

European Office



Position paper on due diligence

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Introduction

VDMA represents over 3.300 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 will be particularly affected by the upcoming proposal on mandatory due diligence requirements for value chains.

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. Furthermore, VDMA itself will be active in preparing an industry dialog of the Federal Ministry for Labour and Social Affairs of Germany.

European approach is better than patchwork of national rules

For our export-oriented industry the functioning of the Internal Market is an imperative. Therefore, we strongly believe that a patchwork of national rules on due diligence requirements for value chains should be avoided. An EU framework for due diligence requirements is preferable, provided it is designed in a SME-friendly and manageable way, as this will establish a level playing field for our companies and this will maintain their competitiveness. Furthermore, it must also apply to companies from third countries that are active in the Internal Market.

No one-fits all approach – Differentiation is needed

A legislation on a mandatory due diligence will only achieve its objective to prevent adversary effects on human rights in the supply chains of European companies, if the due diligence requirements are manageable and implementable also for globally active SMEs.

Based on the ongoing public debate but also in the European Parliament, we have the impression that the upcoming proposal will be predominantly designed with a view to horrible and unjustifiable situations in value chains of specific sectors. There is no doubt that human rights violations must be remedied, but we also believe that a one-fits all approach, which is

applied in the same way to all sectors and businesses no matter of company sizes or the risk attached to the business activity, is counterproductive.

For our companies it will be extremely challenging to fulfil the due diligence requirements, because of their size, activities and available resources. Due to the great variety of products, machine builders typically have many suppliers - from hundreds to many thousands (depends on their size and products) - from all over the world, a complete and exhaustive monitoring of such global value chains is almost impossible, especially for small and medium-sized companies in the machinery sector where risks of human rights violations are rather limited. Therefore, mandatory due diligence of global value chains will hit the mechanical sector particularly hard.

Possible solutions are:

- Legislation on mandatory due diligence should, like the CSR Directive, only apply to capital market-oriented large companies. SMEs and larger companies, which are not capital market-oriented, should be excluded from the scope of an EU framework on due diligence. Alternatively, if one does not want to tie the scope of application to the legal form of a company, one can take the French legislation as an example and apply the legislation to companies that have more than 5.000 employees.
- Legislation on mandatory due diligence should only be extended to the part of the value chain which the company can effectively control, i.e. the tier 1 suppliers of the upstream supply chain with whom there is an established contractual relationship. Companies may still have opportunities to exert influence here, whereas this is not the case deeper in the supply chain towards indirect suppliers or vis-à-vis the customer. VDMA is strongly opposed to mandatory due diligence requirements for the downstream supply chain.
- Companies with low risk of human rights violations in the supply chains or without direct access to and a lack of influence on the risk potential should have less stringent due diligence obligations.

Limiting the scope to internationally recognized standards of human rights violations

The initial objective of the planned legislation was to develop a framework, which prevents human rights violations by obliging companies to identify and eliminate risks in their value chains. In the meantime, the debate is much broader, and legislation will most probably also address other areas, such as environmental pollution, negative effects on biodiversity, etc. The broader the scope, the more difficulties for our member companies.

To make the requirements manageable for businesses, an EU-wide framework on due diligence must be limited to the prevention of serious human rights violations. One can, for example, think here of internationally recognised standards such as the United Nations' Guiding Principles on Businesses and Human Rights.

No civil liability

The need for a special civil liability regulation, as proposed by the European Parliament, should be carefully considered and weighed against existing national liability laws and additional extensive sanctions, e.g. as proposed by the draft Supply Chain Act in Germany. 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. The civil liability regulation proposed by the European Parliament does not adequately reflect such considerations, in particular, as it provides that even fulfilling the company's duties does not automatically exempt and relieve such company of any liability for damages along the value chain. 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, checklists, etc.

Conclusions

VDMA stresses that the planned legislation for mandatory due diligence for value chains will strongly affect the mechanical engineering industry, in particular the export-oriented SMEs. In order to avoid overly bureaucratic and cumbersome processes which do not achieve the intended objective, an EU-wide framework with clear criteria, definitions, standards, manageability of processes and possibilities of influence is needed. Moreover, the legislation should differentiate with respect to the size of the companies, to which level of the supply chains due diligence obligations apply and the risk related to a specific supply chain. We also believe that an EU framework should only enter into force after the end of the current Covid-19 pandemic.

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