

EUROJURIS INTERNATIONAL
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Supply Chain Legalisation

QUESTIONNAIRE – ANSWERS ACCORDING TO BELGIAN LAW

Germany has implemented a Supply chain law for the protecting of Human Rights in global supply chains as did other countries before (e.g. UK anti slavery act)

Questions?

1° Are there any legal requirements to protect human rights and the environment in the supply chain in your country?

In Belgium, there is not a single Act or Government Decree at any level of the Belgian institutional structure about the legal requirements to protect human rights and the environment in the supply chain.

There are several laws that partly touch on the subject of the protection of human rights and the environment in the supply chain, but they are mentioned very briefly.

2° What are the most important rules and regulations? What is the legal consequence of an infringement?

Belgian Corporate Governance Code (2020):

- Principle 3:
3.3 The composition of the board should be determined so as to gather sufficient expertise in the company's areas of activity as well as sufficient diversity of skills, background, age and gender.

The Belgian Economic Law Code:

- Article VI.97 A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:
 - 1° the existence or nature of the product;
 - 2° the main characteristics of the product, such as availability, advantages, risks, execution,

composition, accessories, customer service and complaints handling, process and date of manufacture or provision, delivery, suitability for use, possibilities for use, quantity, specification, geographical or commercial origin, results to be expected from the use, or the results and essential characteristics of tests or checks carried out on the product;

3° the scope of the undertaking's obligations, the motives for the commercial practice and the nature of the sales process, any statement or symbol suggesting sponsorship or direct or indirect support for the undertaking or the product

4° the price or the manner in which the price is calculated, or the existence of a specific price advantage

5° the need for a service, part, replacement or repair

6° the quality, characteristics and rights of the company or its intermediary, such as its identity, assets, qualifications, status, recognition, affiliation, connections, industrial, commercial or intellectual property rights or its awards and distinctions;

7° the rights of the consumer, including the right to replacement or reimbursement pursuant to the provisions of the Law of 1 September 2004 on the protection of consumers in respect of the sale of consumer goods, or the risks he may run.

- Article VI.97 may be relevant in a human rights and SCDD (supply chain due diligence) context:
 - o Providing incorrect information is disciplined as it is providing factually correct information which nevertheless misleads the average consumer.
 - o The reference to art. VI.97, 3° and art. VI.97, 6° of the Economic Law Code. It is suggested that whether the standard of misleading is met, is judged against the general requirements of professional diligence in the sector. The latter can be made more concrete by considering the codes of conduct that are applied in the relevant sector.
 - o The protection against unfair commercial practice is aimed at consumers. However, according to art. VI.104 of the Economic Law Code, it is also possible for a company to rely on these provisions and act against unfair commercial practices of another company when the professional interests of the claiming company are at stake.

3°) Are there any implications for contract design? What is the applicable law in your country?

On this topic, an interesting study has recently been made by the Leuven Centre for Global Governance Studies. In this study (“Options for mandatory Human Rights Due Diligence in Belgium”, 2020, C. BRIGHT a.o., p. 90-92), the following possible contract clauses are mentioned :

“If contracting parties want to ensure the enforceability of the obligations they insert, a variety of options are available, and most clauses can be combined all at once.

A first interesting clause is a damages clause. This clause allows parties contractually to determine beforehand the damages to be paid in case of a breach of a certain contractual provision. The real damages then do not have to be proven and it does not matter whether they would approach the damages foreseen in the contractual provision. The predetermined amount must be paid, while the damage that actually occurred may be significantly more or less. Only when the predetermined

damages are unreasonably high, can a judge mitigate them. When the predetermined damages would be unreasonably low, the provision must be recharacterised as a disclaimer.

Secondly, contracting parties can grant to one (or both) of them the possibility to dissolve the contract, without having to go to court, (ordinarily required under article 1184 Belgian Civil Code. Notice upon the debtor is not required if this is explicitly provided in the contract.

Thirdly, the circle of claimants can be broadened by inserting provisions in favour of a third party. A third party, such as employees of the debtor, can be given the right to enforce a contractual provision concerning their labour conditions. This is a way to overcome privity of contract (art. 1165 Civil Code) and to grant rights to third parties. Very concrete elements could enhance the enforceability of such provisions, such as advertising the rights and obligations of the employees in plain language within the factory buildings. Hitherto no SCDD relevant case-law on this issue exists.

Fourthly, in case there is a chain of contracts not all involving the first creditor who wishes to impose human rights or SCDD obligations, there is a possibility to insert a 'chain clause' (*kettingbeding*). Such a clause obliges the contracting party to insert a certain obligation in a subsequent contract, coupled with the obligation to let any subsequent contracting party insert it as well.

Fifthly, the performance of human rights and SCDD obligations could be inserted as a suspensive condition (*condition suspensive, opschortende voorwaarde*) or as a condition of avoidance (*condition résolutoire, ontbindende voorwaarde*). This goes further than the provisions we just discussed, because the creation or (further) existence of the contract depends on the fulfillment of the condition. Moreover, once a condition is fulfilled, the contract will automatically be created or dissolved and there will be no moment for negotiations, considerations or whatsoever."

Leuven, 6 May 2021

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