The normative provisions on human rights due diligence requirements for companies

EU DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE

(dated 15 March 2024)

Selected Articles

Article 1

Subject matter

1. This Directive lays down rules on

   (a) obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in companies' chains of activities;

   (b) liability for violations of the obligations mentioned above; and

   (c) obligation to adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through best efforts, compatibility of the business model and strategy of the company with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C.

2. This Directive shall not constitute grounds for reducing the level of protection of human, employment and climate provided for by the law of Member States, or applicable collective agreements at the time of the adoption of this Directive.

3. This Directive shall be without prejudice to obligations in the areas of human, employment and social rights, protection of the environment and climate change under other Union legislative acts. If the provisions of this Directive conflict with a provision of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, the provisions of the other Union legislative act shall prevail to the extent of the conflict and shall apply to those specific obligations.

Article 2

Scope

1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State and which fulfil one of the following conditions:

   (a) the company had more than 1000 employees on average and had a net worldwide turnover of more than EUR 450 million in the last financial year for which annual financial statements have been or should have been adopted;

   (b) the company did not reach the thresholds under (a) but is the ultimate parent company of a group that reaches the thresholds in the last financial year for which consolidated annual financial statements have been or should have been adopted;

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2. This Directive shall also apply to companies which are formed in accordance with the legislation of a third country, and fulfil one of the following conditions:

   (a) generated a net turnover of more than EUR 450 million in the Union in the financial year preceding the last financial year;

   (b) the company did not reach the thresholds under point (a) but is the ultimate parent company of a group that on a consolidated basis reaches the thresholds under (a) in the financial year preceding the last financial year;

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Article 4

Due diligence

1. Member States shall ensure that companies conduct risk-based human rights and environmental due diligence as laid down in Articles 5 to 11 ('due diligence') by carrying out the following actions:

   a) integrating due diligence into their policies and risk management systems in accordance with Article 5;

   (b) identifying and assessing actual or potential adverse impacts in accordance with Article 6 and, where necessary, prioritising potential and actual adverse impacts in accordance with Article 6a;

   (c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8;

   (cb) providing remediation to actual adverse impacts in accordance with Article 8c;

   (cc) carrying out meaningful engagement with stakeholders in accordance with Article 8d;

   (d) establishing and maintaining a notification mechanism and complaints procedure in accordance with Article 9;

   (e) monitoring the effectiveness of their due diligence policy and measures in accordance with Article 10;

   (f) publicly communicating on due diligence in accordance with Article 11.

2. Member States shall ensure that, for the purposes of due diligence, companies are entitled to share resources and information within their respective groups of companies and with other legal entities.

3. Member States shall ensure that a business partner shall not be obliged to disclose to a company which is complying with the obligations resulting from this Directive, information that is a trade secret as defined in Article 2(1) of Directive (EU) 2016/943 of the European Parliament and of the Council76, without prejudice to the disclosure of the identity of direct and indirect business partners, or essential information needed to identify potential or actual adverse impacts, where necessary and duly justified for the company's compliance with due diligence obligations. This shall be without prejudice to the possibility for the business partners to protect their trade secrets through the mechanisms established in Directive (EU) 2016/943 of the European Parliament and of the Council. Business partners shall never be obliged to disclose classified information or other information the disclosure of which would cause a risk to the essential interests of a state's security.

3a. Member States shall require companies to retain documentation regarding the actions adopted to fulfil their due diligence obligations for the purpose of demonstrating compliance, including supporting evidence, for at least 5 years from the moment when such documentation was produced or obtained. Where, upon expiry of the applicable period, there is an ongoing judicial or administrative proceeding under this Directive, the retention period shall be extended until the final conclusion of the matter.

Article 4a

Due diligence support at a group level

1. Member States shall ensure that parent companies falling under the scope of this Directive may fulfil the obligations set out in Articles 5 to 11 and Article 15 on behalf of companies which are their subsidiaries falling under the scope of this Directive, if this ensures effective compliance. This is without prejudice to the subsidiaries being subject to the exercise of the supervisory authority's powers in accordance with Article 18 and to their civil liability in accordance with Article 22.

2. The fulfilment of due diligence obligations set out in Articles 5 to 11 by a parent company in accordance with paragraph 1 of this Article is subject to all the following conditions:

   (a) the subsidiary and parent company provide each other with all the necessary information and cooperate to fulfil the obligations resulting from this Directive;

   (b) the subsidiary abides by its parent company's due diligence policy accordingly adapted to ensure that the obligations laid down in Article 5(1) are fulfilled with respect to the subsidiary;

   (c) the subsidiary integrates due diligence into all its policies and risk management systems in accordance with Article 5, clearly describing which obligations are to be fulfilled by the parent company, and, where necessary, communicating so to relevant stakeholders;

(d) where necessary, the subsidiary continues to take appropriate measures in accordance with Articles 7and 8 and to fulfil its obligations under Articles 8c and 8d;

(e) where relevant, the subsidiary fulfils the obligation to seek the contractual assurances in accordance with Article 7(2), point (b), or Article 8(3), point (c); to seek contractual assurances with an indirect business partner in accordance with Articles 7(3) or 8(4); and to temporarily suspend or terminate the business relationship in accordance with Articles 7(5) or 8(6);

3. When the parent company fulfils the obligation set out in Article 15 on behalf of the subsidiary in accordance with paragraph 1 of this Article, the subsidiary shall comply with the obligations laid down in Article 15 in accordance with the parent company's transition plan for climate change mitigation accordingly adapted to its business model and strategy.

Article 5

Integrating due diligence into company's policies and risk management systems

1. Member States shall ensure that companies integrate due diligence into all their relevant policies and risk management systems and have in place a due diligence policy that ensures a risk-based due diligence.

1a. The due diligence policy shall be developed in prior consultation with the company's employees and their representatives, and contain all of the following:

(a) a description of the company's approach, including in the long term, to due diligence;

(b) a code of conduct describing rules and principles to be followed throughout the company and its subsidiaries, and the company's direct or indirect business partners in accordance with Article 7(2), point (b), 7(3), 8(3), point (c), or 8(4); and

(c) a description of the processes put in place to integrate due diligence into the relevant policies and to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to business partners.

2. Member States shall ensure that the companies update their due diligence policy without undue delay after a significant change occurs, and review and, where necessary, update it at least every 24 months.

For this purpose, companies shall take into account the adverse impacts already identified according to Article 6, as well as the appropriate measures taken to address such adverse impacts in line with Articles 7 and 8 and the outcome of the assessments carried out in accordance with Article 10.

Article 6

Identifying and assessing actual and potential adverse impacts

1. Member States shall ensure that companies take appropriate measures to identify and assess actual and potential adverse impacts arising from their own operations or those of their subsidiaries and, where related to their chains of activities, those of their business partners, in accordance with this Article.

   1a. As part of the obligation in paragraph 1, taking into account relevant risk factors, companies shall take appropriate measures to: (a) map their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in order to identify general areas where adverse impacts are most likely to occur and to be most severe; (b) based on the results of that mapping, carry out an in-depth assessment of the own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners, in the areas where adverse impacts were identified to be most likely to occur and most severe.

4. Member States shall ensure that, for the purposes of identifying and assessing the adverse impacts referred to in paragraph 1 based on, where appropriate, quantitative and qualitative information, companies are entitled to make use of appropriate resources, including independent reports and information gathered through the notification mechanism and complaints procedure provided for in Article 9.

   4b. Where information necessary for the in-depth assessment according to paragraph (1a), point (b) can be obtained from business partners at different levels of the chain of activities, the company shall prioritise requesting such information, where reasonable, directly from business partners where the adverse impacts are most likely to occur.

Article 6a

Prioritisation of identified actual and potential adverse impacts

1. Member States shall ensure that, where it is not feasible to prevent, mitigate, bring to an end or minimise all identified adverse impacts at the same time to their full extent, companies prioritise adverse impacts identified pursuant to Article 6 for fulfilling the obligations laid down in Article 7 or 8.

2. The prioritisation shall be based on the severity and likelihood of the adverse impacts.

3. Once the most severe and most likely adverse impacts are addressed in accordance with Article 7 or 8 in a reasonable time, the company shall address less severe and less likely adverse impacts.

Article 7

Preventing potential adverse impacts

1. Member States shall ensure that companies take appropriate measures to prevent, or where prevention is not possible or not immediately possible, adequately mitigate potential adverse impacts that have been, or should have been, identified pursuant to Article 6, in accordance with Article 6a and with this Article.

To determine the appropriate measures referred to in the first subparagraph, due account shall be taken of:

(a) whether the potential adverse impact may be caused only by the company; whether it may be caused jointly by the company and its subsidiary or business partner, through acts or omissions; or whether it may be caused only by the company's business partner in the chain of activities;

(b) whether the potential adverse impact may occur in the operations of the subsidiary, direct business partner or indirect business partner; and

(c) the ability of the company to influence the business partner that may cause or jointly cause the potential adverse impact

2. Companies shall be required to take the following appropriate measures, where relevant:

(a) where necessary, due to the nature or complexity of the measures required for prevention, without undue delay develop and implement a prevention action plan, with reasonable and clearly defined timelines for the implementation of appropriate measures and qualitative and quantitative indicators for measuring improvement. Companies may develop their action plans in cooperation with industry or multi-stakeholder initiatives. The prevention action plan shall be adapted to companies' operations and chain of activities;

(b) seek contractual assurances from a direct business partner that it will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by establishing corresponding contractual assurances from its partners, to the extent that their activities are part of the company's chain of activities. When such contractual assurances are obtained, paragraph 4 shall apply;

(c) make necessary financial or non-financial investments, adjustments or upgrades, such as into facilities, production or other operational processes and infrastructures;

(ca) make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations, including purchasing practices, design and distribution practices;

(d) provide targeted and proportionate support for an SME which is a business partner of

the company, where necessary in light of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems, and, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME, providing targeted and proportionate financial support, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing;

(e) in compliance with Union law, including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to prevent or mitigate the adverse impact, in particular where no other measure is suitable or effective.

2a. Companies may take, where relevant, appropriate measures in addition to the measures included in paragraph 2, such as engaging with a business partner about the company's expectations with regard to preventing and mitigating the potential adverse impacts, or providing or enabling access to capacity-building, guidance, administrative and financial support such as loans or financing, taking into consideration the resources, knowledge and constraints of the business partner.

3. As regards potential adverse impacts that could not be prevented or adequately mitigated by the appropriate measures listed in paragraph 2, the company may seek contractual assurances with an indirect business partner, with a view to achieving compliance with the company's code of conduct or a prevention action plan. When such contractual assurances are sought, paragraph 4 shall apply.

4. The contractual assurances shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to independent third-party verification, including through industry or multi-stakeholder initiatives.

When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. The company shall also assess whether the contractual assurances with an SME should be accompanied by some of the appropriate measures for SMEs included in paragraph 2, point (d). Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.

In case the SME requests to pay at least a part of the cost, or in agreement with the company, the SME shall be able to share the results of verifications with other companies.

5. As regards potential adverse impacts within the meaning of paragraph 1 that could not be prevented or adequately mitigated by the measures in paragraphs 2, 3 and 4, as a last resort, the company shall be required to refrain from entering into new or extending existing relations with a business partner in connection with or in the chain of activities of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions, as a last resort:

(a) adopt and implement an enhanced prevention action plan for the specific adverse impact without undue delay, by using or increasing the company's leverage through the temporary suspension of business relationships with respect to the activities concerned, as long as there is reasonable expectation that these efforts will succeed. The action plan shall include a specific and appropriate timeline for the adoption and implementation of all actions therein, during which the company may also seek alternative business partners;

(b) if there is no reasonable expectation that these efforts would succeed, or if the implementation of the enhanced prevention action plan failed to prevent or mitigate the adverse impact, terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe.

Prior to temporarily suspending or terminating the business relationship, the company shall assess whether the adverse impacts of doing so can be reasonably expected to be manifestly more severe than the adverse impact that could not be prevented or adequately mitigated. Should that be the case, the company shall not be required to suspend or to terminate the business relationship, and shall be in a position to report to the competent supervisory authority about the duly justified reasons of such decision.

Member States shall provide for the availability of an option to temporarily suspend or terminate the business relationship in contracts governed by their laws in accordance with the first subparagraph, except for contracts where the parties are obliged by law to enter into them.

Where the company decides to temporarily suspend or terminate the business relationship, the company shall take steps to prevent, mitigate or bring to an end the impacts of suspension or termination, provide reasonable notice to the business partner and keep that decision under review. Where the company decides not to temporarily suspend or terminate the business relationship in line with this article, the company shall monitor the potential adverse impact and periodically reassess its decision and whether further appropriate measures are available.

Article 8

Bringing actual adverse impacts to an end

1. Member States shall ensure that companies take appropriate measures to bring actual adverse impacts that have been, or should have been, identified pursuant to Article 6 to an end, in accordance with Article 6a and with this Article.

To determine the appropriate measures referred to in the first subparagraph, due account shall be taken of:

(a) whether the actual adverse impact is caused only by the company; whether it is caused jointly by the company and its subsidiary or business partner, through acts or omissions; or whether it is caused only by the company's business partner in the chain of activities;

(b) whether the actual adverse impact occurred in the operations of the subsidiary, direct business partner or indirect business partner; and

(c) the ability of the company to influence the business partner causing or jointly causing the actual adverse impact.

2. Where the adverse impact cannot immediately be brought to an end, Member States shall ensure that companies minimise the extent of such an impact.

3. Companies shall be required to take the following appropriate measures, where relevant:

(a) neutralise the adverse impact or minimise its extent. The action shall be proportionate to the severity of the adverse impact and to the company's implication in the adverse impact;

(b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, without undue delay develop and implement a corrective action plan with reasonable and clearly defined timelines for the implementation of appropriate measures and qualitative and quantitative indicators for measuring improvement. Companies may develop their action plans in cooperation with industry or multi-stakeholder initiatives. The corrective action plan shall be adapted to companies' operations and chain of activities;

(c) seek contractual assurances from a direct business partner that it will ensure compliance with the company's code of conduct and, as necessary, a corrective action plan, including by establishing corresponding contractual assurances from its partners, to the extent that their activities are part of the company's chain of activities. When such contractual assurances are obtained, paragraph 5 shall apply;

(d) make necessary financial or non-financial investments, adjustments or upgrades, such as into facilities, production or other operational processes and infrastructures;

(da) make necessary modifications of, or improvements to, the company's own business plan, overall strategies and operations, including purchasing practices, design and distribution practices;

(e) provide targeted and proportionate support for an SME which is a business partner of the company, where necessary in light of the resources, knowledge and constraints of the SME, including by providing or enabling access to capacity-building, training or upgrading management systems, and, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME, providing targeted and proportionate financial support, such as direct financing, low-interest loans, guarantees of continued sourcing, or assistance in securing financing.

(f) in compliance with Union law, including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end or minimise the extent of such impact, in particular where no other measure is suitable or effective.

(g) provide remediation in accordance with Article 8c.

3a. Companies may carry out, where relevant, appropriate measures in addition to the measures included in paragraph 3, such as engaging with a business partner about the company's expectations with regard to bringing adverse impacts to an end or minimise the extent of such impacts, or providing or enabling access to capacity-building, guidance, administrative and financial support such as loans or financing, taking into consideration the resources, knowledge and constraints of the business partner.

4. As regards actual adverse impacts that could not be brought to an end or the extent of which could not be adequately minimised by the appropriate measures listed in paragraph 3, the company may seek contractual assurances with an indirect business partner, with a view to achieving compliance with the company's code of conduct or a corrective action plan. When such contractual assurances are sought, paragraph 5 shall apply.

5. The contractual assurances shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to independent third-party verification, including through industry or multi-stakeholder initiatives.

When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. The company shall also assess whether the contractual assurances with an SME should be accompanied by some of the appropriate measures for SMEs included in paragraph 3, point (e). Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.

In case the SME requests to pay at least a part of the cost, or in agreement with the company, the SME shall be able to share the results of verifications with other companies.

6. As regards actual adverse impacts within the meaning of paragraph 1 that could not be brought to an end or the extent of which could not be minimised by the measures in paragraphs 3, 4 and 5, as a last resort, the company shall be required to refrain from entering into new or extending existing relations with a business partner in connection with or in the chain of activities of which the impact has arisen and shall, where the law governing their relations so entitles them to, take the following actions, as a last resort:

   (a) adopt and implement an enhanced corrective action plan for the specific adverse impact without undue delay, including by using or increasing the company's leverage through the temporary suspension of business relationships with respect to the activities concerned, as long as there is reasonable expectation that these efforts will succeed. The action plan shall include a specific and appropriate timeline for the adoption and implementation of all actions therein, during which the company may also seek alternative business partners;

   (b) if there is no reasonable expectation that these efforts would succeed, or if the implementation of the enhanced corrective action plan failed to bring to an end or minimise the extent of the adverse impact, terminate the business relationship with respect to the activities concerned if the actual adverse impact is severe.

Prior to temporarily suspending or terminating the business relationship, the company shall assess whether the adverse impacts of doing so can be reasonably expected to be manifestly more severe than the adverse impact that could not be brought to an end or the extent of which could not be adequately minimised. Should that be the case, the company shall not be required to suspend or to terminate the business relationship, and shall be in a position to report to the competent supervisory authority about the duly justified reasons of such decision.

Member States shall provide for the availability of an option to temporarily suspend or terminate the business relationship in contracts governed by their laws in accordance with the first subparagraph, except for contracts where the parties are obliged by law to enter into them.

Where the company decides to temporarily suspend or terminate the business relationship, the company shall take steps to prevent, mitigate or bring to an end the impacts of suspension or termination, provide reasonable notice to the business partner and keep that decision under review.

Where the company decides not to temporarily suspend or terminate the business relationship in line with this article, the company shall monitor the actual adverse impact and periodically reassess its decision and whether further appropriate measures are available.

Article 8c

Remediation of actual adverse impacts

1. Member States shall ensure that where a company has caused or jointly caused an actual adverse impact, that company shall provide remediation.

2. Where the actual adverse impact is caused only by the company's business partner, voluntary remediation may be provided by the company. The company may also use its ability to influence the business partner causing the adverse impact to enable remediation.

Article 8d

Carrying out meaningful engagement with stakeholders

1. Member States shall ensure that companies take appropriate measures to carry out effective engagement with stakeholders, in accordance with this article.

2. Without prejudice to Directive (EU) 2016/943, when consulting with stakeholders, companies shall, as appropriate, provide relevant and comprehensive information to stakeholders, in order to carry out effective and transparent consultations. Without prejudice to Directive (EU) 2016/943, consulted stakeholders shall be allowed to make a reasoned request for relevant additional information, which shall be provided by the company within a reasonable period of time and in an appropriate and comprehensible format. If the

company refuses a request for additional information, the consulted stakeholder shall be entitled to written justification for that refusal.

2a. Consultation of stakeholders shall take place, in the following steps of the due diligence process:

(a) to gather the necessary information on actual or potential adverse impacts, in order to identify, assess and prioritise adverse impacts pursuant to Articles 6 and 6a;

(b) the development of prevention and corrective action plans pursuant to Article 7(2) and Article 8(3), and the development of enhanced prevention and corrective action plans pursuant to Article 7(5) and Article 8(6);

(c) the decision to terminate or suspend a business relationship pursuant to Article 7(5) and Article 8(6);

(d) the adoption of appropriate measures to remediate adverse impacts pursuant to Article 8c.

(e) as appropriate, when developing qualitative and quantitative indicators for the monitoring pursuant to Article 10.

3. Where it is not reasonably possible to carry out effective engagement with stakeholders to the extent necessary to comply with the requirements of this Directive, companies shall consult additionally with experts who can provide credible insights into potential or actual adverse impacts.

4. In consulting stakeholders, companies shall identify and address barriers to engagement and shall ensure that participants are not the subject of retaliation or retribution, including by maintaining confidentiality or anonymity.

5. Member States shall ensure that companies are allowed to fulfil the obligations laid down in this Article through industry or multi-stakeholder initiatives, as appropriate, provided that the consultations procedures meet the requirements set out in this Article. The use of industry and multi-stakeholder initiatives shall not be sufficient to fulfil the obligation to consult the company's own employees and their representatives.

6. Engagement with employees and their representatives shall be without prejudice to relevant EU and national legislation in the field of employment and social rights as well as collective agreements applicable.

Article 9

Notification mechanism and complaints procedure

1. Member States shall ensure that companies provide the possibility for persons and organisations listed in paragraph 2 to submit complaints to them where these persons or organisations have legitimate concerns regarding actual or potential adverse impacts

with respect to the companies' own operations, the operations of their subsidiaries or the operations of their business partners in the companies' chains of activities.

2. Member States shall ensure that the complaints may be submitted by:

   (a) natural or legal persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact, and the legitimate representatives of such persons on behalf of them, such as civil society organisations and human rights defenders;

   (b) trade unions and other workers' representatives representing individuals working in the chain of activities concerned; and

   (c) civil society organisations active and experienced in the areas related to the environmental adverse impact that is the subject matter of the complaint.

3. Member States shall ensure that companies establish a fair, publicly available, accessible, predictable and transparent procedure for dealing with complaints referred to in paragraph 1, including a procedure when the company considers the complaint to be unfounded, and inform the relevant workers representatives and trade unions of that procedure. Companies shall take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organisation submitting the complaint, in accordance with national law. Where information needs to be shared, it shall be in a manner that does not endanger the complainant's safety, including by not disclosing their identity.

Member States shall ensure that where the complaint is well-founded, the adverse impact that is the subject matter of the complaint is deemed to be identified within the meaning of Article 6 and the company shall take appropriate measures in accordance with Articles 7, 8 and 8c.

4. Member States shall ensure that complainants are entitled:

   (a) to request appropriate follow-up on the complaint from the company with which they have filed a complaint pursuant to paragraph 1; and

   (b) to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint, and potential remediation in line with Article 8c;

   (ba) to be provided with the reasoning as to whether a complaint has been considered founded or unfounded and, where founded, to be provided with information on the steps and actions taken or to be taken.

5. Member States shall ensure that companies establish an accessible mechanism for the submission of notifications by persons and organisations where they have information or concerns regarding actual or potential adverse impacts with respect to their own opera-

tions, the operations of their subsidiaries and the operations of their business partners in the companies' chains of activities. The mechanism shall ensure that notifications can be made either anonymously or confidentially in accordance with national law. Companies shall take reasonably available measures to prevent any form of retaliation by ensuring the confidentiality of the identity of the person or organisation submitting the notification, in accordance with national law. The company may inform the persons submitting notifications about steps and actions taken or to be taken, where relevant.

6. Member States shall ensure that companies are allowed to fulfil the obligations laid down in paragraphs 1, 3, first subparagraph, and 5, by participation in collaborative complaints' procedures and notification mechanisms, including those established jointly by companies, through industry associations, multi-stakeholder initiatives or global framework agreements, provided that the collaborative procedures and mechanisms meet the requirements set out in this Article.

7. The submission of a notification or complaint under this Article shall not be a prerequisite for or preclude the persons submitting them from having access to the procedures under Article 19 and 22 or to other non-judicial mechanisms.

Article 10

Monitoring

Member States shall ensure that companies carry out periodic assessments of their own operations and measures, those of their subsidiaries and, where related to the chains of activities of the company, those of their business partners, to assess the implementation and to monitor the adequacy and effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of adverse impacts. Such assessments shall be based, where appropriate, on qualitative and quantitative indicators and be carried out without undue delay after a significant change occurs, but at least every 12 months and whenever there are reasonable grounds to believe that new risks of the occurrence of those adverse impacts may arise. Where appropriate, the due diligence policy, the identified adverse impacts and the derived appropriate measures shall be updated in accordance with the outcome of those assessments and with due consideration of relevant information from stakeholders.

Article 11

Communicating

1. Without prejudice to the exemption in paragraph 2 of this Article, Member States shall ensure that companies report on the matters covered by this Directive by publishing on their website an annual statement. This annual statement shall be published:

(a) in at least one of the official languages of the Union of the Member State of the supervisory authority designated pursuant to Article 17 and, where different, in a language customary in the sphere of international business;

(b) within a reasonable period of time, but no later than 12 months after the balance sheet date of the financial year for which the statement is drawn up, or, for companies voluntarily reporting in accordance with Directive 2013/34/EU, by the date of publication of the annual financial statements.

In the case of a company formed in accordance with the legislation of a third country, the statement shall also include the information pursuant to Article 16(2) regarding the company's authorised representative.

2. Paragraph 1 shall not apply to companies that are subject to sustainability reporting requirements in accordance with Articles 19a, 29a or 40a of Directive 2013/34/EU, including those that are exempted in accordance with Articles 19a(9) or 29a(8) of that Directive.

3. No later than 31 March 2027, the Commission shall adopt delegated acts in accordance with Article 28 concerning the content and criteria for the reporting under paragraph 1, specifying, in particular, sufficiently detailed information on the description of due diligence, potential and actual adverse impacts identified and appropriate measures taken with respect to those impacts. In preparing these delegated acts, the Commission shall take due account of, and align them as appropriate with, the sustainability reporting standards adopted pursuant to Article 29b and 40b of Directive 2013/34/EU. When adopting delegated acts, the Commission shall ensure that there is no duplication in reporting requirements for companies referred to in Article 3, point (a)(iv) that are subject to reporting requirements under Article 4 of Regulation (EU) 2019/2088, while maintaining in full the minimum obligations stipulated in this Directive.

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Article 19

Substantiated concerns

1. Member States shall ensure that natural and legal persons are entitled to submit substantiated concerns, through easily accessible channels, to any supervisory authority when they have reasons to believe, on the basis of objective circumstances, that a company is failing to comply with the national provisions adopted pursuant to this Directive ('substantiated concerns').

1a. Member States shall ensure that, where persons submitting substantiated concerns so request, the supervisory authority takes the necessary measures for the appropriate protection of the identity of that person and their personal information, which, if disclosed, would be harmful to that person.

2. Where the substantiated concern falls under the competence of another supervisory authority, the authority receiving the concern shall transmit it to that authority.

3. Member States shall ensure that supervisory authorities assess the substantiated concerns in an appropriate period of time and, where appropriate, exercise their powers as referred to in Article 18.

4. The supervisory authority shall, as soon as possible and in accordance with the relevant provisions of national law and in compliance with Union law, inform the person referred to in paragraph 1 of the result of the assessment of their substantiated concern and shall provide the reasoning for it. The supervisory authority shall also inform the persons submitting the substantiated concern who have, in accordance with national law, a legitimate interest in the matter, its decision to accept or refuse any request for action, as well as a description of the further steps and measures, and practical information on access to administrative and judicial review procedures.

5. Member States shall ensure that the persons submitting the substantiated concern according to this Article and having, in accordance with national law, a legitimate interest in the matter, have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.

Article 20

Penalties

1. Member States shall lay down the rules on penalties, including pecuniary penalties, applicable to infringements of national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2. In deciding whether to impose penalties and, if so, in determining their nature and appropriate level, due account shall be taken of:

   (a) the nature, gravity and duration of the infringement, and the severity of the impacts resulting from that infringement;

   (b) any investments made and any targeted support provided pursuant to Articles 7 and 8;

   (c) any collaboration with other entities to address the impacts concerned;

   (d) where relevant, the extent to which prioritisation decisions were made in accordance with Article 6a;

   (e) any relevant previous infringements by the company of national provisions adopted pursuant to this Directive found by a final decision;

(f) the extent to which the company carried out any remedial action with regard to the concerned subject-matter;

(g) the financial benefits gained from or losses avoided by the company due to the infringement;

(i) any other aggravating or mitigating factors applicable to the circumstances of the case.

2a. At least the following penalties shall be provided for:

(a) pecuniary penalties;

(b) if the company fails to comply with the decision imposing a pecuniary penalty within the applicable time-limit, a public statement indicating the company responsible and the nature of the infringement;

3. When pecuniary penalties are imposed, they shall be based on the company's net worldwide turnover. The maximum limit of pecuniary penalties shall be not less than 5% of the net worldwide turnover of the company in the financial year preceding the fining decision.

Member States shall ensure that, with regards to companies referred to in Article 2(1), point (b) and Article 2(2), point (b), pecuniary penalties are calculated taking into account the consolidated turnover reported by the ultimate parent company.

4. Member States shall ensure that any decision of the supervisory authorities containing penalties related to the infringements of the national provisions adopted pursuant to this Directive is published, publicly available for at least 5 years and sent to the European Network of Supervisory Authorities. The published decision shall not contain any personal data within the meaning of Article 4(1) of Regulation (EU) 2016/679.

....

Article 22

Civil liability of companies and a right to full compensation

1. Member States shall ensure that a company can be held liable for a damage caused to a natural or legal person, provided that:

(a) the company intentionally or negligently failed to comply with the obligations laid down in Articles 7 and 8, when the right, prohibition or obligation listed in Annex I is aimed to protect the natural or legal person; and

(b) as a result of a failure as referred to in point (a), a damage to the natural or legal person's legal interest protected under national law was caused.

A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.

2. Where the company was held liable in accordance with paragraph 1, a natural or legal person shall have the right to full compensation for the damage occurred in accordance with national law. Full compensation under this Directive shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages.

2a. Member States shall ensure that:

(a) national rules on the beginning, duration, suspension or interruption of limitation periods shall not unduly hamper the bringing of actions for damages and, in any case, shall not be more restrictive than the rules on general civil liability national regimes. The limitation period for bringing actions for damages under this Directive shall be at least 5 years and, in any case, not lower than the limitation period laid down under general civil liability national regimes.

Limitation periods shall not begin to run before the infringement has ceased and the claimant knows, or can reasonably be expected to know: (i) of the behaviour and the fact that it constitutes an infringement; (ii) of the fact that the infringement caused harm to them; and (iii) the identity of the infringer.

(b) cost of proceedings are not prohibitively expensive for claimants to seek justice.

(c) claimants are able to seek injunctive measures, including summary proceedings.

These shall be in the form of a definitive or provisional measure to cease infringements of the national provisions adopted pursuant to this Directive by performing an action or ceasing a conduct;

(d) Member States shall provide for the reasonable conditions under which any alleged injured party may authorise a trade union, non-governmental human rights or environmental organisation or other non-governmental organisation, and, according to national law, national human rights' institutions, based in a Member State to bring actions to enforce the rights of the alleged injured party , without prejudice to national rules of civil procedure.

A trade union or non-governmental organisation may be authorised under paragraph 1 if it complies with the requirements as laid down in national law. These requirements may include maintaining a permanent presence of its own and, in accordance with its statutes, not engaging commercially and not only temporarily in the realisation of rights protected under this Directive or the corresponding rights in national law.

(e) when a claim is brought, and a claimant presents a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of their claim for damage and has indicated that additional evidence lies in the control of the company, courts are able to order that such evidence be disclosed by the company in accordance with national procedural law.

National courts shall limit the disclosure of the evidence sought to that which is necessary and proportionate to support a potential claim or a claim for damages and the preservation to that which is necessary and proportionate to support such a claim for damages. In determining whether an order for the disclosure or preservation of evidence is proportionate, national courts shall consider the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence; the scope and cost of disclosure as well as the legitimate interests of all parties, including third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure; whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information.

Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages. Member States shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.

2b. Companies that have participated in industry or multi-stakeholder initiatives, or used third-party verification or contractual clauses to support the implementation of due diligence obligations can still be held liable in accordance with this Article.

3. The civil liability of a company for damages arising under this provision shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the company's chain of activities.

When the damage was caused jointly by the company and its subsidiary, direct or indirect business partner, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the conditions of joint and several liability and the rights of recourse.

4. The civil liability rules under this Directive shall not limit companies' liability under Union or national legal systems and shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.

5. Member States shall ensure that the provisions of national law transposing this Article are of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.

...

German Act on Corporate Due Diligence Obligations in Supply Chains Of July 16 2021

The Bundestag has passed the following Act:

Article 1

Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (Lieferkettensorgfaltspflichtengesetz – LkSG)

Division 1
General provisions

Section 1
Scope of application

(1) This Act applies to enterprises regardless of their legal form that

1. have their central administration, their principal place of business, their administrative headquarters or their statutory seat in Germany and
2. that normally have at least 3,000 employees in Germany; employees posted abroad are included.

Notwithstanding sentence 1 no. 1, this Act also applies to enterprises regardless of their legal form that

1. have a domestic branch office pursuant to section 13d of the Commercial Code (Handelsgesetzbuch – HGB) and
2. that normally have at least 3,000 employees in Germany.

From 1 January 2024 the thresholds stipulated in sentence 1 no. 2 and sentence 2 no. 2 amount to 1,000 employees, respectively.

(2) Temporary agency workers must be included in the calculation of the number of employees (paragraph (1) sentence 1 no. 2 and sentence 2 no. 2) of the user enterprise if the duration of the assignment exceeds six months.

(3) Within affiliated enterprises (section 15 of the Stock Corporation Act [Aktiengesetz – AktG]), the employees of all enterprises belonging to the group who are employed in Germany must be taken into account when calculating the number of employees (paragraph (1) sentence 1 no. 2) of the parent company; employees posted abroad are included.

Section 2
Definitions

(1) Protected legal positions within the meaning of this Act are those arising from the conventions on the protection of human rights listed in nos. 1 to 11 of the Annex.

(2) A human rights risk within the meaning of this Act is a condition in which, on the basis of factual circumstances, there is a sufficient probability that a violation of one of the following prohibitions is imminent:

1. the prohibition of the employment of a child under the age at which compulsory schooling ends according to the law of the place of employment, provided that the age of employment is not less than 15 years, except where the law of the place of employment so provides in accordance with Article 2 (4) and Articles 4 to 8 of Convention No. 138 of the International Labour Organization of 26 June 1973 concerning Minimum Age for Admission to Employment (Federal Law Gazette 1976 II pp. 201, 202);

2. the prohibition of the worst forms of child labour for children under 18 years of age; in accordance with Article 3 of Convention No. 182 of the International Labour Organization of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Federal Law Gazette 2001 II pp. 1290, 1291) this includes:

   a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, as well as forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflicts,

   b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances,

   c) the use, procuring or offering of a child for illicit activities, in particular for the production of or trafficking in drugs,

   d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children;

3. the prohibition of the employment of persons in forced labour; this includes any work or service that is required of a person under threat of punishment and for which he or she has not made himself or herself available voluntarily, for example as a result of debt bondage or trafficking in human beings; excluded from forced labour are any work or services that comply with Article 2 (2) of Convention No. 29 of the International Labour Organization of 28 June 1930 concerning Forced or Compulsory Labour (Federal Law Gazette 1956 II p. 640, 641) or with Article 8 (3) (b) and (c) of the International Covenant of 19 December 1966 on Civil and Political Rights (Federal Law Gazette 1973 II pp. 1533, 1534);

4. the prohibition of all forms of slavery, practices akin to slavery, serfdom or other forms of domination or oppression in the workplace, such as extreme economic or sexual exploitation and humiliation;

5. the prohibition of disregarding the occupational safety and health obligations applicable under the law of the place of employment if this gives rise to the risk of accidents at work or work-related health hazards, in particular due to:

a) obviously insufficient safety standards in the provision and maintenance of the workplace, workstation and work equipment;

b) the absence of appropriate protective measures to avoid exposure to chemical, physical or biological substances;

c) the lack of measures to prevent excessive physical and mental fatigue, in particular through inappropriate work organisation in terms of working hours and rest breaks; or

d) the inadequate training and instruction of employees;

6. the prohibition of disregarding the freedom of association, according to which

   a) employees are free to form or join trade unions,

   b) the formation, joining and membership of a trade union must not be used as a reason for unjustified discrimination or retaliation,

   c) trade unions are free to operate in accordance with applicable law of the place of employment, which includes the right to strike and the right to collective bargaining;

7. the prohibition of unequal treatment in employment, for example on the grounds of national and ethnic origin, social origin, health status, disability, sexual orientation, age, gender, political opinion, religion or belief, unless this is justified by the requirements of the employment; unequal treatment includes, in particular, the payment of unequal remuneration for work of equal value;

8. the prohibition of withholding an adequate living wage; the adequate living wage amounts to at least the minimum wage as laid down by the applicable law and, apart from that, is determined in accordance with the regulations of the place of employment;

9. the prohibition of causing any harmful soil change, water pollution, air pollution, harmful noise emission or excessive water consumption that

   a) significantly impairs the natural bases for the preservation and production of food,

   b) denies a person access to safe and clean drinking water,

   c) makes it difficult for a person to access sanitary facilities or destroys them or

   d) harms the health of a person;

10. the prohibition of unlawful eviction and the prohibition of unlawful taking of land, forests and waters in the acquisition, development or other use of land, forests and waters, the use of which secures the livelihood of a person;

11. the prohibition of the hiring or use of private or public security forces for the protection of the enterprise's project if, due to a lack of instruction or control on the part of the enterprise, the use of security forces

a) is in violation of the prohibition of torture and cruel, inhumane or degrading treatment,

b) damages life or limb or

c) impairs the right to organise and the freedom of association;

12. the prohibition of an act or omission in breach of a duty to act that goes beyond nos. 1 to 11, which is directly capable of impairing a protected legal position in a particularly serious manner, and the unlawfulness of which is obvious upon reasonable assessment of all the circumstances in question.

(3) An environment-related risk within the meaning of this Act is a condition in which, on the basis of factual circumstances, there is a sufficient probability that one of the following prohibitions will be violated:

1. the prohibition of the manufacture of mercury-added products pursuant to Article 4 (1) and Annex A Part I of the Minamata Convention on Mercury of 10 October 2013 (Federal Law Gazette 2017 II pp. 610, 611) (Minamata Convention);

2. the prohibition of the use of mercury and mercury compounds in manufacturing processes within the meaning of Article 5 (2) and Annex B Part I of the Minamata Convention from the phase-out date specified in the Convention for the respective products and processes;

3. the prohibition of the treatment of mercury waste contrary to the provisions of Article 11 (3) of the Minamata Convention;

4. the prohibition of the production and use of chemicals pursuant to Article 3 (1) (a) and Annex A of the Stockholm Convention of 23 May 2001 on Persistent Organic Pollutants (Federal Law Gazette 2002 II pp. 803, 804) (POPs Convention), last amended by decision of 6 May 2005 (Federal Law Gazette 2009 II pp. 1060, 1061), in the version of Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169 of 26 May 2019 pp. 45-77), as last amended by Commission Delegated Regulation (EU) 2021/277 of 16 December 2020 (OJ L 62 of 23 February pp. 1-3);

5. the prohibition of the handling, collection, storage and disposal of waste in a manner that is not environmentally sound in accordance with the regulations in force in the applicable jurisdiction under the provisions of Article 6 (1) (d) (i) and (ii) of the POPs Convention.

6. the prohibition of exports of hazardous waste within the meaning of Article 1 (1) and other wastes within the meaning of Article 1 (2) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Federal Law Gazette 1994 II pp. 2703, 2704) (Basel Convention), as last amended by the Third Ordinance amending Annexes to the Basel Convention of 22 March 1989 of

6 May 2014 (Federal Law Gazette II pp. 306, 307), and within the meaning of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190 of 12 July 2006 pp. 1-98) (Regulation (EC) No 1013/2006), as last amended by Commission Delegated Regulation (EU) 2020/2174 of 19 October 2020 (OJ L 433 of 22 December 2020 pp. 11-19)

a) to a party that has prohibited the import of such hazardous and other wastes (Article 4 (1) (b) of the Basel Convention),

b) to a state of import as defined in Article 2 no. 11 of the Basel Convention that does not consent in writing to the specific import, in the case where that state of import has not prohibited the import of such hazardous wastes (Article 4 (1) (c) of the Basel Convention),

c) to a non-party to the Basel Convention (Article 4 (5) of the Basel Convention),

d) to a state of import if such hazardous wastes or other wastes are not managed in an environmentally sound manner in that state or elsewhere (Article 4 (8) sentence 1 of the Basel Convention);

7. the prohibition of the export of hazardous wastes from countries listed in Annex VII to the Basel Convention to countries not listed in Annex VII (Article 4A of the Basel Convention, Article 36 of Regulation (EC) No 1013/2006) and

8. the prohibition of the import of hazardous wastes and other wastes from a non-party to the Basel Convention (Article 4 (5) of the Basel Convention).

(4) A violation of a human rights-related obligation within the meaning of this Act is a violation of a prohibition stated in paragraph (2), nos. 1 to 12. A violation of an environment-related obligation within the meaning of this Act is a violation of a prohibition referred to in paragraph (3), nos. 1 to 8.

(5) The supply chain within the meaning of this Act refers to all products and services of an enterprise. It includes all steps in Germany and abroad that are necessary to produce the products and provide the services, starting from the extraction of the raw materials to the delivery to the end customer and includes

1. the actions of an enterprise in its own business area,

2. the actions of direct suppliers and

3. the actions of indirect suppliers.

(6) The own business area within the meaning of this Act covers every activity of the enterprise to achieve the business objective. This includes any activity for the creation and exploitation of products and services, regardless of whether it is carried out at a location in Germany or abroad. In affiliated enterprises, the parent company's own business area includes a group company if the parent company exercises a decisive influence on the group company.

(7) A direct supplier within the meaning of this Act is a partner to a contract for the supply of goods or the provision of services whose supplies are necessary for the production of the enterprise's product or for the provision and use of the relevant service.

(8) An indirect supplier within the meaning of this Act is any enterprise which is not a direct supplier and whose supplies are necessary for the production of the enterprise's product or for the provision and use of the relevant service.

Division 2

Due diligence obligations

Section 3

Due diligence obligations

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

1. establishing a risk management system (section 4 (1)),
2. designating a responsible person or persons within the enterprise (section 4 (3)),
3. performing regular risk analyses (section 5),
4. issuing a policy statement (section 6 (2)),
5. laying down preventive measures in its own area of business (section 6 (1) and (3)) and vis-à- vis direct suppliers (section 6 (4)),
6. taking remedial action (section 7 (1) to (3)),
7. establishing a complaints procedure (section 8),
8. implementing due diligence obligations with regard to risks at indirect suppliers (section 9) and
9. documenting (section 10 (1)) and reporting (section 10 (2)).

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

1. the nature and extent of the enterprise's business activities,
2. the ability of the enterprise to influence the party directly responsible for a risk to human rights or environment-related risk or the violation of a human rights-related or environment- related obligation,
3. the severity of the violation that can typically be expected, the reversibility of the violation, and the probability of the occurrence of a violation of a human rights-related or an environment-related obligation as well as
4. the nature of the causal contribution of the enterprise to the risk to human rights or environment-related risk or to the violation of a human rights-related or environment-related obligation.

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

Section 4

Risk management

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

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

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

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

Section 5

Risk analysis

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

regard to the direct supplier, an indirect supplier is deemed to be a direct supplier.

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

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

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

Section 6

Preventive measures

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

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

1. the description of the procedure by which the enterprise fulfils its obligations under section 4 (1), section 5 (1), section 6 (3) to (5), and sections 7 to 10,
2. the enterprise's priority human rights and environment-related risks identified on the basis of the risk analysis and
3. the definition, based on the risk analysis, of the human rights-related and environment- related expectations placed by the enterprise on its employees and suppliers in the supply chain.

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

1. the implementation of the human rights strategy in the relevant business processes set out in the policy statement,
2. the development and implementation of appropriate procurement strategies and purchasing practices that prevent or minimize identified risks,
3. the delivery of training in the relevant business areas,

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

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

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

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

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

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

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

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

Section 7

Remedial action

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

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

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

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

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

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

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

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

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

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

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

Section 8

Complaints procedure

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

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

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

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

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

Section 9

Indirect suppliers; authorisation to issue statutory instruments

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

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

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

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

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

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

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

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

Section 10

Documentation and reporting obligation

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

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

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

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

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

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

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

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

Division 3

Civil proceedings

Section 11

Special capacity to sue

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

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

Division 4

Monitoring and enforcement by the authorities

Subdivision 1

Report audit

Section 12

Submission of the report

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

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

Section 13

Report audit by the authorities; authorisation to issue statutory instruments

(1) The competent authority checks whether

1. the report pursuant to section 10 (2) sentence 1 has been provided and
2. the requirements according to section 10 (2) and (3) have been complied with.

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

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

1. the procedure for submitting the report pursuant to section 12, and
2. the procedure for report audits by the authorities in accordance with paragraphs (1) and (2).

Subdivision 2

Risk-based control

Section 14

Action taken by the authorities; authorisation to issue statutory instruments

(1) The competent authority will take action:

1. ex officio, in the proper exercise of its discretion,
   a) to monitor compliance with the obligations under sections 3 to 10 (1) with regard to possible human rights and environment-related risks as well as violations of

a human rights- related or environment-related obligation and

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

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

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

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

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

Section 15

Orders and measures

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

1. summon people,

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

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

Section 16

Access rights

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

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

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

Section 17

Obligation to provide information and surrender documents

(1) Enterprises and persons summoned pursuant to section 15 sentence 2 no. 1 are obliged to provide the competent authority, upon request, with the information and to surrender the documents required by the authority to carry out the duties assigned to

it by this Act or on the basis of this Act. The obligation also extends to information on affiliated enterprises (section 15 of the Stock Corporation Act), direct and indirect suppliers and the surrender of documents of these enterprises insofar as the enterprise or person obliged to provide information or surrender documents has the information at its disposal or is in a position to obtain the requested information due to existing contractual relationships.

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

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

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

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

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

Section 18

Obligation to tolerate and cooperate

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

Subdivision 3

Competent authority, handouts, accountability report

Section 19

Competent authority

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

The Federal Ministry for Economic Affairs and Energy exercises the legal and technical supervision in agreement with the Federal Ministry of Labour and Social Affairs.

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

Section 20
Handouts

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

Section 21
Accountability report

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

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

Division 5
Public procurement

Section 22
Exclusion from the award of public contracts

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

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

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

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

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

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

Division 6

Financial penalty and administrative fine

Section 23

Financial penalty

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

Section 24

Provisions on administrative fines

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

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

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

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

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

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

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

7. contrary to

a) section 7 (2) sentence 1 or

b) section 9 (3) no. 3

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

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

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

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

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

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

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

(2) The regulatory offence may be punished

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

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

b) nos. 6 and 7 letter a

with a fine of up to eight hundred thousand euros,

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

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

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

(3) In the case of a legal person or association of persons with an average annual turnover of more than 400 million euros, a regulatory offence under paragraph (1) nos. 6 or 7 (a) may be punished with an administrative fine of up to 2 per cent of the average annual turnover in derogation from paragraph

(2) sentence 2 in conjunction with sentence 1 no. 1 (b). The calculation of the average annual turnover of the legal person or association of persons is based on the worldwide turnover of all natural and legal persons as well as all associations of persons in the

last three financial years preceding the decision by the authority insofar as these persons and associations of persons operate as an economic unit. The average annual turnover may be estimated.

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

1. the charge against the perpetrator of the regulatory offence,
2. the motives and objectives of the perpetrator of the regulatory offence,
3. significance, extent and duration of the regulatory offence,
4. the type of execution of the regulatory offence, in particular the number of perpetrators and their position in the legal person or association of persons,
5. the effects of the regulatory offence,
6. previous regulatory offences for which the legal person or association of persons is responsible pursuant to section 30 of the Regulatory Offences Act, also in conjunction with section 130 of the Regulatory Offences Act, as well as precautions taken before the regulatory offence to prevent and detect regulatory offences,
7. the efforts taken by the legal person or association of persons to detect the offence and to repair the damage, as well as precautions taken after the regulatory offence to prevent and detect regulatory offences,
8. the consequences of the regulatory offence suffered by the legal person or association of persons.

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

Annex

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

1. Convention No. 29 of the International Labour Organization of 28 June 1930 concerning Forced or Compulsory Labour (Federal Law Gazette 1956 II pp. 640, 641) (ILO Convention No. 29)
2. Protocol of 11 June 2014 to Convention No. 29 of the International Labour Organization of 28 June 1930 concerning Forced or Compulsory Labour (Federal Law Gazette 2019 II pp. 437, 438)

3. Convention No. 87 of the International Labour Organization of 9 July 1948 concerning Freedom of Association and Protection of the Right to Organise (Federal Law Gazette 1956 II pp. 2072, 2071), as amended by the Convention of 26 June 1961 (Federal Law Gazette 1963 II pp. 1135, 1136) (ILO Convention No. 87)
4. Convention No. 98 of the International Labour Organization of 1 July 1949 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Federal Law Gazette 1955 II pp. 1122, 1123), as amended by the Convention of 26 June 1961 (Federal Law Gazette 1963 II

   pp. 1135, 1136) (ILO Convention No. 98)
5. Convention No. 100 of the International Labour Organization of 29 June 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Federal Law Gazette 1956 II pp. 23, 24) (ILO Convention No. 100)
6. Convention No. 105 of the International Labour Organization of 25 June 1957 concerning the Abolition of Forced Labour (Federal Law Gazette 1959 II pp. 441, 442) (ILO Convention No. 105)
7. Convention No. 111 of the International Labour Organization of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation (Federal Law Gazette 1961 II pp. 97, 98) (ILO Convention No. 111)
8. Convention No. 138 of the International Labour Organization of 26 June 1973 concerning the Minimum Age for Admission to Employment (Federal Law Gazette 1976 II pp. 201, 202) (ILO Convention No. 138)
9. Convention No. 182 of the International Labour Organization of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Federal Law Gazette 2001 II pp. 1290, 1291) (ILO Convention No. 182)
10. International Covenant of 19 December 1966 on Civil and Political Rights, (Federal Law Gazette 1973 II pp. 1533, 1534)
11. International Covenant of 19 December 1966 on Economic, Social and Cultural Rights (Federal Law Gazette 1973 II pp. 1569, 1570)
12. Minamata Convention on Mercury of 10 October 2013 (Federal Law Gazette 2017 II p. 610, 611) (Minamata Convention)
13. Stockholm Convention of 23 May 2001 on Persistent Organic Pollutants (Federal Law Gazette 2002 II pp. 803, 804) (POPs Convention), last amended by the decision of 6 May 2005 (Federal Law Gazette 2009 II pp. 1060, 1061)
14. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (Federal Law Gazette 1994 II pp. 2703, 2704) (Basel Convention), as last amended by the Third Ordinance amending Annexes to the Basel Convention of 22 March 1989 of 6 May 2014 (Federal Law Gazette II pp. 306/307).

Article 2

Amendment of the Act against Restraints of Competition

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

Article 3

Amendment of the Competition Register Act (Wettbewerbsregistergsetz)

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

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

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

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

   c) The following number 4 is added:

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

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

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

Article 4

Amendment of the Works Constitution Act (Betriebsverfassungsgesetz)

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

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

Article 5

Entry into force

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

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

The constitutional rights of the Bundesrat have been observed.

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

Berlin, 16 July 2021

The Federal President Steinmeier

The Federal Chancellor Dr. Angela Merkel

The Federal Minister

of Labour and Social Affairs Hubertus Heil

The Federal Minister

for Economic Cooperation and Development Gerd Müller

The Federal Minister

for Economic Affairs and Energy Peter Altmaier

French Corporate Duty of Vigilance Law

Article 1

After Article L. 225-102-3 of the Trade and Industry Code, an Article L. 225-102-4 shall be inserted reading as follows:

"Art. L. 225-102-4. – I. – Any company that at the end of two consecutive financial years, employs at least five thousand employees within the company and its direct and indirect subsidiaries, whose head office is located on French territory, or that has at least ten thousand employees in its service and in its direct or indirect subsidiaries, whose head office is located on French territory or abroad, must establish and implement an effective vigilance plan.

"The controlled subsidiaries or companies that exceed the thresholds mentioned in the first paragraph are deemed to satisfy the obligations laid down in this Article from the moment that the company which controls them, within the meaning of Article L. 233- 3, establishes and implements a vigilance plan for the company's operations, as well as the operations of all the subsidiaries or companies that it controls.

"The plan shall include the reasonable vigilance measures to allow for risk identification and for the prevention of severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks resulting directly or indirectly from the operations of the company and of the companies it controls within the meaning of Article L.233-16, II, as well as from the operations of the subcontractors or suppliers with whom it maintains an established commercial relationship, when such operations derive from this relationship.

"The plan shall be drafted in association with the company stakeholders involved, and where appropriate, within multiparty initiatives that exist in the subsidiaries or at territorial level. It shall include the following measures:

"1° A mapping that identifies, analyses and ranks risks;

"2° Procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an established commercial relationship;

"3° Appropriate action to mitigate risks or prevent serious violations;

"4° An alert mechanism that collects reporting of existing or actual risks, developed in working partnership with the trade union organizations representatives of the company concerned;

"5°(new) A monitoring scheme to follow up on the measures implemented and assess their efficiency.

"The vigilance plan and its effective implementation report shall be publicly disclosed and included in the report mentioned in Article L. 225-102.

"A Council of State decree can add to the vigilance measures laid down in 1° to 5° of this Article. It can specify the modalities for elaborating and implementing the vigilance plan, within multiparty initiatives that exist in the subsidiaries or at territorial level where appropriate.

"II. – When a company does not meet its obligations in a three months period after receiving formal notice to comply with the duties laid down in I, the relevant jurisdiction can, following the request of any person with legitimate interest in this regard, urge said company, under financial compulsion if appropriate, to comply with its duties.

"An application may be made to the president of the court, ruling in interlocutory proceedings, for the same purpose.

Article 2

After the same Article L. 225-102-3, an Article L. 225-102-5 shall be inserted reading as follows:

"Art. 225-102-5. – According to the conditions laid down in Articles 1240 and 1241 of the Civil Code, the author of any failure to comply with the duties specified in Article

L. 225-102-4 of this code shall be liable and obliged to compensate for the harm that due diligence would have permitted to avoid.

"The action to establish liability shall be filed before the relevant jurisdiction by any person with a legitimate interest to do so.

"The court may order the publication, distribution or display of its decision or an extract thereof, in accordance with its procedures. The costs shall be paid by the person convicted.

"The court may order its decision to be carried out under financial compulsion."

Article 3

{Non conformed}

Article 4

Articles L. 225-102-4 and L. 225-102-5 of the Trade and Industry Code, in their current wording resulting from this Law, shall apply from the report mentioned in Article L. 225-102 of the same Code on the first open financial year after the publication of this Law.

Notwithstanding the first paragraph of Article 4, for the financial year during which the present Law has been published, article L. 225-102-4, I of said Code shall apply, with the exception of the report provided for in its second to last paragraph.

Deliberated in public session, Paris, 29 November 2016.

Netherlands Unofficial Translation of Child Labor Due Diligence Act

Legislative proposal from member Van Laar on the introduction of a duty of care to prevent the supply of goods and services produced using child labor (Child Labor Due Diligence Act)

February 7, 2017

We, Willem-Alexander, by the grace of God, King of the Netherlands, Prince of Orange-Nassau, etc. etc. etc. etc.

Greetings to all who shall see or hear this read!

We have taken into consideration the desirability of enshrining in law that companies that sell goods and services on the Dutch market should do everything within their power to prevent their products and services from being produced using child labor, so that consumers can buy them with peace of mind;

Thus it is that We, having heard the recommendations of the Advisory Division of the Council of State, and in consultation with the States General, hereby approve and understand the following:

Article 1

Definitions

For the purposes of this Act and the provisions based thereon, the following terms shall have the following meanings

a. child labor: child labor as referred to in Article 2;
b. end-user: the natural person or legal entity using or consuming the good or purchasing the service;
c. company: a company within the meaning of Article 5 of the Trade Register Act 2007 or any entity engaged in an economic activity, regardless of its legal form and the way in which it is financed;
d. superintendent: the superintendent to be appointed by order in council;
e. binding instruction: a standalone order imposed for an offence;
f. standalone order: the order, issued as a sole order, to perform certain acts, as referred to in Article 5:2, second paragraph, of the General Administrative Law Act, in order to promote compliance with statutory regulations;
g. Our Minister: Our Minister for Foreign Trade and Development Cooperation.

Article 2

1. Child labor is understood to mean:

    a. in any case, any form of work, whether or not under an employment contract, performed by persons who have not yet reached the age of 18 and which is included among the worst forms of child labor referred to in Article 3 of the Worst Forms of Child Labor Convention, 1999;

    b. if the work takes place in the territory of a State Party to the Minimum Age Convention, 1973, 'child labor' shall further mean any form of work prohibited by the law of that State in implementation of that Convention;

    c. if the work takes place in the territory of a State which is not a party to the Minimum Age Convention, 1973, child labor shall further be understood to mean:

        i. any form of work, whether or not under an employment contract, performed by persons who are subject to compulsory schooling or who have not yet reached the age of 15, and

        ii. any form of work, whether or not under an employment contract, performed by persons who have not yet reached the age of 18, insofar as such work, by virtue of the nature of the work or the conditions under which it is performed, may endanger the health, safety or morality of young persons.

2. By way of derogation from paragraph 1(c), child labor shall not include light work as defined in Article 7(1) of the Minimum Age Convention, 1973, carried out for a maximum of 14 hours a week by persons who have reached the age of 13.

Article 3

Supervision

1. The superintendent shall be charged with the supervision of compliance with the provisions of or pursuant to this Act.

2. Any natural person or legal entity whose interests are affected by the actions or omissions of a company relating to compliance with the provisions of or pursuant to this Act may submit a complaint about this to the superintendent.

3. Only a concrete indication of non-compliance with the provisions of or pursuant to this Act by an identifiable party constitutes grounds for submitting a complaint.

4. A complaint can only be dealt with by the superintendent after it has been dealt with by the company, or six months after the submission of the complaint to the company without it having been addressed.

Article 4

Declaration

1. Any company registered in the Netherlands that sells or supplies goods or services to Dutch end users declares that it exercises due diligence as referred to in Article 5 in order to prevent such goods or services from being produced using child labor. The first sentence applies mutatis mutandis to companies not registered in the Netherlands that sell or supply goods or services to Dutch end users.

2. The company shall immediately send the statement, as referred to in the first paragraph, to the superintendent after it has been registered in the trade register. Companies that are already registered with the trade register shall send the declaration to the superintendent within six months of the entry into force of this Act. Any company that is not registered in the European part of the Netherlands and that is not registered in the trade register shall send the declaration to the superintendent within six months after the company supplies goods or services to end users in the Netherlands for the second time in a given year.

3. Exceptions may be granted by or pursuant to an order in council before the date on which the declaration is delivered and further rules may be laid down on the content and form of the statement.

4. The supply of goods, as referred to in the first paragraph, does not mean the mere transport of goods.

5. The superintendent shall publish the declarations in a public register on its website.

Article 5

Due diligence

1. A company which, with due observance of the provisions of paragraph 3, investigates whether there is a reasonable suspicion that the goods or services to be supplied have been produced using child labor and which, in the event of a reasonable suspicion, adopts and implements a plan of action, is exercising due diligence. A company which receives goods or services from companies which have issued a declaration as referred to in Article 4 is also exercising due diligence with respect to those goods and services. A company which receives only goods or services from companies which have issued a declaration as referred to in Article 4 is also exercising due diligence and shall not be required to issue a declaration as referred to in Article 4.

2. The investigation referred to in the first paragraph shall be oriented toward sources that are reasonably known and accessible to the company.

3. With due observance of the ILO-IOE Child Labor Guidance Tool for Business, further requirements shall be set by or pursuant to an order in council for the investigation and the plan of action referred to in the first paragraph.

4. Our Minister may approve a joint plan of action that is aimed at ensuring that affiliated companies exercise due diligence to prevent goods or services from being produced using child labor, and that is developed by or among one or more social organizations, employees' organizations or employers' organizations. A company that acts in accordance with a joint action plan approved by Our Minister is exercising due care.

Article 6

Exemption

By or pursuant to an order in council, categories of companies are exempted from the provisions of this Act. The recommendation for an order in council to be adopted pursuant to the previous sentence shall not be made until four weeks after the draft has been submitted to both Houses of the States-General.

Article 7

Administrative fine

1. The superintendent may impose an administrative fine for violation of Article 4, second paragraph, up to a maximum of the amount of the second category fine of Article 23, fourth paragraph, of the Dutch Criminal Code.

2. The superintendent may impose an administrative fine of up to the amount of the fine of the sixth category of Article 23, fourth paragraph, of the Dutch Criminal Code in respect of the following:

    a. failure to comply with the obligation to carry out investigations or to draw up a plan of action, as referred to in Article 5, first paragraph,

    or

    b. failure to comply with the requirements for the examination or plan of action referred to in Article 5, third paragraph.

3. Article 23, seventh paragraph of the Dutch Criminal Code shall apply mutatis mutandis to paragraphs 1 and 2 of this Article.

4. The superintendent shall not impose an administrative fine for violation of the provisions of or pursuant to Articles 4 and 5 until after they have issued a binding instruction. The superintendent may set the offender a time limit within which the instruction must be complied with.

Article 8

Suspension of the fine

The effect of a decision imposing an administrative fine shall be suspended until such time as the period for submitting a notice of objection or appeal has expired or, if an objection has been lodged or an appeal has been lodged, a decision has been taken on the objection or appeal, as the case may be.

Article 9

Criminalization

In Article 1, under 2°, of the Economic Offences Act, the following shall be inserted in the alphabetical list:

the Child Labor Due Diligence Act, article 4, second paragraph, and Article 5, first and third paragraphs, if, in the five years preceding the violation, an administrative fine was imposed on the basis of Article 7, first or second paragraph, of that Act for the same violation by the company, committed by order of or under the de facto leadership of the same manager.

Article 10

Evaluation

Within five years of the entry into force of this Act, Our Minister shall send the States-General a report on the effectiveness and practical effects of this Act.

Article 11

Transitional provision

This Act shall be inapplicable to the supply of goods or services, the obligation for which was entered into prior to the date of issue of the Bulletin of Acts and Decrees in which it is published, until the date on which the obligation expires pursuant to a stipulation agreed prior to the date of issue of the Bulletin of Acts and Decrees in which this Act is published, but no later than until five years after the date of entry into force of this Act.

Article 12

Entry into force

1. This Act shall enter into force on a date to be determined by Royal Decree, but not earlier than January 1, 2020.

2. This Act shall expire at a time to be determined by Royal Decree, which shall not be before the time of dispatch of the report referred to in Article 10.

Article 13

Short title

This law shall be cited as: Child Labor Due Diligence Act.

Order and command that it be published in the Bulletin of Acts, Orders and Decrees and that all ministries, authorities, colleges and civil servants concerned shall uphold its accurate execution.

Given

The Minister for Foreign Trade and Development Cooperation