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An Apparel Supplier's Guide

Key Sustainability Legislation in the EU, US, and UK

EU Taxonomy

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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.

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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 Nort 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

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 <u>United Nations Guiding Principles on Business and Human Rights</u> (**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 stata 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 Taxonomy

1. Overview

The Taxonomy has been in force since 2020. It defines what counts as a "sustainable economic activity" so that investors can more easily decide which companies are operating in a climate-friendly way.

2. Context

The Taxonomy – alongside the Sustainable
Finance Disclosure Regulation (the SFDR)
and the Low Carbon Benchmarks Regulation
– forms one of the pillars of the European
Commission's sustainable finance and climate
change agenda. The Taxonomy aims to
facilitate the EU's goal to become carbon
neutral by 2050 and achieve the SDGs.
By providing a tool that harmonizes the
understanding of sustainable finance across the
EU countries and businesses, it aids investors
to redirect capital into "green" projects and
businesses.

The Taxonomy seeks to achieve these objectives by creating a standard framework in the EU to determine what types of economic activity would be classified as climate friendly. The standardization of environmental sustainability classification across the EU aims to improve clarity and reduce complexity for investors and businesses alike.

The European Commission plans to expand the framework to include social objectives.

3. Status

The Taxonomy was published in the Official Journal of the European Union on June 22, 2020, and entered into force on July 12, 2020. The first two objectives that are set out below (climate change mitigation and climate change adaptation) have applied since January 1, 2022. The three other objectives (circular economy, pollution prevention and protection of biodiversity and ecosystems) have started applying on January 1, 2023.

4. Scope

The Taxonomy applies to:

- Financial companies that offer financial products;⁸
- Non-financial companies that are required to report under the Corporate Sustainability Reporting Directive (the CSRD); and
- EU countries.

For the purposes of this factsheet, the financial companies and non-financial companies that fall within the scope of the Taxonomy will be collectively referred to as "companies in-scope".

5. Obligations for companies in-scope

The Taxonomy is a guide rather than a rulebook. Therefore, there are few binding obligations on the companies in-scope and the EU countries.

Instead, the Taxonomy provides guidance on how to determine whether an investment would qualify as environmentally sustainable. Specifically, the economic activity must meet all of the following conditions:

- 1. it contributes substantially to one or more environmental objectives⁹ or is an enabling activity;¹⁰
- 2. it does not significantly harm (DNSH) any environmental objectives;
- 3. it is carried out in compliance with minimum safeguards; and
- 4. it complies with technical screening criteria (the TSC).11

The economic activity should meet one or more of the following environmental objectives:

Objective 1

Climate change mitigation

The Textiles Regulation lays down requirements on the use of textile fibre names and related labelling and marking of fibre composition of textile products when they are made available on the EU market. In a nutshell, textile labels must:

- be durable, easily legible, visible, accessible, and securely attached;
- give an indication of the fibre composition; and
- use only the textile fibre names listed in the Textiles Regulation for the description of fibre compositions.

Objective 2

Climate change adaptation

Climate change adaptation is demonstrated in an economic activity where it makes a substantial contribution to reducing the adverse impact of the current and future climate without adversely impacting other people, nature, and assets.

Where there are any **non-textile parts of animal origin** in the product (e.g., fur, leather, bone, or down feathers), the label should also state that the product 'contains non-textile parts of animal origin'.

Objective 3

Sustainable use and protection of water and marine resources

An economic activity would contribute to sustainable use of such resources where it protects the environmental and human heath from any contamination or wastewater discharges and improves water management or efficiency.

Objective 4

Transition to a circular economy

An activity contributes to the transition to a circular economy where it contributes to improving efficiency, durability, recyclability and prolonging the use of resources to maximize its value for as long as possible. Contribution could come through the use and choice of materials, facilitating repurposing, reducing food waste across the supply chain, and developing "product-as-a-service" business models and circular value chains.

Objective 5

Pollution prevention and control

Pollution is understood as the introduction of pollutants, which are substances, vibrations, heat, noise, light or other contaminants present in air, water, or land, which may harm, damage or impair human health or the environment, into air, water and land. An economic activity would substantially contribute to meeting this objective by preventing or reducing pollutant emissions, improving quality of air, water or soil, and minimizing negative impacts on human health and environment where economic activity takes place, and by cleaning up litter and other pollution.

Objective 6

The protection and restoration of biodiversity and ecosystems

Biodiversity includes diversity within species between species and ecosystems. An economic activity would substantially contribute to the protection and restoration of biodiversity and ecosystems where it enhances ecosystem services through the sustainable use of land, management, agricultural practices, and forest management as well as the conservation of nature and biodiversity. Ecosystem services are grouped into the categories of provisioning services, regulating services, supporting services and cultural services.



6. Compliance recommendations for companies in-scope

As explained in Section 5 above, the Taxonomy includes only a few binding obligations on companies in-scope. The obligations for companies in-scope are primarily disclosure-related and mostly fall on financial market participants. Please refer to Section 10 below for more details.

There is a phased-in approach for companies in-scope to begin reporting. Information on these timelines can be found on the European Commission's website.

7. Implications for suppliers to companies in-scope

Suppliers that do not fall directly in scope of the reporting obligations under the Taxonomy may still experience knock-on effects, especially where they are in the value chain of a company in-scope. The Taxonomy will likely increase transparency around companies' contributions to the environment and impact investors' decision-making. Financial market participants that are incentivized to increase their share of Taxonomy-aligned financial products will seek to invest in companies that qualify as engaging in environmentally sustainable economic activities under the Taxonomy.

Financial companies will expect investee companies, which may include apparel suppliers, to provide data on KPIs relating to their environmental objectives. As such, suppliers should seek to conduct environmental impact assessments, and report on their processes to manage their

environmental impact, and the outcomes and impact of such risk management practices using KPIs.

Non-financial companies that can demonstrate substantial contribution to the circular economy in the manufacture of textile and apparel products will likely attract more investment.¹² This in turn may incentivize these non-financial companies to change their business practices to better align with the environmental objectives set out in the Taxonomy. It is expected that companies in the apparel industry will change to focus on more resource-efficient manufacturing processes, durability of materials, and circularity (re-use and repair of products, and minimizing textile waste).

8. Penalties for non-compliance

While there are no penalties for non-compliance under the Taxonomy, there are reputational impacts for non-compliance. For example, lenders based in the EU may set preferential rates for those businesses that integrate ESG risks within their investment strategies and/or regularly disclose compliance with ESG-related regulations and guidance. Companies that disclose their alignment to the Taxonomy may be viewed as more attractive amongst investors thereby leading capital to flow into projects, investments and businesses that are environmentally sustainable.

Furthermore, penalties may be established at the national level by the EU countries. These may include penalties for misleading disclosures.

9. Form of enforcement

Not applicable.

10. Reporting/disclosure requirements (if any) for companies in-scope

Reporting obligations for non-financial companies in-scope

The Taxonomy requires companies that are subject to reporting obligations under CSRD to disclose the proportion of their environmentally sustainable economic activities that align with the Taxonomy criteria. These companies in-scope must report on the following key performance indicators:

- The proportion of turnover derived from the Taxonomy activities; and
- The proportion of their capital expenditure and operating expenditure associated with Taxonomy activities. This obligation is supplemented by the Disclosures Delegated Act, which provides specific metrics for turnover, capital expenditure and operating expenditures along with a reporting template.

Specific metrics for these key performance indicators and a reporting template can be found in <u>Annex I to the Disclosures Delegated Act</u>.



Reporting obligations for financial companies in-scope



Financial companies are required to report their KPIs in the form of Green Asset Ratio (GAR)/Green Investment Ratio (GIR). The main KPIs for financial companies relate to the proportion of taxonomy-aligned economic activities in their financial activities, such as lending, investment, and insurance.

Sustainable investments

Where a financial product invests in an economic activity that contributes to an environmental objective under Article 9 of the SFDR (i.e., a sustainable investment), a financial market participant must disclose information on the environmental objective to which the investment underlying the financial product contributes.¹³ This should include an explanation how and to what extent the investments relate to economic activities that are environmentally sustainable under the Taxonomy. Financial market participants must also specify the proportion of investments in the financial product that are made in environmentally sustainable economic activities.

The same obligations apply to financial products that fall under Article 8 of the SFDR, however, disclosure should be accompanied by the following statement: 'The "do no significant harm" principle applies only to those investments underlying the financial product that take into account the EU criteria for environmentally sustainable economic activities. The investments underlying the remaining portion of this financial product do not take into account the EU criteria for environmentally sustainable economic activities.' For all other financial products, information that must be disclosed under the SFDR must be accompanied by the following statement: 'The investments underlying this financial

11. Access to remedy mechanisms and litigation risk

Not applicable.

12. Opportunity to participate and engage in legislative developments

Opportunities for legislative developments may be possible via legal actions. For example, in September 2022, environmental groups, such as Greenpeace, Client Earth, and World Wildlife Fund, requested an internal review in response to the inclusion of natural gas and nuclear energy within the list of green investments under the Taxonomy. The European Commission rejected the group's request, claiming that the Taxonomy did not contravene environmental law. In response, Greenpeace announced that it would file a lawsuit to the European Court of Justice in April 2023.

13. Useful resources to support compliance

European Commission, EU taxonomy for sustainable activities

European Commission, EU Taxonomy Navigator

EUR-Lex, Commission Notice on the interpretation of certain legal provisions of the Disclosures Delegated Act under Article 8 of EU Taxonomy Regulation on the reporting of eligible economic activities and assets 2022/C 385/01

European Commission, <u>Draft Commission Notice on the interpretation and implementation of certain legal provisions of the Disclosures</u>

<u>Delegated Act under Article 8 of EU Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets (second Commission Notice)</u>

EU Technical Expert Group on Sustainable Finance, Taxonomy: Final report of the Technical Expert Group on Sustainable Finance

EU Technical Expert Group on Sustainable Finance, Taxonomy Report: Technical Annex

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 Including corporate bonds that are made available as environmentally sustainable, alternative investment funds, IBIPs, pension products, pension schemes, UCITS, PEPPs and a portfolio managed under the MiFID II Directive.
- 9 While the TSC sets out the criteria for making a substantial contribution, the European Commission outlined that activities would make a substantial contribution when it has a low impact on the environment, has the potential to replace high impact activities, reduce impact from other activities and makes a positive environmental contribution.
- 10 Enabling activities are those activities that do not lock-in assets that could undermine long-term environmental goals or have a positive impact on the basis of lifecycle considerations thereby directly assisting another activity to make a substantial contribution to one or more of the other objectives.
- 11 The TSC are a set of rules and metrics used to evaluate whether an economic activity can be considered environmentally sustainable under the Taxonomy. For more information see Section 11 below.
- By contrast, those that demonstrate poor environmental risk management could see greater challenges in accessing capital.
- 13 Article 5, Taxonomy

Discover Other Factsheets from An Apparel Supplier's Guide



EU Corporate Sustainability Reporting Directive 2

EU Corporate Sustainability Due Diligence Directive



New York Fashion Act

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EU Forced Labour Regulation and Guide 5

US Uyghur Forced Labor Prevention Act 6

EU Ecodesign for Sustainable Products Regulation

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