

EVERY COMPANY COOPERATING WITH GERMAN CONTRACTORS MUST KNOW ABOUT THIS

From January 1, 2023, the Supply Chain Due Diligence Act (German: *Lieferkettensorgfaltspflichtengesetz* – LkSG) is in force in Germany. LkSG is a new regulation in the German legal system. **This Act requires companies falling within its scope to examine their supply chains in order to identify and eliminate corporate social responsibility risks.** Companies will be required to establish effective risk management systems in line with the UN Guiding Principles on Business and Human Rights and to take appropriate action when threats are detected.

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From January 1, 2023 to December 31, 2023, the LkSG applies to companies employing at least 3,000 employees, but from January 1, 2024, its provisions will also be extended to companies with more than 1,000 employees. The calculation of company size depends on the number of employees of all affiliated companies.

The definition of the supply chain and the way of understanding an enterprise mean that the new regulations will also affect the Polish market. German companies will be obliged not only to exercise due diligence themselves, but also "will be held accountable for":

- their foreign daughter companies
- their business partners, including suppliers acting for German entities only indirectly, i.e. subcontractors of their foreign business partners.

In practice, this means that **German companies will exert influence not only on their daughter companies, but also on their foreign suppliers, requiring them to take specific actions.** German companies will have to prepare risk assessments and, if violations are detected, take actions to stop or minimize them.

So what can Polish companies with German companies as partners expect?

Given these types of requirements, it is expected that standards of control over the supply chain will be unified across the entire capital group. However, each change will require its adaptation to Polish legal requirements. It is unacceptable to use the "copy and paste" rule.

So what can Polish companies cooperating with German companies expect?

German contractors will expect from the Polish contractor not only a declaration that it complies with certain conventions (concerning, among others, human rights, fair remuneration and environmental issues), but also evidence that it actually complies with the abovementioned rules. Contractors from Poland will be obliged to report identified cases of potential abuse to their sub-suppliers in the supply chain.

Moreover, German companies are already trying to use trade agreements to determine their content in such a way that the relations with their suppliers allow them to meet the requirements imposed by the LkSG. As practice shows, German companies, when specifying appropriate due diligence obligations in the contract, also establish contractual sanctions for non-compliance with them, such as suspension of execution or termination of the contract and payment of claims for damages or contractual penalties. Therefore, Polish companies should try to negotiate optimal solutions based on negotiations with their German partners.

German contractors can also expect the supplier to create channels for reporting potential abuses and to provide information on actions it takes to exercise due diligence in the supply chain. And everything will be, as practice shows, regulated in contracts concluded with Polish companies and other documents that will be in force, including, for example, the general terms and conditions of sale. For this reason, Polish companies should expect that their German partners will impose a requirement to renegotiate already concluded contracts. Polish companies will have to review their contracts concluded with their sub-suppliers in order to adapt them now to the abovementioned requirements.

LkSG also affects the obligations of companies, both Polish and German, in terms of ESG reporting.

Should you have further questions, we remain at your disposal.

** This Newsletter does not constitute legal or tax advice.*
