



Proposal for a Directive from the European Parliament and the Council about corporate due diligence with regard to sustainability and amending EU Directive 2019/1937 and EU 2019/1937, COM(2022) 71 final

Opinion from German Social Insurance Representation issued on 06.10.2022

The German Federal Pension Insurance (DRV Bund), the German Social Accident Insurance (DGUV), the National Association of Statutory Health Insurance Funds (GKV-Spitzenverband) and the national associations for statutory health and long-term care insurance funds at the federal level as well as Social Insurance for Agriculture, Forestry and Horticulture have joined together to form the German Social Insurance- Working Group Europe in view of their common European policy interests.

The association represents the interests of its members vis-à-vis the bodies of the European Union and other European institutions and advises the relevant players in the context of current legislative projects and initiatives.

As part of a statutory insurance system, health and longterm care insurance, pension insurance and accident insurance offer effective protection against the consequences of major life risks.

I. Preliminary remark

In recent years, responsible conduct in line with ethical, ecological and social criteria has become increasingly important when it comes to entrepreneurial activity. The EU wants to assume its international responsibility in this regard and it also wants to protect human and children's rights along global supply chains and strengthen environmental protection through the proposed directive.

The umbrella organisations of the German social insurance organisations support the proposal that all workers inside and outside the EU should have access to



healthy working conditions and that child labour and forced labour should be abolished worldwide. However, the umbrella organisations of the German Social Insurance are critical of the statutory pension insurance institutions being included amongst the supervised entities. The statutory pension insurance institutions are social security system institutions and not entities in the sense of the current understanding of EU law. Therefore Article 3 (a) (iv), eighth bullet, should be deleted from the proposed Directive.

II. Proposed amendments

1 Regarding Article 3

Definitions

Commission's proposal	Proposed amendments
<p>Definitions</p> <p>The following definitions should apply with regard to the purposes of this Directive:</p> <p>(a) 'companies' means the following: (...)</p> <p>(iv) a regulated financial entity which, regardless of its legal form, is: (...)</p> <p>- a pension institution operating pension schemes that are considered to be social security schemes within the meaning of EU Regulation No. 883/2004 from the European Parliament and the Council and EU Regulation No. 987/2009 from the European Parliament and the Council and any legal entity established for the investment purposes of such schemes; (...)</p>	<p>Definitions</p> <p>The following definitions should apply with regard to the purposes of this Directive:</p> <p>(a) 'companies' means the following: (...)</p> <p>(iv) a regulated financial entity which, regardless of its legal form, is: (...)</p> <p>- a pension institution operating pension schemes that are considered to be social security schemes within the meaning of EU Regulation No. 883/2004 from the European Parliament and the Council and EU Regulation No. 987/2009 from the European Parliament and the Council and any legal entity established for the investment purposes of such schemes; (...)</p>



2 Justification

Article 3(a)(iv) of the proposed Directive includes pension institutions within the meaning of EU Regulations No. 883/2004 and EU No. 987/2009 among the entities to which the proposed directive applies. Therefore, the statutory pension insurance institutions might fall within the scope of the proposed Directive if the other conditions are met.

From the point of view of the umbrella organisations of the German Social Insurance system, neither the sense nor the purpose of including the statutory pension insurance among the supervised entities is apparent. Inclusion would be a departure from the understanding of the term "entity" used in EU law and in the case law of the ECJ (European Court of Justice). In 1993 the ECJ, clearly stated in its judgement in Case C-159/91 - Poucet and Pistre v. AGF and Cancava, that "the concept of an undertaking within the meaning of Articles 85 and 86 of the Treaty does not encompass organizations charged with the management of social security schemes." This judgement has been confirmed on several occasions in subsequent case-law, including Cases C-238/94 and linked Cases C-264/01, C-306/01, C-354/01 and C-355/01. Most recently in June 2020, the ECJ reaffirmed the concept of an entity within the meaning of Articles 85 and 86 in this sense in its judgement in linked Cases C-262/18 P and C-271/18.

This jurisprudence has in turn been reflected in EU legislation covering company reporting requirements and this also includes the insurance sector. Directive 2013/34/EU about consolidated accounts and related reports from certain types of companies excludes pension schemes that qualify as social security schemes. In the Solvency II Directive (Directive 2009/138/EU), under Section 2 'Exceptions to the scope of application' in Subsection 1, Article 3, statutory pension insurance schemes are explicitly excluded from the scope of application.

Therefore, the inclusion of pension schemes considered to be social security schemes within the meaning of EU Regulations No. 883/2004 and EU No. 987/2009 should be deleted from the proposed Directive.
