

The Future of Supply Chain - Breaking down the German Due Diligence Act with Annette and Stephanie

Stephanie: [00:00:00] I have a wish for the future of the supply chain. I hope that the way how companies manage supply chains and how they manage their suppliers contributes to that vision of sustainability of all people living well within the boundaries of the planet.

Richard: Welcome to the Future of Supply Chain podcast from SAP. My name's Richard Howells. I'm a Vice President for Thought Leadership for SAP's ERP, Finance and Supply Chain Solutions. And I'm joined today by my co-host Sin. Sin, please introduce yourself.

Sin: Hello everyone. My name is Sin To and I'm a marketer, blogger, and podcaster on the topic of supply chain at SAP. Today we're joined by our two guests, Annette Ehrnsperger and Stephanie Raabe to discuss the new German Due Diligence act and its implication for companies. So welcome Annette, and welcome Stephanie. Thank you so much for joining us today. It is great to have you on this podcast series. If you could take a [00:01:00] moment to introduce yourself and give some insight into your roles on what you do?

Annette: Thank you. It's a pleasure being here. So my name is Annette Ehrnsperger. I've been with SAP since 2001, that's quite a while, but it's always stayed interesting. I'm with SAP's legal department. I'm on the field side of things at SAP. So we support sales, we negotiate and create contracts with customers and partners. Apart from that, I am mediator and I practice mediations with SAP colleagues. Stephanie, what about you?

Stephanie: Thank you for having me in this podcast. After working on sustainability for almost 20 years, I've taken on the position of SAP's human rights officer at the beginning of 2023. I make sure that SAP is compliant with the German supply chain.

Sin: Thank you so much for your introductions. So, and for those who don't know, a new supply chain sourcing obligations act known as I say it in Germany now, [00:02:00] Lieferkettensorgfaltspflichtengesetz, has been in

force in Germany since January the first of this year, 2023. So first maybe could you explain to our listeners what this new law is about?

Annette: Sure. The so-called Lieferkettensorgfaltspflichtengesetz in German. So it would roughly translate as an act on corporate due diligence obligations in supply chains, meaning value chains, basically. So it requires companies to conduct appropriate due diligence for human rights and certain environmental topics in their own operations and in their supply chains.

So for human rights, it's about, preventing child labor, preventing forced labor modern slavery, that's also a topic, assuring occupational safety, equality of workers, fair wages, and so forth. Environmental protection is [00:03:00] only touched with the ban on persistent organic pollutants and safe handling of waste because that has an impact on human rights indirectly.

Since January 1st, 2023, it applies to companies in Germany with at least 3,000 employees. And starting next year, it will also apply to smaller companies with at least a thousand employees. And, of course we are in Germany, a supervisory authority has been installed, it's the Federal Office for Economic Affairs and Export Control, the BAFA. It is still developing and is currently publishing one by one specific guidances on topics around this law. And of course it can pass fines.

Richard: That's quite a significant impact on companies moving forward, especially larger companies at the moment, and I believe smaller companies in the future. So what does it mean to companies within Germany? What do they have to do? And also what does it mean to companies that are supplying goods to [00:04:00] German companies?

Annette: Yeah. So, the law doesn't say you need to do this or you have to stop doing that. The law sets up due diligence obligations, which from a legal perspective are a bit of a gray area. So the law sets up formal requirements that are quite defined and then material requirements that are more in the due diligence area.

When we look at the formal requirements, it's about a company setting up and maintaining a risk management system, so that needs to be in place and running. And then we heard from Stephanie that she has assumed the role as human right officer at SAP. So yeah, the companies in the scope of application of the law need to designate and properly empower a responsible person.

Regular risk analysis have to be conducted for a company's own operations, but also for direct suppliers. They need to be conducted annually and [00:05:00] for indirect suppliers that the company doesn't have a contract with, there need to be ad hoc risk analysis in case the company gets what we call substantiated knowledge.

So that means a specific information that points at human rights violations in that indirect supplier's business. And on top of that, , of course, you need policy statements. In terms of material requirements on the non-formal side, you need to take preventive measures and if anything happens, of course, you need to remedy. what happened, you need to install a complaints procedure internally, externally, and you need to document and report.

So acting in a diligent manner means that a company needs to prioritize. Yeah, the company can and should allocate resources in a targeted, in a focused way, for example, touching most important or urgent issues first. That's why we have the risk analysis. It shows where [00:06:00] human rights and environmental risks are most relevant in a company's business and in the supply chain.

Richard: So there's like a two step process, you were saying that the one part is having the risk analysis and assessment upfront, but it's also having processes in place in case something does go wrong. Something is happening where you identify something in real time and you have to respond.

Annette: Exactly.

Richard: Did I get that right?

Annette: Yeah, that's about right. And having a complaints mechanism so that complaints can reach you in a manner that you can act upon them.

Richard: So it's really on the german company to do a lot of the work with their suppliers rather than their suppliers providing information to the, company itself.

Annette: I think it's both. The German company needs to stay in a kind of a dialogue with its suppliers to find out whether they fulfill the human rights requirements and if not, what they do against it. So the suppliers cannot be passive. They need to act upon [00:07:00] these rules as well. But the company in Germany doesn't become liable for their breaches. So the law doesn't go as far as imposing liability on the German company.

But they would get fined if shown that they were negligent in following up with something that they're aware of.

Yes.

Sin: But one question Annette, if I understand it correctly, so if they won't get fined, couldn't, or shouldn't companies have created more transparency along the value and supply chain on a voluntary basis? Or why is it so important to have this law installed right now?

Annette: Yeah, that's a good question. and there was indeed an attempt at having it only based on a voluntary set of rules that the companies should adhere to. So in 2016, the German government published a national action plan on business and human rights, to apply the underlying UN guiding principles. And it required companies to take voluntary measures and self commitments. And over the years, [00:08:00] 2018 till 2020, the success was evaluated. So, they followed up on whether companies would indeed take that voluntary step and implement measures, voluntary measures and self commitments. And ultimately results showed that only 13 to 17% of the companies actually did that, fulfilled these requirements, and they had a goal of getting at least 50 % of companies to adhere to the regulations and 13 to 17 clearly didn't meet that goal. Therefore, it was a political decision to enact this law.

Sin: A another question. So in your opinion, what do you think, why didn't so many companies, um, implemented this, the transparency along the value and supply chain on a voluntary basis, isn't it in their favor to do this instead of now having the law and then the law force them to do it.

Annette: That's a good question. , I think there are, there are really many perspectives to it and, many different [00:09:00] priorities that a company struggles with. So, human rights of course is a very central topic, but then there are many other topics that also need to be juggled and I fear it didn't get the priority it should have gotten.

Sin: So in terms of human rights in many countries, the same human rights standards do not apply as here in Germany. And for many it now sounds as if they have to implement the human rights standards abroad that also apply in Germany. Is this assumption correct or do most of the people understand it wrong?

Richard: Or is it more that companies will determine which suppliers they work with if they're not ready to comply to the human rights regulations?

Stephanie: Yeah. Let's answer one question after the other. I start with the basic assumption on that question, and I think we have to go back to what is meant by human rights. The idea of human rights is as simple as it is powerful. Every person around the world has the right to live a life of dignity and to be treated [00:10:00] equally.

And human rights are those rights that every person has simply because of being born. So they're not granted by any state. They're universal rights inherent to us regardless of nationality, sex, ethnic, origin, color, religion, language, or any other status. And these rights are codified in international law. For example, the International Bill of Human rights. And so the German law refers to internationally codified human rights. It's not specific German standards.

And so from my perspective, this new German law does not impose German standards and companies or foreign states, but merely insists on German companies respecting internationally proclaimed human rights as understood by the United Nations. So that was the first part of the question.

And then I think the second part of the question relates to choosing suppliers. Respecting human rights is difficult in many [00:11:00] countries around the world where they're not kind of protected by states in a proper way. But still the expectation is that German companies adhere to the principles behind these standards and rights.

Having said this, they're also expected to leverage their influence on their suppliers instead of leaving them alone. The idea is to work with suppliers to improve the situation of the suppliers because it's better to work on issues than exiting some business relationships and leaving people alone.

So for example, if you do not collaborate with a supplier where you potentially detect tight labor issues and you simply do not work with that supplier anymore. Children potentially will continue to work there just for another customer. Instead, you should use a leverage and try to improve the situation for the children [00:12:00] that have to work on the ground.

So, the idea is not to quit relationship with suppliers, but really improve the situation for people working for these companies.

Richard: That's a great way of defining it, thank you. One other question then, just to broaden the topic. I mean, we are, we're talking predominantly about human rights here with this regulation. But how can the new law contribute

more to sustainability as a whole? And I think you've touched right at the start Annette about it. You talked a little bit about waste and emissions as well.

Stephanie: Maybe I'll start and Annette can add to that, but for me that's a very personal view. Sustainability is all about human rights. One of my favorite definitions of sustainability refers to the idea of all people living well within the boundaries of the planet, and that implies that human rights are inherent to sustainable development that leaves no one behind.

That's also reflected in the UN sustainable development goals. They also seek to realize human rights and [00:13:00] put the principles of equality and non-discrimination at its heart. So, for example, the goals, number five and 10 are specifically dedicated to an equality and non-discrimination. And so, the new German law tries to translate human rights and the UN guiding principles on business and human rights principles into law, and it basically seeks to advance the respect for human rights by business. And with that, it's a contribution to sustainability.

Annette: Yeah. I think ultimately the contribution comes from us all, right. And the law is a motivator, if you will, on this path towards greater sustainability throughout all of our society. The companies need to join the effort. They need to collaborate with their suppliers, and ultimately it's us consumers who will also, have to accept that this is a major topic in our daily lives. Whether we buy something or throw something away, now it's all around us.

Richard: Absolutely.

Stephanie: What I've also heard in your question is [00:14:00] that sustainability is primarily about environmental sustainability. That's not necessarily the definition that we at s SAP have because for us. it has the three dimensions of social, economic, and environmental. And I think we recognize that environment and people cannot be considered on their own. It's a broader system where the social boundaries and planetary boundaries come together. And that's what we have to reflect in our thinking about human rights as well.

Richard: Yes. I think it needs to be embedded in everything that we do, in every business process that we run. And yes, as consumers, we're increasingly looking at what the company is doing that we're buying from, and the product that we're buying, whether that's sustainable, whether that's recyclable. So yes, it's everywhere and, and rightly so.

Sin: Yes, indeed. if we're now talking about companies and about the prototype we buy, I mean, in, in the backbone there always needs to be some kind of technology that we're using. And how can [00:15:00] a business system then help companies to comply with these new regulations and to avoid heavy fines . And what does SAP do and how do we support our customers, if one of you can answer this question?

Stephanie: Yeah, maybe I'll start. So, of course we at SAP respond to the new legal requirements, but we also offer solutions for social responsibility for our customers. And the solutions that SAP currently offers to our customers can help them. For example supply providing, up to date supplier risk scores within supplier selection activities in the spent management process so, that companies can easily select suppliers with lower risk profiles. Through our solutions, our customers can also incorporate internal and external data sources to provide comprehensive supplier risk profiles across all suppliers. And, yeah, with [00:16:00] that we help our customers identify, document and reduce risk in close collaboration with suppliers, which we also enable through our systems. To sum it up, our systems generally help to increase the transparency for our customer, suppliers, and address some of the due diligence obligations that are mentioned in the German Supply Chain Due Diligence Act.

Richard: So this German Supply Chain Act is one of many regulations either already existing and definitely coming in the future. So, let's take a crystal ball approach. What do you see coming next? What other areas do you see where regulations will come into play in the next year or two?

Annette: We are awaiting legislation on the European level. I mean, currently a lot of countries are enacting not comparable laws, but laws that touch on certain areas of human rights due diligence. So we have, modern laws against modern [00:17:00] slavery, for example, in the UK but also in Australia. We have certain comparable laws in France and in the Nordics, but it's like patchwork. Yeah. They are not coordinated. And for companies it's very difficult to keep track of them and to fulfill all of them if they are a global player.

So we are expecting something to happen on a European level. The European Union can act in two ways: they can either pass laws, European laws with a higher rank than local laws like we saw it with a GDPR, which is a regulation and is directly enforceable in the countries. Or they can aim for a directive, which is European law that needs to be translated into then binding local law. It would be incorporated into German national law in a second step. And we expect this to happen in the coming years, and then the German law would most

probably have to be updated to [00:18:00] reflect additional or changed European legal requirements.

Richard: Yes. I think that's standardization across different country boundaries. As you say, it's very difficult for companies to comply to seven different laws that are slightly different, and that's happening with the plastics tax at the moment, for example, where they have it in the UK, but they've also had it in some other countries in Europe but it's slightly different. And having a standard approach to manufacturing in that case, would be much of a benefit from a compliance standpoint.

Stephanie: And that's what the hope is for a, European regulation. There's always this term of the level playing field that is supposed to be provided by a European legislation. And there are some countries that are ahead of this development, like Germany, but also the Netherlands now have proposed a law that should help drive the European legislation. The European legislation looks like that it's going to be a little bit more ambitious than the [00:19:00] German law, so it includes more references to human rights standards and international environmental obligations. One example is that companies will be obliged to design a climate action plan with targets that make their business strategy and business model compatible with the 1.5 degree target.

So that's very new. That's something we have not seen in the German law. And it also actually goes beyond due diligence because it sets concrete targets. Do we also expect the European legislation to not only focus on own operations and supply chain, but most probably it refers to value chain, which would include some downstream due diligence.

And in this context, this means that companies would also have to do human rights and environmental due diligence on companies, business partners activities, for example, sales, transport, storage, or [00:20:00] disposal, which I think is a challenge in itself.

Richard: And that there any comments around that? Any additions that you would add?

Annette: No, I think, it's evolution, right? All around us, even the law evolves. Are a company that needs to, of course, keep track of these developments and we'll do our best, we'll act diligently, and striving to adhere to them.

Stephanie: I just wanted to add that to prepare for this upcoming legislation, it's really good to go back to the original documents and these documents are the

UN guiding principles on business and human rights. They always had this idea of due diligence in the value chain related to all business partners, and they're also the OECD guidelines who try to translate that into more concrete actions. So I can recommend those two documents to everyone who wants to prepare for this legislation and look at it word by word.

Richard: I'm actually sitting in North America at the moment. Do you see North America following suit or keeping up with Europe in the [00:21:00] race for this compliance?

Stephanie: So when it comes to the US I think they do follow somewhat, the European example, but on specific topics. So for example, there is the Uyghur Force Labor Prevention Act, which focuses on a specific region and to prevent goods and services coming from this area into the US. They're more focused on specific topics, but in general, I think that they recognize the importance of human rights due diligence in

. So I don't think this is new, not even in the US but the Americans tend to pick specific topics that they then work on.

Annette: I think in the US there is a big challenge around the disparities between different states. I mean, in Europe you've got national law, and then you've got the EU kind of overarching it. But in the US what I've observed is that different states can have very, or can take very different [00:22:00] approaches at this topic.

Richard: I can confirm that state by state have completely different opinions and legal requirements in general. So we're about almost half an hour into the podcast, which means we're coming to an end and, it's always a good sign when half an hour goes really quickly, that we've had a great conversation. So thank you for that. But I do have one final question that I ask all of our participants, and it's around the future of supply. So maybe from a sustainability perspective, what do you see the future of supply chain.

Stephanie: I have a wish for the future of the supply chain. I hope that the way how companies manage supply chains and how they manage their suppliers contributes to that vision of sustainability of all people living well within the boundaries of the planet.

Richard: I think that's a perfect answer to wrap up this conversation. Annette, did you want to add, add anything? Did you want to give it a go as well? Or we can just go with

Annette: Supply [00:23:00] chains are extremely important. We saw that during the pandemic when supply chains suddenly became very fragile or even broke down altogether. And it's in our own local, regional, but also global interest to take supply chains and their importance into account to preserve the wellbeing of all people on this planet and of the planet itself.

Richard: Well, I'd like to thank you both Annette and Stephanie for a great conversation. It was really inspirational actually to listen to the way that we at SAP are taking sustainability seriously and how we're helping support companies to do that as well through these regulations. So thank you both for a great conversation.

Annette: Thank you for having us.

Richard: And I'd like to thank everyone for listening. Please mark us as a favorite and you can get regular updates and information about future episodes. So until next time from Sin and I thank you for discussing the future of Supply Chain.

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