

# German Supply Chain Due Diligence Act – Implications for Businesses in Germany and Beyond

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econsense – Forum for Sustainable Development of German Business e. V.

# econsense | Forum for Sustainable Development of German Business

## Our members



47 internationally operating German companies from a variety of sectors



## Our goal



Actively shape the transition to a sustainable economy & society

## Our mission



- We support our members in anchoring sustainability in operational practice, in strategy and along the supply chain
- We track and analyze all relevant issues: from environmental protection to human rights – always with a focus on the sustainability business case
- We are a platform for high-level and expert dialogue, in exchange with business, politics and civil society

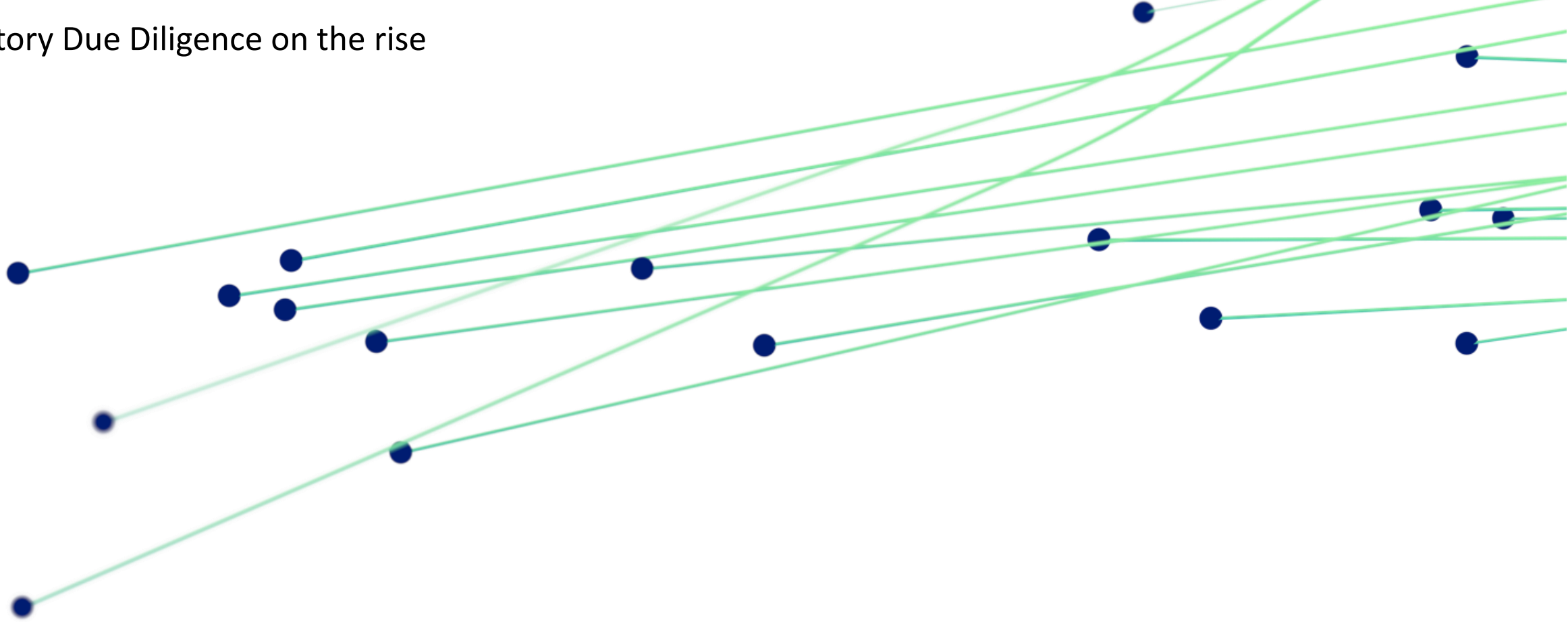
# Agenda

1. **Introduction:** Mandatory Due Diligence on the rise
2. **German Supply Chain Due Diligence Act:** Its scope & obligations for directly affected companies
3. **Impacts on Suppliers:** Collaboration in the supply chain
4. **Outlook:** Regulatory developments at the EU-Level

Q & A

# 1. Introduction

Mandatory Due Diligence on the rise



# The UN Guiding Principles on Business and Human Rights set standards for Corporate Responsibility

The „UNGPs“ were unanimously endorsed by the UN Human Rights Council in June 2011. Their three pillars are also known as the „Ruggie Principles“ after John Ruggie, the then Special Representative of the UN Secretary-General on business and human rights.

## I. Protect

### *The State Duty to Protect:*

Establish political & legal frameworks for companies & investments to ensure the protection of **human rights & labour standards**

## II. Respect

### *The Corporate Responsibility to Respect:*

Take appropriate measures to **avoid any human rights risks** within the sphere of entrepreneurial influence

## III. Remedy

### *Access to Effective Remedy:*

People whose **human rights have been violated** by companies must have **access to effective remedies and reparations**



# — UNGPs recommend Smart Mix of Measures

“States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a **smart mix of measures – national and international, mandatory and voluntary** – to foster business respect for human rights.”

Commentary to Principle 3, UN Guiding Principles on Business & Human Rights (2011)

## International

### Soft Law

- **UNGP** on Business & Human Rights (2011)
- OECD Guidelines for MNEs (2011)



### Hard Law

- EU Corporate Sustainability Due Diligence Directive (**CSDDD**) (*proposed 2022*)
- EU Conflict Minerals Regulation (2021)
- UN Binding Treaty Process (*discussion since 2014*)



## National

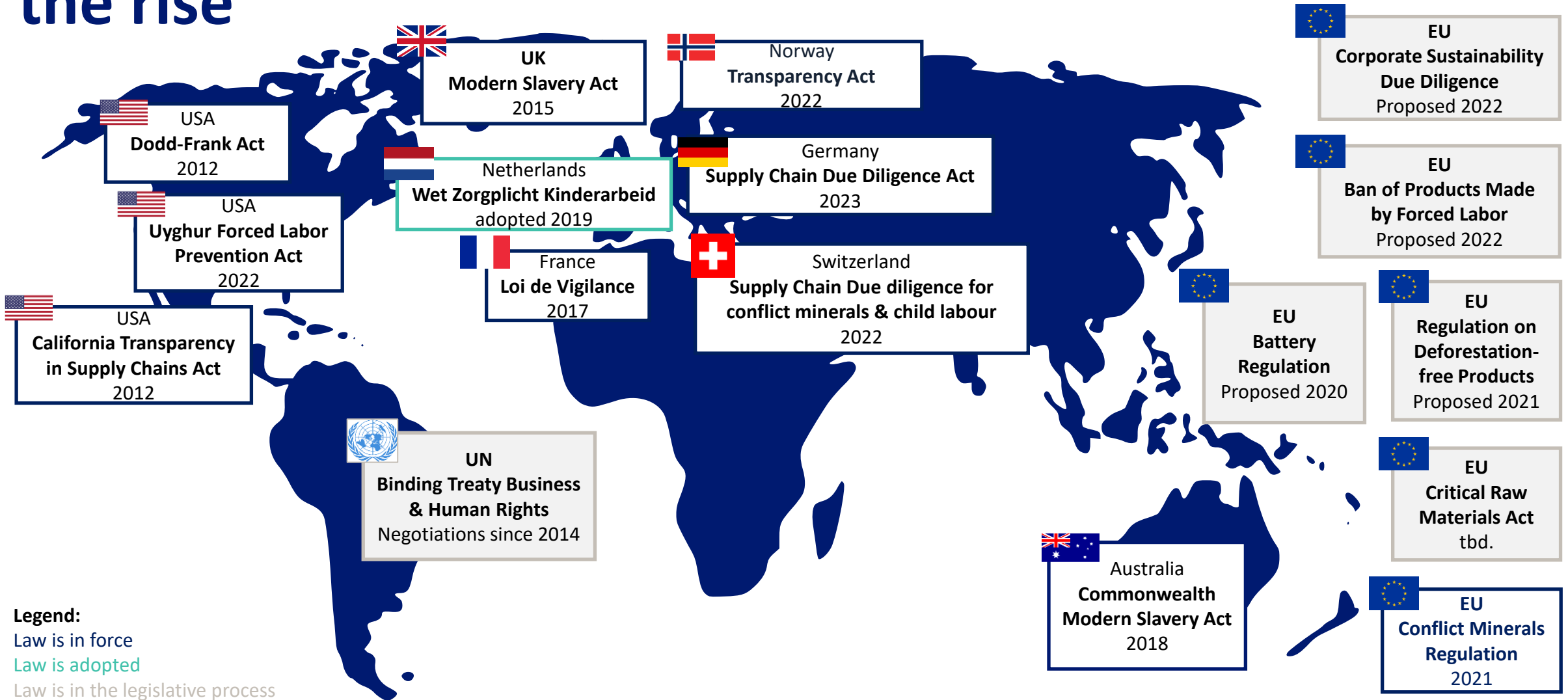
**National Action Plans** on Business & Human Rights  
(National implementation of the UNGP)



National Laws, e.g.

- German **Supply Chain Due Diligence Act** (2023)
- French **Loi de Vigilance** (2017)

# From soft to hard law – due diligence regulations on the rise

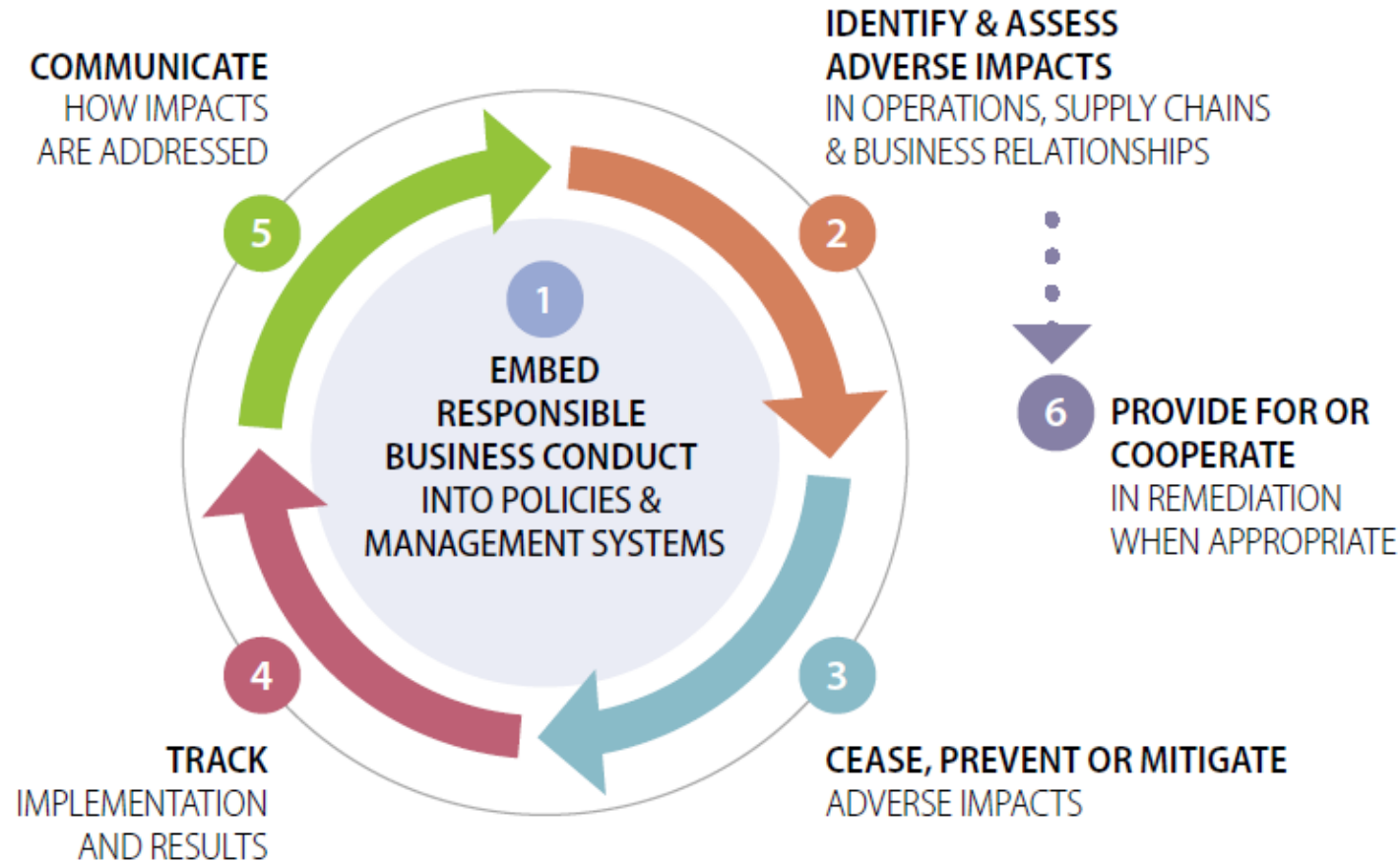


**Legend:**  
Law is in force  
Law is adopted  
Law is in the legislative process

# International frameworks describe due diligence obligations

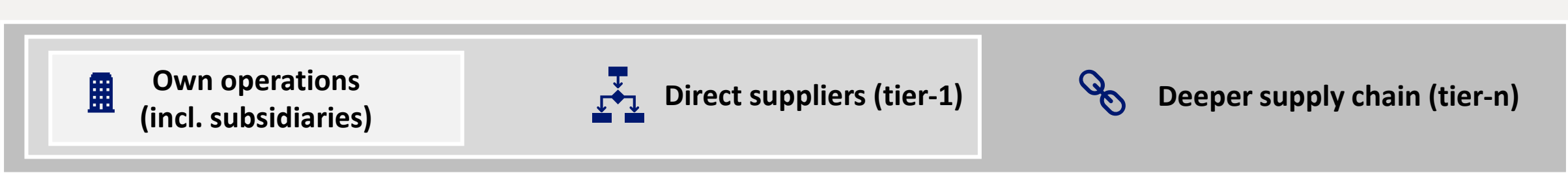
“**Due diligence** is the process enterprises should carry out to identify, prevent, mitigate and account for how they address these actual and potential adverse impacts in their **own operations**, their **supply chain** and **other business relationships**.”

[OECD Guidelines for Multinational Enterprises](#) (p. 15)





# Challenges of Human Rights Due Diligence



## Challenges



Lack of transparency and traceability



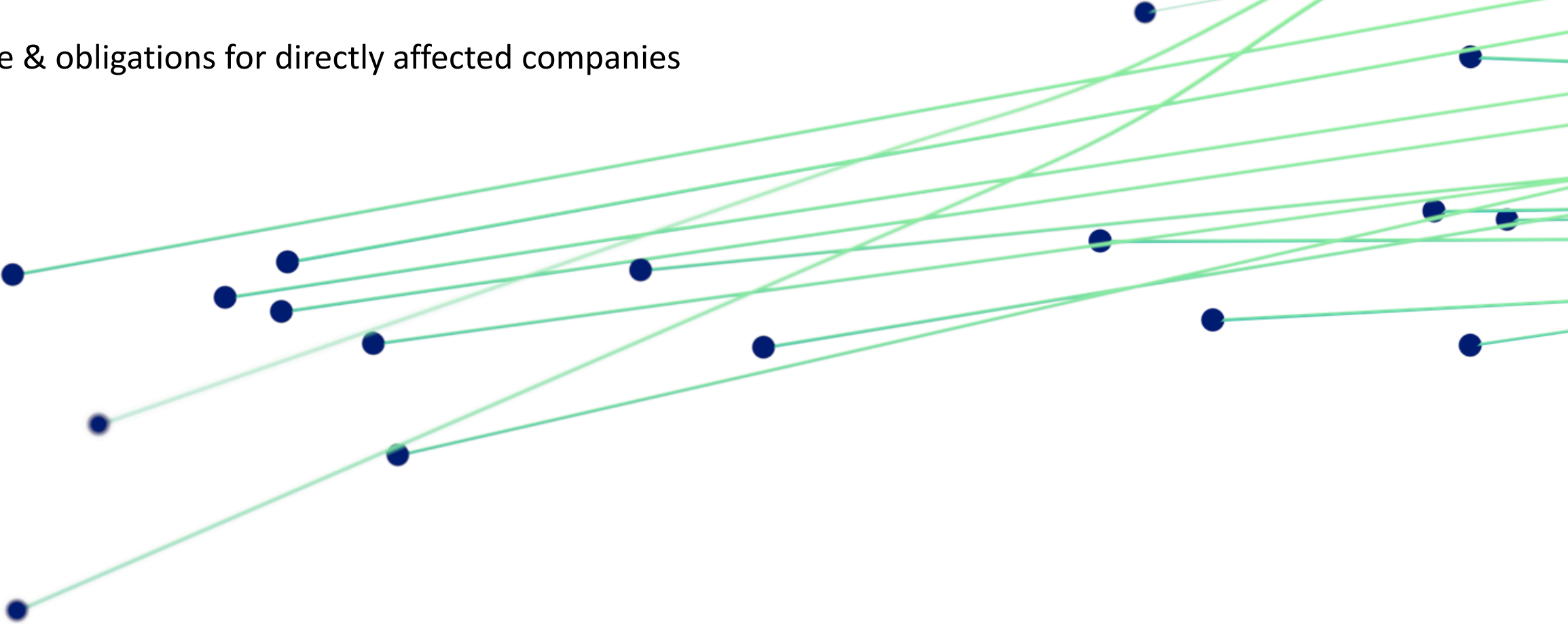
Lack of leverage



Complexity of social data

# 2. German Supply Chain Due Diligence Act

Its scope & obligations for directly affected companies



# Scope of the German Supply Chain Due Diligence Act

The law has come into force on 1<sup>st</sup> January 2023.



## Companies in Scope

- Companies with office in **Germany**
- > **3.000** (2023) / **1.000** (2024) employees in **Germany**

Large German Companies



## Obligations

- **Due Diligence** obligations
- **Reporting** obligations

Obligations of means  
(not of result)



## Gradual Responsibilities

- Full obligations for **own operations** and **direct suppliers**
- Limited obligations for **indirect suppliers**

Direct vs. indirect Suppliers



## Enforcement

- **Strict monitoring** by competent authority
- **High fines**
- **No** (additional) **civil liability**

Strict control  
but no civil liability

# On the basis of international Conventions the Supply Chain Act defines prohibitions for companies

## Human rights-related



**Child labor**



**Adequate living wage**



**Forced labor**



**Taking of land & livelihoods**



**Occupational safety**



**Security forces**



**Freedom of association**



**Soil change, water & air pollution etc. with negative effects on people**



**Unequal treatment**

**&**

**Catch all**

## Environment-related



**Mercury**  
(Minamata Convention)

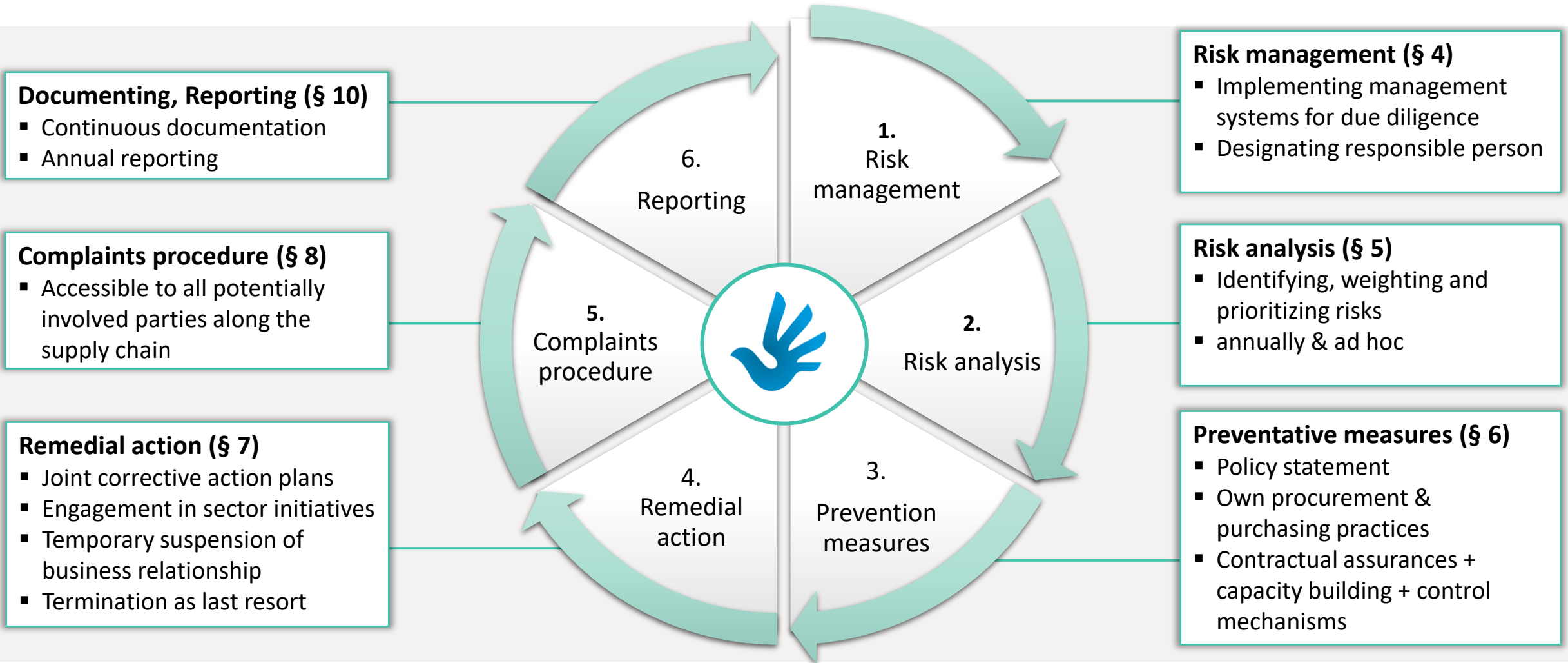


**Persistent organic pollutants (POPs / Stockholm Convention)**



**Hazardous waste**  
(Basel Convention)

# Due Diligence Obligations in the German Supply Chain Act



# Guidance on the law in English and other languages

Federal Office for Economic Affairs and Export Control (BAFA)

- implements the Supply Chain Due Diligence Act and **monitors** compliance
- issues **guidance** (see below) in German, English, French and Spanish ([BAFA - Supply Chain Act](#))

Information in  
English:



FAQs  
in English:



Official English  
translation of the Act

Risk  
analysis



Already  
available in  
English

Complaint  
procedure



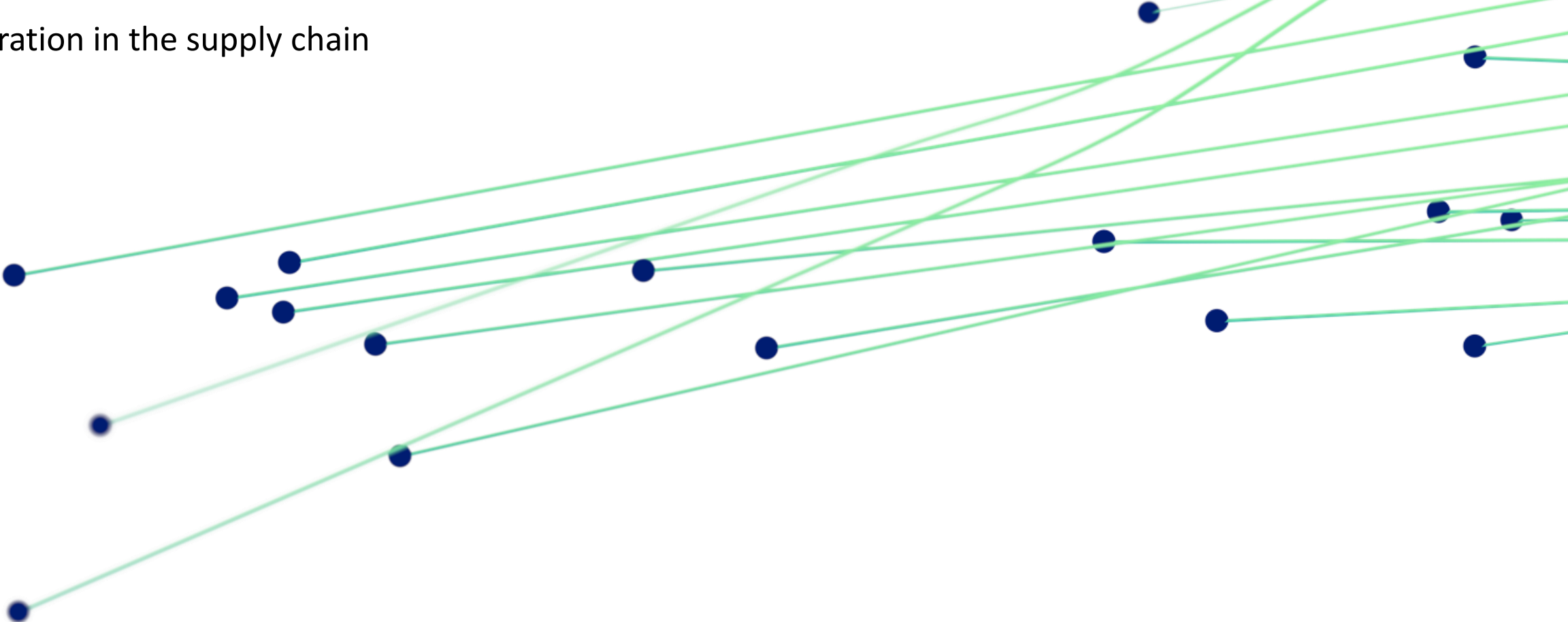
Appropriateness  
and effectiveness



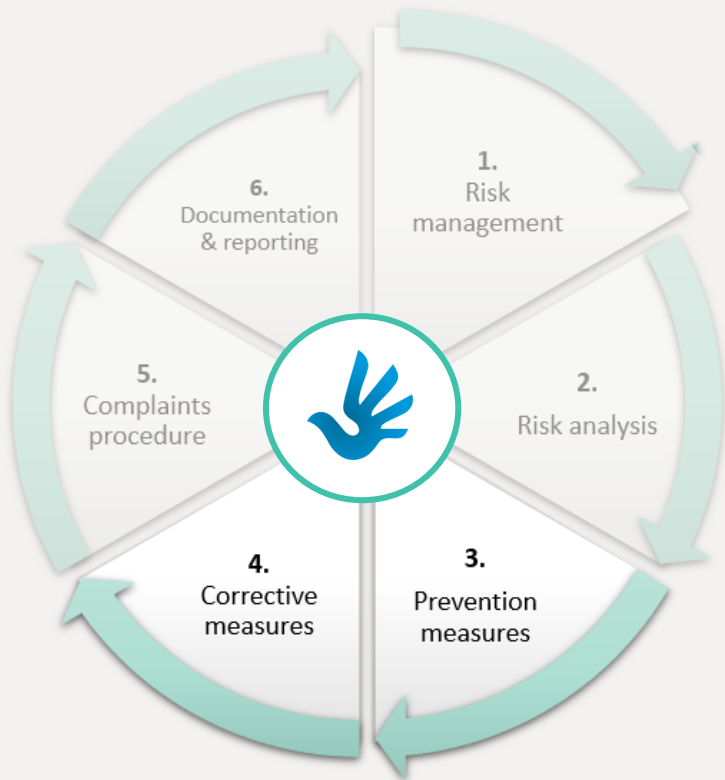
more Guidance  
to come...

# 3. Impacts on Suppliers

Collaboration in the supply chain



# Collaboration in the supply chain for preventative & remedial measures



## Engagement before disengagement:

- **Termination** of business relationships as **ultima ratio**

## Only if all **4 criteria** are met:

1. Severity of violation
2. No other less severe means available
3. Increase of influence not promising
4. No remedy through measures after the specified time period



# Collaboration in the supply chain for risk analysis and complaint procedure

## Complaints channel:



Company-own or cross-company mechanism



Accessible to all potential parties involved along the supply chain



Available in relevant languages

## Complaints procedure (§ 8):



Structured process



Protection against disadvantage



Regular review of effectiveness



## Abstract risk identification based on:



**Country-specific risks**



**Sector-specific risks**



**Product category-specific risks**

## Concrete risk identification based on:



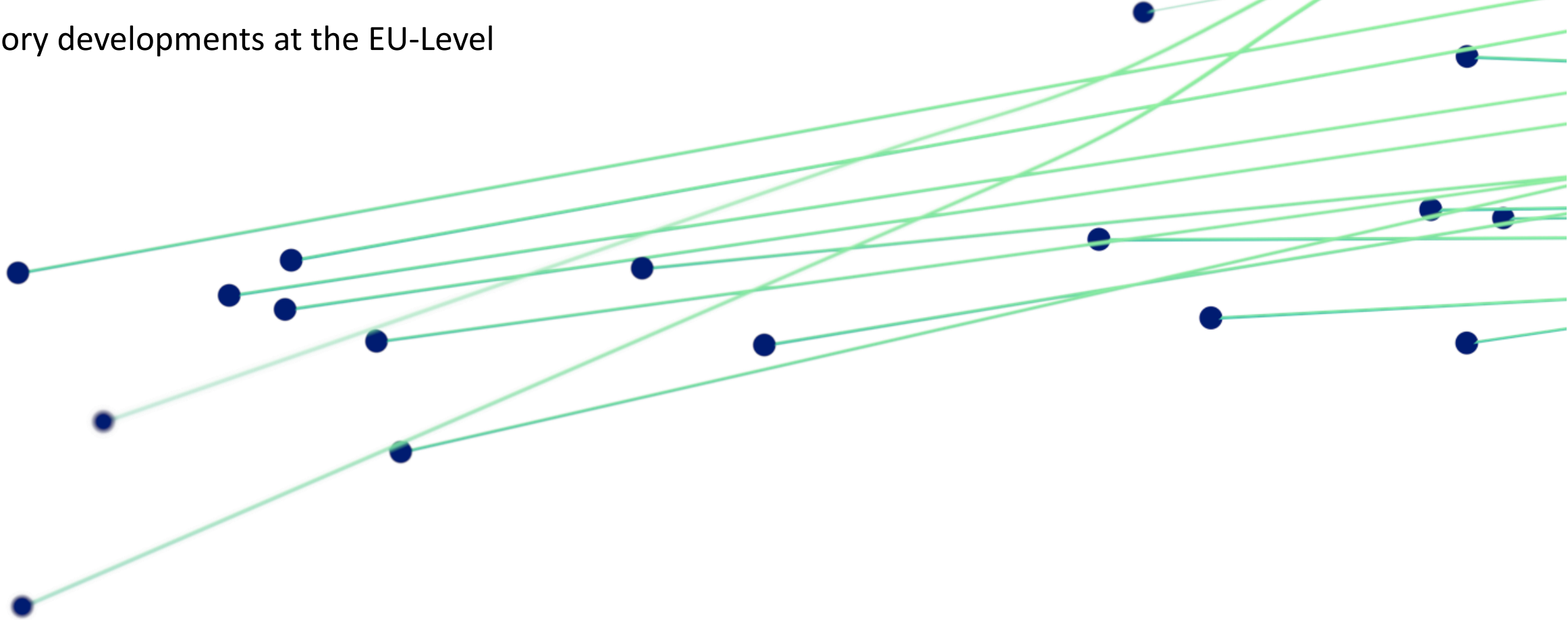
Supply Chain **traceability**



Supplier **Assessment**

# 4. Outlook

Regulatory developments at the EU-Level



# EU Draft Directive more ambitious than German Law

## Deviations

### German Supply Chain Due Diligence Act

### EU Draft CSDDD (23.02.22)

#### Scope

- Registered office in Germany
- > 3.000 / > **1.000 employees**

- Active on EU internal market
- **>500 empl.** + 150 mill € annual net turnover  
>250 empl. + 40 mill € net turnover (Risk sector)\*

#### Reach of due diligence

- Focus on **upstream**
- Gradual responsibility (**direct vs. indirect** suppliers)

- Upstream & **downstream**

#### Topics of due diligence

- Human Rights
- Limited Environmental Topics

- Human Rights
- More **Environmental** Topics
- **Climate Plan**

#### Controls & Sanctions

- **No (new) civil liability**
- High financial **sanctions**

- **Civil Liability**

\* High risk sectors defined according to available OECD sector guidance: Textile- & leather production; agriculture, forestry & fishery; minerals & metals extraction & production.

# Increasing EU-legislation regarding sustainability

## Human Rights & Due Diligence



- CSDDD
- Deforestation Free Products
- Battery Regulation
- Forced Labor Ban
- Conflict Minerals Regulation

## Climate & Environment



- Fit for 55
- EU Emission Trading System
- Circular Economy Action Plan
- Ecodesign Directive

## Sustainable Finance & Reporting



- CSRD
- EU Taxonomy
- Sustainable Finance Disclosure Regulation



**Increase in ESG regulation:** From voluntary frameworks to mandatory laws



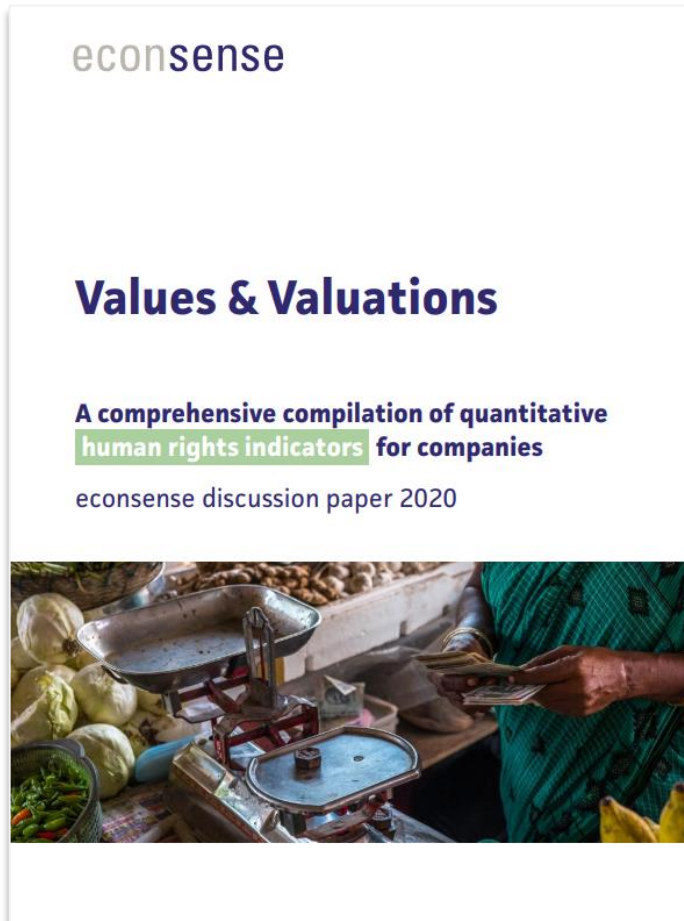
**Broadening the scope:** responsibility for the whole supply or even value chain



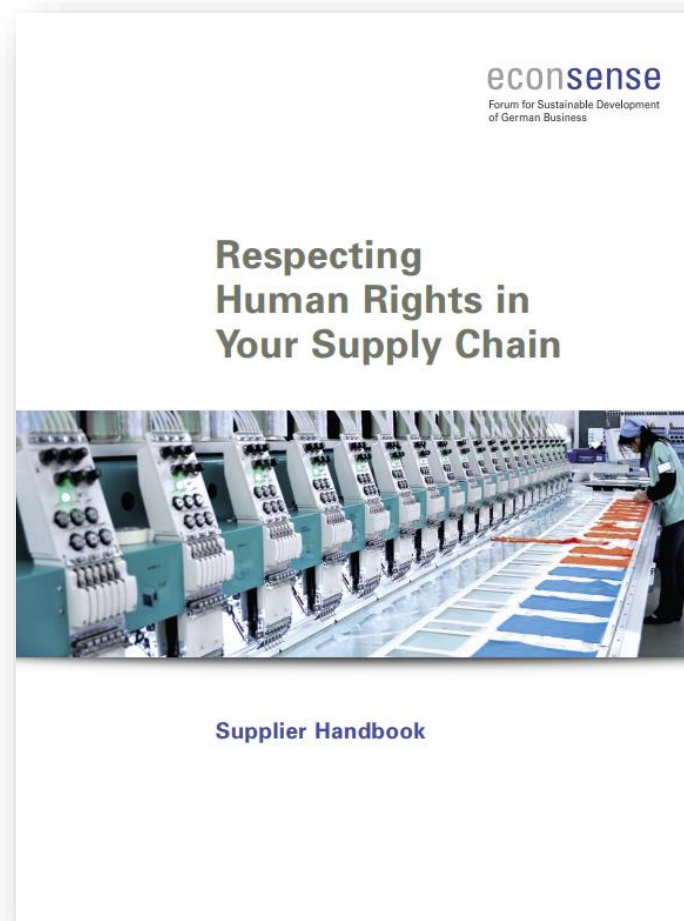
**Duty of Care:** due diligence obligations for human rights and environmental impacts

# econsense offers free publications & tools

## Discussion Papers



## Practical Guidance



## Training Videos



[Training Video for Suppliers: Respecting Human Rights in your Supply Chain / English – YouTube](#)

[Training Video for Suppliers: Respecting Human Rights in your Supply Chain / Spanish - YouTube](#)

# Thank you!

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