

**2024
Edition**

**Factsheet 13:
The German Due Diligence
in the Supply Chain Act**

An Apparel Supplier's Guide 2.0

**Key Sustainability Legislation
in the EU, US, and UK**

EU Strategy for Sustainable and Circular Textiles
EU Corporate Sustainability Due Diligence Directive
EU Corporate Sustainability Reporting Directive
New York Fashion Act
EU Forced Labour Regulation & Guidance
US Uyghur Forced Labor Prevention Act
EU Ecodesign for Sustainable Products Regulation
EU Packaging & Packaging Waste Directive & Provisional Regulation
EU Microplastics Regulation
UK Plastic Packaging Tax
EU Product Environmental Footprint Guide
EU Textiles Regulation
EU Taxonomy
The German Due Diligence in the Supply Chain Act
Lessons for Fashion: How the agricultural sector is tackling commercial compliance through the EU Directive on unfair trading practices

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The Remedy Project is a social enterprise that works to improve access to justice and remedy for migrant workers in global supply chains. They work constructively with governments, civil society, law enforcement, and the private sector to translate the UN Guiding Principles on Business and Human Rights into practice. For more information please see www.remedyproject.co.

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Introduction

UPDATE

a. Objective

In July 2023 the first iteration of this guide covering, 12 pieces of legislation, was published. This document is an update to that guide and includes updates to the 12 factsheets issued last year as well as three additional factsheets covering new legislation not previously included.

This document is intended to enable suppliers in the apparel value chain that are established or headquartered outside of the Global North¹, or whose operations are based outside these jurisdictions or whose supply chains extend to the Global South, to better understand how sustainability-related legislation in the Global North could potentially impact them. While suppliers may not, in all cases, be directly subject to the obligations created by these Global North

laws, they may still experience knock-on effects as they form an integral part of the global apparel value chain and produce goods for multinational brands and retailers who have increasing compliance obligations as they adopt new practices in order to respond to the increased legislation. As such, this document aims to:

- Offer a public resource and roadmap for suppliers to proactively respond to and prepare for the requirements of these Global North laws.
- Provide a platform for dialogue and information exchange where suppliers and manufacturers can explore engagement (where possible) with policy makers in Global North jurisdictions.
- Support suppliers in delivering the fashion industry's social and environmental performance goals, and drive meaningful change for rights holders – whether workers, local communities, cotton farmers– globally.

b. Important legislative context to understand

As governments in the Global North embark on ambitious plans to transition towards climate neutrality, inclusive and sustainable growth, the body of sustainability legislation is expanding rapidly.

The European Union (EU) is at the forefront of these changes, introducing a plethora of legislative and non-legislative measures to implement priority policies such as the [European Green Deal](#). The European Green Deal is a cornerstone of the EU's industrial strategy, comprising a series of proposals to make the EU's climate, energy, transport, and taxation policies fit for reducing net greenhouse gas emissions by at least 55% by 2030, and to secure the global competitiveness and resilience of European industry². There are also sector-specific initiatives such as the EU Strategy for Sustainable and Circular Textiles, which aim to implement the commitments made

¹ For the purposes of this document, "Global North" encompasses the European Union, United Kingdom, and the United States.

² European Commission, [A European Green Deal](#)

under the European Green Deal (see infographic on the next page “**Snapshot of the Legislative Landscape in the Global North**”), by setting out measures to address the design and consumption of textile products, and promote a greener and fairer value chain in the textiles industry. The legislations covered in this document such as the EU Ecodesign for Sustainable Products Regulation and Digital Product Passport, EU Corporate Sustainability Due Diligence Directive, EU Regulation on Prohibiting Products Made With Forced Labour on the Union Market (Forced Labour Regulation), are only some of the initiatives taken by the EU to execute on the European sustainability policy objectives³.

These legislations create legally binding obligations on companies to consider how they are managing their social and environmental impact. Many of these laws and regulations have global application and/or will impact apparel manufacturing and sourcing hubs outside of the Global North. As such, while these laws originate from the Global North such as the EU, United Kingdom, and United States, they will impact companies operating outside of these jurisdictions. It is therefore a prescient

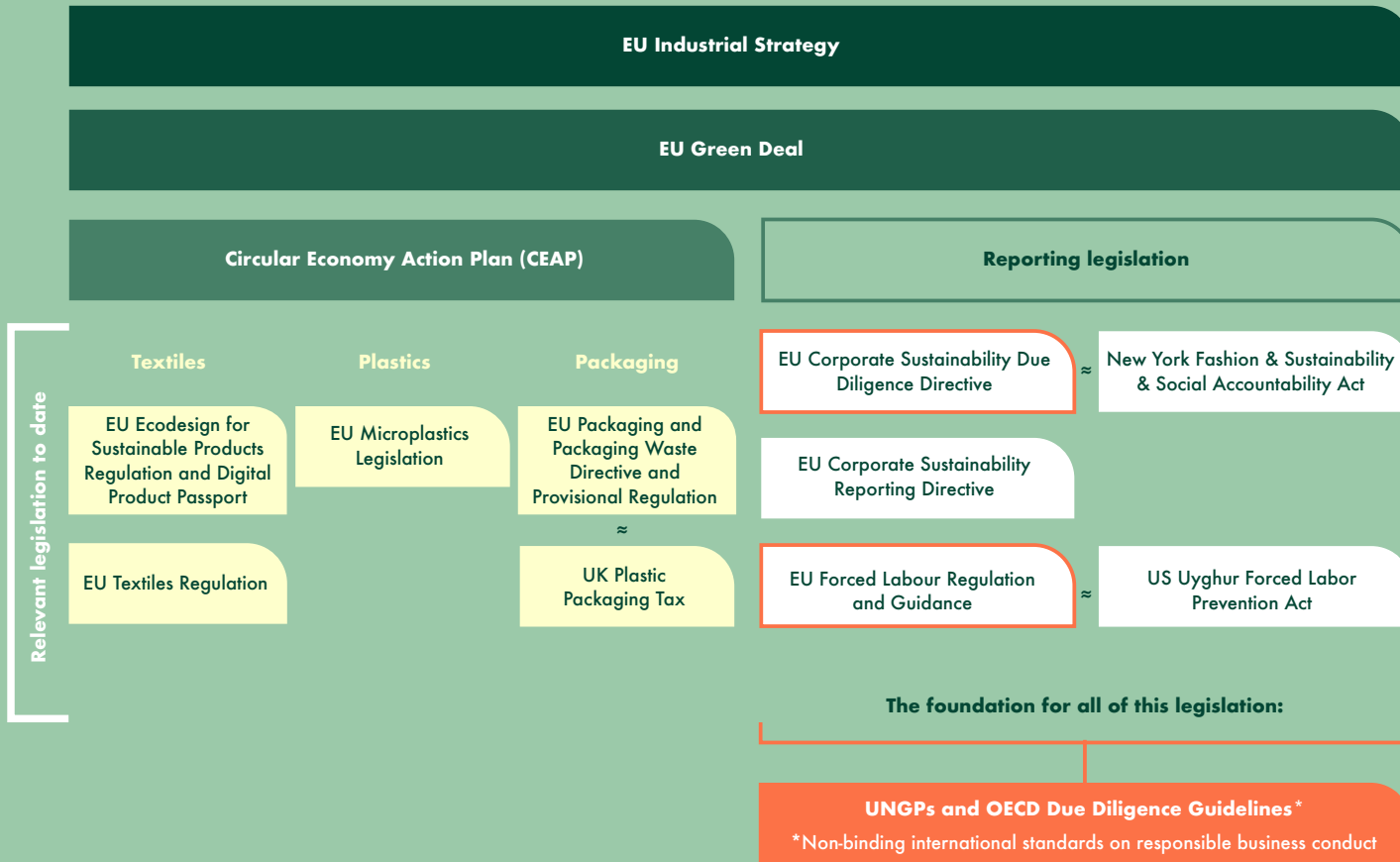
time for companies directly subject to these legislations, and for those who have business relationships with them, to align their sustainability policies and practices with these laws.

At a high level, these laws (especially those relating to mandatory human rights due diligence) can be collectively understood as a legal framework that translates elements of the United Nations Guiding Principles on Business and Human Rights (UNGPs) into binding legal obligations. The UNGPs represent the authoritative framework on how businesses should operationalize their commitments to human rights. As businesses are increasingly required to comply with different (and sometimes overlapping) laws in this area, it is The Remedy Project’s view that businesses that are able to operate in accordance with the UNGPs and other international frameworks such as the OECD Due Diligence Guidance for Responsible Business Conduct will be more successful in making this transition. Complying with the highest international standards could help future-proof business against future legislative changes and may also be more efficient from a process perspective. Furthermore, the Remedy Project sees a trend of many

brands upgrading their internal compliance and value chain requirements based on the UNGPs and international frameworks. Thus, complying with these international standards could help businesses position themselves to align with brands’ expectations and easily and effectively adapt to future legislative requirements, as well as satisfy the requirement of other business partners and customers. Instead of having to operate in accordance with different standards of compliance for each jurisdiction and each counterparty, the business can adopt a less fragmented, and thus less burdensome, approach to compliance. Of course, even if suppliers align with established international frameworks, different brands will continue to set varying detailed procedural requirements on their supply chain partners, particularly in the near future. We therefore continue to recommend that suppliers proactively work with brands and retailers on implementation to reduce the risk of multiple interpretations.

³ See for example the summaries of EU legislation on environment and climate change.

Snapshot of the Legislative Landscape in the Global North



Note * The legislations, regulations and directives in this diagram are not the complete set laid out under the umbrella strategies. Head to the [European Commission](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1111) website to learn more.

c. General implications for companies supplying apparel & beyond

These legislative developments make clear that businesses will need to re-think the way they approach sustainability. This new era of legislation moves sustainability from “nice to have” to “must-have” and requires companies to implement human rights and environmental risk management practices. With this transition, we expect to see more cross-functional efforts to embed considerations of human rights and environmental impacts into business’ day-to-day operations and overall strategy. In this new landscape, in-house legal teams must work closely with procurement and sourcing, operations, product teams, and in-house sustainability experts to achieve compliance. There must also be executive and management level buy-in, and attention given to sustainability issues.

How to Use ● This Document

This document comprises a series of factsheets. For each legislation, the factsheet will cover the following topics on the right.

Updates to Factsheets will be identified by these indicators:

UPDATE

Text Updates

1. Key Changes

A summary of key changes to the legislation since August 2023.

2. Overview

A summary of the key aspects of the legislation.

3. Context

A description of the political context and policy objectives that the legislation seeks to address or achieve.

4. Status

Whether the legislation is in effect and if not, the current stage of the legislative procedure. If known, the expected timeline for implementation is also provided. For proposed EU legislation, users may find it helpful to refer to the [European Parliament's infographic](#) for information on the different stages of the EU legislative procedure.

5. Scope

This section sets out the types of companies or products that fall within the scope of the legislation. This may include, for example, an explanation of the thresholds that a certain company must meet for the legislation to apply. Our suggestion to suppliers is to start by identifying whether they are directly in-scope and, if so, review the obligations and compliance recommendations for companies in-scope (Sections 5 & 6). If a supplier has established that they are not directly in-scope, it is our suggestion that those suppliers review whether the brands for which they produce are in scope. If a supplier's customer is within scope, our suggestion is to review the potential implications for suppliers to companies in-scope (see Section 7).

6. Obligations for companies in-scope

A description of the duties and responsibilities that must be undertaken by the companies that are directly subject to the legislation.

7. Compliance recommendations for companies in-scope

Suggested recommendations for companies to prepare for compliance with the legislation (where the legislation is not yet in effect), or considerations for companies seeking to improve their compliance (where the legislation is already in effect). For the avoidance of doubt, these compliance recommendations do not constitute legal advice or opinion; companies should seek legal advice from attorneys concerning any specific situation or legal question they may have. Moreover, as the text of the laws in many cases remains subject to change, companies should refer to the most updated version of the legislation in developing their compliance strategy. The enforcement actions undertaken by the relevant regulator (once the law is in effect) will also determine the scope of compliance obligations.

8. Potential implications for suppliers to companies in-scope

In some instances, suppliers in the apparel value chain who are not directly subject to the concerned legislation, may still be impacted by the legislation as they supply to companies in-scope (i.e., a fashion brand or fashion retailer in-scope). These may include requirements around transparency and traceability, or obligations to undergo audits or obtain certifications. This section sets out the potential implications of the legislation for suppliers. For the avoidance of doubt, companies in-scope will approach compliance differently and many of the legislations covered in this document are in nascent stages of development. Moreover, the enforcement actions undertaken by the relevant regulator will also affect how companies in-scope respond to the legislation. As such, the guidance provided herein is only intended to represent our best estimates of the knock-on effects of the concerned legislation and is for informational purposes only.

9. Penalties for non-compliance

Where applicable or known, the penalties for companies in-scope that fail to comply with the legislation are set out.

10. Form of Enforcement

A description of the key forms of enforcement action that may be taken by the relevant authorities.

11. Reporting/disclosure for companies in-scope

An overview of the key information disclosure obligations (if any) for companies in-scope.

12. Access to remedy mechanisms and litigation risk

This section notes where the relevant legislation provides a right for legal action to be taken against a company for alleged non-compliance.

13. Opportunity to participate and engage in legislative development

Where applicable, opportunities to participate in public consultation.

14. Useful resources to support compliance

Links to third-party resources and guidance are provided for further detail on how companies in-scope may approach compliance and how suppliers or business partners to companies in-scope may prepare for cascaded compliance requirements.

Glossary

A glossary of key terms used in this document is set out below.

Brands: For the purposes of this document, this refers to a multinational company that is engaged in the business of offering branded apparel products.

Companies in-scope: Companies that are directly subject to the obligations set out in the relevant legislation.

Due Diligence: A process that businesses should carry out to identify, prevent, mitigate, and account for how they address the actual and potential adverse human rights or environmental impacts in their operations, their value chain and other business relationships.

EU Decision: A “decision” is binding on those to whom it is addressed (e.g., an EU country or an individual company) and is directly applicable.⁴

EU Delegated Act: A delegated act is an EU legislative mechanism to ensure that EU

laws that are passed can be implemented properly or reflect developments in a particular sector.

EU Directive: A directive is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals⁵.

EU Regulation: A regulation is a binding legislative act. It must be applied in its entirety across the EU⁶.

EU negotiation position: A particular stance taken by a European Institution in a negotiation where it outlines the preferred result.

EU provisional agreement: When after negotiations, an informal agreement is reached on the text of a legislative proposal that then needs to be formally approved by the European Parliament and the Council of the European Union during the legislative procedure.

Adopted: When a law is officially approved at the end of the legislative procedure.

Approved: Used as a synonym for adopted or used in cases of approval of draft versions of the law.

Derogated: Not included or not applied.

European Commission: The European Commission is the EU’s politically independent executive arm. It is responsible for drawing up proposals for new European legislation, and it implements the decisions of the European Parliament and the Council of the EU.

European Council: The European Council is the EU institution that defines the general political direction and priorities of the European Union.

European Parliament: The European Parliament is the EU’s law-making body that is directly elected by EU voters every 5 years.

Grievance Mechanism: Any routinized, State-based, or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought⁷.

^{4,5,6} European Union, Types of legislation

⁷ UNGPs Principle 25 and commentary

Types of EU legislation

- **Directive:**
A legislative act that sets out a goal for EU countries who then have to devise their own laws on how to reach these goals.
- **Regulation:**
A binding legislative act which must be applied in its entirety across the EU.
- **Decision:**
A binding law only on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable (it does not have to be implemented by the recipient).
- **Delegated and Implementing Acts:**
Non-legislative acts adopted by the European Commission aimed at supplementing elements of a legislative act for uniform implementation.

Supplier: For the purposes of this document, unless otherwise specified, this refers to a supplier in the apparel value chain. While the information provided herein is applicable across the entire value chain, it is primarily intended for Tier 1 suppliers and sub-contractors who produced finished goods for fashion brands and retailers, and Tier 2 suppliers and sub-contractors who provide services and goods, such as knitting, weaving, washing, dyeing, finishing, printing for finished goods, and components (e.g., buttons, zippers, soles, down and fusible) and materials for finished goods.

Value Chain: A value chain encompasses all activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream business relationships of the company.

Intentionally added: Deliberately utilized in the formulation of a material or component where its continued presence is desired in the final product to provide a specific characteristic, appearance or quality.



The German Due Diligence in the Supply Chain Act

NEW *

1. Overview

The German Supply Chain Due Diligence Act (the Act) is intended to mitigate human rights and specified environmental-related risks in company operations and supply chains that can lead to human rights violations.¹ Please see added information in Section 3, 4, 9 and 12.

¹ The German authorities have given no indication at present about how the integration of CSDDD will be with the Act. The German authorities are investing significant resources in developing guidance and enforcement structures around the Act and there is currently no official guidance around the application of CSDDD to a landscape that has already embedded the Act.

2. Context

In 2016, Germany's Federal Government published its National Action Plan (the NAP) implementing the UN Guiding Principles on Business and Human Rights (the UNGPs). The NAP set out the Federal Government's expectations concerning corporate human rights due diligence. In the NAP, the Federal Government indicated it expects all enterprises to exercise human rights due diligence in accordance with the UNGPs commensurate with their size, the sector in which they operate and their position in supply and value chains.

At the time the NAP was issued, the Federal Government indicated compliance would be reviewed annually starting in 2018 and that, in the absence of adequate compliance, the Federal Government would consider further action, including legislation. The goal was that at least 50% of all enterprises

based in Germany with more than 500 employees would incorporate human rights due diligence into their processes by 2020. Subsequent reviews by the Federal Government indicated this goal was not close to being achieved. A study released in July 2020 indicated that between 13% and 17% of the companies surveyed met the requirements of the NAP. As a result of the perceived inadequacy of voluntary compliance, momentum for mandatory human rights due diligence legislation began to build.

On February 12, 2021, the political parties that formed the coalition government at the time announced they had reached a consensus on the key terms of a new mandatory human rights due diligence framework.

3. Status

The Act was passed by the German Parliament on June 11, 2021. It was passed by a wide margin, with 412 votes in favor, 159 against and 59 abstentions. The Act took effect on January 1, 2023, initially applying to larger enterprises with at least 3,000 employees in Germany. These enterprises were expected to have their due diligence and risk management systems fully operational starting in 2023. As of January 1, 2024, the Act's applicability expands to include smaller enterprises that have at least 1,000 employees in Germany. By the start of 2024, all enterprises meeting these employee thresholds are expected to fully comply with the Act. In May 2024, the EU Corporate Sustainability Due Diligence Directive (the CSDDD) was adopted. Due to the stricter reporting requirements set out by the Directive, the Act will require harmonisation accordingly.

In March 2024, the European Council and the European Parliament reached political agreement on the EU Corporate Sustainability Due Diligence Directive (the CSDDD). If the CSDDD is adopted, the Act will need to be harmonized with the CSDDD.

4. Scope

A company is subject to the Act if it meets two threshold requirements:

- ▶ The company has its head office, principal place of business, administrative headquarters, registered office, or branch office in Germany. This includes retail outlets of foreign companies as long as they are registered in Germany and have more than 1000 employees
- ▶ Starting in 2024, the Act applies to companies with 1,000 or more employees in Germany, down from 3,000 in 2023. Employees at subsidiary companies (including employees posted abroad) are included. Temporary workers also are included if their assignments last more than six months.

5. Obligations for companies in-scope

● Risk Management System

Companies within the scope of the Act must establish an appropriate and effective risk management system to identify, minimize, prevent, and address human rights risks and environment-related risks, as well as to end violations of human rights-related or environment-related obligations in their supply chains, particularly when the company has caused or contributed to these risks or violations. A **“supply chain”** encompasses all products and services of a company within the scope of the Act and includes all steps in Germany and abroad necessary to produce the products and services, from the extraction of raw materials to delivery to the end customers. This includes actions of a company in its own business operations and the actions of direct and indirect suppliers.

The risk management system must consider the company’s employees, the employees in its supply chain and other persons directly affected by its economic activity or the economic activity of a company in the supply chain. Specific requirements include:

- Designating a responsible person (e.g., appointing a human rights officer);
- Senior management must seek information on a regular basis (at least once per year) about the work of the person responsible for monitoring risk management. This requirement is specific to this regulation's implementation and involves oversight beyond standard performance reviews to ensure compliance with the Act's mandates; and
- Incorporation of preventative measures and remedial measures.

Complaint Procedure

Companies within the scope of the Act are required to establish a complaints procedure that is easily accessible to both internal and external stakeholders. The complaints mechanism must be:

1. Documented and publicly available.
2. Managed by the company or an entity that is independent of the operational processes being monitored, ensuring that the complaints are handled without bias and that the confidentiality of the complainant is maintained.
3. Subject to an annual review to ensure that it remains effective in identifying, addressing, and resolving complaints.

The complaint procedure is intended to enable the reporting of human rights risks and environment-related risks as well as violations of human rights-related or environment-related obligations within the company's own operations and those of its direct suppliers.

Companies may either establish an internal complaints procedure or entrust a third party to manage the complaints procedure on their behalf. This external entity must also adhere to the same standards of accessibility, impartiality, and confidentiality as required by the Act. Regardless of whether the procedure is managed internally or externally, companies must review these procedures at least annually and on an ad hoc basis as warranted by new developments or emerging issues within the company's operations or its supply chain.

Definitions

- ▶ **Human Rights Risk:** A “human rights risk” within the meaning of the Act refers to a situation in which there is a sufficient likelihood, based on factual circumstances, that a violation of protected human rights may occur. This encompasses risks associated with violations such as forced labor, child labor, discrimination, and other abuses that undermine fundamental human rights as recognized in international human rights laws and standards. The full list of human rights-related obligations is found in Section 2 of the Act, paragraph 2, numbers 1–12.
- ▶ **Environmental-Related Risk:** An “environment-related risk” is defined in the Act as a condition that, based on factual circumstances, presents a sufficient probability of leading to significant adverse impacts on the environment. This includes, but is not limited to, pollution of air, water, and soil; improper handling or disposal of hazardous materials; and other activities that could lead to the degradation of natural resources. The full list of environmental-related obligations found in Section 2 of the Act, paragraph 3, numbers 1–8.
- ▶ **Violation of a Human Rights-Related/Environmental-Related Obligation:** An “environment-related risk” is defined in the Act as a condition that, based on factual circumstances, presents a sufficient probability of leading to significant adverse impacts on the environment. This includes, but is not limited to, pollution of air, water, and soil; improper handling or disposal of hazardous materials; and other activities that could lead to the degradation of natural resources. The full list of environmental-related obligations found in Section 2 of the Act, paragraph 3, numbers 1–8.

Risk Analysis

Companies within scope of the Act must conduct a risk analysis, at least annually, to “identify human rights and environment-related risks in its own business area and at its direct suppliers.” A risk analysis should also be carried out on an as-needed basis if the company expects a significant change or significant expansion of the risk situation in its supply chain (see Section 5 for a comprehensive definition of “supply chain”). The results of the analysis must be communicated internally to relevant decision-makers (e.g., the Board or the purchasing department).

Preventive Measures

A “direct supplier” is a business that has a contract with a company within the scope of the Act to provide goods or services that are essential for making the company’s products or for the services it offers.

If a company within the scope of the Act identifies human rights or environment-related risks in their own operations or at their direct suppliers, it must take “appropriate preventive measures.”

For the company’s own operations, these measures include:

1. Issuing a policy statement on its human rights strategy, which articulates the company’s priority human rights and environmental risks and the company’s strategy for addressing these issues.
2. Developing and implementing procurement strategies and purchasing practices that prevent or minimize identified risks.
3. Conducting training programs in the relevant business areas.
4. Implementing risk-based control measures to verify compliance with the human rights strategy contained in the policy statement.

For direct suppliers, the preventive measures include:

1. Considering human rights and environmental expectations 2 when selecting a direct supplier.
2. Including obligations in contracts that require suppliers to adhere to specified human rights and environmental practices and address them in the supply chain.
3. Providing training to suppliers on how to comply with the standards agreed to in the contracts.
4. Establishing risk-based controls to regularly assess supplier compliance with the human rights strategy.

These measures should be regularly reviewed at least annually and additionally on an ad hoc basis to ensure they remain effective and responsive to new challenges or significant changes in the supply chain.

Remedial Action

If a violation of human rights or environmental standards has occurred or is imminent within the company's own business operations in Germany or at its direct suppliers, the company must take remedial action to prevent, end, or minimize the violation.

The Act specifies:

- In its own business operations in Germany, the company must end the violation.
- For violations at its business operations abroad or at direct suppliers, the company must make efforts to end the violation or, where this is not immediately possible, minimize it as effectively as possible.

Specific steps include:

- 1. Immediate Response:** Develop and implement a plan to end or minimize the violation, including a concrete timeline.
- 2. Collaboration:** Work collaboratively with the direct supplier to develop and implement this remedial plan. Consider forming alliances with other companies or organizations to strengthen the remedial efforts. This could involve joining sector initiatives or collaborating with NGOs.
- 3. Supplier Suspension:** Consider temporarily suspending the direct supplier while remedial actions are formulated and implemented.
- 4. Supplier Termination:**
 - Termination of the supplier contract is required if:
 - The violation is deemed very serious,
 - The remedial plan fails to address the violation effectively,
 - No less severe alternative solutions are available, and
 - Efforts to influence the supplier to change practices are unlikely to succeed.

The company must evaluate the effectiveness of these remedial measures at least annually.

Indirect Suppliers

Indirect suppliers are subject to a lower duty of care compared to direct suppliers. The term “duty of care” in a business context refers to a company’s legal and ethical responsibility to take reasonable steps to ensure they do not cause harm or allow harm to be caused to others, particularly concerning human rights and environmental impacts.

For indirect suppliers – those who are part of the supply chain but do not have direct contractual agreements with an in-scope company—the obligations to monitor and enforce compliance with human rights and environmental standards are activated only when there is actual evidence, or “substantiated knowledge,” of potential violations. This approach recognizes that companies typically have less control over indirect suppliers compared to direct suppliers.

Upon obtaining substantiated knowledge of a potential violation, an in-scope company must:

1. Carry out a risk analysis to assess the nature and severity of the issue.
2. Implement appropriate preventive measures tailored to mitigate the identified risks for the indirect supplier. This might involve working directly with the supplier or engaging with broader industry efforts to improve standards and practices, which could include supporting sector-specific or cross-sector initiatives.
3. Take remedial action to prevent, cease, or minimize the violations.
4. Update its policy statement, if necessary, to reflect any new understandings or strategies developed in response to these risks

Documentation and Records Maintenance

Companies within the scope of the SCDDAAct must continuously document their due diligence efforts. This documentation should include:

Due Diligence Documentation: Companies must document their efforts to meet due diligence obligations. This includes records on the identification and handling of human rights and environmental risks or violations. The documentation must be updated continuously and retained for at least seven years from its creation.



Annual Report: An annual report on due diligence obligations must be prepared. This report should reflect the previous financial year's activities and must be made publicly available on the company's website no later than four months after the financial year-end. It should be kept for seven years and clearly state:

- Whether any human rights or environmental risks or violations have been identified, and if so, which ones.
- The actions taken to fulfill due diligence obligations, with reference to the measures described in the Act, especially those related to the company's policy statement and complaints received.
- The company's assessment of the impact and effectiveness of these measures.
- Conclusions drawn from this assessment for future due diligence measures.

No Identified Risks: If no risks or violations are identified, the company should include in its report an explanation of this, and no further detailed disclosures are required as per the second paragraph.

Protection of Secrets: When documenting and reporting, companies must also consider the protection of business and trade secrets.

Companies subject to the Act should implement and maintain the above programs to ensure compliance with the Act's due diligence obligations. Keep in mind that the Act requires annual repetition of certain acts (e.g., annual risk assessment). Ensure that a system is in place to repeat and grow diligence processes as appropriate.

6. Compliance recommendations for companies in-scope

7. Potential implications for suppliers to companies in-scope

The Act outlines clear requirements for direct suppliers to companies that are covered by the law. These direct suppliers must actively manage and verify that their operations adhere to human rights and environmental standards. Specifically, direct suppliers are expected to:

- 1. Contractual Compliance:** In agreements with in-scope companies, suppliers must provide assurances that they are upholding the required human rights and environmental standards. This also involves extending these commitments to their own supply chain.
- 2. Training and Education:** Suppliers must engage in training programs for their staff to maintain awareness and adherence to the Act's human rights and environmental provisions. Such programs should include initial and ongoing training to keep all levels of the supplier's organization informed and compliant with the contract.
- 3. Verification Mechanisms:** Suppliers should establish agreed-upon procedures with their clients to check that they are indeed following the human rights strategies. These checks should be tailored to identify risks and confirm ongoing compliance.

As noted in Section 5 above, the Act imposes a series of requirements on companies within its scope, which, in turn, have a cascading effect on suppliers. As these in-scope companies work to align with the Act, suppliers must be prepared for a heightened level of scrutiny and an increased need for transparency in their operations. This will likely involve more

in-depth evaluations of suppliers' practices, more detailed reporting requirements, and potentially, more stringent contractual obligations that mirror the rigorous standards of the Act.

It is important to note that the Act sets out due diligence obligations upon companies in-scope which cannot be transferred to suppliers. The German Federal Office for Economic Affairs and Export Control (BAFA), the responsible governmental agency for enforcing the Act, has publicly stated that they are paying particular attention to the prevention of risk and responsibility shifting to suppliers.

Suppliers should ensure that the burden of compliance is not shifted to them and remind brands that they are not legally liable under the Act but they should be prepared to respond to the effects arising from the implementation of such obligations and to cooperate in the provision of information that might be helpful to support the companies in-scope in achieving compliance. Suppliers should ask for technical support and/or financial assistance in the event that these compliance-related requests present a burden.

To effectively respond to companies' demands, suppliers are advised to undertake the following proactive measures:



Comprehensive Evaluation of Supply Chains:

Suppliers should conduct thorough environmental and human rights due diligence of their own supply chains to identify and address any human rights or environmental risks. This includes assessing working conditions, environmental impact, and any potential areas of non-compliance (see Section 2 of the Act for the full list of human rights and environmental obligations).



Documentation and Record-Keeping:

Maintain detailed records of due diligence activities, such as audits, risk assessments, and remedial actions. This documentation will be crucial for demonstrating compliance to clients and regulatory bodies.



Development of a Robust Compliance Framework:

Implement a compliance management system tailored to the specific needs of the supplier's operations and the

requirements of the clients. This framework should include policies and procedures for regular risk assessment, preventive measures, and remedial actions.



Contractual Compliance: Prepare to meet contractual requirements that may be imposed by clients. These contracts might stipulate specific compliance standards or require periodic reporting on your due diligence practices. It is important suppliers understand and negotiate these terms to ensure they are feasible and aligned with their operational capabilities.



Training and Capacity Building: Develop training programs for staff to ensure they understand the Act's requirements and how they relate to the supplier's operations. Training should cover the identification and mitigation of risks, as well as procedures for reporting and addressing potential issues.



Establishment of a Complaints

Procedure: Suppliers should set up a clear and accessible process for raising and addressing grievances within their operations. This reflects the obligation of in-scope companies but is also

a proactive measure for suppliers to manage risks and demonstrate their commitment to due diligence. This mechanism should align with the principles outlined in Section 8 of the Act and ensure the confidentiality and protection of complainants.



Anticipate Legal Implications: Be aware that non-compliance could lead to legal challenges not only for their clients but also for the suppliers themselves. The Act allows NGOs and trade unions to sue on behalf of affected individuals, which could include actions taken against suppliers if they contribute to their client's non-compliance.

Suppliers must be ready to adapt these measures as client requirements evolve. Being proactive in these areas will not only help ensure compliance but also strengthen business relationships by demonstrating a commitment to ethical practices. Furthermore, contractual responsibilities, including those related to human rights and environmental standards, can indeed be passed down from companies in scope to their suppliers. It is therefore important for suppliers to engage in open dialogue with their clients to clarify these responsibilities and establish mutually agreeable compliance processes.

8. Penalties for non-compliance

Subject companies that fail to comply with the requirements of the Act, either intentionally or negligently, may be subject to administrative fines. Depending upon the nature of the violation, the fine can be up to €8 million. However, if the company has an average annual turnover over the last three years of more than €400 million, the fine for failing to take remedial measures to address a violation of a human rights-related or an environment-related obligation in the subject company's own business and at its direct suppliers can be up to 2% of average annual sales. If a potential fine exceeds €175,000, the subject company also can be excluded from public procurement for up to three years.

9. Forms of enforcement

The Federal Office for Economic Affairs and Export Control (BAFA) is charged with reviewing whether a subject company has complied with the Act. Among other things, it can require the subject company to address reporting deficiencies within a reasonable time period. It also is empowered to, with three months' notice, require a subject company to submit a plan to remedy substantive compliance deficiencies, as well as to provide a subject company with specific action items to fulfill its obligations. It is important to reiterate that the Act allows NGOs and trade unions to sue on behalf of affected individuals, which could include actions taken against suppliers if they contribute to their client's non-compliance.

10. Reporting/disclosure requirements (if any) for companies in-scope

Subject companies are required to annually report on their diligence no later than four months after the end of their fiscal year (April 30, for companies with a December 31 fiscal year-end). The report is required to discuss:

- The human rights and environmental risks identified;
- The actions taken in response to complaints received, detailing how such feedback has informed the company's due diligence measures to address human rights and environmental concerns;
- How the subject company assesses the impact and effectiveness of the measures taken; and
- The conclusions drawn from the assessment for future measures.

BAFA has an online questionnaire accessible through its website that subject companies need to fill out to satisfy annual reporting under the Act. Completing the online questionnaire submits the report to BAFA. The report (i.e., the completed questionnaire) is required to be published on the subject company's public website no later than four months after each fiscal year end and kept available for seven years.

11. Access to remedy mechanisms and litigation risk

As noted above, the Act requires in-scope companies to develop a complaint procedure through which affected individuals or individuals with knowledge of possible violations can report the human rights and/or environmental risks and violations. Further, BAFA has set up an online complaint form, with an option for anonymity, whereby known or suspected violations of the Act can be reported.

Non-governmental organizations (NGOs) and trade unions have the right to take legal action in German courts on behalf of individuals who have suffered harm due to a company's actions. This means that these organizations can help people use existing laws to seek justice. However, the Act itself doesn't create new reasons to sue a company—it just ensures that the current laws

are applied effectively when a company does not meet its responsibilities under the Act.

For suppliers, this creates a direct impact. They could face legal challenges if they are found to be part of the problem, particularly if their actions—or lack of action—lead to a company being sued. Thus, it's crucial for suppliers to collaborate with the company to avoid being involved in such legal issues.

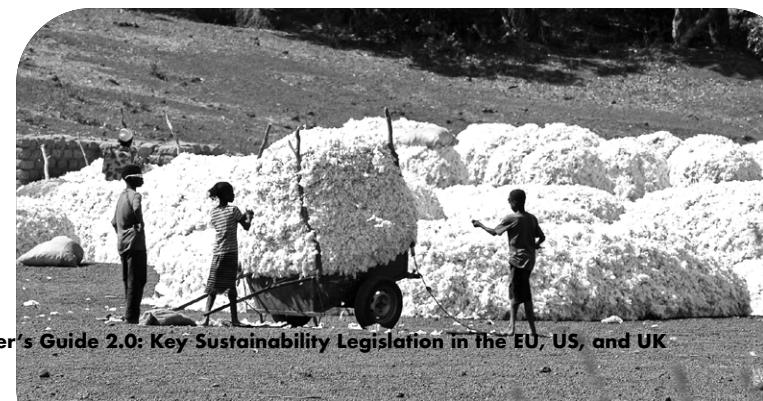


For example on April 24, 2023, the Bangladeshi union National Garments Workers Foundation (NGWF), with support from the European Center for Constitutional and Human Rights (ECCHR) and the African Women's Development and Communication Center (FEMNET), filed a complaint with BAFA against Amazon, IKEA and Tom Tailor, arguing that factories supplying goods to these retailers do not have adequate safety measures in place to protect factory workers and therefore the companies are not in compliance with their due diligence obligations under the Act.

On November 3, 2023, international aid organization Oxfam filed a complaint with BAFA against Rewe and Edeka, two of

Germany's key supermarkets, alleging human rights abuses on banana and pineapple plantations in Latin America. The complaint argues that ample evidence was put forward to expose low wages, disastrous working conditions, and suppression of trade unions and, while competitors addressed the concerns, Rewe and Edeka ignored them.

On the Act's one-year anniversary, BAFA issued a release summarizing enforcement of the Act to date. BAFA conducted 486 checks on companies during 2023, focusing on the automotive, chemicals, pharmaceuticals, mechanical engineering, energy, furniture, textiles and the food and beverage industries. Through its complaints procedure, BAFA received 38 complaints, of which 20 were unrelated to the Act's due diligence obligations or were not sufficiently substantiated; BAFA contacted companies in six cases.



12. Comparison with other Due Diligence Laws



The Act and the CSDDD aim to reinforce the responsibility of companies regarding the impact of their activities on human rights and the environment. However, there are key differences between the two that merit discussion. A detailed comparison between the two reveals the following distinctions and overlaps in terms of due diligence, risk management, complaints mechanism, reporting requirements, legal consequences, and penalties for non-compliance. As noted above, if the CSDDD is formally adopted, the Act will need to be harmonized with the CSDDD. Note, as a European Directive, upon enactment, the CSDDD would be required to be transposed into EU Member State national law. Member States would have two years to transpose the Directive into national law, or in Germany's case, amend the Act.

● Due Diligence Requirements

Both the Act and the CSDDD require companies to integrate due diligence into their policies and risk management systems. The Act specifies that risk management must be part of all relevant business processes, including the establishment of a due diligence policy statement and preventive measures in the company's own area and vis-à-vis direct suppliers. The CSDDD is aligned with the six steps defined by the OECD Due Diligence Guidance for Responsible Business Conduct, which includes integrating due diligence into policies and management systems and identifying and assessing adverse impacts.

● Risk Management System

The Act mandates an effective risk management system to identify and minimize human rights and environmental risks, with specific responsibilities assigned within the enterprise, including the appointment of a human rights officer and regular information-seeking by senior management. The CSDDD stipulates that due diligence should be integrated into all relevant policies and risk management systems, with the due diligence policy developed in consultation with employees and their representatives.

Complaint Procedure

The Act requires companies to establish a transparent and accessible internal complaints procedure, enabling the reporting of human rights and environmental risks and violations. The procedure must be reviewed at least annually or when there's a significant change in risk situations. The CSDDD also requires companies to establish a fair and accessible procedure for handling complaints, with measures to prevent retaliation against complainants.

Reporting Requirements

Companies subject to the Act must document their due diligence efforts and prepare an annual report, publicly available for at least seven years, detailing identified risks, actions taken, and assessments of the effectiveness of measures. The CSDDD requires companies to publish an annual statement on their due diligence efforts, which, from January 2029, must be submitted to the European Single Access Point (ESAP) for accessibility. Companies would not have to report under the CSDDD if they are required to report under the Corporate Sustainability Reporting Directive.

Legal Consequences and Penalties for Non-Compliance

The Act sets out fines for various violations, with a tiered penalty system based on the severity of the non-compliance and the turnover of the company, going up to 2% of the average annual turnover for serious offences. Similarly, the CSDDD requires Member States to lay down rules on penalties for infringements, with considerations for the nature and severity of the impacts, investments made, and remedial actions taken by the company. The maximum limit of pecuniary penalties must be not less than 5% of the net worldwide turnover.

13. Compliance Approaches

To ensure compliance with both the Act and the CSDDD (as it may be harmonized into national law and the Act), companies should adopt a comprehensive approach to due diligence that encompasses a broad spectrum of human rights and environmental protections. Although the CSDDD has yet to be formally approved, preparing for its requirements will provide a solid foundation for compliance with the Act and vice versa, given the overlap in their protective scopes.

Strategic Compliance Planning: Firstly, companies should align their due diligence processes with the provisions outlined in the CSDDD, as this will broadly cover the requirements of the Act. This includes implementing rigorous risk management systems, establishing effective complaints procedures, and ensuring transparent reporting and remediation processes. The CSDDD's expansive approach provides a structured framework that companies can follow to address risks throughout their entire supply chain.

Specific Considerations for the Act: While aligning with the CSDDD will ensure a high level of compliance, particularly concerning the substantive human rights and environmental protections covered by the law, companies must not overlook the specifics of the Act, particularly its reporting requirements. The Act mandates detailed annual reporting and has established online platforms for this purpose, which are already operational. These reports require specific data and documentation that may go beyond the general disclosures anticipated by the CSDDD. Therefore, companies need to integrate these specific reporting obligations into their overall compliance strategy.

Addressing Broader and Future Obligations: Furthermore, companies should review the substantive rights and environmental protections outlined in both pieces of legislation. While compliance with the Act offers a robust framework, the CSDDD introduces additional protections related to hazardous waste, endangered species, maritime law, and ozone protection, which are not fully covered by the SCDDAAct. Companies should therefore enhance their compliance programs to incorporate these additional international treaties and obligations.

Long-Term Compliance Strategy: In the long term, as the CSDDD becomes transposed into national law and national implementation frameworks are established across the EU, companies will need to adapt their compliance strategies accordingly. This adaptation should include regular reviews of compliance frameworks to ensure they remain effective and comprehensive, covering all substantive rights and environmental protections as they evolve under EU law.

In conclusion, while the CSDDD offers a broader scope of compliance, starting with the Act provides a practical and effective groundwork for German companies or suppliers. By proactively aligning their due diligence systems to meet the CSDDD's expected standards, companies set themselves up for success to comply with current German regulations but also prepare to meet future EU-wide obligations.

14. Opportunity to participate and engage in legislative developments (if any)

There is no indication that further public engagement or participation is requested in relation to the Act.

15. Useful resources to support compliance

BAFA Q&A Guidance

Federal Ministry of Labor and Social Affairs' overview of diligence obligations and recommendations

BAFA's Guidance on Conducting a Risk Analysis (Identifying, weighing, and prioritizing" link at bottom of page).

BAFA's Guidance on the Principle of "Appropriateness" under the Act (in German) (Handout Adequacy" link at bottom of page)

Unofficial English translation of the Act



16. Table of Rights

Treaty/Convention	ACT	CSDDD
ILO Convention No. 29	●	●
ILO Convention No. 87	●	●
ILO Convention No. 98	●	●
ILO Convention No. 100	●	●
ILO Convention No. 105	●	●
ILO Convention No. 111	●	●
ILO Convention No. 138	●	●
ILO Convention No. 182	●	●
International Covenant on Civil and Political Rights (ICCPR)	●	●
International Covenant on Economic, Social and Cultural Rights (ICESCR)	●	●
Convention on the Rights of the Child		●
Minamata Convention on Mercury	●	●
Stockholm Convention on Persistent Organic Pollutants	●	●
Basel Convention on Hazardous Wastes	●	●
Convention on Biological Diversity		●
Convention on International Trade in Endangered Species (CITES)		●
United Nations Convention on the Law of the Sea (UNCLOS)		●
Vienna Convention for the Protection of the Ozone Layer		●

Table of Rights (continued)

Substantive Human Right	ACT	CSDDD
Right to life	●	●
Prohibition of torture and cruel, inhuman, or degrading treatment	●	●
Right to liberty and security		●
Prohibition of arbitrary interference with privacy, family, or home		●
Freedom of thought, conscience, and religion		●
Right to fair and favorable work conditions	●	●
Prohibition of discrimination in employment	●	●
Prohibition of child labor	●	●
Prohibition of forced labor	●	●
Right to freedom of association and collective bargaining	●	●
Prohibition of slavery and human trafficking	●	●
Right to an adequate standard of living – wage		●
Right to health – in the context of pollution	●	●
Right to education – child rights		●
Rights related to marriage, family, parents, and children		●
Right to participate in cultural life and enjoy benefits of science		●
Rights to water and sanitation	●	●
Right to housing	●	●

Table of Rights (continued)

Substantive Human Right (continued)	ACT	CSDDD
Right to food		●
Rights of indigenous peoples		●
Prohibition of environmental degradation	●	●
Right to a healthy environment	●	●
Prohibition of unlawful land and resource appropriation	●	●

Substantive Environmental Right	ACT	CSDDD
Prohibition of mercury-added products (Minamata Convention)	●	●
Prohibition of mercury in manufacturing (Minamata Convention)	●	●
Prohibition of improper mercury waste treatment (Minamata Convention)	●	●
Prohibition of certain chemical productions and uses (Stockholm Convention)	●	●
Environmentally sound waste management (POPs Convention)	●	●
Control of hazardous waste export (Basel Convention)	●	●
Ban on hazardous waste export to non-Annex VII countries (Basel Convention)	●	●
Import of hazardous wastes from non-parties (Basel Convention)	●	●
Avoiding or minimizing adverse impacts on biological diversity		●

Table of Rights (continued)

Substantive Environmental Right (continued)	ACT	CSDDD
Prohibiting wildlife trade without CITES permit		●
Prohibition of importing or exporting certain hazardous chemicals (Rotterdam Convention)		●
Prohibition of unlawful production, consumption, import, export of substances depleting the ozone layer		●
Obligation to avoid or minimize adverse impacts on natural heritage (World Heritage Convention)		●
Obligation to avoid or minimize adverse impacts on wetlands (Ramsar Convention)		●
Obligation to prevent pollution from ships (MARPOL 73/78)		●
Obligation to prevent marine pollution by dumping (UNCLOS) X		●

Discover Other Factsheets from An Apparel Supplier's Guide 2.0

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EU Strategy for Sustainable and Circular Textiles

1

EU Corporate Sustainability Reporting Directive

2

EU Corporate Sustainability Due Diligence Directive

3

New York Fashion Act

4

EU Forced Labour Regulation and Guidance

5

US Uyghur Forced Labor Prevention Act

6

EU Ecodesign for Sustainable Products Regulation

7

EU Packaging and Packaging Waste Directive and Provisional Regulation

8

EU Microplastics Regulation

9

UK Plastic Packaging Tax

10

EU Product Environmental Footprint Guide

11

EU Textiles Regulation

12

EU Taxonomy

13

German Supply Chain Due Diligence Act

14

Lessons for fashion: How the agricultural sector is tackling commercial compliance through the EU Directive on unfair trading practices