PERSPECTIVE

WORK AND SOCIAL JUSTICE

THE EU SUPPLY CHAIN DIRECTIVE

Global Protection for People and the Environment

Robert Grabosch
June 2024

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Companies must engage in meaningful consultations with trade unions and other stakeholder groups. Barriers to civil legal protection will be reduced.

Beginning in 2027, national supervisory authorities will monitor compliance with the obligations. BAFA is already active in Germany. In future, fines may amount to 5 per cent of annual turnover and will be made public.

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The CSDDD heralds a paradigm shift. Large companies must make efforts to prevent harm to people and the environment along their global chains of activities, even if they do not think this is profitable. This also applies to non-European companies trading in the EU. This will make globalization fairer. The CSDDD should be an opportunity for closer trade union cooperation and strategic partnerships at the political level between the global North and South.

Companies must engage in meaningful consultation with trade unions and other stakeholder groups to prepare individual due diligence and reparation measures. They are liable for damages to affected people and trade unions. Barriers to civil legal protection will be reduced. Courts can require companies to submit documentation of their due diligence measures, and claims for damages do not become time-limited until at least five years have elapsed.

The risk-based approach and a wide range of assistance, such as a single helpdesk to be set up by the European Commission, will make it easier for companies to exercise due diligence. In 2027, national supervisory authorities will begin to monitor compliance with the obligations. BAFA is already active in Germany. In the future, fines may reach 5 per cent of annual turnover and will be made public. The fulfilment of due diligence obligations by companies is also relevant when awarding public contracts and concessions.

For further information on this topic:
https://www.fes.de/themenportal-die-welt-gerecht-gestalten/weltwirtschaft-und-unternehmensverantwortung/

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Foreword by the FES

The EU Supply Chain Directive is on its way. It is a crucial instrument for making globalization fairer, more sustainable and more reliable. Workers around the world will be protected by the Directive, as will the environment. From now on, companies must ensure that they respect human rights and environmental protection in their supply chains. This goes hand in hand with a global paradigm shift from voluntary commitments to legal obligations for companies.

The path leading to the European Directive – often colloquially referred to as the EU supply chain law – has been a long one. In December of last year, the European Council, the European Commission and the European Parliament agreed on the wording of the law. The process took nearly three years. With this, Europe has not only shown that it is willing to protect human rights in global supply chains. It also showed that despite the debt crisis, Brexit and the rise in right-wing populism, Europe is still able to pass progressive legislation. The German government played an important role in this process. As the EU's largest economy with its own Supply Chain Due Diligence Act (LkSG), Germany is seen by many member countries as an important reference point.

The irritation across Europe was all the greater when, shortly before the Council decision, Germany announced that it would abstain from the vote by the member countries. This unexpected U-turn triggered a wave of indignation and led to increased mistrust concerning the reliability of Germany's position in the European structure. At the same time, it increased uncertainty within the member countries and among those actors who had always opposed the law. The planned vote was postponed several times. In the end, it was only possible to secure a majority because the compromise reached in December 2023 was opened up for further discussion and was watered down. For example, the scope of the Directive was thoroughly revised: originally intended to cover companies with 500 employees and a turnover of €150 million, it is now restricted to companies with 1,000 employees and a turnover of €450 million. In addition, all high-risk sectors, which would have included companies with 250 or more employees, have been removed.

Nevertheless, the Directive is a major achievement. In future, companies covered by the law will have to carefully examine their production paths and ask themselves whether they involve risks of human rights abuses and environmental degradation. If so, companies will have to prioritize these risks and take appropriate countermeasures. In the best-case scenario, damage will thus be prevented before it occurs. In the event of impairments, however, the Directive provides for national supervisory authorities to monitor compliance with the law and, if necessary, impose remedial action or sanctions. In Germany, this function is already performed by the BAFA (Federal Office for Economic Affairs and Export Control). On the other hand, civil liability is to be introduced, which so far does not exist in the LkSG. Companies will be consistently judged on whether they have fulfilled their duty of care, i.e. whether they have done all that is necessary within the limits of their possibilities – no more, but also no less. The Directive also extends the scope of protection of human rights and labour law. In future, for example, attention must also be paid to ensuring a living wage for the self-employed, such as small farmers. Important environmental aspects are now also covered by the law. The role of trade unions and civil society has also been strengthened. They must now be more closely involved in the due diligence process. This offers many opportunities for trade unions, but also for companies.

Rather than being a bureaucratic stumbling block for business innovation, the European supply chain regulation reinforces a risk-based approach that companies can implement effectively. They are now in a position to take legally watertight and targeted action to prevent violations of human rights and environmental regulations. Many companies across Europe took a stand and spoke out in favour of a law. This is because an EU-wide agreement on corporate due diligence promises to offer a real competitive advantage, especially in times of increasingly consumer awareness and critical consumer behaviour. It would be negligent in terms of economic policy not to take advantage of the economic opportunity and the associated competitive advantage for European products that this represents. At the same time, the EU legislation also creates the long-requested level playing field for businesses: it lays down the same rules for all companies.

The Directive is the prelude to the long overdue attempt to adapt the global economy to the environmental and

social challenges of the twenty-first century. The EU cannot seek equal partnerships around the world without at the same time guaranteeing human rights and environmental protection. So it is only right that we continue on this path. In the wake of the German and European supply chain laws, an agreement on global due diligence obligations for companies is more important than ever. The corresponding negotiations have been underway in the UN Human Rights Council since 2014. Now is the time for the EU to finally strengthen this transnational instrument. To achieve this, we need a strong social democratic voice with the support of trade unions and civil society.

In the future, the Friedrich-Ebert-Stiftung will continue to closely monitor the processes surrounding corporate due diligence. Together with our partners around the world, we will work towards a fair and ecologically sustainable global economy. In particular, we will provide practical examples to counter the many myths surrounding supply chain legislation.

This publication is a step in that direction. The author, lawyer Robert Grabosch, LL.M., explains what the EU Supply Chain Directive actually does and does not stipulate. Robert Grabosch also points out the serious differences from the German Supply Chain Act. This publication is based on the text of the Directive as adopted by the European Parliament on 24 April.

I hope you enjoy reading it.

Franziska Korn,
Policy Advisor for Human Rights and Business,
Friedrich-Ebert-Stiftung

1. INTRODUCTION

On 14 December 2023, the three EU legislative bodies agreed on the content of a European directive on corporate sustainability due diligence (Corporate Sustainability Due Diligence Directive/CSDDD) in a trilogue procedure. Further amendments were made in the early months of 2024 in order to achieve the necessary majority of the EU Member States. Only in this way was it possible for the Committee of Permanent Representatives of the Member States to reach an agreement on a final version of the CSDDD in March (document no. 6145/24 of 15.3.2024).[1] The European Parliament adopted the Directive on 24.4.2024. This means that the CSDDD will enter into force on the twentieth day following its publication in the Official Journal of the EU.

From 2027 onwards, large companies operating on the European market will have to make efforts to prevent harm to people and the environment along their global chains of activities. The CSDDD sets out how EU Member States must adapt their national laws by 2026 and how they ensure that European and non-European companies comply with their due diligence obligations.

The requirements resulting from the European Directive for companies and national supervisory authorities are presented below. The differences to the German Supply Chain Due Diligence Act (LkSG) are also highlighted.

Implementing the CSDDD in German law, the scope of the persons covered by the LkSG will have to be extended to include franchisors. European and non-European companies that outsource their business model to independent contractors (franchisees), and often continue to control the sourcing of ingredients and raw materials, can no longer escape due diligence obligations as a result.

Ambiguities regarding the applicability of the LkSG when a holding company acts as the parent company in a group are clarified.

The due diligence obligations under the LkSG already apply to all companies with more than 1,000 employees. The CSDDD only imposes due diligence obligations on companies that simultaneously have a turnover of more than €450 million. However, the CSDDD must not be drawn upon to weaken existing human rights and environmental protections (Art. 1(2)). This point argues against exempting companies with a turnover of less than €450 million from their current due diligence obligations in the future.

2. SCOPE: TO WHICH COMPANIES DOES THE DIRECTIVE APPLY?

The due diligence obligations apply to both European and non-European companies that reach a certain size (Art. 2). For European companies – i.e. those incorporated under the company law of an EU Member State – the provisions apply in the following three cases:

a) The company has more than 1,000 employees and generates more than €450 million in sales worldwide.
b) The company is the ultimate parent company of a group which, when consolidated, exceeds the thresholds set out in a). Such parent companies are often so-called holding companies whose main task is simply to manage the shares in the subsidiaries; a holding company can apply to the supervisory authority for an exemption from the due diligence obligations if it ensures that the next subsidiary, which is at least also economically active, fulfils the due diligence obligations.
c) The company grants franchise rights to self-employed individuals operating in the EU and generates more than €22.5 million in franchise fees and more than €80 million in turnover worldwide.

For certain high-risk sectors, the EU institutions had set much lower thresholds (250 employees and €40 million turnover), namely for the manufacture of and trade in textiles, food and minerals, and for the construction industry. Ultimately, however, the same thresholds mentioned above apply to all sectors. It is estimated that the CSDDD covers 5,400 European companies.

For companies established outside the European Union, the due diligence requirements are in principle the same. However, the number of employees is not relevant and the turnover thresholds (€450 million, €22.5 million and €80 million) are based solely on EU turnover. If a company falls within the scope of the CSDDD, the due diligence obligations apply in the same way as for European companies. It must therefore apply due diligence to the chains of activities of all its products, including those it manufactures and sells outside the EU. In order to be able to correspond with non-European companies at any time and, if necessary, to send them notices of penalties, the supervisory authorities must appoint a representative in the EU (Art. 23).

The human rights and labour law protections of the LkSG are expanded to include personality rights (see Table 1, CSDDD, No. 4) and freedom of thought (No. 5). Attention must be paid not only to a decent wage for employees, but also to a living wage for the self-employed, e.g. small farmers (No. 6). The quality of life of employees, in particular of migrant workers, is more comprehensively protected (No. 7), as are the health and education of children (No. 8).

The three environment-related risk complexes of the LkSG (mercury, POPs, waste) are also supplemented by several topics (see Table 1, lower section).

3. PROTECTIONS

The purpose of the Directive is to protect human rights and the environment from the adverse impacts of business activities.

The protected human rights, including workers' rights, are listed in Annex I of the Directive. The Directive addresses the adverse impacts resulting from the ›abuse‹ of the right in question (Art. 3(1)(c)). However, it is irrelevant whether the impairment is caused deliberately or even intentionally. The list contains 16 entries on specific human and labour rights. Annex I goes on to list the core labour conventions of the ILO, the two UN human rights covenants of 1966

1 Available at the European Parliament's Public Register of Documents at www.europarl.eu/RegistreWeb, Reference: P9_AMA(2023)0184, Amendment 430 of 15 April 2024. This text is available in all official languages of the EU and consolidated with continuous numbering.

and the Convention on the Rights of the Child. The 16 rights specifically listed are enshrined in these international legal frameworks and must be interpreted in light of them. Adverse impacts on other rights enshrined therein may also be taken into account if the impairment is direct and foreseeable (Art. 3(1)(c)(ii)).

The CSDDD refers, inter alia, to the eight core labour conventions of the International Labour Organization (ILO). The worker rights protected therein are also explicitly mentioned in Annex I of the CSDDD. Moreover, companies must pay particular attention to the health and safety of their employees in the workplace (see Table 1). However, the CSDDD does not refer to ILO Convention 155 on Occupational Safety and Health of 1981, since it has only been counted among the core labour standards since 2022 and has not yet been ratified by all EU Member States.

Moreover, Annex II lists the environmental issues to which companies' due diligence obligations relate. In addition to the dangers posed by particularly harmful substances (mercury, persistent organic pollutants (POPs) and hazardous waste), biodiversity, trade in endangered species, the prior informed consent procedure for the import and export of hazardous chemicals, world heritage sites, wetlands and the marine environment are explicitly mentioned.

Not all of the shortlisted frameworks have made it into the catalogue of protected goods in the Annex to the Directive. Recitals 33, 36 and 42 indicate that, depending on the context, companies may also need to take into account the following frameworks:

- the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), including the right to free, prior and informed consent, of 2007
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of 1965
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979
- the Convention on the Rights of Persons with Disabilities of 2006
- the UN Convention against Corruption of 2003; and
- the Geneva Conventions of 1949 on humanitarian law

Climate change remains excluded from the system of due diligence obligations (see below for details). Instead, Article 22 will require companies to develop and implement a transition plan to ensure that their business model and strategy is compatible with the Paris 1.5 degree target through ›best efforts'. This approach was repeatedly criticized as ineffective during the legislative process, on the grounds that the European Commission had not provided any guidance on the content of the transition plans. In addition, the Council of the European Union wanted the competent national supervisory authority to check only whether the company can produce some document called a ›transition plan'. Only the European Parliament – with the support of strong lobbying by civil society organizations – was able to push through a more effective version of the regulation: the transition plan must include deadlines for specific targets, identify decarbonization levers and key measures, specify and explain the level of investment and budget allocated, and describe the role of the company's management and executive bodies and its supervisory board in achieving the target. The supervisory authorities will also need to monitor and enforce all of this, including through the imposition of penalties where necessary. However, the actual implementation of the plan will not be monitored. The transition plan must be renewed every twelve months, taking into account the progress made in the interim. At one stage, the draft of the CSDDD included a provision that particularly large companies would also have to draw up an internal company policy on the implementation of the transition plan. This would have included financial incentives (e.g. bonuses for senior staff). However, this point was deleted at the end of the legislative process.

4. SCOPE OF DUE DILIGENCE

The duty to exercise due diligence applies to all adverse impacts on human rights and the environment that arise

- from the company's own operations,
- from the operations of its controlled subsidiaries (Art. 3(1)(e)) or
- from the operations of its business partners insofar as they are related to the company's chain of activities; business partners also include indirect business partners, i.e. entities with which the company has no contractual relationship but whose business activities are related to the company's business activities, products or services (Art. 3(1)(f)).

With the transposition of the CSDDD into German law, there will no longer be any doubt that the duty of care of supermarkets and other retailers applies not only to their own brands, but to all goods they offer for sale.

The concept of the chain of activities (Art. 3(1)(g)) is therefore of central importance for the scope of the due diligence obligation. It has an *upstream* and a *downstream* side. Activities on the upstream side relate to the development and production of goods or the development and provision of services, including product design, raw material extraction, sourcing, manufacturing, transportation, storage, and the supply of raw materials, products or parts of products. Downstream activities relate to the distribution, transport and storage of the product if the business partner carries out these activities directly or indirectly for or on behalf of the company. This is likely to include online sales platforms, packaging service providers (co-packing) and customer services that have been outsourced to call centres. Retailers (e.g. supermarkets), on the other hand, do not act on behalf of the manufacturer, but in their own name, on the market. This means that the manufacturer of the products does not have to worry about the working conditions in supermarkets. On the other hand, the supermarket operator itself must comply with the due diligence requirements of the CSDDD (provided that it exceeds the size thresholds

Table 1:
Comparison of the protection provided by the CSDDD vs the LkSG

	CSDDD	LkSG
	Abuse of human rights (Art. 3(1)(c) and Annex I)	**Human rights risks** (§2(2))
ILO core labour standards	1. right to **life**, 2. prohibition of **torture and cruel, inhuman or degrading treatment,** including excessive use of force by security forces protecting company assets, 3. **freedom** and **security**	11. excessive use of force by **security forces,** especially against trade union members
	4. **privacy, family, home, correspondence, honour, reputation** 5. **thoughts, conscience, religion**	–
	6. just and favourable conditions of work, in particular **a fair and adequate living wage** for employees and **an adequate living income** for the self-employed	8. payment of an **adequate living wage,** possibly more than the statutory minimum wage at the place of employment
	7. adequate quality of **accommodation, food, clothing** and sanitary facilities (if provided by the company)	–
	8. **children:** the highest attainable standard of health, education, adequate living conditions; protection from economic exploitation, sexual abuse, abduction and child trafficking	–
	9. the **minimum age** at work 10. the **worst forms of child labour**	1. the **minimum age** at work 2. the **worst forms of child labour**
	11. **forced labour** 12. **all forms of slavery**	3. **forced labour** 4. **all forms of slavery**
	re 6: just and favourable conditions of work, in particular: – **safe and healthy working conditions** – appropriate limitation of **working hours**	5. **occupational safety and health regulations** applicable at the place of employment, in particular with regard to (a) workplace, workstation and work equipment, (b) exposure to chemical, physical or biological substances, (c) physical and mental fatigue and (d) training and instruction of employees
	13. **freedom of association:** forming, joining and working in trade unions, including the right to strike and the right to collective bargaining	6. **freedom of association:** forming, joining and working in trade unions, including the right to strike and the right to collective bargaining
	14. **equal treatment** in employment, in particular with regard to origin, skin colour, gender, religion and political conviction, including equal pay for work of equal value	7. **equal treatment** in employment, in particular with regard to national and ethnic origin, social origin, health status, disability, sexual orientation, age, gender, political opinion, religion or belief, including equal remuneration for work of equal value
	15. **harmful environmental changes** (soil, water and air pollution, emissions and excessive water consumption or other impact on natural resources, such as deforestation) that: impede (a) food production, (b) access to clean drinking water or (c) access to sanitary facilities, or (d) damage health, safety or possessions; or (e) damage ecosystems in which humans participate	9. **harmful environmental changes** (soil, water and air pollution, noise emission, excessive water consumption), that: impede (a) food production, (b) access to clean drinking water or (c) access to sanitary facilities, or (d) damage health
	16. unlawful **taking of land, forests and waters** that serve people's livelihoods	10. unlawful **taking of land, forests and waters** that serve people's livelihoods
	Art. 3(1)(c)(ii): direct impairments of other rights protected in the **two UN human rights covenants** of 1966, the **eight ILO core conventions** and the **Convention on the Rights of the Child,** if the company could reasonably have recognized the abuse of the human right	12. any other conduct which is directly capable of impairing in a particularly serious manner a right protected by the **two UN human rights covenants** (1966) or the **eight ILO core conventions** and the unlawfulness of which is obvious upon reasonable assessment of all the circumstances in question
	Environmental protection violations (Art. 3(1)(b) and Annex II)	**Environment-related risks** (§2(3))
	1. impairment of **biodiversity**	–
	2. **trade in endangered species** of wild flora and fauna	–
	3.-5. **mercury** and mercury waste	1.–3. **mercury** and mercury waste
	6.-7. production, use, handling, collection, storage and disposal of persistent organic pollutants (**POPs**)	4.–5. production, use, handling, collection, storage and disposal of **POPs**
	8. the **Prior Informed Consent procedure** for the import and export of toxic substances and pesticides	–
	9. substances that deplete the **ozone layer**	–
	10.-12. export and import of **hazardous waste**	6.-8. export and import of **hazardous waste**
	13. damage to **world cultural and natural heritage sites**	–
	14. **wetlands,** 15. pollution from **ships,** 16. pollution of the **marine environment** through discharges	–

mentioned above). The company's due diligence obligations do not cover the effects of the use of its products or services (e.g. armaments, chemicals and monitoring software) by end users; Recital 25 explains that these aspects are covered by other EU instruments.

The CSDDD covers all activities ›related‹ to the products. This essentially corresponds to the term ›value chain'. At first glance, the LkSG only deals with raw materials and production steps that are ›necessary‹ to produce the products. However, the availability of alternative materials and methods does not stand in conflict with this necessity. Therefore, the ›supply chain‹ within the meaning of the LkSG should already largely correspond to the chain of activities within the meaning of the CSDDD.

The term ›chain of activities‹ is ultimately to be understood in the same sense as ›value chain'. Initially, the three EU legislative institutions used the expression ›value chain'. By replacing this term with the broader ›chain of activities', they have avoided discussions about which business activities add value to products and which do not. (For example, the audit of a company's annual financial statements by accountants is an extensive process, but it does not increase the value of its products.) Ultimately, the chain of activities in the sense of the CSDDD was confined to activities related to one of the above-mentioned upstream or downstream steps, from the development to the delivery of the products (Art. 3(1)(g)). Product-related activities generally also tend to be value-adding.

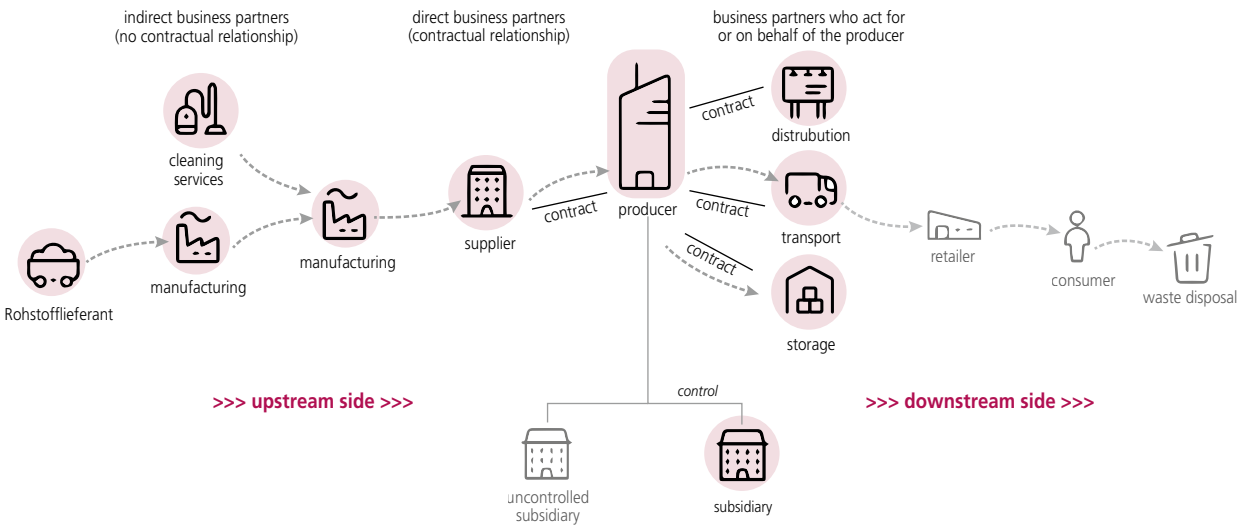
The Commission and Parliament had intended to include special provisions for companies in the financial sector. The decisions and terms of business of investors and lenders exert considerable influence over the behaviour of companies in the real economy. If, on the basis of their due diligence obligations under the CSDDD, they were to offer their services preferentially to companies that are particularly willing to respect human rights and the environment, this would significantly strengthen the effectiveness of the CSDDD. However, the core business of the financial sector, such as the provision of investment products and the granting of loans or guarantees, can hardly be considered to be a product or service in the legal sense that is part of the chain of activities in the sense of the CSDDD. This is why civil society organizations and the Parliament lobbied for special rules for the financial sector right up to the end of the trilogue. However, due to opposition from the Council of the European Union and numerous business associations, no specific requirements for business operations in the financial sector were ultimately included. As a result, the CSDDD only requires companies in the financial sector to exercise due diligence in relation to the upstream side of their chain of activities and their own activities (see Recital 26), e.g. in the management of human resources and the purchasing of working materials. By 2026, the European Commission is going to review if it is necessary to include the financial sector with special obligations in the CSDDD and will present its findings in a report.

5. ELEMENTS OF DUE DILIGENCE

Companies must conduct risk-based due diligence to prevent human rights and environmental impacts (Art. 5(1)). In contrast to the EU-wide ban on products of forced labour, for example, the CSDDD does not aim to ensure that impairments can no longer occur or that products must be withdrawn from the market as a result. Rather, companies are only obliged to make reasonable efforts (duty of care) to prevent adverse effects. Which efforts are expected is spelt out in detail in Articles 5-16.

In order to ensure a functioning system of due diligence throughout the company, the management must consult the employees and their representatives and then draw up a due diligence policy (Art. 7). This includes a description of the diligence-related strategy, a code of conduct for the

Figure 1
Schematic representation of a chain of activities in the sense of the CSDDD. In this case, the company subject to due diligence (represented by the large, centrally positioned icon) is the the producer of the products. The areas of potential impact that the producer must address are highlighted in colour:



company's own employees, those of its subsidiaries and those of its direct and indirect business partners, and a description of the processes for exercising due diligence, verifying compliance with the code of conduct and extending it to business partners. The company's purchasing practices and related company policies are obviously of particular importance here (see also the reference to them in Art. 10 CSDDD). Workers' representatives should raise this during the consultation.

Risk management in accordance with the LkSG must already address commonly known risks in the deeper parts of the supply chain (§4(1) and (2)).

However, under §5(1) of the LkSG, the obligation to carry out a comprehensive annual risk assessment is limited to the company's own operations and those of its direct suppliers. This restriction will no longer apply with the CSDDD. Instead, the regular risk analysis will have to focus on adverse impacts in the chain of activities that are likely to be severe (Art. 8(2) and 9(2)).

The actual and potential adverse impacts must be identified and assessed (Art. 8). First, companies need to identify those areas of their own operations, and those of their business partners related to their chain of activities, where adverse impacts are most likely to occur and are likely to be severe, using measures that are appropriate given the risk factors. According to Recital 41, consideration should be given to whether the business partner itself falls within the scope of the CSDDD. On the basis of this list, the business processes with the most likely and most severe impacts need to be analysed in detail. If the company does not have the necessary information, it should document its efforts to obtain it (Recital 41). If information can be obtained at different points in the chain of activities, the directly responsible business partner should be contacted first, in order to relieve the burden on smaller companies.

The LkSG provides companies with four generally applicable criteria of the appropriateness of efforts and for the prioritization of risks (§3(2)).

The CSDDD sets slightly different requirements in its definition of adequacy (Art. 3(1)(o)). The extent to which the company has contributed to causing the impact is in principle immaterial. However, the special provisions on prioritization, prevention and remediation (Arts. 9-11) contain specific, differentiated requirements on appropriateness.

The company should set priorities if it is not possible to avoid all impacts simultaneously and completely (Art. 9). Prioritization should be based solely on the likelihood and severity of the impact.

Companies must take appropriate preventive measures (Art. 10). Appropriateness depends on the extent to which the company has contributed to the impact, where in the chain of activities the impact occurs, and what influence the company has over the responsible business partner. It may be necessary to immediately develop and implement a prevention action plan, e.g. in cooperation with industry or multi-stakeholder initiatives. Contractual agreements must be made with direct business partners. Where necessary, investments and process changes as well as changes to the business plan, strategies and business practices must be implemented; Article 10 refers in particular to purchasing practices. The company should provide targeted support to small and medium-sized business partners. Where impacts cannot be avoided in this way, the company can seek contractual assurances from indirect business partners and have their compliance verified by independent auditors, including in the context of industry and multi-stakeholder initiatives.

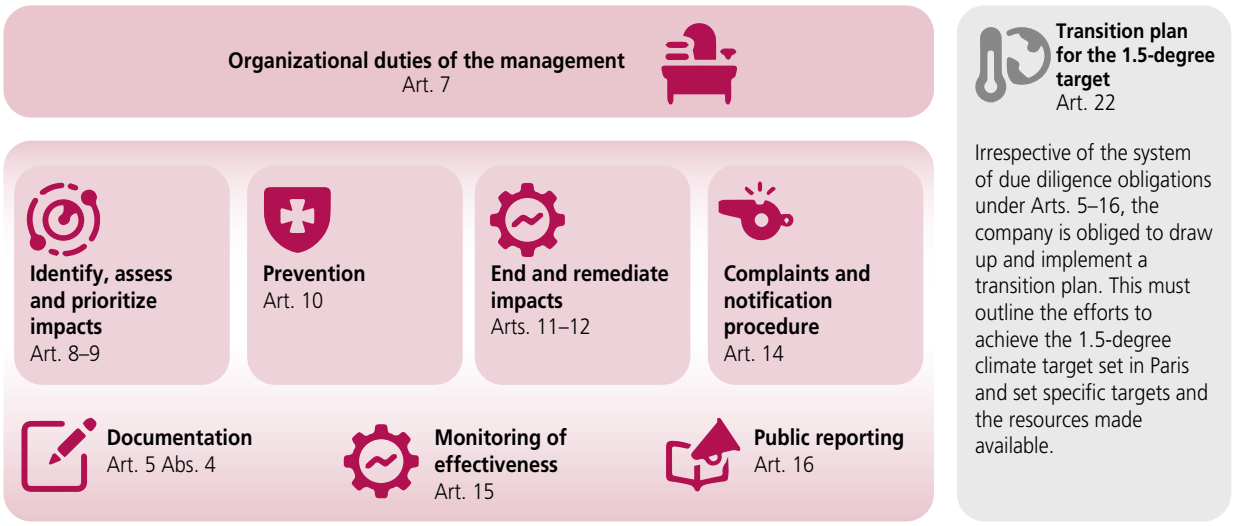
If adverse impacts nevertheless occur, the company must take appropriate measures to bring them to an end (Art. 11) or to minimize them as far as possible; in the latter case, the company must periodically reassess whether the effects can meanwhile be brought to an end (Recital 38). Efforts to bring to an end or minimize impacts should be proportionate to their severity and to the extent of the company's involvement therein. If they are not immediately successful, a corrective action plan must be developed and implemented, where appropriate in cooperation with industry or multi-stakeholder initiatives. The other preventive measures (Art. 10) are also regulated for termination pursuant to Art. 11. Before suspending or, as a last resort, terminating a business relationship, the company must consider whether the harm to the individuals involved would be significantly greater than the harm already suffered, in which case the company may continue the business relationship. However, it must be able to explain the reasons for this to the supervisory authority if called upon to do so.

Companies are also required to remediate adverse impacts if they have caused them alone or jointly with others (Art. 12). If a business partner of the company is the sole cause of the impacts, the company can offer voluntary reparations.

The LkSG currently only requires companies to remedy infringements of the law that have occurred, not to compensate for damage incurred or (going even further) to make reparations.

The company must set up a complaints procedure and in addition make the procedure available to trade unions, other employee representatives and civil society organizations (Art. 14(1)–(4)). The complaint handling procedure must be fair, accessible, predictable, transparent and publicly available. There is no requirement for employee representatives to be consulted or even to play a role in the procedure itself, only that employees be informed of the (established) procedure. The company must make reasonable efforts to protect complainants from retaliation. It should not jeopardize their safety by revealing their identity. Complainants have the right to be kept informed of the handling of their complaint, to communicate personally with company representatives at an appropriate level about the consequences and possible reparation, and to receive an explanation as to whether the complaint is considered justified or unjustified and, if justified, what steps will be taken to remedy the situation. A mechanism for the submission of notifications must also be established (Art. 14(5)). Unlike the complaints procedure, the notification mechanism must be available (anonymously or confidentially) to anyone who has information or suspicions about adverse human rights or environmental impacts, even if they do not claim to be affected themselves. These due diligence obligations can also be fulfilled collaboratively by participating in so-

Figure 2
System of due diligence obligations under the CSDDD



called cross-company grievance mechanisms, i.e. by actively participating in industry or multi-stakeholder initiatives. The CSDDD explicitly mentions global framework agreements as an example (Art. 14(6)).

The risk situation and the actual exercise of due diligence must be monitored in accordance with the provisions of Article 15. Compliance with due diligence obligations must be documented internally on an ongoing basis and the documentation must be retained for five years (Art. 5(4)). Once a year, companies must publicly report on their compliance with the obligations under the CSDDD in an annual statement (Art. 16). The reports will be made publicly available on the European Single Access Point (ESAP) (Art. 17). Companies subject to non-financial reporting requirements under the EU Directive are not required to publish an annual report under the CSDDD. This has met with criticism among the trade unions and civil society. The reason given by the legislator for the exemption is to avoid a double burden on companies; the reporting requirements under the Corporate Sustainability Reporting Directive (CSRD, Directive 2022/2464) are said to include the information to be reported under the CSDDD.

6. INVOLVEMENT OF TRADE UNIONS AND RIGHTS HOLDERS

Civil society organizations, trade unions and the European Parliament successfully lobbied for the obligation on companies to engage in ›meaningful consultations' with stakeholders to be set out in detail in a separate article (Art. 13). The term ›stakeholder‹ is defined in detail in Article 3(1)(n). It includes the employees of the company, its subsidiaries and business partners in the chain of activities, as well as trade unions and workers' representatives, consumers and other individuals, groupings, communities or entities whose rights or interests could be affected by the products, services or operations of the company. Civil society organizations active in the field of environmental protection are also included.

As a prerequisite for meaningful and transparent consultation, the company must provide stakeholders with complete and relevant information where appropriate. If the company refuses a request for information from stakeholders, it must provide a written justification for that refusal.

Article 13(3) sets out the stages of the due diligence process at which the consultations are to take place:

- when collecting information on actual and potential impacts that serves to identify, assess and prioritize the impacts;
- when developing preventive and corrective action plans;
- when deciding on terminating a business relationship (responsible exit);
- when selecting appropriate remediation measures; and
- as appropriate, when developing qualitative and quantitative indicators for monitoring the risk situation and the application of due diligence in accordance with Article 15.

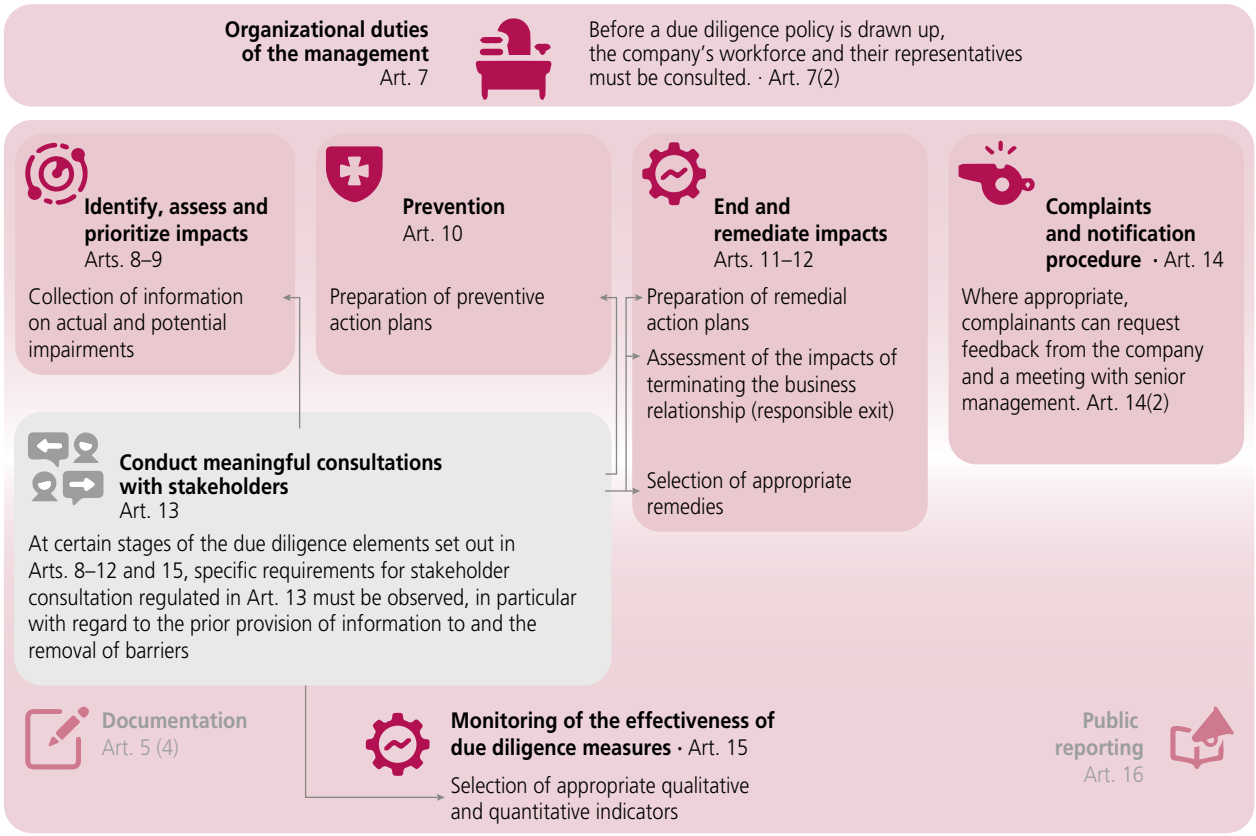
To date, consultation with stakeholders has only been rudimentarily regulated in the LkSG: the interests of potentially affected groups must be ›given due consideration‹ (§4(4) LkSG). However, the LkSG does not impose any formal requirements for this consideration.

Simultaneously with passage of the LkSG, §106(3) no. 5b of the German Works Constitution Act stipulates that the company's management must discuss matters relating to the LkSG with members of the works council in the economic committee. In practice, however, this often only happens – if at all – when the company's own employees feel that their interests are affected.

The CSDDD therefore sets out much more precise and far-reaching requirements for stakeholder participation.

Companies need to be aware of and avoid barriers to stakeholder participation, for example they need to pre-

Figure 3
Provisions on engagement with stakeholders



vent potential retaliation by maintaining confidentiality. If the company cannot reasonably be expected to consult stakeholders directly and comprehensively, it must, as a complementary measure, consult experts who can provide credible insights into potential and actual impacts.

Industry and multi-stakeholder initiatives can also be used for consultation, but cannot replace consultation with the company's own workforce and workers' representatives.

7. REGULATORY MONITORING AND SANCTIONS

Member States must ensure effective implementation of the Directive by designating at least one national supervisory authority and providing it with independent staff with sufficient expertise and powers of investigation and powers to impose penalties (Art. 24(9), Arts. 25 and 27). The European Commission will maintain a public list of all designated supervisory authorities (Art. 24(7)).

According to the provisions of the CSDDD, a supervisory authority will act as follows: it may open an investigation on its own initiative or on the basis of ›substantiated concerns‹ which may be brought to its attention by any person (Art. 25(2), Art. 26). If the person has a legitimate personal interest in the authority taking action, the authority must inform him or her of its decision and provide reasons for it. The decision may be reviewed by the next higher authority or by a court of law.

If the authority finds that there has been a breach of due diligence obligations, it may order that the breach be remedied and measures be taken to remedy the damage. In urgent cases, where serious damage is foreseeable, it may order interim measures.

The authority may impose penalties, which must be effective, proportionate and dissuasive (Art. 27). The notices of penalties will be published. The maximum limit of pecuniary penalties will be not less than 5 per cent of the company's net worldwide annual turnover. The following factors provide indications for the calculation of penalties:

a) the nature, severity and duration of the infringement and the severity of the impacts;
b) the extent to which the company invests in due diligence and supports small and medium-sized enterprises in its chain of activities for the purposes of prevention and remediation;
c) the extent to which the company cooperates with other entities to jointly manage the impacts. This includes not only business partners in the chain of activities, but also associations, trade unions, multi-stakeholder initiatives, such as global framework agreements, and developmental and other governmental and non-governmental organizations;

d) where applicable, how the company has prioritized issues in accordance with Article 9;
e) previously identified breaches of due diligence;
f) the extent to which the company has remediated the impacts. Remediation also includes consultation with stakeholders, see above on Article 13(3);
g) the financial benefit obtained by the company as a result of the infringement.

The Member States may specify additional factors to the national supervisory authority for the calculation of fines. Through the points mentioned in Article 27(2)(b), (c) and (f), the CSDDD provides important incentives for collaborating in initiatives, supporting smaller companies in the chain of activities and remediating damage incurred.

The upper limit for fines under the LkSG is currently 2 per cent of annual turnover. It will therefore have to be raised by at least three percentage points.

The criteria for calculating the amount of the fine (§24(4) LkSG) will have to be supplemented in particular by the company's efforts to empower smaller business partners (Art. 27(2)(b)) and to collaboratively address the impacts (Art. 27(2)(c)).

National public procurement law must be designed to allow public authorities to take into account the due diligence record of potential contractors when awarding commissions (public procurement) and concession contracts. When companies not covered by the CSDDD voluntarily comply with the obligations, this should also be acknowledged (Art. 31). However, the final version of the CSDDD does not specify what role due diligence compliance will play in decisions by Member States or the European Union to grant aid or subsidies to companies. It is therefore questionable to what extent government agencies will pay attention to this point in the context of major funding programmes, such as the ›strategic projects‹ provided for in the EU's Critical Raw Materials Act of 2024.

§22 of the LkSG already provides for exclusion from public procurement.

8. DAMAGES AND ACCESS TO CIVIL LEGAL PROTECTION

Only corporate civil liability (claim to damages) and realistic possibilities to enforce these claims in court will ensure that affected individuals can obtain compensation. The European Commission, the Parliament and civil society organizations had to engage in protracted struggles with the Council and business associations during the legislative process to ensure that the relevant provisions were included in Article 29. The representatives of business feared that European companies could be hit by an avalanche of lawsuits from the Global South, although experience in France tends to contradict such fears. The French *Loi de vigilance* already enshrined the right to compensation in law in 2017. Apparently, only eight lawsuits have been filed to date.

Ultimately, the substantive and procedural requirements have been regulated in such a way as to simplify civil proceedings, in particular in procedural terms, without creating a serious risk of abusive litigation. Article 29 requires Member States to ensure that individuals, trade unions and civil society organizations can sue for damages in civil courts where companies have intentionally or negligently breached their duty to prevent or remedy and damage has been caused as a result (Art. 29).

The facilitation of access to civil legal protection relates mainly to procedural aspects. Trade unions, civil society organizations and the respective national human rights' institution will be able to sue in their own name; here the EU legislator has obviously been inspired by the regulation of the capacity to sue in §11 LkSG. At the very end of the legislative process, the EU institutions added in Recital 84 that the CSDDD is not intended to create an authorization to bring representative actions. The limitation period expires after five years at the earliest. The level of legal costs must not deter claimants. In urgent cases, summary proceedings must be available to enable the courts to order provisional measures to prevent imminent harm, even before a hearing and even if the facts of the case do not appear to have been finally established. In addition, courts should be able to order companies to disclose certain evidence where claimants have provided a reasoned justification for their claim for damages, presented the evidence available to them and identified the evidence they lack that is within the company's control. However, the CSDDD does not reverse the burden of proof in favour of the claimants, as had been demanded by trade unions and civil society worldwide.

The LkSG does not contain a special basis for claims for damages because the German legislator did not take the view that the existing basis for claims was insufficient for effective legal protection. It is now incumbent upon the German legislator to create a basis for claims under civil law.

The capacity to sue enshrined in §11 LkSG has been incorporated into the CSDDD. The other procedural requirements are to be transposed into German law.

In terms of substantive law, the CSDDD sets out for the Member States the conditions under which individuals must be able to claim compensation from companies: where the latter have intentionally or negligently breached their duty to prevent or remedy and have thereby caused or contributed to a breach of the law and damage. The main innovation is that European civil courts will be able to apply the basis for claims from their own national law. Until now, they have mostly had to look for them in foreign law, namely in the law of the jurisdiction where the damage occurred. To do this, the judges had to seek legal opinions from foreign legal experts, which is very time-consuming and often does not lead to sufficiently clear results, since due diligence in chains of activities is still unknown in most foreign legal systems. For this reason alone, it was difficult to assess the rights of claimants and their chances of success in court, and effective legal protection was not guaranteed.

9. TRANSPOSITION OF THE DIRECTIVE AND DATE OF APPLICATION

The Directive will enter into force on the twentieth day after its publication in the Official Journal of the EU (Art. 38) and Member States will then be obliged to bring their national legislation into line with the requirements of the Directive. National legislators have two years to do so (Art. 37(1)). If the law of a Member State already provides a higher level of protection, this may not be lowered (Art. 1(2)). At the same time, however, Article 4 provides that the laws of the Member States may not impose more stringent requirements for the identification, prevention and ending of impacts than those set out in Articles 8-10.

There are transitional periods between the entry into force of the Directive and the application date of the due diligence obligations, the length of which depends on the size of the company (Art. 37(1)):

- Three years and 20 days after the publication of the CSDDD, companies with more than 5,000 employees and a turnover of €1.5 billion must fulfil their due diligence obligations.
- Companies with more than 3,000 employees and a turnover of €900 million have four years. The same applies to franchisors who earn more than €7.5 million in franchise fees in the EU and have a global turnover of €40 million.
- For the remaining, smaller companies, there is a five-year implementation period.

Before the new due diligence obligations become mandatory for the first companies, a variety of forms of assistance will be made available. The European Commission will publish model contractual clauses to facilitate agreement between companies in a chain of activities on a good approach to human rights and environmental impacts (Art. 18). The Commission will publish general and sector-specific leaflets with recommendations for companies (Art. 19), and Member States will provide accompanying support services to companies subject to due diligence, to their business partners and to stakeholders (Art. 20). The Commission will establish a single helpdesk to serve as a point of contact for companies (Art. 21).

Concerns and uncertainties related to antitrust and competition law often make it difficult to comply with or set limits to due diligence obligations. The CSDDD calls on Member States to create the necessary scope in competition law (Art. 5(2)).

10. CONCLUSION

With the CSDDD, a paradigm shift is now taking place at the European level as well. Companies can no longer take human and labour rights into account in their supply chains only when it appears to be conducive to their economic success. Instead, they must always address impairments of human rights and environmental protections throughout their entire chains of activities.

For German companies, it is now all the more clear that the due diligence requirements of the LkSG are not a disadvantage in competition with companies from other countries. On the contrary, companies that have made the effort to implement well-designed due diligence processes at an early stage and have networked with collaborative business partners now have a head start across Europe and beyond. It should be possible to integrate the requirements of the CSDDD into the due diligence processes of the LkSG without major difficulties, or at least without facing completely new challenges. The LkSG has thus demonstrated its international pioneering role.

Trade unions and other stakeholder groups play an important role in the due diligence programme of the CSDDD. To be sure, there is no provision for direct codetermination rights. However, meaningful consultation is required at certain stages of the due diligence process. The global framework agreements, which have often been deemed a success, are recognized as an appropriate means of due diligence, particularly in the context of complaints procedures.

Affected individuals will be significantly better off than under previous national due diligence laws. According to the CSDDD, a company must make amends for any impacts it has caused or contributed to causing. If a business partner is responsible, it can make voluntary reparations. The supervisory authority takes the compensation into account when setting penalties and can order (further) compensation. In addition, access to civil legal protection will be significantly improved. In particular, procedural barriers will be reduced.

Extending the scope of the CSDDD to non-European companies creates a level playing field. However, the risk of market fragmentation has not been eliminated: on the one hand, there will be chains of activities and networks of companies and export-producing regions around the world that pay particular attention to sustainable production methods; international trade union cooperation can make an important contribution to this. On the other hand, there is nothing to prevent less ambitious producers and regions from focusing their sales on markets that are less demanding than the EU market. To counteract market fragmentation, an agreement on global corporate due diligence obligations is therefore more important than ever. Negotiations on this were launched by the UN Human Rights Council back in 2014, and the commitment of the German Federal Government and the European Union to this process is now crucial.

Table 2:
Overview of provisions of CSDDD compared to those of LkSG

CSDDD	LkSG
Personal scope	
Companies and groups in the EU with **1,000 employees** and a turnover of **€450 million**, and companies earning **€22.5 million** annually in **franchise fees**. Non-European companies trading in the EU are also covered. Art. 2	Companies from all sectors with a registered office or branch office and **1,000 employees in Germany**. Until the end of 2023, the threshold was 3,000. Non-European companies with a branch office in Germany are also covered. §1
Protections (see overview in Table 1)	
The **ILO core labour standards,** all the rights mentioned in the LkSG, as well as, for example, the welfare of children, privacy and the quality of the accommodation provided by the company	The **ILO core labour standards** as well as minimum wage, people's natural resources and health damage caused by excessive use of force by security forces
Environmental damage caused by the hazards listed in the LkSG and some other types. Art. 3(1)(b)–(c)	**Environmental damage** caused by mercury, POPs and hazardous waste. § 2 (2)–(3)
Scope of due diligence	
The upstream side of the **chain of activities** and on the downstream side some activities for or on behalf of the company, as well as the activities of controlled **subsidiaries.** Art. 3(1)(e)–(g)	All steps in the **supply chain** necessary for the manufacture of the company's products, from the extraction of raw materials to delivery to the supermarket, as well as the activities of controlled **subsidiaries**. §2(5)–(8)
Elements of due diligence	
Organizational duties of management: formulate a strategy and due diligence policy after consultation with the workforce and adapt company policies, ensure monitoring of effectiveness. Impacts along the entire chain of activities chain must be addressed. Arts. 7, 15	**Organizational duties** of management: embed risk management in all relevant business processes, create responsibility for monitoring, take into account the interests of affected groups. All known risks (including those of indirect suppliers) must be addressed. §4
Identify impacts: first map the chain of activities and, where appropriate, the group structure, then assess potential and actual impacts in depth on a risk basis, prioritizing as necessary. Arts. 8–9	**Risk analysis**: Comprehensively identify, weight and, if necessary, prioritize risks once a year for all direct suppliers–and indirect suppliers if necessary. §5
Prevention: appropriate preventive measures. Art. 10	**Prevention**: appropriate preventive measures. §6
Put an end to impacts: put an end to or minimize impairments that have occurred; termination of the business relationship as a last resort (responsible exit). Art. 11	**Remediation**: end or minimize violations that have occurred; termination of the business relationship as a last resort. §7
Reparation Art. 12	–
Complaints and **notification procedure** Art. 14	**Complaints** and **notification procedure** §§8-9
Documentation and **public reporting** Art. 5 (4), 16	**Documentation** and **public reporting** §10
Involvement of trade unions and rights holders	
The company's due diligence policy must be drawn up after **consulting** the employees and their representatives. Art. 7(2)	The management must **take into account** the interests of the groups affected. §4(4)
Meaningful consultation with different stakeholder groups to prepare for specific due diligence steps by first providing information and removing barriers. Art. 13	The management must **inform** the works council representatives on the economic committee in good time on matters relating to the LkSG. §106(3)(5b) BetrVG
Regulatory Monitoring and Sanctions	
An independent national **supervisory authority** must be appointed and equipped with effective investigatory powers. Art. 18	The Federal Office for Economic Affairs and Export Control (**BAFA**) has extensive investigatory powers. §§12–19
Anyone can submit **›substantiated concerns‹** to the authority and thus initiate an investigation. If the individual is personally affected, the authority must inform him or her of the outcome of the investigation. The individual must have the opportunity to lodge an appeal against the decision to the next higher level. Art. 26	Affected parties can submit **complaints** to BAFA and thereby initiate investigations. The further involvement of the person concerned in the investigation procedure is not regulated. §14(1)(2)
Fines: The maximum amount may not be less than 5% of annual turnover. Notices of penalties will be published. Art. 27	**Fines:** Maximum amount: €8 million or 2% of turnover; fines for the responsible employees: €800,000 §24
Public procurement law: Authorities must be allowed to take into account the fulfilment or breach of due diligence obligations. Art. 31	**Public procurement law:** Exclusion from public procurement. §22
Damages and access to civil legal protection	
Each EU Member State must regulate a **basis for claims**: those whose rights have been violated must be able to take companies to court for damages if the latter have breached their duty to prevent or remedy. Art. 29(1)	The LkSG has thus far lacked a **basis for claims**. Until now, under the Rome II Regulation, foreign law (the law of the jurisdiction where the damage occurred) rather than German law has generally been applied in civil cases. Legal issues regarding the liability of companies in supply chains have generally remained unresolved. Rome II Regulation
Capacity to sue as in the LkSG, also for the national human rights institutions. Art. 29(3)	NGOs and trade unions can sue on behalf of affected people (**capacity to sue**). §11
In urgent cases, it must be possible to issue court orders in **summary proceedings** (without an oral hearing). Art. 29(3)	Urgent court decisions are possible by way of **provisional legal protection** in accordance with the general provisions. ZPO
Court order to disclose certain evidence Art. 29(3)	Similar: **Inspection** of certain documents; **secondary burden of presentation and proof** §810 BGB and case law
The statute of limitations is at least 5 years. Art. 29(3)	The limitation period (under foreign law) is often **3 years**. Rome II Regulation in conjunction with foreign law
The legal costs must not be prohibitively high. Art. 29(3)	The **general provisions** on court costs, lawyers' fees and legal aid apply. GKG, RVG

LIST OF ABBREVIATIONS

BAFA	Federal Office for Economic Affairs and Export Control
CRC	Convention on the Rights of the Child (1989)
CSDDD	Corporate Sustainability Due Diligence Directive (2024)
EU	European Union
ILO	International Labour Organization
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
LkSG	German Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (Lieferkettensorgfaltspflichtengesetz) (2021)
POPs	Persistent Organic Pollutants
UN	United Nations

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