

Supply Chain Due Diligence: An Overview Of Emerging Requirements

Author: Hannah Janknecht

Regulatory Analyst, Compliance & Risks

September, 2023

Further regulatory developments may have occurred after publication. To keep up-to-date with the latest compliance news, [sign up to our newsletter](#).



Supply Chain Due Diligence: An Overview Of Emerging Requirements.....	1
About The Author.....	3
Unlocking Market Access.....	4
1. Introduction.....	6
What Is Supply Chain Due Diligence?.....	7
Why Should Companies Care?.....	8
2. OECD Guidance & UN Guiding Principles: Where It All Began.....	9
3. Supply Chain Due Diligence In Europe.....	10
A) Germany.....	10
B) France.....	13
C) Netherlands, Belgium and Austria.....	14
D) United Kingdom, Norway and Switzerland.....	15
4. European Union.....	18
A) Proposal For A Corporate Sustainability Due Diligence Directive.....	18
B) Conflict Minerals - Regulation (EU) 2017/821.....	20
C) Products Associated With Deforestation And Forest Degradation - Regulation 2023/1115.....	21
D) Batteries and Waste Batteries - Regulation (EU) 2023/1542.....	23
5. Supply Chain Due Diligence Worldwide.....	24
A) United States.....	24
B) Canada.....	25
C) Brazil.....	26
6. In Practice: How To Align Your Business.....	26
7. Outlook.....	27

About The Author



Hannah Janknecht

Regulatory Analyst, Compliance & Risks

Hannah Janknecht joined the Global Regulatory Compliance team in Compliance and Risks as a Regulatory Analyst in September 2022.

She is responsible for the monitoring of regulatory developments in German-speaking countries and helps clients with questions on Ecolabelling, Climate Change Regulations and ESG Reporting.

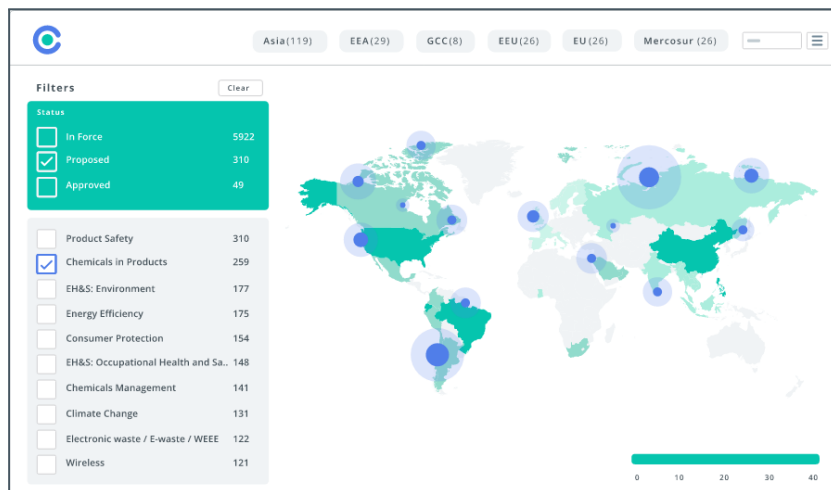
Hannah studied law in Germany (University of Bonn) and holds an LL.M. in Environmental and Natural Resources Law from University College Cork.

Unlocking Market Access

At Compliance & Risks, we help you keep on top of global regulatory changes and their impact worldwide. We have the right technology, regulatory content and expertise to help you unlock market access, protect revenue and elevate the role of compliance.

Our ESG Solution includes:

- **C2P:** A powerful enterprise technology platform to manage your ESG requirements, live link your compliance evidence, and proactively monitor for regulatory changes.
- **ESG Reporting Content:** Mandatory ESG Reporting regulations that are curated and monitored by our regulatory intelligence team
- **Ask our Experts:** Direct access to our team of experts for support



Additionally, we offer:

- **Product Compliance Content:** We provide the broadest and most comprehensive product compliance regulatory content on the market, monitoring 195+ countries, 20 industry sectors, 41+ topics and 70,000+ regulatory sources.
- **Market Access Services:** Our Market Access team helps you understand your product compliance obligations by transforming regulations into actionable knowledge with tailored advice for you and your business.



Why choose Compliance & Risks ESG Solution?

- **Save time** by having all mandatory ESG reporting regulations at your fingertips
- **Avoid delays** with alerts of changes to regulations in the fast changing ESG and Sustainability landscape
- **Improve efficiency with powerful collaboration and workflow tools** to keep compliance evidence up-to-date & live linked back to Regulations, Standards & Requirements

[Contact us](#) to speak to one of our team today to learn how you can simplify your regulatory compliance process.

For more information, please visit www.complianceandrisks.com

Important Notice: All information provided by Compliance & Risks Limited and its contributing researchers in this report is provided for strategic and informational purposes only and should not be construed as company-specific legal compliance advice or counsel. Compliance & Risks Limited makes no representation whatsoever about the suitability of the information and services contained herein for resolving any question of law. Compliance & Risks Limited does not provide any legal services.

© 2023 Compliance & Risks Limited. All rights reserved.

1. Introduction

In today's globalized economy, supply chains are becoming increasingly complex and intertwined, leading to high uncertainty and risks of disruption. The difficulties companies are facing in their supply chain range from geopolitical factors and poor supplier performance to social and environmental risks.

To address these issues, businesses around the globe utilize supply chain due diligence to gain insight into their procedures and mitigate/prevent adverse impacts. While the concept of supply chain due diligence is not new, efforts undertaken by businesses have so far been mostly of a voluntary nature. A sharp growth in mandatory supply chain due diligence requirements may nonetheless be seen in recent years in Europe and across the globe. Some jurisdictions (i.e. Germany) have introduced comprehensive regulations addressing a wide range of human rights and environmental aspects. Other jurisdictions take a more restrictive approach (i.e. Netherlands and Switzerland) and limit their legislation to specific issues including child labor and conflict minerals. Furthermore, some existing regulations such as the EU Regulation on Products Associated with Deforestation and Forest Degradation (EUDR) and the Batteries and Waste Batteries Regulation entail due diligence requirements for specific products.

This paper will give an overview of the current regulatory landscape as regards mandatory supply chain due diligence requirements. It reviews and analyses enacted and emerging due diligence regulations with a specific focus on the European Union. A review of both existing and new regulations will help businesses align their due diligence concepts in an effective and efficient manner and fill gaps where needed.

What Is Supply Chain Due Diligence?

'Supply chain' as defined in the [German Corporate Due Diligence in Supply Chains Act](#) (and similarly in other legislation) refers to **all products and services of a company**, including all steps that are necessary for the production of the product or the delivery of the services, beginning with the extraction of the raw materials and ending with the delivery of the product or service to the consumer. Other legislation such as the proposal for a European Corporate Sustainability Due Diligence Directive use the slightly broader but similar term 'value chain' instead.

The [OECD guidelines](#) refer to Due Diligence as 'the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.'

Common elements of supply chain due diligence requirements are the introduction of a risk management and monitoring system, the regular conduct of risk assessments, the implementation of risk mitigation and prevention measures and the installation of a complaints and grievance mechanism. Furthermore, legislation often requires companies to document and report on their compliance with due diligence requirements. Especially with regard to their reporting obligations, companies need to be aware of potential overlap with recently introduced or enhanced corporate reporting (ESG reporting) obligations.

It is crucial to understand that all supply chain due diligence schemes, voluntary and mandatory, require **best effort**. This means that companies are not obliged to prevent all adverse impacts, but they must install the best possible system to do so. What measures a company must take depends on factors such as the company's size and the nature of its business activities

Why Should Companies Care?

The recent shift from voluntary to mandatory due diligence requirements affects companies across all sectors, but especially in resource-intensive businesses such as textiles, information and communication technology, batteries and food and agriculture.

Although most of the new and proposed regulations are limited to large companies, small and medium sized enterprises (SMEs) are strongly advised to familiarize themselves with the new requirements as well, since large companies in their supply chain will approach them with an extended need for data and information.

Alongside with the need to implement and restructure due diligence policies, the new regulations come with extended liability and fines. While the risk of non-compliance with voluntary frameworks such as the [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#) mostly consisted in reputational loss, many of the new national regulations entail provisions for civil liability and, in the case of the German legislation, even turnover-based fines.

This being said, supply chain due diligence should not be seen as a mere box-ticking exercise, but it will in many ways help companies to build a more resilient supply chain. A better understanding of emerging risks i.e. related to climate change such as droughts and floods, as well as solid insights through improved data collection and management will contribute to a company's ability to adapt quickly. Furthermore, mandatory due diligence requirements can help build a level playing field and avoid unwanted reputational risks. A recent [joint statement](#) issued by more than 40 businesses and business networks (signed in April 2023, updated in August 2023) confirmed the need for a European Due Diligence Directive that is aligned with the OECD guidelines and other international standards.

2. OECD Guidance & UN Guiding Principles:

Where It All Began

The idea of conducting due diligence is not new. The [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#) (first introduced in 1976) and the [UN Guiding Principles on Business and Human Rights](#) (endorsed by the Human Rights Council in 2011) were amongst the first documents to set out procedures and principles for supply chain due diligence.

The UN Guiding Principles entail a high-level description of a risk-based human rights due diligence policy for companies and advise states to make such a policy a legal requirement where appropriate.

The OECD Guidelines on the other hand set out a detailed framework for companies on how to implement risk-based due diligence procedures throughout all relevant departments. The guidelines are updated on a regular basis, most recently in 2023. Furthermore, the OECD adopted [additional guidelines that are specific to due diligence for responsible business conduct](#) (2018), as well as guidance for specific business areas and risks such as [conflict minerals](#), the [garment and footwear industry](#) and [child labor in mineral supply chains](#). The guidelines have been used as a blueprint for binding due diligence requirements in different jurisdictions in recent years. For example, the Norwegian Transparency Act, adopted in July 2022, requires companies to regularly carry out due diligence for their entire supply chain in accordance with the OECD Guidelines for Multinational Enterprises.

3. Supply Chain Due Diligence In Europe

On the way to a first binding regulation on supply chain due diligence, some of the EU member states overtook the efforts of the European Union to transition from soft-law to binding rules. While France passed its Duty of Care Law as early as 2017, the most extensive due diligence requirements were introduced by Germany in 2021 under the so-called 'Lieferkettensorgfaltspflichtengesetz' (Corporate Due Diligence In Supply Chains Act).

A) Germany

The German Government decided to introduce mandatory due diligence requirements after a study conducted in 2020 found that less than a fifth of large German-based companies adhered to voluntary recommendations on supply chain. After extensive political debate, Germany adopted its [Corporate Due Diligence in Supply Chains Act](#) (Lieferkettensorgfaltspflichtengesetz) in July 2021. While enacted in 2021, the Act came into force in January 2023.

The Act requires in-scope companies to adequately comply with human rights and environmental due diligence requirements in order to prevent or minimize human rights and environmental risks and to put an end to violations of such environmental and human rights standards.

Human rights risks include child labor, forced labor, slavery, torture, disregarding the freedom to form trade unions, unequal treatment in employment (i.e. based on ethnic or national origin), withholding a decent wage and the unlawful deprivation of land, forests and waters, the use of which secures the livelihood of a person etc.

The extensive definition of human rights risks shows that the scope of the German Supply Chain Act goes well beyond many of the laws currently applicable in other jurisdictions such as the Netherlands and Switzerland, where regulations are mostly limited to child labor and forced labor.

The **definition of environmental risks** is not as extensive. It includes environmental-related risks leading to human rights violations (i.e. pollution of water, soil and air), as well as certain environment-related obligations under the Minamata Convention on Mercury, the Stockholm Convention on Persistent Organic Pollutants and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

The Act applies to the entire supply chain of a company and its subsidiaries, including business partners and (indirect) suppliers. Business partners and suppliers are however not liable under the Act.

In scope of the German Act are companies that:

1. have either their head office, their principal place of business, their administrative seat or their statutory seat in Germany, and
2. usually employ at least 3,000 people (From 1 January 2024, this number will be increased to 1,000 employees).

Companies must adhere to the following list of **due diligence obligations**:

- Establish a risk management system,
- Define internal responsibility (i.e. by appointing a human rights officer),
- Implement regular risk analyses,
- Submit a declaration of principles, describing the cornerstones of the company's human rights strategy,
- Introduce preventive measures regarding the company's own business as well as its direct suppliers,
- Install remedial measures for imminent or actual violations,
- Establish a complaints procedure, which must be designed in a way that also enables complaints regarding human rights or environmental violations caused by indirect suppliers and
- Implement due diligence obligations with regard to the risks of indirect suppliers.

Companies are furthermore required to continuously **document** the implementation of their due diligence procedures and to submit an **annual report** on the fulfillment of

their due diligence obligations in the previous financial year. The report must be made publicly available on the company's website.

It is important to understand that businesses are **only responsible for addressing risks that they have caused or contributed to**, which means that if the enterprise had not taken a certain action, the specific consequences in question would not have occurred. This may include instances where a company has not acted alone. Whether a contribution is relevant must however be determined on a case by case basis.

Another unique and much discussed element of the German Act is its comparatively **extensive liability scheme**. Companies violating their obligations under the Act face fines of up to eight million euros or up to two percent of their annual turnover (turnover-based fines are however only applicable to enterprises with more than 400 million euros in annual turnover). They can furthermore be excluded from public procurement.

As discussed above, businesses are only required to apply the measures to an extent appropriate in their individual context, taking into consideration i.e. the size and nature of the business. If human rights violations occur despite all appropriate efforts, the business is not liable. In addition, it is important to highlight that businesses are only responsible for their own violations, which means they cannot be held liable for breaches committed by their suppliers.

B) France

France adopted its [Duty of Care \(Devoir de Vigilance\) Law](#) in 2017. The Law was one of the first in Europe that went beyond simply requiring companies to disclose their existing due diligence schemes, but instead making the introduction and implementation of a due diligence plan (vigilance plan) mandatory.

The French Duty of Care Law is more narrow in scope than the German Supply Chain law insofar as it only applies to large French companies who:

- employ at least 5000 employees within the company head office and its direct and indirect subsidiaries (whose head offices are located in France); or
- employ at least 10000 employees within the company and its direct and indirect subsidiaries, whose head office is located in France or abroad.

The vigilance plan shall be drawn up in collaboration with trade unions and other relevant stakeholders. It must be suitable to identify and prevent risks of serious violations of:

- Human rights and fundamental freedoms,
- Health and safety rights,
- Environmental damage.

“Risks of serious violations” include infringements that may result directly or indirectly from a company’s activities and business relationships. The plan must entail:

- Risk assessment and risk mapping,
- Procedures for regular evaluation of subsidiaries and suppliers,
- Measures to mitigate and prevent human rights and environmental violations,
- Alert and Whistleblowing mechanism,
- Monitoring procedure.

The vigilance plan must be included in the management of the company and made publicly available.

In case of failure to introduce and implement a vigilance plan, the court can send formal notice prompting the business to comply with its obligations. If the business fails to comply within three months, the court may sentence the company to pay a civil fine of up to 10 million euros. In addition, companies are subject to civil liability under the French Civil Code for any harm that due diligence would have permitted to avoid. Unlike the German Supply Chain Due Diligence Law, the French Law does however not provide for the concept of turnover fines.

The French High Council for Economy published its first [evaluation report](#) on the Duty of Care Law in 2020. The evaluation identifies several weaknesses in the current implementation of the law, especially with regard to missing or insufficient alert mechanisms, lack of dialogue with trade union organizations and NGOs and insufficient readability of the vigilance plan in the management report. The report recommends the commissioning of a public agency to assist companies with the effective implementation of the law and ensure better enforcement of the obligations.

C) Netherlands, Belgium and Austria

Outside France and Germany, the Netherlands are the only other Member State to have introduced mandatory supply chain due diligence requirements. The [Dutch Due Diligence Law](#), adopted in October 2019, is however limited to **child labor**. Up until now, the Law has not entered into force. Its date of entry into force is subject to approval by the House of Representatives and the Senate and at this point, it is questionable whether the law will come into force at all or whether the senate is currently waiting for developments at the European level.

According to the Law, companies established in- or outside the Netherlands that sell or supply goods or services to Dutch end-users will be obliged to declare that they will have to exercise due care to prevent such goods or services from being created with the help of child labor. If a company has a reasonable suspicion that the supplied goods or services have been produced with the help of child labor, the company must draw up an action plan.

In 2021, a draft for a [Law on the Duty of Care and Accountability across a Company's Supply Chain](#) was introduced and is currently being discussed in the [Belgian Chamber of Representatives](#). Similarly to the French Law, companies would be required to draw up a 'Vigilance Plan' and to include their plans in the management report.

In [Austria](#), a [Draft Resolution](#) entailing potential key points for a supply chain due diligence act has been presented in the parliament in 2021. The Draft resolution proposes to model the Austrian Act after the German Supply Chain Due Diligence Act. The proposal has however not moved forward yet. Other countries such as [Finland](#) have assessed and discussed the option of drafting binding supply chain due diligence requirements, but have not yet proposed any legal texts.

D) United Kingdom, Norway and Switzerland

When the [United Kingdom](#) signed into law the [Modern Slavery Act](#) in 2015, the Act was seen as a progressive initiative to tackle [human trafficking and slavery](#). In addition to improving investigation and enforcement, the Act obliges large companies to develop a slavery and human trafficking statement which may include information on due diligence processes in relation to slavery and human trafficking in the business and supply chains. The Act does not however require companies to establish such a due diligence procedure. Likewise, the inclusion of information on existing procedures in the slavery and human trafficking statement is only suggested but not mandatory. In the light of the more advanced French and German initiatives, the Modern Slavery Act has been widely criticized as insufficient. The UK Government issued [extensive guidance](#) on the identification of modern slavery, employee training and the preparation of the annual statement. However, at the time of writing, there are no official plans for further binding regulations.

After the UK left the European Union on 1st January 2021, the Government [retained](#) the European [Timber Regulation](#) and FLEGT scheme in domestic law (see chapter on European regulations). In order to prevent the placement of illegally harvested timber or timber products on the market, operators are required to apply a due diligence system. This system involves gathering information on the timber, its origin and its

suppliers, assessing the risk of illegality and implementing measures to prevent and mitigate those risks.

Norway's [Transparency Law](#) requires in-scope companies to regularly carry out due diligence for the entire supply chain in accordance with the OECD Guidelines for Multinational Enterprises. The procedure shall be proportional to the size, nature and context of the business, and to the severity and likelihood of negative consequences for [fundamental human rights and decent working conditions](#).

In scope of the Act are large companies exceeding at least two of the following thresholds :

- sales revenues: NOK 70 million,
- balance sheet total: NOK 35 million,
- average number of employees in the financial year: 50 full-time equivalent.

Similar to existing supply chain due diligence legislation across Europe, the Norwegian Act requires in-scope companies to publish a report on their website and to update the report at least once a year. However, a unique feature of the Norwegian Act is the recognition of a [“right of information”](#) which allows any person to request - directly from the company - information about how the entity is handling actual and potential negative human right impacts it has caused or contributed to.

The [Swiss ‘Code des Obligations’](#) which entered into force in January 2022, focuses on supply chain due diligence regarding [conflict minerals and child labor](#). Although the law generally requires companies to submit a non-financial report covering a wide range of aspects including environmental issues, emission reduction targets, human rights and fight against corruption, the law restricts the scope of the obligations to set up due diligence procedures to the following groups of companies:

- Companies that place on the market and/ or process in Switzerland ores of metals containing tin, tantalum, tungsten, and gold originating from conflict-affected and high-risk areas,
- Companies that offer goods or services in Switzerland for which there is a well-founded suspicion of child labour.

In-scope companies must develop and implement a risk management plan and a supply chain traceability system. Compliance with the due diligence requirements in relation to minerals and metals is subject to verification by an independent expert. An [implementing Ordinance](#) that defines the due diligence requirements in further detail also provides exemptions inter alia for companies complying with the OECD Due Diligence Guidelines and the applicable European Union legislation.

4. European Union

Recognising the insufficiency of existing voluntary international mechanisms, the European Union has, in recent years, significantly reinforced its efforts to legislate in the field of supply chain due diligence.

Legislative initiatives at the EU level are not limited to the Draft Corporate Sustainability Due Diligence Directive (February 2022) but also include product-specific regulations. The latest addition in this field is the Batteries and Waste Batteries Regulation (EU) 2023/1542 which regulates the entire life cycle of batteries and requires companies to introduce a battery due diligence policy.

A) Proposal For A Corporate Sustainability Due Diligence Directive

The first Draft for a [Corporate Sustainability Due Diligence Directive \(CSDDD\)](#) was proposed in February 2022. The Draft Directive is currently subject to [trilogue negotiations](#) between the Parliament, the Council and the Commission. After the final adoption of the Directive, Member States will have two years to transpose the rules into national law.

The Draft CSDDD acknowledges that some EU Member States have already introduced Supply Chain Due Diligence Laws and others are currently in the process of doing so. The adopted and planned national laws vary widely in terms of required measures and companies in scope. The Draft CSDDD therefore aims to address fragmentation across the European Union to create more legal certainty for businesses.

Many of the cornerstones of the Draft Directive are similar to those of the German and French Supply Chain Due Diligence Laws.

At the core of the draft is the obligation for Member States to ensure that companies conduct human rights and environmental due diligence by carrying out the following actions:

- Integrate due diligence into their policies (responsibility of the company's director);
- Identify actual or potential adverse impacts;
- Prevent and mitigate potential adverse impacts, bring actual adverse impacts to an end and minimize their extent;
- Establish and maintain a complaints procedure;
- Monitor the effectiveness of their due diligence policy and measures;
- Publicly communicate on due diligence.

Furthermore, Member States must ensure that companies assess, on an annual basis, the effectiveness of implemented measures and publish an annual statement on their website. The obligation to publish an annual statement on the company's website only applies to companies that are not subject to the reporting requirements of Directive 2013/34/EU (Non-financial Reporting). This minor detail highlights the EU Commission intention to create **synergies** between the Draft CSDDD and other reporting frameworks. A revision of the draft CSDDD is however warranted to reflect the recent amendment introduced to the Non-financial Reporting Directive by the Corporate Sustainability Reporting Directive.

In terms of scope, the Draft CSDDD covers actual and potential adverse impacts on **human rights and the environment** in the company's own operations, its subsidiaries and the value chain operations carried out by entities with whom the company has an established business relationship. The human rights and environmental safeguards covered by the CSDDD are those enshrined in the international conventions listed in the Annex. These cover a broad range of rights such as labor rights, children's rights and prohibition of all forms of slavery. In a similar vein to the German Act, the Draft CSDDD uses these international agreements as reference points. The list of environmental rights and prohibitions protected under the Draft CSDDD is however much more comprehensive than the German Act.

As it currently stands, the Draft Directive applies to **two groups of large EU limited liability companies**:

1. Companies with 500 or more employees and a 150 million or more net annual turnover,

2. Companies with 250 or more employees and a 40 million or more net annual turnover that are operating in a high-impact sector, i.e. textiles or mineral extraction.

The [high-impact sectors](#) referred to in the second group of companies include textiles, fisheries, forestry, agriculture, and mineral resources. Due diligence requirements for companies in the second group start to apply two years after the deadline for Member State implementation. The listed sectors are at the same time those for which the [OECD](#) has established specific due diligence guidance. This again underlines how the Draft CSDDD builds on and aligns with already existing voluntary mechanisms. Despite the apparent alignment with the OECD guidance, in a recent [joint statement](#) issued in August 2023, a group of 40 businesses and business networks urged the EU Parliament and Council to achieve more consistency with international standards in the trilogue negotiations.

[Non-EU companies](#) that meet the group 1 or group 2 thresholds are in scope of the Draft Directive if their net turnover has been generated in the EU. If they meet these conditions, the due diligence requirements are the same as for EU companies.

The Draft Directive requires Member States to implement [proportionate enforcement mechanisms](#) but leaves it to the Member States to design the details of these mechanisms.

While adopting the Draft CSDDD in June 2023, the European Parliament proposed a few changes to the Commission Proposal. One of the major changes adopted by the EU Parliament is that companies in scope will be required to implement [climate transition plans](#) in line with the Paris Climate Change Agreement's objective to limit global warming to 1.5°C, including Scope 1, 2 and 3 emissions.

The Draft CSDDD complements a number of already existing EU regulations and directives i.e. on the Prevention and Combating of Human Trafficking, Conflict Minerals, Deforestation and Forest Degradation and Batteries, some of which will be discussed in further detail below. The general rule however is that, in case of overlap

of two or more regulations, the regulation providing the more extensive or specific provisions should prevail.

B) Conflict Minerals - Regulation (EU) 2017/821

[Regulation \(EU\) 2017/821 on Conflict Minerals](#) requires importers of certain metals and minerals to implement due diligence processes with regard to actual or potential risks linked to **conflict-affected and high-risk areas**. The Conflict Minerals Regulation only applies to EU-based companies importing **tin, tantalum, tungsten, their ores and gold**. Companies must ensure that the minerals they import in the EU originate from responsible and conflict-free sources only and put in place more specific mechanisms for conducting due diligence. The due diligence policy for conflict minerals must be consistent with the OECD due diligence guidance.

If enacted, the due diligence provisions of the draft **CSDDD** will apply to additional minerals that are not covered in the Conflict Minerals Regulation but nonetheless produce human rights, climate and environmental adverse impacts. In addition, the CSDDD is more comprehensive in that it requires broader due diligence procedures which also cover the environmental impacts of conflict minerals. Besides the Conflict Minerals Regulation and draft CSDDD, the new **Batteries** and Waste Batteries Regulation (EU) 2023/1542 also contains additional due diligence requirements for minerals used in the production of batteries.

C) Products Associated With Deforestation And Forest Degradation - Regulation 2023/1115

The [Regulation on Products Associated with Deforestation and Forest Degradation](#) (EU Deforestation Regulation), enacted in May 2023, is perceived as a groundbreaking regulation in the field of due diligence. The regulation aims to tackle the climate and biodiversity crisis associated with certain products linked to deforestation. The core due diligence requirements set out in the regulation will apply from **30 December 2024**.

The following commodities are covered under the regulation: cattle, cocoa, coffee, oil palm, rubber, soya and wood. The regulation furthermore applies to products that contain, have been fed with or have been made using any of those commodities, i.e. furniture or chocolate products.

In a nutshell, the products and commodities in scope may only be placed on the EU market or exported if they fulfill the following conditions:

- They are deforestation-free,
- They are produced in accordance with the relevant legislation of the country of production, and
- They are covered by a Due Diligence Statement.

According to the regulation, products and commodities are **deforestation-free** if they have been produced on land that has not been subject to deforestation after **31 December 2020**.

The cornerstones of the due diligence system that operators and traders must put in place are similar to those set out in other regulations. The due diligence process shall include the collection of data, information and documents as well as the introduction of risk assessment and risk mitigation measures. The **collected data** must be sufficient to demonstrate that the products and commodities are deforestation-free and produced in accordance with relevant legislation of the country of production.

Operators and traders must then submit a **due diligence statement** to confirm that due diligence was carried out and that no or only negligible risks were found. The due diligence statements will be made publicly available in an information system by the European Commission.

The regulation however entails several unprecedented requirements which companies will need to adapt to. To name a few, companies are responsible for the **traceability** of their commodities and products. This means that operators and traders must collect extensive information on the origin of their commodities and products and ensure this information is made available in the due diligence statement. The collected information shall cover, among other things, the **geolocation** of all plots of land where the commodities were produced to enable controls through remotely sensed information

and other methods. Another important element of the regulation is the requirement for companies to ensure and confirm in their due diligence statement that the products or commodities were produced in compliance with the [relevant legislation of the country of production](#). The notion of “relevant legislation” is very broad and includes not only land-use and environmental legislation but also labor rights and the protection of indigenous communities.

A [benchmarking system](#) operated by the European Commission will assess and classify countries or parts thereof in three categories (high, standard and low risk) according to the level of risk they represent for deforestation. For commodities and products produced in low risk countries, a [simplified due diligence procedure](#) applies. Furthermore, the number of controls that are carried out to enforce compliance with the regulation will depend on the benchmarking classification. Together with other elements of the regulation such as the definition of deforestation and forest, the planned benchmarking system has sparked heated debate across governments and businesses especially in producer countries.

D) Batteries and Waste Batteries - Regulation (EU) 2023/1542

The Batteries and Waste Batteries Regulation, which entered into force in August 2023 covers the entire life cycle of batteries and entails rules on the production, labeling, recycling and reuse of batteries.

An important element of the regulation is the requirement for operators placing batteries on the EU market to introduce a battery due diligence policy with effect from 18 August 2025. The policy must address the [social and environmental risks](#) that are inherent to the [extraction, processing and trading](#) of certain raw materials and secondary raw materials used in the manufacturing of batteries.

The Battery and Waste Battery Regulation goes beyond the draft CSDDD in that it establishes more specific requirements with regard to batteries as a product. The scope of the regulation aligns with the Draft CSDDD insofar as the obligations for companies to introduce a battery due diligence policy is also limited to entities with a net turnover of 40 million Euros or more. Similar to the draft CSDDD, the due diligence



policy under the Battery and Waste Battery Regulation must be consistent with international standards, including OECD guidance.

Compliance with due diligence obligations under this regulation is subject to conformity assessment and verification by a third party.

5. Supply Chain Due Diligence Worldwide

The proliferation of supply chain due diligence requirements is gaining momentum worldwide. While to date, no country outside of Europe has yet established a comprehensive framework for supply chain due diligence, some jurisdictions have enacted due diligence regulations targeting specific issues such as forced labor and child labor. Furthermore, several countries including Brazil and Chile have proposed Bills or declared their intention to regulate in this area. It must however be noted that many of these regulatory developments do not explicitly require companies to develop and implement e supply chain due diligence policies.

A) United States

The [Uyghur Forced Labor Prevention Act](#), in force since 2021, prohibits the entry in the United States of products made wholly or in part in the Xinjiang Uyghur Autonomous Region or produced by entities in China linked to forced labor. The Act creates the rebuttable presumption whereby all products manufactured in this region must be considered as produced with forced labor and shall therefore be banned from the United States.

The presumption may only be rebutted if it can be established that the importer has fully complied with guidance issued by the Forced Labor Enforcement Task Force, including guidance on supply chain due diligence and management. Several recently introduced Bills furthermore propose to establish disclosure requirements for issuers regarding the use of Uyghur forced labor in the supply chain (see: [House Bill 4452](#) and [House Bill 4840](#)).

A number of US States, including [Washington](#) and [New York](#), have furthermore proposed supply chain due diligence requirements for the textiles industry.

Other legislative developments in the US, including among others, the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) (Conflict Minerals) and the [Section 307 of the Tariff Act of 1930](#) (Import Ban, Forced Labor), have introduced or propose to

introduce reporting requirements or bans on the import of certain products made with forced labor (or for which there is a suspicion of forced labor). However, it is worth noting that none of these initiatives impose actual supply chain due diligence obligations for companies.

B) Canada

In Canada, several laws govern the protection of human rights in the supply chain. These however only establish import bans, sanctions and [reporting requirements](#).

[C-Bill 262](#), proposed in 2022, on the other hand, entails positive due diligence duties which mainly require businesses to establish processes to prevent, address and remedy adverse potential impacts on human rights occurring in relation to business activities conducted abroad.

C) Brazil

[Bill PL 572/2022](#), proposed in March 2022, would require companies to adopt mechanisms to control, prevent and remediate human rights violations in their supply chain. This includes the introduction of a due diligence procedure that is suitable to identify, prevent, monitor and remedy such violations. These obligations, if enacted, will concern all businesses operating in Brazil, including their subsidiaries, branches, subcontractors and suppliers.

6. In Practice: How To Align Your Business

At the start of the due diligence journey, it is crucial for a business to assess and understand its exposure to all relevant risks, depending on the sector, nature and geographical activity. Tools such as supply chain mapping can help companies to determine the most prevalent risks. In order to fully understand the company's exposure and prioritize risks, it is also important to keep track of relevant due diligence regulations in different jurisdictions.

In the light of the new mandatory requirements, companies need to ensure the implementation of their supply chain due diligence policy in all relevant departments. While the sustainability team might often be responsible for the development of commitments and strategies, having the legal, financial and procurement team on board is urgently needed to enable efficient communication with suppliers and avoid all legal and reputational risks.

As part of the due diligence procedure, businesses have to pass on their human rights and environmental goals along the supply chain. A common practice consists of inserting a code of conduct and training clauses into supplier contracts. Here it is however crucial to have monitoring measures in place to ensure adherence to the code of conduct by suppliers. In addition, many companies send out surveys to obtain additional data from their suppliers, although the effect of such self-disclosure is often limited. Another useful source of information are the complaints and grievance mechanisms, the introduction of which is mandatory under some of the due diligence regulations. A stronger way of ensuring compliance with the code of conduct along the supply chain is furthermore the utilization of third-party verification.

Although the threat to determine a supplier relationship in case of non-compliance might be necessary to ensure adherence, the termination of a business relationship is only recommended as a last resort.

7. Outlook

The adoption of the German Corporate Due Diligence in Supply Chains Act as well as the European Draft CSDDD are expected to have a strong pulling effect on the development of due diligence requirements worldwide.

Once the Draft CSDDD is adopted in the EU, Member States will have to transpose the Directive into national law, which will potentially lead to changes to already existing European legislation. In light of these constantly changing and partially overlapping supply chain due diligence requirements, it is vital for companies to implement compliance systems that can respond effectively to these changes.