

# German Supply Chain Act: Implementation from below

How to best make use of the  
Act from the perspective of  
communities and rights-holders

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# Introduction

The impact of international value chains and the activities of multinational corporations on human rights and the environment has been known for a long time. This led to the adoption of the UN Guiding Principles on Business and Human Rights in 2011. However, recurring reports of human rights violations and environmental destruction in the value chains of transnational—including German—companies have increasingly led to a realization among legislators that such voluntary approaches are insufficient to ensure corporate accountability and that binding rules of human rights and environmental due diligence are needed instead.<sup>1</sup>

After years of civil society activism, advocacy and litigation efforts before German courts, on 1 January 2023 a corresponding law came into force in Germany.

The purpose of this guidance note is to inform relevant stakeholders—those affected by human rights violations and environmental destruction along the transnational value chains of German companies, as well as civil society organizations in producing countries—about this new law and its possibilities. In this way, the guidance is intended to support affected persons and their stakeholders to use this new instrument as effectively as possible to promote their rights and demands.

Since the law has only recently come into force, there remains a lack of clarification from the authorities or the courts on numerous aspects, as well as reliable practical experience on how it will be implemented. This guidance is therefore based on the text of the law, the legislative materials and initial handouts from the enforcement authority in Germany. Insofar as this guidance contains cautious predictions about a practice of the administrative authority that we expect in the future, these are based on our initial practical experience through the first complaints that have been filed. They are not intended to and cannot constitute any kind of authoritative, conclusive guidance.

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<sup>1</sup> See Loi de Vigilance in France, laws on due diligence to prevent child labor in Netherlands and Switzerland, laws against modern forms of slavery and human trafficking in USA, Canada, UK, Australia and on conflict minerals (EU and USA) and the negotiations on the EU Corporate Sustainability Due Diligence Directive and a Binding Treaty at the UN level.

# The German Act on Corporate Due Diligence Obligations in Supply Chains (LkSG) at a Glance

- 1** The German Act on Corporate Due Diligence Obligations in Supply Chains (in German Lieferkettensorgfaltspflichtengesetz, or LkSG) imposes an obligation on companies falling within its scope to assume responsibility for their supply chain and to ensure that their contractual partners abroad respect and protect selected internationally recognized human rights and environmental standards.
- 2** The due diligence obligations of the companies extend in principle to their entire supply chain—from the raw material to the finished sales product; however, the LkSG provides for a gradation of the obligations in the lower supply chain.
- 3** Compliance with the obligations is to be monitored and enforced in particular by a public authority (Federal Office of Economics and Export Control—BAFA). The authority will examine company reports and monitor compliance with due diligence obligations. The authority is obligated to intervene at the request of persons whose human rights have been violated. In doing so, the authority has far-reaching investigative powers. It can impose specific measures on the company concerned and, if necessary, enforce them through penalty payments. Finally, it can impose fines of up to 8 million euros or 2 percent of annual group sales in the event of violations and, if necessary, exclude companies from public tendering procedures.
- 4** The LkSG itself does not provide for civil liability of companies for breaches of due diligence obligations that result in damages to third parties. However, the LkSG probably makes it easier to sue for corresponding compensation in accordance with the general rules of civil law by introducing a special type of legal standing.

# FAQ

## The most important facts and terms of the LkSG

### WHICH HUMAN RIGHTS AND ENVIRONMENTAL STANDARDS ARE PROTECTED?

The LkSG explicitly identifies a number of human rights and environmental risks, the realization of which companies should avoid, minimize or end by exercising human rights due diligence.

These are, first of all, the following human rights risks (Section 2 (2) No. 1–10 LkSG):

- 1 Child labor for children under the age at which compulsory schooling ends according to the law of the place of employment, in any case usually not under the age of 15 years
- 2 The worst forms of child labor for children under 18 years of age according to international labor standards
- 3 Forced labor (according to international labor standards and human rights norms)
- 4 All forms of slavery (according to international labor standards and human rights norms)
- 5 Failure to comply with occupational safety regulations according to the national law of the place of employment
- 6 Disregard for freedom of association by obstructing the formation and joining of trade unions, discriminating for joining trade unions or interfering with the operation of trade unions (with respect to individual freedom of association, the international standard of protection applies here, only collective trade union activity must be compatible with the applicable law of the place of employment)
- 7 Unequal treatment in employment according to international labor standards and human rights norms (e.g. based on national and ethnic origin, social origin, political opinion, health status, disability, sexual orientation, age, gender, religion or belief; especially payment of unequal wages for equal work)
- 8 Withholding of an adequate living wage (at least minimum wage as laid down by the applicable law and otherwise to be determined according to the law of the place of employment)<sup>2</sup>
- 9 Causing environmental degradation that affects people's access to food, drinking water, sanitation or health
- 10 Unlawful evictions and deprivation of land as a means of livelihood (the question of what constitutes unlawfulness has not been conclusively clarified nor has the extent to which the internationally recognized human rights standards and consultation rights of indigenous groups<sup>3</sup> are covered)
- 11 Torture, injury to life or limb, or interference with the freedom of association by private or public security forces contracted or used by the company

<sup>2</sup> In our opinion, the term "at a minimum" in the text of the Act should be interpreted as requiring that companies are obligated to pay a wage in excess of the minimum wage if the latter is inadequate, i.e., does not provide workers with what they need to meet their basic living expenses, see [https://lieferkettengesetz.de/wp-content/uploads/2021/11/Initiative-Lieferkettengesetz\\_FAQ-English.pdf](https://lieferkettengesetz.de/wp-content/uploads/2021/11/Initiative-Lieferkettengesetz_FAQ-English.pdf).

<sup>3</sup> Right to free, prior and informed consent (FPIC) in accordance with ILO Convention 169, which Germany has also signed, but which is not explicitly referred to by the LkSG.

What is important as regards this list of specific human rights risks is that many of those risks refer to national law provisions in the respective place of employment. Thus, it is necessary to check in each case whether the relevant standards for the human rights risk at hand are determined pursuant to international or national law and to argue accordingly.

In addition, further human rights are protected when they are enshrined in the international conventions for the protection of human rights listed in the appendix to the LkSG.<sup>4</sup> These are the two human rights conventions of the United Nations (UN) and eight core labor conventions of the International Labor Organization (ILO).<sup>5</sup>

However, protection with regard to these “other rights” only exists against corporate conduct that is directly capable of impairing these rights in a particularly serious manner and whose unlawfulness is obvious when all relevant circumstances are reasonably assessed (Section 2 (2) No. 11 LkSG). Accordingly, not every (but only a qualified) violation or impairment of these rights would trigger due diligence obligations on the part of the German companies involved. The protection of these “other” rights is therefore limited in comparison to the explicitly listed rights.

**Finally, the following environmental risks (Section 2 (3) LkSG) are covered by the Act:**

- 1** The production or use of mercury and the treatment of mercury waste in violation of the Minamata Convention<sup>6</sup>
- 2** The production and use, as well as the non-environmentally sound handling, collection, storage and disposal of persistent organic pollutants (POPs) as defined in the POP’s Convention<sup>7</sup>
- 3** The export and import of hazardous waste in accordance with the Basel Convention<sup>8</sup>

**4** These include for example the right to work, the right to freedom of occupation, the right to social security and social insurance, the right to protection of marriage and family, the right to maternity protection and paid maternity leave, the right to housing, the right to physical and mental health, the right to life, the prohibition of torture, the rights of minorities, the right to education and many more.

**5** ICCPR, ICESCR, ILO nos. 29, 87, 98, 100, 105, 111, 138, 182.

**6** Minamata Convention on Mercury of 10 October 2013.

**7** Stockholm Convention on Persistent Organic Pollutants of 23 May 2001. Persistent organic pollutants (POPs) are organic substances that persist in the environment, accumulate in living organisms and pose risks to public health and the environment. Chemical substances that have been identified as POPs include pesticides (such as DDT), industrial chemicals (such as polychlorinated biphenyls, which were widely used in electrical equipment) or unintentional by-products formed during industrial processes, degradation or combustion (such as dioxins and furans), see <https://echa.europa.eu/understanding-pops>.

**8** Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989.

## WHICH COMPANIES FALL WITHIN THE SCOPE OF THE LKSG?

On 1 January 2023, the LkSG has entered into force for companies in every sector and in any legal form with a registered office, a head office or a branch office in Germany and at least 3,000 employees in Germany.<sup>9</sup> From 1 January 2024, the threshold will drop to 1,000 employees in Germany. In 2024, it will be evaluated whether the statutory regulation can be extended to companies with even fewer employees. Unfortunately, there is (so far) no public list of covered companies. Whether a company has a registered office, a head office or a branch office in Germany can be investigated using the publicly accessible commercial register.<sup>10</sup> What is not so easily accessible/researchable, on the other hand, is the number of employees in Germany. The public annual reports of companies often only state the number of people employed globally. According to estimates, approx. 900 companies are covered in 2023 and approx. 4,800 will be covered from 2024 onwards.

## WHAT DUE DILIGENCE OBLIGATIONS DO COMPANIES HAVE UNDER THE LKSG?

The LkSG imposes specific due diligence obligations on companies, which they must observe in an appropriate manner, with the aim of preventing or minimizing the above-mentioned human rights and environmental risks in their supply chains or ending any violations (Section 3 LkSG).

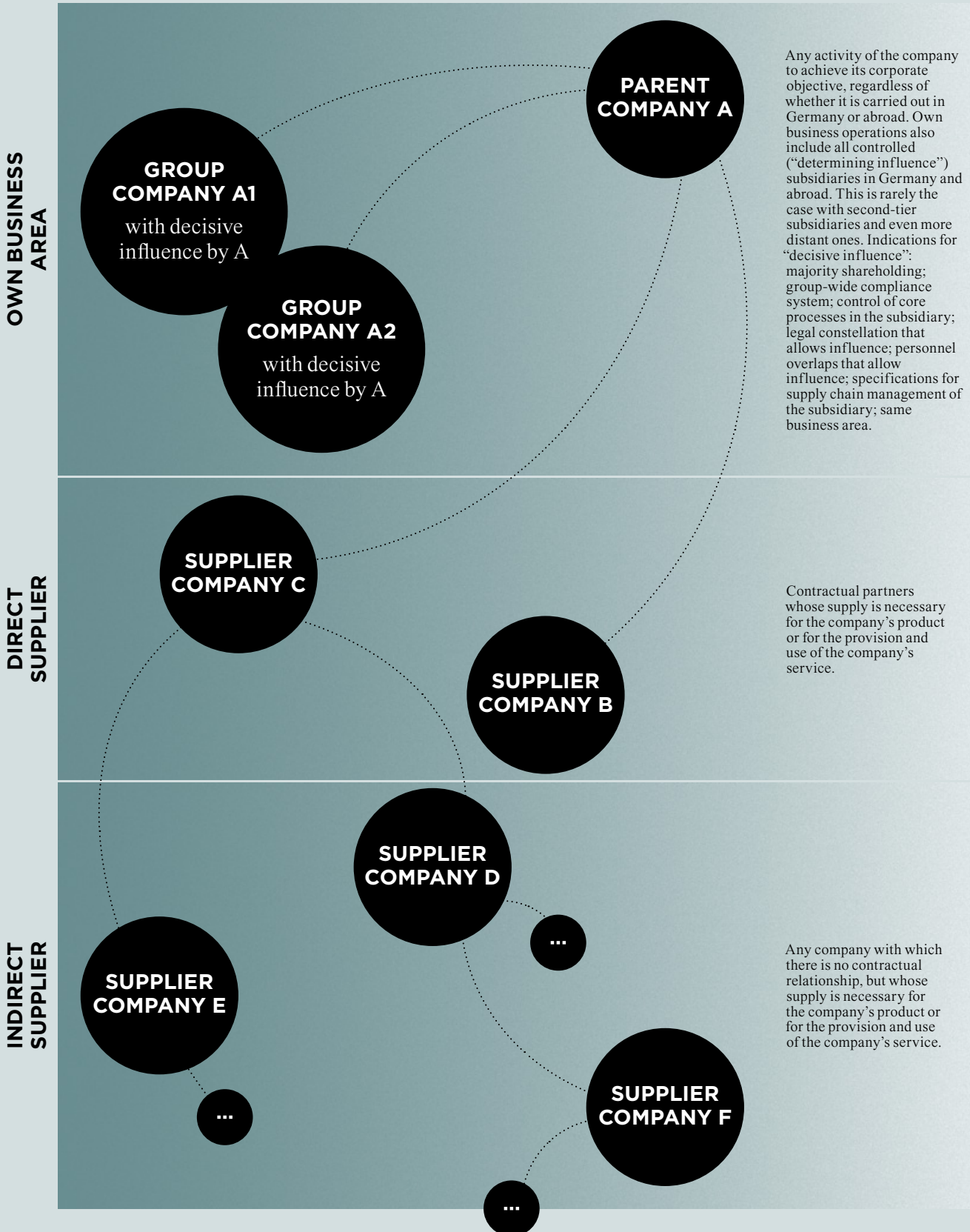
The supply chain within the meaning of the LkSG includes all steps in Germany and abroad that are necessary for the manufacture of products or the provision of services by the company, starting with the extraction of raw materials through to the delivery to the end customer. In principle, this also includes the actions of a company's direct and indirect suppliers in addition to the company's own business operations.<sup>SEE FIG. P.6</sup>

However, according to the LkSG, the main due diligence obligations generally only apply to the company's own business area and direct suppliers (i.e. direct contractual partners of the company). Indirect suppliers are only to be included on an ad hoc basis if either a significant change in the risk situation in the supply chain is to be expected (e.g. due to the introduction of new products, projects or a new business area) or if the company has actual indications that make human rights or environmental violations at indirect suppliers appear possible (so-called substantiated knowledge). In practice, this limitation can be overcome by demonstrably informing companies of rights violations in their deeper supply chain as early and clearly as possible, thereby creating the necessary substantiated knowledge.

<sup>9</sup> This means that, in principle, not only German but also foreign companies are covered by the LkSG if they have a branch office in Germany and employ more than 3,000 (or 1,000 from 2024) people in Germany. The number of employees also includes temporary agency workers if the duration of the assignment exceeds six months (Section 1 (2) LkSG) as well as employees of another enterprise belonging to a group of affiliated enterprises (Section 1 (3) LkSG). With regard to German companies employees posted abroad have also to be counted in (Section 1 (1) and (3) LkSG). Further details of this calculation of the number of employees, however, will eventually have to be clarified by the courts.

<sup>10</sup> The commercial register can be accessed online here: [https://www.handelsregister.de/rp\\_web/welcome.xhtml](https://www.handelsregister.de/rp_web/welcome.xhtml). However, even this research can be complex in the case of larger, complicated corporate structures.

# THE SUPPLY CHAIN COVERED BY THE LKSG





**The LkSG specifies eight obligations, graduated along the supply chain, which companies must observe<sup>11</sup>**

- 1 The establishment of a risk management system in which the individual due diligence measures (see following bullet points) are appropriately and effectively designed, and its anchoring in the relevant business processes (Section 4 LkSG). A person responsible for monitoring the system must also be appointed.
- 2 The analysis of human rights risks, including the possibility of prioritizing risks (Sections 5 and 9 (3) LkSG). The risk analysis is only to be carried out regularly in the company’s own business area and for direct suppliers. Indirect suppliers are only to be included on an ad hoc basis if either a significant change in the risk situation in the supply chain is to be expected or if the company has actual indications that make human rights or environmental violations at indirect suppliers appear possible. **SEE FIG. P.9**
- 3 The issuance of a policy statement by the company’s management in which the company describes the procedures by which it implements the due diligence obligations, including the specification of prioritized risks and the formulation of expectations for suppliers (Section 6 (2) LkSG).
- 4 In the event that risks are identified: implementation of preventive measures in the company’s own business area and vis-à-vis direct suppliers (Section 6 (1), (3), (4) LkSG). In the company’s own business area, possible measures include the adaptation of procurement strategies and purchasing practices as well as training and monitoring of compliance with human rights requirements. With regard to direct suppliers, this includes training, contractual obligations and monitoring mechanisms. Appropriate preventive measures must also be taken with regard to indirect suppliers on an ad hoc basis if the company has actual indications that make human rights or environmental violations at indirect suppliers appear possible (Section 9 (3) LkSG).



When designing and implementing all due diligence measures, companies must give **appropriate consideration to the interests of affected people (stakeholders)** (Section 4 (4) LkSG). This includes workers in the company and in the supply chain, but also neighboring communities in larger projects that may be affected, for example, by pollution of their lands.

The implementation of a dialogue in the form of consultations with stakeholders is not explicitly prescribed by the LkSG. However, companies must document internally how they have taken stakeholder interests into account.



Which action is “**appropriate**” is determined by four criteria named in Section 3 (2) LkSG, each of which is illustrated in the explanatory memorandum to the LkSG by means of auxiliary criteria:

- 1 Type and scope of business activity
- 2 Ability to influence the direct perpetrator of the problem
- 3 Severity, probability and irreversibility of the violation
- 4 Type of own contribution to causation

<sup>11</sup> In the explanatory memorandum to the LkSG, the legislator has consciously referenced the UN Guiding Principles on Business and Human Rights. In our understanding the obligations are therefore to be interpreted and understood in accordance with these principles. The various OECD guidelines on responsible business conduct can give orientation too, as the competent authority also repeatedly refers to them in its information materials.

- 5 When violations occur or are imminent: carrying out remedial action in the company's own business area and as regards its direct suppliers (Section 7 LkSG) as well as taking reasonable efforts to remedy as regards indirect suppliers deeper in the supply chain—provided there are actual indications that make human rights or environmental violations at indirect suppliers appear possible (Section 9 (3) LkSG).<sup>12</sup> Withdrawal or termination of the business relationship shall expressly only be considered in the case of particularly serious violations, if the implementation of remediation or mitigation measures failed to address the (risk of) violations, if the company has no other less severe means at its disposal and increasing the ability to exert influence has no prospect of success (ultima ratio).
- 6 The establishment of a complaints procedure with written rules of procedure that is also accessible at indirect suppliers so that affected parties have a communication channel in the event of possible risks and violations (Sections 8 and 9 (1) LkSG).
- 7 The internal documentation of the measures taken to fulfil the due diligence obligations—these must be kept for seven years and can be inspected by the supervisory authority (Section 10 (1) LkSG).
- 8 Public reporting within four months of the end of a financial year on identified risks, measures taken and their evaluation of effectiveness (Section 10 (2) LkSG).<sup>13</sup> **SEE FIG. P.9**

The risk management or due diligence measures in question must be effective. This is the case if they are suitable for preventing or minimizing such violations in the supply chain that the company has caused or to which it has contributed (Section 4 (2) LkSG). The effectiveness of the preventive and remedial measures as well as of the complaints procedure must be evaluated regularly and, if necessary, adjustments must be made (Sections 6 (5), 7 (4), 8 (5) LkSG).

Finally, and most importantly: due diligence obligations are formulated as obligations of effort, not as obligations of result. This means that companies do not have to guarantee the successful prevention of violations and damages, but only have to make “appropriate” efforts to do so. Only in the company's own business area must due diligence measures (always in Germany and usually abroad) successfully lead to the termination of the violation.

This means that companies are not always liable if human rights are violated in their supply chain. Rather, there may be situations in which human rights violations occur, but the company has nevertheless not committed a breach of duty because it can prove that it had taken all “appropriate” measures.

**12** Unlike the UNGPs and the OECD Due Diligence Guidance for Responsible Business Conduct, the LkSG does not contain an explicit obligation to participate in the redress of damages that have already occurred. However, according to our interpretation of the LkSG, it is not excluded that in individual cases individual redress (e.g. payment of withheld wages) may be part of the appropriate remedial action required of the respective company under the LkSG.

**13** However, the German control authority has announced that it will give the companies more time for their first report and will therefore verify the existence of the reports for the first time by the deadline of June 1, 2024.

# OVERVIEW: GRADUATED DUE DILIGENCE IN THE SUPPLY CHAIN

	OWN BUSINESS AREA	DIRECT SUPPLIER	INDIRECT SUPPLIER
RISK ANALYSIS	✓	✓	Ad hoc in case of a changed risk situation or of indications of possible violations
POLICY STATEMENT + PREVENTIVE MEASURES	✓	✓	Ad hoc in case of indications of possible violations
REMEDIAL ACTION	Duty to succeed as a rule	Termination/Minimization concept	Ad hoc in case of indications of possible violations: termination/minimization concept
COMPLAINT PROCEDURE	✓	✓	✓

# What remedies are available for affected communities and rights holders?

## 1 COMPLAINT TO COMPANY GRIEVANCE MECHANISM (SECTION 8 LKSG)

### General information and legal requirements for the procedure

- According to the LkSG (Section 8 LkSG), every company covered by the scope of the LkSG must establish an adequate internal complaints procedure for violations or threats to human rights or the environment.
- The mechanism must be open to receive information on all constellations along the entire supply chain and must be accessible to all potential stakeholders, including operations and employees at indirect suppliers (Section 9 (1) LkSG).
- Clear and understandable information about accessibility, responsibility and procedure must be made available to the public in an appropriate manner.
- The procedure must keep the identity of the complainant confidential and ensure effective protection against disadvantage or punishment based on the complaint.
- The persons entrusted by the company with the procedure must be independent and not bound by instructions and are obligated to maintain confidentiality.
- If the company receives information in this way, the responsible person must confirm receipt, examine the facts and discuss them with the complainant. The LkSG also provides that the responsible persons may offer a consensual settlement procedure.
- If the company discovers the violation of human rights-related or environmental obligations in the course of the procedure, it must take the necessary measures provided for by law to prevent or end the violation or minimize its extent.

### Practical Guidance

- The direct route via the company may allow for a quicker, more direct remedy through direct negotiations with the company in some circumstances. Instead of involving the BAFA, which would have to investigate the complaint first and then get in contact with the company (see below), the company may take measures to remedy the human rights violation or risk through direct consultations with impacted rights-holders.
- For this purpose, it is important for the rights-holders to formulate their demands vis-à-vis the company as clearly as possible. Ideally, a negotiation strategy should also be prepared in advance. However, the willingness of the company to meet the demands and thus the chances of success of this path will be dependent on the specific company and the concrete circumstances.

- A submission to the grievance mechanism should contain sufficient factual information that indicates a human rights or environmental violation at indirect suppliers is possible. By receiving such information, the company obtains substantiated knowledge, which is important to trigger the due diligence obligations with respect to indirect suppliers according to Section 9 (3) LkSG. Without such knowledge a complaint to the BAFA may prove unsuccessful.
- Complaints and notices can be submitted not only by affected persons, but also by third parties (e.g. trade unions, civil society organizations).

## **2 COMPLAINT TO BAFA (ADMINISTRATIVE PROCEDURE) (SECTIONS 14 FF. LKSG)**

### General information and legal requirements for the administrative procedure

Compliance with the obligations imposed by the LkSG is to be monitored and ensured by the Federal Office of Economics and Export Control (BAFA). This is a German authority that is principally independent, but subject to the legal and technical supervision of the Ministry of Economics.

#### **What can the authority do?**

- The authority has extensive powers of investigation and may issue the appropriate and necessary orders and take the necessary measures to establish, eliminate or prevent the alleged breaches of duty (Sections 15–18 LkSG). It may enter and inspect the premises of the company concerned, inspect and examine business documents and records there, summon persons, and demand information including the transfer of documents. It may order the company concerned to submit within three months a corrective action plan, including clear timelines for its implementation, or it may order the company to take specific action to fulfil its due diligence obligations. If the company fails to comply with the authority’s orders, the authority may impose a penalty payment of up to 50,000 euros.
- Finally, the authority can impose fines for intentional or negligent breaches of duty both on the company itself and on responsible individuals within the company. If imposed on the company itself, the fine for breaches of particularly important duties can be up to 8 million euros or up to 2 percent of average annual sales. In the case of fines of more than 175,000 euros, the company can also be barred from being awarded public contracts for three years. If the breach of duty has caused damage, the amount of the fine depends, among other things, on the extent to which the company has made efforts to repair the damage.

When does the authority take action and how?

Action upon substantiated request of affected persons (Section 14 (1) No.2 LkSG)	Action ex officio according to dutiful discretion (Section 14 (1) No. 1 LkSG)
<p>The authority must take action where a person makes a substantiated claim that:</p> <ul style="list-style-type: none"> <li>· As a result of a breach of a duty of care contained in the LkSG</li> <li>· Her/his legal positions protected by law were violated or such a violation is imminent.</li> </ul>	<p>In addition, even without the existence of an individual complaint, the authority shall act ex officio to monitor compliance with the due diligence obligations imposed by the law.</p> <p>In principle, however, the authority has a wide margin of discretion as to whether and how to take action in which cases.</p>
<p>If there is such a substantiated request from affected parties, the authority must examine the complaint.</p>	<p>If there are (serious) risks or violations of human rights or the environment, this scope of discretion may be narrowed to such an extent that the authority eventually must take action even without the existence of an individual, substantiated complaint.</p>
<p>The complainants who file such an application should be involved in the proceedings, i.e. they have, for example, the right to be heard by the authority and to be informed whether the authority takes action. In our understanding they should further be able to request to inspect the files and be informed about the outcome of the proceedings.</p>	<p>Whistleblowers and third parties, who are not themselves affected do not have any rights to participate vis-à-vis the authority, i.e. they have no legal claim to be informed by the authority about its further actions.<sup>15</sup> It is also highly unlikely for third parties who are not themselves affected to successfully sue for action by the authority, since a right of action before the administrative courts exists in principle only for persons whose own rights may be affected.</p>
<p>If the authority remains inactive,<sup>14</sup> those affected can take legal action before the administrative court to force the authority to take action (judicial review). It is more difficult (but not excluded from the outset) to sue for specific measures to be taken by the authority.</p>	<p>Nevertheless, third parties (individuals or civil society organizations) may at any time anonymously or officially provide BAFA with information (e.g. in the form of new reports) on (potential) human rights and environmental risks in the supply chains of companies covered by the LkSG. BAFA would then, for example, include these in its risk database or, under certain circumstances, also meet or exchange information with the people providing the information, without always having to initiate a formal procedure.</p>

<sup>14</sup> BAFA’s website explains that processing a complaint (evaluating the information received) takes a certain amount of time. Thus, there is no time limit explicitly stated by BAFA. Based on the general rules of administrative procedure, a reasoned decision can generally be expected within three months, containing the result of the examination and the next steps. However, this is not a fixed deadline, but only a guideline.

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**Practical guidance for filing complaints with the BAFA**

- Complaints must be submitted via an online form provided by the BAFA, which is also available in English, French and Spanish.<sup>16</sup> Not all fields have to be filled in, but there are certain mandatory fields (such as information about the applicant and the company). It is possible to upload documents and evidence. Longer explanations of the complaint can also be uploaded here as a PDF document.
- In designing the administrative procedure, it was taken into account that there are major practical obstacles for affected persons to formulate an application, such as language restrictions or a lack of information about the inner workings of the company.<sup>17</sup> Therefore, the requirements for a substantiated submission within the meaning of Section 14 (1) No.2 LkSG are in principle not very strict.
- In principle, the complainant must make a submission on the following points:
  - **Violation of one's own legal position protected by the law has already occurred or is imminent**
    - What is required is a description of the circumstances which is as free of contradictions and plausible as possible and which is intended to substantiate a violation. However, there is no high evidentiary threshold. It is sufficient if the submission makes a corresponding violation of rights appear at least possible.
    - In principle, the person filing the complaint must be covered by the scope of protection of the right that may have been violated. These are usually individuals, such as workers or residents affected by the economic activity. At least for violations of freedom of association, affected trade unions are also entitled to file an application in their own right. It has not yet been clarified whether environmental associations (referring to the Aarhus Convention<sup>18</sup>) can claim the violation of environment-related duties.
    - In principle, affected persons can be represented by a civil society organization as an authorized representative (Section 14 of the German Administrative Procedure Act—VwVfG). The extent to which it is possible in this case for the persons affected to remain completely anonymous vis-à-vis the authorities, but nevertheless to be involved in the proceedings via their authorized representative and to be informed about its outcome, has not yet been clarified by the authority.
  - **Violation occurred “as a result of” the failure of an enterprise covered by the LkSG to fulfil a due diligence obligation under the LkSG**
    - Arguing the breach of a due diligence obligation by companies requires information about internal processes. Yet, affected individuals generally do not have access to internal company documents. In order to still allow for complaints, the burden of proof will most likely not be interpreted strictly by the BAFA.

<sup>16</sup> <https://elan1.bafa.bund.de/beschwerdeverfahren-lksg/>.

<sup>17</sup> These de facto hurdles and the resulting lowering of the burden of proof, in particular with regard to possible breaches of duty by companies, are explicitly emphasized in the explanatory memorandum to the LkSG, see: <https://dserver.bundestag.de/btd/19/286/1928649.pdf>, page 54.

<sup>18</sup> UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25th June 1998.

- It should therefore be sufficient if, based on the information provided, it cannot be ruled out right away that the alleged rights violations may be related to a breach of due diligence by a company or the actions of its suppliers. Whether the company is actually covered by the LkSG, what the supply chain encompasses, and whether and which due diligence obligations have been violated, must then be determined by the authority itself. Even if the LkSG does not impose a blanket obligation on companies to disclose their supply chains, the use of the LkSG's implementation mechanisms could therefore contribute to creating greater transparency in supply chains.
- If those affected by a violation have any indication of a supply chain link to a German company, but it is not entirely clear which of several German companies is linked to the supplier at question, this should not necessarily prevent those affected from filing a complaint. According to first (oral) statements of the responsible authority (BAFA), in such cases it may be sufficient to name the company directly responsible for the violation on-site.
- Nevertheless, in order to guide and influence the authority in the proceedings, it is generally advisable, if possible, to set out as clearly as possible the supply chain link<sup>19</sup> and the due diligence measures to be required of the company to prevent or remedy the rights violation. Case constellations where reference can be made to concrete best practices for the exercise of corporate due diligence in the specific context (such as the signing of the Bangladesh Accord on Fire and Building Safety in Bangladesh as an important part of the compliance of textile companies with their due diligence obligations with regard to fire protection and building safety in their supplier factories) are particularly well suited for this purpose.
- Time of the violation: the LkSG came into force on 1 January 2023. Since then, companies are obliged to respect the law and carry out the appropriate due diligence. Complaints must therefore include information on a violation that occurred after 1 January 2023 or that is still ongoing (at least in terms of its effects).<sup>20</sup>
- On the BAFA's website, general information on the procedure for submitting information on human rights violations in the supply chains of German companies is also available in English:  
[https://www.bafa.de/EN/Supply\\_Chain\\_Act/Complaints\\_Procedure/complaints\\_procedure\\_node.html](https://www.bafa.de/EN/Supply_Chain_Act/Complaints_Procedure/complaints_procedure_node.html)
- For direct access to the online form for submitting information to the authority (in English, French, German and Spanish), please use this link:  
<https://elan1.bafa.bund.de/beschwerdeverfahren-lksg/>

<sup>19</sup> The Netherlands-based non-profit organization SOMO offers (among other things) assistance with corporate and supply chain research: <https://www.somo.nl/our-services/services/>.

<sup>20</sup> In BAFA's online complaint form, a specific date since 1.1.2023 must be selected for violations that have already occurred. For violations that cannot be limited to such a date, the date of the beginning of the violation should therefore be selected. If the beginning of the violation is before the effective date of the LkSG, 1.1.2023 should be selected.



### **3 CIVIL ACTION (TO CLAIM INDIVIDUAL DAMAGES)**

The LkSG does not provide an independent basis for liability claims. This means that if a company has violated its due diligence obligations and, as a result, for example, the health of an employee of its supplier is impaired, the LkSG does not provide that the affected employee can claim damages from the company on the basis of the LkSG before a civil court. However, the LkSG also clarifies that the existing bases for damage claims under foreign law or general tort law in Germany continue to apply (Section 3 (3) LkSG). The due diligence obligations established by the LkSG will become relevant in civil proceedings in the context of the civil courts' assessment of which obligations the company had in the specific case (the breach of which may have led to or at least contributed to the damage).

In German civil proceedings, the lawsuit must generally be brought by the person whose rights have been violated. In the case of human rights violations in international business transactions, this is often not feasible: the distance of the potential plaintiff from the location of the court, the fear of reprisals, and the potentially high costs of litigation often make those affected reluctant to file a lawsuit. To overcome these practical hurdles, the LkSG therefore creates a "special capacity to sue" (Section 11 LkSG). This special form of representative action allows affected parties to authorize German non-governmental organizations or trade unions to sue in their own name (but on behalf of the affected party) before German courts. In addition, they must be registered as non-profit organizations and not only temporarily or occasionally engaged in the defense of human rights. They must have a power of attorney from the person concerned authorizing them to represent his or her rights in court.

1 Complaint to the company (Section 8 LkSG)	2 General submissions and individual complaints to the Federal Office of Economics and Export Control (BAFA) (Sections 14 ff.LkSG)	3 Civil action
Send information directly to the company	Submit general information on infringements of the rights of others or substantiated information on infringements of own rights to the BAFA	File a lawsuit in general civil courts
Company must discuss the case with the complainants, react by performing a risk assessment and take remedial and/or preventive measures	Far-reaching investigative powers (Sections 15–18 LkSG)	Examination of general civil law claims, possibly taking into account the due diligence obligations under the LkSG
	The BAFA may act on its own initiative or in the case of general indications from third parties and must act upon (substantiated) requests from affected parties (Section 14 LkSG)	
	Can require company to carry out specific due diligence measures (by threat of penalty payment of up to 50,000 euros in case of non-compliance!) (Section 15 LkSG)	
	Imposition of fines and potential subsequent exclusion from public tenders possible (Section 22 LkSG)	

In summary, the LkSG, with its mainly administrative enforcement, is thus primarily intended to have a preventive effect in order to encourage companies to exercise human rights due diligence and to prevent human rights violations and environmental damage as far as possible. On the other hand, it does not provide a clear basis for those affected to subsequently seek redress for concrete damage that has already occurred. However, according to our interpretation, it is not excluded that in individual cases individual redress may be part of the appropriate remedy required by the respective company under the LkSG, and it is also theoretically possible to assert such claims through general civil law claims under the general rules. In addition, when imposing fines for due diligence violations, the BAFA has to take into account whether a company has made efforts to repair the damage (Section 24 (4) no. 7 LkSG).

# Important contact persons, addresses, links and further information

The English website of the BAFA and the Ministry of Labor and Social Affairs provides general information on the LkSG:

[bafa.de/EN/Supply\\_Chain\\_Act/Overview/overview\\_node.html](https://bafa.de/EN/Supply_Chain_Act/Overview/overview_node.html)  
[csr-in-deutschland.de/EN/Business-Human-Rights/  
Supply-Chain-Act/supply-chain-act.html](https://csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/supply-chain-act.html)

You will find an English translation of the LkSG here:

[csr-in-deutschland.de/SharedDocs/Downloads/EN/act-corporate-  
due-diligence-obligations-supply-chains.pdf?\\_\\_blob=publicationFile](https://csr-in-deutschland.de/SharedDocs/Downloads/EN/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile)

Official compilation of FAQs in English:

[csr-in-deutschland.de/EN/Business-Human-Rights/  
Supply-Chain-Act/FAQ/faq.html](https://csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/FAQ/faq.html)

FAQ from a civil society perspective published by  
the “Initiative Lieferkettengesetz”:

[lieferkettengesetz.de/wp-content/uploads/2021/11/Initiative-  
Lieferkettengesetz\\_FAQ-English.pdf](https://lieferkettengesetz.de/wp-content/uploads/2021/11/Initiative-Lieferkettengesetz_FAQ-English.pdf)

For direct access to the online form for submitting information to  
the authority (in English, French, German and Spanish):

<https://elan1.bafa.bund.de/beschwerdeverfahren-lksg/>

## Imprint

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