

## SUMMARY

# Five Years of Sector Dialogues

## A civil society review

The sector dialogue format was created on the basis of the National Action Plan for Business and Human Rights (NAP) and is a particular form of multi-stakeholder initiative (MSI). NAP sector dialogues are organised by the Federal Ministry of Labour and Social Affairs (BMAS) and used as a support resource for the Federal Government to implement human rights due diligence. They are intended to help companies with the ambitious implementation of the UN Guiding Principles on Business and Human Rights. They were explicitly not created as fora to discuss the legally compliant implementation of the Act on Corporate Due Diligence Obligations in Supply Chains (LkSG). The first NAP sector dialogue began in 2020 with the automotive industry. This was followed in 2021 by preparations for a second sector dialogue with the mechanical engineering industry. However, these attempts failed after a year of intense discussions due to the surprise withdrawal of the Mechanical Engineering Industry Association (VDMA). The second and most recent sector dialogue finally began in 2023 with the energy sector. This is expected to continue until the end of 2025.

**The particular format of the sector dialogues has had some positive results, but on balance the overall result for civil society is rather patchy. The coordination of a shared understanding of risk among the sectors concerned and the building of trust between the various groups of actors have brought about a shared commitment in the case of some of the challenges identified. However, the results achieved so far have been very indirect and company-specific in part; it has not been possible (so far) to achieve the desired leverage effect through collective measures by the relevant sector, especially where those (potentially) affected in the supply chain are concerned.**

- In practical terms, the sector dialogues have so far unfortunately been unable to maintain the high theoretical **level of ambition** of the pilot projects and jointly adopted guidance developed within these dialogues.
- The rigid timescales of the sector dialogues and (prior) specification of the content and solutions for consultation made the meaningful **inclusion of rights holders** and their representatives in pilot projects very difficult or impossible in some cases.
- The example of the sector dialogues shows that negotiations in the multi-stakeholder format come at a **high cost in terms of time and planning**, and even after five years there are hardly any examples of the practical application of jointly developed solutions and pilot projects. While some processes require a great deal of time to achieve good results and to meaningfully include relevant partners, for example, other processes were drawn out, some unnecessarily, as the result of the hesitant stance of companies and at times the lack of mutual trust among various groups of actors.
- The desired **leverage effect** from the format as a result of joint action in the supply chain has not (yet) been achieved. The highly erratic or very poor participation of some companies in pilot projects negatively affected the planning and broad impact of the projects. Furthermore, in some pilot projects and collective measures, there is an astonishing discrepancy between the topic's relevance for the company (due to its own sites in the country of production, for example) and the company's actual involvement.
- At company level, there is anecdotal evidence of the positive **impact** of the sector dialogues, for example in discussions on internal processes with company representatives or noticeable changes in the views and comments of individual company representatives. In particular the coordination of a shared understanding of risk through the drafting of joint publications and the intense exchange of knowledge, experience and challenges has also had an impact in the sector.

Yet to date the sector dialogues show scarcely any verifiable impact along the supply chain and at rights-holder level, although from a civil society perspective, this is the most important impact level of due diligence measures. The somewhat strong top-down approach in the development of pilot projects and collective measures, particularly with respect to the Sector Dialogue Automotive Industry, has so far prevented any impact at rights-holder level.

**In retrospect, a number of challenges and obstacles<sup>1</sup> to the effectiveness of sector dialogues can be identified from the perspective of the participating civil society organisations:**

- The reluctance by companies to deal with common suppliers as a topic or to disclose them makes it difficult to identify starting points for collective measures.
- The meaningful inclusion of local partners often happens too late and under enormous time constraints. This in part seriously delayed the implementation of the pilot projects.
- Companies did not offer in-depth insights into business processes and identified obstacles, or only very selectively. This hampers the constructive search for solutions.
- The few pilot projects were not really designed to have an impact at local level in the case of those (potentially) affected. Instead, the target horizon was often only to effect changes at the level of corporate processes. This may indeed be helpful for corporate processes but results at best in indirect impact in the supply chain.
- The limited time horizon and ever-recurring unclear perspectives in the sector dialogues over the years have proved to be an obstacle for the planning and effectiveness of some projects. Furthermore, many of the sector's risks are structural in nature, which can only be effectively addressed by means of comprehensive and long-term measures.
- The support of decisions within the sector dialogues was largely dependent on the individual representatives and was not adequately secured by company processes.
- In some companies, the adoption and entry into force of the LkSG have resulted in new priorities being set as regards legally compliant implementation. These were not (any longer) consistent with the sector dialogues' topics and the original ambition of achieving joint effects along the supply chain.
- The absence, in some cases, of exchange and the insufficient cooperation between various federal government departments makes it more difficult to resolve more complex challenges requiring an interaction between politics and business in global supply chains.

However, it is also possible to identify some factors that have significantly increased the effectiveness of the sector dialogue format due to their quality and continuity. These include the holding of face-to-face meetings, the quality of the process facilitation and guidance, equal inclusion in the dialogue of the different positions of the groups of actors and the stronger role of individual companies compared to associations.<sup>2</sup>

**In order to increase the potential impact of the sector dialogue format at company and sector level and in the supply chain, the following recommendations therefore need urgently to be taken into account for the continuation or creation of new sector dialogues.<sup>3</sup>**

**Recommendations for sector dialogues and comparable formats**

- Given the diverse risk profile of the participant companies, the sector approach of the format at times presents those involved with significant challenges in determining concrete topics for joint

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<sup>1</sup> See the unabridged version of the publication for the full text.

<sup>2</sup> See the unabridged version of the publication for the full text.

<sup>3</sup> This is a selection of the recommendations. See the unabridged version of the publication for the full text.

action. One possibility might be to develop multi-stakeholder dialogue formats that focus on certain risks within certain countries.

- If sector-wide standards are to be set by means of sector dialogues, in future the formats must be methodically designed so that they allow even more to be learned from the experience gained from the inclusion of rights holders.
- Companies must participate in the financing, particularly of collective measures and pilot projects, but also in the cost of the dialogue format generally. Government funding is also needed, in particular, to support sensitive processes. This includes ensuring ongoing civil society support, but also the inclusion of rights holders and their representatives.
- Companies must adhere to decisions made jointly within the sector dialogues and guarantee that they will not fall behind with existing commitments.
- Should any individual actor fail to adhere to the jointly concluded agreements, there must be an independent conflict resolution mechanism. In the event of non-cooperation by individual stakeholders, there must be the possibility of clear consequences.
- Companies must be prepared to create transparency as regards internal processes and identified obstacles. Only on this basis is a joint search for solutions possible.

### **Recommendations for collective measures and pilot projects**

- More companies must participate in collective measures to sufficiently address structural risks. Only then is it possible to achieve a leverage effect and practical changes at local level. If, instead, first flagship projects are first designed and implemented that are limited in terms of scope, these must be expanded and scaled following a successful pilot phase so as to generate a leverage effect, at least in the long term.
- As a facilitator, the Federal Government must drive the ambitious, jointly developed projects forward, and also involve all the relevant government departments as far as possible. This requires greater policy coherence between the measures developed in the Sector Dialogues and the superordinate political agenda.
- Collective measures must be impact-driven. The starting point for defining the objectives should be measurable changes, in particular for rights holders at local level, not only processes within the company. In addition, impact monitoring of the measures must be mandatory.
- When pilot projects and collective measures are being planned, wherever practical and necessary, the direct, early involvement of relevant external partners in the project group must be possible, in particular of the rights holders and their representatives at local level.
- Changes locally at rights-holder level take time. Pilot projects and collective measures therefore need to have a clear time perspective that goes beyond short-term ad-hoc measures.

These recommendations should be given serious consideration in the further development of the sector dialogues. Only with their implementation is the high cost associated with the sector dialogues reasonable, otherwise civil society support of formats of this kind would have to be viewed even more critically in future.

**The increased significance of multi-stakeholder formats within the framework of the German LkSG and the European Corporate Sustainability Due Diligence Directive (CSDDD) is also of importance in the overall civil society context.**

The example of the sector dialogues demonstrates clearly what multi-stakeholder formats of this kind achieve: The result is a framework for the exchange of know-how and experience, for building up trust between the various groups of actors and, based on this, for the design and implementation of a flagship project that is ambitious yet limited in scope. Sector dialogues can also be useful to define sector-wide standards that identify what risks there are and what an appropriate, practical implementation of due diligence should look like. The sector dialogues have set standards for the latter, particularly concerning impact orientation and the appropriate inclusion of rights holders in defining, implementing and monitoring

of individual and collective due diligence measures. Now this has to be put into practice, because the sector dialogue outputs contribute to the concretisation of legal requirements in practice, not least through public perception - by other sectors, legislators and public authorities (such as the Federal Office of Economic Affairs and Export Control (BAFA) as the enforcement authority for the LkSG). They therefore also define a sector standard for the proper implementation of due diligence obligations by companies. Multi-stakeholder formats therefore have a clear *raison d'être*, also in the context of due diligence regulation. They can give companies and sectors targeted support in individual aspects of due diligence, and are therefore an additional tool in an entire system of measures. This selective support may also go beyond the statutory requirements.

The examples of pilot projects and collective measures, in particular from the Sector Dialogue Automotive Industry clearly show, however, what multi-stakeholder formats are unfortunately (still) unable to achieve. In fact, both in the recitals of the CSDDD and the explanatory memorandum to the LkSG, the legislator assumes that collaborative formats such as industry, multi-stakeholder or sector initiatives and/or sector standards can increase the influence capacity of companies in the supply chain; however, this theory does not stand on its feet in practice. In light of these considerations, legislators and enforcement authorities should critically question the potentially favourable acknowledgement of companies reporting on their participation in multi-stakeholder initiatives. Simply being a member of these initiatives does not necessarily imply active participation and implementation of impact-orientated pilot projects and collaborative cooperation to increase the influence capacity of companies in the supply chain. Membership therefore should not, for example, be used for de-prioritising companies in the BAFA review process. Instead, new ways should be sought in and aside from the sector dialogues to make an impact jointly in the (deeper) supply chain and to achieve structural changes. This might succeed, for example, thanks to redesigned multi-stakeholder dialogue formats which focus on contexts of countries where certain risks arise and therefore circumvent the obstacles of a sector-wide dialogue approach.

Last but not least, attempts by companies to depict their activities in the sector dialogues as stakeholder engagement must be viewed in a critical light against the background of the CSDDD and the LkSG. The sector dialogues, as well as several civil society publications, clearly show that participation of companies in multi-stakeholder formats can never replace the inclusion of rights holders and their representatives along the supply chain. It can only be a building block in a comprehensive system of inclusion formats, which creates possibilities for the inclusion of affected rights holder groups at different levels, in other words the rights holders and their representatives, and can provide relevant learning experiences.

## Figures at a glance

**24 out of 26** companies in the Automotive Sector Dialogue have production sites in Mexico.

**3 out of 26** companies participate in the pilot project in Mexico to create a cross-company grievance mechanism.

**36%** of the companies in the Automotive Sector Dialogue participated in the implementation of pilot projects by the end of 2023. The participation ratio per pilot project totalled between **13%** and **23%** of the member companies.

**100%** of the companies in the Energy Sector Dialogue are currently involved in designing at least one pilot project. The participation ratio per pilot project totalled **80%** of the member companies.

**9 out of 10** companies from the Energy Sector Dialogue and **19 out of 26** companies from the Automotive Sector Dialogue report on their websites and publications on their membership in the sector dialogues.<sup>4</sup>

Of the companies who have already published a BAFA report, **6 out of 7** companies from the Energy Sector Dialogue and **5 out of 8** companies from the Automotive Sector Dialogue refer to their membership in the sector dialogues.

In **years 1 + 2** of the Automotive Sector Dialogue, guidelines were developed for the implementation of the core elements of human rights due diligence. In **year 3** the companies committed to disclose action plans on jointly identified focal topics based on these guidelines. In **year 4** a process was negotiated for this, and focal topics were identified. In **year 5** of the sector dialogue, action plans were developed by the companies together with further actors. These are for the most part not expected to be implemented until after 2025 – in **year 6** of the sector dialogue.

The Automotive Sector Dialogue pilot project for the creation of a cross-company grievance mechanism in Mexico took more than **four years** from starting up the working group (February 2020) and the decision for the pilot country Mexico (July 2020) to the operational launch of the grievance mechanism in Mexico (May 2024). It was **three years** before the Mexican civil society organisations became full members of the project, with the operational spin-off of the project from the sector dialogue (November 2023).<sup>5</sup>

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<sup>4</sup> This does not include the BAFA reports.

<sup>5</sup> Since October 2020 there has been an exchange at civil society level with Mexican civil society organisations.

# Summary

## **Automotive Sector Dialogue (since 2020)**

The Automotive Sector Dialogue was an effective instrument for developing a shared understanding of the risks in the sector and also, in abstract theory at least, an appropriate implementation of due diligence measures. The latter is particularly relevant with regard to the meaningful inclusion of rights holders and impact orientation. The guidelines developed in the multi-stakeholder format in particular played an important role here, and also created an impact that went beyond the sector. In practical terms, however, almost five years later, the sector dialogue was not (yet) able to realise the high level of ambition of the guidelines and pilot projects. A leverage effect for the sector and for the rights holders in the companies' supply chain is yet to materialise. The successful building of trust between the groups of actors participating should now be used to make a number of fundamental strategic decisions, taking into account the recommendations referred to in this publication, for the perpetuation of the sector dialogue from 2025 onwards. In this way the barriers to the format's effectiveness could be broken down and the dialogue go beyond an impact at the companies' level to an impact at the level of rights holders in the (deeper) supply chain.

## **Energy Sector Dialogue (since 2023)**

By coordinating a shared understanding of risk in the sector, the Energy Sector Dialogue made a significant contribution to the recognition of risks by member companies. This includes in particular risks in the deeper supply chain, such as the mining of raw materials. The level of ambition of the pilot projects that were subsequently developed in the Energy Sector Dialogue has been high so far, and also goes beyond the statutory requirements, such as the LkSG. These pilot projects are nonetheless still in the design phase, so it remains to be seen whether this level of ambition can also be transposed into practice. Here consideration should be given not least to the experience gained from the Sector Dialogue Automotive Industry in terms, for example, of the timely, meaningful and equal inclusion of those (potentially) affected.

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You can download this paper at: [www.germanwatch.org/en/91447](http://www.germanwatch.org/en/91447)

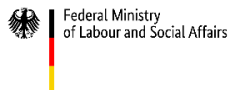
September 2024

**Publishers:**



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With support from the:



on the basis of a resolution passed  
by the German Bundestag

This position paper was written as part of the 'NGO Coordinating Office for NAP Sector Dialogues' project. The publishers are solely responsible for the content of this publication; the opinions presented here do not reflect the position of the funding providers.