

This unofficial translation was commissioned by Ropes & Gray. For the Dutch language text of the Act, see [here](#).

Legislative proposal from member Van Laar on the introduction of a duty of care to prevent the supply of goods and services produced using child labor (Child Labor Due Diligence Act)

AMENDED LEGISLATIVE PROPOSAL

February 7, 2017

We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc. etc. etc.

Greetings to all who shall see or hear this read!

We have taken into consideration the desirability of enshrining in law that companies that sell goods and services on the Dutch market should do everything within their power to prevent their products and services from being produced using child labor, so that consumers can buy them with peace of mind;

Thus it is that We, having heard the recommendations of the Advisory Division of the Council of State, and in consultation with the States General, hereby approve and understand the following:

Article 1 Definitions

For the purposes of this Act and the provisions based thereon, the following terms shall have the following meanings

- a. *child labor*: child labor as referred to in Article 2;
- b. *end-user*: the natural person or legal entity using or consuming the good or purchasing the service;
- c. *company*: a company within the meaning of Article 5 of the Trade Register Act 2007 or any entity engaged in an economic activity, regardless of its legal form and the way in which it is financed;
- d. *superintendent*: the superintendent to be appointed by order in council;
- e. *binding instruction*: a standalone order imposed for an offence;
- f. *standalone order*: the order, issued as a sole order, to perform certain acts, as referred to in Article 5:2, second paragraph, of the General Administrative Law Act, in order to promote compliance with statutory regulations;
- g. *Our Minister*: Our Minister for Foreign Trade and Development Cooperation.

Article 2

1. Child labor is understood to mean:
 - a. in any case, any form of work, whether or not under an employment contract, performed by persons who have not yet reached the age of 18 and which is included among the worst forms of child labor referred to in Article 3 of the Worst Forms of Child Labor Convention, 1999;
 - b. if the work takes place in the territory of a State Party to the Minimum Age Convention, 1973, 'child labor' shall further mean any form of work prohibited by the law of that State in implementation of that Convention;
 - c. if the work takes place in the territory of a State which is not a party to the Minimum Age Convention, 1973, child labor shall further be understood to mean:
 - i. any form of work, whether or not under an employment contract, performed by persons who are subject to compulsory schooling or who have not yet reached the age of 15, and
 - ii. any form of work, whether or not under an employment contract, performed by persons who have not yet reached the age of 18, insofar as such work, by virtue of the nature of the work or the conditions under which it is performed, may endanger the health, safety or morality of young persons.
2. By way of derogation from paragraph 1(c), child labor shall not include light work as defined in Article 7(1) of the Minimum Age Convention, 1973, carried out for a maximum of 14 hours a week by persons who have reached the age of 13.

Article 3 Supervision

1. The superintendent shall be charged with the supervision of compliance with the provisions of or pursuant to this Act.
2. Any natural person or legal entity whose interests are affected by the actions or omissions of a company relating to compliance with the provisions of or pursuant to this Act may submit a complaint about this to the superintendent.
3. Only a concrete indication of non-compliance with the provisions of or pursuant to this Act by an identifiable party constitutes grounds for submitting a complaint.
4. A complaint can only be dealt with by the superintendent after it has been dealt with by the company, or six months after the submission of the complaint to the company without it having been addressed.

Article 4 Declaration

1. Any company registered in the Netherlands that sells or supplies goods or services to Dutch end users declares that it exercises due diligence as referred to in Article 5 in order to prevent such goods or services from being produced using child labor. The first sentence applies *mutatis*

mutandis to companies not registered in the Netherlands that sell or supply goods or services to Dutch end users.

2. The company shall immediately send the statement, as referred to in the first paragraph, to the superintendent after it has been registered in the trade register. Companies that are already registered with the trade register shall send the declaration to the superintendent within six months of the entry into force of this Act. Any company that is not registered in the European part of the Netherlands and that is not registered in the trade register shall send the declaration to the superintendent within six months after the company supplies goods or services to end users in the Netherlands for the second time in a given year.
3. Exceptions may be granted by or pursuant to an order in council before the date on which the declaration is delivered and further rules may be laid down on the content and form of the statement.
4. The supply of goods, as referred to in the first paragraph, does not mean the mere transport of goods.
5. The superintendent shall publish the declarations in a public register on its website.

Article 5 Due diligence

1. A company which, with due observance of the provisions of paragraph 3, investigates whether there is a reasonable suspicion that the goods or services to be supplied have been produced using child labor and which, in the event of a reasonable suspicion, adopts and implements a plan of action, is exercising due diligence. A company which receives goods or services from companies which have issued a declaration as referred to in Article 4 is also exercising due diligence with respect to those goods and services. A company which receives only goods or services from companies which have issued a declaration as referred to in Article 4 is also exercising due diligence and shall not be required to issue a declaration as referred to in Article 4.
2. The investigation referred to in the first paragraph shall be oriented toward sources that are reasonably known and accessible to the company.
3. With due observance of the ILO-IOE Child Labor Guidance Tool for Business, further requirements shall be set by or pursuant to an order in council for the investigation and the plan of action referred to in the first paragraph.
4. Our Minister may approve a joint plan of action that is aimed at ensuring that affiliated companies exercise due diligence to prevent goods or services from being produced using child labor, and that is developed by or among one or more social organizations, employees' organizations or employers' organizations. A company that acts in accordance with a joint action plan approved by Our Minister is exercising due care.

Article 6 Exemption

By or pursuant to an order in council, categories of companies are exempted from the provisions of this Act. The recommendation for an order in council to be adopted pursuant to the previous sentence shall not be made until four weeks after the draft has been submitted to both Houses of the States-General.

Article 7 Administrative fine

1. The superintendent may impose an administrative fine for violation of Article 4, second paragraph, up to a maximum of the amount of the second category fine of Article 23, fourth paragraph, of the Dutch Criminal Code.
2. The superintendent may impose an administrative fine of up to the amount of the fine of the sixth category of Article 23, fourth paragraph, of the Dutch Criminal Code in respect of the following:
 - a. failure to comply with the obligation to carry out investigations or to draw up a plan of action, as referred to in Article 5, first paragraph,
 - or
 - b. failure to comply with the requirements for the examination or plan of action referred to in Article 5, third paragraph.
3. Article 23, seventh paragraph of the Dutch Criminal Code shall apply *mutatis mutandis* to paragraphs 1 and 2 of this Article.
4. The superintendent shall not impose an administrative fine for violation of the provisions of or pursuant to Articles 4 and 5 until after they have issued a binding instruction. The superintendent may set the offender a time limit within which the instruction must be complied with.

Article 8 Suspension of the fine

The effect of a decision imposing an administrative fine shall be suspended until such time as the period for submitting a notice of objection or appeal has expired or, if an objection has been lodged or an appeal has been lodged, a decision has been taken on the objection or appeal, as the case may be.

Article 9 Criminalization

In Article 1, under 2°, of the Economic Offences Act, the following shall be inserted in the alphabetical list:

the Child Labor Due Diligence Act, article 4, second paragraph, and Article 5, first and third paragraphs, if, in the five years preceding the violation, an administrative fine was imposed on the basis of Article 7, first or second paragraph, of that Act for the same violation by the company, committed by order of or under the *de facto* leadership of the same manager.

Article 10 Evaluation

Within five years of the entry into force of this Act, Our Minister shall send the States-General a report on the effectiveness and practical effects of this Act.

Article 11 Transitional provision

This Act shall be inapplicable to the supply of goods or services, the obligation for which was entered into prior to the date of issue of the Bulletin of Acts and Decrees in which it is published, until the date on which the obligation expires pursuant to a stipulation agreed prior to the date of issue of the Bulletin of Acts and Decrees in which this Act is published, but no later than until five years after the date of entry into force of this Act.

Article 12 Entry into force

1. This Act shall enter into force on a date to be determined by Royal Decree, but not earlier than January 1, 2020.
2. This Act shall expire at a time to be determined by Royal Decree, which shall not be before the time of dispatch of the report referred to in Article 10.

Article 13 Short title

This law shall be cited as: Child Labor Due Diligence Act.

Order and command that it be published in the Bulletin of Acts, Orders and Decrees and that all ministries, authorities, colleges and civil servants concerned shall uphold its accurate execution.

Given

The Minister for Foreign Trade and Development Cooperation