

COULD GERMANY INTRODUCE A MANDATORY HUMAN RIGHTS DUE DILIGENCE LAW?

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Legal Briefings - By **Sylvia Schenk and Quenie Hubert**

On 10 September 2019, the seventh anniversary of the devastating fire in the Ali Enterprises factory in Pakistan whose main customer was the German retailer KiK, a coalition of NGOs and trade unions in Germany launched a campaign calling for the issuance of a mandatory supply chain due diligence law.

"CHANCELLOR MERKEL, IT IS TIME WE HAVE A SUPPLY CHAIN LAW"

The "Supply Chain Law Initiative" (German: *Initiative Lieferkettengesetz*) urges the German government to issue a law by 2020 to make human rights due diligence mandatory for German companies and calls for the public to support their cause by [signing a petition](#) to German chancellor Angela Merkel. The government's efforts as laid down in the German "National Action Plan for Business and Human Rights", approved in December 2016, are criticized as insufficient and too slow.

THE NATIONAL ACTION PLAN - MONITORING PHASE UNTIL 2020

The National Action Plan describes in detail companies' responsibilities to respect human rights according to the UN Guiding Principles on Business and Human Rights (UNGPR) and sets a goal for 50 % of all companies with more than 500 employees to have a human rights system in place by 2020.

The German government will assess whether this target has been achieved voluntarily by the business sector in 2020. To this end, the accounting company EY has been commissioned to conduct a survey, with the first phase being kicked off in May 2019 and many German companies receiving a questionnaire. The second survey phase is planned to start in spring 2020. The outcome will determine which steps the German government will take in the area of business and human rights after 2020, which might include legislative measures.

This timeline makes it highly unrealistic that the recent NGO initiative will create enough momentum in order for a law to be introduced in 2020.

IF THE VOLUNTARY APPROACH FAILS, WILL THERE BE A SUPPLY CHAIN LAW BEFORE 2021?

Behind the scenes there has been some activity by parts of the German government, probably to increase the pressure on companies to voluntarily introduce human rights due diligence processes.

In February 2019, a draft for a supply chain law was leaked from the ministry of development and it was said that it could be issued should German companies not take the necessary steps themselves. This initial draft foresees penalties of up to 5 million Euros for companies which are not adhering to their human rights obligations. But the draft has not yet been on the agenda in any internal governmental discussion and there are doubts that it will be passed into law, at least not the current version and not before the monitoring phase according to the National Action Plan is completed.

A TYPICALLY GERMAN APPROACH

In Germany, there has been a long running discussion on whether laws are needed to achieve responsibility by the business sector or whether an approach of setting goals and relying on companies to comply voluntarily will lead to better results.

Those advocating for mandatory legal solutions like the new "Supply Chain Law" initiative expect companies will not meaningfully act in the absence of legal obligations. The opposing position, mainly from the business sector, points out that a law will only cover minimum standards and prevent companies from doing more.

But there are as well companies supporting the idea of a law – maybe even on European level or beyond – to accelerate the development while guaranteeing a level playing field.

The results of the current governmental survey, which will be released in 2020, will answer the question whether the voluntary approach as initiated in December 2016 has achieved the goal laid down in the National Action Plan. With the upcoming federal elections in autumn 2021 the political fight for a binding legal framework may then win momentum.

[More on Business and Human Rights](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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