

# Sustainability through Corporate Human Rights Due Diligence

19 November 2024

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# Outline

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- ① Context
- ② Concept of the human rights due diligence
- ③ Overview of the EU measures with HRDD
- ④ Common features

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# Sustainability and global value chains

Moral Money Supply chains [+ Add to myFT](#)

## So you think you know your supply chain?

With greater scrutiny by investors and new regulations, the issue of worker exploitation and abuse is more in the public eye than ever

## Climate change turns up the heat on supply chains

'Buy local' becomes part of the corporate mantra in building business resilience to climate change

EMILIYA MYCHASUK [+ Add to myFT](#)



Unilever cuts palm oil ties over environment fears

# Sustainability and global value chains

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- **Global value chains (GVCs)**
  - a value chain identifies the full range of activities that firms undertake to bring a product or a service from its conception to its end use by final consumers (OECD)
- **Global supply chains**
  - multinational enterprises and their subsidiaries or joint ventures, as well as international sourcing from suppliers and subcontracted firms (ILO)
- **Chains of activities (CS3D)**
  - the upstream part and the downstream part of the chains of activities
    - activities of a company's downstream business partners related to the services of the company are **excluded, save for** distribution, transport and storage of the product, where the business partners carry out those activities for the company or on behalf of the company
    - disposal of product excluded
    - the term is without prejudice to the terms 'value chain' or 'supply chain' as defined in other Union legislation

# Sustainability and global value chains - in the EU

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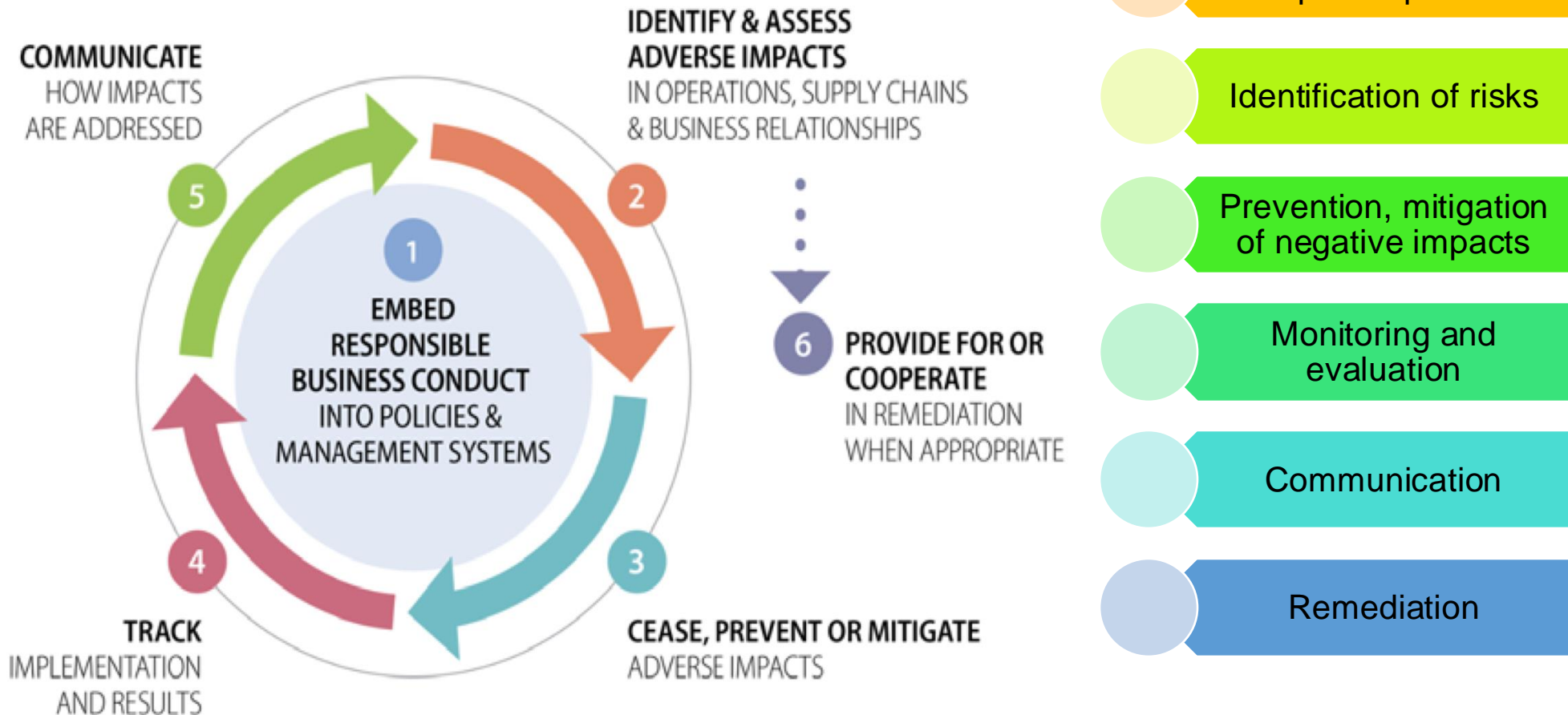
- **European Green Deal (2019)**
  - EU to achieve **SDGs** based on the UN 2030 Agenda
  - a carbon-neutral Europe by 2050
  - to transform industrial sector and value chains
  - **behaviour of companies** across all sectors of the economy is key to success with regard to the Union's sustainability objectives
  - EU as a **standard-setter** across global value chains
- **Corporate sustainability Due Diligence Directive (2024)**
  - corporate behaviour in companies' operations and across their global value chains



to improve sustainability in global value chains

# The concept of human rights due diligence

## DUE DILIGENCE PROCESS & SUPPORTING MEASURES



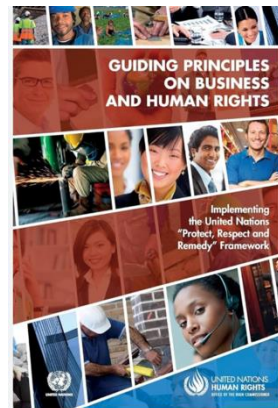


# International context: soft law working with HRDD

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## UN Guiding Principles on Business and Human Rights (2011)



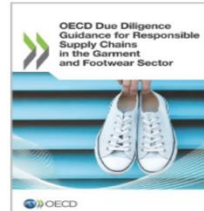
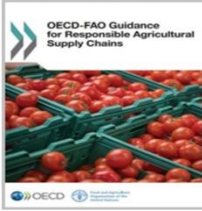




- **OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023 edition)**
- **OECD Due Diligence Guidance for Responsible Business Conduct**

GP 15, 17

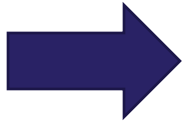


**corporate responsibility to respect human rights**

<h3>Institutional Investors</h3>  <p>This paper highlights key considerations for institutional investors in carrying out due diligence to identify and respond to environmental and social risks.</p> <p><a href="#">» More</a></p>	<h3>Extractive</h3>  <p>This guidance provides a practical framework for identifying and managing risks with regard to stakeholder engagement activities.</p> <p><a href="#">» More</a></p>	<h3>Garment and Footwear</h3>  <p>This guidance supports a common understanding of due diligence and responsible supply chain management in the garment and footwear sector.</p> <p><a href="#">» More</a></p>
<h3>Agriculture</h3>  <p>The OECD and the UN FAO have developed guidance to help enterprises observe standards of responsible business conduct in the agricultural supply chain.</p> <p><a href="#">» More</a></p>	<h3>Minerals</h3>  <p>The OECD Due Diligence Guidance provides detailed recommendations to help companies respect and avoid contributing to conflict through their mineral purchasing decisions and practices.</p> <p><a href="#">» More</a></p>	<h3>Child Labour</h3>  <p>These Practical Actions aim to help companies identify and address the worst forms of child labour in their mineral supply chain.</p> <p><a href="#">» More</a></p>

# EU context: from soft law to hard law

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Creation of a new legal duty of care with regard to human rights and environment

- **EU level**
- **National legislation of some EU Member States**
  - France (Duty of Vigilance Law 2017)
  - Germany (Act on Corporate Due Diligence Obligations in Supply Chains 2023)
  - Netherlands (Dutch Child Labour Due Diligence Act 2019)



# Horizontal regulation: "CS3D"

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Official Journal  
of the European Union

EN

L series

2024/1760

5.7.2024

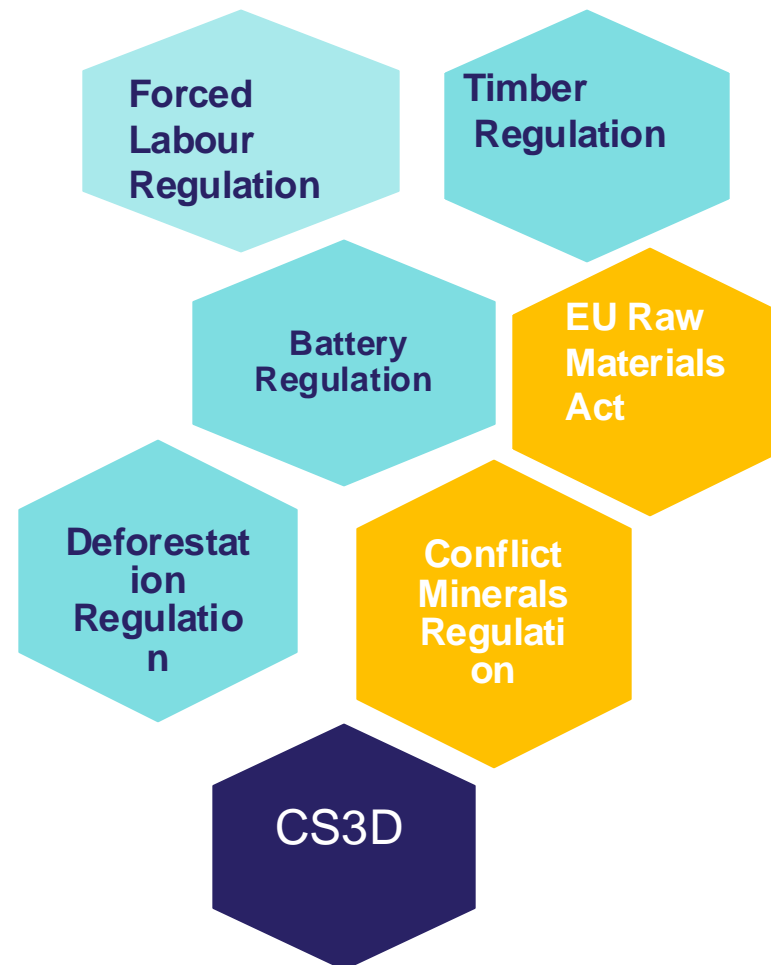
**DIRECTIVE (EU) 2024/1760 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 13 June 2024**

**on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859**

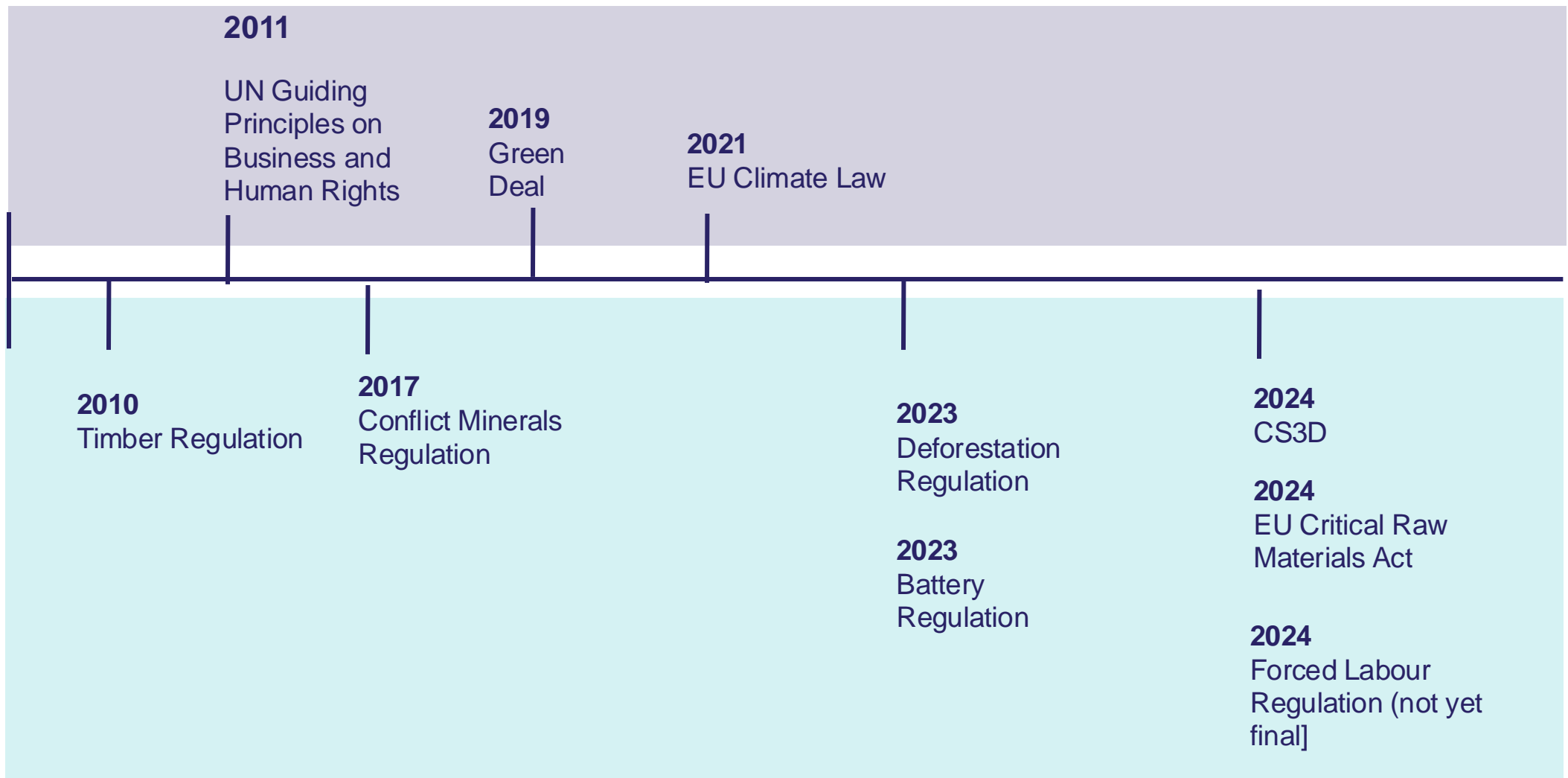
# Specific regulations – using HRDD

- product based
- sector based
- import/export regulation
- green transition



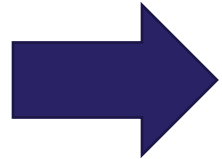
# Timeline

## EU sustainability measures using DD



# Thesis

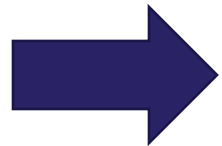
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how can companies be made accountable for their impact on human rights and the environment in the supply chain?



civil liability + administrative sanctions



how do the EU HRDD measures work together?

- **Art. 1.3 of CS3D:** If the provisions of this Directive conflict with provisions of another Union legislative act pursuing the same objectives and providing for more extensive or more specific obligations, **the provisions of the other Union legislative act should prevail to the extent of the conflict** and should apply to those specific obligations
- **Recital 56 of Deforestation Regulation:** EUDR as a more specific due diligence requirement applies alongside CS3D



risk of overlaps ?

# Common characteristics in EU measures using HRDD concept

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- **Risk management process**
  - actual and potential risk
- **Transparency**
  - data sharing
  - reporting
- **Traceability**
  - documentation
  - mapping
- **Domestic law compliance**
- **Accountability**
  - verification and certification
  - administrative sanctions
  - (civil liability)
- **Stakeholder engagement**

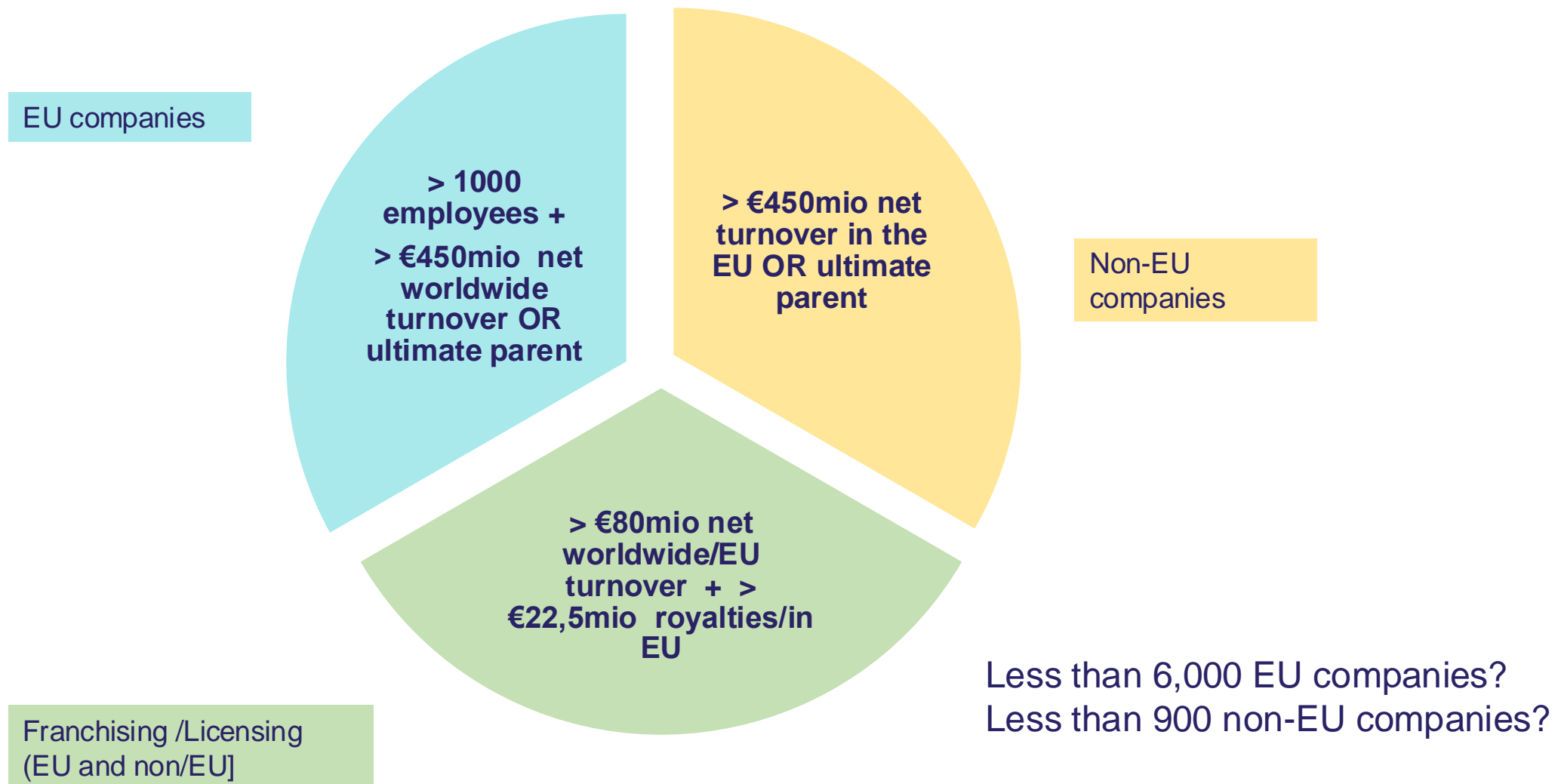
- **scope of application**
- **specific obligations imposed**
- **defences to liability**
- **sanctions for non-compliance**



- 
- **EU directive on corporate sustainability due diligence (2024/1760)**
    - in effect from 25 July 2024
    - transposition by Member States by 26 July 2026
    - progressive roll-out: 2027-2029
  - **Core focus:** identifying and limiting the human rights and environmental impacts of a company's operations, those of its subsidiaries and in its "chain of activities"
  - Cross-sectoral due diligence requirements



## Scope of application



- 
- HRDD requirements **broadly align** with UNGPs and OECD Guidelines with some divergences
  - Detailed description of the **sustainability due diligence**:
    - integrating HRDD into companies' policies
    - identifying actual or potential adverse impacts on HR and environment
    - preventing and mitigating potential adverse impacts, bringing actual adverse impacts to an end, and minimising their extent
    - providing remediation in case of actual adverse impacts
    - carrying out meaningful engagement with stakeholders
    - establishing an internal notification and complaints procedure
    - monitoring the effectiveness of the HRDD policy and measures
    - publicly communicating

- Important **limitations**:
  - reduced personal scope
  - partial coverage of the value chain (“chain of activities”) (X CSRD and ESRS disclosures in relation to the full value chain, including impacts on consumers and end users)
  - companies cannot be held responsible or obliged to take remedial action if the damage or negative impact is caused *solely* by the company’s business partner
- **Administrative sanctions**
  - EU network of supervisory authorities
- **Civil liability**
  - if a company deliberately or negligently **fails to comply** with the requirements under CS3D **and thereby causes harm** to another person
  - damage caused to a person’s protected legal interests will be interpreted in accordance with the MS’s national law

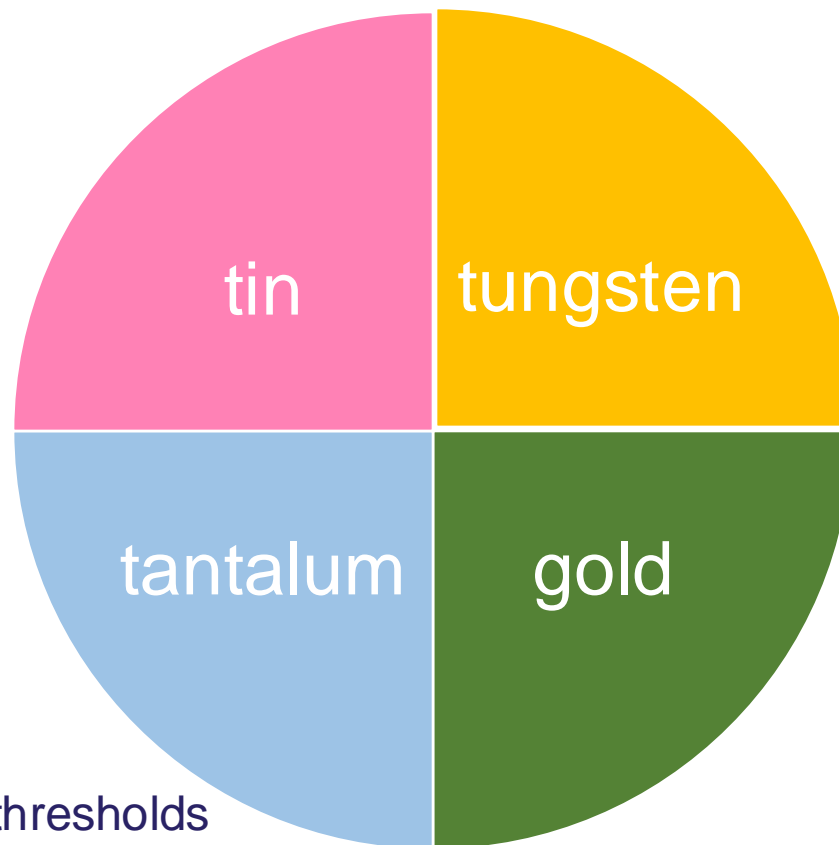
# Conflict Minerals Regulation

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- **EU regulation laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (2017/821)**
  - in effect from 9 July 2017
  - full force from 1 January 2021
- **Core focus:**
  - “responsible sourcing of minerals” - identification of risks linked to the sourcing of 3TG from conflict-affected and high-risk areas
    - armed conflict, fragile post-conflict areas, areas with weak or non-existent governance and security, and areas with widespread and systematic violations of international law
    - these minerals sometimes finance armed conflict or are mined using forced labour
  - obliges EU-based importers of 3TG+gold to comply with prescribed HRDD obligations in the supply chain and to retain documentation demonstrating their compliance

# Conflict Minerals Regulation

**Scope of application:** EU-based importers to the EU, global and EU smelters and refiners



To approx. **600 - 1,000 EU importers**

Indirectly affects approx. 500 smelters and refiners, inside or outside the EU

Annual import volume thresholds  
Annex 1

# Conflict Minerals Regulation

**Commission:** an indicative and non-exhaustive list of conflict-affected and high-risk areas

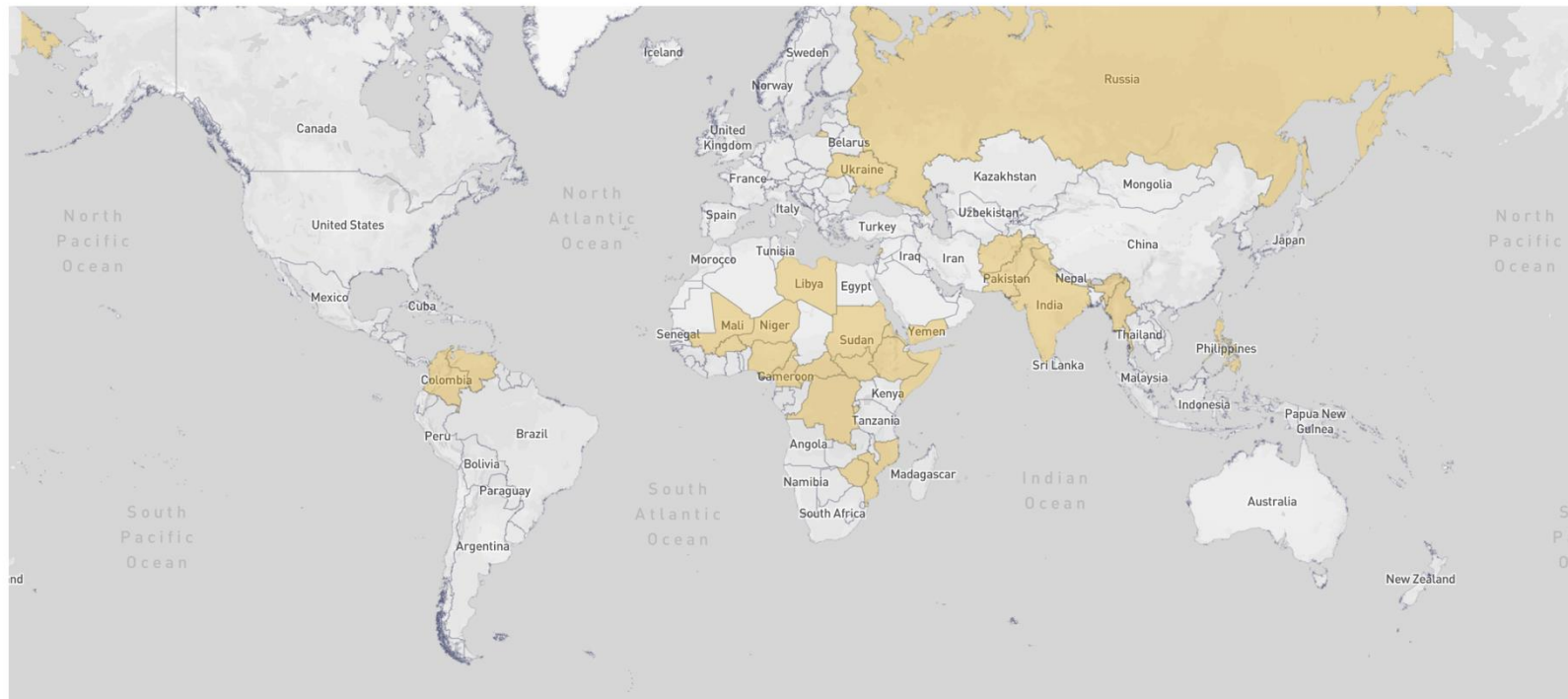


Indicative, non exhaustive list of

## CONFLICT-AFFECTED AND HIGH-RISK AREAS

under Regulation (EU) 2017/821

### GLOBAL MAP





# Conflict Minerals Regulation

- Five step HRDD framework of the **OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas**

- establishing a company management system
- risk assessment in supply chain
- strategy to respond to identified risks
- independent third-party audit to verify DD
- annual reporting on DD



EU companies in the supply chain to ensure they import relevant minerals and metals from responsible and conflict-free sources

- **Administrative ex-post checks** (weak enforcement)
- **No environmental due diligence**
- **No prohibition on placing conflict mineral on EU market**
- **No Civil liability**

## Conflict Minerals Regulation: The regulation explained

On 1 January 2021 a new law came into full force across the EU – the Conflict Minerals Regulation.

# Battery Regulation

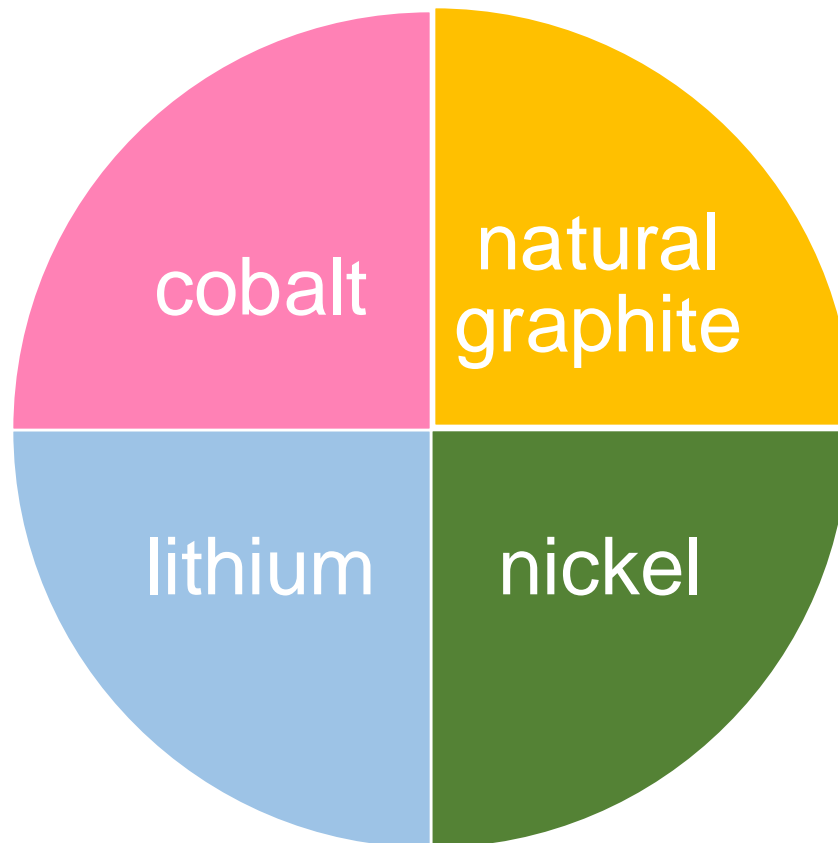
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- **EU regulation concerning batteries and waste batteries (2023/1542)**
  - in effect from 17 August 2023
  - full force from 18 February 2028
- **Core focus:**
  - to promote a circular economy and to reduce the environmental and social impact of batteries throughout the life-cycle
  - outlines safety, sustainability, and labelling requirements for batteries and waste batteries
  - overall aim to develop a sustainable battery industry
  - **due diligence measures** to address the **social and environmental risks related to raw material** extraction, processing, and trading for **battery manufacturing purposes**
    - obliges companies selling batteries with a capacity above 2 kWh to establish a **HRDD policy in their supply chains for cobalt, natural graphite, lithium and nickel**
  - repeal of EU Batteries Directive of 2006

# Battery Regulation

**Scope of application with respect to DD:** economic operators placing batteries on the EU market or into service with a **turnover exceeding EUR 40 million**



all types of batteries sold in the EU, covering the entire battery life cycle from design to reuse or recycling

# Battery Regulation

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- References to the UNGPs and OECD Guidelines
- **Comprehensive DD obligations:**
  - to verify the **source of materials used for the batteries** (extracting, processing, trading)
  - for **associated risks listed in the Annex** (child labour, forced labour, infringements on trade union freedoms, occupational health and safety, and soil, water, and air pollution)
  - adopting and communicating a **battery due diligence policy** to suppliers and the public
  - a system of controls (+ **assigning responsibility to top management**)
  - a grievance mechanism
  - **verification** of the DD process
  - due diligence be conducted only on the supply chain

# Battery Regulation

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- **targets** for battery waste collection, mandatory minimum levels for recycled content, recycling efficiency and recovery of raw materials used in batteries (cobalt, nickel, lithium, etc.).
- labelling requirements (passport, QR code)
- **administrative sanctions**
- **no civil liability**
- "Provisions on due diligence obligations apply without prejudice to Union law on due diligence obligations concerning minerals and metals originating from conflict-affected and high-risk areas"

# Deforestation Regulation EURD

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- **EU regulation on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation (2023/1115)**
  - in effect from 29 June 2023
  - full force probably one year delayed from 30 December 2025
- **Core focus:**
  - address deforestation and forest degradation caused by the expansion of agricultural land with respect to the production of **7 commodities**: cattle, wood, rubber, oil palm, soy, cocoa and coffee and derived products
  - reduce greenhouse gas emissions and biodiversity loss
  - repeal of Timber Regulation
- Strict due diligence requirements



# Deforestation Regulation

**Scope of application:** operators, traders, SMEs, microenterprises, wherever located, if import, export or place on EU market certain products

Import on the EU market



Export from the EU market

## Derivative products

- soya beans
- chocolate
- leather
- printed paper, books
- furniture

Review process for the in-scope commodities

# Deforestation Regulation

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- **No direct reference to the UNGPs** and other international instruments
  - but recitals link deforestation to adverse impacts on the enjoyment of human rights, climate change and biodiversity loss
- **Import control**
- Operators and traders to ensure through due diligence that **commodities** placed on EU market or exported from the EU market are "**deforestation-free**", **legally produced** (in compliance with national laws) **and covered by a due diligence statement** (electronic system accessible to oversight authorities)
  - produced on land that has not been subject to deforestation after 31 December 2020
  - comply with applicable laws in the country of production (land rights, labour rights and human rights protected under international law, as well as the principle of FPIC)
  - measures to ensure traceability to the origin of commodity production: providing geolocation of relevant plots of land
  - record keeping
  - Commission to establish a country benchmarking system
    - categorizing countries into deforestation 'high risk', 'low risk', and 'standard risk' groups, based on an objective and transparent assessment

# Deforestation Regulation

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## Due diligence statement

### ANNEX II

#### Due diligence statement

Information to be contained in the due diligence statement in accordance with Article 4(2):

1. Operator's name, address and, in the event of relevant commodities and relevant products entering or leaving the market, the Economic Operators Registration and Identification (EORI) number in accordance with Article 9 of Regulation (EU) No 952/2013.
2. Harmonised System code, free-text description, including the trade name as well as, where applicable, the full scientific name, and quantity of the relevant product that the operator intends to place on the market or export. For relevant products entering or leaving the market, the quantity is to be expressed in kilograms of net mass and, where applicable, in the supplementary unit set out in Annex I to Regulation (EEC) No 2658/87 against the indicated Harmonised System code or, in all other cases, expressed in net mass specifying a percentage estimate or deviation or, where applicable, volume or number of items. A supplementary unit is applicable where it is defined consistently for all possible subheadings under the Harmonised System code referred to in the due diligence statement.
3. Country of production and the geolocation of all plots of land where the relevant commodities were produced. For relevant products that contain or have been made using cattle, and for such relevant products that have been fed with relevant products, the geolocation shall refer to all the establishments where the cattle were kept. Where the relevant product contains or has been made using commodities produced in different plots of land, the geolocation of all plots of land shall be included in accordance with Article 9(1), point (d).
4. For operators referring to an existing due diligence statement pursuant to Article 4(8) and (9), the reference number of such due diligence statement.
5. The text: 'By submitting this due diligence statement the operator confirms that due diligence in accordance with Regulation (EU) 2023/1115 was carried out and that no or only a negligible risk was found that the relevant products do not comply with Article 3, point (a) or (b), of that Regulation.'
6. Signature in the following format:  
'Signed for and on behalf of:  
Date:  
Name and function: Signature:'.

# Deforestation Regulation

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- Divergence from the HRDD under UNPGs:
  - **collection of conclusive, verifiable information and documents** accompanied by evidence with respect to each product (including geolocation data, evidence of land ownership, and supplier information, compliance with local laws, e.g. land use rights, environmental protections, forest-related regulations, labour rights human rights protected under international law, anti-corruption)
  - **an annual assessment of the deforestation risk based on the collected information** to establish whether there is a risk of non-compliance with the EUDR
  - **mitigation of (non-negligible risk)** (requesting additional data, conducting independent surveys, audits, capacity building for support to suppliers)
  - **reporting** on due diligence systems and measures
  - certification schemes (not to replace the due diligence process)

# Deforestation Regulation

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- **Administrative sanctions**
  - national administrative authorities
  - MS to implement dissuasive penalties:
    - fines of at least 4% of the company's annual turnover in the Member States (proportionate to the environmental damage)
    - confiscation of non-compliant products and associated revenues
    - temporary exclusion from public procurement and public funding
  - EU Commission may publish judgments for infringements of the EUDR and the penalties
- **No civil liability**



## Frequently Asked Questions

Implementation of the EU Deforestation Regulation

Version 3 – October 2024

# Conclusion

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- Creating a level playing field for companies operating in the EU
- The risk of a ‘tick box’ exercise?
- Is the concept of duty of care generally an appropriate tool for changing corporate behaviour?
  - duty of care only imposes due diligence obligations on companies, not human rights obligations
  - lack of experience and empirical data
- Mutual supportiveness of the measures:
  - smart-mix approach (UNGPs)
  - new innovative tools, platforms, and services
  - some of these regulations partially interact in terms of material scope, corporate coverage and requirements
  - not to undermine the scope of the duty to respect human rights in line with the international instruments



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# Thank you for your attention!

## Questions & Comments

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