

Factsheet 1

EU Corporate Sustainability Due Diligence Directive

An Apparel Supplier's Guide

**Key Sustainability Legislation
in the EU, US, and UK**

EU Corporate Sustainability Due Diligence Directive
EU Corporate Sustainability Reporting Directive
New York Fashion Act
EU Forced Labour Regulation & Guide
US Uyghur Forced Labor Prevention Act
EU Ecodesign for Sustainable Products Regulation
EU Packaging & Packaging Waste Directive & Proposal
EU Microplastics Regulation
UK Plastic Packaging Tax
EU Product Environment Footprint Guide
EU Textile Regulation
EU Taxonomy

Acknowledgements

This resource was commissioned and led by:

Epic Group
Norlanka Manufacturing Colomo Ltd.
Shahi Exports Pvt. Ltd.
Simple Approach
Transformers Foundation



In addition, this research was also supported by:

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, GIZ FABRIC Asia
Transformers Foundation



Author:

The Remedy Project is a social enterprise that works to improve access to justice and remedy for migrant workers in global supply chains. They work constructively with governments, civil society, law enforcement, and the private sector to translate the UN Guiding Principles on Business and Human Rights into practice. For more information please see www.remedyproject.co.

Graphic Design:

Fiona Fung

This document should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This document is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your legal counsel concerning any particular situation and any specific legal question you may have.

In addition, many of the legislations covered in this document remain at the early stages of the relevant legislative procedure. The information provided herein has been developed based on the latest draft of the proposed legislation at the time of writing. It is intended that the guidance and recommendations provided in this document will be updated as the legislation develops.

Introduction

a. Objective

This document is intended to enable suppliers in the apparel value chain that are established or headquartered outside of the Global North¹, or whose operations are based outside these jurisdictions or whose supply chains extend to the Global South, to better understand how sustainability-related legislation in the Global North could potentially impact them. While suppliers may not, in all cases, be directly subject to the obligations created by these Global North laws, they may still experience knock-on effects as they form an integral part of the global apparel value chain and produce goods for multinational brands and retailers who have increasing compliance obligations as they adopt new practices in order to respond to the increased legislation. As such, this document aims to:

- Offer a public resource and roadmap for suppliers to proactively respond to and prepare for the requirements of these Global North laws.
- Provide a platform for dialogue and information exchange where suppliers and manufacturers can explore engagement (where possible) with policy makers in Global North jurisdictions.
- Support suppliers in delivering the fashion industry's social and environmental performance goals, and drive meaningful change for rights holders – whether workers, local communities, cotton farmers– globally.

b. Who commissioned this resource and why

This resource was initiated and led by suppliers across production tiers and locations facing many of the same challenges. Despite these shared challenges, rarely do suppliers come together to address these challenges collectively.

Specifically, this resource was commissioned by: Epic Group, Norlanka, Shahi Exports & Simple Approach. In addition, this research was also supported by Transformers Foundation and GIZ FABRIC.

It is important to note the symbolic significance of this piece of work: this is a project initiated and led by fierce – and in some cases direct – commercial competitors. The entities commissioning this resource hope this inspires more apparel suppliers to join forces.

c. Which legislation is covered & why

The entities commissioning this work began by crowdsourcing a longlist of legislation which industry representatives feel are pertinent to the apparel and textile sector (thank to everyone who generously shared their time helping to develop this long list). The entities commissioning this work, in consultation with the Remedy Project, based on significance and impact, narrowed the longlist down to twelve pieces of legislation. The twelve pieces were selected based on the potential scale of cascading impacts and the business risk they pose to suppliers. It is therefore important to emphasize that this resource is not exhaustive.

d. Important legislative context to understand

As governments in the Global North embark on ambitious plans to transition towards climate neutrality, inclusive and sustainable growth, the body of sustainability legislation is expanding rapidly. The European Union (EU) is at the forefront of these changes, introducing a plethora

of legislative and non-legislative measures to implement priority policies such as the [European Green Deal](#). The European Green Deal is a cornerstone of the EU's industrial strategy, comprising a series of proposals to make the EU's climate, energy, transport, and taxation policies fit for reducing net greenhouse gas emissions by at least 55% by 2030, and to secure the global competitiveness and resilience of European industry². There are also sector-specific initiatives such as the EU Strategy for Sustainable and Circular Textiles, which aim to implement the commitments made under the European Green Deal, by setting out measures to address the design and consumption of textile products, and promote a greener and fairer value chain in the textiles industry. The legislations covered in this document such as the EU Ecodesign for Sustainable Products Regulation and Digital Product Passport, EU Corporate Sustainability Due Diligence Directive, EU Regulation on Prohibiting Products Made With Forced Labour on the Union Market (**Forced Labour Regulation**), are only some of the initiatives taken by the EU to execute on the European sustainability policy objectives³.

These legislations create legally binding obligations on companies to consider how they are managing their social and environmental impact. Many of these laws and regulations have global application and/or will impact apparel manufacturing and sourcing hubs outside of the Global North. As such, while these laws originate from the Global North such as the EU, United Kingdom, and United States, they will impact companies operating outside of these jurisdictions. It is therefore a prescient time for companies directly subject to these legislations, and for those who have business relationships with them, to align their sustainability policies and practices with these laws.

At a high level, these laws (especially those relating to mandatory human rights due diligence) can be collectively understood as a legal framework that translates elements of the [United Nations Guiding Principles on Business and Human Rights \(UNGPs\)](#) into binding legal obligations. The UNGPs represent the authoritative framework on how businesses should operationalize their commitments to human rights. As businesses are increasingly required to comply with different (and sometimes overlapping) laws in this area, it is The Remedy

Project's view that businesses that are able to operate in accordance with the UNGPs and other international frameworks such as the [OECD Due Diligence Guidance for Responsible Business Conduct](#) will be more successful in making this transition. Complying with the highest international standards could help future-proof business against future legislative changes and may also be more efficient from a process perspective. Furthermore, the Remedy Project sees a trend of many brands upgrading their internal compliance and value chain requirements based on the UNGPs and international frameworks. Thus, complying with these international standards could help businesses position themselves to align with brands' expectations and easily and effectively adapt to future legislative requirements, as well as satisfy the requirement of other business partners and customers. Instead of having to operate in accordance with different standards of compliance for each jurisdiction and each counterparty, the business can adopt a less fragmented, and thus less burdensome, approach to compliance. Of course, even if suppliers align with established international frameworks, different brands will continue to set varying detailed procedural requirements on their supply chain partners, particularly in the near future. We therefore continue to recommend that suppliers proactively work with brands and retailers on implementation to reduce the risk of multiple interpretations.

e. General implications for companies supplying apparel & beyond

These legislative developments make clear that businesses will need to re-think the way they approach sustainability. This new era of legislation moves sustainability from "nice to have" to "must-have" and requires companies to implement human rights and environmental risk management practices. With this transition, we expect to see more cross-functional efforts to embed considerations of human rights and environmental impacts into business' day-to-day operations and overall strategy. In this new landscape, in-house legal teams must work closely with procurement and sourcing, operations, product teams, and in-house sustainability experts to achieve compliance. There must also be executive and management level buy-in, and attention given to sustainability issues.

f. Likely implications for suppliers

Some of the key and recurring operational implications for suppliers are likely to include:

- Increased demands from brands for visibility into upstream supply chain partners' practices and full supply chain traceability
- More stringent codes of conduct and contract clauses from brands who work to protect themselves in case of legal investigation and penalties.
- Increased reporting requirements and data requests. This will require stronger supply chains and data storage.
- Until legislative frameworks fully mature, different EU states may interpret requirements differently and brands are likely to set different requirements. However, given the common trend of adopting rules and requirements on the basis of international principles and standards, such as the UNGPs and OECD Due Diligence Guidelines, aligning internal systems and procedures with those principles and standards can be a good start towards satisfying varying requirements.
- Increased emphasis for suppliers to implement due diligence processes to identify, prevent, remediate and report on social and environmental impacts.
- Increased focus on grievance mechanisms. Here too there is a risk that different brands will interpret new requirements differently and that this could lead to varying standards within a single facility.

It is hoped that this document will provide companies – especially those engaged in the apparel value chain – a roadmap to navigate this fast-evolving regulatory landscape.

How to Use ● This Document

This document comprises a series of factsheets. For each legislation, the factsheet will cover the following topics:

1. Overview

A summary of the key aspects of the legislation.

2. Context

A description of the political context and policy objectives that the legislation seeks to address or achieve.

3. Status

Whether the legislation is in effect and if not, the current stage of the legislative procedure. If known, the expected timeline for implementation is also provided. For proposed EU legislation, users may find it helpful to refer to the [European Parliament's infographic](#) for information on the different stages of the EU legislative procedure.

4. Scope

This section sets out the types of companies or products that fall within the scope of the legislation. This may include, for example, an explanation of the thresholds that a certain company must meet for the legislation to apply. Our suggestion to suppliers is to start by identifying whether they are directly in-scope and, if so, review the obligations and compliance recommendations for companies in-scope (Sections 5 & 6). If a supplier has established that they are not directly in-scope, it is our suggestion that those suppliers review whether the brands for which they produce are in scope. If a supplier's customer is within scope, our suggestion is to review the potential implications for suppliers to companies in-scope (see Section 7).

5. Obligations for companies in-scope

A description of the duties and responsibilities that must be undertaken by the companies that are directly subject to the legislation.

6. Compliance recommendations for companies in-scope

Suggested recommendations for companies to prepare for compliance with the legislation (where the legislation is not yet in effect), or considerations for companies seeking to improve their compliance (where the legislation is already in effect). For the avoidance of doubt, these compliance recommendations do not constitute legal advice or opinion; companies should seek legal advice from attorneys concerning any specific situation or legal question they may have. Moreover, as the text of the laws in many cases remains subject to change, companies should refer to the most updated version of the legislation in developing their compliance strategy. The enforcement actions undertaken by the relevant regulator (once the law is in effect) will also determine the scope of compliance obligations.

7. Potential implications for suppliers to companies in-scope

In some instances, suppliers in the apparel value chain who are not directly subject to the concerned legislation, may still be impacted by the legislation as they supply to companies in-scope (i.e., a fashion brand or fashion retailer in-scope). These may include requirements around transparency and traceability, or obligations to undergo audits or obtain certifications. This section sets out the potential implications of the legislation for suppliers. For the avoidance of doubt, companies in-scope will approach compliance differently and many of the legislations covered in this document are in nascent stages of development. Moreover, the enforcement actions undertaken by the relevant regulator will also affect how companies in-scope respond to the legislation. As such, the guidance provided herein is only intended to represent our best estimates of the knock-on effects of the concerned legislation and is for informational purposes only.

8. Penalties for non-compliance

Where applicable or known, the penalties for companies in-scope that fail to comply with the legislation are set out.

9. Form of Enforcement

A description of the key forms of enforcement action that may be taken by the relevant authorities.

10. Reporting/disclosure for companies in-scope

An overview of the key information disclosure obligations (if any) for companies in-scope.

11. Access to remedy mechanisms and litigation risk

This section notes where the relevant legislation provides a right for legal action to be taken against a company for alleged non-compliance.

12. Opportunity to participate and engage in legislative developments

Where applicable, opportunities to participate in public consultation.

13. Useful resources to support compliance

Links to third-party resources and guidance are provided for further detail on how companies in-scope may approach compliance and how suppliers or business partners to companies in-scope may prepare for cascaded compliance requirements.

Glossary

A glossary of key terms used in this document is set out below.

Brands: For the purposes of this document, this refers to a multinational company that is engaged in the business of offering branded apparel products.

Companies in-scope: Companies that are directly subject to the obligations set out in the relevant legislation.

Due Diligence: A process that businesses should carry out to identify, prevent, mitigate, and account for how they address the actual and potential adverse human rights or environmental impacts in their operations, their value chain and other business relationships.

EU Decision: A “decision” is binding on those to whom it is addressed (e.g., an EU country or an individual company) and is directly applicable⁴.

EU Delegated Act: A delegated act is an EU legislative mechanism to ensure that EU

laws that are passed can be implemented properly or reflect developments in a particular sector.

EU Directive: A directive is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals⁵.

EU Regulation: A regulation is a binding legislative act. It must be applied in its entirety across the EU⁶.

European Commission: The European Commission is the EU’s politically independent executive arm. It is responsible for drawing up proposals for new European legislation, and it implements the decisions of the European Parliament and the Council of the EU.

European Council: The European Council is the EU institution that defines the general political direction and priorities of the European Union.

European Parliament: The European Parliament is the EU’s law-making body that is directly elected by EU voters every 5 years.

Grievance Mechanism: Any routinized, State-based, or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought⁷.

Supplier: For the purposes of this document, unless otherwise specified, this refers to a supplier in the apparel value chain. While the information provided herein is applicable across the entire value chain, it is primarily intended for Tier 1 suppliers and sub-contractors who produced finished goods for fashion brands and retailers, and Tier 2 suppliers and sub-contractors who provide services and goods, such as knitting, weaving, washing, dyeing, finishing, printing for finished goods, and components (e.g., buttons, zippers, soles, down and fusible) and materials for finished goods.

Value Chain: A value chain encompasses all activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream business relationships of the company.



EU Corporate Sustainability Due Diligence Directive

1. Overview

The EU Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1733 (**CSDDD**) will require some companies inside and outside of the EU to undertake due diligence on their environmental and human rights impacts and tackle climate change.

Due diligence in this context refers to the process businesses should carry out to identify, prevent, mitigate, and account for how they address the actual and potential adverse human rights or environmental impacts in their operations, their value chain and other business relationships⁸. For example, this may include forced and child labour, inadequate workplace health and safety, workplace exploitation, greenhouse gas emissions, pollution and biodiversity loss and ecosystem damage.

2. Context

The EU wants to hold companies **accountable for their social and environmental impacts** – both within their own operations and throughout their value chains. They also want to ensure that companies that have significant operations in the EU are held to the same standard across all the different EU countries.

The CSDDD is intended to complement the proposed EU Corporate Sustainability Reporting Directive (**CSRD**). The CSDDD imposes legal obligations on companies in-scope to manage human rights and environmental risks in their operations and value chain. The CSRD requires companies in-scope to report on how they are managing these risks.

3. Status

In order for the CSDDD to be adopted, the European Commission, the European Parliament, and the European Council must all agree on what the CSDDD says. The first step in this process was a proposal by the European Commission in February 2022. In November 2022, the European Council adopted its negotiating position and general approach to the CSDDD. The European Parliament must now also determine its negotiation position on the CSDDD, and this process is currently underway. The Committee on Legal Affairs voted in April 2023 on their amendments to define the position of the European Parliament, and the European Parliament is expected to settle its position in June 2023⁹. Then, the European Parliament and the European Council will negotiate to agree on and adopt the final text of the CSDDD.

Once adopted, the EU countries will have two years to transpose the CSDDD into their national laws and communicate the relevant texts to the European Commission¹⁰. As the CSDDD is an EU Directive, the EU

countries may, in theory, establish higher standards than what is set out in the CSDDD. There is currently no guidance on how inconsistencies (if any) between national legislation and the CSDDD shall be resolved.

A phased-in approach has been proposed meaning that only large companies are expected to comply initially, i.e., from two years following the entry into force of the CSDDD. Please refer to Section 4 below for further details.

4. Scope

To which companies will the CSDDD directly apply?

The CSDDD will apply to companies, irrespective of whether they are incorporated in the EU, provided they meet the applicable worldwide turnover and/or number of employees thresholds. In this factsheet, companies meeting these criteria are referred to as “companies-in scope”.

● Thresholds

The applicable thresholds to determine whether a company is in-scope are set out below:

Company established in the EU

Group 1

Companies with > 500 employees and a net turnover of EUR 150 million+ worldwide.¹⁵

Group 2

Companies with > 250 employees and a net turnover of EUR 40 million+ worldwide, provided that at least 50% of that turnover was generated in certain sectors, including the manufacture of clothing and textiles, agriculture and manufacture of food products, and extraction of mineral resources¹³.

Company established outside of the EU¹⁴

Companies with a net turnover within the EU of EUR 150 million+.

Companies with a net turnover within the EU of EUR 40 million+ provided that at least 50% of that turnover was generated in certain sectors, including the manufacture of clothing and textiles, agriculture and manufacture of food products, and extraction of mineral resources.

Points to Note

- Different thresholds apply to **EU companies** (i.e., companies formed or incorporated in an EU country) and **non-EU companies** (i.e., companies formed or incorporated outside of the EU).
- Companies in-scope are also categorized based on whether they are larger entities, known as **Group 1 companies**, or smaller entities, referred to as **Group 2 companies**.
- Whether a company in-scope is a Group 1 company or Group 2 company will affect the scope of their obligations, and the timing of expected compliance. Group 1 companies will be subject to the obligations under the CSDDD from two years following the entry into force of the CSDDD. Group 2 will be subject to obligations from four years following the entry into force of the CSDDD.

Exclusions —

SMEs are excluded from direct scope of the CSDDD, although they may still be indirectly impacted due to actions taken by the larger companies in-scope¹⁴.

Similarly, if your company supplies to, or produces for, a company in-scope, you may still be indirectly impacted by the CSDDD as its requirements are expected to have knock-on effects on value chain globally. These implications are set out in more detail in Section 7.



5. Obligations for companies in-scope

The following section has been developed based on the European Commission proposal. As the text of the CSDDD remains subject to change, the precise scope of obligations for companies in-scope (as described below) may differ from the final version adopted.

Overview

The CSDDD, as proposed, will require the companies in-scope to undertake human rights and environmental due diligence in relation to their own operations, the operations within their group (including their subsidiaries) and value chain. A **value chain** encompasses all activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream **established business relationships** of the company¹⁵.

Points to Note

- It is possible that the final text of the CSDDD will have a narrower scope as the European Council has proposed that the concept of “value chain” in the current draft proposal be replaced with the “chain of activities”, which would focus on the company’s upstream suppliers and would exclude the company’s downstream activities (for example, distribution and end of life).
- It is also not clear how the term “established business relationships”¹⁶ will be interpreted in practice. It is possible that companies in-scope will only need to conduct due diligence on business partners with whom they have a (direct or indirect) relationship that is long-lasting. As such, short, unstable, or informal relationships such as unofficial subcontracting or home-based workers (e.g., artisanal embroidery), or self-employed workers (e.g., cotton farmers) may be excluded from the scope of due diligence obligations.
 - This stands in contrast to the UNGPs and OECD Due Diligence standards, which require companies to prioritize due diligence activities based on the severity and likelihood of human rights risks (rather than the duration or intensity of their business relationship).

Companies in-scope will also be required to review the risk of climate change in relation to their business activities and strategy and implement a plan to combat any such risks.

The CSDDD also requires that directors of companies in-scope are responsible for overseeing the due diligence actions set out below. These obligations around directors' duties are intended to embed sustainability considerations within the corporate governance structure of companies in-scope.

Due Diligence Obligations¹⁷

The CSDDD sets out specific requirements that companies in-scope must implement in their operations and across their value chain. These requirements are to:

▶ Integrate due diligence into all corporate policies and establish a standalone due diligence policy¹⁸.

The due diligence policy should include:

- i. a description of the company's approach to due diligence;
- ii. a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries;
- iii. a description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business relationships.



► **Identify actual and potential adverse human rights and environmental impacts from their business operations or those of their subsidiaries or established business relationships (adverse impacts)¹⁹.**

Note that Group 2 companies only need to identify actual and potential severe adverse impacts for Group 2 companies, whereas Group 1 companies have obligation to identify adverse impacts more broadly.

► **Take appropriate measures to prevent or, if not possible, adequately mitigate any potential adverse impacts identified²⁰.**

This could include the following actions:

- i. developing and implementing a prevention action plan, with reasonable and clearly defined timelines and qualitative and quantitative indicators for measuring improvements;
- ii. seeking contractual assurances from business partners to ensure compliance with the company's codes of conduct (it may also be necessary to obtain contractual assurances with suppliers in the value chain where the company in-scope does not have an existing, direct contractual relationship (e.g., a Tier 2 supplier), in which case a contract should be accompanied with appropriate measures to verify compliance);
- iii. making relevant investments, for example, to upgrade the company's management or production processes and infrastructures;
- iv. supporting SMEs with which the company has an established business relationship, where compliance with their obligations could jeopardize the viability of the SME; and
- v. collaborate with other entities, including where appropriate to help bring an adverse impact to an end.



► **Take appropriate measures to bring actual identified adverse impacts to an end or minimize their impact²¹.**

This could include the following actions:

- i. paying damages and financial compensation to affected individuals or communities;
- ii. implementing mitigation measures as described under the preceding bullet point.

Where the above-described actions cannot prevent, adequately mitigate, or bring an end to (respectively) the adverse impact, the company may be required to refrain from entering into new or extended relations with the relevant partner in the value chain and may be required to temporarily suspend or terminate such relationship as appropriate.

► **Establish a complaints procedure for use by the following people and organizations²²:**

- i. those affected or have reasonable grounds to believe they may be affected by an adverse impact;
- ii. trade unions and other workers representatives representing those concerned; and
- iii. civil society organizations active in the value chain.

The complaints procedure should allow complainants to request appropriate follow-up from the company and meet with company representatives to discuss the complaint

► **Companies should assess their own operations and measures and those of subsidiaries and relevant third parties, to monitor their effectiveness, periodically and at a minimum on an annual basis²³.**

The due diligence policy should be updated accordingly following these reviews..

Climate Change Obligations²⁴

In relation to combating the impact of climate change in relation to their operations, Group 1 companies must adopt a plan to ensure that their business model and strategy are in line with the obligations under the Paris Agreement to limit global warming to 1.5°C.

This plan should include the extent to which climate change is a risk for, or an impact on, the company's operations.

Where climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company should include emission reduction objectives in the plan.

Directors' Duties²⁵

Directors of EU companies in-scope will be required to consider the consequences of their decisions or sustainability matters, including, where applicable, human rights, climate change and environmental consequences. EU countries will be required to change national laws so that directors who fail to do so will be considered to have breached their duty to act in the best interest of the company.

Directors of EU companies in-scope will also be held responsible for putting in place and overseeing due diligence actions and liaise with relevant stakeholders and civil society organizations in doing so. Directors are also tasked with adapting the company's corporate strategy to address any identified actual and potential adverse human rights and environmental impacts and any mitigation measures.

6. Compliance recommendations for companies in-scope

As the CSDDD is still passing through the European legislative process, companies in-scope do have time to prepare for their upcoming obligations. While the obligations for companies in-scope may still change depending on the final text of the CSDDD, we suggest the following as general recommendations to consider at this stage:

- ▶ As an initial matter, companies should undertake an assessment of whether they are likely to be within scope, and if so, whether they would fall within Group 1 (larger companies) or Group 2 (smaller companies). In addition to this, companies in-scope should review their subsidiaries and business partners within their value chains, to establish the potential extent of their due diligence obligations.
- ▶ Companies in-scope should consider potential governance and oversight responsibilities within their organization. As mentioned above, directors of EU companies in-scope will be required to consider sustainability matters when making decisions for the business and reporting to the board of directors in that respect. It would therefore be prudent to begin introducing these issues into director-level meetings and decision-making, as well as board reporting procedures, ahead of the implementation of the CSDDD to ensure a smooth transition of this process.
- ▶ Companies in-scope should also review their current procedures and policies to identify any gaps against the requirements of the CSDDD. For example, businesses may not have a complaints procedure in place and will need to establish one. Many businesses will need to either adjust and amend their due diligence policies and practices or implement them for the first time. The due diligence plans should set out clear actions to achieve the objectives, be forward-looking and supported by specific milestones.
- ▶ Larger Group 1 companies that may be subject to the additional climate change obligations described above will also need to separately evaluate their operations and processes to assess their current ability to comply with such obligations.

It is The Remedy Project's assessment that the CSDDD and other human rights due diligence laws derive from the UNGPs, which provides the authoritative international framework on how business should respect human rights. Companies in-scope may consider aiming to operate in accordance with the UNGPs and the OECD Due Diligence Guidance for Responsible Business Conduct as this would likely be more efficient than seeking to achieve different standards of compliance for each individual piece of legislation.

7. Potential implications for suppliers to companies in-scope

The following section has been developed based on the European Commission proposal. As the text of the CSDDD remains subject to change, it is not possible to include with specificity how companies that fall outside the direct scope of the directive may be indirectly affected by the law. Companies in-scope may take different approaches to compliance given that the practical application of the CSDDD remains open to interpretation at this nascent stage. As such, it is difficult to concretely predict in practical terms the specific knock-on effects across value chains.

Companies that do not fall directly within scope of the CSDDD, but supply to companies in-scope, will still be indirectly affected by the CSDDD due to their position in the value chains of companies in-scope. As explained in Section 5 above, where adverse impacts are identified, companies in-scope may be required to temporarily suspend commercial relationships with partners in their value chains until the impact can be brought to an end or minimized, so suppliers should keep this possibility in mind.

Suppliers who are in the value chain of brands or retailers in-scope, but are not directly subject to the obligations of the CSDDD, could expect to see the following **knock-on effects**:



Suppliers should prepare for requests from brands or retailers in-scope to include contractual assurances in agreements that oblige the supplier to comply with the brand's or retailer's codes of conduct, and these may be in the form of warranties and indemnities. This could be the case where there is a direct relationship between the supplier and the brand or retailer, but also where there is an indirect relationship, and the contractual assurances have been flowed down from the brand or retailer to a sub-supplier, through the Tier-1 supplier.



While most brands or retailers currently already require their suppliers to comply with their codes of conduct, we would expect that the standards in the codes of conduct will become increasingly stringent, e.g., suppliers will be required to undertake their own due diligence on their business partners. Similarly, brands or retailers may adapt existing auditing processes to better verify compliance e.g., there could be a higher frequency of unannounced audits for suppliers that are deemed to be high-risk.



Suppliers should also prepare for brands or retailers in-scope to include further rights in contracts that would enable them to conduct more robust verification. This may include the right to conduct audits, on-site inspections, or to requests for information (see subsequent bullet for types of expected information requests). Suppliers should therefore assess their internal processes and record-keeping so that when they are agreeing to be subject to these verification measures they can be confident that they will be able to meet those requirements.



Specifically, we would also expect buyers to request information from suppliers to conduct human rights and environmental risk assessments, and to verify compliance with buyer's codes of conduct. This may include providing data such as demographic information of workers, wages, working hours, and information to support raw materials tracing (e.g., country of origin of materials) and supply chain mapping (e.g., identity and location of sub-suppliers and sub-contractors). Based on the individual brand or retailer, it is possible that data provided will need to cover service providers (e.g., janitorial, catering or security services provided at facilities), and extend upstream to the source of materials (including e.g., ginners or farmers). Buyers may also request suppliers to provide declarations to confirm the accuracy of the information provided.



Brands or retailers in-scope may roll-out, strengthen or expand the scope of existing grievance channels (e.g., third-party helplines, worker voice tools and applications) to cover further tiers of their value chain. While many brands or retailers may have existing grievance reporting channels, these may only cover their own facilities and or Tier-1 supplier facilities currently. These grievance channels will likely be expanded to cover Tier-2 suppliers or even further upstream (depending on the individual brands' or retailers' approach). Suppliers will likely be required to publicize and socialize the availability of brands' or retailers' grievance mechanisms to affected rightsholders (e.g., workers in supplier facilities).





At the same time, we would also expect brands or retailers in-scope to require their direct suppliers to put in place multiple grievance reporting channels (e.g., hotlines, applications) operated by the supplier themselves or by a third-party service provider as well as platforms to solicit worker feedback periodically (e.g., surveys, interviews, applications), to cover supplier sites. At a minimum, these channels must provide users the ability to report anonymous, protect the user's confidentiality, and be accompanied by non-retaliation policies. Brands and retailers will also likely require suppliers to make a diversity of reporting channels available and offer methods of escalating grievances. These grievance channels must be accompanied by procedures to track, investigate, and resolve the reported grievances, and a mechanism to communicate / report how grievances are being resolved.



These policy measures will likely be accompanied by more proactive engagement by brands and retailers on grievance management – for example, brands and retailers may require their suppliers to provide grievance logs and grievance-related data to verify whether the suppliers' grievance mechanism is effective at resolving grievances and actually used by affected rightsholders.

Given that the CSDDD has yet to come into force, and it is uncertain how its provisions will apply in practice, brands and retailers in-scope will likely take different approaches to compliance. Suppliers who expect that they will be indirectly impacted by the CSDDD may already engage in discussions with the brands or retailers who will be directly subject to the obligations of the CSDDD to better understand how the brand or retailer expects to change their current purchasing practices, codes of conduct and other policies, due diligence programs, audit and verification practices, grievance mechanisms and other human rights and environmental risks management practices in light of the CSDDD.

8. Penalties for non-compliance

Each EU country will designate one or more supervisory authority responsible for overseeing compliance with the CSDDD.

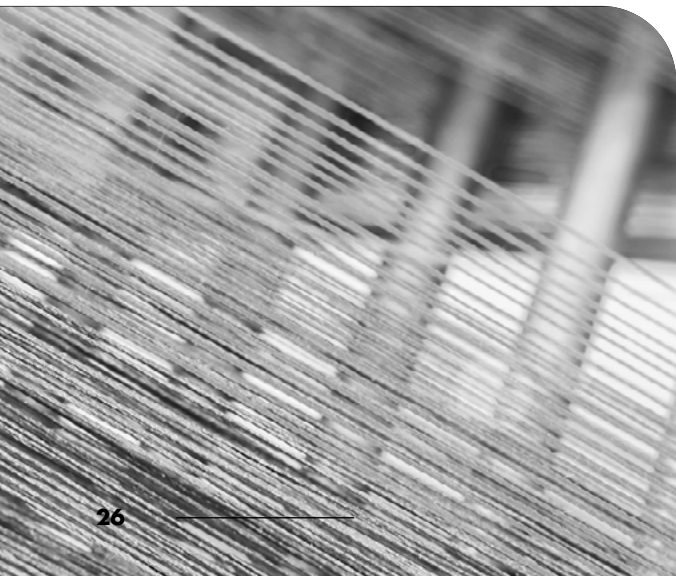
These supervisory authorities can initiate investigations on their own. The supervisory authority may also initiate a investigation where a third party raises substantiated concerns, and there is sufficient information to indicate a potential breach of the CSDDD.²⁶ Any natural and legal persons (this includes any individual, company, or civil society organization whether located inside or outside the EU) may submit substantiated concerns to any supervisory authority when they have reasons to believe, on the basis of objective circumstances, that a company in-scope is failing to comply with the national law provisions adopted pursuant to the CSDDD.²⁷

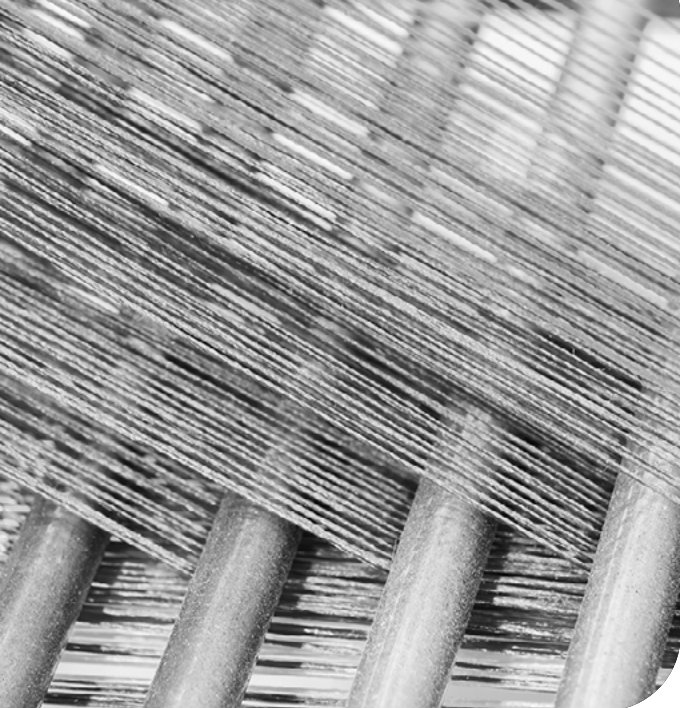
Supervisory authorities may impose the following penalties if non-compliance is found:

- order the company to end the infringing actions;
- order the company to not engage in certain conduct;
- order the company to take remedial action proportionate to the infringement and necessary to bring it to an end;
- impose interim measures to avoid risk of severe and irreparable harm; and
- impose pecuniary sanctions.²⁸

Companies in-scope may also be liable for civil damages if they fail to mitigate, put an end to, or minimize identified adverse human rights or environmental impacts, and this failure led to damage being caused.²⁹

However, where the damage is caused by the company's indirect partner with whom it has an established business relationship, the company will not be held liable, if it has





taken steps to mitigate, end or minimize the adverse impact, unless the actions taken by the company could not be reasonably be expected to adequately address the adverse impact.³⁰

In other words, where (hypothetically):

- The sub-tier supplier of a brand in-scope was required to comply with the brand's code of conduct;
- The brand in-scope implemented robust measures to verify the sub-tier suppliers' compliance with the code; and
- The brand in-scope implemented risk mitigation plans to address any identified adverse impacts... the brand may not be held liable for damages caused by the sub-tier supplier.

By contrast, if the brand in-scope required their sub-tier supplier to comply with the brand's code of conduct but did not undertake compliance verification or risk mitigation measures, the brand in-scope may still be held liable for damages caused by the sub-tier supplier. This is because the measures undertaken by the company could not be reasonably expected to be sufficient to mitigate, end or minimize adverse impacts. This provision highlights the importance of ensuring that any due diligence actions undertaken are genuinely effective and responsive to the risks identified, and do not only exist on paper.

9. Form of Enforcement



As above, enforcement comes in the form of investigation and related powers, sanctions, and civil liability:

Investigations/Supervision.

Where a supervisory authority identifies non-compliance pursuant to an investigation (as described in Section 8 above), the company will be granted an appropriate period of time for remedial action (if possible).³¹ The supervisory authorities may also order the concerned company to stop the infringing conduct as set out above.

Sanctions.

Each EU country establishes their own rules on sanctions for infringements. As such, the form of sanctions may differ based on the EU country. The sanctions should be effective, proportionate, and dissuasive.³² Any pecuniary sanctions (i.e., fines) should be based on the company's turnover.³³ The type and extent of sanctions imposed will depend on:³⁴

- The level of effort taken by the company to comply with the remedial action specified by supervisory authorities;
- Any investments made by the concerned company to comply with the CSDDD; and
- The extent to which the company has collaborated with other entities to address adverse impacts.

Civil Liability.

As above, complainants may be entitled to compensation by way of damages stemming from non-compliance with the CSDDD.

10. Reporting/ disclosure requirements for companies in-scope

Companies in-scope who are not subject to reporting requirements under Articles 19a and 29a of Directive 2013/34/EU³⁵ must publish a statement on their website on an annual basis on the matters covered by the CSDDD. The statement must be published by 30 April each year, covering the previous calendar year. The European Commission will adopt delegated acts specifying the content and criteria for such reporting.³⁶

There are no other reporting or disclosure requirements under the CSDDD, as these obligations will be largely covered by the CSRD.

11. Access to remedy mechanisms and litigation risk

Each EU country must ensure that natural and legal persons are entitled to submit 'substantiated concerns' to any supervisory authority when they have reasons to suspect non-compliance by a company in-scope. The supervisory authority shall, as soon as possible, inform the complainant of the result of the assessment of their concern and provide reasons. Each EU country must ensure that such complainants with a legitimate interest in the matter have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts, or failure to act of the supervisory authority.³⁷

As above, companies in-scope can face civil liability for non-compliance with their obligations under the CSDDD, and so should be aware of the litigation risks in this respect.³⁸

12. Opportunity to participate and engage in legislative developments

There is no indication that further public engagement or participation is requested or possible in relation to the CSDDD.

13. Useful resources to support compliance

European Commission, [Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937](#)

European Commission, [Just and sustainable economy: Companies to respect human rights and environment in global value chains](#)

European Commission, [Questions and Answers: Proposal for a Directive on corporate sustainability due diligence](#)



References

- 1 For the purposes of this document, “Global North” encompasses the European Union, United Kingdom, and the United States.
- 2 European Commission, [A European Green Deal](#)
- 3 See for example the summaries of EU legislation on environment and climate change.
- 4 European Union, Types of legislation
- 5 European Union, Types of legislation
- 6 European Union, Types of legislation
- 7 UNGPs Principle 25 and commentary
- 8 Adapted from the [OECD Due Diligence Guidance for Responsible Business Conduct](#), Page 15.
- 9 Shift, [Human Rights Due Diligence: State of Play in Europe](#) (May 2023)
- 10 Article 30
- 11 Article 2(2), CSDDD
- 12 Article 2 (1)(a)
- 13 Article 2(1)(b)
- 14 Recital 47, CSDDD
- 15 Article 3(g), CSDDD
- 16 An “established business relationship” is defined as business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain (Article 3(f), CSDDD). A “business relationship” refers to a relationship with a contractor, subcontractor, or any other legal entities (partner): (i) with whom the company has a commercial agreement or to whom the company provides financing, insurance, or reinsurance, or (ii) that performs business operations related to the products or services of the company for or on behalf of the company.
- 17 Article 4, CSDDD
- 18 Article 5, CSDDD
- 19 Article 6, CSDDD
- 20 Article 7, CSDDD
- 21 Article 8, CSDDD
- 22 Article 9, CSDDD
- 23 Article 10, CSDDD
- 24 Article 15, CSDDD
- 25 Articles 25, CSDDD
- 26 Article 18 (2), CSDDD
- 27 Article 19(1), CSDDD
- 28 Article 18 (5), CSDDD
- 29 Article 22 (1), CSDDD
- 30 Article 22 (2), CSDDD
- 31 Article 18 (4), CSDDD
- 32 Article 20 (1), CSDDD
- 33 Article 20 (3), CSDDD
- 34 Article 20 (2), CSDDD
- 35 Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.
- 36 Article 11, CSDDD
- 37 Article 19, CSDDD
- 38 Article 22, CSDDD

Discover Other Factsheets from An Apparel Supplier's Guide

1

**EU Corporate
Sustainability
Reporting
Directive**

2

**EU Corporate
Sustainability
Due Diligence
Directive**

3

**New York
Fashion Act**

4

**EU Forced Labour
Regulation
and Guide**

5

**US Uyghur
Forced Labor
Prevention Act**

6

**EU Ecodesign for
Sustainable
Products
Regulation**

7

**EU Packaging
and Packaging
Waste Directive
and Proposal**

8

**EU Microplastics
Regulation**

9

**UK Plastic
Packaging Tax**

10

**EU Product
Environment
Footprint Guide**

11

**EU Textile
Regulation**

12

EU Taxonomy