



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

Ref.: Pol

(please quote when answering)

Note No.: 96 /2025

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 a communication JAL DEU 8/2024 sent by the Special Rapporteur on the situation of human rights in Myanmar and the Working Group on the issue of human rights and transnational corporations and other business enterprises, transmitted 16 January 2025.

The Permanent Mission of the Federal Republic of Germany is pleased to transmit herewith the answer 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, 11 March 2025



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

Response of the Federal Republic of Germany

to the

Joint Communication from Special Procedures - Office of the High Commissioner for Human Rights

Ref.: AL DEU 8/2024

Germany is deeply concerned by the worsening of the political, economic, humanitarian and human rights situation in Myanmar with widespread violence, including indiscriminate air strikes by the military regime and violations of the International Humanitarian Law, mostly affecting the civilian population. Germany has repeatedly called for the end of all forms of violence and increased international preventive action, including an international arms embargo, and has called upon all States to cease the sale, transfer and diversion of arms, munitions and any other military equipment to Myanmar. Germany fully implements the EU arms embargo against Myanmar. Export licenses for weapons, ammunition and armaments (goods cited in Part I, Section A of the Export Control List) were not granted. Additionally, extensive restrictive measures against Myanmar have been enacted by the EU with Council Regulation (EU) No 401/2013 and with Council Regulation (EU) 2018/647 respectively. Furthermore, Germany supports the EU sanctions, namely imposed restrictive measures against 106 individuals and 22 entities, and stands ready to support additional restrictive measures targeting those responsible for violence and human rights violations. Germany attaches also great importance to worldwide protection and promotion of human rights and expects companies to respect human rights in their business dealings.

Regarding the questions:

Question 1: Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations, including any additional information or context you think is relevant to our inquiry.

Germany has taken note of the above-mentioned allegations. Due to the unspecific nature of the allegations, no additional information can be provided.

Question 2: Please also provide information on concrete progress made by your Excellency's Government in requiring or encouraging companies domiciled in your territory and/or jurisdiction to implement human rights due diligence processes, that would be complemented by a conflict-sensitive approach when heightened human rights due diligence is needed. Please clarify the Government of Germany's policy concerning the transport of weapons and related materials to Myanmar's military and whether DHL Group would have violated such policies.

The UN Guiding Principles on Business and Human Rights attach particular priority to assisting enterprises in respecting human rights in areas torn by conflicts. Germany therefore considers that it has a responsibility to try to ensure that German enterprises operating in such conditions have no part in any adverse impacts on human rights. In its National Action Plan on Business and Human Rights it expects all companies irrespective of their size and sector to exercise human rights due diligence across the entire value chain.

To comply with due diligence obligations under the German Supply Chain Due Diligence Act (LkSG, short: Supply Chain Act), enterprises with at least 1,000 employees must implement appropriate and effective risk management systems. When an enterprise has actual indications that an indirect supplier

may be violating human rights obligations or environment-related obligations in more distant parts of the supply chain, it has to carry out a risk analysis immediately and, based on the result, lay down appropriate preventive measures vis-à-vis the party responsible. These include 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. When violations are imminent or have already occurred, a prevention, cessation or minimisation concept must be drawn up and implemented. What is appropriate depends on the type and scope of business activity, the enterprise's ability to have an influence on the risk, the severity of violations and its role in causing the risk. Reviews of appropriateness should be based, among other things, on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

Under the Supply Chain Act (and under the EU Corporate Sustainability Due Diligence Directive (short: CSDDD)) there are no due diligence obligations in relation to risks and violations in the downstream supply chain. If the enterprise that falls within the scope of application undertakes to distribute the product or service to the end customer itself, then this is part of its own business area. If the enterprise instructs a third party with the distribution of the product or service, then that enterprise as a supplier is part of the supply chain pursuant to section 2 (5) of the Supply Chain Act. This also applies if the third party acts in the name and for the account of the company, as long as the third party acts as an independent contractor. See also further details in the answer to question no. 3.

The EU CSDDD makes clear that, in conflict-affected and high-risk areas, as defined in accordance with Regulation (EU) 2017/821, human rights abuses are more likely to occur and to be severe. It spells out that companies should take into account that such situations constitute particular geographic and contextual risk factors when performing in-depth assessments as part of the identification and assessment process, when taking appropriate measures to prevent, mitigate, bring to an end and minimise identified adverse impacts, and when engaging with stakeholders. For this purpose, companies may rely on the Commission's guidance on the assessment of risk factors associated with conflict-affected and high-risk areas, which should take into account the UN Development Programme's guidance 'Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts. A Guide'. Germany is required to implement the CSDDD by July 2026.

Germany adheres to the compliance of the restrictive measures against Myanmar which have been enacted by the EU with Council Regulation (EU) No 401/2013 and with Council Regulation (EU) 2018/647. Based on the information provided, we are unable to verify whether DHL has violated those policies.

Question 3: Please provide information on any steps taken by Your Excellency's Government to set out clearly the expectation that all business enterprises respect human rights throughout their activities, including in relation to enforcement of the Supply Chain Due Diligence Act. Also, please confirm whether your Government has had any communication with DHL Group regarding its joint venture with a Myanmar military controlled entity.

All companies are expected to exercise human rights due diligence in accordance with the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Larger companies are required to comply with the German Supply Chain. Germany is required to implement the EU CSDDD by July 2026.

Through its National Action Plan for Business and Human Rights (NAP), Germany wishes to contribute to improving the human rights situation worldwide and to giving globalisation a social dimension in accordance with the 2030 Agenda for Sustainable Development. It identifies thereby the following core

elements of enterprises' due diligence as Germany's expectation towards all companies regardless of their size and sector in the field of human rights which apply along the entire value chain:

- A human rights policy statement to address human rights issues of particular relevance to the enterprise and/or the sector in which it operates, citing the international reference instruments in the field of human rights and to describe the procedure used by the enterprise to exercise human rights due diligence.
- Procedures for the identification of actual or potential adverse impact on human rights that serve to identify, to prevent or to mitigate potentially adverse effects of corporate activity on human rights. It is not – or not only – a matter of considering risks to the company's own business activity but is primarily about risks to the human rights of those who may be affected by corporate activity. Contextual circumstances should be factored into the analysis. On the basis of the results of the analysis, measures should be identified and incorporated into business activity.
- Enterprises should keep information at their disposal and communicate it, where appropriate, to external recipients in order to demonstrate that they are aware of the actual and potential impact of their corporate activity on human rights and are taking appropriate steps to address the situation. Enterprises whose business activity poses a particularly high risk of adverse impacts should issue regular public reports on that subject.
- For the early identification of (actual or potential) adverse impacts, enterprises should either establish their own grievance procedures or play an active part in external procedures. The grievance mechanism of each enterprise and its whole process of corporate due diligence should be subjected to regular practice-based reviews to assess their effectiveness.

As also provided in the NAP as a governmental measure, the detailed procedure for assessing applications for the provision of export credit guarantees, guarantees for direct investments abroad and untied loan guarantees was reinforced as regards respect for human rights, which are treated as a separate point in project assessments. The aim is to ensure that enterprises which avail themselves of foreign-trade promotion instruments exercise due diligence. In particular, this includes participation in grievance proceedings initiated against them before the German National Contact Point for the OECD Guidelines for Multinational Enterprises.

The Supply Chain Act places enterprises in Germany with at least 1,000 employees under the obligation to respect human rights by implementing defined due diligence obligations. To fall within the scope, enterprises must have their central administration, principal place of business, administrative headquarters, statutory seat or branch office in Germany.

The core elements of the due diligence obligations include the establishment of a risk management system to identify, prevent or minimize the risks of human rights violations and damage to the environment. The due diligence obligations apply to an enterprise's own business area, to the actions of a contractual partner and to the actions of other (indirect) suppliers. This means that an enterprise's responsibility no longer ends at its own factory gate but applies along the entire supply chain. The Act sets out the necessary preventive and remedial measures, makes complaint procedures mandatory and requires regular reports. See also further details in the answer to question no. 2.

The Supply Chain Act contains an exhaustive list of eleven internationally recognized human rights conventions. The legal interests protected in those conventions are used to derive behavioural requirements or prohibitions for corporate action in order to prevent a violation of protected legal positions. These include, in particular, the prohibition of child labour, slavery and forced labour, the disregard of occupational safety and health obligations, withholding an adequate wage, the disregard of the right to form trade unions or employee representation bodies, the denial of access to food and water as well as the unlawful taking of land and livelihoods.

The Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA) has the necessary enforcement instruments to monitor an enterprise's supply chain management. In this context BAFA has far-reaching supervisory powers. It is permitted, for example, to enter business premises, demand information and inspect documents. BAFA can further require enterprises to take concrete action to fulfil their obligations and enforce this by imposing financial penalties.

As of January 2025, BAFA has carried out a total of 1.383 risk-based controls including 125 incident-based controls (e. g. due to media reports, academia, hints and substantiated requests). BAFA has also received a total of 351 complaints including 2/3 with no reference to the due diligence obligations enshrined in the Act and/or to human rights/environmental provisions protected by the Act and/or to companies that fall within the scope of the law. 19 administrative offence proceedings have been initiated.

If enterprises fail to comply with their legal obligations, administrative fines may be imposed. These can amount to up to 8 million euros or up to 2 % of annual global turnover. The fines system based on turnover applies only to enterprises with an annual turnover of more than 400 million euros. Moreover, if an administrative fine is imposed above a certain minimum level, enterprises may be excluded from the award of public contracts.

BAFA also supports companies in implementing their due diligence obligations and provides a comprehensive range of information for this purpose. It has published guidance on the following topics: risk analysis, appropriateness and effectiveness, complaints procedure in the company, collaboration in the supply chain and standards, audits and certifications as instruments in the due diligence process. Germany helps companies implement human rights due diligence through various forms of implementation support, which provide companies with the necessary know-how and offer assistance with concrete challenges (<https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Implementation-support/implementation-support.html>)

Germany has had communication with DHL Group regarding its business engagement in Myanmar.

Question 4: Please provide information on the steps the Government of Germany is taking or considering taking to ensure that individuals affected by the activities of business enterprises domiciled in your jurisdiction have access to remedy in your country, through judicial or extrajudicial State mechanisms.

According to Article 4 Section 1 and Article 63 Section 1 of Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters business enterprises domiciled in Germany can be sued in German courts. If the enterprise concerned falls within the scope of the German Supply Chain Act, the Federal Office for Economic Affairs and Export Control (BAFA) will take administrative action upon request, if the

person making the request makes a substantiated claim (1) that he or she has been violated in his or her protected legal position as a result of the non-fulfilment of an obligation contained in sections 3 to 9 of the Act or (2) that such a violation is imminent. Furthermore, there is a complaint procedure before the German National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP), for cases where specific issues arise in applying the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.