

Bill adopted by Dutch Parliament introducing a duty of care to prevent child labour

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On 7 February 2017, the Dutch Parliament adopted a bill introducing a duty of care to prevent child labour (Wet zorgplicht kinderarbeid – the "Bill"). The Bill requires companies selling goods and services to Dutch end-users to determine whether child labour occurs in their supply chains. If so, companies must set out a plan of action on how to combat it and issue a due diligence statement (verklaring gepaste zorgvuldigheid) on their investigation and plan of action. In cases of non-compliance, companies risk a fine up to a maximum of EUR 820,000 or, alternatively, 10% of their annual turnover. The Bill is now before the Senate and – if approved – it will not come into effect before 1 January 2020. This Corporate Alert provides a brief overview of the Bill.

1. Introduction

Child labour affects approximately 168 million children worldwide. Several initiatives have been taken to combat child labour at a national, EU and international level. Organizations such as the International Labour Organization ("ILO"), the Organization for Economic Co-operation and Development ("OECD") and the United Nations ("UN") continue to fight for the abolition of child labour. This has resulted in several conventions and guidelines, for example the ILO Fundamental Conventions Nos. [138](#) and [182](#) and the [ILO-IOE Child Labour Guidance](#) Tool for Business ("ILO Tool").

2. The Bill

The proposal for the Bill was an initiative of one of the Members of Parliament. Despite all the existing rules and regulations referred to in the introduction, child labour still exists. According to the explanatory memorandum to the Bill, this is partly a result of the lack of enforcement mechanisms. Consequently, goods and services involving child labour are still being brought into the Dutch market. The Bill aims to ensure that this will no longer be the case and that consumers may assume goods and services bought on the Dutch market are sold by companies doing as much as is reasonably possible to prevent these goods and services from being made using child labour. The Bill requires companies to examine whether there is a reasonable suspicion that the goods or services being made using child labour. This includes an examination of the production or supply chain. If so, the companies are required to develop and carry out a plan of action to combat child labour. Finally, companies are required to issue a due diligence statement on the investigation and plan of action. According to the explanatory memorandum to the Bill, the new duty of care to exercise due diligence will create a more level playing field for companies on the Dutch market. It will also enhance knowledge on how to effectively carry out due diligence with respect to child labour in the supply chain.

3. Statement

Companies are required to issue a statement declaring that they have exercised due diligence (gepaste zorgvuldigheid) to prevent their goods and services being made using child labour.

According to the explanatory memorandum to the Bill, other than describing clearly the steps that have been taken and the statement being in accordance with the ILO Tool, companies are free to include any other information in the statement. Secondary legislation may further regulate the content of the statement. A supervising authority will be appointed to monitor compliance with the Bill. The statement will be recorded in a public register, which will also be held by this supervising authority. Presumably, this will be the Dutch Authority on Consumers and Markets (Autoriteit Consument & Markt – the "ACM").

4. Due Diligence

A company will be considered to have exercised due diligence (gepaste zorgvuldigheid) if it has carried out an investigation to assess whether there is a reasonable suspicion that a product or service involves child labour and if such is the case it has adopted a plan of action in line with international guidelines (OECD or UNGP). This investigation must be aimed at reasonably known and consultable sources. Detailed rules for the investigation and plan of action will be determined by secondary legislation, which will take into account the ILO-IOE Child Labour Guidance Tool for Business. The Dutch government can approve a joint plan of action in cooperation with governmental organizations, employees' organizations and employers' organizations. A company implementing such plan will be considered to have exercised due diligence under the Bill. Due diligence is considered to have been exercised when it concerns goods acquired from or services rendered by companies that have issued a due diligence statement. If a company *only* acquires from such companies, then the company itself does not have to issue a due diligence statement.

5. Definitions of Company and Child Labour

The Bill applies to companies selling or delivering goods or services to Dutch end-users. Company is defined broadly and includes any economically active entity irrespective of its nature or the way it is financed. The definition includes not only companies that are registered with the Dutch trade register (handelsregister) but also foreign companies if they deliver goods or services to end-users in the Netherlands more than once a year. It is yet to be determined via secondary legislation whether certain companies, such as small companies or companies that are not active in countries or sectors where child labour occurs, will be exempted from the Bill.

The meaning of child labour in the Bill is based on the definitions used by the ILO Fundamental Conventions Nos. 138 and 182.

6. Enforcement

Each natural person or legal entity is entitled to file a complaint with the company in the event its interests are affected by the actions (or lack of actions) of a company by non-compliance with the provisions under or pursuant to the Bill. The company has six months to resolve the complaint. In case the company has not resolved the complaint after this period or not resolved it satisfactorily, a complaint can be filed with the supervising body. When it becomes apparent the company has not

applied due diligence in line with the Bill, the supervising authority can give a binding instruction and afterwards impose an administrative fine up to a maximum of EUR 820,000, or, alternatively, 10% of its annual turnover. Companies that have applied due diligence but have failed to submit the statement with the supervising authority can also be fined. Being fined twice within five years will constitute an economic offence, which may lead to criminal proceedings.

7. Entry into force and transitional provision

If approved, the new legislation will not come into effect before 1 January 2020. The Bill will not be applicable to the delivery of goods and services that are subject to arrangements which were made before the Bill was published in the Bulletin of Acts and Decrees. This implies that companies will be obliged to exercise due diligence (investigation and adoption of a plan of action in case of a reasonable suspicion) after that publication date. Companies will be required to issue the due diligence statement within six months after 1 January 2020.

8. Conclusion

Although the Bill has yet to be finalized and approved, it is important for companies to align their policies with this new legislation over the next few years.