

# New rules governing supply chain due diligence in Germany

## Key facts and what you can do to prepare for the changes

### Current status (06/2021):

The Bundestag (German parliament) passed the federal government's bill on **11 June 2021**.

### What is the aim of the new legislation?

To **prevent human rights violations** and **environmental damage** in the supply chains of products or services.

### When does it come into force?

**1 January 2023**

### Who is directly affected?

Any corporate entity, however constituted, that has:

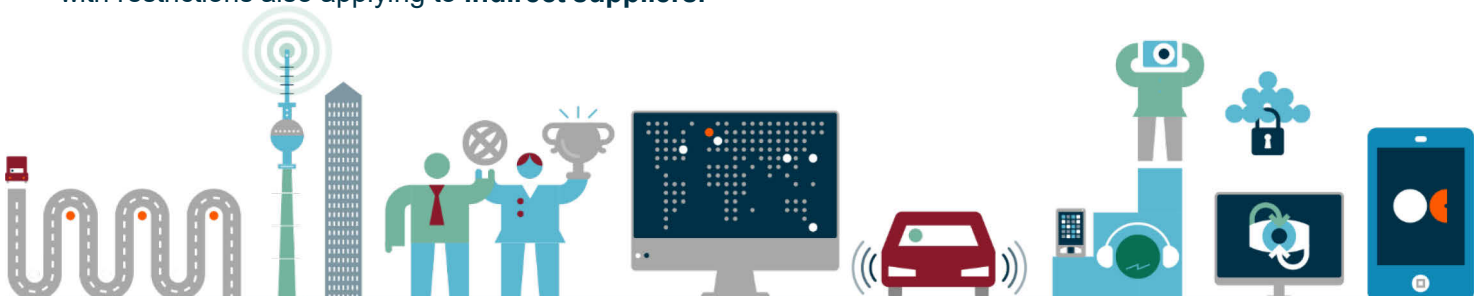
- **A registered office or branch** (according to Section 13d HGB) **in Germany**; [and]
- At least **1,000 employees**. Note that:
  - As part of transitional arrangements, companies must have at least 3,000 employees by the end of 2023, with the 1,000 employee benchmark coming into effect on 1 January 2024.
  - **Employees of subsidiaries are included in the parent company's** calculation.
  - Only **employees working in Germany** and **employees based in Germany but posted abroad** (but not those posted to Germany from abroad) are counted.

### What do companies need to do under the new rules?

- Companies **must strive** to comply with human rights and environmental standards (there is no obligation to succeed) and **observe due diligence obligations** in order to do so.
- Due diligence obligations apply to the conduct of the **company's own business** and to the business of a **company's direct supplier** (i.e. suppliers who have a direct contractual relationship with the company), with restrictions also applying to **indirect suppliers**.

### What happens if the new rules are breached?

- The Federal Office for Economic Affairs and External Control (**BAFA**) is responsible for enforcing the new requirements and has a range of powers to ensure compliance. These powers include:
  - The ability to check for and correct breaches of the new regulations e.g. entering business premises; summoning persons; information and disclosure obligations (incl. handing over documents); requiring a corrective action plan to be created and, if necessary, to take concrete action.
  - Periodic penalty payments **up to EUR 50,000**.
- Fines based on a company's average annual turnover:
  - Turnover below EUR 400 million: a fine of **up to EUR 8 million**.
  - Turnover above EUR 400 million: a fine of **up to 2% of worldwide (group) sales**.
  - Entry in the competition register if a fine  $\geq$  EUR 175,000.
- If applicable, an exclusion from the award of public supply, construction and service contracts (until the company has proved that it has remedied the breach). Any such exclusion would be for a maximum of three years.
- Breach of the new rules does not give rise to any special civil liability (in particular not under Section 823 (2) of the German Civil Code).



## New due diligence requirements at a glance

### General Measures

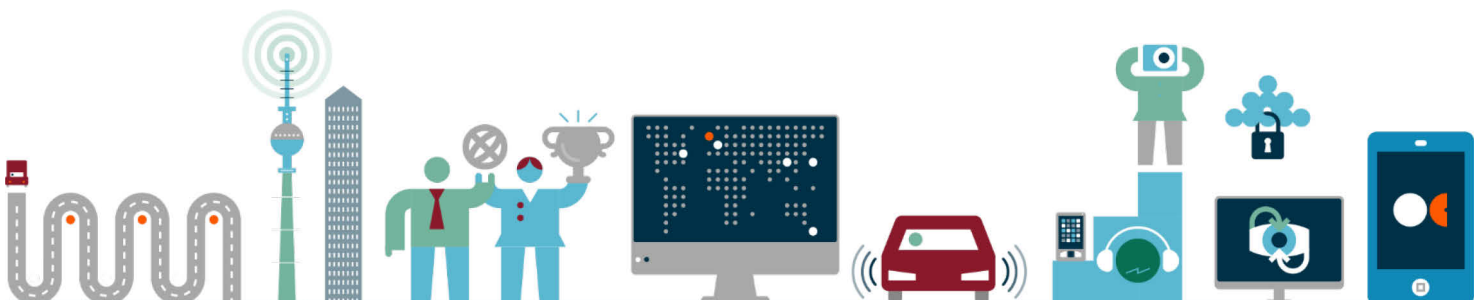
- Introduce and implement a **risk management system**.
- Determine **responsibilities** within the company.
- Conduct an **annual risk analysis**.
- Establish an **internal complaints procedure**.
- **Document all measures** taken to ensure compliance.
- Produce an **annual report**.

### Preventive Measures (if risks are identified)

- Adopt a **human rights and environmental standards policy statement**.
- Immediately establish **appropriate preventive measures** within the **company's own business** and for **direct suppliers** on the basis of the policy statement.

### Remedial Measures (if violation has already been realized or is imminent)

- Take **immediate and appropriate remedial action** to prevent/stop/minimize any violations.
- **Terminate** business relations with suppliers where all other measures are ineffective or inadequate.
- Monitor **possible infringements** by indirect suppliers that are known to the company, as some (albeit weakened) obligations to act will apply to the company in such circumstances.
- **Monitor the effectiveness** of the remedial measures.



## What can companies do now to prepare for the changes?

- **Check your supply chains:** Are all indirect suppliers known? How much influence do you have on your suppliers (and their supply chain)? Are there any known vulnerabilities?
- **Talk to suppliers at an early stage:** What measures can they implement to ensure compliance with the changes? Do they need support, for example in influencing downstream (indirect) suppliers?
- **Check contracts with direct suppliers:** Are there already obligations to comply with human rights and environmental standards in your contracts? Are any such audit and reporting obligations passed through the supply chain?
- **Revise purchasing conditions** and address any conflicts of interest; if necessary, translate into local languages and publish or make available to all suppliers.
- Consider **digitising your supply chain** to better track and manage risks.
- **Prepare documentation and controls** along the supply chain. How might the new requirements be documented across supply contracts? Could any such contract terms be agreed with other manufacturers and suppliers? Are there any industry-specific or cross-industry initiatives that can assist with this process? Can certifications be used?
- **Adapt reporting** to pre-empt the introduction of the new requirements.
- Define processes for internal **complaints procedures**.
- **Appoint a human rights officer** (or similar) and integrate them into your business.
- **Educate and sensitise staff.**
- Create a **budget** for the implementation of the new obligations.
- Adopt a **risk-based approach**. Tackle the "worst first."
- **Document** all measures and steps taken to fulfill duties of care.
- **Introduce sustainability strategies** to gain market advantage and stay ahead of the new rules.

We will be happy to support you in all legal matters relating to the German Supply Chain Act



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