Federal Ministry
of Labour and Social Affairs

SECTOR DIALOGUE
Automotive Industry

Business &
Human Rights

Respecting human rights along global supply and value chains of Germany's automotive industry

Guideline for the core element

Measures and effectiveness tracking

Contents

1. Introduction to the guidelines

Context

Protecting human rights is a duty of the state. This duty cannot be transferred to any other social actors. Business enterprises also have a responsibility to respect human rights. This means they must be aware of the impact of their activities on human rights, and establish due diligence processes in order to prevent, mitigate or compensate for any adverse impacts.

Against this background, the German Federal Government adopted the National Action Plan for Business and Human Rights (NAP) on 21 December 2016. The NAP is based on the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles), which the United Nations Human Rights Council adopted by consensus in 2011, thus creating an internationally recognised framework for human rights due diligence. In accordance with the content of the UN Guiding Principles, the NAP sets out the duty of the state to protect human rights and the responsibility of enterprises to respect human rights in their global supply and value chains.

Germany's Federal Government has established 'sector dialogues' to support enterprises operating in sectors with particularly high human rights risks. The dialogues are implemented by the Federal Ministry of Labour and Social Affairs (BMAS). The goal of the dialogues is to help enterprises find appropriate ways of implementing the five core elements of human rights due diligence and therefore contribute to the improvement of the human rights situation.

The five core elements are:

- human rights policy statement
- procedures for the identification of actual or potential adverse impacts on human rights
- measures to ward off potential adverse impacts and to review the effectiveness of these measures
- reporting
- grievance mechanism

In addition, from 2023 onwards, the German Supply Chain Act (Lieferkettensorgfaltspflichtengesetz, LkSG) requires certain enterprises to take appropriate action to observe human rights and environmental due diligence obligations in their supply chains.[1] As there is a great deal of overlap between the LkSG and the NAP, the sector dialogues also offer meaningful support to help enterprises meet the requirements of the Supply Chain Act.

As a key industry in the German economy, at its production sites around the world, and together with a network of suppliers, the automotive sector contributes to employment, training and economic development. Over half of the value added within the sector is generated by suppliers – from the extraction of raw materials and manufacture of inputs through to component assembly and the production of entire vehicles. At the same time, the situation in the automotive sector's globally dispersed supply and value chains poses significant human rights risks in many areas. This is particularly the case in upstream processes. Furthermore, human rights violations and corruption are more likely to occur in states where the rule of

[1] The German Supply Chain Act came into force on 1 January 2023. All enterprises based in Germany with at least 3,000 employees, regardless of their legal form, and all enterprises with a branch in Germany and at least 3,000 employees in the country, are now required to fulfil certain human rights and environmental due diligence obligations. Within affiliated enterprises, the figure for the parent company includes the total number of workers employed at all the group's companies in Germany and any employees currently on international secondments. From 1 January 2024, the threshold will fall to 1,000 employees. Small and medium-sized enterprises (SMEs) will also be affected indirectly, since enterprises subject to the LkSG will impose their own due diligence obligations on their suppliers.

law is lacking, institutions are weak, and poverty is endemic. Human rights risks that may arise in such countries include damage to the health or safety of workers and local people, discrimination, restrictions on freedom of association and violations of indigenous peoples' rights. The responsibility of the German automotive industry to design sustainable global supply and value chains and to respect human rights is therefore of great importance.

Why is there a Sector Dialogue Automotive Industry?

Enterprises in the automotive industry maintain close links with their consumers. As such, the increasingly stringent requirements surrounding sustainability performance and human rights due diligence go beyond large manufacturers and suppliers of the automotive industry. Increasingly, small and medium-sized enterprises (SMEs) must also rise to the challenge of developing responsible supply and value chains – from the extraction of raw materials to the final product and eventual disposal.

In this context, implementing human rights due diligence can be seen as a learning journey, an individual and ongoing process that each enterprise will need to monitor regularly and keep on improving.

Furthermore, the challenges involved are often complex and diverse, reflecting the highly interwoven nature of supply and value chains. Many vehicle manufacturers and suppliers are already actively engaged in the field of human rights, either as individual enterprises or through national and international initiatives. A joint sectoral approach and industry-wide cooperation can have an even greater impact given the structural similarities between supply and value chains. This is why industry actors representing enterprises, business associations and unions have come together with civil society organisations and the Federal Ministry of Labour and Social Affairs (BMAS) to establish a sector dialogue for respecting human rights along global supply and value chains of Germany's automotive industry.

The goal of the Sector Dialogue is to contribute to the improvement of the human rights situation along the industry's global supply and value chains. It focuses on the responsibility of enterprises to respect human rights. The five core elements described in the NAP support enterprises in implementing human rights due diligence in their business activities and integrating it into their operational management processes. With this goal in mind, the members of the Sector Dialogue have produced a series of guidelines for implementing the five NAP core elements. In this context, the guidelines are designed to act as both a point of reference and a toolbox for enterprises.

How do the guidelines differ from other advice?

The guidelines for the five NAP core elements of human rights due diligence differ in key areas from previous advice and therefore provide significant additional value.

- The guidelines form a collection of self-contained and structurally identical manuals that fully address the NAP requirements.
- The purpose of the NAP is to set out the UN Guiding Principles on Business and Human Rights from an implementation perspective. The guidelines reference the UN Guiding Principles and therefore contribute significantly to the implementation of the wider international framework, whose goals are explicitly recognised by all members of the Sector Dialogue.
- The guidelines include concrete references to the requirements of the Supply Chain Act (LkSG). This will help enterprises that fall under the scope of the law to meet their statutory obligations at the same time. In certain areas, the guidelines go beyond the above-mentioned policy frameworks and regulatory requirements.
- Other relevant guidance has been incorporated into the guidelines alongside examples of current business practice. The guidelines take into account the characteristics of both large enterprises and SMEs.
- With the help of the guidelines, users can review their progress towards fulfilling the NAP requirements (e.g. through checklists). In this way, they create transparency and verifiability for enterprises and their stakeholders and can demonstrate the progress made towards implementation.
- The guidelines – or parts of them – can also be used by your enterprise for training courses or as training resources.

Members of the Sector Dialogue have spent roughly two years drawing up the guidelines in a multi-stakeholder process. The strength of the guidelines lies in the wealth of knowledge and experience of individual members, and as such they have been broadly welcomed among the Sector Dialogue's various stakeholder groups.

How are the guidelines structured?

This document focuses on the core element 'Measures and effectiveness tracking' and

- summarises the key points in the guideline at a glance (section 2);
- clearly explains the NAP requirements for this core element and cites which parts of the LkSG apply to measures and effectiveness tracking (section 3);
- sets out practical and industry-specific steps to integrate the NAP requirements into business management processes (section 4);
- shows how progress towards implementation can be reviewed and made transparent in business practice (section 5);
- lists further information and sources of additional reading (sections 6.1 and 6.4);
- compares the NAP and LkSG requirements side by side in a table, with references to the implementation steps in the guideline (section 6.2);
- contains a glossary of relevant terms used in the field of human rights due diligence as well as selected definitions from the LkSG and the explanatory memorandum to the LkSG (section 6.3).

2. Core element 'Measures and effectiveness tracking' – the key points at a glance

Corporate due diligence involves setting up processes that identify and appropriately address actual and potential adverse impacts on human rights as a result of your business activities. Based on the impacts you identified over the course of your risk analysis, you should take measures in order to pursue two broad aims:

- **prevention**, i.e. mitigating the severity of risks and reducing or eliminating the probability that they will occur;
- **remedy and redress**, i.e. working to stop or at least minimise any existing damage to human rights and providing redress.

You can use this guideline to help you gradually implement the due diligence processes required by the NAP. This approach should lead to a set of processes that allow your enterprise to counter actual and potential adverse impacts through appropriate measures. These processes include steps to review and if necessary increase the effectiveness of your measures.

The guideline proposes the following steps:

1. When deciding on measures, your main starting point should be the results of your risk analysis. At this point, you have already identified, thoroughly analysed and evaluated the actual and potential adverse impacts of your business operations on human rights. Based on the severity of those human rights impacts, you have also established an order of priority for tackling them. The goal now is to set out and implement measures that prevent and provide remedy and redress for those adverse impacts.
2. The next step is to create the necessary conditions for implementing your measures. That involves adapting your processes and documentation as well as establishing suitable organisational structures. These actions are essential in order to embed due diligence processes across the enterprise and to ensure their effectiveness. You should also consult (potentially) affected groups or their legitimate representatives (e.g. unions or civil society organisations) wherever it makes sense and is possible to do so.
3. Determine your enterprise's causal contribution, i.e. in what form it is linked to adverse human rights impacts, and its ability to exert an influence. You can now use this information to design and implement appropriate measures.
4. Your enterprise will need to make arrangements for remedy and redress by developing and implementing measures that stop or at lease mitigate any adverse impacts, if possible restoring the situation that existed before the violation and providing redress where required.
5. Your enterprise should practice prevention, meaning it develops and implements measures that avert future adverse impacts wherever possible or at least mitigate them.
6. In order to determine whether your measures are effective, you will need to review them on a regular basis using both qualitative and quantitative indicators.

To help you implement these steps efficiently, the guideline offers good practice examples from the automotive and other similar industries as well as advice on where you can find more information. It also highlights the LkSG requirements for implementing measures and reviewing their effectiveness and explains which steps are designed to help you meet them. Finally, the guideline includes a checklist that you can use to assess your progress towards implementing the NAP's human rights due diligence requirements.

Links to the guidelines for the other NAP core elements

The procedures that enterprises set up to develop, implement and monitor the effectiveness of measures are closely connected to other aspects of human rights due diligence. The relevant links with the other guidelines on implementing the NAP requirements are set out below:

- **Policy statement:** The policy statement sets out which processes and responsibilities your enterprise will establish in order to determine and implement its measures and how it will review their success.
- **Risk analysis:** This NAP component involves conducting a human rights risk analysis to identify, evaluate and prioritise actual and potential adverse impacts caused by your business operations along your supply and value chain on the basis of their severity. Based on your findings, you are then required to specify and implement measures to counter the identified risks. As part of this analysis, you also need to determine relevant criteria such as your enterprise's causal contribution and its ability to exert influence. These criteria will also help to shape the measures you decide to take.
- **Grievance mechanism:** To meet your due diligence obligations, you will need to implement both preventive measures and measures to provide remedy and redress. Grievance mechanisms are a formal procedure that allows individuals or groups to submit information or complaints about the impacts of business activities and to seek appropriate remedy and redress.
- **Reporting:** Both your internal and external communications should provide relevant information on how you are meeting your due diligence obligations. You should establish transparent reporting mechanisms and a proactive dialogue with stakeholders and (potentially) affected groups in order to explain your measures and their impact. This will also demonstrate to stakeholders and rights holders that you are aware of the actual and potential impacts of your operations and are taking steps to counter them in an appropriate manner.

3. What are the requirements that measures and effectiveness reviews must meet?

Essentially, corporate due diligence is about setting up procedures that enable you to prevent or mitigate actual and potential adverse impacts on human rights as a result of your business activities, or, in the case of existing violations, to provide remedy and redress. You should therefore establish and implement appropriate measures to ensure prevention, remedy and redress based on the results of your risk analysis. You will also need to review the effectiveness of your measures at regular intervals. The NAP[2] requirements are summarised below.[3]

Points you need to consider when implementing measures

A. Use the results of your risk analysis to help you identify appropriate measures.
B. Depending on the types of impacts, develop and implement measures to prevent and remedy human rights impacts and integrate them into your business operations.
C. Define objectives for each of the specified measures.
D. Communicate your objectives internally and externally as appropriate for each measure.
E. If your enterprise lacks the influence needed to implement successful measures on its own, work with other actors to increase your influence.
F. Ensure that your measures are designed in a way that enables you to counter actual or potential adverse impacts through appropriate action.
G. As a last resort, if it is impossible to improve the situation, you may need to consider withdrawing from an area of business or a location. Priority should be given to developing and implementing remedial measures.

Examples of preventive and remedial measures from the NAP

- Provide specialised training for certain employees in your enterprise or at your suppliers.
- Adapt specific management processes.
- Make changes in your supply chain.
- Join a sector-wide initiative.

Reviewing the effectiveness of your measures

H. It is important to regularly examine the success of the measures you have taken by conducting effectiveness reviews.
I. The dialogue with affected groups or their representatives is a key part of this review process.

The Sector Dialogue Automotive Industry and the guidelines are based on a broad understanding of the term ‘measures’. As well as measures to ensure remedy and redress, this includes preventive measures for all your identified risks. The LkSG also distinguishes between preventive and remedial action.

[2] See Federal Government (2016) National Action Plan: Implementation of the UN Guiding Principles on Business and Human Rights, pages 9 and 21.
[3] Note: The glossary in section 6.3 includes the exact text from the National Action Plan for Business and Human Rights setting out requirements for the core element ‘Implementing measures and tracking their effectiveness’.

What requirements does the Supply Chain Act (LkSG) impose on enterprises with regard to implementing measures and tracking their effectiveness?[4]

As in the NAP, the LkSG makes a fundamental distinction between preventive measures (section 6 LkSG) and remedial action (section 7 LkSG) and imposes a requirement to review their effectiveness [section 6 (5) and section 7 (4) LkSG]. If an enterprise has 'substantiated knowledge' of a violation, it must also fulfil its due diligence obligations ad hoc in relation to any risks that arise at indirect suppliers (section 9 LkSG).

Preventive measures (sections 6 and 9 LkSG)
Enterprises can take preventive measures to avert adverse human rights and environmental risks. Pursuant to section 6 (1) LkSG, '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.'

Issuing a **policy statement** on your human rights strategy is one of the preventive measures you are obliged to take [section 6 (2) LkSG]. Detailed requirements for this action by senior management are set out in the guideline for the core element 'Policy statement'.

<u>Your own area of business</u>
Section 6 (3) LkSG states: '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.'

According to the explanatory memorandum to the LkSG, the actions listed are to be seen as definitional elements. From a legal perspective, the list is not exhaustive, and enterprises remain free to take alternative preventive measures that are equally appropriate and serve the same purpose, i.e. to avert adverse human rights and environmental impacts. While enterprises can exercise discretion, all the measures they take must comply with the principle of appropriateness as described in section 3 (2) LkSG. Accordingly, the enterprise must conduct a specific assessment in its own area of business so that it can define appropriate and adequate preventive measures. Below are proposed actions that (among others) might help you translate the above examples into concrete measures in your enterprise.

- Establish an internal code of conduct for your employees and an external code of conduct for your contractual partners and specify the measures you will take in response to violations.
- Establish a strategy for selecting your suppliers.
- As part of a procurement strategy that is consistent with your human rights strategy, specify supply times, purchase prices and the length of contractual relationships.
- Train your workforce to apply standards in their daily routine and in their work processes related to conflict management.
- Update your procedural guidance on a regular basis.

<u>Direct suppliers</u>
In accordance with section 6 (4) LkSG, the above requirements apply equally in the case of **direct suppliers** with which you aim to establish or have already established a contractual relationship.

[4] Note: The glossary in section 6.3 of this guideline includes definitions of key terms used in the LkSG. Section 6.2 compares the NAP and LkSG requirements side by side in a table with references to the steps recommended in the guideline.

Under these circumstances, your enterprise must establish the following appropriate preventive measures:

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.'

The explanatory memorandum to the LkSG proposes the following measures you can take with respect to your direct suppliers:

- Before signing a contract, evaluate your contractual relationships with due regard for specified standards and benchmarks that are consistent with your human rights strategy.
- Establish a supplier code and specify that any signing of contracts will depend on fulfilling the requirements set out in the code.
- Insert outsourcing provisions into your contracts with direct suppliers.
- Conduct on-site inspections and use audit and certification systems.

<u>Indirect suppliers</u>
Pursuant to section 9 (3) no. 2 LkSG, an enterprise must 'as warranted ... lay down appropriate preventive measures vis-à-vis the party responsible' if it 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)'. At this point, the Act provides examples of such actions: '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' [section 9 (3) no. 2 LkSG]. The Federal Government's explanatory memorandum to the LkSG stresses that these initiatives can serve to standardise requirements, increase the enterprise's influence and therefore harness synergies and reduce individual effort. Collaborative approaches should be regarded as important given that upstream supply chains often consist of complex and opaque supplier networks.

Remedial actions (sections 7 and 9 LkSG)
For LkSG purposes, the term 'remedial action' covers all measures that prevent, end or minimise the extent of existing risks and of imminent violations of due diligence obligations. Section 7 (1) sentence 1 LkSG states that appropriate remedial action must be taken without undue delay '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**'.

Section 7 (1) sentence 2 in conjunction with section 5 (1) sentence 2 LkSG clarifies that **indirect suppliers** are to be treated as 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'. This scenario could arise, for example, if the enterprise were to set up a kind of 'straw man' with no significant economic activity of its own as an intermediary, solely in order to avoid or weaken the enterprise's supply chain obligations.

The explanatory memorandum sets out the view that section 7 (1) LkSG does not constitute grounds for a claim against the enterprise.

<u>Your own area of business</u>
Section 7 (1) sentence 3 LkSG states that 'remedial action must **bring the violation to an end**' in cases involving an enterprise's **own business area** in Germany. **In its own business area abroad** and in the case of a **group company** over which the parent company 'exercises a **decisive influence**' as described in section 2 (6) sentence 3, 'the remedial action must usually bring the violation to an end' [section 7 (1) sentence 4 LkSG]. This is underpinned by the interpretation set out in the Federal Government's explanatory memorandum that the enterprise is close enough to the risk to create an expectation that it must bring the risk to an end: 'The more closely an enterprise is linked to an impending or existing violation and the greater its contribution, the more it must strive to end the violation.' Consequently, the action taken to deal with a violation must also be consistent with the statutory principle of appropriateness as set out in section 3 (2) LkSG.

Direct suppliers

Section 7 (2) stipulates how an enterprise must respond '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**'. In such cases, 'the enterprise must draw up and implement a **concept for ending or minimising** the violation without undue delay' [section 7 (2) sentence 1 LkSG]. 'The concept must contain a concrete **timetable**' [section 7 (2) sentence 2 LkSG]. Pursuant to section 7 (2) sentence 3 LkSG, '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.'

By contrast, according to section 7 (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' [section 7 (3) sentence 2 LkSG]. 'Restrictions on foreign trade by or on the basis of federal law, European Union law or international law remain unaffected by sentence 2' [section 7 (3) sentence 3 LkSG].

It is clear from these statutory requirements that the act of terminating a business relationship is intended to be a **last resort**, and that no enterprise can therefore be required to take this step as an automatic response to such risks. The explanatory memorandum clarifies that an enterprise is only expected to terminate a business relationship with a supplier in cases where a violation or breach is assessed as very serious, if all attempts to mitigate the risk have failed after the time specified in the concept, if the enterprise has no other less severe means at its disposal and if increasing the ability to exert influence has no prospect of success.

Indirect suppliers

Pursuant to section 9 (3) no. 3 LkSG, an enterprise must 'without undue delay and as warranted ... draw up and implement a **prevention, cessation or minimisation concept**' if it 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)'. The purpose of this concept is to remedy the violation. In the absence of a statutory instrument imposing other specific requirements [section 9 (4)], the remedial action must be consistent with the criteria set out in section 7 (2) LkSG (see above).

Effectiveness [section 6 (5) and section 7 (4) LkSG]

Pursuant to section 4 (1) sentence 1 LkSG, 'Enterprises must establish an appropriate and effective risk management system to comply with due diligence obligations.' '**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 violations of human rights-related or environment-related obligations if the enterprise has **caused** or **contributed** to these risks or violations within the supply chain' [section 4 (2) LkSG]. In this context, as set out in the Federal Government's explanatory memorandum, the term 'cause' is generally taken to mean that the enterprise has either directly created the risk on its own or has contributed through its actions to the underlying factors causing or exacerbating the risk. The reference to the supply chain makes clear that the risk can lie with the enterprise itself (i.e. in its own area of business), with a direct supplier or with an indirect supplier.

As set out in section 6 (5) sentence 1 LkSG and section 7 (4) sentence 1 LkSG respectively, the **effectiveness of the preventive measures and 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 its direct supplier, for example due to the introduction of new products, projects or a new business field.' 'Findings from the processing of reports [see guideline for the core element 'Grievance mechanism'] ... are to be taken into account' (section 6 (5) sentence 2 and section 7 (4) sentence 2 LkSG). 'The measures must be updated without undue delay if necessary' [section 6 (5) sentence 3 and section 7 (4) sentence 3 LkSG].

How are selected terms described in the LkSG and in the explanatory memorandum?

Preventive and remedial measures must be appropriate. According to section 3 (2) LkSG, the **appropriateness** of actions to fulfil due diligence obligations depends on:

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 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 human rights or environment-related risk or to the violation of a human rights-related or environment-related obligation.'

According to the Federal Government's explanatory memorandum, all the due diligence obligations covered by the Act are subject to the general principle that the scale of the efforts to be made by an enterprise to prevent or end a violation should reflect its ability to exert influence, the likelihood and severity of the anticipated violation of a legal position and the extent of the enterprise's causal contribution to the violation. Equally, the importance of efforts to monitor the supply chain should reflect the degree to which the products and production sites associated with a business activity are vulnerable to human rights risks.

If you gain 'substantiated knowledge' of a violation by an indirect supplier, you must – without delay and as required by the circumstances – embed preventive measures in your dealings with the source of the violation and establish a plan to prevent, stop or minimise the violation. You may gain this knowledge, for example, through your own grievance mechanism (section 8 LkSG), your own findings, the relevant public authority or other sources (e.g. publicly available reports).

You are assumed to have 'substantiated knowledge' if your enterprise is in possession of verifiable and credible indications of a (potential) human rights or environment-related violation by an indirect supplier. Concrete indications as the basis for substantiated knowledge may take the form of reports on the poor human rights situation in the region of production, the fact that an indirect supplier belongs to a sector exposed to a particularly high level of human rights or environmental risks, previous incidents involving the indirect supplier, or information about risks in a particular region in which an enterprise or multiple suppliers operate.

Damage to the environment can also lead to violations of human rights

Inevitably, the activities of enterprises and their relationships with other businesses through supply and value chains also involve impacts on the environment that may lead directly or indirectly to human rights risks as well as adverse human rights impacts. In this context, the actions of enterprises and any related environmental damage may also create human rights risks and may have an adverse impact on human rights both directly and indirectly. Air, water and soil pollution, for example, can threaten the livelihoods of local populations. If an enterprise extracts too much groundwater in a region already suffering from water shortages, for instance, it may violate the right to an adequate standard of living. Equally, the mishandling of hazardous waste may lead to human rights violations if it creates a danger to human health. Furthermore, any deliberate destruction of culturally and ritually important sites may constitute a violation of human rights, as it limits the right of people to take part in cultural life. It follows that preventive and remedial measures must also take account, at least implicitly, of any environmental damage that could have an adverse impact on human rights and that was therefore identified in the risk analysis.

With regard to environment-related obligations, the LkSG contains a number of explicit prohibitions: causing any harmful soil change, water pollution, air pollution, harmful noise emission or excessive water consumption; the manufacture, use and treatment of mercury; the production and use of persistent organic pollutants; the handling, collection, storage and disposal of waste in a manner that is not environmentally sound; and exports and imports of hazardous waste.

4. How can your enterprise implement the requirements step by step?

States have a duty to protect human rights. Enterprises are called upon to respect human rights in their supply and value chains. As such, both states and the business sector are in positions of great responsibility. As an enterprise, you are expected to address any adverse human rights impacts by implementing appropriate forms of prevention and (if necessary) redress. You are also required to establish procedures to review the effectiveness of those measures. The separate guideline for the core element 'Reporting' sets out how you must document and report such measures and their results.

4.1 Step 1 – Base your measures on the findings of your risk analysis

By conducting regular risk analyses, your enterprise can systematically identify, evaluate and prioritise human rights risks along its supply and value chains (see the guideline for the core element 'Risk analysis'). The risk analysis incorporates the findings of your grievance mechanisms (see the guideline for the core element 'Grievance mechanism') and other formal and informal processes through which concerns, information and grievances can be submitted (e.g. questionnaires, audit-related communications, employee surveys, HR and compliance processes, structured dialogue with stakeholders and ad hoc meetings). This approach supplements the enterprise's conventional business risk management system (the 'outside-in' perspective) by also addressing the impacts of its activities on people and the environment (the 'inside-out' perspective). This will help you understand both the impacts of your own activities on people and the environment, as well as the human rights implications linked to your own products and services through your business relationships.

Risk analysis should be the starting point of all your measures for prevention, remedy and redress

As an enterprise, you are required to take appropriate measures to counter the potential and actual adverse human rights impacts that you identify. That applies to impacts directly caused by your enterprise, impacts to which it contributes and impacts linked to your products and services (see step 3). To fulfil this requirement, you will need to integrate your risk analysis findings into your internal business areas and implement appropriate measures.

The purpose of those measures is to avert, end or at least mitigate human rights risks and violations of protected rights and to provide redress as required.

- **Prevention:** You must avert or at least minimise the probability of occurrence of human rights risks and the severity of **potentially adverse impacts**.
- **Remedy and redress**: You must end or at least mitigate actual adverse impacts or human rights violations, provide redress and prevent any (repeat) occurrence.

Although prevention, remedy and redress should be based on the risk analysis, enterprises that have not yet identified and evaluated risks in their supply chain can still work on initial measures. This is particularly important if (potentially) adverse impacts on human rights are acute, severe and already known or foreseeable. All such measures should then be reviewed and if necessary adapted in light of the findings of a subsequent human rights risks analysis.

Address the most severe human rights impacts first

In practice, given that many value chains are complex and globally interconnected, it can be difficult to address all these risks and impacts immediately and simultaneously. For example, how should you respond if risks have been identified in relation to inadequate fire safety precautions among some of your direct suppliers, adverse health impacts due to soil and water pollution in a particular region, or the use of child labour by indirect suppliers?

The NAP and well-known reference instruments, such as the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises, specify that enterprises must focus first on the **most severe** (potential) impacts, i.e. those which (could) cause the greatest damage to people (see at right under the heading 'The three severity criteria'). Once these have been addressed, the enterprise can then deal gradually with all the other (potential) impacts. The guideline for the core element 'Risk analysis' sets out the concrete steps needed to evaluate actual and potential adverse human rights impacts.

In practice, suppliers may find it difficult to prioritise measures as their various customers are likely to impose different requirements with regard to the urgency of prevention, remedy and redress. Evaluation differences of this kind can be resolved to some extent by focusing on the severity criteria and can be addressed at an early stage, e.g. by including rights of audit in your terms of reference. It is also important for different enterprises to combine or standardise their due diligence requirements of suppliers wherever they have business relationships with the same suppliers and therefore overlapping interests.

The three severity criteria

The severity of adverse human rights impacts is assessed on the basis of three criteria:

Scale means the extent of the damage, i.e. the gravity of the actual or potential impact on human rights. For example, damage to a person's bodily integrity is usually greater if that person loses a body part due to inadequate workplace safety precautions than if an excessive workload leads to ill health.

Scope means the number of people that are or could be affected by an adverse impact. For example, if the fire safety precautions at a factory are inadequate, the entire workforce is affected, whereas a lack of protective clothing for handling chemicals will only affect those working in that area.

Irremediability means the extent to which the adverse impacts cannot be remedied or to what extent it is possible to restore the situation that existed before the (potential) violation. For example, it is very difficult or impossible to remedy or provide redress for serious physical injuries that produce lasting harm or death or for permanent damage to an ecosystem that takes away people's livelihood.

The link between environmental due diligence and the duty to respect and protect human rights

Environmental due diligence is an important lever in efforts to prevent human rights violations. **The case of Cerro Matoso, Colombia**, published by Germanwatch explains 'why environmental due diligence matters in mineral supply chains'. The German discussion paper entitled **Über die Notwendigkeit und Wirkung umweltbezogener Sorgfaltspflichten** (a discussion of the need for and impact of environmental due diligence), also published by Germanwatch, makes an important contribution to the wider debate within the framework of German and European supply chain legislation.

Corruption and breaches of human rights due diligence obligations

The fight against corruption and bribery plays an important role in wider efforts to respect human rights. As shown in various studies, for example by Transparency International, human rights violations and corruption occur more frequently for example in states where, for example, the rule of law is lacking, institutions are weak, and poverty is endemic. Potential human rights risks in such countries include damage to the health or safety of workers and the local population, discrimination, restrictions on freedom of association, and violations of indigenous peoples' rights.

With regard to human rights due diligence processes, it is recommended that enterprises observe the following:

- As part of their human rights risk analysis, enterprises should be aware that corruption and bribery can be an indication of human rights violations.
- When developing rules and processes designed to ensure respect for human rights, you should consider measures to fight corruption and bribery as a cross-cutting task.
- Enterprises should integrate anti-corruption measures into their business processes and impose anti-corruption requirements right across their supply chains. If you have not yet established processes of this kind at your enterprise, the expansion of your existing due diligence processes provides a good reason to do so and an opportunity to harness synergies.
- With regard to implementation, the recommended approach involves close collaboration between the compliance department and the various divisions and departments responsible for observing human rights.

Some examples of further reading on this subject: Corruption as a Violation of International Human Rights, research paper by Prof. Dr Anne Peters, in European Journal of International Law, Volume 29, Issue 4, November 2018, pages 1251–1287, Published: 14 February 2019; Integrating Human-Rights in the Anti-Corruption Agenda, a study by the International Council on Human Rights Policy in collaboration with Transparency International, 2010; Corruption and Human Rights: Making the Connection, a study by the International Council on Human Rights Policy in collaboration with Transparency International, 2009.

4.2 Step 2 – Create the right conditions for implementing your measures

In order to address human rights risks and impacts in an appropriate and timely manner, the best approach is to embed your commitment to respect human rights throughout the enterprise.

You will find this easier to achieve if you establish the conditions described below.

- **Actively involve senior management:** Overall responsibility for dealing with (potential) human rights violations and risks should lie with an accountable management level or with relevant decision-makers (e.g. the executive board or board of directors). When allocating overall responsibility, make sure that you avoid conflicts of interest. These can arise, for example, if your efforts to implement effective measures come up against other mechanisms to protect the activities of certain business areas. Equally, an overarching decision to apply human rights criteria when choosing suppliers can be undermined by a situation where relationships with particular suppliers of critical products are viewed as indispensable.

- **Provide the necessary resources:** It is important to provide sufficient personnel and financial resources (with dedicated budgets) so that you can develop and implement effective measures, e.g. for capacity-building, training, audits and engagement with rights holders.

- **Establish clear responsibilities and tasks:** Responsibility for managing adverse impacts should be allocated clearly to one or more relevant functions, e.g.
  - Purchasing – applying human rights criteria when choosing suppliers
  - Compliance and legal – internal controls to ensure compliance with due diligence obligations and the inclusion of human rights expectations in external contracts
  - Product responsibility – due consideration of potential adverse impacts when designing new products
  - Human resources – equal treatment of candidates in selection processes
  - Occupational health and safety – designing accident prevention into production sites
  - Sustainability – ensuring full and balanced reporting on human rights impacts
  - Data protection – protecting employees and business partners from any intrusion into their privacy due to the unauthorised collection, storage or transfer of personal details
  - Environment – company environmental management systems to ensure resource-efficient consumption, e.g. avoiding or at least not exacerbating water shortages for the local population

- **Create a binding framework with formalised requirements:** Set out your human rights expectations in the form of strategies, internal guidance and process descriptions (e.g. a policy statement, a code of conduct, purchasing guidance, occupational safety standards, an HR strategy and a risk management process).

- **Establish decision-making processes and structures:** Set up interdepartmental committees to pool information and take decisions based on clearly regulated processes (e.g. decision trees, scenarios). Make sure that relevant decisions (e.g. on suppliers, business partners and customers, personnel, investment or locations) take into account what you have learned from your risk analysis and about any actual adverse impacts. Initiate decision-making processes every time you identify a new impact (e.g. whenever the scale of the impact exceeds a specifically defined threshold).

When allocating overall responsibility, make sure that you avoid conflicts of interest.

- **Establish supervisory procedures:** In order to monitor compliance with your human rights due diligence obligations, you will need to establish appropriate supervisory procedures (e.g. internal auditing department, internal controls and internal/external auditing).

- **Engage with your stakeholders:** Set up effective processes in your enterprise so that, if necessary, you can call on independent human rights expertise (e.g. academics, human rights experts, NGOs or government bodies). When it comes to deciding which measures to adopt and reviewing their effectiveness, you should also consult (potentially) affected groups or their legitimate representatives (e.g. unions or civil society organisations).

4.3 Step 3 – Determine your causal contribution and your ability to exert influence

To decide on and implement appropriate measures for prevention, remedy and redress, it is essential to determine how closely your enterprise is linked to any actual or potential adverse human rights impacts. The closer you are to an impending violation or to one that has already materialised, and the more you contribute to that violation, the greater your responsibility to end or at least minimise the (potential) violation. With this in mind, you will first need to examine whether your activities have caused or contributed to the adverse human rights impacts identified in your risk analysis or whether your enterprise is merely linked to them in some way. The following section outlines the different types of causal contribution:

- **Cause:** This occurs if your enterprise can be held responsible for any harm through a cause-and-effect relationship, e.g. dangerous working conditions in your own business operations as a result of inadequate safety equipment; contamination of a local community's drinking water due to the introduction of wastewater containing chemicals; late evening shiftwork despite being aware that armed attacks occur more frequently in darkness within the region.

- **Contribute:** You may be contributing to a human rights violation if your enterprise causes an adverse impact together with others, or if its actions contribute to impacts caused by others, e.g. by facilitating or incentivising their actions. This might involve passing on information about employee use of the internet to a government that uses the information to persecute political dissidents. Other examples would be changing your product specifications for suppliers at short notice without adjusting your deadlines or prices (with the result that the supplier can only fulfil the contract by violating labour standards) or setting up a joint venture (as a minority shareholder) with a partner exposed to a high level of risk.

- **Linked:** There is considered to be a link if a human rights violation due to your enterprise's business relationships is directly linked to your business activities, products or services. Although your enterprise may not be directly responsible for any adverse impacts, it may be linked to such impacts through its business relationships. This may occur, for example, if you buy leather products from businesses that employ children contrary to your terms of reference, or if you sell products to customers where there is a particularly high risk of misuse. Other examples include a lack of workplace safety measures in mining operations as part of an upstream supply chain to which you are linked through components you procure containing those raw materials, or the procurement of minerals from a region in which local industry is responsible for severe contamination of drinking water and the resulting damage to the heath of local people.

What does the LkSG say about 'causal contributions'?

The LkSG distinguishes between 'causing' and 'contributing'. In this context, it does not use the word 'linked'. The 'causal contribution' of an enterprise consequently depends on whether that enterprise has caused the adverse impact (on its own or together with another actor) or contributed indirectly to it. The LkSG focuses predominantly on the enterprise's own area of business and on its direct and indirect suppliers.

How to gain a better understanding of links between your enterprise and adverse human rights impacts

The guideline **Doing Business with Respect for Human Rights** by Shift, Oxfam and the Global Compact Network Netherlands provides detailed explanations and examples of how the causal contribution of an enterprise to human rights violations can be classified (see p. 64 et seq).

The measures your enterprise will subsequently be required to implement in order to ensure prevention, remedy and redress depend on your causal contribution.

As you can see, if your enterprise is not actually causing or contributing to a (potential) human rights violation, one of the most useful steps you can take to ensure prevention, remedy and redress is to use and expand your influence. To do this, you will need to gain a better understanding of how you can influence the party causing the risk or violation (see below 'What are the factors that determine your ability to influence a third party?').

Measures to prevent, remedy and redress human rights violations, depending on the nature of your causal contribution

Your enterprise's causal contribution	Actual impact or human rights violation	Potential impact or human rights risk
Cause	• Stop the activity causing the adverse impact. • Provide redress. • Prevent any recurrence/mitigate the risk as far as possible.	• Prevent/mitigate the risk as far as possible.
Contribute	• Stop the activity contributing to the adverse impact or violation. • Provide redress for your contribution to the adverse impact or violation. • Expand your influence and use it to mitigate any remaining impacts as far as possible. • Prevent any repeated contribution/ mitigate the risk as far as possible.	• Prevent any contribution/mitigate the risk as far as possible.
Linked	• Expand your influence and use it to induce the third party causing or contributing to the adverse impact/ violation to stop or mitigate its actions. • Where required, take action at your own enterprise to prevent and mitigate adverse impacts/violations. • Terminate business relationships where appropriate.	• Expand your influence and use it to induce the third party causing or contributing to the risk to take preventive action. • Terminate business relationships where appropriate.

What are the factors that determine your ability to influence a third party?

You can examine your ability to influence others using the following illustrative questions:

- To what extent does your enterprise control the third party (e.g. in the case of long-term equity investments and other direct business relationships)?
- How long has the business relationship been in place?
- How are contractual provisions structured between your enterprise and the third party?
- How costly would it be to change supplier during current production, e.g. as a result of disruptions to production?
- In percentage terms, how much does your enterprise contribute to the third party’s total business?
- Is your enterprise in a position to create incentives for the third party?
- How does your enterprise collaborate with other actors?
- Is your enterprise in a position to influence the way due diligence obligations are regulated?

Based on **The Corporate Responsibility to Respect Human Rights – An Interpretive Guide (2012)**, p. 49

Your ability to influence other actors also depends on the current status of the business relationship. With regard to procurement, for example, your influence may be particularly strong in the period up to the point at which the contract is awarded. This is because your enterprise can use the potential award of a contract as an incentive. Once an active supply relationship has been established, other factors also play a role, e.g. contractual provisions or the potential cost of switching supplier. Against this background, it is recommended that you evaluate your influence from a process-based perspective.

Select measures transparently on the basis of risk

It can be difficult and time-consuming to work out your enterprise’s causal contribution precisely for every (potential) adverse impact. A useful rule of thumb is to use your enterprise’s resources in ways that allow you to implement the measures you believe at the time are most likely to address your priority risks and to end, prevent or mitigate any human rights violations. Don’t forget to document your decisions.

Determine your ability to exert influence

In the context of human rights due diligence, the term ‘influence’ is taken to mean the ability of an enterprise to bring about changes in unlawful practices that a third party causes or to which it contributes. Depending on that influence, your enterprise will have the following options for dealing with adverse impacts for which it is not directly responsible:

1. **You have the ability to exert influence:** Use your **influence** to end, mitigate or prevent impacts, e.g.

- Negotiate a package of corrective measures (e.g. specific occupational safety standards) as part of your audit processes. Follow this up with appropriate monitoring.
- Provide support (e.g. by transferring knowledge and expertise or advising on structures and systems) to help the supplier build up and expand its own capacity.
- Hold management-level talks with affected groups and actors causing human rights violations in order to facilitate greater mutual understanding and improve the situation of those affected.
- Establish long-term supplier relationships based on trust and on prices that allow suppliers to pay a living wage and protect the environment.
- Modify your contracts to incorporate new human rights due diligence requirements or enforce existing contractual provisions.

- Remove firms temporarily from your approved supplier lists or, as a last resort, cancel (or threaten to cancel) a business relationship.
- If a business relationship has not yet been established and there is no prospect of ending, mitigating or preventing adverse impacts, then introduce human rights criteria that must be considered in any decision to award (or not award) a contract.

2. **You lack the ability to exert influence:** Try to increase your influence with a view to ending, mitigating or preventing the impact at some point in the future. You can do this in various ways:

- Incentives: Negotiate agreements on future transactions, offer support for capacity-building and highlight the (reputational) benefits of working with the enterprise and the disadvantages of terminating the business relationship.
- Collaborations: Join forces with other actors, while respecting compliance and anti-corruption rules, e.g. through sector dialogues, multi-stakeholder initiatives or business associations.
- Use the mechanisms available in case law: action for a cease and desist order, reporting a criminal offence or obtaining an interim injunction. Make sure that you observe any data protection rules and non-disclosure agreements (NDAs).
- Share information with official bodies: Encourage local or central government bodies to improve the local human rights situation, e.g. by enforcing regulations, performing checks or imposing sanctions. Wherever possible, all such dialogues should be transparently and publicly communicated with due regard for any data protection rules and non-disclosure agreements.

3. **You lack the ability to exert influence and cannot increase it:** Under these circumstances, you should weigh up whether it is better to (a) maintain or (b) end the business relationship. In line with the principle of 'engagement before disengagement', termination should always be a last resort. If you choose to withdraw, your enterprise will no longer be able to leverage its influence to improve the human rights situation. Complicity in serious human rights violations is a special case. One example of this would be if a direct supplier makes a conscious choice to tolerate the use of child labour, unhealthy working conditions or even deaths. In such cases you must attempt to terminate the business relationship immediately.

(a) If your enterprise decides to **maintain** such a business relationship, e.g. due to a lack of reasonably available alternatives, and if the risk or violation continues, you will need to consider the following:

- Keep up your efforts to prevent or mitigate the impact.
- Be prepared to assume the reputational, financial and legal consequences associated with maintaining the business relationship and therefore with the adverse human rights impacts.
- The more serious the human rights violation by third parties, the more quickly your enterprise must be able to observe changes. If changes are not made rapidly, you should consider terminating the business relationship.

(b) Your enterprise may decide to **terminate** the business relationship because:

- the violation is very serious;
- your own efforts to mitigate or prevent the impact have been unsuccessful;
- your enterprise has no other less severe means at its disposal, and any attempt to increase its ability to exert influence has no prospect of success;
- you are unable to bring about improvements even in collaboration with the authorities.

In such cases, however, you should also consider the potential adverse human rights impacts of terminating the business relationship (e.g. the impact on your supplier of losing business, loss of jobs and income among workers or the potential deterioration in the situation of those affected if another enterprise moves in to fill the resulting gap) and try to prevent or at least mitigate these impacts through additional measures.

The general rule of 'engagement before disengagement'

You should only consider withdrawing from a business relationship if the human rights violations in question are serious, especially if the damage is irreversible, and if there is no prospect of improvement. The principle of 'engagement before disengagement' allows enterprises considerable discretion over how and for how long they try to improve the situation before considering withdrawal. Any decision to break off a business relationship (or not to establish such a relationship in the first place) should be seen as a last resort. Various options for dealing with human rights risks can be discussed and implemented together with suppliers. For example, your enterprise may choose to discontinue the business relationship temporarily or join forces with other enterprises and other (state and non-state) actors as part of a sector initiative in order to increase its influence. This approach can allow the enterprise to maintain its business operations in a country of production even if the human rights situation is uncertain. In this context, sector dialogues and initiatives can play an important role. However, you should always consider terminating the business relationship immediately in situations where your enterprise is violating international law through its operations or if your business partners are included on sanctions lists.

Terminating a business relationship

When should your enterprise terminate its business relationship with a supplier or other business partner? When should you consider other options instead? What should you do if terminating a business relationship would also have adverse human rights impacts? These and similar questions are addressed in the discussion paper **Should I Stay or Should I Go?** published by SOMO, a Dutch NGO.

Weak institutions and conflicts between human rights standards and national law

Actors sometimes refuse to be involved in remedial measures even if they are partly responsible for human rights violations. Such cases usually require greater engagement by senior management and the harnessing of all relevant internal expertise. However, situations can also be more difficult to manage on account of their complexity. This may occur, for example, if local institutions are so weak that they are unable to provide effective support for the measures, or if national laws are inconsistent with international human rights standards. In such cases, it is advisable to engage with independent state and non-state experts, e.g. civil society organisations or trade unions. Multi-stakeholder initiatives can be an appropriate vehicle for this purpose.

How much influence can you exert in the case of long-term equity investments and joint ventures?

Actual or potential adverse impacts on human rights due to the activities of a third party in which your enterprise holds a **minority or majority interest** or of a **joint venture** involving your enterprise are classed as impacts to which your enterprise contributes or which (in the case of a controlling interest) it actually causes. As such, your enterprise is responsible for taking action to end, prevent and compensate for its contribution to the impact and for using its influence to minimise any remaining impacts. Your ability to exert influence will depend on your enterprise's legal structure, the size of its equity interest and individual contractual arrangements.

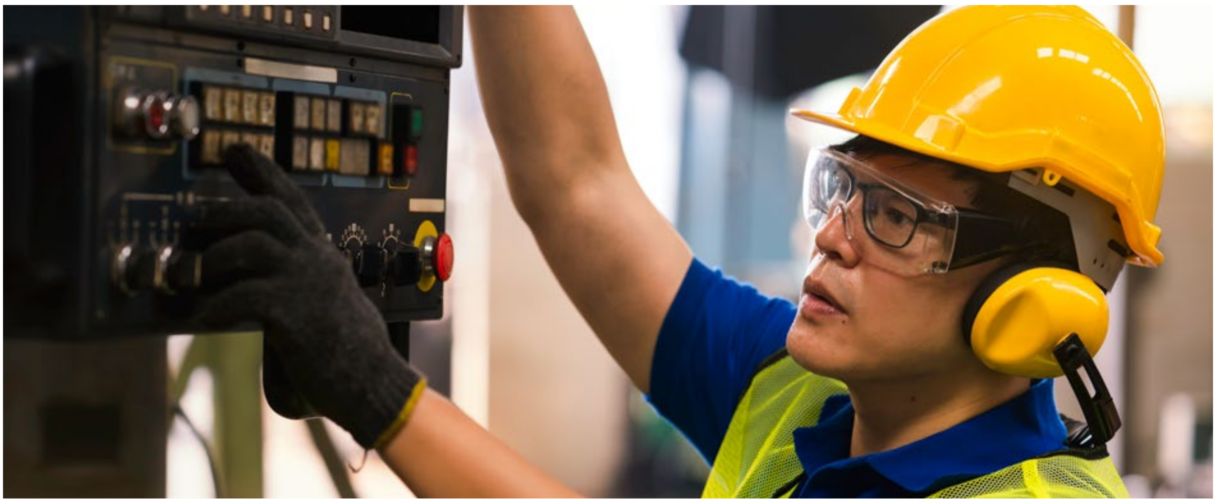
Implications of this kind can be illustrated by reference to the following legal structures:

- **GmbH** (private limited liability company). The managing director of a GmbH is subject to the authority of the general meeting of shareholders. Whether as a majority shareholder or together with other shareholders, your enterprise can therefore instruct the management board to implement measures.

- **AG** (public limited company). The executive board of an AG is not subject to the authority of shareholders, although its activities are controlled by the supervisory board. This means that shareholders have no direct legal right to instruct the executive board to implement such measures. In practice, however, the supervisory board and shareholders can exert influence over the executive board. Control agreement: A control agreement is an agreement under which an AG (or a KgaA/joint-stock company) transfers the management of the company to another enterprise. The controlled enterprise is therefore subject to the authority of the controlling enterprise, which can issue direct instructions to implement measures. For example, the controlling enterprise may choose to issue new guidance that must then be implemented by the controlled enterprise.

- **Joint venture.** A joint venture consists of at least two legally and economically independent enterprises that perform management and/or supervisory roles. Within this arrangement, the influence of each partner usually depends on the economic value it contributes to the joint venture. For example, it may range from purely strategic instructions through to influence over the joint venture's day-to-day operations.

Especially in cases where a partner has limited influence, your enterprise may only be in a position to propose awareness-raising and capacity-building measures in order to pave the way for other measures or improvements.



Insight into corporate practice: Drive Sustainability – a partnership in the automotive industry

Drive Sustainability is a partnership between eleven leading automotive enterprises that want to drive the transition towards a more circular and more sustainable automotive value chain. It was set up by vehicle manufacturers to push for greater sustainability in the automotive industry’s value chains by promoting a common sector-wide approach and integrating sustainability into the overall procurement process. Drive Sustainability organises supplier training in various countries as well as dialogue events and local networks.

The training is customised to reflect the laws and operating conditions in each country. Among the issues addressed are social and environmental sustainability, business conduct, compliance and supplier management. In order to lay a strong foundation for responsible procurement, Drive Sustainability has developed a standardised process that helps enterprises assess their input materials in terms of sustainability.

What should you consider before establishing new business relationships?

If your enterprise is considering a new business relationship (e.g. an equity interest or joint venture) with a partner that is or has been linked to human rights violations, you should examine the implications of doing so beforehand. First of all, you need to answer the following question: Does your enterprise have enough influence (e.g. through contractual provisions) to end, mitigate or prevent any violations linked to its own activities, products or services? If you conclude that your influence is sufficient, the business relationship may be viewed as acceptable provided that your enterprise actually takes the corresponding measures. It is not advisable to enter into such a business relationship if you conclude that you are not in a position to mitigate the risk of human rights violations. At the same time, your enterprise may find itself in an influential position before the agreement is signed if the procurement decision is important to the other party.

Dilemmas: What should you do if the measures you take cause other adverse human rights impacts?

In practice, there are situations in which measures aimed at prevention, remedy and redress cause other adverse human rights impacts. This can give rise to a conflict between different human rights due diligence obligations or between human rights and environmental due diligence obligations.
Here are some examples:

- Measures to prohibit child labour can push affected children and their families into even greater poverty or forms of exploitation because they have lost an important source of income.
- A decision not to use leather on environmental grounds can have a significant impact on the meat and leather industry value chain and undermine working conditions in tanneries due to the loss of revenue.
- A decision to switch your procurement of raw materials to a different country with a better human rights record can undermine the human rights situation in the original country by taking employment opportunities away from affected persons and groups.
- Supplier audits focusing on human rights or environmental impacts may have adverse impacts for those employees who respond to your questions, e.g. reprisals by their employer or the local community.

- By acquiring land to build a production facility or for mining purposes, you may be giving local people new earning opportunities. At the same time, however, you may be taking away the habitat of indigenous peoples.
- Although enterprises may improve stability and planning certainty in a region by investing in long-term projects, there is a risk that secure funding of this kind may disincentivise local partners from applying higher human rights standards.
- Positive environmental impacts in terms of climate change, biodiversity and deforestation, or potential improvements in the situation of indigenous peoples, can also have adverse impacts, e.g. on working conditions.

Consequently, the measures you take may help certain groups and/or protect the environment but harm other people (conflicting interests). If you find that measures intended to observe certain human rights pose a risk to other human rights, you should consider whether alternative measures are possible. If there is no viable alternative, you will need to evaluate which is the best course of action. This could involve, for example, weighing the severity of one adverse impact against the chance to (largely) end another adverse impact. With the support of local institutions, for example, measures to stop child labour could be accompanied by awareness-raising campaigns in the region, education programmes for children or an increase in the wages paid to adult workers.

What should you do if the measures are inconsistent with your own corporate objectives?

In practice, even if enterprises do not intentionally cause or tolerate human rights violations, human rights measures aimed at prevention, remedy and redress are sometimes inconsistent with their own stated goals. This can happen, for example, if an enterprise sources raw materials from high-risk suppliers to which there are very few alternatives, over which they can exercise very little influence due to a combination of strong demand and low supply, or where any decision to switch to a more responsible supplier would involve paying higher prices. Another example is the sale of sensitive products that generate revenue but also cause adverse human rights impacts due to their misuse by certain customers. Enterprises may also face dilemmas if they operate in countries or regions where human rights are violated regardless of their business activities, and they are not in a position to exert any influence.

In situations of this kind, you should carefully weigh up the different options and the associated impacts. Your evaluations should be conducted in a way that can be clearly understood, ideally on the basis of predefined criteria. It is therefore recommended that you establish clear decision-making roles (e.g. individual managers, groups at head office or local level, members of the board), processes and policies in order to manage conflicting objectives, with a primary focus on resolving the human rights violation.

Establish clear decision-making roles, processes and policies in order to manage conflicting objectives.

The criteria against which you assess different options may include the severity of the impact (see above 'The three severity criteria' in step 1 and the guideline for the core element 'Risk analysis'). In addition, your choice will often be guided by your enterprise's moral obligations, value systems, management directives and guidelines. In this context, the **Berlin CSR consensus on corporate responsibility in supply and value chains** sets out leadership and management principles for enterprises, such as integrity, sustainability and participation.

You may also wish to invite contributions and guidance from independent experts (e.g. an independent advisory board, academics or human rights experts). In all cases, wherever circumstances permit, you should make every effort to comply with internationally recognised human rights principles. Where national laws fail to adequately protect human rights, enterprises should – as part of their human rights due diligence obligations – apply the higher standard of internationally recognised human rights as a benchmark for their actions. In doing so, they should not come into conflict with local laws but, in accordance with the UN Guiding Principles, are called upon in case of conflict to find ways to fulfil both standards.

How to deal with dilemmas

Establish a dialogue with civil society organisations, trade associations and other stakeholders on the specific issues raised by dilemma situations. The **Business & Human Rights Helpdesk** operated by the Agency for Business and Economic Development provides digital solutions and studies that you may find helpful when evaluating human rights impacts and weighing up the options in a dilemma situation.

The **Human Rights and Business Dilemmas Forum** was specifically developed by the UN Global Compact and Verisk Maplecroft to help enterprises observe human rights in their operations and supply chains. The forum outlines potential dilemmas in the form of case studies and suggests ways in which enterprises and their partners can resolve them and prevent or mitigate human rights violations.

4.4 Step 4 – Remedy and redress: counter and provide redress for adverse impacts

Even if you comply fully with your due diligence obligations to respect human rights, you can still cause or contribute to adverse impacts in your own value chain. In such cases, either on your own or in collaboration with other actors, you must take appropriate action to provide remedy and redress for those impacts. The purpose of these measures is to:

- end, remove or (outside your own area of business) at least mitigate the scale of any damage, detriments or hazards;
- provide redress to those affected for the damage caused;
- remove or at least reduce the risk of any recurrence of human rights violations.

Your enterprise is responsible for taking remedial action and providing redress only if it causes or contributes to adverse impacts through its business activities or its products and services. While this obligation does not apply if your enterprise is merely linked to the adverse impacts through its business relationships, you can still play a role in the process of providing remedy and redress. As far as possible, you should also use your influence to induce the third party causing or contributing to the adverse impact or violation to stop or mitigate its actions. Decisions to terminate a business relationship should be taken only as a last resort (see step 3).

In practice, the process of driving improvement through remedy and redress can require very lengthy processes. Even in cases where it is not immediately possible to achieve a direct improvement or a perfect solution, your enterprise should begin work on appropriate measures with a view to making gradual improvements.

How can you stop adverse impacts?

- Stop or change your activities in such a way that they no longer cause or contribute to adverse human rights impacts. Outside your own area of business, these changes should at least help to mitigate the adverse impacts.
- If you are not able to end the impact directly, you are expected to produce a concept with a specific timetable for addressing the violation in the foreseeable future. If possible, this timetable should be reviewed at regular intervals.
- It is also recommended that you join forces with other enterprises and stakeholders as part of sector-wide initiatives and standards so that you can work together on solutions and share best practices.
- To avoid any future recurrence of the adverse impact, you should put your newly acquired knowledge of human rights risks and violations to good use by developing preventive measures (see step 5).

Engage affected groups when establishing measures to provide remedy and redress

Measures to provide remedy and redress must be appropriate and will be effective only if they are perceived as such by affected groups. With this in mind, you should always engage with affected groups or their legitimate representatives (e.g. civil society organisations, local trade unions or trade union federations) or complainants when it comes to establishing remedial measures. At the same time, however, you must ensure that this engagement does not put affected groups at risk of reprisals. The engagement process allows you to build a more comprehensive picture of the adverse impacts and gain a better understanding of the concerns of those affected in terms of remedial measures. The results of this dialogue can also be very helpful when it comes to further developing your preventive measures.

Contacting affected groups located in more remote stages of your value chain or even outside it often poses a challenge for enterprises. This matters both for enterprises applying the NAP and for those striving to fulfil their LkSG due diligence obligations as they can have an adverse impact, for example on local communities, through their business activities or through direct suppliers. According to the LkSG, your due diligence processes must include any indirect suppliers if you have 'substantiated knowledge' of (potential) human rights violations. You are more likely to experience problems engaging with affected groups if:

- there is no direct contact;
- they are afraid of reprisals, e.g. by their employer or the local community;
- linguistic, cultural or gender barriers make dialogue more difficult.

To make sure that you are able to engage effectively with these groups, it is important to identify and wherever possible remove any communication barriers, information asymmetries, power differentials or other potential hurdles, for example by:

- moderating between different views and protecting the identity of individuals who may be at risk;
- ensuring that the arrangements adequately meet the needs of affected groups, e.g. with regard to geographical location or the choice of premises.

If you are unable to consult rights holders directly (e.g. if your enterprise is not very big and therefore has fewer contacts, resources or influence), you may consider alternatives such as engaging with civil society representatives, independent experts or local human rights defenders who can speak 'on their behalf'.

Possible ways of engaging affected groups in order to decide on remedial actions and redress

- Hold local discussions with affected groups (possibly including expert facilitators).
- Seek the views of legitimate representatives.
- Conduct interviews with independent human rights experts or civil society organisations.
- Engage with others through initiatives and multi-stakeholder dialogues.
- Conduct internal surveys (e.g. of employees and temporary workers).
- Conduct external surveys (e.g. of other employees in your supply chain, customers, local community representatives, end product users, service users).

The German Federal Government's **Business & Human Rights Helpdesk** can help enterprises make contact with representatives. For example, it offers – among others – various platforms for dialogue between enterprises and with ministries and civil society.

What are effective ways of providing redress for adverse impacts?

Effective, remedial measures need to fulfil several criteria. All such measures must:

- restore the situation that existed before the human rights violation wherever possible, e.g. the health of affected persons or (in so far as any damage contributes to adverse human rights impacts) the state of an ecosystem;
- avoid obstructing potential claims to remedy and redress by other affected groups;
- be lawful and protected against corruption;
- be impartial and free of any political or other attempts to influence the outcome;
- comply with human rights standards;
- be viewed as appropriate, fair and credible by those affected and by independent observers.

Measures that provide redress for adverse impacts can take many different forms. They may be initiated by the enterprise itself or in collaboration with other actors (e.g. courts, the government, other enterprises or third parties), depending on which is considered to be the best approach to meeting the above requirements. If there is any suspicion of criminal activity, you will generally need to work with law enforcement bodies and the judicial system.

Examples of measures you can take to provide remedy and redress for damage caused

Depending on the nature, extent or severity of the damage, you may need to implement one or more of the following measures:

- an apology and a commitment to implement appropriate preventive measures and processes;
- financial or non-financial redress and restitution;
- restoration of the original situation before the violation;
- removal of any contamination or other damage;
- a guarantee or assurance of non-repetition;
- a contribution to the livelihood of the community;
- support for local organisations (independent NGOs, foundations, aid organisations);
- rehabilitation and reintegration;
- disciplinary action against those responsible within your business relationship;
- action to ensure that those responsible are punished, i.e. by seeking criminal charges or calling on the authorities to impose an administrative sanction (e.g. a fine).

What happens if enterprises and affected groups are unable to reach agreement?

In practice, you may find yourself in a situation where you have caused or contributed to an adverse impact, but those affected do not agree with your proposals for remedy and redress. If you cannot reach agreement with the affected groups, it is usually advisable to appoint a neutral third party as mediator or to request an official ruling. This may help to find a solution that affected groups regard as appropriate and effective.

The role of a mediator in such cases is to help both sides find a solution. Neither side is obliged to accept a particular outcome. If they do find a solution, however, they may also agree to be bound by the outcome. By contrast, an official ruling – by a court, an official or statutory body (e.g. an ombudsperson or national human rights institution) – is often binding.

Based on **The Corporate Responsibility to Respect Human Rights – An Interpretive Guide (2012)**, p. 66

In their communications with locally affected groups, enterprises can also refer to the respective country's **National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises**. These government bodies can help enterprises and stakeholders find appropriate measures in line with the OECD Guidelines, which also cover human rights issues. Most importantly, they can act as a platform for mediation and arbitration procedures.

Establish formal processes for remedy and redress

Some enterprises have already established formal processes to provide remedy and redress for certain types of damage, e.g. in the case of workplace accidents, soil or water pollution, or fires. Measures to provide remedy and redress should follow these processes and should reflect the scope and extent of the damage. Although enterprises may make every effort to consider each case with the required sensitivity, it can be difficult to foresee every possible impact. It is therefore recommended that you set out clearly defined policies to regulate these processes and decisions and incorporate them effectively into your internal management systems (e.g. risk and compliance management). This will reduce the risk of losing valuable time through internal disputes over the best way to deal with damages. To this end, you will need to specify which types of stakeholders will be offered remedy and redress (e.g. your own employees, temporary workers, workers in your supply chain, members of local communities or the end users of your products and services). You should also specify the procedures and escalation mechanisms to be followed in different areas of the business (e.g. purchasing, compliance, HR, production) in cases where adverse impacts arise. As an enterprise, you must ensure that affected groups with a justified claim to remedy and redress are not denied that right because your guidance is either too narrowly defined or incomplete.

Use your grievance mechanisms when deciding on measures to provide remedy and redress

Grievance mechanisms are formal procedures that allow individuals or groups to submit information or complaints about how they have been affected by an enterprise's business activities and to seek appropriate remedy and redress. They can be set up by individual enterprises or together with other firms, stakeholders, a business association or a multi-stakeholder group made up of enterprises from the sector concerned and representatives of civil society organisations and government bodies. The advantage of setting up effective grievance mechanisms is that they enable you to deal with adverse impacts as early as possible before they potentially develop into serious human rights violations. To be effective, such mechanisms must be legitimate, transparent, predictable, accessible, equitable and compatible with human rights standards. They should also ensure that the information remains confidential and that the identity of the complainant is protected. The guideline for the NAP core element 'Grievance mechanism' outlines the steps required to implement this procedure. It also explains the work being carried out by the Sector Dialogue Automotive Industry to set up a cross-company grievance mechanism and what enterprises can learn from this.

4.5 Step 5 – Prevention: prevent adverse impacts and define your objectives

On the basis of your risk analysis, once you have identified potential human rights violations and implemented measures to provide remedy and redress in response to any actual violations within your enterprise or your supply and value chain, you should take immediate preventive action. Whether the risks you identify are abstract (e.g. for entire product groups or regions) or specific (e.g. inadequate workplace safety rules in some of your operating sites), this can minimise risks, prevent damage from occurring or recurring and largely mitigate the extent of any damage.

Which preventive measures should you consider in your own area of business?

- **Adopt and implement a policy statement:** As well as describing your enterprise's commitments and due diligence processes, the policy statement should set out your human rights expectations of employees and business partners (see guideline for the core element 'Policy statement').

- **Embed human rights at a structural level:** This involves allocating specific responsibilities, setting up appropriate bodies (or modifying existing ones) and introducing suitable management systems for addressing human rights issues. You may also find it useful to join a sector initiative or working group. This can raise awareness of human rights issues in your own enterprise and therefore help to minimise risks and prevent human rights violations.

- **Issue, implement and regularly update a code of conduct, internal directives and procedural guidance:** These documents should set out in a concrete and understandable manner your human rights expectations of different groups (e.g. your own employees or temporary workers) in each department (e.g. purchasing, production, HR and compliance). For example, an internal directive on workplace health and safety for senior production employees could include a requirement to familiarise new colleagues with health and safety rules. Other internal directives could stipulate that purchasing teams must only award contracts to prequalified suppliers or that HR managers must take disciplinary action against individuals found to have committed violations.

- **Train, sensitise and equip your employees:** This applies to workers in your own area of business and may include, for example, initial and further training measures (possibly in more than one language), dialogue formats to share ideas and experiences, internal events to share information with colleagues in specific roles and target groups, and information on the intranet or in printed form. Through measures such as these, you can ensure that those involved are aware of and understand your human rights expectations and are able to act accordingly. Preventive measures such as training courses and accreditation schemes (e.g. ISO 45001 on occupational health and safety) can serve not only to reduce risks but also to avoid any recurrence of previously identified human rights violations.

- **Implement risk-based control measures:** The purpose of these measures is to review compliance with due diligence processes and human rights expectations at regular intervals, both within the enterprise's own area of business and in routine procedures. External audits and internal controls are suitable mechanisms. Enterprises should review the quality and effectiveness of external audits on a regular basis and take further action as required.

- **Formalise these requirements or incorporate them into your contracts:** The goal here is to enforce employee compliance with the enterprise's human rights expectations.

- **Create incentives:** The purpose of incentives is to motivate individuals in your own area of business to conduct themselves in accordance with the enterprise's human rights commitments. For example, incentives can be integrated into target-setting agreements, performance reviews, performance-related pay awards for managers linked to progress on implementing specific measures and/or the policy statement, or decisions on promotion.

- **Enforce sanctions in response to violations:** In response to violations of internal directives and employment laws that lead to human rights impacts, it may be appropriate to impose sanctions, for example by deducting points in an employee's performance review, issuing a formal warning, terminating a contract or taking legal action.

Insight into corporate practice: Mercedes-Benz Group AG compliance awareness module

Mercedes-Benz Group AG has established clear expectations of ethical business conduct and applies them not only to its own activities but also to those of its business partners. To ensure a shared understanding of this responsibility, it has developed a compliance awareness module that can be used by business partners to train themselves on important issues, such as compliance, integrity and human rights.

The module outlines the compliance policies and principles currently in place at Mercedes-Benz Group AG. It includes two sections that focus on human rights risks and how to deal with them. For business partners, the module is designed to highlight the integrity principles that underlie the company's activities. At the same time, it offers its business partners advice on managing potential human rights risks. The online module is freely available in nine languages.

Insight into corporate practice: REHAU AG Consultation Days

One of the tried-and-tested due diligence review mechanisms at REHAU AG is the Consultation Day, which is in use at roughly 170 sites worldwide. The social audit checklist used during on-site visits was expanded in 2019 to include human rights issues. All employees can provide feedback on their personal concerns and any other grievances in addition to business- and work-related matters. One-to-one conversations are treated confidentially. REHAU ensures that any concerns raised by employees are properly followed up. A formal response, or at least an interim decision, is sent within three weeks in the country's national language to the private address named by the employee.

The same approach is used for detailed site inspections, which include an inspection of the sanitary facilities, canteens and outside areas for evidence of any irregularities. In 2019, REHAU also revised and incorporated human rights issues into the comprehensive checklist used for HR analyses and audits of the HR policies and processes at its factories. The long version of this **good practice example** is available online.

What preventive measures can you adopt with regard to your business partners (e.g. contractors, suppliers and business customers or within a joint venture)?

- **Require a policy statement:** Your business partners should also set out their human rights commitments and due diligence processes. You may be able to have these reviewed by an independent expert to ensure they are complete (document-based review).

- **Draw up guidance and/or a code of conduct as well as procedural guidelines and incorporate them into contracts:** Use them to specify, in a clear and comprehensible manner, your expectations of your respective business partners (e.g. contractors, suppliers, business customers and joint venture partners), and possibly of individual target groups within specific departments (e.g. purchasing, production, HR, compliance). The content of the documents can also be reviewed by an independent expert to ensure they are complete (document-based review).

- **Select your business partners:** When selecting your business partners, you should take into account whether they meet human rights requirements.

- **Inform and enable relevant groups:** This relates, for example, to contractors, suppliers, business customers and joint venture partners. Appropriate action to inform and equip these groups could include initial and further training measures (in various languages), communication measures (e.g. publishing resources on your website or circulating written documents) and specific events designed to ensure that all your business partners are aware of and understand their human rights due diligence obligations and are enabled to act accordingly. Wherever possible, the measures you put in place should be standardised across the industry and recognised by customers and supervisory authorities.

- **Conduct studies and pilot projects:** The purpose of these actions is to increase transparency with regard to any adverse impacts at your indirect suppliers and business partners and to pilot regional or local (i.e. site-based) measures together with other enterprises, organisations and civil society.

- **Provide support:** You can support these target groups in various ways, e.g. by helping them to develop management systems, build up greater expertise in terms of knowledge and skills as well as structures and systems in the upstream supply chain. Wherever possible, the support measures you put in place should be standardised across the industry.

- **Stipulate the use of certified management systems:** Management systems in areas such as environmental protection and occupational safety should be implemented in a way that allows for independent verification and regular monitoring (e.g. ISO 14001 and ISO 45001).

- **Stipulate contractual obligations:** These should help you to enforce your enterprise's human rights expectations and should be designed in such a way that they can be adapted in light of your risk analysis findings even after a contract has been signed. All contractual provisions should be consistent with existing legislation (e.g. standard terms and conditions in line with the German Act on the General Terms of Business).

- **Agree pass-on clauses:** Through provisions of this kind you might, for example, require your suppliers to enforce your code of conduct in dealings with their own suppliers, albeit with due regard for the risk situation and their capacity to implement such provisions.

- **Implement and regularly update your procurement strategies and purchasing practices:** These can also be applied to other business partners as an ongoing measure to prevent or mitigate identified risks. Here are some examples:

    - Structure your **supply lead times, purchase prices and contract lengths** in ways that avoid creating or exacerbating human rights risks in the operations of your business partners. Take account of human rights obligations in your pricing, for example, so that your suppliers are able to pay their workers a fair, living wage. In practice, particularly in the case of component suppliers, contract lengths are based on the model life cycle and often extend over seven or eight years. As such, they are already long compared with other sectors.

  - **Agree on certain standards**, e.g. that particular (input) products must only be obtained from selected (pre-checked) suppliers or from certified regions (product chain certification).
  - **Assess your suppliers** so that you can make better decisions on human rights observance based on greater transparency, e.g. with regard to the acceptance and structure of contract awards, cooperation arrangements and offers of support.
  - **Conduct (social) audits** before or after awarding a contract. This can be done by your own staff, employee representatives, independent third parties or recognised certification/audit systems in order to monitor compliance, e.g. with your code of conduct, guidance or contractual obligations. When selecting or devising audits, make sure they are effective and create enough transparency for you to take any action that may be required.
  - **Modify your supply chain**, e.g. by changing your countries of origin, raw materials or input products. Make sure that you take account of any adverse human rights impacts in your business partners' operations that may be created or exacerbated by such changes, e.g. loss of business base, jobs or income (see 'Dilemmas' under step 3).

- **Create incentives:** Encourage your business partners to meet your enterprise's human rights expectations, e.g. through recognition and rewards, access to networks and tools, 'preferred business partner' status, longer-term contracts, higher prices or capacity-building support (e.g. knowledge-sharing or personnel/financial resources).

- **Apply sanctions in case of violations:** This concerns breaches of contractual provisions, your code of conduct or comparable requirements. You can apply sanctions in various forms, e.g. through contractual penalties, legal action, the temporary suspension of a business relationship until there is an improvement or the breach has been resolved, more stringent controls, tougher requirements governing transparency and the provision of evidence, or compulsory certification.

Insight into corporate practice: embedding human rights due diligence into the BMW Group's procurement process

BMW Group uses an industry-specific questionnaire developed by the Drive Sustainability initiative to help it evaluate each of its suppliers, e.g. in areas such as human rights, the environment and employment conditions. The evaluation results are taken into account when awarding contracts. The standardised questionnaire is firmly integrated into the procurement process. It allows the BMW Group to evaluate its suppliers' sites in relation to core issues and the associated requirements and to stipulate any corrective or remedial action that may need to be taken before commencing production.
Suppliers are asked to complete the questionnaire on an external platform and share it with BMW Group. Following validation, the completed questionnaire is added to the BMW Group's supplier database and then evaluated on the basis of the Group's requirements. Contracts are only awarded without further restrictions if the supplier fulfils the BMW Group's requirements in their entirety or undertakes to implement any corrective measures before commencing production.
Suppliers may find they have to deal with different due diligence requirements imposed by various customers. Combining and standardising requests as in the Drive Sustainability questionnaire can make it easier for suppliers to implement human rights due diligence processes more effectively.
The long version of this **good practice example** is available online.

What are appropriate preventive measures for the entire value chain?

- **Support organisations and particularly sensitive regions:** Help institutions and regions that are associated with human rights problems and that are relevant to your enterprise's own human rights due diligence obligations (e.g. independent NGOs, foundations, aid organisations).

- **Conduct audits:** Audit indirect suppliers that pose a higher risk or that are strategically relevant. This can be done by your own staff, independent third parties or recognised certification/audit systems in order to monitor compliance with your human rights expectations. A prerequisite for this is that you create transparency and traceability. Wherever possible, all such audits should be conducted in consultation with direct suppliers.

- **Strengthen dialogue and collaboration:** Engage with other actors, e.g. through sector dialogues, multi-stakeholder initiatives, business associations or expert forums. Make sure that in doing so you observe compliance and anti-corruption regulations. Provided that competition and antitrust regulations are observed, you can use business associations and sector initiatives to share information (e.g. human rights-related knowledge about your business partners), agree joint audit requirements and set up certification processes for the value chain. As well as enabling you to pool resources, these measures can ease the pressure on business partners by avoiding the need for them to provide multiple responses. Individual suppliers may not fulfil the sector's requirements. In such cases, as a last resort, it may be necessary to exclude them from business with the group of enterprises participating in the sector dialogue. This step should be taken only if previous measures have been exhausted and failed to bring about improvement. Such action is admissible under antitrust law.

Insight into corporate practice: mechanisms for sharing evaluations of the sustainability record of enterprises in the automotive supply chain among VDA members

In collaboration with its members, the German Association of the Automotive Industry (VDA) is currently developing a review and information-sharing mechanism that will evaluate the sustainability performance of enterprises in the automotive supply chain and facilitate mutual recognition of the results. Through the creation of action plans and the option to follow the audit process using a centralised data platform, alongside the sharing of basic audit results, it is intended that suppliers will undergo a development process. Similar platforms have already been established by initiatives such as the Responsible Business Alliance. Numerous automotive enterprises collect sustainability data from suppliers using standardised questionnaires as part of the Drive Sustainability initiative. Looking ahead, participants in the Sector Dialogue Automotive Industry are encouraged to share information and findings with suppliers so that they can access the same data as the OEMs, which currently dominate these platforms.

Further studies addressing the issue of audits

If you would like to explore the issue of audits in more detail, including their potential applications and opportunities and the associated challenges and constraints, take a look, for example, at the following studies (illustrative selection):

- BMAS (2017): 'Potenziale von Brancheninitiativen zur nachhaltigen Gestaltung von Liefer- und Wertschöpfungsketten' (The potential of sector initiatives to sustainably shape supply and value chains) (in German)
- ECCHR, Brot für die Welt, Misereor (2020), 'The human rights fitness of audits and certifiers'
- LeBaron, G. & Lister, J. (2018), 'Ethical Audits and the Supply Chains of Global Corporations'
- Phung, S. & Utlu, D. (2020), 'Human rights in the palm oil sector. The responsibility of purchasing companies: Limits and potentials of certification'
- Potts, J. et al. (2018), 'State of Sustainability Initiatives Review – Standards and the Extractive Economy'
- Sydow, J. & Heinz, R. (2022), 'An Examination of Industry Standards in the Raw Materials Sector – How do standards contribute to the implementation of environmental and human rights due diligence obligations and how do they ensure effectiveness on site?'
- Sydow, J. & Reichwein, A. (2018), 'Governance of Mineral Supply Chains of Electronic Devices'

Insight into corporate practice: IRMA's cross-commodity certification standard

A number of initiatives have been established to help enterprises evaluate and gain a better understanding of human rights risks associated with the procurement of raw materials. One example, set up by the Initiative for responsible Mining Assurance (IRMA), is a standard governing socially and environmentally responsible extraction at industrial mining sites. Independent third parties are commissioned to evaluate human rights and other risks linked to the impacts of industrial mining. With 26 sections divided into four main categories (Business Integrity, Planning for Positive Legacies, Social Responsibility and Environmental Responsibility), IRMA is the most comprehensive mining certification standard. Its approach is applicable to all minerals and regions. The goal of the standard is to bring about continuous improvements in mining operations. One unique aspect of IRMA's approach is that local communities are involved in the evaluation process. Enterprises can therefore use the IRMA audit report to help them understand the mine's overall impacts from a range of perspectives, not only that of the mine itself. For maximum transparency, the audit findings are published and available without charge on the IRMA website.

4.6 Step 6 – Review the effectiveness of your measures

Through your effectiveness review system, you are required to evaluate the success of your adopted measures on a regular basis. That involves establishing a series of processes within your enterprise to find out whether your:

- preventive measures are eliminating or mitigating the severity and the probability of occurrence of risks;
- measures to provide remedy and redress are working to counter, stop or at least minimise any damage to human rights that has occurred and to provide redress for it.

Effectiveness reviews are an important mechanism as they give you a better understanding of the links between your measures and human rights impacts while allowing you to monitor the progress of your actions and continuously improve your due diligence processes. First, you need to understand what constitutes effectiveness in the context of your due diligence obligations. You can then go on to select, compile and evaluate appropriate indicators and use them for management and communication purposes.

How do you distinguish between impact- and results-based indicators?

To measure changes, you can define both qualitative and quantitative indicators. The sustainability reporting frameworks used by industry associations and multi-stakeholder initiatives include numerous quantitative human rights indicators. While they usually measure the activities carried out or the corresponding results (inputs, outputs and outcomes), they also provide useful indications of effectiveness (impact).

The IOOI logic (IOOI stands for input – output – outcome – impact) makes the differences between results-based and impact-based indicators clearer. It underlies numerous measurement approaches and is used increasingly by enterprises to measure and control the social, environmental and economic impacts of their activities.

How the IOOI model works for a training course on discrimination:

- **Input** = the materials, money and time used for a measure: course materials, trainer costs, employee time spent training
  - Example of an indicator: total costs for the training course

- **Output** = direct results: training sessions for a specific group of participants
  - Example of an indicator: number of training sessions, number of participants

- **Outcome** = indirect results: participants gain a greater understanding and awareness of human rights issues, and employees modify their behaviour
  - Example of an indicator: number of correct answers in an end-of-course test

- **Impact** = effect on rights holders: fewer people experience discrimination
  - Example of an indicator: number of actual cases of discrimination

Reporting frameworks with examples of quantitative indicators

- Global Reporting Initiative (GRI)
- Sustainability Accounting Standards Board (SASB)
- European Commission Guidelines on Non-Financial Reporting
- Corporate Human Rights Benchmarking Indicators (CHRB)
- Danish Institute for Human Rights: Platform for Human Rights Indicators for Business
- OHCHR Human Rights Indicators
- United Nations Global SDG Database
- UN Guiding Principles Reporting Framework with Implementation Guidance (UNGPRF)

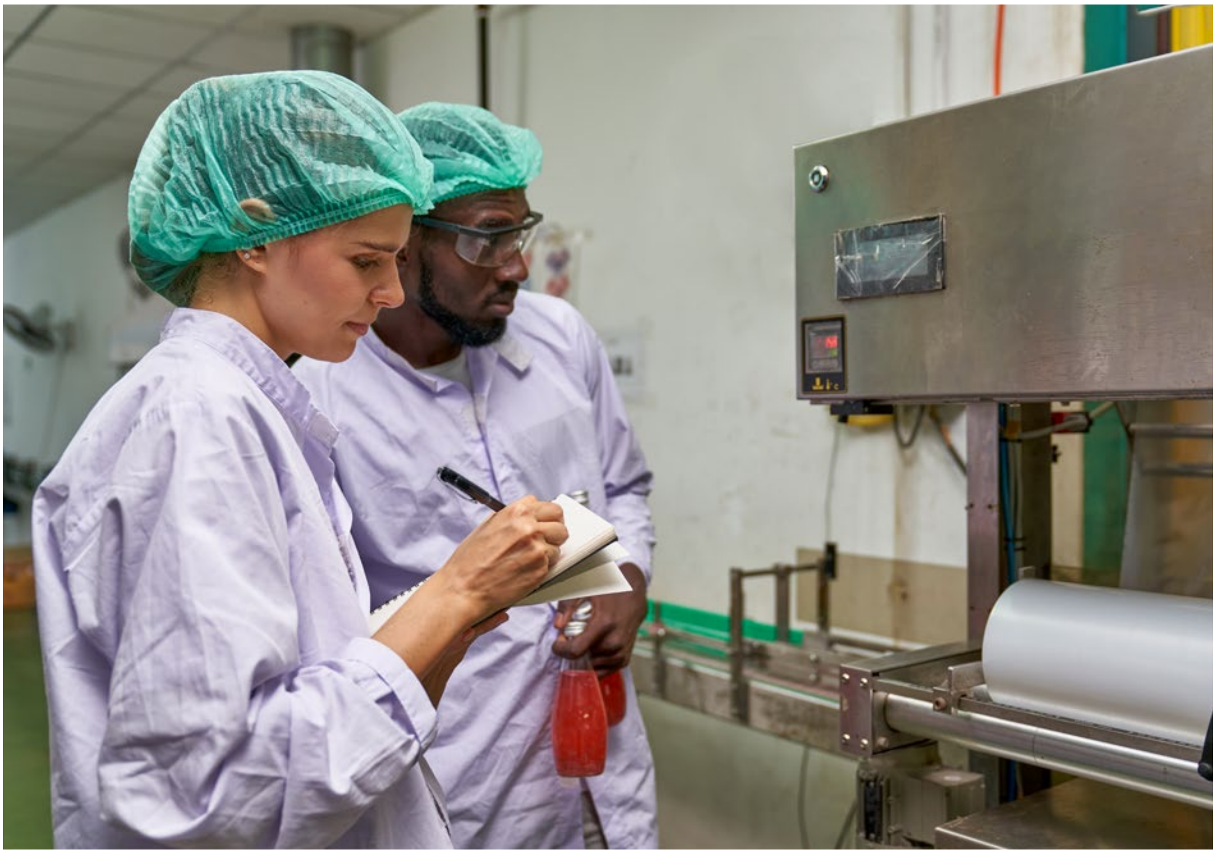
How can indicators be used to measure impacts?

Indicators used to evaluate impact should ideally express a credible link between the measure (in this case a training course) and the reduction of a human rights risk (in this case discrimination). The greater the distance between the measure and the impact, the more likely it is that any change will also be influenced by other factors. In the above example, the training course may have led some participants to modify their behaviour. However, the reduction in cases of discrimination could also be due to other factors, such as additional awareness-raising campaigns by the public sector, increased penalties for violations of anti-discrimination laws and more stringent audits.

Simply adding up results that happen to be countable is not sufficient to create a meaningful indicator of the wider impact.

Consequently, it is often difficult to prove a direct causal link between a given measure and a particular impact. Researchers also believe more work is required to develop indicators that provide a reliable measure of human rights impacts and test them in practice.

Nonetheless, it is generally agreed that many of the measures at least contribute to the desired impacts. It is therefore legitimate for enterprises to measure changes attributable to their interventions using results-based indicators (i.e. outputs and outcomes). However, simply adding up results that happen to be countable is not sufficient to create a meaningful indicator of the wider impact. Instead, your enterprise should first consider the specific change you want to achieve in the adverse impact through your measure. You can then develop a qualitative or quantitative indicator to express a result linked to that impact. (The German Institute for Human Rights has produced the following interpretation of 'effectiveness' based on the UN Guiding Principles. See next page: 'How do the UN Guiding Principles define the effectiveness of measures?')



How do the UN Guiding Principles define the effectiveness of measures?

While the UN Guiding Principles provide explicit effectiveness criteria for grievance mechanisms, they offer no such criteria for the NAP core element 'Measures and effectiveness tracking'. Implicitly, however, the UNGP set out three dimensions of effectiveness, i.e. three conditions that a measure must fulfil to be regarded as effective from a human rights perspective (see Utlu (2019), Towards a definition of effectiveness in HRIA).

1. **The dimension of understanding: Achieving a better understanding of the specific impacts of business activity on specific people, including the perspectives of actually or potentially affected rights holders, with particular regard for an equality-led approach and for highly vulnerable and marginalised groups and populations.**

Assessing the effectiveness of a measure in terms of this first dimension involves analysing whether it has produced insights that help to achieve stated objectives within the enterprise or the sector as a whole. However, this refers solely to insights that help your enterprise or sector to better understand and assess the situation of (potentially) affected groups, and of the impacts of your activities on those groups, in such a way that impacts are less adverse.

Question 1: *What insights has the enterprise gained from this measure (e.g. supplier training) that will enable it to cause fewer human rights violations, to mitigate its causal contribution to such adverse human rights impacts or avoid linking its business activities to adverse impacts?*

2. **The dimension of management: Integrating what you have learned into your business processes and measures in a way that fulfils specific management and funding conditions. In other words, you must not waste any resources that could have been used to implement other measures which would mitigate adverse impacts. It follows that while efficiency is a precondition for effectiveness, the reverse does not apply.**

This second dimension of effectiveness is two-fold. It concerns (a) the expertise and authority of the responsible decision-makers within your enterprise and (b) the financial resources provided by the enterprise to cover the costs of due diligence and in particular the costs of implementing the associated measures.

(I) Measures can only be effective if the responsible departments in your enterprise are able to act on their knowledge of your corporate policies and operations. It follows that responsibility should lie at senior management level, with authority to intervene in all relevant parts of the organisation.

Question 2: *Are those employees with designated responsibility for the measure able and willing to bring about changes in every area of the enterprise linked to the risky business activity?*

(II) Decisions about the financial resources to be made available should be based solely on the cost of the measures required to counter the potential impacts already identified in the risk analysis. Only then can the measures be effective. Otherwise, the choice and scope of the measures would be determined not by the risk that you need to address but by the budget allocated for human rights or CSR.

Question 3: *Have sufficient financial resources been made available to develop, implement and review measures that can really mitigate or prevent potential and actual impacts?*

3. **The dimension of response: Generating insights and responses that lead to measurable change (i.e. measures to prevent, mitigate and compensate for recognised impacts) in a 'legitimate', 'transparent' and 'rights-compatible' way, as confirmed in feedback from actually and potentially affected rights holders.**

The first two dimensions of effectiveness are 'sufficient' conditions. By contrast, the third dimension is a 'necessary' condition. If a relevant change cannot be achieved for affected groups (in the medium term), then improved understanding of the processes and the use of financial and personnel resources are not sufficient to conclude that the measures are effective. The relevant changes must be measurable, although in this context the term 'measurable' does not solely indicate a quantitative measurability. A solely quantitative indicator would not necessarily fully reflect important adverse impacts on human rights (e.g. social divisions that emerge within the community following the relocation of an Afro-Colombian village to make way for a mining project, cf. Niebank/Utlu (2017), 'Closing gaps in protection', p. 15 et seq).

Question 4: *What changes has the measure brought about for affected groups (from the perspective of the enterprise and of independent human rights experts)?*

Question 5: *How do affected groups assess the changes (qualitatively and quantitatively)?*

Choose appropriate indicators based on the measures and objectives you have identified

The actions your enterprise can take to address adverse impacts on human rights are just as numerous and varied as the (potential) adverse impacts. This means that you can define a very wide range of qualitative and/or quantitative indicators that best reflect your particular situation and that measure what you actually want to achieve. Although in practice there are still few standardised indicators for measuring human rights impacts, the goal is to define indicators that measure not only the activity as such but also the progress you have made towards your objectives.

It follows that you should draw up and adopt specific objectives for your prevention, remedy and redress measures in order to:

- demonstrate your commitment to respect human rights;
- create accountability;
- facilitate monitoring of the progress you have made towards implementation.

Reports on these objectives and on your progress towards achieving them should be passed on to the responsible internal bodies and management levels and can also be published in your external reporting. The information can be presented, for example, in the form of key figures and explanatory notes (see also the guideline for the core element 'Reporting'). To emphasise the binding nature of your adopted objectives and create further incentives for achieving them, you may choose to follow established good practice by incorporating them into employee target-setting and performance reviews and into the performance-based pay arrangements for your managerial staff. This can be done, for example, at the same level as other corporate objectives, using a target system with balanced scorecards or comparable methods.

Some examples of objectives for measures

- Training courses to be held at all your own sites.
- All newly appointed employees to receive training over the course of the financial year.
- A specific proportion of your total purchasing volume to be allocated to pre-approved suppliers (e.g. the percentage of contracted suppliers that have implemented all the minimum preventive measures required by the enterprise).
- The number of accidents to have been reduced compared with the previous year.
- All grievances to be processed within a certain period.
- In response to serious human rights violations, corrective measures to be established within a set period (e.g. three months).
- All direct or indirect high-risk suppliers to be audited.
- A specified percentage of audited suppliers in high-risk areas or product groups to implement corrective measures within a stipulated period.
- A specified percentage of traceable raw material supply chains (including mines and other sources) to meet the criteria for recognised certification schemes [e.g. Forest Stewardship Council (FSC) certification for the natural rubber in tyres or certification of mines by the Initiative for Responsible Mining Assurance (IRMA)].
- The number of substantiated violations of your code of conduct to have occurred.
- Satisfaction with working conditions among supply chain employees to reach a target level.

You should now select appropriate indicators based on your chosen measures and the specified objectives. Some examples are given below. Please note, however, that these lists are not exhaustive:

Examples of quantitative indicators

- In your own business area: health and workplace safety indicators for employees, number of temporary workers receiving company social benefits, violations of customer data privacy rules, wage disparities between male and female employees in similar roles, training results, percentage of workspaces with barrier-free access, number of compliance violations identified during audits, costs of court procedures linked to human rights problems.
- In your upstream and downstream value chain: number of identified cases of child labour, number of identified workplace safety deficits, number of violations of regulations to protect surface waters (e.g. exceeding the thresholds for heavy metal contamination), number of violations of regulations governing the production and use of mercury (Minamata Convention), number of cases of sexual harassment, percentage of employees who have joined a trade union, percentage of workers in precarious labour conditions, proportion of suppliers that have taken part in training programmes, number of reported product safety issues, number of complaints about advertising and marketing activities.

Examples of qualitative indicators

- Levels of satisfaction or dissatisfaction among local residents and communities (based on independent reports).
- Descriptions of the human rights situation in an area in which the enterprise is actively striving to make progress (based on independent studies).

Take these steps to compile data for your indicators

Depending on the indicator, you may need to obtain data from internal and/or external sources. The data you need may already be available. If not, you will need to set up new data collection processes. Wherever possible, you should use existing tools and systems. Internally, for example, these include auditing and monitoring processes, feedback management mechanisms and stakeholder engagement processes. Outside your enterprise, this may, for example, involve cooperation and consultation with human rights experts, civil society organisations, certification bodies, audit service providers, government agencies or the representatives of affected groups. As long as you can ensure that competition and antitrust regulations are observed, it may also be useful to collaborate with others in business associations and sector initiatives in order to define and compile indicators.

Examples of information and data sources

- **Audits:** the findings of scheduled or unannounced (social or human rights) audits conducted internally or by independent third parties in your own area of business or at your suppliers or business partners.
- **Evaluations:** the results of external ratings and rankings of your suppliers and business partners in so far as they relate to human rights.
- **Surveys:** the results of surveys and other feedback mechanisms used to obtain the views of your own employees, other value chain workers and external stakeholders.
- **Complaints:** information received from stakeholders either through formal grievance mechanisms or informally (e.g. personal conversations).
- **Internal information systems:** quantitative data about relevant areas of the business within the enterprise, e.g. in connection with human resources (number of employees, gender, remuneration) or with occupational safety (number of workplace accidents, downtimes).
- **External databases, independent reports and studies:** data and information provided, for example, by government agencies, business associations, sector initiatives, civil society organisations or independent experts about human rights problems linked to particular countries, regions, sectors, raw materials, etc.

Establish a dialogue with affected persons

In order to gain a clearer understanding of the cause-and-effect relationships of each impact and to check whether the measures you have taken to ensure prevention, remedy and redress are having the desired effect, you will need to establish and maintain a dialogue with (potentially) affected persons or their legitimate representatives. In your discussions with rights holders and/or independent human rights experts, you should identify if and how the changes have improved the situation of affected groups and to what extent, in their view, the objectives have been met (e.g. whether a supplier's workplace safety measures led to fewer accidents, whether extended delivery periods have reduced excessive working hours, or whether product design changes have improved user safety). These discussions will help you to better evaluate changes in the human rights situation as a result of your measures.

How can you ensure that impacts are measurable?

At present, the process of measuring effectiveness in relation to human rights is much less standardised than for measuring impacts such as environmental damage. A number of publications offer useful guidance:

- In the discussion paper '**Values & Valuations**. A comprehensive compilation of quantitative human rights indicators for companies' econsense offers a collection of mainly results-based quantitative human rights indicators.
- **Measuring Stakeholder Capitalism**, a much more extensive and complex white paper published in September 2020 by the World Economic Forum, describes common metrics and consistent reporting of sustainable value creation. In this context, it also defines several indicators linked to human rights.
- The issue of effectiveness in relation to human rights is explored in greater detail by Shift in a **collection** of general and both topic- and sector-specific studies and guides.
- The **Value Balancing Alliance**, whose members are multinational enterprises, has set itself the goal of using standardised methodologies to measure and compare the value of the social, economic and environmental benefits generated by enterprises. To this end, various studies produced by the Alliance are freely available on its website.

Analyse and interpret the changes in your indicators over time

Once you have compiled and processed the necessary data and applied all this information to work out your indicators, you have to interpret changes in those indicators over time. This might involve analysing trends and patterns revealed by the indicators over time (e.g. the number and type of grievances and their regional/geographical distribution). The results of this analysis will allow you to determine whether your prevention and redress measures have brought about the desired changes in relation to individual human rights problems (e.g. whether a reduction in the number of accidents has led to a corresponding reduction in downtime, whether more employees are satisfied with their working conditions, whether the male/female wage gap has shrunk, or whether fewer corrective measures were required following audits).

However, it is important to exercise caution when interpreting indicator trends and patterns over time. Apparent progress based on indicator measurements is not always substantiated by actual improvements in the human rights situation of (potentially) affected groups. For example, the fact that you are receiving few complaints may be a sign that human rights have improved, but it may also indicate that your stakeholders do not trust the grievance mechanism. Equally, an increase in the number of complaints may be due to improvements in access to grievance channels, or it may point to a greater number of adverse human rights impacts. A downturn in the number of recorded workplace accidents may be the result of more effective occupational safety measures, but it may also point to shortcomings in the culture of reporting workplace accidents. Consequently, you should always interpret the results in context and, wherever possible, alongside information obtained from other sources.

Measuring and interpreting impacts

The **Indicator Design Tool** produced by Shift includes procedural guidance on how to measure and interpret the progress and impact of human rights initiatives and programmes.

How to use the findings of your effectiveness review

Use the knowledge you have gained from interpreting your qualitative and quantitative indicators to adapt and/or supplement your due diligence processes. For example, this may involve revising measures, updating your guidance, establishing additional processes or setting up new training formats. If possible, you should also include the findings of your effectiveness review in relevant internal and external reports as a way of highlighting the progress made so far in human rights observance.

5. Monitoring your progress towards implementing the requirements

You can use the following list to check whether you have fully completed the steps and therefore fulfilled the NAP requirements for the core element 'Measures and effectiveness tracking'.

	Steps implemented to fulfil the NAP requirements for the core element 'Measures and effectiveness tracking'	Reference to steps in the guideline
☐	Your enterprise uses the findings of its risk analysis as the basis to identify appropriate prevention measures in anticipation of potential impacts, and appropriate remedial actions in response to impacts that have already occurred.	1–5
☐	Your enterprise adapts relevant management processes based on its risk analysis findings.	1–6
☐	Your enterprise makes relevant changes in the supply chain based on its risk analysis findings and with due regard for any subsequent adverse impacts that are created or exacerbated.	1, 2, 3, 5
☐	Appropriate measures are taken if the enterprise identifies actual or potential adverse impacts which it causes or to which it contributes.	1–6
☐	Your enterprise has determined its ability to influence any impacts to which it contributes or is linked.	3
☐	In relation to impacts which it has not caused and to which it has not contributed, your enterprise aims to use and where possible increase its influence in order to prevent, end or mitigate the impacts. As a minimum, it establishes a concept with a specific timetable in order to gradually use and increase its influence.	3
☐	Subject to antitrust regulations, the enterprise collaborates with other actors to increase its influence. (This applies mainly in cases where the enterprise contributes or is linked to adverse impacts but cannot adequately influence those impacts on its own).	3
☐	In order to develop and implement measures, the enterprise engages with (potentially) affected persons, their legitimate representatives or independent human rights experts.	2, 4, 5
☐	Your enterprise joins sector initiatives in order to work with others on ways of addressing adverse human rights impacts, share experience of good practices and (jointly, where appropriate) implement the resulting solutions and measures.	4, 5, 6
☐	Clear responsibilities and escalation processes have been established for decisions on how to deal with adverse impacts.	2, 4, 5
☐	The measures established by the enterprise are integrated into its business activities. This means that specified measures are embedded in the processes of the relevant business areas and functions and are then consistently considered in all activities in accordance with formal requirements.	2, 4, 5

☐	Decision-making processes are structured in such a way that the termination of a business relationship on account of actual or potential adverse impacts is understood to be a last resort. This means that priority is given to measures that provide remedy and redress, allowing a range of options for enforcing human rights expectations to take effect and identifying and evaluating the impact of such a decision before deciding to terminate a business relationship.	2, 3
☐	Specific objectives have been formulated for each measure.	6
☐	The objectives are communicated internally and/or externally as appropriate for each measure.	6
Your enterprise provides human rights training:		
☐	in its own area of business	5
☐	for suppliers	
☐	Your enterprise monitors the effectiveness of its measures using qualitative and/or quantitative indicators to ensure that they are designed in a way that appropriately addresses actual and potential adverse impacts.	6
☐	In order to monitor the effectiveness of its measures, your enterprise engages with affected groups, their legitimate representatives or independent human rights experts.	6

6. Where can you find more information?

6.1 Further information

This guideline is a standalone document covering all the relevant steps you will need to implement in order to completely fulfil the NAP requirements for the core element 'Measures and effectiveness tracking'. In addition to this guideline and the other external documents cited so far, the sources below will help you to acquire a deeper understanding of the subject.

Guidelines, templates and digital tools for conducting an in-depth analysis of your supply chain risks can be found in the 'Risk analysis' guideline.

Guidelines, templates and digital tools for developing and implementing measures

- **Human Rights Translated – A Business Reference Guide**, produced by the Castan Centre for Human Rights Law, the International Business Leaders Forum, the Office of the UN High Commissioner for Human Rights and the UN Global Compact. This is a very detailed resource that explains each internationally recognised human right enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- **Five Steps towards Managing the Human Rights Impacts of Your Business**, published by the UN Global Compact Network Germany. This guide to setting up human rights due diligence focuses primarily on analysing risks and planning the next steps. It provides a good basic introduction and is suitable for both large enterprises and especially SMEs.
- **Human Rights and Business Dilemmas Forum**, designed by the UN Global Compact and Verisk Maplecroft. This is a collection of case studies on specific human rights challenges facing large enterprises and the approaches they have adopted in relation to concrete human rights risks.
- **Should I stay or should I go?** by SOMO. This discussion paper explores the question of whether to terminate business relationships with suppliers in the event of human rights violations. It covers both direct and indirect supplier relationships as well as joint ventures and equity interests. The paper is aimed at enterprises that already have some experience of implementing human rights due diligence obligations.
- **Designing Effective Human Rights Training Aligned with the Corporate Responsibility to Respect in the UN Guiding Principles on Business and Human Rights**. This document, produced by BSR for the UN Global Compact, offers guidance on setting up effective human rights training courses within your own enterprise. It is practice-oriented and also very accessible for SMEs.
- **Organising the Human Rights Function within a Company**. Produced by Shift for the UN Global Compact, this document outlines various governance approaches to organising responsibility for human rights within large enterprises.
- **Respecting Human Rights – An Introductory Guide for Business** by the UN Global Compact Network Germany, twentyfifty and the German Institute for Human Rights. This core document looks at the implementation of human rights in the business context. It also examines the associated opportunities and challenges and selected human rights in greater detail.
- **Decent Work Toolkit for Sustainable Procurement** by the UN Global Compact. This toolkit contains guidance, training materials and practical examples to help enterprises enforce decent working conditions in their global supply chains.
- **Conflict-Sensitive Business Practice – Guidance for Extractive Industries** by International Alert. Guidance and screening tools to help enterprises engage responsibly in conflict-affected and high-risk areas (CAHRAs), with a focus on the commodities sector.

- **Stakeholder Engagement in Human Rights Due Diligence**, published by the UN Global Compact Network Germany and twentyfifty. A guide to engaging effectively with stakeholders in the area of human rights due diligence.
- **CSR in Deutschland**, an online platform operated by the Federal Ministry of Labour and Social Affairs (BMAS), containing information on the NAP and LkSG, useful background knowledge and a collection of general and industry-specific guides, advisory services, training courses and practical examples. The site includes a regularly updated list of answers to the most frequently asked questions about the LkSG (in German).
- **Human Rights Due Diligence Info Portal** (in German) set up by the UN Global Compact Network Germany. Information and tools (in written and video form) to help enterprises design and improve their human rights due diligence processes. Some of the materials relate specifically to the automotive industry and SMEs.

Guidelines, templates and digital tools for reviewing the effectiveness of your measures

- '**Values & Valuations**. A comprehensive compilation of quantitative human rights indicators for companies' by econsense is a published report that contributes to the discussion on how to measure human rights impacts. It contains an extensive collection of quantitative human rights indicators that have been developed by enterprises to measure the impact of both their own and their suppliers' activities and that are still to be tested and refined in practice. Enterprises can use these to guide their own responses and contribute to the ongoing debate.
- **Valuing Respect** is a website operated by Shift that provides information on approaches and indicators used to measure the effectiveness of human rights observance measures.
- **Corporate Human Rights Benchmark**. Methodology and findings to assess the establishment of human rights due diligence processes in enterprises on the basis of externally available information. The criteria it applies for evaluating human rights due diligence processes can also be used by enterprises to review the effectiveness of their measures. One of the main areas on which the benchmark focuses is the automotive industry.
- **Know the Chain** by the Business & Human Rights Resource Centre, Humanity United, Sustainalytics and Verité. Drawing on externally available information, this resource evaluates the progress made by enterprises towards implementing corporate human rights due diligence systems. Its main focus is on forced labour and exploitation.
- **Responsible Recruitment Resource Bank** of the Institute for Human Rights and Business. This is an extensive collection of tools and documents to help enterprises establish fair recruitment processes and working conditions based on the 'employer pays principle'. Within the overall value chain, it focuses on direct and indirect suppliers, the enterprise's own practices and those of joint ventures and equity interests. The collection is aimed at enterprises that already have some experience of implementing human rights due diligence obligations.

6.2 Similarities and differences between the NAP and the LkSG

Both the NAP and the LkSG are based on the UN Guiding Principles (2011) as a reference framework. It follows that the steps set out in these guidelines for meeting the NAP requirements will also help you to fulfil the due diligence obligations in the LkSG. Although the fundamental value systems of the two regulatory frameworks are comparable, the rights and obligations they establish are not identical.

One of the key differences between the two regulatory frameworks is that the NAP is voluntary, reflecting a basic expectation of the German Federal Government that enterprises will take appropriate action to fulfil their responsibilities at every point in their supply and value chains. By contrast, the LkSG is mandatory for all enterprises that fall under its scope of application. It obliges them to meet clearly defined due diligence obligations in their own area of business and in their dealings with both direct and indirect suppliers.

This guideline is designed to help enterprises understand and implement generally accepted and appropriate due diligence obligations. With this goal in mind, it covers all the requirements of the NAP core element 'Grievance mechanism'. Additional references in this guideline to LkSG requirements also draw attention to the due diligence obligations imposed by the legislation. This will help enterprises that fall under the scope of the law to meet their statutory obligations at the same time. In certain areas, the guidelines go beyond the above policy frameworks and regulatory requirements.

The Federal Office for Economic Affairs and Export Control (BAFA) will assess each case individually to determine whether an enterprise is meeting the requirements of the LkSG. In deciding whether the measures taken are appropriate, it will consider the enterprise's specific business model. BAFA will publish information, aids and recommendations to facilitate compliance with the LkSG.

Section 3 of this guideline sets out both the NAP specifications and the LkSG requirements. The following overview illustrates which steps in the guideline can be used to help fulfil the LkSG obligations.

Step	Page	Corresponding NAP requirement[5]	Link to LkSG requirements
1) Base your measures on the findings of your risk analysis	14	A, B	Section 6 (Preventive measures) (1) Section 7 (Remedial action) (1) sentences 1 and 2
2) Create the right conditions for implementing your measures	16	B, F	Section 4 (Risk management) (1), (3) and (4) Section 6 (Preventive measures) (2) and (3) sentence 1 nos. 1, 2 and 4
3) Determine your causal contribution and your ability to exert influence	17	A, E, F, G	Section 2 (Definitions) (6) sentence 3 Section 3 (Due diligence obligations) (2) Section 6 (Preventive measures) (3) and (4) Section 7 (Remedial action) (2) sentence 1 and sentence 2 no. 2, (3)
4) Counter and provide redress for adverse impacts (remedy and redress)	26	B, F, G	Section 2 (Definitions) (6) sentence 3 in conjunction with section 7 (1) sentence 4 Section 3 (Due diligence obligations) (2) Section 5 (Risk analysis) (1) sentence 2 in conjunction with section 7 (1) sentence 2 Section 7 (Remedial action) (1), (2) and (3) Section 9 (Indirect suppliers) (3) sentence 1 no. 3
5) Prevent adverse impacts and define your objectives	30	B, C, D, F	Section 3 (Due diligence obligations) (2) Section 6 (Preventive measures) (3) and (4) Section 9 (Indirect suppliers) (3) sentence 1 no. 2
6) Review the effectiveness of your measures	36	F, H, I	Section 4 (Risk management) (2) Section 6 (Preventive measures) (5) Section 7 (Remedial action) (4)

[5] The NAP requirements are in alphabetical order as shown in section 3 of this guideline.

6.3 Glossary

Civil society organisations

See 'Non-governmental organisations (NGOs)'.

Conflict-affected and high-risk areas (CAHRAs)

This term applies to areas currently in a state of armed conflict or a fragile post-conflict setting. It also includes areas affected by weak or absent governance and security, and by widespread and systematic violations of international law and human rights.

Corruption

Criminological research defines corruption as the 'abuse of a public office, a position in the economic sector or a political mandate in favour of a third party, upon their instigation or one's own initiative to obtain an advantage for oneself or a third party, with the occurrence or in the expectation of the occurrence of damage to or a disadvantage for the general public (in official or political functions) or for an enterprise (if the offender holds a pertinent position in the economic sector).'

Definitions of terms used in the Supply Chain Act

- In some cases, the LkSG sets out obligations that must be fulfilled annually and, additionally, '**on an ad hoc basis**'. In sections 5 (4), 6 (5), 7 (4) and 8 (5) LkSG, the obligation to meet a requirement on an ad hoc basis depends on whether the enterprise should expect a significantly changed or expanded risk situation in that area of its business. By contrast, with regard to the enterprise's due diligence obligations on the basis of '**substantiated knowledge**' [section 9 (3) LkSG], the requirement applies if the enterprise has actual indications that suggest that a violation of a human rights-related or environment-related obligation at indirect suppliers may be possible. If this is the case, the enterprise must take action on an ad hoc basis.
- Section 3 (1) sentence 1 LkSG states that enterprises must exercise due regard for the human rights and environment-related due diligence obligations set out in that division of the Act which relate to their supply chains, with the aim of preventing or minimising human rights or environment-related risks or of ending the violation of human rights-related or environment-related obligations. Section 3 (2) LkSG sets out criteria for determining whether actions to fulfil due diligence obligations are appropriate. This depends on:
  - the nature and extent of the enterprise's business activities;
  - the ability of the enterprise to influence the party directly responsible for a human rights or environment-related risk, or for the violation of a human rights-related or environment-related obligation;
  - 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;
  - the nature of the causal contribution of the enterprise to the human rights or environment-related risk, or to the violation of a human rights-related or environment-related obligation.

According to the Federal Government's explanatory memorandum, all the due diligence obligations covered by the Act are subject to the general principle that the scale of the efforts to be made by an enterprise to prevent or end a violation should reflect its ability to exert influence, the likelihood and severity of the anticipated violation of a legal position and the extent of the enterprise's causal contribution. Equally, the importance of efforts to monitor the supply chain should reflect the degree to which the products and production sites associated with a business activity are vulnerable to human rights risks.

- The term '**own business area**' is defined in section 2 (6) as covering every activity of the company, as a legal entity representing the enterprise, to achieve the business objective. This includes any activity related to the creation and exploitation of products and services, regardless of whether it is carried out at a location in Germany or abroad. In affiliated enterprises, the parent enterprise's own business area includes a group enterprise if the parent enterprise exercises a decisive influence on the group enterprise.
- The term '**direct supplier**' is defined in section 2 (7) LkSG as any supplier or service provider with which the enterprise has a contractual relationship and whose supplies are required to produce the enterprise's product or to provide and use the relevant service.

- The term '**indirect supplier**' is defined in section 2 (8) as any enterprise which does not meet the definition for a direct supplier but whose supplies are nevertheless essential to the enterprise's activities. This includes all suppliers with which your enterprise is linked through contractual relationships, business activities, products or services even if there is no direct contractual relationship.

Excerpt from the NAP for the core element 'Measures and effectiveness tracking'

'On the basis of the results of the analysis, measures should be identified and incorporated into business activity. Such measures may, for example, comprise specialised training of particular employees in-house or with suppliers, adaptation of particular management processes, changes in the supply chain and participation in sectoral initiatives. So that potential or actual impacts can be properly addressed, enterprises should define clearly where competence lies for particular issues and establish the corresponding review mechanisms. Depending on the type of impact, an enterprise itself can initiate remedial measures. If the enterprise does not possess sufficient leverage to implement successful measures, it should cooperate with other players to increase its influence. Withdrawal from an area of business activity or from a location should only ever be a last resort in such situations. The enterprise should focus first and foremost on developing remedial measures. To this end, objectives should be formulated and be communicated internally and externally as the relevant measure dictates. With the aid of effectiveness tracking, the enterprise should regularly review the efficacy of the measures it has taken and, to this end, engage in dialogue with affected stakeholders.'

Grievance mechanisms

In the context of this series of guidelines, the term grievance mechanism refers to any routine procedure, whether internal or cross-company, that can be used to submit complaints of human rights violations by the enterprise and to seek remedy.

Human rights

Human rights are fundamental rights held by all individuals regardless of any discrimination, e.g. on the grounds of nationality, place of residence, sex, national or ethnic origin, skin colour, religion, native language or other characteristics. They are brought together in key international standards. The goal of those standards is to ensure that all people worldwide are treated equally and with dignity. Among these rights are those set out in the United Nations International Bill of Human Rights and the fundamental rights established in the ILO's Core Labour Standards.

Human rights due diligence obligations and processes

Human rights due diligence obligations are those obligations which an enterprise must fulfil in order to satisfy its responsibility to respect human rights in its global supply and value chains. These obligations are specified in particular in the UN Guiding Principles. Human rights due diligence processes constitute a continuous risk management process that enterprises must establish in order to identify, prevent, mitigate and provide redress for adverse human rights impacts and demonstrate accountability for the way they deal with such impacts. The five core elements of the NAP set out the main steps involved in fulfilling human rights due diligence obligations.

Human rights impacts (adverse, severe)

Adverse human rights impacts occur when an enterprise directly or indirectly contributes to a situation in which individuals are prevented from exercising their human rights or restricted in the exercise of those rights. The focus of this concept is on the risk to the individual rather than the risk to the enterprise. However, there is a recognised correlation between the highest levels of risk to human rights and the risk to the enterprise. Adverse human rights impacts are assessed as severe if they meet the criteria for severity in terms of their scale, scope or irremediability. These criteria may be fulfilled whether or not the enterprise is in a position to exert any influence on the situation. The potential severity of human rights impacts is specific to an enterprise's activities or business relationships and therefore varies between enterprises.

Human rights risks and risk analysis

The term 'human rights risks' refers to the potential adverse impacts of an enterprise's activities on human rights. They should always be understood as risks to those affected and not primarily as a risk to the enterprise itself. In order to assess such human rights risks, the enterprise should conduct a risk analysis. The purpose of the risk analysis is to identify and assess any actual or potential adverse human rights impacts with which the enterprise may be involved either through its own activities or as a result of its business relationships.

ILO Core Labour Standards

The ILO Core Labour Standards are eight conventions of the International Labour Organization (ILO) that provide a basic framework of global labour and welfare standards. They have the status of international legal instruments and are therefore binding on all states that have ratified them. The eight conventions are: Convention No. 87 – Freedom of Association and Protection of the Right to Organise (1948), Convention No. 98 – Right to Organise and Collective Bargaining (1949), Convention 29 – Forced Labour (1930), Convention 105 – Abolition of Forced Labour (1957), Convention 100 – Equal Remuneration (1951), Convention 111 – Discrimination (Employment and Occupation) (1958), Convention 138 – Minimum Age (1973), and Convention 182 – Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).

International human rights reference instruments

International human rights reference instruments are agreements under international law, conventions, regulations, policies, guidelines, standards and other provisions designed to promote CSR in the area of human rights. These documents serve as an important point of reference for a shared understanding of human rights, and an obligation to respect them.

International law

International law is a supranational legal system imposed by states on themselves as subjects of international law. Among the main sources of international law are the United Nations International Bill of Human Rights, bilateral and multilateral agreements under international law, customary international law and court rulings. Enterprises are not subjects of international law and are not directly bound to observe international law agreements. Nevertheless, within their own context and in accordance with the UN Guiding Principles, they are obliged to respect the human rights specified in international treaties.

Local communities

In the context of human rights due diligence, the term 'local communities' is used for communities that are located in close proximity to the sites operated by business enterprises or that are or could be directly impacted by the activities of those sites. Such impacts can be positive (e.g. job creation) or negative (e.g. groundwater pollution). Local communities are not necessarily homogeneous. In most cases there are overlaps with indigenous communities and vulnerable individuals.

Mitigation measures

The term 'mitigation measures' refers to all measures that can be taken to reduce the scale of actual adverse human rights impacts or the probability that potential adverse human rights impacts will occur.

National Action Plan for Business and Human Rights (NAP)

The NAP was established by the German Federal Government to implement the UN Guiding Principles. It was adopted by the Federal Cabinet in 2016. This is the first time that the German Federal Government has embedded the responsibilities of German enterprises to respect human rights into an established framework (the Action Plan). In the NAP, the Federal Government sets out its expectation that enterprises must exercise their human rights due diligence obligations and respect human rights at all points in their supply and value chains. The NAP consists of five 'core elements': a human rights policy statement; procedures for the identification of actual or potential adverse impacts on human rights; measures to ward off potential adverse impacts and reviews of the effectiveness of these measures; reporting; and a grievance mechanism.

Non-governmental organisations (NGOs)

The term 'non-governmental organisations' is used for non-state organisations, institutions, associations, foundations and other private bodies that are not run for profit and whose purpose is to contribute to the common good in the broadest sense. NGOs may operate locally, regionally, nationally and even internationally. As such, the term includes both local civil society organisations and national and international NGOs. Church-based aid agencies, organisations that form part of the solidarity movement and foundations linked to political parties are also classed as NGOs. NGOs can pursue a wide range of interests. For the purposes of the UN Guiding Principles, enterprises and business associations are not treated as NGOs.

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises are recommendations by the Organisation for Economic Co-operation and Development (OECD) to states and enterprises. Their purpose is to promote sustainable business activity in global supply and value chains. They include recommendations on transparency, working conditions, the environment, corruption, consumer protection, reporting, technology transfer, competition and taxation.

Preventive measures

Preventive measures are measures designed to ensure that adverse human rights impacts do not occur.

Remedial measures

This term is used to describe both the processes by which actual or imminent adverse human rights impacts are ended and those which are intended to provide redress for those violations. Remedial measures and redress may take various forms, such as ending the violation, an apology, the restoration of rights, rehabilitation, financial or non-financial compensation, follow-up measures (e.g. criminal penalties against individuals or sanctions under administrative law, for example a fine imposed on the enterprise in question), a temporary legal remedy or a guarantee of non-recurrence.

Redress

See 'Remedial measures'.

Rights holders

This term includes all people irrespective of their personal characteristics. In this series of guidelines it refers mainly to persons and groups who may potentially be affected by human rights violations ('potentially affected groups/individuals').

Stakeholders

Stakeholders are individuals or organisations that have actual or potential influence over the activities and decisions of an enterprise or that are or may be influenced by those activities and decisions.

United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles)

The UN Guiding Principles are a framework of 31 principles that set out requirements for political and business actors. As such, they are the first generally recognised reference framework for the human rights obligations of states and the responsibilities of enterprises in global supply and value chains. The UN Guiding Principles are based on three 'pillars': the duty of the state to protect human rights, the responsibility of business enterprises to respect human rights, and access to remedy for those affected by human rights violations. The Guiding Principles were adopted in 2011 by the United Nations Human Rights Council.

United Nations human rights treaties

The UN human rights treaties are binding agreements under international law. They apply in those states that have signed and ratified the treaties. The UN's human rights treaties are listed below: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), Convention on the Rights of Persons with Disabilities (CRPD), International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

United Nations Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948. As a resolution of the General Assembly, it is not legally binding. However, it is regarded as part of customary international law. The Universal Declaration sets out the fundamental rights held by all people regardless of their origin, religion, sex or other characteristics. It forms part of the United Nations International Bill of Human Rights, which also includes the International Covenant on Civil and Political Rights (Civil Covenant), the International Covenant on Economic, Social and Cultural Rights (Social Covenant) and their respective Optional Protocols.

Value chain

An enterprise's value chain comprises all the activities linked to the manufacture, sale, use and disposal of its products or to the delivery of its services. In addition to its business activities, the enterprise's value chain therefore includes other enterprises with which it has a direct business relationship, enterprises in its direct and indirect upstream supply chain (right up to the procurement of raw materials), its customers and any downstream business partners providing disposal services. Business support functions also form part of the value chain, e.g. investment and financing activities.

The automotive industry's value chain is characterised by dynamic supplier networks based on reciprocal relationships between suppliers and customers. This means that indirect suppliers in particular can change frequently and in many cases are not known to the procuring enterprise. Furthermore, individual enterprises in the value chain can act simultaneously as each other's suppliers and customers for different products.

Vulnerable groups

For the purposes of the UN Guiding Principles, vulnerability is a measure of both the extent to which a group is vulnerable to adverse human rights impacts as a result of a business activity, and of how it can overcome those impacts. Accordingly, vulnerable groups may experience adverse human rights impacts not only as a result of a specific business activity, since these impacts can be exacerbated by any existing cultural, social, environmental, political or economic disadvantages affecting those groups.

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