

LEGAL UPDATE – SUSTAINABILITY AND ESG

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With CSRD and CSDDD fast approaching, Germany keeps wrangling over sustainability reporting and supply chain due diligence

– A peculiar tale featuring bureaucratic monsters and a chainsaw –

Kolja Stehl| Partner

It is not that long ago that the EU institutions fiercely debated the Corporate Sustainability Reporting Directive (**CSRD**) and the Corporate Sustainability Due Diligence Directive (**CSDDD**). Eventually, in true European style, a compromise was reached on both files. As a result, Germany, like all Member States, is now obliged to transpose CSRD and CSDDD into national law. Thus, one might be forgiven to think that the battle is over: As the big policy decisions were taken at EU level, the local transposition should be a rather technical exercise. So, what is the status of the transposition in Germany? Well, it is complicated.

- On the CSRD side, Germany already missed the transposition deadline of 6 July 2024. This delay caused the European Commission to open an **infringement procedure** on 26 September 2024. Germany and 16 other Member States, which equally failed to implement CSRD on time, now have two months to respond and complete the transposition. The opening of the infringement procedure coincided with the date on which Federal Parliament held its **first reading** of the **draft implementing law**, which the reporting parliamentary secretary of state presented with apparent disdain as “bureaucratic monster”. Just one day later, on 27 September 2024, the Bundesrat, which is the forum through which the German states participate in the legislative procedure, issued an **opinion** on the CSRD implementation, urging the Federal Government to deliver on its **Initiative for Growth** by advocating to the European Commission that CSRD should be significantly cut back. On the same day, Germany’s Justice Minister further stirred the pot by **claiming** that Germany “must use the period until full CSRD implementation to renegotiate”. The **debate** on the implementation is still in full swing.
- On the CSDDD side, the formal implementation process has not yet started, since the directive must only be transposed by 26 July 2026. The German legislator, however, is already up against a challenge due to Germany’s existing supply chain act, the **LkSG**. Indeed, the transition to the EU regime prompts the question of what to do with the LkSG in the run-up to CSDDD. So far, all **attempts** to scrap the LkSG completely have **failed**. According to the Initiative for Growth, the LkSG should rather be scaled down by replacing its relatively wide scope with the narrower scope of CSDDD, which is phased in only gradually. This approach is meant to set free two thirds of the entities that are currently subject to the LkSG, but some **critics** argue that it would be prohibited by EU law. Where does this kerfuffle leave companies today? While companies may already benefit from **deferrals** of the LkSG-reporting deadline, the Federal Government has announced further **measures** to smoothen the path towards CSDDD as quickly as possible. The idea is to pre-empt the actual CSDDD implementation in areas where, compared to the historic LkSG interpretation, CSDDD provides for a more practical and business-friendly approach, while still respecting the black letter of the LkSG.

The latest (and arguably most illustrative) contribution to the German debate on CSRD/CSDDD was made by Germany's Economy Minister on 2 October 2024. Doubling down on his [earlier claims](#) that LkSG should be paused, he called for a fundamental rethink of the current direction of travel. Referring to the LkSG, he [reportedly](#) said that it is not about making individual improvements, but "firing up the chainsaw and chopping the whole thing down". Unsurprisingly, these remarks prompted swift [backlash](#) from within his own political party, whereas others [welcomed](#) the statements with wide arms. The statements sound even more impactful when remembering that Germany has some [history](#) with CSDDD. In the final phase of the trilogue negotiations on the directive, Germany's Justice Minister and Finance Minister tried to topple an EU-wide compromise and then forced Germany's coalition government to abstain from voting. Even today, Germany's policy-making in the field of sustainability reporting and supply chain due diligence remains in limbo, with leading politicians, including the [chancellor](#), stating that regulations have gone too far and should be [trimmed back](#) to a reasonable level.

Of course, to what extent Germany may be allowed to backflip on CSRD and CSDDD depends on the readiness of the EU institutions to reopen these files. In this regard, it is worth noting that the German debate is echoing concerns that have also been expressed at EU level. In early July 2024, it has been [leaked](#) that the EPP considered a draft work plan suggesting to halt implementation of the reporting regime under CSRD and CSDDD, building on Ursula von der Leyen's [2023 commitment](#) to reduce the reporting obligations of companies by 25%. More recently, Mario Draghi, who has been tasked by the European Commission to report on the future of European competitiveness, [identified](#) the EU's sustainability reporting and supply chain due diligence framework as a "major source of regulatory burden". Growing pressure to cut red tape from within the [Member States](#), coupled with targeted anti-ESG [initiatives](#) and continued [criticism](#) from the US, will be among the factors that play into the controversies surrounding a potential review of CSRD and CSDDD. It remains to be seen, however, how the European Commission, which is [guiding](#) Member States through the implementation process, will position itself on this issue.

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Kolja Stehl on +4969170000186 or by email to kstehl@goerg.de. For further information about the author visit our website www.goerg.com.

Our Offices

GÖRG Partnerschaft von Rechtsanwälten mbB

BERLIN

Kantstr. 164,
10623 Berlin
Phone +49 30 884503 0
Fax +49 30 882715 0

HAMBURG

Alter Wall 20 - 22,
20457 Hamburg
Phone +49 40 500360 0
Fax +49 40 500360 99

FRANKFURT AM MAIN

Ulmenstr. 30,
60325 Frankfurt am Main
Phone +49 69 170000 17
Fax +49 69 170000 27

COLOGNE

Kennedyplatz 2,
50679 Cologne
Phone +49 221 33660 0
Fax +49 221 33660 80

MUNICH

Prinzregentenstr. 22,
80538 Munich
Phone +49 89 3090667 0
Fax +49 89 3090667 90