

# Who You Gonna Call?

## The complaints procedure under the German “Supply Chain Act”

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On 1 January 2023, the “Act on Corporate Due Diligence Obligations in Supply Chains” (the “Act”) will enter into force for companies with more than 3000 employees in Germany. In order to specify the obligations under the Act, the Federal Office for Economic Affairs and Export Control (“BAFA”) published several guidance documents, most recently [one on the complaints procedure](#) (in German) under Sec. 8 and 9 of the Act. In this briefing, we summarize the main specifications and recommendations provided in the guidance document.

### **Implementation of a complaints procedure as due diligence obligation under the Supply Chain Act**

In accordance with Sec. 8 and 9 of the Act, companies must implement a complaints procedure that enables individuals to report human rights and environment-related violations resulting from economic activity of a company as well as their direct and indirect suppliers.

According to BAFA, the complaints procedure is intended, on the one hand, to provide an early warning system that ideally prevents damage to individuals or the environment. On the other hand, it is intended to give affected individuals the possibility to seek remedial action if a violation occurs or is imminent. If the reported violations can be confirmed, companies are obliged under Sec. 7 of the Act to end or minimize such violations by taking remedial action and under Sec. 6 to take preventive measures to prevent future violations.

### **Accessibility of the complaints procedure**

The complaints procedure must be accessible to both internal and external complainants. Its most important addressees are individuals in the company or its supply chain who are potentially affected by human rights or environment-related violations. They should be identified in the risk analysis companies carry out under Sec. 5 of the Act and may be, for example, employees, including those of direct or indirect suppliers, or residents at the local sites.

According to the guidance document, potential access barriers should be identified in advance and considered in the design of the procedure to ensure that individuals are

aware of and can use the complaints procedure. In order to take individual needs into account, the target groups or their representatives should already be consulted in the design stage of the procedure. Thereby, it must be considered that access barriers might differ depending on the affected group and might be especially high for vulnerable groups such as individuals who are not literate or children. It can therefore be necessary to create different channels to submit a complaint, e.g., online, by phone or through local contacts.

To provide more clarity, the document offers some examples of measures that might be necessary to address specific access barriers. For example, in the case of language barriers, the information should be translated into the relevant national languages. If a procedure involves costs, cost-free alternatives can be provided. If individuals with limited literacy are affected, information could be posted in the form of illustrated posters in places frequently encountered by them. If trust in the procedure is lacking, measures can be taken to ensure anonymity or direct contact persons can be provided.

As a rule, companies must create access possibilities that are appropriate in relation to the nature and scope of its business activities and the associated risks. The more human rights and environment-related risks a company has identified in its risk analysis, the more effort is required to ensure accessibility for affected individuals. The individual implementation is, however, at the discretion of the company.

## **Further requirements for the complaints procedure**

In accordance with Sec. 8 (2) of the Act, companies must adopt rules of procedure in text form and make them publicly available. BAFA specifies that they should contain information on the types of complaints that can be submitted, the accessibility to and course of the complaints procedure as well as on the possibility of amicable dispute resolution, on the responsible contact persons and on safeguards to prevent adverse action following a complaint.

The needs of the target groups of the procedure should also be considered when designing and communicating the rules of procedure. The information should be clear and concise, prepared in the relevant languages, easy to find and accessible.

Finally, companies must establish the structural conditions to ensure that the persons responsible for the conduct of the complaints procedure can act impartially. They must be independent, not bound by any instructions and obliged to maintain secrecy. Moreover, the responsible persons should be adequately trained and have sufficient time to assess the reported issues.

## **Course of the complaints procedure**

The BAFA guidance also contains specifications on the course of the complaints procedure. When complaints are received, the complainants should be informed of the receipt

of the complaint, as well as the next steps, the timeline of the process, and their rights in relation to the protection from adverse action or punishment. Following that, it should be assessed whether the complaint falls within the scope of the procedure. If a complaint is rejected, the reasons for this should be provided to the complainant. If the complaint falls within the scope, the contact person should discuss the matter with complainant to gain a better understanding of the facts. On this basis, a proposal for remedial action should be developed and, where necessary, agreements on reparations should be reached. In the next step, the measures should be implemented, and the outcome should be evaluated with the complainant.

The effectiveness of the procedure should be reviewed annually and as necessary, and adjustments should be made if required.

## **Protection of the complainants**

To ensure that the complaints procedure is used by affected individuals, confidentiality of their identities as well as protection from repercussions must be ensured. Therefore, companies should take precautions to keep complainants' identities confidential and to protect personal data. BAFA recommends allowing anonymous use of the procedure.

In addition, companies must ensure and take appropriate measures to prevent complainants from being disadvantaged or punished as a result of their complaints. Companies can, for example, outline specific consequences that employees or suppliers can expect, if complainants face retaliations as a result of a complaint.

## **Conclusion**

The guidance document contains important information regarding the requirements for and the organization of the complaints procedure. In particular, the comprehensive specifications on the accessibility of the complaints procedure provide helpful instructions for companies. However, for companies that will be obligated by the Supply Chain Act from the 1 January 2023, several specifications and recommendations come too late. In particular, a consultation of affected persons in order to include their specific needs in the design of the procedure is no longer possible before the obligations come into force on 1 January 2023.