



IS GLOBALIZATION BECOMING MORE EQUITABLE?

Contributions to sustainability



**THE LEGAL 500
GREEN GUIDE**

DIE ZEIT recently headlined this question in an article. According to the current draft of the EU Commission, it looks quite like it:

1. Proposal for a directive on respect for human rights and protection of the environment:

On Feb. 23, 2022, the EU Commission presented a proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. In doing so, it aims to make global trade fairer.

2. The background to this major undertaking is simply explained:

With the European Green Deal, the Commission already issued in December 2019 the goal of making the Union climate-neutral by 2050, the first continent to do so. This is intended to create the transition to a modern, resource-efficient and competitive economy that is

- no longer emits any net greenhouse gases by 2050,
- decouples its growth from resource use,
- does not abandon anyone, neither people nor region.

The draft directive now presented is the next step on Europe's path to becoming a leader in climate protection: goods sold in the European Union should not be produced elsewhere, for example by children or modern slaves, where it is cheap because labor protection and environmental protection are poor.

3. Very wide range of application

Not only large EU companies with at least 500 employees and annual global sales of EUR 150 million or more, or those with more than 250 employees and 50% of their net sales (total global sales of at least EUR 40 million) in resource-intensive or high-risk industries are affected, but also companies from third countries that meet the same size criteria, regardless of the number of employees. For companies from third countries, the

standards are therefore even higher, so that especially low-cost importers are likely to be massively affected. At the same time, the scope of application goes significantly beyond past projects, which usually only affected certain “Public Interest Entities”, or PIEs for short (e.g. the NFI Directive 2014/95/EU).

It should be mentioned, however, that only corporations and capitalistic partnerships are included. Nevertheless, this will probably not result in a practicable loophole, as a (genuine) partnership as a legal form hardly seems feasible in these size classes.

4. Very costly implementation for the companies concerned

It may take up to 2 years until the directive is implemented in the member states, including Austria. Due to the complexity of the prescribed due diligence obligations of the companies, prompt action is nevertheless required. Particularly in the case of large companies, however, corresponding initiatives are already underway that will have to be adapted to the content of the final set of regulations. In addition, foreign investors already demand compliance with strict ESG requirements, including audits, in some cases outside the scope of the Taxonomy Regulation (EU/2020/852).

5. So what will be in such a supply chain law?

Reference can already be made here to Germany's existing Act on Corporate Due Diligence in Supply Chains of July 16, 2021, which will come into force at the beginning of 2023. It essentially provides for the establishment of comprehensive risk management of each company concerned. For this purpose, internal company responsibilities must be defined and mandatory regular risk analyses must be carried out. A declaration of principles must be issued and preventive measures for violations within the company as well as towards direct suppliers must be anchored. In the event of a violation of human rights and environmental due diligence obligations, the company concerned must take remedial action. The entire due diligence obligations require detailed documentation and reporting; fines are provided for if the company violates these due diligence obligations.

Outlook: The Commission's draft still has to be approved by the Council and the Parliament, but one thing is already clear: From now on, the working conditions under which goods are produced and their impact on the environment will play an increasingly important role in the EU.

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