

Factsheet 6

EU Ecodesign for Sustainable Products Regulation

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

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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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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 Ecodesign for Sustainable Products Regulation

(including EU Digital Product Passport)

1. Overview

On March 30, 2022, the European Commission published the proposal for a new Ecodesign for Sustainable Products Regulation (the **ESPR**). Its objective is to create a framework of ecodesign requirements for specific product categories.

Overview (Continued)

A series of delegated acts⁸ will set criteria for different product groups (referred to in this factsheet as product-specific rules). The ESPR will thus enable the setting of EU-wide performance and information requirements for almost all categories of physical goods placed on the market (with some exceptions). These requirements will relate to:

- product durability, reusability, upgradability, and reparability;
- presence of substances that inhibit circularity;
- energy and resource efficiency;
- recycled content;
- remanufacturing and recycling;
- carbon and environmental footprints; and
- information requirements, including a Digital Product Passport (DPP).

Digital Product Passport or DPP

The DPP will electronically register, process, and share information about products' environmental sustainability to enable individuals and corporate consumers to make informed choices about their purchases. It will also help the public authorities in performing checks and controls.



2. Context

The proposal builds on the existing Ecodesign Directive which currently only covers energy-related products. The ESPR is one of the many ambitious proposals of the European Commission aimed at bringing companies in line with the Green Deal ambitions and EU's sustainability goals. The ESPR lays down a framework for setting ecodesign requirements based on the sustainability and circularity aspects listed in the EU Circular Economy Action Plan. The ecodesign approach is applicable to a very broad range of products and sets a wide range of targeted product requirements. This will contribute to achieving the EU's overall climate, environmental and energy goals, while supporting economic growth, job creation and social inclusion. The ESPR aims to promote the separation of economic development from natural resource

use as well as reduce the EU's material dependencies. It will achieve this objective by making materials last for longer, ensuring that product value is retained for as long as possible and boosting the use of recycled content in products.

The main objectives of the ESPR are therefore to reduce the negative life cycle environmental impacts of products. The ESPR also aims to boost the supply of, and demand for, sustainable goods, and deliver sustainable production. At the same time, the ESPR will standardize ecodesign requirements across the EU. Harmonized standards across the EU shall enable more efficient means of compliance and proper enforcement.

3. Status

The ESPR is a proposal published on March 30, 2022 by the European Commission. It has not yet been confirmed by the European Council or voted into law by the European Parliament. Once adopted, the ESPR will enter into force after 20 days and will be applicable immediately from this date.

Since the ESPR is a framework regulation, the new ecodesign requirements will be applicable to specific groups of products only after the adoption of the product-specific rules.



4. Scope



Application of the ESPR

The ESPR shall apply to any physical good that is placed on the EU market or put into service in the EU, including components and intermediate products. This will not apply to certain items like food, feed, medicinal products for human use, veterinary medicinal products, living plants, animals and micro-organisms, products of human origin, products of plants and animals relating directly to their future reproduction.⁹

Points to Note

- The ESPR covers the supply of any product (except for the excluded categories above) for distribution, consumption or use on the EU market in the course of a commercial activity, whether in return for payment or free of charge.
- This broad definition means that a range of companies will fall within the scope of the ESPR, including manufacturers; importers and distributors; dealers; and fulfilment service providers (collectively referred to as “economic operators” in the ESPR). The obligations of each of these categories of companies in-scope are set out below.
- Except in the case of importers, a company may be subject to the ESPR regardless of its place of incorporation or headquarters location. Any company supplying products in the EU and meeting the definition above will be obliged to comply with the ESPR.

5. Obligations for companies in-scope

This section sets out the obligations for each type of economic operator under the ESPR.

● Application of the ESPR

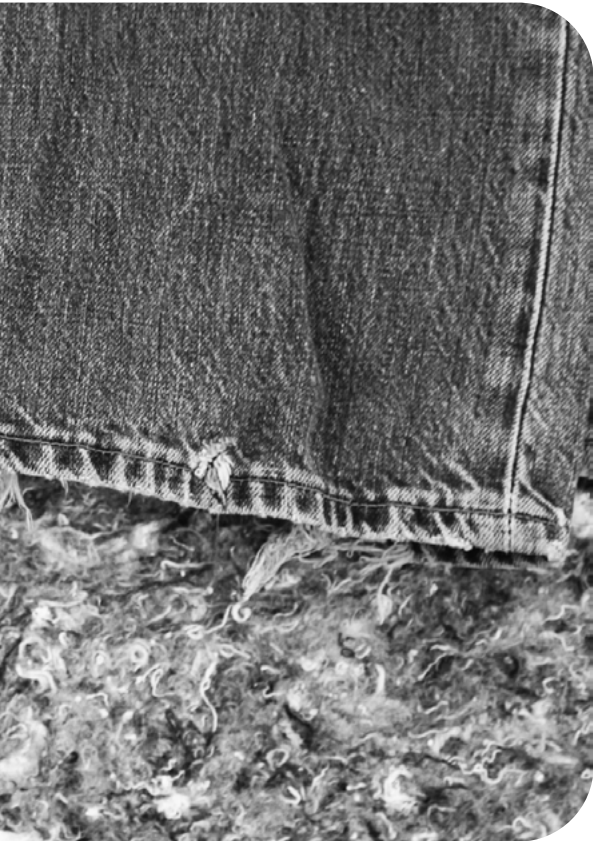
All companies within the scope of the ESPR will have to provide a DPP. The European Commission plans to implement this requirement by product group. There is ongoing public consultation regarding obligation (please see section 12 below). The EU Circular Economy Action Plan identifies seven priority sectors: These sectors are electronics and ICT; batteries and vehicles; packaging; plastics; textiles; construction and buildings; and food and water.

▸ Obligations of Manufacturers

In-scope manufacturers should ensure that their products are designed and manufactured in accordance with the ESPR's ecodesign requirements as well as relevant product-specific rules (yet to be developed, but which will include aspects such as durability, reliability, reusability, upgradability, etc., as similarly set out in the list in section 1 above). In-scope manufacturers will also need to provide the requisite information to demonstrate the product's environmental sustainability. The ecodesign requirements that will determine whether a product is environmentally sustainable have yet to be developed but will include aspects such as durability, reliability, reusability, upgradability, etc. as set out in the list in Section 1 above.

● Points to Note

- The ESPR defines "manufacturer" in two ways: either a natural or legal person who manufactures a product or who has such a product designed or manufactured, and markets that product under its name or trademark, or in the absence of such manufacturer or importer, a



natural or legal person who places on the market or puts into service a product. It is not yet clear how this definition will be interpreted once the proposal becomes effective. Hence, suppliers should carefully consider whether they could possibly fall under either definition.

In-scope manufacturers will be required to carry out specified conformity assessment procedures (or have them carried out on their behalf) and supply required technical documentation. Details for these requirements will be specified in product-specific rules to be developed. Manufacturers will be required to retain technical documentation and declarations of conformity for 10 years after the product has been placed on the market (subject to any product-specific rules).¹⁰

In-scope manufacturers will also be required to ensure that series and mass production procedures continue to conform to applicable requirements and that the products bear a type, batch or serial number or other element allowing their identification.¹¹

If a manufacturer believes or has reasons to believe that it has released a product that does not conform with the requirements and/or product-specific rules, then the manufacturer is obligated to take immediately corrective measures to bring that product into conformity, including withdrawing or recalling the product where appropriate. The manufacturer shall immediately inform the market surveillance authorities of the EU countr(ies) in which the product was made available regarding the non-compliance and the corrective measures it has taken.¹²

► Obligations of Importers and Distributors

The obligations of the importers and the distributors under the ESPR are similar to that of the manufacturers. The importer¹³ and the distributors¹⁴ are under obligation to ensure that the product bears the required CE marking, or the alternative conformity marking as laid down in the relevant product-specific rules, and that a DPP is available in relation to the product.

● Points to Note

- Under the ESPR, a ‘distributor’ means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market.
- An “importer” means any natural or legal person established in the EU who places a product from a third country (i.e., non-EU country) on the EU market.
- An importer or distributor shall be considered a manufacturer for the purpose of the ESPR and will be subject to the obligations of a manufacturer, if they place a product covered by product-specific rules under their name or trademark or modify such a product already placed on the market in a way that affects compliance.¹⁵

► Obligations of Fulfilment Service Providers

The fulfilment service providers will ensure that the conditions during warehousing, packaging, addressing, or dispatching for products covered by the product-specific rules do not jeopardize the products’ compliance with the requirements set out in the relevant rules¹⁶.

► Obligations of Dealers

The dealers will ensure that the DPP is easily accessible to their customers and that they have access to any relevant information required by the product-specific rules, including in case of distance selling.¹⁷ The dealer will provide a DDP¹⁸, display the labels provided in accordance with the ESPR, make reference to the information included in labels and not provide or display other labels, marks, symbols or inscriptions that are likely to mislead or confuse customers¹⁹.

- **Points to Note**
 - Under the ESPR, 'dealer' means a retailer or any other natural or legal person who offers products for sale, hire, or hire purchase, or displays products to customers in the course of a commercial activity, whether or not in return for payment.

► Labelling

If required by the applicable product-specific rules, the economic operator placing the product on the market or putting it into service shall ensure that the products are accompanied by printed labels or deliver the printed labels or digital copies of the labels to the dealer.²⁰ The economic operator will ensure that the labels are accurate, make reference to the information included in the label and not provide or display any other labels, marks or symbols which is likely to mislead or confuse customers with respect to the information included on the label.²¹



► Obligations of Online Marketplaces and Online Search Engines

The ESPR also specifies the obligations of online marketplaces concerning market surveillance. Online marketplaces shall be required to cooperate with the market surveillance authorities to ensure effective market surveillance measures; inform the market surveillance authorities of any action taken in cases of non-compliant products; establish a regular exchange of information on offers that have been removed; and allow online tools operated by market surveillance authorities to access their interfaces in order to identify non-compliant products.²² Online marketplaces would be required to design and organize their online interfaces in a way that would enable dealers to comply with the requirements of the Digital Services Act regarding pre-contractual information and product safety information. The EU countries would be required to empower their market surveillance authorities to order an online marketplace to remove products that do not comply with the ecodesign requirements.

► Information Obligations

Where the products are made available on the market online or through other means of distance sales by the economic operators, the relevant product will clearly and visibly state the name, registered trade name or registered trademark of the manufacturer, as well as the postal or electronic address where they can be contacted and the information to identify the product, including its type and, where available, batch or serial number or any other product identifier.²³

The economic operators will provide, if requested, the market surveillance authorities with the name of any economic operator who has supplied them with a product or any economic operator to whom they have supplied a product, the quantities and exact models.²⁴

► Digital Passport Product Obligations

The ESPR requires that the following product information are made digitally available²⁵:

- **durability; reliability; reusability; upgradability; reparability; energy use or energy efficiency; and recycled content.**

Details regarding the required information will be set out in **product-specific rules** (to be developed)²⁶. A DPP is required to be made available in relation to each product before it can be marketed or put into service²⁷.

The information requirements to be set out in the delegated acts will specify the following in relation to the DPP²⁸:

- information to be included in the DPP;
- the types of bar code, symbol, or other automatic identifier (“data carrier”) to be used;
- the layout in which the data carrier shall be presented and positioned;
- whether it will correspond to model, batch, or item level;
- the manner in which the DPP shall be made available to consumers;
- who shall have access to the product DPP and what information they will be able to access;
- who can add to or update the information contained in the DPP; and
- the period for which the DPP will be made available.

The data carrier must connect to a unique product identifier, and be physically present on the product, packaging or accompanying documentation.²⁹ This data carrier and the unique product identifier must comply with the ISO/IEC standard 1549:2015³⁰. The data included in the DPP shall be stored by the manufacturer, authorized representative, importer, distributor, dealer or fulfillment service provider responsible for its creation or by operators authorised to act on their behalf.³¹ Where the latter, those operators cannot sell, re-use or process the data beyond what is necessary for the storage services.³²

6. Compliance recommendations for companies in-scope

As the product-specific rules have yet to be developed, and the ESPR itself is only at the proposal stage, it is not possible to provide specific compliance recommendations for companies in the apparel value chain that will fall within scope of the ESPR. In this section, we have included our observations on how the ESPR may impact the apparel value chain.

● Anticipated impact of the ESPR

At a broad level, the ESPR is expected to bring greater focus on ecodesign and circularity, while reducing risk of greenwashing practices in product labelling. Manufacturers should expect to comply with a wide range of ecodesign criteria, that cover all aspects of consumer experience and usage of products through to their disposal. This will likely necessitate the re-design of products and even business models. Similarly, requirements to use recycled content in garments will likely have significant impact on materials sourcing practices today. At the same time, manufacturers, and other market participants (importers and distributors, online marketplaces, and dealers) shall need to ensure transparency and accuracy in the way that they label products as “sustainable”.

● Compliance with the DPP

In relation to the DPP requirement specifically, some broad compliance recommendations can be made at this stage, pending details on the specific product information requirements:

- Companies in-scope should undertake internal and external information gathering to identify any gaps in current data points of businesses and supply chains, relating to the durability; reliability; reusability; upgradability; reparability; energy use or energy efficiency; and recycled content of products.
- Consider whether additional contractual obligations may need to be added with new and existing suppliers to ensure that specific data points can be requested, and so organisations should consider this in their existing and any template agreements.



- Companies in-scope should also consider the DPP requirements in the procurement stage, as well as in relation to current suppliers and other members of the value chain.
- The process of DPP data collection will need to be built into current practices and processes of companies in-scope, to ensure that the data flows in the supply chain can facilitate the DPPs in the future. The DPP can be created at any step between raw materials and distribution, however the earlier in the process it is created, the easier the data collection will be.
- New processes and procedures will also need to be implemented by companies in-scope to ensure that the data carrier can be created and physically present on, or provided with, the product as required by the ESPR. Companies in-scope could decide on the data carrier that will work best for their product at this stage, for example a QR code, watermark, barcode, etc.
- Any in-scope companies should consider their own capabilities, including technical capabilities to meet the requirements of the ESPR, for example to ensure interoperability of IT systems and to ensure that cooperation within the value chain can be achieved.
- Companies in-scope should begin discussions and planning internally to ensure that different areas of the business are aware of, and able to contribute to, the implementation of the preparation as set out above. For example, these steps to prepare for the DPP may require input from technology, research and design, marketing, finance, production, and procurement teams.

It remains to be seen how the requirements of the DPP will be aligned with the PEF Guide and Methodology, and companies in-scope should also be mindful of how these two initiatives may overlap.

7. Potential implications for suppliers to companies in-scope

Overall Impact of the ESPR

As noted in Section 7 above, it is difficult to predict with specificity how the ESPR will practicably impact suppliers in the value chain of companies in-scope, as the ESPR is still in the nascent stages of the legislative procedure, and the product-specific rules have yet to developed. Nonetheless, as explained above, it is anticipated the ESPR will have knock-on effects on the apparel industry globally as it will likely impact product design and potentially even business models.

Impact of the DPP

Suppliers should expect to see further information requests and data collection from companies in-scope to support them in meeting the disclosure requirements of the DPP. While it will only be possible to determine the specific types of information that will be required when the product-specific rules are available, suppliers should be prepared to provide data regarding product durability; reliability; reusability; upgradability; reparability; energy use or energy efficiency; and recycled content of materials used. Suppliers could already start reviewing internal record keeping and data collection processes to be prepared for these types of information requests.



8. Penalties for non-compliance

If an EU country makes one of the following findings, it will require the concerned economic operator to put an end to the non-compliance concerned:³³

- the CE marking has been affixed in violation of Article 30 of Regulation (EC) No 765/2008 or of Article 39 of the ESPR;
- the CE marking has not been affixed;
- the identification number of the notified body has been affixed in violation of Article 39 of the ESPR or has not been affixed where required;
- the EU declaration of conformity has not been drawn up;
- the EU declaration of conformity has not been drawn up correctly;
- the technical documentation is not available, not complete or contains errors;
- the information referred to in Article 21(6) or Article 23(3) of the ESPR is absent, false or incomplete; or
- any other administrative requirement provided for in Article 21 or Article 23 of the ESPR or in the applicable product-specific rules, is not fulfilled.

If the non-compliance persists, the concerned EU country will take all appropriate measures to restrict or prohibit the product being made available on the market or ensure that it is recalled or withdrawn from the market.³⁴

The EU countries will lay down the rules on penalties applicable to infringements of the ESPR and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate, and dissuasive, taking into account the extent of non-compliance and the number of units of non-complying products placed on the market.³⁵ As such the amount and form of penalties may differ across the EU countries.

9. Form of enforcement

The ESPR provides for the notified bodies to carry out conformity assessments in accordance with the assessment procedures which will be provided for in the product-specific rules.³⁶ If a manufacturer does not meet the relevant requirements or corresponding harmonised standards, common specifications or other technical specifications, the notified bodies can require that manufacturer to take appropriate corrective measures in view of a second and final conformity assessment, unless the deficiencies cannot be remedied, in which case it shall not issue a certificate or approval decision. After the certificate or approval decision is already issued and during the monitoring of conformity, if the notified bodies finds that a product or the manufacturer does not comply or no longer complies, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw the certificate or approval decision.

EU countries will, at least every 2 years, plan market surveillance activities to ensure appropriate checks are performed in relation to the ESPR.³⁷ The European Commission is empowered to lay down minimum numbers of checks to be performed under market surveillance on specific products or specific requirements.³⁸ Where market surveillance authorities identify non-compliance, they will require the economic operator to take appropriate and proportionate corrective action within a reasonable period. Where this action is not taken within the period, the authorities will take all appropriate provisional measures to prohibit or restrict the product being made available, to withdraw it or recall it.³⁹

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

1. Customs controls related to the DPP

The European Commission will set up a registry for DPPs and specify the information contained within such DPPs that needs to be stored in the registry.⁴⁰ The economic operator placing the product on the market is responsible for ensuring that information is uploaded to the registry in relation to the product in question.⁴¹

2. Destruction of Unsold Consumer Products

Any economic operator that discards unsold consumer products directly, or on behalf of another economic operator, will be required to disclose the number of unsold consumer products discarded per year, differentiated per type or category of products, the reasons for the discarding of products, and the delivery of discarded products to prepare for re-use, remanufacturing, recycling, energy recovery and disposal operations. The information will be disclosed by the economic operator on a freely accessible website or otherwise made publicly available, subject to any applicable product-specific rule.⁴² However, to alleviate overly burdensome compliance costs, the ESPR exempts most micro, small and medium-size enterprises from this obligation.

3. Monitoring and Reporting Obligations of Economic Operators

The European Commission may require the manufactures, their authorized representatives or importers to make available to the European Commission, information on the quantities of a product, to collect, anonymize or report in-use data etc. in accordance with the criteria specified in the ESPR.⁴³

4. Information requested by Competent National Authority

The manufacturers and importers will, further to a reasoned request from a competent national authority, provide all the information and documentation necessary to demonstrate the conformity of the product, including the technical documentation in a language that can be easily understood by that authority. That information and documentation shall be provided in either paper or electronic form. The relevant documents will be made available within 10 days of receipt of a request by a competent national authority.⁴⁴

11. Access to remedy mechanisms and litigation risk

There are no specific remedy mechanisms or litigation risks in the ESPR. These may be specified in the product-specific rules.

12. Opportunity to participate and engage in legislative developments (if any)

Opportunity to comment on DPP requirements

The European Commission is currently seeking views on the categories of new products and measures to address first, so that it can set priorities transparently and inclusively. The feedback and consultation period started on January 31, 2023 and expired on May 12, 2023. The provided input is expected to shape many elements related to the DPP requirements specifically, for example the level of application (item/batch/model), required and optional DPP information and data management requirements.

Opportunity to propose self-regulation measures

Note that two or more economic operators may submit a self-regulation measure establishing ecodesign requirements for products to the European Commission as an alternative to a delegated act.⁴⁵ The economic operators must demonstrate that their measures achieve the same objectives as those set out by the ESPR, in a quicker or at a lesser expense way. The European Commission may reject measures or request that amendments be made. After approval, the economic operators must report to the European Commission on a regular basis detailing progress made.⁴⁶ The provision must also be made for the monitoring of measures by independent experts. The market share in terms of volume of the signatories to the self-regulation measure in relation to the products covered by that measure is at least 80% of units placed on the market or put into service.⁴⁷

13. Useful resources to support compliance

European Commission, [Sustainable products: Commission consults on new product priorities](#)

European Commission, [Green Deal: New proposals to make sustainable products the norm and boost Europe's resource independence](#)

European Commission, [Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC](#)

World Business Council for Sustainable Development, [The EU Digital Product Passport shapes the future of value chains: What it is and how to prepare now](#)

World Business Council for Sustainable Development, [The EU Digital Product Passport: how can companies prepare for it today?](#)



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 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.
- 9 Specified in Article 1(2) of the ESPR.
- 10 Article 21(3) of the ESPR.
- 11 Articles 21(4), 21(5) and 21(6) of the ESPR.
- 12 Articles 21 (7), 21(8) and 21(9) of the ESPR.
- 13 Article 23 of the ESPR
- 14 Article 24 of the ESPR
- 15 Article 28 of the ESPR.
- 16 Article 27 of the ESPR.
- 17 Articles 25(1) and (2) of the ESPR.
- 18 Article 25 (2) of the ESPR.
- 19 Article 25(3) of the ESPR.
- 20 Articles 26(1) and 26(2) of the ESPR.
- 21 Article 26(3) of the ESPR.
- 22 Article 29 of the ESPR.
- 23 Article 30(1) of the ESPR.
- 24 Article 30(2) of the ESPR.
- 25 Article 5 (1) of the ESPR.
- 26 Article 7(1) of the ESPR.
- 27 Article 8(1) of the ESPR.
- 28 Article 8 (2) of the ESPR.
- 29 Article 9 (1) (a) and (b) of the ESPR.
- 30 Article 9 (1) (c) of the ESPR.
- 31 Article 10 (c) of the ESPR.
- 32 Article 10 (d) of the ESPR.
- 33 Article 65(1) of the ESPR.
- 34 Article 65(2) of the ESPR.
- 35 Article 68 of the ESPR
- 36 Article 53 of the ESPR.
- 37 Article 59 (1)
- 38 Article 60 (1)
- 39 Article 63
- 40 Article 13 (1) and (2) of the ESPR
- 41 Article 13 (4) of the ESPR
- 42 Article 20 of the ESPR
- 43 Article 31 of the ESPR
- 44 Articles 21(9) and 23(8) of the ESPR
- 45 Article 18 (1) of the ESPR
- 46 Article 18 (4) of the ESPR
- 47 Article 18 (3)(b) of the ESPR

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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