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I Introduction

The number of litigation related to Environmental, Social and Governance (ESG) topics is increasing rapidly. Accordingly, it is important for companies to understand the underlying norms and associated legal risks to take appropriate measures. In this newsletter, we introduce recent ESG litigation developments, focusing on so-called “Climate Change Litigation”. The term “Climate Change Litigation” or “Climate Litigation” (“*Klimaklagen*”) is often used when interest groups or individuals sue governments or companies to enforce their views on climate protection.¹

II International developments

1. Key trends

Climate change-related lawsuits are gaining importance around the world, with about two-thirds of more than 2,300 cases having been recorded by the Sabin Center for Climate Change Law (SCCCL) after the Paris Climate Agreement was adopted in 2015.² The vast majority of cases were filed in the U.S., however, the number of cases in at least 50 other jurisdictions is increasing quickly.³ While the defendants used to be predominantly governmental actors, the number of lawsuits against companies is now growing and diversifying as well, with cases no longer only being aimed at “classic” targets, such as multinational corporations in the fossil fuel or energy sector, but against numerous other companies, such as those from the chemical, food, finance, travel and other sectors.⁴ Just as the venues and defendants, the objectives of these lawsuits also are diverse and include, for example, challenging inadequate implementation or lack of ambition of climate targets, stopping or disincentivizing harmful policies and activities, claiming damages for climate impacts, or contesting actions or products that misleadingly claim to address climate change (so-called “climate-washing” or “greenwashing”).⁵ Often, the motives of the plaintiffs are not monetary, but strategic and aim beyond the

¹ Weber, Rechtswörterbuch, Klimaklage, beck-online. For a more detailed definition including e.g. non-climate-aligned cases aiming to delay or obstruct climate action see: Setzer/Higham, Global trends in climate change litigation: 2023 snapshot, p. 8 f., https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf.

² Global trends 2023, p. 11, footnote 1 above.

³ For details see Global trends 2023, pp. 12 ff., footnote 1 above.

⁴ For details see Global trends 2023, pp. 19, 21, footnote 1 above.

⁵ See full list and further details: Global trends 2023, pp. 22 ff., 39, footnote 1 above.

individual case to influence climate policy making or the behavior of governmental or corporate actors in general, or to use media coverage to create public awareness.⁶

2. Human rights and international law

With regard to lawsuits against governments, arguments based on human rights are evolving.⁷ Landmark rulings include a 2019 case, initiated by a Dutch environmental organization, in which the court was first to cite human rights laws in confirming a sitting government's obligation to combat climate change.⁸ The year 2022 witnessed a similar decision, in which residents of the Torres Strait Islands prevailed against the Australian government.⁹ The first decisions in similar cases heard by the European Court of Human Rights (ECHR) also are awaited following hearings in March of this year. If the ECHR were to rule that human rights can translate into governmental obligations in the context of climate change, this would send a strong political signal to all signatory states to the European Convention on Human Rights.¹⁰ In addition, different international courts and tribunals have recently been asked to give advisory opinions on climate protection under international law, most prominently, following a unanimous resolution by the UN General Assembly, the International Court of Justice (ICJ).¹¹ Although not legally binding, such opinions also are expected to have a significant signal effect on national governments, including the courts watching over them.¹²

If governments are required or incentivized to take stricter measures, this may impact companies sooner or later. It is therefore worth keeping an eye on these developments, even where companies are not directly subject to legal action.

3. International litigation against companies

Climate Change Litigation against companies is advancing as (i) the scientific basis for the causes of climate change broadens, making it steadily easier for plaintiffs to claim specific attributions for emissions and to prove causal relationships, and (ii) uniform standards of corporate due diligence in the area of climate protection and human rights are developing.¹³ So far, companies found themselves targeted for specific climate-damaging projects, general company-wide policies and strategies or financial decisions regarding high emitting activities, or compensation for losses and damages or costs of adapting, as well as for misinformation or misleading information on climate-friendliness.¹⁴

⁶ For details see Global trends 2023, pp. 19 ff., footnote 1 above.

⁷ For details see Global trends 2023, pp. 5, 14, 32 f., footnote 1 above.

⁸ <https://www.klimareporter.de/europaische-union/oberstes-gericht-verpflichtet-regierung-zum-klimaschutz>.

⁹ <https://www.clientearth.org/latest/press-office/press/torres-strait-islanders-win-historic-human-rights-legal-fight-against-australia/>.

¹⁰ <https://rsw.beck.de/zeitschriften/nvwz/meldung/2023/03/30/klimaschutz-vor-gericht-erstmal-klimaklage-vor-egmr>.

¹¹ For details see Global trends 2023, pp. 17 f., footnote 1 above.

¹² <https://www.lto.de/recht/nachrichten/n/verpflichtungen-staaten-klimawandel-gutachten-igh-resolution-generalversammlung-inselstaat-vanuatu/>.

¹³ For details see Global trends 2023, pp. 35 f., 38 f., footnote 1 above and Setzer/Higham, Global trends in climate change litigation: 2022 snapshot, pp. 33 f., <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/08/Global-trends-in-climate-change-litigation-2022-snapshot.pdf>.

¹⁴ For details see Global trends 2023, pp. 22 ff., footnote 1 above.

The Hague District Court decided the first landmark case against a company in 2021. It ruled that, under Dutch law, the defendant (a large multinational oil company) has their own duty of care to respect human rights and bring their greenhouse gas emissions in line with the Paris Climate Agreement. Notably, the court stated that, although climate change is a global phenomenon that one company on its own cannot solve, this does not absolve companies from their responsibility to do their part.¹⁵ Although the decision is not yet legally binding, as the defendant company appealed it in 2022, it already inspired numerous other lawsuits; for example, a recent lawsuit against a multinational energy company in Italy.¹⁶

However, companies are not only exposed to lawsuits from outsiders. Rather, corporate executives also have faced claims from shareholder activists accusing them of either failing to adequately respond to foreseeable regulatory changes in relation to losses already incurred or, in the case of a recently initiated lawsuit against the board of directors of a large multinational oil company, alleging that continued investment in fossil fuel projects is not in the company's best long-term financial interest.¹⁷ Therefore, companies should be mindful that climate change not only poses a generally recognized risk to financial stability,¹⁸ but also that where such risk manifests it could lead to an increased probability of the company being sued, e.g. by its own (activist) shareholders.

Another recent trend concerns a rapid increase in greenwashing cases in the last few years.¹⁹ Therefore, companies should think carefully about what statements they make about the environmental friendliness of products or investments or about corporate climate commitments, and whether there are any obvious inconsistencies, e.g. when pursuing lobbying activities that aim at the opposite of what is being publicly stated.

III Climate Change Litigation in Germany

1. Developments in Germany

The first groundbreaking climate change decision in Germany was an order by the First Senate of the Federal Constitutional Court (*Bundesverfassungsgericht - BVerfG*) in March 2021.²⁰ Similarly to the argumentation of the Hague District Court in the oil company case (see No. II.3. above), the BVerfG stated that even though climate change is a global phenomenon and could not be stopped by the German state on its own, this does not render it impossible or superfluous for Germany to make its own contribution. The court found that while the chosen climate protection targets and the specific individual measures taken by the government do not as such violate the constitution, there is a disproportionate risk of future fundamental rights being impaired with regard to the concept of a limited so-called "CO2 budget" (i.e. the maximum amount of CO2 that may still be emitted so that the targeted earth temperature is not exceeded). The court stated that one generation ought not to be allowed to consume large parts of the CO2 budget if, at the same time, a radical reduction burden is left to the following generations, meaning that their lives would be exposed to serious loss of personal freedom. Since, with every CO2 emission quantity that is permitted today, the remaining CO2 budget is irreversibly

¹⁵ <http://climatecasechart.com/non-us-case/milieudéfense-et-al-v-royal-dutch-shell-plc/>; <https://www.lto.de/recht/hintergruen/de/h/shell-klima-prozess-den-haag-verpflichtung-reduzierung-co2-emissionen-unternehmen-menschenrechte/>.

¹⁶ For details see Global trends 2022, pp. 33 ff., footnote 13 above and Global trends 2023, pp. 36 f., footnote 1 above.

¹⁷ For details see Global trends 2023, p. 38, footnote 1 above.

¹⁸ See e.g. the Climate Change 100+ initiative, <https://www.climateaction100.org/approach/business-case/>.

¹⁹ For details see Global trends 2023, pp. 39 ff., footnote 1 above.

²⁰ BVerfG, Order of the First Senate of March 24, 2021 - 1 BvR 2656/18, available in English here: http://www.bverfg.de/e/rs20210324_1bvr265618en.html.

reduced and future freedoms are subjected to greater restrictions, the court obliged the German government to take more forward-looking precautions that spread the burden of reduction over time in a way that minimizes the impact on fundamental rights.

Encouraged by the success of this ruling, the number of climate change-related lawsuits in Germany has doubled in 2022/2023.²¹ Among these is a case filed last October that is the first one against the German government before the ECHR. Plaintiffs alleged that the German Climate Protection Act, which was amended in response to the above-mentioned BVerfG decision, still fails to comply with the Paris Climate Agreement.²²

2. Status of litigation against companies in Germany

In Germany, greenwashing cases are on the rise and have a high success rate. Other climate-related lawsuits against companies, on the other hand, have not been successful to date.

(1) Greenwashing

About two-thirds of climate-related cases against companies in German courts recorded by the SCCCL²³ are greenwashing cases based on sections 5 or 5a of the German Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb - UWG*²⁴), according to which actions and omissions may be unlawful if they are “misleading”, e.g. if the advertisement for a product contains untrue statements or other statements suitable for deception or if it withholds essential information or provides it in an unclear, incomprehensible or ambiguous manner. Nearly all greenwashing cases claiming a violation of sections 5 or 5a UWG have been decided in favor of the plaintiffs. The environmental organization Deutsche Umwelthilfe (DUH) claims that it alone has filed 23 greenwashing cases before German courts, of which about half have been successful and the others are still pending.²⁵ Even though some of these cases were ultimately overruled or only partially upheld by the appellate courts, the existing German case law is generally very strict when it comes to potential greenwashing by companies.

For example, it is established case law that the term “environmental friendliness” cannot be clearly defined and, in view of the different perceptions and expectations that are evoked, there is an increased need to provide information on what the environmental friendliness is supposed to result from.²⁶

When it comes to the term “climate neutrality”, at least the higher courts are (for now) in agreement that it contains a clear statement that the advertised product has a balanced carbon footprint and that the average consumer is aware that this can be achieved through both avoidance and compensation measures, while the requirements for providing additional information vary among courts.²⁷ The outcome also highly depends on

²¹ Global trends 2023, p. 13, footnote 1 above; doubled in comparison to the June 2022 Global trends report.

²² <https://www.duh.de/presse/pressemitteilungen/pressemitteilung/wichtige-klimaklage-erstmal-ziehen-deutsche-jugendliche-und-junge-erwachsene-unterstuetzt-von-der-d/>.

²³ <http://climatecasechart.com/non-us-jurisdiction/germany/>; last checked on August 23, 2023.

²⁴ UWG, https://www.gesetze-im-internet.de/uwg_2004/.

²⁵ See DUH PDF-overview “Übersicht laufende Verfahren Klimaneutralität (Stand 25.7.23)” available here: <https://www.duh.de/themen/verbraucher/verbrauchertaeuschung/klimaneutral/>; last checked on August 23, 2023.

²⁶ See Köhler/Bornkamm/Feddersen/Bornkamm/Feddersen, 41. Aufl. 2023, UWG § 5 Rn. 2.183 et seq.

²⁷ Higher Regional Court (*Oberlandesgericht – OLG*) Düsseldorf, July 6, 2023 – 20 U 72/22, GRUR-RS 2023, 16524 and July 6, 2023 – 20 U 152/22, GRUR-RS 2023, 16069; OLG Frankfurt a. M., November 10, 2022 – 6 U 104/22, GRUR 2023, 177; OLG Schleswig, June 30, 2022 – 6 U 46/21, GRUR 2022, 1451; OLG Koblenz, August 10, 2011 - 9 U 163/11, BeckRS 2011, 23895.

the individual case. For instance, on the same day, a court ruled in one case that an advertisement met the requirements because the necessary additional information could be accessed via a link or QR code, and in another case that there was a violation because the featured website did not show a sufficient connection to the advertised “climate-neutral” claim.²⁸ In any case, the German Federal Court of Justice (*Bundesgerichtshof* - *BGH*) has yet to provide uniform guidance on “climate neutrality” advertisement, so companies with products for the German market should be cautious.

(2) Ambition of climate protection measures

Other Climate Change Litigation against companies in Germany has so far been dismissed by the courts. Building on the BVerfG’s climate decision (see No. III.1. above) and the Hague District Court case regarding the oil company (see No. II.3. above), most other lawsuits sought that the courts force companies to take more ambitious measures to comply with the Paris Climate Agreement.

In particular, in four proceedings German automotive manufacturers were sued to stop selling vehicles with internal combustion engines by 2030. These four cases were all dismissed at first instance,²⁹ but the plaintiffs have publicly stated their intention to appeal.³⁰ Most of the courts essentially argued that it was the responsibility of the German legislator to lay down specific climate protection requirements and measures, and some further pointed out that the German legislator had sufficiently fulfilled this responsibility and that no measures going beyond this could be demanded of the defendant companies as private entities.³¹

A similar case in which a German energy company is being sued for the reduction and timely termination of its natural gas and oil production is still pending.³²

(3) Reimbursement of costs for protective measures

In another pending lawsuit, a Peruvian farmer is suing a German energy company in Germany to partially pay for certain protective measures against the threat of flooding caused by glacier melt.³³ The case is currently on appeal after the court of first instance dismissed the lawsuit in December 2016, arguing that the plaintiff himself was required to demonstrate the company’s share of global greenhouse gas emissions and could not leave this to an estimate by the court and also that, due to the large number of greenhouse gas emitters worldwide, it is not possible to establish that the company’s emissions caused the damage alleged by the plaintiff.³⁴

In the subsequent appeal proceedings, however, the court of appeals concluded that the plaintiff’s claim for proportional reimbursement of costs by the German energy company could in principle be considered. The court therefore ordered that evidence be taken in the form of an expert opinion, in particular on the threat of

²⁸ See OLG Düsseldorf, footnote 27 above.

²⁹ Regional Court (*Landgericht* – LG) Stuttgart, September 13, 2022 – 17 O 789/21, BeckRS 2022, 23882; LG München I, February 7, 2023 – 3 O 12581/21, BeckRS 2023, 2861; LG Braunschweig, February 14, 2023 – 6 O 3931/21, KlimR 2023, 88; LG Detmold, February 24, 2023, 1 O 199/21, BeckRS 2023, 2862.

³⁰ <https://www.duh.de/klimaklagen/klimaklagen-gegen-unternehmen/>; <https://www.greenpeace.de/klimaschutz/mobilitaet/vw-klage-gericht>.

³¹ See LG Stuttgart, LG München I and LG Braunschweig, footnote 29 above.

³² See DUH, footnote 30 above; <https://www.duh.de/presse/pressemitteilungen/pressemitteilung/deutsche-umwelthilfe-klage-gegen-oel-und-gaskonzern-wintershall-dea-eingereicht/>.

³³ OLG Hamm, 5 U 15/17; <https://rwe.climatecase.org/en/material>.

³⁴ See press release of the OLG Hamm dated November 08, 2017, https://www.olg-hamm.nrw.de/behoerde/presse/pressemitteilung_archiv/archiv/2017_pressearchive/139-17-peruanischer-Landwirt-RWE.pdf.

harmful effects and the company's share of the causation.³⁵ After the plaintiff, sponsored by a German foundation, paid the advance on costs of EUR 320,000, a delegation including members of the court of appeals and the court-appointed expert traveled to Peru in May 2022 to inspect the localities on site and to carry out the necessary investigations and measurements.³⁶ If the company loses the appeal, it may have to bear these costs of the expert opinion in addition to whatever monetary damage the court determines. The next hearing is expected in fall 2023.

(4) Shareholder litigation

Another recently dismissed case concerned shareholders who were reportedly concerned that a German car manufacturer's stated climate ambitions and its lobbying activities might not align.³⁷ They filed a shareholder action requesting that the court order the general meeting to vote on whether the board of directors should disclose climate change lobbying activities as part of their sustainability reporting and explain to what extent these activities reduce risks for the group companies from climate change and comply with the Paris Climate Agreement. However, the court dismissed this request on the grounds that the intended order would violate the distribution of competencies under German stock corporation law, as it would unduly restrict the board of directors' discretion as to how the reporting obligation is fulfilled. Moreover, the court stated that the general meeting is precluded from giving specific instructions regarding business policy and organization. A reporting obligation on climate protection-related lobbying activities, in the court's view, would have a concrete steering effect on the management due to its publicity impact.³⁸ After rejection by the next instance, the dismissal is now legally binding.³⁹ On the other hand, in May, the German car manufacturer voluntarily disclosed at least parts of its lobbying activities in a report, comparing its climate positions with those of associations of which it is a member.⁴⁰

In another case that did not end up in court, a shareholder proposed to vote on whether a German energy company's board of directors should be instructed to develop a specific plan for demerging its lignite business. However, the proposed resolution was rejected by an overwhelming majority of shareholders at the annual general meeting.⁴¹

Although the shareholders did not reach their goals in either of these two (known) cases, German legal literature is predicting that this is just the beginning of a U.S.-inspired "ESG activism" by shareholders in Germany, as the importance of sustainability for the capital market will continue to grow.⁴²

³⁵ See press releases of the OLG Hamm dated November 30, 2017, https://www.olg-hamm.nrw.de/behoerde/presse/prsessemittteilung_archiv/archiv/2017_pressearchiv/153-17-VT-peruanischer-Landwirt-RWE.pdf, and June 17, 2022, https://www.olg-hamm.nrw.de/behoerde/presse/pressemitteilung_archiv/archiv/2022_Pressearchiv/19_22_PE_Beweisaufnahme-in-Peru-im-Rechtsstreit-Liuya--RWE/index.php.

³⁶ See <https://rwe.climatecase.org/en/material>, FAQ No. 11. ("What role does the Stiftung Zukunftsfähigkeit play?"), and press release of the OLG Hamm dated June 17, 2022, footnote 35 above.

³⁷ <https://www.clientearth.org/latest/press-office/press/investors-turn-to-courts-after-vw-withholds-climate-lobbying-details/>.

³⁸ Local court (*Amtsgericht* – AG) Braunschweig, March 16, 2023 – 118 AR 13/22, NZG 2023, 659.

³⁹ <https://community.beck.de/2023/05/31/olg-braunschweig-nachhaltigkeitsbericht-bleibt-vorstandsbericht>.

⁴⁰ See "Association Climate Review 2023", <https://www.volkswagen-group.com/de/publikationen/unternehmensberichte/association-climate-review-2023-englisch-1810>.

⁴¹ See Klöhn, NZG 2023, 645.

⁴² <https://blog.otto-schmidt.de/gesellschaftsrecht/2022/05/16/esg-aktivismus-gekommen-um-zu-bleiben/>.

IV Impacts on companies

Worldwide, about one in two climate lawsuit verdicts have been favorable to plaintiffs – although this figure refers to all defendants, in particular governments, and not just companies.⁴³ For cases against companies, the number is likely lower.⁴⁴ As explained above, success rates can vary distinctively even within one jurisdiction for different types of climate lawsuits. Successful plaintiffs often inspire imitators and can thus increase the risk for companies of being targeted, especially companies with high emissions and well-known brand names that will attract media attention. This is worrying for companies not only because of the costs and possible damage to reputation, but climate litigation can also lead to negative market reactions impacting share price.⁴⁵

V Outlook

Especially within the EU, several developments could further facilitate Climate Change Litigation. For example, the EU Directive on Representative Actions,⁴⁶ which was recently implemented in Germany, will – at least on a procedural level – enhance the collective assertion of claims across borders in the EU.⁴⁷ Whether this new vehicle will be used in the context of climate protection remains to be seen.

Research also shows that the proliferation of European climate policy and legislation has been accompanied by an increase in Climate Change Litigation in the EU, and this trend is expected to continue in the face of further ambitious EU measures.⁴⁸ These include the EU's decarbonization reforms, known as the "Fit for 55 package", and other integrating and facilitating measures on corporate governance, supply chains, sustainable finance and consumer information, to better align economic activities with the EU's climate goals as part of the "European Green Deal".⁴⁹ These measures include, for example, the Taxonomy Regulation⁵⁰ and the Corporate Sustainability Reporting Directive (CSRD),⁵¹ supplemented by the recently adopted European Sustainability Reporting Standards (ESRS)⁵² that have not yet entered into force.⁵³

⁴³ Global trends 2023, p. 28, footnote 1 above.

⁴⁴ See statistics on a more limited number of examined cases: Sato/Gostlow/Higham/Setzer/Venmans, Impacts of climate litigation on firm value, Working paper, May 2023, 2023, pp. 9 f., https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/05/working-paper-397_-_Sato-Gostlow-Higham-Setzer-Venmans.pdf.

⁴⁵ Impacts of climate litigation on firm value, pp. 2, 4 ff., footnote 44 above.

⁴⁶ Directive (EU) 2020/1828, <https://eur-lex.europa.eu/eli/dir/2020/1828/2023-05-02>.

⁴⁷ See Willert/Isfort, KlimR 2023, 49; Thönissen, NJW 2023, 945; https://www.haufe.de/recht/weitere-rechtsgebiete/prozessrecht/kollektiver-verbraucherschutz-abhilfeklage-als-neue-klageart_206_576248.html.

⁴⁸ Higham/Setzer/Narulla/Bradeen, Climate Change Law in Europe: What do new EU climate laws mean for the courts?, Policy Report, March 2023, pp. 1, 6, <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/03/Climate-change-law-in-Europe-what-do-new-EU-climate-laws-mean-for-the-courts.pdf>.

⁴⁹ For details see Climate Change Law in Europe, pp. 11 ff., 22 ff., footnote 48 above; https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

⁵⁰ Regulation (EU) 2020/852, <http://data.europa.eu/eli/reg/2020/852/oj>.

⁵¹ Directive (EU) 2022/2464, <http://data.europa.eu/eli/dir/2022/2464/oj>.


⁵² C(2023) 5303 final, https://ec.europa.eu/finance/docs/level-2-measures/csrd-delegated-act-2023-5303_en.pdf.

⁵³ Climate Change Law in Europe, p. 25, footnote 48 above; https://finance.ec.europa.eu/news/commission-adopts-european-sustainability-reporting-standards-2023-07-31_en.

Still under discussion are the new Directive on Green Claims⁵⁴ in which the EU Commission is proposing common criteria against greenwashing and misleading environmental claims⁵⁵ and the proposal of the Corporate Sustainability Due Diligence Directive (CSDDD),⁵⁶ also referred to as the “EU Supply Chain Law”.⁵⁷ In contrast to, for example, the German Supply Chain Due Diligence Act,⁵⁸ the CSDDD proposal contains explicitly climate change-related obligations and independent civil liability of affected companies, which, at least according to the latest amendments of the EU Parliament, shall apply to all obligations under the Directive.⁵⁹ However, the final content of either of these Directives is not yet set. It is therefore advisable to monitor further developments in these matters as well.

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⁵⁴ COM/2023/166 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2023:0166:FIN>.

⁵⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1692; https://environment.ec.europa.eu/topics/circular-economy/green-claims_en.

⁵⁶ COM/2022/71 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>.

⁵⁷ Climate Change Law in Europe, pp. 22 ff., footnote 48 above.

⁵⁸ Lieferkettensorgfaltspflichtengesetz, <https://www.gesetze-im-internet.de/lksg/>.

⁵⁹ See in particular Art. 15 and Art. 22 of the February 2022 proposal COM/2022/71 final: https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en and the latest EU Parliament amendments: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.html. On the German Supply Chain Due Diligence Act see e.g. Gehling/Ott/Lüneborg, CCZ 2021, 230 and Tschäpe/Trefzger, ZfBR 2023, 423.