Your path to CSR compliance with regard to the Lieferkettensorgfaltspflichtengesetz (LkSG) // Supply Chain Due Diligence Act (SCDDA)

Route plan 8.1

March 2023 | Martin Rothermel, Sebastian Rünz
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Summary
**What is new?**

**Recent developments**

1. German Authority („BAFA“) Handouts Risk Analysis (August 2022), Questionnaire Report (October 2022), Handout Complaints Procedure (November 2022) [see details below].
2. Suspension Discussion in the „Bundestag“ on 15.12.2022 with referral to committees¹
3. Handout Adequacy (23.12.2022) [see below].
4. Letter from Ministries to economic associations on 23.12.2022 see here =>
5. Complaint mask at BAFA* activated in January
6. Update FAQ on 03.01.2023 and 27.02.2023*.
7. ...
8. ...
9. ...

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¹ On 10.02.2023; The Bundesrat rejected the motion for a resolution of the Free State of Bavaria to suspend the entry into force of the #Lieferkettensorgfaltspflichtengesetz (#LKSG) (BR-Drs. 657/22). This corresponds to the recommendation of the Committee on Labour, Integration and Social Policy, the Committee on the Environment, Nature Conservation and Nuclear Safety and the Committee on Economic Affairs (BR-Drs. 657/1/22).

* Since December 2021, the first more concrete guidance on the interpretation of the LKSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found on the BMAS website (in November 2021, 09.02.2022, 28.04.2022, 25.10.2022, 03.01.2023 and 27.02.2023) NEW SYNOPSIS 27.02.2023: https://www.taylorwessing.com/de/insights-and-events/insights/2022/05/synopse-faq-zum-lieferkettensorgfaltspflichtengesetz

*https://www.bafa.de/DE/Lieferketten/Beschwerde_einreichen/beschwerde_einreichen_node.html?jsessionid=B35A2B0AEO50FF7717F4EB446EFEF8F0.1_cid362
Relevant issues summarised (I)*

Scope and "hot" questions

1. **Group (ultimate) parent companies domiciled in Germany (including pure financial holding companies)** must have all employees of all subsidiary and sub-subsidiary companies working in Germany attributed to them (section 1(3)); they fall within the scope of the 2023 (or 2024) Act if this attribution results in 3,000 (or 1,000) employees or more (only few reduce application to companies with operative functions).

2. **There is no attribution to intermediate holding companies or intermediate parent companies**: if the ultimate parent company is located abroad, there is no attribution and the law only applies to companies in Germany that exceed the above-mentioned employee thresholds. Also, determining influence (the following points are to be considered in an overall view, e.g., a large majority shareholding, the existence of a group-wide compliance system, the assumption of responsibility for the control of core processes in the processes in the subsidiary, a corresponding legal constellation in which the possibility of exerting influence is inherent, overlapping personnel on management level, a decisive influence on the supply chain management of the subsidiary, influence via the shareholders’ meeting, or that the business area of the subsidiary is the same as that of the parent company, for example because the subsidiary produces the same products or provides the same services). can only be exercised by the ultimate parent company (disputed).

3. **Group parents domiciled in Germany who have a determining influence** (§ 2 para. 8) on daughters or grandchildren must, in addition to the mother’s, daughter’s and grandchild’s own business area, also audit all indirect and direct suppliers of these daughters and grandchildren (in Germany and abroad) (although the law would certainly allow for differentiations) [this seemed to be reconsidered by the BMAS, as in February 2022 the relevant no. IV. 8. had disappeared from the FAQ - but BAFA’s handouts (e.g.: risk analysis and also report) still provide for this].

4. Unclear what is **necessary** [erforderlich] in the supply chain (§ 2 para. 5) and what is **required** [notwendig] in terms of direct or indirect suppliers (§ 2 paras. 7 and 8).

5. The obligations apply to all direct and indirect purchases of goods and services and to all third party and own brands, although the law would certainly allow for differentiations and trade is not actually mentioned (§ 2 para. 7 and 8); moreover, there is a tendency to interpret the supply chain broadly, even though it is not actually mentioned in the relevant obligations (see the relevant 9 obligations on (1) Establishment of risk management (§ 4 para.1), (2). Establishment of an in-house responsibility (§ 4 para. 3), (3). Carrying out regular risk analyses (§ 5), policy statement (§ 6 para. 2), (5). Establishing preventive measures within the own business unit (§ 6 par. 1 and 3) and towards direct suppliers (§ 6 par. 4), (6). Taking corrective measures (§ 7 paras. 1 to 3), (7) Establishing a complaints procedure (§ 8), (9) Due diligence obligations with regard to risks at indirect suppliers (§ 9) and (9,) Documentation (§ 10 para. 1) and reporting (§ 10 para. 2). Nevertheless, BAFA believes that the occasion-related (ad hoc) risk analysis must go into the entire supply chain (§ 5 para. 4).

6. If **mothers and daughters** in Germany fall under the law, both must separately comply with the LkSG and file separate reports; however, they may assume certain functions for each other or coordinate (however, centralising compliance functions leads to determining influence and increases the scope of the company in question, as 3. above).

7. And others more > see route plan.

* Since December 2021, the first more concrete guidance on the interpretation of the LkSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found on the BMAS website (in November 2021, 09.02.2022, 28.04.2022, 25.10.2022, 03.01.2023 and 27.02.2023) NEW SYNOPSIS 27.02.2023: https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.

*See the current detailed route plan of Taylor Wessing...on the website https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.
Relevant issues summarised (II)*

Risk Management and Human Rights Officer (HRO)

1. Must be in place at the start in 2023 (2024)
2. Human rights officer is a recommendation, not an obligation - strategic and operational questions arise (1) Strategic advantages and disadvantages of centralised/decentralised HRO and number of HROs; (2) Strategic advantages and disadvantages of HRO in management function / outside management function and if so, where (compliance, legal, ESG, purchasing, etc.); (3) Strategic advantages and disadvantages of management with horizontal delegation and HRO with vertical delegation and active definition of residual responsibility; (4) Strategic advantages and disadvantages of HRO with monitoring or also with implementation tasks or specifications of analyses and measures (keyword neutrality and understanding as 1st or 2nd line); (5) Strategic advantages and disadvantages of HROs in the management function / outside the management function and if so where (compliance, legal, ESG, purchasing, etc.). (5) Strategic advantages and disadvantages of HRO as contact person for BAFA (would have to be named according to § 17 para. 2 LKSG); (6) Solution of possible conflicts of interest (e.g. if HRO is active in purchasing); (6) Strategic advantages and disadvantages of HRO as contact person for BAFA (would have to be named according to § 17 para. 2 LKSG), if HRO is active in purchasing; (7) Weighing up the delimitation of tasks HRO and steering committee; (8) Comparison of experiences from data protection, immission control, SGB, ASiG, WHG, KrWG in distinction to GWG, export control, 3TG; (9) Filter of risks escalated to HRO and further escalated by HRO in comparison to risks remaining at the operational level or with HRO; (10) Questions of works constitution law; (11) Labour law privileges and insurance environment.

3. Needs horizontal guideline (responsibility, structures, processes) and vertical procedure descriptions (operational procedures, measures, documentation).

4. Ideally, the report writes itself in parts "automatically" from the documentation and the process descriptions and guidelines.

*See the current detailed route plan of Taylor Wessing... on the website https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.
Relevant issues summarised (III)*

Risk analysis (annual & occasion-related (ad hoc) & appropriate)

1. The handout had a mixed reception (a lot of repetition, little that goes further in concrete terms, questionable legal opinions, etc.).

2. However, it probably needs 4 steps in its own business area and with the direct suppliers (See slides below):

3. Step 1: Overview

4. Guidance on adequacy (appropriateness) is still awaited; consists of (1.) the nature and extent of the company's business activities, (2.) the company's ability to influence the direct perpetrator of a human rights or environmental risk or the violation of a human rights or environmental obligation, (3.) the typical expected severity of the violation, the reversibility of the violation and the likelihood of the violation of a human rights or environmental obligation, and (4) the nature of the company's contribution to the causation of the human rights or environmental risk or violation of a human rights or environmental obligation.

5. ...

*See the current detailed route plan of Taylor Wessing... on the website https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.
Relevant issues summarised (IV)*

Adequacy

1. The concept of adequacy (reasonableness) is central, it is used 19 times in the Act (section 2 subsection 2 no. 8 on reasonable wages and duties of care, partly several times in the paragraph, in section 3 subsection. 1, § 3 para. 2, § 4 para. 1, § 4 para. 4, § 5 para. 1, § 5 para. 2, § 6 para. 1, § 6 para. 3, § 6 para. 4, § 7 para. 1, § 8 para. 1, § 9 para. 3, § 13 para. 2, § 22 para. 1)*.

2. BAFA also generally links it to effectiveness (probably because of § 4 par. 1 on risk management), although the pairing of terms only occurs twice in § 4 - otherwise the word "effective" is found 5 times (§ 6 par. 5, § 7 par. 4, § 8 par. 4 and 5, § 10 par. 2 no. 3).

3. Adequacy in analysis also in obtaining the information ("communicating tubes") = where more influence, causation, severity, type and scope, there also more care in obtaining the information for analysis

4. Adequacy in all 9 duties....

5. ...

In part, reference is made (as in § 5 para. 1) to an appropriate risk analysis according to paras. 2 to 4 and in the referred para. 2 it is pointed out again that the weighting and prioritisation must be appropriate, whereby § 3 para. 1 already refers to an appropriate risk analysis in sentence 2 and sentence 2 no. 3, so that this is subject to a quasi threefold postulate of appropriateness. The legislator has distributed the word quite generously in the text.

*See the current detailed route plan of Taylor Wessing...on the website https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.
Relevant issues summarised (V)*

Preventive measures (immediate & appropriate)

1. **Policy statement** may already make sense at the beginning of 2023
2. **Measures** are well indicated in the questionnaire accompanying the report, ... both in their own business area, as well as

**B 2.2 What preventive measures were implemented in the reporting period to prevent and minimise the priority risks in your own business area?**

171. conducting training in relevant business areas
172. implementation of risk-based control measures
173 Other/further measures

... vis-à-vis **direct suppliers**

...and towards **indirect suppliers**

What prevention measures were implemented for the reporting period to prevent and minimise the priority risks at **indirect suppliers**?

229. developing and implementing appropriate procurement strategies and practices.
230. implementation of risk-based control measures
231. supporting the supplier in preventing and minimising the risk
232. implementation of sectoral or cross-sectoral initiatives

What prevention measures were implemented in the reporting period to prevent and minimise the priority risks at **direct suppliers**?

197. developing and implementing appropriate procurement strategies and practices.
198. integration of expectations in supplier selection
199. obtain contractual assurances for compliance and implementation of expectations along the supply chain.
200. training and further education to enforce the contractual assurance.
201. agreeing and implementing risk-based control measures
> If the answer 197. has been selected, describe
205. The measures implemented and to what extent the determination of delivery times, of purchase prices or the duration of contractual relationships have been adjusted.
206. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.
207. the extent to which the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
> If at least one of the answers from 198. to 202. was selected, describe in each case
208. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
209. How the measures contribute to the prevention and minimisation of the priority risks.
210. To what extent the interests of potential stakeholders and/or their legitimate representatives have been taken into account in the design and implementation of the measures.

*See the current detailed route plan of Taylor Wessing…on the website https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.
**Relevant issues summarised (VI)**

Remedial action (immediate & appropriate) = prevent, stop, minimise immediately or for a specific period of time with a specific plan.

1. Measures are well indicated in the questionnaire accompanying the report,

... both in their **own business area**, as well as

.... vis-à-vis direct suppliers

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**Findings of violations and corrective actions at direct suppliers**

C1. Were any violations detected at direct suppliers during the reporting period? (optional procedures)

- Yes.
- No.

297. What procedures can be used to identify violations at direct suppliers?

- > If yes, describe.

298. What procedures can be used to identify violations at direct suppliers during reporting period?

- > If yes, describe.

299. For how many suppliers has remedial action been taken?

- > If you are selected, describe the appropriate remedial action you have taken and also describe

300. What remedial actions have been taken, in particular what trade-offs have been made with regard to the selection and design of the measures in the context of the relevant follow-up approaches to cessation or further minimisation?

301. What effectiveness of the measures was reviewed?

302. To what extent the interests of potentially affected persons and/or their legitimate representatives have been affected

303. to what extent are violations identified in your own business area? You can voluntarily indicate the number of violations per topic. [M1-U3]

304. If one of the answers from 261. to 263. was selected, have you taken remedial action?

305. Yes.

306. No.

307. give reasons for your answer

308. If you are selected, describe the appropriate remedial action you have taken and also describe

309. What processes, outcomes, and/or effects are the measures intended to achieve?

310. What effects can be expected from the implementation of the measures?

311. To what extent the interests of potentially affected persons and/or their legitimate representatives have been affected

312. To what extent the interests of potentially affected persons and/or their legitimate representatives have been affected

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**Findings of violations and corrective actions at indirect suppliers**

C2. Were any violations detected at indirect suppliers during the reporting period? (opportunities for the BAFA)

- Yes.
- No.

313. What procedures can be used to detect violations in indirect suppliers?

- > If yes, describe.

314. What procedures can be used to detect violations in indirect suppliers?

- > If yes, describe.

315. On what basis the violations identified were weighted and prioritized and what trade-offs were made in doing so.

316. What remedial actions, if any, have been taken and, in particular, what trade-offs have been made with regard to the selection and design of measures under the relevant cessation and minimisation approaches

317. To what extent the interests of potentially affected persons and/or their legitimate representatives have been affected

318. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

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**... and towards indirect suppliers**

319. Have you reviewed the termination at this period?

- Yes.
- No.

320. Please indicate the number of violations detected at direct suppliers during reporting period?

- > If yes, describe.

321. To what extent the interests of potentially affected persons and/or their legitimate representatives have been affected

322. To what extent the interests of potentially affected persons and/or their legitimate representatives have been affected

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*See the current detailed route plan of Taylor Wessing... on the website https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.*
Relevant issues summarised (VII)*

Complaints procedure

1. Must be available as early as 2023 (2024)
2. The handout is very useful
3. Should give internal procedural instructions (who, what, how, where, impartiality, confidentiality, freedom from instructions, protection, etc.).
4. Needs external rules of procedure (who, what, how, where, how long, protection, etc.)
5. Needs certain procedural steps to set up and monitor and adapt and implement (communicating tubes to risks and stakeholders)
6. ...and should be barrier-free for all potentially affected persons as a target group (affected by economic actions of companies, direct suppliers, indirect suppliers).
7. ...

BAFA published a handout on the complaints procedure in October 2022: https://www.bafa.de/DE/Lieferketten/Beschwerdeverfahren/beschwerdeverfahren_node.html;jsessionid=118A6ED7C609585B093B5CA0EF6975702_cid387

*See the current detailed route plan of Taylor Wessing...on the website https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.
Relevant issues summarised (VIII)*

Indirect suppliers

1. ...as above with substantiated knowledge
2. ...strange location of the inclusion of the information on the indirect supplier (in § 9 instead of § 8)

*See the current detailed route plan of Taylor Wessing on the website https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.
Relevant issues summarised (IX) *

Documentation and report

1. **Documentation** ongoing
2. **Report** in the first quarter (plus 1 month) after the end of the financial year
3. Report to be submitted **electronically** to BAFA
4. Publish report on **website**
5. Questionnaire with **437 questions based** on the structure of the law (not on the "topic", e.g. this and that risk and these and those measures with these and those results,...).
6. ... "now" you know what's coming up in the exam
7. ...everyone will know what you did and what you didn't do...

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*BAFA submitted a questionnaire on the report in October 2022: [https://www.bafa.de/DE/Lieferketten/Berichtspflicht/berichtspflicht_node.html](https://www.bafa.de/DE/Lieferketten/Berichtspflicht/berichtspflicht_node.html)*

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*See the current detailed route plan of Taylor Wessing... on the website [https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act](https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act) or on request.*
Application for groups and holdings - in a nutshell:

According to the current interpretation of the law by BAFA and BMAS*:

1. Group (ultimate) parent companies domiciled in Germany (including pure financial holding companies) must have all employees of all subsidiary and sub-subsidiary companies working in Germany attributed to them; they fall within the scope of the 2023 (or 2024) Act if this attribution results in 3,000 (or 1,000) or more (only few reduce application to companies with operative functions).

2. There is no attribution to intermediate holding companies or intermediate parent companies; thus, if the parent company is located abroad, there is no attribution and the law only applies to companies in Germany that for themselves exceed the above-mentioned employee thresholds.

3. Group parents domiciled in Germany (also pure financial holding companies) that have a determining influence (the following points are to be considered in an overall view, e.g. a large majority shareholding, the existence of a group-wide compliance system, the assumption of responsibility for the control of core processes in the processes in the subsidiary, a corresponding legal constellation in which the possibility of exerting influence is inherent, overlapping personnel on management level, a decisive influence on the supply chain management of the subsidiary, influence via the shareholders’ meeting, or that the business area of the subsidiary of the subsidiary is the same as that of the parent company, for example because the subsidiary produces the same products or provides the same services) on „daughters or grandchildren“ must, in addition to the own business of the mother, daughter and grandchild, also examine all indirect and direct suppliers of these daughters and grandchildren (in Germany and abroad) (although the law would certainly allow for differentiations) [however, the BMAS seems to be reconsidering this, as in February 2022 the relevant item IV. 8. had disappeared from the FAQ - but BAFA’s handouts (e.g.: risk analysis and also report) still provide for this]. Unclear what is “necessary”[erforderlich] in the supply chain (§ 2 para. 5) and what is “required” [notwendig] in terms of direct or indirect suppliers (§ 2 paras. 7 and 8) and how relevant “supply chain” definition is. Also unclear if “trade” falls within the scope.

4. If mothers and daughters in Germany fall under the law, both must separately comply with the LkSG and file separate reports; however, they may assume certain functions for each other or coordinate (however, centralising compliance functions leads to determining influence and increases the scope of the company in question, as above 3.).

5. The obligations apply to all direct and indirect purchases of goods and services and to all third party and own brands, although the law would certainly allow for differentiation

> This needs to be discussed strategically and tactically....

* Since December 2021, the first more concrete guidance on the interpretation of the LkSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found on the BMAS website (in November 2021, 09.02.2022, 28.04.2022, 25.10.2022, 03.01.2023 and 27.02.2023) NEW SYNOPSIS 27.02.2023: https://www.taylorwessing.com/de/insights-and-events/insights/2022/05/synopse-faq-zum-lieferkettensorgtaltspflichtengesetz

*See the current detailed route plan of Taylor Wessing...on the website https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act or on request.
Scope of application and crucial legal questions

To be resolved:

- What Company?
- Employees in Germany?
- Ultimate Parent Company?
- Supply Chain?
- Necessary for Manufacture?
- Own Business Area?
- Determining Influence?
- Supply Chain?
- Direct Supplier?
- Required for Manufacture?
- Trade?
- Provision of and Use of relevant service?
- ...

§ 1

Scope of application

1. This Act shall apply to enterprises, irrespective of their legal form, which
   1. have their head office, their principal place of business, their administrative headquarters or their registered office in Germany and
   2. generally employ at least 3,000 employees in Germany; employees posted abroad are included.
   Notwithstanding sentence 1 number 1, this Act shall also apply to enterprises, irrespective of their legal form, which
   1. have a branch office in Germany pursuant to § 13d of the Commercial Code and
   2. usually employ at least 3,000 employees in Germany. As of 1 January 2024, thresholds in sentence 1 number 2 and sentence 2 number 2 shall each be 1,000 employees.

2. Temporary agency workers shall be taken into account in the calculation of the number of employees (subsection 1, sentence 1, number 2 and sentence 2, number 2) of the user enterprise if the duration of the assignment exceeds six months.

3. Within affiliated companies (§ 15 of the Stock Corporation Act), the employees of all group companies employed in Germany shall be taken into account when calculating the number of employees (subsection 1, sentence 1, number 2) of the umbrella company; employees posted abroad shall be included.

§ 2

(5) The supply chain within the meaning of this Act refers to all products and services of an enterprise. It includes all steps in the country and abroad that are necessary for the manufacture of the products and the provision of the services, starting with the extraction of the raw materials up to the delivery to the end customer and includes:

1. the actions of a company in its own business area,
2. the actions of a direct supplier, and
3. the actions of an indirect supplier.

(6) Own business within the meaning of this Act includes any activity of the entity of the enterprise to achieve the objective of the enterprise. This includes any activity for the manufacture and utilisation of products and for the provision of services, irrespective of whether it is carried out at a location in Germany or abroad. An affiliated enterprise, an enterprise belonging to the group is included in the own business area of the umbrella company if the umbrella company exercises a determining influence on the enterprise belonging to the group.

(7) For the purposes of this Act, a direct supplier is a partner to a contract for the supply of goods or the provision of services whose supplies are required for the manufacture of the enterprise's product or the provision and use of the relevant service.

(8) For the purposes of this Act, an indirect supplier means any enterprise which is not a direct supplier and whose supplies are required for the manufacture of the enterprise's products or for the provision and use of the relevant service.
Scope of application
Due diligence obligations according to SCDDA* at a glance

Human rights and environmental risks (§ 2)

Due diligence obligations (§ 3)

1. Risk management
2. Internally responsible Human Rights Officer
3. Risk analysis
4. Policy Statement
5. Prevention measures - own business area - direct suppliers
6. Remedies
7. Complaints procedure
8. Measures - indirect suppliers
9. Documentation, Report

Due diligence

"Protected legal position"

§ 2 para. 1 LkSG: concluding reference to internationally recognised conventions in the annex, there the first 11 of 14 conventions

Human rights risks

Sec. 2 (2) LkSG: reference to internationally recognised agreements, in particular ILO core labour standards, but also mere regulation in the LkSG

1. child labour below the minimum permitted age (at least 15 years), ILO 138 + national
2. worst forms of child labour for children under 18, ILO 182
3. forced labour, ILO 29 + 1966 Covenant
4. slavery, practices similar to slavery
5. disregard of occupational health and safety, national law
6. disregard for freedom of association (trade unions)
7. discrimination (descent, disability, age, gender, religion, et al)
8. withholding adequate wages, national law
9. causing harmful soil degradation, water and air pollution, harmful noise emissions and excessive water consumption
10. unlawful eviction as well as deprivation of land, forests, waters
11. use of security forces, if this results in harm to life, limb, freedom of association or union
12. catch-all clause, for unlawful serious impairment of protected position

Environmental risks

Section 2(3) of the LkSG: reference to internationally recognised agreements:

1, 2, 3: Mercury: Minamata Convention (risks from involvement in the production and disposal of mercury-containing products)
4: Chemicals: PoPs Convention (risks from the production or use of certain persistent organic pollutants)
5: Waste: PoPs Convention
6, 7, 8: Waste: Basel Convention (risks arising from the import and export of waste)
Appendix
Attachment
(to § 2 paragraph 1, § 7 paragraph 3 sentence 2) – Conventions (300 pages in total; Nos. 1 to 11 are 116 pages)

5. Convention No 100 of the International Labour Organisation of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (BGBl. 1956 II pp. 23, 24) (ILO Convention No 100)
The obligations (§§ 3 ff.) in detail

1. Risk Management
   - Risk management for all relevant business processes and reasonable measures, those that:
     - make it possible to identify human rights and environmental risks and prevent, terminate or minimize cause or contribute to violations of human rights (see § 2 paras. 2 and 3) or environmental risks (see § 2 paras. 3 and 4).

2. Human-Rights-Officer
   - Definition of internal responsibility with regular (at least annual) information of the management.

3. Risk analysis
   - Internal responsibility (§ 4 para. 3), definition of internal responsibility with regular risk analysis, the human rights and environmental risks with appropriate weighting and prioritisation (in accordance with § 13(2): on the basis of the nature and extent of the business activity, the capacity to influence, the typically expected severity of the breach, the irreversibility of the breach, the likelihood of the breach and the nature of the contribution to causation) as well as:
     - a) communication to decision makers (e.g. board of directors, purchasing department) plus annual and event-related analysis (e.g. new products, new projects, new business areas) with regard to:
       - the own business area
       - direct suppliers
       - indirect suppliers in the event of circumvention of contractual assurances (§ 6 para. 1, § 5 para. 1 and § 6 para. 3, 4, 5 as well as in §§ 7, 8, 9, 10), i.e. on:
         - risk management (§ 4 para. 1)
         - internal responsibility (§ 4 para. 3)
         - regular risk analyses (§ 6)
         - preventive measures (§ 6 paras. 3, 4, 5)
         - remedial measures (§ 7)
         - complaint management (§ 8)
         - due diligence obligations for indirect suppliers (§ 9)
         - documentation (§ 10)

4. Policy statement
   - § 6 para. 2: Policy statement on human rights strategy with procedural description (§ 6 para. 2) on obligations (in § 4 para. 1, § 5 para. 1 and § 6 para. 3, 4, 5 as well as in §§ 7, 8, 9, 10, i.e. on:
     - risk management (§ 4 para. 1)
     - internal responsibility (§ 4 para. 3)
     - regular risk analyses (§ 6)
     - preventive measures (§ 6 paras. 3, 4, 5)
     - remedial measures (§ 7)
     - complaint management (§ 8)
     - due diligence obligations for indirect suppliers (§ 9)
     - documentation (§ 10)

5. Prevention measures
   - Remedy-measures

6. Complaints procedure
   - § 8 Complaints procedure with textual rules of procedure (§ 8 para. 2) for activities in the own business area and those of direct suppliers and indirect suppliers (§ 9 para. 1) on the basis of:
     - knowledge with acknowledgement of receipt and discussion of the facts with whistleblowers and procedure with amicable settlement or external complaints procedure. Persons must be impartial (§ 8 (3)).

7. Measures indirect
   - § 10 Evaluation of the impact and effectiveness of the measures:
     - conclusion of the evaluation of the impact and effectiveness of the measures conclusions from the evaluation for future measures filing of report with BAFA (§ 12)

8. Documentaton, Report
   - § 11 Due diligence obligations for indirect suppliers with adaptation of the existing risk management (§ 9 para. 4) and in the event of indications of a possible violation at an indirect supplier:
     - a) risk analysis (§ 5 paras. 1 to 3)
     - adequate preventive measures
     - concept for the prevention, cessation or minimization of injuries
     - update policy statement.
The explanatory memorandum to the law refers in § 3 para. 1 to a further 1100 pages on the duties of care:

And: since December 2021, the first more concrete information on the interpretation of the LkSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found (without date, version name or author name, etc. - but with copyright notice) on the website:  https://www.csr-in-deutschland.de/DE/Wirtschaft-Menschenrechte/Gesetz-ueber-die-unternehmerischen-Sorgfaltspflichten-in-Lieferketten/FAQ/faq.html%3Bjsessionid%3D84DDC33F2F10B38A37AC092B9E6BF0CA#doc957658bodyText2

> The text of the FAQ changes in the background (first in February 2022 and then last time in April 2022)...See our synopsis [click] on this here.
You need people, processes and documents - rough overview

**People**
- Management
- Human Rights Commissioner
- Purchasing department
- Compliance Department
- Legal Department
- CSR Department

**Processes**
- Regular risk analysis
- Risk management
- Procurement strategy
- Technical business partner check
- Technical Supply Chain Traceability
- Approval process suppliers
- Purchasing Practice
- Preventive and corrective measures
- Complaints procedure
- Information Management
- Documentation
- Reporting
- Training concept

**Documents – content of toolbox**
- Policy Statement
- Code of Conduct
- Supplier Code
- Guideline sustainable procurement / supplier selection / review
- Approval process suppliers
- Questionnaire Suppliers / Compliance Questionnaire
- Corrective measure plan as remedial measure
- Checklist sustainable contract design
- Rules of procedure Appeal procedure
- Responsibility and measure plan risk management
- Training schedule
- Contracts with suppliers
- Documentation, continuous
Effective risk management for all relevant business processes with appropriate measures to identify + minimize risks; and stop and minimize violations when caused. In addition: Human Rights Officer

Risk analysis with appropriate weighting and prioritization
And - where risk is identified - prevention through policy statement, procurement, training and control measures.
As well as, if breach has occurred or is imminent, remedial measure for mandatory termination in own business area and regular termination abroad.

Risk analysis such as Own Business; and, if risk is identified, prevention through supplier selection, contractual assurances from the supplier regarding the supplier and its supply chain, training and education, and control measures. And - if breach has occurred or is imminent - remedial measure to terminate or plan to terminate or minimise, merger if appropriate, temporary suspension and termination of the business relationship.

If substantiated knowledge, event-related risk analysis such as own business area; and - if risk identified - prevention towards causer as well as control measures and merger and remediation concept as well as updating policy statement.
Interrelationships
What until when
What until when

See the plan below and individual topics below
<table>
<thead>
<tr>
<th>Section</th>
<th>Details</th>
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<tbody>
<tr>
<td>§ 4</td>
<td>Risk management</td>
</tr>
<tr>
<td>(1)</td>
<td>Businesses must establish adequate and effective risk management to comply with the due diligence obligations (§ 3 paragraph 1). Risk management shall be embedded in all relevant business processes through appropriate measures.</td>
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<tr>
<td>(2)</td>
<td>Effective measures are those that make it possible to identify and minimise human rights and environmental risks and to prevent, end or minimise the extent of violations of human rights or environmental obligations if the company has caused or contributed to these risks or violations within the supply chain.</td>
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<tr>
<td>(3)</td>
<td>The company shall ensure that it is determined who within the company is responsible for monitoring risk management, for example by appointing a human rights officer. The management shall regularly, at least once a year, inform itself about the work of the responsible person or persons.</td>
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<td>(4)</td>
<td>In establishing and implementing its risk management system, the enterprise shall give due consideration to the interests of its employees, employees within its supply chains and those who may otherwise be directly affected in a protected legal position by the economic activity of the enterprise or by the economic activity of an enterprise in its supply chains.</td>
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</table>

Implementation, e.g. through structures (corporate governance guidelines, responsibilities, internal instructions for action, responsibilities, etc = analogous or linked to existing compliance system) and processes and procedures; start of operations by January 2023.

This could be done, for example, by means of a horizontal management directive that defines objectives, reflects the contents of the law, contains basic specifications, describes the organisation, assigns individual implementation tasks and responsibilities in the own business unit and in direct and indirect purchasing, describes reporting lines, provides for review routines. In addition, vertical process descriptions for different areas (HR, EHS, purchasing, sales, etc.) could be provided and details on compliance with duties and responsibilities, reporting lines, etc. could be specified.

Should a human rights officer (HRO) be appointed (this is a recommendation of the law, not an obligation, so there is no time limit for this), the following strategic questions arise:

(1) Strategic advantages and disadvantages of centralised/decentralised HROs and number of HROs
(2) Strategic advantages and disadvantages of HRO in the management function / outside the Management function and if yes, where (Compliance, Legal, ESG, Purchasing, etc.)
(3) Strategic advantages and disadvantages of management with horizontal delegation and HRO with vertical delegation and active determination of the Residual responsibility
(4) Strategic advantages and disadvantages HRO with monitoring or also with implementation tasks or specifications of analyses and measures (keyword neutrality and understanding as 1st or 2nd line)
<table>
<thead>
<tr>
<th>(LKSG)</th>
<th>Mandatory</th>
<th>Details</th>
<th>2022</th>
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<td>(5)</td>
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<td>Strategic advantages and disadvantages HRO as contact person for BAFA (would have to be appointed according to § 17 para. 2 LKSG)</td>
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<td>Resolving possible conflicts of interest (e.g. if HRO is involved in purchasing)</td>
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<td>Weighing up the delimitation of tasks HRO and Steering Committee</td>
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<td>Comparison of experiences from data protection, immission control, SGB, ASiG, WHG, KrWG in distinction to GWG, export control, TIG</td>
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<td>Filter of risks escalated to and further escalated by the HRO compared to risks that remain at the operational level or with the HRO</td>
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<td>Questions of works constitution law</td>
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<td>Labour law privileges and insurance environment</td>
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§ 5 Risk analysis

In its own business area and with its Direct suppliers weighted and prioritised. In particular, according to the criterion of appropriateness:

Prepare

Will be carried out from 2023

1. the nature and extent of the company’s business,

2. the company’s ability to influence the direct perpetrator of a human rights or environment-related risk or the violation of a human rights-related or environment-related duty,

3. the typically expected severity of the violation, the reversibility of the violation and the likelihood of the violation of a human rights-related or an environment-related obligation, as well as

4. according to the nature of the company’s causal contribution to the human rights or environment-related risk or to the violation of a human rights-related or an environment-related risk.
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<td>Environmental duty.</td>
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<tr>
<td>§ 6</td>
<td>Prevention measures - Policy statement</td>
<td>The company must issue a policy statement on its human rights strategy. The company management must issue the policy statement. The policy statement must contain at least the following elements of a human rights strategy for the company: 1. A description of the procedure by which the enterprise fulfils its obligations under § 4(1), § 5(1), § 6(3) to (5), and §§ 7 to 10. 2. The priority human rights and environmental risks identified for the company on the basis of the risk analysis; and 3. The definition, based on the risk analysis, of the human rights and environmental expectations that the company has of its employees and suppliers in the supply chain.</td>
<td>Shall be published in a preliminary version, although LKSG and FAQ are not clear about the timing, as the content partly consists of the results of the risk analysis to be carried out in 2023. Such a preliminary statement could look as follows: Human Rights Strategy It seems advisable to address the human rights and environmental risks contained in the LKSG, i.e. to copy them (a summary in one’s own words seems unnecessarily difficult). A more extensive version of the declaration of principles including further goals (such as the Global Compact) is possible, but is not required by law, so that the question arises whether one is doing oneself a favour with an overobligatory declaration of principles. If one wanted to include more goals, then one could perhaps make two parts - for example Part I Code of Conduct and Part II Declaration of Principles on the Supply Chain Sourcing Obligations Act. Otherwise, there is a danger that the voluntary commitment goes further than the law requires. In this case, Part II could state that the human rights and environmental risks described in the law will be prevented in an appropriate manner and, if necessary, ended or minimised. Expectations Then it could be formulated that one has to be aware of the Employees and suppliers in the supply chain within the meaning of the Act are expected to support the company to the best of their ability to adequately prevent and, where appropriate, mitigate the human rights and environmental risks described in the Act.</td>
<td>Will be adapted from 2023</td>
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or minimise them; this applies in particular to the priority human rights and environmental risks. Workers and suppliers in the supply chain as defined by the law are expected to support the company in risk management, risk analysis, prevention and remediation measures and the grievance procedure; this applies to its own business and the supply chain.

Priority risks

"This is only possible in rudimentary form without the results of a risk analysis (which does not have to be carried out until 2023):

Our risk analysis is carried out in accordance with the law is carried out on an ongoing and ad hoc basis, this policy statement is reviewed and updated accordingly. The priority risks at the moment are that the company operates globally, i.e. has global supply chains, resulting in a high degree of complexity and diversity. In addition, the technologies involved in the business activity may be risky. From the global activities and the technologies therefore give rise to systemic risks, some of which are beyond our control. We will assess the risks, which in terms of severity, reversibility and likelihood have greater weight and over which we have influence or even a temptation contribution, prioritise. [Can you give examples?]

Procedure

We have a proven management system consisting of specifications for the management of the Group and the organisational units, a regulation management, a risk management, an internal control system and a compliance management system. In addition, there are relevant instructions. The requirements of the Supply Chain Duty of Care Act are woven into this in terms of personnel, processes and documentation. Annual and ad hoc audits are carried out in the own business unit and in the supply chain.
Risk analyses are carried out in accordance with the instructions and the regulations of the law that precede such instructions, and their results are appropriately weighted and prioritised. Based on the results of the risk analysis, the appropriately weighted and prioritised risks are assigned to preventive and remedial measures under the Act, the effectiveness of which is reviewed annually and on an ad hoc basis and updated as necessary. We also include indirect suppliers in the above-mentioned analyses and measures; in particular, if we have factual indications that a violation of a human rights-related or environmental duty at an indirect supplier appear possible (substantiated knowledge). We maintain a legally compliant Complaints procedure. We will document and report the fulfilment of due diligence obligations in accordance with the law.

[The law does not state that the policy statement must be published; but the explanatory memorandum to the law says it must be communicated to workers, the works council, immediate suppliers and the public. There will be many companies that put it on the website...]

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<th>§ 6</th>
<th>Prevention measures - Other</th>
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<td></td>
<td>• In own business unit e.g. implementation of human rights strategy, procurement strategy, purchasing practices, training, controls</td>
<td>Prepare</td>
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<td>• Towards direct suppliers, e.g. supplier selection process, assurances from suppliers, training/education/review of suppliers.</td>
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<td>• Towards indirect suppliers, e.g. control measures, assistance with the</td>
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<td>To be applied and reviewed from 2023</td>
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Prevention and avoidance, implementation of sector-specific or cross-sectoral initiatives, preparation and implementation of concepts for prevention, cessation or minimisation (corrective action plan).

- Other measures to implement the LKSG in relation to contracts are: A code of conduct with a compliance clause and a commitment to respect human rights and avoid environmental risks, as well as corresponding measures and the possibility for the supplier to make specifications in this regard; pass-on clauses; chain of custody obligations; obligation of the supplier to maintain a complaints procedure and also to make this known to stakeholders; regulations on the possibility of suspending cooperation; Regulations on the possibility of special termination; regulations on information, disclosure and audits; regulations on inspections; claims for compensation, claims for damages, contractual penalties; obligations of the supplier to cooperate, in particular with regard to training and further training, reports, naming of sub-suppliers, cooperation in remedial measures vis-à-vis the supplier and indirect suppliers, cooperation in industry initiatives, cooperation in a concept and a corrective action plan.

§ 7 Remedial action

Remedial measures include all measures that bring about a change or cessation or at least a minimisation of a risk (in the own business unit in Germany, this measure must be successful, in the own business unit of

Prepare measures that can then be initiated in the event of a violation

To be applied and reviewed from 2023

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<td>Prevention and avoidance, implementation of sector-specific or cross-sectoral initiatives, preparation and implementation of concepts for prevention, cessation or minimisation (corrective action plan). Other measures to implement the LKSG in relation to contracts are: A code of conduct with a compliance clause and a commitment to respect human rights and avoid environmental risks, as well as corresponding measures and the possibility for the supplier to make specifications in this regard; pass-on clauses; chain of custody obligations; obligation of the supplier to maintain a complaints procedure and also to make this known to stakeholders; regulations on the possibility of suspending cooperation; Regulations on the possibility of special termination; regulations on information, disclosure and audits; regulations on inspections; claims for compensation, claims for damages, contractual penalties; obligations of the supplier to cooperate, in particular with regard to training and further training, reports, naming of sub-suppliers, cooperation in remedial measures vis-à-vis the supplier and indirect suppliers, cooperation in industry initiatives, cooperation in a concept and a corrective action plan.</td>
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<td>§ 7 Remedial action Remedial measures include all measures that bring about a change or cessation or at least a minimisation of a risk (in the own business unit in Germany, this measure must be successful, in the own business unit of</td>
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<td>Prepare measures that can then be initiated in the event of a violation</td>
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<td>To be applied and reviewed from 2023</td>
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<td>(LKSG)</td>
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<tr>
<td>§ 8</td>
<td>Complaints procedure</td>
<td>In accordance with the LKSG</td>
<td>Prepare and implement 01 January 2023</td>
<td>To be applied and reviewed from 2023</td>
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</tbody>
</table>
| § 9    | Indirect suppliers | Requirements for indirect suppliers:  
- Consideration of information in this regard (especially sound knowledge)  
- then the corresponding processes as for direct suppliers  
- in particular the risk analysis, the anchoring of appropriate preventive measures vis-à-vis the polluter, such as control measures, the Support in the prevention and avoidance of a risk or the implementation of sector-specific or cross-sector initiatives  
- In particular, create and implement concepts for prevention, cessation or minimisation  
- in particular the updating of the principle Explanation | Prepare that and how substantiated knowledge can arise and then, with substantiated knowledge about indirect suppliers, also the risk analysis, the preventive measures, etc. can be initiated. | To be applied |
| § 10   | Documentation, report | (1) The fulfilment of the due diligence obligations pursuant to § 3 shall be continuously documented within the company. The documentation shall be kept for at least seven years from its creation.  
(2) The enterprise shall prepare an annual report on the fulfilment of its due diligence obligations in the previous business year and make it publicly available free of charge on the enterprise’s website for a period of seven years no later than four months after the end of the business year. The report shall at least state in a comprehensible manner,  
1. whether, and if so, which human rights | Prepare that the structures and processes are created in such a way that a report can be produced on time in 2024 and documentation is also ready, ideally "at the push of a button". | Be prepared | Still to be published (report) |
<table>
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<tr>
<th>(LUKSG)</th>
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<td>and environment-related risks or violations of a human rights-related or environment-related duty the company has identified,</td>
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<td>2. what the company has done, with reference to the measures described in §§ 4 to 9, to fulfil its due diligence obligations; this also includes the elements of the policy statement pursuant to § 6 paragraph 2, as well as the measures the company has taken as a result of complaints pursuant to § 8 or pursuant to § 9 paragraph 1,</td>
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<td>3. how the company assesses the impact and effectiveness of the measures; and</td>
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<td>4. what conclusions it draws from the assessment for future action.</td>
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<td>(3) If the enterprise has not identified any human rights or environment-related risk and no violation of a human rights-related or environment-related obligation and has plausibly explained this in its report, no further explanations pursuant to paragraph 2 sentence 2 numbers 2 to 4 are required.</td>
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<td>(4) Due consideration shall be given to the protection of trade and business secrets.</td>
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To Do's large enterprises
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<tr>
<td>1</td>
<td>Risk management, § 4 Para. 1</td>
<td>Adaptation of risk management to points 2 to 9</td>
<td>3,000 employees</td>
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<tr>
<td>2</td>
<td>Human Rights Officer, § 4 Para. 3</td>
<td>Selection, designation, training, definition of reporting routine</td>
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<td>3</td>
<td>Risk analysis, § 5</td>
<td>Development of analysis criteria and procedures</td>
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<td>4</td>
<td>Policy Statement, § 6</td>
<td>Implement</td>
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<td>5</td>
<td>Prevention measures, § 6 par. 3, 4, 5</td>
<td>Design and publications</td>
<td></td>
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<tr>
<td>6</td>
<td>Remedial action, § 7</td>
<td>Collect, checking, adapting existing Documents and processes</td>
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<td>7</td>
<td>Complaints procedure, § 8</td>
<td>Collect, review, adapt existing documents and processes</td>
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<tr>
<td>8</td>
<td>Measures indirect Suppliers, § 9</td>
<td>Establish procedures and rules of procedure, adapt and roll out complaints procedure</td>
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<tr>
<td>9</td>
<td>Documentation, § 10</td>
<td>Derivation from points 5 and 6</td>
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Our Gap Analysis / Health Check

- Rough Overview
- Schedule and To Do's
- Reporting routine
- Implementation
- Publications
- Ongoing documentation
- Reports

- 1,000 employees
Gap Analysis – electronically and internetbased

Following details with prioritization
1. Starting point (a): § 6 par. 3, 4, 5 - develop preventive measures

2022 - To Dos (Preparations)

1. Collate and review current procurement strategy, purchasing practice, codes of conduct and contracts, terminate contracts in good time if necessary due to need for change.

2. Then:
   - **Measure 1**: Creation of a Code of Conduct that describes the applicable standards for employees
     - See Code of Conduct [Toolbox]
   - **Measure 2**: Creation of a Supplier Code of Conduct that explains the human rights expectations of (potential) contractual partners
     - See Supplier Code of Conduct [Toolbox]
   - **Measure 3**: Establishment of a sustainable procurement strategy and supplier selection
     - See Procurement Policy [Toolbox]
     - See release process suppliers [Toolbox]
     - See questionnaire suppliers [Toolbox]
     - See checklist sustainable contract design [Toolbox]
   - **Measure 4**: Definition of a strategy in the event of a breach of the Supplier Code of Conduct
     - See corrective measure plan [Toolbox]
   - **Measure 5**: Regular and ad hoc inspections of suppliers
     - See Supplier Verification Checklist [Toolbox]
   - **Measure 6**: Training of own employees, especially in purchasing, and of suppliers
     - See training plan [Toolbox]
   - **Measure 7**: Adoption in policy statement
     - See policy statement [Toolbox]

2023 - Goals + Implementation

**Objective**: Compliance with the Declaration of Principles

- Compliance with the measures developed
- Examination of the effectiveness of the measures 1x per year and on an ad hoc basis
- Updating of measures, if necessary
- Adjust contracts if necessary

2024...as 2023
<table>
<thead>
<tr>
<th>No.</th>
<th>§</th>
<th>Duties and tasks according to the law</th>
<th>Tasks concretely</th>
<th>Competences and interfaces</th>
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<th>Support Idea</th>
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<tr>
<td>5</td>
<td>6</td>
<td>Prevention measures</td>
<td>Comparison of existing / adaptation / creation of new:</td>
<td>- skilled in creating process descriptions and documents as well as contracts - knowledge of existing documents and processes - interfaces with procurement and compliance and the human rights officer</td>
<td>- Legal - Compliance - Supply Chain</td>
<td>- external support - support from core team</td>
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<td>- implementation policy statement</td>
<td>- supplier contracts</td>
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<td>- development and implementation of</td>
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<td>appropriate procurement strategies</td>
<td>- supplier codes of</td>
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<td>and practices (e.g. on delivery</td>
<td>conduct</td>
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<td>times, purchase prices, contract</td>
<td>- procurement strategy</td>
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<td>duration, etc.), incl. Internal</td>
<td>- supplier selection</td>
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<td>company conduct guidelines for</td>
<td>- release process</td>
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<td>procurement steps (a.o. product</td>
<td>- procedure for breaches of codes and processes</td>
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<td>developments, order placements,</td>
<td>- regular and ad hoc inspections of suppliers</td>
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<td>purchasing, production lead times)</td>
<td>- training of own employees in purchasing, with suppliers</td>
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<td>in order to prevent or minimise</td>
<td>- adoption in policy statement</td>
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<td>risks (§ 6 para. 3 no. 2) and</td>
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<td>- training concepts (§ 6 para. 3 no.</td>
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<td>day-to-day business and</td>
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<td>- control measures (§ 6 par. 3 no.</td>
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<td>4) and supplier evaluation</td>
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<td>- contracts with contractual</td>
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<td>assurances (§ 6 par. 4 no. 2),</td>
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<td>for contractual partners with the</td>
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<td>possibility of changing these</td>
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<td>contract) and pass-on clauses</td>
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<td>(supplier must pass on code to its</td>
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<td>possibly stipulation that the</td>
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<td>supplier may only purchase from</td>
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<td>certified regions or raw materials</td>
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<td>- contracts with appropriate</td>
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<td>control mechanisms, training and</td>
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<td>further education (§ 6 par. 4 no.</td>
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<td>3) - development of concepts for</td>
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<td>the review of control mechanisms,</td>
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<td>(§ 6 para. 4 no. 4) - development</td>
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<td>preventive measures (§ 6 par. 5)</td>
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</table>
Reflections on the Code of Conduct
The LkSG provides for a number of preventive and remedial measures, in particular a "contractual assurance by a direct supplier that it will comply with the human rights and environmental expectations required by the company's management and address them appropriately along the supply chain" (§ 6 para. 4 no. 2 LkSG).

One will perhaps still need information from the supplier and will have to rely on cooperation. Supplier Codes of Conduct have for long been part of the modern contractual set-up.

> But what do you "really need"?
> What is the harm if it is "invalid" (how much effort is to be made with whom)?
> What is the harm if the supplier (who) objects / does not agree / does not get in touch?
> How "accurate" do you have to be?
> **Once you have answered this for yourself, you can decide how to proceed - here are a few thoughts...**
B 2.2 Which preventive measures were implemented in the reporting period to prevent and minimise the priority risks in your own business area?

171. Conducting training in relevant business areas.
172. Implementation of risk-based control measures.
173. Other/other measures.

> If at least one of the answers from 171. to 173. was selected, describe in each case.

176. The measures implemented and specify in particular the scope (e.g. number, coverage, scope).
177. How the measures contribute to the prevention and minimisation of the priority risks.
178. To what extent the interests of potential stakeholders and/or their legitimate representatives have been taken into account in the design and implementation of the measures.

B 2.3 Was a process for testing effectiveness defined and implemented for the measures (training, risk-based control measures and other measures)?

181. If Yes, describe the process(es) for testing the effectiveness of the measures.

B 3.2 Which prevention measures were implemented in the reporting period to prevent and minimise the priority risks at direct suppliers?

197. Developing and implementing appropriate procurement strategies and practices.
198. Integration of expectations in supplier selection.
199. Obtain contractual assurances for compliance and implementation of expectations along the supply chain.
200. Training and further education to enforce the contractual assurance.
201. Agreeing and implementing risk-based control measures.

> If the answer 197. has been selected, describe.

205. The measures implemented and to what extent the determination of delivery times, of purchase prices or the duration of contractual relationships have been adjusted.
206. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.
207. The extent to which the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

B 4.2 Which prevention measures were implemented for the reporting period to prevent and minimise the priority risks at indirect suppliers?

229. Developing and implementing appropriate procurement strategies and practices.
231. Supporting the supplier in preventing and minimising the risk.
232. Implementation of sectoral or cross-sectoral initiatives.

> If the answer 229. has been selected, describe.

236. The measures implemented.
237. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.

238. To what extent the interests of potential stakeholders and/or their legitimate representations have been taken into account in the design and implementation of the measures.

> If at least one of the answers 230. to 231. was selected, describe in each case.

239. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).

240. To what extent adjustments in dealing with suppliers should contribute to the prevention and minimisation of the priority risks.

241. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

> If at least one of the answers 232. to 233. was selected, describe in each case.

242. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).

243. To what extent other/further measures should contribute to the prevention and minimisation of the priority risks.

244. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

B 4.3 Was a process for reviewing effectiveness defined and implemented for the measures (procurement practices, purchasing strategy and other measures)?

247. Developing and implementing appropriate procurement strategies and practices.
248. Support of the supplier in preventing and minimising the risk.
249. Implementation of sectoral or cross-sectoral initiatives.

> If the answer 247. has been selected, describe.

252. The measures implemented.
253. To what extent the measures contribute to the prevention and minimisation of the priority risks.

BAFA's questionnaire on the report pursuant to § 10 para. 2 LkSG
C1.1 Were there any violations in your own business area during the reporting period?
261. yes, only domestically
262. yes, only abroad
263. yes, at home and abroad
264. no,
> If no, describe
265. What procedures can be used to identify violations in its own business area?
> If yes, describe
266. Which procedures can be used to identify violations in its own business area?
267. Your company’s approach to ensuring that remedial action can be taken in the event of breaches and that their implementation is effective.
268. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
> If yes, in which topics were violations identified per topic.
[C1-3U]
> If one of the answers from 261. to 263. was selected, have you taken appropriate remedial action?
282. yes 283. no
> If no was selected
284. give reasons for your answer
> If Yes was selected, describe the appropriate remedial action you have taken.
285. The cases in which violations could not be terminated and where they occurred.
286. What long-term remedial actions have been taken, in particular what trade-offs have been made with respect to the selection and design of the measures in the context of the relevant follow-up approaches to cessation or minimisation.
287. How the effectiveness of the measures is reviewed.
288. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
> If 282. yes was selected, did the remedial action result in the cessation of the violation?
293. yes 294. no
> If no was selected
295. What procedures can be used to identify violations at direct suppliers?
> If yes, describe
296. What procedures can be used to identify violations at direct suppliers?
297. On what basis the violations identified were weighted and prioritised and what trade-offs were made in doing so.
298. Your organisation’s approach to ensuring that remedial action can be taken in the event of breaches and that implementation and outcomes are effective.
299. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
> If yes, in which topics were violations identified at direct suppliers? You can voluntarily indicate the number of violations per topic.
[C1-3U]
> If 293. yes was selected, have you taken appropriate remedial action?
313. yes 314. no
> If No was selected
315. give reasons for your answer
> If Yes is selected, describe the appropriate remedial action you have taken.
316. What remedial actions have been taken, in particular what trade-offs have been made with regard to the selection and design of the measures in the context of the relevant follow-up concepts for cessation and minimisation.
317. how the effectiveness of the measures will be reviewed.
318. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
>C2.3 Were there any breaches at direct suppliers for the reporting period that could not be terminated within a foreseeable period of time? 
321. no
> If yes, describe
322. describe the process, outcomes and consequences.
C2.3 Were there any breaches at direct suppliers for the reporting period that could not be terminated within a foreseeable period of time?
321. no
> If yes, describe
322. describe the process, outcomes and consequences.
323. number of terminations of business relationships due to serious violations that could not be terminated (optional: explanation)
324. yes 325. no
> If no was selected
326. temporary suspension of business relations
327. what remedial actions, if any, have been taken and, in particular what trade-offs have been made with respect to the selection and design of the measures under the relevant cessation and minimisation approaches.
328. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
> If Yes was selected, in which topics were violations detected at direct suppliers?
You can voluntarily indicate the number of violations per topic.
[C1-3U]
Contracts...as preventive measures

Preventive measures are (§ 6 LkSG and reasoning opf the law and literature):

In own business area e.g. implementation of human rights strategy, procurement strategy, purchasing practices, training, controls

Towards direct suppliers, e.g. supplier selection process, assurances from suppliers, training/education/review of suppliers.

Towards indirect suppliers, e.g. control measures, support in prevention and avoidance, implementation of sector-specific or cross-sector initiatives, creation and implementation of concepts for prevention, termination or minimisation (corrective action plan).

Further measures to implement the SCDDA in relation to contracts are: a code of conduct and a supplier code of conduct (specifications, chain of custody, etc.) with a compliance clause and a commitment to respect human rights and avoid environmental risks, as well as corresponding measures and the possibility for the supplier to make specifications in this regard) with a compliance clause and the obligation to observe human rights and to avoid environmental risks as well as corresponding measures and the possibility for the supplier to make specifications in this regard which can also be changed; passing-on clauses; obligation of the supplier to maintain a complaints procedure and to also make this known to the stakeholders; regulations on the possibility of suspending cooperation; regulations on the possibility of special termination; Provisions on information, disclosure and audits; provisions on inspections; claims for compensation, damages, indemnification, contractual penalties; obligations of the supplier to cooperate, in particular with regard to training and further education, reports, naming of sub-suppliers, cooperation in remedial measures vis-à-vis the supplier as well as indirect suppliers, cooperation in industry initiatives, cooperation in a concept and a corrective action plan.

> What do you need from it?
Supplier Code of Conduct

Reflections:

• Add to existing codes or use own LkSG/SCDDA codes?
• LkSG/SCDDA draft text on risks yourself or copy or refer?
• In which parts of the supplier's group (POS or everywhere)?
• To what depth in the supplier’s supply chain?
• Focus on self-responsibility or a lot of specifications to suppliers?
• Setting targets or taking action?
• What do I want to/can I track and how (abstract goals / concrete measures)?
• What does the law require of me and what must I require of the supplier (prevention, remedy, reasonableness, effort)?
• Duties versus incentives?
• What do you want to know (unnecessary "substantiated knowledge")?
• How and where to agree (GTC, orders, contracts, etc.)?

> What do you need from it ?

The Ten Principles of the United Nations Global Compact are derived from: the Universal Declaration of Human Rights, the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.

Human Rights
Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2: make sure that they are not complicit in human rights abuses.

Labour
Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: the elimination of all forms of forced and compulsory labour;
Principle 5: the effective abolition of child labour; and

Environment
Principle 7: Businesses should support a precautionary approach to environmental challenges;
Principle 8: undertake initiatives to promote greater environmental responsibility; and
Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption
Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.
Pass-on clauses

Reflections ["Weitergabeklauseln"]:
• What is meant by this (keyword "address")?
• No discharge from one's own duties...!?  
• ...
• ...
• ...

> What do you need from it?
Information, audits, controls, certifications

Reflections:
• What information do you "need" yourself, when and to what depth?
• What do you believe in whom and how much and for how long?
• What do you let them show you?
• How "blind" may one be ("ascertain" / "could have ascertained")?
• Which part of a supplier is affected (only the POS or the whole group)?
• What to think about self-disclosure and what to think about self-disclosure databases?
• How do you deal with indices (and with which ones)?
• What information should the supplier obtain on his part?
• Do you want information (in the sense of "raw data") or results of analyses (possibly prioritised and weighted) from the supplier?
• Do you have to have up-to-date information all the time?
• What is the threshold for taking action, how concrete and reliable does the information have to be?
• When do you undertake audits and at whose expense?
• When and how do you carry out checks yourself and at whose expense?
• What certifications are required, at what intervals and at whose expense?

> What do you need from it?
Suspension and termination

Reflections:
- Prerequisites for suspension and termination (how do you actually imagine this)?
- Idle time obligation and costs
- Other consequences (last call, last order, purchase quantities, prices, takeover of stocks and/or raw materials, etc.)?
- Issuance of tools, know kow, IP, etc.
- Support with qualification of other suppliers or with procurement from upstream suppliers?
- Waiver of appeal, arbitral award, arbitration clause
- Restart possibilities -requirements, speed, costs
- Requalification
- ...>

> What do you need from it?

*brutal ideas: one switches suppliers off and on? BAFA wants to be able to order this - with all the consequences (no energy, no gas, no raw materials, no products, no services)?
Contractual penalties, guarantees, damages, indemnification

Reflections:
• Contractual penalties always difficult - is there actually any case law outside the construction contract?
• Fault principle in GTCs cannot be circumvented - even if guarantees would be desirable?
• Agree exemption as a foreign body in German law?
• Is there a *vice versa*?
• ...

> What do you need from it?
Participation

Reflections:
• Information about relevant circumstances and findings - on demand or automatically?
• "Toleration" of audits, controls, certifications
• "Toleration" of the other regulations above?
• Cooperation on corrective action plan?
• Participation in industry initiatives, associations, etc.
• ...
• ...
• ...
> What do you need from it?
The GTC [AGB] topic

Reflections:
• Inclusion as the biggest hurdle?
• Transparency requirement?
• Surprising?
• Content control according to catalogue?
• Adequacy against the background of the LkSG/SCDDA?
• ...
• ...
• ...
• ...
• ...

> Who cares?
<table>
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<tr>
<th>#</th>
<th>Medium</th>
<th>Inclusion problems</th>
<th>Country specifics</th>
<th>Content problems</th>
<th>Practical</th>
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<tbody>
<tr>
<td>1</td>
<td>AGB</td>
<td>Reference (to website or similar)</td>
<td>- German: national other than international (mitschicken) - Other law: Anything goes</td>
<td>If too short, then possibly indefinite and possibly unreasonable if one does not regulate the occasion and extent. If not too short and vague, then perhaps inappropriate if one does not regulate occasion and extent.</td>
<td>- Why German law? - What do I really need? - Can the LkSG ensure reasonableness in § 307 BGB? - What harm is there if it doesn't? - What does effort mean? - What is adequacy in the sense of the LkSG?</td>
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<td>2</td>
<td>AGB</td>
<td>Reference to business paper (order, order confirmation, delivery note, etc.).</td>
<td>- German: national other than international (mitschicken) - Other law: Anything goes</td>
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<td>3</td>
<td>AGB</td>
<td>Conflicting GTC, &quot;battle of forms&quot; (with defence clause or without)</td>
<td>Residual validity theory (&quot;knock out rule&quot;) [civil law] or theory of the last word (&quot;last shot doctrine&quot;) [common law].</td>
<td>See e.g. Max Bahr decision BGH 05.10.2015 - VIII ZR 16/05 or most recently ENI decision (LG München 20.05.2022 - 1 HKO 15370/20)</td>
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<td>4</td>
<td>Standard contract (without signature) =&gt; like GTC (especially inclusion problems)</td>
<td>as above</td>
<td>as above</td>
<td>as above</td>
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<tr>
<td>5</td>
<td>Standard contract (with signature) =&gt; like GTC (especially content problems)</td>
<td>None !?</td>
<td>as above</td>
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<td>6</td>
<td>Supplement + annex to standard contract =&gt; as above nos. 4 and 5</td>
<td>as above or None !?</td>
<td>as above</td>
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<td>7</td>
<td>Supplier portal [without click it does not go on] =&gt; as above point 5</td>
<td>None !?</td>
<td>as above</td>
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<td>8</td>
<td>Individual negotiation</td>
<td>+</td>
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<td>Fiction or reality?</td>
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Fair supply contracts

Reflections:
• What is it?
• ISO 20400 or CFRPP, sustainable procurement strategies (integration, reporting, equal partnership, production planning, fair payment terms, sustainable costing)?
• Prices, delivery times, quantities, advance planning, transparency?
• ...
• ...
• ...
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• ...
> What do you need from it?
Self-declaration

Reflections:
• Do you want to sign the client’s specifications 1:1?
• Who checks whether these are within the scope and feasible?
• Idea: "we have our own statement on the LkSG and we do not accept anything more".
• Content: "Small Package" (see below) or full compliance (but not as an obligation towards clients).
• Content: An interface regulation on what information is shared, when and how, and how to cooperate:
  "[Company] represents and warrants (this is an obligation, not a strict warranty) that it will comply with the human rights and environmental expectations required by the LkSG and adequately address them within its supply chain; [Company] will also support the Buyer in all its risk management, risk analysis, prevention, remediation and complaint handling activities in its own business and with its direct and indirect suppliers to the extent required (in particular to the extent required by law, the adequacy and effort requirements therein).
• [Company] shall, to the best of its ability, answer any questions that the Buyer may reasonably ask; [Company]’s trade secrets shall be protected and shall not be disclosed by [Company]. [Company] shall decide at its sole discretion what constitutes a trade secret (this applies in particular to intellectual property, know-how, designs, processes and methods, recipes, contents, materials, calculation components, countries of origin, regions, suppliers, customers, names, addresses, telephone numbers). [Company] shall inform the buyer about its own business and [Company]’s supply chain on a need-to-know basis against the background of reasonableness and legal obligation. In justified cases, [Company] shall grant the buyer auditing opportunities, whereby the subject, intensity, duration and frequency shall be agreed with [Company]. Subject to this provision, [COMPANY] may also only allow such audits in justified cases and generally only to third parties bound to neutrality and confidentiality. The [company] shall decide at its own discretion which certifications it shall seek, maintain and award.
• ...
> Special topic ?
Mutual recognition without obligation

Reflections:
• Customer has a code
• Supplier has a code
• Both work according to your codes and do not commit to each other ...
• ...for example "The contracting parties have each imposed their own codes of conduct (Annex 1 and 2). They are obliged to ensure by appropriate measures that their own code of conduct is observed within their mutual business relationship. They recognise their codes as equivalent and waive any contractual submission to the code of conduct of the other party."
• ...

> Special topic ?
...differentiation makes sense
[Space for graphics during the lecture].
2. Starting point (b): § 4 (3) - appointing human rights officer

2021

Monitor the legislative process

(§ 4 para. 3): Definition of internal responsibility with regular (at least annual) information of the management.

2022 - To Do (Preparations)

1. Follow up preparations on prevention (§ 6) and other steps with human rights officers.

2. Then:

   **Measure 1:** Create the position of "Human Rights Officer" or another person with primary responsibility who reports directly to the Management Board.

   Human rights officer or other person with primary responsibility, should be the main organiser and main contact with regard to risk management and due diligence.

   **Note:** The Supply Chain Act does not describe what expertise a person must have to be a Human Rights Officer. Ideally, it is a communicative personality with previous knowledge in the area of CSR / sustainability / human rights / supply chain law. Nevertheless, a lot of this will be regular "training on the job." If applicable, there are already people in the company who can take over the position.

   **Measure 2:** Train "human rights officers"

   **Note:** When creating a new position, care should be taken to ensure that the person is sufficiently informed/trained and involved in a timely manner to perform his/her duties. He/she should be in regular exchange with other involved departments (reporting routine) in order to avoid system errors and to minimize the risk "human".

2023 - Targets + implementation

**Objective:** The Supply Chain Act recommends the establishment of the position of human rights officers reporting directly to senior management.

**Measure:** Provide the necessary tools to ensure adequate monitoring of due diligence.

**Measure:** The management has to inform itself regularly, i.e. at least annually, as well as on an ad hoc basis, e.g. when new business areas or products are introduced, about the work of the responsible person or persons.

2024

...as 2023
### Duties and Tasks According to the Law

<table>
<thead>
<tr>
<th>No.</th>
<th>§</th>
<th>Duties and Tasks According to the Law</th>
<th>Tasks Concretely</th>
<th>Competences and Interfaces</th>
<th>Cast Idea</th>
<th>Support Idea</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>4</td>
<td>Human Rights Officer(s)</td>
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</tbody>
</table>

- Monitoring of risk management with regular (min. annual) information of the management on measures to identify and minimise human rights and environmental risks and to prevent, end or minimise the extent of violations of human rights or environmental obligations if the company has caused or contributed to these risks or violations within the supply chain.

- Monitoring of measures no. 1 to 9
- Support or lead for measures no. 1 to 9
- Initiation of new, further, repeated measures
- Reports to the management
- Knowledge organisation in the sense of attribution, demand, forwarding, storage
- Assumption of responsibility risks, if necessary
- Communicate with the authorities if necessary

- Proximity to the management
- Connection to Legal, HR, environment, procurement, sustainability, compliance (the representative cannot know, assess and implement everything alone)

- One or more persons in each company within the scope of the LkSG (not central, not “pulling up”)
- Understanding of the LkSG and knowledge of the company organisation helpful
- High communication and, if necessary, communication skills assertiveness in the company
- Tactically consider whether with leadership power equipped or not

- External support
- Support by the respective persons responsible for measures no. 1 to 9
- Support from management
What does the literature and BAFA say?

- § Section 9 (2) sentence 1 no. 2 OWiG presupposes (i) explicit assignment by the owner of the establishment or enterprise (section 9 (2) sentence 2 OWiG), (ii) task is incumbent on the owner of the establishment/enterprise, (iii) actual action on behalf of the owner of the establishment/enterprise, (iv) performance of the assigned task on one’s own responsibility.
- LkSG Duties of care are directed to the company as such according to § 3 para. 1 sentence 1 LkSG as well as § 4 et seq. LkSG to the company as such, i.e., responsibility is borne by the management due to the duty of loyalty. The management is liable for violations of the duties of care listed in the catalogue of fines in § 24 para. 1 LkSG pursuant to § 9 para. 1 no. 1, no. 2 OWiG (in conjunction with § 130 para. 1 OWiG), § 130 para. 1 OWiG in case of violation of the required supervisory duties) as a representative body or acting member of a body. Possible also fine against the company pursuant to section 30 subsection 1 in conjunction with section 9 subsection 1 OWiG. § Section 9 (1) OWiG.
- OWiG Liability of the MBA only possible as a „sum of money“ within the meaning of § 9 para. 2 sentence 1 no. 2 OWiG by assigning operational responsibility (if possible) for the implementation of due diligence. Pursuant to § 24 para. 2 LkSG, a fine of EUR 800,000 is possible for a natural person. The competent administrative authority within the meaning of the section 36 (1) no. 1 OWiG is BAFA.
- MBA usually responsible for monitoring risk management (cf. § 4 para. 3 sentence 1 LkSG) - otherwise there are risks of conflicts of interest. The inadequate performance of the MBA’s monitoring activities is not listed as an administrative offence in § 24 para. 1 LkSG, so that the MBA is not liable in this respect. § Section 24 para. 1 no. 1 LkSG is solely linked to the management's determination of “who within the company is responsible for monitoring risk management”.
- The situation is different if the MBA is to perform the tasks for the fulfilment of the due diligence obligations with the corresponding delegation of authority and action by the MBA on his own responsibility (the company representative must be able to act and act independently within the scope of his decision-making authority within the sphere of action of the client), i.e. he should be able to take those measures in fact and in law which are required for the performance of the tasks assigned to him and the associated obligations. Then:
  - o View 1 (literature) depending on the form pursuant to section 24 subsection 1 LkSG in conjunction with section 9 subsection 2 p. 1 no. 2 OWiG, § 9 para. 2 p. 1 no. 2 OWiG, provided that only a sufficient freedom of decision of the MBA within the scope of his assignment, because according to the government's explanatory memorandum, a separation between the MBA and the management is not intended, since the monitoring of the fulfilment of due diligence obligations can be anchored “for example in the executive board, in the compliance department or in purchasing.” In this respect, the MBA could act independently within the sphere of influence of the management and be responsible for due diligence obligations “on its behalf”.
  - o View 2 (Literature) Conceptually, the MBA cannot be relieved of the responsibility of fulfilling the due diligence obligations incumbent on the management. (MBA as operational self-monitoring body). The MBA is neither responsible for the establishment of risk management, nor does it designate the relieves normative task with regard to the obligation to establish it. It does not determine the responsibility for the operational implementation of risk management, but only its monitoring. Thus, a two-tier system is envisaged (operational tasks of the management vs. operational self-monitoring of the MBA). Without a contradictory conflict of interest with regard to his self-monitoring function, he cannot take over operational tasks of the management, i.e. he cannot act independently in the sphere of action of the principal as defined by section 9 (2) sentence 2 no. 1 OWiG. 

In line with this, define scope of possible delegation of authority, frying and accompanying tasks (training, advising management), involvement in due diligence with clarification of responsibility of management.

Consideration should also be given to employment contract protection (e.g. in the literature): “The managers bear - as usual - the comprehensive risk of a personal fine according to §§ 9 i.V.m. 24 para. 1 LkSG, or §§ 9 para. 1 no. 1 i.V.m. 130 para. 1 OWiG. The human rights commissioner himself bears no risk of a fine.”

1 Mitsch, Lieferkettengesetz und Ordnungswidrigkeitenrecht, NZWiSt 2021, 409, 410.
2 Cf. only Kloch, 16th ed. 2022, AktG § 93 AktStV marginal no. 10.  
3 Grabow/Hartwig, Tätigkeitsschutz bei Straftatbeständen und Ordnungswidrigkeiten im Arbeitsrecht, CB 2019, 151, 155.  
4 Harings/Jürgens/Thahammer, Die Rolle des Menschenrechtsbeauftragten im Lieferkettensorgfaltspflichtgesetz, CB 2022, 93, 96; Gehling/Ott/Baake, LkSG § 4 para. 52; Depping/Walden-Walden, LkSG, § 4 marginal no. 124.  
5 Rutloff/Wagner/Nahn-Freihoff, Der Menschenrechtsbeauftragte, CCC 2020, 20, 26; Häfeli, Der Menschenrechtsbeauftragte im Lieferkettensorgfaltspflichtgesetz - ein weiterer betrieblicher Beauftragter?, ARP 2021, 299, 300; Berg/Kramme-Kramme/Ponholzer, § 4 Rn. 22.  
6 Cf. OLG Düsseldorf, decision of 05.04.1982, ref.: S 5 Ss (OWi) 156/82; Beck/COK OWiG-Valutax, § 9 marginal no. 50.  
8 Grabosch-Engel/Schölkopf, Das neue Lieferkettensorgfaltspflichtgesetz, § 6 marginal no. 37.  
9 Bergl, BT-Drs. 19/28649, p. 43, referring to this Häfeli, Der Menschenrechtsbeauftragte im Lieferkettensorgfaltspflichtgesetz - ein weiterer betrieblicher Beauftragter?, ARP 2021, 299, 300.  
10 Harings/Jürgens/Thahammer, Die Rolle des Menschenrechtsbeauftragten im Lieferkettensorgfaltspflichtgesetz, CB 2022, 93, 95; Gehling/Ott/Baake, LkSG, § 4 Rn. 22; Depping/Walden-Walden, LkSG, § 4 marginal no. 124; Gehling/Ott-Baake, LkSG, § 4 marginal no. 52.  
12 Depping/Walden-Walden, LkSG, § 4 marginal no. 97.  
13 Cf. also the structure of the data protection commissioner, Art. 39 para. 1 lit. a. a DISGVO, and the inclusion control commissioner, Art. 54 para. 1 sentence 1 BImSchG.  
14 Harings/Jürgens/Thahammer, Die Rolle des Menschenrechtsbeauftragten im Lieferkettensorgfaltspflichtgesetz, CB 2022, 93, 95; Berg/Kramme-Kramme/Ponholzer, LkSG, § 4 Rn. 22; Depping/Walden-Walden, LkSG, § 4 marginal no. 124; Gehling/Ott-Baake, LkSG, § 4 marginal no. 52.  
15 Grabosch, Das neue Lieferkettensorgfaltspflichtgesetz, § 5 marginal no. 37.
Strategic, tactical, operational issues Legal effects OWiG and liability

(1) Strategic advantages and disadvantages of centralised/decentralised MBAs and number of MBAs
(2) Strategic advantages and disadvantages of MBA in the management function / outside the management function and if so, where (compliance, legal, ESG, purchasing, etc.)
(3) Strategic advantages and disadvantages of management with horizontal delegation and MBA with vertical delegation and active determination of residual responsibility
(4) Strategic advantages and disadvantages MBA with monitoring or also with implementation tasks or specifications of analyses and measures (keyword neutrality and understanding as 1st or 2nd line)
(5) Strategic advantages and disadvantages MBA as contact person for BAFA (would have to be appointed according to § 17 para. 2 LKSG)
(6) Resolving possible conflicts of interest (e.g. if MBA is involved in purchasing)
(7) Weighing up the delimitation of tasks MBA and Steering Committee
(8) Comparison of experiences from data protection, immission control, SGB, ASiG, WHG, KrWG in distinction to GWG, export control, 3TG
(9) Filler of risks escalated to and further escalated by the MBA compared to risks that remain at the operational level or with the MBA
(10) Questions of works constitution law
(11) Labour law privileges and insurance environment

Designation as liable commissioner or not

Intended: OWiG Addressee

Intended: Not OWiG Addressee
3. Then: § 5 - risk analysis

2022 - To Dos (Preparations)

1. Perform risk analysis
2. Preparations for prevention (§ 6) and remedial measure (§ 7)
3. Then: According to analysis preventive and remedial measures

2023 - Goals + Implementation

Objective: To identify risks in the company's own business area, in the business area of direct suppliers and - in the case of substantiated knowledge of possible infringements - also in the business area of indirect suppliers (Section 9 (3)).

Measure 1: Determine at least once a year and on an ad hoc basis (e.g. new products, new projects, new business areas) whether there is a risk that your own business activities or the business activities of your direct (or indirect, if you have substantiated knowledge) suppliers violate human rights or environmental obligations.

Inventory of all business activities and business relationships of your company, e.g. according to business areas, locations, products or countries of origin, e.g. on the basis of internationally recognised agreements, such as ILO core labour standards. Note: The risks for potentially affected parties are to be determined, not the risks for the company itself. First of all, use internal knowledge and existing mechanisms. In addition, a "supply chain law roundtable" makes sense here. Also access external knowledge, such as the "Infoportal Human Rights Due Diligence" of the German UN Global Compact or CSR Risk Checks online (e.g.: https://www.mvoriscochecker.nl/en). In addition: conduct supplier interviews (especially if the supplier might have superior knowledge or the risk originates from his sphere), conduct on-site inspections, seek discussions with (potentially affected) stakeholders, such as workers, trade unions, local residents. Also take into account findings from the processing of leads in the complaints procedure.

Measure 2: Weight (and prioritize - if you cannot address all identified risks at the same time) the identified risks according to (i) type and scope of business activity, (ii) company's ability to influence the direct cause, (iii) expected severity of the breach, (iv) reversibility of the breach, (v) likelihood of the breach occurring, (vi) type of causation contribution. Note: Prioritisation is also not about the company's interests, but the interests of the (potentially) affected parties.

Measure 3: Communicate the results of the risk analysis to the relevant decision-makers in the company, in particular management, legal department, compliance, purchasing, CSR department, human rights officer(s).
### Risk analysis

**No.** | § | Duties and tasks according to the law | Tasks concretely | Competences and interfaces | Cast idea | Support idea |
--- | --- | --- | --- | --- | --- | --- |
3 | 5 | Risk analysis | - Risk analysis of own business area - human rights 1 | -interfaces to all locations in the own business area  | HR | - external support  | -support from core team |
|  |  | Regular risk analysis, of human rights and environmental risks with -appropriate weighting and prioritisation (according to § 3 para. 2: on the basis of type and scope of business activity, capacity to influence, typically expected severity of the injury, irreversibility of the injury, likelihood of the breach and nature of the contribution to causation) as well as - communication to decision-makers (e.g. board of directors, purchasing department); plus annual and event-related analysis (e.g. new products, new projects, new business areas) with regard to - the own business area - immediate suppliers - indirect suppliers in the event of circumvention | -knowledge of the HR and occupational health and safety situation |  |  |  |
|  |  | - Risk analysis of own business area - environmental risks 2 | -interfaces to all locations in the own business area  | -knowledge of the environmental situation |  |  |
|  |  |  | -Supplier risk analysis | -knowledge of human rights and environmental risks of the LkSG  | procurement  | - Support from core team |
|  |  |  |  | -knowledge of the supplier situation  | -IT support to cope with the complexity certainly makes sense |  |

1. child labour below minimum age (min. 15 years), ILO 138 + national; 2. worst forms of child labour for children under 18, ILO 182; 3. forced labour, ILO 29 + Covenant 1966; 4. slavery, slave-like practices; 5. disregard for labour protection, national; 6. disregard for freedom of association (trade unions) 7. discrimination (descent, disability, age, gender, religion, preferences); 8. withholding of adequate wages, national; 9. causing harmful soil, water and air pollution, harmful noise emissions and excessive water consumption; 10. unlawful eviction as well as deprivation of land, forests, water bodies; 11. use of security forces if this results in impairment of life, limb, association or freedom of association; 12. catch-all clause, obviously unlawful serious impairment of legal position

2. 1, 2, 3: Mercury: Minamata Convention (risks from involvement in the production and disposal of mercury-containing products); 4: Chemicals: PoPs Convention (risks from the production or use of certain persistent organic pollutants); 5: Waste: Basel Convention (risks from import and export of waste).
3. Risk analysis - filter

Idea: 80/20

Business areas

Domestic / Foreign

Human Rights Risks

Environmental Risks

Protected rights positions

To Dos

Suppliers

Direct / Indirect ???

Countries

Areas

Details

To Dos
## Risk analysis of direct suppliers

### 2. risk identification

<table>
<thead>
<tr>
<th>Risk country</th>
<th>Risk area</th>
<th>Risk</th>
<th>Evaluation and prioritisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>+</td>
<td>+</td>
<td>+/−</td>
<td>High Priority</td>
</tr>
<tr>
<td>+</td>
<td>−</td>
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<td>Medium Priority</td>
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<td>Low Priority</td>
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<td>−</td>
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</table>

In addition, a risk can also arise with regard to an individual risk supplier, e.g., because this supplier has already attracted negative attention. The risk supplier then falls into the high or medium priority, so that it is necessary to consider which measures are to be taken.

### 3. evaluate and prioritize identified risks

<table>
<thead>
<tr>
<th>Own influence</th>
<th>Hazard potential</th>
<th>Own causation</th>
<th>Causation Supplier</th>
<th>Evaluation and prioritisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>+</td>
<td>+</td>
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<td>+/−</td>
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</table>

### 1. get an overview of procurement processes and direct suppliers

Usually many companies already have a good overview of their supply chains due to their SAP systems.

### 2. get specific info tools

Information on the specific supplier via specific info tools

### 3. evaluate and prioritize identified risks

- **High priority:** very likely that preventive and/or remedial measure needs to be taken (broadly, if necessary); deepening if further information is needed to take measure.
- **Medium priority:** likely to require preventive and/or remedial measure (less extensive if necessary); more in-depth if further information is needed to take measure.
- **Low priority:** likely to require preventive and/or remedial measure only on a case-by-case basis; regularly no need for in-depth analysis.

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1. The list of countries comes from the association amfori, is based on the Worldwide Governance Indicators of the World Bank and takes into account the political framework conditions in the countries.
2. Explanations of the individual areas also indicate which vulnerable groups of people are affected.

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What does the literature and BAFA say?

- **Spend** - interface Requirements for risk analysis in § 5 LkSG + requirements for adequacy in § 3 para. 2 LkSG.
- View 1 (theoretical literature) - Critical as the risks for potentially affected parties have to be determined and not the risks for the company itself. At best, a threshold based on the share of the supplier's sales turnover is possible, as there is probably no influence if the value is low. But typically, the ability to influence top 20/30 suppliers by business volume is greater than that of insignificant suppliers. In order to maintain proportionality, it may also be appropriate to limit the influence to individual production steps, depending on the order volume. In addition, strategic importance should be taken into account in the prioritisation process through purchasing volume, as well as the risk of human rights violations and their severity, the production methods, the products themselves and the question of whether a break-off of the business relationship could have a negative impact on labor and social standards. Consequential risks must nevertheless be prioritised, even if the business volume falls short of the purchasing volume of so-called key suppliers.
- View 2 (literature practical) - Possible to define a low de minimis threshold based on annual turnover until regulatory guidance and best practice emerges.
- View 3 - BAFA handout on risk analysis: relevant procurement structure includes the "order volume per procurement category in the last business year (percentage share of total volume)". Nevertheless, the severity of the violation may be determined by weighing and comparing various factors. To this end, the reversibility of the breach, these factors include the degree of impairment caused by the breach and the number of people affected by the breach. With regard to the number of people affected, the principle applies that the severity of the breach increases as the number of people affected increases.
- According to the FAQ of the BMAS, the following should apply: "In a second step, the risks are to be assessed and, if necessary, prioritised. On this basis, the company can decide which risks (and which supply relationship) it considers in depth and addresses first. Companies have a wide scope for action in this regard. The decisive factor is that the company can plausibly justify why a certain risk is addressed as a priority in accordance with the criteria of appropriateness laid down in § 3 para. 2 LkSG. One criterion, for example, is the severity of the identified risk in connection with a relevant causation contribution (e.g. large purchase volume of a certain raw material)."
- The most recent handout on adequacy (December 2022) states the following about spend (page 7): "In this context, it is not useful to determine how high the order volume is for this supplier in relation to the total order volume for all suppliers. This allows the conclusion to be drawn how important the supplier is for the company, but not how important the company is for the supplier and therefore how great its ability to influence is. The question of the ratio of the order volume to the (total) turnover of the supplier may be difficult to answer for many companies at the beginning. This is because the total turnover of the supplier is regularly unknown. Companies can try to work towards more transparency gradually step by step. It may also be possible to gauge the supplier's own importance from its willingness to cooperate in measures for improvement."

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2. Gehlig-Ot balk, LkSG, § 5 marginal no. 50.
3. Fritz / Klaedtke, Lieferketten im Vergabeverfahren - Sofortige und zukünftige Änderungen durch das Lieferkettensorgfaltspflichtengesetz, NZBau 2022, 131 (135).
5. Schork-Schneer, Die angemessene Risikoanalyse gemäß § 5 LkSG, Cla 2002, p. 334 (336) with reference to Brouwer, Noch viele offene Rechts- und Auslegungsfragen zum Lieferkettensorgfaltspflichtengesetz - Hinweise zum VCH-Diskussionspapier zur Umsetzung des LkSG, CCZ 2022, 137, 143, who believes that the volume could at best be related to the sales of the supplier in order to understand the possibilities of influence.
7. BAFA published a handout on risk analysis in Augustus 2022: https://www.bafa.de/DE/Lieferkettensorgfaltspflichtengesetz/risikoanalyse_node.html
8. Gehlig-Ot balk: LkSG, § 3 marginal no. 98 with reference to the government’s explanatory memorandum. Furthermore, this can be found in the UNHCR Guiding Principles Interpretable Guide, p.8
9. Gehlig-Ot balk: LkSG, § 3 marginal no. 102.
10. There (FAQ BMAS) No. XIII.2. Since December 2021, the first more concrete information on the interpretation of the LkSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found on the BMAS website (in November 2021, 09.02.2022, 28.04.2022 and 25.10.2022): https://www.csr-in-deutschland.de/DE/Wirtschaft-Menschenrechte/Gesetz-ueber-die-unternehmenslichen-Sorgfaltspflichten-in- supply-chains-FAQ.faq.html - The text of the FAQ changes in the background (penultimate time in February 2022 and last time in April 2022 and then in October 2022 and January 2023)! See our synopsis [click] on this here. There is also a new synopsis for the version of 25.10.2022: https://www.taylowsensing.com/de/insights-and-events/insights/2022/05/insights-FAQ-zum-lieferkettensorgfaltspflichtengeset.
11. See also Deeping Walden-Walden, LkSG, § 5 marginal no. 79 - incidentally, the "spent" is not discussed further in the commentary.
12. See the BAFA handout on adequacy https://www.bafa.de/SharedDocs/Drucks/_loads/DE/Lieferkettensorganahandreichung_angemessenheit.pdf?ssessionid=527672C2D68155A5EBB0E046C33D02E2_cid90?blob=publicationFile&v=3
13. See also the BMAS, Praktische Hinweise und Maßnahmen zur Umsetzung des Lieferkettensorgfaltspflichtengesetzes im Unternehmen, DB 2021 p. 3078 (3080) fn. 23.
14. See also the BMAS, Praktische Hinweise und Maßnahmen zur Umsetzung des Lieferkettensorgfaltspflichtengesetzes im Unternehmen, DB 2021 p. 3078 (3080) fn. 23.
Spend

Practical approach

- Reduce spend over time (BAFA: "at the beginning" and "gradually")
- Select starting points at different levels according to criticality
- Incorporating knowledge and experience

Starting point: Indirect purchasing = perhaps not "necessary" or even "required".

Starting point: Direct purchase = perhaps not "necessary" or even "required".

Starting point: High-risk sectors

Starting point: Critical regions

Starting point: High-risk sectors in critical regions

Starting points also to be varied in the case of concrete findings / experiences

Major supplier

Small supplier

Time
Our guide to risk analysis

Praktischer Leitfaden
für die Risikoanalyse nach § 5 Lieferktonsergatungspflichtengesetz

A. EINLEITUNG

Ab dem 01.01.2023 sind Unternehmen mit Glass im Inland, die in der Regel mehrere tausend Arbeitsstunden durchführen, von der in § 5 Lieferktonsergatungspflichtengesetz (L Leverk) geregelten werkverwandten und umgebungsbezogenen Säug- ningspflichten in ihren Aktionären zu berichten.


Der Leitfaden soll dazu beitragen, dass Unternehmen die Gefährdung durch Bruch und Erosion von Glas eingehend analysieren und geeignete Maßnahmen zur Prävention und Abwehr dieser Gefährdung ergreifen.

Der Leitfaden sollte den Leser eine Vorstellung geben, was er tun muss, wenn er ein Glasprodukt produziert oder handelt. Er sollte ihm auch helfen, die Gefährdung durch Bruch und Erosion von Glas zu verhindern.

Der Leitfaden enthält Empfehlungen für die Erstellung eines „Leitfadens“ und gibt eine Übersicht über die wichtigsten Punkte, die bei der Erstellung eines „Leitfadens“ zu beachten sind.

B. EINLEITUNG

1. Definition

2. Risikobeurteilung

3. Maßnahmen

4. Überwachung

5. Dokumentation

C. KONZEPT

1. Allgemeine Betriebssicherheit

2. Sicherheitstechnische Maßnahmen

3. Personenschutzmöglichkeiten

D. ÜBERSICHT

1. Verantwortliche Stelle

2. Zentrale Stelle

3. Arbeitsgeräte

4. Arbeitssicherheit

5. Gegenmaßnahmen

E. CONCLUSIONS

1. Summary

2. Conclusion

3. Acknowledgments

https://www.taylorwessing.com
-/media/taylorwessing/files/germany/2022/03/leitfaden-risikoanalyse_taylorwessing.pdf

Praktische Leitfaden
für die Risikoanalyse nach § 5 Lieferktonsergatungspflichtengesetz

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3. Acknowledgments

https://www.taylorwessing.com
-/media/taylorwessing/files/germany/2022/03/leitfaden-risikoanalyse_taylorwessing.pdf
The English translation of the Guideline is different than the German (less Footnotes, etc....!?)
§ 2 para. 6 extends the own business area and does not extend to the supply chain of group companies

§ Sections 2(7) and (8) do not provide for the delivery of goods, but only for the provision of services; "downstream", therefore, the goods logistics provider is not a supplier (at most the service logistics provider).

6 Delivery to end customers is covered by the ‘LkSG’. Where a company subcontracts delivery to a third-party service provider, this supplier is considered part of the supply chain pursuant to Section 2(5) ‘LkSG’. Where a company subject to the ‘LkSG’ assumes responsibility for the distribution and/or delivery to end customers, then it is considered part of its own operations. See BAFA Q&A, no. IV.11.

Synopsis FAQ on the LkSG: https://www.taylorwessing.com/de/insights-and-events/insights/2022/05/synopse-faq-zum-lieferkettensorgfaltspflichtengesetz

(5) The supply chain within the meaning of this Act refers to all products and services of an enterprise. It includes all steps in the country and abroad that are necessary for the manufacture of the products and the provision of the services, starting with the extraction of the raw materials up to the delivery to the end customer and includes
1. the actions of a company in its own business area,
2. the actions of a direct supplier, and
3. the actions of an indirect supplier.

(6) Own business within the meaning of this Act includes any activity of the entity of the enterprise to achieve the objective of the enterprise. This includes any activity for the manufacture and utilisation of products and for the provision of services, irrespective of whether it is carried out at a location in Germany or abroad. In affiliated enterprises, an enterprise belonging to the group is included in the own business area of the umbrella company if the umbrella company exercises a determining influence on the enterprise belonging to the group.

(7) For the purposes of this Act, a direct supplier is a partner to a contract for the supply of goods or the provision of services whose supplies are required for the manufacture of the enterprise’s product or the provision and use of the relevant service.

(8) For the purposes of this Act, an indirect supplier means any enterprise which is not a direct supplier and whose supplies are required for the manufacture of the enterprise’s products or for the provision and use of the relevant service.
As defined here, contribution to or partial responsibility for a risk implies that the actions of a third party caused the adverse impact in question. The company “contributes” to the impact if it, by action or even omission, in any way permits, facilitates or incentivizes the violation of a concrete obligation. The following factors may help to determine whether a company has contributed in this way (particularly in the supply chain context):

1. The extent to which a company may encourage or incentivize a violation by a third party, i.e., to what degree its actions increased the risk of the violation.
2. The extent to which the company could have, or should have, known about the violation, i.e., to what degree the violation was foreseeable.
3. The extent to which the company’s actions would have prevented, mitigated or stopped the violation, i.e., to what degree it failed to act appropriately. Overall, we should not consider "contribution or partial responsibility" as a static concept. Companies may initially only be "indirectly linked" to a violation. However, if they fail to act, they may ultimately be found to have "contributed". See also the OECD Due Diligence Guidance for responsible Business Conduct, p. 70.

Explanatory Memorandum on the law
"In the context of risk management, companies must only address those human rights and environmental risks that they have caused. Causing means that the company alone has directly caused the risk or has (causally) contributed to the emergence or intensification of the risk through its actions. The reference to the supply chain makes it clear that the risk may lie with the company itself, i.e. in its own business area, with a direct supplier or an indirect supplier".
Section 5 Risk analysis

(1) As part of risk management, the enterprise must conduct an appropriate risk analysis in accordance with paragraphs (2) to (4) to identify the human rights and environment-related risks in its own business area and at its direct suppliers. In cases where an enterprise has structured a direct supplier relationship in an improper manner or has engaged in a transaction in order to circumvent the due diligence obligations with regard to the direct supplier, an indirect supplier is deemed to be a direct supplier.

(2) The identified human rights and environment-related risks must be weighted and prioritised appropriately. The criteria listed in section 3 (2), amongst others, are decisive in this regard.

(3) The enterprise must ensure that the results of the risk analysis are communicated internally to the relevant decision makers, such as the board of directors or the purchasing department.

(4) The risk analysis must be carried out once a year as well as on an ad hoc basis if the enterprise must expect a significantly changed or significantly expanded risk situation in the supply chain, for example due to the introduction of new products, projects or a new business field. Findings from the processing of reports according to section 8 (1) are to be taken into account.

(5) The supply chain within the meaning of this Act refers to all products and services of an enterprise. It includes all steps in the country and abroad that are necessary for the manufacture of the products and the provision of the services, starting with the extraction of the raw materials up to the delivery to the end customer and includes

1. the actions of a company in its own business area,
2. the actions of a direct supplier, and
3. the actions of an indirect supplier.

(6) Own business within the meaning of this Act includes any activity of the entity of the enterprise to achieve the objective of the enterprise. This includes any activity for the manufacture and utilisation of products and for the provision of services, irrespective of whether it is carried out at a location in Germany or abroad. In affiliated enterprises, an enterprise belonging to the group is included in the own business area of the umbrella company if the umbrella company exercises a determining influence on the enterprise belonging to the group.

(7) For the purposes of this Act, a direct supplier is a partner to a contract for the supply of goods or the provision of services whose supplies are required for the manufacture of the enterprise's product or the provision and use of the relevant service.

(8) For the purposes of this Act, an indirect supplier means any enterprise which is not a direct supplier and whose supplies are required for the manufacture of the enterprise's products or for the provision and use of the relevant service.
Procedure Risk analysis

Considerations on risk analysis - also in connection with the handout

BAFA has formed 4 case groups, which differ little:
Procedure Risk analysis of own business area

Step 1: Overview of company structure

Parent company

• Name and industry of all group companies over which significant influence is exercised.

<table>
<thead>
<tr>
<th>Group company 1</th>
<th>Group company 2</th>
<th>Group company 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact person (name and e-mail address)</td>
<td>Contact person (name and e-mail address)</td>
<td>Contact person (name and e-mail address)</td>
</tr>
<tr>
<td>Operating sites/locations (by country)</td>
<td>Operating sites/locations (by country)</td>
<td>Operating sites/locations (by country)</td>
</tr>
<tr>
<td>Product types/type of service(s)</td>
<td>Product types/type of service(s)</td>
<td>Product types/type of service(s)</td>
</tr>
<tr>
<td>Production steps/activities carried out (aggregated)</td>
<td>Production steps/activities carried out (aggregated)</td>
<td>Production steps/activities carried out (aggregated)</td>
</tr>
<tr>
<td>Sales volume</td>
<td>Sales volume</td>
<td>Sales volume</td>
</tr>
<tr>
<td>Number of employees</td>
<td>Number of employees</td>
<td>Number of employees</td>
</tr>
</tbody>
</table>

Nature and scope of business activity

to be taken into account across the board and with a view to preparing the risk analysis, not as a concrete prioritisation criterion (footnote 12 handout)

Conclusion? Unclear, possibly it is meant that the most important products, services, companies are to be considered in depth within the framework of the risk analysis or that the risks identified there are to be addressed as a priority.
Procedure Risk analysis in own business area

Step 2: Risk identification

**Abstract consideration of risks?** According to BAFA possible in principle if so many subsidiaries that individual consideration is unreasonable **From when?**

**Concrete consideration of risks** Either in all subsidiaries or if too many, in those with increased risk disposition **How?**

- Checklists
  - to responsible persons - must be empowered to identify and report risks, training where appropriate.
  - in every society
  - to collect information on any risks
Our checklists for risk analysis in own business area*

Checkliste Risikoanalyse
Menschenrechtliche Risiken
– Kinderarbeit – § 2 Abs. 2 Nr. 1 und Nr. 2 LAso –

<table>
<thead>
<tr>
<th>Risiko</th>
</tr>
</thead>
<tbody>
<tr>
<td>der Verleihung des Verbriefes der Beschäftigung eines Kindes unter dem Mindestalter (Nr. 1),</td>
</tr>
<tr>
<td>der Verleihung des Verbriefes des schlimmsten Formen der Kinderarbeit für Kinder unter 15 Jahren (Nr. 2)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gesetzliche Anforderungen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Das LAso normiert in § 2 Abs. 2 Nr. 1 und Nr. 2 jeweils eigenständige Verbriefe, welche auf die Bekämpfung der Kinderarbeit abzielen.</td>
</tr>
</tbody>
</table>


Nach Art. 2 Abs. 4 sowie Art. 4 des ILO-Übereinkommens Nr. 138 können die Staaten in bestimmten Konstellationen durch Regelungen im nationalen Recht, welche nicht im Widerspruch zu den nachstehenden Artikeln des ILO-Übereinkommens Nr. 138 stehen, von dem festgelegten Alter abweichen. Auf diese Ausnahmenregelungen nimmt § 2 Abs. 2 Nr. 1 LAso ausdrücklich Bezug, sodass diese auch im Anwendungsbereich des LAso einschlägig sind und kein Verstoß gegen § 2 Abs. 2 Nr. 1 LAso vorliegt, soweit ein Ausnahmetatbestand erfüllt ist. Die Ausnahmenregelungen steilen sich dabei wie folgt dar:

<table>
<thead>
<tr>
<th>Checklist</th>
<th>Checkliste</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Beschäftigen Sie im Rahmen Ihrer Geschäftstätigkeit Kinder?</td>
<td></td>
</tr>
<tr>
<td>Ja O</td>
<td>Nein O</td>
</tr>
<tr>
<td>Prüfung festsetzen</td>
<td>Kein Risiko, Prüfung beendet</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Checklist-Fragen zu Nr. 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Werden Kinder beschäftigt, die noch nicht das Alter erreicht haben, in welchem nach dem jeweiligen Recht des Beschäftigungslandes die Schulpflicht endet?</td>
</tr>
<tr>
<td>Ja O</td>
</tr>
<tr>
<td>Prüfung festsetzen</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Checkliste</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Beschäftigen Sie Kinder, die jünger als 15 Jahre sind?</td>
</tr>
<tr>
<td>Ja O</td>
</tr>
<tr>
<td>Prüfung festsetzen</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Checkliste</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Ist die Beschäftigung von einer mit den Ausnahmetalbeständen des ILO-Übereinkommens Nr. 138 übereinstimmenden nationalen gesetzlichen Ausnahmeregelung des Beschäftigungslandes erfasst?</td>
</tr>
<tr>
<td>Ja O</td>
</tr>
<tr>
<td>Einzelfallprüfung notwendig</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Checkliste</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Sind in dem Beschäftigungsland bereits Fälle von Kinderarbeit bekannt?</td>
</tr>
<tr>
<td>Ja O</td>
</tr>
<tr>
<td>Einzelfallprüfung notwendig</td>
</tr>
</tbody>
</table>


*Now also available in english language

---

## Our checklists for risk analysis in own business area

<table>
<thead>
<tr>
<th>Checklist-Fragen zu Nr.</th>
<th>Bitte ankreuzen und entsprechend den Anmerkungen weiterprüfen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Werden in Ihrem Betrieb die wichtigsten erforderlichen Maßnahmen nach dem Arbeitszulassungsgesetz getroffen?</td>
<td>Ja O Nein O</td>
</tr>
</tbody>
</table>

### 1. Festlegung von Arbeits- und Tätigkeitsbereichen.

| Festlegung der Gefährdungen: Werden für jeden festgelegten Arbeitsbereich die für die betriebliche Sicherheit und Gesundheit relevanten möglichen Gefährdungsfaktoren erfasst (s. Beitrag)? | Ja O Nein O |

#### a. Physikalische Faktoren (z.B. Über-/Unterdrehen, Arbeiten unter Zeitdruck, wechselnde oder lange Arbeitszeiten, häufige Nacharbeit, fehlende soziale Kontakte) | Ja O Nein O |
#### b. Mechanische Faktoren (z.B. Abtransport, Ausrutscher, Stolper, Umlenkungen, ungeschützte bewegte Maschinen, Teile mit gefährlichen Oberflächen, bewegte Arbeits- und Transportgeräte) | Ja O Nein O |
#### c. Elektrische Faktoren (z.B. Elektro- und Lichtschlag, Elektrofalle, elektrische Aufbauten) | Ja O Nein O |
#### d. Gefahrstoffe (z.B. Dioxine, flüchtige Substanzen, Streusalze, Innen- und Außenbekleidung, flüchtige Schadstoffe) | Ja O Nein O |
#### e. Thermische Gefahr (z.B. Über-/Unterdrehen, Arbeit in über-/unterhitzenen Bereichen, Strahlungen, Oberflächen-Überhitzung) | Ja O Nein O |
#### f. Besondere physikalische Einwirkungen (z.B. Lärm, Ultraschall, Vibrationen, Strahlungen, Oberflächen-Überhitzung) | Ja O Nein O |

### 2. Arbeitsschutzgesetz.

| Arbeitsschutzgesetz: Werden die bei der Ermittlung der Gefahrquellen der gesetzlichen Vorschriften berücksichtigt (s. Beitrag)? | Ja O Nein O |

| Wurden bei der Ermittlung die Betriebsfalle der betrieblichen Personengruppen berücksichtigt (z.B. Jugendliche, werdende oder stillende Mütter, Beschäftigte ohne ausreichende Deutschkenntnisse, Menschen mit Behinderungen, Zigarettenraucher, Praktikanten, Berufsunfähigten) | Ja O Nein O |

### 3. Beurteilung der Gefährdungen:

| Wird der errechnete Ist-Zustand einem Soll-Zustand entsprechend geltender gesetzlicher Vorschriften, Vorschriften und sonstiger Vorschriften gegenübertreten | Ja O Nein O |

### 4. Festlegung konkreter Maßnahmen:

| Wird erreicht, dass dem Ist-Zustand ein Soll-Zustand gerecht wird (s. Beitrag)? | Ja O Nein O |

### 5. Durchführen der Maßnahmen:

| Werden die nach Ziff. 4 festgelegten Maßnahmen durchgeführt? | Ja O Nein O |

### 6. Turingmäßige Prüfung der Maßnahmen:

| Wird die Wirksamkeit der Maßnahmen nach Ziff. 4, 5, jährlich geprüft? | Ja O Nein O |
Our checklists for risk analysis in own business area

Checklists - Examples

Checkliste Risikoanalyse
Unwahrscheinliche Risiken

– Umgang mit Quecksilber – § 2 Abs. 3 Nr. 1, Nr. 2 und Nr. 5 LkSG –

<table>
<thead>
<tr>
<th>Risiko</th>
</tr>
</thead>
<tbody>
<tr>
<td>+ Risiko der Verletzung des Vorrats der Herstellung von mit Quecksilber verunreinigten Produkten (Nr. 1)</td>
</tr>
<tr>
<td>+ Risiko der Verletzung des Verbotes der Verwendung von Quecksilber und Quecksilberverbindungen bei Herstellungsprozessen (Nr. 2)</td>
</tr>
<tr>
<td>+ Risiko der Verletzung des Verbotes der Behandlung von Quecksilberabfällen (Nr. 3)</td>
</tr>
</tbody>
</table>

Gesetzliche Anforderungen


\[ \text{Minamata-Übereinkommen} \]

– Quecksilber ist elementares Quecksilber (Hg), CAS-Nummer 7439-07-6.
– Quecksilberverbindung ist jeder Stoff, der aus Quecksilberatomen und einem oder mehreren Atomen anderer chemischer Elemente besteht und der sich nur durch chemische Reaktionen in verschiedene Bestandteile teilen lässt.
– Ein mit Quecksilber versetztes Produkt ist ein Produkt oder einen Produktbestandteil, das beziehungsweise der absichtlich hinzugetretene Quecksilber in einer absichtlich hinzugetretene Quecksilberverbindung enthält.

Das Vorliegen eines Verbotes nach Nr. 1 richtet sich nach Art. 4 Abs. 1 des Minamata-Übereinkommens und Anlage A Teil I des Minamata-Übereinkommens.

Das Vorliegen eines Verbotes nach Nr. 2 richtet sich nach Art. 6 Abs. 2 des Minamata-Übereinkommens und Anlage B Teil I des Minamata-Übereinkommens.

Das Vorliegen eines Verbotes nach Nr. 3 richtet sich nach Art. 11 Abs. 3 des Minamata-Übereinkommens. Art. 11 Abs. 3 des Minamata-Übereinkommens bezieht sich zudem auf die technischen Richtlinien des Basler Übereinkommens.

Checkliste-Fragen zu Nr. 1

1. Stellen Sie ein mit Quecksilber verunreinigtes Produkt gemäß der Anlage A Teil I des Minamata-Übereinkommens her?

Hinweis: Dies können u.a. Batterien, Lampen, Kosmetika, Pestizide, Biciclete und Massengerätete wie Thermometer sein.

<table>
<thead>
<tr>
<th>Ja O</th>
<th>Nein O</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prüfung fortsetzen</td>
<td>Kein Risiko, Prüfung bewilligt</td>
</tr>
</tbody>
</table>

2. Wenn 1. mit Ja beantwortet wurde:

– Handelt es sich bei dem Produkt um ein für den Zivilschutz und militärische Verwendungszwecke unersetzliches Produkt?

<table>
<thead>
<tr>
<th>Ja O</th>
<th>Nein O</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nein O</td>
<td></td>
</tr>
</tbody>
</table>

– Handelt es sich um ein Produkt für die Forschung, die Kalibrierung von Instrumenten oder zur Verwendung als Rekorderstandard?

<table>
<thead>
<tr>
<th>Ja O</th>
<th>Nein O</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nein O</td>
<td></td>
</tr>
</tbody>
</table>

– Handelt es sich um Schalter und Relais, Kalkohletelefontelefonen und Leuchtstofflampen mit extrem lebenden Elektroden (GZFL und EEFL), für elektronische Displays und Messgeräte, zu denen keine nachweisbare Quecksilberbonone Alternative als Einsatz verfügbar ist?

<table>
<thead>
<tr>
<th>Ja O</th>
<th>Nein O</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nein O</td>
<td></td>
</tr>
</tbody>
</table>

– Handelt es sich um ein Produkt, das bei traditionellen oder religiösen Praktiken verwendet wird?

<table>
<thead>
<tr>
<th>Ja O</th>
<th>Nein O</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nein O</td>
<td></td>
</tr>
</tbody>
</table>

– Handelt es sich um einen Impfstoff mit Thiomersal als Konservierungsstoff?

<table>
<thead>
<tr>
<th>Ja O</th>
<th>Nein O</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nein O</td>
<td></td>
</tr>
</tbody>
</table>

3. Wenn alle unter 2. aufgetretenen Fragen mit Nein beantwortet wurden:

Produzieren Sie in einem Produktionsland, das eine Ausnahme nach dem Minamata-Abkommen für das mit Quecksilber versetzte Produkt registriert hat?

Hinweis: Die aktuelle Liste registrierter Ausnahmen kann hier abgerufen werden: https://www.taylorwessing.com/uk/partners/exceptions

<table>
<thead>
<tr>
<th>Ja O</th>
<th>Nein O</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kein Risiko</td>
<td>Kein Risiko bewilligt</td>
</tr>
</tbody>
</table>

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Procedure Risk analysis in own business area

Step 3: Weighting and prioritisation

From the risk identification
- risks collected

Nature and scope of business activity

- Probability of occurrence
- Severity

BAFA (Ideas)
- Risk inventory

Heatmap
- Influence
- Contribution to causation

Nature and scope of business activity
Procedure Risk analysis in own business area

Step 4: Measures

Ensure that risks are terminated
Procedure Risk analysis of direct suppliers

Step 1: Supplier overview

Step 2: Risk identification

Step 3: Weighting and prioritisation

Step 4: Measures Dashboard
## Procedure

### Risk analysis of direct suppliers

#### Step 1: Supplier overview

Relevant data on the suppliers (supplier-related)
- Address data etc.
- Possibly group information
- Possibly information on the internal structure at the supplier
- Maybe information on the order volume from the company's point of view
- Maybe information on the order volume from the supplier's point of view

Relevant data on suppliers (product-related)
- Product categories
- Product details
- Production locations per product
- Single Source, Dual Source, Multi Source

---

### Supplier Information

<table>
<thead>
<tr>
<th>Supplier No.</th>
<th>Supplier</th>
<th>Country</th>
<th>ZIP Code</th>
<th>City</th>
<th>Address</th>
<th>Phone</th>
<th>Email</th>
<th>Category</th>
<th>Details</th>
<th>Production Site</th>
<th>Single/Multi Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>12572461</td>
<td>O-MaX</td>
<td>USA</td>
<td>13418</td>
<td>New York</td>
<td>123 Main St</td>
<td>123-456-7890</td>
<td><a href="mailto:omax@supplier.com">omax@supplier.com</a></td>
<td>Metals</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

### Subcontractors

- **Who where how**

---

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# Procedure Risk analysis of direct suppliers

## Step 2: Risk identification

### Abstract
- Countries
- Industries
- etc.

- About indices etc.
- This leads to score values or point values or the like

### Specifically
- Knowledge
- Experience
- Concrete information

- This leads to values (as on the left)
- Logically processable (as on the left)

---

### Identification
- Who where how
  - ...

---

### The abstract values via indices should be automatically attracted and linked to an intelligent algorithm

### The concrete values should also be automatically attracted and linked to an algorithm

---

### This is how consistent risk identification results from intelligent linking of abstract and concrete values

---

<table>
<thead>
<tr>
<th>Supplier No.</th>
<th>Supplier</th>
<th>Country</th>
<th>Länderskizze nach Kamien</th>
<th>Länderskizze nach High Index</th>
<th>Länderskizze nach World Project Index</th>
<th>Länderskizze nach Freedom House</th>
<th>Länderskizze nach Environmental Performance Index</th>
<th>etc.</th>
<th>Branchen- Wettbewerbs- risiko</th>
<th>Seltenheit</th>
<th>Erfahrungen</th>
<th>Kumulative Werte (A)</th>
<th>Kumulative Werte (B)</th>
<th>RISIKO</th>
</tr>
</thead>
<tbody>
<tr>
<td>56</td>
<td>62</td>
<td>12</td>
<td>52</td>
<td>46</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>B</td>
<td>4</td>
<td>A</td>
<td></td>
<td>-20</td>
<td>-30</td>
<td>GERING</td>
</tr>
<tr>
<td>57</td>
<td>63</td>
<td>13</td>
<td>58</td>
<td>49</td>
<td>3</td>
<td>5</td>
<td>2</td>
<td>C</td>
<td>5</td>
<td>B</td>
<td></td>
<td>-66</td>
<td>-76</td>
<td>MITTEL</td>
</tr>
<tr>
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<td>64</td>
<td>14</td>
<td>60</td>
<td>51</td>
<td>4</td>
<td>6</td>
<td>3</td>
<td>D</td>
<td>6</td>
<td>C</td>
<td></td>
<td>-33</td>
<td>-43</td>
<td>HOCH</td>
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<tr>
<td>61</td>
<td>65</td>
<td>15</td>
<td>62</td>
<td>53</td>
<td>5</td>
<td>7</td>
<td>4</td>
<td>D</td>
<td>7</td>
<td>D</td>
<td></td>
<td>-20</td>
<td>-30</td>
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</tr>
<tr>
<td>66</td>
<td>67</td>
<td>16</td>
<td>68</td>
<td>54</td>
<td>6</td>
<td>8</td>
<td>5</td>
<td>A</td>
<td>8</td>
<td>C</td>
<td></td>
<td>-10</td>
<td>-20</td>
<td></td>
</tr>
</tbody>
</table>
Procedure Risk analysis of direct suppliers

Step 3: Weighting and prioritisation

From the risk identification

- From the risk identification
- Concrete identification and weighting as well as prioritisation (§ 3 para. 2 LkSG)
- The concrete values should also be automatically attracted and linked to an algorithm

<table>
<thead>
<tr>
<th>Supplier No.</th>
<th>Supplier</th>
<th>Kumulative Werte (A)</th>
<th>Kumulative Werte (B)</th>
<th>RISIKO</th>
<th>Art und Umfang der Geschäftstätigkeit</th>
<th>Einflussvermögen</th>
<th>Gefahrenpotential</th>
<th>Verursachungsbeitrag</th>
<th>Priorität</th>
</tr>
</thead>
<tbody>
<tr>
<td>10101</td>
<td>Aachenit GmbH</td>
<td>-31</td>
<td>-2</td>
<td>HOCH</td>
<td>6</td>
<td>6</td>
<td>5</td>
<td>4</td>
<td>NIEDRIG</td>
</tr>
<tr>
<td>10102</td>
<td>Bielefeld GmbH</td>
<td>-26</td>
<td>-2</td>
<td>MITTEL</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>NIEDRIG</td>
</tr>
<tr>
<td>10103</td>
<td>Dortmund GmbH</td>
<td>-36</td>
<td>-2</td>
<td>HOCH</td>
<td>4</td>
<td>7</td>
<td>2</td>
<td>9</td>
<td>HOCH</td>
</tr>
</tbody>
</table>

This results in appropriate weighting and priority.
Procedure Risk analysis of direct suppliers

Step 4: Measures Dashboard

Measures Dashboard

- Assigns measures (prevention and remedy), enables follow-up and completion
- Links to documents, certificates, enquiries, correspondence, etc.
- Automatically reports ToDos
- Enables automatic creation of documentation and report
- Leads to recurring processes

In addition, according to BAFA, the following information should be recorded for each high-risk supplier:

- Name
- Contact person (name and e-mail address)
- Parent company, if applicable
- Product type/type of service
- For direct suppliers: Order volume in the last business year
- Operating or production sites
- Number of employees
- Existence of employee representation
### Appropriateness criteria

Section 302 "LkSG"

#### Guidance criteria based on initial government draft BT-Drs. 19/28649, pg. 42 ff

<table>
<thead>
<tr>
<th>Qualitative:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Degree of complexity of a product or service</td>
<td>Variety of services and business relationships</td>
<td>Country-wide or international scope</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Quantitative:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Company size (number of staff and their roles, revenue, fixed and working capital, production capacity)</td>
<td>Vulnerability (frequency of risks specific to a country, sector or a category of goods)</td>
<td></td>
</tr>
</tbody>
</table>

#### 1. Nature and scope of the business activities of the company

- Company size (relative to its competitors (market dominance) and to the entity directly responsible)
- Order volume (relative to the revenue of the entity directly responsible)
- Proximity to the risk (i.e., where the risk exists and who is responsible: at the company itself, at a direct supplier or at an indirect suppliers)?

#### 2. A company’s ability to influence the entity directly responsible for a risk or violation

- Severity: Degree (i.e., intensity/depth) of harm;
- Number of people impacted
- No possibility of correcting the adverse impact (irreversibility)

#### 3. The typically expected severity and likelihood of a violation of this nature

- Likelihood:
  - Whether and when a violation occurs (e.g., if there is already evidence of a supplier’s poor performance (greater likelihood) or effective preventative measures in place (less likelihood))

#### 4. The nature of the company’s contribution to the risk or the violation

- The company has made a major contribution to the risk or is directly (solely) responsible
- As defined here, contribution to or partial responsibility for implies that the actions of a third party caused the adverse impact. The company "contributes" to the impact if it, by action or even omission, in any way permits, facilitates or incentivizes a specific violation.

---

**How to take into account at all?** Footnote 11: "to be taken into account in its entirety".

**Actually to be considered first, because if (-), no action to be taken...When is causation missing?**
Annex II of the BAFA handout

**V:** Clear; possibility to search for specific industries
**N:** Country of origin to be entered, which may not be known; rather product-related.

**V:** Possibility to search for specific branches
**N:** Too many different categories. Categories; partly too few results for reports

**V:** Detailed presentation of the structures of the respective country
**N:** Guides only on 20 countries; sprawling information without risk reference

**V:** Depending on the multistakeholder initiative, in-depth sector information
**N:** Unt. have to search themselves; Fair Wear Found., has partly only older products.

**V:** Detailed presentation of the structures of the respective country
**N:** Guides only on 20 countries; sprawling information without risk reference

**V:** Depending on the multistakeholder initiative, in-depth sector information
**N:** Unt. have to search themselves; Fair Wear Found., has partly only older products.

**V:** Structured structure; concise presentation of national results
**N:** Partly somewhat abstract presentation

**V:** Often easy-to-understand schemes for sector- or country-specific risks
**N:** May be too superficial for high-risk areas.

**V:** Comprehensive background information on human rights risks
**N:** Only reverse search, i.e. via child labour one comes to Branch e.

**V:** Understandable information on the procedure for risk analysis and other due diligence. Due diligence
**N:** Not suitable for overview of country- or sector-specific risks

**V:** Raising awareness of risk when country is particularly poorly rated
**N:** Only reference to water scarcity (§ 2 para. 2 no. 9 LkSG); no reference to products.

**V:** Filtering of information possible; possibly interesting with concrete knowledge
**N:** Rather confusing; environmental topics often have nothing to do with LkSG

**V:** Sector reference; many sectors taken into account; heat maps for high risks
**N:** Very extensive

**V:** Concrete specifications for carrying out the risk analysis
**N:** Very extensive information material; previous knowledge necessary

**V:** Clearly held; complete coverage of the value chain
**N:** Sector-limited; commodity-related

**V:** Catalogue of questions can be used to analyse risks vis-à-vis suppliers, if necessary.
**N:** No possibility of orientation with regard to risks

**V:** Understandable overview of the procedure for risk analysis and other duties of care. Due diligence
**N:** Very detailed information

**V:** May be suitable for students with previous knowledge of the relevant sector.
**N:** Very detailed information

**V:** May be suitable for students with previous knowledge of the relevant sector.
**N:** Very detailed information

**V:** May be suitable for students with previous knowledge of the relevant sector.
**N:** Very detailed information

**V:** May be suitable for students with previous knowledge of the relevant sector.
**N:** Very detailed information

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**N:** Very detailed information

**V:** May be suitable for students with previous knowledge of the relevant sector.
**N:** Very detailed information
### Annex II of the BAFA handout – see our guide

<table>
<thead>
<tr>
<th>Index</th>
<th>Depicted human rights within the meaning of § 2 II LkSG</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. 2 (Child labour)</td>
</tr>
<tr>
<td></td>
<td>No. 3 (forced labour)</td>
</tr>
<tr>
<td></td>
<td>No. 5 (occupational health and safety)</td>
</tr>
<tr>
<td></td>
<td>No. 6 (Freedom of association)</td>
</tr>
<tr>
<td></td>
<td>No. 7 (Discrimination)</td>
</tr>
<tr>
<td></td>
<td>No. 10 (Land deprivation)</td>
</tr>
<tr>
<td><a href="https://www.amfori.org/sites/default/files/amfori-2020-11-12-Country-Risk-Classification-2021_0.pdf">https://www.amfori.org/sites/default/files/amfori-2020-11-12-Country-Risk-Classification-2021_0.pdf</a></td>
<td>No. 6 (Freedom of association)</td>
</tr>
<tr>
<td></td>
<td>No. 10 (Land deprivation)</td>
</tr>
<tr>
<td><a href="https://freedomhouse.org/countries/freedom-world/scores">https://freedomhouse.org/countries/freedom-world/scores</a></td>
<td>No. 6 (Freedom of association)</td>
</tr>
<tr>
<td></td>
<td>No. 10 (Land deprivation)</td>
</tr>
<tr>
<td></td>
<td>No. 11 b) c) (violence by Security forces)</td>
</tr>
<tr>
<td><a href="https://www.globalslaveryindex.org/resources/downloads/">https://www.globalslaveryindex.org/resources/downloads/</a></td>
<td>No. 4 (Slavery)</td>
</tr>
<tr>
<td><a href="https://epi.yale.edu/epi-results/2022/component/epi">https://epi.yale.edu/epi-results/2022/component/epi</a></td>
<td>No. 9 (Soil change, Water and Air pollution)</td>
</tr>
<tr>
<td><a href="https://www.wsi.de/de/wsi-minimum-wage-database-international-15339.htm">https://www.wsi.de/de/wsi-minimum-wage-database-international-15339.htm</a></td>
<td>No. 8 (minimum wage; adequate Wage)</td>
</tr>
<tr>
<td><a href="https://www.living-income.com/living-income-benchmarks">https://www.living-income.com/living-income-benchmarks</a></td>
<td></td>
</tr>
</tbody>
</table>

**Country risks**
Annex II of the BAFA handout – see our guide

### Sector-specific risks

If you already know your own high-risk sectors or high-risk products, many of the sources with detailed information will help...

...but, if you want to get an abstract overview of sector-specific risks (1st step of the risk analysis according to BAFA), many sources are unsuitable, because:

- often do not show any sector-specific risks at all, but only product-related risks, for example.
- Extremely extensive in parts
- regularly very confusing
- partly contain only descriptions

<table>
<thead>
<tr>
<th>Source</th>
<th>Depicted human rights risk within the meaning of § 2 II LkSG</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods">https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods</a></td>
<td>▪ No. 1-4 (Excel file offers the possibility to determine risks by product cat. (e.g. &quot;bricks&quot; or &quot;cotton&quot;) to determine risks).</td>
</tr>
<tr>
<td><a href="https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/Forschungsberichte/fb-543-achtung-von-menschenrechten-entlang-globaler-wertschoepfungsketten.pdf?_blob=publicationFile&amp;v=1">https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/Forschungsberichte/fb-543-achtung-von-menschenrechten-entlang-globaler-wertschoepfungsketten.pdf?_blob=publicationFile&amp;v=1</a></td>
<td>▪ No. 1-10 (risk classification by sector (cf. tables 69 and 70; page 239 ff.) and &quot;heat maps&quot; - these map human rights risks at sector level and locate the risks along various stages of the value chain)</td>
</tr>
<tr>
<td><a href="https://www.responsiblesourcingtool.org/visualizerisk">https://www.responsiblesourcingtool.org/visualizerisk</a></td>
<td>▪ No. 1-4 (search options by industry and raw material/consumable good)</td>
</tr>
<tr>
<td><a href="https://www.kompass-nachhaltigkeit.de/grundlagenwissen/produktkategorien/bekleidung-textilien">https://www.kompass-nachhaltigkeit.de/grundlagenwissen/produktkategorien/bekleidung-textilien</a></td>
<td>▪ No. 1-10 (Identifies specific products for the area of &quot;public procurement&quot; that are typically related to human rights violations)</td>
</tr>
<tr>
<td><a href="https://www.mvorisicochecker.nl/de">https://www.mvorisicochecker.nl/de</a></td>
<td>▪ No. 1-10 (Risk check for specific products and countries)</td>
</tr>
</tbody>
</table>
### Environmental risks

#### Index / Explanation / Tool

<table>
<thead>
<tr>
<th>Tool/Website</th>
<th>Depicted environment-related risk within the meaning of § 2 III LkSG</th>
</tr>
</thead>
</table>
| https://public.tableau.com/views/GlobaMercuryEmissions/Dashboard1?showVizHome=no | - Mercury: § 2 III No. 1, 2, 3 LkSG  
- Enables search by sector and country |
| https://www.mercuryconvention.org/en | - Long-lived organic pollutants: § 2 III No. 4, 5 LkSG  
- shows developments in emissions of various POPs. POPs subdivided according to regions |
| http://chm.pops.int/Implementation/GlobalMonitoringPlan/MonitoringReports/tabid/525/ (Second Global Monitoring Report) | - Persistent organic pollutants  
- shows development of emissions of einz. POPs in the EU broken down by country and sector |
- Listing of all POPs in the Convention |
| http://www.pops.int/TheConvention/ThePOPs/AllPOPs/tabid/2509/Default.aspx | - Persistent organic pollutants  
- Toolkit on "unwanted by-products" |
| http://www.pops.int/Implementation/UnintentionalPOPs/ToolkitforUPOPs/Overview/tabid/372/Default.aspx | - Waste: § 2 III No. 6, 7, 8 LkSG  
- only represents OECD countries; probably only relevant for "illegal waste disposal" and "other undiscovered waste" |
- lists the amount of "hazardous waste" from 1990-2016 |
| http://www.basel.int/Implementation/Publications/GuidanceManuals | - Waste  
- Guidance on compliance with the Basel Convention |

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Annex II of the BAFA handout – see our guide
Procedure Risk analysis indirect suppliers

Step 1: Substantiated knowledge  → No explanation in the handout of what is meant by this...

...but BMAS FAQ VI.12. and 13.: actual indications, violation of a human rights or environmental obligation possible. Ex:

- Reports on poor human rights situation in the production region
- Complaints procedure
- Affiliation of the indirect supplier to a risk industry
- Own findings
- Previous incidents at the indirect supplier
- Notification authority or third party

No general duty of the company to investigate! The more a suspicion has become concrete, the higher the effort that is reasonable in further locating it. Case-by-case decision

Examination as to whether the threshold for "substantiated knowledge" has been exceeded on the basis of a previously established scheme with

Various criteria, e.g. type of source, level of detail, locatability in supply chain, concreteness, probability of occurrence

Knowledge attribution in the company

Step 2: Risk identification like immediate suppliers

Step 3: Weighting and prioritising like immediate suppliers

Step 4: Measures dashboard like immediate suppliers
Procedure for event-related risk analysis

1. **Step: Occasion-relatedness (ad hoc)**

- Change in business activity, for example due to
  - Important investments
  - Opening up a new procurement country
  - Outbreak of a conflict or natural disaster in a country of activity

- Starting a new job or relationship
- Strategic decisions
- Change in business activity, for example due to
  - Imminent market entry
  - Product launch
  - Change in business principles
  - Wider business changes

Step 2: Risk identification see direct suppliers /
Consideration of the risks whose change / addition is evident due to the change in business activity /
According to BAFA, also indirect suppliers

Step 3: Weighting and prioritisation see immediate suppliers /
Comparison with the results of the regular risk analysis

Step 4: Measures Dashboard see immediate suppliers
BAFA handout on adequacy

➢ 29 pages

➢ **Adequacy / Reasonableness / Appropriateness** (47 times in the law and explanatory notes) and effectiveness (15 times in the law and explanatory notes) - both mentioned together only once in the law in § 4 para. 1 LkSG "adequate and effective risk management" - arbitrary linkage by BAFA).

➢ Adequacy and effectiveness in **other handouts**:  
  ➢ (B1.4) Appropriateness criteria considered in risk analysis weighting and how? / (E1.1) Is there a process to review risk management for adequacy, effectiveness...? / (Glossary) Explanation of adequacy and adequacy criteria
  ➢ Complaints procedure handout: S.7
  ➢ Risk analysis handout: Annex I
  ➢ FAQ VI.4. (General), VIII.3. (Risk analysis), XIV.2. (Review BAFA)

➢ **Helpful?**

➢ **BAFA checks whether the company** has acted **appropriately ex ante**! Weighing process must be **plausibly explained** for BAFA
Content and classification of the handout

Adequacy = Overarching framework for the implementation of due diligence obligations

Appropriateness defined in more detail by appropriateness criteria from § 3 para. 2 LkSG; efforts of the company can vary according to the appropriateness criteria (discretion); if ex-ante appropriate measure but ex-post effect does not unfold, company cannot be prosecuted (excl.: own business area at home and abroad); interaction with effectiveness

Description of the individual adequacy criteria; assistance for application as in Annex I in the Risk Analysis handout; adequacy in individual due diligence obligations with guiding questions and case examples

BAFA will check adequacy of efforts!

Sources that provide information on? Many sources are more concerned with the content of measures and possible procedures under individual due diligence obligations.
Principle of appropriateness and effectiveness

Adequacy criteria (§ 3 para. 2 LkSG)

Observe appropriateness criteria for all due diligence obligations (§ 3 para. 1 LkSG): "As appropriateness criterion a) so and so, b) so and so, c)...falls risk analysis / preventive measure / complaint procedure...so and so".

Pg. 4 above: "Adequacy criteria...vary across many companies...somewhat across different operations, sites or companies...supply chains and suppliers."

Additionally in the law: "Risks are to be weighted and prioritised appropriately" (§ 5 para. 2 p. 1 LkSG); "Agreement on appropriate contractual control mechanisms" (§ 6 para. 4 LkSG).

Requires planning (What is appropriate and effective?), implementation, review (Still effective?) and adaptation.

Principle of effectiveness

§ Section 4 (2) LkSG: "Effective measures are those that make it possible to identify and minimise human rights and environment-related risks and to prevent, end or minimise the extent of violations of human rights-related or environment-related obligations...".

By law: Effective risk management, effective preventive measures, effective remedial measures and effective complaints procedure.

Adequacy and effectiveness closely related, but can diverge, e.g.:
- Measure particularly effective but not appropriate
- Measure appropriate but not particularly effective

Appropriateness relates more to companies / effectiveness more to affected persons.
So how does one proceed now?

For each individual duty of care....
...evaluate single or multiple adequacy criteria
...if necessary, again differentiated according to companies, supply chains etc...
...and make a basic statement about the company / risk situation...and document it.

Example: Risk analysis with regard to raw material procurement is particularly extensive due to the nature and scope of the business activity and the risks involved.

...for individual measures within the framework of a due diligence obligation, in turn assess individual or several appropriateness criteria
...and make a concrete statement about the measure to be taken...and document it.

Example: Preventive measure against individual raw material supplier more far-reaching due to ability to influence and severity and probability of risk
Principle of appropriateness and effectiveness

What does this mean for practice?

Consider appropriateness criteria at several levels (due diligence level, individual measure level, etc.).

More or less sensible:
Partly rather a documentation task - e.g.: Subsequent justification why the personnel structures that have already been created are appropriate OR why documentation and report are appropriate (documentation and report are not even mentioned in the handout...in § 3 para. 1 no. 9 LkSG they are).

Partial added value in terms of content - In particular: Risk analysis (weighting of identified risks); preventive measures (concept of measures); complaints procedure (scope of channels and documentation).

In any case, DOCUMENT in order not to make yourself vulnerable to BAFA. BAFA checks appropriateness! Problem if adequacy is not taken into account.

Much at the discretion of the company → Result First! Reason Second!
Effects of the handout - Risk management

➢ **What does the example show?**

➢ If there is a **lack of expertise, additional staff** must be hired or staff must be **released in order** to fulfil due diligence obligations → **If necessary, staff re-planning**

➢ **The more advanced existing processes are, the fewer additional resources are needed**

闪电 Icon Is somewhat at odds with company size

➢ **Occasion-related risk analysis** seems to be **taken seriously by BAFA** (e.g. investment decision).

⚠️ Clear internal guidelines and processes, when event-related risk analysis is necessary
Effects of the handout - Risk management

➢ To what extent do guiding questions help?

*Much content design and approach*

Aufgabe: Kontinuierliche Überprüfung des Risikomanagements (ergibt sich aus der Anforderung eines wirksamen Risikomanagements gem. § 4 Abs. 1 S. 1 V. m. Abs. 2)

Berücksichtigung von (möglicherweise) Betroffenen:
- Wie werden die Interessen der eigenen Geschäftstätigkeit, der Beschäftigten innerhalb der Lieferketten und der sonstigen (möglicherweise) Betroffenen im Sinne von § 4 Abs. 4 bei der Umsetzung des Risikomanagements und der Auswahl und Gestaltung von Maßnahmen berücksichtigt?

Schlussfolgerungen aus der Wirksamkeitsprüfung für die Angemessenheit der Maßnahmen ziehen:
- Welche Schlüsse lassen sich aus der Wirksamkeitsprüfung von Präventions- oder Abhilfemaßnahmen oder von Beschwerdeverfahren mit Blick auf die ziel führende Verwendung der eingesetzten Ressourcen und die angemessene Intensität und den Umfang der Bemühungen des Unternehmens ziehen?
- Können vorhandene Ressourcen eventuell durch Umverteilung zielführender eingesetzt werden?
- Sind zusätzliche Ressourcen für die Weiterentwicklung des Risikomanagements notwendig?
- Befähigt das Risikomanagement das Unternehmen Risiken möglichst früh zu identifizieren und darauf angemessen zu reagieren?

Überprüfung des Risikomanagements:
- Wie wird das Risikomanagement überprüft anhand der Erkenntnisse aus der Umsetzung auf seine Angemessenheit und Wirksamkeit und die angemessene Berücksichtigung der Interessen von (möglicherweise) Betroffenen hin überprüft?

Aufgabe: Ggf. Anpassung des Risikomanagements (ergibt sich aus der Anforderung eines wirksamen Risikomanagements gem. § 4 Abs. 1 S. 1 V. m. Abs. 2)

Änderungen berücksichtigen:
- Inwiefern hat sich die grundsätzliche Risikodisposition des Unternehmens durch strategische Entscheidungen verändert?
- Was bedeutet dies mit Blick auf die verfügbaren Ressourcen für die Umsetzung des Risikomanagements?
- Welche grundsätzlichen strategischen Entscheidungen stehen in naher Zukunft an?
- Was sind mögliche Auswirkungen dieser Entscheidungen auf die Risikodisposition des Unternehmens?
- Wie kann sich das Unternehmen auf diese Veränderungen vorbereiten und etwaige notwendige Ressourcen einplanen?
Effects of the handout - risk analysis

➢ What does the example show?

**Take internal risk analysis seriously** (BAFA talks about own coordinators, local representatives worldwide, pooling information e.g. from health and safety audits and complaints procedures etc.).

In concrete risk analysis, **questionnaires as self-disclosure** can be an approach for risk suppliers.

Questionnaires not adequate in all cases → **More intensive risk identification efforts** (audit, on-site visit)
Effects of the handout - risk analysis

➢ **What does the example show?**

Re-emphasised the importance of risk analysis in own **business area** (questionnaires, personal interviews, evaluation of public and internal data (e.g. accident statistics, employee surveys)).

Numerical assessment of **adequacy criteria** (scale) possible

**Appropriateness criteria** must also be taken into account in the own **business area** (ability to influence high across the board; contribution to causation?)
Effects of the handout - risk analysis

➢ To what extent do guiding questions help?

- Reichen die Informationen, die über vorhandene Quellen zusammengetragen werden, aus, um die konkreten Risiken zu ermitteln und unter Berücksichtigung der Angemessenheitskriterien zu gewichten und zu priorisieren?
- Wo bestehen Datenlücken, z. B. in der eigenen Lieferkette, und wie können diese Datenlücken beispielsweise über vertiefte Prüfungen oder den Austausch mit Experten und Expertinnen geschlossen werden? Welche zusätzlichen Ressourcen sind hierfür gegebenenfalls erforderlich?

Gewichtung und Priorisierung der ermittelten Risiken:
- Wie werden die Angemessenheitskriterien gem. § 3 Abs. 2 bei der Gewichtung und Priorisierung der Risiken berücksichtigt?
- Inwieweit werden bei der Risikogewichtung und -priorisierung die Art und Umfang der Geschäftstätigkeit und die damit verbundene Risikodisposition als übergreifendes Kriterium für die Ressourcenplanung berücksichtigt? (siehe Ressourcen festlegen)
- Inwieweit werden Schwere und Eintrittswahrscheinlichkeit von Risiken einzelnen, beispielsweise mit Hilfe einer Skala und/oder einer sogenannten Heatmap, bewertet?
- Wie und an welchem Punkt werden das Einflussvermögen und die Art des Verursachungsbeitrags zu Risiken bewertet und mit den Ergebnissen der Bewertung, der Schwere und der Eintrittswahrscheinlichkeit ins Verhältnis gesetzt?
- Inwieweit werden relevante interne und externe Stakeholder in den Prozess der Gewichtung und Priorisierung eingebunden?
- Beispiel: relevante Personale aus dem Bereich Beschaffung/Einkauf für die Einschätzung der Einflussmöglichkeiten auf einzelne Lieferanten oder Lokale Mitarbeitende, die Einschätzungen zur Schwere, zur Eintrittswahrscheinlichkeit und zum Verursachungsbeitrag von konkreten Risiken in lokalen Kontexten abgeben können, oder (möglichweise) Betroffene oder deren gewerkschaftliche Vertreter für die Einschätzung der Schwere der Beeinträchtigung von Arbeitnehmerrechten oder
- Anwesende oder deren Interessenvertreter für die Einschätzung der Schwere der zu erwartenden Beeinträchtigung der Gesundheit oder der Nutzungsmöglichkeit von Wasser und Land?
- Wie wird mit Konflikten bei der Gewichtung und/oder Priorisierung der Risiken umgegangen und wie werden interne Entscheidungsträgerinnen und Entscheidungsträger hierbei eingeschaltet?

Schlussfolgerungen aus Erkenntnissen der Risikoanalyse:
- Wie werden Lerneffekte aus dem Analyseprozess identifiziert und ihre Berücksichtigung in kommenden Risikoanalysen sichergestellt?
- Wie wird die interne Kommunikation der Ergebnisse der Risikoanalyse und die Ableitung von angemessenen und wirksamen Präventionsmaßnahmen vorbereitet und sichergestellt?
Impact of the handout - prevention measures

What does the example show?

Code of conduct not sufficient as sole preventive measure

Appropriateness test can play out in "details" (country context forced labour, intensity, number of people affected, cooperation suppliers, political context)

Unannounced on-site inspections should be possible

Problem: AGB law with German contract

Doubtful whether far-reaching contractual regulations (unannounced audits, contractual penalty, support obligations) are accepted

Additional training, audits
Impact of the handout - prevention measures

➢ What does the example show?

- **Leverage for suppliers (triggering price calculations)**

- **Adequacy test** again plays out "details" (number of persons affected, impact on other protected legal positions)

- **Change in purchasing practices** (responsible sourcing; appropriate contract design)

- Additional **controls and consequences in the event of non-compliance with the Supplier Code of Conduct**

- It is questionable whether this is how it works in practice!
Impact of the handout - prevention measures

➢ To what extent do guiding questions help?

Aufgabe: Auswahl von Präventionsmaßnahmen (§ 6 Abs. 3 und 4, § 9 Abs. 3 Nr. 2)

Präventionsmaßnahmen identifizieren und konzipieren:

- Sind die Ergebnisse der regelmäßigen (jährlichen) oder anlassbezogenen Risikoanalysen sowie Erkenntnisse aus Beschwerdeverfahren Ausgangspunkt für die Auswahl der Präventionsmaßnahmen?
- Sind die im LäSSG genannten Präventionsmaßnahmen in Bezug auf die Risiken zielführend und ausreichend oder bedarf es zusätzlicher/anderer Maßnahmen?
- Wie schwer sind die ( möglichen) Verletzungen und wie wahrscheinlich ist ihr Eintritt? Welcher Aufwand in Bezug auf die Präventionsmaßnahmen ist daher nötig?
- Inwiefern wurden Lernverfahren aus der bisherigen Umsetzung von Präventions- und Abhilfemaßnahmen sowie den erfolgten Wirksamkeitsüberprüfungen berücksichtigt?
- Inwiefern wurde bei der Auswahl und der Konzeption von Präventionsmaßnahmen abgewogen, welche Maßnahmen mit Blick auf die Risiken des Unternehmens in den konkreten Kontexten zielführend und ausreichend sind?
- Inwiefern wurden hierbei die lokalen rechtlichen, politischen oder kulturellen Gegebenheiten berücksichtigt?
- Inwiefern werden die Interessen von ( möglicherweise) Betroffenen bei der Auswahl und der Konzeption von Präventionsmaßnahmen identifiziert und ausreichend berücksichtigt?

Aufgabe: Umsetzung von Präventionsmaßnahmen (§ 6 Abs. 3 und 4, § 9 Abs. 3 Nr. 2)

Einbeziehung weiterer Stakeholder:

Wie kann bei der Umsetzung von Präventionsmaßnahmen mit relevanten internen Stakeholdern (z.B. lokale Standorte), Zulieferern und/oder anderen Unternehmen oder Organisationen im Rahmen von Brancheninitiativen oder Multi-Stakeholder-Initiativen zusammengearbeitet werden, um vorhandene Ressourcen zielführend einzusetzen?

Schlussfolgerungen aus der Wirksamkeitsprüfung für die Anwendbarkeit der Maßnahmen ziehen:

- Welche Schlüsse lassen sich aus der Wirksamkeitsprüfung der Präventionsmaßnahmen mit Blick auf die Auswahl und Konzeption der Maßnahmen ziehen? Sind Anpasungen erforderlich?
- Können vorhandene Ressourcen eventuell durch Umverteilung zielführender eingesetzt werden?
- Sind zusätzliche Ressourcen für bestehende oder neue Präventionsmaßnahmen notwendig?
Impact of the handout - remedial measures

➢ What does the example show?

- Carry out root cause analysis in own business area after injury has been detected
- Adequacy test also to be taken into account in own business area
- Adequacy assessment must not become an end in itself
  ➔ Sometimes the result must also simply be clear
Impact of the handout - remedial measures

➢ To what extent do guiding questions help?

<table>
<thead>
<tr>
<th>Aufgabe: Entwicklung von Abhilfemaßnahmen (§ 7 Abs. 1 - 3, § 9 Abs. 3 Nr. 3)</th>
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</thead>
<tbody>
<tr>
<td>Abhilfemaßnahmen identifizieren und konzipieren:</td>
</tr>
<tr>
<td>• Inwieweit verfügt das Unternehmen über zielführende und ausreichende Kanäle oder Möglichkeiten, um Verletzungen von menschenrechtlichen oder umweltbezogenen Pflichten festzustellen?</td>
</tr>
<tr>
<td>• Sind die Ergebnisse der regelmäßigen (jährlichen) und anlassbezogenen Risikoanalysen sowie Erkenntnisse aus Beschwerdeverfahren Ausgangspunkt für Entwicklung/Auswahl der Abhilfemaßnahmen?</td>
</tr>
<tr>
<td>• Inwieweit wird bei der Auswahl von Abhilfemaßnahmen bedacht, welcher Aufwand mit Blick auf die konkrete Verletzung und die Betroffenen Personen sowie den relevanten lokalen Kontext zielführend und ausreichend ist?</td>
</tr>
<tr>
<td>• Wie wird sichergestellt, dass Abhilfemaßnahmen zur Beendigung von Verletzungen im eigenen Geschäftsbereich im Inland bzw. in der Regel zur Beendigung von Verletzungen im eigenen Geschäftsbereich im Ausland sowie bei bestimmten beeinflussten konzernangehörigen Gesellschaften führen?</td>
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<tr>
<td>• Wie wird erfasst und sichergestellt, dass ähnliche Sachverhalte auch vergleichbar behandelt werden, also ein ähnlicher Aufwand ergriffen wird, um vergleichbare Menschenrechtsverletzungen zu adressieren?</td>
</tr>
<tr>
<td>• Inwieweit werden die Ungemessenheitskriterien bei der Auswahl von Abhilfemaßnahmen berücksichtigt, beispielsweise durch Bewertung der Schwere der Verletzung? Sind alle Möglichkeiten der Eindrosselung genutzt worden?</td>
</tr>
<tr>
<td>• Inwieweit wurde die Perspektive der Betroffenen bei der Auswahl von Abhilfemaßnahmen berücksichtigt?</td>
</tr>
<tr>
<td>• Inwieweit wurden Lernerfahrungen aus der bisherigen Umsetzung von Abhilfemaßnahmen und den erfolgten Wirksamkeitsüberprüfungen berücksichtigt?</td>
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</table>

<table>
<thead>
<tr>
<th>Erfolg der Maßnahmen überprüfen</th>
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</thead>
<tbody>
<tr>
<td>• Hatten die Abhilfemaßnahmen Erfolg?</td>
</tr>
<tr>
<td>• Inwieweit werden Abweichungen von „in der Regel“ zu beanenden Verstößen im eigenen Geschäftsbereich im Ausland und im eigenen Geschäftsbereich gemäß § 2 Abs. 6 S. 3 dokumentiert und begründet?</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Einbeziehung von Zulieferern</th>
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<tbody>
<tr>
<td>Inwieweit erfolgt die Erarbeitung und Umsetzung von Konzepten zur Beendigung oder Minimierung von Verletzungen in Zusammenarbeit mit Zulieferern?</td>
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</table>

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<tr>
<th>Verknüpfung mit anderen Maßnahmen</th>
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<tbody>
<tr>
<td>Inwieweit wird die Umsetzung der Konzepte mit vorhandenen Präventionsmaßnahmen, beispielsweise der Anpassung von Beschaffungs- oder Einkaufspraktiken, verknüpft?</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Schlussfolgerungen aus der Wirksamkeitsprüfung ziehen:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Wird im Rahmen der Wirksamkeitsüberprüfungen festgestellt, wie die eingesetzten Maßnahmen gewirkt haben, und wie werden die Betroffenen in diesen Prozess eingebunden?</td>
</tr>
<tr>
<td>• Welche Schlüsse lassen sich aus der Wirksamkeitsprüfung von Abhilfemaßnahmen mit Blick auf die Angemessenheit der Auswahl der Umfang der Maßnahmen ziehen, insbesondere in Bezug auf das Verhältnis von eigenen Abhilfemaßnahmen, der Wirksamkeit von Konzepten zur Beendigung oder Minimierung und dem Abbruch einer Geschäftsbeziehung? Sind Anpassungen erforderlich?</td>
</tr>
<tr>
<td>• Können vorhandene Ressourcen eventuell durch Umverteilung zielführender eingesetzt werden, um insb. einen Abbruch einer Geschäftsbeziehung als letztes Mittel zu vermeiden?</td>
</tr>
<tr>
<td>• Sind zusätzliche Ressourcen für bestehende oder neue Abhilfemaßnahmen notwendig?</td>
</tr>
</tbody>
</table>
Impact of the handout - Complaints procedure

➢ What does the example show?

Can this example be generalised? Would mean that for suppliers who produce for many large German companies, (communication) their own complaints procedure would not be effective → Industry initiatives complaints procedure then standard

Communication of the complaints procedure can be complex and time-consuming with target groups!
Impact of the handout - Complaints procedure

What does the example show?

In the case of very high risks, measures to be taken are very extensive! (Initiatives, controls, stakeholder discussions)

───

Wieder ein Beispiel

Überprüfung von Beschwerdeverfahren


Schnell stellt sich uns unangenehm heraus, dass alle Ansprechpersonen des Beschwerdeverfahrens männersicht und es den Männern und Frauen unangenehm ist, mit Männern über diese Themen zu sprechen. Sie fürchten, dass man ihnen nicht glaubt, sie nicht ernstnimmt, sie den Tätern gegenüberstellt, sie aufgrund der Beschwerde noch schlechter behandelt oder sie gar entlässt.

To what extent do guiding questions help?

---

### Aufgabe: Einrichtung von oder Beteiligung an Beschwerdeverfahren (§§ 8, 9 Abs. 1)

- Inwiefern wird bei der Einrichtung und Auswahl von Beschwerdeverfahren angesichts der Informationen zur eigenen Risikodisposition und den Ergebnissen der Risikoanalyse (sofern diese bereits vorliegen) abgewogen, welcher Aufwand zielführend und ausreichend ist?
  - Inwiefern wurden die Ergebnisse der Risikoanalyse und insbesondere Informationen zu Kontexten mit (prioritären) Risiken (Länder, Regionen, einzelne Standorte, Branchen) sowie den jeweiligen Zielgruppen des Verfahrens bei der Einrichtung oder Auswahl des Beschwerdeverfahrens berücksichtigt?
  - Inwiefern wurden die Interessen der Zielgruppen der Verfahren (insbesondere der potenziell von Verletzungen betroffenen Gruppen) bei der Einrichtung und Auswahl von Beschwerdeverfahren identifiziert und insbesondere mit Blick auf die Zugänglichkeit der Beschwerdeverfahren ausreichend berücksichtigt?
  - Wie wird sichergestellt, dass diese Zielgruppen über das Beschwerdeverfahren informiert werden?

### Aufgabe: Umsetzung und Überprüfung von Beschwerdeverfahren (§§ 8, 9 Abs. 1)

- Inwiefern verfügen mögliche Betroffene von Risiken oder Verletzungen, die über die Risikoanalyse oder die Umsetzung bisheriger Präventions- oder Abhilfemaßnahmen identifiziert wurden, über (ausreichenden) Zugang zu einem Beschwerdeverfahren?
- Inwiefern werden diejenigen, für die das Verfahren vorgesehen ist, im Rahmen der Überprüfung konsultiert? Inwiefern werden Lernerfahrungen aus der Bearbeitung von Beschwerden und den Wirksamkeitsüberprüfungen genutzt, um die vorhandenen Ressourcen zielführend einzusetzen?
- Sind Anpassungen oder zusätzliche Ressourcen notwendig?
- Wie wird sichergestellt, dass diese Zielgruppen über das Beschwerdeverfahren informiert werden?
Conclusion

BAFA deals with adequacy

Adequacy criteria must not degenerate into an end in themselves! Often result should be at the beginning

Document adequacy considerations / problem only if adequacy is not considered at all

Discretionary scope for appropriateness remains in place
Our checklists for risk analysis - Contact us!

Our checklists for risk analysis in your own business area (currently 70 pages with many integrated documents and links)

01 Checkliste $2 Abs. 2 Nr. 1 und 2
02 Checkliste $2 Abs. 2 Nr. 3
03 Checkliste $2 Abs. 2 Nr. 4
04 Checkliste $2 Abs. 2 Nr. 5
05 Checkliste $2 Abs. 2 Nr. 6
06 Checkliste $2 Abs. 2 Nr. 7
07 Checkliste $2 Abs. 2 Nr. 8
08 Checkliste $2 Abs. 2 Nr. 9 und 10
09 Checkliste $2 Abs. 2 Nr. 11
10 Checkliste $2 Abs. 3
4. And: § 4 - establish risk management

**2021**

Monitor the legislative process

**2022 - To Dos (Preparations)**

1. Pursue preparations for prevention (§ 6) and risk analysis (§ 5)

2. Then: Measure: Develop responsibility and Measure plan Risk management
   See Responsibility and Measure Plan Risk Management [Toolbox].

**2023 - Goals + Implementation**

**Goal:** Identify human rights and environmental risks in the own business and in the supply chain and prevent, stop or minimize violations of protected positions (see § 2 para. 2 and 1) or environmental obligations (see § 2 para. 3 and 4).

**Measure 1:** Embed responsibilities to monitor due diligence compliance in all internal company business processes that are likely to impact risk mitigation. Together = "Roundtable Supply Chain Law"

→ See Responsibility and Measure Plan Risk Management [Our Toolbox].

1st level: Management
2nd level: Human Rights Officer (or other person with primary responsibility who reports directly to the Management Board)
3rd level: relevant departments, in particular purchasing, legal department, compliance, CSR department

**Measure 2:** The management has to inform itself about the work of the responsible persons at least once a year as well as on an ad hoc basis, for example when new business areas or products are introduced.

**2024**

...as 2023
4. and: § 4 - Establish risk management

A. Horizontal directive
- Responsibilities, processes, measures at management and executive level
- Human rights officer(s) and steering groups
- Management information, controls and delegation
- Detailing in vertical process descriptions - ideally with automation of "analysis - measures - documentation - report"

B. Vertical standard operating procedure descriptions (SOPs, VAs, etc.)
<table>
<thead>
<tr>
<th>No.</th>
<th>§</th>
<th>Duties and tasks according to the law</th>
<th>Tasks concretely</th>
<th>Competences and interfaces</th>
<th>Cast Idea</th>
<th>Support Idea</th>
</tr>
</thead>
</table>
| 1   | 4 | Risk management                      | - implementation of measures no. 1 to 9 | - Legal  
- HR  
- Environment - EHS  
- Procurement - supply chain  
- Sustainability  
- Compliance  | - Core team  | - external support  
support by the respective persons responsible for measures no. 1 to 9 |
# 5. Timely: § 7 - develop corrective measures

## 2021

**Remedy-measures**

Corrective measures in our own business operations (at home and abroad) and at direct suppliers with immediate corrective measures (Article 7(1)) or, in the case of direct suppliers, a concept with a concrete timetable for minimisation (Article 7(2)) with a corrective measure plan (Article 7(2)(1)) and
- cooperation with other companies and suspension of the business relationship; and
- termination of the business relationship (if applicable § 7 para. 3 nos. 1-3 - after consideration of whether serious, no timely remedy, no softer means and no increase in influence appears promising).

## 2022 - To Dos (Preparations)

1. Pursue preparations for prevention (§ 6) and risk analysis and management (§ 5 and § 4)
2. **Measure**: Develop escalation and correction plan
   - See corrective measure plan [Toolbox]

## 2023 - Goals + Implementation

### Goal: Prevention, cessation, minimization of human rights or environmental violations

**Measure 1**: Take corrective measure in your own business area that will result in the termination of the violation.

**Measure 2**: In the event of (imminent) breaches in the business of the direct (or indirect, if there are indications) supplier, if you are unable to stop the breach yourself, you must immediately work with the supplier to develop a corrective measure (time) plan to prevent, stop or minimize the breach, typically including the following elements:

(i) First of all, ask your supplier to remedy the grievance by a certain date. Make your requirements clear and offer concrete support;

(ii) Join forces with other companies to increase pressure on the supplier (e.g. as part of industry initiatives);

(iii) If it is foreseeable that the supplier will not comply with the requirements, you should enforce a contractual penalty, temporarily suspend business relations or remove the company from possible award lists until the supplier has ended the violation.

→ See corrective measure plan [Toolbox]

**Measure 3**: If the escalation and remediation plan is unsuccessful, or if the violation is so severe that an escalation and remediation plan is not even a consideration, terminate the relationship with the supplier.

→ See corrective measure plan [Toolbox]

**Measure 4**: Annual and ad hoc inspections and, if necessary, adaptation of the escalation and remediation plan.

**Measure 5**: Findings from the handling of indications in the complaints procedure (see puzzle piece no. 7) are to be taken into account in the regular review of the remedial measures.

## 2024

...as 2023
<table>
<thead>
<tr>
<th>No.</th>
<th>§</th>
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<th>Cast idea</th>
<th>Support idea</th>
</tr>
</thead>
</table>
| 6   | 7  | Remedial action                       | remedial measures in own business operations and in the case of direct suppliers with immediate remedial measures (§ 7 para. 1) or in the case of direct suppliers concept with concrete time schedule for minimisation (§ 7 para. 2) with corrective action plan (§ 7 para. 2 no. 1) as well as merger with other companies and suspension of the business relationship and termination of the business relationship (if applicable § 7 para. 3 nos. 1-3) - after weighing whether serious, no timely remedy, no milder means and no increase in influence promising). | - in its own business area, remedial action leading to termination of violation  
- in case of (threatened) violations in the business area of the direct (or indirect in the event of indications) supplier, termination or corrective action (time) plan for prevention, termination or minimisation of the violation  
- possible termination of the cooperation with the supplier.  
- annual and ad hoc inspections and, if necessary, adjustment of the escalation and remediation plan  
- Findings from the processing of indications in the complaints procedure are to be taken into account in the regular review of remedial measures. | - knowledge of the risks from the analysis  
- knowledge of current developments  
- interfaces to legal, HR, environment, procurement, sustainability, Compliance | - HR and environment - EHS for own business area  
- Procurement and supply chain for suppliers | - external support  
- support from core team  
- support from management |
To Dos (Preparations)

1. Pursue preparations for prevention (§ 6) and risk analysis and management (§ 5 and § 4)

Then:

Measure: Continue to develop the measures already developed for the direct supplier for use with the indirect supplier.

2023 - Goals + Implementation

Objective: In the event of actual indications of a (possible) infringement, you must also fulfill certain due diligence obligations in the case of an indirect supplier.

Note: It is no longer necessary to assume substantiated knowledge; it is sufficient if you have factual indications that make a human rights or environmental violation at an indirect supplier appear possible. Factual indications can be, for example, reports on the poor human rights situation in the production region, the fact that an indirect supplier belongs to an industry with special human rights or environmental risks, and previous incidents at the indirect supplier. The due diligence obligations can be greatly extended as a result.

Note: If an attempt is made to circumvent the due diligence requirements through the intermediary of a direct supplier, indirect suppliers count as direct suppliers.

Measures: Take the following Measures immediately upon substantiated knowledge of a (possible) violation at an indirect supplier:

− risk analysis (puzzle piece no. 3)
− appropriate preventive measures and control measures towards polluters (puzzle piece no. 5), in particular contacting the indirect supplier, clarifying expectations, familiarising the indirect supplier with the Supplier Code of Conduct, as far as possible carrying out checks at the indirect supplier itself or attempting to take action via the direct supplier, further support measures, joining industry initiatives.
− concept for minimizing and preventing and ending injuries (puzzle piece #6) see corrective measure plan [Toolbox].
− update the policy statement (puzzle piece no. 4), for example in relation to the identified relevant risks in the supply chain or to the human rights-related expectations that the company has of its suppliers in the supply chain.
<table>
<thead>
<tr>
<th>No.</th>
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<tbody>
<tr>
<td>8</td>
<td>§ 9</td>
<td>Measures indirect suppliers</td>
<td>-ensuring that any</td>
<td>-knowledge of current</td>
<td>- Procurement and</td>
<td>- external support</td>
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<tr>
<td></td>
<td></td>
<td>Due diligence obligations for indirect suppliers</td>
<td>knowledge in the</td>
<td>developments - interfaces with Legal,</td>
<td>- support from core</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>with adaptation of the existing risk</td>
<td>establishment is not lost</td>
<td>Procurement,</td>
<td>team</td>
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<tr>
<td></td>
<td></td>
<td>management (§ 9 para. 4) and in case of</td>
<td>-analysis, prevention and</td>
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<td>- support from management</td>
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<tr>
<td></td>
<td></td>
<td>indications of a possible violation at an indirect supplier</td>
<td>remedy as No. 3, 6, 7</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>- a risk analysis (§ 5 par. 1 to 3)</td>
<td>-adoption in policy</td>
<td></td>
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<tr>
<td></td>
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<td>-adequate preventive measures towards</td>
<td>statement</td>
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<td>-concept to prevent, stop or minimise violations</td>
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<td></td>
<td>- update policy statement</td>
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</tbody>
</table>
Special topic framework agreements

What does the literature and BAFA say?

- The term "framework agreement" is usually not discussed in depth in the literature1; in general, the literature misses many practical questions.
- It should be logical: In the case of the delivery of goods or the provision of services and invoicing and payment, there is always a contract (at least an implied contract) - it is at most questionable between whom and where the exchange of services actually takes place and who is to be considered specifically on the company side or on the supplier side2; this should be more important than the question of who is the contractual partner on both sides in two corporate groups.
- BAFA also assumes (strongly criticised) that the parent company must also include suppliers of a subsidiary if it has a determining influence3; this is partly supported in the literature because otherwise the law would be shorter than ideologically desired4. The opposing view is to be preferred, since the wording of the law is different ("contra legem"5). In addition, there is probably the legal entity principle, according to which the due diligence obligations are incumbent on the respective company subject to the LkSG6.
- And wording: § Section 2 para. 2 LkSG requires "necessary supplies for the production of the product or the provision of the service of the enterprise", so there must have already been an exchange of services from a contractual partner (supplier) to the LkSG enterprise (as recipient)7.
- One view (literature) bases the concepts of "necessity" (§ 2 para. 5 LkSG and "necessity" (§ 2 para. 7 LkSG) on a narrow understanding and wants to exclude the supply of mere auxiliary and operating resources8; for this, reference is made to guiding principles and guidelines9.
- BAFA and the explanatory memorandum (frighteningly, the terms are used synonymously), as well as some of the literature, do not go beyond the criteria of "necessity" and "need".

1 See only: Gehring/Of Gehring/Fischer LkSG, § 2 marginal no. 363 et seq.
2 See Rothermel's LkSG Commentary, § 2 marginal no. 132 ff.
3 Cf. No. IV No. 7b) FAQ BMAS ("the business area and the supply chains of the company"), available online at: CSR - Fragen und Antworten zum Lieferkettengesetz (csr-in-deutschland.de) as well as the now deleted No. IV No. 8, cited in Rothermel. LkSG, p. 22; BAFA Handreichung zur Risikoanalyse, fn. 4, available online at: https://www.bafa.de/DE/liefertenketten/Risikoanalyse/risikoanalyse_node.html, BAFA Fragerkatlog zur Berichterstattung gem. § 10 Abs. 2 LkSG. Prälambel, p. 3, available online at https://www.bafa.de/SharedDocs/Downloads/DE/liefertenketten/fragenkatalog_berichterstattung.pdf?blob=publicationFile&v=4.
4 Otl. Lüneburg/Schmelzeisen, Zur Anwendung des Lieferkettensorgfaltspflichtengesetzes im Konzern, DB 2022, 288, 244.
6 Berg/Kramme-Charnitzky, LkSG, § 2 marginal no. 186 f.
7 Explicitly DAV Opinion 27/2021, April 2021, para. 25.
8 Cf. Depping/Walden-Walden, LkSG, § 2 marginal no. 614.

Action, available online at: https://oemguidelines.oecd.org/OECD-erlaltden-fur-die-erfurung-der-sorgfaltspflicht-fur-verantwortungsvolles-unternehmerisches-handeln.pdf; OECD Guide to the

Fulfilment of due diligence to promote responsible supply chains for minerals from conflict and high risk areas, available online at: https://www.oecd-ilibrary.org/docserver/3d21faa0-en.pdf?expires=1673684510&id=id&accname=guest&checksum=ACBF570909F66546CA118972269F62.
11 Cf. No. II No. 3 and 4 FAQ BMAS, available online at: CSR - Fragen und Antworten zum Lieferkettengesetz (csr-in-deutschland.de). Depping/Walden-Walden, LkSG, § 2 Pn. 536. Johann/Sangi-Gehne/Gabriel, LkSG, § 2 marginal no. 178; according to Falder/Franz-Fahle/Poleacov, LkSG, no. 4.3, necessity could even be assumed in principle, as companies would not conclude unnecessary contracts.
12 Cf. explicitly Johann/Sangi-Gehne Gabriel, LkSG, § 2 marginal no. 178.
13 Ziff. II No. 3 and 4 FAQ BMAS, available online at: CSR - Fragen und Antworten zum Lieferkettengesetz (csr-in-deutschland.de).
14 Charnitzky/Weigel, Die Krux mit der Sorgfalt, RIW 2022, 12, 13; Wagner/Rutloff/Wagner-Wagner/Wagner-Schuler, LkSG, § 1 marginal no. 66.
Framework agreements

Practical approach

When (When not)
- Active direct suppliers are those who have delivered in the FY (filter by *invoices*, view *creditor list*) - regular analysis; framework contract, individual contract, call-off, etc. not relevant.
- Active direct suppliers are also those who will still deliver in the FY (…) - *occasion-based analysis*; framework contract, individual contract, call-off, etc. not relevant.

Who and where (who and where not)
- If "when" (see above) leads to *subsidiary* (framework contract, individual contract, call-off, etc. not relevant) then questionable whether determining influence and BAFA view or law or whether one asks "necessary for manufacturing the product" of the company (parent or subsidiary - and who falls under law).
- If "when" (see above) leads to *parent company* (framework contract, individual contract, call-off, etc. not relevant) then questionable whether "necessary for production of the product" of the enterprise.
- In addition, there is always the question of who is the relevant *supplier* (mother, daughter, company that supplied the goods).

What (what not)
- Basically questionable what is "necessary for the production of the company's product" = *different depth of analysis* possible

Stratified approach according to "when", "who", "where" and "what" possible and sensible; if necessary, backed up with expert opinion.
7. Then: § 8 - establish complaints procedure

---

2021

Monitor the legislative process

2022 - To Dos (Preparations)

1. Pursue preparations for prevention (§ 6) and risk analysis and management (§ 5 and § 4) as well as corrective measures (§ 7 and § 9)

2. Then:

   Measure:
   Establish a complaints system that is accessible to your own employees and those in and around the supply chain. Alternatively, participate in an external grievance mechanism (e.g. an industry association) provided it meets the accessibility, transparency and integrity requirements set out in the law.

   Note: The complaints procedure must therefore be accessible beyond the immediate supplier to the named persons throughout the supply chain.

   Requirements of complaints mechanism: The procedure must be specified in text form, in particular: Who are the target groups? What happens in the event of a tip-off? What procedural steps follow? What is the time schedule? Users do not suffer any disadvantages by making use of the complaints procedure! Confidentiality and data protection are guaranteed! The persons entrusted by the company with the implementation of the procedure must guarantee impartiality. Ensure access to and use of the complaints mechanism. When making it accessible, a combination of different complaint channels (depending on the target group) is recommended. For example, consider setting up hotlines / e-mail addresses / websites, complaint forms, imprints on products, (internal / external) contact persons. Note: Where risks have been identified, particular attention should be paid to minimising barriers to the complaints procedure (e.g. language, fear of consequences).

   See Rules of Procedure Appeal Procedure [Toolbox].

2023 - Goals + Implementation

Objective: (Potentially) affected persons and whistleblowers should be given the opportunity to point out human rights and environmental risks and violations.

Measure 1: Maintain an appropriate grievance procedure.

Measure 2: Provide public (website) and regular targeted information about the complaints procedure. Also make the procedure transparent.

Note: It makes sense to combine the establishment of a complaints procedure with the introduction of a whistleblowing system. We will be happy to support you in the implementation of a combined technical solution.

Measure 3: The effectiveness of the grievance procedure shall be reviewed at least annually or as needed and updated promptly as needed.

2024

...as 2023

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Complaints procedure

Complaints procedure with textual rules of procedure (§ 8 para. 2) for activities in the own business area and those of direct suppliers and indirect suppliers (§ 9 para. 1) on the basis of knowledge with acknowledgement of receipt and discussion of the facts with whistleblowers and procedure with amicable settlement or external complaints procedure. Persons must be impartial (Section 8 (3)). Clear and comprehensible information on accessibility and competence and implementation of the procedure must be accessible and the procedure must be accessible to potential users and be confidential with identity protection and protection against discrimination (§ 8 para. 4). Plus annual and occasion-related analysis (e.g. new products, new projects, new business areas) of the effectiveness of the procedure.
<table>
<thead>
<tr>
<th>No.</th>
<th>§</th>
<th>Duties and tasks according to the law</th>
<th>Tasks concretely</th>
<th>Competences and interfaces</th>
<th>Cast idea</th>
<th>Support idea</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>§ 8</td>
<td>Complaints procedure</td>
<td>- set up complaints system</td>
<td>- possibly familiar with internal reporting system</td>
<td>- HR</td>
<td>- external support - support from core team - support from management</td>
</tr>
</tbody>
</table>

Complaint procedure with textual rules of procedure (§ 8 para. 2) for activities in the own business area and those of direct suppliers and indirect suppliers (§ 9 para. 1) on the basis of knowledge with acknowledgement of receipt and discussion of the facts with whistleblowers and procedure with amicable settlement or external complaint procedure. Persons must be impartial (§ 8 para. 3). Clear and comprehensible information on the accessibility and competence and implementation of the procedure must be accessible and the procedure must be accessible to potential users; and be confidential and provided with identity protection and protection against discrimination (§ 8 para. 4). Plus annual and occasion-related analysis (e.g. new products, new projects, new business areas) of the effectiveness of the procedure.
Practical guidance, especially on how to set up and implement complaints procedures

Footnote 2: The appeal procedure must be in place from the entry into force of the law in 2023 (2024).

Risk-based approach also for complaints procedures (complaints procedure should be based on results of risk analysis...those potentially affected after risk analysis are priority target group) - further development possible in 2023!

BAFA can impose a fine of up to EUR 8 million if the complaints procedure is not set up (§ 24 para. 1 no. 8 LkSG, § 24 para. 2 p. 1 no. 1 lit a)) [interestingly, the law does not say "not established in time" or "not properly established"].

Descriptions of the complaints procedure in the annual report
D1.3 Were the rules of procedure publicly available during the reporting period?
383. yes, with indication where it is publicly available
384. no
> If No
385. give reasons for your answer

[D2] Requirements for the complaints procedure

D2.1 Were responsibilities for the implementation of the procedure defined for the reporting period?
386. yes
387. no
> If No
388. Justify your answer
> If yes, what criteria are ensured for those responsible?
389. Those responsible can act impartially
390. The competent persons are not bound by instructions within the scope of this competence
391. Those responsible fulfil their obligation to maintain confidentiality
392. None of the above

D2.2 Were arrangements made for the reporting period to protect potentially involved parties from being disadvantaged or penalised as a result of a complaint?
393. yes
394. no
> If No
395. give reasons for your answer
> If yes, describe what arrangements have been made, in particular
396. How the complaints procedure ensures the confidentiality of whistleblowers' identities?
397. What further measures are taken to protect whistleblowers?

[D3] Effectiveness of the appeal procedure

D3.1 Did you receive any information about the complaints procedure during the reporting period?
398. yes
399. no
> If yes, please provide details on
400. duration of proceedings - target duration and real duration of proceedings (indication of shortest and the longest duration of proceedings with a brief explanation of the facts) of the total number of complaints received and, if applicable, changes in the
401. Comparison with the previous reporting period of the proportion of complaints redressed in the total number of complaints (with optional explanation)
> If Yes was selected, on which topics have complaints been received?

[M1 - U3]
> If Yes is selected, describe
416. What conclusions were drawn from the complaints/warnings received and to what extent these findings have led to adjustments in risk management

D3.2 Was the grievance procedure reviewed for effectiveness for the reporting period?
417. Yes, annual review
418. yes, occasion-based review
419. no
> If No
420. give reasons for your answer
If one of the answers from 417. to 418. has been selected, describe
421. To what extent feedback from internal and external stakeholders, in particular (potential) stakeholders, was obtained for the evaluation.
422. How the effectiveness of the complaints procedure is measured
423. What findings regarding effectiveness were drawn from the review and what actions were derived from it.

> BAFA published a handout on the complaints procedure in October 2022: https://www.bafa.de/DE/Lieferketten/Beschwerdeverfahren/beschwerdeverfahren_node.html;jsessionid=118A6ED7C609585B093B5CA0EF697570.2_cid387
Contents of the handout - General

Footnote 2: The appeal procedure must be **in place from the entry into force of the law in 2023 (2024).** Complete?

Published Rules of Procedure
(*responsibilities and resources must be clarified*)

Guideline on treatment of complaints
(*according to the requirements of the LkSG*)

Secure accessible complaint channels
(*priority target groups not yet determined*)

Communication of the complaint channels internally and externally
(*priority target groups not yet determined*)
Contents of the handout - Not all questions are answered (1)

**Which complaint channels and how to communicate?**

- Online mask; Hotline; E-mail address; Mailboxes; Contact persons
- Adequacy ( Appropriateness)
- Intranet; circulars; training courses; notice boards; business cards; information brochures
- Adequacy

**Problem: Supplier Code of Conduct**

"The supplier shall pass on to its employees in an appropriate manner any information received from us regarding accessibility, responsibility and the implementation of the grievance procedure. The grievance procedure must be accessible to employees while maintaining confidentiality of identity and effective protection against discrimination."

**Problem: Languages**

Handout: "...be prepared in the languages that are relevant for the company's target groups". translation into the national language of the priority target groups may be necessary

**Problem: Notices at indirect suppliers? Unclear;** actually to be proceeded on the basis of risk analysis (there are medium b. Suppliers only taken into account if subst. Knowledge taken into account); furthermore, no obligation to know entire supply chain
Example measures for the design of accessibility

<table>
<thead>
<tr>
<th>I: Beispielhafte Maßnahmen zur Gestaltung der Zugänglichkeit des Beschwerdeverfahrens</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beispiele für Zugangshinderer</strong></td>
</tr>
<tr>
<td><strong>Das Verfahren ist nicht bekannt</strong></td>
</tr>
<tr>
<td><strong>Es bestehen Sprachbarrieren</strong></td>
</tr>
<tr>
<td><strong>Es bestehen Einschränkungen durch mangelndes Lese- oder Schreibvermögen</strong></td>
</tr>
<tr>
<td><strong>Es besteht kein Vertrauen in das Verfahren</strong></td>
</tr>
<tr>
<td><strong>Das Verfahren ist mit Kosten verbunden</strong></td>
</tr>
<tr>
<td><strong>Es besteht kein Zugriff auf das Beschwerdeverfahren (z. B. da dieses nur an bestimmten Orten verfügbar ist)</strong></td>
</tr>
<tr>
<td></td>
</tr>
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<td></td>
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<td></td>
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<tr>
<td></td>
</tr>
</tbody>
</table>
Contents of the handout - Not all questions are answered (2)

Problem: Who receives and processes tips?

1. purchasing staff / other operational departments for receiving and initially processing leads?
   No, because:
   - Conflict of interest;
   - no sufficient capacities;
   - not trained.
   → Therefore: Receipt by Compliance Department (or Sustainability Department)

2. purchasing staff / other operational departments for subsequent clarification of allegations against a supplier?

   Advantage: Purchasing staff / operational departments may already have a connection to the supplier
   
   Disadvantage: Conflict of interest
   - Assign concrete task;
   - If necessary, forward information to the operational department only in anonymised form;
   - Confidentiality undertaking;
   - Trainings.
Example of a complaint procedure

### Transparente Kommunikation gegenüber der hinweisgebenden Person zum Verlauf und Fortschritten

|-----------------------------------------------|-------------------------------------------|-----------------------------|-------------------------------------------------|---------------------|-----------------------------|-----------------------------|

**Abbildung 2: Beispielhafter Ablauf eines Beschwerdeverfahrens**

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Optionales Streitbeilegungsverfahren (siehe 3.4)
Review of the effectiveness of the complaints procedure

Beispiele für KPIs zur Messung der Wirksamkeit von Beschwerdeverfahren:

- Anzahl der Beschwerden (Gesamtzahl/differenziert nach Themen)
- Informationen zur hinweisgebenden Person (Zuordnung in Zielgruppe, beispielsweise eigene Beschäftigte, Beschäftigte bei unmittelbaren/indirekten Zulieferern etc.)
- Anteil der gelösten Beschwerden (an der Gesamtzahl der Beschwerden sowie differenziert nach der Beschwerdeführung, beispielsweise begrundete Ablehnung, Rücknahme der Beschwerde, Abhilfe, keine Abhilfe, einvernehmliche Beleidigung)
- Durchschnittliche Zeitspanne für die Lösung einer Beschwerde
- Zufriedenheit derjenigen, die eine Beschwerde eingereicht haben, mit dem Ergebnis des Verfahrens

II: Leitfragen zu den Effektivitätskriterien der UN-Leitprinzipien unter Berücksichtigung der spezifischen Anforderungen des LSG

<table>
<thead>
<tr>
<th>Effektivitätskriterien</th>
<th>Leitfragen für die Überprüfung</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legitim</td>
<td>Gibt es eine Beschwerdenordnung, die den Prozess im Umgang mit Beschwerden klar beschreibt? Sind klar Zuständigkeiten für die Umsetzung des Verfahrens benannt und wird die Qualifikation der für die Bearbeitung von Beschwerden verantwortlichen Personen durch angemessene Schulungen sichergestellt?</td>
</tr>
<tr>
<td>Zugänglich</td>
<td>Werden Informationen zum Verfahren auf eine Art und Weise bereitgestellt, die an den Kontext und die Zielgruppen angepasst ist? Schützt das Verfahren hinweisgebende Personen vor Benachteiligung oder Bestrafung?</td>
</tr>
<tr>
<td>Berechenbar</td>
<td>Enthält die öffentliche Verfahrensordnung Informationen zum vorhersehbaren Zeitrahmen für die einzelnen Verfahrensstufen, zu möglichen Ergebnissen, die erzielt werden können, sowie zur Überwachung der Umsetzung?</td>
</tr>
<tr>
<td>Ausgewogen</td>
<td>Wird die notwendige Unterstützung bereitgestellt, damit die Zielgruppen das Verfahren tatsächlich nutzen können? Haben die Zielgruppen Zugang zu Fachwissen, Beratung und Informationen, die sie benötigen, um an dem Beschwerdeverfahren zu teilnehmen?</td>
</tr>
<tr>
<td>Transparent</td>
<td>Wird die hinweisgebende Person über das Verfahren hinweg transparent und verständlich über den Verlauf und erreichte Fortschritte informiert? Werden Informationen zu über das Verfahren eingereichten Beschwerden und deren Lösung öffentlich bereitgestellt?</td>
</tr>
<tr>
<td>Rechts-kompatibel</td>
<td>Werden Beschwerden zu schwerwiegenden menschenrechts- und umweltbezogenen Pflichtverletzungen priorisiert behandelt und Entscheidungsträgerinnen und -träger im eigenen Unternehmen darüber entsprechend informiert? Werden Lösungs- und Abhilfemaßnahmen im Einklang mit international anerkannten Menschenrechtsstandards entwickelt?</td>
</tr>
<tr>
<td>Quelle-kontinuierlichen Lernens</td>
<td>Wird das Verfahren jährlich und anlässlich auf seine Wirksamkeit überprüft? Fließen Erkenntnisse aus der Bearbeitung von Hinweisen in die Anpassung der eigenen Sorgfaltsprozesse?</td>
</tr>
</tbody>
</table>
The Complaints Procedure under the LkSG/SCDDA and the Whistleblower Protection Act (HinSchG) [Whistleblower Directive]
<table>
<thead>
<tr>
<th>#</th>
<th>Subject area</th>
<th>LkSG</th>
<th>HinSchG</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reach</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Personnel scope of application</td>
<td>From 1,000 (as of 2024) or 3,000 employees (§ 1 para. 1 LkSG)</td>
<td>From 50 (as of Dec. 2023) or 250 employees (§§ 12 para. 2, 42 HinSchG)</td>
</tr>
<tr>
<td>2</td>
<td>Group-wide calculation</td>
<td>In the case of affiliated companies, employees are added together for threshold values (§ 1 para. 3 LkSG)</td>
<td>Thresholds count per legal unit, i.e. there is no aggregation (§ 12 para. 2 in conjunction with § 2 para. 9 HinSchG).</td>
</tr>
<tr>
<td>3</td>
<td>Material scope of application</td>
<td>Human rights and environment-related risks as well as violations of human rights-related or environment-related obligations in the company's own business operations and in the supply chain (§ 3 para. 1 LkSG)</td>
<td>Violation of regulations subject to criminal penalties or fines if the regulation serves to protect life, limb or health or to protect the rights of employees or their representative bodies (section 2 (1) HinSchG).</td>
</tr>
<tr>
<td>4</td>
<td>Which whistleblowers are covered?</td>
<td>Everyone / all persons (internal and external persons) who are potentially affected by human rights or environmental violations in their own business area and in the company's supply chain through economic activity (§ 8 para. 1 LkSG), including through economic activity by indirect suppliers.</td>
<td>Persons who obtain information about violations in a professional context (especially employees, but not other third parties) (section 1 (1) and (2) HinSchG).</td>
</tr>
<tr>
<td><strong>Establishment (adaptation) of a procedure / system</strong></td>
<td></td>
<td><strong>n/a</strong></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Participation target groups</td>
<td>According to the explanatory memorandum and BAFA, target groups are to be consulted during construction and design; special consideration is given to vulnerable groups</td>
<td><strong>n/a</strong></td>
</tr>
<tr>
<td>6</td>
<td>Interaction</td>
<td>BAFA: The more risks identified and prioritised, the more effort in terms of complaints procedures for the relevant target group; companies should build on results of the risk analysis for complaints procedures and include complaints procedures in risk analysis Complaints procedures provide feedback on the effectiveness of risk management and due diligence processes</td>
<td><strong>n/a</strong></td>
</tr>
<tr>
<td>[Note: A functioning whistleblower system is a central building block of an effective compliance management system and helps to gain information on whether the preventive measures and structures are working or whether there is a need for improvement].</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Internal or external procedure</td>
<td>Participation in external complaints procedure is sufficient (§ 8 para. 1 LkSG)</td>
<td>Establishment of an internal reporting office required, however, a third party may be entrusted with the tasks of an internal reporting office (sections 12 (1), 14 (1) HinSchG).</td>
</tr>
<tr>
<td>#</td>
<td>Subject area</td>
<td>LkSG</td>
<td>HinSchG</td>
</tr>
<tr>
<td>----</td>
<td>--------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>8</td>
<td>Central procedure (&quot;group solution&quot;) permissible?</td>
<td>Yes (§ 8 para. 1 LkSG)</td>
<td>Yes (§ 14 para. 1 HinSchG)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[Attention: possibly different transposition in other EU countries].</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Channels</td>
<td>All</td>
<td>All; reports are to be made possible orally or in text form (cf. item 12).</td>
</tr>
<tr>
<td>10</td>
<td>Obligation to publish rules of procedure</td>
<td>Yes, rules of procedure in text form must be drawn up and made publicly available (§ 8 para. 2 LkSG).</td>
<td>No, internal reporting office only has to maintain clear and easily accessible information on official reporting procedures (§ 13 para. 2 HinSchG).</td>
</tr>
</tbody>
</table>
| 11 | Content Rules of Procedure (external Rules of Procedure as opposed to internal Procedural Guideline, below). | • Scope of application  
    • Complaint channels  
    • Complaints procedure, time frame  
    • Option for amicable dispute resolution  
    • Contact persons and departments  
    • How protection from disadvantage is achieved | n/a |
| 12 | Accessibility of the procedure                   | Procedures must be accessible to potential participants and procedural rules must be easy to find (proactive communication via notices, business cards, etc.), i.e. as barrier-free as possible (§ 8 para. 4 LkSG), for example in terms of languages.  
    Accessibility must also be ensured in the case of indirect suppliers, so that in particular factors such as language or residence abroad must not stand in the way of a complaint (section 9 (1) LkSG). | • Notifications shall be made possible in oral or text form  
    • Verbal messages must be possible by telephone or by means of another form of voice transmission  
    • Upon request, a personal meeting with a person responsible for receiving a report shall be made possible for a report within a reasonable time (§ 16 par. 3 HinSchG). |
<p>| 13 | Obligation to admit anonymous reports?           | No (§ 8 para. 4 LkSG) but confidentiality of identity; BAFA recommends enabling anonymity | No, there is no obligation to allow anonymous reports to be submitted. However, anonymous reports should also be processed (section 16 (1) HinSchG). |
| 14 | External consensual dispute resolution possible?  | Yes, § 8 para. 1 LkSG                                                 | No                                                                     |
| 15 | Subject of the allegations                       | Regularly the company itself or suppliers                             | Regularly individual persons within the company                          |
| 16 | Determination of responsibility required?        | Yes, responsibility for handling incoming complaints must be defined (§ 8 para. 3 LkSG). | Yes, responsibility for processing incoming complaints must be defined (§§ 14, 15 HinSchG). |</p>
<table>
<thead>
<tr>
<th>#</th>
<th>Subject area</th>
<th>LkSG</th>
<th>HinSchG</th>
</tr>
</thead>
</table>
| 17 | Requirements for whistleblowers | Whistleblowers must  
• be available at certain times  
• provide a guarantee of impartiality,  
• independent and  
• not be bound by instructions (no conflicts of interest)  
• be sworn to secrecy  
• be trained  (§ 8 para. 3 LkSG) | Whistleblowers must be independent.  
It shall be ensured that  
• other (operational) tasks and duties do not lead to conflicts of interest.  
• The recipient of the information has the necessary expertise.  (§ 15 para. 1 and 2 HinSchG) |
| 18 | Procedure  
( an internal procedural guideline is probably recommended) | • Acknowledgement of receipt and continuous contact with the person providing the information  
• Examination of the complaint (fits topic to the scope of application of the procedure)  
• Clarification of the facts  
• Confidentiality identity and protection from disadvantage or punishment, also posture of contact in follow-up  
• Plaintiff specific KPI for development systematic effectiveness measurement | • Acknowledgement of receipt of a report to the person making the report (after 7 days at the latest).  
• Checking whether the reported infringement falls within the material scope of application  
• Keep in contact with the person who gave the tip  
• Checking the validity of the message received (relevance check)  
• If necessary, ask the person providing the information for further information.  
• Taking appropriate follow-up measures (according to § 18 HinSchG) (§ 17 HinSchG) |
| 19 | Review and adaptation | Review effectiveness at least once a year with KPIs (e.g. number of complaints, information on whistleblowers, proportion of complaints resolved, average time to resolution, satisfaction of complainants); use appropriate KPIs such as number of complaints (differentiated by topic, information on whistleblowers, proportion of complaints resolved, average time to resolution of complaints, satisfaction of those who filed a complaint). | n/a |

System operation

| #  | Obligation to acknowledge receipt? | Yes (§ 8 para. 1 LkSG) with information on next steps  
LkSG does not contain a rigid deadline regulation but BAFA envisages that more predictable timeframes will be communicated | Yes, within 7 days (§ 17 para. 1 HinSchG) |
<table>
<thead>
<tr>
<th>#</th>
<th>Subject area</th>
<th>LkSG</th>
<th>HinSchG</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>Feedback process</td>
<td>The persons entrusted with the implementation of the procedure shall discuss the facts of the case with the whistleblower; they may offer a procedure of amicable settlement (section 8 (1) LkSG).</td>
<td>MROS maintains contact with the whistleblower and, if necessary, requests further information from him/her (Section 17 (1) HinSchG). The whistleblower shall be informed after three months about the progress of the report and planned follow-up measures (section 17 (2) HinSchG).</td>
</tr>
<tr>
<td>22</td>
<td>Procedure for the amicable settlement of disputes</td>
<td>Companies are free to offer whistleblowers an amicable dispute resolution procedure. In this case, the parties involved try to find an amicable solution together with the help of a neutral and mediating third party instead of bringing about a decision through the official complaint procedure (§ 8 para. 1 LkSG).</td>
<td>Not provided</td>
</tr>
<tr>
<td>23</td>
<td>Protection from disadvantage and punishment</td>
<td>Whistleblower must be effectively protected from disadvantage or punishment on the basis of his complaint (§ 8 para. 4 LkSG); abusiveness mentioned in justification of law, not at all by BAFA To do this, companies must define and communicate what measures they will take to protect whistleblowers from being disadvantaged or penalised for using a complaints procedure.</td>
<td>Reprisals are prohibited; this also applies to the threat and attempt to exercise reprisals (section 36 sub-section 1 HinSchG). Reversal of the burden of proof in favour of the whistleblower who experiences a disadvantage following the report (section 36 (2) HinSchG). In the case of a violation of the prohibition of reprisals, there is a claim for damages (§ 37 HinSchG)</td>
</tr>
<tr>
<td>24</td>
<td>Maintaining the confidentiality of identity</td>
<td>Complaint procedure must maintain confidentiality of identity (§ 8 para. 4 LkSG)</td>
<td>The reporting office must always maintain the confidentiality of the identity (§ 8 para. 1 HinSchG). BUT exceptions to the confidentiality requirement (in particular § 9 HinSchG)</td>
</tr>
<tr>
<td>25</td>
<td>Access info</td>
<td>Clear and comprehensible information on accessibility and responsibility and on the implementation of the procedure shall be made publicly available in an appropriate manner (§ 8 par. 4 LkSG).</td>
<td>Internal reporting office shall provide clear and easily accessible information to workers on external reporting procedures (section 13(1) HinSchG).</td>
</tr>
<tr>
<td>26</td>
<td>Documentation obligation</td>
<td>An annual report on the fulfilment of due diligence obligations must be prepared and made available free of charge on the company's website for 7 years. Among other things, the report must describe the measures taken by the company in response to complaints. (§ 10 para. 2 LkSG)</td>
<td>All incoming messages are stored in a permanently retrievable manner, to be documented in compliance with the principle of confidentiality (§ 11 para. 1 HinSchG). The documentation is deleted two years after the conclusion of the procedure (§ 11 para. 3 HinSchG).</td>
</tr>
<tr>
<td>#</td>
<td>Subject area</td>
<td>LkSG</td>
<td>HinSchG</td>
</tr>
<tr>
<td>---</td>
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<td>------------------------------</td>
</tr>
<tr>
<td></td>
<td>Sanction risks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Impending fines for non-compliance</td>
<td>Up to EUR 8 million (§ 24 LkSG)</td>
<td>Up to EUR 1 million (§ 40 HinSchG)</td>
</tr>
</tbody>
</table>
Implement the LkSG and HinSchG together?

Principle: The requirements of the complaints procedure under the LkSG also predominantly include the requirements of the HinSchG [Whistleblower Directive]. "Same same but different": Pay attention to the different requirements of the laws!

Recommendation:

- Channels: one technical system but different categories; otherwise individual
- Communication of the channels: Communicate HinSchG only internally; communicate LkSG internally and externally
- Responsibilities: flexible
- Internal guidelines: Include differences of laws in policy(ies)
- Procedural rules: it is better to have two different procedural rules, otherwise they may be too complex.
Are existing whistleblowing channels sufficient?

To be examined in individual cases = comparison of the established complaints procedure with the requirements of the LkSG (and the HinSchG).

So far, requirements of the LkSG are often not yet fully met because:

- No written / published rules of procedure
- No signed confidentiality obligations (employment contract obligations regularly insufficient)
- Often only accessible to internal employees
- Existence often not yet sufficiently communicated
- Content restriction to "classic" compliance topics
8. And finally: § 6 para. 2 - create policy statement

2021

Monitor the legislative process

2022 - To Dos (Preparations)

1. Pursue preparations for prevention (§ 6) and risk analysis and management (§ 5 and § 4) as well as corrective measures (§ 7 and § 9) and complaint procedures (§ 8)

Then:

Measure 1: Create a policy statement with
(i) a description of how the company complies with the due diligence obligations, i.e. what is done roughly in the areas:
- risk management (§ 4 para. 1)
- internal responsibility (§ 4 para. 3)
- regular risk analyses (§ 5)
- preventive measures (§ 6 par. 3, 4, 5)
- remedial measures (§ 7)
- complaint management (§ 8)
- due diligence obligations for indirect suppliers (§ 9)
- documentation (§ 10)

(ii) an explanation of the risks identified in the risk analysis, with reference to the relevant international agreements; and
(iii) statements on human rights and environmental expectations that the company has of its employees and suppliers.

Note: Declarations of principle are regularly brief and only roughly state that the company is committed to protecting human rights, which risks in particular the company has identified and what it is doing and expects to do about them (human rights strategy). The policy statement serves as the basis for the company’s own Code of Conduct and the Supplier Code of Conduct.

Tip: Check (also in the future) whether your existing policy statement is concrete enough, as the draft requires in particular that the company at least describes its essential measures for fulfilling the due diligence obligations.

See policy statement [Toolbox]

Measure 2: Management adopts the policy statement.

Measure 3: Communicate the (new) policy statement to employees, the works council, suppliers in the supply chain and the public.

2023 - Targets + implementation

Objective: Life of the policy statement and update if necessary

2024

...like 2023

Objective: Life of the policy statement and update if necessary

Policy statement on human rights strategy with procedural description (§ 6 para. 2) on the obligations (in § 4 para. 1, § 5 para. 1 and § 6 para. 3, 4, 5 as well as in §§ 7, 8, 9, 10), i.e. on
- risk management (§ 4 para. 1)
- internal responsibility (§ 4 para. 3)
- regular risk analyses (§ 5)
- preventive measures (§ 6 par. 3, 4, 5)
- remedial measures (§ 7)
- complaint management (§ 8)
- due diligence obligations for indirect suppliers (§ 9)
- documentation and report (§ 10)

Objective: Life of the policy statement and update if necessary

Notes on human rights and environmental expectations that the company has of its employees and suppliers.
<table>
<thead>
<tr>
<th>No.</th>
<th>§</th>
<th>Duties and tasks according to the law</th>
<th>Tasks concretely</th>
<th>Competences and interfaces</th>
<th>Cast idea</th>
<th>Support idea</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>§ 6</td>
<td>Policy statement</td>
<td>- description of measures no. 1 to 9 in the so-called Policy statement</td>
<td>-proximity to the management - connection to Legal, HR, Environment, Procurement, Sustainability, Compliance - proximity to Human rights officer</td>
<td>- Human rights officer</td>
<td>- external support - support from core team - support from management</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Policy statement on human rights strategy with procedural description (§ 6 para. 2) on the duties (in § 4 para. 1, § 5 para. 1 and § 6 paras. 3, 4, 5 and in §§ 7, 8, 9, 10), i.e. to - risk management (§ 4 para. 1) - in-house responsibility (§ 4 para. 3) - regular risk analyses (§ 5) - prevention measures (§ 6 par. 3, 4, 5) - remedial measures (§ 7) - complaint management (§ 8) - due diligence obligations for indirect suppliers (§ 9) - documentation (§ 10)</td>
<td></td>
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</tr>
</tbody>
</table>
Monitor the legislative process

Documentation with internal continuous documentation and storage for seven years (§ 10 para. 1) as well as annual report on previous year (10 para. 2), with:
- presentation of the human rights and environmental risks that have been identified;
- description of what the company has done in terms of risk management (§ 4), regular risk analyses (§ 5), preventive measures (§ 6), corrective measures (§ 7), complaint management (§ 8), due diligence obligations for indirect suppliers (§ 9);
- evaluation of the impact and effectiveness of the measures;
- conclusions from the evaluation for future Measure.

Note: If you have not identified any risks, further explanations in the report are not necessary. Company and business secrets do not have to be disclosed. Electronic access is provided by the Federal Office of Economics and Export Control (BAFA) for the report format.

Measure 2: Make your report publicly available on your website, free of charge, for a period of 7 years. Keep your documentation for at least 7 years.

Measure 3: File your report with BAFA
<table>
<thead>
<tr>
<th>No.</th>
<th>§</th>
<th>Duties and tasks according to the law</th>
<th>Tasks concretely</th>
<th>Competences and interfaces</th>
<th>Cast idea</th>
<th>Support idea</th>
</tr>
</thead>
</table>
| 9   | 10  | Documentation and report             | -Documentation of measures 1 to 8   | -Knowledge of LkSG activities  
- Knowledge current Developments  
- Interfaces to Legal, HR, Environment, Purchasing, Sustainability, Compliance | - Core Team | - External support  
- Support from Core Team  
- Support from management |
General information on the report

➢ To be submitted **annually** to BAFA no later than **4 months after the end of the business year** and **published** on the website for **7 years**.

➢ Document continuously; **documentation** also to be kept for **7 years** (not public)

➢ **Submission** of the report takes place **electronically**

➢ BAFA can demand **rectification** of the report (§ 13 para. 2 LkSG)

➢ BAFA may impose a **fine** if documentation is not kept (§ 24 para. 1 no. 9 LkSG) and if report is not prepared correctly, not submitted (in time) or not published (in time) (§ 24 para. 1 nos. 10 to 12 LkSG).
Handout on reporting - contents

➢ Contents

➢ Presumably all the questions companies have to answer in the annual report

➢ 38 pages

➢ 437 questions - of which only 4 are voluntary (questions 118, 120, 268, 341)

➢ 39 Explanation of terms

➢ 1 Upload option for the policy statement
Handout on reporting - legal classification

- Legal classification

More structured and clearer handout as a risk analysis handout

Good way to prepare for "what will come up in the exam".

Not only multiple choice - companies have a lot to describe (free text occurs 248 times)

Depth of presentation for free texts unclear
What is the first thing that stands out?

Structure reasonably logical, shortened (abridged) report for "0" risks (who has zero risks?), otherwise long report.

Structure follows that of the law - could have been done differently and divided into general and then own business area, direct and indirect supplier.

There are "voluntary" and not "voluntary statements" - partly scattered in the text and not always comprehensible why and what the consequences are.

You can also answer questions with "no" or "nothing" and then have to give reasons - but then you should also have good reasons...

The details are very helpful; however, BAFA wants to design an online mask (questionable how this can be implemented efficiently in the company).

BAFA's idiosyncratic legal opinions are repeated (as was already the case with the handout on risk analysis) ...
What is the second thing that stands out?

Now "official" shortening of the description of the risks:
Alternatively, it is now possible to use M1-10 and U1-3 of the BAFA questionnaire for the report [M1 - U3]:

M1 Prohibition of child labour
M2 Prohibition of forced labour and all forms of slavery
M3 Disregard for occupational health and safety and work-related health hazards
M4 Disregard for freedom of association - freedom of association and the right to collective bargaining
M5 Prohibition of unequal treatment in employment
M6 Prohibition of withholding a fair wage
M7 Destruction of the natural basis of life through environmental pollution
M8 Unlawful violation of land rights
M9 Prohibit the hiring or use of private/public security forces, which can lead to impairments due to lack of instruction or control
M10 The prohibition of an [...] act or omission in breach of duty which is directly capable of impairing in a particularly serious manner a protected legal position (arising from the human rights conventions within the meaning of section 2(1)) and the unlawfulness of which is obvious on a reasonable assessment of all the circumstances under consideration.

U1 Prohibited production, use and/or disposal of mercury (Minamata Convention)
U2 Prohibited production and/or use of substances within the scope of the Stockholm Convention (POPs) and non-environmentally sound handling of waste containing POPs
U3 Prohibited import/export of hazardous waste as defined by the Basel Convention
What are master data and structure details?

If one indicates "0" risks, one has to indicate more about the company and the sourcing structure in the abridged report - in (18 & 43.) to (27& 45.); in the full report these questions are missing - affiliated companies are no longer asked there at all.
What is risk management and anchoring of the strategy and evaluation?

ABRIDGED REPORTING OBLIGATION

Monitoring of risk management and responsibility of the Executive Board
A1.1 Were responsibilities for monitoring risk management defined for the reporting period?
29. yes
30. no
> If No
31. give reasons for your answer
> If Yes
32. which person(s) or function(s) is/are responsible for monitoring risk management?

COMPLETE REPORT QUESTIONNAIRE

A - Strategy and anchoring
[A1] Risk management oversight and management responsibility
A1.1 Were responsibilities for monitoring risk management defined for the reporting period?
54. yes
55. no
> If No
56. give reasons for your answer
> If yes, describe
57. which person(s) or function(s) is/are responsible for monitoring risk management?
A1.2 Has management established a reporting process to ensure that it is regularly informed, at least annually, about the work of the person responsible for overseeing risk management?
58. yes
59. no
> If No
60. give reasons for your answer
> If yes, describe
61. the process for reporting to senior management on risk management at least annually or on a regular basis. Who reports? How often is reporting done? In what form is it reported?

[A3] Anchoring the human rights strategy within the own organisation
A3.1 In which relevant departments/business processes was the anchoring of the human rights strategy ensured during the reporting period?
90. personnel/HR
91. site development/management
92. environmental management
93. occupational safety and occupational health management
94. Communication/Corporate Affairs
95. research and development
96. purchasing/procurement
97. supplier management
98. CSR/Sustainability
99. law/compliance
100. quality management
101. Mergers and Acquisitions
102. Business Development
103. IT/Digital Infrastructure
104. Community/Stakeholder Engagement
105. revision
106. economic committee
107. . Other
108. in no department
> If In no department was selected
109. give reasons for your answer
> If at least one of the answers from 90. to 107. has been selected, describe
110. How the responsibility for implementing the strategy is distributed within the different departments/business processes.
111. how the strategy is integrated into operational processes and procedures
112. What resources and expertise are made available for implementation in the processes.

E Assessment of risk management and conclusions
E1.1 Is there a process to review risk management across the board for adequacy, effectiveness and appropriate consideration of the interests of (potentially) affected parties?
424. yes
425. no
> If No
426. give reasons for your answer
> If yes, which areas of risk management are reviewed for adequacy and effectiveness?
427. resources and expertise
428. risk analysis and prioritisation process
429. preventive measures
430. Remedial action
431. complaints procedure
432. consideration of the interests of potentially affected persons
433. documentation
434. more
435. no areas
> If No Areas has been selected
436. give reasons for your answer
> If yes, describe
437. How this audit is conducted

#### A2.1 Is there a policy statement that has been prepared or updated based on the risk analysis conducted during the reporting period?

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>62.</strong></td>
<td>yes</td>
</tr>
<tr>
<td><strong>63.</strong></td>
<td>no</td>
</tr>
</tbody>
</table>

**If No**

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<tbody>
<tr>
<td><strong>64.</strong></td>
<td>give reasons for your answer</td>
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</table>

**If Yes**

Upload the policy statement (and any other relevant documents).

#### A2.2 Has management issued the policy statement?

<p>| | |</p>
<table>
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<tbody>
<tr>
<td><strong>66.</strong></td>
<td>yes</td>
</tr>
<tr>
<td><strong>67.</strong></td>
<td>no</td>
</tr>
</tbody>
</table>

**If No**

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<th></th>
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<tbody>
<tr>
<td><strong>68.</strong></td>
<td>give reasons for your answer</td>
</tr>
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</table>

#### A2.3 Is the policy statement publicly available?

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>69.</strong></td>
<td>Yes, with indication of the source</td>
</tr>
<tr>
<td><strong>70.</strong></td>
<td>no</td>
</tr>
</tbody>
</table>

**If No**

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<tr>
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<tr>
<td><strong>71.</strong></td>
<td>give reasons for your answer</td>
</tr>
</tbody>
</table>

**If at least one of the answers from 72. to 75. has been selected, describe how the policy statement was communicated to the respective relevant target groups.**

#### A2.4 To which target groups was the policy statement for the reporting period communicated?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td><strong>72.</strong></td>
<td>own employees</td>
</tr>
<tr>
<td><strong>73.</strong></td>
<td>works council/economic committee</td>
</tr>
<tr>
<td><strong>74.</strong></td>
<td>direct suppliers for whom a risk was identified in the risk analysis a risk was identified</td>
</tr>
<tr>
<td><strong>75.</strong></td>
<td>Other target groups</td>
</tr>
<tr>
<td><strong>76.</strong></td>
<td>no target groups</td>
</tr>
</tbody>
</table>

**If No target groups was selected**

<p>| | |</p>
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<tbody>
<tr>
<td><strong>77.</strong></td>
<td>give reasons for your answer</td>
</tr>
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</table>

#### A2.5 What elements does the policy statement contain?

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>79.</strong></td>
<td>Description of the process by which the company complies with the following obligations:</td>
</tr>
<tr>
<td><strong>80.</strong></td>
<td>Choices:</td>
</tr>
<tr>
<td><strong>81.</strong></td>
<td>a. [Establishment of a risk management system]</td>
</tr>
<tr>
<td><strong>82.</strong></td>
<td>b. [Annual risk analysis]</td>
</tr>
<tr>
<td><strong>83.</strong></td>
<td>c. [Anchoring preventive measures for risks in the own business area, at direct suppliers and, if applicable, indirect suppliers as well as checking their effectiveness].</td>
</tr>
<tr>
<td><strong>84.</strong></td>
<td>d. [Remedial measures in own business unit, at direct suppliers and, if applicable, indirect suppliers and their effectiveness review].</td>
</tr>
<tr>
<td><strong>85.</strong></td>
<td>e. [Provide a complaints procedure within own business unit, with suppliers and review its effectiveness].</td>
</tr>
<tr>
<td><strong>86.</strong></td>
<td>f. [Documentation and reporting obligation]</td>
</tr>
<tr>
<td><strong>87.</strong></td>
<td>80. description of the priority risks identified</td>
</tr>
<tr>
<td><strong>88.</strong></td>
<td>81. description of human rights-related and environmental expectations of own employees and suppliers</td>
</tr>
<tr>
<td><strong>89.</strong></td>
<td>82. other elements</td>
</tr>
<tr>
<td><strong>90.</strong></td>
<td>83. none of the listed elements</td>
</tr>
</tbody>
</table>

**If None of the listed items has been selected**

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>91.</strong></td>
<td>give reasons for your answer</td>
</tr>
</tbody>
</table>

#### A2.6 Was the policy statement updated for the reporting period?

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>85.</strong></td>
<td>yes</td>
</tr>
<tr>
<td><strong>86.</strong></td>
<td>no</td>
</tr>
</tbody>
</table>

**If No**

<p>| | |</p>
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<thead>
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<tbody>
<tr>
<td><strong>87.</strong></td>
<td>give reasons for your answer</td>
</tr>
</tbody>
</table>

**If yes, describe**

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<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>88.</strong></td>
<td>What were the reasons for the updates?</td>
</tr>
<tr>
<td><strong>89.</strong></td>
<td>What adjustments have been made</td>
</tr>
</tbody>
</table>
ABRIDGED REPORTING OBLIGATION

B - Identified risks and/or identified injuries

B1.1. Was a human rights or environmental risk identified during the reporting period?

33. yes -> jump to "Full reporting obligation".
34. no

> If No was selected, describe in a comprehensible way during which period the regular risk analysis was carried out.

36. the essential steps and methods of risk analysis, in particular:
   a. The internal and external sources used in the context of the abstract risk assessment.
   b. The methodology of identification, evaluation and prioritisation in the context of the concrete risk assessment.
   c. Whether and to what extent information on risks and actual breaches of duty obtained through the processing of indications from the company’s complaints procedure was taken into account in the risk analysis.
   d. How the interests of the potentially affected persons are adequately taken into account within the framework of the risk analysis.

37. whether and, if so, what reasons there were for occasion-related risk analyses in the reporting period.

B1.2. Was a violation of a human rights or environmental obligation identified during the reporting period?

38. yes -> jump to "Full reporting obligation".
39. no

> If No was selected, describe in a comprehensible way what procedures can be used to detect violations in its own business area.

40. what procedures can be used to detect violations in its own business area.

41. what procedures can be used to identify breaches at direct suppliers.

42. what procedures can be used to identify breaches at indirect suppliers.

COMPLETE REPORT QUESTIONNAIRE

B - Risk analysis and prevention measures

[B1] Implementation, procedure and results of the risk analysis

B1.1. Did a regular (annual) risk analysis take place during the reporting period to identify, weigh and prioritise human rights and environmental risks?

113. yes, for the own business area
114. Yes, for direct suppliers
115. no

> If No was selected, describe in more detail.

116. give reasons for your answer

> If 113. or 114. Yes has been selected, describe how the analysis has led to with regard to a significantly changed and/or expanded risk situation.

117. in which period the annual risk analysis was carried out
118. The risk analysis procedure.

> Voluntary information: If 113th or 114th Yes was selected, were indirect suppliers also taken into account as part of the regular (annual) risk analysis during the reporting period?

119. yes
120. no

> Voluntary information: if 119. yes was selected, describe the process by which indirect suppliers were considered in the regular (annual) risk analysis.

B1.2. Were incident-related risk analyses also carried out during the reporting period?

122. yes, due to internal/strategic decisions
123. yes, due to external factors.

(124 ) Yes, due to substantiated knowledge of possible infringements at indirect suppliers.

Yes, due to a significant change in the risk situation as a result of new products/projects.

126. Yes, due to a significant change in the risk situation as a result of new business areas.

127. Yes, due to further occasions
128. no

> If No was selected, describe in more detail.

129. give reasons for your answer

> If yes, describe the specific occasions.

130. The specific occasions.

131. which findings the analysis has led to with regard to which adequacy criteria?

132. the extent to which findings from the processing of tips/complaints have been incorporated.

B1.3. Which risks were specifically identified in the risk analysis(s)? Select in each case for the own business unit, the direct supplier and, if applicable, the indirect supplier -.

[M1 - U3]

146. no risks

B1.4. What is risk analysis?

147. Yes, based on the expected severity of the injury by degree, number of people affected and irreversibility.

148. Yes, on the basis of one’s own capacity to influence.

149. Yes, based on the nature and scope of its own business activities.

150. Yes, based on the type of causation contribution.

152. Yes, based on other factors.

153. no

> If No was selected, describe in more detail.

154. give reasons for your answer

> If yes, describe in more detail.

155. How the weighting and prioritisation was done and what trade-offs were made.

BAFA published a handout on risk analysis in August 2022:
https://www.bafa.de/DE/Lieferketten/Risikoanalyse/riskoaanalyse_node.html
2.2 Which preventive measures were implemented in the reporting period to prevent and minimise the priority risks in your own business area?

171. conducting training in relevant business areas
172. implementation of risk-based control measures
173. other/other measures
> If at least one of the answers from 171. to 173. was selected, describe in each case

176. The measures implemented and specify in particular the scope (e.g. number, coverage, scope).
177. How the measures contribute to the prevention and minimisation of the priority risks.
178. To what extent the measures were implemented and taken into account in the design and implementation of the measures.

B2.3 Was a process for testing effectiveness defined and implemented for the measures (training, risk-based control measures and other measures)?

181. If yes, describe the process(es) for testing the effectiveness of the measures

B 3.2 Which prevention measures were implemented in the reporting period to prevent and minimise the priority risks at direct suppliers?

197. developing and implementing appropriate procurement strategies and practices.
198. integration of expectations in supplier selection
199. obtain contractual assurances for compliance and implementation of expectations along the supply chain.
200. training and further education to enforce the contractual assurance.
201. agreeing and implementing risk-based control measures
> If the answer 197. has been selected, describe

205. The measures implemented and to what extent the determination of delivery times, of purchase prices or the duration of contractual relationships have been adjusted.

206. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.
207. the extent to which the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
> If at least one of the answers from 198. to 202. was selected, describe in each case

208. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
209. How the measures contribute to the prevention and minimisation of the priority risks.
210. To what extent the interests of potential stakeholders and/or their legitimate representatives have been taken into account in the design and implementation of the measures.

B3.3 Was a process for reviewing effectiveness defined and implemented for the measures (procurement practices, purchasing strategy and other measures)?

213. If yes, describe the process(es) for testing the effectiveness of the measures

B4.2 Which prevention measures were implemented for the reporting period to prevent and minimise the priority risks at indirect suppliers?

229. developing and implementing appropriate procurement strategies and practices.
230. implementation of risk-based control measures
231. supporting the supplier in preventing and minimising the risk
232. implementation of sectoral or cross-sectoral initiatives
> If the answer 229. has been selected, describe

236. The measures implemented
237. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.
238. To what extent the interests of potential stakeholders and/or their legitimate representations have been taken into account in the design and implementation of the measures.
> If at least one of the answers 230. to 231. was selected, describe in each case

239. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
240. To what extent adjustments in dealing with suppliers should contribute to the prevention and minimisation of the priority risks.
241. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
> If at least one of the answers 232. to 233. was selected,

242. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
243. To what extent other/further measures should contribute to the prevention and minimisation of the priority risks.
244. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

B4.3 Was a process for reviewing effectiveness defined and implemented for the measures (procurement practices, purchasing strategy and other measures)?
C1. Findings of violations and corrective actions in own business area

C1.1 Were there any violations in your own business area during the reporting period?

261. Yes, only domestically
262. Yes, only abroad
263. Yes, at home and abroad
264. No;
   > If yes, describe
265. What procedures can be used to identify violations in its own business area.
   > If yes, describe
266. Which procedures can be used to identify violations in its own business area?

267. Your company’s approach to ensuring that remedial action can be taken in the event of breaches and that their implementation is effective.

268. What extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
   > If yes, in which topics were violations identified in your own business area?
   > If you voluntarily indicate the number of violations per topic [M1-U3]

269. If one of the answers from 261. to 263. was selected, have you taken remedial action?

282. Yes 283. no
   > If No was selected
284. Give reasons for your answer
   > If Yes is selected, describe the appropriate remedial action you have taken and also describe
285. The cases in which violations could not be terminated and where they occurred.

286. What long-term remedial actions have been taken, in particular what trade-offs have been made with respect to the selection and design of the measures in the context of the relevant follow-up approaches to cessation or further minimisation.

287. How the effectiveness of the measures is reviewed

288. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
   > If 282. yes was selected, did the remedial action result in the cessation of the violation?

289. Yes 290. partly 291. no
   > If one of the answers from 261. to 263. was selected, have you analysed to what extent the identified violation is an indication for a possibly necessary adaptation/supplementation of existing prevention measures?
   > If yes, describe
292. The process, outcomes and consequences.

C2. Findings of violations and corrective actions at direct suppliers

C2.1 Were there any violations at direct suppliers during the reporting period?

293. Yes 294. no
   > If No, describe
295. What procedures can be used to identify violations at direct suppliers?
   > If yes, describe
296. What procedures can be used to identify violations at direct suppliers?

297. On what basis the violations identified were weighted and prioritised and what trade-offs were made in doing so.

298. Your organisation’s approach to ensuring that remedial action can be taken in the event of breaches and that implementation and outcomes are effective.

299. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
   > If yes, in which topics were violations identified at direct suppliers? You can voluntarily indicate the number of violations per topic [M1-U3]

300. If No was selected
301. Give reasons for your answer
   > If Yes is selected, describe the appropriate remedial action you have taken and also describe
302. What remedial actions have been taken, in particular what trade-offs have been made with regard to the selection and design of the measures.

303. How the effectiveness of the measures will be reviewed

304. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
   > If 313. yes was selected, did the remedial action result in the cessation of the violation?

315. Yes 316. partly 317. no
   > If 313. yes was selected, have you analysed to what extent the identified violation is an indication for a possible adaptation/supplementation of existing prevention measures?
318. Describe the process, outcomes and consequences.

C2.2 Were there any breaches at indirect suppliers during the reporting period that could not be terminated within a foreseeable period of time?

319. Yes 320. partly 321. no
   > If 319. yes was selected, have you analysed to what extent the identified violation is an indication for a possible adaptation/supplementation of existing prevention measures?
322. Describe the process, outcomes and consequences.

C2.2 (MISSING in BAFA questionnaire)

C2. 3 Were there any breaches at direct suppliers for the reporting period that could not be terminated within a foreseeable period of time?

323. Yes 324. no
   > If yes, describe
325. The cases in which violations could not be terminated
326. What long-term remedial actions have been taken, in particular what trade-offs have been made with respect to the selection and design of the measures in the context of the relevant follow-up concepts for cessation or minimisation.

327. How the effectiveness of the measures is reviewed

328. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

329. What the concrete timetable of the concept looks like.
   > If Yes was selected, name which measures were considered in the preparation and implementation of the concept
330. Joint development and implementation of a plan with the undertaking by which the breach is caused.
331. Joining forces with other companies within the framework of industry initiatives and industry standards
332. Temporary suspension of business relations
333. Others

> If Yes was selected, in how many cases was the business relationship with one or more direct suppliers broken off due to the violations?

334. Number of terminations of business relationships due to serious violations that could not be terminated (optional: explanation)

C3. Findings of violations and corrective actions at indirect suppliers

C3.1 Were any violations found at indirect suppliers during the reporting period?

335. Yes 336. no
   > If No, describe
337. What procedures can be used to detect violations in indirect suppliers?
   > If yes, describe
338. What procedures can be used to detect violations in indirect suppliers?

339. On what basis the violations identified were weighted and prioritised and what trade-offs were made in doing so.

340. What remediation actions, if any, have been taken and, in particular, what trade-offs have been made with respect to the selection and design of measures under the relevant cessation and minimisation approaches

341. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
   > If Yes was selected, in which topics were violations detected at direct suppliers? You can voluntarily indicate the number of violations per topic [M1-U3]

C3.2 Were there any breaches at indirect suppliers during the reporting period that could not be terminated within a foreseeable period of time?

355. Yes 356. no
   > If Yes, describe
357. The cases where violations could not be terminated are structural challenges which are longer term, etc.

358. Whether and, if so, what long-term remedial measures have been taken, in particular what trade-offs have been made with regard to the selection and design of the measures within the framework of the corresponding follow-up concepts for cessation or minimisation.

359. How the effectiveness of the measures is reviewed

360. Describe to which the interests of potentially affected people and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
D - Complaints procedure

[D1] Establishment of or participation in a complaints procedure

D1.1 In what form was a complaints procedure offered for the reporting period?

361. corporate grievance procedure
362. participation in an external procedure
363. combination of own and external procedures
364. More
365. in no form

> If at least one of the answers from 361. to 364. is selected, how is access to the complaints procedure involved in the design, review and improvement of the procedure?

D1.2 Which potential stakeholders have access to the complaints procedure?

369. own employees
370. communities near own sites
371. employees at suppliers
372. External stakeholders such as NGOs, trade unions, etc.
373. other
374. no parties involved

> If No participants was selected

> If at least one of the answers from 369. to 373. is selected, how is access to the complaints procedure ensured for the different groups of potentially involved parties?

376. Publicly accessible rules of procedure in text form
377. accessibility information
378. information on jurisdiction
379. information on the process
380. all information is clear and understandable
381. all information is publicly available
382. none

D1.3 Were the rules of procedure publicly available during the reporting period?

383. yes, with indication where it is publicly available
384. no

> If No

385. give reasons for your answer

[D2] Requirements for the complaints procedure

D2.1 Were responsibilities for the implementation of the procedure defined for the reporting period?

386. yes
387. no

> If No

388. Justify your answer

> If Yes, what criteria are ensured for those responsible?

389. Those responsible can act impartially
390. The competent persons are not bound by instructions within the scope of this competence.
391. Those responsible fulfill their obligation to maintain confidentiality
392. None of the above

D2.2 Were arrangements made for the reporting period to protect potentially involved parties from being disadvantaged or penalised as a result of a complaint?

393. yes
394. no

> If No

395. give reasons for your answer

> If Yes, describe what arrangements have been made, in particular

396. How the complaints procedure ensures the confidentiality of whistleblowers’ identities.
397. What further measures are taken to protect whistleblowers?

[D3] Effectiveness of the appeal procedure

D3.1 Did you receive any information about the complaints procedure during the reporting period?

398. yes
399. no

> If yes, please provide details on

400. duration of proceedings - target duration and real duration of proceedings (indication of shortest and 401. the longest duration of proceedings with a brief explanation of the facts) of the total number of complaints received and, if applicable, changes in the

402. Comparison with the previous reporting period of the proportion of complaints redressed in the total number of complaints (with optional explanation)

> If Yes was selected, on which topics have complaints been received?

[M1] - U3

> If Yes is selected, describe

416. What conclusions were drawn from the complaints/warnings received and to what extent these findings have led to adjustments in risk management

D3.2 Was the grievance procedure reviewed for effectiveness for the reporting period?

417. Yes, annual review
418. yes, occasion-based review
419. no

> If No

420. give reasons for your answer

If one of the answers from 417. to 418. has been selected, describe

421. To what extent feedback from internal and external stakeholders, in particular (potential) stakeholders, was obtained for the evaluation.

422. How the effectiveness of the complaints procedure is measured

423. What findings regarding effectiveness were drawn from the review and what actions were derived from it.

> BAFA published a handout on the complaints procedure in October 2022: https://www.bafa.de/DE/Lieferketten/Beschwerdeverfahren/beschwerdeverfahren_node.html;jsessionid=118A6ED7C609585B093B5CA0EF697570.2_cid387
Reporting handout - Strategic considerations

➢ Who writes the report? / RTD

➢ Preparation time (4 months)

➢ What do I give away?

➢ Document permanently; clear guidelines with little leeway

➢ What is the consequence of my answer?
Consequences for smaller companies
Consequences for smaller companies (= suppliers)

2.1. Company > 1000

- implement everything
- have to undertake risk analysis
- must take preventive measures
- must take remedial Meas...ure...
- must report
- are controlled by the BAFA

2.1. Direct supplier

- get duties passed on
- may have to report on their own risk analysis
- must participate in prevention
- must participate in remedial Measure
- must provide information
- are controlled by the customer

2.1. Indirect supplier

- get duties passed on
- may have to report on their own risk analysis
- must participate in prevention
- must participate in remedial Measure
- must provide information
- are controlled by the customer

...where are the differences?
Consequences for smaller companies (= suppliers)

> Which people, processes and documents are useful (for discussion) ?

**People**
- Human Rights Commissioner
- Policy Statement
- Regular risk analysis
- Complain procedure
- Preventive and corrective measures
- Regular risk analysis
- Supplier Code
- Documentation
- Purchasing Practice
- Technical business partner check
- Reporting
- Information Management
- Approval process suppliers
- Approval process suppliers
- Technical Supply Chain Traceability
- Responsibility and Measure plan Risk management
- Approval process suppliers
- Purchasing Practice
- Complaints procedure
- Documentation, continuous
- Documentation
- Reporting
- Training concept
- Training schedule
- Contracts with suppliers
- Checklist sustainable contract design
- Rules of procedure
- Guideline sustainable procurement / supplier selection / review
- Contracts with suppliers
- Questionnaire Suppliers / Compliance Questionnaire
- Guideline sustainable procurement / supplier selection / review
- Technical Supply Chain Traceability
- Responsibility and Measure plan Risk management
- Approval process suppliers
- Purchasing Practice
- Complaints procedure
- Documentation, continuous
- Documentation
- Reporting
- Training concept
- Training schedule
- Contracts with suppliers
- Checklist sustainable contract design
- Rules of procedure
- Guideline sustainable procurement / supplier selection / review
Consequences for smaller companies (= suppliers)
Consequences for smaller companies (= suppliers)

The fundamental question is:

1. Do you want to agree to everything that the client demands and thus become transparent and obligated to the client?

   or

2. Offer the client a „small package“ and inform him "only" about relevant problems - a self-declaration could make sense for this purpose
Small Package (selection) for smaller companies (= suppliers)

[check box] To Do

(1) Establish **risk management**; in particular:

a) Include the topic of human rights and environmental risks in the existing compliance management system.

b) Anchor human rights and environmental risks in existing governance system

c) Supplement internal company guidelines and directives with human rights and environmental risks

(2) Establish an **in-house responsibility**; and **human rights officer** optional optional; in particular:

a) Identify a responsibility for human rights and environmental risks within management

b) Designate a human rights officer within or outside the management

c) Appoint a steering group or contact person to the Human Rights Officer in the relevant departments of the company that deal with human rights and environmental risks in its own business and in the supply chain.

(3) Regular **risk analysis**; in particular:

a) Establish routines in its own business unit that review human rights and environmental risks in reasonable depth and at reasonable intervals and consolidate the information that is presumably already available on what regulations are already taken into account in its own business units on the subject (occupational health and safety, environment, etc.).

b) Carry out a risk analysis with suppliers - first analyse human rights and environmental risks with the immediate supplier (i.e. direct contractual partner) at reasonable intervals and in appropriate detail. For this purpose, risk categories could be formed according to countries, product types and other findings - for this purpose, indices could be used, e.g. clustering one’s own suppliers according to common indices (see our guideline on risk analysis).
c) The identified risks could be weighted and prioritised, i.e. based on (i) the type and scope of the business activity, (ii) capacity to influence the polluter, (iii) typically expected blockage and irreversibility and likelihood of breach, and (iv) nature of the contribution to causation.

d) the relevant results could be communicated to persons responsible for risk management (see above)

e) the analysis could be repeated once a year and on specific occasions

(4) Issuing a **policy statement**; in particular:

a) The company could adopt a policy statement that identifies the priority human rights and environmental risks and describes the process for addressing risk management, risk analysis, prevention and mitigation measures, the grievance procedure and possible action towards indirect suppliers.

b) the human rights-related and environmental expectations could then also be included in the policy statement and for this one could refer, for example, to a code of conduct of the company for its own business unit and a code of conduct of the company for its suppliers or perhaps to a uniform code of conduct for its own business unit and for the suppliers

(5) **Prevention measures** in the own business area and towards direct suppliers; in particular:

a) Implementation of the Human Rights Policy in the relevant business processes of the own business unit.

b) Appropriate procurement strategies and purchasing practices, implementation in sustainable contract content, use of sustainable contract design checklist

c) Training in own business area

d) Controls in own business area

e) Consideration of human rights and environmental expectations when selecting a supplier.
f) Obtaining appropriate contractual assurances from the immediate supplier (perhaps via a Code of Conduct of Supplier with its obligation to comply with the expectations as well as corresponding measures and possibilities of further specification of measures as well as passing-on clauses; chain of custody expectations; provision of a complaints procedure; contractual penalties; indemnities; compensation for damages; possibility of suspension of the business relationship; possibility of special termination; possibility of controls; specifications for information, information and audits as well as further intensive specifications for cooperation actions, e.g. for training, reports, designation of the sub-supplier, remedial measures, industry initiatives, concepts, corrective action plans, etc.), e.g. for training, reports, designation of the upstream supplier, remedial measures, industry initiatives, concepts, corrective action plans, etc.).

g) Training and further education of suppliers

h) Controls of the suppliers

(6) Remedial measures; in particular:

a) Measures to prevent, stop, minimise human rights and environmental risks, insofar as they are imminent and have occurred and must be successful in the own business sector domestically

b) Measures to prevent, stop, minimise human rights and environmental risks, insofar as they are imminent and have occurred and must generally be successful in the own business operations of subsidiaries in the domestic market over which one has a determining influence and in the own business operations abroad

(7) Establishment of a complaints procedure; in particular:

a) Possibly establishing a complaints procedure for human rights and environmental risks reported in its own operations or those of its direct or indirect suppliers.

b) such a mechanism must have rules of procedure, be neutral, be confidential and not disadvantage a notifier

c) the complaints procedure must be barrier-free, i.e. accessible in many languages and ideally, in addition to the internet, also by telephone or with anonymous postal addresses or slip boxes

(8) Implementation of due diligence with regard to risks at indirect suppliers; in particular:
(a) if there is any knowledge of human rights or environmental risks at indirect suppliers (substantiated knowledge), a risk analysis must also take place with regard to these and preventive and remedial measures must be taken.

b) Reports on indirect suppliers must also be possible in the complaints procedure.

(9) **Documentation and report**; in particular:

a) Documentation of the above-mentioned compliance measures in the company and retention of the documentation for seven years is recommended.

b) Preparation of a report and, if applicable, publication on the website and retention for seven years, in each case within four months after the end of a financial year.
Other countries
Comparison with the EU-Guideline proposal
### Recent Legal Developments in Supply Chain Due Diligence*

<table>
<thead>
<tr>
<th>Title</th>
<th>German Supply Chain Due Diligence Act of July 16, 2021 (SCDAA)</th>
<th>European Supply Chain Directive Draft published February 23, 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Date</td>
<td>January 01, 2023 – Preparation Phase already started</td>
<td>Unknown – even if Directive could come into force 2022, EU member states would have to transform within two / four years or longer</td>
</tr>
<tr>
<td>Company size</td>
<td>Applicable to companies with 3,000 employees or more in 2023 (1,000 employees in 2024); attribution of employees of subsidiaries to parent company</td>
<td>Applicable to companies of 500 employees and 150 Mio turnover / 250 employees and 40 Mio. active in high-risk areas / others 150 Mio in EU or 40 in EU and risk area</td>
</tr>
<tr>
<td>Location</td>
<td>Head Office / Headquarters in Germany</td>
<td>Business activity (sale of services and products) in the EU</td>
</tr>
<tr>
<td>Scope of the duties</td>
<td>Due diligence obligations for own business area and direct suppliers (only in the case of substantiated knowledge of risks to indirect suppliers)</td>
<td>Due diligence obligations for the entire supply chain (also indirect suppliers)</td>
</tr>
<tr>
<td>Human Rights</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Environment</td>
<td>Yes</td>
<td>Yes including climate</td>
</tr>
<tr>
<td>Civil liability</td>
<td>No (general principles of law remain unaffected)</td>
<td>Yes</td>
</tr>
<tr>
<td>Law for injured parties</td>
<td>Applicable law of the state in which damage occurs and thus often not German law (due to conflicts of laws rules)</td>
<td>Choice of the plaintiff as to which law is to be applied (law of the third country, law of the company's seat, law of the country in which company operates), liability shall be mandatory</td>
</tr>
<tr>
<td>Jurisdiction for injured parties at the seat of the company</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Sanctions</td>
<td>No criminal consequences</td>
<td>Criminal consequences possible</td>
</tr>
<tr>
<td>Fines</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Import bans</td>
<td>No</td>
<td>Possibly Yes</td>
</tr>
</tbody>
</table>

* In Germany and EU – in 10 other countries less detailed provisions exist or are still discussed - see Backup Slides attached for USA, Canada, UK, Australia, France, Netherlands, Norway, Finland, Switzerland, India

➢ See our comprehensive Synopsis here: https://www.taylorwessing.com/de/insights-and-events/insights/2023/02/synopse-eu-lieferketten-sorgfaltspflichten
## Comparison with EU Directive - Details

<table>
<thead>
<tr>
<th>Topic Subtheme</th>
<th>Directive Content</th>
<th>Article</th>
<th>LkSG Content</th>
<th>§§</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPANY AND EMPLOYEES</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Company</td>
<td>Companies if held by corporation and corporations as well as regulated financial companies</td>
<td>Art. 3 (a)</td>
<td>Every company regardless of legal form</td>
<td>§ 1 para. 1</td>
</tr>
<tr>
<td>Seat; administration, branch, branch office in Member State</td>
<td>Decisive is whether company established under an EU law; seat only relevant for jurisdiction of authority</td>
<td>Art. 2, 17</td>
<td>Germany</td>
<td>§ 1 para. 1</td>
</tr>
<tr>
<td>Business activity in EU by companies outside EU</td>
<td>Relevant from EUR 150 million turnover in EU or more than EUR 40 million in EU and 50% of total turnover in risk sector (then number of employees not relevant)</td>
<td>Art. 2 (2)</td>
<td>Not relevant</td>
<td></td>
</tr>
<tr>
<td>Employees</td>
<td>500 respectively 250 for turnover in risk sector of at least EUR 20 million</td>
<td>Art. 2 (1)</td>
<td>3,000 and 1,000 respectively in Germany</td>
<td>§ 1 para. 1</td>
</tr>
<tr>
<td>Temporary workers</td>
<td>Consideration without duration of use</td>
<td>Art. 2 (3)</td>
<td>Consideration over duration of use</td>
<td>§ 1 para. 2</td>
</tr>
<tr>
<td>Group accounting</td>
<td>Not regulated</td>
<td></td>
<td>Yes</td>
<td>§ 1 para. 3 and § 2 para. 6</td>
</tr>
<tr>
<td>Activity in risk sector</td>
<td>Relevant for EU companies with between 250 and 500 employees and at least 20 million EUR turnover in the risk sector; relevant for non-EU companies with between 40 and 150 million EUR turnover in the EU but 50% worldwide in the risk sector.</td>
<td>Art. 2 (1) and (2)</td>
<td>Not relevant</td>
<td></td>
</tr>
</tbody>
</table>

1 Does not seem to be a relevant question for the Commission; however, the directive distinguishes between “company’s employees” and “employees of its subsidiaries” (Art. 3 (n), 5 (1) (b)).
<table>
<thead>
<tr>
<th>Topic</th>
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<th>Article</th>
<th>LkSG Content</th>
<th>§§</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turnover</td>
<td>Relevant (see above)</td>
<td>Art. 7 (2) (d), 7 (4), 8 (3) (e), 8 (5), 14 (1), 2</td>
<td>Not relevant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SME</td>
<td>Special regulations</td>
<td></td>
<td>Not relevant</td>
<td>Art. 3 (d)</td>
<td>Decisive</td>
</tr>
<tr>
<td>Determining influence</td>
<td>No regulation but definition of &quot;subsidiary&quot; available (reference to Art. 2 para. f of Directive 109/2004.</td>
<td>Art. 3 (d)</td>
<td>Relevant</td>
<td>§ 2 para. 5, 6, 3 para. 1 No. 5, 5 para. 1, 6 para. 3, § 6 para. 5, § 7 para. 1, 7 para. 4, 8 para. 1, 8 para. 5</td>
<td></td>
</tr>
</tbody>
</table>

**RELEVANT (BUSINESS) AREAS**

| Own business area | Relevant under "own operations" | Art. 1 (1) (a), 4 (1), 6 (1), 9 (1), 10 | Relevant | §§ 2 para. 5, 6, 3 para. 1 No. 5, 5 para. 1, 6 para. 3, § 6 para. 5, § 7 para. 1, 7 para. 4, 8 para. 1, 8 para. 5 |
| Immediate suppliers | Relevant, but no clear distinction from indirect supplier, all "value chain" (see there) if "established business relationship" (see there) or "business relationship" (see there). Particularities in cases where only "indirect relationship" or "indirect partner" is referred to (e.g. Art. 7 (3), 8 (4), 22 (2). | Art. 3 (e), 3 (f), 3 (g) | Relevant | §§ 2 para. 5, 2 para. 7, 2 para. 8, 3 para. 1 No. 5, 5 para. 1, 6 para. 5, 7 para. 1, 7 para. 2, 7 para. 4, 8 para. 1, 8 para. 5, 17 para. 1 |
| Indirect suppliers | Relevant, but no clear distinction from direct supplier, all "value chain" (see there) if "established business relationship" (see there) resp. "business relationship" (see there). Particularities in cases where only "indirect relationship" or "indirect partner" is referred to (e.g. Art. 7 (3), 8 (4), 22 (2). | Art. 3 (e), 3 (f), 3 (g), 7 (3), 8 (4), 22 (2), 22 (3), | Relevant | §§ 2 para. 8, 5 para. 1 p. 3, 9, 17 para. 1 |
| Supply chain, value chain | Definition of "value chain" quite broadly "upstream" and "downstream" if "established business relationship" | Art. 3 (g) | Defined | § 1 para. 5 |

1 Business relationship' means a relationship with a contractor, subcontractor or any other legal entities ('Partner'), (i) with whom the company has a commercial agreement or to whom the company provides financing, insurance or reinsurance, or (ii) that performs business operations related to the products or services of the company for or on behalf of the company. Established business relationship’ means a business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain. Value chain' means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company.
<table>
<thead>
<tr>
<th>Topic</th>
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<th>LkSG Content</th>
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</tr>
</thead>
<tbody>
<tr>
<td>&quot;established business relationship&quot;</td>
<td>Relevant - obligations go further; duration, intensity, importance for “value chain” assumed</td>
<td>Art. 1 (1) (a), 3 (f)</td>
<td>Not relevant</td>
<td>Not relevant (see direct and indirect suppliers)</td>
<td></td>
</tr>
<tr>
<td>&quot;business relationship&quot;</td>
<td>Relevant - obligations less extensive; provision of services for the products and services with contract or without by &quot;partner&quot;</td>
<td>Art. 3 (e)</td>
<td>Not relevant</td>
<td>Not relevant (see direct and indirect suppliers)</td>
<td></td>
</tr>
<tr>
<td>&quot;partner&quot;</td>
<td>Relevant - like &quot;business relationship&quot;</td>
<td>Art. 3 (e)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;upstream&quot;</td>
<td>Relevant for &quot;value chain&quot; (see there)</td>
<td>Art. 3 (g)</td>
<td>Relevant</td>
<td>§ 2 para. 5</td>
<td></td>
</tr>
<tr>
<td>&quot;downstream&quot;</td>
<td>Relevant for &quot;value chain&quot; (see there)</td>
<td>Art. 3 (g)</td>
<td>Relevant</td>
<td>§ 2 para. 5</td>
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<td>PROTECTED GOODS</td>
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<tr>
<td>Human rights risks</td>
<td>&quot;human rights adverse impacts&quot;</td>
<td>Art. 1 (1), 3 (a), Annex Part I Sec. 1 with 21 references, Sec. 2 with 23 conventions</td>
<td>Human rights risks and protected legal positions from Nos. 1 to 11 of the annex</td>
<td>§ 2 paras. 1 and 2, annex</td>
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<tr>
<td>Environmental risks</td>
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<td>§ 2 para. 3</td>
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<tr>
<td>Climate-related risks</td>
<td>Paris Climate Agreement, 1.5 degrees target</td>
<td>Art. 15</td>
<td>No mention</td>
<td></td>
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<tr>
<td>DUE DILIGENCE OBLIGATIONS</td>
<td>Catalogue (&quot;due diligence&quot;) with references</td>
<td>Art. 4</td>
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<td>§ 3 para. 1 sentence 2</td>
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<tr>
<td>RISK MANAGEMENT</td>
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<tr>
<td>Integration</td>
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<td>Detailed risk management</td>
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<tr>
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<td>Art. 3 (k), 16</td>
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<td>Policy statement</td>
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<td>Art. 4 (1)</td>
<td>Policy statement - a little more content</td>
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<td>Policy statement as part of the prevention measures</td>
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**RISK ANALYSIS**

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<th>Art. 7 (1), 8 (1), 15 (2), 22 (1) (b)</th>
<th>No &quot;should have found out&quot; - only effort</th>
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<th>Audit only in sector if company only falls within scope because of sector</th>
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<tr>
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<td>Participation of &quot;affected groups&quot; and &quot;stakeholders&quot; - also in prevention and remedial action</td>
<td>Art. 3 (n), 6 (5), 7 (2) (a), 8 (3) (b)</td>
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<tr>
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<th>§ 5 para.4</th>
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<table>
<thead>
<tr>
<th>Identify and need to identify risks</th>
<th>Preventive and corrective measures for identified risks and risks that should have been identified, &quot;should have&quot; in analysis according to Art. 6</th>
<th>Art. 7 (1), 8 (1), 15 (2), 22 (1) (b)</th>
<th>Prevention only towards identified risks, no &quot;should have identified&quot; - only effort</th>
<th>§ 6 para.1</th>
</tr>
</thead>
</table>

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1 In addition to approach, procedures and processes, also identified risks

2 There, own business operations (possibly also those of subsidiaries in the case of decisive influence) and direct suppliers.

3 The provisions in Art. 7 on "preventing potential adverse impacts" and in Art. 8 on "bringing actual adverse impacts to an end" are very similar; Art. 8 has one more paragraph (2) for minimisation and one more letter (3) (a) in the form of reparation; this is not entirely comprehensible from a German perspective, as a gradation is not recognisable in this way.
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<thead>
<tr>
<th>Topic</th>
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<tr>
<td>Prevention and reduction</td>
<td>&quot;prevention action plan with reasonable and clearly defined timelines&quot;</td>
<td>Art. 7 (2) [a]</td>
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<td>Appropriate strategies, practices, training and control measures in own business area</td>
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<td>&quot;contractual assurances from business partners&quot;</td>
<td>Art. 7 (2) [b]</td>
<td></td>
<td>Selection according to expectations, contractual assurances, training, further education,</td>
<td>§ 6 para. 3</td>
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<tr>
<td></td>
<td>&quot;investments in production processes and infrastructures&quot;</td>
<td>Art. 7 (2) [c]</td>
<td></td>
<td>No mention</td>
<td></td>
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<tr>
<td></td>
<td>&quot;Targeted and proportionate support&quot; for SMEs</td>
<td>Art. 7 (2) [d]</td>
<td></td>
<td>No mention</td>
<td></td>
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<tr>
<td></td>
<td>&quot;collaborate with other entities&quot;</td>
<td>Art. 7 (2) [e]</td>
<td></td>
<td>No mention in own business but towards direct suppliers as remedial action and towards indirect suppliers</td>
<td>§ 7 para. 2 no. 2, § 9 para. 3 No. 2</td>
</tr>
<tr>
<td>Contract with third parties</td>
<td>&quot;conclude a contract with a partner with whom it has an indirect relationship&quot;</td>
<td>Art. 7 (3)</td>
<td></td>
<td>No specific mention but perhaps part of the measures towards direct suppliers as a remedial measure and towards indirect suppliers</td>
<td>§ 7 para. 2, § 9 para. 3</td>
</tr>
<tr>
<td>Control of contracts</td>
<td>&quot;contractual assurances shall be accompanied by appropriate measures to verify compliance&quot;</td>
<td>Art. 7 (4)</td>
<td></td>
<td>No specific mention but perhaps part of control measures against direct suppliers as a remedial measure and against indirect suppliers</td>
<td>§ 6 para. 4 no. 4, § 9 para. 3 No. 3</td>
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<tr>
<td>Requirement of fairness and non-discrimination vis-à-vis SMEs</td>
<td>&quot;terms shall be fair, reasonable and non-discriminatory&quot;</td>
<td>Art. 7 (4)</td>
<td></td>
<td>No default</td>
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<tr>
<td>If the above does not lead to avoidance or reduction</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Non-renewal</td>
<td>&quot;refrain from entering into new or extending existing relations&quot;</td>
<td>Art. 7 (5)</td>
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<td>Termination against direct supplier as remedial action</td>
<td>§ 7 para. 3</td>
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<tr>
<td>Suspend</td>
<td>&quot;suspend relations&quot;</td>
<td>Art. 7 (5) [a]</td>
<td></td>
<td>Suspension against direct supplier as remedial measure</td>
<td>§ 7 para. 2</td>
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</table>

6 A distinction is made between "mitigate" as prevention in Art. 7 and "minimise" as remedy in Art. 8.
7 Almost identical wording to corrective action plan in Art. 8 (3) (b)
8 Almost identical wording to assurances of compliance with corrective action plan in Art. 8 (3) (c)
9 Almost identical wording to bringing actual adverse impacts to an end in Art. 8 (3) (d)
10 Almost identical wording to code of conduct or corrective action plan in Art. 8 (3) (e)
11 Identical wording in Art. 8 (3) (f)
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<tr>
<td>Exit</td>
<td>“terminate”</td>
<td>Art. 7 (5) (b)</td>
<td></td>
<td>Termination vis-à-vis direct supplier as remedial action</td>
<td>§ 7 para. 3</td>
</tr>
<tr>
<td>Legal possibility</td>
<td>“where law governing the relations so entitles”; “member states shall provide for the ability of an option to terminate the business relationship in contracts governed by their laws”</td>
<td>Art. 7 (5)</td>
<td></td>
<td>Not mentioned</td>
<td></td>
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<tr>
<td>Special rules for financing</td>
<td>“not be required to terminate when expected to cause substantial prejudice”</td>
<td>Art. 7 (6)</td>
<td></td>
<td>Not mentioned</td>
<td></td>
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<tr>
<td>Review</td>
<td>Regulation, business policy and monitoring on occasion and annually</td>
<td>Art. 5 (2), 10</td>
<td></td>
<td>Occasional and annual</td>
<td>§ 6 para. 5</td>
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<tr>
<td>REMEDY12</td>
<td>“bringing actual adverse impacts to an end”</td>
<td>Art. 8</td>
<td></td>
<td>Remedial action</td>
<td>§ 7 para. 1</td>
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<tr>
<td>Identify and need to identify risks</td>
<td>Preventive and corrective measures for identified risks and risks that should have been identified, “should have” in analysis according to Art. 6</td>
<td>Art. 7 (1), 8 (1), 15 (2), 22 (1) (b)</td>
<td></td>
<td>Remedy only against identified risks, no “should have identified” - only effort</td>
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<tr>
<td>Minimisation12</td>
<td>“minimise the extent”</td>
<td>Art. 8 (2)</td>
<td></td>
<td>Staggering; Termination in own business operations in national territory, as a rule termination in own business operations abroad and at subsidiaries. Concept with timetable for immediate supplier.</td>
<td>§ 7 par. 1 and 2</td>
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<tr>
<td>Reparation</td>
<td>“neutralise the adverse impact or minimise its extent, including by the payment”</td>
<td>Art. 8 (3) (a)</td>
<td></td>
<td>No regulation12</td>
<td></td>
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<tr>
<td>Termination and minimisation measures</td>
<td>“corrective action plan with reasonable and clearly defined timelines”</td>
<td>Art. 8 (3) (b)</td>
<td></td>
<td>Staggering as above; then concept with timetable</td>
<td>§ 7 para. 2</td>
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<td></td>
<td>“contractual assurances from direct partners”</td>
<td>Art. 8 (3) (c)</td>
<td></td>
<td>No specific mention but perhaps part of the concept as above and, if necessary, elaboration of a plan with the causer.</td>
<td>§ 7 para. 2 no. 1</td>
</tr>
</tbody>
</table>

12 The provisions in Art. 7 on “preventing potential adverse impacts” and in Art. 8 on “bringing actual adverse impacts to an end” are very similar; Art. 8 has one more paragraph (2) for minimisation and one more letter (a) in the form of reparation; this is not entirely comprehensible from a German perspective, as a gradation is not recognisable in this way.

13 A distinction is made between “mitigate” as prevention in Art. 7 and “minimise” as remedy in Art. 8.

14 But reparation is one of 8 criteria in the assessment of fines (section 24 para. 4 no. 7) (> see below under section 3 para. 1).

15 Almost identical wording to prevention action plan in Art. 7 (2) (a)

16 Almost identical wording to assurances of compliance with prevention action plan in Art. 7 (2) (b)
<table>
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<tr>
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<th>Article</th>
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<td></td>
<td></td>
<td>&quot;investments in production processes and infrastructures&quot;.</td>
<td>Art. 8 (3) (d)§§</td>
<td>No mention</td>
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<td></td>
<td></td>
<td>&quot;Targeted and proportionate support&quot; for SMEs</td>
<td>Art. 8 (3) (e)§§</td>
<td>No mention</td>
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<td></td>
<td></td>
<td>&quot;collaborate with other entities&quot;</td>
<td>Art. 8 (3) (f)§§</td>
<td>Joining forces with other companies as part of industry initiatives and industry standards</td>
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<td></td>
<td>Contract with third parties</td>
<td>&quot;conclude a contract with a partner with whom it has an indirect relationship&quot;</td>
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<td>&quot;contractual assurances shall be accompanied by appropriate measures to verify compliance&quot;</td>
<td>Art. 8 (5)</td>
<td>No specific mention but perhaps part of control measures against direct suppliers as a remedial measure and against indirect suppliers</td>
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<td></td>
<td>Requirement of fairness and non-discrimination vis-à-vis SMEs</td>
<td>&quot;terms shall be fair, reasonable and non-discriminatory&quot;</td>
<td>Art. 8 (5)</td>
<td>No specification</td>
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<td></td>
<td>If the above does not lead to avoidance or minimisation</td>
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<td></td>
<td>Non-renewal</td>
<td>&quot;refrain from entering into new or extending existing relations&quot;</td>
<td>Art. 8 (6)</td>
<td>Termination against direct supplier as remedial measure</td>
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<td></td>
<td>Suspend</td>
<td>&quot;suspend relations&quot;</td>
<td>Art. 8 (6) (a)</td>
<td>Suspension against direct supplier as remedial measure</td>
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<td>Exit</td>
<td>&quot;terminate&quot;</td>
<td>Art. 8 (6) (b)</td>
<td>Termination against direct supplier as remedial action</td>
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<td></td>
<td>Legal possibility</td>
<td>&quot;where law governing the relations so entitles&quot;; &quot;member states shall provide for the ability of an option to terminate the business relationship in contracts governed by their laws&quot;</td>
<td>Art. 8 (6)</td>
<td>Not mentioned</td>
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\(^{17}\) Almost identical wording to preventing potential adverse impacts in Art. 7 (2) (c)

\(^{18}\) Almost identical wording to code of conduct or prevention action plan in Art. 7 (2) (d)

\(^{19}\) Identical wording in Art. 7 (2) (e)
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<td>Occasional and annual</td>
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<td>COMPLAINT PROCEDURE</td>
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<tr>
<td>People</td>
<td>&quot;persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact&quot;, &quot;trade unions and other workers' representatives representing individuals working in the value chain concerned&quot;, &quot;civil society organisations active in the areas related to the value chain concerned&quot;</td>
<td>Art. 9 (1) and (2)</td>
<td>People</td>
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<tr>
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<tr>
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<td>Art. 9 (4)</td>
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<tr>
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<td>Regulation, &quot;business policy&quot; and monitoring on occasion and annually</td>
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<td>Occasional and annual</td>
<td>§ 8 para. 5</td>
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<tr>
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<td>No regulation but inclusion in annex I E.2 of the WBRL 2019/1937/UE and explicit application of the WBRL to all reports</td>
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<td>DOCUMENTATION AND REPORT</td>
<td>For companies that are not subject to non-financial reporting according to Directive 2013/34/EU, report on the website as of 30 April of each year.</td>
<td>Art. 11</td>
<td>Documentation and report</td>
<td>§§ 10 and 12</td>
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<td>SAMPLE CLAUSES</td>
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<td>Art. 12</td>
<td>No regulation</td>
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<tr>
<td>AID</td>
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<td>Handouts from the authority or the ministry</td>
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<tr>
<td>REPRESENTATIVE</td>
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<tr>
<td>AUTHORITIES AND POWERS</td>
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<td></td>
<td>Extensive powers</td>
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<td>Extensive powers</td>
<td>§§ 14 to 18</td>
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<td></td>
<td>Application rights for affected persons</td>
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<td>Action on request</td>
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<td>&quot;European network of supervisory authorities&quot;</td>
<td>Art. 21</td>
<td>No regulation</td>
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<tr>
<td>SANCTIONS</td>
<td>Sanctions &quot;sanctions provided for shall be effective, proportionate and dissuasive&quot;</td>
<td>Art. 20 (1)</td>
<td>Penalty payments and fines for administrative offences</td>
<td>§§ 23, 24</td>
<td></td>
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<tr>
<td></td>
<td>Good conduct reference &quot;due account shall be taken of the company's efforts to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as collaboration with other entities to address adverse impacts in its value chains, as the case may be&quot;</td>
<td>Art. 20 (2)</td>
<td>Efforts to detect and make reparations as well as avoid can reduce fines, among other things.</td>
<td>§ 24 para. 4</td>
<td></td>
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<tr>
<td></td>
<td>Dependence on turnover &quot;when pecuniary sanctions are imposed, they shall be based on the company's turnover&quot;</td>
<td>Art. 20 (3)</td>
<td>Fines of €100,000, €3m and €5m and, in certain cases, 2% of group-wide turnover</td>
<td>§ 24 para. 3</td>
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</tr>
<tr>
<td>PUBLIC CONTRACTS</td>
<td>Public submission requires confirmation that no sanctions have been imposed</td>
<td>Art. 24</td>
<td>Exclusion possible for up to 3 years</td>
<td>§ 22</td>
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### LIABILITY

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<tr>
<td></td>
<td></td>
<td>Additional liability:</td>
<td>Art. 22 (1)</td>
<td>No additional liability:</td>
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</tr>
<tr>
<td></td>
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<td>&quot;Member States shall ensure that companies are liable for damages if: (a) they failed to comply with the obligations laid down in Articles 7 and 8 and; (b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage&quot;</td>
<td></td>
<td>&quot;A breach of the obligations under the Act shall not give rise to civil liability. Any civil liability established independently of this Act shall remain unaffected&quot;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>No liability for damage caused by indirect partner if reasonable measures have been taken. Other measures taken by the company must be taken into account</td>
<td>Art. 22 (2)</td>
<td>No regulation</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Liability of one company exempts another in the &quot;Value chain not</td>
<td>Art. 22 (3)</td>
<td>No regulation</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>No impact on other liability provisions</td>
<td>Art. 22 (4)</td>
<td>No regulation</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Liability should be mandatory internationally</td>
<td>Art. 22 (5)</td>
<td>No regulation</td>
<td></td>
</tr>
</tbody>
</table>

### GOVERNANCE

<table>
<thead>
<tr>
<th>Topic</th>
<th>Subtheme</th>
<th>Directive Content</th>
<th>Article</th>
<th>LkSG Content</th>
<th>§§</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Business leaders should integrate sustainability, human rights and the environment into short-, medium- and long-term decision-making.</td>
<td>Art. 25 (1)</td>
<td>No explicit regulation, at most consequences from risk management</td>
<td>§ 4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Breach of the duty of legality shall also be given in the event of breach of the above</td>
<td>Art. 25 (2)</td>
<td>As above.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Business leaders supervision obligation also includes the due diligence obligations in Art. 4 to 9</td>
<td>Art. 26</td>
<td>As above.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Salary should also reward climate targets</td>
<td>Art. 15 (3)</td>
<td>As above.</td>
<td></td>
</tr>
</tbody>
</table>

### IMPLEMENTATION

<table>
<thead>
<tr>
<th>Topic</th>
<th>Subtheme</th>
<th>Directive Content</th>
<th>Article</th>
<th>LkSG Content</th>
<th>§§</th>
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<tr>
<td></td>
<td></td>
<td>2 years for companies with many employees and / or large turnover according to Art. 2.</td>
<td>Art. 30 (1) (a), 2 (1) (b), 2 (2) (b)</td>
<td>Application 2023 or 2024</td>
<td>§ 1 para. 1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 years for companies with few employees and / or small turnover according to Art. 2</td>
<td>Art. 30 (1) (b), 2 (1) (a), 2 (2) (a)</td>
<td>As above.</td>
<td></td>
</tr>
</tbody>
</table>
Comparison other countries
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>USA</td>
<td>Tariff Act of 1930 (19 U.S.C. § 1307)</td>
<td>1930</td>
<td>On any importer of goods; can be reported by anyone to U.S. Customs and Border Protection (CBP).</td>
<td>Forced and child labour</td>
<td>-</td>
<td>-</td>
<td>Import ban; must demonstrate that all reasonable efforts have been made to establish the absence of forced and child labour in the supply chain.</td>
<td>Fine, confiscation, destruction of the seized goods</td>
<td>No</td>
</tr>
<tr>
<td>2</td>
<td>USA</td>
<td>Trafficking Victims Protection Act (TVPA); 18 U.S. Code §§1581-1597, Trafficking Victims Protection Reauthorization Act (TVPRRA) 2008</td>
<td>2000</td>
<td>On any company that is &quot;active&quot; in the USA or has &quot;minimum contacts&quot; (import and sale of goods is already sufficient) in one of the states according to a so-called &quot;long-arm statute&quot; of the individual states.</td>
<td>Modern slavery, human trafficking, forced and compulsory labour, servitude, worst forms of child labour</td>
<td>-</td>
<td>-</td>
<td>Avoidance, standard knowing or having to know, regardless of whether appropriate measures were taken or not.</td>
<td>Fine, imprisonment</td>
<td>Civil and punitive damages; claim is directed both against the perpetrators of the offences (human trafficking and modern forms of slavery) worldwide and against anyone who recognisably benefits from modern forms of slavery or human trafficking</td>
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<td>3</td>
<td>USA</td>
<td>Dodd-Frank Act (DFA)</td>
<td>2010</td>
<td>On companies listed with SEC</td>
<td>Armed conflicts over conflict minerals (indirectly child labour, sexual violence, forced displacement and destruction of cultural sites)</td>
<td>-</td>
<td>Reporting obligation for 3TG</td>
<td>Report, examination in three steps: (i) Is there a reporting obligation? i.e. is one of the conflict minerals (tin, tantalium, wolfram and their ores and gold) required in the manufacture of a product or for its functioning? (ii) If yes: Do the raw materials come from the conflict region DR Congo or its neighbouring countries? Then a comprehensible and honest assessment must be made: country of origin verification to be performed (iii) If, in any case, there is reason to believe that the conflict material originates from a conflict region and also does not come from recycling or scrap, it must be examined whether, by acquiring the conflict minerals have been used to finance armed groups in the conflict region</td>
<td>5 USD million, up to 20 years imprisonment, depending on the state, companies that fail to comply with the reporting requirement may be excluded from the public procurement process</td>
<td>Possible claims for damages by the company’s shareholders in the event of misstatements or exaggerated information</td>
</tr>
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<tr>
<td>4</td>
<td>USA</td>
<td>California</td>
<td>2012</td>
<td>To companies that do business in California, have worldwide sales of more than $100 million, and are identified as a manufacturer or retailer on their California state tax return. Business activity exists, among other things, with a minimum annual turnover of USD 500,000 in California</td>
<td>Slavery, human trafficking</td>
<td>-</td>
<td>Report on how the company deals with the risk of slavery and human trafficking in the entire supply chain; reporting obligations are already fulfilled even if the company specifically states that it does not take any measures on all issues. Attorney General of California may seek judicial release of error-free report in case of breach of reporting requirement</td>
<td>Risk control</td>
<td>No</td>
<td>Probably yes; liability under competition or consumer protection law is possible in case of misrepresentation or exaggeration by a company</td>
</tr>
<tr>
<td>5</td>
<td>Canada</td>
<td>Customs Tariff</td>
<td>2020</td>
<td>On each importer</td>
<td>Forced labour</td>
<td>-</td>
<td>-</td>
<td>Import ban; companies that import goods into Canada should import take appropriate measures to ensure that their goods are not produced using forced labour</td>
<td>Fine, confiscation</td>
<td>Yes</td>
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<tr>
<td>6</td>
<td>UK</td>
<td>Modern Slavery Act (MSA)</td>
<td>2015</td>
<td>Any company that does business in the UK and has a worldwide turnover of £36 million, either itself or through subsidiaries. A foreign company without a registered office or principal place of business in the UK which meets this turnover threshold is in any case doing business in the UK if it has a demonstrable business presence (e.g. establishment, provision of services, generation of revenue) locally.</td>
<td>Modern slavery, human trafficking</td>
<td>-</td>
<td>Annual report on measures to counter forms of slavery and human trafficking in all supply chains and business sectors. Law does not contain an obligation to take certain measures; however, if no measures are taken, this must be stated. If both parent company and subsidiary are subject to reporting requirements, a joint group-wide report may be prepared by the parent company. Ministry of the Interior can force the publication of the report in court. Accuracy and completeness of the report is not verified.</td>
<td>-</td>
<td>Sanctions are being considered</td>
<td>Eventual; Act does not itself provide for liability, but the reports to be published may be used as evidence of a lack of care if civil liability is based on another provision of law. Possible liability under general civil law provisions in case of false or exaggerated reports (consumer protection law, competition law).</td>
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<tr>
<td>7</td>
<td>Australia</td>
<td>Modern Slavery Act (MSA)</td>
<td>2018</td>
<td>Companies that have a worldwide consolidated annual turnover of A$100 million or more during the 12-month reporting period and have their registered office or do business in Australia. Business activity exists in any case if the company maintains a branch in Australia or is registered with the competent supervisory authority for any other reason.</td>
<td>Slavery, human trafficking, worst forms of child labour.</td>
<td>-</td>
<td>Annual report on risks of slavery, human trafficking and child labour throughout the supply chain. Report is to be addressed to the competent federal authority (Federal Ministry of the Interior), which may request rectification in the event of deficiencies; in the event of violations, the Minister may make these publicly known in an online register. Group-wide report possible for several group companies together.</td>
<td>Risk control</td>
<td>Not foreseen; only publication in an online register in case of infringements.</td>
<td>Possible liability under general civil law provisions in the case of false or exaggerated reports (consumer protection law, competition law).</td>
</tr>
<tr>
<td>8</td>
<td>Australia, New South Wales</td>
<td>New South Wales Modern Slavery Act (NSW MSA)</td>
<td>From 2018, not yet in force</td>
<td>Businesses with at least one employee in NSW and a minimum annual turnover of A$50 million worldwide.</td>
<td>Slavery, human trafficking, worst forms of child labour.</td>
<td>-</td>
<td>Annual report on risks of slavery, human trafficking and child labour throughout the supply chain. If a company is already required to report under the Au-MSA, it does not have to prepare another report under the NW-MSA. Specifications essentially correspond to those of the Au-MSA.</td>
<td>-</td>
<td>Fines up to AUSD million 1.1</td>
<td>Possible liability under general civil law provisions in case of false or exaggerated reports (consumer protection law, competition law).</td>
</tr>
<tr>
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<tr>
<td>9</td>
<td>France</td>
<td>Loi de Vigilance</td>
<td>2017</td>
<td>Company with registered office in France as SA with min. 5,000 employees plus their daughters in F resp. 10,000 AN with subsidiaries worldwide in two consecutive financial years - but probably not companies abroad</td>
<td>Human rights, fundamental freedoms, health, security</td>
<td>Environment when related to human rights</td>
<td>Report on risks and remedial measures</td>
<td>Systematic recording, procedures for assessing the situation and established business relationships, risk reduction and prevention measures, warning and whistleblowing mechanism, review of effectiveness</td>
<td>The Council of State is authorised by decree to determine the details of the development and implementation of the monitoring plan, if necessary within the framework of sector-specific or regional multilateral initiatives.</td>
<td>Companies are required to develop their monitoring plan in cooperation with society’s stakeholders</td>
</tr>
</tbody>
</table>

*Loi de vigilance of valid 27.3.2017, for financial years after the year following publication; [https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/](https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/).
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<tr>
<td>10</td>
<td>Netherlands</td>
<td>Wet Zorgplicht Kinder-arbeid</td>
<td>Not yet in force</td>
<td>Companies worldwide that supply services or goods to end users in the Netherlands twice a year</td>
<td>Child labour</td>
<td>-</td>
<td>Explanation</td>
<td>Examination, action plan in case of &quot;reasonable suspicion&quot;, declaration</td>
<td>Fine in the amount of EUR 820,000 or 10% of the annual turnover if the supervisory authority has unsuccessfully requested the enterprise to remedy a breach; imprisonment</td>
<td>No</td>
</tr>
</tbody>
</table>

10 Wet Zorgplicht Kinderarbeid (Wet van oktober n.242019, houdende de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen - Wet zorgplicht kinderarbeid).

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<tr>
<td>12</td>
<td>Norway</td>
<td>Transparency Act (TG)</td>
<td>In force since July 2022</td>
<td>Companies that operate as so-called “large companies” as well as so-called “small companies” which, alone or together with their subsidiaries, exceed at least two of the following thresholds: (i) Average number of employees during the financial year: 50 full-time employees; (ii) NOK 70 million turnover; (iii) NOK 35 million total assets. Larger foreign companies are obliged to pay tax in Norway if they offer goods or services in Norway and are thereby liable to pay tax in Norway (from an annual turnover of 10,000 NOK)</td>
<td>Fundamental human rights and working conditions covered by the UNGPs</td>
<td>Environmental damage is covered insofar as it has a negative impact on the human rights covered.</td>
<td>Annual and ad hoc report on the implementation of the due diligence obligation</td>
<td>As OECD Guidelines (similar to LkSG); any person can require to implement the due diligence obligations; affectedness or legitimate interest not required for this purpose</td>
<td>Fine</td>
<td>No</td>
</tr>
</tbody>
</table>

<p>| Switzerland | Due diligence obligations in the Swiss Code of Obligations (SOR) | Not yet in force22 | Companies in Switzerland Reporting on Corporate Social Responsibility as a whole: Public companies domiciled in Switzerland as well as financial service providers with at least 500 full-time employees on an annual average and a balance sheet total of CHF 20 million or a turnover of CHF 20 million or a turnover of CHF 40 million in two consecutive years. Reporting on metal and mineral transactions: Companies with their registered office or head office in Switzerland that import minerals or metals containing tin, tantalum, tungsten or gold from conflict or high-risk areas into Switzerland. Reporting on child labour: companies domiciled or managed in Switzerland that offer products or services where there is reasonable suspicion of child labour. Reporting on payments to government agencies: companies domiciled in Switzerland and obliged to undergo a so-called ordinary audit, which are directly or indirectly abroad active in the extraction of raw materials. Child labour, social issues including workers' issues, human rights, Anti-corruption, conflict minerals Environmental concerns Annual non-financial reporting. Reports are published in electronic form within 6 months of the end of the financial year and remain available for inspection for 15 years. Reporting on corporate social responsibility, i.e. on environmental issues, social issues including labour issues, human rights protection and anti-corruption; corporate groups must provide consolidated reports; reporting obligations fulfilled abroad are credited. Reporting on metal and mineral transactions: Companies must report on compliance with their due diligence obligations along the supply chain Reporting on child labour: Reporting companies must report on due diligence to be applied in the supply chain Reporting on payments to government entities: Must report on payments to (foreign) government entities in the amount of CHF 100,000 per financial year (including cumulative partial amounts); in corporate groups Reporting consolidated and equivalent foreign reports recognised Management system, risk analysis, risk management plan, measures Fine, natural persons involved in reporting are subject to criminal liability if they provide false information or fail to do so altogether Liability |
|---|---|---|---|---|---|---|---|---|---|</p>
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<td>14</td>
<td>Finland</td>
<td>Ongoing legislative process[14]</td>
<td></td>
<td></td>
<td>Human rights</td>
<td>Environmental risks</td>
<td>Not specified in more detail, as only government study on possible legislation so far.</td>
<td>Not specified in more detail, as only government study on possible legislation so far.</td>
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<tr>
<td>15</td>
<td>India</td>
<td>Business Responsibility and Sustainability Report (BRSR)</td>
<td>In force, mandatory from financial year 2022 - 2023</td>
<td>India's 1,000 largest listed companies (by market capitalisation) are required to report by regulatory order</td>
<td>Worker and social concerns</td>
<td>Energy and water consumption, air pollutant emissions, CO₂ emissions, transition to a circular economy, waste generated and waste management, bio-diversity</td>
<td>Report on &quot;ESG&quot; risks, sustainability goals and concepts for their implementation, various environmental concerns, employee and social concerns</td>
<td></td>
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</tr>
</tbody>
</table>

Useful slides
Others
The first commentary on this - has been available since July 2022
Project organisation

Development towards SCDDA fulfilment

[Space for graphics during the lecture].
Workshop - Topics

Planning for the "end result":
> Report in Q 1 2024
Who does what until when?

Procedure Risk analysis
- Own business division
- Suppliers

Smart processes
- IT support
- From paper into paper

Complaints procedure
- What
- Where
- How
- Who

EU Directive
- What comes
- Can the German system be replicated
- What is different

What is the current status
- General
- Own business division
- Immediate suppliers
- Indirect suppliers

What is the current state of "Paper compliance" - responsibilities, structures, processes

Individual questions

Customer communication
- General
- Commitments
- No Gos

Direct suppliers
Analysis + Measures

Indirect suppliers
Substantiated knowledge,
Analysis + Measures

Own business area
Analysis + Measures

General
Risk management,
policy statement
Complaints procedure,
documentation, report

Process Ownership
> Who and how
Other...our Toolbox and our checklists

Nur Dokumente

Beschreibung | gerne gehen wir die Dokumente in einer Video session gemeinsam durch + zeigen sie auf dem Screen

INHALTSVERZEICHNIS

Toolbox mit über 200 Seiten in 16 Dokumenten

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Further information on the Supply Chain Sourcing Obligations Act...

At https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act you will find a lot of further information on the LkSG, such as our guide to risk analysis, the synopsis to the FAQ of the BMAS, our route plan or an explanatory video on our gap analysis, and much more.

GAP-Analyse Tool: Ist Ihr Unternehmen für das Lieferkettengesetz in 2023 gut aufgestellt?
Experts
Martin Rothermel has built up the German practice area of commercial and contract law. He advises companies on purchasing, quality assurance, distribution (e-commerce, commercial agent, authorised dealer and franchise systems) and product liability. His work includes contract drafting as well as representation in contentious disputes. His clients include national and international companies in industry and commerce. Martin Rothermel regularly publishes articles and gives lectures on international sales and delivery law (including UN sales law), supply chain, distribution and cartel law, e-commerce law and product liability law.

Martin has published the first legal commentary handbook on the German LkSG (SCDDA) in 2022.

Martin Rothermel studied in Würzburg, worked as a trainee lawyer for Siemens AG in Munich and Procter & Gamble Comp. in the USA. He obtained his doctorate in antitrust law, worked as in-house counsel for a medium-sized IT company since his admission to the bar in 1999 and then as a management consultant for Roland Berger Strategy Consultants. After working for a national commercial law firm, he joined the Munich office of Taylor Wessing in 2004.

Languages:
German, English

"Leading name", "Tier 1", Legal 500 2023
"Leading lawyer in distribution law", JUVE 2022/2023
"Lawyer of the Year for Foreign Trade", Handelsblatt 2021
"Particularly innovative in commercial law", Brand Eins 2021
"Recommended Lawyer", in JUVE, Chambers, Legal 500
"Leading law firm in contract law and antitrust law", Kanzleimonitor.de

"He has very deep knowledge of the legal aspects, knows the law, and we also get advice that is very pragmatic and very helpful. So the theory is good and he also provides good solutions.", Client, Chambers Europe 2020


“Market sources emphasise his experience and tenacity, stating that "he is certainly someone who doesn't give up easily during negotiations. ". Chambers Europe 2019

Highlighted as Best Lawyer for Foreign Trade and Franchise Law. Best Lawyers in Germany, Handelsblatt 2018

“Sources hail Martin Rothermel for being "extraordinarily creative," adding: "He really never gives up and tries things even in impossible situations." He is renowned for his strength in distribution and franchise agreements and also has a high level of expertise in commercial litigation", Chambers Europe 2018

“Frequently recommended”, “outstanding”, “strong expertise”, JUVE Handbook 2017

Your experts
Sebastian Rünz is an expert in advising on production, purchasing, sales, distribution (e-commerce, commercial agent, authorised dealer and franchise systems) and a specialist in compliance.

As a trained CSR manager, Sebastian Rünz advises companies on legal components related to Corporate Social Responsibility (CSR), for example on the concrete implementation of CSR in sustainable contracts as well as the legal integration of sustainability aspects into compliance management systems. His work also includes representing clients in contentious disputes.

Languages: German, English

> Special expertise: Risk analysis guide (https://www.taylorwessing.com/-/media/taylorwessing/files/germany/2022/03/leitfaden-risikoanalyse_taylor-wessing.pdf); cooperation with software providers.
> Special expertise in the area of "reviewing corporate approaches": several gap analyses based on our online mask-based IT tool (see our website for introductory video Gap Analysis at https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act) = Best Practice

> Special expertise on the topic of "MBA", as several mandates = best practice; at the German Institute for Compliance, Sebastian Rünz heads the "MBA" sub-working group in the CSR and Human Rights working group and, together with other company representatives, is developing the DICO standards on human rights officers...