

EU Supply Chain Due Diligence

Update: June 2023

Synoptic comparison of (i) the Commission's proposal (February 2022), (ii) the proposal of the Council of the European Union (November 2022) and (iii) the proposal of the EU Parliament (June 2023) for an EU Supply Chain Due Diligence Directive with (iv) the German Supply Chain Act (Lieferkettensorgfaltspflichten Gesetz, LkSG)

In November 2022 the **Council of the European Union**¹ - based on the **Commission's proposal** of 23 February 2022² - presented its **proposal** for the Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (**CSDDD** or **CS3D** - partly also, although technically incorrect: **EU Supply Chain Act**). The **EU Parliament's Committee on Legal Affairs (JURI)** has now voted on 25 April 2023 - after a draft report³ was already published in November 2022 - on an extensive catalogue of proposed amendments⁴ and presented its final report for an EU Parliament proposal⁵. The EU Parliament discussed this report in plenary on 31 May 2023 and finalised its proposal on 1 June 2023⁶. Now follow the so-called **trilogue negotiations** between the Commission, the Council and the Parliament. These are currently scheduled to begin in Summer 2023.

This synoptic comparison compares the main contents of the proposals for the CSDDD and the LkSG, which has already been in force since 1 January 2023, and thus enables an assessment of the development trend of the issue of EU supply chain due diligence obligations.⁷

Please note: This document is **based on its German-language sister version** and has been translated using an electronic translation programme. **Subtleties in the wording can and will therefore differ from the original English wording of the respective proposals.**

¹ *Council of the European Union*, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, 15024/1/22 REV 1, available online at: <https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pdf>.

² *European Commission*, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM(2022) 71 final, 2022/0051 (COD), available online at: https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF.

³ *EU Parliament Committee on Legal Affairs*, Draft report on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, (COM(2022)0071 - C9-0050/2022 - 2022/0051(COD)), available online at: https://www.europarl.europa.eu/doceo/document/JURI-PR-738450_EN.pdf.

⁴ The proposed amendments are available online at: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2022/0051\(OLP\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2022/0051(OLP))

⁵ **So far only available as a "Voting List"**, available online at: https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/JURI/DV/2023/04-24/voting-list-corporate-due-diligence_EN.pdf.

⁶ *European Parliament*, P9_TA(2023)0209 Corporate Sustainability Due Diligence Amendments* adopted by the European Parliament on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD)), available online at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.pdf.

⁷ See also the very useful comparison of the Commission's proposal and the LkSG in *Rothermel's* LkSG Commentary, Part A. marginal no. 36; <https://shop.ruw.de/startseite/5051-lksg.html>

The most obvious difference between the various CSDDD proposals is the scope and amount of text by which the **proposal** of the EU Parliament expands the Commission's original proposal. Compared to the **draft report** from November 2022, however, the (once again) inevitably resulting increased degree of formalisation has been reduced. In the draft report, the **reference points of the due diligence obligations** were extended to include *good governance* in addition to human rights and environmental adverse impacts. This has already been abandoned again in the final report. There were only a few deletions between the final report and the adopted proposal of the EU Parliament, but the most prominent is certainly the deletion of the personal responsibility of board members for the implementation of due diligence obligations. With regard to the **scope of application**, the EU Parliament continues to pursue the most ambitious approach and, with the attribution of employees to the *ultimate parent company of a group*, adopts the concept of employee attribution to the parent company from the LkSG (see below in detail).

The somewhat leaner proposal of the **Council of the European Union**, on the other hand, moves in the direction of the LkSG in some places - for example in the shape of the newly chosen terms such as *direct* and indirect *business partners*, which are modelled on the direct and indirect suppliers of the LkSG, or in the form of the newly conceived *chain of activities*, which moves away from the concept of the value chain and towards that of the supply chain by excluding the stage of use or utilisation of the company's products or service.

"*Dead*" now seems to be the "qualification" of **established business relationship** still used in the Commission proposal, which could no longer be found in the draft report of the EU Parliament's Committee on Legal Affairs and the Council proposal. From a company's point of view, this is very welcome, as the exact threshold at which a business relationship becomes an established one would be rather difficult to grasp. However, the **prioritisation** of actual and potential negative impacts, which is already part of the risk analysis in the LkSG but was still missing in the Commission proposal, in contrast to the report and its draft and the Council proposal, seems to have prevailed.

In addition, when considering the CSDDD proposals, the **identification** of risks or negative impacts according to the CSDDD will probably cause more effort compared to the LkSG. Whereas according to the LkSG the human rights and environmental risks only have to be determined for the *subsidiaries* if a *determining influence* is exercised on them (cf. Sec. 2 para. 6 p. 3 in conjunction with Sec. 5 para. 1 p. 1 LkSG) and for the *indirect suppliers* only if there is corresponding *substantiated knowledge* (§ 9 para. 3 no. 1 LkSG), the CSDDD proposals refer to all subsidiaries as well as the (direct and indirect) business partners of the value chain or chain of activities, so that the scope of the investigation is significantly increased compared to the LkSG.

The greatest distinguishing feature from the LkSG remains the mandatory and priority **civil liability** provided for in the CSDDD proposals. While the Council's proposal restricts it to the extent that it should no longer entitle to "*overcompensation*", according to the report of the Committee on Legal Affairs of the EU Parliament, it should be extended to the extent that the company is also explicitly liable for damages of the subsidiary under its control. The final report refrained from doing so. What is new since the report of the Committee on Legal Affairs of the EU Parliament is, for example, the concept of the *secondary burden of proof* and that *NGOs* should be granted *party rights* in civil lawsuits. This is also included in the finalised parliamentary proposal. Furthermore, the CSDDD, as an element unknown to the LkSG, will in all likelihood also include **concrete climate targets**. Both the Council's and the EU Parliament's proposal go beyond the Commission's proposal and additionally take up the goal of achieving climate neutrality by 2050, which is anchored in the so-called European Climate Act (Regulation (EU) 2021/1119).

In detail, the main differences between the CSDDD/ CS3D proposals are as follows:

- There is disagreement between the proposals regarding the scope of application of the Directive. While the Council of the European Union is pursuing a less far-reaching approach than the Commission's proposal, at least until four years after the Directive enters into force, the EU Parliament would likely include significantly more companies in the scope of the Directive. New in the EU Parliament's proposal is the attribution to the "*very top*" of the *ultimate parent company of a group*, as known from the LkSG.

The Council also wants to leave it up to the member states whether they want to include supervised financial companies in the scope of the Directive.

- After the draft report of the Committee on Legal Affairs had also included *good governance* as a connecting factor of the due diligence obligations, this has disappeared again since the final report.
- While the Council's proposal approaches the LkSG with regard to the conventions referred to and deletes a number of (especially human rights-related) conventions, the EU Parliament's proposal includes a number of further conventions, but does not take over all proposals from the draft report.
- The so-called "*chain of activities*" proposed by the Council develops from the concept of the "*value chain*" still envisaged in the Commission proposal to the concept of the supply chain known from the LkSG. The stage of use/application of the company's products or services is excluded. The proposal of the EU Parliament, on the other hand, retains the *upstream* and *downstream* "*value chain*".
- The concept of "*established business relationship*" is not pursued either in the Council's or the EU Parliament's proposal.
- According to the Council proposal (Art. 4a), parent companies should be allowed to fulfil due diligence obligations on behalf of their subsidiaries, which themselves fall within the scope of the Directive. This was neither in the draft report nor in any other proposal for a Directive and is also not provided for in this form in the LkSG⁸. However, the final report of the Committee on Legal Affairs now also provides for such a possibility and this is also included in the EU Parliament's proposal.
- The proposal of the Council and the proposal of the EU Parliament take up the concept of *prioritisation* and thus, like the LkSG, rely on a risk-based approach.
- The proposals of the Council and the Parliament provide - in contrast to the Commission proposal - in the context of avoidance as well as cessation for rearrangements with regard to the obligation to suspend trade relations or to break off business relations and presuppose a prior examination as to whether more serious effects result from this.
- In the context of "remediation", the EU Parliament's proposal also explicitly holds **institutional investors** and **asset managers** responsible.
- According to the EU Parliament's proposal, the maximum limit of fines should be at least 5% of the company's worldwide net turnover in the business year preceding the decision imposing the fine.

⁸ For more details, see *Rothermel*, LkSG, Part C., § 4, marginal no. 6; <https://shop.ruw.de/startseite/5051-lksg.html>

- With regard to the civil liability risk, only the Council's proposal provides for a clarification that claims for damages must not lead to overcompensation.
The EU Parliament's proposal strengthens the rights of those affected, for example, through urgent legal protection and a ten-year statute of limitations.
- In contrast to the Commission's proposal, the Council's and the EU Parliament's proposal do without a direct responsibility of the company management for the fulfilment of due diligence obligations.

The following is a detailed comparison, with colour code, of the main provisions of the Proposals and the LkSG:

Colour code:

- **Coloured green:** Solely listed in the Commission proposal
- **Coloured purple:** Innovation in the proposal of the EU Parliament
- **Coloured red:** Innovation in the proposal of the Council of the European Union
- **Coloured blue:** Conceptually only provided for in the LkSG

| | Proposal of the European Commission | Proposal of the EU Parliament | Proposal of the Council of the European Union | German Supply Chain Act (LkSG) |
|------------------------------------|---|--|--|---|
| <p>Scope of application</p> | <p>Limited liability companies incorporated under the laws of a Member State and operating in the last financial year:</p> <ul style="list-style-type: none"> - (two years after entry into force, an average of more than 500 employees and worldwide net turnover of more than EUR 150 million, or - (four years after entry into force, more than 250 employees on average and worldwide net turnover of more than EUR 40 million, provided that at least 50% of this net turnover was generated in a risk sector. <ul style="list-style-type: none"> - Textile and leather industry, related products, related wholesale trade - Agriculture, forestry, fishing, manufacture of food products, wholesale of livestock, timber, agricultural raw materials, food, beverages - Extraction of raw materials, processing of metallic and non-metallic products, wholesale of mineral raw materials | <p>Companies incorporated under the laws of a Member State and in the last financial year:</p> <ul style="list-style-type: none"> - (five years after entry into force) an average of more than 250 employees (three years after entry into force 1,000; four years after entry into force 500) and worldwide net turnover of more than (four years after entry into force) EUR 40 million (three years after entry into force EUR 150 million) [companies (themselves, i.e. no reference to <i>ultimate parent company of a group</i> see below) with an average of more than 250 employees and worldwide net turnover of more than EUR 40 million but not more than EUR 150 million, may choose not to comply with the commitments until five years after entry into force], or <p style="margin-left: 20px;">the company does not meet this threshold, but is the ultimate parent company of a group with (four years after entry into force) 500 employees (three years after entry into force 1,000) and a worldwide net turnover of more than EUR 150 million.</p> | <p>Limited liability companies incorporated under the laws of a Member State and operating for two consecutive financial years:</p> <ul style="list-style-type: none"> - (three years after entry into force) on average more than 1,000 (four years after entry into force 500) employees and worldwide net sales of more than 300 million EUR (four years after entry into force 150 million EUR), or - (five years after entry into force) on average more than 250 employees and worldwide net turnover of more than EUR 40 million, provided at least 50% of this net turnover was generated in a risk sector <ul style="list-style-type: none"> - Textile and leather industry, related products, related wholesale trade - Agriculture, forestry, fishing, manufacture of food products, wholesale of livestock, timber, agricultural raw materials, food, beverages - Extraction of raw materials, processing of metallic and non-metallic products, wholesale of mineral raw materials | <p>Companies, regardless of their legal form, which</p> <ul style="list-style-type: none"> - have their head office, their principal place of business, their administrative headquarters, their registered office or a branch office pursuant to Sec. 13d HGB in Germany - as a rule, more than 3,000 (from 1 January 2024 1,000) employees in Germany (if the head office, principal place of business, administrative headquarters are in Germany, employees posted abroad are included) <p>Within affiliated companies (Sec. 15 AktG), the employees of all group companies employed in Germany shall be taken into account when calculating the number of employees of the parent company; employees posted abroad shall be included.</p> |

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| | Proposal of the European Commission | Proposal of the EU Parliament | Proposal of the Council of the European Union | German Supply Chain Act (LkSG) |
|--|---|--|--|--------------------------------|
| | <p>Companies incorporated under the laws of a third country and in the last financial year:</p> <ul style="list-style-type: none"> - (two years after entry into force) net turnover of more than EUR 150 million, or - (four years after entry into force) Net turnover of more than EUR 40 million, provided that at least 50% of the worldwide net turnover was generated in a risk sector (see above). | <p>Companies incorporated under the laws of a third country and in the last financial year:</p> <ul style="list-style-type: none"> - (four years after entry into force) worldwide net turnover exceeding EUR 150 million, of which at least EUR 40 million (three years after entry into force EUR 150 million) was generated in the EU, including royalties generated by itself or its subsidiaries in the Union or branches in the Union under vertical agreements concluded in the Union; or - (four years after entry into force) the company does not meet this threshold but is the ultimate parent company of a group with 500 employees and a worldwide net turnover exceeding EUR 150 million, of which at least EUR 40 million (three years after entry into force EUR 150 million) was generated in the EU including royalties earned by itself or its subsidiaries in the Union or branches in the Union under vertical agreements concluded in the Union | <p>Limited liability companies established under the laws of a third country and in two consecutive financial years:</p> <ul style="list-style-type: none"> - (three years after entry into force) net turnover of more than EUR 300 million (four years after entry into force EUR 150 million), or - (five years after entry into force) Net turnover of more than EUR 40 million, provided that at least 50% of the worldwide net turnover was generated in a risk sector (see above). <p>Member States may exclude financial services provided by regulated financial companies from the scope of application when implementing the Directive</p> | |

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|---|--|---|---|---|
| | Proposal of the European Commission | Proposal of the EU Parliament | Proposal of the Council of the European Union | German Supply Chain Act (LkSG) |
| | Company must do business in the EU by offering products or services | | Company must do business in the EU by offering products or services | |
| Protected legal interests | <u>Human rights adverse impacts:</u> <ul style="list-style-type: none"> - Right of the population to dispose of a country's natural resources and not to be deprived of their means of subsistence - Right to life and security - Prohibition of torture and cruel, inhuman or degrading treatment - Right to freedom and security - Prohibition of arbitrary or unlawful interference with their privacy, family, home or correspondence and attacks on their reputation - Prohibition of interference with freedom of thought, conscience and religion - Right to just and favourable conditions of work, including a decent wage, a decent livelihood, safe and healthy working conditions and reasonable limits on working hours <ul style="list-style-type: none"> - Right to the best interests of the child | <u>Human rights adverse impacts:</u> <ul style="list-style-type: none"> - Right of the population to dispose of a country's natural resources and not to be deprived of their means of subsistence - Right to life and security - Prohibition of torture and cruel, inhuman or degrading treatment - Right to freedom and security - Prohibition of arbitrary or unlawful interference with their privacy, family, home or correspondence and attacks on their reputation - Prohibition of interference with freedom of thought, conscience and religion - Right to just and favourable conditions of work, including adequate remuneration ensuring a decent livelihood, safe and healthy working conditions and reasonable limitation of working hours; also includes the right to a living wage for the self-employed and small companies - Right to an adequate standard of living <ul style="list-style-type: none"> - Right to the best interests of the child | <u>Human rights adverse impacts:</u> <ul style="list-style-type: none"> - Right of the population to dispose of a country's natural resources and not to be deprived of their means of subsistence - Right to life and security - Prohibition of torture and cruel, inhuman or degrading treatment - Right to freedom and security - Prohibition of arbitrary or unlawful interference with their privacy, family, home or correspondence and attacks on their reputation - Prohibition of interference with freedom of thought, conscience and religion - Right to just and favourable conditions of work, including a decent wage, a decent livelihood, safe and healthy working conditions and reasonable limits on working hours <ul style="list-style-type: none"> - Right to the best interests of the child | <u>Human rights risk:</u> <ul style="list-style-type: none"> - Destruction of the natural basis of life through environmental pollution - Unlawful violation of land rights - Prohibition of the commissioning or use of private/public security forces that can lead to impairments due to lack of instruction or control. - Disregard for occupational health and safety and work-related health hazards |

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| | Proposal of the European Commission | Proposal of the EU Parliament | Proposal of the Council of the European Union | German Supply Chain Act (LkSG) |
|--|---|--|--|---|
| | <ul style="list-style-type: none"> - Employment ban for children - Prohibition of child labour - Prohibition of forced labour - Ban on slavery - Prohibition of trafficking in human beings - Freedom of association, freedom of assembly, right to organise and collective bargaining, right to form trade unions, right to strike - Prohibition of unequal treatment in employment - Prohibition of withholding remuneration that allows for an adequate standard of living - Prohibition of causing measurable soil, water and air pollution that is harmful to health - Prohibition of unlawful eviction, unlawful clearance, occupation of land, forests and waters - Indigenous peoples' right to the land, territories and resources they traditionally own | <ul style="list-style-type: none"> - Employment ban for children - Prohibition of child labour - Prohibition of forced labour - Ban on slavery - Prohibition of trafficking in human beings - Freedom of association, freedom of assembly, right to organise and collective bargaining, right to form trade unions, right to strike - Prohibition of unequal treatment in employment - Prohibition of withholding remuneration that allows for an adequate standard of living - Prohibition of causing measurable soil, water and air pollution that is harmful to health - Prohibition of unlawful eviction, unlawful clearance, occupation of land, forests and waters - Indigenous peoples' right to the land, territories and resources they traditionally own, their right to self-determination and their right to give, modify, refuse or withdraw their free, prior and informed consent to interventions, decisions and activities that may affect their lands, territories, resources and rights | <ul style="list-style-type: none"> - Employment ban for children - Prohibition of child labour - Prohibition of forced labour - Ban on slavery - Prohibition of trafficking in human beings - Freedom of association, freedom of assembly, right to organise and collective bargaining, right to form trade unions, right to strike - Prohibition of unequal treatment in employment - Prohibition of withholding remuneration that allows for an adequate standard of living - Prohibition of causing measurable soil, water and air pollution that is harmful to health - Prohibition of unlawful eviction, unlawful clearance, occupation of land, forests and waters - Indigenous peoples' right to the land, territories and resources they traditionally own | <ul style="list-style-type: none"> - Employment ban for children - Prohibition of child labour - Prohibition of forced labour - Ban on slavery - Failure to respect freedom of association - freedom of association and right to collective bargaining - Prohibition of unequal treatment in employment - Prohibition of withholding a fair wage - Prohibition of an act or omission in breach of duty which is directly capable of impairing a protected legal position in a particularly serious manner and the unlawfulness of which is obvious on a reasonable assessment of all the circumstances under consideration. |

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| | Proposal of the European Commission | Proposal of the EU Parliament | Proposal of the Council of the European Union | German Supply Chain Act (LkSG) |
|--|--|--|--|---|
| | <p><u>Conventions on Human Rights and Fundamental Freedoms:</u></p> <ul style="list-style-type: none"> - Universal Declaration of Human Rights - International Covenant on Civil and Political Rights of 19 December 1966 - International Covenant on Economic, Social and Cultural Rights of 19 December 1966 - Convention on the Prevention and Punishment of the Crime of Genocide - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - International Convention on the Elimination of All Forms of Racial Discrimination - Convention on the Elimination of All Forms of Discrimination against Women - Convention on the Rights of the Child - Convention on the Rights of Persons with Disabilities - United Nations Declaration on the Rights of Indigenous Peoples - Declaration on the Rights of Persons Belonging to National or Ethnic, | <p><u>Conventions on Human Rights and Fundamental Freedoms:</u></p> <ul style="list-style-type: none"> - Universal Declaration of Human Rights - International Covenant on Civil and Political Rights of 19 December 1966 - International Covenant on Economic, Social and Cultural Rights of 19 December 1966 - Convention on the Prevention and Punishment of the Crime of Genocide - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - International Convention on the Elimination of All Forms of Racial Discrimination - Convention on the Elimination of All Forms of Discrimination against Women - United Nations Declaration on the Elimination of Violence against Women - Convention on the Rights of the Child - Convention on the Rights of Persons with Disabilities - United Nations Declaration on the Rights of Indigenous Peoples - United Nations Declaration on the Rights of Persons Belonging to | <p><u>Conventions on Human Rights and Fundamental Freedoms:</u></p> <ul style="list-style-type: none"> — Universal Declaration of Human Rights - International Covenant on Civil and Political Rights of 19 December 1966 - International Covenant on Economic, Social and Cultural Rights of 19 December 1966 — Convention on the Prevention and Punishment of the Crime of Genocide — Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment — International Convention on the Elimination of All Forms of Racial Discrimination — Convention on the Elimination of All Forms of Discrimination against Women — Convention on the Rights of the Child — Convention on the Rights of Persons with Disabilities — United Nations Declaration on the Rights of Indigenous Peoples — Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities | <p><u>Conventions on Human Rights and Fundamental Freedoms:</u></p> <ul style="list-style-type: none"> - International Covenant on Civil and Political Rights of 19 December 1966 - International Covenant on Economic, Social and Cultural Rights of 19 December 1966 |

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|--|---|--|--|--|
| | <ul style="list-style-type: none"> - Religious or Linguistic Minorities - United Nations Convention against Transnational Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime - International Labour Organisation Declaration on Fundamental Principles and Rights at Work - Tripartite Declaration of Principles of the International Labour Organisation concerning Multinational Enterprises and Social Policy - Core/Basic Conventions of the International Labour Organisation: | <ul style="list-style-type: none"> - National or Ethnic, Religious or Linguistic Minorities - United Nations Declaration on the Rights of Small Farmers and Other People Working in Rural Areas - United Nations Convention against Transnational Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime - United Nations Convention against Corruption, 2003 - OECD Anti-Corruption Convention, 1997 - International Labour Organisation Declaration on Fundamental Principles and Rights at Work - International Labour Organisation Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169) - Occupational Safety and Health and Working Environment Convention, 1981 (No. 155) - Tripartite Declaration of Principles of the International Labour Organisation concerning Multinational Enterprises and Social Policy - Core/Basic Conventions of the International Labour Organisation: | <ul style="list-style-type: none"> — United Nations Convention against Transnational Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime — International Labour Organisation Declaration on Fundamental Principles and Rights at Work — Tripartite Declaration of Principles of the International Labour Organisation concerning Multinational Enterprises and Social Policy - Core/Basic Conventions of the International Labour Organisation: | <ul style="list-style-type: none"> - Core/Basic Conventions of the International Labour Organisation: |

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|--|---|---|---|---|
| | <ul style="list-style-type: none"> - International Labour Organisation Convention No. 29 of 28 June 1930 concerning Forced or Compulsory Labour - Protocol of 11 June 2014 to the International Labour Organisation Convention No. 29 of 28 June 1930 concerning Forced or Compulsory Labour - International Labour Organisation Convention No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise, as amended by the Convention of 26 June 1961. - International Labour Organisation Convention No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, as amended by the Convention of 26 June 1961. - International Labour Organisation Convention No. 100 of 29 June 1951 concerning | <ul style="list-style-type: none"> - International Labour Organisation Convention No. 29 of 28 June 1930 concerning Forced or Compulsory Labour - Protocol of 11 June 2014 to the International Labour Organisation Convention No. 29 of 28 June 1930 concerning Forced or Compulsory Labour - International Labour Organisation Convention No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise, as amended by the Convention of 26 June 1961. - International Labour Organisation Convention No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, as amended by the Convention of 26 June 1961. - International Labour Organisation Convention No. 100 of 29 June 1951 concerning | <ul style="list-style-type: none"> - International Labour Organisation Convention No. 29 of 28 June 1930 concerning Forced or Compulsory Labour - Protocol of 11 June 2014 to the International Labour Organisation Convention No. 29 of 28 June 1930 concerning Forced or Compulsory Labour - International Labour Organisation Convention No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise, as amended by the Convention of 26 June 1961. - International Labour Organisation Convention No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, as amended by the Convention of 26 June 1961. - International Labour Organisation Convention No. 100 of 29 June 1951 concerning | <ul style="list-style-type: none"> - International Labour Organisation Convention No. 29 of 28 June 1930 concerning Forced or Compulsory Labour - Protocol of 11 June 2014 to the International Labour Organisation Convention No. 29 of 28 June 1930 concerning Forced or Compulsory Labour - International Labour Organisation Convention No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise, as amended by the Convention of 26 June 1961. - International Labour Organisation Convention No. 98 of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, as amended by the Convention of 26 June 1961. - International Labour Organisation Convention No. 100 of 29 June 1951 concerning |

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| | Proposal of the European Commission | Proposal of the EU Parliament | Proposal of the Council of the European Union | German Supply Chain Act (LkSG) |
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| | <p>Equal Remuneration for Men and Women Workers for Work of Equal Value</p> <ul style="list-style-type: none"> - International Labour Organisation Convention No. 105 of 25 June 1957 concerning the Abolition of Forced Labour - International Labour Organisation Convention No. 111 of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation - International Labour Organisation Convention No. 138 of 26 June 1973 concerning Minimum Age for Admission to Employment - International Labour Organisation Convention No. 182 of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour | <p>Equal Remuneration for Men and Women Workers for Work of Equal Value</p> <ul style="list-style-type: none"> - Convention No. 105 of the International Labour Organisation of 25 June 1957 concerning the Abolition of Forced Labour - International Labour Organisation Convention No. 111 of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation - International Labour Organisation Convention No. 138 of 26 June 1973 concerning Minimum Age for Admission to Employment - International Labour Organisation Convention No. 182 of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour - Council of Europe Convention on preventing and combating violence against women and domestic violence | <p>Equal Remuneration for Men and Women Workers for Work of Equal Value</p> <ul style="list-style-type: none"> - International Labour Organisation Convention No. 105 of 25 June 1957 concerning the Abolition of Forced Labour - International Labour Organisation Convention No. 111 of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation - International Labour Organisation Convention No. 138 of 26 June 1973 concerning Minimum Age for Admission to Employment - International Labour Organisation Convention No. 182 of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour | <p>Equal Remuneration for Men and Women Workers for Work of Equal Value</p> <ul style="list-style-type: none"> - International Labour Organisation Convention No. 105 of 25 June 1957 concerning the Abolition of Forced Labour - International Labour Organisation Convention No. 111 of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation - International Labour Organisation Convention No. 138 of 26 June 1973 concerning Minimum Age for Admission to Employment - International Labour Organisation Convention No. 182 of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour |

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| | <p><u>Environmental adverse impacts and conventions:</u></p> <ul style="list-style-type: none"> - Take necessary measures under the 2020 United Nations Convention on Biological Diversity, including the Cartagena Protocol and the Nagoya Protocol. - Prohibit international trade in endangered species of wild fauna and flora (CITES). - Prohibited production, use and/or disposal of mercury (Minamata Convention) - Prohibition of production and/or use | <p><u>Environmental adverse impacts and conventions:</u></p> <ul style="list-style-type: none"> - Commitment to identify and prevent, mitigate or address adverse impacts on any of the following environmental categories <ul style="list-style-type: none"> - Climate change; - Loss of biodiversity; - air, water and soil pollution; and - Degradation of terrestrial, marine and freshwater ecosystems; - deforestation; - overexploitation of materials, water, energy and other natural resources; - Harmful generation and improper disposal of waste, including hazardous substances - Take necessary measures under the 2020 United Nations Convention on Biological Diversity, including the Cartagena Protocol and the Nagoya Protocol. - Prohibit international trade in endangered species of wild fauna and flora (CITES). - Prohibited production, use and/or disposal of mercury (Minamata Convention) - Prohibition of production and/or use | <p><u>Environmental adverse impacts and conventions:</u></p> <ul style="list-style-type: none"> - Take necessary measures under the 2020 United Nations Convention on Biological Diversity, including the Cartagena Protocol and the Nagoya Protocol. - Prohibit international trade in endangered species of wild fauna and flora (CITES). - Prohibited production, use and/or disposal of mercury (Minamata Convention) - Prohibition of production and/or use | <p><u>Environmental risks and conventions:</u></p> <ul style="list-style-type: none"> - Prohibited production, use and/or disposal of mercury (Minamata Convention) - Prohibited production and/or use of |

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| | <p>of substances in the area of application of the Stockholm Convention (POPs) and non-environmentally sound handling of waste containing POPs.</p> <ul style="list-style-type: none"> - Prohibition of import of hazardous chemicals (UNEP/FAO) - Prohibition of illegal import and export of substances that deplete the ozone layer (Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol) - Prohibition of import/export of hazardous waste under the Basel Convention | <p>of substances in the area of application of the Stockholm Convention (POPs) and non-environmentally sound handling of waste containing POPs.</p> <ul style="list-style-type: none"> Prohibition of import of hazardous chemicals (UNEP/FAO) - Prohibition of illegal import and export of substances that deplete the ozone layer (Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol) - Prohibition of import/export of hazardous waste under the Basel Convention - Commitment to meet the greenhouse gas emission reduction targets of the Paris Agreement under the United Nations Framework Convention on Climate Change, the European Climate Change Act and the Global Methane Commitment. - United Nations Convention on the Law of the Sea (UNCLOS) - Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) - United Nations Convention on the Protection and Use of Transboundary Watercourses and International Lakes, also known as the Water | <p>of substances in the area of application of the Stockholm Convention (POPs) and non-environmentally sound handling of waste containing POPs.</p> <ul style="list-style-type: none"> - Prohibition of import of hazardous chemicals (UNEP/FAO) - Prohibition of illegal import and export of substances that deplete the ozone layer (Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol) - Prohibition of import/export of hazardous waste under the Basel Convention - Protection of the World Cultural and Natural Heritage (World Heritage Convention) - Protection of Wetlands (Ram-sar) - Prevention of marine pollution (UNCLOS) - Protection against Pollution from Ships (MARPOL) | <p>substances within the scope of the Stockholm Convention (POPs) and non-environmentally sound handling of waste containing POPs</p> <ul style="list-style-type: none"> - Prohibited import/export of hazardous waste as defined by the Basel Convention |

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| | | Convention, 1992 | | |
| Relevant definitions | <p>Business relationship = a relationship with a contractor, a subcontractor or any other legal company ("Partner"),</p> <ul style="list-style-type: none"> - with whom the company has a business agreement or to whom the company provides funding, insurance or reinsurance; or - carrying on business activities related to the company's products or services for or on behalf of the company <p>Established business relationship = a direct or indirect business relationship that is or is likely to be stable in view of its intensity or duration and that does not represent an insignificant or merely subordinate part of the value chain</p> | <p>Business relationship = a direct or indirect relationship of the company with a contractor, a subcontractor, or any other legal company ("partner") in its value chain</p> <ul style="list-style-type: none"> - with whom the company has a business agreement or to whom the company provides funding, insurance or reinsurance; or - carrying on business activities related to the company's products or services for or on behalf of the company <p>[Concept of established business relationship omitted]</p> | <p>Business partner = a legal company</p> <ul style="list-style-type: none"> - with whom the company has entered into a business agreement concerning the company's activities, products or services or for whom the company provides services ("<i>direct business partner</i>"), or - which is not a direct business partner but which carries out business activities related to the company's activities, products or services ("<i>indirect business partner</i>") <p>Business relationship = a relationship of the company with its business partner [concept of established business relationship omitted]</p> | <p>Direct supplier = 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.</p> <p>Indirect supplier = any enterprise which is not a direct supplier and whose supplies are necessary for the manufacture of the enterprise's product or for the provision and use of the service in question.</p> |
| | <p>Value chain = activities related to the production of goods or the provision of services by an enterprise, including the development of the product or service and the use and disposal of the product, as well as related activities in the enterprise's upstream and downstream</p> | <p>Value chain =</p> <ul style="list-style-type: none"> - activities, in connection with the production, development, extraction, procurement, manufacture, transport, storage and supply of raw materials, products or parts of products of an company and the | <p>Activity chain =</p> <ul style="list-style-type: none"> - the activities of an company's upstream business partners in connection with the production of goods or the provision of services by the company, including the development, extraction, production, transportation, | <p>Supply chain = refers to all products and services of a company. It includes all steps at home and abroad that are necessary to manufacture the products and provide the services, starting with the extraction of the raw materials to the delivery to the end customer and covers</p> |

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| | established business relationships. | <p>development of the product of an company or the development or provision of a service and all legal entities involved therein, and</p> <ul style="list-style-type: none"> - activities related to the sale, distribution, transport, storage and waste management of a company's products or the provision or use of services, with the exception of the waste management of the product by consumers, and all legal entities involved therein | <p>storage and delivery of raw materials, products or parts of products and the development of the product or service; and</p> <ul style="list-style-type: none"> - the activities of an company's downstream business partners related to the distribution, transport, storage and disposal of the product, including dismantling, recycling, composting or landfilling, provided that the business partners carry out these activities for or on behalf of the company; except for the disposal of the product by consumers and the distribution, transport, storage and disposal of the product where the product is subject to export control under Regulation (EU) 2021/821 of the European Parliament and of the Council or to export control in respect of arms, munitions or war material after the export of the product has been authorised | <ul style="list-style-type: none"> - the actions of a company in its own business area, - the actions of a direct supplier and - the actions of an indirect supplier. |
| <p>What are the duties of care?</p> | <ul style="list-style-type: none"> - Reference point human rights and the environment - Incorporating due diligence into their corporate policies - Identification of actual or potential negative impacts | <ul style="list-style-type: none"> - Reference point human rights and environment [draft report still mentioned good corporate governance here]. - Incorporating risk-based due diligence into their corporate policies - Identification of actual or potential negative impacts | <ul style="list-style-type: none"> - Reference point human rights and the environment - Incorporating due diligence into their corporate policies and risk management systems - Identification of actual or potential negative impacts | <ul style="list-style-type: none"> - Reference point human rights and the environment - Establishment of a risk management system - Determination of an internal responsibility - Carrying out regular risk analyses - Issuing a policy statement |

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| | <ul style="list-style-type: none"> - Avoidance and mitigation of potential negative impacts, remediation of actual negative impacts and minimisation of their magnitude - Establishment and maintenance of a complaints procedure - Monitoring the effectiveness of their due diligence policies and measures - Public communication about due diligence | <ul style="list-style-type: none"> - Remediation of actual negative impacts according to separate remediation procedure - Avoidance and mitigation of potential negative impacts, remediation of actual negative impacts and minimisation of their magnitude - Prioritisation of potential and actual negative impacts, if applicable. - Establishment of or participation in a notification and out-of-court complaint mechanism - Monitoring and reviewing the effectiveness of their due diligence policies and measures - Public communication about due diligence - Meaningful consultation and involvement of affected stakeholders | <ul style="list-style-type: none"> - Avoidance and mitigation of potential negative impacts, remediation of actual negative impacts and minimisation of their magnitude - Establishment and maintenance of a complaints procedure - Monitoring the effectiveness of their due diligence policies and measures - Public communication about due diligence | <ul style="list-style-type: none"> - Anchoring prevention measures in the own business unit and towards direct suppliers - Taking remedial action - Establishment of a complaints procedure - Implementation of due diligence with regard to risks at indirect suppliers - Documentation and reporting |
| Due diligence obligations at group level | | There is the possibility of fulfilment of the due diligence obligations of the subsidiaries by the ultimate parent company of a group The civil liability of the subsidiary according to the Directive remains unaffected by this. | There is the possibility of the parent company fulfilling the due diligence obligations of the subsidiaries The civil liability of the subsidiary according to the Directive remains unaffected by this. | Every company that is an addressee of the LkSG must comply with the law. There is no exemption for affiliated companies ⁹ Controlling parent companies include the supply chains of the corresponding subsidiaries in their own business area. |
| Incorporating due diligence | Companies must integrate due diligence into all areas of their business policy and | Companies must integrate due diligence into all relevant areas of their business | Companies must integrate due diligence into all areas of their business policy and | The company must make a policy statement on its human rights strategy. |

⁹ For more details, see *Rothermel*, LkSG, Part C., § 4, marginal no. 6; <https://shop.ruw.de/startseite/5051-lksg.html>

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| <p>into corporate policy</p> | <p>have a due diligence strategy in place</p> <p>The strategy contains:</p> <ul style="list-style-type: none"> - Description of the company's approach - also in the long term - to due diligence - Code of Conduct, which describes the rules and principles to be followed by the company's employees and subsidiaries - Description of due diligence implementation procedures, including measures to verify compliance with the Code of Conduct and to extend its application to established business relationships | <p>policies and have a due diligence strategy that has been developed in consultation with trade union and worker representatives and other stakeholders, with particular attention to the needs of vulnerable stakeholders</p> <p>The strategy contains:</p> <ul style="list-style-type: none"> - Description of the potential and actual negative impacts identified by the company - Description of the company's approach - short, medium and long term - to due diligence, - Code of Conduct setting out the rules, principles and measures to be followed and, where appropriate, implemented throughout the company and its subsidiaries - across all corporate functions and activities. The Code of Conduct aims to ensure that the company respects human rights and the environment and is guided by the fundamental values of the Union - Description of the procedures and measures taken to implement due diligence in the value chain, including the relevant measures taken to integrate due diligence into the company's own business model and employment and purchasing practices at companies with which the company | <p>have a due diligence strategy in place</p> <p>The strategy contains:</p> <ul style="list-style-type: none"> - Description of the company's approach - also in the long term - to due diligence - Code of conduct describing the rules and principles to be followed by the company's employees and subsidiaries and, where applicable, its direct or indirect business partners - Description of due diligence implementation procedures, including measures to verify compliance with the Code of Conduct and to extend its application to business partners | <p>The policy statement must contain at least the following:</p> <ul style="list-style-type: none"> - Description of the process by which the company fulfils its obligations, - the priority human rights and environmental risks identified for the company on the basis of the risk analysis; and - 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>If the company has substantiated knowledge of circumstances that make a violation of a human rights-related or an environmental obligation at an indirect supplier appear possible, the company must update this policy statement accordingly.</p> |

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| | <p>The strategy shall be updated annually</p> | <p>has business relationships, as well as the measures taken to monitor and review activities for the fulfilment of due diligence.</p> <p>The strategy is to be continuously reviewed and updated in the event of significant changes</p> <p>Due diligence must be conducted in a manner that is appropriate and proportionate to the likelihood and severity of the potential adverse impacts, as well as the severity of the actual adverse impacts, and the circumstances and risk factors specific to the business, in particular the sector and location of the business's operations, the size and length of the value chain, the size of the business, its capacity, resources and influence</p> <p>Where companies operate in areas that are in armed conflict or post-conflict instability, or in areas that are occupied and/or annexed, as well as in areas with weak or non-existent governance and security, such as failed states, Member States shall ensure that they comply with obligations under international humanitarian law and conduct enhanced, conflict-sensitive due diligence on their business and business relationships by</p> | <p>The strategy shall be updated as soon as a significant change occurs, but at least every 24 months.</p> <p>Companies incorporated under the law of a Member State must take and monitor the measures concerning due diligence obligations</p> | |

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| | | including a conflict analysis in their due diligence, based on meaningful and conflict-sensitive stakeholder engagement, on the causes, triggers and parties to the conflict and the impact of the company's activities on the conflict | | |
| Human Rights Commissioner | The authorised representative provided for under the Directive for companys incorporated under the law of a third country serves (only) as a contact person for the supervisory authority | The authorised representative provided for under the Directive for companys incorporated under the law of a third country serves (only) as a contact person for the supervisory authority | The authorised representative provided for under the Directive for companys incorporated under the law of a third country serves (only) as a contact person for the supervisory authority | The company shall ensure that it is determined who within the company is responsible for overseeing risk management , for example by appointing a human rights officer . |
| Determination | Companies shall take appropriate measures to identify actual and potential adverse impacts on human rights and the environment arising from their own operations or those of their subsidiaries and, where related to their value chains, from their established business relationships | Companies shall take appropriate measures and conduct a comprehensive inventory of their operations, subsidiaries and business relationships to identify actual and potential adverse impacts on human rights and the environment arising from their own operations, products and services or those of their subsidiaries and those related to their value chains The companies - Identify areas where negative impacts are most likely to occur and where the potential impacts are most likely to be severe , including the identification of the individual | Companies shall take appropriate measures to identify actual and potential adverse impacts on human rights and the environment arising from their own operations and those of their subsidiaries and, where they are linked to their chains of activities, those of their business partners For these purposes, companies may map all areas of their own operations and those of their subsidiaries and, where they are linked to their activity chains, those of their business partners. Based on the results of this mapping, companies can make an in-depth assessment of the areas where negative | As part of risk management, the company shall conduct an appropriate risk analysis to identify the human rights and environmental risks in its own business operations as well as those of its direct suppliers According to the guidance of the Federal Office of Economics and Export Control (BAFA), the company must also already take into account the so-called adequacy criteria when determining the risks ¹⁰ . The following must therefore be taken into account in the determination: |

¹⁰ See p. 13 of BAFA's handout on adequacy https://www.bafa.de/SharedDocs/Downloads/DE/Lieferketten/handreichung_angemessenheit.pdf;jsessionid=5272672C2D68155A5EBB0E046C332D2E.2_cid390?_blob=publicationFile&v=3.

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| | <p>The companies that fall within the scope of the Directive only because of their activity in a risk sector must also identify only the actual and potentially serious adverse effects relevant to that sector</p> <p>In particular, companies shall also consult, as appropriate, with potentially affected groups such as workers and other relevant stakeholders</p> | <p>activities, subsidiaries and business relationships with an increased risk of harm that should be prioritised, taking into account the relevant risk factors; and</p> <ul style="list-style-type: none"> - Conduct comprehensive assessments of prioritised activities, subsidiaries and business relationships to determine the nature and extent of specific actual and potential adverse impacts - Take appropriate measures to reassess impacts at regular intervals, including in the context of significant changes in the company's business, business relationships or operating environment, in response to complaints and at regular intervals during the relevant activity or business relationship <p>In particular, companies shall also consult, as appropriate, with potentially affected groups such as workers and other relevant stakeholders</p> <p>If not all required information regarding its own value chain is available, the company shall disclose its efforts to obtain the required information about its value chain, the reasons for not obtaining the required information and its plans to obtain the required information in the future.</p> | <p>impacts have been identified as most likely or most serious.</p> <p>The companies that fall within the scope of the Directive only because of their activity in a risk sector must also identify only the actual and potentially serious adverse effects relevant to that sector</p> <p>In particular, companies shall also consult, as appropriate, with potentially affected groups such as workers and other relevant stakeholders</p> | <ul style="list-style-type: none"> - The nature and extent of the company's business activities, - 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, - 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 - 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 environment-related obligation <p>The risk analysis must be carried out once a year as well as on an ad hoc basis if the company has to 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.</p> <p>A risk analysis must also be carried out if the company has substantiated knowledge in the sense of the existence of factual indications that make a violation of a human rights-related or an</p> |

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| | | | | environmental obligation appear possible in the case of indirect suppliers. |
| Prioritisation | | <p>Companies may, in cases where it is not possible to prevent, terminate or mitigate all identified adverse impacts simultaneously through appropriate measures, prioritise the order in which they take appropriate measures, based on the severity and likelihood of the impacts and the assessment made, by developing, implementing and regularly reviewing a prioritisation strategy</p> <p>Companies are required to take appropriate action depending on the severity and likelihood of the impact, taking into account the risk factors. In prioritising their response to human rights and environmental risks, companies shall treat the severity of an adverse impact, e.g. where a delayed response would result in the impact becoming irreversible, as the most important factor</p> | <p>Companies prioritise negative impacts where it is not possible to fully address all identified negative impacts simultaneously</p> <p>Prioritisation is based on its severity and likelihood. The severity of an adverse impact is assessed on the basis of its intrinsic severity, the number of people affected or the extent of the environment affected and the difficulty of restoring the situation that existed prior to the impact</p> | <p>The human rights and environmental risks identified in the risk analysis are to be appropriately weighted and prioritised</p> <p>The following must therefore also be taken into account in the weighting and prioritisation:</p> <ul style="list-style-type: none"> - The nature and extent of the company's business activities, - 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, - 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 - 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 environment-related obligation |
| Avoidance | Companies shall take appropriate measures to avoid or, where they cannot or cannot immediately be avoided, | Companies shall take appropriate measures to avoid or, where they are not or cannot immediately be avoided, to | Companies shall take appropriate measures to avoid or, if not or not immediately avoidable, adequately mitigate | If the company identifies a risk in the course of a risk analysis, it shall immediately take appropriate preventive |

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| | <p>adequately mitigate potential adverse impacts on human rights and the environment that have been or should have been identified</p> | <p>adequately mitigate potential adverse human rights and environmental impacts that have been or should have been identified or failed to be identified</p> <p>Prioritisation provided, see above.</p> <p>In cases where an entity may cause a potential adverse effect, "appropriate measures" shall be understood as measures aimed at avoiding or mitigating a potential adverse effect. In cases where an entity may contribute to a negative effect, "appropriate measures" shall be understood as measures aimed at avoiding or mitigating the contribution to the effect by using or enhancing the entity's leverage with other responsible parties to avoid or mitigate the potential negative effect. In cases where an entity's activities, products or services may be directly linked to an adverse effect through its business relationships with other entities, 'appropriate measures' are understood as measures aimed at using or enhancing the entity's ability to influence responsible parties to avoid or mitigate the potential adverse effect and to influence the entity that is causing the effect.</p> | <p>potential adverse human rights and environmental impacts that have been or should have been identified and addressed as a priority</p> <p>In determining the appropriate measures, due consideration must be given to where in the chain of activity the potential negative impact was caused and whether the company is in a position to influence this business partner</p> | <p>measures</p> <p>According to the company's handbook, the company has a margin of discretion within the framework of appropriate-ness¹¹,</p> <ul style="list-style-type: none"> - which of the listed measures they are specifically implementing, - whether they take measures other than those specified by law in individual cases because these appear to be more effective, - whether further measures are required beyond those specified in the Act; and - how they implement chosen measures in concrete terms <p>Appropriate prevention measures must be anchored in the own business area, in particular:</p> <ul style="list-style-type: none"> - the implementation of the human rights strategy set out in the policy statement in the relevant business processes, |

¹¹ See p. 18 of BAFA's handout on adequacy https://www.bafa.de/SharedDocs/Downloads/DE/Lieferketten/handreichung_angemessenheit.pdf;jsessionid=5272672C2D68155A5EBB0E046C332D2E.2_cid390?_blob=publicationFile&v=3.

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| | <p>The companies are obliged, if necessary to</p> <ul style="list-style-type: none"> - develop and implement a preventive action plan - obtain contractual assurance from business partners with whom they have a direct business relationship that they will ensure compliance with the company's Code of Conduct and, if necessary, a prevention plan, including by obtaining corresponding contractual assurances from their partners to the extent that their activities are part of the company's value chain. - make necessary investments | <p>The companies are obliged to take appropriate measures, among others</p> <ul style="list-style-type: none"> - develop and implement a preventive action plan - consider establishing contractual provisions with partners with whom they have a direct business relationship that ensure compliance with the company's Code of Conduct and, where necessary, a prevention plan. Partners with whom companies have a business relationship may be required to establish appropriate and equitable contractual arrangements with their partners where their activities are part of the company's value chain. - make necessary changes, improvements to, or investments in, or the withdrawal of investments from, its own operations, e.g. in management, production or other operational processes, facilities, products and product traceability, services and skills - Adapt business models and strategies, including purchasing practices, which include those that contribute to living wages and incomes for its suppliers, to avoid potential negative impacts and to develop and implement | <p>The companies are obliged, if necessary to</p> <ul style="list-style-type: none"> - develop and implement a preventive action plan - obtain contractual assurances from a direct business partner that it will ensure compliance with the company's Code of Conduct and, where necessary, a Preventive Action Plan, including by obtaining corresponding contractual assurances from its partners where their activities are part of the company's chain of operations. - make necessary financial and non-financial investments | <ul style="list-style-type: none"> - the development and implementation of appropriate procurement strategies and practices that prevent or minimise identified risks, - the delivery of training in the relevant business areas, - the implementation of risk-based control measures to verify compliance with the human rights strategy contained in the Declaration of Principles in its own business area <p>Appropriate preventive measures must also be anchored vis-à-vis direct suppliers, in particular:</p> <ul style="list-style-type: none"> - the consideration of human rights and environmental expectations when selecting a direct supplier, - Contractual assurance from a direct supplier that it will comply with the human rights and environmental expectations required by the company's management and adequately address them along the supply chain, - the implementation of training and further education - to enforce the contractual assurances of the direct supplier - agreeing on appropriate contractual control mechanisms and their risk-based implementation to verify |

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| | <ul style="list-style-type: none"> - Provide targeted and proportionate support to an SME with which the company has an established business relationship, where compliance with the Code of Conduct or the Preventive Action Plan would jeopardise the SME's viability - Cooperate with other companies, including, where appropriate, to improve the company's ability to address the negative impacts, especially if no other measures are appropriate or effective. <p>The company may contract with a partner with whom it has an indirect relationship to achieve compliance with the company's Code of Conduct or a Preventive Action Plan</p> | <ul style="list-style-type: none"> - purchasing practices that do not contribute to potential negative impacts on human rights or the environment; - Provide targeted and proportionate financial and administrative support to an SME with which the company has an established business relationship - Agree with a business partner with whom the company has a business relationship on the company's expectations for avoiding and mitigating potential negative impacts, including providing or enabling access to capacity building, advice, administrative or financial support such as loans or financing, taking into account the resources, knowledge and restrictions of the business partner; - Cooperate with other companys, including, where appropriate in the circumstances, to remedy the adverse effects, in particular where no other measures are appropriate or effective - Where there is a direct link to impacts occurring in business relationships with other covered entities in the EU, appropriate measures may include notifying the relevant supervisory authority while continuing to make reasonable efforts to prevent or mitigate the impact | <ul style="list-style-type: none"> - Provide targeted and appropriate support to an SME that is a business partner of the company, where compliance with the Code of Conduct or the Preventive Action Plan would jeopardise the SME's viability - Cooperate with other companies, including, where appropriate, to improve the company's ability to address the negative impacts, especially if no other measures are appropriate or effective. <p>The company may enter into a contract with an indirect business partner to achieve compliance with the company's code of conduct or a preventive action plan</p> | <p>compliance with the human rights strategy at the direct supplier.</p> <p>The effectiveness of the preventive measures must be reviewed once a year as well as on an ad hoc basis if the company must expect a significantly changed or significantly expanded risk situation in its own business area or at the direct supplier, for example due to the introduction of new products, projects or a new business field. The measures are to be updated immediately if necessary</p> <p>If the company has substantiated knowledge of circumstances that make a violation of a human rights-related or an environment-related obligation at an indirect supplier appear possible, the company shall anchor appropriate preventive measures vis-à-vis the originator, such as the implementation of control measures, support in the prevention and avoidance of a risk or the implementation of industry-specific or cross-industry initiatives to which the company has subscribed</p> |

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| | <p>Contractual assurances must be accompanied by appropriate measures to verify compliance</p> <p>If potential negative impacts cannot be avoided or adequately mitigated, the company must not enter into new relationships or expand existing relationships with the impact partner or the value chain partner. In accordance with the law applicable to the relationship, the company must then</p> | <p>When distributing or selling a product or providing a service, companies shall take appropriate measures to ensure that the composition, design and marketing of a product or service comply with EU law and do not have an adverse effect, either on individuals or on the general public. In this context, particular attention should be paid to possible adverse effects on children.</p> <p>Contractual assurances must be flanked by measures to support the implementation of due diligence</p> <p>Contractual provisions must not result in the transfer of responsibility for the implementation of due diligence</p> <p>When drafting contractual provisions, companies must assess whether the business partner can reasonably be expected to carry out due diligence in accordance with this Directive</p> <p>If potential negative impacts cannot be avoided or adequately mitigated and the company has caused or contributed to them, and there is no realistic prospect of change, the company must not enter into new relationships or expand existing relationships with the partner or the value chain party causing the</p> | <p>Contractual assurances must be accompanied by appropriate measures to verify compliance</p> <p>If potential adverse impacts cannot be avoided or adequately mitigated, the company will be required, as a last resort, to refrain from entering into new relationships or developing existing relationships with the business partner in connection with whom the impacts arise. In accordance with the law</p> | |

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| | <ul style="list-style-type: none"> - temporarily suspending business relations while seeking to avoid or minimise the impact, if it is reasonable to assume that such efforts will be successful in the short term - In the event of serious potential negative impacts, the business relationship in the activity concerned must be terminated | <p>impacts. It must then, in accordance with the law governing the relationship, as a last resort with a view to responsible corporate withdrawal</p> <ul style="list-style-type: none"> - Temporarily suspending the business relationship while seeking to avoid or mitigate the impact - Due to the severity of potential negative impacts or if efforts to avoid or mitigate the impacts have failed, the business relationship in the activity concerned must be terminated <p>Before temporarily suspending trading relations or terminating the business relationship, the company must first assess whether the negative effects resulting from the suspension or termination of the business relationship would be greater than the negative effects to be avoided or mitigated</p> <ul style="list-style-type: none"> - if so, the companies must refrain from temporarily suspending or terminating the business relationship | <p>governing the relationship, it must then</p> <ul style="list-style-type: none"> - temporarily suspend the business relationship while seeking to avoid or mitigate the impact if it can reasonably be expected to do so or the efforts have not been successful in the short term. If this cannot reasonably be expected or the efforts have not been successful in the short term, the company must terminate the business relationship. - In the event of serious potential negative effects, the business relationship in the activity concerned must be terminated | |

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| | <p>Member States must provide for the possibility of such termination of business relations</p> | <ul style="list-style-type: none"> - If the trading relationship is temporarily suspended or the business relationship is terminated, the companies must take measures to avoid, mitigate or terminate the effects of the suspension or termination of the business relationship, inform the business partner in an appropriate manner and keep this decision under constant review <p>Member States must provide for the possibility of suspending or terminating a business relationship</p> | <p>Member States must provide for the possibility of such termination of business relations, except in the case of contracts which the parties are legally obliged to conclude</p> <p>The company is not obliged to terminate the business relationship if</p> <ul style="list-style-type: none"> - it is reasonable to assume that termination would lead to negative impacts that are more severe than the potential negative impacts - there is no alternative to this business relationship (indispensable products or services without which the company would suffer considerable damage) <p>If the relationship is not terminated on the basis of this, this shall be duly justified to the supervisory authority</p> | |

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| | | | <p>The company must then monitor the decision not to terminate the business relationship and seek alternative business relationships</p> <p>The obligation to temporarily suspend or terminate the business relationship does not apply to business agreements concluded by the company before the end of the transposition period</p> | |
| Remedy | <p>The companies shall take appropriate measures to remedy actual negative impacts that have been or should have been identified</p> <p>If the negative effects cannot be remedied, companies must minimise the extent of these effects</p> | <p>The companies shall take appropriate measures to remedy actual negative impacts that have been or should have been identified</p> <p>If the negative impacts cannot be remedied immediately, companies must adequately mitigate the extent of these impacts while continuing their efforts to remedy the negative impacts</p> | <p>Companies shall take appropriate measures to avoid or, where they are not or cannot be immediately avoided, to remedy actual adverse human rights and environmental impacts that have been or should have been identified and addressed as a matter of priority</p> <p>In determining the appropriate measures, due consideration must be given to where in the chain of activity the actual negative impact was caused and whether the company is in a position to influence this business partner</p> <p>If the negative impacts cannot be remedied, the companies minimise the extent of these impacts by</p> | <p>Within the framework of appropriate-ness, the company has scope for decision-making and discretion in the selection and implementation of suitable measures</p> <p>If the enterprise becomes aware that a violation of a human rights or environmental obligation has occurred or is imminent in its own business or in the business of a direct supplier, it shall take immediate and appropriate remedial action to prevent, remedy or minimise the extent of the violation. In its own domestic business, the remedial action must result in the cessation of the breach. In the company's own business operations abroad and in the business operations of a group company over which a decisive influence is exercised, the remedial</p> |

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| | <p>The companies are obliged to take the following measures, if applicable:</p> <ul style="list-style-type: none"> - neutralise the negative impacts or | <p>Prioritisation provided, see above.</p> <p>In cases where an entity has caused an actual impact, "appropriate measures" shall be understood as measures aimed at mitigating the magnitude of an actual negative impact and remedying harm. In cases where an entity has contributed to a negative impact, "appropriate measures" shall mean measures aimed at mitigating the contribution to the impact by using or enhancing the entity's ability to influence other responsible parties to mitigate the potential negative impact and, to the extent of the contribution, to contribute to remedying the harm. In cases where an entity's activities, products or services are directly linked to an adverse effect through its relationships with other entities, "appropriate measures" should be understood as measures aimed at using or enhancing the entity's ability to influence responsible parties in order to mitigate the adverse effect. An entity directly associated with an adverse effect considers using its leverage with responsible parties to enable the remediation of harm caused by an effect.</p> <p>The companies are obliged to take appropriate measures, among others</p> <ul style="list-style-type: none"> - neutralise the adverse impact or | <p>The companies are obliged, if necessary</p> <ul style="list-style-type: none"> - neutralise the negative impacts or | <p>action must generally lead to the termination of the violation.</p> <p>If the violation of a human rights-related or environmental obligation at a direct supplier is such that the company cannot end it in the foreseeable future, it must immediately develop and implement a concept to end or minimise it. The concept must contain a concrete time schedule. When drawing up and implementing the concept, the following measures in particular shall be considered:</p> <ul style="list-style-type: none"> - the joint development and implementation of a plan to end or minimise the breach with the company by which the breach is caused, - joining forces with other companies in industry initiatives and industry standards to increase the ability to influence the polluter, - a temporary suspension of the business relationship during risk minimisation efforts. <p>The company must also prepare such a concept if it has substantiated knowledge of circumstances that make a violation of a human rights-related or an environmental obligation at an indirect supplier appear possible</p> |

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| | <p>minimise their magnitude, including through the payment of compensation to the affected persons and financial compensation to the affected communities. This shall be proportionate to the significance and extent of the adverse impact and the company's participation in that impact</p> <ul style="list-style-type: none"> - develop and implement a corrective action plan - obtain contractual assurances from a direct partner with whom they have an established business relationship that they will ensure compliance with the Code of Conduct and, if necessary, a corrective action plan, including by obtaining corresponding contractual assurances from their partners where their activities are part of the company's value chain. - make necessary investments | <p>adequately mitigate its magnitude by returning the affected persons and/or the environment to a situation that is equivalent to, or as close as possible to, the situation that existed prior to the impact in the given circumstances. This shall be proportionate to the significance, magnitude of the adverse impacts, the company's involvement in those impacts and the company's resources and influence.</p> <ul style="list-style-type: none"> - develop and implement a corrective action plan - consider establishing, through appropriate and fair contractual provisions with a partner with whom they have a business relationship, that they will ensure compliance with the company's Code of Conduct and, if necessary, a corrective action plan. Partners with whom the company has a business relationship may be required to enter into appropriate reasonable, non-discriminatory and fair contractual provisions with their partners to the extent that their activities are part of the company's value chain - make necessary changes, improvements to or investments in, or withdrawal of investments in, its own operations, e.g. in management, production or other operational | <p>minimise their extent. This shall be proportionate to the significance and magnitude of the adverse impact and the company's involvement in that impact</p> <ul style="list-style-type: none"> - develop and implement a corrective action plan - obtain contractual assurances from a direct business partner that it will ensure compliance with the company's Code of Conduct and, if necessary, a corrective action plan, including by obtaining corresponding contractual assurances from its partners where their activities are part of the company's chain of activities. - make necessary financial and non-financial investments | |

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| | <ul style="list-style-type: none"> - provide targeted and proportionate support to an SME with which the company has an established business relationship, where compliance with the code of conduct or corrective action plan would jeopardise the SME's viability - Cooperate with other companies, including, where appropriate, to improve the company's ability to address the negative impacts, | <p>procedures, facilities, products and product traceability, services and capabilities, in order to terminate the impact</p> <ul style="list-style-type: none"> - adapt business models and strategies, including purchasing practices, which include those that contribute to living wages and incomes for its suppliers, to address or mitigate actual negative impacts and to develop and implement purchasing practices that do not contribute to potential negative impacts on human rights or the environment; - provide targeted and proportionate financial and administrative support to an SME with which the company has an established business relationship - agree with a business partner with whom the company has a business relationship on the company's expectations for remediation and mitigation of adverse impacts, including providing or enabling access to capacity building, advice, administrative or financial support such as loans or financing, taking into account the resources, knowledge and restrictions of the business partner; - cooperate with other companys, including, where appropriate in the circumstances, to improve the ability of the company to remedy the adverse | <ul style="list-style-type: none"> - provide targeted and appropriate support to an SME that is a business partner of the company, where compliance with the code of conduct or corrective action plan would jeopardise the SME's viability - Cooperate with other companies, including, where appropriate, to improve the company's ability to address the negative impacts, | |

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| | <p>especially if no other measures are appropriate or effective.</p> <p>The company may contract with a partner with whom it has an indirect relationship to ensure compliance with the company's code of conduct or a corrective action plan</p> <p>Contractual assurances must be accompanied by appropriate measures to verify compliance</p> | <p>effects, in particular where no other measures are appropriate or effective</p> <ul style="list-style-type: none"> - Where there is a direct link to impacts occurring in business relationships with other covered entities in the EU, appropriate measures may include notifying the relevant supervisory authority while continuing to make reasonable efforts to remedy or mitigate the impact <p>When distributing or selling a product or providing a service, companies shall take appropriate measures to ensure that the composition, design and marketing of a product or service comply with EU law and do not have an adverse effect, either on individuals or on the general public. In this context, particular attention should be paid to possible adverse effects on children.</p> <p>Contractual assurances must be flanked by measures to support the implementation of due diligence</p> <p>Contractual provisions must not result in the transfer of responsibility for the implementation of due diligence</p> <p>When drafting contractual provisions,</p> | <p>especially if no other measures are appropriate or effective.</p> <ul style="list-style-type: none"> - Provide remedial action to affected persons and communities (a remedy within the meaning of the Directive is financial or non-financial compensation provided by the company, including restoring the person(s) affected or the environment to the situation or state it would have been in had the adverse effects not occurred, and must be proportionate to the significance and magnitude of the adverse effects and the company's involvement in the adverse effects). <p>The company may enter into a contract with an indirect business partner to achieve compliance with the company's code of conduct or a corrective action plan</p> <p>Contractual assurances must be accompanied by appropriate measures to verify compliance</p> | |

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| | <p>If actual negative impacts cannot be remedied or minimised in magnitude, the company must not enter into new relationships or expand existing relationships with the partner or the value chain party from which the impacts originate. In such cases, in accordance with the law governing the relationship, the company must</p> <ul style="list-style-type: none"> - business relations are temporarily suspended while efforts are made to remedy the negative effects or minimise their extent - In the event of serious negative effects, the business relationship in the activity concerned must be terminated | <p>companies must assess whether the business partner can reasonably be expected to carry out due diligence in accordance with this Directive</p> <p>If actual negative impacts cannot be remedied or mitigated to the extent that the company has caused or contributed to them, and there is no realistic prospect of change, the company must not enter into new relationships or expand existing relationships with the partner or the value chain party from which the impacts originate. It must then, in accordance with the law governing the relationship, as a last resort, with a view to responsible corporate withdrawal</p> <ul style="list-style-type: none"> - business relations are temporarily suspended and efforts are made at the same time to remedy the negative effects or to mitigate their extent - Due to the severity of the negative impact or if efforts to remedy or mitigate the negative impact have failed, the business relationship in the activity concerned must be terminated | <p>If actual adverse effects cannot be avoided or adequately mitigated, the company will be required, as a last resort, to refrain from entering into new relationships or developing existing relationships with the business partner in connection with whom or from whom the effects arise. In accordance with the law applicable to the relationship, it must then</p> <ul style="list-style-type: none"> - temporarily suspend the business relationship and at the same time seek to remedy or mitigate the extent if it can reasonably be expected to do so or the efforts will not be successful in the short term. If this cannot reasonably be expected or the efforts have not been successful in the short term, the company must terminate the business relationship. - In the event of serious negative effects, the business relationship in the activity concerned must be terminated | <p>The termination of a business relationship is only required if</p> <ul style="list-style-type: none"> - the violation of a protected legal position or an environmental duty is assessed as very serious, |

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| | <p>Member States must provide for the possibility of such termination of business relations</p> | <p>Prior to the temporary suspension of trading relations or termination of the business relationship, the company must assess whether the negative effects resulting from the suspension or termination of the business relationship would be greater than the negative effects to be avoided or mitigated</p> <ul style="list-style-type: none"> - if so, the companies must refrain from temporarily suspending or terminating the business relationship - If the trading relationship is suspended or the business relationship is terminated, companies must take measures to avoid, mitigate or terminate such effects, inform the business partner in an appropriate manner and keep this decision under constant review <p>Member States must provide for the possibility of suspending or terminating a business relationship</p> <p>Institutional investors and asset managers will be required to take appropriate measures to cause their investee companies to terminate actual adverse effects that have been or should have been identified or, if the adverse effects cannot be eliminated, to minimise those effects.</p> | <p>Member States must provide for the possibility of such termination of business relations, except in the case of contracts which the parties are legally obliged to conclude</p> <p>The company is not obliged to terminate the business relationship if</p> <ul style="list-style-type: none"> - it is reasonable to assume that the termination would lead to negative effects that are more severe than the actual negative effects | <ul style="list-style-type: none"> - the implementation of the measures developed in the concept does not remedy the situation after the time specified in the concept has elapsed, - no other mitigating means are available to the company and an increase in influence does not appear promising <p>The effectiveness of the remedial measures must be reviewed once a year and on an ad hoc basis if the company must expect a significantly changed or significantly expanded risk situation in its own business area or at the direct supplier, for example due to the introduction of new products, projects or a new business field. The measures must be updated immediately if necessary.</p> |

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| | | <p>Where appropriate, institutional investors and asset managers shall be required to cooperate with the investee and exercise their voting rights to cause the management body of an investee to terminate the actual impact or minimise its magnitude. The required measures shall be proportionate to the significance and magnitude of the adverse effect and the contribution of the conduct of the investee to the adverse effect.</p> <p>Similarly, the measures required of institutional investors and asset managers must be proportionate and appropriate and take due account of the degree of control they have over the company in which they have an interest.</p> <p>The enterprise that has caused or contributed to an adverse impact shall take appropriate measures to remedy or mitigate that adverse impact and the potential harm it has caused to people or the environment</p> <p>Suitable remedial measures should be aimed at restoring the affected persons and groups or communities and/or the environment to a state that corresponds to or is as close as possible to the state prior to the impact. These mitigation measures may be, in consultation with all affected stakeholders:</p> | <p>- there is no alternative to this business relationship (indispensable products or services without which the company would suffer considerable damage)</p> <p>If the relationship is not terminated on the basis of this, this shall be duly justified to the supervisory authority</p> <p>The company must then monitor the decision not to terminate the business relationship and seek alternative business relationships</p> <p>The obligation to temporarily suspend or terminate the business relationship does not apply to business agreements concluded by the company before the end of the transposition period</p> | |

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| | | <ul style="list-style-type: none"> - compensation, - return, - rehabilitation, - public apology, - reinstatement, - contribution to investigations <p>Stakeholders affected by an adverse effect should not be required to seek remedies before bringing their claims to court</p> <p>Where the company is directly linked to an adverse impact, Member States should encourage them to participate voluntarily in remedial action, where appropriate, or to use their influence with responsible parties to enable the remediation of damage caused by an impact</p> <p>The company must take appropriate measures to enable genuine interaction and dialogue with affected stakeholders throughout the due diligence process. To this end, engagement must include information and consultation with affected stakeholders and be comprehensive, structural, effective, timely and culturally and gender sensitive.</p> <p>Where appropriate, companies shall provide comprehensive, targeted and relevant information to affected stakeholders about their value chain and actual or</p> | | |

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| | | <p>potential negative impacts on the environment, human rights and good governance. They also have the option of requesting additional written information, which the company must provide within a reasonable time and in an appropriate and understandable format</p> <p>Companies shall establish an appropriate framework for consultations with the stakeholders concerned</p> | | |
| Complaints procedure | <p>Company must establish a complaints procedure</p> <p>Adverse impacts about actual or potential negative impacts of business activities on human rights and the environment</p> <ul style="list-style-type: none"> - of the company, or - its subsidiaries, or - its value chain | <p>Company must establish a notification and out-of-court complaint mechanism</p> <p>Adverse impacts about actual or potential negative impacts on human rights and the environment</p> <ul style="list-style-type: none"> - of the company, or - its subsidiaries, or - its value chain | <p>Company must establish a grievance procedure, which must be fair, accessible and equitable. The procedure shall ensure that the company of the person or organisation making the complaint is kept confidential and shall provide for necessary measures to prevent any form of retaliation by the company or its affiliates.</p> <p>Adverse impacts about actual or potential negative impacts of business activities on human rights and the environment</p> <ul style="list-style-type: none"> - of the company, or - its subsidiaries, or - its business partner | <p>Company must establish an adequate internal company complaints procedure set out in a publicly available set of rules of procedure in text form.</p> <p>The persons entrusted by the company with the conduct of the proceedings must offer a guarantee of impartiality, in particular they must be independent and not bound by instructions. They shall be bound to secrecy.</p> <p>Indications of human rights and environment-related risks as well as violations of human rights-related or environment-related obligations caused by the economic activities of a company in the business sector</p> <ul style="list-style-type: none"> - of the company itself - of an immediate supplier |

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| | <p>Opportunity to complain for:</p> <ul style="list-style-type: none"> - affected persons or persons with reasonable grounds to believe that they may be affected by negative impacts, - Trade unions and other workers' representatives representing persons active in the value chain concerned - Civil society organisations active in the value chain concerned | <p>Opportunity to complain for:</p> <ul style="list-style-type: none"> - affected persons or persons with reasonable cause to believe that they may be adversely affected or their legal representatives or, where there are no individuals, groups or communities adversely affected by an adverse environmental impact, credible and experienced organisations whose functions include the protection of the environment, - Trade unions and other workers' representatives, including those representing persons working in the value chain concerned - Legal or natural persons working for human rights and the environment - Civil society organisations active in the value chain concerned <p>Companies shall proactively inform stakeholders of the existence, objectives and procedures of notification and grievance mechanisms. The complainant must also not be subject to reprisals or retaliation (ensure anonymity and confidentiality, policy must be defined and implemented).</p> <p>Companies shall report on the substantiated adverse impacts raised through their grievance mechanisms and regularly report on the progress made in this regard.</p> | <p>Opportunity to complain for:</p> <ul style="list-style-type: none"> - affected persons or persons with reasonable grounds to believe that they may be affected by adverse impacts, - Trade unions and other workers' representatives representing persons active in the chain of activities concerned - Civil society organisations active in the area of the chain of activities concerned | <p>The complaints procedure must be accessible to potential stakeholders, maintain confidentiality of idcompany and ensure effective protection against disadvantage or punishment on the basis of a complaint</p> <p>The effectiveness of the complaints procedure shall be reviewed at least once a year and on an ad hoc basis</p> <p>The company must set up the complaints procedure in such a way that it also enables persons to point out human rights or environment-related risks as well as violations of human rights-related or environment-related obligations that have arisen as a result of the economic actions of an indirect supplier</p> |

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| | <p>Complainant is entitled to</p> <ul style="list-style-type: none"> - Require appropriate follow-up to the complaint from the company - Meet representatives of the company at the appropriate level to discuss potential or actual serious adverse effects that are the subject of the complaint | <p>All information shall be disclosed in a manner that does not compromise the security of stakeholders, including by not disclosing their idcompany.</p> <p>Complainant is entitled to</p> <ul style="list-style-type: none"> - Receive timely and appropriate follow-up to the complaint from the company, setting out in a reasoned manner whether the complaint is considered to be well-founded or unfounded and what steps and actions have been taken - Meet representatives of the company at the appropriate level to discuss potential or actual negative impacts that are the subject of the complaint - Require that companies eliminate or contribute to the elimination of actual adverse effects | <p>Complainant is entitled to</p> <ul style="list-style-type: none"> - Require appropriate follow-up to the complaint from the company - Meet representatives of the company at the appropriate level to discuss potential or actual serious adverse effects that are the subject of the complaint | |
| Monitoring | <p>Companies shall conduct regular assessments of their own operations and actions, those of their subsidiaries where these are related to the business' value chains, and those of their established business relationships, to monitor the effectiveness of identifying, preventing, mitigating, remediating and minimising adverse impacts on human rights and the environment.</p> | <p>The companies continuously review and monitor the appropriateness and effectiveness of the measures they have taken and their implementation</p> <p>Monitoring and review shall be based on qualitative and quantitative indicators, where appropriate, and shall be carried out on an ongoing basis, taking into account the nature, severity and likelihood of the adverse effects concerned, and as</p> | <p>Companies shall conduct regular assessments of their own activities and actions and those of their subsidiaries and, where they are linked to the company's activity chains, those of their business partners, in order to monitor the effectiveness of identifying, preventing, mitigating, remedying and minimising the magnitude of adverse impacts</p> | <p>The company must (at least) once a year</p> <ul style="list-style-type: none"> - Find out about the work of the Human Rights Commissioner - Carry out a risk analysis - Verify the effectiveness of the prevention measures - Verify the effectiveness of the remedial measures - Review the effectiveness of the complaints procedure |

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| | <p>The assessments shall be based on qualitative and quantitative indicators, as appropriate, and shall be carried out at least every 12 months and as soon as there are reasonable grounds to believe that significant new risks may emerge in relation to those negative impacts</p> <p>The due diligence strategy shall be updated in line with the findings of these assessments</p> | <p>soon as there are reasonable grounds to believe that significant new risks may arise in relation to those adverse effects</p> <p>Where appropriate, review and update the due diligence strategy, preventive action plan and corrective action plan in line with the findings of these assessments.</p> | <p>These assessments shall be based on qualitative and quantitative indicators, as appropriate, and shall be carried out immediately after a significant change occurs, but at least every 24 months, and as soon as there are reasonable grounds to believe that significant new risks of occurrence of those adverse effects may arise</p> <p>The due diligence strategy shall be updated in accordance with the results of these assessments and with due consideration of relevant information from stakeholders.</p> | <p>The company shall ensure that it is determined who within the company is responsible for overseeing risk management, for example by appointing a human rights officer</p> |
| Reporting | <p>Companies that are not already subject to the reporting obligations pursuant to Art. 19 and 29a of Directive 2013/34/EU shall report once a year on their website in the form of a statement in a language customary in the international business community</p> <p>The declaration shall be published by 30 April each year for the previous calendar year</p> <p>The Commission shall, by means of delegated acts, determine the content and criteria for reporting</p> | <p>Companies that are not already subject to the reporting obligations pursuant to Art. 19, 29a and 40a of Directive 2013/34/EU shall report once a year on their website in the form of a statement in one of the official languages of the EU</p> <p>The declaration shall be published no later than 12 months after the balance sheet date of the financial year for which the declaration is prepared</p> <p>The Commission shall, by means of delegated acts, determine the content and criteria for reporting</p> | <p>Companies that are not already subject to the reporting obligations pursuant to Art. 19 and 29a of Directive 2013/34/EU shall report once a year on their website in the form of a statement in a language customary in the international business community</p> <p>The statement shall be published within a reasonable period of time, which shall not exceed twelve months after the balance sheet date of the financial year for which it is prepared</p> <p>The Commission shall, by means of delegated acts, determine the content and criteria for reporting</p> | <p>The fulfilment of the due diligence obligations must be continuously documented within the company. The documentation shall be kept for at least seven years from the date of its creation.</p> |

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| | | <p>For companies that do not have a website, Member States shall set up a website on which the report of the companies concerned shall be published</p> <p>The declaration is to be uploaded to the European Single Access Point (ESAP)</p> | | <p>Report must be prepared once a year and must be made publicly available free of charge on the company's website for a period of seven years no later than four months after the close of the financial year</p> <p>The report shall state the following:</p> <ul style="list-style-type: none"> - Whether and, if so, which human rights and environment-related risks or violations of a human rights-related or environment-related duty the company has identified - what the company has done to fulfil the due diligence obligations - how the company assesses the impact and effectiveness of the measures - what conclusions it draws from the evaluation for future measures |
| Supervisory authorities | <p>Supervisory authorities should have the power:</p> <ul style="list-style-type: none"> - to request information, - to conduct investigations, | <p>Supervisory authorities should have the power:</p> <ul style="list-style-type: none"> - to demand information, - to conduct investigations, including, where appropriate, on-site | <p>Supervisory authorities should have the power:</p> <ul style="list-style-type: none"> - to request information, - to conduct investigations, (for climate change mitigation, only the | <p>The authority shall verify that the report is available and that the requirements for it have been complied with</p> <p>The Authority may require rectification of the report within a reasonable period of time</p> |

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| | <ul style="list-style-type: none"> - to order the cessation of the infringement, to order the cessation of any repetition of the conduct in question, to order such remedial measures as are appropriate and necessary to the infringement - the imposition of financial sanctions (<i>Art. 20, on the other hand, also provides in principle for sanctions of a non-financial nature according to its wording</i>) - on the adoption of interim measures to prevent the risk of serious and irreparable damage <p>May act ex officio or on the basis of reasonable adverse impacts raised by a natural or legal person</p> | <p>inspections and interviews with relevant stakeholders,</p> <ul style="list-style-type: none"> - to order the cessation of the infringement, to order the cessation of any repetition of the conduct in question, to order such remedial measures as are appropriate and necessary to the infringement - on the imposition of financial sanctions - on the adoption of interim measures to prevent the risk of serious or irreparable damage - to evaluate prioritisation strategies and order a review if the requirements for such prioritisation strategies are not met <p>May act ex officio or on the basis of reasonable adverse impacts raised by a natural or legal person</p> <p>Supervisory authorities shall publish and regularly update a list of all companys subject to this Directive</p> <p>The civil liability of companys shall remain unaffected by decisions of the supervisory authorities. In the context of</p> | <p>adoption of the plan by the companies will be monitored),</p> <ul style="list-style-type: none"> - to order the cessation of the infringement, to order the cessation of any repetition of the conduct in question, to order such remedial measures as are appropriate and necessary to the infringement - on the imposition of financial sanctions - in urgent cases, to adopt provisional measures to avoid the risk of serious and irreparable damage <p>May act ex officio or on the basis of reasonable adverse impacts raised by a natural or legal person</p> | <p>The authority shall act ex officio according to its due discretion</p> <ul style="list-style-type: none"> - to monitor compliance with due diligence obligations with regard to possible human rights and environmental risks as well as violations of a human rights-related or an environmental obligation; and - to detect, eliminate and prevent violations thereof; <p>The authority shall take action upon application if the person making the application substantiates claims,</p> <ul style="list-style-type: none"> - being injured in a protected legal position as a result of the non-fulfilment of a duty of care or - that such a breach is imminent <p>The Authority shall in particular have the powers to</p> <ul style="list-style-type: none"> - persons to be invited, - order the company to submit a corrective action plan, including clear timelines for its implementation, within three months from the date of notification of the order; and - require the company to take specific actions to fulfil its obligations |

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| | | <p>ongoing civil proceedings, the supervisory authorities shall communicate to the court all information available to it concerning a particular company</p> | | <p>To the extent necessary for the performance of their duties, the competent authority and its delegates shall be authorised to</p> <ul style="list-style-type: none"> - enter and inspect company premises, business premises and farm buildings during normal business or operating hours; and - in the case of companies, to inspect and examine, during normal business or operating hours, business documents and records from which it can be deduced whether the due diligence obligations have been complied with <p>The enterprises and their employees summoned for this purpose shall be obliged to provide the competent authority with the information and to surrender documents upon request. This obligation also extends to information on affiliated companies, direct and indirect suppliers and the handing over of documents of these companies, insofar as the company or person obliged to provide information or hand over documents has the information at its disposal or is in a position to obtain the requested information due to existing contractual relationships</p> <p>The enterprises shall tolerate the measures of the competent authority</p> |

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| | | | | and its representatives and cooperate in the implementation of the measures. |
| Sanctions | <p>In the event of infringements of this Directive, sanctions created by Member States may be imposed which are effective, proportionate and dissuasive</p> <p>If financial penalties are imposed, they must be based on the company's turnover</p> | <p>In the event of infringements of this Directive, sanctions created by Member States may be imposed which are effective, proportionate and dissuasive</p> <p>At least the following measures shall be provided for:</p> <ul style="list-style-type: none"> - financial sanctions - A public statement setting out a company's responsibility and the nature of the breach - an obligation to take a measure, including an obligation to cease the conduct constituting the infringement and to desist from a repetition of that conduct - the suspension of the products from free circulation or exportation <p>If financial sanctions are imposed, they must be based on the company's turnover. The maximum limit for fines is at least 5% of the company's worldwide net turnover in the business year preceding the fine decision.</p> <p>Companies incorporated under the laws of a third country should be able to be excluded from public tenders if they do</p> | <p>In the event of infringements of this Directive, sanctions created by Member States may be imposed which are effective, proportionate and dissuasive</p> <p>If financial sanctions are imposed, they must be proportionate to the company's worldwide net turnover</p> | <p>A penalty payment of up to EUR 50,000 may be imposed in the official proceedings.</p> <p>The following shall be fined:</p> <ul style="list-style-type: none"> - not designate a responsible person for the monitoring of risk management - not carrying out a risk analysis, not carrying it out correctly, not carrying it out completely or not carrying it out in time - not taking a preventive measure or not taking it in time - fail to conduct a review of the prevention and remedial measures and the complaints procedure in a timely manner or at all - failure to update the prevention and remediation measures and the complaints procedure in a timely manner, if at all - not taking a remedial action or not taking it in time - Failure to prepare or implement a cessation or minimisation concept in a timely manner or at all - not ensuring that a complaints |

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| | Decisions of the supervisory authorities containing penalties in relation to an infringement of the provisions of this Directive shall be published | not appoint an agent Decisions of the supervisory authorities containing sanctions in relation to an infringement of the provisions of this Directive shall be published | Decisions of the supervisory authorities containing sanctions related to an infringement of the provisions of this Directive shall be published, shall remain publicly available for at least three years and shall be communicated to the European Network of Supervisors | <ul style="list-style-type: none"> - procedure is in place - not to keep documentation or not to keep it for at least seven years - Failure to produce a report correctly - not making a report publicly available or not making it publicly available in a timely manner - not submitting a report or not submitting it in time - contravene an enforceable order <p>The basis for the assessment of the fine for legal persons and associations of persons is the significance of the administrative offence. The economic circumstances of the legal person or association of persons shall be taken into account in the assessment. In the assessment, the circumstances shall be weighed against each other insofar as they speak for and against the legal person or association of persons.</p> |
| | Criminal sanctions conceivable | Criminal sanctions conceivable | Criminal sanctions conceivable | There are no criminal consequences |
| Civil liability | The companies are liable for damages if <ul style="list-style-type: none"> - they have not fulfilled the obligations arising from the prevention of potential negative impacts and the remediation of actual negative impacts; and | The companies are liable for damages if <ul style="list-style-type: none"> - they have not fulfilled the obligations arising from the prevention of potential negative impacts and the remediation of actual negative impacts; and | The companies are liable for damages to a natural or legal person if <ul style="list-style-type: none"> - they have intentionally or negligently failed to fulfil their obligations to prevent potential adverse effects and to remedy actual adverse effects where the rights, prohibitions and obligations are intended to protect the | A breach of the obligations under the LkSG shall not give rise to any liability under civil law. Liability established independently of this Act shall remain unaffected. |

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| | <ul style="list-style-type: none"> - negative impacts have occurred as a result of this failure that should have been identified, avoided, mitigated, remedied or minimised by taking reasonable measures and have resulted in harm <p>Where a company has obtained contractual assurances from its business partners with whom it has a direct business relationship that they will ensure compliance with the company's code of conduct and, if necessary, a preventive action plan, including by obtaining appropriate contractual assurances from their partners to the extent that their activities are part of the company's value chain, and where those contractual assurances have been accompanied by appropriate measures to verify compliance, the company is not liable for any damage caused by adverse effects as a result of the activities of an indirect partner with which it has an established business relationship, unless, depending on the individual case, it would be unreasonable to expect that the action taken, including compliance verification, would be appropriate to avoid, mitigate, remedy or minimise the adverse effect</p> | <ul style="list-style-type: none"> - the company has caused or contributed to adverse effects as a result of that failure, which should have been identified, prioritised, avoided, mitigated, terminated, remedied or minimised by taking reasonable measures and resulted in harm <p>To ensure that:</p> <ul style="list-style-type: none"> - the limitation period for bringing actions for damages is at least ten years and measures are taken to ensure that the costs of proceedings are not too high for claimants to obtain justice - the plaintiffs have the possibility to seek injunctions, including summary proceedings. These must take the form of a definitive or interim measure to restrain an act which may be in breach of this Directive or to comply with a measure under the Directive - Measures must be in place to ensure that mandated trade unions, civil society organisations or other relevant actors acting in the public interest can bring proceedings in court on behalf of a victim or group of victims of adverse effects, and that these bodies have the rights and obligations of a | <ul style="list-style-type: none"> - natural or legal person; and the failure has damaged the legal interest of the natural or legal person protected under national law <p>A company cannot be held liable if the damage was caused only by its business partners in its chain of activity</p> <p>The claim for damages must not result in overcompensation, whether punitive damages, multiple damages or other types of damages</p> | |

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| | <p>The civil liability of a company does not affect the civil liability of its subsidiaries or direct and indirect business partners in the value chain</p> <p>Civil liability under the Directive is without prejudice to any other civil liability</p> | <p>claimant in the proceedings, without prejudice to applicable national law</p> <ul style="list-style-type: none"> - Where an action is brought and a claimant presents elements establishing the likelihood of a company's liability under this Directive and has indicated that additional evidence is within the power of the company to dispose of, the courts may order that such evidence be disclosed by the company in accordance with national procedural law, subject to Union and national rules on confidentiality and proportionality <p>Plaintiffs to be able to seek injunctions in Union courts, including summary proceedings</p> <p>The civil liability of an company shall be without prejudice to the civil liability of its subsidiaries or direct or indirect business partners in the value chain. In cases where a subsidiary falls within the scope of this Directive and has been dissolved by the parent company or has deliberately dissolved itself in order to avoid liability, the liability may be attributed to the parent company if there is no legal successor.</p> <p>The civil liability provisions of this Directive shall not limit liability under</p> | <p>The civil liability of a company shall be without prejudice to the civil liability of its subsidiaries or direct and indirect business partners in the chain of activities. If the damage was caused jointly by the enterprise and its subsidiary or direct or indirect business partners, they are jointly and severally liable</p> <p>Civil liability under the Directive is without prejudice to any other civil liability</p> | |

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| | <p>under EU law or the law of the Member States which does not derive from the Directive or which provides for stricter liability</p> <p>This liability shall be mandatory and shall prevail in cases where the law applicable to corresponding claims is not the law of a Member State</p> | <p>Union or Member State law, including the rules on joint and several liability</p> <p>This liability shall be mandatory and shall prevail in cases where the law applicable to corresponding claims is not the law of a Member State</p> <p>Member States shall ensure that (non-)compliance with the obligations resulting from this Directive or their voluntary implementation is considered as one of the environmental and social aspects to be taken into account in accordance with the rules applicable to the granting of public support or the award of public contracts and concessions</p> | <p>under EU law or the law of the Member States which does not derive from the Directive or which provides for stricter liability</p> <p>This liability shall be mandatory and shall prevail in cases where the law applicable to corresponding claims is not the law of a Member State</p> | |
| Climate change | <p>Companies (<i>listed below</i>) must define a plan to ensure that the company's business model and strategy are compatible with the transition to a sustainable economy and the limitation of global warming to 1.5 °C in accordance with the Paris Agreement</p> | <p>Companies must develop and implement a monitoring plan (in line with the reporting requirements set out in Article 19a of Regulation (EU) 2021/0104 (CSRD)) to ensure that the company's business model and strategy are aligned with the transition to a sustainable economy and the limitation of global warming to 1.5 °C in accordance with the Paris Agreement, the goal of climate neutrality by 2050 and the 2030 climate target set out in Regulation (EU) 2021/1119</p> | <p>Companies (<i>listed below</i>) must submit a plan, including implementation measures and related financial and investment plans, to ensure that the company's business model and strategy are compatible with the transition to a sustainable economy and the limitation of global warming to 1.5 °C in accordance with the Paris Agreement, as well as the goal of achieving climate neutrality by 2050 set out in the so-called European Climate Change Act (Regulation (EU) 2021/1119)</p> | <p>Climate targets are not addressed by the LkSG</p> |

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| | | <p>The plan shall include a description regarding: (i) the resilience of the company's business model and strategy to climate-related risks, (ii) the opportunities for the company in relation to climate issues, (iii) where applicable, an identification and explanation of decarbonisation levers within the company's operations and value chain, (iv) how the company's business model and strategy address the interests of the company's affected stakeholders and the company's impact on climate change, (v) how the company's strategy on climate issues has been and will be implemented, including the relevant financial and investment plans, (vi) the time-bound, science-based climate change targets the company has set for Scope 1, Scope 2 and, where applicable, Scope 3 emissions, including, where applicable, absolute greenhouse gas emission reduction targets for 2030 and in five-year increments up to 2050, based on conclusive science, and a description of the progress the company has made, (vii) a description of the role of the administrative, management and supervisory bodies with respect to climate issues</p> | <p>The plan shall indicate, where appropriate, the company's participation in activities related to coal, oil and gas</p> | |
| | <p>If climate change is, or should have been identified as, a major risk or impact of the company's operations, the company</p> | | <p>If climate change is, or should have been, identified as a major risk or impact of the company's operations, the</p> | |

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| | Proposal of the European Commission | Proposal of the EU Parliament | Proposal of the Council of the European Union | German Supply Chain Act (LkSG) |
| | <p>must include emission reduction targets in its plan</p> <p>This applies to:</p> <ul style="list-style-type: none"> - Enterprises which are incorporated under the laws of a Member State and which in the last financial year had an average number of employees exceeding 500 and a worldwide net turnover exceeding EUR 150 million; and - Enterprises incorporated under the laws of a third country and having a net turnover in the last business year of more than EUR 150 million | <p>This applies to:</p> <ul style="list-style-type: none"> - The companys falling within the scope of the Directive | <p>company must include targets for reducing its greenhouse gas emissions in its plan</p> <p>This applies to:</p> <ul style="list-style-type: none"> - Enterprises which are incorporated under the laws of a Member State and which in the last financial year had an average number of employees exceeding 500 and a worldwide net turnover exceeding EUR 150 million; and - Enterprises incorporated under the laws of a third country and having a net turnover in the last business year of more than EUR 150 million | |
| Members of the Executive Board | <p>Members of the management of companies incorporated under the law of a Member State and falling within the scope of the Directive shall, when exercising their duty to act in the best interests of the company, take into account the short, medium and long-term consequences of their decisions for sustainability aspects, including, where appropriate, the consequences for human rights, climate change and the environment</p> <p>National laws, regulations and</p> | <p>Members of the management of companies incorporated under the law of a Member State and falling within the scope of the Directive shall, when exercising their duty to act in the best interests of the company, take into account the short, medium and long-term consequences of their decisions for sustainability aspects, including, where appropriate, the consequences for human rights, climate change and the environment</p> <p>National laws, regulations and</p> | <p>Not applicable</p> | <p>The LkSG does not address the management accordingly</p> <p>The management has regularly, at least once a year, to inform about the work of the responsible person or persons</p> <p>The company 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.</p> |

| Colour code: <ul style="list-style-type: none"> ■ Coloured green: Solely listed in the Commission proposal ■ Coloured purple: Innovation in the proposal of the EU Parliament ■ Coloured red: Innovation in the proposal of the Council of the European Union ■ Coloured blue: Conceptually only provided for in the LkSG | | | | |
|---|---|---|--|---------------------------------------|
| | Proposal of the European Commission | Proposal of the EU Parliament | Proposal of the Council of the European Union | German Supply Chain Act (LkSG) |
| | administrative provisions shall also treat the duties listed above as breaches of directors' duties Members of the management are responsible for the establishment and control of the measures to fulfil the duty of care | administrative provisions shall also treat the duties listed above as breaches of directors' duties | | |

PLEASE FEEL FREE TO CONTACT US!

Taylor Wessing

Isartorplatz 8, 80331 Munich
Tel. +49 (0) 89 21038-0

Benrather Straße 15, 40213 Düsseldorf
Phone +49 (0) 211 8387-0

Your contacts for supply chains:



Dr Martin Rothermel

Tel. +49 (0) 89 21038 - 121

m.rothermel@taylorwessing.com



Sebastian Rünz, LLM

Tel. +49 (0) 211 8387- 278

s.ruenz@taylorwessing.com



Julius Dahmen

Tel. +49 (0) 89 21038 - 269

j.dahmen@taylorwessing.com



Louis Warnking

Tel. +49 (0) 211 8387 - 238

l.warnking@taylorwessing.com

Further **useful** and **up-to-date information** can be found here: <https://www.taylorwessing.com/en/insights-and-events/insights/supply-chain-act>
 Brief **overview** of the **Supply Chain Act**: <https://www.taylorwessing.com/en/insights-and-events/insights/2021/07/overview-of-the-german-supply-chain-due-diligence-act>
 Guide to the **Supply Chain Act**: <https://www.taylorwessing.com/en/insights-and-events/insights/2021/07/guide-to-the-german-supply-chain-due-diligence-act>
Route plan to the Supply Chain Act: https://www.taylorwessing.com/-/media/taylor-wessing/files/germany/2022/03/route-plan_german-supply-chain-due-diligence-act.pdf
Practical guide: https://www.taylorwessing.com/-/media/taylor-wessing/files/germany/2022/03/practical-guide_risk-analysis_february-2022.pdf
Synopsis EU Supply Chain Due Diligence: <https://www.taylorwessing.com/de/insights-and-events/insights/2023/02/synopse-eu-lieferketten-sorgfaltspflichten>
GAP-Analysis Tool: https://vimeo.com/691791575?embedded=true&source=vimeo_logo&owner=170438950
Commentary on the Supply Chain Act, Dr. Martin Rothermel: <https://shop.ruw.de/startseite/5051-lksg.html>