

**2024  
Edition**

**Factsheet 3:  
New York Fashion Act**

# An Apparel Supplier's Guide **2.0**

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

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 Environment 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

# 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](http://www.remedyproject.co).

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# 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<sup>1</sup>, 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<sup>2</sup>. There are also sector-specific initiatives such as the EU Strategy for Sustainable and Circular Textiles, which aim to implement the commitments made

<sup>1</sup> For the purposes of this document, "Global North" encompasses the European Union, United Kingdom, and the United States.

<sup>2</sup> 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<sup>3</sup>.

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.

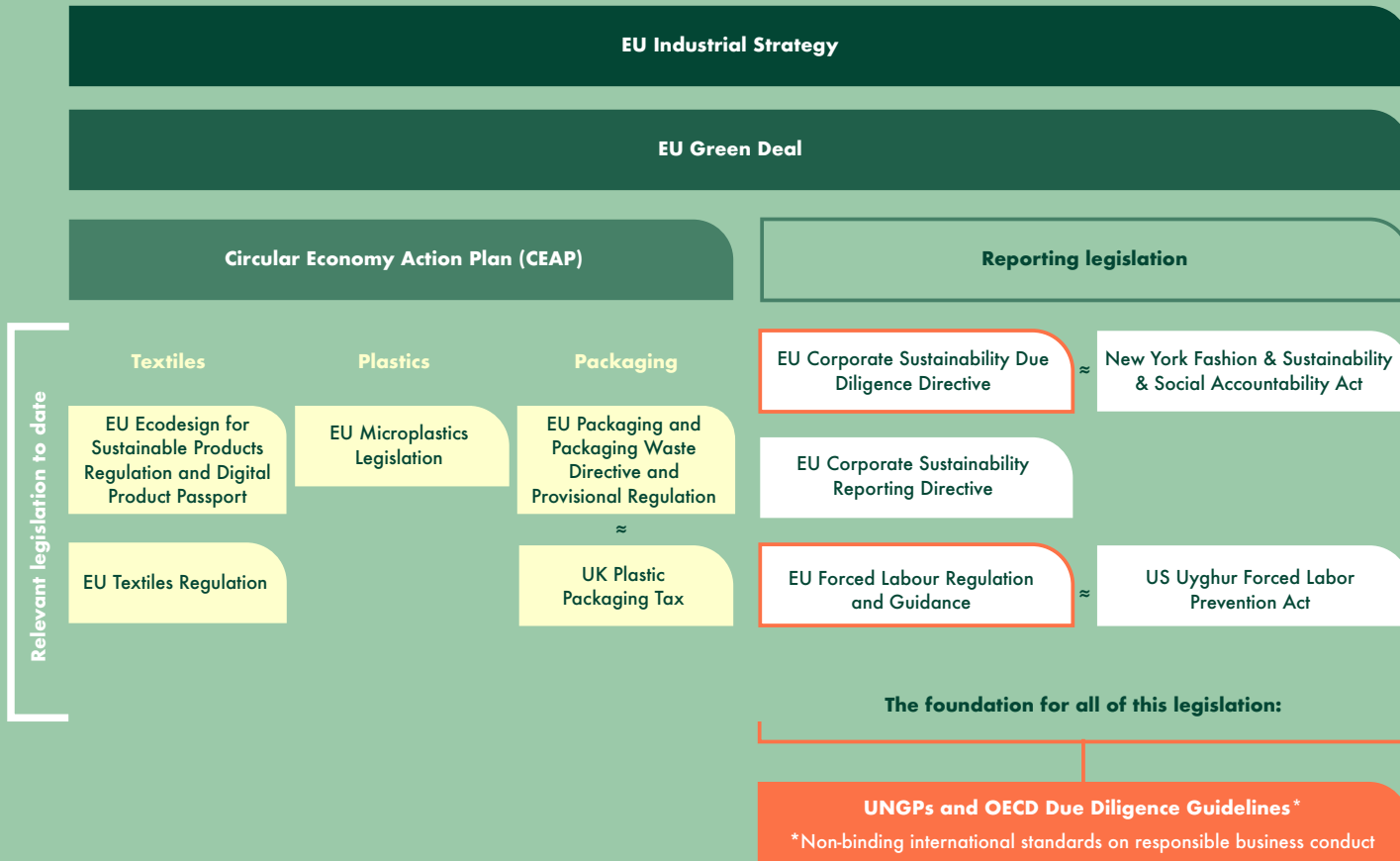
At a high level, these laws (especially those relating to mandatory human rights due diligence) can be collectively understood as a legal framework that translates elements of the United Nations Guiding Principles on Business and Human Rights (UNGPs) into binding legal obligations. The UNGPs represent 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.

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<sup>3</sup> 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](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1111) website to learn more.

## c. General implications for companies supplying apparel & beyond

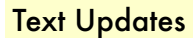
These legislative developments make clear that businesses will need to re-think the way they approach sustainability. This new era of legislation moves sustainability from “nice to have” to “must-have” and requires companies to implement human rights and environmental risk management practices. With 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.<sup>4</sup>

**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<sup>5</sup>.

**EU Regulation:** A regulation is a binding legislative act. It must be applied in its entirety across the EU<sup>6</sup>.

**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<sup>7</sup>.

<sup>4,5,6</sup> European Union, Types of legislation

<sup>7</sup> UNGPs Principle 25 and commentary

## 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.

**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.

# 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<sup>1</sup> 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,<sup>2</sup> 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.

<sup>1</sup> 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.

<sup>2</sup> 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<sup>3</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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<sup>4</sup>;
  - 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<sup>5</sup>
- 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.

<sup>5</sup> 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:**

<sup>6</sup> 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.

<sup>7</sup> 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<sup>6</sup> 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.<sup>7</sup>
  - ▶ 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.<sup>8</sup> 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

<sup>8</sup> 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](#)

# Discover Other Factsheets from An Apparel Supplier's Guide 2.0

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**EU Strategy for Sustainable and Circular Textiles**

1

**EU Corporate Sustainability Reporting Directive**

2

**EU Corporate Sustainability Due Diligence Directive**

3

**New York Fashion Act**

4

**EU Forced Labour Regulation and Guidance**

5

**US Uyghur Forced Labor Prevention Act**

6

**EU Ecodesign for Sustainable Products Regulation**

7

**EU Packaging and Packaging Waste Directive and Provisional Regulation**

8

**EU Microplastics Regulation**

9

**UK Plastic Packaging Tax**

10

**EU Product Environment Footprint Guide**

11

**EU Textiles Regulation**

12

**EU Taxonomy**

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**