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October 25, 2021

THE GERMAN DUE DILIGENCE ACT – RELEVANCE FOR TEXTILE AND GARMENT PRODUCTION

Dear Sir,

We bring to your kind notice that on June 11, 2021 the German Government enacted the German Supply Chain Due Diligence Law, which shall help increase the compliance of German companies and their international suppliers with social, labour, and environmental standards.

The law will come **into effect on January 1, 2023**. It is most important for those TMA members who are exporting their goods to Germany. We enclosed herewith brochure on the same for your ready reference and necessary positive action. Exporters thoroughly study the same as it will affect your whole supply chain. Hence you should be very careful for the due diligence of the entire supply chain.

Thanks & Regards

M. Muzzammil Husain
Secretary General



Affiliated with the Federation of Pakistan Chamber of Commerce and Industry





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The German Due Diligence Act – Relevance for Textile and Garment Production

On June 11, 2021 the German Government enacted the German Supply Chain Due Diligence Law, which shall help increase the compliance of German companies and their international suppliers with social, labour, and environmental standards. It will impose a due diligence obligation on companies with their head office, registered office or headquarter in Germany, backed by sanctions for non-compliance.

The law will come into effect on January 1, 2023.

What is the Due Diligence Act and who is affected by it?

The law obliges German companies with more than 3,000 employees¹ (from 2024 also those starting from more than 1,000 employees) to fulfil their responsibility in the supply chain with regards to respect for internationally recognized human rights and environmental obligations (due diligence). The Due Diligence Act applies to the entire supply chain of companies, from the extraction of raw materials to the finished sales product, with varying degrees of obligations.

” The Act will affect every supplier who does business with German companies - and their suppliers

The objective of the Due Diligence Act is to protect the basic human rights of people who produce goods for Germany. While the act does not impose a corporate duty to ensure and guarantee human rights within the companies' supply chains, it specifies the form in which companies fulfil their human rights due diligence obligations. This includes that they must analyse human rights risks, take preventive and remedial measures, establish grievance mechanisms and report on their actions taken.

According to the act, companies' supply chains include their own business operations, direct suppliers, and indirect suppliers, with different scopes and requirements each. Companies are obliged by law to implement measures

and conduct efforts to address (possible) human rights violations in their own business activities and vis-à-vis their direct suppliers. For their indirect suppliers, companies are obliged to take immediate action if violations of human rights in indirect supplier factories become known. So while companies would not be responsible for the actions of their indirect suppliers, they have to ensure that they have the relevant risk assessment etc. in place ("Duty of effort"). By this means, the Due Diligence Act directs German enterprises to work towards compliance with human rights and environmental protection and provides a common framework for a level playing field.

The act takes a holistic approach to due diligence, targeting all human rights as defined by several ILO agreements. Environmental concerns are also relevant, especially whenever correlated with human rights (for example the pollution of water violates the human right to access clean water).

What are the regulations?

The act defines obligations (efforts) to avoid human rights violations rather than focusing on penalties. While the Act will not hold companies accountable for the actions of their direct suppliers, it will do so if these impacts would have been predictable and preventable. As such, the act requires companies to implement a number of measures, which range from the assignment of roles, declaration of intentions, risk analyses, risk managements, prevention measurements to complaint mechanisms, and transparent reporting. These obligations include the following nine areas:

1. Establishment of a risk management system to identify, prevent or mitigate potential adverse human rights impacts of business activities (section 4 (1)).
2. Definition of an internal responsibility (section 4 (3)).
3. Performance of regular (at least annual) risk analyses. The results must be incorporated into preventive and corrective measures to be taken (section 5).
4. Adoption of a policy statement (statement of principles) on the human rights strategy (section 6 (2)).
5. Laying down preventive measures in its own business (section 6 (1) and (3)) and vis-à-vis direct suppliers. (section 6 (4)).
6. Establishment of a complaints procedure (grievance

¹ Employees of all Group companies and temporary workers are to be counted in. It is estimated that in 2023 the law will apply to 925 companies, in 2024 to 4800 companies.

mechanism) which can be set up by themselves or by actively joining external procedures (section 8).

7. Taking corrective (remedial) action: If the Company discovers that a violation of a human rights-related or an environment-related obligation has already occurred or is imminent in its own business area or at a direct supplier, it must, without undue delay, take appropriate remedial action to prevent, end or minimise the extent of this violation² (Article 7 (1) to (3)).
8. In case of an indirect supplier, the due diligence obligations apply only as warranted by the circumstances and as soon as the company learns about potential violations.³ In that case the company has to act immediately and conduct a risk analysis, establish appropriate prevention measures, develop a strategy to minimize and avoid the problem and update its policy statement as appropriate (section 9).

Another essential criterion to assess the adequacy of the risk management is the hazard potential, i.e. a) the severity and b) the likelihood (probability) of the negative impacts.⁴

9. Internal documentation (section 10 (1)) and external reporting (section 10 (2)) to BAFA (see below) on an annual basis.

What happens in case of non-compliance?

An established government authority, the Federal Office for Economic Affairs and Export Control (BAFA) is tasked with monitoring compliance with the law and is entitled, among other things, to impose financial sanctions if companies fail to adequately comply with the due diligence obligations set out in the law. In case of misconduct, fines of up to two percent of the annual turnover may be imposed. An additional civil liability, based on violations of the duties and obligations under the Act, is explicitly excluded. However, people whose human rights have been violated can now use German courts to get their rights upheld. They can also report their grievances to the Federal Office for Economics and Export Control and German trade unions and non-governmental organisations may also support injured parties from other countries by defending their rights before a German court (representative action).

For companies to be prepared, a transitional period of 1,5 years until January 2023 is granted, before the law comes into force.

” The Goal is the Elimination of Current and Potential Human Rights Violations Within a Company's Supply Chain Through Internal Measures Rather than the Identification and Prosecution of Culprits.

² In the case of direct suppliers, the company must draft and implement a concept for ending or minimising the violations without undue delay, if it is unable to end the violation in the foreseeable future.

³ Measures must be taken if a company obtains “substantiated knowledge”, however, it is still unclear how companies are to obtain substantiated knowledge.

⁴ The expected severity of the violation of the protected legal position (a) is measured by the degree of actual or potential impairment and the number of people actually or potentially affected and the possibility of remedying the negative impacts. The probability of occurrence (b) describes the assessment of whether and when the risk will result in a violation of a legal interest.”

What can suppliers of affected companies do?

Although regulations and obligations have only just been published, companies have already started to set up action plans or initiated new strategies in anticipation of the new regulations.

Textile suppliers should prepare in collaboration with their brand and retail partners and consider which risk assessment and management structures as well as preventive and correctional measures they have in place for themselves and their suppliers. Companies that adopt the upcoming changes early will be prepared for future business interaction with German companies as well as potential EU-wide regulations, which are also currently under discussion.

A number of private sector partners, especially service providers, as well as civil society organizations and networks already offer support for suppliers and provide tools, trainings, guides etc. These range from management skill trainings to trainings on social compliance and environmental protection. Suppliers will progressively be obliged by German companies (especially Tier 1 suppliers) to meet the new requirements.

Why act now?

Driven by concerns of negative publicity and potential fines, German and international companies are increasingly analysing their supply chains. For a supplier or distributor, a single negative case in the production can make the difference between attracting and retaining brands and investors. Adapting industry trends such as sustainable supply chain management gives suppliers a competitive advantage in cooperation with brands and retailers:

” The Due Diligence Act in Germany Will Force Companies to Examine Activities and Business Connections if There Are Potential or Actual Human Rights violations in Their Supply Chains.

- Due to existing national laws in Germany and other countries (e.g. the French Duty of Vigilance Law, the UK Modern Slavery Act or the Dutch Child Labour Due Diligence Law), leading companies may choose other suppliers in line to meet their national requirements or the expectations of their consumers.
- Better human rights conditions will have positive effects on workers directly and have also benefits for the suppliers and brands. Happier workers are proven to be more productive as ILO [Better Work Program](#) indicates.
- In cooperation with companies, suppliers can actively shape the implementation process from the start.
- Suppliers could receive early access to available financing and technical assistance.
- Successful implementation can increase a supplier's reputation in international markets and among competitors.

What's the background of the law?

Sustainability in global supply chains has been a priority of the German government for many years. One industry in

focus is the global textile and garment industry, however, the law applies to all industries. It has been driven by three German Ministries: the Federal Ministry for Economic Cooperation and Development (BMZ), the Federal Ministry of Labour and Social Affairs (BMAS) and the Federal Ministry for Economic Affairs and Energy (BMWi).

How does the law link with other international regulations on business and Human rights?

In June 2011, the United Nations adopted the UN Guiding Principles on Business and Human Rights with the aim to prevent the violation of human rights by business enterprises and define the state's duty to protect and the corporate responsibility to respect human rights in global supply chains.

In order to implement these Guiding Principles in Germany, the Federal Government initially relied on voluntary engagement. In December 2016, it adopted the National Action Plan on Business and Human Rights (NAP) and established a review mechanism. The result: too few companies fulfil their human rights due diligence obligations.⁵ The NAP provides that the German government will consider further steps up to and including legal measures if less than 50 % of companies fulfil their human rights due diligence obligations. It was also agreed in the German coalition agreement that a legal regulation should be initiated if the voluntary self-commitment of companies is not sufficient.

What is the status at the EU level?

On 10 March 2021, the European Parliament adopted an outline proposal for the "EU Directive on Mandatory Human Rights, Environmental and Good Governance Due Diligence". The European Commission has been tasked with drafting a formal legislative proposal for the Directive, which is expected to be presented by the end of 2021. It may impose new wide-ranging environmental, social and corporate governance (ESG) due diligence requirements on the whole value chain of companies established or operating in the European Union. Once adopted, the directive must be transposed by the EU Member States into national law within two years.⁶ Thus, more need for action can be expected.

GIZ's engagement on sustainable textile and garment supply chains

The German Government is bringing new initiatives on the way to support the implementation of the Due Diligence Act. Apart from the multi-stakeholder initiative [Partnership for Sustainable Textiles \(PST\)](#), driven by the German Federal Ministry for Economic Cooperation and Development (BMZ), it launched the "Global Solidarity Initiative (GSI)" which will focus on the joint exchange and implementation of due diligence obligations by brands in Germany, the

EU, and manufacturing firms in the textile/garment and electronics sector. Also, the regional project "Promoting sustainability in the textile and garment industry in Asia ([FABRIC](#))" has been commissioned by BMZ to foster sustainability in the Asian Textile and Garment Industry through regional exchange and capacity development measures. It operates in Bangladesh, Cambodia, Myanmar, Pakistan and Vietnam and also works with China.

The Secretariat of PST, the new project GSI as well as FABRIC and several bilateral development projects on sustainability in the textile and garment industry in Bangladesh, Pakistan, Cambodia and Ethiopia are implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

In China, the regional project FABRIC is operating under the roof of the Sino-German Center for Sustainable Development ([CSD](#)), a joint initiative between BMZ and the Ministry of Commerce of the People's Republic of China (MofCom) to support the Sino-German Dialogue on Development Cooperation and facilitate joint triangular projects.

For more information about giz, please visit www.giz.de/en. For more resources on sustainability in the textile and garment industry, please visit www.asiagarmenthub.net.

Note: The contents of this document do not constitute legal advice and it only serves general and practical information purposes.

Further Information



[Link](#) to English translation of the German Supply Chain Act



[Link](#) to FAQ on the German Supply Chain Act

More information on the [Website](#) of the Federal Ministry for Economic Cooperation and Development and the [Website](#) of the German Federal Ministry of Labour and Social Affairs.

Published by:



Sino-German Center for Sustainable Development

Fostering and Advancing Sustainable Business and Responsible Industrial Practices in the Clothing Industry in Asia ([FABRIC](#))

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Beijing, September 2021

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Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

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⁵ In two surveys, conducted in 2019 and 2020, only 20 and 17 percent of participating companies were found to fulfil the requirements from the NAP.

⁶ Footnote: European Parliament, [Corporate due diligence and corporate accountability European Parliament resolution of 10 March 2021](#) with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)).