# WHAT IMPACT WILL THE NEW EU SUPPLY CHAIN DIRECTIVE (CS3D - CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE) AND THE SUPPLY CHAIN DUE DILIGENCE ACT (LKSG) HAVE ON HUMAN RIGHTS AND ON POTENTIAL COMPANIES AFFECTED BY THEM?

#### **Daniel Knoblich**

Graduate School
IIC University of Technology
Cambodia
Knoblich.koeln@freenet.de

#### **ABSTRACT**

The article analyses the impact of the EU Supply Chain Directive and the German Supply Chain Duty of Care Act on human rights and the companies affected. The aim is to protect human rights and the environment. The EU directive comes into force in stages and applies to the company's own operations, the entire chain of activities, including disposal, as well as direct and indirect suppliers. The climate protection programme aims to reduce greenhouse gas emissions by at least 65% by 2030, as environmental protection also makes a direct contribution to human rights. The analysis shows that the EU Supply Chain Directive will incur considerable costs, as the introduction of the Supply Chain Due Diligence Act alone will cost the logistics companies concerned 60 million euros (around 0.12% of industry turnover) and 100 million euros (around 0.20% of industry turnover) by 2023. The EU directive affects around 13,000 companies in the EU and a further 4,000 from third countries. Clothing imports from countries with problematic sustainability standards such as Bangladesh and Pakistan have already fallen by more than 20%. A further potential shortening of supply chains through reshoring or nearshoring is to be expected as a result of the EU Supply Chain Directive. Both the directive and the law require companies to analyse risks, have transparent supply chains and take preventative measures. By leveraging AI to digitize supply chains, diversify procurement and contract provisions, it is possible to ensure compliance with human rights and environmental standards across the entire value chain.

**Keywords:** Environmental protection, Social, EU/Germany Agreement, Economy.

## INTRODUCTION

The Supply Chain Due Diligence Act, or the Supply Chain Act for short, is an important and widely discussed topic in Germany and Europe. Ultimately, it is about companies taking responsibility for protecting human rights and the environment. There is already such a law in Germany, but it is to be tightened up by the EU and implemented throughout Europe. Business associations are resisting this implementation (cf. Verdi 2024). The EU Supply Chain Act and the EU Supply Chain Directive (CS3D - Corporate Sustainability Due Diligence Directive) are now to apply in a watered-down form.

This article analyses the implementation and coordination of the EU and examines the impact of the new EU Supply Chain Directive on companies, the economy and countries.

## **METHODOLOGY**

A literature review is carried out to identify the various legislative changes. The effects and benefits are also analysed. An overview of the existing research and legal situation is compiled from various sources. At the beginning, detailed research questions are formulated in order to define the objectives.

- a) What differences will there be between the EU Supply Chain Directive (CSDDD) and the Supply Chain Due Diligence Act (LkSG)?
- b) What is the impact of the EU Supply Chain Directive (CSDDD) and the Supply Chain Due Diligence Act (LkSG) on the companies and their the environment and human rights?
- c) How is the EU Supply Chain Directive being implemented and what are the positive aspects result from this?

In order to structure and organise the individual questions and provide an overview, a term matrix is created. The content is categorised based on these keywords (cf. Gilarski et al., 2020). (see Figure 1).

Conditions	EU/Germany Agreement	Economy	Environmental protection	Social
Synonyms	Politics	Costs	Impact, advantages	Working conditions, advantages
Generic term	Parties, EU Commission, countries	Company, business relationships, Subsidies, state	Improvements, environmental impact	Child and forced labour, slavery
Subtitle	Implementation, negotiations, regulations, changes	Specifications, delivery prices, supply chains	Packaging, CO2 pollution	Wages, countries
Related terms	European Economic Area		Sustainability	Social Responsibility

Figure 1: The term matrix, or vocabulary used in the literature search

Source: own representation

The content with the headings, subheadings and related terms is used in the search engines Web of Science PubMed, EconBiz, BASE and Google Scholar (cf. Burkhardt et al. 2017). This tool facilitates the search, as only the contexts are filtered (Durach, CF, Kembro & Wieland, 2017; Guba, 2008; Kitchenham, 2007; McManus et al., 1998).

Once the sources have been located, the information can be extracted from the key terms (cf. Gough, 2012). The sources are systematically analysed and the commonalities and research gaps are identified (cf. Boland et al., 2017; Briner & Denyer, 2012).

In the conclusion, the connections between the research questions and the evaluation are discussed and the results are emphasised (cf. Burkhardt et al. 2017).

# The Supply Chain Act in Germany and the EU:

Germany's "National Action Plan for Business and Human Rights" was approved by the government in 2016. The response was poor. For this reason, the "Federal Ministry of Labour and Social Affairs" and the "Federal Ministry for Economic Cooperation and Development" proposed a legal regulation for due diligence obligations of German companies - the so-called Supply Chain Due Diligence Act, which was the subject of much discussion. Environmental standards and socially acceptable working conditions are to be complied with under this law (cf. Görg et al. 2021; Zeisel 2021). Before its introduction, it was received very positively, as it creates jobs in developing and emerging countries and should increase the attractiveness of foreign companies for labour in order to reduce migration to industrialised countries. (cf. Görg et al. 2021).

This changed when, shortly before the bill was passed, business organisations demanded that the scope of application be restricted, that the duty of care be limited to direct suppliers only, that foreign companies in Germany be held accountable and that the "Federal Office of Economics and Export" Control's inspection options be limited. Apparently, the lobbyists had given up their favourable stance and were now aiming to block the bill completely. (cf. Paasch/Seitz 2021). Many German and European companies were more frequently involved in human rights violations, even though the UN had already adopted guiding principles ten years ago. As it was not a law, there was a lack of implementation and less than 20% of companies complied. (cf. Zach 2021; Herzog 2021). A number of countries have already legislated responsibility for respecting human rights in the supply chain. These relate to specific sectors, topics or rights, such as a Dutch law against child labour, standards of conduct on conflict minerals in the USA and the EU, and reporting obligations in relation to human trafficking and modern slavery in the UK, Australia and the USA (Lorenzen 2021). However, since human rights violations often take place in a complex environment, doubts were already raised in 2020 as to whether European or German laws can have any effect at all if the governments of the countries in which the violations take place do not implement them. (cf. Lorenzen 2021). Lieferketten umfassen den gesamten Produktions- und Lebenszyklus einer Ware oder Dienstleistung, von den Rohstoffen und Grundmaterialien bis zu den Endprodukten und dem Recycling (cf. Herzog 2021).

The Supply Chain Due Diligence Act finally came into force in 2023 and applied to companies with 3000 employees. From January 2024, the scope of application was reduced to 1000 employees (cf. Grünewald et al. 2022; Herzog 2021). However, as going it alone would lead to distortions of competition because suppliers would engage in supplier hopping in order to conceal production relationships and national regulations would not eliminate global economic relationships, the proposal was made to find an EU-wide regulation. As a result, the draft for an EU supply chain directive was created (cf. Herzog 2021). The vote on the EU Supply Chain Directive was postponed until February 2024 (cf. Meder 2024), as the German "Free Democratic Party" (FDP) expressed concerns that it would create unnecessary bureaucratic burdens. Italy and France also objected to the draft. The requirements of the EU directive were too strict, meaning that small and medium-sized enterprises would suffer as a result. Particularly in the area of civil liability, which could result in risks for companies. (cf. Bühner 2023; Höhn 2024; ZDH 2024).

In March 2024, a new EU Supply Chain Directive was finally adopted after lengthy discussion, with the agreement of the permanent representatives of the member states (cf. Time 2024).

The following implementation of the EU directive at a glance (see Figure 2).



- May / June 2024: The CSDDD comes into force 20 days after its publication
- May / June 2026 (2 years after entry into force): EU states must implement the CSDDD into national law, Germany will adapt the LkSG
- 2027 (3 years after entry into force): CSDDD applies to companies that employ at least 5,000 people and generate sales of at least 1.5 billion
  euros.
- 2028 (4 years after entry into force): Directive applies to companies that employ more than 3,000 people and generate sales of at least 900 million euros.
- 2029 (5 years after entry into force): CSDDD applies to companies that employ more than 1,000 people and generate sales of at least 450 million euros.

# Figure 2: Timetable EU Supply Chain Directive

Source: Lawcode 2024

"In contrast to the German Supply Chain Act, the directive has the following stricter regulations

- Extension of due diligence obligations to the entire value chain,
- Introduction of a new civil law liability offence for the breach of due diligence obligations and
- Extension of the list of protected assets" [my translation] (Würz 2024).

Small and medium-sized companies can therefore be indirectly affected if, for example, they are suppliers to large companies (cf. IfM n.d.; EQS 2024).

The German Supply Chain Act applies to all (legal form-neutral) companies, while the EU Directive initially only applied to stock corporations, partnerships limited by shares and limited liability companies (cf. Würz 2024), but this was amended in April 2024 so that partnerships can be included (cf. Lutz 2024).

The Supply Chain Duty of Care Act also applies to companies with 1000 employees (cf. Bmas n.d), in the EU Directive it applies to 5000 employees, but decreases over the years and depends on their turnover (cf. WDR 2024; MDR 2024). However, for companies from third countries, there is no threshold for the number of employees. Instead, the threshold for net sales achieved in the EU is now only at least €450 million, while the first draft still required €150 million. (cf. Lutz 2024).

On a positive note, it should be emphasised that, in order to avoid competitive disadvantages, the law applies not only to companies in the EU, but also to companies that are economically active in the EU but are not based in the EU (cf. IHK n.d; Meder 2024).

The due diligence obligations and thus the supplier audit of the EU Directive relate to the company's own business activities, subsidiaries, direct and indirect suppliers, the use and disposal of products and should be reviewed annually (cf. Würz 2024; Compliance Solutions n.d). The company's own division must develop rules of conduct in accordance with the EU Supply Chain Directive in order to minimise risk in the procurement process. Preventive measures should be taken with direct suppliers to avoid overtime due to short delivery times. Violations require remedial action, which may include financial compensation, apologies or preventative measures. An annual due diligence report must also be submitted (cf. BMAS 2024; Haufe n.d; Wellbrock n.d). According to the commission's draft, large companies should be obliged to draw up climate protection plans.

Liability is waived in the event of wilful or negligent breach of the duty of care. (cf. Lutz 2024; Bmas 2024; Bühner 2023). The sanctions for non-compliance are determined by the national authority in each Member State. (cf. Compliance Solutions n.d). After the official publication of the European Parliament, the directive would enter into force on the 20th day (cf. Lutz 2024).

## **Economic aspects**

The EU Supply Chain Directive is to be seen as an extended Supply Chain Due Diligence Act that still needs to be transposed into national law and thus modified (cf. Söder 2024). Due to the great similarity between the EU Supply Chain Directive and the Supply Chain Due Diligence Act, German companies are well positioned to fulfil the due diligence obligations of the EU requirements. However, the companies concerned should familiarise themselves with the new content once the directive has been officially adopted, as new protected goods will be added, particularly in the environmental area. The EU directive also emphasises important risks, including those in the deeper supply chain (cf. Rödl 2024; Green Vision Solutions 2024). The German Supply Chain Due Diligence Act already provides for due diligence and thus risk management to be extended to the entire supply chain if suppliers are found to have abuses. It is important that suppliers comply with human rights and environmental standards. Training can help identify risks. Complaint mechanisms enable those affected to report violations. (cf. BMAS 2024; Haufe n.d.; Wellbrock n.d.).

However, companies lack transparency, as supply chains can be endless and companies are constantly changing their suppliers and, in turn, their sub-suppliers. In addition, companies lack the ability to exert influence, as they have no opportunity to enforce remedial measures with indirect suppliers because they are not influential major customers. Reports, controls and complaints procedures are therefore associated with a high level of effort for companies and risk analysis is limited to direct suppliers (cf. Franke 2021; Dessel 2023).

The IW Report 8/2024 and other EU member states believe that companies will bear huge costs and the EU's competitiveness will deteriorate as a result. In developing and emerging countries, economic development may even be at risk, as their attractiveness as suppliers of intermediate or final products to the European market will decline sharply (cf. Händlerbund; Kolev-Schaefer/Neligan 2024). The European Commission estimates that the EU directive will affect around 13,000 companies in the EU and a further 4,000 companies from third countries that are active in the European single market. This is also likely to lead to a shortening of supply chains through reshoring or nearshoring (cf. Koch 2024).

The German Supply Chain Due Diligence Act has already made it possible to collect company data. Trade data shows that since the introduction of the law, imports of clothing from countries with problematic sustainability standards such as Bangladesh and Pakistan have fallen by over 20% in the high-risk area. This development does not appear to be the result of falling German demand, but rather an initial sign of trade adjustments due to non-tariff trade barriers, especially with these countries. Declining imports of garments may also be due to changes in sourcing strategy due to corona (cf. Sumrow 2023) and wars to increase the resilience of supply chains. (cf. Kolev-Schaefer, /Neligan 2024; Joebges/ Döver 2022; Aksoy 2024; Bunde 2023). 7% of companies have withdrawn from countries with weak government structures, while one in eight companies has decided to produce or purchase in countries with high human rights and environmental standards (cf. Kolev-Schaefer, /Neligan 2024).

In December 2022, the Handelsblatt Research Institute (HRI) estimated the costs of introducing sustainable supply chain management in Germany at between 0.005% and 0.6% of company turnover. The study assumes that the additional costs arising from the introduction of the law for logistics companies affected by the Supply Chain Sustainability Obligations Act in 2023 will be between EUR 60 million (approx. 0.12% of industry turnover) and a maximum of EUR 100 million (approx. 0.20% of industry turnover). According to estimates, the costs will be significantly lower from 2024.

LBBW Research assumes that risk management is beneficial, as a number of advantages were already realised in 2022. (cf. Hellgren 2022). These are, for example, that human rights are not violated and that the resilience of supply chains, the standardisation of global purchasing processes and the quality of preliminary products are improved (cf. Grünewald et. al 2022; Dessel 2023).

According to an expert interview with Weleda AG, which has already introduced social and ecological standards since 2017, long-term business relationships can be useful for developing transparency towards suppliers and sub-suppliers. (cf. Jerke 2021; Oyedijo et al. 2023). In addition, digitalisation of supply chains with artificial intelligence and diversification of procurement can help to control and regulate supply chains (cf. Bunde 2023; Grünewald et. al 2022; Lane 2023).

The advantages of an EU supply chain directive can be an improvement in image (cf. Jerke 2021: p. 35), but also an increase in the competitiveness of the company, as compliance creates a high reputation among stakeholders, banks and customers (cf. Dessel 2023). Compliance with the Supply Chain Act therefore also makes sense for companies that are not affected by the Act (cf. Haupt 2021).

## **Environmental protection:**

As mentioned in the previous chapter, companies must draw up a climate action plan as part of the EU Supply Chain Directive. The climate targets for greenhouse gas emissions are therefore to be reduced by at least 65% by 2030 (cf. BMWK 2024).

According to Section 2 (3) of the German Supply Chain Duty of Care Act, mercury, persistent organic pollutants, the handling of waste and the import and export of hazardous waste are considered ecological risks (cf. Dessel 2023). The EU Commission's draft directive (CSDDD) provides for the reduction of CO2 emissions from companies, whereby the instruments required

are left to the individual member states, as companies can be very heterogeneous. (cf. Bierbrauer 2022).

The introduction of positive and negative lists for the implementation of the German Supply Chain Duty of Care Act was already mentioned in the study "Economic Evaluation of a Supply Chain Act" by Gesamtmetall e.V. Trading partners are categorised according to compliance or non-compliance with environmental standards (cf. Felbermayr 2022; Jäger et al. 2023).

A Federal Environment Agency research project on the electronics industry analysed the negative environmental impacts along the global supply chain of the electronics industry. The upstream metal production sector is of particular importance due to its negative impact on greenhouse gases, air pollutants, water, water-polluting substances and waste. In addition, electricity consumption along the higher value chain also plays an important role in greenhouse gas emissions, air pollutant emissions and water consumption. (cf. Grüning et al. 2023). The project supports companies in promoting due diligence in supply chains. Possible measures to reduce environmental risks include determining the impact through a thorough risk analysis using databases or changing the scope of activities. MRIO and other databases provide an overview of the industry's environmental footprint. (cf. Flaute et al. 2017). Based on the results of the analyses, fact sheets are explained in order to avoid the environmental impact of the supply chain. These include the definition of objectives, the internal exchange of knowledge, especially with upstream suppliers, the introduction of purchasing and supplier management and the use of secondary raw materials (recycling) (cf. Grüning et al. 2023).

#### Social

As the EU Corporate Sustainability Due Diligence Directive (CSDDD) includes the protection of human rights (cf. Rödl 2023), purchasing practices, such as the exclusion of suppliers, must be changed in companies in such a way that they take this protection into account (cf. Fairtrade 2024). If there is a reasonable likelihood of a violation of key human or labour rights due to actual circumstances, this constitutes a human rights risk (cf. Zimmer 2023). Environmental protection is directly linked to the protection of human rights, as the right to clean drinking water or health is a human right. Negative environmental impacts such as pollutants can become an insidious danger for people and the environment and lead to people emigrating or fleeing, which in turn has negative human rights consequences for those affected. (cf. Grüning et al. 2023; BUND 2022). The prohibition of child labour and forced labour, occupational health and safety, freedom of association, equal treatment, fair wages and the prevention of land confiscation by companies are also key human rights risks. Companies must ensure that compliance with these points is observed in their supply chain (cf. Zimmer 2023).

The study "Social Sustainability and Human Rights in Global Supply Chains" analysed which approaches companies pursue in order to achieve sustainability goals in their social supply chains. The 22 global corporations surveyed pursue two different, cumulative approaches. The transaction-based approach relies on the collective power of buyers to ensure that suppliers comply with their standards. The second approach is the relationship-based approach, which is about building capacity between buyers and suppliers. Some leading companies are engaging directly with workers to train them to advocate directly for their rights (cf. Cao et al. 2023).

The article by the Austrian Institute of Economic Research found that not only in the EU, but also non-European companies already fulfil due diligence obligations. In countries such as the USA, Canada and Mexico, products from forced labour have already been banned. The EU Supply Chain Directive can be effectively implemented by promoting human rights due diligence guidelines, harmonising reporting standards, certification systems and risk management requirements and involving civil society in the implementation process (cf. Meyer/Pham 2023).

From the perspective of international law, there are three ways to protect human rights in the supply chain. 1. a direct commitment of transnational companies to human rights enshrined in international law. 2. national law that regulates companies in the countries of production.

3. control of the buyer companies on the territory of the respective country of domicile (also through national law, especially through supply chain laws). Regulation in the producing countries would be the simplest solution if the producing countries have sufficient resources to enforce the measures (cf. Waibel/Grandits 2023).

Studies show that since 2005, 280 allegations of human rights violations have been documented against German companies and 29 out of 10 sectors have recognisable human rights risks. A voluntary basis is therefore not a successful approach and must be enforced by law (cf. Krauß/Baier 2021).

## Review after one year of the Supply Chain Due Diligence Act

According to an evaluation by the "Federal Office of Economics and Export Control" (BAFA), the results for 2023 were positive. The companies have successfully implemented the requirements. BAFA is responsible for monitoring, but also for providing support. BAFA tries to help companies that have not yet addressed the issue and need support. 486 inspections were carried out, 78 of which were ad hoc inspections. The inspections focussed on risk management and the complaints procedure. The internal responsibility for risk management and the establishment of the complaints procedure were implemented by most companies. Some companies had attempted to contractually transfer these duties to their suppliers, but this is not permitted (cf. BAFA 2023; Zimmer 2023).

## RESULTS AND CONCLUSION

The following three questions are addressed again in the final section:

- a) What differences will there be between the EU Supply Chain Directive (CSDDD) and the Supply Chain Due Diligence Act (LkSG)?
- b) What is the impact of the EU Supply Chain Directive (CSDDD) and the Supply Chain Due Diligence Act (LkSG) on the companies and their the environment and human rights?
- c) How is the EU Supply Chain Directive being implemented and what are the positive aspects result from this?

Re a) The German Supply Chain Due Diligence Act came into force on 1 January 2024 for companies with more than 1,000 employees. It applies to all companies, regardless of their legal form, as well as to their own business area, indirect (in the event of concrete indications) and direct suppliers. The Supply Chain Due Diligence Act does not establish liability in the area of civil law.

Comprehensive due diligence obligations must be implemented and a complaints procedure must be set up.

However, in the EU Supply Chain Directive (CSDDD Corporate Sustainability Due Diligence Directive), the law gradually comes into force, starting from 2027 for companies with more than 5,000 employees and a global turnover of 1.5 billion euros, and by 2029 for companies with up to 1,000 employees and a global turnover of 450 million euros. In contrast, there is no threshold for the number of employees for companies from third countries. Instead, there is only a threshold for net turnover. The scope of the EU Supply Chain Directive covers its own area of the entire activity chain, including disposal and for direct and indirect suppliers. As with the Supply Chain Duty of Care Act, the legal scope extends to the environment and human rights. A climate protection plan is also provided for. The directive regulates civil liability for intentional and negligent behaviour, unlike the Supply Chain Due Diligence Act. Fines are determined at national level.

Re b) According to IW Report 8/2024, the EU Supply Chain Directive will lead to considerable expenditure for companies. The costs of implementing sustainable supply chain management in Germany were estimated by the Handelsblatt Research Institute (HRI) in December 2022 at 0.005% to 0.6% of company turnover. These figures were calculated for the German Supply Chain Sustainability Act. As suppliers to large companies, small and medium-sized enterprises that are not directly covered could still be affected by the EU Supply Chain Act.

Human rights and the environment must be clearly protected. In order to improve the ecological footprint, greenhouse gases should be reduced, waste minimised and pollutants avoided.

Environmental protection and human rights are closely linked. Negative environmental impacts such as contaminated drinking water can lead to migration, which in turn has a negative impact on human rights.

Regarding c) The implementation of the EU Supply Chain Directive plays an important role in business transactions. The points that already apply in the German Supply Chain Act can help here, as the EU Directive serves as a kind of supplement to the Directive. The adaptation of the directive to the law will take two years after it comes into force.

"The Federal Office of Economics and Export Control" supports companies in implementing risk management in order to fulfil human rights and environmental due diligence obligations. Responsibilities are defined, risk analyses are carried out and the supply chain is made transparent. Companies must identify their business areas and those of their suppliers and take reporting standards and certification systems into account in order to facilitate implementation.

The company's own division should develop rules of conduct to minimise risk in the procurement process. Overtime at the producer due to short delivery times can be avoided. Preventive measures against direct suppliers can be implemented in contract management to ensure compliance with human rights and environmental standards along the supply chain. Training and knowledge sharing help to identify risks. Complaints mechanisms allow affected parties to point out risks or violations. In the event of violations, remedial measures must be taken, which may include

financial compensation. An annual due diligence report must be submitted to the competent authority.

A study has shown that the introduction of positive and negative lists to implement the German Supply Chain Duty of Care Act offers advantages with regard to compliance or non-compliance with environmental standards vis-à-vis suppliers and subcontractors.

Despite the costs incurred, risk management improves the resilience of supply chains, the standardisation of global purchasing processes and the quality of primary products

Long-term business relationships can be useful for developing transparency towards suppliers and subcontractors. Diversification of procurement and digitalisation of supply chains with artificial intelligence can also contribute to the control and regulation of supply chains.

Implementing the EU Supply Chain Directive also brings benefits such as improved image and increased competitiveness. Compliance creates a good reputation with stakeholders, banks and customers.

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