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**Recommended Actions for the Strategic Planning and  
Controlling in Companies affected by the German Supply  
Chain Due Diligence Act**

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In today's economy, nearly half of global trade happens in Global Value Chains, which Multinational Enterprises lead. With the growing awareness of the underlying asymmetrical governance and the negative impacts on society and the environment, more and more states follow the proposal of international organisations to establish public governance solutions. With the Act on Due Diligence Obligations in Supply Chain, Germany passed a due diligence policy that has the potential to impact and steer businesses within Global Value Chains. This thesis aims to provide recommended strategic actions for affected companies. For this purpose, the following research question is posed: How should the strategic planning and controlling in companies react to the act on due diligence obligations in supply chains?

In order to answer the research question, a qualitative research approach was conducted. The qualitative study showed that the Act on Due Diligence Obligations in Supply Chains is a regulation that companies should not only comply with but anchor in their core business strategy. The anchoring of due diligence obligations makes it possible to profit from a broad range of positive financial and non-financial effects sustainable supply chains generate.

<sup>1</sup> Keywords: Global Value Chain, Strategic Planning and Controlling, Sustainability, German Supply Chain Due Diligence Act

## **Recommended Actions for the Strategic Planning and Controlling in Companies affected by the German Supply Chain Due Diligence Act**

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## List of Abbreviations

DDOS	Act on Corporate Due Diligence Obligations in Supply Chains
GCC	Global Commodity Chain
GVC	Global Value Chain
GPN	Global Production Network
SME	Small and medium enterprise
MNE	Multinational enterprise

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## **Kurzfassung**

**Autor:** Jobst König

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**Titel:** Handlungsempfehlungen für die strategische Planung und Kontrolle in Unternehmen die vom Lieferkettensorgfaltspflichtengesetz betroffen sind.

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In der heutigen Wirtschaft findet fast die Hälfte des Welthandels in globalen Wertschöpfungsketten statt, die von multinationalen Unternehmen geleitet werden. Mit dem wachsenden Bewusstsein für die zugrundeliegende asymmetrische Machtverteilung und die negativen Auswirkungen auf Gesellschaft und Umwelt folgen immer mehr Staaten dem Vorschlag internationaler Organisationen, politische Lösungen zu schaffen. Mit dem Gesetz über Sorgfaltspflichten in der Lieferkette hat Deutschland eine Sorgfaltspflichtpolitik verabschiedet, die das Potenzial hat, Unternehmen innerhalb globaler Wertschöpfungsketten zu beeinflussen und zu lenken. Ziel dieser Arbeit ist es, strategische Handlungsempfehlungen für betroffene Unternehmen zu geben. Zu diesem Zweck wird die folgende Forschungsfrage gestellt: Wie sollten die strategische Planung und das Controlling in Unternehmen auf das Gesetz zu Sorgfaltspflichten in Lieferketten reagieren? Zur Beantwortung der Forschungsfrage wurde ein qualitativer Forschungsansatz durchgeführt. Die qualitative Studie hat gezeigt, dass das Gesetz über Sorgfaltspflichten in Lieferketten eine Regelung ist, die Unternehmen nicht nur einhalten, sondern in ihrer Kerngeschäftsstrategie verankern sollten. Die Verankerung der Sorgfaltspflichten ermöglicht es, von einer breiten Palette positiver finanzieller und nicht-finanzieller Effekte nachhaltiger Lieferketten zu profitieren.

## **Abstract**

**Author:** Jobst König

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**Title:** Recommended Actions for the Strategic Planning and Controlling in Companies affected by the German Supply Chain Due Diligence Act

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In order to answer the research question, a qualitative research approach was conducted. The qualitative study showed that the Act on Due Diligence Obligations in Supply Chains is a regulation that companies should not only comply with but anchor in their core business strategy. The anchoring of due diligence obligations makes it possible to profit from a broad range of positive financial and non-financial effects sustainable supply chains generate.

# 1 Introduction

The increase in cross-border economic transactions has characterised the past decades. The result of global trade and expanded investments is the qualitative restructuring of commodity chains. Goods are produced in a division of labour along global commodity chains, with profits being distributed unequally.<sup>1</sup> Germany is integrated into the global division of labour as intensively as few other countries. Moreover, the focus often is on German exports and it is repeatedly overlooked that German companies import raw materials, intermediate products, and finished goods from abroad to an almost equally large extent to process or sell them in Germany.<sup>2</sup> For long, neither companies nor those with political responsibility were interested in a comprehensive policy that tackles economic, ecological, and humanitarian conditions under which these imported goods are produced, especially in emerging and developing countries.<sup>3</sup> Due to its high level of international interdependence, the Federal Republic of Germany is obliged to assume responsibility concerning human rights due diligence obligations in supply chains.

In addition to the need for states to respect, protect and uphold human rights, companies also have a responsibility to respect human rights. Global business activities significantly negatively impact people and the environment along supply chains.<sup>4</sup>

Against this backdrop, the German parliament passed the Act on Due Diligence Obligations in Supply Chains in June 2021.<sup>5</sup> This decision is a consequence of the failed process of the National Action Plan on Business and Human Rights. Aiming to monitor compliance with human rights and labour, social and environmental standards at suppliers of German companies, this regulation is seen by its legislators as the most advanced in Europe.<sup>6</sup>

The far-reaching requirements, other EU regulations, including the Taxonomie, and an overall societal shift towards more awareness of sustainable business activities challenges affected companies.<sup>7</sup>

Within this thesis, the concept of global value chains and their impact is introduced. Based on the regulatory gap presented within global value chains, international and national solutions are presented. Finally, the management functions in focus *strategic planning and controlling* are explained. Based on a qualitative study, recommended strategic planning and controlling actions will be elaborated to answer the research question *How should the strategic planning and controlling in companies react to the act on due diligence obligations in supply chains?*

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<sup>1</sup> Mayer and Phillips (2017), p.136

<sup>2</sup> Walk Free Foundation (2018), p.iv

<sup>3</sup> Gewerkschaft Erziehung und Wissenschaft (2021); Endres, dpa, and KNA (2020)

<sup>4</sup> Human Rights Watch (2016), p.5-6

<sup>5</sup> Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (n.d.)

<sup>6</sup> Ibid.

<sup>7</sup> Deloitte (n.d.)

## 2 Theoretical background

This section will explain the thematic framework to give a precise answer to the research question. This will be done in three parts. First, the economic framework of global value chains (GVCs) will be examined to understand the policy responses. Therefore the development of GVCs and the underlying concept is elaborated. Then, based on GVCs impact the need for regulation and different international and national approaches including the Act on Due Diligence Obligations in Supply Chains (DDOS) will be presented. With the help of existing literature, the effectiveness of the different approaches will be analyzed, and a forecast for DDOS will be made. In the third step, the management functions of strategic planning and control will be defined and studied to make recommendations for action.

### 2.1 Global Value Chains

GVCs, have emerged as a crucial aspect of globalization. More and more production processes are organized internationally and broken down into distinct tasks. The lead firms that organize and run them establish many of the norms by which other enterprises in the chain must function.<sup>8</sup> Today, GVCs are where around half of all global trade is organized.<sup>9</sup> This section aims to illustrate the development of GVCs and the importance of value chains in today's economy. For this purpose, the origin of the term, the governance and the impact of GVCs are evaluated.

#### 2.1.1 Origin and the different chain approaches

The concept of the commodity chain can be traced back to an article by Terence Hopkins and Immanuel Wallerstein. This article appeared in the magazine *Review* in 1977<sup>10</sup>. In the 1980s, several studies followed up on Hopkins and Wallerstein's concept.<sup>11</sup> The first detailed account came from Gary Gereffi and Miguel Korzeniewicz. The two authors published *Commodity Chains and Global Capitalism*. The origin of the Global Commodity Chain (GCC) approach could thus be traced back to the tradition of world systems analysis. Both schools argue that the commodity chain concept is suitable for analyzing the international division of labour, which is typical for the capitalist mode of production.<sup>12</sup> The differences between these two approaches are determined by the temporal and spatial conception of globalization and the research objective.<sup>13</sup>

To analyse the functioning of global industries, the aforementioned GCC paradigm is only one among several networks or chain approaches.<sup>14</sup> The different research strands are commodity chains (CC), global commodity chains (GCC), global value chains (GVC), and global production networks (GPN).<sup>15</sup> These differ in the level of analysis and objective.<sup>16</sup> The GCC, GVC, and GPN

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<sup>8</sup> Gereffi and Lee (2016), p.28

<sup>9</sup> World Bank (2020), p.2

<sup>10</sup> Bair (2005), p.154

<sup>11</sup> Ibid., p.155

<sup>12</sup> Ibid., p.155

<sup>13</sup> Ibid., p.156

<sup>14</sup> Ibid., p.162

<sup>15</sup> Plank and Staritz (2010), p.181

<sup>16</sup> Bair (2005), p.164

approaches are analytically oriented to the micro level ((transnational) companies) or meso level (sectors). In contrast, the CC approach, based on world system analysis, is characterized by a macro-level and holistic approach.<sup>17</sup>

In the context of this thesis, the GVC approach will be explicitly addressed. In order to understand and approach it, it is also necessary to describe the GCC concept, as findings from this research, especially concerning the governance structure, have shaped the development of the analysis of GVCs.<sup>18</sup>

### **2.1.2 Global Commodity Chains and their governance concept**

According to Gereffi, GCCs are rooted in production systems that lead to specific patterns of coordinated trade. A production system, he argues, links the economic activities of firms to technological and organizational networks that enable companies to develop, produce, and distribute specific goods.<sup>19</sup> He argues that the GCC perspective underscores the need to look not only at the geographic spread of transnational production arrangements but also at their organizational scope. By organizational scope, Gereffi means the linkages between different economic actors, for example, raw material suppliers, factories, traders, and retailers.<sup>20</sup> He describes the following main dimensions of global commodity chains, along which they can be analyzed.

First, these have an input-output structure. The author argues that this refers to a set of products and services linked together in a sequence of value-adding economic activities. Second is the territoriality dimension, a spatial dispersion or concentration of production and distribution networks consisting of firms of different sizes and types. Third, Gereffi mentions governance structure. The governance structure describes authority and power relationships that determine how financial, material and human resources are allocated within a chain. Fourth, a commodity chain can be analyzed in terms of an institutional structure.<sup>21</sup> Studies of GCC focus in particular on the dimension of governance structure and thus on the question of which companies in the chain succeed in bringing different areas of the production process under control and in what way they appropriate and distribute the created surplus value. The description of the governance structure of a chain thus provides information about the power relations within it.<sup>22</sup>

Against the background, two different types of governance structures have initially emerged. These are referred to as producer-driven and buyer-driven commodity chains.<sup>23</sup>

Gereffi uses the term buyer-driven GCC to describe how global buyers help create a supply base through explicit coordination upon which production and distribution systems can be built on a global scale without direct ownership.<sup>24</sup> Buyer-driven commodity chains refer to those industries in which large retailers, brands, and trading companies play the central role in building decentralized

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<sup>17</sup> Bair (2005), p.164; Plank and Staritz (2010), p.181

<sup>18</sup> Ibid., p.164

<sup>19</sup> Gereffi (2018), p.44

<sup>20</sup> Ibid., p.44

<sup>21</sup> Bair (2005), p.159; Gereffi (2018), p.44 f.

<sup>22</sup> Ibid., p.159

<sup>23</sup> Gereffi (2018), p.45

<sup>24</sup> Gereffi, Humphrey, and Sturgeon (2005), p.82

production networks in various exporting countries. This pattern of trade-led industrialization is typical in labour-intensive consumer goods industries, including apparel. Producer-controlled commodity chains, he said, are characteristic of capital-intensive industries in which manufacturing firms control and often own several vertically organized suppliers.<sup>25</sup> He said that one of the main characteristics of companies that fit the buyer-controlled model is that they often do not own production facilities. Instead, these companies are responsible for design and marketing, not manufacturing. The latter is done by complex and tiered networks of contractors.<sup>26</sup>

Consequently, companies outsource parts or all of their product development worldwide. The central role of the core company in buyer-controlled commodity chains is to manage these production and trade networks and ensure that all parts of the business come together as an integrated whole. So-called big buyers control the chain, even though they have no ownership rights in the companies producing for them. In buyer-controlled commodity chains, the organization of consumption is a crucial determinant of where and how global production occurs the author says. Profits in buyer-driven chains do not come from economies of scale and technological advances as in producer-driven chains but unique combinations of high-value research, design, sales, marketing, and financial services.<sup>27</sup> Gereffi notes that economic actors do not operate in a policy vacuum. In addition to economic market development from supply and demand, political pressures also influence them.<sup>28</sup> Gereffi points out that government policies in consumer or importing countries are significant. The influence of protectionist measures such as quotas, tariffs, and voluntary export restrictions is decisive, as these influence the production location in buyer-controlled chains.<sup>29</sup>

The dichotomous categories of buyer- and producer-driven global commodity chains are said to be too broad to capture the complexity of GVC governance structures. Given this, a more detailed explanation of GVC governance is provided in a separate subsection following the general explanations of the GVC approach.

### **2.1.3 Global Value Chains and their governance concept**

The GVC Initiative 2000-2005, born out of a 1999 workshop by the Institute of Development Studies (IDS) at the University of Sussex, was founded by scholars from two different research traditions. First, from the tradition of the GCC approach and, second, from the perspective of local economic clusters that emphasize the export potential of small and medium-sized enterprises (SMEs) in countries of the Global South.<sup>30</sup> The GVC concept aims to understand how value is created, captured, sustained, and leveraged across all industry types.<sup>31</sup> Moreover, the GVC framework reflected a confluence of three different theoretical traditions, dependency, world systems, and development theories.<sup>32</sup>

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<sup>25</sup> Bair (2005), p.159

<sup>26</sup> Gereffi (2018), p.46

<sup>27</sup> Ibid., p.46 f.

<sup>28</sup> Ibid., p.47

<sup>29</sup> Ibid., p.48 f.

<sup>30</sup> Ibid., p.196 f.

<sup>31</sup> Gereffi and Lee (2016), p.25ff

<sup>32</sup> Gereffi (2019), p.197

What distinguishes the GVC approach from the GCC paradigm, he argues, is the more significant influence of international business economics on its analyses of global production networks, as well as the more pronounced interest in policy implications. This contrasts with the more sociologically inspired orientation of the GCC framework. However, these differences are only gradual in part.<sup>33</sup> The two aforementioned contrasting research orientations on the global economy - one top-down and one bottom-up - generate the two main conceptual pillars of the GVC framework: governance and upgrading processes. These two perspectives on global industries are based on detailed and historically grounded analyses of the strategies of multinational enterprises (MNEs) and the evolving structure of the international and domestic industries in which they are located.<sup>34</sup> For GVC scholars, MNEs are central institutions that link globalization and development. Consequently, the policy relevance of GVC research is a direct byproduct of the embeddedness of MNEs in global, regional, and local contexts and the recurring challenges of uneven development.<sup>35</sup>

As mentioned in the explanations of the distinction between buyer- and producer-driven commodity chains, a definitive account is needed of governance - one of the two pillars of the GVC framework mentioned above.<sup>36</sup> According to Gereffi, the governance structure of GVCs can be defined by the strategies of different types of lead firms in global industries. These have the power to orchestrate activities of internationally dispersed firm networks due to their size and control over critical corporate resources. Such firm networks, in turn, represent the global supply chains of lead firms.<sup>37</sup> It would be necessary to address how global production is organized. Against this background, the key questions are which activities and technologies a company should keep in-house, which should be outsourced to other companies, and where the various activities should be located.<sup>38</sup>

In the article *The governance of global value chains* by Gereffi, Humphrey, and Sturgeon, the authors draw on three streams of literature, transaction cost economics, production networks, and firm-level technological capabilities and learning.<sup>39</sup> The authors note that history, for example, and many other factors, play an influential role in how firms are interconnected in the global economy. Nonetheless, they argue that a simple framework is needed that generates results.<sup>40</sup> Against the background of the three literature streams, the identification of three variables had taken place.<sup>41</sup> First, transaction complexity - the complexity of the information and knowledge transfer required to carry out a particular transaction, particularly in terms of product and process specifications. Second, the information codifiability - the extent to which this information, this knowledge can be codified and thus transferred efficiently as well as without transaction-specific investment between the parties to the transaction. Third, the supplier

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<sup>33</sup> Bair (2005), p.154

<sup>34</sup> Gereffi and Lee (2016), p.25ff; Gereffi (2019), p.197

<sup>35</sup> Gereffi (2019), p.197

<sup>36</sup> Gereffi and Lee (2016), p. 27 f.

<sup>37</sup> Gereffi (2019), p.197


<sup>38</sup> Gereffi, Humphrey, and Sturgeon (2005), p.79

<sup>39</sup> Ibid., p.78

<sup>40</sup> Ibid., p.82

<sup>41</sup> Ibid., p.78

competence level - the capabilities of actual and potential suppliers in relation to the requirements of the transaction. If only two values - high or low - were allowed for these three factors, the result would be eight possible combinations, five of which generate GVCs.<sup>42</sup> The five types of global value chain governance, noting their dynamic and overlapping nature, are listed in the figure below, along with the values of the three variables that determine them.

Governance type	Complexity of transactions	Ability to codify transactions	Capabilities in the supply-base	Degree of explicit coordination and power asymmetry
Market	Low	High	High	Low
Modular	High	High	High	
Relational	High	Low	High	
Captive	High	High	Low	
Hierarchy	High	Low	Low	

**Figure 1: Key Factors influencing GVC governance<sup>43</sup>**

The governance type *market* is characterized by the easy codification of transactions and relatively simple product specifications. Furthermore, suppliers can produce the products in question with little input from buyers. In market exchanges, buyers respond to specifications and prices set by sellers. Because the complexity of the information exchanged is relatively low, transactions can be managed with little explicit coordination.<sup>44</sup> For both parties, the low costs of switching to new partners are essential.<sup>45</sup>

If the ability to codify specifications extends to complex products, the governance type *modular* emerge. Then the product architecture would be modular and technical standards would simplify interactions by reducing component variation and unifying component, product, and process specifications.<sup>46</sup> The product is manufactured according to more or less detailed specifications of the customer(s).<sup>47</sup> Suppliers can also have the competence to deliver complete packages and modules. Linkages based on codified knowledge offer many of the advantages of market linkages - speed, flexibility, and access to low-cost inputs - but are not congruent with traditional market exchanges based on price. Because of codification, complex information can be exchanged with little explicit coordination effort so that, as with simple market exchange, the costs of switching to new partners remain low.<sup>48</sup>

A *relational* governance type is expected when product specifications cannot be codified, transactions are complex, and supplier capabilities are high.<sup>49</sup> In these networks, there are complex interactions between buyers and sellers that often create interdependence and a high degree of asset specificity.<sup>50</sup> The reason for this is the need for knowledge exchange between buyers and sellers and the

<sup>42</sup> Ibid., p.85

<sup>43</sup> Ibid., p.87

<sup>44</sup> Ibid., p.86

<sup>45</sup> Ibid., p.83

<sup>46</sup> Ibid., p.86

<sup>47</sup> Ibid., p.84

<sup>48</sup> Ibid., p.86

<sup>49</sup> Ibid., p.86

<sup>50</sup> Ibid., p.84



outsourcing motivation of leading companies due to suppliers' competence in gaining access to complementary competencies. The resulting interdependence could be regulated, for example, by social and spatial proximity and family and ethnic ties. In addition, this can be achieved through mechanisms that impose costs on the party that breaks an agreement. The exchange of complex information is usually achieved through frequent interaction and is subject to a high degree of explicit coordination, which means that the costs of switching to new partners are high.<sup>51</sup>

The *captive* governance type is characterized by the transactional dependence of small suppliers on larger buyers.<sup>52</sup> The ability to codify, in the form of detailed instructions and the complexity of product specifications are high. However, the skills of the suppliers are low.<sup>53</sup> Low competence against the background of complex products and specifications requires a high degree of intervention and control from the leading company. Such suppliers are often limited to a narrow range of tasks and depend on the leading company for complementary activities such as design, logistics, and purchasing components. The suppliers are confronted with considerable switching costs and are therefore trapped.<sup>54</sup>

The *governance* type hierarchy is characterized by vertical integration.<sup>55</sup> If product specifications cannot be codified, products are complex, and highly competent suppliers cannot be found, then leading companies are forced to develop and manufacture products internally.<sup>56</sup> The predominant form of corporate governance is management control, passed on from managers to subordinates or from headquarters to subsidiaries and affiliates.<sup>57</sup>

As shown in the last column of Figure 1, the governance types cover a spectrum ranging from a low degree of explicit coordination and power asymmetry between buyers and suppliers in terms of markets to a high degree between them in terms of hierarchies.<sup>58</sup> These governance types thus illustrate the functioning of power distributions in GVCs.<sup>59</sup> Concerning the *hierarchical* governance type, the exercise of power corresponds to direct administrative control. Such direct control indicates a high degree of explicit coordination and power asymmetry, with the leading firm being the dominant party. Precise control and power asymmetry are equally characteristic of a *captive* governance type. In *relational* GVCs, on the other hand, the balance of power between firms is more symmetrical due to the contribution of critical competencies on both sides. In *relational* GVCs, there is a high degree of explicit coordination. However, this is achieved through close dialogue between more or less equal partners and thus contrasts with the flow of information and control between unequal partners as in *hierarchical* or *captive* GVCs. In *modular* GVCs, power asymmetries remain relatively low because suppliers and buyers work with multiple partners.

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<sup>51</sup> Gereffi, Humphrey, and Sturgeon (2005), p.86

<sup>52</sup> Ibid., p.84

<sup>53</sup> Ibid., p.86

<sup>54</sup> Ibid., p.86 f.

<sup>55</sup> Ibid., p.84

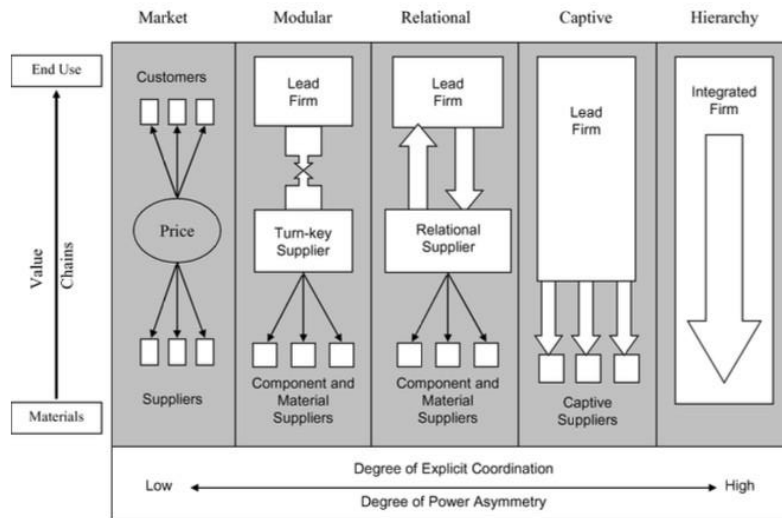
<sup>56</sup> Ibid., p.87

<sup>57</sup> Ibid., p.84

<sup>58</sup> Ibid., p.87 f.

<sup>59</sup> Ibid., p.88

Figure 2 serves as an illustration of these remarks. The value chain types are arranged along with explicit coordination and power asymmetry. The black arrows represent exchanges based on price, and the white arrows represent information and control flows regulated by explicit coordination.<sup>60</sup>



**Figure 2: The five governance types of global value chains<sup>61</sup>**

Despite this multitude of influencing factors, such as international or national regulations, the governance framework presented is part of the journey towards a systematic understanding of GVCs. One of the most important findings is that access to markets for countries in the Global South increasingly depends on participation in GPNs managed by companies based in industrialized countries.<sup>62</sup>

### 2.1.4 Upgrading processes in Global Value Chains

Improving the economic and social conditions for workers and communities associated with GVCs is a complex challenge and forms the other basis of the GVC framework.<sup>63</sup> Upgrading processes could be described as those strategies that countries, regions, companies, and other economic actors use to improve their position or maintain the status quo. It could be divided into economic and social upgrading.<sup>64</sup>

*Economic upgrading* is defined as a shift to higher value activities in production, improved technology, knowledge, and skills, and increased benefits or profits resulting from participation in GVCs.<sup>65</sup> Four types of upgrading have been identified within the GVC framework. Product upgrading is characterized by producing higher-value goods. Process upgrading represents improving technology and/or the production system. Intra-chain upgrading involved increased diversity in terms of taking on functions or abandoning existing functions to increase the overall skill content of activities. This type of upgrading

<sup>60</sup> Ibid., p.88

<sup>61</sup> From Gereffi, Humphrey, and Sturgeon (2005), p.89

<sup>62</sup> Gereffi, Humphrey, and Sturgeon (2005), p.99

<sup>63</sup> Gereffi and Lee (2016), p.26

<sup>64</sup> Ibid., p.27

<sup>65</sup> Ibid., p.29

described the advancement of a company within the same chain to a more central position. Lastly, inter-chain upgrading describes an industry/company moving into new but often related industries.<sup>66</sup>

*Social upgrading* is defined as improving workers' rights and entitlements and upgrading the quality of their employment.<sup>67</sup> This process does not only refer to access to decent work, which can result from economic upgrading. It also includes improving working conditions, protection, and rights, improving the overall well-being of workers and their families and communities. The following quote should serve to clarify: „Social upgrading can be subdivided into two components [...]: measurable standards, which include the type of employment (regular or irregular), wage level, social protection, and working hours; and enabling rights, or less quantifiable aspects of social upgrading, such as freedom of association, the right to collective bargaining, non-discrimination, voice, and empowerment.”<sup>68</sup>

### **2.1.5 Impact on labour and employment development in Global Value Chains**

The development of labour and employment in value chains and production networks of global capitalism is characterized by contradictory trends. On the one hand, cost and time pressure is exerted by international brand companies and core companies on their suppliers and service providers. In addition, the latter are often exposed to inadequate working conditions. On the other hand, upgrading processes can lead to upgrading and improving the position of companies and entire economies.<sup>69</sup> Implicit in the GVC literature is often the assumption that economic upgrading leads to social upgrading through better wages and working conditions, which can be refuted by case studies.<sup>70</sup> It is instead the case that social upgrading is influenced by economic upgrading. For example, if upgrading is primarily based on reducing labour costs, the jobs created are usually low-paid, informal, or characterized by poor working conditions.<sup>71</sup> Moreover, temporary and casual workers are excluded from social upgrading, which leads to segmented social upgrading within a cluster. In this context, gender differences also play a crucial role. Female workers tend to work in insecure, low-paid, and seasonal jobs. When higher-value jobs are sought in clusters, which require a more highly skilled workforce, there is often exclusion and marginalization of women and unskilled workers.<sup>72</sup>

Human Rights Watch documents the most common habits of an inadequate work environment including minimum wage violations, forced overtime, child labour, sexual harassment, exposure to toxic substances and retaliation against workers who attempt to organize.<sup>73</sup> The ILO has shown the extreme effects in its report. Approximately 160 million children were in child labour at the beginning of 2020

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<sup>66</sup> Bair (2005), p.165

<sup>67</sup> Gereffi and Lee (2016), p.26

<sup>68</sup> Ibid., p.29

<sup>69</sup> Flecker (2010), p.43

<sup>70</sup> Ibid., p.29f.

<sup>71</sup> Gereffi and Lee (2016), p.30

<sup>72</sup> Ibid., p.30

<sup>73</sup> Human Rights Watch (2016), p.5-6

- an increase of 5.5 percent compared to the last survey in 2016 (151.6 million).<sup>74</sup> This is the first time the number of working children has risen after a steady decline this millennium. This does not yet include the potential impact of the Corona pandemic.<sup>75</sup> The global prevalence of child labour stagnated at 9.6 per cent of five- to seventeen-year-olds, with sub-Saharan Africa standing out in regional comparison with nearly 25 per cent. In addition, 24.9 million people are victims of forced labour, as documented by the 2018 Global Slavery Index.<sup>76</sup> Germany sourced \$28.4 billion worth of goods in the electronics and apparel sectors in 2018 that may have been produced under working conditions that fall under the umbrella of "modern slavery". The Global Slavery Index estimates that Germany is the third largest importer of "high-risk" goods among G20 countries, behind the United States and Japan.<sup>77</sup> The ILO estimates that 0.5 per cent of all adults worldwide work under duress or in slave-like conditions.<sup>78</sup> Accordingly, slavery, forced labour, child labour or human trafficking still exist along globalized value chains in almost all countries and many industries. Such labour relations are often only apparent at second glance - even in Germany, the ILO sees the exploitation of workers with temporary residence permits as a problem. Often, the residence permit is linked to an employment contract, which gives employers great power over the employees.

It can be concluded that participation in GVCs does not lead proportionally to economic or social upgrading in developing countries. One of the reasons has just been outlined. Asymmetric market structures created by oligopolistic positions of focal companies, which support competition and pressure among suppliers, lead to enormous competitive pressure to keep costs low, quality high, and supply customers on time. The limitations on the expansion of value added activities by suppliers are reflected in the limited ability to control markups on costs and the resulting need to control labour costs.

Another important factor contributing to the hardening of global value-added structures and the development of precarious working conditions among workers is the lack of regulation within global supply chains.

## **2.2 Regulatory gap and due diligence approaches**

This chapter discusses how these gaps came into existence, what approaches already exist in practice, and how the DDOS aims to close these gaps.

### **2.2.1 Regulatory gap**

Due to a changed international division of labour as well as the effects on labour and employment relations, regulation is necessary. Against this background, a distinction can be made between *private*, *social* and *public governance*.<sup>79</sup> These are governance dimensions that exist due to the nature of the actors involved.<sup>80</sup> *Private governance* refers to codes of conduct and monitoring by companies, while *social governance* refers to civil society pressure on companies exerted by

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<sup>74</sup> International Labour Organization and UNICEF (2021), p.12

<sup>75</sup> International Labour Organization and UNICEF (2021), p.21

<sup>76</sup> Walk Free Foundation (2018), p.27

<sup>77</sup> Walk Free Foundation (2018), p.iv

<sup>78</sup> International Labour Organization, International Organization for Migration, and Walk Free Foundation (2017), p.5

<sup>79</sup> Gereffi and Lee (2016), p.25

<sup>80</sup> Ibid., p.30

trade unions and non-governmental organizations (NGOs).<sup>81</sup> Examples are codes of conduct initiated by NGOs or multi-stakeholder initiatives. Public governance is exercised by public actors, including governments at various levels within nation states and supranational organizations.<sup>82</sup>

Mayer and Phillips argue that the advance of GVCs has driven the privatization of governance and this private governance has insufficiently secured social, labour, and environmental improvements.<sup>83</sup> They say that today, firms, not states have the upper hand in choosing what is being produced where and under what terms. To a great extent, global production patterns controlled by a constellation of trade rules and other state policies are now artefacts of value chain governance. As outlined in 2.1 Development of Global Value Chains, the vision of leading neo-liberal politicians and advisors was a world of free market competition. However, the effect of this development is described by Gereffi and Mayer as a highly leveraged form of managed trade where focal companies control production and a few powerful actors capture most of the value created in the system.<sup>84</sup>

As markets became disconnected from social institutions, a deficit of governance emerged. This triggered social pressure on companies to improve their business practices, resulting in private governance. Mayer and Phillips state that this process should not be seen only a consequence of an absence of public governance but as a result of political choices executed by both states and private actors to initiate structural change associated with economic globalization.<sup>85</sup>

Four reasons have been put up by the authors to explain how states still enable the absence of public governance and effective regulatory.

First, free trade agreements have lowered not only tariffs and other barriers but also the ability to restrict imports. While the WTO allows restrictions based on environmental or health concerns in the importing country, the ability to impose restrictions based on practices in the exporting country is only possible in extreme cases.<sup>86</sup>

Second, as the economic development of developing countries is strongly linked to attracting foreign investment, these countries have incentives to be the low-cost point in the value chain. As a result, governments lower producers' regulatory costs, keep wages competitive and limit the ability of workers to organize. Enforcement mechanisms are also often underdeveloped or actively not implemented. Labour inspection systems are only partially implemented, which can be attributed to limited resources and intentional decisions. The ILO has revealed that government authorities sometimes obstruct inspection procedures. In addition, national legislation leaves gaps, for example, in India, where most forms of work from home are unregulated. However, this is where child labour problems occur most frequently.<sup>87</sup>

Third, States have wide latitude in setting their regulatory frameworks. Large economies with strong governments, such as China, strengthened the enforcement of labour and environmental laws in 2008. This resulted in higher

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<sup>81</sup> Gereffi and Lee (2016), p.25

<sup>82</sup> Ibid., p.31

<sup>83</sup> Mayer and Phillips (2017), p.146

<sup>84</sup> Ibid., p.142 f.

<sup>85</sup> Ibid., p.142

<sup>86</sup> Ibid., p.143 f.

<sup>87</sup> Ibid., p.144

production costs and shifted the economy from the lowest value-added stage in the GVC to higher value-added stages. However, this is rarely the case, and the authors note that the bottom line is that outsourcing of production has led to less regulation by states.<sup>88</sup>

Lastly, it can be observed that states are actively promoting Corporate Social Responsibility measures, including using their legislative authority to integrate Corporate Social Responsibility into national legal frameworks. Different forms developed within the last year in different locations. The California Transparency in Supply Chain Act in California, the Modern Slavery Act in the UK and the German National Action Plan for Business and Human Rights is a governmental approach to promote private governance. These movements shift away from primarily voluntaristic approaches towards what has been termed “CSRD as mandated by government”<sup>89</sup> This can be seen as a positive development on the one hand. On the other hand, these frameworks lack clear sanctions for non-compliance or any controlling measures to enforce these legislations.<sup>90</sup>

Mayer and Phillips conclude that there is a growing body of literature arguing that a form of private and public governance is needed to achieve improvements in social, labour, and environmental standards.<sup>91</sup>

In the following section, public governance approaches by national actors will be analyzed to determine their performance and whether they have impacted companies' actions and strategies.

## **2.2.2 Due diligence approaches**

In the following the UN Guiding Principles on Business and Human Rights (UNGP) will be summarized as these principles lay the foundation for most national and international approaches. Further two already active laws, the UK Modern Slavery Act and the French Duty of Vigilance Law and the German Supply Chain Due Diligence Act, that will come into effect in 2023, will be analyzed. Three factors are used to analyze and compare these national regulations. These are scope, obligations, and monitoring and enforcement. The performance of the regulations is then evaluated based on a literature review. In addition, it is investigated whether companies' reactions to the law can be identified. This section will be closed with an outlook on the EU Commission Proposal for a Directive on Due Diligence.

The UNGP are the most recognized framework and the concept and terminology of due diligence as the standard of care is incorporated in the French Duty of Vigilance Law and the German mandatory due diligence law. Moreover it is adopted in international frameworks like the ILO Tripartite declaration of principles concerning MNEs and social policy and OECD Guidelines for Multinational Enterprises.<sup>92</sup>

The principles were developed by the UN Special Representative on Business and Human Rights, Prof. John Ruggie and transnational corporations and other business enterprises. The Guiding Principles were adopted in Resolution 17/4 in

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<sup>88</sup> Mayer and Phillips 2017) p.144

<sup>89</sup> Ibid., p.145

<sup>90</sup> Ibid.

<sup>91</sup> Ibid., p.146

<sup>92</sup> Smit et al. (2020), p.161

2011.<sup>93</sup> As an international framework, these formulate requirements for politics and business and for the first time provide a generally recognized reference for human rights obligations of states and for the responsibility of companies in global supply and value chains. They are to be applied to all states and transnational and other business enterprises, regardless of size, sector, location, ownership and structure.<sup>94</sup>

The framework consist of 31 principles, which are divided into three pillars. The first is The State's Duty to Protect Human Rights, the second is The Corporate Responsibility to Respect Human Rights, and the third is Access to Remedy. Basic and operational principles are formulated for each of these three pillars. Briefly summarized, the first pillar aims at the state's duty to protect with regard to the respect, protection and guarantee of human rights and fundamental freedoms. The second pillar describes in the fundamental and operational principles the responsibility of companies with regard to respect for human rights. Access to remedy, the third pillar, states that in the event of human rights violations, these must be countered by appropriate and effective remedial measures.<sup>95</sup>

The corporate responsibility to respect human rights is further explained in Principle 13. This includes businesses to avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur. Also, businesses should seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationship.<sup>96</sup>

### **2.2.3 UK Modern Slavery Act**

The UK Modern Slavery Act was passed with three main objectives in 2015. First, it provided a clear legal framework for law enforcement agencies to combat modern slavery. Secondly, it should enable crimes covered by the Act to be appropriately punished, and finally, the Act should improve support and protection for victims. In addition the law was created to establish supply chain transparency of companies doing business in the United Kingdom.<sup>97</sup>

The scope of the law includes every commercial organization which supplies goods or services and carries business in the UK with a total turnover above 36 million British pounds.<sup>98</sup> Until today 18,242 companies have published a statement.<sup>99</sup>

The obligations companies have to follow under the law are to publish a slavery and human trafficking statement for each financial year. This statement has to include the organization's steps during the financial year to ensure that slavery and human trafficking are not taking place in its supply chain. What the Statement must contain is not defined. Section 54 (5) of the Act simply proposes to publish information on the company and its supply chain, policies on slavery and human trafficking, relevant due diligence processes, which areas are at increased risk and what steps are being taken to manage the risk, performance indicators on

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<sup>93</sup> United Nations (2011), p.iv

<sup>94</sup> Ibid., p.1

<sup>95</sup> Ibid., p.3 ff.

<sup>96</sup> Ibid., p.14 f.

<sup>97</sup> Home Office (2018)

<sup>98</sup> Home Office (2021), p.5

<sup>99</sup> Business & Human Rights Resource Centre (n.d.)

the effectiveness of the prevention of slavery, and company internal training on the subject.<sup>100</sup> If no steps are taken by a company to ensure that slavery and human trafficking are not taking place within its supply chain the statement has to include this information.<sup>101</sup> In addition, the statement must be approved by management, signed by a governing body, and finally posted prominently on the website.<sup>102</sup>

There is no strict monitoring and enforcement system for the UK Modern Slavery Act. If a company fails to file a statement for a fiscal year, the secretary of state may seek an injunction to issue a statement. A court case with unlimited penalty may be initiated if the company does not comply with the order. Compliance is explicitly not dependent on quality or completeness as long as it describes the steps a company has taken or has not taken. The government relies on the threat of reputational damage that the company could suffer.<sup>103</sup>

A quantitative measure of the law's impact is the percentage of affected companies that have adopted a report. The UK Home Office found in an internal report that only 60% of all affected companies published a report.<sup>104</sup> In the case of the UK Modern Slavery Act, these 60% may include reports stating that nothing has been done.

External research by Amnesty International concluded that almost half of the companies failed to adopt the report required by the regulation. It was found that many companies filed a report in the first year of the reporting period but stopped following up. They conclude that companies already engaged in human rights protection along their supply chain filed the most comprehensive reports. Thus the act has failed to drive companies to respect human rights within their supply chain and implement comprehensive due diligence. This is due to weak monitoring and enforcement of already weak reporting requirements.<sup>105</sup>

LeBaron and Rühmkorfs study on the UK Modern Slavery Act summarizes that more stringent legislation generally leads to more private governance and that less stringent regulation does not spur change in company practices. They argue that company strategies could still revolve around the UK Modern Slavery Act. However, due to the weak institutional design, they doubt it will result in meaningful company and supplier policies.<sup>106</sup>

Lastly, the Business and Human Rights Resource Centre analyzed the top-selling companies within the United Kingdom and their reaction to the new legislation. Their 2018 report concludes that the legislation has failed to deliver transformational change.<sup>107</sup>

In summary, the UK Modern Slavery Act has not met its goals mentioned above due to its weak design, particularly its missing enforcement and monitoring instruments. An interviewee in a large-scale study summarized that the law created board awareness because it required management signatures but was

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<sup>100</sup> Modern Slavery Act 2015, Section 54 (5)

<sup>101</sup> Ibid., Section 54 (4)

<sup>102</sup> Ibid., Section 54 (6); Ibid Section 54 (7)

<sup>103</sup> Home Office (2021), p.6

<sup>104</sup> Smit et al. (2020), p.247

<sup>105</sup> Ibid., p.347

<sup>106</sup> Ibid., p.249

<sup>107</sup> Ibid., p.247



not reflected in the company's actions.<sup>108</sup> So based on the literature, no law's impact on the strategic direction of affected companies can be identified.

## 2.2.4 French Corporate Duty of Vigilance Law

In 2017 France was the first country to adopt a law on due diligence. It strives to oblige major French companies to avert the risks and serious violations that their activities may entail regarding human rights and fundamental freedoms, human health and safety, and the environment. Furthermore, it makes parent companies responsible for not only their activities but for their supplier activities.

The regulation applies to large French companies with over 5000 employees worldwide and large non-French companies operating in France with more than 10,000 employees worldwide.<sup>109</sup> This makes up only approximately 262 companies.<sup>110</sup>

The law obliges companies in scope to implement an effective vigilance plan. This plan has to include a risk mapping to identify and rank risks the company faces; a procedure to assess subsidiaries, subcontractors, and suppliers; a mitigation plan for risks to prevent violations; an alert mechanism; and a control system to assess the efficiency of the actions in place. A statement has to be published each year to prove that the vigilance plan is implemented.<sup>111</sup>

Suppose companies fail to publish or implement a vigilance plan. In that case, any concerned parties can turn to relevant jurisdiction for action, in which case the company has three months to meet its obligation. After this period, companies could be subject to a fine of up to 10 million euros. If this failure resulted in damages that would otherwise have been preventable fines can go up to € 30 million.<sup>112</sup>

The French parliament published an evaluation report on the Corporate Duty of Vigilance Law in 2022. One of the biggest and most frequently cited criticisms of the law is its very vague wording.<sup>113</sup> Many questions remain unanswered and have not yet been answered by the legislator. This results in large companies such as McDonalds which do not feel obliged to prepare a report and are looking for loopholes in the vague wording of the scope.<sup>114</sup> In addition to the scope, questions also arose as to the basis of standards on which companies should measure their influence on human rights, at what point a company has a business relationship with the parent company, and what falls under "serious" violations of human rights. In order to obtain answers to these questions, reliance was placed on the court's interpretation of the law. As of the date of the report, there were five proceedings initiated. Four with the aim of obtaining interim measures, one with the aim of obtaining compensation for damages. However, as it was not clear by the end of 2021 which court would actually decide on the lawsuits in the course of the law, there are no judgments yet and clarity on the law is still pending.<sup>115</sup>

The lack of a set standard to report to results in great disparities in the plans presented. Some companies state that there are risks of child labour or forced

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<sup>108</sup> Ibid., p.104

<sup>109</sup> European Coalition of Corporate Justice (2016), Article 1

<sup>110</sup> Sherpa (2021)

<sup>111</sup> European Coalition of Corporate Justice (2016), Article 1

<sup>112</sup> Ibid., Article 1 f.

<sup>113</sup> Latham & Watkins (2022), p.2

<sup>114</sup> Julien Collinet (2020)

<sup>115</sup> Latham & Watkins (2022), p.2

labour, but without giving any indication of the places or the names of the structures where these risks exist. And other lack on mentioning measures required to address these risks.<sup>116</sup>

Another point of criticism is the lack of enforcement effort on the part of the government. Swann Bommier, Advocacy Officer for the regulation of multinational companies at CCFD-Terre Solidaire states: "This third edition of the Duty of Vigilance Radar reveals the apathy and the clear lack of willingness from the government and the majority to ensure the control and the implementation of this law: for four years now, no list of companies subject to this law has been released, and failures to publish vigilance plans remain unpunished."<sup>117</sup>

On the other hand, the report issued by the parliament, which synthesized a large number of interviews and an important number of publications, also states positive effects. Against the opinion of many, the law had no adverse effect on the French economy, and the regulation guarantees quality for French companies, including protecting their reputation and brand image. Moreover, it improves the attractiveness of companies hiring process and enables control of the supply chain.<sup>118</sup>

In summary, it can be argued that the French corporate duty of vigilance law intentionally leaves a great deal of room for interpretation in order to not impose too significant a burden on companies resulting in a quarter of the companies concerned not publishing a report.<sup>119</sup> The pressure on the companies does not seem great enough to deal with the processes required by the law and to adopt them in their practice. Without consequences, companies continue to do business as usual under French regulation, except for those that have shown grand ambitions before. Once again, private governance is stimulated rather than establishing clear guidelines and creating planning certainty through stringent public governance. On a positive note, however, the orientation toward the UN Guiding Principles for Business and Human Rights can be found here in risk mapping, preventive measures, and complaints mechanisms. In addition, the law with the first due diligence mechanism in Europe had a radiating effect on other nations. This effect also includes Germany, which has drawn some conclusions from the French law with their corporate due diligence act.

### **2.2.5 German Act on Corporate Due Diligence Obligations in Supply Chains**

Apart from the fact that the German law has the longest name, it is also the most recently adopted and strongest in the EU. It was passed on the July 16 2021 and will come into force from 2023. The now mandatory approach is a response to Germany's voluntary approach the Nationaler Aktionsplan Wirtschaft und Menschenrechte. The result after four years was that too few companies are fulfilling their human rights due diligence obligations. In an official company survey on the 2020 voluntary approach, only 450 of 2250 companies contacted responded. Of these 450 companies, only 17 per cent met the requirements.<sup>120</sup>

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<sup>116</sup> Julien Collinet (2020)

<sup>117</sup> Sherpa (2021)

<sup>118</sup> Latham & Watkins (2022), p.4

<sup>119</sup> Lavite (2020)

<sup>120</sup> Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (n.d.)

The law is intended to strengthen the rights of people in supply chains on the one hand and to ensure legal certainty and fair, competitive conditions on the other. In addition, the requirements are internationally compatible and are based on the due diligence standard of the UN Guiding Principles. The regulation establishes an obligation to make efforts, but neither an obligation to succeed nor a guarantee liability.<sup>121</sup>

The law will apply from 01.01.2023 for companies that have their central administration, their principal place of business, their administrative headquarters or their statutory seat in Germany and employ over 3000 employees. This will affect around 600 companies. On 01.01.2024, this scope will be extended to companies with 1000 employees. This currently corresponds to 2891 companies.<sup>122</sup>

From 2023, companies must implement five measures, both in their own business operations and those of their direct suppliers. First, a policy statement on respect for human rights must be adopted. Second, a risk analysis must be conducted regularly to identify adverse human rights impacts. Third, there must be a risk management system that includes preventive and remedial measures to avert potential adverse human rights impacts. Fourth, a grievance mechanism must be established, and fifth, a public report must be adopted.<sup>123</sup>

In the event of a violation of human rights, a distinction is also made according to the graduated principle based on the company's ability to exert influence.

In their own business area, companies must take immediate remedial action in the event of a domestic violation, which necessarily leads to the end of the violation. In the case of direct suppliers, the company must draw up a specific plan for minimization and prevention if it cannot end the violation in the foreseeable future.<sup>124</sup> In the case of indirect suppliers, the due diligence obligations generally only apply on an ad hoc basis and only if the company becomes aware of a possible violation. If a company identifies a violation at an indirect supplier, it is also required to conduct a risk analysis and implement a concept for minimization and avoidance. Appropriate preventive measures against the originator are to be anchored afterwards, whereby the implementation of industry initiatives is one possibility.<sup>125</sup>

The German legislation is the only one so far with a public regulator. The newly staffed Federal Office of Economics and Export Control will ensure effective enforcement of the law. If companies do not publish their annual report or submit them to their competent authority in the given timeframe and the informations required, the regulator can issue fines ranging from 100,000 to 500,000 euros or up to two per cent of the average annual worldwide turnover if the legal person or association of persons has an average annual turnover of more than 400

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<sup>121</sup> Bundesministerium für Arbeit und Soziales and CSR (2022)

<sup>122</sup> Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (n.d.)

<sup>123</sup> Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains, sec. 3, (1)

<sup>124</sup> Ibid., Sec. 7, (1) – (2)

<sup>125</sup> Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains, Sec. 9, (1) – (4)

million euros.<sup>126</sup> Moreover, companies can be excluded from public procurement for up to three years in the event of serious violations.<sup>127</sup>

People affected by human rights violations of German companies can assert their rights in German courts and file complaints with the German Federal Office of Economics and Export Control. Also, German trade unions and non-governmental organizations are allowed to aid those affected abroad in representing their rights before German courts.<sup>128</sup>

The act can be seen as a compromise between the ministries involved, which was already preceded by a long dispute. After months of negotiations between the responsible federal ministries of economics, labour and development, an agreement was finally reached after a number of amendments, so that the law could be passed before the federal government's summer break in 2021. In addition, there was a controversial dispute between non-governmental organizations and business organisations.

Environmental associations and human rights groups criticize that companies are not civilly liable for abuses along the supply chain and that the duty of care only applies to direct suppliers and not the entire supply chain. In addition, critics say the law does not go far enough, as companies with fewer than 1,000 employees are not affected. The law was primarily driven forward by the association Initiative Lieferkettengesetz. The alliance of over 125 civil society organizations is criticizing the Supply Chain Act. The accusation is that the Federal Ministry of Economic Affairs and Energy and members of the Christian Democratic Union have weakened the law. It now covers too few companies, makes too many exceptions to corporate due diligence obligations, and fails to set an example for climate protection.<sup>129</sup>

Business associations, on the other hand, often argue that a strict supply chain law would entail high costs for the economy and thus harm Germany as a business location, especially after the economy suffered greatly during the Corona pandemic. Moreover, it would not be feasible, especially for small and medium-sized enterprises, to check the entire supply chain.<sup>130</sup>

Despite the criticism of the law, it can be stated that it paves the way from purely voluntary corporate social responsibility to binding companies' human rights and environmental requirements. Like the French due diligence approach, the German is based on the UN Guiding Principles, which are internationally recognized. Regulatory enforcement, including the monitoring of due diligence and the imposition of sanctions, is also a step toward a more stringent public policy that will make an essential contribution against human rights violations.

## **2.2.6 EU Corporate Sustainability Due Diligence Directive**

On February 23, 2022, the EU Commission published the Corporate Sustainability Due Diligence Directive to harmonize existing national supply chain laws with its proposal. As a directive, the regulation would have to be implemented in the national law of the member states.

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<sup>126</sup> Ibid., Sec. 23, (1.) – (3)

<sup>127</sup> Ibid., Sec. 22, (1) – (3)

<sup>128</sup> Ibid., Sec. 11, (1) – (2)

<sup>129</sup> Initiative Lieferkettengesetz (2021), p.4 f.

<sup>130</sup> Bundesverband der Deutschen Industrie e.V. (2021)

The EU Directive builds on the same due diligence processes as the German Supply Chain act. However, its holistic view of human rights, climate, and environmental impacts throughout the entire value chain are more ambitious in scope and content.

European companies, as well as companies from third countries operating in the EU with 500 or more employees and more than 150 million euros in sales worldwide, are covered by European law. This affects around 17,000 companies. For high-risk industries in which the risk potential for people and the environment is exceptionally high, the directive's requirements must already be met from 250 employees and 40 million euros in sales. These include the textile and leather industries, agriculture and forestry, fishing, and mining. A transitional period of two years applies to these industries.<sup>131</sup>

The due diligence requirements are the same as those of German law, whereby companies with annual sales of more than 150 million euros must prove that their strategy is compatible with the 1.5-degree target of the Paris agreement. However, the duty of care relates not only to the company's business activities or those of its subsidiaries but equally to direct and indirect suppliers and the use and disposal of the goods produced.<sup>132</sup>

As in German law, the European draft calls for the national states to set up monitoring authorities to check companies' compliance with the requirements.<sup>133</sup> Precise fines are not specified.<sup>134</sup> Instead, the draft specifies that companies are civilly liable if they have breached due diligence obligations and an adverse effect has occurred and led to damage that should have been detected, prevented, minimized, terminated, or reduced by taking appropriate measures.<sup>135</sup> This clause is a crucial prerequisite for affected parties to successfully sue for damages in such cases before courts in the EU.<sup>136</sup>

The EU law is a strong signal to the national states. On the one hand, it creates a level playing field as demanded by companies, and on the other hand, it meets the demand of environmental and social associations and broadens the scope, the area of application in the supply chain and creates a basis for civil liability.

## 2.2.7 Comparability of approaches

This chapter has noted a shift toward disclosure and due diligence requirements in regulating companies and their global supply chains. Existing soft law provisions like the UK Modern Slavery Act or the Nationaler Aktionsplan Wirtschaft und Menschenrechte have not significantly impacted corporate operations. However, they provide a good foundation on which national and EU-wide hard law provisions have been and are being developed. Disclosure alone has been shown to have limited ability to fully identify the impacts of corporate and supply chain activities. It has not led to real accountability or remedies for the harm caused, as we have seen in the United Kingdom. National due diligence provisions, guided by international principles and guidelines and equipped with stringent sanctioning and control mechanisms, promise to have a more significant

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<sup>131</sup> European Commission (2022b), p.2

<sup>132</sup> European Commission (2022a)

<sup>133</sup> European Commission (2022b), p.2

<sup>134</sup> Initiative Lieferkettengesetz (2022), p.27

<sup>135</sup> Proposal for a Directive of the European Parliament and of the Council

on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Article 22

<sup>136</sup> Initiative Lieferkettengesetz (2022), p.32

impact by requiring companies to make efforts to eliminate or mitigate their negative impacts and close the regulatory gap in which global value chain operate.

From the analysis of the laws, it can be summarized that the laws differ fundamentally in essential points such as the obligations or the enforcement criteria. Thus, the negative conclusions of the UK and France regulations cannot be projected onto the German approach. The German law, especially with regard to the established control authority, could be a wake-up call for companies that have not yet dealt with human rights in the supply chain. Also, the even stricter EU proposal should enhance companies' motivation to adapt their operations and strategy now to generate a leap over other European companies.

## **2.3 Strategic Planning and Controlling for Sustainable Supply Chains**

Due to DDOS, companies face the challenge of reacting appropriately to avoid penalties. This work aims to examine which actions are advisable at the strategic level. Thus, this chapter presents the adaptive management process by Schreyögg and Koch and deals with the management functions of strategic planning and the complementary function of strategic controlling.

### **2.3.1 Adaptive management process**

The basis for this chapter is the management literature by Schreyögg and Koch. Their approach is based on the classic management process with its five management functions of planning, organization, personnel deployment, leadership and control. In the classical approach, these are viewed as phases of a sequence of tasks that build on one another.<sup>137</sup> Accordingly, the classic management process can be seen as a sequence of cycles.<sup>138</sup> The process begins with planning, which designs the goals and the measures to be taken to achieve them. The following functions work towards achieving the defined goals and are thus subordinate to the planning function. This subordination is also referred to in the literature as the primacy of planning.<sup>139</sup> This view of the predominant role of planning is based on two assumptions. First, the environment and the relevant interrelationships in which a company operates can be identified, and their development can be predicted. Second, activities and processes in companies are entirely controllable, which means that plans can be implemented without disruptions. Schreyögg and Koch see this assumption as a solid contradiction to everyday practice.<sup>140</sup> The authors conclude that the classic management process is too narrow to incorporate current problems and the concepts and models developed for them.<sup>141</sup> As a result of this critic, they introduce the adaptive management process. In this approach, the linear sequence of management functions is seen as a misleading orientation pattern, and it is assumed that various alternative approaches are available. The use and combination of management functions are flexible and vary according to the current problem scenario. Consequently, organization, personnel deployment,

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<sup>137</sup> Schreyögg and Koch (2020), p.9

<sup>138</sup> Ibid., p.11

<sup>139</sup> Ibid., p.120

<sup>140</sup> Ibid., p.123

<sup>141</sup> Ibid., p.123

leadership, and control are no longer used as planning enforcement functions and are now available as independent management potentials alongside the planning function.<sup>142</sup>

To limit the scope of the thesis, the author focuses on the functions of strategic planning and strategic control. These functions are well-suited since emerging regulations as presented in section 2.2, and increased societal awareness for sustainability and human right violations as in section 2.1.5 raise the question of whether companies also need to reorient themselves fundamentally. The function of Strategic Planning explores this very question and attempts to provide a framework of orientation for the enterprise.<sup>143</sup> Since planning is always associated with uncertainty and represents a selection process, strategic control acts as a continuously reviewing twin function and is therefore also considered.<sup>144</sup>

### **2.3.2 Strategic Planing**

According to Schreyögg and Koch, strategy can be defined as the answer to the following three questions: First, in which business field does a company want to be active; second, how does a company want to compete in these business fields; and third, what should be the long-term competence base.<sup>145</sup>

The first question should not be seen as a situation survey but as a look into the future. In the future, does a company want to stay in its current business field, enter a new one, or diversify. Within a business field, differentiation can be made again by the product range, the customer group, or user problems. Many companies, especially those affected by the Supply Chain Act, are active in several business areas.<sup>146</sup>

The second strategic question deals with the competitive strategy. Classic examples are cost or quality leadership.<sup>147</sup> However, sustainability can also be part of the competition policy. Especially with increasing customer awareness, competitive strategies based on sustainable raw materials or processing methods are becoming more popular and successful.<sup>148</sup>

The last question focuses on the strategic importance of a company's resources and their potential to provide a basis for success in the longer term beyond individual market movements.<sup>149</sup>

There are two different planning levels within strategic planning. There is the strategy of the corporate enterprise as a whole, the resulting corporate strategy, and that of the business unit and the resulting business strategy. The former determines the company's business areas and the resources to be allocated in line with the strategic objectives. The second determines how the competition is to be contested. For each business unit, external and internal conditions can be different, which is why particular strategies are necessary for each business unit.<sup>150</sup>

Every strategic planning process builds on two fundamental pillars, the analysis of the environmental situation and the analysis of internal opportunities and

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<sup>142</sup> Ibid., p.136

<sup>143</sup> Ibid., p.145

<sup>144</sup> Ibid., p.147

<sup>145</sup> Ibid., p.153

<sup>146</sup> Ibid., p.153

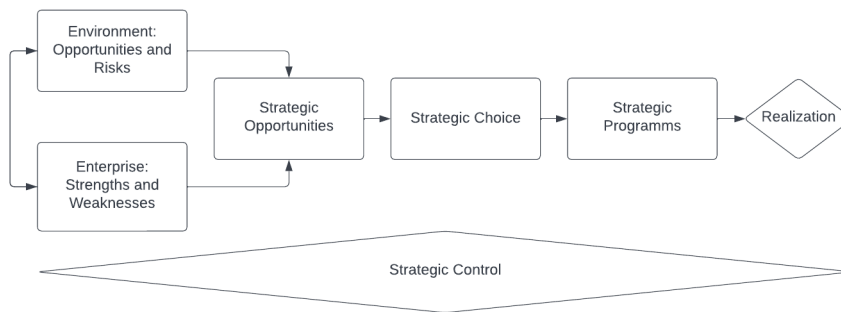
<sup>147</sup> Ibid., p.153

<sup>148</sup> Smit et al. (2020), p.306

<sup>149</sup> Schreyögg and Koch (2020), p.153

<sup>150</sup> Ibid., p.154

limitations. Based on this, a five-stage planning process can be derived. Figure three shows these five stages, including realization and control. These two elements are not part of strategic planning but are essential for the comprehensibility of the process.<sup>151</sup>



**Figure 3: Strategic planning process<sup>152</sup>**

In the following, the individual steps are presented in order to be able to derive recommendations for action for the individual steps in Chapter 4.

### *Environmental analysis*

The environmental analysis aims to analyze the company's external environment for signs of threats to the current business or new opportunities for a business to make more informed decisions on the basis of this.<sup>153</sup>

The analysis draws on internal and external sources to create a picture of the current and future situation. However, this picture is invariably inaccurate and never perfect, which means that decisions are always subject to uncertainty. In the broad environmental analysis, the most comprehensive possible view of the environment is taken, and it is divided into sectors. The authors propose a division into macro-economic, technological, political, socio-cultural, and natural environments.

An Ernst & Young study identified companies' major environmental drivers concerning sustainable supply chain and strategy. According to the study, operational, financial, regulatory, and reputational risk are the main drivers for a sustainable supply chain.<sup>154</sup> Another report on supply chain sustainability concludes that pressure from government and international bodies is the highest driver for sustainability within companies. Also this is the driver with the highest growth rate.<sup>155</sup> The DDOS presented in chapter 2.2.2 falls under regulatory risk and governmental pressure. Other key environmental drivers are investors and consumers driving sustainability.<sup>156</sup>

After the research, the identified trends are assigned to the sectors presented. In the next step, cross-connections are made between the trends, and different future scenarios are developed. At the end of this evaluation, critical assumptions and premises are made to provide orientation for the further planning process.<sup>157</sup>

### *Company analysis*

<sup>151</sup> Ibid., p.156

<sup>152</sup> Following Schreyögg and Koch (2020), p.156

<sup>153</sup> Schreyögg and Koch (2020), p.159

<sup>154</sup> UN Global Compact and Ernst & Young (2016), p.6

<sup>155</sup> MIT Center for Transportation & Logistics (2021), p.15

<sup>156</sup> Ibid. p.15

<sup>157</sup> Schreyögg and Koch (2020), p.160 f.f.



The company analysis aims to determine the internal resource situation. The strengths and weaknesses identified in this way are used to formulate alternative strategies and identify strategic competitive advantages.<sup>158</sup>

Strengths and weaknesses can only be reasonably determined compared to actual or potential competitors. The focus is on existing markets but must also include potential future markets, thus establishing a direct link to the overall corporate strategy. Like the environmental analysis, the company analysis can never be complete. This selection and prioritization require early monitoring of the development of assumptions by strategic control.<sup>159</sup>

Corporate resources can be divided into three levels—resources in the narrower sense, value creation processes, and overarching capabilities and competencies.<sup>160</sup>

The first category includes tangible resources such as land, capital, and labour and intangible factors such as employee skills, non-codifiable know-how, and brand image.

The second level looks at the value chain and aims to make the main value-creating activities transparent. As a reorganization of value activities is often the starting point for developing a strategic competitive advantage, the interfaces to upstream and downstream value chains must be identified. A reorganization includes strategic outsourcing to realize cost savings, but also the reintegration of value activities to ensure quality and achieve planning security.

The third level contains potentials that the company has developed over time. These can also be classified under the term system capabilities and include, among other things, specific know-how, control-, and coordination competencies. Especially in this category, it is essential to compare the company's system capabilities with its competitors. Because only if the competition does not possess these capabilities are they strategically relevant.<sup>161</sup>

### *Strategic opportunities*

In this step, the results of the two previous analyses are brought together by comparing the company's resources with environmental developments. This leads to the question of a possible strategic reorientation.<sup>162</sup>

At the business unit level, three fundamental questions arise. First, where should the competition take place? Second, according to which rules should the competition take place? Third, with what thrust should competition take place?<sup>163</sup>

In summary, the place of competition can be the core market or the niche. Competition can occur through adaptation or a change, and the focus of competition can be designed through lower cost or differentiation of services. On this basis, eight strategy opportunities emerge in theory.<sup>164</sup>

The Ernst & Young report states that sustainable attributes of products can offer a market diversification which can result in increased sales, stronger customer relationships and easier access to capital.<sup>165</sup>

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<sup>158</sup> Ibid., p.184

<sup>159</sup> Ibid., p.184 f.

<sup>160</sup> Ibid., p.185

<sup>161</sup> Ibid., p.185 f.f.

<sup>162</sup> Ibid., p.194

<sup>163</sup> Ibid., p.195

<sup>164</sup> Schreyögg and Koch (2020), p.195 f.f.

<sup>165</sup> UN Global Compact and Ernst & Young (2016), p.6

On the overall enterprise level, different strategies exist. These are important as soon as several business areas with different competitive strategies are processed.<sup>166</sup> If a new business area is opened with a new product, this is referred to as diversification. Diversification can be achieved through acquisition, cooperation, or in-house development.<sup>167</sup>

In order to equip these different fields of activity with limited resources, they must be organized and managed. The portfolio strategy helps by defining a benchmark and providing a generalized description of the strategic situation. The best-known model is the BCG matrix, which organizes the portfolio based on market growth and relative market share.<sup>168</sup>

### *Strategic choice*

After formulating strategic alternatives, a suitable strategy is selected in this step. The alternatives are selected based on the company's long-term goals and criteria. In addition to profitability potential, the alternatives are examined for feasibility, acceptance, and ethical justifiability.<sup>169</sup>

A feasibility analysis rules out unrealistic alternatives at an early stage.<sup>170</sup> As strategic choices are often combined with a redistribution of power within a company and resistance from internal power groups is often the cause of failed strategies, the acceptance is an essential part of the selection process. The corporate culture also plays an important role here, as it must ultimately support the strategy, which means that the implementation of a strategy should always be accompanied by well-thought-out change management.<sup>171</sup> If strategies are feasible and acceptable, the last step is to compare them with the company's value system.<sup>172</sup> If the development of a business field is associated with risks of human rights crimes, it could be that companies that have a strict value system reject this option.

### *Strategic Program*

The task of the strategic program is to concretize the strategy for operational functions. In general, it is also essential to create a common basic understanding of the selected strategy and arouse interest within the company.<sup>173</sup> According to the authors, program development is an independent planning activity that defines measures critical to success and determines the areas of particular importance for successful implementation. Creating a strategy-oriented organizational and management system and a strategy-oriented human resources system are other conditions for the success of strategy implementation.<sup>174</sup>

## **2.3.3 Strategic Control**

As mentioned earlier, strategic planning is a selective process and inevitably involves the risk of misselection and ignorance. Strategic control thus forms the

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<sup>166</sup> Schreyögg and Koch (2020), p.208

<sup>167</sup> Ibid., p.212

<sup>168</sup> Ibid., p.213

<sup>169</sup> Ibid., p.230

<sup>170</sup> Ibid., p.230

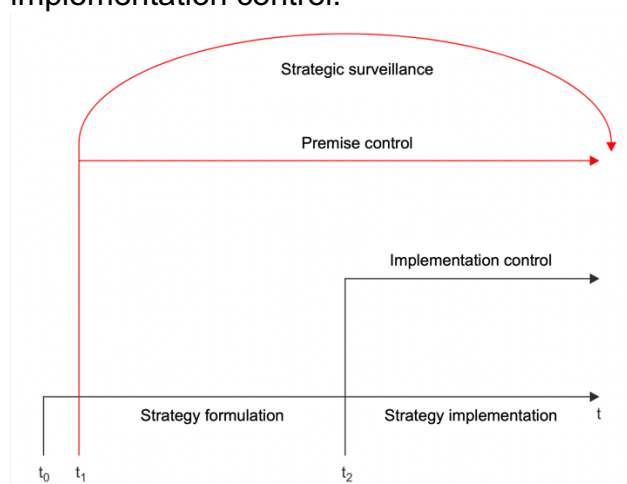
<sup>171</sup> Ibid., p.231

<sup>172</sup> Ibid., p.231

<sup>173</sup> Ibid., p.232

<sup>174</sup> Schreyögg and Koch (2020), p.233 f.

complementary twin function to strategic planning to create mechanisms for managing the risk of selection.<sup>175</sup> The specific task of strategic control is thus to evaluate the strategy in terms of its future viability continuously and to signal threats and thus make adjustments to the strategy on time.<sup>176</sup> According to Schreyögg and Koch, three types of control can be distinguished. As visualized in Figure 4, the strategic surveillance, the premise control, and the implementation control.<sup>177</sup>



**Figure 4: Strategic control process<sup>178</sup>**

In  $t_0$ , the planning process starts, and with  $t_1$ , the decision-making process is structured by setting premises. However, other conditions are excluded with the setting of premises, from which the need for a premise control formulates itself. The premise control continuously monitors whether the previously set premises remain valid.<sup>179</sup>

The implementation of the strategy in  $t_2$  justifies the implementation control. This control mechanism determines whether the selected strategy is at risk based on disruptions and deviations from intermediate strategic objectives.<sup>180</sup>

However, even with the two specialized control mechanisms described above, misjudgments can still occur, so strategic monitoring is needed to act as a safety net. It does not focus on a specific control object but rather on the potential threat to the company's existence as a going concern.<sup>181</sup>

All three control instruments thus form a strategic control system that continuously compensates for the selection risk of strategic planning, irrespective of periodization.<sup>182</sup>

As with the test for acceptance of a strategic choice, the corporate culture also plays a significant role in the control system. It requires a critical organization with open communication structures that promotes and accepts conflicting opinions and encourages people to put forward their suggestions. The first point is critical, as control information are often negative news that needs to be delivered. Here,

<sup>175</sup> Ibid., p.244

<sup>176</sup> Ibid.,

<sup>177</sup> Ibid., p.245

<sup>178</sup> From Schreyögg and Koch (2020), p.245

<sup>179</sup> Schreyögg and Koch (2020), p.246

<sup>180</sup> Ibid., p.246

<sup>181</sup> Ibid., p.246 f.

<sup>182</sup> Ibid., p.247

an open communication structure is essential so that this information is not neglected.<sup>183</sup>

To what extent does the Supply Chain Duty of Care Act affect individual process steps of strategic planning, and the mechanisms of strategic control and how companies should adapt to this will be investigated in this thesis. The methodology for this is presented in the following chapter, and the investigation results are presented in chapter four.

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<sup>183</sup> Schreyögg and Koch (2020), p.254 f.

### 3 Methodology

Following the theoretical background, the methodology used for the research is elaborated in the following chapter. First, the research design is presented and elaborated on why an empirical approach is a methodological fit. Further, the data collection process is described, including the execution of semi-structured interviews, the choice of interview partners and the interview. Lastly, the transcription process and qualitative content analysis method are depicted.

#### 3.1 Research design

The research question *How should the strategic planning and controlling in companies react to the act on due diligence obligations in supply chains?* will be answered using a descriptive qualitative research approach. Primary data was collected by deploying semi-structured interviews, and the data was analyzed by deploying a structured qualitative content analysis based on Kuckartz.<sup>184</sup>

The research method should be chosen after its methodological fit, which means that method, research question and state of research need to be aligned.<sup>185</sup> It describes the "internal consistency"<sup>186</sup>. Since this research deals with recommended actions motivated by the SDDA, which will come into force in 2023, it is a contemporary and controversial topic. Due to this topicality, there is little explicit prior knowledge about the topic. Thus, qualitative research is more appropriate than quantitative, or in other words, a methodological fit.<sup>187</sup>

Primary data was collected and utilized since strategic adaptations regarding the SDDA are underexplored. In this regard, five employees were chosen as experts for this research. During selecting employees, the researcher paid attention to selecting heterogeneous experts. In particular, the experts should differ in their hierarchical position in their company, department, or company. Another selection criterion was the duration of their employment. The more experience these experts gain with supply chains, the SDDA, and strategic planning and control, the more they could draw recommended actions. The chosen experts fulfil the requirements but are not further introduced due to anonymity. More senior employees are expected to be more experienced in strategic topics, which include strategic change processes. On the other hand, middle management can provide more insight into the connection between strategy and operations. Thus, interviewees were selected due to their potential contribution to answering the research question.<sup>188</sup>

The principle of flexibility guides the qualitative research process, according to Döring & Bortz. Qualitative research aims to generate theories, and the research process needs to be adjusted if new insights demand adjustments. Semi-structured interviews allow the interviewer to add new questions to the interview guide, if necessary, which fosters the principle of flexibility. However, it is to be noted that the interview guide was developed linearly, limiting the flexibility

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<sup>184</sup> Kuckartz (2018), p.100-111

<sup>185</sup> Edmondson and Zuzul (2016), p.1

<sup>186</sup> Ibid., p.2

<sup>187</sup> Ibid., p.2

<sup>188</sup> Döring and Bortz (2016), p. 372

principle. Given the limited duration of the research, a circular development of the interview guide was not possible.<sup>189</sup>

In addition, a qualitative research process is guided by the principle of circularity, according to Döring & Bortz. The chosen structured qualitative content analysis implements the principle of circularity since the development of codes and the coding process runs in a spiral shape.<sup>190</sup>

### 3.2 Data collection

After the decision to conduct a qualitative content analysis and semi-structured interviews has been elaborated, the overall procedure of the research design will now be outlined. This procedure is based on the theory of Döring and Börtz. The authors describe the data collection process with the following ten steps, which were adhered during the process of this work: 1.: content preparation, 2.: organizational preparation, 3.: start of the conversation, 4.: conduction and recording of the interview, 5.: end of the conversation, 6.: farewell, followed by 7.: interview notes, 8.: transcription, 9.: analysis of the transcripts and, lastly, 10.: archiving of the material.<sup>191</sup>

During the first step, content preparation, the overall interview topic, the particular questions, and the method for conducting them were determined. Subsequently, interview partners were determined. The selection of the partners was based on the openness of the persons for an interview, the time availability and the interest in the aim of the work. Six interview partners were found and received an email to find a common date, and general information about the scientific work and the procedure. This document is presented in appendix A.

Individual online interviews using the specified method of semi-structured interviews based on interview guides<sup>192</sup> were conducted. A virtual exchange was chosen via the business collaboration platform *Microsoft Teams*, which enables the recording of the interview by the interviewer. The interviewer chose the online option because the interviewees lived in different cities throughout Germany. Therefore, it was more time and cost-efficient to conduct the interviews via *Microsoft Teams*, where both interviewee and interviewer could stay in their hometown. Finally, online interviews provide respondents the option to pick their level of participation by logging in with a false name or, if they so want, turning off the camera. This guarantees greater anonymity than face-to-face interviews and prevents potential biases based on appearance.<sup>193</sup>

As already described in the research design, emphasis was placed on heterogeneity among the interviewees. In order to capture a broad perspective and thus achieve the most differentiated result possible, people from different hierarchies and work areas were interviewed. The acquisition of potential interview partners resulted in six interviewees from six positions. This included one partner from a consultancy responsible for environmental, social and governance topics within the areas of Europe, the Middle East, India and Asia.

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<sup>189</sup> Döring and Bortz (2016), p. 67-68

<sup>190</sup> Ibid., p.67-68

<sup>191</sup> Ibid., p.365-369

<sup>192</sup> Ibid., p. 372

<sup>193</sup> Ibid., p. 374

One manager from the sustainability team of a consultancy with responsible for the German Supply Chain Act. One senior manager from the sustainability team of a consultancy with responsibility for the German Supply Chain Act. One Senior Consultant from the Sustainability Team of a consultancy focused on the German Supply Chain Act. One Senior Consultant from the operations team of a consultancy with responsibility for sustainable sourcing and supply chain management. Lastly, a manager for sustainability from a large German industrial corporation. This group of interviewees included five men and one women.

Traditionally, semi-structured interviews are based on an interview guide that contains between 8 and 15 questions.<sup>194</sup> Although the interview guide is structured, this structure can be broken up during the interview. This deviation from the structure can include skipping or deepening questions. The deepening can be done through differentiation questions, which help keep the interview going and allow the interviewee to expand on their answers, support them with examples, or amplify them.<sup>195</sup> In this way, semi-structured interviews allow certain freedom for the interviewer and interviewee and offer better comparability of answers than an unstructured interview. This comparability primarily remains ensured by the thematic framework and the structure of the communication process.<sup>196</sup>

### 3.3 Interview guide

Reinders' "principles of an interview guide" were followed in the compilation of the interview guide. In Reinders's report, the guide must adhere to three basic principles of qualitative research.

The first requirement is to be receptive to the interview questions. In order to allow for the analysis of subjective experiences, actions, and attitudes as well as their significance for the interviewee, it is important to stress that the interviewer employs a non-hypothesis-based approach. As a result, the questions should be flexible and open to new information as the interview progresses.<sup>197</sup>

In order to put the responses within the perspective of a timeline with advancements and changes, the second principle, processivity, states that they should not be comprehended statically but rather procedurally. Reinders contends that processivity can be attained by looking at past-present processes in which questions regarding the past, the present, and changes are actively raised. By asking questions regarding the function of the interviewee's social environment, one can also analyze an ego-other process to comprehend interactionism in order to comprehend various viewpoints and their evolution.<sup>198</sup>

The third fundamental principle is listed as communication. The independence of the interviewee and the interviewer must be strengthened because information is acquired through conversation. A positive environment encourages better answers by adjusting the interviewer's language level, minimizing technical terms, simplifying the questions, and closely matching the interview format to casual talks. Avoiding difficult, repetitive questions and responding to pertinent

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<sup>194</sup> Döring and Bortz (2016), p.372

<sup>195</sup> Ibid., p.357

<sup>196</sup> Misoch (2019), p.66

<sup>197</sup> Ibid., p.66

<sup>198</sup> Ibid., p.66 f.

information in the interview to create a smooth conversation flow are also covered in this idea.<sup>199</sup>

The interview guideline and style of the questions were based on the principles mentioned above and on the literature analysis of the researcher. It functions to structure and guide the data collection and analysis, leading to better comparability between interviews.<sup>200</sup> A pretest was performed before the first interview started, allowing the researcher to test the interview guide and subsequently refine or enhance it.<sup>201</sup> Likewise, the possible duration could be evaluated.<sup>202</sup>

The interview guide is presented in appendix B. Nevertheless, it is to be accentuated that questions were prefaced, omitted, or exacerbated depending on the interview situation. The structure used is divided into an information phase, followed by one warm-up question, the main part, and a closing phase according to Misoch.<sup>203</sup>

### **3.4 Transcription**

As mentioned in Chapter 3.2, MS Teams was used as the software to conduct the interviews. The software allows the user to record the video and audio track of the virtual meetings. In order to save equipment and to obtain the best possible audio quality, this function was used. These recordings were downloaded from MS Teams after the interviews and saved in a folder on the laptop. A postscript was created after each interview and attached to the video file to avoid losing valuable impressions of the interviewee and insights. This approach corresponds to the 7th step of Döring and Börtz's data collection process.<sup>204</sup> Based on research on transcription software, the transcription software Descript was picked to transcribe the recorded interviews. The program is based on speech recognition and automatically transforms audio and video files into text. The usage of this software entails careful checking and, in places, manual adjustment of the transcribed text. Nevertheless, the time saved with automated transcription is up to 70%<sup>205</sup>. In addition to the transcription of the recorded interviews, further steps were taken to prepare the data. These included sorting and anonymizing the material. These are elementary components of the process and form the basis for qualitative content analysis.<sup>206</sup> A tabular summary of the individual answers in keywords to the respective questions of the interview guideline is presented in appendix C.

### **3.5 Structured qualitative content analysis**

According to Döring and Bortz, the transcription process is followed by the analysis of the transcripts. The "MAXQDA" software was used for the qualitative

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<sup>199</sup> Misoch (2019), p.67

<sup>200</sup> Döring and Bortz (2016), p.372

<sup>201</sup> Ibid., p.372

<sup>202</sup> Kuckartz et al. (2008), p. 20

<sup>203</sup> Misoch (2019), p.68

<sup>204</sup> Döring and Bortz (2016), p.367

<sup>205</sup> Amberscript, (2022)

<sup>206</sup> Döring and Bortz (2016), p.368



analysis to ensure a methodical evaluation.<sup>207</sup> The structured qualitative content analysis itself is based on Kuckartz.<sup>208</sup>

In the first step, the text files were carefully read, and significant text passages were marked. Annotations were written in the margins, and evaluation ideas that arose spontaneously were recorded in the form of memos.<sup>209</sup> This process was done with the help of MAXQDA, into which the transcripts were previously exported.

In the next step, main and subcategories were created based on the research question and interview questions. The coding system, a list of interviews, and examples can be found in appendix D. With the help of MAXQDA, the text sections were automatically saved into the respective code folder. The software allowed to display only a specific code with its text sections by filtering the code. This function helped to create the content for the *Findings* chapters.

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<sup>207</sup> Döring and Bortz (2016), p.369

<sup>208</sup> Kuckartz (2018), p.100 f.

<sup>209</sup> Ibid., p.100

## 4 Findings

In this chapter, the findings of the semi-structured interviews are collected. Based on the interview questions, the findings are structured accordingly and aiming to provide the basis to answer the research question.

### 4.1 Perception of DDOS

In order to gain a certain impression of the interviewees' mood, they were asked for their general assessment of the law.

The basic assessment of the law is very positive. Different views were expressed. One aspect that was expressed with a positive view was that the law would create equal rules for all market participants in Germany. The interviewee pointed out that previously only some sectors were under solid scrutiny. The voluntary fulfilment of due diligence obligations was previously a disadvantage, which was unfair for certain market participants.<sup>210</sup> Conversely, it was reported that practical experience showed that the voluntary implementation of due diligence did not impose an excessive burden on companies.<sup>211</sup> Several respondents expressed confidence in the effectiveness of the regulation. The law would make globalisation fairer, and it would be a big step towards making things better for the people in the producing countries.<sup>212</sup> An obligatory regulation with sanctions is the only right way, as regulations still have the strongest steering effect on business activities.<sup>213</sup> This is also shown by the fact that the UN Guiding Principles for Business and Human Rights are more than ten years old, and relatively little has changed since then.<sup>214</sup>

The most frequently mentioned criticism of the due diligence regulation is the weak degree of concretisation. Especially for companies that have not dealt with the topic before, the degree of concretisation is too weak to implement appropriately.<sup>215</sup> The interviewee distinguishes between social and ecological aspects. In the case of the ecological points, the law is even less concrete.<sup>216</sup> Also, excluding indirect suppliers could lead to a wrong prioritisation of risks, which is why employee\_4 considers this measure a problem.<sup>217</sup> Finally, employee\_5 makes a general criticism of regulations. They could take away the strategic element and flexibility of an issue such as human rights, as a law makes it a compliance issue.<sup>218</sup>

### 4.2 Challenges

Four main challenges have been identified that companies face with approaching DDOS.

The first is the effort and cost involved. Large companies with several thousand suppliers would have to build an immense capacity to adjust all suppliers to the

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<sup>210</sup> Employee\_1, Pos.2

<sup>211</sup> Employee\_4, Pos.2

<sup>212</sup> Employee\_1, Pos.3; Employee\_4, Pos.2

<sup>213</sup> Employee\_2, Pos.2

<sup>214</sup> Employee\_5, Pos.9

<sup>215</sup> Employee\_3, Pos.2

<sup>216</sup> Employee\_3, Pos.4

<sup>217</sup> Employee\_4, Pos.5

<sup>218</sup> Employee\_5, Pos.5

requirements.<sup>219</sup> This was also noted by Employee\_5, who emphasised that the necessary experts in this area were also lacking.<sup>220</sup>

The next challenge is data collection and evaluation. Employee\_3 describes the vast amount of data and the evaluation of it to achieve a rational risk analysis as the main pain point. In addition, data quality is also a problem. Tracing seven-digit purchase volumes is partly impossible due to collective items, as he experienced in a project.<sup>221</sup>

Three of the six interviewees mentioned a lack of transparency. Many companies had no transparency at all.<sup>222</sup> In one example, Employee\_3 refers to a client with 30,000 suppliers. Transparency is not achievable for all of them, and the complexity has to be reduced.<sup>223</sup>

However, the most frequently mentioned challenge is the lack of knowledge about DDOS in organisations. Starting with the fact that most companies do not realise that their business area is also subject to due diligence obligations. Many companies are only vaguely aware of who works and do what in their foreign subsidiaries.<sup>224</sup> Employee\_4 also supports this point and mentions the human resource area as a challenge. This is often forgotten, but in DDOS, it is also a lot about the own employees.<sup>225</sup> Employee\_3 differentiates in his explanations of the challenges and describes a lack of knowledge as a problem mainly for medium-sized companies.<sup>226</sup>

### 4.3 Implementation status

In order to understand the current situation in affected companies, it was asked which departments lead the implementation and which requirements are already met to comply with the law. The survey also asked for the respondents' opinions on where implementation should be anchored.

The basic tenor was that this varies greatly. On the one hand, there is a discrepancy between a partly reasonable basis at large companies and no basis at all for fulfilling requirements at medium-sized and smaller companies. This decline is mainly because larger companies have already been affected by similar regulations and have thus built up certain systems and transparency in their supply chain.<sup>227</sup> But there are also great differences among the large companies. In practice, it can be observed that the companies that have been seriously dealing with sustainability in its full complexity previously can fall back on much better structures and systems when implementing the law.<sup>228</sup>

Similar to the implementation status, the anchoring and responsibility of the companies also vary. According to Employee\_2, many companies tend to anchor implementation in the compliance department. However, there are also examples where the sustainability department should deal with it or, in rare cases, the legal department.<sup>229</sup> As many companies see DDOS as an additional effort that ties up

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<sup>219</sup> Employee\_3, Pos. 6

<sup>220</sup> Employee\_5, Pos.32

<sup>221</sup> Employee\_2, Pos.12

<sup>222</sup> Employee\_2, Pos.8

<sup>223</sup> Employee\_3, Pos.6

<sup>224</sup> Employee\_2, Pos.12

<sup>225</sup> Employee\_4, Pos.11

<sup>226</sup> Employee\_3, Pos.6

<sup>227</sup> Employee\_2, Pos.27; Employee\_4, Pos.10; Employee\_5, Pos.19

<sup>228</sup> Employee\_2, Pos.28

<sup>229</sup> Employee\_2, Pos.15-18

resources and costs money, they try to act minimally invasively and use existing structures instead of creating new ones. However, this is the wrong way, as implementation requires interdisciplinary anchoring.<sup>230</sup> Which department has to be involved depends on the respective organisational structure. (Employee\_2, Pos.23) Nevertheless, purchasing is often seen as the function with the most contact points; compliance and sustainability departments are indispensable, and the human resources department must also be involved for successful implementation, said the respondents. (Employee\_1, Pos.8; Employee\_3, Pos.10; Employee\_4, Pos.22; Employee\_5, Pos.22)

#### 4.4 Impact on business activity

In order to be able to assess how companies view DDOS strategically, it was asked if DDOS is more of an opportunity or threat to a company. Other drivers were also identified that companies should consider in their environmental analysis. The respondents expressed their experiences with the companies and their recommendations.

Currently, there is a strong focus on compliance with all legal requirements to avoid sanctions, which is sometimes first perceived as a threat to the business.<sup>231</sup> One interviewee stated that the threat of a two per cent turnover fine is the real motivation for most companies to comply with the law.<sup>232</sup> Establishing a sustainable supply chain is not seen as a competitive advantage in many industries. For a B2B industrial product, this is not a purchase criterion for most and therefore does not fall within the scope of opportunities.<sup>233</sup> In certain companies, the law is also seen as a threat to the business model, as implementation costs reduce the already low margins. However, knowledge sharing can often improve these views and the associated rejection of DDOS.<sup>234</sup> There are relatively few companies that see DDOS directly as an opportunity. These few had already fundamentally dealt with sustainability and socially responsible business.<sup>235</sup> The personal opinion of the interviewees tends towards opportunity, even if it is seen more in the long term. This viewpoint is argued by many in the wake of another development; that of EU legislation on supply chains. Since the German law has lost some of its clouts compared to the EU law but is still the strictest in the EU comparison, companies that deal well with DDOS now will have an advantage in a few years, as they will be able to perform better at the EU level.<sup>236</sup> Generally, the DDOS and the bundled legislative projects under the EU Green Deal are linked. Companies should see the DDOS as an opportunity to build up structures now that will also help them with the taxonomy or the Corporate Sustainability Reporting Directive. There, too, social safeguards have to be fulfilled to be compliant. In the near future, it is no longer just about avoiding sanctions but also about access to favourable financing through access to Green Bonds.<sup>237</sup>

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<sup>230</sup> Employee\_1, Pos.8

<sup>231</sup> Employee\_5, Pos.29

<sup>232</sup> Employee\_1, Pos.13

<sup>233</sup> Employee\_4, Pos.28

<sup>234</sup> Employee\_3, Pos.12

<sup>235</sup> Employee\_2, Pos.35

<sup>236</sup> Employee\_2, Pos.63

<sup>237</sup> Employee\_3, Pos.32; Employee\_6, Pos.3; Employee\_2, Pos.35

## 4.5 Success factors

The interviewees were asked about implementation success factors, and the answers can be categorised into six sub-factors. Comprehensive knowledge creation, collaboration with the ecosystem, Commitment and Integration, adapted incentivisation and technical support.

A lack of knowledge was mentioned by many as a challenge. Consecutively, holistic knowledge building is an essential factor for successful implementation.<sup>238</sup> However, this must not only occur within the organisations but also beyond. Employee\_3 cites a positive example in which a German company trains the farmers in Georgia on site in collaboration with the entire supply chain and organises workshops.<sup>239</sup>

Furthermore, collaboration with the entire ecosystem is a decisive aspect, which includes cooperation and exchange in industry initiatives.<sup>240</sup>

In addition to understanding due diligence, it is equally important to integrate this understanding into the core of the company. Starting individual initiatives is not enough; it is necessary to anchor due diligence in its strategy.<sup>241</sup> The basis for this is organisational buy-in from top management and a long-term commitment from the entire management.<sup>242</sup> To achieve this, it makes sense to demonstrate added value and to communicate this convincingly. Sustainability without a business case does not sell, says Employee\_3.<sup>243</sup>

For DDOS to be implemented deeply in a company and carried out proactively, it requires a newly conceived incentivisation structure for the workforce. Procurement should not only be evaluated according to savings, and a salesperson should have incentives to market more sustainable products.<sup>244</sup>

The last point is the technical implementation of DDOS. In order to bring transparency into the supply chain, it is necessary to support it with a digital system.<sup>245</sup> However, this point is often overestimated, and it is assumed that acquiring a tool solves all requirements.<sup>246</sup>

## 4.6 Positive effects

The interviewees were asked whether the introduction and implementation of DDOS could generate positive effects on business. This is important to justify possible recommendations for the choice of a strategy.

According to the interviewees, a sustainable supply chain can positively influence reputation, improve future talent acquisition, enable market entry, generate cost savings, lead to improved supplier relationships and improve resilience and robustness in the supply chain.

Negative headlines are a severe problem, especially in the B2C business, which would be directly reflected in sales figures.<sup>247</sup> Employee\_6 goes further. Damage to reputation can lead to being thrown out of a market entirely.<sup>248</sup> Good risk

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<sup>238</sup> Employee\_1, Pos.6

<sup>239</sup> Employee3\_Pos.22

<sup>240</sup> Employee\_3, Pos.22; Employee\_5, item 30

<sup>241</sup> Employee\_4, Pos.17

<sup>242</sup> Employee\_1, Pos.29, Employee\_3, Pos.20

<sup>243</sup> Employee\_3, Pos.20

<sup>244</sup> Employee\_2, item 14

<sup>245</sup> Employee\_3, Pos.24; Employee\_5, Pos.15

<sup>246</sup> Employee\_5, Pos.14

<sup>247</sup> Employee\_5, Pos.30

<sup>248</sup> Employee\_6, Pos.41

management with preventive measures can minimise the risk of such reputational losses.<sup>249</sup>

Employee\_2 explains that the coming generations have greater expectations of the companies where they want to work. Many expect a responsibility towards human rights. Companies should take this seriously, as well-educated people are very scarce and competition for professionals will increase.<sup>250</sup>

Employee\_2 predicts that DDOS requirements will be the minimum social standards in the future; without, companies will no longer be allowed to operate in large markets.<sup>251</sup> Meeting the requirements would therefore represent a kind of access permissions.

Cost savings are possible in various areas. On the one hand, better transparency and comprehensive risk management could lead to more effective risk-based testing. Employee\_1 reduced testing costs by 50% within two years, saving millions in costs.<sup>252</sup> On the other hand, cost savings can be realised through cheaper financing options. Green bonds offer more favourable financing conditions in comparison. Adherence to social standards such as those in DDOS is a prerequisite for gaining access to these cost advantages.<sup>253</sup>

DDOS leads to companies having to develop their suppliers further so that they meet the requirements. A side effect is that the more intensive cooperation improves performance indicators such as timing, quality and reliability.<sup>254</sup> Employee\_1 also refers to improvements in quality assurance by passing on requirements to the supplier.<sup>255</sup>

By actively monitoring the supply chain and developing suppliers, companies can also make the supply chain more robust and resilient.<sup>256</sup> In this way, the company is better protected against external influences and can react better to the competition<sup>257</sup> and avoid supply bottlenecks.<sup>258</sup>

## 4.7 Strategic actions

Employee\_2 differentiates. An adjustment of the market positioning depends on the industry. It is driven by the relevance of the observance of human rights in the production of the purchased product for the customer.<sup>259</sup> Especially in industries in the public spotlight, such as the textile industry, the relevance for the sales market is given, so an adjustment of competition policy in the course of DDOS is recommended.<sup>260</sup> Due to society's changed perception of human rights in the supply chain, there is also a real business case behind it. Examples are the brands Patagonia and Vaude, which generate business advantages through their positioning.<sup>261</sup> Employee\_5 thinks there will also be sector agnostic adjustments. Classic low-cost strategies are associated with high risks, which are

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<sup>249</sup> Employee\_4, Pos.28

<sup>250</sup> Employee\_2, Pos.56-57

<sup>251</sup> Employee\_2, Pos.54

<sup>252</sup> Employee\_1, Pos.25

<sup>253</sup> Employee\_2, Pos.35,55

<sup>254</sup> Employee\_4, Pos.33

<sup>255</sup> Employee\_1, Pos.16

<sup>256</sup> Employee\_3, Pos.12; Employee\_4, Pos.39; Employee\_5, Pos.40

<sup>257</sup> Employee\_3, Pos.12

<sup>258</sup> Employee\_5, Pos.40

<sup>259</sup> Employee\_2, Pos.37, 60

<sup>260</sup> Employee\_2, Pos.32, 38

<sup>261</sup> Employee\_2, Pos.60

increasingly expensive to minimise, making this strategy no longer profitable.<sup>262</sup> Another proposal for action comes from Employee\_3. He sees success in two approaches: diversification with a business case based on a sustainable supply chain and the group's subsequent adoption of this strategy, or a direct turnaround of the business model.<sup>263</sup> Such a change is also a possible option for Employee\_5. He sees a fundamental strategy adjustment towards sustainability as a good option for SMEs, as they can react faster and more nimbly due to their size.<sup>264</sup>

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<sup>262</sup> Employee\_5, Pos.44

<sup>263</sup> Employee\_4, Pos.32

<sup>264</sup> Employee\_5, Pos. 44

## 5 Recommended Actions for the strategic planning and controlling

Based on the theoretical research and the findings of the semi-structured interviews, a number of recommendations can be made for strategic planning and controlling in companies. These recommendations are structured and framed using the planning process from 2.3.2.

### 5.1 Environmental analysis

As explained in section 2.2.5, DDOS has two mechanisms that set it apart from other laws at the EU level. The sanction payments of up to 2% of turnover and the dedicated control institution to monitor implementation. Employee\_1 affirms that the sanction mechanism has pushed many companies to deal with the topic and assumes that the sanctions will be enforced.<sup>265</sup>

There is no uniform opinion on the weighting of DDOS in the environmental analysis. The regulation could be seen as a compliance exercise to avoid sanction payments or as part of an overall concept of a sustainable strategy.<sup>266</sup>

Employee\_4 sees a strategic significance of the law only to a limited extent. The DDOS is primarily a compliance task that minimises the risk of fines and reputation so that no strategic realignment could be derived from this.<sup>267</sup>

Employee\_2, on the other hand, sees the law in the overall context of other developments as the main driver for future business activities.<sup>268</sup> This view is also shared by Employee\_3, who believes that DDOS does not have a significant strategic impact but encourages companies to rethink in connection with the EU Green Deal.<sup>269</sup> The most frequently mentioned developments associated with DDOS are an emerging complementary regulatory framework at the EU level and increasing awareness among the population and investors for sustainability within the supply chain. Two interviewees say that the minimum standards defined in DDOS will be the licence to operate in the future. For this reason, a serious examination of the topic is recommended.<sup>270</sup>

This assumption is consistent with a study from 2016, in which 87% of respondents stated that a sustainable supply chain would be the licence to operate in the future.<sup>271</sup> The United Nations Guide for Sustainable Supply Chains also points to higher standards for investors and customers. Sustainable supply chains are becoming a prerequisite for doing business.<sup>272</sup>

### 5.2 Company analysis

Through DDOS, the respondents propose a shift in the valuation of internal resources. Due to DDOS, investments already made in sustainable supply chains now represent a business advantage.<sup>273</sup> Employee\_5 recommends that companies that have already built up resources in recent years now see these as

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<sup>265</sup> Employee\_1, Pos.13

<sup>266</sup> Employee\_2, Pos.19

<sup>267</sup> Employee\_4, Pos.20

<sup>268</sup> Employee\_2, Pos.2

<sup>269</sup> Employee\_3, Pos.30

<sup>270</sup> Employee\_2, Pos.54, Employee\_5, Pos.40

<sup>271</sup> UN Global Compact and Ernst & Young (2016), p.18

<sup>272</sup> UN Global Compact and BSR (2015), p.19

<sup>273</sup> Employee\_1, Pos.15



a strength and thus set themselves apart from competitors.<sup>274</sup> Additionally, activities in risk areas should be increasingly assessed as a risk and a weakness for the company due to the DDOS and the EU Green Deal.<sup>275</sup> Employee\_2 opens up another perspective. The companies concerned should implement DDOS more than minimally invasive to be pioneers in the European market in a few years when the EU regulation discussed in 2.2.6 becomes mandatory. A study by Handelsblatt found that 10.9% of the companies surveyed do not see any business advantages in sustainable supply chains. Surprisingly, a disproportionately high number of them have been practising sustainable supply chain management for more than 5 years. The study assumes that these companies put their responsibility first and thus do not see the economic benefits.<sup>276</sup> These companies should become aware of the economic opportunities of their sustainable supply chain in order to generate positive economic effects.

### 5.3 Strategic opportunities

After discussing the environment and company analysis, it is about generating strategic alternatives for action. Since, as Schreyögg and Koch say, this depends on the respective strengths and weaknesses of the companies, the generation of alternatives is highly individual.

The interviewees also emphasise that strategic opportunities depend on the sector and on the relevance of a possible differentiation for the customer.<sup>277</sup> In the textile industry, differentiation via a sustainable supply chain is a recommendable business field strategy because sustainability is relevant to the end customer.<sup>278</sup>

Apart from a specific business unit strategy, four out of six interviewees emphasise that in regard to the DDOS companies should implement sustainable supply chain actions into their corporate strategies.<sup>279</sup> Employee\_2 emphasises in this context that it is insufficient to anchor this in a sustainability strategy. Instead of a separate sustainability strategy, a sustainable corporate strategy is needed to generate positive effects.<sup>280</sup>

This recommendation is also displayed in a report by the Federal Ministry for Economic Cooperation and Development. The company surveyed, which had already been dealing with sustainable supply chain management before the DDOS, explains that it was particularly important for them to anchor the topic in the corporate strategy and not in a separate sustainability strategy.<sup>281</sup>

Only one employee directly recommended to establish a concrete business case and proposed to differentiate by creating a new division or new product line based.<sup>282</sup> In an extensive report of best-practice companies establishing a sustainable supply chain none of them generated a precise business case to drive

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<sup>274</sup> Employee\_5, Pos.30

<sup>275</sup> Employee\_3, Pos.32

<sup>276</sup> Handelsblatt Research Institute (2021), p.28

<sup>277</sup> Employee\_4, Pos.20; Employee\_2, Pos.60

<sup>278</sup> Employee\_3, Pos.20

<sup>279</sup> Employee\_1, Pos.29; Employee Employee\_2 Pos.60; Employee\_4, Pos.17; Employee\_5, Pos.40

<sup>280</sup> Employee\_3, Pos.60

<sup>281</sup> Accenture GmbH and twentyfifty GmbH (2021), p.48

<sup>282</sup> Employee\_4, Pos.20

forward human rights due diligence.<sup>283</sup> A closer look on possible business cases might be interesting to foster this development.

## 5.4 Strategic choice

An evaluation of the alternatives is carried out and prioritised based on a profitability assessment.<sup>284</sup> The qualitative structured content analyses revealed several positive factors that are linked to a strategy based on a sustainable supply chain. These factors should be taken into account by companies when evaluating strategic opportunities.

The findings show that sustainability in the supply chain leads to greater resilience.<sup>285</sup> This is also confirmed by the Handelsblatt study, which points out that default risks can be avoided through closer cooperation with suppliers.<sup>286</sup> Such cooperation with suppliers, driven by the passing on of sustainability requirements, can also lead to social upgrading, as suppliers are forced to improve working conditions consequently.<sup>287</sup>

Other economic benefits of a sustainable supply chain are access to the green financial market<sup>288</sup> and increased employee attractiveness<sup>289</sup>. According to the Handelsblatt study, asset managers already invest a third of their capital according to ESG criteria. According to estimates, this could be half by 2026. Without a sustainable supply chain, companies are excluded from these financial flows.<sup>290</sup> The study also confirms the increased attractiveness to employees. Seventy per cent of employees see an employer's sustainability activities as "important" or "somewhat important".<sup>291</sup> According to the Handelsblatt, the direct and less direct positive profitability effects are contrasted by costs for risk management, as the basis for a sustainable supply chain, of less than 1% of annual turnover.<sup>292</sup> This makes an implementation of sustainability in the supply chain into the corporate strategy feasible even for small and medium-sized enterprises.

## 5.5 Strategic program

Based on the findings, recommended actions for the strategic programme can also be derived. The interviewees' statements are close to what Schreyögg and Koch perceive as the overriding success factor - creating a common basic understanding of the strategy<sup>293</sup>.

Employee\_1 underlines that this is not an easy task, but to fully comply with the duty of care in the supply chain, it is necessary to educate the entire company.<sup>294</sup> Furthermore, it is essential that the whole management department also understands the importance of sustainability and actively promotes it; otherwise, the strategy cannot be implemented profitably.<sup>295</sup> Employee\_4 also points out

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<sup>283</sup> Accenture GmbH and twentyfifty GmbH (2021), p.99

<sup>284</sup> Schreyögg and Koch (2020), p.230

<sup>285</sup> Employee\_3, Pos.12; Employee\_4, Pos.33

<sup>286</sup> Handelsblatt Research Institute (2021), p.49

<sup>287</sup> Gereffi and Lee (2016), p.32

<sup>288</sup> Employee\_2, pos.55; Employee\_3, pos.32

<sup>289</sup> Employee\_2, item 56

<sup>290</sup> Handelsblatt Research Institute (2021), p.26

<sup>291</sup> Ibid.

<sup>292</sup> Ibid. p.24 f.

<sup>293</sup> Schreyögg and Koch (2020), p.232

<sup>294</sup> Employee\_1, Pos.6

<sup>295</sup> Employee\_1, Pos.29

that his sustainability department has conducted training with employees on supply chain sustainability for years. These training measures show positive effects, and an increasing number of people show interest and want to promote the strategy proactively.<sup>296</sup> Specifically, when implementing the strategy in the function, it was helpful to make it as official as possible. For this purpose, an official project was started in each function equipped with sufficient capacities.<sup>297</sup> Concrete recommendations for action for individual departments are also mentioned. Procurement is recommended to include the entire supply chain in the strategy. To include the entire supply chain means being on-site with the raw material supplier and carrying out training.<sup>298</sup> Ultimately, however, there is also a need for system-side support to monitor due diligence obligations and create transparency.<sup>299</sup> UN Global Compact report suggests data sharing platforms. These can help collect and manage information on suppliers' sustainability performance. Providers include Sedex, EcoVadis, e-Tasc and Fair Factories Clearinghouse.<sup>300</sup> Recommendations are also made for organisational and management systems. In order to anchor sustainable supply chain management in the company's daily activities, it is necessary to adapt organisational structures and incentive models.<sup>301</sup> If incentive models are not adapted, procurement will continue to choose suppliers on a low-cost basis if it is evaluated according to these.<sup>302</sup>

## 5.6 Strategic controlling

As planning is based on uncertainties and selectivity, strategic control is the complementary function to strategic planning.<sup>303</sup>

From the findings, a recommendation can be made for implementation control. The classic project structure that Employee\_4 proposes for the implementation of the strategy in the functions allows progress to be monitored on the basis of milestones.<sup>304</sup> To control premises such as increased cooperation with suppliers leads to lower failure rates and more resilience, technological support should be used. Technology solutions are able to gather and analyse data and thus monitor suppliers' performance. Further, the report emphasises that for companies that want to generate value out of sustainable supply chains, supply chain data analytics and technology are increasingly becoming critical for competitiveness and profitability.<sup>305</sup>

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<sup>296</sup> Employee\_4, Pos.26, 35

<sup>297</sup> Employee\_4, Pos.26

<sup>298</sup> Employee\_3, Pos.22

<sup>299</sup> Employee\_3, Pos.24

<sup>300</sup> UN Global Compact and BSR (2015), p.70

<sup>301</sup> Employee\_2, Pos.35

<sup>302</sup> Employee\_2, Pos.13

<sup>303</sup> Schreyögg and Koch (2020), p.245

<sup>304</sup> Employee\_4, pos.26

<sup>305</sup> UN Global Compact and Ernst & Young (2016), p.37

## 6 Conclusion

### 6.1 Summary

In today's economy half of global trade happens in GVCs which are led by Multinational Enterprises. With growing awareness for the underlying asymmetrical governance and the negative impacts on society and environment more and more states follow the proposal of international organisations to establish public governance solutions. With the DDOS Germany passed a due diligence policy that has potential to impact and steer business within GVCs.

Based on this development, the purpose of this study answer the question *How should the strategic planning and controlling in companies react to the act on due diligence obligations in supply chains.*

In this regard, literature research was done at first to understand the underlying concept of GVCs. From this basis, the justification for public governance approaches is derived, which were analysed to assess the impact of DDOS. Lastly the focus area in management was elaborated to narrow the research field and give precise answers.

Afterwards, semi-structured interviews with six experts in the field of sustainable advisory and supply chain were conducted. The interview material was analyzed with a qualitative content analysis. Thereby, it was pursued to find out about their take on the DDOS and how companies and should approach the DDOS to generate positive effects.

Finally, the findings were structured and applied to the concept of strategic planning and controlling to generate recommended actions.

The research in this study shows that companies affected by DDOS must seriously deal with the regulation. Unlike other regulations, the individual requirements cannot be handed over to one function but must be addressed by the company as a whole.

Furthermore, companies should not view DDOS as a single regulation but in the context of other developments. Here, the focus should be on the EU Taxonomy and the upcoming EU regulation for supply chains. These have close overlaps with DDOS, and non-compliance can have far-reaching consequences for financing and market access.

Concrete business field strategies could not be generated due to the individuality of each company. Instead, it became apparent that anchoring sustainable supply chain actions in the corporate strategy is recommended as a reaction to DDOS. Furthermore, companies should not take the diversions via anchoring in the sustainability strategy but prefer anchoring at the company's core.

The economic benefits of such an integration into daily operations range from direct cost savings through reduced testing costs to better quality through increased cooperation with suppliers and access to cheaper credit. According to this research, these benefits outweigh implementation costs and thus are also recommended for medium-sized and smaller companies.

Companies must provide training in all business areas to ensure understanding and commitment to due diligence to take full advantage of these benefits.

Through technological systems and top-anchored project management, the implementation and the premises can be monitored to a certain extent to reduce misjudgements.

## **6.2 Limitations and outlook**

Considering the findings of this study, more in-depth questioning of the experts regarding strategic controlling would have been valid. In comparison, less information could be generated in this specific field. This gap opens up the possibility for further research.

In addition, the work showed differences between MNEs and SMEs in terms of the resources available and the resulting opportunities. This paper can give a rough overview of its results. Further research focusing on SMEs or MNEs may be considered valuable.

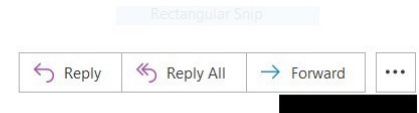
The chosen qualitative research approach limits the generalizability of recommended actions as the number of interviews and the interviewees' backgrounds are limited within the scope of a bachelor thesis. Nevertheless, the qualitative empirical approach is a methodological fit since it allows an in-depth quality and thus analysis of the findings, which is valuable in strategic planning and controlling.

Increasing awareness in society of the need for due diligence in the supply chain is an identified development in this work. However, recommendations for implementing due diligence tend to be based on future stricter regulations and financing benefits. Explicit business cases based on due diligence compliance are rare in practice. A more detailed examination of how a business unit strategy based on compliance with due diligence requirements in the supply chain would have to be designed to be profitable would be an exciting extension of this study.

# Apendix

## Appendix A: Contact with possible interview partner

Experteninterview Bachelorarbeit



Hallo [redacted]

ich habe von [redacted] gehört, dass Du bereit wärst mit mir zu meiner Bachelorarbeit zu sprechen. Das freut mich sehr und es würde die Arbeit auch qualitativ nochmal aufwerten! Außerdem freue ich mich, Dich auch mal, zumindest über Teams, kennenzulernen.

Ich schicke Dir gleich einen Termin für die KW27. Wenn der Dir nicht passen sollte, schick mir gerne einen Terminvorschlag, dann passe ich das an.

Hier eine kleine Zusammenfassung zu meinem Vorhaben:

Im Rahmen meiner Bachelorarbeit suche ich nach Expert:innen im Bereich Supply-Chain und Lieferkettensorgfaltspflichtengesetz um mit diesen Experteninterviews zu führen.

Das Thema meiner Bachelorarbeit lautet "Recommended Actions for the Strategic Planning and Controlling in Companies affected by the German Supply Chain Due Diligence Act".

Mit dieser wissenschaftlichen Arbeit möchte ich untersuchen, ob das LkSG in Unternehmen nur als Pflicht zur Compliance wahrgenommen wird oder auch als Anlass gesehen wird, sich strategisch an die veränderte politische Situation anzupassen und wenn ja, wie. Unter strategischer Anpassung fällt zum Beispiel das Abstoßen riskanter Geschäftsfelder oder die aktive Verfolgung einer nachhaltigeren Produktpolitik.

Durch die Experteninterviews möchte ich die Erfahrung von Experten in diesem Bereich nutzen, um Handlungsempfehlungen für betroffene Unternehmen zu generieren. Gefragt werden soll in diesem Zusammenhang zum Beispiel, wie hoch das Thema LkSG in Unternehmen aufgehoben ist oder welche Kompetenzen in Unternehmen im Hinblick auf die ansteigenden Sorgfaltspflichten stärker ausgebaut werden müssen.

Die Interviews würden über Microsoft Teams geführt werden und circa eine Stunde in Anspruch nehmen. Die Interviews werden nach der Durchführung transkribiert und analysiert und schlussendlich anonymisiert in meinen Ergebnisteil einfließen. Meinen Leitfaden an Fragen, würde ich rechtzeitig vor dem Interview zur Verfügung stellen. Die Fragen können aber, durch den gewählten halbstrukturierten Ansatz, an die Kompetenzen und Handlungsfelder des Interviewten angepasst werden.

Viele Grüße und noch einen schönen letzten Tag in New York,  
Jobst König

Mit freundlichen Grüßen, best regards

## Appendix B: Interview Guideline

### **Guideline expert interview**

#### **Intentions:**

The topic of my bachelor thesis is "Recommended Actions for the Strategic Planning and Controlling in Companies affected by the German Supply Chain Due Diligence Act".

With this scientific work I would like to investigate whether the Act on Due Diligence Obligations in Supply Chains is only perceived as a compliance obligation in companies or whether it is also seen as a reason to strategically adapt to the changed political situation and, if so, how.

#### **Questions:**

##### **Warm-up phase**

1.1 Do you generally consider a duty of care law to be useful?

##### **Main phase**

Topic block 1: Implementation of the law

2.1 What specific challenges do companies face in terms of DDOS implementation?

Which approaches to solutions exist? Are there special features in the different industries?

2.2 Are certain DDOS requirements already being addressed or even implemented in the companies?

Do these requirements align with companies' existing supply chain management efforts?

2.3 Which significance should the law have in the companies and where should it be anchored?

Topic block 2: Impact of the law

3.1 Is the DDOS more of an opportunity or threat to a company? Does it vary from industry to industry?

3.2 Which factors are particularly important in order to generate added value for the company with the implementation?

Topic block 3: Strategy

4.1 What positive effects can be generated by implementing the DDOS and a sustainable supply chain?

4.2 How do companies adapt their strategy to DDOS and the increasing requirements?

4.3 How has the significance of the topic developed over the last few years?

##### **Closing phase**

5.1 Are there any missing aspects you would like to add?

Appendix C: Tabular presentation of the individual answers in keywords to the interview questions

Questions	Answers	Interview
Do you consider a duty of care law to be appropriate in general?	<ul style="list-style-type: none"> <li>• Positive</li> <li>• Will create a level playing field within Germany</li> <li>• Meeting due diligence requirements will no longer be a competitive disadvantage</li> <li>• A big step in the direction that the people in the production countries will be better off in the end</li> </ul>	Employee_1
	<ul style="list-style-type: none"> <li>• Mixed opinion</li> <li>• Ideologically yes, as regulation is what steers companies in a specific direction</li> <li>• But in the reality of business, it is extremely difficult to fulfil certain requirements</li> </ul>	Employee_2
	<ul style="list-style-type: none"> <li>• Positive</li> <li>• The idea of due diligence regulation is good</li> <li>• Degree of concretization extremely weak, especially for companies without experience</li> </ul>	Employee_3
	<ul style="list-style-type: none"> <li>• Positive</li> <li>• Reasonable to make the voluntary approach mandatory</li> <li>• The exclusion of indirect suppliers could lead to wrong prioritization</li> </ul>	Employee_4
	<ul style="list-style-type: none"> <li>• Mixed opinion</li> <li>• Reasonable that companies have to be aware of their impact on society and the environment</li> <li>• The mandatory nature of law could take away flexibility and strategic element as focus on compliance</li> </ul>	Employee_5
	<ul style="list-style-type: none"> <li>• Positive</li> <li>• Need for harmonization</li> </ul>	Employee_6
What specific challenges do companies face in terms of DDOS implementation?	<ul style="list-style-type: none"> <li>• Lack of awareness-raising work in risk countries, but also lack of understanding of due diligence obligations in the focal companies</li> <li>• Insufficient anchoring in corporate strategy</li> </ul>	Employee_1
	<ul style="list-style-type: none"> <li>• Poor data quality</li> <li>• Lack of transparency in the supply chain</li> <li>• Lack of and wrong understanding of the law</li> <li>• Decentralized organizational structures make data collection difficult</li> <li>• Conflicting incentivization of functional departments</li> </ul>	Employee_2
	<ul style="list-style-type: none"> <li>• High effort to confront suppliers</li> <li>• Lack of data and evaluation capacities</li> </ul>	Employee_3



	<ul style="list-style-type: none"> <li>• Quantity of suppliers and change of suppliers</li> <li>• Lack of know-how and commitment</li> </ul>	
	<ul style="list-style-type: none"> <li>• Lack of knowledge</li> <li>• Lack of clarity, in relation to the implementation in the company</li> <li>• Lack of anchoring at the top level and lack of professionalization of the topic</li> <li>• Problems in understanding that the own business area is also affected</li> <li>• Decentralized and disparate systems complicate data collection</li> </ul>	Employee_4
	<ul style="list-style-type: none"> <li>• Lack of knowledge, especially regarding own business area</li> <li>• Problems to merge already existing approaches with the requirements from the DDOS</li> <li>• Missing resources and expert knowledge</li> </ul>	Employee_5
	<ul style="list-style-type: none"> <li>• Lack of knowledge</li> <li>• Problems in understanding the DDOS in the context of the EU Green New Deal and its regulatory</li> <li>• Lack of transparency</li> <li>• Problems to analyse quantity of data</li> </ul>	Employee_6
Are certain DDOS requirements already being addressed or even implemented in the companies?	<ul style="list-style-type: none"> <li>• Strong differences between the companies, some already have a strategic claim in the subject matter and others deal with it in a more legalistic way</li> </ul>	Employee_2
	<ul style="list-style-type: none"> <li>• 60 per cent of companies have already launched initiatives similar to the requirements of DDOS previously</li> </ul>	Employee_3
	<ul style="list-style-type: none"> <li>• The company already very far as far as requirements are concerned</li> <li>• Suppliers already have a code of conduct because they have signed the UN GP.</li> <li>• But still missing professionalization</li> </ul>	Employee_4
	<ul style="list-style-type: none"> <li>• Many companies already have chapters on human rights in their sustainability reports to which they can refer</li> <li>• Risk analyses are already being carried out in some cases by companies that have conscientiously implemented the NAP</li> <li>• Also sector differences, textile sector is under pressure and has oriented itself early on to certain guidelines such as those of the UN and therefore this sector is further along than others</li> </ul>	Employee_5
Which significance should the law have in the companies and where should it be anchored?	<ul style="list-style-type: none"> <li>• The DDOS is a cross-functional project that can only be tackled jointly.</li> <li>• Above all, it needs the purchasing department, the compliance department and human resources.</li> <li>• The Board of Management must take responsibility and supervise it; otherwise, cross-functional implementation cannot take place.</li> </ul>	Employee_1

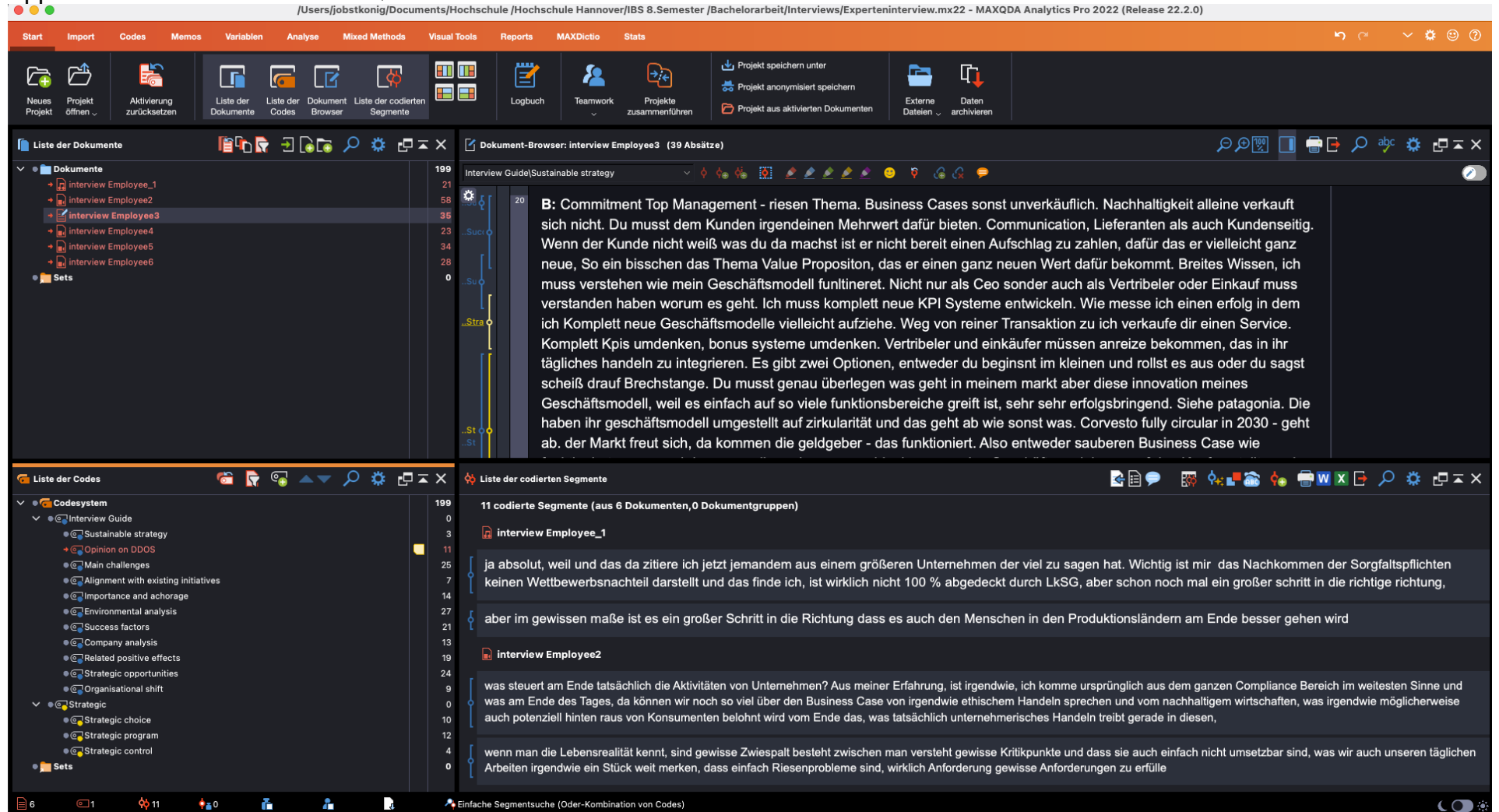
	<ul style="list-style-type: none"> <li>• Interdisciplinary responsibility</li> <li>• But in practice companies tend towards the compliance department, as regulations are always structured in a similar way and the methodology is known there</li> <li>• Many choose a minimally invasive approach and try to comply with the DDOS with existing structures and processes</li> </ul>	Employee_2
	<ul style="list-style-type: none"> <li>• Cross-functional implementation is required</li> <li>• Generating data and communicating with suppliers and educating them will have to come primarily from the procurement department</li> </ul>	Employee_3
	<ul style="list-style-type: none"> <li>• DDOS already has a certain weight, but it is only a subarea of the sustainability strategy and this is part of the corporate strategy.</li> <li>• Planning takes place in the sustainability department and implementation takes place in the respective departments on the basis of work packages.</li> </ul>	Employee_4
	<ul style="list-style-type: none"> <li>• Compliance, procurement and sustainability departments have a different understanding and approaches, a steering person or cross-functional steering body is needed.</li> </ul>	Employee_5
	<ul style="list-style-type: none"> <li>• Anchoring always dependent on the prevailing strategy and culture of the company</li> <li>• If a sustainable corporate strategy is already in place, DDOS will also be anchored in top management and implemented cross-functionally, this should be the case</li> <li>• If the company doesn't recognize a customer need, it is more likely to be a compliance issue</li> </ul>	Employee_6
Is the DDOS more of an opportunity or threat to a company?	<ul style="list-style-type: none"> <li>• At the latest with the introduction of the european initiative, it will become a competitive disadvantage not to have a clean compliance with the DDOS</li> <li>• Adaptation to the environment, especially the sustainability requirements of the end customers and the emerging regulations, is a must</li> </ul>	Employee_1
	<ul style="list-style-type: none"> <li>• Companies that have already committed themselves to this topic see it as an opportunity to generate a competitive advantage</li> <li>• Competitive advantage due to better financing possibilities and less effort with upcoming EU regulations</li> <li>• Harmonization of EU regulations DDOS can be an impetus to also be taxonomy aligned</li> <li>• Should be seen as an opportunity to generate an advantage on the European level</li> <li>• Also on a societal level the awareness of human rights is changing, whoever leads the way now can also generate profit in the end</li> </ul>	Employee_2
	<ul style="list-style-type: none"> <li>• On the one hand, a threat because margins are already low in some industries, creating problems for entire business models</li> </ul>	Employee_3

	<ul style="list-style-type: none"> <li>• The threat is that DDOS ties up resources, which costs money and reduces margins.</li> <li>• But the danger of being out of the market is mainly in doing nothing</li> <li>• Opportunity also, as it provides access to cheaper money</li> <li>• Opportunity in the long run, as DDOS requirements create better supplier relationships and companies in general create more robust and resilient supply chains</li> </ul>	
	<ul style="list-style-type: none"> <li>• Is first perceived as a threat, since the 2% penalty already discourages companies.</li> <li>• Chance to move into a leading position on the European market, especially for those who have already implemented some voluntary measures</li> </ul>	Employee_5
	<ul style="list-style-type: none"> <li>• Depends on the corporate culture, but the company should make a virtue out of necessity and think about how it can be commercialized. the demand for such products is there and will increase.</li> </ul>	Employee_6
Which factors are particularly important in order to generate added value for the company with the implementation?	<ul style="list-style-type: none"> <li>• In order to successfully implement DDOS, the organizational structure must be rethought, moving away from silo thinking to process-based thinking</li> <li>• The incentive system must also be aligned with the new strategy in order to establish duties of care in the functions</li> <li>• Enough resources to create holistic understanding</li> </ul>	Employee_2
	<ul style="list-style-type: none"> <li>• Commitment top management</li> <li>• Development of business cases is important to be able to sell it internally but ultimately also externally</li> <li>• Clear communication to suppliers and customers and rethinking the value proposition of own products</li> <li>• Functioning technical support</li> <li>• Training of suppliers on site and in person</li> </ul>	Employee_3
	<ul style="list-style-type: none"> <li>• Clear communication and anchoring of the project within the sustainability, if not corporate, strategy.</li> <li>• Leadership must be picked up, otherwise problems will arise</li> <li>• A professional project management including budget</li> <li>• Training of all employees</li> </ul>	Employee_4
	<ul style="list-style-type: none"> <li>• Tools and digital solutions</li> <li>• Exchange in industry initiatives and cluster formation to share best practices</li> <li>• Provide resources for implementation</li> </ul>	Employee_5
What positive effects can be generated by	<ul style="list-style-type: none"> <li>• Requirements for suppliers in the area of human rights and the environment and a corresponding sanctions policy improve quality assurance enormously</li> </ul>	Employee_1

implementing the DDOS and a sustainable supply chain?	<ul style="list-style-type: none"> <li>• Stronger supplier relationships can also minimize costs in risk-based testing, for example, which is a direct economic advantage</li> </ul>	
	<ul style="list-style-type: none"> <li>• Clear advantages in the implementation of future regulations</li> <li>• Minimum standards set now will be license to operate in a few years, without them you won't get business anymore</li> <li>• Good basis for alternative financing possibilities like Green Bonds etc.</li> <li>• Better possibilities to acquire skilled personnel as current generations pay attention to these topics and there is currently an acute shortage of skilled personnel.</li> </ul>	Employee_2
	<ul style="list-style-type: none"> <li>• From the requirements, suppliers can be further developed to create more robust and resilient supply chains</li> </ul>	Employee_3
	<ul style="list-style-type: none"> <li>• The implementation of DDOS inevitably requires existing processes to be professionalized, i.e. more digital and transparent</li> <li>• Supplier performance such as timing and quality correlates strongly with ESG performance of supplier data</li> <li>• Better reputation</li> </ul>	Employee_4
	<ul style="list-style-type: none"> <li>• Implementation requires active supply chain management, which in turn generates robustness for further demands on the supply chain.</li> <li>• Better handling of supply bottlenecks through transparency and supplier relations</li> <li>• Processes are created that not only fulfil obligations but also create new information assets, providing a basis for strategic decision-making</li> </ul>	Employee_5
	<ul style="list-style-type: none"> <li>• Reduces the risk of reputational damage which is excessive in today's environment</li> </ul>	Employee_6
How do companies could adapt their strategy to DDOS and the increasing requirements?	<ul style="list-style-type: none"> <li>• Fairly industry dependent, the higher the demand from the customer, the more strategically relevant, driven from the environment rather than intrinically</li> <li>• DDOS mainly in the context of large wave of EU regulation, here mainly driven by financing</li> <li>• However, most still see the issue of human rights only in relation to their sustainability strategy and not in terms of a sustainable strategy, separation of these two strategies is questionable as they are contacarious</li> <li>• Completely rotated business models for niche suppliers a possibility, examples Patagonia and Vaude</li> </ul>	Employee_2
	<ul style="list-style-type: none"> <li>• Depending on the market potential, in theory there are two approaches as to how to react to this, either open up a business case and pursue this and draw conclusions from this for the entire company or turn the entire business model upside down and transform it</li> <li>• DDOS addresses many functional areas, making innovation very possible in the process</li> <li>• Very risky to react with existing products and without strategic adaptation or reorientation because this takes a lot of time.</li> </ul>	Employee_3

	<ul style="list-style-type: none"> <li>• Re-evaluation of own business sectors necessary, spin-offs appropriate to obtain green financing options or to avert damage to reputation</li> </ul>	
	<ul style="list-style-type: none"> <li>• For most industries, human rights are not a business model but a pure compliance exercise to avoid reputational damage and fines</li> </ul>	Employee_4
	<ul style="list-style-type: none"> <li>• If much has already been done in the topic, these companies should take advantage of the current debate and gain a business advantage from it.</li> <li>• Removing from risk areas, raw materials or also countries, to save costs are done already</li> <li>• Overall strategy adjustment resulting from the law is not conceivable or sensible for large companies, but conceivable for agile SMEs.</li> </ul>	Employee_5
How has the significance of the topic developed over the last few years?	<ul style="list-style-type: none"> <li>• In general, large companies, which sometimes had to pay penalties in this area, have done more in recent years and therefore have more staff and trained people</li> <li>• A small medium-sized company will have to completely rebuild all these processes because even they do not fall within the scope, the requirements will cascade down</li> <li>• In terms of the whole ESG topic, there has been a lot of movement at the management level, as they have been involved in this for many years now</li> <li>• Really large-scale rollout of sustainable business strategies probably only with the retirement of the current management responsible</li> </ul>	Employee_2
	<ul style="list-style-type: none"> <li>• Strong change of mind within the last years as not being sustainable always costs more money</li> </ul>	Employee_3
	<ul style="list-style-type: none"> <li>• More people in the specialist departments, but also in management, who are keen to drive forward sustainability initiatives, also in order to raise their profile within the company</li> <li>• Above all, however, at the operational level and less at the strategic level</li> </ul>	Employee_4
	<ul style="list-style-type: none"> <li>• Still many management positions with a very classic numbers-driven approach</li> <li>• Definitely also a generational issue</li> </ul>	Employee_5
	<ul style="list-style-type: none"> <li>• Fifteen years ago, this was not a strategic issue but a necessary evil. Now, social change has reached a point where no management position can afford to ignore it, otherwise the business will be in danger</li> </ul>	Employee_6

# Appendix D: Screenshot of MAXQDA



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## Statutory declaration

Ich versichere an Eides statt, dass die vorliegende Arbeit mit dem Titel

Recommended Actions for the Strategic Planning and Controlling in Companies  
affected by the German Supply Chain Due Diligence Act

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Jobst König