

QUESTIONS & ANSWERS _____

German economic engine roars thanks to forced labor: Complaint filed against VW, BMW and Mercedes Benz

1. What is the case about?

Since 2017 the government of the People’s Republic of China has implemented a system of forced labor in the Xinjiang Autonomous Uyghur Region (Uyghur Region). Under this system, people from Uyghur, Kazakh and other Turkic Muslim groups are forced to leave their homes, re-educated and assigned to work in roles supporting the government’s industrial policy. It is extremely difficult for Uyghurs to refuse or escape these work assignments, which are closely linked to the system of detention and political indoctrination implemented by the government.

The automotive industry has been identified as being at high risk of forced labor. This is as a result of the growing number of companies operating in the Uyghur Region that are involved in automotive parts manufacturing, materials processing and mineral mining. German automotive manufacturers are heavily reliant on materials and components manufactured in China and, by extension, the Uyghur Region. According to a recent research study by Sheffield Hallam University, practically every major automotive manufacturer has significant exposure to Uyghur forced labor in their supply chains.

Volkswagen, Mercedes-Benz and BMW have all been publicly linked to these potential human rights violations in their supply chains, either through direct or indirect supplier relationships. Volkswagen in particular has faced increasing political, media and investor pressure in connection with a factory operated by its Chinese joint venture SAIC-Volkswagen that is located in Urumqi, Xinjiang. According to recent evidence, the company’s exposure to these systematic risks of forced labor in its supply chain are much more widespread than previously reported.

Under the German Supply Chain Act, which came into force in January 2023, the largest German companies have an obligation to carry out human rights due diligence – in other words, to take appropriate measures to identify, prevent and remediate human-rights related risks within their supply chains. Volkswagen, Mercedes-Benz and BMW have a legal responsibility to comply with this obligation regarding the clearly established risks of forced labor connected to their supplier relationships within the Uyghur Region. However, information on these companies’ due diligence processes indicates that the measures that they are taking are neither appropriate nor effective, considering the scale and severity of the rights violations occurring in the Uyghur Region.

ECCHR is therefore requesting that the Federal Office for Economic Affairs and Export Control (BAFA) – the administrative authority tasked with monitoring and enforcing the Supply Chain Act – conduct an urgent investigation into the compliance of Volkswagen, BMW and Mercedes-Benz with their due diligence obligations.

2. What is the legal basis of the complaint (in Germany)?

The complaint was submitted under the new German Supply Chain Act, which requires companies that are headquartered in Germany and have at least 3,000 employees to carry out human rights and environmental due diligence. The aim of this legislation is to prevent, minimize and stop any human rights violations and environmental damage in connection with German business practices. The Act stipulates specific actions that companies must take to uphold their due diligence obligations, which include performing regular risk analyses (Section 5), as well as adopting preventive measures (Section 6) and taking remedial action (Section 7) that are adequate and effective in addressing the results of the risk analyses. Companies are also required to establish a complaint procedure (Section 8).

Under the Act, the Federal Office for Economic Affairs and Export Control (BAFA) is the responsible authority for assessing company compliance with their due diligence obligations. Based on public reporting, ECCHR has submitted its allegations to the BAFA as an ex officio action under Section 14(1) of the Act. Due to the highly repressive situation in the Uyghur Region, it is impossible for an individual worker in conditions of forced labor to submit a complaint as an “affected individual,” which means that the use of the ex officio mechanism is the only legal option available to prompt action under the Act at this time.

The decision to act ex officio in accordance with Section 14 (1) LkSG is generally at BAFA’s discretion. Pursuant to Section 40 of the Administrative Procedure Act (VwVfG); however, authorities must exercise their discretion in accordance with the purpose of the authorization and comply with the legal limits of discretion. According to the legislative materials, the BAFA's discretion to decide within the framework of Section 14 (1) No. 1 LkSG is intended to lead to action if there are indications of existing human rights risks (“intendiertes Ermessen”). According to the legislative materials, this derives from the preventive nature of the law. Due to the seriousness of the violations at issue here, in the facts of this case, only a decision to act would be compatible with the purpose of Section 14 (1) no. 1 LkSG (“Ermessensreduzierung auf Null”).

The violation of the prohibition of forced labor is designated in the Act as a human rights risk that companies are obligated to minimize and mitigate the risk of by carrying out human rights due diligence (Section 2 (2) no. 3). Experts agree that the state-sponsored labor programs being implemented in the Uyghur Region meet the criteria of forced labor. In addition, these specific risks have been publicly acknowledged prior to the entry into force of the act and, therefore, should have been integrated into the fulfillment of the due diligence obligation by Volkswagen, BMW and Mercedes-Benz.

While the act applies in principle to the entire supply chain, the standards of due diligence are differentiated according to whether the rights violation, or risk of violation, exists within a company’s business area, or those of a direct or indirect supplier. For indirect suppliers (Section 9), a company must have “substantiated knowledge” that human rights violations have occurred; in such scenarios, the company is required to take appropriate measures to prevent and minimize risks rather than put an end to them. Based on the Sheffield Hallam report, all three automotive companies have both direct and indirect supply chain relationships with suppliers where there is a strong likelihood that they have received labor transfers of coerced Uyghur

workers. ECCHR makes the argument that in the case of indirect suppliers, ¹the high degree of media reporting on the human rights situation in the Uyghur Region, as well as frequent direct communications from international civil society to Volkswagen, BMW and Mercedes-Benz regarding these risks, have clearly satisfied the substantiated knowledge criterion.

The key legal argument in the complaint is that the measures which Volkswagen, BMW and Mercedes-Benz describe in their public documentation on human rights due diligence are not “appropriate” in order to sufficiently identify, prevent and minimize the known risks of Uyghur forced labor in their supply chains. These companies rely on on-site audits and contractual assurances to verify the protection of human rights in their supply chains. However, the specific context of state-sponsored forced labor and political repression in the Uyghur Region, enforced through government surveillance and coercion, entails that it is essentially impossible to monitor working conditions in the region. We argue that, therefore, the only appropriate due diligence response is to follow the recommendations of the Call to Action to End Uyghur Forced Labour, endorsed by over 400 civil society organizations, and urgently take steps to disengage from relationships with suppliers based in the Uyghur Region or to stop sourcing from there.

3. What do we want to achieve with the complaint ?

The abuses perpetrated in the Uyghur Region constitute one of the most pressing human rights situations of our time. Multinational corporations must take urgent measures to identify their exposure to these risks in their supply chains, and take appropriate action to mitigate and prevent further violations.

As a result of the introduction of the German Supply Chain Act, German companies now have a legal responsibility to carry out due diligence to prevent human rights-related risks. Volkswagen, BMW and Mercedes-Benz are among the biggest and most powerful German corporations. All three companies are heavily reliant on the Chinese automotive manufacturing industry, which is deeply implicated in the use of Uyghur forced labor. Yet, despite clear indications that severe human rights violations are likely happening within this sector of their supply chains, they have failed to take appropriate steps to identify and mitigate these specific risks, based on the available evidence. For example, in all of their documentation describing their human rights due diligence processes, the risk of Uyghur forced labor is not mentioned once.

It is crucial that the due diligence obligation does not become reduced to a tick-the-box exercise. One of the central questions to be answered in the implementation of the law is what constitutes appropriate preventive and remedial measures. We argue that the use of third-party auditing or membership in multi-stakeholder initiatives (cited by the companies as a cornerstone of their due diligence response) is not a sufficient response to the specific risk of Uyghur forced labor. As part of its investigations into the compliance of Volkswagen, BMW and Mercedes-Benz with their due diligence obligations, the BAFA should request information from these companies on the specific measures they are taking to fulfill their obligations in relation to the established risks of Uyghur forced labor in their supply chains. These measures should take into account the severity, probability and irremediability of the human rights violations taking place.

The importance of the Chinese market for automotive manufacturers, both in terms of the supply chain but also as a key export destination, should not preclude the adoption of effective human rights due diligence when faced with clear evidence of rights violations. The purpose of human rights due diligence is to protect human rights; economic and political considerations should not factor into a company’s response.

¹ Beschlussempfehlung und Bericht des Ausschusses für Arbeit und Soziales, BT-Drucksache 19/30505, page 43.

4. What can companies do to assess human rights due diligence in their supply chains?

The nature of the violations occurring in the Uyghur Region necessitate a due diligence approach that responds to the systematic risk of forced labor within the automotive supply chain as a high priority. According to the UN Guiding Principles, a company's salient human rights issues are those human rights that stand out because they are at risk of receiving the most severe negative impacts as a result of the company's activities or business relationships. Severe human rights impacts must be prioritized for risk management. The human rights situation in the Uyghur Region clearly meets this threshold of severity and, therefore, necessitates an immediate and proportionate response.

The German Supply Chain Act sets out clear parameters for the measures to be taken as part of the due diligence obligation. However, the emphasis is on "appropriate" action, in light of the specific violations taking place.

The Call to Action developed by the Coalition to End Forced Labour in the Uyghur Region, which has been endorsed by over 400 organizations, outlines measures to be taken by multinational corporations operating in industries connected to the Uyghur Region. On the basis of the fact that there are no valid means for companies to verify that any workplace in the region is free of forced labor, or to prevent forced labor in these facilities, the Call to Action states that buyers have to operate on the assumption that any supplier operating in the region is at high risk of forced labor. As a result, after conducting a comprehensive supply-chain mapping to identify their exposure to forced labor in the Uyghur Region, companies should disengage from any business relationship or contract in which links to the region are identifiable. Furthermore, according to the Call to the Action, companies should publicly communicate the steps that they have taken to identify and prevent the use of Uyghur forced labor in their supply chains, as well as provide a clear timeline for implementation of these measures in order to ensure accountability.

5. Why is the case relevant?

The human rights violations being perpetrated against the Uyghurs in Xinjiang have been publicly reported and condemned since 2019. Multinational corporations that have supply chain relationships in the region have long been put on notice regarding the need to take action to identify and mitigate these rights violations. With the German Supply Chain Act, this is now a legal obligation for German companies. And whereas previously much of the attention was focused on the garment and solar industries, the Sheffield Hallam report has now clearly identified the risks in the automotive industry. As one of the first complaints to be filed under this new law, the BAFA has an opportunity to demonstrate its willingness to hold corporations accountable for failing to adequately address human rights risks in their supply chains.

This case follows a series of criminal complaints filed in Germany and the Netherlands by ECCHR in 2021. These complaints called upon investigative authorities to examine the alleged complicity of European garment companies in forced labor in Xinjiang, through their sourcing of products directly or indirectly from the region. When combined, these cases highlight that multinational corporations have not taken sufficient steps to ensure that their products are free of forced labor, and that they respect workers' rights around the world.

6. Why has the ECCHR not filed a criminal complaint in this case?

In this case, we have decided to focus our legal strategy on the German Supply Chain Act, in order to test the effectiveness of the law in addressing systematic human rights violations including Uyghur forced labor. The law opens a critical new avenue in corporate accountability, by virtue of its preventive aim: if companies are following their human rights due diligence obligations under the law, they must be proactively taking measures to identify, prevent and mitigate human rights risks in their supply chains. On the basis of the available information, we allege that Volkswagen, BMW and Mercedes-Benz are not complying with this obligation.

Since we filed our criminal complaint against European textile companies, it has become increasingly challenging to gather evidence of Uyghur forced labor occurring in specific facilities within the supply chains of multinational corporations that would meet the evidentiary criteria of a criminal complaint. Furthermore, compared to the garment industry, where there is a certain level of supply chain transparency, automotive supply chains are extremely opaque. Our complaint emphasizes clear and compelling evidence of the risk of Uyghur forced labor in the supply chains of Volkswagen, BMW and Mercedes-Benz. The companies themselves have the means – and now the legal responsibility – to map their supply chains and identify business relationships connected to Uyghur forced labor.

7. What is ECCHR's role in the case / complaint?

ECCHR has based this submission to the BAFA on existing evidence published by civil society institutions, most notably the report released in December 2022 by Sheffield Hallam University and NomoGaia. This report clearly documents the extensive supply chain links between German automotive manufacturers and companies participating in forced labor in the Uyghur Region. However, as we emphasize in the complaint, given the challenges of supply chain tracing using publicly available documentation, this evidence is likely just the tip of the iceberg in terms of the likely exposure of Volkswagen, BMW and Mercedes-Benz to Uyghur forced labor.

We have not had any direct contact with survivors of forced labor in XUAR, given the precarious security situation in China.

Many civil society organizations are working to secure accountability for forced labor in the Uyghur Region, under the banner of the Coalition to End Forced Labour in the Uyghur Region. The requests for company action included in this complaint are aligned with the Call to Action issued by the members of this coalition, which has been endorsed by over 400 civil society organizations.

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European Center for Constitutional and Human Rights (ECCHR)