The Supply Chain Due Diligence Act takes effect on 1 January 2023

Article by Daniel Wuhrmann

Scope
Last week, Germany's Federal Parliament adopted the new Supply Chain Due Diligence Act (PDF only in German). The new law will enter into force on 1 January 2023 and will take effect immediately for companies with 3,000 or more employees, and on 1 January 2024 for companies with 1,000 or more employees. The law will only apply to companies whose head office, principal establishment, center of administration or registered office is in Germany.

Requirements
Companies within the scope of the Act will be required to analyze their operations and supply chains (procurement and distribution) in order to ensure adherence to human rights and environmental requirements, as well as taking preventive and remedial actions.

As for the specific requirements which companies will have to satisfy with regard to human rights and the environment, the Act states that companies will be required to adhere to the international treaties and conventions which are listed in an annex to the Act. The Act now includes additional environmental requirements with regard to the import and export of waste and waste trafficking, and the "Basel Convention" (only in German) has now been expressly included, as well as the "Stockholm Convention" (only in German) and the "Minamata Convention."

Liability Risks
The Supply Chain Due Diligence Act itself does not establish liability for violations of these requirements and their consequences. However, there is still a risk of general tort law liability in accordance with §§ 823(1) and (2) of the Civil Code for violations of due diligence requirements and so-called "protective legislation." Whether and how liability of this kind will develop, particularly in international cases where the rules of international private law apply, will only become clear in practice. But it will be interesting to see what the EU Commission ultimately publishes and puts into effect in the coming months with regard to the proposed EU Supply Chain Directive, as this will be decisive in case of doubt.
It is also important to understand that, as stated in its legislative intent, the Act does not require any company to do the impossible (either legally or factually). Accordingly, any liability for companies would be limited and would have to be evaluated on a case-by-case basis. Moreover, those affected would have to explain and furnish evidence that the due diligence requirements were violated.

**Recommended Actions**

Companies affected by the Act should take action as soon as possible in order to ensure that they will comply with the Act as of 1 January 2023. In addition to liability risks in civil law, there may also be a risk of significant fines and penalties, as well as exclusion from tender procedures for public contracts. But smaller companies should also take heed: companies which are directly affected by the Act will (have to) try to obligate their suppliers to comply with their own requirements, so that due diligence requirements might get in "through the back door."

In addition, developments at the EU level should be watched closely.

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