



Germany's New Supply Chain Act – Part 1 of 4 – Introduction

11 June 2021 (update 22 June 2021)

On 11 June 2021, the German parliament approved the Federal Act on Corporate Due Diligence Obligations in Supply Chains (*“Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten – Lieferkettensorgfaltspflichtengesetz – LkSG”*) – **German Supply Chain Due Diligence Act.**

With effect as of 1 January 2023, companies operating in Germany and employing a certain number of employees will encounter a completely new set of rules obliging them to review their supply chains and to enact a supply chain related compliance management system – the new rules demand for remediation measures and may even trigger the need to terminate relationships with suppliers as a measure of last resort. Non-compliance with these obligations will be sanctioned, in particular with fines of up to 2 % of the yearly global turnover and the exclusion from public tender procedures. Private enforcement by workers' unions or non-governmental organisations will further increase the risk that infringements of the new rules will expose companies acting in Germany to litigation, financial and reputational risks.

In addition, and from a broader perspective, the German Supply Chain Due Diligence Act is going to have an impact on the standards that companies, irrespective of whether they fall under the statutory scope of the German Supply Chain Due Diligence Act, should consider in relation to improving their Environmental Social Governance (**ESG**) profiles.

Germany's long road to its new Supply Chain Act

Back in 2016, the German government published a National Action Plan (**NAP**) for the Implementation of the UN Guiding Principles on Business and Human Rights (UNGPs).¹

According to the **Coalition Agreement 2018** between the political parties CDU, CSU and SPD, the newly formed government would adopt legally binding legislation if fewer than 50% of all companies based in Germany with more than 500 employees were undertaking human rights due diligence processes with respect to their value chains by 2020.²

However, in 2019, proposed legislation drafted by the CSU headed Ministry for Economic Cooperation and Development was leaked, suggesting that at least some members of the government expected that the 2020 target would not be reached. The leaked draft was entitled "Act to Regulate Human Rights and Environmental Due Diligence in Global Value Chains" ("*Entwurf eines Gesetzes zur Regelung menschenrechtlicher und umweltbezogener Sorgfaltspflichten in globalen Wertschöpfungsketten (Sorgfaltspflichtengesetz)*") (**2019 Draft**).³

In March 2020, the Minister for Economic Cooperation and Development (CSU) and the Minister for Labour and Social Affairs (SPD) jointly presented a revised proposal, this time in a downsized version referred to as Term Sheet for a German "Federal Act on the Strengthening of Corporate Due Diligence to Avoid Human Rights Impacts in Global Value Chains" ("*Entwurf für Eckpunkte eines Bundesgesetzes über die Stärkung der unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in globalen Wertschöpfungsketten (Sorgfaltspflichtengesetz)*") (**Term Sheet 2020**).⁴

In October 2020, a monitoring report confirmed that the goals of the NAP had not been reached. Only 13 to 17% of companies in Germany implemented human rights related compliance mechanisms on a voluntary basis.⁵

Against that background, the Ministry of Economy and Energy – which has been headed by the third party of the coalition, Angela Merkel's CDU – started to engage in the discussion and finally agreed to propose a joint draft act that was approved by the government on 3 March 2021 ("*Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (Sorgfaltspflichtengesetz)*") (**Government's Proposal 2021**).

On that basis, the legislative procedure was launched on 23 March 2021.⁶ Expert hearings were held on 17 May 2021⁷ – but only a day later CDU, CSU and SPD surprisingly stopped the legislative procedure to re-negotiate details of the new rules. Parliament's approval of the Government's Proposal 2021 was initially scheduled for 21 May 2021 but was postponed. It took until 27 May 2021 for the government to agree on amendments, which were officially introduced to the legislative process by decision of the parliament's committee for Labour and Social Affairs in its session held on 9 June 2021 (**Final Amendments 2021**).⁸

The German parliament finally approved the German Supply Chain Due Diligence Act in its session held on 11 June 2021 – i.e. in the *penultimate* session prior to the end of the 4 year term of the CDU, CSU and SPD government.

Once officially published in the German Federal Legal Gazette, the German Supply Chain Due Diligence Act will enter into force **with effect as of 1 January 2023**. This provides for a transitional period of about a year and a half, allowing companies to adopt their operations to the new set of rules.

¹ NAP published on the [website](#) of the German Federal Foreign Office (*Auswärtiges Amt*).

² The Coalition Agreement can be found [here](#).

³ A German version of the 2019 Draft can be found [here](#).

⁴ The Term Sheet 2020 can be found [here](#).

⁵ More about this monitoring report can be found on the [website](#) of the German Federal Foreign Office (*Auswärtiges Amt*).

⁶ Proposal of the Draft 2021 can be found [here](#) or [here](#).

⁷ Some statements can be found [here](#).

⁸ Final Amendments 2021 can be found [here](#).

Up-coming German Federal Elections in September 2021

In September 2021, Germany is going to hold federal elections. Most of the parties have been publishing their electoral programs in the meantime, providing for a broad range of perspectives on supply chain regulations:

- The conservative parties CDU and CSU have published their electoral program on 21 June 2021⁹. They emphasize the need of a European wide supply chain regulations to avoid competitive disadvantages of companies falling under the scope of the German Supply Chain Due Diligence Act. The European law shall, however, be based on the standards set by the latest German rules without increasing the level of imposed due diligence obligations.
- The Social Democrats (SPD) celebrate the new Act and claim this as one of their successes achieved as part of the currently existing government. They may want to develop this new legislation further, although they do not indicate how they will do so.¹⁰
- The Green Party (Bündnis90/Die Grünen) would like to go further than the new Act and calls for a strict and effective civil law liability regime for companies with respect to human rights and environmental related impacts along their supply chains.¹¹
- The Socialists Party (Die Linke) also wishes to strengthen supply chain related regulations, including by way of a strict and effective civil liability regime, by considering greenhouse gas emissions in value chains (i.e., Scope 3 emissions), by prohibiting the import of rare raw materials and by implementing a comprehensive certification system applicable to raw materials imported from conflict regions.¹²

- The Liberal Party (FDP) proposes to restrict any supply chain related obligations to direct suppliers only and to reduce administrative burdens such as obligations to document efforts, risk analysis etc. They promote an EU wide regulation to ensure a level playing field for German companies competing with companies from other EU Member States.¹³

Supply chain legislation on the EU level

Supply chain legislation focusing on the human rights and environmental impacts of business is at the top of the European political agenda as well.

The EU Commission has conducted a “Study on due diligence requirements through the supply chain” published in February 2020¹⁴ and kicked-off a consultation process in October 2020.¹⁵

Predominantly pushed by highly regulatory-friendly initiatives launched by the European Parliament,¹⁶ the EU Commission was expected to publish a draft regulation on supply chain management in June 2021 but this has been **postponed until fall 2021 at least**, reportedly due to conflicting views, particularly between the more regulatory-friendly Justice Commissioner *Didier Reynders* and his key opponent, the more company-friendly Internal Market Commissioner *Thierry Breton*.

However, the future EU legislation may have an impact on the German Supply Chain Due Diligence Act to the extent the EU legislation will provide for binding, potentially stronger rules than foreseen by the German lawmakers. If so, Germany will have to adapt its legislation to the future EU standard.

⁹ Party's election program can be found [here](#).

¹⁰ Party's election program can be found [here](#).

¹¹ Party's election program can be found [here](#).

¹² Party's election program can be found [here](#).

¹³ Party's election program can be found [here](#).

¹⁴ Study can be found [here](#).

¹⁵ Details can be found [here](#).

¹⁶ Cf., for example, the Parliament's [reporting](#), its legally non-binding proposal for a [directive](#) or the EU Parliament's [briefing paper](#).

Supply chains & ESG

Interest in the ESG performance of companies explains why supply chain due diligence legislation is at the top of the agenda for many regulators, companies, financial institutions and other stakeholders around the world. The concept of human rights due diligence, first introduced in the UNGPs, is now being extended to the other ESG factors:

E – Some supply chain regulations such as the German Supply Chain Due Diligence Act often comprise the need to comply with particular environmental related legislation. Sustainability is, without saying, a closely related topic in this context.¹⁷

S – Considering and complying with human rights is at the core of all supply chain legislation, be it in Germany, the UK,¹⁸ France or The Netherlands.¹⁹

G – Ensuring an adequate management of supply chain related risk is a critical challenge when setting-up future governance structures.

Further briefings on the German Supply Chain Due Diligence Act to Come

This briefing is Part 1 of a series of briefings aiming at providing an overview of the key elements of the new German Supply Chain Due Diligence Act.

Our series will consist of the following briefings:

Part 1: Introduction (updated on 22 June 2021)

Part 2: Compliance²⁰

Part 3: Litigation

Part 4: FAQs

Key points/15 seconds read/Summary

Companies operating in Germany will have to ensure compliance with the newly enacted rules of the German Supply Chain Due Diligence Act that will enter into effect on 1 January 2023. With this new legislation, Germany lines up with countries like France and The Netherlands where similar rules have already been enacted. The developments at the EU level as well as the up-coming federal elections in September 2021 may trigger changes in the German regulations soon. A&O's series of briefings will provide an overview of key aspects of the new legislation and its implications for companies doing business in Germany.

¹⁷ See [our briefing](#).

¹⁸ On the UK Modern Slavery Act see for example [our briefing](#).

¹⁹ On the latest development see for example [our briefing](#).

²⁰ Part 2 can be found [here](#).

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