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Ensuring Ethical Supply Chains: Navigating the EU due diligence directive and challenges of alternative ingredient sourcing

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 - Thank you to our Mobile App sponsor: **Epicor (Booth 4465)**
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- Please place all devices on silent mode
- The Expo Hall is open today from 10am – 5:30pm.
- There is an LGBTQ + Allies Networking reception tonight from 5:30-7:30pm in South Pacific Ballroom F.
This reception is in partnership with the Naturally Proud Network.



Ensuring Ethical Supply Chains: Navigating the EU due diligence directive and challenges of alternative ingredient sourcing



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Bird & Bird LLP

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*A truly international firm,
organised around our clients*

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31
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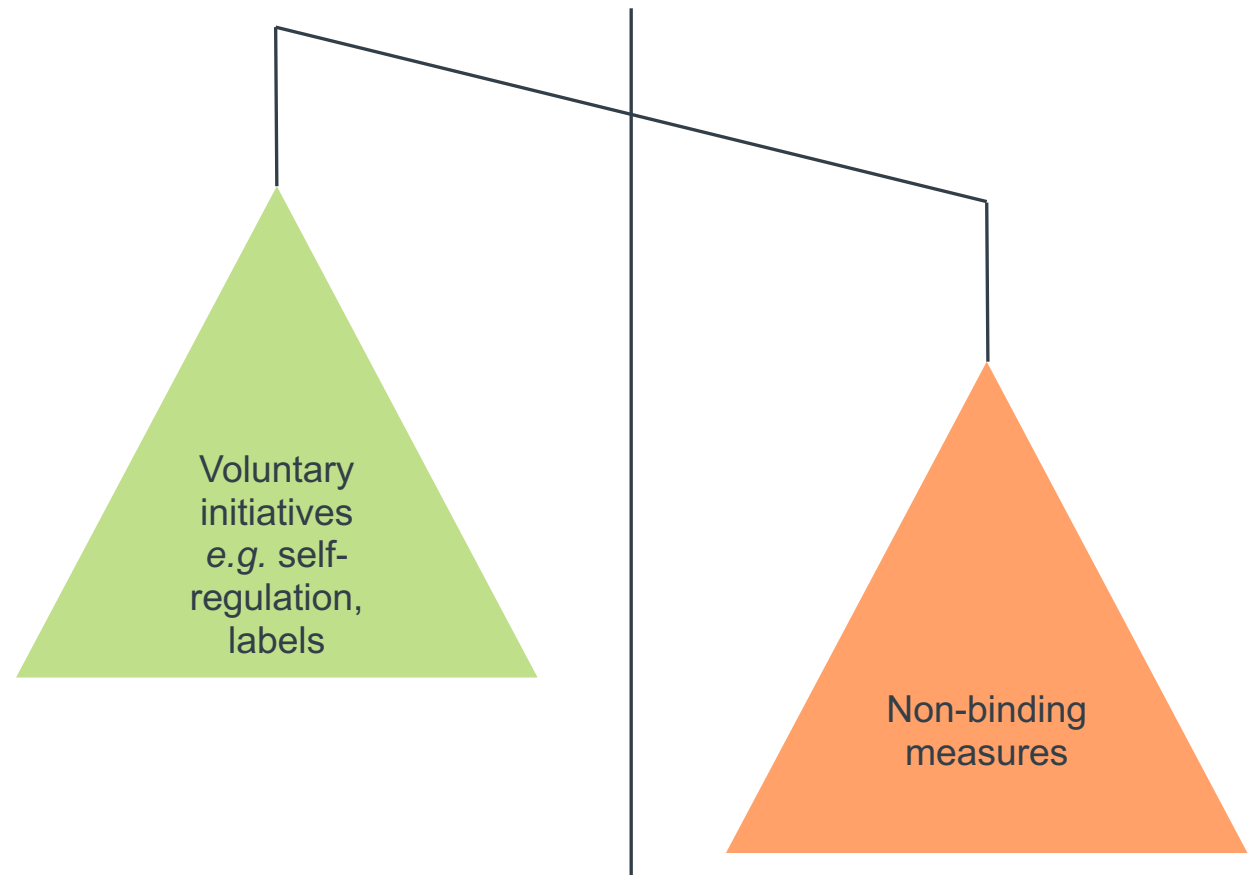
Singapore

Sydney

Ensuring Ethical Supply Chains

A well-worn topic

- Gradually increased focus on CSR towards more ethical products and services
- 1976 : OECD Guidelines for Multinational Enterprises (last updated in June 2023)
 - **Recommendations** from governments to multinational operators
- June 2011 : UN Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council



Ensuring Ethical Supply Chains

Overall EU policy context

❖ 6 Commission priorities for 2019-24, one of them is the

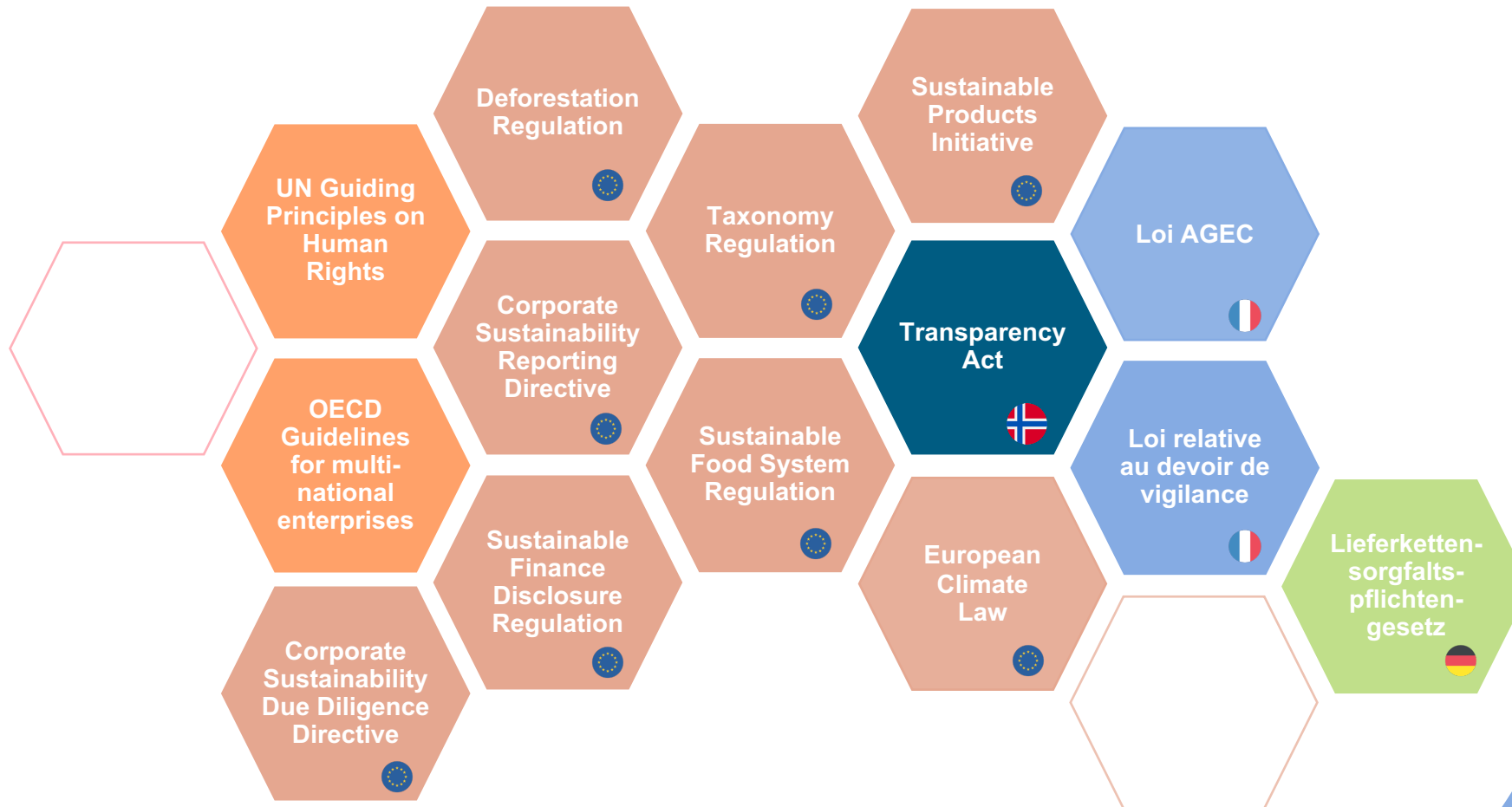
European Green Deal

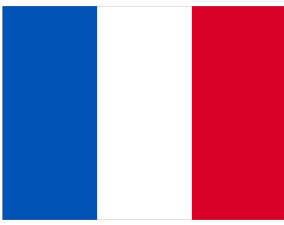
- Broad roadmap which includes biodiversity and forests, agriculture and food, green cities and the circular economy
- *New growth strategy*
- Launched in December 2019
- Proposes several rules or initiatives to advance the green transition and protect human rights in the EU and beyond

Actions	Indicative Timetable ¹
Climate ambition	
Proposal on a European 'Climate Law' enshrining the 2050 climate neutrality objective	March 2020
Comprehensive plan to increase the EU 2030 climate target to at least 50% and towards 55% in a responsible way	Summer 2020
Proposals for revisions of relevant legislative measures to deliver on the increased climate ambition, following the review of Emissions Trading System Directive; Effort Sharing Regulation; Land use, land use change and forestry Regulation; Energy Efficiency Directive; Renewable Energy Directive; CO ₂ emissions performance standards for cars and vans	June 2021
Proposal for a revision of the Energy Taxation Directive	June 2021
Proposal for a carbon border adjustment mechanism for selected sectors	2021
New EU Strategy on Adaptation to Climate Change	2020/2021
Clean, affordable and secure energy	
Assessment of the final National Energy and Climate Plans	June 2020
Strategy for smart sector integration	2020
'Renovation wave' initiative for the building sector	2020
Evaluation and review of the Trans-European Network – Energy Regulation	2020
Strategy on offshore wind	2020
Industrial strategy for a clean and circular economy	
EU Industrial strategy	March 2020
Circular Economy Action Plan, including a sustainable products initiative and particular focus on resource intense sectors such as textiles, construction, electronics and plastics	March 2020

ESG Regulations

Multi-national, EU and member states' policies





Framework in France

"Loi relative au devoir de vigilance"

What should companies do

Due diligence plan covering the activities

Company

Subsidiaries

Controlled companies

- Identify risks and prevent serious harm

- ◆ To human rights and fundamental freedoms
- ◆ To the health and safety of individuals
- ◆ To the environment

Which companies are affected



- > 5.000 employees for 2 consecutive years
- Own company and direct or indirect subsidiaries
- Registered office in France

- > 10.000 for 2 consecutive years
- Own company and direct or indirect subsidiaries
- Registered office in France and abroad

What are the risks of non-compliance

- Formal notice and/or injunction
- Civil liability of the responsible person

- **Compensation for the damage**





Framework in Germany

"Lieferketten-sorgfalts-pflichten-gesetz" (German Supply Chain Act)

What?

Strengthening human rights and environmental protection in global supply chains

Who

Companies in Germany required to implement due diligence obligations

- Company's own operations
- Actions of a contractual partner
- Actions of direct and indirect suppliers

When

Deferred application



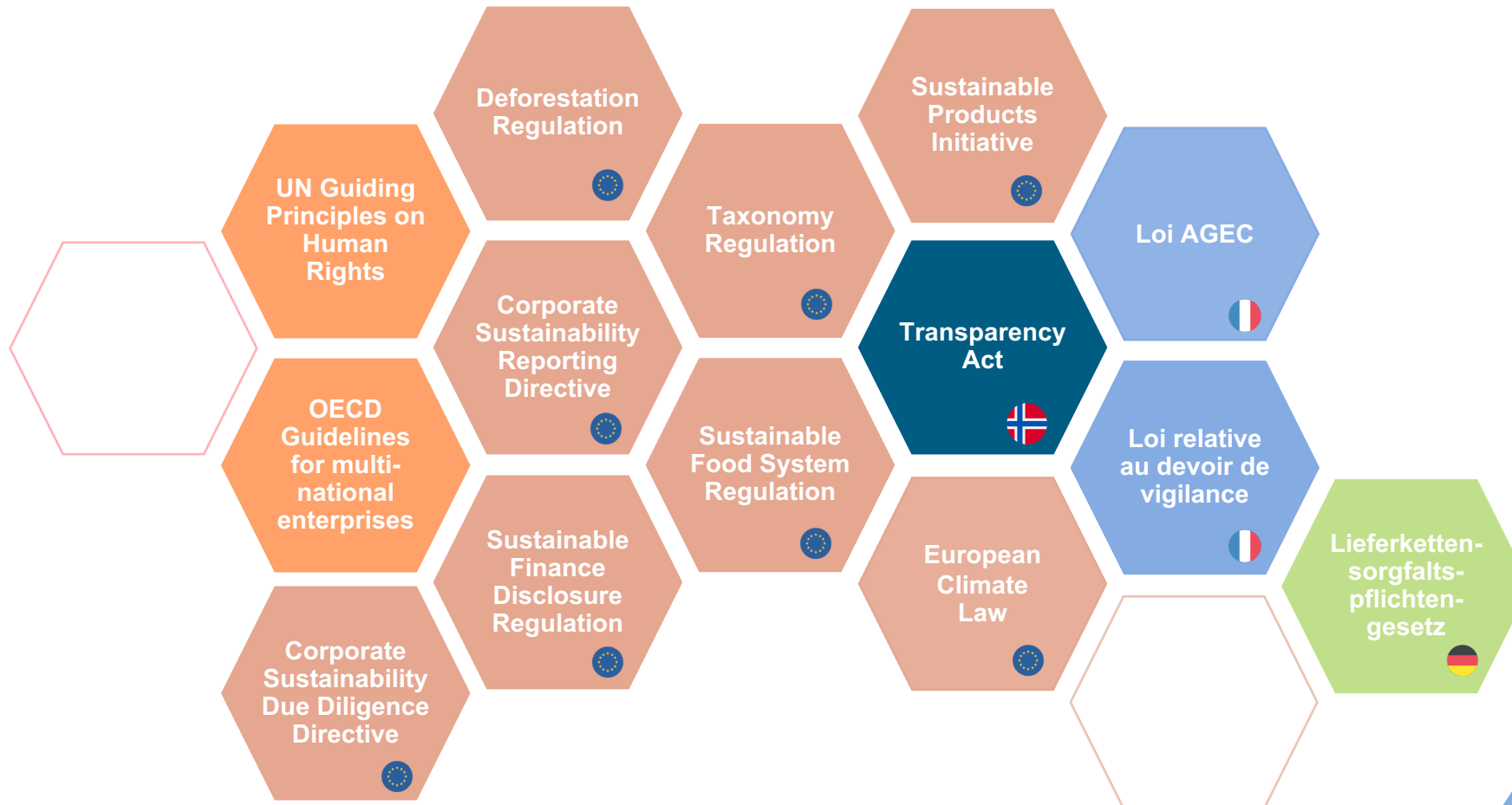
companies with > 3,000 employees in Germany




companies with > 1,000 employees in Germany

ESG Regulations

Multi-national, EU and member states' policies





*(...) The European Green Deal was born out of this necessity to protect our planet.
But it was also designed as an opportunity to preserve our future prosperity.
We started this mandate by setting a long-term perspective with the climate law and the 2050 target.
We shifted the climate agenda to being an economic one.
This has given a clear sense of direction for investment and innovation.*

(...)

*This shows that when it comes to the European Green Deal:
We stay the course.
We stay ambitious.
We stick to our growth strategy.
And we will always strive for a fair and just transition!*

State of the Union Address by President von der Leyen, 13 September 2023

A deep dive into the CSDDD

- 01 What is the CSDDD / Legislative Procedure status
- 02 Objectives
- 03 Scope
- 04 Obligations
- 05 Enforcement mechanisms
- 06 Combating climate change
- 07 Outlook

Corporate Sustainability Due Diligence Directive (CSDDD)



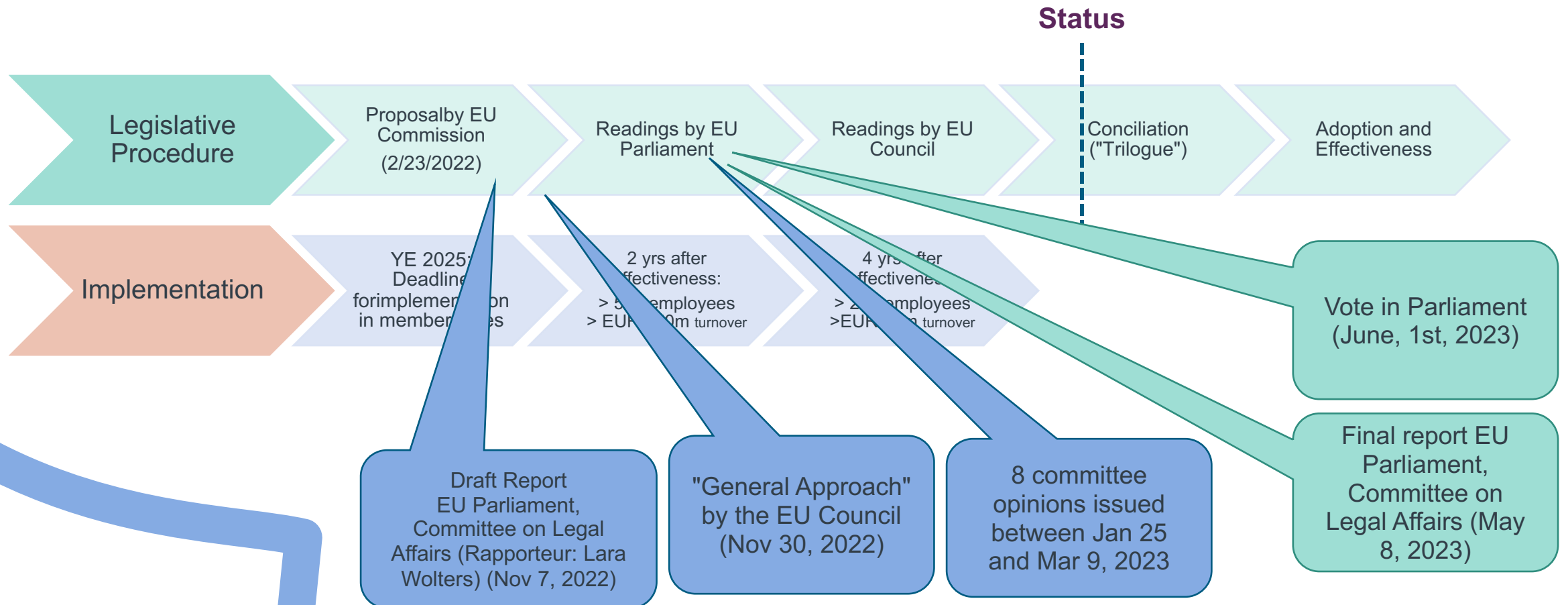
"The behaviour of companies across all sectors of the economy is key to success in the Union's sustainability objectives as many Union companies rely on global value chains. It is also in the interest of companies to protect human rights and the environment, in particular given the rising concern of consumers and investors regarding these topics"

(CSDDD, Recital 4)




Status of Legislative Procedure

Roadmap to effectiveness as from 2027?



Objectives

From the EU's perspective, the CSDDD shall...

-  ...improve corporate governance practices
-  ...avoid fragmentation of due diligence requirements
-  ...increase corporate accountability for adverse impacts
-  ...improve access to remedies for those affected
-  ...complement other measures in force or proposed

Scope of the Commission's Proposal

To whom will the Commission's proposal apply?

**EU Council:
Higher Thresholds!
Phase-in Approach!**

Medium-sized companies

- > 250 employees on average
- > EUR 40m worldwide net turnover
- > 50% of turnover in high-impact sectors

c. 13,000 companies

Large non-EU companies

**EU Parliament:
Lower Thresholds!
More Sectors!**

Large EU companies

- > EUR 40m worldwide net turnover
- > 50% of turnover in high-impact sectors

c. 4,000 companies

Amendments of the Parliament

To whom shall the CSDDD apply?

- > 250 employees on average
- > EUR 40m worldwide net turnover
- > ~~50% of turnover in high-impact sectors~~



- > EUR 150m net turnover worldwide
- ≥ 40 million was generated in the Union



Company did not reach the thresholds above but is the ultimate parent company of a group

- > 500 employees ~~on average~~
- > EUR 150m worldwide net turnover



Company did not reach the thresholds above but is the ultimate parent company of a group

- > 500 employees
- > EUR 150m net turnover worldwide
- ≥ EUR 40m net turnover in the EU
- > ~~50% of turnover in high-impact sectors~~



Obligations

Overview

EU Council:
"Chain of Activities"
(upstream + few downstream activities – excl. products use and provisions of services)

Integration
(Article 5 CSDDD)

place

- a des
- a c
-

Impacts

appropriate mea...
potential impacts
own operation... those of th...
es or from their established...
relationships.

**Preventing/Mitigating/Ending
Adverse Impacts**
(Article 7/8 CSDDD)

prompt measures to
mitigate

Complaints Procedure
(Article 9 CSDDD)

Companies to provide a possibility for **persons** (who are or believe to be affected) and **organisations** (trade unions/workers' representatives, civil society organisations) to submit **complaints** and to establish a related procedure on how to deal with complaints.

Monitoring
(Article 10 CSDDD)

Companies to carry out **periodic assessments** of operations:
• their own;
• their subsidiaries;
• their established business relationships to monitor Art.6-8 measures.

EU Parliament:
"Value Chain"
(upstream + downstream!)

annual statement on
covered by the CSDDD; details to
be set in a delegated act to EU
commission.

Obligations (cont'd)

Required Measures in Detail

Preventing/Mitigating/Ending Adverse Impacts

(Article 7/8 CSDDD)



Preventing Adverse Impacts (Art. 7)	Bringing Adverse Impacts to an End (Art. 8)
☞ Prevention action plan	☞ Neutralise or minimise (<u>incl. fin. compensation</u>)
☞ Contractual assurances (incl. audit rights)	☞ Corrective action plan
☞ Necessary investments	☞ Contractual assurances (incl. audit rights)
☞ Targeted and proportionate support for SMEs	☞ Necessary investments
☞ Collaborate with other entities	☞ Targeted and proportionate support for SMEs
☞ <u>Ultimately</u> : No new business with partner!	☞ Collaborate with other entities
	☞ <u>Ultimately</u> : No new business with partner!

Enforcement mechanisms

Public Enforcement plus Civil Liability

Public Enforcement (Art. 17-21 CSDDD)



- Member states to designate supervising authorities
- Investigations may be carried out by own motion or upon substantiated concerns communicated to authority
- Sanctions: Cessation, pecuniary sanctions, interim measures
- European Network of Supervising Authorities

Civil liability (Art. 7-8 CSDDD)

- Safe harbor for indirect business relations if reasonable measures were taken
 - Breach of investigation under Art. 7 or 8 CSDDD

Directors' Duty (Art. 25 CSDDD)



- Explicitly required to take sustainability matters into account in acting in the best interest of the company
- Member states' laws on consequences of a breach of directors' duties to apply

**EU Council:
No liability for
business partners;
intended or negligent
breach of duties**

Combating Climate Change

Compatibility with Sustainable Economy and the Paris Agreement

Article 15

Combating climate change

1. Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan to ensure that the 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. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations.
2. Member States shall ensure that, in case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company includes emission reduction objectives in its plan.
3. Member States shall ensure that companies duly take into account the fulfilment of obligations referred to in paragraphs 1 and 2 when setting variable remuneration. Variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.

**Not supported
by EU Council**



Amendments of the Parliament

Clarifying the content of the transition plan

- Resilience of the company's business model and strategy to risks related to climate matters
- Opportunities for the company related to climate matters
- Identification and explanation of decarbonisation levers within the company's operations and value chain, including the exposure of the company to coal-, oil- and gas-related activities;
- How the company considers the interests of affected stakeholders and its impact on climate change;
- Implementation of strategy about climate matters, including related financial and investment plans;
- Time-bound targets related to climate change set by the company;
- Description of the role of the administrative, management and supervisory bodies regarding climate matters.

Outlook

What you should do

- ✓ Monitor developments of EU legislation process
- ✓ Identify existing and potential adverse environmental and human rights impacts of the company's activities across its value chain
- ✓ Create effective grievance and remediation mechanisms
- ✓ Consider implementing human rights- and environment-related obligations in agreements with suppliers



Let's stay in touch



Interested in keeping abreast of future developments regarding the CSDDD or receive Bird & Bird's Food regulatory updates?

Let's stay in touch!



Thank you

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in touch!*

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