
EU regulation of supply chains must be made manageable

Joint appeal concerning the planned Corporate Due Diligence Directive

February 2023

The German business community organised in BDI and BDA supports the idea of making the global economy more resilient and further promoting sustainability also in the framework of supply chains. Even as things currently stand, the commitment of German businesses, within their sphere of influence, to supporting greater sustainability at all levels in developing and emerging countries is clearly recognisable.

The November 2022 draft report on the Corporate Due Diligence Directive by lead rapporteur Lara Wolters in the European Parliament's Legal Affairs Committee once more markedly tightens the Commission's draft to the detriment of businesses. In this form, the Directive will lead to even more red tape, legal uncertainty and ultimately the withdrawal of European companies from high-risk regions. The EU Directive is likely to make the diversification of supply chains required to ensure security of supply more difficult.

The German business community calls for a proportionate European directive which supports European companies in global competition such that the necessary protection of human rights and environment can be promoted in interaction between States and businesses. A prior condition for this is that companies must at least be able to exert some influence in these areas. In this regard, it is essential to recognise practical limits.

Against this background, we regard the following points as indispensable:

- **The underlying objective of sustainability legislation must be a maximum level of harmonisation**

Without an adequate degree of binding harmonisation, a directive runs the risk of fragmenting the EU single market, since companies across Europe will not be subject to the same laws and competition conditions. The least that is needed here is a so-called single market clause. European companies will otherwise be confronted with 27 different sets of transposition provisions. As a result, the EU would fail in its mission of being a regulatory beacon for other jurisdictions.

- **Meeting due diligence obligations must be limited to the sphere of the supply chain and more specifically to the direct supplier**

A consideration of the entire supply chain is not feasible in practice and would inevitably lead to a bureaucratic nightmare, not only for small and medium-sized enterprises. It should be possible for companies to assign weightings and to prioritise, especially within the supply chain structure.

- **The threshold for the scope must be at least 1,000 employees**

Monitoring the various due diligence obligations is a complex and labour-intensive process, hence only larger businesses are equipped to meet the

requirements of the Directive. In addition, the proposal does not create any genuinely level playing field for companies from third countries.

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- **The provisions concerning specific sectors with separate threshold values must be deleted**

To come to grips with the varying risks in different areas, the risk-based approach followed inter alia in the UN Guiding Principles is more effective and more manageable for companies.

- **The separate requirements applicable specifically for members of the management team should be deleted**

Additional rules in company law constitute a superfluous duplication within the Directive and unnecessarily complicate its implementation for companies.

- **The list of individual due diligence obligations in the Annex to the Directive must be shortened**

Due diligence obligations to be complied with must be manageable and legally certain for companies. A blanket reference to implementing and complying with requirements under international agreements goes too far for companies. The requirement should be reduced to a statement of the clear rules of the UN Guiding Principles.

- **Any additional civil liability must be completely deleted from the draft Directive**

In essence, civil liability must be limited to directly attributable actions, as already provided for in individual national legal systems in the EU. Companies need clear definitions in precisely this area to guaranty legal certainty.

- **Companies need clear rules and appropriate support measures**

Unambiguous guidelines are indispensable for companies, in particular regarding interaction and overlaps with existing or future rules in this area. In addition, there should be the possibility to organise due diligence obligations at group level. In this regard, the importance and recognition of multi-stakeholder initiatives and sectoral standards to underpin and comply with due diligence obligations need to be better highlighted and supported.

BDI and BDA therefore call on the European Parliament and the EU Council to take these proposals and concerns into account in the ongoing legislative debate and also in the framework of cooperation in the trilogue negotiations. The German business community is willing to participate actively in shaping a realistic and manageable proposal.

In this connection, the German business community strongly supports the joint statement by BusinessEurope and other European business associations, which we attach for your information under this [link](#).

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