

### The New German Supply Chain Act – Key Facts and Potential Impacts on Businesses

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According to the Federal Ministry of Labour and Social Affairs, the Act on Corporate Due Diligence in Supply Chains (in the following the "Supply Chain Act") will be adopted before the end of this legislative period. A corresponding government draft was passed at the beginning of March. Below you will find an overview of the most important facts.

#### Current Status of the Legislative Process

After the Federal Ministry of Labour and Social Affairs was able to reach an agreement with the Federal Ministry for Economic Affairs and Energy on the last contentious issues, the Federal Cabinet approved the government draft of the Supply Chain Act on 3 March 2021.

The current draft bill is available at:

<https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/gesetz-unternehmerische-sorgfaltspflichten-lieferketten.html>

As the draft bill still contains many textual inaccuracies and incorrect references, further adjustments are to be expected (potentially including changes in contents).

The draft bill will now be sent to the Federal Parliament (Bundestag). The consent of the Federal Senate (Bundesrat) is not required. However, it remains to be seen whether the law will actually be adopted this year.

The Supply Chain Act is intended to come into force on 1 January 2023. Businesses should accordingly use this interim period to prepare for the new requirements.

#### Objectives of the Supply Chain Act

Businesses must seek to ensure compliance with human rights and certain environmental standards in

their supply chains. In particular, this comprises compliance with reasonable working conditions and minimum wages as well as the prevention of child labour, slavery, forced labour and human trafficking. Environmental pollution, especially the use of mercury or persistent organic pollutants, should also be opposed. The respective benchmarks are various conventions of the International Labour Organization, the Minamata and Stockholm Conventions, as well as further international agreements.

#### What is the "Supply Chain" and Which Businesses Fall Within the Scope of the Supply Chain Act?

**The supply chain comprises...**

all steps a business must take, whether in Germany or abroad, to produce a certain product or provide a certain service, starting with the procurement of necessary raw materials and finishing with the delivery of the product or service to the end customer. This concerns any actions of the relevant business within its own business area as well as any actions of a direct or indirect supplier of such a business.

**The scope of the Supply Chain Act includes...**

any business, regardless of its legal form, that has its registered office in Germany and employs at least 3,000 people. Temporary loaned workers who work for the business for at least six months must also be counted. As of 1 January 2024, however, the threshold will be lowered to 1,000 employees, bringing considerably more businesses into the scope of the Supply Chain Act.

In corporate groups, employees of affiliated businesses will also be attributed to the respective parent company. However, according to the wording of the Act, this should not apply vice versa, so that, for example, the Supply Chain Act would apply to German subsidiaries of international groups only if the em-

employee numbers of these subsidiaries themselves exceeds the relevant threshold.

The Supply Chain Act applies across all sectors and irrespective of the value generation stage at which a business operates.

## Which Requirements Apply to Businesses in Scope?

The Act imposes due diligence obligations on the businesses in scope; these obligations are intended to reduce the risk of violations of human rights and environmental standards in the supply chain. The obligations are differentiated according to the business' own sector, direct suppliers used and indirect suppliers used where no direct contracting takes place.

### Businesses in scope will accordingly have to implement comprehensive compliance measures and processes, in particular...

- implement a risk management system und determine internal responsibilities (e.g. by appointing a human rights officer);
- carry out on-going risk assessments with respect to violations as well as where risks arise;
- adopt a declaration of commitment to implement the legal requirements;
- implement a complaints management procedure for affected persons;
- implement preventive measures (as well as corrective measures if needed) to prevent or remedy any violations (e.g. with contractual safeguards, on-premises inspections, suspension or even termination of the business relationship with the supplier);
- evaluate the effectiveness of the established measures and processes continuously as well as on indicated occasions;
- observe comprehensive documentation and reporting obligations.

If applicable, businesses can also benefit from existing structures when implementing the new requirements, for example if a corresponding corporate code of conduct already exists and is established in its own supply chain.

### Violations of the due diligence obligations can lead to...

significant fines of up to EUR 8 million or 2 % of the annual group and global turnovers. Businesses may also be excluded from public tenders for a period of up to three years.

In addition, the Act provides interest groups and NGOs a right of standing to make it easier for affected persons to bring claims against local businesses. As a result, such institutions could for example assert claims on the part of foreign workers against German businesses before the German courts. However, the Supply Chain Act does not create an independent legal basis for liability, so that any applicable claims in tort would still have to be determined on the basis of conflict of laws principles.

## What will Suppliers have to face?

### Suppliers can expect that customers...

will now pay more attention to compliance with human rights and environmental standards on the part of direct and indirect suppliers when selecting business partners and within ongoing business relationships. It also seems likely that customers will carry out regular checks.

### In particular, customers may require their direct suppliers...

- to give contractual concessions or warranties to comply with the requirements,
- to grant corresponding audit and monitoring rights as well as additional termination rights and rights to modify or suspend the business relationship in the event of violations,
- to impose similar obligations on the supplier's own suppliers, as well as
- to accept comprehensive indemnities and even contractual penalties.

It is also possible that customers will now press even harder for the enforcement of their own corporate codes of conduct as a benchmark.

In addition to the creation of the necessary compliance structures and processes, extensive contractual adjustments may therefore also be required.

## Conclusion

Regardless of whether a business falls directly within the scope of the Supply Chain Act or not, it should prepare to comply with the new requirements at an early stage, identify the need for adaptation in particular for its own business operations and implement the necessary measures and process changes.

We will be happy to assist you with all the necessary steps.

## Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Dr. Clemens Jestaedt on +49 69 170000-202 or by email to [cjestaedt@goerg.de](mailto:cjestaedt@goerg.de). For further information about the author visit our website [www.goerg.com](http://www.goerg.com).

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