

Guidelines on The Transparency Act (Nw: *Åpenhetsloven*)

1 Scope of the Guidelines

These Guidelines ("**The Guidelines**") provide guidance on the act relating to enterprises' transparency and work on fundamental human rights and decent working conditions ("**The Transparency Act**" or "**The Act**"(Nw: *Åpenhetsloven*)).

The Guidelines do not purport to be all-inclusive, and employees that are involved in processes directly or indirectly linked to the requirements of the Transparency Act are encouraged use their own sound judgement.

2 Applicability and Responsibilities

The Guidelines may also be applied to a company's subsidiaries and employees worldwide, as well as to majority owned entities (JVs).

A company's Chief Executive Officer ("**CEO**") has the overall responsibility to ensure that the company complies with laws and regulations, including meeting the legal requirements under the Transparency Act.

3 Introduction and purpose of the Act

The Transparency Act enters into force on 1 July 2022. The Transparency Act can be found here:

- In English: <https://lovdata.no/dokument/NLE/lov/2021-06-18-99>
- In Norwegian: <https://lovdata.no/dokument/NL/lov/2021-06-18-99>

The purpose of the Act is to promote enterprises' respect for fundamental human rights and decent working conditions in connection with the production of goods and the provision of services. Further, the Act ensures the general public access to information regarding how enterprises address adverse impacts on fundamental human rights and decent working conditions.

The Act builds on international procedure and consensus about the requirements for responsible business conduct as well as Norwegian traditions of transparency and access to information.

The Consumer Authority (Nw: *Forbrukertilsynet*) is the independent administrative body tasked with supervising and enforcing the Transparency Act. Guidance from the Consumer Authority will be published on the Consumer Authority's webpage available at: <https://www.forbrukertilsynet.no/apenhetsloven>.

4 The requirements under the Transparency Act

4.1 Key requirement under the Act: Conducting due diligence (Nw: *Aktsomhetsvurderinger*)

4.1.1 Introduction

Companies are committed to conduct due diligence of suppliers and other business partners under the Act. Such due diligence shall be conducted on a regular basis and be risk based, proportionate and in accordance with UN's Guiding Principles for Business and Human Rights and the OECD Procedure for Multinational Enterprises. Useful information regarding due diligence on supply chains be found here:

- UN's Guiding Principles for Business and Human, available at: <https://www.unglobalcompact.org/library/2->
- OECD Due Diligence Guidance for Responsible Business Conduct, available at <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

4.1.2 Direct suppliers and sub-contracting through suppliers

A company's requirements to conduct due diligence comprise in principal both suppliers (direct sourcing) and their sub-suppliers (indirect sourcing). At the same time the required actions under the Act shall be *risk based* and *proportionate*. This means that it is the company's direct suppliers (with whom the company has a contractual relationship with) that primarily shall be subject to the company's due diligence measures. Such measures could include background checks and various follow-up measures (e.g., audits/physical inspections), see item 4.1.4 below and the Third-Party Risk Management Procedure for further guidance.

With respect to potential human rights risks in relation to sub-suppliers, a company should request relevant information from its supplier to identify any such risk further down in the supply chain. Through contract regulations (see template in Appendix 1 below) and on-going dialogue, the company can set out expectations to the supplier's efforts on human rights risk mitigation towards sub-suppliers (so called "flow-down" provisions).

4.1.3 Examples of relevant risks

Examples of potentially relevant risks that a company should identify and mitigate under the Transparency Act are:

Child labor, discrimination, sexual harassment, and violence against women, forced labor, occupational health and safety (e.g., worker related injury and ill health), violations of the right of workers to establish or join a trade union and to bargain collectively, non-compliance with minimum wage, the use of hazardous chemicals, right to land and property and minority rights.

4.1.4 Due diligence requirements under the Transparency Act, Section 4

Compliance with the Act in terms of due diligence commitments mean to:

- a Embed responsible business conduct into the Company's policies

A company's Board of Directors sets the overall "tone from the top" and has the overall responsibility to ensure that the company has in place adequate measures in relation to responsible business conduct. The company's CEO is responsible for the day-to-day implementation of such measures. Thus, business ethics is a Board and management responsibility in a company. Social sustainability and human rights are also often embedded in a company's framework for responsible business.

- b Identify and assess actual and potential adverse impacts on fundamental human rights and decent working conditions that the enterprise has either caused or contributed toward (or that are directly linked with the enterprise's operations, products or services via the supply chain or business partners)

Risk assessment of suppliers and other business partners is a key requisite under the Transparency Act. The Third- Party Risk Management Procedure is a tool that is recommended to use to identify high-risk suppliers which may be subject to certain on-boarding procedures (e.g., background checks/integrity due diligence). Background check procedures may consist of screening of high-risk suppliers in compliance databases and collecting risk relevant information from the supplier through a compliance questionnaire. The Third- Party Risk Management Procedure provides further guidance.

- c Implement suitable measures to cease, prevent or mitigate adverse impacts based on the enterprise's prioritizations and assessments pursuant to (b)

The Act requires implementation of risk-based measures. Examples of such measures that a company may implement are:

- I. Background checks of higher-risk suppliers with subsequent follow-up actions and dialogue.
 - II. The obligation of suppliers to comply with a company's supply chain code of conduct.
 - III. Supplier contracts that contain adequate compliance clauses, including inter alia the company's expectations to working conditions and compliance program of the supplier, duty to inform the company of breaches, the company's right to conduct audits and the company's right to suspend or terminate the agreement in the event of supplier's breach of agreement.
 - IV. Regular audits (physical inspections).
- d. Track the implementation and results of measures pursuant to (c)

For high-risk suppliers that entail an inherent risk of violating human rights, it is recommended that a company closely monitors any identifies concerns and track the outcome of the implemented measures above, and on an on-going basis assess the need to adopt additional measures. If violation of human rights is observed, the company is advised to assess whether disengagement from the business relationship may be appropriate. Disengagement should be the last resort after attempts of preventing or mitigating severe impacts based on dialogue with the business partner.

It is recommended that a company shares risk relevant information pertaining to high-risk suppliers within the company's organization. This will ensure that the risk assessments take all relevant facts and observations into consideration (holistic approach), as there may be additional risks associated with such suppliers, e.g., corruption and money laundering risks.

Information regarding suppliers from a risk management perspective may also be exchanged with the company's peers to the extent appropriate.

In cases of suspected human rights violations, a company shall consider consulting with local authorities, local communities and relevant NGOs.

- e. Communicate with affected stakeholders and rights-holders regarding how adverse impacts are addressed pursuant to (c) and (d)

A company has certain disclosure obligations under section 5 of the Transparency Act, see item 3.3 below. In addition, when concerns in relation to human rights or labor conditions are raised by or on behalf of affected stakeholders, a company is advised to prepare to communicate on how the company addresses these concerns. It is advisable that a company has a contingency plan in place to adequately manage such potential incidents.

- f. Provide for or co-operate in remediation and compensation where this is required

If a company identifies that it has caused or contributed to actual adverse impacts, it is a requirement under the Act that it address such impacts by providing for remediation. The type of remedy or combination of remedies that is appropriate will depend on the nature and extent of the adverse impact. Examples of remediation measures are providing public statements or offering compensation to affected parties.

4.2 Publishing statements regarding due diligence processes

Section 5 of the Act requires companies to publish a statement concerning the due diligence processes pursuant to Section 4. The statement shall according to the Act at least include:

- a) a general description of the company's structure, area of operations, procedures for handling actual and potential adverse impacts on fundamental human rights and decent working conditions
- b) information regarding actual adverse impacts and significant risks of adverse impacts that the company has identified through its due diligence
- c) information regarding measures the company has implemented or plans to implement to cease actual adverse impacts or mitigate significant risks of adverse impacts, and the results or expected results of these measures.

The statement shall be made easily accessible on the company's website. The Act requires the company to inform where the statement can be accessed in the annual reports.

The statement shall be updated and published no later than 30 June each year and otherwise in case of significant changes to the company's risk assessments. The statement is first time to be published by 30 June 2023. The Act requires the statement to be signed by the company's Board of Directors and the CEO.

Employees involved in supply chain management would typically prepare a draft of the statement before it is reviewed and discussed by the CEO and the Board of Directors.

4.3 Requests for information

4.3.1 Introduction

Companies may receive requests for information in relation to their compliance with the Transparency Act. It is advisable that the information provided by a company is adequate and that it has been properly quality assured internally according to the procedures outlined below in 4.3.3.

4.3.2 The obligation to provide information

Any person has upon written request the right to information from a company on how the company addresses actual and potential adverse impacts pursuant to Section 4 (due diligence processes), see Section 6 of the Act. This includes both general information and information relating to a specific product marketed by the company. It is not a requirement that a company discloses the production facilities or names of suppliers or sub-suppliers.

A request for information may be denied pursuant to Section 6, second paragraph, by a company if:

- a) the request does not provide a sufficient basis for identifying what the request concerns (e.g., vague requests that are difficult or impossible to adequately respond to).
- b) the request is clearly unreasonable (e.g., it has a harassment purpose or a response place substantial economic or administrative burdens on the company).
- c) the requested information concerns data relating to an individual's personal affairs (e.g., information relating to social security numbers or other information pertaining to an individual).
- d) the requested information concerns data regarding technical devices and procedures or other operational and business matters which for competitive reasons it is important to keep secret in the interests of the person or entity whom the information concerns (e.g., the information represent a trade secret under the Trade Secrets Act).

The right to information regarding actual adverse impacts on fundamental human rights with which a company is familiar, applies irrespective of the limitations in the above paragraph.

However, even if the requirements in the above paragraph are met (i.e., a company is familiar with actual adverse impacts on fundamental human rights), the right to information does not, pursuant cover information that is:

- Classified pursuant to the Security Act (NO: Sikkerhetsloven) or
- Protected pursuant to the Intellectual Property Rights Act (NO: Åndsverksloven).

Should the Company, by disclosing the requested information, violate other laws (e.g., the GDPR) or breach the loyalty obligations under existing agreements, particular legal assessments should be conducted before disclosing such information, as these issues are not dealt with in a conclusive manner under the Act.

The information shall be provided in writing and shall be adequate and comprehensible. A company shall provide information within a reasonable time and no later than three weeks after the request for information is 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 after the request is received. According to the Act the exception of extended response time should only be applied in special circumstances. A company should be able to demonstrate that the request is "disproportionately burdensome". This would typically be the case if a response to the request entails that a substantial amount of information must be collected by the company.

The company shall no later than three weeks after the request for information is received, inform the person requesting information of the extension of the extended time limit, the reasons for the extension, and when the information can be expected.

If a company denies a request for information, the company shall inform about the legal basis for the denial, the right and time limit for demanding a more detailed justification for the denial and that the Consumer Authority (Nw: *Forbrukertilsynet*) is the supervisory and guidance body.

Any person whose request for information is denied by the company may within three weeks from the denial was received, demand a more detailed justification for the denial. The justification shall be provided by the company in writing, as soon as possible and no later than three weeks after the demand for a more detailed justification was received.

4.3.3 Internal procedures associated with information requests

Employees involved in supply chain management would typically be responsible for handling external requests for information. It is advisable that all handling of requests is documented in writing.

The first step is to assess whether the request meets the conditions under the Act or if it shall be denied. If the request shall be denied, a draft statement elaborating on the grounds for denial shall be prepared. If the request shall be accommodated, the staff involved with handling the external request shall ensure that relevant information is gathered in a timely manner.

It is advisable that a draft response is submitted to the CEO for approval.

In matters concerning potential human rights/labor conditions abuses in a company's supply chain that may entail legal risk and/or reputational damage to the company, it is advisable that the CEO consult with the Board of Directors before a response is provided to an external party.

4.3.4 Duty to provide information to the Consumer Authority

The company is obligated to provide the Consumer Authority (Nw: *Forbrukertilsynet*) and the Market Council (Nw: *Markedsrådet*) with the information these authorities require to carry out their duties pursuant to the Act. The information may be required to be provided in writing or orally, within a given deadline. The duty to provide information applies irrespective of confidentiality obligations (Nw: *taushetsplikt*). However, this does not apply to duty of confidentiality pursuant to

the Norwegian Criminal Procedure Act (Nw: *straffeprosessloven*). It is advisable that legal expertise is consulted should the company receive a request for information from the Consumer Authority.

5 Breaches of the Act or decisions– legal consequences

If a company breaches its obligations under the Act, the Consumer Authority and the Market Council may impose enforcement fines (Nw: *tvangsmulkt*) or infringement fines (Nw: *overtredelsesgebyr*).

The enforcement penalty may be imposed as a running charge or as a lump sum. When determining the enforcement penalty, emphasis shall be given to the consideration that it must not be profitable to breach the decision. In the determination of the amount of the infringement penalty, emphasis shall be given to the severity, scope and effects of the infringement.

Both individuals and the company may be subject to fines. Complying with the Act is an overall obligation for the board, while the CEO and other employees with managerial positions have an obligation to ensure that adequate measures are implemented on an on-going basis. If a company violates the Act or decisions adopted by the authorities under the Act, there is an inherent risk that the authorities will impose fines on board members and/or company managers. The authorities have to demonstrate that the individual(s) subject to a fine acted with negligence (Nw: *uaktsomhet*) or intent (Nw: *forsett*).

Companies should also be observant to that negative press coverage regarding potential breaches of the Act, may represent severe reputational damage to the company and result in potential loss of business.

By documenting the company's assessments and instigated measures under the Act and by seeking external advice, when necessary, the board and management will mitigate the risk of fines and reputational damage.

6 Preparing to meet the requirements of the Act

6.1 Examples of steps that the company may initiate in relation to due diligence measures (Nw: *aktsomhetsvurderinger*)

- Preparing an **overview of the company's existing supply chain** (including sub-suppliers) with the aim to identify where in the supply chain human rights risks are most likely to be present and most significant. Risks to consider may e.g. be associated with sectors, products, geography and/or at business partner level.
- To assess the risk associated with a supplier's supply chain, the company may inter alia **ask the supplier** of the following information:
 - Description of the supplier's supply chain (i.e. stating the main input factors (Nw: *innsatsfaktorer*) in relation to the relevant tiers of suppliers)
 - Where in the supply chain does the supplier identify an inherent risk of human rights abuses?
 - What are the relevant regions and countries?
 - What are the relevant risks involved (see item 4.1.3 above)?
 - What measures do the supplier have in place to identify and mitigate human rights risks in the supply chain?
- Conducting a **risk mapping of the suppliers** under the Third-Party Risk Management Procedure to identify high risk suppliers
- Collecting risk relevant information from **high-risk suppliers through a compliance questionnaire** that may contain questions relating to (non-exhaustive list):

- Business registration number and information on group company structure (if applicable)
- Contact details etc. (contact person, phone number web site etc.)
- Shareholders (up to beneficial owners), directors and key management (information should be documented by way of company certificate, business registry document etc.)
- Number of employees
- Information on plants and production facilities involved in the production of goods to the company
- Percentage (approx.) of the supplier's turnover which will be related to business with the company
- The use of intermediaries (agents, consultants etc.), suppliers or hired-in personnel in relation to the production of goods to the company
- Quality management system/quality manual
- Health and Safety Program including questions on personal protection measures, the working environment etc.
- Compliance with minimum wages under ILO standards
- Any adverse incidents regarding labor conditions
- Sanctions, fines or prosecution initiated by authorities against shareholders (incl. beneficial owners), directors and key management the last 10 years
- Description of compliance measures, including sharing policies on ethics and anti-corruption etc.
- Conducting **screening in compliance databases** like Dow Jones, Refinitiv etc. (requires licenses) and online sources (Google).
- Prepare a **plan for further mitigating measures**, such as:
 - Assessing whether existing contracts with high-risk suppliers contain adequate human right's clauses. If not, prepare a plan for renegotiating contracts to loop in relevant clauses (see Appendix 1 for an example).
 - Potential audits (physical inspections) of high-risk suppliers

6.2 Preparing for potential information requests by:

- Describing the company's supply chain with focus on the type of suppliers or sub-suppliers that entail high-risk of human rights abuse. It is not required to name production facilities, suppliers or sub-suppliers. It is sufficient to describe the type of industry and regions and examples of concrete risks involved. However, it is advisable to be as concrete as possible, as this will strengthen the perception of the company's risk awareness and governance maturity.
- Outlining how responsible business conduct are embedded into the company's policies and procedures (e.g. the Board's oversight, management's focus, internal supply chain specialists, regulations in Code of Conduct/Supplier Code, supporting procedures such as this Guideline etc.)
- Describing the company's risk assessment and due diligence processes, including the risk categorization process, and on-boarding under the Third-Party Risk Management Procedure and other measures to mitigate the risk of human right's violations (contract regulations, dialogue with suppliers, audits).

APPENDIX 1 – EXAMPLE CONTRACT CLAUSES

[to be considered on a case by case basis]

[Clause x] Human Rights

The Supplier shall take effective measures to ensure that its performance under this Agreement respects Human Rights consistent with the United Nations Guiding Principles on Business and Human Rights. To this effect, the Supplier shall take all reasonable steps to avoid, or otherwise appropriately address or remedy, including through the establishment of appropriate grievance mechanisms, adverse impacts on Human Rights which it or any of its affiliates, or any officer, director, agent, representative or employee of the Supplier or such affiliates may cause or contribute to.

The Supplier shall identify the risk of human rights' violation in its own supply chain and shall on a risk-based approach actively seek to safeguard Human Rights in the supply chain. The Supplier shall use best efforts to include contractual clauses that set out the same requirements and obligations as this clause [x] in agreements with its suppliers.

The Supplier shall promptly, and in writing, reply to any questions from the Company related to its compliance with the obligations set out in this clause [x].

The Supplier agrees to notify the Company promptly in writing upon discovery of any instance where it fails to comply with this clause [x]. In such event, the Supplier shall promptly take adequate mitigating measures to minimize any adverse effect on the Company and any potential breaches of Human Rights it causes.

For the purpose of this clause, the following definition shall apply:

"Human Rights" means inter alia child labor, discrimination, sexual harassment, and violence against women, forced labor, occupational health and safety (e.g., worker related injury and ill health), violations of the right of workers to establish or join a trade union and to bargain collectively, non-compliance with minimum wage and the use of hazardous chemicals.

[Clause y] Audit

The Company may at any time, with reasonable notice, during the term of this Agreement, and for a period of five (5) years after its termination, undertake auditing measures of the Supplier in order to assess its performance and compliance in relation to its obligations under this Agreement. This includes appointing external advisors to conduct audits and investigation.

The Supplier is obliged to fully cooperate with the Company and/or its advisors, providing all required information, documentation and access to both productions' facilities, other premises and personnel. Each Party shall bear its own costs with respect to any audits performed, unless a violation which is not immaterial of this Agreement is uncovered, in which case the Supplier shall reimburse the Company all reasonable costs associated with the audit.

[Clause z] Consequences of non-compliance

Violation of clauses [x and y] shall automatically be deemed a material breach of this Agreement, and the Company shall be entitled to suspend or terminate this Agreement with immediate effect without any liability.

The Supplier shall indemnify and hold harmless the Company from and against any losses, damages and claims arising from a material breach of clause [x and y]. This indemnity shall survive termination of this Agreement