

IMPLEMENTATION OF THE GERMAN SUPPLY CHAIN DUE DILIGENCE ACT CONSIDERING THE EU SUSTAINABILITY DUE DILIGENCE DIRECTIVE IN CONSTRUCTION PROJECTS OF INTERNATIONAL AUTOMOTIVE SUPPLIERS

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Abstract: The German Due Diligence Law (GDDL) and the upcoming EU Sustainability Due Diligence Directive (CS3D) intend to make companies more accountable to protect human rights along their value chains, and to consider environmental aspects that can consequently lead to human rights violations. Especially in the construction sector, there is a substantial risk of violations worldwide. To prevent this from happening in the future processes must be implemented that meet the requirements of the GDDL and CS3D.

Keywords: Supply Chain Due Diligence Act (GDDL), Risk Analysis, Sustainability, EU Sustainability Due Diligence Directive (CS3D).

Introduction

Since 1987, with the publication of the final report of the United Nations World Commission on Environment and Development (Brundtland Report) and the subsequent UN Conference on Environment and Development in Rio de Janeiro in 1992, the idea of sustainability has become increasingly important in the lives of the population.

The topic of sustainability has become an integral part of political, economic, and social activities. In addition to the best-known topics of climate change and its consequential damage, i.e., the ecological area, sustainability also includes economic and social areas. This is described in the literature as the sustainability triangle or the three pillars of sustainability.

One sub-area of the topic of sustainability is the social aspect of supply chains, and another sub-area is the supply chains in construction projects of production facilities of automotive suppliers.

It is now widely known that in many countries raw materials are exploited and inhumane working conditions prevail to increase the prosperity of other countries¹.

Germany is the third largest importing country in the world after the USA and China. With a turnover of more than 500 billion euros, the automotive industry and suppliers are the strongest economic sector in Germany². The automotive and supplier companies have locations all over the world where

their production takes place. In addition, they also need additional third-party goods for their production, which are often manufactured in different countries and transported to their production facilities so that their finished products can then be exported worldwide. As a result, Germany has a large share of international supply chains.

To strengthen human rights in the supply chain of companies, Germany has passed the “Supply Chain Due Diligence Act” (GDPR), or “Supply Chain Act” for short. The law came into force on 01.01.2023 and aims to strengthen the exercise of due diligence by companies along their value chain by establishing a risk management system to prevent or minimize environmental and human rights risks³.

In addition to the GDDL, the European Union is developing an EU Corporate Sustainability Due Diligence Directive (CS3D). The draft was adopted by the Permanent Representatives of the Member States on 14 March 2024. The draft is to be published by June 2024 and transposed into national law by member states by June 2026. CS3D aims to promote responsible and sustainable corporate behavior by considering the activities of companies, their subsidiaries, and the global value chain. Risks must be identified and eliminated. In addition, the directive also requires information on measures to achieve the 1.5°C target⁴.

Compared to the GDDL, the draft of CS3D has significantly stricter regulations in several areas, which must therefore be integrated into the GDDL by June 2026 at the latest.

To meet the legal requirements already in force and at the same time to be able to implement the established future requirements, processes are required to ensure that both the goals set by the legislator and the Group's own goals are successfully implemented. To create an optimal process, known process models are examined and analyzed to subsequently adapt it to the required conditions.

Research Methodology

Every company has its own sustainability goals. The challenge is to combine the company's sustainability goals with the already legally required goals of the GDDL and to combine them into a process for the future new goals resulting from the CS3D.

For the general design of business processes, various approaches are shown in the literature. Central steps on the way to a new or improved business process model are always the identification and analysis, modeling, implementation, and evaluation of the processes.



Fig. 1. Simplified process model [1]

To develop a process that is pragmatic for companies, the following steps must be conducted, documented, and in some cases reviewed and adapted several times:

The starting point in the process model is the identification of all requirements coming from the GDDL and CS3D and what this means specifically in terms of implementation. For this purpose, the legal texts of GDDL and directive draft of CS3D are analyzed regarding the application of the company's own business area. The current state of a company must also be examined to be able to evaluate which requirements of the GDDL and CS3D are already met, partially fulfilled, and thus need to be improved, or which requirements need to be completely reintegrated. Considering the resulting requirements, the process development for the repositioning of the company begins.

As a next step, existing processes will be analyzed from the literature. From a content and process engineering point of view, existing processes serve as a comprehensive source of information for the development of the required modules. The included criteria are then sorted, selected and, if necessary, weighted according to relevance for the company and thus serve as a template for process modules.

The process components are transferred into a process sequence and assessed in practice based on tests and then analyzed regarding weak points, potential for improvement and optimization. In a further step, the knowledge gained from this is used to start modelling new or improved business processes. In addition, benchmarking is another approach. By looking at best practice companies, projects or existing company benchmarks, insights can be gained about the modular process steps and their design in connection with process development for sustainable supply chains. Relevant literature sources and the state of research also provide a starting point for module definition and design. Module development is also supported by the conclusions drawn from the identification and analysis of existing internal supply chain and sustainability processes.

Results

The process of creating and implementing the general process for verifying and complying with the GDDL and later the CS3D can be divided into 3 phases:

1. Phase I: Identification of the required input (Step 1 according to Fig. 1)

2. Phase II: Conversion of input to output (steps 2 and 3 according to Fig. 1)
3. Phase III: Application of output in business activities (step 4-6 according to Fig. 1)

Phase 1: Identification of the required input

The required input includes, in addition to the company's requirements regarding sustainability, also legal requirements. Both GDDL and CS3D intend to make companies more accountable by encouraging companies to better protect human rights along their value chains, and to consider environmental aspects that can consequently lead to human rights violations.

The GDDL, which is already in force, contains a comprehensive catalogue of eleven internationally recognized human rights conventions. Guidelines of conduct or prohibitions of entrepreneurial activity are derived from the legal interests protected there to prevent a violation of protected legal positions. The directives include, in particular, the prohibition of child labor, slavery and forced labor, the disregard for occupational health and safety, the deprivation of a decent wage, the disregard for the right to form trade unions or workers' representatives, the denial of access to food and water, and the unlawful deprivation of land and livelihoods⁵.

It focuses on actual and potential adverse impacts on human rights and the environment through a company's own operations (see Fig. 2), its subsidiaries or through the chain of activities of its business partners. The law gives companies even greater responsibility not only for their own business areas, but also for their direct suppliers and, to a limited extent, indirect suppliers. This means that the responsibility of companies no longer ends at their own factory gates but exists along the entire supply chain.

The GDDL obliges companies with their headquarters, administrative headquarters, registered office, or branch office in Germany to respect human rights by implementing defined due diligence obligations. To achieve this, companies must design their processes in such a way that human rights are upheld within their own company and with suppliers⁶.

One of the core elements of due diligence is the establishment of a risk management system to identify the risks of human rights violations and environmental damage. Only by specifically determining risks can measures be developed to avoid or minimize the risks from the outset. The law specifies what preventive and remedial measures are necessary and requires complaints procedures and regular reporting⁶.

If companies do not comply with their legal obligations, the GDDL provides that fines can be imposed. In addition, if a fine is imposed above a certain minimum amount, there is the possibility of being excluded from public procurement.

CS3D also covers these requirements, but in addition, the catalogue of human rights obligations of companies is expanded to include further rights and prohibitions. Among others, additional aspects must be taken into account: the prohibition of arbitrary or unlawful interference in private life, the right to freedom of thought, conscience and religion, or the prohibition of restricting access to adequate housing for workers. In contrast to the GDDL's limited catalogue of environment-related prohibitions, the canon of prohibitions on measurable environmental damage is extended by a further seven international agreements. These include the Convention on Biological Diversity (CBD) of 1992, the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1973 or the Montreal Protocol of 1987 on substances that deplete the ozone layer. In addition to the expanded environmental bans, companies must prepare and implement an annually updated transition plan in line with the European directive "Corporate sustainability reporting directive" (CSRD) to ensure that their business model and strategy are consistent with the transition to a sustainable economy and limiting global warming to 1.5°C under the Paris Agreement. The CS3D considers that companies submitting a transition plan on climate change mitigation in accordance with Articles 19a, 29a and 40a of Directive (EU) 2013/34 have complied with their obligation⁶.

Another key difference between GDDL and CS3D is the business partners to consider. While GDDL refers to direct subcontractors and indirect subcontractors are only to be considered if they present "substantiated knowledge" of breaches of the GDDL's obligations, CS3D is aimed at chains of activity of companies⁷. This includes all activities of a company's upstream business partners in connection with the manufacture of goods or the provision of services by the company, including the planning, extraction, procurement, manufacturing, transportation, storage and supply of raw materials, products or parts of the products, and the development of the product or service. In addition, the chain of activity includes the activities of an undertaking's downstream counterparties in connection with the distribution, transport, storage, and disposal of the product, where the business partners conduct those activities directly or indirectly for the undertaking or on behalf of the undertaking. This is also intended to cover the product marketing chain accordingly.

Due to the requirements of the GDDL, companies are now subject to the following due diligence obligations:

1. Establishment of a risk management system.
2. Define internal responsibilities.
3. Regular risk analyses.
4. Publish a policy statement.

5. Anchoring preventive measures in the company's own business area and vis-à-vis direct and indirect suppliers.

6. Implement remediation.

7. Establishment of a complaint's procedure.

8. Documentation of the implementation of the requirements and reporting⁷.

The CS3D includes six steps of due diligence:

1. Integration of due diligence obligations into corporate policy and management systems.

2. Identify and assess adverse human rights and environmental impacts.

3. Preventing, stopping, or minimizing actual and potential adverse human rights and environmental impacts.

4. Evaluation of the effectiveness of the measures.

5. Communication.

6. Provision of remedies⁴.

Phase 2: Conversion of Input to Output

This phase includes the definition of process steps and their conversion into outputs.



Fig. 2. Process Setup Flowchart [2]

The influencing variables from the input result in the requirements and tasks for the design of the modules of the process to be developed.

In summary, the approach to general process modelling presented above is the starting point for the design of a general process model for the development of sustainable supply chains. Considering the current state of research and technology, the analysis of existing sustainability processes and projects as well as framework conditions to be defined, the supply chain sustainability process is derived as a chain of tasks in a first step.

As a result of this specification, the following core processes could be identified:

1. Regulations Management – Strategy Development and Implementation – Define, implement, and improve corporate strategy considering regulations with company-wide relevance.

2. Risk management – analyzing risks and mitigating them through preventive measures.

3. Incident Management – Monitor potential incidents and stop breaches.

4. Training – Guidance and training of employees and suppliers in relation to GDDL and CS3D

5. System review – review and consistent improvement of the process

6. Reporting – Internal and external reporting on the system and its results

With the help of the entrepreneurial and sustainable specifications, the previously derived process steps of the task chain are worked out into detailed process modules and structured in a model. This results in a model template, which in the next step is subjected to an entrepreneurial adaptation through the inclusion of concrete sustainable goals and strategies. The resulting instrumentalized tools support the implementation as well as the final evaluation and optimization of the process model.

To meet the complex requirements of the core processes in the time available until the mandatory implementation of the GDDL, a further division into work packages is required. The various work packages will be worked on in parallel and coordinated with each other at regular intervals, so that a comprehensive overall package of measures will be created, which will be put into practice.

For strategy development and implementation, various work packages were defined based on the requirements and the boundary conditions to be considered.

Work package 1 covers the area of Abstract Risk Analysis and Supplier Identification. The two main tasks of this work package are to develop a concept for the analysis of industry risk and a prioritization process for supplier selection.

The second work package includes the Concrete Risk Analysis and a Deep Dive Methodology. Development of a supplier desk-based risk assessment and responsible value chain related audit guidelines.

Work package 3 deals with the Risk Mitigation and Prevention Concept. In this area, the CAP guidelines, as well as the supplier training and escalation management.

Software, reporting and internal management will be dealt with in work package 4.

Work package 5 includes instruction development, trainings, and communication. This work package refers to the training of the own employees and the development of instructions for documentation, communication.

The core risk management process is divided into two work packages. The first package deals with abstract risk analysis and supplier identification. For this purpose, a concept is being developed to be able to assess the industry risk considering the country risk. Another focus is the prioritization methodology, in which criteria are defined to select appropriate suppliers. This will be necessary for existing suppliers as well as for new suppliers and must be adapted

accordingly. The goal is to get a selection of suppliers that need to be looked at in more detail.

In the second work package, the concrete risk analysis and the Deep Dive Methodology will be developed. To this end, selected suppliers are subjected to an individual risk analysis in which supplier data is checked and suppliers are actively involved. The results are classified and documented with the help of an evaluation card. The follow-up of the risk analysis includes various measures: Initiate/Support audit process, Mitigation/Escalation process, supplier performance evaluation and commercial impact.

Incident management includes the Mitigation and prevention concept as well as software, reporting and interface management work packages. The Mitigation and Prevention concept covers five areas that contribute to the prevention of violations of GDDL and CS3D. To this end, supplier training, audit mitigation, contract clauses and escalation levels and procedures are developed.

In order to centrally record all information and evaluations from the previous work packages and make them accessible to the relevant employees, reporting offices and institutions, suitable tools are required. This is the subject of the work package Software, reporting and interface management.

In the core process of instruction development, training and communication, internal guidelines as well as instructions for supplier selection and the required training materials are developed. The design of internal and external reporting is also an aspect that will be worked out by this work package.

All developed measures must first be assessed in a test phase on pilot projects. As a result, optimization opportunities can be implemented before the measures have to be applied to all employees of a company in a binding manner.

Phase 3: Application of the output in the planning and execution phase

The starting point for the introduction of “formalized rules and procedures” are the results of the core processes. Regions and suppliers were divided into distinct levels of prioritization. As a first step, the measures are implemented at important suppliers who are rated as high-risk before suppliers are considered from the next higher priority level.

Conclusion

The Supply Chain Due Diligence Act provides companies with important incentives to deal with this issue more intensively. Companies are encouraged to work with their business partners to promote compliance with appropriate standards throughout the value chain by identifying, preventing, and minimizing

risks of negative impacts on human and environmental rights in their operations and supply chains, including appropriate grievance mechanisms and reporting. Companies expect their suppliers to respect human and environmental rights as set out in applicable laws. In addition, suppliers are required to implement appropriate due diligence processes. Companies need to support their business partners and especially their suppliers, e.g., through appropriate monitoring systems, corrective action plans and training.

As can already be seen, the topic of sustainable supply chains is complex, with many requirements, possibilities, and measures. In such complex situations, formalized rules and processes for humans should be introduced with the help of instrumentalized tools and integrated into the strategic and operational processes [3].

In the meantime, there is still room for improvement in the practical implementation. To minimize additional costs for companies, processes and measures should be designed in such a way that the GDDL already in force is covered on the one hand and the even more extensive EU regulation on supply chains (Corporate Sustainability Due Diligence Directive (CS3D)) in the future.

Notes

- ¹ Braune, Anna (2024): Was das Lieferkettengesetz für die Baubranche bedeutet.
Available at: <https://blog.dgnb.de/lieferkettengesetz-baubranche/>. Retrieved on 11.04.2024 at 08.39.
- ² Statistisches Bundesamt (Destatis) (2024): Wichtigste Industriezweige in Deutschland nach Umsatz im Jahr 2022.
Available at: <https://de.statista.com/statistik/daten/studie/241480/umfrage/umsaetze-der-wichtigsten-industriebranchen-in-deutschland/>. Retrieved on 14.04.2024 at 18.25.
- ³ DWF Group (2024): CS3D vs the LkSG – key differences between the EU CS3D and the German LkSG.
Available at: <https://dwfgroup.com/de-de/news-and-insights/insights/2024/3/cs3d-vs-the-lksg>. Retrieved on 11.04.2024 at 17.24.
- ⁴ Würz, Karl (2024): EU-Lieferketten-Richtlinie verabschiedet!
Available at: https://www.haufe.de/compliance/recht-politik/ein-ueberblick-die-eu-lieferketten-richtlinie-csddd_230132_612132.html. Retrieved on 12.04.2024 at 17.30.
- ⁵ Bauprofessor (2023): Neues Lieferkettengesetz: So wirkt es sich auf kleinere Unternehmen aus.
Available at: <https://www.bauprofessor.de/news/neues-lieferkettengesetz-so-wirkt-es-sich-auf-kleinere-unternehmen-aus/>. Retrieved on 11.04.2024 at 08.39.
- ⁶ Rothermel, Martin / Ruenz, Sebastian / Dahmen, Julius (2023): EU-Lieferkettenrichtlinie vs. LkSG und EU-Nachhaltigkeitsberichterstattung

Available at: https://www.taylorwessing.com/-/media/taylor-wessing/files/germany/2023/06/taylor-wessingcs3dlksgihk_06062023.pdf. Retrieved on 09.04.2024 at 14.15.

- ⁷ Wiedmann, Michael (2024): CS3D versus LkSG: Das Europäische und das deutsche Lieferkettensorgfaltspflichtengesetz im Vergleich.

Available at: <https://www.dqsglobal.com/de-de/wissen/blog/cs3d-versus-lksg-das-europaeische-und-das-deutsche-lieferkettengesetz-im-vergleich>. Retrieved on 09.04.2024 at 14.36.

References

1. **Binner**, H. (1997): Integriertes Organisations- und Prozessmanagement. München: Carl Hanser Verlag, Pages 5-8.
2. **Koschlik**, M. (2019): Verfahren zur ganzheitlichen Nachhaltigkeitsintegration bei öffentlichen Baumaßnahmen im In- und Ausland. München: Dr. Hut Verlag. Page 99.
3. **Eisenführ**, F., M. **Weber** (2003): *Rationales Entscheiden*. Edition 4. Berlin/Heidelberg: Springer Publisher. Page 207.

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ПРИЛАГАНЕ НА ГЕРМАНСКИЯ ЗАКОН ЗА НАДЛЕЖНА ПРОВЕРКА НА ВЕРИГАТА НА ДОСТАВКИ, КАТО СЕ ИМА ПРЕДВИД ДИРЕКТИВАТА НА ЕС ЗА НАДЛЕЖНА ПРОВЕРКА НА УСТОЙЧИВОСТТА В СТРОИТЕЛНИ ПРОЕКТИ НА МЕЖДУНАРОДНИ АВТОМОБИЛНИ ДОСТАВЧИЦИ

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Резюме: Германският закон за надлежна проверка (GDDL) и предстоящата Директива на ЕС за надлежна проверка на устойчивостта (CS3D) имат за цел да

направят компаниите по-отговорни за защитата на правата на човека по техните вериги за създаване на стойност и да вземат предвид екологичните аспекти, които впоследствие могат да доведат до нарушения на правата на човека. Особено в строителния сектор има висок риск от нарушения в световен мащаб. За да се предотврати това да се случи в бъдеще, трябва да се приложат процеси, които отговарят на изискванията на GDDL и CS3D.

Ключови думи: Закон за надлежна проверка на веригата на доставки (GDDL), Анализ на риска, Устойчивост, Директива на ЕС за надлежна проверка на устойчивостта (CS3D).

За автора

Никол Серторели е докторант в Университета по библиотекознание и информационни технологии в София, България, в областта на социалните комуникации и информационните науки – организация и управление на информационните процеси. Тя има магистърска степен по науки за околната среда, магистърска степен по строително инженерство и диплома по инженерство по архитектура и е член на Камарата на архитектите в Германия. Благодарение на професионалния си опит в строителния сектор, докато работи за неправителствени организации в развиващите се страни, а по-късно и за международен автомобилен доставчик, изследователският ѝ интерес е разработването на процес за прилагане на критерии за устойчивост в строителните проекти.

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