

German Supply chain law

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PG International Litigation, ADR and Contracts

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Following international trends Germany is about to establish a supply chain law

1. What is the aim of the law?

- The aim of the law is to improve the **protection of human rights**.
- Companies in Germany also have a responsibility to help protect human rights. They must ensure that human rights are respected **in their supply chains**, which means **no child labour or enforced labour**.
- This is a question of respecting basic human rights. It is not about implementing european social standards everywhere in the world.
- **Environmental issues** also play a part if – because of them – human rights are violated (e.g. in the case of polluted water).
- The law sets out clear and realisable requirements for corporate due diligence, thus creating legal certainty for companies and affected persons.

2. Which human rights are covered by the due diligence obligations?

- Bodily integrity and health
- Freedom from slavery and forced labour
- Protection of children and freedom from child labour
- Freedom of association and the right to collective bargaining
- Protection against torture
- Fair working conditions (safety at work, breaks)
- Environmentally related obligations to protect human health

3. What is the application area?

Companies, regardless of their legal form, which

1. have their head office, principal place of business, administrative headquarters or registered office **in Germany** and
2. generally employ at least 3,000 employees

But German companies will pass their responsibilities along the supply chain

4. What are the most important rules and regulations?

1. For the first time, clear requirements for corporate due diligence obligations

2. Responsibility for the entire supply chain

Corporate due diligence obligations apply to the **entire supply chain** – from the raw materials to the completed sales product.

The requirements that companies must meet are appropriate and **tiered**, for example based on the degree of influence the company has on those committing the violation and also based on the different stages within the supply chain.

Many companies are already meeting these requirements, since they are already implementing, for example, the **EU Conflict Minerals Regulation** and/or the **EU CSR Directive**.

5. What are the most important rules and regulations?

3. External monitoring by a government authority

The **Federal Office for Economic Affairs and Export Control** is tasked with monitoring compliance with the law. It checks company reports and investigates any grievances.

4. Better protection of human rights

Not only can people whose human rights have been violated use the German courts to get their rights upheld, they can now also report their grievances to the **Federal Office for Economic Affairs and Export Control**.

6. How are the requirements tiered within the supply chain?

The requirements that companies must meet are **tiered** based on the **different stages within the supply chain**:

- the company's own business operations,
 - direct suppliers,
 - indirect suppliers,
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- the kind and extent of the business activity,
 - the degree of influence the company has on the one directly committing the violation,
 - the typically expected severity of the violation.

7. Which companies come under the law?

- From 2023 onwards: companies with more than **3,000 employees** (over 600 companies in Germany)
- From 2024 onwards: companies with more than **1,000 employees** (2,900 companies)

8. What must a company do in the context of its own business operations and in the context of a direct supplier's business operations?

Companies must implement the following measures:

- Draft and adopt a **policy statement** on respecting human rights.
- Carry out a **risk analysis**: by implementing procedures for identifying disadvantageous impacts on human rights.
- Engage in **risk management (incl. remedial measures)** to prevent potential negative impacts on human rights.
- Establish a **grievance mechanism**.
- Implement transparent public **reporting**.

9. What must a company do in the context of its own business operations and in the context of a direct supplier's business operations?

In the event of a violation of rights, a company must immediately **take steps to remedy the situation in its own area of business, steps that will necessarily cause the violation to cease**. In addition to that, it must also introduce **further prevention measures**.

If the company is not able to end the violation in the case of a **direct supplier** in the foreseeable future, then it must draw up a concrete **plan to minimise and avoid** the problem.

10. What must a company do in the case of an indirect supplier?

In this case the due diligence obligations apply only as warranted by the circumstances.

If the company learns about a **possible violation by an indirect supplier**, then it must immediately:

- conduct a risk analysis,
- implement a strategy to minimise and avoid the problem,
- firmly establish appropriate prevention measures vis-à-vis the one committing the violation.

11. Are companies liable for human rights violations in their supply chains?

The law does **not create any new liability regulations under civil law.**

Liability under civil law according to German and foreign laws continues to apply.

Infringements of the law may result in **finances.**

Companies found to have committed serious infringements may be **excluded from public procurement processes** for up to three years.

12. Must business relations be terminated in certain circumstances?

The law does not create any new liability regulations under civil law.

Liability under civil law according to German and foreign laws continues to apply.

EU perspective?

EU Conflict Minerals Regulation

EU CSR Directive (Corporate sustainability reporting)

uniform European set of rules (work in progress)

European Parliament resolution of **10 March 2021**:

RECOMMENDATIONS FOR DRAWING UP A DIRECTIVE ON
CORPORATE DUE DILIGENCE AND CORPORATE
ACCOUNTABILITY
(P9_TA-PROV (2021)0073)

Questionnaires

Are there any legal requirements to protect human rights and the environment in the supply chain in your country?

What are the most important rules and regulations?

What is the legal consequence of an infringement?

Are there any implications for contract design?

Questionnaires

UK

Italy

Belgium

Thank you!