

Position paper on the Commission proposal for a Directive on corporate sustainability due diligence

Registration number
in the register of representative bodies:
976536291-45
April 2022

Introduction

VDMA represents over 3.400 mechanical engineering companies in Germany and Europe. The industry stands for innovation, export orientation, medium-sized businesses and employs around four million people in Europe, of which more than 1 million are employed in Germany alone. With around 90.000 companies, the mechanical engineering is one of the largest industries in the EU economy. With an estimated 36% share of the world market, Europe is the largest producer and exporter of machinery and equipment.

The basis for the international success of the mechanical engineering industry is a strong global connection with efficient and innovative suppliers and customers all over the world. Our companies are export champions. They export almost 80% of their production, of which about 55% is sold to third countries. But they also create significant welfare and growth in third countries by cooperating with businesses in almost all regions of the world. Global value chains are an important factor for the success of the European mechanical engineering industry.

Due to the SME structure of the industry (about 86% of the member companies of VDMA have fewer than 250 employees and around two third even employ fewer than 100 persons), the export orientation and the strong integration into global value chains, the mechanical engineering industry is affected by the proposal of the Commission for a Directive on corporate sustainability due diligence, even though SMEs are not directly in the scope of this proposal.

Mechanical engineering industry promotes human rights

Respecting and protecting human rights along supply chains are a mandate and an obligation for the mechanical engineering industry. Human rights are non-negotiable and our member companies pay close attention to avoid any human rights violations in their supply chains. Therefore, many of our companies already have codes of conduct and supplier contracts to commit themselves and their partners to respecting human rights.

The subject matter of the proposal

Article 1 of the proposal aims to establish obligations of due diligence by companies regarding actual and potential human rights and environmental adverse impacts for their own operations, the operations of their subsidiaries, and the value chain operations carried out by established business relationships.

VDMA believes that the scope must be limited to internationally recognized standards of human rights violations. The broader the scope (e.g. climate change and environment), the more difficulties for a successful fulfilment of the due diligence obligations.

The mechanical and plant engineering is highly dependent on exports. Due to the average size of the companies (less than 500 employees), the industry maintains fewer production sites outside Germany and the European Union, but exports to almost every country in the world. Tracking the final whereabouts of exported products, some of which last for decades, is simply not something our member companies can do, let alone influence. The medium-sized mechanical and plant engineering sector can only start to bring about changes in human rights issues in its own business area and with its direct suppliers, but not with its international customer. Hence, VDMA is also of the opinion that the scope of the Directive must be limited to the activities that a company can control, namely those of its own company, its subsidiaries and its direct suppliers. Our medium-sized companies do not have the market power to influence the deeper supply chain and certainly have not the power to influence their customers.

The personal scope of the proposal

Article 2 of the proposal establishes the personal scope of application of the Directive.

VDMA welcomes the fact that the Directive's obligations only apply to companies of a certain size, namely to those companies with more than 500 employees for mechanical engineering companies and a net worldwide turnover of more than EUR 150 million. This takes account of the fact that implementation of the due diligence obligations by small companies is illusory. However, we would have preferred an employee threshold that is similar to the one applied in the German Supply Chain Act. The scope of this German law will initially be limited to companies that employ more than 1.000 employees.

VDMA also welcomes the fact that it applies to certain companies of third countries. This creates a minimum level-playing field towards these companies. Nevertheless, this level playing field only applies to companies that are active on the European market and not to markets outside Europe. Moreover, we wonder how these obligations will be enforced on these companies. However, there is no level-playing field towards non-European companies that are not active in the EU. This has negative consequences on our export-orientated companies.

No civil liability

Article 22 of the proposal lays down the requirement for Member States to establish rules governing the civil liability of the company for damages arising due to its failure to comply with the due diligence obligations under certain conditions.

VDMA is very critical towards this concept of civil liability. The general concept of civil liability is based on personal wrongdoing, the prerequisites of which must be defined with legal certainty, and should also consider practical manageability. This Article does not adequately reflect such considerations, in particular, as it provides that a company is under certain circumstances liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship. This provision exposes companies to unmanageable challenges.

Role of Governments and State authorities

Even though we do not deny that companies have a responsibility in the fight against human rights violations, it should be emphasized that Governments and State authorities are primarily responsible for upholding human rights. This responsibility must not be passed on to the companies. We see the responsibility of the State in particular also in the downstream value chain. Governments and State authorities are in a much better position than businesses to reveal violations and enforce human rights. This applies in particular to SMEs, whose information base is very often limited. We require here the support of the EU and the EU Member States. They should, wherever possible, provide for example data regarding human rights country risks, white-lists of countries where the Directive on corporate sustainability due diligence will not apply, checklists, etc. We would also welcome a black-list of companies, sectors and countries with which European companies are not allowed to maintain relations.

Conclusion

Even though we welcome an EU-wide framework instead of a patchwork of different national regulations, the requirements of the proposed EU Directive are far-reaching and are hardly implementable for the international active companies of the mechanical engineering industry. Therefore, we are of the opinion that the proposal will not lead to better protection of human rights and to more environmental protection in the world. An EU Directive that provides companies with clear and implementable guidelines for the implementation of due diligence

obligations with a sense of proportionality will be much more likely to help achieve this goal. VDMA is, therefore, calling on the European Parliament and Council of the EU as co-legislators to amend the proposal of the Commission for an EU Directive on corporate sustainability due diligence and make the requirements manageable and implementable especially for European B2B companies, which are internationally active and successful. More concretely, the Directive should include a well-defined scope, due diligence requirements should be limited to tier 1 and the customer side should be excluded.

VDMA hopes that the above-mentioned issues will be clarified by the European Parliament and Council of the EU during the legislative process.

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