

Prepared by the New Zealand Embassy Berlin, in consultation with NZTE Berlin

Summary

- Germany has adopted a Supply Chain Due Diligence Act, which from 21 January 2023 will require large companies in Germany to ensure human rights and environmental standards are met in their business operations and along their supply chains.
- New Zealand exporters who supply German companies subject to the law could be affected as these companies review their suppliers and, potentially, suppliers' suppliers' compliance with the law.

Report

On 11 June 2021, the German Federal Parliament adopted supply chain due diligence legislation that will require large companies to scrutinise their business operations, and that of their suppliers and, potentially, their suppliers' suppliers, to ensure compliance with human rights and environmental standards. France and the Netherlands have passed similar legislation, and the European Commission is considering a common European Union directive (law) that is potentially even more ambitious.

Germany has had an Action Plan on Business and Human Rights for some time, based on United Nations [Guiding Principles](#). However, only a minority of German companies complied with these voluntary guidelines. This, and repeated reports of poor labour standards and safety conditions at German businesses' foreign suppliers, in particular in the textiles, food and mining sectors, led to the Government passing binding legislation.

What the new legislation entails

The Supply Chain Due Diligence Act will apply from 21 January 2023 to German or foreign companies in Germany with a workforce of >3,000 (including employees seconded abroad), and from 2024 to those with >1,000 staff. Under the law, they will be required to actively manage risks related to human rights and environmental standards, not only internally within their businesses, but also with regard to direct suppliers* of both goods or services, irrespective of location. They also have to take action to address evidence of violations of the law by their suppliers' suppliers*.

The due diligence requirements explicitly refer to a number of international human rights and environmental conventions, and cover a wide range of issues including: child and forced labour, slavery, the right to join a trade union, various forms of discrimination, forced evictions, acts that harm human health and the environment, as well as compliance with relevant national work safety and minimum pay standards.

Every company subject to the law must establish effective risk management procedures, undertake regular risk assessments, adopt a general human rights declaration (that includes its expectations vis-à-vis suppliers), establish preventative measures, immediately address any human rights violations in their supply chain, establish a complaint management system, and ensure adequate documentation and reporting.

*For the purpose of the Act, "a direct supplier is a contractual partner whose supplies are necessary for the manufacture of the company's product or for the provision and use of the relevant service". A supplier's (or indirect) supplier "is any enterprise which is not a direct supplier and whose supplies are necessary for the manufacture of the company's product or for the provision and use of the relevant service".

Germany's Federal Office for Economic Affairs and Export Control (BAFA) will be responsible for monitoring and ensuring compliance, and providing advice to companies subject to the law. It may request relevant information, including on their suppliers and suppliers' suppliers, and/or concrete action to rectify identified issues. Companies failing to comply with the law face potentially heavy fines and temporary exclusion from government tenders.

The Government says it is not establishing any new standards; rather it requires companies subject to the legislation to accept greater responsibility for their supply chains. Claiming ignorance is no longer an option. If companies are able to demonstrate they have taken appropriate precautions and actions (including terminating a relationship with a supplier, if necessary), they will not be held liable for events outside their control.

While committed to the Government's overarching goal, some German businesses have expressed concern about the potential impact of the new legislation e.g. additional costs and risks. If companies subject to the law err on the side of caution and, in case of doubt, end relationships with suppliers or withdraw entirely from a country or region, this may affect their competitive advantage. Particularly challenging will be having to take responsibility for their suppliers' suppliers.

A wide range of sectors will be affected from engineering and construction (importers of raw materials such as steel) to retail and farming. German farmers have expressed concern that they may be held accountable for the feed they import from developing countries, and clothing retailers are concerned that they (not just producers) may be held responsible for the material (e.g. cotton) used in the clothes they sell.

How could New Zealand businesses be affected

We are not aware of any New Zealand company with >1,000 staff in Germany, so we do not expect New Zealand businesses to be affected by the new law directly. However, there are German (and possibly foreign) companies which source product from New Zealand that could be affected e.g. German wholesalers or manufacturers who order New Zealand food or technology.

These companies may review their suppliers' human rights and environmental credentials. Given New Zealand's high standards and reputation for social and environmental sustainability, it seems unlikely that New Zealand will be a country of concern. However companies subject to the new legislation may tighten their procurement policies and require information regarding compliance with the legislation from their overseas suppliers. New Zealand businesses' own suppliers would not be scrutinised by default, but could be if and when issues arise, most probably in relation to inputs imported from outside New Zealand.

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