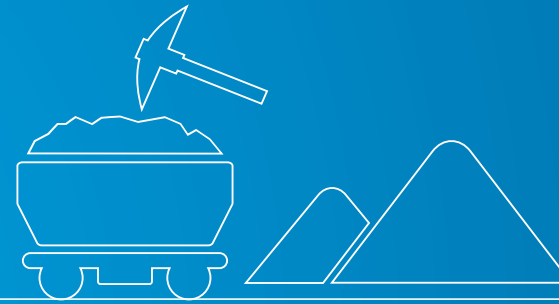




Federal Ministry
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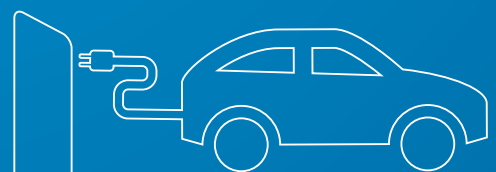
SECTOR DIALOGUE
Automotive Industry



Respecting human rights
along global supply and
value chains of Germany's
automotive industry

Cross-national recommendations

Responsible
lithium mining



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About these recommendations

These recommendations have been produced as part of the Sector Dialogue “Respecting human rights along global supply and value chains of Germany’s automotive industry” [Sector Dialogue Automotive Industry](#). These joint recommendations for responsible lithium mining and responsible sourcing were drawn up in a collaborative process by representatives of business enterprises, industry associations, non-governmental organisations and policy-makers. The following members of the Sector Dialogue were involved in drawing up the recommendations: Robert Bosch GmbH, Mercedes-Benz Group, Porsche AG, Volkswagen AG, German Association of the Automotive Industry (VDA), Germanwatch e. V. and the Federal Ministry of Labour and Social Affairs. The Federal Foreign Office took part in an observational capacity. These recommendations have been published in two stages. To enable dialogue with external parties, a preliminary draft was published in June 2022. A series of dialogue formats were subsequently conducted with external stakeholders on the basis of the preliminary draft. For this final version, input received through dialogue with lithium extraction companies, civil society representatives from lithium mining regions and technical experts has been incorporated accordingly.

Declaration of intent for implementing and disseminating these recommendations

Members of the Sector Dialogue Automotive Industry have developed a common understanding of the due diligence obligations necessary for responsible lithium mining. With the adoption of this version of the recommendations by the members of the Sector Dialogue Automotive Industry, the enterprises named herein commit themselves to upholding the agreed expectations with regard to responsible lithium mining and will use the recommendations for responsible sourcing as the basis for planning and realising individual measures within their own sphere of operation by which to push for implementation of the responsible lithium mining expectations.

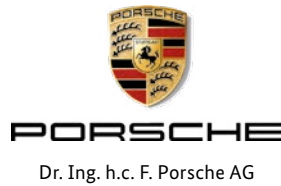
Implementation will be discussed within the Sector Dialogue Automotive Industry. The participating enterprises will share their experiences, results and challenges faced with respect to implementation of these recommendations within the scope of a knowledge and best practice sharing format of the Sector Dialogue Automotive Industry. Further-going joint activities will be developed as needed on the basis of the results of this knowledge sharing.

The enterprises, industry associations and non-governmental organisations named herein as well as the Federal Ministry of Labour and Social Affairs shall advocate for the dissemination and broad-based establishment of these recommendations by, for example, publishing these recommendations on their website and/or informing and training their suppliers on this topic.



Federal Ministry of Labour and Social Affairs

Companies in the automotive industry



Trade associations



Non-governmental organisations



Introduction

Lithium is a **commodity of strategic relevance** for the automotive industry. As of today, no battery electric vehicle can do without it. That makes it a crucial commodity for the electrification of mobility and an important building block in the energy transition. Lithium extraction can generate opportunities in producing countries by creating jobs and tax revenue as well as through the development of processing industries. But it also causes social and environmental impacts that can have adverse effects on the lives of the affected persons and violate their human rights. That is why companies in the German automotive industry and the members of the Sector Dialogue Automotive Industry advocate for the implementation of preventive and remedial measures to ensure respect for human rights in lithium extraction.

Protecting human rights is a state duty. It cannot be transferred to other societal actors. At the same time, **business enterprises** have a **responsibility** to respect human rights in their value chains. They must comply with national laws, and they must respect decisions handed down by judicial and extrajudicial mechanisms regarding remedies in response to adverse impacts that have occurred. However, where national laws fail to adequately protect human rights, or if existing laws are not sufficiently enforced by the responsible authorities, enterprises shall apply the higher standard of internationally recognised human rights as a benchmark for their actions under their human rights due diligence. In doing so, they should not come into conflict with local laws but, in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs), are called upon in case of conflict to find ways to fulfil both standards.

The aim of these **recommendations for responsible lithium mining and responsible sourcing** is to address as part of due diligence processes the human rights-related risks that can result from lithium extraction from salars or from hard-rock deposits.¹ With these recommendations, the members of the Sector Dialogue Automotive Industry formulate the expectation that lithium extraction companies implement the UNGPs, as well as make recommendations for

specific preventive measures. The recommendations further outline activities by which companies of the German automotive industry can push for implementation of these preventive measures. They illustrate how individual preventive measures can be designed. The steps described in these recommendations for implementing the requirements of the UNGPs can thus also aid enterprises in complying with the due diligence requirements set out in the German Act on Corporate Due Diligence Obligations in Supply Chains (LkSG). These recommendations can also be used as a guide when fulfilling any due diligence requirements that may result from future legislation relating to human rights, environmental and climate protection, such as the European Directive on Corporate Sustainability Due Diligence (CSDDD). The chosen approach and the recommendations cannot be easily transferred to other raw material supply chains as the lithium supply chain features several unique characteristics due to its relatively few intermediate stages and the small number of actors and places of origin.





These recommendations for responsible lithium mining are based on an exploratory **desk study** conducted in advance within the context of the Sector Dialogue Automotive Industry. It identified human rights risks associated with lithium extraction, taking into account the legal frameworks in six selected (potential) producing countries (Argentina, Australia, Bolivia, Chile, Mexico, Portugal). As an aggregate risk assessment, the exploratory desk study forms the basis for the development of the recommendations for responsible lithium mining but should not be understood as a substitute for an enterprise's own individual risk analysis. Besides the countries reviewed, there are other lithium-producing countries, such as China, for example, which were not included in the desk study, but which may have to be included in such individual risk analysis at enterprise level.

Following a risk-based approach, the exploratory desk study has identified a particular need for action in four **risk areas**: human rights and environmental impact assessments, water and environmental management, engagement with rightsholders, and protection

¹ For the purposes of this document, the term lithium mining or lithium extraction is used as an umbrella term to refer to the extraction of lithium from salars or from hard-rock deposits, including the first step of preprocessing.

of human rights and environmental defenders. In these areas, gaps have been identified in the state’s fulfilment of its duty to protect human rights in all six countries examined – with potential or actual, sometimes severe, human rights impacts. In some of the producing countries, corruption increases the likelihood of the identified risks occurring and was taken into consideration as a cross-cutting issue in selected passages. These four risk areas share certain common elements and are interconnected. Transparency, accountability, and engagement are relevant factors for all four risk areas. Good-quality impact assessments,

with meaningful consultation of those potentially affected, form the foundation of effective water and environmental management. Freedom of expression may not be infringed upon during this process, and the right to co-determination must be upheld. As the prioritisation of risks in the context of human rights due diligence processes depends on an assessment of severity and likelihood in relation to the other human rights impacts identified, this prioritisation can differ between enterprises. The following human rights in each risk area were identified in the desk study as being potentially affected:

Risk area	Potentially affected human rights ²
Human rights and environmental impact assessments 	<ul style="list-style-type: none"> • Art. 1 of the International Covenant on Economic, Social and Cultural Rights Right of all peoples to self-determination • Art. 19 of the International Covenant on Civil and Political Rights Right to hold opinions without interference, right to receive information • Art. 25 of the International Covenant on Civil and Political Rights Right to take part in the conduct of public affairs
Water and environmental management 	<ul style="list-style-type: none"> • Art. 6 of the International Covenant on Economic, Social and Cultural Rights Right to work and vocational training (right to life is derived from this) • Art. 7 of the International Covenant on Economic, Social and Cultural Rights Right to the enjoyment of just and favourable conditions of work • Art. 11 of the International Covenant on Economic, Social and Cultural Rights Right to an adequate standard of living (including the right to food and housing) • Art. 12 of the International Covenant on Economic, Social and Cultural Rights Right to the enjoyment of physical and mental health
Rightsholder engagement 	<ul style="list-style-type: none"> • Art. 1 of the International Covenant on Economic, Social and Cultural Rights Right of all peoples to self-determination • Art. 19 of the International Covenant on Civil and Political Rights Right to hold opinions without interference, right to receive information • Art. 25 of the International Covenant on Civil and Political Rights Right to take part in the conduct of public affairs • ILO Convention 169 Rights of indigenous groups
Protection of human rights and environmental defenders 	<ul style="list-style-type: none"> • Art. 6 of the International Covenant on Economic, Social and Cultural Rights Right to work and vocational education (right to life is derived from this) • Art. 9 of the International Covenant on Civil and Political Rights Right to liberty and security of person • Art. 19 of the International Covenant on Civil and Political Rights Right to hold opinions without interference, right to receive information • Art. 21 of the International Covenant on Civil and Political Rights Right of peaceful assembly

The exploratory desk study identified high risks for, in particular, the rights of affected communities and their residents as well as for human rights defenders. Applying a risk-based approach, these recommendations for responsible lithium mining aim to strengthen

upholding of human rights for these groups of persons. An additional relevant group of persons are individuals employed in lithium extraction projects. Workers are also rightsholders.

² For a more detailed description of the individual legal positions and their possible impairment by extractive activities, see Maximilian Spohr [“Human Rights Risks in Mining – A Baseline Study”](#), Max Planck Foundation for International Peace and the Rule of Law, 2016.

These **recommendations for responsible lithium mining** relate to the supply chain stage of lithium extraction. They describe the joint expectations of the members of the Sector Dialogue Automotive Industry for responsible lithium extraction within each of the identified risk areas. Because of the chosen cross-national approach,³ they need to be compared with the extraction and risk context in each separate use case. They were developed on the basis of international best practices and describe the shared scope of expectations with respect to responsible lithium mining. They allow a step-by-step fulfilment within the sense of an ambitious process of continuous improvement. The international best practices used are listed in the section “Information to guide implementation”. These recommendations for responsible lithium mining were developed in collaboration with experts from the extractive sector and agreed upon within the Sector Dialogue Automotive Industry by its members. Selected representatives of civil society from the producing countries were given the opportunity to comment on a preliminary draft.

The **recommendations for responsible sourcing strategies** describe how the companies of the German automotive industry – taking into account the specific ways in which they are connected to the risk – can ask that lithium mining companies implement the recommendations for responsible lithium mining. The underlying UNGPs describe different needs for action with regard to preventive and remedial measures, depending on whether an enterprise causes or contributes to adverse impacts or whether it is involved because the impact is directly linked to its business relationships (cf. UNGP 19).⁴ The recommendations were developed jointly with representatives of the German automotive industry, civil society, industry associations and trade unions following a multistakeholder approach. The measures already proactively adopted by the German automotive industry were discussed in this context and incorporated into the responsible sourcing strategies. The focus is on preventing risks by using influence through the lever of the lithium procurement processes. Leverage is derived from many different factors such as purchase quantities, contractual terms, and the global supply and demand situation. Leverage is not a fixed variable but can be proactively created and expanded to a certain extent through business conduct.

Dissemination of these recommendations for responsible lithium mining by the members and the push for their implementation will be accompanied by an exchange on lessons learned within the Sector Dialogue Automotive Industry.

These recommendations for responsible lithium mining and responsible sourcing strategies **differ from previous guidance in crucial points**, thereby offering considerable added value for users:

- Their lithium-specific focus means they contribute significantly to implementing the international reference framework of the UNGPs in relation to lithium extraction and procurement.
- The recommendations for responsible lithium mining apply a risk-based approach. They are based on internationally recognised guidelines. The recommendations for responsible sourcing are geared towards implementation.
- In order to develop the recommendations, the members of the Sector Dialogue Automotive Industry participated in a year-long drafting process. The recommendations for responsible lithium mining and responsible sourcing were jointly agreed upon in a multistakeholder process in order to increase the influence of the German automotive industry and thus campaign for their acceptance and implementation.
- The recommendations for responsible sourcing targeted at downstream enterprises illustrate how the findings of the desk study as well as the recommendations for responsible lithium mining can be integrated into corporate human rights due diligence processes.

These recommendations for responsible lithium mining and responsible sourcing address exclusively potential risks – based on the exploratory desk study – relating to lithium extraction. To ensure responsible design throughout the entire lithium value chain, measures to, for instance, raise reuse percentages, extend the useful life of lithium-ion batteries, or reduce the carbon footprint of extraction, processing and transport activities are also required. Lowering long-term demand for primary raw materials and combating climate change can also help to preventatively reduce potential for adverse human rights impacts. These aspects do not fall within the scope, however, of these recommendations for responsible lithium mining and responsible sourcing.

³The term cross-national refers to a research approach that compares specific phenomena across two or more countries; cross-national approaches enable recommendations of a general nature to be made but do not deal with situation-specific cases.

⁴This grading refers to the ‘cause, contribute, directly linked’ framework of the UNGPs. An attribution to the relevant category must take into account different factors such as predictability of negative impacts or effectiveness of the enterprise’s own measures. John Ruggie has outlined the basic ideas of the framework in a [Letter to the OECD](#).

Recommendations for responsible lithium mining

Risk area 1: Human rights and environmental impact assessments

Recommendation: Human rights and environmental impact assessments based on ↘ [internationally recognised best practices](#) are undertaken at all stages (exploration, construction and operation, closure) of new and existing lithium extraction projects. The conducting of impact assessments as part of the exploration phase is to be highlighted in particular, as such assessments have a direct impact on project design and thus can potentially identify and address impacts early on in the process. The data gathered as part of impact assessment can serve as the basis for monitoring changes that are possibly linked to the lithium extraction. To prevent conflicts of interest and corruption, the impact assessments are performed by ↘ [independent external experts](#) in on-site consultations together with those affected by actual or potential adverse impacts. To promote the financial independence of impact assessments, it is recommended to examine and pilot ↘ [alternative financing models](#), e.g. in cooperation with other actors in the lithium value chain. Based on the impact assessments, prevention and mitigation strategies as well as remedial measures for possible adverse impacts have to be developed, made public and monitored in collaboration with those (potentially) affected and rightsholders. The complete findings of the impact assessments must be communicated – under careful balancing of transparency vs privacy protection considerations – to the affected communities and responsible authorities in appropriate language, contextualised, and made permanently available for review, including by third parties. As part of the licence award procedure, they help to make decisions of state regulators transparent and to approve extraction projects in compliance with local legislation. Groups at heightened risk of vulnerability should be identified during the impact assessment, and adverse impacts should be listed individually ↘ [per group affiliation](#) and taken into account in the development

of measures. Lithium extraction companies report on an ongoing basis on human rights and environmental impacts as well as the effectiveness of the prevention and mitigation strategies in place. If impact assessments carried out by external experts determine that planned lithium extraction projects would lead to severe, non-preventable human rights violations, lithium extraction should not proceed.

Risk area 2: Water and environmental management

Recommendation: Lithium extraction projects prevent and minimise adverse impacts on the availability and quality of ↘ [drinking and industrial water](#) as well as on ↘ [ecosystem services](#) as a whole. This includes taking into account possible interactions between brine extraction and the hydrological cycle as a result of extraction from salars. Where negative environmental impacts do occur, lithium extraction companies follow national legislation on remediation. They have an environmental management strategy and system that mitigates environmental impacts as well as a closure plan that includes concepts for subsequent use (and financing plan). Water management is based on comprehensive – where available public-sector – ↘ [hydrological analyses](#) of the impact of water use, including an independent environmental impact assessment. To ensure a fair balance of interests for all water users, enterprises involved in lithium extraction actively support the public authorities' approach to ↘ [water resource management](#), where feasible also with their own ↘ [water stewardship approaches](#). Lithium extraction should not adversely affect access to water for other user groups, particularly the local population. The aim is to ensure human rights-compliant and socially and ecologically sustainable resource extraction. Any necessary prevention measures are developed and implemented jointly with the rightsholders. Lithium extraction projects ↘ [communicate](#) the extractions and their impacts transparently, continuously and in a

manner that is suited to the target groups. Surrounding communities are involved and supported in an appropriate manner, for example through community-based monitoring approaches. ↘ [Licences and usage rights](#) for water and other resources are awarded without corruption and in accordance with objective and verifiable criteria and are in line with current national regulations. To minimise environmental impacts, extraction projects seek to reduce their water footprint and, where appropriate, lower brine quantities extracted from salars, including through the use of ↘ [new technologies](#). Before new technologies are deployed, independent impact assessments must be carried out. The management of tailings dams in extraction from hard-rock deposits complies with ↘ [international standards](#).

Risk area 3: Rightsholder engagement

Recommendation: Lithium extraction projects engage with actual and potentially affected rightsholders in a target-group-sensitive manner and on a continuous basis in ↘ [decision-making processes](#) related to decisions that will have significant impact on their rights, livelihoods, culture, social dynamics and environment. All ↘ [relevant information](#) regarding the extraction project is provided in good time and in a target-group-accessible format. The engagement process follows ↘ [international best practices](#), includes external mediators where needed, and takes into account any ↘ [existing community protocols](#). Government-run processes of engagement may not be substituted or influenced. Local expert knowledge is drawn upon for the purposes of comprehensive planning as well as the early identification and selection of rightsholders. The entire process is free of manipulation, coercion or threats. Engagement begins prior to the exploration phase before any activities are undertaken in the affected area. Lithium extraction companies report continuously about the implementation of agreed measures. Indigenous communities have a right to free, prior and informed consent (FPIC), including by following their own FPIC protocols. This explicitly includes the right to say “No”. The need for ↘ [FPIC-compliant agreement](#) is taken into account in new and existing extraction projects wherever relevant. This should adequately consider not just the legally recognised indigenous groups but also local conditions and the self-designation of groups. In order to involve rightsholders, a grievance mechanism should also be available at the level of the extraction project in accordance with the UNGP 31 effectiveness criteria.

Risk area 4: Protection of human rights and environmental defenders

Recommendation: Lithium extraction projects respect the national legal framework, officially recognise the ↘ [particular need for protection](#) of ↘ [human rights and environmental defenders](#), and actively advocate for their civil and political rights in accordance with the UNGPs, including vis-à-vis their external service providers and suppliers. They integrate impacts and risks for human rights and environmental defenders in their risk analyses, proactively condemn any form of violence and reprisals, and take responsibility for the identification and prevention of any such instances. They support investigations of ↘ [instances of violence or reprisals](#) and train their security services in cooperative and non-violent interactions with human rights and environmental defenders.

Recommendations for responsible sourcing

The UNGPs set out both the duty of the state to protect and the responsibility of enterprises to respect human rights. To this end, due diligence processes should be established in order to identify risks and develop, implement and monitor preventive and remedial measures. Engaging with those potentially affected (rightsholders) is important here. The Sector Dialogue Automotive Industry develops, among other things, sector-specific guidelines for enterprises on fulfilling due diligence obligations. The following recommendations detail such guidelines in the area of lithium procurement.

These recommendations show how German automotive companies can integrate the risks that arise from the use of lithium into their own human rights due diligence processes. They provide for a risk-based step-by-step approach to pushing for implementation of the recommendations for responsible lithium mining.

Each recommendation is followed by a further-going description with detailed information. If needed, specific proposals for measures and actions are listed as a supplement at the end of this document, grouped by risk area.

1. Integrate the four risk areas identified for lithium extraction and the associated human rights risks into the enterprise's own continuous risk analysis

The first step is to determine how a given enterprise is related to the identified potential adverse human rights impacts of lithium mining via its business relationships (cause, contribute, directly linked). The risk analysis focuses on the perspective of potentially affected stakeholders. Thus, enterprises should not just avail themselves of internal and external specialist knowledge but also [consult potentially affected stakeholders](#) directly or indirectly wherever possible. The cross-national risk areas and the associated risks are not necessarily relevant for every German automotive company with its own individual procurement circumstances.

2. Assess the severity of the risks associated with the enterprise's own lithium procurement and prioritise them individually

All human rights should be respected equally, but in some cases [prioritisation](#) is required in practice. The UNGPs allow for risks that may cause the most severe impact to be addressed first. The severity of impact can be assessed based on the three criteria of scale, scope and irremediable character. Irremediable impacts in particular must be prevented from occurring.

3. Establish and maintain communication channels, including collaboratively, for longer-term engagement with potentially affected stakeholders in extraction regions that are of great importance to the enterprise's own lithium procurement

Engagement with potentially affected groups is an important component in all core elements of human rights due diligence. It is therefore prudent to select and include potentially affected stakeholders, their representatives, human rights defenders, and/or environmental defenders over the long term and to rely on established communication channels. Relevant affected stakeholders should be identified and selected using local expert knowledge. Cultural sensitivity, accessible procedures, an appropriate presentation of information for each target group, support measures for self-organisation and local networks are necessary in order for this to succeed. The independence of the consulted affected stakeholders should be ensured at all times. Cross-company formats could be used here with a view to pooling resources and capacities, as well as reducing the time demands on external stakeholders. In order to facilitate access to remedial measures and the flow of information about possible human rights risks, it should be possible to [disclose the enterprise's own supply chains](#) in specific cases, taking into account competition law, data protection and business secrets.

4. Establish and maintain dialogue forums with enterprises active in the area of lithium extraction, including collaboratively, for acceptance of the recommendations for responsible lithium mining and identification of possible shared connecting factors

To promote respect for human rights, enterprises must use their ability to influence. Developing and using influence expressly includes dialogue-based aspects of persuasive efforts, which often achieve the greatest effect jointly and in collaboration with other stakeholder groups. The risk areas and recommendations for responsible lithium mining can be strategically positioned in dialogue with, for example, sectoral and extractive initiatives, national or international business associations, theme-based industrial alliances or within the framework of international conferences. Possible future suppliers or exploration companies can also be addressed in this way. Such dialogue formats can mark the start of joint activities aimed at securing respect for human rights and form the basis for active remediation efforts in the event that adverse impacts actually occur.

5. Strengthen and advocate for the development of human rights due diligence processes at enterprises operating in lithium extraction with close links to the four identified risk areas

a. In the direct contractual relationship

Companies have a range of options vis-à-vis direct suppliers for establishing preventive measures. Preventive measures aim to prevent adverse impacts from occurring in the first place or from re-occurring. They help to largely mitigate the extent of such impacts. In addition to appropriate selection criteria for the awarding of new contracts, these preventive measures include conducting dialogue at various levels for awareness-raising, training and capacity development as support offers, specifying contractual obligations to enforce verifiable expectations, and audits as control mechanisms and links for adjustments. ↘ [Table 1](#) under “Suggested measures and actions by risk area” shows examples of how some of these measures can be designed for the individual risk areas.

b. Jointly with intermediary suppliers or through initiatives

If no direct contractual relationships exist with lithium extraction companies, contractual transfer provisions in contracts with direct suppliers (e.g. battery cell manufacturers) and appropriate selection criteria for the awarding of new contracts can be used to exercise leverage for the implementation of preventive measures in lithium extraction. Transfer clauses serve to require direct suppliers to undertake efforts to implement the material demands, stipulated in the code of conduct for suppliers or under a voluntary commitment, in the supply chain. In addition, certified commodity supply chains can be an effective means of following up on the implementation of appropriate preventive measures beyond direct suppliers. The selected certification should satisfy the expectations laid down in the recommendations for responsible lithium mining. In this case, enterprises remain under obligation to monitor the effectiveness of the certification. They should review the ↘ [quality and effectiveness of external audits on a regular basis](#) and, where necessary, ↘ [implement measures to supplement](#) these. In order to ensure the cascading of the requirements, direct suppliers’ due diligence processes and the integration of the recommendations for responsible lithium mining must be verified, for example through effective audits. ↘ [Table 1](#) under “Suggested measures and actions by risk area” can provide orientation on this. The recommendations for responsible lithium mining can be disseminated and communicated jointly with intermediate suppliers or through initiatives. For companies with little influence, the latter can be important partners for building leverage.

6. Undertake activities specific to particular risk areas individually or in cooperation with other companies, civil society organisations and/or state agencies to complement the other measures

Local engagement in the form of studies, own projects or financial support for established networks can be effective preventive measures for particular risks. They are directed at other local stakeholders and can contribute to building knowledge within the enterprise and minimising risk on the ground.

They are therefore tailored to particular risks as well as contexts and require an in-depth approach and meticulous planning in collaboration with local stakeholders. Such activities are often particularly effective when conducted collaboratively, for example with sector initiatives or multi-stakeholder partnerships. ↘ [Table 2](#) under “Suggested measures and actions by risk area” summarises ideas for measures specific to particular risk areas.

7. Leverage influence to bring about mitigation and remediation in cooperation with enterprises causing adverse impacts

Despite all efforts to prevent adverse impacts, these may nevertheless occur. Measures of mitigation and remediation aim to reduce or eliminate negative impacts as well as bring about a return to original conditions and offer restitution. Depending on the relationship to the negative impact (see recommendation 1), the UNGPs lay out various levels of responsibility. Enterprises are only then to be considered responsible for providing mitigation and remediation measures when they have, through their own activities, caused or contributed to the negative impact. If an enterprise is only linked to the negative impact through a business relationship, it is not responsible for providing such measures. It can, however, take on such a role and leverage its influence over the causing enterprise in order to bring about mitigation and/or cessation. If, in the case of severe human rights abuses, changes in the situation do not become apparent, a termination of the business relationship should be considered. Decisions here are guided by the principle of “engage before disengage”, with termination of business relationships being a measure of last resort.

Suggested measures and actions by risk area

Table 1: Measures to strengthen human rights due diligence processes or push for their development

The following table shows examples of how measures specific to particular risk areas can be designed in order to strengthen human rights due diligence processes, or push for the development of such, in lithium extraction companies (recommendation 5). This table can be applied in direct contractual relationships with lithium extraction companies but also used jointly for dialogue with intermediate suppliers in order to pass on expectations to lithium extraction companies. The way the various instruments are used and the detailed design of the instruments depend on each enterprise’s individual influence and its connection to the risk.

Risk area	Contracts	Audits	Training	Dialogue
Human rights and environmental impact assessments (HRIA and ESIA)	Use various tools (certifications [IRMA Ch. 1.2, 1.3], code of conduct for suppliers or voluntary commitment) to include material demands from the recommendations for responsible lithium mining, establish control mechanisms and define options for sanctions <u>Priority:</u> publication of the findings of the impact assessments	Possible control points for audits: findings of identification process, implementation of measures based on the impact assessments Verification of the implementation of measures through consultation with potentially affected groups	Training provided by human rights experts based on the Human Rights Impact Assessment Guidance and Toolbox of the Danish Institute for Human Rights	
Water and environmental management	Use various tools (certifications [IRMA Ch. 2.1, 2.6, 4.1, 4.2, 4.6 or AWS], code of conduct for suppliers or voluntary commitment) to include material demands from the recommendations for responsible lithium mining, establish control mechanisms and define options for sanctions <u>Priority:</u> regeneration plans and financing as well as methodologically robust environmental monitoring systems	Possible control points for audits: existence of an environmental management system, public reporting, implementation of measures Verification of the implementation of measures through consultation with potentially affected groups and review of data from community monitoring approaches where applicable		Raise awareness about the issue against the background of growing public reporting in sales markets, where appropriate also together with regional/national research facilities and universities

Risk area	Contracts	Audits	Training	Dialogue
<p>Rightsholder engagement</p>	<p>Use various tools (certifications [IRMA Ch. 1.2, 1.3, 1.4, 2.1, 2.2, 2.3], code of conduct for suppliers or voluntary commitment) to include material demands from the recommendations for responsible lithium mining, establish control mechanisms and define options for sanctions <u>Priority:</u> effective grievance mechanisms in accordance with UNGP 31, identification process, documentation of consultation during risk analysis and development of measures</p>	<p>Possible control points for audits: findings of identification process, existence of a consultation process and review grievance mechanism against UNGP effectiveness criteria Assessment of engagement process through consultation with potentially affected groups</p>	<p>Training conducted by local organisations on requirements for target group-oriented communication</p>	<p>Dialogue on German and European due diligence obligations and the associated need for effective engagement with potentially affected groups Joint identification of remedial measures and support for justified grievances put forward by rightsholders to the extraction company, e.g. in the form of dialogue forums for arbitration of conflicts between affected groups and the extraction company</p>
<p>Protection of human rights and environmental defenders</p>	<p>Use various tools (code of conduct for suppliers or voluntary commitment) to include material demands from the recommendations for responsible lithium mining, establish control mechanisms and define options for sanctions <u>Priority:</u> company policy with processes for their consideration and engagement in the overall due diligence process</p>	<p>Possible control points for audits: existence of security personnel, selection process and decision-making criteria, reported incidents (where there are surrounding communities) Verification through consultation with potentially affected groups</p>	<p>In cooperation with local, regional or international NGOs, training for suppliers and service providers (e.g. security companies) to further sensitise staff to the topic of appropriate handling of human rights and environmental defenders and to the importance of and particular risks associated with their work</p>	<p>Joint identification of measures (collective advocacy) for supporting the position of human rights and environmental defenders in local contexts</p>

Table 2: Activities in addition to the other measures

The following table summarises possible activities specific to particular risk areas (recommendation 6) that need to be adapted in detail to the relevant contexts and needs during implementation planning, with the involvement of potentially affected groups. In addition, to avoid duplication and parallel measures, it is advisable during the design phase to gain a comprehensive picture of existing activities in the relevant local context. When activities are being implemented on the ground, continual transparency should be ensured towards the target group and local stakeholders with regard to supporters of the relevant activity and the objectives being pursued.

Human rights and environmental impact assessments	Water and environmental management	Rightsholder engagement	Protection of human rights and environmental defenders
Develop and promote independent financing options (blind funds) for impact assessments	Promote research, trailing and scaling of water-saving technologies	Pilot FPIC-compliant engagement of indigenous communities and scale the findings Public statement , for instance in cooperation with other enterprises or initiatives, on the expectation that FPIC rights are to be comprehensively upheld during all lithium extraction projects	Enterprise's own policy or signing of public statements on the protection of human rights defenders (zero tolerance)
Carry out joint HRIAs/ESIAs in key extraction regions	Support extraction companies' regeneration plans	Support measures identified in local development plans	Promote support networks on the ground and internationally
Build capacities for community monitoring and promote integration into existing processes			Engage in international initiatives (VPSHR, Business Network on Civic Freedoms and Human Rights Defenders)
Develop/promote grievance mechanisms at the level of the extraction project in line with UNGP 31			

Information to guide implementation

Section	Point of discussion	Proposal for approach
Risk area 1: Human rights and environmental impact assessments	Which international best practices were consulted in the development of these recommendations?	<ul style="list-style-type: none"> 🌐 Danish Institute for Human Rights: HRIA guidance and toolbox 🌐 ICHRDC: Getting it Right HRIA Guide 🌐 IBLF/IFC: Guide to Human Rights Impact Assessment and Management 🌐 BSR: Guidelines on conducting an effective HRIA 🌐 IFC Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts 🌐 IRMA Standard (Chapters 1.2, 1.3, 2.1)
	To what extent do the formulated expectations differ from current practice in lithium extraction projects?	The formulated expectations go beyond current standard practice and local legal regulations, especially with regard to the independence of studies, communication of their findings and effective rightsholder engagement (see desk study).
	Which proposals and approaches already exist for alternative financing models?	Based on a study by Germanwatch and others on ecological sustainability and environmental impact assessments in the context of human rights due diligence obligations , the potential for conflicts of interest when carrying out environmental and social impact assessments (ESIA) is to be highlighted. Alternative financing models should lead to a separation between the contracting entity and the applicant for the mining licence. One example of this could be blind funds, which can commission impact assessments independently of extraction companies but obtain financial contributions from these companies.
	What is meant by listing impacts individually by group affiliation and taking this into account when developing measures?	A listing of impacts by group affiliation takes into account the fact that people who, owing to their sociodemographic affiliation (e.g. women, children, people with disabilities, etc.), may be particularly affected by risks must be considered explicitly in impact assessments. Women may face different or greater risks than men. Findings must be broken down according to these groups so that targeted measures can be developed for the respective risks.
	What qualifications should the experts employed in conducting impact assessments have?	According to the Human Rights Impact Assessment Guidance and Toolbox of the Danish Institute for Human Rights (p. 46) impact assessments should be carried out by a team. In addition to their technical expertise in evaluating environmental and health-related impacts, team members should also possess experience in human rights and have knowledge of local contexts and language as well as fundamental knowledge of the sector and the relationship between the sector and human rights-related risks. It is recommended that team members, and in particular women, be recruited locally, possibly from affected groups.

Section	Point of discussion	Proposal for approach
Risk area 2: Water and environmental management	Which international best practices were consulted in the development of these recommendations?	<ul style="list-style-type: none"> 🌐 CEO Water Mandate’s Water Disclosure Guidelines 🌐 AWS International Water Stewardship Standard 🌐 UNEP/UNESCO Integrated Water Resources Management in Action 🌐 Global Industry Standard on Tailings 🌐 Guidelines for Responsible Mine Tailings 🌐 IRMA Standard (Chapters 2.1, 2.6, 4.1, 4.2, 4.6)
	To what extent do the formulated expectations differ from current practice in lithium extraction projects?	The formulated expectations go beyond current standard practice and local legal regulations, especially with regard to effective rightsholder engagement, target group-oriented communication on key water management data and integrated resources management (see desk study).
	What kind of water is discussed, and how should the difference between freshwater and saltwater be addressed?	<p>The recommendations for responsible lithium mining with regard to water management apply to drinking water and industrial water. This also includes surface waters and groundwaters. Lithium extraction should not adversely affect access to water for other user groups. Water can be used as drinking water or for other purposes (for example agriculture). At this point, the possible interaction between salars and regional water cycles, which has not yet been conclusively clarified scientifically, should be highlighted. In cases where there is no scientific statement on the existence or non-existence of such interaction that is accepted by all stakeholders, conflict-sensitive mediation processes should be initiated.</p> <p>The cultural aspect of water as a resource (including saltwater) is an element of rightsholder engagement in FPIC-compliant processes with indigenous groups.</p>
	What possibilities exist to control legally compliant processes for awarding extraction and usage rights?	<p>As a general principle, it is necessary to consider anti-corruption and human rights due diligence obligations together and to link the respective processes. This is also discussed at the level of the UN OHCHR on the basis of the Report of the Working Group on Business and Human Rights. Other organisations such as the Basel Institute on Governance or the UN Global Compact have also developed relevant guidance notes.</p> <p>With regard to corruption risks in the extractive sector, particular emphasis should be placed on the instruments of the Transparency International Accountable Mining Programme, which are of great importance for the risk analysis of downstream enterprises.</p>
	How are the “best available” water management technologies defined?	<p>The best available water management technologies should reduce the water footprint of lithium projects, particularly where extraction from brine is concerned. These aspects of the recommendations for responsible lithium mining are aimed at promoting innovation. Possible technologies must be examined by an independent entity for their impacts on local ecosystems before they are put into use. Various technologies are currently being piloted, and long-term impacts are difficult to predict.</p> <p>New technologies and procedures such as those listed by the Federal Institute for Geosciences and Natural Resources in the document Information on the sustainability of lithium are already being trialled. The Karlsruhe Institute of Technology is also researching new lithium extraction methods (see also desk study). There is no central institution that defines the “best available” technologies.</p>

Section	Point of discussion	Proposal for approach
	What international standards exist for the management of tailings dams?	There are two international standards for the management of tailings dams: the Global Industry Standard on Tailings Management , developed by, among others, the UN Environment Programme (UNEP) and the International Council on Mining and Metals (ICMM), and the Safety First Guidelines , developed by a coalition of more than 150 NGOs and scientists from 24 countries.
	What is meant by ecosystem services?	Ecosystem services are services provided to people by the natural world. They can be classified into four categories: provisioning services, regulating services, cultural services and supporting services. (German Environment Agency).
	What scope do comprehensive hydrological analyses of water impacts have?	Studies must take into account both existing and planned usages as well as their cumulative affects at water catchment area level. This includes cultural services of water as a resource (see definition of ecosystem services). Projected effects as a result of climate change must also be taken into account.
	What is the difference between integrated water management and water stewardship?	Both approaches share similar goals, whose attainment requires mobilisation of a wide range of actors as well as cooperative action. They differ, however, with respect to their main target group: stewardship approaches are addressed primarily to water users (bottom-up approach), whereas integrated water management approaches target the planning and regulatory level (top-down approach) (see Newborne and Dalton [2016]: Water Management and Stewardship: Taking stock of corporate water behaviour).
	Which data is meant by “relevant environmental data”?	The provision of relevant environmental data should, among other things, include current and projected water removal amounts, the use of chemicals and hazardous substances, and, where extraction from salars is concerned, evaporation discharge amounts.
Risk area 3: Rightsholder engagement	Which international best practices were consulted in the development of these recommendations?	<ul style="list-style-type: none"> OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector IFC Stakeholder Engagement Good Practice Handbook Danish Institute for Human Rights: Cross-Cutting Stakeholder Engagement IIED Meaningful Community Engagement in the Extractive Industries BSR: Legitimate and Meaningful Stakeholder Engagement in Human Rights Due Diligence Global Compact Network Germany: Stakeholder Engagement in Human Rights Due Diligence. A Business Guide AccountAbility AA1000 Stakeholder Engagement Standard IRMA Standard (Chapters 1.2, 1.3, 1.4, 2.1, 2.2, 2.3)
	What does engagement in shaping decision-making processes and in decision-making itself mean?	Engagement has to be more than just the receiving of information and must be understood in the sense of negotiations (see also OECD Due Diligence Guidance Meaningful Stakeholder Engagement , p.20). Indigenous groups, as well as other affected communities, should have a say in deciding the nature of their engagement (shaping the processes) (see also community protocols in the case study on Argentina in the desk study) and be able to influence decisions.
	What is meant by “self-determined protocols”?	This applies especially to the design of FPIC processes. In the interest of cultural sensitivity, the right to FPIC means indigenous communities can shape this process as they see fit. In Argentina, for example, 33 indigenous communities set forth what they believe an FPIC-compliant engagement process should look like in the Kachi Yupi Protocol (see desk study, p. 18). Non-indigenous communities can also use such protocols to define how external stakeholders should be involved in decisions affecting them. UNEP has published a corresponding description and list of principles .

Section	Point of discussion	Proposal for approach
	<p>How should the need for FPIC be taken into account and how do the formulated expectations address the differing range of options for action between new and existing extraction projects?</p>	<p>A distinction between new and existing extraction projects is not necessary for all formulated expectations. Many of the formulated expectations can also be retroactively implemented, or meaningful work can be done towards their fulfilment (e.g. impact assessments, water management). Where appropriate, supplements have been added to individual passages (e.g. FPIC). In general, reference should be made to the wording of the IRMA standard, which deals in several places with how the differing range of options for action between new and existing projects (greenfield vs brownfield) can be handled:</p> <p><i>“At existing mines, where FPIC was not obtained in the past, operating companies will be expected to demonstrate that they are operating in a manner that seeks to achieve the objectives of this chapter. For example, companies may demonstrate that they have the free, informed consent of indigenous peoples for current operations by providing evidence of signed or otherwise verified agreements, or, in the absence of agreements, demonstrate that they have a process in place to respond to past and present community concerns and to remedy and/or compensate for past impacts on indigenous peoples’ rights and interests. In alignment with this chapter, such processes should have been agreed to by indigenous peoples and evidence should be provided that agreements are being fully implemented by the companies. (...) Both new and existing mines shall obtain the free, prior and informed consent of indigenous peoples if there are proposed changes to a company’s plans or activities that may significantly change the nature or degree of an existing impact, or result in additional impacts on indigenous peoples’ rights, lands, territories, resources, properties, livelihoods, cultures or religions.”</i> (IRMA standard, p. 50)</p>
	<p>What constitutes relevant information within the context of meaningful consultation with rightsholders?</p>	<p>The OECD Due Diligence Guidance on Meaningful Stakeholder Engagement names as key information such things as the enterprise’s objectives, its current and planned activities, options for potential alternative project design, proposed risk management concepts, information on anticipated contribution to national revenues and public revenues at regional and local level, main contracts and agreements, and any environmental, social and human rights impact assessments and their related desk studies, in addition to publicly accessible documents. (p. 54)</p>
<p>Risk area 4: Protection of human rights and environmental defenders</p>	<p>Which international best practices were consulted in preparing the assessment?</p>	<p>Voluntary Principles on Security and Human Rights International Service for Human Rights Business: Support for Civic Freedoms and Human Rights Defenders Zero Tolerance Initiative: The Geneva Declaration IRMA Standard (Chapters 1.3, 3.4, 3.5)</p>
	<p>What can an official recognition of the need for protection look like, and what is necessary to achieve this?</p>	<p>This can be done in the form of publicly accessible company policies (Anti-Reprisal Policy, HRD Policy). As a suggestion, a collection of existing policies of enterprises from a wide range of sectors can be consulted via the Business & Human Rights Resource Centre.</p>
	<p>What is meant by instances of violence or reprisals?</p>	<p>Possible forms of violence or reprisals against human rights and environmental defenders can be internal attacks, political persecution, loss of employment options and access to sources of project finance, (public) denigration and stigmatisation, surveillance, criminalisation, abuse of right to legal recourse (strategic lawsuit against public participation, SLAPP) as well as verbal, psychological or physical abuse, murder.</p>

Section	Point of discussion	Proposal for approach
	How are the terms “human rights defender” and “environmental defender” defined?	There is no specific definition of who is considered a human rights defender. Descriptions of the term refer to “individuals, groups or associations ... that ... contribute to effectively eliminating all forms of human rights abuse and infringement of the basic freedoms of peoples or individuals” (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144). Based on this broad categorisation, a human rights defender can be any individual or group of individuals who advocates on behalf of human rights, ranging from intergovernmental organisations with offices in major cities around the world all the way to single individuals working within their local communities. For more information on the subject, see the webpage UN Special Rapporteur on human rights defenders .
Recommendation 1: Integration into risk analysis	How are challenges for risk analysis execution in the area of consultation with groups potentially directly or indirectly affected addressed?	An effort at consultation should be made. It must be noted here that for various reasons (e.g. lack of willingness, rejection, lack of capacity) this is not always possible for companies to do alone. However, meaningful efforts should be made, as described in the guideline of the Sector Dialogue Automotive Industry on the core element “Risk analysis”.
Recommendation 2: Assessment of severity	What guidelines exist that can be helpful for putting prioritisation into practice?	The “Risk analysis” guideline of the Sector Dialogue Automotive Industry references the publication Exploring the Concept of Prioritization: An Explanatory Note for the Dutch Sector Covenant Process . This presents relevant questions in connection with the prioritisation of human rights risks in a clear and concise manner. We also refer to the OECD Due Diligence Guidance for Responsible Business Conduct . It contains practical examples of the three severity criteria (see p. 45), which can serve as orientation for companies.
Recommendation 3: Developing and managing communication channels	What possibilities exist for an enterprise to disclose its own supply chains in compliance with competition law?	An enterprise may disclose its own supply chains to the secretariat of the Sector Dialogue Automotive Industry or another third party that is not active in the market in an entrepreneurial capacity. The secretariat may collect the data and make it available to other enterprises in an anonymised manner, i.e. after deleting information that would allow individual contracting entities to be matched with individual contractors. In this way, the enterprises in the sector’s supply chain can be identified without having to disclose specific individual contractual relations. In the case of direct cooperation between competitors, an exchange is possible in individual cases if the information relating to the supply chain does not involve sensitive competition-related information, e.g. because the existence of the supply relationship is already publicly known or is not a trade secret.
Recommendation 5: Strengthening and advocating development of human rights due diligence processes at enterprises operating in lithium extraction with close links to the four risk areas	How can enterprises check the quality and effectiveness of external audits?	To check quality and effectiveness, the enterprise needs sufficient transparency regarding the composition of the audit team and their respective qualifications, regarding the audit process and/or guidance framework applied as well as all sources of information to be considered by the audit (e.g. with which actors will the audit speak in which context). Accessibility of audit reports and corrective action plans can also be points of reference where reviewing quality and effectiveness is concerned.
	What measures can enterprises take to supplement audits?	A variety of different measures can be taken to supplement audits. Selection and application are dependent on the respective situation. The Shift publication From Audit to Innovation: Advancing Human Rights in Global Supply Chains names as potential supplementary measures: introducing grievance mechanisms at supplier level, cooperating with local stakeholders (e.g. unions, NGOs, etc.) and programmes aimed at continuously improving economic incentives, among other things. In certain cases, having additional checks conducted by external experts such as (environmental or social) consultants can be expedient (see Phung, S. & Utlu, D. [2020]: Menschenrechte im Palmölsektor: Die Verantwortung von einkaufenden Unternehmen – Grenzen und Potenziale der Zertifizierung).

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