Commission Proposal for „Corporate Sustainability Due Diligence" must not put excessive strains on companies

Human rights due diligence is part of the self-concept of our member companies. Therefore, we support a workable European due diligence directive that creates a level playing field. However, due diligence obligations that go beyond direct contractual relationships, additional civil liability and an application to mid-sized companies are impracticable. In these respects, the European Commission's proposal for a directive is in urgent need of amendment.

Human rights due diligence is a joint task of states, companies and civil society

It goes without saying that all companies must respect human rights. As economic operators, companies have influential power and thereby also responsibility. But it should not be forgotten that human rights protection is primarily the task of states. Instead of causing new bureaucratic requirements, states should provide supporting services for companies also at the European level and ensure compliance with existing human rights regulations. This includes anonymous and legally binding advice as well as a central European information desk which offers help and information on implementation in the Member States. It is not the task of companies to support other companies' implementation processes. Rather, this is a task of states.

Focus on human rights

The scope of this legislation should focus on respect for human rights. An extension to include "environment" and "governance" would cause yet more legal uncertainty due to inconsistent standards in these areas. This also holds true for the intention to stipulate climate targets in the directive. Furthermore, the due diligence directive needs to resolve existing conflicts – such as the lack of implementation of relevant international law obligations in some countries – instead of bringing about even more complexity and legal uncertainty.

Concentrate due diligence on direct suppliers

In order to enable also mid-sized companies to meet the legal requirements, the due diligence obligations should focus on direct suppliers (tier 1). Many mid-sized companies lack the human resources and the technical possibilities to analyse all tiers of all value chains (upstream & downstream) beyond their own contractual relationships. Moreover, larger businesses alone may have some 100,000 direct suppliers.

Drive forward and recognise industry standards

Where recognised industry standards are applied, this should be considered in the framework of due diligence obligations or sanction rules, for example by safe harbour regulations. This would provide positive incentives for the implementation and further development of tailored solutions to achieve the necessary level of protection.

Specific solutions at industry level facilitate implementation for companies, simplify controls for public authorities and can achieve improvements on the ground. Sector initiatives pool the know-how of industries and can increase influence on suppliers. This strengthens the "empowerment instead of disengagement" approach.

Central complaints mechanism

Central complaints mechanisms at industry level should be made possible, as such a mechanism makes it easier for those affected to submit information and reduces the administrative burden for companies.

Limit liability to those causing human rights violations

Companies should only be held liable if they have caused human rights violations. This also applies to fines and penalty payments. The mere existence of business relationships cannot be considered a sufficient contribution to causation. Very few European companies have a global sphere of influence that would allow them to enforce own standards worldwide. It must be avoided that companies are held liable for damages without having the opportunity to change the situation on the ground. If companies have no influence on their business partners, there can generally be no culpable conduct. Accordingly, legal disputes on human rights violations in third countries should be settled primarily in the geographic proximity of those committing them, i.e. by the competent courts with jurisdiction in the country in question. Otherwise, there is a risk of a worldwide “litigation industry” at the expense of domestic companies.

Ensure practicability for companies

Instead of including mid-sized companies in the scope of the directive and overburdening them with requirements they can hardly fulfil, the scope should be narrowed down to companies with more than 1,000 employees. Last but not least, the measures must be limited to what is feasible. This applies equally to the traceability of products and to the extremely limited options of finding out details about the working conditions of an operation in a far upstream company of the value chain. Companies need clear-cut principles and criteria according to which they can prioritise their activities with legal certainty. At the same time, it must be ensured that the requirements to companies and the measures to be taken do not put at risk the security of supply with urgently needed goods.

Avoid hindsight errors and maintain the principles of the burden of proof

If, in retrospect, it turns out that a company gave lower priority to relevant risks for factual reasons, it must be ensured that the benchmark remains the ex-ante perspective and that sanctions are not imposed in hindsight. Likewise, the general principles of the burden of proof must be maintained: Anyone who accuses a company of a breach of due diligence bears the burden of proof for this according to the principle of having to produce evidence.

Ensure a level playing field for all market participants

The fact that the scope of the proposed directive is to cover companies operating on the European market irrespective of their registered office avoids distortions of competition and is to be welcomed. However, many vague definitions in the Commission’s proposal require further clarification at EU level to facilitate uniform implementation in the Member States. Independently of this, the outlook of an international solution – based on the UN Guiding Principles on Business and Human Rights and involving as many countries as possible – would be desirable to create a level playing field.

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The German Federation of Chemical Employers’ Associations is the head organization for collective bargaining and social policy in the chemical and pharmaceutical industry, as well as large parts of the rubber and plastics processing industries in Germany. It represents the interests of its 10 regional member associations, with 1,900 companies and 580,000 employees vis-à-vis trade unions, politics and public.

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