

SPAIN LAUNCHES CONSULTATION ON HUMAN RIGHTS AND SUSTAINABILITY DUE DILIGENCE LAW

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Legal Briefings

As European momentum builds to audit ESG factors, Spain is the latest to unveil social due diligence plans

As foreseen in the General State Administration's Annual Legislative Plan for 2022, which contemplated the approval of a law to guarantee business practices supporting sustainability and human rights through a due diligence obligation, the Spanish government has opened a consultation for the draft bill on the protection of human rights, sustainability and due diligence in transnational business activities (the draft bill). The legislation will establish binding obligations for Spanish transnational companies and transnational companies operating in Spain to observe environmental and human rights in all business activities, including the implementation of due diligence throughout their value chain.

The Spanish government opened a consultation on 14 February 2022 to gather stakeholders views on various aspects related to its adoption and help to produce a draft text.

The consultation is open until 3 March 2022.

A RESPONSE TO THE CLAIMS MADE BY CIVIL SOCIETY AND INTERNATIONAL ORGANISATIONS

According to the notice that announced the opening of the public consultation process, companies are increasingly aware that respect for human rights and the environment is an asset in business terms and they have progressively adopted mechanisms to ensure that they are not violated. However, voluntary mechanisms have been inadequate and it has thus been necessary to adopt regulations that establish a framework of obligations, infringements and sanctions for companies if they violate human rights or cause environmental harms in third countries, ensuring victims have proper access to justice.

In this regard, the United Nations' Committee on Economic, Social and Cultural Rights in 2018 recommended bolstering regulations in Spain to ensure companies be held legally accountable for violations of those rights abroad (including violations involving subsidiaries). Additionally, in June 2021 the Platform for Responsible Businesses (Plataforma por las Empresas Responsables), an association of more than 500 organisations, called on the Spanish government to approve a law on corporate due diligence for environmental and human rights.

THE EUROPEAN CONTEXT

The aim of the initiative is to respond to calls by civil society organisations and international actors. Additionally, the legislation is intended to become a distinctive trademark of Spain's EU Presidency in 2023, when Spain will be responsible for chairing the Council of the European Union, driving forward the work of this institution on European legislation and ensuring orderly legislative processes and cooperation between Member States. This initiative is intended to place Spain at the forefront of Europe in the protection of human rights.

According to the government, the supra-national backdrop in which legislative initiatives on the subject are increasingly prevalent makes this the ideal time to fill the current legislative void in Spain.

There are a few European countries that have already introduced corporate human rights due diligence obligations, such as France (2017), Germany (2021) and Norway (2021). Others have embarked on the legislative process, in what appears to be a race to regulate. Examples include the UK (in 2021, as reported previously) or the Netherlands (also in 2021), which announced last year that it would develop its own legislation to avoid waiting any longer for EU reform.

INTERACTION WITH THE EU SUSTAINABLE CORPORATE GOVERNANCE PROPOSAL

The long-awaited proposal for corporate human rights and environmental due diligence (the Sustainable Corporate Governance Proposal) was to be presented by the EU Commission in June 2021 but publication was delayed, being finally presented on [23 February](#).

Although it is not possible to tell precisely how the Spanish draft bill will interact with the Sustainable Corporate Governance Proposal until both texts are finally approved, it is reasonable to assume they will develop along similar lines. Both initiatives foresee establishing due diligence obligations with regards to environmental and human rights, ensuring victims' access to justice and creating a national supervisory authority that may impose sanctions in the event of non-compliance.

It is possible that Spain's draft bill could be more ambitious in scope than the EU proposal. According to the notice announcing the consultation period, the aim is to approve a law that is expansive as to the rights that it protects, the obligations imposed, and the transnational companies caught by its scope of application. In any event, the Spanish law will need to be compatible with an EU-wide approach.

OBJECTIVES OF THE DRAFT BILL

The draft bill seeks to respond to the above-mentioned requirements and to fill the legal vacuum that exists in Spain in this area.

According to the announcement, it will have the following objectives:

- Establish binding and general obligations for Spanish transnational companies and transnational companies operating in the Spanish market to observe environmental and human rights in all their business activities across the entire value chain, including the implementation of due diligence mechanisms throughout that chain that help to prevent, eliminate, mitigate and/or repair potential violations.

- Afford legal certainty in the economic relationships among States and provide a level-playing field for those Spanish companies that already apply strict standards regarding environmental and human rights.
- Establish a system of infringements and sanctions for companies that breach the obligations to respect, protect and promote environmental and human rights and the due diligence mechanisms in place.
- Ensure all victims have access to justice to claim effective reparation, allowing class actions to be brought on their behalf by non-profit entities or trade unions.
- Appoint an independent public authority with powers to monitor compliance with the law.
- Guarantee the implementation of the 2030 Agenda and Sustainable Development Goals, as well as the achievement of the Spanish Sustainable Development Strategy 2030.

SCOPE OF THE CONSULTATION

The public consultation aims to glean opinions of the most representative players and organisations potentially affected by the upcoming law with regard to the following aspects:

- The problems the initiative is intended to solve;
- The need and timeliness of its approval;
- The objectives of the law; and
- The possible alternative regulatory and non-regulatory solutions.

WHAT HAPPENS NEXT?

At this stage, it is difficult to tell whether the obligation to carry out environmental and human rights due diligence in Spain – and in many other European countries, if current trends persist – will come from EU law or national initiative. However, one thing is clear: it will come, sooner rather than later.

In the meantime, companies should start preparing. As directly affected, they may also choose to participate in the consultation to express their views on the aspects outlined above.

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KEY CONTACTS

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