

JANUARY 2023

Mandatory Human Rights Due Diligence: Germany

THE ISSUE

Lieferkettensorgfaltspflichtengesetz (the German Supply Chain Act or the Act) was passed by the German Parliament in July 2021 and entered into force on Jan. 1, 2023. The law establishes human rights and environmental due diligence standards to ensure that German companies responsibly manage their global supply chains. This issue brief sets out the information FLA members should know about this important new law that impacts companies with operations in Germany, and also provides general guidance on how companies can use FLA Principles to comply with human rights due diligence frameworks.

BACKGROUND

As of Jan. 1, 2023, the German Supply Chain Act applies to any company with more than 3,000 employees in Germany, and a head office, main branch, administrative headquarters, registered office or branch in Germany. Foreign companies of the same size with offices or branches in Germany will also need to comply with the German Supply Chain Act. Starting in 2024, the Act will apply to companies with at least 1,000 employees in Germany.

Section 3 of the German Supply Chain Act sets out companies' human rights and environmental due diligence obligations with the aim of "preventing or minimizing any risks to human rights or environment-related risks or of ending the violation of human rights-related or environment-related obligations." These due diligence obligations include:

- **Establishing a risk management system:** This system should enable companies to identify and minimize human rights and environmental risks.
- **Designating a responsible party within the company:** The company must appoint a person (or persons) responsible for monitoring risk management and report to the company's senior leadership on the risk management work at least once a year.
- **Performing regular risk analyses:** Risk analysis should be performed at least annually and identify the human rights and environmental risks in the company's own business, as well as that of its direct suppliers. The results of the risk analysis should be communicated internally to the company's decision-makers.
- **Issuing a policy statement:** The company should create a policy statement on its human rights strategy, which must then be approved by the company's senior management.

- **Creating preventive measures in its own area of business and vis-à-vis direct suppliers:** These preventive measures should involve the implementation of the company's human rights policy, responsible purchasing practices, training, and measures to verify compliance with the company's policy statement.
- **Taking remedial action:** If the company discovers that a violation of human rights or environmental obligations has occurred (or is likely to occur) in its own business or with a direct supplier, the company must take appropriate remedial action to prevent, end, or minimize the violation.
- **Establishing a complaints procedure:** The companies must establish a grievance mechanism that allows individuals to report human rights and environmental risks as well as violations that have arisen as a result of the companies' actions or the actions of a direct or indirect supplier.
- **Implementing due diligence obligations regarding risks at indirect suppliers:** If a company has indications that human rights or environmental obligations could be at risk of violation at an indirect supplier, the company must establish a risk management system that incorporates these indirect suppliers.
- **Documenting and reporting:** Companies must document the actions taken in accordance with the Act and prepare an annual report regarding the fulfillment of its due diligence obligations under the Act.

The German Supply Chain Act does not provide for civil liability if a company does not comply. However, the Act does enforce financial penalties for companies that do not meet their legal obligations. A company may be fined up to €800,000 if its global turnover is less than €400 million. For companies with an average worldwide annual turnover over €400 million, they may be fined up to 2% of their total worldwide annual group turnover. If a potential fine exceeds €175,000, companies can also be barred from public tender offers in Germany for a period of up to three years.

Bundesamt für Wirtschaft und Ausfuhrkontrolle (The Federal Office of Economics and Export Control, or BAFA) will oversee implementation of the new law, including review of submitted reports. Companies must submit their annual due diligence reports to BAFA no later than four months after the end of the financial year. The report must be publicly available. BAFA has released guidance regarding the questions it expects the reports to answer. The guidance is [available here](#) (in German only).

FLA RECOMMENDATIONS

FLA recommends that its member companies familiarize themselves with the German Supply Chain Act. Many components of FLA's Principles of Responsible Sourcing and Responsible Production overlap with requirements of German Supply Chain Act. Examining these correlations will help our member companies understand the due diligence work they have already done and provides a good starting point for establishing their due diligence programs. Set out below is a mapping of the the steps that companies must take under the new German law and the corresponding work that companies do with FLA as part of Fair Labor Accreditation.

German Supply Chain Act	FLA Principles
Establish a risk management system.	FLA Principles taken as a whole establish a risk management system for member companies in order for them to be able to monitor and improve labor rights in their global supply chains.
Designate a responsible person or persons within the company.	FLA Principle 3 requires that a company identifies and trains the specific staff responsible for implementing the workplace standards and responsible purchasing practices.
Perform regular risk analysis.	The type of risk analysis envisioned by the Act is covered by Principle 2.1 (responsible purchasing practices), Principle 4.2 (conditioning future business on suppliers' continuous improvement), and Principle 7.2 (analysis of trends in noncompliance findings).
Issue a policy statement.	Principle 1.1 requires a company's leadership to formally commit to uphold workplace standards. Principle 2.1 requires that a member company has policies and procedures in place for responsible planning and purchasing.
Lay down preventive measures in its own area of business and vis-à-vis direct suppliers.	Principle 2.1 is aimed at proactively implementing responsible planning and purchasing policies and procedures to reduce negative effects on working conditions in their supply chains.
Take remedial action.	Principle 8 is focused on member companies' work with their suppliers to remediate in a timely and preventative manner.
Establish a complaints procedure.	Principle 6 requires that member companies and their suppliers have grievance mechanisms in place.
Implement due diligence obligations with regard to risks at indirect suppliers.	Principle 7.1 requires that member companies have a system to trace and collect data on their suppliers as well as subcontractors.
Document and report.	Principle 10.3 requires that member companies complete a standardized annual report regarding the companies' progress in the fulfillment of the Principles of Fair Labor and Responsible Sourcing.

As is evident in the above table, the systems and frameworks FLA member companies use to reach accreditation can assist them as they comply with the German Supply Chain Act, and/or prepare for other human rights due diligence (HRDD) regulations that may come into force. Companies seeking to be proactive in planning their responses to forthcoming regulation may wish to keep in

mind the essential elements of HRDD as set out by the Organization for Economic Co-operation and Development (OECD) in its [Due Diligence Guide for Responsible Business Conduct](#):

1. Embed responsible business conduct into policies and management systems;
2. Identify and assess adverse impacts;
3. Cease, prevent, and/or mitigate adverse impacts;
4. Track implementation and results;
5. Communicate how impacts are addressed; and
6. Provide for or cooperate with remediation when appropriate.

Additional resources on the German Supply Chain Act:

- [Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten](#) (Act on Corporate Due Diligence Obligations in Supply Chains). (n.d.) German Federal Ministry of Labour and Social Affairs.
- [Full text of the Supply Chain Act](#) (in English).
- King & Spalding. (2023, January 5). [Germany Becomes the Latest Country to Adopt Mandatory Human Rights Due Diligence Legislation](#).
- Löning. (October 2022). [Implementing the German Supply Chain Due Diligence Act](#).
- *Bundesamt für Wirtschaft und Ausfuhrkontrolle* (Federal Office for Economic Affairs and Export Control). (2022, August 17). [Germany: Enforcement authority BAFA releases guidelines on implementing risk analyses in the context of the Supply Chain Act](#). Business & Human Rights Resource Centre.

Additional resources on human rights due diligence:

- OECD. (2018). [OECD Due Diligence Guide for Responsible Business Conduct](#).
- OECD. (2018, March 7). [OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector](#).
- Business & Human Rights Resource Centre. (n.d.) [Human Rights Due Diligence & Impact Assessment](#).