



MAKING THE GERMAN SUPPLY CHAIN DUE DILIGENCE ACT WORK FOR TRADE UNIONS:

Recommendations Based on a Study of the Automotive
Industry in South Africa, Ghana, Kenya and Germany

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The German Supply Chain Due Diligence Act (SCDDA) came into force on January 01, 2023. This legislation marks a significant shift towards holding companies accountable for their business practices. However, the true effectiveness of the SCDDA will need to be demonstrated through its implementation.

The FES study ‘The German Due Diligence Act and the Automotive Supply Chain in Africa: An Opportunity for Trade Union Solidarity?’ commissioned by the Trade Union Competence Center (TUCC) in Johannesburg focuses on the automotive supply chains in Germany, Ghana, Kenya and South Africa. The study explores the law’s potential capacity to enhance transnational trade union solidarity and thereby improve working conditions along the supply chain. Carried out in 2022, shortly before the enactment of the SCDDA, the study aims to shed light on possible rights violations occurring in the production process of (German) cars - now protected under the provisions of the SCDDA. In addition, the study delves into the issue of complaints mechanisms.

The study reveals that the complaints mechanisms embodied in the SCDDA are either still unfamiliar to workers or do not make them feel protected against potential repercussions. These findings emphasise the indispensable role of trade unions, works councils and shop stewards in ensuring the Act’s effectiveness in holding companies truly accountable.

By aligning with its initial objectives, the Act has the potential to serve as a significant instrument for enhancing working conditions in German companies and their suppliers in the Global South, thereby contributing to meaningful improvements overall. However, the study also uncovers several shortcomings in relation to the SCDDA.

FINDINGS AND RECOMMENDATIONS

In order to fully unlock the potential of the SCDDA, and to provide guidance for future international regulations, such as the currently negotiated Corporate Sustainability Due Diligence Directive (CSDDD) in the European Union (EU), the following findings and recommendations have emerged:

ROLE OF TRADE UNIONS

- The role of (German) co-determination actors and trade unions should be explicitly defined. The SCDDA only addresses the economic committee as a space where works councils will be represented and where they have a role in the risk management system. Otherwise, the role of works councils and trade unions is not clearly defined in the SCDDA. As a result, the possibilities of trade unions and works councils to apply the SCDDA have to be inferred from other laws, such as the German Works Constitution Act. By applying the Works Constitution Act, German co-determination actors should review the implementation of the Act (in the supervisory board), obtain the results of the risk analysis (in the economic committee) and participate in the design of the complaints mechanism (in the works council).
- Trade unions and works councils, in both Germany and countries where German companies/suppliers are located, will have to more effectively utilise the provisions outlined in the Act to advocate for their inclusion in risk assessment and monitoring processes. Achieving this goal necessitates practical implementation and transnational cooperation among trade unions and works councils.

- If complaints to the company fail to yield solutions, the SCDDA provides for trade unions to pursue legal action in Germany and engage with the German implementation agency, Federal Office for Economic Affairs and Export Control (BAFA).
- Workers in Germany, and especially in African production countries, report a lack of knowledge about how supply chains are structured. This knowledge is central to trade unions for their networking and organising along the supply chain. In light of workers' limited access to information so far, companies must prioritise enhancing transparency across their entire supply chains, including their suppliers.
- To effectively enforce the Act, there is a need for greater transnational networking and information exchange between works councils and trade unions across different production sites. Workers' representatives should focus specifically on the companies' complaint mechanisms and on addressing the lack of knowledge regarding supplier relationships within the supply chain. It is essential to facilitate transnational exchanges among unions to identify prevalent risks in each context and develop mechanisms for documenting and sharing complaints.
- Global Union Federations such as IndustriALL for the sector considered here have a pivotal role as crucial intermediaries between multinational companies and local trade unions. Their involvement will be instrumental in fostering continuous social dialogue, identifying and addressing violations, and monitoring remedial actions.

TRANSPARENCY AND SAFETY

- The legal text of the SCDDA has been described as too complex and, to some extent, ambiguous by both African and German workers representatives and lawyers. This is likely to result in numerous test litigations in the future and could potentially hinder legal certainty for both workers and companies. It is crucial that future legislation, such as the incorporation of the EU directive (CSDDD) into national law, addresses this issue to ensure clarity and coherence.
- The Act allows for a broad range of interpretations by lawyers, therefore making it challenging for workers' representatives in Germany, and even more so in other countries involved in the production process, to comprehend its provisions.
- Due to the wide scope of interpretations of the Act, there is a significant demand by trade unions for easily comprehensible legal text and training materials, catering to the needs of workers, companies and their suppliers.
- Companies should incorporate the expertise and networks of workers and trade unions both in the production countries as well as in Germany when establishing their complaint mechanisms. These mechanisms need to be accessible, transparent, credible and trustworthy for all affected workers or stakeholders seeking to utilise them. It is crucial for workers to have assurance that their job security will not be compromised when filing a complaint. Furthermore, trade unions should be actively involved in the implementation of complaint mechanisms, and once established, they should be

integrated into the governance structure.

- It is imperative to place particular emphasis on ensuring the safety of women when utilising complaint mechanisms in line with ILO convention 190 on eliminating Violence and Harassment in the World of Work, as there is a heightened risk of abuse faced by female workers when accessing current mechanisms.

FURTHER RECOMMENDATIONS

- In general, workers interviewed from all countries considered the thresholds of 3 000 (starting from 2023) and 1 000 (starting from 2024) workers per company in Germany too high, resulting in a very limited scope of the law. They emphasised the need for a clear instrument that encompasses all companies and the entire supply chain to ensure comprehensive due diligence.
- Given the proven effectiveness of private law enforcement in addressing these issues, the lack of civil liability in the German law is a weakness criticised by numerous non-governmental organisations (NGOs), co-determination actors and critical legal experts. It is recommended that the EU directive includes civil liability in case of violations.

CONCLUSIONS

Overall, the SCDDA marks a significant milestone in addressing human, environmental and labour rights violations in the supply chain and promoting the harmonisation of labour standards across countries and companies, particularly in the Global South. However, to fully unlock its potential, it is crucial to clarify the mechanisms of implementation and enforcement, specifically with regard to the involvement of workers' representative structures. Transnational trade union networks of solidarity and support, along with increased initiatives to expose violations of human, environmental and labour rights in the supply chain, can play a pivotal role in this endeavour. Achieving this necessitates the adoption of a context-sensitive approach that fosters collaboration between German and foreign trade unions, promoting cooperative partnerships based on mutual respect and cultivating trust to address the uncertainties within supply chains. It is in the best interests of companies to actively engage trade unions in monitoring and evaluation processes, as this will enable the identification and prevention of all potential risks. By implementing best practices, companies can become sector leaders and build a reputable image by fulfilling their obligations.

IMPRESSUM

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