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

Toronto Metropolitan University - CSR Institute zoom session

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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 napthalenes

# 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 1<sup>st</sup> 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
  - Conducting 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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