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Abstract

The world is in a constant state of change. The foundations for today's technological progress were laid not only since the beginning of globalization, but also long before. Nevertheless, the expansion of global trade and the transformation of the world do not come without a price. The already noticeable effects of climate change are a reminder of the price of unrestrained growth. In order to take countermeasures in time, efficient solutions must be found quickly. In doing so, it must be borne in mind that various interests must be reconciled.

Resource-conserving sustainable production and consumption change is a cost and transformation factor that represents a task for society as a whole. Therefore, a good balance and consideration between the different factors is required in order to manage a change.
In addition, it is also important to see opportunities from this starting position. Opportunities for new business fields, better investments that can pave the way to a fairer world.

This understanding has reached the center of society. The European Union is also picking up on this and has taken a number of measures to pave the way for transformation. Among other things, numerous regulatory instruments have been created in directives that act at the interface between business and sustainability and therefore unite the issues that are currently being prioritized in a globalized world.

This master thesis will therefore show how the European Union wants to integrate sustainability issues into the codes of the companies with the instruments of directives. As an example, the CSRD Directive (Corporate Sustainability Reporting Directive) and the CSDD Directive (Corporate Sustainability Due Diligence Directive) will be discussed and the latter will be compared in particular with the German Supply Chain Act. A cautious outlook will also be ventured as to how well the aforementioned regulatory instruments can actually improve aspects relevant to climate policy.

Key words: climate protection, climate change, directives, supply chains, corporate reporting, sustainability, CSRD, CSDDD, ESG, globalization, transformation

Abstraktum

Die Welt befindet sich in einem stetigen Wandel. Nicht erst seit Beginn der Globalisierung, sondern auch schon lange zuvor wurden die Grundpfeiler für den heutigen Technologiefortschritt gelegt. Dennoch kommen die Ausweitung des globalen Handels und die Transformation der Welt nicht ohne einen Preis. Die schon jetzt spürbaren Auswirkungen des Klimawandels sind auch ein Mahnmal für den Preis des ungebremsten Wachstums.
Um noch rechtzeitig gegenzusteuern gilt es, schnell effiziente Lösungswege zu finden. Dabei ist zu beachten, dass verschiedene Interessen in Einklang gebracht werden müssen.

Ressourcenschonende nachhaltige Produktion und Konsumumstellung ist ein Kosten- und Transformationsfaktor, der eine gesamtgesellschaftliche Aufgabe darstellt. Um einen Wandel zu bewältigen ist daher vor allem eine gute Balance und Abwägung zwischen den verschiedenen Faktoren erforderlich.
Zudem gilt es, aus dieser Ausgangsposition auch Chancen zu sehen. Chancen für neue Geschäftsfelder, bessere Investitionen, die den Weg zu einer gerechteren Welt ebnen können.

Dieses Verständnis ist in der Mitte der Gesellschaft angekommen. Auch die Europäische Union greift dies auf und hat eine Reihe von Maßnahmen ergriffen, um den Weg zu einer Transformation zu bereiten. Unter anderem wurden zahlreiche Regelungsinstrumente in Richtlinien geschaffen, die an der Schnittstelle zwischen Wirtschaft und Nachhaltigkeit agieren und daher die Themen vereinen, die in einer globalisierten Welt derzeit zu priorisiert behandelt werden.

Diese Masterarbeit soll daher im Folgenden aufzeigen, wie die Europäische Union mit dem Instrumentarium von Richtlinien Nachhaltigkeitsthemen in die Kodizes der Unternehmen integrieren will. Als Beispiel dazu werden die CSRD-Richtlinie (Corporate Sustainability Reporting Directive) und die CSDDD- Richtlinie (Corporate Sustainability Due Diligence Directive) erörtert und letztere insbesondere mit dem deutschen Lieferkettensorgfaltspflichtengesetz verglichen. Auch soll ein vorsichtiger Ausblick dahingehend gewagt werden, wie gut mit den genannten Regelungsinstrumentarien tatsächlich klimapolitisch relevante Aspekte verbessert werden können.

Stichwörter: Klimaschutz, Klimawandel, Richtlinien, Lieferketten, Berichtspflichten, Nachhaltigkeit, CSRD, CSDDD, ESG, Globalisierung, Transformation

Table of content

A. Sustainability as a transformative factor

I. Background

Sustainability has been a particular focus for some years now. The inclusion of sustainability covers areas of everyday private life as well as professional life. Thus, this topic concerns not only natural persons, but also legal entities. Sustainability is not only a topic of general interest. Concrete structures with regard to sustainable corporate management can mean a real competitive advantage for companies.
In particular, it is also in line with the standards of the time and the seriousness of the situation with regard to climate change to align a company accordingly now. The urgency was once again highlighted by the goals and resolutions of the Paris Agreement of 2015, especially with regard to the 1.5 degree target. The European Union has also taken this as an opportunity to make concrete specifications and provisions towards a sustainable economic positioning of companies. In this respect, the European Union has adopted a number of directives that are intended to pave the way for the transformation to climate neutrality.

II. Goals and research questions

In some cases, sustainability aspects are perceived as opaque, as there are no standardized and globally recognized regulations. The aim of this paper is therefore first to show how some selected European directives want to bring this topic into the corporate governance of a company. At the same time, a cautious outlook is to be ventured as to the extent to which the implementation of sustainable corporate governance can help achieve the climate goals. In doing so, it will also be necessary to critically examine the extent to which the directives actually provide support and the right instruments for member states of the European Union, so that the goals they have set themselves can be realistically achieved at all.

This topic also includes the anchoring of human rights protection in the value chain. The focus of this paper is explicitly on the aspects of sustainability in the sense of environment and climate, in order to present the guidelines and the corresponding considerations in a more condensed way.

III. Excursus: Sequence of the legislative process from EU level

At the outset, reference is made to the legal status on which this work is based since some of the selected directives have not yet entered into force, but are still in a concrete phase of the legislative process.

The background of these different drafting stages is the legislative procedure of the European Union: According to Art. 294 TFEU[1], the European Commission submits a proposal to the European Council and the European Parliament on a law to be adopted or (as in this case) a directive.
Thereafter, the first reading takes place; if the Council approves the draft, it is adopted in the version of the European Parliament's position. Otherwise, the procedure has to be continued in second reading. If the procedure continues, a third reading and conciliation may also take place, cf. Art. 294 TFEU.

Accordingly, the elaborations referred to in this paper are drafts and not the final version.

[1] Consolidated Version of the Treaty on the Functioning of the European Union (2012) OJ C326/47.

B. Introcuction to Corporate Governance

The starting point of the whole discussion is the corporate governance of a company. This is also referred to as corporate constitution.[2] It should be noted that corporate governance is not a completely voluntary institution, but can have consequences for the managing director from the perspective of liability law.[3] In principle, the addressees of corporate governance are various corporate bodies.[4] In essence, this is a central task of the Executive Board, which is therefore reserved for executive bodies in the company.[5]

Corporate governance aims to improve the quality of the company's management.[6] In particular, sustainable actions should take into account the interests of shareholders from an economic perspective.[7] It follows that corporate governance is decisive for the external perception of a company.[8] This is already evident from the fact that a company with a strong economic position is more likely to be able to convince the capital market of its efficiency than companies that are less well positioned.[9] This is where the link to compliance comes in. The terms overlap in part, but the term "compliance" is mainly included in corporate governance.[10]

Corresponding to the concept of corporate governance is that of corporate social responsibility. In essence, this means that companies bear a social responsibility by virtue of their position in society.[11]
The outstanding importance of sustainability criteria in today's world is made clear by the 2030 Agenda adopted by the United Nations.[12] The resolution, which came into force on 01.01.2016, contains universal targets for developing, emerging and industrialized countries with regard to sustainable development.[13] Here, too, it is a question of social responsibility and harmony with

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[2] *Stephan/Tieves*, Münchener Kommentar zum GmbHG 3. Aufl. 2019, § 37, Rn. 36.
[3] Ibid.
[4] *Koch*, Aktiengesetz, 16. Aufl. 2022, AktG § 76 Rn. 37.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] *Walden*, Corporate Social Responsability, NZG 2020, 50
[12] *Huck/Kurkin*: Die UN-Sustainable Development Goals (SDGs) im transnationalen Mehrebenensystem, ZaöRV 2018, 379.
[13] Ibid.

sustainable management of the earth in order to be able to achieve climate goals in the long term.[14]

The institute of corporate governance, which has existed for a long time, is therefore being further transformed, due to the steadily growing importance of sustainability, social justice and economic responsibility. The term corporate governance is being expanded to include the word sustainable, because it is no longer just an insignificant secondary factor. Rather, in a world of climate extremes and globalization, sustainability has become an essential core factor in setting up a company. This is not only the case with regard to the internal constitution of the company.

The aspect of sustainability is of considerable importance, particularly in relation to the external presentation of the company and how it is perceived.
Regardless of whether the internal motives in achieving these sustainability goals are directed more toward economic interests or toward ecological and social interests, however, this is precisely the development that is required to create the transformation toward a fairer world as a community.

[14] *Huck/Kurkin*, ZaöRV 2018, 379.

C. Selection of EU directives

I. Introduction

In order to implement the Paris Agreement, the European Union has issued several directives that are intended to facilitate the transformation to greater sustainability. To provide an initial overview, the following section focuses on the CSRD Directive (Corporate Sustainability Reporting Directive) and the CSDD Directive (Corporate Sustainability Due Diligence Directive). These two directives were selected because the changes they will bring about will not become relevant until 2022 and 2023. They are therefore directly in line with the times.
The guidelines also reflect the rapidly changing current understanding of sustainability relevance in relation to climate protection. It is possible that the legal regulations would not have been implemented to this extent or with less rigor a decade ago.
At the same time, the areas of reporting requirements (CSRD) and value chains (CSDD) cover core areas of corporate structures. These have such a decisive influence on the corporate governance of companies that it is questionable whether they should not be taken into account.

II. CSRD

With the CSRD (Corporate Sustainability Reporting Directive), the European Union has created a new directive on corporate reporting. As sustainability reporting obligations are now integrated, the new CSRD Directive replaces the previously applicable NFRD Directive (Non-Financial Reporting Directive)[15].

The new directive represents a comprehensive change to the previous legal situation.[16] In particular, the regulations should become legally binding in order to introduce certain standards, which has also been intended with the previous version.[17] Furthermore, it is a goal to promote transparency, as it requires companies to disclose significantly more internal procedures in the field of ESG (Environmental, Social, Governance).[18]

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[15] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (2014) OJ L330/1.
[16] *Needham/Warnke/Müller*, Grünes Licht für die Corporate Sustainability Reporting Directive (CRSD): Ein Überblick über die finalisierten Regelungen zur Nachhaltigkeitsberichterstattung, IRZ 2023, 41.
[17] *Eufinger*, Die neue CSR-Richtlinie – Erhöhung der Unternehmenstransparenz in Sozial- und Umweltbelangen, EuZW 2015, 425.
[18] Ibid.

1. Importance of Corporate Social Responsibility

The implementation of the directive is of outstanding importance for the companies subject to it. The starting point of the directive is the area of corporate social responsibility. The concept of corporate social responsibility combines the transparency required by the European legislator with regard to the respective companies.[19]
This transparency relates to topics such as environmental protection and social responsibility.[20] As the term itself suggests, corporate social responsibility is a concept that exists only on a voluntary basis.[21] Nevertheless, also in terms of the topics covered by CSR, a development can be observed to the effect that CSR considerations can now be a decisive factor in the orientation and competitiveness of companies, showing a soft law in the area of CSR considerations was formed before the implementation of the directive.[22] The problem is that it may not be possible to assume uniform implementation, as many different factors play a role in the actual relevance of CSR topics for a particular company.
With these considerations in mind, the initially applicable CSR Directive was brought into being at an early stage, but with the new directive, the reporting of sustainability issues has been significantly stepped up.[23]

2. Content

a. Background and key points

By adapting the directive, the sustainability standards developed by the European Union are transformed into law.[24] Until this could be the case, a number of preliminary legal considerations took place within the European Union. The uniform European standards for sustainable reporting bear the name ESRS. They are based on internationally recognized guidelines and were developed by EFRAG (European Financial Reporting Advisory Group) and submitted to the European Commission.[25]

[19] *Eufinger*, EuZW 2015, 425.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] *Needham/Warnke/Müller*, IRZ 2023, 41.
[24] *Needham/Warnke/Müller*, IRZ 2023, 44.
[25] Ibid.

For this reason, a brief overview of the core topics covered by the directive will be provided. In order to avoid a sprawling scope of application, the guideline is intended to cover the following areas in particular: Environmental Factors, Social and Human Rights Factors, and Governance Factors.[26]

The environmental factors to be reported on include: climate change mitigation, climate change adaptation, water and marine resources, resource use and the circular economy, pollution, biodiversity and ecosystems.[27]
In the area of governance factors, the following are to be covered in particular: the role of the company's management bodies in connection with the specified sustainability aspects, information on the control systems relating to sustainability reporting, ethics of the company and other aspects.[28]

b. Comparison with the previous version

A comparison with the previous directive shows that the scope of application has been significantly expanded. This applies both horizontally and vertically, i.e. the depth of the reporting has also been increased.[29]

First of all, a clear expansion of the personal scope of application can be seen.[30] This is because, in addition to the large companies covered by the directive, i.e. companies with more than 500 employees, listed companies are now covered, with the exception of micro-enterprises.[31]

Listed SMEs (small and medium-sized enterprises) are in the scope of the directive, taking into account certain characteristics.[32] It should be noted, that in the event that SMEs are affected by

[26] Directive (EU) 2022/2464 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (2022) OJ L322/15.
[27] Ibid; Since the focus of the paper is on the EU's climate policy, it does not present the social and human rights factors.
[28] Ibid.
[29] Council of the EU, Press release, 28.11.2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/, retrieved on 24.02.2023.
[30] *Needham/Warnke/Müller*, IRZ 2023, 42.
[31] Council of the EU, Press release, 28.11.2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/, retrieved on 24.02.2023; *Needham/Warnke/Müller*, IRZ 2023, 42.
[32] Ibid.

the European Union, an exemption is provided for a period of three years, according to which they will be exempt from the regulations until 2028.[33]

For non-European companies, the scope of application of the Directive is opened if annual sales exceed 150 million euros within the European Union, if a subsidiary or branch is maintained and if certain values are exceeded.[34] The number of companies subject to reporting requirements will increase significantly as a result of these changes.[35]

The criterion of materiality was also explicitly amended.[36] Thus, the model of double materiality was created in the new directive.[37] This achieves that the scope of reporting is expanded.[38] The concept of dual materiality is set out in Art. 19a Paragraph 1 and Art. 29a Paragraph 1 of the Directive.

The European Commission describes the concept of dual materiality as follows:

> *„ (...) require reporting not only on information to the extent necessary for an understanding of the undertaking's development, performance and position, but also on information necessary for an understanding of the impact of the undertaking's activities on environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters. Those Articles therefore require undertakings to report both on the impacts of the activities of the undertaking on people and the environment, and on how sustainability matters affect the undertaking. That is referred to as the double materiality perspective, in which the risks to the undertaking and the impacts of the undertaking each represent one materiality perspective. The fitness check on corporate reporting shows that those two perspectives are often not well understood or applied. It is therefore necessary to clarify that undertakings should consider each materiality*

[33] Council of the EU, Press release, 28.11.2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/, retrieved on 24.02.2023; *Needham/Warnke/Müller*, IRZ 2023, 42.
[34] Council of the EU, Press release, 28.11.2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/, retrieved on 24.02.2023.
[35] *Needham/Warnke/Müller*, IRZ 2023, 42.
[36] Council of the EU, Press release, 28.11.2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/, retrieved on 24.02.2023.
[37] Ibid.
[38] *Needham/Warnke/Müller*, IRZ 2023, 43.

perspective in its own right, and should disclose information that is material from both perspectives as well as information that is material from only one perspective."[39]

In addition, the temporal connecting factor changes.[40] Thus, reporting must be done not only for the past but for the future.[41] This is then to be implemented by specifying sustainability goals and KIPs.[42]

The concept of sustainability is then given its own section in the so-called management report.[43] In this respect, the bond becomes an obligation.[44] The obligation is accompanied by the external audit of the report on sustainability that is therefore prescribed.[45] In order to keep up with the times and meet the prevailing standards of digitalization, a requirement of electronic reports is introduced.[46]

It is noteworthy that a corporate obligation to comply with European sustainability reporting standards comes through the directive.[47] This is only logical, as this is the only way to achieve a uniform regulatory basis.[48] As a result, a simplified comparability of the reports and processes in the context of digitization is reached.[49]

aa. Benefits

The adaptation of the legal framing of sustainability reporting gives it a completely new role in the large regulatory spectrum of the European Union. The explicit implementation now makes it clear that these issues can no longer be overlooked.

The advantage of the regulations is, on the one hand, that sustainability aspects are given a new status. This applies in particular in comparison to the publication of financial information by companies.[50]

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[39] Directive (EU) 2022/2464 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (2022) OJ L322/15 (29).
[40] Council of the EU, Press release, 28.11.2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/, retrieved on 24.02.2023.
[41] Ibid.
[42] Ibid.
[43] *Needham/Warnke/Müller*, IRZ 2023, 42.
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] *Needham/Warnke/Müller*, IRZ 2023, 44.
[48] Ibid.
[49] Ibid.
[50] *Needham/Warnke/Müller*, IRZ 2023, 46.

The adapttion creates a chain fraction. On the one hand, companies will inevitably have to adapt or change their business mechanisms, if they have not already done so. It is an inference from the fact that the implementation or non-implementation of sustainability standards will be publicly visible. The public is the decisive criterion, because it is from this that the external perception of the company is derived. Admittedly, depending on the industry, sustainability aspects can be of decisive importance and may even represent a competitive advantage.

Corresponding to the aspect of the new significance is the fact that a paradigm shift has occurred overall with the guideline.[51] The fact that reporting used to serve only to provide information on the capital market and is now used to draw attention to sustainability aspects states that argument.[52] There is therefore an urgent need to move away from focusing solely on targeted profit optimization.

In addition, the regulations also unmistakably represent a tightening of the previous (incomplete) legal situation. However, against the backdrop of the objective of climate neutrality, this is expressly seen as an advantage rather than a disadvantage. However, it is important not to completely disregard entrepreneurial interests; this applies in particular to SMEs, for which a more detailed explanation is provided in the case of disadvantages.

Another advantage of the regulations is that they are intended to promote and advance digitization.[53] In particular, the aim is to create equivalence between the sustainability report and publications on corporate finances in order to generate an equal status in the long term.[54]

bb. Shortcomings

The disadvantages of the guidelines must be critically examined. At the very least, the ultimate effectiveness of the regulations has to be regarded as problematic. It is true that the regulations provide for the preparation of the reports described. However, on the one hand, there is no obligation for an external, i.e. independent, review of the reports. It is thus at least questionable whether this creates a gateway for concealment or inaccuracies.

[51] *Spießhofer,* Sustainable Corporate Governance, NZG 2022, 437.
[52] Ibid.
[53] *Needham/Warnke/Müller*, IRZ 2023, 44.
[54] Ibid.

On the other hand, the regulations also do not contain any specific liability. However, Art. 30 of the Directive will apply at least in the following version:

> *„(1) Member States shall ensure effective investigations and sanctions to detect, correct and prevent inadequate performance of financial statement audits and sustainability reporting assurance.*
>
> *(2) Without prejudice to their civil liability regimes, Member States shall provide for effective, proportionate and dissuasive sanctions for statutory auditors and audit firms that do not comply with the rules adopted for the implementation of this Directive and, where applicable, Regulation (EU) No 537/2014 when carrying out statutory audits or sustainability reporting attestations.“*[55]

The word "proportionate" opens up the possibility for a relatively broad leeway within the member states; depending on the interests guiding the legislator, there is thus the possibility that the sanctions may vary considerably in severity. It would hence be desirable in this context to specify a minimum level for the corresponding sanctions. Still, it must be given credit that the possibility is granted at all; reliance on corresponding voluntariness has unfortunately not led to the desired goals in other areas either.

Nevertheless, this criticism must be viewed in a differentiated manner and the possibility must be taken into account that the concern about non-implementation may be unfounded. For example, German law regards failure to implement reporting requirements as an administrative offense with the consequence of fines of up to 10 million euros.[56] In addition, the criminal offense of inaccurate presentation under Section 331 of the German Commercial Code (HGB) has also been established, according to which prison sentences of up to 3 years are possible in particularly serious cases.[57]

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[55] Directive (EU) 2022/2464 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (2022) OJ L322/15.
[56] Bundesanstalt für Finanzdienstleistungsaufsicht, Rechtsfolgen von Verstößen gegen die Mitteilungspflicht, n.d., https://www.bafin.de/DE/Aufsicht/BoersenMaerkte/Emittentenleitfaden/Modul2/Kapitel1/Kapitel1_2/Kapitel1_2_10/kapitel1_2_10_node.html, retrieved on 08.03.2023.
[57] Handelsgesetzbuch (HGB), BGBl. Teil III Nr. 4100-1.

Since only one member state is involved, it remains the case that for the time being there is no uniform sanction probation. It remains to be seen whether this will become established.
A differentiated view of this criticism must take into account that this is a public process. The question of whether explicitly standardized civil liability is necessary at all depends on the extent to which the reports that can be viewed by the public actually require sanctions that go beyond this. As already explained above, this can represent a competitive advantage or disadvantage, so that this can possibly constitute the greater sanction than a concrete threat of punishment.

Another potential disadvantage is the indirect burden on small and medium-sized enterprises (SMEs). This follows from the fact that even if they are excluded from a direct reporting obligation, they still remain part of the value chain. For this reason, they are, conversely, again affected by mandatory reporting.[58] While it should be noted that these consequences have been recognized by the European Union and are to be mitigated somewhat by the exemption outlined above, under which SMEs will be exempt from disclosing information until 2028.[59]
However, it remains to be seen whether this is still in an appropriate relationship between the expense and the size of the company concerned and can possibly only be considered in detail after the end of the transitional period.

cc. Interim result

It should be noted at the outset that the new directive will bring about considerable transformation work with regard to the significance of sustainability aspects in companies. As the consideration above shows, this can never be done without restrictions for the companies concerned. Therefore, it must be taken into account that the issue of sustainability is indeed of crucial importance and that companies are a significant factor in this. However, the burdens must also be in proportion to the benefits generated. The companies affected must not be left entirely on their own, i.e. the implementation of the climate targets cannot be passed on to the companies alone. This does not appear to be the case at present, particularly in view of the exemptions created for SMEs, which is why positive aspects can be expected with the upcoming sustainability reporting obligations with regard to the climate targets.

[58] *Needham/Warnke/Müller*, IRZ 2023, 43.
[59] Council of the EU, Press release, 28.11.2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/, retrieved on 24.02.2023.

c. Implementation schedule

Furthermore, the question arises as to when the implementation of the new criteria will become an obligation. The current time frame for the CSRD Directive is that it was adopted by the European Council in 2022 and will now come into force on January 5, 2023.[60] The initial application of the CSRD Directive will then take place from 2024, as the national legislator has time until July 6, 2024 to transpose the Directive into national law.[61] Specifically, the implementation will apply from 2024 for companies that are already subject to reporting requirements under the old directive.[62] Reporting by the companies is then scheduled for the year 2025.[63] From 2025, the directive will continue to be mandatory for large companies, so that reporting by these companies will be required in 2026.[64] Finally, small and medium-sized enterprises as well as non-EU enterprises follow in 2026-2028.[65] The latter have time until 2028.[66] For small and medium-sized companies with interaction on the capital market, there is an "opt-out" option, i.e. the initial application of the directive can be postponed, specifically by two years.[67]

3. Suitability of the directive for achieving climate targets

The concrete effects of the directive can only be assessed scientifically once it has been fully implemented in the member states. Nevertheless, it is worthwhile to make a brief forecast.

In principle, the provisions of the directive show the extent to which sustainability issues have found their way into everyday business life. In particular, the expanded scope of the directive and the inclusion of many companies now means that it will be less and less possible to ignore sustainability aspects. Furthermore, it is clear that reporting on sustainability issues is only one piece of the puzzle among many in order to create real sustainability in the value chain.

Yet, the link to transparency should not be underestimated. This is because external perception has become increasingly relevant for the competitiveness and marketability of a company,

[60] *Needham/Warnke/Müller*, IRZ 2023, 42.
[61] Ibid.
[62] Council of the EU, Press release, 28.11.2022, https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/, retrieved on 24.02.2023.
[63] Ibid.
[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] Ibid.

especially since the dawn of the digital age. Accordingly, a negative external perception can, under certain circumstances, influence the sales and success of a company. This is particularly true if there is greater competition and a company does not hold a monopoly position since there is an incentive to differentiate oneself from other companies through increased transparency and to gain a prominent position with the issue of environmental aspects, which is important for consumers.

4. Conclusion

According to the above considerations, the CSRD Directive will make a further important contribution to a more sustainable value chain. Together with the other regulations envisaged by the European Union, this can be a decisive factor in achieving self-set goals.

In the whole context, the feature of the public should not be underestimated. It is outstanding that the topic sustainability has found such a harmony in the public discussion in the meantime that it is not to be excluded any more. Therefore, it can be concluded that public opinion can sometimes be a higher sanction criterion for companies than the concrete threat of punishment.

In this respect, it can be expected that, despite the lack of civil liability, a considerable improvement in sustainability obligations can be assumed as a result of the publication of the report.

This is already the case, as the issue of sustainability can only be considered in a very differentiated manner for the European Union. Not all member states attach the same importance to such implementation. At the same time, however, it is important that the industrialized countries in particular are obliged to comply, as they will play a decisive role in meeting and achieving climate targets due to their emissions output.

Even if the CSRD Directive does not directly affect the achievement of climate targets, the indirect influence of such regulations should not be underestimated. All in all, this is another important adjusting screw that will have a significant influence on the market.

III. CSDDD

For some time now, the European Union has been pursuing the goal of creating a uniform legal framework by means of harmonization. This relates to the regulatory field of environmental protection and human rights. The creation of uniform regulations in the area of global supply chains is therefore very obvious. In this respect, the EU is pursuing the goal of establishing a supply chain law.

The corresponding draft (Corporate Sustainability Due Diligence Directive - CSDDD) was presented by the European Commission in February 2022.[68] The European Parliament is expected to reach an agreement in May 2023. From this date, the implementation period for the member states will be 2 years.[69] This could then also have an impact on Germany, where the new Supply Chain Sourcing Obligations Act already came into force on January 1, 2023.[70]

The basis for this work regarding the Corporate Sustainability Due Diligence Directive is the draft of the European Commission, which was adopted by the Commission on February 23, 2022.[71] In addition, comparisons are made with the position paper of the Council of the European Union wherever possible. This is not the final version either, but it should be able to provide a good analytical overview.

1. **Importance of sustainability in supply chains**

The concrete proposal „*Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937* "[72], states the explicit goal of transforming the value chain to mitigate negative

[68] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (1), retrieved on 13.03.2023; *Hübner/Habrich/Weller,* Corporate Sustainability Due Diligence, NZG 2022, 644.
[69] European Commission, Corporate sustainability due diligence, 2022, https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en, retrieved on 06.03.2023.
[70] Federal Ministry of Labour and Social Affairs, Supply Chain Act, n. d., https://www.bmas.de/EN/Europe-and-the-World/International/Supply-Chain-Act/supply-chain-act.html, retrieved on 06.03.2023.
[71] European Commission, Corporate sustainability due diligence, 2022, https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en, retrieved on 06.03.2023.
[72] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (1), retrieved on 13.03.2023.

impacts on human rights and environmental concerns.[73] The Commission recognizes that sustainability aspects may well represent a competitive advantage.[74] Nevertheless, it acknowledges that voluntary measures have so far failed to achieve the desired goal, which is why a legal framework is now needed.[75]

Explicitly, the Commission titles the negative effects on:

> *„Adverse impacts include, in particular, human rights issues such as forced labour, child labour, inadequate workplace health and safety, exploitation of workers, and environmental impacts such as greenhouse gas emissions, pollution, or biodiversity loss and ecosystem degradation."*[76]

Consequently, the EU Commission feels compelled to act. It therefore explicitly states the following as the objectives of the directive:

> *„(1) improve corporate governance practices to better integrate risk management and mitigation processes of human rights and environmental risks and impacts, including those stemming from value chains, into corporate strategies;*
>
> *(2) avoid fragmentation of due diligence requirements in the single market and create legal certainty for businesses and stakeholders as regards expected behaviour and liability;*
>
> *(3) increase corporate accountability for adverse impacts, and ensure coherence for companies regarding obligations under existing and proposed EU initiatives on responsible business conduct;*
>
> *(4) improve access to remedies for those affected by adverse human rights and environmental impacts of corporate behaviour;*

[73] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (1), retrieved on 13.03.2023.
[74] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (2), retrieved on 13.03.2023.
[75] Ibid.
[76] Ibid.

(5) being a horizontal instrument focussing on business processes, applying also to the value chain, this Directive will complement other measures in force or proposed, which directly address some specific sustainability challenges or apply in some specific sectors, mostly within the Union."[77]

The directive establishes due diligence requirements that companies must comply with. The aforementioned objectives are to be achieved in part by companies carrying out due diligence checks.[78] This should then explicitly address the objectives just described, so that the scope goes beyond that of the usual due diligence review.[79]

In particular, certain companies must also demonstrate how they will comply with the climate targets agreed in Paris in 2015 with regard to the 1.5 degree target.[80]

The importance of the issues relating to climate change is underlined by a specially created "climate article". This was created as a separate article in addition to the due diligence obligations listed in Art. 5 - 11 of the Directive to be found in Art. 15 of the proposed directive "Combating climate change".[81] The envisaged goals are thus finally put into a legal form.

2. Content and current legal status

The proposal for the directive is divided into 32 Articles. In the following, particularly important passages of the proposal are presented and explained.

These are, on the one hand, the personal scope of application (a.), civil liability (b.) and directors' duties (c.). These selected passages in particular give legal form to the duties of care just explained.

[77] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (3), retrieved on 13.03.2023.

[78] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (1), retrieved on 13.03.2023.

[79] Ibid.

[80] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (4), retrieved on 13.03.2023.

[81] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (60), retrieved on 13.03.2023.

The problems explained refer to the proposal submitted by the European Commission. The amendments proposed by the European Council have an influence, although it should be noted that this is merely a position paper and not a legally binding proposal.[82]
The final version, which has to be approved by the European Parliament[83], is no longer part of the explanations. At the current point of view, this has not yet been published by the European Parliament.

a. Personal scope

Article 2 of the proposal sets out the scope of the Directive. Accordingly, the Directive applies to companies with an average of more than 500 employees and a worldwide net turnover of more than 150 million euros (group 1) and to companies with more than 250 employees and a net turnover of more than 40 million euros (group 2).[84] However, at least 50% of the turnover for these companies must have been generated in certain sectors specified in Article 2 Paragraph 1b.[85]

In addition, the directive applies to companies from third countries that achieve a net turnover of 150 million euros in the European Union or a net turnover of 40 million euros to 150 million euros, provided that at least 50% of the net turnover is implemented in the sectors already mentioned in 1b.[86]

Significant changes have been made to this scope of application, previously proposed by the Commission, by the revision of the European Parliament.[87] This now stipulates that EU companies with more than 250 instead of 500 employees and a turnover of 40 million instead of the previous 150 million euros are covered by the directive (Group 1).[88] For those in Group 2, 50

[82] European Council, General Approach, 30.11.2022, https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pd , retrieved on 13.03.2023.
[83] See chapter III. Excursus: Sequence of the legislative process from EU level.
[84] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (46), retrieved on 13.03.2023.
[85] Ibid.
[86] Ibid.
[87] European Parliament, Draft Report, 07.11.2022, https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/JURI/PR/2022/11-17/1266206EN.pdf, retrieved on 13.03.2023.
[88] European Parliament, Draft Report, 07.11.2022, https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/JURI/PR/2022/11-17/1266206EN.pdf, Amendment 11, retrieved on 13.03.2023.

employees instead of 250 employees and sales of 8 million euros instead of 40 million euros should suffice.[89]

The scope of application proposed by the European Parliament would mean a significant tightening of the directive, as more companies would be included in the scope of application, which would result in an expansion of the scope. The European Council has chosen a different approach, proposing a gradual introduction of the directive depending on the number of employees and turnover, starting with the largest companies. The proposal states:

> *"Therefore, the rules of the proposed Directive shall first apply to very large companies that have more than 1000 employees and EUR 300 million net worldwide turnover, or 300 million net turnover generated in the Union for non-EU companies 3 years from the entry into force".*[90]

In principle, the European Council supports the introduction of the thresholds already proposed by the EU Commission and the Parliament.[91]
Accordingly, the final form of the directive remains to be seen. The argument in favor of an extended scope of application, which was proposed by the European Parliament, is that the extension of the scope of application would result in a commitment to the specified targets by far more companies. This means that these objectives could sometimes be achieved more effectively. However, the considerable obligations that this would create for companies also speak against such an expansion. It should be borne in mind that a balance must be struck, as the regulations must not impose an unlimited burden on companies. The restrictions should occur to a reasonable extent.

The scope of the Directive cannot be determined on the basis of thresholds alone. Rather, it is also linked to personal characteristics. The responsibility of companies covers not only the upstream chain, but explicitly also the downstream chain.[92] This means that not only suppliers are obligated, but also the end consumers as customers. This represents a considerable expansion

[89] European Parliament, Draft Report, 07.11.2022, https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/JURI/PR/2022/11-17/1266206EN.pdf, Amendment 11, retrieved on 13.03.2023.
[90] European Council, General Approach, 30.11.2022, https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pd (5), retrieved on 13.03.2023.
[91] Ibid.
[92] *Bomsdorf/Blatecki-Burgert*, Lieferketten-Richtlinie und Lieferkettensorgfaltspflichtengesetz, ZRP 2022, 142.

of the scope of application of the due diligence obligations.[93] A problem in this context is how companies are to check and ensure compliance with the due diligence obligations in the downstream chain in particular.[94] This is because the company has little influence on how the end consumer handles a product. This could be understood as a kind of passing on to the companies.[95]

In the context of the personal scope of application, it should be noted that the company size in the draft directive has a concrete influence on the due diligence obligations of Art. 5 - 11 of the draft directive.[96] This is a kind of two-class system.[97] This conclusion follows from the fact that, according to the draft directive, large companies must be liable for all actual and potential negative consequences. For small and medium-sized enterprises, this only applies to actual and serious potential negative consequences, cf. Art. 6 Paragraph 2 of the draft directive. For such companies, this is a mitigation.[98]

b. Civil liability

With regard to possible liability consequences for the company and its organization, the current status quo is that liability options do exist from a tort law perspective. However, these are not implemented everywhere, for example at EU level. It is therefore questionable whether such liability is necessary.
At present, there is no liability under tort law, since there is no duty of care from which liability can be derived. If a duty of care is now established, which, however, according to the will of the legislator, is not to fulfill an element of liability, the question arises as to the necessity of the regulation. Following on from this, the question will arise that if tort law should be served by the duty of care, how this would be implemented in member states with a different understanding of corporate law. It is therefore essential whether the draft achieves real progress for the problem of liability law.

[93] *Bomsdorf/Blatecki-Burgert*, ZRP 2022, 142.
[94] Ibid.
[95] Ibid.
[96] *Hübner/Habrich/Weller,* NZG 2022, 651.
[97] Ibid.
[98] Ibid.

aa. Overview

It is important that the directive, unlike the German Supply Chain Diligence Act[99], explicitly prescribes civil liability:

> ***Article 22 Civil liability***
>
> *(1) Member States shall ensure that companies are liable for damages if:*
>
> *(a) they failed to comply with the obligations laid down in Articles 7 and 8 and;*
>
> *(b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage.*[100]

This liability concerns the companies themselves. It is purely a matter of liability in the external relationship. Questions concerning internal relations only become virulent in the case of directors' duties, i.e. questions concerning the liability of the company management in relation to the company. The liability of companies under civil law is set out in Art. 22 of the proposed directive. This civil liability applies if there are obligations or violations of Art. 7 and 8, which stipulate the avoidance or rectification of negative effects.

bb. Benefits of civil liability

One argument in favor of introducing civil liability is that this is precisely an aspect that is only inadequately covered in the various legal systems. As a result of the different national regulations, there are then correspondingly different results in questions of liability law.[101] This sometimes has the consequence that distortions of competition can occur.[102] A level playing field can

[99] See chapter IV. Comparison with the German Supply Chain Act.
[100] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (65), retrieved on 13.03.2023; *Hübner/Habrich/Weller,* NZG 2022, 651.
[101] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (12-13), retrieved on 13.03.2023.
[102] Ibid.

therefore only be established if there is equal liability in all member states. A corresponding consequence under liability law then represents an incentive to act in accordance with the regulations, so that the achievement of the objectives standardized in the directive can be guaranteed in the long term. In this respect, the introduction of civil liability can be a kind of impetus to actually fulfill the specified duties of care.[103]

cc. Shortcomings of civil liability

In the context of civil liability, the question of the burden of proof initially remains open.[104] This is due to the fact that the directive places the burden of proof on the member states to regulate independently. The question of who bears the burden of proof is of considerable importance for the effectiveness of the directive.[105] If, for example, the companies were to bear a negative burden of proof that a violation has not occurred, it can be assumed that the directive would be implemented more consistently. But if the member states or the relevant enforcing authority has to provide evidence of the infringement, it may be difficult to enforce the directive, as the authority will not be aware of any internal company processes.

However, the Directive no longer contains a reversal of the burden of proof.[106] This is advantageous for companies, as the previously provided reversal of the burden of proof for fault and the causality between breach of duty and damage should apply.[107]
Regardless of this, such open-ended regulation is problematic.[108] Thus, it would be more desirable if the distribution of the burden of proof already resulted from the directive.[109] Otherwise, the door will be opened for inconsistent consequences under liability law.[110] In this context, it would be necessary, especially with such an objective of fair value creation in the supply chain, for liability for companies that violate it to be uniform.
In this context, it should also be considered that civil liability entails the possibility of escalating liability risks if the regulations, such as the burden of proof, are not clearly defined by the legislator.[111]

[103] *Bomsdorf/Blatecki-Burgert*, ZRP 2022, 144.
[104] *Bomsdorf/Blatecki-Burgert*, ZRP 2022, 143.
[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] *Stöbener de Mora/Noll*, Noch grenzenlosere Sorgfalt?, EuZW 2013, 24.
[109] Ibid.
[110] Ibid.
[111] *Bomsdorf/Blatecki-Burgert*, ZRP 2022, 144.

The applicability of the legal provisions furthermore is problematic from a liability perspective, as conflicts with national legal systems are to be expected since it would have to be established in such a way that it conforms to the different legal systems .[112] The problem is that, although a new field of law is being regulated, this is already partly covered by existing structures or that conventional legal systems are not even aware of the field of law to be regulated. There is thus a risk of system discontinuities. The specific example of the German Supply Chain Act raises this issue again[113].

Also worth considering, but not decisive, is at least the financial cost aspect that restructuring into a liability entails.[114] The previous production advantage in southern countries was to keep the cost factors relatively low.[115] This would no longer be the case with liability-related due diligence.[116] As a consequence, the costs for the end consumer would naturally increase. However, this cannot be a viable argument against a liability-based consequence. After all, this is precisely one reason why the transformation did not occur much earlier or why the focus was placed so little on sustainability and more on profit in the first place.

c. Directors duties

aa. Overview

First of all, the question justifiably arises here as to why, in addition to the civil law liability already discussed, an explicit directors duties standardization is required. A study commissioned by the EU[117] on the subject found that EU companies tend to focus on short-term profit distributions to shareholders rather than on long-term corporate interests.[118] It can be concluded from this, that the interests of the directors are therefore more focused on economic profit maximization and less on the sustainability aspects targeted by the EU.[119] For this reason, it was

[112] *Czubayko*, Die Haftung in der Lieferkette, Bucerius Law Journal 02/2019, 74.
[113] See chapter IV. Comparison with the German Supply Chain Act.
[114] *Bomsdorf/Blatecki-Burgert*, ZRP 2022, 144.
[115] Ibid.
[116] Ibid.
[117] European Commission, Directorate-General for Justice and Consumers, Study on directors' duties and sustainable corporate governance: final report, Publications Office, 2020, https://data.europa.eu/doi/10.2838/472901, retrieved on 24.03.2023.
[118] European Commission, Directorate-General for Justice and Consumers, Study on directors' duties and sustainable corporate governance: final report, Publications Office, 2020, https://data.europa.eu/doi/10.2838/472901 (VI), retrieved on 24.03.2023.
[119] Ibid.

summed up that there is a concrete need for action by the EU.[120] It is also explicitly stated that climate change will hardly be manageable if the current status quo is maintained.[121] An explicit consideration of the management within the guideline therefore appears to make sense.
The original draft directive, which is also referred to above, contains directors duties in Art. 25, 26 of the proposal. Following the General Approach of the European Council (non-binding position paper) of 2023, this approach was removed from the Directive:

> *"Due to the strong concerns expressed by Member States that considered Article 25 to be an inappropriate interference with national provisions regarding directors' duty of care, and potentially undermining directors' duty to act in the best interest of the company, the provisions have been deleted from the text."*[122]

Under the European Commission's original draft directive, these directors duties would be as follows:

> *„**Article 25 Directors' duty of care***
>
> *(1) Member States shall ensure that, when fulfilling their duty to act in the best interest of the company, directors of companies referred to in Article 2(1) take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term.*
>
> *(2) Member States shall ensure that their laws, regulations and administrative provisions providing for a breach of directors' duties apply also to the provisions of this Article.*

and

[120] European Commission, Directorate-General for Justice and Consumers, Study on directors' duties and sustainable corporate governance: final report, Publications Office, 2020, https://data.europa.eu/doi/10.2838/472901 (VI), retrieved on 24.03.2023.
[121] Ibid.
[122] European Council, General Approach, 30.11.2022, https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pd (10), retrieved on 13.03.2023.

Article 26 Setting up and overseeing due diligence

(1) Member States shall ensure that directors of companies referred to in Article 2(1) are responsible for putting in place and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organisations. The directors shall report to the board of directors in that respect.

(2) Member States shall ensure that directors take steps to adapt the corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9."[123]

It is clear from the articles that the responsibility of top management should be established through these. This represents an attempt to integrate the forced topics of sustainability into the top management of the company.[124] However, the regulations on liability only relate to the liability of the management to the company in the internal relationship, for example in the case of possible recourse claims by the company in the event of claims for damages by third parties.[125] External liability is precisely not provided for under the draft.[126] These regulations are comparable, for example, with liability under the German GmbHG, according to which the managing director can also be internally liable to the company.

bb. Benefits of directors duties

The greatest benefit to directors duties would be to establish the commitment to sustainability even more strongly at the highest level in the company, the executive board.[127] This implementation could create an incentive for a genuine transformation, as the company's management plays a decisive role in deciding the direction of the company.

[123] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (66), retrieved on 13.03.2023.
[124] *Stöbener de Mora/Noll*, EuZW 2013, 21.
[125] *Burchardi*, Lieferkettensorgfaltspflichten: Risiken für die Unternehmensleitung, NZG 2022, 1472.
[126] Ibid.
[127] Ibid.

In addition, it must be weighed up here what would happen if the liability of the company management were to be removed from the draft.
First of all, it must be noted that this is not an extremely sharp intervention, since it is only a matter of liability in the internal relationship. This is also expressly provided for in the EU Commission's draft. In this respect, the directors duties do not expose company managements to any escalating liability consequences, as the possible liability area is clearly defined. Therefore, the potential liability would also be in an appropriate proportion to the position of the company management.

Nevertheless, it is important to note that without the implementation of the directors' duties, a large gap would arise with regard to liability problems. The question would then be whether this might not call into question the effectiveness of the entire directive. Without liability in the internal relationship, there is in fact no legal obligation to enforce compliance with the due diligence obligations imposed by the directive. The gap that then arises could in fact no longer be closed by the other regulations. The implementation of the directors duties is therefore of crucial importance.

cc. Shortcomings of directors duties

The associated extension of liability speaks against the establishment of directors' duties. It is true that directors' duties relate to obligations for which the management is responsible vis-à-vis the company, so that external liability cannot be assumed. However, it is decisive that internal liability can also have considerable consequences for the persons concerned, if only because of the volume involved. It should also be noted that the safe harbor proviso is absent with regard to the company management, so that this would result in an aggravation of liability and an imbalance between the company management and the company.[128]

Although the implementation of directors' duties is expressly advocated here, the associated difficulties cannot be disregarded either. The introduction of directors' duties would be particularly difficult in relation to countries that are close to the common law legal system since it would significantly interfere with existing structures. The company law of the common law countries does not already know any relevant principles on which the considerations set out

[128] *Burchardi*, NZG 2022, 1472.

here are partly based, such as the duty of legality or the "Business Judgment Rule" applied in German stock corporation law.[129]

dd. Interim result

Whether the European Commission can actually implement its original proposal to introduce directors duties remains to be seen. Based on the position of the European Council and the position of the member states contained therein, this is at least questionable. It is also questionable, whether the discussion on directors' duties is not also misguided in terms of content, as there are already doubts in some quarters as to whether the extension of duties will actually lead to structural changes at the level of management.[130]
Irrespective of this, there is more to be said for sticking to the European Commission's proposal. After all, real change starts at the management level of the company. If the appropriate incentives (including negative ones in the form of sanctions) for compliance are not created at this level, there will not be much change to the European Commission's finding that voluntary approaches do not lead to the desired goal.

d. Safe harbor

aa. Overview

Finally, a brief outlook on the so-called safe harbor regulations should be ventured. This is not a focal point, as is the problem of liability, among other things. Nevertheless, the safe harbor reservation offers a possibility to mitigate the severity of liabilities, in the context of which the main points of criticism are to be expected.

A safe harbor is a legal provision in a statute or regulation that provides protection from legal liability or other penalty if certain conditions are met.[131] The draft directive of the European Commission contains such a safe harbor provision in Art. 22 Paragraph 2[132], according to which no liability must be assumed for damage caused by the activity of an indirect partner with whom

[129] *Czubayko*, Bucerius Law Journal 02/2019, 75.
[130] *Stöbener de Mora/Noll*, EuZW 2013, 15.
[131] *Harings/Zegula*: Die Lieferkette als Anknüpfungspunkt der Compliance-Verplichtungen nach dem LkSG, CCZ 2022, 168.
[132] Ibid.

a business relationship is maintained. This does not apply only in the case that the suitability of the measure to avoid the damage should not have been expected (cf. Art. 22 Paragraph 2 Sentence 2).

bb. Benefits of safe harbor

The advantage of safe harbor regulations is that they do not expose companies to excessive liability risks. Accordingly, legal certainty is created for the companies concerned by giving them an overview of the potential liability framework they can expect.

cc. Shortcomings of safe harbor

The disadvantage of this regulation is certainly that there is a certain recourse barrier. It is therefore questionable whether the implementation of such a provision creates liability gaps that run counter to the original objective of closing such gaps.

At the same time, there is a relatively narrow safe harbor provision here.[133] Whether this is to be seen as an advantage or a disadvantage is a matter of interpretation. However, if the scope of application is as limited as the one presented here, the usefulness of such a regulation may well be questioned.

[133] *Hübner/Habrich/Weller,* NZG 2022, 651.

3. Suitability of the directive for achieving climate targets

As has now been shown, the draft directive to date lays down far-reaching regulations for a relatively uniform implementation of a supply chain law in the respective member states. It appears to be a mere formality that the CSDDD Directive will be enacted by the EU (France was the first to draft a law, Switzerland also has one, the United Kingdom has already regulated in some places in the direction of a supply chain law, in Austria the discussion is well advanced, etc.[134]). The need for action by the EU was confirmed by the study commissioned by the EU. [135] This is what it means in concrete terms:

> *„Corporate governance frameworks in Europe vary significantly between Member States, and an EU action alone seems to have the prerequisite scale and scope needed to achieve a higher level of corporate responsibility for long-term sustainable value creation and to set a minimum common ground for dealing with sustainability while avoiding market distortions."*[136]

The yardstick against which the directive will later have to be measured is no less than the targets it sets itself. By way of this outlook, however, it can be stated that, in principle, a binding anchoring of sustainability aspects in legal form is the only way to be able to demand uniform cooperation from the member states and companies. The European Commission itself stated in the draft directive that the concept, which was initially based on voluntary action, was not able to achieve the desired objectives.[137] In particular, they said, there was a lack of cross-industry improvements.[138]

Specifically, the question of the burden of proof by way of civil liability appears to be problematic. Although this, as a quite sharp instrument, is sometimes welcome, because it outweighs the voluntary basis of the German Supply Chain Act, in order to be effective at all, a uniform

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[134] *Stöbener de Mora/Noll*, EuZW 2013, 15.
[135] European Commission, Directorate-General for Justice and Consumers, Study on directors' duties and sustainable corporate governance: final report, Publications Office, 2020, https://data.europa.eu/doi/10.2838/472901, retrieved on 24.03.2023.
[136] European Commission, Directorate-General for Justice and Consumers, Study on directors' duties and sustainable corporate governance: final report, Publications Office, 2020, https://data.europa.eu/doi/10.2838/472901 (VI)), retrieved on 24.03.2023.
[137] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (2), retrieved on 13.03.2023.
[138] Ibid.

regulation must be made possible. Regardless of which way it is argued, whether companies or prosecuting authorities should be exposed to higher evidentiary hurdles, the purpose of the directive will possibly be missed without a clear uniform burden of proof regulation. Many provisions of the directive are largely undefined.[139] The consequence of implementing the directive with civil liability in its current version would be that a patchwork quilt would emerge at European level, as it cannot be assumed that uniform rules on the burden of proof will be applied.
In addition, efforts should be made to implement the "directors duties" within the guideline. Only by anchoring the "directors duties" can it be ensured that there is a will on the part of the company's management to implement the specified objectives, as the company's top management is decisive for the orientation of the company.

Precisely because of the already generous wording, there should be no deletion. In particular, the wording already does not specify the type of liability, so that there is no similarly sharp sword as civil liability. Furthermore, the wording of Art. 25 Paragraph 1 of the draft directive only refers to sustainability aspects and leaves the consequences for human rights, the environment and the climate under the word "where appropriate".

In this respect, these are already generous requirements, since the term sustainability can be defined more broadly than the terms environment or climate. Removing the "directors duties" from the draft would mean moving further away from the original aim of the regulatory objectives. It would also disregard the need to integrate sustainability aspects within corporate governance. In order to be able to further promote the achievement of climate targets, it should at least be possible to impose a semi-binding obligation on corporate management to implement them.

The concept of safe harbor regulations makes sense in order to create a fair balance of interests on both sides. On the one hand, it can be achieved that there is a possibility of civil liability at all for companies that violate regulations. At the same time, however, it also ensures that the interests are not imbalanced. It would be inequitable to impose a liability risk on companies even for the actions of indirect partners. In addition to legal uncertainty, such a drastic intervention could also represent a competitive disadvantage and would appear to be too sharp a sword against the backdrop of the civil liability that has already been created.

[139] *Stöbener de Mora/Noll*, EuZW 2013, 21.

4. Conclusion

In summary, the directive is the way forward for achieving the climate targets. However, the problems identified make it clear that the full potential of the regulatory bandwidth has not yet been reached. This is not always exclusively a matter of tightening up the proposed draft, but above all of making the regulations more precise. Even though the European Commission states[140], the aim of the draft directive is to harmonize regulations at the European level, there is a risk that the current version of the directive will achieve precisely the opposite since the directive contains many formulations in which it gives the member states the opportunity to make the regulations more specific.

In principle, this makes sense in order to do justice to the different legal systems of the various countries, since in some cases uniform regulations can collide with multi-faceted legal systems. Nevertheless, the transfer to the member states must not get out of hand to such an extent that there is no longer any difference between European directives and individually designed supply chain laws.

[140] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF (11-14), retrieved on 13.03.2023.

IV. Comparison with the German Supply Chain Act

On 01.01.2023, the new Supply Chain Act (in the following LkSG), namely the Supply Chain Due Diligence Act, came into force in Germany.[141]
The German Supply Chain Act reflects a development that can also be observed at the international level: the anchoring of human rights and environmental aspects in global supply chains.[142]

1. Content

As already indicated above, the introduction of the German Supply Chain Act imposes new obligations on companies, which must be implemented from January 1, 2023. For this reason, we will first provide an overview of the structure of the German law to enable a later comparison. Therefore, only selected relevant topics are touched upon here.

a. Personal scope

Section 1 of the Supply Chain Sourcing Obligations Act determines its scope of application in this regard:

> *„(1) This Act shall apply to companies, regardless of their legal form, which are*
> *1. have their head office, principal place of business, administrative headquarters or registered office in Germany, and*
> *2. generally employ at least 3,000 employees in Germany; employees posted abroad are included.*
> *By way of derogation from sentence 1, number 1, this Act shall also apply to enterprises, irrespective of their legal form, which*
> *1. have a branch office in Germany pursuant to Section 13d of the German Commercial Code, and*
> *2. generally employ at least 3,000 employees in Germany.*
> *As of January 1, 2024, the thresholds provided for in sentence 1 number 2 and sentence 2 number 2 shall each be 1,000 employees.*

[141] *Wagner/Ruttloff*, Das Lieferkettensorgfaltspflichtengesetz– Eine erste Einordnung, NJW 2021, 2145.
[142] Ibid.

(2) Temporary workers shall be included in the calculation of the number of employees (paragraph 1, sentence 1, number 2 and sentence 2, number 2) of the user enterprise if the duration of the assignment exceeds six months.

(3) Within affiliated companies (Section 15 of the German Stock Corporation Act), the employees of all group companies employed in Germany shall be taken into account when calculating the number of employees (paragraph 1 sentence 1 number 2) of the parent company; employees posted abroad are included."[143]

According to Section 1, the scope of application of the law is therefore clear. The parallel to the European Directive can be seen here.
According to the new German Supply Chain Act, the respective company owner, i.e. a natural or legal person, is specifically obligated, whereby the latter is more likely to be the rule.[144]

With regard to the scope of application, it should be noted that, unlike in the European draft directive, only the upstream chain, e.g. suppliers, and not the downstream chain, e.g. customers, are covered by the legal obligations of the law with regard to due diligence.[145] This already results from the systematics and wording of the law.[146] According to Section 2 Paragraph 5 and 6 LkSG, the upstream chain is limited to the supply chain of the company's own business area. However, a concrete delimitation appears to be difficult, transitions between the business areas are partly fluid and there is also no significant difference to the downstream chain, at least in part.[147]

b. Effort obligations

The new German law now contains, in contrast to the due diligence obligations standardized in the European Directive, effort obligations.[148] These are not literally standardized in the law, but result from the regulatory context and the government's explanatory memorandum.[149] The purpose of the effort requirements is to ensure that the standards set by the law itself are actually

[143] Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten (LkSG), BGBl. 2021 Teil I Nr. 46.
[144] *Burchardi*, NZG 2022, 1467.
[145] *Bomsdorf/Blatecki-Burgert*, ZRP 2022, 141.
[146] Ibid.
[147] Ibid.
[148] *Wagner/Ruttloff*, NJW 2021, 2145.
[149] Ibid.

adhered to.[150] At the same time, despite a violation of environmental or human rights-related concerns, no violation results if the company in question has made sufficient efforts to prevent the violation from occurring.[151] Therefore, it can already be deduced from the chosen designation "duties of effort" that a concrete success is not owed in each case. The duties of effort are therefore weaker than the duties of care, the violation of which entails a concrete consequence.

c. Appropriateness reservation

The German Supply Chain Act also contains an appropriateness proviso. This is standardized in Section 3 Paragraph 1 Sentence 1 LkSG and represents an extension of the obligation to make an effort. According to this, companies are obligated to take the standards set out in the law into account in an appropriate manner. The criteria for determining whether action is appropriate or not are defined in Section 3 Paragraph 2 of the LkSG. The resulting need for an objective assessment of whether a measure is actually appropriate must be carried out by the companies themselves.[152] The problem is that this creates a relatively high degree of legal uncertainty for companies since the term "appropriateness" is an undefined legal term, the definition of which is thus passed on to the companies.

d. Liability

The fields of the obligation to make an effort and the reservation of adequacy resulting from them refer to the liability in the internal relationship of the company.[153] In the event of violations, the company management is therefore obligated to compensate for certain damage items. The concrete legal consequence of the liability results from the penalty provision of Section 24 LkSG. According to this, the company can claim compensation for economic losses from the company management through sanctions of a supervisory nature.[154] The amount of the respective indemnifiable damage position is largely determined by the size of the company, also in relation to the annual turnover.
The Supply Chain Act does not recognize any further liability under civil law, even in the internal relationship. This is expressly stated in the wording of Section 3 LkSG.

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[150] *Wagner/Ruttloff*, NJW 2021, 2145.
[151] Ibid.
[152] *Burchardi*, NZG 2022, 1468.
[153] *Burchardi*, NZG 2022, 1467.
[154] Ibid.

Section 3 states:

> *„A breach of the obligations under this Act shall not give rise to civil liability. Any civil liability established independently of this Act shall remain unaffected.“*[155]

Accordingly, corporate liability in the internal relationship is explicitly not intended which is emphasized by the government's explanatory memorandum to the draft.[156] Therefore, it is not necessary to create new duties of care from the second half of the sentence.[157] The management of the company therefore does not have to fear any recourse in the event of third-party claims for damages against the company.[158]

The new Supply Chain Act also does not provide for external liability. This already results from a first-law conclusion with regard to the above-mentioned. If it is clear from the explanatory memorandum that the liability of the companies is not to be extended, then it is certainly not possible to assume extended liability in the sense of external liability.
The only possibility that comes close to the idea of liability is to achieve a fine via Section 24 LkSG, as has just been shown.

[155] Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten (LkSG), BGBl. 2021 Teil I Nr. 46.
[156] *Burchardi*, NZG 2022, 1467.
[157] Ibid.
[158] Ibid.

2. Criticism and Comparison

a. Scope for interpretation and legal uncertainty

On the one hand, the German Supply Chain Act must be credited with the fact that highly overdue issues are now covered by binding legislation. However, this is immediately followed by the main criticism of the current version of the Supply Chain Act since many standards allow a great deal of room for interpretation, as the wording is relatively broad.[159] In this respect, the corresponding room for interpretation has been created.[160]
Accordingly, it may still be necessary to make improvements here. Still, the fact that the law has already come into force may mean that correct implementation is delayed and the transformation targets are missed.[161] The legislator itself indicates that it has recognized the need for further concretization, so in Section 14 LkSG, as well as in Section 20 LkSG, there is an authorization to issue corresponding ordinances by the ministries.[162]

A further point of criticism also arises from the requirement of reasonableness standardized in Section 3 LkSG because the fact that the weighing of compliance with due diligence obligations is passed on to the companies, results in a considerable degree of legal uncertainty for them.[163] At the same time, however, the presence proviso represents a kind of gateway for the expansion of the concept of appropriateness.[164] Under certain circumstances, this can also mean from the opposite perspective that the limits are extended to such an extent that the concept of appropriateness loses its original meaning. It is true that the principle of legality, according to which a company is obliged to comply with the applicable regulations, applies here.[165] Overall, there is still no uniform and clear regulation for the companies. The resulting uncertainty should therefore be eliminated by introducing binding regulations.

The limitation of the scope of application to the downstream chain also corresponds to these factors. Although this makes sense, as companies are exposed to considerable liability risks if the upstream chain is closed, the definition made here does not represent a clear-cut line. In

[159] *Wagner/Ruttloff*, NJW 2021, 2151.
[160] Ibid.
[161] Ibid.
[162] *Wagner/Ruttloff,* NJW 2021, 2152.
[163] *Burchardi*, NZG 2022, 1469.
[164] *Burchardi*, NZG 2022, 1468.
[165] *Burchardi*, NZG 2022, 1469.

some cases, the transitions remain fluid. It is up to the companies themselves to define the boundaries in concrete terms. This creates legal uncertainty.[166]

b. Liability issues

The lack of civil liability for companies must also be viewed critically. This is a significant difference from the European draft directive. The mere standardization of rules on fines is a relatively weak sword. The problem of civil liability relates both to the internal relationship, where there is no possibility of recourse by the company against the management in the event of claims for damages by third parties, and to civil liability in the external relationship.
Such implementation would, however, have provided an opportunity to add considerably more weight to the text of the standard. In order to manage a long-term transformation of supply chains, it is not possible to rely on the voluntariness and insight of company managements. Rather, the incentive to comply with existing regulations must be greater than the temptation not to do so, but not to fear consequences for non-compliance that would be greater than a potential loss of profit for complying with supply chain regulations. The considerations made by the EU Commission regarding the lack of success of voluntary measures in the area of corporate governance can probably be applied to Germany.

Nevertheless, it is fundamentally problematic to introduce external liability at all, as desirable as it would be, on the basis of the existing legal situation.[167] There is even talk of external liability in the sense of a "foreign body" in the German legal system.[168] This is because the external liability could neither be constructed from the German legal construction of the contract with protective effect in favor of third parties, nor via a tortious liability, in particular in the sense of Section 831 BGB.[169] One possibility to introduce liability would be to create a duty of care corresponding to Section 823 Paragraph 1 BGB and sometimes open the door to tort law after all.[170]

For the creation of such a liability-relevant duty to protect, the relevant statutes of German corporate law would then have to be changed. Thus, the construct of the German company

[166] *Bomsdorf/Blatecki-Burgert*, ZRP 2022, 142.
[167] *Czubayko*, Bucerius Law Journal 02/2019, 74 f.
[168] Ibid.
[169] Ibid; Bürgerliches Gesetzbuch (BGB), BGBl. 2023 Teil I Nr. 72.
[170] Ibid.

should no longer be regarded as a subject of private law, but would have to undergo a significant transformation to general interests.[171]
Problems under group law could also be expected under certain circumstances. This results from the fact that in German corporate law, shareholders and the company are liable separately from each other, the so-called principle of separation.[172] In the event of liability on the part of the company acting as the buyer company, these principles of company law would have to be abandoned, which would result in a significant restructuring of German company law.[173] External liability integrated into group law must therefore be rejected.

The most promising way for an external liability therefore remains, as already indicated, within the framework of German tort law, more precisely to create a corresponding duty of care via Section 823 Paragraph 1 BGB. It would be possible, for example, to derive a due diligence obligation from the due diligence obligations proposed by the European Commission and contained in the directive. These would then have to go further than the now integrated due diligence obligations. In this context, it would then have to be discussed whether such an expansion of the catalog of duties of care in Section 823 Paragraph 1 BGB would be permissible at all.[174]
The conclusion [175], that the introduction of an external liability in the context of human rights, which are also covered by the expected directive, might possibly cause a systemic break [176] to German liability law can also be transferred to the area of due diligence obligations for climate and environment. For this reason, such duties cannot be derived by further development of the law. Rather, different legislation is required, so that improvements to the German law would be desirable.[177]

This clearly shows how difficult it is to unite different legal systems under a common regulatory standard. The implementation of harmonization will therefore have to be measured against the final result. The fact that the German law falls short of the standards now specified is not surprising in view of the discrepancy that has arisen between it and the existing system.
Rather, urgent consideration should be given to a tightening up of external liability in order to ensure the consistent integration of sustainability issues into corporate governance.

[171] *Czubayko*, Bucerius Law Journal 02/2019, 74 f.
[172] Ibid.
[173] Ibid.
[174] *Czubayko*, Bucerius Law Journal 02/2019, 77.
[175] Ibid.
[176] Ibid.
[177] Ibid.

By way of comparison, however, it must also be noted here that the draft directive, with its standardized civil law liability in the internal relationship, is significantly stricter, but otherwise does not significantly exceed the German draft in terms of liability. This already results from the fact that the above-mentioned duty of legality corresponds to the obligations applicable under the draft directive in the sense of directors' duties anyway.[178] It can therefore be concluded that, with the exception of civil liability, there are no serious obligations for the company's management that go beyond the German Supply Chain Act.[179]

Furthermore, it must be acknowledged that the German Supply Chain Due Diligence Act was passed relatively quickly and is still waiting for the uniform European legal framework to be delivered.[180] Improvements are therefore definitely to be expected here.

c. Scope of application

Unlike the European proposal[181], the German Supply Chain Act mainly refers to the big players, thus largely excluding small and medium-sized enterprises from its scope of application. Of course, it must be conceded that large companies are certainly the main shareholders on the international economic stage and also have the largest share in any violations or violations of the targeted issues. Still, a transformation of global supply chains that strives for a fairer world and leaves no one behind cannot be undertaken without the totality of companies. In this respect, competitive advantages and incentives are created for smaller companies, which, however, run counter to the declared goal of human rights and environmental protection.

The problem just outlined also coincides with the fact that the German draft distinguishes between indirect and direct suppliers.[182] This is different from the European proposal, which then has the consequence that the obligation to comply is considerably extended, so that the entire supply chain would have to take full responsibility for compliance with the specified regulatory framework.[183] This would make it more likely that the target would ultimately be achieved.

[178] *Burchardi*, NZG 2022, 1472.
[179] Ibid.
[180] Ibid.
[181] European Commission, Proposal for EU Directive 2019/1937, 23.02.2022, https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF, retrieved on 13.03.2023.
[182] Ibid.
[183] Ibid.

Consequently, the draft directive is more far-reaching than the German draft with regard to the personal scope of application.[184]

d. Interim result

In summary, it can be said that the German Supply Chain Act is the first step into the right direction. Matters that have long been in need of regulation have finally been cast into a uniform legal framework. On the one hand, the German Supply Chain Act largely follows the proposals of the European Union on the specially planned Supply Chain Directive. At the same time, however, the German law falls considerably short of the standard of protection and regulation envisaged by the European Union.[185]

Whether a transformation of the supply chain can be achieved in this way is currently questionable. It is to be hoped that the lack of concretization will be taken over as quickly as possible by practice and administration. In the long term, this should also be an impetus to abandon the construct of private governance, at least to a certain extent. As already described at the beginning of this paper, this is a topic that affects all areas of public life. If the consequences of climate and environmental change are not mitigated, this will also affect companies to the fullest. An at least partial opening of corporate structures and commitment to sustainability is therefore also likely to be in the corporate interest. In a weighing-up process, the benefits gained should justify the undisputedly high transformation effort.

[184] *Hübner/Habrich/Weller,* NZG 2022, 651.
[185] *Wagner/Ruttloff*, NJW 2021, 2151.

D. Conclusion

Looking at the status quo, the European system with regard to compliance with sustainability criteria by companies is one that relies solely on the voluntary nature of companies. At present, there is no legal obligation in the sense of legally binding rules, as the focus has so far been more on voluntary compliance. Accordingly, there is no de facto obligation for companies to comply with these regulations and therefore no possibility of enforcement in the event of non-compliance. It remains to be clarified whether the guidelines in their current version really achieve these objectives and thus have a real impact on corporate governance.

The comparison shows: The transformation to a more sustainable world is well underway. The comparison also shows: we are still a long way from reaching our goal. This is because the legal framework, some of which has not even come into force yet, is almost in need of overhaul even before it appears. Corresponding to this is the result of the analysis of the German Supply Chain Act, which already falls short of the legal framework envisaged by the European Union and therefore needs to be improved.

In summary, it can also be said that the directive provides a certain orientation framework for the member states. The example of the German Supply Chain Act, which even falls short of the proposed directive, shows that the directive can very well be a suitable instrument for implementing the objectives in the member states since no liability has been explicitly standardized there to date. On the contrary, the law even explicitly states that liability is not intended. Unlike in other areas, where the European Unions' wave of harmonization can be viewed critically (e.g. European Takeover Directive), there is a concrete need for full harmonization in this area, which is also appropriate because, unlike takeover law statutes, a supply chain law does not yet exist in many member states.

Nevertheless, it will depend above all on the social and political will to exploit the full potential of the regulatory framework. The aim cannot be to find loopholes in order to circumvent sustainability criteria, otherwise the status quo will not be changed. In this context, the not inconsiderable problem point that harmonization usually entails must be taken into account. The system alienation of a liability was explicitly shown at the German supply chain law. Since this problem, of the expected system break, is not a German phenomenon, but is rather also to be expected in other member states, the concrete implementation of the liability envisaged by the proposed directive is at least not entirely without doubt.

The inclusion of ESG criteria in the company's "corporate governance", which is required by the EU Directive as well as by the Supply Chain Act in Germany, can mean a real competitive advantage in this respect. Practice will show whether this applies to small and medium-sized companies due to the financial burden. Still, the implementation of sustainability in corporate governance is of great importance. From an abstract perspective, it can therefore be concluded that the idea of sustainable corporate governance can help to achieve climate targets. The prerequisite for this, however, is a functional legal interaction of the individual legal forms. Therefore, the success of the EU directives in actually achieving climate goals, when viewed in concrete terms, also depends to a large extent on overcoming the problems highlighted above in the legal design.

Ultimately, however, it will be the interplay of many global measures that will make real progress towards meeting the 1.5 degree target of the Paris Climate Agreement.