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ROSA LUXEMBURG STIFTUNG

NADJA DORSCHNER

The Supply Chain Act: Stay Ambitious, Support Workers

The German government's "growth initiative" aims to ensure that the recently adopted European supply chain directive, the Corporate Sustainability Due Diligence Directive (CSDDD), is swiftly implemented as part of Germany's Act on Corporate Due Diligence Obligations in Supply Chains (LkSG). This process offers an opportunity to adapt and reinforce the LkSG to the benefit of those who are subjected to human rights violations along supply chains. This policy brief provides an overview of recent political disputes that have emerged with regard to the statutory regulation of corporate due diligence obligations, identifies deficiencies in the implementation of the LkSG, and proposes potential measures that could be adopted to ensure that the law is more closely aligned with the needs of workers in global supply chains in future.

The LkSG (2021) has recently been the subject of sustained criticism, with German Chancellor Olaf Scholz promising employer representatives that it would "go away" (Deutsche Presse-Agentur 2024) and Economics Minister Robert Habeck advocating "firing up the chainsaw and cutting the whole thing down" (Niemeyer 2024). With these comments, both politicians made it abundantly clear where they stand when it comes to the fight for more equitable working conditions along global supply chains. The floundering German industrial sector is unhappy with what it sees as an excessive administrative burden, and policymakers appear to be caving in to its demands.

Despite the LkSG's shortcomings, its adoption in June 2021 was a tremendous success in both the political sphere and civil society. It sent a clear message to trade unions and workers around the world who produce goods and render services for the German market that the government takes its responsibilities concerning ecological degradation and human rights violations seriously, and that it will no longer rely on companies' voluntary risk assessments. Adopting the EU supply chain directive was an equally significant step. Nonetheless, Germany's coalition government assumed an incredibly counterproductive position here too, with the FDP blocking the law from being adopted in the Council of the European Union in February 2024, thereby necessitating renegotiations that in turn significantly diluted the EU directive.

At the same time that the EU directive came into force in July 2024, the German government announced its "growth initiative" aimed at stimulating the country's economy. According to this directive, **the LkSG will be suspended for two thirds of all companies before the end of the current legislative period, meaning it will only continue to apply to fewer than 1,000 companies in future.** This means that the German government is ultimately seeking to take advantage of the fact that the EU directive applies to fewer companies than Germany's LkSG. According to a legal opinion issued by the Universität Halle-Wittenberg, this violates what is known as prohibition of deterioration, which is stipulated under European law concerning the implementation of European directives in national law (Mittwoch 2024). In other aspects, the EU directive surpasses the German LkSG and, for example, provides those impacted by rights violations with the opportunity to sue for compensation in the civil courts of the countries in which the companies in question are headquartered. In this case, Germany's current coalition government intends to wait until 2027 — the latest possible date under EU law — before fully implementing the directive.

Current Supply Chain Regulation Is Insufficient

In view of these fierce political headwinds, it seems particularly important to revisit the question of who is actually supposed to benefit from corporate due diligence obligations and **why statutory regulation has been and continues to be so urgently needed**. Images of disasters are seared into our collective memory: the 2013 collapse of the Rana Plaza factory building in Bangladesh, tragically killing 1,135 people, or Brazil's Brumadinho dam, which burst in 2019, sweeping away hundreds of local homes in a catastrophic mudslide. Disasters such as these are

symptoms of a crisis-ridden capitalist system that does not shy away from the continued exploitation of both human and ecological resources and is adept at devising mechanisms to certify its "fairness" and "sustainability" without having to compromise its profit interests.

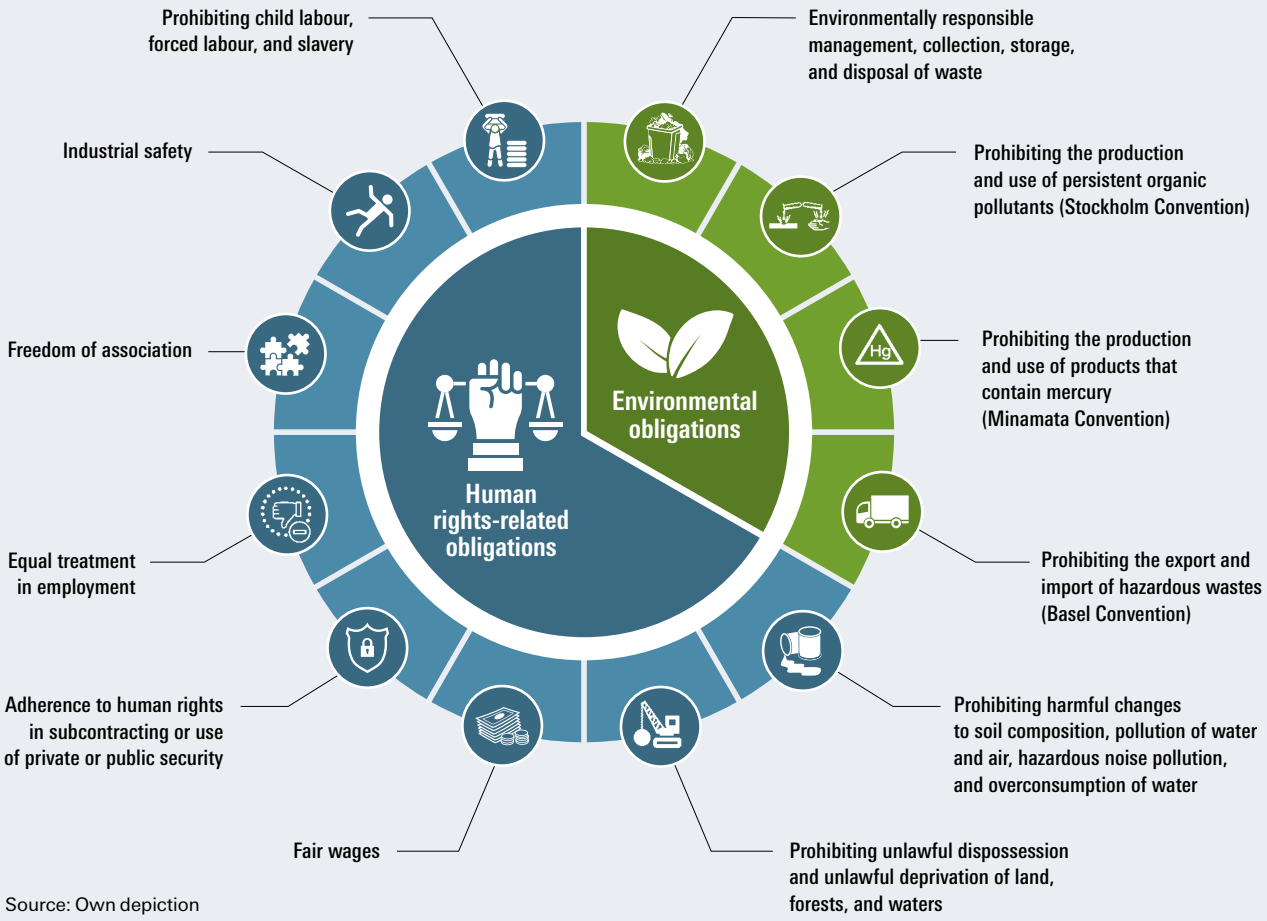
Between 2016 and 2020, Germany's private sector was finally "urgently called upon" to honour its obligation to uphold human rights thanks to the implementation of the National Action Plans on Business and Human Rights (NAP). In 2020, an evaluation commissioned by Germany's Foreign Office concluded that a mere 15 percent of the 7,400 companies surveyed had complied with the standards laid out in the NAP (Hofmann 2020). As a result, the German government found itself forced to fulfil the pledge it had made in its coalition agreement that it would introduce a due diligence act in the event that 50 percent or more of Germany's major companies failed to voluntarily meet their obligations. Drawing on the UN Guiding Principles, the LkSG was adopted in 2021, defining the human rights risks for which companies must carry out risk assessments, adopt preventative measures, and establish complaints procedures.

In January 2023, the LkSG came into force for companies in Germany with more than 3,000 employees; since January 2024, it has also applied to companies with 1,000 or more employees. The Federal Office for Economics and Export Control (BAFA) is the body responsible for implementing and enforcing the LkSG, monitoring companies, and processing complaints. Complainants can contact BAFA if they believe their rights have been violated. This recourse can be particularly helpful in the case of companies that fail to provide sufficient grievance mechanisms, do not adequately or appropriately respond to complaints, or indicate a company's breach of due diligence to BAFA.

However, the LkSG complaints procedure is deficient in a number of respects:

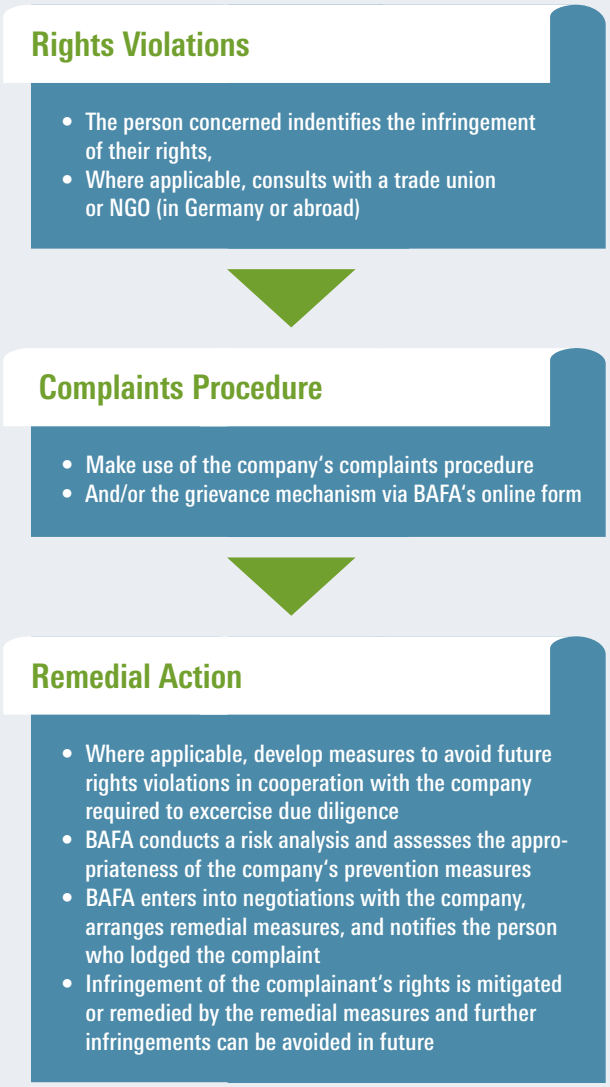
- **Lack of transparency in supply chains:** In the event of an infringement of rights, the affected party can use an online form on the BAFA website to submit information pertaining to the nature of the infringement and where and when it occurred. Ideally, the affected parties would specify the company against which the complaint is to be lodged. However, due to the complex and generally opaque nature of supply chains, it can be **incredibly difficult for those impacted by violations to ascertain which company ultimately purchased their products and services.** What's more, BAFA has no official overview of which companies are subject to the LkSG because it is incumbent upon the companies themselves to determine whether or not they fall within the scope of the legislation. Even non-governmental organizations (NGOs) that provide support often find it necessary to carry out comprehensive

Legal protections under the LkSG



Source: Own depiction

Complaints Procedure (A Typical Example)



Source: Own depiction

research in order to trace supply relationships and identify which companies a complaint should be directed against. In many cases, even this information is insufficient to provide a complete understanding of the supply chain.

- **Fear of repression:** Consultations with labour rights organizations and trade unions have revealed that complaints are commonly associated with fears of repression and a perceived threat of dismissal on the part of workers. Both BAFA and the companies named in the complaint are obliged to ensure confidentiality: to protect the identity of complainants and ensure they are protected against discrimination and punishment. Yet in reality, it is not uncommon for companies to infringe upon workers' freedom of association and for **workers to be threatened in the workplace or even dismissed due to trade union activities**. Previous complaints procedures at BAFA were also criticized due to the fact that trade unions could apparently only assert their freedom of association in their capacity as trade unions. But trade unions can serve as valuable intermediaries in representing their members in complaints proceedings and may well enhance the level of protection and anonymity of the individual complainant. This raises the question of whether and to what extent human rights violations and instances of environmental degradation along supply chains can be adequately documented on the basis of reports and complaints provided by those affected in conjunction with a company's risk analyses. The prerequisite for lodging a complaint is still that the option of submitting a complaint is only relevant to concerned parties if the process would entail a manageable degree of risk for the complainant and if they could feasibly expect to improve their situation as a result. Although it is possible to anonymously report infringements to BAFA, complainants in such cases have no entitlement to action, which means that reports can go uninvestigated.

- **Insufficient provision of information:** In many cases, those impacted by violations are not aware of their rights or the options available for lodging a complaint via the LkSG. **Virtually all of the information and support services offered by BAFA and the government ministries are geared towards companies.** The task of providing information to rights-holders seems to be primarily offloaded onto NGOs. Even the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ, German Association for International Collaboration) has explicitly stated its objective of enabling companies to fulfil their responsibilities towards people and the environment (GIZ 2023). However, helping workers exercise their legal rights is at best a secondary endeavour here. Consequently, the majority of complaints that have thus far been submitted to BAFA or against companies have been lodged with the aid of German and international NGOs. The Rosa-Luxemburg-Stiftung is committed to providing information regarding the LkSG to trade unions and local labour rights organizations in producing countries.

- **Lengthy procedures, limited transparency:** In April 2023, the organization FEMNET, Bangladeshi trade union the National Garment Workers Federation, and the European Centre for Constitutional and Human Rights filed the very first complaint within the framework of the LkSG (FEMNET/NGWF/ECCHR 2023). By the end of September 2024, BAFA's only official statement regarding the complaint was that it had been "substantiated", meaning that there were grounds to believe that a violation of human rights or environmental due diligence obligations had occurred. But so far, no further details have been disclosed. Several different complaints procedures have demonstrated that BAFA fails to provide transparency with regard to communication in the complaints process and instead communicates with each party separately, so the complainant ultimately has no idea how the company has reacted to the complaint or which of the company's actions is deemed sufficient by BAFA.[1] **On the whole, from**

1 After the final editing of this policy brief was concluded, BAFA granted inspection of all complaints-related files to an Ecuadorian trade union. Future complainants will also be able to apply to inspect the files.

the perspective of the impacted parties, complaints procedures are seen as protracted, overly bureaucratic, and opaque, and have at best resulted in selective improvements.

Companies and workers along the supply chain are currently confronting the challenges posed by the reality that the options available for enforcing environmental and labour standards along the supply chain have become increasingly convoluted since the mid-1990s (cf. Kirsch et al. 2023; Emons et al. 2023). There are:

- **Self-imposed rules of conduct** that certain companies have followed since the 2000s in an effort to exhibit accountability. One such company is Tchibo, which considers itself a trailblazer when it comes to matters of corporate due diligence and is one of the companies that called for a supply chain act to be introduced. Although it is generally difficult to assess the effectiveness of self-imposed rules, they nonetheless help companies legitimize their actions (Scheper 2019). What's more, such rules are not legally binding.

- **Multi-stakeholder initiatives** in which, for example, companies negotiate standards with international trade union organizations, governments, and NGOs. One example of this is the Accord on Fire and Building Safety in Bangladesh, which was launched following the collapse of the Rana Plaza commercial building in Bangladesh.

- **Global framework conventions** are contracts between multinational corporations and global trade union organizations. Negotiations with trade union organizations serve as an essential basis for considering the concerns of workers along the supply chain. Since there is no internationally recognized legal framework in place for monitoring compliance with global framework conventions, the parties to a convention will usually agree to rely on internal monitoring mechanisms within companies. Research indicates that global framework conventions have improved and enhanced the capacity of employees of multinational corporations to network at the regional, national, and global level. However, they are also voluntary, not legally binding, and generally considered inadequate by trade unions.

The majority of these initiatives are based on either the core labour standards of the UN's International Labour Organization (ILO) as an instrument of international law or the UN Human Rights Council's Guiding Principles on Business and Human Rights. However, the voluntary nature of the aforementioned instruments and the lack of scope in terms of holding companies to account yet again underscores the **need to legally regulate corporate due diligence**. Meanwhile, existing approaches should continue to be scientifically evaluated, their impact assessed, and successful approaches combined and pursued. If we are to ensure that those affected by infringements of their human rights or instances of environmental degradation in supply chains have access to clear legal recourse and can count on perpetrators being held liable and on receiving compensation for damages, the best approach would appear to entail a combination of obligation and accountability on the part of companies, as well as engaging in dialogue with trade unions and civil society actors along the supply chain.

Enforcing Workers' Rights More Effectively

The following measures should be taken to improve the effectiveness of the LkSG for workers at all points along the supply chain:

- **Boost cooperation with trade unions and labour rights organizations in producing countries:** The Asia Floor Wage Alliance, a trade-union-affiliated NGO that campaigns for improved labour conditions in Asia's textiles industry, believes that the LkSG can only be deemed effective if it enhances workers' bargaining power for transnational collective agreements (Ginting/Saxby 2024). This would constitute a concrete improvement for workers because it would prevent cutthroat competition between different production sites. It would also require that trade unions in producing countries be actively involved in preparing companies' risk analyses, thus ensuring that the experiences of workers form the basis for such analyses. The LkSG does not currently require companies to consult with specific stakeholders, either when performing risk analyses or when reviewing the effectiveness of complaints procedures. During dialogue events organized by the Rosa-Luxemburg-Stiftung, there was a distinct impression that companies primarily turn to consulting firms when it comes to fulfilling their due diligence obligations, instead of reaching out to trade unions or labour rights organizations.

- **Companies must bear the costs of compliance:** Given the costs companies incur in complying with global labour and social standards, the question also arises: what degree of intervention in social and labour-law issues are governments in producing countries prepared to tolerate? As a general rule, governments tend to welcome investments by foreign companies, while at the same time looking to protect the profit interests of local suppliers. Currently, the labour law standards in many producing countries, such as India, are more likely to further reduce workers' legal protections — in other words, to further deregulate the labour markets. It is for this reason that a number of measures aimed at protecting the environment and human rights in producing countries can only be enforced if German and European companies are prepared to accept the associated costs and redistribute the margins along the value chain.

- **Trade unions and works councils in Germany can play an active role:** The challenges associated with outsourcing, transfer, competition, and supply chain fragmentation for trade union organizing and transnational solidarity in global supply chains are not only recognized in political praxis, but have also been scientifically proven (Haipeter et al. 2023). Despite this, such practices are already in place in a handful of companies, and the Hans-Böckler-Stiftung, for example,

has called for workers in Germany to be involved in the process of monitoring the effectiveness and structure of their companies' complaint procedures (Hans-Böckler-Stiftung 2022). Unfortunately, the **LkSG has made no clear stipulations** in this respect **and falls short of the UN Guiding Principles on Business and Human Rights**. The latter of these at least stipulates that employee representatives must be involved in the process of formulating any policy statements on human rights due diligence. The LkSG, on the other hand, has failed to adopt this, instead merely reserving the right to be notified and to advise the economic committees of works councils on issues of corporate due diligence. The trade unions and works councils in Germany could at this point demand additional co-determination rights and express solidarity with workers along the supply chain. Efforts should be made in parliament to strengthen the law in this regard.

Using the LkSG to Achieve Greater Global Justice

In an effort to minimize the impact of global geopolitical tensions, climate change, and other shocks (such as pandemics) on the German economy's supply chains, German foreign and economic policy is currently centred around diversification and ensuring resilience to crisis. It is worth bearing in mind that **social inequality is increasing** around the world, and that it will only persist and intensify as a result of the aforementioned crises. It is therefore all the more important now that we respond to these crises by implementing economic policy measures that look not only at the competitiveness of the German and European economies, but rather focus on building solidarity among people whose economies and lived realities are largely determined by the actions of European companies via supply relationships and market dominance.

What stance should we, as leftists, take with regard to the LkSG? One thing is certain: **we cannot accept any further weakening or dilution of the act**. In Germany, more than 140 civil society organizations joined forces to form the Supply Chain Act Initiative in 2019 in order to demand the introduction of the Supply Chain Act. We must defend all that they have achieved in their years of tireless work and compel the German government to implement corporate due diligence requirements in the interests of workers in global supply chains. At the same time, we must be wary not to overextend our expectations of the LkSG.

Statutory regulation of supply chain relationships is a solution that is inherent to the system and does not fundamentally challenge the hierarchies and inequitable power structures and relations of global capitalism. Labour-intensive production stages that generate low added value continue to be offshored to "developing" nations in order to maximize added value and minimize (or outright ignore) risks. The production stages with high added value are kept in industrialized centres — and with them the accumulation of capital. The LkSG will not dismantle these dynamics; in the worst case, it will only perpetuate them.

As leftists, we can still make use of this instrument to initiate **a fundamental reconsideration of international trade and labour relations**.

The LkSG and CSDDD: A Summary

Act on Corporate Due Diligence Obligations in Supply Chains (LkSG)	EU Supply Chain Law, Corporate Sustainability Due Diligence Directive (CSDDD)
In effect since 1 January 2023	In effect since 26 July 2024; must be implemented within the framework of national law by all EU member states by 26 July 2026
Defines legal human rights protections (see Figure 1)	Broadens the scope of legal protections under the LkSG, taking into account (among other things) a broader spectrum of violations of environmental protection regulations, such as adverse effects on biodiversity, or degradation of world heritage sites
Defines which measures are required to fulfil companies' due diligence obligations in terms of: – Risk management – Preventative measures – Remedial measures – Complaints procedures – Duty to document and report	Makes provisions for supplementary obligations: – Compensation (civil liability before the courts in the jurisdiction of the company's headquarters) – Broadens the definition of a supply chain to also encapsulate the chain of activity, i.e., tasks performed after the product has been manufactured, such as delivery and marketing
BAFA/national regulatory body can penalize companies by issuing fines or banning them from being awarded public contracts	
Applies to companies with at least 1,000 employees in Germany	Applies to companies with at least 1,000 employees in the EU **and** at least €450 million in sales worldwide

Source: Own representation; see the Friedrich-Ebert-Stiftung's detailed comparison (Brabosch 2024)

Courses of Action

In addition to the aforementioned measures, we recommend the following **actions**:

- → **Engaging in proactive dialogue with and reconciling the interests of workers at all points along the supply chain**
- → Providing trade unions and labour rights organizations in producing countries with **comprehensive information** that helps workers exercise their rights under the LkSG
- → **Clear and easily accessible forms of legal recourse** for those impacted by breaches of a company's due diligence obligations
- → **Disclosing the supply chain relationships of companies subject to due diligence**
- → **Ensuring BAFA actively communicates** with all complainants
- → **Imposing stricter competition laws** in order to curb the power and influence of the companies that dominate the market
- → Germany and the EU should at long last assume an **active role in negotiating the UN treaty** on business and human rights with regard to the global regulation of supply chains
- → Transposition of the CSDDD into German law may **on no account result in the LkSG being in any way weakened or undermined** or delay companies' fulfilment of their obligations

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Nadja Dorschner is a senior advisor for global supply chains and socio-ecological transformation in the Rosa-Luxemburg-Stiftung's Asia Department, having previously headed the RLS's South Asia regional office for two years. She studied International Development at the University of Vienna.

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