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THE ESSENTIALS of grievance mechanisms



**A guide to establishing complaints procedures
in line with the German Supply Chain Act**

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EXECUTIVE SUMMARY

Businesses play a central role in shaping societies and economies. As companies strive for growth and success, it is critical to recognise the responsibility that comes with influence. Grievance mechanisms play a crucial role in enabling businesses to address adverse human rights impacts, now a strategic imperative for any company committed to responsible business conduct.

In this article, we present the benefits of having a grievance mechanism and answer questions that businesses often have when establishing one.

The German Supply Chain Due Diligence Act (LkSG), which came into force in January 2023, requires companies that fall within its scope to identify and mitigate human rights and environmental risks and violations in their own operations and supply chains. As part of their obligations, companies must establish a grievance mechanism through which concerns about human rights and environmental risks and harms can be raised in a secure manner for the complainant and directly to the company.



An effective grievance mechanism acts as an early risk warning system for companies, allowing them to act before problems escalate.

Navigating the complex landscape of regulatory requirements and societal expectations for establishing an effective grievance mechanism can be a daunting challenge. To provide valuable assistance to organisations undertaking this important task, we have compiled answers to common questions that typically arise during the process.

There are several reasons for establishing a robust grievance mechanism within any organisation



1. Protecting your reputation

A company with a proactive approach to human rights protects its reputation. By addressing grievances promptly, you demonstrate a commitment to responsible business practices. This resonates positively with customers, investors and partners.



2. Improving employee well-being

A safe and respectful work environment promotes well-being and productivity. Grievance mechanisms provide a channel for employees to voice concerns, enabling a culture of trust and well-being.



3. Mitigating risks

Ignoring human rights violations can lead to legal liabilities, boycotts and brand damage. Implementing grievance mechanisms helps to identify and address issues early, minimising potential risks.



4. Supporting sustainable supply chains

Ensure that your suppliers comply with human rights standards. By setting up grievance mechanisms, you create a transparent process for stakeholders at all levels to report concerns.



5. Fostering innovation

An open and inclusive workplace encourages diverse perspectives, leading to innovative solutions. Grievance mechanisms empower employees to contribute without fear of repercussions.



GLOS·SA·RY (subst)

Channel

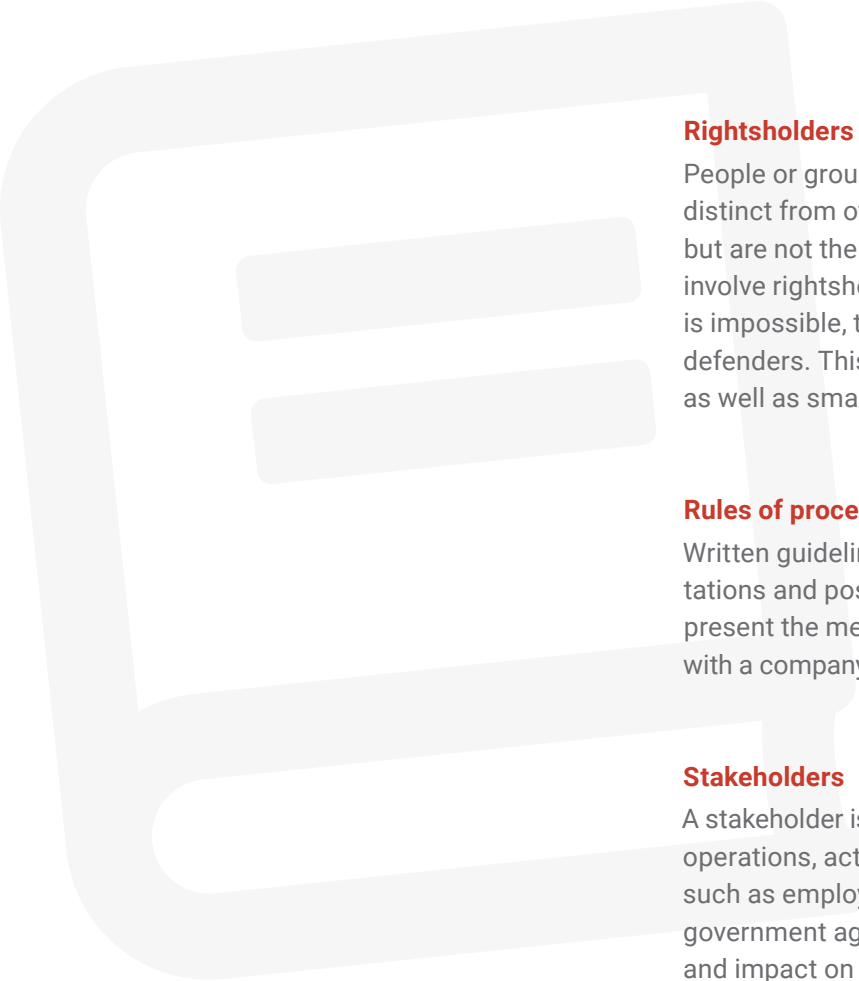
The point of contact for communicating the complaint to the company. This can take the form of an online platform, a hotline, an ombudsman etc. It is therefore a tool, part of a mechanism. Given the complexity of globalised supply chains, a single mechanism may have different entry points, depending on the reality of the various target groups.

Grievance management system

In some cases, given the existence of well-established (regional or sectoral) grievance mechanisms or the complexity of reaching certain target groups, companies may choose to participate in, or establish, multiple grievance mechanisms, both with decentralised intake and case handling, especially for cases along supply chains. This scenario can also be complemented by technical and local experts and organisations partnering with companies to assist with both fact-finding and remediation. This network of processes, guidelines, organisations and actors can be viewed from the company's point of view as a grievance management system.

Grievance mechanism

A routinised process for receiving, assessing, addressing and documenting each grievance received through designated channels. In addition to addressing individual grievances, a grievance mechanism, as outlined in the LkSG, requires an evaluation of the overall effectiveness of the mechanism as well as integrating the results into the company's human rights due diligence process.



Rightsholders

People or groups whose human rights are directly affected by a company's activities. They are distinct from other stakeholders, such as civil society groups and NGOs, who may provide insight but are not themselves rightsholders. All rightsholders are stakeholders. Companies should involve rightsholders by consulting them directly. However, in situations where direct consultation is impossible, they can use alternatives, such as experts, organisations or human rights defenders. This typically means involving large, well-known, national and international groups as well as smaller local groups.

Rules of procedure

Written guidelines for how the mechanism operates. They outline the steps and define the expectations and possibilities for both the users and the operators of the mechanism. They serve to present the mechanism to external audiences and, for many people, are the first point of contact with a company. Since they can be long and complex, it is good practice to provide "simple versions".

Stakeholders

A stakeholder is an individual, group, organisation or entity that affects or is affected by a company's operations, activities and products, either directly or indirectly. They can include individuals such as employees, customers, investors, suppliers, local communities, regulatory authorities, government agencies and others. Stakeholders often have varying degrees of influence and impact on the project or organisation, and their interests can cover a wide range of areas, including financial, social, environmental, ethical and others.

1

What is a grievance mechanism? How is it different from a complaints mechanism?

A grievance mechanism is a tool for your company to receive, assess, remedy and document human rights risks and adverse impacts that may arise from business activities.

In the UNGPs framework, a “grievance mechanism” refers to a routinised process for raising concerns about adverse human rights impacts linked to business activities and for seeking solutions to them.¹ The mechanisms can take a variety of forms, be it state-based or non-state-based, judicial or non-judicial, and together, they form a broader web of remedies for affected individuals.

Within this web, the UNGPs require the establishment of “operational level grievance mechanisms” (OLGM), typically managed by companies. They are directly accessible to potentially affected individuals and communities and can be used to communicate risks or actual impacts related to the company’s activities.

There are also non-state-based grievance mechanisms in multi-stakeholder initiatives (MSIs). These mechanisms exist outside of companies and are established based on mutually agreed sets of commitments to which the parties involved adhere. They typically bring together different companies operating in the same region, or in the same sector, and provide a single channel through which affected people can lodge complaints. This simplifies access for victims and prevents companies from having to duplicate their effort.

¹ OHCHR, 2011, p. 27



Grievance mechanism

The term “grievance mechanism” was originally used in a broader sense. Today, it usually refers to non-state-based mechanisms in the day-to-day work of human rights due diligence, such as internal company mechanisms (OLGMs) or external mechanisms in multi-stakeholder initiatives.

Different names,
same idea

Section 8 of the German Supply Chain Due Diligence Act (LkSG) also follows along this line, stipulating that **companies are obliged to set up an “internal complaints procedure”**. This procedure must enable the reporting of human rights and environmental risks and violations arising from their business activities, whether in their own business operations or those of a direct or indirect supplier.

LkSGP

Although the UNGP and the LkSG use different names, the idea is the same: to provide a way to receive, investigate and remedy adverse human rights impacts arising from business activities. Therefore, both terms can be used interchangeably in this context.

A grievance (or complaint) mechanism is not just an entry point for receiving information. It requires transparent rules, embodied in a process with a beginning, a middle and an end. For companies, that means that they need to focus not only on the writing of the rules of procedure, but also on considering how the mechanism will be embedded in the company's governance and business practices. In this way, they can **avoid the common pitfall of having a grievance mechanism that is stronger in design than in operation.**

2

What are the requirements of a grievance mechanism? Is it enough to publish rules of procedure?

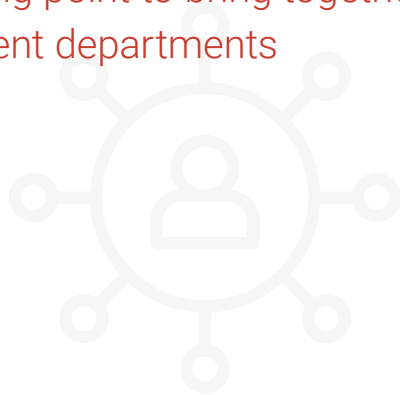
The LkSG requires companies to either have an internal grievance mechanism or to participate in an appropriate external mechanism. When setting up such a mechanism or evaluating an external one, several legal requirements must be met.

An essential part of the mechanism's structure is its rules of procedure, which must be available to the public in written form. This document must provide clear and accessible information on the following points:

- The possibility of reporting on human rights and environmental risks and violations arising from a company's operations or supply chain.
- When and how a confirmation of receipt will be sent to the reporting person.
- The available access channels (e.g. website, email, hotline)
- The responsibility for implementation, e.g. which department(s) are responsible for the complaint procedure and who the contact persons are.
- The need for the case handler to discuss the facts with the reporter, using a dialogue-based approach whenever possible.
- The guarantee of impartiality, independence and confidentiality of and by the case handler, who is not bound by instructions.
- The possibility of maintaining the confidentiality of identity and anonymity of reports.
- The guarantee of effective protection against retaliation or punishment for making a complaint.
- The availability of a procedure for the consensual resolution of disputes.



Discussing the rules of procedure can be a great starting point to bring together different departments



The mechanism must be accessible to all potentially affected persons and take into account the specific target groups identified in the company's risk assessment. This may require different solutions for different companies and target groups, such as multiple access points: hotlines, web-sites or a local contact person.

While rules of procedure are essential, **an effective complaints mechanism also requires capacity building and a comprehensive roll-out**. Information about the mechanism needs to be clear, understandable and appropriately promoted to the target audiences. This may take the form of providing "simple versions" of the policies, using visual aids such as processes and flowcharts, actively engaging with target groups during the roll-out and training own employees and suppliers on the grievance mechanism.

Rules of procedure guide the implementation of the mechanism, and companies need to establish internal processes to meet the written requirements. **The process of discussing the rules of procedure can in fact be a starting point, an opportunity to bring together different departments that need to be involved in the governance and processes that make the complaints mechanism work.**

It is therefore essential that **companies allocate financial resources and designate responsible employees and departments to handle complaints**. These persons should be adequately trained and have the independence and time to understand, assess and discuss the situation with the reporter.

Another requirement is for the **effectiveness of the grievance handling process to be reviewed at least annually and on an ad hoc basis** when significant changes or expansion of risks are expected, such as the introduction of new products or new lines of business. The effectiveness criteria in Guiding Principle 31 of the UNGPs can be used as a reference for this evaluation. This means assessing, among other things, whether the mechanism is accessible and known to potential users, whether it is trusted by the stakeholders, which makes it legitimate, and whether it is compatible with users' rights.

Finally, **it is necessary to document** all complaints and proceedings that take place through official channels, collecting information such as the number of grievances, topics and duration of the process. In this way, the results of the grievance mechanism can be fed back to the company as information for adapting the due diligence process.

A closer look on whistleblowing mechanisms

² Deloitte. Die Umsetzung des LkSG: Eine Untersuchung von Unternehmen im DAX 40, MDAX und SDAX nach Inkrafttreten des LkSG. Retrieved from: https://www.dai.de/fileadmin/user_upload/Kurzstudie_LkSG_Juni_2023.pdf

3 What is the difference between the whistleblowing mechanism the EU Whistleblowing Directive stipulates, and the grievance mechanism required under the LkSG? What do I need to consider if I want to use what I already have in place for whistleblowing?

When planning the implementation of the grievance mechanism in line with the LkSG, it is common for companies to start by identifying what is already in place and could be adapted to facilitate the implementation of the new mechanism, e.g., by using channels that are already known to potential users.

Due to its more comprehensive approach, many companies under the LkSG already had whistleblowing mechanisms in place in line with the EU Whistleblowing Directive, implemented domestically in Germany with the Hinweisgeberschutzgesetz (HinSchG), in force since July 2023. In order to simplify procedures and reduce costs, many companies are therefore deciding to adapt and merge whistleblowing and grievance mechanisms, usually under platforms designed for the former.

However, it is worth noting, for example, that both the **topical scope and the target groups of the LkSG are much broader than those of the Whistleblower Directive**. This means that many widely used platforms designed as entry channels for whistleblowing purposes will need to be carefully adapted and, in some cases, complemented by other (offline) channels in order to meet the accessibility requirements of the LkSG. In particular, the audience of the LkSG is potentially more vulnerable and may include, among others, people in different countries, from different socio-economic backgrounds, with or without access to computers or the internet.



Did you know?

A 2023 survey of companies listed on the German stock exchanges DAX 40, MDAX and SDAX revealed that the majority of the participating companies have a general reporting system in which reports under the LkSG are also submitted and recorded. Of the companies surveyed, 14 percent stated that they have separate reporting systems for LkSG and HinSchG reports. ²

4

I want to set up a grievance mechanism. Where do I start?

Before you begin, it's important to map out what is already available to businesses and known by potential users. It is also necessary for companies to engage in a critical analysis of this process, because although these two pieces of legislation have many requirements in common, there are also differences that need to be considered to ensure the effectiveness and accessibility of this combination.

The first step in ensuring the effectiveness of your company's complaints mechanism is to conduct a human risk analysis to identify potential users and target groups. This will enable you to carry out a gap assessment of the mechanism and determine whether what you have in place meets the needs of rightsholders or whether improvements are needed. A strategy for implementing these improvements can then be designed and implemented.

Löning can support your company in all these steps – from risk analysis and gap assessment to tailor-made design and support in the implementation or improvement of the grievance mechanism, including which service provider best suits your and the rightsholder's needs.

Before going live with the grievance mechanism, it is important for your company to be well prepared for when a complaint comes in. For the process to run smoothly, it is essential to have a clear idea of the complaint handling process and the responsibilities within. That way, even if there are different entry points, all grievances will be handled as part of a consistent process.

Löning can support your
company in all these steps –
[contact us](#)

5 My company has received a complaint. Where do I start? What do I need to know about case handling?

When a complaint is received, the first step is to assess the information that is available: is the subject matter of the reported information covered by the LkSG? Does it relate to your company's activities? Do you need more information to establish these facts?

If the preliminary assessment of the complaint report leads to a decision to investigate the matter, it's important to document this decision. It may be helpful to develop an internal investigation mandate template that can serve as a guide for those who will be responsible for handling complaints.

Most of the issues that will need to be addressed in the investigation mandate will be covered by the Rules of Procedure – such as the department responsible for handling the reports and a proposed timeframe. In any case, the persons responsible for managing the cases must be given adequate training, time and resources to fulfil their duties.

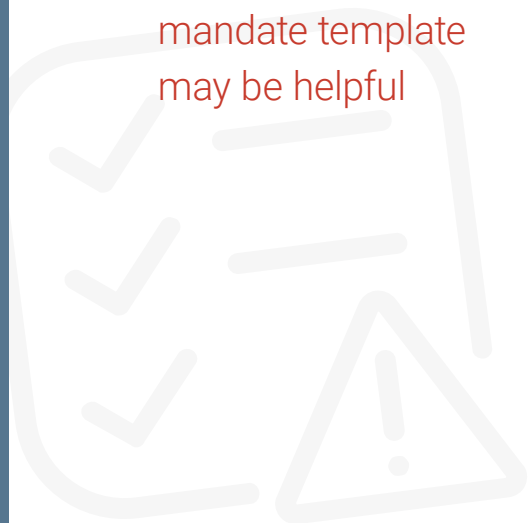
Specialised organisations and experts can be engaged to assist the company with complex investigations. Companies also have the option of completely outsourcing the handling of complaints to specialised organisations.

As the case progresses, it may be determined that a risk or violation has occurred, leading to the development of a remediation plan. Alternatively, the information available may not allow this conclusion to be reached, resulting in the case being closed. A final report of actions taken and findings should be made available. To ensure that there is no retaliation following a complaint, it is also advisable to maintain contact with the complainant where possible.

It is important to understand that, as dynamic and ongoing processes, the development of the mechanism, the handling of complaints and the review of the effectiveness of the mechanism will often overlap in time and complement each other.

In any case, **it is essential at each stage – from confirmation of receipt to communication of findings and implementation of remedial measures – for a continuous exchange with the reporting person to take place, allowing for a dialogue-based approach focused on the needs of rightsholders.**

Developing an
internal investigation
mandate template
may be helpful



6 What is a dialogue-based approach? Is it different from the amicable settlement mentioned in the LkSG?

Grievance mechanisms should be based on engagement and dialogue, with a focus on finding mutually agreed-upon solutions through dialogue. This means that:

- the stakeholders for whom it is intended are consulted on its design and operation, and
- the complaints mechanism focuses on dialogue as a means of addressing and resolving grievances in collaboration with the reporter and those affected.

A dialogue-based approach strengthens the legitimacy of the mechanism, as a company should not be simultaneously both the subject of complaints and unilaterally determine their outcome. Offering a consensual approach to dispute resolution means that the parties are given the opportunity to take control of the conflict and find a solution that best suits their interests.

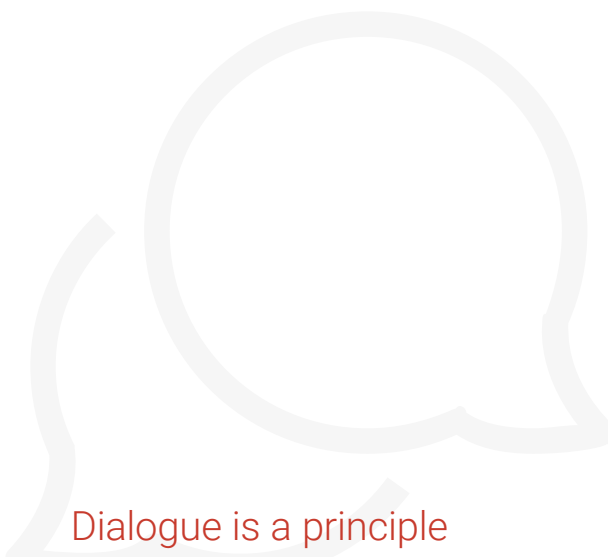
Good practices
in establishing and
performing
dialogue-based
approaches include:

1. Implementing and reviewing the mechanism

- Developing an understanding of the local context of the target groups and business partners. For example, learning about existing dialogue and decision-making structures.
- Consulting stakeholders about their needs and expectations. Reaching out to local experts and representatives to develop strategies for consultation strategies (e.g. trade unions and civil society organisations).
- Providing multiple avenues and opportunities for rightsholders to share their views. A grievance mechanism does not preclude active stakeholder engagement.

2. Clarifying the facts; working out a solution; implementing remedial measures (complaint handling)

- Training and supporting mechanism staff in dialogue-based methods of complaint resolution. For example, drawing on best practices in mediation.
- Using joint fact-finding and problem-solving methods wherever possible and appropriate.
- Considering the possibility of using consensual dispute resolution, with the use of external facilitators.
- Using independent third-party facilitators where necessary, for example when a consensual solution cannot be reached, and adjudication is required.



Dialogue is a principle that encompasses all phases of the handling of a complaint

A common challenge for companies is how to reach rightsholders and ensure effective dialogue. In many cases, NGOs and other civil society organisations support the establishment of grievance mechanisms, the handling of complaints and the implementation of remedial measures. Working with these organisations can be helpful as they are often in direct contact with those affected.

Works councils and other employee representatives should also be involved in developing your grievance mechanism. They have often already established channels through which workers can raise grievances and are aware of the needs of your potential complainants. Communicating with these groups can help you avoid duplication and inefficiency.

Dialogue is a principle that encompasses all phases of the handling of a complaint and the development of the complaint mechanism itself, as evidenced by the need to “discuss the facts of the case with the person making the allegation”, as mentioned in the LkSG.

In order to reinforce this approach, the LkSG also provides for the possibility of offering an amicable settlement option to those concerned, which may take the form of various consensual dispute resolution methods, such as mediation by an independent third party. This enables a structured, voluntary process with the support of an independent third party, such as a mediator, through which the parties can explore interests and creative solutions to problems and develop remedial or preventive measures that are supported by all parties.



Dialogue should take into consideration:

- the scope of the mechanism;
- the language and methods of communication;
- the means of raising grievances;
- the location, timing and nature (online or offline) of meetings; and
- the involvement of independent external facilitators.

7

How do you deal with grievances regarding the actions of suppliers?

If a direct supplier is found to have caused human rights or environmental harm, the LkSG requires companies to take steps to end or minimise the harm within a clear timeframe. It is the responsibility of the buyer to implement the provisions of the LkSG, and to do so they will need the collaboration of their business partners and must always consult with the affected people and their representatives. All actions should be seen as a way of working with suppliers, based on close communication, shared responsibility, setting expectations and documentation.

In addition to establishing mechanisms at the company level, effective grievance management therefore also involves encouraging and, where appropriate, assisting suppliers and business partners in establishing effective grievance mechanisms and in managing grievances themselves, so that problems can be dealt with effectively when they arise.

To achieve this, you should communicate your expectations to suppliers, for example by including such requirements in contracts or your supplier code of conduct. With higher-risk suppliers, it is worth having an in-depth dialogue, asking questions such as:

How would you know if a worker felt they were being mistreated in your company?

What are the main complaints you have received from employees, workers or communities in recent months?

How are these communicated to you?

How are the complaints currently being dealt with?

What were the outcomes, and did you change any policies or procedures as a result?

With what outcome?

Establishing an open dialogue with your suppliers also helps to increase leverage – the ability to influence or change supplier actions. Companies should include efforts to increase leverage in uncooperative scenarios. If a supplier is confirmed to be involved in a human-rights violation or risk of a violation and refuses to collaborate, makes little or no progress in remediation and/or shows a lack of commitment, an escalation policy can be put in place. This policy serves to prevent recurrence and fulfils your responsibility to aid remediation throughout the supply chain. If the supplier does not follow the steps, they should be notified that the business relationship could be negatively affected.

In this regard, it is important to reiterate that the LkSG only requires companies to terminate business relationships with their suppliers in extreme circumstances, as a last resort. The guiding principle is:

“Build capacity,
not end relationships.”



8

What is remediation?

How can I implement remedial action?

When adverse human rights and environmental impacts occur, companies have a responsibility to provide or contribute to remedial action. The aim of remediation is to counteract or compensate for human rights violations that have occurred. Remedial measures can take a variety of forms, and can also be combined. This includes restitution, financial or non-financial compensation, rehabilitation and satisfaction, as well as the establishment of guarantees of non-repetition. It is important for the appropriate solution for each case to be determined in dialogue with the affected people, their representative and, where appropriate, suppliers.

In order to be effective,
the remedial measures should take
into account several aspects:

- The measures seek to remedy situations that expose people and the environment to potential or actual harm by bringing them closer to their previous unaffected situation.
- They help to prevent future harm.
- They are not just an outcome, but a process that gives agency to the harmed person and works towards restoring the dignity lost through the harm.
- Where a violation has occurred and the company has **caused or contributed** to it, **the company's obligations include remediation or a contribution to remediation.**
- Similarly, **where a company has not directly caused** the adverse impacts – which may be the case for violations along the supply chain, the concept of **leverage becomes relevant.**

LkSG requirements

Important:

compensation is not required, but supported.

IN OWN AREA OF BUSINESS

In Germany: remediation **must** bring harm to end. Abroad and/or affiliated: **should** usually bring to end.

Take action to prevent, end or minimize the violation.

DIRECT SUPPLIER

If violation cannot be immediately ended: **draw up and implement a concept** with time-frame, for ending or minimizing the violation.

INDIRECT SUPPLIER

In the event of substantiated knowledge of harm: **take preventive actions**, such as support in the prevention and avoidance of a risk and implement a prevention, cessation or minimization concept.

When it comes to the different forms remedial action can take, it is important to note that, although the LkSG does not require compensation as a remedial measure, the BAFA has indicated that efforts in this direction will be taken into account when setting fines in cases where an infringement of the law is found.

Finally, as with other aspects of case handling, preparation is a key aspect of effective remediation. If you have identified particularly serious issues (such as modern slavery or child labour) for your company, it is important to identify and liaise with organisations (NGOs, counselling centres, industry initiatives) that can help provide appropriate support to those affected. These networks should be identified with a view to the specific human rights risks of your business.

Liaise with organisations
that can help provide
appropriate support to
those affected

What needs to be documented and reported?

Can the documentation of complaints be used to improve a company's human rights due diligence?

The purpose of a grievance mechanism is:

first,

to enable stakeholders (including local communities) to raise concerns and provide timely feedback about adverse human rights impacts that a company's activities may be causing or contributing to;

second,

to allow these stakeholders to seek redress if the adverse impacts have already occurred;

third,

to complement the company's human rights due diligence process by acting as an "early warning system" and source of knowledge. To this end, thorough documentation and verification of effectiveness are essential.

As part of the company's internal documentation obligation under Section 10 of the LkSG – as well as the annual reporting obligation – companies are required to continuously document and publicly report on both complaints received and the implementation and effectiveness of preventive and remedial measures. Relevant information to collect on the implementation and effectiveness of the mechanism includes:

- Whether you received any grievance reports during the reporting period.
- If so, how many grievances were received, what was the content of the communications, how long it took to process the case and what was the outcome.
- What were the subjects of the complaints received.
- What were the findings, the lessons learned and the remedial actions taken and to what extent have these conclusions led to adjustments in risk management.



Documenting each complaint – the case history, the steps taken, and the satisfaction feedback from rightsholders – will therefore provide a company with the information it needs to meet legal reporting and documentation requirements, but also to have an overview of the effectiveness and key risks.

Finally, this information can be fed back into a company's human rights due diligence process, allowing for the appropriate prioritisation of human rights issues and ultimately for the strengthening of current management processes.

Addressing human rights concerns is not just a regulatory requirement; it is a way to drive positive change and contribute to a more equitable world. At Löning, we offer our expertise in establishing effective grievance mechanisms tailored to your organisation's needs.

Let's work together to create a culture of accountability and responsibility throughout all your business practices.

info@loening.org

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