

# Supply chain law FAQs



Federal Ministry  
for Economic Cooperation  
and Development

As at: 9 June 2021

## 1. What is the aim of the law?

- The act is intended to improve the **protection of basic human rights** and, in particular, enforce the ban on forced labour.
- **Environmental concerns are also relevant** if – because of them – human rights are being violated (e.g. in the case of polluted water) or if it is a matter of human health.

## 2. Which companies come under the law?

- From 2023 onwards: companies with more than **3,000 employees (900 companies)**.
- From 2024 onwards: Companies with more than **1,000 employees (4,800 companies)**.
- After that, the area of application will be evaluated.

## 3. What are the most important rules and regulations?

### 1. Responsibility for the entire supply chain; tiered requirements for companies:

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

1. the company's own business operations,
2. direct suppliers,
3. indirect suppliers.

and based on:

- › the kind and extent of the business activity,
- › the degree of influence the company has on the one committing the violation,
- › the typically expected severity of the violation,
- › the way in which the company has contributed to the violation.

## 2. External monitoring by a government authority

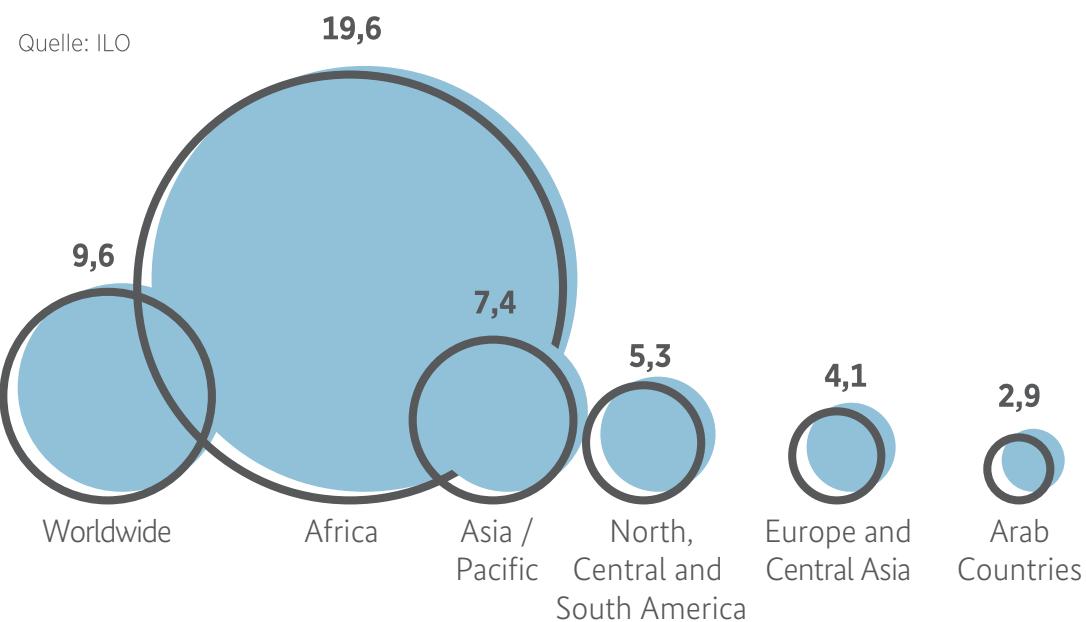
- › An established government authority, the **Federal Office for Economics and Export Control**, is tasked with monitoring compliance with the law.
- › It checks **company reports**, investigates any **grievances** made and imposes **sanctions**, if needed.

## 3. More rights for injured parties

- › 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 Economics and Export Control**.
- › German trade unions and non-governmental organisations may also support injured parties from other countries by defending their rights **before a German court** (representative action).

### 1 in 10 children are forced to work.

Child labourers under the statutory minimum age, in % (2016)



## 4. 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 have to put the following measures in place both in their own and in their direct suppliers' business operations:
  - › Draft and adopt a **policy statement** on respecting human rights.
  - › **Risk analysis:** Implement procedures for identifying negative impacts on human rights.
  - › Engage in **risk management (incl. prevention and remedial measures)** to avoid potential negative impacts on human rights.

- › Establish a **grievance mechanism**.
- › Implement transparent public **reporting**.
- In the event of a violation of rights, the company must, in its own **area of business**, take steps **immediately** that will necessarily cause the violation to cease.
- In the case of **direct suppliers**, the company must draft a **concrete plan** for minimising and preventing violations when it is unable to end the violation **in the foreseeable future**.

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

- Here, the due diligence obligations apply only as warranted by the circumstances and as soon as the company learns about potential violations.
- In this case, the company has to act immediately and:
  - › 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. The implementation of **industry-wide initiatives** is a good option in this context.

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

- The law does **not create any new civil liability regulations**. Liability under civil law according to German and foreign laws continues to apply.

## 7. Must business relations be terminated?

- That is **not the aim** of the law. Instead the law is intended to sustainably establish improved protection of human rights in suppliers' operations, within the scope of what is feasible in these companies.
- **No company** will be expected to change the **legal and political conditions in the partner country**.
- The only time that **business relations need to be terminated** is when a serious violation of human rights has been found and the measures taken so far under the company's strategy have failed to succeed within a given period of time.
- At the same time, there will be substantial government **support programmes** for companies.

## 8. How will the law be implemented?

- The **Federal Office for Economics and Export Control** will ensure the effective implementation of the law. It will set up a lean reporting procedure that will provide the basis for the monitoring of companies.
- Infringements of the law may result in **fines**.
- Companies found to have committed serious infringements may be **excluded from public procurement procedures** for up to three years.

## 9. What new provisions does the law include, as compared with the government's draft?

- The law will initially apply for **branches of foreign companies in Germany** if they have more than 3,000 employees (as of 2023) or 1,000 employees (as of 2024) in Germany.
- **The area of business of German companies will be expanded so that their international subsidiaries (if controlled by them)** are considered to be part of the companies' own area of business, not direct suppliers.
- A further **environmental convention**, the Basel Convention on waste exports, has been included in the law. This also serves to protect human health.
- For indirect suppliers, **industry-wide initiatives** are regarded as an **appropriate prevention measure**.
- **Works councils** have to be informed about the implementation of the law.
- Additional clarification: **A violation of the obligations arising from this law does not give rise to civil liability. Civil liability on grounds outside this law remains unaffected.**
- Clarification: If a country of production has not ratified international agreements, this is not a **reason per se to break off business relations with companies in that country**.
- A new title: **Act on Due Diligence in Supply Chains**.

## 10. Don't we need Europe-wide rules?

- The **goal** continues to be a **uniform European set of rules**. It will probably take several years until we have such a European set of rules.
- EU legislation should find a compromise between better protection of human rights, **feasibility for companies**, and **positive impact for the people concerned**.
- The German law should serve as a **blueprint for a European law**.

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### 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 German 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.
- **In passing this law we are fulfilling a pledge made in the Coalition Agreement.**

### 2. Why do we need a due diligence law?

- For many years, the German government had relied on voluntary commitments in order to implement the UN Guiding Principles on Business and Human Rights in Germany, and had adopted a **National Action Plan for Business and Human Rights**.
- In order to check whether bigger companies were meeting their human rights due diligence obligations in their supply chains, a **monitoring** system was set up using independent service providers.
- The **compliance target of 50 per cent was clearly not being met** under this system:
  - In the first company survey (in 2019), about 400 of the roughly 3,000 companies invited to take part completed the questionnaire; about 20% of them were shown to be compliant.
  - For the second round (in 2020), the methodology was improved and about 450 (from a total of 2,250) companies responded; **17% were compliant**.
- The **Coalition Agreement** envisaged for this situation the enactment of national legislation by the German government.

### 3. What are the biggest human rights violations worldwide in connection with economic activities?

- There are **152 million child labourers**, half of whom are being exploited.
- **There are 25 million people working as forced labourers**.

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### 4. 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.

### 5. 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).
- After that, the area of application will be evaluated.

### 6. What are the most important rules and regulations?

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

- This creates legal certainty for companies and affected persons.

#### 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**.

#### 3. External monitoring by a government authority

- The **Federal Office for Economic Affairs and Export Control**, which is tasked with monitoring compliance with the law, is an established government authority.
- It checks company reports and investigates any grievances.

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### 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**.

### 7. What is a supply chain?

- For the purposes of this law, the supply chain covers all the inputs that the company uses in order to manufacture a product or provide a service, **from the acquisition of the raw materials to delivering it to the end customers**.

### 8. 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.

#### And based on:

- 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.

### 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?

- **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**.

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- 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. What must a company do when a grievance is reported?

- The company must examine whether rights have been violated in the context of its own business operations or in the context of a supplier's business operations.
- Depending on what stage of the supply chain is affected, the requirements set out above then apply.

### 12. Must business relations be terminated in certain circumstances?

- That is not the aim of the law. Instead the aim is to lastingly establish improved protection of human rights.
- The only time that **business relations need to be terminated** is when a serious violation of human rights has been found and the measures from the company's strategy that have been taken so far have failed to succeed within a set period of time.

### 13. 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.

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### 14. Can non-governmental organisations file law suits?

- Non-governmental organisations **do not themselves have any right of action**.
- However, affected persons who have had important rights violated can be supported by non-governmental organisations in filing a suit (so-called representative action).

### 15. Are there standards for minimum wages?

- The law does **not lay down any global minimum wages**.
- It does however make reference to the ILO conventions, which envisage decent wages.
- The desirable wage levels vary from country to country and are guided by the respective economic situation.

### 16. How is the law to be implemented?

- The **Federal Office for Economic Affairs and Export Control** will ensure the effective implementation of the law.
- Infringements of the law may result in **fines**.
- Companies found to have committed serious infringements may be **excluded from public procurement processes** for up to three years.
- At the same time, the German government will offer substantial **support programmes** for companies.

### 17. Is there an electronic reporting procedure?

- The authority responsible for monitoring compliance is working **with a fully electronic reporting format which is simple to use**. Existing reporting obligations (e.g. CSR reporting) will be integrated into this format so as to avoid creating parallel structures.
- Further simplifications for companies: The authority will set up a **“recognition mechanism” for existing certification systems**. This will give companies guidance as to where and when existing certificates can be used as proof of due diligence.

### 18. Don't we need Europe-wide rules?

- The **goal** continues to be a **uniform European set of rules**.
- It will probably take several years until we have a uniform European set of rules.

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- With a national law, we will be able to influence EU legislation in the direction that we want. That is also in the interests of German businesses.

### 19. What is the time plan going forward?

- The intention is that the **Federal Cabinet** will decide on the draft law by **mid-March** at the latest.
- After that, it is intended that the law will be adopted by the **German Bundestag (Parliament) before the summer recess.**
- For companies with more than 3,000 employees, it will then come into force starting on 1 January 2023.