



**GERMAN ACT ON
CORPORATE DUE DILIGENCE
OBLIGATIONS IN SUPPLY CHAINS:
A COMPREHENSIVE OVERVIEW**

LkSG

(Lieferkettensorgfaltspflichtengesetz, LkSG)

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INTRODUCTION

The German Supply Chain Due Diligence Act (LkSG), effective from January 1, 2023, emerged from global efforts to promote corporate responsibility, beginning with the 2011 UN Guiding Principles on Business and Human Rights. In 2016, these principles led to adoption of Germany's National Action Plan on Business and Human Rights. However, as these efforts proved insufficient, the LkSG was introduced to mandate companies to prevent, mitigate, and address human rights and environmental risks throughout their supply chains. The Act enforces existing international agreements (including key labour and environmental standards) requiring Germany based companies to implement due diligence and set up a complaints' mechanism across their global supply networks.



SCOPE AND APPLICABILITY

- **As of January 1, 2023:** Applies to companies with at least 3,000 employees in Germany.
- **From January 1, 2024:** Extends to companies with at least 1,000 employees in Germany.
- The Act primarily affects German-based companies covered by this act and their ensuing global supply chain operations.

Key Dates in the full rollout of the German Supply Chain Due Diligence Act

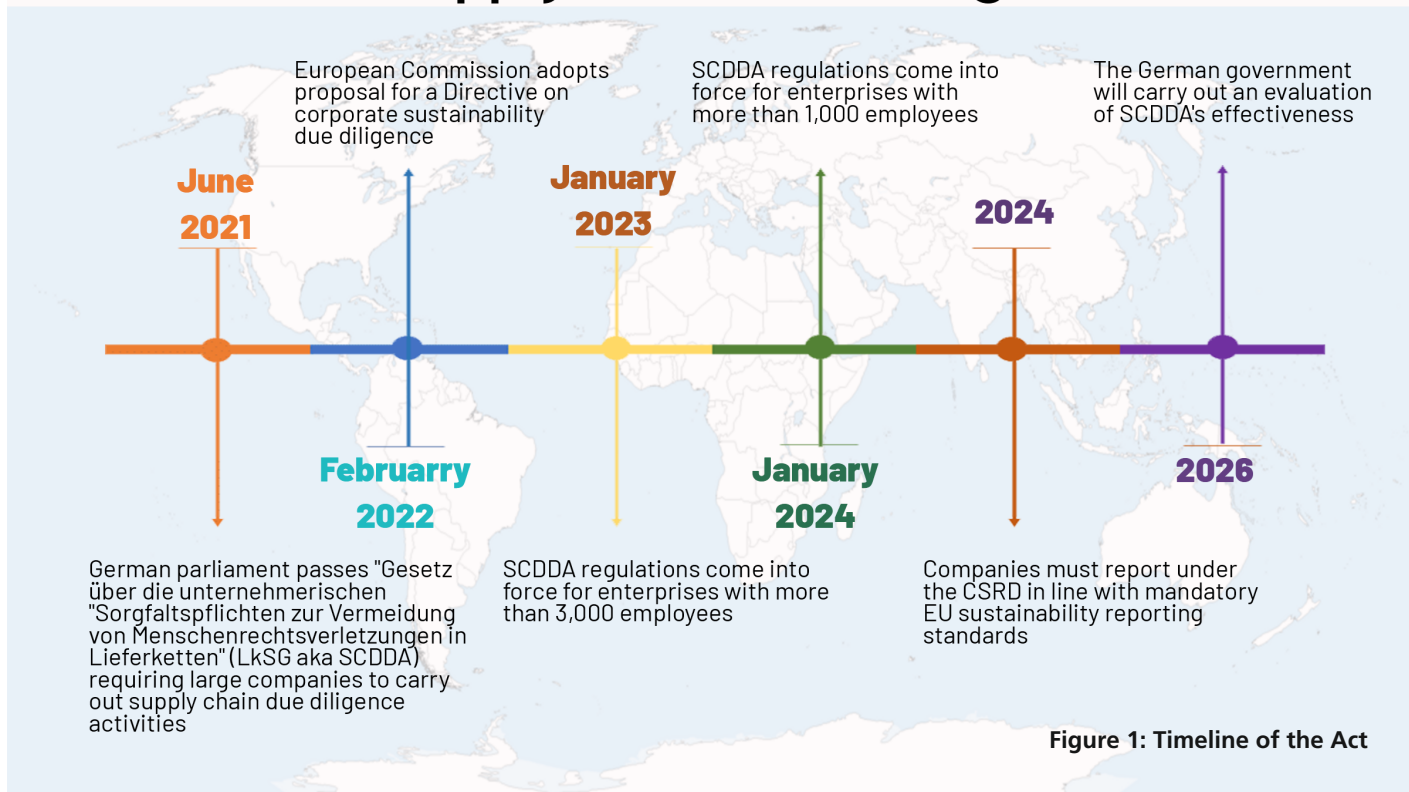


Figure 1: Timeline of the Act

KEY PROVISIONS OF THE ACT

1. **Risk Management:** Companies must establish a risk management system to identify, assess, and mitigate risks to human rights (including labour rights) and the environment.
2. **Risk Analysis:** Regular analysis to prioritize and address potential violations.
3. **Preventive and Remedial Measures:** Actions must be taken to prevent, minimize, or end violations throughout the supply chain.
4. **Complaints Procedure:** Establishment of a mechanism for reporting risks and violations.
5. **Reporting:** Annual public reports on due diligence activities, submitted to the Federal Office for Economic Affairs and Export Control (BAFA).
6. **Scope of Due Diligence:** Includes own operations, direct suppliers, and indirect suppliers under certain conditions (e.g., reliable risk information).



German Supply Chain Act

Due Diligence Obligations

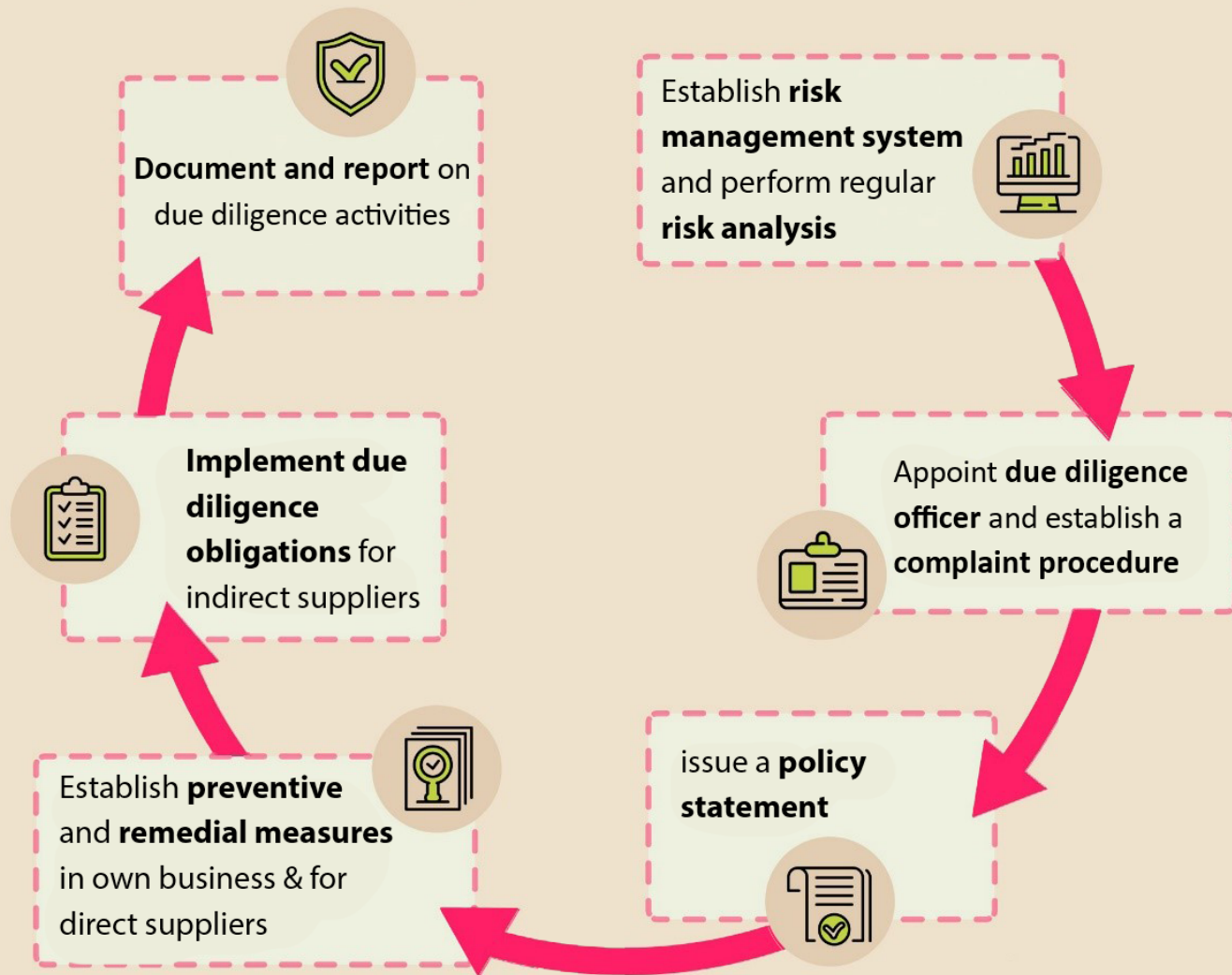


Figure 2: Due Diligence Obligations

HOW THE LkSG AFFECTS SUPPLY CHAINS:

Increased Responsibility for Labour, Human Rights and Environmental Standards

- **Mandatory Due Diligence:** Companies falling within the purview of this act must conduct thorough due diligence across their supply chains to identify and mitigate risks related to human rights abuses and environmental violations.
- **Preventive and Corrective Actions:** Responsibility extends beyond immediate operations to the entire supply chain, requiring preventive measures and corrective actions.

Broader Supply Chain Coverage

- **Direct and Indirect Suppliers:** The law applies to all levels of the supply chain, including sub-contractors and raw material providers.
- **Global Reach:** The law affects global supply chains, particularly in regions with less stringent regulations.

Documentation and Transparency Requirements

- **Reporting Obligations:** Companies must document and report due diligence efforts, thereby increasing transparency.
- **Impact on Supplier Relations:** Suppliers may face closer scrutiny and more stringent contractual obligations.

Legal and Financial Implications

- **Penalties for Non-Compliance:** Non-compliance can result in imposition of significant financial penalties on the violating company and exclusion from public contracts in Germany.

Pressure on Smaller Suppliers

- **Compliance Burden:** Smaller suppliers, particularly in developing countries, may struggle to meet the required standards.
- **Supply Chain Restructuring:** Companies may shift to more compliant suppliers.

Shift Towards Ethical and Sustainable Practices

- **Promoting Ethical Business:** Encourages ethical and sustainable practices, leading to long-term positive impacts.
- **Competitive Advantage:** Compliant suppliers may gain a competitive edge.

Enhanced Stakeholder Engagement

- **Involvement of Trade Unions and NGOs:** Greater involvement of stakeholders in supply chain management enhances compliance and effectiveness.

Risk Management and Supply Chain Resilience

- **Proactive Risk Identification:** The law fosters proactive risk management, building more resilient supply chains.
- **Long-Term Supplier Development:** Encourages stable, reliable supply chains through long-term supplier relationships.

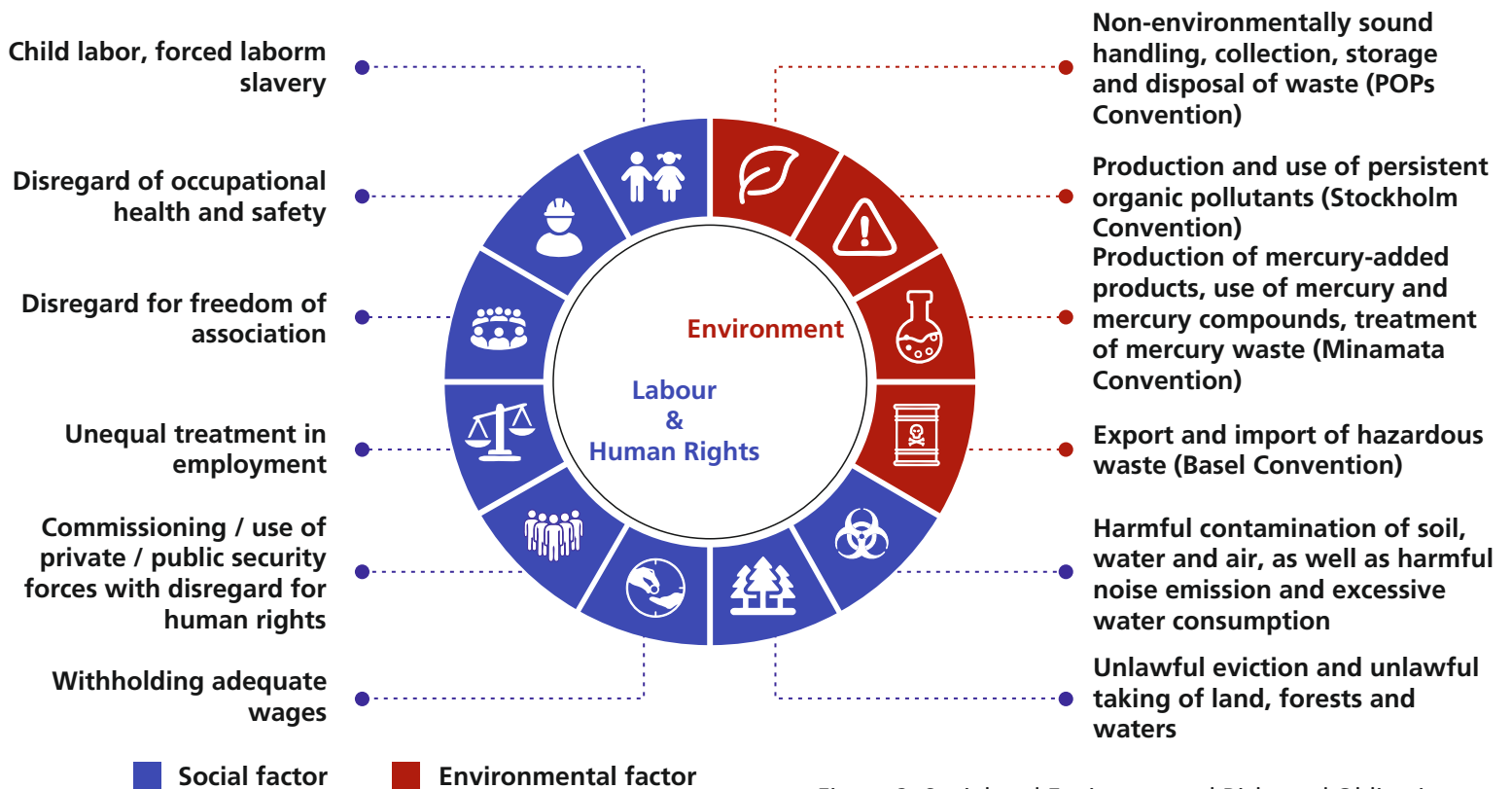


Figure 3: Social and Environmental Risks and Obligations

IMPLICATIONS

Supply Chain Act not Implemented? Possible Consequences:

- Fines can be imposed by BAFA in the event of non-implementation.
- Fines of up to 8 million euros possible if LkSG has not been implemented.
- Companies with 400 million euros annual turnover can receive fines of up to 2% of the average annual turnover.

Sanctions and fines

- Companies can be excluded from public contracts in the event of serious offences.
- Fines under the German Supply Chain Act are entered in the competition register, which can put companies at a competitive disadvantage.

Exclusion from Public Contracts

- If companies receive subsidies and violate the due diligence obligations, this can lead to severe consequences.
- Subsidies may not be granted or may be reclaimed.
- Funds that had already been approved no longer have to be paid out.

Reclaiming Subsidies

ADDRESSING VIOLATIONS UNDER LkSG

If a supplier factory believes that a Germany based company falling within the purview of this law has violated its legal obligations or contractual agreements, or if it believes it has been wronged under the German Supply Chain Due Diligence Act (LkSG), it may consider filing a case against the company. Here are the steps and considerations involved:

1. Review the Legal Framework

- **Understand Applicable Laws:** Determine which laws or regulations the company may have violated. This could include:
 - **Contractual Violations:** Breach of contract terms related to payment, delivery, or agreed-upon standards.
 - **Labor Laws:** Violations of labour rights under local laws, international labour standards, or provisions under the LkSG.
 - **Human Rights:** Violations of human rights obligations, particularly if the company has failed to uphold standards in its supply chain operations.
- **Jurisdiction:** Identify which jurisdiction's laws apply. If the company is based in Germany and the issue relates to supply chain due diligence, the LkSG will be applicable. Local laws in the supplier's country shall also apply.

2. Gather Evidence

- **Documentation:** Collect all relevant documents, such as contracts, communication records, purchase orders, and any correspondence related to the issue.
- **Witness Statements:** If applicable, gather statements from workers or other parties involved, documenting any violations or breaches of contract.
- **Audit Reports:** If there have been third-party audits or inspections, these reports can be crucial evidence in a case.

3. Attempt Resolution through Mediation or Negotiation

- **Engage with the Company:** Before pursuing legal action, it's often advisable to attempt to resolve the issue directly with the company. This could involve formal communication or mediation.
- **Grievance Mechanisms:** If the company or relevant law (e.g., LkSG) provides a formal grievance mechanism, use this process to file a complaint and seek resolution.

4. Seek Legal Counsel

- **Consult Local Lawyers:** Engage a lawyer or legal firm in your country who specializes in international trade, contract law, or human rights law. They can provide advice on the best course of action and the legal options available.
- **International Legal Expertise:** If the case involves a foreign company or international laws like the LkSG, you may need to consult with legal experts who have experience in cross-border legal issues.

5. Filing a Case

- **Determine the Venue:** The appropriate venue for filing a case could be:
 - **Local Courts:** If the issue involves a breach of contract or local labour violations, the case may be filed in the courts of the supplier's country.
 - **Foreign Courts:** If the case involves violations of laws like the LkSG, the case may need to be filed in Germany or another relevant jurisdiction.
- **Legal Action:** Prepare and file the legal case, following the required procedures for the chosen jurisdiction. This may involve submitting a complaint, filing a lawsuit, or initiating arbitration proceedings, depending upon the nature of the dispute and the applicable legal framework.

6. Consider Alternative Dispute Resolution (ADR)

- **Arbitration:** Many international contracts include arbitration clauses. Arbitration can be a faster and more confidential way to resolve disputes compared to traditional court proceedings.
- **Mediation:** Mediation can be a less adversarial process and may lead to a mutually agreeable solution without the need for formal litigation.

7. Engage International Organizations

- **Human Rights Bodies:** If the case involves significant human rights violations, international bodies such as the United Nations or the International Labour Organization (ILO) may provide avenues for raising complaints or seeking redressal.
- **Trade Unions, NGOs and Advocacy Groups:** Organizations that focus on worker's rights or corporate accountability may offer support, including legal assistance or public advocacy.

8. Prepare for Potential Outcomes

- **Legal Costs:** Be aware of the potential costs involved in pursuing legal action, including legal fees, court costs, and the time commitment.
- **Retaliation Risks:** Consider the potential risks of retaliation from the company or other entities involved, particularly in markets where suppliers may have limited power.
- **Settlement Possibilities:** Be open to settlement negotiations that could provide a quicker resolution, though it's important to ensure that any settlement terms are fair and enforceable.

9. Monitor and Follow Up

- **Ongoing Communication:** Maintain communication with legal counsel and follow up on the progress of the case.

Enforcement of Rulings: If the case is successful, ensure that the ruling is enforced, whether it involves compensation, specific performance, or other remedies.



ROLE OF TRADE UNIONS IN THE GERMAN ACT ON CORPORATE DUE DILIGENCE OBLIGATIONS IN SUPPLY CHAINS

Trade unions play a critical role in the implementation and enforcement of the German Act on Corporate Due Diligence Obligations in Supply Chains (LkSG). Their involvement spans various aspects, from advocacy and monitoring to providing support and representation for affected workers. Here are the key roles of trade unions under the Act:

1. Monitoring and Reporting Violations

- **On-the-Ground Insights:** Trade unions are often well-positioned to observe and document labour rights violations, unsafe working conditions, and environmental harms within factories and supply chains. They can use this information to inform larger stakeholders, including the German companies bound by the LkSG.
- **Collaboration with NGOs:** Unions can collaborate with like-minded non-governmental organizations (NGOs) and international bodies to compile evidence and report violations to German companies or relevant authorities, such as the [Federal Office for Economic Affairs and Export Control \(BAFA\) in Germany](#).

2. Engagement with Workers

- **Education and Awareness:** Trade unions can educate workers, especially in supply chain operations about their rights under the LkSG, including how the law can be used to protect them from exploitation, unsafe working conditions, and other human rights abuses.
- **Collecting Grievances:** Unions can help workers document and report grievances related to labour & human rights violations or environmental damage, ensuring these issues are communicated to the relevant authorities and companies involved.

3. Filing Complaints

- **Grievance Mechanisms:** The LkSG requires companies to establish a complaints mechanism for workers and stakeholders. Trade unions can assist workers in using these mechanisms effectively, ensuring that their complaints are heard and addressed.
- **Legal Action:** In cases where companies fail to address significant violations, trade unions can support or initiate legal action against the company in Germany or in the relevant jurisdiction, using the LkSG as a basis for the case.

4. Pressure for Remedial Actions

- **Negotiation with Companies:** Trade unions can engage in direct negotiations with German companies or their local subsidiaries, advocating for remedial actions where violations have been identified. This could include demands for better working conditions, fair wages, or environmental remediation.
- **Campaigning:** Unions can campaign for stronger enforcement of the LkSG by exercising their rights and educating their members or international solidarity actions, raising awareness about the conditions in the supply chain and pressuring companies to act.

5. Capacity Building and Training

- **Building Union Capacity:** Trade unions can strengthen their own capacity to engage with the LkSG by seeking training on the law, understanding how it applies to their situation, and learning how to use it effectively in advocacy.
- **Training Workers:** Unions can also train workers on how to gather evidence, document violations, and understand the grievance mechanisms provided by the LkSG, empowering them to protect their rights.

6. Engagement in Multi-Stakeholder Initiatives:

- Trade unions often participate in multi-stakeholder partnerships and dialogues aimed at improving sustainability in specific supply chains.
- Their involvement ensures that workers' voices are heard and that their interests are considered in policy and practice developments.

7. Collaboration with German Trade Unions

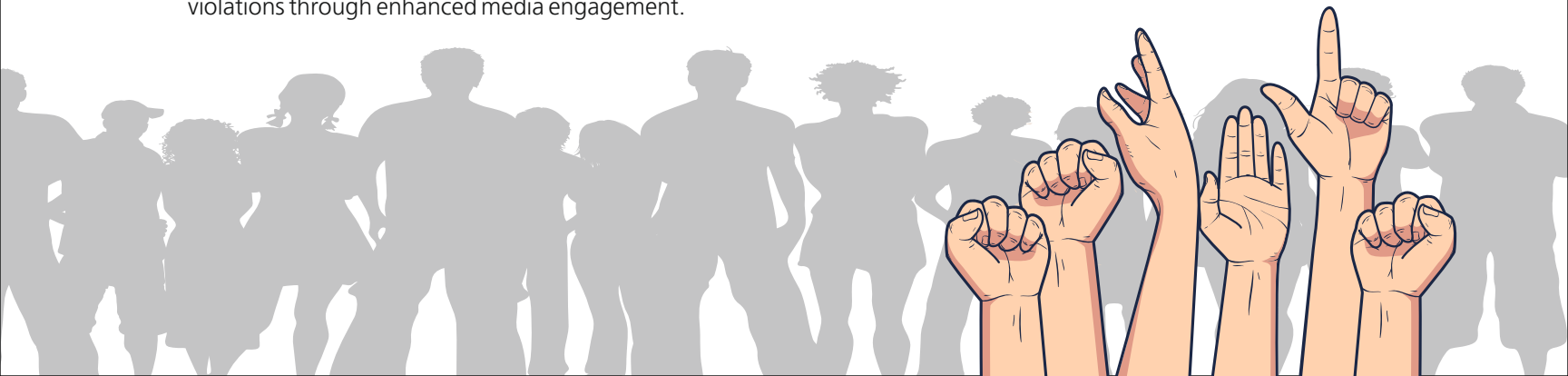
- **Transnational Solidarity:** Trade unions in production countries can partner with German trade unions to create a stronger international movement advocating for labour rights. German unions can exert pressure on companies based in Germany to comply with the LkSG and to take action against violations in their supply chain operations.
- **Joint Advocacy:** Collaborative efforts can lead to joint advocacy campaigns targeting both the companies and the policymakers to ensure the LkSG is enforced effectively and that violations are addressed swiftly.

8. Influencing Policy and Legislation

- **Lobbying for Stronger Laws:** Trade unions can lobby their own governments to adopt similar due diligence laws, thereby expanding the protections offered to workers and ensuring that all companies operating in their country aim for similar standards as those outlined under the LkSG.
- **Influencing Corporate Policies:** By engaging directly with companies, trade unions can push for the adoption of better corporate policies that go beyond mere compliance with the LkSG, aiming for higher standards of labour and environmental protection.

9. Documentation and Public Awareness

- **Publishing Reports:** Trade unions can publish reports documenting violations and the impacts of the LkSG on workers, raising public awareness and putting pressure on companies and authorities to take action.
- **Media Engagement:** Trade unions can raise awareness among common citizens on instances of labour and human rights' violations through enhanced media engagement.



THE GERMAN SUPPLY CHAIN DUE DILIGENCE ACT (LkSG): AT A GLANCE

Aspect	LkSG (Germany)
Scope	<ul style="list-style-type: none"> - Applies to companies operating in Germany. - Initially for companies with >3,000 employees, expanding to >1,000 employees in 2024. - Covers entire supply chain, including direct and indirect suppliers.
Due Diligence Obligations	<ul style="list-style-type: none"> - Requires regular risk analysis for human rights and environmental risks. - Must implement preventive measures and corrective actions for identified risks. - Requires establishing grievance mechanisms for reporting violations. - Companies must report publicly on due diligence efforts annually.
Legal and Financial Consequences	<ul style="list-style-type: none"> - Fines up to 2% of global annual turnover for non-compliance. - Non-compliance may result in exclusion from public contracts in Germany. - Focuses on German jurisdiction but has extraterritorial effects.
Labour, Environmental and Climate Focus	<ul style="list-style-type: none"> - International Labour Standards, Environmental due diligence included, primarily focused on human rights impact.
Stakeholder Involvement	<ul style="list-style-type: none"> - Involves grievance mechanisms and preventive measures.
Jurisdiction and Reach	<ul style="list-style-type: none"> - Focuses on companies in Germany but impacts global supply chains.

https://www.bafa.de/EN/Supply_Chain_Act/Overview/overview_node.html

About the Author

Paradigm Shift – specialises in supply chain monitoring, social dialogue, conflict management and social and environmental impact assessment. Through an array of its flagship programs, Paradigm Shift conducts participatory social audits, promotes a dynamic, inclusive and reinforced social dialogue for workers / workers' organisations, officials, and civil society organizations on core human rights topics, optimises grievance mechanisms and most notably it assesses supply chain risks related to social complaints and grievance redressal mechanisms.



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