

## **For a legally sound and workable EU supply chain legislation**

Human rights due diligence is part of the self-concept of our member companies. A workable European due diligence legislation that creates a level playing field would further contribute to this. However, it is essential that such legislation provides the companies with the necessary legal certainty and equality in competition – without putting an excessive strain on them. The proposal for a directive of the EU Commission should give emphasis on these premises, unlike the legislative initiative report of the European Parliament.

### **Level Playing Field: safeguard equal competitive conditions for all market players**

In order to achieve the broadest possible impact and to avoid distortions of competition, the scope of application of a supply chain legislation should include all companies that import goods or raw materials into the European market, irrespective of the location of their headquarters. This ensures a level playing field in the meaning of fair competition between market players as a basis for effective human rights protection and is also in line with the Conflict Minerals Regulation. Independently of this, the outlook of an international solution would be desirable – which should be oriented to the UN Guiding Principles on Business and Human Rights and involve as many countries as possible.

### **Focus on human rights**

The scope of the legislation should focus on respect for human rights. An extension to include the fields of "environment" and "governance" would cause yet more legal uncertainty due to inconsistent standards and would diminish the intended focus on human rights protection. Furthermore, a directive on supply chain due diligence needs to resolve existing conflicts such as the non-applicability of relevant rules in some countries, instead of making matters even more complex and intensifying the lack of legal certainty.

### **Concentrate due diligence on direct suppliers**

In order to enable small and medium-sized enterprises (SMEs) to meet the legal requirements, the due diligence obligations should focus on direct suppliers (tier 1). This is because many SMEs lack the human resources and the technical possibilities to analyse all links of all supply chains beyond their own contractual relationships. Outside of direct business contacts, obligations should therefore only be considered if there is proven knowledge of human rights violations.

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

It goes without saying that companies must respect all human rights. However, human rights protection is primarily the responsibility of states. At most, companies might be held responsible only in addition to public administrations. If a company has knowledge of a human rights violation, additionally to taking appropriate remedial measures also the competent authorities need to be held accountable. In this respect, cooperation with foreign trade chambers might be an obvious step. This applies in particular if companies deliberately disregard human rights and are unwilling to cooperate in remedial action.

### **Bring about support for more legal certainty**

Companies need to be able to see right away what their concrete obligations are and what measures they are expected to take to meet their obligations. Beside sufficiently clear legal requirements, companies should have extra support such as anonymous and legally binding advice. Moreover, it should be made possible to create a more binding legal situation for the respective industries by means of industry standards developed in a multi-stakeholder process. Finally, some forms of assistance or guidelines for the concretisation of legal requirements from the competent bodies and institutions are a great help for companies.

### **Drive forward and recognise industry standards**

Specific solutions at the industry level facilitate implementation for companies, simplify controls for public authorities and can achieve improvements locally. Sector initiatives pool the know-how of industries and can increase influence on suppliers. This strengthens the "empowerment not disengagement" approach. A central complaints mechanism at sector level makes it easier for those affected to submit information and reduces the administrative burden for companies.

Where recognised industry standards are applied, this should be taken into account in the framework of due diligence obligations or sanction rules, for example with safe harbour regulations. This would provide positive incentives for the implementation and further development of suitable standardisation as a perfect fit to achieve the necessary level of protection.

### **Limit civil liability to those causing human rights violations**

Companies should only have civil liability if they have caused human rights violations. Very few European businesses have a global sphere of influence that would allow them to enforce European standards worldwide. Thus, they could be liable for damages without having the possibility to change the situation in any way. Also, fines or periodic penalty payments should only be considered if there is a reproachable behaviour of the company itself. This is not the case where companies cannot exert influence on suppliers.

### **Ensure workability for companies**

Last but not least, the demanded 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 far upstream links of the supply 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 for 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**

Should it turn out in retrospect 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.

**Contact:****Dominik Jaensch**

Legal and Taxes

Phone: +49 (69) 2556-1699

E-Mail: [jaensch@vci.de](mailto:jaensch@vci.de)Internet: [www.vci.de](http://www.vci.de) Twitter: <http://twitter.com/chemieverband>Facebook: <http://facebook.com/chemieverbandVCI>

Verband der Chemischen Industrie (VCI)  
German Chemical Industry Association  
Mainzer Landstraße 55, 60329 Frankfurt, Germany

- Identification no. in the EU Transparency Register: 15423437054-40

The VCI represents the politico-economic interests of around 1,700 German chemical companies and German subsidiaries of foreign businesses vis-à-vis politicians, public authorities, other industries, science and media. In 2020, the German chemical industry realised sales of ca. 186 billion euros and employed around 464,000 staff.

**Mechthild Bachmann**

Sustainability and Innovation

Phone: +49 (611) 77881-52

E-Mail: [mechthild.bachmann@bavc.de](mailto:mechthild.bachmann@bavc.de)Internet: [www.bavc.de](http://www.bavc.de) Twitter: [www.twitter.com/BAVChemie](http://www.twitter.com/BAVChemie)

Bundesarbeitgeberverband Chemie e.V. (BAVC)  
German Federation of Chemical Employers' Associations  
Abraham-Lincoln-Straße 24, 65189 Wiesbaden, Germany

- Registration no. in the EU Transparency Register: 3474944849-83

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.

Wiesbaden / Frankfurt, 14 September 2021