



## Transparency in Supply Chain Statements

### How the UK Modern Slavery Act affects German companies and their subsidiaries.

In 2015, the UK Government passed what is commonly referred to as the Modern Slavery Act (MSA), which is designed to target slavery and human trafficking in the UK and commercial supply chains that come into contact with the country. This act affects not only UK-based companies, but also companies based in other countries, including Germany. Importantly, the MSA includes a requirement for commercial organizations that fall within the relevant provisions of the MSA to publish an annual “Transparency in Supply Chain” (TISC) statement. The following article examines which companies must produce a TISC statement, and provides advice on how to best ensure compliance with the MSA.

August 2017, Dr. Jan Tibor Lelley

The TISC statement first became applicable to organizations having a financial year ending March 31, 2016, with an annual obligation for organizations to issue updated statements so long as they meet the criteria outlined below. The UK government expects that organizations will continuously build on their TISC statements, so that they become more thorough and comprehensive as time goes on. Organizations should in theory publish their statement as soon as possible, although in practice the government encourages publication within six months of the end of the company’s financial year.

How does the Modern Slavery Act’s Transparency in Supply Chain requirement

apply to German companies and subsidiaries of German companies that operate in the UK?

The TISC requirement applies to any commercial organization that,

1. carries out business, or part of its business, in the UK;
2. supplies goods or services; and
3. has a total worldwide annual turnover of at least £36m.

This statement must provide information setting out the steps that the organization has taken over the previous financial year to eradicate slavery and human trafficking in its supply chains. The obligation to produce a TISC statement applies to organizations that carry out business within the UK, not just those which are incorporated or headquartered in the UK.

Thus, any German subsidiary operating in the UK and meeting the above three elements falls under the MSA. This further holds true for companies in Germany. If the company satisfies the three elements, it is subject to the MSA. However, if any of the three elements are not met, the organization is then under no obligation of disclosure. Each commercial organization satisfying the test outlined above is required to produce a TISC statement, however a parent company may produce a group TISC statement for itself and each of its subsidiaries that would otherwise have to produce a statement.

If the company has a website, it must publish the TISC slavery and human trafficking statement there, and include a link to the statement in a prominent place on the website's homepage. If the organization does not have a website, it must provide a copy of the transparency in supply chain statement to anyone who makes a written request for one, and must do so within 30 days of the day the request is received.

***(a) The UK Government's definition of "Turnover"***

The UK government's guidance issued on the new disclosure obligation states that turnover "means the amount derived from the provision of goods and services falling within the ordinary activities of the commercial organization or subsidiary" after deduction of:

1. trade discounts;
2. value added tax; and
3. any other taxes based on the amounts so derived.

***(b) The UK Government's definition of "Carrying out business in the UK"***

In the UK government's guidance, it has indicated that a "common sense approach" should be taken when assessing whether or not an organization can properly be regarded as carrying out business, or part of a business, in the UK.

The guidance states that "organizations that do not have a demonstrable business presence in the UK" will not be caught by the test. So, just because a German parent company has a subsidiary in the UK does not necessarily mean that the parent company is carrying out business in the UK, because the subsidiary may be conducting business independent from that of the parent. But, where a subsidiary's UK operations

form part of a German parent company's business, the German parent will be considered to be carrying out business in the UK.

### What goes into a TISC statement?

The MSA does not lay out specific requirements for the information to be included in a TISC statement, other than that it must contain the steps the organization has taken to prevent modern slavery in its supply chain and own business. Further, this document is intended to be public-facing, and so it should be constructed in a manner that is easily accessible to the average person. The type of information the UK government expects to be succinctly and plainly contained within a TISC statement includes:

- details of the organization's structure, business and supply chains;
- the organization's policies on slavery and human trafficking;
- the due diligence it has undertaken in its business and on its supply chain;
- the organization's assessment of risk of slavery in its business or supply chain, the steps it has taken to address those risks, and how effective those steps have been; and
- the training which it gives to its staff.

The UK government encourages clear, detailed, and informative statements, but ultimately compliance does not rest on the quality of the statement. In fact, commercial organizations may provide that they have taken no steps, or are just beginning investigations. However, it is important to keep in mind that such a statement may bring about negative publicity and damage the value of the organization's brand.

#### ***(a) Organizational Structure and Supply Chains***

For a business to produce an effective statement, it will need to have a concrete understanding of its supply chains in order to define the boundaries of the report and to support the identification of areas prone to the risk of slavery and human trafficking. Information to disclose could include:

- the sector(s) the business operates in and whether any of its work is seasonal;
- the organizational structure and group relationships;
- the countries it sources its goods or services from, specifically including high risk countries where modern forms of slavery are known to be prevalent;
- the make-up and complexity of the supply chains;
- the business' operating model; and
- relationships with suppliers and others, including trade unions and other bodies representing workers.

This information will provide the context necessary for the average person to consider the statement more effectively. A greater level of detail is beneficial, but too much technical or legal information will make the statement hard to understand for many readers, so a balance must be struck.

#### ***(b) Organizational Policies***

Effective policies at the organizational level establish a culture of assessing, preventing, and mitigating the risk of slavery and human trafficking, as well as provide a clear path

for employees to follow in combatting the issue. In some cases, this may require a business to implement new policy, however in most scenarios a business may only need to alter and adapt existing policies to better work to prevent modern slavery. The guidance provided by the UK government stresses that to remain effective, “policies and approaches may need upgrading as the years pass, and as understanding of the issue and approaches to address it improve”.

Clear policies regarding modern slavery should mean that all employees in the organization and its supply chain know how to, and are resourced to, prevent or identify exploitation. They should detail the immediate steps to be taken when modern slavery or human trafficking is identified, and broadly and with whom to partner in influencing remedy for workers (or ceasing of that business relationship in the worst case scenario). Information regarding modern slavery policy that could be disclosed includes:

- the process for policy development;
- policies that concern business relationships (e.g. a Supplier Code of Conduct);
- recruitment policy;
- procurement policy and incentives to combat modern slavery;
- employee code of conduct;
- policies concerning access to remedy, compensation, and justice for victims of modern slavery; and
- policies that relate to staff training and increasing awareness of modern slavery.

### Who must approve the slavery and human trafficking statement?

Additionally, the MSA requires a TISC statement on slavery and human trafficking to be approved and signed by an appropriate senior person in the business. The government sees this as an effective method to ensure “senior level accountability, leadership, and responsibility for modern slavery and gives it the serious attention it deserves”. For a corporate body (other than a limited liability partnership), the statement must be approved by the board of directors and signed by a director (or equivalent). Where the organization is a limited liability partnership it must be approved by the members and signed by a designated member. For a limited partnership, registered under the Limited Partnerships Act 1907, a general partner must sign it and if the organization is any other kind of partnership, a partner must sign it.

### What penalties do violators of the MSA face?

If a business fails to produce a TISC statement for a particular financial year the Secretary of State may seek an injunction requiring the organization to comply. If the organization fails to comply with the injunction, they will be in contempt of a court order, which is punishable by an unlimited fine. The government has made it clear that issuing an injunction is an enforcement mechanism of last resort, with the government primarily relying on stakeholders of organizations to apply pressure to encourage compliance with the MSA. In practice, failure to comply with the provision will mean the organization has not produced a statement, published it on their website (where they have one), or has not set out the steps taken by the organization in the relevant financial year.

### Practical recommendations:

1. Determine whether your company meets the three requirement threshold for

publishing a transparency in supply chain statement. Regarding “carrying out business”, keep in mind that a common sense approach should be utilized.

2. If your corporate structure includes subsidiaries, determine which entities need to publish a statement and whether it would make sense to publish one overarching statement, or individual statements for each business entity.
3. Depending on your needs, it may be advisable to appoint an employee to be in charge of collecting the information required for the TISC statement, as well as updating it yearly.
4. Start working on collecting the information necessary for an adequate statement sooner rather than later. Collecting information and crafting a proper statement can be a lengthy process. Further, showing a proactive attitude towards completing this requirement in a timely fashion can only benefit your company in terms of public perception that you take this issue seriously.
5. If your company requires additional advice, we are here to help. Our team of lawyers is here to support you every step of the way to ensure compliance in the present and long term.

## Contact:

[Dr. Jan Tibor Lelley](#)

E-Mail: [lelley@buse.de](mailto:lelley@buse.de) | Tel: +49 201 1758-0

Web Version: <https://buse.de/en/insights/transparency-in-supply-chain-statements/>