



Permanent Mission
of the Federal Republic of Germany
to the Office of the United Nations and
to the other International Organizations
Geneva

Ref.: Pol-11-Pol 381.70/66

(please quote when answering)

Note No. 152/2021

Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner of Human Rights and has the honour to refer to the joint letter transmitted on 7 June 2021 from the Working Group on the discrimination against women and girls, the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Permanent Mission of the Federal Republic of Germany is pleased to transmit herewith the response of the Government of the Federal Republic of Germany.

The Permanent Mission of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner of Human Rights the assurances of its highest consideration.

Geneva, 04 August 2021



To the
Office of the High Commissioner of Human Rights
Palais Wilson
Geneva

Response of the Government of the Federal Republic of Germany to the joint letter transmitted on 7 June 2021 from the Working Group on the discrimination against women and girls, the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

We would like to thank you for bringing this incidence to our attention.

We have taken note with great concern of the incident you are pointing out. The German Government is committed to protecting human rights worldwide, in particular gender equality and sexual and reproductive health and rights – both in bilateral relations as well as multilateral fora. We would like to point out various initiatives that have been implemented in order to strengthen human rights compliance, also in the context of private sector engagement:

The German Government has taken a variety of measures to protect against human rights abuses by business enterprises domiciled on German territory. In December 2016, the German Government adopted the **National Action Plan (NAP)** on Business and Human Rights as a policy framework for the implementation of the UN Guiding Principles on Business and Human Rights in Germany. In its NAP, the German Government reiterates that primary responsibility for the protection of human rights lies with states and that the states' duty to protect cannot be delegated to other stakeholders within society. At the same time, the NAP establishes the expectation vis-à-vis all enterprises to introduce the process of corporate due diligence in a manner commensurate with their size, the sector in which they operate, and their position in supply and value chains. The core elements are: (1) a human rights policy statement, (2) procedures for the identification of actual or potential adverse impact on human rights, (3) measures to ward off potentially adverse impacts and review of the effectiveness of these measures, (4) reporting, and (5) a grievance mechanism.

On July 22, 2021 Germany passed a **law on mandatory human rights due diligence**. The law will take effect for companies that have their headquarter or a branch office in Germany with at least 3000 employees as of 1 January 2023. From 1 January 2024, the law will also cover companies with at least 1000 employees. The due diligence obligations were designed to be comprehensive and feasible for the companies. Companies affected by the law are required to

establish appropriate management procedures in order to ensure that human rights are respected throughout their supply chains – from raw materials to the finished product for sale. The requirements that companies must meet are tiered based on the different stages within the supply chain: 1. the company's own business operations, 2. direct suppliers, 3. indirect suppliers. The law is not limited to certain sectors and addresses relevant human rights risks, such as child labour, forced labour, discrimination at the workplace, restrictions on freedom of association, access to food, water, accommodation et.al. (section 2 of Supply Chain Act).

The due diligence obligations for companies must follow a risk-based approach. The obligations must be carried out on an ongoing basis for their own business activities, direct suppliers and also for their indirect suppliers if the company obtains substantiated knowledge of a possible infringement of a protected legal position or of an environmental obligation (eg. through NGO reports or information from a public authority). In the event that human rights are violated, the company must remedy this situation. Within the scope of its own business activities, a company must ensure that the remedy leads to the termination of the human rights violation. In the event that the human rights violation occurs within the supply chain under the responsibility of a direct supplier, a company must elaborate an effective remedial strategy with the supplier within a certain timeframe. If the company has real indications that suggest a possible violation of human rights-related or an environment-related obligation at indirect suppliers (beyond tier1), it is obliged to conduct the full due diligence process for this incident.

Companies are required to set up grievance mechanisms that allow risks and violations to be identified at an early stage.

Companies must issue reports on their human rights due diligence at least once a year. The report must include the human rights and environmental risks identified along the supply chain, the measures undertaken, an analysis of the impact and effectiveness of these measures and its conclusions taken into consideration for future measures.

The law contains a robust public law enforcement mechanism carried out by the Federal Office for Economic Affairs and Export Control including an online assessment of company reports as well as on-site inspections of risk management implemented in Germany.

Companies failing to comply with the law can be fined and, if their shortcomings are severe, they may be fined up to EUR 8 million or to 2 per cent of the average annual turnover and will be additionally excluded from participating in public procurement processes for up to three years.

Furthermore, Germany supports mandatory human rights due diligence on a European level.

In addition to these measures, the German Government has **supported businesses in putting human rights due diligence into practice** in many ways for several years. To this end, the German Government has maintained structured sector dialogues with stakeholders, such as business associations, trade unions and non-governmental organisations, on an ongoing basis. Several multi-stakeholder initiatives have been set up and facilitated by the German Government in order to promote sector-specific guidelines, further a common understanding of due diligence and bring forward cooperative projects for improved due diligence in supply chains. These include dialogue platforms and alliances for action. The German Government has established a helpdesk dedicated to UNGPs for businesses that has already provided information and advice on human rights due diligence to several hundred companies free of charge (the Business and Human Rights Helpdesk). The German Government commissioned and published an in-depth scientific study to identify human rights risk in global supply chains of German industry sectors.

German Government programmes for development cooperation have been complemented by a wide variety of measures and partnerships aimed at supporting sustainability standards throughout global supply chains in many countries and different sectors. This includes assistance for partner governments in designing their own National Action Plans on business and human rights. One crucial element with a specific link to promoting and strengthening compliance in the private sector has been the essential support provided by the German Government for the Alliance for Integrity. The Alliance is an initiative with a global focus that is driven by a number of national and multinational companies, business associations, public institutions, civil society organisations and international organisations.

Germany also actively contributes to the work done by the OECD Working Party on Responsible Business Conduct and several working groups on corresponding (sectorial) OECD guidelines. The OECD Guidelines for Multinational Enterprises (the Guidelines) set out the participating countries' recommendations on responsible business conduct for multinational companies that operate in a global context. The Guidelines contain established principles of responsible business conduct in the areas of information policy, human rights, employment policy, environmental protection, anti-corruption, consumer interests, science and technology, competition and taxation. These Guidelines, which form part of the OECD Declaration on International Investment and Multinational Enterprises, are not legally binding, but reflect the Federal Government's expectations towards the business conduct of German enterprises that operate globally. Germany has further established a National Contact Point (NCP) to further the implementation of the Guidelines. The NCP has two main functions: 1) to promote the Guidelines and handle enquiries, which means that the NCP ensures that the Guidelines and the

role of the NCP is known among relevant stakeholders and across government agencies: and 2) provides a grievance mechanism to resolve cases relating to non-observance of the Guidelines by companies (www.bmwi.de/Redaktion/EN/Textsammlungen/Foreign-Trade/national-contact-point-ncp.html).

The German Government has funded competent non-state organisations on an ongoing basis in order to support their work to assist companies with information, training and platforms for exchange. These include the German Global Compact Network and the Business and Human Rights Resource Centre.

Moreover, Germany is seeking ways to support the valuable work of international organisations and institutions and is engaging with them in order to contribute to further developing and disseminating international standards on business and human rights as well as responsible business conduct. Engagements and partnerships include the UN Working Group on the issue of human rights and transnational corporation and other business enterprises, activities by the ILO and the OECD, UNDP and UNICEF.

A central online platform offering an overview of German Government activities in the field of business and human rights is www.wirtschaft-menschenrechte.de. Sections of this website are also available in English.

Regarding the specific sector of pharmaceuticals, there are specific laws and regulations in place monitored by the competent authorities in Germany (“Arzneimittelüberwachungsbehörden”). These regulations apply to pharmaceuticals manufactured or sold within German territory. The production and marketing of pharmaceuticals by a (foreign) subsidiary of a German based company outside of Germany does not fall within the competence of the German medicines authorities. These companies do fall under the regulations and control of the competent local authorities who decide according to their regulation which measures to take.

The German Government remains committed to the protection of human rights worldwide, a fundamental pillar of Germany’s foreign policy. This engagement is guided inter alia by the German Government’s Action Plan on Human Rights 2021/2022, as contained in the 14th Report of the Federal Government on its Human Rights Policy. Sexual and Reproductive Health and Rights are one of our human rights priorities, as laid out in point 7 of the Action Plan. We look forward to continuing these efforts - with partners and in bilateral relations as well as in multilateral fora.