



# New Act regarding transparency of companies compliance to fundamental human rights and working conditions



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## **Purpose**

The Norwegian Parliament passed in June 2021 the so called Transparency Act (In Norwegian: "Åpenhetsloven") with the purpose to promote companies' respect for fundamental human rights and decent working conditions in connection with the production of goods and services, and to ensure the general public access to information on how companies handle negative consequences on fundamental human rights and decent working conditions. Anchored in a number of international obligations such as the UN Guiding Principles on Business and Human Rights (UNGPR) and the OECD Guidelines for Multinational Enterprises, as well as the UN's sustainability goals,

the Transparency Act aims to provide a common standard and further tighten the legal obligations for companies to comply with both the UNGP and the OECD's Guidelines for Multinational Companies.

The Transparency Act is a part of a very interesting development, where obligations related to what historically has been considered "soft law" or obligations that "should" be fulfilled, now are further legalized for companies. In this context, it is also interesting to note that the European Commission is working on a new directive on sustainable corporate governance, which is also expected to enhance the liability of board members.

### **Highlights of the act**

- The Act is limited to fundamental human rights and decent working conditions. It is important to note that the OECD Guidelines for Multinational Enterprises include more than this (for example: the business's consequences on the external environment, fight against bribery etc.), and these conditions must still be taken into account – in order to fully comply with the OECD Guidelines for Multinational Enterprises.
- The Act shall apply to "*larger companies*" as defined in section 1-5 of the Accounting Act, i.e. public limited companies, listed companies and other accounting entities. In addition, the following companies are included:
  - Companies which, on the balance sheet date, meet at least two of the following three conditions:
    - over 70 MNOK in sales revenue,
    - over 35 MNOK in balance sheet total,
    - over 50 man-years in the average number of employees in the financial year.
- The companies must also be "domiciled" within Norway and offer goods or services in or outside Norway, or be a company that offers goods and services in Norway and are taxable in Norway according to Norwegian law.
- It is estimated that about 8,800 will be included in the definition "larger companies".

### **Main obligations:**

- The companies subject to the Transparency Act shall carry out and publish due diligence assessments related to fundamental human rights and decent working conditions:
  - The companies covered by the Transparency Act shall through the due diligence assessments get an overview of the consequences their business, supply chains and business partners have on fundamental human rights and working conditions.
  - The assessments must be carried out regularly and be in proportion to the size of the company, the nature of the company, the context in which the company takes place and the severity of and the probability of negative consequences for basic human rights and decent working conditions.
  - This entails that the company must investigate and manage risk of a negative impact on human rights and decent working conditions. The assessment made shall be carried out in accordance with the OECD's guidelines for multinational companies.
- The companies subject to the Transparency Act shall provide information at the request of the general public.
  - The general public (for example consumers and investors) are through the information duty ensured openness and insight into a company's work on compliance with fundamental human rights and decent

working conditions.

- The duty to provide information is not absolute, and the company has a certain right to reject requests for information. However, and provided the request is justified under the law, the company must provide the requested information within a reasonable time and no later than three weeks after the information request has been received. If the amount or type of information requested makes it disproportionately burdensome to respond to the request for information within three weeks, the information shall be provided within two months of receipt of the request.

#### **Control and enforcement:**

- The Norwegian Consumer Agency is given a duty to provide guidance, and is the public body who shall supervise that the duties in the Transparency Act are complied with.
- The Norwegian Consumer Agency is also given the authority to issue orders and prohibition decisions, as well as to impose coercive fines for non-compliance with orders/decisions, as well as to impose an infringement fee.

Per date it is not decided when the Transparency Act will enter into force in Norway, but in any event it will not enter into force before 1 January 2022. Companies therefore have some time to prepare themselves for the duties provided in the Transparency Act.

*DLA Piper Norway held a short webinar on the Transparency Act earlier in June together with our Pro Bono cooperation partner Care Norway and Member of the Norwegian Parliament Tage Pettersen (available online: <https://norway.dlapiper.com/no/landing/apenhetsloven> (In Norwegian only)). We are planning a more comprehensive/in-depth seminar/webinar where we focus on the Act in a somewhat wider context in fall (September). Please let us know if you are interested in participation for our seminar/webinar this fall.*

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Fagområder      Compliance og risikostyring, Offentlige anskaffelser, Internasjonal handel

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