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## German Parliament Approves Mandatory Human Rights and Environmental Due Diligence Legislation – Near-term Steps for U.S.-based Multinationals

In May, we published an article discussing German corporate social responsibility requirements for U.S.-based multinationals. That article was published in conjunction with leading German law firm Gleiss Lutz.

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Along with other CSR requirements, our May article discussed the proposed Due Diligence in the Supply Chain Act. The Act was passed by the German Parliament on June 11. The Act passed by a wide margin, with 412 votes in favor, 159 against and 59 abstentions.

In this update to our earlier article, Gleiss Lutz and we discuss what U.S.-based multinationals should be doing now in furtherance of the Act.

### What Does the Act Require?

Because the proposed Act already was a compromise among the main German political parties, the final Act largely tracked the draft approved by the Federal Cabinet in March. For an extensive summary of the draft Act approved by the Federal Cabinet, see our earlier article [here](#).

To recap a few important aspects of the Act:

- The Act generally applies to companies with 3,000 employees in Germany, starting in 2023. The threshold drops to 1,000 employees in 2024. For purposes of the calculation, employees of subject companies working abroad are included.
- The Act applies to a broad range of human rights risks. It also applies to environmental risks that can lead to human rights violations.
- The Act imposes a duty of care for managing and addressing human rights and environmental risks that extends to the entire supply chain. The manner in which the duty of care must be exercised is based on the particular facts and circumstances and differs by supply chain tier. In a group of affiliated companies, a parent company's duty of care extends to the business activities of affiliated companies under its influence.
- Subject companies will be required to annually report on their due diligence. The report will be required to be made publicly available and submitted to a regulator.
- Violations of the Act can have significant consequences. These consequences include a requirement to take remedial action and significant administrative fines, as well as exclusion from public tenders. NGOs and trade unions also can bring claims in German courts on behalf of persons that suffer harm, although the Act does not create a new basis for liability (this was a topic of fierce debate up until final passage of the Act).

These and other aspects of the Act are discussed in detail in our earlier article, available [here](#).

### What Should We Be Doing Now?

At a minimum, U.S.-based multinationals should take the following near-term steps:

- Determine whether any of your company's operations will be subject to the Act, in either 2023 or 2024.
- If your company will be subject to the Act, benchmark your existing supply chain due diligence program against the requirements of the Act and establish an action plan for addressing any program gaps.

Because of the broad scope of the Act and the extent of its requirements, our experience to date has been that most U.S.-based multinationals with operations that will be subject to the Act will need to enhance portions of their compliance program.

Most U.S.-based multinationals have moved to a common enterprise-wide approach to managing human rights compliance, or are in the process of doing so. To the extent aspects of the current human rights compliance program require enhancement to meet the requirements of the Act, consideration will need to be given whether to roll the enhancements out across the enterprise, or only at the operations subject to the Act.

- Determine who will have responsibility for reporting under the Act. With the proliferation of additional human rights reporting requirements, many U.S.-based multinationals have begun to centralize the human rights reporting function to ensure global consistency in disclosure.
- New contracts that will continue after the effective date of the Act should take into account compliance requirements under the Act. Also, consider whether existing contracts will need to be amended, directly or via changes to vendor codes or standard terms and conditions.
- Even if your company will not be subject to the Act, determine whether you have significant commercial customers, or a significant number of commercial customers more generally, that will be subject to the Act. If so, begin to assess what this is likely to mean to your company from a commercial perspective. Said another way, assess what compliance procedures your German customers are likely to expect your company to follow.

We expect larger German companies to start communicating supplier compliance expectations later this year and into 2022. Even though the Act does not take effect until 2023, German companies with more sophisticated supply chain compliance functions are likely to expect suppliers to make required enhancements to their compliance programs in advance of the effective date of the Act.

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For further information on the practice, click [here](#).