

## Conference “Responsibility towards society and the environment: businesses and their due diligence obligations”

### Minutes of the Workshops

#### Workshop 1: Which role can voluntary instruments and initiatives play in fulfilling due diligence obligations?

19 September 2019, 13:00 – 14:30

**Moderation:** Dr. Nele Kampffmeyer, Oeko-Institut e.V.

The workshop started with a keynote lecture by Mr Jan Kosmol (UBA): "The role of voluntary instruments in the implementation of due diligence in the raw materials sector". The presentation addressed, *inter alia*, multi-level governance and the diversity of initiatives and certificates in terms of coverage and requirements.

Three central questions were first discussed in small groups and then jointly by all participants of the workshop.

**Question 1:** *How can the tension between high market coverage with low levels of ambition and the risk of remaining in a niche when requirements are too strict be addressed?*

#### Results from the small group and general discussion:

The members of small group 1 were of the opinion that minimum requirements should not be voluntary, but should be regulated by law. Furthermore, higher standards could make an initiative even more attractive. For example, experience in the Partnership for Sustainable Textiles has shown that lower standards do not lead to long-term membership. One member of the small group has even explicitly left the Partnership because the standards are too low. Long-term membership in such initiatives, on the other hand, often leads to a desire for increased requirements.

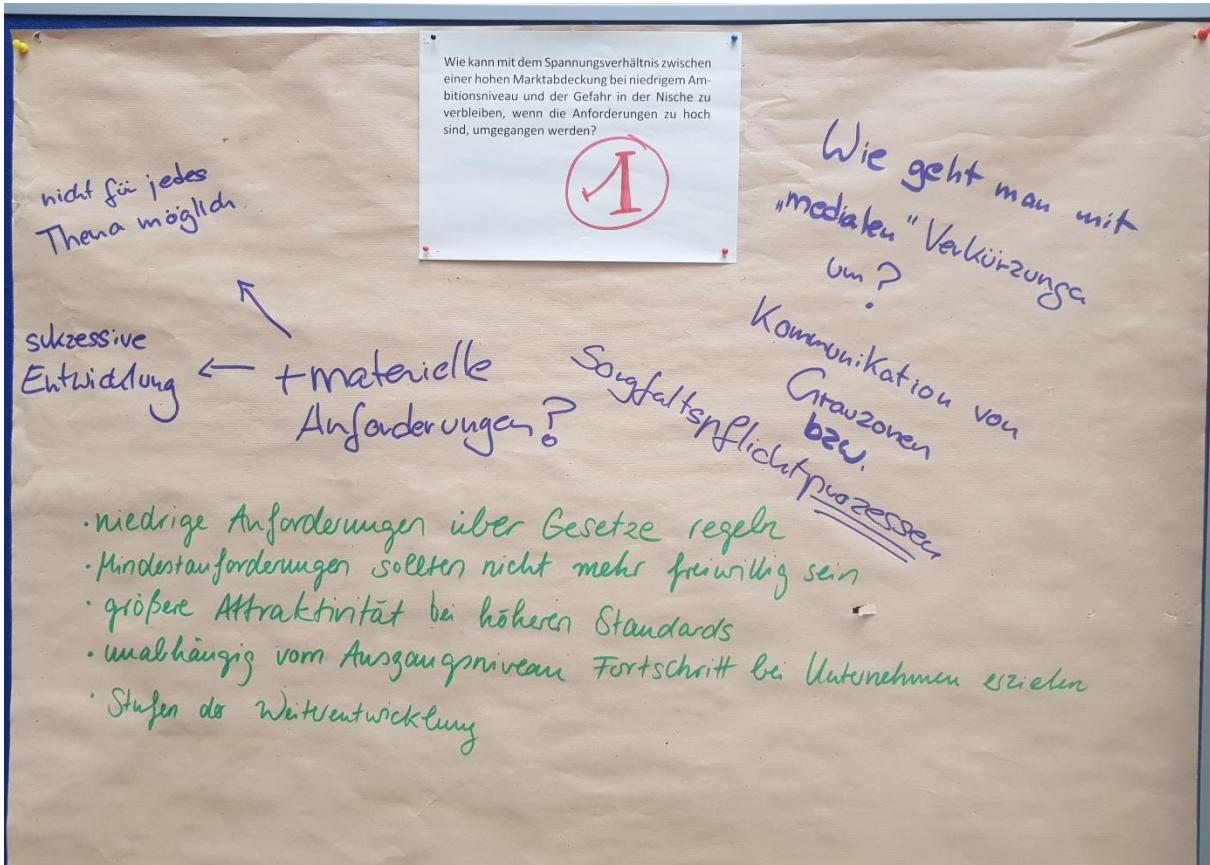
However, as far as attracting new members, different membership levels should be offered. This does not mean that there should be no entry threshold at all, but a low one from which further progress can be achieved.

In the ensuing discussion, it was stated that the standards' strength was closely related to public attention, as this puts pressure on the certifiers. However, it is problematic that the purchasing behaviour of consumers is not changing at the same rate – in particular the willingness to actually pay higher prices for certified goods.

Further discussion points included firstly the difficulty in dealing in the media with the grey areas that always exist in practice (compliance with certain standards can only be ensured to the best degree possible, but not guaranteed), since there is usually a tendency to oversimplify issues, thus creating a shortened and sometimes contentious presentation of the topic at hand. This is particularly relevant for corporate due diligence obligations, since the concept of procedural obligations (as opposed to material requirements) is already rather difficult to convey.

The necessity of supplementing procedural obligations with material requirements was also discussed. In particular, the question of whether such obligations are possible for all topics was raised. In any case, these would have to be developed successively within an initiative or a certification.

**Figure 1: Brainstorming on Question 1**



**Question 2: How can a common understanding of relevant risks and appropriate measures between different stakeholders be developed?**

The effects and outlook for success of additional smaller industry initiative compared to the fusion of existing initiatives was also discussed here.

#### **Results from the small group and general discussion:**

The large number of different complaint mechanisms was cited as an example of the negative consequences of fragmentation by a large number of initiatives or even measures by individual companies. These would mean that a company in the middle of a complex supply chain would have to keep countless hotline numbers available and publicise them not only within its own company but also to its suppliers. This leads to confusion rather than effective access for those concerned. In addition, it is de facto impossible to implement in practice. For this reason, industry-specific or even cross-industry approaches would be preferable.

A further proposal was to choose a regional instead of a sector-specific approach. In this context, reference was made to the "jurisdictional approach" in which buyers of different agricultural commodities join forces, as the issues in the agricultural sector differ more by region than by agricultural commodity. A similar principle could possibly also be applied in other industries, since the suppliers of individual sectors are usually also regionally concentrated. In this case, large corporations should play a major role as major end customers.

The discussion focused on the fact that a regional approach of this kind would in particular require the support of local politicians and administrations. However, it often is precisely the failure of local governance that leads to the need for voluntary corporate initiatives. Because of this constellation, more support from politicians and, above all, development cooperation actors would thus be necessary and desirable.

With regard to the common definition of risks and measures, it was stressed that a consensus on sectoral risks has to be found, which could then also serve as a basis for initiatives in other countries. A good example of such a consensus is the OECD's Sectoral Guidelines.

**Figure 2: Brainstorming on Question 2 (part 1)**

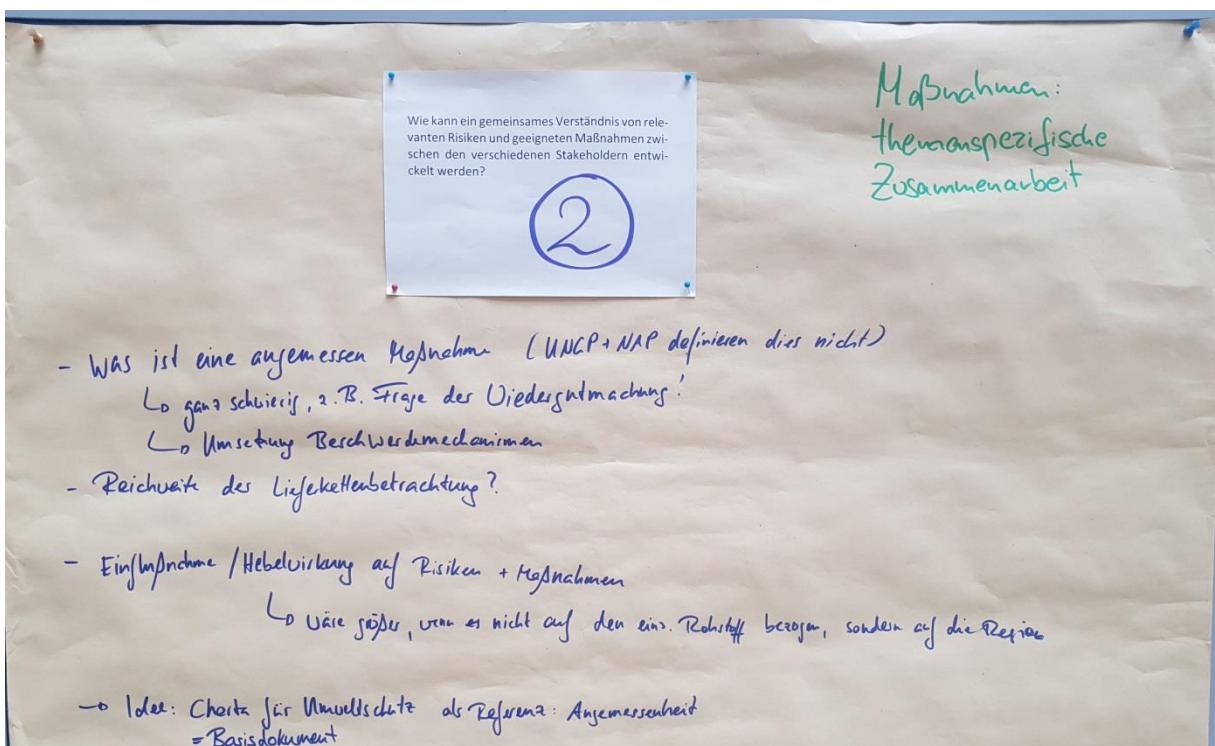
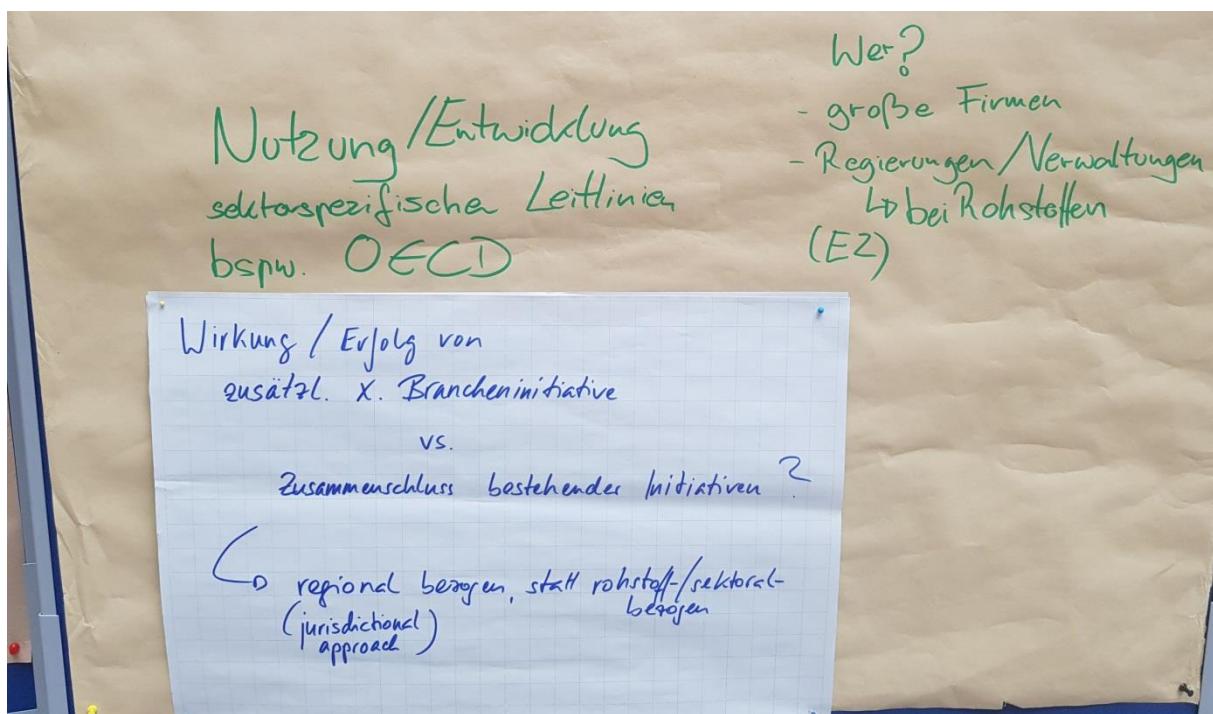


Figure 3: Brainstorming on Question 2 (part 2)



**Question 3: How must monitoring mechanisms and reporting be designed to make industry initiatives and certification credible?**

**Results and discussion:**

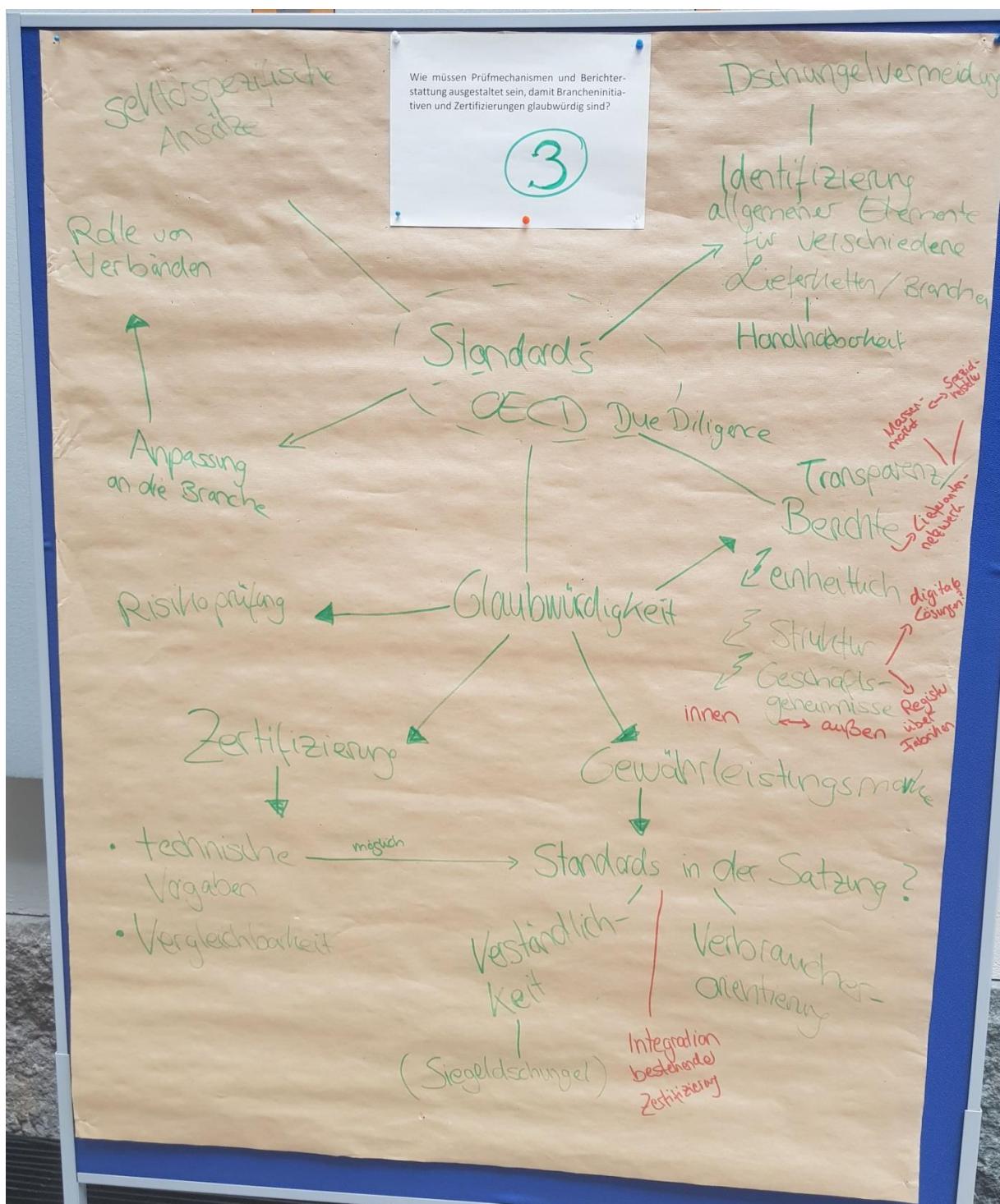
The group first discussed which standards should be used at all. The standards should not be too general, but rather adapted to the respective industry. Furthermore, it is important to develop uniform standards for reporting in order to increase the comparability of different initiatives and certifications and to facilitate mutual recognition. In this context, reference was made once again to the "Green Button", which bundles existing certificates.

Finally, the problem of disclosure of supply chains to promote transparency versus the protection of trade secrets was raised. Particularly in technology and chemical industries, companies would find it difficult to make their suppliers publicly transparent. In the textile industry, however, this is different, according to one objection. In recent years there has been a trend towards more and more disclosure. Major brands, such as Adidas, are now publishing lists of all their suppliers.

Overall, it is clear that the design of the auditing processes and publication formats is of great importance for meeting the requirements of transparency and credibility as well as those of secrecy interests related to competition. In this context, the question of the possibilities of digital solutions was also discussed. Politicians and policy advisors should develop practical solutions in this area.

Finally, the question was raised as to the extent to which certification marks have so far proven useful. It was emphasised once again that interest in the Green Button is great in the Partnership for Sustainable Textiles, but that no empirical values are available yet. It constitutes uncharted territory, where goodwill can be expected but the future development remains unclear.

Figure 4: Brainstorming on Question 3



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