

Webinar Q&A

Lessons Learned from Existing Responsible Business Conduct Due Diligence Laws: What Is Working and What Is Not?

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Q: One of the arguments against introducing RBC due diligence laws is the risk of buying companies withdrawing from high risks countries/regions - meaning that companies might avoid certain countries for imports/investments because the costs of addressing the risks are too high. What are lessons learned from existing laws to mitigate this risk?

A: Many companies are currently sourcing and operating in high risk countries all around the world and many of them are already conducting audits and trying to mitigate risks. Proper due diligence legislation would provide a better framework and institutional support for these activities. I see that good legislation will make operations in high risk countries easier, not more difficult. The EU must use its whole policy risks to reduce these political risks.

Q: The draft German national supply chain due diligence law includes references to due diligence schemes and sets out a specific liability regime that provides a safe harbour provision for companies that participate in state-recognised due diligence scheme. Is that something that is being considered for the EU-level legislation?

A: References to due diligence schemes, such as in the German draft legislation, can also be considered at EU level. Due diligence legislation does not mean that a company is always responsible for each and every violation, but it requires the companies to conduct meaningful due diligence and do what they can in order to mitigate and avoid risks. A company that exercises due diligence should not be liable, so that could be called "safe harbour". At the same time, it is important to understand that due diligence is not just a tick-box compliance exercise but the required level of attention varies case by case.

Q: What important upcoming meetings will take place in regard to the European Human Rights Due Diligence legislation?

A: I recommend that everyone follow the process in the European Parliament, especially in the JURI committee. Committee meetings and a plenary session for the Parliament's reports take place this autumn. For the actual legislative proposal, we need to wait until next year.

Q: Regarding the European legislation, when do you expect that the implementation will take place?

A: Well, let's wait until we have the legislative proposal first. The legislative process for the Conflict Minerals Regulation took three years.

Q: Let's say there will be a due diligence directive which puts all the responsibility for all human rights issues in the supply chain with the company. What's your opinion on this? Don't you think that governments need to carry the greatest responsibility as they create for example the adverse working environment (on which the company doesn't have enough of an influence)?

A: No directive or regulation will put all the responsibility with the company. Governments shall provide laws, regulation and even industry guidance, whereas companies need to ensure that respect for human rights is embedded into their business models, operations and relationships.

Already there are cases where companies turn to the EU and ask the EU to provide mandatory legislation and to use its trade and foreign policy muscles, because companies cannot solve all these problems alone

Q: Something as basic as 'honouring contracts' have been flouted by some global brands and retailers during the pandemic. It is essential to promote ethical business practices in the global apparel supply chain.

What are your views on the unilateral order cancellation by some European clothing brands during the COVID-19 pandemic? This has put the lives of millions of workers in the RMG producing developing countries at great risk.

Can European brands cancel contracts citing 'force majeure' clause where in fact it is the suppliers who are adversely affected by the COVID-19 pandemic?

A: I cannot comment on any particular case or contract but of course unilateral cancellation leaves the supplier and its workers in unbearable circumstances. It is an irresponsible way of doing business and does not encourage long-term business relations.

I'd rather see buyers and suppliers having a dialogue, trying to solve the problems together. This is also what responsible business conduct guidelines recommend.

Q: Auditing is the only way to ensure due diligence but when we talk about sustainable business conduct actually it is beyond the framework of compliance and can only be ensured through market-led mechanisms like providing additional business opportunities and incentivising best practices. Auditing will keep the suppliers confined within the mouse and cat game... that's not progressive.

A: Sure. Audits are a way that companies can demonstrate that they are taking due diligence seriously and trying to make sure that their supply chains follow their agreements, instructions and any applicable laws.

It is common knowledge that audits are not always reliable. Also, auditing the auditors is very important.

The best suppliers should pass these audits with flying colours and of course companies should award them with new contracts and business opportunities. Market led mechanisms kick in after the audits.

Q: How important is your dialogue with trade unions on the ground during your auditing process?

A: It is absolutely important. Improving conditions related to labour rights and human rights require that workers and employees are organised. Trade unions have a fundamental role in this.

At the same time, it is the EU's job to create pressure for its trading partners to ratify and implement the ILO labour conventions

Q: To anyone who can answer: would the provisions of the expected future DD directive or regulation apply to smaller companies, and not only to big groups like in France (5,000 employees and more). Would there be a threshold (e.g. 500 employees + ?)

A: This is one of the key questions in the future legislation. There can be human rights violations, for example modern slavery, in smaller companies too, and there should not be loopholes in the legislation. At the same time, it is obvious that requirements for smaller companies will be different than large companies.

Pierre Petitdemange
Financial Director Asian Sourcing Offices, Auchan Trading Company

Q: You talked mainly about the audits you conduct with your suppliers. According to due diligence concept, companies are expected to scrutinise their own purchasing practices and how they support (or hinder) suppliers in improving working and environmental conditions. Could you share whether and how Auchan is working on the topic of purchasing practices?

A: Indeed, we do not only use the audits to reduce our risk exposure.

1- First we have internal information/training/written documentation to ensure that our employees are at ease about our targets and the “how to”. Our buyers are our main target, thus they can communicate on this topic with their suppliers.

2- Every six months, we review our supplier catalogue and make sure they all fit our company values and requirements.

3- In Bangladesh, we already conducted several training sessions of our supplier’s employees about “the labor law and human rights”.

4- On the environment topic, we changed our approach recently. We now ask our supplier first to make an auto evaluation. Then we help them to solve the biggest issues. We also use the resources of amfori to enrich our knowledge and the support we give to the suppliers. We do the audits only once this process has been undertaken.

5- Last but not least, we are working on the long run to reduce our number of suppliers, this is to make our follow up easier and the collaboration more interesting for both parties.

Q: Do you require your suppliers to disclose all producers? Including in the lower tiers? If they do, does Auchan have any influence on those tiers in respect to decreasing any adverse impact?

A: We do: it is mandatory to identify all “rank1” factories and subcontractors as required by law (we talk about production activities not packing and storage). We are starting for our textile suppliers (textile industry may have high environmental impact) to also ask for rank2, but we are only at the beginning of this process.

The pressure we put on rank1 production activities has direct consequences on the lower steps of the production process. The more pressure we put on suppliers on this topic, the more likely they are to understand the stakes and to become eager to control their own supply chain as well.

Q: What did the prevention plan obligation change in the existing sourcing/buying policies and procedures at Auchan? Which part of the law requests did you find the most challenging to implement?

A: It helped to change our mindset and to understand our responsibility in the whole supply chain. To respect our prevention plan, we had to shape our processes around it, and the consequences are numerous. For instance, we have specific IT tools built just to respect our commitments.

I will not come back on all the challenges, as it was already explained during the webinar. But I will complete the answer a bit. The company usually reacts first to economical interests. The prevention plan and the risk mapping pushes the company to challenge this initial vision and to consider more the risks which are on people. It is not that easy to make that turn.

Nina Von Radowitz
Head of Corporate Responsibility, METRO AG

Q: One of the arguments against introducing RBC due diligence laws is the risk of buying companies withdrawing from high risks countries/regions - meaning that companies might avoid certain countries for imports/investments because the costs of addressing the risks are too high. What lessons can be learned from existing laws to mitigate this risk?

A: METRO and companies in general I trust, shall see legislation as a supportive framework which is targeted at bringing benefits whilst supporting implementation. For HRDD I see this as the case even if it brings challenges for companies in operational business. I therefore also disagree with looking at “HR sensitive” countries only one-dimensionally: after all, it is a company’s obligation to assess its risks AND chances to conduct business in a responsible manner

Q: Can you give us an insight on how you support your suppliers to create a CAP and to implement the planned actions?

A: Our sourcing teams are in very close contact with our direct producers and accompany them before, during and after an audit process. Some producers may not be “mature” enough for an audit so self-assessment and training is key. Training is also crucial if improvements cannot be reached, e.g. maybe because the root cause of issues have not been detected. Knowing about a producer’s challenges and “circumstances” allows our teams to build their CAPs individually, find solutions, share best practices from other producers etc. I’d also like to be transparent. This is much more challenging when talking about multiple tiers of a products supply chain. Direct contact in the end is the key to improving things.

Something as basic as 'honoring contracts' has been flouted by some global brands and retailers during the pandemic. It is essential to promote ethical business practices in the global apparel supply chain.

Q: What are your views on unilateral order cancellation by some European clothing brands during the COVID-19 pandemic?

A: This has put the lives of millions of workers in the RMG producing developing countries at great risk. Of course, while we do not appreciate such behaviour, I’d like to remind everyone that things should always be evaluated on facts and in the context of each specific case

Q: Can European brands cancel contracts citing 'force majeure' clause where in fact it is the suppliers who are adversely affected by the COVID-19 pandemic?

A: This is up to lawyers and judges to decide what is legal and what not. Of course, one can have an opinion of what is legitimate and what not.