

Der Modern Slavery Act und seine Anwendung auf deutsche Unternehmen

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Überblick

- Formen moderner Sklaverei
- Aktivitäten internationaler Organisationen
- UK Modern Slavery Act
- Anwendung auf deutsche Unternehmen
- Prävention und Schutz

Formen moderner Sklaverei

- Sklaverei, Leibeigenschaft
- Zwangsarbeit
- Kinderarbeit
- Menschenhandel
- Ausbeutung, insb. sexueller Art (v.a. Zwangsprostitution)





Aktivitäten internationaler Organisationen

- ILO: Konventionen/Erklärungen zu Zwangs- und Kinderarbeit
- UNO: Guiding Principles on Business and Human Rights (2011)
- OECD: Leitsätze für multinationale Unternehmen (2011)
- CSR-Richtlinie 2014/95/EU – bis Dez. 2016 umzusetzen!
- G7: Fonds Vision Zero (2015)
- Frankreich: Berichtspflicht zu Zwangs- und Kinderarbeit
- California: Supply Chain Transparency Act (2010)
- Bayern: Gesetz zu Grabsteinen geplant (2015)
- Kampagnen und gepl. Gesetz gegen Zwangsprostitution
- (UK) Modern Slavery Act 2015

Modern Slavery Act 2015

- Engl. Gesetz gegen Zwangs-/Kinderarbeit, Menschenhandel
- Transparenz in der Lieferkette
- Pflicht zur jährlichen Veröffentlichung der Maßnahmen
- Auch anwendbar auf dt. Unternehmen mit „Geschäft in UK“
- Dilemma: Prozessrisiken in USA durch Transparenz

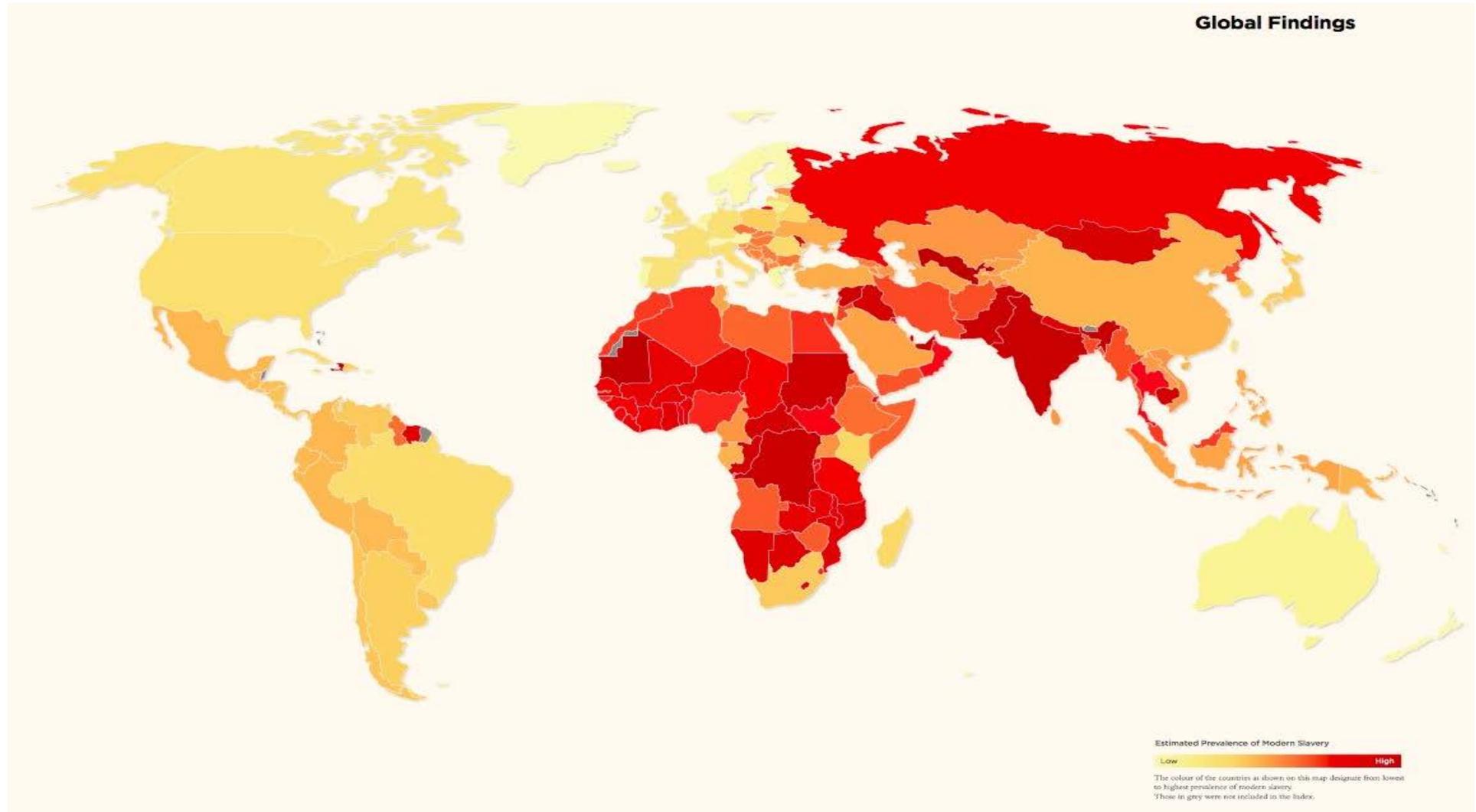


Madeleine Albright recently described human trafficking as “*the fastest growing criminal enterprise in the world.*”

Industries exposed to risk of slavery, forced labour or trafficking in the supply chain

1. Agribusiness, notably cocoa and cotton.
2. Chemicals, notably ethanol and palm oil.
3. Apparel, in particular sportswear.
4. Mining and minerals.
5. Electronics, particularly communications technology.
6. Fisheries.
7. Construction.
8. Food and beverage.

Global Prevalence of Slavery



Global Slavery Index 2015

UK Modern Slavery Act 2015

- Targets modern slavery – slavery, servitude, forced or compulsory labour.
- Creates and consolidates existing slavery and human trafficking offences.
- Most importantly for businesses, the Act establishes a new transparency requirement for businesses in connection with their efforts to ensure that they are not benefitting from modern slavery.
- Notably, the Act does not introduce an offence for companies of failing to prevent modern slavery or selling products with modern slavery in the supply chain.

Modern Slavery Act – required statement

Section 54:

- (1) A commercial organisation ... must prepare a slavery and human trafficking statement for each financial year... .
- (4) A slavery and human trafficking statement for a financial year is—
 - (a) a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place—
 - (i) in any of its supply chains, and
 - (ii) in any part of its own business,
 - (b) a statement that the organisation has taken no such steps.

Modern Slavery Act – who must make a slavery and human trafficking statement?

- Applies to corporations that
 - supply goods and services
 - carry on business, or a part of a business, in the UK
 - note that this is the same standard as used in the Bribery Act section 7 offence of corporate failure to prevent bribery
 - have annual turnover of £36m or more.
- Government guidance states that where a more than one group company falls under the obligation to produce a statement, the parent may produce one statement covering all such group companies, provided that the statement “*fully covers the steps that each of [those] organisations have taken in the relevant financial year.*”

Modern Slavery Act – what must a slavery and human trafficking statement contain?

- Section 54 prescribes no specific requirements for the statement.
- The Government’s guidance talks of businesses “capturing all the actions” they have taken.
- Section 54(5) provides that statement *may include* info on —
 - the organisation's structure, its business and its supply chains;
 - its policies in relation to slavery and human trafficking;
 - its relevant due diligence processes;
 - the parts of its business and supply chains at related risk, and the steps it has taken to assess and manage that risk;
 - its effectiveness in ensuring slavery is not taking place in its business or supply chains, against performance indicators it considers appropriate;
 - training about slavery and human trafficking available to its staff.

Modern Slavery Act 2015: Formalities re slavery and human trafficking statements

Statement must be:

- Approved by the Board.
 - Note Board's potential reputational and legal obligations.
- Signed by a director.
- Published on the organisation's website, with a link to the statement in "*prominent place on that website's homepage*".
- If a business fails to produce a slavery and human trafficking statement for a particular financial year the government may seek an injunction through the courts. No criminal liability or other penalty for failure.

U.S. Litigation Risk

- Many multi-national companies are being sued on transnational supply chain theories.
- Some examples from 2015: Costco, CP, Hershey, Mars, Iams, Procter&Gamble, Mitsubishi, Nissan, Mitsui.
- Many more industries are being targeted:
 - Cocoa Industry (Hershey, Mars)
 - Beverage Industry (e.g., Coca-Cola)
 - Coffee Industry (e.g., Starbucks)
 - GMO Industry (e.g., Monsanto, Syngenta)
 - Palm Oil Industry (e.g., Wilmar)
 - Retail Industry (e.g., Wal-Mart, Mary Kay)
 - Technology Industry (e.g., Apple)
 - Frozen Seafood (e.g., Costco)

Chocolate Case Study

- “The defendants are *well aware* of the child slavery problem in the Ivory Coast. They *acquired this knowledge firsthand* through their numerous visits to Ivorian farms.
- “[T]he defendants *knew of the child slave labor problems* in the Ivorian cocoa sector due to the many reports issued by domestic and international organizations.”
- “The defendants’ *control* over the Ivory Coast cocoa market further supports the allegation that the defendants acted with the purpose to facilitate slavery.”
- “According to the complaint, the defendants had enough control over the Ivorian cocoa market that they *could have stopped or limited* the use of child slave labor by their suppliers.”

Supply Chain Transparency and Litigation

Risk: Think Like A Plaintiff Lawyer

COMPARE The Transparency in Supply Chains Act:

Companies must disclose “efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale.”



WITH Plaintiffs’ First Amended Complaint in *Chocolate Case Study*:

“[Defendant’s] Standards of Business Conduct states that [Defendant] ‘is against all forms of exploitation of children. [Defendant] does not provide employment to children before they have reached the age to have completed their compulsory education ... and expects its suppliers to apply the same standards. . . . [Defendant] also requires all of its subcontractors and Outsourcing Contractors to adhere to [Defendant’s] Corporate Business Principles, and chooses its Suppliers based on, inter alia, their ‘minimum corporate social responsibility standards.’”

Supply Chain Transparency and Litigation Risk: Think Like A Plaintiff Lawyer

COMPARE Modern Slavery Act:
Companies must disclose the
“*steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place.*”



WITH Plaintiffs’ First Amended
Complaint in *Chocolate Case Study*:

“*[Defendant’s] Commitment to Africa Brochure: . . . states that the ‘[s]upport provided to farmers ranges from technical assistance on income generation to new strategies to deal with crop infestation, to specific interventions designed to address issues of child labor.’ ‘Specific programs directed at farmers in West Africa include field schools to help farmers with supply chain issues, as well as a grassroots ‘training of trainers’ program to help eliminate the worst forms of child labor.’*”

Supply Chain Transparency and Litigation Risk: Think Like A Plaintiff

“Defendants, because of their economic leverage in the region and exclusive supplier/buyer agreements each had the ability to control and/or limit the use of forced child labor by the supplier farms and/or farmer cooperatives from which they purchased their cocoa beans, *and indeed maintained specific policies against the use of such forced labor practices.*”

Plaintiffs’ First Amended Complaint in *Chocolate Case Study*

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Hershey Litigation



Demand for inspection pursuant to 8 *Del. C.* §220 because
“there are substantial grounds to believe that the Company’s Board of Directors has caused or permitted the Company to support the use of unlawful child labor, in fact integrating this illegal conduct into its business model.”

- Child labor/trafficking laws in Ghana and Côte d’Ivoire.
- Includes allegations of violations of the US Trafficking Victims Protection Act, and the California Transparency Supply Chain Act of 2010.

Spectrum of likely responses to increasing transparency requirements



Planning re transparency requirements

1. Develop and publish a disclosure statement.
2. Revise/create relevant policies (Supplier Code of Ethics).
3. Certification, plus verification and auditing as necessary.
4. Consider which documents are made public (and which may be exposed to risk of disclosure).
5. Make suitable arrangements re training/internal accountability
6. Direct all inquiries re supply chains to legal department; ensure consistent/thoughtful responses.
7. Consider ability and strategy for managing up the supply chain.
8. Integrate legal, media and NGO engagement strategies.
9. Ensure ability to comply in full with public-facing statements.
10. Monitor legal developments.
11. Track relevant press reporting.
12. Industry and regional benchmarking.

Auditing Practices

- ***Planning, scoping and targeting*** – proportionality/risk assessment.
- ***Auditor selection*** – ensure auditors are suitably qualified and measured, and that they know what is required and, just as importantly, what is not required by the applicable home state and host state laws.
- ***Response*** – if an auditor (or indeed any one else) alerts you to unlawful activity, do not ignore it.
- ***Assertion of control*** – It can be dangerous to claim control over suppliers and/or to make assurances about their practices. Note examples from *Hershey*.

Managing the competing risks

- Be aware of the risks of “over-compliance”.
- Risk-assessment is fundamental to a proportionate compliance regime.
- Quickly escalate and respond to red-flags.
- Comply with laws re transparency.
- Be aware of risks for employees as well as the company.
- Consider how others will use your disclosures.
 - NGOs.
 - Litigants (victims of violations, shareholders, plaintiff firms).
 - Prosecutors.
- Consider benchmarking.
- Do not make assertions that you do not know are true or that you cannot guarantee.

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