



## WARNINGS TO COMPANIES ABOUT GERMAN SUPPLY CHAIN LAW

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The German Supply Chain Law<sup>1</sup> (“Law”) requires large companies to identify, address and prevent violations regarding human rights and related environmental issues in the operations of themselves and their direct suppliers. Within the scope of these regulations, the large companies that continue their operations in Germany are obliged to ensure compliance with certain social and environmental standards within their supply chains. Within this framework, the requirements stipulated in the Law came into force as of January 1, 2023, for companies that have headquarters, administrative or legal centers in Germany, and with 3,000 or more employees, while the requirements shall apply as of 2024 for companies with 1,000 or more employees.

Accordingly, the companies covered by the Law must monitor and act on violations of their direct suppliers’ operations, as well as their operations from the extraction of raw materials to their delivery to the last customer. In addition, if the companies within the scope receive verified information regarding potential human rights or environmental rights violations by one of their indirect suppliers, they are deemed obliged to immediately carry out a risk analysis for these violations.

In this context, Law has determined two main areas of protection and these areas are regarding environmental rights and human rights. Within the scope of environmental protection; issues such as the production and non-use of banned chemicals, processing, collection, storage, and disposal of wastes in a way that do not harm the environment, and export and processing of hazardous wastes shall be evaluated. In the framework of compliance with human rights rules; any act or violation that is unlawful, including but not limited to child labor, forced labor, freedom

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<sup>1</sup> 1 Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (Lieferkettensorgfaltspflichtengesetz - LkSG)

of association, unequal treatment/discrimination, and improper use of force by security forces, shall be evaluated.

If enterprises fail to comply with their legal obligations in the Law, fines may be imposed. Fines for breaches of due diligence and reporting obligations can reach up to 8 million euros depending on the nature and severity of the breach. If the enterprise have an average annual endorsement over 400 million euros, and does not take corrective precautions directly aimed at a direct supplier, they may face fines up to 2% of their average annual turnover. At the same time, it is possible to ban these enterprises from participating in public tenders for up to 3 years if the obligations in the Law are not followed. Therefore considering that the Law stipulates sanctions that could be a deterrent, it is probable for the enterprises which are obliged according to the Law, concretely audit their suppliers and create new business models in this framework.

The Law also affects companies in Turkey that are directly or indirectly involved in the supply chain of businesses operating under the Law and engaging in commercial relationships.

#### Obligations Imposed On Companies By The Law:

- Obligation To Conduct Risk Assessment
- Reporting On The Fulfilment Of Due Diligence Obligation
- Preparing the Guiding Principle
- Impact Assessment
- Responsibility for Internal Compliance
- Establishment of a Risk Management System
- Establishment of Preventive Measures
- Taking Remedial Measures
- Establishment of Complaint Procedure

#### **1- Obligation To Conduct Risk Assessment**

Companies may need to adapt their risk, management, and compliance processes to identify human rights-related and environment-related risks. . The relevant situation is valid for both companies' commercial operations and the organizations in their extended supply chains. Companies shall comply with the rules as far as possible with their suppliers. The risks that companies need to address include internationally recognized human rights treaties and sustainability issues, as briefly mentioned above: Forced labor, child labor, discrimination, violations of freedom of association (especially in the framework of trade union rights), unethical employment (e.g. employing workers without insurance), unsafe working conditions, environmental degradation, etc.

Companies should take appropriate preventive or remedial measures based on on the present risk analysis In terms of supply sector, this can be defined as reviewing supplier selection and supplier monitoring processes and having a clear supplier communication process within the prescribed rules.

## 2- Reporting On The Fulfillment Of Due Diligence Obligation

A report on the status of due diligence obligations regarding human rights must be documented annually and made publicly available free of charge on the company's website within 4 months from the end of the financial year for 7 years. This report should include:

- What risks the company has determined.
- The issue of what measures were taken while fulfilling the due diligence obligation, including the issues written in the policy text.
- The company's assessment of the impact and effectiveness of the precautions and,
- Evaluation of future precautions.

## 3- Guiding Principles

In the draft on how the Law will be implemented, reference is made to the OECD (Organisation for Economic Co-operation and Development) Due Diligence Guideline in Trade Relations and the UN OHCHR ((Office of the United Nations High Commissioner for Human Rights) Guideline on Human Rights Corporate Responsibility. These guidelines are considered substantial texts on how to establish the content and implementation of the due diligence obligation required by the Law.

Accordingly, human rights may occur violations in trade;

- During the company's own commercial operations
- Directly or through a third party (government, other company, etc.) due to its own commercial operations
- in case of commercial relations with them in violations arising from third parties

Therefore, companies will be expected to pay attention to risk areas, particularly in these three groups.

The human rights within the scope of "corporate responsibility for human rights" consist primarily of the rights set forth in the Declaration of Human Rights ( including the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, and International Covenant on Civil and Political Rights ) and the Declaration of the International Labor Organization on Fundamental Principles and Rights to be applied in the workplace.

## 4- Impact Assessment

Companies will confer with potential risk groups and other relevant persons (trade unions and especially non-governmental organizations specialized in this subject), taking into account the content of their activities for risk assessment. One of the points that need to be fulfilled for the next steps of the supply chain is to ask primary suppliers to do their own risk assessments and these primary level suppliers to do the same risk assessment for their own suppliers. In this way, the lowest and highest levels of the supply chain will be able to manage the process in harmony.

Within the scope of this risk assessment, companies will be able to apply the following preventive measures against suppliers with whom they are in a contractual relationship or in the process of making a contract:

- Considering expectations in line with human rights in supplier selection.
- Asking suppliers to identify risks of human rights violations in their workplaces and supply chains.
- Establishing a contractual control mechanism to monitor whether set expectations are met to ensure human rights are respected and providing the necessary training to fulfill these expectations.
- Ensuring the establishment of a risk-based control mechanism that monitors the compliance of direct suppliers with human rights strategies.
- The content and level of these obligations regarding risk assessment depend on the company's impact on the supplier, the severity and difficulty of the breach, and the risk of the breach occurring.

#### **5- Responsibility For Internal Compliance**

Companies covered by the Law are obliged to appoint a “human rights officer” responsible for monitoring risk management. In this context, the appointment of a risk management officer does not necessarily require a new position, and it is possible to integrate it into existing departments (e.g. compliance officer, sustainability department, etc.).

#### **6- Establishing A Risk Management System**

Companies should establish an appropriate risk management system to ensure compliance with the obligations stipulated by the Law and analyze their own and their direct suppliers' human rights and environmental risks as part of this system.

#### **7- Establishing Preventative Measures**

Companies should take the necessary measures within the scope of the protection of human rights and environmental protection in their supply and supply relations, and establish preventative measures to ensure compliance with the strategies determined by the guidelines by providing training in the relevant business areas.

#### **8- Taking Remedial Measures**

If it is determined that a violation has occurred or is likely to be violated in matters protected by the Law, the Companies are obliged to take corrective/compensatory measures immediately to prevent, stop the violation, or minimize the consequences of the violation. Otherwise, companies may face the administrative fines regulated in the Law and explained above, as well as civil cases to be substituted by those who suffered from the said violations and by Non-Governmental Organizations.

#### **9- Establishment of Complaint Procedure**

Companies should establish a public complaints procedure to report potential violations of human rights or environmental obligations in their businesses or suppliers. Accordingly, the effectiveness of the complaint procedure should be reviewed annually and, if necessary, on an ad hoc basis.

**RESULT:** The Supply Chain Law, which stipulates many obligations for companies operating in Germany, regulates the audit of companies' direct operations and, in certain cases, the operations of indirect suppliers from the extraction of raw materials to the delivery of the product to the last customer. Law also regulates the prevention of violations and the compensation in case of violations. Companies operating in Turkey that are not covered by the relevant law but are in the supply chain of German companies subject to the Law are likely to face various demands.

It should also be noted that the regulations envisaged under the German Supply Chain Law are quite similar to those on the agenda of the European Union. The draft law on the subject is still at the proposal stage<sup>2</sup>.

For this reason, it is of great importance that our companies, which export to the European Union, especially Germany, and which are suppliers of the companies in this country, are aware of the obligations stipulated by Law and that they take the necessary measures.



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<sup>2</sup> 2 Proposal for a Directive Of The European Parliament And Of The Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937