

Act on Corporate Due Diligence Obligations in Supply Chains Of July 16 2021

The Bundestag has passed the following Act:

Article 1

Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (Lieferkettensorgfaltspflichtengesetz – LkSG)

Division 1

General provisions

Section 1

Scope of application

(1) This Act applies to enterprises regardless of their legal form that

1. have their central administration, their principal place of business, their administrative headquarters or their statutory seat in Germany and
2. that normally have at least 3,000 employees in Germany; employees posted abroad are included.

Notwithstanding sentence 1 no. 1, this Act also applies to enterprises regardless of their legal form that

1. have a domestic branch office pursuant to section 13d of the Commercial Code (Handelsgesetzbuch – HGB) and
2. that normally have at least 3,000 employees in Germany.

From 1 January 2024 the thresholds stipulated in sentence 1 no. 2 and sentence 2 no. 2 amount to 1,000 employees, respectively.

(2) Temporary agency workers must be included in the calculation of the number of employees (paragraph (1) sentence 1 no. 2 and sentence 2 no. 2) of the user enterprise if the duration of the assignment exceeds six months.

(3) Within affiliated enterprises (section 15 of the Stock Corporation Act [Aktiengesetz – AktG]), the employees of all enterprises belonging to the group who are employed in Germany must be taken into account when calculating the number of employees (paragraph (1) sentence 1 no. 2) of the parent company; employees posted abroad are included.

Section 2

Definitions

(1) Protected legal positions within the meaning of this Act are those arising from the conventions on the protection of human rights listed in nos. 1 to 11 of the Annex.

(2) A human rights risk within the meaning of this Act is a condition in which, on the basis of factual circumstances, there is a sufficient probability that a violation of one of the following prohibitions is imminent:

1. the prohibition of the employment of a child under the age at which compulsory schooling ends according to the law of the place of employment, provided that the age of employment is not less than 15 years, except where the law of the place of employment so provides in accordance with Article 2 (4) and Articles 4 to 8 of Convention No. 138 of the International Labour Organization of 26 June 1973 concerning Minimum Age for Admission to Employment (Federal Law Gazette 1976 II pp. 201, 202);

2. the prohibition of the worst forms of child labour for children under 18 years of age; in accordance with Article 3 of Convention No. 182 of the International Labour Organization of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Federal Law Gazette 2001 II pp. 1290, 1291) this includes:

a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, as well as forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflicts,

b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances,

c) the use, procuring or offering of a child for illicit activities, in particular for the production of or trafficking in drugs,

d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children;

3. the prohibition of the employment of persons in forced labour; this includes any work or service that is required of a person under threat of punishment and for which he or she has not made himself or herself available voluntarily, for example as a result of debt bondage or trafficking in human beings; excluded from forced labour are any work or services that comply with Article 2 (2) of Convention No. 29 of the International Labour Organization of 28 June 1930 concerning Forced or Compulsory Labour (Federal Law Gazette 1956 II p. 640, 641) or with Article 8 (3) (b) and (c) of the International Covenant of 19 December 1966 on Civil and Political Rights (Federal Law Gazette 1973 II pp. 1533, 1534);

4. the prohibition of all forms of slavery, practices akin to slavery, serfdom or other forms of domination or oppression in the workplace, such as extreme economic or sexual exploitation and humiliation;

5. the prohibition of disregarding the occupational safety and health obligations applicable under the law of the place of employment if this gives rise to the risk of accidents at work or work-related health hazards, in particular due to:

- a) obviously insufficient safety standards in the provision and maintenance of the workplace, workstation and work equipment;
- b) the absence of appropriate protective measures to avoid exposure to chemical, physical or biological substances;
- c) the lack of measures to prevent excessive physical and mental fatigue, in particular through inappropriate work organisation in terms of working hours and rest breaks; or
- d) the inadequate training and instruction of employees;

6. the prohibition of disregarding the freedom of association, according to which

- a) employees are free to form or join trade unions,
- b) the formation, joining and membership of a trade union must not be used as a reason for unjustified discrimination or retaliation,
- c) trade unions are free to operate in accordance with applicable law of the place of employment, which includes the right to strike and the right to collective bargaining;

7. the prohibition of unequal treatment in employment, for example on the grounds of national and ethnic origin, social origin, health status, disability, sexual orientation, age, gender, political opinion, religion or belief, unless this is justified by the requirements of the employment; unequal treatment includes, in particular, the payment of unequal remuneration for work of equal value;

8. the prohibition of withholding an adequate living wage; the adequate living wage amounts to at least the minimum wage as laid down by the applicable law and, apart from that, is determined in accordance with the regulations of the place of employment;

9. the prohibition of causing any harmful soil change, water pollution, air pollution, harmful noise emission or excessive water consumption that

- a) significantly impairs the natural bases for the preservation and production of food,
- b) denies a person access to safe and clean drinking water,
- c) makes it difficult for a person to access sanitary facilities or destroys them or
- d) harms the health of a person;

10. the prohibition of unlawful eviction and the prohibition of unlawful taking of land, forests and waters in the acquisition, development or other use of land, forests and waters, the use of which secures the livelihood of a person;

11. the prohibition of the hiring or use of private or public security forces for the protection of the enterprise's project if, due to a lack of instruction or control on the part of the enterprise, the use of security forces

- a) is in violation of the prohibition of torture and cruel, inhumane or degrading treatment,
- b) damages life or limb or
- c) impairs the right to organise and the freedom of association;

12. the prohibition of an act or omission in breach of a duty to act that goes beyond nos. 1 to 11, which is directly capable of impairing a protected legal position in a particularly serious manner, and the unlawfulness of which is obvious upon reasonable assessment of all the circumstances in question.

(3) An environment-related risk within the meaning of this Act is a condition in which, on the basis of factual circumstances, there is a sufficient probability that one of the following prohibitions will be violated:

1. the prohibition of the manufacture of mercury-added products pursuant to Article 4 (1) and Annex A Part I of the Minamata Convention on Mercury of 10 October 2013 (Federal Law Gazette 2017 II pp. 610, 611) (Minamata Convention);
2. the prohibition of the use of mercury and mercury compounds in manufacturing processes within the meaning of Article 5 (2) and Annex B Part I of the Minamata Convention from the phase-out date specified in the Convention for the respective products and processes;
3. the prohibition of the treatment of mercury waste contrary to the provisions of Article 11 (3) of the Minamata Convention;
4. the prohibition of the production and use of chemicals pursuant to Article 3 (1) (a) and Annex A of the Stockholm Convention of 23 May 2001 on Persistent Organic Pollutants (Federal Law Gazette 2002 II pp. 803, 804) (POPs Convention), last amended by decision of 6 May 2005 (Federal Law Gazette 2009 II pp. 1060, 1061), in the version of Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169 of 26 May 2019 pp. 45-77), as last amended by Commission Delegated Regulation (EU) 2021/277 of 16 December 2020 (OJ L 62 of 23 February pp. 1-3);
5. the prohibition of the handling, collection, storage and disposal of waste in a manner that is not environmentally sound in accordance with the regulations in force in the applicable jurisdiction under the provisions of Article 6 (1) (d) (i) and (ii) of the POPs Convention.
6. the prohibition of exports of hazardous waste within the meaning of Article 1 (1) and other wastes within the meaning of Article 1 (2) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Federal Law Gazette 1994 II pp. 2703, 2704) (Basel Convention), as last amended by the Third Ordinance amending Annexes to the Basel Convention of 22 March 1989 of 6 May 2014 (Federal Law Gazette II pp. 306, 307), and within the meaning of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190 of 12 July 2006 pp. 1-98) (Regulation (EC) No 1013/2006), as last amended by Commission Delegated Regulation (EU) 2020/2174 of 19 October 2020 (OJ L 433 of 22 December 2020 pp. 11-19)

a) to a party that has prohibited the import of such hazardous and other wastes (Article 4 (1) (b) of the Basel Convention),

b) to a state of import as defined in Article 2 no. 11 of the Basel Convention that does not consent in writing to the specific import, in the case where that state of import has not prohibited the import of such hazardous wastes (Article 4 (1) (c) of the Basel Convention),

c) to a non-party to the Basel Convention (Article 4 (5) of the Basel Convention),

d) to a state of import if such hazardous wastes or other wastes are not managed in an environmentally sound manner in that state or elsewhere (Article 4 (8) sentence 1 of the Basel Convention);

7. the prohibition of the export of hazardous wastes from countries listed in Annex VII to the Basel Convention to countries not listed in Annex VII (Article 4A of the Basel Convention, Article 36 of Regulation (EC) No 1013/2006) and

8. the prohibition of the import of hazardous wastes and other wastes from a non-party to the Basel Convention (Article 4 (5) of the Basel Convention).

(4) A violation of a human rights-related obligation within the meaning of this Act is a violation of a prohibition stated in paragraph (2), nos. 1 to 12. A violation of an environment-related obligation within the meaning of this Act is a violation of a prohibition referred to in paragraph (3), nos. 1 to 8.

(5) The supply chain within the meaning of this Act refers to all products and services of an enterprise. It includes all steps in Germany and abroad that are necessary to produce the products and provide the services, starting from the extraction of the raw materials to the delivery to the end customer and includes

1. the actions of an enterprise in its own business area,
2. the actions of direct suppliers and
3. the actions of indirect suppliers.

(6) The own business area within the meaning of this Act covers every activity of the enterprise to achieve the business objective. This includes any activity for the creation and exploitation of products and services, regardless of whether it is carried out at a location in Germany or abroad. In affiliated enterprises, the parent company's own business area includes a group company if the parent company exercises a decisive influence on the group company.

(7) A direct supplier within the meaning of this Act is a partner to a contract for the supply of goods or the provision of services whose supplies are necessary for the production of the enterprise's product or for the provision and use of the relevant service.

(8) An indirect supplier within the meaning of this Act is any enterprise which is not a direct supplier and whose supplies are necessary for the production of the enterprise's product or for the provision and use of the relevant service.