

To
Commission President Ursula von der Leyen



cc
Commission Vice-President Věra Jourová
Commissioner Didier Reynders
Commissioner Thierry Breton

Berlin, 6 July 2021

The German Supply Chain Act and the upcoming EU legislation on sustainable corporate governance

As Members of the Parliamentary Group Bündnis 90/Die Grünen in the German Bundestag and members of the Greens/EFA Group in the European Parliament, we are writing to express our full support for the resolution adopted with broad majority by the European Parliament on 10 March 2021 on corporate due diligence and corporate accountability. At the same time, we want to convey our concerns regarding the lack of ambition of the recently adopted German Supply Chain Act and its possible impact on the EU legislation on sustainable corporate governance.

We voted in favour of the German Supply Chain Act on 11 June 2021 in the German Bundestag as we are convinced that it is high time for a legislation that provides for concrete provisions in the way companies must comply with their due diligence obligations in the field of human rights and environmental protection. However, the Act does not go far enough and has been weakened in many crucial aspects. More and stricter measures are needed to prevent and mitigate human rights violations and environmental pollution.

Therefore, we urge you to put forward a much more ambitious proposal for an EU legal framework on corporate due diligence. In the following, we would like to highlight gaps and concerns regarding the recently adopted German legislation, and urge the European Commission to address these.

Scope of the due diligence obligations: The German law differentiates between due diligence obligations required in relation to direct suppliers (for which the company must conduct due diligence) versus indirect suppliers (for which no action is needed unless the company is alerted to a problem). As intended by the *United Nations Guiding Principles on Business and Human Rights (UNGPs)*, the EU legislation should instead require companies to conduct due diligence for the entire value chain and all business operations as well as relationships, including subsidiaries, insofar as they have or can have a negative impact on human rights and the environment and the company actually influences or can influence the third party in an appropriate manner.

Scope of application: The German Act will only apply as of 2023 for companies with a workforce of at least 3,000 and later to companies with a workforce of at least 1,000. However, the number of companies covered is too small. Companies that are smaller can also have significant negative impacts on human rights and environmental issues when they are operating in risk sectors. It is crucial that the European law applies to a wider range of companies on a risk basis, since human rights risks are not necessarily related to the size of an enterprise. Smaller companies in high-risk sectors such as agriculture, textile and mining should also be required to conduct due diligence.

Environmental due diligence: The German law only covers environmental protection where environmental risks can lead to human rights violations. It largely omits strong commitments to climate action and other environmental aspects such as biodiversity loss or marine pollution. Destroying the climate, forests and biodiversity will therefore mostly remain without consequences in this law. Hence, the European legislative proposal must ensure that there are no glaring gaps in protection that result in significant environment-related risks not being covered by the corporate duty of care.

Civil liability: one of the most significant gaps in the German Act is the lack of civil liability provisions. It is therefore crucial that the EU legislation includes a civil liability clause to allow for injured parties to bring their claims against European companies for human rights violations before a European civil court. This clause would also give more legal certainty for companies.

As Members of the German National Parliament and the European Parliament, we invite the European Commission to put forward an ambitious proposal for a corporate due diligence legislation instead of simply using the German Supply Chain Act as a blueprint for the EU legislative proposal. We would like to emphasize that the German legislation was substantially criticized by John Ruggie, the United Nations' Secretary-General's Special Representative for Business and Human Rights and author of the UN Guiding Principles on Business and Human Rights. John Ruggie pointed out that the German Supply Chain Act does not align with the UNGPs and addressed several loopholes which diverge from the United Nations framework.

We are committed to fight for a stronger national due diligence legislation and are ready to support your efforts for a more ambitious legal framework at EU level.

Yours sincerely,

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