

For an effective Supply Chain Law that is closely aligned with international standards, strengthens the rights of affected people and creates a level playing field

We are strongly in support of mandatory human rights and environmental due diligence legislation; therefore, we welcome that the (German) Federal Government has agreed on a [draft law](#), which the parliament (Bundestag) is currently discussing.¹ This is a step in the right direction and sends a strong signal that corporate responsibility for human rights and the environment is a duty and not a voluntary matter.

This law can bring about a paradigm shift if it both widely establishes responsible business conduct and leads to concrete improvements for people and the environment along global supply chains. However, if the law is to achieve this, and to make a substantial contribution towards a more sustainable economy, **crucial aspects of the draft need to be strengthened**. In its current draft version, the law falls well [short of the standards](#) set out in the UN Guiding Principles and OECD Guidelines. The EU Parliament's [proposal](#) for a future EU-wide regulation, for example, follows these more consistently.

Important points for strengthening the existing draft:

- 1) **The German Supply Chain Law should apply the risk-based approach of the UN Guiding Principles and OECD Guidelines consistently and, in particular, establish proactive due diligence obligations along the entire value chain.**

In our view, the UN Guiding Principles already account for the complexity of current global supply networks: following these standards, companies can prioritise, where necessary and appropriate, to focus first on the most salient issues for people and the environment. The basis for this prioritisation lies in the **continuous and proactive analysis of** potential and actual violations **along the entire value chain**, given that severe issues can occur **anywhere** – at any point in the value chain and in any country, in the company's own operations and in external business relationships. Moreover, our experience shows that the risk of human rights violations often increases further down the supply chain. Regular identification and assessment of human rights and environmental risks in value chains can provide starting points for appropriate responses even if individual production sites are not yet known at every stage. At the same time, **more transparent and less complex supply chains** form important building blocks for companies' human rights and environmental due diligence.

Through a risk-based approach, companies take appropriate measures where the greatest and most urgent need for action exists, regardless of where in the value chain this occurs. In the current draft law, the obligations to conduct risk analysis and follow-up are limited to own business operations and *tier 1*, except in cases of "substantiated knowledge" of possible violations. This means there are large gaps in terms of preventing and addressing human rights issues, as well as a lack of incentive for further proactive efforts by companies. This must be corrected. The French law and the proposals for EU regulation entail a proactive risk-based approach throughout the value chain.

We unequivocally welcome the draft law's reference to the key role that a company's **own purchasing practices** play in preventing human rights abuses. At the same time, elsewhere **it relies too heavily on mere control measures and the contractual enforcement of requirements in the supply chain**. In practical terms, this would lead companies to focus on contractual enforcement

¹ The German original of this statement was published in April 2021. On 11 June, the German Parliament's lower chamber (Bundestag) adopted the "Act on Corporate Due Diligence in Supply Chains". It was approved by the upper chamber (Bundesrat) on 25 June and [announced](#) in the Federal Law Gazette (Bundesgesetzblatt) on 22 July. The law will enter into force in 2023 and initially cover companies with >3000 employees, and from 2024 companies with >1000 employees.

with immediate suppliers, despite these business relationships being less likely to pose significant human rights risks (depending on the sector). This ignores both the risks in lower supply chain tiers and the need for more effective measures. In practice, positive incentives and development measures for suppliers often prove more reliable and effective, as do long-term supply relationships based on partnership, as well as changes to a company's own business strategy – building on the **genuine involvement of all relevant stakeholders, especially of potentially and actually affected people**, in due diligence (starting with the risk analysis). In these areas too, the law must align more closely with the UN Guiding Principles and OECD Guidelines and their transformative and more comprehensive approach.

2) The law should focus on the rights of affected people and also create a level playing field regarding remediation requirements.

According to UN and OECD standards, companies should provide or cooperate in remediation through legitimate processes, at a minimum, when they have caused or contributed to adverse impacts. However, the provisions on remedy [Abhilfemaßnahmen] in the draft law neglect the aspect of remediation for individuals including reparation, although access to remedy [Zugang zu Abhilfe] under the UN Guiding Principles includes such rights of individually affected people. The complaints procedure in the draft is also primarily designed as a mere notification system. The provisions thus leave gaps at the expense of those affected and must be strengthened.

Legal mechanisms, in addition to **strong administrative enforcement**, are needed to strengthen and protect the **rights of affected people to remedy and reparation**, while at the same time having a broad preventative effect. We welcome that the draft law entitles domestic trade unions and non-governmental organisations to litigate before German courts on behalf of affected people from other countries [Prozessstandschaft]. This is a step in the right direction and recognition of the rights of affected people and the important role of civil society.

3) The law's scope should apply to companies of all sizes, and it should also apply to companies registered outside and active on the German market.

For us, responsibility for human rights and the environment applies to companies of all sizes. Only scale and complexity of measures can vary in order to ensure their appropriateness and proportionality for companies in accordance with the UN Guiding Principles and OECD Guidelines. Decisive factors include the size, sector and operational environment of a company, as well as the severity and irreversibility of its human rights and environmental impacts. Minimum thresholds for the size of a company, on the other hand, contradict these risk- and context-based UN and OECD requirements.

The globally connected German “Mittelstand” (or SME sector), which includes several of the signatories, is Germany's economic engine. Under the current draft law, some smaller companies would be included indirectly through their contractual relationships with large companies and would then have to factor in their contractual enforcement. **Instead, smaller German companies should be included directly in the scope of a strengthened law.** Close alignment with UN and OECD standards would ensure proportionality here as well, and lead to a greater and necessary partnership dynamic to ensure respect for people and the environment in global value chains.

In principle, we believe that **any regulation aligned with international standards is more effective the more companies it covers.** A strengthened law should therefore also apply to companies registered outside of Germany but that conduct significant business activities on the German market. Such a provision would further increase the level playing field.

It is high time that Germany, as one of the most important players in global trade, takes the step towards a truly effective Supply Chain Law, thus paving the way for an ambitious EU regulation. 'Divestment' from poorer countries in the global South, occasionally purported as a side-effect of mandatory due diligence legislation, is not realistic. Rather, sustainable development only happens when working conditions and investments respect human rights and are in line with environmental standards. A strengthened law would, through its implementation, make a tangible contribution to improving human rights along global value chains. At the same time, it would help companies become resilient and future-oriented. Business must not be done at the expense of people and the environment.



As of: 28 April 2021 (English translation as of August 2021)