



Q&A TWO YEARS INTO THE GERMAN SUPPLY CHAIN ACT

1 Why are the German Supply Chain Act (LkSG) and the EU Supply Chain Directive (CSDDD) a success for the protection of human rights in global supply chains?

After a long struggle, the LkSG came into force on 1 January 2023, followed by the adoption of the EU Supply Chain Directive in the summer of 2024. Both grew out of the realization that the recurring violations of human rights and environmental standards along the supply chains of large German and European companies necessitate binding regulation. Numerous people and organizations from international civil society, including ECCHR, have been campaigning for such statutory regulation for many years.

Despite all justified criticism that the LkSG falls short of its original expectations, its adoption and implementation is a milestone on the road toward effective corporate accountability and compliance with human rights and environmental standards. Rightsholders from various producing countries are already reporting initial successes—with suppliers sitting down with trade unions for the first time to negotiate improvements in labor standards, or workers finally receiving a minimum wage that enables them to feed their families. Through the law, Germany has become a pioneer and role model for other nations, and the EU has now followed suit. Germany should use the implementation of the directive as an opportunity to make the LkSG even more effective and legally secure by incorporating learnings from previous experience in putting such a law into practice!

2 Why are both the LkSG and the EU directive necessary, and why have voluntary corporate commitments failed?

It requires more than lip service to ensure that companies take responsibility for respecting human rights in their supply chains—the principle of voluntary self-regulation has failed demonstrably. Despite numerous disasters in the supply chains of German companies, such as the fire in 2012 at the Ali Enterprises textile factory that produced for KiK, in which 258 workers died in agony, German and European companies have not taken sufficient measures. Human rights violations and environmental abuses in global supply chains continue to occur. There is even empirical evidence that purely voluntary

corporate social responsibility leads nowhere: In the course of the National Action Plan for Business and Human Rights (NAP), the German government commissioned a study on the effectiveness of voluntary measures and found that only a small proportion of companies fulfilled the requirements of the NAP on a voluntary basis. This finding remains unchanged to this day, and the LkSG and EU CSDDD take precisely such realities into account. This makes it all the more disconcerting that a range of voices are currently calling for a return to voluntary corporate responsibility instead of binding regulation. We already know better and should not tolerate any kind of regression!

3 What is the criticism of the existing LkSG after two years of its practical implementation, and what will change with the CSDDD?

The LkSG obligates large German companies to examine their supply chains for possible human rights and environmental violations, to take measures to prevent and end violations, to establish complaints procedures, and to document and communicate this. However, the due diligence obligations are graduated, i.e. the majority of the obligations initially focus on the company's own business area and direct suppliers. In relation to indirect suppliers—i.e. deeper in the supply chain, where human rights violations occur particularly frequently—companies generally only have to take action if there are concrete indications of human rights violations and environmental damage. Under the LkSG, therefore, ignorance pays off for companies. This, however, contradicts the very purpose of supply chain laws: namely, to generate transparency and hold companies accountable for their own supply chains. In addition, the LkSG lacks its own separate basis for claims under civil law, through which aggrieved rightsholders may demand compensation. Furthermore, the role of rightsholders, whom the law serves to protect and who should be in the spotlight as experts on the grievances that affect them on the ground, is not defined clearly enough in the German Act.

The EU Supply Chain Directive (CSDDD), which was adopted by the EU in summer 2024 and is to be transposed into national law within two years, addresses some of these points of criticism. The directive generally does not differentiate between direct and indirect suppliers—companies' due diligence obligations extend to all their suppliers from the outset, regardless of whether they are aware of any risks at their suppliers. Ignorance thus no longer pays. At the same time, however, the law also reduces the burden on companies: they may

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now employ a risk-based approach, which allows them to first address risks at suppliers that are deemed particularly serious. In addition, the CSDDD introduces civil liability for damages and mandates full compensation for those affected. Rightsholders will also play a central role under the CSDDD, both with regard to their involvement by companies in the course of fulfilling their due diligence obligations and within complaints procedures with authorities. And the CSDDD has another decisive advantage over the LkSG: it obliges companies to adopt and implement a “climate plan” in alignment with the 1.5 degree target—an important step towards mitigating climate change!

However, as the German debate concerning the weakening of the LkSG shows, the adoption of the CSDDD also entails risks. For example, the German government wants to use the CSDDD as an impetus to reduce the scope of the LkSG. However, an academic assessment has shown that this would violate European law! The CSDDD clearly stipulates that it must not be used as a pretext to weaken existing laws.

4 Is the LkSG a “bureaucratic monster,” as critics claim?

No. Criticism in the media focuses almost exclusively on the allegedly excessive reporting obligations for companies and loses sight of the core idea of the LkSG, namely the protection of human rights and environmental standards along supply chains. It is a careful risk analysis and, if necessary, the implementation of effective preventive and remedial measures that is crucial for this. Reporting obligations, on the other hand, only serve a supplementary purpose, namely to enable the supervisory authority BAFA (Federal Office for Economic Affairs and Export Control) to conduct audits and to enable public transparency. Those who have set up an effective risk management system will not fail because of the reporting obligations.

In addition, complaints are frequently made to the public that SMEs (small and medium-sized enterprises) are overburdened. However, such an overload, for example due to multiple submissions of long standard questionnaires or the off-loading of risks by large corporations, is not an inevitable consequence of the LkSG. Quite the opposite is true: The BAFA has clearly described such practices as inadmissible in its handout “Cooperation in the supply chain”—and the CSDDD will make this even clearer. If large companies still get away with it, the problem is a lack of enforcement by the BAFA, not the LkSG or the CSDDD itself!

In all their criticism, the opponents of the LkSG also overlook the fact that the law creates fair competition and legal

certainty for companies. And even more importantly, the perennial, yet unjustified invocation of a “bureaucratic monster” and associated calls for the law to be suspended are a slap in the face to those whom the LkSG was enacted to protect and whose most fundamental rights are being called into question by such debates! After decades of fighting against exploitation, the first positive effects of the LkSG are now becoming apparent. These must not be risked because of (deliberate) misinterpretations of the law.

5 Who is allowed to submit a complaint to the BAFA under the LkSG, and why is it important to be recognized as a party to the proceedings throughout the entire application and review process?

Under the LkSG, complaints can be lodged not only with companies, but also with the supervisory authority, the BAFA. In contrast to the internal company complaints mechanism, however, before the BAFA, the rights of complainants themselves must have been violated, i.e. they must be personally affected by the human rights violation. If one’s complaint is “substantiated,” meaning that it contains adequate facts to substantiate it, the BAFA must take action. However, the BAFA has a great deal of leeway as to what measures it takes against the company. In order to find out what steps the BAFA is taking exactly, complainants may demand access to records. This has only recently become possible—as the BAFA now finally recognizes them as parties to the proceedings! This is important so that those affected can influence the procedure and have a say in what measures are taken to protect them. After all, they are experts on their own particular situation.

6 What consequences do companies face if a complaint is submitted to the BAFA?

The purpose of a complaint, either to the company itself or to the BAFA, is first and foremost to draw attention to human rights and environmental violations in the supply chain and to ensure that the German company in question takes appropriate and effective due diligence measures to prevent or end the violation, or at least to minimize its extent. As a rule, the BAFA will therefore first contact the company and, after clarifying

the facts of the case, issue orders and take measures for precisely this purpose. For example, the BAFA can demand that the company takes certain actions. If companies go so far as to intentionally or negligently violate their obligations under the law, fines of up to EUR 8 million or up to 2 percent of the company's average annual turnover can be imposed. In the case of fines of more than EUR 175,000, the company may also be excluded from receiving public contracts for three years.

It is important that the BAFA—in addition to offering support to companies—makes use of this entire catalog of powers to enforce the law and, thus, also clearly indicates which measures under the LkSG are insufficient. This is the only way for the law to be effective. Without effective enforcement, legal requirements will ultimately remain practically.

7 How do companies use standards, audits and certifications along the supply chain, and what are the challenges surrounding these practices?

Many companies use standards, audits and certifications both for the risk analysis and to identify appropriate preventive or remedial measures. At the same time, however, such mechanisms have been criticized for years due to their structural deficits. Low-quality standards, pre-announced (and hence ineffective) audits, and conflicts of interest among certifiers—who are dependent on being commissioned by the very companies they are supposed to audit—represent just some of these challenges. The collapse of the Rana Plaza factory in 2013, in which more than 1,130 people died and 2,500 were injured, some of them seriously, is a tragic example of this. Just a few months earlier, as part of a social audit, the TÜV found the construction quality of the building to be “good.” The BAFA also emphasizes that the use of standards, audits and certifications cannot release companies from independently fulfilling their due diligence obligations. Anyone using such mechanisms must therefore continuously review their effectiveness and compliance with the LkSG. Otherwise, companies risk violating their own obligations under the law—which can result in substantial fines.

8 What role do trade unions and rightsholders play in the implementation of the LkSG and in the future implementation of the EU CSDDD?

Rightsholders, such as workers in supplier facilities or local indigenous communities in the vicinity of polluting factories, are not only the ones the LkSG was enacted to protect, as local experts, they are also of central importance to the effective implementation of the law. Trade unions in particular play an important role in this context: they pool the interests of workers and thus provide an urgently needed counterweight to the power of employers. In addition, individuals often have to fear repression if they stand up for their labor rights. Trade union representation therefore provides indispensable protection.

Unfortunately, the requirement to include such stakeholders is formulated too weakly in the LkSG. Neither the companies, when taking due diligence measures, nor the BAFA in its inspection activities are sufficiently obliged to involve rightsholders. To make matters worse, the BAFA does not allow trade unions to file complaints on behalf of their members concerning violations of individual labor rights. Instead, the BAFA treats such complaints as mere “information,” which neither gives complainants the right to participate in the proceedings nor obliges the BAFA to take any action at all. This is particularly problematic because individual employees are often reluctant to submit a complaint—especially as the BAFA does not allow them to do so anonymously. This practice of the BAFA jeopardizes the effectiveness of the entire LkSG.

Some of this will improve once the CSDDD has been implemented. The directive stipulates the comprehensive involvement of stakeholders, including within complaints procedures before authorities. In addition, the CSDDD can be read in such a way where trade unions must be allowed to act as complainants for individual labor rights violations. The resulting opportunity for a supply chain law that is effective without exposing rightsholders to additional risks should definitely be seized when the CSDDD is transposed into German law!

9

In light of the political shift to the right, are binding human rights and environmental standards at risk?

Not only in Germany, but also at the EU level, liberal and conservative parties, business associations and other lobby organizations are resisting legal obligations for companies to protect human rights and the environment, such as the LkSG, CSDDD, as well as the CSRD (Corporate Sustainability Reporting Directive) and EUDR (EU Deforestation Regulation). This increased resistance is often voiced in the context of economic growth and the reduction of bureaucracy, but it must also be seen in the wider context of a political shift to the right, in which human rights guarantees are increasingly called into question.

The debates on suspending or weakening the LkSG in the course of implementing the CSDDD should therefore be viewed critically. It is not just about technical issues such as reducing bureaucracy or supposedly value-neutral incentives for the economy. It is about respecting the fundamental rights of millions of people along global supply chains. If we were to be honest in this debate, all those calling for the LkSG to be suspended or weakened would have to say: we want German economic growth, even at the expense of all those who continue to be exploited in our global supply chains and suffer environmental destruction for our benefit. However, such an approach obviously contradicts Germany's human rights obligation to adequately monitor the economic activities of companies operating overseas, in order to prevent human rights violations and environmental pollution.

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