DUTCH LEGISLATURE PASSES MANDATORY CHILD LABOR DILIGENCE LAW WITH THE POTENTIAL TO IMPACT MULTINATIONAL COMPANIES AROUND THE WORLD

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The legislature of the Netherlands has passed a strict supply chain diligence law aimed at companies that provide any goods or services to the Dutch market. This law will impose mandatory due diligence requirements with respect to child labor in supply chains and thus goes considerably farther than other countries' supply chain transparency laws that simply require companies to report their efforts to address modern slavery in their supply chains.

The International Labour Organization recently estimated that 152 million children were engaged in child labor around the world, and 73 million of those children were involved in "hazardous work."[1] "Hazardous work" also serves as a "proxy category" for the "worst forms of child labor" as defined by Article 3 of the Convention on the Worst Forms of Child Labor and involves (1) modern slavery; (2) child prostitution and pornography; (3) using children in "illicit activities," including drug trafficking; and (4) "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."[2] Children between the ages of five and eleven constitute 48% of these 152 million children in child labor, and 19 million children between five and eleven years old are currently engaged in hazardous work or the worst forms of child labor.[3]

Child labor's prevalence in the global marketplace is as wide as it is deep: In its 2018 List of Goods Produced by Child Labor or Forced Labor, the United States Department of Labor identified child labor as a practice occurring in 74 countries around the world and found that these 152 million child laborers—often slaves—are involved in the production of 136 different goods, including cocoa, cotton, silk, leather, coffee, tea, shrimp, diamonds, cobalt, soccer balls, surgical instruments, soap, furniture, and footwear.[4]

The Netherlands has now taken legislative action in response. On May 14, 2019, the Senate of the Netherlands passed the Child Labor Due Diligence Bill. The bill will now go to His Majesty Willem-Alexander, King of the Netherlands, to be signed into law as an Act of Parliament. This follows years of activity in the Dutch legislature: Roeleof van Laar, a Member of Parliament in the Labour Party, first introduced the bill in 2014, and the Dutch Lower House passed the law in 2017. This bill further solidifies the Netherlands' reputation as one of the nations at the forefront of combatting human rights abuses, including modern slavery.[5]

ABOUT THE LAW

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The Child Labor Due Diligence Bill is a groundbreaking piece of legislation because it is one of the first laws that requires companies to actively address human rights abuses that exist in their supply chains. Most legislation in other jurisdictions aims to address modern slavery in supply chains by requiring disclosure, meaning that these laws only require a company to publicly state what efforts, if any, it is taking to address or eradicate the presence of modern slavery in its supply chains. The Child Labor Due Diligence Bill, by contrast, requires companies to implement a plan of approach to take due care that the goods or services they produce are free of child labor.[6] "Child labor" is defined as work performed by individuals who have not yet turned eighteen that falls within the "worst forms of child labour" defined under Article 3 of the Convention on the Worst Forms of Child Labor, 1973.[7] Companies must also provide a declaration to the trade register that their goods are free of child labor within six months from when the law goes into force.[8] This law will apply to Dutch companies, as well as to any other companies including multi-national corporations that provide goods or services to the Dutch market at least twice a year.

The enforcement mechanisms in this Bill are also unique. For example, instead of regulators actively initiating enforcement, any person or entity whose interests are affected can submit a complaint against a company for investigation by the designated government agency.[9] Consequences for companies that fail to comply with the law can be severe. For the first offense, the company is subject to an administrative fine; if it offends twice within five years, the "responsible director" at the company can be imprisoned; and in egregious circumstances, penalties can involve imprisonment and fines exceeding € 500,000 or up to 10% of the company's annual turnover.[10]

Many aspects of this bill still need to be addressed in order to provide companies with full clarity regarding their responsibilities under the law. For starters, the bill does not provide a specified start date, stating only that the law will not take effect before January 1, 2020.[11] The bill also lacks detail as to the required declarations and diligence plans and how compliance will be assessed. Organizations following the law's developments believe, however, that "the expectation is not that the company provide a guarantee that child labor does not occur in the supply chains, but that the company has done what can reasonably be expected to prevent this from happening."[12]

GLOBAL TREND

The Dutch Child Labor Due Diligence Bill marks an increasing international trend toward adopting human rights legislation, and could serve as a catalyst for more jurisdictions adopting due diligence, rather than disclosure-based, regimes. The United Kingdom became the first nation to adopt substantial anti-slavery legislation targeting modern slavery in supply chains by passing the Modern Slavery Act of 2015 four years ago, following the nascent California Transparency in Supply Chains Act in 2010. Since then, France, Australia, and the Australian state of New South Wales have passed modern slavery legislation. Not only has the legislation become more frequent, but the legislative regimes have also become largely stronger over time. Among disclosure-based systems, the Australian Modern Slavery Act imposed a number of stricter requirements than the United Kingdom's Modern Slavery Act,[13] and the New South Wales version surpasses both by including monetary penalties.[14] France, in 2017, was the first nation to adopt a due diligence regime—and the only such nation until the Dutch bill becomes law—but several other governments are now considering adopting similar approaches for their human rights

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legislation. Germany's government, for example, drafted human rights due diligence legislation in February 2019 that would require companies with over 250 employees and an annual turnover of over € 40 million (≈USD 45 million) to perform supply chain risk assessments and would impose punishments of up to € 5 million (≈USD 5.5 million) and imprisonment for violations of the law.[15] In June, Finland's government announced that it would begin to move toward adopting human rights due diligence-based legislation as well.[16] Indeed, just this month, the state of New York introduced supply chain transparency legislation.

CONCLUSION

As governments continue to take seriously the issues of child labor, forced labor, and other modern slavery, we can expect more, and stronger, anti-slavery legislation. Companies and organizations should, therefore, assess and strengthen their supply chain diligence to stay in front of these trends by creating robust organizational support for the due diligence mechanisms and processes required to respond to risks of modern slavery, including child labor, in their supply chains.

Notes:

[1] INTERNATIONAL LABOUR ORGANIZATION, GLOBAL ESTIMATES OF CHILD LABOUR: RESULTS AND TRENDS, *2012-2016* 11 (2017).

[2] *Id.* at 21.

[3] *Id.* at 13.

[4] OFFICE OF CHILD LABOR, FORCED LABOR, AND HUMAN TRAFFICKING, U.S. DEP'T OF LABOR, 2018 LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR REQUIRED BY THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2005 8-14 (2018).

[5] The Global Slavery Index 2018, prepared by The Walk Free Foundation, ranked the Netherlands as the nation "taking the most action to respond to modern slavery," and the Dutch received the only "A" rating awarded by the Index. *See* THE GLOBAL SLAVERY INDEX 2018, THE WALK FREE FOUNDATION 41, 45 (2018), https://www.globalslaveryindex.org/

[6] Child Labor Due Diligence Bill, art. 5(1).

[7] *Id.*, art. 2(1). The Bill also provides additional definitions of child labor where the work occurs in a nation that is a signatory to the Convention on the Minimum Age, 1973. *Id.*, art. 1(b)-(c).

[8] *Id.*, art. 4(1).

[9] *Id., art. 3(2).*

[10] *Id.*, art. 7, 9.

[11] *Id.,* art. 12(1).

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[12] *Frequently Asked Questions about the New Dutch Child Labour Due Diligence Law*, MVOPLATFORM (Apr. 14, 2017), https://www.mvoplatform.nl/en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law/.

[13] *Australia passes the Modern Slavery Bill 2018 – What Do You Need to Do?*, K&L GATES GLOBAL ETHICAL SUPPLY CHAIN ALERT (Nov. 30, 2018), http://www.klgates.com/australia-passes-the-modern-slavery-bill-2018--what-do-you-need-to-do-11-30-2018/.

[14] *Ethical Supply Chain and the Modern Slavery Act 2018 -- Are You Ready?*, K&L GATES GLOBAL ETHICAL SUPPLY CHAIN ALERT (June 29, 2018), http://www.klgates.com/ethical-supply-chain-and-the-modern-slavery-act-2018--are-you-ready-06-29-2018/.

[15] *German Development Ministry Drafts Law on Mandatory Human Rights Due Diligence for German Companies*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, https://www.business-humanrights.org/en/german-development-ministry-drafts-law-on-mandatory-human-rights-due-diligence-for-german-companies (last visited June 14, 2019).

[16] FINNWATCH, *Finnish Government Commits to HRDD Legislation*, EUROPEAN COALITION FOR CORPORATE JUSTICE (June 3, 2019), http://corporatejustice.org/news/15476-finnish-government-commits-to-hrdd-legislation.

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