

BMW Position on the proposal for a Directive on Corporate Sustainability Due Diligence

Introduction

BMW Group already started in 2010 by implementing due diligence activities with focus on human rights, environmental and social sustainability standards in the supply chain. By setting up a cross-sectoral harmonized sustainability questionnaire in close cooperation with the Drive Sustainability Initiative in 2014 BMW Group took an important step for conducting risk management in its supply chain.

BMW Group is convinced that overall sustainability performance can only be increased by developing suppliers continuously and building strong supplier relationships. Considering the growing complexity of our n-tier supplier network we actively approach our direct suppliers and jointly develop measures to create more traceability and transparency and become more environmental and social sustainable beyond our own business conduct. To achieve our objective of having the most sustainable supplier network in the entire industry our corporate due diligence management is fully integrated along our procurement process taking the UN Guiding Principles, the OECD Due Diligence Guidance for Responsible Business Conduct, the German government's National Action Plan and the German Supply Chain Due Diligence Law into account.

Our BMW Group Code on Human Rights and Working Conditions, our Supplier Sustainability Policy, our International and General Purchasing Terms and Conditions lay down the human right, social and sustainability standards which are core principles of our own business conduct and our business partners to ensure compliance.

For conducting risk assessment, we use risk maps from the Responsible Business Alliance (RBA), the standardized questionnaire and further standardized and BMW specific tools customized to our individual supplier network. We use the RBA risk assessment platform as an essential step for due diligence efforts ensuring sustainability in our supplier network. This platform provides a dynamic assessment methodology for a high-quality and country-specific risk analysis for each assessed supplier location.

By using the standardized questionnaire more than 3.900 suppliers are linked to our highly automated due diligence process by providing reliable and high-quality sustainability information about their due diligence activities and preventive measures. All provided information are validated by an external provider and some of them are certified.

For verification purposes and identified high risk suppliers we conduct onsite audits on the premises of our contracted suppliers on our own or by contracting independent third parties. Identified risks are mitigated by implementation of appropriate preventive measures or remedial actions usually before start of production.

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The BMW Group is involved in standardization initiatives such as the GAIA X partner platform and actively drives the expansion of the IMDS database with the goal of obtaining traceability on the occasion related basis to environmental and social standards.

By rolling out new technologies and direct purchasing we secure traceability and transparency of critical raw materials with regard to human rights, social and environmental standards. For increasing sustainability in the n-tier supply chain we contract our direct suppliers demanding minimum safeguard standards from their suppliers for 37 critical raw materials we have identified.

Key Recommendations

BMW Group strongly **supports a harmonized EU framework** for Corporate Sustainability Due Diligence (CSDD). A common set of rules embedded in an EU regulation would be our most favourable option.

The **scope** of the legal framework **should cover all companies** independent on their size or turnover taking a risk-based approach for sustainability due diligence into account.

We strongly support **setting the due diligence obligations at group level with a full exemption for subsidiaries** where the subsidiaries are fully integrated in the compliance, risk and due diligence process at group level.

Due diligence obligations for companies should clearly **differentiate between measures in relation to direct business relationships and indirect relationships** considering what companies can achieve and deliver. Only in the case of **direct business relationships** companies will be able to conduct **due diligence proactively**. Regarding **indirect business relationships** companies will have to establish **occasion-based due diligence**.

For minimizing the administrative burden and to achieve harmonized reporting standards we strongly recommend **aligning the reporting obligations of the CSDD with the upcoming Corporate Sustainability Reporting Directive (CSRD)**.

We **welcome** the possibility for **industry schemes and multi-stakeholder initiatives** to support the implementation of due diligence.

The CSDD shall **focus on the implementation of human rights, social and environmental standards** in the own business conduct of a company and in regard to direct business relationships. Avoiding double regulation obligations combating climate change as set out in article 15 of the CSDD should be deleted considering that these obligations will be set out in the upcoming CSRD (including detailed reporting standards).

Regarding civil liability **companies should only be held liable for damages caused by actual human rights and environmental adverse impacts**, which are **directly linked** to the business conduct of the company and which are **a result of acting deliberately or grossly negligent**.

Specific Comments and solutions

Based on our technical expertise in supply chain due diligence we absolutely **welcome** the objective of the European Union setting up **a common legal framework for Corporate Sustainability Due Diligence**. A common legal framework in the EU will provide legal certainty and a common level playing field in the EU. Covering national due diligence initiatives within one harmonized legal framework will contribute to keep additional administrative burden for businesses to a minimum extent. We believe that the adopted directive will be a good step towards harmonization, but a clear and reliable set of rules covered by a **due diligence regulation would be our most favourable option** avoiding divergence on national level. In addition to a harmonized legal framework, we request to take the following topics in the upcoming legislative procedure into consideration:

Article 2 Scope

According to article 2 the directive shall cover EU-companies and third-country companies dependent on their size (employees), their turnover or if they are part of a high-risk sector. Taking third-country companies in the scope of the directive will create a level playing field without setting a disadvantage to EU companies. Nevertheless, we see the **limitation of the scope based on the size** (number of employees) **or turnover of a company critical**. Based on our experience, we know that there is **no correlation between the risk** for human rights and environmental **adverse impacts and the size or turnover of a company**. In contrary, we know that especially in high-risk sectors small and medium companies are face high risks for adverse impact. Furthermore, businesses under the scope of the directive need a legal basis for collecting sustainability information in their value chain across the EU border. Fading out companies in relation to their size or turnover, will make it nearly impossible getting any sustainability information from these companies. Thus, we strongly recommend eliminating the defined thresholds and to **take more a risk-based approach for sustainability due diligence**.

Article 3 Definitions

The definition of "company" as set out in Art. 3a seems to indicate that the due diligence obligations are set at entity level but not at group level. We **strongly support setting the due diligence obligations at group level to minimize the administrative and cost burden** for groups falling under the scope of Directive. Large multinational groups usually set up their compliance, risk and due diligence functions at group level with group-wide responsibility. Subsidiaries usually do not have their own due diligence processes. Requiring subsidiaries to set up own due diligence processes and systems would lead to unnecessary costs and creates overlaps between different entities of the same group. Additionally, setting the due diligence obligations at entity level would imply that a group with several subsidiaries in the EU operating in other Member States would have to follow the decisions of several different supervisory authorities. Such an arrangement would be practically difficult to handle but also very cumbersome.

The **NFRD exempts subsidiaries from reporting obligations** if the parent undertaking's management report contains such disclosures. Similarly, **the CSDD should exempt subsidiaries from separate due diligence requirements** if the parent company falls under the scope of the CSDD and its due diligence obligations.

Article 5 Integrating due diligence into companies' policies

To foster human rights, social and environmental standards on business side it is important to integrate due diligence into the corporate policies and to have a due diligence policy in place. By defining the internal due diligence policy, the code of conduct has to be transparent and clear to establish a common understanding of sustainability. In this regard it is important to consider what companies can achieve and how far they can exert influence on their value chain by applying appropriate measures. Based on our own experience **it's impossible to be held liable for adverse impact occurring beyond direct business relationships** where a company cannot exert influence proactively and directly with appropriate measures.

Article 6 Identifying actual and potential adverse impact

According to article 6 companies shall take appropriate measures to identify actual and potential adverse human rights and adverse environmental impacts arising from their own operations (including subsidiaries) and their established business relationship (= value chain). Additionally, companies shall make use of external sources and carry out consultations with external stakeholders to identify actual and potential adverse impacts.

From our point of view **article 6 goes far beyond what companies can deliver or even to implement by using the latest technologies**. The requirements are excessive losing the focus on the essential objective - making businesses more sustainable.

For achieving the main objective of the highly appreciated due diligence legislation **we strongly recommend taking an occasion-based approach**. Businesses should evaluate their highest potential risks arising from their own operations and their value chain and take appropriate measures to identify actual risks. By defining **appropriate measures**, it has to be **differentiated between direct and indirect business relationships** considering, that even by using the latest technologies (e. g. blockchain technologies) full transparency in a complex and continuously changing value chain can never be achieved.

Where relevant, carrying out external stakeholder consultations is important from our point of view. BMW Group regularly reflects its own business conduct by external stakeholder engagement. In this case it is important to provide **flexibility** to a company **to choose the right and appropriate external stakeholders**, which can contribute to sustainable development of a company.

Article 7 Preventing potential adverse impact

According to article 7 companies shall take appropriate measures to prevent or mitigate potential adverse human rights and environmental impacts. Article 7 as well **doesn't consider what is achievable by companies** by developing and implementing a prevention action plan or not. Here as well it **has to be differentiated between direct and indirect business relationships**. Regarding direct business relationships it's possible to develop and implement proactive prevention measures what is impossible to do in the case of indirect business relationships where the individual members of the whole value chain are unknown in most cases. This existing gap can be closed by obliging direct business partners to oblige their direct business partners implementing minimum safeguard standards and an appropriate prevention action plan on human rights and sustainability via contractual cascading. We consider the consultation of external stakeholders in the development of a prevention action plan useful, but companies should be free to choose their appropriate external stakeholders.

Furthermore article 7 **should take a more risk-based approach**. It only increases the administrative burden for companies excessively to apply measures to prevent or mitigate all potential adverse impacts, even if there is only a very small probability of becoming actual. Excessive prevention or mitigation measures without considering the principle of proportionality don't contribute increasing the sustainability of companies. Taking a more **risk-based approach considering the principle of proportionality will mitigate the administrative burden** for companies to a minimum extent and will achieve equal sustainability objectives.

As already mentioned, there is no correlation between the size of a company and a potential risk for adverse impacts. Thus, it will be important that SMEs receive targeted and proportionate support from companies where they have a direct business relationship to.

We **welcome the possibility for collaboration with other entities** as set out in article 7 to increase the ability to bring adverse impact to an end. We recommend clarifying that also sector or branch specific initiatives are appropriate for achieving the same result.

The possibility of obliging indirect suppliers directly to implement appropriate measures to prevent or mitigate potential adverse impacts might be a good instrument to enable compliance in the whole value chain. Here it has to be considered that **direct contracting will only be applicable on a specific purpose, but never proactively with all entities** of a value chain.

Regarding cost for third party compliance verification, we **refuse the proposed obligation to take the cost in relation to SMEs**. Even BMW Group is already supporting SMEs by taking the verification cost in its due diligence process, we believe there **should remain free of choice**.

According to article 7 paragraph 5 companies shall temporarily suspend or terminate their business relationships or shall refrain from entering into new or extending existing business relationships with partners not able of preventing or mitigating potential adverse impacts. BMW Group is refusing to make these measures, which should be considered as measure of last resort, obligatory for cases where partners are not able to prevent or mitigate potential adverse impacts. This **measure should be only considered as measure of last resort for bringing actual adverse impacts to an end**.

Article 8 Bringing actual adverse impacts to an end

According to article 8 companies shall take appropriate measures to bring actual adverse impacts caused by their own business conduct or their value chain to an end. It is highly appreciated that article 8 paragraph 2 considers that actual adverse impacts cannot be brought to an end in every case. Therefore, companies are required to minimize the extent of such an impact. This kind of clarification reflects the reality of companies embedded in global value chains, where the ability to bring adverse impacts to an end depends on the kind of business relationship.

We **welcome the clarification** in article 8 that **actions to neutralize or minimize the extent of adverse impact should be proportionate** to the significance and scale of the adverse impact and to the contribution of the company's conduct to the adverse impact. **We recommend to clearly point out that measures should follow a risk-based approach** in line with the risk-based prevention action plan of a company. **Companies should be enabled to**

focus on high-risk areas, where they are able to exert sufficient and appropriate influence to bring actual adverse impacts to an end.

Nevertheless article 8 **should clearly differentiate between measures in relation to direct business relationships and indirect relationships**. In the case of direct business relationships, the cooperation between companies in general is set up on strong contractual relationships where the implementation of human rights and environmental standards and appropriate measures bringing adverse impacts to an end are bilaterally agreed. This **enables companies to conduct due diligence proactively with its direct business relationships**. **In the case of indirect business relationships companies can only exert influence or enforce human rights and environmental standards via their direct business relationships**. Especially if an indirect business relationship is located outside the European Union companies will do hard to exert influence. Additionally, it has to be considered that the value chain of the automotive industry is extensive and regularly changes (especially in the n-Tier supply chain). So, companies in most cases don't know their value chain beyond their direct business relationships. In consequence **companies are not able to conduct due diligence regarding indirect business relationships proactively**. Thus, **we strongly recommend** adapting article 8 in a way **to establish proactive due diligence for direct business relationships and occasion-based due diligence for indirect business relationships**. By conducting occasion-based due diligence companies should be enabled to apply a risk-based approach.

Article 8 also states that companies shall pay damages and enable financial compensation for adverse impacts in their value chain. **We don't see payments or financial compensation as appropriate measures to bring adverse impacts to an end**. These **measures** are more an issue of civil liability and therefore **should be regulated under article 22**.

In cases where adverse impact cannot be immediately brought to an end companies shall develop and implement a corrective action plan in consultation with external stakeholders. Here as well it has to be considered that a corrective action plan can only be enforced in relation to direct business relationships. Regarding the external stakeholder consultation, **it should be clearly pointed out that companies should be free to choose the appropriate stakeholders in relation to the specific adverse impact**.

We welcome the possibility for **contracting indirect business relationships directly** as set out in article 8 paragraph 4. Nevertheless, it should be considered that direct contracting of indirect business relationships can only be done targeted and occasion based. **Direct proactive contracting of the whole value chain** to achieve compliance with the company's code of conduct or a corrective action plan **is not feasible**. Here as well a risk-based approach should be taken for direct contracting.

Enabling suitable industry initiatives for independent third-party verification as set out in article 8 paragraph 5 we consider as appropriate solution to mitigate the administrative burden for due diligence especially to SMEs.

In cases **where actual adverse impacts could not be brought to an end** or the extent of which could not be minimized by appropriate measures **suspending commercial relationships temporary, terminating business relationships, refraining from entering in to new or extending existing relations can be the measure of last resort**. As set out in article 8 paragraph 6 companies shall be obliged to apply these measures in every case as mentioned above without considering the principle of proportionality. **We absolutely refuse to make the measures as mentioned above obligatory** for companies. Alternatively, the **measures should be applied voluntarily as**

measure of last resort considering the severeness of the actual adverse impact. Additionally, **it should be clarified that these measures can only be applied to direct business relationships.**

Finally, **we strongly recommend** adding a paragraph **setting out an obligation for indirect suppliers in cases of substantiated severe concerns** (e. g. severe human rights abuses) **to provide evidence for compliance on request to a member of the value chain.** Without this important amendment there won't be a legal basis for companies requesting proofs for compliance from indirect business relationships.

Article 11 Communicating

We strongly recommend aligning the reporting obligations of the CSDD with the CSRD. Divergence has to be avoided at any circumstance to enable a common level playing field for all companies falling under the scope of the CSDD. The CSDD should be fully aligned and compatible with all relevant EU legislations, especially the CSRD. This applies for all relevant dimensions, including, but not limited to the respective sustainability-related reporting requirements. Inconsistencies and duplications leading to complexity, confusion and legal liability risks need to be avoided. The CSRD should contain the sustainability-related disclosure requirements (incl. on due diligence) while the CSDD should define and describe the due diligence duties for groups.

Article 14 Accompanying measures

We welcome the intention of the EU-Commission and the member states **to facilitate industry schemes and multi-stakeholder initiatives** to support the implementation of due diligence. We consider these initiatives as important solution to generate border crossing acceptance for due diligence and to minimize the administrative effort for businesses to a minimum extent.

Article 15 Combating climate change

According to article 15 EU-companies which have more than 500 employees and a net worldwide turnover of more than 150 million € or non-EU-companies with a net turnover of more than 150 million € in the EU in the financial year shall adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. This plan shall in particular identify on the basis of reasonable information the extent to which climate change is a risk for or an impact of the company's operations. In addition, companies shall include emission reduction objectives in its plan in case climate change is or should have been identified as a principal risk for or a principal impact of the company's operations. Finally, companies shall duly consider the fulfilment of the obligations (incl. emission reduction objectives) when setting the variable remuneration of directors.

BMW Group is absolutely committed to the 1.5 °C pathway of the Paris Agreement and already has defined ambitious targets to become climate neutral until 2050. Environmental standards and greenhouse gas reduction targets are already integrated in our own sustainability and circular economy strategy. Also, the variable remuneration of the responsible directors is linked at BMW to the fulfilment of due diligence obligations in the supply chain. **Article 15 is lacking important and detailed information about how companies should report or verify compliance** with the 1.5° pathway. The details provided are far too vague from an implementation perspective. An additional **clarification in the CSDD proposal is missing.** Regarding the disclosure obligations **we don't see a need**

for double regulation complementary to the obligations as set out in the CSRD proposal under the new article 19 a (sustainability reporting). Within the CSRD it's intended to oblige big companies anyhow to report about their Paris Agreement compliance. **To avoid double regulation and diverging reporting obligations** it will be required to **delete article 15 in the CSDD proposal**.

Finally, **companies shouldn't be obliged to disclose emission reduction targets**. This kind of reporting should be maintained on a voluntary basis. **We also don't see a need for double regulation via the CSDD**. Companies will be obliged to disclose the life cycle sustainability footprint of their products (digital passport) anyhow via upcoming environmental legislations (e. g. battery regulation, eco-design regulation, new end of life vehicle directive, etc.). So, there is no need to integrate obligatory requirements on emission target reporting in the CSDD to avoid undue double regulation and to mitigate the administrative burden for companies. From our point of view the **focus of the CSDD shall be the implementation of human rights, social and environmental standards in the own business conduct of a company and regarding direct business relationships**.

In consideration of all arguments mentioned above we completely refuse the obligations as set out in article 15 of the CSDD. **Article 15 should be deleted at all**.

Article 19 Substantiated concerns

According to article 19 natural and legal persons shall be entitled to submit substantiated concerns to any supervisory authority when they have reasons to believe that a company is failing to comply with its due diligence obligations. The supervisory authorities shall assess the substantiated concerns and shall inform the person who has filed a substantiated concern about the outcome of the assessment. In addition, persons having a legitimate interest in the matter shall have access to a court or other independent and impartial public body to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.

We see the need for setting the conditions under which an interested person should be enabled to submit a substantiated concern, have unhindered access to a court, or how to be represented to enforce its rights. Nevertheless **article 19 should be limited to cases where a person can provide substantiated evidence that the rights of the person are infringed by the actual adverse impact of a company**. Furthermore, **companies in general should have a right to be heard within an assessment** conducted by a supervisory authority. Article 19 doesn't consider the right to be heard for accused companies and only focus on the rights of the accusing party. **We're absolutely refusing to open the substantiated concerns procedure for all kind of due diligence failures** without considering if the failure has led to an actual adverse impact of a company.

Article 20 Sanctions

According to article 20 paragraph 4 member states shall ensure that any decision of the supervisory authorities containing sanctions related to the breach of the provisions of this directive is published. Respecting the protection of data privacy, **we're refusing the public disclosure of sanctions**.

Article 22 Civil liability

According to article 22 companies shall be held liable for all damages in the entire value chain, which have been caused by failing to comply with the due diligence obligations. Only in the case of indirect business relationships a company shall not be held liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner, if the company verifies, that it has complied with its due diligence obligations.

We consider **article 22 contradicting to the obligation of means**, what is intended to be the core principle of the CSDD. In contrary companies will be held liable for all kind of damages in relation to direct business partnerships, even if they have complied with their due diligence obligations. In principle **companies should only be held liable for damages caused by actual human rights and environmental adverse impacts**, which are **directly linked to the business conduct** of the company and which are **a result of acting deliberately or grossly negligent**. In cases where companies haven't caused actual adverse impacts deliberately or grossly negligent (e. g. processing errors) there should be full exemption from civil liability. In addition, **we strongly recommend implementing a stepwise evaluation of the civil liability of companies**. In general, the national responsible supervisory authority shall assess submitted substantiated concerns in line with article 19. Only if the supervisory authority comes to the result that a company has caused an actual human rights or environmental adverse impact deliberately or grossly negligent companies shall be held liable for their infringement. Access to a court shall be permitted in these cases to file a suit for payment of damages to the affected persons or for financial compensation.

Article 26 Setting up and overseeing due diligence

According to article 26 directors of companies shall be responsible for putting in place and overseeing due diligence actions and the due diligence policy with due consideration for relevant input from stakeholders and civil society organizations.

BMW Group already today reflects its sustainability strategy with external stakeholders and civil society organizations via external stakeholder engagement on a regular basis. **We absolutely welcome the suggested proposal of leaving the decision of the extent of external stakeholder engagement to the companies** and to enable companies to freely choose the appropriate and most competent stakeholders for their individual belongings.

Article 30 Transposition

We welcome the suggested transposition period of 2 years (for big companies) from the entry into force of this directive which will provide sufficient lead time to adapt their processes and systems.

Annex Part I and II

The individual due diligence obligations as set out in Annex Part I and II are based on a large number of international human rights, fundamental freedoms and environmental protection agreements. In order to determine the individual protected assets the annex references in a total of 56 points to a large number of different international agreements.

We consider the reference to a large number of complex international agreements in the area of human rights, fundamental freedoms and environmental protection **in principle too extensive** (reference to a total of more than 230 pages of complex legal texts). The **framework** of protected assets **has to be realistic, implementable and manageable. A clear and conclusive reference to internationally recognized human rights and environmental standards will be appropriate.**