

Your path to CSR compliance with regard to the
Lieferkettensorgfaltspflichtengesetz (LkSG) //
Supply Chain Due Diligence Act (SCDDA)

Route plan 8.1

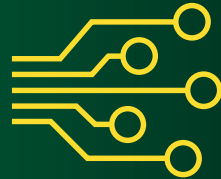
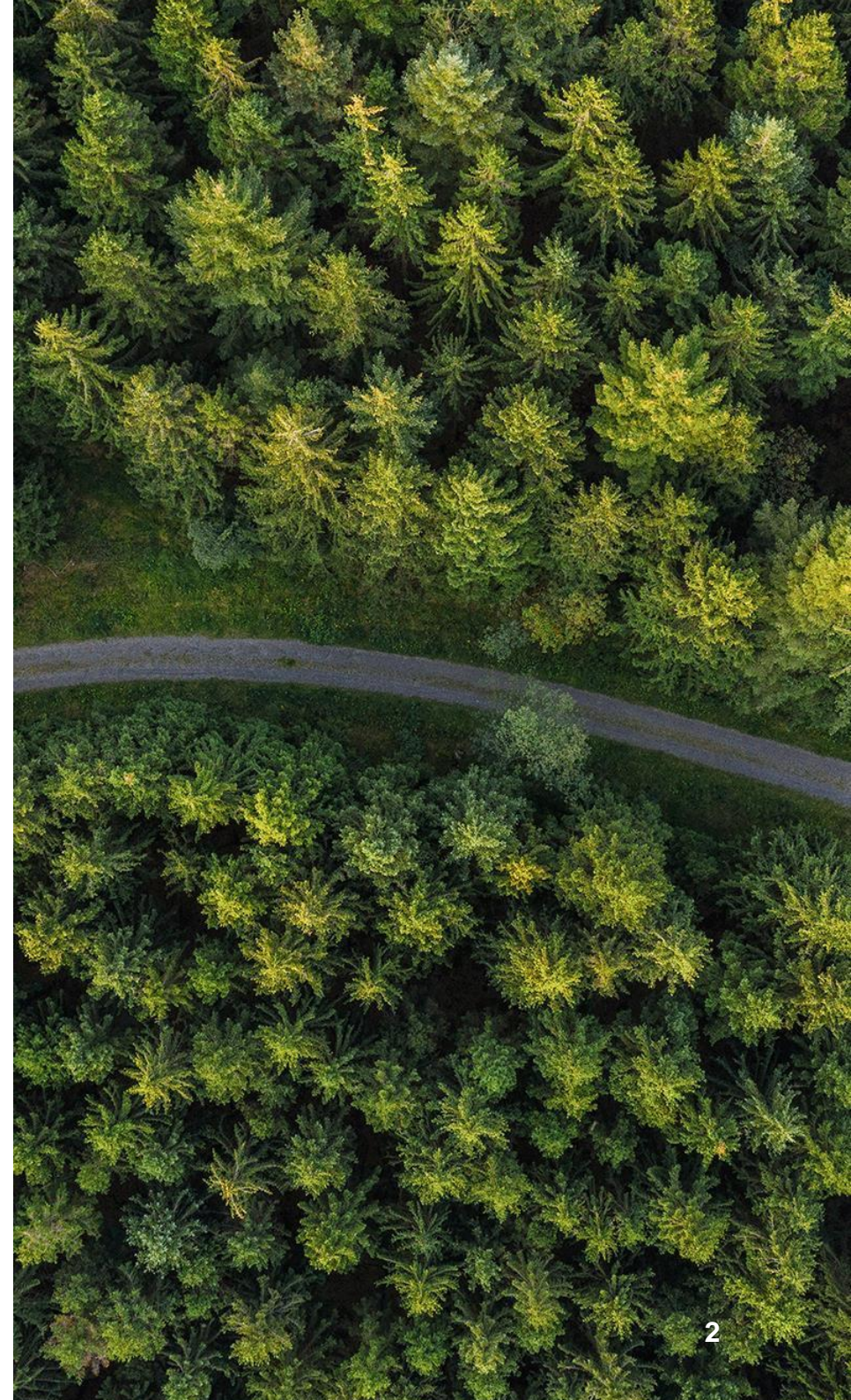


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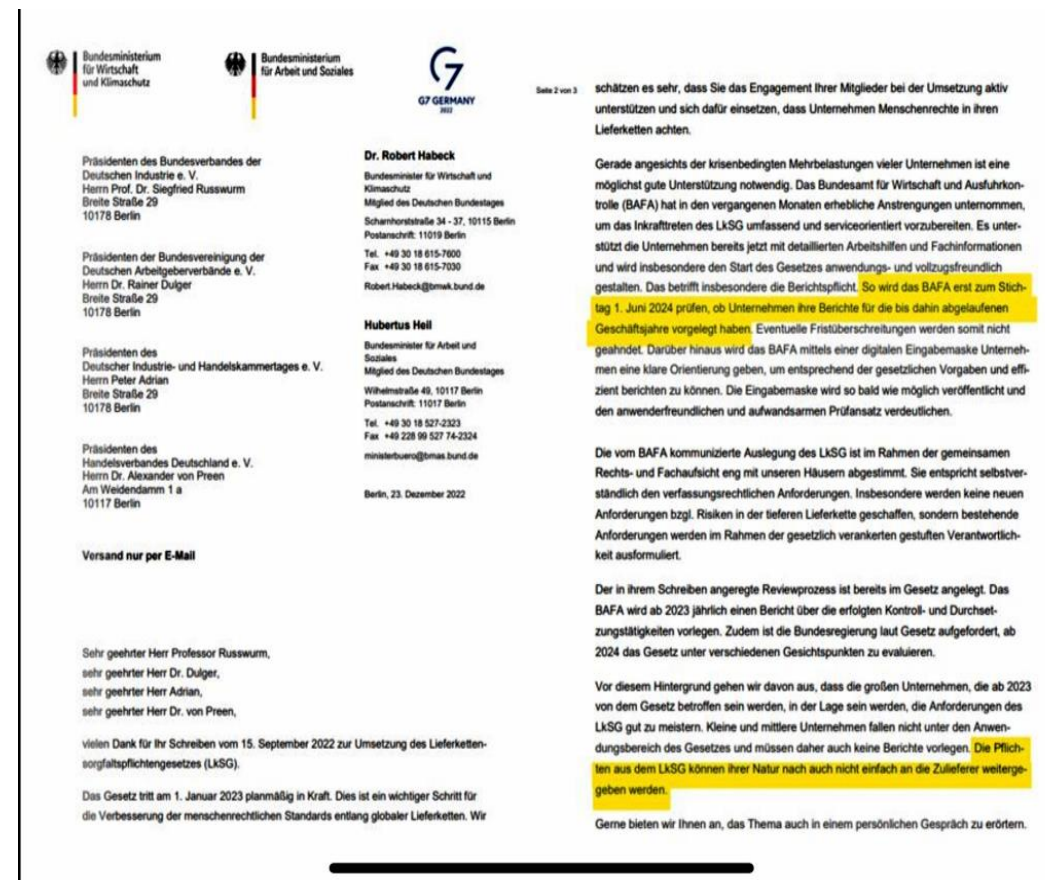


Summary

What is new ?

Recent developments

1. German Authority („BAFA“) Handouts Risk Analysis (August 2022), Questionnaire Report (October 2022), Handout Complaints Procedure (November 2022) **[see details below]**.
2. Suspension Discussion in the „Bundestag“ on 15.12.2022 with referral to committees¹
3. Handout Adequacy (23.12.2022) **[see below]**.
4. Letter from Ministries to economic associations on 23.12.2022 see here =>
5. Complaint mask at BAFA* activated in January
6. Update FAQ on 03.01.2023 and 27.02.2023°.
7. ...
8. ...
9. ...



¹ On 10.02.2023; The Bundesrat rejected the motion for a resolution of the Free State of Bavaria to suspend the entry into force of the #Lieferkettensorgfaltspflichtengesetz (#LkSG) (BR-Drs. 657/22). This corresponds to the recommendation of the Committee on Labour, Integration and Social Policy, the Committee on the Environment, Nature Conservation and Nuclear Safety and the Committee on Economic Affairs (BR-Drs. 657/1/22).

° Since December 2021, the first more concrete guidance on the interpretation of the LkSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found on the BMAS website (in November 2021, 09.02.2022, 28.04.2022, 25.10.2022, 03.01.2023 and 27.02.2023) **NEW SYNOPSIS 27.02.2023: <https://www.taylorwessing.com/de/insights-and-events/insights/2022/05/synopse-faq-zum-lieferkettensorgfaltspflichtengesetz>**

*https://www.bafa.de/DE/Lieferketten/Beschwerde_einreichen/beschwerde_einreichen_node.html;jsessionid=B35A2B0AE050FF7717F4EB4465EEFBF0.1_cid362

Relevant issues summarised (I)*

Scope and "hot" questions

1. **Group (ultimate) parent companies domiciled in Germany (including pure financial holding companies)** must have all employees of all subsidiary and sub-subsidiary companies working in Germany attributed to them (section 1(3)); they fall within the scope of the 2023 (or 2024) Act if this **attribution** results in 3,000 (or 1,000) employees or more (only few reduce application to companies with operative functions).
2. **There is no attribution to intermediate holding companies or intermediate parent companies**; if the ultimate parent company is located abroad, there is no attribution and the law only applies to companies in Germany that exceed the above-mentioned employee thresholds. Also, **determining influence** (the following points are to be considered in an overall view, e.g. a large majority shareholding, the existence of a group-wide compliance system, the assumption of responsibility for the control of core processes in the processes in the subsidiary, a corresponding legal constellation in which the possibility of exerting influence is inherent, overlapping personnel on management level, a decisive influence on the supply chain management of the subsidiary, influence via the shareholders' meeting, or that the business area of the subsidiary of the subsidiary is the same as that of the parent company, for example because the subsidiary produces the same products or provides the same services). **can only be exercised by the ultimate parent company (disputed).**
3. **Group parents** domiciled in Germany who have a determining influence (§ 2 para. 6) on daughters or grandchildren must, in **addition to the mother's, daughter's and grandchild's own business area, also audit all indirect and direct suppliers of these daughters and grandchildren (in Germany and abroad)** (although the law would certainly allow for differentiations) *[this seemed to be reconsidered by the BMAS, as in February 2022 the relevant no. IV. 8. had disappeared from the FAQ - but BAFA's handouts (e.g.: risk analysis and also report) still provide for this].*
4. Unclear what is „**necessary**“ [erforderlich] in the supply chain (§ 2 para. 5) and what is „**required**“ [notwendig] in terms of direct or indirect suppliers (§ 2 paras. 7 and 8).
5. The obligations apply to all direct and indirect purchases of goods and services and to all third party and own brands, although the law would certainly allow for differentiations and **trade is** not actually mentioned (§ 2 para. 7 and 8); moreover, there is a tendency to interpret the **supply chain** broadly, even though it is not actually mentioned in the relevant obligations (see the relevant 9 obligations on (1) Establishment of risk management (§ 4 para.1), (2). Establishment of an in-house responsibility (§ 4 para. 3), (3). Carrying out regular risk analyses (§ 5), policy statement (§ 6 para. 2), (5). Establishing preventive measures within the own business unit (§ 6 par. 1 and 3) and towards direct suppliers (§ 6 par. 4), (6). Taking corrective measures (§ 7 paras. 1 to 3), (7.) Establishing a complaints procedure (§ 8), (9) Due diligence obligations with regard to risks at indirect suppliers (§ 9) and (9.) Documentation (§ 10 para. 1) and reporting (§ 10 para. 2). Nevertheless, BAFA believes that the **occasion-related (ad hoc) risk analysis must go into the entire supply chain** (§ 5 para. 4).
6. If **mothers and daughters** in Germany fall under the law, **both must separately comply with the LkSG** and file separate **reports**; however, they may assume certain functions for each other or coordinate (however, centralising compliance functions leads to determining influence and increases the scope of the company in question, as 3. above).
7. And others more > see route plan.

° Since December 2021, the first more concrete guidance on the interpretation of the LkSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found on the BMAS website (in November 2021, 09.02.2022, 28.04.2022, 25.10.2022, 03.01.2023 and 27.02.2023) **NEW SYNOPSIS 27.02.2023:** <https://www.taylorwessing.com/de/insights-and-events/insights/2022/05/synopse-faq-zum-lieferkettensorgfaltspflichtengesetz>

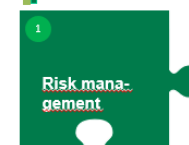
*See the current detailed route plan of Taylor Wessing...on the website <https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act> or on request.

Relevant issues summarised (II)*

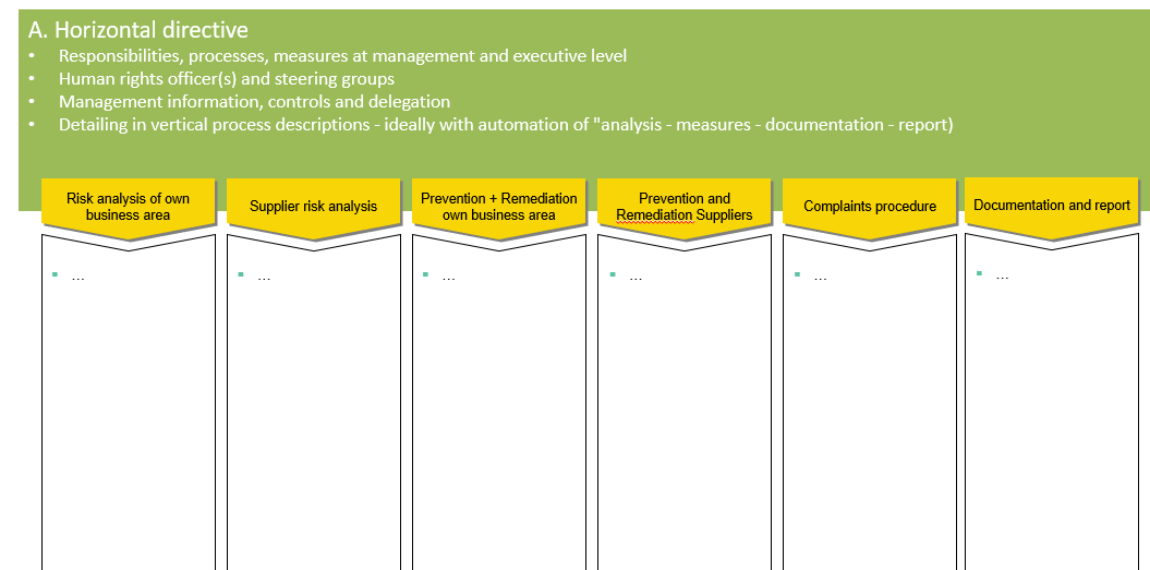
Risk Management and Human Rights Officer (HRO)

1. Must be in place **at the start in 2023 (2024)**
2. Human rights officer is a **recommendation**, not an obligation - **strategic and operational questions arise** [(1) Strategic advantages and disadvantages of centralised/decentralised HRO and number of HROs; (2) Strategic advantages and disadvantages of HRO in management function / outside management function and if so, where (compliance, legal, ESG, purchasing, etc.).(3) Strategic advantages and disadvantages of management with horizontal delegation and HRO with vertical delegation and active definition of residual responsibility; (4) Strategic advantages and disadvantages of HRO with monitoring or also with implementation tasks or specifications of analyses and measures (keyword neutrality and understanding as 1st or 2nd line); (5) Strategic advantages and disadvantages of HROs in the management function / outside the management function and if so where (compliance, legal, ESG, purchasing, etc.). (5) Strategic advantages and disadvantages of HRO as contact person for BAFA (would have to be named according to § 17 para. 2 LKSG); (6) Solution of possible conflicts of interest (e.g. if HRO is active in purchasing); (6) Strategic advantages and disadvantages of HRO as contact person for BAFA (would have to be named according to § 17 para. 2 LKSG). if HRO is active in purchasing); (7) Weighing up the delimitation of tasks HRO and steering committee; (8) Comparison of experiences from data protection, immission control, SGB, ASiG, WHG, KrWG in distinction to GWG, export control, 3TG; (9) Filter of risks escalated to HRO and further escalated by HRO in comparison to risks remaining at the operational level or with HRO; (10) Questions of works constitution law; (11) Labour law privileges and insurance environment.
3. Needs **horizontal guideline** (responsibility, structures, processes) and **vertical procedure descriptions** (operational procedures, measures, documentation)
4. Ideally, the **report** writes itself in parts "automatically" from the **documentation** and the process descriptions and guidelines.

4. and: § 4 - Establish risk management



B. Vertical
standard
operating
procedure
descriptions
(SOPs, VAs, etc.)



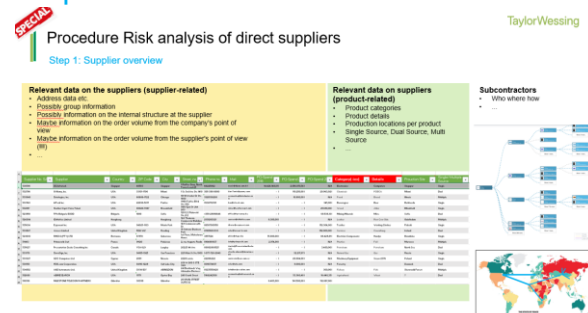
*See the current detailed route plan of Taylor Wessing...on the website <https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act> or on request.

Relevant issues summarised (III)*

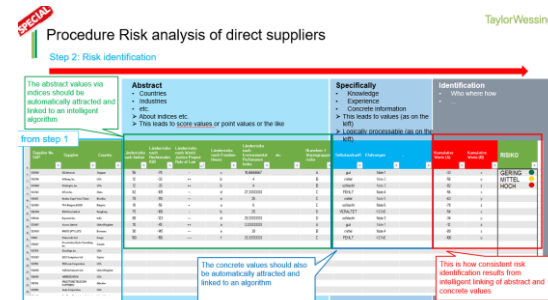
Risk analysis (annual & occasion-related (ad hoc) & appropriate)

1. The handout had a **mixed reception** (a lot of repetition, little that goes further in concrete terms, questionable legal opinions, etc.).
2. However, it probably needs **4 steps** in its own business area and with the direct suppliers (See slides below):

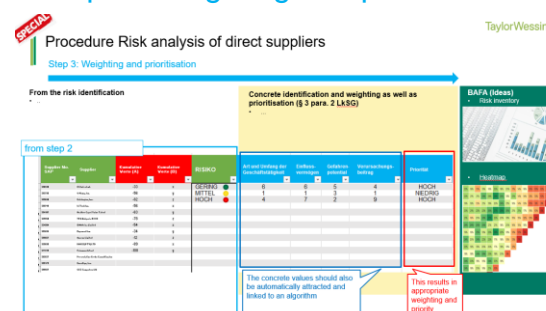
Step 1: Overview



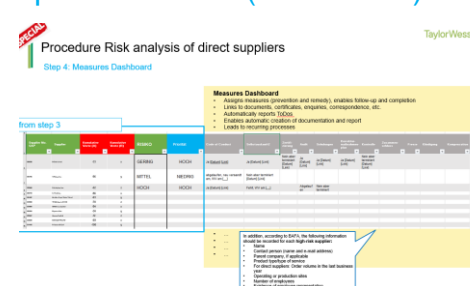
Step 2: Risk identification abstract and concrete



Step 3: Weighting and prioritisation



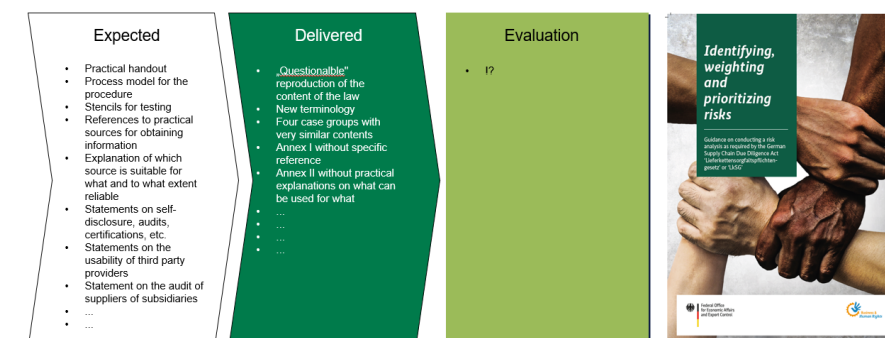
Step 4: Measures (Dashboard)



BAFA published a **handout on risk analysis** in August 2022 (also available in english):

https://www.bafa.de/DE/Lieferketten/Risikoanalyse/risikoanalyse_node.html

BAFA Risk Analysis Handout - **Expectations fulfilled !?**



BAFA has also announced a **handout on adequacy (appropriateness)**:

https://www.bafa.de/SharedDocs/Pressemitteilungen/DE/Lieferketten/2022_06_handreichung.html

4. **Guidance on adequacy (appropriateness)** is still awaited; consists of (1.) the nature and extent of the company's business activities, (2.) the company's ability to influence the direct perpetrator of a human rights or environmental risk or the violation of a human rights or environmental obligation, (3.) the typical expected severity of the violation, the reversibility of the violation and the likelihood of the violation of a human rights or environmental obligation, and (4) the nature of the company's contribution to the causation of the human rights or environmental risk or violation of a human rights or environmental obligation.

5. ...

*See the current detailed route plan of Taylor Wessing...on the website <https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act> or on request.

Relevant issues summarised (IV)*

Adequacy

1. The **concept of adequacy (reasonableness)** is central, it is used 19 times in the Act (section 2 subsection 2 no. 8 on reasonable wages and duties of care, partly several times in the paragraph, in section 3 subsection. 1, § 3 para. 2, § 4 para. 1, § 4 para. 4, § 5 para. 1, § 5 para. 2, § 6 para. 1, § 6 para. 3, § 6 para. 4, § 7 para. 1, § 8 para. 1, § 9 para. 3, § 13 para. 2, § 22 para. 1)°.
2. BAFA also generally links it to **effectiveness** (probably because of § 4 par. 1 on risk management), although the pairing of terms only occurs twice in § 4 - otherwise the word "effective" is found 5 times (§ 6 par. 5, § 7 par. 4, § 8 par. 4 and 5, § 10 par. 2 no. 3).
3. **Adequacy in analysis also in obtaining the information** ("communicating tubes") = where more influence, causation, severity, type and scope, there also more care in obtaining the information for analysis
4. Adequacy in all 9 duties....
5. ...

BAFA also issued a handout on adequacy on 23.12.2022:

https://www.bafa.de/SharedDocs/Downloads/DE/Lieferketten/handreichung_angemessenheit.html



In part, reference is made (as in § 5 para. 1) to an appropriate risk analysis according to paras. 2 to 4 and in the referred para. 2 it is pointed out again that the weighting and prioritisation must be appropriate, whereby § 3 para. 1 already refers to an appropriate risk analysis in sentence 2 and sentence 2 no. 3, so that this is subject to a quasi threefold postulate of appropriateness. The legislator has distributed the word quite generously in the text.

*See the current detailed route plan of Taylor Wessing...on the website <https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act> or on request.

Relevant issues summarised (V)*

Preventive measures (immediate & appropriate)

1. **Policy statement** may already make sense at the beginning of 2023
2. **Measures** are well indicated in the questionnaire accompanying the report,

... both in their **own business area**, as well as



B 2.2 What preventive measures were implemented in the reporting period to prevent and minimise the priority risks in your own business area?

- 171. conducting training in relevant business areas
- 172. implementation of risk-based control measures
- 173 Other/further measures

.... vis-à-vis **direct suppliers**



What prevention measures were implemented in the reporting period to prevent and minimise the priority risks at direct suppliers?

- 197. developing and implementing appropriate procurement strategies and practices.
- 198. integration of expectations in supplier selection
- 199. obtain contractual assurances for compliance and implementation of expectations along the supply chain.
- 200. training and further education to enforce the contractual assurance.
- 201. agreeing and implementing risk-based control measures
- > *If the answer 197. has been selected, describe*
- 205. The measures implemented and to what extent the determination of delivery times, of purchase prices or the duration of contractual relationships have been adjusted.
- 206. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.
- 207. the extent to which the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- > *If at least one of the answers from 198. to 202. was selected, describe in each case*
- 208. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
- 209. How the measures contribute to the prevention and minimisation of the priority risks.
- 210. To what extent the interests of potential stakeholders and/or their legitimate representatives have been taken into account in the design and implementation of the measures.

...and towards **indirect suppliers**



What prevention measures were implemented for the reporting period to prevent and minimise the priority risks at indirect suppliers?

- 229. developing and implementing appropriate procurement strategies and practices.
- 230. implementation of risk-based control measures
- 231. supporting the supplier in preventing and minimising the risk
- 232. implementation of sectoral or cross-sectoral initiatives

BAFA submitted a questionnaire on the report in October 2022:
https://www.bafa.de/DE/Lieferketten/Berichtspflicht/berichtspflicht_node.html

Lieferkettensorgfaltspflichtengesetz (LkSG)
 Fragenkatalog zur Berichterstattung
 gemäß § 10 Abs. 2 LkSG

*See the current detailed route plan of Taylor Wessing...on the website <https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act> or on request.

Relevant issues summarised (VI)*

Remedial action (immediate & appropriate) = prevent, stop, minimise immediately or for a specific period of time with a specific plan.

- Measures are well indicated in the questionnaire accompanying the report,

... both in their **own business area**, as well as

.... vis-à-vis **direct suppliers**

[C2] Findings of violations and corrective actions at direct suppliers

C2.1 Were any violations detected at direct suppliers during the reporting period?

293. yes 294. no > If no, describe

295. What procedures can be used to identify violations at direct suppliers?

> If yes, describe

296. What procedures can be used to identify violations at direct suppliers?

297. On what basis the violations identified were weighted and prioritised and what trade-offs were made in doing

298. Your organisation's approach to ensuring that remedial action can be taken in the event of breaches and that i

299. To what extent the interests of potentially affected persons and/or their legitimate representatives have been

> If yes, in which topics were violations identified at direct suppliers? You can voluntarily indicate the number of vio

> If 293. yes was selected, have you taken appropriate remedial action?

313. yes 314. no > If no is selected

315. give reasons for your answer

> If Yes is selected, describe the appropriate remedial action you have taken and also describe

316. what remedial actions have been taken, in particular what trade-offs have been made with regard to the selec

317. how the effectiveness of the measures will be reviewed

318. To what extent the interests of potentially affected persons and/or their legitimate representatives have been

319. If yes, in which topics were violations identified at indirect suppliers? You can voluntarily indicate the number of vio

320. If 319. yes was selected, have you taken appropriate remedial action?

> If 293. yes was selected, have you analysed to what extent the identified violation is an indication for a possible need to

322. describe the process, outcomes and consequences

[C2 ? MISSING in BAFA questionnaire]

...and towards **indirect suppliers**

Findings of violations and remedial actions at indirect suppliers

C3.1 Were any violations detected at indirect suppliers during the reporting period?

335. yes 336. no > If no, describe

337. What procedures can be used to detect violations in indirect suppliers?

> If yes, describe

338. What procedures can be used to detect violations in indirect suppliers?

339. On what basis the violations identified were weighted and prioritised and what trade-offs were made in doing so.

340. what remedial actions, if any, have been taken and, in particular, what trade-offs have been made with respect to the selection and design of measures under the relevant cessation and minimisation approaches

341. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

> If Yes was selected, in which topics were violations detected at direct suppliers? You can voluntarily indicate the number of violations per topic. [M1-U3]

C3.2 Were there any violations at indirect suppliers during the reporting period that could not be terminated within a foreseeable period of time?

355. yes 356. no > If yes, describe

357. The cases where violations could not be terminated are structural challenges which are longer term etc.

358. Whether and, if so, what long-term remedial measures have been taken, in particular what trade-offs have been made with regard to the selection and design of the measures within the framework of the corresponding follow-up concepts for cessation or minimisation.

359. How the effectiveness of the measures is reviewed

360. the extent to which the interests of potentially affected people and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

[C1] Findings of violations and corrective actions in own business area

C1.1 Were any violations detected in your own business area during the reporting period?

261. yes, only at home 262. yes, only abroad 263. yes, at home and abroad 264. no; > If no, describe

265. What procedures can be used to identify violations in its own business area.

> If yes, describe

266. Which procedures can be used to identify violations in its own business area?

267. Your company's approach to ensuring that remedial action can be taken in the event of breaches and that their implementation is effective.

268. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

> If yes, in which topics were violations identified in your own business area? You can voluntarily indicate the number of violations per topic. [M1-U3]

> If one of the answers from 261. to 263. was selected, have you taken remedial action?

282. yes 283. no > If no is selected

284. give reasons for your answer

> If Yes is selected, describe the appropriate remedial action you have taken and also describe

285. The cases in which violations could not be terminated and where they occurred.

286. What long-term remedial actions have been taken, in particular what trade-offs have been made with respect to the selection and design of the measures in the context of the relevant follow-up approaches to cessation or further minimisation.

287. How the effectiveness of the measures is reviewed

288. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

> If 282. yes was selected, did the remedial action result in the cessation of the violation?

289. yes 290. partly 291. no

> If one of the answers from 261. to 263. was selected, have you analysed to what extent the identified violation is an indication of a possible need to adapt/supplement existing prevention measures?

Describe the process, outcomes and consequences.

BAFA submitted a questionnaire on the report in October 2022:
https://www.bafa.de/DE/Lieferketten/Berichtspflicht/berichtspflicht_node.html

Lieferkettenorgfals-
pflichtengesetz (LkSG)
Fragenkatalog zur Berichterstattung
gemäß § 10 Abs. 2 LkSG

Relevant issues summarised (VII)*

Complaints procedure

1. Must be available as early as **2023** (2024)
2. The **handout** is very useful
3. Should give **internal procedural instructions** (who, what, how, where, impartiality, confidentiality, freedom from instructions, protection, etc.).
4. Needs **external rules of procedure** (who, what, how, where, how long, protection, etc.)
5. Needs **certain procedural steps** to set up and monitor and adapt and implement (communicating tubes to risks and stakeholders)
6. ...and should be **barrier-free** for all potentially affected persons as a target group (affected by economic actions of companies, direct suppliers, indirect suppliers).
7. ...

> BAFA published a **handout on the complaints procedure** in October 2022:
https://www.bafa.de/DE/Lieferketten/Beschwerdeverfahren/beschwerdeverfahren_node.html?jsessionid=118A6ED7C609585B093B5CA0EF697570.2_cid387

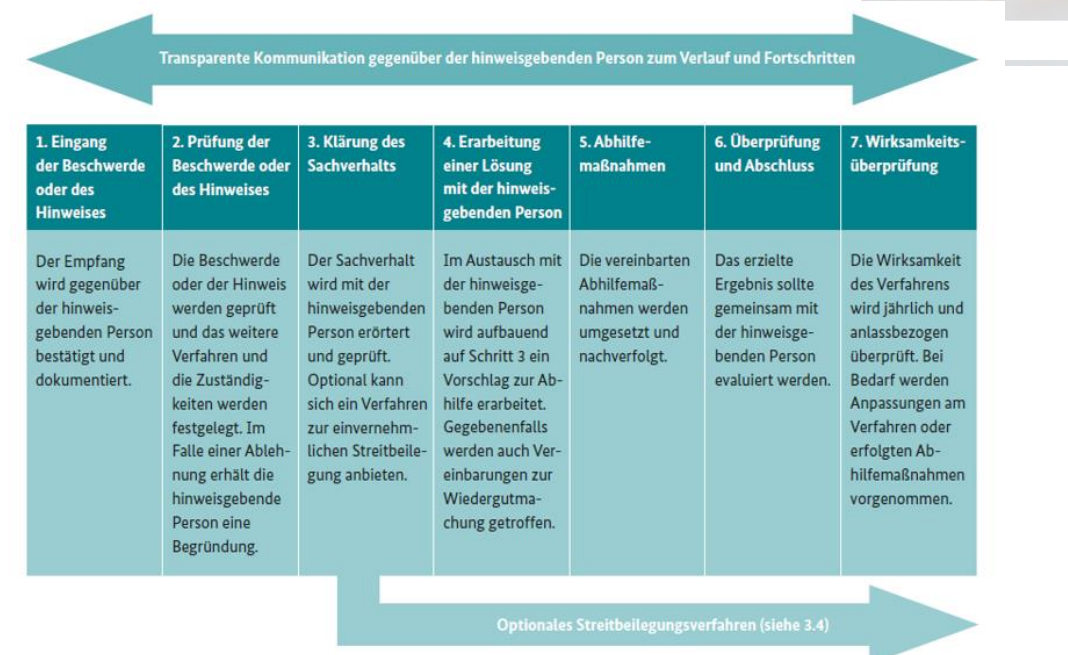


Abbildung 2: Beispielhafter Ablauf eines Beschwerdeverfahrens⁷

*See the current detailed route plan of Taylor Wessing...on the website <https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act> or on request.



Relevant issues summarised (VIII)*

Indirect suppliers

1. ...as above with **substantiated knowledge**
2. ...strange location of the inclusion of the information on the indirect supplier (in § 9 instead of § 8)

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Relevant issues summarised (IX)*

Documentation and report

1. **Documentation** ongoing
2. **Report** in the first quarter (plus 1 month) after the end of the financial year
3. Report to be submitted **electronically** to BAFA
4. Publish report on **website**
5. Questionnaire with **437 questions based** on the structure of the law (not on the "topic", e.g. this and that risk and these and those measures with these and those results,,,).
6. ... "now" you know what's coming up in the exam
7. ...everyone will know what you did and what you didn't do...

BAFA submitted a questionnaire on the report in October 2022:
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Application

Application for groups and holdings - in a nutshell:

According to the current interpretation of the law by BAFA and BMAS*:

1. Group (ultimate) parent companies domiciled in Germany (including pure financial holding companies) must have all employees of all subsidiary and sub-subsidiary companies working in Germany attributed to them; they fall within the scope of the 2023 (or 2024) Act if this attribution results in 3,000 (or 1,000) or more (only few reduce application to companies with operative functions).
2. There is no attribution to intermediate holding companies or intermediate parent companies; thus, if the parent company is located abroad, there is no attribution and the law only applies to companies in Germany that for themselves exceed the above-mentioned employee thresholds.
3. Group parents domiciled in Germany (also pure financial holding companies) that have a determining influence (the following points are to be considered in an overall view, e.g. a large majority shareholding, the existence of a group-wide compliance system, the assumption of responsibility for the control of core processes in the processes in the subsidiary, a corresponding legal constellation in which the possibility of exerting influence is inherent, overlapping personnel on management level, a decisive influence on the supply chain management of the subsidiary, influence via the shareholders' meeting, or that the business area of the subsidiary of the subsidiary is the same as that of the parent company, for example because the subsidiary produces the same products or provides the same services) on „daughters or grandchildren“ must, in addition to the own business of the mother, daughter and grandchild, also examine all indirect and direct suppliers of these daughters and grandchildren (in Germany and abroad) (although the law would certainly allow for differentiations) *[however, the BMAS seems to be reconsidering this, as in February 2022 the relevant item IV. 8. had disappeared from the FAQ - but BAFA's handouts (e.g.: risk analysis and also report) still provide for this]]*. Unclear what is “necessary”[*erforderlich*] in the supply chain (§ 2 para. 5) and what is “required” [*notwendig*] in terms of direct or indirect suppliers (§ 2 paras. 7 and 8) and how relevant “supply chain” definition is. Also unclear if “trade” falls within the scope.
4. If mothers and daughters in Germany fall under the law, both must separately comply with the LkSG and file separate reports; however, they may assume certain functions for each other or coordinate (however, centralising compliance functions leads to determining influence and increases the scope of the company in question, as above 3.).
5. The obligations apply to all direct and indirect purchases of goods and services and to all third party and own brands, although the law would certainly allow for differentiation

> This needs to be discussed strategically and tactically....

° Since December 2021, the first more concrete guidance on the interpretation of the LkSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found on the BMAS website (in November 2021, 09.02.2022, 28.04.2022, 25.10.2022, 03.01.2023 and 27.02.2023) **NEW SYNOPSIS 27.02.2023:** <https://www.taylorwessing.com/de/insights-and-events/insights/2022/05/synopsis-faq-zum-lieferkettensorgfaltspflichtengesetz>

*See the current detailed route plan of Taylor Wessing...on the website <https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act> or on request.

Scope of application and crucial legal questions

To be resolved:

- What Company?
- Employees in Germany?
- Ultimate Parent Company?
- Supply Chain?
- Necessary for Manufacture?
- Own Business Area?
- Determining Influence?
- Supply Chain?
- Direct Supplier?
- Required for Manufacture?
- Trade?
- Provision of and Use of relevant service?
- ...

Gesetz
über die unternehmerischen Sorgfaltspflichten in Lieferketten

Vom 16. Juli 2021

§ 1

§ 1

Scope of application

(1) This Act shall apply to enterprises, irrespective of their legal form, which

1. have their head office, their principal place of business, their administrative headquarters or their registered office in Germany and
2. generally employ at least 3,000 employees in Germany; employees posted abroad are included.

Notwithstanding sentence 1 number 1, this Act shall also apply to enterprises, irrespective of their legal form, which

1. have a branch office in Germany pursuant to § 13d of the Commercial Code and
2. usually employ at least 3,000 employees in Germany.

As of 1 January 2024, thresholds in sentence 1 number 2 and sentence 2 number 2 shall each be 1,000 employees.

(2) Temporary agency workers shall be taken into account in the calculation of the number of employees (subsection 1, sentence 1, number 2 and sentence 2, number 2) of the user enterprise if the duration of the assignment exceeds six months.

(3) Within affiliated companies (§ 15 of the Stock Corporation Act), the employees of all group companies employed in Germany shall be taken into account when calculating the number of employees (subsection 1, sentence 1, number 2) of the umbrella company; employees posted abroad shall be included.

§ 2

(5) The supply chain within the meaning of this Act refers to all products and services of an enterprise. It includes all steps in the country and abroad that are necessary for the manufacture of the products and the provision of the services, starting with the extraction of the raw materials up to the delivery to the end customer and includes

1. the actions of a company in its own business area,
2. the actions of a direct supplier, and
3. the actions of an indirect supplier.

(6) Own business within the meaning of this Act includes any activity of the entity of the enterprise to achieve the objective of the enterprise. This includes any activity for the manufacture and utilisation of products and for the provision of services, irrespective of whether it is carried out at a location in Germany or abroad. In affiliated enterprises, an enterprise belonging to the group is included in the own business area of the umbrella company if the umbrella company exercises a determining influence on the enterprise belonging to the group.

(7) For the purposes of this Act, a direct supplier is a partner to a contract for the supply of goods or the provision of services whose supplies are required for the manufacture of the enterprise's product or the provision and use of the relevant service.

(8) For the purposes of this Act, an indirect supplier means any enterprise which is not a direct supplier and whose supplies are required for the manufacture of the enterprise's products or for the provision and use of the relevant service.

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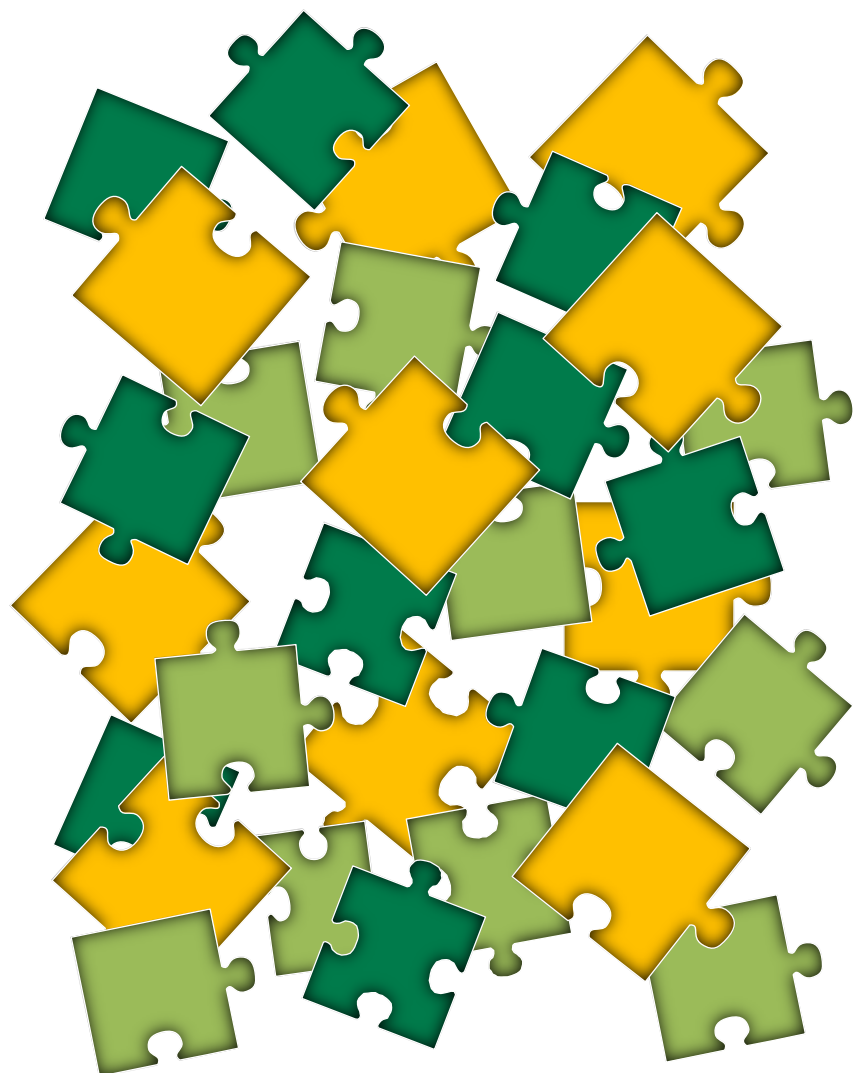
Scope of application



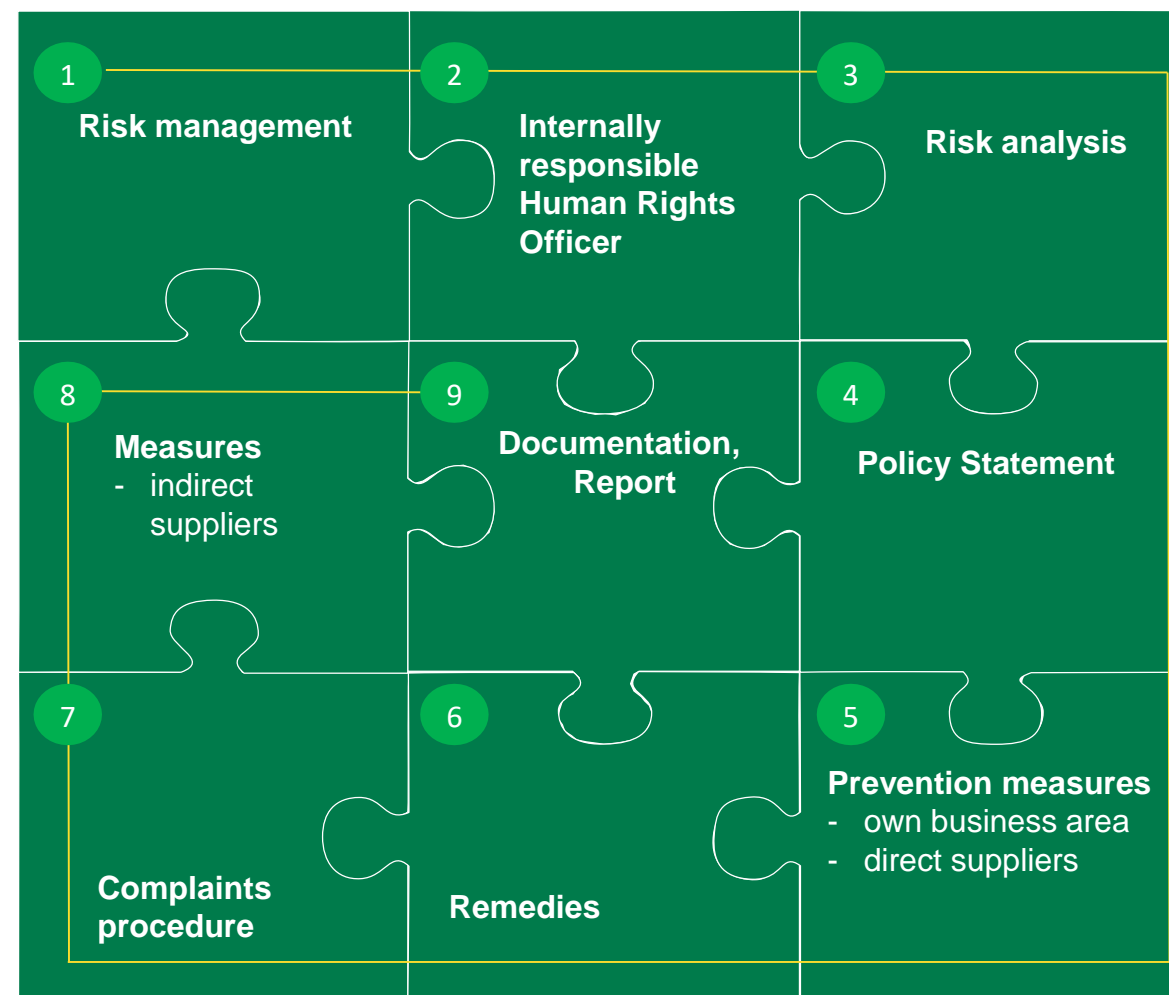
Overview

Due diligence obligations according to SCDDA* at a glance

Human rights and environmental risks (§ 2)



Due diligence obligations (§ 3)





Due diligence

"Protected legal position"

§ 2 para. 1 LkSG: concluding reference to **internationally recognised conventions in the annex**, there the first 11 of 14 conventions

Human rights risks

Sec. 2 (2) LkSG: reference to **internationally recognised agreements**, in particular ILO core labour standards, but also **mere regulation in the LkSG**

1. child labour below the minimum permitted age (at least 15 years), ILO 138 + national
2. worst forms of child labour for children under 18, ILO 182
3. forced labour, ILO 29 + 1966 Covenant
4. slavery, practices similar to slavery
5. disregard of occupational health and safety, national law
6. disregard for freedom of association (trade unions)
7. discrimination (descent, disability, age, gender, religion, et al)
8. withholding adequate wages, national law
9. causing harmful soil degradation, water and air pollution, harmful noise emissions and excessive water consumption
10. unlawful eviction as well as deprivation of land, forests, waters
11. use of security forces, if this results in harm to life, limb, freedom of association or union
12. catch-all clause, for unlawful serious impairment of protected position

Environmental risks

Section 2(3) of the LkSG: reference to **internationally recognised agreements**:

- 1, 2, 3: Mercury: Minamata Convention (risks from involvement in the production and disposal of mercury-containing products)
- 4: Chemicals: PoPs Convention (risks from the production or use of certain persistent organic pollutants)
- 5: Waste: PoPs Convention
- 6, 7, 8: Waste: Basel Convention (risks arising from the import and export of waste)

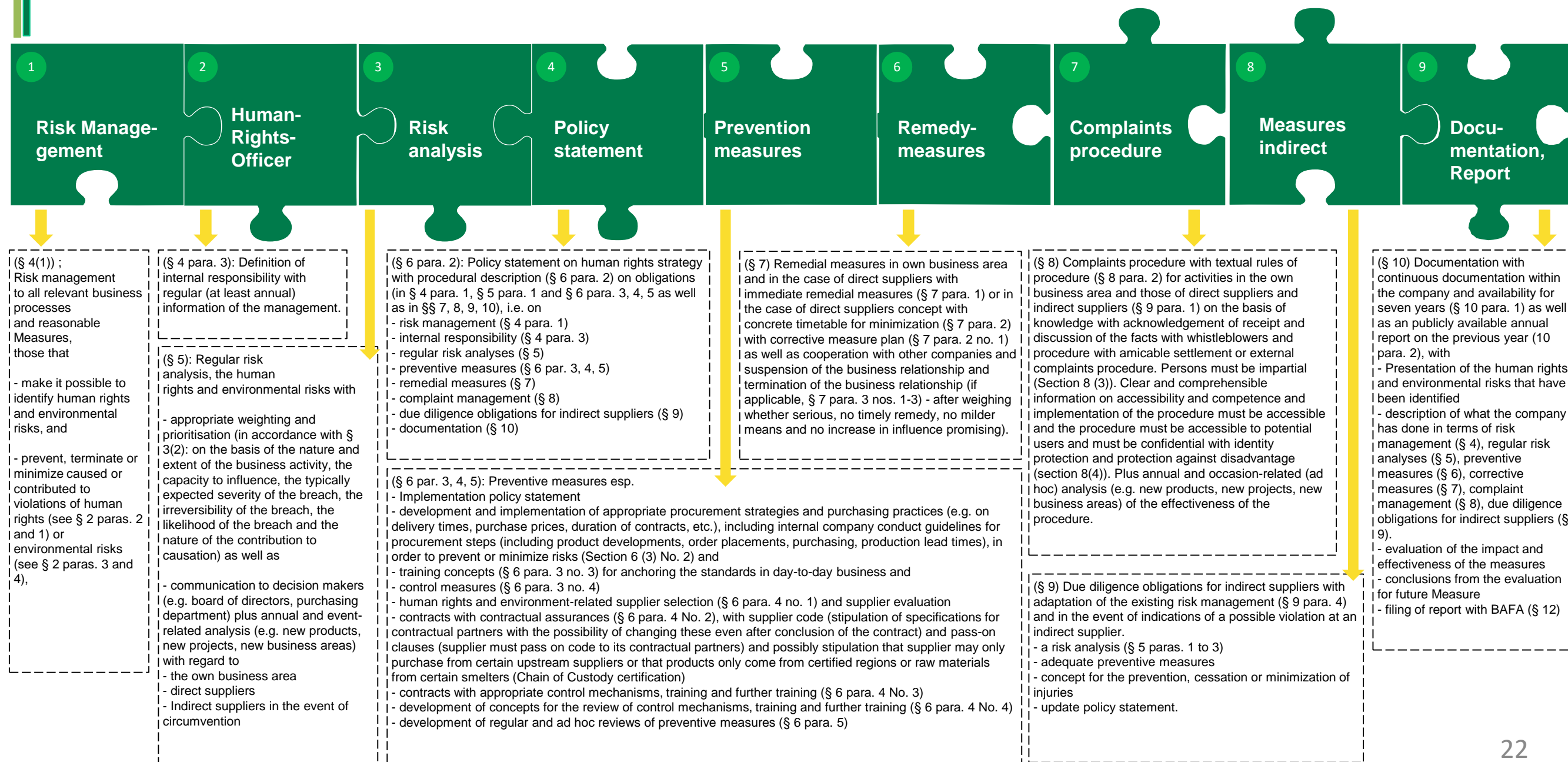
Appendix

Attachment

(to § 2 paragraph 1, § 7 paragraph 3 sentence 2) – Conventions (300 pages in total; Nos. 1 to 11 are 116 pages)













1. Convention No 29 of the International Labour Organisation 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 International Labour Organisation Convention No. 29 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 Organisation 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 Organisation 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 Organisation of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (BGBl. 1956 II pp. 23, 24) (ILO Convention No 100)
6. Convention No 105 of the International Labour Organisation of 25 June 1957 concerning the abolition of forced labour (BGBl. 1959 II pp. 441, 442) (ILO Convention No 105)
7. Convention No 111 of the International Labour Organisation of 25 June 1958 concerning discrimination in respect of employment and occupation (BGBl. 1961 II pp. 97, 98) (ILO Convention No 111)
8. Convention No 138 of the International Labour Organisation 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 Organisation of 17 June 1999 concerning the prohibition and immediate Measure 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 p. 803, 804) (POPs Convention), as last amended by the Decision of 6 May 2005 (Federal Law Gazette 2009 II p. 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 p. 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 p. 306/307)

The obligations (§§ 3 ff.) in detail



...more info

The explanatory memorandum to the law refers in § 3 para. 1 to a further 1100 pages on the

 1 UN-Leitprinzipien-Wirtschaft und Menschenrechte 2011 48 Seiten D	1.088 KB
 2 Nationaler Aktionsplan 2016 32 Seiten D	698 KB
 3 OECD Leitsätze für multinationale Unternehmen 2011 106 Seiten D	1.159 KB
 4 The Corporate Responsibility to Respect Human Rights. An Interpretive Guide 2012 98 Seiten kein D	2.647 KB
 5 Corporate human rights due diligence. Getting started, emerging practices, tools and resources Companion Paper II 2018 27 nur E	1.073 KB
 6 OECD-Due Diligence Guidance for Responsible Business Conduct 2018 104 Seiten auch auf D	8.777 KB
 7 OECD Leitfaden Minereale aus Konflikt- und Hochrisikogebieten dritte Fassung 2019 132 Seiten auch auf D	2.210 KB
 8 OECDFAO-Leitfaden für verantwortungsvolle landwirtschaftliche Lieferketten 2016 90 Seiten auch auf D	2.713 KB
 9 OECD-Leitfaden konstruktive Shareholderbeteiligung im Rohstoffsektor 2017 132 Seiten auch D	2.992 KB
 10 OECD-Leitfaden Lieferketten in Bekleidungs- und Schuhwarenindustrie 2020 192 Seiten auch D	3.320 KB
 11 OECD Verantwortungsvolles Handeln für institutionelle Investoren 2018 66 Seiten auch D	2.384 KB
 12 Die Erfüllung der Sorgfaltspflicht für verantwortungsvolles Firmenkreditgeschäft 2019 78 Seiten auch D	3.326 KB

And: since December 2021, the first more concrete information on the interpretation of the LkSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found (without date, version name or author name, etc. - but with copyright notice) on the website: <https://www.csr-in-deutschland.de/DE/Wirtschaft-Menschenrechte/Gesetz-ueber-die-unternehmerischen-Sorgfaltspflichten-in-Lieferketten/FAQ/faq.html%3Bjsessionid%3D84DDC33F2F10B38A37AC092B9E6BF0CA#doc957658bodyText2>

> The text of the FAQ changes in the background (first in February 2022 and then last time in April 2022)...See our [synopsis \[click\]](#) on this here.

You need people, processes and documents - rough overview



People

Management

Human Rights Commissioner

Purchasing department

Compliance Department

Legal Department

CSR Department



Processes

Regular risk analysis

Risk management

Procurement strategy

Technical business partner check

Technical Supply Chain Traceability

Approval process suppliers

Purchasing Practice

Preventive and corrective measures

Complaints procedure

Information Management

Documentation

Reporting

Training concept



Documents – content of toolbox



Policy Statement ✓

Code of Conduct ✓

Supplier Code ✓

Guideline sustainable procurement / supplier selection / review ✓

Approval process suppliers ✓

Questionnaire Suppliers / Compliance Questionnaire ✓

Corrective measure plan as remedial measure ✓

Checklist sustainable contract design ✓

Rules of procedure Appeal procedure ✓

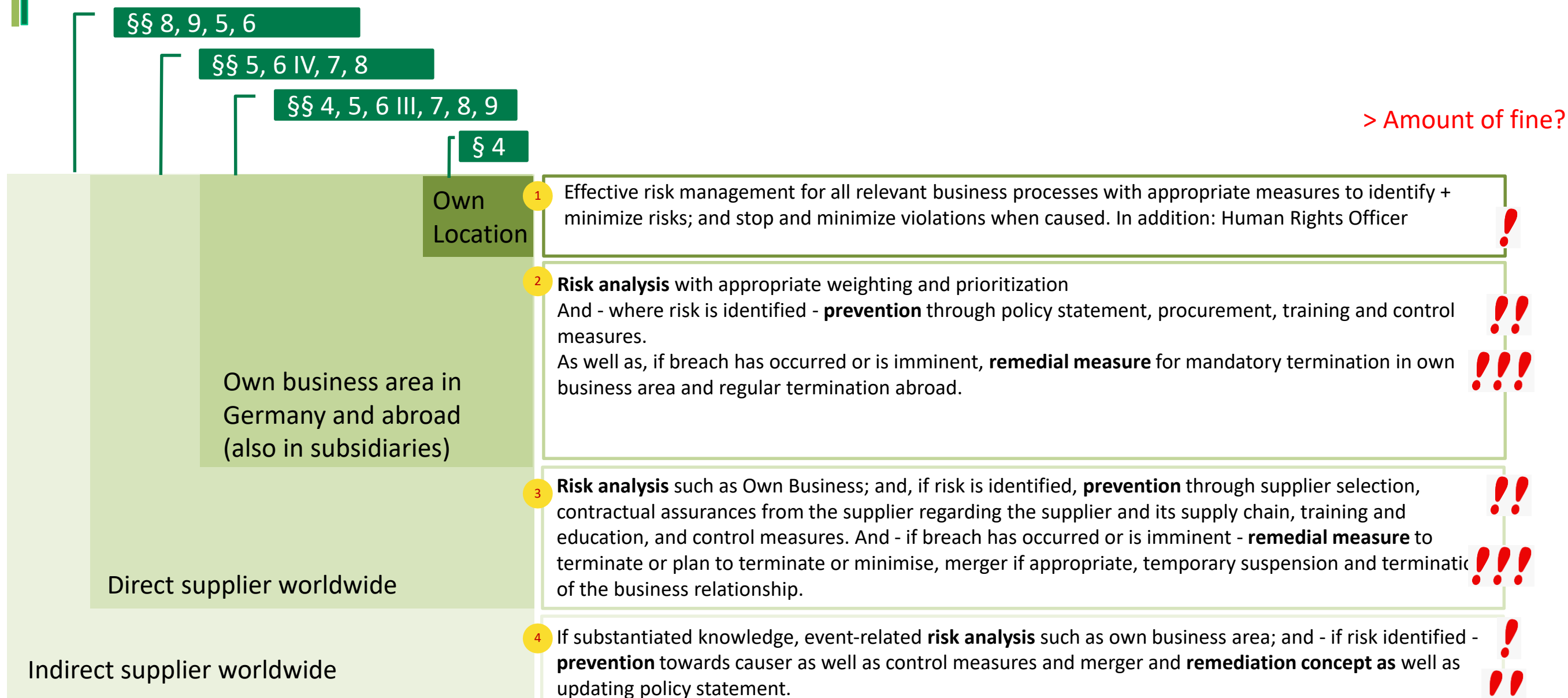
Responsibility and measure plan risk management ✓

Training schedule ✓

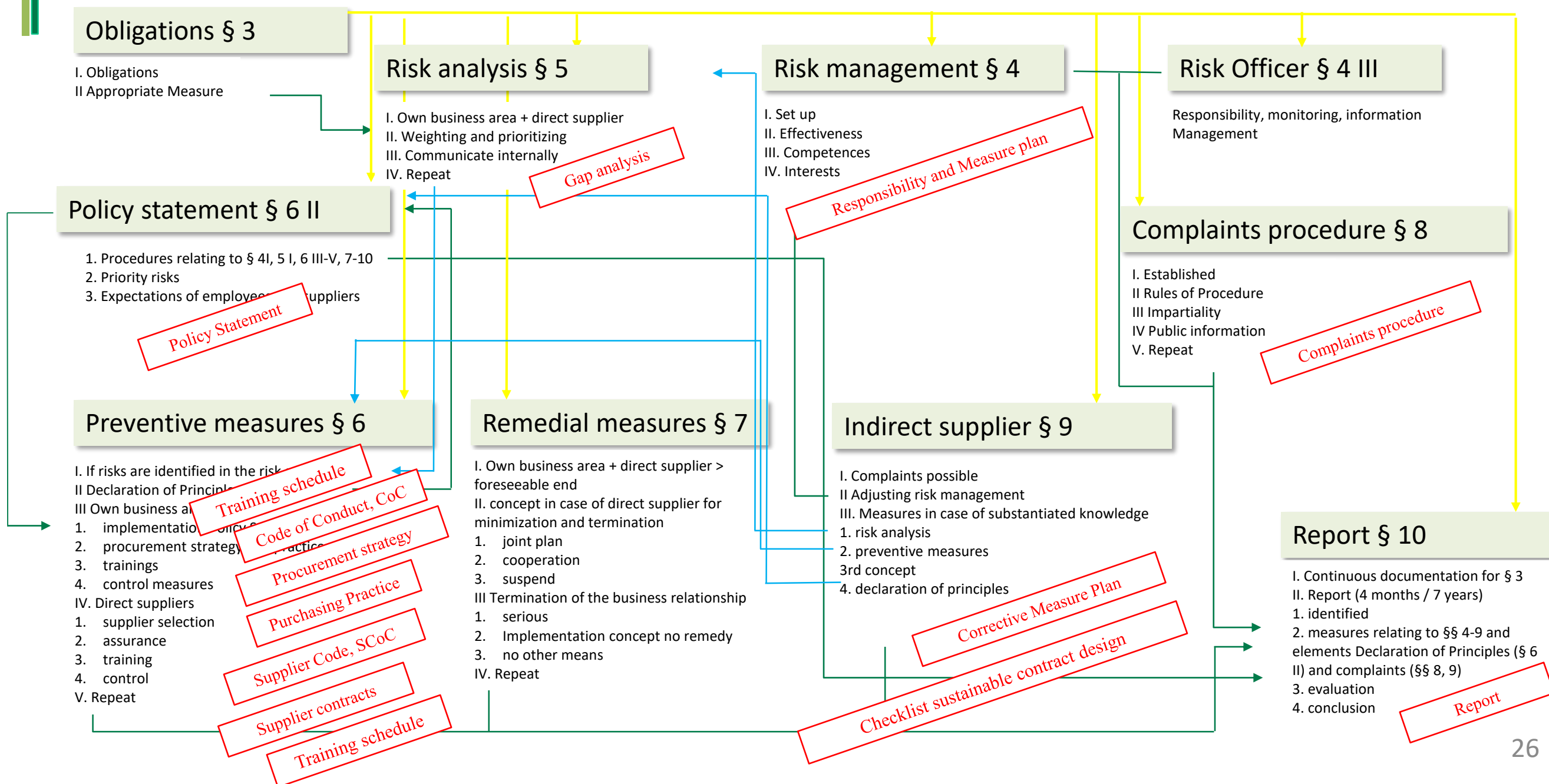
Contracts with suppliers ✓

Documentation, continuous ✓

Own location, own business, suppliers



Interrelationships



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Interrelationships

What until when

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What until when

See the plan below and individual topics below

(LKSG)	Mandatory	Details	2022	2023	2024
§ 4	Risk management	<p>(1) Businesses must establish adequate and effective risk management to comply with the due diligence obligations (§ 3 paragraph 1). Risk management shall be embedded in all relevant business processes through appropriate measures.</p> <p>(2) Effective measures are those that make it possible to identify and minimise human rights and environmental risks and to prevent, end or minimise the extent of violations of human rights or environmental obligations if the company has caused or contributed to these risks or violations within the supply chain.</p> <p>(3) The company shall ensure that it is determined who within the company is responsible for monitoring risk management, for example by appointing a human rights officer. The management shall regularly, at least once a year, inform itself about the work of the responsible person or persons.</p> <p>(4) In establishing and implementing its risk management system, the enterprise shall 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 activity of the enterprise or by the economic activity of an enterprise in its supply chains.</p>	<p>Implementation, e.g. through structures (corporate governance guidelines, responsibilities, internal instructions for action, responsibilities, etc = analogous to or linked to existing compliance system) and processes and procedures; start of operations by January 2023.</p> <p>This could be done, for example, by means of a horizontal management directive that defines objectives, reflects the contents of the law, contains basic specifications, describes the organisation, assigns individual implementation tasks and responsibilities in the own business unit and in direct and indirect purchasing, describes reporting lines, provides for review routines. In addition, vertical process descriptions for different areas (HR, EHS, purchasing, sales, etc.) could be provided and details on compliance with duties and responsibilities, reporting lines, etc. could be specified.</p> <p>Should a human rights officer (HRO) be appointed (this is a recommendation of the law, not an obligation, so there is no time limit for this), the following strategic questions arise:</p> <p>(1) Strategic advantages and disadvantages of centralised/decentralised HROs and number of HROs (2) Strategic advantages and disadvantages of HRO in the management function / outside the Management function and if yes, where (Compliance, Legal, ESG, Purchasing, etc.) (3) Strategic advantages and disadvantages of management with horizontal delegation and HRO with vertical delegation and active determination of the Residual responsibility (4) Strategic advantages and disadvantages HRO with monitoring or also with implementation tasks or specifications of analyses and measures (keyword neutrality and understanding as 1st or 2nd line)</p>	Will be executed	from 2023

(LKSG)	Mandatory	Details	2022	2023	2024
			(5) Strategic advantages and disadvantages HRO as contact person for BAFA (would have to be appointed according to § 17 para. 2 LKSG) (6) Resolving possible conflicts of interest (e.g. if HRO is involved in purchasing) (7) Weighing up the delimitation of tasks HRO and Steering Committee (8) Comparison of experiences from data protection, immission control, SGB, ASiG, WHG, KrWG in distinction to GWG, export control, 3TG (9) Filter of risks escalated to and further escalated by the HRO compared to risks that remain at the operational level or with the HRO (10) Questions of works constitution law (11) Labour law privileges and insurance environment		
§ 5	Risk analysis	In its own business area and with its Direct suppliers weighted and prioritised. In particular, according to the criterion of appropriateness:	Prepare	Will be carried out	from 2023
		1. the nature and extent of the company's business,			
		2. the company's ability to influence the direct perpetrator of a human rights or environment-related risk or the violation of a human rights-related or environment-related duty,			
		3. the typically expected severity of the violation, the reversibility of the violation and the likelihood of the violation of a human rights-related or an environment-related obligation, as well as			
		4. according to the nature of the company's causal contribution to the human rights or environment-related risk or to the violation of a human rights-related or an environment-related risk.			

(LKSG)	Mandatory	Details	2022	2023	2024
		environmental duty.			
§ 6	Prevention measures - Policy statement	<p>The company must issue a policy statement on its human rights strategy. The company management must issue the policy statement. The policy statement must contain at least the following elements of a human rights strategy for the company:</p> <ol style="list-style-type: none"> 1. A description of the procedure by which the enterprise fulfils its obligations under § 4(1), § 5(1), § 6(3) to (5), and §§ 7 to 10, 2. The priority human rights and environmental risks identified for the company on the basis of the risk analysis; and 3. The definition, based on the risk analysis, of the human rights and environmental expectations that the company has of its employees and suppliers in the supply chain. 	<p>Shall be published in a preliminary version, although LKSG and FAQ are not clear about the timing, as the content partly consists of the results of the risk analysis to be carried out in 2023.</p> <p>Such a preliminary statement could look as follows:</p> <p>Human Rights Strategy [It seems advisable to address the human rights and environmental risks contained in the LkSG, i.e. to copy them (a summary in one's own words seems unnecessarily difficult). A more extensive version of the declaration of principles including further goals (such as the Global Compact) is possible, but is not required by law, so that the question arises whether one is doing oneself a favour with an overobligatory declaration of principles. If one wanted to include more goals, then one could perhaps make two parts - for example Part I Code of Conduct and Part II Declaration of Principles on the Supply Chain Sourcing Obligations Act. Otherwise, there is a danger that the voluntary commitment goes further than the law requires. In this case, Part II could state that the human rights and environmental risks described in the law will be prevented in an appropriate manner and, if necessary, ended or minimised]. Expectations Then it could be formulated that one has to be aware of the Employees and suppliers in the supply chain within the meaning of the Act are expected to support the company to the best of their ability to adequately prevent and, where appropriate, mitigate the human rights and environmental risks described in the Act.</p>	Will be adapted	from 2023

(LKSG)	Mandatory	Details	2022	2023	2024
			<p>or minimise them; this applies in particular to the priority human rights and environmental risks. Workers and suppliers in the supply chain as defined by the law are expected to support the company in risk management, risk analysis, prevention and remediation measures and the grievance procedure; this applies to its own business and the supply chain.</p> <p>Priority risks</p> <p>"This is only possible in rudimentary form without the results of a risk analysis (which does not have to be carried out until 2023):</p> <p>Our risk analysis is carried out in accordance with the law is carried out on an ongoing and ad hoc basis, this policy statement is reviewed and updated accordingly. The priority risks at the moment are that the company operates globally, i.e. has global supply chains, resulting in a high degree of complexity and diversity. In addition, the technologies involved in the business activity may be risky. From the global activities and the technologies therefore give rise to systemic risks, some of which are beyond our control. We will assess the risks, which in terms of severity, reversibility and likelihood have greater weight and over which we have influence or even a temptation contribution, prioritise. [Can you give examples?]"</p> <p>Procedure</p> <p>We have a proven management system consisting of specifications for the management of the Group and the organisational units, a regulation management, a risk management, an internal control system and a compliance management system. In addition, there are relevant instructions. The requirements of the Supply Chain Duty of Care Act are woven into this in terms of personnel, processes and documentation. Annual and ad hoc audits are carried out in the own business unit and in the supply chain.</p>		

(LKSG)	Mandatory	Details	2022	2023	2024
			<p>Risk analyses are carried out in accordance with the instructions and the regulations of the law that precede such instructions, and their results are appropriately weighted and prioritised.</p> <p>Based on the results of the risk analysis, the appropriately weighted and prioritised risks are assigned to preventive and remedial measures under the Act, the effectiveness of which is reviewed annually and on an ad hoc basis and updated as necessary. We also include indirect suppliers in the above-mentioned analyses and measures; in particular, if we have factual indications that a violation of a human rights-related or environmental duty at an indirect supplier appear possible (substantiated knowledge).</p> <p>We maintain a legally compliant Complaints procedure.</p> <p>We will document and report the fulfilment of due diligence obligations in accordance with the law.</p> <p>[The law does not state that the policy statement must be published; but the explanatory memorandum to the law says it must be communicated to workers, the works council, immediate suppliers and the public. There will be many companies that put it on the website...]</p>		
§ 6	Prevention measures - Other	<ul style="list-style-type: none"> • In own business unit e.g. implementation of human rights strategy, procurement strategy, purchasing practices, training, controls • Towards direct suppliers, e.g. supplier selection process, assurances from suppliers, training/education/review of suppliers. • Towards indirect suppliers, e.g. control measures, assistance with the 	Prepare	To be applied and reviewed	from 2023

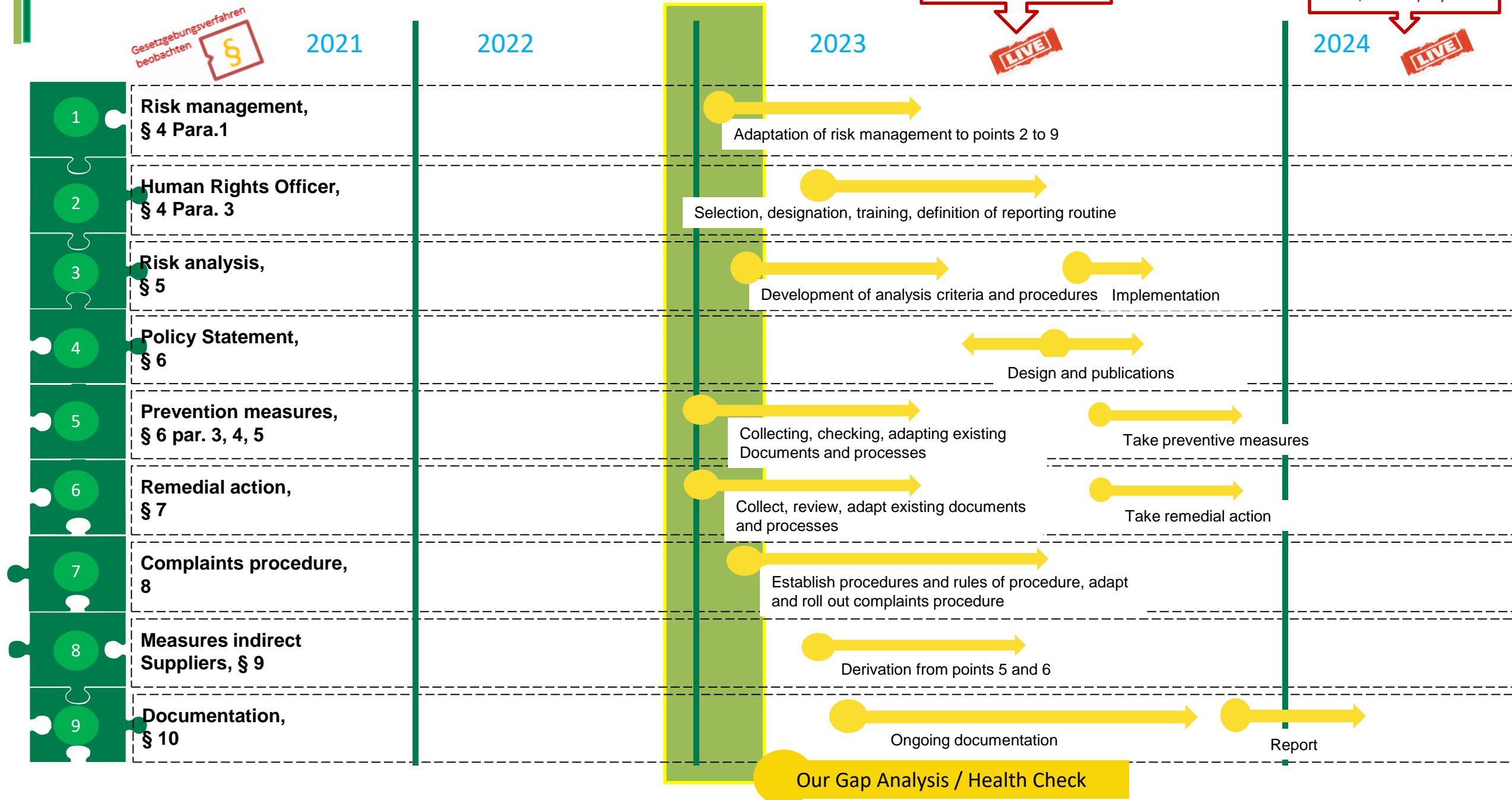
(LKSG)	Mandatory	Details	2022	2023	2024
		<p>Prevention and avoidance, implementation of sector-specific or cross-sectoral initiatives, preparation and implementation of concepts for prevention, cessation or minimisation (corrective action plan).</p> <ul style="list-style-type: none"> Other measures to implement the LKSG in relation to contracts are: A code of conduct with a compliance clause and a commitment to respect human rights and avoid environmental risks, as well as corresponding measures and the possibility for the supplier to make specifications in this regard; pass-on clauses; chain of custody obligations; obligation of the supplier to maintain a complaints procedure and also to make this known to stakeholders; regulations on the possibility of suspending cooperation; Regulations on the possibility of special termination; regulations on information, disclosure and audits; regulations on inspections; claims for compensation, claims for damages, contractual penalties; obligations of the supplier to cooperate, in particular with regard to training and further training, reports, naming of sub-suppliers, cooperation in remedial measures vis-à-vis the supplier and indirect suppliers, cooperation in industry initiatives, cooperation in a concept and a corrective action plan. 			
§ 7	Remedial action	Remedial measures include all measures that bring about a change or cessation or at least a minimisation of a risk (in the own business unit in Germany, this measure must be successful, in the own business unit of	Prepare measures that can then be initiated in the event of a violation	To be applied and reviewed	from 2023

(LKSG)	Mandatory	Details	2022	2023	2024
		subsidiaries or abroad, this measure must usually be successful).			
§ 8	Complaints procedure	In accordance with the LKSG	Prepare and implement 01 January 2023	To be applied and reviewed	from 2023
§ 9	Indirect suppliers	Requirements for indirect suppliers: -Consideration of information in this regard (especially sound knowledge) -then the corresponding processes as for direct suppliers -in particular the risk analysis, the anchoring of appropriate preventive measures vis-à-vis the polluter, such as control measures, the Support in the prevention and avoidance of a risk or the implementation of sector-specific or cross-sector initiatives -In particular, create and implement concepts for prevention, cessation or minimisation -in particular the updating of the principle Explanation	Prepare that and how substantiated knowledge can arise and then, with substantiated knowledge about indirect suppliers, also the risk analysis, the preventive measures, etc. can be initiated.	To be applied	
§ 10	Documentation, report	(1) The fulfilment of the due diligence obligations pursuant to § 3 shall be continuously documented within the company. The documentation shall be kept for at least seven years from its creation. (2) The enterprise shall prepare an annual report on the fulfilment of its due diligence obligations in the previous business year and make it publicly available free of charge on the enterprise's website for a period of seven years no later than four months after the end of the business year. The report shall at least state in a comprehensible manner, 1. whether, and if so, which human rights	Prepare that the structures and processes are created in such a way that a report can be produced on time in 2024 and documentation is also ready, ideally "at the push of a button".	Be prepared	Still to be published (report)

(LKSG)	Mandatory	Details	2022	2023	2024
		<p>and environment-related risks or violations of a human rights-related or environment-related duty the company has identified,</p> <p>2. what the company has done, with reference to the measures described in §§ 4 to 9, to fulfil its due diligence obligations; this also includes the elements of the policy statement pursuant to § 6 paragraph 2, as well as the measures the company has taken as a result of complaints pursuant to § 8 or pursuant to § 9 paragraph 1,</p> <p>3. how the company assesses the impact and effectiveness of the measures; and</p> <p>4. what conclusions it draws from the assessment for future action.</p> <p>(3) If the enterprise has not identified any human rights or environment-related risk and no violation of a human rights-related or environment-related obligation and has plausibly explained this in its report, no further explanations pursuant to paragraph 2 sentence 2 numbers 2 to 4 are required.</p> <p>(4) Due consideration shall be given to the protection of trade and business secrets.</p>			

To Do's large enterprises

Schedule and To Do's - Rough Overview



Gap Analysis – electronically and internetbased

[Click] <https://www.taylorwessing.com/en/campaigns/de/gap-analyse>

Dieser Inhalt ist nur für Testzwecke

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Im Folgende finden Sie unsere Fragen zum Thema Einkauf / Supply Chain. Sollten Sie zwischendrin unterbrechen wollen oder die weitere Bearbeitung an einen Kollegen oder eine Kollegin übergeben wollen, scrollen Sie bitte nach ganz unten und klicken Sie auf "oder speichern und später fortfahren".

Teil 1: Einkauf / Supply Chain Management

Risikomanagement

Haben Sie im Einkauf / Supply Chain Management Zuständigkeiten verankert, um die Erfüllung der Sorgfaltspflichten unter dem Lieferkettensorgfaltspflichtengesetz (LkSG) zu überwachen?

Was sind Sorgfaltspflichten?

OPTIONAL

☐ Ja

☐ Nein

Haben Sie im Einkauf / Supply Chain Management Maßnahmen mit dem Ziel etabliert, menschenrechtliche und umweltbezogene Risiken und Rechtsgutsverletzungen entlang ihrer Lieferketten zu identifizieren, zu verhindern, zu beenden oder zumindest zu minimieren?

Was sind menschenrechtliche und umweltbezogene Risiken?

Was sind umweltbezogene Risiken?

Was ist eine Lieferkette?

☐ Ja

☐ Nein

Risikoanalyse

Führen Sie in Ihrem Unternehmen eine Risikoanalyse durch, d.h. identifizieren Sie, bewerten Sie und priorisieren Sie die menschenrechtlichen und umweltbezogenen Risiken in Ihrem eigenen Geschäftsbereich und im Geschäftsbereich Ihrer unmittelbaren Zulieferer?

Was bedeutet "Risikoanalyse"?

Was bedeutet "eigener Geschäftsbereich"?

Was bedeutet "unmittelbare Zulieferer"?



Weiter →

Dieser Inhalt ist nur für Testzwecke

Haben Sie im Einkauf / Supply Chain Management Maßnahmen mit dem Ziel etabliert, menschenrechtliche und umweltbezogene Risiken und Rechtsgutsverletzungen entlang ihrer Lieferketten zu identifizieren, zu verhindern, zu beenden oder zumindest zu minimieren?

Was sind menschenrechtliche und umweltbezogene Risiken?

Menschenrechtliche Risiken werden in § 2 Abs. 2 LkSG und umweltbezogene Risiken in § 2 Abs. 3 LkSG näher beschrieben. Unter "menschenrechtliche Risiken" im Sinne des LkSG fallen:

- 1) Kinderarbeit unter zulässigem Mindestalter (mind. 15 Jahre)
- 2) Schlimmste Formen von Kinderarbeit für Kinder unter 18 Jahren
- 3) Zwangsarbeit
- 4) Sklaverei, sklavenähnliche Praktiken
- 5) Missachtung von Arbeitsschutz
- 6) Missachtung der Koalitionsfreiheit (Gewerkschaften)
- 7) Diskriminierung (Abstammung, Behinderung, Alter, Geschlecht, Religion)
- 8) Vorenthalten angemessenen Lohns
- 9) Herbeiführung einer schädlichen Bodenveränderung, Gewässer- und Luftverunreinigung, schädliche Lärmemissionen und übermäßiger Wasserverbrauch
- 10) Widerrechtliche Zwangsräumung sowie Entzug von Land, Wäldern, Gewässern
- 11) Nutzung von Sicherheitskräften, wenn dadurch Beeinträchtigung von Leib, Leben, Vereins-/Koalitionsfr.
- 12) Auffangklausel

Was sind umweltbezogene Risiken?

Was ist eine Lieferkette?

☐ Ja

☐ Nein

Risikoanalyse

Führen Sie in Ihrem Unternehmen eine Risikoanalyse durch, d.h. identifizieren Sie, bewerten Sie und priorisieren Sie die menschenrechtlichen und umweltbezogenen Risiken in Ihrem eigenen Geschäftsbereich und im Geschäftsbereich Ihrer unmittelbaren Zulieferer?

Dieser Inhalt ist nur für Testzwecke

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Identifizieren Sie Risiken zu minimieren bzw. diesen vorzubeugen?

☐ Ja

☐ Nein

In welchem Ausmaß bemühen Sie sich um Transparenz und Kenntnis Ihrer Lieferketten?

Welche Ihrer Lieferketten kennen Sie gut, welche Lieferketten weniger gut? Bitte beschreiben Sie, in welchen Lieferketten Ihre Kenntnis der Zulieferer über Tier 1 hinausgeht und wo nicht. Dort, wo die Kenntnis über Tier 1 hinausgeht: Bis zu welcher Stufe geht die Kenntnis?

Bewerten Sie Ihre Vertragspartner vor Vertragsschluss danach, inwieweit sie Ihre menschenrechtsbezogenen Erwartungen erfüllen?

☐ Ja

☐ Nein

Wieviel Prozent Ihrer Zulieferer haben eine Zertifizierung, die Menschenrechtsstandards abbildet, z.B. SA8000, BSCI, SMETA oder andere branchenspezifische Siegel?

Wie viele Ihrer TOP 10 Zulieferer haben eine derartige Zertifizierung?

Wie viele der Zulieferer in Ihren risikobehafteten Lieferketten haben eine derartige Zertifizierung?



Weiter →



Following details with prioritization



1. Starting point (a): § 6 par. 3, 4, 5 - develop preventive measures

5

Prevention measures

Monitor the legislative process

2021



Prevention measures esp.

- Implementation Declaration of Principles (§ 6 para. 3 no. 1)
- development and implementation of appropriate procurement strategies and purchasing practices (e.g. on delivery times, purchase prices, duration of contracts, etc.), including internal company conduct guidelines for procurement steps (including product developments, order placements, purchasing, production lead times), in order to prevent or minimize risks (Section 6 (3) No. 2) and
- training concepts (§ 6 para. 3 no. 3) for anchoring the standards in day-to-day business and
- control measures (§ 6 para. 3 no. 4)
- human rights and environment-related supplier selection (§ 6 para. 4 no. 1) and supplier evaluation
- contracts with contractual assurances (§ 6 para. 4 No. 2) with supplier code (specification of expectations for contractual partners with the possibility of changing these even after conclusion of the contract) and pass-on clauses (supplier must pass on code to his contractual partners) and possibly stipulation that supplier may only purchase from certain upstream suppliers or that products only come from certified regions or raw materials from certain smelters (chain of custody certification).
- contracts with appropriate control mechanisms and training and further education (§ 6 para. 4 No. 3)
- development of concepts for the review of control mechanisms and training and further education (§ 6 para. 4 No. 4)
- development of regular and ad hoc reviews of preventive measures (§ 6 para. 5)

2022 - To Dos (Preparations)

- 1 Collate and review current procurement strategy, purchasing practice, codes of conduct and contracts, terminate contracts in good time if necessary due to need for change.
- 2 Then:
 - Measure 1:** Creation of a Code of Conduct that describes the applicable standards for employees
See **Code of Conduct** [Toolbox]
 - Measure 2:** Creation of a Supplier Code of Conduct that explains the human rights expectations of (potential) contractual partners
See **Supplier Code of Conduct** [Toolbox].
 - Measure 3:** Establishment of a sustainable procurement strategy and supplier selection
→ See **Procurement Policy** [Toolbox]
→ See **release process suppliers** [Toolbox]
→ See **questionnaire suppliers** [Toolbox]
→ See **checklist sustainable contract design** [Toolbox].
 - Measure 4:** Definition of a strategy in the event of a breach of the Supplier Code of Conduct
→ See **corrective measure plan** [Toolbox]
 - Measure 5:** Regular and ad hoc inspections of suppliers
See **Supplier Verification Checklist** [Toolbox].
 - Measure 6:** Training of own employees, especially in purchasing, and of suppliers
→ See **training plan** [Toolbox]
 - Measure 7:** Adoption in policy statement
See **policy statement** [Toolbox]

2023 - Goals + Implementation

Objective: Compliance with the Declaration of Principles

Compliance with the measures developed

Examination of the effectiveness of the measures 1x per year and on an ad hoc basis

Updating of measures, if necessary

Adjust contracts if necessary

2024

...as 2023

"Job Description"

5

Prevention
measures

No.	§	Duties and tasks according to the law	Tasks concretely	Competences and interfaces	Cast idea	Support idea
5	§ 6	Prevention measures - implementation policy statement - development and implementation of appropriate procurement strategies and practices (e.g. on delivery times, purchase prices, contract duration, etc.), incl. Internal company conduct guidelines for procurement steps (a.o. product developments, order placements, purchasing, production lead times) in order to prevent or minimise risks (§ 6 para. 3 no. 2) and - training concepts (§ 6 para. 3 no. 3) for anchoring the standards in day-to-day business and - control measures (§ 6 par. 3 no. 4) - human rights and environment-related supplier selection (§ 6 para. 4 no. 1) and supplier evaluation - contracts with contractual assurances (§ 6 para. 4 no. 2), with supplier code (specification of the requirements for contractual partners with the possibility of changing these even after conclusion of the contract) and pass-on clauses (supplier must pass on code to its contractual partners) and possibly stipulation that the supplier may only purchase from certain upstream suppliers or that products only come from certified regions or raw materials come from specific smelters (Chain of Custody certification) - contracts with appropriate control mechanisms, training and further education (§ 6 par. 4 no. 3) - development of concepts for the review of control mechanisms, training and further education (§ 6 para. 4 no. 4) - development of regular and ad hoc reviews of preventive measures (§ 6 par. 5)	Comparison of existing / adaptation / creation of new: - supplier contracts - codes of conduct - supplier codes of conduct - procurement strategy - supplier selection - release process - procedure for breaches of codes and processes - regular and ad hoc inspections of suppliers - training of own employees in purchasing, with suppliers - adoption in policy statement	- skilled in creating process descriptions and documents as well as contracts - knowledge of existing documents and processes - interfaces with procurement and compliance and the human rights officer	- Legal - Compliance - Supply Chain	- external support - support from core team

[Space for graphics during the lecture].



Reflections on the Code of Conduct

The reason for codes of conduct towards suppliers...

- The LkSG provides for a number of preventive and remedial measures, in particular a *"contractual assurance by a direct supplier that it will comply with the human rights and environmental expectations required by the company's management and address them appropriately along the supply chain"* (§ 6 para. 4 no. 2 LkSG).
 - One will perhaps still need information from the supplier and will have to rely on cooperation
 - Supplier Codes of Conduct have for long been part of the modern contractual set-up
 - ...
- > But what do you "really need" ?
- > What is the harm if it is "invalid" (how much effort is to be made with whom)?
- > What is the harm if the supplier (who) objects / does not agree / does not get in touch ?
- > How "accurate" do you have to be ?
- > **Once you have answered this for yourself, you can decide how to proceed - here are a few thoughts...**



B 2.2 Which preventive measures were implemented in the reporting period to prevent and minimise the priority risks in your own business area?

- 171. conducting training in relevant business areas
- 172. implementation of risk-based control measures
- 173. other/other measures
- > If at least one of the answers from 171. to 173. was selected, describe in each case
- 176. The measures implemented and specify in particular the scope (e.g. number, coverage, scope).
- 177. How the measures contribute to the prevention and minimisation of the priority risks.
- 178. To what extent the interests of potential stakeholders and/or their legitimate representatives have been taken into account in the design and implementation of the measures.

B2.3 Was a process for testing effectiveness defined and implemented for the measures (training, risk-based control measures and other measures)?

- 181. If Yes, describe the process(es) for testing the effectiveness of the measures

B 3.2 Which prevention measures were implemented in the reporting period to prevent and minimise the priority risks at direct suppliers?

- 197. developing and implementing appropriate procurement strategies and practices.
- 198. integration of expectations in supplier selection
- 199. obtain contractual assurances for compliance and implementation of expectations along the supply chain.
- 200. training and further education to enforce the contractual assurance.
- 201. agreeing and implementing risk-based control measures

> If the answer 197. has been selected, describe

- 205. The measures implemented and to what extent the determination of delivery times, of purchase prices or the duration of contractual relationships have been adjusted.

- 206. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.
- 207. the extent to which the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- > If at least one of the answers from 198. to 202. was selected, describe in each case
- 208. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
- 209. How the measures contribute to the prevention and minimisation of the priority risks.
- 210. To what extent the interests of potential stakeholders and/or their legitimate representatives have been taken into account in the design and implementation of the measures.

B3.3 Was a process for reviewing effectiveness defined and implemented for the measures (procurement practices, purchasing strategy and other measures)?

- 213 If yes, describe the process(es) for testing the effectiveness of the measures

B4.2 Which prevention measures were implemented for the reporting period to prevent and minimise the priority risks at indirect suppliers?

- 229. developing and implementing appropriate procurement strategies and practices.
- 230. implementation of risk-based control measures
- 231. supporting the supplier in preventing and minimising the risk
- 232. implementation of sectoral or cross-sectoral initiatives

> If the answer 229. has been selected, describe

- 236. The measures implemented
- 237. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.

- 238. To what extent the interests of potential stakeholders and/or their legitimate representations have been taken into account in the design and implementation of the measures.

> If at least one of the answers 230. to 231. was selected, describe in each case

- 239. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
- 240. To what extent adjustments in dealing with suppliers should contribute to the prevention and minimisation of the priority risks.
- 241. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

> If at least one of the answers 232. to 233. was selected, describe in each case

- 242. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
- 243. To what extent other/further measures should contribute to the prevention and minimisation of the priority risks.
- 244. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

B4.3 Was a process for reviewing effectiveness defined and implemented for the measures (procurement practices, purchasing strategy and other measures)?

What are prevention measures?

BAFA's questionnaire on the report pursuant to § 10 para. 2 LkSG

[C1] Findings of violations and corrective actions in own business area

C1.1 Were there any violations in your own business area during the reporting period?

261. Yes, only domestically
 262. Yes, only abroad
 263. Yes, at home and abroad
 264. no;
 > If No, describe
 265. What procedures can be used to identify violations in its own business area.
 > If yes, describe
 266. Which procedures can be used to identify violations in its own business area?
 267. Your company's approach to ensuring that remedial action can be taken in the event of breaches and that their implementation is effective.
 268. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
 > If yes, in which topics were violations identified in your own business area? You can voluntarily indicate the number of violations per topic. [M1-U3]
 > If one of the answers from 261. to 263. was selected, have you taken remedial action?
 282. yes 283. no
 > If No was selected
 284. give reasons for your answer
 > If Yes is selected, describe the appropriate remedial action you have taken and also describe
 285. The cases in which violations could not be terminated and where they occurred.
 286. What long-term remedial actions have been taken, in particular what trade-offs have been made with respect to the selection and design of the measures in the context of the relevant follow-up approaches to cessation or further minimisation.
 287. How the effectiveness of the measures is reviewed
 288. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
 > If 282. yes was selected, did the remedial action result in the cessation of the violation?
 289. yes 290. partly 291. no
 > If one of the answers from 261. to 263. was selected, have you analysed to what extent the identified violation is an indication for a possibly necessary adaptation/supplementation of existing prevention measures?
 Describe the process, outcomes and consequences.

[C2] Findings of violations and corrective actions at direct suppliers

C2.1 Were there any violations at direct suppliers during the reporting period?

293. yes 294. no
 > If No, describe
 295. What procedures can be used to identify violations at direct suppliers?
 > If yes, describe
 296. What procedures can be used to identify violations at direct suppliers?
 297. On what basis the violations identified were weighted and prioritised and what trade-offs were made in doing so.

298. Your organisation's approach to ensuring that remedial action can be taken in the event of breaches and that implementation and outcomes are effective.
 299. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
 > If yes, in which topics were violations identified at direct suppliers? You can voluntarily indicate the number of violations per topic. [M1-U3]
 > If 293. yes was selected, have you taken appropriate remedial action?
 313. yes 314. no
 > If No was selected
 315. give reasons for your answer
 > If Yes is selected, describe the appropriate remedial action you have taken and also describe
 316. what remedial actions have been taken, in particular what trade-offs have been made with regard to the selection and design of the measures in the context of the relevant follow-up concepts for cessation and minimisation
 317. how the effectiveness of the measures will be reviewed
 318. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures
 > If 313. yes was selected, did the remedial action result in the cessation of the violation?
 319. yes 320. partly 321. no
 > If 293. yes was selected, have you analysed to what extent the identified violation is an indication for a possible adaptation/supplementation of existing prevention measures?
 322. describe the process, outcomes and consequences
 [C2.2 MISSING in BAFA questionnaire]
C2. 3 Were there any breaches at direct suppliers for the reporting period that could not be terminated within a foreseeable period of time?
 323. yes 324. no
 > If yes, describe
 325. The cases in which violations could not be terminated
 326. What long-term remedial actions have been taken, in particular what trade-offs have been made with respect to the selection and design of the measures in the context of the relevant follow-up concepts for cessation or minimisation.
 327. How the effectiveness of the measures is reviewed
 328. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
 329. What the concrete timetable of the concept looks like.

> If Yes was selected, name which measures were considered in the preparation and implementation of the concept

330. Joint development and implementation of a plan with the undertaking by which the breach is caused.
 331. joining forces with other companies within the framework of industry initiatives and industry standards
 332. Temporary suspension of business relations
 333. others

- > If Yes was selected, in how many cases was the business relationship with one or more direct suppliers broken off due to the violations?
 334. number of terminations of business relationships due to serious violations that could not be terminated (optional: explanation)

[C3] Findings of violations and corrective actions at indirect suppliers

C3.1 Were any violations found at indirect suppliers during the reporting period?

335. yes 336. no
 > If No, describe
 337. What procedures can be used to detect violations in indirect suppliers?
 > If yes, describe
 338. What procedures can be used to detect violations in indirect suppliers?
 339. On what basis the violations identified were weighted and prioritised and what trade-offs were made in doing so.
 340. what remedial actions, if any, have been taken and, in particular, what trade-offs have been made with respect to the selection and design of measures under the relevant cessation and minimisation approaches
 341. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

> If Yes was selected, in which topics were violations detected at indirect suppliers? You can voluntarily indicate the number of violations per topic. [M1-U3]

C3.2 Were there any breaches at indirect suppliers during the reporting period that could not be terminated within a foreseeable period of time?

355. yes 356. no
 > If yes, describe
 357. The cases where violations could not be terminated are structural challenges which are longer term, etc.
 358. Whether and, if so, what long-term remedial measures have been taken, in particular what trade-offs have been made with regard to the selection and design of the measures within the framework of the corresponding follow-up concepts for cessation or minimisation.
 359. How the effectiveness of the measures is reviewed
 360. the extent to which the interests of potentially affected people and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.

What are remedial measures?

BAFA's questionnaire on the report pursuant to § 10 para. 2 LkSG

Contracts...as preventive measures

Preventive measures are (§ 6 LkSG and reasoning of the law and literature):

In **own business area** e.g. implementation of human rights strategy, procurement strategy, purchasing practices, training, controls

Towards **direct suppliers**, e.g. supplier selection process, assurances from suppliers, training/education/review of suppliers.

Towards **indirect suppliers**, e.g. control measures, support in prevention and avoidance, implementation of sector-specific or cross-sector initiatives, creation and implementation of concepts for prevention, termination or minimisation (corrective action plan).

Further measures to implement the SCDDA in relation to contracts are: a **code of conduct** and a **supplier code of conduct** (specifications, chain of custody, etc.) with a compliance clause and a commitment to respect human rights and avoid environmental risks, as well as corresponding measures and the possibility for the supplier to make specifications in this regard) with a compliance clause and the obligation to observe human rights and to avoid environmental risks as well as corresponding measures and the possibility for the supplier to make specifications in this regard which can also be changed; **passing-on clauses**; obligation of the supplier to maintain a **complaints procedure** and to also make this known to the stakeholders; regulations on the possibility of **suspending cooperation**; regulations on the possibility of **special termination**; Provisions on **information, disclosure and audits**; provisions on **inspections**; claims **for compensation, damages, indemnification, contractual penalties; obligations of the supplier to cooperate**, in particular with regard to training and further education, reports, naming of sub-suppliers, cooperation in remedial measures vis-à-vis the supplier as well as indirect suppliers, cooperation in industry initiatives, cooperation in a concept and a corrective action plan.

> What do you need from it?

Supplier Code of Conduct

Reflections:

- Add to existing codes or use own LkSG/SCDDA codes?
- LkSG/SCDDA draft text on risks yourself or copy or refer?
- In which parts of the supplier's group (POS or everywhere)?
- To what depth in the supplier's supply chain?
- Focus on self-responsibility or a lot of specifications to suppliers?
- Setting targets or taking action?
- What do I want to/can I track and how (abstract goals / concrete measures)?
- What does the law require of me and what must I require of the supplier (prevention, remedy, reasonableness, effort)?
- Duties versus incentives?
- What do you want to know (unnecessary "substantiated knowledge")?
- How and where to agree (GTC, orders, contracts, etc.)?
- ...
- ...
- ...

> What do you need from it ?



[EXAMPLE]

The Ten Principles of the United Nations Global Compact are derived from: the [Universal Declaration of Human Rights](#), the [International Labour Organization's Declaration on Fundamental Principles and Rights at Work](#), the [Rio Declaration on Environment and Development](#), and the [United Nations Convention Against Corruption](#).

Human Rights

[Principle 1](#): Businesses should support and respect the protection of internationally proclaimed human rights; and

[Principle 2](#): make sure that they are not complicit in human rights abuses.

Labour

[Principle 3](#): Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

[Principle 4](#): the elimination of all forms of forced and compulsory labour;

[Principle 5](#): the effective abolition of child labour; and

[Principle 6](#): the elimination of discrimination in respect of employment and occupation.

Environment

[Principle 7](#): Businesses should support a precautionary approach to environmental challenges;

[Principle 8](#): undertake initiatives to promote greater environmental responsibility; and

[Principle 9](#): encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

[Principle 10](#): Businesses should work against corruption in all its forms, including extortion and bribery.

Pass-on clauses

Reflections [„Weitergabeklauseln“]:

- What is meant by this (keyword "address")?
- No discharge from one's own duties...!?
- ...
- ...
- ...

> What do you need from it ?

Information, audits, controls, certifications

Reflections:

- What information do you "need" yourself, when and to what depth?
- What do you believe in whom and how much and for how long?
- What do you let them show you?
- How "blind" may one be ("ascertain" / "could have ascertained")?
- Which part of a supplier is affected (only the POS or the whole group)?
- What to think about self-disclosure and what to think about self-disclosure databases?
- How do you deal with indices (and with which ones)?
- What information should the supplier obtain on his part?
- Do you want information (in the sense of "raw data") or results of analyses (possibly prioritised and weighted) from the supplier?
- Do you have to have up-to-date information all the time?
- What is the threshold for taking action, how concrete and reliable does the information have to be?
- When do you undertake audits and at whose expense?
- When and how do you carry out checks yourself and at whose expense?
- What certifications are required, at what intervals and at whose expense?

> What do you need from it ?

Suspension and termination

Reflections:

- Prerequisites for suspension and termination (how do you actually imagine this)?
- Idle time obligation and costs
- Other consequences (last call, last order, purchase quantities, prices, takeover of stocks and/or raw materials, etc.)?
- Issuance of tools, know kow, IP, etc.
- Support with qualification of other suppliers or with procurement from upstream suppliers?
- Waiver of appeal, arbitral award, arbitration clause
- Restart possibilities -requirements, speed, costs
- Requalification
- ...

> What do you need from it ?

Contractual penalties, guarantees, damages, indemnification

Reflections:

- Contractual penalties always difficult - is there actually any case law outside the construction contract?
- Fault principle in GTCs cannot be circumvented - even if guarantees would be desirable?
- Agree exemption as a foreign body in German law?
- Is there a *vice versa*?
- ...

> What do you need from it ?

Participation

Reflections:

- Information about relevant circumstances and findings - on demand or automatically?
- "Toleration" of audits, controls, certifications
- "Toleration" of the other regulations above?
- Cooperation on corrective action plan?
- Participation in industry initiatives, associations, etc.
- ...
- ...
- ...

> What do you need from it ?

The GTC [AGB] topic

Reflections:

- Inclusion as the biggest hurdle?
- Transparency requirement?
- Surprising?
- Content control according to catalogue?
- Adequacy against the background of the LkSG/SCDDA?
- ...
- ...
- ...
- ...

> Who cares ?

#	Medium	Inclusion problems	Country specifics	Content problems	Practical
1	AGB	Reference (to website or similar)	- German: national other than international (mitschicken) - Other law: Anything goes	If too short, then possibly indefinite and possibly unreasonable if one does not regulate the occasion and extent. If not too short and vague, then perhaps inappropriate if one does not regulate occasion and extent See e.g. Max Bahr decision BGH 05.10.2015 - VIII ZR 16/05) or most recently ENI decision (LG München 20.05.2022 - 1 HKO 15370/20)	<ul style="list-style-type: none">• Why German law?• What do I really need?• Can the LkSG ensure reasonableness in § 307 BGB?• What harm is there if it doesn't?• What does effort mean?• What is adequacy in the sense of the LkSG ?
2	AGB	Reference to business paper (order, order confirmation, delivery note, etc).	- German: national other than international (mitschicken) - Other law: Anything goes		
3	AGB	Conflicting GTC, "battle of forms" (with defence clause or without)	Residual validity theory ("knock out rule") [civil law] or theory of the last word ("last shot doctrine") [common law].		
4	Standard contract (without signature) => like GTC (especially inclusion problems)	as above	as above		
5	Standard contract (with signature) => like GTC (especially content problems)	None !?	as above		
6	Supplement + annex to standard contract => as above nos. 4 and 5	as above or None !?	as above		
7	Supplier portal [without click it does not go on] => as above point 5	None !?	as above		
8	Individual negotiation	+	+		Fiction or reality ?

Fair supply contracts

Reflections:

- What is it?
- ISO 20400 or CFRPP, sustainable procurement strategies (integration, reporting, equal partnership, production planning, fair payment terms, sustainable costing)?
- Prices, delivery times, quantities, advance planning, transparency?
- ...
- ...
- ...
- ...
- ...
- ...

> What do you need from it ?

Self-declaration

Reflections:

- Do you want to sign the client's specifications 1:1?
- Who checks whether these are within the scope and feasible?
- Idea: "we have our own statement on the LkSG and we do not accept anything more".
- Content: "Small Package" (see below) or full compliance (but not as an obligation towards clients).
- Content: An interface regulation on what information is shared, when and how, and how to cooperate:
- "[Company] represents and warrants (this is an obligation, not a strict warranty) that it will comply with the human rights and environmental expectations required by the LkSG and adequately address them within its supply chain; [Company] will also support the Buyer in all its risk management, risk analysis, prevention, remediation and complaint handling activities in its own business and with its direct and indirect suppliers to the extent required (in particular to the extent required by law, the adequacy and effort requirements therein).
- [Company] shall, to the best of its ability, answer any questions that the Buyer may reasonably ask; [Company]'s trade secrets shall be protected and shall not be disclosed by [Company]. [Company] shall decide at its sole discretion what constitutes a trade secret (this applies in particular to intellectual property, know-how, designs, processes and methods, recipes, contents, materials, calculation components, countries of origin, regions, suppliers, customers, names, addresses, telephone numbers). [Company] shall inform the buyer about its own business and [Company]'s supply chain on a need-to-know basis against the background of reasonableness and legal obligation. In justified cases, [Company] shall grant the buyer auditing opportunities, whereby the subject, intensity, duration and frequency shall be agreed with [Company]. Subject to this provision, [COMPANY] may also only allow such audits in justified cases and generally only to third parties bound to neutrality and confidentiality. The [company] shall decide at its own discretion which certifications it shall seek, maintain and award.
- ...

> Special topic ?

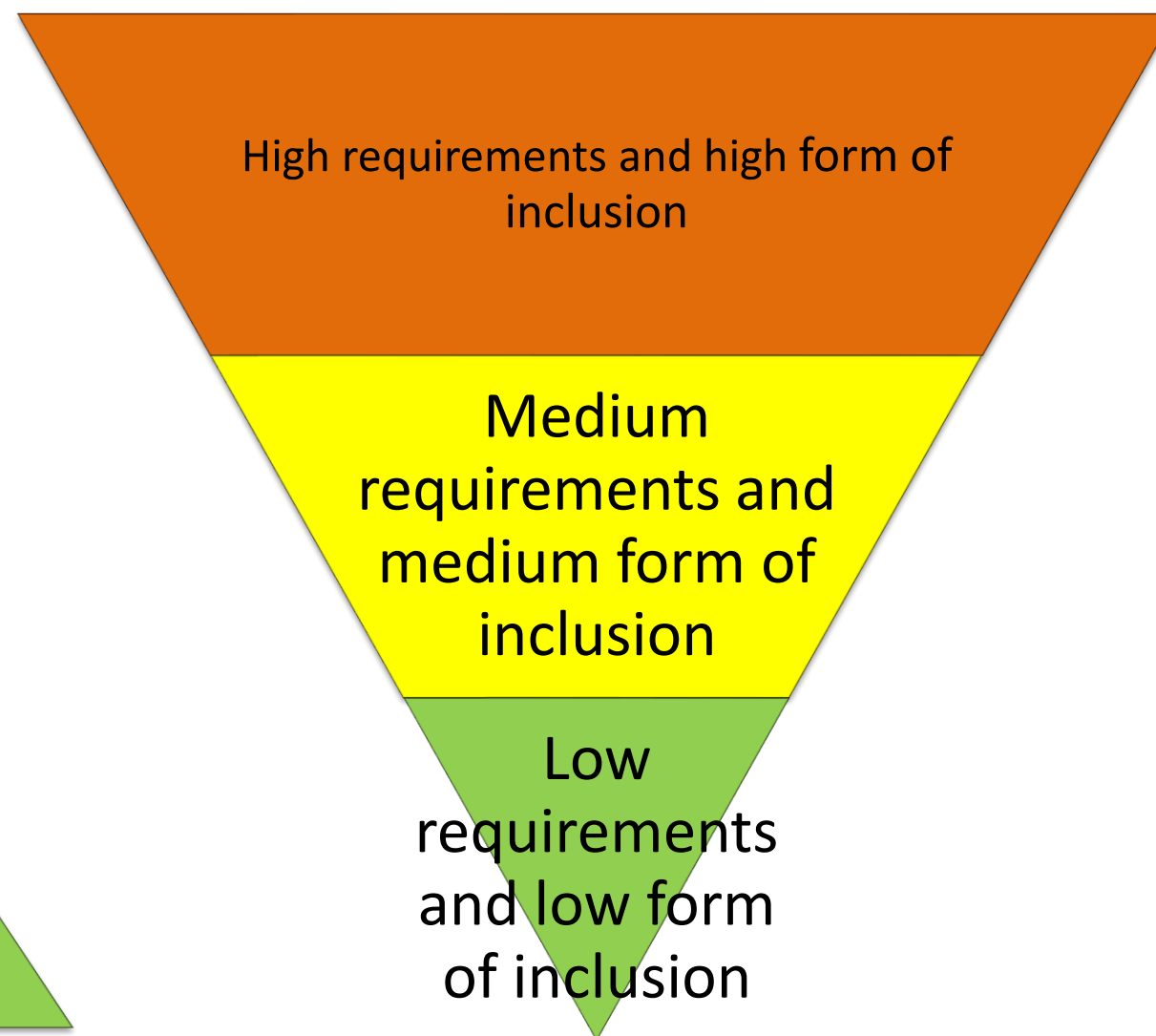
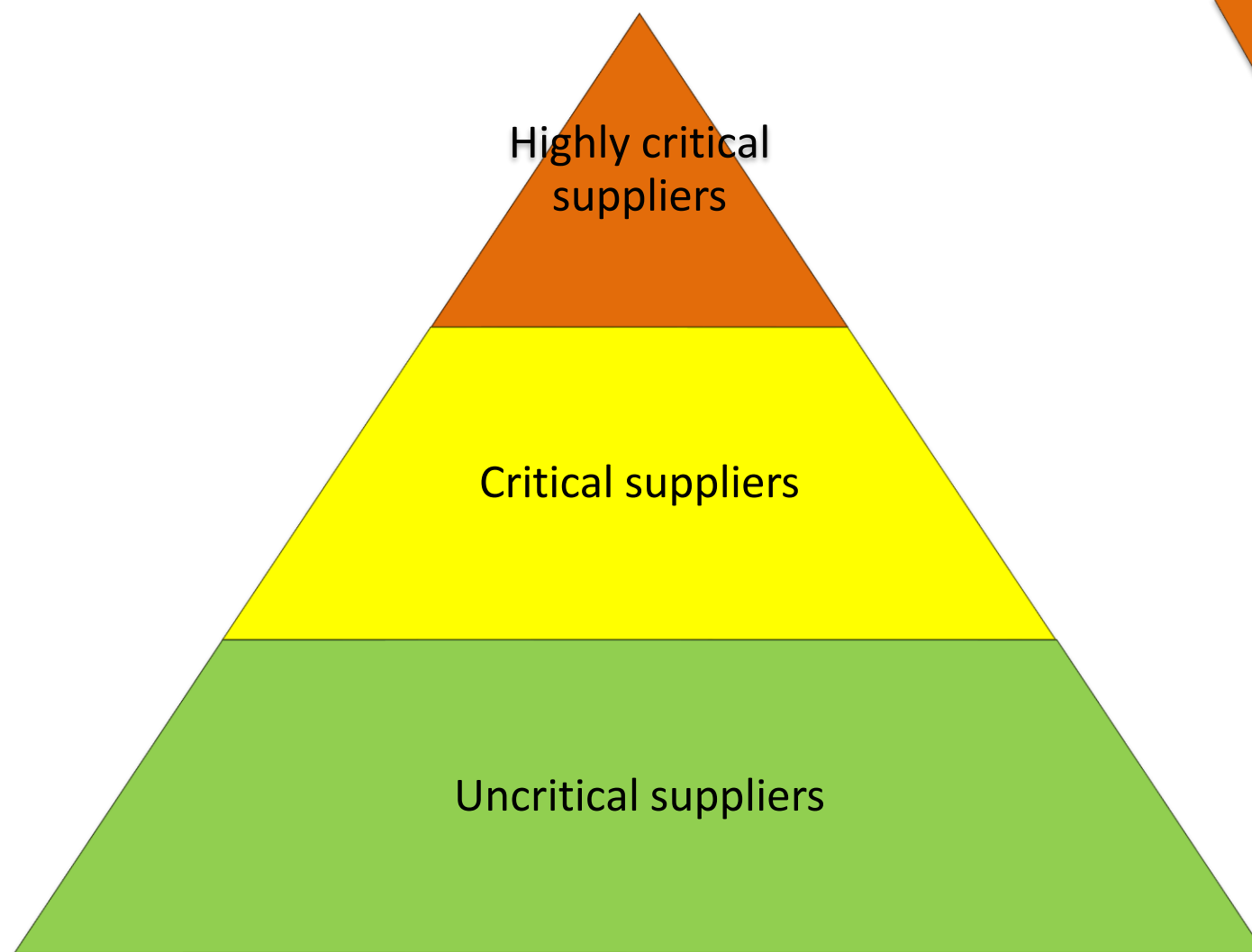
Mutual recognition without obligation

Reflections:

- Customer has a code
- Supplier has a code
- Both work according to your codes and do not commit to each other ...
- ...for example *"The contracting parties have each imposed their own codes of conduct (Annex 1 and 2). They are obliged to ensure by appropriate measures that their own code of conduct is observed within their mutual business relationship. They recognise their codes as equivalent and waive any contractual submission to the code of conduct of the other party."*
- ...

> Special topic ?

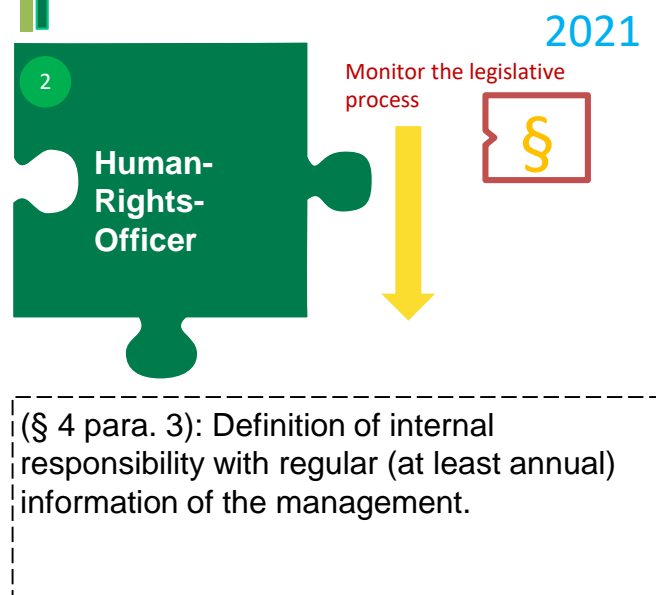
...differentiation makes sense



[Space for graphics during the lecture].



2. Starting point (b): § 4 (3) - appointing human rights officer



2022 - To Dos (Preparations)

1 Follow up preparations on prevention (§ 6) and other steps with human rights officers.

2 Then:

Measure 1: Create the position of "Human Rights Officer" or another person with primary responsibility who reports directly to the Management Board.

Human rights officer or other person with primary responsibility, should be the main organiser and main contact with regard to risk management and due diligence.

Note: The Supply Chain Act does not describe what expertise a person must have to be a Human Rights Officer. Ideally, it is a communicative personality with previous knowledge in the area of CSR / sustainability / human rights / supply chain law. Nevertheless, a lot of this will be regular "training on the job". If applicable, there are already people in the company who can take over the position.

Measure 2: Train "human rights officers"

Note: When creating a new position, care should be taken to ensure that the person is sufficiently informed/trained and involved in a timely manner to perform his/her duties. He/she should be in regular exchange with other involved departments (reporting routine) in order to avoid system errors and to minimize the risk "human".

2023 - Targets + implementation

Objective: The Supply Chain Act recommends the establishment of the position of human rights officers reporting directly to senior management.

Measure: Provide the necessary tools to ensure adequate monitoring of due diligence.

Measure: The management has to inform itself regularly, i.e. at least annually, as well as on an ad hoc basis, e.g. when new business areas or products are introduced, about the work of the responsible person or persons.

2024

...as 2023

"Job Description"



No.	§	Duties and tasks according to the law	Tasks concretely	Competences and interfaces	Cast idea	Support idea
2	§ 4	Human Rights Officer(s) Monitoring of risk management with regular (min. annual) information of the management on measures to identify and minimise human rights and environmental risks and to prevent, end or minimise the extent of violations of human rights or environmental obligations if the company has caused or contributed to these risks or violations within the supply chain.	-monitoring of measures no. 1 to 9 - support or lead for measures no. 1 to 9 -initiation of new, further, repeated measures -reports to the management -knowledge organisation in the sense of attribution, demand, forwarding, storage -assumption of responsibility risks, if necessary -communicate with the authorities if necessary	-proximity to the management - connection to Legal, HR, environment, procurement, sustainability, compliance (the representative cannot know, assess and implement everything alone)	-one or more persons in each company within the scope of the LkSG (not central, not "pulling up") -understanding of the LkSG and knowledge of the company organisation helpful -high communication and, if necessary, communication skills assertiveness in the company -tactically consider whether with leadership power equipped or not	- external support - support by the respective persons responsible for measures no. 1 to 9 -support from management

Special topic Human Rights Officer

What does the literature and BAFA say?

- § Section 9 (2) sentence 1 no. 2 **OWiG** presupposes (i) explicit assignment by the owner of the establishment or enterprise (section 9 (2) sentence 2 OWiG), (ii) task is incumbent on the owner of the establishment/enterprise, (iii) actual action on behalf of the owner of the establishment/enterprise, (iii) performance of the assigned task on one's own responsibility.
- LkSG Duties of care are directed to the company as such according to § 3 para. 1 sentence 1 LkSG as well as § 4 et seq. LkSG to the company as such¹, responsibility is borne by the management due to the duty of legality². The management is liable for violations of the duties of care listed in the catalogue of fines in § 24 para. 1 LkSG pursuant to § 9 para. 1 no. 1, no. 2 OWiG (in conjunction with § 130 para. 1 OWiG). § 130 para. 1 OWiG in case of violation of the required supervisory duties) as a representative body or acting member of a body³. Possible also fine against the company pursuant to section 30 subsection 1 in conjunction with section 9 subsection 1 OWiG. § Section 9 (1) OWiG.
- OWiG Liability of the MBA only possible as "agent" within the meaning of § 9 para. 2 sentence 1 no. 2 OWiG by assigning operational responsibility (if possible) for the implementation of due diligence. Pursuant to § 24 para. 2 LkSG, a fine of EUR 800,000 is possible for a natural person. The competent administrative authority within the meaning of section 36 (1) no. 1 OWiG is BAFA.
- MBA usually responsible for monitoring risk management (cf. § 4 para. 3 sentence 1 LkSG) - otherwise there are risks of conflicts of interest. The **inadequate performance of the MBA's monitoring activities is not listed as an administrative offence in § 24 para. 1 LkSG**, so that the MBA is **not liable** in this respect⁴. § Section 24 para. 1 no. 1 LkSG is solely linked to the management's determination of "who within the company is responsible for monitoring risk management"⁵.
- The situation is different if the MBA is to *perform* the tasks for the fulfilment of the due diligence obligations *with the* corresponding delegation of authority and action by the MBA on his *own responsibility* (the company representative must be able to act and act **independently within the** scope of his decision-making authority within the **sphere of action of the client**⁶), i.e. he should be able to take those measures in fact and in law which are required for the performance of the tasks assigned to him and the associated obligations⁷. Then:
 - View 1 (literature) depending on the form pursuant to section 24 subsection 1 LkSG in conjunction with section 9 subsection 2 p. 1 no. 2 OWiG. § 9 para. 2 p. 1 no. 2 OWiG, provided that only a sufficient freedom of decision of the MBA within the scope of his assignment⁸, because according to the government's explanatory memorandum, a separation between the MBA and the management is not intended, since the monitoring of the fulfilment of due diligence obligations can be anchored "for example in the executive board, in the compliance department or in purchasing"⁹. In this respect, the MBA could act independently within the sphere of influence of the management and be responsible for due diligence obligations "on its behalf".
 - View 2 (Literature) Conceptually, the MBA cannot be relieved of the responsibility of fulfilling the due diligence obligations incumbent on the management. (MBA as operational self-monitoring body)¹⁰. The MBA is neither responsible for the establishment of risk management, nor does its designation relieve the management with regard to the obligation to establish it¹¹. It also does not determine the responsibility for the operational implementation of risk management, but only its monitoring¹². Thus, a two-tier system is envisaged (operational tasks of the management vs. operational self-monitoring of the MBA¹³). Thus, without a corresponding conflict of interest with regard to his self-monitoring function, he cannot take over operational tasks of the management, i.e. he cannot act independently in the sphere of action of the principal as defined by section 9 (2) sentence 1 no. 2 OWiG¹⁴.
- In line with this, define scope of possible delegation of authority, frying and accompanying tasks (training, advising management), involvement in due diligence with clarification of responsibility with management.
- Consideration should also be given to employment contract protection (e.g. in the literature): "*The managers bear - as usual - the comprehensive risk of a personal fine according to §§ 9 i.V.m. 24 para. 1 LkSG, or §§ 9 para. 1 no. 1 i.V.m. 130 para. 1 OWiG. The human rights commissioner himself bears no risk of a fine.*"¹⁵

¹ Mitsch, Lieferkettengesetz und Ordnungswidrigkeitenrecht, NZWiSt 2021, 409, 410.

² Cf. only Koch, 16th ed. 2022, AktG, § 93 AktG marginal no. 10.

³ Grambow/Hartwig, Täter Eigenschaft bei Straftatbeständen und Ordnungswidrigkeiten im Arbeitsrecht, CB 2019, 151, 155.

⁴ Harings/Jürgens/Thalhammer, Die Rolle des Menschenrechtsbeauftragten im Lieferkettensorgfaltspflichtengesetz, CB 2022, 93, 96; Gehling/Ott-Balke, LkSG, § 4 para. 52; Depping/Walden-Walden, LkSG, § 4 marginal no. 124.

⁵ Ruttloff/Wagner/Hahn/Freihoff, Der Menschenrechtsbeauftragte, CCZ 2020, 20, 26; Häfeli, Der Menschenrechtsbeauftragte im Lieferkettensorgfaltspflichtengesetz - ein weiterer betrieblicher Beauftragter?, ARP 2021, 299, 300; Berg/Kramme-Kramme/Ponholzer, § 4 Rn. 22.

⁶ Cf. OLG Düsseldorf, decision of 05.04.1982, ref.: 5 Ss (OWi) 156/82; BeckOK OWiG-Valerius, § 9 marginal no. 50.

⁷ OLG Celle, Bscl. v. 23.05.2022, Az.: 222 Ss 34/02 (OWi); KK-OWiG-Rogall, 5. Aufl. 2018, OWiG, § 9 Rn. 88.

⁸ Grabosch-Engel/Schönfelder, Das neue Lieferkettensorgfaltspflichtengesetz, § 6 marginal no. 38.

⁹ RegBegr, BT-Drs. 19/28649, p. 43, referring to this Häfeli, Der Menschenrechtsbeauftragte im Lieferkettensorgfaltspflichtengesetz - ein weiterer betrieblicher Beauftragter?, ARP 2021, 299, 300.

¹⁰ Harings/Jürgens/Thalhammer, Die Rolle des Menschenrechtsbeauftragten im Lieferkettensorgfaltspflichtengesetz, CB 2022, 93, 95; Berg/Kramme-Kramme/Ponholzer, LkSG, § 4 Rn. 22;

Depping/Walden-Walden, LkSG, § 4 marginal no. 124; Gehling/Ott-Balke, LkSG, § 4 marginal no. 52.

¹¹ Ruttloff/Wagner/Hahn/Freihoff, Der Menschenrechtsbeauftragte, CCZ 2020, 20, 26.

¹² Depping/Walden-Walden, LkSG, § 4 marginal no. 97.

¹³ Cf. also the structure of the data protection commissioner, Art. 39 para. 1 lit. a DSGVO, and the immission control commissioner, Art. 54 para. 1 sentence 1 BImSchG.

¹⁴ Harings/Jürgens/Thalhammer, Die Rolle des Menschenrechtsbeauftragten im Lieferkettensorgfaltspflichtengesetz, CB 2022, 93, 95; Berg/Kramme-Kramme/Ponholzer, LkSG, § 4 Rn. 22;

Depping/Walden-Walden, LkSG, § 4 marginal no. 124; Gehling/Ott-Balke, LkSG, § 4 marginal no. 52.

¹⁵ Grabosch, Das neue Lieferkettensorgfaltspflichtengesetz, § 5 marginal no. 37.

Human Rights Officer

Practical approach

Strategic, tactical, operational issues Legal effects OWiG and liability

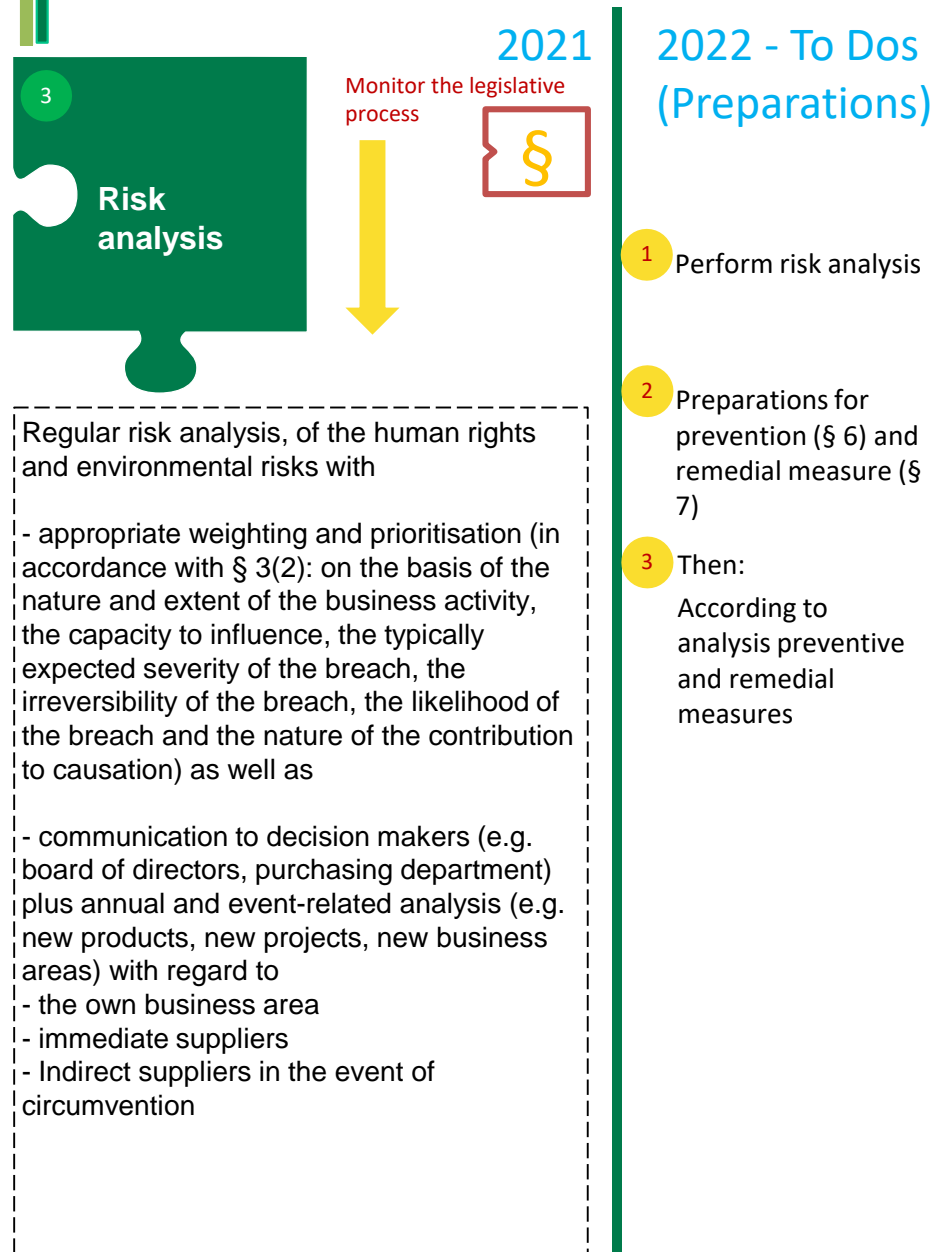
- (1) Strategic advantages and disadvantages of centralised/decentralised MBAs and number of MBAs
- (2) Strategic advantages and disadvantages of MBA in the management function / outside the management function and if so, where (compliance, legal, ESG, purchasing, etc.)
- (3) Strategic advantages and disadvantages of management with horizontal delegation and MBA with vertical delegation and active determination of residual responsibility
- (4) Strategic advantages and disadvantages MBA with monitoring or also with implementation tasks or specifications of analyses and measures (keyword neutrality and understanding as 1st or 2nd line)
- (5) Strategic advantages and disadvantages MBA as contact person for BAFA (would have to be appointed according to § 17 para. 2 LKSG)
- (6) Resolving possible conflicts of interest (e.g. if MBA is involved in purchasing)
- (7) Weighing up the delimitation of tasks MBA and Steering Committee
- (8) Comparison of experiences from data protection, immission control, SGB, ASiG, WHG, KrWG in distinction to GWG, export control, 3TG
- (9) Filter of risks escalated to and further escalated by the MBA compared to risks that remain at the operational level or with the MBA
- (10) Questions of works constitution law
- (11) Labour law privileges and insurance environment

Designation as liable commissioner or not

Intended: OWiG Addressee

Intended: Not OWiG Addressee

3. Then: § 5 - risk analysis



"Job Description"



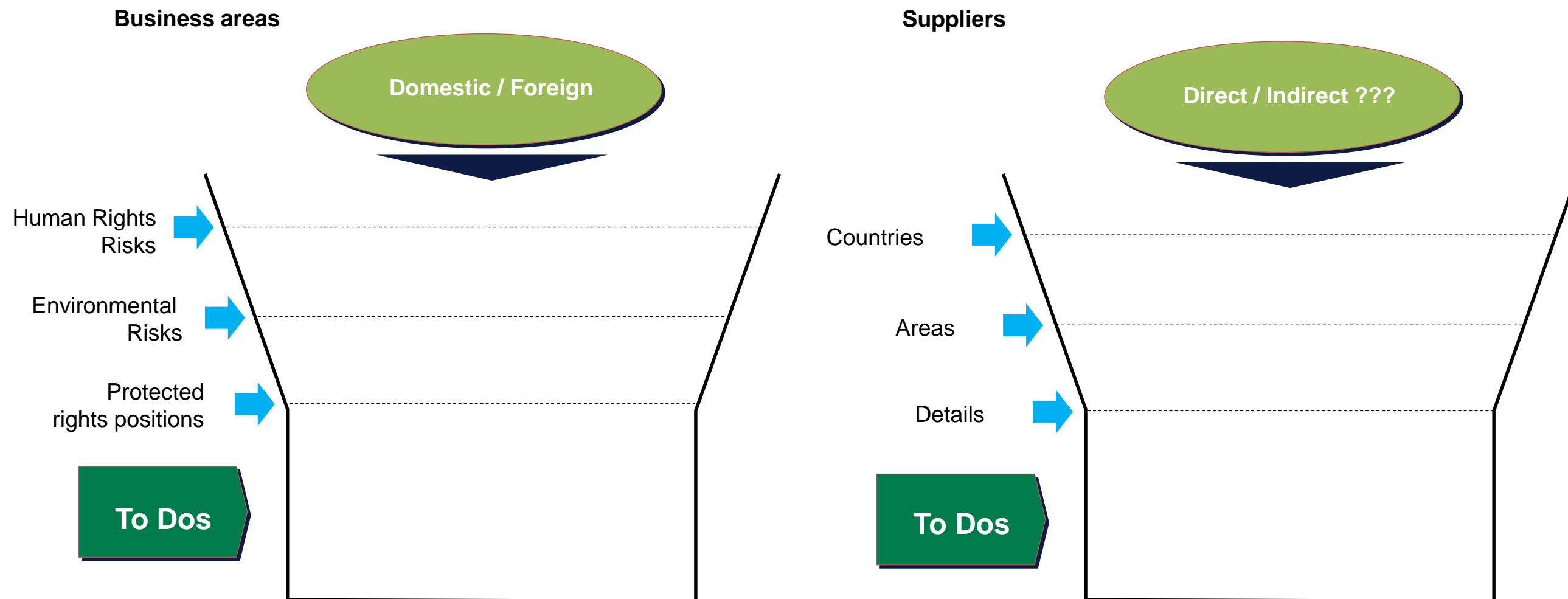
No.	§	Duties and tasks according to the law	Tasks concretely	Competences and interfaces	Cast idea	Support idea
3	§ 5	Risk analysis Regular risk analysis, of human rights and environmental risks with -appropriate weighting and prioritisation (according to § 3 para. 2: on the basis of type and scope of business activity, capacity to influence, typically expected severity of the injury, irreversibility of the injury, likelihood of the breach and nature of the contribution to causation) as well as - communication to decision-makers (e.g. board of directors, purchasing department) plus annual and event-related analysis (e.g. new products, new projects, new business areas) with regard to - the own business area - immediate suppliers -Indirect suppliers in the event of circumvention	- Risk analysis of own business area - human rights ¹	-interfaces to all locations in the own business area -knowledge of the HR and occupational health and safety situation	- HR	- external support -support from core team
			- Risk analysis of own business area - environmental risks ²	-interfaces to all locations in the own business area -knowledge of the environmental situation	- Environment - EHS	- external support -support from core team
			- Supplier risk analysis	-knowledge of human rights and environmental risks of the LkSG -knowledge of the supplier situation - system knowledge for IT/KI supported analysis	- Procurement - supply chain - Sustainability -IT support to cope with the complexity certainly makes sense	- external support -support from core team

¹ 1. child labour below minimum age (min. 15 years), ILO 138 + national; 2. worst forms of child labour for children under 18, ILO 182; 3. forced labour, ILO 29 + Covenant 1966; 4. slavery, slave-like practices; 5. disregard for labour protection, national; 6. disregard for freedom of association (trade unions) 7. discrimination (descent, disability, age, gender, religion, preferences); 8. withholding of adequate wages, national; 9. causing harmful soil, water and air pollution, harmful noise emissions and excessive water consumption; 10. unlawful eviction as well as deprivation of land, forests, water bodies; 11. use of security forces if this results in impairment of life, limb, association or freedom of association; 12. catch-all clause, obviously unlawful serious impairment of legal position

² 1, 2, 3: Mercury: Minamata Convention (risks from involvement in the production and disposal of mercury-containing products); 4: Chemicals: PoPs Convention (risks from the production or use of certain persistent organic pollutants); 5: Waste: PoPs Convention; 6, 7, 8: Waste: Basel Convention (risks from import and export of waste).

3. Risk analysis - filter

Idea: 80/20



Risk analysis of direct suppliers

1. get an overview of procurement processes and direct suppliers usually many companies already have a good overview of their supply chains due to their SAP systems.

2. risk identification

Risk country ¹ (location of supplier in <u>risk country</u> or not)	Risk area ² (specific product groups, industries, etc.)	Risk (from risk country and risk area)
+	+	+/- Risk
+	-	Risk
-	+	Risk
-	-	No Risk

In addition, a risk can also arise with regard to an individual **risk supplier**, e.g. because this supplier has already attracted negative attention. The risk supplier then falls into the high or medium priority, so that it is necessary to consider which measures are to be taken.

Once a potential risk has or has not been identified on the basis of the table (risk country and risk area), a cross-check (case-by-case examination) should be carried out to determine whether or not a risk actually exists.

3. evaluate and prioritize identified risks

Own influence ³	Hazard potential ⁴	Own causation ⁵	Causation Supplier ⁶	Evaluation and prioritisation
+	+	+	+	+/-
+	+	+	-	High Priority
+	+	-	+	
+	-	+	+	
-	+	+	+	
+	+	-	-	Medium Priority
-	+	+	-	
-	+	-	+	
+	-	-	+	
+	-	+	-	Low Priority
-	-	+	+	
+	-	-	-	
-	+	-	-	
-	-	+	-	
-	-	-	+	
-	-	-	-	

High priority: very likely that preventive and/or remedial Measure needs to be taken (broadly, if necessary); deepening if further information is needed to take Measure.

Medium priority: likely to require preventive and/or remedial Measure (less extensive if necessary); more in-depth if further information is needed to take Measure.

Low priority: likely to require preventive and/or remedial Measure only on a case-by-case basis; regularly no need for in-depth analysis.

³=Proximity to risk: Where does risk arise directly (own business area, direct supplier or indirect supplier); Is one the main customer in terms of procurement volume or are there many other customers in addition to one?; How large is one's own company?

⁴=severity, probability and irreversibility of the injury.

⁵=Own causation requires more than just ordering a service or product, e.g. placing requirements on the supplier that may increase the risk of human rights violations.

⁶=Is there evidence that the immediate supplier is causing human rights risks? (Questions such as: Does the immediate supplier produce himself or does he also just buy the product; How big is the immediate supplier; Media reports; etc.).

Information on the specific supplier via specific info tools

¹The list of countries comes from the association amfori, is based on the Worldwide Governance Indicators of the World Bank and takes into account the political framework conditions in the countries.

²Explanations of the individual areas also indicate which vulnerable groups of people are affected.

Special topic Spend

What does the literature and BAFA say?

- **Spend** = interface Requirements for risk analysis in § 5 LkSG + requirements for adequacy in § 3 para. 2 LkSG.
- View 1 (theoretical literature) - Critical as the risks for potentially affected parties have to be determined and not the risks for the company itself.¹ At best, a threshold based on the share of the supplier's sales turnover is possible, as there is probably no influence if the value is low. But typically, the ability to influence top 20/30 suppliers by business volume is greater than that of insignificant suppliers². In order to maintain proportionality, it may also be appropriate to limit the influence to individual production steps, depending on the order volume³. In addition, strategic importance should be taken into account in the prioritisation process through purchasing volume, as well as the risk of human rights violations and their severity, the production methods, the products themselves and the question of whether a break-off of the business relationship could have a negative impact on labour and social standards⁴. Consequential risks must nevertheless be prioritised, even if the business volume falls short of the purchasing volume of so-called key suppliers⁵.
- View 2 (literature practical) - Possible to define a low de minimis threshold based on **annual turnover** until regulatory guidance and *best practice* emerges.⁶
- View 3 - BAFA handout on risk analysis⁷: relevant procurement structure includes the "**order volume per procurement category in the last business year (percentage share of total volume)**". Nevertheless, the **severity** of the violation must be determined by weighing and comparing various factors. In addition to the reversibility of the breach, these factors include the degree of impairment caused by the breach and the number of people affected by the breach.⁸ With regard to the number of people affected, the principle applies that the severity of the breach increases as the number of people affected increases.⁹
- According to the FAQ of the BMAS¹⁰, the following should apply: *"In a second step, the risks are to be assessed and, if necessary, prioritised. On this basis, the company can decide which risks (and which supply relationship) it considers in depth and addresses first. Companies have a wide scope for action in this regard. The decisive factor is that the company can plausibly justify why a certain risk is addressed as a priority in accordance with the criteria of appropriateness laid down in § 3 para. 2 LkSG. One criterion, for example, is the severity of the identified risk in connection with a relevant causation contribution (e.g. large purchase volume of a certain raw material)"*¹¹.
- The most recent **handout on adequacy**¹² (December 2022) states the following about spend (page 7): *"In this context, it is not useful to determine how high the order volume is for this supplier in relation to the total order volume for all suppliers. This allows the conclusion to be drawn how important the supplier is for the company, but not how important the company is for the supplier and therefore how great its ability to influence is. The question of the ratio of the order volume to the (total) turnover of the supplier may be difficult to answer for many companies at the beginning. This is because the total turnover of the supplier is regularly unknown. Companies can try to work towards more transparency **gradually step by step**. It may also be possible to gauge the supplier's own importance from its willingness to "cooperate" in measures for improvement.*

¹ Herrmann/Rünz, Praktische Hinweise und Maßnahmen zur Umsetzung des Lieferkettensorgfaltspflichtengesetzes im Unternehmen, DB 2021 p. 3078 (3080) fn. 23.

² Gehlig/Ott-Balke, LkSG, § 5 marginal no. 50.

³ Fritz / Klaedtker, Lieferketten im Vergabeverfahren - Sofortige und zukünftige Änderungen durch das Lieferkettensorgfaltspflichtengesetz, NZBau 2022, 131 (135).

⁴ Gehlig/Ott-Balke, LkSG, § 5 marginal no. 48 with reference to the process steps sustainable supply chain management, guideline of econsense - Forum Nachhaltige Entwicklung der Deutschen Wirtschaft e.V., 2017, p.7. 73 BT-Drucks. 19/28649,45.

⁵ Schork/Schreier, Die angemessene Risikoanalyse gemäß § 5 LkSG, CB 2022, p. 334 (336) with reference to Brouwer, Noch viele offene Rechts- und Auslegungsfragen zum Lieferkettensorgfaltspflichtengesetz - Hinweise zum VCI-Diskussionspapier zur Umsetzung des LkSG, CCZ 2022, 137, 143, who believes that the volume could at best be related to the sales of the supplier in order to understand the possibilities of influence.

⁶ Gehlig/Ott/Lüneborg, Das neue Lieferkettensorgfaltspflichtengesetz - Umsetzung in der Unternehmenspraxis, CCZ 2021, 230 (235).

⁷ BAFA published a handout on risk analysis in August 2022: https://www.bafa.de/DE/Lieferketten/Risikoanalyse/risikoanalyse_node.html

⁸ Gehlig/Ott-Mader, LkSG, § 3 marginal no. 98 with reference to the government's explanatory memorandum. Furthermore, this can be found in the UNHCR Guiding Principles Interpretative Guide, p.8

⁹ Gehlig/Ott-Mader, LkSG, § 3 marginal no. 102.

¹⁰ There (FAQ BMAS) No. XIII.2. Since December 2021, the first more concrete information on the interpretation of the LkSG has been published in an FAQ by the Federal Ministry of Labour and Social Affairs. This can be found on the BMAS website (in November 2021, 09.02.2022, 28.04.2022 and 25.10.2022): <https://www.csr-in-deutschland.de/DE/Wirtschaft-Menschenrechte/Gesetz-ueber-die-unternehmerischen-Sorgfaltspflichten-in-supply-chains/FAQ/faq.html> > The text of the FAQ changes in the background (penultimate time in February 2022 and last time in April 2022 and then in October 2022 and January 2023)...See our [synopsis](#) [click] on this here. There is also a new synopsis for the version of 25.10.2022 <https://www.taylorwessing.com/de/insights-and-events/insights/2022/05/synopsis-faq-zum-lieferkettensorgfaltspflichtengesetz>.

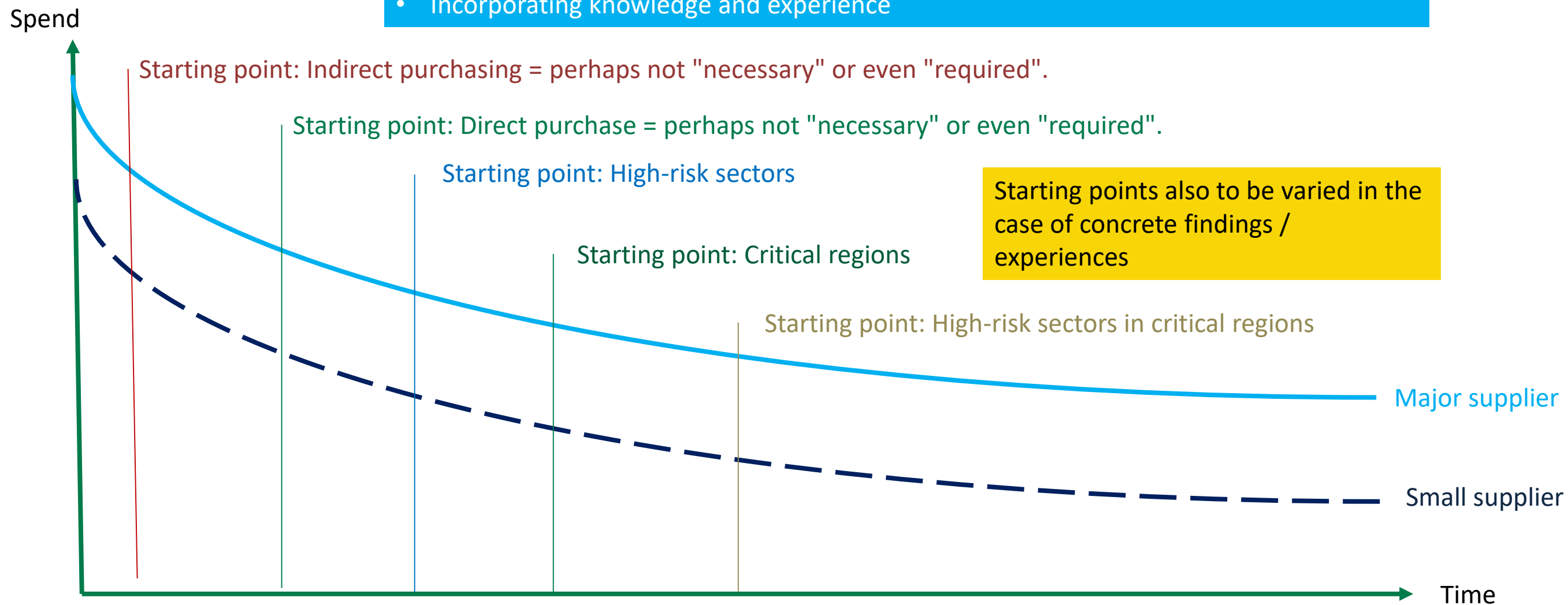
¹¹ See also *Depping/Walden-Walden*, LkSG, § 5 marginal no. 79 - incidentally, the "spent" is not discussed further in the commentary.

¹² See the BAFA handout on adequacy https://www.bafa.de/SharedDocs/Down-loads/DE/Lieferketten/handreichung_angemessenheit.pdf;jsessionid=5272672C2D68155A5EBB0E046C332D2E.2_cid390?blob=publicationFile&v=3

Spend

Practical approach

- Reduce spend over time (BAFA: "at the beginning" and "gradually")
- Select starting points at different levels according to criticality
- Incorporating knowledge and experience



Our guide to risk analysis



Dezember 2021

Praktischer Leitfaden

für die Risikoanalyse nach § 5 Lieferkettensorgfaltspflichtengesetz

INHALT



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- Einleitung

Seite 2

- Grundsätze und Begriffserläuterungen
- Risikoanalyse bei unmittelbaren Zulieferern

Seite 7

- Risikoanalyse bei mittelbaren Zulieferern
- Risikoanalyse im eigenen Geschäftsbereich

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Seite 9

- Bußgelder
- Ausblick

A. EINLEITUNG

Ab dem 01.01.2023 sind Unternehmen mit Sitz im Inland, die in der Regel mindestens 3000 Arbeitnehmer beschäftigen, verpflichtet, die in den §§ 3 ff. Lieferkettensorgfaltspflichtengesetz (LkSG) genannten menschenrechtlichen und umweltbezogenen Sorgfaltspflichten in ihren Lieferketten zu beachten.

Eine der wichtigsten Sorgfaltspflichten, die als erstes zu erfüllen ist, ist die in § 5 LKSG geregelte Risikoanalyse. *Doch wie führt ein Unternehmen eine Risikoanalyse konkret durch?* In Anbetracht der immer geringer werdenden Vorlaufzeit bis das Gesetz scharfgeschaltet wird, wird diese Frage drängender. Unternehmen sollten so schnell wie möglich mit der Risikoanalyse beginnen.

Dieser tieferegehende Leitfaden will dem Leser eine Vorgehensweise an die Hand geben, wie die Durchführung einer Risikoanalyse konkret aussehen kann. Er geht dabei deutlich über das hinaus, was regelmäßig in praktischen Ratgebern zu finden ist und enthält zahlreiche Verlinkungen zu hilfreichen öffentlichen Indexen, Übersichten, Leitfäden und Tools. Die hier dargestellte Vorgehensweise trägt der Situation Rechnung, dass i.d.R. nicht auf Anhieb jedes erdenkliche Risiko in der Lieferkette angegangen werden kann. Vorgesprochen wird daher ein schlüssiges und gestuftes System, das ein „Herausfiltern“ von risikolosen Bereichen und Lieferanten sowie eine Einordnung von Risiken in verschiedene Prioritätsstufen ermöglicht. Nicht jedes erkannte Risiko muss somit zu einer konkreten Maßnahme i.S.d. LkSG führen.

Praktischer Leitfaden
für die Risikoanalyse nach § 5 Lieferkettensorgfaltspflichtengesetz

kunftsland) oder dem gelieferten Rohstoff Kobalt (Kriterium: Risikogruppe; Produkt) ist grundsätzlich ein potentielles Risiko anzunehmen. Ergibt sich mindestens nach einem Kriterium ein potentielles Risiko, so liegt ein relevantes Risiko vor, das es später zu bewerten und priorisieren gilt.

Siehe folgende Abbildung zur Veranschaulichung:



Ergeben sich aus intern schon vorhandenem Wissen tatsächliche Anhaltspunkte, dass trotz der Bejahung eines (abstrakten) Risikos anhand der generalisierenden Betrachtung (s.o.) tatsächlich kein Risiko vorliegt (weil z.B. in der Vergangenheit erfolgte Inspektionen oder Zertifizierungen dafür sprechen, dass keine Menschenrechtsverletzung bei einem Lieferanten vorliegt oder droht), so würde dieser im Rahmen eines solchen Cross-checks wieder aus dem Risikobereich herausfallen und könnte „ausortiert“ werden.

Um nicht bereits an dieser Stelle eine detaillierte Einzelfallprüfung vornehmen zu müssen, sollte sich die Überprüfung im Rahmen von Cross-checks auf internes oder jedenfalls schnell zugängliches Wissen beschränken.

Praxistipp: Auch Zulieferer, die selbst unter das LkSG fallen, könnten zumindest fürs Erste als Nichttrisikolieferanten eingeordnet werden, zumindest soweit Vertrauen darin besteht, dass diese selbst den Anforderungen des LkSG gerecht werden.

Beachte: Es sind die Risiken für potentiell Betroffene zu ermitteln, nicht die Risiken für das Unternehmen selbst. Daher ist das (reine) generelle Aussortieren von für ein Unternehmen „finanziell unbedeutenden“ Zulieferern vor dem Hintergrund der Anforderungen des LkSG nicht zu empfehlen. Das „Aussortieren“ von Lieferanten als nicht risikobehaftet sollte durch ausreichende Tatsachengrundlage belegbar sein, gerade vor dem Hintergrund des jährlich einzureichenden Berichts.

Zusammenfassend:



Bewertung und Priorisierung der ermittelten Risiken

Entscheidungs- und Tatsachengrundlage
Präventions- und Abhilfemaßnahmen

1. Kriterium Herkunftsland

Die generalisierende Untersuchung hinsichtlich des Herkunftslandes kann anhand verschiedener öffentlich zugänglicher Indizes vorgenommen werden. Neben Herkunftsländern auch noch die Produktionsländer der Lieferanten herauszufinden, erscheint – zumindest im Rahmen einer ersten Klassifizierung in Risiko- und Nichtrisikolieferanten – über das Kriterium der Anwesenheit hinauszuweisen.

Menschenrechtliche Risiken

Wichtig zu beachten ist, dass nicht jeder Index jedes menschenrechtliche oder umweltbezogene Risiko i.S.d. § 2 II, III LkSG abdeckt. So könnte man z.B. meinen, dass der Global Rights In-


dex des Internationalen Gewerkschaftsbundes einen Bezug zu sämtlichen Risiken im Zusammenhang mit Arbeit (vgl. § 2 II Nr. 1-8 LkSG) hat. Tatsächlich bildet er aber nur Verletzungen des Kollektivarbeitsrechts ab, sodass dort nur potentielle Risiken bzgl. § 2 II Nr. 6 LkSG (Missachtung der Koalitionsfreiheit) ermittelt werden können. Auch betreffen die Indexe regelmäßig nur staatliches Handeln, sodass Risiken, die ihre Ursache in nicht-staatlichem Handeln haben, nicht erfasst sind. Eine nicht abschließende Liste von Indexen und deren Zuordnung zu den menschenrechtlichen Risiken i.S.d. § 2 II LkSG finden Sie hier:

Index	Abgebildetes menschenrechtliches Risiko § 2 III LKSG
https://www.ilo.org/public/english/condemnation/forced-labour/index.htm	<ul style="list-style-type: none"> • § 2 II Nr. 1 LKSG (Kinderarbeit) • Nr. 2 (Kinderarbeit) • Nr. 3 (Zwangsarbeit) • Nr. 5 (Arbeitsschutz) • Nr. 6 (Koalitionsfreiheit) • Nr. 7 (Diskriminierung) • Nr. 10 (Ländentzug)
https://www.amfor.com/sites/default/files/amfor2020-11-12%20Country-Risk-Assessment-2021-0.pdf	<ul style="list-style-type: none"> • Nr. 6 (Koalitionsfreiheit) • Nr. 10 (Ländentzug)
https://freedomhouse.org/country/russia/society/worldwide	<ul style="list-style-type: none"> • Nr. 6 (Koalitionsfreiheit) • Nr. 10 (Ländentzug)
https://www.humanrights.org/topic/human-rights/index-2020-71ang-en	<ul style="list-style-type: none"> • Nr. 6 (Koalitionsfreiheit) • Nr. 11 b) c) (Gewalt durch Sicherheitskräfte)
https://www.abolitionslaveryindex.org/en/sources/download/	<ul style="list-style-type: none"> • Nr. 4 (Sklaverei)
https://api.walrusdata.com/loadspc2020report20210112.pdf	<ul style="list-style-type: none"> • Nr. 9 (Bodenveränderung, Gewässer- und Luftverunreinigung)
https://www.walrusdata.com/loadspc2020report20210112.pdf	<ul style="list-style-type: none"> • Nr. 8 (Mindestlohn; angemessener Lohn)
https://www.livingincome.com/living-income-benchmarks	

Es bedarf mithin mehrerer Indexe, um alle Risiken i.S.d. LkSG insgesamt abzudecken. Die Indexe bilden auch nur

https://www.taylorwessing.com/-/media/taylorwessing/files/germany/2022/03/leitfaden-risikoanalyse_taylorwessing.pdf

BAFA Risk Analysis Handout - Expectations fulfilled !?

Expected	Delivered	Evaluation	
<ul style="list-style-type: none"> • Practical handout • Process model for the procedure • Stencils for analysis • References to practical sources for obtaining information • Explanation of which source is suitable for what and to what extent reliable • Statements on self-disclosure, audits, certifications, etc. • Statements on the usability of third party providers • Statement on the audit of suppliers of subsidiaries • ... • ... 	<ul style="list-style-type: none"> • "Unconventional" reproduction of the content of the law • New terminology • Four case groups with very similar contents • Annex I without specific reference • Annex II without practical explanations of what can be used for what • ... • ... • ... • ... 	<ul style="list-style-type: none"> • !? 	

BAFA Risk Analysis Handout - Deviations from the Law

Details - 1

⁴The parent company of a Group must conduct due diligence for its own business area and for the supply chain as a whole. This also applies to all operations and supply chains of the Group's affiliated companies, provided they are legally and economically dependent of the parent company (see also Section 2(6) sentence 3 'LkSG').

§ 2 para. 6 extends the own business area and does not extend to the supply chain of group companies

⁵ Delivery to end customers is covered by the 'LkSG'. Where a company subcontracts delivery to a third-party service provider, this supplier is considered part of the supply chain pursuant to Section 2(5) 'LkSG'. Where a company subject to the 'LkSG' assumes responsibility for the distribution and/or delivery to end customers, then it is considered part of its own operations. See BAFA Q&A, no. IV.11.

§ Sections 2(7) and (8) do not provide for the delivery of goods, but only for the provision of services; "downstream", therefore, the goods logistics provider is not a supplier (at most the service logistics provider).

Synopsis FAQ on the LkSG: <https://www.taylorwessing.com/de/insights-and-events/insights/2022/05/synopse-faq-zum-lieferkettensorgfaltspflichtengesetz>

(5) The supply chain within the meaning of this Act refers to all products and services of an enterprise. It includes all steps in the country and abroad that are necessary for the manufacture of the products and the provision of the services, starting with the extraction of the raw materials up to the delivery to the end customer and includes

1. the actions of a company in its own business area,
2. the actions of a direct supplier, and
3. the actions of an indirect supplier.

(6) Own business within the meaning of this Act includes any activity of the entity of the enterprise to achieve the objective of the enterprise. This includes any activity for the manufacture and utilisation of products and for the provision of services, irrespective of whether it is carried out at a location in Germany or abroad. In affiliated enterprises, an enterprise belonging to the group is included in the own business area of the umbrella company if the umbrella company exercises a determining influence on the enterprise belonging to the group.

(7) For the purposes of this Act, a direct supplier is a partner to a contract for the supply of goods or the provision of services whose supplies are required for the manufacture of the enterprise's product or the provision and use of the relevant service.

(8) For the purposes of this Act, an indirect supplier means any enterprise which is not a direct supplier and whose supplies are required for the manufacture of the enterprise's products or for the provision and use of the relevant service.

BAFA Risk Analysis Handout - Deviations from the Law

Details - 2

¹² As defined here, contribution to or partial responsibility for a risk implies that the actions of a third party caused the adverse impact in question. The company “contributes” to the impact if it, by action or even omission, in any way permits, facilitates or incentivizes the violation of a concrete obligation. The following factors may help to determine whether a company has contributed in this way (particularly in the supply chain context):

1. The extent to which a company may encourage or incentivize a violation by a third party, i.e., to what degree its actions increased the risk of the violation.
2. The extent to which the company could have, or should have, known about the violation, i.e., to what degree the violation was foreseeable.
3. The extent to which the company’s actions would have prevented, mitigated or stopped the violation, i.e., to what degree it failed to act appropriately. Overall, we should not consider “contribution or partial responsibility” as a static concept. Companies may initially only be “indirectly linked” to a violation. However, if they fail to act, they may ultimately be found to have “contributed”. See also the OECD Due Diligence Guidance for responsible Business Conduct, p. 70.

Where does BAFA get this broad understanding of "contribute" / "cause" ?

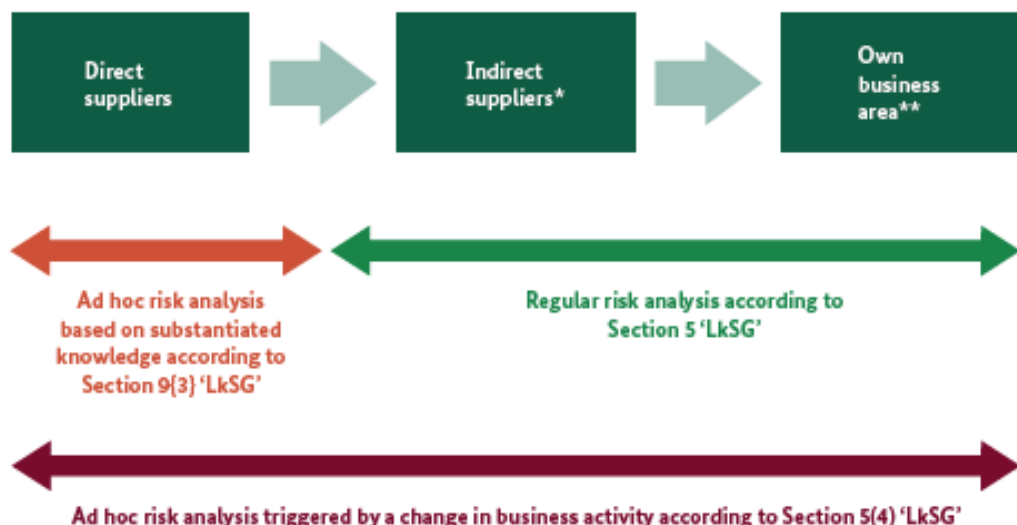
Explanatory Memorandum on the law

"In the context of risk management, companies must only address those human rights and environmental risks that they have caused. Causing means that the company alone has directly caused the risk or has (causally) contributed to the emergence or intensification of the risk through its actions. The reference to the supply chain makes it clear that the risk may lie with the company itself, i.e. in its own business area, with a direct supplier or an indirect supplier".

BAFA Risk Analysis Handout - Deviations from the Law

Details - 3

Objective: An appropriate and effective risk management along the entire supply chain



§ 5 para. 4 regulates the WHEN and not the HOW and WHERE of the occasion-related (ad hoc) repetition of the risk analysis (moreover, why then not also extend to the end customer)

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.

§ 5

(5) The supply chain within the meaning of this Act refers to all products and services of an enterprise. It includes all steps in the country and abroad that are necessary for the manufacture of the products and the provision of the services, starting with the extraction of the raw materials up to the delivery to the end customer and includes

1. the actions of a company in its own business area,
2. the actions of a direct supplier, and
3. the actions of an indirect supplier.

(6) Own business within the meaning of this Act includes any activity of the entity of the enterprise to achieve the objective of the enterprise. This includes any activity for the manufacture and utilisation of products and for the provision of services, irrespective of whether it is carried out at a location in Germany or abroad. In affiliated enterprises, an enterprise belonging to the group is included in the own business area of the umbrella company if the umbrella company exercises a determining influence on the enterprise belonging to the group.

(7) For the purposes of this Act, a direct supplier is a partner to a contract for the supply of goods or the provision of services whose supplies are required for the manufacture of the enterprise's product or the provision and use of the relevant service.

(8) For the purposes of this Act, an indirect supplier means any enterprise which is not a direct supplier and whose supplies are required for the manufacture of the enterprise's products or for the provision and use of the relevant service.

Procedure Risk analysis

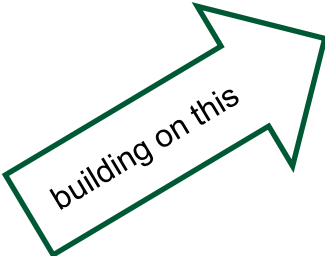
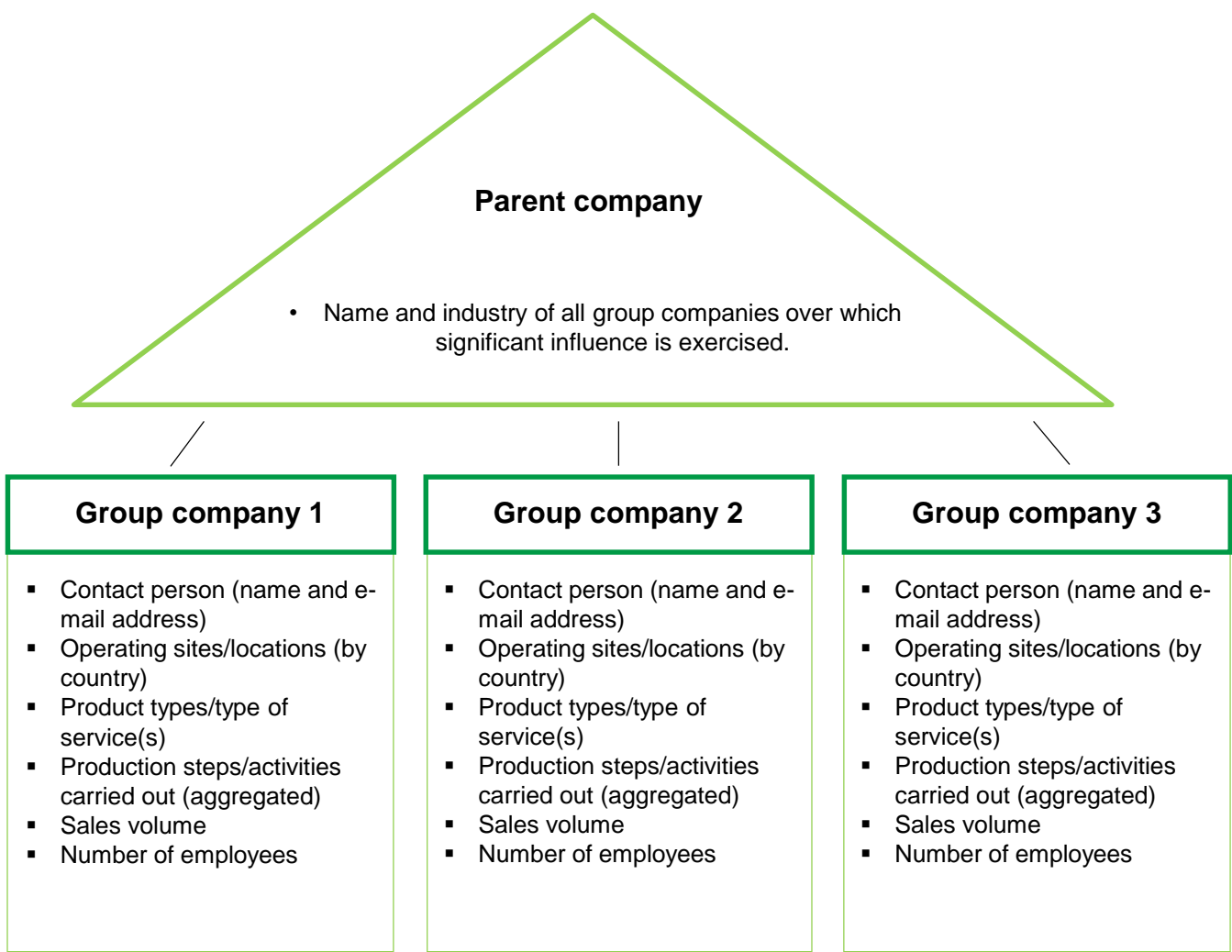
Considerations on risk analysis - also in connection with the handout

BAFA has formed 4 case groups, which differ little:

I. Hilfestellung für eine regelmäßige Risikoanalyse im eigenen Geschäftsbereich ¹⁰			II. Hilfestellung für eine regelmäßige Risikoanalyse bei unmittelbaren Zulieferern ¹¹			III. Hilfestellung für eine anlassbezogene Risikoanalyse (substantiierte Kenntnis, Fokus mittelbare Zulieferer)			IV. Hilfestellung für eine anlassbezogene Risikoanalyse (wesentliche Veränderung oder Erweiterung der Risikolage, Fokus gesamte Lieferkette)		
Schritte der Risikoanalyse	Vorgehen	Beispielhafte Ergebnisse	Schritte der Risikoanalyse	Vorgehen	Beispielhafte Ergebnisse	Schritte der Risikoanalyse oder Untersuchung der Verletzung	Vorgehen	Beispielhafte Ergebnisse	Schritte der Risikoanalyse	Vorgehen	Beispielhafte Ergebnisse
1. Abstrakte Betrachtung von Risiken, insbesondere <ul style="list-style-type: none">• branchenspezifische Risiken• länderspezifische Risiken zwecks Identifizierung von Gesellschaften/Filialen/Standorten mit einer erhöhten Risikodisposition. Identifizierung von möglicherweise von den Risiken Betroffenen einschließlich besonders vulnerabler Personengruppen.	Fokus: Welche menschenrechtlichen oder umweltbezogenen Risiken existieren im eigenen Geschäftsbereich? Abgleich von Informationen und Quellen zu menschenrechtlichen und umweltbezogenen Risiken im Sinne des § 2 Abs. 2 und 3 mit Informationen zur eigenen Branche bzw. zu den eigenen Branchen und Tätigkeitsländern. Erste abstrakte Einschätzung der Risiken (= abstrakte Risikobetrachtung). Ein Überblick über ausgewählte Informationen und Quellen, die im ersten Schritt genutzt werden können, um menschenrechtliche und umweltbezogene Risiken zu ermitteln, findet sich in Anhang II. Eine Betrachtung von Risiken allein auf dieser abstrakten Basis genügt nicht. Eine Plausibilisierung der Risiken im eigenen spezifischen Kontext erfolgt im nächsten Schritt.	Das Unternehmen weiß, welche menschenrechtlichen und umweltbezogenen Risiken in seinen Tätigkeitsländern typischerweise auftreten und welche Gruppen möglicherweise betroffen sind. Das Unternehmen weiß in Bezug auf jede Beschaffungskategorie (gegebenenfalls Aggregation mehrerer Kategorien), welche Risiken branchentypisch sind. Das Unternehmen weiß, in welchen angehörigen Gesellschaften (auf die es einen bestimmenden Einfluss ausübt), Filialen/Standorten abstrakte menschenrechtliche oder umweltbezogene Risiken auftreten, und hat darauf aufbauend Gesellschaften/Filialen/Standorte die vertiefte weitere Analyse identifiziert. Das Unternehmen weiß bezüglich vormals festgestellter Risiken, ob diese weiter potenziell auftreten.	1. Abstrakte Betrachtung von Risiken, insbesondere <ul style="list-style-type: none">• branchenspezifische Risiken• länderspezifische Risiken zwecks Identifizierung von Hochrisiko-Zulieferern. Identifizierung von möglicherweise von den Risiken Betroffenen einschließlich besonders vulnerabler Personengruppen.	Fokus: Welche menschenrechtlichen oder umweltbezogenen Risiken treten wo in Bezug auf die Geschäftstätigkeit der Zulieferer auf? Abgleich von Informationen und Quellen zu menschenrechtlichen und umweltbezogenen Risiken im Sinne des § 2 Abs. 2 und 3 mit Informationen zu den Beschäftigungsländern und/oder Beschäftigungskategorien. Erste abstrakte Einschätzung der Risiken (= abstrakte Risikobetrachtung). Ein Überblick über ausgewählte Informationen und Quellen, die im ersten Schritt genutzt werden können, um menschenrechtliche und umweltbezogene Risiken zu ermitteln, findet sich in Anhang II. Eine Betrachtung von Risiken allein auf dieser abstrakten Basis genügt nicht. Eine Plausibilisierung der Risiken im eigenen spezifischen Kontext erfolgt im nächsten Schritt.	Das Unternehmen weiß, welche menschenrechtlichen und umweltbezogenen Risiken in welchen seiner Beschäftigungsländern auftreten und welche Gruppen möglicherweise betroffen sind. Das Unternehmen weiß in Bezug auf jede Beschaffungskategorie (gegebenenfalls Aggregation mehrerer Kategorien), welche Risiken branchentypisch sind. Das Unternehmen weiß, in welchem seiner Beschäftigungsländer oder in Bezug auf welche seiner Beschäftigungskategorien abstrakte menschenrechtliche oder umweltbezogene Risiken auftreten, und hat darauf aufbauend Länder, Beschäftigungskategorien oder Zulieferer für die vertiefte weitere Analyse identifiziert. Das Unternehmen weiß bezüglich vormals festgestellter Risiken, ob diese weiter potenziell auftreten.	1. Abstrakte Betrachtung von Risiken, insbesondere <ul style="list-style-type: none">• branchenspezifische Risiken• länderspezifische Risiken zwecks erster Verifizierung der tatsächlichen Anhaltspunkte für die Verletzung menschenrechtsbezogener oder umweltbezogener Pflichten. Identifizierung von möglicherweise von den Risiken Betroffenen einschließlich besonders vulnerabler Personengruppen.	Fokus: Welche menschenrechtlichen oder umweltbezogenen Risiken treten bei einem oder mehreren mittelbaren Zulieferern auf? Abgleich von Informationen und Quellen zu menschenrechtlichen und umweltbezogenen Risiken in Bezug auf eine oder mehrere mittelbare Zulieferer (beispielsweise ein oder mehrere mittelbare Zulieferer in einem bestimmten Beschäftigungsland; auf einer bestimmten Lieferkettenstufe; in einer bestimmten Rohstofflieferkette). Ein Überblick über ausgewählte Informationen und Quellen, die im ersten Schritt genutzt werden können, um menschenrechtliche und umweltbezogene Risiken zu ermitteln, findet sich in Anhang II. Eine Ermittlung von Risiken allein auf dieser abstrakten Basis genügt nicht. Eine Plausibilisierung der Risiken im eigenen spezifischen Kontext erfolgt im nächsten Schritt.	1. Abstrakte Betrachtung von Risiken, insbesondere <ul style="list-style-type: none">• branchenspezifische Risiken• länderspezifische Risiken zwecks Verifizierung veränderter oder hinzugekommener Risiken Identifizierung von möglicherweise von den Risiken Betroffenen einschließlich besonders vulnerabler Personengruppen.	Fokus: Welche neuen oder veränderten menschenrechtlichen oder umweltbezogenen Risiken treten aufgrund des Auslösers der anlassbezogenen Risikoanalyse auf? Abgleich von Informationen und Quellen zu menschenrechtlichen und umweltbezogenen Risiken in Bezug auf den Auslöser der Risikoanalyse (beispielsweise zu länderspezifischen Risiken im Zusammenhang mit einem möglichen neuen Beschäftigungsland, material- oder rohstoffspezifischen Risiken im Zusammenhang mit der Einführung/Entwicklung eines neuen Produktes). Ein Überblick über ausgewählte Informationen und Quellen, die im ersten Schritt genutzt werden können, um menschenrechtliche und umweltbezogene Risiken zu ermitteln, findet sich in Anhang II. Eine Ermittlung von Risiken allein auf dieser abstrakten Basis genügt nicht. Eine Plausibilisierung der Risiken im eigenen spezifischen Kontext erfolgt im nächsten Schritt.	Das Unternehmen weiß, welche möglichen neuen oder veränderten menschenrechtlichen oder umweltbezogenen Risiken mit dem Auslöser der Risikoanalyse typischerweise verbunden und welche Gruppen möglicherweise betroffen sind.	
2. Konkrete Ermittlung von Risiken und ihre Gewichtung sowie Priorisierung anhand der in § 3 Abs. 2 genannten Kriterien mit Fußnote 12 • Art und Umfang der Geschäftstätigkeit • Eintrittswahrscheinlichkeit • Schwere der Verletzung nach Grad, Anzahl der Betroffenen und Unumkehrbarkeit • Einflussmöglichkeiten • Verursachungsbeitrag des Unternehmens zu einzelnen Risiken oder Risikobereichen	Fokus: Welche konkreten Risiken bestehen in den Standorten und Gesellschaften? Welche Risiken muss das Unternehmen wo priorität angehen? Plausibilisierung der Ergebnisse der vorangegangenen abstrakten Risikobetrachtung. Individuelle Ermittlung, Gewichtung und Priorisierung von konkreten menschenrechtlichen und umweltbezogenen Risiken in einem spezifischen Kontext bei den Gesellschaften/Filialen/Standorten mit einer erhöhten Risikodisposition (= konkrete Risikobetrachtung). Die Ermittlung, Gewichtung und Priorisierung der Risiken erfolgen transparent, nachvollziehbar und nach einer konsistent angewandten Systematik. Eintrittswahrscheinlichkeit und Schwere der Verletzung sind hierbei einzeln zu bewerten, beispielsweise mittels einer Skala beziehungsweise einer „Heatmap“.	Aufbauend auf Schritt 1 und den vorbereitenden Informationen zu Art und Umfang der Geschäftstätigkeit, kennt das Unternehmen seine konkreten menschenrechtlichen oder umweltbezogenen Risiken auf Länderebene. Das Unternehmen kennt seine Standorte/Filialen/Gesellschaften mit einer erhöhten Risikodisposition sowie die dort konkret bestehenden prioritären Risiken. Das Unternehmen hat klar definierte Verantwortliche für jedes prioritäre Risiko oder aggregierte Risikobereiche bestimmt. Werden für das Ergreifen von angemessenen Maßnahmen weitere Informationen benötigt, nimmt das Unternehmen für einzelne prioritäre Risiken oder Risikobereiche vertiefte Prüfungen vor.	Fokus: Welche Risiken sind bei welchen spezifischen Hochrisiko-Zulieferern relevant? Welche Risiken muss das Unternehmen wo priorität angehen? Plausibilisierung der Ergebnisse vorangegangener abstrakten Risikobetrachtung. Individuelle Ermittlung, Gewichtung und Priorisierung von konkreten menschenrechtlichen und umweltbezogenen Risiken in einem spezifischen Kontext, zum Beispiel in Bezug auf Länder, Standorte und/oder Zulieferer bei den Hochrisiko-Zulieferern (= konkrete Risikobetrachtung). Aufbauend auf Schritt 1 und den vorbereitenden Informationen zu Art und Umfang der Geschäftstätigkeit, kennt das Unternehmen seine konkreten menschenrechtlichen oder umweltbezogenen Risiken auf Zuliefererebene. Das Unternehmen kennt seine Hochrisiko-Zulieferer ¹¹ oder -Länder/-Regionen ¹¹ und die im jeweiligen Kontext auftretenden prioritären Risiken. Das Unternehmen hat klar definierte Verantwortliche für jedes prioritäre Risiko oder aggregierte Risikobereiche bestimmt. Werden für das Definieren von angemessenen Maßnahmen weitere Informationen benötigt, nimmt das Unternehmen für einzelne prioritäre Risiken oder Risikobereiche vertiefte Prüfungen vor.	2. Konkrete Ermittlung von Risiken und ihre Gewichtung sowie Priorisierung im Abgleich mit den Ergebnissen der regelmäßigen Risikoanalyse anhand der in § 3 Abs. 2 genannten Kriterien: • Art und Umfang der Geschäftstätigkeit • Eintrittswahrscheinlichkeit • Schwere der Verletzung nach Grad, Anzahl der Betroffenen und Unumkehrbarkeit • Einflussmöglichkeiten • Verursachungsbeitrag des Unternehmens zu einzelnen Risiken oder Risikobereichen	Fokus: Welche Risiken treten auf der Ebene meiner mittelbaren Zulieferer auf? Inwiefern verändert dies die prioritären Risiken meines Unternehmens? Plausibilisierung der Ergebnisse der vorangegangenen Risikobetrachtung. Individuelle Betrachtung von konkreten Risiken in einem spezifischen Kontext von einem oder mehreren mittelbaren Zulieferern. Die Ermittlung, Gewichtung und Priorisierung der Risiken erfolgen transparent, nachvollziehbar und nach einer konsistent angewandten Systematik. Eintrittswahrscheinlichkeit und Schwere der Verletzung sind hierbei einzeln zu bewerten, beispielsweise mittels einer Skala bzw. einer „Heatmap“. Im Fall von fehlenden Daten dokumentiert und begründet das Unternehmen Informationslücken und weist entsprechende Bemühungen zur Datenbeschaffung nach. Abgleich mit den Ergebnissen der regelmäßigen Risikoanalyse, inwiefern eine Anpassung der priorisierten Risiken erfolgen muss.	2. Konkrete Ermittlung von Risiken und ihre Gewichtung, Identifizierung von möglicherweise von diesen Risiken Betroffenen sowie Priorisierung im Abgleich mit den Ergebnissen der regelmäßigen Risikoanalyse anhand der in § 3 Abs. 2 genannten Kriterien: • Art und Umfang der Geschäftstätigkeit • Eintrittswahrscheinlichkeit • Schwere der Verletzung nach Grad, Anzahl der Betroffenen und Unumkehrbarkeit • Einflussmöglichkeiten • Verursachungsbeitrag des Unternehmens zu einzelnen Risiken oder Risikobereichen	Fokus: Welche Risiken werden durch den Auslöser der anlassbezogenen Risikoanalyse verursacht? Inwiefern verändert dies die prioritären Risiken des Unternehmens? Konkrete Risikobetrachtung und -priorisierung der Ergebnisse der Risikoanalyse mit Bezug auf den Auslöser der Risikoanalyse anhand einer transparenten, nachvollziehbaren und konsistent angewandten Systematik. Abgleich mit den Ergebnissen der regelmäßigen Risikoanalyse.	Das Unternehmen kennt seine konkreten Risiken im Zusammenhang mit dem Auslöser der anlassbezogenen Risikoanalyse (beispielsweise im Zusammenhang mit einem potenziellen Joint-Venture-Partner in einem Hochrisiko-Land). Das Unternehmen weiß, ob die anstehende Entscheidung oder das externe Ereignis die prioritären Risiken des Unternehmens verändern, und kann einschätzen, ob neue oder veränderte Präventionsmaßnahmen notwendig sind. Das Unternehmen hat klar definierte Verantwortliche für jedes prioritäre Risiko oder aggregierte Risikobereiche bestimmt.			
3. Sukzessive Ausweitung der konkreten Risikobetrachtung (Schritt 2) auf sämtliche Gesellschaften/Filialen/Standorte im eigenen Geschäftsbereich	Fokus: Welche konkreten Risiken bestehen im gesamten eigenen Geschäftsbereich? Das in Schritt 2 dargestellte Vorgehen der Ermittlung, Gewichtung und Priorisierung ist über die Gesellschaften/Filialen/Standorte mit einer erhöhten Risikodisposition hinaus sukzessive auf sämtliche übrigen Gesellschaften/Filialen/Standorte anzuwenden.	Das Unternehmen kennt die konkreten menschenrechtlichen oder umweltbezogenen Risiken im gesamten eigenen Geschäftsbereich.				Alternativ: Untersuchung einer konkreten Verletzung von menschenrechtlichen oder umweltbezogenen Pflichten bei einem oder mehreren mittelbaren Zulieferern. Untersuchung der Verletzung unter Einbezug der möglicherweise Betroffenen bzw. ihrer Vertretungen beispielsweise in Form von Konsultationen.					

Procedure Risk analysis of own business area

Step 1: Overview of company structure



Overview most important in terms of turnover Products or services, which the Company manufactures and/or distributes or offers						



Nature and scope of business activity

to be taken into account across the board and with a view to preparing the risk analysis, not as a concrete prioritisation criterion (footnote 12 handout)



Conclusion? Unclear, possibly it is meant that the most important products, services, companies are to be considered in depth within the framework of the risk analysis or that the risks identified there are to be addressed as a priority.

Procedure Risk analysis in own business area

Step 2: Risk identification



Abstract consideration of risks? According to BAFA possible in principle if so many subsidiaries that individual consideration is unreasonable **From when?**



Concrete consideration of risks Either in all subsidiaries or if too many, in those with increased risk disposition **How?**



Checklists



to responsible persons - must be empowered to identify and report risks, training where appropriate.



in every society



to collect information on any risks



Our checklists for risk analysis in own business area*



Checklists - Examples

Checkliste Risikoanalyse
Menschenrechtliche Risiken
– Kinderarbeit – § 2 Abs. 2 Nr. 1 und Nr. 2 LkSG –

Risiko

- der Verletzung des Verbots der Beschäftigung eines Kindes unter dem Mindestalter (Nr. 1),
- der Verletzung des Verbots der schlimmsten Formen der Kinderarbeit für Kinder unter 18 Jahren (Nr. 2)

Gesetzliche Anforderungen

Das LkSG normiert in § 2 Abs. 2 Nr. 1 und Nr. 2 jeweils eigenständige Verbote, welche auf die Bekämpfung der Kinderarbeit abzielen.

§ 2 Abs. 2 Nr. 1 LkSG verbietet die Beschäftigung eines Kindes, wenn dieses noch nicht das Alter erreicht hat, mit dem nach dem Recht des jeweiligen Beschäftigungsortes die Schulpflicht endet. Weiter darf keine Beschäftigung eines Kindes unter 15 Jahren erfolgen, auch wenn möglicherweise nach dem jeweiligen Recht des Beschäftigungsortes bereits vor Erreichen des 15. Lebensjahres keine Schulpflicht mehr besteht.

Das LkSG orientiert sich hinsichtlich der Nr. 1 am ILO-Übereinkommen Nr. 138¹, welches den ratifizierenden Staaten nach Art. 2 die Verpflichtung auferlegt, ein nicht unter dem Ende der Schulpflicht liegendes Alter, welches 15 Jahre nicht unterschreitet, zur Zulassung zur Beschäftigung zu bestimmen. Unter https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY_P10011_CONVENTION_TYPE_CODE_2,F können die Staaten, die das Übereinkommen ratifiziert haben, eingesehen werden. Einen Überblick über die gesetzlichen Bestimmungen in den einzelnen Ländern bietet die ILO hier: https://www.ilo.org/dyn/natlex/natlex4.byCountry?p_lang=en

Nach Art. 2 Abs. 4 sowie Art. 4 bis 8 des ILO-Übereinkommens Nr. 138 können die Staaten in bestimmten Konstellationen durch Regelungen im nationalen Recht, welche nicht im Widerspruch zu den nachfolgenden Artikeln des ILO-Übereinkommens Nr. 138 stehen dürfen, von dem festgelegten Alter abweichen. Auf diese Ausnahmeregelungen nimmt § 2 Abs. 2 Nr. 1 LkSG ausdrücklich Bezug, sodass diese auch im Anwendungsbereich des LkSG einschlägig sind und kein Verstoß gegen § 2 Abs. 2 Nr. 1 LkSG vorliegt, soweit ein Ausnahmetatbestand erfüllt ist. Die Ausnahmeregelungen stellen sich dabei wie folgt dar:

¹ Übereinkommen der Internationalen Arbeitsorganisation vom 26. Juni 1973 über das Mindestalter für die Zulassung zur Beschäftigung, BGBl. 1976 II S. 201, 202.

Checkliste

Checklist-Fragen zu Nr. 1	Bitte ankreuzen und entsprechend den Anmerkungen weiterprüfen	
1. Beschäftigen Sie im Rahmen Ihrer Geschäftstätigkeit Kinder? <i>Hinweis: Der Begriff des „Kindes“ erfasst in diesem Zusammenhang Personen, die unter 18 Jahre alt sind.</i>	Ja O	Nein O
	Prüfung fortsetzen	Kein Risiko, Prüfung beendet
2. Werden Kinder beschäftigt, die noch nicht das Alter erreicht haben, in welchem nach dem jeweiligen Recht des Beschäftigungslandes die Schulpflicht endet? <i>Hinweis: Ein Überblick über die jeweiligen gesetzlichen Regelungen kann unter https://www.ilo.org/dyn/natlex/natlex4.byCountry?p_lang=en gewonnen werden.</i>	Ja O	Nein O
	Weiter bei Frage 4	Prüfung fortsetzen
3. Beschäftigen Sie Kinder, die jünger als 15 Jahre sind?	Ja O	Nein O
	Prüfung fortsetzen	Kein Risiko, Prüfung beendet
4. Ist die Beschäftigung von einer mit den Ausnahmetatbeständen des ILO-Übereinkommens Nr. 138 übereinstimmenden nationalen gesetzlichen Ausnahmeregelung des Beschäftigungslandes erfasst?	Ja O	Nein O
	Einzelfallprüfung notwendig	Risiko besteht, Prüfung beendet
5. Sind in dem Beschäftigungsland bereits Fälle von Kinderarbeit bekannt? <i>Hinweis: Unter https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings kann eingesehen werden, ob in einzelnen Ländern bereits Verstöße aufgetreten sind.</i>	Ja O	Nein O
	Einzelfallprüfung notwendig	kein Risiko, Prüfung beendet

*Now also available in english language

Our checklists for risk analysis in own business area



Checklists - Examples

Checklist-Fragen zu Nr. 5	Bitte ankreuzen und entsprechend den Anmerkungen weiterprüfen	
<p>Werden in Ihrem Betrieb die wichtigsten erforderlichen Maßnahmen nach dem Arbeitsschutzgesetz getroffen?</p> <p><i>Das Arbeitsschutzgesetz verlangt die</i></p> <ul style="list-style-type: none"> - Aufstellung - Überprüfung - Anpassung <p><i>von nach den betrieblichen Umständen erforderlichen Maßnahmen zum Schutz der Sicherheit und Gesundheit der Beschäftigten.</i></p> <p><i>Von der Einhaltung der Vorgaben des Arbeitsschutzgesetzes ist daher dann eher auszugehen, wenn die folgenden Fragen mit „Ja“ oder „sicher nicht einschlägig“ beantwortet werden können:</i></p>		
1. Festlegung von Arbeits- und Tätigkeitsbereichen: Werden im Betrieb Arbeitsbereiche festgelegt, die nach der Art der Tätigkeit eine ähnliche arbeitsschutzrechtliche Gefahrenlage aufweisen (z.B. Schreibtischarbeitsplätze mit/ohne Computer, Lagermitarbeiter, Fahrer)?	Ja <input type="radio"/>	Nein <input type="radio"/>
2. Ermittlung der Gefährdungen: Werden für jeden festgelegten Arbeitsbereich die für die betriebliche Sicherheit und Gesundheit relevanten möglichen Gefährdungsfaktoren erfasst („Ist-Zustand“)? Dies ist dann der Fall, wenn folgende Gefährdungsfaktoren entweder erfasst werden oder offensichtlich irrelevant für den Betrieb sind.	Ja <input type="radio"/>	Nein <input type="radio"/>
a. Psychische Faktoren (z.B. Über-/Unterforderung, Arbeiten unter Zeitdruck, wechselnde oder lange Arbeitszeiten, häufige Nachtarbeit, fehlende soziale Kontakte)	Ja <input type="radio"/>	Nein <input type="radio"/>
b. Mechanische Gefährdungen (z.B. Absturz, Ausrutschen, Stolpern, Umknicken, ungeschützt bewegte Maschinenteile, Teile mit gefährlichen Oberfläche, bewegte Arbeits- und Transportmittel)	Ja <input type="radio"/>	Nein <input type="radio"/>
c. Elektrische Gefährdungen (z.B. Elektrischer Schlag, Lichtbögen, Elektrostatische Aufladungen)	Ja <input type="radio"/>	Nein <input type="radio"/>
d. Gefahrstoffe (z.B. Denkbare Gefahren durch Hautkontakt, Einatmen, Verschlucken, insb. bei biologisch, chemisch wirkenden Arbeitsstoffen, Brand-/Explosionsgefahren durch leicht brennbare Stoffe)	Ja <input type="radio"/>	Nein <input type="radio"/>
e. Thermische Gefährdungen (z.B. heiße/kalte Medien oder Oberflächen)	Ja <input type="radio"/>	Nein <input type="radio"/>
f. Besonderer physikalischer Einwirkungen (z.B. Lärm, Ultraschall, Vibrationen, Strahlungen, Unter/Überdruck)	Ja <input type="radio"/>	Nein <input type="radio"/>
g. Arbeitsumgebung (z.B. Hitze, Kälte, Lüftung, Beleuchtung, Ersticken, Unzureichende Flucht- und Verkehrswege, unzureichende Sanitärräume)	Ja <input type="radio"/>	Nein <input type="radio"/>
h. Belastung/Arbeitsschwere (z.B. schwere und/oder dynamische Arbeit, insb. mit Lasten, Arbeit in Zwangshaltung)	Ja <input type="radio"/>	Nein <input type="radio"/>
Werden bei der Ermittlung die Bedürfnisse besonderer Personengruppen berücksichtigt (z.B. Jugendliche, werdende oder stillende Mütter, Beschäftigte ohne ausreichende Deutschkenntnisse, Menschen mit Behinderungen, Zeitarbeitnehmer, Praktikanten, Berufsanfänger.	Ja <input type="radio"/>	Nein <input type="radio"/>
3. Beurteilung der Gefährdungen: Wird der ermittelte Ist-Zustand einem Soll-Zustand entsprechend geltender Gesetze, Verordnungen und sonstiger Vorschriften gegenüberstellt?	Ja <input type="radio"/>	Nein <input type="radio"/>
4. Festlegen konkreter Maßnahmen: Werden aus dem Vergleich von Ist- und Soll-Zustand konkrete Arbeitsschutzmaßnahmen abgeleitet und werden zur Durchführung Termine und für Verantwortliche bestimmt?	Ja <input type="radio"/>	Nein <input type="radio"/>
5. Durchführen der Maßnahmen: Werden die nach Ziff. 4 festgelegten Maßnahmen durchgeführt?	Ja <input type="radio"/>	Nein <input type="radio"/>
6. Turnusmäßige Prüfung der Maßnahmen: Wird die Wirksamkeit der Maßnahmen nach Ziff. 4, 5, jährlich geprüft?	Ja <input type="radio"/>	Nein <input type="radio"/>

<p>Werden im Betrieb die erforderlichen Maßnahmen nach dem Arbeitszeitgesetz und nach dem Bundesurlaubsgesetz getroffen?</p> <p><i>Das Arbeitszeitgesetz (ArbZG) regelt die Sicherheit und den Gesundheitsschutz der Beschäftigten im Rahmen der Arbeitszeitgestaltung und begrenzt dabei unter anderem die höchstzulässige Arbeitszeit und enthält Regelungen über Mindestruhepausen und Mindestruhezeiten. Für Jugendliche und besondere Personengruppen können besondere arbeitszeitrechtliche Vorschriften gelten. Das Bundesurlaubsgesetz (BUrlG) regelt insbesondere den gesetzlichen Mindesturlaub</i></p> <p><i>Von der Einhaltung der Vorgaben des Arbeitszeitgesetzes ist dann eher auszugehen, wenn alle folgenden Fragen mit „Ja“ beantwortet werden können:</i></p>		
1. Höchstarbeitszeit: Werden im Unternehmen die Höchstarbeitszeiten eingehalten, nämlich:	Ja <input type="radio"/>	Nein <input type="radio"/>
a. Keine Überschreitung der täglichen <i>maximalen</i> Arbeitszeit von 10 Stunden?	Ja <input type="radio"/>	Nein <input type="radio"/>
b. Keine Überschreitung einer <i>durchschnittlichen</i> täglichen Arbeitszeit von 8 Stunden pro Werktag (einschl. Samstag). Der Durchschnitt muss innerhalb von 6 Kalendermonaten oder innerhalb von 24 Wochen erreicht werden?	Ja <input type="radio"/>	Nein <input type="radio"/>
2. Ruhepausen: Werden die Vorgaben hinsichtlich einzuhaltender Ruhepausen eingehalten, nämlich:	Ja <input type="radio"/>	Nein <input type="radio"/>
a. Ab 6 Stunden Arbeitszeit: Gewährung einer Pause von 30 Minuten?	Ja <input type="radio"/>	Nein <input type="radio"/>
b. Ab 9 Stunden Arbeitszeit: Gewährung einer Pause von 45 Minuten?	Ja <input type="radio"/>	Nein <input type="radio"/>
3. Ruhezeit: Wird zwischen zwei Arbeitseinsätzen stets eine Mindestruhezeit von 11 Stunden eingehalten?	Ja <input type="radio"/>	Nein <input type="radio"/>
4. Ausnahmen: Sofern eine der Fragen 1 bis 3 mit Nein beantwortet wurde: Ist die Über/Unterschreitung durch einen Tarifvertrag oder aufgrund eines Tarifvertrags in einer Betriebs- oder Dienstvereinbarung vorgesehen und werden die Anforderungen an den Ausnahmetatbestand des § 7 ArbZG eingehalten?	Ja <input type="radio"/>	Nein <input type="radio"/>
5. Nachtarbeit: Wird Nacht- und Schichtarbeit ausschließlich im Einklang mit den Anforderungen des § 6 ArbZG festgelegt und durchgeführt?	Ja <input type="radio"/>	Nein <input type="radio"/>
6. Sonn- und Feiertagsarbeit: Wird die Sonn- und Feiertagsarbeit ausschließlich im Einklang und ggf. unter Berücksichtigung der möglichen Ausnahmen der §§ 9 ff. ArbZG festgelegt und durchgeführt?	Ja <input type="radio"/>	Nein <input type="radio"/>
7. Aufzeichnung der Arbeitszeiten: Ist ein objektives, verlässliches und zugängliches Zeiterfassungssystem eingerichtet? <i>Erläuterung: Die Pflicht zur Aufzeichnung besteht auch bei Vertrauensarbeitszeit. Die Pflicht zur Aufzeichnung der Arbeitszeit kann an den Beschäftigten delegiert werden, allerdings muss der Arbeitgeber die Aufzeichnungen jedenfalls stichprobenartig prüfen</i>	Ja <input type="radio"/>	Nein <input type="radio"/>
8. Sicherstellung der Einhaltung: Wird die Einhaltung des Arbeitszeitschutzes durch organisatorische (z.B. Aushang des Arbeitszeitgesetzes, Anweisung zur Nichtüber- und -unterschreitung der Arbeitszeitgrenzen) oder technische Maßnahmen (z.B. Erinnerung per Pop-Up am PC) sichergestellt?	Ja <input type="radio"/>	Nein <input type="radio"/>
9. Gesetzlicher Mindesturlaub: Wird der gesetzliche Mindesturlaub (24 Arbeitstage auf Basis einer 6-Tage-Woche) nach den Vorschriften des Bundesurlaubsgesetzes gewährt?	Ja <input type="radio"/>	Nein <input type="radio"/>



Our checklists for risk analysis in own business area



Checklists - Examples

Checkliste Risikoanalyse
Umweltbezogene Risiken

– Umgang mit Quecksilber – § 2 Abs. 3 Nr. 1, Nr. 2 und Nr. 3 LkSG –

Risiko

- Risiko der Verletzung des Verbotes der Herstellung von mit Quecksilber versetzten Produkten (Nr. 1)
- Risiko der Verletzung des Verbotes der Verwendung von Quecksilber und Quecksilberverbindungen bei Herstellungsprozessen (Nr. 2)
- Risiko der Verletzung des Verbotes der Behandlung von Quecksilberabfällen (Nr. 3)

Gesetzliche Anforderungen

Das LkSG verweist auf das **Minamata-Übereinkommen** (Übereinkommen von Minamata vom 10. Oktober 2013 über Quecksilber (BGBl. 2017 II S. 610, 611)), dessen Vorgaben maßgebend sind.



Minamata-Übereinkommen + Anlagen

- **Quecksilber** ist elementares Quecksilber ($Hg(0)$, CAS-Nummer 7439-97-6).
- **Quecksilberverbindung** ist jeder Stoff, der aus Quecksilberatomen und einem oder mehreren Atomen anderer chemischer Elemente besteht und der sich nur durch chemische Reaktionen in verschiedene Bestandteile trennen lässt.
- Ein **mit Quecksilber versetztes Produkt** ist ein Produkt oder einen Produktbestandteil, das beziehungsweise der absichtlich hinzugefügtes Quecksilber oder eine absichtlich hinzugefügte Quecksilberverbindung enthält.

Das Vorliegen eines Verbotes nach **Nr. 1** richtet sich nach **Art. 4 Abs. 1 des Minamata-Übereinkommens** und **Anlage A Teil I des Minamata-Übereinkommens**.

Das Vorliegen eines Verbotes nach **Nr. 2** richtet sich nach **Art. 5 Abs. 2 des Minamata-Übereinkommens** und **Anlage B Teil I des Minamata-Übereinkommens**.

Das Vorliegen eines Verbotes nach **Nr. 3** richtet sich nach **Art. 11 Abs. 3 des Minamata-Übereinkommens**. Art. 11 Abs. 3 des Minamata-Übereinkommens bezieht sich zudem auf die **technischen Richtlinien des Basler Übereinkommens**.

Checkliste

Checklist-Fragen zu Nr. 1	Bitte ankreuzen und entsprechend den Anmerkungen weiterprüfen	
1. Stellen Sie ein mit Quecksilber versetztes Produkt gemäß der Anlage A Teil 1 des <u>Minamata</u> -Übereinkommens her? <i>Hinweis: Dies können u.a. Batterien, Lampen, Kosmetika, Pestizide, Biozide und Messgeräte wie Thermometer sein.</i>	Ja O	Nein O <i>Prüfung fortsetzen</i> <i>Kein Risiko, Prüfung beendet</i>
2. Wenn 1. mit Ja beantwortet wurde: <ul style="list-style-type: none">– Handelt es sich bei dem Produkt um ein für den Zivilschutz und militärische Verwendungszwecke unerlässliches Produkt?– Handelt es sich um ein Produkt für die Forschung, die Kalibrierung von Instrumenten oder zur Verwendung als Referenzstandard?– Handelt es sich um Schalter und Relais, Kaltkathoden-Leuchtstofflampen und Leuchtstofflampen mit externen Elektroden (CCFL und EEFL) für elektronische Displays und Messgeräte, <u>zu denen keine machbare quecksilberfreie Alternative als Ersatz verfügbar ist?</u>– Handelt es sich um ein Produkt, das bei traditionellen oder religiösen Praktiken verwendet wird?– Handelt es sich um einen Impfstoff mit <u>Thiomersal</u> als Konservierungsstoff?	Ja O	Nein O <i>Kein Risiko, wenn eine der Fragen mit Ja beantwortet wurde. Prüfung fortsetzen, wenn alle Fragen mit Nein beantwortet wurden.</i>
3. Wenn alle unter 2. aufgeführten Fragen mit Nein beantwortet wurden: Produzieren Sie in einem Produktionsland, das eine Ausnahme nach dem Minamata-Abkommen für das mit Quecksilber versetzte Produkt registriert hat? <i>Hinweis: Die aktuelle Liste registrierter Ausnahmen kann hier abgerufen werden: https://www.mercuryconvention.org/en/parties/exemptions</i>	Ja O <i>Kein Risiko</i>	Nein O <i>Risiko besteht</i>

Procedure Risk analysis in own business area

Step 3: Weighting and prioritisation

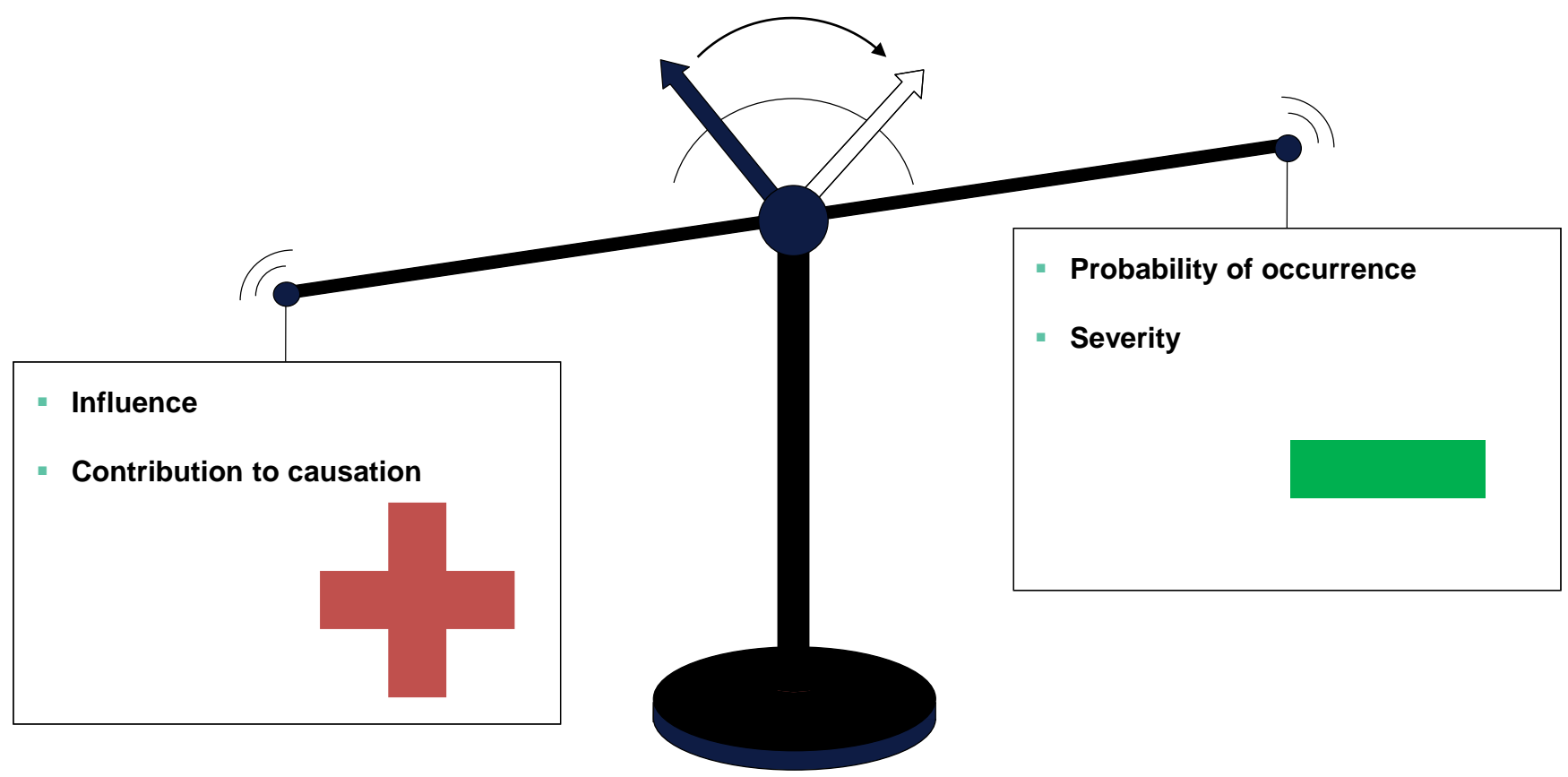
From the risk identification

- risks collected

from step 2



Nature and scope of business activity



BAFA (Ideas)

- Risk inventory

- Heatmap

22%	19%	13%	19%	16%	23%	19%	20%	11%	14%	16%	10%	10%	10%	9%	6%	6%
23%	21%	21%	24%	24%	29%	24%	18%	22%	14%	14%	12%	13%	10%	10%	7%	
19%	19%	13%	21%	19%	20%	24%	21%	16%	14%	13%	10%	9%	9%	7%		
23%	21%	22%	22%	26%	27%	29%	26%	21%	21%	17%	15%	10%	6%			
21%	16%	20%	24%	27%	23%	20%	19%	15%	15%	12%	12%	6%				
24%	24%	24%	24%	21%	21%	18%	20%	16%	15%	18%	18%	7%				
19%	16%	25%	19%	23%	28%	22%	18%	13%	10%	5%						
24%	20%	24%	22%	23%	17%	18%	15%	13%	7%							
22%	19%	19%	20%	20%	17%	19%	18%	12%								
18%	18%	24%	24%	23%	19%	20%	8%									
24%	23%	18%	16%	24%	22%	16%										
24%	18%	20%	18%	21%	10%											



Procedure Risk analysis in own business area

Step 4: Measures



Ensure that risks are terminated



Procedure Risk analysis of direct suppliers

Step 1: Supplier overview

Step 2: Risk identification

Step 3: Weighting and prioritisation

Step 4: Measures Dashboard



Procedure Risk analysis of direct suppliers

Step 1: Supplier overview

Relevant data on the suppliers (supplier-related)

- Address data etc.
- Possibly group information
- Possibly information on the internal structure at the supplier
- Maybe information on the order volume from the company's point of view
- Maybe information on the order volume from the supplier's point of view (!!!)
- ...

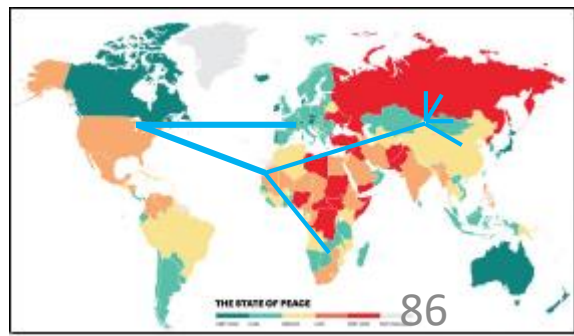
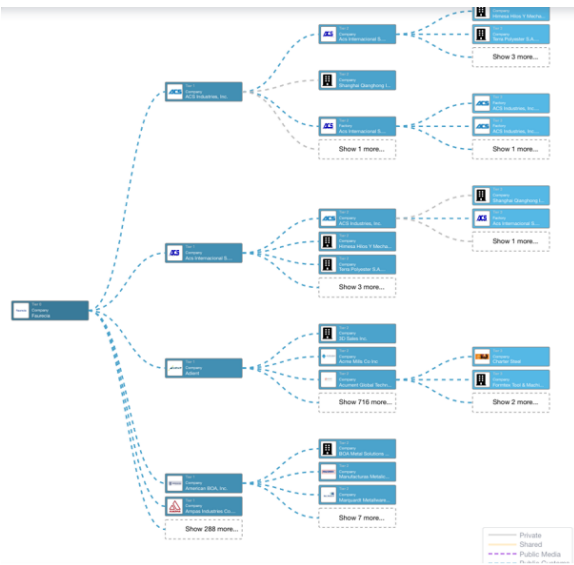
Relevant data on suppliers (product-related)

- Product categories
- Product details
- Production locations per product
- Single Source, Dual Source, Multi Source
- ...

Subcontractors

- Who where how
- ...

Supplier No. SA	Supplier	Country	ZIP Code	City	Street, no.	Phone no.	Mail	PO-Spend 2018	PO-Spend	PO-Spend 20	Category(-ies)	Details	Production Site	Single / Multiple Source
530590	DG Infratech	Singapur	48583	Singapur	1 Raffles Quay, North Tower Level 25	66225862	munir@dgpan.com.sg	14,426,148,011	2,056,870,541	N/A	Electronics	Computers	Singapur	Single
532796	Q-Nomy, Inc.	USA	33131-1700	Miami	1 Se 3rd Ave Ste 1410	305-330-8800	Liam.Tamir@q-nomy.com	-	110,250,001	23,963,021	Chemicals	PCBCA	Miami	Dual
533048	Datalogics, Inc.	USA	60606-1722	Chicago	101 N Wacker Dr Ste 1800	3128538200	accounting@datalogic.com	-	10,800,001	N/A	Food	Bread	Illinois	Multiple
533743	IriTech Inc.	USA	22030-5017	Fairfax	1166 Fairfax Blvd Ste 302	7038772135	leo@iritech.com	-	-	345,001	Beverages	Beer	Bethesda	Single
534187	Heather Capri Voice Talent	USA	80020-7067	Broomfield	1186 Opal St Unit 203	-	voice@heathercapri.com	-	-	25,650,001	Wood	Alder	Blomfield	Single
523958	TPA Bulgaria EOOD	Bulgaria	1000	Sofia	128 G.S.Rakovski Str., fl.2	+359-23816646	office@tpa-group.bg	-	-	69,538,131	Mining Minerals	Mica	Sofia	Dual
524384	ID4Africa Limited	Hongkong		Hongkong	12A Thomson Commercial Building 143 Commonwealth Dr	2131200321	contact@id4africa.com	6,300,001	-	N/A	Leather	Raw Cow Skin	Guinfundum	Multiple
535634	Exponent Inc.	USA	94025-1133	Menlo Park	18 Suttons Business Park	06507383158	dburu@exponent.com	-	-	152,304,001	Textiles	Working Clothes	Fidschi	Single
533667	Access Limited	United Kingdom	RG6 1AZ	Reading	1st Floor, Mokolwane House	01189663333	sales@access-uk.com	-	-	192,000,001	Services	Consulting	Ireland	Dual
523633	RHOSS (PTY) LTD	Botswana	67978	Gaborone	3357524	0164861037	office@rhoss.biz	55,800,001	-	88,423,811	Electronic Components	Handys	Bombine	Single
511413	Primocrib Sarl	France	91120	Palaiseau	2, rue Auguste Rodin	0164861037	info@primacrib.com	2,374,381	-	N/A	Plastics	Foil	Marocco	Multiple
535627	Presentation Geeks Consulting Inc	Canada	V3A 6L9	Langley	20225 44 Ave	08882069525	Justin@PresentationGeeks.com	-	-	3,480,001	Petroleum	Petroleum	North Sea	Dual
533179	DocuSign, Inc.	USA	94105-1925	San Francisco	221 Main St Ste 1000	1-877-720-2040	alvin.diaz@docuSign.com	-	32,217,871	N/A	Natural Gas	Gas	Russia	Single
533327	GCC Computers Ltd	Cyprus	2031	Nicosia	2220 Latsia	22206222	contract@gcc.com.cy	-	20,004,001	N/A	Machinery Equipment	Screw 2376	Poland	Single
530150	PDQ.com Corporation	USA	84110-1223	Salt Lake City	230 W 200 S STE 3101	8016574657	sales@pdq.com	-	9,000,001	N/A	Forestry	Fish	Denmark	Dual
534052	A&D Instruments Ltd.	United Kingdom	OX14 1DY	ABINGDON	24 Blacklands Way, Abingdon Business	01235550420	info@and-instruments.com	-	-	300,001	Forestry	Fish	Sherwood Forest	Multiple
512630	ABIRESEARCH	USA	11771	Oyster Bay	243 South Street	5166242500	accounting@abiresearch.com	-	53,360,481	16,440,351	Agricultural	Wheat	?	Dual
510358	MILESTONE TELECOM PARTNERS	Gibraltar	30339	Gibraltar	26 MAIN STREET SUITE 52	-	-	6,403,001	541,500,001	112,887,001	-	-	-	-



Procedure Risk analysis of direct suppliers

Step 2: Risk identification

The abstract values via indices should be automatically attracted and linked to an intelligent algorithm

from step 1

Abstract

- Countries
- Industries
- etc.
- About indices etc.
- This leads to score values or point values or the like

Specifically

- Knowledge
- Experience
- Concrete information
- This leads to values (as on the left)
- Logically processable (as on the left)

Identification

- Who where how
- ...

Supplier No. SAP	Supplier	Country	Länderrisiko nach Amfori	Länderrisiko nach Rechtsindex IGB	Länderrisiko nach World Justice Project Rule of Law	Länderrisiko nach Freedom House	Länderrisiko nach Environmental Performance Index	etc.	Branchen- / Warengrupperrisiko	Selbstauskunft	Erfahrungen	-	Kumulative Werte (A)	Kumulative Werte (B)	RISIKO
530590	DG Infratech	Singapur	56	-78	-	c	18,66666667		A	gut	Note 1		-33	x	GERING
532796	Q-Nomy, Inc.	USA	12	-33	++	b	4		B	mittel	Note 2		-56	y	MITTEL
533048	Datalogics, Inc.	USA	12	-33	++	b	4		B	schlecht	Note 3		-82	z	HOCH
533743	IntTech Inc.	China	82	-105	--	d	27,33333333		C	FEHLT	Note 4		-56	x	
534187	Heather Capri Voice Talent	Brasilien	78	-110	---	e	26		C	mittel	Note 5		-63	y	
523958	TPA Bulgaria EOOD	Bulgaria	18	-56	+	a	6		C	schlecht	Note 6		-78	z	
524384	ID4Africa Limited	Hongkong	75	-100	-	b	25		D	VERALTET	KEINE		-54	x	
535634	Exponent Inc.	India	88	-123	---	d	29,33333333		D	schlecht	Note 3		-34	y	
533667	Access Limited	United Kingdom	10	-45	++	a	3,33333333		A	gut	Note 1		-12	z	
523693	RHOSS (PTY) LTD	Botswana	90	-145	---	e	30		B	mittel	Note 4		-89	x	
511413	Primocrib Sarl	Kongo	100	-156	----	f	33,33333333		C	FEHLT	KEINE		-100	y	
535627	Presentation Geeks Consulting Inc	Canada													
533179	DocuSign, Inc.	USA													
533327	GCC Computers Ltd	Cyprus													
530150	PDQ.com Corporation	USA													
534052	A&D Instruments Ltd.	United Kingdom													
512690	ABI RESEARCH	USA													
510358	MILESTONE TELECOM PARTNERS	Gibraltar													
530861	Ande Corporation	USA													

The concrete values should also be automatically attracted and linked to an algorithm

This is how consistent risk identification results from intelligent linking of abstract and concrete values

Annex I of the BAFA handout

Appropriateness criteria Section 3(2) 'LkSG'	Guidance criteria based on initial government draft BT-Drs. 19/28649, pg. 42 ff
1. Nature and scope of the business activities of the company	<p>Qualitative:</p> <ul style="list-style-type: none"> <input type="radio"/> Degree of complexity of a product or service <input type="radio"/> Variety of services and business relationships <input type="radio"/> Country-wide or international scope <p>Quantitative:</p> <ul style="list-style-type: none"> <input type="radio"/> Company size (number of staff and their roles, revenue, fixed and working capital, production capacity) <input type="radio"/> Vulnerability (frequency of risks specific to a country, sector or a category of goods)
2. A company's ability to influence the entity directly responsible for a risk or violation	<ul style="list-style-type: none"> <input type="radio"/> Company size (relative to its competitors (market dominance) and to the entity directly responsible) <input type="radio"/> Order volume (relative to the revenue of the entity directly responsible) <input type="radio"/> Proximity to the risk (i.e., where the risk exists and who is responsible: at the company itself, at a direct supplier or at an indirect suppliers)?
3. The typically expected severity and likelihood of a violation of this nature	<p>Severity:</p> <ul style="list-style-type: none"> <input type="radio"/> Degree (i.e., intensity/depth) of harm; <input type="radio"/> Number of people impacted <input type="radio"/> No possibility of correcting the adverse impact (irreversibility) <p>Likelihood:</p> <ul style="list-style-type: none"> <input type="radio"/> Whether and when a violation occurs (e.g., if there is already evidence of a supplier's poor performance (greater likelihood) or effective preventative measures in place (less likelihood))
4. The nature of the company's contribution to the risk or the violation	<ul style="list-style-type: none"> <input type="radio"/> The company has made a major contribution to the risk or is directly (solely) responsible <input type="radio"/> As defined here, contribution to or partial responsibility for implies that the actions of a third party caused the adverse impact. The company "contributes" to the impact if it, by action or even omission, in any way permits, facilitates or incentivizes a specific violation.




How to take into account at all? Footnote 11 : "*to be taken into account in its entirety*".






Actually to be considered first, because if (-), no action to be taken...When is causation missing?

Annex II of the BAFA handout

- CSR-Risiko-Check: branchen-, produkt- und länderspezifische Risiken  V: Clear; possibility to search for specific industries
N: Country of origin to be entered, which may not be known; rather product-related.
- Business and Human Rights Resource Centre: Filtermöglichkeit von Berichten nach Ländern, Sektoren und Themen  V: Possibility to search for specific branches
N: Too many different categories. Categories; partly too few results for reports
- Human Rights and Business Country Guide: Risiken nach Ländern  V: Detailed presentation of the structures of the respective country
N: Guides only on 20 countries; sprawling information without risk reference
- Country Reports von Multistakeholder-Initiativen wie der Fair Wear Foundation  V: Depending on the multistakeholder initiative, in-depth sector information
N: Unt. have to search themselves; Fair Wear Found. has partly only older reports
- US State Department: Länderberichte zu Menschenrechten  V: Structured structure; concise presentation of national results
N: Partly somewhat abstract presentation
- Indizes und Rankings (Human Development Index, Global Rights Index, ILAB Kinder- und Zwangsarbeit, Modern Slavery Index etc.)  V: Often easy-to-understand schemes for sector- or country-specific risks
N: May be too superficial for high-risk areas.
- Websites und Berichte zivilgesellschaftlicher oder Regierungsorganisationen (beispielsweise ILO Helpdesk for Business, WHO, UNICEF, Amnesty International, Human Rights Watch, IndustriAll, lokale Gewerkschaften, ...)  V: Detailed information, if applicable, if good report on own sector
N: Prior knowledge required; unclear where to look everywhere
- UN GCD, Helpdesk für Wirtschaft und Menschenrechte und Verisk Maplecroft: Praxislotse Wirtschaft und Menschenrechte, ausführliche Hintergrundinfos zu verschiedenen Menschenrechtsrisiken  V: Comprehensive background information on human rights risks
N: Only reverse search, i.e. via child labour one comes to Branche
- UN GCD: Infoportal Menschenrechtliche Sorgfalt mit Sektorfokus auf Automobil, Bekleidung und Textil, IKT und Technologie  V: Understandable information on the procedure for risk analysis and other due diligence. Due diligence
N: Not suitable for overview of country- or sector-specific risks
- WWF Water Risk Filters: Information zu Wasserknappheitsrisiken  V: Raising awareness of risk when country is particularly poorly rated
N: Only reference to water scarcity (§ 2 para. 2 no. 9 LkSG); no reference to products.
- Environmental Justice Atlas: Informationen zu Umweltverschmutzungen, Verletzungen von Umweltrechten  V: Filtering of information possible; possibly interesting with concrete knowledge
N: Rather confusing; environmental topics often have nothing to do with LkSG
- BMUV-geförderte Studie von Adelphi und Systain: Umweltatlas Lieferketten  V: Sectors with high environmental impacts
N: Partly difficult to understand; difficult to draw conclusions for general risk analysis
- BMAS (2020): Die Achtung von Menschenrechten entlang globaler Wertschöpfungsketten. Risiken und Chancen für Branchen der deutschen Wirtschaft. Branchenstudie zu menschenrechtlichen Risiken  V: Sector reference; many sectors taken into account; heat maps for high risks
N: Very extensive

- Bündnis für nachhaltige Textilien: Infopapiere zu diversen Themen im Textil- und Bekleidungssektor  V: Concrete specifications for carrying out the risk analysis
N: Very extensive information material; previous knowledge necessary
- Drive Sustainability: Raw Material Outlook mit Hintergrundinformationen zu rohstoff-spezifischen Risiken  V: Clearly held; complete coverage of the value chain
N: Sector-limited; commodity-related
- UN Guiding Principles Reporting Framework  V: Catalogue of questions can be used to analyse risks vis-à-vis suppliers, if necessary.
N: No possibility of orientation with regard to risks

OECD-Branchenleitfäden

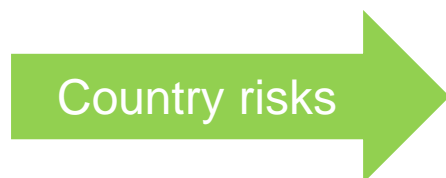
- OECD (2018): OECD Due Diligence Guidance for Responsible Business Conduct  V: Understandable overview of the procedure for risk analysis and other duties of care. Due diligence
N: Extensive
- OECD (2012): OECD Guidance for Responsible supply Chains of Minerals from Conflict-Affected and High-Risk Areas  V: May be suitable for students with previous knowledge of the relevant sector.
N: Very detailed information
- OECD/FAO (2016): OECD FAO Guidance for Responsible Agricultural Supply Chains  V: May be suitable for students with previous knowledge of the relevant sector.
N: Very detailed information
- OECD (2017): OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector  V: May be suitable for students with previous knowledge of the relevant sector.
N: Very detailed information; unclear how guidance helps to identify risks.
- OECD (2018): OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector  V: May be suitable for students with previous knowledge of the relevant sector.
N: Very detailed information
- OECD (2018): Responsible business conduct for institutional investors: Key considerations for due diligence  V: May be suitable for students with previous knowledge of the relevant sector.
N: Very detailed information
- OECD (2019): Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises  V: May be suitable for students with previous knowledge of the relevant sector.
N: Very detailed information



Detailed analysis



Annex II of the BAFA handout – see our guide



Index	Depicted human rights Risk within the meaning of § 2 II LkSG
https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2021	<ul style="list-style-type: none">▪ § 2 II No. 1 LkSG (child labour)▪ No. 2 (Child labour)▪ No. 3 (forced labour)▪ No. 5 (occupational health and safety)▪ No. 6 (Freedom of association)▪ No. 7 (Discrimination)▪ No. 10 (Land deprivation)
https://www.amfori.org/sites/default/files/amfori-2020-11-12-Country-Risk-Classification-2021_0.pdf	<ul style="list-style-type: none">▪ No. 6 (Freedom of association)▪ No. 10 (Land deprivation)
https://freedomhouse.org/countries/freedom-world/scores	<ul style="list-style-type: none">▪ No. 6 (Freedom of association)▪ No. 10 (Land deprivation)
https://files.mutualcdn.com/itu/c/files/ITUC_GlobalRightsIndex_2021_EN-final.pdf	<ul style="list-style-type: none">▪ No. 6 (Freedom of association)▪ No. 11 b) c) (violence by Security forces)
https://www.globalslaveryindex.org/resources/downloads/	<ul style="list-style-type: none">▪ No. 4 (Slavery)
https://epi.yale.edu/epi-results/2022/component/epi	<ul style="list-style-type: none">▪ No. 9 (Soil change, Water and Air pollution)
https://www.wsi.de/de/wsi-minimum-wage-database-international-15339.htm https://www.living-income.com/living-income-benchmarks	<ul style="list-style-type: none">▪ No. 8 (minimum wage; adequate Wage)

Annex II of the BAFA handout – see our guide

Sector-specific risks

If you already know your own high-risk sectors or high-risk products, many of the sources with detailed information will help...

...but, if you want to get an abstract overview of sector-specific risks (1st step of the risk analysis according to BAFA), many sources are unsuitable, because:

- often do not show any sector-specific risks at all, but only product-related risks, for example.
- Extremely extensive in parts
- regularly very confusing
- partly contain only descriptions

Sector / product risks

Source	Depicted human rights risk within the meaning of § 2 II LkSG
https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods	■ No. 1-4 (Excel file offers the possibility to determine risks by product cat. (e.g. "bricks" or "cotton") to determine risks).
https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/Forschungsberichte/fb-543-achtung-von-menschenrechten-entlang-globaler-wertschoepfungsketten.pdf?__blob=publicationFile&v=1	■ No. 1-10 (risk classification by sector (cf. tables 69 and 70; page 239 ff.) and "heat maps" - these map human rights risks at sector level and locate the risks along various stages of the value chain)
https://www.responsible-sourcingtool.org/visualizerisk	■ No. 1-4 (search options by industry and raw material/consumable good)
https://www.kompass-nachhaltigkeit.de/grundlagenwissen/produktkategorien/bekleidung-textilien	■ No. 1-10 (Identifies specific products for the area of "public procurement" that are typically related to human rights violations)
https://www.mvorisicohecker.nl/de	■ No. 1-10 (Risk check for specific products and countries)

Annex II of the BAFA handout – see our guide



Index / Explanation / Tool	Depicted environment-related risk within the meaning of § 2 III LkSG	TaylorWessing
https://public.tableau.com/views/GlobaIMercuryEmissions/Dashboard1?:showVizHome=no https://www.mercuryconvention.org/en	<ul style="list-style-type: none"> Mercury: § 2 III No. 1, 2, 3 LkSG Enables search by sector and country 	
http://chm.pops.int/Implementation/GlobalMonitoringPlan/MonitoringReports/tabid/525/ (Second Global Monitoring Report)	<ul style="list-style-type: none"> Long-lived organic pollutants: § 2 III No. 4, 5 LkSG shows developments in emissions of various POPs. POPs subdivided according to regions 	
https://www.eea.europa.eu/data-and-maps/indicators/eea32-persistent-organic-pollutant-pop-emissions-1/assessment-10	<ul style="list-style-type: none"> Persistent organic pollutants shows development of emissions of einz. POPs in the EU broken down by country and sector 	
http://www.pops.int/TheConvention/ThePOPs/AllPOPs/tabid/2509/Default.aspx	<ul style="list-style-type: none"> Persistent organic pollutants Listing of all POPs in the Convention 	
http://www.pops.int/Implementation/UnintentionalPOPs/ToolkitforUPOPs/Overview/tabid/372/Default.aspx	<ul style="list-style-type: none"> Persistent organic pollutants Toolkit on "unwanted by-products" 	
https://sensoneo.com/de/sensoneo-welt-abfall-index-2019/	<ul style="list-style-type: none"> Waste: § 2 III No. 6, 7, 8 LkSG only represents OECD countries; probably only relevant for "illegal waste disposal" and "other undiscovered waste". 	
http://data.un.org/Data.aspx?d=ENV&f=variableID%3A2830	<ul style="list-style-type: none"> Waste lists the amount of "hazardous waste" from 1990-2016; 	
http://www.basel.int/Implementation/Publications/GuidanceManuals	<ul style="list-style-type: none"> Waste Guidance on compliance with the Basel Convention. 	

Procedure Risk analysis indirect suppliers

Step 1: Substantiated knowledge → No explanation in the handout of what is meant by this...

...but BMAS FAQ VI.12. and 13.: actual indications, violation of a human rights or environmental obligation possible. Ex:

- Reports on poor human rights situation in the production region Complaints procedure
- Affiliation of the indirect supplier to a risk industry Own findings
- Previous incidents at the indirect supplier Notification authority or third party



No general duty of the company to investigate! The more a suspicion has become concrete, the higher the effort that is reasonable in further locating it. **Case-by-case decision**



Examination as to whether the threshold for "substantiated knowledge" has been exceeded on the basis of a previously **established scheme** with

Various criteria, e.g. type of source, level of detail, locatability in supply chain, concreteness, probability of occurrence



Knowledge attribution in the company

Step 2: Risk identification like immediate suppliers

Step 3: Weighting and prioritising like immediate suppliers

Step 4: Measures dashboard like immediate suppliers

Procedure for event-related risk analysis

1. Step: Occasion-relatedness (ad hoc)

Handout



- Change in business activity, for example due to
 - Important investments
 - Opening up a new procurement country
 - Outbreak of a conflict or natural disaster in a country of activity

Explanatory
Memorandum



- Starting a new job or relationship
- Strategic decisions
- Change in business activity, for example due to
 - imminent market entry
 - Product launch
 - Change in business principles
 - wider business changes

Monitoring necessary?

Step 2: Risk identification see direct suppliers /

Consideration of the risks whose change / addition is evident due to the change in business activity /

According to BAFA, also indirect suppliers

Step 3: Weighting and prioritisation see immediate suppliers /

Comparison with the results of the regular risk analysis

Step 4: Measures Dashboard see immediate suppliers

BAFA handout on adequacy



- 29 pages
- **Adequacy / Reasonableness / Appropriateness** (47 times in the law and explanatory notes) **and** effectiveness (15 times in the law and explanatory notes) - both mentioned together only once in the law in § 4 para. 1 LkSG "*adequate and effective risk management*" - arbitrary linkage by BAFA).
- Adequacy and effectiveness in **other handouts**:
 - (B1.4) Appropriateness criteria considered in risk analysis weighting and how? / (E1.1) Is there a process to review risk management for adequacy, effectiveness...? / (Glossary) Explanation of adequacy and adequacy criteria
 - Complaints procedure handout: S.7
 - Risk analysis handout: Annex I
 - FAQ VI.4. (General), VIII.3. (Risk analysis), XIV.2. (Review BAFA)
- **Helpful?**
- **BAFA checks whether the company has acted appropriately ex ante!**
Weighing process must be **plausibly explained** for BAFA



Content and classification of the handout

Inhalt

1.	Einleitung.....	1
2.	Bedeutung des Prinzips der Angemessenheit	2
2.1	Das Prinzip der Angemessenheit	2
2.2	Das Prinzip der Wirksamkeit im Zusammenhang mit dem der Angemessenheit	4
3.	Angemessenheit praktisch umsetzen	7
3.1	Einrichtung und kontinuierliche Umsetzung des Risikomanagements	11
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3.3	Auswahl und Umsetzung von Präventionsmaßnahmen	18
3.4	Entwicklung und Umsetzung von Abhilfemaßnahmen	20
3.5	Einrichtung von oder Beteiligung an Beschwerdeverfahren	22
4.	Überprüfung der angemessenen Umsetzung durch das Bundesamt für Wirtschaft und Ausfuhrkontrolle	25
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Adequacy = **Overarching framework** for the implementation of due diligence obligations

Appropriateness **defined in more detail by appropriateness criteria from § 3 para. 2 LkSG**; **efforts of the company can vary according to the appropriateness criteria** (discretion); **if ex-ante appropriate measure** but ex-post effect does not unfold, company cannot be **prosecuted** (excl.: own business area at home and abroad); interaction with effectiveness

Description of the individual adequacy criteria; **assistance for application** as in Annex I in the Risk Analysis handout; adequacy in individual due diligence obligations with **guiding questions and case examples**

BAFA will **check** adequacy of efforts!

Sources that provide information on? Many sources are more concerned with the content of measures and possible procedures under individual due diligence obligations.

Principle of appropriateness and effectiveness

Adequacy criteria (§ 3 para. 2 LkSG)



Observe appropriateness criteria for all due diligence obligations (§ 3 para. 1 LkSG): *"As appropriateness criterion a) so and so, b) so and so, c)...falls risk analysis / preventive measure / complaint procedure...so and so"*.



Pg. 4 above: *"Adequacy criteria...vary across many companies...somewhat across different operations, sites or companies...supply chains and suppliers."*



Additionally in the law: "Risks are to be weighted and prioritised appropriately" (§ 5 para. 2 p. 1 LkSG); "Agreement on appropriate contractual control mechanisms" (§ 6 para. 4 LkSG).



Requires **planning** (What is appropriate and effective?), **implementation**, **review** (Still effective?) and **adaptation**.

Principle of effectiveness



§ Section 4 (2) LkSG: *"**Effective** measures are those that make it possible to identify and minimise human rights and environment-related risks and to prevent, end or minimise the extent of violations of human rights-related or environment-related obligations..."*.



By law: Effective risk management, effective preventive measures, effective remedial measures and effective complaints procedure.



Adequacy and effectiveness closely related, but can diverge, e.g.:

- Measure particularly effective but not appropriate
- Measure appropriate but not particularly effective



Appropriateness relates more to companies / effectiveness more to affected persons

Principle of appropriateness and effectiveness

Angemessenheitskriterien § 3 Abs. 2	Hilfskriterien
1. Art und Umfang der Geschäftstätigkeit des Unternehmens	Art: <ul style="list-style-type: none"> ○ Komplexe Beschaffenheit bzw. Art der Produkte oder Dienstleistungen ○ Vielfalt der Leistungen und Geschäftsbeziehungen ○ überregionale oder internationale Ausrichtung ○ Faktoren für länder-, branchen- und warengruppenspezifische Risiken (Infobox 3) Umfang: <ul style="list-style-type: none"> ○ Unternehmensgröße (Anzahl Beschäftigte und deren Funktion, Umsatz, Anlage- und Betriebskapital, Produktionskapazität) ○ Anfälligkeit (Häufigkeit länder-, branchen- und warengruppenspezifischer Risiken)
2. Das Einflussvermögen des Unternehmens auf den unmittelbaren Verursacher eines Risikos oder der Verletzung einer Pflicht	<ul style="list-style-type: none"> ○ Größe des Unternehmens (im Vergleich zu seinen Wettbewerbern - Marktdominanz - und zum Verursacher) ○ Auftragsvolumen des Unternehmens im Verhältnis zum gesamten Umsatz des Verursachers ○ Nähe zum Risiko (Wo und durch wen entsteht das Risiko: beim Unternehmen selbst, bei einem unmittelbaren oder bei einem mittelbaren Zulieferer?)
3. Die typischerweise zu erwartende Schwere und Wahrscheinlichkeit der Verletzung einer Pflicht	Schwere: <ul style="list-style-type: none"> ○ Grad (Intensität/Tiefe) der Beeinträchtigung ○ Anzahl betroffener Personen / Größe betroffener Umweltbereiche ○ Unmöglichkeit, die negativen Auswirkungen zu beheben (Unumkehrbarkeit) ○ Erforderlicher Aufwand (Ressourcen, Zeit), um die negativen, aber (noch) umkehrbaren Auswirkungen zu beheben Wahrscheinlichkeit: <ul style="list-style-type: none"> ○ ob und wann das Risiko in eine Verletzung mündet (bspw. falls es bereits Informationen zur mangelhaften Performance des Zulieferers - erhöhte Wahrscheinlichkeit - oder effektiven Präventionsmaßnahmen - verringerte Wahrscheinlichkeit - gibt)
4. Art des Verursachungsbeitrags des Unternehmens zu dem Risiko oder der Verletzung	<ul style="list-style-type: none"> ○ Das Unternehmen trägt ganz überwiegend zum Risiko bei oder verursacht es unmittelbar (allein) ○ Beitragen/(mit-)verursachen bedeutet, dass die Auswirkung das Ergebnis einer Handlung eines Dritten ist. Das Unternehmen leistet einen Beitrag, wenn die Handlung oder auch Unterlassung des Unternehmens in irgendeiner Weise die Verletzung einer konkreten Pflicht erlaubt, ermöglicht oder motiviert.

So how does one proceed now?



For each individual duty of care....

...evaluate single or multiple adequacy criteria

...if necessary, again differentiated according to companies, supply chains etc...

...and make a basic statement about the company / risk situation...and document it.

→ *Example: Risk analysis with regard to raw material procurement is particularly extensive due to the nature and scope of the business activity and the risks involved.*



...for individual measures within the framework of a due diligence obligation, in turn assess individual or several appropriateness criteria

...and make a concrete statement about the measure to be taken...and document it.

→ *Example: Preventive measure against individual raw material supplier more far-reaching due to ability to influence and severity and probability of risk*



Principle of appropriateness and effectiveness

What does this mean for practice?



Consider appropriateness criteria **at several levels** (due diligence level, individual measure level, etc.).

More or less sensible:



Partly rather a documentation task - e.g.: Subsequent justification why the personnel structures that have already been created are appropriate OR why documentation and report are appropriate (documentation and report are not even mentioned in the handout...in § 3 para. 1 no. 9 LkSG they are).



Partial added value in terms of content - In particular: Risk analysis (weighting of identified risks); preventive measures (concept of measures); complaints procedure (scope of channels and documentation).



In any case, **DOCUMENT in order** not to make yourself vulnerable to BAFA. BAFA checks appropriateness! Problem if adequacy is not taken into account.



Much at the discretion of the company → Result First! Reason Second!



Effects of the handout - Risk management

Beispiele

Einrichtung des Risikomanagements (Ressourcenplanung)

Nach einer präzisen Bestandsaufnahme der bereits bestehenden Prozesse und Expertise wertet das Unternehmen aus, welche Expertise im Unternehmen zum Umgang mit menschenrechtlichen oder umweltbezogenen Risiken bereits vorhanden ist und welche Lücken in Bezug auf bestimmte Themen, Bereiche oder Regionen bestehen. Beispielsweise verfügen viele Unternehmen über etablierte Umweltmanagementsysteme oder Expertise über die Nachhaltigkeit bestimmter Rohstoffe, Lieferketten oder Regionen. Das Unternehmen stellt je nach Bedarf zusätzliches Personal ein oder stellt vorhandene Mitarbeitende für Tätigkeiten in Bezug auf die Sorgfaltspflichten (teilweise) frei. Je fortgeschrittener die Prozesse sind, über die ein Unternehmen bereits verfügt, desto weniger zusätzliche Ressourcen werden notwendig sein, um die Anforderungen des LkSG zu erfüllen.

Anpassung des Risikomanagements

Das Unternehmen hat im vergangenen Jahr eine wichtige Investitionsentscheidung getroffen und in ein Joint-Venture in einem weiteren Land investiert. Über eine anlassbezogene Risikoanalyse hat das Unternehmen vor der Investitionsentscheidung eine Reihe neuer Risiken ermittelt und priorisiert sowie Präventionsmaßnahmen eingeführt, die in der weiteren Zusammenarbeit mit dem Joint-Venture-Partner kontinuierlich weitergeführt werden müssen. Da weitere Geschäftsaktivitäten in dem Land geplant sind, plant das Unternehmen vorausschauend zusätzliche Ressourcen für den Umgang mit Risiken in diesem Kontext ein.

➤ What does the example show?

➤ If there is a **lack of expertise, additional staff** must be hired **or staff** must be **released in order** to fulfil due diligence obligations → ***If necessary, staff re-planning***

➤ **The more advanced existing processes are, the fewer additional resources** are needed



Is somewhat at odds with company size

➤ **Occasion-related risk analysis** seems to be **taken seriously by BAFA** (e.g. investment decision).



Clear internal guidelines and processes, when event-related risk analysis is necessary

Effects of the handout - Risk management

➤ To what extent do guiding questions help?

Much content design and approach

Aufgabe: Einrichtung eines angemessenen Risikomanagements: d.h. (i.) Verankerung in allen maßgeblichen Geschäftsabläufen durch angemessene Maßnahmen (§ 4 Abs.1 S.2), (ii.) Klare Festlegung der Zuständigkeiten für die Umsetzung der einzelnen Sorgfaltspflichten (§ 4 Abs. 1 S.2) sowie für die Überwachung des Risikomanagements innerhalb des Unternehmens (§ 4 Abs. 3 S. 1), letzteres z. B. durch einen Menschenrechtsbeauftragten, (iii.) Informationspflicht der Geschäftsleitung (§ 4 Abs. 3 S. 2) und (iv.) angemessene Berücksichtigung der Interessen der (möglicherweise) Betroffenen (§ 4 Abs. 4)

Überblick verschaffen über die eigene Risikodisposition:

Inwiefern ist das Unternehmen aufgrund der Art und des Umfangs seiner Geschäftstätigkeit und mit Blick auf den Reifegrad vorhandener Sorgfaltprozesse anfällig für menschenrechtliche oder umweltbezogene Risiken?

Ressourcen festlegen:

Welche finanziellen und/oder personellen Ressourcen müssen (im Jahr/Geschäftsjahr) für das Risikomanagement und den Umgang mit menschenrechtlichen oder umweltbezogenen Risiken oder Verletzungen zur Verfügung gestellt werden, um der individuellen Risikodisposition gerecht zu werden?

Zuständigkeiten festlegen:

Wie wird sichergestellt, dass die mit der operativen Umsetzung der Sorgfaltspflichten betrauten Personen sowie die mit der Überwachung des Risikomanagements betraute(n) Person(en) die notwendige Expertise besitzen, ausreichend Zugriff auf Informationen und Dokumente haben und mit Blick auf finanzielle Mittel, personelle Ressourcen und (Entscheidungs-)Befugnisse so ausgestattet sind, dass sie ihre Überwachungsaufgabe hinreichend erfüllen können?

Strukturen schaffen:

- Wie wird die Einbindung der Geschäftsleitung in wichtige Entscheidungsprozesse sichergestellt?
- Wie wird sichergestellt, dass das Risikomanagement durch angemessene Maßnahmen in allen dafür maßgeblichen Geschäftsabläufen (z. B. im Einkauf, im Personalwesen, in der Unternehmensleitung) verankert wird?

Aufgabe: Kontinuierliche Überprüfung des Risikomanagements (ergibt sich aus der Anforderung eines wirksamen Risikomanagements gem. § 4 Abs. 1 S. 1 i. V. m. Abs. 2)

Berücksichtigung von (möglicherweise) Betroffenen:

- Wie werden die Interessen der eigenen Beschäftigten, der Beschäftigten innerhalb der Lieferketten und der sonstigen (möglicherweise) Betroffenen im Sinne von § 4 Abs. 4 bei der Umsetzung des Risikomanagements und der Auswahl und Gestaltung von Maßnahmen identifiziert und ausreichend berücksichtigt?
- Inwiefern werden die zu ergreifenden Maßnahmen aus Sicht der beteiligten Betroffenen als angemessen und wirksam erachtet?

Schlussfolgerungen aus der Wirksamkeitsprüfung für die Angemessenheit der Maßnahmen ziehen:

- Welche Schlüsse lassen sich aus der Wirksamkeitsprüfung von Präventions- oder Abhilfemaßnahmen oder von Beschwerdeverfahren mit Blick auf die zielführende Verwendung der eingesetzten Ressourcen und die ausreichende Intensität und den Umfang der Bemühungen des Unternehmens ziehen?
- Können vorhandene Ressourcen eventuell durch Umverteilung zielführender eingesetzt werden?
- Sind zusätzliche Ressourcen für die Weiterentwicklung des Risikomanagements notwendig?
- Befähigt das Risikomanagement das Unternehmen Risiken möglichst früh zu identifizieren und darauf angemessen zu reagieren?

Überprüfung des Risikomanagements:

Wie wird das Risikomanagement übergreifend anhand der Erkenntnisse aus der Umsetzung auf seine Angemessenheit und Wirksamkeit und die angemessene Berücksichtigung der Interessen von (möglicherweise) Betroffenen hin überprüft?

Aufgabe: Ggf. Anpassung des Risikomanagements (ergibt sich aus der Anforderung eines wirksamen Risikomanagements gem. § 4 Abs. 1 S. 1 i. V. m. Abs. 2)

Änderungen berücksichtigen:

- Inwiefern hat sich die grundsätzliche Risikodisposition des Unternehmens durch strategische Entscheidungen verändert?
- Was bedeutet dies mit Blick auf die verfügbaren Ressourcen für die Umsetzung des Risikomanagements?
- Welche grundsätzlichen strategischen Entscheidungen stehen in naher Zukunft an?
- Was sind mögliche Auswirkungen dieser Entscheidungen auf die Risikodisposition des Unternehmens?
- Wie kann sich das Unternehmen auf diese Veränderungen vorbereiten und etwaig notwendige Ressourcen einplanen?



Effects of the handout - risk analysis

Beispiele

Vorbereitung der Risikoanalyse

Bei der Vorbereitung der regelmäßigen (jährlichen) Risikoanalyse in einem Unternehmen wird zwischen dem eigenen Geschäftsbereich und den unmittelbaren Zulieferern unterschieden. Zwei Koordinatoren für die jeweiligen Bereiche stellen die erforderlichen Daten in Zusammenarbeit mit den beteiligten Abteilungen bereit. Im eigenen Geschäftsbereich gibt es im Personalbereich eine etablierte Struktur, die auch die weltweiten Standorte über lokale Vertreterinnen und Vertreter einbezieht und Informationen aus Beschwerdeverfahren oder Gesundheits- und Arbeitsschutzaudits zusammenführt. Auf diesen Strukturen soll bei der Umsetzung des Risikomanagements und der Risikoanalysen aufgebaut werden. Die Risikoanalyse bei unmittelbaren Zulieferern ist komplexer, da diese bisher kaum vom Nachhaltigkeitsmanagement erfasst sind. Das Unternehmen plant zusätzliche Ressourcen und ein Onboarding der relevanten Abteilungen ein, um die angemessene Umsetzung der Analyse zu gewährleisten.

Durchführung der Risikoanalyse: Auswahl der Methoden

Ein Unternehmen hat bereits eine abstrakte Risikoanalyse durchgeführt und möchte im nächsten Schritt in der konkreten Risikoanalyse ermitteln, welche der im Rahmen der abstrakten Risikoanalyse möglichen Risiken tatsächlich bei seinen unmittelbaren Zulieferern eine Rolle spielen. Das Unternehmen hat mehrere tausend unmittelbare Zulieferer, etwa die Hälfte ist in Risikoländern ansässig. Die Hälfte wiederum dieser Zulieferer ist Risikosektoren zuzuordnen. Das Unternehmen plant zunächst, die Ergebnisse aus der abstrakten Risikoanalyse über eine Selbstauskunft der Zulieferer mit einem Fragebogen zu überprüfen. Schnell kommt man zum Ergebnis, dass dies der Pflicht zu einer angemessenen Risikoanalyse nicht in allen Fällen genügt. Denn bei Zulieferern in Risikoländern und -branchen können intensivere Risikoermittlungsbemühungen angezeigt sein. Das Unternehmen prüft daher in einem nächsten Schritt, bei welchen Zulieferern ein Vor-Ort-Besuch oder ein Audit erforderlich wäre, um der Pflicht zu einer angemessenen Risikoanalyse nachzukommen.

➤ What does the example show?



Take internal risk analysis seriously (BAFA talks about own coordinators, local representatives worldwide, pooling information e.g. from health and safety audits and complaints procedures etc.).



In concrete risk analysis, **questionnaires as self-disclosure** can be an **approach** for risk suppliers.



Questionnaires not adequate in all cases → **More intensive risk identification efforts** (audit, on-site visit)



Effects of the handout - risk analysis

Weiteres Beispiel

Gewichtung und Priorisierung von Risiken

Ein multinationales Unternehmen mit über 200.000 Mitarbeitenden weltweit ist in einem Risikosektor und in Ländern mit hohen menschenrechtlichen und umweltbezogenen Risiken tätig und hat aufgrund dieser grundsätzlichen Risikodisposition einen umfangreichen Prozess zur Risikoanalyse aufgesetzt. Im eigenen Geschäftsbereich arbeitet das Unternehmen mit regionalen internen Menschenrechtsverantwortlichen und Ansprechpersonen an seinen lokalen Standorten zusammen. Einmal jährlich erhalten die lokalen Kolleginnen und Kollegen einen Fragebogen zu menschenrechtlichen und umweltbezogenen Risiken und werden darauf aufbauend in einem persönlichen Gespräch konsultiert. Die Rückmeldungen werden von den Verantwortlichen mithilfe von Desktopanalysen öffentlicher Datenquellen und der Auswertung interner Daten beispielsweise zu Unfallstatistiken oder Rückmeldungen aus Umfragen unter Mitarbeitenden validiert. Im Auswertungsprozess kommt den Angemessenheitskriterien eine zentrale Rolle zu. Mithilfe einer definierten Skala schätzen die Verantwortlichen die Schwere (Intensität, Anzahl der Betroffenen und Unumkehrbarkeit) des Risikos oder Risikobereichs pro Standort oder Region ein. Die Eintrittswahrscheinlichkeit von Risiken wird unter Berücksichtigung des Kontexts (beispielsweise über die Auswertung von Länderindizes) und interner Faktoren (vorhandene Präventionsmaßnahmen und deren Wirksamkeit) bewertet. Das Einflussvermögen wird aufgrund des Fokus auf den eigenen Geschäftsbereich pauschal als hoch eingeschätzt. Für den Verursachungsbeitrag wird ein numerischer Wert angesetzt, der im letzten Schritt mit den Werten zur Schwere und Eintrittswahrscheinlichkeit kombiniert wird, um die Risiken des Unternehmens zu priorisieren. Auf Basis der Ergebnisse werden Prioritäten auf Ebene der Unternehmenszentrale und für die einzelnen Regionen/Länder und entsprechende Präventions- und Abhilfemaßnahmen festgelegt.

➤ What does the example show?



Re-emphasised the importance of risk analysis in own business area (questionnaires, personal interviews, evaluation of public and internal data (e.g. accident statistics, employee surveys)).



Numerical assessment of adequacy criteria (scale) possible



Appropriateness criteria must also be **taken into account in the own business area** (ability to influence high across the board; contribution to causation?)

Effects of the handout - risk analysis

➤ To what extent do guiding questions help?

Aufgabe: Vorbereitungsphase der Risikoanalyse gem. § 5 Abs. 1, Abs. 4 und § 9 Abs. 3 Nr. 1

Ressourcen festlegen:

Inwiefern wird die Risikodisposition des Unternehmens (insbesondere Art und Umfang der Geschäftstätigkeit und die mögliche Anfälligkeit für Risiken) bei der Ressourcenplanung für die Risikoanalyse berücksichtigt?

Strukturen festlegen:

Sind alle Unternehmensbereiche, Fachabteilungen oder Standorte/Regionen, die im Zusammenhang mit Risiken stehen könnten, in den Risikoanalyseprozess eingebunden? Wird der Prozess zielführend gesteuert (u. a. klare Festlegung von Zuständigkeiten)?

Zugang zu bestehenden Unternehmensinformationen:

Wie wird ein Zugriff auf relevante Daten gewährleistet?

Welches Wissen hat das Unternehmen bereits zu:

- Risiken und Verletzungen im eigenen Geschäftsbereich, bei unmittelbaren Zulieferern und in der tieferen Lieferkette?
- Art und Umfang der eigenen Geschäftstätigkeit sowie der Beschaffungs- und Lieferkettenstruktur (siehe Handreichung Risikoanalyse)?

Aufgabe: Durchführung der Risikoanalyse gem. § 5 Abs. 1, Abs. 4 und § 9 Abs. 3 Nr. 1

Ausreichende Informationsgrundlagen schaffen:

- Auf welche verfügbaren und relevanten Quellen¹⁴ zu Branchen- oder Länderrisiken kann das Unternehmen für die abstrakte Betrachtung von menschenrechts- und umweltbezogenen Risiken zurückgreifen?
- Auf welche externen¹⁵ Quellen kann das Unternehmen bei der konkreten Risikoanalyse zurückgreifen?
- Auf welche internen Quellen kann das Unternehmen zurückgreifen, z. B. Human Rights Impact Assessments, Hinweise aus Beschwerdeverfahren, Analysen zu bestehenden Präventionsmaßnahmen, Ergebnisse von Audits und anderen risikobasierten Kontrollen, Auswertung von Dialogen mit Lieferanten, Ergebnisse lokaler Konsultationen mit (möglicherweise) Betroffenen, sowie deren Interessenvertretungen (bspw. Gewerkschaften oder zivilgesellschaftliche Organisationen) oder Analysen der Wirkung von Beschaffungs- oder Einkaufspraktiken?
- Sind weitere Maßnahmen der Risikoermittlung für die konkrete Risikoanalyse erforderlich (Selbstauskünfte der Zulieferer, Durchführung von Audits, Vor-Ort-Besuche)?
- Sind die Risikoermittlungsmaßnahmen für die konkrete Risikoanalyse angemessen? Sollten vertiefte Ermittlungsmaßnahmen in Bezug auf bestimmte Zulieferer stattfinden?

- Reichen die Informationen, die über vorhandene Quellen zusammengetragen werden, aus, um die konkreten Risiken zu ermitteln und unter Berücksichtigung der Angemessenheitskriterien zu gewichten und zu priorisieren?
- Wo bestehen Datenlücken, z. B. in der eigenen Lieferkette, und wie können diese Datenlücken beispielsweise über vertiefte Prüfungen oder den Austausch mit Experten und Expertinnen geschlossen werden? Welche zusätzlichen Ressourcen sind hierfür gegebenenfalls erforderlich?

Gewichtung und Priorisierung der ermittelten Risiken:

- Wie werden die Angemessenheitskriterien gem. § 3 Abs. 2 bei der Gewichtung und Priorisierung der Risiken berücksichtigt?
- Inwiefern werden bei der Risikogewichtung und -priorisierung die Art und der Umfang der Geschäftstätigkeit und die damit verbundene Risikodisposition als übergreifendes Kriterium für die Ressourcenplanung berücksichtigt? (siehe Ressourcen festlegen)
- Inwiefern werden Schwere und Eintrittswahrscheinlichkeit von Risiken einzeln bewertet, beispielsweise mit Hilfe einer Skala¹⁶ und/oder einer sogenannten Heatmap?
- Wie und an welchem Punkt werden das Einflussvermögen und die Art des Verursachungsbeitrags zu Risiken bewertet und mit den Ergebnissen der Bewertung, der Schwere und der Eintrittswahrscheinlichkeit ins Verhältnis gesetzt?
- Inwiefern werden relevante interne und externe Stakeholder in den Prozess der Gewichtung und Priorisierung eingebunden
 - beispielsweise relevantes Personal aus dem Bereich Beschaffung/Einkauf für die Einschätzung der Einflussmöglichkeiten auf einzelne Lieferanten oder
 - lokale Mitarbeitende, die Einschätzungen zur Schwere, zur Eintrittswahrscheinlichkeit und zum Verursachungsbeitrag von konkreten Risiken in lokalen Kontexten abgeben können, oder
 - (möglicherweise) Betroffene bzw. deren gewerkschaftliche Vertretungen für die Einschätzung der Schwere der Beeinträchtigung von Arbeitnehmerrechten oder
- Anwohnende oder deren Interessenvertretungen für die Einschätzung der Schwere der zu erwartenden Beeinträchtigung der Gesundheit oder der Nutzungsmöglichkeit von Wasser und Land?
- Wie wird mit Konflikten bei der Gewichtung und/oder Priorisierung der Risiken umgegangen und wie werden interne Entscheidungsträgerinnen und Entscheidungsträger hierbei eingebunden?

Schlussfolgerungen aus Erkenntnissen der Risikoanalyse:

- Wie werden Lernerfahrungen aus dem Analyseprozess identifiziert und ihre Berücksichtigung in kommenden Risikoanalysen sichergestellt?
- Wie wird die interne Kommunikation der Ergebnisse der Risikoanalyse und die Ableitung von angemessenen und wirksamen Präventionsmaßnahmen vorbereitet und sichergestellt?

Impact of the handout - prevention measures

Beispiel

Planung und Umsetzung von risikobasierten Präventionsmaßnahmen

Ein Unternehmen hat als Präventionsmaßnahme gegen Zwangsarbeit bislang auf Unterzeichnung seines Verhaltenskodex durch alle seine unmittelbaren Zulieferer gesetzt. Dieser listet alle einzuhaltenden menschenrechts- und umweltbezogenen Standards auf, u. a. das Verbot von Zwangsarbeit.

Die Überprüfung der Angemessenheit der Präventionsmaßnahmen eines Unternehmens ergibt, dass der Verhaltenskodex für Lieferanten in Bezug auf die Verhinderung und Minimierung von Zwangsarbeit nicht angemessen ist.

Das Unternehmen stellt nämlich fest, dass bei einem konkreten unmittelbaren Zulieferer die Eintrittswahrscheinlichkeit von Zwangsarbeit aufgrund des Landeskontexts und der Branche als sehr hoch zu bewerten ist. Zugleich handelt es sich bei Zwangsarbeit um eine Verletzung, die stets mit einer hohen Intensität einhergeht und daher als schwer zu bewerten ist. Das Unternehmen kann lediglich noch nicht bewerten, wie viele Menschen betroffen sein könnten. Zugleich stuft es den eigenen Verursachungsbeitrag als gering ein. Das Einflussvermögen auf den unmittelbaren Verursacher der Verletzung bewertet es als mittel. Zwar war die Zusammenarbeit mit dem Zulieferer in der Vergangenheit stets konstruktiv und der Zulieferer reagierte stets zufriedenstellend auf Kritik. Zugleich lässt aber der politische Kontext in dem Land in Bezug auf das Thema Zwangsarbeit wenig Einflussmöglichkeiten erwarten. Da das Unternehmen Art und Umfang seiner Geschäftstätigkeit ebenfalls als hoch bewertet, kommt es zu dem Ergebnis, dass der bisherige Verhaltenskodex als Präventionsmaßnahme unangemessen ist.

Daraufhin überarbeitet das Unternehmen seinen Verhaltenskodex. Danach wird der Zulieferer verpflichtet, unangekündigte Vor-Ort-Kontrollen inklusive Gespräche mit Beschäftigten zu dulden. Zudem nimmt es Regelungen zu Konsequenzen bei Nichteinhaltung der vereinbarten Standards auf. So wird der Zulieferer verpflichtet, an Abhilfemaßnahmen mitzuwirken bzw. diese zu dulden. Außerdem soll der Zulieferer bei schweren Verstößen eine Vertragsstrafe zahlen. Zusätzlich wird ein außerordentliches Kündigungsrecht für schwere Verstöße aufgenommen, wenn Abhilfemaßnahmen nach der im Maßnahmenplan vorgesehenen Zeit erfolglos bleiben und mildere Mittel nicht in Betracht kommen.

Das Unternehmen überlegt auch, regelmäßige Audits bei Zulieferern mit hohen Risiken für Zwangsarbeit durchzuführen. Da aber erfahrungsgemäß Audits das Vorkommen von Zwangsarbeit nicht zuverlässig abprüfen können, entscheidet das Unternehmen, sich bei seinen Audits auf die Themen zu konzentrieren, die darüber realistisch erfasst werden, wie z. B. Arbeits- und Gesundheitsschutz sowie Personal- und Umweltmanagementsysteme. Zudem entwickelt das Unternehmen Schulungen zum Umgang mit Arbeitsvermittlungsagenturen sowie für die Integration von konkreten Vorgaben in Verträge mit Personaldienstleistern.

➤ What does the example show?



Code of conduct not sufficient as sole preventive measure



Appropriateness test can play out in "details" (country context forced labour, intensity, number of people affected, cooperation suppliers, political context)



Unannounced on-site inspections should be possible
Problem: AGB law with German contract



Doubtful whether far-reaching contractual regulations (unannounced audits, contractual penalty, support obligations) are **accepted**



Additional training, audits

Impact of the handout - prevention measures

Weiteres Beispiel

Planung und Umsetzung von risikobasierten Präventions- und Abhilfemaßnahmen

Ein Unternehmen, das Textilwaren von unmittelbaren Zulieferern aus einem südostasiatischen Land bezieht, identifiziert in Bezug auf mehrere dieser Zulieferer im Rahmen der Risikoanalyse das Thema *angemessene Löhne* als Risiko, teilweise auch als Verletzung - denn bei einigen Zulieferern wird der staatliche Mindestlohn unterschritten. Als Präventions- und Abhilfemaßnahme verpflichtet das Unternehmen im Rahmen eines Verhaltenskodex seine Zulieferer, den jeweils geltenden staatlichen Mindestlohn einzuhalten.

Einzelne Zulieferer melden an das Unternehmen zurück, dass sie bei den gegenwärtig vom Unternehmen gezahlten Preisen unmöglich den staatlichen Mindestlohn an ihre Beschäftigten auszahlen können. Das Unternehmen nimmt dies zum Anlass, die Wirksamkeit und Angemessenheit seines Verhaltenskodex zu überprüfen.

Es kommt zum Ergebnis, dass dieser nicht wirksam und zudem unangemessen ist. Denn der Mindestlohn wurde bereits vor einem Jahr angehoben. Seine Abnahmepreise hat es jedoch seit geraumer Zeit nicht verändert. Das Unternehmen ermittelt daraufhin, wie hoch der Abnahmepreis jeweils sein müsste, um seine Zulieferer in die Lage zu versetzen, angemessene Löhne auszuzahlen.

Die Prüfung der Angemessenheitskriterien ergibt darüber hinaus, dass weitere Maßnahmen erforderlich sind. Das Unternehmen stellt fest, dass vor dem Hintergrund von Art und Umfang seiner Geschäftstätigkeit mehr Engagement von ihm zu erwarten ist. Zudem geht das Unternehmen davon aus, dass Schwere und Eintrittswahrscheinlichkeit stark ausgeprägt sind. Denn die Unterschreitung des Mindestlohns betrifft viele Personen und hat starke negative Auswirkungen auf deren Lebens- und Arbeitsbedingungen sowie andere geschützte Rechtspositionen. So führen geringe Löhne typischerweise zu einer Überschreitung von Arbeitszeiten, weil Beschäftigte darauf angewiesen sind, mit Überstunden weitere Einnahmen zu erzielen, um ausreichend Mittel für die Sicherung ihres Lebensunterhalts zu erwirtschaften. Die Überschreitung von Arbeitszeiten erhöht die Gefahr für Unfälle. Geringe Löhne sind zudem ein Risikofaktor für Kinderarbeit, da von Armut betroffene Familien oftmals auf die Löhne der Kinder angewiesen sind. Auch Einflussvermögen und Verursachungsbeitrag schätzt es als hoch ein. Das Unternehmen geht hierbei davon aus, dass es mit einer Veränderung seiner Einkaufspraktiken (insbesondere Abnahmepreis) die Situation beeinflussen kann und durch die zu geringen Abnahmepreise zu dem Problem beigetragen hat.

Das Unternehmen beschließt daher, sowohl die Abnahmepreise zu erhöhen, als auch Kontrollmaßnahmen und Konsequenzen bei Nichteinhaltung in den Verhaltenskodex aufzunehmen. Damit will es sicherstellen, dass seine Zulieferer auch tatsächlich angemessene Löhne auszahlen.

➤ What does the example show?



Leverage for suppliers (triggering price calculations)



Adequacy test again plays out "**details**" (number of persons affected, impact on other protected legal positions)



Change in purchasing practices (responsible sourcing; appropriate contract design)



Additional controls and consequences in the event of non-compliance with the Supplier Code of Conduct



It is questionable whether this is how it works in practice!



Impact of the handout - prevention measures

➤ To what extent do guiding questions help?

Aufgabe: Auswahl von Präventionsmaßnahmen (§ 6 Abs. 3 und 4, § 9 Abs. 3 Nr. 2)	
Präventionsmaßnahmen identifizieren und konzipieren:	
<ul style="list-style-type: none">○ Sind die Ergebnisse der regelmäßigen (jährlichen) oder anlassbezogenen Risikoanalysen sowie Erkenntnisse aus Beschwerdeverfahren Ausgangspunkt für die Auswahl der Präventionsmaßnahmen?○ Sind die im LkSG genannten Präventionsmaßnahmen in Bezug auf die Risiken zielführend und ausreichend oder bedarf es zusätzlicher/anderer Maßnahmen?○ Wie schwer sind die (möglichen) Verletzungen und wie wahrscheinlich ist ihr Eintritt? Welcher Aufwand in Bezug auf die Präventionsmaßnahmen ist daher nötig?○ Inwiefern wurden Lernerfahrungen aus der bisherigen Umsetzung von Präventions- und Abhilfemaßnahmen sowie den erfolgten Wirksamkeitsüberprüfungen berücksichtigt?○ Inwiefern wurde bei der Auswahl und der Konzeption von Präventionsmaßnahmen abgewogen, welche Maßnahmen mit Blick auf die Risiken des Unternehmens in den konkreten Kontexten zielführend und ausreichend sind?○ Inwiefern wurden hierbei die lokalen rechtlichen, politischen oder kulturellen Gegebenheiten berücksichtigt?○ Inwiefern werden die Interessen von (möglicherweise) Betroffenen bei der Auswahl und der Konzeption von Präventionsmaßnahmen identifiziert und ausreichend berücksichtigt?	

Aufgabe: Umsetzung von Präventionsmaßnahmen (§ 6 Abs. 3 und 4, § 9 Abs. 3 Nr. 2)	
Einbeziehung weiterer Stakeholder:	
Wie kann bei der Umsetzung von Präventionsmaßnahmen mit relevanten internen Stakeholdern (z. B. lokale Standorte), Zulieferern und/oder anderen Unternehmen oder Organisationen im Rahmen von Brancheninitiativen oder Multi-Stakeholder-Initiativen zusammengearbeitet werden, um vorhandene Ressourcen zielführend einzusetzen?	
Schlussfolgerungen aus der Wirksamkeitsprüfung für die Angemessenheit der Maßnahmen ziehen:	
<ul style="list-style-type: none">○ Welche Schlüsse lassen sich aus der Wirksamkeitsprüfung der Präventionsmaßnahmen mit Blick auf die Auswahl und Konzeption der Maßnahmen ziehen? Sind Anpassungen erforderlich?○ Können vorhandene Ressourcen eventuell durch Umverteilung zielführender eingesetzt werden?○ Sind zusätzliche Ressourcen für bestehende oder neue Präventionsmaßnahmen notwendig?	



Impact of the handout - remedial measures

Beispiel

Bestimmung und Umsetzung von Abhilfemaßnahmen

Im Rahmen eines Human Rights Impact Assessments wird festgestellt, dass Mitarbeitende in der eigenen Produktion keine Schutzhandschuhe und -masken tragen. Dies widerspricht lokalen Arbeitsschutzstandards.

Da die Verletzung im eigenen Geschäftsbereich stattfindet, muss die Abhilfemaßnahme im Inland zur Beendigung, im Ausland in der Regel zur Beendigung führen.

Zur Entwicklung wirksamer und angemessener Abhilfemaßnahmen wird eine Ursachenanalyse durchgeführt, die in mehreren Schritten und unter Beteiligung der Betroffenen herausarbeitet, dass sich aktuell niemand dafür zuständig fühlt, die vorhandene Schutzausrüstung in den richtigen Größen bereitzustellen. Die Mitarbeitenden bevorzugen es daher, ohne Handschuhe zu arbeiten.

Das Unternehmen kommt zu dem Ergebnis, dass die Angemessenheitskriterien stark ausgebildet sind. Art und Umfang der Geschäftstätigkeit stuft es als hoch ein. Verletzungen sind bereits eingetreten, weshalb die Eintrittswahrscheinlichkeit als sehr hoch zu bewerten ist. Die Schwere stuft das Unternehmen als mittel ein. Insbesondere sind aber die Kriterien Verursachungsbeitrag und Einflussvermögen - wie in der Regel im eigenen Geschäftsbereich - sehr stark ausgebildet. Denn die Verletzung wird unmittelbar alleine (und nicht gemeinsam mit einem anderen Akteur oder nur mittelbar) verursacht: das Unternehmen ist rechtlich verpflichtet Zuständigkeiten für die Beschaffung von Schutzausrüstung und die Durchsetzung ihrer Anwendung festzulegen.

Aus der Ermittlung der Ursachen des Problems sowie der Anwendung der Angemessenheitskriterien ergeben sich Ansätze für Abhilfemaßnahmen. Das Unternehmen legt zunächst die Verantwortlichkeiten klar fest. Die Mitarbeitenden werden mit der passenden Ausrüstung versorgt, darüber informiert, wer zuständig ist und an wen sie sich bei Fragen oder zukünftigen Problemen wenden können. Zudem werden alle Mitarbeitenden in der korrekten Anwendung der Schutzausrüstung geschult. Eine jährliche Wiederholung dieser Schulung ist vorgesehen. Das Unternehmen plant zudem, die Wirksamkeit der Maßnahme mit angemessenen Kontrollmaßnahmen, u. a. durch regelmäßige unangekündigte Besuche des Standorts, nachzuhalten.

➤ What does the example show?



Carry out root cause analysis in own business area after injury has been detected



Adequacy test also to be taken into account in own business area



Adequacy assessment must not become an end in itself
➔ Sometimes the result must also simply be clear

Impact of the handout - remedial measures

➤ To what extent do guiding questions help?

Aufgabe: Entwicklung von Abhilfemaßnahmen (§ 7 Abs. 1 - 3, § 9 Abs. 3 Nr. 3)

Abhilfemaßnahmen identifizieren und konzipieren:

- Inwiefern verfügt das Unternehmen über zielführende und ausreichende Kanäle oder Möglichkeiten, um Verletzungen von menschenrechtlichen oder umweltbezogenen Pflichten festzustellen?
- Sind die Ergebnisse der regelmäßigen (jährlichen) und anlassbezogenen Risikoanalysen sowie Erkenntnisse aus Beschwerdeverfahren Ausgangspunkt für Entwicklung/Auswahl der Abhilfemaßnahmen?
- Inwiefern wird bei der Auswahl und Konzeption von Abhilfemaßnahmen bedacht, welcher Aufwand mit Blick auf die konkrete Verletzung und die betroffenen Personen sowie den relevanten lokalen Kontext zielführend und ausreichend ist?
- Wie wird sichergestellt, dass Abhilfemaßnahmen zur Beendigung von Verletzungen im eigenen Geschäftsbereich im Inland bzw. in der Regel zur Beendigung von Verletzungen im eigenen Geschäftsbereich im Ausland sowie bei bestimmend beeinflussten konzernangehörigen Gesellschaften führen?
- Wie wird erfasst und sichergestellt, dass ähnliche Sachverhalte auch vergleichbar behandelt werden, also ein ähnlicher Aufwand ergriffen wird, um vergleichbare Menschenrechtsverletzungen zu adressieren?
- Inwiefern werden die Angemessenheitskriterien bei der Auswahl und Konzeption von Maßnahmen berücksichtigt, beispielsweise durch Bewertung der Schwere der Verletzung? Sind alle Möglichkeiten der Einflussnahme genutzt worden?
- Inwiefern wurde die Perspektive der Betroffenen bei der Auswahl und Konzeption der Abhilfemaßnahmen identifiziert und berücksichtigt?
- Inwiefern wurden Lernerfahrungen aus der bisherigen Umsetzung von Abhilfemaßnahmen und den erfolgten Wirksamkeitsüberprüfungen berücksichtigt?

Aufgabe: Umsetzung von Abhilfemaßnahmen (§ 7 Abs. 1 - 3, § 9 Abs. 3 Nr. 3)

Erfolg der Maßnahmen überprüfen

- Hatten die Abhilfemaßnahmen Erfolg?
- Inwiefern werden Abweichungen von „in der Regel“ zu beendenden Verstößen im eigenen Geschäftsbereich im Ausland und im eigenen Geschäftsbereich gemäß § 2 Abs. 6 S. 3 dokumentiert und begründet?

Einbeziehung von Zulieferern

Inwiefern erfolgt die Erarbeitung und Umsetzung von Konzepten zur Beendigung oder Minimierung von Verletzungen in Zusammenarbeit mit Zulieferern?

Verknüpfung mit anderen Maßnahmen:

Inwiefern wird die Umsetzung der Konzepte mit vorhandenen Präventionsmaßnahmen, beispielsweise der Anpassung von Beschaffungs- oder Einkaufspraktiken, verknüpft?

Schlussfolgerungen aus der Wirksamkeitsprüfung ziehen:

- Wird im Rahmen der Wirksamkeitsüberprüfungen festgestellt, wie die eingesetzten Maßnahmen gewirkt haben, und wie werden die Betroffenen in diesen Prozess eingebunden?
- Welche Schlüsse lassen sich aus der Wirksamkeitsprüfung von Abhilfemaßnahmen mit Blick auf die Angemessenheit der Auswahl und des Umfangs der Maßnahmen ziehen, insbesondere in Bezug auf das Verhältnis von eigenen Abhilfemaßnahmen, der Wirksamkeit von Konzepten zur Beendigung oder Minimierung und dem Abbruch einer Geschäftsbeziehung? Sind Anpassungen erforderlich?
- Können vorhandene Ressourcen eventuell durch Umverteilung zielführender eingesetzt werden, um insb. einen Abbruch einer Geschäftsbeziehung als letztes Mittel zu vermeiden?
- Sind zusätzliche Ressourcen für bestehende oder neue Abhilfemaßnahmen notwendig?



Impact of the handout - Complaints procedure

Beispiel

Einrichtung von Beschwerdeverfahren

Vor Einrichtung des Beschwerdeverfahrens führt ein Modeunternehmen zahlreiche Gespräche, u. a. mit Beschäftigten verschiedener Zulieferer sowie deren Vertretungen. So möchte es ermitteln, wie das Verfahren ausgestaltet und zugänglich gemacht werden sollte. Hierbei identifiziert es als eine besonders relevante Zielgruppe Beschäftigte bei seinen Zulieferern in der Konfektion. In den Gesprächen erfährt es zudem, dass viele unmittelbare Zulieferer eine Vielzahl von Modelabels in Europa und Nordamerika beliefern. Es kommt daher zu dem Schluss, dass Informationen zu einem eigenen Beschwerdeverfahren bei diesen Beschäftigten nicht zielführend wären. Denn für die Beschäftigten vor Ort sowie Anwohnende der Fabriken dürfte es in der Regel nicht nachvollziehbar sein, an welches Beschwerdeverfahren der vielen Modelabels sie sich wenden können. Das Problem wurde auch von einigen anderen Unternehmen erkannt. Aus diesem Grund beschließen diese Unternehmen, sich zu einer regionalen Brancheninitiative zusammenzuschließen. Die Brancheninitiative soll das Beschwerdeverfahren für Beschäftigte und Anwohnende durchführen. Das Verfahren soll sowohl online, als auch über Aushänge und große Informationsschilder in den Zuliefererfabriken in der Landessprache bekannt gemacht werden. Diese Informationen geben auch die konkreten Ansprechpersonen an, welche über die Hotline, die E-Mail-Adresse und über die Website erreichbar sind. Zudem gibt es in der Landeshauptstadt ein Büro, in dem man sich direkt an Ansprechpersonen wenden kann. Im Ergebnis beteiligt sich das Unternehmen an dem externen Verfahren der regionalen Brancheninitiative.

➤ What does the example show?



Can this example be generalised? Would mean that for suppliers who produce for many large German companies, (communication) their own complaints procedure would not be effective → Industry initiatives complaints procedure then standard



Communication of the complaints procedure can be complex and time-consuming with target groups!

Impact of the handout - Complaints procedure

Weiteres Beispiel

Überprüfung von Beschwerdeverfahren

Im Rahmen der jährlichen Wirksamkeitskontrolle prüft das Unternehmen auch die Zugänglichkeit des externen Verfahrens der regionalen Brancheninitiative. Hierfür sichtet es anonymisierte Informationen über Anzahl und Themen der Beschwerden sowie die Personen, die sich des Verfahrens bedienen. Zudem berücksichtigt das Unternehmen die Ergebnisse aus der Risikoanalyse. Durch diese hat das Unternehmen Diskriminierung sowie sexuelle Belästigung gegen weibliche Beschäftigte bei seinen Konfektionszulieferern als großes Problem identifiziert. Der Abgleich mit den Informationen des externen Beschwerdeverfahrens ergibt allerdings, dass keine Beschwerden zu diesen Themen eingegangen und insgesamt Frauen als Beschwerdeführerinnen deutlich unterrepräsentiert sind. Nach Anwendung der Angemessenheitskriterien beschließt das Unternehmen, seine Bemühungen um Zugänglichkeit im Rahmen der Anpassung seines Beschwerdeverfahrens auf Frauen und Beschwerden zu Diskriminierung sowie sexuelle Belästigung zu konzentrieren.

Denn in diesem Bereich sind die Angemessenheitskriterien stark ausgeprägt. Dies betrifft insbesondere Schwere und Wahrscheinlichkeit der Verletzungen. Bei Zulieferunternehmen der Textilbranche ist eine Vielzahl von Frauen potenziell und tatsächlich von Diskriminierung sowie sexueller Belästigung betroffen. Zahlreiche Medien- und Gewerkschaftsberichte sowie Nichtregierungsorganisationen (NGO) weisen seit vielen Jahren auf das Problem hin. Zudem handelt es sich um eine intensive Rechtsgutverletzung, zumal auch die Anwendung sexualisierter Gewalt unter diesen Bedingungen naheliegt.

Nachdem das Unternehmen das Thema im Rahmen des regelmäßigen Austauschs in der regionalen Brancheninitiative anspricht, setzt diese eine Arbeitsgruppe ein, welche ermitteln soll, weshalb das Beschwerdeverfahren so selten von Frauen genutzt wird und weshalb keine Beschwerden zu Diskriminierung und sexueller Belästigung eingehen. Die Arbeitsgruppe konsultiert eine europäische NGO, die sich für bessere Arbeitsbedingungen von Frauen in der Textilindustrie einsetzt, eine Fraueninitiative in der Region sowie zwei Gewerkschaften. Über diese Akteure entsteht auch Kontakt und kann ausreichend Vertrauen zu Betroffenen aufgebaut werden, um mit ihnen in vertrauensvollem Rahmen über die Zugänglichkeit des Verfahrens zu sprechen.

Schnell stellt sich als ursächlich heraus, dass alle Ansprechpersonen des Beschwerdeverfahrens männlich sind und es den Mädchen und Frauen unangenehm ist, mit Männern über diese Themen zu sprechen. Sie fürchten, dass man ihnen nicht glaubt, sie nicht ernstnimmt, sie den Tätern gegenüberstellt, sie aufgrund der Beschwerde noch schlechter behandelt oder sie gar entlässt.

Daraufhin stellt die regionale Brancheninitiative zunächst ausreichend Frauen als Ansprechpersonen für Beschwerden ein und macht dies öffentlich. Beschwerdeführer und Beschwerdeführerinnen können nunmehr entscheiden, ob sie lieber mit einem Mann oder einer Frau sprechen wollen. Zudem sollen einige der weiblichen Ansprechpersonen besonders in Bezug auf den Umgang mit Diskriminierung und sexueller Belästigung geschult werden.

➤ What does the example show?



In the case of very high risks, measures to be taken are very extensive! (Initiatives, controls, stakeholder discussions)



Effects of the handout - Complaints procedure

➤ To what extent do guiding questions help?

Aufgabe: Einrichtung von oder Beteiligung an Beschwerdeverfahren (§§ 8, 9 Abs. 1)

- Inwiefern wird bei der Einrichtung und Auswahl von Beschwerdeverfahren angesichts der Informationen zur eigenen Risikodisposition und den Ergebnissen der Risikoanalyse (sofern diese bereits vorliegen)¹⁹ abgewogen, welcher Aufwand zielführend und ausreichend ist?
 - Inwiefern wurden die Ergebnisse der Risikoanalyse und insbesondere Informationen zu Kontexten mit (prioritären) Risiken (Länder, Regionen, einzelne Standorte, Branchen) sowie den jeweiligen Zielgruppen des Verfahrens bei der Einrichtung oder Auswahl des Beschwerdeverfahrens berücksichtigt?
 - Inwiefern wurden die Interessen der Zielgruppen der Verfahren (sprich, der potenziell von Verletzungen betroffenen Gruppen) bei der Einrichtung und Auswahl von Beschwerdeverfahren identifiziert und insbesondere mit Blick auf die Zugänglichkeit der Beschwerdeverfahren ausreichend berücksichtigt?
 - Wie wird sichergestellt, dass diese Zielgruppen über das Beschwerdeverfahren informiert werden?

Aufgabe: Umsetzung und Überprüfung von Beschwerdeverfahren (§§ 8, 9 Abs. 1)

- Inwiefern verfügen mögliche Betroffene von Risiken oder Verletzungen, die über die Risikoanalyse oder die Umsetzung bisheriger Präventions- oder Abhilfemaßnahmen identifiziert wurden, über (ausreichenden) Zugang zu einem Beschwerdeverfahren?
- Inwiefern werden diejenigen, für die das Verfahren vorgesehen ist, im Rahmen der Überprüfung konsultiert? Inwiefern werden Lernerfahrungen aus der Bearbeitung von Beschwerden und den Wirksamkeitsüberprüfungen genutzt, um die vorhandenen Ressourcen zielführender einzusetzen?
- Sind Anpassungen oder zusätzliche Ressourcen notwendig?
- Wie wird sichergestellt, dass diese Zielgruppen über das Beschwerdeverfahren informiert werden?



Conclusion



BAFA deals with adequacy



Adequacy criteria must not degenerate into an end in themselves! Often result should be at the beginning



Document adequacy considerations / problem only if adequacy is not considered at all



Discretionary scope for appropriateness remains in place



Our checklists for risk analysis - Contact us!

➤ Our checklists for risk analysis in your own business area (currently 70 pages with many integrated documents and links)

- 01 Checkliste § 2 Abs. 2 Nr. 1 und 2
- 02 Checkliste § 2 Abs. 2 Nr. 3
- 03 Checkliste § 2 Abs. 2 Nr. 4
- 04 Checkliste § 2 Abs. 2 Nr. 5
- 05 Checkliste § 2 Abs. 2 Nr. 6
- 06 Checkliste § 2 Abs. 2 Nr. 7
- 07 Checkliste § 2 Abs. 2 Nr. 8
- 08 Checkliste § 2 Abs. 2 Nr. 9 und 10
- 09 Checkliste § 2 Abs. 2 Nr. 11
- 10 Checkliste § 2 Abs. 3

Checkliste Risikoanalyse
Umweltbezogene Risiken

– Umgang mit Quecksilber – § 2 Abs. 3 Nr. 1, Nr. 2 und Nr. 3 LkSG –

Risiko

- Risiko der Verletzung des Verbotes der Herstellung von mit Quecksilber versetzten Produkten (Nr. 1)
- Risiko der Verletzung des Verbotes der Verwendung von Quecksilber und Quecksilberverbindungen bei Herstellungsprozessen (Nr. 2)
- Risiko der Verletzung des Verbotes der Behandlung von Quecksilberabfällen (Nr. 3)

Gesetzliche Anforderungen

Das **LkSG** verweist auf das **Minamata-Übereinkommen** (Übereinkommen von Minamata vom 10. Oktober 2013 über Quecksilber (BGBl. 2017 II S. 610, 611)), dessen Vorgaben maßgebend sind.

Minamata-Übereinkommen - Anlagen

- **Quecksilber** ist elementares Quecksilber ($Hg(0)$, CAS-Nummer 7439-97-6).
- **Quecksilberverbindung** ist jeder Stoff, der aus Quecksilberatomen und einem oder mehreren Atomen anderer chemischer Elemente besteht und der sich nur durch chemische Reaktionen in verschiedene Bestandteile trennen lässt.
- Ein **mit Quecksilber versetztes Produkt** ist ein Produkt oder einen Produktbestandteil, das beziehungsweise der absichtlich hinzugefügtes Quecksilber oder eine absichtlich hinzugefügte Quecksilberverbindung enthält.

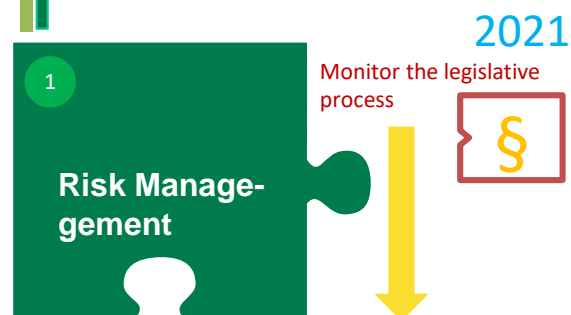
Das Vorliegen eines Verbotes nach **Nr. 1** richtet sich nach **Art. 4 Abs. 1 des Minamata-Übereinkommens** und **Anlage A Teil I des Minamata-Übereinkommens**.
Das Vorliegen eines Verbotes nach **Nr. 2** richtet sich nach **Art. 5 Abs. 2 des Minamata-Übereinkommens** und **Anlage B Teil I des Minamata-Übereinkommens**.
Das Vorliegen eines Verbotes nach **Nr. 3** richtet sich nach **Art. 11 Abs. 3 des Minamata-Übereinkommens**. Art. 11 Abs. 3 des Minamata-Übereinkommens bezieht sich zudem auf die **technischen Richtlinien des Basler Übereinkommens**.

Checkliste

Checklist-Fragen zu Nr. 1	Bitte ankreuzen und entsprechend den Anmerkungen weiterprüfen	
1. Stellen Sie ein mit Quecksilber versetztes Produkt gemäß der Anlage A Teil 1 des Minamata-Übereinkommens her?	Ja O	Nein O
<i>Hinweis: Dies können u.a. Batterien, Lampen, Kosmetika, Pestizide, Biozide und Messgeräte wie Thermometer sein.</i>	<i>Prüfung fortsetzen</i>	<i>Kein Risiko, Prüfung beendet</i>
2. Wenn 1. mit Ja beantwortet wurde:		
– Handelt es sich bei dem Produkt um ein für den Zivilschutz und militärische Verwendungszwecke unerlässliches Produkt?	Ja O	Nein O
– Handelt es sich um ein Produkt für die Forschung, die Kalibrierung von Instrumenten oder zur Verwendung als Referenzstandard?	Ja O	Nein O
– Handelt es sich um Schalter und Relais, Kalkathoden-Leuchtstofflampen und Leuchtstofflampen mit externen Elektroden (CCFL und EEFL) für elektronische Displays und Messgeräte, <u>zu denen keine machbare quecksilberfreie Alternative als Ersatz verfügbar ist?</u>	Ja O	Nein O
– Handelt es sich um ein Produkt, das bei traditionellen oder religiösen Praktiken verwendet wird?	Ja O	Nein O
– Handelt es sich um einen Impfstoff mit Thiomersal als Konservierungsstoff?	Ja O	Nein O
	<i>Kein Risiko, wenn eine der Fragen mit Ja beantwortet wurde. Prüfung fortsetzen, wenn alle Fragen mit Nein beantwortet wurden.</i>	
3. Wenn alle unter 2. aufgeführten Fragen mit Nein beantwortet wurden:		
Produzieren Sie in einem Produktionsland, das eine Ausnahme nach dem Minamata-Abkommen für das mit Quecksilber versetzte Produkt registriert hat?	Ja O <i>Kein Risiko</i>	Nein O <i>Risiko besteht</i>
<i>Hinweis: Die aktuelle Liste registrierter Ausnahmen kann hier abgerufen werden: https://www.mercuryconvention.org/en/parties/exemptions</i>		

Checklist-Fragen zu Nr. 5	Bitte ankreuzen und entsprechend den Anmerkungen weiterprüfen	
Werden in Ihrem Betrieb die wichtigsten erforderlichen Maßnahmen nach dem Arbeitsschutzgesetz getroffen?		
<i>Das Arbeitsschutzgesetz verlangt die</i> <ul style="list-style-type: none">– Aufstellung– Überprüfung– Anpassung <i>von nach den betrieblichen Umständen erforderlichen Maßnahmen zum Schutz der Sicherheit und Gesundheit der Beschäftigten.</i> <i>Von der Einhaltung der Vorgaben des Arbeitsschutzgesetzes ist daher dann eher auszugehen, wenn die folgenden Fragen mit „Ja“ oder „sicher nicht einschlägig“ beantwortet werden können:</i>		
1. Festlegung von Arbeits- und Tätigkeitsbereichen: Werden im Betrieb Arbeitsbereiche festgelegt, die nach der Art der Tätigkeit eine ähnliche arbeitsschutzrechtliche Gefahrenlage aufweisen (z.B. Schreibtischarbeitsplätze mit/ohne Computer, Lagermitarbeiter, Fahrer)?	Ja O	Nein O
2. Ermittlung der Gefährdungen: Werden für jeden festgelegten Arbeitsbereich die für die betriebliche Sicherheit und Gesundheit relevanten möglichen Gefährdungsfaktoren erfasst („Ist-Zustand“)? Dies ist dann der Fall, wenn folgende Gefährdungsfaktoren entweder erfasst werden oder offensichtlich irrelevant für den Betrieb sind.	Ja O	Nein O
a. Psychische Faktoren (z.B. Über-/Unterforderung, Arbeiten unter Zeitdruck, wechselnde oder lange Arbeitszeiten, häufige Nacharbeit, fehlende soziale Kontakte)	Ja O	Nein O
b. Mechanische Gefährdungen (z.B. Absturz, Ausrutschen, Stolpern, Umknicken, ungeschützt bewegte Maschinenteile, Teile mit gefährlichen Oberfläche, bewegte Arbeits- und Transportmittel)	Ja O	Nein O
c. Elektrische Gefährdungen (z.B. Elektrischer Schlag, Lichtbögen, Elektrostatische Aufladungen)	Ja O	Nein O
d. Gefahrstoffe (z.B. Denkbare Gefahren durch Hautkontakt, Einatmen, Verschlucken, insb. bei biologisch, chemisch wirkenden Arbeitsstoffen, Brand-/Explosionsgefahren durch leicht brennbare Stoffe)	Ja O	Nein O
e. Thermische Gefährdungen (z.B. heiße/kalte Medien oder Oberflächen)	Ja O	Nein O
f. Besonderer physikalischer Einwirkungen (z.B. Lärm, Ultraschall, Vibrationen, Strahlungen, Unter/Überdruck)	Ja O	Nein O
Werden im Betrieb die erforderlichen Maßnahmen nach dem Arbeitszeitgesetz und nach dem Bundesurlaubsgesetz getroffen?		
<i>Das Arbeitszeitgesetz (ArbZG) regelt die Sicherheit und den Gesundheitsschutz der Beschäftigten im Rahmen der Arbeitszeitgestaltung und begrenzt dabei unter anderem die höchstzulässige Arbeitszeit und enthält Regelungen über Mindestruhepausen und Mindestruhezeiten. Für Jugendliche und besondere Personengruppen können besondere arbeitszeitrechtliche Vorschriften gelten. Das Bundesurlaubsgesetz (BUrlG) regelt insbesondere den gesetzlichen Mindesturlaub.</i> <i>Von der Einhaltung der Vorgaben des Arbeitszeitgesetzes ist dann eher auszugehen, wenn alle folgenden Fragen mit „Ja“ beantwortet werden können:</i>		
1. Höchstarbeitszeit: Werden im Unternehmen die Höchstarbeitszeiten eingehalten, nämlich:	Ja O	Nein O
a. Keine Überschreitung der täglichen <i>maximalen</i> Arbeitszeit von 10 Stunden?	Ja O	Nein O
b. Keine Überschreitung einer <i>durchschnittlichen</i> täglichen Arbeitszeit von 8 Stunden pro Werktag (einschl. Samstag). Der Durchschnitt muss innerhalb von 6 Kalendermonaten oder innerhalb von 24 Wochen erreicht werden)?	Ja O	Nein O

4. And: § 4 - establish risk management



Risk management to all relevant business processes and appropriate measures, i.e. those that

- make it possible to identify human rights and environmental risks, and
- prevent, end or minimise violations of human rights (see § 2 paras. 2 and 1) or environmental obligations (see § 2 paras. 3 and 4) that are caused or contributed to,

2022 - To Dos (Preparations)

1 Pursue preparations for prevention (§ 6) and risk analysis (§ 5)

2 Then:
Measure: Develop responsibility and Measure plan Risk management
See **Responsibility and Measure Plan Risk Management [Toolbox]**.

2023 - Goals + Implementation

Goal: Identify human rights and environmental risks in the own business and in the supply chain and prevent, stop or minimize violations of protected positions (see § 2 para. 2 and 1) or environmental obligations (see § 2 para. 3 and 4).

Measure 1: Embed responsibilities to monitor due diligence compliance in all internal company business processes that are likely to impact risk mitigation. Together = "Roundtable Supply Chain Law

→ See **Responsibility and Measure Plan Risk Management [Our Toolbox]**.

1st level: Management

2nd level: Human Rights Officer (or other person with primary responsibility who reports directly to the Management Board)

3rd level: relevant departments, in particular purchasing, legal department, compliance, CSR department

Measure 2: The management has to inform itself about the work of the responsible persons at least once a year as well as on an ad hoc basis, for example when new business areas or products are introduced.

2024

...as 2023

4. and: § 4 - Establish risk management

1

Risk management

A. Horizontal directive

- Responsibilities, processes, measures at management and executive level
- Human rights officer(s) and steering groups
- Management information, controls and delegation
- Detailing in vertical process descriptions - ideally with automation of "analysis - measures - documentation - report)

Risk analysis of own business area

■ ...

Supplier risk analysis

■ ...

Prevention + Remediation own business area

■ ...

Prevention + Remediation Suppliers

■ ...

Complaints procedure

■ ...

Documentation and report

■ ...

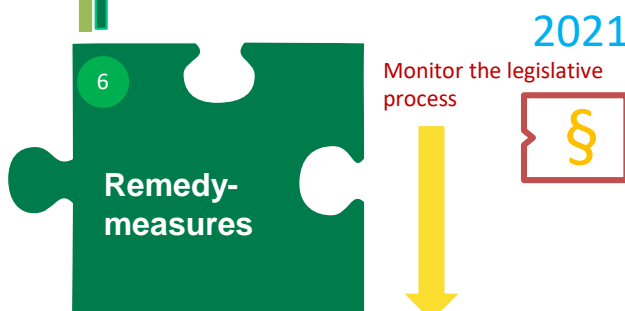
B. Vertical standard operating procedure descriptions (SOPs, VAs, etc.)

"Job Description"



No.	§	Duties and tasks according to the law	Tasks concretely	Competences and interfaces	Cast idea	Support idea
1	§ 4	Risk management Businesses must establish adequate and effective risk management to comply with due diligence obligations. Risk management shall be anchored in all relevant business processes through appropriate measures.	- implementation of measures no. 1 to 9	- Legal - HR - Environment - EHS - Procurement - supply chain - Sustainability - Compliance	- Core team	- external support - support by the respective persons responsible for measures no. 1 to 9

5. Timely: § 7 - develop corrective measures



Corrective measures in our own business operations (at home and abroad) and at direct suppliers with

- immediate corrective measures (Article 7(1)) or, in the case of direct suppliers, a concept with a concrete timetable for minimisation (Article 7(2)) with a corrective measure plan (Article 7(2)(1)) and
- cooperation with other companies and suspension of the business relationship; and
- termination of the business relationship (if applicable § 7 para. 3 nos. 1-3 - after consideration of whether serious, no timely remedy, no softer means and no increase in influence appears promising).

2021

Monitor the legislative process



2022 - To Dos (Preparations)

1 Pursue preparations for prevention (§ 6) and risk analysis and management (§ 5 and § 4)

2 Then:
Measure: Develop escalation and correction plan
 See **corrective measure plan [Toolbox]**

2023 - Goals + Implementation

Goal: Prevention, cessation, minimization of human rights or environmental violations

Measure 1: Take corrective measure in your own business area that will result in the termination of the violation.

Measure 2: In the event of (imminent) breaches in the business of the direct (or indirect, if there are indications) supplier, if you are unable to stop the breach yourself, you must immediately work with the supplier to develop a corrective measure (time) plan to prevent, stop or minimize the breach, typically including the following elements:

- First of all, ask your supplier to remedy the grievance by a certain date. Make your requirements clear and offer concrete support;
- Join forces with other companies to increase pressure on the supplier (e.g. as part of industry initiatives);
- If it is foreseeable that the supplier will not comply with the requirements, you should enforce a contractual penalty, temporarily suspend business relations or remove the company from possible award lists until the supplier has ended the violation.

→ See **corrective measure plan [Toolbox]**

Measure 3: If the escalation and remediation plan is unsuccessful, or if the violation is so severe that an escalation and remediation plan is not even a consideration, terminate the relationship with the supplier.

→ See **corrective measure plan [Toolbox]**

Measure 4: Annual and ad hoc inspections and, if necessary, adaptation of the escalation and remediation plan.

Measure 5: Findings from the handling of indications in the complaints procedure (see puzzle piece no. 7) are to be taken into account in the regular review of the remedial measures.

2024

...as 2023

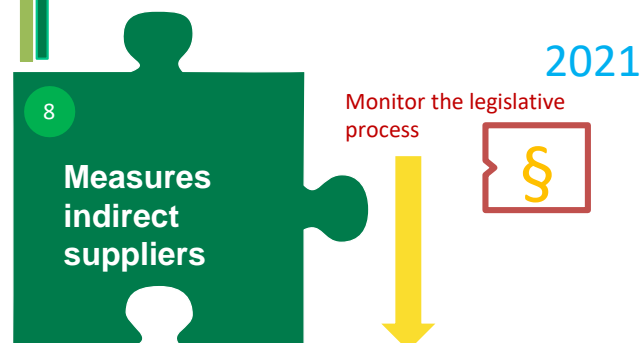
"Job Description"

6

Remedy-
measures

No.	§	Duties and tasks according to the law	Tasks concretely	Competences and interfaces	Cast idea	Support idea
6	§ 7	Remedial action Remedial measures in own business operations and in the case of direct suppliers with immediate remedial measures (§ 7 para. 1) or in the case of direct suppliers concept with concrete time schedule for minimisation (§ 7 para. 2) with corrective action plan (§ 7 para. 2 no. 1) as well as merger with other companies and suspension of the business relationship and termination of the business relationship (if applicable § 7 para. 3 nos. 1-3) - after weighing whether serious, no timely remedy, no milder means and no increase in influence promising).	-in its own business area, remedial action leading to termination of violation -in case of (threatened) violations in the business area of the direct (or indirect in the event of indications) supplier, termination or corrective action (time) plan for prevention, termination or minimisation of the violation -possible termination of the cooperation with the supplier. -annual and ad hoc inspections and, if necessary, adjustment of the escalation and remediation plan -Findings from the processing of indications in the complaints procedure are to be taken into account in the regular review of remedial measures.	-knowledge of the risks from the analysis - knowledge of current developments -interfaces to Legal, HR, Environment, Procurement, Sustainability, Compliance	-HR and environment - EHS for own business area -Procurement and supply chain for suppliers	- external support -support from core team -support from management

6. Then also: § 9 - develop measures for indirect suppliers



Due diligence obligations for indirect suppliers with adaptation of the existing risk management (§ 9 para. 4) and in the event of indications of a possible violation at an indirect supplier.

- a risk analysis (§ 5 paras. 1 to 3)
- adequate preventive measures towards polluters
- concept for the prevention, cessation or minimization of injuries
- updating policy statement

2022 - To Dos (Preparations)

- 1 Pursue preparations for prevention (§ 6) and risk analysis and management (§ 5 and § 4)
- 2 Then:
Measure: Continue to develop the measures already developed for the direct supplier for use with the indirect supplier.

2023 - Goals + Implementation

Objective: In the event of *actual indications* of a (possible) infringement, you must also fulfil certain due diligence obligations in the case of an indirect supplier.

Note: It is no longer necessary to assume substantiated knowledge; it is sufficient if you have factual indications that make a human rights or environmental violation at an indirect supplier appear possible. Factual indications can be, for example, reports on the poor human rights situation in the production region, the fact that an indirect supplier belongs to an industry with special human rights or environmental risks, and previous incidents at the indirect supplier. The due diligence obligations can be greatly extended as a result.

Note: If an attempt is made to circumvent the due diligence requirements through the intermediary of a direct supplier, indirect suppliers count as direct suppliers.

Measures: Take the following Measures immediately upon substantiated knowledge of a (possible) violation at an indirect supplier:

- risk analysis (puzzle piece no. 3)
- appropriate preventive measures and control measures towards indirect suppliers (puzzle piece no. 5), in particular contacting the indirect supplier, clarifying expectations, familiarising the indirect supplier with the Supplier Code of Conduct, as far as possible carrying out checks at the indirect supplier itself or attempting to take action via the direct supplier, further support measures, joining industry initiatives.
- concept for minimizing and preventing and ending injuries (puzzle piece #6) see **corrective measure plan** [Toolbox].
- update the policy statement (puzzle piece no. 4), for example in relation to the identified relevant risks in the supply chain or to the human rights-related expectations that the company has of its suppliers in the supply chain.

2024

...as 2023

"Job Description"

8

Measures indirect

No.	§	Duties and tasks according to the law	Tasks concretely	Competences and interfaces	Cast idea	Support idea
8	§ 9	Measures indirect suppliers Due diligence obligations for indirect suppliers with adaptation of the existing risk management (§ 9 para. 4) and in case of indications of a possible violation at an indirect supplier - a risk analysis (§ 5 par. 1 to 3) -adequate preventive measures towards causer -concept to prevent, stop or minimise violations - update policy statement	-ensuring that any knowledge in the establishment is not lost -analysis, prevention and remedy as No. 3, 6, 7 -adoption in policy statement	-knowledge of current developments - interfaces with Legal, Procurement, Sustainability, Compliance	- Procurement and supply chain for suppliers	- external support -support from core team -support from management

Special topic framework agreements

What does the literature and BAFA say?

- The term "**framework agreement**" is usually not discussed in depth in the literature¹; in general, the literature misses many practical questions.
- It should be logical: In the case of the delivery of goods or the provision of services and invoicing and payment, there is always a contract (at least an implied contract) - it is at most questionable between whom and **where** the exchange of services actually takes place and **who** is to be considered specifically on the company side or on the supplier side²; this should be more important than the question of who is the contractual partner on both sides in two corporate groups.
- BAFA also assumes (strongly criticised) that the parent company must also include **suppliers of a subsidiary** if it has a determining influence³; this is partly supported in the literature because otherwise the law would be shorter than ideologically desired⁴. The opposing view⁵ is to be preferred, since the wording of the law is different ("*contra legem*"⁶). In addition, there is probably the legal entity principle, according to which the due diligence obligations are incumbent on the respective company subject to the LkSG⁷.
- And wording: § Section 2 para. 7 LkSG requires "*necessary supplies for the production of the product or the provision of the service of the enterprise*", so there must have already been an exchange of services from a contractual partner (supplier) to the LkSG enterprise (as recipient) ⁸.
- One view (literature) bases the concepts of "necessity" (§ 2 para. 5 LkSG) and "necessity" (§ 2 para. 7 LkSG) on a narrow understanding and wants to exclude the supply of mere auxiliary and operating resources⁹; for this, reference is made to guiding principles and guidelines¹⁰.
- BAFA and the explanatory memorandum (frighteningly, the terms are used synonymously), as well as some of the literature, do not go beyond the criteria of "necessity" and "need". "Necessity"¹¹. Accordingly, all supplies are necessary without which the enterprise could not manufacture its product or provide its service¹². Necessity is to be understood broadly, so that auxiliary steps such as building cleaning, canteen operation and office supplies are also covered¹³. A distinction should then be made within the framework of the appropriateness criteria (§ 3 para. 2 LkSG) in the prioritisation and weighting.
- A subsidiary can also be a subcontractor; if an attribution takes place due to a determining influence, the subsidiary may be excluded from the group of subcontractors, which results from a systematic point of view from the graduated programme of duties, which places the two groups of duties in an alternative relationship¹⁴.

¹ See only. Gehling/Ott-Gehling/Fischer, LkSG, § 2 marginal no. 363 et seq.

² See Rothermel's LkSG Commentary, § 2 marginal no. 132 ff.

³ Cf. No. IV No. 7b) FAQ BMAS ("*the business area and the supply chains of the company*"), available online at: [CSR - Fragen und Antworten zum Lieferkettengesetz \(csr-in-deutschland.de\)](https://www.bafa.de/DE/Lieferketten/Risikoanalyse/risikoanalyse_node.html) as well as the now deleted No. IV No. 8, cited in Rothermel, LkSG, p. 22; BAFA Handreichung zur Risikoanalyse, fn. 4, available online at: https://www.bafa.de/DE/Lieferketten/Risikoanalyse/risikoanalyse_node.html; BAFA Fragenkatalog zur Berichterstattung gem. § 10 Abs. 2 LkSG, Präambel, p. 3, available online at: https://www.bafa.de/SharedDocs/Downloads/DE/Lieferketten/fragenkatalog_berichterstattung.pdf?blob=publicationFile&v=4.

⁴ Ott/Lüneborg/Schmelzeisen, Zur Anwendung des Lieferkettensorgfaltspflichtengesetzes im Konzern, DB 2022, 238, 244.

⁵ Berg/Kramme-Charnitzky, LkSG, § 2 marginal no. 188 f.; Charnitzky/Weigel, Die Krux mit der Sorgfalt, RIW 2022, 12, 13; Depping/Walden-Depping, LkSG, § 2 marginal no. 603 ff.; Hermann/Rünz, Praktische Hinweise und Maßnahmen zur Umsetzung des Lieferkettensorgfaltspflichtengesetzes im Unternehmen, DB 2021, 3078, 3079; DAV-Stellungnahme 27/2021, April 2021, para. 25 and Rothermel, LkSG Kommentar § 2 para. 119.

⁶ Berg/Kramme-Charnitzky, LkSG, § 2 marginal no. 188 f.

⁷ Explicitly DAV Opinion 27/2021, April 2021, para. 25.

⁸ Cf. Depping/Walden-Walden, LkSG, § 2 marginal no. 614.

⁹ Harings/Zegula, Die "Lieferkette" als Anknüpfungspunkt der Compliance-Verpflichtungen nach dem LkSG, CCZ 2022, 165, 166 ff; Bettermann/Hoes, Das Lieferkettensorgfaltspflichtengesetz - Besondere Pflichten für Kreditinstitute?, BKR 2022, 23, 25.

¹⁰ See United Nations Human Rights Council Guiding Principles on Business and Human Rights, available online at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf; OED Due Diligence Guide for Responsible Business Conduct

Action, available online at: <https://mneguidelines.oecd.org/OECD-leitfaden-fur-die-erfullung-der-sorgfaltspflicht-fur-verantwortungsvolles-unternehmerisches-handeln.pdf>; OECD Guide to the

Fulfilment of due diligence to promote responsible supply chains for minerals from conflict and high risk areas, available online at: <https://www.oecd-ilibrary.org/docserver/3d21faa0-en.pdf?expires=1676384510&id=id&accname=guest&checksum=ACBF570309F065456C811897236E96F2>.

¹¹ Cf. No. II No. 3 and 4 FAQ BMAS, available online at: [CSR - Fragen und Antworten zum Lieferkettengesetz \(csr-in-deutschland.de\)](https://www.bafa.de/DE/Lieferketten/Risikoanalyse/risikoanalyse_node.html); Depping/Walden-Walden, LkSG, § 2 Rn. 536; Johann/Sangi-

Gehne/Gabriel, LkSG, § 2 marginal no. 178; according to Falder/Frank-Fahle/Poleacov, LkSG, no. 4.3, necessity could even be assumed in principle, as companies would not conclude unnecessary contracts.

¹² Cf. explicitly Johann/Sangi-Gehne/Gabriel, LkSG, § 2 marginal no. 178.

¹³ Ziff. II Nr. 3 und 4 FAQ BMAS, available online at: [CSR - Fragen und Antworten zum Lieferkettengesetz \(csr-in-deutschland.de\)](https://www.bafa.de/DE/Lieferketten/Risikoanalyse/risikoanalyse_node.html).

¹⁴ Charnitzky/Weigel, Die Krux mit der Sorgfalt, RIW 2022, 12, 13; Wagner/Ruttloff/Wagner-Wagner/Wagner/Schuler, LkSG, § 1 marginal no. 66.

Framework agreements

Practical approach

When (When not)

- Active direct suppliers are those who have delivered in the FY (filter by **invoices**, view **creditor list**) - regular analysis; framework contract, individual contract, call-off, etc. not relevant.
- Active direct suppliers are also those who will still deliver in the FY (...) - **occasion-based analysis**; framework contract, individual contract, call-off, etc. not relevant

Who and where (who and where not)

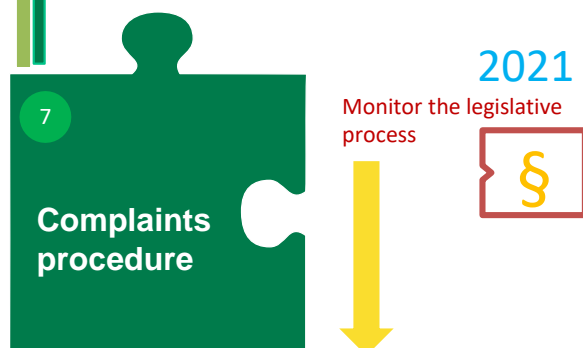
- If "when" (see above) leads to **subsidiary** (framework contract, individual contract, call-off, etc. not relevant) then questionable whether determining influence and BAFA view or law or whether one asks "necessary for manufacturing the product" of the company (parent or subsidiary - and who falls under law).
- If "when" (see above) leads to **parent company** (framework contract, individual contract, call-off, etc. not relevant) then questionable whether "necessary for production of the product" of the enterprise.
- In addition, there is always the question of **who** is the relevant **supplier** (mother, daughter, company that supplied the goods).

What (what not)

- Basically questionable what is "necessary for the production of the company's product" = **different depth of analysis** possible

Stratified approach according to "when", "who", "where" and "what" possible and sensible; if necessary, backed up with expert opinion

7. Then: § 8 - establish complaints procedure



Complaints procedure with textual rules of procedure (§ 8 para. 2) for activities in the own business area and those of direct suppliers and indirect suppliers (§ 9 para. 1) on the basis of knowledge with acknowledgement of receipt and discussion of the facts with whistleblowers and procedure with amicable settlement or external complaints procedure. Persons must be impartial (Section 8 (3)). Clear and comprehensible information on accessibility and competence and implementation of the procedure must be accessible and the procedure must be accessible to potential users and be confidential with identity protection and protection against discrimination (§ 8 para. 4). Plus annual and occasion-related analysis (e.g. new products, new projects, new business areas) of the effectiveness of the procedure.

2022 - To Dos (Preparations)

- 1 Pursue preparations for prevention (§ 6) and risk analysis and management (§ 5 and § 4) as well as corrective measures (§ 7 and § 9)

2 Then:

Measure:

Establish a complaints system that is accessible to your own employees and those in and around the supply chain. Alternatively, participate in an external grievance mechanism (e.g. an industry association) provided it meets the accessibility, transparency and integrity requirements set out in the law.

Note: The complaints procedure must therefore be accessible beyond the immediate supplier to the named persons throughout the supply chain.

Requirements of complaints mechanism: The procedure must be specified in text form, in particular: Who are the target groups? What happens in the event of a tip-off? What procedural steps follow? What is the time schedule? Users do not suffer any disadvantages by making use of the complaints procedure! Confidentiality and data protection are guaranteed! The persons entrusted by the company with the implementation of the procedure must guarantee impartiality. Ensure access to and use of the complaints mechanism. When making it accessible, a combination of different complaint channels (depending on the target group) is recommended. For example, consider setting up hotlines / e-mail addresses / websites, complaint forms, imprints on products, (internal / external) contact persons. Note: Where risks have been identified, particular attention should be paid to minimising barriers to the complaints procedure (e.g. language, fear of consequences).

See **Rules of Procedure Appeal Procedure** [Toolbox].

2023 - Goals + Implementation

Objective: (Potentially) affected persons and whistleblowers should be given the opportunity to point out human rights and environmental risks and violations.

Measure 1:

Maintain an appropriate grievance procedure.

Measure 2: Provide public (website) and regular targeted information about the complaints procedure. Also make the procedure transparent.

→ **Note:** It makes sense to combine the establishment of a complaints procedure with the **introduction of a whistleblowing system**. We will be happy to support you in the implementation of a combined technical solution.

Measure 3: The effectiveness of the grievance procedure shall be reviewed at least annually or as needed and updated promptly as needed.

2024

...as 2023



No.	§	Duties and tasks according to the law	Tasks concretely	Competences and interfaces	Cast idea	Support idea
7	§ 8	Complaints procedure Complaint procedure with textual rules of procedure (§ 8 para. 2) for activities in the own business area and those of direct suppliers and indirect suppliers (§ 9 para. 1) on the basis of knowledge with acknowledgement of receipt and discussion of the facts with whistleblowers and procedure with amicable settlement or external complaint procedure. Persons must be impartial (§ 8 para. 3). Clear and comprehensible information on the accessibility and competence and implementation of the procedure must be accessible and the procedure must be accessible to potential users; and be confidential and provided with identity protection and protection against discrimination (§ 8 para. 4). Plus annual and occasion-related analysis (e.g. new products, new projects, new business areas) of the effectiveness of the procedure	-set up complaints system -alternatively: Participation in an external complaints procedure (e.g. of an industry association).	- possibly familiar with internal reporting system	- HR	- external support -support from core team -support from management

BAFA handout on complaint procedure - General



- **Practical guidance**, especially on how to set up and implement complaints procedures
- Footnote 2: The appeal procedure must be **in place from the entry into force of the law in 2023 (2024)**.
- **Risk-based approach** also for complaints procedures (complaints procedure should be based on results of risk analysis...those potentially affected after risk analysis are priority target group) - **further development possible in 2023!**
- BAFA can impose a **fine** of up to EUR 8 million if the complaints procedure is not set up (§ 24 para. 1 no. 8 LkSG, § 24 para. 2 p. 1 no. 1 lit a)) *[interestingly, the law does not say "not established in time" or "not properly established"]*.
- Descriptions of the **complaints procedure in the annual report**



J - Complaints procedure

[D1] Establishment of or participation in a complaints procedure

D1.1 In what form was a complaints procedure offered for the reporting period?

- 361. corporate grievance procedure
- 362. participation in an external procedure
- 363. combination of own and external procedures
- 364. More
- 365. in no form
- > *If In no form was selected*
- 366. give reasons for your answer
- > *If at least one of the answers from 361. to 364. has been selected, describe*

- 367. The company's own procedure and/or the procedure in which your company participates. involved
- 368. The extent to which the potential stakeholders who are to use the procedure are involved in the design, review and improvement of the procedure.

D1.2 Which potential stakeholders have access to the complaints procedure?

- 369. own employees
- 370. communities near own sites
- 371. employees at suppliers
- 372. External stakeholders such as NGOs, trade unions, etc.
- 373. other
- 374. no parties involved
- > *If No participants was selected*
- 375. give reasons for your answer

> *If at least one of the answers from 369. to 373. is selected, how is access to the complaints procedure ensured for the different groups of potentially involved parties?*

- 376. Publicly accessible rules of procedure in text form
- 377. accessibility information
- 378. information on jurisdiction
- 379. information on the process
- 380. all information is clear and understandable
- 381. all information is publicly available
- 382. none

D1.3 Were the rules of procedure publicly available during the reporting period?

- 383. yes, with indication where it is publicly available
- 384. no
- > *If No*
- 385. give reasons for your answer
- [D2] Requirements for the complaints procedure**
- D2.1 Were responsibilities for the implementation of the procedure defined for the reporting period?**
- 386. yes
- 387. no
- > *If No*
- 388. Justify your answer
- > *If yes, what criteria are ensured for those responsible?*

- 389. Those responsible can act impartially
- 390. The competent persons are not bound by instructions within the scope of this competence.
- 391. Those responsible fulfil their obligation to maintain confidentiality
- 392. None of the above

D2.2 Were arrangements made for the reporting period to protect potentially involved parties from being disadvantaged or penalised as a result of a complaint?

- 393. yes
- 394. no
- > *If No*
- 395. give reasons for your answer
- > *If yes, describe what arrangements have been made, in particular*
- 396. How the complaints procedure ensures the confidentiality of whistleblowers' identities.
- 397. What further measures are taken to protect whistleblowers?

[D3] Effectiveness of the appeal procedure

D3.1 Did you receive any information about the complaints procedure during the reporting period?

- 398. yes
- 399. no
- > *If yes, please provide details on*
- 400. duration of proceedings - target duration and real duration of proceedings (indication of shortest and

- 401. the longest duration of proceedings with a brief explanation of the facts) of the total number of complaints received and, if applicable, changes in the
- 402. Comparison with the previous reporting period of the proportion of complaints redressed in the total number of complaints (with optional explanation)
- > *If Yes was selected, on which topics have complaints been received?*

[M1 - U3]

- > *If Yes is selected, describe*
- 416. What conclusions were drawn from the complaints/warnings received and to what extent these findings have led to adjustments in risk management

D3.2 Was the grievance procedure reviewed for effectiveness for the reporting period?

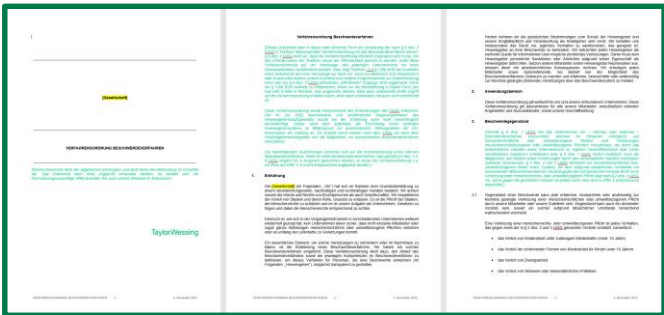
- 417. Yes, annual review
- 418. yes, occasion-based review
- 419. no
- > *If No*
- 420. give reasons for your answer
- If one of the answers from 417. to 418. has been selected, describe
- 421. To what extent feedback from internal and external stakeholders, in particular (potential) stakeholders, was obtained for the evaluation.
- 422. How the effectiveness of the complaints procedure is measured
- 423. What findings regarding effectiveness were drawn from the review and what actions were derived from it.

> BAFA published a handout on the complaints procedure in October 2022:
https://www.bafa.de/DE/Lieferketten/Beschwerdeverfahren/beschwerdeverfahren_node.html;jsessionid=118A6ED7C609585B093B5CA0EF697570.2_cid387



Contents of the handout - General

Footnote 2: The appeal procedure must be **in place from the entry into force of the law in 2023 (2024)**.
Complete?



Published Rules of Procedure
(responsibilities and resources must be clarified)



Guideline on treatment of complaints
(according to the requirements of the LkSG)



Secure accessible complaint channels
(priority target groups not yet determined)



Communication of the complaint channels internally and externally
(priority target groups not yet determined)



Contents of the handout - Not all questions are answered (1)

Which complaint channels and how to communicate?



Online mask; Hotline; E-mail address; Mailboxes; Contact persons
Adequacy (Appropriateness)



Intranet; circulars; training courses; notice boards; business cards; information brochures
Adequacy

Problem: Supplier Code of Conduct

"The supplier shall pass on to its employees in an appropriate manner any information received from us regarding accessibility, responsibility and the implementation of the grievance procedure. The grievance procedure must be accessible to employees while maintaining confidentiality of identity and effective protection against discrimination."

Problem: Languages

Handout: "...be prepared in the languages that are relevant for the company's target groups".
are important" translation into the national language of the priority target groups may be necessary

Problem: Notices at indirect suppliers? Unclear; actually to be proceeded on the basis of risk analysis (there are

medium b. Suppliers only taken into account if subst. Knowledge taken into account); furthermore, no obligation to know entire supply chain

Example measures for the design of accessibility

I: Beispielhafte Maßnahmen zur Gestaltung der Zugänglichkeit des Beschwerdeverfahrens	
Beispiele für Zugangsbarrieren	Mögliche Maßnahmen
Das Verfahren ist nicht bekannt	<p>Bereitstellung einer barrierefreien Online-Maske, die auf der Unternehmenswebsite einfach auffindbar ist. Verteilung von niedrigschwelligen Informationsbroschüren (beispielsweise in Comic-Form)</p> <p>Regelmäßige Informationen und Schulungen für Zielgruppen zum Verfahren</p>
Es bestehen Sprachbarrieren	Übersetzung der Informationen in für Zielgruppen relevante, landestypische Sprachen
Es bestehen Einschränkungen durch mangelndes Lese- oder Schreibvermögen	Aufbereitung der Informationen in Form von illustrierten/grafisch aufbereiteten Postern an von den Zielgruppen besonders häufig frequentierten Orten
Es besteht kein Vertrauen in das Verfahren	<p>Angabe von direkten Ansprechpersonen anstelle von anonymen Systemen</p> <p>Transparente Kommunikation zum Ablauf und Stand des Beschwerdeverfahrens</p> <p>Sicherstellung der Anonymität der Hinweisgebenden, auch nach Abschluss des Beschwerdeverfahrens</p>
Das Verfahren ist mit Kosten verbunden	Schaffung eines kostenfreien Verfahrens, beispielsweise in Form von kostenfreien Hotlines oder Online-Zugängen
Es besteht kein Zugriff auf das Beschwerdeverfahren (z. B. da dieses nur an bestimmten Orten verfügbar ist)	<p>Einrichtung von Beschwerdekästen an geschützten Standorten, die regelmäßig entleert werden</p> <p>Angaben zum Beschwerdeverfahren und Ansprechpersonen auf Visitenkarten von Personal, das regelmäßig Zulieferbetriebe besucht (zum Beispiel Qualitätspersonal, Auditorinnen und Auditoren)</p>



Contents of the handout - Not all questions are answered (2)

Problem: Who receives and processes tips?

1. purchasing staff / other operational departments for receiving and initially processing leads?

No, because:



- Conflict of interest;
- no sufficient capacities;
- not trained.

→ Therefore: Receipt by Compliance Department (or Sustainability Department)

2. purchasing staff / other operational departments for subsequent clarification of allegations against a supplier?



Advantage: Purchasing staff / operational departments may already have a connection to the supplier



Disadvantage: Conflict of interest



- Assign concrete task;
- If necessary, forward information to the operational department only in anonymised form;
- Confidentiality undertaking;
- Trainings.



Example of a complaint procedure

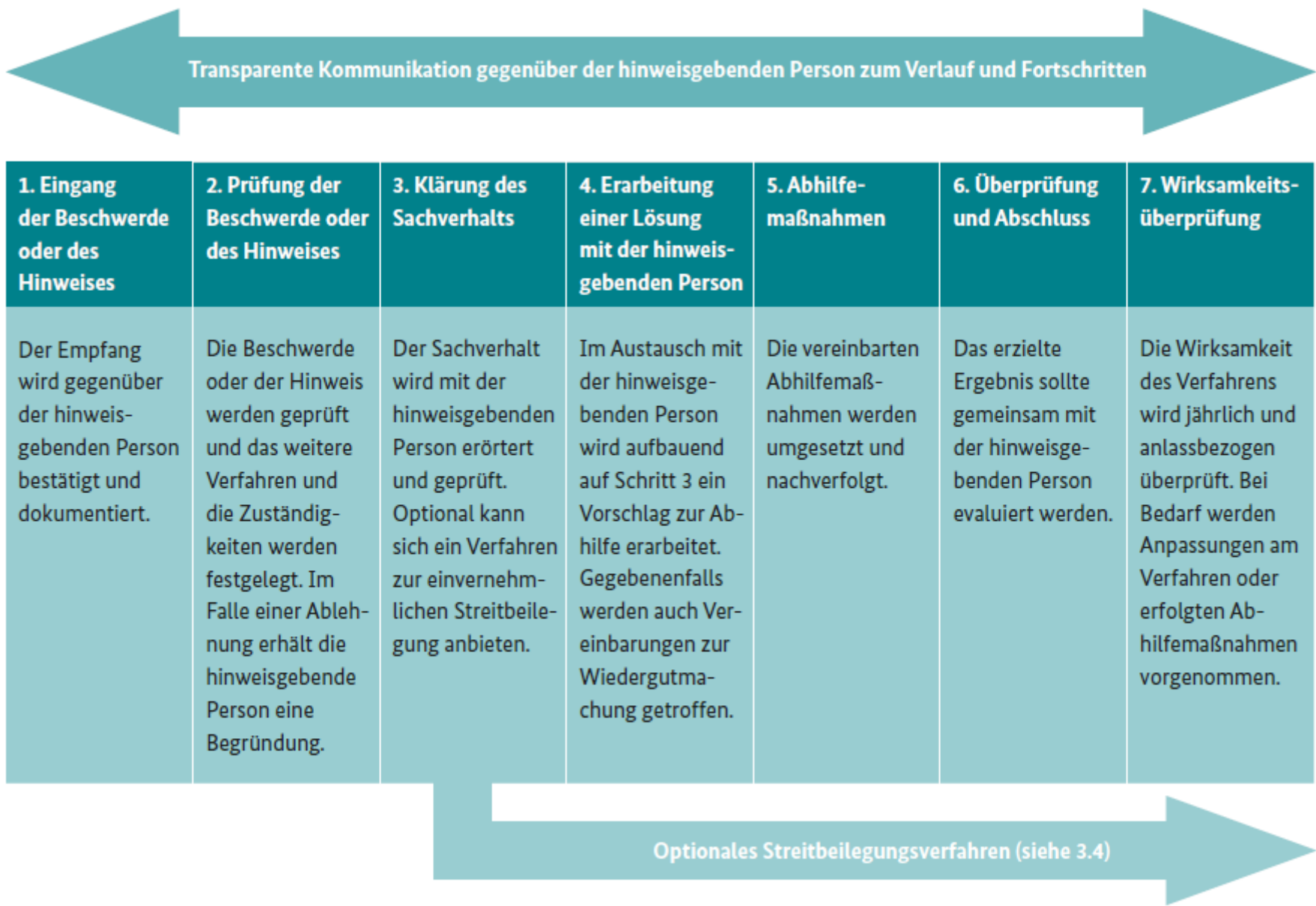


Abbildung 2: Beispielhafter Ablauf eines Beschwerdeverfahrens⁷



Review of the effectiveness of the complaints procedure

II: Leitfragen zu den Effektivitätskriterien der UN-Leitprinzipien unter Berücksichtigung der spezifischen Anforderungen des LkSG	
Effektivitätskriterien ¹⁰	Leitfragen für die Überprüfung ¹¹
Legitim	<ul style="list-style-type: none">• Gibt es eine Verfahrensordnung, die den Prozess im Umgang mit Beschwerden klar beschreibt?• Sind klare Zuständigkeiten für die Umsetzung des Verfahrens benannt und wird die Qualifikation der für die Bearbeitung von Beschwerden verantwortlichen Personen durch angemessene Schulungen sichergestellt?
Zugänglich	<ul style="list-style-type: none">• Werden Informationen zum Verfahren auf eine Art und Weise bereitgestellt, die an den Kontext und die Zielgruppen angepasst ist?• Schützt das Verfahren hinweisgebende Personen wirksam vor Benachteiligung oder Bestrafung?
Berechenbar	<ul style="list-style-type: none">• Enthält die öffentliche Verfahrensordnung Informationen zum vorhersehbaren Zeitrahmen für die einzelnen Verfahrensstufen, zu möglichen Ergebnissen, die erzielt werden können, sowie zur Überwachung der Umsetzung?
Ausgewogen	<ul style="list-style-type: none">• Wird die notwendige Unterstützung bereitgestellt, damit die Zielgruppen das Verfahren tatsächlich nutzen können?• Haben die Zielgruppen Zugang zu Fachwissen, Beratung und Informationen, die sie benötigen, um an dem Beschwerdeverfahren auf faire, informierte und respektvolle Weise teilnehmen zu können?
Transparent	<ul style="list-style-type: none">• Wird die hinweisgebende Person über das Verfahren hinweg transparent und nachvollziehbar über den Verlauf und erreichte Fortschritte informiert?• Werden Informationen zu über das Verfahren eingegangenen Beschwerden und deren Lösung öffentlich bereitgestellt?

II: Leitfragen zu den Effektivitätskriterien der UN-Leitprinzipien unter Berücksichtigung der spezifischen Anforderungen des LkSG	
Effektivitätskriterien ¹⁰	Leitfragen für die Überprüfung ¹¹
Rechte-kompatibel	<ul style="list-style-type: none">• Werden Beschwerden zu schwerwiegenden menschenrechts- und umweltbezogenen Pflichtverletzungen priorisiert behandelt und Entscheidungsträgerinnen und -träger im eigenen Unternehmen darüber entsprechend informiert?• Werden Lösungen und Abhilfemaßnahmen im Einklang mit international anerkannten Menschenrechtsstandards entwickelt?
Quelle kontinuierlichen Lernens	<ul style="list-style-type: none">• Wird das Verfahren jährlich und anlassbezogen auf seine Wirksamkeit überprüft?• Fließen Erkenntnisse aus der Bearbeitung von Hinweisen in die Anpassung der eigenen Sorgfaltsprozesse?
Dialog-kompatibel	<ul style="list-style-type: none">• Wurden wichtige Zielgruppen in der Konzeption und Gestaltung des Verfahrens konsultiert und ihre konkreten Bedürfnisse identifiziert?• Werden Beschwerden mit dialogbasierten Ansätzen bearbeitet?• Werden diejenigen, die Beschwerden eingereicht haben, nach Abschluss des Verfahrens zu ihrer Zufriedenheit mit dem Ablauf und den Ergebnissen befragt?

Beispiele für KPIs zur Messung der Wirksamkeit von Beschwerdeverfahren:

- Anzahl der Beschwerden (Gesamtzahl/differenziert nach Themen)
- Informationen zur hinweisgebenden Person (Zuordnung in Zielgruppe, beispielsweise eigene Beschäftigte, Beschäftigte bei unmittelbaren/mittelbaren Zulieferern etc.)
- Anteil der gelösten Beschwerden (an der Gesamtzahl der Beschwerden sowie differenziert nach der Beschwerdelösung, beispielsweise begründete Ablehnung, Rücknahme der Beschwerde, Abhilfe/keine Abhilfe, einvernehmliche Beilegung)
- Durchschnittliche Dauer für die Lösung einer Beschwerde
- Zufriedenheit derjenigen, die eine Beschwerde eingereicht haben, mit dem Ergebnis des Verfahrens



The Complaints Procedure under the LkSG/SCDDA and the Whistleblower Protection Act (HinSchG) [Whistleblower Directive]

#	Subject area	LkSG	HinSchG
	Reach		
1	Personnel scope of application	From 1,000 (as of 2024) or 3,000 employees (§ 1 para. 1 LkSG)	From 50 (as of Dec. 2023) or 250 employees (§§ 12 para. 2, 42 HinSchG)
2	Group-wide calculation	In the case of affiliated companies, employees are added together for threshold values (§ 1 para. 3 LkSG)	Thresholds count per legal unit, i.e. there is no aggregation (§ 12 para. 2 in conjunction with § 2 para. 9 HinSchG).
3	Material scope of application	Human rights and environment-related <u>risks</u> as well as violations of human rights-related or environment-related obligations in the company's own business operations and in the supply chain (§ 3 para. 1 LkSG)	<u>Violation of</u> regulations subject to criminal penalties or fines if the regulation serves to protect life, limb or health or to protect the rights of employees or their representative bodies (section 2 (1) HinSchG).
4	Which whistleblowers are covered?	Everyone / all persons (internal and external persons) who are potentially affected by human rights or environmental violations in their own business area and in the company's supply chain through economic activity (§ 8 para. 1 LkSG), including through economic activity by indirect suppliers.	Persons who obtain information about violations in a professional context (especially employees, but not other third parties) (section 1 (1) and (2) HinSchG).
	Establishment (adaptation) of a procedure / system		
5	Participation target groups	According to the explanatory memorandum and BAFA, target groups are to be consulted during construction and design; special consideration is given to vulnerable groups	n/a
6	Interaction	BAFA: The more risks identified and prioritised, the more effort in terms of complaints procedures for the relevant target group; companies should build on results of the risk analysis for complaints procedures and include complaints procedures in risk analysis Complaints procedures provide feedback on the effectiveness of risk management and due diligence processes	n/a [Note: A functioning whistleblower system is a central building block of an effective compliance management system and helps to gain information on whether the preventive measures and structures are working or whether there is a need for improvement].
7	Internal or external procedure	Participation in external complaints procedure is sufficient (§ 8 para. 1 LkSG)	Establishment of an internal reporting office required, however, a third party may be entrusted with the tasks of an internal reporting office (sections 12 (1), 14 (1) HinSchG).



#	Subject area	LkSG	HinSchG
8	Central procedure ("group solution") permissible?	Yes (§ 8 para. 1 LkSG)	Yes (§ 14 para. 1 HinSchG) [Attention: possibly different transposition in other EU countries].
9	Channels	All	All; reports are to be made possible orally or in text form (cf. item 12).
10	Obligation to publish rules of procedure	Yes, rules of procedure in text form must be drawn up and made publicly available (§ 8 para. 2 LkSG).	No, internal reporting office only has to maintain clear and easily accessible information on official reporting procedures (§ 13 para. 2 HinSchG).
11	Content Rules of Procedure (external Rules of Procedure as opposed to internal Procedural Guideline, below).	<ul style="list-style-type: none">• Scope of application• Complaint channels• Complaints procedure, time frame• Option for amicable dispute resolution• Contact persons and departments• How protection from disadvantage is achieved	n/a
12	Accessibility of the procedure	<p>Procedures must be accessible to potential participants and procedural rules must be easy to find (proactive communication via notices, business cards, etc.), i.e. as barrier-free as possible (§ 8 para. 4 LkSG), for example in terms of languages</p> <p>Accessibility must also be ensured in the case of indirect suppliers, so that in particular factors such as language or residence abroad must not stand in the way of a complaint (section 9 (1) LkSG).</p>	<ul style="list-style-type: none">• Notifications shall be made possible in oral or text form• Verbal messages must be possible by telephone or by means of another form of voice transmission• Upon request, a personal meeting with a person responsible for receiving a report shall be made possible for a report within a reasonable time (§ 16 par. 3 HinSchG)
13	Obligation to admit anonymous reports?	No (§ 8 para. 4 LkSG) but confidentiality of identity; BAFA recommends enabling anonymity	No, there is no obligation to allow anonymous reports to be submitted. However, anonymous reports should also be processed (section 16 (1) HinSchG).
14	External consensual dispute resolution possible?	Yes, § 8 para. 1 LkSG	No
15	Subject of the allegations	Regularly the company itself or suppliers	Regularly individual persons within the company
16	Determination of responsibility required?	Yes, responsibility for handling incoming complaints must be defined (§ 8 para. 3 LkSG).	Yes, responsibility for processing incoming complaints must be defined (§§ 14, 15 HinSchG).

#	Subject area	LkSG	HinSchG
17	Requirements for whistleblowers	<p>Whistleblowers must</p> <ul style="list-style-type: none"> • be available at certain times • provide a guarantee of impartiality, • independent and • not be bound by instructions (no conflicts of interest) • be sworn to secrecy • be trained <p>(§ 8 para. 3 LkSG)</p>	<p>Whistleblowers must be independent. It shall be ensured that</p> <ul style="list-style-type: none"> • other (operational) tasks and duties do not lead to conflicts of interest. • The recipient of the information has the necessary expertise. <p>(§ 15 para. 1 and 2 HinSchG)</p>
18	Procedure (an internal procedural guideline is probably recommended)	<ul style="list-style-type: none"> • Acknowledgement of receipt and continuous contact with the person providing the information • Examination of the complaint (fits topic to the scope of application of the procedure) • Clarification of the facts • Confidentiality Identity and protection from disadvantage or punishment, also posture of contact in follow-up • Plaintiff specific KPI for development systematic effectiveness measurement 	<ul style="list-style-type: none"> • Acknowledgement of receipt of a report to the person making the report (after 7 days at the latest). • Checking whether the reported infringement falls within the material scope of application • Keep in contact with the person who gave the tip • Checking the validity of the message received (relevance check) • If necessary, ask the person providing the information for further information. • Taking appropriate follow-up measures (according to § 18 HinSchG) <p>(§ 17 HinSchG)</p>
19	Review and adaptation	<p>Review effectiveness at least once a year with KPIs (e.g. number of complaints, information on whistleblowers, proportion of complaints resolved, average time to resolution, satisfaction of complainants); use appropriate KPIs such as number of complaints (differentiated by topic, information on whistleblowers, proportion of complaints resolved, average time to resolution of complaints, satisfaction of those who filed a complaint).</p>	n/a
	System operation		
20	Obligation to acknowledge receipt?	<p>Yes (§ 8 para. 1 LkSG) with information on next steps</p> <p>LkSG does not contain a rigid deadline regulation but BAFA envisages that more predictable timeframes will be communicated</p>	<p>Yes, within 7 days (§ 17 para. 1 HinSchG)</p>



#	Subject area	LkSG	HinSchG
21	Feedback process	The persons entrusted with the implementation of the procedure shall discuss the facts of the case with the whistleblower; they may offer a procedure of amicable settlement (section 8 (1) LkSG).	MROS maintains contact with the whistleblower and, if necessary, requests further information from him/her (Section 17 (1) HinSchG). The whistleblower shall be informed after three months about the progress of the report and planned follow-up measures (section 17 (2) HinSchG).
22	Procedure for the amicable settlement of disputes	Companies are free to offer whistleblowers an amicable dispute resolution procedure. In this case, the parties involved try to find an amicable solution together with the help of a neutral and mediating third party instead of bringing about a decision through the official complaint procedure (§ 8 para. 1 LkSG).	Not provided
23	Protection from disadvantage and punishment	Whistleblower must be effectively protected from disadvantage or punishment on the basis of his complaint (§ 8 para. 4 LkSG); abusiveness mentioned in justification of law, not at all by BAFA To do this, companies must define and communicate what measures they will take to protect whistleblowers from being disadvantaged or penalised for using a complaints procedure.	Reprisals are prohibited; this also applies to the threat and attempt to exercise reprisals (section 36 sub-section 1 HinSchG). Reversal of the burden of proof in favour of the whistleblower who experiences a disadvantage following the report (section 36 (2) HinSchG). In the case of a violation of the prohibition of reprisals, there is a claim for damages (§ 37 HinSchG)
24	Maintaining the confidentiality of identity	Complaint procedure must maintain confidentiality of identity (§ 8 para. 4 LkSG)	The reporting office must always maintain the confidentiality of the identity (§ 8 para. 1 HinSchG). BUT exceptions to the confidentiality requirement (in particular § 9 HinSchG)
25	Access info	Clear and comprehensible information on accessibility and responsibility and on the implementation of the procedure shall be made publicly available in an appropriate manner (§ 8 par. 4 LkSG).	Internal reporting office shall provide clear and easily accessible information to workers on external reporting procedures (section 13(1) HinSchG).
26	Documentation obligation	An annual report on the fulfilment of due diligence obligations must be prepared and made available free of charge on the company's website for 7 years. Among other things, the report must describe the measures taken by the company in response to complaints. (§ 10 para. 2 LkSG)	All incoming messages are stored in a permanently retrievable manner. to be documented in compliance with the principle of confidentiality (§ 11 para. 1 HinSchG). The documentation is deleted two years after the conclusion of the procedure (§ 11 para. 5 HinSchG).



#	Subject area	LkSG	HinSchG
	Sanction risks		
27	Impending fines for non-compliance	Up to EUR 8 million (§ 24 LkSG)	Up to EUR 1 million (§ 40 HinSchG)



Implement the LkSG and HinSchG together?



Principle: The requirements of the complaints procedure under the LkSG also predominantly include the requirements of the HinSchG [Whistleblower Directive].

"Same same but different": Pay attention to the different requirements of the laws!



Recommendation:



Channels: one technical system but different categories; otherwise individual



Communication of the channels: Communicate HinSchG only internally; communicate LkSG internally and externally



Responsibilities: flexible



Internal guidelines: Include differences of laws in policy(ies)



Procedural rules: it is better to have two different procedural rules, otherwise they may be too complex.



Are existing whistleblowing channels sufficient?



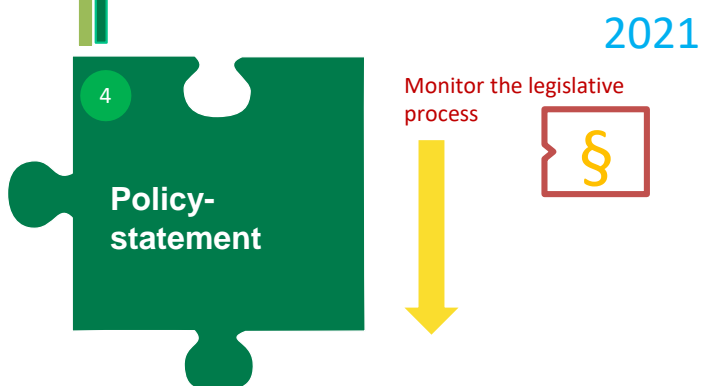
To be examined in individual cases = comparison of the established complaints procedure with the requirements of the LkSG (and the HinSchG).



So far, requirements of the LkSG are often not yet fully met because:

- No written / published rules of procedure
- No signed confidentiality obligations (*employment contract obligations regularly insufficient*)
- Often only accessible to internal employees
- Existence often not yet sufficiently communicated
- Content restriction to "classic" compliance topics

8. And finally: § 6 para. 2 - create policy statement



Policy statement on human rights strategy with procedural description (§ 6 para. 2) on the obligations (in § 4 para. 1, § 5 para. 1 and § 6 para. 3, 4, 5 as well as in §§ 7, 8, 9, 10), i.e. on

- risk management (§ 4 para. 1)
- internal responsibility (§ 4 para. 3)
- regular risk analyses (§ 5)
- preventive measures (§ 6 par. 3, 4, 5)
- remedial measures (§ 7)
- complaint management (§ 8)
- due diligence obligations for indirect suppliers (§ 9)
- documentation (§ 10)

2021

2022 - To Dos (Preparations)

- 1 Pursue preparations for prevention (§ 6) and risk analysis and management (§ 5 and § 4) as well as corrective measures (§ 7 and § 9) and complaint procedures (§ 8)

- 2 Then:

Measure 1 :Create a policy statement with

- (i) a description of how the company complies with the due diligence obligations, i.e. what is done roughly in the areas:
 - risk management (§ 4 para. 1)
 - internal responsibility (§ 4 para. 3)
 - regular risk analyses (§ 5)
 - preventive measures (§ 6 par. 3, 4, 5)
 - remedial measures (§ 7)
 - complaint management (§ 8)
 - due diligence obligations for indirect suppliers (§ 9)
 - documentation and report (§ 10)
- (ii) an explanation of the risks identified in the risk analysis, with reference to the relevant international agreements; and
- (iii) statements on human rights and environmental expectations that the company has of its employees and suppliers.

Note: Declarations of principle are regularly brief and only roughly state that the company is committed to protecting human rights, which risks in particular the company has identified and what it is doing and expects to do about them (human rights strategy). The policy statement serves as the basis for the company's own Code of Conduct and the Supplier Code of Conduct.

Tip: Check (also in the future) whether your existing policy statement is concrete enough, as the draft requires in particular that the company at least describes its essential measures for fulfilling the due diligence obligations.

See **policy statement** [Toolbox]

Measure 2: Management adopts the policy statement.

Measure 3: Communicate the (new) policy statement to employees, the works council, suppliers in the supply chain and the public.

2023 - Targets
+ implementation

Objective: Life of the policy statement and update if necessary

2024

...like 2023

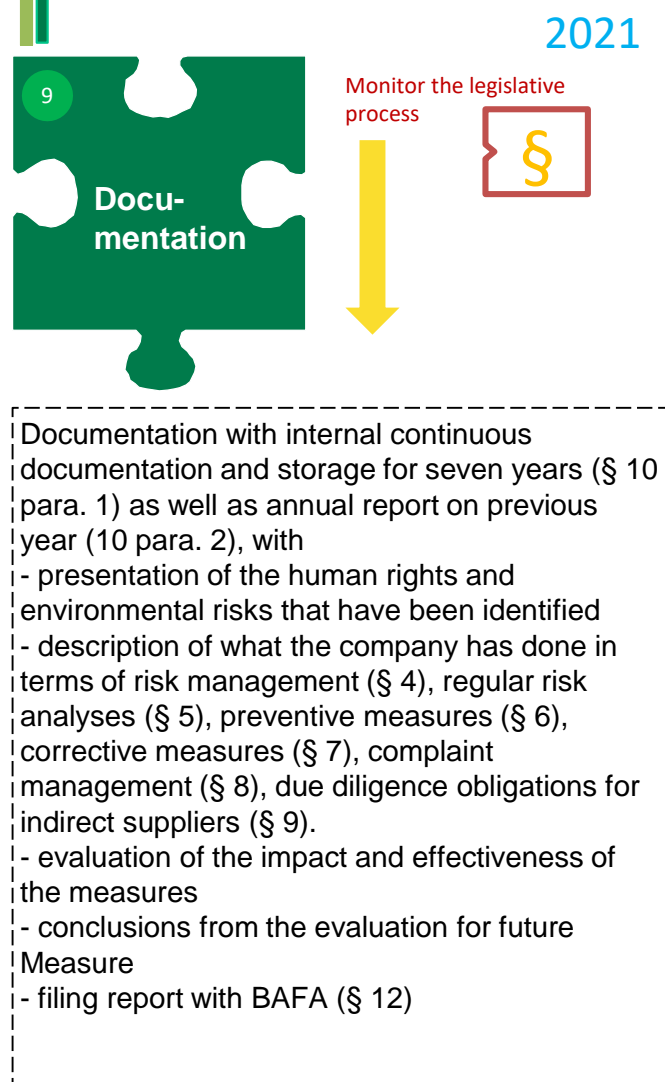
"Job Description"

4

Policy-
Statement

No.	§	Duties and tasks according to the law	Tasks concretely	Competences and interfaces	Cast idea	Support idea
4	§ 6	Policy statement Policy statement on human rights strategy with procedural description (§ 6 para. 2) on the duties (in § 4 para. 1, § 5 para. 1 and § 6 paras. 3, 4, 5 and in §§ 7, 8, 9, 10), i.e. to - risk management (§ 4 para. 1) - in-house responsibility (§ 4 para. 3) - regular risk analyses (§ 5) - prevention measures (§ 6 par. 3, 4, 5) - remedial measures (§ 7) - complaint management (§ 8) - due diligence obligations for indirect suppliers (§ 9) - documentation (§ 10)	- description of measures no. 1 to 9 in the so-called Policy statement	- proximity to the management - connection to Legal, HR, Environment, Procurement, Sustainability, Compliance - proximity to Human rights officer	- Human rights officer	- external support - support from core team - support from management

9. Then annually: § 10 - prepare documentation; publish report



2021

2022 - To Dos (Preparations)

- 1 Pursue preparations on prevention (§ 6) and risk analysis and management (§ 5 and § 4) as well as remedial measures (§ 7 and § 9) and policy statement (§ 6)
- 2 Then:
Measure: Preparation of the necessary for documentation and report

2023 - Goals + Implementation

Objective: Proof of fulfilment of obligations, transparency, basis for official control

Measure 1: Document internally on an ongoing basis and report once a year (no later than 4 months after the end of the financial year) on the previous year (10 para. 2) the following:

- outline the human rights and environmental risks that have been identified;
- presentation of what the company has done in terms of risk management (§ 4), regular risk analyses (§ 5), preventive measures (§ 6), remedial measures (§ 7), complaint management (§ 8), due diligence obligations for indirect suppliers (§ 9);
- evaluation of the impact and effectiveness of the measures;
- conclusions from the evaluation for future Measure.

Note: If you have not identified any risks, further explanations in the report are not necessary. Company and business secrets do not have to be disclosed. Electronic access is provided by the Federal Office of Economics and Export Control (BAFA) for the report format.

Measure 2: Make your report publicly available on your website, free of charge, for a period of 7 years. Keep your documentation for at least 7 years.

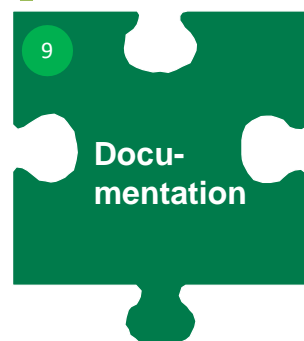
Measure 3: File your report with BAFA

2024

...as 2023

Measure 1: Publish report no later than 4 months after the end of the financial year) on the previous year (10(2)).

"Job Description"



No.	§	Duties and tasks according to the law	Tasks concretely	Competences and interfaces	Cast idea	Support idea
9	§ 10	Documentation and report Documentation with continuous documentation within the company and storage for seven years (§ 10 para. 1) as well as an annual report on the previous year (10 para. 2), with -Outline the human rights and environmental risks that have been identified. were -Presentation of what companies do in terms of risk management (§ 4), regular risk analyses (§ 5), preventive measures (§ 6), remedial measures (§ 7), Complaint management (§ 8), due diligence obligations for indirect suppliers (§ 9) has done -Evaluation of the impact and effectiveness of the measures -Conclusions from the evaluation for future measures	-Documentation of measures 1 to 8 - Report for website and Authority	-Knowledge of LkSG activities - Knowledge current Developments -Interfaces to Legal, HR, Environment, Purchasing, Sustainability, Compliance	- Core Team	- External support -Support from Core Team -Support from management

Handout on reporting - general



Lieferkettensorgfalts- pflichtengesetz (LkSG)

Fragenkatalog zur Berichterstattung
gemäß § 10 Abs. 2 LkSG

- General information on the report
 - To be submitted **annually** to BAFA no later **than 4 months after the end of the business year** and **published** on the website for **7 years**.
 - Document continuously; **documentation** also to **be kept for 7 years** (not public)
 - **Submission of** the report takes place **electronically**
 - BAFA can demand **rectification of** the report (§ 13 para. 2 LkSG)
 - BAFA may impose a **fine** if documentation is not kept (§ 24 para. 1 no. 9 LkSG) and if report is not prepared correctly, not submitted (in time) or not published (in time) (§ 24 para. 1 nos. 10 to 12 LkSG).

Handout on reporting - contents



Lieferkettensorgfalts- pflichtengesetz (LkSG)

Fragenkatalog zur Berichterstattung
gemäß § 10 Abs. 2 LkSG

➤ Contents



- Presumably all the questions companies have to answer in the annual report
- 38 pages
- 437 questions - of which only 4 are voluntary (questions 118, 120, 268, 341)
- 39 Explanation of terms
- 1 Upload option for the policy statement

Handout on reporting - legal classification



➤ Legal classification



More structured and clearer handout as a risk analysis handout



Good way to prepare for "what will come up in the exam".



Not only multiple choice - companies have a lot to describe (free text occurs 248 times)



Depth of presentation for free texts unclear



What is the first thing that stands out?

Content

Foreword 1

Preamble 2

Master data 4

I. Information on the reporting organisation 4

II. Information on the report 4

III. Voluntary disclosures on corporate and procurement structure 4

Abbreviated reporting requirement 6

A - Risk Management Oversight and Management Responsibility 6

B - Identified risks and/or identified injuries 6

C - Information on the corporate and procurement structure 7

Complete report questionnaire 8

A - Strategy and anchoring 8

[A1] Risk Management Oversight and Management Responsibility 8

[A2] Policy Statement on the Human Rights Strategy 8

[A3] Anchoring the human rights strategy within the own organisation 10

B - Risk analysis and prevention measures 11

[B1] Implementation, procedure and results of the risk analysis 11

[B2] Prevention measures in own business area 13

[B3] Prevention measures at direct suppliers 14

[B4] Prevention measures at indirect suppliers 16

[B5] Communication of results 18

[B6] Amendments and Occasional Effectiveness Review 18

C - Violation findings and remedial action 18

[C1] Violations findings and corrective actions in own business 18

[C2] Findings of violations and corrective actions at direct suppliers 20

[C3] Findings of violations and corrective actions at indirect suppliers 22

D - Complaints procedure 24

[D1] Establishment of or participation in a complaints procedure 24

[D2] Requirements for the complaints procedure 25

[D3] Effectiveness of the appeal procedure 26

E - Risk management assessment and conclusions 27

Glossary 28

Structure reasonably logical, shortened (abridged) report for "0" risks (who has zero risks?), otherwise long report.

Structure follows that of the law - could have been done differently and divided into general and then own business area, direct and indirect supplier

There are "voluntary" and not "voluntary statements" - partly scattered in the text and not always comprehensible why and what the consequences are

You can also answer questions with "no" or "nothing" and then have to give reasons - but then you should also have good reasons...

The details are very helpful; however, BAFA wants to design an online mask (questionable how this can be implemented efficiently in the company).

BAFA's idiosyncratic legal opinions are repeated (as was already the case with the handout on risk analysis) ...



What is the second thing that stands out?

What are the risks?

Now "official" shortening of the description of the risks:

Alternatively, it is now possible to use M1-10 and U1-3 of the BAFA questionnaire for the report [M1 - U3]:

M1 Prohibition of child labour

M2 Prohibition of forced labour and all forms of slavery

M3 Disregard for occupational health and safety and work-related health hazards

M4 Disregard for freedom of association - freedom of association and the right to collective bargaining

M5 Prohibition of unequal treatment in employment

M6 Prohibition of withholding a fair wage

M7 Destruction of the natural basis of life through environmental pollution

M8 Unlawful violation of land rights

M9 Prohibit the hiring or use of private/public security forces,

which can lead to impairments due to lack of instruction or control

M10 The prohibition of an [...] act or omission in breach of duty which is directly capable of impairing in a particularly serious manner a protected legal position (arising from the human rights conventions within the meaning of section 2(1)) and the unlawfulness of which is obvious on a reasonable assessment of all the circumstances under consideration.

U1 Prohibited production, use and/or disposal of mercury (Minamata Convention)

U2 Prohibited production and/or use of substances within the scope of the Stockholm Convention (POPs) and non-environmentally sound handling of waste containing POPs

U3 Prohibited import/export of hazardous waste as defined by the Basel Convention



What are master data and structure details?

STRUCTURE:

Master data

I. Information on the reporting organisation

I.1 Details of the organisation

1. name of the company
2. legal form
3. Street
4. house number
5. postcode
6. Place
7. (if applicable) Commercial register number and registration court
8. indicate the financial year to which the report relates from [month / year] to [month / year].
9. number of employees
10. person(s) authorised to represent the company

II. information on the report

II.1 Indicate whether information and/or data from other previously published report formats have been used for this report:

11. Yes
12. No

> If yes, specify

13. what the report format is
14. and to what extent the information and/or data have been externally verified

II.2 Give a contact person for questions about the report or the information reported:

15. Name
16. function
17. Email

THEN:

III. once Voluntary disclosure and then in the **Abbreviated Reporting Requirements** (A. Risk Management and B. Risks identified and breaches detected, if "0") under **C. Information on the corporate and procurement structure** (but there is no publication of this mandatory information in the final report) > **???? But both catalogues are identical ??? <**

Information on the corporate and procurement structure

III.1 & C.1 In which sectors are the companies of your own business unit active?

18 & 43. List of industries according to NACE sector classification

III. 2 & C.2 Naming of all affiliated companies on which a determining influence is exercised pursuant to § 2 para. 6 sentence 2 LkSG.

- 19 & 44. names of the affiliated company
- 20 & 45. [The affiliated company is itself directly affected by the scope of application of the Act due to exceeding its own number of employees in Germany from 2023 (3,000 employees) or from 2024 (1,000 employees) and is therefore subject to reporting requirements.
- 21 & 46. Headquarters of the affiliated company
- 22 & 47. countries in which locations of the affiliated company exist
- 23 & 48. Industry in which the affiliated company operates
- 24 & 49. Selection of all areas of value added in which the affiliated enterprise is active in the specified industries

Choices:

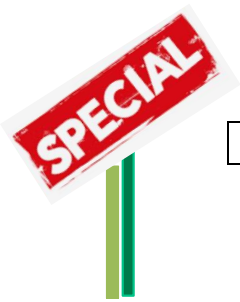
- a. [Raw material extraction]
- b. [Production of components/intermediates]
- c. [Manufacture of finished products]
- d. [Distribution/Trade]
- e. [Waste Treatment/Recycling]
- f. [Services]
- g. [Lending/Financing/Insurance]
- h. [More]

If you have not already done so in the master data, provide information on the procurement structure in your own business area, in particular on

- 25 & 50. All countries of production from which goods and/or services were procured from direct suppliers during the reporting period.
- 26 & 51. of the total number of direct suppliers in the reporting period
- 27 & 52. the commodity groups relevant to their business model
- 27 & 53. the commodities relevant to their business model

Then **Full Report** (which starts with A again.....)

If one indicates "0" risks, one has to indicate more about the company and the sourcing structure in the abridged report - in (18 &) 43. to (27&) 45.; in the full report these questions are missing - affiliated companies are no longer asked there at all



ABRIDGED REPORTING OBLIGATION

Monitoring of risk management and responsibility of the Executive Board

A1.1 Were responsibilities for monitoring risk management defined for the reporting period?

29. yes

30. no

> If No

31. give reasons for your answer

> If Yes

32. which person(s) or function(s) is/are responsible for monitoring risk management?

COMPLETE REPORT QUESTIONNAIRE

A - Strategy and anchoring

[A1] Risk management oversight and management responsibility

A1.1 Were responsibilities for monitoring risk management defined for the reporting period?

54. yes

55. no

> If No

56. give reasons for your answer

> If yes, describe

57. which person(s) or function(s) is/are responsible for monitoring risk management

A1.2 Has management established a reporting process to ensure that it is regularly informed, at least annually, about the work of the person responsible for overseeing risk management?

58. yes

59. no

> If No

60. give reasons for your answer

> If yes, describe

61. the process for reporting to senior management on risk management at least annually or on a regular basis. Who

reports? How often is reporting done? In what form is it reported?

[A3] Anchoring the human rights strategy within the own organisation

A3.1 In which relevant departments/business processes was the anchoring of the human rights strategy ensured during the reporting period?

90. personnel/HR

91. site development/management

92. environmental management

93. occupational safety and occupational health management

94. Communication/Corporate Affairs

95. research and development

96. purchasing/procurement

97. supplier management

98. CSR/Sustainability

99. law/compliance

100. quality management

101. Mergers and Acquisitions

102. Business Development

103. IT/Digital Infrastructure

104. Community/Stakeholder Engagement

105. revision

106. economic committee

107. . Other

108. in no department

> If In no department was selected

109. give reasons for your answer

> If at least one of the answers from 90. to 107. has been selected, describe

110. How the responsibility for implementing the strategy is distributed within the different departments/business processes.

111. how the strategy is integrated into operational processes and procedures

112. What resources and expertise are made available for implementation in the processes.

E Assessment of risk management and conclusions

E1.1 Is there a process to review risk management across the board for adequacy, effectiveness and appropriate consideration of the interests of (potentially) affected parties?

424. yes

425. no

> If No

426. give reasons for your answer

> If yes, which areas of risk management are reviewed for adequacy and effectiveness?

427. resources and expertise

428. risk analysis and prioritisation process

429. preventive measures

430. Remedial action

431. complaints procedure

432. consideration of the interests of potentially affected persons

433. documentation

434. more

435. no areas

> If No Areas has been selected

436. give reasons for your answer

> If yes, describe

437. How this audit is conducted

What is risk management and anchoring of the strategy and evaluation?



[A2] Policy Statement on the Human Rights Strategy

A2.1Is there a policy statement that has been prepared or updated based on the risk analysis conducted during the reporting period?

- 62. yes
- 63. no

> If No

64. give reasons for your answer

> If Yes

Upload the policy statement (and any other relevant documents). documents)

A2.2Has management issued the policy statement?

- 66. yes
- 67. no

> If No

68. give reasons for your answer

A2.3Is the policy statement publicly available?

- 69. Yes, with indication of the source
- 70. no

> If No

71. give reasons for your answer

A2.4To which target groups was the policy statement for the reporting period communicated?

- 72. own employees
- 73. works council/economic committee
- 74. direct suppliers for whom a risk was identified in the risk analysis a risk was identified
- 75. Other target groups
- 76. no target groups

> If No target groups was selected

77. give reasons for your answer

> If at least one of the answers from 72. to 75. has been selected, describe

78. how the policy statement was communicated to the respective relevant target groups.

A2.5What elements does the policy statement contain?

79. Description of the process by which the company complies with the following obligations:

Choices:

- a. [Establishment of a risk management system]
- b. [Annual risk analysis]
- c. [Anchoring preventive measures for risks in the own business area, at direct suppliers and, if applicable, indirect suppliers as well as checking their effectiveness].
- d. [Remedial measures in own business unit, at direct suppliers and, if applicable, indirect suppliers and their effectiveness review].
- e. [Provide a complaints procedure within own business unit, with suppliers and review its effectiveness].
- f. [Documentation and reporting obligation]
- 80. description of the priority risks identified
- 81. description of human rights-related and environmental expectations of own employees and suppliers
- 82. other elements
- 83. none of the listed elements

> If None of the listed items has been selected

84. give reasons for your answer

A2.6Was the policy statement updated for the reporting period?

- 85. yes
- 86. no

> If No

87. give reasons for your answer

> If yes, describe

88. What were the reasons for the updates?

89. What adjustments have been made

What is Declaration of Principles (Policy Statement)?

What is risk analysis?

ABRIDGED REPORTING OBLIGATION

B - Identified risks and/or identified injuries

B1.1 Was a human rights or environmental risk identified during the reporting period?

- 33. yes -> jump to "Full reporting obligation".
- 34. no
- > If No was selected, describe in a comprehensible way
- 35. during which period the regular risk analysis was carried out
- 36. the essential steps and methods of risk analysis, in particular
 - a. The internal and external sources used in the context of the abstract risk assessment
 - b. The methodology of identification, evaluation and prioritisation in the context of the concrete risk assessment
 - c. Whether and to what extent information on risks and actual breaches of duty obtained through the processing of indications from the company's complaints procedure was taken into account in the risk analysis
 - d. How the interests of the potentially affected persons are adequately taken into account within the framework of the risk analysis.
- 37. whether and, if so, what reasons there were for occasion-related risk analyses in the reporting period

B1.2 Was a violation of a human rights or environmental obligation identified during the reporting period?

- 38. yes -> jump to "Full reporting obligation".
- 39. no
- > If No was selected, describe in a comprehensible way
- 40. what procedures can be used to detect violations in its own business area
- 41. what procedures can be used to identify breaches at direct suppliers
- 42. what procedures can be used to identify breaches at indirect suppliers

COMPLETE REPORT QUESTIONNAIRE

B - Risk analysis and prevention measures

[B1] Implementation, procedure and results of the risk analysis

B1.1 Did a regular (annual) risk analysis take place during the reporting period to identify, weigh and prioritise human rights and environmental risks?

- 113. yes, for the own business area
- 114. Yes, for direct suppliers
- 115. no
- > If No
- 116. give reasons for your answer
- > If 113. or 114. Yes has been selected, describe
- 117. in which period the annual risk analysis was carried out
- 118. The risk analysis procedure
- > Voluntary information: If 113th or 114th Yes was selected, were indirect suppliers also taken into account as part of the regular (annual) risk analysis during the reporting period?
- 119. yes
- 120. no
- Voluntary information: > If 119. yes was selected, describe
- 121. The process by which indirect suppliers were considered in the regular (annual) risk analysis.

B1.2 Were incident-related risk analyses also carried out during the reporting period?

- 122. yes, due to internal/strategic decisions
- 123. yes, due to external factors
- (124) Yes, due to substantiated knowledge of possible infringements at indirect suppliers.
- Yes, due to a significant change in the risk situation as a result of new products/projects.
- 126 Yes, due to a significant change in the risk situation as a result of new business areas.
- 127 Yes, due to further occasions
- 128. no
- > If No
- 129. give reasons for your answer
- > If yes, describe
- 130. The specific occasions
- 131. which findings the analysis has led to with regard to a significantly changed and/or expanded risk situation

- 132. the extent to which findings from the processing of tips/complaints have been incorporated

B1.3 Which risks were specifically identified in the risk analysis(s)? Select in each case for the own business unit, the direct supplier and, if applicable, the indirect supplier -. [M1 - U3]

- 146. no risks
- B1.4 Were the risks identified during the reporting period weighted and prioritised, and if so, on the basis of which adequacy criteria?
- 147 Yes, on the basis of the nature and scope of its own business activities.
- 148 Yes, on the basis of one's own capacity to influence.
- 149 Yes, based on the expected severity of the injury by degree, number of people affected and irreversibility.
- 150 Yes, based on the probability of occurrence.
- 151 Yes, on the basis of the type of causation contribution
- 152 Yes, based on other factors
- 153. no
- > If No
- 154. give reasons for your answer
- > If yes, describe in more detail
- 155. How the weighting and prioritisation was done and what trade-offs were made.

BAFA published a handout on risk analysis in August 2022:
https://www.bafa.de/DE/Lieferketten/Risikoanalyse/risikoa_nalyse_node.html



2.2 Which preventive measures were implemented in the reporting period to prevent and minimise the priority risks in your own business area?

- 171. conducting training in relevant business areas
 - 172. implementation of risk-based control measures
 - 173. other/other measures
- > If at least one of the answers from 171. to 173. was selected, describe in each case
- 176. The measures implemented and specify in particular the scope (e.g. number, coverage, scope).
 - 177. How the measures contribute to the prevention and minimisation of the priority risks.
 - 178. To what extent the interests of potential stakeholders and/or their legitimate representatives have been taken into account in the design and implementation of the measures.

B2.3 Was a process for testing effectiveness defined and implemented for the measures (training, risk-based control measures and other measures)?

- 181. If Yes, describe the process(es) for testing the effectiveness of the measures

B 3.2 Which prevention measures were implemented in the reporting period to prevent and minimise the priority risks at direct suppliers?

- 197. developing and implementing appropriate procurement strategies and practices.
 - 198. integration of expectations in supplier selection
 - 199. obtain contractual assurances for compliance and implementation of expectations along the supply chain.
 - 200. training and further education to enforce the contractual assurance.
 - 201. agreeing and implementing risk-based control measures
- > If the answer 197. has been selected, describe
- 205. The measures implemented and to what extent the determination of delivery times, of purchase prices or the duration of contractual relationships have been adjusted.

- 206. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.
 - 207. the extent to which the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- > If at least one of the answers from 198. to 202. was selected, describe in each case
- 208. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
 - 209. How the measures contribute to the prevention and minimisation of the priority risks.
 - 210. To what extent the interests of potential stakeholders and/or their legitimate representatives have been taken into account in the design and implementation of the measures.

B3.3 Was a process for reviewing effectiveness defined and implemented for the measures (procurement practices, purchasing strategy and other measures)?

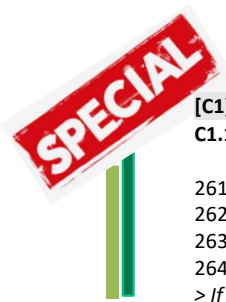
- 213 If yes, describe the process(es) for testing the effectiveness of the measures

B4.2 Which prevention measures were implemented for the reporting period to prevent and minimise the priority risks at indirect suppliers?

- 229. developing and implementing appropriate procurement strategies and practices.
 - 230. implementation of risk-based control measures
 - 231. supporting the supplier in preventing and minimising the risk
 - 232. implementation of sectoral or cross-sectoral initiatives
- > If the answer 229. has been selected, describe
- 236. The measures implemented
 - 237. To what extent adjustments in its own procurement strategy and practices should contribute to the prevention and minimisation of the priority risks.

- 238. To what extent the interests of potential stakeholders and/or their legitimate representations have been taken into account in the design and implementation of the measures.
- > If at least one of the answers 230. to 231. was selected, describe in each case
- 239. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
 - 240. To what extent adjustments in dealing with suppliers should contribute to the prevention and minimisation of the priority risks.
 - 241. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- > If at least one of the answers 232. to 233. was selected, describe in each case
- 242. The measures implemented and specify in particular the scope (e.g. number, coverage, area of application).
 - 243. To what extent other/further measures should contribute to the prevention and minimisation of the priority risks.
 - 244. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- B4.3 Was a process for reviewing effectiveness defined and implemented for the measures (procurement practices, purchasing strategy and other measures)?**

What are prevention measures?



What are remedial measures?

[C1] Findings of violations and corrective actions in own business area

C1.1 Were there any violations in your own business area during the reporting period?

- 261. Yes, only domestically
- 262. Yes, only abroad
- 263. Yes, at home and abroad
- 264. no;
- > If No, describe
- 265. What procedures can be used to identify violations in its own business area.
- > If yes, describe
- 266. Which procedures can be used to identify violations in its own business area?
- 267. Your company's approach to ensuring that remedial action can be taken in the event of breaches and that their implementation is effective.
- 268. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- > If yes, in which topics were violations identified in your own business area? You can voluntarily indicate the number of violations per topic. [M1-U3]
- > If one of the answers from 261. to 263. was selected, have you taken remedial action?
- 282. yes 283. no
- > If No was selected
- 284. give reasons for your answer
- > If Yes is selected, describe the appropriate remedial action you have taken and also describe
- 285. The cases in which violations could not be terminated and where they occurred.
- 286. What long-term remedial actions have been taken, in particular what trade-offs have been made with respect to the selection and design of the measures in the context of the relevant follow-up approaches to cessation or further minimisation.
- 287. How the effectiveness of the measures is reviewed
- 288. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- > If 282. yes was selected, did the remedial action result in the cessation of the violation?
- 289. yes 290. partly 291. no
- > If one of the answers from 261. to 263. was selected, have you analysed to what extent the identified violation is an indication for a possibly necessary adaptation/supplementation of existing prevention measures?
- Describe the process, outcomes and consequences.

[C2] Findings of violations and corrective actions at direct suppliers

C2.1 Were there any violations at direct suppliers during the reporting period?

- 293. yes 294. no
- > If No, describe
- 295. What procedures can be used to identify violations at direct suppliers?
- > If yes, describe
- 296. What procedures can be used to identify violations at direct suppliers?
- 297. On what basis the violations identified were weighted and prioritised and what trade-offs were made in doing so.

- 298. Your organisation's approach to ensuring that remedial action can be taken in the event of breaches and that implementation and outcomes are effective.
- 299. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- > If yes, in which topics were violations identified at direct suppliers? You can voluntarily indicate the number of violations per topic. [M1-U3]
- > If 293. yes was selected, have you taken appropriate remedial action?
- 313. yes 314. no
- > If No was selected
- 315. give reasons for your answer
- > If Yes is selected, describe the appropriate remedial action you have taken and also describe
- 316. what remedial actions have been taken, in particular what trade-offs have been made with regard to the selection and design of the measures in the context of the relevant follow-up concepts for cessation and minimisation
- 317. how the effectiveness of the measures will be reviewed
- 318. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- > If 313. yes was selected, did the remedial action result in the cessation of the violation?
- 319. yes 320. partly 321. no
- > If 293. yes was selected, have you analysed to what extent the identified violation is an indication for a possible adaptation/supplementation of existing prevention measures?
- 322. describe the process, outcomes and consequences
- [C2.2 MISSING in BAFA questionnaire]
- C2. 3 Were there any breaches at direct suppliers for the reporting period that could not be terminated within a foreseeable period of time?**
- 323. yes 324. no
- > If yes, describe
- 325. The cases in which violations could not be terminated
- 326. What long-term remedial actions have been taken, in particular what trade-offs have been made with respect to the selection and design of the measures in the context of the relevant follow-up concepts for cessation or minimisation.
- 327. How the effectiveness of the measures is reviewed
- 328. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- 329. What the concrete timetable of the concept looks like.
- > If Yes was selected, name which measures were considered in the preparation and implementation of the concept
- 330. Joint development and implementation of a plan with the undertaking by which the breach is caused.
- 331. joining forces with other companies within the framework of industry initiatives and industry standards
- 332. Temporary suspension of business relations
- 333. others

> If Yes was selected, in how many cases was the business relationship with one or more direct suppliers broken off due to the violations?

334. number of terminations of business relationships due to serious violations that could not be terminated (optional: explanation)

[C3] Findings of violations and corrective actions at indirect suppliers

C3.1 Were any violations found at indirect suppliers during the reporting period?

- 335. yes 336. no
- > If No, describe
- 337. What procedures can be used to detect violations in indirect suppliers?
- > If yes, describe
- 338. What procedures can be used to detect violations in indirect suppliers?
- 339. On what basis the violations identified were weighted and prioritised and what trade-offs were made in doing so.
- 340. what remedial actions, if any, have been taken and, in particular, what trade-offs have been made with respect to the selection and design of measures under the relevant cessation and minimisation approaches
- 341. To what extent the interests of potentially affected persons and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.
- > If Yes was selected, in which topics were violations detected at direct suppliers? You can voluntarily indicate the number of violations per topic. [M1-U3]

C3.2 Were there any breaches at indirect suppliers during the reporting period that could not be terminated within a foreseeable period of time?

- 355. yes 356. no
- > If yes, describe
- 357. The cases where violations could not be terminated are structural challenges which are longer term, etc.
- 358. Whether and, if so, what long-term remedial measures have been taken, in particular what trade-offs have been made with regard to the selection and design of the measures within the framework of the corresponding follow-up concepts for cessation or minimisation.
- 359. How the effectiveness of the measures is reviewed
- 360. the extent to which the interests of potentially affected people and/or their legitimate representatives have been taken into account in the design, implementation and review of the effectiveness of the measures.



- D - Complaints procedure**
- [D1] Establishment of or participation in a complaints procedure**
- D1.1 In what form was a complaints procedure offered for the reporting period?**
- 361. corporate grievance procedure
 - 362. participation in an external procedure
 - 363. combination of own and external procedures
 - 364. More
 - 365. in no form
 - > *If In no form was selected*
 - 366. give reasons for your answer
 - > *If at least one of the answers from 361. to 364. has been selected, describe*
 - 367. The company's own procedure and/or the procedure in which your company participates. involved
 - 368. The extent to which the potential stakeholders who are to use the procedure are involved in the design, review and improvement of the procedure.
- D1.2 Which potential stakeholders have access to the complaints procedure?**
- 369. own employees
 - 370. communities near own sites
 - 371. employees at suppliers
 - 372. External stakeholders such as NGOs, trade unions, etc.
 - 373. other
 - 374. no parties involved
 - > *If No participants was selected*
 - 375. give reasons for your answer
 - > *If at least one of the answers from 369. to 373. is selected, how is access to the complaints procedure ensured for the different groups of potentially involved parties?*
 - 376. Publicly accessible rules of procedure in text form
 - 377. accessibility information
 - 378. information on jurisdiction
 - 379. information on the process
 - 380. all information is clear and understandable
 - 381. all information is publicly available
 - 382. none

- D1.3 Were the rules of procedure publicly available during the reporting period?**
- 383. yes, with indication where it is publicly available
 - 384. no
 - > *If No*
 - 385. give reasons for your answer
- [D2] Requirements for the complaints procedure**
- D2.1 Were responsibilities for the implementation of the procedure defined for the reporting period?**
- 386. yes
 - 387. no
 - > *If No*
 - 388. Justify your answer
 - > *If yes, what criteria are ensured for those responsible?*
 - 389. Those responsible can act impartially
 - 390. The competent persons are not bound by instructions within the scope of this competence.
 - 391. Those responsible fulfil their obligation to maintain confidentiality
 - 392. None of the above
- D2.2 Were arrangements made for the reporting period to protect potentially involved parties from being disadvantaged or penalised as a result of a complaint?**
- 393. yes
 - 394. no
 - > *If No*
 - 395. give reasons for your answer
 - > *If yes, describe what arrangements have been made, in particular*
 - 396. How the complaints procedure ensures the confidentiality of whistleblowers' identities.
 - 397. What further measures are taken to protect whistleblowers?
- [D3] Effectiveness of the appeal procedure**
- D3.1 Did you receive any information about the complaints procedure during the reporting period?**
- 398. yes
 - 399. no
 - > *If yes, please provide details on*
 - 400. duration of proceedings - target duration and real duration of proceedings (indication of shortest and

- 401. the longest duration of proceedings with a brief explanation of the facts) of the total number of complaints received and, if applicable, changes in the
 - 402. Comparison with the previous reporting period of the proportion of complaints redressed in the total number of complaints (with optional explanation)
 - > *If Yes was selected, on which topics have complaints been received?*
- [M1 - U3]**
- > *If Yes is selected, describe*
- 416. What conclusions were drawn from the complaints/warnings received and to what extent these findings have led to adjustments in risk management
- D3.2 Was the grievance procedure reviewed for effectiveness for the reporting period?**
- 417. Yes, annual review
 - 418. yes, occasion-based review
 - 419. no
 - > *If No*
 - 420. give reasons for your answer
 - If one of the answers from 417. to 418. has been selected, describe
 - 421. To what extent feedback from internal and external stakeholders, in particular (potential) stakeholders, was obtained for the evaluation.
 - 422. How the effectiveness of the complaints procedure is measured
 - 423. What findings regarding effectiveness were drawn from the review and what actions were derived from it.

> BAFA published a handout on the complaints procedure in October 2022:
https://www.bafa.de/DE/Lieferketten/Beschwerdeverfahren/beschwerdeverfahren_node.html;jsessionid=118A6ED7C609585B093B5CA0EF697570.2_cid387



Reporting handout - Strategic considerations



- Who writes the report? / RTD



- Preparation time (4 months)



- What do I give away?



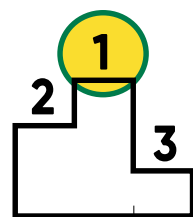
- Document permanently; clear guidelines with little leeway



- What is the consequence of my answer?

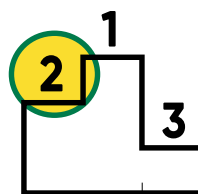
Consequences for smaller companies

Consequences for smaller companies (= suppliers)



Company > 1000

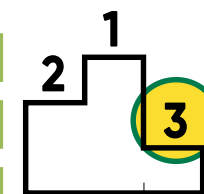
- ...implement everything
- ...have to undertake risk analysis
- ...must take preventive measures
- ...must take remedial Measure...
- ...must report
- ...are controlled by the BAFA



Direct supplier

- ...get duties passed on
- ...may have to report on their own risk analysis
- ...must participate in prevention
- ...must participate in remedial Measure
- ...must provide information
- ...are controlled by the customer

...where are the differences?



Indirect supplier

- ...get duties passed on
- ...may have to report on their own risk analysis
- ...must participate in prevention
- ...must participate in remedial Measure
- ...must provide information
- ...are controlled by the customer

...where are the differences?

Consequences for smaller companies (= suppliers)

> Which people, processes and documents are useful (for discussion) ?



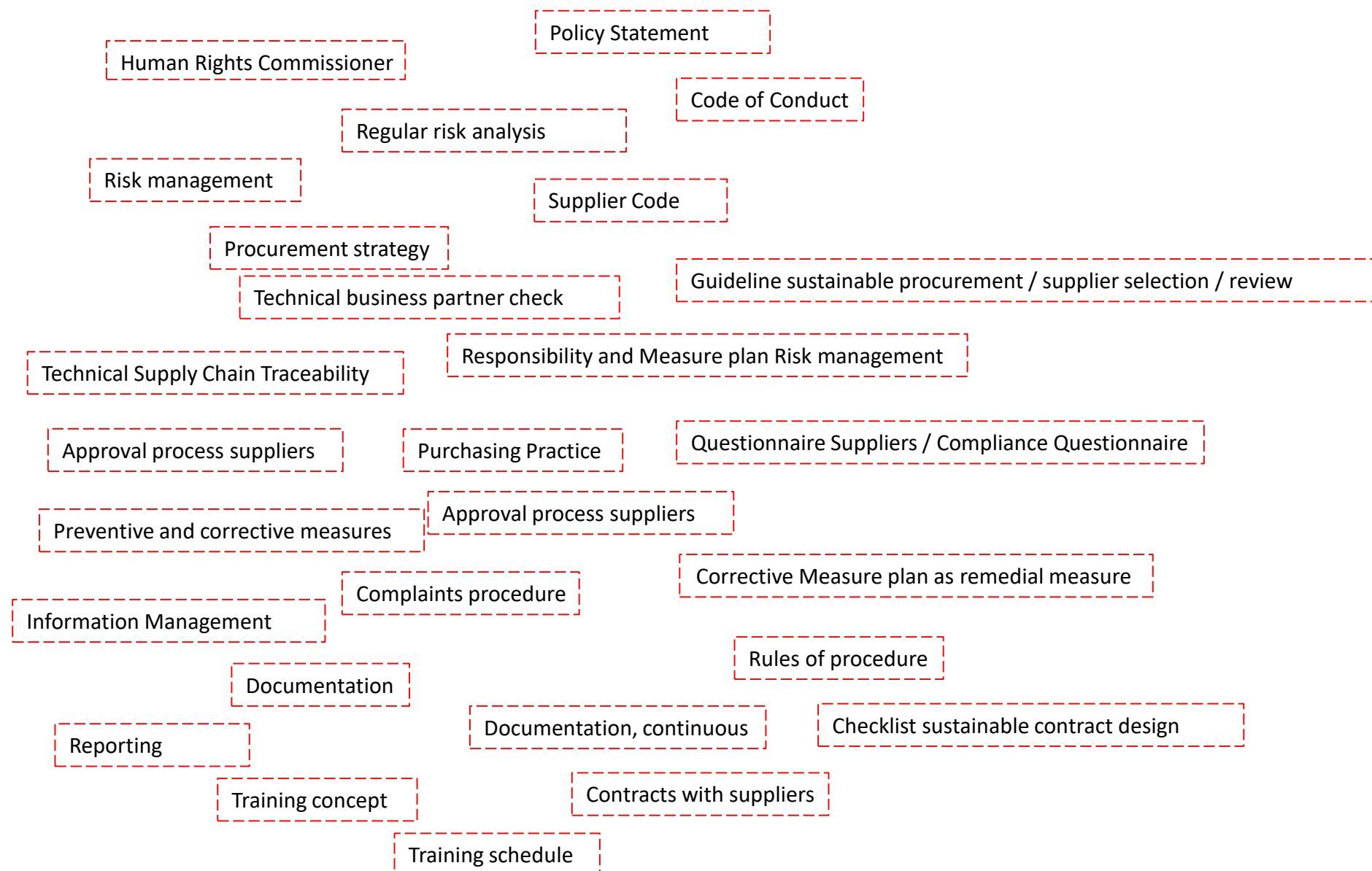
People



Processes



Documents





Consequences for smaller companies (= suppliers)



Consequences for smaller companies (= suppliers)

The fundamental question is:

1. Do you want to agree to everything that the client demands and thus become transparent and obligated to the client?
- or
2. Offer the client a „small package“ and inform him "only" about relevant problems - a self-declaration could make sense for this purpose

Small Package (selection) for smaller companies (= suppliers)

- | | |
|-------------|--|
| [check box] | To Dos |
| [] | (1) Establish risk management ; in particular: |
| [] | a) Include the topic of human rights and environmental risks in the existing compliance management system. |
| [] | b) Anchor human rights and environmental risks in existing governance system |
| [] | c) supplement internal company guidelines and directives with human rights and environmental risks |
| [] | (2) Establish an in-house responsibility , and human rights officer optional optional; in particular: |
| [] | (a) identify a responsibility for human rights and environmental risks within management |
| [] | (b) designate a human rights officer within or outside the management |
| [] | c) appoint a steering group or contact person to the Human Rights Officer in the relevant departments of the company that deal with human rights and environmental risks in its own business and in the supply chain. |
| [] | (3) Regular risk analysis ; in particular: |
| [] | a) Establish routines in its own business unit that review human rights and environmental risks in reasonable depth and at reasonable intervals and consolidate the information that is presumably already available on what regulations are already taken into account in its own business units on the subject (occupational health and safety, environment, etc.). |
| [] | b) Carry out a risk analysis with suppliers - first analyse human rights and environmental risks with the immediate supplier (i.e. direct contractual partner) at reasonable intervals and in appropriate detail. For this purpose, risk categories could be formed according to countries, product types and other findings - for this purpose, indices could be used, e.g. clustering one's own suppliers according to common indices (see our guideline on risk analysis). |

- [] c) The identified risks could be weighted and prioritised, i.e. based on (i) the type and scope of the business activity, (ii) capacity to influence the polluter, (iii) typically expected blockage and irreversibility and likelihood of breach, and (iv) nature of the contribution to causation.
- [] d) the relevant results could be communicated to persons responsible for risk management (see above)
- [] (e) the analysis could be repeated once a year and on specific occasions
- [] (4) Issuing a **policy statement**; in particular:
- [] a) The company could adopt a policy statement that identifies the priority human rights and environmental risks and describes the process for addressing risk management, risk analysis, prevention and mitigation measures, the grievance procedure and possible action towards indirect suppliers.
- [] b) the human rights-related and environmental expectations could then also be included in the policy statement and for this one could refer, for example, to a code of conduct of the company for its own business unit and a code of conduct of the company for its suppliers or perhaps to a uniform code of conduct for its own business unit and for the suppliers
- [] (5) **Prevention measures** in the own business area and towards direct suppliers; in particular:
- [] a) Implementation of the Human Rights Policy in the relevant business processes of the own business unit.
- [] b) Appropriate procurement strategies and purchasing practices, implementation in sustainable contract content, use of sustainable contract design checklist
- [] c) Training in own business area
- [] d) Controls in own business area
- [] e) Consideration of human rights and environmental expectations when selecting a supplier.

- [] f) Obtaining appropriate contractual assurances from the immediate supplier (perhaps via a Code of Conduct of Supplier with its obligation to comply with the expectations as well as corresponding measures and possibilities of further specification of measures as well as passing-on clauses; chain of custody expectations; provision of a complaints procedure; contractual penalties; indemnities; compensation for damages; possibility of suspension of the business relationship; possibility of special termination; possibility of controls; specifications for information, information and audits as well as further intensive specifications for cooperation actions, e.g. for training, reports, designation of the sub-supplier, remedial measures, industry initiatives, concepts, corrective action plans, etc.).e.g. for training, reports, designation of the upstream supplier, remedial measures, industry initiatives, concepts, corrective action plans, etc.).
- [] g) Training and further education of suppliers
- [] h) Controls of the suppliers
- [] (6) **Remedial measures**; in particular:
 - [] a) Measures to prevent, stop, minimise human rights and environmental risks, insofar as they are imminent and have occurred and must be successful in the own business sector domestically
 - [] b) Measures to prevent, stop, minimise human rights and environmental risks, insofar as they are imminent and have occurred and must generally be successful in the own business operations of subsidiaries in the domestic market over which one has a determining influence and in the own business operations abroad
- [] (7) Establishment of a **complaints procedure**; in particular:
 - [] a) Possibly establishing a complaints procedure for human rights and environmental risks reported in its own operations or those of its direct or indirect suppliers.
 - [] (b) such a mechanism must have rules of procedure, be neutral, be confidential and not disadvantage a notifier
 - [] c) the complaints procedure must be barrier-free, i.e. accessible in many languages and ideally, in addition to the internet, also by telephone or with anonymous postal addresses or slip boxes
- [] (8) Implementation of due diligence with regard to **risks at indirect suppliers**; in particular:

- [] (a) if there is any knowledge of human rights or environmental risks at indirect suppliers (substantiated knowledge), a risk analysis must also take place with regard to these and preventive and remedial measures must be taken
- [] b) Reports on indirect suppliers must also be possible in the complaints procedure
- [] (9) **Documentation and report**; in particular:
- [] a) Documentation of the above-mentioned compliance measures in the company and retention of the documentation for seven years is recommended.
- [] b) Preparation of a report and, if applicable, publication on the website and retention for seven years, in each case within four months after the end of a financial year.



Other countries

Comparison with the EU-Guideline proposal

Recent Legal Developments in Supply Chain Due Diligence*

Title	German Supply Chain Due Diligence Act of July 16, 2021 (SCDAA)		European Supply Chain Directive Draft published February 23, 2022	
Effective Date	January 01, 2023 –Preparation Phase already started		Unknown – even if Directive could come into force 2022, EU member states would have to transform within two / four years or longer	
Company size	Applicable to companies with 3,000 employees or more in 2023 (1,000 employees in 2024); attribution of employees of subsidiaries to parent company		Applicable to companies of 500 employees and 150 Mio turnover / 250 employees and 40 Mio. active in high-risk areas / others 150 Mio in EU or 40 in EU and risk area	
Location	Head Office / Headquarters in Germany		Business activity (sale of services and products) in the EU	
Scope of the duties	Due diligence obligations for own business area and direct suppliers (only in the case of substantiated knowledge of risks to indirect suppliers)		Due diligence obligations for the entire supply chain (also indirect suppliers)	
Human Rights	Yes		Yes	
Environment	Yes		Yes including climate	
Civil liability	No (general principles of law remain unaffected)		Yes	
Law for injured parties	Applicable law of the state in which damage occurs and thus often not German law (due to conflicts of laws rules)		Choice of the plaintiff as to which law is to be applied (law of the third country, law of the company's seat, law of the country in which company operates), liability shall be mandatory	
Jurisdiction for injured parties at the seat of the company	Yes		Yes	
Sanctions	No criminal consequences		Criminal consequences possible	
Fines	Yes		Yes	
Import bans	No		Possibly Yes	

* In Germany and EU – in 10 other countries less detailed provisions exist or are still discussed - see **Backup Slides attached** for USA, Canada, UK, Australia, France, Netherlands, Norway, Finland, Switzerland, India

➤ See our comprehensive Synopsis here: <https://www.taylorwessing.com/de/insights-and-events/insights/2023/02/synopse-eu-lieferketten-sorgfaltspflichten>

Comparison with EU Directive - Details

Topic Subtheme	Directive Content	Article	LkSG Content	§§
COMPANY AND EMPLOYEES				
Company	Companies if held by corporation and corporations as well as regulated financial companies	Art. 3 (a)	Every company regardless of legal form	§ 1 para. 1
Seat; administration, branch, branch office in Member State	Decisive is whether company established under an EU law; seat only relevant for jurisdiction of authority	Art. 2, 17	Germany	§ 1 para. 1
Business activity in EU by companies outside EU	Relevant from EUR 150 million turnover in EU or more than EUR 40 million in EU and 50% of total turnover in risk sector (then number of employees not relevant)	Art. 2 (2)	Not relevant	
Employees	500 respectively 250 for turnover in risk sector of at least EUR 20 million	Art. 2 (1)	3,000 and 1,000 respectively in Germany	§ 1 para. 1
Temporary workers	Consideration without duration of use	Art. 2 (3)	Consideration over duration of use	§ 1 para. 2
Group accounting	Not regulated ¹		Yes	§ 1 para. 3 and § 2 para. 6
Activity in risk sector	Relevant for EU companies with between 250 and 500 employees and at least 20 million EUR turnover in the risk sector; relevant for non-EU companies with between 40 and 150 million EUR turnover in the EU but 50% worldwide in the risk sector.	Art. 2 (1) and (2)	Not relevant	

¹ Does not seem to be a relevant question for the Commission; however, the directive distinguishes between "company's employees" and "employees of its subsidiaries" (Art. 3 (n), 5 (1) (b)).

Topic Subtheme	Directive Content	Article	LkSG Content	§§
Turnover	Relevant (see above)		Not relevant	
SME	Special regulations	Art. 7 (2) (d), 7 (4), 8 (3) (e), 8 (5), 14 (1), (2)	Not relevant	
Determining influence	No regulation but definition of "subsidiary" available (reference to Art. 2 para. f of Directive 109/2004.	Art. 3 (d)	Decisive	§ 1 para. 6
RELEVANT (BUSINESS) AREAS				
Own business area	Relevant under "own operations"	Art. 1 (1) (a) , 4 (1) , 6 (1) , 9 (1) , 10	Relevant	§§ 2 para. 5, 6, 3 para. 1 No. 5, 5 para. 1, 6 para. 3, § 6 para. 5, § 7 para. 1, 7 para. 4, 8 para. 1, 8 para. 5
Immediate suppliers	Relevant, but no clear distinction from indirect supplier, all "value chain" (see there) if "established business relationship" (see there) or "business relationship" (see there). Particularities in cases where only "indirect relationship" or "indirect partner" is referred to (e.g. Art. 7 (3), 8 (4), 22 (2).	Art. 3 (e), 3 (f), 3 (g)	Relevant	§§ 2 para. 5, 2 para. 7, 2 para. 8, 3 para. 1 No. 5, 5 para. 1, 6 para. 4, 6 para. 5, 7 para. 1, 7 para. 2, 7 para. 4, 8 para. 1, 8 para. 5, 17 para. 1
Indirect suppliers	Relevant, but no clear distinction from direct supplier, all "value chain" (see there) if. "established business relationship" (see there) resp. "business relationship" (see there). Particularities in cases where only "indirect relationship" or "indirect partner" is referred to (e.g. Art. 7 (3), 8 (4), 22 (2).	Art. 3 (e), 3 (f), 3 (g), 7 (3), 8 (4), 22 (2), 22 (3),	Relevant	§§ 2 para. 8, 5 para. 1 p. 3, 9, 17 para. 1
Supply chain, value chain ²	Definition of "value chain" quite broadly "upstream" and "downstream" if "established business relationship"	Art. 3 (g)	Defined	§ 1 para. 5

² **Business relationship'** means a relationship with a contractor, subcontractor or any other legal entities (**'Partner'**), (i) with whom the company has a commercial agreement or to whom the company provides financing, insurance or reinsurance, or (ii) that performs business operations related to the products or services of the company for or on behalf of the company. **Established business relationship'** means a business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain. **Value chain'** means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company.

Topic Subtheme	Directive Content	Article	LkSG Content	§§
"established business relationship"	Relevant - obligations go further; duration, intensity, importance for "value chain" assumed	Art. 1 (1) (a), 3 (f)	Not relevant (see direct and indirect suppliers)	
"business relationship"	Relevant - obligations less extensive; provision of services for the products and services with contract or without by "partner"	Art. 3 (e)	Not relevant (see direct and indirect suppliers)	
"partner"	Relevant - like "business relationship"	Art. 3 (e)		
"upstream"	Relevant for "value chain" (see there)	Art. 3 (g)	Relevant	§ 2 para. 5
"downstream"	Relevant for "value chain" (see there)	Art. 3 (g)	Relevant	§ 2 para. 5
PROTECTED GOODS				
Human rights Risks	"human rights adverse impacts"	Art. 1 (1), 3 (a), Annex Part I Sec. 1 with 21 references, Sec. 2 with 23 conventions	Human rights risks and protected legal positions from Nos. 1 to 11 of the annex	§ 2 paras. 1 and 2, annex
Environmental risks	"environmental impacts"	Art. 1 (1), 3 (b), Annex Part II with 12 "conventions"	Environmental risks, annex No. 13, 14, 15	§ 2 para. 3
Climate-related risks	Paris Climate Agreement, 1.5 degrees target	Art. 15	No mention	
DUE DILIGENCE OBLIGATIONS	Catalogue ("due diligence") with references	Art. 4	Catalogue with references	§ 3 para. 1 sentence 2
RISK MANAGEMENT				
Integration	"integrate due diligence into all corporate policies"	Art. 4 (1)	Detailed risk management	§ 4
Responsibility, Human rights officer	Not relevant; only gives "authorised representative" for companies from third countries	Art. 3 (k), 16	Mandatory and target rule	§ 4 para. 3

Topic	Subtheme	Directive Content	Article	LkSG Content	§§
	Policy statement	"diligence policy" with "company's approach", "code of conduct", "description of the process", "measures to be taken"	Art. 4 (1)	Policy statement - a little more content ³	§ 6 para. 2
	Annual review	"update annually"	Art. 4 (2)	Policy statement as part of the prevention measures	§ 6 par. 2 and 5
RISK ANALYSIS					
	Appropriate risk analysis	"identify actual and potential adverse impacts arising from own operations or those of their subsidiaries and, where related to their value chain, from their established business relationships", these can be "direct and indirect".	Art. 6 (1)	Risk analysis - less extensive ⁴	§ 5 para. 1
	Identify and need to identify risks	Preventive and corrective measures for identified risks and risks that should have been identified, "should have"	Art. 7 (1), 8 (1), 15 (2), 22 (1) (b)	No "should have found out" - only effort	
	Risk sectors	Audit only in sector if company only falls within scope because of sector	Art 6 (2)	No relevance	
	Sources	Mention of sources	Art. 6 (4)	No mention	
	Stakeholder participation	Participation of "affected groups" and "stakeholders" - also in prevention and remedial action	Art. 3 (n), 6 (5), 7 (2) (a), 8 (3) (b)	Mention in risk management, not in prevention and remediation	§ 4 para.4
	Repetition	Regulation, business policy and monitoring on occasion and annually	Art. 5 (2), 10	Occasional and annual	§ 5 para. 4
PREVENTION ⁵		"preventing potential adverse impacts"	Art. 7	Prevention measures	§ 6
	Identify and need to identify risks	Preventive and corrective measures for identified risks and risks that should have been identified, "should have" in analysis according to Art. 6	Art. 7 (1), 8 (1), 15 (2), 22 (1) (b)	Prevention only towards identified risks, no "should have identified" - only effort	§ 6 para.1

³ In addition to approach, procedures and processes, also identified risks

⁴ There, own business operations (possibly also those of subsidiaries in the case of decisive influence) and direct suppliers.

⁵ The provisions in Art. 7 on "preventing potential adverse impacts" and in Art. 8 on "bringing actual adverse impacts to an end" are very similar; Art. 8 has one more paragraph (2) for minimisation and one more letter (3) (a) in the form of reparation; this is not entirely comprehensible from a German perspective, as a gradation is not recognisable in this way.

Topic	Subtheme	Directive Content	Article	LkSG Content	§§
	Prevention and reduction ⁶	"prevention action plan with reasonable and clearly defined timelines"	Art. 7 (2) (a) ⁷	Appropriate strategies, practices, training and control measures in own business area	§ 6 para. 2
		"contractual assurances from business partners"	Art. 7 (2) (b) ⁸	Selection according to expectations, contractual assurances, training, further education,	§ 6 para. 3
		"investments in production processes and infrastructures"	Art. 7 (2) (c) ⁹	No mention	
		"Targeted and proportionate support" for SMEs	Art. 7 (2) (d) ¹⁰	No mention	
		"collaborate with other entities"	Art. 7 (2) (e) ¹¹	No mention in own business but towards direct suppliers as remedial action and towards indirect suppliers	§ 7 para. 2 no. 2, § 9 para. 3 No. 2
	Contract with third parties	"conclude a contract with a partner with whom it has an indirect relationship"	Art. 7 (3)	No specific mention but perhaps part of the measures towards direct suppliers as a remedial measure and towards indirect suppliers	§ 7 para. 2, § 9 para. 3
	Control of contracts	"contractual assurances shall be accompanied by appropriate measures to verify compliance"	Art. 7 (4)	No specific mention but perhaps part of control measures against direct suppliers as a remedial measure and against indirect suppliers	§ 6 para. 4 no. 4, § 9 para. 3 No. 3
	Requirement of fairness and non-discrimination vis-à-vis SMEs	"terms shall be fair, reasonable and non-discriminatory"	Art. 7 (4)	No default	
	If the above does not lead to avoidance or reduction				
	Non-renewal	"refrain from entering into new or extending existing relations"	Art. 7 (5)	Termination against direct supplier as remedial action	§ 7 para. 3
	Suspend	"suspend relations"	Art. 7 (5) (a)	Suspension against direct supplier as remedial measure	§ 7 para. 2

⁶ A distinction is made between "mitigate" as prevention in Art. 7 and "minimise" as remedy in Art. 8.

⁷ Almost identical wording to corrective action plan in Art. 8 (3) (b)

⁸ Almost identical wording to assurances of compliance with corrective action plan in Art. 8 (3) (c)

⁹ Almost identical wording to bringing actual adverse impacts to an end in Art. 8 (3) (d)¹⁰

Almost identical wording to code of conduct or corrective action plan in Art. 8 (3) (e)¹¹

Identical wording in Art. 8 (3) (f)

Topic	Subtheme	Directive Content	Article	LkSG Content	§§
	Exit	"terminate"	Art. 7 (5) (b)	Termination vis-à-vis direct supplier as remedial action	§ 7 para. 3
	Legal possibility	"where law governing the relations so entitles"; "member states shall provide for the ability of an option to terminate the business relationship in contracts governed by their laws"	Art. 7 (5)	Not mentioned	
	Special rules for financing	"not be required to terminate when expected to cause substantial prejudice"	Art. 7 (6)	Not mentioned	
	Review	Regulation, business policy and monitoring on occasion and annually	Art. 5 (2), 10	Occasional and annual	§ 6 para. 5
REMEDY ¹²		"bringing actual adverse impacts to an end"	Art. 8	Remedial action	§ 7
	Identify and need to identify risks	Preventive and corrective measures for identified risks and risks that should have been identified, "should have" in analysis according to Art. 6	Art. 7 (1), 8 (1), 15 (2), 22 (1) (b)	Remedy only against identified risks, no "should have identified" - only effort	§ 7 para.1
	Minimisation ¹³	"minimise the extent"	Art. 8 (2)	Staggering: Termination in own business operations in national territory, as a rule termination in own business operations abroad and at subsidiaries. Concept with timetable for immediate supplier.	§ 7 par. 1 and 2
	Reparation	"neutralise the adverse impact or minimise its extent, including by the payment"	Art. 8 (3) (a)	No regulation ¹⁴	
	Termination and minimisation measures	"corrective action plan with reasonable and clearly defined timelines"	Art. 8 (3) (b) ¹⁵	Staggering as above; then concept with timetable	§ 7 para. 2
		"contractual assurances from direct partners"	Art. 8 (3) (c) ¹⁶	No specific mention but perhaps part of the concept as above and, if necessary, elaboration of a plan with the causer.	§ 7 para. 2 no. 1

¹² The provisions in Art. 7 on "preventing potential adverse impacts" and in Art. 8 on "bringing actual adverse impacts to an end" are very similar; Art. 8 has one more paragraph (2) for minimisation and one more letter (3) (a) in the form of reparation; this is not entirely comprehensible from a German perspective, as a gradation is not recognisable in this way.

¹³ A distinction is made between "mitigate" as prevention in Art. 7 and "minimise" as remedy in Art. 8.

¹⁴ But reparation is one of 8 criteria in the assessment of fines (section 24 para. 4 no. 7) (> see below under section 3 para. 1).

¹⁵ Almost identical wording to prevention action plan in Art. 7 (2) (a)

¹⁶ Almost identical wording to assurances of compliance with prevention action plan in Art. 7 (2) (b)

Topic Subtheme	Directive Content	Article	LkSG Content	§§
	"investments in production processes and infrastructures".	Art. 8 (3) (d) ¹⁷	No mention	
	"Targeted and proportionate support" for SMEs	Art. 8 (3) (e) ¹⁸	No mention	
	"collaborate with other entities"	Art. 8 (3) (f) ¹⁹	Joining forces with other companies as part of industry initiatives and industry standards	§ 7 para. 2 no. 2
Contract with third parties	"conclude a contract with a partner with whom it has an indirect relationship"	Art. 8 (4)	No specific mention but perhaps part of the measures towards direct suppliers as a remedial measure and towards indirect suppliers	§ 7 para. 2, § 9 para. 3
Control of contracts	"contractual assurances shall be accompanied by appropriate measures to verify compliance"	Art. 8 (5)	No specific mention but perhaps part of control measures against direct suppliers as a remedial measure and against indirect suppliers	§ 6 para. 4 no. 4, § 9 para. 3 no. 3
Requirement of fairness and non-discrimination vis-à-vis SMEs	"terms shall be fair, reasonable and non-discriminatory"	Art. 8 (5)	No specification	
If the above does not lead to avoidance or minimisation				
Non-renewal	"refrain from entering into new or extending existing relations"	Art. 8 (6)	Termination against direct supplier as remedial measure	§ 7 para. 3
Suspend	"suspend relations"	Art. 8 (6) (a)	Suspension against direct supplier as remedial measure	§ 7 para. 2
Exit	"terminate"	Art. 8 (6) (b)	Termination against direct supplier as remedial action	§ 7 para. 3
Legal possibility	"where law governing the relations so entitles"; "member states shall provide for the ability of an option to terminate the business relationship in contracts governed by their laws"	Art. 8 (6)	Not mentioned	

¹⁷ Almost identical wording to preventing potential adverse impacts in Art. 7 (2) (c)

¹⁸ Almost identical wording to code of conduct or prevention action plan in Art. 7 (2) (d)

¹⁹ Identical wording in Art. 7 (2) (e)

Topic	Subtheme	Directive Content	Article	LkSG Content	§§
	Special rules for financing	"shall not be required to terminate ... when expected to cause substantial prejudice".	Art. 8 (7)	Not mentioned	
	Review	Regulation, business policy and monitoring on occasion and annually	Art. 5 (2), 10	Occasional and annual	§ 7 para. 5
COMPLAINT PROCEDURE					
	People	"persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact", "trade unions and other workers' representatives representing individuals working in the value chain concerned", "civil society organisations active in the areas related to the value chain concerned"	Art. 9 (1) and (2)	People	§ 8 para. 1
	Scope	"their own operations, operations of subsidiaries and their value chains"	Art. 9 (1)	Own business unit, direct supplier and indirect supplier	§§ 8 para. 1 and 9 para. 1
	Occasion	"legitimate concerns"	Art. 9 (1)	No specifications	
	Procedure	"procedure", "information"	Art. 9 (3)	Publicly available information and rules of procedure	§ 8 par. 2 and 4
	Consideration	"deemed to be identified in Art. 6".	Art. 9 (3)	Take into account findings from complaints procedure	§§ 5 para. 4, 6 para. 5, 7 para. 4
	External procedure	No regulation		Possible	§ 8 para. 1
	Tracking and Discussion	"request appropriate follow-up", "meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint"	Art. 9 (4)	No regulation	
	Review	Regulation, "business policy" and monitoring on occasion and annually	Art. 5 (2), 10	Occasional and annual	§ 8 para. 5
	Protection	No regulation but inclusion in annex I E.2 of the WBRL 2019/1937 ²⁰ and explicit application of the WBRL to all reports	Art. 27, 23	Impartiality, freedom from instructions, confidentiality, protection against discrimination	§ 8 par. 3 and 4

²⁰ Directive EU 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting violations of Union law; Official Journal of the European Union of 26.11.2019 L 305/17 <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32019L1937>

Topic Subtheme	Directive Content	Article	LkSG Content	§§
DOCUMENTATION AND REPORT	For companies that are not subject to non-financial reporting according to Directive 2013/34 ²¹ , report on the website as of 30 April of each year.	Art. 11	Documentation and report	§§ 10 and 12
SAMPLE CLAUSES	"commission shall adopt guidance about voluntary model contract clauses"	Art. 12	No regulation	
AID	Guidelines, websites, platforms, portals, financial support for SMEs, joint initiatives	Art. 13, 14	Handouts from the authority or the ministry	§§ 9 para. 4, 20
REPRESENTATIVE	Non-EU companies need an "authorised representative"	Art. 16	No mention	
AUTHORITIES AND POWERS				
	"supervisory authorities" in member states	Art. 17	BAFA	§ 19
	Extensive powers	Art. 18	Extensive powers	§§ 14 to 18
	Application rights for affected persons	Art. 19	Action on request	§ 14 para. 2
	"european network of supervisory authorities"	Art. 21	No regulation	
SANCTIONS				
Sanctions	"sanctions provided for shall be effective, proportionate and dissuasive"	Art. 20 (1)	Penalty payments and fines for administrative offences	§§ 23, 24
Good conduct reference	"due account shall be taken of the company's efforts to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as collaboration with other entities to address adverse impacts in its value chains, as the case may be"	Art. 20 (2)	Efforts to detect and make reparations as well as avoid can reduce fines, among other things.	§ 24 para. 4
Dependence on turnover	"when pecuniary sanctions are imposed, they shall be based on the company's turnover"	Art. 20 (3)	Fines of €100,000, €3m and €5m and, in certain cases, 2% of group-wide turnover	§ 24 para. 3
PUBLIC CONTRACTS	Public submission requires confirmation that no sanctions have been imposed	Art. 24	Exclusion possible for up to 3 years	§ 22

²¹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual accounts, consolidated accounts and related reports of certain types of companies, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A32013L0034>

Topic	Subtheme	Directive Content	Article	LkSG Content	§§
LIABILITY					
		Additional liability: "Member States shall ensure that companies are liable for damages if: (a) they failed to comply with the obligations laid down in Articles 7 and 8 and; (b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage"	Art. 22 (1)	No additional liability: "A breach of the obligations under the Act shall not give rise to civil liability. Any civil liability established independently of this Act shall remain unaffected"	§ 3 para. 3
		No liability for damage caused by indirect partner if reasonable measures have been taken. Other measures taken by the company must be taken into account	Art. 22 (2)	No regulation	
		Liability of one company exempts another in the "Value chain not	Art. 22 (3)	No regulation	
		No impact on other liability provisions	Art. 22 (4)	No regulation	
		Liability should be mandatory internationally	Art. 22 (5)	No regulation	
GOVERNANCE					
		Business leaders should integrate sustainability, human rights and the environment into short-, medium- and long-term decision-making.	Art. 25 (1)	No explicit regulation, at most consequences from risk management	§ 4
		Breach of the duty of legality shall also be given in the event of breach of the above	Art. 25 (2)	As above.	
		Business leaders supervision obligation also includes the due diligence obligations in Art. 4 to 9	Art. 26	As above.	
		Salary should also reward climate targets	Art. 15 (3)	As above.	
IMPLEMENTATION					
		2 years for companies with many employees and / or large turnover according to Art. 2.	Art. 30 (1) (a), 2 (1) (b), 2 (2) (b)	Application 2023 or 2024	§ 1 para. 1
		4 years for companies with few employees and / or small turnover according to Art. 2	Art. 30 (1) (b), 2 (1) (a), 2 (2) (a)	As above	

Comparison other countries



#	Country	Law	In force	Application	Humanrights risks	Environmental risks	Reporting obligation	Due diligence	Sanction	Liability
1	USA	Tariff Act of 1930 (19 U.S.C. § 1307)	1930 ¹	On any importer of goods; Can be reported by anyone to U.S. Customs and Border Protection (CBP).	Forced and child labour	-	-	Import ban; must demonstrate that all reasonable efforts have been made to establish the absence of forced and child labour in the supply chain.	Fine, confiscation, destruction of the seized goods	No
2	USA	Trafficking Victims Protection Act (TVPA); 18. US. Code §§1581-1597. Trafficking Victims Protection Reauthorization Act (TVPRA) 2008	2000 ²	On any company that is "active" in the USA or has "minimum contacts" (import and sale of goods is already sufficient) in one of the states according to a so-called "long-arm statute" of the individual states.	Modern slavery, human trafficking, forced and compulsory labour, servitude, worst forms of child labour	-	-	Avoidance, standard: knowing or having to know, regardless of whether appropriate measures were taken or not.	Fine, imprisonment	Civil and punitive damages; claim is directed both against the perpetrators of the offences (human trafficking and modern forms of slavery) worldwide and against anyone who recognisably benefits from modern forms of slavery or human trafficking

¹ Section of the 302Tariff Act of 1930; see CBP website: <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>; see also <https://crsreports.congress.gov/product/pdf/IF/IF11360>.

² Trafficking Victims Protection (and Reauthorization) Acts since with 2000several amendments and implementing acts.



#	Country	Law	In force	Application	Humanrights risks	Environmental risks	Reporting obligation	Due diligence	Sanction	Liability
3	USA	Dodd-Frank Act (DFA)	2010 ³	On companies listed with SEC	Armed conflicts over conflict minerals (indirectly child labour, sexual violence, forced displacement and destruction of cultural sites)	-	Reporting obligation for 3TG	Report, examination in three steps: (i) Is there a reporting obligation? I.e. is one of the conflict minerals (tin, tantalum, wolfram and their ores and gold) required in the manufacture of a product or for its functioning? (ii) If yes: Do the raw materials come from the conflict region DR Congo or its neighbouring countries? Then a comprehensible and honest assessment must be made. country of origin verification to be performed (iii) If, in any case, there is reason to believe that the conflict material originates from a conflict region and also does not come from recycling or scrap, it must be examined whether, by acquiring the conflict minerals have been used to finance armed groups in the conflict region	5 USD million, up to 20 years imprisonment; depending on the state, companies that fail to comply with the reporting requirement may be excluded from the public procurement process	Possible claims for damages by the company's shareholders in the event of misstatements or exaggerated information

³ Section Dodd1502 Frank Act valid 2010, since 2013; cf. <https://www.sec.gov/opa/Article/2012-2012-163htm---related-materials.html>.



#	Country	Law designation	In force	Application	Humanrights risks	Environmental risks	Reporting obligation	Due diligence	Sanction	Liability
4	USA California	California Transparency in Supply Chains Act (CTSCA)	2012 ⁴	<p>To companies that do business in California, have worldwide sales of more than \$100 million, and are identified as a manufacturer or retailer on their California state tax return.</p> <p>Business activity exists, among other things, with a minimum annual turnover of USD 500,000 in California</p>	Slavery, human trafficking	-	<p>Report on how the company deals with the risk of slavery and human trafficking in the entire supply chain; reporting obligations are already fulfilled even if the company specifically states that it does not take any measures on all issues.</p> <p>Attorney General of California may seek judicial release of error-free report in case of breach of reporting requirement</p>	Risk control	No	Probably yes; liability under competition or consumer protection law is possible in case of misrepresentation or exaggeration by a company
5	Canada	Customs Tariff Act (CTA)	2020 ⁵	On each importer	Forced labour	-	-	Import ban; companies that import goods into Canada should import Take appropriate measures to ensure that their goods are not produced using forced labour	Fine, confiscation	Yes

⁴ California Transparency in Supply Chains Act since 2012, State 1.1.2012 of California Department of Justice The California Transparency in Supply Chains Act [h2012, https://oag.ca.gov/SB657](https://oag.ca.gov/SB657).

⁵ Canada-United States-Mexico Agreement, implemented in the Customs Tariff Act since [h1.7.2020, https://laws-lois.justice.gc.ca/eng/acts/C-54.011/FullText.html](https://laws-lois.justice.gc.ca/eng/acts/C-54.011/FullText.html).



#	Country	Law designation	In force	Application	Humanrights risks	Environmental risks	Reporting obligations	Due diligence	Sanction	Liability
6	UK	Modern Slavery Act (MSA)	2015 ⁶	<p>Any company that does business in the UK and has a worldwide turnover of £36 million, either itself or through subsidiaries.</p> <p>A foreign company without a registered office or principal place of business in the UK which meets this turnover threshold is in any case doing business in the UK if it has a demonstrable business presence (e.g. establishment, provision of services, generation of revenue) locally</p>	Modern slavery, human trafficking	-	<p>Annual report on measures to counter forms of slavery and human trafficking in all supply chains and business sectors</p> <p>Law does not contain an obligation to take certain measures; however, if no measures are taken, this must be stated</p> <p>If both parent company and subsidiary are subject to reporting requirements, a joint group-wide report may be prepared by the parent company</p> <p>Ministry of the Interior can force the publication of the report in court</p> <p>Accuracy and completeness of the report is not verified</p>	-	Sanctions are being considered	<p>Eventual; Act does not itself provide for liability, but the reports to be published may be used as evidence of a lack of care if civil liability is based on another provision of law</p> <p>Possible liability under general civil law provisions in case of false or exaggerated reports (consumer protection law, competition law)</p>

⁶ Modern Slavery Act valid 2015, since the end of the financial year -31.03.2016 <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>, see also the official guide <https://www.gov.uk/government/collections/modern-slavery>



#	Country	Law designation	In force	Application	Humanrights risks	Environmental risks	Reporting obligations	Due diligence	Sanction	Liability
7	Australia	Modern Slavery Act (MSA)	2018 ⁷	Companies that have a worldwide consolidated annual turnover of A\$100 million or more during the 12-month reporting period and have their registered office or do business in Australia. Business activity exists in any case if the company maintains a branch in Australia or is registered with the competent supervisory authority for any other reason	Slavery, human trafficking, worst forms of child labour	-	Annual report on risks of slavery, human trafficking and child labour throughout the supply chain Report is to be addressed to the competent federal authority (Federal Ministry of the Interior), which may request rectification in the event of deficiencies; in the event of violations, the Minister may make these publicly known in an online register Group-wide report possible for several group companies together	Risk control	Not foreseen, only publication in an online register in case of infringements	Possible liability under general civil law provisions in the case of false or exaggerated reports (consumer protection law, competition law).
8	Australia, New South Wales	New South Wales Modern Slavery Act (NSW MSA)	From 2018 ⁸ , not yet in force	Businesses with at least one employee in NSW and a minimum annual turnover of A\$50 million worldwide.	Slavery, human trafficking, worst forms of child labour	-	Annual report on risks of slavery, human trafficking and child labour throughout the supply chain If a company is already required to report under the Au-MSA, it does not have to prepare another report under the NW-MSA Specifications essentially correspond to those of the Au-MSA	-	Fines up to AUD million 1,1	Possible liability under general civil law provisions in case of false or exaggerated reports (consumer protection law, competition law)

⁷ Modern Slavery Act effective 2018, for financial years from 01.7.2019; Australian Government Modern Slavery Act No 2018, [h153, https://www.legislation.gov.au/Details/C2018A00153](https://www.legislation.gov.au/Details/C2018A00153).

⁸ New South Wales Modern Slavery Act - not yet in force due to lack of clarity on relationship with Au-MSA; intended to harmonise NSW-MSA and Au-MSA; see also <https://www.nsw.gov.au/modern-slavery>.



#	Country	Law designation	In force	Application	Humanrights risks	Environmental risks	Reporting obligations	Due diligence	Sanction	Liability
9	France	Loi de Vigilance	2017 ⁹	Company with registered office in France as SA with min. 5,000 employees plus their daughters in F resp. 10.000 AN with subsidiaries worldwide in two consecutive financial years - but probably not companies abroad	Human rights, fundamental freedoms, health, security	Environment when related to human rights	Report on risks and remedial measures	<p>Systematic recording, procedures for assessing the situation and established business relationships, risk reduction and prevention measures, warning and whistleblowing mechanism, review of effectiveness</p> <p>The Council of State is authorised by decree to determine the details of the development and implementation of the monitoring plan, if necessary within the framework of sector-specific or regional multilateral initiatives.</p> <p>Companies are required to develop their monitoring plan in cooperation with society's stakeholders</p> <p>Monitoring plan is published</p>	Fine	<p>Liability</p> <p>Enforcement:</p> <p>(i)any person with a legitimate interest may admonish the company to rectify deficiencies in the monitoring plan within three months, after which an action for rectification of the monitoring plan may be brought before a court, including by summary proceedings</p> <p>(ii)Liability for damages for serious infringements which could have been prevented if the monitoring plan had been dutifully drawn up and implemented</p>

⁹ Loi de vigilance of valid 27.3.2017,for financial years after the year following publication; <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>.



#	Country	Law designation	In force	Application	Humanrights risks	Environmental risks	Reporting obligations	Due diligence	Sanction	Liability
10	Netherlands	Wet Zorg-plicht Kinder-arbeid	Not yet in force ¹⁰	Companies worldwide that supply services or goods to end users in the Netherlands twice a year	Child labour	-	Explanation	Examination, action plan in case of "reasonable suspicion", declaration NGOs, Business associations and trade unions can participate in sectoral or -across "joint action plans" the importance of the "concretise due diligence. If the joint action plan is approved by a ministry and a company adheres to the Action Plan, it shall thereby exercise due diligence	Fine in the amount of EUR 820,000 or 10% of the annual turnover if the supervisory authority has unsuccessfully requested the enterprise to remedy a breach; imprisonment	No
11	Netherlands	Wet Verantwoord en Duurzaam Internationaal Ondernemen	Not yet in force ¹¹	Company in NL with 250 employees and/or EUR 40 million turnover and/or EUR million ²⁰ balance sheet total	Restrictions on freedom of association and collective bargaining; discrimination; forced labour; child labour; unsafe working conditions slavery; exploitation.		Explanation	Checking, preventing, mitigating, stopping mitigating or remedying and Reverse as far as possible, Withdraw	Fine, imprisonment	No

¹⁰ Wet Zorgplicht Kinderarbeid (Wet van oktober n242019, houdende401 de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen -Wet zorgplicht kinderarbeid). ¹¹ Wet verantwoord en duurzaam international ondernemen vom 11.03.2021 - Gesetzsverschlagn; „Wet verantwoord en duurzaam international ondernemen" from the unofficial11.3.2021, English translation available at: <https://www.mvoplatform.nl/en/translation-of-the-bill-for-responsible-and-sustainable-international-business-conduct/>.



#	Country	Law designation	In force	Application	Humanrights risks	Environmental risks	Reporting obligations	Due diligence	Sanction	Liability
12	Norway	Transparency Act (TG)	In force since July 2022	<p>Companies that operate as so-called "large companies" as well as so-called "small companies" which, alone or together with their subsidiaries, exceed at least two of the following thresholds:</p> <p>(i) Average number of employees during the financial year: 50 full-time employees; (ii) NOK 70 million turnover; (iii) NOK 35 million total assets.</p> <p>Larger foreign companies are obliged to pay tax in Norway if they offer goods or services in Norway and are thereby liable to pay tax in Norway (from an annual turnover of 10.000 NOK)</p>	Fundamental human rights and working conditions covered by the UNGPs	Environmental damage is covered insofar as it has a negative impact on the human rights covered.	Annual and ad hoc report on the implementation of the due diligence obligation	As OECD Guidelines (similar to LkSG); any person can require to implement the due diligence obligations; affectedness or legitimate interest not required for this purpose	Fine	No

¹² Law on Corporate Transparency and Labour with Fundamental Human Rights and Decent Working Conditions (TG); <https://www.regjeringen.no/en/dokumenter/supply-chain-transparency/id2680057/>.



13	Switzerland	Due diligence obligations in the Swiss Code of Obligations (SOR)	Not yet in force ¹³	<p>Companies in Switzerland</p> <p>Reporting on Corporate Social Responsibility as a whole: Public companies domiciled in Switzerland as well as financial service providers with at least 500 full-time employees on an annual average and a balance sheet total of CHF 20 million or a turnover of CHF 20 million or a turnover of CHF 40 million in two consecutive years.</p> <p>Reporting on metal and mineral transactions: Companies with their registered office or head office in Switzerland that import minerals or metals containing tin, tantalum, tungsten or gold from conflict or high-risk areas into Switzerland.</p> <p>Reporting on child labour: companies domiciled or managed in Switzerland that offer products or services where there is reasonable suspicion of child labour.</p> <p>Reporting on payments to government agencies: companies domiciled in Switzerland and obliged to undergo a so-called ordinary audit, which are directly or indirectly (abroad) active in the extraction of raw materials.</p>	Child labour, social issues including workers' issues, human rights, Anti-corruption, conflict minerals	Environmental concerns	<p>Annual non-financial reporting. Reports are published in electronic form within 6 months of the end of the financial year and remain available for inspection for 10 years.</p> <p>Reporting on corporate social responsibility, i.e. on environmental issues, social issues including labour issues, human rights protection and anti-corruption; corporate groups must provide consolidated reports; reporting obligations fulfilled abroad are credited.</p> <p>Reporting on metal and mineral transactions: Companies must report on compliance with their due diligence obligations along the supply chain</p> <p>Reporting on child labour: Reporting companies must report on due diligence to be applied in the supply chain</p> <p>Reporting on payments to government entities: Must report on payments to (foreign) government entities in the amount of CHF 100,000 per financial year (including cumulative partial amounts); in corporate groups Reporting consolidated and equivalent foreign reports recognised</p>	Management system, risk analysis, risk management plan, measures	Fine, natural persons involved in reporting are subject to criminal liability if they provide false information or fail to do so altogether	Liability
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#	Country	Law	In force	Application	Human rights risks	Environmental risks	Reporting obligations	Due diligence	Sanction	Liability
14	Finland		Ongoing legislative process ¹⁴		Human rights	Environmental risks	Not specified in more detail, as only government study on possible legislation so far.	Not specified in more detail, as only government study on possible legislation so far.	Not specified in more detail, as only government study on possible legislation so far.	Not specified in more detail, as only government study on possible legislation so far.
15	India	Business Responsibility and Sustainability Report (BRSR)	In force, mandatory from financial year 2022-. 23 ¹⁵	India's 1,000 largest listed companies (by market capitalisation) are required to report by regulatory order	Worker and social concerns	Energy and water consumption, air pollutant emissions, CO ₂ emissions, transition to a circular economy, waste generated and waste management, bio-diversity	Report on "ESG" risks, sustainability goals and concepts for their implementation, variously environmental concerns, employee and social concerns			

¹³ Duties of care in the Code of Obligations which will probably come into 1.1.2022 force on; cf. <https://www.skmr.ch/de/themenbereiche/wirtschaft/artikel/gegenvorschlag-kvi.html>.

¹⁴ https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162411/TEM_2020_44.pdf?sequence=1&isAllowed=y.

¹⁵ <https://www.sebi.gov.in/media/press-releases/may-2021/sebi-issues-circular-on-business-responsibility-and-sustainability-reporting-by-listed-entities-50097.html>; https://www.sebi.gov.in/sebi_data/commondocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure1_p.PDF; https://www.sebi.gov.in/sebi_data/commondocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure2_p.PDF.

Useful slides

Others

The first commentary on this - has been available since July 2022



Die aktuelle Kommentierung zum LkSG ist eine wertvolle Arbeitshilfe für alle, die sich mit der Analyse und Umsetzung des neuen Gesetzes befassen. Sie zeigt den Weg durch die Regelungen anhand aller Tatbestandsmerkmale und enthält nützliche Informationen zu Interpretation und Subsumption.

Auf einen Blick

- Kommentierung der jeweiligen Vorschriften des LkSG
- Erläuterungen zu Herkunft, Interpretation und Subsumption
- Kritische Analyse der Tatbestandsmerkmale, deren Bedeutung, Unterscheidbarkeit und Stringenz
- Verweis auf internationale Regelungen zu Menschenrechten und menschenrechtlicher Due Diligence der UN, der OECD, der ILO und weiterer Abkommen
- Einbettung in bekannte Compliance-rechtliche Vorgaben
- Wertvolle Arbeitshilfe und stabile Quelle für den Rechtsanwender

Von einem erfahrenen Praktiker

Dr. **Martin Rothermel** leitet die Practice Area Commercial Agreements & Distribution einer internationalen Wirtschaftskanzlei. Er berät Unternehmen bei der Vertragsgestaltung und vertritt sie vor nationalen Gerichten wie auch in internationalen Schiedsverfahren; zudem lehrt er internationales Handelsrecht an Universitäten wie auch für Verbände, Kammern und Seminaranbieter.

Martin Rothermel (Hrsg.)

LkSG – Lieferkettensorgfaltspflichtengesetz

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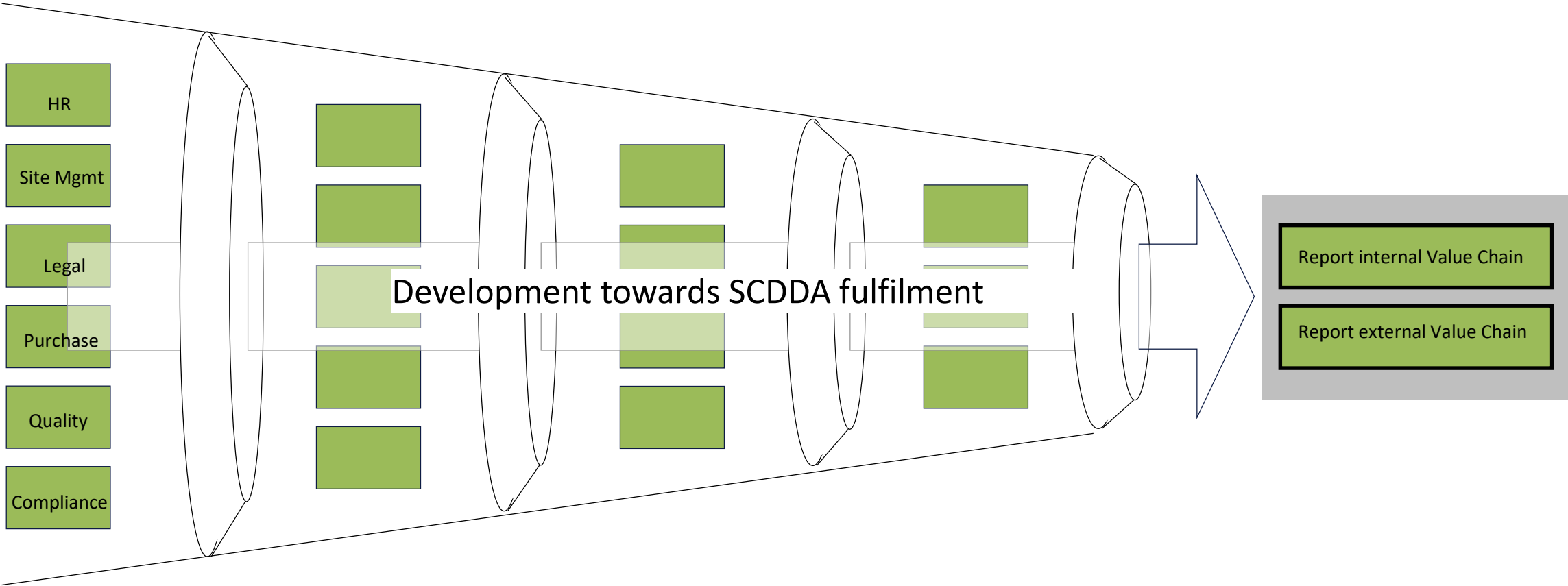
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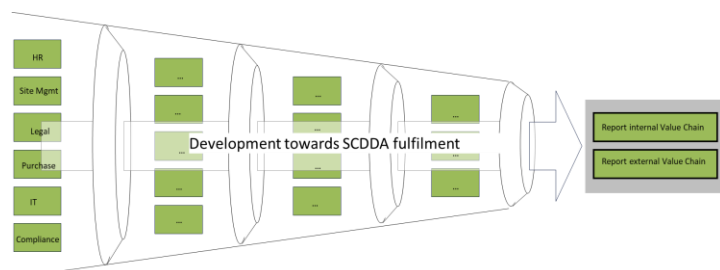
Others



Project organisation



Workshop - Topics



Planning for the "end result":
> Report in Q 1 2024
Who does what until when?



Procedure Risk analysis

- Own business division
- Suppliers



Smart processes

- IT support
- From paper into paper

General

Risk management,
policy statement
Complaints procedure,
documentation, report

Indirect suppliers

Substantiated
knowledge,
Analysis + Measures

Own business area

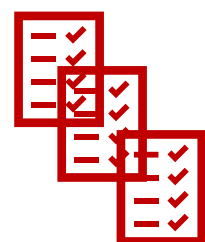
Analysis + Measures

Direct suppliers

Analysis + Measures

What is the current status

- General
- Own business division
- Immediate suppliers
- Indirect suppliers



What is the current state of
"Paper compliance" -
responsibilities, structures,
processes



Individual
questions



Complaints procedure

- What
- Where
- How
- Who



Process Ownership
> Who and how



Customer communication

- General
- Commitments
- No Gos



EU Directive

- What comes
- Can the German system be replicated
- What is different

Other...our Toolbox and our checklists

Nur Dokumente

Beschreibung | gerne gehen wir die Dokumente in einer Videosession gemeinsam durch + zeigen sie auf dem Screen

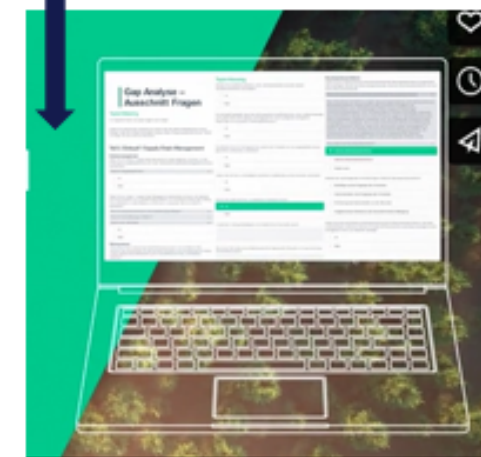
INHALTSVERZEICHNIS

Toolbox mit über 200 Seiten in 16 Dokumenten

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- 03 Checkliste § 2 Abs. 2 Nr. 4
- 04 Checkliste § 2 Abs. 2 Nr. 5
- 05 Checkliste § 2 Abs. 2 Nr. 6
- 06 Checkliste § 2 Abs. 2 Nr. 7
- 07 Checkliste § 2 Abs. 2 Nr. 8
- 08 Checkliste § 2 Abs. 2 Nr. 9 und 10
- 09 Checkliste § 2 Abs. 2 Nr. 11
- 10 Checkliste § 2 Abs. 3



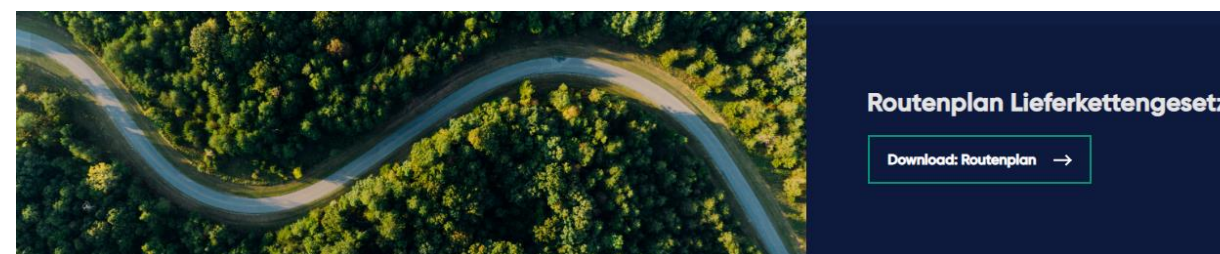
Weitere Dokumente

Kosten

je nach Bedarf

Further information on the Supply Chain Sourcing Obligations Act...

At <https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act> you will find a lot of further information on the LkSG, such as our guide to risk analysis, the synopsis to the FAQ of the BMAS, our route plan or an explanatory video on our gap analysis, and much more.



GAP-Analyse Tool: Ist Ihr Unternehmen für das Lieferkettengesetz in 2023 gut aufgestellt?





Experts

Your experts

Martin Rothermel has built up the German practice area of commercial and contract law. He advises companies on purchasing, quality assurance, distribution (e-commerce, commercial agent, authorised dealer and franchise systems) and product liability. His work includes contract drafting as well as representation in contentious disputes. His clients include national and international companies in industry and commerce. Martin Rothermel regularly publishes articles and gives lectures on international sales and delivery law (including UN sales law), supply chain, distribution and cartel law, e-commerce law and product liability law.

Martin has published the first legal commentary handbook on the German LkSG (SCDDA) in 2022.

Martin Rothermel studied in Würzburg, worked as a trainee lawyer for Siemens AG in Munich and Procter & Gamble Comp. in the USA. He obtained his doctorate in antitrust law, worked as in-house counsel for a medium-sized IT company since his admission to the bar in 1999 and then as a management consultant for Roland Berger Strategy Consultants. After working for a national commercial law firm, he joined the Munich office of Taylor Wessing in 2004.

Languages:
German, English

"Leading name", "Tier 1", Legal 500 2023
"Leading lawyer in distribution law", JUVE 2022/2023
"Lawyer of the Year for Foreign Trade", Handelsblatt 2021
"Particularly innovative in commercial law", Brand Eins 2021
"Recommended Lawyer", in JUVE, Chambers, Legal 500
"Leading law firm in contract law and antitrust law", Kanzleimonitor.de
"He has very deep knowledge of the legal aspects, knows the law, and we also get advice that is very pragmatic and very helpful. So the theory is good and he also provides good solutions.", Client, Chambers Europe 2020
"leading in German and international commercial and liability law", "expert in contract drafting and management". Handels- u. Haftungsrecht", "Experte für Vertragsgestaltung u. -management", "stark im internat. Distribution law", Competitor, Juve 2019
"Market sources emphasise his experience and tenacity, stating that "he is certainly someone who doesn't give up easily during negotiations.", Chambers Europe 2019
Highlighted as Best Lawyer for Foreign Trade and Franchise Law, Best Lawyers in Germany, Handelsblatt 2018
"Sources hail Martin Rothermel for being "extraordinarily creative," adding: "He really never gives up and tries things even in impossible situations." He is renowned for his strength in distribution and franchise agreements and also has a high level of expertise in commercial litigation", Chambers Europe 2018
"Frequently recommended", "outstanding", "strong expertise", JUVE Handbook 2017



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As a trained CSR manager, Sebastian Rünz advises companies on legal components related to Corporate Social Responsibility (CSR), for example on the concrete implementation of CSR in sustainable contracts as well as the legal integration of sustainability aspects into compliance management systems. His work also includes representing clients in contentious disputes.

Languages: German, English

- > Special expertise: Risk analysis guide (https://www.taylorwessing.com/-/media/taylorwessing/files/germany/2022/03/leitfaden-risikoanalyse_taylor-wessing.pdf); cooperation with software providers.
- > Special expertise in the area of "reviewing corporate approaches": several gap analyses based on our online mask-based IT tool (see our website for introductory video Gap Analysis at <https://www.taylorwessing.com/de/insights-and-events/insights/supply-chain-act>) = Best Practice
- > Special expertise on the topic of "MBA", as several mandates = best practice; at the German Institute for Compliance, Sebastian Rünz heads the "MBA" sub-working group in the CSR and Human Rights working group and, together with other company representatives, is developing the DICO standards on human rights officers....



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