

The new German Supply Chain Act – also a challenge for foreign operations in Germany

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Germany has embraced the European and global trend to pass ESG legislation. Well known legislative initiatives have already started in the EU, in the UK, in France and in the Netherlands.* The German Act on Corporate Due Diligence in Supply Chains – colloquially known as the “Supply Chain Act” (*Lieferketten-Gesetz*) imposes due diligence obligations to safeguard human rights and environmental standards in supply chains.

Accordingly, from 2023, companies with more than 3,000 employees are obliged by the Supply Chain Act to comply with new due diligence obligations in relation to their direct but also indirect suppliers: To this end, human rights and environmental risks must be identified and eliminated or at least minimized. From 2024 onwards, the threshold shall be reduced to 1,000 employees.

Operations in Germany

This new law does not only apply to German companies but also to any foreign companies having either subsidiaries, joint ventures or even branch offices in Germany. All those Germany-related links result in the application of the Supply Chain Act, provided that their operations meet the thresholds (3,000 and then 1,000 employees). The legal form is irrelevant.

Consequently, those foreign companies must also comply with the obligations of the Supply Chain Act, among others:

- Establishment of risk management, starting with a risk analysis;

- Setting up an effective compliance management system for their entire supply chain, from direct to indirect suppliers, including the individual freelancer at the end of the chain;
- Implementation of preventive measures against a direct supplier, including the delegation of certain obligations stemming from the Supply Chain Act;
- Annual report on the fulfillment of due diligence obligations;
- Introducing or extending a whistleblower system;
- Documentation and reporting.

Also foreign companies may be sanctioned via their operations under the Supply Chain Act. Fines for companies with an average worldwide annual turnover of more than €400 million, may reach up to 2 per cent of their total worldwide annual group turnover.

*At the European level, these include: The EU Conflict Minerals Regulation, the EU Timber Trade Regulation, the CSR Directive and its planned adaptations, the EU Taxonomy Regulation, the EU Guidance on Due Diligence for EU businesses to address the risk of forced labor in their operations and supply chains and, last but not least, the planned EU Directive for a European Supply Chain Act. Other international examples include the UK Modern Slavery Act, the French Loi de Vigilance, the Dutch Child Labour Due Diligence Act and the Bill on Responsible and Sustainable International Business Conduct.

Supplying companies in Germany

Direct and indirect suppliers based in Germany as well as those from abroad have to be prepared too. Via their German customers and their supply agreements they will be required to also follow the new supply chain regime – irrespective of their size.

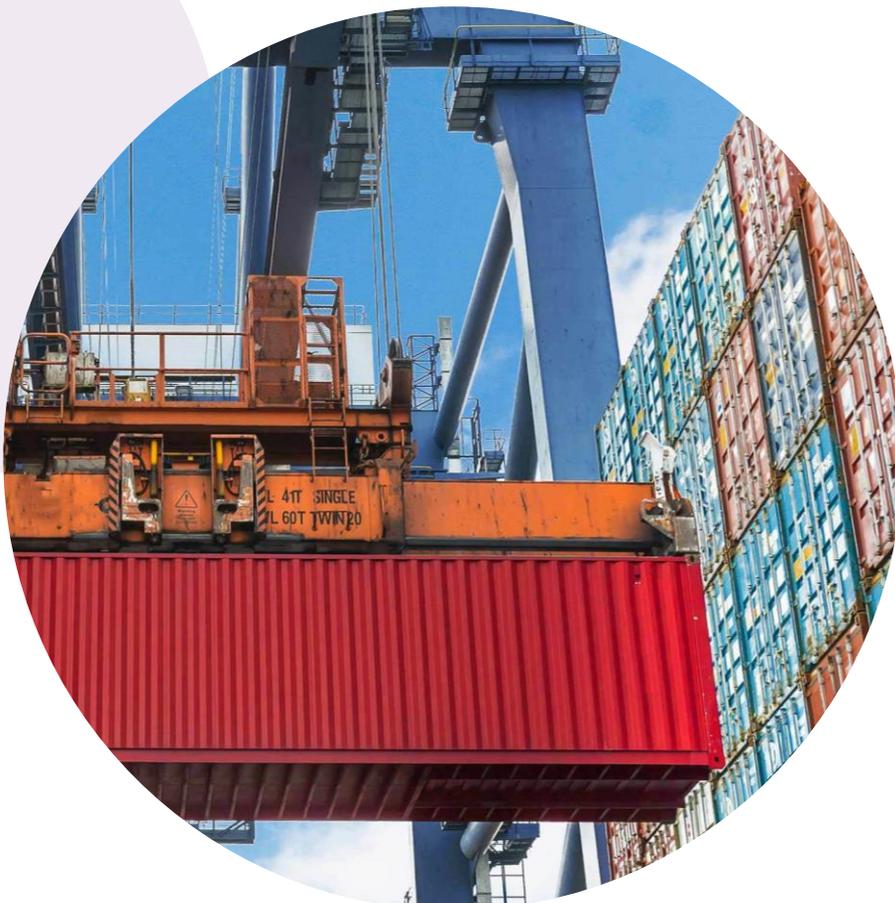
Among other issues, suppliers should clarify the following questions:

- Which due diligence obligations are transferred with regard to human rights and environmental risks?
- Which of those due diligence obligations must now the supplier transfer to its own suppliers?
- Which analysis and documentation obligations does the supplier have and which have to be passed on to its own suppliers?
- What audit and control rights are in place and which audit and controls rights should be requested from suppliers further down the chain?

The German Supply Chain Act strengthens the enforcement of human rights and environmental sustainability. Comparable laws and legislative initiatives exist worldwide. Due to this global development and the German Supply Act it is time to act – including foreign companies having operations in Germany and being suppliers to companies in Germany.

After a profound risk analysis, a first step should be the implementation of a preventive supply chain management system; this also involves informing and raising awareness within the company and later among suppliers, as well as developing a concept to ensure compliance throughout the entire supply chain.

There is not much time left until the beginning of 2023. Make the most of it!



First checklist for companies

German companies (from 3,000 employees from 2023 and from 1,000 employees from 2024)	Foreign companies with German companies or branches (3,000 or 1,000 employees)	Suppliers in Germany and abroad These requirements may be delegated:
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Resolution by the management	✓	✓	✓
🕒 NOW Phase 1 – Preparation			
Rough analysis			
Which human rights and environmental risks exist within the company and its suppliers?			
Is the supply chain known in all of its ramifications? What are the supply chains of the direct suppliers?	✓	✓	✓
Which supply chain management measures are already in place?			
Information events to raise awareness, especially among management, purchasing and sales staff	✓	✓	✓
🕒 from January 2022 Phase 2 – Basics			
Revision of the purchasing guideline	✓	✓	(✓)
Assign responsibilities for the implementation of supply chain due diligence within the company	✓	✓	(✓)
Revision of business processes, especially in purchasing and sales	✓	✓	(✓)
Concept for dealing with violations (termination, measures under labor law, investigation, etc.) at the principal company	✓	✓	✓
and at supplier level	✓	✓	(✓)
Concept of delegation to suppliers	✓	✓	✓
Detailed analysis of human rights and environmental risks and its documentation	✓	✓	✓
Development of new sample contracts and general terms and conditions in accordance with the German Supply Chain Act (<i>Lieferketten-G</i>)	✓	✓	(✓)
🕒 from July 2022 Phase 3 – Implementation			
Information for suppliers	✓	✓	
Renegotiation of existing contracts	✓	✓	(✓)
Risk-based controls in the principal's own business area	✓	✓	✓
and at supplier level	✓	✓	(✓)
Introduction / extension of whistleblowing systems	✓	✓	

Dentons Compliance Network international

Customized advice on supply chain law requires a global reach and deep roots in local markets. With our "in and of the community" approach, we focus on legal advice that is shaped by an understanding of local markets, legal cultures and their particularities on the one hand, but also ensure a link to the German market and legal system on the other.

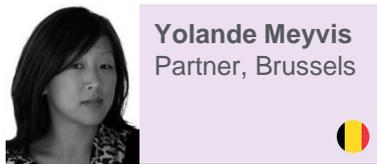
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and more than 36,000 lawyers around the globe. Membership is free of charge for law firms – the only criterion is the proven quality of the advisory service.

We are thus in a position to serve the supply chains of German companies globally and to provide comprehensive worldwide support in implementing the requirements of the Supply Chain Act. Dentons' global compliance group comprises more than 250 specialized lawyers in over 100 locations worldwide; in Europe, we are represented by over 90 advisors in more than 30 locations. In addition, the compliance experts in the partner law firms of the Nextlaw Referral Network support us.



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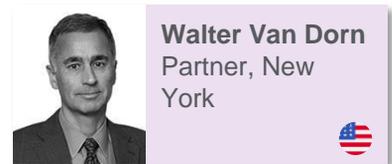
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