

HURDLES ON THE JOURNEY TO EUROPEAN MANDATORY HUMAN RIGHTS DUE DILIGENCE

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Legal Briefings - By **Antony Crockett, Rebecca Perlman, Sylvia Schenk and Stéphanie Regalia**

The EU Commission is delaying publication of its proposal for corporate human rights and environmental due diligence to the fall. Meanwhile, the draft German Supply Chain Law is finally moving to Bundestag vote after a last minute compromise was reached.

DELAYED PUBLICATION OF EU SUSTAINABLE CORPORATE GOVERNANCE PROPOSAL

One of the most anticipated legal initiatives to come from the EU Commission this year and a promised action point under the EU Green Deal, the proposal on sustainable corporate governance has been delayed after the Commission's [Regulatory Scrutiny Board](#) gave a negative opinion on the proposal's impact assessment. The draft text which was originally slated for publication in June is now expected later this fall. In addition, the proposal will no longer be supervised exclusively by Justice Commissioner Didier Reynders, but will now be taken forward by Commissioner Reynders and Internal Market Commissioner Thierry Breton.

The proposal is largely considered one of the biggest developments in the field of business and human rights as it aims to introduce EU-wide mandatory human rights and environmental due diligence. In addition to corporate due diligence, there was also a push to amend directors' duties with the aim to promote long-term corporate decision making in a landscape still often driven by short-term financial considerations.

On the first of these items, the Commission received backing from the European Parliament to move forward on human rights and environmental due diligence. On 10 March 2021, the European Parliament voted in plenary session to adopt the text of a [draft directive](#) on corporate due diligence and corporate accountability (we previously reported on this development [here](#)). While the European Parliament cannot initiate legislation without the support of the European Commission, the large majority in favour of the draft directive (504 votes in favour, 79 against and 112 abstention) sent a strong political signal.

In contrast the proposal for new directors' duties was met with less enthusiasm from certain Member States, business associations and commentators, including former UN Secretary General Representative for Business & Human Rights [John Ruggie](#).

The Commission's [summary report](#) on the public consultation which took place from 26 October 2020 to 8 February 2021 reveals that while a majority of respondents expressed support for a directors' duty of care in relation to human rights, there was a strong divergence between the views of NGO respondents and business representatives. 90.8% of NGOs expressed support on the topic while 68.9% of individual company respondents and 89.8% of business association respondents expressed disagreement. Member States have also expressed concerns in relation to the impact of the proposed amendments to directors' duties on the different corporate governance models that exist across the EU, which are largely governed by Member States' domestic laws.

Little is known on the form or content of the upcoming proposal, including whether the Commission will follow the European Parliament's lead by legislating via a directive as opposed to a regulation. However, the Commission has declared on multiple occasions that the proposal will be aligned with other key action points under the Green Deal and the Sustainable Finance Action Plan. In particular, the sustainable corporate governance proposal is expected to be aligned with the closely-related proposal for a Corporate Sustainability Reporting Directive (read our previous analysis [here](#)).

GERMANY INCHES CLOSER TO SUPPLY CHAIN DUE DILIGENCE LAW

After a tumultuous journey through government coalition negotiations, the draft German Supply Chain Law is back on track for adoption before the end of the Bundestag's session prior to federal elections in September. The draft law aims to gradually introduce mandatory human rights and environmental due diligence for German companies (see our summary of the draft's history and content [here](#)).

The government had agreed on a legislative proposal in February 2021, which underwent a very brief stakeholder consultation on 3 March. However, the proposal was withdrawn from the parliament's agenda on 18 May 2021 due to "open questions regarding the liability of companies".

The original draft provided that companies could be fined for non-compliance and excluded from public tenders for up to three years, but did not create a new basis for civil lawsuits. Nevertheless, criticism within the business sector continued that the law might be used as a basis for civil claims, thus adding to (reputational) risks for companies.

News outlets have now reported that the coalition reached a new compromise on the draft with two major adjustments:

- To expressively state that no additional civil liability for companies will result from the new law while existing liability is not affected;
- extension of the scope of the law to branches/subsidiaries of foreign companies with more than 3,000 employees in Germany as of 2023 and 1,000 employees as of 2024.

The text of the revised draft law is yet to be released, but this should happen soon as the Bundestag will meet two more times for regular sessions before the summer parliamentary break.

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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