



Directive on Corporate Sustainability Due Diligence

“Keeping pace with the EU's new
trade policy and rules”-30 August
2022

WHY- POLITICAL CONTEXT

International commitments:



Political priorities of the Commission -Green and just transition:

- And linked strategies : Biodiversity Strategy, Action Plan on a Circular Economy, Chemicals, Farm to Fork strategy, Strategy for financing the transition to a sustainable economy, EU Action Plan on Human Rights and Democracy, Trade Policy Review 2021, Decent Work Worldwide Communication 2022 etc...

• **Strong call from stakeholders and the European Parliament and Council to take action**

- Nearly 500 000 responses to public consultation
- Support for EU action on due diligence by NGOs and businesses

CURRENT SITUATION: International voluntary framework



OECD Guidelines for Multinational Enterprises

- Government-backed recommendations on what constitutes **responsible business conduct** (RBC)
- Define **risk-based due diligence** as main tool to identify, prevent or mitigate risk
- Cover all areas of business responsibility (social, environmental and governance aspects)
- **OECD Due Diligence Guidance for RBC**, and sector-specific due diligence guidance provide practical support to companies



UN Guiding Principles on Business and Human Rights

- 31 principles developed by Prof. John Ruggie; endorsed by HR Council in 2011
- Affirm (1) the **state duty to protect** against HR abuses;
 - (2) the **corporate responsibility to respect** human rights; and
 - (3) the need for **access to remedy** for victims of HR abuses linked to business activity
- Clarify that a core component of the corporate responsibility to respect is the concept of **on-going HR due diligence**



ILO Tripartite Declaration of Principles concerning MNEs and Social Policy

- Only global instrument developed, adopted and supported by governments, employers' and workers' organizations
- Provides guidance of how companies can contribute to **decent work agenda**
- Based on **ILO Declaration on Fundamental Principles and Rights at Work** which addresses forced labour, child labour, non-discrimination and freedom of association and collective bargaining

Key considerations when designing the scheme

CULTURE OF NO HARM: Step up corporate due diligence culture of “do no harm”, make it a new norm worldwide and foster engagement with third country suppliers, avoid disengagement

DEFRAGMENTATION IN THE SINGLE MARKET: Limit patchwork of rules, avoid administrative cost and burden

CONSISTENCY: With existing rules on due diligence and sustainability reporting

LEGAL CERTAINTY: Provide legal certainty and predictability as regards measures to be taken to prevent adverse impacts including in the value chain and as regards its consequences; ensure access to remedy

TRANSPARENCY: Help companies reply to investors and consumers pressure

PROPORTIONALITY: Ensure proportionality and feasibility by companies; help SMEs to face indirect impacts

COLLABORATION: foster industry collaboration, build leverage

Benefits

FOR CITIZENS



- Better protection of human rights, including labour rights
- Healthier environment for present and future generations
- Increased trust in businesses
- More transparency enabling better informed choices
- Better access to justice for victims

FOR COMPANIES



- Harmonised legal framework in the EU, creating legal certainty and level playing field
- Better medium to long-term financial performance, cost reductions
- More innovation, first mover advantages in global markets, more competitiveness
- Attracting talent, customer loyalty
- Better access to finance

FOR PARTNER COUNTRIES



- Better protection of human rights and the environment
- More awareness about sustainability issues
- Sustainable investment
- Improved living conditions for people

PRESENTATION OF THE PROPOSAL: WHO, WHAT, HOW



PERSONAL SCOPE: WHO

		LARGE EU LLCs + REGULATED FINANCIAL COMPANIES	NON-EU COMPANIES	SMALL AND MEDIUM ENTERPRISES
GROUP 1	<i>500+ employees and more than net €150 million of turnover*</i>	+/- 9,400 companies	+/- 2,600 companies	Micro companies and small and medium enterprises (SMEs) are not directly concerned by the proposed rules.
GROUP 2	<i>250+ employees and more than net €40 million of turnover*, operating in defined high impact sectors.</i> <i>The rules will apply to this group 2 years later than to group 1.</i>	+/- 3,400 companies	+/- 1,400 companies	

* **Worldwide turnover for EU companies and EU wide turnover for non EU companies**

PERSONAL SCOPE: High impact sectors for Group 2 companies

- **Which sectors?**
- **GARMENT & FOOTWEAR:** Manufacture of textiles, leather and related products including footwear and the wholesale trade of textiles, clothing and footwear
- **AGRICULTURE:** Agriculture, forestry, fisheries including aquaculture, manufacture of food products and the wholesale trade of agricultural raw materials, live animals, wood, food and beverages
- **MINERALS:** Extraction of mineral resources, manufacture of basic metal products, other non-metallic mineral products and fabricated metal products and the wholesale trade of mineral products and fabricated metal products, the wholesale trade of mineral resources

What obligations?

CORPORATE DUE DILIGENCE DUTY

Human rights and environmental adverse impacts

Identifying, preventing, bringing to an end, and accounting for negative human rights and environmental impacts in company's **own operations, subsidiaries and value chains ('established business relationships')**.

Toolbox of appropriate measures

DUTIES FOR DIRECTORS

Due diligence: setting up and overseeing the due diligence processes and integrating due diligence into the corporate strategy. Report to the board.

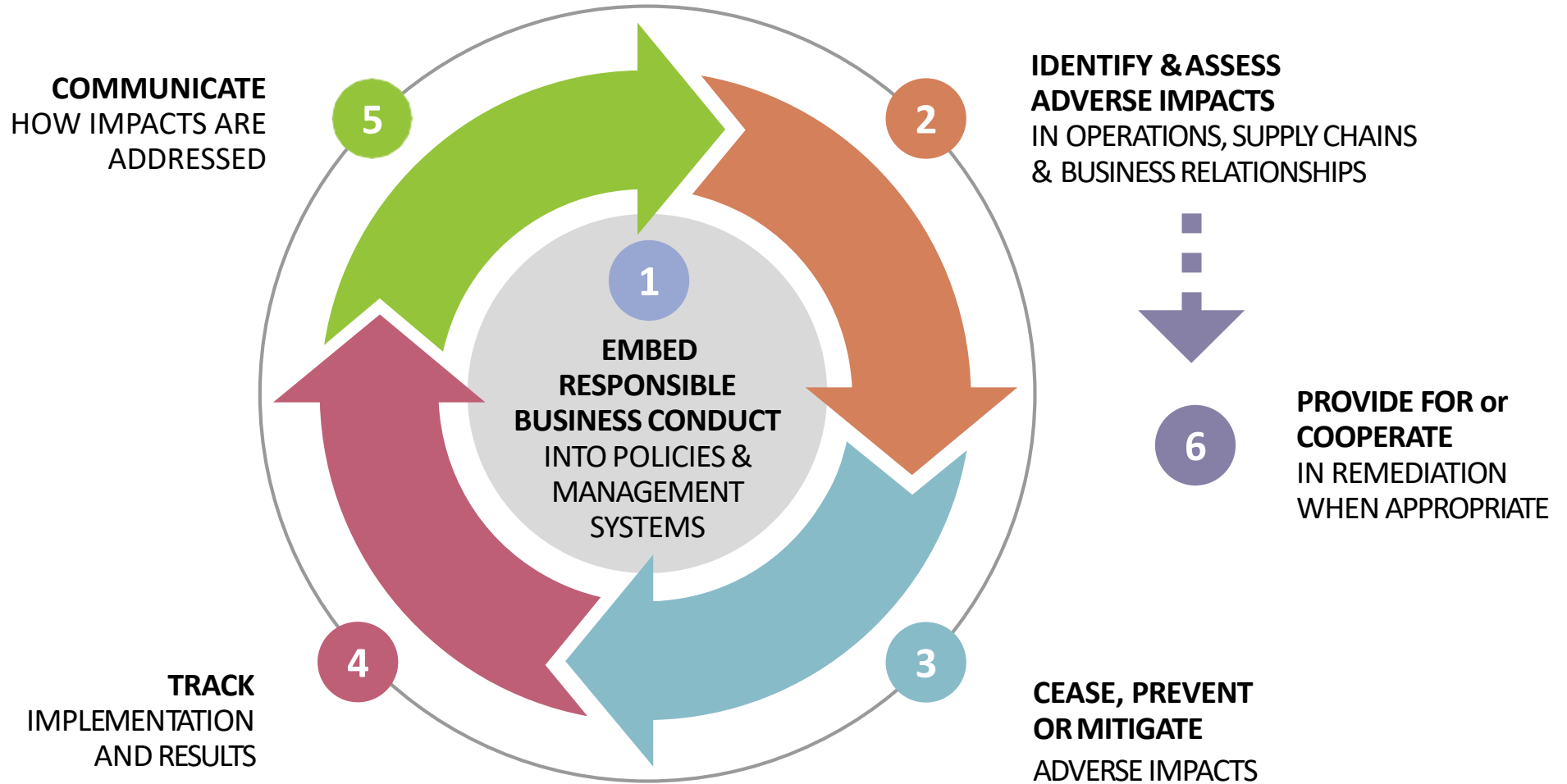
Duty of care: when fulfilling their duty to act in the best interest of the company, take into account the human rights, climate change and environmental consequences.

SPECIAL: CLIMATE CHANGE

Group 1 companies: adopt a plan to ensure that their business strategy is compatible with limiting global warming to 1.5 °C in line with the Paris Agreement. In case climate change is identified principal risk for company's operations, include emission reduction objectives.

Directors **variable remuneration** linked to their contribution to long-term sustainability.

How does Human Rights and Environmental Due Diligence work?



What are the obligations for companies and their directors in different Groups?

GROUP 1

- Full due diligence obligation
- All sectors
- Plan to ensure that their business strategy is compatible with limiting global warming to 1.5 °C in line with the Paris Agreement
- CSRD reporting*
- Directors` duty of care *

GROUP 2- Phase-in 2 years

- Due diligence only for severe adverse impacts
- High impact sectors
- CSRD reporting*
- Directors` duty of care*

** Not applicable for non EU companies*

HOW: implementation & public enforcement



Internal complaint proceedings

- Complaint mechanism to be set up by company
- Affected persons, trade unions, CSOs



Administrative supervision

- MS supervisory authorities
- Complaint mechanism “substantiated concerns”
- Sanctions
- European Network of Supervisory Authorities



Civil liability

- Obligation of means
- Own operations, subsidiaries and established business relations
- ‘safeguard’ for liability in value chains beyond Tier 1
- Burden of proof on claimant
- Overriding provisions

CSDD Support toolbox

