
CIVIL LAW ISSUES REGARDING THE IMPLEMENTATION OF THE EU SUPPLY CHAIN DIRECTIVE

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A. Introduction

- 1 For supply chain law, the entry into force of the European Supply Chain Directive (Corporate Sustainability Due Diligence Directive, CSDDD)¹ on July 25, 2024, marks the preliminary culmination of European legal developments. The human rights due diligence obligations developed in the UN Guiding Principles on Business and Human Rights² will thus become binding for companies throughout the EU. This entails a significant need for adaptation of the German Supply Chain Act (LkSG)³, which will be examined in more detail below with regard to due diligence obligations (see para. 11 et seq.) and civil liability (para. 47 et seq.). In doing so, the opinion takes into account the latest developments resulting from the Omnibus I Directive⁴ (on legal developments, see para. 2 et seq.), in particular its significance for the private enforcement of due diligence obligations.

B. General

I. Regulatory Developments

- 2 The EU Supply Chain Directive was originally intended to be implemented in the member states by July 26, 2026. However, as a result of the global ESG backlash,⁵ the economic downturn, and the associated concerns about the lack of competitiveness of European companies, calls for relief and the reduction of bureaucracy have grown. In this context, the Draghi Report identified the European regulations on sustainability reporting under the Corporate Sustainability Reporting Directive (CSRD)⁶ and – although not yet applicable at that time – the due diligence obligations of the EU Supply Chain Directive as “a major source of regulatory burden.”⁷ The European legislature responded immediately with a far-reaching relaxation of the regulations: With the so-called “Stop the Clock” Directive⁸, the implementation deadline for the CSDDD was initially extended by one year to July 26, 2027. The Omnibus I Directive further extended this deadline by one year to July 26, 2028. For companies, the implementation provisions are to apply as of July 26, 2029 (Art. 37(1) CSDDD⁹).

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¹ Directive (EU) 2024/1760 of the European Parliament and of the Council of June 13, 2024, on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, OJ L 2024/1760 of July 5, 2024.

² UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, UN Doc. A/HRC/17/31.

³ Supply Chain Due Diligence Act of July 16, 2021, Federal Law Gazette I, p. 2959.

⁴ Directive (EU) 2026/470 of the European Parliament and of the Council of February 24, 2026, amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464, and (EU) 2024/1760 with regard to certain requirements for sustainability reporting and corporate due diligence, OJ L 2026/470 of February 26, 2026.

⁵ See *Renner*, ZEuP 2025, 719 ff.

⁶ Directive (EU) 2022/2464 of the European Parliament and of the Council of December 14, 2022, amending Regulation (EU) No. 537/2014 and Directives 2004/109/EC, 2006/43/EC, and 2013/34/EU as regards corporate sustainability reporting, OJ L 322, Dec. 16, 2022, p. 15.

⁷ EU, *The Future of European Competitiveness*, 2024, Part B, In-depth Analysis and Recommendations, p. 318.

⁸ Directive (EU) 2025/794 of the European Parliament and of the Council of April 14, April 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760 regarding the dates from which Member States must comply with certain requirements on corporate sustainability reporting and due diligence obligations, OJ L 2025/794 of 16 April 2025.

⁹ Unless otherwise stated, reference is made to the CSDDD as amended by the Omnibus I Directive.

- 3 The Omnibus I Directive not only postpones the date of implementation and application; it also significantly narrows the scope of application. While the directive was originally intended – following a phased introduction over several years – to apply to EU companies with an average of more than 1,000 employees and a global net turnover of more than 450 million euros, the Omnibus I Directive has raised the relevant thresholds to 5,000 employees and a global net turnover of more than 1.5 billion euros. For companies from third countries, the regulation now applies only to those with an annual net turnover of 1.5 billion euros generated in the EU (previously: 450 million euros).¹⁰ A large portion of the approximately 5,000 companies currently affected by the German LkSG¹¹ will thus fall outside the scope of application in the future; the German government estimates that 150 companies headquartered in Germany will be subject to due diligence obligations under the new thresholds.¹²
- 4 In addition to the scope of application, the Omnibus I Directive also affects the structure of obligations. This applies less to the actual due diligence obligations, where only the requirements for risk analysis have been reduced (see para. 21) and the obligation to terminate business relationships has been removed (para. 31). By contrast, the removal of civil liability under Art. 29(1) CSDDD constitutes a significant change (see para. 75). The German legislature should consider compensating for this by creating a corresponding basis for liability in German law (para. 105).

II. Scope for Implementation

- 5 Before the issues raised are examined in greater detail, the question first arises as to the general scope for implementation available to the legislature. This scope is limited, on the one hand, by the requirements for full harmonisation under Art. 4(1) CSDDD and, on the other hand, by the prohibition on deterioration under Art. 1(2) CSDDD.

1. Degree of Harmonisation (Art. 4 CSDDD)

- 6 The CSDDD takes a differentiated approach with regard to the degree of harmonisation, which affords the German implementing legislature varying degrees of discretion depending on the regulatory area. Art. 4(1) CSDDD exhaustively lists the provisions to which full harmonisation applies: In these areas, Member States may not adopt either stricter or more lenient provisions. Outside this fully harmonised core, Member States may, pursuant to Art. 4(2) CSDDD, maintain or introduce more extensive requirements to the extent that this is compatible with Union law (minimum harmonisation).
- 7 The fully harmonised core includes – with the exception of Art. 7 CSDDD (risk management and policy statement) and Art. 10(6), 11(7) CSDDD (suspension of the business relationship) – the provisions on due diligence obligations, namely on risk analysis and prioritization (Articles 8 and 9 of the CSDDD), preventive and remedial measures (Articles 10 and 11 of the CSDDD), the complaint mechanism (Article 14 of the CSDDD), as well as effectiveness reviews (Article

¹⁰ For further details on the limitation of the scope of application, see *Voland/Nowalder*, ESG 2026, 43 (44 et seq.).

¹¹ According to *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Mittwoch/Bremenkamp*, 1st ed. 2023, LkSG § 1, para. 17, the LkSG applies to 4,800 companies; “Large Majority in Favor of Supply Chain Act,” *Handelsblatt*, Jan. 3, 2024, available online at <https://www.handelsblatt.com/unternehmen/mittelstand/lieferkette-grosse-mehrheit-fuer-lieferkettengesetz/100002172.html> (last accessed on March 27, 2026) estimates 5,200 companies.

¹² Response of the Federal Government to the parliamentary question from The Left Party, Drs. 21/1024 dated Oct. 10, 2025, p. 6.

15 of the CSDDD) and reporting (Article 16 of the CSDDD). By contrast, the provisions on enforcement do not fall within the fully harmonised scope of Art. 4(1) CSDDD. This applies in particular to the provisions on civil liability in Art. 29 CSDDD. In this respect, Member States retain considerable discretion, which is limited only by the requirements of Art. 29(2) to (6) CSDDD (for further details, see para. 101). In particular, the German legislature – despite the deletion of the corresponding provisions from Art. 29(1), (3)(d), and (7) CSDDD – may enact regulations on civil liability, representative action, and mandatory international applicability, as Recital 49 of the Omnibus I Directive also expressly notes.

2. Prohibition on Deterioration (Art. 1(2) CSDDD)

- 8 Pursuant to Article 1(2), sentence 1 of the CSDDD, the Directive may not serve as a justification for lowering the level of protection with regard to human rights and environmental or climate protection (prohibition on deterioration). In Germany, it has been argued on the basis of this provision that the level of protection associated with the LkSG must not be undermined in the implementation of the CSDDD. This applies in particular to the personal scope of application under Section 1 of the LkSG; the legislature must therefore implement the CSDDD either for companies with 1,000 or more employees and without revenue thresholds, or as a standalone due diligence law alongside the LkSG, which remains in force.¹³
- 9 The European legislature responded to this discussion by supplementing the rule on the prohibition of deterioration in the Omnibus I Directive with the new Art. 1(2), sentence 2 of the CSDDD. It now expressly states: “However, the first sentence of this paragraph shall not prevent Member States from adapting national legislation on corporate due diligence obligations regarding sustainability, in particular its scope of application, in force at the time of adoption of this Directive, in order to align it with this Directive.” The EU legislator thus stipulates that the scope of application under Article 2 of the CSDDD may be adopted for the (future) LkSG; this does not constitute a violation of the EU-law prohibition on deterioration.¹⁴
- 10 However, this is unlikely to end the discussion. A prohibition on deterioration may arise not only from Art. 1(2) CSDDD but also from the UN Social Covenant¹⁵.¹⁶ In this regard, it remains questionable whether the German legislature may limit the scope of application for due diligence obligations under Section 1 LkSG by raising the thresholds.

¹³ In this sense, *Mittwoch*, NJW 2024, 2353 ff.; *Zimmer/Langbein*, NZA 2025, 1151 (1154 f.); proposing a two-track solution, *Hübner/Lieberknecht*, NJW 2024, 1841 (1842); dissenting views: *Dürr/Stark*, EuZW 2025, 156 (161 ff.); *Ruttloff/Wagner/Hahn*, NJW 2024, 3401 (3403); *Stöbener de Mora/Noll*, NZG 2024, 1391 (1392): “seems contrived.”

¹⁴ For further details, see *Wiedmann/Hagel*, CCZ 2026, 7 (8).

¹⁵ International Covenant on Economic, Social and Cultural Rights of December 19, 1966, Federal Law Gazette 1973 II p. 1569.

¹⁶ See DIMR, Maintaining the Level of Protection Under the Supply Chain Act: On the Prohibition of Retrogression from the UN Social Covenant, 2024, available at https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/DIMR_Stellungnahme_Schutzniveau_des_Lieferkettengesetzes_erhalten.pdf (last accessed on March 27, 2026); *Krajewski*, Neither Regression nor Frustration: European and International Legal Limits on an Amendment to the Supply Chain Act, *Verfassungsblog*, March 21, 2025, available online at <https://verfassungsblog.de/lksg-menschenrechte/> (last accessed on March 27, 2026).

C. Due Diligence Obligations (Art. 8 et seq. CSDDD)

I. Overview

- 11 Like the LkSG¹⁷ before, the EU Supply Chain Directive largely adheres to the due diligence standard of the UN Guiding Principles. Its core elements – policy commitment, impact assessment, integration, tracking, and reporting – are therefore all reflected as due diligence obligations in the CSDDD.¹⁸ At first glance, this reveals a high degree of continuity from the UN Guiding Principles through the LkSG to the CSDDD, which facilitates the application of the law. In particular, the implementation and application of the CSDDD can build on previous experience; the implementation of the CSDDD can and should be achieved by adapting and supplementing the LkSG. In addition, the UN Guiding Principles, which are expressly referenced in Recital 5 of the CSDDD, may continue to be taken into account in the interpretation of due diligence obligations.¹⁹
- 12 However, compared to the LkSG, the CSDDD significantly differentiates the individual due diligence obligations, a fact reflected in the considerable scope of the individual provisions. This is intended to enable the application of the law as uniformly as possible across the EU in order to create a level playing field (Recital 31). From the perspective of legal practitioners, however, the regulations are not made any easier to apply due to their scope and level of detail. Furthermore, there is a risk that the directive, due to its excessive complexity, will not only fail to achieve its regulatory objective but may even hinder its attainment (“regulatory paradox”).²⁰ In this regard, one wonders whether a leaner regulatory framework – albeit one with strong enforcement mechanisms – would not have sufficed.²¹
- 13 However, the CSDDD also provides new ideas: Of particular note is the obligation to remedy under Art. 12 CSDDD, which for the first time places the duty of remediation provided for in Principle 22 of the UN Guiding Principles on a legal footing (for further details, see para. 35 et seq.). No such obligation currently exists in the LkSG. The other new developments regarding due diligence obligations associated with the CSDDD are summarized below:

II. Scope of due diligence obligations within the group and the supply chain

- 14 The CSDDD introduces new provisions, initially regarding the application of due diligence obligations within a corporate group. Until now, a parent company has been required to observe due diligence obligations with respect to subsidiaries if they are either part of the supply chain as suppliers themselves or, pursuant to Section 2(6), sentence 3 of the LkSG, are included in the parent company’s own business operations. The latter applies to all direct and indirect subsidiaries over which the parent company exercises a controlling influence.²² In the future,

¹⁷ Explanatory Memorandum to the Draft State Act on Human Rights, Bundestag Document No. 19/28649, p. 41.

¹⁸ For a detailed discussion of due diligence under the UN Guiding Principles, see *Brunk*, Human Rights Compliance, 2022, p. 213 ff.

¹⁹ On the consideration of the UN Guiding Principles in the interpretation of the LkSG, see *Brunk*, in: *Kalss/Torggler*, Supply Chain Responsibility, 2024, p. 41 (51 et seq.); *Kaltenborn/Krajewski/Rühl/Saage-Maß/Hein/Vossen*, 1st ed. 2023, LkSG § 3, note 164: The UN Guiding Principles should be “taken into account, at any rate, within the framework of a teleological and historical interpretation of the law.”

²⁰ For a fundamental discussion of the regulatory paradox, see *Sunstein*, Paradoxes of the Regulatory State, 57 U. Chi. L. Rev. 407 (1990).

²¹ *Wagner* advocates for the complete replacement of public law obligations with (effective) civil liability, “The Supply Chain Needs Liability Law,” F.A.Z., July 2, 2025, p. 16.

²² See *Brunk*, in: *Kalss/Torggler*, Supply Chain Responsibility, 2024, p. 41 (46 ff.).

subsidiaries will be directly included within the scope of the due diligence obligations of the ultimate parent company (see Art. 8(1) CSDDD: “adverse impacts arising from their own operations or those of their subsidiaries”). This eliminates the criterion of decisive influence.²³

- 15 Furthermore, the Directive extends the scope of due diligence obligations to the chain of activities (Art. 3(1)(g) CSDDD). This differs from the supply chain under Section 2(5) of the LkSG in that it includes not only *upstream* activities but also certain *downstream* activities of business partners. In practice, however, this conceptual expansion is unlikely to have much impact, as the activities included in the scope are limited to distribution, transport, and storage (Art. 3(1)(g)(ii) CSDDD). These are activities that could already be subsumed under the broad definition of the supply chain in Section 2(5), sentence 2, of the LkSG (“up to delivery to the end customer”).²⁴ Even if the shift toward the activity chain therefore leads to a genuine expansion of the scope of application only in borderline cases, the associated clarification is to be welcomed.
- 16 The CSDDD also largely eliminates the different treatment of direct and indirect suppliers. Until now, German companies have always been required to comply with the LkSG due diligence obligations with respect to their direct suppliers (Sections 5–8 LkSG), but with respect to their indirect suppliers only if they have substantiated knowledge of human rights and environmental violations (Section 9(3) LkSG). Although the European Commission adopted this concept in its draft Omnibus Directive²⁵, the proposal did not gain traction in the legislative process.²⁶ The due diligence obligations under Art. 8 et seq. of the CSDDD therefore apply without further distinction to “business partners,” which, according to the definition in Art. 3(1)(f) of the CSDDD, includes both direct and indirect business partners. However, when determining appropriate remedial and corrective measures pursuant to Art. 10(1)(2)(b) and Art. 11(1)(2)(b) CSDDD, firms may continue to differentiate between direct and indirect counterparties. In addition, the Omnibus I Directive added a provision in Article 8(2a)(c) of the CSDDD stipulating that the in-depth risk analysis pursuant to Article 8(2)(b) of the CSDDD may primarily focus on areas involving direct counterparties if adverse impacts in multiple areas are assessed as equally likely or equally severe.
- 17 According to the administrative practice of the BAFA, a parent company must fulfill the due diligence obligations under the LkSG not only with respect to its own suppliers, but also with respect to suppliers of subsidiaries that are considered part of its own business operations pursuant to Section 2 (6), sentence 3 of the LkSG.²⁷ It is questionable whether this broad

²³ Ritz/Werner, CCZ 2025, 55 (57).

²⁴ See Explanatory Memorandum to the Draft LkSG, BT-Drs. 19/28649, p. 40: “The supply chain for the manufacture of a tangible good typically includes the phase [...] of distribution (activities that ensure the product reaches its final destination, for example through distributors, warehouses, physical stores, or online platforms); for a broad understanding, see also *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Mittwoch/Bremenkamp*, 1st ed. 2023, LkSG § 2, para. 838 et seq.; with reservations, see *Fleischer/Mankowski/Kolb*, 1st ed. 2023, LkSG § 2, para. 251.

²⁵ See Art. 8(2)(b) and (2a) CSDDD-E, COM(2025) 81 final, p. 46.

²⁶ For further details, see *Voland/Nowalder*, ESG 2026, 43 (46).

²⁷ See BAFA, Guidance on Identifying, Weighing, and Prioritizing Risks, Guidance on Implementing a Risk Analysis in Accordance with the Requirements of the Supply Chain Due Diligence Act, 2022, p. 6 with footnote 4: “The parent company must fulfill due diligence obligations for its own business operations and along its supply chains. This also includes the business area and supply chains of a group company if the parent company exercises a controlling influence over it (see § 2(6), sentence 3).”; in agreement *Brunk*, in: *Kalss/Torggler*, Supply Chain Responsibility, 2024, p. 41 (48); *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Mittwoch/Bremenkamp*, 1st ed. 2023, LkSG § 2 n. 865; against this, *Fleischer/Mankowski/Kolb*, 1st ed. 2023, LkSG § 2 n. 246.

interpretation can be maintained under the CSDDD, because subsidiaries will no longer be included by way of attribution in the future; rather, the due diligence obligations must be applied directly to them (see above, para. 14). However, one could consider treating business partners of subsidiaries as indirect business partners of the ultimate parent company as a basis for justification.²⁸

III. Due Diligence Obligations in Detail

1. Risk management (Art. 7 CSDDD)

18 Under the LkSG, risk management (Section 4 LkSG) and the policy statement (Section 6(2) LkSG) have so far been regulated separately. The latter is also designed as a preventive measure rather than an overarching corporate strategy. Art. 7 CSDDD combines both regulatory areas into a single provision, thereby making the policy statement (“due diligence policy”) the central integration tool for risk management.

19 In general terms, the CSDDD and the LkSG are similar; however, the regulations place different emphases regarding the substantive requirements for the policy statement. The mandatory elements of Art. 7(2) CSDDD go beyond the LkSG in two respects: First, subparagraph (b) requires the creation of a code of conduct with binding rules and principles that extends to subsidiaries as well as direct and indirect business partners, whereas under Section 6(2)(3) LkSG, only expectations for employees and suppliers need to be formulated. Second, subparagraph (c) requires a description of measures to verify compliance with the code of conduct and to extend it to business partners, for which there is no equivalent in the LkSG regarding the policy statement. Conversely, Section 6(2)(2) of the LkSG imposes more extensive requirements for the policy statement in that the statement must identify the priority risks determined on the basis of the risk analysis as a separate element, whereas Article 7(2) of the CSDDD does not require a separate presentation of the identified risks.

20 The internal allocation of responsibilities remains unaffected by Art. 7 CSDDD. In particular, the provision does not contain requirements comparable to Section 4(3) LkSG regarding the establishment of internal responsibility (e.g., through the appointment of a human rights officer) and reporting to management. Since Art. 7 CSDDD is not among the provisions fully harmonised pursuant to Art. 4(1) CSDDD (see above, para. 7), the German legislature may, however, continue to provide for a special supervisory responsibility in the future.

2. Risk Analysis and Prioritization (Articles 8 and 9 of the CSDDD)

21 Even though the provisions on risk analysis and prioritisation in Articles 8 and 9 of the CSDDD go significantly beyond Section 5 of the LkSG in terms of scope and level of detail, the two laws are essentially largely parallel. For example, a two-step approach – abstract and concrete risk analysis – has already been considered necessary for risk analysis under Section 5 LkSG.²⁹ Art. 8(2) CSDDD now makes the two-step procedure mandatory. In this regard, the regulation has undergone various changes through the Omnibus I Directive, which are intended, on the one hand, to reduce the effort required of the obligated firm for the risk analysis (Recital 39 et

²⁸ Rejecting this conclusion: *Voland/Nowalder*, ESG 2026, 43 (46).

²⁹ BAFA, Guidance on Identifying, Weighing, and Prioritizing Risks, Guidance on Implementing a Risk Analysis in Accordance with the Requirements of the Supply Chain Due Diligence Act, 2022, p. 10 ff.

seq.) and, on the other hand, to protect small and medium-sized business partners (SMEs) from excessive information requests (Recital 41: limiting the so-called trickle-down effect).³⁰

22 For the risk analysis review cycle, see para. 43 .

a) Risk Analysis

23 For the two-step procedure, Art. 8(2) CSDDD first identifies risk factors to be considered in the risk analysis, namely the regulatory environment as well as country-, sector-, and product-related factors. The fact that companies may take into account, for risk mitigation purposes, whether a business partner is also subject to the Directive or comparable provisions under national law is intended to avoid unnecessary duplication of effort and to strengthen the risk-based approach to due diligence.³¹

24 For the first stage of the process – the abstract risk analysis – Article 8(2)(a) of the CSDDD provides for a so-called scoping analysis. Its specific features only become apparent when comparing the text of the CSDDD before and after its reform by the Omnibus I Directive. Originally, Art. 8(2)(a) of the CSDDD (pre-amended version) required companies *to document* their business activities as well as those of their subsidiaries and business partners in order to identify risk areas on this basis. This would have required a complete mapping of business activities. The new regulation dispenses with this; according to Recital 39 of the Omnibus I Directive, companies are “not required to systematically identify adverse impacts at entity level, but rather are required to scope general areas.” This allows risk areas to be clustered (e.g., by product groups, business units, etc.) and the in-depth assessment – the specific risk analysis – under Article 8(2)(b) of the CSDDD to be limited to those areas where the adverse impacts have been classified as most likely and most severe.

b) Requests for Information in the Context of the Risk Analysis

25 Pursuant to Art. 8(2)(a) CSDDD, the scoping assessment must be conducted exclusively on the basis of information reasonably available. According to Recital 39 of the Omnibus I Directive, this generally precludes requesting information from business partners at this stage. Instead, the scoping review is generally conducted as a “desktop” review based on the company’s own data and publicly available information (including relevant databases). Pursuant to Article 8(3) of the CSDDD, companies should also be permitted to rely on digital solutions as well as industry and multi-stakeholder initiatives. This is intended to alleviate the burden on the obligated company and protect business partners – particularly SMEs – from excessive information requests.

26 SMEs are afforded further protection under Article 8(2a) of the CSDDD, which was introduced as part of the Omnibus I Directive. According to subparagraph (a) of that provision, companies may only request *necessary* information as part of the risk assessment of business partners.³² In this context, the request for information must “always be targeted, reasonable, and proportionate” (Recital 41 of the Omnibus I Directive). Furthermore, for business partners with fewer than 5,000 employees, the request for information may only be made if the information

³⁰ See Jelonek, NZG 2026, 252 (256 et seq.); Voland/Nowalder, ESG 2026, 43 (46 et seq.).

³¹ Jelonek, NZG 2026, 252 (257).

³² Voland/Nowalder, ESG 2026, 43 (47): “absolutely necessary.”

cannot reasonably be obtained by other means.³³ To avoid parallel information requests at all stages of the value chain, companies should, pursuant to Art. 8(2a)(b) of the CSDDD, where appropriate, prioritize requesting the information directly from the business partner or partners where the adverse impacts are most likely to occur. If the adverse impacts are assessed as equally likely or equally severe in multiple areas, the assessment of those areas involving direct business partners should be prioritized in accordance with Art. 8(2a)(c) CSDDD (see already para. 16).

- 27 However, the restriction on information requests to business partners is not absolute. Companies should still be able to “have flexibility in judging” which information is reasonably available to them (Recital 39 of the Omnibus I Directive) and which information can, in all reasonableness, only be obtained through information requests to (SME) business partners. Furthermore, the legislator has refrained from including in the CSDDD, following the model of the CSRD (see Art. 19a(3) of the Accounting Directive), more extensive protective mechanisms such as prohibitions on clauses, disclosure obligations, and rights of refusal.³⁴ It is therefore doubtful whether the CSDDD’s information restrictions will be effective in practice.

c) Risk Prioritization

- 28 Article 9(1) of the CSDDD permits companies to prioritize individual risks when fulfilling their due diligence obligations if they are unable to address all identified risks simultaneously and in full. Although prioritization is established in Art. 9(1) and (3) of the CSDDD as an exception requiring justification, it is in fact the norm, since companies, with their limited financial and human resources, generally cannot manage all identified risks simultaneously. The option to prioritize not only makes it easier for companies to practically implement their due diligence obligations but also appears sensible from the perspective of those affected: The alternative would be – despite continued resource constraints – a “scattergun” approach to risk management, which would make it virtually impossible to take appropriate measures for every risk.
- 29 According to Art. 9(2) CSDDD, prioritization must be based on the severity and likelihood of the identified adverse impacts. Compared to the LkSG, this places greater emphasis on the interests of those affected, as Section 5(2) LkSG bases prioritization on the appropriateness criteria of Section 3(2) LkSG. Severity and likelihood (Section 3(2)(3) LkSG) are not the only relevant criteria there, but are of equal weight alongside other criteria, e.g., the nature and scope of the company’s business activities (No. 1) and the company’s ability to influence the direct cause of the adverse impact (No. 2).³⁵
- 30 For corporate practice, the possibility of prioritization should not be underestimated. This applies, on the one hand, from a practical standpoint, because the company can deploy its resources more effectively. On the other hand, from a legal perspective, proper prioritization

³³ *Jelonek*, NZG 2026, 252 (257) fears, however, a “far-reaching ineffectiveness of this provision [...]”; for due to numerous trade secrets, the SME will regularly be the sole source of information.”

³⁴ See the criticism in *Jelonek*, NZG 2026, 252 (259): “A key discrepancy concerns the different SME protection mechanisms: The primacy of Art. 8 CSDDD over Art. 19a III para. 2 et seq. EU Accounting Directive (new version) threatens the effectiveness of the VSME; the complexity of both regulations may overwhelm SMEs in the exercise of their rights. It is therefore doubtful whether the small butcher shop Stephan in Ingelheim will no longer have to expect overwhelming requests following the implementation of the Omnibus I Directive.”

³⁵ With a critique of the influence criterion: *Brunk*, Human Rights Compliance, 2022, p. 468.

means that the company cannot be sanctioned in administrative fine proceedings if another, non-prioritized risk materializes. This defense has already applied in the past, as proper prioritization precludes a breach of the duty of care relevant to fines. In the future, Art. 9(4) of the CSDDD, which is based on the Omnibus I Directive, expressly establishes this with regard to the sanctions under Art. 27 of the CSDDD. However, prioritization has an exculpatory effect not only in administrative penalty proceedings but also with regard to civil liability.³⁶ To benefit from this effect, however, companies must comprehensively document their prioritization decisions.³⁷

3. Preventive and remedial measures (Art. 10 and 11 CSDDD)

- 31 The preventive and remedial measures set forth in Articles 10 and 11 of the CSDDD cannot be discussed in detail here.³⁸ Instead, it should be noted that – despite their considerably greater scope and level of detail – Articles 10 and 11 of the CSDDD are, in principle, consistent with the framework of obligations established in Sections 6 and 7 of the LkSG. The CSDDD introduces innovations primarily in two areas: First, as *a last resort*, it no longer requires the termination of the business relationship as in Section 7(3) LkSG, but only its (temporary) suspension.³⁹ Second, the action plan under Articles 10 and 11 of the CSDDD provides for targeted support measures for SMEs.⁴⁰
- 32 The suspension of the business relationship is regulated in Art. 10(6) and Art. 11(7) of the CSDDD: If potential (Art. 10) or actual (Art. 11) adverse impacts could not be prevented, appropriately mitigated, remedied, or minimized in scope by the upstream measures, the company implements a tiered escalation regime. This comprises, first, a prohibition on entering into new business relationships with the business partner in question or expanding existing ones (para. 1(a)), second, the suspension of the business relationship with respect to the activities in question, to the extent permitted by applicable law (subparagraph b), and third, the adoption and implementation of a strengthened prevention or corrective action plan (subparagraph c). If the company decides to suspend the business relationship, it is obligated under Art. 10(6)(5) and Art. 11(7)(5) of the CSDDD to take measures to prevent, mitigate, or remedy the adverse impacts associated with the suspension. To this end, all measures provided for in Art. 10(2) and Art. 11(3) of the CSDDD may be necessary, in particular the provision of remedies pursuant to Art. 11(3)(h) and Art. 12 of the CSDDD. Accordingly, companies may be obligated to pay outstanding wages upon suspension of the business relationship, provided the requirements of Art. 12(1) CSDDD are met (in particular, the company’s own contributory fault).
- 33 Furthermore, the suspension of the business relationship is subject to a proportionality assessment: The company must first examine whether the adverse impacts caused by the suspension are manifestly more serious than the effects to be prevented or remedied, and must be able to justify its decision to the supervisory authority (para. 3). Of particular importance is the safe-harbour provision, which is worded identically in both paragraphs (para. 2): As long as

³⁶ For more details, see *Brunk*, CRZ 2024, 130 (133).

³⁷ Same recommendation in *Voland/Nowalder*, ESG 2026, 43 (48).

³⁸ See, in this regard, each with a comparison to Sections 6, 7 LkSG, *Hagel/Wiedmann*, CCZ 2024, 185 (194 et seq.); *Stöbener de Mora/Noll*, NZG 2024, 1391 (1394 et seq.).

³⁹ *Voland/Nowalder* welcome this, ESG 2026, 43 (48): “greater cooperation instead of exclusion.”

⁴⁰ See also *Brunk*, “Does the New Supply Chain Directive Overburden Small Suppliers?”, in: Legal Tribune Online, May 9, 2024, available at https://www.lto.de/persistent/a_id/54514 (accessed on: March 27, 2026).

it can reasonably be assumed that the enhanced action plan will be successful, the mere continuation of the business relationship does not lead to sanctions under Art. 27 CSDDD nor to liability under Art. 29 CSDDD. The company is obligated – regardless of whether it suspends the business relationship or not – to continuously review its decision and monitor any adverse impacts (subsections 5 and 6).

- 34 Compared to the LkSG, the CSDDD also contains significantly more extensive protective mechanisms in favor of SMEs that are integrated into the activity chain as business partners. Art. 10(2)(e) and Art. 11(3)(f) of the CSDDD require the covered company to provide targeted and appropriate support to SME business partners, provided this is necessary in light of the SME’s resources, knowledge, and limitations. Support measures include, for example, access to capacity building, training, or the modernization of management systems. In individual cases, where the viability of the SME would otherwise be jeopardized, targeted financial support may also be required (e.g., through direct financing, low-interest loans, or procurement guarantees). Under Article 10(5) and Article 11(6) of the CSDDD, protection is extended to the level of contractual assurances. Contracts with SMEs must therefore provide for fair, reasonable, and non-discriminatory terms. The obligated company must also assess whether the contractual assurances should be accompanied by support measures; in the case of compliance reviews by independent third parties, the obligated company – not the SME – generally bears the costs. In this regard, the LkSG lacks a comparable protection mechanism for SMEs; the common practice of passing on due diligence obligations to suppliers on a 1:1 basis is therefore likely to no longer be possible in the future.⁴¹

4. Remedy

- 35 Pursuant to Article 12(1) of the CSDDD, Member States shall ensure that an enterprise provides remediation if it has caused an actual adverse impact, either alone or jointly with others. According to Article 3(1)(t) of the CSDDD, “remediation” means restoring the situation or condition that existed prior to the occurrence of the actual adverse impact. It must be proportionate to the company’s implication in the adverse impacts and may consist of financial or non-financial compensation by the company to those affected. It also includes reimbursement of the costs incurred by the authorities as a result of necessary remedial measures.
- 36 While the UN Guiding Principles already provided for a corresponding obligation to provide redress (“remediation”),⁴² the LkSG lacks a counterpart. From a legal perspective, this is therefore a novelty.⁴³ However, the provision has been criticized because its relationship to civil liability is unclear.⁴⁴ While the latter, pursuant to Art. 29(1) CSDDD – which was repealed by the Omnibus I Directive – requires a culpable breach of the duty of care, the obligation to provide compensation merely requires a contributory cause. The obligation to remedy is also subject to *public enforcement* under Art. 25(4) and (5)(c) CSDDD. Looking ahead, one may therefore ask whether the repeal of the EU-level liability provision should be offset by effective enforcement of the obligation to remedy (for further details, see para. 82 et seq.).

⁴¹ However, this practice is also impermissible under the LkSG; see *Brunk*, in: Kalss/Torggler, Supply Chain Responsibility, 2024, p. 41 (61 ff.).

⁴² For further details, see *Brunk*, Human Rights Compliance, 2022, p. 235 ff.

⁴³ For more details, see *Warnking/Rünz/Rothermel/Busse*, NZG 2024, 263 ff.

⁴⁴ See *J. Schmidt*, NZG 2024, 859 (865); *Stöbener de Mora/Noll*, NZG 2024, 1391 (1395).

5. Involvement of Stakeholders

- 37 Pursuant to Art. 13(1) and (3) CSDDD, companies are required to consult the relevant stakeholders when implementing individual due diligence obligations. In this respect, the CSDDD goes beyond the previous provision in Section 4(4) of the LkSG:⁴⁵ According to this provision, stakeholder interests must be taken into account when establishing and implementing risk management and due diligence obligations. However, this does not necessarily entail an explicit consultation obligation.⁴⁶
- 38 According to Article 3(1)(n) of the CSDDD, stakeholders include, on the one hand, the employees of the company, the employees of its subsidiaries and business partners, as well as their trade unions and employee representatives. On the other hand, this includes individuals or communities whose rights or interests are or could be directly affected by the products, services, and business activities of the company, its subsidiaries, and its business partners, as well as the legal representatives of these individuals or communities. According to Recital 45 of the Omnibus I Directive, this includes, for example, individuals or communities in the vicinity of facilities operated by business partners if these individuals or communities are directly affected by pollution, or indigenous peoples whose rights to land or resources are directly affected by a business partner's acquisition, development, or other use of land, forests, or water bodies. Pursuant to Article 13(3) of the CSDDD, consultations may be limited to the relevant stakeholders in each case (see also Recital 45 of the Omnibus I Directive).⁴⁷
- 39 However, the Omnibus I Directive narrowed the scope of relevant stakeholders; previously, consumers as well as national human rights and environmental organizations and civil society organizations were also supposed to be included. Whether this simplification will have an impact on corporate practice is questionable, however, as consultations with local communities and indigenous peoples are often initiated and/or facilitated through civil society, human rights, or environmental organizations. Furthermore, involving these organizations is generally appropriate given their expertise.⁴⁸
- 40 The measures for which relevant stakeholders must be consulted are set forth in Article 13(3) of the CSDDD: According to this provision, consultations must take place, first, as part of the risk analysis and prioritization (subparagraph (a)), and second, during the development of prevention and corrective action plans pursuant to Article 10(2) and Article 11(3) of the CSDDD and the development of enhanced prevention and remedial action plans pursuant to Art. 10(6) and Art. 11(7) of the CSDDD (lit. b), and third, when adopting appropriate remedial measures for adverse impacts pursuant to Art. 12 of the CSDDD (lit. d). The consultation requirement when deciding on the suspension or termination of a business relationship pursuant to Art. 10(6) or Art. 11(7) of the CSDDD (lit. c), as well as when developing qualitative and quantitative

⁴⁵ *Verse*, AcP 225 (2025), 857 (865).

⁴⁶ Explanatory Memorandum to the LkSG, BT-Drs. 19/28649, p. 44; *Fleischer/Mankowski/Fleischer/Götz*, 1st ed. 2023, LkSG § 4 n. 94; see also, however, *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Lorenzen*, 1st ed. 2023, LkSG § 4 n. 150: "Despite this fundamental right to choose the form, the government's explanatory memorandum regards bilateral, direct consultation as the standard procedure for taking interests into account."

⁴⁷ *Wagner/Rothenburg/Schuler*, DB 2025, 1128 (1131).

⁴⁸ *Danish Institute for Human Rights*, Cross-Cutting: Stakeholder Engagement, Human Rights Impact Assessment Guidance and Toolbox, 2020, p. 8.

indicators for the monitoring required under Art. 15 of the CSDDD (lit. e), was repealed by the Omnibus I Directive.

41 The consultation requirement is set forth in Art. 13(2) and (4) through (6) of the CSDDD. Accordingly, companies may, for example, be required to provide stakeholders with relevant and comprehensive information to the extent necessary to ensure an effective and transparent consultation process (Art. 13(2), first sentence, CSDDD). Pursuant to Art. 13(5) CSDDD, companies must identify and address barriers to stakeholder engagement and ensure that participants in the consultation process are not subject to reprisals or retaliation (e.g., by safeguarding confidentiality and anonymity). Art. 13(6) CSDDD allows companies – to the extent permitted under competition law⁴⁹ – to conduct consultation processes within the framework of industry and multi-stakeholder initiatives.

6. Monitoring

42 Instead of a one-year review cycle (see Sections 6(5), 7(4), 8(5) LkSG), the regular review of the adequacy and effectiveness of the measures taken must, pursuant to Art. 15 CSDDD, take place at least every five years in the future. This extension stems from the Omnibus I Directive; previously, Art. 15 CSDDD also provided for a one-year review cycle. In addition to the regular review, however, companies remain obligated to review the measures taken on an ad hoc basis if there are indications that the risk environment has changed or that the measures taken are no longer sufficient or effective (Art. 15, para. 2 CSDDD). Since it is to be expected that such changes will occur within five years, the regular review is likely to be of little significance.⁵⁰ Furthermore, pursuant to Art. 7(3)(1) CSDDD, the company must update its policy statement at least every 24 months, which also relativizes the five-year review cycle set forth in Art. 15 CSDDD.⁵¹

43 According to its wording, Article 15 of the CSDDD refers only to the process step of effectiveness review (“to assess the implementation and to monitor the adequacy and effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of adverse impacts”). However, when considered in conjunction with Recital 61 of the CSDDD, the provision also allows for an alternative interpretation, according to which the review cycle could also refer to the conduct of the risk analysis.⁵² Furthermore, Art. 8 CSDDD – unlike Section 5(4) LkSG (“once a year and as circumstances require”) – does not itself provide for a specific frequency of repetition. This could argue in favour of applying the five-year cycle to the risk analysis. However, the wording of Art. 15 CSDDD does not support this interpretation; furthermore, the risk analysis and the effectiveness review pursuant to Art. 5(1)(b) and (g) CSDDD constitute two distinct and separate stages of the due diligence obligation. Furthermore, it cannot be assumed that Recital 61 of the CSDDD refers to the risk analysis, as its rationale is set out separately in Recital 41 of the CSDDD. It expressly states there: “Identification of adverse impacts should include assessing the human rights and environmental context in a dynamic way and at regular intervals: without undue delay after a

⁴⁹ For further details, see *Holle*, ZHR 188 (2024), 98 ff.

⁵⁰ Likewise, *Jelonek*, NZG 2026, 252 (259): “The company remains obligated to review and update the protection system in the event of significant changes. This is likely to limit the practical significance of the long timeframe, as the volatility of modern business operations will regularly necessitate a higher frequency.”

⁵¹ *Jelonek*, NZG 2026, 252 (259, note 105).

⁵² In this sense, *Voland/Dietz*, ESG 2025, 143 (150).

significant change occurs, *but at least every 12 months*, [...].“ The Omnibus I Directive does not indicate that this cycle should also be extended. Overall, therefore, there are stronger reasons to apply the five-year cycle only to the effectiveness review and to maintain the annual cycle for the risk analysis.⁵³

44 Pursuant to Article 4(1) of the CSDDD, Article 15 of the CSDDD is a fully harmonised provision, i.e., Member States may not enact divergent regulations. Retaining the one-year review cycle pursuant to Sections 6(5), 7(4), and 8(5) of the LkSG is therefore precluded. The implementation of the five-year review period does not constitute a violation of the EU law prohibition on deterioration, as it constitutes a permissible adaptation within the meaning of Article 1(2), second sentence, of the CSDDD.

7. Reporting (Art. 16 CSDDD)

45 Instead of imposing its own reporting obligation, the CSDDD relies on the sustainability reporting obligation under the EU Accounting Directive – as supplemented in this respect by the CSRD. Only if a company subject to the CSDDD is not required to report on sustainability must it submit an annual report pursuant to Art. 16(1) CSDDD. This primarily applies to partnerships and companies from third countries.⁵⁴

IV. Interim Conclusion

46 In conclusion, it is evident that despite its broader scope and greater differentiation, the CSDDD essentially adheres to the due diligence standard known from the UN Guiding Principles and enshrined in the LkSG. Implementation can and should therefore be achieved by adapting and supplementing the existing LkSG. However, the implementing legislature’s discretion is limited in this regard: Since the provisions on due diligence obligations under Art. 4(1) CSDDD are largely fully harmonised, Sections 5 et seq. of the LkSG must essentially be replaced by the requirements of the Directive. The legislator retains independent discretion only outside the fully harmonised core – namely in risk management (Art. 7 CSDDD), the obligation to take remedial action (Art. 12 CSDDD), and stakeholder consultation (Art. 13 CSDDD), where, pursuant to Art. 4(2) CSDDD, it may impose more stringent requirements.

D. Civil Liability (Art. 29 CSDDD)

47 Art. 29(1) CSDDD provided for a specific basis for liability regarding the enforcement of due diligence obligations. For German law, this would have entailed a significant legal change, as the German legislature has thus far expressly excluded enforcement under tort law for the LkSG (Section 3(3) sentence 1 LkSG). However, the Omnibus I Directive repealed the EU liability provision even before its transposition into German law. The same applies to Art. 29(7) CSDDD, according to which the liability provision would have been mandatorily applied as an overriding mandatory provision (*Eingriffsnorm*) within the meaning of Art. 16 of the Rome II Regulation vis-à-vis the law of third countries. The question therefore arises as to whether and under which provisions companies in Germany can be held liable for human rights violations in their supply chains. To address this question, this opinion will first outline the current legal situation below (see I.) and then discuss a possible need for reform under the CSDDD (see II.).

⁵³ See also *Voland/Dietz*, ESG 2025, 143 (150).

⁵⁴ For further details, see *Jelonek*, NZG 2025, 731.

I. Civil Liability *de lege lata*

1. Applicable Liability Law

- 48 Due to the typically cross-border nature of supply chain cases, the applicable law must first be determined with the aid of conflict-of-laws rules.⁵⁵ Assuming tortious liability, the applicable law is generally governed by the provisions of the Rome II Regulation. If the damage is limited to a violation of personal rights, national conflict-of-laws rules (more specifically: Art. 40 EGBGB) apply due to the exclusion under Art. 1(2)(g) of the Rome II Regulation.⁵⁶
- 49 Subject to a choice of law pursuant to Art. 14 of the Rome II Regulation⁵⁷, claims arising from tort are generally governed by the law of the place where the harmful event occurred, i.e., the law of the state in which the damage occurred (Art. 4(1) of the Rome II Regulation).⁵⁸ For environmental damage and related human rights violations, the injured party may instead choose the law of the place of the act (Art. 7 Rome II Regulation). It is disputed whether, for the purpose of determining the place of the act, one may rely solely on the direct act of infringement (typically by a subsidiary or business partner abroad) or also on the breach of a duty of control, organization, or supervision by *the chain leader* within the country.⁵⁹
- 50 Due to the connecting factor of the place where the damage occurs (*lex loci damni*), foreign liability law generally applies in supply chain cases. This does not necessarily entail disadvantages for the injured parties – on the contrary: based on recent case law from English courts, it is reasonable to assume that, at least under *common law*, the *chain leader* is more likely to be held liable than under German law (for further details, see para. 65 et seq.). However, determining the applicable foreign law involves considerable effort and legal uncertainty, which raises the question of whether a correction is needed.⁶⁰ In particular, a special connecting factor for overriding mandatory provisions under Art. 16 of the Rome II Regulation could be considered for this purpose. With regard to the LkSG, in light of Section 3(3) sentence 1 LkSG, the view that due diligence obligations should be classified as overriding mandatory provisions is largely rejected.⁶¹
- 51 For the EU Supply Chain Directive, Art. 29(7) CSDDD originally provided for an explicit provision on overriding mandatory provisions;⁶² however, this was subsequently deleted by the Omnibus I Directive. This deletion could ultimately have more serious consequences for private *enforcement* of the Directive than the deletion of the actual liability provision in Art. 29(1) CSDDD. To the extent that the case is governed by foreign liability law, neither the duties of

⁵⁵ See also *Brunk*, Human Rights Compliance, 2022, p. 332 et seq.; *Hübner*, Corporate Liability for Human Rights Violations, 2022, p. 139 et seq.; *Mansel*, ZGR 2018, 439 ff.; *Wagner*, *RabelsZ* 80 (2016), 717 (739 ff.).

⁵⁶ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl*, 1st ed. 2023, LkSG § 3 Annex I, para. 3.

⁵⁷ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl*, 1st ed. 2023, LkSG § 3 Annex I, para. 7 et seq.

⁵⁸ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl*, 1st ed. 2023, LkSG § 3 Annex I, para. 13.

⁵⁹ For the current state of opinion, see *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl*, 1st ed. 2023, LkSG § 3 Annex I, para. 19.

⁶⁰ See *Brunk*, Human Rights Compliance, p. 345 et seq.; *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl*, 1st ed. 2023, LkSG § 3 Annex I para. 28 et seq.

⁶¹ *Brunk*, Human Rights Compliance, p. 349; *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl*, 1st ed. 2023, LkSG § 3 Annex I para. 30; dissenting view: *Kieninger*, ZIP 2024, 1037 (1043); in principle, also *MüKoBGB/Wagner*, 9th ed. 2024, BGB § 823, para. 128: “a classification as an intervention norm within the meaning of § 16 of the Rome II Regulation could at most be considered for the due diligence obligations under the LkSG [...]”.

⁶² For a detailed discussion, see *Kieninger*, GS Mankowski, 2025, 807 ff.

care nor the procedural *safeguards* under Article 29(3) of the CSDDD play a role.⁶³ Conflict of laws thus proves to be the Achilles' heel of supply chain liability. This can prove problematic not only for those affected; this situation is also unfortunate for companies because they must consequently align their conduct with different due diligence regimes: the due diligence obligations of the CSDDD and the standard of due diligence under the applicable tort law. These can – for example, under German law – even create conflicting incentives.⁶⁴ Added to this are the previously mentioned concerns regarding legal uncertainty in the application of foreign liability law, particularly in light of the sometimes substantial liability risks for German companies under *common law*.⁶⁵

52 It therefore makes sense for the German legislature to adhere to the classification as an overriding mandatory provision in the implementing provisions for the CSDDD. This can be achieved through an explicit statutory provision; however, the deletion of Section 3(3) LkSG is likely to lead to the same result, as the due diligence obligations are geared toward application in cross-border supply chain cases. At least for the French *Loi de Vigilance*⁶⁶, the classification as an overriding mandatory provision is widely accepted;⁶⁷ it was recently confirmed by the Tribunal judiciaire de Paris in its Yves Rocher ruling.⁶⁸ The deletion of Art. 29(7) CSDDD does not preclude the classification of the Member State's implementing legislation as an overriding mandatory provision (see Recital 49 of the Omnibus I Directive).

2. Liability under German law

53 Although Germany has specific supply chain legislation in the form of the LkSG, this does not provide a separate basis for claims for those affected. Corporate liability for human rights violations may therefore arise primarily under general tort law; however, German tort law is generally not applicable to foreign circumstances (see above, para. 50). The following considerations regarding German tort law therefore serve primarily as a point of contrast for future legal developments.

a) Liability Implications of Section 3(3), Sentence 1 of the LkSG

54 According to the legislature's intent, the LkSG is designed to be liability-neutral. The LkSG is not intended to create additional civil liability risks for companies nor to restrict existing liability options.⁶⁹ The legislator has implemented this objective in Section 3(3) of the LkSG:

⁶³ See *Kieninger*, ZIP 2025, 682 (683).

⁶⁴ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 122; *Wagner*, GS Mankowski, 2025, 837 (852).

⁶⁵ See also *Kieninger*, ZIP 2025, 682 (684): "With or without Art. 29(7) CSDDD, Member States are strongly advised to adopt the internationally mandatory framework, as domestic companies would otherwise be liable under the laws of the place where the damage occurred."

⁶⁶ Law No. 2017-399 of March 27, 2017, on the duty of care of parent companies and contracting entities, JORF No. 0074 of March 28, 2017.

⁶⁷ See *Nasse*, ZEuP 2019, 774 (800) with further references.

⁶⁸ Paris Commercial Court (34th Chamber), Judgment of March 12, 2026 – Case No. 22/04017 – *Sherpa et al. v. Laboratoires de Biologie Végétale Yves Rocher*, para. 75.

⁶⁹ See the recommendation for a resolution and report of the Committee on Labor and Social Affairs (11th Committee), BT-Drs. 19/30505, p. 39: "The government's draft of a Due Diligence Act was adopted with the aim and intention of not creating any additional civil liability risks for companies compared to the current legal situation. [...] This must be clarified, particularly with regard to § 823(2) BGB. However, to the extent that civil liability already exists under the current legal situation, irrespective of the newly created due diligence obligations, this liability shall continue unchanged and, in particularly serious cases, its enforcement shall be facilitated."

A breach of the obligations under the LkSG does not give rise to civil liability (Section 3(3) sentence 1 LkSG); however, civil liability arising independently of this remains unaffected (Section 3(3) sentence 2 LkSG).

- 55 Consequently, the LkSG not only lacks its own basis for civil claims that would allow affected parties to demand that a company comply with its duty of care or pay damages in the event of a breach of duty.⁷⁰ Rather, Section 3(3) sentence 1 LkSG excludes liability arising from a breach of the LkSG's obligations entirely. According to the legislature's intention, this was to be "clarified, in particular with regard to Section 823(2) German Civil Code (BGB)."⁷¹ Therefore, according to unanimous opinion – despite the explicit purpose of the LkSG to protect individuals⁷² – neither the prohibitions on conduct under Section 2(2) LkSG nor the human rights due diligence obligations under Sections 3 et seq. LkSG constitute protective laws within the meaning of Section 823(2) BGB.⁷³
- 56 However, the scope of Section 3(3) sentence 1 LkSG has not been conclusively clarified. In particular, it is disputed whether and to what extent the human rights-based duties of care under the LkSG can shape the tortious duties of care under Section 823(1) BGB. According to one view, the duties of care under the LkSG are to be regarded as tortious duties of care *in their entirety*.⁷⁴ This would mean that a violation of Sections 3 ff. LkSG – provided the other elements of the offense are present: infringement of a legal interest, causation, and damage⁷⁵ – would give rise to liability of *the chain leader* under Section 823(1) BGB. The prevailing view rejects this in light of the exclusion of liability under Section 3(3) sentence 1 LkSG.⁷⁶ Tort liability can only be developed independently of the LkSG based on the assessments and objectives inherent in tort law.⁷⁷ According to a mediating view, while a breach of the duty of care cannot give rise to liability under Section 3(3) sentence 1 LkSG, tortious liability always presupposes at least an indirect influence by the *chain leader* on the risk situation at subsidiary or supplier companies.⁷⁸ However, if there is an influence giving rise to liability, the due diligence required under the LkSG could be used to specify the content of the standard of care under tort law.⁷⁹ In this way, the duties of conduct arising from the LkSG would shape the precautions that a

⁷⁰ Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk, 1st ed. 2023, LkSG § 3, para. 128.

⁷¹ Recommendation for a resolution and report of the Committee on Labor and Social Affairs (11th Committee), BT-Drs. 19/30505 of June 9, 2021, p. 39.

⁷² See Explanatory Memorandum to the LkSG, BT-Drs. 19/28649, p. 2: "This is intended, on the one hand, to strengthen the rights of people in supply chains affected by corporate activities and, on the other hand, to take into account the legitimate interests of companies in legal certainty and fair competitive conditions.;" in contrast, however, Koch, MDR 2022, p. 1 (4).

⁷³ Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk, 1st ed. 2023, LkSG § 3, note 215; Fleischer/Mankowski/Fleischer, 1st ed. 2023, LkSG § 3, note 60; BeckOGK/Kieninger, Sept. 1, 2023, LkSG § 3, para. 185; MüKoBGB/Wagner, 9th ed. 2024, BGB § 823, para. 129.

⁷⁴ For a detailed discussion, see BeckOGK/Kieninger, Sept. 1, 2023, LkSG § 3, para. 192 et seq.; Leyens/Seibt LieferkettenR-HdB/Kieninger, 1st ed. 2025, § 44, para. 20 et seq.; Kieninger, ZIP 2024, 1037 (1041 et seq.).

⁷⁵ Leyens/Seibt LieferkettenR-HdB/Kieninger, 1st ed. 2025, § 44, para. 25.

⁷⁶ See Fleischer/Mankowski/Fleischer, 1st ed. 2023, LkSG § 3, para. 66, 78 et seq.; Leyens/Seibt Supply Chain Act Commentary/Mansel, 1st ed. 2025, § 9, para. 19; Spindler, ZHR 186 (2022), 67 (100); MüKoBGB/Wagner, 9th ed. 2024, BGB § 823, para. 130 et seq.; Wagner, FS Singer, 2021, 693 (708 et seq.).

⁷⁷ Fleischer/Mankowski/Fleischer, 1st ed. 2023, LkSG § 3, para. 66; MüKoBGB/Wagner, 9th ed. 2024, BGB § 823, para. 130; Wagner, FS Singer, 2021, 693 (709).

⁷⁸ Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk, 1st ed. 2023, LkSG § 3, para. 210.

⁷⁹ Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk, 1st ed. 2023, LkSG § 3, para. 211 et seq.; generally also Paefgen, ZIP 2021, 2006 (2011); Wagner/Rutloff/Wagner/S. Wagner, para. 1819 et seq.

reasonable, prudent, cautious, and conscientious company may consider sufficient – but also necessary.⁸⁰

- 57 Even if one follows the prevailing view, the LkSG does not entail a bar to liability. For one thing, the provision leaves civil liability established independently of the LkSG unaffected (Section 3(3), sentence 2 LkSG). The assumption that companies can be held liable for human rights violations in their supply chains under German tort law was already accepted prior to the enactment of the LkSG. On the other hand, even according to prevailing doctrine, the LkSG does not “freeze tortious duty of care obligations at the level prior to the law’s entry into force,”⁸¹ but rather enables an incremental (further) development of tort liability elements within corporate groups and supply chains.⁸²

b) Overview of tortious liability elements

- 58 If, under the provisions of private international law, German law is exceptionally applicable, liability under tort law is particularly relevant.⁸³ Various grounds for liability are discussed in the legal literature.⁸⁴ Liability for breach of duties of care (*Verkehrspflichten*) under Section 823(1) BGB has the greatest potential because such duties of care are not fixed by law but are developed through case law on a case-by-case basis and are thus structurally open to the incorporation of new expectations regarding conduct and due care. By contrast, other grounds for liability play only a minor role: Liability under Section 823(2) BGB is excluded due to Section 3(3) sentence 1 LkSG.⁸⁵ Although liability for agents (*Gehilfenhaftung*) under Section 831(1) BGB is likely applicable (disputed);⁸⁶ it is subject to a comparatively higher burden of proof due to its two-tiered tort structure and offers no apparent advantages as a basis for liability compared to Section 823(1) BGB.⁸⁷ Section 826 BGB and Section 830(2) BGB (aiding and abetting) require (alternative) intent on the part of *the chain leader* and are therefore generally ruled out.⁸⁸ The following analysis is therefore limited to liability under Section 823(1) BGB.

c) Liability for breach of duty of care under Section 823(1) BGB

- 59 Liability of *the chain leader* for human rights violations at its subsidiaries and suppliers can only be considered if it has (indirectly) caused this violation itself or was obligated to prevent it for other reasons. Such a duty may arise from the duties of care under Section 823(1) BGB. A distinction is made here between safety duties (*Sicherungspflichten*) and protective duties (*Fürsorgepflichten*). A person is under a safety duty who creates or allows a hazardous situation

⁸⁰ On this standard, see BGH NJW 2013, 48, note 7; NJW 2014, 2104, note 9; NJW 2018, 2956, para. 17; NZM 2019, 893, para. 14; *MüKoBGB/Wagner*, 9th ed. 2024, BGB § 823, para. 529.

⁸¹ *MüKoBGB/Wagner*, 9th ed. 2024, BGB § 823, para. 130.

⁸² *Fleischer*, DB 2022, 920 (922).

⁸³ Grounds for liability under contract law are excluded here and in the following; see *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 234 et seq.; *Fleischer*, DB 2022, 920 (926 et seq.); *BeckOGK/Kieninger*, Sept. 1, 2023, LkSG § 3, para. 217 et seq.

⁸⁴ Overview in *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 131 et seq.

⁸⁵ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 214 et seq.

⁸⁶ In favor: *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, n. 220 et seq.; against: *Wagner*, GS Mankowski, 2024, 837 (844 et seq.); *MüKoBGB/Wagner*, 9th ed. 2024, BGB § 823, para. 143 et seq.

⁸⁷ *MüKoBGB/Wagner*, 9th ed. 2024, BGB § 823, para. 144.

⁸⁸ For further details, see *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 216 et seq.

of any kind to persist within their area of responsibility; they must take all reasonable measures and precautions to prevent harm to others.⁸⁹ In contrast, protective duties (*Fürsorgepflichten*) establish a responsibility (a guarantor's duty, *Garantenpflicht*) to protect the legal interests of third parties against unspecified dangers; they are established by law, legal transaction, or the actual assumption of the duty of care.⁹⁰ In both types of these duties of care, the allegation of breach of duty consists of an omission, namely the failure to take the required safety or care measures.

60 Since the duties of care of every legal entity are generally limited to its own organizational and risk sphere,⁹¹ but human rights violations in corporate and supply chain cases typically occur outside the *chain leader's* immediate sphere of responsibility, liability for breaches of these duties of care constitute an exception that requires justification. According to prevailing opinion, the due diligence obligations under the LkSG cannot be directly invoked to justify this (see above, para. 56), but rather a derivation autonomous of tort law is required. For this purpose, the general attribution criteria of control over risk, deriving benefit, and protection of legitimate expectations, as well as the expectation of due diligence, may be invoked.⁹² On this basis, case groups related to corporate groups and supply chains can be developed:

aa) Knowledge of human rights violations

61 Opinions differ on whether mere knowledge of human rights violations is sufficient to establish tort liability.⁹³ This concerns cases in which the *chain leader* is aware of, or ought to be aware of, human rights violations at subsidiaries or suppliers but fails to intervene and maintains the business relationship. According to a view held by some, knowledge of or the deliberate turning a blind eye to ("must have known") human rights violations by subsidiaries or suppliers can establish tortious duties of care on the part of the *chain leader*.⁹⁴ According to a different view, mere knowledge of a human rights violation is generally not a sufficient basis for liability, because such knowledge is not accompanied by the creation or increase of a relevant risk.⁹⁵ However, if additional factors are present, liability under Section 823(1) BGB or Section 830(2) BGB (aiding and abetting) may be established even under the latter view in exceptional cases.⁹⁶

⁸⁹ BGH NJW 2023, 2037, para. 13; ZUM 2022, 133 (141); NJW 2021, 1090, para. 8; NJW 2017, 2905, para. 6; NJW 2014, 2104, para. 8; NJW 2013, 48, para. 6; see also *MüKoBGB/Wagner*, 9th ed. 2024, BGB § 823, para. 506.

⁹⁰ For a detailed discussion of the individual case groups, see *MüKoBGB/Wagner*, 9th ed. 2024, BGB § 823, para. 515 et seq. with further references; in the supply chain context, see *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 155, 174 et seq.

⁹¹ On the legal entity principle or separation principle, see *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 147 et seq.

⁹² Fundamentally *from Bar*, *Verkehrspflichten*, 1980, p. 112 et seq.; furthermore, *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 157 et seq.; *Hübner*, *Corporate Liability for Human Rights Violations*, 2022, p. 231 ff.

⁹³ See also *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 188.

⁹⁴ *König*, AcP 217 (2017), 611 (674); *Fleischer/Korch*, DB 2019, 1944 (1951): "Knowledge of significant health damage or imminent deaths"; for supplier scenarios, see *Habersack/Ehrl*, AcP 219 (2019), 155 (202).

⁹⁵ *Brunk*, *Human Rights Compliance*, 2022, p. 389; *Habersack/Zickgraf*, ZHR 182 (2018), 252 (286); *Wagner*, *RabelsZ* 80 (2016), 717 (770).

⁹⁶ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, n. 204, 218.

bb) Human Rights-Related Statements

62 According to prevailing opinion, public commitments to human rights or human rights due diligence obligations, as well as statements regarding human rights-related risk management or specific preventive and remedial measures taken, do not in and of themselves give rise to tortious duties of care or protection.⁹⁷ However, they may give rise to liability under the provisions of corporate, capital markets, sales, or unfair competition law.⁹⁸

cc) Other Group-Related Case Groups

63 Within a group, the parent company's sole or majority ownership of a subsidiary or sub-subsidiary is not, in and of itself, sufficient to establish a group-related duty of care.⁹⁹ Rather, there must be actual influence ("control and exercise of authority"¹⁰⁰) by the parent company over the risk situation at the subsidiary. This may be assumed in individual cases if the parent company manages the subsidiary as if it were an internal department.¹⁰¹ Furthermore, influence giving rise to liability may exist if the parent company intervenes in the subsidiary's risk management or the handling of specific risk situations through guidelines or individual instructions.¹⁰²

dd) Other supply chain-related case groups

64 The status of being the predominant main customer is not in itself sufficient to establish a tortious duty of care.¹⁰³ However, the associated power asymmetry may serve as a basis for liability if the *chain leader* uses its position of power to influence the supplier's conduct and thereby the on-site risk situation,¹⁰⁴ particularly through product- and production-related specifications (e.g., product requirements, quantity, delivery time, price, etc.)¹⁰⁵ or supply chain-related risk management (codes of conduct, audits, etc.)¹⁰⁶.

3. Liability under Foreign Law

65 While German liability law has not yet played a role in practice, there have already been initial cases of application elsewhere. English courts, in particular, have shown openness to developing corporate and supply chain liability for human rights violations based on *common law*.¹⁰⁷

⁹⁷ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 191.

⁹⁸ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 241 et seq.

⁹⁹ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 181.

¹⁰⁰ *Fleischer*, DB 2022, 920 (924).

¹⁰¹ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, note 182; *Fleischer*, DB 2022, 920 (924).

¹⁰² With further differentiation: *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, margin note 184 et seq.; *Fleischer*, DB 2022, 920 (924).

¹⁰³ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 195.

¹⁰⁴ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 196.

¹⁰⁵ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 198 et seq.

¹⁰⁶ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 200 et seq.; see also *Fleischer*, DB 2022, 920 (925), according to whom "a duty of care may arise from the fact that the principal closely monitors the supplier's operations and effectively manages them as if they were an integral part of its own business."

¹⁰⁷ For a more detailed discussion of the following, see *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl/Brunk*, 1st ed. 2023, LkSG § 3, Annex II, para. 28 et seq.

- 66 The UK Supreme Court first had the opportunity in 2019, in its *Vedanta* decision¹⁰⁸, to rule on the liability of a parent company for human rights violations committed by a subsidiary. Although the decision concerned only jurisdictional issues, the Supreme Court was able to comment on substantive law as well due to the particularities of English procedural law¹⁰⁹. In particular, it developed categories of cases in which the parent company's control over the subsidiary may be sufficient to establish corporate liability (so-called "Vedanta routes"):¹¹⁰
- The parent company essentially assumes management of the subsidiary's relevant business activities, either alone or jointly with the subsidiary's managers (Route 1).¹¹¹
 - The parent company issues group guidelines to minimize the adverse impacts of hazardous activities, but these guidelines are flawed, and as a result, a third party suffers damage (Route 2).¹¹²
 - The parent company addresses the risk situation at the subsidiary through training, monitoring, and enforcement of corporate guidelines (Route 3).¹¹³
 - The parent company gives the impression in published documents that it exercises a certain degree of oversight and control over its subsidiaries, even though this is not actually the case (Route 4).¹¹⁴
- 67 While Vedanta routes 1 through 3 could theoretically give rise to liability on the part of the parent company even under German law (see para. 63), route 4 clearly goes beyond the scope of German tort law. Under German law, such (fiduciary) liability toward the affected parties based solely on statements is precisely not considered (see para. 62 above). It is in this fourth route, therefore, that the true explosive power of the decision lies.¹¹⁵
- 68 As for liability for suppliers in the supply chain, a decision by the highest court is still pending. Recently, however, the UK Court of Appeal, in its *Dyson* decision, indicated an openness to applying the Vedanta precedent to supplier cases.¹¹⁶ The UK Supreme Court did not accept the appeals filed by the defendant companies; the case did not raise any legal issues of general

¹⁰⁸ *Vedanta v Lungowe* [2019] UKSC 20; again *Okpabi v Shell* [2021] UKSC 3.

¹⁰⁹ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl/Brunk*, 1st ed. 2023, LkSG § 3 Annex II para. 39 et seq.

¹¹⁰ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl/Brunk*, 1st ed. 2023, LkSG § 3 Annex II para. 44 et seq.

¹¹¹ *Vedanta v Lungowe* [2019] UKSC 20 para. 51: "(i) Where the parent has in substance taken over the management of the relevant activity of the subsidiary in place of or jointly with the subsidiary's own management; (ii) Where the parent has given relevant advice to the subsidiary about how it should manage a particular risk."

¹¹² *Vedanta v Lungowe* [2019] UKSC 20 para. 52: "Group guidelines regarding the minimization of the environmental impact of inherently dangerous activities, such as mining, may be shown to contain systemic errors which, when implemented as a matter of course by a particular subsidiary, then cause harm to third parties."

¹¹³ *Vedanta v Lungowe* [2019] UKSC 20 para. 53: "Even where group-wide policies do not of themselves give rise to such a duty of care to third parties, they may do so if the parent does not merely proclaim them, but takes active steps, through training, supervision, and enforcement, to ensure that they are implemented by relevant subsidiaries."

¹¹⁴ *Vedanta v Lungowe* [2019] UKSC 20 para. 53: "[T]he parent may incur the relevant responsibility to third parties if, in published materials, it holds itself out as exercising that degree of supervision and control over its subsidiaries, even if it does not in fact do so. In such circumstances, its very omission may constitute the abdication of a responsibility which it has publicly undertaken."

¹¹⁵ *Kieninger*, IPRax 2020, 60 (67); *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl/Brunk*, 1st ed. 2023, LkSG § 3 Anh II para. 45.

¹¹⁶ *Limbu v Dyson* [2024] EWCA Civ 1564 para. 18: "As to the negligence claim, the circumstances capable of giving rise to parent company liability for harm suffered by individuals as a result of a foreign subsidiary's operations, which it is said can extend to harm caused by the subsidiary's supply chain contractor";

interest.¹¹⁷ Accordingly, it can be assumed that the *chain leader* can expect to be held liable in accordance with the Vedanta criteria even in straightforward supply chain cases.

69 Overall, *common law* thus appears to be significantly more liability-friendly than German law. This can give rise to significant liability risks for German companies, particularly because English case law is relevant not only when English law is applied, but always in cases where a *common law* jurisdiction is invoked as the law governing torts.¹¹⁸ In such cases, a German judge would have to base his decision on the liability of the German *chain leader* on the liability-friendly case law of the UK Supreme Court.¹¹⁹ If the German legislature wishes to avoid this, it has no choice but to apply its own liability law as an overriding mandatory provision within the meaning of Art. 16 of the Rome II Regulation, making it mandatory internationally. A proper implementation of Art. 29 of the CSDDD provides scope for this.

II. Civil Liability *de lege ferenda*

70 From a legal policy perspective, the provisions of the EU Supply Chain Directive (CSDDD) must be observed, which expressly addresses civil liability in Art. 29 CSDDD. However, this liability provision was gutted by the Omnibus I Directive; in particular, the basis for liability under EU law set forth in Article 29(1) CSDDD was deleted. Consequently, the remaining provisions on liability modalities (Article 29(2) to (6) CSDDD) lack regulatory completeness. It is not possible to assess with certainty what this means for the implementing legislature and the affected companies. Before returning to this question (see para. 81 et seq.), the original provision (para. 71 et seq.) and its amendment by the Omnibus I Directive (para. 74 et seq.) will first be presented in an overview.

1. Overview of the original provision of Art. 29 CSDDD

71 Article 29(1) of the CSDDD required Member States to establish a liability regime under which companies would have been liable to pay damages to affected parties in the event of a violation of the human rights and environmental standards set forth in the CSDDD. Under Art. 29(1)(a) CSDDD, liability would have been directly linked to a breach of the due diligence obligations under Art. 10 and 11 CSDDD. Specifically, the following conditions applied to liability:¹²⁰

- Breach of a duty of care under Art. 10 or 11 CSDDD;
- Adverse impact on human rights or environmental standards (within the meaning of Art. 3(1)(b) and (c) CSDDD) that serve to protect the affected parties;
- Violation of a legal interest protected under national law (Recital 79: “for example, death, physical or psychological injury, deprivation of personal liberty, loss of human dignity, or damage to a person’s property”);
- Causality as defined by national law, subject to the limitations of Art. 29(1)(2) CSDDD;
- Intent or negligence;

¹¹⁷ See *Limbu v Dyson*, UKSC/2025/0019: “Permission to appeal is REFUSED because the application does not raise a point of law of general public importance.”

¹¹⁸ For example, the Vedanta decision concerned a case in Zambia, while the Dyson decision involved a case from Malaysia.

¹¹⁹ For further details, see *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl/Brunk*, 1st ed. 2023, LkSG § 3, Annex II, para. 34.

¹²⁰ For more on the individual elements of the offense, see *Brunk*, CRZ 2024, 130 (132 ff.); *Kieninger*, ZIP 2024, 1037 (1044 f.); *Verse*, AcP 225 (2025), 857 (880 ff.).

- Damage.

72 With regard to legal consequences, Article 29(2) of the CSDDD provided for a right to full compensation in accordance with national law. Overcompensation through punitive damages or multiple compensation was to be excluded.

73 The further modalities of the claim for damages under EU law were set forth in Article 29(3) to (7) of the CSDDD: Paragraph 3 established a set of procedural safeguards, including a minimum statute of limitations of five years (lit. a), interim relief (lit. c), standing to sue on behalf of others by recognized trade unions and NGOs (lit. d), and judicial powers to order the production of evidence (lit. e). Under paragraph 4, participation in industry and multi-stakeholder initiatives was not permitted to create a “safe harbour.” Paragraph 5 established joint and several liability. Paragraph 6 clarified that the Directive does not affect more favourable national liability laws. Pursuant to paragraph 7, Member States were required to ensure that national implementing provisions take precedence over the law of third countries (conflict-of-laws rule within the meaning of Article 16 of the Rome II Regulation).

2. Amendments to Article 29 of the CSDDD by the Omnibus I Directive

74 Civil liability was already one of the central points of contention during the trilogue negotiations. In this respect, the liability regime established in Article 29 of the CSDDD represented a compromise between those in favour of liability and those sceptical of it.¹²¹ This compromise is largely revised by the Omnibus I Directive:

75 The key change is the deletion of Article 29(1) of the CSDDD, which simultaneously removes the basis for liability under EU law. The legislator justifies this in Recital 49 with the principle of subsidiarity: Instead of a uniform EU-wide liability regime, Member States are to ensure that victims of human rights violations have effective access to justice and guarantee their right to an effective remedy. According to the drafters’ recitals, the deletion of Article 29(1) of the CSDDD is therefore not intended to result in the complete elimination of liability, but rather to be compensated for by national liability regimes.

76 The European Commission’s reasoning in the Staff Working Document of February 26, 2025, accompanying the reform, points in the same direction. It states:

“The harmonized liability regime in Article 29(1) CSDDD had been introduced considering that some companies had already been brought to court based on existing national liability laws for their failure to address human rights and environmental violations in their value chains. The CSDDD introduced a number of limitations on the application of civil liability (e.g., fault requirement, no liability for adverse impacts caused solely by business partners). The proposed deletion of this EU-wide regime responds to calls to leave the regulation of specific liability conditions – including those regarding causality and fault – to national law, thereby limiting liability risks. It leaves companies subject to the applicable liability regimes of the Member States. This will reduce risks for companies within national jurisdictions that have more restrictive liability regimes in terms of the applicable conditions than those set out in Article 29(1) of the CSDDD. However, the overall reduction in risk will depend on the potential increase in liability risks in other

¹²¹ See Brunk, CRZ 2024, 130 (131).

*jurisdictions with conditions more favorable to the victim (e.g., strict liability without a fault requirement).*¹²²

- 77 Accordingly, *private enforcement* should be left to the Member States rather than being subject to a uniform EU-wide liability regime. Depending on the applicable liability law, this should make it possible to reduce liability risks for companies. However, the Commission notes in the Staff Working Document that liability risks may also be higher under the applicable law (e.g., in the case of strict liability). The European Commission does not, however, assume that liability will be eliminated entirely.
- 78 However, these considerations are not reflected in the text of Article 29 of the CSDDD or the Omnibus I Directive, leaving it unclear whether Member States are still required to provide a civil remedy for sanctions against breaches of due diligence (for further details, see para. 87 et seq.).
- 79 Further significant changes introduced by the Omnibus I Directive include the deletion of the representative action provision from Article 29(3)(d) CSDDD and the provision on overriding mandatory provisions from Article 29(7) CSDDD. In Recital 49, the legislator again cites the “different rules and traditions” in the Member States, and thus the principle of subsidiarity, as justification. It is therefore consistent that the legislator simultaneously states that Member States remain free to provide for representative actions and the status of overriding mandatory provisions in their national law. For the German LkSG, the provision in Section 11 LkSG can therefore be retained.
- 80 In addition, the Omnibus I Directive makes amendments to Art. 29(2), (4), and (5) of the CSDDD. These are consequential amendments following the deletion of the EU-law liability provision. Instead of referring to the directive provision in Art. 29(1) CSDDD, the aforementioned provisions now refer to national liability law. For example, under the new paragraph 2, Member States must ensure that affected parties are entitled to full compensation if they hold a company liable *under national law* for damages incurred as a result of non-compliance with due diligence obligations.

3. Liability Law Implications of the Omnibus I Directive

- 81 Due to the deletion of Art. 29(1) CSDDD, it is clear that Member States are no longer required to transpose the provision set forth therein into their national liability law. However, given the reference to the principle of subsidiarity and the associated call on Member States to provide a liability regime for affected parties under national law, the question arises as to whether civil liability under the Omnibus I Directive remains relevant as an enforcement mechanism. In particular, the question arises as to whether Member States must continue to provide a basis for liability or whether they may do so only *on a voluntary basis* if they deem it appropriate. The following will explore these questions and examine whether and what significance the Omnibus I Directive continues to have under liability law.

¹²² European Commission, Commission Staff Working Document of Feb. 26, 2025, SWD(2025) 80 final, p. 39 et seq.

a) Subjective Right to Redress: Art. 12(1) CSDDD as a Hidden Liability Provision?

- 82 Prior to the Omnibus I Directive, the relationship between civil liability and the obligation to provide redress under Art. 12 CSDDD was discussed (see already para. 35 et seq.). The main point of contention was whether the right to remedy under Art. 12(1) CSDDD constitutes a subjective right that affected parties can enforce through civil proceedings (*private enforcement*), or a public-law obligation whose enforcement is reserved for the supervisory authority and which protects affected parties only indirectly (*public enforcement*).¹²³ This question has taken on even greater significance following the removal of the civil liability provision.
- 83 The discussion is rooted in the structural similarity between civil liability and the duty to remedy: The latter obliges companies to remedy the actual adverse impacts they have caused, either alone or jointly with others, whereby “remedy” is to be understood, *mutatis mutandis*, as the restoration of the situation prior to the occurrence of the adverse impacts through the provision of financial or non-financial compensation (see Art. 3(1)(t) CSDDD). Thus, it exhibits a significant congruence of legal consequences with civil liability under Art. 29 CSDDD. However, it applies factually even in cases of mere (contributory) causation of the adverse impact by the company and is therefore subject to fewer prerequisites than fault-based liability.¹²⁴ If a subjective right could be derived from Art. 12(1) CSDDD, the affected parties would not only retain a civil law remedy despite the deletion of Art. 29(1) CSDDD, but this remedy would also be more attractive to them than an action for damages.
- 84 Whether Article 12(1) of the CSDDD grants affected parties a subjective right must be determined by way of interpretation. The wording is not conclusive in this regard.¹²⁵ The recitals and the regulatory framework, however, argue against the establishment of a subjective right to remedy.¹²⁶ Accordingly, it is more likely that only *public enforcement* by the supervisory authority is intended. In this sense, Recital 58 states that “the competent supervisory authority has the power [...] to order the company to provide appropriate remediation,” while those affected are referred to the judicial enforcement of civil liability. Recital 58 offers no indication that the remedy under Art. 12(1) CSDDD could also be asserted as such in civil court. With regard to the regulatory framework, Art. 5(1)(d) CSDDD classifies the remedy as part of the due diligence obligations, which, according to conventional understanding – at least for the LkSG¹²⁷ – are primarily obligations under public law.¹²⁸ Accordingly, Art. 25(4) and (5)(a)(iii) CSDDD provide for enforcement under public law by the supervisory authority. In contrast, civil legal action should only be available under the conditions set forth in Art. 29(1) CSDDD;

¹²³ For a subjective right enforceable under civil law, see *Bartmann*, NJW 2025, 1295 (1297); likely also *Zetzsche/Sinnig*, WM 2024, 1389 (1392); against this, *Steinbrück/Traub*, MDR 2024, 1141 (1148); according to *Wais*, JZ 2025, 177 (186), “it is only from this provision [i.e., Art. 29(1) CSDDD] that the clear conclusion arises that the due diligence obligations of the Directive have an individual-protecting character.”

¹²⁴ Critically, *J. Schmidt*, NZG 2024, 859 (865): “is in a striking state of tension”; furthermore, *Stöbener de Mora/Noll*, EuZW 2023, 14 (20). *Bartmann*, NJW 2025, 1295 (1300 f.), proposes, to resolve this tension, applying the requirements of Art. 29(1) CSDDD analogously to the right to remedy.

¹²⁵ See *Steinbrück/Traub*, MDR 2024, 1141 (1148).

¹²⁶ Likewise *Steinbrück/Traub*, MDR 2024, 1141 (1148); dissenting opinion: *Bartmann*, NJW 2025, 1295 (1297).

¹²⁷ *Leyens/Seibt LieferkettenR-HdB/Mansel*, 1st ed. 2025, § 9 n. 17; *Spindler*, ZHR 186 (2022), 67 (97): “public-law character of due diligence obligations.”

¹²⁸ For the CSDDD, see the dissenting view of *Bartmann*, NJW 2025, 1295 (1297).

a claim for relief separate from liability would therefore not be considered under those provisions.¹²⁹

85 However, this conclusion can be challenged on the basis of the EU law principle of effectiveness (*effet utile*). According to this principle, EU law must be interpreted in such a way that the respective legislative purpose is achieved as effectively as possible.¹³⁰ This can be achieved in particular through effective enforcement mechanisms. However, the gain in effectiveness associated with private enforcement should not be overestimated, as *private enforcement* of supply chain law has specific weaknesses.¹³¹ However, the same applies to *public enforcement*.¹³² It therefore seems obvious that the purpose associated with the EU Supply Chain Directive – the protection of human rights and the environment – can best be achieved through a combination of both enforcement mechanisms.¹³³ This argues in favour of deriving individually enforceable legal positions from the Directive by way of interpretation. If, following its deletion, Art. 29(1) CSDDD is no longer a viable starting point for this, the focus shifts to the due diligence obligations and, in particular, the obligation to remedy under Art. 12(1) CSDDD. From the perspective of the principle of effectiveness, the relationship between civil liability and the obligation to remedy could thus be understood as a system of communicating vessels, in the sense that a “less” on one side causes a “more” on the other. This is not, of course, mandatory.

86 The ECJ remains free to continue to locate private enforcement under Article 29 of the CSDDD despite the deletion of its paragraph 1 (for further details, see para. 92 et seq.). Likewise, it may give priority to the objective of the Omnibus I Directive to reduce the liability risks for companies associated with supply chain regulation¹³⁴ and, accordingly, leave the “whether” of private enforcement entirely to the Member States. It is not possible to predict with legal certainty how the ECJ would rule on this issue.

b) Introduction of civil liability in national law: mandatory or optional?

87 Although the Omnibus I Directive, by deleting Article 29(1) CSDDD, removed the explicit obligation on Member States to introduce civil liability in their national law specifically linked

¹²⁹ In this sense, see also *Zetsche/Sinnig*, WM 2024, 1389 (1392).

¹³⁰ *Calliess/Ruffert/Wegener*, 6th ed. 2022, TEU Art. 19, para. 32.

¹³¹ *Plastisch Wagner*, ZEuP 2023, 517 (525 ff.): “The notion that large numbers of exploited workers from *sweatshops* in Asia, the surviving relatives of workers killed in accidents and fires, or even children illegally employed by subcontractors could appear before German courts to sue the chain leader for the damages to which they are entitled under European law is unrealistic. The informational, financial, and psychological hurdles that must be overcome before initiating a civil lawsuit under the German model are far too high for foreign workers and consumers to surmount. And even if they were lower, the assumption that the ‘poorest of the poor’ would set out to file civil lawsuits in Europe and successfully fight them through would seem far-fetched.”; See also *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 124.

¹³² See *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 124: “In contrast, the BAFA, as the central supervisory authority (§ 19), is likely to be overwhelmed by the task of comprehensive monitoring, not only for financial reasons but also due to a lack of jurisdiction. As a domestic authority, the BAFA lacks the powers of intervention necessary to clarify the facts with regard to foreign subsidiaries and suppliers.”; similarly *Wagner*, ZEuP 2023, 517 (524 f.).

¹³³ On this argument, ECJ, BeckRS 2004, 75459 para. 31 – Muñoz; but see also *Wagner*, ZEuP 2023, 517 (526): “Not much can be expected from either administrative or private enforcement, nor from a combination of the two. The ‘smart mix’ of the two enforcement instruments is not so smart after all.”

¹³⁴ According to the European Commission’s proposed directive, the deletion of the liability provision was intended to limit potential litigation risks (see Recital 28 CSDDD-E, COM(2025) 81 final, p. 34); however, this rationale was not adopted for the final version of the Omnibus I Directive.

to breaches of due diligence obligations, this was, as stated in Recital 49 of the Omnibus I Directive, not intended to be done without replacement; rather, the gap was to be filled by Member States' liability laws. Accordingly, the Omnibus legislator did not completely remove the liability regime under Article 29 of the CSDDD, but rather retained Article 29(2) to (6) of the CSDDD and explicitly aligned it with Member States' liability law.

- 88 The significance of this regulatory intervention in the structure of Article 29 of the CSDDD is interpreted differently in the initial comments on the Omnibus I Directive: The prevailing view interprets the changes to mean that Member States are no longer required to introduce civil liability for breaches of due diligence obligations. However, if they do so *voluntarily*, they would have to take into account the remaining provisions of Article 29 of the CSDDD.¹³⁵ Other voices argue that Member States remain obligated to introduce civil liability for breaches of due diligence obligations even after the deletion of Article 29(1) of the CSDDD. Without the requirements of Article 29(1) of the CSDDD, however, they are said to have greater discretion, particularly regarding the factual basis for liability.¹³⁶ Both interpretations have compelling arguments in their favour:
- 89 One argument in favour of the prevailing interpretation is that, following the deletion of Article 29(1) of the CSDDD, the substantive provisions of the EU Supply Chain Directive no longer contain an explicit obligation on Member States to introduce civil liability. Nor does such an obligation necessarily follow from the wording of Article 29(2) of the CSDDD. This provision can indeed be understood as a merely conditional rule on legal consequences that does not impose a liability regime on Member States, but only applies if Member State law actually provides for a corresponding basis for liability. The remaining provisions in Article 29(3) to (6) of the CSDDD can also be interpreted in this way. Nor can any contrary conclusions necessarily be derived from the fact that, according to Recital 49 of the Omnibus I Directive, Member States should be obligated under both international law and Union law to provide affected parties with effective access to justice and to ensure an effective remedy. This is because the recitals have no regulatory content of their own and cannot provide a binding interpretation of either international law or Union law.¹³⁷ In any case, Article 47 of the Charter of Fundamental Rights, referred to in Recital 49, does not oblige Member States to provide a *specific* legal remedy for the enforcement of Union law. Rather, it is sufficient that national law as a whole guarantees effective legal protection.¹³⁸ With regard to the human rights protected by the EU Supply Chain Directive, general tort law is available for this purpose in Germany.
- 90 The opposing view may point out that the prevailing view leads to significant inconsistencies: Not only would the regulatory basis for the remaining provisions of Art. 29 CSDDD be lost; the numerous references to civil liability in other provisions of the Directive (see Art. 6(1) sentence 2, Art. 10(6) subpara. 2, Art. 11(7), subpara. 2, Art. 14(7), Art. 25(4), subpara. 2, and

¹³⁵ In this sense, *Hagel/Wiedmann*, CCZ 2025, 116 (124); *Kieninger*, ZIP 2025, 682 (683); *Mittwoch*, GPR 2025, 120 (126); *Schoch/Möller*, RIW 2025, 397 (400 et seq.); *Stöbener de Mora/Noll*, EuZW 2025, 501 (505); *Verse*, AcP 225 (2025), 857 with * footnote.

¹³⁶ *Kulov*, NJOZ 2025, 800 et seq.; *Nowalder*, ZIP 2025, 2925 (2930); *Voland/Nowalder*, ESG 2026, 43 (48).

¹³⁷ ECJ, BeckRS 2004, 74578 para. 54 – Nilsson; BeckRS 2005, 70929 para. 32 – Deutsches Milch-Kontor; BeckRS 2009, 70379 para. 16 – Tyson Parketthandel.

¹³⁸ ECJ, NJW 2007, 3555 para. 47 – Unibet; NJW 2025, 1873 para. 79 – European Public Prosecutor's Office; NJW 2025, 2751 para. 76 – Royal Seraing.

(9) CSDDD) would come to naught.¹³⁹ These inconsistencies could be avoided if Art. 29(2) CSDDD were not merely understood in a conditional sense, but as a normative mandate to Member States to actually provide for a corresponding basis for liability in national law. The wording of Art. 29(2) CSDDD is open to this interpretation; it could certainly be understood to mean that affected parties must be able to claim (full) compensation for damages resulting from non-compliance with due diligence obligations under national law. This interpretation is also supported by Recital 49 of the Omnibus I Directive,¹⁴⁰ which, although it has no direct legal effect, must nevertheless be taken into account when interpreting the provisions of the Directive according to the case law of the ECJ.¹⁴¹ Finally, when interpreting Article 29 of the CSDDD, the principle of effectiveness (*effet utile*) must be observed, according to which the purpose of the Directive must be given effect as effectively as possible.¹⁴² In this regard, it has already been explained (see para. 85) that the purpose associated with the EU Supply Chain Directive supports the possibility of *private enforcement*. It is therefore difficult to reconcile this with leaving the decision on “whether” liability applies to the discretion of the Member States.

91 In our view, the arguments put forward by the latter position are more convincing. The Omnibus I Directive makes it clear in Recital 49 that Member States’ liability laws are intended to fill the gap created by the deletion of Article 29(1) of the CSDDD. It is therefore inconsistent to allow Member States to decide freely on the “existence” of liability. In this respect, it is problematic that the deletion of the EU liability provision leaves room for divergent interpretations. Legal certainty can therefore only be achieved through a binding ruling by the ECJ.

c) Civil Liability Through the Back Door: The Role of the ECJ

92 It is impossible to predict with certainty whether the ECJ would, in the event of a request for a preliminary ruling under Article 29 of the CSDDD, infer an obligation on Member States to provide for civil liability for breaches of the duty of care. Although the ECJ has, in various decisions – most recently in its *Thermofenster* rulings¹⁴³ – advocated for *private enforcement* of EU law derived from the principle of effectiveness,¹⁴⁴ it has, however, rejected such an interpretation in other proceedings.¹⁴⁵ The case law of the ECJ thus reveals no consistent decision-making criteria that would allow for a reliable prognosis.¹⁴⁶ Referrals to the ECJ on such matters are therefore akin to buying a grab bag.

93 If one nevertheless attempts a cautious systematization, various criteria can be derived from the ECJ’s decisions that might, in individual cases, support the need for a civil law enforcement

¹³⁹ This is also acknowledged by *Kieninger*, ZIP 2025, 682 (683); *Mittwoch*, GPR 2025, 120 (126); see also *Kulov*, NJOZ 2025, 800 et seq.; *Nowalder*, ZIP 2025, 2925 (2927).

¹⁴⁰ See *Kulov*, NJOZ 2025, 800 ff.

¹⁴¹ ECJ EuZW 2006, 112, para. 76 – IATA and ELFAA; AG 2020, 584, para. 44 – Mowi; VersR 2025, 314, para. 42 et seq. – Ford Italia.

¹⁴² *Calliess/Ruffert/Wegener*, 6th ed. 2022, TFEU Art. 19 para. 32.

¹⁴³ ECJ, NJW 2023, 1111, para. 68 et seq., 93 – Mercedes Benz: “However, national legislation that makes it practically impossible or excessively difficult for the purchaser of a motor vehicle to obtain adequate compensation for the damage suffered as a result of the manufacturer’s breach of the prohibition contained in Art. 5(2) of Regulation No. 715/2007 is not consistent with the principle of effectiveness.”; again ECJ NJW 2025, 2983 para. 68 – Volkswagen.

¹⁴⁴ ECJ, EuZW 2001, 715 para. 24 et seq.

¹⁴⁵ Overview in *Wagner*, NJW 2023, 1761 et seq.

¹⁴⁶ This assessment is shared by *Wagner*, NJW 2023, 1761 et seq. (1767); similarly regarding sustainable finance regulation, see *Gnauert*, ZEuP 2025, 773 (784 et seq.).

regime: first, an individual-oriented protective purpose of the relevant provisions of the directive;¹⁴⁷ second, the inadequacy of the public law enforcement regime to achieve the regulatory objective;¹⁴⁸ third, the compatibility of a civil law remedy with the regulatory framework of the directive.¹⁴⁹ A comparison shows that these criteria are generally met with regard to the EU Supply Chain Directive.

- 94 First, the enforcement of EU law provisions under private law requires that the relevant EU legal act serve not only the public interest but also the protection of individual interests. In the case of the CSDDD, such an individual protection purpose can be assumed: The human rights due diligence obligations serve precisely to protect affected stakeholders from the adverse impacts of corporate activities (see Recitals 5 et seq., 16). This is particularly evident in the compensation obligation under Article 12 of the CSDDD, which provides for individual compensation payments to affected parties (Recital 58). However, according to the case law of the ECJ, the purpose of individual protection is only a necessary, not a sufficient, condition for the derivation of compensation claims.¹⁵⁰
- 95 With regard to the second criterion – the inadequacy of the public law enforcement regime – the EU Supply Chain Directive does indeed provide in Recital 76 that Member States must establish “deterrent, proportionate, and effective sanctions.” To this end, the EU Supply Chain Directive relies, in Articles 24 through 28 and 31, on a public law enforcement mechanism carried out by national supervisory authorities. Pursuant to Article 25 of the CSDDD, they are to have extensive powers of intervention and, pursuant to Article 27(1) and (4) of the CSDDD, be able to impose a fine of up to 3% of (consolidated) global net turnover. Despite these far-reaching powers of the authorities and their associated strong legal standing, however, it cannot be assumed that the public law enforcement regime is sufficient to achieve the directive’s purpose. Public law suffers – particularly in the area of supply chain law – from a lack of enforcement.¹⁵¹ This stems, on the one hand, from limited financial and human resources, which preclude comprehensive monitoring. On the other hand, the supervisory authority’s legal jurisdiction ends at the national border, meaning that official fact-finding and enforcement against foreign subsidiaries and suppliers are hardly feasible.¹⁵² While *private enforcement* is also subject to significant restrictions, it can partially compensate for the weaknesses of *public enforcement* when used as a complement, thereby contributing to more effective enforcement overall.¹⁵³

¹⁴⁷ ECJ, EuZW 2001, 715 para. 18 et seq., 26; NJW 2017, 1161 para. 50; NJW 2023, 1111 para. 68 et seq., 85.

¹⁴⁸ ECJ, EuZW 2001, 715 para. 27; BeckRS 2004, 75459 para. 31.

¹⁴⁹ ECJ, EuZW 2013, 557, para. 57; NJW 2017, 1161, para. 56.

¹⁵⁰ See ECJ, NJW 2017, 1161 para. 55 – TÜV Rheinland: It follows “neither from the fact that a directive imposes monitoring obligations on certain bodies, nor from the fact that this directive also aims to protect injured parties, that it is mandatory [...], that it is intended to create rights in favor of injured parties in the event that the relevant bodies fail to fulfill their obligations, which applies in particular where the directive contains no express provision granting such rights”; see *Wagner*, NJW 2023, 1761 (1763).

¹⁵¹ *Wagner*, ZEuP 2023, 517 (524).

¹⁵² *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3 n. 124; *Wagner*, ZEuP 2023, 517 (524).

¹⁵³ See ECJ, BeckRS 2004, 75459 para. 31 – Muñoz: “Such a right to bring an action strengthens the enforceability of the Community law provisions on quality standards. It complements the activities of the bodies responsible in the Member States for carrying out the checks provided for in those provisions and thus helps to prevent practices that could distort competition, which are often difficult to detect.”

- 96 Third, the question arises as to whether civil liability is provided for in the EU Supply Chain Directive. In this regard, doubts are warranted due to the deletion of Art. 29(1) CSDDD. However, in the *TÜV Rheinland* case, the ECJ justified its negative ruling by stating that the Medical Devices Directive applicable to the case contained “no information whatsoever regarding the modalities for establishing civil liability.”¹⁵⁴ This does not apply to the EU Supply Chain Directive in this way: According to Recital 49 of the Omnibus I Directive, Member States are to ensure an effective legal remedy in the event of “failure to comply with due diligence requirements.” Article 29(2) of the CSDDD also requires, for the purpose of compensation, that the affected party has suffered damage as a result of “failure to comply with due diligence obligations.” This provides a sufficient point of reference for the structure of Member State liability. Furthermore, the remaining provisions of Article 29 of the CSDDD prescribe numerous liability modalities for Member States. Civil liability thus remains compatible with the regulatory framework of the EU Supply Chain Directive.
- 97 Finally, it should be noted that, after a period of restraint in its *Thermofenster* decisions, the ECJ has recently once again shown itself open to deriving the possibility of private enforcement of EU law from the principle of effectiveness.¹⁵⁵ The decision is also noteworthy because *private enforcement* is by no means provided for in Directive 2007/46/EC on the type-approval of motor vehicles, which formed the basis of the proceedings. It merely obliges Member States to establish effective, proportionate, and dissuasive penalties (see Art. 46 of Directive 2007/46/EC), but leaves their specific design to the Member States. If this is sufficient for the ECJ to derive a claim for damages, then this must apply all the more to the EU Supply Chain Directive, which sets out detailed provisions regarding liability arrangements.

d) Liability Provisions: Implementation Obligations under Art. 29(2) to (6) CSDDD?

- 98 The provisions on liability arrangements in Art. 29(2) to (6) CSDDD were originally intended to specify and supplement the elements of liability under EU law. At first glance, the deletion of Art. 29(1) CSDDD appears to have stripped them of their regulatory basis. However, it cannot be assumed that the provisions have become moot as a result of the Omnibus I Directive. Otherwise, the legislator would have made more sweeping cuts and deleted Article 29 of the CSDDD in its entirety. The question therefore arises as to whether and how the remaining provisions are to be implemented. In particular, the question is what the relevant point of reference for their implementation should be.
- 99 The answer to these questions is straightforward if one continues to view Member States as obligated to ensure a civil remedy (see above, para. 88). In that case, the deletion of Article 29(1) of the CSDDD would have made little difference, since Member States would still be required to maintain a basis for liability for which the requirements of Article 29(2) to (6) CSDDD would have to be implemented with regard to the liability modalities.¹⁵⁶ If one follows the opposing view, it could be assumed that the liability provisions would apply only if Member States *voluntarily* provide a legal remedy.¹⁵⁷ However, this view would lead to significant

¹⁵⁴ ECJ, NJW 2017, 1161, para. 56 – TÜV Rheinland.

¹⁵⁵ ECJ, NJW 2023, 1111 para. 93 – Mercedes Benz; NJW 2025, 2983 para. 68 – Volkswagen.

¹⁵⁶ See *Voland/Nowalder*, ESG 2026, 43 (48).

¹⁵⁷ Based on this, *Verse*, AcP 225 (2025), 857 with * footnote: “The remaining provisions of Art. 29 CSDDD are to be applicable only if national law (voluntarily) provides for civil liability.”

inconsistencies.¹⁵⁸ Nor does it appear compelling. It is equally possible to assume that there is an obligation to implement Art. 29(2) to (6) CSDDD that exists independently of the deletion of Art. 29(1) CSDDD. The directive's requirements would then refer to the general provisions that can be invoked under private law to enforce supply chain law.¹⁵⁹

100 The final clarification of this question is reserved for the ECJ. Until then, legal practitioners – unless the German legislature introduces a separate basis for liability – must contend with significant legal uncertainty. The requirements of the Directive under Art. 29(3) CSDDD go beyond German law, at least in part. While some of these differences can be resolved through an interpretation consistent with the directive, where such an interpretation fails due to the wording of the German provisions, there is a risk of a claim for state liability under EU law.¹⁶⁰

101 Discrepancies between the Directive and national law can be found, for example, in the following areas:

- The German statute of limitations provisions of Sections 195 and 199 of the German Civil Code (BGB) are incompatible with Article 29(3)(a) of the CSDDD in two key respects: First, the three-year standard limitation period under Section 195 of the BGB falls short of the five-year minimum period required under EU law; compensation through the ten-year period under Section 199(3)(1) BGB, which is independent of knowledge, is ruled out because Art. 29(3)(a) CSDDD clearly refers to a subjective, knowledge-dependent period. Second, the BGB lacks a structural element corresponding to the directive's principle of termination, so that the period under Section 199(1) BGB continues to run even during an ongoing infringement, which can lead to the de facto frustration of the right to sue in cases of structural, ongoing infringements in the supply chain. An interpretation of Sections 195 and 199 of the BGB that complies with the Directive does not meet these requirements because adjusting the length of the time limit and introducing the cessation principle without an explicit legal basis would be *contra legem*.
- Art. 29(3)(b) CSDDD obliges Member States to ensure that the costs of proceedings are not disproportionately high for claimants; the provision gives concrete form to the right to effective legal protection (see Recital 82). German law on litigation costs appears to be fundamentally compatible with this requirement. In individual cases, however, hardships may arise for those affected that impair the right to effective legal protection: The interplay of a fee system based on the value in dispute, the losing-party principle under Section 91 ZPO, and the actual complexity of supply chain lawsuits creates, in typical cases, a cost risk that can have a deterrent effect on structurally weaker plaintiffs. In light of Art. 29(3)(b) CSDDD, cost relief may therefore be necessary in individual cases. Section 12(3) of the Unfair Competition Act (UWG) could serve as a model provision, under which court and attorney's fees are assessed, upon request, only on the basis of a partial value of the claim adjusted to the economic circumstances of the beneficiary party.

¹⁵⁸ See *Kieninger*, ZIP 2025, 682 (683).

¹⁵⁹ *Nowalder*, ZIP 2025, 2925 (2933).

¹⁶⁰ ECJ, NJW 1992, 165 – *Frankovich*.

- Article 29(3)(e) of the CSDDD requires Member States to allow for court orders requiring the disclosure of evidence, provided that the plaintiff has submitted a sufficient statement of claim based on reasonably accessible facts that supports the plausibility of their claim. Section 142 of the German Code of Civil Procedure (ZPO) does not meet these requirements:¹⁶¹ It requires a fully coherent statement of claim¹⁶² as well as the specific identification of the document to be submitted, and provides neither for the reduction of the burden of substantiation to a reasonable level as required by the Directive nor for the identification of evidence by category.¹⁶³ Furthermore, Section 142 ZPO is limited to documents, whereas Art. 29(3)(e) CSDDD refers generally to evidence.¹⁶⁴ Given the clear wording of Section 142 ZPO, an interpretation in conformity with the Directive is out of the question in this respect. The national legislature is therefore required to create a special statutory disclosure provision, e.g., modelled on Section 33g GWB – which implemented the structurally comparable requirement from Art. 5 of the Antitrust Damages Directive 2014/104/EU.

102 Further questions arise from the provision in Article 29(3)(c) of the CSDDD, according to which Member States must ensure that claimants can seek final or provisional injunctions. Due to its regulatory context, this requirement is widely regarded as a mere procedural rule.¹⁶⁵ However, it is not intended merely to ensure the possibility of interim relief, but presupposes the existence of substantive injunctive relief claims.¹⁶⁶ It is questionable whether this directive requirement continues to apply despite the deletion of Art. 29(1) CSDDD. An argument in favour of this is that it is not directly affected by the amendments associated with the Omnibus I Directive. Furthermore, the objective of the claim – to remedy breaches of the duty of care by taking a measure or ceasing a conduct – exists independently of the existence of a claim for damages at the secondary level. Art. 29(3)(c) CSDDD could thus certainly be understood to require Member States to introduce corresponding substantive injunctive relief claims. Otherwise, recourse to the quasi-negatory claim for removal and injunctive relief under Sections 823(1) and 1004 of the German Civil Code (BGB) would remain analogous, although its objectives may go beyond the requirements of the Directive.¹⁶⁷

e) Liability Consequences of Legislative Inaction: Foreign Liability Law

103 It proves particularly problematic that the Omnibus I Directive, in Article 29(7) of the CSDDD, has removed the mandatory international application of the directive's requirements. This raises the question of whether Member State liability law applies at all in cases involving international supply chains. Admittedly, the Omnibus I Directive states in Recital 49 that Member States are now free to declare their implementing provisions to be overriding mandatory provisions within the meaning of Article 16 of the Rome II Regulation. Furthermore, even without an explicit provision, the courts of the Member States may be required to apply the implementing provisions as overriding mandatory provisions in the context of human rights claims. However,

¹⁶¹ See *Nowalder*, ZIP 2025, 2925 (2931 et seq.); *Steinbrück/Traub*, MDR 2024, 1141 (1149).

¹⁶² BGH, BeckRS 2019, 7939, para. 15.

¹⁶³ See *Musielak/Voit/Stadler*, 22nd ed. 2025, ZPO § 142, para. 4a.

¹⁶⁴ *Steinbrück/Traub*, MDR 2024, 1141 (1148).

¹⁶⁵ *Hagel/Wiedmann*, CCZ 2025, 116 (124); *Kieninger*, ZIP 2024, 1037 (1046); *Nowalder*, ZIP 2025, 2925 (2926).

¹⁶⁶ *Brunk*, CRZ 2024, 130 (135); *Steinbrück/Traub*, MDR 2024, 1141 (1148).

¹⁶⁷ For further details, see *Steinbrück/Traub*, MDR 2024, 1141 (1148).

in light of the deletion of Article 29(7) of the CSDDD, it is unclear whether a court will recognize the national implementing law as having the character of an overriding mandatory provision in the future. Should the provision of Section 3(3) sentence 1 LkSG remain unchanged – which is, however, doubtful (para. 106) – German courts may even be legally prevented from classifying the implementing provisions in this manner.¹⁶⁸

- 104 Unless national implementing law applies as an overriding mandatory provision under Article 16 of the Rome II Regulation, the foreign law of liability of the place where the harmful event occurred would generally be applicable in a human rights action based on the connecting rule set forth in Article 4(1) of the Rome II Regulation (see above, para. 48 et seq.). It is difficult for legal practitioners to predict the specific liability consequences associated with this. In any case, one cannot assume that the application of foreign liability law poses no or only minimal liability risks for companies.¹⁶⁹ On the contrary, in light of the human rights lawsuits filed in England to date (Vedanta, Shell, Dyson, etc.), it can be noted that *common law* is significantly more open to corporate liability than German law (see above, para. 65 et seq.) and also the liability provision in Art. 29(1) CSDDD, which was repealed by the Omnibus I Directive. According to this, it may be sufficient for group liability if the parent company states in its disclosures that it supervises and controls its subsidiaries, while in reality it does not do so and thus evades the responsibility it has publicly assumed.¹⁷⁰ Most recently, the UK Court of Appeal has shown itself open to applying this case law to supplier cases¹⁷¹ and has not encountered any objection from the UK Supreme Court in this regard.¹⁷² Against this backdrop, it could prove beneficial for both affected parties and companies if Member States establish a balanced liability regime when implementing the EU Supply Chain Directive and declare it in its entirety to be an overriding mandatory provision (see already para. 52).

III. Conclusion and Recommendations for the Implementing Legislator

- 105 The deletion of Art. 29(1) CSDDD poses significant challenges for the implementing legislature. These challenges primarily involve developing its own understanding of the contradictory provisions regarding civil liability. In this regard, it has already been explained that there is strong evidence to assume a Member State obligation to ensure civil liability despite the deletion of the liability provision under EU law (see above, para. 90). To this end, the

¹⁶⁸ See, however, *MüKoBGB/Wagner*, 9th ed. 2024, BGB § 823, para. 128, according to which, notwithstanding § 3(3) sentence 1 LkSG, the duties of care could be considered a qualifying provision within the meaning of § 16 of the Rome II Regulation.

¹⁶⁹ See also European Commission, Commission Staff Working Document of Feb. 26, 2025, SWD(2025) 80 final, p. 40: “This [i.e., the deletion of Art. 29(1) CSDDD] will reduce risks for companies within national jurisdictions that have more restrictive liability regimes in terms of the applicable conditions than those set out in Article 29(1) CSDDD. But the overall risk reduction will depend on the possible increase in liability risks in other jurisdictions with conditions more favorable to the victim (e.g., strict liability without a fault requirement).”

¹⁷⁰ *Vedanta v Lungowe* [2019] UKSC 20 para. 53: “[T]he parent may incur the relevant responsibility to third parties if, in published materials, it holds itself out as exercising that degree of supervision and control over its subsidiaries, even if it does not in fact do so. In such circumstances, its very omission may constitute the abdication of a responsibility which it has publicly undertaken.”; see *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Rühl/Brunk*, 1st ed. 2023, LkSG § 3 Anh II para. 45.

¹⁷¹ *Limbu v Dyson* [2024] EWCA Civ 1564 para. 18: “As to the negligence claim, the circumstances capable of giving rise to parent company liability for harm suffered by individuals as a result of a foreign subsidiary’s operations, which it is said can extend to harm caused by the subsidiary’s supply chain contractor”;

¹⁷² See *Limbu v Dyson*, UKSC/2025/0019: “Permission to appeal is REFUSED because the application does not raise a point of law of general public importance.”

German legislature could either repeal the unfortunate¹⁷³ provision in Section 3(3) sentence 1 LkSG, thereby enabling the enforcement of due diligence obligations through tort law. It seems more appropriate, however, to create a separate liability provision that simultaneously implements the requirements of Art. 29(3) to (5) CSDDD.¹⁷⁴ The legislature could simultaneously elevate this provision to the status of an overriding mandatory provision, thereby preventing the application of foreign liability law, which may be less or more favourable to liability. For both affected parties and companies, this would entail a significant gain in legal certainty in the long term.

- 106 If the legislature refrains from enacting an explicit liability provision in light of the political situation, the follow-up question arises as to whether the provision in Section 3(3) sentence 1 LkSG can remain in force. This appears doubtful because the exclusion of liability precludes effective enforcement of the law and is thus likely to contradict the EU legal principle of effectiveness (*effet utile*). Member States may not, in fact, structure their national law in such a way as to render the exercise of rights guaranteed under EU law practically impossible or excessively difficult.¹⁷⁵ Furthermore, Recital 49 expressly calls on Member States to ensure an effective remedy. The liability exclusion in Section 3(3), sentence 1, LkSG is clearly incompatible with this. It is therefore not unlikely that the ECJ will strike down this provision at the first opportunity should the German legislature wish to retain it.
- 107 Regardless of whether civil liability is established by the legislature or the European Court of Justice, there is no need to fear excessive liability risks for companies: First, companies are granted broad discretion in conducting risk analysis and assessment under Art. 8 CSDDD, in setting priorities under Art. 9 CSDDD, and in selecting “appropriate measures” under Arts. 10 and 11 CSDDD, which significantly reduces the scope for judicial review in the context of a damages lawsuit.¹⁷⁶ Second, subject to any relaxation of the burden of proof by case law, those affected face significant evidentiary challenges regarding the causality between the breach of the duty of care and the damage; this allocation of the burden of proof is not altered by the powers to submit evidence under Article 29(3)(e) of the CSDDD.¹⁷⁷ Third, there are significant practical hurdles to private enforcement (geographical circumstances, information asymmetries, limited human and financial resources, etc.), which is why it can be assumed that, even after the introduction of a liability regime, proceedings will be limited to a few strategic lawsuits.¹⁷⁸ This is demonstrated by a comparative look at France, where the Tribunal judiciaire de Paris handed down its first liability judgment on March 12, 2026,¹⁷⁹ even though the French *Loi de Vigilance* has been in effect since 2017. Despite these limitations, civil liability ensures effective enforcement in serious cases and thus contributes to the further development and

¹⁷³ *Kaltenborn/Krajewski/Rühl/Saage-Maaß/Bachmann/Brunk*, 1st ed. 2023, LkSG § 3, para. 122 et seq.

¹⁷⁴ With a corresponding recommendation prior to the adoption of the Omnibus I Directive, see already *Kieninger*, ZIP 2024, 1037 (1048); concurring *Brunk*, CRZ 2024, 130 (138); *Verse*, AcP 225 (2025), 857 (889); *Wais*, JZ 2025, 177 (186).

¹⁷⁵ See ECJ, NJW 2023, 1111, para. 93 – Mercedes Benz; NJW 2025, 2983, para. 68 – Volkswagen.

¹⁷⁶ *Brunk*, CRZ 2024, 130 (133); *Verse*, AcP 225 (2025), 857 (884).

¹⁷⁷ See *Verse*, AcP 225 (2025), 857 (890 et seq.).

¹⁷⁸ For further details, see *Wagner*, ZEuP 2023, 517 (525 ff.).

¹⁷⁹ Paris Commercial Court (34th Chamber), Judgment of March 12, 2026 – Case No. 22/04017 – Sherpa et al. v. Laboratoires de Biologie Végétale Yves Rocher.

greater effectiveness of supply chain law, as well as to the strengthening of the rights of those affected.