

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

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Roxanna Noll, Project Manager Human Rights & Value Chains
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

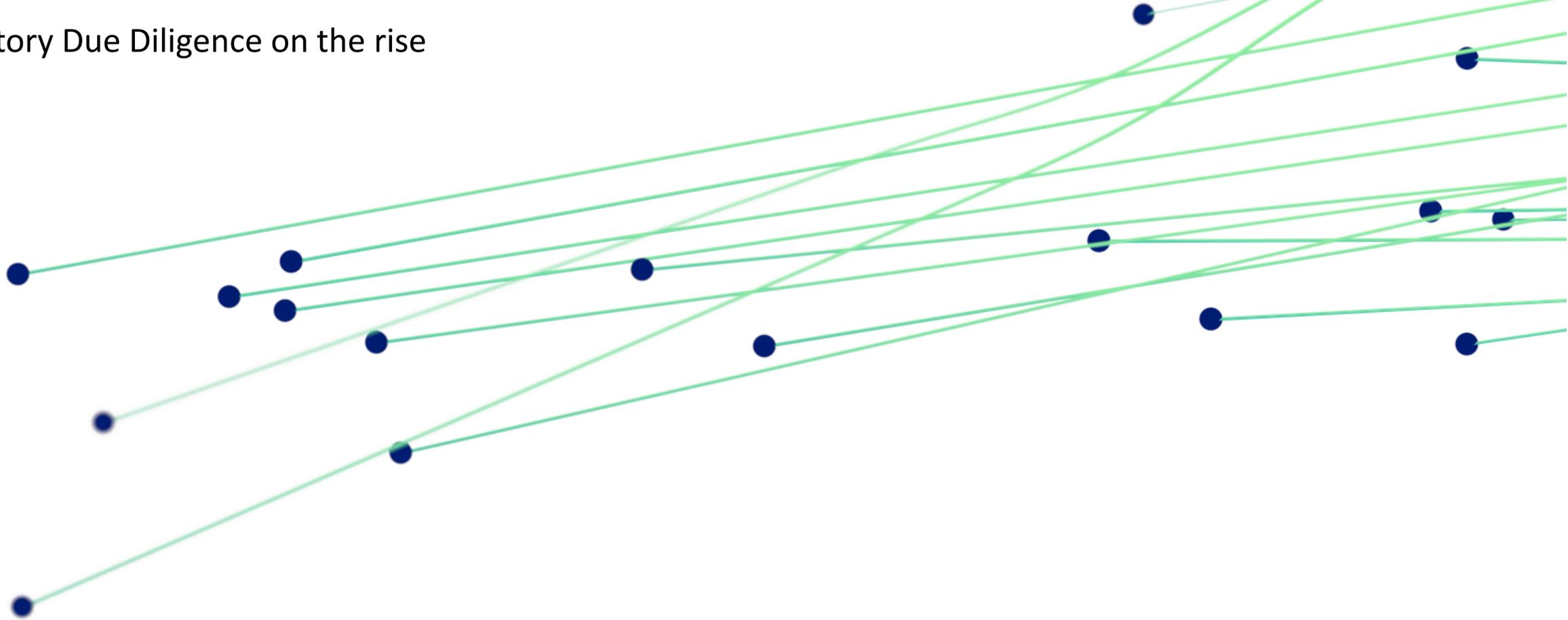
Agenda

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



— 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

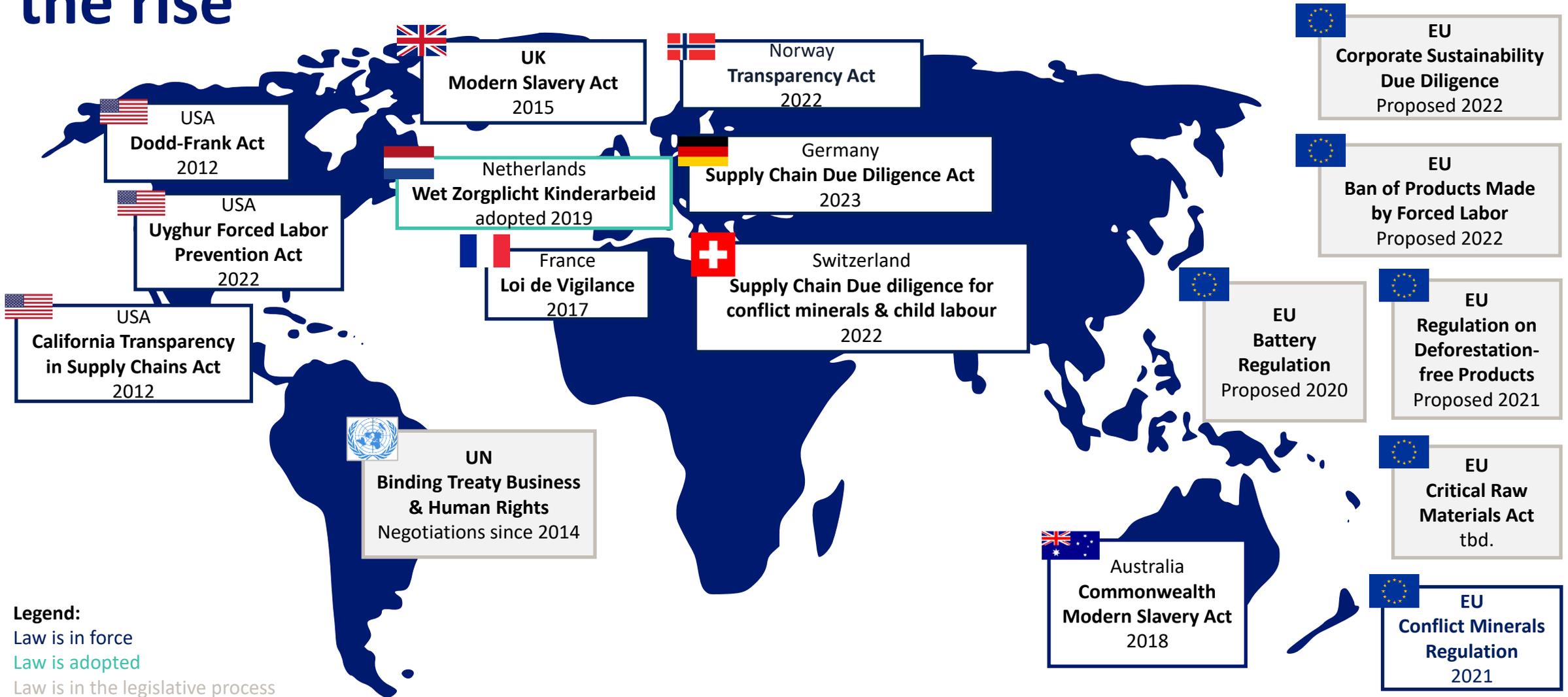
National Action Plans on Business & Human Rights
(National implementation of the UNGP)



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

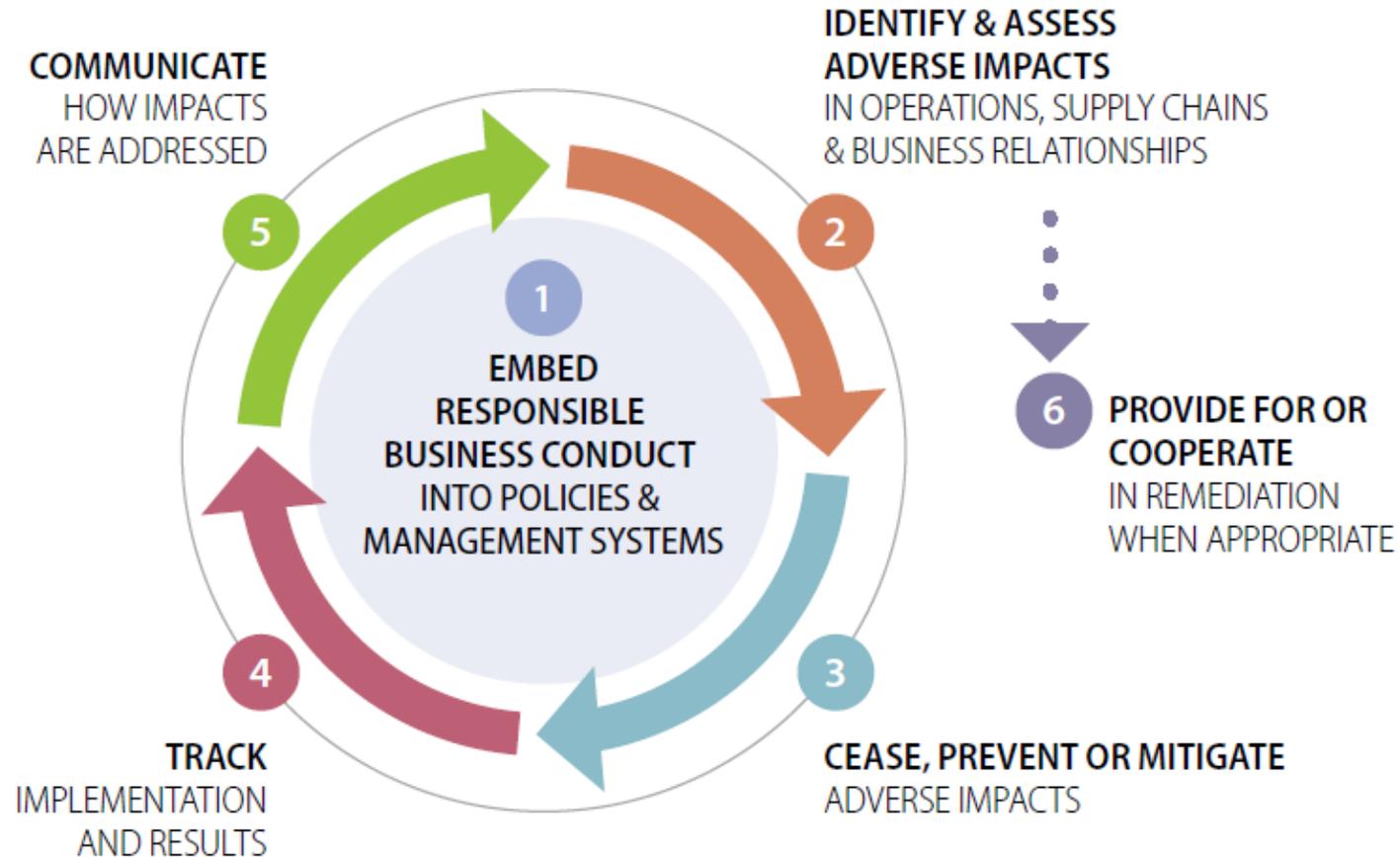


Legend:
 Law is in force
 Law is adopted
 Law is in the legislative process

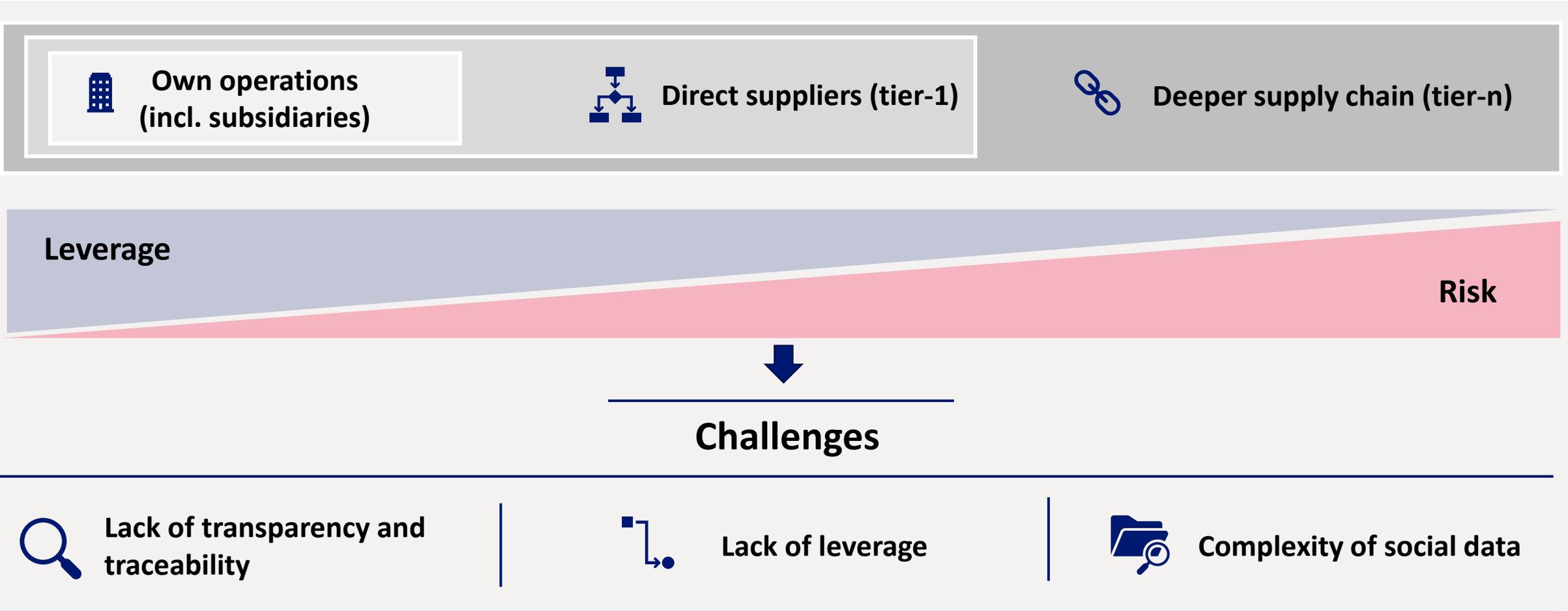
International frameworks describe due diligence obligations

“**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)

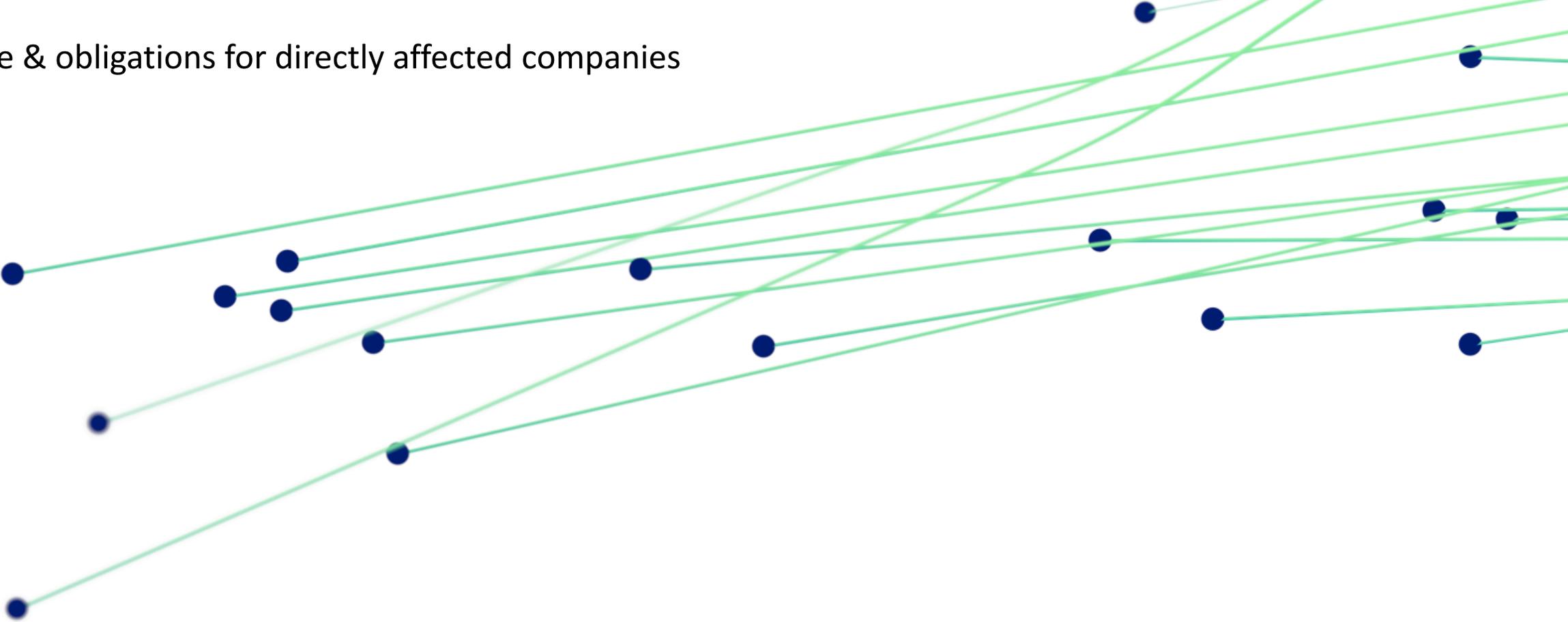


Challenges of Human Rights Due Diligence



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 1st 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)

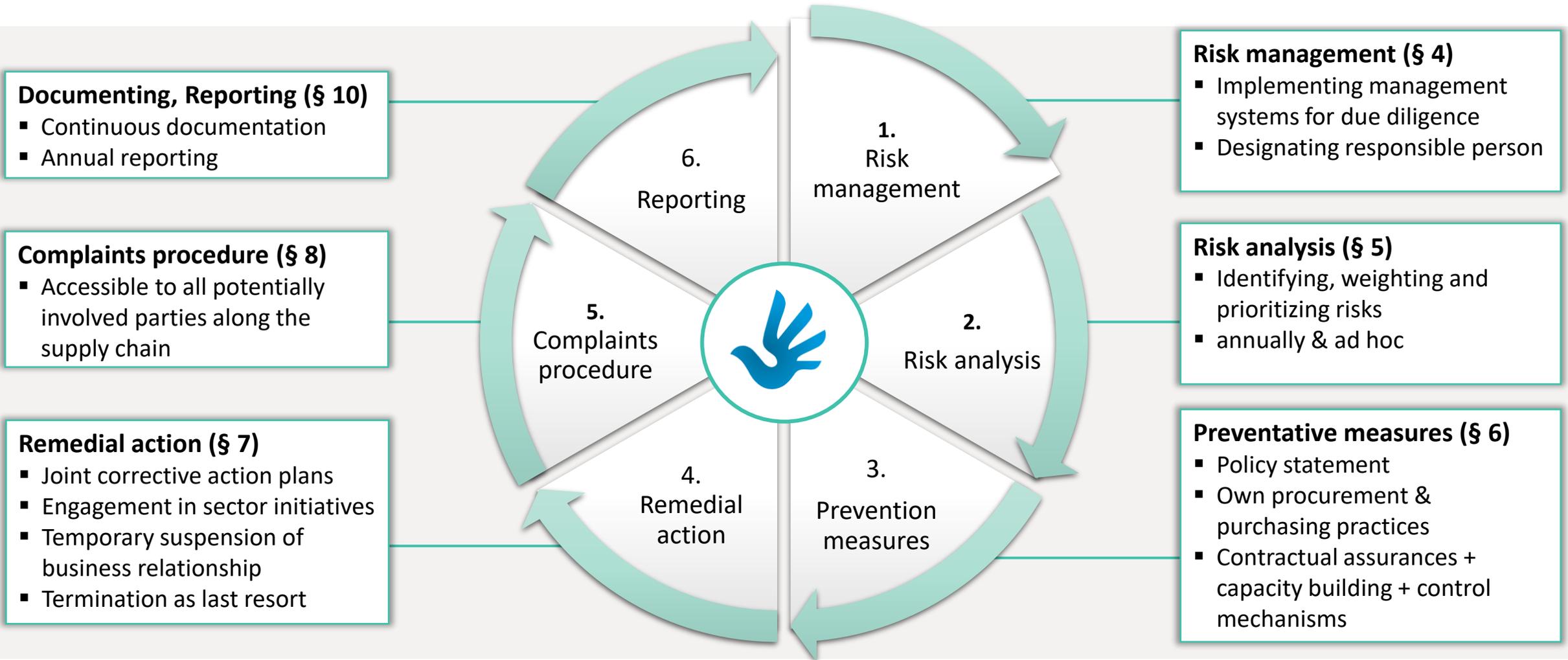


Persistent organic pollutants
(POPs / Stockholm Convention)



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



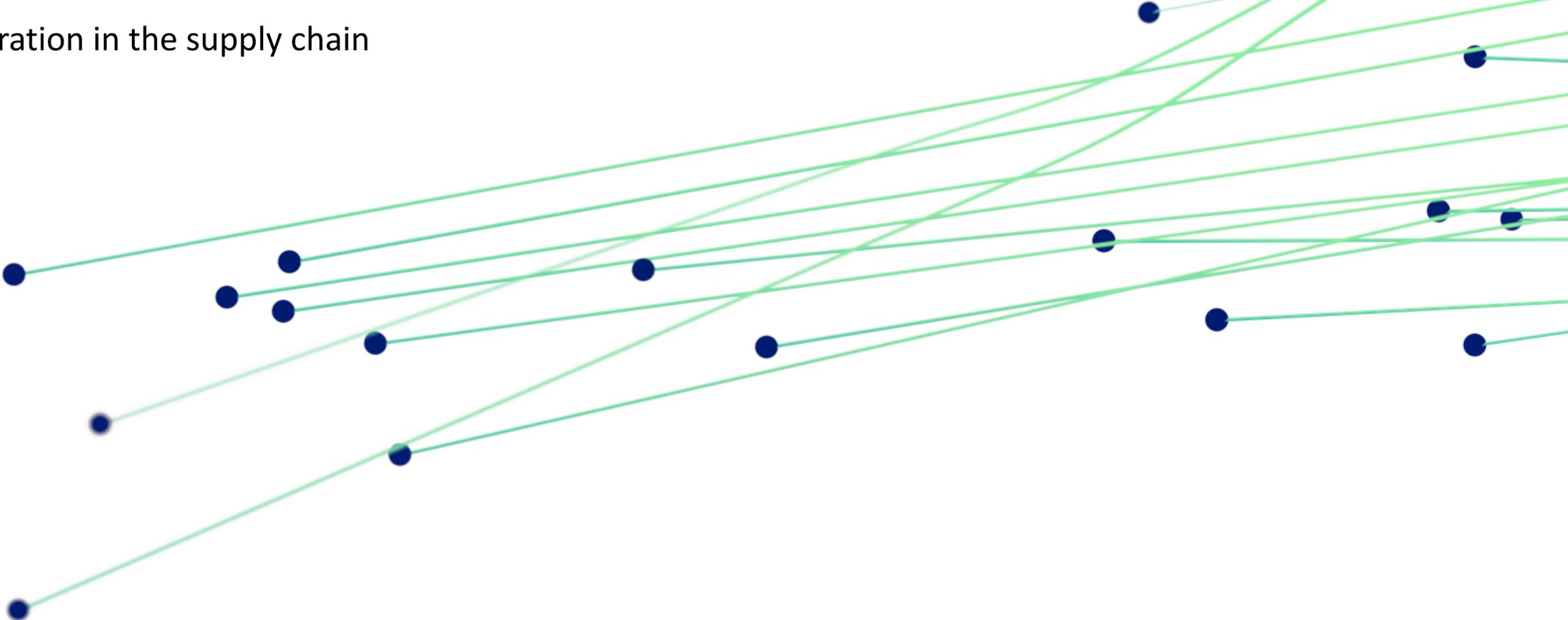
Appropriateness
and effectiveness



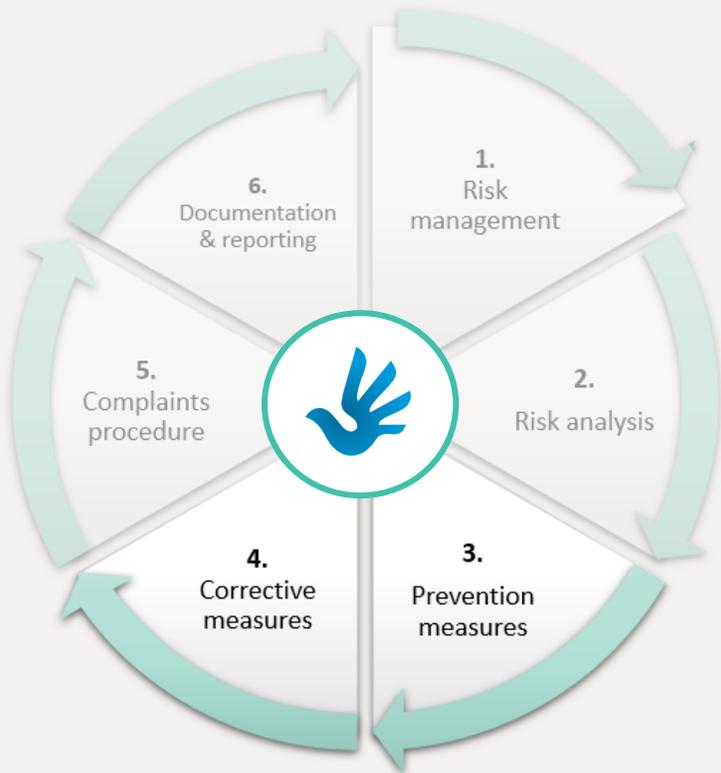
more Guidance
to come...

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:



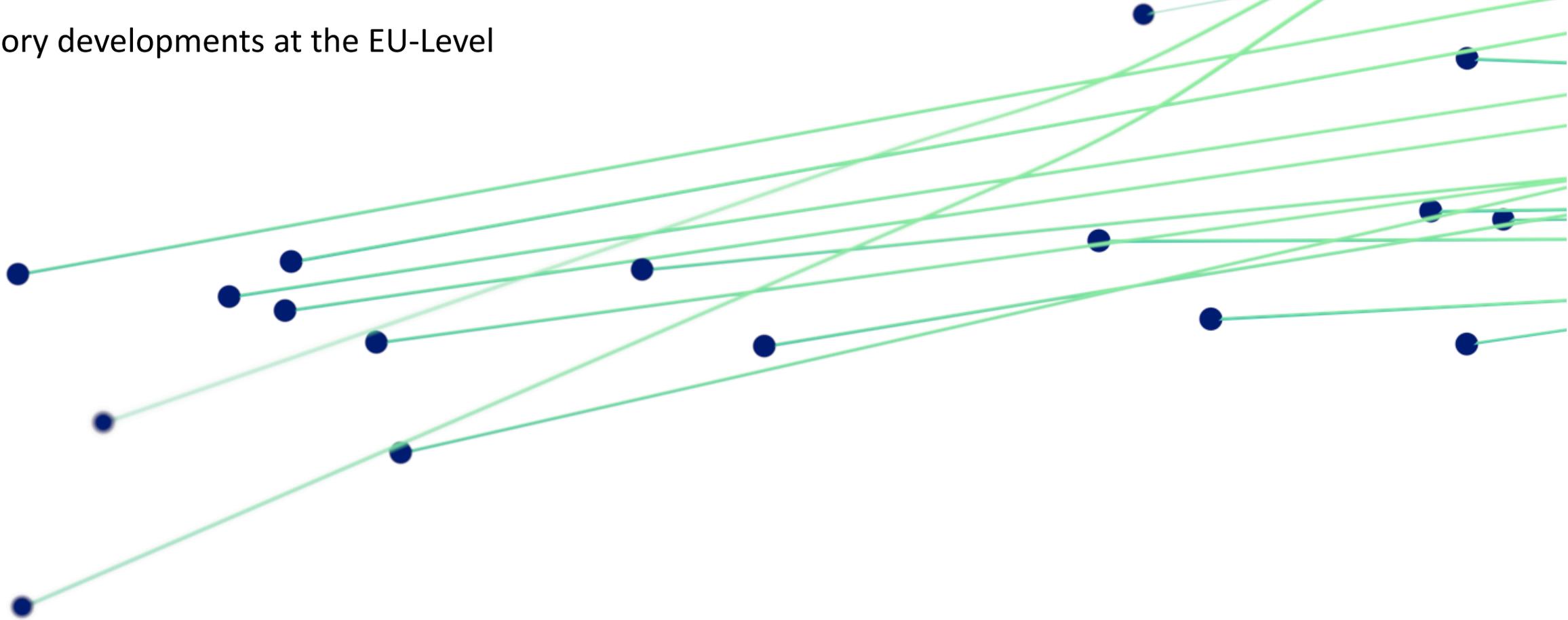
Supply Chain **traceability**



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



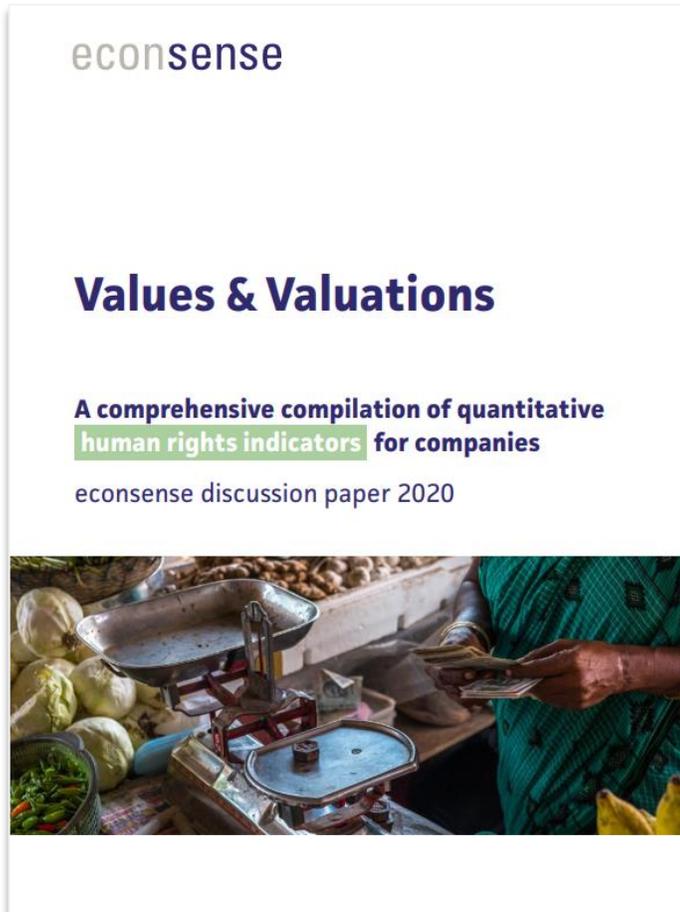
Broadening the scope: responsibility for the whole supply or even value chain



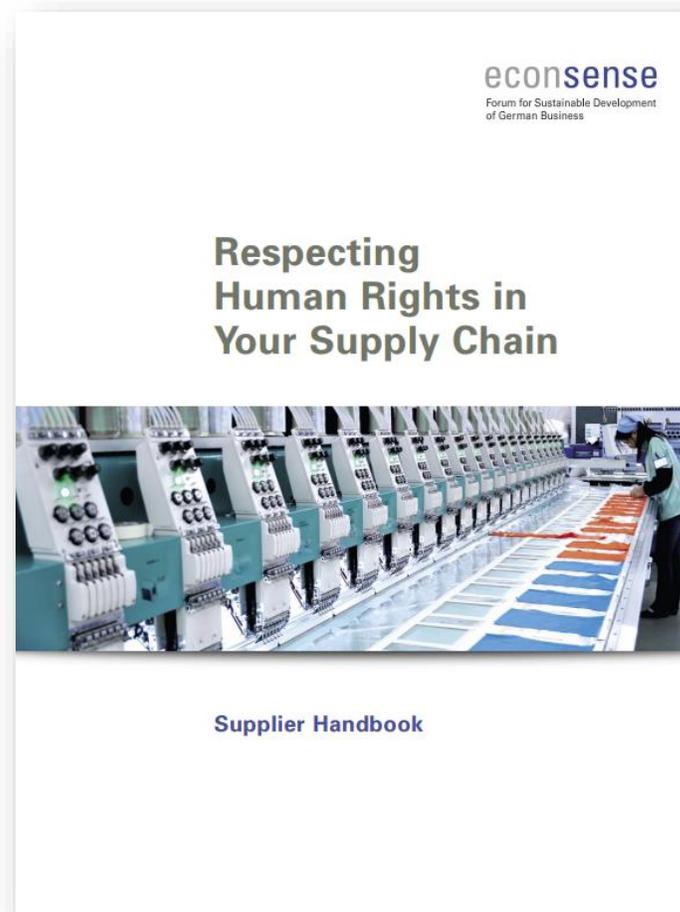
Duty of Care: due diligence obligations for human rights and environmental impacts

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!

econsense

Forum for Sustainable Development
of German Business e.V.
Kurfürstendamm 22, 10719 Berlin
econsense.de | twitter | linkedin



Roxanna Noll

Project Manager

[LinkedIn](#)

T. +49 30 2028-1739

M. +49 175 8478996

r.noll@econsense.de

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