

## **Position on the European Parliament's Draft Report on a Directive on Corporate Sustainability Due Diligence (CSDDD).**

Respect for human rights and the protection of our natural basis of life are amongst the core principles of responsible entrepreneurship and form an integral part of the corporate ethics of companies in the German chemical-pharmaceutical industry. With regards to the present legislative initiative by the European institutions to lay down novel due diligence rules on corporate social responsibility we still see considerable need for improvement. We wish to assume an active role in this process by enriching the deliberations with contributions based on the daily experiences and business practice of our members.

### **Risk-based prioritisation**

The newly introduced risk-based approach must be further substantiated. It is a central instrument for the targeted implementation of the Directive and allows companies to prioritise tackling the most serious violations. This means that resources can be focused where they are needed and of the greatest benefit.

### **General limitation to direct suppliers**

But even with a risk-based approach and corresponding prioritisation, a supervision of the entire value chain beyond direct contractual relationships cannot be implemented in a legally sound manner. To ensure effective implementation at the corporate level, the due diligence obligations should be limited to direct suppliers. Only in cases where a company has obtained substantiated knowledge of a violation of human rights or environmental requirements by a supplier, the due diligence obligations might be extended to indirect suppliers. At least the scope of the Directive should not comprise the whole value chain and exclude downstream relations.

### **Clearly define the objects of legal protection**

We believe that extending the scope of protection to good governance is factually inappropriate and unworkable in practice. Good governance problems in third countries are so individual and complex that a specific due diligence obligation in the field of governance is almost impossible to formulate, let alone verify. An effective Directive needs clearly defined objects of legal protection. If the legislator issuing this Directive fails to produce a standard of sufficient legal clarity, that standard cannot reasonably be imposed on companies. For this reason, the Directive should build on well-established international standards, such as the UN Guiding Principles.

### **Design a realistic scope of application**

The application of the new due diligence obligations must not excessively strain the financial and administrative capacities of medium-sized businesses in particular. We support an increase of the thresholds combined with an implementation that is graduated by company size, as proposed by the Council.

### **Support industry initiatives**

The far-reaching proposals for various new due diligence obligations threaten to create a set of mutually reinforcing due diligence obligations that will form a significant additional administrative burden for businesses. To ensure that compliance does not become almost impossible, industry initiatives must be recognised as an essential means of implementing the Directive. Such initiatives are especially helpful to medium-sized businesses to discharge their due diligence obligations. Therefore, we advocate for creating incentives for the realisation and further development of targeted solutions to achieve the necessary level of protection. This should take the form of safe-harbour regulations, where companies that implement a suitable industry initiative such as the Chemie<sup>3</sup> sustainability initiative of the German chemical industry are granted some relief from liability. In this approach, we see great opportunities for a better acceptance of the Directive in practice, and we expressly welcome the German government's stance on this issue.

### **Limit liability to those causing the violations**

According to the draft report, companies are to be held liable for harm caused by the actions of third parties. This threatens to shift liability away from the actual offenders. Civil liability should be based solely on the action of the company that caused the harm. Liability must also be excluded if a company has carried out a comprehensible prioritisation. In a later check of the prioritisation and the measures, it must be ensured that the benchmark remains the ex-ante perspective and that liability is not constructed in hindsight. The intervention of Union law in the civil procedural laws of the Member States should be kept to a minimum. It is highly important that representative action (the right to litigate in one's own name on behalf of others) is not extended too far, and this right needs to exclude groups representing only short-term particular interests. There is no need for European provisions on the settlement of claims for damages; this can be handled under the national laws of the Member States. The same holds true for rules on the statute of limitations and the burden of proof.

### **Do not burden institutions for occupational retirement provision**

It is disproportionate and not understandable to include institutions for occupational retirement provision (IORPs) in the scope of the Directive and, moreover, to define them as a risk sector. IORPs have a social purpose and cannot be compared with purely financial service providers. Their social function and the triangle relationship between the employee, employer and IORP must be adequately recognised.

### **Compliance at company group level**

Company groups must have the flexibility to comply with their due diligence and reporting obligations in a way that reflects their corporate structure. Here, clarification is needed that companies can meet their obligations at group level.

### **Mitigating climate change**

Reaching the 1.5 degree target is an important matter. However, there are climate-specific EU provisions and legislative projects for this. The Directive should keep the focus on the supply chain and not lay down climate goals.

### **Directors' duty of care**

Provisions on Directors' duty of care are enshrined in the respective laws of the Member States and should not become the subject-matter of the Directive.

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The VCI represents the politico-economic interests of over 1,900 German chemical and pharmaceutical companies and German subsidiaries of foreign businesses in contacts with politicians, public authorities, other industries, science and media. In 2021, the industry realised sales of nearly 220 billion euros and employed around 530,000 staff.

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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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