

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.