

Supply chain law: Reporting questionnaire published

November 14, 2022

As of January 1, 2023, companies that fall under the scope of the German Supply Chain Due Diligence Act (LkSG) will be subject to a reporting obligation. To facilitate the timely and complete implementation of this obligation, BAFA has now published a catalogue of questions that provides a detailed insight into the structure and content of the reporting expected by the authorities. In the following, we briefly outline the most important components and added values of this questionnaire.

Significance

Pursuant to Sec. 10 (2) LkSG, affected companies must prepare a report on the fulfillment of their due diligence obligations every fiscal year and make it available to the public and to BAFA. BAFA will examine these reports, Section 13 (1) LkSG. The reporting obligation is considered a core element of the LkSG, as it requires companies to account to the public for any risks they have identified and how they are complying with their due diligence obligations. The reporting obligation begins on January 1, 2023, and the first reports must be completed no later than four months after the end of the fiscal year. The published questionnaire is intended as an aid to companies concerned, as they can review their previous considerations regarding the reporting obligation to determine whether the information required by BAFA is available or can still be obtained.

Overview

The published questionnaire is intended to reflect the questionnaire that will be made available in the form of an electronic portal on the BAFA website in January. This allows the companies concerned to familiarize themselves with its content in advance. The questionnaire will contain open and multiple-choice questions. By answering these questions completely and truthfully and by publishing the generated report, the companies fulfill their reporting obligation.

In particular, it must be stated whether and, if so, which risks or due diligence violations the company have been identified, which measures have been taken in regard to its legal obligations, how the effectiveness of these measures is evaluated and what conclusions are to be drawn from these assessments for further measures. In addition, companies can make voluntary disclosures, although these are explicitly labeled as such in the catalog and are generally not published.

Non-answering of questions

The factsheet provided by BAFA makes it clear that information is only to be provided if and to the extent that it does not constitute trade or business secrets. Otherwise, limited disclosures are possible. In the case of a possible right to refuse

to provide information, the submission of the report is technologically possible despite the omission of answers. If a question is answered in the negative, a free text field is usually available to explain the circumstances in more detail. This (voluntary) option should be used, as plausible explanations are taken into account appropriately by BAFA.

Content

The questionnaire is divided into several sections, whereby the first section asks for master data on the company and on the report. In the following, an abbreviated or a full report is possible, whereby the full report becomes necessary as soon as risks or breaches of due diligence have been identified. The abbreviated report only requires a comprehensible disclosure of the risk analysis as well as for information on the corporate structure to be provided. The full report requires information on the anchoring of risk management, a detailed description of the risk analysis, a description of the preventive or remedial measures, corresponding testing of efficacy and explanations on the offer of a complaints procedure.

The annex to the questionnaire contains a glossary that defines important terms such as *adequacy*, *affected party*, *control measure* or *risk profile* in accordance with the LkSG or other sources.

Conclusion

As the reporting deadline of four months after the end of the fiscal year is not particularly long to prepare and submit a comprehensive report, the companies concerned should take advantage of the opportunity and, in addition to their own considerations to date, examine in detail the questions made available by BAFA. A thorough "test run" can shed light on what information still needs to be compiled. BAFA states that it is aware that, particularly in the first reporting year, all parties are still gathering experience and that a wide variety of constellations must be considered. Therefore, free text fields will often be made available for companies to specify their respective circumstances in order to adequately acknowledge those complex and company-specific structures that may still be in process.

The questionnaire can be found [here](#) (in German).

BLOMSTEIN will closely monitor and provide information on further developments regarding the LkSG. If you have any questions about the potential impact on your company or your industry, [Florian Wolf](#) and [Anna Huttenlauch](#) will be pleased to assist you at any time.