup>179</sup>

This chapter has hopefully been able to demonstrate the complexity of the concepts of global governance and transnational regulation. The reason behind the increase of global governance initiatives – especially in the context of this paper – is quite simple: "coercion and sanction are costly mechanisms of control, quite unsuited for regulating activities that require any measure of creativity or enthusiasm".<sup>180</sup> In other words, different forms of global governance are able to offer solutions that states could probably never provide, and while states may have the upper hand in enforcement and coercion, global governors are far more able when it comes to e.g. leadership and creativity.<sup>181</sup> This is essential especially when addressing a formerly unknown or otherwise exceptionally complex issue, such as the climate change – or an industry with activities around the globe.

---

<sup>179</sup> *ibid.* p 82-88.

<sup>180</sup> Ian Hurd, 'Legitimacy and Authority in International Politics' 379-408. p 385.

<sup>181</sup> Avant, Finnemore and Sell (n 128). p 9.

### 4.3 Self-regulation

When talking about the increase in transnational regulation, people often refer to initiatives in the private sector. As established in the previous chapter, private/private T(E)R is essentially self-regulation within an industry; self-regulation happens when private sector actors voluntarily bind themselves to certain rules. These rules can e.g. go beyond the current regulatory requirements or establish completely new standards for industries/areas for which government regulation is lacking. All self-regulatory initiatives need some consensus on the content of the rules and some expertise in their implementation.<sup>182</sup> Where consensus is deep, it is more likely that self-regulation will be developed and implemented. The role of leadership is also crucial – when industry leaders establish certain “best practices” they may influence or even pressure other industry actors or their business partners to act in conformity with these practices.<sup>183</sup>

#### *Strengths and weaknesses of self-regulation*

Voluntary approaches, such as industry self-regulation, can offer certain valuable things that government regulation perhaps cannot; they can e.g. encourage collective learning, distribute valuable information and build consensus among participants.<sup>184</sup> Industry self-regulation also offers advantages for governments – these include influencing the behaviour of an industry without getting actively involved and using the resources of the industry actors instead of government resources. Self-regulatory instruments also allow for forms of regulation which would not be possible on the government level.<sup>185</sup> There might also be some political advantages in choosing self-regulation; self-regulation allows the government to say that a certain issue is being regulated without having to take responsibility for the regulation.<sup>186</sup> From the industry’s point of view a self-regulatory scheme may raise the barriers to enter the industry, thus creating economic benefits for the existing actors and participants to the initiative.<sup>187</sup> One of the major advantages of self-regulation is its flexibility; when circumstances change, the rules can be quickly adjusted if necessary. There are also

---

<sup>182</sup> *ibid.* p 171.

<sup>183</sup> *ibid.* p 171.

<sup>184</sup> Gunningham and Sinclair (n 145). p 109.

<sup>185</sup> Margot Priest, ‘The Privatization of Regulation: Five Models of Self-Regulation’ (1998) 29 *Ottawa Law Review* 233 <[https://helka.finna.fi/PrimoRecord/pci.lexisnexis\\_lawreviews29OttawaLRev233](https://helka.finna.fi/PrimoRecord/pci.lexisnexis_lawreviews29OttawaLRev233)> accessed 24 April 2020. p 268.

<sup>186</sup> *ibid.* p 269.

<sup>187</sup> *ibid.*

fewer restraints in self-regulatory schemes, relating to e.g. budget and personnel control.<sup>188</sup> In addition, some argue that compliance is higher with self-regulatory instruments where the participants have had the chance to develop the rules themselves and they understand the need for those rules as well as their targets.<sup>189</sup>

The abovementioned advantages of self-regulation represent only one side of the coin; there are also multiple issues with and limitations to the use of self-regulatory initiatives. In contrast to government regulation, which is seen as impartial and fair and is thought to protect the public interest, self-regulation is not always seen as capable of achieving those objectives.<sup>190</sup> This concern arises from the reasoning behind the decision to participate in self-regulatory initiatives, which shall be discussed further on in this chapter. Another concern is the possibility of the controlling participants to dominate the self-regulatory regime and pursue their own interests rather than the public interest.<sup>191</sup> In addition, self-regulation may lead to under-regulation; as will be demonstrated later on, one reason behind participating in a voluntary self-regulation scheme might be the avoidance of stricter government regulation. Another reason for under-regulation in a self-regulatory scheme might be the lack of personnel and expertise on the matter.<sup>192</sup> Finally, as opposed to e.g. government legislation, self-regulatory regimes are not subject to certain accountability mechanisms; tools such as ministerial responsibility, judicial review, oversight and transparency of decision-making are lacking in self-regulatory initiatives and regimes.<sup>193</sup>

---

<sup>188</sup> *ibid.*

<sup>189</sup> *ibid.* p 270.

<sup>190</sup> *ibid.* p 271.

<sup>191</sup> *ibid.* p 272.

<sup>192</sup> *ibid.* p 272-273.

<sup>193</sup> *ibid.* p 273. Dara O'Rourke, 'Bringing in Social Actors: Accountability and Regulation in the Global Textiles and Apparel Industry' in Dana L Brown and Ngaire Woods (eds), *Making global self-regulation effective in developing countries* (Oxford University Press 2007). p 114, 129. Christine Parker, *The Open Corporation: Effective Self-Regulation and Democracy* (Cambridge University Press 2002). p 11-12, 277-278.

### *Forms of self-regulation*

*“Self-regulation occurs when those regulated design and implement and perhaps even enforce the rules themselves.”<sup>194</sup>*

Self-regulation, too, comes in many sizes and colours. This chapter shall present a few different categorisations based on their usefulness in the context of this paper, taking into account the nature of the analysis presented in chapter 5. The aim is to present a theoretical framework for instruments similar to the Charter; voluntary instruments with little or no influence from public authorities, conducted between industry representatives and, furthermore, which do not include any (obvious) methods for sanctioning.

Gunningham and Sinclair have researched voluntary arrangements in the field of environmental protection and found three prevalent forms of voluntary commitments; unilateral commitments, public voluntary programmes and negotiated agreements. All of these represent different forms of informal regulation within or by an industry.<sup>195</sup> Unilateral commitments are instruments initiated by companies or industry associations without any involvement of public authorities, where the targets are set, and their fulfilment monitored, by the initiators themselves. Public voluntary programmes are typically initiated by a public authority and private actors then adhere to the rules set by the public authority, whereas negotiated agreements are bargained between public authorities and an industry.<sup>196</sup> For the purposes of this paper, unilateral commitments shall be further explored and analysed here.

Unilateral commitments have been further divided into two forms. First form of commitments occurs as signing up to an environmental charter, which aims to raise the level of corporate environmental performance across an industry without introducing any specific performance targets. The second approach includes commitments developed by an industry association and aim to reach the industry as a whole – i.e. industry-wide forms of self-regulation, such as the chemical industry’s Responsible Care initiative.<sup>197</sup> Even though unilateral commitments are purely private sector instruments, public authorities can support

---

<sup>194</sup> Virginia Haufler, ‘Industry Regulation and Self-Regulation: The Case of Labour Standards’ in Andrew Fenton Cooper, John English and Ramesh Chandra Thakur (eds), *Enhancing global governance: Towards a new diplomacy?* (United Nations University Press 2002). p 167.

<sup>195</sup> Gunningham and Sinclair (n 145). p 97.

<sup>196</sup> *ibid.*

<sup>197</sup> *ibid.* p 98.

and encourage the initiatives by e.g. publicising them.<sup>198</sup> Industry self-regulation also has its issues, some of which are especially characteristic for these forms of collective initiatives. One example is the threat of freeriding, where a participant seeks to claim the benefits associated with the membership of such an initiative without fulfilling any obligations.<sup>199</sup> Freeriding is possible mainly because these voluntary industry self-regulatory instruments include no methods of enforcement or sanctioning.<sup>200</sup> Despite their issues and the lack of binding measures, voluntary industry-wide self-regulation has great potential; it can “build an industry morality” and “institutionalise responsibility”.<sup>201</sup>

Priest has also explored different forms of self-regulation and has identified five prevalent models; voluntary codes of conduct, statutory self-regulation, firm-defined regulation, supervised self-regulation and regulatory self-management.<sup>202</sup> All of the aforementioned models, save for voluntary codes of conduct, include some level of government involvement. For the purposes of this paper, these models shall not be further explored here – the main interest shall be the voluntary codes of conduct and their characteristics. Voluntary codes of conduct are established voluntarily usually by a contract. They have little or none involvement from the public, but they might have a public representative on a committee (if such a committee is established). Voluntary codes of conduct usually do not include any methods of auditing compliance or ensuring accountability towards third parties. The rules are made by the participants themselves and are based on consensus among them. Adjudication methods and sanctioning are oftentimes lacking, and freeriding might become a problem.<sup>203</sup>

*“The source of power to initiate and enforce a code is thus found within the industry”*<sup>204</sup>

The different forms of self-regulation can be analysed through certain categories; following Priest’s research, these categories are efficiency, effectiveness, openness, fairness and accountability. Efficiency refers to achieving regulatory objectives at the lowest possible cost. Voluntary codes of conduct include several elements contributing to their efficiency, such as

---

<sup>198</sup> *ibid.*

<sup>199</sup> *ibid.* p 99.

<sup>200</sup> *ibid.*

<sup>201</sup> *ibid.* p 101.

<sup>202</sup> Priest (n 186). p 242.

<sup>203</sup> *ibid.* p 242-243.

<sup>204</sup> *ibid.* p 245.

their flexibility as instruments resulting in easy adaptation to changing circumstances, and the use of expertise in their development. Part of the voluntary codes' efficiency comes from their low cost to governments, since costs are largely borne by the participants (and transferred to customers). The creation of and the participation in voluntary codes may, however, induce anti-competitive behaviour.<sup>205</sup>

The second category, effectiveness, embodies the achievement of regulatory objectives, incentives for compliance and methods for enforcement.<sup>206</sup> Voluntary codes can be tailored to suit the needs of a specific industry better than government regulation, which is especially relevant in situations where a certain problem has not been regulated before. A voluntary code, if proven effective, may become the industry best-practice. On the other hand, voluntary codes may prove to be ineffective due to the lack of incentives for compliance and methods for enforcement. They might also prove to be ineffective if only a few industry representatives participate in them.<sup>207</sup>

Third, openness refers to the accessibility and transparency of the voluntary code. As the development of voluntary codes usually happens between participants and there is little or no involvement of the public, there is often room for improvement in terms of transparency. However, transparency can be increased by involving public interest groups or even states, and by publicising the code and its contents – the more representatives of different stakeholder groups participate in the process of developing a code, the more interests can be represented in it.<sup>208</sup> The fourth category, fairness, refers to the equitable assignment of duties, rights, benefits and obligations. Voluntary codes, which typically have no enforcement methods other than e.g. the use of logos or membership, are “governed by rules of fairness in dealing with members”, but members of the public cannot demand dispute settlement among the participants.<sup>209</sup>

Finally, there is the question of accountability. In the case of voluntary codes, the participants are usually accountable to other participants and the code is enforced through membership contracts.<sup>210</sup> Depending on the relationship of the code with government regulation –

---

<sup>205</sup> *ibid.* p 278.

<sup>206</sup> *ibid.* p 279.

<sup>207</sup> *ibid.* p 279.

<sup>208</sup> *ibid.* p 280.

<sup>209</sup> *ibid.* p 281.

<sup>210</sup> *ibid.* p 282.



whether its instead of or in addition to legislation – the issue of accountability is viewed differently. When the voluntary code is intended to substitute government regulation, mechanisms of ensuring accountability are lacking. When the intention is to complement government regulation, however, voluntary codes can provide additional measures for accountability; such as peer pressure and comprehensive compliance systems.<sup>211</sup>

Priest's categorisation is not the only way to analyse the different forms of self-regulation. Another way to evaluate voluntary approaches is to analyse them in terms of legitimacy, rigor, accountability and complementarity.<sup>212</sup> These categories are somewhat similar to the division presented by Priest – accountability, for example, refers to the independence and transparency of a regime.<sup>213</sup> Legitimacy refers to the participation of key stakeholders throughout the entire process of standard setting, monitoring and enforcement.<sup>214</sup> Rigidity refers to e.g. the measurability of the standards and whether they meet or exceed the requirements of legislation.<sup>215</sup> And finally, the complementarity of a regime concerns the relationship between the regime and state regulation; whether the nongovernmental system intends to complement or replace government regulation.<sup>216</sup> The objective of this kind of analysis is to determine whether an initiative can in fact complement existing regulation and fulfil regulatory loopholes, and whether the initiative truly is effective.

### *Transparency and accountability issues*

As the voluntary approaches described above cannot resort to traditional means of ensuring compliance and accountability, they must create other kinds of methods and incentives. There are several methods to enhance accountability; e.g. opening meetings and procedures to the public, as well as engaging independent auditors or reviewers.<sup>217</sup> Establishing a committee to manage the administration of the instrument is also an option, preferably by including members representing different stakeholder groups in order to adequately address the varying needs and viewpoints of all those involved. This way the instrument becomes

---

<sup>211</sup> *ibid.* p 282.

<sup>212</sup> O'Rourke (n 194). p 139.

<sup>213</sup> *ibid.*

<sup>214</sup> *ibid.*

<sup>215</sup> *ibid.*

<sup>216</sup> *ibid.*

<sup>217</sup> Priest (n 186). p 297.

more transparent and is more likely to be accepted.<sup>218</sup> Public reporting and evaluation are also key tools in improving accountability in self-regulatory schemes. Reporting not only draws the public's attention to a participant's performance, but the results give the abovementioned committee (or other administrative body) the possibility to identify issues and address them to increase compliance.<sup>219</sup> In the absence of government coercion and sanctions, some self-regulatory instruments rely on third-party oversight. The external evaluation of independent third parties is more credible than self-monitoring by the participants themselves.<sup>220</sup>

Despite the abundance of options to enhance accountability, many self-regulatory schemes mainly rely on informal enforcement measures, such as “naming and shaming”.<sup>221</sup> Reputational pressure is thought to be effective enough to ensure compliance<sup>222</sup> – however, in order to tackle the issue of freeriding (and hence, greenwashing), an effective complaints-mechanism and commercially significant sanctioning is crucial. The complaints and sanctioning mechanisms should be reinforced by spreading knowledge about the initiative; the attention drawn to a “naming and shaming” campaign will increase its effectiveness by affecting the actor's reputation.<sup>223</sup> Especially when the initiative in question concerns issues of ethical behaviour, compliance with it is to some extent enforced by peer pressure and reputational pressure – reputation can be an effective tool in informal sanctioning and ensuring compliance.<sup>224</sup> Peer pressure is an especially significant tool in an industry, where the reputation of one affects the reputation of all.<sup>225</sup> Peer pressure is effective in certain situations, but it needs a “consensus of interests” in order to work. The effect of peer pressure may disappear e.g. when only a small group of actors dominate the self-regulatory regime or when the number of actors in the industry grows rapidly, and the participation in the regime is not mandatory.<sup>226</sup> It has also been suggested that in order for a self-regulatory instrument

---

<sup>218</sup> Belinda Reeve, ‘Private Governance, Public Purpose? Assessing Transparency and Accountability in Self-Regulation of Food Advertising to Children’ (2013) 10 *Journal of Bioethical Inquiry* 149 <<http://link.springer.com/10.1007/s11673-013-9441-z>> accessed 23 April 2020, p 151.

<sup>219</sup> *ibid.*

<sup>220</sup> *ibid.*

<sup>221</sup> Gunningham and Sinclair (n 145), p 129.

<sup>222</sup> O'Rourke (n 194), p 136.

<sup>223</sup> Reeve (n 218), p 152.

<sup>224</sup> Priest (n 186), p 245.

<sup>225</sup> *ibid.* p 248.

<sup>226</sup> *ibid.* p 294.

to become credible and effective, government support in creating regulation and ensuring enforcement is essential.<sup>227</sup>

### *When to resort to self-regulation?*

Self-regulation is a viable alternative to government regulation in an industry with only a few actors, which are preferably large and have already existed for some time. Some also suggest that voluntary codes might thrive in industries with “rapidly changing or advanced technology”, where companies are more likely to comply with e.g. environmental regulation.

<sup>228</sup> For a self-regulatory regime to work, the participating actors should share certain core interests to be able to agree on rules and be willing to enforce them. In the ideal situation, according to Priest, the opinion of peers as well as the consumers and public should be paramount to the participants. It is also crucial that the majority of the industry is participating in the regime and that the industry has sufficient resources to maintain and develop it. In the absence of government resources, the availability of expertise is also a must.

<sup>229</sup> In short, self-regulatory schemes are most effective when non-compliance can be punished, there are dispute settlement mechanisms in place and consumers value compliance.<sup>230</sup>

### *Why participate in voluntary self-regulation?*

There are multiple reasons why a private actor might want to engage in voluntary self-regulatory schemes. Especially for MNC's and other actors aiming for financial gain, reasons behind participation might be profit-driven. A major motivator in this case would be resource efficiency – corporations can often cut down on emissions simply by being more resource-efficient.<sup>231</sup> By participating in voluntary schemes, a company might also be able to reduce certain risks,<sup>232</sup> such as the threat of regulation (national/international), public activism resulting in negative attention and losing the competitive position of a company.<sup>233</sup>

---

<sup>227</sup> Gunningham and Sinclair (n 145). p 99.

<sup>228</sup> *ibid.* p 298.

<sup>229</sup> *ibid.* p 298.

<sup>230</sup> *ibid.* p 239.

<sup>231</sup> Michael P Vandenbergh and Jonathan M Gilligan, *Beyond Politics: The Private Governance Response to Climate Change* (Cambridge University Press 2017). p 139.

<sup>232</sup> Hauffer (n 182). p 168.

<sup>233</sup> The competitive position might be lost if e.g. only one company adopts strict environmental standards, whereas when the whole industry adopts the same standards, companies get to keep their competitive positions. *ibid.* p 169. More on the reasons for participating in voluntary commitments in general: Gunningham and Sinclair (n 145). p 97-98.

One element of the risk management approach is regulatory avoidance.<sup>234</sup> Private forms of governance might become cheaper for corporations compared to expensive (and mandatory) government regulation. Companies might also anticipate government regulation in the near future, and act before the government regulation comes into force – thereby gaining so called first-mover advantage.<sup>235</sup> By acting in advance of government regulation, actors might set expectations for the future regulation and industry standards, and avoid the costs of implementing new rules in the future.<sup>236</sup> A key aspect in the decision to join in a voluntary initiative to avoid government regulation, is the fact that in transnational operations actors may face the threat of regulation from multiple different sources; the actor's home state may regulate the actor's activities both home and abroad, and there is also a possibility of international regulation. While it might be less complicated for the actor to leave the regulation to the state and other public entities, the processes of creating hard international law are often slow and highly political, which is why some actors might prefer engaging in self-regulatory schemes instead.<sup>237</sup>

The regulatory avoidance approach regards the actor's attitude towards government regulation – thus, it focuses on the relationship between the actor and the public sector. However, the public sector is not the only cause for concern for actors; the private sector plays an increasingly important role in today's globalised society. One major incentive for participation in voluntary regulation and the key explanation behind the rise of industry self-regulation is reputational pressure.<sup>238</sup> The reputation of a company affects all of its relationships – retail and corporate customers as well as investors, employees and other stakeholders.<sup>239</sup>

---

<sup>234</sup> Vandenberg and Gilligan (n 231). p 149.

<sup>235</sup> *ibid.*

<sup>236</sup> Green (n 129). p 53.

<sup>237</sup> Haufler (n 182). p 168.

<sup>238</sup> *ibid.* p 170. Gunningham and Sinclair (n 145). p 94-95.

<sup>239</sup> Haufler (n 182). p 170.

*“In short, anything a company does anywhere in the world can affect its reputation everywhere in the world. Reputation has become the cornerstone of both investor confidence and public trust. What happens to a company’s reputation therefore has an increasingly direct impact on its relationships with everyone from governments and regulators to customers, employees and investors.”*<sup>240</sup>

The different stakeholder groups of a corporation have power over its behavioural choices, and the reputational risks arising from unethical behaviour are simply not worth it.<sup>241</sup> There have been examples of successful activist group campaigns aimed at e.g. boycotting a certain company or raising awareness of a company’s unethical behaviour, which have led actors to take reputational aspects of doing business more seriously.<sup>242</sup> Reputational pressure matters especially in initiatives, which create a “club effect” among the participants; actors might join the club for the reputational benefits arising from being associated with an environmentally responsible initiative,<sup>243</sup> or they might join in order to avoid being shamed or sanctioned for *not* participating.<sup>244</sup>

The reasons behind an individual actor’s decision to participate in a voluntary self-regulatory instrument are diverse – without extensive empirical research one cannot conclude any definite motives for participation. The next chapter shall dive into the initiatives in the fashion industry and analyse the Fashion Industry Charter for Climate Action in more detail, based on the theory presented in this chapter.

---

<sup>240</sup> ‘You Can Run, But You Cannot Hide: Transparency and Disclosure in Corporate Governance’ (*Business Council of Canada*, 30 January 2003) <<https://thebusinesscouncil.ca/publications/you-can-run-but-you-cannot-hide/transparency-and-disclosure-in-corporate-governance/>> accessed 24 March 2020.

<sup>241</sup> Michael E Cloghesy, ‘A Corporate Perspective on Globalisation, Sustainable Development, and Soft Law’ in John J Kirton and MJ Trebilcock (eds), *Hard choices, soft law: voluntary standards in global trade, environment and social governance* (Routledge, Taylor & Francis Group 2016). p 326.

<sup>242</sup> Haufler (n 182). p 169.

<sup>243</sup> Green (n 129). p 54.

<sup>244</sup> *ibid.*

## 5 GLOBAL GOVERNANCE IN THE FASHION INDUSTRY

As the previous chapter demonstrated, transnational regulation can occur in many different forms, the range of possible global governors is enormous, and they exercise authority via a number of methods. The fashion industry has multiple examples of different forms of transnational regulation by different kind of governors who exercise varying sorts of authority. For instance, while not exactly a fashion industry initiative, the EU circular economy legislative package does affect the industry greatly (at least within the EU). The EU and the legislative package, however, cannot be described as a form of global governance – the EU’s authority derives from member state delegation and is generally quite widely accepted as equally legitimate as state authority. Nevertheless, it contributes to the range of initiatives concerning the fashion industry.

Another example is the GFA 2020 commitment, which represents a very different kind of industry-wide initiative. The GFA is a non-profit organisation, which describes itself as “a thought leadership and advocacy organisation focusing on industry collaboration and public-private cooperation”.<sup>245</sup> The GFA’s authority could be described as a mix of entrepreneurial and principled authority – as a non-profit organisation they advocate for ethical behaviour in the field of fashion and by creating initiatives they engage in industry self-regulation. The commitment, in turn, could be seen as a form of substitute or risk management TER, where the industry itself decides to adopt certain standards / rules in order to either avoid the negative consequences arising from (possible) government regulation or to fulfil loopholes left by inadequate government regulation. The issues with the GFA 2020 commitment are the same as in any self-regulatory schemes – voluntary participation, lack of enforcement methods and credibility issues. Indeed, according to the 2019 status report of the commitment, 15 of the 90 signatories had not met the minimum requirements.<sup>246</sup>

In this paper the main focus is on the Fashion Industry Charter for Climate Action, which is also a private sector instrument intended to govern the actions of the signatories. The process for the initiation of the Charter was twofold: first, the UN Climate Change called for the

---

<sup>245</sup> ‘Global Fashion Agenda - About Us’ <<https://globalfashionagenda.com/about-us/>> accessed 8 February 2020.

<sup>246</sup> ‘Global Fashion Agenda - 2020 Commitment’ <<https://globalfashionagenda.com/commitment/#>> accessed 8 February 2020.

industry representatives to take action in mitigating their environmental impacts throughout the industry, and second, the signatories then proceeded to establish targets and rules for themselves via the Charter. This division shall also guide the structure of the following chapters: questions relating to the authority of the UN Climate Change shall be covered first, and the questions arising from the Charter in connection with the theory of industry self-regulation shall be addressed after.

## 5.1 Questions about authority in the Charter

As one of the most widely-known and accepted global governors, the authority of the UN and its different organs has been quite thoroughly analysed in the academic literature (some of the work has been referred to in this paper, see e.g. chapter 4.1). In the case of the Charter, the authority of the UN Climate Change could be based on a few different attributes of the organisation: their “perceived altruism” constituting principled authority, and the possibility of the organisation using experts to perform certain tasks, thus constituting expert authority.<sup>247</sup> The UNFCCC is also the parent treaty of the Paris Agreement,<sup>248</sup> which in turn is linked to the Charter – thus, the authority of the UN Climate Change in initiating the Charter might also derive from its previous actions, and the fact that it has been considered legitimate in the past via e.g. the Paris Agreement.

When looking at the Charter as a self-regulatory instrument, the more pressing question is the authority base of the signatories. In this case, it could be described as *entrepreneurial authority* (see chapter 4.1.2), which often occurs as e.g. industry-wide forms of self-regulation (including situations where a few industry representatives create a set of standards for them and for other industry representatives to follow).<sup>249</sup> This is also the case with the Charter; the 43 original signatories established the targets and rules, and then invited others to join their cause. Thus, by establishing those rules the original signatories acted as governors. However, they also intend to follow the rules and achieve the targets themselves – which is where the line between the governors and the governed gets blurred. As the signatories use their entrepreneurial authority to collectively govern each other they form a kind of *club*, where the difference between the governors and the governed is not always clear (as demonstrated

---

<sup>247</sup> See chapter 4.1.2.

<sup>248</sup> UNFCCC, ‘About the Secretariat’ <<https://unfccc.int/about-us/about-the-secretariat>> accessed 31 March 2020.

<sup>249</sup> Green (n 129), p 46.

above). The signatories might share a mutual understanding regarding a certain outcome or process, which is why they are brought together in this initiative. In this case the desired outcome is the mitigation of climate change.

The bases for the UN Climate Change's and the signatories' authority might be different, but the form in which they practice that authority in connection with the Charter is quite similar. That is to say, all the participants aim for the same outcome, thus constituting an example of consensus-based authority practice. One of the key features in this sort of authority practice is the role of pre-existing norms and practices, around which consensus can be formed. In the case of the Charter, the pre-existing norms could refer to the UNFCCC and the Paris Agreement. In consensus-based authority practice the consent to a certain outcome usually exists prior to any action being taken due to the deep mutual understanding which exists among the parties of a certain ideological discourse. In the case of the Charter, it is clear that the signatories along with the UN Climate Change share a mutual understanding of the necessity of protecting the environment and mitigating climate change. Thus, the UN Climate Change used its (principled) authority to unite the signatories, who already shared an understanding of the fashion industry's negative impacts on the climate and realised that it should have a more active role in the fight against climate change.

### *The role of the UN Climate Change*

As was established, the UN Climate Change used its' legitimate authority to initiate the commitment, but what kind of role does it have in the implementation, maintenance and development of the Charter? The UNFCCC itself represents collective action TER, where the main purpose is the effective regulation of global public goods.<sup>250</sup> Collective action TER is initiated by a public sector actor and is addressed to the public sector – hence, the Charter does not fit the description. The Charter is an example of public/private TER – initiated by a public entity and addressed to the private sector. Furthermore, and as mentioned before, in public/private forms of TER the participation is voluntary, and the initiative is arranged and administered by a transnational public entity on behalf of its signatories.<sup>251</sup> Indeed, as can be seen from the Charter, the role of the UN Climate Change in the fulfilment of the Charter is exactly that:

---

<sup>250</sup> See chapter 4.2.1.

<sup>251</sup> See chapter 4.2.1.



UN Climate Change is committed to facilitate and coordinate, within its resources and mandates and as part of its work on Global Climate Action, the work undertaken by Signatories as part of the fashion industry’s response to UNFCCC Global Climate Action.<sup>252</sup>

UN Climate Change will facilitate the work by:

- a. Supporting the delivery of the Working Groups to the extent that they are within UN Climate Change’s existing resources and mandates;
- b. Maintaining a list of Signatories and their participation in working groups;
- c. Facilitating regular online calls and meetings as may be necessary among Signatories;
- d. Organising an annual face-to-face meeting with all Signatories to take stock of progress, share lessons learned, and discuss and agree on work to be done in the next year. Signatories will be invited to host the meeting on a rotational basis and attendees will bear their own costs of attendance;
- e. Coordinating external communication activities by the Signatories;
- f. Presenting and explaining the work of the Signatories to other entities and organisations, as needed to facilitate delivery of work by the Signatories;<sup>253</sup>

The above examples leave little room for interpretation – the role of the UN Climate Change is purely administrative. Nevertheless, the fact that the Charter functions under a widely known and authoritative international organisation benefits the signatories by establishing a stronger sense of authority for the initiative and by enhancing its credibility. By being under the auspices of the UN Climate Change, the initiative also gets more attention, as was seen in the COP25. Martin Frick, Senior Director Policy and Coordination at UN Climate Change, applauded the fashion industry’s representatives for taking action against climate change by joining the Charter, and stated that the fashion industry is a great example of social norm creating: “fashion works like no other industry with the perception of what’s right, what’s cool, what’s the thing that people should wear, and that’s an always evolving colourful, interesting, creative thing. And if we can have, not only the industry in itself, looking inside into your own value chains, in the electricity that you buy, in the water

---

<sup>252</sup> Modalities of Work, Section 1.

<sup>253</sup> Modalities of Work, Section 15.

consumption -- if you use your sparkle, the fascination that people have with beauty to make this green agenda something that people aspire to, and not a backwards agenda -- it is the thing to do.”<sup>254</sup> Which raises the following questions; what are the reasons behind a voluntary initiative like the Charter and why do actors want to participate in it?

## 5.2 Reasons behind the Charter and motives for participation

While the Charter quite clearly represents a public/private form of TER, the purpose behind the initiative is a more complex issue. Chapter 4.2.1 introduced different purposes of TER – one of which was the use of TER in the case of a states’ unwillingness or inability to create acceptable environmental regulation. A common form of this kind of substitute *TER* is an NGO-/IO-led initiative, where the NGO/IO either takes control of the initiative or works together with the other participants – like the Charter. A substitute TER initiative, especially when led by an NGO/IO, might occur as e.g. principle-based regulation.

A short analysis of the preamble of the Charter reveals the ultimate motive for the initiative: the consensus about the fact that certain, environmentally harmful activities require regulation. This can be seen in many instances in the Charter, e.g.:

”the goals agreed in the Paris Agreement translate to reaching climate neutrality in the second half of the twenty-first century. The fashion industry, as a major global player, needs to take an active part in contributing to the realisation of these goals”<sup>255</sup>

”current solutions and business models will not be sufficient to deliver on the current climate agenda. Fashion industry needs to embrace a deeper, more systemic change and scale low-carbon solutions; ”<sup>256</sup>

”the fashion industry stakeholders have a role to play in reducing climate emissions resulting from their operations, with an awareness that the majority of

---

<sup>254</sup> The whole webcast can be seen at UNFCCC, ‘Fashion Industry Charter for Climate Action: One Year after Its Launch’, *COP25* (2019) <<https://unfccc-cop25.streamworld.de/webcast/fashion-industry-charter-for-climate-action-one-ye>> accessed 7 April 2020.

<sup>255</sup> Preamble, Section 3.

<sup>256</sup> Preamble, Section 6.

climate impact within the industry lies in manufacturing of products and materials; ”<sup>257</sup>

There is a widespread understanding globally that MNC’s have responsibilities concerning other stakeholder groups than their shareholders – that is to say, “those who are affected by their activities”.<sup>258</sup> The Charter is not the only instance where a certain activity is deemed underregulated; Cragg notes that there is a general consensus on the international level about certain commercial activities that require regulation or standard setting, as well as the need of protection against unwanted harm in certain areas (e.g. human rights and the environment).<sup>259</sup> Besides the general consensus that the actions of MNC’s need to be regulated, there are other reasons for encouraging self-regulation. Some argue that international hard law (international conventions etc.) cannot be trusted to “bring about needed changes to ensure global sustainability”. This lack of trust is mostly due to the inefficiency of the processes of international hard law and the lack of enforcement methods on the global level – thereby, it is argued that better results may be achieved through international standards and other voluntary programmes.<sup>260</sup> Furthermore, the regulation of environmental and other issues relating to the concept of sustainable development has already increasingly been focusing on the collaboration between governments and industries in order to ensure the protection of the environment as well as to secure economic growth and job creation.<sup>261</sup>

Thus, the most plausible reasons behind an initiative like this are 1) the consensus that the fashion industry, as a major emitter of GHG’s, should somehow be regulated and 2) due to the inability or the inefficiency of states and other traditional governors to regulate such activity, the regulation has to be carried out by some other global actor – in this case, by the UN Climate Change.

At the panel discussions at COP25, one of the issues discussed was indeed the role of the fashion industry in the fight against climate change. Hans Peter Lankes, Vice President of

---

<sup>257</sup> Preamble, Section 7.

<sup>258</sup> Wesley Cragg, ‘Multinational Corporations, Globalisation, and the Challenge of Self-Regulation’ in John J Kirton and MJ Trebilcock (eds), *Hard choices, soft law: voluntary standards in global trade, environment and social governance* (Routledge, Taylor & Francis Group 2016). p 216.

<sup>259</sup> *ibid.* p 215.

<sup>260</sup> Cloghesy (n 241). p 328.

<sup>261</sup> *ibid.* p 326.

Economics and Private Sector Development at IFC, stated that the signatories are very committed and engaged in the Charter, and due to their power and networks across the globe, they have the ability to “pull” the whole industry with them towards a certain direction. These brands (i.e. the signatories) have the opportunity to implement more efficient and environmentally friendlier technological solutions in the different steps of their value chains in low- and middle-income countries, which would otherwise not be implemented. Brands can also encourage certain solutions due to the influence they have on people’s preferences.

*“The power to shape demand in the fashion industry is something that can go beyond the particular fashion. It goes to demand for lifestyles, it goes to demand for how things are made – and we can use that power.”<sup>262</sup>*

Valerie Keller, Co-Founder and CEO of Imagine,<sup>263</sup> when asked if the fashion industry should solely concentrate on a certain issue (e.g. plastic pollution) or should it try and tackle everything at once, stated that there is an abundance of promising initiatives addressing important issues across the industry, but they need to be brought together in order for the industry to transform as a whole. She emphasised that this is also one of the main reasons behind the Charter. She also highlighted the role of the signatories in the transformation by saying that business is either a part of the solution or part of the problem; because the industry has waited for too long to address the issue, it is now imperative for businesses to make sustainability the core of their business models.

*“A thousand flowers have bloomed; we need to make some bouquets”<sup>264</sup>*

---

<sup>262</sup> Hans Peter Lankes at COP25.

<sup>263</sup> Imagine is a for-benefit organisation, which brings together CEO’s from around the world to address issues in business, such as the climate change and human rights. The aim is to transform the system towards a sustainable and more equal path. ‘Imagine’ <<https://imagine.one/>> accessed 6 May 2020.

<sup>264</sup> Valerie Keller at COP25, referring to the abundance of initiatives across the industry and the need to bring those initiatives together in order to achieve a meaningful change in the industry.

### *Motives for participating in the Charter*

The general reasoning for the need of an environmental initiative in the fashion industry is closely associated with the elements of substitute TER. However, when examining the relationship between the signatories and the Charter, the possible reasons for participation form an example of risk management TER. The motive for joining in a commitment, which will (greatly) affect the actors' way of doing business and which, at first glance, would appear to stand against their current business models, could be to avoid certain risks.<sup>265</sup> As described in chapter 4.2.1, actors participate in risk management TER initiatives e.g. when they want to avoid negative consequences of under-regulation. Other elements of the risk management approach include the avoidance of stricter and more costly government regulation as well as reputational risks, as explained in chapter 4.3 in connection with reasons to participate in voluntary codes of conduct. Reputation is a major motivator for engaging in voluntary regulation; participation might be motivated by either the enhanced reputation due to being associated with a certain initiative, or the avoidance of negative attention and shaming due to non-participation. Especially in initiatives which form a kind of "club", the reputational motives are a plausible explanation for participation. The reputational aspect will be further discussed in chapter 5.4.

Of course, the true reasons behind each signatory's participation in the Charter cannot be discovered in this paper. However, explanations presented in chapter 4.3 offer a set of plausible reasons for participation on a general level – considering that the signatories are MNC's and thus by nature profit-driven, it is highly probable that one or more of the motives do apply.

---

<sup>265</sup> The prevailing business model in the fashion industry is the linear model, as explained in chapter 3.1.

### 5.3 Credibility of the Charter

In the previous chapters the Charter was established to be an example of substitute and risk management TER – both of which tend to be subject to the same risks. In general, industry self-regulation has been described as “voluntary, unenforceable and lacking credibility”,<sup>266</sup> and the issue of accountability is usually seen as a major problem – which are precisely the issues usually discussed in connection with both substitute and risk management TER initiatives. This chapter shall explore the credibility issues of the Charter, and whether they have somehow been addressed.

The first things to notice in connection with the Charter is the voluntary participation and the “easy exit” option. The Charter gives the signatories the option of withdrawing from its obligations without giving explanations or other reasoning for their decision to exit:

Signatories and Supporting Organisations *may withdraw* from the Fashion Industry Charter for Climate Action and associated obligations at any time by notifying UN Climate Change in writing.<sup>267</sup>

The voluntary participation and the option for withdrawing are the two sides of the same coin; on the one hand it may encourage participation by lowering the threshold to engage in the initiative, but on the other hand it makes the initiative vulnerable by decreasing its strength and credibility as a regulatory instrument. Voluntary participation also means that actors cannot be obligated to participate even if it was deemed necessary – for instance, if a major emitter refused to participate. This is a common problem for all voluntary initiatives and represents one of the fundamental issues of global governance.

In addition to the voluntary participation and exit option, the Charter states the following:

The Fashion Industry Charter for Climate Action does not constitute a new formal initiative or registered organisation, but work is carried out by the Signatories with facilitation from UN Climate Change.<sup>268</sup>

---

<sup>266</sup> Haufler (n 182). p 164.

<sup>267</sup> Modalities of Work, Section 18.

<sup>268</sup> Modalities of Work, Section 2.

The fact that the Charter's role as a formal initiative is denied in the Charter itself somewhat undermines its credibility, which is an obstacle many voluntary initiatives face; convincing other actors of the credibility of the initiative. For instance, risk management TER initiatives are often motivated by the enhanced reputation and the increased profitability associated with them – and not e.g. the protection of the environment – which naturally undermines their credibility in the eyes of the different stakeholder groups.<sup>269</sup> The voluntary participation and the exit option, the fact that the signatories establish the rules themselves, and the lack of enforcement methods are all examples of elements that reduce the Charter's credibility. However, the deficit created by the aforementioned circumstances has, at least in part, been taken into account in the Charter by compensating the shortfalls with other mechanisms to induce credibility.

One way to enhance the credibility of a voluntary initiative is to associate it with certain relevant legislation, legally binding commitments and/or other reputable initiatives.<sup>270</sup> As already mentioned in chapter 3.2, the objectives of the Charter are linked to both the Paris Agreement and the GHG Protocol Corporate Standard – both of which are widely-known and respected commitments based on scientific knowledge. In addition to this, though not exactly a part of the targets, the Charter points out that “delivering on the climate agenda also contributes to the broader Agenda 2030 for Sustainable Development”. The Agenda 2030 is closely related to other worldwide commitments on climate change mitigation, and has been adopted by all UN member states.<sup>271</sup> The aforementioned associations aim to boost the credibility of the Charter on a more general level, but certain specific risks have also been taken into account: the possible incentive towards anti-competitive behaviour has been acknowledged by stating that signatories “shall refrain from any such behaviours during or in relation to their participation”.<sup>272</sup> The risk of anti-competitive behaviour is especially characteristic for risk management TER initiatives, which the Charter, too, represents.<sup>273</sup>

---

<sup>269</sup> Heyvaert (n 157), p 80.

<sup>270</sup> *ibid.* p 74.

<sup>271</sup> The Agenda 2030 is “a plan of action for people, planet and prosperity”, which seeks to balance the economic, social and environmental aspects of sustainable development, and to bring human rights to everyone around the world. It was adopted by UN member states in 2015 along with the Sustainable Development Goals (SDG's). The Agenda aims to eradicate (extreme) poverty and achieve a sustainable and resilient path by 2030 via the fulfilment of the 17 SDG's (and the 169 targets). United Nations, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (2018) A/RES/70/1 <[https://sustainabledevelopment.un.org/content/documents/21252030\\_Agenda\\_for\\_Sustainable\\_Development\\_web.pdf](https://sustainabledevelopment.un.org/content/documents/21252030_Agenda_for_Sustainable_Development_web.pdf)> accessed 8 February 2020.

<sup>272</sup> Modalities of Work, Section 19.

<sup>273</sup> See chapter 4.2.1.

The possibility of anti-competitive behaviour is also characteristic for voluntary codes of conduct in general; while the flexibility increases their efficiency as regulatory instruments, it also allows for anti-competitiveness among the participants.<sup>274</sup>

Another way to boost the credibility of an initiative is to seek the support of public interest groups. This has also been done in connection with the Charter – at the moment it has over 30 supporting organisations, which represent a variety of different industries, sectors and causes (ranging from sustainable freight NGO’s to universities and to global media companies). The UN Climate Change, even though not a supporting organisation, can also be seen as a public interest group enhancing the credibility of the Charter. The support of the aforementioned organisations and other actors is indeed significant, but perhaps even more noteworthy is the signing of the Public Communique at COP25; where 86 signatories signed a public pledge to states and governments to assist the industry in the fight against climate change. In the Communique, the signatories recognise that “the current solutions and business models will be insufficient to deliver on the climate agenda”, and hence “ask the political leaders of countries with major fashion production and consumer markets to partner with us to bring the industry in line with the Paris Agreement goal”. Kendall Tang, a representative of one of the signatories, stated that the Communique “is a very important signal to policy makers around the world on the necessity to have the right framework to enable and promote actions to reduce our level of carbon emissions”.<sup>275</sup> Indeed, the pledge from the fashion industry for governments to take action sends a strong message about the aims of the industry representatives and gives their intentions more credit. Engaging public interest groups and states also enhances the Charter’s transparency and thus makes it more accessible to the public – which, in turn, contributes to its credibility.

One reason the methods discussed in this chapter enhance the credibility of the Charter is because they put pressure on the signatories; for instance, if they ask for assistance from states they also have to be sure to do their part of the job and act in conformity with their commitments. Thus, reputational pressure is not only a motivator for participation – it might also encourage compliance. Closely linked to, and partly overlapping with, the issue of credibility are the issues of enforcement and accountability.

---

<sup>274</sup> See chapter 4.3.

<sup>275</sup> ‘Public Communique’ (n 99).



## 5.4 Enforcement and accountability

As explained in chapter 4.3, if the voluntary self-regulation is intended to substitute government regulation (as is the case with the Charter), the issues of accountability and enforcement are more pronounced. The methods for ensuring accountability and enforcing the rules are quite similar and partly overlapping; the mechanisms range between (fairly) formal and informal methods. This chapter shall explore the methods utilised in the Charter in connection with both, enforcement and accountability issues.

In the absence of traditional enforcement and coercion methods, the Charter has relied on other ways to achieve and maintain compliance among the signatories. One form of incentivising membership and compliance in voluntary initiatives is the use of certain mechanisms arising from private and intellectual law, such as membership contracts and the use of trademarks.<sup>276</sup> The Charter expressly denies the use of the name and logo of the UN Climate Change, and the members do not have to sign separate membership contracts in order to join the initiative,<sup>277</sup> but it does include certain similar motivators:

The participation of Signatories and Supporting Organisations in the Working Groups will be recognised by UN Climate Change in relevant communications and events. Such participation may also be reflected in the Signatories' own communications, by stating that they are a Signatory to the Fashion Industry Charter for Climate Action as part of fashion industry's response to UN Climate Change Global Climate Action.<sup>278</sup>

Working Group 1: Decarbonisation and GHG emissions reductions

Works to e.g. "define a system to reward companies that set and achieve more ambitious climate targets."

The lack of mechanisms to hold actors accountable in case of non-compliance is a key issue in all voluntary regulation.<sup>279</sup> Especially with self-regulatory instruments, where participants

---

<sup>276</sup> Heyvaert (n 157). p 74-75.

<sup>277</sup> To participate, the members are required to sign a letter of commitment, which confirms their intentions to support the Charter, implement its principles and engage in the working groups. The letter does not contain any actual provisions. UNFCCC, 'About the Fashion Industry Charter for Climate Action' (n 93).

<sup>278</sup> Modalities of Work, Section 12.

<sup>279</sup> Haufler (n 182). p 181.

create the rules themselves and decide their own degree of participation, the issue of accountability seems quite self-evident and the discussion might even seem completely fruitless.<sup>280</sup> There are, however, some solutions to this problem; external auditing, public reporting and accountability systems within organisations, to name a few.<sup>281</sup> One option is to establish an administration committee to manage the functioning of the instrument. Ideally the committee would include representatives from different stakeholder groups in order to take different viewpoints into account in the development of the instrument. The Charter has a Steering Committee, which e.g. officially published the Public Communique at COP25. However, no information is publicly available on the committee's members or its responsibilities. Nevertheless, the committee in itself is a positive step in addressing the accountability deficit created by the lack of formal mechanisms to hold actors accountable. In addition to establishing a separate committee, opening the meetings and procedures of the regime to the public contributes to the improvement of accountability. The UNFCCC maintains a section on their website dedicated to the meetings of the fashion industry representatives, which contains general information about the meetings as well as meeting reports. Moreover, the event held at COP25 in connection with the Charter was open to the public, and all presentations and discussions were webcasted. These actions allow the public to follow the development of Charter as well as the signatories, and thus in part fill the accountability deficit.

The Charter has one key tool with which it intends to hold the signatories accountable: the public reporting of GHG emissions. The underachievement or negligence of the signatories to report their emissions does not lead to any sanctions, but public reporting is one way of putting reputational pressure on the participants by ensuring that no underperformance goes unnoticed. During the time of COP25 there were not yet any mechanisms in place for tracking and reporting – Laila Petrie, the Vice-Chair of the Charter Steering Committee and Co-Chair of the Working Group on decarbonisation, stated that different options were still being explored in order to make the Charter “as transparent as possible”. She pointed out that some commitments included in the Charter (mainly the action-based targets, such as the policy engagement) might need specific ways of reporting, for which the existing reporting mechanisms would not work. Petrie also noted that the framework for the Working Group targets functions both at the individual company level and collectively on the industry

---

<sup>280</sup> *ibid.* p 182.

<sup>281</sup> *ibid.*

level. Hence, she stated that it is important to discover the aggregate output of the individual companies – how much impact reduction can be seen and how many suppliers etc. and different regions are engaged in the Charter via the signatories. This further contributes to the reputational pressure arising from the requirement to publicly report emissions – not only are the signatories’ emissions being scrutinised, but also the reach of their influence throughout their value chains is being followed. However, the Charter does not include requirements for external auditing or evaluation and while the public reporting of emissions certainly affects the participants’ reputation, the consequences for the companies depend largely on the activities of consumers. If consumers are not environmentally conscious, they most likely will not care about the company’s GHG emissions, which, in turn, is why the education of consumers is vital if the fast fashion industry is to change its ways. While the Charter does emphasise the role of education in “building towards changed consumer behaviours that reduce environmental impacts”, it leaves the concrete methods and implementation unresolved. At the time of writing this (April 2020), none of the 8 Working Groups cover the education of consumers.

The abovementioned mechanisms lay at the more formal end of the spectrum, but many voluntary self-regulatory regimes rely on informal measures; compliance can to some extent be enforced by peer pressure and reputational pressure. Reputation can be an effective tool in informal sanctioning, especially when the reputation of one affects the reputation of all. The recognition of signatories by the UN Climate Change and a reward system might be great motivators for some signatories (perhaps more so for the smaller or less-known ones), mostly due to the possible reputational benefits. As already mentioned before, some voluntary initiatives create a ‘club effect’ – in these initiatives, where reputation is one of the key reasons of joining a ‘club’, the banishment from the group might be a serious and undesirable consequence for the actor. This has also been taken into account in the Charter:

In order to ensure the quality and credibility of the work of the Signatories of the Fashion Industry Charter for Climate Action, UN Climate Change, based on consultations with Signatories, may exclude a company or organisation from the list of Signatories if its sincerity in participation or ability to participate is reasonably a cause for concern.<sup>282</sup>

---

<sup>282</sup> Modalities of Work, Section 16.

In addition, for the informal methods to work properly, it is crucial to establish a well-functioning and effective complaints-mechanism, as well as commercially significant sanctioning. The Charter does not include the aforementioned mechanisms, and thus relies solely on peer pressure amongst the signatories as well as reputational pressure arising from participation and e.g. reporting of emissions.

The option of excluding misbehaving signatories from the Charter also raises its credibility, as the chances of using the Charter solely for greenwashing decrease. Another viable option for voluntary initiatives is using consumer power in the absence of traditional means of coercion.<sup>283</sup> Consumer power can be harnessed by e.g. organising public campaigns in connection with the initiative or by using labels to increase consumer awareness. As already mentioned, the Charter does not include options for labelling, but the signatories can naturally utilise their participation in their communications.<sup>284</sup> Furthermore, the UN Climate Change maintains a list of signatories and their participation in Working Groups,<sup>285</sup> which helps the conscious consumer to stay informed about current participants and their targets, and can perhaps even follow whether or not they are being fulfilled. The trouble is, of course, that the scope of consumers who actively follow the list (and individual participants' websites) is presumably quite small. This is one reason why the COP25 was important for the Charter; an eagerly followed conference which also drew a lot of attention to the side events, one of them being the publication of the fashion industry's Communique. By publicly reaffirming their intentions and asking for the help of governments the signatories achieved two things: 1) they spread knowledge about the initiative and 2) they brought attention to the participating companies and their targets. In other words, reputational pressure can also be used as a tool for enforcement as well as a motivator for participation and compliance.

On a more general level, the role of the civil society is crucial in holding actors accountable for their unethical actions. Third parties that are concerned for the social and environmental consequences of the MNC's activities in under-regulated environments have formed an

---

<sup>283</sup> Heyvaert (n 157). p 75.

<sup>284</sup> At least Inditex, H&M Group and Nike, Inc. have all mentioned their participation in the Charter on their website. However, the mentions are not easily found, and the average consumer would probably not go to the trouble of finding them.

<sup>285</sup> Modalities of Work, Section 15b.

important sector – the civil society.<sup>286</sup> Competition and profit maximisation have led corporations to move production of goods and services to “low-cost, under-regulated environments”, but at the same time technological advances have increased the amount and the possibilities of international co-operation between third parties. These third-party organisations have the ability to influence MNC’s by organising publicity campaigns, boycotts and by putting political pressure on governments and international bodies.<sup>287</sup> The civil society’s focus is on issues other than the economic interests of different (business) parties – they are concerned about the ethical questions of doing business, such as human rights and environmental protection.<sup>288</sup> Which ultimately leads the discussion back to the role of reputation – the bad reputation following from a failure to comply with certain requirements may be an appropriate punishment.

Enforcement and accountability issues are also closely related to the efficiency and effectiveness of an instrument. As already established, the Charter is an example of a voluntary form of industry-wide self-regulation; there is no involvement of the public, essentially no methods for auditing compliance or ensuring accountability, and the rules are made by the participants themselves. The efficiency of the Charter can be measured by determining its flexibility to respond to changing circumstances and the use of expertise. The Working Groups, which each represent a different principle of the Charter, contribute to the flexibility of the Charter. As the targets have been divided into smaller areas of work, the Charter is more likely to be able to quickly respond to changing circumstances. Also, the Working Groups are utilising experts by engaging representatives from the signatories as well as the supporting organisations in their work. As an example of a voluntary form of industry-wide self-regulation, the Charter can be tailored for the specific needs of the fashion industry – however, its effectiveness is determined by the number of participants, the incentives for compliance and the methods for enforcement it includes. As mentioned in chapter 3.2, the Charter has around 100 signatories – considering the size of the industry, this not a big number. However, the signatories are major players in the industry and can undoubtedly influence the industry’s development; as powerful actors they may be able to set an example for the other industry representatives to follow. The enforcement methods and incentives for compliance in the Charter are relatively weak, as has been demonstrated in this chapter; this

---

<sup>286</sup> Cragg (n 258). p 222.

<sup>287</sup> *ibid.*

<sup>288</sup> *ibid.*

decreases the Charter's effectiveness. The efficiency and effectiveness of the Charter are indirectly explored more thoroughly in chapter 5.6 via the analysis of some empirical studies conducted in connection with the Charter.

## 5.5 Summary of the analysis

In short, the Charter represents both a substitute TER and risk management TER initiative – the categorisation depends on the viewpoint. From the viewpoint of the initiator and the supporting organisations, the Charter represents a form of substitute TER. From the signatories' point of view, however, the Charter falls in the risk management TER -category. The UN Climate Change relies mainly on a combination of principled and expert authority, whereas the signatories form an example of entrepreneurial authority. The difficulties that the Charter faces are typical for all voluntary initiatives; the voluntary participation creates certain vulnerabilities, and the lack of enforcement methods and ways of holding actors accountable lead to credibility issues. The existence of the issues has been recognised and the Charter offers some solutions to them.

Associating the Charter with legislation and international (legal) commitments, such as the Paris Agreement, Agenda 2030 and the GHG Protocol Corporate Standard, raises its credibility – as does the public support of states and other public interest organisations. The lack of enforcement methods has been compensated by the recognition of the signatories in the communications of the UN Climate Change, as well as the reward system for setting and achieving targets. The possible exclusion from the Charter works both as an enforcement method by putting pressure on the signatories to act in conformity with their commitment, as well as a method to hold signatories accountable in case they fail to comply with the Charter. The accountability issue is also addressed by requiring the signatories to publicly report their GHG emissions. Most of these methods ultimately rely on the power that consumers and other actors have over the signatories, by affecting their reputation.

The voluntary participation, credibility issues and the lack of enforcement methods has raised questions about voluntary commitments – are they a result of a genuine concern for the climate or are they only one more form of greenwashing?<sup>289</sup> The concern is that the

---

<sup>289</sup> For instance, H&M has been the target of many critics and has been accused of greenwashing numerous times due to discrepancies between their environmentally conscious campaigns and their 'usual' forms of

initiatives might be used only to boost a company's business via the enhanced reputation they get from participating in them, without actually making any changes to their business models. This might lead to a situation where the majority of the industry (especially the major emitters) is engaged in various sustainability initiatives and reaping the benefits of seeming 'environmentally conscious', but where in fact the environmental reality remains unchanged. This leaves little or no incentive to create new sustainable solutions or impose stricter regulation for the industry. The threat of greenwashing is especially relevant regarding the enforcement of rules and the possibility to hold actors accountable in case of non-compliance.

Whether or not the Charter is just another form of greenwashing cannot be concluded solely based on a theoretical analysis of its characteristics – however, and unfortunately, a comprehensive empirical study is not possible in this research paper. Instead, a few empirical studies which have been conducted so far regarding the Charter shall be utilised in the following (short) analysis of the Charter in action. The aim is to provide evidence to strengthen the theoretical viewpoints offered in this chapter, and to offer some tangible facts for the reader about the Charter in practice.

---

production. See Sharlene Gandhi, 'How Fast Fashion Is Greenwashing' [2019] *Sense and Sustainability* <<https://www.senseandsustainability.net/2019/12/03/how-fast-fashion-is-greenwashing/>> accessed 26 February 2020. And The Fashion Law, 'Greenwashing' (2016) <<https://www.thefashionlaw.com/learn/greenwashing/>> accessed 26 February 2020.

## 5.6 The Charter in action

Greenwashing comes in many forms – it might be e.g. vague promises, omitting information and important facts or even providing false information about a company or its products.<sup>290</sup> Even though it is complicated to adequately evaluate whether the Charter is used as a tool for greenwashing, a few attempts have been made to more thoroughly analyse its role and impacts.

Stand – an environmental advocacy organisation – published a report in 2019 ranking 45 fashion brands based on their commitments to address their climate impacts. The report includes companies, which have committed to the Charter and/or other industry initiatives (such as the G7 Fashion Pact). In the filthy fashion climate scorecard companies were given points for their climate commitments – the amount of points awarded was higher the more concrete the targets were. It was especially noted in the report that no points were given for “false climate solutions”, such as focusing only on the transformation towards a circular economy model, shifting the burden of action to consumers in the hope that consumers will choose to make conscious decisions and the failure to encompass the full value chain.<sup>291</sup> The report includes 45 major fashion companies, of which only two are on the right track to achieve the Paris Agreement target (1,5°C). Most of the Charter’s signatories which were a part of the study for the report were placed lower than this – some (e.g. H&M, GAP, PUMA, Nike, Adidas) are on a path to 2°C or less of global warming, and some (e.g. Inditex, GANT, Esprit, GANNI) on a path to more than 2°C of warming.<sup>292</sup> The report is not comprehensive and does not concern the Charter specifically, but it goes to show that despite the abundance of initiatives a company might be committed to, the targets set by them might still not be enough; e.g. targets set by the signatories of the Charter might be in accordance with its minimum requirements, but they are not ambitious enough to tackle the industry’s climate impacts. This calls for a re-evaluation of the Charter’s targets, as well as more stringent measures concerning its enforcement and the accountability of the signatories – or even mandatory industry-wide regulation.

---

<sup>290</sup> The Fashion Law (n 287).

<sup>291</sup> ‘Filthy Fashion Climate Scorecard’ (2019) <<https://www.stand.earth/sites/stand/files/StandEarth-FilthyFashionScorecard.pdf>> accessed 22 April 2020. p 7.

<sup>292</sup> *ibid.* p 5.



Another study was conducted in 2019 by KPMG to assess the targets and actions by the original 43 signatories of the Charter.<sup>293</sup> The study found three major shortcomings; value chain GHG emissions (Scope 3 emissions) are not widely reported (targets no. 2 and 4), consumer awareness is not being appropriately improved (targets no. 11, 14 and 15) and the industry representatives are not utilising existing tools and standards to improve their performance (targets no. 4, 13 and 15). Other areas of improvement found by the study include the (transparent) disclosure of GHG reduction goals, further commitment to the Science Based Targets Initiative and the extension of climate strategies throughout the whole value chain. According to the study, only 37% of the original signatories had disclosed their Scope 3 emissions – which, as explained in chapter 3.2.4, are a major contributor to the climate impact of the industry. The lack of adequate reporting of Scope 3 emissions could be due to the size and complexity of the value chains, as well as the lack of data.<sup>294</sup>



Figure 2: The reporting of Scope 3 emissions.  
Source: KPMG, ‘Sustainable Fashion: Committing to a Sustainable Future through the Fashion Industry Charter for Climate Action ’ (2019). p 12.

<sup>293</sup> KPMG, ‘Sustainable Fashion: Committing to a Sustainable Future through the Fashion Industry Charter for Climate Action ’ (2019) <<https://assets.kpmg/content/dam/kpmg/cn/pdf/en/2019/09/sustainable-fashion-committing-to-a-sustainable-future-through-the-fashion-industry-charter-for-climate-action.pdf>> accessed 29 April 2020.

<sup>294</sup> *ibid.* p 10. O’Rourke (n 194). p 129.

In addition to the lack of reporting in general, the Charter does not specify what emissions Scope 3 should include. As figure 2 demonstrates, the indirect emissions of Scope 3 could include a variety of sources. Certain examples of the emissions included in Scope 3 are extremely relevant for the fashion industry (such as the end-of-life treatment of products, the waste generated in operations and fuel and energy related activities). However, as the Charter does not require the reporting of specific indirect emissions, the choice of the content and the extent of reporting is up to the participants themselves. Without binding requirements, it is possible to leave out certain relevant emissions and only report emissions from other sources included in Scope 3 (e.g. business travel and employee commuting). For now, however, the more prominent issue seems to be the fulfilment of the reporting requirement overall.

Around 60% of the retail brands controlled by the original 43 signatories already have a sustainability section available on their websites, and 35% of the brands offer an environmentally conscious line of products.<sup>295</sup> However, as the consumers are becoming more and more conscious in their shopping habits, this is not enough; studies have shown that consumers would prefer a conscious option if more information was available regarding the sustainability of a product.<sup>296</sup> The report offers some examples how companies could enhance consumer awareness: adding information about a product's sustainability, offering an environmentally conscious line of products or improving their reporting and information sharing practices towards consumers.<sup>297</sup> Over 90% of the original signatories (at the time of conducting the study) had a sustainability section on their consumer websites, and over 50% also provided a sustainability report.<sup>298</sup> However, 33% did not have any kind of reporting on sustainability.<sup>299</sup>

---

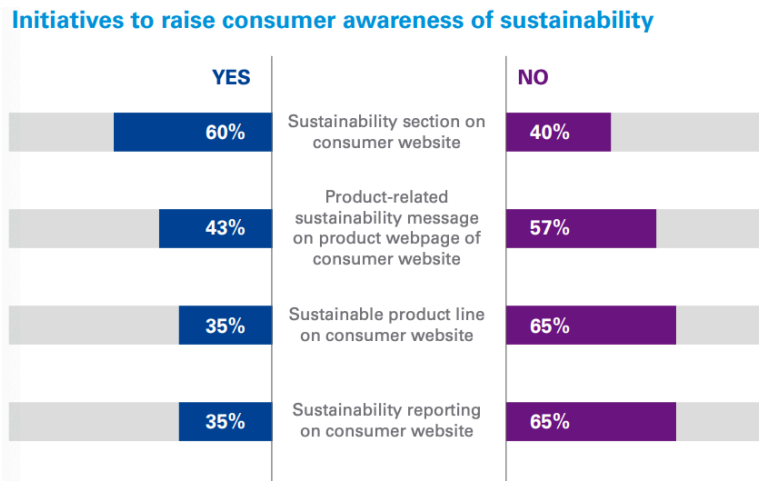
<sup>295</sup> KPMG (n 291). p 14.

<sup>296</sup> *ibid.*

<sup>297</sup> *ibid.*

<sup>298</sup> *ibid.* p 16.

<sup>299</sup> *ibid.* p 17.



Base: 93 brands

Source: Publicly available information

Figure 3: Raising consumer awareness on sustainability.

Source: KPMG, 'Sustainable Fashion: Committing to a Sustainable Future through the Fashion Industry Charter for Climate Action' (2019), p 15.

It was also noticed that the industry is not fully utilising the existing tools and standards to assess the climate impact of their actions (e.g. SAC, the Higg Index and ZDHC mentioned in chapter 3.1). The report states that the industry already has the necessary infrastructure to move towards a more sustainable path, but it is still looking for new measures to address the climate impacts – hence, the report concludes that the “signatories should leverage these existing foundations to measure their impact and make tangible improvements”.<sup>300</sup> As was mentioned in chapter 5.4, at the time of COP25, different tracking and reporting methods were still being explored due to the nature of certain targets, for which the existing methods would not fit. According to the KPMG report, however, this is unnecessary as appropriate mechanisms already exist – in light of this, the signatories might be prolonging the process unnecessarily and thus wasting precious time.

Despite the critique of the reports covered above, the Charter got a fairly good reception at COP25. Alice Pilia, Senior Policy Adviser at Condé Nast,<sup>301</sup> applauded the Charter for bringing together different actors ranging from policy makers to fashion brands and other relevant actors in the industry, as well as supporting organisations. However, it was also agreed by the panellists that the industry is currently underestimating what it takes to completely transform the way it operates. There are certain business models (such as the circular economy model) which could be beneficial for the industry but are yet to be fully

<sup>300</sup> *ibid.* p 18.

<sup>301</sup> Condé Nast is a global mass media company. Its portfolio consists of several print, digital, video and social brands, such as Vogue, Vanity Fair and GQ. 'Condé Nast - About' <<https://www.condenast.com/about>> accessed 6 May 2020.

utilized. The objectives of the Charter and the actions of the industry representatives were also contested during the panel discussions, and a question was raised regarding the future of the industry; are we, as consumers and human beings, expecting too much of the fashion industry? There is a decision to be made between continuing as a fast-producing industry by switching to more sustainable materials and processes or changing entirely the definition of *fashionable*.

## 6 CONCLUSIONS

Fashion no longer is the individualised privilege of the high society – it is a multi-trillion-dollar industry, dominated by large multinational corporations that hold a considerable amount of power globally. What these corporations do and decide affects not only actors within their own value chains, but other industries and consumers as well. Some might argue that the fashion industry has a responsibility of taking a bigger part in the combat against climate change with or without binding regulation and strict methods of coercion, but the cruel fact remains that the world revolves around business. On a more positive note, business can change; as seen in the COP25 discussions about the Charter, many of the panellists emphasised that sustainability is becoming an integral part of the industry. Bottom-up initiatives, such as the Charter, can demonstrate the participants' concern and motivate other actors (e.g. states) to act, thus paving the way for binding regulation by encouraging agenda setting and compliance with industry standards. The question is not only about GHG emissions or transforming the industry into a circular one – it is about combining all issue areas to form a comprehensive regulatory framework for the industry as a whole.

The Charter, as good as it may sound, might not be enough to motivate fashion industry actors to truly address the impacts they have on the climate and the environment. Some of the targets indeed address the most critical parts of the industry (e.g. the 30% reduction in GHG emissions, especially in Scope 3 activities) and some methods, such as the public reporting of the GHG emissions, might put pressure on the companies to actually follow through with their commitment. The inclusion of GHG Protocol Corporate Standard and Scope 3 activities in the reporting requirements is certainly significant and brings a considerable edge to the Charter in comparison with other industry initiatives. Also, the establishment of specific Working Groups to deal with different issue areas is commendable – this can e.g. prevent the signatories of using the Charter for greenwashing and it might motivate to establish more ambitious targets. However, there are still some major issues to be dealt with; first, not all participants are reporting Scope 3 emissions, which form a major part of the value chain emissions. Second, the Scope 3 emissions have not been specified in the Charter and could be anything a signatory chooses to report, ranging from extremely relevant emission sources (e.g. energy and fuel related) to less relevant ones from the fashion industry's point of view (e.g. employee commuting). While all the emissions mentioned in connection with Scope 3 definition are relevant in combatting the climate change, the

Charter should require the reporting of the emissions arising from the most relevant sources in the fashion industry. And third, although the reporting requirement in itself is a positive step, as an informal enforcement method it needs some other concrete measures in order to function adequately; e.g. commercially significant sanctioning. The Charter lacks any concrete methods of enforcement and holding the signatories accountable in case of non-compliance; this has been left solely in the hands of the signatories themselves as well as the public via peer pressure and reputational pressure.

In the absence of traditional enforcement and accountability mechanisms, the Charter relies heavily on peer pressure and reputational pressure. Reputational pressure is one of the major ways of ensuring compliance with voluntary initiatives; it affects the decision to participate in an initiative as well as the compliance with it. It is used as a substitute for traditional methods of enforcement and coercion, as well as a mean to hold actors accountable in case they fail to comply with their commitments. Consumers hold a lot of power, and their everyday decisions can have a real impact on the way business is done. In other words, consumers can define the future of the fashion industry by choosing to be conscious and making informed decisions. This is why Alice Pilia at the COP 25 stated that it is crucial to trigger behavioural change – to make sure that consumers get on board with the agenda and make sustainable choices in their daily lives. However, to put the future of fashion solely in the hands of consumers does not seem right; after all, as the producers of fashion, companies are better equipped for changing the “system”. In order to do this, however, the burden of transforming the entire system should be divided between fashion industry representatives and public authorities. This is why the role of the Communique is crucial – if states take the industry’s pledge into account and act on it accordingly, the future of fashion might look a lot brighter.

Although the shrinking of the Aral Sea was not due to climate change, it nevertheless cruelly demonstrated that “men can destroy the planet.”<sup>302</sup> After a visit to the infamous location, the UN Secretary-General António Guterres said in his statement, that we should “use the Aral Sea as a symbol of how humanity can destroy the planet and let’s make it a lesson for us all to be able to mobilise the whole international community to implement the Paris

---

<sup>302</sup> ‘Catastrophe of Aral Sea Shows “men Can Destroy the Planet,” Warns UN Chief Guterres’ [2017] *UN News* <<https://news.un.org/en/story/2017/06/559232-catastrophe-aral-sea-shows-men-can-destroy-planet-warns-un-chief-guterres>> accessed 7 April 2020.

Agreement — Governments, businesses, civil society, cities, States — in order to make sure that tragedies like the one I have seen in Uzbekistan will not be repeated.”<sup>303</sup> As I stood on top of an abandoned ship in the middle of a dried-up sea, feeling slightly guilty about the cotton shirt I was wearing, I wondered; how many other disasters like this would we let happen on the account of being *fashionable*?

The Charter as well as the abundance of other initiatives across the industry have given me a glimpse of hope – perhaps the market forces are indeed more effective in “regulating” an industry such as this. However, the lack of binding measures does make the situation slightly precarious, and my main question to the fashion industry remains: is it enough?

---

<sup>303</sup> Guterres (n 1).