

STATE OF THE NATION 2024

GUEST CONTRIBUTION

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PULLING AT THE THREADS: UNRAVELLING THE REGULATORY DEVELOPMENTS FACING THE TEXTILE INDUSTRY

This past year was one of the most active years we have ever seen for governing sustainability. The regulatory changes we saw in 2023 will be felt acutely by the textile industry, which has been identified as a “high impact” industry in Europe. The new and proposed EU requirements will impact almost all areas of a textile product’s lifecycle, from design and manufacture to marketing, repair, and end-of-life disposal.

Common themes behind many of the changes are transparency and traceability. We anticipate these issues will continue to take center stage in 2024. Much of the new legislation aims at enhancing traceability. Stakeholders across the entire textile industry will likely face greater accountability for the full lifecycle of their products, irrespective of their role in the supply chain.

The key word of 2023/24: Transparency

Traceability sits at the core of legislative developments focused on promoting sustainable practices in the textile industry. Companies will need to tackle the challenge of supply chain visibility in advance of wide-ranging requirements coming into force. Given the pace at which these mandatory obligations are being implemented and the penalties for non-compliance, companies are encouraged to act now to better understand the regulations and reinforce communication channels throughout their value chains before the laws are in place.

Key takeaways from 2023/24 included the following:

The adoption of the Digital Product Passport (DPP) – On 4 December 2023, a provisional agreement was reached on the new Ecodesign for Sustainable Products Regulation (ESPR). In addition to far-reaching sustainability

requirements for product groups, the ESPR introduces new transparency requirements for products in the form of a Digital Product Passport (DPP). The purpose of a DPP is to electronically register, process, and share product-related information amongst supply chain partners, authorities, and consumers. The information contained in the DPP is likely to relate to product compliance, sustainability credentials such as chemical substances of concern, and the product’s environmental footprint and traceability.

The introduction of DPPs is indicative of the EU’s move towards the digitisation of product compliance. It will be coupled with a new EU IT system which will be used to screen all DPPs at EU borders. These systems will use AI technologies to carry out more efficient and effective reviews of compliance across complex supply chains. The ESPR is expected to enter into force ahead of the European Parliamentary elections in June 2024.

Although the ESPR could potentially apply to all products (with exemptions for food, feed, medical products, and certain motor vehicles), delegated legislation is needed to effect the DPP requirement. The textile industry—especially garments and footwear—is perceived as a high-impact sector. The European Commission is prioritizing a Delegated Act on textiles, which would introduce the DPP and the substantive rules on sustainability and circularity for the industry.



Prohibitions on products of deforestation (adopted) and products of forced labour (proposed) mean that traceability will be key for continued access to the EU market. Both these laws prohibit the placing and making available of non-compliant products on the EU market and their export from the EU. The Deforestation Regulation, which came into force on 29 June 2023, will require companies to substantiate that products are compliant before they can be placed on the EU market or exported from the EU. Penalties include fines of up to 4% of a company’s EU turnover and the risk of product seizure for non-compliance. The Deforestation Regulation applies to certain commodities and products listed in the Annex, including rubber, cattle, and wood, as well as leather and paper products of the printing industry placed on the EU market from 30 December 2024.

The EU’s corresponding [proposal to ban products made with forced labour](#) is still in draft and while some progress may be achieved in 2024, the European Parliamentary elections in June 2024 may delay the legislative process. In its current form, the prohibition would apply where there is “substantiated concern” that a product has been made with forced labour. However, the European Parliament is advocating for goods produced in areas designated as high-risk to be presumed products of forced labour, placing the burden of proof on companies to prove the goods comply with the ban.

Beyond a product’s sustainability credentials, traceability is necessary to satisfy corporate reporting and due diligence obligations. –The EU’s Corporate Sustainability Reporting Directive (CSRD) is one of two groundbreaking pieces of EU Environmental, Social, and Corporate Governance (ESG) legislation that apply to all industries, including textiles. It was adopted in January 2023 and requires certain EU companies and non-EU companies with activities in the EU to file audited sustainability reports alongside their annual financial statements starting as early as 2024. These reports must publicly detail companies’ sustainability-related impacts throughout their value chains. In addition, they must provide insights into a broad range of sustainability topics including pollution, resource use (such as water consumption), biodiversity, workers in the value chain, and impacts on consumers and end-users.

These new mandatory reporting requirements are likely to place significant pressure on companies to better monitor their value chains. Visibility beyond Tier 1 suppliers is also likely to be critical for the textile industry following the provisional agreement on the EU’s Corporate Sustainability Due Diligence Directive (CSDDD) on 14 December 2023. Once adopted, the CSDDD will create new and far-reaching mandatory human rights and environmental due diligence obligations for EU companies and non-EU companies operating in the EU. Penalties for non-compliance include fines of up to 5% of a company’s global turnover.

Waste management: Tracing the Whole Product Lifecycle

Traceability does not stop with the sale of clothing. The textile industry faces increasing scrutiny as to the amount of textile waste generated. These are the key takeaways for textile companies around waste management in 2023/24:

Prepare for a ban on the destruction of unsold consumer apparel and clothing accessories. – A key component of the provisionally agreed ESPR is the first-of-its-kind ban on the destruction of unsold clothing and footwear. This prohibition would apply to articles that have not been offered for sale as well as products returned by a consumer. In addition, economic operators will be required to disclose annually the quantities of unsold consumer products discarded and the reasons for doing so. Large companies will need to comply two years after the legislation enters into force. We estimate the ESPR will be adopted in Q1 or Q2 2024. Medium-sized companies will have six years to comply. While there are certain exemptions, the impact of this ban is likely to be significant for the clothing industry.

Keep an eye out for the introduction of new extended producer responsibility requirements (EPRs) for textiles. – On 5 July 2023, the European Commission published proposed revisions to the Waste Framework Directive with a focus on textile and food waste. If adopted, the amendments are expected to require manufacturers, sellers, and importers, among others, to take financial and operational responsibility for the separate collection, recovery, and subsequent management of collected waste. Although it is still in its early stages, we estimate the legislation will be passed sometime in 2024/2025 with the rules applying from around 2025-2027.

Sustainability labelling and claims

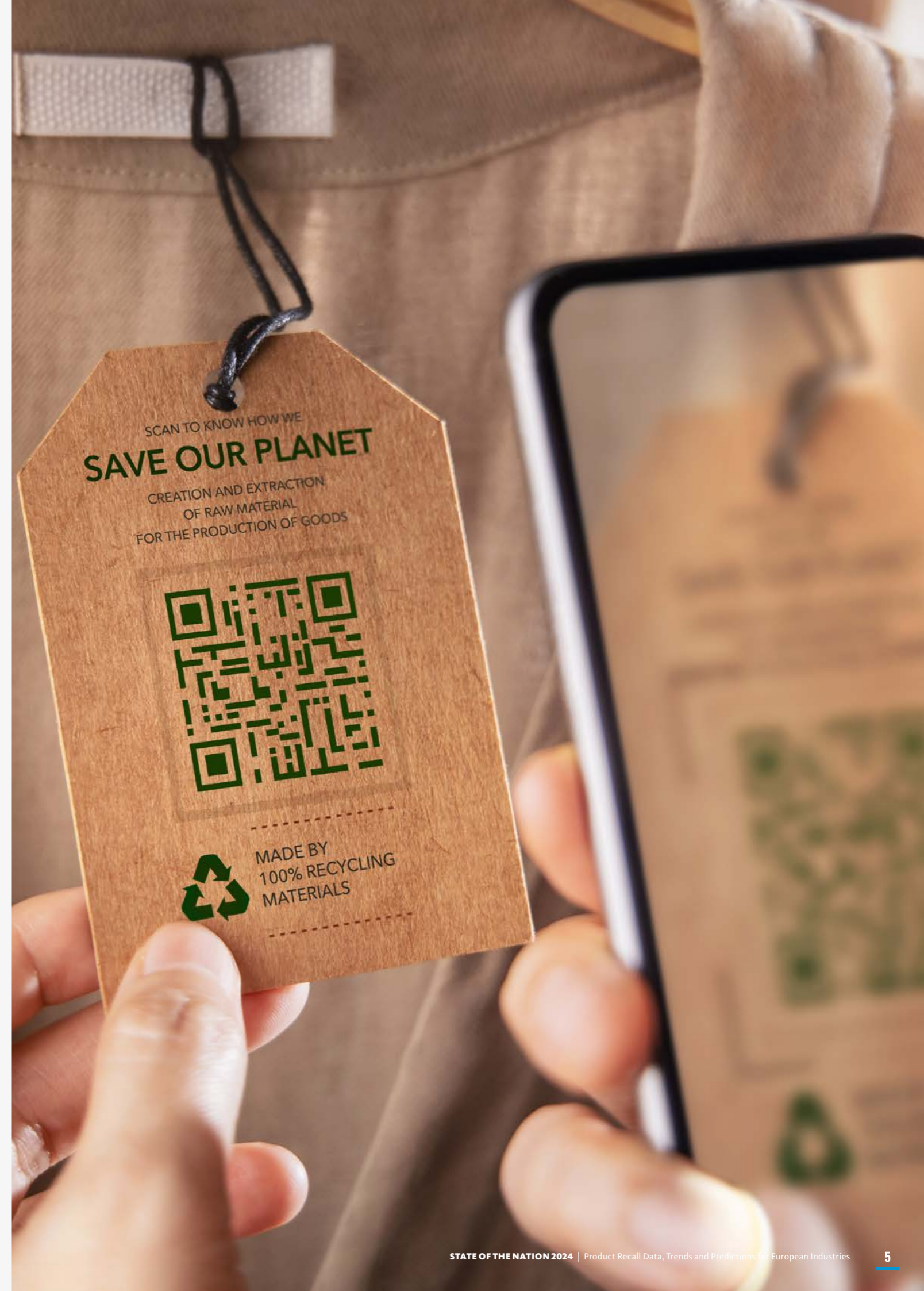
Upcoming labelling requirements and rules on sustainability-related claims are expected in 2024. They include provisions to ensure consumers have access to relevant information that is accurate, clear, and comparable.

Companies should take stock of their labelling and public messaging to-date and work fast towards being able to substantiate any claims they make. These are the highlights for 2023/24 around sustainability:

Revision of the EU rules on textile labelling. – Revisions to the EU Textile Labelling Regulation are currently subject to a public consultation ending in March 2024. The draft legislation is expected to be published in Q4 2024. The legislative proposal will then go through the ordinary legislative procedure – it is expected the requirements will apply from around 2026-2028. The revisions are anticipated to introduce specifications for physical and digital labelling of textiles including introducing sustainability and circularity parameters to align with requirements under the proposed ESPR. Additional policy considerations include clarifying and updating the rules on fibre identification, EU-wide sizing, and leather and fur authenticity (enlarging the scope of the regulation beyond textile products).

Having an EU-wide rule should ease the burden of compliance for companies that currently must navigate patchwork national regimes. For the time being, national labelling initiatives such as France's Triman Logo and [eco-label](#) requirement continue to dominate. For those caught by these rules, the progress of the European Commission's infringement case initiated against France in February 2023 for inhibiting the free movement of goods through its labelling regimes is one to watch.

Beware the “empowered consumer.” – On 17 January 2024, the new Green Transition Directive to empower “consumers for the green transition” was adopted by the European Parliament and is now pending final approval by the Council before entering into force. Once formally adopted, Member States will have two years to transpose the directive into national law. The Green Transition Directive amends the Unfair Commercial Practices Directive and Consumer Rights Directive. It will ban unsubstantiated generic environmental claims, climate-related claims reliant on offsetting, unfounded durability claims, and unauthorised sustainability labels.



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These rules will be in-scope of the EU Representative Actions Directive, allowing pan-European class action-style litigation to be brought in case of violations. The Green Transition Directive complements the proposed Green Claims Directive for which negotiating positions are expected to be published in early 2024. The proposed Green Claims Directive lays down more specific rules on the substantiation, third-party verification, and communication of environmental claims.

Materials and manufacture: Tracing a product's constituent parts

The textile industry will need to continue to adapt to changing requirements on permitted materials, necessitating traceability down to a product's constituent parts. While the final scope of these materials-related regulations is still somewhat uncertain, the trends are apparent and we anticipate more clarity in 2024.

Companies in the textiles industry should use the time to understand the composition of their products and determine whether design changes will be necessary in coming years. Top themes around materials from 2023/24 include the following:

The end is in sight for so-called "forever chemicals." – What materials can and cannot be used in the design and manufacturer of textiles is, perhaps, familiar ground for those in the textile industry. Less familiar may be the [EU's proposed restriction of per-and polyfluoroalkyl substances](#) (PFAS) published on 7 February 2023. These substances are sometimes called "forever chemicals" because they can linger in the human body and environment for a very long time. The EU is not alone. U.S. state legislators are also introducing similar prohibitions.

However, the EU's proposal is unique in its broad scope. If adopted, it would be the biggest proposed chemical restriction in EU history and ban the manufacture, use, and placing on the EU market of around 10,000 PFAS, both on their own and when incorporated into products (e.g., waterproof jackets). If the final text is approved, companies may have a limited window to react. The current proposal only offers an 18-month transition

period. The public consultation closed on 22 September 2023 and there could be draft legislation in 2024. If so, the restriction could be adopted by the European Commission as early as 2025 with restrictions applying from 2026/27.

Increased scrutiny of sensitizing substances. – In a similar vein, the EU also proposed restricting the placement on the EU market of products containing one of the more than 1,000 skin-sensitizing substances commonly contained in clothing and textile items, including those processed using certain dyes. While the exact scope remains uncertain, articles which come into contact with human skin, including accessories such as jewelry, goggles, and wrist straps, are expected to be in-scope. The REACH Committee, which is responsible for the regulation of chemicals in the EU, is expected to vote on draft legislation in Q1/Q2 2024.

Two less things to think about, for now. – Some respite for the textile industry comes from the removal of synthetic textiles from the scope of the European Commission's proposed regulation on microplastic pollution published on 16 October 2023. While the scale of microplastic pollution associated with the textiles industry is well recognized, the Environment Commissioner Virginijus Sinkevičius reportedly said that it is "very unlikely" that further legislative proposals tackling other sources of microplastic pollution will be presented before the end of the Commission's term.

In addition, the proposed revisions to the EU's REACH regulation have been postponed for a second time and likely will not see progress until after the European elections in June 2024. The EU Commission considers review of the REACH regulation as a cornerstone for regulating chemicals as part of the Chemicals Strategy for Sustainability.

What is ahead?

Now more than ever, it is important for all actors in the textile industry to take stock and remain abreast of developments to make sure that they can continue to operate in the EU. This includes assessing virtually every process and material from sourcing to waste removal. The speed with which regulators hope to enact some of the new measures only adds to the challenges.



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