

# Frequently Asked Questions about the new Dutch Child Labour Due Diligence Law

On the 7th of February 2017, the lower house of the Dutch Parliament adopted a law requiring companies to determine whether child labour exists in their supply chains and set out a plan of action on how to combat it. This law, called the “Child Labour Due Diligence Law” (“Wet Zorgplicht Kinderarbeid”), is still awaiting approval by the Senate.

Below we explain what is known about the content of the law at this moment. Several aspects of interpretation and especially implementation of the law are still to be determined via an instrument known as a *General Administrative Order* or GAO (*‘Algemene Maatregel van Bestuur’, AMvB*). The GOA, an executive responsibility of the government, will only be issued after approval in the Senate. This means that the information provided below does not cover some of the final details of the law.

## **What is the purpose of the law?**

The stated goal of this legislation is to protect Dutch consumers. The legislation aims to prevent goods and services produced with child labour from being delivered to consumers in the Netherlands. Dutch consumers should be able to trust that the companies from which they purchase products and services are conducting due diligence (i.e. doing everything that can reasonably be expected of them) to prevent child labour from being used in their products and services. The Senate is challenging this goal and has stated that, in reality, combating child labour is the ultimate goal.

## **What is the law asking from companies?**

Companies covered by the law (see below for an explanation of which companies are covered) have to submit a statement to regulatory authorities declaring that they have carried out due diligence related to child labour in their full supply chains. It is not defined yet which regulatory authorities will be responsible, but it is very likely to be the Dutch Consumer and Market Authority (ACM).

There are no specific requirements for the statement (yet) - the form and content will be determined by the GAO. Companies only have to submit the statement once; it has a long-term validity and there is no provision about the length of time for which it is valid. This is different from the UK Modern Slavery Act and the French ‘Devoir de Vigilance’ bill, both of which require an annual statement. Although the GAO will determine some of the other specifics for the statement, it will not change the one-off nature of the statement. It has been clear during the entire political debate that this law is not about reporting requirements but about compulsory due diligence. The only element that contributes to more transparency is that all statements will be published on the website of the regulator.

## **When does the law take effect?**

The law enters into force on 1 January 2020. Companies have to send the statement to the regulator six months after this law enters into force (i.e. by 1 July 2020). Companies wishing to voluntarily send in their statements before the deadline can do so as early as 2018.

## **How is due diligence defined under the law?**

Due diligence under this law means first assessing whether there is a reasonable presumption that the goods and services to be supplied have been produced with child labour. For the quality of this assessment, the law refers to the International Labor Organization’s and International Organisation of Employers’ recently published “Child Labour Guidance for Business”. This guide is in turn based on

the UN Guiding Principles on Business and Human Rights (UNGPs). The investigation must focus on sources that can be reasonably known and that are accessible.

If the investigation indicates that there is a reasonable presumption that child labour has contributed to the product or service, the company is expected to draw up an action plan in line with international guidelines (UNGPs or the OECD Guidelines for Multinational Enterprises) to prevent this impact.

As of now, there are no specifications for the quality of the action plan. Such criteria may be developed at a later date. The regulatory authority can consider joint plans of action (e.g. through a sectoral or multi-stakeholder initiative) as a valid way of addressing the impact.

Hence, the expectation is not that the company provide a guarantee that child labour does not occur in the supply chains, but that the company has done what can reasonably be expected to prevent this from happening.

### **Which companies are covered under the law?**

The law applies not only to companies registered in the Netherlands, but also to companies from anywhere in the world that deliver their products or services to the Dutch market twice or more a year. The government can exempt certain sectors or categories of companies for which the risk of child labour is low. This is to be determined in the GAO.

Based on the first debate in the Senate, we expect that the GAO will have to include limitations such as size of the company in order to harmonize this law with other legal obligations for companies and in order to reduce the burden for small and medium-sized enterprises.

### **What happens if a company does not publish a statement or if child labour is found despite?**

Companies that fail to submit a statement will be fined, though at a mere €4,100, the fine is largely symbolic. The fine can be raised if there are further complaints and if the subsequent legally-binding instructions and terms of execution imposed by the regulatory authorities are not followed.

However, there will be no active enforcement by the regulatory authorities. Only complaints submitted by a third party will trigger enforcement. Any person (natural or legal) can file a complaint with the regulator on the basis of concrete evidence that the company's products or services were produced with child labour. Any individual or entity wishing to submit a complaint must first submit the complaint to the company itself. If the company's reaction is 'inadequate' according to the complainant, he/she can escalate the case to the regulator.

If the regulatory authorities determine that the company has not conducted due diligence in line with the legislation, the regulator provides the company legally-binding instructions and a time frame for execution. If that is not followed, the company can be fined. If a company is fined twice within five years, the next violation can lead to imprisonment of the responsible director. At the most extreme, failing to follow the law can lead to imprisonment and fines of € 750,000 or 10% of the company's annual turnover.

There remain many open questions regarding enforcement of the law. One of the main ones is how the regulatory authorities will assess whether due diligence was sufficient or insufficient in cases where a complaint provides evidence of child labour.

### **What effects and side effects can we expect?**

MVO Platform expects the law to have an overall positive effect and to contribute to a decrease of child labour in supply chains of consumer products. However, it is important to keep in mind that companies are not required to guarantee that child labour does not occur in the supply chain, but merely to state that the company has done what can reasonably be expected to prevent this from happening.

There are some potential side effects of the law depending on how companies respond to it. For example, companies could start avoiding sourcing from countries with a high risk of child labour in order not to run the risk. However, this is likely to be impossible or very difficult for many products. In addition, companies might do the absolute minimum to meet the law's requirements. For example, they may quickly get rid of child labourers if discovered without taking responsibility for remediation of impacts that have already occurred.

Therefore, it is crucial that the still-to-be-defined quality criteria for the action plans clarify that due diligence is not seen as avoiding risks but as taking responsibility for getting children not only out of work but also into school.

## Where did the initiative of this law come from?

The Child Labour Due Diligence Law was initiated by the MP Van Laar (Labour Party). He worked on it for approximately three years, mainly with his own experts and assistants.



Both the civil society coalition Stop Child Labour as well as some other children's rights organisations like UNICEF provided input at various phases of the process. These organisations also made public comments and statements regarding the content of the law. Van Laar started a sign-on petition in order to generate support from the general public as well as some companies. Among the companies that supported the initiative were Tony's Chocolonely and Nestlé. Tony's Chocolonely even campaigned actively in support of the law.

*Van Laar –at the right of the chocolate bar- campaigns with Tony Chokolonely. The Hague, January 2017 (photo: Tony Chokolonely)*

Van Laar's efforts paid off, and following a few amendments, the law received broad support in Parliament. This is quiet surprising in the Dutch political context where there is currently a very strong preference for self-regulation and negotiated solutions. The vote in the Parliament was 82 in favour (out of 150). The Liberal Party (VVD), Geert Wilders' Freedom Party (PVV), and the Christian Democrats (CDA) all voted against the law.

## What are the next steps?

Currently the Senate revises the law; this means a preparatory study before the Senate will vote. The Senate acts independently so approval is not guaranteed, although the political parties that voted in favor of the law in the lower house of Parliament also have a majority in the Senate. The Senate is only to be able to reject or accept legislation, but in practice it can influence the interpretation of the law and especially the GAO during the revision process. Usually one round of preparatory work in the Senate is sufficient, which will mean that the law could pass before the summer of 2017. However, sometimes more rounds are needed, and that could mean several month more before the final approval of the law.

## How does the new Dutch law relate to international developments?

With the unanimous adoption of the UNGPs by the UN Human Rights Council in 2011, human rights due diligence was established as a global expectation from companies. Over the past two years, several international and European institutions, as well as national parliaments, have asked for a business and human rights framework that embeds human rights due diligence into law. While the European Commission has so far failed to address the growing number of calls to enhance legal standards of responsibility for human rights abuses and environmental damages caused by EU companies, there are several legislative initiatives at the national level. The new Dutch law is thus part of a larger trend towards regulating human rights due diligence, either through transparency requirements, or through obligations to conduct due diligence.

In France a duty of vigilance law was definitely adopted in March 2017. A similar law is currently being considered in Switzerland, Italy has announced its intention to conduct a legal review in that regard, and the German parliament is currently discussing a concrete motion. In 2016, the UK adopted the *Transparency in Supply Chains Clause of the Modern Slavery Act*, and in April 2017, a UK parliamentary report called for broader mandatory human rights due diligence.

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