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# Update on Mandatory Human Rights Due Diligence: Groundbreaking New York Fashion Sustainability Legislation Proposal, While EU Initiative Stalls

Client Alert | January 27, 2022

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In February and March 2021, we published updates on global legislative developments in relation to mandatory human rights due diligence and supply chain reporting (see here and here).

At that time, it was expected that the European Commission ("**EC**") would publish draft legislation at the pan-European level in the form of a Sustainable Corporate Governance proposal ("**SCG**") in Summer 2021. The anticipated draft directive was hailed as a potential game-changer: directing how companies should manage matters in their own operations and value chains as regards human rights, climate change and the environment, and related governance.

By comparison, fewer material developments have arisen in the United States, with the most notable change to the law in this field in recent years being the California Transparency in Supply Chains Act 2010. But the landscape may be changing, both with the recently passed federal Uyghur Forced Labor Prevention Act and a new proposed law pending in New York State (the draft "Fashion Sustainability and Social Accountability Act") that may impose significant reporting requirements on the fashion industry.

***Pan-European Developments – EC draft legislation significantly delayed***

As it stands, the EC draft directive has not yet been handed down and updates on its status have not been forthcoming from the EC. However, it is reported that the delay is a result of a (second) rejection by the EC's internal Regulatory Scrutiny Board (an independent body charged with quality control and impact assessment of legislation). The latest indications by the EC are that the draft directive is now expected in February 2022.

Unsurprisingly, this delay has been met with widespread condemnation and concern from civil society. For example, on 8 December 2021, in an open letter signed by 47 civil society and trade union organizations to EC President Ursula von der Leyen (see here), complaints were made about delays to a "*crucial new law that can help millions of people to demand justice against human rights violations*…" and expressing "*dee*[p] *concer*[n]" about the "*complete lack of transparency on the reasons for this new delay*". The letter called on the President to "*publicly reiterate* [the] *commitment … to making supply chains of companies active on the EU market sustainable through ambitious, binding human rights and environmental due diligence legislation*".

***US Developments – Groundbreaking draft legislation proposed***

## Related People

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Meanwhile, in the US, human rights due diligence legislation has advanced with two meaningful developments.

On the federal level, on 23 December 2021, President Biden signed the Uyghur Forced Labor Prevention Act (the "**UFLPA**") into law. The UFLPA creates a rebuttable presumption that all goods manufactured – even partially – in China's Xinjiang Uyghur Autonomous Region are the product of forced labor and therefore not entitled to entry at US ports. The UFLPA also builds on prior legislation, such as the Uyghur Human Rights Policy Act of 2020, by expanding that Act's authorization of sanctions to cover foreign individuals responsible for human rights abuses related to forced labor in the Xinjiang region. We explore the UFLPA in detail in our client alert, here.

On the state level, earlier this month, two New York State Senators introduced historic legislation to set broad sustainability mandates for the fashion industry – an industry which is (according to some estimates) responsible for approximately 4-8.6% of global greenhouse gas emissions. The Fashion Sustainability and Social Accountability Act (the "**FSSAA**"), sponsored by Senator Alessandra Biaggi and assembly member Dr. Anna Kelles, is a proposal that, if enacted, would require fashion retailers and manufacturers doing business in New York State with annual global gross revenues that exceed $100 million to publish extensive disclosures on their websites about their "*environmental and social due diligence policies, processes and outcomes, including significant real or potential adverse environmental and social impacts*" (see here). The FSSAA would therefore place obligations on many household fashion names and brands based around the world.

The disclosures under the draft FSSAA include, among other things: (i) supply chain mapping of at least 50% of suppliers by volume across all tiers of production; (ii) a "sustainability report" identifying each business's risks, as informed by United Nations and International Labor Organization principles; (iii) independently verified greenhouse gas reporting; and (iv) quantitative measures, such as publishing the median wages of workers of suppliers compared with the local minimum wage. The FSSAA requires that all disclosures be made on the retail or manufacturer's website within a year of the legislation's enactment into law.

In terms of enforcement, the FSSAA, if passed, would require New York's Attorney General ("**AG**") to publish an annual report regarding companies' compliance with the law. And, if enacted, failure to meet the legislation's requirements would result in the AG having the power to fine sellers and manufacturers up to 2% of annual revenues of $450 million or more. Such money will then be deposited into a community benefit fund, which will be used for environmental projects that directly and verifiably benefit environmental justice communities.

While legislation can take years, advocates are hoping that the bill is passed by Spring 2022 and certainly no later than the end of the 2022 New York State legislative session in June. The legislation has four cosponsors and is currently pending before the New York House Consumer Affairs and Protection and Senate Consumer Protection Committees and, if it advances out of committee, it will be voted on by the full legislative body.

***Conclusion***

These initiatives in the US are a further indication of the general direction of evolving due diligence expectations. If enacted, the FSSAA would not only make waves in the fashion world, but could also foreshadow legislation requiring ESG disclosures for other industries in the US.

With this in mind, together with the anticipated EC legislation and individual country developments, companies should continue to reflect on their knowledge of their own supply chains, human rights and environmental risks within their business, and internal due diligence processes/compliance methodologies. The expectations of companies in

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terms of their substantive management of environmental and human rights risks, as well as their reporting obligations, looks set only to increase.

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Environmental, Social and Governance (ESG) practice, or the following authors in London and the US:

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