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Responsible Business Conduct Supply Chain Regulation: Learning from the German Experience

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Study on Transnational Environmental Governance

- **What was it about?**
 - Tracing Transnational Corporate Environmental Standards
 - Seeking to explain how they interact with Environmental Law
- **Case Study: Corporate Controlled Substance Lists / Green Procurement Guidelines**
 - Evaluation of 40 lists of worldwide operating corporations of the electronics / automotive sector (2004 - 2005)
 - Corporations from Japan, USA, the EU and South Korea
 - Compliance with hazardous substance control regulations of EU, Japan, USA
- **Results**
 - Relatively high levels of compliance with legal obligations of all jurisdictions

Study on Transnational Environmental Governance

- **What kind of regulation was at stake?**
 - Intl Conventions: POPs, Basel Convention, Montreal Protocol
 - EU Restriction of Hazardous Substances (RoHS) Directive 2002/95/EC
 - Substance bans in electronical and electrical products (4 heavy metals, 2 flame retardants: PBB, PBDE)
 - Regular revision of a „black list“ of substances (now altogether 10 substances, including phthalates)
 - US Clean Air Act Sec 611 (as amended 1990)
 - Ban of ozone depleting substances, not only in products, but also labelling requirements if used in processes
 - Japanese Chemical Substance Control Law
 - Disclosure of polychlorinate naphtalenes

Study on Transnational Environmental Governance

- **What can be considered trivial about the results?**
 - Corporations comply with laws (or at least say so in public)
 - There are spill-over effects
- **What did I find exciting about the results?**
 - Spill-over effects or „translations“ are not predictable and can take different dimensions:
 - Spacial dimension: Are markets separated or are standards turned global?
 - Temporal dimension: How early do corporations start to phase out substances?
 - Material dimension: Do corporations anticipate dynamic regulation by phasing out on a voluntary basis?
 - Social dimension: How does corporate infrastructure of compliance shift responsibilities in the supply chain and between states and corporations?



German Supply Chain Due Diligence Act

- **What is it about?**
 - Act on Corporate Due Diligence Obligations in Supply Chains (Lieferkettensorgfaltspflichtengesetz, LkSG)
 - Enforcing in German corporations' supply chains
- **Who gets addressed?**
 - companies in Germany with at least 1,000 employees (from Jan 1st 2024)
 - Suppliers only indirectly
- **What gets addressed?**
 - Human Rights and certain environmental obligations
- **What duties does it entail?**
 - Establishing a risk management system and personal responsibilities
 - Conduction risk analyses and issuing a policy statement
 - Laying down preventive measures
 - Taking remedial action and establishing a complaints procedure
 - Documenting and reporting



German Supply Chain Due Diligence Act

- **Who is in charge?**
 - BAFA (Federal Office of Economics and Export Control in Germany)
 - Companies have to report to BAFA
- **What happens if you do not comply?**
 - In principle high fines are possible
 - Until now BAFA tried to avoid sanctions and still tries to convince and cooperate
- **What about civil liability?**
 - SCDDA does not entail civil liability (notwithstanding claims on other legal grounds)

German Supply Chain Due Diligence Act

- **Cases before the adoption**
 - 2013: Rana Plaza collapse with indirect involvement of German KiK apparel retailer (1.134 people died, 2.500 injured)
 - 2015: Saúl Luciano Lliuya vs RWE-Case (preventive action against climate change at German court)
 - 2019: Brumadinho dam disaster, involvement of TÜV Süd (270 people died, environmental damage)
- **Cases after the adoption**
 - According to BAFA more than 400 complaints, but until now no fines
 - Examples:
 - BMW: Environmental problems and labour rights of supplier in Moroccan Cobalt mine; media coverage
 - Rewe & Edeka (grocery retailers): toxic pesticides and dumping wages on banana plantations in Ecuador; claims by Oxfam
 - Mercedes-Benz in Alabama: Union claims infringements on freedom of association

EU Corporate Sustainability Due Diligence Directive

- **Scaling up the German SCDDA?**
 - EU CSDDD largely draws on the German Act, but there are also differences
 - EU Directives have to be transformed by member states => SCDDA will have to be amended
- **Cases after the adoption**
 - Scope is different and bigger as also subsidiaries and suppliers doing business in EU are addressed
 - Civil liability integrated

What can we learn from the implementation of RoHS for CSDD?

- **Compliance and implementation in supply chains is not a trivial thing**
- **Legal obligations have to be “translated” multidimensionally:**
 - Spacial dimension: We are talking about basic Human Rights and basic environmental duties
 - Temporal dimension: Implementation has only started a bit over a year ago, so presently the supervision by BAFA is relatively cooperative and non-conflictual
 - Material dimension: Human Rights and environmental due diligence will have to be spelled out
 - Social dimension: Responsibilities and processes have to be introduced, contracts between producer and supplier updated with contractual disclosure obligations and sanctions etc.
- **Is corporate social and environmental responsibility a good thing?**
 - CSR is a way to privatize public tasks
 - How does this affect democracy and rule of law?
- **How does CSR change by being more embedded into binding legal obligations?**



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