



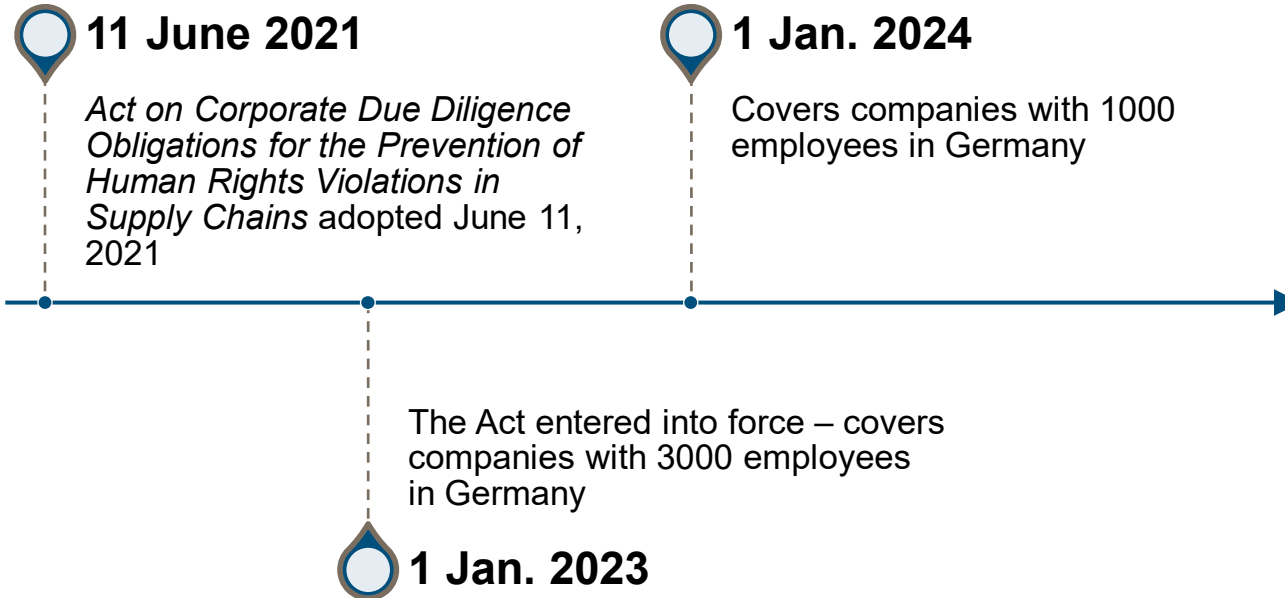
The German Supply Chain Due Diligence Act as seen from the practitioner's perspective

Lessons from a year of existence
of the Supervisory Authority (BAFA)

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Germany's mandatory HRDD regime



Comparison EU CSDD Proposal

	German Act	EU CSDD
Scope	3000 /1000 employees	500 emp. + 150 Mio EUR turnover; risk sectors: 250 emp. + 40 Mio. EUR
Human Rights due diligence obligations	Own business area + tier 1 + ad hoc tier n	Chain of activities, some downstream activiteis
Civil liability	Unclear	Yes
Administrative supervision	Yes	Yes

Companies are taking the LkSG serious

- Creates space for respecting human rights for companies and states
 - vs. Race to the bottom & sole profit focus
- Companies are supportive & acting
 - New personell with HRE expertise
 - cross-functional implementation projects (Compliance, Sustainability, Procurement, HR)
 - Progress on implementing measures -> risk appear in all companies and countries!
- Compliance driven vs. effectiveness driven
 - desktop based, tick box, (superficial) automatization, audits, weak on rightsholder perspective -> incoherent with Art. 18 Taxonomy, UNGP, OECD MNE (...)

Pragmatic idealism - Human rights & implementability

- **Effectiveness** of measures ex ante and ex post
 - are measures actually capable of changing the situation on the ground? Are rightsholder being involved?
- **Appropriate measures**, pragmatic idealism, not perfection
 - obligation of means
 - To esp. Influence, probability & severity of risks and the extent of own contributions
- **Prioritization**
 - focusing on the problems where higher influence & higher risks overlap (spend, risk profiles acc. To indicators)



Beware of ignoring effectiveness



Focus on many tier 1 suppliers with superficial measures instead of prioritizing high risk supply chains to tier n



Focus on whole sale transfer of obligations instead of shared responsibility -> overwhelming for SMEs, wrong incentives for human rights



Doing mere desk based & automatized HREDD instead of involving prioritized rightsholders

Administrative enforcement - BAFA

- Enforcement authority:



- „**BAFA**“/ *Federal Office for Economic Affairs and Export Control* with broad competences, under supervision of *Federal Ministry of Labour and Social Affairs* and *Federal Ministry for Economic Affairs and Climate Action*

- Set-up:
 - 101 employees; 8 departments, including 6 sector specific departments
 - Stakeholder advisory body, including GIHR

Enforcement – admin. Authority

WHEN: control by the authority/BAFA

- (1) **Ex officio** to monitor compliance with HRDD obligations -> obligatory review of reports and **risk-based** controls
- (2) **Upon request** of affected person

HOW:

- Reviews reports, demand information -> conversation, give orders for concrete actions
- Sanctions: Financial penalties and administrative fines; exclusion from the award of public contracts

Enforcement actions so far



- In cooperation with companies
 - Repeatedly communications cooperation approach
 - „joint learning process“



- No fines so far, rather
 - Three rounds of information requests to approx. 500 companies
 - 6 guidances, risk indicators data base



- Setting up complaint channel (anonymous, several languages)

The German state supports companies via information and support



- Helpdesk is supporting companies through free advise
 - Point of contact for any company
- Open Access resources support companies
 - Risk analysis: CSR Risk Check, BHR Navigator: specific guidance for specific rights (Child Labour etc.)
 - KMU Kompass & Siegel Kompass



Outlook and Questions



Thank you