

**C L I F F O R D**  
**C H A N C E**

# **SUSTAINABILITY-RELATED DUE DILIGENCE REGULATIONS – FRAMEWORKS FOR MANAGING HUMAN RIGHTS AND ENVIRONMENTAL RISKS**

**THURSDAY 25 APRIL 2024**

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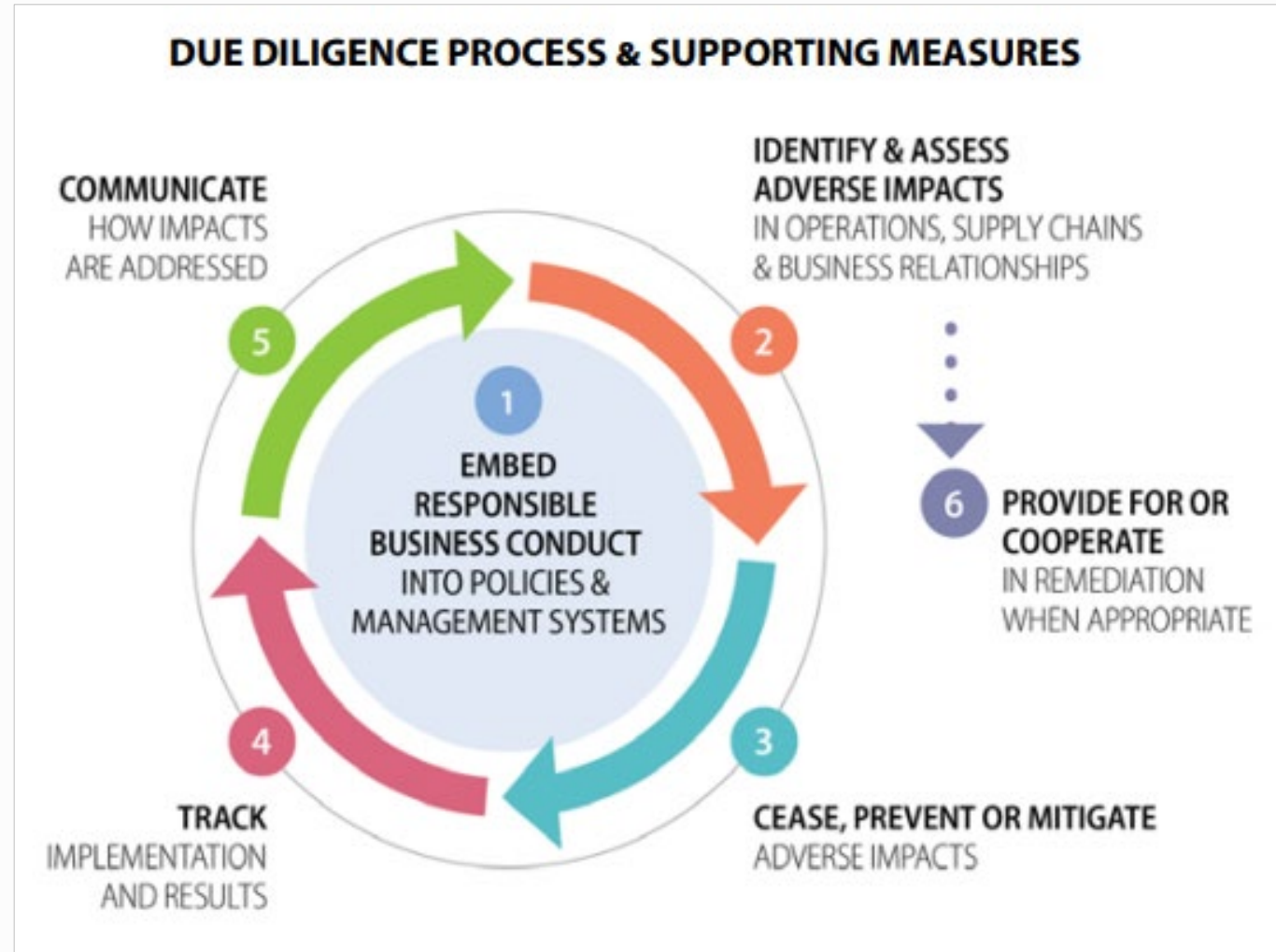
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# 'SOFT LAW' FRAMEWORKS FOR HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE

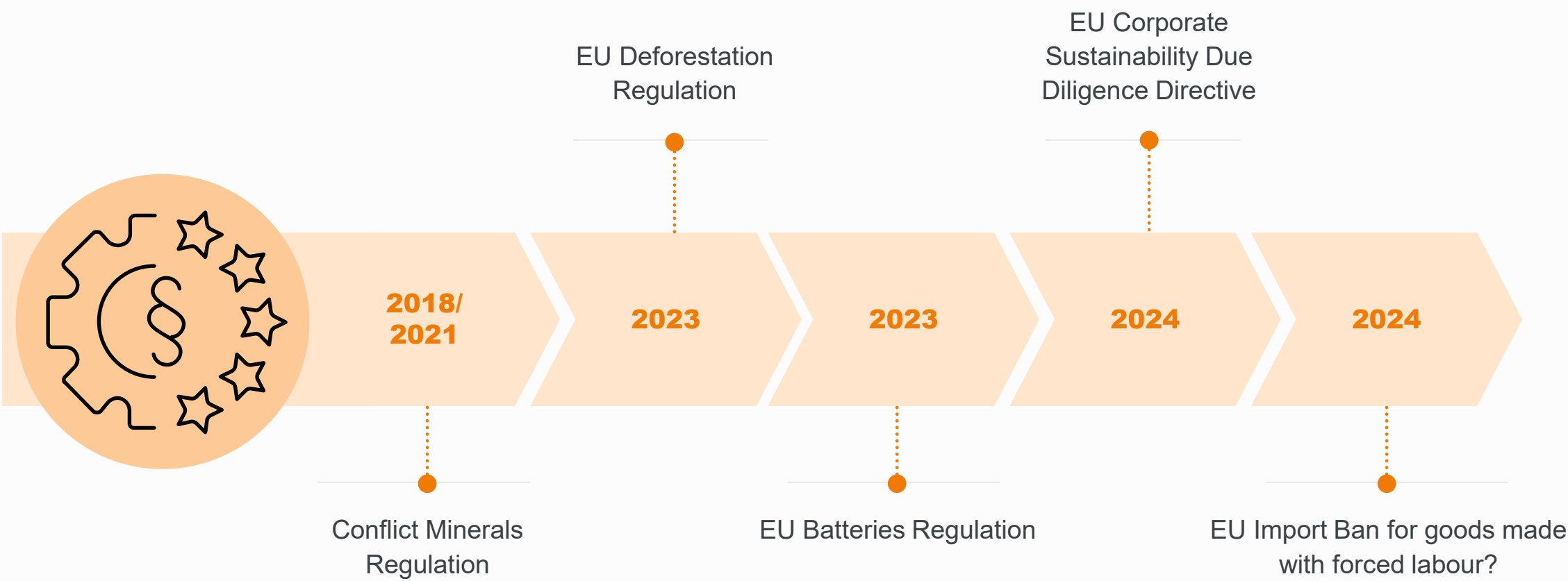


Source: OECD

<https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>, pg 21

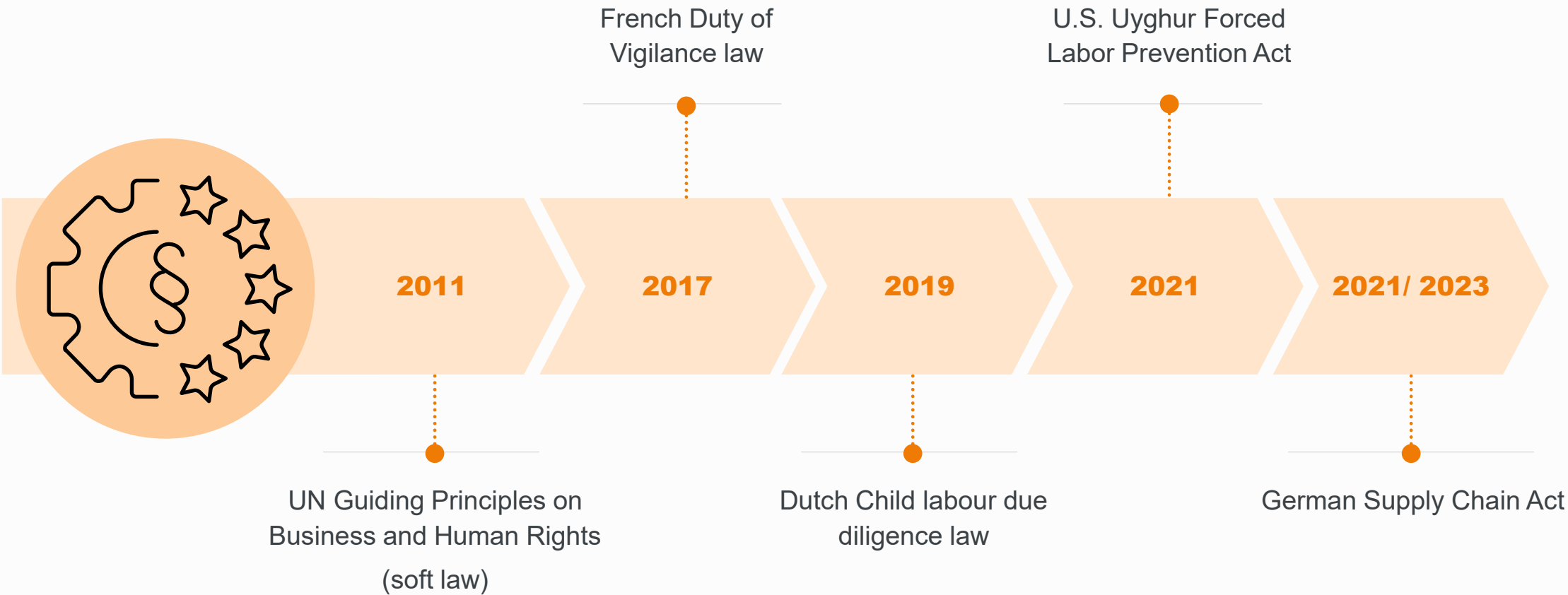
**BACKGROUND**

INCREASING SUPPLY CHAIN DUE DILIGENCE LEGISLATION AT EU LEVEL



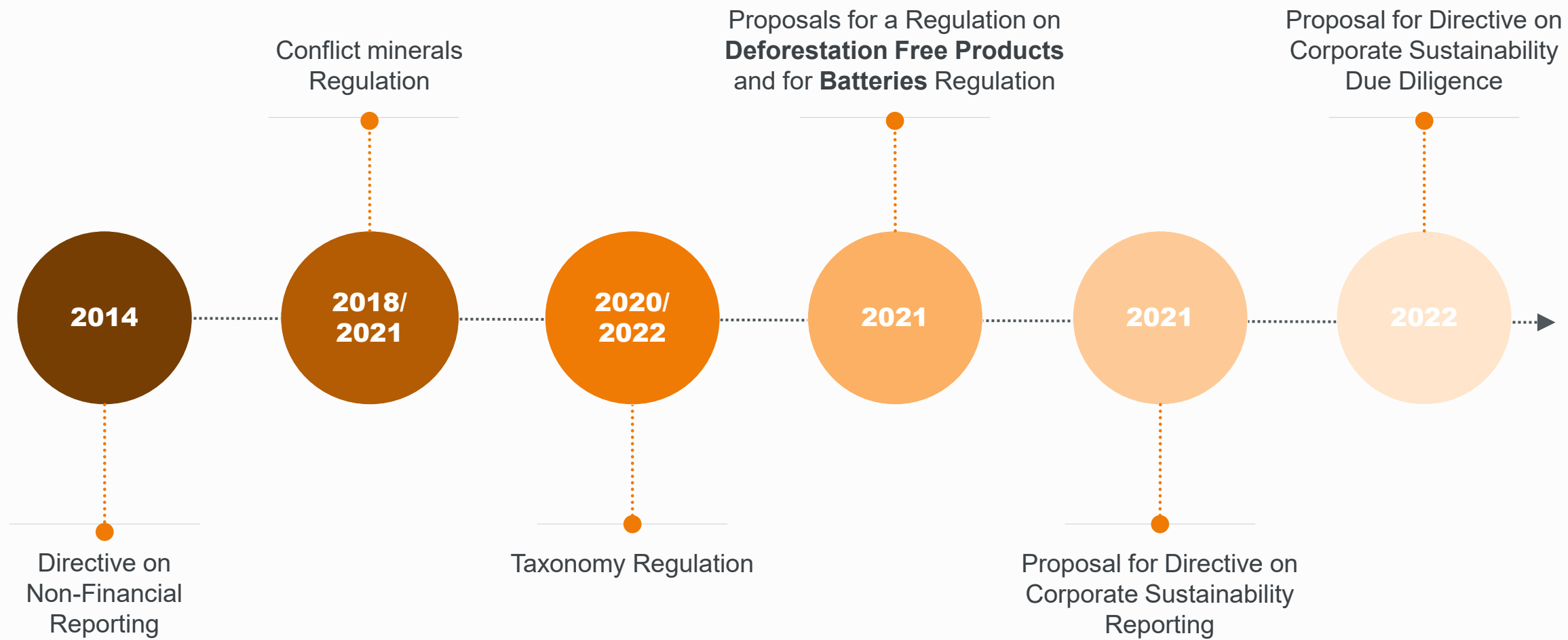
**BACKGROUND**

INCREASING SUPPLY CHAIN DUE DILIGENCE LEGISLATION AT NATIONAL LEVEL

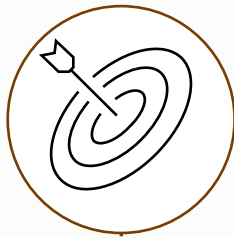


# BACKGROUND

## INCREASING LEGISLATION AT EU LEVEL

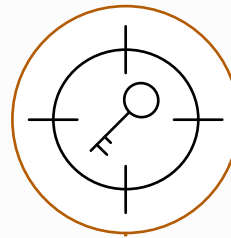


# WHAT IS THE CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CS3D)?



## Objectives

- Enhance the protection of the environment and human rights in the EU and globally.
- Level playing field.



## Key Elements

- Due diligence obligations in own operations, subsidiaries and chain of activities.
- Climate transition plans.
- Supervision, Enforcement and Civil Liability.



## Compromise

- Council and Parliament political agreement 14 December 2023.
- Q1 2024: Member State concerns primarily relating to SME impact.
- Council agreement 15 March 2024 and formal approval by Parliament on 24 April 2024.

# SCOPE OF APPLICATION AND TIMING



## EU-based Companies

- > 1000 employees + € 450m net worldwide turnover.
- Companies that do not reach these thresholds but are the ultimate parent of a group which as group reaches the thresholds on a consolidated basis in the previous financial year are also in scope.



## Non-EU Companies

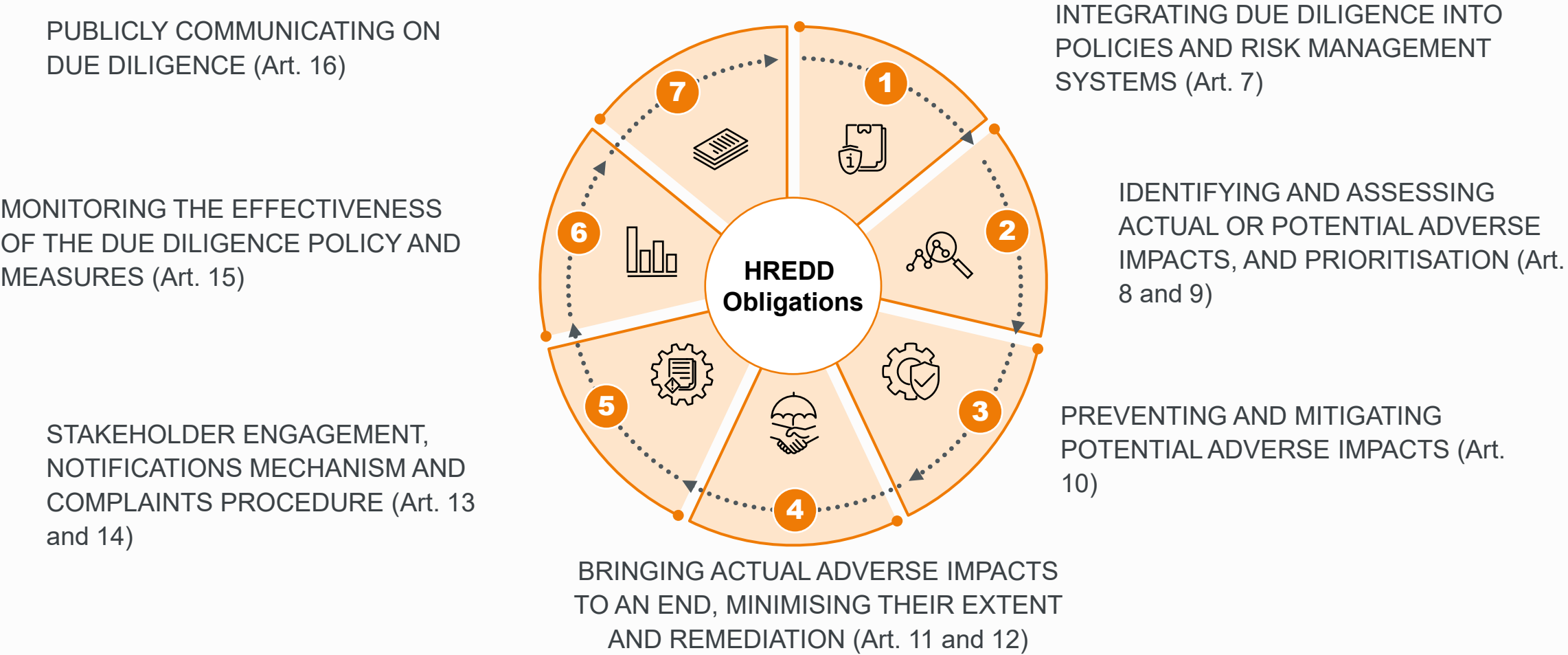
- > € 450m net turnover in the EU.

**APPLICATION:** +3, +4, OR +5 YEARS AFTER ENTRY INTO FORCE, i.e. from 2027



# OVERVIEW OF DUE DILIGENCE OBLIGATION

## Duty to Conduct Human Rights and Environmental Due Diligence by Carrying Out the Following Actions:





# HOW FAR DO THE DUE DILIGENCE OBLIGATIONS EXTEND?



- Upstream (supply of **goods and services**)
  - Downstream (distribution, storage, disposal, **not services**)
  - Business partners (can be 'direct' or 'indirect')
- What is a “**Business partner**”?
  - With whom the company has a commercial agreement related to the operations, products or services of the company or to whom the company provides services... (**direct business partner**), or
  - which is not a direct business partner, but which performs business operations related to the operations, products or services of the company (**indirect business partner**).

# FINANCIAL SECTOR?

## Upstream Application

- HREDD obligations only apply to upstream elements of financial undertakings' chain of activities.
- No application to downstream activities (including loans).
- Specific exemptions for Alternative Investment Funds (AIFs) and undertakings for collective investment in transferable securities (UCITS).
- Regulated financial undertakings still have an obligation to adopt and implement climate transition plans.

## Future Inclusion?

- In December 2023, lead negotiators emphasised that this compromise seems to be a temporary measure.
- This view may have changed following further political negotiations in Q1 2024, with further uncertainty in light of the EU Parliamentary elections.
- A review mechanism is in place.

# DUE DILIGENCE

## OVERLAPPING REQUIREMENTS WITH CLIMATE ISSUES?



Human Rights Due Diligence



Environmental Due Diligence

Climate Due Diligence? “Adverse Climate Change Impacts” Not Expressly Included



Article 22: Put into Effect a Climate Transition Plan

# COMBATTING CLIMATE CHANGE (ARTICLE 22) – THE TRANSITION PLAN

- Same turnover/employee thresholds as per the Due Diligence obligations of the CS3D
- Best efforts to adopt **and put into effect** a plan to ensure that **business model** and **strategy** of the company 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 and the aims of the European Climate Law
- Compliance with CSRD fulfils the “adoption” element
- Contains:
  - 2030 targets, and five-year targets to 2050, including, “where appropriate” scope 1, scope 2 and scope 3 GHG absolute emission reduction targets
  - An explanation of how these goals will be achieved
  - An explanation of how these goals will be financed
- Policies in place (such as financial incentives) to encourage administrative management and supervisory teams in companies with over 1000 employees



**Liability? Supervisory and enforcement regime applies, civil liability regime does not apply**

# SUPERVISORY, ENFORCEMENT, AND CIVIL LIABILITY



## SUPERVISORY + ENFORCEMENT (ART 24-28)

- Member State appointed supervisory authority
- Fines for infringement set by each Member State
- Maximum must be set at 5% or more of net worldwide turnover
- Public disclosure of the nature of the infringement if the company fails to pay within the applicable time-limit



## CIVIL LIABILITY (ART 29)

- For intentional or negligent failure to comply with
  - preventing potential adverse impacts) and/or
  - bringing actual adverse impacts to an end
- Which leads to damage to a protected legal interest
- No liability for damage only caused by business partners
- Established liability → right to full compensation
- Limitation period: at least 5 years

# CLIFFORD CHANCE SPEAKERS



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The background of the entire page is a blurred photograph of autumn foliage. The leaves are in various shades of green, yellow, orange, and red, creating a bokeh effect. A horizontal white railing or fence is visible in the middle ground, also blurred.

# CLIFFORD CHANCE

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