



## Use the German EU Council Presidency to make the economy more resilient and in line with human rights

(unofficial translation; original at [https://www.cora-netz.de/wp-content/uploads/2020/06/2020-06-15\\_Deutsche-EU-Ratspr%C3%A4sidentschaft\\_Forderungspapier.pdf](https://www.cora-netz.de/wp-content/uploads/2020/06/2020-06-15_Deutsche-EU-Ratspr%C3%A4sidentschaft_Forderungspapier.pdf))

From July 1, 2020, Germany will assume the presidency of the Council of the European Union for six months. This EU Presidency will be strongly influenced by the effects of the COVID-19 pandemic, especially its economic consequences. The necessary recovery must be used as an opportunity to make the European economy more resilient in the future. The COVID-19 crisis is a dramatic demonstration of the fragility and vulnerability of global supply chains, not only for European companies, but especially for employees in the Global South. For this reason, "**resilient**" may not just mean that basic medical care or the supply of necessary preliminary products for European companies should be secured. It is at least as important that the people in the entire supply chain are taken into account. Their human rights must be respected and their living environment must be protected.

Even before the COVID-19 pandemic, the European Commission had already initiated a comprehensive package of measures for sustainable business conduct with the **European Green Deal** at the end of 2019. This must be embedded in a European economic policy in line with human rights. In this respect, the EU can tie in with the **EU Action Plan for Financing Sustainable Growth** ("**Sustainable Finance**"). Within the framework of this action plan, the Directorate-General for Justice published a comprehensive study in February 2020, which underlines the need to regulate corporate due diligence obligations in the supply chain. According to the study, 70 percent of the company representatives who responded to a survey consider a legal regulation of human rights and environmental due diligence obligations to be advantageous.

Against this background, the signatory organizations expect the Federal Government of Germany to take the following essential steps within the framework of its Council Presidency:

### 1. **Expectations of an EU Action Plan on Business and Human Rights**

Shortly after the adoption of the UN Guiding Principles for Business and Human Rights, the EU Commission announced in its CSR communication at the end of 2011 that it would draw

up an implementation plan. While many member states have already drawn up national action plans, this is still pending at European level. Several German federal ministries are planning to work intensively with such an action plan during their presidency.

- At the heart of an EU action plan, there should be an EU-wide regulation of corporate due diligence obligations for human rights and the environment, based on the UN Guidelines for Business and Human Rights and the OECD Guidelines for Multinational Enterprises. In addition, the action plan should also include other EU-relevant aspects of the UN Guiding Principles. These include the primacy of human rights in trade and investment policy, a raw materials policy and public procurement in line with human rights, improved access to justice in the EU for those affected by human rights violations by European companies, measures to protect vulnerable groups such as human rights defenders and indigenous peoples, and the commitment to international rules to protect human rights in the global economy.

## **2. Ambitious European regulation on corporate due diligence obligations**

For many years not only civil society, but also the EU Parliament, the European Council and several national parliaments have been calling for binding regulation of human rights and environmental due diligence obligations at European level. More and more companies are also supporting this demand, as shown, for example, by the above-mentioned study by the EU Directorate-General for Justice. Based on the recommendations of this study, EU Justice Commissioner Reynders announced at the end of April that he intends to present a proposal for a binding regulation of corporate due diligence obligations in 2021.

- The EU should adopt an ambitious, cross-sectoral regulation on human rights and environmental due diligence obligations of companies. This regulation must include all companies that are based in an EU member state or that offer products and services on the EU internal market and must oblige them to exercise due diligence throughout the entire value chain. The EU member states must be obliged to monitor compliance with the requirements and to sanction companies in case of violations. The member states must also enable civil liability if companies have contributed to foreseeable and avoidable damage. As the largest economy in the EU and holder of the EU Council Presidency in the second half of 2020, Germany must now lead the way and set ambitious standards with its own supply chain law.<sup>1</sup>

## **3. Trade policy**

The EU committed itself in the Treaty of Lisbon in 2009 to respect and promote human rights in all policy areas - and thus also in its trade policy. However, the implementation of this commitment has so far been insufficient. Thus, human rights clauses in most agreements allow the suspension of trade preferences in case of human rights violations. However, the hurdles for the activation of the clause are very high. The EU's sustainability impact assessments of trade agreements now contain human rights chapters, but they are usually published only at a time when negotiations on trade agreements have already been largely or completely concluded, so that they have virtually no effect.

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<sup>1</sup> The European network ECCJ (European Coalition for Corporate Justice), in which the CorA Network for Corporate Accountability is represented from Germany, has drawn up requirements for a European regulation: "EU Model Legislation on Corporate Responsibility to Respect Human Rights and the Environment" <https://corporatejustice.org/2020-legal-brief.pdf>

- The EU and its member states should not ratify the trade agreement with MERCOSUR because of the high risks for the environment, climate and human rights. These risks are all the greater against the background of President Jair Bolsonaro's anti-climate and anti-human rights policy. Moreover, the agreement contains no effective protection mechanisms for the environment and human rights. The EU must fundamentally realign its trade policy to the current social and ecological challenges. Within the framework of its EU Council Presidency, the German government should also finally implement its plans to advocate for more effective and timely sustainability impact assessments and binding human rights standards in trade agreements within the EU.

#### **4. International regulation on business and human rights (UN Treaty)**

In the negotiations for a binding agreement on the human rights governance of global business transactions, a revised draft treaty has been available since July 2019, which contains substantial improvements over previous versions that have been praised by NGOs and numerous governments. Among other things, the draft stipulates that the contracting states must enact national laws to oblige their companies to exercise human rights due diligence. This would create a level playing field for human rights protection in the economy, which is in the interest of many companies. Although the EU representative emphasized this potential at the beginning of the last round of negotiations, the EU and the German government - in contrast to many other governments such as France, Spain and Belgium - did not participate in the subsequent discussion of the draft treaty.

- Within the framework of the German EU Council Presidency, the German government should ensure that the EU participates constructively in the further elaboration of the UN Treaty. It should itself participate actively and constructively in the negotiations and work to ensure that the Council issues the Commission with a corresponding negotiating mandate for those areas that fall within the EU's competence.

#### **5. Criteria for effective multi-stakeholder initiatives**

During its Council Presidency, the German government will focus on expanding multi-stakeholder initiatives (MSIs) and intends to develop criteria for making these MSIs effective. NGOs have had many years of experience with MSIs and consider them at best as a supplement to, but not as a substitute for, legal frameworks for human rights due diligence by companies.

- In order for MSIs to be effective, they must be based on binding principles, include binding targets for the companies involved, be transparent and impact-oriented and regularly determine their impact. In addition, an MSI must provide for complaint mechanisms and sanctions in the event that the parties involved do not adhere to the agreed rules.<sup>2</sup>

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<sup>2</sup> Cf. Position paper "Requirements for effective multi-stakeholder initiatives to strengthen corporate due diligence", which presents the criteria for MSI in more detail from a civil society perspective: [https://www.coranetz.de/wp-content/uploads/2020/07/2020-07-17\\_MSI-Positionspapier\\_CorA-ForumMR-VENRO.pdf](https://www.coranetz.de/wp-content/uploads/2020/07/2020-07-17_MSI-Positionspapier_CorA-ForumMR-VENRO.pdf) (German only; translation pending)