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.

Division 2
Due diligence obligations

Section 3
Due diligence obligations

(1) Enterprises are under an obligation to exercise due regard for the human rights and environment-related due diligence obligations set out in this Division in their supply chains with the aim of preventing or minimising any risks to human rights or environment-related risks or of ending the violation of human rights-related or environment-related obligations. The due diligence obligations include:

1. establishing a risk management system (section 4 (1)),

2. designating a responsible person or persons within the enterprise (section 4 (3)),

3. performing regular risk analyses (section 5),

4. issuing a policy statement (section 6 (2)),

5. laying down preventive measures in its own area of business (section 6 (1) and (3)) and vis-à-vis direct suppliers (section 6 (4)),

6. taking remedial action (section 7 (1) to (3)),

7. establishing a complaints procedure (section 8),

8. implementing due diligence obligations with regard to risks at indirect suppliers (section 9) and

9. documenting (section 10 (1)) and reporting (section 10 (2)).

(2) The appropriate manner of acting in accordance with the due diligence obligations is determined according to

1. the nature and extent of the enterprise's business activities,

2. the ability of the enterprise to influence the party directly responsible for a risk to human rights or environment-related risk or the violation of a human rights-related or environment-related obligation,

3. the severity of the violation that can typically be expected, the reversibility of the violation, and the probability of the occurrence of a violation of a human rights-related or an environment-related obligation as well as

4. the nature of the causal contribution of the enterprise to the risk to human rights or environment-related risk or to the violation of a human rights-related or environment-related obligation.

(3) A violation of the obligations under this Act does not give rise to any liability under civil law. Any liability under civil law arising independently of this Act remains unaffected.

Section 4
Risk management

(1) Enterprises must establish an appropriate and effective risk management system to comply with due diligence obligations (section 3 (1)). Risk management must be enshrined in all relevant business processes through appropriate measures.

(2) Effective are those measures that make it possible to identify and minimise human rights and environment-related risks and to prevent, end or minimise the extent of human rights-related or environment-related obligations if the enterprise has caused or contributed to these risks or violations within the supply chain.

(3) The enterprise must ensure that it is determined who within the enterprise is responsible for monitoring risk management, for example by appointing a human rights officer. Senior management must seek information on a regular basis, at least once a year, about the work of the responsible person or persons.

(4) In establishing and implementing its risk management system, the enterprise must give due consideration to the interests of its employees, employees within its supply chains and those who may otherwise be directly affected in a protected legal position by the economic activities of the enterprise or by the economic activities of an enterprise in its supply chains.

Section 5
Risk analysis

(1) As part of risk management, the enterprise must conduct an appropriate risk analysis in accordance with paragraphs (2) to (4) to identify the human rights and environment-related risks in its own business area and at its direct suppliers. In cases where an enterprise has structured a direct supplier relationship in an improper manner or has engaged in a transaction in order to circumvent the due diligence obligations with regard to the direct supplier, an indirect supplier is deemed to be a direct supplier.

(2) The identified human rights and environment-related risks must be weighted and prioritised appropriately. The criteria listed in section 3 (2), amongst others, are decisive in this regard.

(3) The enterprise must ensure that the results of the risk analysis are communicated internally to the relevant decision-makers, such as the board of directors or the purchasing department.

(4) The risk analysis must be carried out once a year as well as on an ad hoc basis if the enterprise must expect a significantly changed or significantly expanded risk situation in the supply chain, for example due to the introduction of new products, projects or a new business field. Findings from the processing of reports according to section 8 (1) are to be taken into account.

Section 6
Preventive measures

(1) If an enterprise identifies a risk in the course of a risk analysis pursuant to section 5, it must take appropriate preventive measures pursuant to paragraphs (2) to (4) without undue delay.

(2) The enterprise must issue a policy statement on its human rights strategy. Senior management must adopt the policy statement. The policy statement must contain at least the following elements of a human rights strategy of the enterprise:

1. the description of the procedure by which the enterprise fulfils its obligations under section 4 (1), section 5 (1), section 6 (3) to (5), and sections 7 to 10,

2. the enterprise's priority human rights and environment-related risks identified on the basis of the risk analysis and

3. the definition, based on the risk analysis, of the human rights-related and environment-related expectations placed by the enterprise on its employees and suppliers in the supply chain.

(3) The enterprise must lay down appropriate preventive measures in its own area of business, in particular:

1. the implementation of the human rights strategy in the relevant business processes set out in the policy statement,

2. the development and implementation of appropriate procurement strategies and purchasing practices that prevent or minimize identified risks,

3. the delivery of training in the relevant business areas,

4. the implementation of risk-based control measures to verify compliance with the human rights strategy contained in the policy statement in its own business area.

(4) The enterprise must lay down appropriate preventive measures vis-à-vis a direct supplier, in particular:

1. the consideration of human rights-related and environment-related expectations when selecting a direct supplier,

2. contractual assurances from a direct supplier that it will comply with the human rights-related and environment-related expectations required by the enterprise's senior management and appropriately address them along the supply chain,

3. the implementation of initial and further training measures to implement the contractual assurances made by the direct supplier according to number 2,

4. agreeing on appropriate contractual control mechanisms and their risk-based implementation to verify compliance with the human rights strategy at the direct supplier.

(5) The effectiveness of the preventive measures must be reviewed once a year and on an ad hoc basis if the enterprise must expect a significantly changed or significantly expanded risk situation in its own business area or at its direct supplier, for example due to the introduction of new products,

projects or a new business field. Findings from the processing of reports according to section 8 (1) are to be taken into account. The measures must be updated without undue delay if necessary.

Section 7
Remedial action

(1) If the enterprise discovers that a violation of a human rights-related or an environment-related obligation has already occurred or is imminent in its own business area or at a direct supplier, it must, without undue delay, take appropriate remedial action to prevent, end or minimise the extent of this violation. Section 5 (1) sentence 2 applies accordingly. In its own business area in Germany, the remedial action must bring the violation to an end. In the own business area abroad and in the own business area pursuant to section 2 (6) sentence 3, the remedial action must usually bring the violation to an end.

(2) If the violation of a human rights-related or an environment-related obligation at a direct supplier is such that the enterprise cannot end it in the foreseeable future, it must draw up and implement a concept for ending or minimising the violation without undue delay. The concept must contain a concrete timetable. When drawing up and implementing the concept, the following measures in particular must be taken into consideration:

1. the joint development and implementation of a plan to end or minimise the violation with the enterprise causing the violation,

2. joining forces with other enterprises in sector initiatives and sector standards to increase the ability of influencing the entity that causes or may cause a harm,

3. a temporary suspension of the business relationship while efforts are made to minimise the risk.

(3) The termination of a business relationship is only required if

1. the violation of a protected legal position or an environment-related obligation is assessed as very serious,

2. the implementation of the measures developed in the concept does not remedy the situation after the time specified in the concept has elapsed,

3. the enterprise has no other less severe means at its disposal and increasing the ability to exert influence has no prospect of success.

The mere fact that a state has not ratified one of the conventions listed in the Annex to this Act or has not implemented it into its national law does not result in an obligation to terminate the business relationship. Restrictions on foreign trade by or on the basis of federal law, European Union law or international law remain unaffected by sentence 2.

(4) The effectiveness of the remedial action must be reviewed once a year and on an ad hoc basis if the enterprise must expect a significantly changed or significantly expanded risk situation in its own business area or at the direct supplier, for example due to the introduction of new products, projects or a new business field. Findings from the processing of reports according to section 8 (1) are to be taken into account. The measures must be updated without undue delay if necessary.

Section 8
Complaints procedure

(1) The enterprise must ensure that an appropriate internal complaints procedure is in place in accordance with paragraphs (2) to (4). The complaints procedure enables persons to report human rights and environment-related risks as well as violations of human rights-related or environment-related obligations that have arisen as a result of the economic actions of an enterprise in its own business area or of a direct supplier. Receipt of the reported information must be confirmed to the person having reported the information. The persons entrusted by the enterprise with the implementation of the procedure must discuss the facts with the persons having reported the information. They may offer a procedure for amicable settlement. The enterprises may instead participate in an appropriate external complaints procedure, provided it meets the following criteria.

(2) The enterprise establishes rules of procedure in text form which are publicly available.

(3) The persons entrusted by the enterprise with the conduct of the proceedings must offer a guarantee of impartiality; in particular, they must be independent and not bound by instructions. They are bound to secrecy.

(4) The enterprise must make clear and comprehensible information on accessibility and responsibility and on the implementation of the complaints procedure publicly available in an appropriate manner. The complaints procedure must be accessible to potential parties involved, must maintain confidentiality of identity and must ensure effective protection against disadvantage or punishment as a result of a complaint.

(5) The effectiveness of the complaints procedure must be reviewed at least once a year and on an ad hoc basis if the enterprise must expect a significantly changed or significantly expanded risk situation in its own business area or at the direct supplier, for example due to the introduction of new products, projects or a new business field. The measures must be repeated without undue delay if necessary.

Section 9
Indirect suppliers; authorisation to issue statutory instruments

(1) The enterprise must set up the complaints procedure pursuant to section 8 in such a way that it also enables persons to report risks to human rights or environment-related risks as well as violations of human rights-related or environment-related obligations that have arisen due to the economic actions of an indirect supplier.

(2) The enterprise must adapt its existing risk management system as defined in section 4 in accordance with paragraph (3) below.

(3) If an enterprise has actual indications that suggest that a violation of a human rights-related or an environment-related obligation at indirect suppliers may be possible (substantiated knowledge), it must without undue delay and as warranted

1. carry out a risk analysis in accordance with section 5 (1) to (3),

2. lay down appropriate preventive measures vis-à-vis the party responsible, such as the implementation of control measures, support in the prevention and avoidance of a risk or the implementation of sector-specific or cross-sector initiatives to which the enterprise is a party,

3. draw up and implement a prevention, cessation or minimisation concept and

4. update its policy statement in accordance with section 6 (2), if necessary.

(4) The Federal Ministry of Labour and Social Affairs is authorised to regulate the details of paragraph (3) by statutory instrument in agreement with the Federal Ministry for Economic Affairs and Energy without the consent of the Bundesrat.

Section 10
Documentation and reporting obligation

(1) The fulfilment of the due diligence obligations pursuant to section 3 must be continuously documented within the enterprise. The documentation must be kept for at least seven years from its creation.

(2) The enterprise must prepare an annual report on the fulfilment of its due diligence obligations in the previous financial year and make it publicly available free of charge on the enterprise's website no later than four months after the end of the financial year for a period of seven years. The report must at least state in a comprehensible manner,

1. whether the enterprise has identified any human rights and environment-related risks or violations of a human rights-related or environment-related obligation, and if so, which ones,

2. what the enterprise has done to fulfil its due diligence obligations with reference to the measures described in sections 4 to 9; this also includes the elements of the policy statement pursuant to section 6 (2) as well as the measures taken by the enterprise as a result of complaints pursuant to section 8 or section 9 (1),

3. how the enterprise assesses the impact and effectiveness of the measures and

4. what conclusions it draws from the assessment for future measures.

(3) If the enterprise has not identified any risk to human rights or environment-related risk and no violation of a human rights-related or an environment-related obligation and has plausibly explained this in its report, no further details as pursuant to paragraph (2) nos. 2 to 4 are required.

(4) Due consideration is to be given to the protection of business and trade secrets.

Division 3
Civil proceedings

Section 11
Special capacity to sue

(1) Any person claiming to have been violated in a legal position pursuant to section 2 (1) that is of paramount importance may authorise a domestic trade union or non-governmental organisation to bring proceedings to enforce his or her rights in its own capacity.

(2) A trade union or non-governmental organisation may be only authorised under paragraph (1) if it maintains a permanent presence of its own and, in accordance with its statutes, is not engaged commercially and not only temporarily in the realisation of human rights or corresponding rights in the national law of a state.

Division 4
Monitoring and enforcement by the authorities

Subdivision 1
Report audit

Section 12
Submission of the report

(1) The report pursuant to section 10 (2) sentence 1 must be submitted in German and electronically via an electronic/digital access provided by the competent authority.

(2) The report must be submitted no later than four months after the end of the financial year to which it relates.

Section 13
Report audit by the authorities; authorisation to issue statutory instruments

(1) The competent authority checks whether

1. the report pursuant to section 10 (2) sentence 1 has been provided and

2. the requirements according to section 10 (2) and (3) have been complied with.

(2) If the requirements according to section 10 (2) and (3) have not been met, the competent authority may demand that the enterprise rectify the report within a reasonable period of time.

(3) The Federal Ministry of Labour and Social Affairs is authorised to regulate the following procedures in more detail by statutory instrument in agreement with the Federal Ministry for Economic Affairs and Energy without the consent of the Bundesrat:

1. the procedure for submitting the report pursuant to section 12, and

2. the procedure for report audits by the authorities in accordance with paragraphs (1) and (2).

Subdivision 2
Risk-based control

Section 14
Action taken by the authorities; authorisation to issue statutory instruments

(1) The competent authority will take action:

1. ex officio, in the proper exercise of its discretion,

   a) to monitor compliance with the obligations under sections 3 to 10 (1) with regard to possible human rights and environment-related risks as well as violations of a human rights-related or environment-related obligation and

   b) to detect, end and prevent violations of obligations under letter a;

2. upon request, if the person making the request makes a substantiated claim

   a) that he or she has been violated in his or her protected legal position as a result of the non-fulfilment of an obligation contained in sections 3 to 9 or

   b) that a violation referred to in letter a is imminent.

(2) The Federal Ministry of Labour and Social Affairs is authorised to regulate in more detail the procedure for risk-based control pursuant to paragraph (1) and sections 15 to 17 by statutory instrument in agreement with the Federal Ministry for Economic Affairs and Energy without the consent of the Bundesrat.

Section 15
Orders and measures

The competent authority makes the appropriate and necessary orders and takes the appropriate and necessary measures to detect, end and prevent violations of the obligations under sections 3 to 10 (1). It may in particular

1. summon people,

2. order the enterprise to submit, within three months of the notification of the order, a corrective action plan, including clear timelines for its implementation and

3. require the enterprise to take specific action to fulfil its obligations.

Section 16
Access rights

Insofar as this is necessary for the performance of the duties pursuant to section 14, the competent authority and its representatives are authorised

1. to enter and inspect the enterprise's premises, offices and commercial buildings during normal business or operating hours and

2. to inspect and examine, within normal business or operating hours, the enterprise's business documents and records from which it is possible to deduce whether the due diligence obligations under sections 3 to 10 (1) have been complied with.

Section 17
Obligation to provide information and surrender documents

(1) Enterprises and persons summoned pursuant to section 15 sentence 2 no. 1 are obliged to provide the competent authority, upon request, with the information and to surrender the documents required by the authority to carry out the duties assigned to it by this Act or on the basis of this Act. The obligation also extends to information on affiliated enterprises (section 15 of the Stock Corporation Act), direct and indirect suppliers and the surrender of documents of these enterprises insofar as the enterprise or person obliged to provide information or surrender documents has the information at its disposal or is in a position to obtain the requested information due to existing contractual relationships.

(2) The information to be provided and documents to be surrendered pursuant to paragraph (1) include in particular

1. information and evidence to determine whether an enterprise falls within the scope of this Act,

2. information and evidence on the fulfilment of the obligations according to sections 3 to 10 (1) and

3. the names of the persons responsible for monitoring the enterprise's internal processes for fulfilling the obligations under sections 3 to 10 (1).

(3) Any person obliged to provide information in accordance with paragraph (1) may refuse to provide information in response to questions if the response would expose them or one of the relatives referred to in section 52 (1) of the Code of Criminal Procedure (Strafprozessordnung) to the risk of criminal prosecution or proceedings under the Regulatory Offences Act (Gesetz über Ordnungswidrigkeiten). The person obliged to provide information is to be informed of their right to refuse to provide information. Other statutory rights to refuse to provide information or to give evidence as well as statutory duties of confidentiality remain unaffected.

Section 18
Obligation to tolerate and cooperate

The enterprises must tolerate the measures of the competent authority and its representatives and support them in the implementation of the measures. Sentence 1 also applies to the enterprise owners and their representatives, and in the case of legal persons, to the persons appointed to represent them by law or under the legal person's statutes.

Subdivision 3
Competent authority, handouts, accountability report

Section 19
Competent authority

(1) The Federal Office for Economic Affairs and Export Control is responsible for the official monitoring and enforcement under this Division. The Federal Ministry for Economic Affairs and Energy is responsible for the legal and technical supervision of the Federal Office for Economic Affairs and Export Control with regard to the tasks under this Act. The Federal Ministry for Economic Affairs and Energy exercises the legal and technical supervision in agreement with the Federal Ministry of Labour and Social Affairs.

(2) The competent authority takes a risk-based approach in the performance of its tasks.

Section 20
Handouts

The competent authority publishes cross-sectoral or sector-specific information, assistance and recommendations on compliance with this Act in consultation with the authorities concerned. The information, assistance or recommendations require the approval of the Federal Foreign Office prior to publication insofar as foreign policy concerns are affected.

Section 21
Accountability report

(1) The competent authority pursuant to section 19 (1) sentence 1 reports once a year on its monitoring and enforcement activities pursuant to Division 4 carried out in the previous calendar year. The respective report is to be prepared for the first time for the year 2022 and is to be published on the website of the competent authority.

(2) The reports is to refer to and explain any violations identified and remedial measures ordered as well as contain an evaluation of the submitted enterprise reports according to section 12, without naming the respective enterprises concerned.

Division 5
Public procurement

Section 22
Exclusion from the award of public contracts

(1) Enterprises that have been fined in accordance with section 24 (2) for a violation under section 24 (1) that has been established by final and binding decision shall, as a rule, be excluded from participation in a procedure for the award of a supply, works or service contract by the contracting authorities referred to in sections 99 and 100 of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen) until they have proved that they have cleared themselves in accordance with section 125 of the Act against Restraints of Competition. The exclusion pursuant to sentence 1 may only take place within an appropriate period of up to three years.

(2) An exclusion according to paragraph (1) requires a violation that has been established by final and binding decision carrying a fine of at least one hundred and seventy-five thousand euros. Notwithstanding sentence 1

1. in the cases of section 24 (2) sentence 2 in conjunction with section 24 (2) sentence 1 no. 2, a violation that has been established by final and binding decision carrying a fine of at least 1 million five hundred thousand euros,

2. in the cases of section 24 (2) sentence 2 in conjunction with section 24 (2) sentence 1 no. 1, a violation that has been established by final and binding decision carrying a fine of at least two million euros and

3. in the cases of section 24 (3), a violation that has been established by final and binding decision carrying a fine of at least 0.35 per cent of the average annual turnover is required.

(3) The applicant is to be heard before the decision on exclusion is taken.

Division 6
Financial penalty and administrative fine

Section 23
Financial penalty

Notwithstanding section 11 (3) of the Administrative Enforcement Act (Verwaltungsvollstreckungsgesetz), the amount of the financial penalty in administrative enforcement proceedings by the competent authority under section 19 (1) sentence 1 is up to 50,000 euros.

Section 24
Provisions on administrative fines

(1) A person has committed a regulatory offence when he or she, intentionally or by negligence,

1. contrary to section 4 (3) sentence 1, fails to ensure that a determination referred to therein has been made,

2. contrary to section 5 (1) sentence 1 or section 9 (3) no. 1, does not carry out a risk analysis, does not carry it out correctly, completely or in time,

3. contrary to section 6 (1), does not take a preventive measure or does not take it in time,

4. contrary to section 6 (5) sentence 1, section 7 (4) sentence 1 or section 8 (5) sentence 1, does not carry out a review or does not carry it out in time,

5. contrary to section 6 (5) sentence 3, section 7 (4) sentence 3 or section 8 (5) sentence 2, fails to update a measure or fails to update it in time,

6. contrary to section 7 (1) sentence 1, fails to take remedial action or fails to take such action in time,

7. contrary to

   a) section 7 (2) sentence 1 or

   b) section 9 (3) no. 3

   fails to draw up a concept or draw it up in time, or fails to implement it or implement it in time,

8. contrary to section 8 (1) sentence 1, also in conjunction with section 9 (1), fails to ensure that a complaints procedure is in place,

9. contrary to section 10 (1) sentence 2, fails to keep documentation or does not keep it for at least seven years,

10. contrary to section 10 (2) sentence 1, fails to prepare a report correctly,

11. contrary to section 10 (2) sentence 1, fails to make a report referred to therein publicly available or fails to do so in time,

12. contrary to section 12, does not submit a report or does not submit it in time or

13. fails to comply with an enforceable order pursuant to section 13 (2) or section 15 sentence 2 no. 2.

(2) The regulatory offence may be punished

1. in the cases referred to in paragraph (1)

a) nos. 3, 7 letter b and no. 8

b) nos. 6 and 7 letter a

with a fine of up to eight hundred thousand euros,

2. in the cases of paragraph (1) nos. 1, 2, 4, 5 and 13, with an administrative fine of up to five hundred thousand euros and

3. in the other cases referred to in paragraph (1), with an administrative fine of up to one hundred thousand euros.

In the cases of sentence 1 nos. 1 and 2, section 30 (2) sentence 3 of the Regulatory Offences Act applies.

(3) In the case of a legal person or association of persons with an average annual turnover of more than 400 million euros, a regulatory offence under paragraph (1) nos. 6 or 7 (a) may be punished with an administrative fine of up to 2 per cent of the average annual turnover in derogation from paragraph (2) sentence 2 in conjunction with sentence 1 no. 1 (b). The calculation of the average annual turnover of the legal person or association of persons is based on the worldwide turnover of all natural and legal persons as well as all associations of persons in the last three financial years preceding the decision by the authority insofar as these persons and associations of persons operate as an economic unit. The average annual turnover may be estimated.

(4) The basis for the assessment of the administrative fine for legal persons and associations of persons is the significance of the regulatory offence. The economic circumstances of the legal person or association of persons are to be taken into account in the assessment. In the assessment, the circumstances are to be weighed up insofar as they speak for and against the legal person or association of persons. The following is to be taken into consideration, among other things:

1. the charge against the perpetrator of the regulatory offence,

2. the motives and objectives of the perpetrator of the regulatory offence,

3. significance, extent and duration of the regulatory offence,

4. the type of execution of the regulatory offence, in particular the number of perpetrators and their position in the legal person or association of persons,

5. the effects of the regulatory offence,

6. previous regulatory offences for which the legal person or association of persons is responsible pursuant to section 30 of the Regulatory Offences Act, also in conjunction with section 130 of the Regulatory Offences Act, as well as precautions taken before the regulatory offence to prevent and detect regulatory offences,

7. the efforts taken by the legal person or association of persons to detect the offence and to repair the damage, as well as precautions taken after the regulatory offence to prevent and detect regulatory offences,

8. the consequences of the regulatory offence suffered by the legal person or association of persons.

(5) The administrative authority within the meaning of section 36 (1) no. 1 of the Regulatory Offences Act is the Federal Office for Economic Affairs and Export Control. Section 19 (1) sentences 2 and 3 apply to the legal and technical supervision of the Federal Office.

Annex

(to section 2 (1), section 7 (3) sentence 2)

Conventions

1. Convention No. 29 of the International Labour Organization of 28 June 1930 concerning Forced or Compulsory Labour (Federal Law Gazette 1956 II pp. 640, 641) (ILO Convention No. 29)

2. Protocol of 11 June 2014 to Convention No. 29 of the International Labour Organization of 28 June 1930 concerning Forced or Compulsory Labour (Federal Law Gazette 2019 II pp. 437, 438)

3. Convention No. 87 of the International Labour Organization of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise (Federal Law Gazette 1956 II pp. 2072, 2071), as amended by the Convention of 26 June 1961 (Federal Law Gazette 1963 II pp. 1135, 1136) (ILO Convention No. 87)

4. Convention No. 98 of the International Labour Organization of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Federal Law Gazette 1955 II pp. 1122, 1123), as amended by the Convention of 26 June 1961 (Federal Law Gazette 1963 II pp. 1135, 1136) (ILO Convention No. 98)

5. Convention No. 100 of the International Labour Organization of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Federal Law Gazette 1956 II pp. 23, 24) (ILO Convention No. 100)

6. Convention No. 105 of the International Labour Organization of 25 June 1957 concerning the Abolition of Forced Labour (Federal Law Gazette 1959 II pp. 441, 442) (ILO Convention No. 105)

7. Convention No. 111 of the International Labour Organization of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation (Federal Law Gazette 1961 II pp. 97, 98) (ILO Convention No. 111)

8. Convention No. 138 of the International Labour Organization of 26 June 1973 concerning the Minimum Age for Admission to Employment (Federal Law Gazette 1976 II pp. 201, 202) (ILO Convention No. 138)

9. 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) (ILO Convention No. 182)

10. International Covenant of 19 December 1966 on Civil and Political Rights, (Federal Law Gazette 1973 II pp. 1533, 1534)

11. International Covenant of 19 December 1966 on Economic, Social and Cultural Rights (Federal Law Gazette 1973 II pp. 1569, 1570)

12. Minamata Convention on Mercury of 10 October 2013 (Federal Law Gazette 2017 II p. 610, 611) (Minamata Convention)

13. Stockholm Convention of 23 May 2001 on Persistent Organic Pollutants (Federal Law Gazette 2002 II pp. 803, 804) (POPs Convention), last amended by the decision of 6 May 2005 (Federal Law Gazette 2009 II pp. 1060, 1061)

14. 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).

Article 2

Amendment of the Act against Restraints of Competition

In section 124 (2) of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen) in the version promulgated on 26 June 2013 (Federal Law Gazette I pp. 1750, 3245), as last amended by Article 1 of the Act of 9 March 2021 (Federal Law Gazette I p. 327), after the words “section 19 of the Minimum Wage Act (Mindestlohngesetz)” the word “and” is replaced by a comma and the words “and section 22 of the Act on Corporate Due Diligence Obligations in Supply Chains of ... [insert: date of execution and citation in the Federal Law Gazette]” are inserted after the words “section 21 of the Act to Combat Undeclared Work and Illegal Work (Schwarzarbeitsbekämpfungsgesetz)”.

Article 3

Amendment of the Competition Register Act (Wettbewerbsregistergsetz)

The Competition Register Act (Wettbewerbsregistergesetz) of 18 July 2017 (Federal Law Gazette I p. 2739), as last amended by Article 10 of the Act of 18 January 2021 (Federal Law Gazette I p. 2), is amended as follows:

1. Section 2 (1) is amended as follows:

a) In number 2 letter e, after the words “has been”, the comma and the word “or” are replaced by a semicolon.

b) In number 3, the full stop at the end is replaced by a semicolon and the word “or”.

c) The following number 4 is added:

“4. final and binding decisions imposing administrative fines for regulatory offences pursuant to section 24(1) of the Act on Corporate Due Diligence Obligations in Supply Chains of ... [insert: date of execution and citation in the Federal Law Gazette] if an administrative fine of at least one hundred and seventy-five thousand euros has been imposed.”.

2. In section 3 the following paragraph (4) is added:

"(4) For the purpose of checking and completing the data referred to in paragraph (1) number 4, the registry authority may request that the Federal Central Tax Office transmit the valid VAT identification number of an enterprise that has been entered or is to be entered in the competition register. In the request, the registry authority must state the name or enterprise name as well as the legal form and address of the enterprise concerned. Section 27a (2) sentence 2 of the Value Added Tax Act (Umsatzsteuergesetz) remains unaffected.".

Article 4

Amendment of the Works Constitution Act (Betriebsverfassungsgesetz)

In section 106 (3) of the Works Constitution Act in the version promulgated on 25 September 2001 (Federal Law Gazette I p. 2518), as last amended by Article 6 of the Act of 20 May 2020 (Federal Law Gazette I p. 1044), the following number 5b is inserted after number 5a:

"5b Issues of corporate due diligence in supply chains pursuant to the Act on Corporate Due Diligence Obligations in Supply Chains;".

Article 5

Entry into force

(1) Subject to paragraph (2), this Act enters into force on 1 January 2023.

(2) Section 13 (3), section 14 (2) and sections 19 to 21 of the Act on Corporate Due Diligence Obligations in Supply Chains enter into force on the day after promulgation.

The constitutional rights of the Bundesrat have been observed.

The above Act is hereby executed. It is to be promulgated in the Federal Law Gazette.

Berlin, 16 July 2021

The Federal President

Steinmeier

The Federal Chancellor

Dr. Angela Merkel

The Federal Minister

of Labour and Social Affairs

Hubertus Heil

The Federal Minister

for Economic Cooperation and Development

Gerd Müller

The Federal Minister

for Economic Affairs and Energy

Peter Altmaier