EU Corporate Sustainability Due Diligence Directive
EU Corporate Sustainability Reporting Directive
New York Fashion Act
EU Forced Labour Regulation & Guide
US Uyghur Forced Labor Prevention Act
EU Ecodesign for Sustainable Products Regulation
EU Packaging & Packaging Waste Directive & Proposal
EU Microplastics Regulation
UK Plastic Packaging Tax
EU Product Environment Footprint Guide
EU Textile Regulation
EU Taxonomy

An Apparel Supplier's Guide

Key Sustainability Legislation in the EU, US, and UK

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Author:
The Remedy Project is a social enterprise that works to improve access to justice and remedy for migrant workers in global supply chains. They work constructively with governments, civil society, law enforcement, and the private sector to translate the UN Guiding Principles on Business and Human Rights into practice. For more information please see www.remedyproject.co.

Graphic Design:
Fiona Fung

Contents

Executive Summary for Senior Leaders of Companies Supplying Apparel & Beyond

Sustainability-related legislation is coming

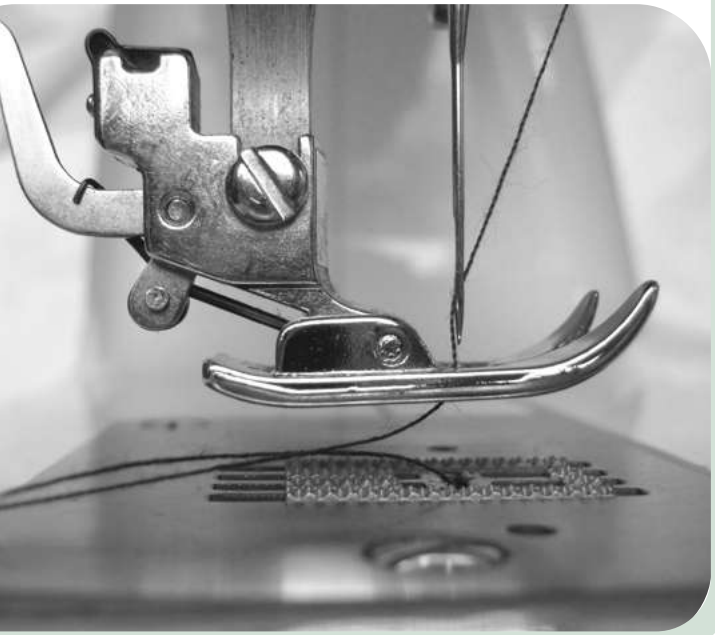
Legislators in the Global North are making significant moves to enact sustainability-related legislation. While these laws originate from places such as the EU, United Kingdom, and the United States, they will impact companies operating outside of these jurisdictions. This document is intended to enable suppliers in the apparel value chain - and others who are seeking to better understand upcoming legislation - that are established or headquartered outside of the Global North, or whose operations are based outside these jurisdictions, to better understand how sustainability-related legislation in the Global North will impact them.

Suppliers may be legally liable

Key to understanding how these initiatives might impact suppliers will be determining whether your company is directly or indirectly in-scope. 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 – meaning that your company is likely to face strong knock-on effects. 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.

Key highlights & trends

The legislative initiatives covered in the fact sheets are likely to have far-reaching operational and legal impacts on apparel suppliers, which could include:



- Increased demands from brands for visibility into upstream supply chain partners' practices and full supply chain traceability.
- Increased reporting requirements and data requests. This will require stronger data gathering and management capacity.
- More stringent codes of conduct and contract clauses from brands who work to protect themselves in case of legal investigation and penalties.
- Brands may interpret and operationalize new legal requirements differently, this may lead to suppliers having to comply with multiple, conflicting standards.
- In some cases, EU Member States may interpret EU requirements differently.
- Increased expectation for suppliers to implement due diligence processes to identify, prevent, remediate and report on social and environmental impacts.
- Increased focus on grievance mechanisms which may lead to conflicting requirements or duplication of work.

An overview of the legislative initiatives included in this document

This resource contains factsheets for **twelve legislative initiatives** across the EU, US, and UK. It is by no means an exhaustive resource – indeed, the entities commissioning this work mapped over 60 different legislative initiatives with potential implications for suppliers. These twelve initiatives were selected by the suppliers commissioning this work because they felt that these were the most salient for suppliers. The factsheets include:

1. **EU Corporate Sustainability Due Diligence Directive**
2. **EU Corporate Sustainability Reporting Directive**
3. **New York Fashion Act**
4. **EU Forced Labour Regulation and Guide**
5. **US Uyghur Forced Labor Prevention Act**
6. **EU Ecodesign for Sustainable Products Regulation**
7. **EU Packaging and Packaging Waste Directive and Proposal**
8. **EU Microplastics Regulation**
9. **UK Plastic Packaging Tax**
10. **EU Product Environment Footprint Guide**
11. **EU Textile Regulation**
12. **EU Taxonomy**

If you are interested in supporting further research and factsheets, click here to get in touch.

Recommendations

The suppliers commissioning this work recommend that fellow suppliers:

- **Discuss the implications and implementation plans with your customers.**

  It is important to engage with brands and retailers before they finalize their methodologies for implementation as there is a serious risk of multiple interpretations. Aligning with OECD Due Diligence Guidelines and the UN Guiding Principles may minimize this risk to a certain extent.

- **Allocate sufficient resources to understanding and proactively complying with the legislative landscape in the Global North.**

  Be sure to engage your legal teams, HR teams, Sourcing Teams, and other operational functions. Compliance should not be left to sustainability or ESG teams alone.

- **Seek out opportunities to engage policymakers to contextualize policy implications, and shape their development and delivery.**

  The often vague and imprecise language used to refer to suppliers in many of the legislative initiatives covered in this document is indicative of a larger gap between policymakers in the Global North and the entities outside of those jurisdictions, who are likely to bear significant and often invisible burdens as a result.

What happens next?

Resource permitting, we hope that these 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.

This document should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This document is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your legal counsel concerning any particular situation and any specific legal question you may have.

In addition, many of the legislations covered in this document remain at the early stages of the relevant legislative procedure. The information provided herein has been developed based on the latest draft of the proposed legislation at the time of writing. It is intended that the guidance and recommendations provided in this document will be updated as the legislation develops.

Introduction

a. Objective

This document is intended to enable suppliers in the apparel value chain that are established or headquartered outside of the Global 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. Who commissioned this resource and why

This resource was initiated and led by suppliers across production tiers and locations facing many of the same challenges. Despite these shared challenges, rarely do suppliers come together to address these challenges collectively.

Specifically, this resource was commissioned by: Epic Group, Norlanka, Shahi Exports & Simple Approach. In addition, this research was also supported by Transformers Foundation and GIZ FABRIC.

It is important to note the symbolic significance of this piece of work: this is a project initiated and led by fierce – and in some cases direct – commercial competitors. The entities commissioning this resource hope this inspires more apparel suppliers to join forces.

c. Which legislation is covered & why

The entities commissioning this work began by crowdsourcing a longlist of legislation which industry representatives feel are pertinent to the apparel and textile sector (thank to everyone who generously shared their time helping to develop this long list). The entities commissioning this work, in consultation with the Remedy Project, based on significance and impact, narrowed the longlist down to twelve pieces of legislation. The twelve pieces were selected based on the potential scale of cascading impacts and the business risk they pose to suppliers. It is therefore important to emphasize that this resource is not exhaustive.

d. Important legislative context to understand

As governments in the Global Nort embark on ambitious plans to transition towards climate neutrality, inclusive and sustainable growth, the body of sustainability legislation is expanding rapidly. The European Union (EU) is at the forefront of these changes, introducing a plethora

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 under the European Green Deal, by setting out measures to address the design and consumption of textile products, and promote a greener and fairer value chain in the textiles industry. The legislations covered in this document such as the EU Ecodesign for Sustainable Products Regulation and Digital Product Passport, EU Corporate Sustainability Due Diligence Directive, EU Regulation on Prohibiting Products Made With Forced Labour on the Union Market (**Forced Labour Regulation**), are only some of the initiatives taken by the EU to execute on the European sustainability policy 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.

e. General implications for companies supplying apparel & beyond

These legislative developments make clear that businesses will need to re-think the way they approach sustainability. This new era of legislation moves sustainability from "nice to have" to "must-have" and requires companies to implement human rights and environmental risk management practices. With this transition, we expect to see more cross-functional efforts to embed considerations of human rights and environmental impacts into business' day-to-day operations and overall strategy. In this new landscape, in-house legal teams must work closely with procurement and sourcing, operations, product teams, and in-house sustainability experts to achieve compliance. There must also be executive and management level buy-in, and attention given to sustainability issues.

f. Likely implications for suppliers

Some of the key and recurring operational implications for suppliers are likely to include:

- Increased demands from brands for visibility into upstream supply chain partners' practices and full supply chain traceability
- More stringent codes of conduct and contract clauses from brands who work to protect themselves in case of legal investigation and penalties.
- Increased reporting requirements and data requests. This will require stronger stata supply chains and data storage.
- Until legislative frameworks fully mature, different EU states may interpret requirements differently and brands are likely to set different requirements. However, given the common trend of adopting rules and requirements on the basis of international principles and standards, such as the UNGPs and OECD Due Diligence Guidelines, aligning internal systems and procedures with those principles and standards can be a good start towards satisfying varying requirements.
- Increased emphasis for suppliers to implement due diligence processes to identify, prevent, remediate and report on social and environmental impacts.
- Increased focus on grievance mechanisms. Here too there is a risk that differnet brands will interpret new requirements differently and that this could lead to varying standards within a single facility.

It is hoped that this document will provide companies – especially those engaged in the apparel value chain – a roadmap to navigate this fast-evolving regulatory landscape.

How to Use This Document

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

1. Overview

A summary of the key aspects of the legislation.

2. Context

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

3. Status

Whether the legislation is in effect and if not, the current stage of the legislative procedure. If known, the expected timeline for implementation is also provided. For proposed EU legislation, users may find it helpful to refer to the European Parliament's infographic for information on the different stages of the EU legislative procedure.

4. Scope

This section sets out the types of companies or products that fall within the scope of the legislation. This may include, for example, an explanation of the thresholds that a certain company must meet for the legislation to apply. Our suggestion to suppliers is to start by identifying whether they are directly in-scope and, if so, review the obligations and compliance recommendations for companies in-scope (Sections 5 & 6). If a supplier has established that they are not directly in-scope, it is our suggestion that those suppliers review whether the brands for which they produce are in scope. If a supplier's customer is within scope, our suggestion is to review the potential implications for suppliers to companies in-scope (see Section 7).

5. Obligations for companies in-scope

A description of the duties and responsibilities that must be undertaken by the companies that are directly subject to the legislation.

6. Compliance recommendations for companies in-scope

Suggested recommendations for companies to prepare for compliance with the legislation (where the legislation is not yet in effect), or considerations for companies seeking to improve their compliance (where the legislation is already in effect). For the avoidance of doubt, these compliance recommendations do not constitute legal advice or opinion; companies should seek legal advice from attorneys concerning any specific situation or legal question they may have. Moreover, as the text of the laws in many cases remains subject to change, companies should refer to the most updated version of the legislation in developing their compliance strategy. The enforcement actions undertaken by the relevant regulator (once the law is in effect) will also determine the scope of compliance obligations.

7. Potential implications for suppliers to companies in-scope

In some instances, suppliers in the apparel value chain who are not directly subject to the concerned legislation, may still be impacted by the legislation as they supply to companies in-scope (i.e., a fashion brand or fashion retailer in-scope). These may include requirements around transparency and traceability, or obligations to undergo audits or obtain certifications. This section sets out the potential implications of the legislation for suppliers. For the avoidance of doubt, companies in-scope will approach compliance differently and many of the legislations covered in this document are in nascent stages of development. Moreover, the enforcement actions undertaken by the relevant regulator will also affect how companies in-scope respond to the legislation. As such, the guidance provided herein is only intended to represent our best estimates of the knock-on effects of the concerned legislation and is for informational purposes only.

8. Penalties for non-compliance

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

9. Form of Enforcement

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

10. Reporting/ disclosure for companies in-scope

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

11. Access to remedy mechanisms and litigation risk

This section notes where the relevant legislation provides a right for legal action to be taken against a company for alleged non-compliance.

12. Opportunity to participate and engage in legislative developments

Where applicable, opportunities to participate in public consultation.

13. Useful resources to support compliance

Links to third-party resources and guidance are provided for further detail on how companies in-scope may approach compliance and how suppliers or business partners to companies in-scope may prepare for cascaded compliance requirements.

Glossary

A glossary of key terms used in this document is set out below.

Brands: For the purposes of this document, this refers to a multinational company that is engaged in the business of offering branded apparel products.

Companies in-scope: Companies that are directly subject to the obligations set out in the relevant legislation.

Due Diligence: A process that businesses should carry out to identify, prevent, mitigate, and account for how they address the actual and potential adverse human rights or environmental impacts in their operations, their value chain and other business relationships.

EU Decision: A "decision" is binding on those to whom it is addressed (e.g., an EU country or an individual company) and is directly 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].

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].

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.

Overview

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.

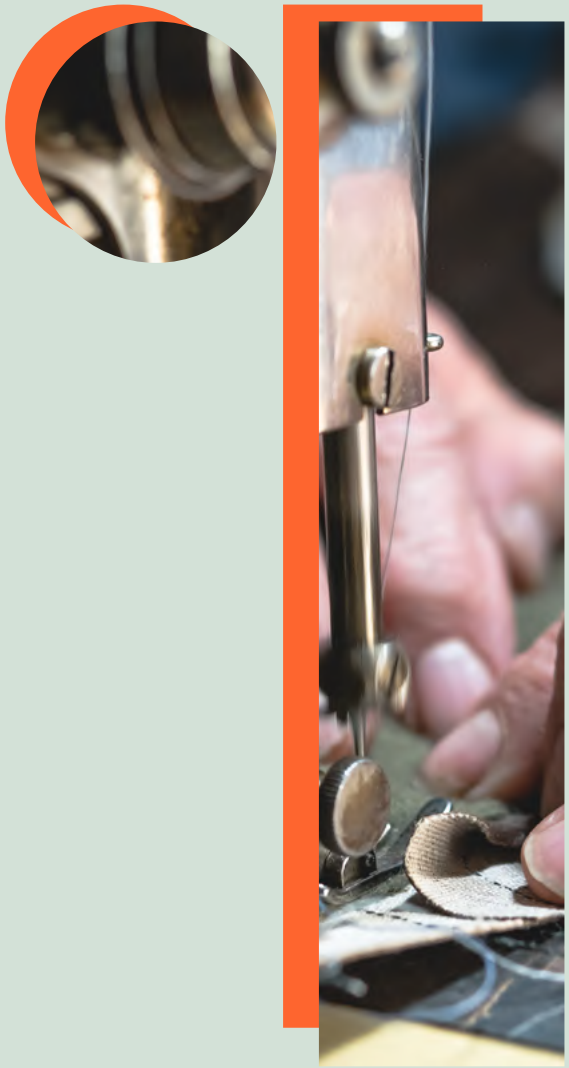
Legislation	Description	Timing (Likelihood of Implementation)[8]	Effort and Investment Required for Companies In-Scope to Comply[9]	Expected Indirect Impact for Apparel Suppliers to Companies In-Scope[10]	Opportunity to participate in public consultation / engage in legislative process
1 **EU Corporate 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	Expected to come into effect < 5 years (high)	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 but companies in-scope are not required to report under the CSRD until at least 2025	High	Medium	Yes, EFRS sector-specific standards
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

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
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	Expected to come into effect < 5 years (high)	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	Not applicable
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.	Unknown (uncertain)	High	High	Yes

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
7 **EU Packaging & Packaging Waste Directive & Proposal**	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: Not applicable Medium	Directive: Not applicable Medium	Directive: Not applicable Directive: No
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.	Unknown (uncertain)	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	Not applicable

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
10 EU Product Environment Footprint Guide	A non-binding framework that establishes the steps and rules to make an appropriate and comparable product life cycle assessment.	Not applicable (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	Not applicable
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	Not applicable

Factsheet



EU Corporate Sustainability Due Diligence Directive

1. 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 tackle 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 value chain and other business relationships[11]. 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.

2. Context

The EU wants to hold companies **accountable for their social and environmental 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 value chain. The CSRD requires companies in-scope to report on how they are managing these risks.

3. Status

In order for the CSDDD to be adopted, the European Commission, the European Parliament, and the European Council must all agree on what the CSDDD says. 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. The European Parliament must now also determine its negotiation position on the CSDDD, and this process is currently underway. The Committee on Legal Affairs voted in April 2023 on their amendments to define the position of the European Parliament, and the European Parliament is expected to settle its position in June 2023[12]. Then, the European Parliament and the European Council will negotiate to agree on and adopt the final text of the CSDDD.

Once adopted, the EU countries will have two years to transpose the CSDDD into their national laws and communicate the relevant texts to the European Commission[13]. As the CSDDD is an EU Directive, the EU countries may, in theory, establish 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.

A phased-in approach has been proposed meaning that 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 4 below for further details.

4. Scope

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 worldwide turnover and/or number of employees thresholds. In this factsheet, companies meeting these criteria are referred to as "companies-in scope".

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[14]
Group 1	Companies with > 500 employees and a net turnover of EUR 150 million+ worldwide.[15]	Companies with a net turnover within the EU of EUR 150 million+.
Group 2	Companies with > 250 employees and a net turnover of EUR 40 million+ worldwide, provided that at least 50% of that turnover was generated in certain sectors, including the manufacture of clothing and textiles, agriculture and manufacture of food products, and extraction of mineral resources[16].	Companies with a net turnover within the EU of EUR 40 million+ provided that at least 50% of that turnover was generated in certain sectors, including the manufacture of clothing and textiles, agriculture and manufacture of food products, and extraction of mineral resources.

Points to Note

- Different thresholds apply to **EU companies** (i.e., companies formed or incorporated in an EU country) and **non-EU companies** (i.e., companies formed or incorporated outside of the EU).
- Companies in-scope are also categorized based on whether they are larger entities, known as **Group 1 companies**, or smaller entities, referred to as **Group 2 companies**.
- Whether a company in-scope is a Group 1 company or Group 2 company will affect the scope of their obligations, and the timing of expected compliance. Group 1 companies will be subject to the obligations under the CSDDD from two years following the entry into force of the CSDDD. Group 2 will be subject to obligations from four years following the entry into force of the CSDDD.

Exclusions

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[17].

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 value chain globally. These implications are set out in more detail in Section 7.

5. Obligations for companies in-scope

The following section has been developed based on the European Commission proposal. As the text of the CSDDD remains subject to change, the precise scope of obligations for companies in-scope (as described below) may differ from the final version adopted.

Overview

The CSDDD, as proposed, will require the companies in-scope to undertake human rights and environmental due diligence in relation to their own operations, the operations within their group (including their subsidiaries) and 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 **established business relationships** of the company[18].

Points to Note

- It is possible that the final text of the CSDDD will have a narrower scope as the European Council has proposed that the concept of "value chain" in the current draft proposal be replaced with the "chain of activities", which would focus on the company's upstream suppliers and would exclude the company's downstream activities (for example, distribution and end of life).
- It is also not clear how the term "established business relationships"[19] will be interpreted in practice. It is possible that companies in-scope will only need to conduct due diligence on business partners with whom they have a (direct or indirect) relationship that is long-lasting. As such, short, unstable, or informal relationships such as unofficial subcontracting or home-based workers (e.g., artisanal embroidery), or self-employed workers (e.g., cotton farmers) may be excluded from the scope of due diligence obligations.
  - This stands in contrast to the UNGPs and OECD Due Diligence standards, which require companies to prioritize due diligence activities based on the severity and likelihood of human rights risks (rather than the duration or intensity of their business relationship).

Companies in-scope will also be required to review the risk of climate change in relation to their business activities and strategy and implement a plan to combat any such risks.

The CSDDD also requires that directors of companies in-scope are responsible for overseeing the due diligence actions set out below. These obligations around directors' duties are intended to embed sustainability considerations within the corporate governance structure of companies in-scope.

Due Diligence Obligations[20]

The CSDDD sets out specific requirements that companies in-scope must implement in their operations and across their value chain. These requirements are to:

Integrate due diligence into all corporate policies and establish a standalone due diligence policy[21].

The due diligence policy should include:

i. a description of the company's approach to due diligence;

ii. a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries;

iii. a description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business relationships.

Identify actual and potential adverse human rights and environmental impacts from their business operations or those of their subsidiaries or established business relationships (adverse impacts)[22].

Note that Group 2 companies only need to identify actual and potential severe adverse impacts for Group 2 companies, whereas Group 1 companies have obligation to identify adverse impacts more broadly.

Take appropriate measures to prevent or, if not possible, adequately mitigate any potential adverse impacts identified[23].

This could include the following actions:

i. developing and implementing a prevention action plan, with reasonable and clearly defined timelines and qualitative and quantitative indicators for measuring improvements;

ii. seeking contractual assurances from business partners to ensure compliance with the company's codes of conduct (it may also be necessary to obtain contractual assurances with suppliers in the value chain where the company in-scope does not have an existing, direct contractual relationship (e.g., a Tier 2 supplier), in which case a contract should be accompanied with appropriate measures to verify compliance);

iii. making relevant investments, for example, to upgrade the company's management or production processes and infrastructures;

iv. supporting SMEs with which the company has an established business relationship, where compliance with their obligations could jeopardize the viability of the SME; and

v. collaborate with other entities, including where appropriate to help bring an adverse impact to an end.

Take appropriate measures to bring actual identified adverse impacts to an end or minimize their impact[24].

This could include the following actions:

i. paying damages and financial compensation to affected individuals or communities;

ii. implementing mitigation measures as described under the preceding bullet point.

Where the above-described 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 value chain and may be required to temporarily suspend or terminate such relationship as appropriate.

Establish a complaints procedure for use by the following people and organizations[25]:

i. those affected or have reasonable grounds to believe they may be affected by an adverse impact;

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

iii. civil society organizations active in the value chain.

The complaints procedure should allow complainants to request appropriate follow-up from the company and meet with company representatives to discuss the complaint

Companies should assess their own operations and measures and those of subsidiaries and relevant third parties, to monitor their effectiveness, periodically and at a minimum on an annual basis[26].

The due diligence policy should be updated accordingly following these reviews..

Climate Change Obligations[27]

In relation to combating the impact of climate change in relation to their operations, Group 1 companies must adopt a plan to ensure that their business model and strategy are in line with the obligations under the Paris Agreement to limit global warming to 1.5°C.

This plan should include the extent to which climate change is a risk for, or an impact on, the company's operations.

Where climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company should include emission reduction objectives in the plan.

Directors' Duties[28]

Directors of EU companies in-scope will be required to consider the consequences of their decisions or sustainability matters, including, where applicable, human rights, climate change and environmental consequences. EU countries will be required to change national laws so that directors who fail to do so will be considered to have breached their duty to act in the best interest of the company.

Directors of EU companies in-scope will also be held responsible for putting in place and overseeing due diligence actions and liaise with relevant stakeholders and civil society organizations in doing so. Directors are also tasked with adapting the company's corporate strategy to address any identified actual and potential adverse human rights and environmental impacts and any mitigation measures.

6. Compliance recommendations for companies in-scope

As the CSDDD is still passing through the European legislative process, companies in-scope do have time to prepare for their upcoming obligations. While the obligations for companies in-scope may still change depending on the final text of the CSDDD, we suggest the following as general recommendations to consider at this stage:

- As an initial matter, companies should undertake an assessment of whether they are likely to be within scope, and if so, whether they would fall within Group 1 (larger companies) or Group 2 (smaller companies). 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.
- Companies in-scope should consider potential governance and oversight responsibilities within their organization. As mentioned above, directors of EU companies in-scope will be required to consider sustainability matters when making decisions for the business and reporting to the board of directors in that respect. It would therefore be prudent to begin introducing these issues into director-level meetings and decision-making, as well as board reporting procedures, ahead of the implementation of the CSDDD to ensure a smooth transition of this process.
- 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.
- Larger Group 1 companies that may be subject to the additional climate change obligations described above will also need to separately evaluate their operations and processes to assess their current ability to comply with such obligations.

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.

7. Potential implications for suppliers to companies in-scope

The following section has been developed based on the European Commission proposal. As the text of the CSDDD remains subject to change, it is not possible to include with specificity how companies that fall outside the direct scope of the directive may be indirectly affected by the law. Companies in-scope may take different approaches to compliance given that the practical application of the CSDDD remains open to interpretation at this nascent stage. As such, it is difficult to concretely predict in practical terms the specific knock-on effects across value chains.

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 value chains of companies in-scope. As explained in Section 5 above, where adverse impacts are identified, companies in-scope may be required to temporarily suspend commercial relationships with partners in their value chains until the impact can be brought to an end or minimized, so suppliers should keep this possibility in mind.

Suppliers who are in the value chain 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**:

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.

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.

- 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.

- 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.

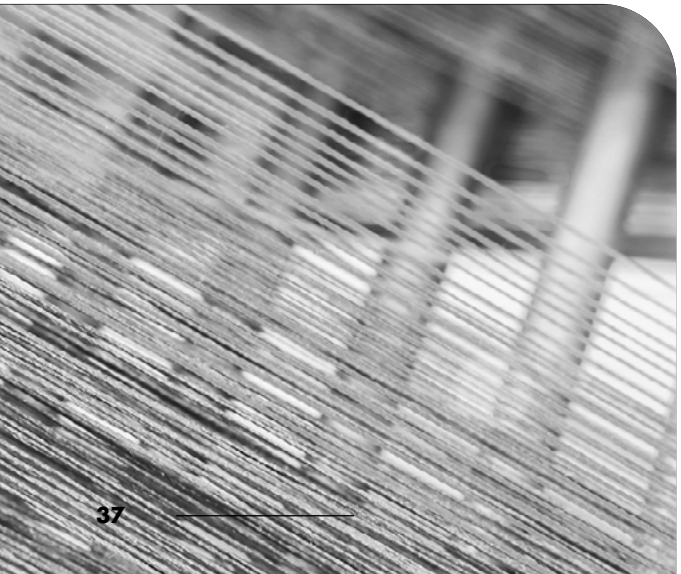
- Brands or retailers in-scope may roll-out, strengthen or expand the scope of existing grievance channels (e.g., third-party helplines, worker voice tools and applications) to cover further tiers of their value chain. While many brands or retailers may have existing grievance reporting channels, these 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).

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.

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 yet to come into force, 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.

8. Penalties for non-compliance



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

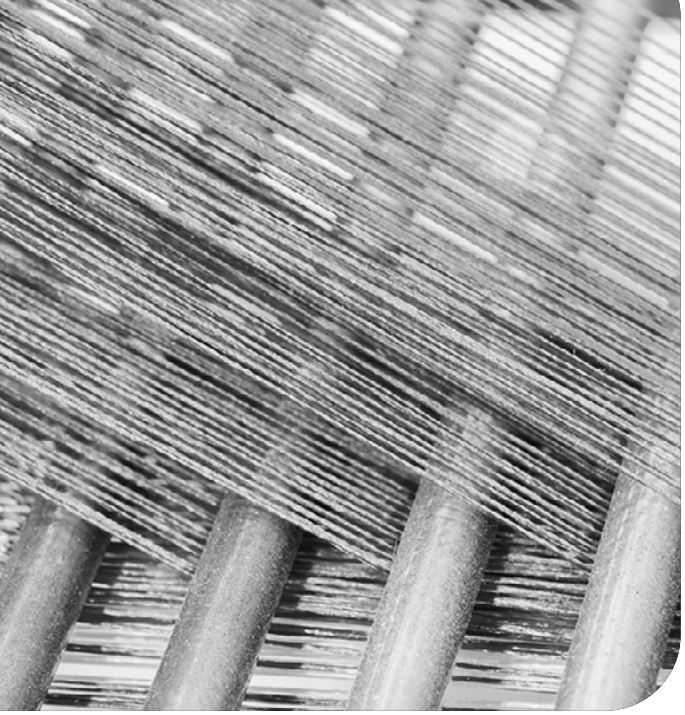
These supervisory authorities can initiate investigations on their own. The supervisory authority may also initiate a investigation where a third party raises substantiated concerns, and there is sufficient information to indicate a potential breach of the CSDDD.[29] Any natural and legal persons (this 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.[30]

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 to avoid risk of severe and irreparable harm; and
- impose pecuniary sanctions.[31]

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.[32]

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



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.[33]

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.

9. Form of Enforcement

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

Investigations/Supervision.

Where a supervisory authority identifies non-compliance pursuant to an investigation (as described in Section 8 above), the company will be granted an appropriate period of time for remedial action (if possible).[34] The supervisory authorities may also order the concerned company to stop the infringing conduct as set out above.

Sanctions.

Each EU country establishes their own rules on sanctions for infringements. As such, the form of sanctions may differ based on the EU country. The sanctions should be effective, proportionate, and dissuasive.[35] Any pecuniary sanctions (i.e., fines) should be based on the company's turnover.[36] The type and extent of sanctions imposed will depend on:[37]

- The level of effort taken by the company to comply with the remedial action specified by supervisory authorities;
- Any investments made by the concerned company to comply with the CSDDD; and
- The extent to which the company has collaborated with other entities to address adverse impacts.

Civil Liability.

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

10. 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[38] must publish a statement on their website on an annual basis on the matters covered by the CSDDD. The statement must be published by 30 April each year, covering the previous calendar year. The European Commission will adopt delegated acts specifying the content and criteria for such reporting.[39]

There are no other reporting or disclosure requirements under the CSDDD, as these obligations will be largely covered by the CSRD.

11. 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.[40]

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.[41]

12. 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.

13. 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

Factsheet

EU Corporate Sustainability Reporting Directive

1. Overview

The EU Corporate Sustainability Reporting Directive (**CSRD**) took effect on 5 January 2023 although companies in-scope are not expected to start reporting until their 2025 financial year. Building on the current EU Non-Financial Reporting Directive (**NFRD**)[42], 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 European Sustainability Reporting Standards (ESRS), which specifies the detailed reporting requirements. The ESRS are being developed by EFRAG (European Financial Reporting Advisory Group).[43]

Overview (Continued)

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.

2. 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. That being said, there are differences between the ESRS standards proposed under the CSRD, and other international standards on sustainability reporting such as the IFRS and TCFD. Please refer to the comparative analysis provided by EFRAG to learn more about the similarities and differences in these requirements.

3. 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 June 16, 2024, to transpose the CSRD into their national laws.

On November 22, 2022, EFRAG submitted the first set of draft ESRS to the European Commission. The first set of these ESRS is required to be adopted by June 30, 2023, as a delegated act.[44] The European Commission is currently consulting with EU bodies and EU countries on the draft standards.

The sustainability reporting requirements for companies in-scope[45] will take effect on a staggered basis, as follows:

Category	Criteria	Implementation[46]
Companies already subject to reporting under the NFRD	A large company incorporated in the EU which (i) is a public interest entity and (ii) has more than 500 employees.	From 2025 for financial years starting January 1, 2024
Large companies incorporated in the EU (including EU subsidiaries of non-EU parent companies) and EU parent companies of large group, other than those in Category 1	The company or the consolidated group of companies must meet two of the following criteria: • Balance sheet total of EUR 20 million • Net turnover[47] of EUR 40 million; and/or • An average of 250 employees during the financial year	From 2026 for financial years starting January 1, 2025
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: • Balance sheet total: EUR 4 million; • Net turnover: EUR 8 million; and/or • An average of 50 employees during the financial year.	From 2026 for financial years starting January 1, 2025

Parent company that is not incorporated in the EU with (i) an EU-incorporated large subsidiary or an SME subsidiary listed in the EU; or (ii) a large EU branch	The company must meet the following criteria:
	• Net turnover of EUR 150 million in the EU for each of the last two consecutive financial years; and
	• At least one subsidiary or branch in the EU which:
	  • For a subsidiary, meets the criteria for categories (2) or (3) above; or
	  • For a branch, has a turnover of more than EUR 40 million.
		From 2028 for financial years starting January 1, 2028

4. Scope

The CSRD casts a wide net, substantially wider than the NFRD. Please refer to the table in Section 3 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.

5. 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.

Types of Disclosures Required

Pursuant to the CSRD, the principal information required to be reported includes the following:

- Resilience of the company or group's business model and strategy in relation to sustainability risks;
- Sustainability strategy and transition plan(s);
- How the company's business model and strategy consider its stakeholders' interests and its impacts on sustainability matters;
- Sustainability targets and policies;
- Any incentive schemes linked to sustainability matters;
- Indicators relevant to its sustainability-related disclosures; and
- A description of the due diligence processes regarding sustainability matters and actions taken to remediate or mitigate potential adverse impacts in its value chain.

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.[48]

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).

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.

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, 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.

6. 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 there are any companies in-scope. For most multinationals, the threshold question will be whether any of their subsidiaries incorporated in the EU are large companies (i.e., Category 2 companies as per the table in Section 3 above). Larger multinationals also will need to assess whether they might be subject to reporting as a non-EU company. Multinationals that determine they currently do not meet a CSRD compliance threshold should consider whether their EU growth strategy necessitates ongoing compliance threshold testing or preparation 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.

7. 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 draft 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 textiles, accessories, footwear, and jewellery sector specific standard is published by EFRAG.

8. 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.

9. Form of Enforcement

Please refer to Section 8.

10. Reporting/ disclosure requirements for companies

The ESRS will specify the forward-looking, historical, qualitative, and quantitative information to be reported by companies in-scope. These are currently being developed by EFRAG.

General and topical standards

EFRAG already has submitted to the Commission draft general standards, which provide for general requirements (ESRS 1) and general disclosures (ESRS 2). EFRAG also has submitted 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 for sectors characterized as **high impact,** including the textiles, accessories, footwear, and jewelry sector. 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.

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.

11. 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.

12. Opportunity to participate and engage in legislative developments

As noted in Sections 3 and 10 above, the sector specific standards are under development. Please refer to the EFRAG website for information on opportunities to participate. Note that the development of the sector specific standards is currently facing delays as EFRAG prioritize the release of further guidance to support companies apply the EFRS general and topical standards.[49]

13. Useful resources to support compliance

European Commission, Corporate sustainability reporting

EFRAG, First set of draft ESRS

New York Fashion Act

(Fashion Sustainability and Social Accountability Act)

1. Overview

If passed, the Fashion Sustainability and Social Accountability Act (**Fashion Act**) would require "**fashion sellers**" doing business in New York[50] 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,[51] 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.

2. 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."

3. Status

The bill was initially introduced to the New York State legislature in October 2021 and is pending before the Consumer Protection Committee. It will 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.

4. Scope

Overview

The Fashion Act would cover any fashion seller doing business in New York that has annual global revenue of 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, 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:

1. **Tier one** suppliers refer to those suppliers, including their subcontractors, who produce finished goods, such as sewing and embroidering services.

2. **Tier two** suppliers relate to suppliers to tier one, 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. Components include buttons, zippers, rubber soles, down and fusibles.

3. **Tier three** suppliers refer to suppliers to tier two, including subcontractors, who process raw materials, such as ginning, spinning and supply chemicals.

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

5. 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.

Supply chain mapping

Once the proposed Fashion Act comes into force, companies will have the following supply chain mapping obligations:

- Within **12 months**, map **75%** of tier one suppliers by volume (i.e., units), and report to the Attorney General on the mean wages of workers and how this compares with local minimum wage and **living wages**,[52] the percentage of unionized factories, and the hours worked weekly by month and the hours and frequency of overtime by firm and country. This data should be independently verified at least once every two years.
- Map **75%** of tier two suppliers by volume, within **24 months**.
- Map **50%** of tier three and tier four suppliers by volume or dollar value, within **36 months**.

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:

- 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 of interventions;
- 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. These include:

- 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);
  - Developing pricing models that account for the cost of wages, benefits, and investments in suitable work[53]
- Utilizing responsible exit or disengagement strategies;
- Consulting and engaging with impacted and potentially impacted stakeholders and rights holders and their representatives; or
- 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.

6. 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.

7. Potential implications for suppliers to companies in-scope

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:

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[54] 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.[55]
    - 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.[56] 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 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.

8. 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.

9. 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.

10. Reporting/ disclosure requirements for companies in-scope

As explained in Section 5 above, 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 13). 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.

11. 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 8 for further details.

12. 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.

13. 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

Factsheet

EU Forced Labour Regulation and Guide

1. Overview

The Regulation

On September 14, 2022, the European Commission published a proposal for a Regulation of the European Parliament and of the Council on Prohibiting Products made with Forced Labour on the Union Market (the **Forced Labour Regulation**). The objective of the Forced Labour Regulation[57] 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.

Overview (Continued)

The Guidelines

18 months after the Forced Labour Regulation enters into force, the European Commission shall issue guidelines which will include, among other things:

- Guidance on forced labour due diligence that takes into account applicable 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 economic operators.
- Information on risk indicators of forced labour 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.
- A list of publicly available information sources of relevance for the implementation of the Regulation.
- 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**).[58] 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. 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 the CSDDD and CSRD by building upon the obligation to conduct supply chain due diligence and highlights the importance for companies to enforce their human rights due diligence programs.

3. Status

The Forced Labour Regulation will need to be adopted by both the European Council and the European Parliament. Once adopted and published, the Forced Labour Regulation will enter into force and, as per its current text, start applying two years later. It is difficult to predict when the Forced Labour Regulation will come into force given that it is still in the early stages of the legislative procedure.

4. Scope

The Forced Labour Regulation covers all products, 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 is 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. 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 users or consumers in the EU. The scope includes both products sold in exchange for payment and offered for free.[59]
- The "placing of products" under the Forced Labour Regulation means the first instance of making a product available on the EU market.[60]

- 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" must be well-founded, and based on objective and verifiable information.

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.

5. Obligations for companies in-scope

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 Commission will issue guidelines within 18 months after the entry into force. As explained above, these guidelines have yet to be published and the text of the Regulation also remains under negotiation. 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.

6. Compliance recommendations for companies in-scope

The Regulation remains under development and proposed amendments may affect the scope of companies' obligations and the means of enforcement. The below section has been developed based on the current text of the Forced Labour Regulation as proposed by the European Commission.

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 relevant authorities shall take into account:

- Whether the company can demonstrate that it carries out due diligence on the basis of identified forced labour impact in its supply chain; and
- Adopts and carries out measures suitable and effective for bringing to an end forced labour in a short period of time[61]

Where the relevant authorities find that the company's due diligence actions effectively mitigate, prevent and bring to an end the risk of forced labour, they may not initiate an investigation. The safe harbour contained in the Forced Labour Regulation emphasizes the importance of having robust due diligence systems. Where companies have an effective due diligence system this may help protect them from liability.

7. Potential implications for suppliers to companies in-scope

As the text of the Forced Labour Regulation remains subject to change, it is not possible to include with specificity how companies that fall outside the direct scope of the Forced Labour Regulation may be indirectly affected by the law. Companies in-scope may take different approaches to compliance given that the practical application of the Forced Labour Regulation remains open to interpretation at this nascent stage. As such, it is difficult to concretely predict in practical terms the specific knock-on effects across value chains.

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 down 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.[62] 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.

8. 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 products from the EU market where they have already been placed or made available in the EU; and
- ordering the company to destroy, render inoperable or otherwise dispose of the relevant products.

Companies will be granted **at least 30 days** to comply with the competent authority's decision. When setting the time limit, a competent authority shall take into account the size and economic resources of the company.

If a company fails to comply, the competent authority will::

- Prohibit the company from placing or making available said products;
- Require the company to withdraw said product from the EU market;
- Require the company to dispose of the remaining inventory of said product, at the company's expense.

If the company concerned 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 is required to withdraw its decision.

Non-compliance with a decision by a competent authority may result in penalties under rules established by the relevant EU country under national law. Penalties shall be effective, proportionate, and dissuasive. There is no standard penalty amount and as such the form and amount of penalty will depend on the relevant EU country's rules.

9. Form of enforcement

Each EU country shall designate competent authorities which will be responsible for implementing and enforcing the Forced Labour Regulation. Competent authorities are required to follow a risk-based approach, focusing their efforts where they are most likely to be effective, in particular on the companies involved in the steps of the value chain as close as possible to where the risk of forced labour is likely to occur. They will also need to consider the size and economic resources of companies, the quantity of products concerned and the scale of suspected forced labour.

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.

The preliminary phase involves a risk-based approach to determine the likelihood that the company concerned violated the prohibition of forced labour. Competent authorities will examine all information available to them, including:

- Submissions by natural or legal persons or associations or any association not having legal personality.
- Risk indicators and other information pursuant to guidelines to be issued by the European Commission.
- A public database to be commissioned by the European Commission.
- Information and decisions, including any past cases of compliance or non-compliance of the company, recorded in the information and communication system to be established for use by the European Commission, the EU countries competent authorities and customs authorities in connection with the Regulation.
- Information requested by competent authorities from other relevant authorities, where necessary, on whether the companies under assessment are subject to and carry out due diligence in relation to forced labour in accordance with applicable EU or Member State legislation setting out due diligence and transparency requirements with respect to forced labour.

Before initiating an investigation, the competent authorities shall request from the concerned company, information on actions they have taken to identify, prevent, mitigate, or end risks of forced labour in their operations and value chains with respect to the products under assessment. The company shall respond to requests from competent authorities within 15 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.

Competent authorities shall take into account where the company demonstrates that they perform due diligence based on identified forced labour impact in their supply chain, adopt and carry out measures suitable and effective to bringing to an end forced labour in a short period of time.

If competent authorities determine there is a substantiated concern of forced labour, an investigation will proceed to the next phase. If that occurs, notice shall be provided to the company concerned.

Customs authorities will enforce the Forced Labour Regulation in cooperation with the competent authorities by denying entry into or exit from the EU of products made with forced labour. The Forced Labour Regulation will also empower the European Commission to adopt delegated acts[63] supplementing the Forced Labour Regulation that identify products or product groups for which information will be required to be provided to customs authorities in decisions.

10. Reporting/ disclosure requirements for companies in-scope

Not Applicable.

11. Access to remedy mechanisms and litigation risk

Competent authorities shall give the concerned companies a reasonable time of at least 30 days to comply with their 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.

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

Public consultation for the Forced Labour Regulation has closed.

13. Useful resources to support compliance

European Commission, Proposal for a 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

Factsheet

U.S. Uyghur Forced Labor Prevention Act

1. Overview

The Uyghur Forced Labor Prevention Act (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 entities specified by the U.S. government (the UFLPA Entity List), are produced using forced labor. In effect, **importers of goods produced in XUAR, or by entities on the UFLPA Entity List will need 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. In addition, importers will need to **demonstrate due diligence, effective supply chain tracing and supply chain management measures to ensure that they do not import any goods made, in whole or in part, by forced labor, especially from XUAR.**

2. Context

On June 17, 2022, the U.S. Department of Homeland Security (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.

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, the 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.

3. Status

The UFLPA was signed into law on December 23, 2021, and took effect on June 21, 2022. The U.S. Customs and Border Protection (**CBP**) has been actively enforcing the UFLPA. Statistics around 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 investigation and enforcement. The countries of origin of the shipments include Malaysia, Vietnam, China, Thailand, Sri Lanka, among others.

4. Scope

Under the UFLPA, all products made (i) in XUAR, or (ii) by an entity on the UFLPA Entity List are presumed to be made from forced labor. 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.

5. Obligations for companies in-scope

Under the UFLPA, importers should ensure that their supply chains are free of forced labor and be able to document 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 China, particularly 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:

- Identifying and engaging with stakeholders and partners to assess and address forced labor risk;
- Conducting a forced labor risk assessment to identify the places in the supply chains where goods or materials are at risk of being made by forced labor;
- Developing a code of conduct to address the risk of forced labour, which is incorporated into supplier contracts;
- Communicating and training partners on due diligence and managing forced labor risks across the supply chain;
- Monitoring compliance of suppliers with codes of conduct (including through credible audits, use of technology, and engaging in partnerships with civil society);
- Remediating any identified indicators of forced labor (including by taking corrective action and ending a business relationship with the concerned supplier, where full remediation is not possible); and

- Using independent third-party verification to determine the implementation and effectiveness of the importer's due diligence system; and
- Providing regular and timely public reporting on its due diligence system (including any auditing and verification processes).

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.

Points to Note

- Importers should conduct supply chain tracing by mapping out their entire supply chains from raw materials to imported goods or materials.
- The supply chain tracing must also show the **chain of custody** of goods and materials from raw materials to the buyer of the imported goods or materials.
- The more comprehensively importers can map their supply chains, the more accurately they can identify risks of forced labor.

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 request an exception to the UFLPA's rebuttable presumption or requested by the 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 subject to 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 will 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):[64]

- 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.

3. Supply chain management measures

Information on supply chain management measures may then 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.

6. Compliance recommendations for companies in-scope

Companies in-scope 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 in-scope 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.

7. Potential implications for suppliers to companies in-scope

While the CBP Guidance is aimed at importers, suppliers face the risk of having their goods held at U.S. customs. To prevent and mitigate against this risk, 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 5 above and include (but is not limited to):[65]

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

- 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 labour

- Information on workers at each entity involved in the production of the goods in China such as wage payment and production output per worker; and
- 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.

8. Penalties for non-compliance

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.

9. 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.

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.

10. 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.

11. Access to remedy mechanisms and litigation risk

Please refer to Sections 8 and 9 above relating to penalties for non-compliance.

12. Opportunity to participate and engage in legislative developments

Not applicable.

13. 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. CBP, Operational Guidance for Importers

US CBP, Uyghur Forced Labor Prevention Act Statistics

Factsheet

EU Ecodesign for Sustainable Products Regulation

(including EU Digital Product Passport)

1. Overview

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

Overview (Continued)

A series of delegated acts[66] will set criteria for different product groups (referred to in this factsheet as product-specific rules). The ESPR will thus enable the setting of EU-wide performance and information requirements for almost all categories of physical goods placed on the market (with some exceptions). These requirements will relate to:

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

Digital Product Passport or DPP

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

2. Context

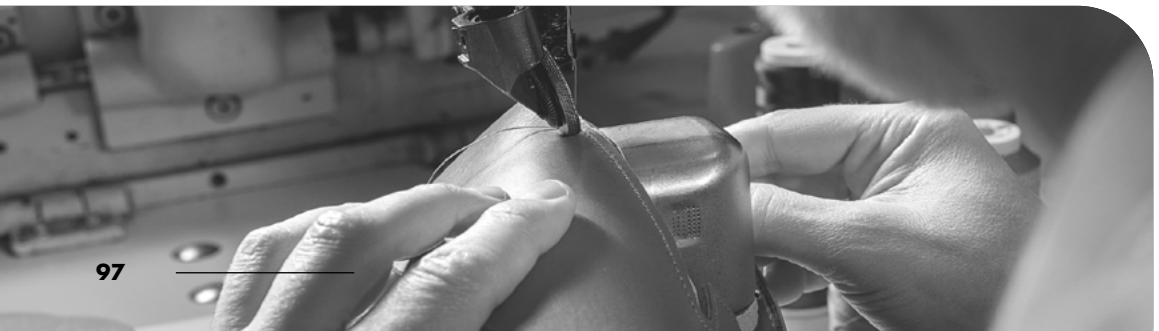
The proposal builds on the existing Ecodesign Directive which currently only covers energy-related products. The ESPR is one of the many ambitious proposals of the European Commission aimed at bringing companies in line with the Green Deal ambitions and EU's sustainability goals. The ESPR lays down a framework for setting ecodesign requirements based on the sustainability and circularity aspects listed in the EU Circular Economy Action Plan. The ecodesign approach is applicable to a very broad range of products and sets a wide range of targeted product requirements. This will contribute to achieving the EU's overall climate, environmental and energy goals, while supporting economic growth, job creation and social inclusion. The ESPR aims to promote the separation of economic development from natural resource use as well as reduce the EU's material dependencies. It will achieve this objective by making materials last for longer, ensuring that product value is retained for as long as possible and boosting the use of recycled content in products.

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

3. Status

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

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



4. Scope

Application of the ESPR

The ESPR shall apply to any physical good that is placed on the EU market or put into service in the EU, including components and intermediate products. This will not apply to certain items like food, feed, medicinal products for human use, veterinary medicinal products, living plants, animals and micro-organisms, products of human origin, products of plants and animals relating directly to their future reproduction.[67]

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 ESPR

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

5. Obligations for companies in-scope

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

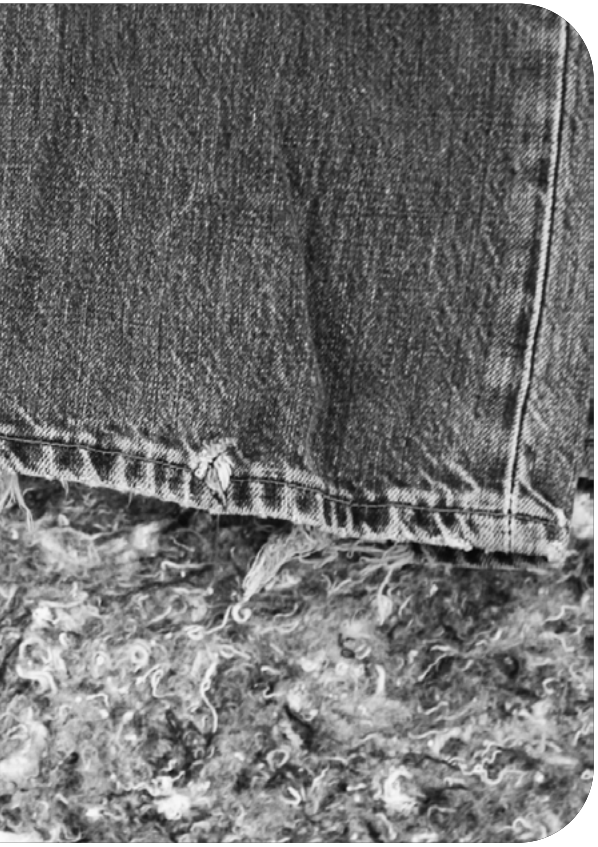
Obligations of Manufacturers

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).[68]

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.[69]

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.[70]

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[71] and the distributors[72] 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.[73]

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 rules[74].

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.[75] The dealer will provide a DDP[76], 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[77].

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.[78] 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.[79]

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.[80] 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.[81]

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.[82]

Digital Passport Product Obligations

The ESPR requires that the following product information are made digitally available[83]:

- **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)[84]. A DPP is required to be made available in relation to each product before it can be marketed or put into service[85].

The information requirements to be set out in the delegated acts will specify the following in relation to the DPP[86]:

- 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.[87] This data carrier and the unique product identifier must comply with the ISO/IEC standard 1549:2015[88]. 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.[89] Where the latter, those operators cannot sell, re-use or process the data beyond what is necessary for the storage services.[90]

6. Compliance recommendations for companies in-scope

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

Anticipated impact of the ESPR

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

Compliance with the DPP

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

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

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

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

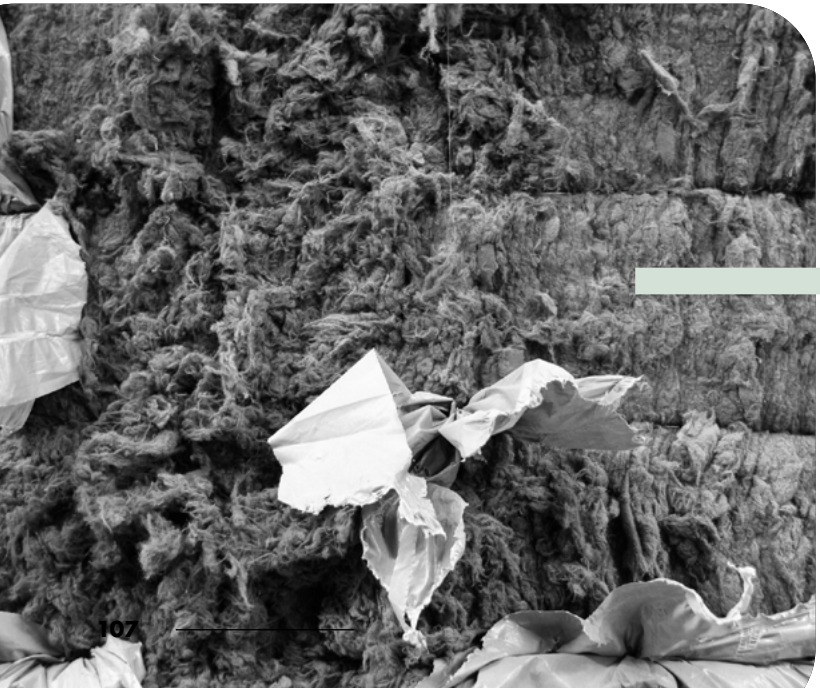
7. Potential implications for suppliers to companies in-scope

Overall Impact of the ESPR

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

Impact of the DPP

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



8. Penalties for non-compliance

If an EU country makes one of the following findings, it will require the concerned economic operator to put an end to the non-compliance concerned:[91]

- 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.[92]

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

9. Form of enforcement

The ESPR provides for the notified bodies to carry out conformity assessments in accordance with the assessment procedures which will be provided for in the product-specific rules.[94] 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.[95] The European Commission is empowered to lay down minimum numbers of checks to be performed under market surveillance on specific products or specific requirements.[96] 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.[97]

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

1. Customs controls related to the DPP

The European Commission will set up a registry for DPPs and specify the information contained within such DPPs that needs to be stored in the registry.[98] 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.[99]

2. Destruction of Unsold Consumer Products

Any economic operator that discards unsold consumer products directly, or on behalf of another economic operator, will be required to disclose the number of unsold consumer products discarded per year, differentiated per type or category of products, the reasons for the discarding of products, and the delivery of discarded products to prepare for re-use, remanufacturing, recycling, energy recovery and disposal operations. The information will be disclosed by the economic operator on a freely accessible website or otherwise made publicly available, subject to any applicable product-specific rule.[100] 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.[101]

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.[102]

11. Access to remedy mechanisms and litigation risk

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

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

Opportunity to comment on DPP requirements

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

Opportunity to propose self-regulation measures

Note that two or more economic operators may submit a self-regulation measure establishing ecodesign requirements for products to the European Commission as an alternative to a delegated act.[103] 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.[104] 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.[105]

13. Useful resources to support compliance

European Commission, Sustainable products: Commission consults on new product priorities

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

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

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

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

Factsheet

EU Packaging and Packaging Waste Directive and Proposal

1. Overview

The directive 94/62/EC on packaging and packaging waste (**Directive**) is part of a set of the EU rules on packaging and packaging waste, including design and waste management. The Directive was last amended in 2018 as part of the Circular Economy Package.[106] An ambitious revision is currently under legislative procedure. On November 30, 2022 the European Commission put forward a proposal[107] for amending Regulation EU 2019/1020[108] and Directive (EU) 2019/904[109], and repealing the Directive (the **Proposal**). This factsheet will discuss both the requirements of the current Directive and expected changes under the Proposal.

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

2. Context

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

1. Increase of packaging waste due to more single-use packaging, high level of avoidable packaging, and higher share of plastics in packaging;
2. Systemic issues with packaging circularity due to commonly used design features that inhibit recycling, and unclear packaging labelling; and
3. Systemic issues in EU's ability to reduce the use of virgin materials in new packaging.[110]

3. Status

The Current Directive

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

The Proposal

The Proposal is currently being discussed in the European Parliament[111] by the Environment, Public Health, and Food Safety Committee, with Frederique Ries as Rapporteur. Due to the European elections taking place in the spring of 2024, it is expected that the process will either be fastened for the legislation to be passed in early 2024 before the change of Parliament or will be carried over with the new Parliament and thus not finished before 2025. Extensive negotiations are expected.

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

4. Scope

The Directive covers all packaging placed on the European market and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household, or any other level, regardless of the material used.[112]

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.[113] It includes all sales packaging or primary packaging, grouped packaging or secondary packaging, and transport packaging or tertiary packaging.

5. Obligations for companies in-scope

Under the current Directive:

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

1. Essential Requirements

All packaging placed on the EU market to comply with three essential categories of requirements (the Essential Requirements):[114]

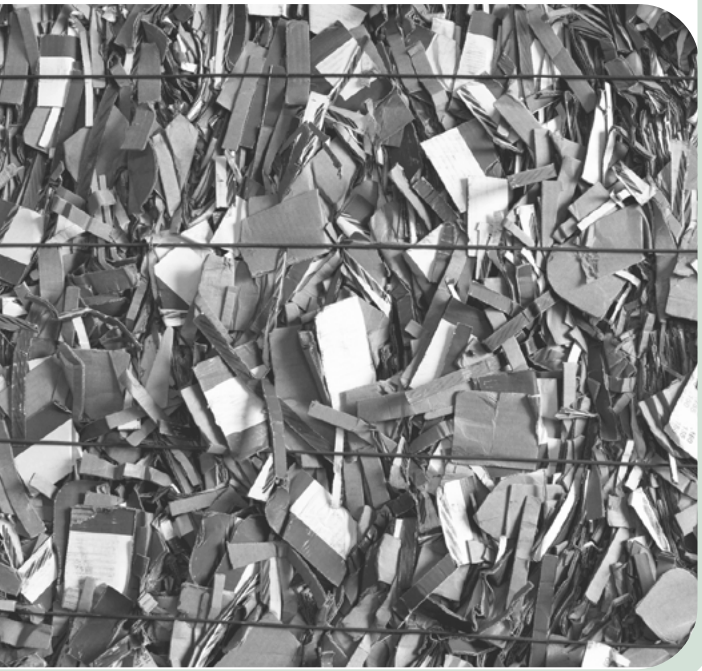
- **Manufacturing and composition of packaging:** packaging must be designed and manufactured adequately to (i) reduce its volume and weight to the minimum, (ii) permit its re-use or recovery including recycling, and (iii) limit the presence of noxious or hazardous substances and materials.

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

2. Targets

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

- 3 years after the entry into force of the Directive, all packaging placed on the market shall comply with Essential Requirements;
- No later than 5 years after the implementation of the Directive in national laws, at least 50% of all packaging should be recovered, at least 15% of which by weight per packaging material being recycled[115];
    - By December 31, 2025, at least 65% by weight of all packaging waste should be recycled. The recycling targets per material were set at: 50% of plastic, 25% of wood, 70% of ferrous metals, 50% of aluminum, 70% of glass, and 75% of paper and cardboard.
    - By December 31, 2030, at least 70% by weight of all packaging waste should be recycled. The recycling targets per material were set at: 55% of plastic, 30% of wood, 80% of ferrous metals, 60% of aluminum, 75% of glass and 85% of paper and cardboard.
    - The concentration levels of heavy metals present in packaging should not exceed 600 ppm by weight no later than 2 years after the implementation



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

3. Producer Responsibility

The EU countries must also establish responsibility schemes to encourage the design of environmentally friendly packaging by making sure that producers bear the financial and/or organizational responsibility for the waste management of their packaging.[116]

Under the Proposal:

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

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

Some key measures put forward by the Proposal include:

- Updated targets for packaging waste reduction and mandatory reuse or refill.[117]
- New EU-wide standards for over-packaging which are meant to reduce the excessive empty spaces in packaging.[118]
- Extended ban on single-use packaging.[119]
- Mandatory compostability for some packaging such as hotel miniatures, coffee pods, lightweight plastic bags etc.[120]
- New system of packaging labelling meant to facilitate recycling.[121]
- New targets for reducing the packaging waste generated per capita as compared to the packaging waste generated per capita in 2018, by 5% in 2030, 10% in 2035, and 15% in 2040.

6. Compliance recommendations for companies in-scope

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

7. Potential implications for suppliers

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

8. Penalties for non-compliance

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

9. Form of enforcement

Not applicable.

10. Reporting/ disclosure requirements for companies in-scope

There are no reporting obligations on companies. However, there are reporting requirements for the EU countries. Specifically, the EU countries must create and/or enable databases on packaging and packaging waste to facilitate the monitoring of the Directive's implementation.[122] A European Commission decision[123] decided on the format and rules regarding the calculation, verification, and reporting of data through the databases. A second European Commission decision[124] later introduced new rules to improve the quality of reporting received. European Commission decisions are binding, meaning that addressees of the decisions (in this case, the EU countries) must comply with the decision.

11. Access to remedy mechanisms and litigation risk

Not applicable.

12. Opportunity to participate and engage in legislative developments

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

13. Useful resources to support compliance

Consolidated text: European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

European Commission, Proposal for a revision of EU legislation on Packaging and Packaging Waste

European Commission, Packaging waste

Factsheet

EU Microplastics Regulation

1. Overview

The Commission Regulation (EU) 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 (the **Microplastics Proposal**) is a proposed legislative initiative which aims to reduce the intentional release of microplastics in the environment. In doing so, the Microplastic Proposal hopes to ultimately reduce environmental pollution and potential risks to human health.

2. 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 reducing microplastic emissions by 30% among its 2030 targets.

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 unintentional release of microplastics. To this end, the European Commission will address the presence of microplastics in the environment by:

- Restricting intentionally added microplastics and tackling pellets considering the opinion of the ECHA;
- Developing labelling, standardization, certification, and regulatory measures on unintentional release of microplastics;
- Further developing and harmonizing methods for measuring unintentionally released microplastics and delivering harmonized data on microplastics concentrations in seawater; and
- Closing the gaps in scientific knowledge related to the risk and occurrence of microplastics in the environment, drinking water and foods.

There is currently no single European law that covers microplastics in a comprehensive manner. There are also no economic incentives for businesses to take measures to reduce the presence of microplastics in the environment.

3. 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.

If passed, the European Commission can send the Microplastics Proposal to the European Parliament and the Council. The European Parliament and the Council have a 3-month scrutiny period and, if they do not oppose the Microplastics Proposal during that period, it will be adopted under the Commission Regulation (EU) 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 as regards synthetic polymer microparticles, which establishes the EU chemicals framework.

4. Scope

The Microplastics Proposal on microplastics will apply to manufacturers, importers, and downstream users of microplastics and of products within the scope of the legislation.

5. Obligations for companies within scope

The Microplastics Proposal **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.[125] This would include (but is not limited to) use of microplastics cosmetic products or detergents/waxes/polishes and air care products.

Certain uses and sectors are excluded from this prohibition:

Excluded uses/sectors:

i. 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.

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.

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

- **4 years** after the entry into force for the use of microplastics in rinse-off cosmetic products;
- **5 years** after the entry into force 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 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 for the use of microplastics in plant protection products and biocidal products; and
- **12 years** after the entry into force for the use of microplastics in lip products, nail products and make-up.

6. 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 Proposal.

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 textile, 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.

7. Potential implications for suppliers

See discussion in Section 6 above.

8. Penalties for non-compliance

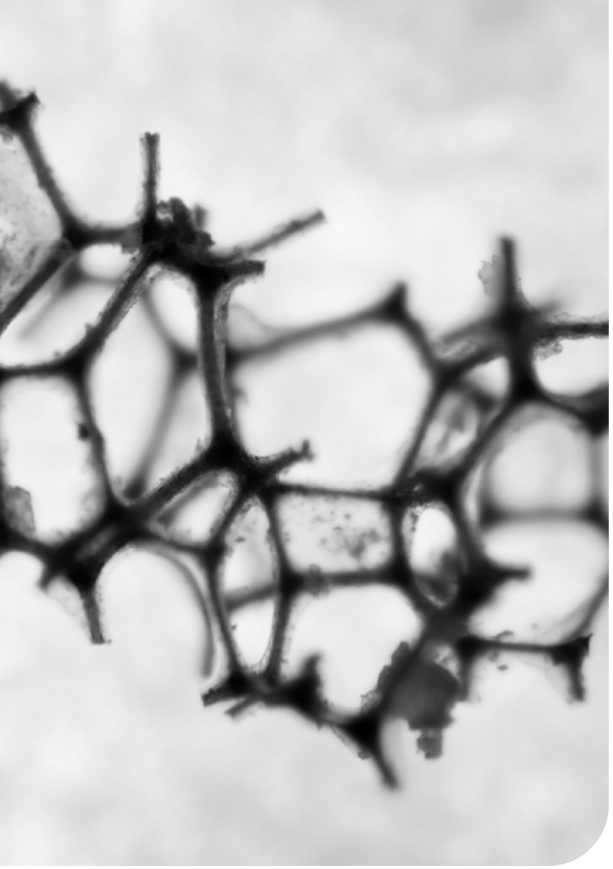
Not applicable.

9. 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.

10. 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.



11. Access to remedy mechanisms and litigation risk

Not applicable.

12. Opportunity to participate and engage in legislative developments

The Microplastics Proposal 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.

13. 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)

Factsheet

UK Plastic Packaging Tax

1. 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.[126] The PPT applies to plastic packaging manufactured in, or imported into, the UK that contain less than 30% recycled plastic content.

2. 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.

3. 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

4. Scope

The PPT applies to manufacturers who undertake the last substantial modification[127] 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.

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.

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.

5. 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. 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 individual company, and not 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.

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.

6. 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

7. 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.[128] 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.

8. 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.[129]

9. 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.

10. Reporting/ disclosure requirements for companies in-scope

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

11. 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. 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.

12. Opportunity to participate and engage in legislative developments

Not applicable.

13. 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

Factsheet

EU Product Environmental Footprint Guide

1. 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.

2. 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.

3. 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) 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 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.

4. 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 PEFCRs 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.

5. 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).

6. Compliance recommendations for companies in-scope

Not applicable as explained in Section 5.

7. 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.

8. Penalties for non-compliance

Not applicable.

9. Form of enforcement

Not applicable.

10. Reporting/ disclosure requirements for companies in-scope

Not applicable.

11. Access to remedy mechanisms and litigation risk

Not applicable.

12. 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.

13. Useful resources to support compliance

European Commission, Environmental Footprint methods

European Environmental Bureau, The EU Product Environmental Footprint Methodology

Factsheet

EU Textiles Regulation

1. 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.

2. 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.

3. 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.

4. 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[130] 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.

5. Obligations for companies in-scope

Textile labels[131] 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.[132]

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;[133] 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'.

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.

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

The terms "virgin wool" or "fleece wool" may only be used for products composed exclusively of a fibre which:

- 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.

6. 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.

7. 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.

8. Penalties for non-compliance

Not applicable.

9. 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.

10. 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.

11. Access to remedy mechanisms and litigation risk

Not applicable.

12. Opportunity to participate and engage in legislative developments

Not applicable.

13. 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

Factsheet

EU Taxonomy

1. Overview

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

2. Context

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

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

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

3. Status

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

4. Scope

The Taxonomy applies to:

- Financial companies that offer financial products;[134]
- Non-financial companies that are required to report under the Corporate Sustainability Reporting Directive (the CSRD); and
- EU countries.

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

5. Obligations for companies in-scope

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

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

1. it contributes substantially to one or more environmental objectives[135] or is an enabling activity;[136]
2. it does not significantly harm (**DNSH**) any environmental objectives;
3. it is carried out in compliance with minimum safeguards; and
4. it complies with technical screening criteria (the **TSC**).[137]

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

Objective 1

Climate change mitigation

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

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

Objective 2

Climate change adaptation

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

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

Objective 3

Sustainable use and protection of water and marine resources

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

Objective 4

Transition to a circular economy

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

Objective 5

Pollution prevention and control

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

Objective 6

The protection and restoration of biodiversity and ecosystems

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

6. Compliance recommendations for companies in-scope

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

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

7. Implications for suppliers to companies in-scope

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

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

Non-financial companies that can demonstrate substantial contribution to the circular economy in the manufacture of textile and apparel products will likely attract more investment.[138] This in turn may incentivize these non-financial companies to change their business practices to better align with the environmental objectives set out in the Taxonomy. It is expected that companies in the apparel industry will change to focus on more resource-efficient manufacturing processes, durability of materials, and circularity (re-use and repair of products, and minimizing textile waste).

8. Penalties for non-compliance

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

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

9. Form of enforcement

Not applicable.

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

Reporting obligations for non-financial companies in-scope

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

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

Specific metrics for these key performance indicators and a reporting template can be found in 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.[139] This should include an explanation how and to what extent the investments relate to economic activities that are environmentally sustainable under the Taxonomy. Financial market participants must also specify the proportion of investments in the financial product that are made in environmentally sustainable economic activities.

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

11. Access to remedy mechanisms and litigation risk

Not applicable.

12. Opportunity to participate and engage in legislative developments

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

13. Useful resources to support compliance

European Commission, EU taxonomy for sustainable activities

European Commission, EU Taxonomy Navigator

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

European Commission, 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)

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

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

References

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

2 European Commission, A European Green Deal

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

4 European Union, Types of legislation

5 European Union, Types of legislation

6 European Union, Types of legislation

7 UNGPs Principle 25 and commentary

8 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.

11 Adapted from the OECD Due Diligence Guidance for Responsible Business Conduct, Page 15.

12 Shift, Human Rights Due Diligence: State of Play in Europe (May 2023)

13 Article 30

14 Article 2(2), CSDDD

15 Article 2 (1)(a)

16 Article 2(1)(b)

17 Recital 47, CSDDD

18 Article 3(g), CSDDD

19 An "established business relationship" is defined as business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain (Article 3(f), CSDDD). A "business relationship" refers to a a relationship with a contractor, subcontractor, or any other legal entities (partner): (i) with whom the company has a commercial agreement or to whom the company provides financing, insurance, or reinsurance, or (ii) that performs business operations related to the products or services of the company for or on behalf of the company.

20 Article 4, CSDDD

21 Article 5, CSDDD

22 Article 6, CSDDD

23 Article 7, CSDDD

24 Article 8, CSDDD

25 Article 9, CSDDD

26 Article 10, CSDDD

27 Article 15, CSDDD

28 Articles 25, CSDDD

29 Article 18 (2), CSDDD

30 Article 19(1), CSDDD

31 Article 18 (5), CSDDD

32 Article 22 (1), CSDDD

33 Article 22 (2), CSDDD

34 Article 18 (4), CSDDD

35 Article 20 (1), CSDDD

36 Article 20 (3), CSDDD

37 Article 20 (2), CSDDD

38 Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

39 Article 11, CSDDD

40 Article 19, CSDDD

41 Article 22, CSDDD

42 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.

43 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.

44 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.

45 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.

46 Reporting will occur in the following financial year for each of the above financial years.

47 "**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.

48 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.

49 KPMG, The European Commission announces modified timetable for sector-specific ESRS standards

50 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 not have a storefront there.

51 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.

52 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 deducting taxes and deductions.

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

54 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.

55 Liquidated damages is a term used in legal contracts to refer to financial compensation for the loss suffered by the injured party.

56 As promoted by the World Resources Institute, CDP, United Nations Global Compact, and the World Wildlife Fund.

57 A regulation is a binding legislative act. It must be applied in its entirety across the EU.

58 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).

59 Article 2, Forced Labour Regulation

60 Ibid

61 Article 4(6), Regulation

62 For example, the YESS Standards for Spinning & Fabric.

63 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.

64 Appendix A. Commodity-Specific Supply Chain Tracing Document

65 This is non-exhaustive list. Please refer to the Guidance for further details on the documentation required.

66 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.

67 Specified in Article 1(2) of the ESPR.

68 Article 21(3) of the ESPR.

69 Articles 21(4), 21(5) and 21(6) of the ESPR.

70 Articles 21 (7), 21(8) and 21(9) of the ESPR.

71 Article 23 of the ESPR

72 Article 24 of the ESPR

73 Article 28 of the ESPR.

74 Article 27 of the ESPR.

75 Articles 25(1) and (2) of the ESPR.

76 Article 25 (2) of the ESPR.

77 Article 25(3) of the ESPR.

78 Articles 26(1) and 26(2) of the ESPR.

79 Article 26(3) of the ESPR.

80 Article 29 of the ESPR.

81 Article 30(1) of the ESPR.

82 Article 30(2) of the ESPR.

83 Article 5 (1) of the ESPR.

84 Article 7(1) of the ESPR.

85 Article 8(1) of the ESPR.

86 Article 8 (2) of the ESPR.

87 Article 9 (1) (a) and (b) of the ESPR.

88 Article 9 (1) (c) of the ESPR.

89 Article 10 (c) of the ESPR.

90 Article 10 (d) of the ESPR.

91 Article 65(1) of the ESPR.

92 Article 65(2) of the ESPR.

93 Article 68 of the ESPR

94 Article 53 of the ESPR.

95 Article 59 (1)

96 Article 60 (1)

97 Article 63

98 Article 13 (1) and (2) of the ESPR

99 Article 13 (4) of the ESPR

100 Article 20 of the ESPR

101 Article 31 of the ESPR

102 Articles 21(9) and 23(8) of the ESPR

103 Article 18 (1) of the ESPR

104 Article 18 (4) of the ESPR

105 Article 18 (3)(b) of the ESPR

106 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.

107 European Commission, Proposal for a revision of EU legislation on Packaging and Packaging Waste, 30 November 2022, link.

108 Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products.

109 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.

110 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.

111 Legislative Observatory European Parliament, 2022/0396(COD) Packaging and packaging waste, link.

112 Article 2, Directive

113 Article 3, Directive

114 See Annex II – Essential requirements on the composition and the reusable and recoverable, including recyclable, nature of packaging

115 Article 6.

116 Article 12 of the Directive

117 New Article 10 of the Proposal

118 New Article 21 of the Proposal

119 New Article 22 of the Proposal

120 New Article 8 of the Proposal

121 New Articles 11 and 12 of the Proposal

122 Ibid.

123 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.

124 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.

125 Polymers that occur in nature and that have not been chemically modified and polymers that are biodegradable are excluded.

126 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.

127 A substantial modification is any process that changes the shape, thickness, weight, or structure of a packaging component.

128 Companies should also be mindful that the supply chain of recycled materials carry their own set of human rights risks.

129 Please refer to Sections 77 to 81 of the Finance Act 2021.

130 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."

131 According to the definition in the Textiles Regulation, 'labelling' means affixing the required information to the textile product by way of attaching a label.

132 Article 15

133 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.

134 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.

135 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.

136 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.

137 The TSC are a set of rules and metrics used to evaluate whether an economic activity can be considered environmentally sustainable under the Taxonomy. For more information see Section 11 below.

138 By contrast, those that demonstrate poor environmental risk management could see greater challenges in accessing capital.

139 Article 5, Taxonomy