

## Memorandum: Implementation of the Corporate Sustainability Due Diligence Directive under the Omnibus I Directive in German law

By: Robert Grabosch, Lawyer · Ref.: 207-RG-001 · For: The German Supply Chain Act Initiative · 23 February 2026

### Summary:

- Even after the weakening of the CSDDD by the Omnibus I Directive, there is still a considerable need for amendments in German law, in particular the Supply Chain Due Diligence Act (LkSG).
- The prohibition of regression and the principle of proportionality set limits on the weakening of the LkSG. These arise from international and European law.
- There is a considerable chance that the Omnibus I Directive itself is partially unlawful and can be declared void by the Court of Justice of the European Union (CJEU) due to violations of the principles of non-regression and of proportionality. This concerns, for example, climate protection (Art. 22 CSDDD).
- A reduction in the scope of the LkSG in line with that of the CSDDD under Omnibus I – which, according to estimates, would exclude 95% of companies previously subject to due diligence obligations from the scope – is particularly problematic. It is obvious that this would substantially reduce the level of protection. In order for the reductions in the scope of application (and thus the level of protection) to be legally permissible, they would either have to be compensated for or be necessary to achieve overriding public interests after all available resources have been exhausted. It has not yet been substantiated that this is the case. General references to competitiveness and bureaucracy reduction are no substitute for an impact assessment and a balanced decision. A reduction in the scope of the LkSG is therefore likely to violate international and European law prohibitions on regression and the principle of proportionality.
- Article 29 CSDDD continues to require Member States to ensure effective claims for damages in national law. To date, German law does not meet these requirements.
- In addition, a number of further adjustments to the CSDDD in the version of the Omnibus I Directive need to be made to the LkSG. The most important changes include: The risk-based approach to the scoping exercise at the beginning of the risk analysis requires companies to address risks beyond their immediate suppliers. The catalogue of human rights and environmental protection goods is being expanded. Risk prioritisation must be carried out on the basis of more appropriate criteria. When suspending a business relationship, any adverse effects on people must be avoided. Companies must offer their suppliers the necessary support (including financial support). In addition to the existing obligations with regard to ending negative impacts, companies will also have to provide remediation. Stakeholders, complainants and whistleblowers are given stronger procedural rights. Administrative supervision is made more effective.

**Question: How should the changes made to the CSDDD by the Omnibus I Directive be assessed in light of higher-ranking law, in particular principles of non-regression, and what adjustments are now required in the LkSG? A brief memorandum (15 pages) is requested.**

## I. INTRODUCTION

Directive (EU) 2024/1760 on corporate sustainability due diligence (CSDDD) is amended by Article 4 of the so-called Omnibus I Directive (for documents relating to the legislative process, see: [2025/0045 \(COD\)](#)<sup>1</sup>). Accordingly, the German Supply Chain Due Diligence Act (German *Lieferkettensorgfaltspflichtengesetz*, abbr. LkSG) will have to be extensively amended by 26 July 2028. The CSDDD regulates in part minimum adjustments and in part full harmonisation of due diligence obligations. The following section outlines the circumstances under which legislative rollbacks are permissible and which obligations and minimum standards must be effectively re-regulated or tightened in German law with a view to effective human rights and environmental protection.

## II. PRINCIPLES OF NON-REGRESSION AND OF PROPORTIONALITY

At several levels of the human rights and environmental protection regime under international and European law, so-called principles of non-regression or non-retrogression are increasingly being recognised. Essentially, this means that once national and EU legislators have enacted regulations to protect human rights and the environment, they may not roll them back, or may do so only under strict conditions of proportionality.

The Omnibus I Directive significantly reduces the scope of the CSDDD. If this were to be implemented 1:1 in German law, the majority of companies would be exempt from due diligence obligations in future. Official calculations of the number of companies are not yet available. According to estimates, the Omnibus I Directive reduces the scope of the CSDDD by 70%.<sup>2</sup> In a hypothetical 1:1 implementation of the CSDDD thresholds after the Omnibus Directive (> 5,000 employees and > €1.5 billion in turnover), around 95% of the approximately 4,800–5,200 companies currently subject to the LkSG would fall outside its scope of application.<sup>3</sup> Only the very largest companies – an estimated 276 – would remain directly subject to due diligence requirements under the German regulation. In addition, Omnibus I also weakens the content of due diligence requirements and the maximum amounts of fines.

This raises the question of whether the CSDDD, which came into force on 25 July 2024, may be weakened by the Omnibus I Directive and, in turn, whether the LkSG may be weakened in accordance with the amended CSDDD.

### 1. Non-regression clause of Art. 1(2) CSDDD

After the original CSDDD was adopted, the then Federal Government announced its intention to relieve large parts of the economy from the LkSG. The LkSG was to be at least suspended or its scope largely restricted and aligned with the CSDDD. Immediately, doubts were raised as to whether the CSDDD itself would allow for a weakening of the laws already in place in the Member States. This is because Art. 1(2) CSDDD states:

This Directive shall not constitute grounds for reducing the level of protection of human rights, employment and social rights, or of protection of the environment or of protection of the climate provided for by the national law of the Member States or by the collective agreements applicable at the time of the adoption of this Directive. (Article 1(2) CSDDD)

Several legal experts (including *Mittwoch, Zimmer, Langbein*) recognised at the time that Article 1(2) CSDDD contained a substantive prohibition on weakening the level of protection. Recitals 17 and 31 of the CSDDD suggest that the EU legislator wanted existing national due diligence laws to retain their scope of application. A reduction in the scope of application to significantly fewer companies would inevitably result in a reduction in human rights protection.<sup>4</sup>

Other experts, however, saw Article 1(2) CSDDD as merely a formal provision. They pointed out that the Advocate General at the CJEU referred to such provisions as “transparency clauses” and that in the *Mangold* and *Angelidaki* cases, the CJEU had only prohibited the use of the Directive as a “pretext” for their own political decisions. Instead of shifting the blame to the EU legislator, the national legislator was required to state its true motives.<sup>5</sup> In addition, according to these authors, the desired *level playing field* spoke in favour of the admissibility of harmonising the scope of application.<sup>6</sup>

The latter view was countered by the argument that it reduced a central provision of the CSDDD to mere protection of the EU’s image.<sup>7</sup> According to the recitals of the CSDDD, the EU institutions are not concerned with protecting their reputation, but with strengthening sustainability in global chains of activity.

This legal debate on the principle of non-regression probably prompted the amendment of the non-regression clause in the CSDDD in the course of the Omnibus I package. At the end of the trilogue negotiations, a sentence was added to the non-regression clause in the CSDDD. The newly added sentence 2 explicitly excludes the human rights and environmental due diligence laws already existing in national law (i.e. the LkSG and the *Loi de vigilance*) from grandfathering and explicitly allows the personal scope of application of these laws to be narrowed so that it corresponds to that of the CSDDD:

However, the first sentence of this paragraph shall not prevent Member States from adjusting any national corporate sustainability due diligence laws applicable at the time of the adoption of this Directive, in particular their scope, with a view to aligning them with this Directive.  
(Art. 1(2) sentence 2 CSDDD (introduced by Omnibus I))

However, as there are good reasons to believe that sentence 1 does not contain a purely formal transparency requirement but rather a substantive prohibition of deterioration (see above), it is questionable what sentence 1 refers to after the addition of this second sentence, if not the LkSG.

According to recital 36 of the Omnibus I Directive<sup>8</sup>, the EU institutions were aware that further sector- or situation-specific due diligence regulations already exist in national legal systems. These relate, for example, to working time, health and equal treatment of employees and, according to recital 36 of the Omnibus I Directive, are not to be subsumed under the general due diligence obligations of the CSDDD. It is possible that the remainder of the prohibition of regression in Article 1(2) sentence 1 CSDDD refers to these specific due diligence obligations. However, it is surprising that the EU legislator did not reveal this intention in Recital 36 regarding the amendment to Article 1(2) CSDDD.

The meaning of the two sentences in Article 1(2) CSDDD remains unclear, particularly in light of the objectives of the CSDDD and the Omnibus I Directive mentioned in the recitals. Exempting 95% of companies previously subject to due diligence from their obligations does not serve the purpose of realising European values and protecting human rights in global value chains, as stated in Recital 2 of the CSDDD. Nor does it make the protection of human rights and the environment more efficient (reduction of bureaucracy); on the contrary, it makes it less efficient. A twentyfold larger number of companies with a common goal and harmonised means would operate many times more efficiently and effectively (network effect). While 95% of companies currently subject to due diligence requirements will no longer be covered by the law, the requirements will focus more strongly on the companies that remain within its scope. In future, these companies will no longer be able to assume that their suppliers will comply with legal due diligence obligations on their own initiative. In addition, some of the companies falling outside the scope of the law are already complaining that they will suffer competitive disadvantages if other companies cease their efforts.<sup>9</sup>

The undermining of the prohibition of regression inserted in sentence 2 is thus clearly contrary to the spirit and purpose of the CSDDD and can hardly be justified by the spirit and purpose of the Omnibus I Directive. However, the wording of Art. 1(2) sentence 2 CSDDD is clear. In comparable circumstances, the CJEU has pointed out

“that the preamble to a Community act has no binding legal force and cannot be relied on either as a ground for derogating from the actual provisions of the act in question or for interpreting those

provisions in a manner clearly contrary to their wording". (CJEU, judgment of 19 June 2014 – C-345/13 (*Karen Millen Fashions*), para. 31, with further references)

The non-regression clause laid down in Article 1(2) sentence 1 CSDDD therefore no longer precludes a restriction of the scope of application of the LkSG in line with the significantly reduced scope of application of the CSDDD as a result of the Omnibus I Directive.

## **2. Non-regression clause in the EU Charter of Fundamental Rights (Article 53 CFR)**

Article 53 of the European Charter of Fundamental Rights prohibits the States Parties from reducing the protection of fundamental rights in their legal systems on the grounds that the same fundamental rights are less pronounced in the Charter of Fundamental Rights. This prohibition is not relevant in the present case, as the possible reductions in the LkSG are not being justified by the fact that the standards of protection in the Charter of Fundamental Rights are also lower.

## **3. Proportionality requirement of the EU Charter of Fundamental Rights (Art. 52 CFR)**

The Charter of Fundamental Rights is the European Union's catalogue of fundamental rights and protects numerous rights and prohibitions that are operationalised in the CSDDD, for example:

- Art. 1: Human dignity
- Art. 5: Prohibition of slavery, forced labour and human trafficking
- Art. 31: Fair and just working conditions
- Art. 32: Prohibition of child labour
- Art. 47: The right to an effective remedy, including civil liability
- Art. 37: Environmental protection and, implicitly, climate protection

The CFR is legally binding and has the same status as the EU Treaties (primary law). It must be observed both by the EU institutions when creating legal acts and by the Member States when transposing them into and applying them in national law.

Since the weakening of the CSDDD introduced by the Omnibus I Directive and a corresponding weakening of the LkSG interferes with the protection of several rights guaranteed by the Charter of Fundamental Rights, it is only permissible under Art. 52(1) of the Charter if, firstly, it is provided for by law and preserves the essence of the rights concerned, secondly, it pursues an objective of general interest of the Union or the protection of the rights and freedoms of others, and thirdly, it is appropriate, necessary and proportionate in the strict sense.

It has to date neither been asserted nor comprehensively explained that the extensive reduction of the personal scope of the CSDDD and a corresponding restriction of the LkSG would satisfy these three requirements.

There are already doubts regarding the legitimacy of the objective and its appropriateness: The recitals of the Omnibus I Directive essentially refer to the reduction of administrative burdens and the avoidance of legal uncertainty, without systematically explaining to what extent the claimed relief is actually necessary to achieve a Union-wide recognised public interest and why it must come at the expense of human rights and environmental protection to such an extent. No consideration has been given to the fact that a drastic reduction in the number of companies subject to the directive will make it structurally more difficult to achieve the objectives pursued by the CSDDD, in particular the prevention of human rights violations and serious environmental damage in value chains. Cooperation and mutual learning between companies will be lost, while the remaining companies will have to shoulder the same efforts alone. It therefore seems doubtful that the measures chosen can be considered suitable for promoting the sustainability objectives recognised under EU law under these circumstances.

In any case, it is not apparent that the reduction in the level of protection provided for in Omnibus I and a corresponding weakening of the LkSG would be necessary and proportionate in the strict sense within the meaning of Article 52(1) CFR. Neither is it demonstrated that less severe measures – such as a targeted

simplification of supervisory procedures, specific administrative relief for smaller obligated companies or clarifying guidelines – would be insufficient, nor is there a comprehensible weighing up of the alleged relief interests and the risks to the effective protection of the fundamental rights concerned. The remark at the end of the recitals (recital 52) that the Directive does not go beyond what is necessary remains formulaic. The statement that the climate transition plans “have been deemed to be disproportionate, particularly due to the administrative burden on companies and supervisory authorities, and could lead to legal uncertainty” (recital 47) does not replace an independent assessment of proportionality.

With specific regard to environmental and climate protection, *Calliess* and *Kirchhof* emphasise that European primary law, as regulated in the Treaty on the Functioning of the European Union (TFEU), draws an independent “red line” for the legislator. The integration clause (Art. 11 TFEU) obliges the EU to integrate the objectives and guiding principles of environmental policy from Art. 191 TFEU – in particular the precautionary principle and the polluter pays principle – into all policy areas. This prohibits simply “weighing away” environmental concerns in the balancing of interests. Legislative discretion is exceeded if a measure is recognisably one-sidedly designed to the detriment of environmental and climate protection and is likely to lead to significant, noticeable environmental damage.<sup>10</sup> This must also be taken into account in the context of the Charter of Fundamental Rights, which in Article 37 requires a high level of environmental protection and continuous improvement of environmental quality.

Against this background, there is much to suggest that the Omnibus I Directive and corresponding restrictions in the LkSG do not fully comply with the proportionality requirements of Article 52 of the Charter of Fundamental Rights and therefore call for in-depth judicial review.

#### 4. Principle of non-regression in the EU Treaty (Article 2 TEU)

In 2021, the CJEU ruled that Article 2 of the Treaty on European Union also contains a prohibition of value regression. The exact meaning of this prohibition of regression has not yet been decided. However, it could also set limits on the Omnibus I Directive and the implementation of the CSDDD into German law. Article 2 TEU reads as follows:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. (Art. 2 TEU)

In the case to be decided by the CJEU, the Maltese NGO *Repubblika* challenged the new Maltese procedure for appointing judges. It argued that Maltese judges would no longer be independent in future and would therefore be less able to uphold European values. The CJEU held, first, that once a level of protection had been achieved, it could not be reduced:

In particular, it follows from Article 2 TEU that the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, inter alia, justice prevails. (...) It follows that compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State. A Member State cannot therefore amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU (...) (CJEU, judgment of 20 April 2021 – C-896/19 (*Repubblika*), paras. 62–63)

Several aspects of this new prohibition of regression remain unresolved:

Firstly, in the decisive passage, the CJEU refers to the “protection of the value of the rule of law”, which must not be diminished. *Mader* is of the opinion that this must also apply to all values covered by Article 2 TEU.<sup>11</sup> The protection of the values as set out and defined in the Annex to the CSDDD should therefore not be reduced. This has not yet been decided by the courts. However, it seems likely that the CJEU would at least measure any regression in effective legal protection (harmonisation of the civil liability under Article 29(1) CSDDD) against the prohibition of regression in Articles 2 and 19 TEU.

Secondly, it is claimed that the *Repubblika* judgment is irrelevant in the context of the CSDDD. In *Repubblika*, a new system for electing judges had to be assessed, whereas national legislators have discretion when transposing the CSDDD and Omnibus I Directive.<sup>12</sup> This view is not convincing. Courts are well versed in recognising the limits of legislators' margin of discretion.

Thirdly, it is uncertain whether and under what circumstances the CJEU could consider a possible regression in the protection of EU values to be justified, for example by means of a proportionality test. In the *Repubblika* case, the court did not need to consider possible criteria, as it came to the conclusion that no reduction in protection had occurred in that case.

The exact circumstances under which the Treaty on European Union could allow setbacks in the protection of human rights have therefore not yet been clarified by the court. In the field of environmental and climate protection law, the discussion on a prohibition of regression has already advanced. Here, a prohibition of deterioration with more precise requirements is increasingly being recognised. According to this, the level of protection achieved may not be lowered in an overall assessment, but may only be changed under the condition of normative compensation. *Calliess* and *Kirchhof* derive this from Article 20a of the German Basic Law and Article 191(1) TFEU and compare it with prohibitions on deterioration under EU law, such as those in the law on water resources.<sup>13</sup> If this approach is applied to human rights and environmental due diligence obligations, there is much to suggest that a "red line" must also be recognised in this respect: once a level of protection has been achieved through national due diligence laws such as the LkSG, it may not be reduced without equivalent compensation – for example, through more effective instruments under EU law. This initially concerns directly the due diligence obligations with environmental protection effects (Sections 2(2) No. 9 and 2(3) LkSG). However, the comments by *Callies* and *Kirchhof* should also be transferable to purely human rights-related due diligence obligations.

Overall, there are therefore good reasons to believe that the Omnibus I Directive and its implementation in national law violate European primary law. The CJEU could therefore declare parts of the Omnibus I Directive null and void. A more detailed examination and legal action should be considered.

## **5. Principle of non-regression in the UN Covenant on Economic, Social and Cultural Rights (Art. 2(1) ICESCR)**

With the International Covenant on Economic, Social and Cultural Rights of 1966 Germany and a large number of other signatory states agreed to protect various human rights that are also covered by the CSDDD, such as labour rights (Art. 6, 7 ICESCR), the right to health protection (Art. 12) and the right to a livelihood (Art. 11). Article 2(1) ICESCR stipulates a general prohibition of regression. This does not apply absolutely, but requires that any deliberate lowering of a once achieved standard of protection of economic and social human rights must meet specific requirements for justification. The entirety of the human rights of the Social Covenant would have to be considered with extreme caution, and the full use of all available resources would be expected.<sup>14</sup> This has not yet happened. Instead of conducting its own proportionality assessment, the EU legislator refers to the 2024 report "The Future of European Competitiveness" (known as the Draghi Report), which itself recommends that an impact assessment be carried out.<sup>15</sup> In October 2025, the European Parliament's Legal Affairs Committee accordingly noted that the necessary impact assessment and proportionality test were still lacking.<sup>16</sup> In November 2025, the European Ombudsman also criticised the considerations underlying the Omnibus I Directive and the legislator's procedure; the Commission had, without sufficient justification, dispensed with an impact assessment, a public consultation and a climate consistency assessment.<sup>17</sup>

In its [General Comment No. 24](#), the CESCR made it clear that the unilateral prioritisation of corporate interests cannot justify a step backwards without further ado:

"The obligation to respect economic, social and cultural rights is violated when States parties prioritise the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights."

The German Institute for Human Rights (DIMR) and lawyers *Krajewski, Kaltenborn and Rahn* have therefore already expressed considerable doubts that a suspension of the LkSG or a far-reaching weakening of the LkSG's protection standards, as planned by the federal government, would be permissible without further justification.<sup>18</sup>

In the event that the LkSG is adapted to the scope of the CSDDD, the DIMR initially argued, prior to the adoption of the Omnibus I Directive, that the reductions in the scope of the LkSG could be offset by the fact that the implementation of the CSDDD in other EU Member States would make numerous companies subject to due diligence requirements. However, the German legislature would narrow the scope of the LkSG on its own initiative, independently of the CSDDD. After all, it should not justify a reduction in the scope with the CSDDD (Art. 1 (2) sentence 1 CSDDD). The two processes would therefore be independent and must be assessed separately in terms of the prohibition of regression. It therefore does not seem right to offset the implementation of the CSDDD in other Member States with legislative rollbacks in Germany.

Given that, based on Omnibus I, approximately 95% of companies within the scope of application in Germany would be exempt from the LkSG, compensating for the exclusion of German companies from the scope of application with companies added in other Member States would in any case no longer be tenable.

There is therefore a considerable likelihood that Germany would violate the prohibition of regression in the ICESCR by reducing the scope of the LkSG and weakening due diligence obligations.

For Germany, the Optional Protocol to the ICESCR (OP-ICESCR) entered into force on 20 July 2023. This means that persons who consider that their rights under the ICESCR have been violated by Germany can, in principle, lodge an individual complaint (Communication) with the UN Committee on Economic, Social and Cultural Rights (CESCR). Before doing so, they must exhaust domestic legal remedies (except in cases of unreasonable delay, among others), and the complaint must generally be submitted within one year of the conclusion of domestic legal proceedings.

### **III. PERSONAL SCOPE OF APPLICATION OF DUE DILIGENCE OBLIGATIONS**

#### **1. The LkSG to date**

According to estimates, the LkSG currently applies to approximately 2,900 German companies (including foreign companies: approximately 4,800 companies) that employ 1,000 or more workers in Germany.<sup>19</sup>

#### **2. CSDDD and Omnibus I**

The CSDDD provides for a partial extension of the scope of application of the LkSG: due diligence laws must also apply to certain foreign companies, regardless of whether they have a branch in Germany, and employees working abroad are also counted when determining the number of employees of the company. Essentially, however, the CSDDD results in considerable reductions in the scope of application compared to the LkSG: the CSDDD in its version after Omnibus I only provides for due diligence obligations for companies with more than 5,000 employees (before Omnibus I: 1,000) and at the same time €1.5 billion in turnover (before Omnibus I: €450 million).

According to the revised review clause in Article 36(2) CSDDD, the European Commission will review and report by 26 July 2031 on whether the thresholds should be lowered back to 1,000 employees and €450 million in turnover. In addition, the Commission should no longer consider regulating due diligence obligations relating to the use of credit or invested funds. The revised version thus aims to exclude a sectoral extension of due diligence obligations to financing activities ("use of credit/financial services") in the context of the future review; for financial companies, due diligence obligations will typically remain only in relation to their own business operations (e.g. procurement of office supplies, working conditions).

### 3. Amendments to Section 1 LkSG

If the scope of the LkSG were aligned with that of the CSDDD, the LkSG would only apply to approximately 150 companies headquartered in Germany.<sup>20</sup> This is about 95% fewer companies than before.<sup>21</sup> Before Omnibus I, the reduction in scope would have affected about 66% of companies subject to due diligence.<sup>22</sup> It is obvious that this would significantly reduce the protection of human rights and the environment in global supply chains.<sup>23</sup> Such a reduction triggers an increased burden of justification and reasoning and must be measured in particular against the relevant prohibitions of regression (TEU; ICESCR) and Art. 52 CFR. It stands to reason that various prohibitions on regression would be violated (see above). The fact that companies in other EU Member States will be subject to due diligence requirements in future cannot compensate for the losses in the scope of application of the LkSG, either in practical or legal terms (see II.5 above).

Subject to a thorough examination of the prohibitions on regression (TEU and Social Pact) and the principle of proportionality (CFR), it is therefore assumed here that the personal scope of application of the LkSG (Section 1 LkSG) may not be aligned with that of the CSDDD.

For the sake of clarity, the resulting changes are also shown in tabular form below. The left-hand column shows the currently applicable scope of the LkSG. Due to the **prohibition of regression**, the legislator may not narrow this scope even if the CSDDD sets weaker requirements. However, the scope of application must be extended to include additional companies (right-hand column). The resulting **extensions to the scope of application** are highlighted in green:

<b>LkSG</b> The regulatory content of Section 1 LkSG currently.	<b>CSDDD</b> (information in brackets: before Omnibus I)
Companies and groups <b>based</b> in Germany with at least <b>1,000 employees</b> in Germany; <b>turnover is irrelevant</b> . <span style="float: right;">§ 1(1)(1)</span>	Companies and corporations <b>based</b> in the EU with more than <b>5,000 (1,000) employees</b> worldwide and <b>€1.5 billion (€450 million)</b> in turnover worldwide. <span style="float: right;">Art. 2(1)(a)(b)</span>
Foreign companies and corporations with <b>administrative headquarters or branches</b> and more than <b>1,000 employees</b> in Germany. <span style="float: right;">§ 1 12</span>	-
-	Companies and groups worldwide that generate more than <b>€75 million in franchise fees (€22.5 million)</b> and <b>a total of €275 million in turnover (€80 million)</b> . If they are based in the EU, their worldwide turnover is taken into account; otherwise, only their turnover in the EU is taken into account. <span style="float: right;">Art. 2(1)(c) and 2(2)(c)</span>
-	Companies and groups not based in the EU with more than <b>€1.5 billion in turnover in the EU (€450 million)</b> . <span style="float: right;">Art. 2(2)(a)</span>
The due diligence obligations apply mutatis mutandis to the <b>financial sector</b> and its specific products and services. <small>Government explanatory memorandum to the LkSG, p. 40; contra: BAFA</small>	For the <b>financial sector</b> , due diligence obligations only apply to office work (purchase of office supplies; working conditions of employees).
An <b>exemption</b> from due diligence obligations for <b>holding companies</b> is not regulated by law, but may be introduced.	Parent companies that, as traditional <b>holding companies</b> , primarily manage shares in companies can apply for an <b>exemption</b> from due diligence obligations if they ensure that their next operating subsidiary fulfils the due diligence obligations. <span style="float: right;">Art. 2(3)</span>

## IV. PROTECTED LEGAL INTERESTS AND ENVIRONMENTAL MATTERS

Some of the human rights and environmental matters covered by the CSDDD are already covered by the LkSG. In the following table, the protected matters that need to be added to the LkSG are highlighted in green. The content covered by the prohibition of regression is marked in red.

<p style="text-align: center;"><b>LkSG</b></p> <p style="text-align: center;">Protected matters under Section 2 II LkSG currently.</p>	<p style="text-align: center;"><b>CSDDD</b></p> <p style="text-align: center;">Protected matters covered by the annex to the CSDDD.</p>
<p>Excessive use of force by security forces, in particular against trade union members.</p> <p style="text-align: right;">§ 2(2) No. 11</p>	<p>Right to life; prohibition of torture and cruel, inhuman or degrading treatment, including excessive use of force by security forces tasked with protecting company assets; liberty and security</p> <p style="text-align: right;">Annex I.1 No. 1-3</p>
<p style="text-align: center;">-</p>	<p>Privacy, family, home, correspondence, honour, reputation; thoughts, conscience, religion</p> <p style="text-align: right;">Annex I.1 Nos. 4-5</p>
<p>Freedom of association in accordance with ILO Conventions 87 and 98, regardless of whether they have been ratified and fully or partially implemented at the respective location.</p> <p style="text-align: right;">§ 2(2) No. 6</p>	<p>Freedom of association in accordance with ILO Conventions 87 and 98, as regulated in these conventions.<sup>24</sup></p> <p style="text-align: right;">Art. 3(1)(c)</p>
<p>Payment of a fair wage for employees; according to some opinions, the payment of fair remuneration for small farmers, migrant workers and other self-employed persons is not yet covered.</p> <p style="text-align: right;">§ 2(2) No. 8</p>	<p>Payment of fair and adequate wages for employees and income for self-employed persons that is sufficient to cover their basic needs.</p> <p style="text-align: right;">Annex I.1 No. 6</p>
<p style="text-align: center;">-</p>	<p>Adequate quality of accommodation, if provided by the company, as well as food, clothing and sanitary facilities</p> <p style="text-align: right;">Annex I.1 No. 7</p>
<p style="text-align: center;">-</p>	<p>With regard to children, the highest attainable standard of health, education; adequate standard of living; protection from economic exploitation, sexual abuse, abduction</p> <p style="text-align: right;">Annex I.1 No. 8</p>
<p>Certain environmental changes that have an adverse effect on people.</p> <p style="text-align: right;">§ 2(2) No. 9</p>	<p>Certain environmental changes that have an adverse effect on humans, as well as measurable environmental damage caused by mere impairment of natural resources (e.g. through deforestation) and such damage that impairs the use of property or harms ecosystems in which humans participate.</p> <p style="text-align: right;">Annex I.1 No. 15</p>
<p>Violations of legal provisions concerning mercury, POPs and hazardous waste</p>	<p>Violations of legal provisions concerning mercury, POPs and hazardous waste, as well as:</p> <ul style="list-style-type: none"> <li>▪ Impairment of biodiversity</li> <li>▪ Trade in endangered species of wild flora and fauna</li> <li>▪ the Prior Informed Consent procedure for trade in toxic substances and pesticides</li> <li>▪ Ozone-depleting substances</li> <li>▪ World cultural and natural heritage</li> <li>▪ Impairment of wetlands</li> </ul>

When supplementing the environmental protection matters in the LkSG, reference must be made to the environmental protection agreements cited in the CSDDD and their implementation in foreign law (Art. 3(1)(b) CSDDD).

When the catalogue of human rights protection matters in the LkSG is expanded in accordance with the CSDDD, the question arises as to whether reference should be made solely to the relevant human rights agreement or whether its implementation (or lack thereof) in the national law of the country of production should ultimately be decisive. Unlike in the case of environmental protection matters, the CSDDD does not mention the law of the respective country of production here. Conversely, this means that the international standard is decisive. Only insofar as a convention itself leaves options or scope for specifications to the contracting states (e.g. 14 instead of 15 years as the minimum age for work) would national law (inevitably) be decisive in accordance with the provisions of the CSDDD.

Under the LkSG, companies must already respect freedom of association, for example, even in countries that have not ratified, implemented or only partially implemented the ILO conventions. This remains the case because of the prohibition of regression and because Art. 3(1)(c) CSDDD refers only to the conventions and not to national law.

For other protected matters, e.g. safety and health protection at work, the LkSG declares the level of protection at the place of employment to be decisive. Here, the legislator must refer primarily to the conventions (ILO Conventions Nos. 155 and 187) in future. Local occupational health and safety regulations may still be relevant, provided they are in line with the conventions.

## V. SCOPE OF DUE DILIGENCE OBLIGATIONS ALONG THE VALUE CHAIN

According to the LkSG, due diligence must first be applied within the company's own business area, which also includes subsidiaries that are effectively controlled. The CSDDD, on the other hand, covers "controlled" subsidiaries; the *possibility* of making decisions about business activities is sufficient. The definition of the "chain of activities" (CSDDD) is similar to that of the "supply chain" (LkSG).

Differences and the need for adjustments are shown in the following table:

LkSG	CSDDD
Due diligence must be applied in the "own business area", among other things, and this includes <b>subsidiaries over which decisive influence is exercised</b> . The decisive factor is whether the influence is <i>actually</i> exercised. § 2(6)(3)	Due diligence must also be applied to the activities of " <b>controlled subsidiaries</b> ". Here, the <i>possibility</i> of exercising control is sufficient. Art. 3(1)(e)
Risks in the "supply chain", including all "suppliers" from raw material extraction to delivery to the end customer. This includes the <b>transport</b> of the product to the retailer. § 2(5)(2)	Impacts on "business partners" in the "chain of activity", which includes upstream and (some) downstream activities. The downstream activities covered include the <b>distribution, transport and storage</b> of products (except for dual-use goods authorised for export). Art. 3(1)(g)(ii)
The regular (annual) risk analysis must only cover <b>direct suppliers</b> .	As part of a <b>scoping exercise</b> prior to the risk analysis, only existing information needs to be taken into account, but <b>areas with increased risks</b>

	§ 5(1)	must be identified throughout the entire chain of activity (risk-based approach).	Art. 8(2)(a)
Risks that the company has <b>caused</b> or contributed to must be considered.	§ 4(2)	At the outset, the company must consider <b>all impacts</b> . Only once the measures to be taken against the impacts have been determined does it become relevant whether the company causes the impact, contributes to it or is merely associated with it.	Art. 10(1)(a)

With regard to the downstream side of the supply chain, it must at least be stipulated that the distribution, transport and storage of products are covered. Beyond this, the legislator has some leeway: it can stipulate that the impacts of the use of products (e.g. social media, surveillance software, dangers to children) and their disposal are also covered.

## VI. ELEMENTS OF DUE DILIGENCE

The LkSG goes beyond the CSDDD in some elements of due diligence. When implementing the CSDDD into German law, priority must be given to the prohibition of deterioration and the prohibition of regression (see II). Insofar as Art. 4 CSDDD provides for so-called “full harmonisation”, the German legislator may not go beyond the requirements of the CSDDD when implementing the CSDDD. Full harmonisation “downwards”, on the other hand, is not permitted due to the prohibition of regression.<sup>25</sup>

In the table below, the requirements protected by the prohibition of regression are highlighted in red. The due diligence obligations of the CSDDD (right-hand column) go beyond the requirements of the LkSG in some areas. Since Omnibus I, almost all of them are subject to full harmonisation (marked in green). This means that, when introducing new due diligence obligations, national legislators may not go beyond the provisions of the CSDDD. Only with regard to remediation (highlighted in light green) can requirements exceeding the provisions of the CSDDD be imposed on companies.

LkSG	CSDDD
<p><b>Risk analysis:</b> at least once a year in their own business area and with direct suppliers, as well as on an ad hoc basis in all parts of the supply chain</p> <p>§ 5(1) and (4), 9(3) No. 1</p>	<p><b>Identification</b> of actual and potential negative impacts caused by the company, to which it has contributed or to which there is a direct link. Clear risk-based approach instead of differentiation between direct and indirect business partners; prioritisation based on severity and probability (not contribution to cause or influence).</p> <p>Art. 8, 9</p>
<p>Appropriate measures must be taken for <b>prevention</b>. These include a public statement of principles by management, implementation of the human rights strategy in the company’s own business processes, training and controls, selection of contractual partners, and adaptation of purchasing practices.</p> <p>§ 6</p>	<p>A series of measures must be taken to <b>prevent</b> the impacts. These include prevention plans; contractual agreements that must be fair and reasonable towards smaller business partners; audits and industry initiatives; the provision of sufficient resources within the company and support for small and medium-sized business partners; suspension of the business relationship.</p> <p>Art. 10</p>
<p><b>Ending negative impacts:</b> The measures must be successful in the company’s own business area (including subsidiaries). If ending negative impacts is not immediately possible with regard to</p>	<p><b>Bringing negative impacts to an end</b>, e.g. by minimising or “neutralising” the effects, developing corrective action plans, entering into contractual agreements, providing investments, supporting</p>

<p>suppliers, minimisation concepts are required: A corrective action plan must be developed jointly; cooperation and suspension of the business relationship must be considered. A (permanent) termination of the business relationship may be necessary.</p> <p style="text-align: right;">§ 7</p>	<p>smaller companies, participating in cooperation with other companies and providing remedies to the persons and communities affected, or suspending the business relationship.</p> <p style="text-align: right;">Art. 11</p>
<p>The LkSG lists preventive and remedial measures as so-called "<b>standard examples</b>", i.e. these measures are usually necessary and sufficient, but under special circumstances the company must ask itself whether other measures are necessary.</p> <p style="text-align: right;">§§ 6–7</p>	<p>The lists of (partly mandatory, partly optional) prevention and termination measures are <b>exhaustive</b>. Under no circumstances can companies be required to make efforts in any other way.</p> <p style="text-align: right;">Art. 10–11</p>
<p>Beyond ending impacts, the LkSG does not regulate <b>remediation or compensation</b>. Supervisory authority BAFA takes voluntary efforts to provide compensation into account when determining the amount of a fine.</p> <p style="text-align: right;">§ 24(4)(4) No. 7</p>	<p>Member States must ensure that companies <b>remediate</b> adverse impacts if they have caused or contributed to them. Depending on the circumstances, this may also include compensation for damages.<sup>26</sup></p> <p style="text-align: right;">Art. 12</p>
<p>The LkSG already regulates both a <b>complaints procedure</b> and a <b>whistleblowing procedure</b>.</p> <p style="text-align: right;">§§ 8–9</p>	<p>"Notification procedures" must be established that are accessible to both complainants (who are personally affected) and whistleblowers (not personally affected).</p> <p>Complainants must be informed of the outcome of the complaint procedure. If they have not lodged their complaint anonymously, they may request, among other things, the following:</p> <ul style="list-style-type: none"> <li>▪ <b>Reasons for the decision</b></li> <li>▪ <b>A personal meeting</b> with the company's management</li> <li>▪ <b>Reparation</b></li> </ul> <p style="text-align: right;">Art. 14</p>
<p><b>Documentation</b> (retention period: 7 years) and <b>reporting</b> based on the BAFA questionnaire and monitored by the BAFA</p> <p style="text-align: right;">§ 10</p>	<p><b>Documentation</b> (retention period: 5 years); <b>reporting</b>, if applicable, in accordance with CSRD.</p> <p style="text-align: right;">Art. 16</p>
<p><b>Review of the effectiveness</b> of due diligence measures, once a year and as required.</p> <p style="text-align: right;">§ 6(5), § 7(4), § 8(5)</p>	<p><b>Monitoring:</b> Review of the effectiveness of due diligence measures on a regular basis, at least every 5 years (before omnibus: every 12 months).</p> <p style="text-align: right;">Art. 15</p>
<p><b>Criteria</b> for the appropriateness of efforts</p> <p style="text-align: right;">§ 3(2)</p>	<p><b>Criteria</b> for the appropriateness of efforts</p> <p style="text-align: right;">Recital 41 and Art. 3(1)(o), 9(2), 10(1) and 11(1)</p>

## VII. DELETION OF ART. 22 CSDDD (CLIMATE TRANSITION PLANS)

Art. 22 CSDDD stipulated that companies must make "best efforts" to align their business models and strategies with the EU's climate neutrality target (by 2050) and the Paris 1.5° target (by 2100). Each company had to adopt and put into effect, as well as annually renew, a transition plan setting out time-bound emission reduction targets, decarbonisation levers, key measures, investments and budgets provided, and the role of the company's administrative and management bodies and supervisory board.

These requirements gave companies considerable freedom in how they achieved their targets. At the same time, the regulation was seen as an important contribution to achieving climate targets and thus protecting the basis of human life.

*Calliess and Kirchhof* have taken a detailed look at regressive measures in the field of climate protection in 2025 and highlighted a dense network of the Paris Agreement, EU climate law, the Green Deal, the ECtHR climate ruling and the climate decision of the German Federal Constitutional Court. This multi-level system means that the essential instruments of climate protection – including binding reduction paths and sector-specific targets – may only be withdrawn if there is a “comparably suitable and effective alternative protection concept”. Changes that visibly lower the level of protection achieved are only permissible in exceptional cases and with sound justification; a complete or unconditional repeal of key climate protection instruments would cross the “red line” of a prohibition on deterioration.<sup>27</sup> Applied to Article 22 CSDDD and the deletion of the climate transition plans decided in Omnibus I, this means that the EU legislator would have to substantiate how the climate targets of the EU and the Paris Agreement are to be achieved just as effectively without such plans. Merely referring to administrative burdens or legal uncertainty does not meet these standards.

It therefore stands to reason that the Omnibus I Directive violates European primary law in this respect due to a breach of the prohibition of regression and the principle of proportionality (see above). If the CJEU declares the Omnibus I Directive invalid in this respect by way of a preliminary ruling or an action for annulment, Member States will still be obliged under Article 22 CSDDD to require companies to adopt and put into effect climate transition plans.

## VIII. CONSULTATION WITH STAKEHOLDERS

The LkSG regulates the obligation of companies to consult stakeholders only rudimentarily. As a consequence, in practice, dialogue with stakeholders plays hardly a role yet. Several requirements from the CSDDD must be transposed into German law (highlighted in green):

LkSG	CSDDD
<p>When establishing and implementing the risk management system, management must <b>“take into account”</b> the interests of all potentially affected rights holders. (German law does not yet regulate further detail.) § 4(4) LkSG</p> <p>The works council members on <b>the company’s Economic Committee</b> must be “informed” by management about matters relating to the LkSG. According to general understanding, this means that information must be shared with the Economic Committee in good time so that discussions in the Economic Committee can take place in time for management to take them into account <i>before</i> making its decisions. (It is disputed whether the Economic Committee also deals with matters in the supply chain or only with matters concerning its own workforce). § 106(3) No. 5b Works Constitution Act</p>	<p>A <b>due diligence policy</b> shall be developed in prior consultation with the company’s employees and their representatives. Art. 7(2)</p> <p>Anyone who complains to the company about a violation of their rights may request appropriate feedback and a <b>discussion with managers</b>. Art. 14(2)</p> <p><b>For certain due diligence measures, namely</b></p> <ul style="list-style-type: none"> <li>▪ gathering information for the purpose of risk assessment,</li> <li>▪ the development of prevention action and corrective action plans and</li> <li>▪ the selection of remedial measures,</li> </ul> <p><b>special requirements apply</b> for the meaningful engagement with stakeholders, namely:</p> <ul style="list-style-type: none"> <li>▪ Management must provide comprehensive and relevant information. Stakeholders may submit a reasoned request for further relevant information. The company must provide this within a reasonable time frame and in an understandable manner.</li> <li>▪ Experts who can provide credible insights into potential and actual impacts should be consulted, but only as a secondary measure; direct dialogue with stakeholders takes precedence.</li> <li>▪ Removal of barriers for stakeholders; protection against reprisals, e.g. through anonymity.</li> </ul>

- Involvement in industry and multi-stakeholder initiatives should be considered, but does not replace direct dialogue with the company's own workforce and employee representatives.

Since Omnibus I, the requirements for stakeholder involvement no longer apply to responsible exits and monitoring indicators.

Art. 13 in conjunction with 8, 10, 11, 15

The German legislator can specify even more precisely in German law how consultation with interest groups must be carried out and has considerable leeway in this regard. For example, co-determination rights are typical in German collective labour law. It seems sensible, for example, that a company's due diligence policies should not be decided by management alone, but jointly with the chair of the works council.

## IX. CIVIL LIABILITY AND ACCESS TO LEGAL PROTECTION

Civil liability and access to effective legal protection are among the most controversial and, at the same time, most important practical aspects of the CSDDD. Even after Omnibus I, Article 29 CSDDD still contains far-reaching requirements for the national structuring of claims for damages and procedural support; the widespread short form "liability is deleted" therefore falls short and needs to be clarified precisely.

Article 29(1) subparagraph 1 CSDDD originally read as follows:

Member States shall ensure that a company can be held liable for damage caused to a natural or legal person, provided that:

- (a) the company intentionally or negligently failed to comply with the obligations laid down in Articles 10 and 11, when the right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person; and
- (b) as a result of the failure referred to in point (a), damage to the natural or legal person's legal interests that are protected under national law was caused .

Other parts of Article 29 CSDDD set out a number of substantive, procedural and conflict-of-law requirements for the formulation of the claim for damages.

This required all Member States to:

- create a basis for claims in their national law that allows for damages in cases of breaches of duty (if such a basis for claims did not already exist),
- design the claim along the lines of the elements known from the German law of delicts (cf. Art. 29(1) CSDDD with § 823(1) BGB and § 823(2) BGB),
- regulate the accompanying procedural improvements for affected persons provided for in paragraphs 2–6 and
- make the new provisions mandatory for foreign cases as well (overriding mandatory provisions).

After paragraph 1 was deleted by the Omnibus I Directive, only paragraphs 2–6 remain.

Subsequently, some have summarised the amendment in the Omnibus I Directive with the short formula "the liability is deleted". However, this cannot be understood to mean that there is now no basis for civil law claims for damages. If a civil law claim for damages were only optional, the improvements specified in paragraphs 2–6 would only be relevant in legal systems where claims for damages are possible. The result would be an even greater divergence between legal systems.

The words at the beginning of paragraph 2 – namely "Where a company is held liable pursuant to national law for damage caused to a natural or legal person by a failure to comply with the due diligence requirements

...” – provide a little more clarification. Initially, paragraph 2 dealt with how damages are distributed in cases of joint and several liability: Each liable party is obliged to compensate the victim in full for the damage, regardless of their share of the fault, and the liable parties must settle the distribution of the burden of compensation among themselves by way of recourse. However, recital 49 of the Omnibus I Directive<sup>28</sup> may have broadened the meaning of paragraph 2. This recital now clarifies that effective access to legal protection must be guaranteed, but that the basic structure of the basis for claims will in future be left to each Member State individually in accordance with the principle of subsidiarity (and will no longer have to be based on the German system, as previously provided for in Article 29(1)). Several press releases from the EU legislator have also been formulated in this direction.<sup>29</sup> This interpretation of the Omnibus I Directive is preferable because it avoids a divergence in the level of protection within the EU and enables those affected to obtain effective legal protection.

Ultimately, it is crucial that persons affected by human rights violations can effectively claim damages. In theory, depending on the circumstances of the case, provisions from the law of the place of production or special legal bases for claims – e.g. in German occupational health and safety law – may already be considered today. In each case, the improvements in Article 29(2)-(6) CSDDD would then have to be guaranteed. The legal situation would ultimately be extremely complex and would be accompanied by considerable difficulties in defining boundaries. The practical effectiveness of the European legal requirements (*effet utile*) and effective legal protection (Recital 49 of the CSDDD) would only be guaranteed if the LkSG itself regulated its own basis for claims within its personal and material scope of application, which would also be expressly applicable to foreign cases of damage as an overriding mandatory provision.

However, due to the deletion of paragraph 1, which is open to interpretation, individual Member States and EU institutions could take contrary interpretations. It seems conceivable that the EU legislator was not really in agreement about the meaning of the amendments it made. There would then be disagreement about the meaning of the deletion of paragraph 1. In the event of such a disagreement, the deletion provided for in the Omnibus I Directive could be found by the CJEU to be partially void.<sup>30</sup> As a result, the first half of Article 29(1) CSDDD would remain in force: “Member States shall ensure that a company can be held liable for damage.” In this case, the CSDDD would continue to require that civil law claims for damages be regulated in the law of the Member States. Member States could structure these claims in accordance with their national legal traditions, but they would have to accompany them with the improvements set out in paragraphs 2–6.

In any case, it still follows from the CSDDD that the following requirements from Art. 29 CSDDD must be implemented in German law (**marked in green**), whereby any restrictions on civil proceedings (**marked in red**) must be refrained from due to the prohibition of regression. The changes can be regulated by establishing a new basis for civil claims in the LkSG.

LkSG	CSDDD
<p>The LkSG does not yet contain a <b>basis for claims</b>. To date, due to the Rome II Regulation, civil court proceedings have generally been governed by the law of the place where the damage occurred rather than German law. How German or foreign law is to be interpreted in specific cases is so <b>difficult to predict</b> that civil proceedings are generally not considered.</p>	<p><b>Member States must either render the bases for claims for damages more effective or create a new basis for claims.</b> (The Omnibus I Directive does not indicate beyond reasonable doubt that the EU legislator intended to remove this obligation.) However, according to Omnibus I, the basis for claims can in principle be based on the criteria customary in the tort law of the respective Member State.</p> <p style="text-align: right;"><small>Art. 29(1)–(6)</small></p>
<p>The principles of <b>joint and several liability</b> (see right-hand column) are already regulated in the BGB.</p> <p style="text-align: right;"><small>§ 421 German Civil Code</small></p>	<p>The claimant must be able to demand compensation for <b>the full damage</b> from one or more of the companies involved in causing the damage (which then settle the distribution of the liability amount among themselves). However, the claimant will not be compensated for more than 100% of their damage in total.</p> <p style="text-align: right;"><small>Art. 29(2)</small></p>

<p>NGOs and trade unions can file lawsuits on behalf of affected persons (<b>standing in a representative capacity</b>).</p> <p style="text-align: right;">§ 11</p>	<p>(Provisions on standing in a representative capacity have been deleted by Omnibus I. According to recital 49, existing rules on representative action shall remain unaffected.)</p> <p style="text-align: right;">Art. 29(3)</p>
<p><b>Preliminary injunctions</b> may be granted in accordance with the general provisions.</p> <p style="text-align: right;">Code of Civil Procedure</p>	<p>In urgent cases, injunctive measures must be possible in <b>summary proceedings</b> (without oral hearings).</p> <p style="text-align: right;">Art. 29(3)</p>
<p>Comparable in some respects: the right to disclosure of certain documents and the <b>secondary burden of proof and presentation</b></p> <p style="text-align: right;">§ 810 Civil Code and case law</p>	<p>Courts must be able to order the <b>disclosure of certain evidence</b> under certain circumstances.</p> <p style="text-align: right;">Art. 29(3)</p>
<p>The limitation period (under foreign law) is often <b>3 years</b>.</p> <p style="text-align: right;">Rome II Regulation in conjunction with foreign law</p>	<p>The limitation period for claims may not end before <b>5 years</b>.</p> <p style="text-align: right;">Art. 29(3)</p>
<p>To be examined: are the court costs, solicitor's fees and legal aid reasonable?</p> <p style="text-align: right;">GKG, RVG</p>	<p>The <b>costs of legal proceedings</b> must not be prohibitively high.</p> <p style="text-align: right;">Art. 29(3)</p>
<p><b>Conflict of laws:</b> In each individual case, it is uncertain whether German or foreign bases for claims or duties of care are to be applied as mandatory rules or taken into account as so-called "safety and conduct rules".</p>	<p><b>Conflict of laws:</b> It is left to the Member States whether they determine by statute generally or by court decisions in individual cases the route by which national law is given effect (in particular as an overriding mandatory provision or rule of safety and conduct).</p> <p style="text-align: right;">Omnibus I</p>

The Commission must review by 26 July 2031 and every five years thereafter whether claims for damages and access to effective legal protection in the Member States are effectively guaranteed in accordance with the requirements of Article 29 (review clause in Article 36(2)(f) CSDDD).

## X. ADMINISTRATIVE SUPERVISION

The Federal Office for Economic Affairs and Export Control (German: Bundesamt für Wirtschaft und Ausfuhrkontrolle, abbr. BAFA) already has extensive investigative and sanctioning powers under the LkSG. However, the CSDDD requires a number of changes to be made (highlighted in green):

LkSG	CSDDD
<p>The German Federal Ministry for Economic Affairs and Energy (German: Bundesministerium für Wirtschaft und Energie, abbr. BMWV) exercises <b>legal and technical</b> supervision over the BAFA.</p> <p style="text-align: right;">§ 19 I</p>	<p>The supervisory authority and its staff and persons acting on their behalf must be <b>independent</b>. It must also be staffed <b>with personnel who have sufficient expertise</b> and are bound by <b>confidentiality</b>.</p> <p style="text-align: right;">Art. 24(9)</p>
<p>Only those whose rights are affected may submit a request for official action.</p>	<p>The <b>right to submit substantiated concerns</b> is already granted in the case of a legitimate interest; rights of participation and information of the applicants.</p> <p style="text-align: right;">Art. 26(1) und (6)</p>
-	<p>Protection of the <b>identity</b> of complainants.</p> <p style="text-align: right;">Art. 26(2)</p>
<p>BAFA may <b>order the company</b> bring negative impacts to an end and take specific actions to fulfil obligations.</p> <p style="text-align: right;">§ 15</p>	<p>The authority must, among other things, be able to <b>order the company to remediate</b> and bring to an end the infringement.</p> <p style="text-align: right;">Art. 25(5)(a)(iii)</p>

Maximum fine: <b>2%</b> of global turnover.	§ 24(3)	Maximum fine: <b>3%</b> of global turnover (before Omnibus I: not less than 5%)	Art. 27(4)
–		<b>Publication of penalty notices.</b>	Art. 27(5)
Companies against which the BAFA has imposed a legally binding fine of €175,000 may not only but <i>should</i> be excluded be excluded from <b>public procurement</b> for three years.	§ 22	Contracting authorities must be able to take into account the company's overall compliance with due diligence obligations when <b>awarding public contracts</b> (not just whether a fine has been imposed).	Art. 31

The CSDDD requires that supervision be exercised by an *independent* authority. In this respect, there is a tension. The Basic Law does not provide for a general model of independent authorities. Rather, the principle of democracy (Art. 20(2) GG) fundamentally requires an unbroken chain of legitimacy via ministerial authority. However, the German Federal Constitutional Court and the literature accept exceptions to this principle if they are prescribed by Union law or objectively justified. This is the case here (Art. 24(9) CSDDD). Technical and legal supervision of the BAFA should therefore be excluded and, instead, freedom from instructions should be clearly regulated (in accordance with § 10 of the Federal Data Protection Act; Art. 52 GDPR). The personal independence of the authority's management can be ensured by appointment by the Bundestag for a fixed term that cannot be revoked prematurely (in accordance with Section 26 AGG). Conflicts of interest, such as those arising from advisory activities for companies, must be avoided. Instead of being controlled vertically by a ministry, the supervisory authority should cooperate with the EU network of supervisory authorities (Art. 28 CSDDD) and coordinate horizontally with other national authorities (environment, occupational safety).

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<sup>1</sup> The Omnibus I Directive has already been adopted by the legislative institutions. It will shortly be published in the Official Journal of the EU following formal adoption by the Council of the EU. Most recently, some linguistic corrections were made to the text by corrigendum of 26 January 2026.

<sup>2</sup> The think tank E3G estimated the reduction of the CSDDD's scope at approximately 70% compared with the original CSDDD, [www.e3g.org/publications/what-european-business-leaders-think-about-the-eus-corporate-sustainability-and-due-diligence-rules/](https://www.e3g.org/publications/what-european-business-leaders-think-about-the-eus-corporate-sustainability-and-due-diligence-rules/) (30 September 2025). Since the original CSDDD was expected to capture approximately 1,500 German companies and corporate groups, a 70% reduction leads to approximately 450 companies. According to other estimates, approximately 200 companies would in future be subject to due diligence obligations in Germany; see also the estimates of the SOMO CSDDD Datahub, [www.somo.nl/csddd-datahub-reveals-law-covers-fewer-than-3400-eu-based-corporate-groups/](https://www.somo.nl/csddd-datahub-reveals-law-covers-fewer-than-3400-eu-based-corporate-groups/).

<sup>3</sup> According to a study commissioned by the Handelsblatt, 5,200 companies are currently subject to due diligence obligations, Handelsblatt, Große Mehrheit für Lieferkettengesetz (3 January 2024), [www.handelsblatt.com/unternehmen/mittelstand/lieferkette-grosse-mehrheit-fuer-lieferkettengesetz/100002172.html](https://www.handelsblatt.com/unternehmen/mittelstand/lieferkette-grosse-mehrheit-fuer-lieferkettengesetz/100002172.html). The Federal Government's estimates assume 4,800 companies subject to due diligence obligations from 2024 onwards (including foreign companies with branch offices in Germany).

<sup>4</sup> Zimmer/Langbein, "Abolishing the German Supply Chain Due Diligence Act – permissible and sensible under European law?" (Abschaffung des deutschen Lieferkettensorgfaltspflichtengesetzes – europarechtlich zulässig und sinnvoll?), NZA 2025, 1151; Mittwoch, "Redesigning the personal scope of the LkSG through transposition of the CSDDD" (Die Neugestaltung des Anwendungsbereichs des LkSG durch Umsetzung der CSDDD), NJW 2024, 2353 (paras. 13 and 22); Mittwoch, "Possibilities and limits of designing the personal

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scope of the LkSG” (Möglichkeiten und Grenzen der Gestaltung des Anwendungsbereichs des LkSG), Legal opinion, July 2024, [germanwatch.org/de/91189](https://germanwatch.org/de/91189).

<sup>5</sup> Dürr/Stark, “Non-regression clauses in EU law: transparency requirements or obligation to go beyond minimum transposition? Interpretive options and implications for CSDDD transposition by way of LkSG reform” (Unionsrechtliche Regressionsverbote: Transparenzgebote oder Pflicht zur überschießenden Umsetzung?), *EuZW* 2025, 156 (158). Schneider/Brouwer further argue that no impermissible deterioration is apparent, since the provision only concerns the protection of companies within the scope of the CSDDD, not the protection of people in supply chains: Schneider/Brouwer, “The non-regression principle in European law” (Das europarechtliche Verschlechterungsverbot), *EuZW* 2024, 888 (889).

<sup>6</sup> Wagner/Ruttloff/Hahn, “Margins for phased transposition of the EU Supply Chain Directive” (Spielräume bei der stufenweisen Umsetzung der EU-Lieferketten-RL), *NJW* 2024, 3401, paras. 20 et seq.

<sup>7</sup> Zimmer/Langbein, op. cit., p. 1154. Indeed, protecting the image of the EU institutions is not among the purposes stated in the CSDDD’s recitals.

<sup>8</sup> The recitals of the Omnibus Directive were renumbered (consolidated) by the corrigendum of 26 January 2026. Recital 19c is now Recital 36.

<sup>9</sup> JARO Institute / YouGov survey conducted 15–28 April 2025 among 1,350 German business decision-makers, [https://jaro-institut.de/wp-content/uploads/2025/06/JARO\\_YouGov\\_03062025\\_final3\\_DE.pdf](https://jaro-institut.de/wp-content/uploads/2025/06/JARO_YouGov_03062025_final3_DE.pdf).

<sup>10</sup> Calliess/Kirchhof, “The legally binding framework for German climate policy and the judicially reviewable minimum standard of climate protection” (Der rechtsverbindliche Rahmen für die deutsche Klimapolitik und das gerichtlich kontrollierbare Untermaß des Klimaschutzes), Expert opinion commissioned by KlimaUnion (March 2025), [https://klimaunion.org/wp-content/uploads/2025/03/Rechtsgutachten\\_C.-Calliess-G.-Kirchhof-Klimaschutz-Rote-Linien-des-Rechts.pdf](https://klimaunion.org/wp-content/uploads/2025/03/Rechtsgutachten_C.-Calliess-G.-Kirchhof-Klimaschutz-Rote-Linien-des-Rechts.pdf) (accessed 7 February 2026); Calliess/Dross: “Environmental and climate protection as an integral part of economic policy” (Umwelt- und Klimaschutz als integraler Bestandteil der Wirtschaftspolitik), *ZUR* 2020, 456 et seq.

<sup>11</sup> Mader, “Ways out of the rule-of-law malaise: the new EU constitutional principle of the non-regression prohibition and its significance for enforcement of values” (Wege aus der Rechtsstaatsmisere: der neue EU-Verfassungsgrundsatz des Rückschrittsverbots und seine Bedeutung für die Wertedurchsetzung), *EuZW* 2021, 917 (Part 1) and 974 (Part 2), pp. 976–977.

<sup>12</sup> Dürr/Stark, op. cit., p. 157.

<sup>13</sup> Calliess/Kirchhof, op. cit.

<sup>14</sup> General Comment No. 3 of the CESCR Committee of 1990.

<sup>15</sup> Recitals 7 and 37 of the Omnibus I Directive as amended by the corrigendum.

<sup>16</sup> JURI Committee of the European Parliament, Monitoring the implementation of EU law in areas where the Commission’s 2023 Annual report on monitoring the application of EU law, the Draghi and Letta reports overlap 2025, October 2025, [www.europarl.europa.eu/RegData/etudes/STUD/2025/778853/IUST\\_STU\(2025\)778853\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/778853/IUST_STU(2025)778853_EN.pdf).

<sup>17</sup> European Ombudsman, Inquiry OI/3/2025/TE, 25 November 2025, [www.ombudsman.europa.eu/en/opening-summary/de/205174](https://www.ombudsman.europa.eu/en/opening-summary/de/205174).

<sup>18</sup> DIMR (German Institute for Human Rights), Position paper: Maintaining the protection level of the Supply Chain Act (Schutzniveau des Lieferkettengesetzes erhalten), November 2024; Krajewski, “Neither regression nor frustration” (Weder Rückschritt noch Frustration), *Verfassungsblog*, 21 March 2025, <https://verfassungsblog.de/lksg-menschenrechte/>; Kaltenborn/Rahn, “Between relief and gutting: How the EU risks its own values in supply chain law” (Zwischen Entlastung und Entkernung: Wie die EU beim

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Lieferkettenrecht ihre eigenen Werte riskiert), 22 October 2025, <https://verfassungsblog.de/lieferkettengesetz-berichtspflicht-reform/>.

<sup>19</sup> Government draft of the LkSG, BT-Drs. 19/28649, p. 26; cf. Handelsblatt, Sorgfaltspflichtengesetz kommt, 9 June 2021, [www.handelsblatt.com/politik/deutschland/menschenrechte-sorgfaltspflichtengesetz-kommt-minister-mueller-mir-faellt-ein-grosser-stein-vom-herzen/27270568.html](http://www.handelsblatt.com/politik/deutschland/menschenrechte-sorgfaltspflichtengesetz-kommt-minister-mueller-mir-faellt-ein-grosser-stein-vom-herzen/27270568.html), accessed 20 January 2026; FAQ paper of the Initiative Lieferkettengesetz, [https://lieferkettengesetz.de/wp-content/uploads/2021/11/Initiative-Lieferkettengesetz\\_FAQ-Deutsch.pdf](https://lieferkettengesetz.de/wp-content/uploads/2021/11/Initiative-Lieferkettengesetz_FAQ-Deutsch.pdf).

<sup>20</sup> This figure is based on an estimate by the Federal Statistical Office, cited by the Federal Government in its reply to a minor interpellation (Kleine Anfrage) by the Die Linke parliamentary group, printed paper 21/2236 of 10 October 2025, p. 6.

<sup>21</sup> Official statistical data are not available; but cf. [www.linkedin.com/posts/arved-lueth\\_csrd-csddd-esg-activity-7382034158044254208-01mr/](http://www.linkedin.com/posts/arved-lueth_csrd-csddd-esg-activity-7382034158044254208-01mr/).

<sup>22</sup> Growth Initiative of the Federal Government of 5 July 2024, [www.bundesregierung.de/resource/blob/975226/2297962/490594de98f9f5551033969d87184247/2024-07-08-wachstumsinitiative-data.pdf](http://www.bundesregierung.de/resource/blob/975226/2297962/490594de98f9f5551033969d87184247/2024-07-08-wachstumsinitiative-data.pdf), p. 10; the document is no longer available online.

<sup>23</sup> On the prospects before Omnibus I: Mittwoch, op. cit.

<sup>24</sup> The German-language version of the CSDDD leaves it ambiguous whether the international standard applies or whether the transposition of the conventions into national law at the place of employment is determinative. The English word “as” has been translated as “da” meaning “since/because”. This is evidently erroneous, because the EU legislature states reasons in the recitals, not in the normative part of the directive. What is meant is freedom of association “as” i.e. “in the manner in which” it is internationally codified.

<sup>25</sup> Hagel/Wiedmann, “How must the LkSG be adapted on account of the CS3D?” (Wie muss das LkSG aufgrund der CS3D angepasst werden?), CCZ 2024, 185 (187).

<sup>26</sup> Bartmann, “The relationship between claims for remediation and damages under the CSDDD” (Das Verhältnis der Ansprüche auf Abhilfe und Schadensersatz nach der CSDDD), NJW 2025, 1295.

<sup>27</sup> Calliess/Kirchhof, op. cit.

<sup>28</sup> The relevant recital was reformulated by the corrigendum of 26 February 2026 (Recital 49).

<sup>29</sup> European Parliament, press releases of 16 December 2025: “Businesses will be liable at the national level for failures to apply the rules correctly,” [www.europarl.europa.eu/news/en/press-room/20251211IPR32164/simplified-sustainability-reporting-and-due-diligence-rules-for-businesses](http://www.europarl.europa.eu/news/en/press-room/20251211IPR32164/simplified-sustainability-reporting-and-due-diligence-rules-for-businesses); “They will remain liable at national rather than EU level for non-compliance (...)” of 9 December 2025, [www.europarl.europa.eu/news/en/press-room/20251208IPR32080/deal-on-updated-sustainability-reporting-and-due-diligence-rules](http://www.europarl.europa.eu/news/en/press-room/20251208IPR32080/deal-on-updated-sustainability-reporting-and-due-diligence-rules); and “Offending firms would be liable at the national rather than EU level and would have to fully compensate their victims for damages.” of 13 November 2025, [www.europarl.europa.eu/news/en/press-room/20251106IPR31296/sustainability-reporting-and-due-diligence-meps-back-simplification-changes](http://www.europarl.europa.eu/news/en/press-room/20251106IPR31296/sustainability-reporting-and-due-diligence-meps-back-simplification-changes).

<sup>30</sup> Where a void part of a legal act is severable from the remainder — i.e. where the act still has a meaningful regulatory content without the void part and the EU legislature would also have adopted the remainder without the void part — the CJEU upholds the validity of the remainder of the act (CJEU, Case C-244/03, France v Parliament and Council, paras. 12–14; Case C-540/03, Parliament v Council, paras. 29–30).