2024 Edition

- EU Strategy for Sustainable and Circular Textiles
- EU Corporate Sustainability Due Diligence Directive
- EU Corporate Sustainability Reporting Directive
- New York Fashion Act
- EU Forced Labour Regulation & Guidance
- US Uyghur Forced Labor Prevention Act
- EU Ecodesign for Sustainable Products Regulation
- EU Packaging & Packaging Waste Directive & Provisional Regulation
- EU Microplastics Regulation
- UK Plastic Packaging Tax
- EU Product Environmental Footprint Guide
- EU Textiles Regulation
- EU Taxonomy
- The German Due Diligence in the Supply Chain Act
- Lessons for Fashion: How the agricultural sector is tackling commercial compliance through the EU Directive on unfair trading practices

An Apparel Supplier's Guide 2.0

Key Sustainability Legislation in the EU, US, and UK

Acknowledgements

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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 resource was commissioned and led by:
Crystal International Group Limited
Diamond Fabrics Limited (Sapphire Group)
Lenzing Aktiengesellschaft
Pactics Group
Poeticgem Group
Shahi Exports
Simple Approach
Sourcery
Transformers Foundation

In addition, this research was also supported by:
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, GIZ, FABRIC Asia and Transformers Foundation

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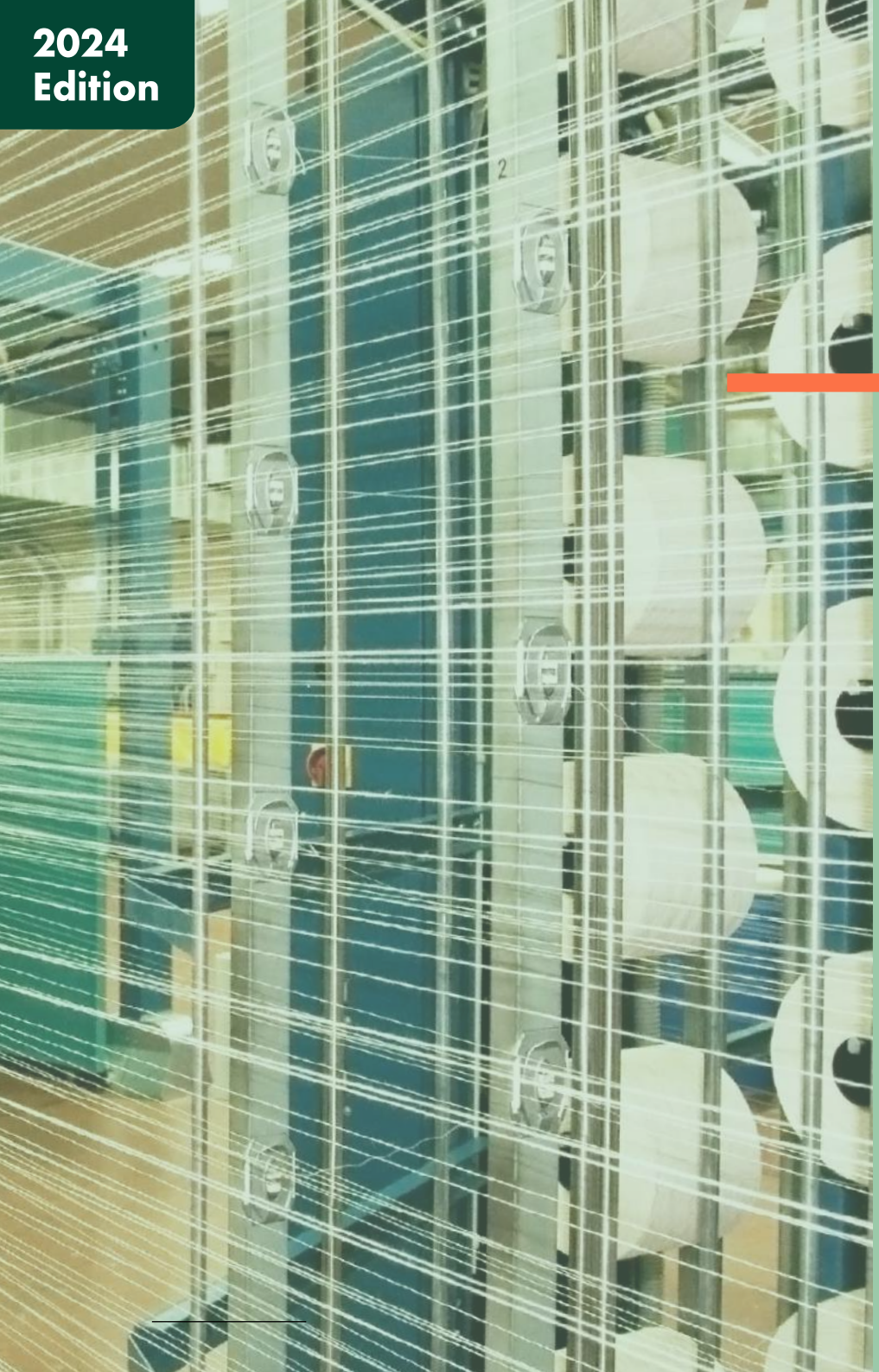
2024 Edition



Executive Summary for Senior Leaders of Companies Supplying Apparel & Beyond

Sustainability-related legislation is here.

Just a year ago, when we published the first version of this report, we anticipated that a wave of legislation in the Global North was coming. Within a year, several legislations have been adopted or gained momentum in the EU, UK & United States. This has created a heightened need for suppliers in the apparel value chain in the Global South and other manufacturing regions to understand the impact of the upcoming and adopted legislation on their operations. Whether you are new to this report or well-versed with last year's report, we encourage suppliers to engage with the factsheets to establish whether your company is directly within scope or whether the brands and retailers for which you produce are in scope. In either scenario, your company will likely face strong knock-on effects. However, it is important to emphasize that even if your company is only indirectly in scope, you are still likely to be impacted and may even be legally liable through new and strengthened contracts from brands.

This report is commissioned by Crystal International Group Limited, Diamond Fabrics Limited (Sapphire Group), Lenzing Aktiengesellschaft, Pactics Group, Poeticgem Group, Shahi Exports, Simple Approach, Sourcery, with support from Transformers Foundation and GIZ FABRIC Asia.

An overview of updates made to this report

This report includes updated fact sheets for the 12 legislative initiatives covered in the 2023 report and three new factsheets covering legislative initiatives not previously included: the EU Strategy for Sustainable and Circular Textiles (ESSCT), the German Due Diligence in the Supply Chain Act. Some of the updated factsheets underwent major revisions over the last year and have changed quite a bit, whilst others faced more minor changes and a section on looking at "Lessons for fashion: how is the agricultural sector is tackling commercial compliance through the EU Directive on unfair trading practices".

Although factsheet 0, the EU Strategy for Sustainable and Circular Textiles, is not a piece of legislation in and of itself, it was included in this report because it is the backbone and driving force behind much of the emerging legislation in the EU. Thus, it is an important overarching document for suppliers to understand and connect legislations and directives.

We decided to include the EU Directive on Unfair Trading Practices in the Agriculture and Food Supply Chain to give suppliers insight into how the agricultural sector, characterized by similarly asymmetrical commercial relationships, is working to improve issues of imbalanced bargaining power between buyers and suppliers.

Please note that this guide is in no way the only guide on all legislation. There may be other legislation or reports that would be relevant for suppliers. Last year, the entities commissioning this report mapped 60 legislative initiatives with potential implications for suppliers and selected 12 legislations to cover. We did a similar exercise this year, reviewing 35 pieces of legislation and voting on three factsheets to add to this version of the report.

Updates to the 2024 Edition

- New factsheets
- Major updates to factsheets
- Minor updates to factsheets

0 EU Strategy for Sustainable and Circular Textiles

13 German Supply Chain Due Diligence Act

14 Lessons for fashion: How the agricultural sector is tackling commercial compliance through the EU Directive on unfair trading practices

1 EU Corporate Sustainability Due Diligence Directive

2 EU Corporate Sustainability Reporting Directive

4 EU Forced Labour Regulation and Guidance

7 EU Packaging and Packaging Waste Directive and Provisional Regulation

8 EU Microplastics Regulation

3 New York Fashion Act

5 US Uyghur Forced Labor Prevention Act

6 EU Ecodesign for Sustainable Products Regulation

9 UK Plastic Packaging Tax

10 EU Product Environmental Footprint Guide

11 EU Textiles Regulation

12 EU Taxonomy

Key impacts & recommendations for suppliers

The legislative initiatives covered in the factsheets will likely have far-reaching operational and legal impacts on us apparel suppliers. The suppliers commissioning this report reflected on the potential implications of these legislations based on the factsheets and made some recommendations for fellow and peer suppliers. However, we encourage senior managers to direct their teams to engage with the details of each factsheet. We would also stress that compliance cannot be left to sustainability departments alone and will require joint efforts across departments.

Trend 1: Responsible purchasing practices & shared responsibility

Key Implications

The EU Corporate Sustainability Due Diligence Directive (CSDDD) introduced requirements for companies to review their purchasing practices, particularly when contracting with small and medium-sized enterprises (SMEs). This aims to ensure that Human Rights & Environmental Due Diligence (HREDD) responsibilities are shared equally between brands and suppliers, thereby preventing brands from outsourcing their HREDD obligations and associated costs to suppliers.

In this way, CSDDD recognizes the ability of contracts to underpin more balanced trading relationships and mandates a shift from a compliance-centered approach– in which compliance efforts and costs are easily shifted from buyers to suppliers– to a risk-based approach where brands' purchasing practices become part of the risk equation.

Reflections & Recommendations

We welcome this renewed focus on purchasing practices in CSDDD and urge all suppliers to be aware that the burden and the risks associated with the legislation cannot and should not be simply passed on to you.

- This shift may allow suppliers to **advocate for more ethical commercial practices**, demand fairer contracts, and push back on brands' unfair expectations to fulfill the CSDDD requirements, which are meant to be a shared responsibility.

- There is power in the **collective voice of suppliers demanding disclosure from brands on their purchasing practices** and inclusion of purchasing practices frameworks within legislations. Here, we encourage **learning from other sectors**–the EU Directive on unfair trading practices in the agri-food supply chain is a good example of what could be done for our industry. We expect to see industry bodies and supplier groups advocating for contracts and codes of conduct to reflect the regulation's expectation of fairness and shared responsibility. Some examples of ongoing initiatives include the Responsible Contracting Project, the Sustainable Terms of Trade Initiative, and The Common Framework for Responsible Purchasing Practices.

Trend 2: Multiple interpretations and duplication of work for suppliers

Key Implications

We expect this increased burden of work on suppliers due to two factors:

1. Brands may interpret and operationalize new legal requirements differently, leading to suppliers having to comply with multiple, conflicting standards. To protect themselves from legal investigations and penalties, brands have started rolling out more stringent goals, codes of conduct, and contract clauses alongside unannounced audits, on top of ongoing industry assessments, which adds to existing audit fatigue and the cost of business. In addition to this, suppliers are also facing the brunt of multiple standards and programs, such as traceability software and grievance redressal tools.

2. In some cases involving Directives, EU Member States may likely interpret EU requirements differently, leading to suppliers implementing multiple due diligence processes to identify, prevent, remediate, and report on social and environmental impacts.

Reflections & Recommendations

- **Discuss the implications and implementation plans with your customers.** It is important to engage with brands and retailers before they finalize their implementation methodologies, as there is a serious risk of multiple interpretations.

- **Actively begin evaluating your operations and collaborate with brands to assess your value chain for alignment** with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. Aligning with the OECD Due Diligence Guidelines and the UN Guiding Principles may minimize this risk to some extent.

- To address some of the remedy requirements in the regulations, **suppliers can expect brands to request that they adopt third-party grievance mechanisms**, as they may perceive suppliers' existing grievance mechanisms as inadequate. This may also have the unintended consequence of eroding your ability to address problems directly.

- Suppliers have also renewed their calls for greater commonality in audit requirements and modalities, given the need to comply with a common set of regulations. We anticipate **greater efforts on the part of industry bodies representing both buyers and suppliers to identify what this commonality** might look like in a bid to address mounting audit costs.

- Suppliers must continue as a collective to **advocate for harmonization across interpretations by EU Member States**. It gives us hope that, in March 2024, the European Council and the European Parliament reached a political agreement that if the CSDDD is adopted, the German Supply Chain Act will need to be harmonized with the CSDDD.

Trend 3: Increasing reporting requirements and data requests

Key Implications

With the adoption of CSDD, EU Forced Labor Act, and ESPR, suppliers will face increasing data requests, including:

1. Visibility into upstream supply chain partners' practices and full supply chain traceability. In that sense, suppliers shoulder a dual role: a lot of this legislation forces them to look in two directions, downstream towards their clients and upstream towards their (fabric, yarn, and accessory) suppliers.

2. Brands may alter their raw material purchasing behavior and become more involved in textile processing steps to improve their performance or meet sustainability-related performance and information requirements when such criteria are imposed (e.g., through ESPR)

Reflections & Recommendations

Suppliers must build capabilities to cope with these increasing demands and align with the expectations set out in these legislations. You are recommended to:

- **Map your supply chain and ensure you have documentation for orders** as per UFLPA and EU Forced Labor Act to be prepared for brand requests and potential detentions by Customs Authorities.

- **Allocate sufficient resources to understand and proactively comply with the Global North's legislative landscape.** Shift internal "compliance" mindsets towards "due diligence" and engage, adapt, and educate legal, HR, sourcing, and other operational functions to share responsibility with sustainability or ESG teams.

- **Develop stronger data gathering and management capacity**, including improving systems to measure and capture life cycle assessment (LCA) relevant data (e.g., energy and water consumption per produced item, the input of chemicals, etc.). **Digitize where possible** to avoid a massive administrative burden.

Trend 4: Potential legal implications for suppliers

Key Implications

Through UFLPA, EU Forced Labor Act, and German Supply Chain Due Dilligence Act there may be direct legal implications for suppliers. Further, where suppliers are not legally liable, their customers/brands might seek to create this liability through contractual documents.

Reflections & Recommendations

- **Suppliers will need competent legal advisors to support them in case of any legal implications.** The German Act, for example, allows NGOs and trade unions to sue on behalf of affected individuals, which could include actions taken against suppliers if they contribute to their client's non-compliance.

- **As mentioned above, despite all the best efforts on due diligence, there could be an increased risk of detentions by Customs Authorities.** Being prepared to offer all documents as per the UFLPA and EU Forced Labor Act, along with due diligence practices in such cases, would be essential to avoid becoming blacklisted by such authorities. Suppliers should also be prepared to push back on fines and penalties being offloaded by brands onto suppliers in case of detentions as, ultimately, the onus lies on the importer, i.e., the brand.

Call to Action for Legislators

We strongly believe that legislation is required to create a level playing field and force companies across the value chain to make changes. Suppliers also want a just transition (decent work, living wages, and decarbonized economic activity) **but** based on shared responsibility. As legislations gain momentum, we call for enforcement and further development of legislation to be informed by the following:

1. **Move away from a top-down approach:** Though well-intentioned, much of the legislation we looked at relies on a top-down approach to sustainability, which creates significant hidden work for suppliers who, in most cases, already disproportionately bear the burden of sustainability/due diligence relative to their margins.

2. **Involve the production experts:** We see value in implementable and equitable legislation but are concerned with the lack of suppliers' voice within legislative development. Involving suppliers could lead to legislation that is better informed, more equitable, and more impactful, with buy-in from the start.

3. **Problem-shifting:** We fear that much of the legislation covered in these fact sheets will serve to shift legal responsibility from brands to their suppliers rather than spark meaningful collective action and shared responsibility.

How to engage?

Resources permitting, we hope that the factsheets will be updated and expanded as the legislative landscape evolves. If you would like to support this work, are interested in connecting with other suppliers also working on these issues, or have an interest in advocacy, please get in touch with us.

Lastly, this document should not be construed as legal advice or a legal opinion in any way. 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 UPDATE

a. Objective

In July 2023 the first iteration of this guide covering, 12 pieces of legislation, was published. This document is an update to that guide and includes updates to the 12 factsheets issued last year as well as three additional factsheets covering new legislation not previously included.

This document is intended to enable suppliers in the apparel value chain that are established or headquartered outside of the Global North[1], 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. 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 industry[2]. There are also sector-specific initiatives such as the EU Strategy for Sustainable and Circular Textiles, which aim to implement the commitments made

[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*

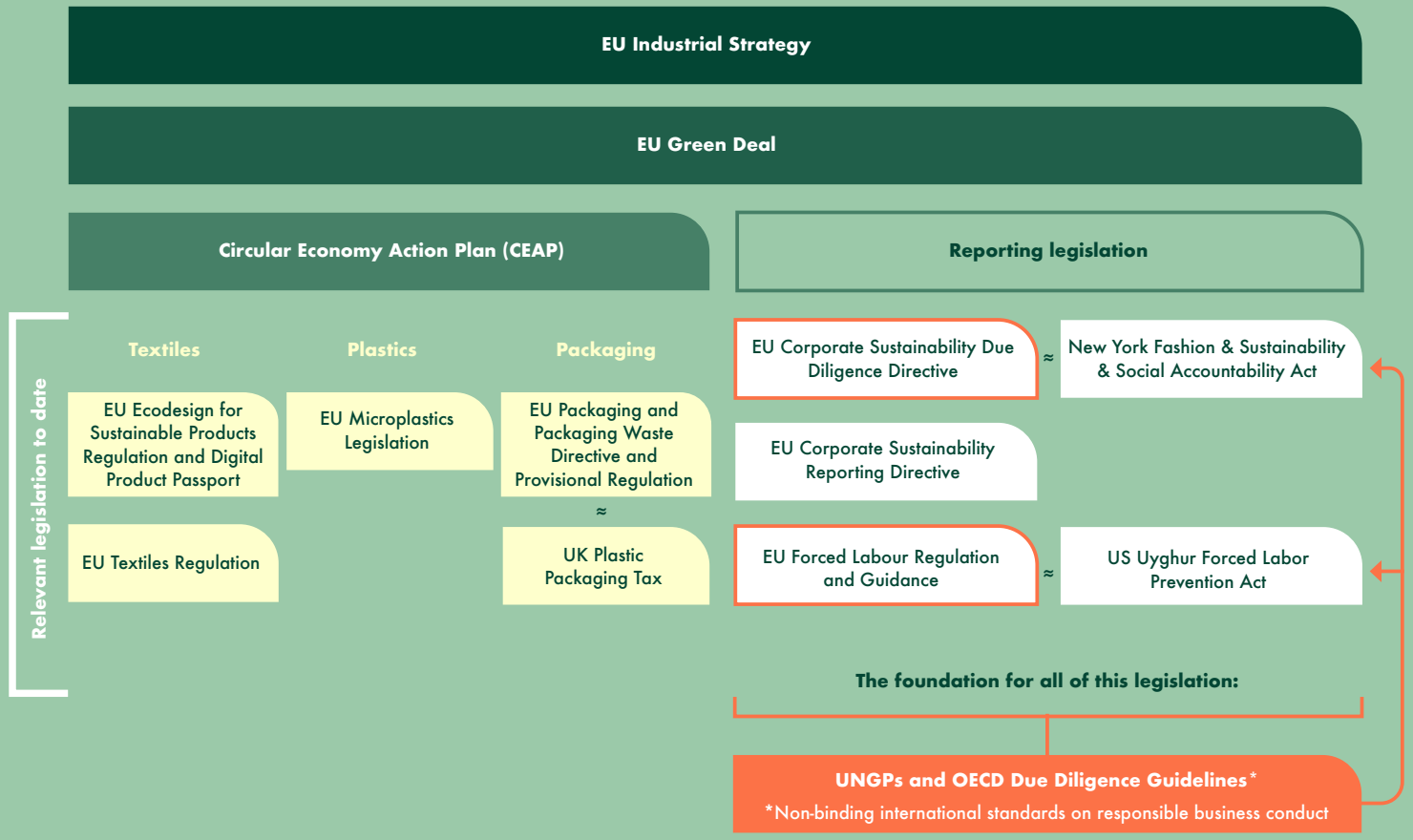
under the European Green Deal (see infographic on the next page **"Snapshot of the Legislative Landscape in the Global North"**), by setting out measures to address the design and consumption of textile products, and promote a greener and fairer value chain in the textiles industry. The legislations 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 objectives[3].

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.

[3] *See for example the summaries of EU legislation on environment and climate change.*

Snapshot of the Legislative Landscape in the Global North



Note ✳ The legislations, regulations and directives in this diagram are not the complete set laid out under the umbrella strategies. Head to the European Commission website to learn more.

c. 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.

How to Use This Document

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

Updates to Factsheets will be identified by these indicators:

UPDATE Text Updates

1. Key Changes

A summary of key changes to the legislation since August 2023.

2. Overview

A summary of the key aspects of the legislation.

3. Context

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

4. 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.

5. 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).

6. 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.

7. 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.

8. 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.

9. Penalties for non-compliance

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

10. Form of Enforcement

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

11. Reporting/ disclosure for companies in-scope

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

12. 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.

13. Opportunity to participate and engage in legislative development

Where applicable, opportunities to participate in public consultation.

14. 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 applicable.[4]

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 goals[5].

EU Regulation: A regulation is a binding legislative act. It must be applied in its entirety across the EU[6].

EU negotiation position: A particular stance taken by a European Institution in a negotiation where it outlines the preferred result.

EU provisional agreement: When after negotiations, an informal agreement is reached on the text of a legislative proposal that then needs to be formally approved by the European Parliament and the Council of the European Union during the legislative procedure.

Adopted: When a law is officially approved at the end of the legislative procedure.

Approved: Used as a synonym for adopted or used in cases of approval of draft versions of the law.

Derogated: Not included or not applied.

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 sought[7].

[4,5,6] *European Union, Types of legislation*
[7] *UNGPs Principle 25 and commentary*

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.

Intentionally added: Deliberately utilized in the formulation of a material or component where its continued presence is desired in the final product to provide a specific characteristic, appearance or quality.

UPDATE

Types of EU legislation

Directive:
A legislative act that sets out a goal for EU countries who then have to devise their own laws on how to reach these goals.

Regulation:
A binding legislative act which must be applied in its entirety across the EU.

Decision:
A binding law only on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable (it does not have to be implemented by the recipient.

Delegated and Implementing Acts:
Non-legislative acts adopted by the European Commission aimed at supplementing elements of a legislative act for uniform implementation.

Overview

UPDATE

The table below provides an overview of the legislative initiatives covered in this document. This is intended to help suppliers identify, at a quick glance, which of the legislations covered in this document could potentially be relevant to them and offer some guidance on where to prioritize their efforts. For example, where the legislation is in effect or is expected to be taken imminently, suppliers may want to designate this a priority area. Suppliers may also want to prioritize legislation where significant investment and resources are required to reach compliance, or there are significant expected impacts on the apparel value chain.

Legislation	Description	Timing (Likelihood of Implementation)[8]	Effort and Investment Required for Companies In-Scope to Comply[9]	Expected Indirect Impact for Apparel Suppliers to Companies In-Scope[10]	Opportunity to participate in public consultation / engage in legislative process
0 EU Strategy for Sustainable and Circular Textiles	A non-binding strategic framework that guides the creation of regulations for more sustainable and circular life cycle of textile products.	N/A (non-binding)	N/A	N/A	Yes, opportunity to join sector-specific working groups
1 EU Corporate Sustainability Due Diligence Directive (CSDDD)	Creates an obligation on companies globally (that meet the stated thresholds) to conduct human rights and environmental due diligence, and make available a complaints procedure.	High: Expected to come into effect < 5 years	High	High	No
2 EU Corporate Sustainability Reporting Directive (CSRD)	Requires companies globally (that meet the stated thresholds) to report on social and environmental sustainability information in accordance with European reporting standards.	In-effect: companies in-scope are required to apply the rules by 2024 financial year for reports in 2025	High	Medium	Yes, EFRS sector-specific standards

[8] *For the avoidance of doubt, these estimates have been developed based on public information regarding the expected date that the legislation shall come into effect. As many of these legislations are still in the early stages of the legislative procedure, the estimates contained herein remain subject to change and will be impacted by the political context, e.g., outcome of the upcoming European Parliament legislation.*
[9] *"High" means that significant effort and investment is required for apparel companies in-scope to attain compliance; medium indicates that some effort or investment is required for apparel companies in-scope to attain compliance; and "limited" means that the legislation requires companies in-scope to make limited effort or investments to attain compliance.*
[10] *"High" means that suppliers to companies in-scope should expect to make significant changes to their existing business policies, operations, practices, or processes as a result of the law, even though these laws do not directly impose any obligations on these suppliers. "Medium" signifies that suppliers to companies in-scope should anticipate making some changes to their existing business policies, operations, practices or processes. "Limited" means that suppliers to companies in-scope are unlikely to be indirectly impacted by the law and therefore will only need to make a few or no changes to their existing business policies, operations, practices or processes*

Legislation	Description	Timing (Likelihood of Implementation)[8]	Effort and Investment Required for Companies In-Scope to Comply[9]	Expected Indirect Impact for Apparel Suppliers to Companies In-Scope[10]	Opportunity to participate in public consultation / engage in legislative process
3 New York Fashion Sustainability and Social Accountability Act	Creates obligations on fashion sellers doing business in New York to conduct environmental and human rights due diligence, set and comply with greenhouse gas emission targets, and produce a publicly available due diligence report.	Unknown (uncertain)	High	High	Yes
4 EU Forced Labour Regulation	Implements a ban on products made with forced labour from being sold in the EU or exported from the EU.	High: Expected to come into effect < 4 years	High	High	No
5 U.S. Uyghur Forced Labor Prevention Act (UFLPA)	Requires importers to prove that the goods made wholly or in part in Xinjiang are not produced using forced labor before they can be imported into the United States. Importers need to demonstrate due diligence, effective supply chain tracing and supply chain management measures to ensure that they do not import any goods made by forced labor.	In effect	High	High	N/A

Legislation	Description	Timing (Likelihood of Implementation)[8]	Effort and Investment Required for Companies In-Scope to Comply[9]	Expected Indirect Impact for Apparel Suppliers to Companies In-Scope[10]	Opportunity to participate in public consultation / engage in legislative process
6 **EU Ecodesign for Sustainable Product Regulation (including the EU Digital Product Passport)**	Establishes a framework to set ecodesign requirements for specific product groups to improve their circularity, energy performance and other environmental sustainability aspects. Companies in-scope will also need to provide a digital product passport that shares information about the product's environmental sustainability. Manufacturers, importers, distributors, dealers, fulfillment services providers will be required to comply.	In effect in 2 years	High	High	Yes
7 **EU Packaging & Packaging Waste Directive & Provisional Regulation**	The Directive sets requirements and targets for EU countries on the recovery and recycling of packaging waste. There is also a proposed regulation that is intended to widen the scope of the Directive and create direct obligations on companies to prevent excessive packaging waste and minimize the environmental impact of packaging.	Directive: latest amendment in effect since 2018 Proposal: Expected to come into effect <5 years (high)	Directive: N/A Medium	Directive: N/A Medium	Directive: N/A Directive: No

Legislation	Description	Timing (Likelihood of Implementation)[8]	Effort and Investment Required for Companies In-Scope to Comply[9]	Expected Indirect Impact for Apparel Suppliers to Companies In-Scope[10]	Opportunity to participate in public consultation / engage in legislative process
8 EU Microplastics Legislation	Prohibits the placement of synthetic polymer microparticles (microplastics) on the market on their own or, where the microplastics are intentionally added to confer a sought-after characteristic, in mixtures in a concentration equal to or greater than 0.01% by weight.	In effect	This legislation is unlikely to have a direct impact on manufacturers of textile products for the apparel industry, as it only addresses the intentional use of microplastics in products.		No
9 UK Plastic Packaging Tax	Requires manufacturers and importers of plastic packaging to pay a tax on the relevant products.	In effect	Limited	Limited	N/A
10 EU Product Environmental Footprint Guide	A non-binding framework that establishes the steps and rules to make an appropriate and comparable product life cycle assessment.	N/A (non-binding)	Limited	Limited	Yes, opportunity to join sector-specific working groups
11 EU Textiles Regulation	Sets out labelling requirements for textile products made available in the EU.	In effect	Medium	Limited	N/A

Legislation	Description	Timing (Likelihood of Implementation)[8]	Effort and Investment Required for Companies In-Scope to Comply[9]	Expected Indirect Impact for Apparel Suppliers to Companies In-Scope[10]	Opportunity to participate in public consultation / engage in legislative process
12 EU Taxonomy	Sets out a classification system for activities that would qualify as an environmentally sustainable economic activity. It also imposes obligations on financial companies and certain non-financial companies to publish key performance indicators relating to sustainable investments and environmentally sustainable economic activities, respectively.	In effect	Medium	Limited	N/A
13 German Supply Chain Due Diligence Act	Requires companies in-scope to establish a risk management system to identify, minimise, prevent and address human rights and environmental risks, and to end human rights and environmental-related violations in their supply chain.	In effect	High	High	N/A

Factsheet

NEW ✳

EU Strategy for Sustainable and Circular Textiles

1. Overview

On March 30, 2022, the European Commission (the EC) published the "EU Strategy for Sustainable and Circular Textiles" (the ESSCT) as a part of the broader European Green Deal. This strategy is integral to Europe's ambitious goal to become the first climate-neutral continent by 2050. This strategy aims to reshape the textiles sector, making it greener, more resilient, and competitive while reducing its environmental and climate footprint. The ESSCT addresses the entire lifecycle of textile products and proposes a suite of coordinated actions to overhaul how textiles are produced, used, and managed at their end of life. The strategy is employed as a foundational framework to develop binding legislation. Please find the key changes in Section 1, 2, 3, 4, 5, and 12.

Overview (Continued)

Nature of a Strategy and Its Legislative Impact

- **Strategic Framework:** The ESSCT outlines the ambitions and directives for future actions but itself does not enact laws. Instead, it serves as a blueprint guiding the creation of regulations that will operationalize its goals.
- **Legislative Development:** By identifying priority areas for action, the strategy informs the development of regulations and policies that will implement its objectives. This relationship ensures that strategic goals are translated into enforceable laws and standards.
- **Impact on Companies:** The ESSCT is designed to set out a pathway to a more sustainable textiles industry, referring to multiple pieces of legislation which result in varied obligations depending on the size of the company and the specific sector involved. As such, it's crucial for companies to understand that while the strategy provides the overarching framework, each accompanying piece of legislation will define specific compliance requirements. Companies should review the obligations specific to each piece of legislation under which they fall within scope to ensure appropriate adaptation and compliance.

Strategic Objectives:

The ESSCT is driven by three key plans, each designed to foster distinct yet interconnected aspects of the textile industry's transformation:

"A New Pattern for Europe": Focusing on sustainable and circular textiles, this plan includes setting Ecodesign requirements to extend the lifecycle of products and improving the overall sustainability of textiles.

"Weaving the Industry of Tomorrow": Aimed at creating the enabling conditions for a sustainable industry, this plan promotes multi-stakeholder collaboration and supports the transition towards circular business models.

"Tying Together a Sustainable Textiles Value Chain Globally": This plan emphasizes the need for environmental and social due diligence along global value chains and regulates the export of textile waste to ensure it is managed sustainably.

2. Context

The ESSCT was developed as a response to the growing environmental and social challenges posed by the textiles sector within the EU. This strategy is aligned with the European Green Deal's ambition to transition to a more sustainable and resource-efficient European economy, recognizing the textiles sector as a priority for achieving these objectives.

Policy Foundations and Evolution

- **European Green Deal:** The ESSCT is a critical component of the Green Deal, which aims to make Europe the first climate-neutral continent by 2050. The textiles sector, with its significant environmental footprint, is pivotal in this transformation.
- **EU Circular Economy Action Plan:** The textiles industry is identified in this plan as a key area for action due to its substantial impact on resource use, waste production, and greenhouse gas emissions.
- **EU Industrial Strategy:** This strategy supports the modernization and competitiveness of Europe's industrial sectors, including textiles, by promoting innovation in sustainable practices and technologies.

Challenges Addressed by the ESSCT

The ESSCT strives to address the most relevant environmental-related issues within the textile industry. These issues are characterized by:

Resource Intensity: High consumption of water, energy, and raw materials.

Waste Production: Significant waste generation, with low rates of recycling and high volumes of landfill and incineration.

Chemical Usage: Extensive use of hazardous chemicals affecting human health and ecosystems.

Social Concerns: Issues related to labor rights and working conditions in global supply chains.

Stakeholder Engagement and Legislative Framework

The development of the ESSCT involved extensive consultations with a wide range of stakeholders including industry leaders, policymakers, environmental groups, and consumer advocates. These consultations helped shape a balanced strategy that addresses both regulatory requirements and market-based incentives.

Consultative Process

Engaging stakeholders ensured that the strategy addresses real-world challenges and harnesses industry expertise and insights.

Legislative Impact

While the ESSCT guides legislative development, it is supported by specific legislative actions that operationalize its goals (discussed below). These include new regulations on ecodesign, waste management, and producer responsibilities, which are detailed in subsequent sections of this document.

Implications for Future Policy Development

The ESSCT not only sets the direction for immediate regulatory actions but also establishes a framework for ongoing policy development as market conditions and technological capabilities evolve. It anticipates future challenges and opportunities, ensuring that the textiles sector can adapt and thrive in an increasingly circular and sustainable economy.

3. Status

Since the publication of the ESSCT, the EC has made significant progress in advancing the legislative and initiative components of the strategy. This section outlines the current status of legislative measures directly derived from the strategy and highlights supporting initiatives that are facilitating its implementation.

Legislative Acts based on the Strategy

- **Ecodesign for Sustainable Products Regulation (ESPR):** The ESPR sets stringent design requirements to ensure that textiles are durable, easier to repair, and recycle, and contain a minimum amount of recycled content. The ESPR will also introduce mandatory criteria for "green public procurement", in addition to requirements regarding Member States' incentives concerning textile products.

- **Digital Product Passport (DPP):** As a critical component of the ESPR, the DPP aims to provide accessible, detailed information on each textile product, covering aspects such as materials used, reparability, and recyclability.

- **Directive on Green Claims:** This directive is pending approval and is designed to prevent greenwashing by ensuring that all sustainability claims made by companies are reliable, verifiable, and based on standardized methodologies.

- **Revision of the Waste Framework Directive:** Adopted on July 5, 2023, this proposal introduces mandatory and harmonized Extended Producer Responsibility (EPR) schemes for textiles across all EU Member States. Under these schemes, textile manufacturers and retail brands will be responsible for covering the costs associated with the management of textile waste and will be incentivized to enhance waste minimization and circularity in their operations.

- **Revision of the Textile Labelling Regulation:** The Commission will revise the textile labelling Regulation (planned for the 4th quarter 2024) to introduce specifications for physical and digital labelling of textiles.

Relationship with other Global Value Chain Legislative Initiatives

Corporate Sustainability Due Diligence Directive (CSDDD):

Although not developed as a direct outcome of the ESSCT, the CSDDD plays a crucial role in achieving the strategy's objectives, particularly the "Tying Together a Sustainable Textiles Value Chain Globally" goal. Adopted on 23 February 2023, this directive introduces comprehensive due diligence obligations for large companies, including those with more than 250 employees and over €40 million turnover operating in high-impact sectors such as textiles. It mandates these companies to identify, prevent, mitigate, and account for adverse human rights and environmental impacts within their own operations and across global value chains. The CSDDD applies to both EU-based companies and third-country companies active in the EU, ensuring that significant textile market players engage in responsible business practices irrespective of their geographic location.

EU Rules on the Shipment of Waste:

Recently adopted regulations aim to control the export of textile waste, ensuring that non-OECD countries willing to accept EU textile waste can manage it sustainably, and prevent illegal shipments of waste to third countries. This measure seeks to increase transparency and sustainability in the global trade of textile waste, aligning with the broader goals of the ESSCT. The new regulations will enter into force on 20 May 2024.

Supporting Initiatives

- "ReSet The Trend" Campaign: In alignment with efforts to mitigate the impact of fast fashion, the "ReSet The Trend" campaign was launched to enhance consumer engagement and awareness about sustainable fashion practices. This campaign aims to shift consumer behavior towards more sustainable choices in textile products.
- Transition Pathway for the Textiles Ecosystem: Published on June 6, 2023, this initiative provides a collaborative platform for stakeholders in the textiles sector to submit commitments to support the ESSCT's actions. It calls for commitments to support the actions delineated in the pathway, aiming to facilitate the sector's transition to a more sustainable and circular model. The latest hybrid event for stakeholders is due to take place on 4 June 2024.
- Pact for Skills: Launched on 16 December 2021, the initiative supports the creation of large-scale skills partnership for the textiles ecosystem to prepare the workforce for green jobs through upskilling, reskilling and acquisition and transfer of green and digital skills. Organizations ranging from individual companies to industrial ecosystems are invited to join.
- Guidance on Circular Economy Business Models: Expected in 2024, this guidance will encourage Member States to support the reuse and repair sectors, complementing the legislative focus of the ESSCT with practical, market-based strategies.

Note *

While some of these steps are currently in the proposal stage and have not yet been voted into law, their adoption and implementation are expected to significantly advance the goals of the ESSCT.

4. Scope

The ESSCT is intended to set out a pathway for a circular textiles economy across all Member States. As such, the scope of the ESSCT encompasses all textile-related companies operating within the EU.

It important to note that, while the ESSCT provides the overarching framework, the applicable scope for compliance will be determined by each individual piece of legislation developed under or in support of this strategy, affecting manufacturers, retailers, importers, and other relevant entities differently depending on their location, scale of operations, and legislation in question.

However, legislation and regulations developed by the EU aim in general for uniformity in scope of application across all Member States to ensure a standardized regulatory environment that supports the Union's goals for a sustainable and circular economy. Any regulation-specific differences are noted below.

Geographic Scope

All EU Member States: The ESSCT applies uniformly across the EU, impacting textile operations in all 27 EU countries. This broad geographic scope ensures that the strategy's initiatives are implemented across a diverse and integrated market, promoting uniform standards and practices throughout the Union.

Targeted Business Entities

- **Manufacturers:** Textile manufacturers within the EU must adapt their production processes to meet new sustainability criteria, including the use of recycled materials and the reduction of hazardous substances.
- **Retailers and Distributors:** Companies that sell or distribute textiles in the EU must ensure their products comply with the ESSCT's requirements for durability, reparability, and recyclability.
- **Importers:** Importers of textile goods into the EU are required to ensure that their products adhere to the strict environmental standards set out by the ESSCT
- **Large Enterprises:** Specifically, companies with significant operations, defined as those having more than 500 employees and a turnover exceeding EUR 150 million, are subject to rigorous due diligence requirements under related legislative measures like the Corporate Sustainability and Due Diligence Directive.
- **Small and Medium-sized Enterprises (SMEs):** While the focus is often on large corporations, SMEs are also encouraged to align with the ESSCT's objectives, with specific initiatives aimed at supporting these businesses through digital transformation and skills development.

5. Obligations for companies in-scope

Regulatory Impact and Business Adaptation

Companies operating within the EU must proactively adjust their business models to incorporate ESSCT-driven legislative changes. This adaptation involves not only meeting specific product standards but also engaging in broader sustainability practices that contribute to the circular economy. Businesses are advised to regularly review legislative updates and participate in industry forums and consultations to stay informed and compliant.

- **EPR:** The introduction of EPR schemes under the ESSCT will require businesses to take responsibility for the entire lifecycle of their products, from production to post-consumer waste. This includes financial responsibility for collecting and recycling textile waste and EPR fees paid according to mandatory environmental considerations (eco-modulation).
- **Design and Production Changes:** Businesses will need to adopt practices that ensure textiles are durable, repairable, and recyclable. Compliance with the ESPR will require integrating a minimum percentage of recycled materials in new textiles and meeting design standards that facilitate easier repair and recycling.
- **Waste Management and Recycling:** With the introduction of harmonized EPR schemes, producers are responsible for the end-of-life impacts of their products. This includes financial responsibility for the collection, treatment, and recycling of textile waste, incentivizing companies to minimize waste generation and enhance the circularity of their textile products.

Note

As noted above, the ESSCT provides a strategic framework rather than direct legislative mandates. It influences the creation of various legislative measures that will specify differing obligations based on company size, industry sector, and other factors. Companies are advised to consult specific legislation relevant to their operations for detailed compliance requirements.

General Expectations

Circular Business Models: Companies are generally expected to integrate circular business practices to minimize waste and environmental impact. This includes enhancing the sustainability of supply chains, reducing the release of microplastics and other pollutants, and improving the overall lifecycle management of textiles.

Re-use and Repair Obligations: As part of transitioning towards a circular economy, companies should prepare for potential obligations related to the re-use and repair of textiles. This may involve adapting business models to accommodate these practices more robustly, ensuring that products are designed with longevity and reparability in mind.

Environmental and Human Rights Due Diligence: Companies should adopt a comprehensive approach to environmental and human rights due diligence throughout their value chains. This includes identifying, preventing, mitigating, and remedying actual and potential adverse impacts. Maintaining accurate reports on efforts in this regard will be required for transparency and reporting purposes.

Digital Product Passports: With the impending implementation of the ESPR, companies will need to adopt Digital Product Passports. These passports will provide critical information on the sustainability attributes and lifecycle of textile products, aiding consumers in making informed choices and enhancing transparency across supply chains.

Monitoring and Reporting Requirements

Legislative Compliance: Companies must stay vigilant and informed about new regulations under the ESSCT framework. This includes preparing for new reporting requirements, such as those related to waste transparency and the environmental impact of products.

Proactive Engagement: To ensure compliance and leverage strategic advantages, companies should engage with regulatory developments actively. This could involve participating in stakeholder consultations, aligning internal policies with upcoming requirements, and investing in systems and technologies that facilitate compliance and sustainability.

6. Compliance recommendations for companies in-scope

Steps in the regulatory process for the implementation of the various proposals under the ESSCT are still underway. Key compliance steps for companies operating in the EU or those with an EU presence in their supply chain firstly involve consideration of the specific legislation and whether the company falls within its scope. From here, companies should consider taking actions such as the following, as applicable:

Mapping Responsibility and Costs: Assess and map the potential costs and obligations of compliance with the suite of legislation and initiatives described here.

Preparing for Reporting Obligations: Prepare for new reporting obligations and implement appropriate processes, such as those concerning textile waste transparency, green claims, and mandatory sustainability disclosures. Develop appropriate processes and systems to ensure and monitor compliance.

Reviewing Supply Chains: Conduct a thorough review of supply chains to evaluate the impacts of various factors such as product durability, repairability, recyclability, environmental considerations in production and transportation, labor rights, and human rights. Prepare for proposed bans on practices like the destruction of unsold products.

Implementing Recycling or Repair Programs: Consider implementing recycling or repair programs to promote circularity. This may involve partnering with specialized service providers or integrating such practices into existing business models.

Aligning Internal Policies: Develop and implement internal policies that align with the principles and objectives of the ESSCT. These policies should address environmental sustainability, labor rights, human rights, and other relevant considerations.

7. Potential implications for suppliers to companies in-scope

A large focus of the ESSCT is on promoting greener and fairer value chains across borders and continents to make an impact not just on companies based in, or with operations in, the EU, but on their wider global supply chains. These include:

Environmental Compliance: Suppliers may face increased pressure to comply with environmental regulations and standards set forth by the ESSCT's various regulations, initiatives, and legislation. This could involve measures aimed at reducing resource consumption, minimizing waste generation, and improving overall environmental performance throughout the supply chain.

Product Innovation and Design: Suppliers may need to innovate their products and manufacturing processes to meet the sustainability criteria outlined in the ESSCT. This could involve developing eco-friendly materials, incorporating recycled fibers, or designing products with enhanced durability and recyclability.

Supply Chain Transparency: The ESSCT emphasizes the importance of transparency across the textiles supply chain. Suppliers may be required to provide detailed information about the origins of materials, production processes, and environmental and social impacts associated with their products

Circular Economy Practices: Suppliers may be encouraged or required to adopt circular economy practices, such as product reuse, repair, and recycling. This could involve collaborating with stakeholders to establish take-back programs or investing in technologies that enable closed-loop systems.

Risk Management: Suppliers will need to assess and mitigate risks related to compliance with ESSCT-related requirements. This may involve conducting thorough due diligence on suppliers and subcontractors to ensure alignment with sustainability goals.

Market Access: Compliance with the ESSCT may become a prerequisite for market access, as consumers and retailers increasingly prioritize sustainable and ethically sourced products. Suppliers that fail to meet these standards may face challenges in accessing certain markets or retaining existing customers.

Stakeholder Engagement: Suppliers may need to engage with a diverse range of stakeholders, including rightsholders, workers, customers, regulators, and civil society organizations, to demonstrate their commitment to sustainability and address stakeholder concerns effectively.

Compliance with CSDDD: Suppliers will need to adhere to due diligence requirements mandated by the CSDDD, particularly if they fall within its scope. This involves identifying, preventing, mitigating, and remedying adverse impacts on human rights and the environment across their operations and value chains.

Forced Labor Compliance: Suppliers must ensure that their operations and supply chains are free from forced labor, including forced child labor. Compliance with upcoming legislative initiatives, such as those aimed at prohibiting products made by forced labor, is essential to avoid non-compliance and associated penalties.

8. Penalties for non-compliance

Not applicable as the ESSCT is intended to set out a pathway to a more sustainable textiles industry and as such refers to multiple pieces of legislation. Companies should refer to the penalties specific to each piece of legislation under which they fall within scope.

9. Form of enforcement

Not applicable. Companies should refer to the enforcement measures specific to each piece of legislation under which they fall within scope.

10. Reporting/ disclosure requirements for companies in-scope

Not applicable. Companies should refer to the reporting and disclosure requirements specific to the legislation under which they fall in scope.

11. Access to remedy mechanisms and litigation risk

Not applicable. Companies should refer to the reporting and disclosure requirements specific to the legislation under which they fall in scope.

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

Initial workshops were held across September – October 2022 in relation to the Textiles Ecosystem Transition Pathway, at which consultations with EU textiles industry stakeholders were the focus. The final stakeholder consultation report was published on 6 June 2023. The final report can be found under section 13. Useful resources below.

It is possible that the ESSCT could lead to additional regulations beyond those currently on the table. The strategy serves as a blueprint for guiding the development of regulations and policies aimed at achieving its objectives. While some legislative measures have already been proposed and adopted, the implementation of the ESSCT may prompt further regulatory action as market conditions evolve and new challenges emerge.

13. Useful resources to support compliance

European Commission – EU Strategy for Sustainable and Circular Textiles

Communication from the European Commission – EU Strategy for Sustainable and Circular Textiles (COM(2022) 141)

Textiles Ecosystem Transition Pathway – Stakeholder Consultation Report.

EU Corporate Sustainability Due Diligence Directive

Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937

UPDATE

1. Key Updates

After much debate and questions as to whether the CSDDD would pass, the CSDDD received approval from the European Parliament. Since the Commission's original proposal, many key provisions have been adapted or removed. The most relevant changes are: the thresholds to be a company in-scope have risen dramatically, the directors' duties have been removed, and key concepts such as "chain of activities" and "business partners" have been modified. The key changes are in Section 4, 5, 6, 7 and 10.

2. Overview

The EU Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1973 (**CSDDD**) will require some companies inside and outside of the EU to undertake due diligence on their environmental and human rights impacts and create a plan to mitigate climate change.

Due diligence in this context refers to the process businesses should carry out to identify, prevent, mitigate, and account for how they address the actual and potential adverse human rights or environmental impacts in their operations, their chain of activities[1] and other business relationships[2]. For example, this may include forced and child labour, inadequate workplace health and safety, workplace exploitation, greenhouse gas emissions, pollution and biodiversity loss and ecosystem damage.

3. Context

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

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

[1] *Chain of activities means (1) activities of a company's upstream business partners related to the production of goods or the provisions of services by the company, including the design, extraction, sourcing, manufacture, transport, storage, and supply of raw materials, products, or parts of the products and development of the product or the service, and (2) activities of a company's downstream business partners related to the distribution, transport and storage of the product, where the business partners carry out those activities for the company or on behalf of the company. Compared to the original proposal, the concept of 'chain of activities' excludes part of the downstream supply chain, specifically consumer use and product disposal.*

[2] *The concept of 'business relationships' includes direct and indirect business partners, irrespective of how structured the business relationship is. Compared to the original proposal, it is broader as it includes any indirect business relationship. Adapted from the OECD Due Diligence Guidance for Responsible Business Conduct, Page 15. Due diligence under the CSDDD generally is aligned with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.*

4. Status

In order for the CSDDD to be adopted, the European Commission, the European Parliament, and the European Council must all agree on the text. The first step in this process was a proposal by the European Commission in February 2022. In November 2022, the European Council adopted its negotiating position and general approach to the CSDDD.

In June 2023, the European Parliament, adopted its negotiating position. On December 14, 2023 the European Parliament and the European Council reached provisional political agreement on the CSDDD. After several weeks of delays due to insufficient support from the EU Member States, notably from Germany and Italy, on March 5, 2024, the Belgian EU Council Presidency shared with other Member States and Parliament an updated text of the CSDDD with certain concessions. After much back and forth and further concessions, on March 15, 2024, the Council approved the Directive. On March 19, 2024, the JURI Committee of Parliament voted to approve the Directive. Parliament approved the CSDDD during its April 2024 plenary and the Council gave final approval on May 24, 2024.

Following the adoption, the EU countries will have two years to transpose the CSDDD into their national laws and communicate the relevant texts to the European Commission[3].

As the CSDDD is an EU Directive, the EU countries may, in theory, establish choose to set higher standards than what is set out in the CSDDD.

There is currently no guidance on how inconsistencies (if any) between national legislation and the CSDDD shall be resolved.

Only large companies are expected to comply initially, i.e., from two years following the entry into force of the CSDDD. Please refer to Section 5 below for further details.

[3] *Article 30, CSDDD*

5. Scope

UPDATE

To which companies will the CSDDD directly apply?

The CSDDD will apply to companies, irrespective of whether they are incorporated in the EU, provided they meet the applicable thresholds. In this factsheet, companies meeting these criteria are referred to as "companies in-scope".

Applicability Thresholds

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

Company established in the EU	Company established outside of the EU[4]
Companies with more than 1,000 employees on average and net worldwide turnover of more than EUR 450 million for the last financial year.	Companies that generated a net turnover of more than EUR 450 million in the EU in the financial year preceding the last financial year.
The ultimate parent company of a group that reaches the thresholds set forth above.	The ultimate parent company of a group that reaches the thresholds set forth above.
Companies or parent companies with franchising or licensing agreements in the EU with annual royalties exceeding EUR 22.5 million and net worldwide turnover of more than EUR 80 million in the last financial year.	Companies or parent companies with franchising or licensing agreements in the EU with annual royalties exceeding EUR 22.5 million in the EU and net worldwide turnover of EUR 80 million in the EU in the financial year preceding the last financial year.

[4] *Article 2(2), CSDDD*

UPDATE

Effective Date

Each EU Capital Member State has two years to incorporate the CSDDD into its national laws, regulations, and administrative provisions.

In-scope companies have different timelines to comply with CSDDD obligations based on the following applicability thresholds:

- Three years after the Directive's entry into force in 2024, the following companies would be covered:
  - Companies established in the EU with more than 5,000 employees on average and generated a net worldwide turnover of more than €1.5 billion generated in the last financial year.
  - Companies established outside the EU that generated a net worldwide turnover of more than €1.5 billion in the last financial year.
- Four years after the Directive's entry into force, the following companies would be covered:
  - Companies established in the EU with more than 3,000 employees on average and generated a net worldwide turnover of €900 million generated in the last financial year.
  - Companies established outside the EU that generated a net worldwide turnover of €900 million in the last financial year.
- Five years after the Directive's entry into force, all companies in-scope would be covered.

For Context

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

Similarly, if your company supplies to, or produces for, a company in-scope, you may still be indirectly impacted by the CSDDD as its requirements are expected to have knock-on effects on chain of activities globally. These implications are set out in more detail in Section 8.

6. Obligations for companies in-scope

UPDATE

Overview

The CSDDD, as proposed, will require the companies in-scope to undertake human rights and environmental risk-based due diligence in relation to their own operations, the operations within their group (including their subsidiaries) and chain of activities. A chain of activities encompasses all activities of a company's upstream business partners related to the production of goods or provision of services, including sourcing, manufacture, transport, and supply of raw materials, and activities of a company's downstream business partners connected to the goods, including distribution, transport and storage, where the business partners carry out those activities for or on behalf of the company. Downstream activities for company's services and disposal of the product are excluded.

A business partner is a legal entity related to the operations, products or services of the obligated company. It can be related via a commercial agreement or a provision of services as part of their chain of activities (direct business partners), but also any performance of business operations (indirect business partners).

Companies in-scope will also be required to adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through best efforts, that their business model and strategy are compatible with the transition to a sustainable economy and with limiting global warming to 1.5°C in line with the Paris Agreement.

Due Diligence Obligations[5]

The CSDDD sets out specific requirements that companies in-scope must implement. These requirements are to:

Integrate due diligence into relevant policies, develop risk management systems and set up a due diligence policy.

The due diligence policy should include a description of the company's approach; a code of conduct followed by the company's subsidiaries; employees and business partners, and a description of the processes put in place to integrate and implement due diligence.

Identify and assess actual and potential adverse impacts from their business operations or those of their subsidiaries or business relationships and, where necessary, prioritize potential and actual adverse impacts.[6]

Where it is not feasible to prevent or mitigate all identified adverse impacts at the same time to their full extent, companies would need to prioritize adverse impacts identified based on the severity and likelihood of the adverse impact.

Take appropriate measures to prevent or, if not possible, adequately mitigate potential adverse impacts identified[4].

Companies would be required to take the following actions, including but not limited to:

i. seeking contractual assurances from direct business partners to ensure compliance with the company's codes of conduct (and, as necessary, prevention action plans); and

ii. making necessary modifications of the company's business plan, overall strategies and operations, including purchasing practices, design and distribution practices;

[5] *Article 4, CSDDD*
[6] *Article 6, CSDDD*

iii. supporting SMEs that are business partners of the company, with training, knowledge and financial resources where necessary.

Where the above-described appropriate actions cannot prevent or adequately mitigate the potential impact, the company may be required to refrain from entering into new or extended relations with the relevant partner in the chain of activities value chain and may be required to temporarily suspend or terminate such relationship as a last resort.

Take appropriate measures to bring actual identified adverse impacts to an end or minimize their impact

This could include being required to take the following actions, including but not limited to developing and implementing a corrective action plan with the implementation of appropriate measures and monitoring indicators; and seeking contractual assurances from direct business partners that the partner will ensure compliance with the company's code of conduct.

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

Provide remediation of actual adverse impacts.[7]

Where a company has caused or jointly caused an actual adverse impact, that company would be required to provide remediation. Where the actual adverse impact is caused only by the company's business partner, voluntary remediation may be provided by the company. The company may also use its ability to influence the business partner causing the adverse impact to enable remediation.[8]

[6] *Article 6, CSDDD*
[7] *Article 8c, CSDDD*
[8] *Remediation means restitution of the affected persons, communities or environment to a situation equivalent or as close as possible to the situation they would be in had the actual adverse impact not occurred, proportionate to the company's implication in the adverse impact, including financial or non-financial compensation provided by the company to a person or persons affected by the actual adverse impact and, where applicable, reimbursement of the costs incurred by public authorities for any necessary remedial measures.*

Carry out meaningful engagement with stakeholders.[9]

Companies would be required to consult with stakeholders in the following steps of due diligence process, including but not limited to gather the necessary information on actual or potential adverse impacts, in order to identify, assess and prioritize adverse impacts; and the development of prevention and corrective action plans.

Establish a notification mechanism and complaints procedure for use by the following people and organizations.[10]

i. those affected or have reasonable grounds to believe they may be affected by an adverse impact, and their legitimate representatives, such as civil society organizations and human rights defenders;

ii. trade unions and other workers representatives representing those concerned; and

iii. civil society organizations active and experienced in areas related to the environmental adverse impact that is the subject matter of the complaint.

The complaints procedure should allow complainants to request appropriate follow-up from the company andmeet with company representatives to discuss the complaint. A company would be required to provide a complainant with its reasoning as to whether a complaint is found to be founded or unfounded, and, if founded, the steps or actions to be taken.

Conduct annual monitoring.[11]

Companies should assess their own operations and measures and those of subsidiaries, where related to the company, those of their business partners, to monitor their adequacy and effectiveness, after a significant change and at a minimum on an annual basis. The due diligence policy should be updated accordingly following these reviews.

[9] *Article 8d, CSDDD*
[10] *Article 9, CSDDD*
[11] *Article 10, CSDDD*

Climate Change Obligations[12]

In-scope companies must adopt and put into effect a transition plan for climate change mitigation that aims to ensure, through best efforts, that their business model and strategy are in line with the obligations under the Paris Agreement to limit global warming to 1.5°C and the objective of achieving climate neutrality and 2050 climate neutrality targets, and, where relevant, the exposure of the company to coal-, oil- and gas-related activities.

This plan should include:

- Time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and including, where appropriate, absolute emission reduction targets for greenhouse gas for scope 1, scope 2 and scope 3 greenhouse gas emissions for each significant category;
- A description of decarbonization levers identified and key actions planned to reach targets referred to in the previous bullet point, including where appropriate changes in the undertaking's product and service portfolio and the adoption of new technologies;
- An explanation and quantification of the investments and funding supporting the implementation of the transition plan; and
- A description of the role of the administrative, management and supervisory bodies with regard to the plan.

The transition plan would be required to be updated every 12 months and contain a description of the progress the company has made towards achieving the targets in the first bullet point above.

[12] *Article 15, CSDDD*

7. Compliance recommendations for companies in-scope

As the CSDDD has been recently adopted, we suggest the following as general recommendations to consider at this stage:

- **Comprehensive Evaluation of Supply Chains:** As an initial matter, companies should undertake an assessment. In addition to this, companies in-scope should review their subsidiaries and business partners within their value chains, to establish the potential extent of their due diligence obligations.

- **Development of a Robust Governance and Compliance Framework:** Companies in-scope should consider potential governance and oversight responsibilities within their organization. Companies in-scope should also review their current procedures and policies to identify any gaps against the requirements of the CSDDD. For example, businesses may not have a complaints procedure in place and will need to establish one. Many businesses will need to either adjust and amend their due diligence policies and practices or implement them for the first time. The due diligence plans should set out clear actions to achieve the objectives, be forward-looking and supported by specific milestones.

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

8. Potential implications for suppliers to companies in-scope

Companies that do not fall directly within scope of the CSDDD, but supply to companies in-scope, will still be indirectly affected by the CSDDD due to their position in the chain of activities of companies in-scope. As explained in Section 6 above, where adverse impacts are identified, companies in-scope may be required to temporarily suspend commercial relationships within their chain of activities until the impact can be brought to an end or minimized, so suppliers should keep this possibility in mind.

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

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

Considering the financial impact that implementing CSDDD obligations will have on suppliers, CSDDD provides the possibility to initiate conversations on changing practices, such as purchasing practices, aimed at compensating suppliers' efforts. It is also worth noting that CSDDD recognises the ability of contracts to underpin more balanced trading relationships. This also presents suppliers with an opportunity to advocate for a more balanced commercial relationship with the companies in-scope.

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

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

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

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

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

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

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

9. Penalties for non-compliance

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

These supervisory authorities can initiate investigations on their own. The supervisory authority may also initiate a investigation where a third party raises substantiated concerns, and there is sufficient information to indicate a potential breach of the CSDDD.[13] Any natural and legal persons (this includes any individual, company, or civil society organization whether located inside or outside the EU) may submit substantiated concerns to any supervisory authority when they have reasons to believe, on the basis of objective circumstances, that a company in-scope is failing to comply with the national law provisions adopted pursuant to the CSDDD.[14]

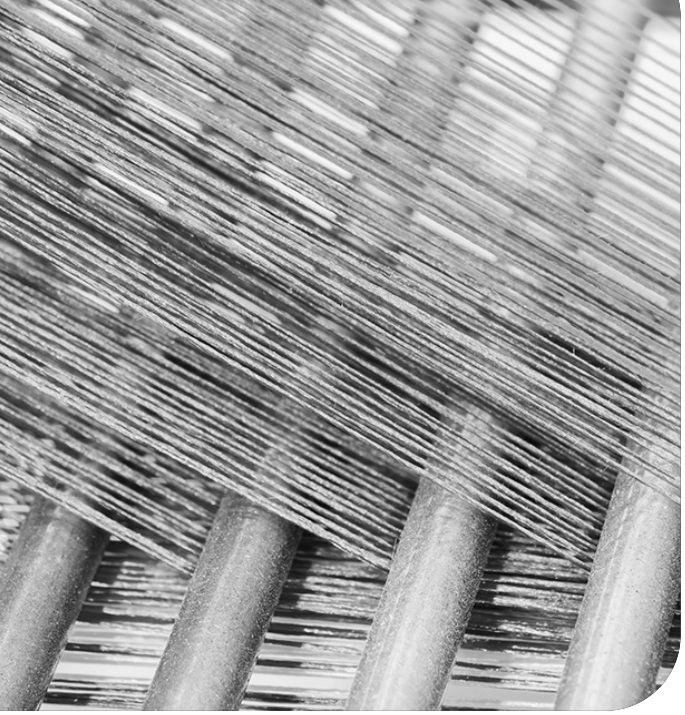
Supervisory authorities may impose the following penalties if non-compliance is found:

- order the company to end the infringing actions;
- order the company to not engage in certain conduct;
- order the company to take remedial action proportionate to the infringement and necessary to bring it to an end;
- impose interim measures in case of imminent risk of severe and irreparable harm; and
- impose penalties.[15]

Companies in-scope may also be liable for civil damages if they fail to mitigate, put an end to, or minimize identified adverse human rights or environmental impacts, and this failure led to damage being caused.[16]

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

[13] *Article 18 (2), CSDDD*
[14] *Article 19 (1), CSDDD*
[15] *Article 19 (1), CSDDD*
[16] *Article 18 (5), CSDDD*



taken steps to mitigate, end or minimize the adverse impact, unless the actions taken by the company could not be reasonably be expected to adequately address the adverse impact.[17]

In other words, where (hypothetically):

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

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

[17] *Article 22 (1), CSDDD*

10. Form of Enforcement

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

[18] Article 22 (1), CSDDD
[19] Article 18 (4), CSDDD
[20] Article 20 (1), CSDDD
[21] Article 20 (3), CSDDD

Investigations/Supervision.

Where a supervisory authority identifies non-compliance pursuant to an investigation (as described in Section 9 above), the company will be granted an appropriate period of time for remedial action (if possible)[18]. The supervisory authorities may also order the concerned company to stop the infringing conduct as set out above.

Penalties.

Each EU country establishes their own rules on penalties for infringements. As such, the form of sanctions may differ based on the EU country. The penalties should be effective, proportionate, and dissuasive.[19] Any pecuniary penalties (i.e., fines) should be based on the company's turnover, at a maximum of 5% of net worldwide turnover.[20] The type and extent of penalties imposed will depend on:[21]

- The nature, gravity and duration of the infringement, and the severity of the impacts resulting from that infringement;
- Any investments made and any targeted support provided;
- Any collaboration with other entities to address the impacts concerned;
- Where relevant, the extent to which prioritization decisions were made;
- Any relevant previous infringements by the company of national provisions adopted pursuant to the Directive found by a final decision;
- The extent to which the company carried out any remedial action with regard to the concerned subject-matter;
- The financial benefits gained from or losses avoided by the company due to the infringement; and
- Any other aggravating or mitigating factors applicable to the circumstances of the case.

Civil Liability.

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

- The company intentionally or negligently failed to comply with the obligations under the CSDDD, when the right, prohibition or obligation is aimed to protect the natural or legal person; and
- As a result of a failure, as referred to in the previous bullet point, a damage to the natural or legal person's legal interest protected under national law was caused.

11. Reporting/ disclosure requirements for companies in-scope

Companies in-scope who are not subject to reporting requirements under Articles 19a and 29a of Directive 2013/34/EU[22] must publish a statement on their website on an annual basis on the matters covered by the CSDDD. The statement must be published in an official language of the European Union of the Member State of the applicable supervisory authority no later than 12 months after the balance sheet date of the applicable financial year. Companies voluntarily reporting should publish their disclosures by the date of publication of their annual financial statements. The European Commission will adopt delegated acts specifying the content and criteria for such reporting no later than March 31, 2027.[23]

There are no other reporting or disclosure requirements under the CSDDD, as these obligations will be largely covered by the CSRD. However, CSDDD and CSRD set different requirements for what companies fall under their scope of application. CSDDD applies to companies with more than 1,000 employees and a net worldwide turnover of more than EUR 450 millions, while CSRD applies to large companies with an annual net turnover of EUR 50 millions and 250 employees, listed SMEs and public interest entities with over 500 employees (please see Section 4 of CSRD for a detailed explanation of the scope of application).

[22] *Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.*
[23] *Article 11, CSDDD*

12. Access to remedy mechanisms and litigation risk

Each EU country must ensure that natural and legal persons are entitled to submit 'substantiated concerns' to any supervisory authority when they have reasons to suspect non-compliance by a company in-scope. The supervisory authority shall, as soon as possible, inform the complainant of the result of the assessment of their concern and provide reasons. Each EU country must ensure that such complainants with a legitimate interest in the matter have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts, or failure to act of the supervisory authority.[24]

As above, companies in-scope can face civil liability for non-compliance with their obligations under the CSDDD, and so should be aware of the litigation risks in this respect.[25]

13. Opportunity to participate and engage in legislative developments

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

[24] *Article 19, CSDDD*
[25] *Article 22, CSDDD*

14. Useful resources to support compliance

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

European Commission, Just and sustainable economy: Companies to respect human rights and environment in global value chains

European Commission, Questions and Answers: Proposal for a Directive on corporate sustainability due diligence

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

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

2024 Edition

Factsheet

EU Corporate Sustainability Reporting Directive

UPDATE

1. Key Updates

On October 17, 2023, the European Commission adopted a delegated directive that adjusted the reporting threshold for large companies. This summary has also been updated to provide an overview of (1) EU Member States' progress in transposing the Directive into national law and (2) the adoption of the first 12 European Sustainability Reporting Standards (ESRS). The adoption of sector-specific standards has been post-poned. The main changes relate to Section 3, 4, 6, 11, 13 and 14.

2. Overview

The EU Corporate Sustainability Reporting Directive (**CSRD**) took effect on January 5 2023, although the first wave of companies in-scope are not expected to start reporting until their 2024 financial year (with the first report to be produced in 2025). Building on the current EU Non-Financial Reporting Directive (**NFRD**[1]), the CSRD will require detailed qualitative and quantitative sustainability disclosures from a substantially expanded universe of companies.

The CSRD sets out how companies must report on their social and environmental performance. It includes what types of information they need to disclose and how those disclosures should be made. Companies in-scope will need to follow the reporting requirements set out in the ESRS, which specifies the detailed reporting requirements. The ESRS are being developed by EFRAG (European Financial Reporting Advisory Group).[2]

CSRD reporting is intended to help a company's stakeholders better understand its sustainability performance and impact. Such stakeholders may include:

- Investors and asset managers, who want to better understand the risks and opportunities that sustainability issues pose for their investments and the impacts of those investments on people and the environment;
- Civil society actors, including non-governmental organizations and social partners that wish to better hold companies to account for their impacts on people and the environment;
- Customers, who want to understand and, where necessary, report on sustainability risks and impacts throughout their own value chains;
- Policy makers and environmental agencies, as part of monitoring environmental and social trends and to inform public policy.

[1] *The NFRD requires companies to provide disclosures on: their efforts to protect the environment, how they treat their employees, how they plan to adhere to general human rights, how they mitigate corruption or bribery, and how they promote diversity in their work environment.*
[2] *EFRAG is a private association established with the encouragement of the Commission to serve the public interest. Its member organizations are European stakeholders and national organizations and civil society organizations*

3. Context

The CSRD provides a framework for harmonizing EU sustainability reporting standards and aims to align EU reporting standards and internationally recognized sustainability reporting and accounting standards and frameworks. In November 2023, the GRI-ESRS Interoperability Index was made publicly available. This index allows entities reporting under ESRS to be considered as reporting 'with reference' to the GRI standards. However, with other international standards on sustainability reporting, such as the IFRS and TCFD, there are differences to be assessed with regard to their interoperability with ESRS. Please refer to the comparative analysis provided by EFRAG to learn more about the similarities and differences in these requirements.

4. Status

The CSRD entered into force on January 5, 2023. However, as a European Directive, it does not directly create obligations for companies in-scope. Those obligations will be created under each EU country's national laws based on the CSRD. EU countries will have until July 6, 2024, to transpose the CSRD into their national laws. As of February 29, 2024, five EU Member States (Czechia (in part), Finland, France, Hungary and Romania) have approved implementing legislation to transpose the CSRD into national law, an additional eight Member States have introduced implementing legislation but not yet approved it, and a further eight Member States have held consultations regarding transposing the CSRD into national law.

On July 31, 2023, EFRAG adopted the first set of ESRS, consisting of two general cross-cutting ESRS and ten topical ESRS, as a delegated act.[3] EFRAG may develop, and the European Commission may adopt, additional sector-specific and other ESRS. On February 8, 2024, the European Parliament and the European Council reached a political agreement to delay the adoption of sector-specific ESRS and the standards specifying the reporting obligations of Third-Country Companies (as defined below) to June 30, 2026.

[3] *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.*

UPDATE **The sustainability reporting requirements for companies in-scope[4] will take effect on a staggered basis, as follows:**

Category	Criteria	Implementation[5]
1 Companies already subject to reporting under the NFRD	Large company or parent company of a large group that is incorporated in the EU which (i) is a public interest entity and (ii) has more than 500 employees on average.	Financial years starting on or after January 1, 2024, with the first report to be produced in 2025
2 Large companies incorporated in the EU (including EU subsidiaries of non-EU parent companies) not already subject to the NFRD	The company must meet two of the following criteria: • Balance sheet total of EUR 25 million • Annual net turnover[6] of at least EUR 50 million; and/or • An average of 250 employees during the financial year	Financial years starting on or after January 1, 2025, with the first report to be produced in 2026
3 SMEs incorporated in the EU that are listed on EU-regulated markets (other than micro-companies)	The company must have securities listed on an EU-regulated market and meet two of the following criteria (to the extent not covered by categories 1 and 2, a Listed SME): • Balance sheet total of at least EUR 4 million; • Annual net turnover of at least EUR 8 million; and/or • An average of 50 employees during the financial year.	Financial years starting on or after January 1, 2026, with the first report to be produced in 2027. However, for the first two years following 2026, SMEs will have the option to opt out from the reporting requirements, so long as they indicate in their management report why they did not disclose sustainability information.
4 Large companies not incorporated in the EU with certain EU ties	The non-EU company must meet the following criteria (Third-Country Companies): • Annual net turnover of EUR 150 million in the EU for each of the last two consecutive financial years; and • At least one subsidiary that is a Large Undertaking (as defined in category 2) or a Listed SME (as defined in category 3) or EU branch that generated net turnover of more than EUR 40 million in the prior financial year	Financial years starting on or after January 1, 2028, with the first report to be produced in 2029

[4] It must be noted that the term used in the CSRD is an "undertaking" rather than a "company". But for the purposes of readability, the term "company" will be used in this factsheet. Undertakings is an EU legislative term that refers to any entity that is engaged in the economic activity of offering goods or services on a given market, regardless of its legal status and the way in which it is financed. As such, the term "undertaking" is broader than a "company" as an undertaking could be an entity without formal legal status.
[5] Reporting will occur in the following financial year for each of the above financial years.
[6] "Net turnover" is generally defined as the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover.

5. Scope

The CSRD casts a wide net, substantially wider than the NFRD. Please refer to the table in Section 4 above for the criteria to determine whether a company would fall within the scope of the CSRD. The European Commission estimates that approximately 49,000 companies will be required to comply with the CSRD, compared to an estimate of only 11,600 companies that are required to comply with the NFRD.

6. Obligations for companies in-scope

Overview

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. The CSRD provides an exemption for subsidiaries, if the subsidiary's parent company includes the subsidiary in the parent company's consolidated management report.

Types of Disclosures Required

As noted above, the specific disclosures required to be made are set out in the ESRS. The CSRD more generally states that sustainability matters to be addressed in the management report are required to include the following:

- A brief description of the company's business model and strategy, including, but not limited to, the resilience of the company or group's business model and strategy in relation to sustainability risks; and how the company's business model and strategy consider its stakeholders' interests and its impacts on sustainability matters;
- Sustainability targets, a description of the progress the company has made towards achieving those targets, and a statement of whether the company's targets, as related to environmental matters, are based on conclusive scientific evidence;

- Any incentive schemes linked to sustainability matters;
- Indicators relevant to its sustainability-related disclosures;
- A description of the due diligence processes regarding sustainability matters;
- The principal actual or potential adverse impacts connected with the company's own operations and within its value chain and actions taken to identify and track these impacts;
- Actions taken by the company, and the result of such actions, to prevent, mitigate, remediate or bring an end to actual or potential adverse impacts; and
- Principal risks to the company related to sustainability matters.

To the extent applicable, reported information is required to address the company's own operations and its value chains – both within and outside the European Union – including its products and services, its business relationships, and its supply chain.[7]

On December 22, 2023, EFRAG published Draft EFRAG IG 2.[8] Draft EFRAG IG 2 is draft value chain guidance that explains how to navigate the value chain requirements of the ESRS, contains FAQs for implementing value chain reporting under the ESRS and includes an upstream and downstream value chain map that explains the coverage of the upstream and downstream value chain.

Double Materiality

The CSRD takes a "double materiality" approach to reporting. Companies in-scope are required to report both on (i) how sustainability matters affect their business; and (ii) the external impacts of their activities on people and the environment. This is consistent with the approach taken under the voluntary Global Reporting Initiative (GRI) standards. The concept of double materiality is further explained in the draft ESRS 1 (General requirements).

[7] *For the first three years of reporting, if information regarding the value chain is not available, the undertaking must instead explain the efforts made to obtain the necessary information about its value chain, the reasons why not all of the necessary information could be obtained and its plans to obtain the necessary information in the future.*
[8] *https://www.efrag.org/Assets/Download?assetUrl=/sites/webpublishing/SiteAssets/Draft+EFRAG+IG+2+VCIG+231222.pdf*

On December 22, 2023, EFRAG also published Draft EFRAG IG 1.[9] Draft EFRAG IG 1 provides draft guidance concerning the materiality assessment required by the ESRS; Draft EFRAG IG 1 explains the ESRS approach to materiality, illustrates how the materiality assessment is to be performed, explains how companies can take account of other frameworks and standards while making the assessment,and includes FAQs on impact and financial materiality, the materiality assessment process, stakeholder engagement and disaggregation and reporting.

Limited Assurance

Companies in-scope will have to seek limited assurance of the sustainability information disclosed. This means that companies in-scope will need to engage a third-party auditor to verify the information disclosed, although the degree of assurance required is less onerous than what is required for financial auditing. Assurance standards are to be adopted by the European Commission before October 1, 2026.

The European Commission has indicated that its goal is to eventually adopt a "reasonable assurance" standard, potentially as early as 2028. Reasonable assurance would entail more extensive procedures, including consideration of internal controls of the reporting company and substantive testing to detect flaws.

Equivalence

The CSRD includes an equivalence mechanism. This means that where a company is subject to multiple reporting requirements across different jurisdictions, it may be able to attain some reporting exemptions where the other reporting requirements are considered equivalent to the ESRS. However, the European Commission has not postponed the deadline to issue the equivalent standards to 2026 and it is unclear at this stage how this equivalence mechanism will operate in practice and which other reporting standards will be considered equivalent to the ESRS.

[9] *https://www.efrag.org/Assets/Download?assetUrl=/sites/webpublishing/SiteAssets/IG+1+Materiality+Assessment_final.pdf*

7. Compliance recommendations for companies in-scope

Companies in-scope can prepare for reporting under the CSRD by taking the following steps:

- As an initial matter, there should be an assessment of whether your company is in-scope. For most multinationals, the threshold question will be whether any of their incorporated in the EU are large companies / large undertakings (i.e., Category 2 companies as per the table in Section 4 above). Larger multinationals also will need to assess whether they might be subject to reporting as a non-EU company. Multinationals that do not currently meet a CSRD compliance threshold should consider whether their EU growth strategy needs to monitor when the company reaches CSRD threshold and prepare for compliance with the CSRD.

- Companies in-scope should determine where primary responsibility for CSRD compliance will sit, e.g., at the parent level or subsidiary level. There has been a trend to increase the centralization of responsibility for sustainability disclosures at the parent company level to ensure consistency across mandatory and voluntary disclosures and reduce compliance costs.

- For multinationals, in almost all cases, it will make the most sense for primary responsibility for sustainability disclosure globally to sit in the headquarters (whether with the sustainability, legal, compliance, finance or another team). Of course, regional, and local personnel in other parts of the world also have an important part to play and will need to be integral to data collection and reporting.

- Companies in-scope also should conduct a preliminary CSRD gap assessment. The gap assessment should focus on gaps between expected required CSRD disclosures (as detailed in EFRS 1 and ESRS 2 standards) and other current and expected voluntary and mandatory sustainability disclosures (including those expected to be required by the SEC's climate risk disclosure rules if applicable).

- Companies in-scope should set up a process for ongoing monitoring of the significant number of CSRD-related developments that will occur over the next few years.

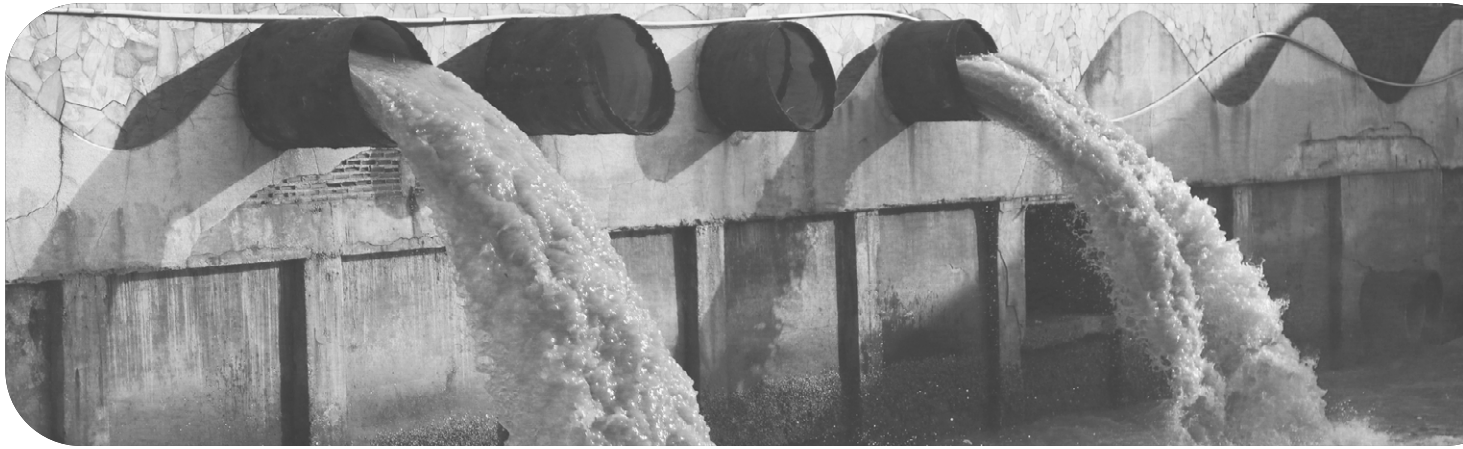
8. Potential implications for suppliers to companies in-scope

Suppliers to companies in-scope may experience some indirect impact as the CSRD pushes for greater transparency and standardization of sustainability reporting standards. Brands and retailers in-scope may require suppliers to provide information to support their reporting process. For example, companies in-scope are likely to develop key performance indicators to measure sustainability-related performance and require their suppliers to report in accordance with these indicators.

Suppliers to companies in-scope may also consider reviewing the sector-agnostic EFRS standards (EFRS 1 and ESRS 2) to understand what kinds of data and information they may be required to provide to support companies in-scope report under the CSRD. Suppliers may conduct a gap analysis to determine what information is readily available and where their ESG data collection and reporting systems may need to be upgraded or expanded. Suppliers should also consider where further and independent verification will be required to validate the accuracy of datasets. Note that this gap analysis will need to be updated when the draft sector-specific standard is published by EFRAG.

9. Penalties for non-compliance

Each EU country will set their own enforcement and penalty rules under the CSRD. Therefore, a company operating in Germany may pay more or less in penalties for non-reporting or non-compliance than a company in Spain.



10. Form of Enforcement

Please refer to Section 9.

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

The ESRS will specify the forward-looking, historical, qualitative, and quantitative information to be reported by companies in-scope. On July 31, 2023, the European Commission adopted twelve ESRS, consisting of two general cross-cutting ESRS and ten topical ESRS, as further described below. Additional sector-specific and other ESRS are currently being developed by EFRAG.

General and topical standards

The European Commission adopted general standards,which provide for general requirements (ESRS 1) and general disclosures (ESRS 2), in addition to 10 topical draft standards across each of the environmental, social and governance pillars. Companies in-scope will need to report according to the general and topical standards.

Environment

Climate change (ESRS E1)
Pollution (ESRS E2)
Water and marine resources (ESRS E3)
Biodiversity and ecosystems (ESRS E4)
Resource use and circular economy (ESRS E5)

Social

Own workforce (ESRS S1)
Workers in the value chain (ESRS S2)
Affected communities (ESRS S3)
Consumers and end-users (ESRS S4)

Governance

Business conduct (ESRS G1)

Sector-specific standards

The second set of standards will include sector-specific standards including sectors covered by GRI sector standards (agriculture, coal mining, mining, oil and gas (upstream) and oil and gas (mid- to downstream)) and sectors characterized as **high impact,** (textiles, energy production, road transport, motor vehicle production and food/beverages). These standards shall set out the disclosure requirements that are specific to each sector; companies in-scope that fall within the identified sectors will also need to ensure that their reporting is aligned with the sector-specific standards in addition to the sector agnostic standards described above. EFRAG has noted that its sector-specific standards will be mapped to the sector-specific SASB standards in subsequent versions of the ESRS to avoid inconsistencies. On February 8, 2024, the European Parliament and the European Council reached a political agreement to delay the adoption of sector-specific ESRS to June 30, 2026.

The second set of EFRAG standards will also include ESRS for SMEs. The intent behind standards specific to SMEs is to enable them to report in accordance with standards that are proportionate to their capacities and resources, and relevant to the scale and complexity of their activities. The reporting standards for SMEs are to be included in the ESRS to be adopted by June 30, 2026.

Additionally, EFRAG is developing a voluntary reporting standard for use by non-listed SMEs to enable them to respond to requests for sustainability information in an efficient and proportionate manner. A draft of the voluntary standard is expected to be issued in the first half of 2024 and will be open to a four-month public consultation.

12. Access to remedy mechanisms and litigation risk

While there is no access to remedy mechanisms under the CSRD, it is worth noting that non-compliance could lead to reputational and financial damage. Activists are targeting management and boards of certain companies that fail to take a proactive stance on ESG issues, and social and mainstream media are quick to expose companies' failings in ESG areas. This stakeholder accountability and public scrutiny fed by a desire for change, is expected to result in an increase in enforcement and litigation risks relating to sustainability performance for corporates. These risks may include:

These risks may include:

- Misleading and inaccurate ESG disclosures or "greenwashing" by companies may result in liability in relation to investors who have suffered loss as a result of any untrue or misleading statements, or omissions.
- The potential for sanctions for breaches of prospective supply chain due diligence requirements under the CSDDD, such as debarment from public procurement, loss of export credit and fines. Companies also face significant reputational and financial damage from governance and oversight failures of supply chain risks where there are allegations over poor labour practices, human rights abuses, and slavery.
- Claims by asset managers for indemnity and contributions to meet regulatory penalties or damages arising from misleading ESG disclosures provided by companies.
- Employees feel more emboldened to call out their employers for non-compliance with their published ESG standards.
- Climate-related legal action brought by environmental groups continues to rise, with The Hague District Court recently ordering Royal Dutch Shell to reduce its carbon emissions by 45% (compared to 2019 levels) by 2030. In July 2021, Royal Dutch Shell confirmed its intention to appeal the court ruling. During the same week, investors in energy company Chevron, voted to cut emissions generated by the use of the company's products. These developments are likely to lead to further transformations with the energy sector (including in relation to transport and mining), with companies increasingly likely to face similar lawsuits from environmental groups, together with pressure from investors to reduce their contributions to climate change.

13. Opportunity to participate and engage in legislative developments

As noted above, additional ESRS standards are under development by EFRAG. Please refer to the EFRAG website for information on opportunities to participate.

14. Useful resources to support compliance

European Commission, Corporate sustainability reporting

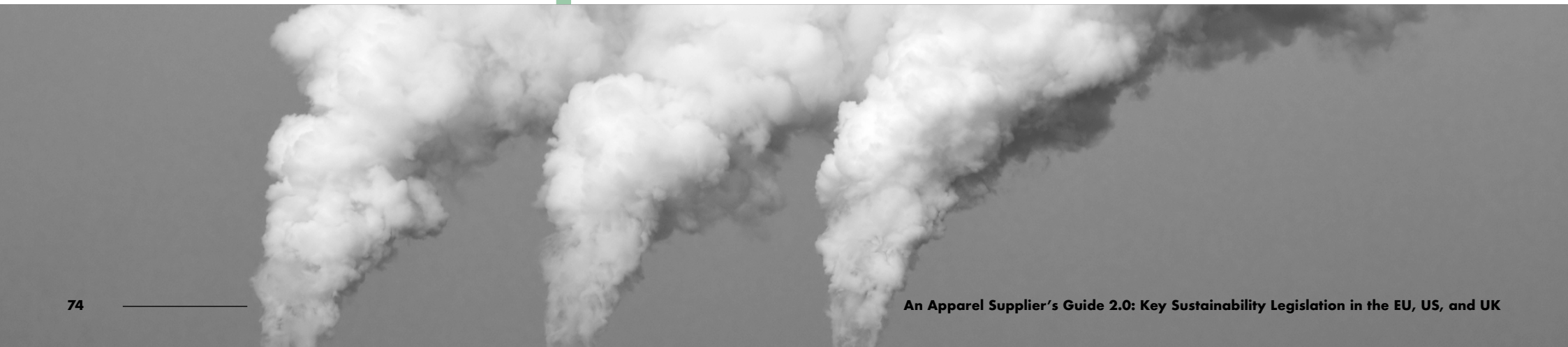
European Commission, Adjustments of the size criteria for micro, small, medium-sized and large undertakings or groups

EFRAG, Sustainability reporting standards

EFRAG, ESRS Q&A Platform

EFRAG, Draft EFRAG IG 1

EFRAG, Draft EFRAG IG 2



2024 Edition

Factsheet

New York Fashion Sustainability and Social Accountability Act

UPDATE

1. Key Updates

Since the Fashion Sustainability and Social Accountability Act's (the Fashion Act) introduction, two other U.S. states – Massachusetts and Washington – have introduced their own versions of the Fashion Act. A draft amended version of the Fashion Act has been circulated among industry groups and other stakeholders, but not yet formally introduced (and therefore not reflected herein). The main changes relate to Section 2, 4, 5 and 6.

2. Overview

If passed, the Fashion Sustainability and Social Accountability Act (**Fashion Act**) would require "**fashion sellers**" doing business in New York[1] to conduct environmental and human rights due diligence, set and comply with greenhouse gas emission targets, and produce a publicly available due diligence report.

"Fashion sellers" is defined under the proposed Fashion Act as "any business entity which sells articles of wearing apparel, footwear, or fashion bags, that together exceed USD 100 million in annual gross receipts,[2] but shall not include the sale of used wearing apparel, footwear, or fashion bags, nor shall it include multi-brand retailers, except where the apparel, footwear, and fashion bag private labels of those companies together exceed USD 100 million in global revenue". As such, the term "fashion sellers" may include fashion brands, fashion retailers or fashion manufacturers.

[1] *So long as a fashion seller conducts transactions in New York State for the purpose of financial or pecuniary gain or profit, it could be subject to the Fashion Act, even if it does have a storefront the State.*

[2] *of property, the performance of services, or the use of property or capital, including rents, royalties, interest, and dividends, in a transaction that produces business income, in which the income, gain, or loss is recognized, or would be recognized if the transaction were in the United States, under the internal revenue code, as applicable for purposes of this*

3. Context

The purpose of the proposed Fashion Act is to require fashion sellers to map their supply chains and perform due diligence. This includes identifying, preventing, mitigating, accounting for, and taking remedial action to address actual and potential adverse impacts to human rights and the environment in their own operations and in their supply chain. The proposed Fashion Act would additionally lead to the creation of a fashion remediation fund to support affected communities or workers harmed by adverse labour-related or environmental impacts.

If passed, the Fashion Act would make New York the first state in the United States to pass a law that would hold fashion companies accountable for their role in climate change and human rights impacts. Its introduction follows the California Garment Worker Protection Act which came into force on January 1, 2022, with the aims of preventing wage theft, mandating fair pay and improving working conditions for garment workers employed in California. In describing the impetus for this proposed legislation, the New York State Senate sponsor of the proposed Fashion Act, Senator Alessandra Biaggi, elaborated that "as a global fashion and business capital of the world, New York State has a moral responsibility to serve as a leader in mitigating the environmental and social impact of the fashion industry." Since the Fashion Act's introduction, two other U.S. states – Massachusetts and Washington – have introduced their own versions of the Fashion Act.

At the federal level, a proposed amendment to the Fair Labor Standards Act of 1938, named the Fabric Act, has been proposed. The bill requires garment industry employers to pay at least the hourly minimum wage, and to be registered with the Department of Labor, and prohibits piece rate pay.

4. Status

The bill was initially introduced to the New York State legislature in October 2021, reintroduced in January 2023, and is currently pending before the Consumer Protection Committee. Further, a draft amended version of the Fashion Act has been circulated among industry groups and other stakeholders, but not yet formally introduced.

The Fashion Act would need to pass both the New York State Assembly and the New York State Senate before it can become law. As such, there are significant hurdles to overcome before the Fashion Act can be passed into law. Therefore, it remains unclear when (if at all) the Fashion Act will take effect.

5. Scope

Overview

The Fashion Act would cover any fashion seller doing business in New York that has annual worldwide gross receipts[3] exceeding USD 100 million. A fashion seller does business in New York where it conducts transactions in New York State for the purpose of financial or pecuniary gain or profit. This means that a fashion seller could still do business in New York even if it does not have a storefront there.

The proposed Fashion Act will require fashion sellers to conduct and report on the due diligence of their suppliers from tiers one to four. The different tiers are defined in the following ways:

It should be noted that the definition of tiers included in the Act does not necessarily reflect the complex reality of how a supply chain is structured. The Act does not define a supply chain and it is therefore not clear whether its application extends to indirect suppliers irrespective of how established the business relationship with the relevant supplier is.

1. **Tier one** suppliers would mean those suppliers who produce finished goods to the fashion seller, including their subcontractors (e.g., sewing and embroidering services).

2. **Tier two** suppliers would mean suppliers to tier one suppliers, including subcontractors, who provide services and goods, such as knitting, weaving, washing, dyeing, finishing, printing for finished goods, and components and materials for finished goods when they are stand-alone operations and not integrated with tier one. Components include buttons, zippers, rubber soles, down and fusibles.

3. **Tier three** suppliers would mean suppliers to tier two suppliers, including subcontractors, who process raw materials (e.g. such as ginning, spinning and supply chemicals).

4. **Tier four** suppliers would mean to companies, including subcontractors, who supply raw materials to tier three suppliers.

[3] *Gross receipts is defined in the Fashion Act as gross amounts realized, otherwise known as the sum of money and the fair market value of other property or services received, on the sale or exchange of property, the performance of services, or the use of property or capital, including rents, royalties, interest, and dividends, in a transaction that produces business income, in which the income, gain, or loss is recognized, or would be recognized if the transaction were in the United States, under the internal revenue code, as applicable for purposes of this section.*

6. Obligations for companies in-scope

The proposed Fashion Act requires fashion sellers to map tiers one to four of their supply chains and undertake human rights and environmental due diligence, in compliance with the OECD Guidelines for Multinational Enterprises and OECD Due Diligence Guidance for Responsible Supply Chains in the Garment or Footwear Sector for the parts of their business relating to apparel, footwear, or fashion bags. Fashion sellers will also be required to develop and submit an annual due diligence report to the Office of the Attorney General.

[4] *Living wage is defined as the remuneration received for a standard workweek by a worker in a particular place sufficient to afford a decent standard of living for such worker and their family. Elements of a decent standard of living include food, water, housing, education, health care, transportation, clothing, and other essential needs including provision for unexpected events. Living wage shall be determined exclusive of overtime wages and by net wages including in-kind and cash benefits, and any other relevant deducting taxes and deductions.*

Supply chain mapping

Under the proposed Fashion Act, companies would have the following supply chain mapping obligations:

- Within **12 months** of the Fashion Act going into effect, map at least **75%** of tier one suppliers by volume (i.e., units)
- Within two years of the Fashion Act going into effect, map at least **75%** of tier two suppliers by volume, within **24 months**.
- Within three years of the Fashion Act going into effect, map at least **50%** of tier three and tier four suppliers by volume or dollar value.
  - the mean wages of workers and how this compares with local minimum wage and living wages[4];
  - the percentage of unionized factories; and
  - the hours worked weekly by month and the hours and frequency of overtime by firm and country

Due diligence obligations

In line with the OECD Guidelines for Multinational Enterprises and the OECD Guidance for Responsible Supply Chains in the Garment and Footwear Sector, the proposed Fashion Act requires fashion sellers to, at a minimum:

- Embed responsible business conduct in the company's policies and management systems;
- Identify areas of significant risks in the context of its own activities and business and supply chain relationships;
- Identify, prioritize, and assess the significant potential and actual adverse impacts of those risks;
- Cease, prevent, or mitigate those risks;

- Track the implementation and results; and
- Provide for or cooperate in remediation in the event of an adverse impact.

Cease, prevent, or mitigate risks

Notably, the proposed Fashion Act lists out ways that fashion sellers can **cease, prevent, or mitigate adverse impacts** of human rights and environmental risks. This includes, but is not limited to:

- Incentivizing improved supplier performance on workers' rights and environment impact by embedding responsible purchasing practices in its supply chain relationships and contracts, including:
  - Contract renewals, longer term contracts, price premiums
  - Providing reasonable assistance to suppliers so that they can meet applicable human rights and environmental standards (including carbon emission reduction targets); and
  - Developing pricing models that account for the cost of wages, benefits, and investments in suitable work[5]
- Utilizing responsible exit or disengagement strategies;
- Consulting and engaging with impacted and potentially impacted stakeholders and rights holders and their representatives; and
- Establishing quantitative baseline and reduction targets on greenhouse gas emissions.

Remediation

With respect to the requirement to **provide for or cooperate in remediation in the event of an adverse impact**, the proposed Fashion Act stipulates that the remedies provided should seek to restore affected persons to the position they would have been if the adverse impact had not happened. Further, fashion sellers should consult with affected rightsholders and their credible representatives to determine the appropriate remedy.

[5] *Specifically, as reflected in freight on board prices together with traditional pricing considerations such as quantities being purchased, cost of materials, and skill requirements*

7. Compliance recommendations for companies in-scope

The proposed Fashion Act will entail additional compliance obligations for companies in-scope, as they will be required to map most of their tier one to tier four suppliers. They will also be required to conduct due diligence, in line with the OECD Guidelines for Multinational Enterprises and the OECD Guidance for Responsible Supply Chains in the Garment and Footwear Sector.

They will need to take a risk-based approach to due diligence, meaning that they will be required to prioritize actions to address issues based on the likelihood and severity of harm. Companies in-scope will also need to consider how their purchasing practices can be improved to cease, prevent, or mitigate adverse human rights and environmental impacts. They will need to sample and report on wastewater chemical concentrations and water usage for 75% of tier two dyeing, finishing and garment washing suppliers by volume.

Companies in-scope will be required to establish quantitative baseline and reduction targets for greenhouse gas emissions. They will need to carefully track compliance with reduction targets, since observed derogations will need to be remedied within an eighteen-month period.

As a matter of practicality, we would expect that companies in-scope would report in accordance with the OECD Guidelines for Multinational Enterprises and the OECD Guidance for Responsible Supply Chains in the Garment and Footwear Sector.

8. Potential implications for suppliers to companies in-scope

It should be noted that the definition of tiers included in the Act does not necessarily reflect the complex reality of how a supply chain is structured. It could present a difficulty for suppliers to work out what disclosure requirements might be applicable or passed on to them. On a general note, for suppliers that are in the value chain of companies in-scope, but do not fall directly within the scope of the proposed Fashion Act, we would expect to see:

[6] *Joint and several liability makes all parties in a lawsuit responsible for damages up to the entire amount awarded. That is, if one party is unable to pay, then the others named must pay more than their share.*
[7] *Liquidated damages is a term used in legal contracts to refer to financial compensation for the loss suffered by the injured party.*

Information requests

- Information requests to support mapping process for fashion sellers in-scope. Companies in-scope will need to report on the name, address, parent company, product type and number of workers at each site by country for suppliers across all four tiers. As such, it is expected that fashion sellers will rely on upstream suppliers to provide some of this information.

- Tier-one suppliers should expect disclosure requests relating to wages of workers, hours logged, hours and frequency of overtime by firm and country, percentage of unionized factories. This will require suppliers to fashion sellers in-scope to have in place the relevant corporate governance practices and human resources system to accurately record and report on these data points.

- Fashion sellers in-scope will likely be more stringent on suppliers' compliance with reporting on payment of wages. The proposed Fashion Act holds fashion sellers to be jointly and severally liable[6] for the payment of wages to employees and subcontracted workers of tier one suppliers.

    - Fashion sellers will be liable for both lost wages and an additional equal amount as liquidated damages.[7]

    - Where non-compliance is identified (e.g., workers are being paid below minimum wage, or have not received their overtime wages) fashion sellers will likely exert significant pressure on suppliers to remediate these violations.

Suppliers should expect companies-in-scope to impose contractual liability for failure to provide information, or provision of inaccurate or incomplete information. The proposed Fashion Act requires fashion sellers to conduct effective due diligence and report on this. Failure to do so could render them liable to a fine of up to 2% of their annual revenues and being publicly listed by the New York State Attorney General as non-compliant with

the Fashion Act. Considering these potential consequences, fashion sellers are likely to require suppliers across all tiers to provide accurate and timely information so that they can comply with the requirements. Fashion sellers in-scope are likely to expect suppliers to provide well-triangulated data to support their due diligence activities, including from social audits, worker interviews, worker engagement tools, among other data sources.

Science-based targets and environmental impact monitoring

The proposed Fashion Act mandates that fashion sellers set and comply with near-term and long-term greenhouse gas emissions targets in line with the Paris Agreement.

Greenhouse gas emission reduction targets must cover **Scope Two and Three emissions**, and at a minimum, align with Science-Based Targets Initiative's most recent target validation criteria.[8] Fashion sellers with global revenues over USD 1 billion will need to use the absolute contraction approach to calculate Scope Three emissions. To set greenhouse gas emission targets, fashion sellers will first need to determine their baseline greenhouse gas emissions, before developing reduction targets. Fashion sellers will be required to report on greenhouse gas emissions inventory annually. Within four years of the Fashion Act coming into force, fashion sellers will be required to use primary data to determine the greenhouse gas emissions inventory of the most **significant suppliers** in tiers two and three contributing to greenhouse gas emissions. Significant suppliers mean suppliers representing 75% and 50% of fabric (by volume) in tiers two and three, respectively.

Suppliers to companies in-scope should be prepared to share emissions data to support this baseline assessment. Moreover, suppliers will likely also face pressure to set emission targets, reduce their emissions, and report annually on these emission targets. Suppliers may consider seeking support from companies in-scope

[8] *As promoted by the World Resources Institute, CDP, United Nations Global Compact, and the World Wildlife Fund.*

to achieve these reductions given that companies in-scope are required by the Fashion Act to provide "reasonable assistance" to suppliers to meet environmental standards.

Within two years of the Fashion Act coming into force, fashion sellers will need to sample and report on the water usage and wastewater chemical concentrations for tier two dyeing, finishing and garment washing suppliers supplying 75% of fabric by volume. These reports must be independently verified by a verification body that has been duly accredited by the New York Department of State. Where the samples show concentrations that are out of compliance with the Zero Discharge of Hazardous Chemical Program's most recent Wastewater Guidelines, fashion sellers will be required to develop corrective plans to remedy wastewater treatment and make adequate progress in remediating wastewater pollution concentrations within three years the Fashion Act coming into force. This will place remediation obligations on relevant tier two dyeing, finishing and garment washing suppliers.

Stakeholder Engagement

The proposed Fashion Act requires fashion sellers to identify and address salient human rights and environmental issues in their supply chain. To track and monitor progress, fashion sellers will need to consult and engage with impacted and potentially impacted stakeholders, rightsholders, and their credible representatives. This could lead to fashion sellers requiring suppliers to implement additional worker voice and grievance channels to engage with affected stakeholders, so they can determine the effectiveness of interventions. This may also require engagement with stakeholders such as trade unions and civil society organizations that represent affected rightsholders, and a greater push for social dialogue at between suppliers and workers, especially where there are restrictions on the right to freely associate under local laws.

Incentives for suppliers

- Given the importance of suppliers' performance with respect to social and environmental responsibility, fashion sellers may use tools such as scorecards to select suppliers with a demonstrable commitment in these areas. This is particularly important given fashion sellers will need to develop time bound corrective action plans for suppliers to address any gaps. Suppliers may be held contractually liable if the identified issues are not addressed within the agreed upon time or face commercial consequences (e.g., reduction of purchasing orders). Accordingly, suppliers who have established frameworks in place to prevent, mitigate and address social and environmental issues are likely to be more attractive to fashion sellers.

- The proposed Fashion Act envisages that fashion sellers can cease, prevent, or mitigate key social and environmental risks in their supply chain in several ways, including the provision of reasonable assistance to suppliers so that they can meet applicable human rights and environmental standards. This could result in additional training or other capacity-building activities organized by the fashion seller, to ensure that suppliers understand the content of these standards and are able to comply.

As a matter of good practice, it is recommended that suppliers to fashion sellers in-scope seek to operate in accordance with the OECD Guidelines for Multinational Enterprises and the OECD Guidance for Responsible Supply Chains in the Garment and Footwear Sector.

9. Penalties for non-compliance

A fashion seller may be fined **up to 2% of its annual revenues** for failing to conduct due diligence or file a due diligence report, as required by the Fashion Act. Fined amounts will be deposited into a fashion remediation fund, which will be used to support labour remediation and environmental benefit projects. The New York Attorney General will also publish a list of the businesses that were found to be in violation, every year.

Fashion sellers will also be held jointly and severally liable for the payment of their tier one suppliers' employees' wages and an additional equal amount as liquidated damages, where there are lost wages. 'Wages' are interpreted broadly and can include overtime wages, paid leave, incentives, bonuses, and severance payments. 'Employee' is also construed broadly and includes all workers, regardless of whether they are full-time, part-time, on a fixed or temporary contract, directly contracted, or hired through an intermediary. This provision means that where a fashion seller cancels placed orders, delays payments, or uses forced majeure clauses to avoid paying suppliers for booked orders, they may still be held liable to pay the wages of their suppliers' employees.

10. Form of enforcement

The New York Attorney General is responsible for monitoring, investigating, and enforcing the Fashion Act. Further, any person may report non-compliance to the Attorney General's office.

11. Reporting/ disclosure requirements for companies in-scope

As explained in Section 6, the proposed Fashion Act requires fashion sellers to develop and submit a due diligence report to the New York Attorney General on an annual basis.

With respect to suppliers from tier one to tier four, the report must include the name, address, parent company, product type and number of workers at each site by country. Additionally, with respect to tier one suppliers, the report must also include the mean wages of workers and how this compares with local minimum wage and living wages, the percentage of unionized factories, and the hours worked weekly by month, and the hours and frequency of overtime by firm and country.

The report will need to include greenhouse gas emissions inventory, reported in line with the most recent Greenhouse Gas Protocol Corporate Accounting and Reporting Standard, Scope Two Guidance, and the most recent Corporate Value Chain Scope Three accounting and reporting standard set by the World Resource Institute and the World Business Council for Sustainable Development (see resources set out in Section 14). Compliance with greenhouse gas emissions reduction targets will also need to be reported. For fashion sellers with global revenue over USD 1 billion, the Absolute Contraction Approach must be used to calculate scope three emissions.

Fashion Sellers will be required to sample and report on wastewater chemical concentrations and water usage, in line with the Zero Discharge of Hazardous Chemicals Programs' most recent wastewater guidelines.

The same report, excluding the additional information pertaining to workers of tier one suppliers, must be published and publicly available for download on the fashion seller's website. If the fashion seller does not have a website, the fashion seller will be required to provide a written disclosure to a person requesting this information within 30 days of receiving the request.

12. Access to remedy mechanisms and litigation risk

Fashion sellers are jointly and severally liable for payment for the wages of their tier one suppliers' employees. See Section 9 for further details.

13. Opportunity to participate and engage in legislative developments

Stakeholders can reach out to New York State Senators and Assembly members with their views on the proposed Fashion Act.

14. Useful resources to support compliance

The New York State Senate, Senate Bill Number S4746

The New York State Senate, Assembly Bill A4333

OECD, Guidelines for Multinational Enterprises

OECD, Due Diligence Guidance for Responsible Supply Chains in the Garment & Footwear Garment

ZDHC, Wastewater Guidelines Version 2.1 (November 2022)

GHG, A Corporate Accounting and Reporting Standard

GHG, Scope 2 Guidance

GHG, Corporate Value Chain (Scope 3) Accounting and Reporting Standard

Science-Based Targets, Understand the methods of science-based climate action

EU Forced Labour Regulation and Guidance

EU Proposed Regulation on Prohibiting Products Made With Forced Labour on the Union Market and EU Forced Labour Guidance

UPDATE

1. Key Updates

Upon approval by the European Parliament, the Regulation Prohibiting Products made with Forced Labour on the Union Market (the Forced Labour Regulation) is expected to be adopted, published in the Official Journal of the European Union, and go into effect three years thereafter. The approved text of the Forced Labour Regulation provides more detail on what the preliminary investigation process and investigation process will entail. It also introduces the development of a forced labour online portal for keep information, reporting and tools. The main changes relate to Section 4, 9, 10 and 14.

2. Overview

The Regulation

On September 14, 2022, the European Commission published a proposal for the Forced Labour Regulation. On March 5, 2024, the European Parliament and the European Council reached a provisional deal on the text of the Forced Labour Regulation. The Parliament approved the Forced Labour Regulation during its April 2024 plenary. The Regulation is expected to be published in the European Journal in the first half of 2024 and would take effect 36 months after its formal publication.

The objective of the Forced Labour Regulation[1] is to prevent products made with forced labour (including forced child labour) from being sold in the EU market or being exported from the EU. This includes products of any type, including their components, from all sectors and industries, at any stage of the supply chain.

UPDATE

The Forced Labour Single Portal

The Forced Labour Regulation requires the European Commission to develop a Forced Labour Single Portal, a public website including key information and tools related to the Forced Labour Regulation. The Forced Labour Single Portal will include:

- A list of, and contact information for, all Member State Authorities responsible for enforcing the Regulation;
- Guidelines to be issued by the European Commission (further discussed below);
- A database of forced labour risk geographic areas or products containing indicative, non-exhaustive, evidence based, verifiable and regularly updated information on forced labour risks in specific geographic areas or with respect to specific products or product groups, including with regard to forced labour imposed by state authorities (the information will be required to be sourced from international organizations, in particular the ILO and the United Nations Organization, or from institutional, research, or academic institutions);
- A list of publicly available information sources of relevance for the implementation of the Forced Labour Regulation, including sources which make available disaggregated data on the impact and victims of forced labour, such as gender-disaggregated data or data about forced child labour, allowing to identify age- and gender-specific trends;
- A dedicated centralized mechanism for the submission of information on alleged violations of the Forced Labour Regulation, including information on the company or products concerned, reasons and evidence for substantiating the allegation and, where possible, supporting documents (the **Single Information Submission Point**); and
- Any decisions taken under the Forced Labour Regulation to ban a particular product, as well as any withdrawal of such a ban and the result of reviews.

[1] *A regulation is a binding legislative act. It must be applied in its entirety across the EU.*

The Guidelines

18 months after the Forced Labour Regulation enters into force, the European Commission, in consultation with relevant stakeholders, will issue guidelines which will include, among other things:

- Guidance on due diligence in relation to forced labour, including forced child labour, that takes into account applicable national and EU legislation setting out due diligence requirements with respect to forced labour, guidelines and recommendations from international organizations and, the size and economic resources of operators, companies, different types of suppliers along the supply chain and different sectors.
- Guidance on due diligence in relation to forced labour imposed by state Authorities.
- Guidance on best practices for bringing an end and remediating different types of forced labour.
- Information on risk indicators of forced labour, including on how to identify them, based on independent and verifiable information, including reports from international organizations, in particular the International Labour Organization (the **ILO**), civil society, business organizations and experience from implementing EU legislation setting out due diligence requirements with respect to forced labour[2].
- Guidance on how to engage in dialogue with Member State authorities, in particular on the type of information to be submitted.
- Guidance on how to submit information via the single information submission point.
- Guidance for Member States on the method for calculating financial penalties and the applicable thresholds.
- Further information to facilitate the competent authorities' implementation of the Regulation.

As the Forced Labour Regulation has yet to enter into force, these guidelines are not yet available.

Previous Forced Labour Guidance

The European Commission and European External Action Service previously published a forced labour guidance in July 2021, to assist EU businesses in taking appropriate measures to address the risk of forced labour in their operations and supply chains (the **Guidance**).[3] This Guidance is non-binding and is intended to provide practical guidance for European companies, ahead of the introduction of a mandatory due diligence obligations.

This factsheet will primarily discuss the Forced Labour Regulation but where applicable, the information provided in the Guidance is also referenced.

[2] *The proposal envisages the adoption of delegated and implementing acts by the European Commission aimed at supplementing and specifying the key concepts of the legislative act, including how to identify the information on risk indicators.*

[3] *European Commission, New EU guidance helps companies to combat forced labour in supply chains. Note that the link to download the guidance is currently broken on the date of access (March 29, 2023).*

3. Context

The Forced Labour Regulation was first announced by Ursula von der Leyden, the President of the Commission, in her State of the Union address in September 2021.

The Forced Labour Regulation complements to Corporate Sustainability Due Diligence Directive and Corporate Sustainability Reporting Directive by increasing the stakes if a company does not conduct supply chain due diligence and appropriately exclude forced labour from its supply chain. It highlights the importance for companies to enforce their human rights due diligence programs.

4. Status

On March 5, 2024, the European Parliament and European Council reached a provisional deal on the text of the Forced Labour Regulation. On March 13, 2024, the European Council approved the adoption of the Forced Labour Regulation. The Parliament approved the Forced Labour Regulation during its April 2024 plenary. Once formally adopted and published in the Official Journal of the European Union, the Forced Labour Regulation would enter into force and start applying three years later.

5. Scope

The Forced Labour Regulation covers all products of any type, including their components, irrespective of sector or origin, including for example:

- Products manufactured in the EU for consumption in the EU;
- Products manufactured in the EU for export outside of the EU; and
- Products manufactured outside of the EU for sale in the EU (i.e., imported goods).

The Forced Labour Regulation does not target specific companies or industries, although the European Commission has recognized that forced labour has been more frequently reported in certain sectors, including services, textiles, mining, and agriculture.

The prohibition on forced labour will apply to all economic operators, which are defined as natural or legal persons or associations of persons **placing or making products available on the EU market or exporting products from the EU**. For ease of readability, we will use the term "company" in this factsheet, instead of economic operator.

Points to Note

- The Forced Labour Regulation defines **"making [products] available on the market"** as supplying a product for distribution, consumption, or use within the EU market in the course of commercial activity. When the product is sold online or through other means of distance sales, the product is considered to be made available in the EU if it is targeted at end users or consumers in the EU. The scope includes both products sold in exchange for payment and offered for free.
- The **"placing of products"** under the Forced Labour Regulation means the first instance of making a product available on the EU market.
- Based on these definitions, the Forced Labour Regulation has a wide-reaching scope and broad extra-territorial application. For example, a garment supplier incorporated in Bangladesh that produces garments at its factories in Bangladesh and exports the garments to the EU for distribution by a European retailer may be subject to investigation under this Forced Labour Regulation.

The Forced Labour Regulation will require competent authorities to demonstrate that there is "substantial concern" that forced labour was involved at some stage of the supply chain before preventing a product from being made available in the EU market or exported from the EU market. A **"substantiated concern"** would mean a reasonable indication and based on objective, factual and verifiable information, for the competent authorities to suspect that the product was likely made with forced labour.

The definition of "forced labour" means **forced or compulsory labour**, including forced child labour, as defined in Article 2 of the Convention on Forced Labour, 1930 (No. 29) of the ILO, i.e., "all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered him or herself voluntarily".

Points to Note

- Based on the Forced Labour Regulation, a **product made with forced labour** is any product where forced labour has been used in whole or in part at any stage of its extraction, harvest, production, or manufacture, including working or processing related to a product at any stage of its supply chain.
- For example, if a cotton shirt is found to have used cotton that was farmed by workers in a situation of forced labour, the cotton shirt would be considered a product made with forced labour.

6. Obligations for companies in-scope

We recommend that companies placing or making available products on the EU market or exporting such products should take appropriate measures to identify and eliminate any forced labour risks in their supply chains. The scope of the measures and due diligence depends on the proximity to possible forced labour in the supply chain, the specific type of products and the resources of the relevant company. In other words, companies in-scope should take a risk-based approach to due diligence. A risk-based approach recognizes that companies may not have the resources to identify or respond to all risks of forced labour related to their activities and business relationships at the same time. As such, companies should prioritize their efforts based on the severity and likelihood of harm, focusing their attention and resources at their higher-risk operations and business relationships.

The Forced Labour Regulation does not include any formal or specific measures or due diligence obligations. However, it provides that the European Commission will issue guidelines within 18 months after the entry into force. As explained above, these guidelines have yet to be published. As such, it is not possible at this early stage to provide further specificity with respect to companies' obligations.

That being said, the existing Guidance published by the European Commission and European External Action Service offers a framework for undertaking due diligence with respect to forced labour risks. For the avoidance of doubt, this Guidance is non-binding and the advice provided therein may not be aligned with the final text of the Forced Labour Regulation. As such, the below is provided for information purposes only:

According to the Guidance, due diligence should correspond with risks and appropriate to a company's circumstances and context. Due diligence should cover both the company's own activities and its business relationships, e.g, its upstream supply chain. It may also be important to consider how particular risks affect different groups, including women, religious or ethnic minorities.

The Guidance sets forth the following a **six-step framework for effective due diligence** which is based on OECD due diligence framework:

1. Embed responsible business conduct into the company's policies and management systems
2. Identify and assess actual or potential adverse impacts in the company's operations, supply chains and business relationships.
3. Cease, prevent, and mitigate adverse impacts.
4. Track implementation and results.
5. Communicate how impacts are addressed.
6. Provide for or cooperate in remediation when appropriate.

The Guidance also recommends specific measures to **address forced labour**, including:

- Policies and management systems should be tailored to the risk of forced labour.
- Risk factors should be considered as part of the due diligence process.
- Considerations when carrying out in-depth risk assessment of certain high-risk suppliers or supply chain segments.
- Considerations when taking action to address risks of forced labour.
- Considerations for responsible disengagement.
- Considerations for remediation.

7. Compliance recommendations for companies in-scope

Given the broad scope of the Forced Labour Regulation and significant consequences of non-compliance, companies in-scope should already ensure that they have an effective due diligence program to identify and address the risk of forced labour in their operations, supply chains and business relationships. This may include (but is not limited) to the following measures:

- Ensure that their policies (e.g., a human rights policy, or supplier code of conduct) and management systems address the risk of forced labour and are effectively embedded within their day-to-day business conduct and operations.
- Conduct and strengthen risk assessments in their own operations and in sourcing practices to identify and assess the actual or potential risk of forced labour. Manufacturing and/or sourcing countries, or raw materials supply chains (e.g., cotton), that are identified as higher risk or 'red flags' should be subject to enhanced due diligence. This process of risk prioritization will enable companies in-scope to determine where to place their time and resources.
- Conduct a comprehensive supply chain mapping and request upstream suppliers and business partners to provide data to enable traceability of materials.
- Require upstream suppliers and business partners to implement their own forced labour due diligence programs and disclose how they are seeking to identify and address the risk of forced labour. Any information or data provided by upstream suppliers and business partners should be verified, through conducting audits and on-site investigations, deploying worker engagement tools, and engaging with relevant stakeholders (e.g., trade unions, civil society, and worker organizations).
- Implement an effective grievance mechanism that is accessible to any stakeholder in their value chain to report allegations of forced labour. Grievance mechanisms should be considered by companies to be a "must-have" and a proactive way of engaging with risk, rather than a "nice to have".

In determining whether there is a violation of the Forced Labour Regulation, the competent authorities will take into account among other things, information on the company's actions taken to identify, prevent, mitigate, bring to an end or remediate risks of forced labour in their operations and supply chains with respect to the product(s) under assessment. The competent authorities may also request information on those actions from other relevant stakeholders, including any persons related to the products and geographical areas under assessment.

Where the competent authorities find that the company's due diligence actions effectively identify, prevent, mitigate, bring to an end or remediate the risk of forced labour in their operations and supply chain, they may not initiate an investigation.

8. Potential implications for suppliers to companies in-scope

Suppliers should expect that companies in-scope will be strengthening their due diligence programs. Today, many European and US-headquartered apparel brands already have due diligence programs and policies that stipulate zero tolerance for forced labour. It is anticipated that these brands and retailers (if they aren't already doing so today) will seek "no forced labour" declarations from suppliers in light of the Forced Labour Regulation. Brands and retailers will also request their suppliers to provide contractual assurances, which may be in the form of warranties and indemnities.

It is expected that these measures will cascade up the supply chain, and consequently, that many suppliers will in turn require their upstream suppliers and business partners to provide similar declarations and contractual assurances. However, companies should be wary of over-reliance on such declarations, and must ensure that they proactively conduct robust due diligence programs and have an effective grievance mechanism in place.

Suppliers should also implement their own due diligence systems to identify, prevent and remediate the risk of forced labour in their operations and supply chain. These systems should be aligned with the OECD due diligence framework. Suppliers may find industry-wide tools and standards helpful.[4] Suppliers may also invest in supply chain traceability technology or participate in industry-wide supply chain mapping tools. However, as explained above, it is important that suppliers ensure that any such tools or industry-wide schemes are effective and backed up by robust datasets and methodology.

Suppliers should also expect companies in-scope to require them to have an effective grievance mechanism in place, and to socialize the grievance mechanisms operated by companies in-scope. Companies in-scope may also seek to provide support and tools to their suppliers to build their upstream business partners' capacities to identify and address forced labour risks.

In the event that suppliers are faced with forced labor allegations through complaints addressed to the centralized mechanism established by the Commission, suppliers can prepare for such an eventuality by (i) being rigorous in conducting a thorough mapping of their supply chain; (ii) implementing robust due diligence programs that provide a well-rounded view of risks and an assessment of salient risks; and maintaining detailed records of due diligence findings and action taken to address risks identified. It would also be helpful to suppliers to develop and continue to improve their operational level grievance mechanism which is a fundamental part of early risk identification and mitigation.

[4] *For example, the YESS Standards for Spinning & Fabric.*

9. Penalties for non-compliance

Pursuant to the Forced Labour Regulation, if a competent authority finds that the forced labour prohibition has been violated, it will adopt a decision:

- prohibiting the placing or making the relevant products available on the EU market and their export from the EU;
- ordering the company concerned to withdraw the relevant products from the EU market where they have already been placed or made available on the EU market or to remove content from an online interface referring to the relevant product or listing the relevant product; and
- ordering the company to dispose of the relevant products product or parts of the product by recycling them, or, in the case of perishable products, by donating them for charitable or public interest purposes (or, in each case, when that is not possible, by render inoperable those products.

UPDATE

In the event disposal of the product would disrupt a supply chain of strategic or critical importance for the EU, the lead competent authority may instead order the product concerned to be withheld for a defined period of time, which shall be no longer than the time necessary to eliminate forced labour for the product concerned, at the cost of the company. If, during this time, the company demonstrates that they have eliminated forced labour from the supply chain without changing the product and by having brought to an end the forced labour identified in the decision, the lead competent authority would review such decision. If the company does not demonstrate that they have eliminated forced labor from the supply chain of the relevant product, they would be required to dispose of the product in the manner set forth above.

Companies will be granted **at least 30 business days** to comply with the decision (or, in the case of perishable goods, animals, and plants, at least 10 business days).

UPDATE

If a company fails to comply with a decision within the time limit provided, the lead competent authority will be responsible for enforcing the decision by ensuring the following:

- The company is prohibited from placing or making available the products concerned on the EU market and exporting them from the EU market;
- The products concerned already placed or made available on the EU market are withdrawn by relevant authorities, in accordance with EU and national laws;
- The products concerned remaining with the company are disposed of in accordance with the Forced Labour Regulation, at the expense of the company; and
- Access to the products and to listing referring to the products concerned is restricted by requesting the relevant third party to implement such measures.

If a company fails to comply with a decision within the time limit provided, the competent authority will be required to impose penalties on the company. Member States will be required to lay down rules on penalties applicable to non-compliance with a decision, which would be required to give due regard to the following:

- The gravity and duration of the infringement;
- Any relevant previous infringements by the company;
- The degree of cooperation with the competent authorities; and
- Any other mitigating or aggravating factor applicable to the circumstances of the case, such as financial benefits gains, or losses avoided, directly or indirectly, from the infringement.

There is no standard penalty amount and as such the form and amount of penalty will depend on the relevant EU country's rules.

10. Form of enforcement

Within 12 months of the Forced Labour Regulation entering into force, each EU Member State would be required to designate competent authorities which would be responsible for enforcing the Forced Labour Regulation. If the suspected forced labour is taking place in the territory of a Member State, the relevant Member State authority will act as the lead competent authority in the investigation. However, if the suspected forced labour is taking place outside the territory of the EU, the European Commission will act as the lead competent authority conducting the investigation.

Competent authorities will be required to follow a risk-based approach in assessing the likelihood of a violation, initiating and conducting the preliminary phase of the investigations and identifying the products and companies concerned.

UPDATE

In assessing the likelihood of a violation, competent authorities will be required to use the following criteria in prioritizing the products suspected to have been made with forced labour:

- Scale and severity of the suspected forced labor, including whether forced labor imposed by state authorities should be a concern;
- Quantity or volume of products placed or made available on the EU market; and
- Share of the part suspected to have been made with forced labour in the final product.

The assessment of the likelihood of a violation will be required to be based on all relevant, factual and verifiable information available, including, but not limited to, the following:

- Information and decisions encoded in the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 the European Parliament and of the Council, including any past cases of compliance or non-compliance of a company with the Regulation;
- The database of forced labor risk areas or products housed on the Forced Labor Single Portal;
- The risk indicators and other information provided pursuant to guidelines to be issued by the European Commission;
- Submissions made pursuant to via the Single Information Submission Point;
- Information received by the lead competent authority from other authorities relevant for the implementation of the Forced Labour Regulation, such as Member States' due diligence, labor, health or fiscal authorities, on the products and companies under assessment; and
- Any issues arising from meaningful consultations with relevant stakeholders, such as civil society organizations and trade unions.

Investigations by competent authorities will be carried out in two phases: **(i) a preliminary phase and (ii) an investigative phase**. Competent authorities will bear the burden of establishing that forced labour has been used at any stage of production, manufacture, harvest, or extraction of a product.

Before initiating an investigation, the competent authorities would be required to request from the concerned company, and, where relevant, other product suppliers, information on actions taken to identify, prevent, mitigate, bring to an end or remediate risks of forced labour in their operations and supply chains with respect to the products under assessment. Competent authorities may also request information on those actions from other relevant stakeholders, including the persons or associations having submitted relevant, factual, and verifiable information to the Single Information Submission Point and any other natural or legal persons related to the products and geographical areas under assessment, as well as from the European External Action Service and EU Delegations in relevant third countries.

The company will be required to respond to requests from competent authorities within 30 business days from the day such requests are received. Competent authorities will then have 30 business days after receipt of information from the company to conclude the preliminary stage of their investigation and determine whether there is a substantial concern of violation of the Forced Labour Regulation.

UPDATE

If competent authorities determine there is a substantiated concern of forced labour, an investigation will proceed to the next phase. If that occurs, notice will be provided to the company concerned within three business days from the date of the decision to initiate the investigation. The notice will be required to include the following:

- The initiation of the investigation and the possible consequences thereof;
- The products subject to the investigation;
- The reasons for the initiation of the investigation, unless it will jeopardize the outcome of the investigation; and
- The possibility for the company to submit any other document or information to the lead competent authority, and the date by which such information must be submitted.

Upon request, companies under investigation will be required to submit any information relevant and necessary for the investigation, including information identifying the products under investigation and, where appropriate, identifying the part of the product to which the investigations should be limited, the manufacture, producer or product supplier of those products or parts thereof. Companies will be provided between 30 and 60 business days to submit any such information, subject to the right to request an extension of that deadline with a justification.

UPDATE

During the investigation, lead competent authorities will be permitted to collect information from or interview any relevant persons who consent to be interviewed for the purpose of collecting information relating to the subject matter of the investigation, including relevant companies and any other stakeholders.

In exceptional situations, lead competent authorities may conduct field inspections. Where the risk of forced labour is located in the territory of a Member State, the competent authority may conduct its own inspections. Where the risk of forced labor is located outside of the territory of the EU, the Commission may carry out all necessary checks and inspections, provided that the companies concerned provide their consent and the government of the third country in which the inspections are to take place has been notified and raises no objection.

Within a reasonable period of time, and ideally within nine months, from the date of initiating the investigation, the lead competent authority will be required to adopt a decision as to whether the company has violated the Forced Labour Regulation. If the competent authority cannot establish a violation, they will be required to close the investigation and inform the company. If the competent authority establishes a violation, they will be required to adopt a decision containing the following information:

- The findings of the investigation and the information and evidence underpinning the findings;
- Reasonable time limits for the company to comply with the orders, which shall not be less than 30 business days (and, in the case of perishable goods, animals and plants, not less than 10 business days);
- All relevant information and in particular the details allowing the identification of the product concerned, including
- details about the manufacturer, producer, product suppliers and, where appropriate, production site;

UPDATE

The European Commission would be required to adopt implementing acts further specifying the details of the information to be included in the decision.

Customs authorities would, in cooperation with the competent authorities, enforce the Forced Labour Regulation by controlling entry into or exit from the EU of products made with forced labour. Where customs authorities identify a product entering or leaving the EU market that may, according to a decision, be in violation of the Forced Labour Regulation, the customs authorities would be required to suspend the release for free circulation or export of that product until either of the following conditions has been satisfied:

- The Member State Authorities or the Commission, as applicable, have not requested the customs authorities to maintain the suspension within four business days of the initial suspension (or two business days for perishable products, animals and plants); or
- The Member State Authorities or the Commission, as applicable, informed the customs authorities of their approval for release for free circulation or export pursuant to the Regulation.

11. Reporting/ disclosure requirements for companies in-scope

Not Applicable.

12. Access to remedy mechanisms and litigation risk

Competent authorities would be required to give the concerned companies a reasonable time of at least 30 days to comply with their decision.

Companies affected by a decision would be permitted, at any time, to submit a request for a review containing new substantial information that was not brought to the attention of the competent authority during the investigation and which demonstrates that the products are in compliance with the Forced Labour Regulation. The competent authority would be required to issue a decision on the request for a review within 30 business days of receipt of the request. If the company is able to provide evidence it has complied with the decision and eliminated forced labour from its operations or supply chain with respect to the products concerned, the competent authority would be required to withdraw its decision for the future, inform the company and remove it from the Forced Labor Single Portal.

Companies that have been affected by a decision of a Member State authority (but not by the European Commission) would have access to a court or a tribunal to review the procedural and substantive legality of the decision.

If the concerned company can provide evidence showing it has complied with the decision and eliminated forced labour from its operations or supply chain for the relevant product, the competent authority must withdraw its decision.

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

Public consultation for the Forced Labour Regulation has closed.

14. Useful resources to support compliance

European Council, Regulation on prohibiting products made with forced labour on the Union market

European Commission, Questions and Answers: Prohibition of products made by forced labour in the Union Market

European Commission, Factsheet Forced Labour Ban

5

U.S. Uyghur Forced Labor Prevention Act

UPDATE

1. Key Updates

U.S. Customs and Border Protection (**CBP**) has been actively enforcing the Uyghur Forced Labor Prevention Act (the **UFLPA**). The first case challenging an entity's inclusion on the UFLPA Entity List began proceedings in January 2024 (see Chapter 10). Updates to the Strategy (as defined herein) were issued on July 26, 2023. The Updates relate to evaluation and description of forced-labour schemes and UFLPA entity list. The main changes relate to Section 2, 3, 4, 5, 8, 10 and 14.

2. Overview

The **UFLPA** is an amendment to the U.S. Tariff Act of 1930 (the **Tariff Act**). Section 307 of the Tariff Act prohibits the importation into the United States of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by forced labor, including by forced child labor.

The UFLPA establishes a rebuttable presumption for purposes of Section 307 of the Tariff Act that goods produced in the Xinjiang Uyghur Autonomous Region of China (**XUAR**), or by persons working with the XUAR government for purposes of pairing and other government-sponsored labor programs are produced using forced labor and therefore prohibited from being imported into the United States under Section 307 of the Tariff Act. Specific entities found by the U.S. Department of Homeland Security (DHS) to be associated with forced labor in XUAR are set forth on a published list (the UFLPA Entity List).

In effect, **importers of goods produced in XUAR will need to be able to prove that the goods were not mined, produced, or manufactured wholly or in part by forced labor,** otherwise the goods will not be permitted to enter the United States. This can be done, in theory, by demonstrating **due diligence, effective supply chain tracing and supply chain management measures to ensure that goods are not made, in whole or in part, by forced labor.**

3. Context

On June 17, 2022, the **DHS** delivered to Congress its Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China (the **Strategy**). The Strategy sets out guidance to importers on how they can become eligible for an exception to the rebuttable presumption. Updates to the Strategy were issued on July 26, 2023 (the Strategy Updates).

The Forced Labor Enforcement Task Force (the **FLETF**), chaired by DHS, then developed a strategy for supporting the enforcement of Section 307 to prevent the importation into the United States of goods produced with forced labor in China.

Further, on June 13, 2022, CBP issued an Operational Guidance for Importers (the **Guidance**) that complements the Strategy. The Guidance reflects CBP's interpretation of the UFLPA and therefore offers practical information to importers on how they may seek to comply with the UFLPA.

On January 19, 2024, the House Select Committee on the Chinese Communist Party sent a letter to the DHS Secretary regarding strengthening enforcement of the UFLPA. If implemented, the actions detailed in the letter would impact importers and their downstream commercial customers.

4. Status

The UFLPA was signed into law on December 23, 2021, and the forced labor presumption went into effect on June 21, 2022. **CBP** has been actively enforcing the UFLPA. Statistics around UFLPA enforcement actions taken are available on CBP's website. Hundreds of shipments relating to the apparel, footwear and textiles sectors have been subjected to CBP detainment and investigation. The main countries of origin of the detained apparel shipments include China, Vietnam, the Phillipines, Nicaragua, and Sri Lanka.

5. Scope

Under the UFLPA, all goods, wares, articles and merchandise mined, produced or manufactured, wholly or in part, (i) in XUAR, or (ii) by persons working with the XUAR government for purposes of pairing and other government-sponsored labor programs, are presumed to be made from forced labor and therefore prohibited from being imported into the United States under Section 307 of the Tariff Act.

This presumption applies to all goods made in, or shipped through any country, if the product includes inputs from XUAR. For example, a shirt that contains cotton grown in XUAR would fall under the presumption, irrespective of where the finished shirt was produced, or where the ginning, spinning or fabric mill processes occurred.

UPDATE

The forced labor presumption applies unless it is determined by the Commissioner that it has been rebutted. In order to find that an exception exists, the Commissioner of CBP must find that:

- By clear and convincing evidence, the goods in question were not produced wholly or in part with forced labor;
- The importer has fully complied with guidance and implementing regulations issued pursuant to the Act; and
- The importer has completely and substantively responded to all inquiries for information submitted by the Commissioner to ascertain whether the goods were produced wholly or in part with forced labor.

6. Obligations for companies in-scope

Importers should work to ensure that their supply chains are free of forced labor and be able to produce a paper trail to prove it. According to the Strategy, importers should have in place due diligence, effective supply chain tracing and supply chain management measures to ensure that they do not import any goods mined, produced, or manufactured wholly or in part with forced labor from the XUAR.

Due Diligence Obligations

For purposes of the Strategy, due diligence includes assessing, preventing, and mitigating forced labor risks in the production of goods imported to the United States. According to the Strategy, an effective due diligence system in any industry may include the following elements:

stakeholder engagement, forced labor risk assessments, a code of conduct addressing the risk of forced labor, training and monitoring compliance of suppliers, remediation and public reporting.

Supply Chain Tracing

The Strategy indicates that effective supply chain tracing is a critical first step of due diligence and that importers are required to know their suppliers and labor sources at all levels of the supply chain.

- Importers should conduct comprehensive supply chain tracing by mapping and showing the chain of custody of goods and materials, from raw materials to the buyer of the imported goods or materials.

According to the Strategy, importers should be aware that if their imports have inputs from factories that source materials from both within the XUAR and outside the XUAR, they risk having their imports subject to detention as it may be more difficult to verify that the supply chain for imports is using only non-XUAR materials that have not been replaced by or commingled with XUAR materials at any point in the manufacturing process.

Supply Chain Management Measures

Supply chain management measures form a part of importers' due diligence and are taken to prevent and mitigate identified risks of forced labor. According to the Strategy, effective supply chain management measures include:

- Having a process to vet potential suppliers for forced labor before entering into an agreement with them;
- Requiring that agreements with suppliers require corrective action by suppliers if forced labor is identified in the supply chain and outlining consequences if corrective action is not taken (including a termination of contractual relationship).
- Having access to supplier documentation, personnel, and workers to verify the absence of forced labor indicators, including at the recruitment stage.

Types and Nature of Information Required to Request

The Guidance then sets out the following **five** categories of types and nature of information that may be required by the CBP if importers seek to rebut the UFLPA's forced labor presumption (i.e., to release a detained shipment) or as may be requested by CBP:

i. Due diligence system information;

ii. Supply chain tracing;

iii. Supply chain management measures;

iv. Evidence that goods were not mined, produced, or manufactured wholly or in part in the XUAR; and

v. Evidence that goods originating in China were not mined, produced or manufactured wholly or in part by forced labor.

The Guidance provides a further explanation of the detailed information that CBP will consider. A summary is provided in this factsheet, and we would recommend that companies in-scope refer to the Guidance for further detail.

1. Due Diligence System Information

Importers' due diligence systems should be designed to ensure that importers will not import goods that are mined, produced, or manufactured by forced labor. According to the Guidance, documentation showing a due diligence system or process that may include the following:

- Engagement with suppliers and other stakeholders in order to assess and address forced labor risks;
- Mapping of supply chain and assessment of forced labor risks from raw materials to the production of imported goods;
- Developing a written code of conduct for suppliers, forbidding the use of forced labor and addressing the use of Chinese government labor schemes;
- Trainings on forced labor risks for employees and agents who select and interact with suppliers;
- Monitoring of compliance with the code of conduct;
- Remediation of any forced labor conditions identified or termination of supplier relationships if remediation is not possible or not completed in a timely manner;
- Independent verification of the implementation and effectiveness of the due diligence system; and
- Reporting performance and engagement.

2. Supply Chain Tracing Information

Supply chain tracing information may be provided by importers or requested by the CBP in order to demonstrate that imports are either not within the purview of the UFLPA as supply chains are wholly outside of the XUAR and unconnected to listed entities or to show that imports are free of forced labor and in compliance with the UFLPA. This includes evidence pertaining to (i) the overall supply chain; (ii) merchandise or any component thereof; and (iii) miner, producer, or manufacturer.

Points to Note

Refer to the Guidance for a detailed list of the types of evidence that CBP may request. In particular, for products made with cotton, CBP has specified that importers may consider submitting the following evidence (although this is not intended to be an exhaustive list):[1]

- Provide **sufficient documentation**, including any records that may be kept in the ordinary course of business (e.g., purchase orders, payment records, etc.), to show the entire supply chain, from the origin of the cotton at the bale level to the final production of the finished product.
- Provide a **flow chart** of the production process and maps of the region where the production processes occur. Number each step along the production process and number any additional supporting documents associated with each step of the process.
- Identify all the **entities involved** in each step of the production process, with citations denoting the business records used to identify each upstream entity with whom the importer did not directly transact.

[1] *Appendix A. Commodity-Specific Supply Chain Tracing Document*

3. Supply chain management measures

Information on supply chain management measures may include internal controls to prevent or mitigate forced labor risk and remediate any use of forced labor identified in the mining, production, or manufacture of imported goods. Importers should also be able to demonstrate that documents provided are part of an operating system or an accounting system that includes audited financial statements.

4. Evidence that goods were not mined, produced, or manufactured wholly or in part in the XUAR

Evidence that goods were not mined, produced, or manufactured wholly or in part in the XUAR includes documentation that traces the supply chain for the goods (as set out above under "supply chain tracing information").

5. Evidence that goods originating in China were not mined, produced or manufactured wholly or in part by forced labor

Evidence that goods originating in China were not mined, produced, or manufactured wholly or in part by forced labor may include (but is not limited to):

- Supply chain map identifying all entities involved in production of the goods;
- Information on workers at each entity involved in the production of the goods in China, such as wage payment and production output per worker;
- Information on worker recruitment and internal controls to ensure that all workers in China were recruited and are working voluntarily; and
- **Credible audits** to identify forced labor indicators and remediation of these if applicable.

Points to Note

The Strategy includes an explanation of what CBP would consider to be a credible audit. A **credible audit** should include the following key elements:

- Unannounced arrival at the worksite and at a time when the workforce, especially workers at risk of forced labor, are likely to be present;
- Examination of ILO indicators of forced labor, in particular intimidation or threats, abuse of vulnerability, restriction of movement, isolation, abusive working conditions and excessive overtime.
- Worker, management, and labor broker or recruiter interviews completed in the interviewee's native language and free of employer or government intimidation;
- Unrestricted access to the worksite and any associated locations, such as cafeterias and dormitories, to observe conditions; and
- Review of documents and other information to provide additional proof of compliance and to identify or corroborate discrepancies in the information and observations of the worksite and associated facilities. This should also include documentation of the supplier's involvement with labor transfer programs in China, receipt of workers from XUAR, and measures to ensure voluntary participation by all workers in the supply chain.

7. Compliance recommendations for companies in-scope

Companies in-scope (i.e., importers to the United States) should implement a robust due diligence system, conduct supply chain tracing, and implement the supply chain management measures described in the CBP Strategy documents. Where the company in-scope has existing due diligence programs and supply chain management measures, and already conducts supply chain tracing, the company should evaluate their current systems to determine whether there are any gaps based on the CBP Strategy. Areas that may warrant heightened attention could include:

- Whether the auditing program undertaken by the company meets CBP's definition of credible audits
- Whether the company's supply chain tracing is sufficiently comprehensive to meet CBP's requirements (this is likely to be challenging with respect to chain of custody issues for companies in-scope that engage in the production of products that contain cotton)
- Whether the company could better engage with its stakeholders (including civil society partners) to identify, and address forced labor risk
- Whether the company could invest in improving the capacity of their suppliers to identify and address forced labor risk, e.g., by offering trainings.

In determining whether to grant an exception to the rebuttable presumption under the UFLPA, the CBP will take into consideration the effectiveness of the concerned company's due diligence systems, and supply chain management measures. As such, it is critical that companies focus on strengthening their risk management systems and practices.

Companies in-scope should also review the CBP Guidance and verify whether they have access to the information and types of evidence that may be requested by the CBP. Companies in-scope may need to request information from suppliers to address any information gaps. Companies in-scope may also need to upgrade document and record management systems to ensure that this information is readily available and easily accessible.

8. Potential implications for suppliers to companies in-scope

While the CBP Guidance is aimed at U.S. importers, suppliers face the risk of repercussions from their clients' goods being held at U.S. customs. If this occurs, the client may come to the supplier and ask them to provide evidence of the supply chain and that forced labor is not involved. To mitigate against this risk and to be able to provide the necessary information to clients, suppliers will also need to:

- implement effective due diligence policies and processes
- undertake supply chain tracing
- develop supply chain management processes
- properly document these policies and processes.

In other words, the requirements imposed on companies in-scope will likely cascade up the supply chain to suppliers.

Suppliers to companies in-scope should expect to be subjected to renewed requests for information from buyers relating to their due diligence policies and processes, supply chain tracing and management processes. The information requested will likely cover all the categories described in Section 6 above and include (but is not limited to):[2]

- Documentation showing a due diligence system or process to identify, monitor and remediate forced labor risks, especially with respect to any sourcing and production in China, including e.g., a supplier code of conduct that prohibits use of forced labor;

- Documentation tracing the supply chain that demonstrates their goods are either not subject to the UFLPA because their supply chains are wholly outside of Xinjiang and unconnected to listed entities, or to show that their imports are free of forced labor and in compliance with the UFLPA, such as (but not limited to):
  - Detailed description of supply chain including imported merchandise and components thereof, including all stages of mining, production, or manufacture;
  - Shipping records, including manifests, bills of lading (e.g., airway/vessel/trucking);
  - Certificates of origin;
  - Mining, production, or manufacturing records;

- Evidence showing that goods originating in China were not produced or manufactured wholly or in part by forced labor
  - Information on workers at each entity involved in the production of the goods in China such as wage payment and production output per worker.

Companies in-scope are also likely to request suppliers to make declarations or affidavits that they do not source from XUAR, and that their goods are not produced (wholly or partly) by forced labour. These disclosures will be subjected to independent verification and assurances will likely to be sought in the form of contractual indemnities and warranties that aim to protect the buyer if the disclosures made around supply chain tracing and management and due diligence practices are incorrect.

[2] *This is non-exhaustive list. Please refer to the Guidance for further details on the documentation required.*

9. Penalties for non-compliance

While not dictated by the UFLPA, generally, failure by importers to take appropriate remedial action after they learn of forced labor in their supply chain can expose them to potential criminal liability if they continue to benefit, financially or by receiving anything of value, from participating in a venture engaged in forced labor, while knowing of or recklessly disregarding the forced labor. The CBP also has the authority to issue civil penalties against those who facilitate import of goods produced with forced labor.

10. Form of enforcement

Enforcement Actions

The CBP is the main enforcement agency under the UFLPA and may use detention, exclusion, forfeiture, and seizure in order to enforce the UFLPA.

- **Detention**

  The CBP has **five days** (excluding weekends and holidays) from the date on which goods are presented for examination by the CBP to determine whether they should be released or detained. If goods are not released within this five-day period, they will be considered to be detained goods.

- **Exclusion**

  The CBP can prohibit the entry of goods that it considers to be in violation of the UFLPA. If the CBP has not made a decision on admissibility within 30 days after the goods are presented to the CBP for examination, the goods are considered excluded.

- **Seizure / Forfeiture**

  Import of goods determined to be in violation of the UFLPA can be subject to seizure and forfeiture. Once CBP has made a decision to seize a shipment, the case will be referred to the Fines, Penalties and Forfeitures (FPFO) officer at the port of entry.

Responding to enforcement action

The CBP will provide importers with notice when enforcement actions are taken, such as a Customs Detention Notice or a Notice of Seizure which shall contain information on the action to be taken and the rights of the relevant importer. In response to such notices, importers may provide information to the CBP and request an exception to the UFLPA's rebuttable presumption.

- Importers that receive a detention notice concerning their shipments may respond to such notice within the applicable timeframe which is typically 30 days from the date that the goods were presented for examination by the CBP and request an exception from the UFLPA's rebuttable presumption.
- Importers that receive an exclusion notice can file an administrative protest within the applicable timeframe to request an exception from the UFLPA's rebuttable presumption.
- Importers that receive a seizure notice may utilize a petition process to request an exception to the UFLPA's rebuttable presumption.

Importers can also identify other shipments that have identical supply chains to ones that have been previously reviewed by CBP and determined to be admissible to facilitate a quicker release of identical shipments.

Importers can also argue that goods fall outside the scope of the UFLPA in response to enforcement action by the CBP and provide information to that effect to the CBP. The information provided must show that the goods and their inputs are sourced completely outside the XUAR and have no connection to entities on the UFLPA Entity List. If the CBP finds that the information provided by importers shows that the goods are outside the scope of the UFLPA, the importers will not need to obtain an exception from the UFLPA's rebuttable presumption and the CBP will release the contested shipments, provided that they are otherwise in compliance with U.S. law.

CBP's approach to enforcement

The Strategy sets out the following four high-priority sectors for enforcement: (i) silica-based products (including polysilicon); (ii) apparel; (iii) cotton and cotton products; and (iv) tomatoes and downstream products. The Strategy also includes an initial UFLPA Entity List and a process for updating the UFLPA Entity List going forward. The Strategy Updates reiterate these high priority sectors.

According to the Strategy, the CBP shall employ a risk-based approach to enforcement that is dynamic in nature and prioritizes the highest-risk goods based on current data and intelligence. The CBP shall also prioritize illegally transshipped goods with inputs from the XUAR and goods imported to the United States by entities that, although not located in the XUAR, are related to an entity in the XUAR (whether as a parent, subsidiary, or affiliate) and likely to contain inputs from that region.

UPDATE

Selected litigation

On June 9, 2023, the printing and imaging company Ninestar and its affiliates were added to the UFLPA Entity List. Ninestar denies that it used forced labor and sued the U.S. government. On January 18, 2024, the U.S. Court of International Trade heard arguments in Ninestar's request for a preliminary injunction to remove Ninestar from the Entity List. This will be the first case challenging an entity's inclusion on the UFLPA Entity List.

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

The UFLPA contains reporting requirements for the Commissioner, who shall submit to the appropriate congressional committees and make available to the public, no later than 30 days after making a determination of an exception from the rebuttable presumption a report identifying the good and the evidence considered if an exception should be granted.

12. Access to remedy mechanisms and litigation risk

Please refer to Sections 9 and 10 above relating to penalties for non-compliance.

13. Opportunity to participate and engage in legislative developments

Not applicable.

14. Useful resources to support compliance

U.S. DHS, Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China

U.S. DHS, 2023 Updates to the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China

U.S. CBP, Operational Guidance for Importers

US CBP, Uyghur Forced Labor Prevention Act Statistics

2024 Edition

Factsheet

EU Ecodesign for Sustainable Products Regulation

(including EU Digital Product Passport)

UPDATE

1. Key Updates

A public consultation on the proposal was held from January 31, 2023 to May 12, 2023 and a provisional agreement on the draft ESPR was reached between the European Parliament and Council on December 4, 2023. The main changes can be found in Section 3.

2. 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 acts[1] 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:

UPDATE

(a) product durability and reliability;

(b) product reusability;

(c) product upgradability, reparability, maintenance and refurbishment;

(d) the presence of substances of concern in products;

(e) product energy and resource efficiency;

(f) recycled content in products;

(g) product remanufacturing and recycling;

(h) products' carbon and environmental footprints;

(i) products' expected generation of waste materials.

Digital Product Passport or DPP

The DPP will electronically register, process, and share information about products' environmental sustainability, material information and design, and other relevant aspects 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.

[1] *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.*

3. 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.

4. Status

The ESPR is a proposal published on March 30, 2022 by the European Commission. A public consultation on the proposal was held from January 31, 2023 to May 12, 2023 and a provisional agreement on the draft ESPR was reached between the European Parliament and Council on December 4, 2023. The Regulation was adopted on May 27, 2024. Once adopted, the ESPR will be published in the Official Journal of the European Union and will enter into force after 20 days from its publication. The Regulation will be applicable from 2 years after its entry into force.

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.

5. Scope

[2] *Specified in Article 1(2) of the ESPR.*

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.[2]

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.

Application of the DPP

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.

6. Obligations for companies in-scope

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

Obligations of Manufacturers

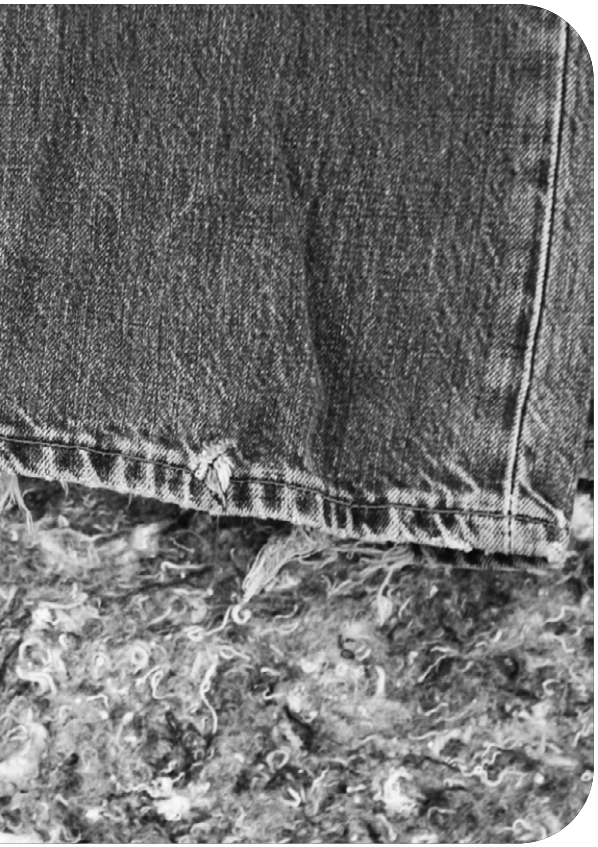
In-scope manufacturers should ensure that their products are designed and manufactured in accordance with the ESPR's ecodesign requirements as well as relevant product-specific rules (yet to be developed, but which will include aspects such as durability, reliability, reusability, upgradability, etc., 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).[3]

[3] *Article 21(3) of the ESPR.*



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.[4]

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.[5]

Obligations of Importers and Distributors

The obligations of the importers and the distributors under the ESPR are similar to that of the manufacturers. The importer[6] and the distributors[7] 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.[8]

[4] *Articles 21(4), 21(5) and 21(6) of the ESPR.*
[5] *Articles 21 (7), 21(8) and 21(9) of the ESPR.*
[6] *Article 23 of the ESPR*
[7] *Article 24 of the ESPR*
[8] *Article 28 of the ESPR.*

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 rule[9].

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[10]. The dealer will provide a DDP[11], 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 customers[12].

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.[13] 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.[14]

[9] *Article 27 of the ESPR.*
[10] *Articles 25(1) and (2) of the ESPR.*
[11] *Article 25 (2) of the ESPR*
[12] *Article 25(3) of the ESPR.*
[13] *Articles 26(1) and 26(2) of the ESPR.*
[14] *Article 26(3) of the ESPR.*

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.[15] 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.[16]

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.[17]

[15] Article 29 of the ESPR.
[16] Article 30(1) of the ESPR.
[17] Article 30(2) of the ESPR.

Digital Passport Product Obligations

The ESPR requires that the following product information are made digitally available[18]:

- **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)[19]. A DPP is required to be made available in relation to each product before it can be marketed or put into service[20].

The information requirements to be set out in the delegated acts will specify the following in relation to the DPP[21]:

- 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.[22] This data carrier and the unique product identifier must comply with the ISO/IEC standard 1549:2015[23]. 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.[24] Where the latter, those operators cannot sell, re-use or process the data beyond what is necessary for the storage services.[25]

[18] *Article 5 (1) of the ESPR.*
[19] *Article 7(1) of the ESPR.*
[20] *Article 8(1) of the ESPR.*
[21] *Article 8 (2) of the ESPR.*
[22] *Article 9 (1) (a) and (b) of the ESPR.*
[23] *Article 9 (1) (c) of the ESPR.*
[24] *Article 10 (c) of the ESPR.*
[25] *Article 10 (d) of the ESPR.*

7. Compliance recommendations for companies in-scope

In this section, we have included our observations on how the ESPR is expected to 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 and terminating the practice of destructing unsold textiles and footwear. 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.
- Companies are banned from destroying unsold textiles and footwear (see chapter 10).

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.

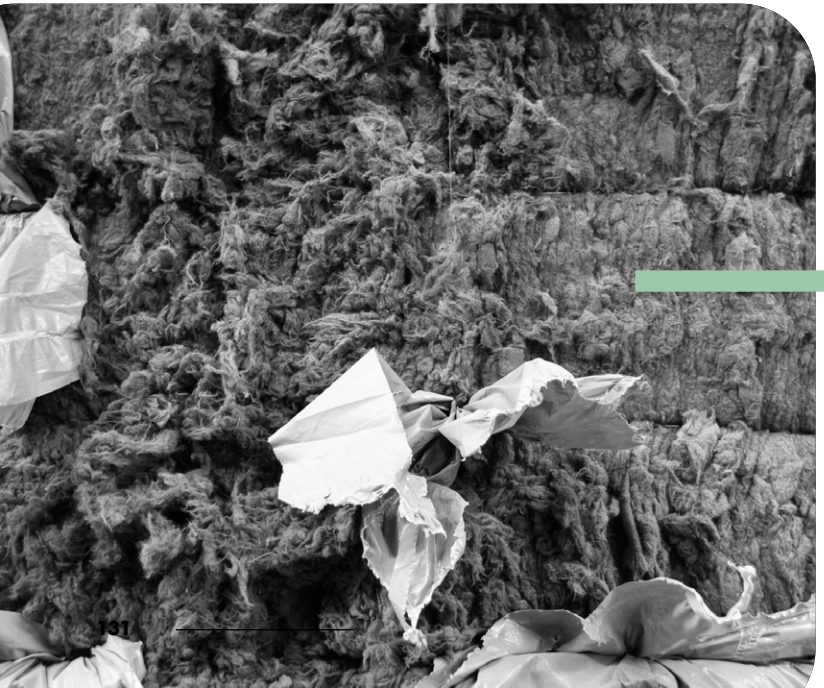
8. Potential implications for suppliers to companies in-scope

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.



9. 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:[26]

- 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.[27]

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.[28] As such the amount and form of penalties may differ across the EU countries.

[26] *Article 65(1) of the ESPR.*
[27] *Article 65(2) of the ESPR.*
[28] *Article 68 of the ESPR.*

10. 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.[29] 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.[30] The European Commission is empowered to lay down minimum numbers of checks to be performed under market surveillance on specific products or specific requirements.[31] 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.[32]

[29] *Article 53 of the ESPR.*
[30] *Article 59 (1).*
[31] *Article 60 (1).*
[32] *Article 63.*

11. 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.[33] 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.[34]

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. Destruction is considered as the discarding or intentional damaging of these products after which they become waste, including recycling, incineration and landfilling. 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.[35] 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.[36]

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.[37]

[33] *Article 13 (1) and (2) of the ESPR.*
[34] *Article 13 (4) of the ESPR.*
[35] *Article 20 of the ESPR.*
[36] *Article 31 of the ESPR.*
[37] *Articles 21(9) and 23(8) of the ESPR*

12. 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.

13. 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.[38] 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.[39] 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.[40]

[38] *Article 18 (1) of the ESPR.*
[39] *Article 18 (4) of the ESPR.*
[40] *Article 18 (3)(b) of the ESPR.*

14. 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

European Commission, Commission welcomes provisional agreement for more sustainable, repairable and circular products

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?

2024 Edition

Factsheet

EU Packaging and Packaging Waste Directive and Provisional Regulation

Directive 94/62/EC on Packaging and Packaging Waste and Provisional Regulation

UPDATE

1. Key Updates

On March 4, 2024, the Council of the EU and the EU Parliament's representatives reached a provisional political agreement on the Proposal for a regulation on packaging and packaging waste (PPWR). The PPWR has provided more clarity on the main requirements of PPWR, as detailed below. The main changes relate to Section 1, 3, 4, 5, and 6.

2. Overview

UPDATE

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.[1] An ambitious revision is currently under legislative procedure. On November 30, 2022 the European Commission put forward a proposal[2] for amending Regulation EU 2019/1020[3] and Directive (EU) 2019/904[4], and repealing the Directive (the **Proposal**). The European Union's Council and Parliament then adopted its position on the Proposal in November and December 2023 respectively. On March 4, 2024, the Council of the EU and the EU Parliament's representatives reached a provisional political agreement on the Proposal for a regulation on packaging and packaging waste (PPWR). PPWR considers the full life-cycle of packaging and establishes requirements to ensure that packaging is safe and sustainable by requiring that all packaging is recyclable and that the presence of substances of concern is minimised. The provisional agreement will now be submitted to the member states' representatives within the EU Council and to the EU Parliament's environment committee for endorsement. If approved, the text will then need to be formally adopted by both institutions before it can be published in the EU's Official Journal and enter into force. The regulation will be applied from 18 months after the date of entry into force.[5]

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.

[1] *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.*
[2] *European Commission, Proposal for a revision of EU legislation on Packaging and Packaging Waste, 30 November 2022, link.*
[3] *Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products.*
[4] *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.*
[5] *Packaging: Council and Parliament strike a deal to make packaging more sustainable and reduce packaging waste in the EU, 4 March 2024, link.*

3. 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.[6]

4. 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.

[6] *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.*

5. 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.[7]

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.[8] It includes all sales packaging or primary packaging, grouped packaging or secondary packaging, and transport packaging or tertiary packaging. Packaging used for textiles falls under the scope of the Directive.

6. Obligations for companies in-scope

Under the current Directive:

The Directive does not apply to companies directly, but instead creates obligations for EU countries to implement measures at national level to prevent the production of packaging waste, and to promote reuse of packaging, recycling, and recovery of packaging waste. EU countries are therefore required to ensure that packaging placed on the EU market meet the following essential requirements.

1. Essential Requirements

All packaging placed on the EU market to comply with three essential categories of requirements (the Essential Requirements):[9]

- **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.

[7] *Article 2, Directive*
[8] *Article 3, Directive*
[9] *See Annex II – Essential requirements on the composition and the reusable and recoverable, including recyclable, nature of packaging*

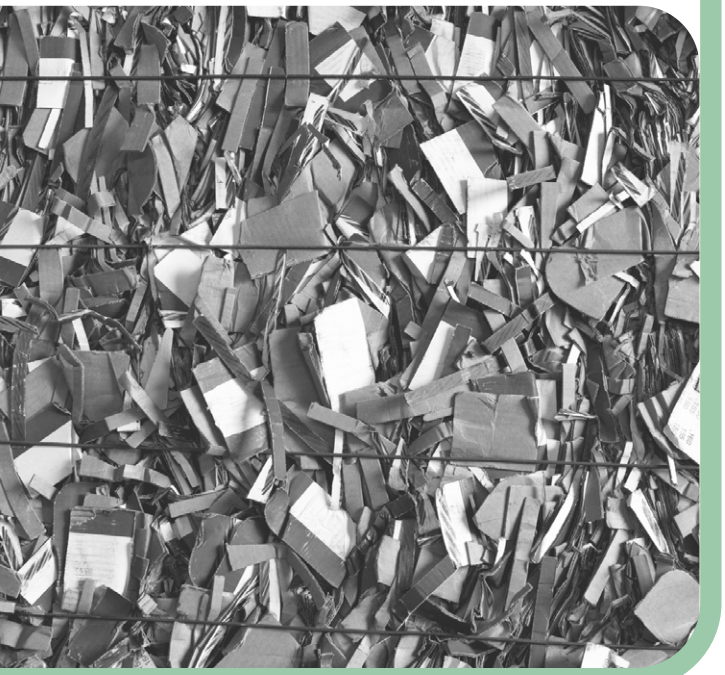
- **Re-usable nature of packaging:** packaging must be designed and manufactured adequately to (i) allow for multiple use/trips/rotations, (ii) allow for safe reuse processes, and (iii) be recoverable once the packaging is no longer re-used.
- **Recoverable nature of packaging:** packaging must be designed 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 recycled[10];
    - 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.

[10] *Article 6.*



- 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.[11]

Under the PPWR:

If enacted, PPWR would 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 would need to ensure that the packaging is designed and manufactured in accordance with the requirements sent out in the regulation 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, if enacted EU manufacturers and importers into the EU will need to comply with PPWR. PPWR therefore does not differentiate between companies incorporated in the EU, and those incorporated outside the EU.

[11] *Article 12 of the Directive*

UPDATE

The main requirements of PPWR are to:

- reduce unnecessary packaging and promoting reusable and/or refillable packaging solutions –(i) introduces a restriction on placing on the market of food contact packaging containing per- and polyfluorinated alkyl substances (PFASs) above certain thresholds, (ii) includes 2030 and 2040 headline targets for minimum recycled content in plastic packaging (but exempts compostable plastic packaging and packaging whose plastic compenent represents less than 5% of the packaging total weight from such targets) and (iii) sets a maximum empty space ratio of 50% in grouped transport and e-commerce packaging and manufacturers are to reduce packaging unless the packaging is already protected when PPWR is enacted.

- set new binding re-use targets for 2030 and indicative targest for 2040–(i) the targets vary based on the type of packaging used; micro-enterprises are exempt and economic operators are given the option to form pools of up to five final distributors to meet re-use targets for beverage packaging; (ii) includes a 5 year renewable five-year of exemption in specific cases and (iii) includes an obligation for take-away businesses to offer possibility of bringing own containers at no additional charge and by 2030 take-away activities should aim to get 10% of products in packaging which is suitable for re-use.

- set up deposit return systems to ensure the separate collection of at least 90% per annum of single-use plastic bottles and metal beverage containers by 2029–member states would be exempt from requirement to introduce a DRS if they reach a separate collection rate of above 80%iin 2026 and they submit an implementation for achieving 90% target.

- restrict certain packaging formats (including single-use plastic packaging for fruit and vegetables, condiments, sauces within the HORECA sector, for small cosmetic and toiletry products, and for very lightweight plastic bags).[12]

[12] *Packaging: Council and Parliament strike a deal to make packaging more sustainable and reduce packaging waste in the EU, 4 March 2024.*

7. Compliance recommendations for companies in-scope

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.

However, companies that produce and use packaging should refer to the relevant EU country's regulations on packaging and packaging waste, and if enacted the PPWR, and ensure that any packaging produced or sourced for use is compliant with national laws and measures and the PPWR. If enacted, PPWR will be applied from 18 months after the date of entry into force.[13]

8. 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 or the PPWR 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.

[13] *Packaging: Council and Parliament strike a deal to make packaging more sustainable and reduce packaging waste in the EU, 4 March 2024, link.*

9. Penalties for non-compliance

Not applicable as the Directive does not prescribe penalties for non-compliance for companies in-scope. To be defined under the PPWR.

10. Form of enforcement

Not applicable under the Directive.

To be defined under the PPWR.

11. 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.[14] A European Commission decision[15] decided on the format and rules regarding the calculation, verification, and reporting of data through the databases. A second European Commission decision[16] 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. To be defined, if any, under the PPWR.

12. Access to remedy mechanisms and litigation risk

Not applicable under the Directive. To be defined, if any, under the PPWR.

[13] *Packaging: Council and Parliament strike a deal to make packaging more sustainable and reduce packaging waste in the EU, 4 March 2024, link.*
[14] *Ibid.*
[15] *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.*
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.

13. 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.

14. 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

EU Microplastics Regulation

UPDATE

1. Key Updates

The Microplastics Proposal passed the 3-month scrutiny of the European Parliament and the Council and was adopted on September 25, 2023. The first of the new measures, including a ban on loose glitter made of plastic for textile purposes (with exceptions), entered into force on October 17, 2023, see Section 5 for more details. The Commission is expected to issue a detailed Q&A to support the implementation of the new rules.[1]

[1] *The timeline is undefined.*

2. Overview

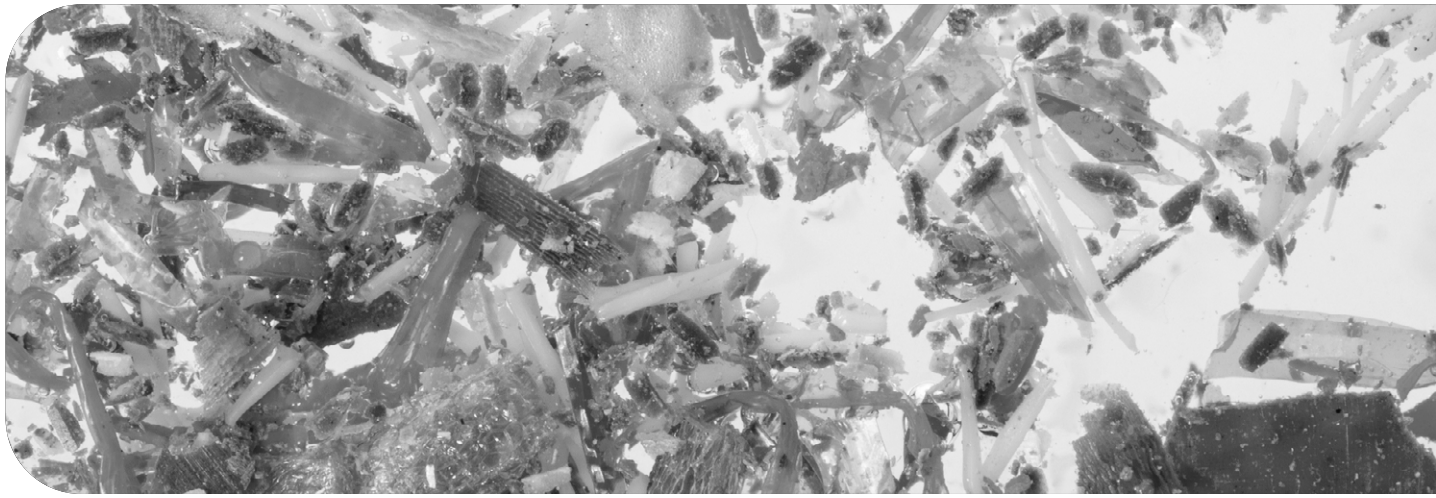
The Commission Regulation (EU) 2023/2055 of September 25, 2023 (the **Microplastics Regulation**)[2] is a legislative initiative which aims to reduce the intentional release of microplastics in the environment. In doing so, the Microplastic Regulation hopes to ultimately reduce environmental pollution and potential risks to human health. The European Chemicals Agency (ECHA) estimates that more than 42,000 tons of microplastics intentionally added to products are released in the EU every year. The Microplastics Regulation is expected to result in a 70% reduction of quantified emissions (500,000 tons over 20 years) that would otherwise occur.

3. Context

The European Commission has been working on tackling plastic pollution for a long time. To reduce all sources contributing to microplastic pollution, the European Commission published the European Green Deal, the new Circular Economy Action Plan (CEAP) and the Zero Pollution Action Plan. The latter includes a target to reduce microplastic emissions by 30% by 2030.

The European Commission requested the European Chemicals Agency (ECHA) to prepare a restriction dossier concerning the use of intentionally added microplastics to consumer or professional use products. In parallel, the CEAP presented a set of initiatives to establish a comprehensive and sustainable product policy framework to address the release of microplastics. To this end, the European Commission will address the presence of microplastics into the environment.

The ECHA concluded that microplastics intentionally added to certain products are released into the environment in an uncontrolled manner, and recommended restricting them. Based on this evidence, the Commission drafted the Microplastics Proposal that was adopted on September 25, 2023.



[2] *Amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards synthetic polymer microparticles.*

4. Status

The European Commission published the Microplastics Proposal on August 30, 2022. The Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) Committee discussed the Proposal on September 23, 2022, and again on March 1, 2023.

The Microplastics Proposal passed the 3-month scrutiny of European Parliament and the Council, and was adopted on September 25, 2023 under the Commission Regulation (EU) 2023/2055 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards to synthetic polymer microparticles.

UPDATE

The first of the new measures, including a ban on cosmetics containing microbeads and loose glitter, entered into force on October 17, 2023. Other measures will come into force in stages, giving affected stakeholders time to switch to alternatives.

Most recently, on January 29, 2024, the European Council and European Parliament reached a provisional political agreement on a proposal to remove microplastics and other micropollutants from urban wastewater. Under this proposal, at least 80% of the costs needed to remove pollutants in the sewage treatment process would be covered by pharmaceutical and cosmetic producers, in line with the 'polluter pays' principle. By 2045, the provisional agreement would require EU member states to remove a broad spectrum of micropollutants from urban wastewater before is released into the environment.

This provisional political agreement would have a significant financial impact on producers of cosmetics, chemicals, and medicines in the European Union. Under the proposal:

- companies would have to cover the costs of gathering and verifying data on how their products impact wastewater;
- there would be potential cost implications arising from product reformulation to meet the proposed environmental risk minimisation requirements; and

[2] *Specified in Article 1(2) of the ESPR.*

- new product formulations would be subject to regulatory scrutiny by medicines regulatory authorities, to ensure compatibility with the new requirements without adversely affecting the safety, quality, and efficacy of the reformulated products.

As a next step, the provisional agreement will be submitted to the EU members' representatives with the European Parliament's Environment Committee. Then, if formally adopted by both institutions, the directive will be published in the European Union's Official Journal. Considering that the Microplastics Regulation states that "a big part of microplastic pollution forms unintentionally, for example as a result of [...] the washing of synthetic clothes" and that the EU Environment Agency says that "about 8% of European microplastics released to oceans are from synthetic textiles and the percentage of microplastics deriving from washing textiles is even higher", it is likely that further legislative developments will address the issue.

UPDATE

5. Scope

The Microplastics Regulation applies to manufacturers, importers, and industrial downstream users of microplastics and of products within the scope of the legislation. The Microplastics Regulation adopts a wide definition of microplastics, covering all synthetic polymer particles below 5mm that are organic, insoluble and resist (bio) degradation.

Certain types of products are derogated from the sale ban:

- Products that contain microplastics but do not release them or their release can be minimised (e.g. construction materials);
- Products used at industrial sites; and
- Products already regulated by other EU legislation (e.g. medicinal products, food and feed).
- While these products can still be sold, their manufacturers will have to (i) report the estimated microplastic emissions from these products to the ECHA annually and (ii) provide instructions on how to use and dispose of the product to prevent microplastics emissions.

As outlined above, the Microplastics Regulation includes transitional periods aimed at providing sufficient time for businesses to comply with the restriction and transition to suitable alternatives. More specifically, the Microplastics Regulation sets the following transitional periods:

- Immediately (from October 17, 2023) for microplastics themselves and when intentionally added (e.g. to certain cosmetics and loose glitter);
- 4 years after the entry into force (from October 17, 2027) for the use of microplastics in rinse-off cosmetic products;
- 5 years after the entry into force (from October 17, 2028) for the use of microplastics in detergents/waxes/polishes and air care products, fertilizing products outside the scope of application of Regulation (EU) 2019/ 1009, for products for agricultural and horticultural uses;
- 6 years after the entry into force (from October 17, 2029) for the use of microplastics in the encapsulation of fragrances, leave-on cosmetic products, medical devices within the scope of Regulation (EU) 2017/745, granular infill for use on synthetic sports surfaces;
- 8 years after the entry into force (from October 17, 2031) for the use of microplastics in plant protection products and biocidal products; and
- 12 years after the entry into force (from October 17, 2035) for the use of microplastics in lip products, nail products and make-up (additionally, from October 17, 2031 until October 16, 2035, suppliers of these products must include the following statement on the label or packaging of the product: 'This product contains microplastics').

6. Obligations for companies within scope

The Microplastics Regulation **prohibits** the placement of synthetic polymer microparticles (**microplastics**) on the market on their own or, where the microplastics are **intentionally added** to confer a sought-after characteristic, in mixtures in a concentration equal to or greater than 0.01% by weight.[3] This would include (but is not limited to) use of microplastics cosmetic products or detergents/waxes/polishes and air care products. Specifically, the sale of non-biodegradable, insoluble plastic glitter for textiles purposes is banned when glittered articles serve purely or primarily a decorative function and the glitter can detach from the article under normal use.

Certain uses and sectors are excluded from this prohibition:

i. textiles in case the decorative function of the product containing glitter is secondary microplastics for use at industrial sites

ii. medicinal products within the scope of Directive 2001/83/EC of the European Parliament and of the Council and veterinary medicinal products within the scope of Regulation (EU) 2019/6 of the European Parliament and of the Council

iii. EU fertilizing products within the scope of Regulation (EU) 2019/1009 of the European Parliament and of the Council

iv. food additives within the scope of Regulation (EC) No 1333/2008 of the European Parliament and of the Council

v. in-vitro diagnostic devices (if potential release can be minimized by setting conditions of use and disposal)

vi. microplastics that are both (a) contained by technical means throughout their whole life cycle and (b) microplastic containing wastes arising are incinerated or disposed of as hazardous waste

vii. microplastics that permanently lose their particle form

viii. microplastics that are permanently enclosed in a solid matrix during end use.

[3] *Polymers that occur in nature and that have not been chemically modified and polymers that are biodegradable are excluded.*

Any manufacturer, importer or downstream user responsible for placing a substance or mixture containing a microplastic falling within the exclusions set out in (i), (ii), (vi), (vii) or (viii) above must ensure that the label, safety data sheet, or instruction, provides any relevant instructions for use to avoid releases of microplastics to the environment, including at the waste life-cycle stage. The instructions must be clearly visible, legible, and indelible and the label written in the official language(s) of the EU country or countries where the substance or mixture is placed, unless the concerned country or countries provide(s) otherwise.

7. Obligations for companies in-scope

The Microplastics Proposal shall not have direct effects on manufacturers of textile products for the apparel industry, as it only addresses the intentional use of microplastics in products. While textiles products are a major source of microplastics pollution, the release of microplastics from textile products (also referred to as microfibres) primarily originate from the washing of synthetic textiles during textile manufacturing, garment wearing and end-of life disposal. This form of microfiber release or shedding is categorized as unintentional release of microplastics, and therefore does not fall within the scope of this Microplastics Regulation.

However, more broadly, this legislative initiative highlights that regulatory bodies are actively engaged in addressing microplastics pollution. Although there are currently no EU regulations that address microfibres unintentionally released by textiles, future regulation curbing plastic microfibre pollution is expected. For example, France has already taken legislative steps to regulate microfibre pollution through the introduction of the Anti-Waste for a Circular Economy Law. The UK is reportedly working on a similar bill to address microfibre pollution. In addition, the EU strategy for sustainable and circular textiles also confirms that the European Commission intends to address the unintentional release of microplastics from synthetic textiles.

8. Potential implications for suppliers

See discussion in Section 6 above.

9. Penalties for non-compliance

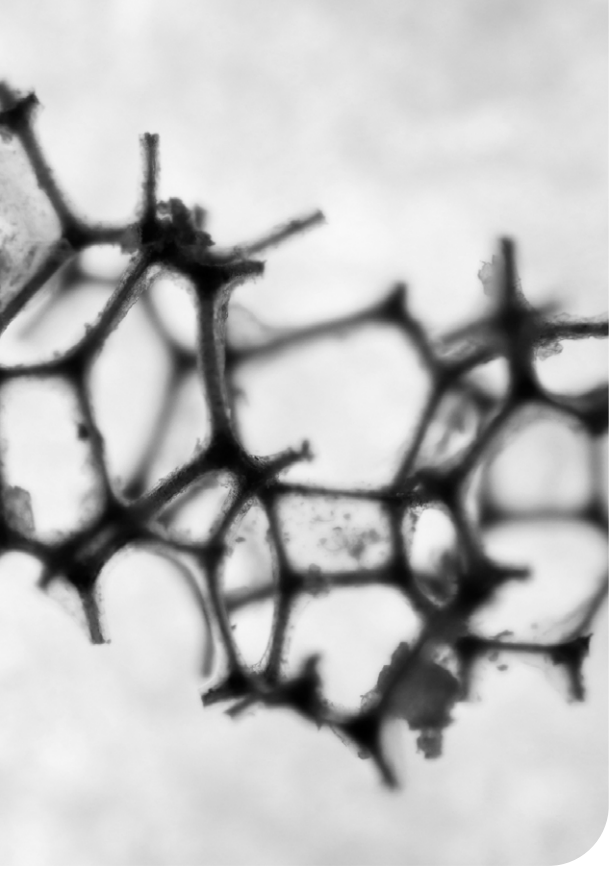
Not applicable.

10. Form of enforcement

The ECHA has no enforcement responsibilities; therefore, enforcement of REACH regulations is a national responsibility. Each EU country must put in place an official system of controls and adopt legislation specifying penalties for non-compliance with the provisions of REACH.

11. Reporting/ disclosure requirements for companies in-scope

Importers or downstream users that place products falling within certain excluded uses/sectors shall be subject to reporting requirements. They will be required to send the identity of the polymer(s) used, a description of the use of the microplastic, the quantity of microplastics used in the previous year, and the quantity of microplastics released to the environment (either estimated or measured in the previous year) to the ECHA. The proposed reporting requirement is expected to help ensure that significant emissions are not occurring from the excluded uses/sectors.



12. Access to remedy mechanisms and litigation risk

Not applicable.

13. Opportunity to participate and engage in legislative developments

The Microplastics Regulation was open to public consultation from February 22, 2022 to May 17, 2022. There are no current opportunities to participate and engage in the legislative process.

14. Useful resources to support compliance

European Commission, Comitology Register, COMMISSION REGULATION (EU) .../... of XXX amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards synthetic polymer microparticles

ECHA, Annex XV Restriction Report Proposal for a Restriction (2019)

UK Plastic Packaging Tax

UPDATE

1. Key Updates

No key updates since previous publication.

2. Overview

The Finance Act 2021, Part 2 sets out an environmental tax system by legislating to implement the Plastic Packaging Tax (PPT). The PPT, which has been in force since April 1, 2022, is designed to encourage the use of more recycled plastic.[1] The PPT applies to plastic packaging manufactured in, or imported into, the UK that contain less than 30% recycled plastic content. PPT receipts in financial year 2022 totalled £276 million, exceeding the government's estimate of £235 million.[2]

[1] *To qualify as recycled plastic, it must be plastic waste recovered from either (i) pre-consumer plastic that is recovered from waste generated in a manufacturing process and processed by a reprocessing facility or (ii) post-consumer plastic that is generated by households or commercial, industrial, or institutional facilities in their role as end user of the product that can no longer be used for its intended purpose.*

[2] *https://www.gov.uk/government/statistics/plastic-packaging-tax-ppt-statistics/plastic-packaging-tax-ppt-statistics-commentary*

3. Context

The PPT is seen to be more than just a tax. The purpose of the PPT is to provide a financial incentive for businesses to use recycled plastic packaging and find sustainable solutions. With greater demand for recycled plastic, this will increase the amount of recycling and collection of plastic waste, diverting it away from landfill or incineration. By promoting the use of recycled plastic, the PPT will help reduce carbon emissions and support the UK's goal of reaching net-zero emissions by 2050, an important step in overall climate change reduction.

4. Status

The PPT was passed on November 4, 2021 and entered into force on April 1, 2022. The tax is charged at a rate of:

£200 per tonne from April 1, 2022

£210.82 per tonne from April 1, 2023

£217.85 per tonne from April 1, 2024[3]

5. Scope

The PPT applies to manufacturers who undertake the last substantial modification[4] of plastic packaging and importers of finished plastic packaging components (whether or not, filled with goods) that contain less than 30% recycled plastic content into the UK. A component must meet the definition of 'packaging' to be liable for the PPT. Packaging is defined as "a product that is designed to be suitable for use, whether alone or in combination with other products, in the containment, protection, handling, delivery or presentation of goods at any stage in the supply chain of the goods, from the producer of the goods to the consumer or user." For example, where an apparel company imports t-shirts packaged in poly bags into the UK, and the poly bags contain less than 30% recycled plastic content, the apparel company may be subject to the PPT. Of the total plastic packaging manufactured in and imported to the UK, 39% was declared as taxable under the PPT.

Manufacturers and importers may be exempt from the PPT if they fall within the following categories:

Exempted Packaging Categories

Four packaging components are exempted from the PPT. They are products:

- used for the immediate packaging of human medicinal products
- permanently recorded as set aside for non-packaging use
- used as transport packaging for imported goods
- used in aircraft, ship, and rail goods stores.

[3] *https://www.gov.uk/government/publications/changes-to-plastic-packaging-tax-rates-from-1-april-2024/increase-to-plastic-packaging-tax-rates-from-1-april-2024*
[4] *A substantial modification is any process that changes the shape, thickness, weight, or structure of a packaging component.*

Only the plastic packaging used for human medicinal products and plastic packaging permanently recorded as set aside for non-packaging use must be included when calculating the total weight of plastic packaging manufactured or imported.

Excluded Product Categories

Three types of products relate to packaging which do not typically contribute to plastic pollution, and which do not need to be included when calculating the total weight of plastic packaging manufactured or imported. They are products which are designed to be:

- used for the long-term storage of goods
- an integral part of the goods
- reused for the presentation of goods.

There is a deferral of liability to the PPT for plastic packaging which is exported outside the UK within 12 months. Where tax has been paid and the related plastic packaging components are subsequently exported, credit or repayment will be issued for the tax paid.

6. Obligations for companies within scope

The responsibility for paying PPT falls predominantly with importers of filled or unfilled plastic packaging into the UK and UK manufacturers of plastic packaging.

Registration Requirements

Companies that manufactured in the UK or imported 10 or more tonnes of plastic packaging into the UK in the last 12 months, must register with the HM Revenue & Customs (HMRC) for PPT, even where the plastic packaging is not taxable. Likewise, companies that expected to import into the UK or manufacture in the UK 10 tonnes or more of finished plastic packaging components in the following 30 days, should also register.

Companies falling within these thresholds must register, even if the plastic packaging meets the recycled content criteria or is one of the exempt examples of packaging categories. In other words, you may still need to register, even if you are not liable for payment of PPT.

A manufacturer or importer must register within 30 days of meeting the 10-tonnes threshold. Where the taxpayer is a part of a group of companies, the 10-tonnes threshold test applies to each individual company within the group, and not to the group on a combined basis. There are anti-avoidance provisions to prevent companies from attempting to separate business activities to avoid the PPT by keeping each entity under the threshold.

De Minimis Exception

Companies that place less than 10 tonnes of plastic packaging onto the UK market in the past 12 months do not need to register for and pay PPT. For example, an apparel company that imports products into the UK that are packaged with polybags will not need to register with the HMRC for PPT if they use less than 10 tonnes of plastic packaging (cumulative across any rolling 12-month periods). Nevertheless, it is recommended that companies keep records event if the threshold is not met in the event that the threshold is later met and records are required for the prior 12-month period.

Submission of quarterly returns

A company in-scope is required to submit quarterly returns to HMRC detailing weights of plastic packaging components which are in the scope of the tax, those containing 30% or more recycled content, and those which are exempt, manufactured quantities, imported quantities and exports amongst other things. All the information submitted must be supported by sufficient evidence.

Determination of amount of PPT payable

The PPT applies to plastic packaging on a per component basis. Plastic packaging made from different components of materials are classed as plastic packaging if they are predominantly plastic by weight. The taxable base will be calculated based on the weight of the whole packaging, if plastic is the dominant component by weight. If a packaging is made up of several plastic packaging components, each component must be taken into account for PPT. Further details on the calculation of PPT are set out in the Plastic Packaging Tax (General) Regulations 2022.

7. Compliance recommendations for companies in-scope

As explained in Section 5 above, the responsibility for paying PPT falls predominantly with importers of filled or unfilled plastic packaging into the UK and UK manufacturers of plastic packaging. As a first step, companies should check whether the packaging they manufacture, or import is subject to the PPT. If they are within scope, the manufacturer or importer should work out the weight of the packaging and register with HMRC. These companies in-scope will be required to file quarterly tax returns and make payment of taxes.

Companies in-scope are required to keep accounts, records and supporting evidence for six years (including any measurement of weight) for all the information submitted on the PPT return. Please refer to the HMRC's website for further information on the record-keeping requirements: https://www.gov.uk/guidance/record-keeping-and-accounts-for-plastic-packaging-tax

8. Potential implications for suppliers

At a broader level, the PPT is likely to encourage companies that use and purchase plastic packaging to explore incorporating more recycled content into packaging, or alternative packaging materials – as the PPT makes use of plastic packaging more costly.[5] Suppliers should also note that the recycled plastics supply chain carries its own human rights risks, and therefore it would be advisable to conduct human rights due diligence when sourcing recycled plastics.

9. Penalties for non-compliance

Where a company in-scope fails to register, file returns, or pay the tax, there is a £500 fixed penalty, and a daily penalty of £40 for each day, after the first, on which the concerned company continues to default. Interest on late payments may also apply. There can be criminal penalties in cases of fraudulent evasion of PPT and for misstatements and false documents and conduct involving such offences.[6]

10. Form of enforcement

HMRC shall carry out compliance checks based on the filed returns, although the triggers that would prompt a compliance check are not specified in the case of PPT.

11. Reporting/ disclosure requirements for companies in-scope

Please refer to Section 5 for discussion on registration requirements and submission of quarterly returns.

[5] Companies should also be mindful that the supply chain of recycled materials carry their own set of human rights risks.
[6] Please refer to Sections 77 to 81 of the Finance Act 2021.

12. Access to remedy mechanisms and litigation risk

As explained in Section 8 above, companies that fraudulently evade payment of PPT, make misstatements or provide false documents in relation to their returns, may be subject to criminal action.

In addition, although it is the manufacturer or importer of packaging components that is primarily liable for the PPT, downstream companies in the supply chain may also be held secondarily liable for unpaid tax, if they should have known, or ought to have known, that PPT has not been paid. For example, if you purchase plastic packaging components in the UK from a UK packaging manufacturer, or if you distribute imported goods in the UK that have been packaged in plastic, you could be held secondarily liable for a failure to pay PPT. In such cases, these downstream customers should conduct due diligence to ensure that PPT has been paid by the importer or manufacturer (where required). It is recommended that such companies keep records of due diligence checks undertaken and retain any evidence that demonstrates that they are not liable for payment of PPT.

13. Opportunity to participate and engage in legislative developments

Not applicable.

14. Useful resources to support compliance

UK HMRC, Records and accounts you must keep for Plastic Packaging Tax Guidance

UK HMRC, Check which packaging is subject to Plastic Packaging Tax

UK Legislation, Finance Act 2021, Part 2

UK Legislation, Plastic Packaging Tax (General) Regulations 2022

2024 Edition

Factsheet

EU Product Environmental Footprint Guide

Product Environmental Footprint Guide and Methodology

UPDATE

1. Key Updates

The Product Environmental Footprint has been in a transitional phase since the end of the pilot phase in 2018 and is now expected to be completed by the end of 2024, see Section 3 for more details. The key changes are in Section 3 and 4. Particular attention should be given to the PEF Category Rules for Apparel and Footwear set out in Section 4.

2. Overview

The Product Environmental Footprint (**PEF**) Guide is a multi-criteria measure of the environmental performance of a good or service throughout its life cycle. A product's lifecycle includes supply chain activities such as extraction of raw materials and production processes as well as the product's use and final waste management processes. The PEF Guide provides a method for modelling the environmental impacts of the flows of material/energy and the emissions and waste associated with a product throughout its life cycle.

3. Context

The PEF Guide outlines a common framework for all the steps and specific rules necessary to make an appropriate and comparable life cycle assessment. The objective of the PEF Guide is to make the EU market for green alternatives more attractive by ensuring transparent assessment of a product's environmental impact, the European Commission hopes that the negative environmental impacts of products can be reduced.

The PEF Guide and Methodology considered the recommendations made by similar, widely recognised product environmental accounting methods and guidance documents, including ISO standards and other methodological guides such as the International Life Cycle Reference Database Handbook, ISO 14040-44, ISO 14064, PAS 2050, WRI/WBCSD, GHG protocol and others.

The PEF Guide is part of a set of interrelated EU initiatives (including the EU ecolabel initiative) to establish **a coherent product policy framework** that will make sustainable products, services, and business models the norm. This framework aims to transform consumption patterns so that emissions and waste levels are reduced. PEF methodologies are already being utilized by EU policymakers in the context of certain EU policies and legislation such as the Taxonomy Regulation, the Sustainable Batteries Initiative, and the Green Consumption Pledge.

4. Status

As a European Commission Recommendation, there are no legal consequences or requirements arising from the PEF Guide. A recommendation simply allows the EU institutions (in this case, the European Commission) to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.

The PEF methodology is still under development following its initial pilot phase between 2013-2018 during which the methodologies were tested with more than 300 companies and 2000 contributing stakeholders in different fields of activities, including food and feed, IT equipment, batteries, and detergents.

The European Commission is working to develop the PEF Product Category Rules (**PEFCRs**) and Organisation Environmental Footprint Sector Rules (**OEFSRs**) which aim to provide more detailed technical guidance on how to conduct PEF studies for specific product categories - including for the apparel and footwear sector. The purpose is to develop a common scientifically-based methodology to ensure environmental footprint comparability between two items, and to assist in implementing eco-design principles. The continued development of the PEFCRs is intended to provide a basis for further policy development and implementation.

The European construction sector is currently the only category in which the PEF Guide has resulted in some mandatory changes in product life cycle assessments. The EN15804 standard for construction companies was amended to align with the methodology set out in the PEF Guide. The amended standard is the EN 15804+A2 standard.

The PEF has been in a transitional phase since the end of the pilot phase in 2018 and until the possible adoption of policies implementing the PEF methods. The aims of the transition phase are to provide a framework for monitoring the implementation of existing PEFCRs and OEFSRs, developing new PEFCRs and OEFCRs and new methodological developments.

The transition phase is expected to be completed by the end of 2024. This means that using the PEF methodology is not yet mandatory. The culmination of the transition phase by the end of 2024 is approaching, the European Commission will continue to refine the nuances of PEF and has conducted a second public consultation for the PEFCR for apparel and footwear.

5. Scope

Objectives of the PEF Guide

The PEF Guide aims to provide detailed and comprehensive technical guidance on how to conduct a PEF study. PEF studies may be used for a variety of purposes, including internal and external applications (as described below). It is primarily aimed at technical experts who need to develop a PEF study, for example engineers and environmental managers in companies and other institutions. However, no expertise in environmental assessment methods is needed to use the PEF Guide for conducting a PEF study.

Based on a life-cycle approach, the PEF Guide provides a method for modelling the environmental impacts of the flows of material/energy and resulting emissions and waste streams associated with a product from a supply chain perspective (from extraction of raw materials, through use, to final waste management). A life cycle approach takes into consideration the spectrum of resource flows and environmental interventions associated with a product or organization from a supply chain perspective. It includes all stages from raw material acquisition through processing, distribution, use, and end-of-life processes, and all relevant related environmental impacts, health effects, resource-related threats, and burdens to society.

Applications of PEF Studies

Potential applications of PEF studies may be grouped depending on a company's in-house or external objectives:

- In-house applications may include support to environmental management, identification of environmental hotspots, and environmental performance improvement and tracking, and may implicitly include cost-saving opportunities;
- External applications (e.g., Business-to-Business (B2B), Business-to-Consumers (B2C)) cover a wide range of possibilities, from responding to customer and consumer demands, marketing, benchmarking, environmental labelling, supporting eco-design through supply chains, green procurement and responding to the requirements of environmental policies

at European or EU country level. Benchmarking could, for example, include defining an average performing product (based on data provided by stakeholders or on generic data or approximations) followed by a grading of other products according to their performance versus the benchmark.

PEFCRs

The PEF Category Rules will aim to provide detailed technical guidance on how to conduct a PEF study for various specific product categories. PEFCRs shall provide further specification at the process and/or product level. It is envisaged that PEFCRs for specific product categories will typically provide further specification and guidance in addition to the PEF methodology to assist with:

- defining the goal and scope of the study;
- defining relevant/irrelevant impact categories;
- identifying appropriate system boundaries for the analysis;
- identifying key parameters and life-cycle stages;
- providing guidance on possible data sources (including the geographic level at which data should be collected);
- completing the Resource Use and Emissions Profile phase; and
- providing further specification on how to solve multi-functionality problems.

PEF Category Rules for Apparel & Footwear

The PEFCRs for Apparel and Footwear are currently under development. Informed by a multi-stakeholder group that includes public consultations (the latest conducted in March/April 2024), it aims to create a set of rules for 13 categories of garments and footwear. Products will be categorized according to 16 environmental impact indicators, including climate change, water, land use, and human health. A score will be assigned to each product and used by consumers to understand the environmental impacts of products within the same category.

6. Obligations for companies in-scope

As noted above, there are currently no direct obligations arising for companies, save where the relevant PEF methodologies have been adopted into existing legislation, policies, or standards (i.e., in the construction industry where the EN15804+A2 standard has been adopted which aligns the pre-existing EN15804 standard with the methodology set out in the PEF Guide).

7. Compliance recommendations for companies in-scope

Not applicable as explained in Section 5.

8. Implications for suppliers to companies in-scope

While it is not yet clear when and how the PEF methodology will become required practice, it is likely that suppliers will face increasing requests for data regarding the environmental impact of materials used and production processes. Suppliers will likely be requested by brands to disclose information regarding their sourcing practices, and their approaches to water usage, energy usage, waste management and recycling. The credibility and accuracy of this data will be important, and likely result in the need to conduct specific environmental impact assessments covering the lifecycle of a product. Where brands do not source materials directly, they will likely require their suppliers to map the entire upstream value chain (from mills, to ginners, up to farm-level) and conduct environmental due diligence on these business partners. These disclosure and due diligence requirements will likely be reflected in expanded supplier codes of conduct and standards, which brands will require suppliers to demonstrate compliance with.

The development of the PEF methodology for the textile sector will most likely necessitate further updates of existing industry tools such as the Higg PM, which is currently aligned with the Draft EU PEF. The data and methodology used by these industry tools to substantiate product environmental impact claims will naturally need to be reviewed and potentially reassessed once the final PEFCR for apparel products is available.

In connection with the increased volume of data requests, brands will likely also request suppliers to provide indemnities and warranties regarding the quality and accuracy of disclosures. Where suppliers are found to have provided poor disclosures, or fail to disclose the requested information, they shall face liabilities.

At a macro-level, as brands conduct increasingly accurate product environmental impact assessments, they will also explore areas in which they can use more sustainable materials and eco-friendly production processes. The quantitative data will help brands identify areas where the design and manufacture of products could be improved to minimize environmental impact. This may result in changes to product design, substitution of raw materials for recycled or renewable alternatives, and upgrade of production processes (e.g., dyeing practices) to minimize water usage, energy usage, and waste discharge.

9. Penalties for non-compliance

Not applicable.

10. Form of enforcement

Not applicable.

11. Reporting/ disclosure requirements for companies in-scope

Not applicable.

12. Access to remedy mechanisms and litigation risk

Not applicable.

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

In 2019, the Directorate General for the Environment and the Directorate General for the Internal Market, Industry, Entrepreneurship and SMEs of the European Commission (DG ENV and DG GROW) issued a call for volunteers to assist in the development of new PEFCRs following the end of the 2013-2018 pilot phase.

As a result, working groups were set up for the following product categories to focus on the development of PEFCRs in these areas:

- Apparel (including accessories, dresses, hosiery, underwear, leggings/ tights, baselayer, jacket, jersey, pants, shirts, skirt, socks, sweater and cardigans, swimwear, t-shirt, boots, cleats, court, dress shoes/ heel, other athletic shoes, sandals and sneakers);
- Cut flowers and potted plants;
- Flexible packaging (low, medium and high functionality flexible packaging);
- Synthetic turf; and
- Marine fish (wild caught marine fish and marine fish from marine open net pen aquaculture).

The deadline to apply to join these working groups was in August 2019, however further applications to join may be made by contacting the working group coordinator. The relevant contact details for the working group coordinators can be found at https://ec.europa.eu/environment/eussd/smgp/ef_transition.htm. Further details regarding the composition of working groups can be found here: https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupID=470.

14. Useful resources to support compliance

European Commission, Environmental Footprint methods

European Environmental Bureau, The EU Product Environmental Footprint Methodology

2024 Edition

Factsheet

EU Textiles Regulation

Regulation (EU) 1007/2011 on Textile Fiber Names and Related Labelling and Marking of the Fiber Composition of Textile Products (Textiles Regulation)

UPDATE

1. Key Updates

No key updates since previous publication. Please see added information in Section 3, 5 and 12.

2. Overview

Regulation (EU) 1007/2011 on Textile Fiber Names and Related Labelling and Marking of the Fiber Composition of Textile Products (the **Textiles Regulation**) regulates fiber names and related labelling requirements for textile products. Textiles products that are made available on the EU market should be labelled, marked or accompanied with commercial documents that meet the requirements set out in the Textiles Regulations.

3. Context

The Textiles Regulation was put in place to protect consumer interests and ensure that businesses that sell textile products across the EU were consistent in the way that they labelled or marked the products.

EU-wide legislation around textile labelling and marketing was first introduced in the 1970s. Changes have been made over time to the laws in response to fibre and material technological developments to included more requirements for the labelling and marketing of textile products.

4. Status

The Textiles Regulation was adopted by the European Union on October 18, 2011, and was effective from May 8, 2012. It repealed and replaced the previous laws.

It is currently under review and a general public consultation took place until April 2024 to allow for amendments that will allow consumers access to all the relevant information on textiles, resort to compliance costs for companies, and regulatory consistency.

5. Scope

Companies planning to sell textiles products in the EU market (including retailers and manufacturers) must ensure that the products are labelled or marked in accordance with the Textiles Regulation. In general, textile products must carry a label clearly identifying the composition of all textile fibers used and indicating any non-textile parts of animal origin. These labels must be firmly attached to the product.

Textile products[1] exclusively composed of textile fibres (e.g., clothing), or products containing at least 80% by weight of textile fibres (such as furniture, umbrella, and sunshade coverings), fall within the scope of the Textiles Regulations.

[1] *Article 3(1)(a) defines a textile product as "any raw, semi-worked, worked, semi- manufactured, manufactured, semi-made-up or made-up product which is exclusively composed of textile fibres, regardless of the mixing or assembly process employed."*

6. Obligations for companies in-scope

Textile labels[2] are mandatory in the EU for textiles intended for sale to the end consumer. In the case of business-to-business sales, textile labels may be replaced or supplemented by accompanying commercial documents.

The manufacturer of the product must ensure that the label or marking complies with the Regulation, and that the information provided is accurate. If the manufacturer is not incorporated in the EU, these obligations shall fall upon the importer. Distributors will also need to comply with the Textiles Regulation where they place a product on the market under their name or trademark, attach the label by themselves or modify the content of the label.[3]

National authorities can check textile products for conformity with the information displayed on the label at any stage of the marketing chain, such as:

- when requesting customs clearance
- at distributor's warehouses
- at wholesale or retail outlets.

Textile labels and fibre names

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;[4] and
- use only the textile fibre names listed in the Textiles Regulation for the description of fibre compositions.

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'.

[2] *According to the definition in the Textiles Regulation, 'labelling' means affixing the required information to the textile product by way of attaching a label.*
[3] *Article 15. For the purposes of the Regulation, a distributor means a manufacturer placing a product on the market under his name or trademark, attaching the label himself or modifying the content of the label.*
[4] *There are some exceptions for listing the fibre composition, for example, visible, isolable fibres which are purely decorative and do not exceed 7% of the weight of the finished product do not have to be considered in the fibre compositions.*

All labels of textiles products sold in one or more EU countries must include translations in all the official national languages where the textile products are made available to the consumer.

Purity

Textiles products can only be described as "100%", "pure", or "all" if it is composed exclusively of one fibre type. The manufacturer may choose whether to use those terms or to refer, for example, to a 100% cotton shirt simply as "cotton".

For finished textile products made from two or more fibres, the fibre contents should be itemized and followed by their percentage of the total product (i.e., "cotton 80%, polyester 15%, nylon 5%"). For finished textile products with two or more distinct textile components (i.e., a jacket with a separate lining), textile labelling should be made separately for each component.

Types and names of fibres

The types and names of textile fibres that can be used are limited to the list in Annex I of the Textiles Regulation on textile names and related labelling. If the textile product contains a textile fibre that is not among those listed in the Textiles Regulation, it is possible to apply for a new fibre type to be added. Currently, there is debate around how to differentiate recycled fibers from virgin fibers and how to streamline the process for registering new names in light of emerging technologies.

Cotton

The term "cotton" may be used only to describe the fibre obtained from the bolls of the cotton plant (Gossypium). The term "cotton linen union" may be used only for products having a pure cotton warp and a pure flax weft, in which the percentage of flax accounts for not less than 40% of the total weight of the fabric. This name must be accompanied by the composition specification "pure cotton warp - pure flax weft".

Wool

- Has not previously been part of a finished product;
- Has not been subjected to any spinning and/or felting processes (other than those required in the manufacture of the product); and
- Has not been damaged by treatment or use.

The terms "virgin wool" or "fleece wool" may be used to describe wool contained in products that are made from a mixture of texture fibres. In such cases, the wool fibre must:

- Not have been previously incorporated in a finished product;
- Not be damaged by treatment; and
- Account for at least 25% of the total weight of the mixture.

7. Compliance recommendations for companies in-scope

Companies in-scope should ensure that textile products that are made available on the EU market are labelled in accordance with the requirements of the Textiles Regulation. The composition of a textile product should be determined through robust testing and inspection, as the information provided on the labels must be accurate.

Note that wash care labels, country of origin, size label, and manufacturer identification are not specifically required by the Textiles Regulation. Having said that, it is strongly recommended to include this information as certain EU countries may require such information, or they might be covered by other legislations or industry standards.

8. Potential implications for suppliers

The Textiles Regulation is focused on protecting consumers from misrepresentation in the labelling of textiles products, rather than addressing the environmental and human rights impacts of textile products or production processes. As such, it is not highly relevant to the scope of suppliers' sustainability obligations.

That being said, suppliers to companies in-scope should expect to receive requests for specific labeling and information relating to the purity and types of fibres used. These disclosures will likely be subject to independent verification and brands in-scope may seek assurances from suppliers relating to the accuracy of the information provided.

9. Penalties for non-compliance

Not applicable.

10. Form of enforcement

The ECHA has no enforcement responsibilities; therefore, enforcement of REACH regulations is a national responsibility. Each EU country must put in place an official system of controls and adopt legislation specifying penalties for non-compliance with the provisions of REACH.

11. Reporting/ disclosure requirements for companies in-scope

Importers or downstream users that place products falling within certain excluded uses/sectors shall be subject to reporting requirements. They will be required to send the identity of the polymer(s) used, a description of the use of the microplastic, the quantity of microplastics used in the previous year, and the quantity of microplastics released to the environment (either estimated or measured in the previous year) to the ECHA. The proposed reporting requirement is expected to help ensure that significant emissions are not occurring from the excluded uses/sectors.

12. Access to remedy mechanisms and litigation risk

Not applicable.

13. Opportunity to participate and engage in legislative developments

New initiatives may be launched by the time of the proposal submission set on for the first quarter of 2025.

14. Useful resources to support compliance

YourEurope, Textile Label

EURlex, REGULATION (EU) No 1007/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council

12

EU Taxonomy

UPDATE

1. Key Updates

The definition of "environmentally sustainable" activities, as set out by the EU Taxonomy, is expanding. This includes climate change adaption and water and marine resources. Moreover, on January 15, 2024, five non-governmental organizations (NGOs) initiated a legal challenge against the European Commission challenging certain rules that would allow certain aviation and shipping activities to be classified as sustainable if they meet certain efficiency criteria, even if they operate on fossil fuels. The key changes are in Section 5, 6, 7, 11, 13 and 14. Particular attention should be given to disclosure obligations set out in Section 6.

2. Overview

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

3. 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 UNSDGs. 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 environmentally sustainable. 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.

4. 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.

5. Scope

The Taxonomy applies to:

- Financial companies that offer financial products;[1]
- Companies that are subject to the EU Non-Financial Reporting Directive (the NFRD) or 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".

[1] *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.*

6. Obligations for companies in-scope

Companies in-scope must include in their non-financial statement, consolidated non-financial statement information or sustainability statement how and to what extent their activities are associated with economic activities that qualify as environmentally sustainable (defined below). In particular, companies must disclose:

- The proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable; and
- The proportion of their capital expenditures and proportion of operating expenditures related to assets or processes associated with economic activities that qualify as environmentally sustainable.

The Taxonomy provides guidance on how to determine whether an activity qualifies as environmentally sustainable. An economic activity qualifies as **environmentally sustainable** if it meets the following four conditions:

1. It contributes substantially to one or more environmental objectives[2] or is an enabling activity;[3]
2. It does not significantly harm (**DNSH**)[4] any of the environmental objectives;
3. It is carried out in compliance with minimum safeguards[5]; and
4. It complies with technical screening criteria (the **TSC**) set out by the Commissions (e.g., the Delegated Act supplementing Article 8 of the Regulation).[6]

[2] *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.*

[3] *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.*

[4] *Significant harm is defined for each environmental objective in the Taxonomy. For example, a significant harm to the climate change mitigation objective would be where an activity leads to significant greenhouse gas emissions. When assessing harm, both the environmental impact of the activity itself and the environmental impact of the products and services provided by that activity throughout their life cycle must be taken into account, in particular by considering the production, use and end of life of those products and services.*

[5] *Minimum safeguards means procedures implemented by an Undertaking that is carrying out an economic activity to ensure alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organization on Fundamental Principles and Rights at Work and the International Bill of Human Rights.*

[6] *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 12 below.*

The Taxonomy articulates six environmental objectives:

Objective 1

Climate change mitigation[7]

TAn activity that meets the first objective are those that substantially contribute to stabilizing greenhouse gas emissions. The Taxonomy refers to the long-term temperature goal of the Paris Agreement, namely keeping the global average temperature below 2°C and limiting global temperature to 1.5°C above pre-industrial levels, and it describes ways in which an economic activity can contribute to climate change mitigation.

Objective 2

Climate change adaptation

Climate change adaptation is demonstrated in an economic activity that either substantially reduces the risk of the adverse impact of the current climate and the expected future climate on that economic activity or substantially reduces that adverse impact, without increasing the risk of an adverse impact on people, nature, or 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 that contributes substantially to achieving the good status of bodies of water, including bodies of surface water and groundwater or to preventing the deterioration of bodies of water that already have good status, or the good environmental status of marine waters or preventing the deterioration of marine waters that are already in good environmental status.

[7] The Climate Delegated Act was adopted to, among other topics, establish technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation and adaption was adopted to, among other topics, establish technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation and adaption

Objective 4

Transition to a circular economy

An activity that 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.

7. Compliance recommendations for companies in-scope

As explained in Section 5 above, the Taxonomy includes only a few binding obligations on companies in-scope. Please refer to Section 11 below for more details.

There is a phased-in approach for companies in-scope to begin reporting. As of January 2024, non-financial entities are required to report on eligibility and alignment for the previous calendar year. Information on these timelines can be found on the European Commission's website.[8]

8. 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.[9] 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] *https://ec.europa.eu/sustainable-finance-taxonomy/.*

[9] *By contrast, those that demonstrate poor environmental risk management could see greater challenges in accessing capital.*

9. 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.

10. Form of enforcement

Not applicable.

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

Reporting obligations for non-financial companies in-scope

As noted in section 6, the Taxonomy requires companies that are subject to the NFRD or the CSRD to disclose the proportion of their activities that align with the Taxonomy criteria as activities that qualify as environmentally sustainable in their non-financial statement, consolidated non-financial statement or sustainability statement. These companies in-scope must report on the following key performance indicators:

- The proportion of turnover derived from the products or services associated with economic activities that qualify as environmentally sustainable; and
- The proportions of their capital expenditure and operating expenditure related to assets or processes associated with Taxonomy activities that qualify as environmentally sustainable. 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 Annex I to the Disclosures Delegated Act.

Reporting obligations for financial companies in-scope

Key performance indicators

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.[10] 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 product do not take into account the EU criteria for environmentally sustainable economic activities."

[10] *Article 5, Taxonomy*

12. Access to remedy mechanisms and litigation risk

Not applicable.

13. 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.

On January 15, 2024, five NGOs initiated a legal challenge against the European Commission challenging certain rules that would allow certain aviation and shipping activities to be classified as sustainable if they meet certain efficiency criteria, even if they operate on fossil fuels. The NGOs expect the Commission to respond by June 2024. By 27 June 2024, no official response by the Commission was issued.

14. Useful resources to support compliance

European Commission, EU taxonomy for sustainable activities

European Commission, EU Taxonomy Navigator

European Commission, Amendments to the Disclosures Delegated Act

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, Draft Commission Notice on the interpretation and implementation of certain legal provisions of the Disclosures 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)

European Commission, Draft Commission Notice on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of the EU Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activites and assets (third Commission Notice)

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

2024 Edition

Factsheet

The German Due Diligence in the Supply Chain Act

NEW ✳

1. Overview

The German Supply Chain Due Diligence Act (the Act) is intended to mitigate human rights and specified environmental-related risks in company operations and supply chains that can lead to human rights violations.[1] Please see added information in Section 3, 4, 9 and 12.

[1] *The German authorities have given no indication at present about how the integration of CSDDD will be with the Act. The German authorities are investing significant resources in developing guidance and enforcement structures around the Act and there is currently no official guidance around the application of CSDDD to a landscape that has already embedded the Act.*

2. Context

In 2016, Germany's Federal Government published its National Action Plan (the NAP) implementing the UN Guiding Principles on Business and Human Rights (the UNGPs). The NAP set out the Federal Government's expectations concerning corporate human rights due diligence. In the NAP, the Federal Government indicated it expects all enterprises to exercise human rights due diligence in accordance with the UNGPs commensurate with their size, the sector in which they operate and their position in supply and value chains.

At the time the NAP was issued, the Federal Government indicated compliance would be reviewed annually starting in 2018 and that, in the absence of adequate compliance, the Federal Government would consider further action, including legislation. The goal was that at least 50% of all enterprises based in Germany with more than 500 employees would incorporate human rights due diligence into their processes by 2020. Subsequent reviews by the Federal Government indicated this goal was not close to being achieved. A study released in July 2020 indicated that between 13% and 17% of the companies surveyed met the requirements of the NAP. As a result of the perceived inadequacy of voluntary compliance, momentum for mandatory human rights due diligence legislation began to build.

On February 12, 2021, the political parties that formed the coalition government at the time announced they had reached a consensus on the key terms of a new mandatory human rights due diligence framework.

3. Status

The Act was passed by the German Parliament on June 11, 2021. It was passed by a wide margin, with 412 votes in favor, 159 against and 59 abstentions. The Act took effect on January 1, 2023, initially applying to larger enterprises with at least 3,000 employees in Germany. These enterprises were expected to have their due diligence and risk management systems fully operational starting in 2023. As of January 1, 2024, the Act's applicability expands to include smaller enterprises that have at least 1,000 employees in Germany. By the start of 2024, all enterprises meeting these employee thresholds are expected to fully comply with the Act. In May 2024, the EU Corporate Sustainability Due Diligence Directive (the CSDDD) was adopted. Due to the stricter reporting requirements set out by the Directive, the Act will require harmonisation accordingly.

In March 2024, the European Council and the European Parliament reached political agreement on the EU Corporate Sustainability Due Diligence Directive (the CSDDD). If the CSDDD is adopted, the Act will need to be harmonized with the CSDDD.

4. Scope

A company is subject to the Act if it meets two threshold requirements:

- The company has its head office, principal place of business, administrative headquarters, registered office, or branch office in Germany. This includes retail outlets of foreign companies as long as they are registered in Germany and have more than 1000 employees

- Starting in 2024, the Act applies to companies with 1,000 or more employees in Germany, down from 3,000 in 2023. Employees at subsidiary companies (including employees posted abroad) are included. Temporary workers also are included if their assignments last more than six months.

5. Obligations for companies in-scope

Risk Management System

Companies within the scope of the Act must establish an appropriate and effective risk management system to identify, minimize, prevent, and address human rights risks and environment-related risks, as well as to end violations of human rights-related or environment-related obligations in their supply chains, particularly when the company has caused or contributed to these risks or violations. A **"supply chain"** encompasses all products and services of a company within the scope of the Act and includes all steps in Germany and abroad necessary to produce the products and services, from the extraction of raw materials to delivery to the end customers. This includes actions of a company in its own business operations and the actions of direct and indirect suppliers.

The risk management system must consider the company's employees, the employees in its supply chain and other persons directly affected by its economic activity or the economic activity of a company in the supply chain. Specific requirements include:

- Designating a responsible person (e.g., appointing a human rights officer);
- Senior management must seek information on a regular basis (at least once per year) about the work of the person responsible for monitoring risk management. This requirement is specific to this regulation's implementation and involves oversight beyond standard performance reviews to ensure compliance with the Act's mandates; and
- Incorporation of preventative measures and remedial measures.

Complaint Procedure

Companies within the scope of the Act are required to establish a complaints procedure that is easily accessible to both internal and external stakeholders. The complaints mechanism must be:

1. Documented and publicly available.
2. Managed by the company or an entity that is independent of the operational processes being monitored, ensuring that the complaints are handled without bias and that the confidentiality of the complainant is maintained.
3. Subject to an annual review to ensure that it remains effective in identifying, addressing, and resolving complaints.

The complaint procedure is intended to enable the reporting of human rights risks and environment-related risks as well as violations of human rights-related or environment-related obligations within the company's own operations and those of its direct suppliers.

Companies may either establish an internal complaints procedure or entrust a third party to manage the complaints procedure on their behalf. This external entity must also adhere to the same standards of accessibility, impartiality, and confidentiality as required by the Act. Regardless of whether the procedure is managed internally or externally, companies must review these procedures at least annually and on an ad hoc basis as warranted by new developments or emerging issues within the company's operations or its supply chain.

Definitions

Human Rights Risk: A "human rights risk" within the meaning of the Act refers to a situation in which there is a sufficient likelihood, based on factual circumstances, that a violation of protected human rights may occur. This encompasses risks associated with violations such as forced labor, child labor, discrimination, and other abuses that undermine fundamental human rights as recognized in international human rights laws and standards. The full list of human rights-related obligations is found in Section 2 of the Act, paragraph 2, numbers 1–12.

Environmental-Related Risk: An "environment-related risk" is defined in the Act as a condition that, based on factual circumstances, presents a sufficient probability of leading to significant adverse impacts on the environment. This includes, but is not limited to, pollution of air, water, and soil; improper handling or disposal of hazardous materials; and other activities that could lead to the degradation of natural resources. The full list of environmental-related obligations found in Section 2 of the Act, paragraph 3, numbers 1–8.

Violation of a Human Rights-Related/Environmental-Related Obligation: An "environment-related risk" is defined in the Act as a condition that, based on factual circumstances, presents a sufficient probability of leading to significant adverse impacts on the environment. This includes, but is not limited to, pollution of air, water, and soil; improper handling or disposal of hazardous materials; and other activities that could lead to the degradation of natural resources. The full list of environmental-related obligations found in Section 2 of the Act, paragraph 3, numbers 1–8.

Risk Analysis

Companies within scope of the Act must conduct a risk analysis, at least annually, to "identify human rights and environment-related risks in its own business area and at its direct suppliers." A risk analysis should also be carried out on an as-needed basis if the company expects a significant change or significant expansion of the risk situation in its supply chain (see Section 5 for a comprehensive definition of "supply chain"). The results of the analysis must be communicated internally to relevant decision-makers (e.g., the Board or the purchasing department).

A "direct supplier" is a business that has a contract with a company within the scope of the Act to provide goods or services that are essential for making the company's products or for the services it offers.

Preventive Measures

If a company within the scope of the Act identifies human rights or environment-related risks in their own operations or at their direct suppliers, it must take "appropriate preventive measures."

For the company's own operations, these measures include:

1. Issuing a policy statement on its human rights strategy, which articulates the company's priority human rights and environmental risks and the company's strategy for addressing these issues.
2. Developing and implementing procurement strategies and purchasing practices that prevent or minimize identified risks.
3. Conducting training programs in the relevant business areas.
4. Implementing risk-based control measures to verify compliance with the human rights strategy contained in the policy statement.

For direct suppliers, the preventive measures include:

1. Considering human rights and environmental expectations 2 when selecting a direct supplier.
2. Including obligations in contracts that require suppliers to adhere to specified human rights and environmental practices and address them in the supply chain.
3. Providing training to suppliers on how to comply with the standards agreed to in the contracts.
4. Establishing risk-based controls to regularly assess supplier compliance with the human rights strategy.

These measures should be regularly reviewed at least annually and additionally on an ad hoc basis to ensure they remain effective and responsive to new challenges or significant changes in the supply chain.

Remedial Action

If a violation of human rights or environmental standards has occurred or is imminent within the company's own business operations in Germany or at its direct suppliers, the company must take remedial action to prevent, end, or minimize the violation.

The Act specifies:

- In its own business operations in Germany, the company must end the violation.
- For violations at its business operations abroad or at direct suppliers, the company must make efforts to end the violation or, where this is not immediately possible, minimize it as effectively as possible.

Specific steps include:

1. **Immediate Response:** Develop and implement a plan to end or minimize the violation, including a concrete timeline.
2. **Collaboration:** Work collaboratively with the direct supplier to develop and implement this remedial plan. Consider forming alliances with other companies or organizations to strengthen the remedial efforts. This could involve joining sector initiatives or collaborating with NGOs.
3. **Supplier Suspension:** Consider temporarily suspending the direct supplier while remedial actions are formulated and implemented.
4. **Supplier Termination:**
    - Termination of the supplier contract is required if:
    - The violation is deemed very serious,
    - The remedial plan fails to address the violation effectively,
    - No less severe alternative solutions are available, and
    - Efforts to influence the supplier to change practices are unlikely to succeed.

The company must evaluate the effectiveness of these remedial measures at least annually.

Indirect Suppliers

Indirect suppliers are subject to a lower duty of care compared to direct suppliers. The term "duty of care" in a business context refers to a company's legal and ethical responsibility to take reasonable steps to ensure they do not cause harm or allow harm to be caused to others, particularly concerning human rights and environmental impacts.

For indirect suppliers – those who are part of the supply chain but do not have direct contractual agreements with an in-scope company–the obligations to monitor and enforce compliance with human rights and environmental standards are activated only when there is actual evidence, or "substantiated knowledge," of potential violations. This approach recognizes that companies typically have less control over indirect suppliers compared to direct suppliers.

Upon obtaining substantiated knowledge of a potential violation, an in-scope company must:

1. Carry out a risk analysis to assess the nature and severity of the issue.
2. Implement appropriate preventive measures tailored to mitigate the identified risks for the indirect supplier. This might involve working directly with the supplier or engaging with broader industry efforts to improve standards and practices, which could include supporting sector-specific or cross-sector initiatives.
3. Take remedial action to prevent, cease, or minimize the violations.
4. Update its policy statement, if necessary, to reflect any new understandings or strategies developed in response to these risks

Documentation and Records Maintenance

Companies within the scope of the SCDDAAct must continuously document their due diligence efforts. This documentation should include:

Due Diligence Documentation: Companies must document their efforts to meet due diligence obligations. This includes records on the identification and handling of human rights and environmental risks or violations. The documentation must be updated continuously and retained for at least seven years from its creation.

Annual Report: An annual report on due diligence obligations must be prepared. This report should reflect the previous financial year's activities and must be made publicly available on the company's website no later than four months after the financial year-end. It should be kept for seven years and clearly state:

- Whether any human rights or environmental risks or violations have been identified, and if so, which ones.
- The actions taken to fulfill due diligence obligations, with reference to the measures described in the Act, especially those related to the company's policy statement and complaints received.
- The company's assessment of the impact and effectiveness of these measures.
- Conclusions drawn from this assessment for future due diligence measures.

No Identified Risks: If no risks or violations are identified, the company should include in its report an explanation of this, and no further detailed disclosures are required as per the second paragraph.

Protection of Secrets: When documenting and reporting, companies must also consider the protection of business and trade secrets.

6. Compliance recommendations for companies in-scope

Companies subject to the Act should implement and maintain the above programs to ensure compliance with the Act's due diligence obligations. Keep in mind that the Act requires annual repetition of certain acts (e.g., annual risk assessment). Ensure that a system is in place to repeat and grow diligence processes as appropriate.

7. Potential implications for suppliers to companies in-scope

The Act outlines clear requirements for direct suppliers to companies that are covered by the law. These direct suppliers must actively manage and verify that their operations adhere to human rights and environmental standards. Specifically, direct suppliers are expected to:

1. **Contractual Compliance:** In agreements with in-scope companies, suppliers must provide assurances that they are upholding the required human rights and environmental standards. This also involves extending these commitments to their own supply chain.
2. **Training and Education:** Suppliers must engage in training programs for their staff to maintain awareness and adherence to the Act's human rights and environmental provisions. Such programs should include initial and ongoing training to keep all levels of the supplier's organization informed and compliant with the contract.
3. **Verification Mechanisms:** Suppliers should establish agreed-upon procedures with their clients to check that they are indeed following the human rights strategies. These checks should be tailored to identify risks and confirm ongoing compliance.

As noted in Section 5 above, the Act imposes a series of requirements on companies within its scope, which, in turn, have a cascading effect on suppliers. As these in-scope companies work to align with the Act, suppliers must be prepared for a heightenedlevel of scrutiny and an increased need for transparency in their operations. This will likely involve more in-depth evaluations of suppliers' practices, more detailed reporting requirements, and potentially, more stringent contractual obligations that mirror the rigorous standards of the Act.

It is important to note that the Act sets out due diligence obligations upon companies in-scope which cannot be transferred to suppliers. The German Federal Office for Economic Affairs and Export Control (BAFA), the responsible governmental agency for enforcing the Act, has publicly stated that they are paying particular attention to the prevention of risk and responsibility shifting to suppliers.

Suppliers should ensure that the burden of compliance is not shifted to them and remind brands that they are not legally liable under the Act but they should be prepared to respond to the effects arising from the implementation of such obligations and to cooperate in the provision of information that might be helpful to support the companies in-scope in achieving compliance. Suppliers should ask for technical support and/or financial assistance in the event that these compliance-related requests present a burden.

To effectively respond to companies' demands, suppliers are advised to undertake the following proactive measures:

Comprehensive Evaluation of Supply Chains: Suppliers should conduct thorough environmental and human rights due diligence of their own supply chains to identify and address any human rights or environmental risks. This includes assessing working conditions, environmental impact, and any potential areas of non-compliance (see Section 2 of the Act for the full list of human rights and environmental obligations).

Documentation and Record-Keeping: Maintain detailed records of due diligence activities, such as audits, risk assessments, and remedial actions. This documentation will be crucial for demonstrating compliance to clients and regulatory bodies.

Development of a Robust Compliance Framework: Implement a compliance management system tailored to the specific needs of the supplier's operations and the requirements of the clients. This framework should include policies and procedures for regular risk assessment, preventive measures, and remedial actions.

Contractual Compliance: Prepare to meet contractual requirements that may be imposed by clients. These contracts might stipulate specific compliance standards or require periodic reporting on your due diligence practices. It is important suppliers understand and negotiate these terms to ensure they are feasible and aligned with their operational capabilities.

Training and Capacity Building: Develop training programs for staff to ensure they understand the Act's requirements and how they relate to the supplier's operations. Training should cover the identification and mitigation of risks, as well as procedures for reporting and addressing potential issues.

Establishment of a Complaints Procedure: Suppliers should set up a clear and accessible process for raising and addressing grievances within their operations. This reflects the obligation of in-scope companies but is also a proactive measure for suppliers to manage risks and demonstrate their commitment to due diligence. This mechanism should align with the principles outlined in Section 8 of the Act and ensure the confidentiality and protection of complainants.

Anticipate Legal Implications: Be aware that non-compliance could lead to legal challenges not only for their clients but also for the suppliers themselves. The Act allows NGOs and trade unions to sue on behalf of affected individuals, which could include actions taken against suppliers if they contribute to their client's non-compliance.

Suppliers must be ready to adapt these measures as client requirements evolve. Being proactive in these areas will not only help ensure compliance but also strengthen business relationships by demonstrating a commitment to ethical practices. Furthermore, contractual responsibilities, including those related to human rights and environmental standards, can indeed be passed down from companies in scope to their suppliers. It is therefore important for suppliers to engage in open dialogue with their clients to clarify these responsibilities and establish mutually agreeable compliance processes.

8. Penalties for non-compliance

Subject companies that fail to comply with the requirements of the Act, either intentionally or negligently, may be subject to administrative fines. Depending upon the nature of the violation, the fine can be up to €8 million. However, if the company has an average annual turnover over the last three years of more than €400 million, the fine for failing to take remedial measures to address a violation of a human rights-related or an environment-related obligation in the subject company's own business and at its direct suppliers can be up to 2% of average annual sales. If a potential fine exceeds €175,000, the subject company also can be excluded from public procurement for up to three years.

9. Forms of enforcement

The Federal Office for Economic Affairs and Export Control (BAFA) is charged with reviewing whether a subject company has complied with the Act. Among other things, it can require the subject company to address reporting deficiencies within a reasonable time period. It also is empowered to, with three months' notice, require a subject company to submit a plan to remedy substantive compliance deficiencies, as well as to provide a subject company with specific action items to fulfill its obligations. It is important to reiterate that the Act allows NGOs and trade unions to sue on behalf of affected individuals, which could include actions taken against suppliers if they contribute to their client's non-compliance.

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

Subject companies are required to annually report on their diligence no later than four months after the end of their fiscal year (April 30, for companies with a December 31 fiscal year-end). The report is required to discuss:

- The human rights and environmental risks identified;
- The actions taken in response to complaints received, detailing how such feedback has informed the company's due diligence measures to address human rights and environmental concerns;
- How the subject company assesses the impact and effectiveness of the measures taken; and
- The conclusions drawn from the assessment for future measures.

BAFA has an online questionnaire accessible through its website that subject companies need to fill out to satisfy annual reporting under the Act. Completing the online questionnaire submits the report to BAFA. The report (i.e., the completed questionnaire) is required to be published on the subject company's public website no later than four months after each fiscal year end and kept available for seven years.

11. Access to remedy mechanisms and litigation risk

As noted above, the Act requires in-scope companies to develop a complaint procedure through which affected individuals or individuals with knowledge of possible violations can report the human rights and/or environmental risks and violations. Further, BAFA has set up an online complaint form, with an option for anonymity, whereby known or suspected violations of the Act can be reported.

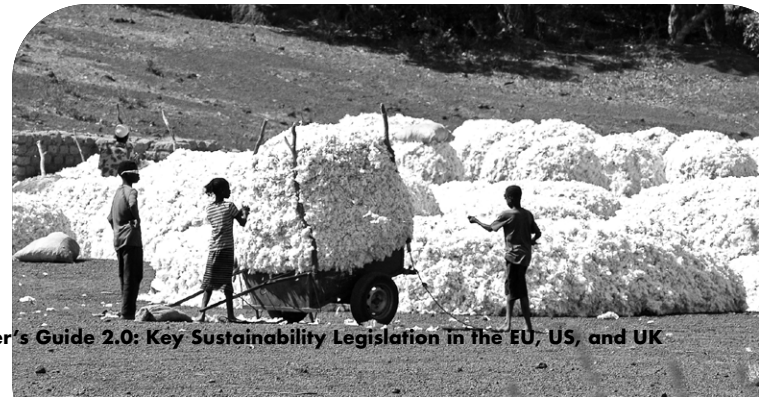
Non-governmental organizations (NGOs) and trade unions have the right to take legal action in German courts on behalf of individuals who have suffered harm due to a company's actions. This means that these organizations can help people use existing laws to seek justice. However, the Act itself doesn't create new reasons to sue a company—it just ensures that the current laws are applied effectively when a company does not meet its responsibilities under the Act.

For suppliers, this creates a direct impact. They could face legal challenges if they are found to be part of the problem, particularly if their actions—or lack of action—lead to a company being sued. Thus, it's crucial for suppliers to collaborate with the company to avoid being involved in such legal issues.

For example on April 24, 2023, the Bangladeshi union National Garments Workers Foundation (NGWF), with support from the European Center for Constitutional and Human Rights (ECCHR) and the African Women's Development and Communication Center (FEMNET), filed a complaint with BAFA against Amazon, IKEA and Tom Tailor, arguing that factories supplying goods to these retailers do not have adequate safety measures in place to protect factory workers and therefore the companies are not in compliance with their due diligence obligations under the Act.

On November 3, 2023, international aid organization Oxfam filed a complaint with BAFA against Rewe and Edeka, two of Germany's key supermarkets, alleging human rights abuses on banana and pineapple plantations in Latin America. The complaint argues that ample evidence was put forward to expose low wages, disastrous working conditions, and suppression of trade unions and, while competitors addressed the concerns, Rewe and Edeka ignored them.

On the Act's one-year anniversary, BAFA issued a release summarizing enforcement of the Act to date. BAFA conducted 486 checks on companies during 2023, focusing on the automotive, chemicals, pharmaceuticals, mechanical engineering, energy, furniture, textiles and the food and beverage industries. Through its complaints procedure, BAFA received 38 complaints, of which 20 were unrelated to the Act's due diligence obligations or were not sufficiently substantiated; BAFA contacted companies in six cases.



12. Comparison with other Due Diligence Laws

The Act and the CSDDD aim to reinforce the responsibility of companies regarding the impact of their activities on human rights and the environment. However, there are key differences between the two that merit discussion. A detailed comparison between the two reveals the following distinctions and overlaps in terms of due diligence, risk management, complaints mechanism, reporting requirements, legal consequences, and penalties for non-compliance. As noted above, if the CSDDD is formally adopted, the Act will need to be harmonized with the CSDDD. Note, as a European Directive, upon enactment, the CSDDD would be required to be transposed into EU Member State national law. Member States would have two years to transpose the Directive into national law, or in Germany's case, amend the Act.

Due Diligence Requirements

Both the Act and the CSDDD require companies to integrate due diligence into their policies and risk management systems. The Act specifies that risk management must be part of all relevant business processes, including the establishment of a due diligence policy statement and preventive measures in the company's own area and vis-à-vis direct suppliers. The CSDDD is aligned with the six steps defined by the OECD Due Diligence Guidance for Responsible Business Conduct, which includes integrating due diligence into policies and management systems and identifying and assessing adverse impacts.

Risk Management System

The Act mandates an effective risk management system to identify and minimize human rights and environmental risks, with specific responsibilities assigned within the enterprise, including the appointment of a human rights officer and regular information-seeking by senior management. The CSDDD stipulates that due diligence should be integrated into all relevant policies and risk management systems, with the due diligence policy developed in consultation with employees and their representatives.

Complaint Procedure

The Act requires companies to establish a transparent and accessible internal complaints procedure, enabling the reporting of human rights and environmental risks and violations. The procedure must be reviewed at least annually or when there's a significant change in risk situations. The CSDDD also requires companies to establish a fair and accessible procedure for handling complaints, with measures to prevent retaliation against complainants.

Reporting Requirements

Companies subject to the Act must document their due diligence efforts and prepare an annual report, publicly available for at least seven years, detailing identified risks, actions taken, and assessments of the effectiveness of measures. The CSDDD requires companies to publish an annual statement on their due diligence efforts, which, from January 2029, must be submitted to the European Single Access Point (ESAP) for accessibility. Companies would not have to report under the CSDDD if they are required to report under the Corporate Sustainability Reporting Directive.

Legal Consequences and Penalties for Non-Compliance

The Act sets out fines for various violations, with a tiered penalty system based on the severity of the non-compliance and the turnover of the company, going up to 2% of the average annual turnover for serious offences. Similarly, the CSDDD requires Member States to lay down rules on penalties for infringements, with considerations for the nature and severity of the impacts, investments made, and remedial actions taken by the company. The maximum limit of pecuniary penalties must be not less than 5% of the net worldwide turnover.

13. Compliance Approaches

To ensure compliance with both the Act and the CSDDD (as it may be harmonized into national law and the Act), companies should adopt a comprehensive approach to due diligence that encompasses a broad spectrum of human rights and environmental protections. Although the CSDDD has yet to be formally approved, preparing for its requirements will provide a solid foundation for compliance with the Act and vice versa, given the overlap in their protective scopes.

Strategic Compliance Planning: Firstly, companies should align their due diligence processes with the provisions outlined in the CSDDD, as this will broadly cover the requirements of the Act. This includes implementing rigorous risk management systems, establishing effective complaints procedures, and ensuring transparent reporting and remediation processes. The CSDDD's expansive approach provides a structured framework that companies can follow to address risks throughout their entire supply chain.

Specific Considerations for the Act: While aligning with the CSDDD will ensure a high level of compliance, particularly concerning the substantive human rights and environmental protections covered by the law, companies must not overlook the specifics of the Act, particularly its reporting requirements. The Act mandates detailed annual reporting and has established online platforms for this purpose, which are already operational. These reports require specific data and documentation that may go beyond the general disclosures anticipated by the CSDDD. Therefore, companies need to integrate these specific reporting obligations into their overall compliance strategy.

Addressing Broader and Future Obligations: Furthermore, companies should review the substantive rights and environmental protections outlined in both pieces of legislation. While compliance with the Act offers a robust framework, the CSDDD introduces additional protections related to hazardous waste, endangered species, maritime law, and ozone protection, which are not fully covered by the SCDDAAct. Companies should therefore enhance their compliance programs to incorporate these additional international treaties and obligations.

Long-Term Compliance Strategy: In the long term, as the CSDDD becomes transposed into national law and national implementation frameworks are established across the EU, companies will need to adapt their compliance strategies accordingly. This adaptation should include regular reviews of compliance frameworks to ensure they remain effective and comprehensive, covering all substantive rights and environmental protections as they evolve under EU law.

In conclusion, while the CSDDD offers a broader scope of compliance, starting with the Act provides a practical and effective groundwork for German companies or suppliers. By proactively aligning their due diligence systems to meet the CSDDD's expected standards, companies set themselves up for success to comply with current German regulations but also prepare to meet future EU-wide obligations.

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

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

15. Useful resources to support compliance

BAFA Q&A Guidance

Federal Ministry of Labor and Social Affairs' overview of diligence obligations and recommendations

BAFA's Guidance on Conducting a Risk Analysis (Identifying, weighing, and prioritizing" link at bottom of page).

BAFA's Guidance on the Principle of "Appropriateness" under the Act (in German) (Handout Adequacy" link at bottom of page)

Unofficial English translation of the Act

16. Table of Rights

Treaty/Convention	ACT	CSDDD
ILO Convention No. 29	●	●
ILO Convention No. 87	●	●
ILO Convention No. 98	●	●
ILO Convention No. 100	●	●
ILO Convention No. 105	●	●
ILO Convention No. 111	●	●
ILO Convention No. 138	●	●
ILO Convention No. 182	●	●
International Covenant on Civil and Political Rights (ICCPR)	●	●
International Covenant on Economic, Social and Cultural Rights (ICESCR)	●	●
Convention on the Rights of the Child		●
Minamata Convention on Mercury	●	●
Stockholm Convention on Persistent Organic Pollutants	●	●
Basel Convention on Hazardous Wastes	●	●
Convention on Biological Diversity		●
Convention on International Trade in Endangered Species (CITES)		●
United Nations Convention on the Law of the Sea (UN-CLOS)		●
Vienna Convention for the Protection of the Ozone Layer		●

Table of Rights (continued)

Substantive Human Right	ACT	CSDDD
Right to life	●	●
Prohibition of torture and cruel, inhuman, or degrading treatment	●	●
Right to liberty and security		●
Prohibition of arbitrary interference with privacy, family, or home		●
Freedom of thought, conscience, and religion		●
Right to fair and favorable work conditions	●	●
Prohibition of discrimination in employment	●	●
Prohibition of child labor	●	●
Prohibition of forced labor	●	●
Right to freedom of association and collective bargaining	●	●
Prohibition of slavery and human trafficking	●	●
Right to an adequate standard of living – wage		●
Right to health – in the context of pollution	●	●
Right to education – child rights		●
Rights related to marriage, family, parents, and children		●
Right to participate in cultural life and enjoy benefits of science		●
Rights to water and sanitation	●	●
Right to housing	●	●

Table of Rights (continued)

Substantive Human Right (continued)	ACT	CSDDD
Right to food		●
Rights of indigenous peoples		●
Prohibition of environmental degradation	●	●
Right to a healthy environment	●	●
Prohibition of unlawful land and resource appropriation	●	●

Substantive Environmental Right	ACT	CSDDD
Prohibition of mercury-added products (Minamata Convention)	●	●
Prohibition of mercury in manufacturing (Minamata Convention)	●	●
Prohibition of improper mercury waste treatment (Minamata Convention)	●	●
Prohibition of certain chemical productions and uses (Stockholm Convention)	●	●
Environmentally sound waste management (POPs Convention)	●	●
Control of hazardous waste export (Basel Convention)	●	●
Ban on hazardous waste export to non-Annex VII countries (Basel Convention)	●	●
Import of hazardous wastes from non-parties (Basel Convention)	●	●
Avoiding or minimizing adverse impacts on biological diversity		●

Table of Rights (continued)

Substantive Environmental Right (continued)	ACT	CSDDD
Prohibiting wildlife trade without CITES permit		●
Prohibition of importing or exporting certain hazardous chemicals (Rotterdam Convention)		●
Prohibition of unlawful production, consumption, import, export of substances depleting the ozone layer		●
Obligation to avoid or minimize adverse impacts on natural heritage (World Heritage Convention)		●
Obligation to avoid or minimize adverse impacts on wetlands (Ramsar Convention)		●
Obligation to prevent pollution from ships (MARPOL 73/78)		●
Obligation to prevent marine pollution by dumping (UNCLOS) X		●

14

Lessons for fashion: How the agricultural sector is tackling commercial compliance through the EU Directive on unfair trading practices

NEW ✳

1. Overview

It is notable how few of the pieces of legislation covered in this guide address purchasing practices and inequity across the fashion value chain. Unlike the other factsheets in this guide, this section aims to give suppliers insight into how the agricultural sector, characterised by similarly asymmetrical commercial relationships, is working to improve these issues through the EU Directive on unfair trading practices.

1. Context

The EU Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (UTP Directive) recognises that unfair trading practices are widespread in the EU and can have harmful effects, particularly for small and medium-sized enterprises (SME) in the agricultural and food supply chain. The main objectives of the UTP Directive are:

- to protect farmers, farmers organisations and other weaker suppliers of agricultural and food products against stronger buyers;
- to prohibit a range of unfair trading practices that are considered the most harmful;
- the enforcement of the unfair trading practices by authorities in each EU Member State and coordination among the authorities; and
- to introduce a uniform minimum standard of protection across the EU.

The food supply chain is highly vulnerable to unfair trading practices, as there are significant imbalances between a large number of farmers and smaller suppliers of partly perishable and non-perishable products and a few large processors, distributors and food retailers. Farmers and small suppliers often do not have the means to defend themselves against unfair trading practices such as late payment, leading them to reluctantly accept unfair terms in order to maintain business relationships, which causes significant problems in the availability of working capital and cash flow. Unfair trading practices not only jeopardise the livelihoods of farmers and small suppliers who are particularly exposed to biological and meteorological risks, but also the supply of food for the EU population. Recognising the strategic nature of the agricultural sector, the importance of small farmers and the stark imbalance of power in the supply chain, the EU adopted the UTP Directive to improve the protection of farmers and smaller suppliers by banning certain unfair practices. As part of a wider governance strategy (Farm to Fork), this Directive also aims to improve the position of farmers in the agri-food supply chain.

The EU Directive 2019/633 was adopted on 17 April 2019. Member states were mandated to incorporate the Directive into their national legislation by 2021. In Germany, the UTP Directive has been transposed into the Agrarorganisationen-und Lieferketten-Gesetz (Agricultural Organisations and Supply Chains Act,"AgrarOLkG"), which entered into force on 9 June 2021.

2. Scope and the relevance of size in the agri-food supply chain

The Directive aims to protect the entire agri-food supply chain, in particular farmers and weaker suppliers who sell agricultural and food products to economically more powerful buyers, including groups of buyers and public sector organisations. The Directive does not apply to the final consumer.

Who can be a supplier?

- Farmers, including their organisations (e.g. cooperatives)
- Processors (food industry)
- Distributors, e.g. wholesalers
- Producer organisations, incl. cooperatives

Who can be a buyer?

- Producer organisations, incl. cooperatives buying from their farmer members
- Processors
- Distributors, e.g. wholesalers
- A retailer or retail association
- Public authorities
- Also, buyers outside the EU

Note ✳

The Directive applies if at least either the supplier or the buyer is based in the EU.

Source: European Commission: The Directive on unfair trading practices in the agriculture and food supply chain

The Directive takes a stepwise approach to protecting weaker suppliers from economically stronger buyers based on their turnover. For example, farmers with a turnover of less than €2 million would be protected from buyers with a turnover of more than €2 million. Farmers with a turnover of between €2 million and €10 million would be protected from buyers with a turnover of €10 million or more. This tiered system ensures that suppliers with a turnover of up to €350 million are protected from stronger buyers. A supplier who sells to public sector organisations is protected against unfair commercial practices irrespective of the actual turnover.

3. Obligations: how unfair purchasing practices are defined and prohibited

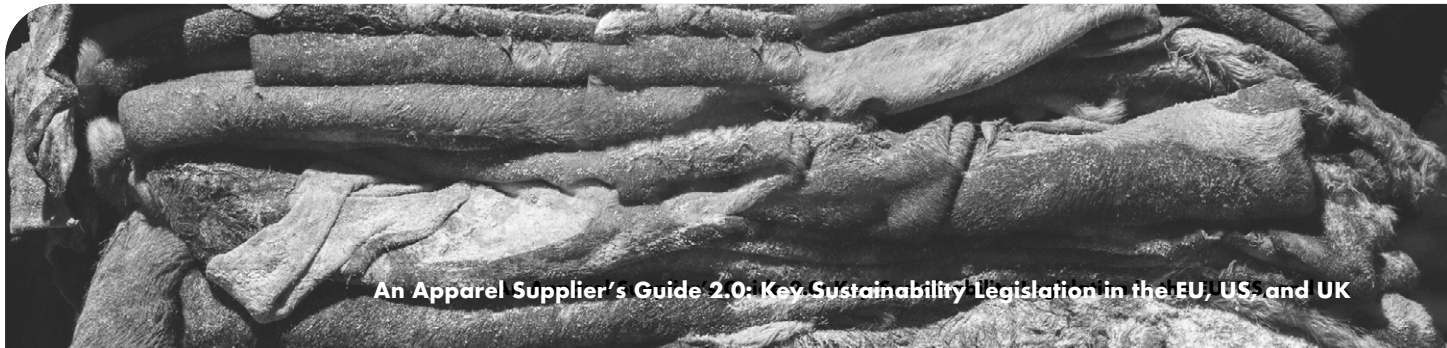
The Directive targets 16 unfair trading practices that are deemed most harmful. The Directive classifies unfair trading practices into "black" and "grey" categories. Black practices are unconditionally prohibited, while grey ones are permissible if both supplier and buyer consent in a clear and unambiguous manner beforehand. This requirement for clear and unambiguous agreement aims to ensure transparency and predictability, clarifying the rights and obligations of both parties.

Black practices

1. Payments later than 30 days for perishable agricultural and food products
2. Payment later than 60 days for other agri-food products
3. Short-notice cancellations of perishable agri-food products
4. Unilateral contract changes by the buyer
5. Payments not related to a specific transaction
6. Risk of loss and deterioration transferred to the supplier
7. Refusal of a written confirmation of a supply agreement by the buyer, despite request of the supplier
8. Misuse of trade secrets by the buyer
9. Commercial retaliation by the buyer
10. Transferring the costs of examining customer complaints to the supplier

Grey practices

1. Return of unsold products
2. Payment of the supplier for stocking, display and listing
3. Payment of the supplier for promotion
4. Payment of the supplier for marketing
5. Payment of the supplier for advertising
6. Payment of the supplier for staff of the buyer, fitting out premises



4. Enforcement and reporting

EU Member States have designated an authority to enforce the Directive. The enforcement authorities are authorised, for example, to act upon a complaint, conduct investigations, terminate an infringement, or impose fines and other sanctions.

There are no reporting requirements for in-scope companies. Enforcement authorities publish an annual report including the number of complaints received and the number of investigations opened or closed during the previous year. For each closed investigation, the report shall include a summary description of the matter, the outcome of the investigation and, where appropriate, the decision taken, subject to confidentiality requirements.

Weaker suppliers often refrain from pursuing their rights due to concerns about potential commercial reprisals and the financial risks associated with litigation. The Directive underscores several measures aimed at addressing these barriers:

- Suppliers have the option to submit a complaint to the national enforcement authority.
- Suppliers can choose whether to file a complaint with the authority in their own EU Member State or with the authority in the EU Member State where the buyer is located.
- The complainant has the right to request anonymity and specify which information is to be treated confidentially. If confidential information needs to be disclosed in order to resolve the complaint, the complainant is informed by the corresponding authority and can decide on how to proceed. The complainant and the buyer may also agree to make use of alternative dispute resolution procedures (e.g. ombudsperson).
- Suppliers may seek the assistance of a producer organisation (e.g. a cooperative) or other relevant organisations to represent them and file complaints on their behalf.
- Authorities are authorised to initiate investigations on their own initiative, e.g. on the basis of anonymous information.

The German enforcement authority, the Federal Agency of Agriculture and Food (Bundesanstalt für Landwirtschaft und Ernährung, BLE), conducted six proceedings in 2022, only two of which were based on complaints. Companies were supported in the application of the law in over 50 cases. According to a survey by the EU Directorate-General for Agriculture and Rural Development, fear of retaliation and low expectations of enforcement authorities are the main reasons why unfair trading practices are still not reported on a large scale (EU Directorate-General for Agriculture and Rural Development 2024).

5. Conclusion

The commercial practices and dynamics between buyers and suppliers in the garment industry are similar to those in the agri-food supply chain, even if the conditions are different. Late payment and last-minute order changes or cancellations can have serious consequences for suppliers and rightsholders. Fashion suppliers and their respective representative bodies must ensure that policy makers are aware of the impact of these harmful practices on the supply chain and incorporate responsible purchasing practices into policies relevant to the fashion industry.

6. Sources

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