

The copy & paste method

How German Members of the European Parliament are adopting the demands of the business lobby for the EU Corporate Sustainability Due Diligence Directive

By Armin Paasch and Karolin Seitz

The EU Corporate Sustainability Due Diligence Directive (CSDDD) offers a unique opportunity to prevent human rights violations and environmental damage in value chains of European companies and to finally give those affected a real chance to claim compensation. In February 2022, the EU Commission presented a [proposal](#) for a corresponding directive. It goes beyond the German Supply Chain Act in several respects. However, it also contains numerous loopholes, largely as a result of [pressure from business lobby groups](#). In May 2022, the German “Initiative Lieferkettengesetz” and further European civil society organizations therefore submitted joint proposals on how the draft could be improved in order to obtain an effective EU directive after all.

However, when it came to the EU Member States’ decision on the CSDDD on November 30, 2022, the German Government, under pressure from the Free Democratic Party

(FDP), pushed through numerous further [watered-down amendments](#). And in the European Parliament (EP), German Members of the European Parliament (MEPs) from the Christian Democratic Union (CDU) and its European People’s Party (EPP) group have now proposed amendments that would render the CSDDD completely ineffective.

Our analysis shows that the CDU and the EPP have taken over a large number of their proposals from business associations, even copying them word for word in some cases. In the current negotiations in the EP and in the subsequent negotiations, the “Initiative Lieferkettengesetz” expects German MEPs and the German Government to stop following the individual interests of business lobbyists. Instead, they should put human rights, the environment, and the climate at the center of their actions.

German position watered down in EU Council by Justice Minister Buschmann

On November 30, 2022, the EU Member States agreed on a common position on the Commission proposal. On a positive note, they reject the limitation of due diligence obligations to long-term and quantitatively significant so-called “established business relationships.” The EU Commission had proposed such a limitation.

At the same time, however, the Council position contains a whole series of problematic elements that would greatly weaken the CSDDD. For example, the Council – unlike the Commission – does not

want to focus on the entire value chain, but only on a so-called “activity chain.” This would exclude, for example, financial investments, arms exports, or the use of products (such as the use of toxic pesticides). Under [pressure from France](#), the Member States are also to be given the option of completely exempting financial services from human rights and environmental due diligence. Furthermore, the Council insists on obliging companies to draw up climate plans. However, failure to do so should not be sanctioned. The Council rejects outright the Commission’s proposal to take a company’s sustainability into account in the remuneration of directors.

The road to the EU Corporate Sustainability Due Diligence Directive

In March 2021, the European Parliament adopted a detailed draft EU directive. In February 2022, the EU Commission presented its own proposal. The Member States took a position on this proposal in November 2022 with an EU Council decision. Now an EU Parliament decision is still pending which is expected in May 2023 – then the negotiations between the three institutions, known as the “trilogue,” can begin. Once agreed, the EU directive must subsequently be transposed into national law. Depending on the form the EU directive takes, the German government would therefore have to adapt the German Supply Chain Act.

Research by the ARD magazine **Monitor** has shown that a large share of these dilutions can be traced back to the German Government and an internal instruction of September 2, 2022. Beyond these dilutions, the German Government even called for another huge loophole for companies. With regard to civil liability, it is calling for a so-called “safe harbor” for companies that use certain certifications or implement industry standards. Accordingly, these companies would only be liable for damage they caused intentionally or through gross negligence, but not in the case of simple negligence. The problem with this is that it is almost impossible for those affected to prove intent or gross negligence, especially since there are no provisions for facilitating evidence that would give them access to internal company documents. This means that they would still be barred from seeking damages through the European courts.

Current research by the investigative magazine **Correctiv** now shows that the instruction of September 2, 2022 had a predecessor version dated July 26, 2022. In it, the Federal Ministries for Labor and Social Affairs, for Economy and Climate Action, for the Environment, and for Economic Cooperation and Development pursued thoroughly ambitious plans. These included, for example, an explicit obligation for companies to implement climate plans and a requirement for variable remuneration for company management depending on the achievement of climate targets. Also, the earlier draft instruction did not include a requirement for a “safe harbor” loophole for companies – until the FDP-led German Federal Ministry of Justice intervened, lodging several “management reservations,” thereby weakening some of the other ministries’ proposals, and even turning some of them into their

opposite. The final version of the German Government’s instruction from September 2, 2022 calls for the “safe harbor” loophole. On the other hand, it rejects sanctioning the non-implementation of climate plans, as well as the consideration of climate targets in the remuneration of executive board members.

In line with the German Government’s demands, the EU Council resolution of November 30, 2022 opposes a sanction-based implementation obligation for climate plans and variable compensation for directors. However, it does not follow the German demand for the “safe harbor” loophole. The German Government subsequently agreed to the Council resolution, but announced in its own **protocol declaration** that it would not ultimately approve a directive without a “safe harbor” provision.

But why did the Federal Ministry of Justice intervene, thereby opposing the position of four other ministries? Documents we have obtained on the German Freedom of Information Act (IFG) trace the successful attempts by corporate lobby groups to influence the Federal Ministry of Justice. On April 11, 2022, high-ranking representatives of the Confederation of German Employers’ Associations (BDA) and the Federation of German Industries (BDI) addressed a joint letter to Federal Justice Minister Marco Buschmann (FDP), urging him to take their concerns into account when positioning the German Government on the Commission’s proposal.

Buschmann showed understanding for their concerns. Several of the Federal Ministry of Justice’s “management reservations” can be traced back to demands from corporate lobbyists. For example, business associations such as the BDI, the Association of German Chambers of Commerce Abroad (DIHK) and textile+mode had repeatedly called for the “safe harbor” loophole. In their letter to Buschmann, BDA and BDI had vehemently opposed the obligation to implement climate plans and the linking of climate targets to the remuneration of directors.

State secretaries of the Federal Ministry of Justice met with high-ranking business representatives (BDI, DIHK and IHK Stuttgart) at least three times in spring 2022 to discuss the CSDDD. However, Federal Minister of Justice Buschmann has rejected requests for talks from the Initiative Lieferkettengesetz, and has not passed them on to a lower hierarchical level.

The wind is turning in the CDU/CSU and EPP – a lobbying storm in the European Parliament

Not only in the German Government, but also in the European Parliament, the major business associations have unleashed a veritable lobbying storm against an effective EU directive. As recently as March 2021, the European Parliament had passed a detailed **proposal** for an EU directive with a very broad majority – including members of the CDU. In many respects, this proposal was more ambitious than the proposal submitted by the EU Commission on February 23, 2022, less than a year later. However, the wind changed decisively in the CDU/CSU during this period. In a letter dated March 10, 2022, Manfred Weber (Christian Social Union, CSU), leader of the European People's Party (EPP), called on Commission President Ursula von der Leyen to postpone the CSDDD because of the economic consequences the Ukraine war was having. Similarly, his party colleague **Markus Ferber** called for a “rejection” of the Commission's proposal in the EP's Economic and Monetary Affairs Committee on October 27, 2022.

In the EP's lead Committee on Legal Affairs, the EPP's shadow rapporteur Axel Voss (CDU), together with Marion Walsmann (CDU), Karolin Braunsberger-Reinhold (CDU), Swedish Christian Democrat Jessica Polfjård, Pascal Arimont from the Belgian CSP, and other group colleagues, presented demands on November 30, 2022 that would completely gut the Commission's proposal.¹ According to them, the directive should only apply to companies with more than 3,000 employees, which would leave it significantly behind the German Supply Chain Act. Although the latter has also only applied to companies with 3,000 or more employees since January 1, 2023, it will apply to companies with 1,000 or more employees from 2024 on. Under the Voss proposal, the directive would not apply in the EU Member States until 2033.

Just like in German law, Voss and colleagues propose limiting full due diligence to direct business partners. In addition, however, they demand that the entire downstream supply chain be excluded, i.e. exports, investments, most services, and financial transactions. Human rights abuses within the EU would not be covered at all in the Voss pro-

posal. He also said that companies' requirements for climate plans and corporate governance obligations would be completely eliminated. A recognition process for industry initiatives and certifications is included in Voss' proposal, too. If a company participates in a recognized industry initiative or uses a certification, it would be recognized as implementing the directive.

According to Voss, civil liability is to be limited to intent and gross negligence, not only for companies belonging to an industry initiative, but for everyone. For those affected, however, who generally have no access to internal company documents, it is virtually impossible to prove that the companies acted intentionally or with gross negligence. In addition, Voss and his colleagues want to delete the mandatory overriding application provided for in the Commission proposal, so that the liability rule in the EU directive would not apply in the vast majority of cases anyway, because the law of the place of damage would be applied.

Taken together, these proposals by Voss and his colleagues would render the CSDDD completely ineffective.

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Our analysis shows that the EPP has taken over these demands to a large extent from position papers and letters of business associations – partly even by simple copy and paste. Axel Voss and colleagues have apparently copied particularly eagerly from the German Chemical Industry Association (VCI) and the German Chemical Employers' Association (BACV).² This applies, for example, to the particularly problematic demand to exempt the entire downstream supply chain from any duty of care, including the use of products by consumers. Under this proposed directive, corporations like Bayer or BASF would no longer have to worry about the proper use of toxic pesticides or other chemicals. As suggested by the chemical lobbyists, the EPP MEPs demand a limitation of the full due diligence to direct suppliers anyway, so that the use of pesticides on plantations, where health damage regularly occurs, would not have to be taken into consideration as long as the companies have not become aware of any concrete complaint. Word for

1 Amendments by Axel Voss et al. in „Amendments Draft Report by Lara Wolters (PE738.450v01-00) on Corporate Sustainability Due Diligence and amending Directive (EU)”, online under <https://www.europarl.europa.eu/committees/en/juri/documents/latest-documents>

2 This is shown by a comparison of the amendments with the position paper of the two associations. A selection can be found under this [link](#). It can be that the EPP members have also copied the demands from other business associations, which have used the same word-for-word formulations as the VCI and the BACV.

word, the EPP MEPs have taken over the proposal of the German chemical lobby for a recognition procedure for industry initiatives. The same applies to the EPP's justification for the demand to lower the standard of fault for civil liability to intent and gross negligence.

The one-sided adoption of demands from business associations is not surprising. According to the information on the [EP's website](#) on Axel Voss, he has met more than 25 times with representatives of companies and their interest groups to discuss the planned CSDDD since the beginning of 2021. The same website indicates only three meetings of Axel Voss with civil society representatives on the issue in the same period. The amendment's co-signatory Jessica Polfjård also had [exchanges](#) with the major European business associations EuropeanIssuers and BusinessEurope, as well as with Kreab, one of the largest lobbying agencies in Brussels, in October 2022.

Common good before individual interests

The fact that government representatives and members of parliament also listen to the perspectives and

concerns of companies and include them in their deliberations is not objectionable in principle. However, it is important that this perspective is only one of several. If, at the same time, requests for talks from human rights, environmental, and development organizations are rarely or not at all accepted, this is a problematic imbalance. This is especially true for legislation that aims to improve the protection of human rights and the environment. The result is obvious in the case of the Federal Ministry of Justice and the CDU/CSU in the EP. They have ignored core concerns of civil society while largely adopting, and sometimes even writing off, the demands of the business lobby.

However, negotiations in the EP are still in full swing. And the EP's position will probably be followed from May 2023 by the trilogue between the Commission, the Council, and the Parliament, in which the German Federal Government will also play a key role. Citizens and civil society rightly expect governments and parliamentarians not to subordinate the common good to the individual interests of just a few companies.

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Bischöfliches Hilfswerk MISEREOR e. V.
Mozartstraße 9, 52064 Aachen, Germany
info@misereor.de
www.misereor.de
Contact: Armin Paasch

Global Policy Forum Europe e.V.
Königstraße 37a, 53115 Bonn, Germany
europe@globalpolicy.org
www.globalpolicy.org
Contact: Karolin Seitz

Authors: Armin Paasch and Karolin Seitz

Editors: Johannes Heeg, Mike Gardner

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