

Overview of the ESG Legal Landscape

2022

Agenda

- 01** Introduction
- 02** ESG and License to Operate
- 03** ESG Reporting
- 04** Mandatory Environmental and Human Rights Due Diligence
- 05** Key Take Aways
- 06** Green House Gas Accounting
- 07** Questions & Answers

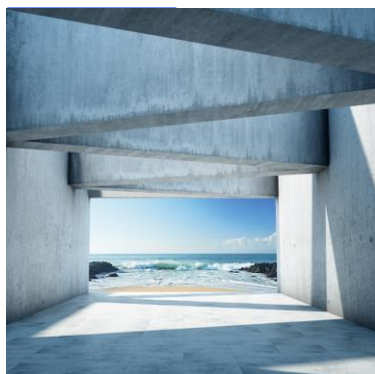
01

INTRODUCTION

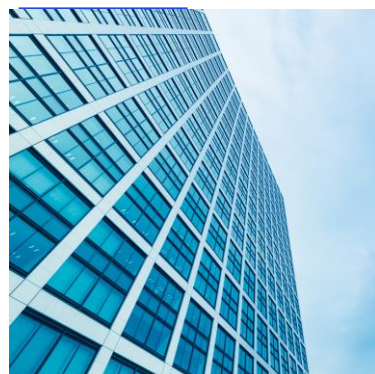


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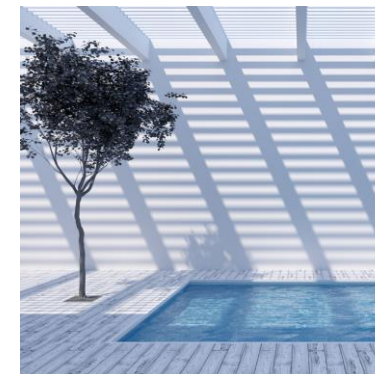
**Tax Law & Tax
Controversy**



**Customs & Global
Trade**



**Corporate &
Commercial Law**



**ESG
Environmental Social
Governance**

Gitte Damgaard Sloth



Background

Gitte is an off counsel in KPMG Law Advokatfirma with the responsibility for the Environmental Social Governance (ESG) services. Prior to joining KPMG, Gitte practiced as an ESG consultant advising both SMEs and large companies from various sectors. Prior to that, Gitte was heading several legal units in the fashion company, Bestseller A/S, including Legal, Compliance and most recently the Legal Sustainability team. Before joining Bestseller, Gitte practiced with the law firm Kromann Reumert.

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Function and specialisation

Environmental Social Governance (ESG)

Education

Master in Legal CSR and Responsible Management.
Master of Laws, LL.M

Professional experience

Gitte is specialized in the legal framework within ESG and sustainability while transforming legal requirements, and guidelines into the ESG and sustainability work in business units. More specifically, the legal framework covers EU, national and international requirements and guidelines, such as UN Treaties and conventions, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the UN Sustainable Development Goals, and various EU, national and international ESG reporting and due diligence legislation.

Gitte is experienced in identifying ESG gaps, develop policies and Code of Conducts just as she is experienced in ESG screening. Gitte helps companies exercising and implementing human rights, environmental and climate due diligence, and Gitte has extensive knowledge of responsible sourcing and supply chain management. Moreover, Gitte worked on several projects assisting companies in sustainable transition and sustainable business models. Gitte assists in developing ESG reports and in general, she helps navigate the legal landscape of marketing to avoid greenwashing.

02

ESG AND LICENSE TO OPERATE

What are we facing?

From Sustainability to ESG (Environmental Social Governance)



2010 (app.): The term ESG covers environment, climate, social, human rights, employees, anti-corruption, ethics, company governance structures, tax policy, responsible leadership.

Terminology invented by investors, banks and more data driven.

The new language BUT sustainability is the important part of it.

1970'ies: Covers primarily pro bono and philanthropy and in the 1990'ies: Primarily social aspects and the environment.

2000: The term 'Sustainability' covers social, environment, climate, human rights, employees, business ethics and anti-corruption

Actually from 1987 where the UN Bruntland Report on sustainable development defined as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.

E

ENVIRONMENT

- Environmental impact
- Climate
- Protection and restoration of biodiversity
- Protection and restoration of land and sea

S

SOCIAL

- Human rights
- Labour rights
- Inclusion, equity, diversity
- Employees
- Impact on Society

G

GOVERNANCE

- Responsible management
- Tax policy
- The work of Board of Directors and executives
- Gender composition
- Handling of ethical and anti-corruption issues

European Green Deal 2019:

EU to become the first climate neutral continent by 2050

- Redirect capital to sustainable activities
- Need for transparency
- Fair for all
- Push into a sustainable world
- Basis of regulation



CSRD

Corporate
Sustainability
Reporting
Directive.

EU Green Deal

CSDD

Corporate
Sustainability
Due Diligence
Directive

EU Taxonomy

Standards for
sustainable
activities

...and many
more

'TUSAMI' OF ESG REGULATION is coming up and many of them will become GAME CHANGERS

All regulation have in common that it

- will force companies to work actively with all parameters of ESG
- will force companies to be transparent
- will need a huge amount of data
- will need committed resources
- will need a focus on sustainable business models
- will be ground-breaking and game changers

Keep or achieve your 'license to operate'.

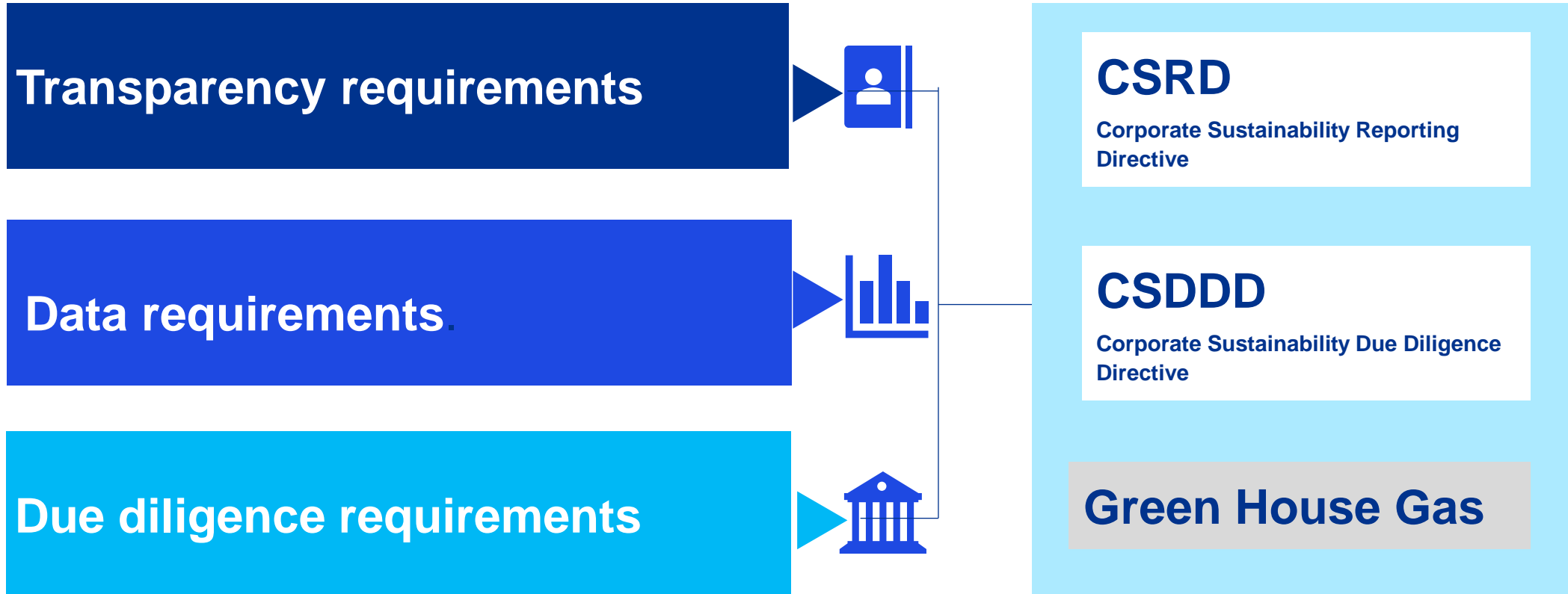
Compliance will be essential to do business and survive in the future.

'License to
operate'

If you miss the target,
you loose your 'license
to operate'.



Examples of ground-breaking and cross-cutting ESG regulation and the focus of today.



03

ESG REPORTING

**The Corporate Sustainability
Reporting Directive
CSRD**

What to prepare for?

Corporate Sustainability Reporting Directive (CSRD)

In short:

- Will replace the existing Non-financial Reporting Directive (NFRD) (For DK companies known as §99A).
- Mandatory public reporting, based on detailed data, for larger companies for instance about:
 - Co2 emissions, pollution, water usage, waste water, biodiversity, working conditions and human rights in supply chains, equity and anti-corruption
- Mandatory impact assessment
- KPI's and how to reach the goals



NFRD will become CSRD

Non-financial Reporting Directive (NFRD)



Large companies

Cross cutting:

- Business model
- Material risks
- Due diligence processes
- KPI's

Policies, actions, results and expectations for the future on specific sustainability areas:

- Climate and environment
- Social and employees
- Human rights
- Anti-corruption and bribery

Corporate Sustainability Reporting Directive (CSRD)



Extended amount of large companies

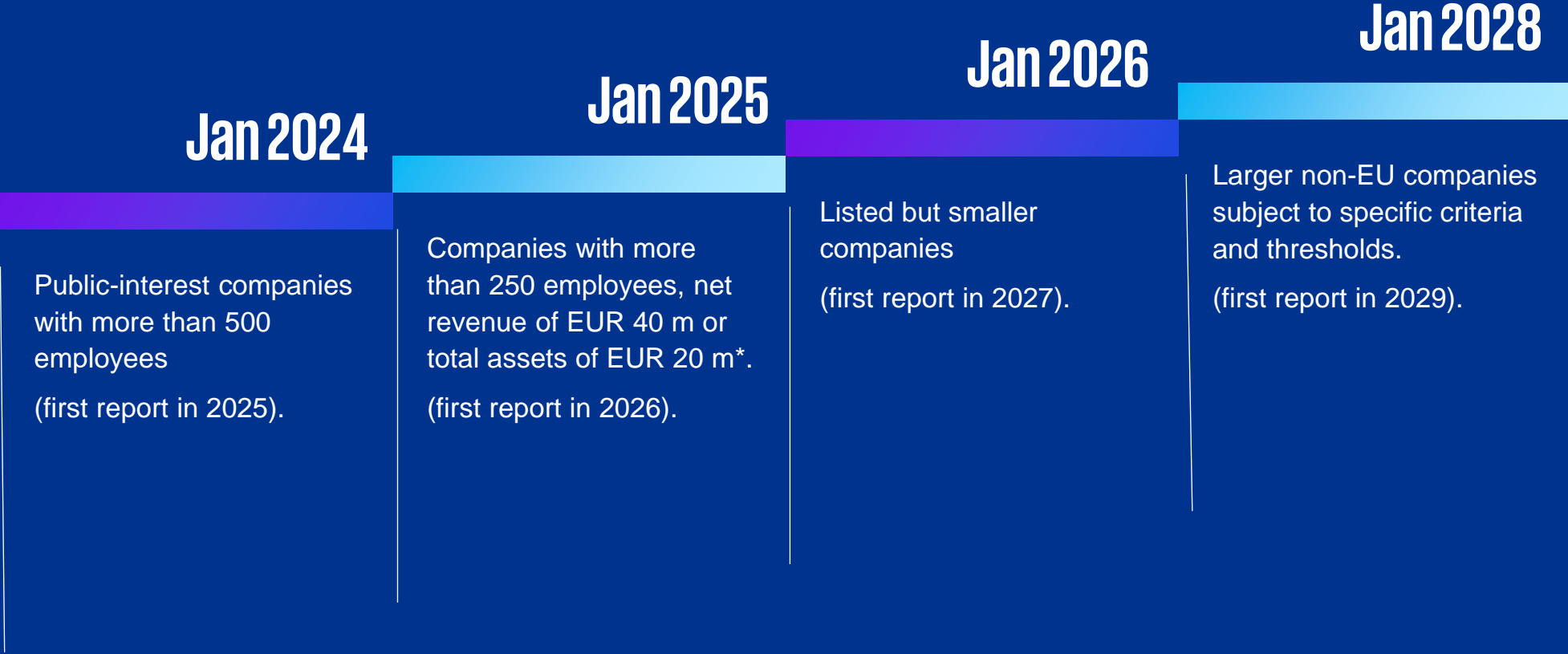
- Mandatory assurance
- Details and data according to extensive standards
- reporting
- in digital format
- Public available
- Double materiality assessment

Information about:

- General aspects
- Environmental area
- Social area
- Governance area

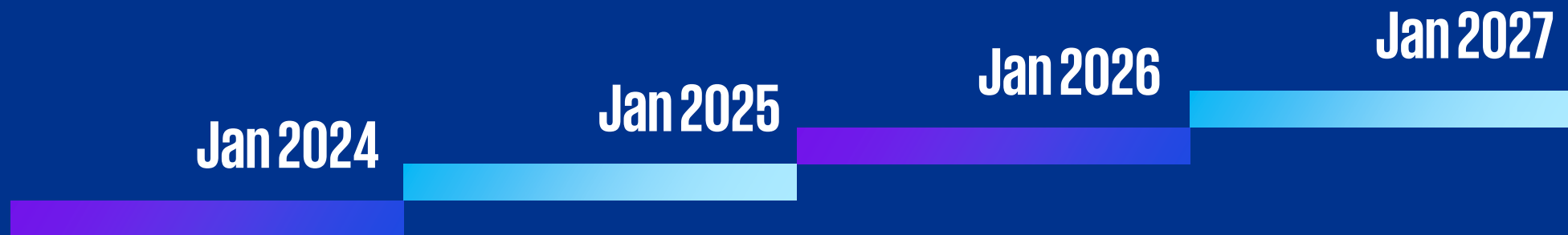
Concerns the whole value chain.

Companies subject to CSRD and implementation timeline



*Thresholds apply: Two of the following three criteria (including EU and non-EU subsidiaries): 250 employees, net revenue of EUR 40 m or total assets of EUR 20 m.

Companies indirectly subject to CSRD – the cascading effect!

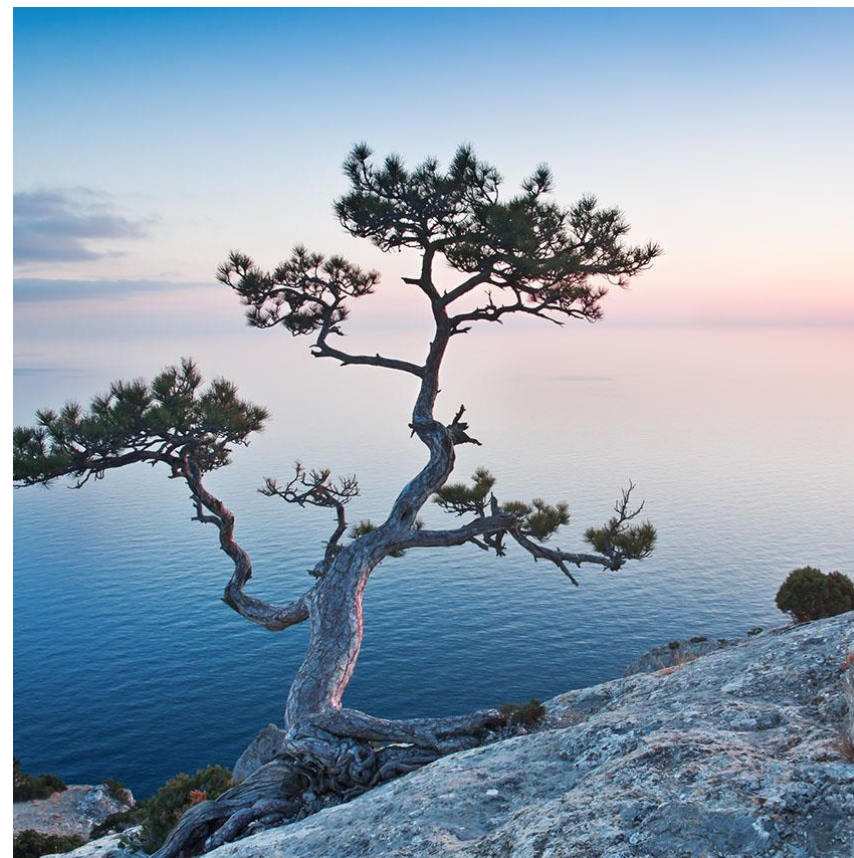


Indirectly small and medium size companies (SME's) and non-EU companies, primarily in global value chains, doing business with companies subject to CSRD and in sectors with general serious risks due to for example:

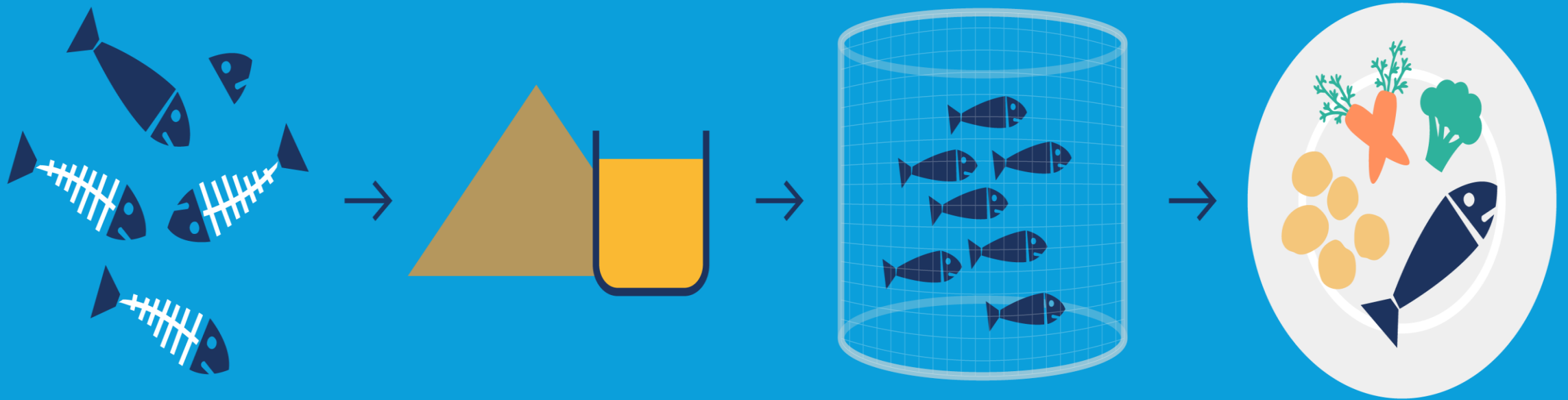
- Demands from larger business partners
- Competitive benefits
- Demands from investors – access to capital.
- Demands from parent undertakings

What are the reporting requirements? European Sustainability Reporting Standards (ESRS)

- Very detailed reporting requirements are outlined in the European Sustainability Reporting Standards (ESRS).
- Drafts are now available and submitted to the EU Commission - probably few things will change.
- Final standards will be published in 2023.
- Sector specific standards (app. 40) are on their way.
- Introduce the concept of double materiality (multi-stakeholder approach)
- Expand reporting to the entire value chain



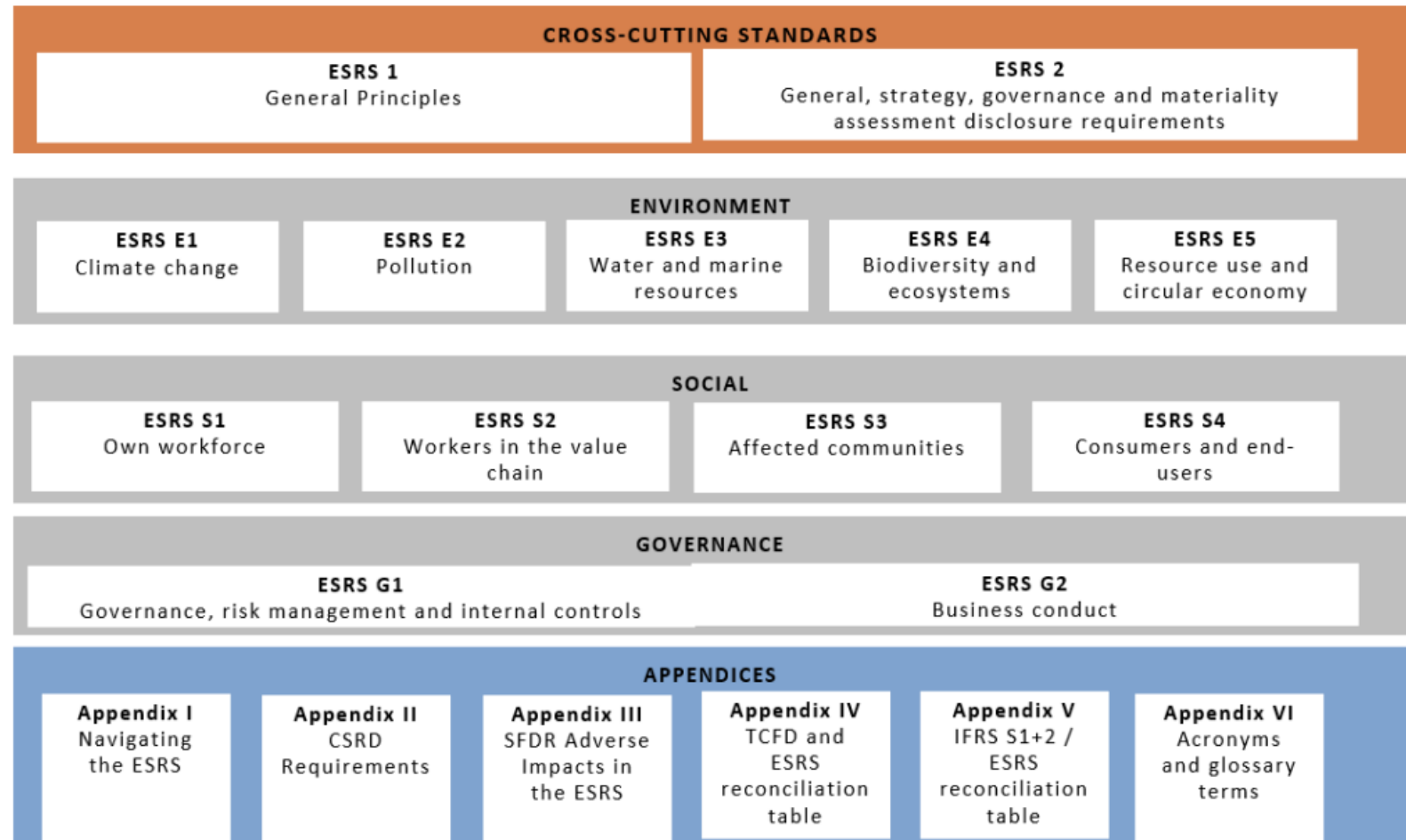
Fishmeal and fish oil value chain



Overview of Exposure Draft ESRS

For each layer and topic, reporting is required on:

- Strategy, governance, materiality assessment
- Policies, targets and action plan
- Performance and KPI's



Source: RJ/EFRAO Outreach event, Sustainability Reporting (ESRS ED). 15 June 2022 Amsterdam

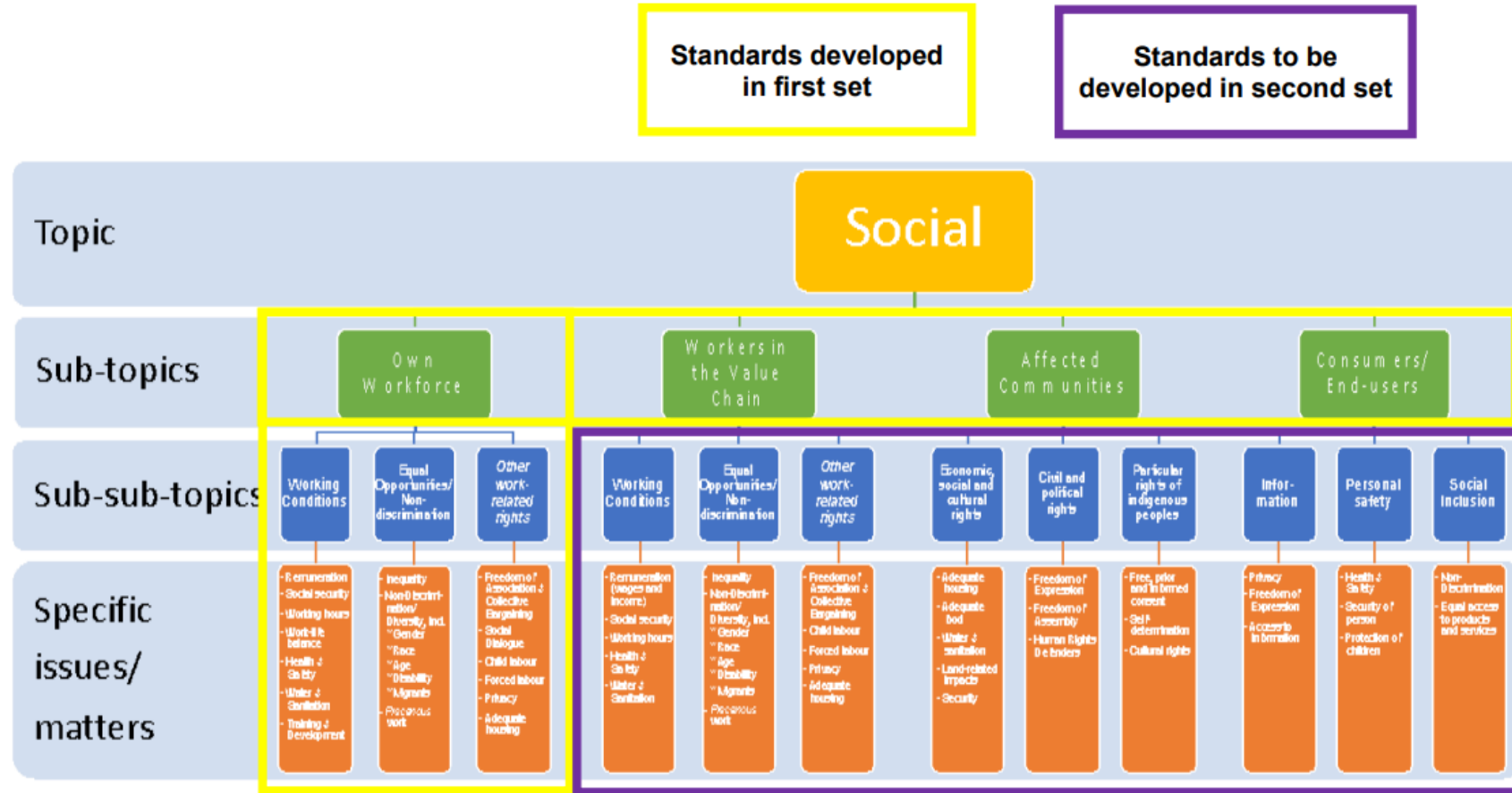
ESRS S2 Workers in the value chain

Basis for conclusions

May 2022



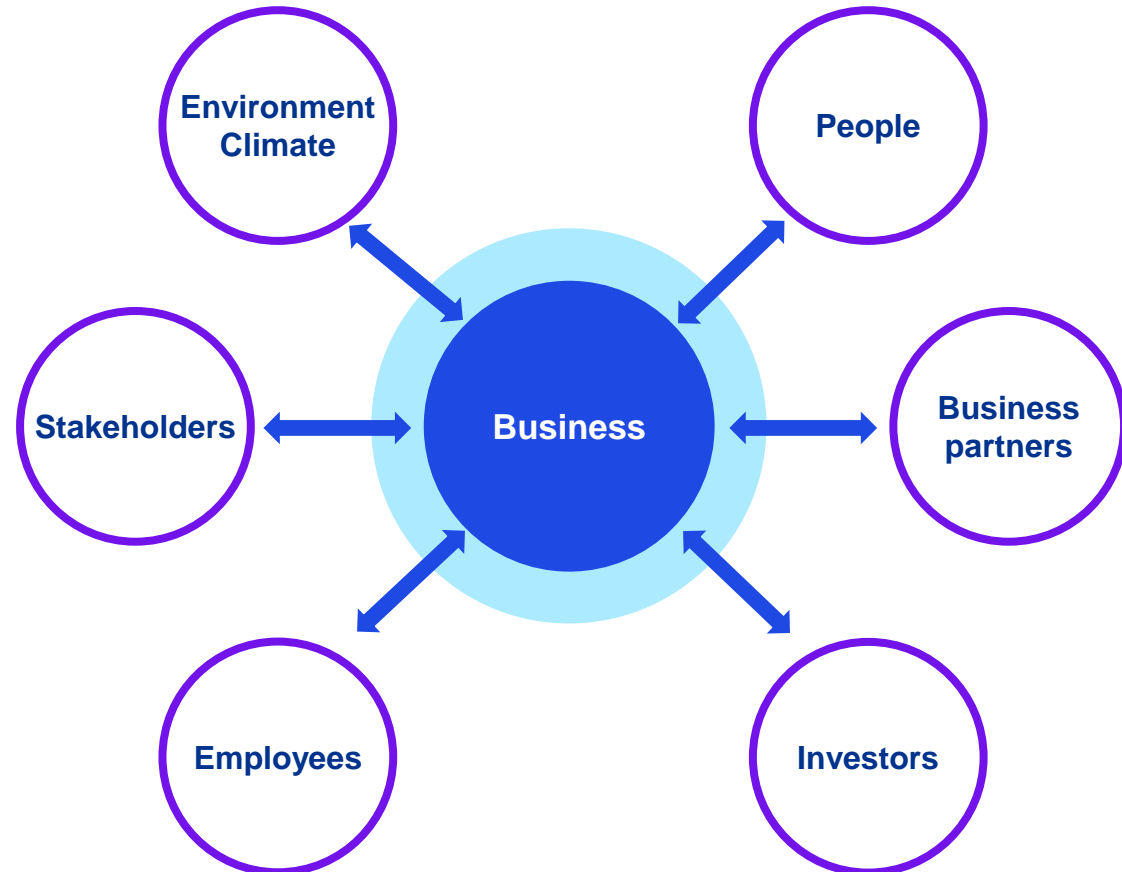
[Draft] ESRS S2 Workers in the value chain



[Draft] ESRS S2 Workers in the value chain
Basis for conclusions, May 2022

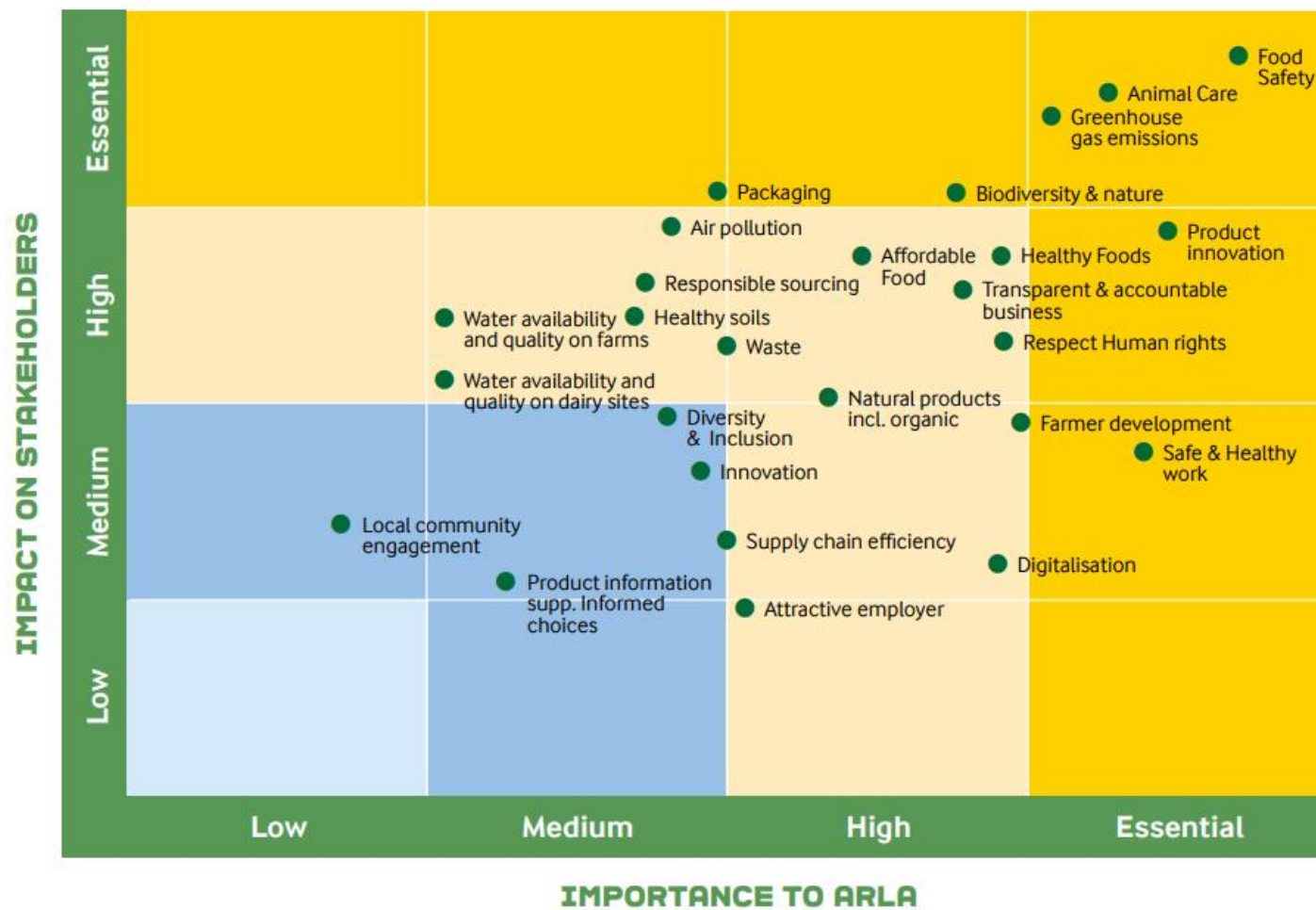
Double materiality assessment

- This new concept is an important part of CSRD
- The assessment will give the outside, e.g. investors, and companies more transparency in their value chain
- An issue is 'material' if it has an impact on people or the environment.
- If an issue from the outside ALSO has an impact on the business it has a 'double materiality' e.i. a financial materiality that can affect enterprise value.
- Mandatory to report on how the assessment is performed and the results
- The assessment will form basis for the ESG work and priorities.
- In practice: engage with relevant stakeholders - unions, employees etc.to assess material aspects and how to priorities.



ARLA ESG Report 2021

MATERIALITY ANALYSIS



04

Mandatory Human Rights and Environmental Due Diligence

The Corporate Sustainability Due Diligence Directive (CSDDD)

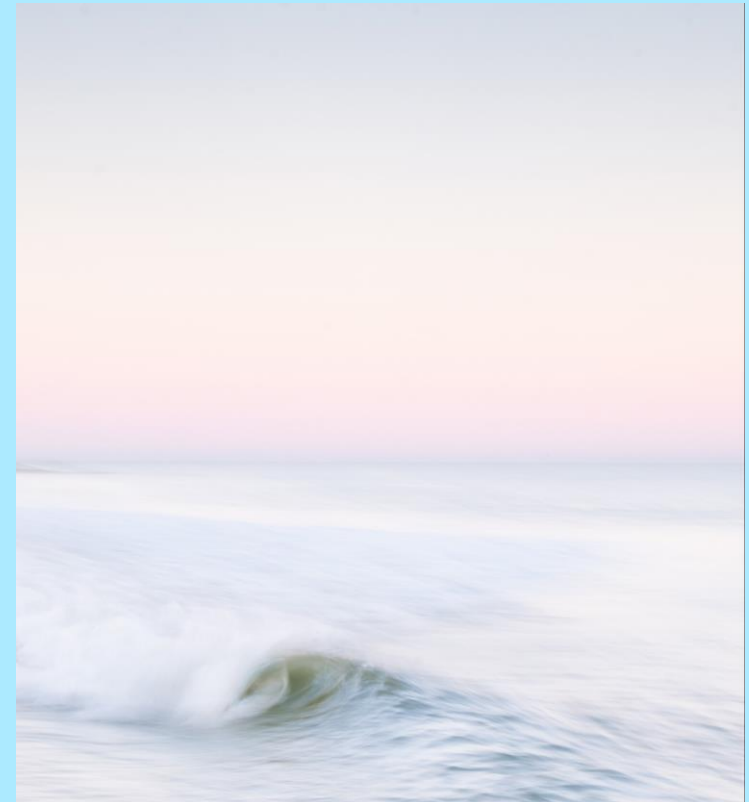
What is that?

What is human rights and environmental due diligence?

According to the UN, OECD and society, companies are expected to act responsibly.

Due diligence is about having robust processes in place to avoid that business activities have a negative impact on human rights and the environment, climate, employees, society and business ethics.

Due diligence applies to the whole value chain; own operations, subsidiaries, (sub)suppliers and other business partners.



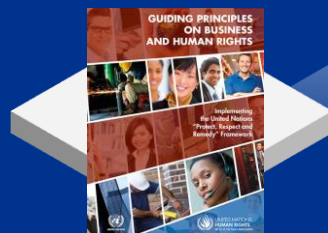
Where do the due diligence obligations come from?

United Nations

UN Guiding Principles on Business and Human Rights, 2011

The Guidelines

- companies must respect human rights
- obligation to have a DUE DILIGENCE process to prevent, mitigate and remediate actual and potential adverse impacts that a company causes, contributes to or is linked to.



OECD

- Guidelines for Multinational Enterprises
- Covers all ESG areas
- Due Diligence Guidance for Responsible Business Conduct
- Sector specific due diligence guidance



National regulation

- Norway: Åpenhetsloven 1 July 2022.

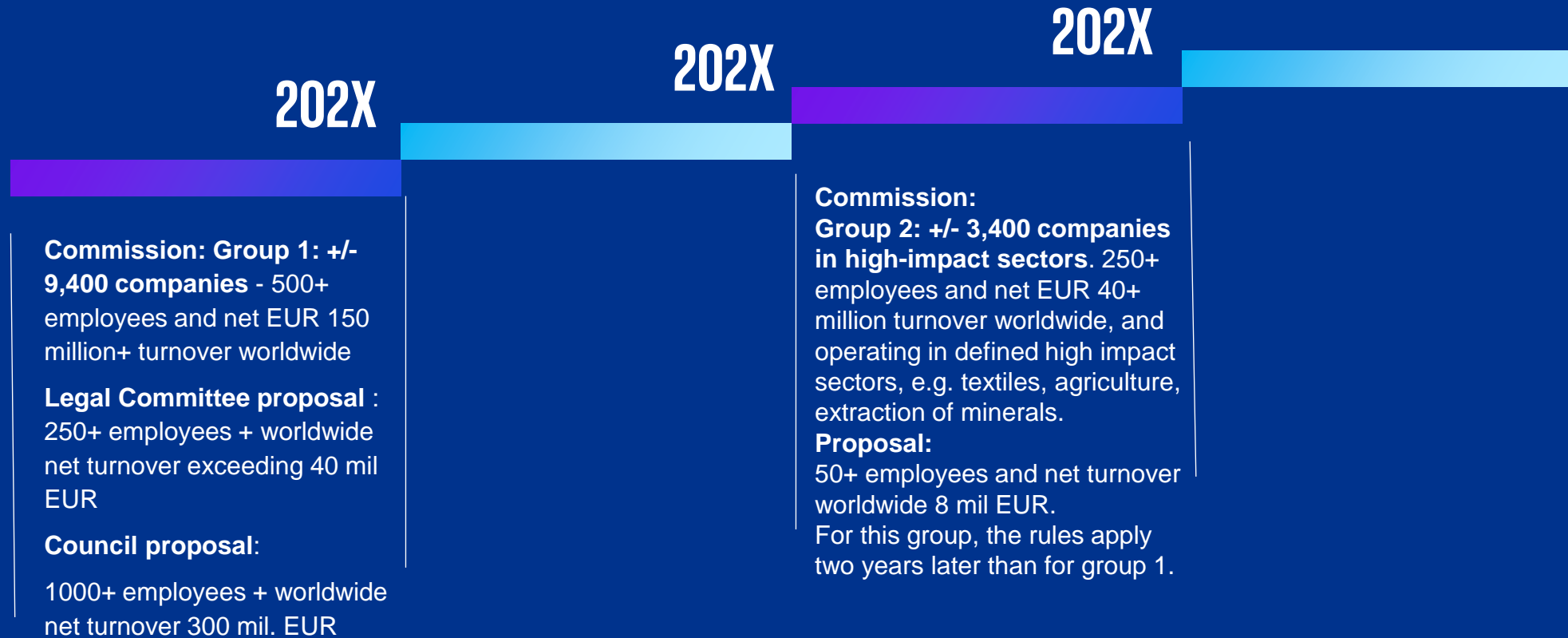


- Germany
- France: Duty of Vigilance
- California Supply Chain Due Diligence Act (?)
- Etc.

CSDDD

- Draft from 2022
- Implementation of guiding principles into binding law.
- Regarding both environment and human rights.
- More or less same structure, wording, language etc. as the guidelines
- Ground-breaking to transform such guidelines into hard law.

Companies subject to CSDDD and implementation timeline. This is a draft still receiving positions.

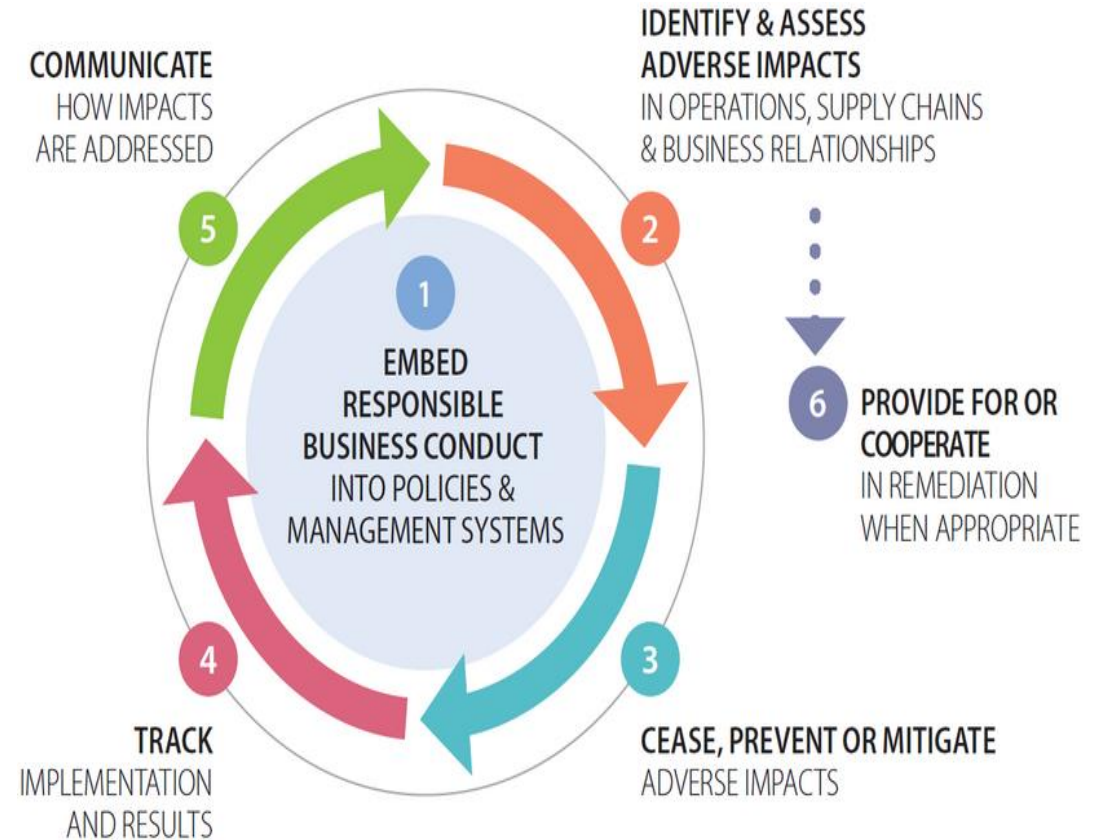


Always and indirectly SME's, since they are already obliged acc. To OECD guidelines, because of the cascading effect and cases that may be brought up in the OECD National Contact Point (grievance mechanism).

What is human rights and environmental due diligence? The 6 steps model - CSDDD.

Companies within scope must conduct human rights and environmental due diligence by following these 6 steps:

- 1. Commitment and anchoring**
Integrating commitments into policies management systems.
- 2. Risk assessment**
Identifying actual and potential risks to human rights and the environment
- 3. Address adverse impacts**
Preventing and mitigating potential negative impacts, and cease actual negative impacts.
- 4. On-going follow-up**
Monitoring the effectiveness of the due diligence policy and work
- 5. Communication**
Publicly report and communicate about their due diligence work
- 6. Complaints mechanism and remediation**
Establishing a complaints mechanism.



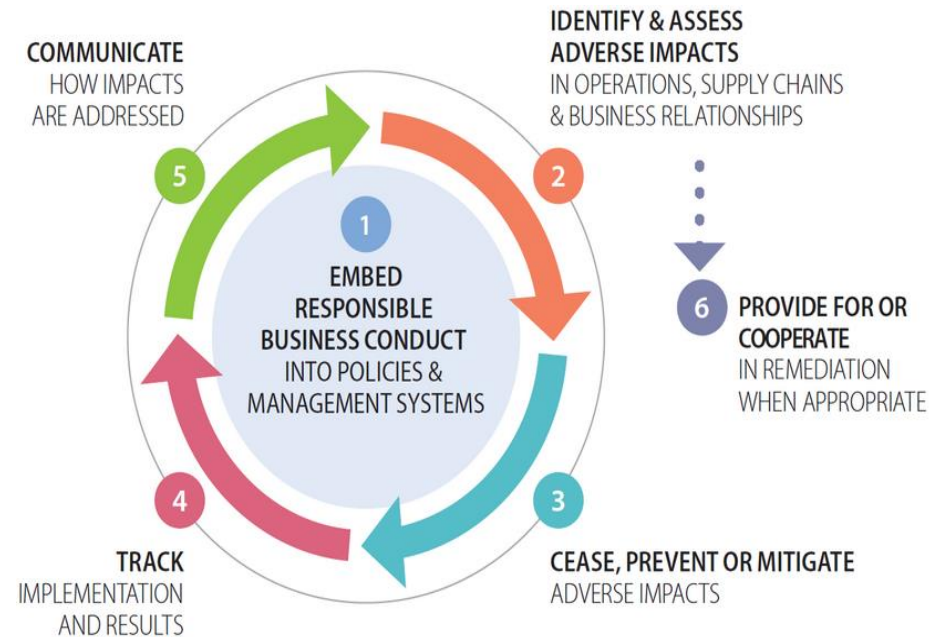
Source: OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct:

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1st STEP: Commitment and anchoring

Integrate the company's commitment into policies and management systems:

- Get policies in place – or update existing ones - that state your position and obligations (a CoC is not enough).
- Take into account specific risks for the company.
- If necessary, start with general commitments and elaborate after step 2 and extra awareness of certain risks
- Communicate policies internally and externally
- Assess and adjust processes and management systems to support the policies and the due diligence work
- Use policies as working-tools



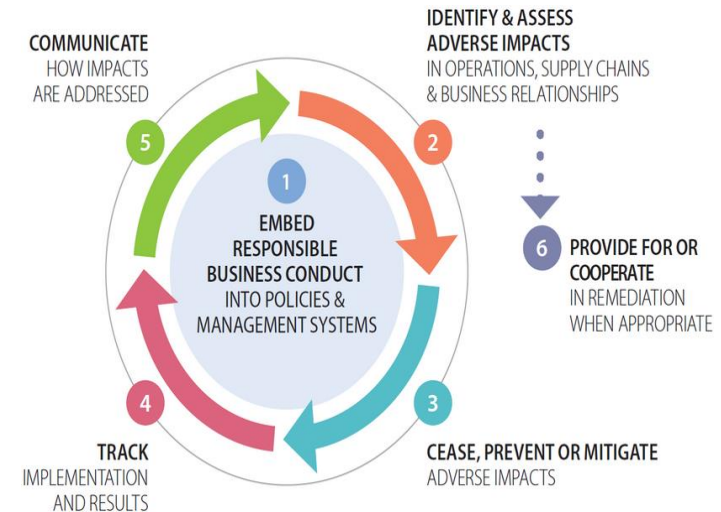
Source: OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct:

2nd STEP: Risk assessment

Identify actual and potential risks to human rights and the environment in own operations, supply chains and other business relationships.

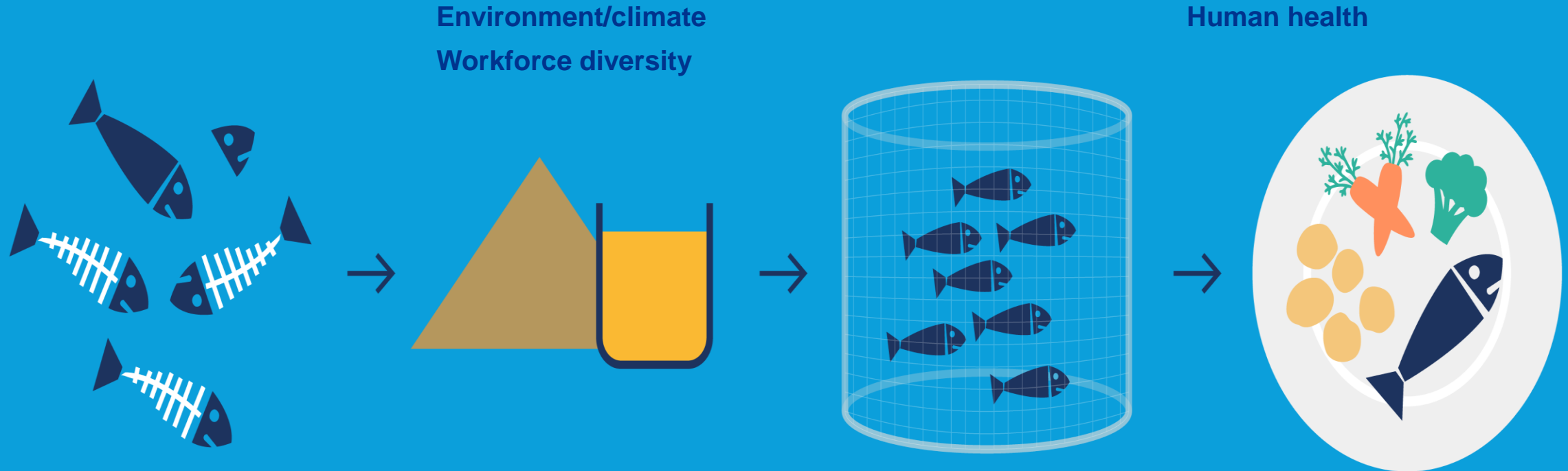
- Make an overall risk assessment regarding the company's impact on human rights and the environment (not vice versa) in the entire value chain.
- Risk assessments based on known risks in the industry, products, country of origin etc.
- Risk assessments based on interviews, desktop research, reports, common knowledge, dialogue with suppliers, industry organisations, NGO's, unions, workers etc.
- Risks identified by mapping supply chain, tiers, products, work place accidents etc.
- Prioritise the risks based on severity, how many can be affected and possibility for remediation.
- Prioritise risks based on probability and consequence.

The challenging part of due diligence obligations.



Source: OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct:

Fishmeal and fish oil value chain



Environment/climate
Workforce diversity

Human health

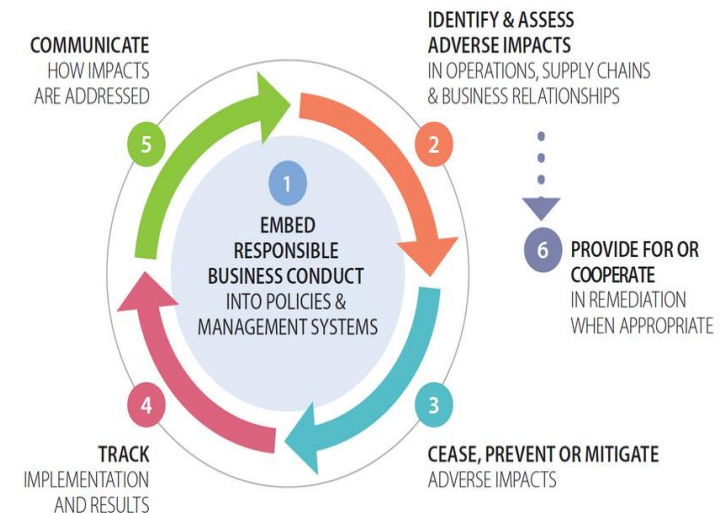
Human rights
Modern slavery
Labour rights
Biodiversity
Environment

Transportation:
- Labour rights
- Climate

3rd STEP: Address adverse impacts

Prevent and mitigate potential negative impacts, and cease actual negative impacts on people and the environment.

- Based on priorities in step 2, the negative impacts must be addressed – no matter where in the value chain.
- Focus on the specific part of value chain or products with certain risks.
- E.g. concerning risk assessment on human rights, address suppliers and sub-suppliers and working conditions if risks have been identified.
- Make a specific process and structure for working with the risks. E.g. how do you follow up on existing suppliers, how do you onboard a new supplier, what are the requirements, what do you need to know and see to address potential or actual risks.
- Address the specific risk by e.g. updating CoC, contracts, through dialogue with suppliers, self-assessment questionnaires, visits, action plans, check certifications for example, MSC, ASC, certification according to Marin Trust standard.
- Cooperation through industry organizations, with competitors, membership of organizations handling the specific risks.

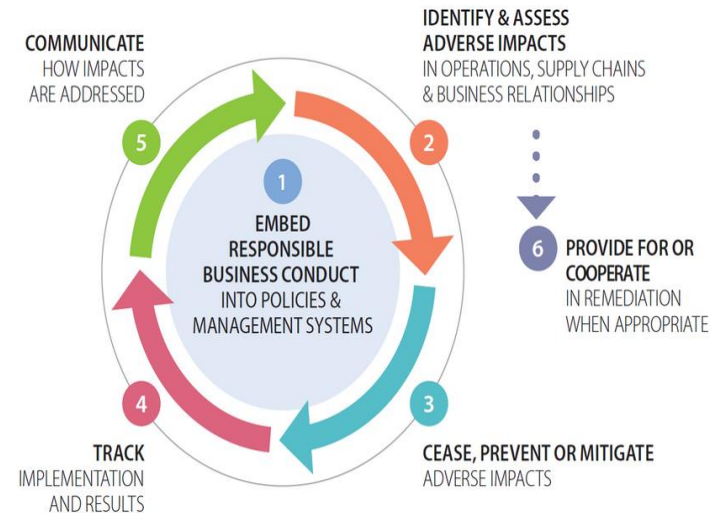


Source: OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct:

4th STEP: Ongoing follow-up

Monitoring the effectiveness of the due diligence policy and work

- Continuesly follow up on the whole due diligence process – does it work?
- Follow-up in own operations, by suppliers or other important stakeholders.
- Did action plans work and did conditions improve?
- Review policies
- Review the risk assessment since things change, the world change, news about new risks in specific countries etc.
- Is there a need for employee training?
- Did you set up goals and KPI's and where they achieved?
- In ISO 'language' use the 'Plan-Do-Check-Adjust'

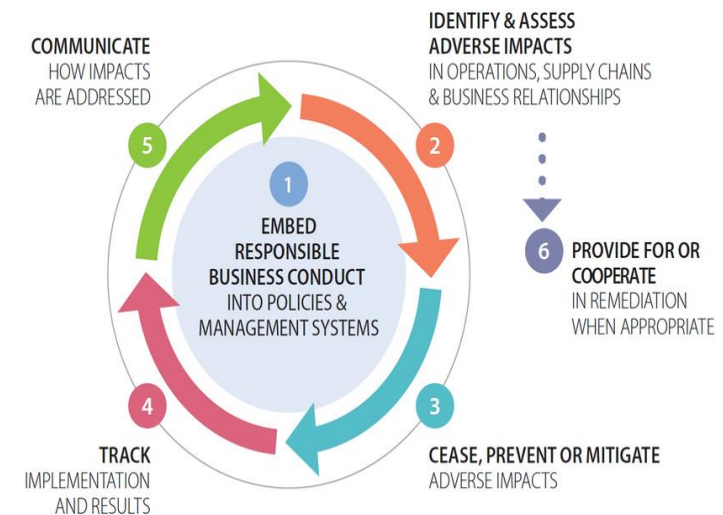


Source: OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct:

5th STEP: Communication

Publicly report and communicate about due diligence work

- Documentation is key!
- Good documentation is needed – both in due diligence requirements, in CSRD and in greenwashing complaints.
- Detailed communication about the due diligence process, the risks, how they are addressed, actions and results is important.
- Transparency is a must according to CSRD, consumers, customers and other stakeholders.
- Transparency regarding both success and failure
- According to CSRD: digital reporting
- Be aware of greenwashing.

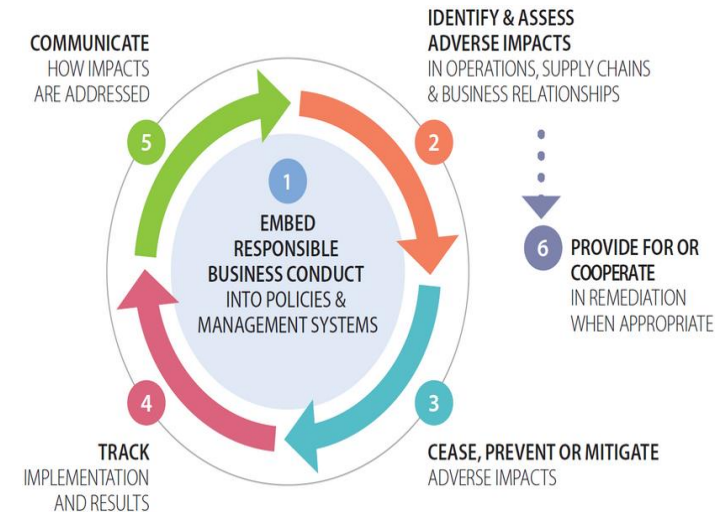


Source: OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct:

6th STEP: Complaints mechanism and remediation

Establishing a complaints mechanism and make remediation possible.

- Must live up to certain criterias
Legitimacy, accessibility, predictability, fairness, transparency, involvement and dialogue.
- Phone, mail, internal or external



Source: OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct:

Due diligence final points

Due diligence is an ongoing process – it is a way of doing business

It can seem overwhelming but get started as soon is possible/continue and prioritise.

A Code of Conduct is no longer enough

Documentation is key

Most companies will indirectly be subject to the CSDDD once implemented and the OECD Guidelines apply to all

Note: According to the CSDDD the executives must ensure that their business model and strategy supports the Paris Agreement.

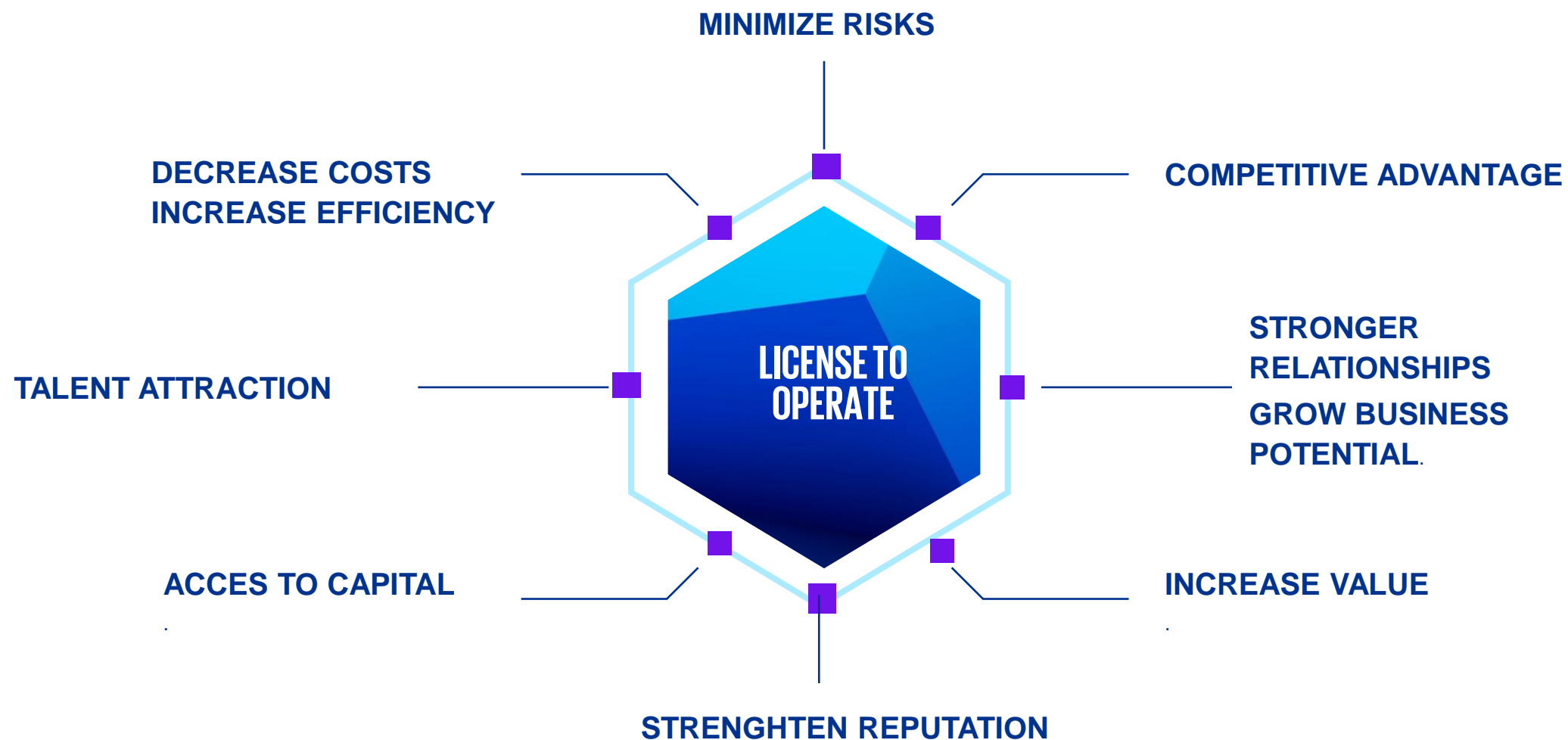


05

KEY TAKE AWAYS



The Business Case



What to do now?

- Start or continue the ESG/sustainability work
- Map the gaps
- Map all reporting areas in your company and start implementation
- Start or continue the due diligence process
- Involve internal and external stakeholders and organizations
- Don't be paralyzed by the tsunami but don't under-estimate the tasks
- Dedicate resources



ESG trends and focus areas in 2023.

Biodiversity

Last 40 years, wild species fallen by 60% due to changes in land and sea use, climate change, overexploitation, pollution. UN conference regarding biodiversity and binding agreements between states. Reporting according to CSRD and due diligence according to CSDDD.

Human rights

Increasing mandatory human rights due diligence obligations. Increasing examples of modern slavery and regulation (e.g. EU's draft directive regarding ban on products from forced labour).

Diversity, equity, gender and inclusion.

'Black lives matter', women in executive positions and minorities.

06

GREEN HOUSE GAS ACCOUNTING

How to approach it?

The need for Green House Gas Accounting



- According to the CSRD and CSDDD companies in scope are required to have and disclose
 - ‘The plans of the undertaking, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5 C in line with the Paris Agreement’.
- Investors, banks, customers, stakeholders and business partners subject to the CSRD and the CSDDD
- Governments and Co2 taxes
- Mandatory by law

How to get started?

The Greenhouse Gas Protocol

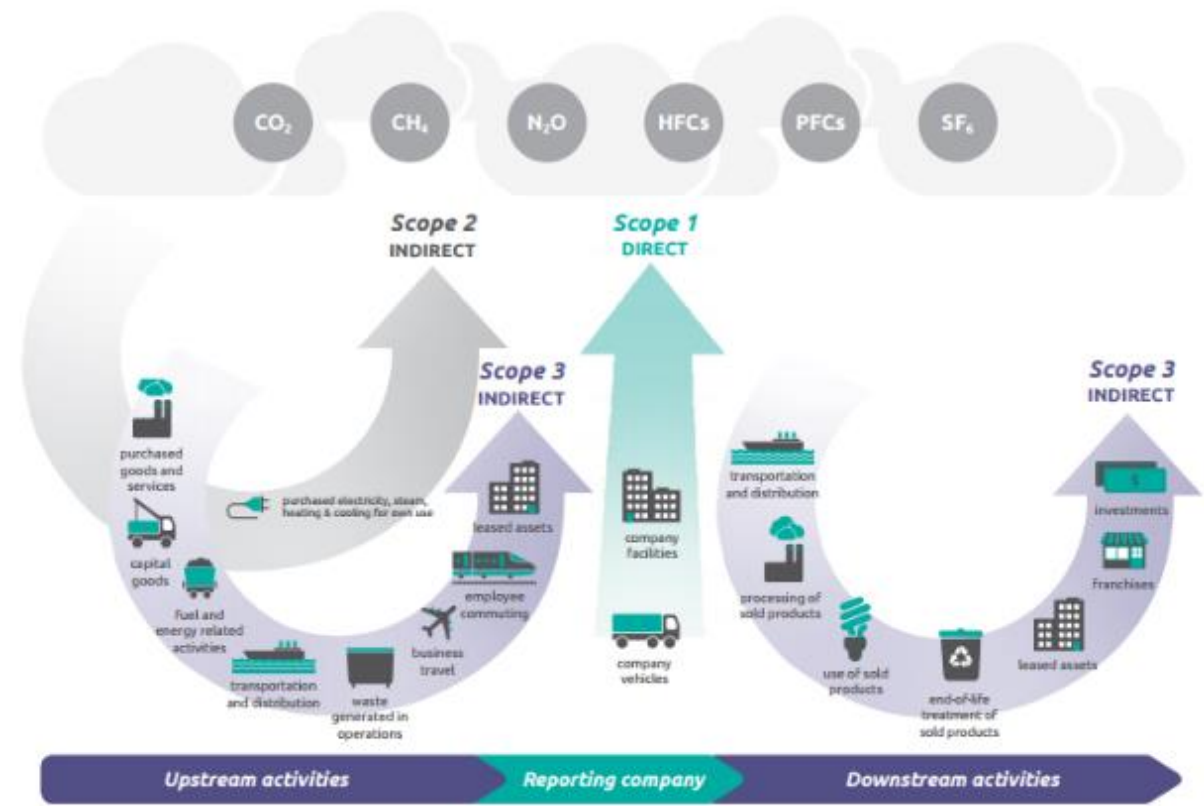
Has become the common standard

Might be implemented into legislation or common guidelines.

Operates with tree scopes.



The Greenhouse Gas Protocol – 3 scopes.



The Greenhouse Gas Protocol

- Start with scope 1 and 2 (what you control)
- Scope 3 is a challenge but take it bite by bite
- Prioritise and work systematically

07

**QUESTIONS
&
ANSWERS**

