

Bird & Bird

Supply Chain Act and ESG compliance

January 2023



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The Supply Chain Act – key aspects at a glance

On 1 January 2023, the LkSG (also known as the “Supply Chain Act”) came into force in Germany. The Act provides corporate responsibility for complying with human rights and environmental obligations in supply chains at the domestic level.

Dates & Thresholds

- **1 January 2023**
 - Companies with a registered office or branch office in Germany with at least 3,000 employees.
- **1 January 2024**
 - Threshold will be extended to companies with a registered office or branch office in Germany with at least 1,000 employees.
 - Small and medium-sized enterprises (“SMEs”) below this threshold may also be affected due to the so-called “trickle-down-effect” of passing legal obligations along the supply chain by way of contractual agreements.

Due Diligence Obligations

- Companies are obligated to properly take account of human rights and environmental due diligence obligations in their supply chains.
- The due diligence obligations apply both to the company’s own business operations and to the actions of direct as well as indirect suppliers.

Actions to take

- The LkSG provides for various categories of due diligence obligations that must be implemented:

1 Documentation and reporting obligations

2 Diversified risk management system incl. effective risk analysis

3 Implementation of preventive and remedial measures when risks are identified

Liability / Sanctions

- **No (original) liability under the LkSG**
 - Violation of due diligence obligations does not give rise to direct civil liability under the LkSG. However, contractual provisions may lead to civil liability in the event of a breach of due diligence obligations.
 - Contractual and/or tort liability for damages and termination of contracts are possible in exceptional cases.
- **Strict public law sanctions regime**
 - Regular, risk-based inspections by the Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, hereinafter “BAFA”, competent federal agency).
 - Imposition of fines (up to EUR 8 million or 2% of the average annual turnover for companies with an average annual turnover of at least EUR 400 million)
 - Exclusion from public procurement procedures for up to three years for companies that have been fined at least EUR 175,000.
 - Infringement entry in the competition register, from which public contracting authorities request information before awarding public contracts. But: Application for early deletion of the register entry can be made to the BAFA in the event of successful self-cleaning.

Dedicated expert team

There is no “one-size-fits-all” approach when it comes to compliance with the German Supply Chain Act. Having been involved with the legislation since its planning process, we have already advised various companies on Supply Chain Act compliance projects and thus know how to efficiently structure and manage them with a risk-based approach tailored to sector- and company-specific requirements.

Implementing legislative requirements such as the German Supply Chain Act calls for more than legal advice. Highly experienced lawyers with **special sector know-how** of the contractual relations along the supply chain as well as **strong project management skills** can guarantee the success of your organisation’s working processes and its resilience to risks over the longer term.

With a dedicated cross-practice expert team, we help domestic and international clients **navigate the rigid documentation and obligations** of the Supply Chain Act in the German and EU markets. We **conduct and implement all relevant risk analyses** while also **negotiating contracts** for the purpose of our client’s commercial objectives and priorities.

What’s more, our focus on selected sectors helps us provide a comprehensive risk analysis covering the **regulatory specifics along the global supply chains of the respective industries**. We have sector experts in areas such as automotive, aviation, life sciences, retail and technology, who know all the relevant contract terms and structures of the underlying industry. They make sure that **all risk gaps** in compliance with the German Supply Chain Act **are properly detected and reflected** with the aim of protecting companies against liability, administrative fines and loss of reputation.



Our compliance services

- Policy design, review or updating of written policies and procedures (template policy and governance framework for organising Supply Chain Act compliance);
- Template for supply chain compliance and audit clauses;
- Draft and review of a Code of Conduct;
- End-to-end procurement processes (legal check-points in workflow, supplier due diligence checklist, decision trees with regard to indirect suppliers, etc.);
- Bespoke risk assessment for specific customer projects, from risk mapping and process risk evaluation to preventive and reactive compliance audits;
- Design and delivery of customised, industry-specific training modules and programmes.



'The sharpest sword of their advice is definitely the understanding of the actual business, which is why from the client's point of view one can always count on well-engineered decision-making bases that include an adequate risk/opportunity assessment.'

Legal500 Germany 2022

All-around Supply Chain Act compliance support

Having an impact across various areas of law, the legal scope of the Supply Chain Act is far-reaching and requires comprehensive knowledge of the respective interfaces.

As a full-service firm, we provide a forward-looking and seamless approach to compliance projects with specialists across all key areas of law. We cover the full range of potential risks of the Supply Chain Act with the following being an overview of selected areas.



Commercial

- Drafts, amendments, and reviews of contractual compliance provisions (Code of Conduct, audit clauses, compliance clauses, etc.).
- Advice on various general civil law issues / implications, such as:
 - Civil liability issues and disputes;
 - Assessment of the LkSG's impact on the German GTC law.
- Review of compliance management systems as well as legal support for establishing LkSG-compliant compliance management systems risk analyses required under the LkSG.



Corporate

- Advice on the extended scope of duties of board members and managing directors to avoid personal liability.
- Support on the seller side in compiling documents and information for LkSG due diligence.
- Compliance due diligence on the acquirer's side extended to the specific topics of the LkSG, including consideration of the results in the transaction documentation.
- Post-merger support in the implementation of possible recommendations to improve the risk profile.



Employment

- Employment law advice relating to the Non-financial Reporting Directive (NFRD) and its amendment to the Corporate Sustainability Reporting Directive (CSRD).
- Advice on the employment law implications due to the implementation of remedial measures (dismissal etc.).
- Support in dealing with reporting obligations and rights to access to information vis-à-vis economic committees and works councils.



Public Procurement

- Advice on self-cleaning measures, including compensation for damages, active cooperation with investigating authorities as well as technical, organisational and personnel aspects.
- Compliance advice under public procurement law at an early stage of investigation proceedings, due to the necessity of active cooperation with the investigating authorities in the clarification process.

Toolkit & value-added offers

We offer several value-added services to increase efficiency and provide in-house teams with the information and training needed to tackle the challenges faced in complying with the Supply Chain Act.

Risk matrix

We use Red/Amber/Green matrixes to provide an overview of all legal risks relating to the Supply Chain Act, the likelihood of the risks' realization as well as their possible impact on the company.

Bespoke materials

From ready-made templates to comprehensive memos and briefings, we provide a vast collection of bespoke material that is tailored to your requirements for the implementation of the legal action items in your company.

In-house trainings

Employee training is a key component of the successful implementation of compliance projects to improve its understanding and increase the willingness to act as required amongst staff.

Upon request, we provide internal trainings on all relevant compliance elements of the Supply Chain Act tailored to your company-specific requirements. In each case our maxim is make practical recommendations that can be easily implemented in practice by all employees.



Legal Updates

Our experts regularly produce articles and client alerts and give talks on conferences on the latest legal developments in supply chain regulation, which are available online and on dedicated portals on our website. This includes:

- Article on the [Risk analysis as a core element of the Supply Chain Due Diligence Act](#)
- Article on the [Supply Chain Due Diligence Act - latest developments at EU-level \(in German\)](#)
- Commentary in the professional press, e.g. [The EU Supply Chain Act and its implications](#) (in German).
- Panel discussion at the [General Police Equipment Exhibition & Conference](#) (May 2022, in German) on the latest developments in Supply Chain and Sustainability issues.

Get in touch



Dr. Matthias Spilker, LL.M.

Partner, Commercial

+4921120056295
matthias.spilker@twobirds.com



Felix Schmidtke

Associate, Commercial

+4921120056295
felix.schmidtke@twobirds.com



Stefan Münch

Partner, Corporate/M&A

+498935816237
stefan.muench@twobirds.com



Dr. Stefanie Ortmann, LL.M.

Partner, Corporate/M&A

+4921120056249
stefanie.ortmann@twobirds.com



Dr. Martin Nebeling

Partner, Employment

+4921120056240
martin.nebeling@twobirds.com



Benjamin Karcher

Counsel, Employment

+4921120056340
benjamin.karcher@twobirds.com



Anna Rennen

Counsel, Public Procurement

+4921120056224
anna.rennen@twobirds.com

twobirds.com

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