

EU Guidance on Forced Labour in Supply Chains

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Introduction

Earlier this week, the European Commission published its Guidance “On Due Diligence For EU Businesses To Address The Risk Of Forced Labour In Their Operations And Supply Chains”.

The document, which is not legally binding, provides practical guidance on how to use existing international, voluntary, due diligence guidelines and principles when dealing with the risk of forced labour in supply chains.

The European Commission made clear in its press release, that the Guidance forms part of the EU’s wider strategy to defend human rights and strengthen the resilience and sustainability of the EU supply chain. The European Commission sees the Guidance as encouragement for EU businesses to take appropriate measures regarding their supply chains ahead of the EU’s introduction of a mandatory due diligence duty for businesses operating in the EU. As set out in our previous Client Alert, the due diligence duty will require certain businesses operating in the EU to identify, prevent, mitigate and account for adverse human rights and environmental impacts in their operations and supply chains. We will also cover this in more detail as well as other developments in Europe in a separate Client Alert.

Who should consider the Guidance?

Although the Guidance is directed at EU companies, it is based on international instruments aimed at companies globally. This includes the OECD Due Diligence Guidance For Responsible Business Conduct (the OECD Guidelines) and the UN Guiding Principles on Business and Human Rights (UNGPs). While the UNGPs are not “legally binding” and are often referred to as “soft-law”, there are growing expectations for companies worldwide to adhere to them. This “soft law” has been evolving into “hard law” in multiple jurisdictions (the anticipated EU mandatory due diligence laws being a prime example). Therefore, we believe that this Guidance will be a helpful resource for companies globally.

Why is the guidance helpful?

[Repository of International Guidance](#)

The Guidance pulls together existing general international guidelines on effective due diligence of supply chains (which is not only limited to forced labour) and is therefore a useful source of guidance in this area for companies. In particular, the Guidance highlights the six-step supply chain due diligence process set out in the OECD Guidelines; namely to

1. Embed responsible business conduct into the company's policies and management systems
2. Identify and assess actual or potential adverse human rights, societal and environmental impacts in the company's operations, supply chains and business relationships
3. Cease, prevent and mitigate adverse impacts
4. Track implementation and results
5. Communicate how adverse impacts are addressed
6. Provide for or cooperate in remediation when appropriate

We provide a more detailed explanation of the due diligence process in our previous Client Alert, which covers the "six best practices to promote and support human rights and corporate social responsibility in supply chains".

Forced labour

The Guidance also adds value by tailoring existing guidance to address forced labour risks in supply chains. The Guidance identifies practical considerations in the implementation of due diligence processes for the purposes of dealing with forced labour risk. For example, the Guidance sets out a list of "red-flags" for forced labour to be taken into account when scoping supply chain due diligence. These risk factors broadly fall into three categories:

- Country risk factors
- Risk factors linked to migration and informality
- Risk factors linked to presence of debt risk

The Guidance also singles out the following cross-cutting issues which should be taken into account in a business' due diligence:

- **Gender:** the Guidance acknowledges that risks of harm in the supply chain often differ for men and women and sets out considerations that need to be taken into account in applying a "gender-responsive due diligence".

- **Ethnic or Religious minorities:** the Guidance acknowledges that instances of forced labour targeted against a particular ethnic or religious group, may be part of a wider policy of discrimination, either by government or company policy. However, significantly (particularly in light of the issues in Xinjiang), the Guidance provides that

“EU companies should still take action to ensure that their businesses or supply chains are neither directly nor indirectly contributing to such policies or practices and to seek to cease, prevent or mitigate adverse impacts (through using leverage or disengagement, for example) to which they are directly linked, even if they have not contributed to those impacts”.

We will also cover US guidance relating to Xinjiang-specific supply chain due diligence in another Client Alert.

- **Raw materials of unknown or high-risk origin:** the Guidance highlights the importance of a business credibly obtaining and verifying information on the origin of raw materials. It notes that if a business is unable to identify the origin of raw materials or their origin is from high-risk countries then it should assess whether independent access to evaluate worksites is feasible. If not feasible, businesses should direct suppliers to source materials from commodity traders outside of high-risk areas.

Conclusion

The Guidance reflects the growing expectations for companies to follow the voluntary global standards in the UNGP and the OECD Guidelines. It also serves as a reminder that companies operating in the EU should start to get ready for the mandatory due diligence requirements that will follow.

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