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# Foreign corporate accountability: The contested institutionalization of mandatory due diligence in France and Germany

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## Abstract

In the recent past, European states have adopted mandatory due diligence (MDD) laws for holding companies accountable for the environmental and human rights impacts of their supply chains. The institutionalization of the international due diligence norm into domestic legislation has, however, been highly contested. Our contribution analyzes the discursive struggles about the meaning of due diligence that have accompanied the institutionalization of MDD in Germany and France. Based on document analysis and legal analysis of laws and law proposals, we identify a *state-centric*, a *market-based*, and a *polycentric-governance* discourse. These discourses are based on fundamentally different understandings of how the United Nations Guiding Principles on Business and Human Rights should be translated into hard law. By outlining these discourses and comparing the related policy preferences, we contribute with a better understanding of different ways in which MDD is institutionalized, with important consequences for the possibilities to enhance corporate accountability in global supply chains.

**Keywords:** corporate accountability, discourse analysis, due diligence, public policy, supply chain.

## 1. Introduction

In recent years, binding regulations in the “home states” of companies have emerged to hold corporations accountable for human rights and environmental impacts caused along their supply chains in often distant places of production. According to recent studies, mandatory due diligence (MDD), which builds on the United Nations Guiding Principles on Business and Human Rights (UNGPs) adopted in 2011, represents a new and potentially effective approach to govern global supply chains (Schilling-Vacaflor & Lenschow, 2021; Smit et al., 2020). The UNGPs outline that companies shall assess and address human rights risks and impacts associated with their business activities, including the operations of subsidiaries and suppliers (OHCHR, 2011). In 2011, the OECD incorporated due diligence obligations of companies in its Guidelines for Multinational Enterprises, but in contrast to the UNGPs, the OECD guidelines establish both human rights and environmental due diligence duties of companies (OECD, 2011). These types of due diligence procedures fundamentally differ from conventional corporate due diligence that has focused upon companies’ own exposure to risks (Higham, 2019). By translating international soft norms on due diligence into binding law, MDD laws hold the promise to contribute to “foreign corporate accountability” in global supply chains, understood here as the accountability of companies for negative

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impacts caused abroad by their subsidiaries or suppliers (see introduction of this volume). Hence, here we do not focus on other potentially relevant actors for foreign corporate accountability, such as finance institutions, banks, and investors. Our aim is to systematically analyze the highly contested nature of the policymaking processes for interpreting the due diligence norm and translating it into national legislation.

Our article contributes to debates on the regulation and governance of global supply chains by critically analyzing the discursive struggles related to the drafting of new laws in France and Germany. We selected these countries for analysis, as they have been frontrunners globally in adopting the first cross-sectoral and comprehensive MDD laws. Our analysis on France and Germany shows that the legislative processes in these countries were shaped by different discourse coalitions with competing storylines about the nature of existing problems and suitable policy solutions. These discourse coalitions, therefore, conceive of foreign corporate accountability and, correspondingly MDD, very differently. The way the foreign corporate accountability norm is understood and institutionalized carries important consequences for the effectiveness of MDD in terms of the possibilities to hold companies accountable for negative impacts abroad. The adoption of MDD laws—namely a regulation on deforestation-free products and a directive on corporate sustainability due diligence—is currently also under debate at the European Union (EU) level. The European Commission already presented a law proposal for the regulation in November 2021 and for the directive in February 2022. The different national conceptions of MDD become relevant again in the decisionmaking process of these legislative proposals.

This study contributes to an emerging strand of research into the enhancement of foreign corporate accountability through a due diligence approach (e.g., Bueno & Bright, 2020; Evans, 2020; LeBaron & Rühmkorf, 2019; Partzsch & Vlaskamp, 2016), by comparatively analyzing the political contestations surrounding groundbreaking new laws and tracing the processes to institutionalize MDD. Drawing on discourse analytical approaches, we identify three central meta-discourses on foreign corporate accountability that different coalitions have deployed in their attempts to influence the institutional design of these laws. These are: a *state-centric discourse* that emphasizes the importance of regulatory rules and legal liability; a *market-based discourse* that centers on the idea of self-organizing markets; and a *polycentric-governance discourse* that stresses the need of collaborative policymaking relying on a mix of mandatory and voluntary measures. Furthermore, our analysis reveals how each meta-discourse has been closely associated with specific institutional design features of MDD laws. To analyze the multidimensional character of MDD laws, we establish nine indicators that assess the scope, procedure, and enforceability of the new laws (see Section 3). This study discusses the implications of such differences in the institutional design of MDD for fostering foreign corporate accountability. While our findings stem from two in-depth case studies, a glance at ongoing policymaking processes on MDD laws at EU level and in other Member States shows that our findings are of much broader relevance.

## 2. Theory

This study draws on discourse analytical approaches to analyze the contestations and institutionalization of foreign corporate accountability through an MDD approach. We first briefly outline the state of the art, and thereafter present our analytical framework.

### 2.1. Foreign corporate accountability

Over the last three decades, a structural shift in the global economy has taken place, which has profoundly changed the relationship between states and markets, and reconfigured patterns of authority and governance. The increased power of global corporations has, however, not been matched by the development of arrangements to hold these corporations accountable for the negative impacts caused by their subsidiaries and suppliers (Ruggie, 2018). Given the absence of binding international conventions, there has been a proliferation of voluntary measures to address the negative impacts of global supply chains, many of which have been criticized for being rather ineffective (Bartley, 2018; LeBaron et al., 2017). This is largely due to the fact that companies are often only willing to engage in voluntary measures in situations where they are profitable (Auld et al., 2008). The UNGPs, adopted by the UN Human Rights Council in 2011, clearly establish that both states and companies are

responsible to respect and protect human rights, and to offer remedy to victims of human rights violations. This authoritative global standard stipulates that:

*[b]usiness enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence [...] should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships. (United Nations Human Rights Office of the High Commissioner, 2011, p. 17)*

All companies, independent of their size and economic sector, should exercise due diligence, but larger companies and those with higher risks should implement more rigorous systems. To implement the UNGPs, states should adopt a “smart mix” of voluntary and mandatory measures. As it has become increasingly clear that companies have largely failed to implement robust due diligence systems voluntarily, supply chain regulations building on a due diligence approach have recently been adopted (Smit et al., 2020). MDD laws also reflect a fundamental shift from voluntary corporate social responsibility, to non-negotiable corporate accountability as discussed in the literature on business and human rights (Bernaz, 2016; Ramasastry, 2015). The law-making processes have, however, been characterized by fierce contestations over the translation of this global norm into domestic legislation. To analyze the domestication of international norms, this article draws on and contributes to three literatures, neither of which has systematically analyzed the discursive struggles about the meaning of foreign corporate accountability that manifested in policymaking processes to institutionalize MDD.

First, theoretical literature on accountability in global and multi-scale environmental governance points to the existence of “accountability traps,” meaning that “as policy-makers and corporations are being scrutinized more frequently and intensely, they get better in meeting the requirements posed by accountability holders, but they are not necessarily performing better in terms of the expected outcomes” (Gupta & Mason, 2014; Park & Kramarz, 2019). Yet, existing theories on accountability have mainly centered either on domestic and global politics or on private accountability, hence missing the transnational (supply chain) dimension of new public policies. We contribute to this literature by offering a systematic analysis of contemporary political debates about accountability in the realm of global supply chains.

Second, the literature on the regulation and governance of global supply chains has problematized the shortcomings of private governance approaches (Dauvergne & Lister, 2012; LeBaron et al., 2017), analyzed early supply chain regulations with an environmental focus (e.g., Bartley, 2014; Moser & Leipold, 2021; Partzsch, 2020), and more recently started to explore the implications of regulations that are based on a due diligence approach (Partzsch & Vlaskamp, 2016; Schilling-Vacaflor & Lenschow, 2021). However, this scholarship has not yet analyzed different interpretations of the meaning of due diligence and its contested translation from international soft law to domestic hard law.

Finally, legal scholars on business and human rights have emphasized the limitations in international law to establish legal liability of corporations for their negative externalities caused abroad (Bernaz, 2016; Ruggie, 2018), and more recently paid attention to the institutional design of MDD laws (Bueno & Bright, 2020; Cossart et al., 2017; LeBaron & Rühmkorf, 2019). Business and human rights scholars have also been very active in providing consultancy and publishing policy briefs to inform law-making processes and they have published legal commentaries to interpret MDD laws (e.g., European Parliament, 2020). However, as this scholarship has mainly focused on legal aspects surrounding MDD, the deeply political processes that have surrounded law-making processes have escaped previous studies in this field.

Taken together, we advance previous research on supply chain governance by identifying three emerging metadiscourses on foreign corporate accountability in policymaking processes and analyze how these discourses have shaped the institutionalization of MDD in different domestic contexts.

## 2.2. Analyzing discourses on foreign corporate accountability

To analyze how international soft norms on due diligence are domesticated and translated into domestic legislation, we employ a discourse analytical approach (Durnova et al., 2016; Hajer, 1993, 1995; Van Hulst &

Yanow, 2016). We define discourse as “an ensemble of ideas, concepts and categories through which meaning is given to social and physical phenomena, and which is produced and reproduced through an identifiable set of practices” (Hajer & Versteeg, 2005, p. 175). Discourse analytical approaches help us to uncover the production of meaning, often embedded in asymmetric constellations of power, and to analyze conflicting knowledge claims on how global supply chains should be regulated. We share Lukes’s (1974) multidimensional understanding of power that includes instrumental behavior to influence certain decisions, structural power that can limit the scope of what is being discussed, and ideological power that shape people’s perceptions of the problem and its solution. In transnational governance, there is a structural risk that rights and the perspectives of marginalized groups in the Global South are not sufficiently taken into consideration (cf. Gustafsson & Schilling-Vacaflor, 2022). By comparing discourses and their institutionalization in France and Germany, we explicitly address the impact of ideological power shaping policy designs.

Discourses and policy frames can reflect the interests of actors and actor coalitions and they can be used strategically to achieve policy goals. However, an important assumption in discourse analytical approaches is that policy discourses and different communicative practices can contribute to alter actors’ perceptions of their interests in relation to different policy problems and their solutions (Durnova et al., 2016; Hajer, 1995). This has important consequences for the analysis of global supply chain regulations, since it implies that the emergence of new policy discourses, which attribute companies responsibility for the negative impacts caused by their subsidiaries or suppliers, may actually alter perceptions of citizens and policymakers of how the problems associated with global supply chains should be handled. Indeed, recent survey research shows that citizens who mistrust the effectiveness of private voluntary measures show a higher level of support for stringent supply chain regulations (Amengual & Bartley, 2022). From a discourse analytical perspective, we can argue that policy preferences are shaped by the policy frames and arguments used by the actors during the drafting process.

In this article, we conceive of MDD laws as products of discursive struggles shaped by specific actor constellations and embedded in different institutional contexts, in which certain interpretations of MDD are favored, while others are marginalized. More concretely, we draw on Hajer’s (1995) concepts storyline, discourse coalition and institutionalization, to analyze the discursive struggles surrounding the drafting of MDD laws.

*Storyline* refers to a narrative that clusters separate discursive components and provides actors with a symbolic reference that helps them to overcome fragmentation. Storylines help to reduce the complexity of policy problems and give a sense of a coherent problem. Storylines also establish a discursive closure, which implies that certain aspects are marginalized or excluded (Hajer, 1995, p. 56). Metaphors, analogies, historical references, appeals to senses of guilt or collective threats, and clichés, are discursive practices deployed to establish storylines. However, it is also important to pay attention to the question of what ideas, values, or forms of knowledge become marginalized and silenced in a discourse (Alger & Dauvergne, 2020; Van Hulst & Yanow, 2016). Eventually, storylines are essential for creating new political coalitions, as they frame policy problems in a way different actors can relate to.

*Discourse coalitions* are defined as the ensemble of a set of storylines, the actors who reproduce these storylines, and the discursive practices that sustain the discourse (Hajer, 1995, p. 65). Importantly, storylines help to create meaning and to establish a common discourse, which in turn contributes to the formation of discourse coalitions with common political goals. Whereas in traditional political coalitions collective interests and strategic choices constitute the basis of the coalition, storylines are the basis for the formation of discourse coalitions and may potentially change what actors perceive to be their interests (Hajer, 1995, p. 66).

Finally, *institutionalization* of a discourse refers to whether and how a discourse is “translated into institutional arrangements” ranging from concrete policies to institutional arrangements (Hajer, 1995, p. 61). Discourse coalitions aim at discourse institutionalization as this implies that a certain discourse will become dominant or hegemonic in a given policy domain. In our case, we focus on the question of which of the different discourses turns out to be winning over the others in dominating the common understanding and hence, shaping the institutionalization of MDD in domestic laws and thus the structuration of future power relations.

### 2.3. Metadiscourses on the regulation and governance of global supply chains

We argue that state-centric, market-based, and polycentric-governance discourses have underpinned much of the political and scholarly debates about global supply chain regulations in the aftermath of the UNGPs’ adoption.

Drawing on literatures on the regulation and governance of global supply chains, different modes of environmental governance, and on business and human rights (Bartley, 2014, 2018; Bernaz, 2016; Kronsell & Bäckstrand, 2010; LeBaron & Rühmkorf, 2019; Lemos & Agrawal, 2006), we present the three discourses below. In our empirical analysis, we first outline how they have discussed foreign corporate accountability and thereafter analyze the discursive struggles surrounding the institutionalization of MDD laws.

### 2.3.1. *The state-centric discourse*

In this storyline, private governance is criticized for being part of a neoliberal ideology that has contributed to enhance corporate power at the expense of the state's capacity to regulate global supply chains (Bernaz, 2016; Clapp, 2017; Dauvergne & Lister, 2012). Against this background, the call to bring the state back in, in order to hold companies accountable, has become louder (Bartley, 2014, 2018; Lenschow et al., 2016; Moser & Leipold, 2021). From this perspective, hierarchically organized, regulatory rules and forms of control are needed to govern global supply chains, and to effectively hold companies into account. This emphasis on non-negotiable corporate accountability has been at the center of scholarly debates on business and human rights (Bernaz, 2016). At the same time, within the strand of literature that has argued for a “re-centering” of the state, there has also been a concern that supply chain regulations from the Global North might contribute to undermine state authority and democratic accountability in the Global South (Bartley, 2014, 2018).

Therefore, scholars have argued that in order to produce transformational change, supply chain regulations need to be accompanied by efforts to re-center the role of the state also on the supply-side and to strengthen reform-oriented coalitions in producing sites (Bartley, 2018; Macdonald, 2020). Moreover, this discourse highlights the importance that actors in the Global North, who advocate for the rights of affected groups in the Global South, seek the authorization of these groups and are receptive to their concerns (Rubenstein, 2007). This is important to avoid that transnational governance instruments contribute to further marginalize affected groups.

### 2.3.2. *The market-based discourse*

At the core of this discourse is the notion of voluntarism and corporate social responsibility. The market-based discourse has underpinned dominant private forms of supply chain governance, such as codes of conduct, certifications, company commitments, self-assessments of suppliers, and audits. This discourse highlights markets as self-organizing through companies' engagement in voluntary actions and attempts to establish private regulation (Büthe & Mattli, 2011). From this perspective, the growing rule-making authority of private actors is seen as legitimate and as having transformational potential, while state interventions are often rejected (Bernstein & Cashore, 2007; Evans, 2020). This discourse argues that governments should primarily facilitate or delegate authority to private actors, instead of restricting their agency. The legitimacy of market-based solutions is based on authority granted by supply chain actors and customers, rather than states (Cashore, 2002). The market-based discourse embodies ideas about a new form of corporate social responsibility in which companies internalize a firm's negative externalities through engaging in different types of private initiatives (LeBaron & Rühmkorf, 2019). However, rather than profoundly restructuring corporate activities with potentially negative impacts of profitability, companies often advocate for win-win scenarios in which improvements in sustainability practices lead to profit maximization (Auld et al., 2008; Dauvergne & Lister, 2012).

### 2.3.3. *The polycentric-governance discourse*

If the three discourses are placed on a continuum of positions in relation to either state-centric or market-based solutions to sustainability problems, the polycentric governance discourse represents a middle position. It advocates in favor of a combination between moderate state interventions and market-based solutions. At the core of the polycentric storyline is the assumption that in order to enhance corporate accountability, the support of public and private actors across different levels of governance is needed. Indeed, the polycentric approach characterized both the drafting process and the design of the UNGP framework, which is implemented by a wide range of actors, such as states, international organizations, companies, and business associations (Rodríguez-Garavito, 2017). As argued by Ruggie (2017), the aim behind the adoption of the UNGPs was to “generate a new and different regulatory dynamic, one in which public and private governance systems—corporate as well as civil—each come to add distinct value, compensate for one another's weaknesses, and play mutually reinforcing roles [...] The spatial imagery embedded in the UNGPs is a regulatory ecosystem, not hierarchy” (p. 47). This

perspective, thus, emphasizes that the joint action of different actors creates synergies (cf. Lemos & Agrawal, 2006). For instance, private actors can implement voluntary actions, while states can orchestrate, support, and steer company behavior (Renckens, 2020). The predominant focus in this discourse is on collaborative policymaking, such as multi-stakeholder dialogues and public–private partnerships that could help to span the divide between markets, states and societal actors. Yet, the discourse is largely silent on the unequitable consequences of and power dynamics inherent in the governance of global supply chains.

### 3. Methodology and data

To analyze the three meta-discourses on foreign corporate accountability, we first collected and scanned broad empirical material, such as statements, reports, newspaper articles, and transcripts of parliamentary debates. We then traced the policymaking process in each country, by analyzing the involved actors' positions and discourses, important events as well as different public statements and law proposals. We gathered many original public statements released by civil society, state, and business actors from France and Germany during the policymaking processes. Our primary data included the protocols on the different readings of the law proposals on MDD in both countries and a set of public statements by (1) civil society organizations, (2) political parties and policymakers, and (3) business associations and companies. For collecting these primary documents, we first identified the key stakeholders in the policymaking processes in both countries through literature research and conversations with experts and then searched for the public statements of these stakeholders. For collecting our sets of documents, we aimed to achieve a balance between the number of statements of the three groups outlined above. In the case of Germany, we collected 60 statements. Many of these statements were submitted to the Ministry of Social Affairs on 1 March 2021, in the framework of a consultation about a law proposal presented by three German ministries in February 2021 (see Section 4.3). In the case of France, the level of participation by business actors and civil society organizations in the policymaking process has been comparatively lower and the state did not organize any consultation process. We analyzed a total of 45 statements from French actors.

For the comparative analysis, we established a coding scheme to identify the different storylines, discourse coalitions, and silences as well as the preferred policy solutions (see Appendix A). The first two authors of this article developed and refined the coding scheme in different pilot studies. In the first rounds of coding, the same documents were coded by both authors and the results were discussed among all authors of the article. Thereafter, the first author finished the coding of data on France, and the second author did the coding of the data from Germany. In Appendix B, we have included illustrative quotes on the three discourses. The data analysis was conducted with the support of the software ATLAS.ti.

Furthermore, for assessing and comparatively analyzing the institutional design features of MDD laws and law proposals, we established an original analytical framework (see Appendix C). To do so, we consulted literature on the legal design of due diligence laws (e.g., European Parliament, 2020; Smit et al., 2020), diverse law proposals as well as adopted laws. Our framework distinguishes between the three key categories scope, procedure, and enforceability and we operationalized these categories by identifying three indicators to assess each category in a nuanced way. To assess the scope of the legal norms, we focused on (1) the coverage of companies, (2) the coverage of environmental and human rights issues, and (3) the reach of due diligence requirements in the supply chain, ranging from direct suppliers to the entire supply chain. To assess the laws' procedural requirements, we distinguish between specific requirements to (1) exercise due diligence, (2) to report upon due diligence systems, and (3) to carry out consultations with stakeholders. To assess the laws' enforceability, we distinguish between (1) state supervision and sanctions, (2) legal liability, and (3) measures for providing victims with access to remedy. For assessing the stringency and/or comprehensiveness of laws or law proposals with regard to each indicator, we calibrated the indicators on a scale between 0 (very weak or absent presence of indicator) and 1 (very strong or full presence of indicator). To assess how the legislative processes evolved over time and how MDD was institutionalized, we applied our assessment scheme on institutional design features to a total of 13 law proposals that were developed throughout the policymaking processes in France and Germany.

#### 4. Discourses on foreign corporate accountability and the institutionalization of MDD

In this section, we present our empirical analysis. We first present the central storylines related to each of the discourses. Even though with different intensity, all three discourses are present in both countries. To avoid duplication, we will therefore focus on the narrative features of these discourses drawing on material from both countries without systematically comparing them. We continue with a discussion of preferred institutional design features of MDD laws for each discourse. In Hajer's terms, we may speak of a discourse structuration that precedes actual institutionalization. Finally, we analyze how these discourses have been institutionalized in the laws adopted in France and Germany.

##### 4.1. Discourses on foreign corporate accountability and MDD

This section aims to identify some of the storylines actors use to link discursive categories with concrete social or physical phenomena. In Appendix B, we collected a broader list of emblematic quotes illustrating the storylines of the three discourses outlined below.

###### 4.1.1. State-centric discourse

The state-centric discourse has been reproduced in France's and Germany's policymaking processes by broad coalitions of civil society organizations, such as environmental and human rights NGOs, churches, and by trade unions. Furthermore, many representatives from leftist and green parties have supported the call for stringent and comprehensive MDD laws. These actors highlight the severe environmental and human rights problems that need to be solved in relation to global supply chains and the lack of corporate accountability. To underline the urgency of stringent MDD laws, concrete examples of severe injustices that appeal to senses of guilt, compassion, and justice are frequently used. For instance, adherents of this discourse argued: "80 million children work as labor slaves for us, the rich who are on the sunny side of the planet, for our products" (Gerd Müller, Federal Minister of Economic Cooperation and Development BMZ, in *Deutscher Bundestag*, 2021a, p. 28434). Similarly, with reference to the collapse of the textile factory at Rana Plaza in Bangladesh that triggered a public outcry as several large French brands were implicated, a civil society organization posed the rhetorical question: "Is 1,138 deaths too few for a law?" (Terre des Hommes, 2014, p. 1).

This discourse often portrays companies in negative terms, as profiting from existing accountability gaps, and externalizing their social and environmental costs to distant sites of production. This discourse coalition further refers to scientific evidence and practical examples to emphasize that voluntary measures have failed, whereby the need for the adoption of an MDD law is justified. As stated by a French NGO "Transnational corporations reacted by drawing up ethical charters and codes of conduct with no one else but themselves to answer to" (Les Amis de la Terre France and Actionaid, 2017, p. 6).

Relatedly, this discourse outlines that sustainable consumption should not be a duty of consumer's choices, but it should be a standard for all products available on the market. From this perspective, companies are responsible for ensuring human rights and environmental protection throughout their supply chains, but they are unlikely to assume this responsibility without the existence of legally binding rules. The introduction of due diligence obligations is presented as an important step to address the identified environmental and human rights problems and to provide the victims of such damages with access to remedy. For instance, the French deputy Dominique Potier referred to the following quote by the political activist Henri Lacordaire in the 19th century to emphasize the importance of legally binding requirements: "Between the strong and the weak, between the rich and the poor, between the master and the servant, it is freedom that oppresses and the law that sets free" (Assemblée Nationale, 2015, p. 10). Overall, the broader goal of MDD laws is a systemic change, which should help to create new relationships between the state, civil society, and companies. Therein, fairness and sustainability should be more important than profitability.

In contrast, this discourse is silent on the potential negative effects of MDD laws for companies and for different kinds of actors in the Global South. In this perspective, legally binding rules are needed at all levels, from the domestic, to the EU and the global level. Being among the first countries in introducing such laws is not seen as a risk for the national economy, but rather as an opportunity for the country to take a pioneering role in the transformation toward a new form of competitiveness that encompasses fundamental moral values.



#### 4.1.2. *Market-based discourse*

The principal actors that reproduced a market-based discourse in the policymaking processes of MDD laws in France and Germany were business associations, companies and members of conservative, rightwing and liberal political parties. This discourse aims to maintain the status quo and to delegitimize the adoption of stringent MDD laws. Within this discourse, such laws were frequently described as “repressive,” “punitive,” “excessive,” “inappropriate,” or “dangerous.” Rather than controlling the companies, this discourse coalition argued that states should support and incentivize the European companies to maintain and improve their already high voluntary standards.

In the market-based discourse, companies are represented in a positive light, by highlighting all the voluntary efforts that they have already made for contributing to environmental and social sustainability. As stated by a French business association “[French companies are] now recognized as the most respectful of international standards in terms of human rights and environmental protection. They adhere to the principles of the OECD and the UN and through their international activities are driving progress and improving standards in all territories” (Afep, 2017, p. 2). Actors reproducing this discourse emphasized that governments and not companies should be responsible for human rights protection. For instance, a German business association in the textile sector argued that an MDD law would penalize the leading companies worldwide when it comes to social and environmental standards (Textil und Mode, 2021, p. 1). Similarly, a Republican member of the Senate expressed that the adoption of an MDD law would “damage France’s image and attractiveness. In our competitive system, subcontractors will go elsewhere. We do not live in ‘Care Bear Land’” (Senat, 2016, p. 21).

As this discourse has been silent on accountability gaps in global supply chains, it represents MDD laws as unnecessary hurdles that negatively affect companies located in Germany or France. Furthermore, the storyline is advanced that the most responsible companies covered by the laws would likely abandon high-risk areas, thus leaving these places with the least responsible companies. By portraying companies as victims of disproportionate rules and, moreover, appealing to a collective threat toward the national economy, this discourse marginalizes social justice concerns.

#### 4.1.3. *Polycentric discourse*

As the political processes and discourses surrounding the adoption of MDD laws were highly contested and polarized in France and Germany, the polycentric discourse was reproduced less frequently and played a more important role in the German than in the French case. Among the actors sharing this discourse were certifiers and auditors who saw the adoption of MDD laws as a business opportunity, by creating synergies between moderate legal requirements and available voluntary measures (see, for instance, TÜV Association, 2021). Furthermore, some companies and in Germany members of the Christian democratic party CDU expressed their support for MDD, while advocating for a weaker version of it than proposed by the state-centric discourse coalition. For instance, in November 2021, the CDU-led Ministry for Economic Development and Cooperation BMZ stated on its webpage: “EU legislation should equally find a compromise between better protection of human rights, feasibility for business and effectiveness for those affected” (Ministry for Economic Development and Cooperation BMZ, 2021).

The polycentric-governance discourse envisions a gradual transformation of company behavior and global economic relations. This discourse focuses on the synergic relationship between voluntary and mandatory measures that could be achieved through collaborative policymaking, such as multi-stakeholder dialogues and public-private partnerships. For instance, members of a business association of German retailers stated: “[V]oluntarism and legal regulation to promote respect for human rights could complement each other and contribute to addressing the complexity of global challenges” (Foreign Trade Association of German Retailers AVE, 2020, p. 3). From this perspective, states and NGOs could use such softer forms of governance to support and incentivize companies to improve their organizational structures and practices.

This discourse is in favor of the adoption of minimal standards for companies to fulfill, while rejecting rules that impose what is seen as unreasonable administrative burdens on companies. The polycentric discourse generally represents companies in a positive light, but it acknowledges that some companies behave irresponsibly, which is seen as a distortion of fair competition. MDD laws could help to establish a level playing field and to reward companies that behave responsibly. This discourse highlights the market opportunities that moderate MDD laws represent. For instance, a German entrepreneur emphasized: “I firmly believe that this law [...]

promotes business. The importance of respecting human rights in the supply chain is extremely high for future business. The opportunities for our business in the future, namely ‘profit with purpose’ are huge” (Henning Ohlsson, CEO EPSON Germany, in Deutscher Bundestag, 2021b, p. 9). Similarly, as expressed by a member of the National Assembly in France “As you know, we are very attentive to the interests of French companies, particularly within the Economic Affairs Committee. [...] In our view, the duty of care contributes to the accountability of companies without affecting their competitiveness” (Assemblée Nationale, 2016, p. 36). This understanding of foreign corporate accountability as a win-win approach for everyone—civil society, state and business actors—tends to shy away from discussing trade-offs between different social, economic, and environmental goals as well as questions of power and social justice.

#### 4.2. Discourses and their institutional design preferences

The three discourses presented above differ significantly in their views on the preferred institutional design of MDD laws. Interestingly, each discourse refers to the UNGPs and the OECD Guidelines on Multinational Enterprises in a supportive way and interprets these soft law norms, that is, norms that are not legally binding, in a way that sustains its own policy preference. This highlights the multinterpretability of these reference documents, inviting discursive struggles in political life. There has thus been little contestation of the due diligence norm itself, but primarily about whether and how the norm should be translated into hard law, with a focus on the scope, procedure, and enforceability of legislative measures.

##### 4.2.1. Scope

In the policymaking processes in both countries, the scope of the laws to be adopted concerning the thresholds of the size of companies and the issue-areas to be covered were important points of contention. In line with its main ambition to solve environmental and human rights problems in global supply chains, the state-centric discourse expressed its preference to oblige all companies to comply with the law and to adopt a broad definition of the problems to be covered. Moreover, from this perspective, due diligence systems shall cover the entire supply chain, as “[t]he majority of human rights violations occur at the beginning of the supply chain, such as child labor in cocoa farming or the displacement of indigenous peoples and environmental destruction in mining projects” (Initiative Lieferkettengesetz, 2021, p. 4). However, for pragmatic reasons, in the final round of negotiations several actors reproducing this discourse supported a compromise solution with a more narrow scope such as proposed within the polycentric-governance discourse.

The market-based discourse aimed to curtail and restrict the scope of the law as much as possible. In France, the market-based discourse succeeded to limit the coverage of the law exclusively to very large companies with more than 5000 employees in France or more than 10,000 employees worldwide and a subsidiary in France. While advocates of a market-based discourse in Germany generally expressed a very critical position toward the French Duty of Vigilance law, this very high threshold of companies subject to the law was often mentioned as a model to follow by Germany. The market-based discourse further aimed to limit the law exclusively to human rights violations and sustained this claim by arguing that the UNGPs also solely focus on human rights, while concealing the fact that the OECD Guidelines on Multinational Enterprises cover environmental alongside human rights impacts. In both Germany and France, the market-based discourse coalition also favored limiting due diligence obligations exclusively to direct, first-tier suppliers, arguing that covering entire supply chains would be far too “complex,” “disproportionate,” “unfeasible,” and even “contrary to constitutional principles of responsibility” (Senat, 2017, p. 13). As argued by a French conservative politician “It will be very difficult, if not impossible, to implement the obligation of vigilance on the entire chain of subcontractors and suppliers” (Assemblée Nationale, 2016, p. 4).

The polycentric discourse in Germany aimed to find a middle position, with thresholds of companies to be covered oscillating between 250 and 1000 employees. Similarly, advocates of moderate policy solutions argued that the law to be adopted shall include environment-related human rights violations and selected environmental agreements, but for the sake of feasibility and appropriateness not cover all kinds of environmental issues.

##### 4.2.2. Procedures

The state-centric discourse’s understanding of due diligence is in line with the UNGPs and the OECD Guidelines. Accordingly, due diligence must be based on risk assessment, the establishment of prevention

and mitigation measures to address identified risks, progress tracking of adopted measures, effective grievance mechanisms, stakeholder consultations, and access to remedy for victims. This discourse sustains that voluntary measures such as certification, reporting or branch standards can be used in addition to, but not instead of robust due diligence systems. Relatedly, proponents of the state-centric discourse have emphasized the key importance to involve diverse groups of stakeholders for developing effective due diligence systems.

In contrast, the market-based discourse implicitly challenges the due diligence obligations outlined in the UNGPs, by framing them as unfeasible and disproportionate, in particular for small- and medium-sized companies. This discourse argued that private standards, such as certification, reporting, or multi-stakeholder initiatives should be the basis for the implementation of MDD. This discourse also called for a simplification of due diligence requirements, by establishing state-led black lists of “high-risk areas” or “irresponsible suppliers,” which should be excluded from European global supply chains. More generally speaking, this discourse advocates for a supportive rather than a supervising or sanctioning role of the state. Furthermore, in contrast to international norms that have highlighted the importance of stakeholder consultations for enabling effective due diligence, proponents of market-based solutions have rejected such participatory processes, arguing that they could “complicate risk management and significantly hamper entrepreneurial decisions, especially investment decisions” (Textil und Mode, 2021, p. 2).

Finally, the polycentric discourse is, similar to the market-oriented one, in favor of simplifying due diligence procedures for companies, by safe harbor solutions, certification, and black or white lists. Such solutions mean that either the exclusive reliance on an industry standard (“safe harbor”), on a voluntary certification standard or on a black or white list of more or less responsible producing sites or suppliers could be used as evidence for complying with MDD. Such solutions can preclude or limit rightsholders from bringing civil claims against a company (Smit & Bright, 2020). In contrast to the market-based discourse, the polycentric discourse, however, sees the opportunity to combine voluntary and (moderate) mandatory measures. For instance, a German audit company argued that the use of certification and auditing in due diligence systems could help to “relieve the burden on the state and save public resources” (TÜV Association, 2021, p. 4).

#### 4.2.3. Enforcement

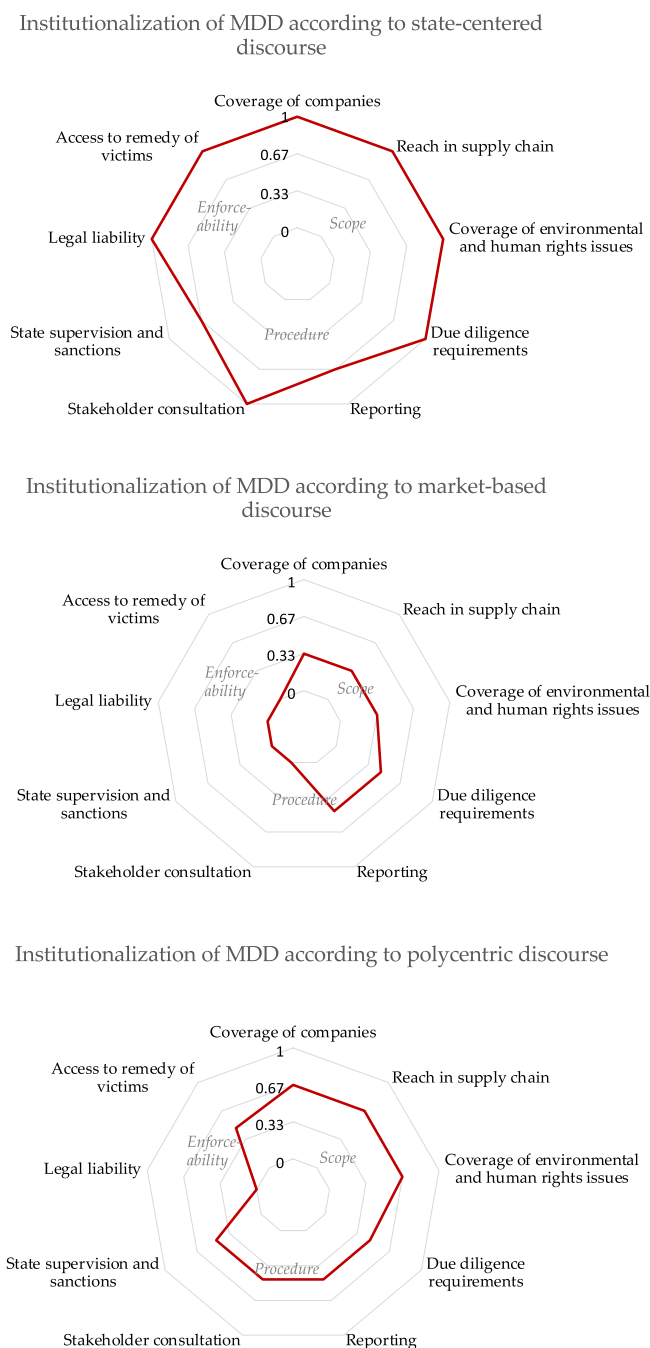
From the perspective of the state-centric discourse, it is crucial that MDD laws are enforceable. Non-compliant companies shall be penalized, environmental damages be remediated and victims of human rights violations gain access to remedy. Accordingly, the state-centric discourse calls for the civil liability of companies for harms caused abroad that could have been prevented and for a reversal of the burden of proof from the victims to the companies. As emphasized by a French Socialist “Our main dispute concerns the question of sanctions. For your personal ethics, the commercial issue, will be enough for companies to make progress. We have a different vision of the world” (Assemblée Nationale & Sénat, 2016, p. 4). While in France there have been divided opinions among representatives of the state-centric discourse regarding the need to establish a supervisory authority for monitoring the compliance with the Duty of Vigilance law, in Germany this discourse coalition was united in demanding the creation of a competent state authority with sufficient resources and strong competences to investigate and sanction non-compliant companies.

Unsurprisingly, the market-based discourse strongly opposed command and control mechanisms to enforce MDD laws. In particular, the inclusion of legal liability and access to remedy clauses in the laws was perceived as a risk for companies, who saw the possibility to file lawsuits against non-compliant companies as a “disproportionate demand,” leading to a “loss of time, money and reputation” (Foreign Trade Association of German Retailers AVE, 2020, p. 2). Companies were generally more favorable toward the option to establish a supervisory authority that should mainly support and guide companies, while opposing substantial penalties or the exclusion of non-compliant companies from public procurement.

The polycentric discourse advocated for a mix of moderate sanctions and incentives for responsible companies, also highlighting the importance to foster policy coherence through foreign policies and development cooperation programs. According to this discourse, the state, civil society, and business must “unite to fight for our values, together where human rights are violated, and not against each other in German courts”

(Carl-Julius Cronenberg, parliamentary deputy for the liberal FDP party, in Deutscher Bundestag, 2021c, p. 30257).

The following star diagrams illustrate the multidimensional policy preferences reflected in the three discourses with regards to the institutionalization of MDD. As outlined in Section 3, we distinguish between three indicators for each category: (1) scope, (2) procedural requirements, and (3) enforceability. To assess each indicator, we distinguish between different degrees of stringency and/or comprehensiveness (for more details, see Appendix C). Higher values correspond to larger circles in Figure 1 and indicate a more stringent and/or comprehensive design of MDD in the respective dimension.



**Figure 1** Institutional design preferences by the three discourses (schematic representation).

### 4.3. Contested policymaking and MDD laws in France and Germany

We now turn to the discourses' institutionalization in Germany and France. Our study reveals that the processes of contestation between different discourses, which constructed different meanings of due diligence and appropriate governance solutions, gave rise to rather different forms of institutionalization. Thus, even though both countries are considered pioneering in hardening soft international law and creating a binding framework for globally operating companies regarding the enforcement of environmental and human rights, patterns of discursive interaction in these countries shaped distinct policy solutions in both countries.

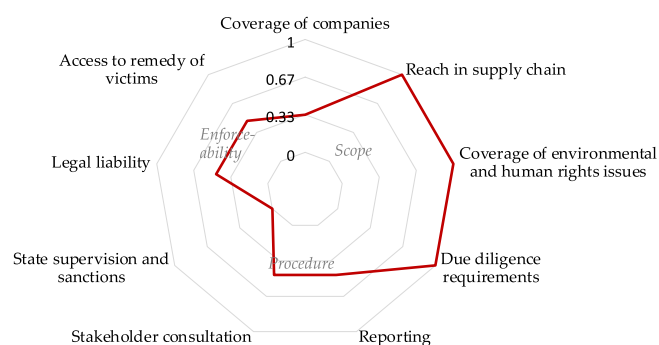
#### 4.3.1. *The institutionalization of MDD in France*

After a four-year-long battle, the "Duty of Vigilance" law (Law No. 2017-399) was finally adopted in 2017. This law was the first cross-sectoral and stringent MDD law to be adopted and this was celebrated as a groundbreaking step by civil society organizations. The first law proposal was presented in 2013 by adherents of a state-centric discourse, the same year as the Rana Plaza textile factory collapsed, which resulted in the death of more than 1100 persons. As several large French brands were implicated, the accident resulted in a public outcry about business impunity (Evans, 2020). Civil society organizations, trade unions, and left-wing deputies developed an ambitious proposal for an MDD law that should cover all companies and allow for the possibility to file lawsuits against non-compliant companies to French courts. Interestingly, in accordance with the policy preferences of the state-centric discourse coalition, the first law proposal established that the burden of proof in lawsuits should be on the companies and not on the claimants. Furthermore, rather than relying on information disclosure mechanisms and reporting, which play a central role in the market-based discourse, the law proposal aimed to make companies directly responsible for preventing and mitigating damages. When introducing the law proposal, proponents often used historical references to the abolishment of slavery and child labor to signal hope and the possibility of change. In this context, actors related to core values of the French state: "The law we are proposing today stands in the tradition of the French Revolution and the Enlightenment [...]. We are attached to our values, to an economy that makes sense and is limited by law" (Assemblée Nationale, 2016, p. 1).

The first ambitious law proposal faced strong opposition from adherents of the market-based discourse, such as business associations, the Ministry of the Economy (led by Emmanuelle Macron from 2014 to 2016), and members of the conservative and liberal party. Given this broad opposition, it took over a year until the law was presented in the National Assembly. To demonstrate the public support for the Duty of Vigilance law, civil society organizations conducted a survey in 2015, that showed that 76% of French citizens supported the adoption of a law that holds multinational companies responsible for the impacts of their subsidiaries and suppliers (Sherpa, 2015). Nevertheless, the first law proposal was voted down in the National Assembly, and a new—much more limited—proposal was developed and gained the support of a majority in the National Assembly (Bill 2578). Reflecting the influence of the market-based discourse coalition, the revised proposal stipulated that only very large companies with 5000 employees in France, or 10,000 employees worldwide are to be subject to the law. Instead, reporting on the establishment of robust due diligence systems was established as a key priority and the reversal of the burden of proof in lawsuits was withdrawn. This proposal, however, still included broad human rights and environmental due diligence obligations over subsidiaries and entire supply chains and the possibility to sanction non-compliant companies with a fine of up to €10 million, a potentially powerful enforcement mechanism. This proposal was adopted with minor changes by the National Assembly. But this time the Senate, which had a conservative majority and thus mainly represented the market-based discourse, rejected the bill.

During the following year, there was an open political struggle between the National Assembly and the Senate. Business associations also continued to lobby intensively against the adoption of the law (Evans, 2020). In November 2016, a Joint Commission with members from the National Assembly and the Senate was established, but given the polarization between different political forces, it was not possible to reach an agreement. In line with the French institutional rules, in the case of a deadlock, the Assembly's decision prevails, which explains the adoption of the law in February 2017. Finally, in March 2017, the Constitutional Council ruled that the law was in general compliant with the French Constitution, but pressured by right-wing legislators the Council excluded the possibility to penalize non-compliant companies with up to €10 million. In the end, the law represents a compromise between different political forces, and includes design features reflecting both state-centric and market-based discourses (on the law's institutional design see Fig. 2). Although the law was significantly watered down with regards to its scope and enforcement,

## Institutionalization of MDD in French Duty of Vigilance law



**Figure 2** Institutional design features of the French Duty of Vigilance law (for a justification of this assessment, see Appendix C).

most notably because it stipulates the legal liability of companies for harm caused abroad, it was still seen as a partial victory of the coalition that promoted the state-centric discourse (Dupré & Psychuad, 2017).

#### 4.3.2. The institutionalization of MDD in Germany

In December 2016, the German federal government adopted a National Action Plan (NAP) for business and human rights in order to implement the UNGPs. The NAP expressed the expectation that all German companies above a threshold of 500 employees adhere to their due diligence obligations. While the NAP is a voluntary instrument, the German government, at that time a coalition between the conservative CDU party and the social democratic SPD party, established in its coalition contract that they would adopt a law in the case that less than 50% of companies would implement voluntary due diligence measures until mid-2020.<sup>1</sup> Whereas the concrete methodology of the monitoring of companies' compliance with the NAP was contested, the result of the monitoring was still very clear, showing that only 13%–17% of the companies observed complied with the NAP requirements.<sup>2</sup> This finding challenged the market-based discourse according to which existing voluntary measures of companies would be sufficient for establishing sustainable supply chains. Following the sobering findings of the NAP monitoring, many CDU representatives changed sides from a market-based to a polycentric-governance discourse, the latter favoring the adoption of a moderate MDD law.

Already prior to the NAP monitoring, civil society organizations, supported by academics and policymakers, created the “supply chain due diligence initiative” (*Lieferkettengesetzinitiative*), a broad coalition that reproduced the state-centric discourse. Furthermore, in February 2019 a draft law proposal that reflected the policy preferences embedded in the state-centric discourse and that was commissioned by the German Ministry of Economic Cooperation and Development (BMZ), was leaked and became public. Adherents of the market-based discourse were outraged about the fact that policymakers already started to prepare a law before having the results of the NAP monitoring. In January 2020, the BMZ and the German Ministry of Social Affairs (BMAS) publicly announced that they were developing a law proposal together. Although plans to officially announce the cornerstones of a new MDD law were blocked by the Federal Ministry of Economic Affairs and Energy (BMWFi) and chancellor Angela Merkel,<sup>3</sup> the core ideas agreed upon by the BMZ and the BMAS became public in June 2020. They included due diligence obligations for companies with more than 500 employees and enforcement measures through a competent authority as well as civil liability of non-compliant companies.<sup>4</sup>

After the results of the NAP monitoring were released in July 2020, the BMAS, the BMZ, and the BMWFi were commissioned to develop an MDD law proposal together. However, given the strong resistance against such a law by the minister of the economy Peter Altmaier, who reproduced a market-based discourse and was supported by business associations and many German companies, this proved to be a difficult task (Paasch & Seitz, 2021). To overcome deadlock, in September 2020, more than 200,000 people signed a petition that was handed over to the Federal Chancellery. It called upon minister Altmaier to end his blockade and to adopt a stringent MDD law. In January 2021, Chancellor Angela Merkel and Vice-Chancellor Olaf Scholz mediated between the three

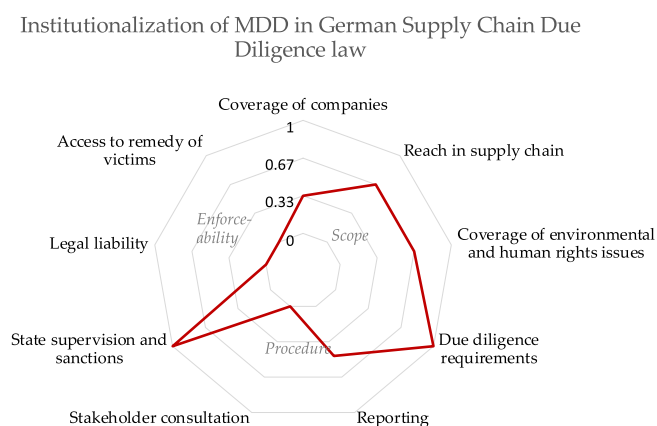
ministries to enable a compromise solution. On 12 February 2021, the three ministers organized a press conference and presented their law proposal, which was labeled by German media a “typical Merkel compromise” (Witting, 2021). Indeed, as we will outline below, the design of the law largely reflects a polycentric-governance discourse. With very minor changes, a few months later, on 11 June 2021, the German Federal Parliament adopted the law (on its institutional design see Fig. 3). The law was criticized by the adherents of the market-based discourse as being too stringent, while civil society organizations lamented that the law was watered down due to the lobbying of the market-based discourse coalition.

The law stipulates that very large companies with over 3000 employees from 2023 on and 1000 employees from 2024 on are subject to the law. It establishes due diligence obligations for all types of human rights violations, including environment-related human rights infringements and three environmental standards (use of mercury, use of toxic chemicals, and treatment of waste). Other environmental issues such as climate change or biodiversity loss are, however, not included in the scope of the law. Due diligence obligations were limited to the direct suppliers of companies, but companies have to take action in case they get information about serious problems further down in their supply chains. The law establishes specific due diligence obligations in line with international soft norms, including the yearly reporting upon due diligence efforts. However, it does not mention the need to consult stakeholders and rightsholders in due diligence systems. To enforce the law, it establishes a competent state authority with rather strong competences to supervise companies, receive complaints, investigate and sanction non-compliant companies with penalties and the exclusion from public procurement. However, the law does not include the possibility to file lawsuits against allegedly non-compliant companies in German courts and does not contain provisions for providing victims of human rights violations with access to remedy (Fig. 3).

## 5. Discussion and conclusion

The recent trend of adopting MDD laws has been hailed as a groundbreaking step for closing the profound accountability gaps in global supply chains. The political processes to translate international soft law into hard law have, however, been highly contested. Companies lobbied against the adoption of stringent laws, whereas civil society organizations have seen MDD laws as an opportunity to hold companies legally responsible for adverse impacts of their business activities in distant sites of production, thereby aiming to create a more just global economy. This article analyzes the discursive struggles that accompanied the institutionalization of MDD laws in Germany and France. Our study reveals the fundamentally different perspectives of foreign corporate accountability that underpinned the competing discourses (state-centric, market-based, and polycentric-governance-discourse), and shaped the institutionalization of MDD laws in both countries. By outlining these three discourses, we link important academic debates to contemporary political processes to institutionalize MDD specifically, and to rethink and re-negotiate the regulation and governance of global supply chains more broadly.

In the following, we will discuss the broader implications of our findings for scholars and policymakers related to supply chain governance and business, human rights, and the environment.



**Figure 3** The institutional design features of the German Supply Chain Due Diligence law.

First, the three outlined discourses reveal fundamentally different understandings of how the UNGPs should be translated into hard law. The state-centric discourse assumes that regulatory rules and bureaucratic power on the demand side will make it possible to govern complex global supply chains effectively and contribute to processes of just transformation. In contrast, the market-based discourse is based on the assumption that due diligence should be implemented through the delegation of authority to private actors. Such deep-rooted contestations are unlikely to be settled with the adoption of new laws. Laws often leave much room for actors to construct the meaning of the compliance with the law according to their own perspectives and interests, which could result in symbolic forms of compliance (Monciardini *et al.*, 2021), but also in civil society pressures and state action aimed at steering company behavior. Future research could refer to the three discourses about foreign corporate accountability and due diligence identified here to analyze company compliance and contestations in the implementation phase.

Second, although we observed the parallel formation of discourse coalitions in both countries, which not only used similar narratives in support of their understanding of the situation, but also consisted of similar actor groups, at the stage of discourse institutionalization both countries went separate ways. This paper did not set out to fully explain these differences in institutional outputs, as the focus was placed on elaborating on the discursive foundations of recent MDD policies. Nevertheless, the patterns found do correspond with characterizations of the French polity and its politics of interest intermediation as “statist,” on the one hand, and the German polity and politics of interest intermediation as corporatist and leaning toward compromise, on the other hand (cf. Schmidt, 2002). Moreover, the institutionalization of a polycentric-governance discourse in Germany also reflects the conduct inside a coalition government—especially a so-called “great coalition” with CDU and SPD—that tends to be integrative rather than polarizing. In future legislative bargaining processes, it is important to keep in mind that while the polycentric discourse can in some cases help to form broader coalitions that enable the adoption of a law, this might also lead to a weakening of the stringency of MDD laws in important respects.

With regards to European policymaking, it is important to keep these potential trade-offs in mind as for the debates about the EU’s Regulation on Deforestation-Free Products and the Directive on Corporate Sustainability Due Diligence. The Member States will need to agree on these future MDD laws at the EU level. The pioneering stands of Germany and France by no means ensure joint advocacy, as both countries may end up in different discourse coalitions also at EU level. Future research on EU policy processes will be able to draw on our analysis of the three discourses and the institutionalization of MDD when making sense of contestations in Brussels.

Third, MDD laws constitute a bricolage of the available building blocks for operationalizing due diligence. To assess the multidimensional character of the MDD laws and law proposals in France and Germany, we established nine criteria that fall in the broader categories of scope, procedure, and enforceability. Our operationalization of the different dimensions of MDD laws could be used and refined in future analyses of the emerging trend to adopt rules to enhance foreign corporate accountability. Rather than mirroring one of the discourses, the laws incorporate different institutional design features preferred by the three discourses. Whereas the French Duty of Vigilance law establishes that companies can be legally held accountable for adverse impacts in their supply chains, it is restricted in its scope and only covers the very largest companies. In contrast, the German Supply Chain Due Diligence law establishes a competent authority for supervising compliance and sanctioning non-compliant companies. At the same time, there is no legal liability and the law only covers the first tier of the supply chain. Hence, the scope, procedures and enforcement of the laws are combined in different ways, resulting in a bricolage of different components of due diligence. The two MDD laws should thus be seen as negotiated outcomes, rather than as the triumph of one discourse coalition over another.

Finally, the institutional design features established in the new, potentially groundbreaking laws carry important consequences for the way foreign corporate accountability might be enhanced. In contrast to the French law, the German law does not specifically mention stakeholder consultations and access to remedy as important pillars of MDD. This difference might reduce the chances of stakeholders and rightsholders from the Global South to participate in due diligence systems and related accountability mechanisms. Furthermore, the French law covers environmental damages in a broad sense, while the German law mainly focuses on human rights. Hence, the French law opens up more opportunities for environmental activists to use the law in their struggles against global environmental problems such as climate change and biodiversity loss. Moreover, the laws are based on different enforcement mechanisms. While the concrete outcomes of the different paths of enforcement in France



(legal accountability) and in Germany (supervisory accountability) remain to be seen, the steering of companies by a monitoring, guiding, and sanctioning state agency on a continuous basis might be better able to contribute to the uptake of prevention and mitigation measures by companies. This is so because the French Duty of Vigilance law focuses solely on legal liability for enforcing the law, which gets activated after harm has already happened. Taken together, such institutional design features are likely to shape foreign corporate accountability in important ways. While our analysis of the important implications of the institutional design of MDD laws for fostering FCA is not exhaustive, it clearly shows the need of having a close eye on how policymaking processes determine the institutionalization of MDD laws. The evolving practical understandings of foreign corporate accountability and MDD are thus decisive for the extent to which public policies from the demand-side might contribute to processes of just transformation in our global political economy.

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## Data availability statement

The data that support the findings of this study are available in the supplementary material of this article.

## Endnotes

- 1 The coalition program is available here: <https://www.bundesregierung.de/resource/blob/656734/847984/5b8bc23590d4cb2892b31c987ad672b7/2018-03-14-koalitionsvertrag-data.pdf>; p. 156.
- 2 The final report of the NAP monitoring can be retrieved here: <https://www.auswaertiges-amt.de/blob/2405080/23e76da338f1a1c06b1306c8f5f74615/201013-nap-monitoring-abschlussbericht-data.pdf>.
- 3 See, for instance: <https://www.rnd.de/politik/fairtrade-gesetz-kanzleramt-pfeift-heil-und-muller-bei-lieferkettengesetz-zuruck-D7Z57JYDZRFNDEOPBMCWEOU6A.html>.
- 4 See: [https://die-korrespondenten.de/fileadmin/user\\_upload/die-korrespondenten.de/Lieferkettengesetz-Eckpunkte-10.3.20.pdf](https://die-korrespondenten.de/fileadmin/user_upload/die-korrespondenten.de/Lieferkettengesetz-Eckpunkte-10.3.20.pdf).

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**Data S1** Supporting Information.