

Factsheet 7

EU Packaging & Packaging Waste Directive & Proposal

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 Packaging and Packaging Waste Directive and Proposal

1. Overview

The directive 94/62/EC on packaging and packaging waste (**Directive**) is part of a set of the EU rules on packaging and packaging waste, including design and waste management. The Directive was last amended in 2018 as part of the Circular Economy Package.⁸ An ambitious revision is currently under legislative procedure. On November 30, 2022 the European Commission put forward a proposal⁹ for amending Regulation EU 2019/1020¹⁰ and Directive (EU) 2019/904¹¹, and repealing the Directive (the **Proposal**). This factsheet will discuss both the requirements of the current Directive and expected changes under the Proposal.

The Directive sets Essential Requirements (as defined in Section 5 below) and targets for EU countries regarding the recovery and recycling of packaging waste. It vastly covers (i) the substances in packaging; (ii) the recyclability of packaging; (iii) the management of waste packaging; and (iv) the labelling of packaging.

2. Context

The Directive regulates what kind of packaging can be placed on the EU market, and how packaging waste should be both managed and prevented. However, despite the implementation of the Directive, the European Commission has observed that packaging and packaging waste continue to have an increasingly serious impact on the environment. As such, the European Commission considers that the current Directive has failed to manage and reduce the negative environmental impacts of packaging. It has identified three groups of interlinked problems to solve:

1. Increase of packaging waste due to more single-use packaging, high level of avoidable packaging, and higher share of plastics in packaging;
2. Systemic issues with packaging circularity due to commonly used design features that inhibit recycling, and unclear packaging labelling; and
3. Systemic issues in EU's ability to reduce the use of virgin materials in new packaging.¹²

3. Status

The Current Directive

The Directive was first adopted on December 20, 1994. It has been amended several times to account for changes in packaging technology and consumption. The latest amendment to the Directive entered into force on July 4, 2018. The EU countries were required to transpose the Directive into national law by July 5, 2020.

The Proposal

The Proposal is currently being discussed in the European Parliament¹³ by the Environment, Public Health, and Food Safety Committee, with Frederique Ries as Rapporteur. Due to the European elections taking place in the spring of 2024, it is expected that the process will either be fastened for the legislation to be passed

in early 2024 before the change of Parliament or will be carried over with the new Parliament and thus not finished before 2025. Extensive negotiations are expected.

The main objectives of the Proposal (as defined below) are similar to the Directives as it aims to (i) reduce packaging in quantity by restricting unnecessary packaging and promoting reusable and/or refillable packaging solutions; (ii) boost high quality recycling by making all packaging circulating on the EU market recyclable; and (iii) increase the use of recycle plastics in packaging through mandatory targets. The Proposal will be considered by the European Parliament and the Council, in the ordinary legislative procedure, and is not expected to become law before 2024 at the earliest.

4. Scope

The Directive covers all packaging placed on the European market and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household, or any other level, regardless of the material used.¹⁴

Packaging means all products made of any materials of any nature to be used for the containment, protection, handling, delivery, and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer. 'Non-returnable' items used for the same purposes shall also be considered to constitute packaging.¹⁵ It includes all sales packaging or primary packaging, grouped packaging or secondary packaging, and transport packaging or tertiary packaging.

5. Obligations for companies in-scope

● Under the current Directive:

The CSRD will require the company's management report to include (in a clearly identifiable dedicated section) information necessary to understand the company's impacts on sustainability matters, and how sustainability matters affect the company's development, performance, and position. "Sustainability matters" broadly encompasses environmental, social, and human rights and governance factors.

▮ 1. Essential Requirements

All packaging placed on the EU market to comply with three essential categories of requirements (the Essential Requirements):¹⁶

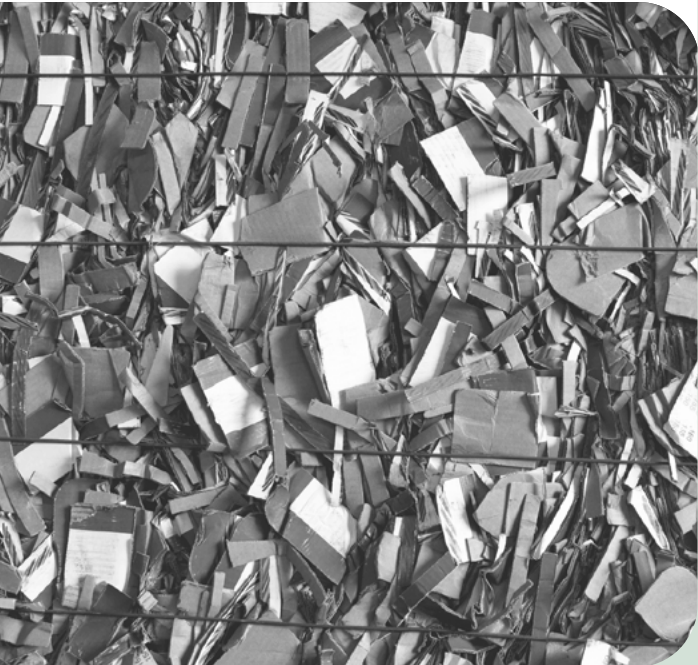
- **Manufacturing and composition of packaging:** packaging must be designed and manufactured adequately to (i) reduce its volume and weight to the minimum, (ii) permit its re-use or recovery including recycling, and (iii) limit the presence of noxious or hazardous substances and materials.

- **Re-usable nature of packaging:** packaging must be designed and manufactured adequately to (i) allow for multiple use/trips/rotations, (ii) allow for safe reuse processes, and (iii) be recoverable once the packaging is no longer re-used.
- **Recoverable nature of packaging:** packaging must be designed and manufactured adequately to allow for (i) its recovery in the form of material recycling, (ii) its recovery in the form of energy recovery, (iii) its recovery in the form of composting, and (iv) its biodegradability to be complete if advertised as biodegradable packaging.

2. Targets

The Directive sets multiple targets for the EU countries to achieve the above-mentioned objectives, notably:

- 3 years after the entry into force of the Directive, all packaging placed on the market shall comply with Essential Requirements;
- No later than 5 years after the implementation of the Directive in national laws, at least 50% of all packaging should be recovered, at least 15% of which by weight per packaging material being recycled¹⁷;
 - By December 31, 2025, at least 65% by weight of all packaging waste should be recycled. The recycling targets per material were set at: 50% of plastic, 25% of wood, 70% of ferrous metals, 50% of aluminum, 70% of glass, and 75% of paper and cardboard.
 - By December 31, 2030, at least 70% by weight of all packaging waste should be recycled. The recycling targets per material were set at: 55% of plastic, 30% of wood, 80% of ferrous metals, 60% of aluminum, 75% of glass and 85% of paper and cardboard.
 - The concentration levels of heavy metals present in packaging should not exceed 600 ppm by weight no later than 2 years after the implementation





of the Directive in national laws, should not exceed 250 ppm by 3 years after the implementation, and not exceed 100 ppm by weight 5 years after implementation.

3. Producer Responsibility

The EU countries must also establish responsibility schemes to encourage the design of environmentally friendly packaging by making sure that producers bear the financial and/or organizational responsibility for the waste management of their packaging.¹⁸

Under the Proposal:

The Proposal put forward by the European Commission would notably change the rules from being a directive to a regulation. It would create direct obligations on companies in-scope. For example, manufacturers that place packaging on the EU market will need to ensure that the packaging is designed and manufactured in accordance with the requirements sent out in the Proposal around substances used in packaging, minimum recycled content, recyclable and compostable packaging, reusable packaging, and packaging minimization. Any supplier of packaging or packaging materials will also be required to provide the manufacturer with all the information and documentation necessary for the manufacturer to demonstrate that the packaging conforms with the requirements of the Proposal.

Notably, EU manufacturers and importers into the EU will need to comply with the Proposal. The Proposal therefore does not differentiate between companies incorporated in the EU, and those incorporated outside the EU.

Some key measures put forward by the Proposal include:

- Updated targets for packaging waste reduction and mandatory reuse or refill.¹⁹
- New EU-wide standards for over-packaging which are meant to reduce the excessive empty spaces in packaging.²⁰
- Extended ban on single-use packaging.²¹
- Mandatory compostability for some packaging such as hotel miniatures, coffee pods, lightweight plastic bags etc.²²
- New system of packaging labelling meant to facilitate recycling.²³
- New targets for reducing the packaging waste generated per capita as compared to the packaging waste generated per capita in 2018, by 5% in 2030, 10% in 2035, and 15% in 2040.

Companies that produce and use packaging should refer to the relevant EU country's regulations on packaging and packaging waste and ensure that any packaging produced or sourced for use is compliant with national laws and measures. The Directive does not, by itself, create any specific obligations for companies. The obligations under the Directive largely fall upon the EU countries themselves to meet recycling targets for packaging waste, and to introduce measures to promote the use of reusable packaging, such as deposit-return schemes, economic incentives, and requirements relating to the minimum percentages of reusable packaging placed on the market for each type of packaging.

6. Compliance recommendations for companies in-scope

7. Potential implications for suppliers

Suppliers to companies which are subject to national law requirements or measures to promote the use of reusable packaging and/or reduce packaging waste will likely face pressure to source packaging that use biobased, biodegradable, and compostable plastics as alternatives to conventional plastics. They are likely to face pressure to reduce the quantity of packaging used, and to use reusable and refillable packaging solutions, or otherwise ensure that packaging is recyclable or compostable.

8. Penalties for non-compliance

Not applicable as the Directive does not prescribe penalties for non-compliance for companies in-scope.

9. Form of enforcement

Not applicable.

10. Reporting/ disclosure requirements for companies in-scope

There are no reporting obligations on companies. However, there are reporting requirements for the EU countries. Specifically, the EU countries must create and/or enable databases on packaging and packaging waste to facilitate the monitoring of the Directive's implementation.²⁴ A European Commission decision²⁵ decided on the format and rules regarding the calculation, verification, and reporting of data through the databases. A second European Commission decision²⁶ later introduced new rules to improve the quality of reporting received. European Commission decisions are binding, meaning that addressees of the decisions (in this case, the EU countries) must comply with the decision.



11. Access to remedy mechanisms and litigation risk

Not applicable.

12. Opportunity to participate and engage in legislative developments

Not applicable with respect to the Directive. In regards to the Proposal, the European Commission opened a [feedback period](#) from 1 December 2022 to 24 April 2023 to collect feedback on the Proposal which it will summarize and present to the European Parliament and Council to help with the legislative debate.

13. Useful resources to support compliance

[Consolidated text: European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste](#)

European Commission, [Proposal for a revision of EU legislation on Packaging and Packaging Waste](#)

European Commission, [Packaging waste](#)

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 The First Circular Economy Action Plan was published in 2018. For a summary of its implementation see Implementation of the first Circular Economy Action Plan, [link](#). The second Circular Economy Package was published on 30 November 2022, [link](#).
- 9 European Commission, Proposal for a revision of EU legislation on Packaging and Packaging Waste, 30 November 2022, [link](#).
- 10 Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products.
- 11 Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.
- 12 European Commission, Executive summary of the impact assessment report accompanying the document Proposal for a Regulation of the European Parliament and the Council on packaging and packaging waste, 30 November 2022, [link](#).
- 13 Legislative Observatory European Parliament, 2022/0396(COD) Packaging and packaging waste, [link](#).
- 14 Article 2, Directive
- 15 Article 3, Directive
- 16 See Annex II – Essential requirements on the composition and the reusable and recoverable, including recyclable, nature of packaging
- 17 Article 6.
- 18 Article 12 of the Directive
- 19 New Article 10 of the Proposal
- 20 New Article 21 of the Proposal
- 21 New Article 22 of the Proposal
- 22 New Article 8 of the Proposal
- 23 New Articles 11 and 12 of the Proposal
- 24 Ibid.
- 25 2005/270/EC: Commission Decision of 22 March 2005 establishing the formats relating to the database system pursuant to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste, [link](#).
- 26 Commission Implementing Decision (EU) 2019/665 of 17 April 2019 amending Decision 2005/270/EC establishing the formats relating to the database system pursuant to European Parliament and Council Directive 94/62/EC on packaging and packaging waste, [link](#).

Discover Other Factsheets from An Apparel Supplier's Guide

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**EU Corporate
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