

February 15, 2023

Germany's New Law on Supply Chain Due Diligence



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Empowering
Businesses
to Create a **Slave-Free
World**

Agenda

- Introduction to Modern Slavery and Human Rights Due diligence, *Clemence Aron, Programme Director, The Mekong Club*
- How to implement the German Supply Chain Due Diligence Act, *Dr Joerg Schmidt, Sustainability & Corporate Responsibility Professional, PHD, MSC*
- German Supply Chain Due Diligence Act, what it means for your business, ALDI case study, *Kathrin Raabe in the CR International Department at ALDI SOUTH in Salzburg/Austria*
- Q&A

A significant proportion of modern slavery victims **work in global supply chains.**



Human Rights Due Diligence to address Modern Slavery



UNGPs

OECD
Guidelines

- 1 - Embed responsible business conduct into policies and management systems
- 2 - Assess actual and potential adverse human rights impacts
- 3 - Integrate the findings and take appropriate action
- 4 - Track implementation and results
- 5 - Communicate and report how impacts are being addressed
- 6 - Provide for or cooperate in remediation when appropriate

Due Diligence
Laws

Modern Slavery
Acts

Expanding Legislation

2010
California
Transparency in
Supply Chains Act

2015
United Kingdom
Modern Slavery Act

2017
France Duty of
Vigilance Act

2018
Australia Modern
Slavery Act

2021
Swiss Non-financial
Reporting and Due
Diligence
Legislation

2021
Norway's
Transparency Act

2021
German Supply
Chain Due
Diligence Act

2022
US Customs Border
& Protection
Regulation

2023
EU corporate
sustainability due
diligence directive



How to implement the German Supply Chain Due Diligence Act

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Agenda:

- /// The German Supply Chain Due Diligence Act – a short portrait
 - /// Policy statement
 - /// Risk analysis
 - /// Preventive measures
 - /// Remedy & complaints
 - /// Relations & outlook
- Risk management procedure:
Challenging due diligence
elements of the Act**

The German Supply Chain Due Diligence Act – a short portrait

Background

- Enacted: July 2021.
- Enforcing / monitoring authority: **Federal Office for Economic Affairs and Export Control***
 - Public info about due diligence obligations;
 - Compliance with reporting obligations;
 - Inspections;
 - Prevention of violations;
 - Coercive sanctions & fines.

*Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA).

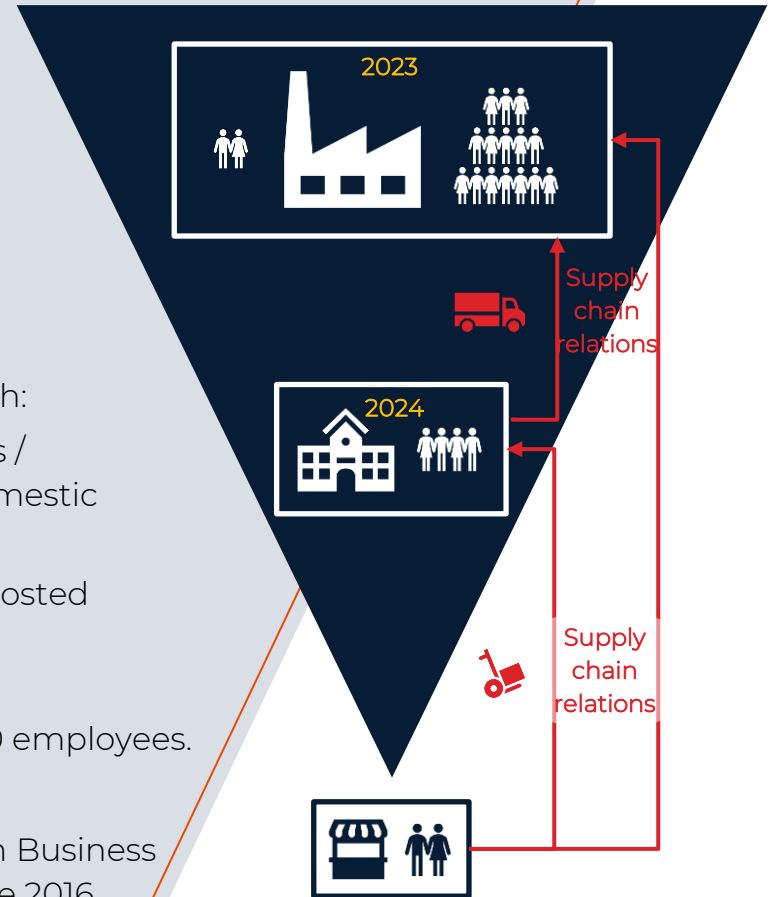
The screenshot shows the website of the Federal Office for Economic Affairs and Export Control (BAFA). The page is titled "Supply Chain Act" and features a navigation menu with options like "Federal Office", "Energy", "Foreign Trade", "Promotion of Economic Development and SMEs", "Supply Chain Act", and "AOB". A search bar is located in the top right corner. The main content area includes a "SECTION MENU" with links to "Overview", "Reporting Obligation", "Risk Analysis", "Appropriateness and Effectiveness", "Complaints Procedure", "Submit a Complaint", and "About Borna". Below the menu is a large image of a network diagram with nodes and lines, representing global supply chains. The text below the image states: "The Supply Chain Act addresses the responsibility of German enterprises to respect human rights in global supply chains." A "TO THE TOPIC" button is visible at the bottom right of the content area.

https://www.bafa.de/EN/Supply_Chain_Act/supply_chain_act_node.html

The German Supply Chain Due Diligence Act – a short portrait

Who must act – and when?

- Since 1 January 2023: all legal forms of enterprises with:
 - Central administration / principal place of business / administrative headquarters / statutory seat or domestic branch office in Germany;
 - At least 3,000 employees in Germany (incl. those posted abroad).
- From 1 January 2024: all such companies with > 1000 employees.
- What about smaller firms? -> National Action Plan on Business and Human Rights (NAP); German NAP in force since 2016.



The German Supply Chain Due Diligence Act – a short portrait

Legal positions & definitions

- Human rights risks & violations related to relevant international agreements: this includes forced labor & child labor – the law mentions modern **slavery** & **human trafficking** explicitly.
- Environment-related risks & violations referring to relevant international agreements on hazardous substances (health risks!).
- Own business area / processes & supply chain (direct and - limited - indirect suppliers).

Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten

Vom 16. Juli 2021

Der Bundestag hat das folgende Gesetz beschlossen:

Artikel 1

Gesetz
über die unternehmerischen
Sorgfaltspflichten zur Vermeidung von
Menschenrechtsverletzungen in Lieferketten
(Lieferkettensorgfaltspflichtengesetz – LkSG)

Abschnitt 1

Allgemeine Bestimmungen

§ 1

Anwendungsbereich

(1) Dieses Gesetz ist anzuwenden auf Unternehmen ungeachtet ihrer Rechtsform, die

1. ihre Hauptverwaltung, ihre Hauptniederlassung, ihren Verwaltungssitz oder ihren satzungsmäßigen Sitz im Inland haben und
2. in der Regel mindestens 3 000 Arbeitnehmer im Inland beschäftigen; ins Ausland entsandte Arbeitnehmer sind erfasst.

Abweichend von Satz 1 Nummer 1 ist dieses Gesetz auch anzuwenden auf Unternehmen ungeachtet ihrer Rechtsform, die

1. eine Zweigniederlassung gemäß § 13d des Handelsgesetzbuchs im Inland haben und
2. in der Regel mindestens 3 000 Arbeitnehmer im Inland beschäftigen.

Ab dem 1. Januar 2024 betragen die in Satz 1 Nummer 2 und Satz 2 Nummer 2 vorgesehenen Schwellen

mern 1 bis 11 der Anlage aufgelisteten Übereinkommen zum Schutz der Menschenrechte ergeben.

(2) Ein menschenrechtliches Risiko im Sinne dieses Gesetzes ist ein Zustand, bei dem aufgrund tatsächlicher Umstände mit hinreichender Wahrscheinlichkeit ein Verstoß gegen eines der folgenden Verbote droht:

1. das Verbot der Beschäftigung eines Kindes unter dem Alter, mit dem nach dem Recht des Beschäftigungsortes die Schulpflicht endet, wobei das Beschäftigungsalter 15 Jahre nicht unterschreiten darf; dies gilt nicht, wenn das Recht des Beschäftigungsortes hiervon in Übereinstimmung mit Artikel 2 Absatz 4 sowie den Artikeln 4 bis 8 des Übereinkommens Nr. 138 der Internationalen Arbeitsorganisation vom 26. Juni 1973 über das Mindestalter für die Zulassung zur Beschäftigung (BGBl. 1976 II S. 201, 202) abweicht;
2. das Verbot der schlimmsten Formen der Kinderarbeit für Kinder unter 18 Jahren; dies umfasst gemäß Artikel 3 des Übereinkommens Nr. 182 der Internationalen Arbeitsorganisation vom 17. Juni 1999 über das Verbot und unverzügliche Maßnahmen zur Beseitigung der schlimmsten Formen der Kinderarbeit (BGBl. 2001 II S. 1290, 1291):
 - a) alle Formen der Sklaverei oder alle sklaverähnlichen Praktiken, wie den Verkauf von Kindern und den Kinderhandel, Schuldknechtschaft und Leibeigenschaft sowie Zwangs- oder Pflichtarbeit, einschließlich der Zwangs- oder Pflichtrekrutierung von Kindern für den Einsatz in bewaffneten Konflikten,
 - b) das Heranziehen, Vermitteln oder Anbieten eines Kindes zur Prostitution, zur Herstellung von Pornographie oder zu pornographischen Darbietungen

https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s2959.pdf#_bgbl__%2F%2F%5B%40attr_id%3D%27bgbl121s2959.pdf%27%5D__1674766538909

The German Supply Chain Due Diligence Act – a short portrait

Core obligations of the due diligence procedure

- Establishment of a **risk management system** (Sec 4)
- Designation of the **in-house responsibility** (Sec 4 (3))
- Performance of **regular risk analyses** (Sec 5)
- Issuing of a **policy statement** (Sec 6 (2))
- Establishment of **preventive measures** (own business unit, direct suppliers*) (Sec 6)
- Taking of **corrective / remedial action** (Sec 7)
- Establishment of a **complaints procedure** (Sec 8)
- Implementation of due diligence with regard to **indirect suppliers**** (Sec 9)
- Documentation & reporting** about fulfilment of all obligations (Sec 10)

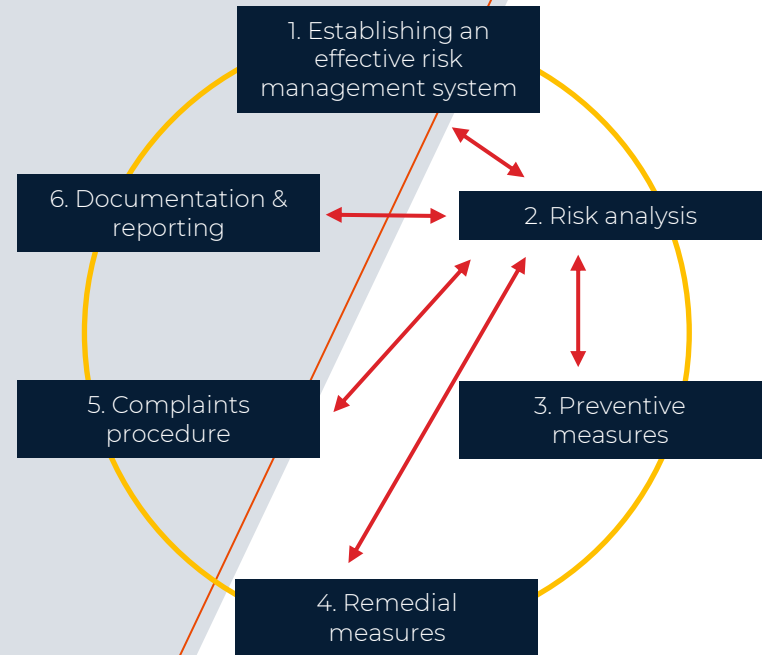
*Contract partners.

**Along product supply chains.

The German Supply Chain Due Diligence Act – a short portrait

Risk* management

- ▀ Risks-based* approach of the Act.
- ▀ Overall aims: identify & prevent or minimize risks* / identify & end or minimize violations.
- ▀ Connections & logic between the elements / core obligations.



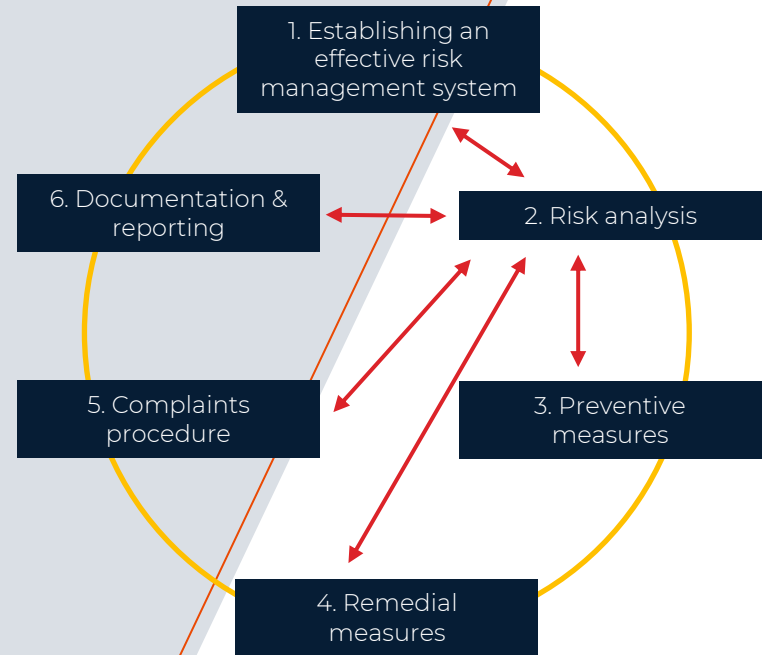
https://www.bafa.de/SharedDocs/Downloads/EN/Supply_Chain_Act/guidance_risk_analysis.pdf?__blob=publicationFile&v=5

*Referring to risks & interests of “rights holders” (specifically: employees along value chains).

The German Supply Chain Due Diligence Act – a short portrait

Risk management

- /// “Appropriate* & effective” measures; depending on a company’s business activities.
- /// Proactive in all relevant business processes & supply chains.
- /// Assignment of responsibility for the risk management within the organization; <yearly information of senior management.



https://www.bafa.de/SharedDocs/Downloads/EN/Supply_Chain_Act/guidance_risk_analysis.pdf?__blob=publicationFile&v=5

**Angemessenheit* (appropriateness) being a vague legal term: How much care is enough?

Are **you** prepared & know what you have to do?

Results of a **recent survey** (conducted in autumn 2022 among BME* members) about readiness of German companies for the obligations of the Act

- ▀ ~4% consider themselves **very well prepared** at the organizational level.
- ▀ ~70% consider themselves **moderately to very poorly prepared**.
- ▀ 28% have implemented a **system for risk identification**, 50% are in a preparation process.
- ▀ 16% claim to have full, 56% partial **knowledge of their direct suppliers**.

*German Association for Materials Management, Purchasing and Logistics

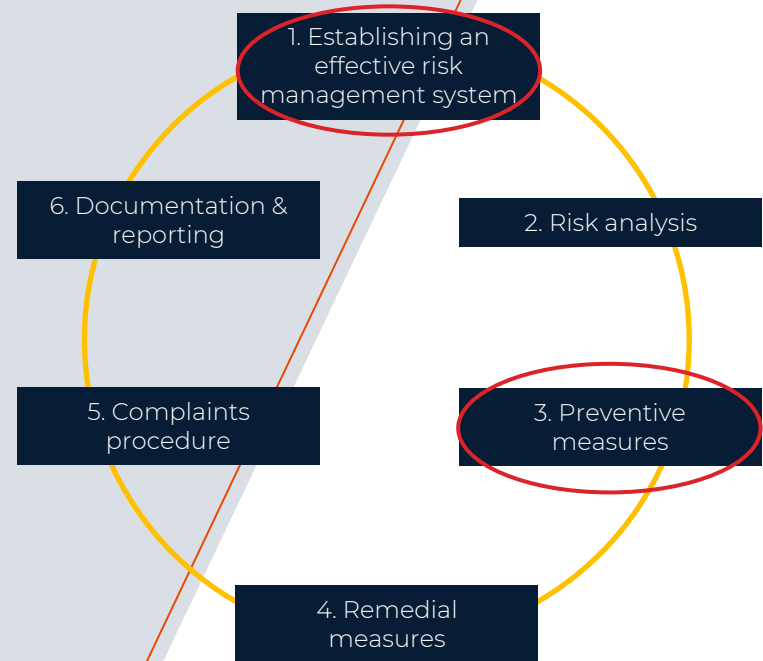


<https://www.bme.de/news/integritynext-und-bme-veroeffentlichen-studie-zum-lksg>

Risk management procedure: Challenging due diligence elements of the Act

Policy statement

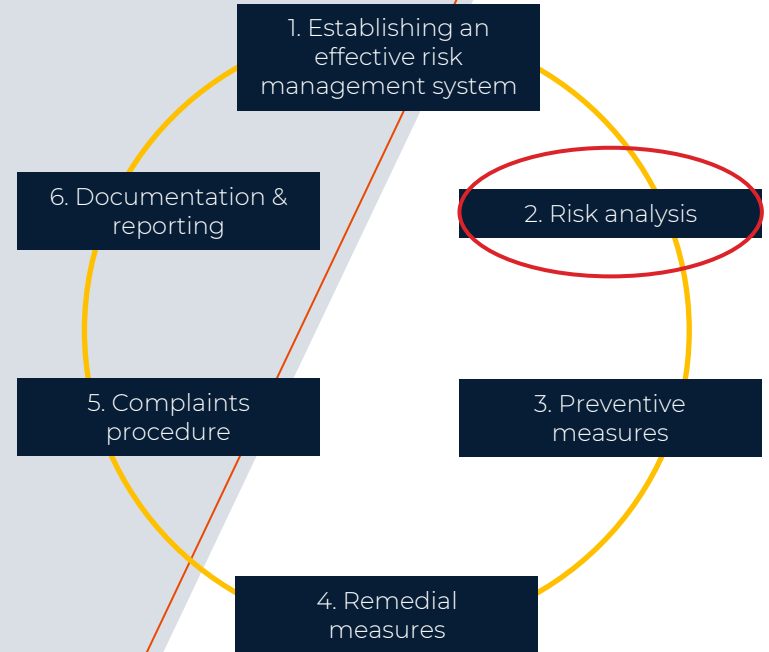
- ▀ The company's **basic risk management document**.
- ▀ It must include:
 - ▀ The central elements of the **human rights strategy**;
 - ▀ **Priority** human rights & environment-related risks (as a result of the risk analysis);
 - ▀ Description of the company's risk management **measures** concerning all core obligations of the Act (and relating to priority risks);
 - ▀ **Expectations** from employees & suppliers.
- ▀ It must be **adopted** by senior company management.



Risk management procedure: Challenging due diligence elements of the Act

Risk analysis

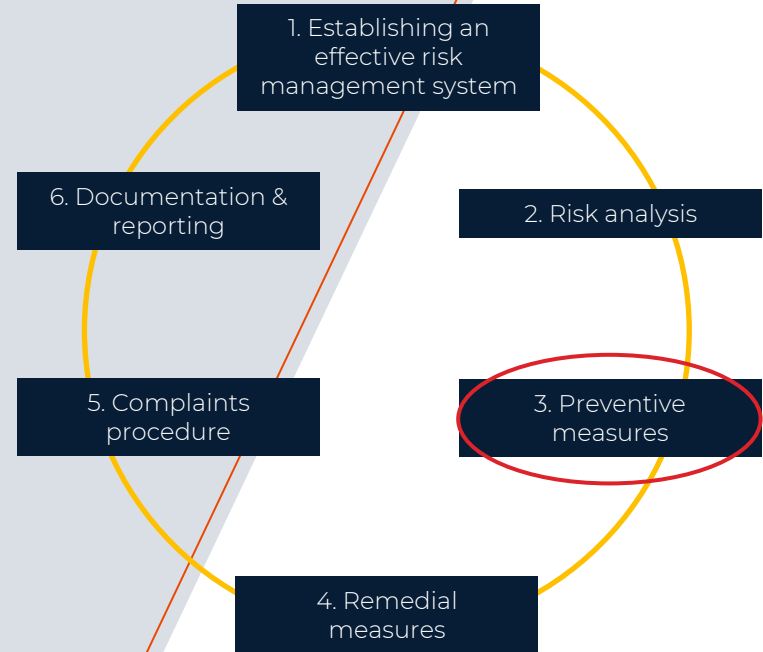
- Central element & point of reference of the risk management system.
- Purpose: **identify** & **prioritize** the human rights & environment-related **risks** in own business area / processes plus at direct suppliers.
- Annual **frequency** & related to significant changes in the value chain.
- Communication of results to senior management.



Risk management procedure: Challenging due diligence elements of the Act

Preventive measures

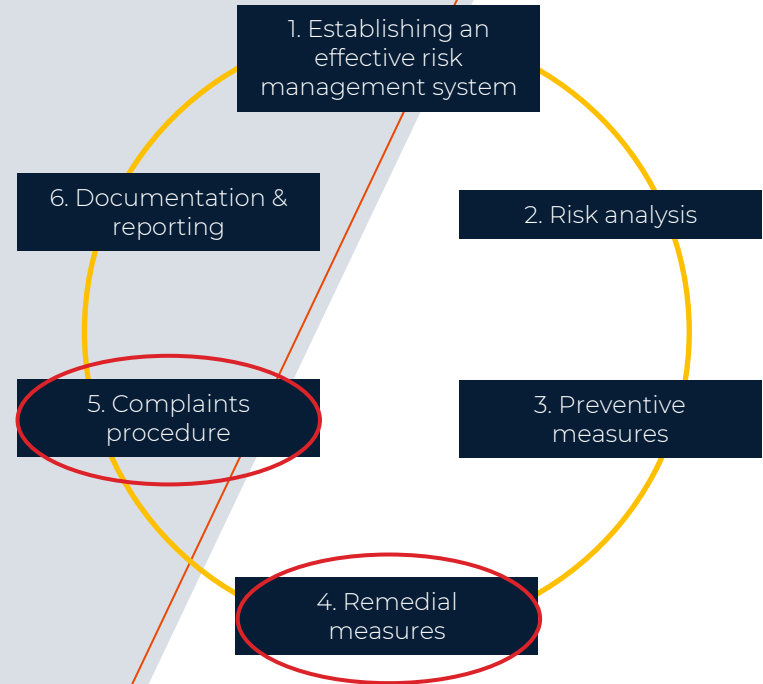
- Refers to the results of the **risk analysis**: take immediate action against **identified risks**; annual review of measures.
- Risk prevention / minimizing measures for **own business area / processes**: human rights strategy implementation, procurement, training, control.
- Appropriate preventive measures concerning **direct suppliers**: expectations, contractual assurance, training, control.



Risk management procedure: Challenging due diligence elements of the Act

Remedy & complaints

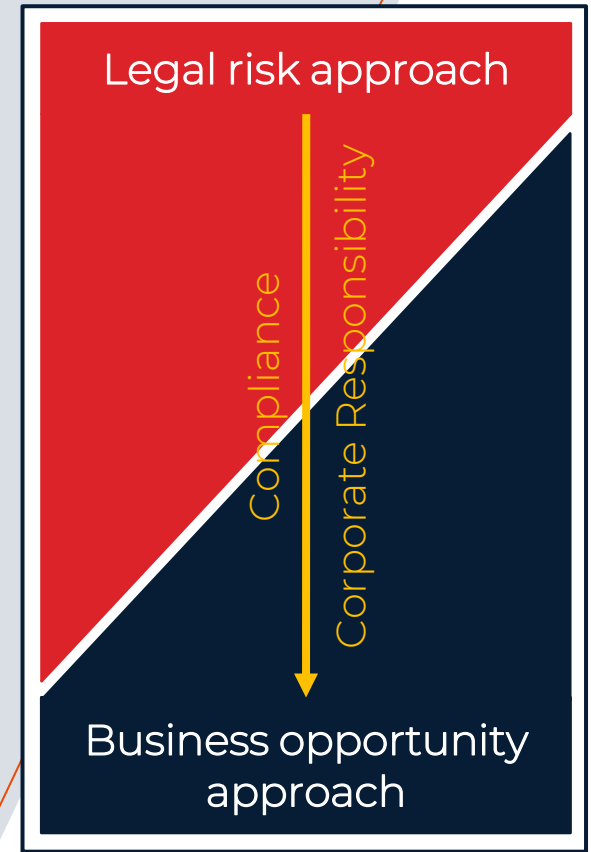
- Refers to the results of the **risk analysis**: take immediate action against **identified violations**; annual effectiveness review.
- Concept with concrete timetable to **end or minimise** violations which are out of immediate reach of the organization.
- Internal, publicized **complaints procedure** to report risks & violations, incl. designated responsibility.
- Also related to **indirect suppliers**.



Relations & outlook

Risk*-opportunity nexus

- /// **Non-compliance** with obligations of the Act is a regulatory offence for affected companies and may lead to:
 - /// Administrative fines, despite no civil litigation is foreseen in the law;
 - /// Reputation loss from stakeholders.
- /// **Compliance** entails various opportunities:
 - /// Better understanding of supply chains (actors & processes) – relevant in times of disrupting supply chains;
 - /// Better meeting of customer expectations / needs (no one would like to be linked to modern slavery);
 - /// Synergies with various obligations & requirements from other relevant “ESG” / sustainability laws.



*Referring to risks for a company from ill compliance with due diligence regulations (financial risks, reputation risks etc.).

Relations & outlook

The dynamic landscape of due diligence & reporting regulations

- EU: Non-financial Reporting Directive (NFRD; in force with implementation laws in all Member States) and Corporate Sustainability Reporting Directive (CSRD; proposal in political process) require human rights performance reporting.
- Various laws (in force or in preparation) in different jurisdictions require policy statements, supply chain risk assessment and/or reporting of human rights aspects (incl. modern slavery, forced labor and/or child labor).
- Efficient integration of appropriate & effective compliance & corporate responsibility measures.

Dutch Child Labour Due Diligence Law

Norwegian Transparency Act

United Kingdom Modern Slavery Act

EU Non-financial

Reporting Directive (NFRD)

Swiss Non-financial Reporting and Due Diligence Legislation

French Duty of Vigilance Act

EU Conflict Minerals Regulation EU Directive CS3D

Australia Modern Slavery Act

EU Taxonomy

Canada Modern Slavery Act

EU Corporate Sustainability Reporting Directive (CSRD)

German Supply Chain Due Diligence Act:

What it means for your business – ALDI
SOUTH case study



Kathrin Raabe

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ALDI SOUTH GROUP : Strong International Presence



>7,000 stores



>200,000 ALDI employees



11 countries



>1,500 core range products



ALDI SOUTH GROUP : Best Practices



- Make sure that Sustainability is everybody's business – Human Rights need to be embedded in all processes and into the core of your company
- Ensure top management involvement – The head of CR should update top management regularly and give updates in key buying meetings
- Base your due diligence work on a thorough risk analysis and impact assessments – You do not have unlimited resources so ensure to use them where your main risks lie and where you have leverage to create an impact
- Work collaboratively with your business partners – A partnership approach allows you to use your resources better and tackle challenges jointly

ALDI SOUTH GROUP : Best Practices



- Include CR aspects in buying decisions – Colleagues from CR and buyers should send strong aligned messages
- Analyse the way you buy – Responsible purchasing practices are a key lever for driving change in supply chains
- Don't try to reinvent the wheel – Use existing tools, concepts and training materials
- Tackle challenges jointly – systematic change is only possible through teaming up with like minded companies

ALDI SOUTH GROUP : Best Practices



Increased transparency
of our supply chains



ALDI Sustainability
Assessments



Collaboration with
external stakeholders



Child Labour Policy



Human Rights Policy



CR Supplier Evaluation

THANK YOU

Contact:
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