

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

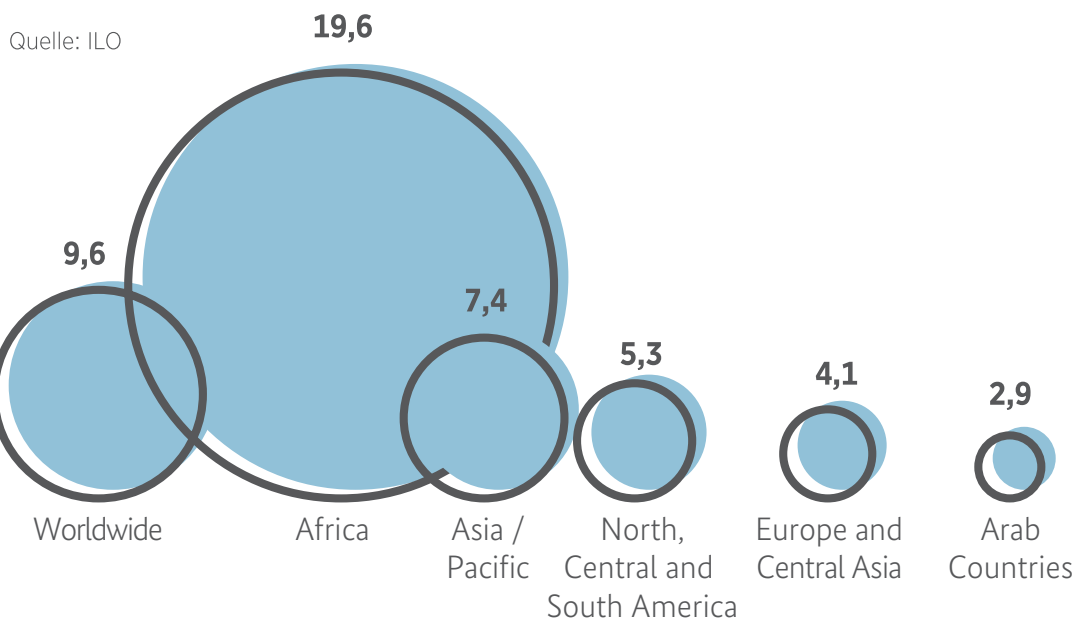
- › An established government authority, the **Federal Office for Economics and Export Control**, is tasked with monitoring compliance with the law.
- › It checks **company reports**, investigates any **grievances** made and imposes **sanctions**, if needed.

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 **fin**es.
- 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 **fin**es.
- 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.