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Practical guide

For the risk analysis of Sec. 5 Supply Chain Due Diligence Act

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A. INTRODUCTION

As of 1 January 2023, companies based in Germany generally employing at least 3,000 employees are obliged to comply with the human rights and environmental due diligence obligations set out in Secs. 3 et. seqq. Supply Chain Due Diligence Act (**LkSG**).

One of the **most important obligations** that must be addressed first is the **risk analysis** set out in Sec. 5 LkSG. *But how does a company carry out such a risk analysis?* Considering that time is running out until the law takes effect, this question is becoming ever more pressing. Companies should thus start with the risk analysis as soon as possible.

This in-depth **guide** aims to **provide** the reader with an **approach on how to conduct a risk analysis in tangible terms**. It goes well beyond what is regularly found in practical guides and contains numerous links to helpful public indices, overviews, guides and tools. The approach outlined here recognises that it is not usually possible to address every conceivable risk in the supply chain at the first attempt. It therefore proposes a coherent and **step-by-step system that aids in determining risk-free areas, suppliers that need to be "filtered out"** and risks to be classified into different priority levels. Hence, not every risk that is identified necessarily leads to a concrete measure within the meaning of the LkSG.

B. PRINCIPLES AND DEFINITIONS

Pursuant to Sec. 5 of the LkSG, companies must conduct an **appropriate risk analysis in order to identify the human rights and environmental risks in their own business area**, in the business area of their **direct suppliers** and - in the case of substantial knowledge of possible violations - also in the business area of indirect suppliers (cf. Sec. 9 III LkSG). The identified **risks are to be evaluated and prioritised**. This process serves as a basis for implementing effective preventive measures (as defined in Sec. 6 LkSG) and remedial measures (as defined in Sec. 7 LkSG).

Central stipulations for the risk analysis are the human rights and environmental risks mentioned in Sec. 2 II and III LkSG.

Practical tip: Take a look at the explanatory memorandum to these risks in the LkSG and compile the international conventions mentioned there. If one of the risks mentioned could be deemed as relevant, you already have an initial basis for assessment.

The analysis pursuant to Sec. 5 LkSG to determine such risks must be **"appropriate"**. This vague legal term is to be defined in relative terms in order to grant the company the necessary flexible scope for discretion and action:

the greater a company's ability to exert influence, the more likely and severe the expected violation of the protected legal position, and the greater a company's contribution to causation, the greater the requirements that can be assigned to a company for identifying a risk. The more susceptible a business activity is to human rights and environmental risks by product and production site, the more important it is to monitor the supply chain.

The principle of appropriateness set out in Sec. 3 II LkSG applies to all obligations regulated by the LkSG.

However, it is also clear that a company is not required to do anything that is legally or in actuality impossible. Moreover, the law only establishes a duty to make an effort and neither a

duty to succeed nor a guarantee. The procedural obligations stipulated oblige the company to implement a specific measure, but not to guarantee success. This means that the authorities will also focus their review on the efforts taken, i.e. in the context of risk analysis, on the company's internal process for identifying, evaluating and prioritising any risks. The process must be coherent and comprehensible. If this is the case, the obligation to make an effort is deemed to be fulfilled - even if an actual risk was not identified in a specific individual case.

Practical tip: Document your risk analysis procedure regularly; in this way, you already create a basis for the annual report to be submitted later. You should also inform the people responsible for risk management within the meaning of Sec. 4 II LkSG about your procedure.

C. RISK ANALYSIS FOR DIRECT SUPPLIERS

A direct supplier is defined as a party to a contract for the supply of goods or the provision of services whose supplies are necessary for the manufacture of the company's product or for the provision and use of the service in question; cf. Sec. 2 VII LkSG.

I. Step 1: Get an overview

According to the explanatory memorandum to Sec. 5 I LkSG, companies should, in a first procedural step, gain an overview of their own procurement processes, of the structure and persons at the immediate supplier, and of the important groups of people who may be affected by the company's business activities.

As a rule, many companies already have a good overview of their suppliers due to their SAP systems. Use this internal knowledge first. In addition, a "Core Team Supply Chain Act" makes sense here. If relevant supplier information is missing and cannot be found out through internal and external sources, you should conduct supplier surveys as necessary.

Supplier lists should at least contain the country of origin and the industry or

specific commodity group, as this information is important for risk identification (see below). When concluding contracts with new suppliers, this information should ideally be recorded immediately. In case of existing contractual relationships, this information should be researched as necessary.

II Step 2: Risk identification/investigation

First, all relevant risks must be identified so that they can then be evaluated and prioritised.

Scope

Initially, the supplier itself should be specifically examined if internal signs already indicate a risk (e.g. the supplier has attracted negative attention in the contractual relationship; or lawsuits / allegations against the supplier are known - in this case, a comparison with <https://www.business-human-rights.org/de/von-uns/lawsuits-data-base/> can be useful). If there are strong signals, then there is already a risk within the meaning of the LkSG with regard to this supplier.

Subsequently, when identifying a potential risk, it is advisable to examine the "remaining" supplier list according to two criteria: **country of origin** and **risk area**.

Here, an abstract / generalizing approach is to be taken, e.g. a supplier from Yemen (criterion: country of origin) or the supplied raw material cobalt (criterion: risk group; product) could generally to be assumed to pose a potential risk. If there is a potential risk according to at least one criterion, then there is a relevant risk that must be earmarked and prioritised later.

See the following figure for illustration:

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

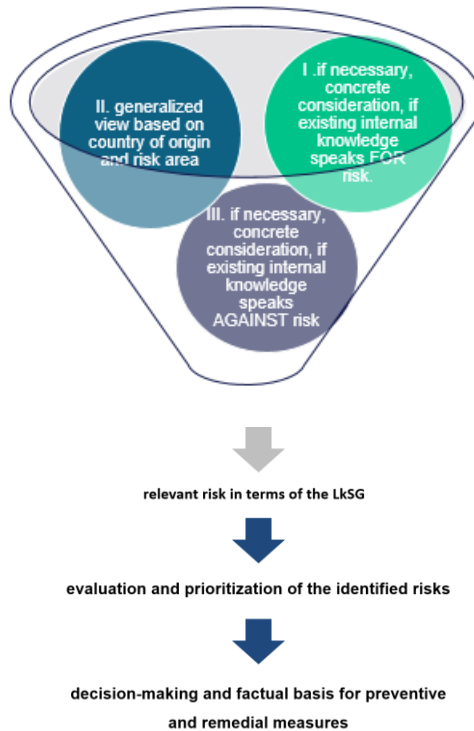
If there is internal knowledge available that, despite signs of an (abstract) risk based on the generalised view (see above), there is, in fact, no risk (due to, for example, inspections or certifications carried out in the past indicating that no human rights violation has occurred or is imminent), then this supplier would again be taken off your risk list and could be "sorted out" (**cross-check**).

In order not to have to carry out a detailed case-by-case investigation at this point, the investigation within the framework of cross-checks should be limited to internal or at least quickly accessible knowledge.

Practical tip: Suppliers who themselves fall under the LkSG could also be classified as non-risk suppliers, at least to the extent that there is confidence that they themselves will have to meet the requirements of the LkSG.

Attention: The risks for potentially at-risk groups are decisive, not the risks for the company itself. Therefore, purely sorting out suppliers that are "financially insignificant" for a company is not recommended against the background of the requirements of the LkSG. The classification of suppliers as "non-risk" should be provable by sufficient factual basis, especially against the background of the report to be submitted annually.

To summarise:



1. Criterion: Country of origin

The general investigation with regard to the country of origin can be carried out on the basis of various publicly accessible indices. To find out not only the country of origin but furthermore the country of production of the suppliers seems - at least in the context of an initial classification into risk and non-risk suppliers - to go beyond the criterion of appropriateness.

Human rights risks

It is important to note that not every index covers every human rights or environmental risk as defined in Sec. 2 II, III LkSG. For example, one might think that the Global Rights Index of the International Trade Union Confederation has a reference to all risks related to labour (cf. Sec. 2 II No. 1-8 LkSG). In fact, however, it only maps violations of collective labour law, so that only potential risks with regard to Sec. 2 II No. 6 LkSG (disregard of freedom of association) can be determined. Furthermore, the indices regularly only relate to state action, so that risks which have their cause in non-state action are not covered. A non-exhaustive list of indices and their allocation to human rights risks within the meaning of Sec. 2 II LkSG can be found here:

Index	Represented human rights risk in the sense of Sec. 2 II LkSG
https://worldjusticepro-ject.org/our-work/research-and-data/wjprule-law-index-2020	<ul style="list-style-type: none"> Sec. 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://www.globalslaveryindex.org/resources/downloads/	<ul style="list-style-type: none"> No. 6 (freedom of association) No. 11 b) c) (violence by security forces) No. 4 (slavery)
https://epi.yale.edu/downloads/epi2020report20210112.pdf	<ul style="list-style-type: none"> No. 9 (soil, water and air pollution)
https://www.wsi.de/de/wsi-mindestlohn-daten-bank-international-15339.htm https://www.living-income-benchmarks	<ul style="list-style-type: none"> No. 8 (minimum wage; fair wage)

Several indices compiled together are therefore necessary to cover all risks within the meaning of the LkSG as a whole. The indices also only roughly match the human rights risks from Sec. 2 II 2 LkSG, without guaranteeing that the respective particulars in the indices always correlate with the human rights risks described in the LkSG entirely.

There are also other indices that cover certain risks. An overview is provided at <https://triponelconsulting.com/2020/09/30/assessing-human-rights-related-country-risk-publicly-available-indices/>.

These points, on the other hand, provide a good jumping-off point. It should

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also be kept in mind that the LkSG lays down duties to make an effort that are based on practicality.

Important: Given the many different criteria on which the indices are based, countries may be classified differently in each index. Should this be the case, you could create a general classification using individual cases. For example, if three indices show a low risk and only one index shows a medium risk, classify the country as a non-risk country overall.

Environmental risks

Sec. 2 III LkSG lists environment-related risk and refers to the conventions listed in numbers 12, 13 and 14 of the Annex to the LkSG (Minamata Convention on Mercury, POPs Convention on Persistent Organic Pollutants, Basel Convention on Disposal of Hazardous Wastes). The list is exhaustive so that "environment-related obligations" within the meaning of the LkSG refer exclusively to the obligations specified in these conventions.

A non-exhaustive list of indices, explanations and tools and a classification of the environment-related risks within the meaning of Sec. 2 III LkSG can be found below:

Index / Explanation / Tool	Represented environment-related risk in the sense of Sec. 2 III LkSG
https://www.mercuryconvention.org/en	<ul style="list-style-type: none"> Mercury: Sec. 2 III No. 1, 2, 3 LkSG Enables search by sector and country
(Second Global Monitoring Report)	<ul style="list-style-type: none"> Persistent organic pollutants: Sec. 2 III No. 4, 5 LkSG Shows trends in emissions of various POPs subdivided by region
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 the development of emissions of individual POPs in the EU broken down by country and sector
http://www.pops.int/TheConvention/ThePOPs/All-POPs/tabid/2509/Default.aspx	<ul style="list-style-type: none"> Persistent organic pollutants List of all POPs covered by the POPs Convention
http://www.pops.int/Implementation/UnintentionalPOPs/Toolkit	<ul style="list-style-type: none"> Persistent organic pollutants Toolkit on "undesirable by-products"; p. 23 et seq. list

forUPOPs/Overview/tabid/372/Default.aspx	sources of these POPs by sector and product group.
https://senso-neo.com/global-waste-index-2019/	<ul style="list-style-type: none"> Waste: Sec. 2 III No. 6, 7, 8 LkSG Only represents OECD countries; probably only the categories "illegal waste disposal" and "other, undiscovered waste" are relevant
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; search by country possible
http://www.basel.int/Implementation/Publications/GuidanceManuals	<ul style="list-style-type: none"> Waste Guidance on compliance with the Basel Convention

These indices and tools provide only a first point of reference for a potential risk. At the latest, when preparing preventive or remedial measures, gathering further information is required to determine whether a risk really does exist.

2. Criterion: Risk area

Further criteria for determining risk are the supplier's specific industry and, above all, the product / product group. Supplied products can, in turn, be divided into risk and non-risk products / material groups. Material groups set up in SAP could serve as a source. In individual cases, when determining risk areas, it may also make more sense to focus on individual elements contained in components and not on a product as a whole.

Again, various public sources of information can help to figure out which areas are more likely to be risky and which are not:

Source	Human rights risk in the sense of Sec. 2 II LkSG
https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods	<ul style="list-style-type: none"> No. 1-4 (the spreadsheet file offers the possibility to determine risks according to individual product categories (e.g. "bricks" or "cotton").
https://www.nac.haltige-agrar-lieferketten.org/en/	<ul style="list-style-type: none"> No. 1-10 (provides a risk classification by sector (cf. Table 69 and 70; page 239 et. seq.) and "heat maps" - these map human rights risks at sector level that are associated with sector activities and embedded in governance contexts. In addition, the heat maps locate the risks along various stages of the value chain and assign them to human rights issues.)
https://www.responsible-sourcing-tool.org/visualizerisk	<ul style="list-style-type: none"> No. 1-4 (offers search options by industry and raw material / consumable good)
https://www.kompass-nachhaltigkeit.de/en/product-search/aparel-textiles	<ul style="list-style-type: none"> No. 1-10 (lists specific products for "public procurement" that are typically linked to human rights violations)
https://www.mvo.risicochecker.nl/en	<ul style="list-style-type: none"> No. 1-10 (risk check for specific products and countries)

It is also possible to involve an external software provider who can assist with the analysis of risks (of immediate suppliers).

Practical tip: You should ensure that the method used by the third-party provider allows conclusions to be drawn about the relevant risks under the LkSG. The approach of external providers varies. In particular, there are web crawler software solutions that specialise on primarily filtering out and evaluating information from online texts and social media which, in the event of critical findings, are then sent, as an alert to the customer. Other solutions depend more on self-disclosed information provided by the suppliers themselves. If you need further information on the approach of individual providers, please contact us.

III. Step 3: Risk assessment and risk prioritisation

According to Sec. 5 II LkSG, the identified risks must now be appropriately weighted and prioritised. The aim is to create a sufficient decision-making and factual basis for any preventive and remedial measures; which risks the company must address and how depends largely on the individual company and risk situation.

The criteria listed in Sec. 3 II No. 1-4 LkSG are decisive for the evaluation and prioritisation (cf. Sec. 5 II 2 LkSG). You can see what is hidden behind these criteria in the table at the top right.

It is often necessary to obtain additional information in order to create the factual basis for the weighting based on the criteria mentioned. First of all, use internally available knowledge, which is easy to obtain. An indication for the criterion of influence is, for example, the ratio of your order volume to the total turnover of the supplier. The more important you are for the supplier from an economic point of view, the greater your ability to "exert pressure".

If necessary, further widening of

Criterion according to Secs. 5 II, 3 II LkSG	Meaning	Circumstances
Nature and scope of the business	<ul style="list-style-type: none"> Type = includes nature of the product/service, variety of services provided, and trans-regional or international focus. Scope = refers to the size of the enterprise, number + function of employees, volume of sales, fixed and working capital, production capacity. 	<ul style="list-style-type: none"> Country-, industry- and product group-specific risks → The more susceptible a business activity is to risks in terms of type and scope, the higher the priority that must be set Note: this criterion is only meaningful in combination with the following other criteria (e.g. the scale of production as well as the number of employees may influence the number of potentially affected persons in the context of the severity of the violation)
Ability to influence the immediate polluter	<ul style="list-style-type: none"> Possibility for the German company to directly or indirectly influence the direct cause of the risk or violation 	<ul style="list-style-type: none"> Proximity to risk (where and by whom does risk arise directly?) Ratio of order volume of the company to turnover of the supplier (economic dependence?)
Severity, probability and irreversibility of the injury (= hazard potential)	<ul style="list-style-type: none"> Severity = degree of affectedness; number of people affected Irreversibility = possibility of remedying the negative effects? Probability of occurrence = assessment of whether and when risk turns into infringement of legal rights 	<ul style="list-style-type: none"> Belonging to high-risk sector Actual and regulatory framework conditions of the place of production Handling of toxic substances in production Poor sustainability performance of (potential) suppliers
Nature of the contribution to causation	<ul style="list-style-type: none"> Distinction as to whether a company has directly caused the risk alone or jointly with a third party, or whether it has indirectly contributed to the risk 	<ul style="list-style-type: none"> Demands to suppliers that can increase risks See also indications on the criterion "capacity to influence", as both criteria are closely linked

knowledge is required through more elaborate measures, such as on-site inspections, discussions with workers / trade unions, direct exchange with residents, case studies, further expert knowledge (cf. explanatory memorandum to Sec. 5 II LkSG). For information on which in-depth knowledge may be necessary at which stage of the risk analysis, see the table on the right. →

On the [following page](#), you will find a [scheme for the risk analysis which also contains ideas for weighting and prioritising the identified risks](#). Using this scheme, it is also possible to arrive at a low priority for identified risks with the effect that it would not be necessary to link a preventative / remedial measure within the meaning of the LkSG to every risk. Of course, such system requires a coherent and comprehensible explanation in a report.

Stage	Nature and scope of information gathering
Risk determination - concrete consideration (e.g. individual suppliers)	<ul style="list-style-type: none"> Existing internal knowledge Private providers, if applicable
Risk determination - generalised view (risk country and area)	<ul style="list-style-type: none"> Existing internal knowledge (Publicly available) indices Private providers, if applicable
Risk analysis - Evaluation and prioritisation of risks	<ul style="list-style-type: none"> Easy to obtain internal knowledge Individual consolidation of knowledge Indices Private providers, if applicable
Preparation / implementation of preventive and remedial actions	<ul style="list-style-type: none"> Internal knowledge If necessary, further deepening of knowledge through more elaborate measures, e.g. on-site inspections, discussions with employees/trade unions, direct exchange with stakeholders, supplier surveys, case studies, further specialist knowledge (cf. explanatory memorandum to Sec. 5 II).

Risk analysis of direct suppliers

2. Risk identification

Risk country (location of supplier in risk country or not)	Risk area (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.



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.

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.

3. Assess and prioritize identified risks

Own influence	Hazard potential	Own causation	Causation Supplier	Evaluation and prioritisation
+	+	+	+	High Priority
+	+	+	-	
+	+	-	+	
+	-	+	+	
-	+	+	+	Medium Priority
-	+	+	+	
-	+	-	-	
-	+	-	+	
+	-	-	+	Low Priority
+	-	+	-	
-	-	+	+	
+	-	-	-	
-	+	-	-	Low 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.

D. RISK ANALYSIS FOR INDIRECT SUPPLIERS

In the case of substantial knowledge, a risk analysis must be carried out immediately and on an ad hoc basis, i.e. only with regard to the concrete possible infringement, also for indirect suppliers; cf. Sec. 9 III No. 1 LkSG.

The difference to direct suppliers is that there is no contractual relationship between the company and the indirect supplier, see Sec. 2 VIII LkSG.

Substantial knowledge exists if the company has verifiable and serious factual indications that make a human rights or environmental violation in the indirect supplier's business area appear possible.

Examples of sources of information: Complaints procedure according to Sec. 8 LkSG; own or forwarded official as well as other external findings.

Examples of actual indications: Reports on the poor human rights situation in the production region; affiliation with a risk industry; previous incidents at the indirect supplier.

The wording in Sec. 9 III LkSG suggests that the company has no duty to investigate. However, it is unclear what is required for a company to gain substantial knowledge, for example, does an NGO report that indicates a risk and that is provided to the company suffice? This is supported by the explanatory memorandum to Sec. 9 III LkSG, which also mentions the forwarding of findings by the authority as an exemplary source of information.

The risks known in the context of indirect suppliers must then be weighted and prioritised again (see above), so that preventive and remedial measures can be taken if necessary.

E. RISK ANALYSIS IN OWN BUSINESS AREA

Definition: According to Sec. 2 VI LkSG, "own business area" covers every activity of the company to achieve the company's objective, i.e. every activity for the production and exploitation of products and for the provision of services, irrespective of

whether it is carried out at a location in Germany or abroad. As for affiliated companies, the parent company's own business area is deemed to include a company belonging to the group if the parent company exercises a determining influence on the company belonging to the group.

The following **special features / differences to the risk analysis with regard to suppliers** should be noted:

- In the context of risk identification, a distinction should be made between the company's own **locations** in Germany or abroad. For the latter, the same **splitting into risk countries is applicable** (see above). By reason, this is not applicable to domestic locations.
- In the case of **risk areas**, it is necessary to consider where important groups of people can be affected by the company's business activities and how, e.g. in the form of a **risk mapping** according to business areas or products.
- The human rights and environmental risks in Sec. 2 II and III LkSG must also be reviewed as part of the risk analysis in one's own business area. Doing so, it quickly becomes apparent that certain risks regularly occur less frequently in one's own business area than others.

Child labour, forced labour, slavery, lack of freedom of association, for example, are unlikely to occur in practice, at most if the company has its own site in a high-risk country.

Other risks are more likely to exist in the company's own business area, for example:

- **Sec. 2 II No. 5 LkSG** (*disregard of occupational health and safety obligations according to the law of the place of employment*)
→ The website of the International Labour Organization provides a good initial overview of which occupational health and safety regulations apply in which countries: <https://www.ilo.org/safework/countries/lang--en/index.htm>.
- **Sec. 2 II No. 7 LkSG** (*unequal treatment in employment*, e.g. on the basis of national and ethnic

origin, social origin, health status, disability, sexual orientation, age, gender, political opinion, religion or belief, payment of unequal remuneration (especially between men and women) for work of equal value. Since a company has no data at all on most of these criteria, systematic unequal treatment is likely to be ruled out on a regular basis, and, at most, there will be individual incidents which then have to be dealt with appropriately. However, a somewhat more complex analysis could arise with regard to the topic of "gender-equal distribution of positions in the company" and "gender pay gap", as it is questionable whether a company can simply claim that no differences exist or whether a corresponding data basis must first be created to this end. In the case of salaries, it may be possible to draw on previous reviews of pay structures in the context of the German Transparency in Wage Structures Act (*Entgelttransparenzgesetz*).

- **Sec. 2 II No. 8** (*withholding of a reasonable wage; at least the minimum wage determined by the applicable law, otherwise measured according to the regulations of the place of employment*).
→ The WSI Minimum Wage Database International lists the minimum wage in selected countries <https://www.wsi.de/de/wsi-mindestlohn-datenbank-international-15339.htm>.

→ On living-income.com there is a spreadsheet overview which gives reference values for a reasonable wage in different countries <https://www.living-income.com/living-income-benchmarks>.

An independent calculation of an appropriate wage by a company can be very complex and usually requires the involvement of external expertise.

- **Sec. 2 II No. 9 LkSG** (*harmful soil changes, water pollution, air pollution, harmful noise emissions or excessive water consumption, which lead to health damage specified in the Act*) and **Sec. 2 II No. 10 LkSG**

(*unlawful eviction, unlawful deprivation of land, forests and waters, the use of which secures a person's livelihood, in the case of acquisition, construction or other use*) → The LkSG does not define the terms of harmful environmental effects from Sec. 2 II No. 9 LkSG. In Germany, it is likely that environmental regulations such as the Federal Emission Control Act can be used as a guideline, in other countries the corresponding local regulations - if they exist. It is still unclear whether German legal principles should be applied in the absence of local environmental regulations or if the level of protection is completely inadequate to prevent damage to health. In the case of major projects (abroad), it is in any case advisable to carry out an environmental impact assessment. Also in the context of Sec. 2 II No. 10 LkSG, the exact standard - national law or international standards - for assessing the unlawfulness of eviction or deprivation is unclear. Therefore, here too, at least in the case of major projects abroad, a precise assessment of the project's impact in this respect must be carried out involving external expertise and the local population in stakeholder consultations.

Practical tip: For environment-related risks in one's own business area within the meaning of Sec. 2 III LkSG, the official websites of the three relevant conventions mentioned above (Minimata, POPs, Basel) offer helpful explanations.

Not all of these risks are typically on a company's radar. Whether authorities intend to read (detailed) explanations on all these risks in the annual report is not yet foreseeable. In any case, it cannot be ruled out that the risks in one's own business area will also play a significant role in the context of the review of a company's compliance with the LkSG.

- It is also particularly essential to identify and bundle internal company knowledge - for example by appointing a human rights officer -

and to communicate the information that accumulates in all relevant internal company business processes (executive board, compliance department, purchasing department, etc.) to the persons responsible.

Attention: The complaints procedure required under Sec. 8 I LkSG can also be a valuable source of information.

- In addition, a concrete risk assessment should be carried out directly in the company's own business area, i.e. it should be determined whether such a risk actually exists or not. The point in time of the detailed determination of facts and gaining of knowledge thus takes place at an earlier stage than the risk analysis at suppliers. The reason for this is that the risk analysis serves as the basis for determining effective preventive and remedial measures and that stricter requirements apply to the company's own business area than to those for direct or indirect suppliers. For example, in a company's own domestic business area, the remedial action must lead to a cessation of the violation. Here, as an exception, a duty to succeed (not only to make an effort) is stipulated. In the company's own business area, the company is at such proximity to the risk that the company is expected to bring any imminent or already occurred infringement to an end without delay.
- Prioritisation of the identified risks is likely to be less relevant in the company's own sphere of business, as this only has to be carried out if the company cannot address all risks at the same time (cf. legal justification for Sec. 5 II LkSG). In the company's own business area, it is generally easier to address all risks than outside the company's own sphere of business.

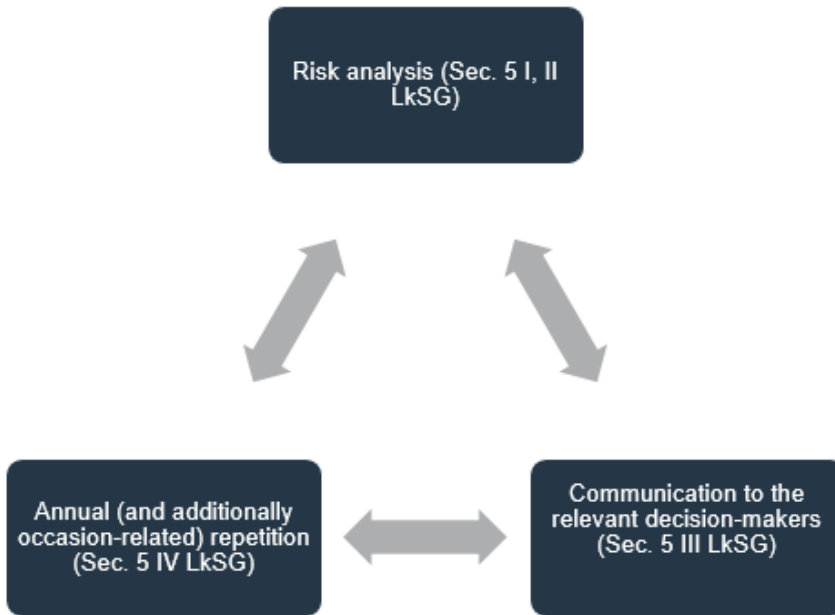
When prioritising the identified risks, the criteria "ability to influence" and "type of causation contribution" (here: own causation) are usually not meaningful, as the company's own business area inevitably has a high level of influence and the risk is usually caused directly by

the company alone or jointly with another entity.

F. COMMUNICATION OF RESULTS, FREQUENCY, PREVENTION AND REMEDIES

The results of the risk analysis must be communicated to the relevant decision-makers in the company (e.g. management board, purchasing department, etc.) (Sec. 5 III LkSG). In view of the dynamics of the human rights situation, the risk analysis is not a one-time process, but must be repeated at least once a year and additionally on an ad hoc basis. However, the obligation to conduct an ad hoc review only applies in the event of significant changes in the company (e.g. new business areas, new products, new projects).

The risk analysis serves as a basis for taking preventive and remedial measures. Preventive measures (Sec. 6 LkSG) are intended to avert future human rights and environmental risks; take place primarily in the company's purchasing, compliance and sustainability departments; and consist, in particular, of processes and documents including, for example, the following: *declaration of principles, code of conduct, supplier code of conduct, supplier selection process and approval process in which human rights aspects are taken into account and evaluated, sustainable procurement guideline, KYC process with questions on human rights, sustainable contract design, employee and supplier training, supplier audits*. Remedial measures (Sec. 7 LkSG) serve to cease, prevent or minimise human rights or environmental violations that have already occurred or are imminent and primarily include the *immediate termination of a violation and the development of a remedial plan with a supplier*.



G. FINES

Anyone who intentionally or negligently fails to carry out a risk analysis within the meaning of Sec. 5 LkSG or Sec. 9 LkSG, or fails to do so correctly, completely or in good time, is acting in

breach of regulations pursuant to Sec. 24 I No. 2, II sentence 1, No. 2, sentence 2 LkSG. As a consequence, fines of up to **EUR 5 million** may be imposed. It is not clear whether, in addition, fines of up to **2% of the annual group turnover** may be imposed pursuant to Sec. 24 III sentence 1 LkSG in

the event that the incorrect risk analysis and the resulting lack of knowledge lead to the failure to take remedial action within the meaning of Sec. 7 LkSG. In addition, there is the threat of exclusion from public tenders if the fine reaches the threshold of EUR 175,000 (for natural persons) and EUR 1.5 million (for legal entities).

H. OUTLOOK

The more thought-out and logical the concept of a company's risk analysis appears and the more sources and indices - covering all risks – a company uses for the risk determination, the more likely the risk analysis is "appropriate" in the sense of Sec. 5 I 1 LkSG. The procedure for determining the risks then offers the authorities less potential for the accusation of a breach of the duty of care.

There is still enough time to develop analysis procedures and criteria. Nevertheless, this extensive and demanding task should be started early enough - gladly with our support.

...FEEL FREE TO CONTACT US!

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