

## German Government Issues Draft Law Against Exploitation in the Supply Chain

The German Government has issued a draft bill against exploitation and other human rights violations in supply chains that contains new duties for German companies (the “**Draft Bill**”).

The Draft Bill is similar in nature to the French “loi de vigilance”, the UK’s Modern Slavery Act and the Dutch Child Labor Due Diligence Law. It aims to write into law the mandatory due diligence requirements that German companies have to fulfil with respect to all levels of their supply chains (from raw material extraction to marketing of finished goods) regarding the avoidance of human rights violations.

When enacted by the German Parliament, the Draft Bill will apply to “enterprises” that have their seat, headquarters or main branch in Germany. In terms of timing, it is planned that the new rules apply to enterprises with more than 3,000 employees starting January 1, 2023, and to enterprises with more than 1,000 employees starting January 1, 2024. For purposes of calculating the number of employees, all enterprises within a group of companies are considered, including subsidiaries seated outside of Germany. There will still be a lot of discussion around the term “enterprise” as it remains unclear whether foreign parent companies or (foreign and domestic) financial investors will be regarded as part of the German enterprise either for the purpose of determining the number of employees or for group liability.

As per March 2021, the German Government expects that the Draft Bill will thus apply to more than 600 companies as from 2023 and to approx. 2,900 companies as from 2024.

The Draft Bill contains a list of basic human rights that it seeks to protect, including notably freedom from slavery and child labor, protection of life and freedom from bodily harm, prohibition of torture, fair work conditions and certain environmental standards.

Under the Draft Bill, enterprises are subject to a stricter set of duties as regards their own business and that of their immediate supplier. Within this sphere, enterprises are to (i) issue a declaration confirming their observance of basic human rights, (ii) install a risk analysis and risk management system and (iii) maintain a complaints and whistleblowing system open to anyone that may be affected along the supply chain. If a human rights violation is detected in the enterprise’s own business, it must immediately take measures to end the violation and take measures to prevent future violations. If a violation occurs at an immediate supplier which the enterprise cannot stop “in the

foreseeable future”, it must create a plan to minimize and ultimately avoid the violation, e.g., by exercising economic pressure (including together with other customers of that supplier) or temporarily terminating the business relationship.

A less strict set of duties applies to enterprises with respect to their intermediate suppliers further down in the supply chain. Here, enterprises are to take measures if and when they become aware of a possible human rights violation. Once so aware, the enterprise must (i) conduct a risk assessment, (ii) implement a plan to minimize and avoid the violation and (iii) enact appropriate prevention measures with binding effect vis-à-vis the responsible supplier.

All efforts to minimize the risk of human rights violations or measures taken against human rights violations must be well documented and reported to the public and the authorities.

The Draft Bill does not aim at forcing enterprises to end business relationships with direct or indirect suppliers. Rather it aims to maintain these business relationships and increase observance of human rights along the supply chain. However, if significant human rights violations were detected and all measures taken by the enterprise were unsuccessful in stopping and preventing violations, the Draft Bill demands a termination of the business relationship with the supplier.

The Draft Bill grants the authorities a wide spectrum of investigative and controlling powers, including the right to demand information and to inspect properties and documents.

Non-compliance with the Draft Bill’s requirements may result in a sanction of a certain percentage of the enterprise’s annual revenue (2% is currently contemplated) and a potential temporary exclusion from public tenders.

The Draft Bill does not aim at creating an additional civil liability regime. However, civil liability for a violation of the obligations set out in the Draft Bill is possible applying standard German civil law. The Draft Bill seeks to facilitate the enforcement of claims of affected individuals by introducing a right to have the claim litigated by domestic NGOs or trade unions as a proxy.

If the Draft Bill is signed into law the organizational effort regarding supply chain compliance of German enterprises (within the meaning of the Draft Bill) will significantly increase. It is therefore recommended that affected enterprises consider the Draft Bill in a timely manner.

The Draft Bill includes a significant number of undefined legal terms. We expect to see guidance materials further down in the legislative process informing German market participants of the precise requirements that they are expected to fulfill. The European Commission is also working on a draft

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directive on the same subject matter which is set to be published in June. It remains to be seen whether the German Draft Bill will need to be amended in light of the EU Commission's draft directive which is expected to apply more broadly and contain stricter standards.

We will provide an update on the Draft Bill if there are noteworthy developments.