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NEWSLETTER SLOVAKIA

SETTING FOUNDATIONS

Issue:
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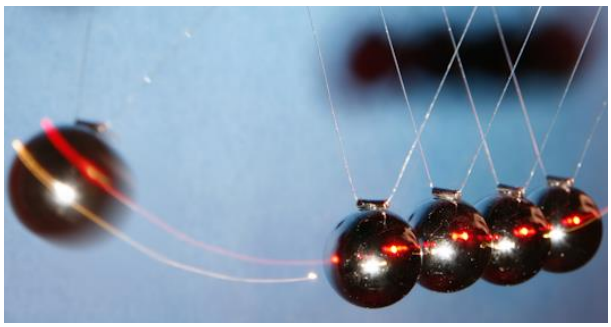
→ Law

German law on due diligence in supply chains

As of 1 January 2023, the German law "Lieferkettensorgfaltspflichtengesetz" - the Due Diligence in Supply Chains Act (LkSG Act) - entered into force, the main features of which are summarised in this article. Germany has thus become another country (e.g. France, the UK, the Netherlands, etc.) that has adopted a comprehensive set of measures regarding the responsibility to protect human rights and the environment in supply chains. However, this law does not only apply to German companies, but has a broader impact - it may also influence Slovak companies that would be in the position of a direct or indirect supplier.



Which entrepreneurs are subject to the LkSG?

The LkSG applies to entrepreneurs with their registered office or head office in Germany as well as to foreign branches (organisational entities) located in Germany. In 2023, the law first applied to entrepreneurs with at least 3,000 employees in Germany and from 1 January 2024 the scope has been extended and now it applies to entrepreneurs with at least 1,000 employees. This number includes not only employees directly in Germany but also employees posted abroad.

The supply chain covers all products and services of the entrepreneur - it includes all stages in Germany and abroad that are necessary for production and provision of services, from the extraction of raw materials to the delivery to the final customer, and it includes

- activities of the entrepreneur in its own field of business,
- activities of direct suppliers, and
- activities of indirect suppliers.

This includes all activities relating to production and use of products and provision of services, whether carried out in Germany or abroad. Direct supplier means a party to a contract for the supply of goods or services whose supply is necessary for the production of the entrepreneur's product or for the provision and use of the service in question. An indirect supplier is any entity which is not a direct supplier and whose deliveries are necessary for the production of the entrepreneur's product or for the provision and use of the service in question. In relation to the indirect supplier a narrower range of obligations (a system to allow complaints and, where applicable, risk management) is applicable; however, in cases where the entrepreneur has abused the arrangement of the relationship with the direct supplier or has entered into a transaction to circumvent the due diligence requirements in relation to the direct supplier, the indirect supplier will be considered to be direct supplier to the full extent.

What precautions must be taken by the obliged persons?

These are obligations of a preventive nature, monitoring obligations and the obligation to remedy the violation.

Businesses are required to implement in their supply chains measures and due diligence with respect to human rights and the environment to prevent or minimise human rights or environmental risks or to end violations. These measures should include a system to allow complaints from indirect suppliers. Businesses are obliged to ensure compliance with human rights and environmental protection in supply chains, which is specified in particular in the area of labour law, e.g. prohibition of child labour, prohibition of forced labour, prohibition of discrimination, compliance with occupational health and safety, sustainability and environmentally friendly production practices, etc.

Businesses are required to introduce processes and measures necessary to (i) manage and identify risks, (ii) analyse them, (iii) prevent and (iv) remedy breaches, both in their own operations in Germany and abroad, as well as in their domestic supply chains, including international suppliers.

In the area of prevention, the entrepreneur must incorporate appropriate preventive measures vis-à-vis the direct supplier, in particular:

- Taking human rights and environmental expectations into account when selecting a direct supplier,
- Contractual assurances from the direct supplier that it will meet the human rights and environmental expectations required by the management of the entrepreneur and address them appropriately within the supply chain,
- Conducting training and education to enforce the direct supplier's contractual assurances

A risk analysis must be carried out by the entrepreneur on an annual basis, as well as on an ad hoc basis if the entrepreneur shall expect a significant change or significant increase of risk situations in the supply chain, for example as a result of the introduction of new products, projects or a new area of business.

If an entrepreneur becomes aware that a violation or risk of violation of human rights or environmental obligations has occurred in its business area or with a direct supplier, it shall immediately take appropriate corrective action, in particular in order to bring the violation to an end. In certain cases, it may also be necessary for the entrepreneur to terminate the business relationship if

- the breach of the protected right or environmental obligation is considered to be very serious,
- the implementation of the measures set out in the draft procedure does not lead to the situation being rectified after the time specified in the draft procedure has elapsed,
- other less stringent means are not available to the entrepreneur and increasing its influence will not seem to be sufficient.

The compliance of the entrepreneur with the obligations laid down in the LkSG shall be documented on an ongoing basis. The documentation must be kept for at least seven years after its creation. The entrepreneur must draw up an annual report on the fulfilment of the due diligence obligations for the previous financial year and publish it free of charge on a website no later than four months after the end of the financial year for a period of seven years. These reports shall also be delivered electronically to the competent authority.

What are the sanctions?

In the event of breaches of the obligations defined in the LkSG, the competent authority may impose fines on the entrepreneur (organisational unit) according to the type of obligation breached, in the range of up to EUR 100,000, up to EUR 400,000 and up to EUR 800,000; in certain cases, a fine of up to 2 per cent of the turnover is possible for an entrepreneur with an average annual turnover of more than EUR 400 million, and, alternatively, under certain conditions, participation in public tenders in Germany may be prohibited. However, the law expressly excludes the possibility of liability under civil law in the event of a breach of the obligations set out therein. If liability under civil law would arise on other legal grounds, the assertion of such claims is not precluded.

Last but not least, we would like to inform you that on 24 April 2024 the EU Supply Chain Directive was approved by the European Parliament, which is to be implemented in the legal systems of the Member States by 2026 and which contains more comprehensive regulation than the German LkSG.

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→ **Law**

Employers, get ready for total transparency in pay!

Women in the EU earn on average 13 per cent less than their male counterparts. This gender pay gap has largely stagnated over the last decade. This is despite the fact that the prohibition of discrimination on the grounds of sex (in all aspects and conditions of pay) is laid down in Article 4 of Directive 2006/54/EC and the principle of equal pay is enshrined in Article 157 of the Treaty on the Functioning of the European Union. It requires Member States to ensure 'the application of the principle of equal pay to male and female workers for equal work or work of equal value'.

While equal pay for equal work or work of equal value for men and women is already enshrined in our Labour Code in Sec. 119a, Directive (EU) 2023/970 on strengthening the

principle of equal pay for equal work or work of equal value for men and women through pay transparency and enforcement mechanisms, which was approved by the European Parliament last year, goes several steps further.

The Directive goes beyond mere equal pay monitoring and contains a series of binding measures. It is to be transposed into national law within three years of its adoption. That leaves just two years to go. Those companies that actively prepare for a smooth transition and start addressing this issue today will therefore have a major advantage.

The measures will affect both public and private sector employers as well as all employees who have an employment contract or employment relationship defined by law, collective agreement and/or practice.

What is the aim of the directive?

The directive aims to introduce binding measures as well as sanctions in the area of transparent and equal pay.

These measures must, among other things, promote compliance with the principle of equal pay for equal work or work of equal value between men and women. The Slovak Labour Code considers equal work or work of equal value to be work of equal or comparable complexity, responsibility and exertion, which is performed under the same or comparable working conditions and with the same or comparable performance and results of work in an employment relationship with the same employer.

The assessment of comparable work is to be based on various criteria including soft skills (as for example pleasant demeanour, empathetic communication or patient approach), effort, responsibility and working conditions and other criteria relevant to the particular job or position. The criteria must be applied in an objective, gender-neutral manner that excludes any direct or indirect discrimination on the basis of sex.

Measures introduced under the Directive will have to prohibit any direct or indirect discrimination in pay on grounds of sex.

What does this mean in practice?

All stakeholders will have their obligations and their role to play as a result of the transposition of the new Directive.

European Union (EU) Member States shall ensure that employers have pay structures that exclude any discrimination in pay on the grounds of sex. They shall ensure that analytical tools or methodologies are available to assess and compare the value of different jobs at employer level. Provide technical assistance and training to help employers with fewer than 250 employees to comply with the requirements of the Directive.

Member States shall adopt remedies and means of enforcement. They will have to ensure that workers have the right to go to court to enforce their rights to equal pay if a settlement cannot be reached. Currently, the anti-discrimination law already has a solid basis in the Slovak legal order, on the basis of which it is possible to file so-called anti-discrimination lawsuits.

States will also have to ensure that associations, organisations, equality bodies, workers' representatives and other persons with a legitimate interest in ensuring equality between men and women are able to participate in administrative or judicial proceedings and thus have adequate resources to carry out their functions effectively in relation to compliance with the right to equal pay. In Slovakia, the Slovak National Centre for Human Rights will be the main equality institution.

In addition, the proposal reinforces the existing minimum standards on sanctions in the event of breaches. Member States will have to lay down specific sanctions, which should be effective, proportionate and dissuasive. Sanctions must include fines. Compensation must not be limited by the imposition of a cap.

Furthermore, Member States must ensure consistent and coordinated monitoring and support for the application of the principle of equal pay. From 31 January 2028, States will have to provide Eurostat with national data to calculate the gender pay gap on an annual basis.

The employers' criteria used to determine wages, pay levels and pay progression must be objective and gender-neutral and must be made readily available to workers.

Further, employers will have to inform all their employees annually of their right to request and receive in writing information on their

individual pay and the average gender-disaggregated pay level for colleagues performing the same work or work of equal value.

Employers with at least 100 employees will have a reporting obligation - they will be required to provide and publish information on the gender pay gap and the proportion of male and female employees who receive additional or variable components (this requirement will be phased in from 7 June 2027 for employers with more than 100 employees, depending on the size of the business). Those with a gender pay gap of at least 5 per cent that cannot be justified by objective, gender-neutral criteria and that is not eliminated within 6 months will be required to carry out a pay review in cooperation with employee representatives - to identify, remedy and ensure the prevention of discriminatory pay gaps.

If employers are prosecuted, they will bear the burden of proof. Employers will have to prove that there has been no discrimination and provide all relevant evidence. The limitation period for bringing an equal pay claim will be at least 3 years.

Future employers will need to ensure that vacancy notices and job titles are gender-neutral and that recruitment practices are non-discriminatory. Before the interview, they will be obliged to provide job applicants with information on the starting salary for the job or its scope and, where applicable, details of the collective agreement provisions applied by the employer in relation to the job. Employers will be required to disclose salary ranges and will be prohibited from asking about an applicant's salary history.

Employees will have the right to request (directly or through their employee representatives or national equality body) information on their individual pay levels and the average pay level, broken down by gender, for categories of employees who do the same work as them or work of equal value to them.

Employees will not be prevented from providing information about their pay for the purposes of enforcing the principle of equal pay. Employees whose rights are violated will be able to claim full compensation, including wage compensation, related bonuses or payments in kind, compensation for loss of opportunity, compensation for non-pecuniary damage, damages, and interest on late payments.

All economic operators in the performance of public contracts or concessions (including the subcontracting chain) will have to comply with the obligations relating to the principle of equal pay.

What you can do today?

Although the transposition of the Directive is still 2 years away, in this case the prepared will have the advantage.

The first step would be to review your job structure and remuneration structure. An up-to-date and accurate job structure forms the basis for a fair and transparent remuneration system. Simply assigning jobs to a hierarchy based on salary levels, subordination, or a salary comparison report is not enough. You need to use an approach that delivers a clear understanding and identification of the same work across the business.

As a second step, we recommend that you conduct a thorough pay equity analysis to identify any gender pay gaps for the same job categories and take corrective action where pay gaps are greater than 5 per cent. Start using gender-neutral tools and benchmarks to compare pay levels now, including gender-neutral job evaluation and classification systems.

Review your internal Diversity, Equity and Inclusion (DEI) guidelines and policies to ensure they are fair and equitable. Improving these policies can foster a culture of fairness and equality, which will help attract and retain top talent. Be prepared that any internal documents regarding employee pay decisions, including any guidance to help managers make decisions, need to be made available to employees in the future. You may want to modify them in the meantime.

Make managers and HR staff aware of the guidelines and the DEI policies in place through training to ensure that these standards are applied.

If you are going to justify any pay differentials with objective criteria, such as job performance or market premiums, now is a good time to review your existing performance management process to make sure it is robust, with a documented set of results, and consistent across the business before it is implemented. Also consider whether you have sufficient confidence in your market premium data and whether it is up to date.

Since when do the rules apply?

The Directive must be transposed into national law by 7 June 2026. From that date, the above rules should also apply. However, Member States may apply more favourable conditions for employees than those set out in the Directive immediately.

Conclusion

Not only in the EU, but also worldwide, organisations are striving for equal pay. They are taking into account the growing pressure from governments, activist investors and employees and are realising the benefits in terms of attracting and retaining the best talent they need to achieve their business objectives. Offering equal pay for equal work is a hot topic, and according to many, "it's the right thing to do and long overdue." However, it has its pitfalls. Employers will need to allocate budgets and HR teams to comply with the new rules too. It will also not be easy to ensure complete fairness in remuneration, as each employee comes with a different work history, different performance, different skills and abilities, etc. Last but not least, maximum transparency of remuneration criteria may cause other problems. Existing employees identified the publication of salary ranges in job advertisements as the biggest source of dissatisfaction, as they saw roles they considered similar to their own being advertised at higher salary levels. They felt as though they were being punished for their loyalty. Tackling this problem will be difficult in a high inflation environment where candidates' salaries are rising but internal budgets for annual pay rises are struggling to keep up.

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