

SUSTAINABILITY AND LEGAL DEVELOPMENT IN THE EU

21 May 2022

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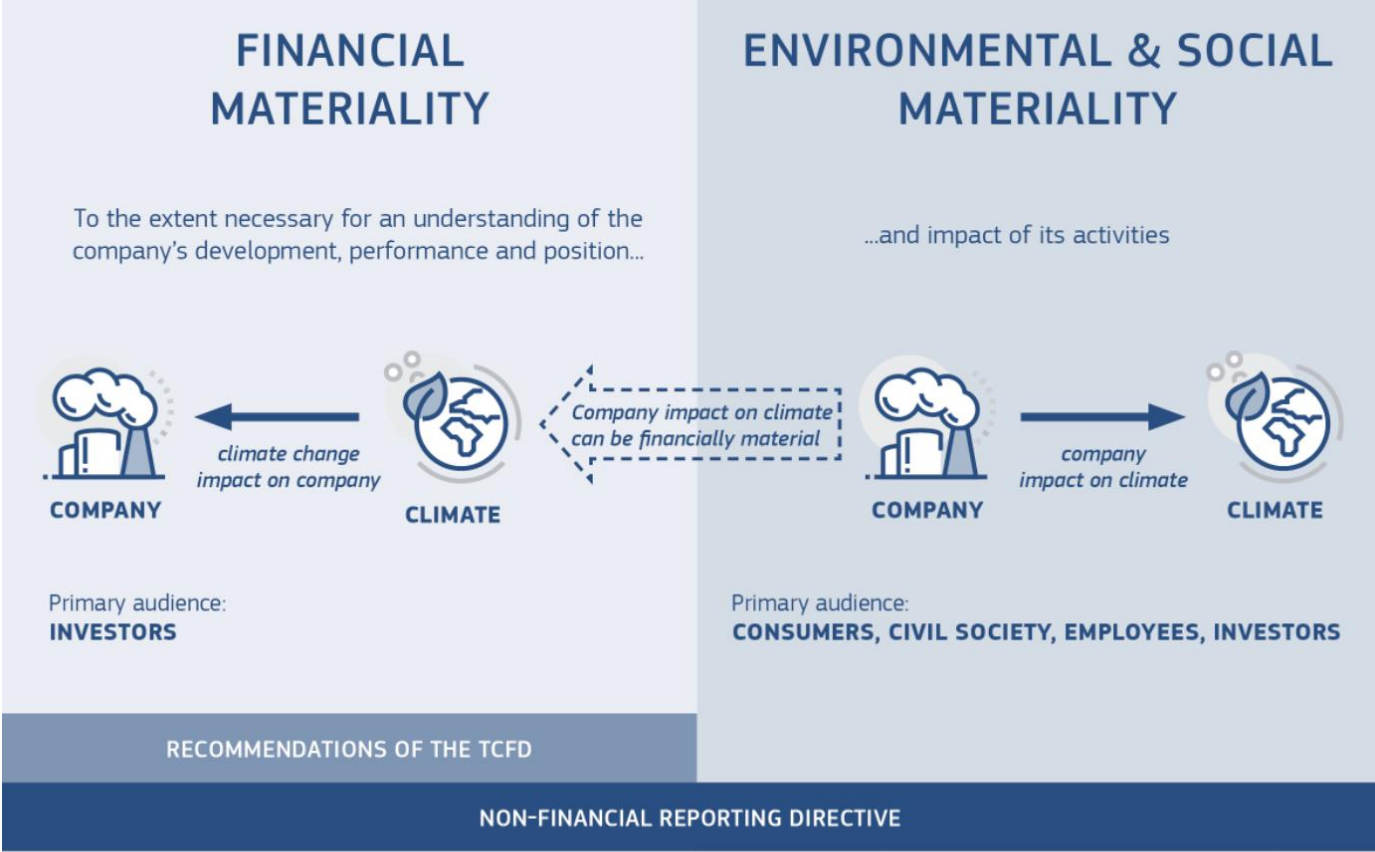


*There is one and only one social responsibility of business—
to use its resources and engage in activities designed to
increase its profits so long as it stays within the rules of
the game, which is to say, engages in open and free
competition without deception or fraud.*

- Milton Friedman -



CONCEPT OF
DOUBLE
MATERIALITY



* Financial materiality is used here in the broad sense of affecting the value of the company, not just in the sense of affecting financial measures recognised in the financial statements.

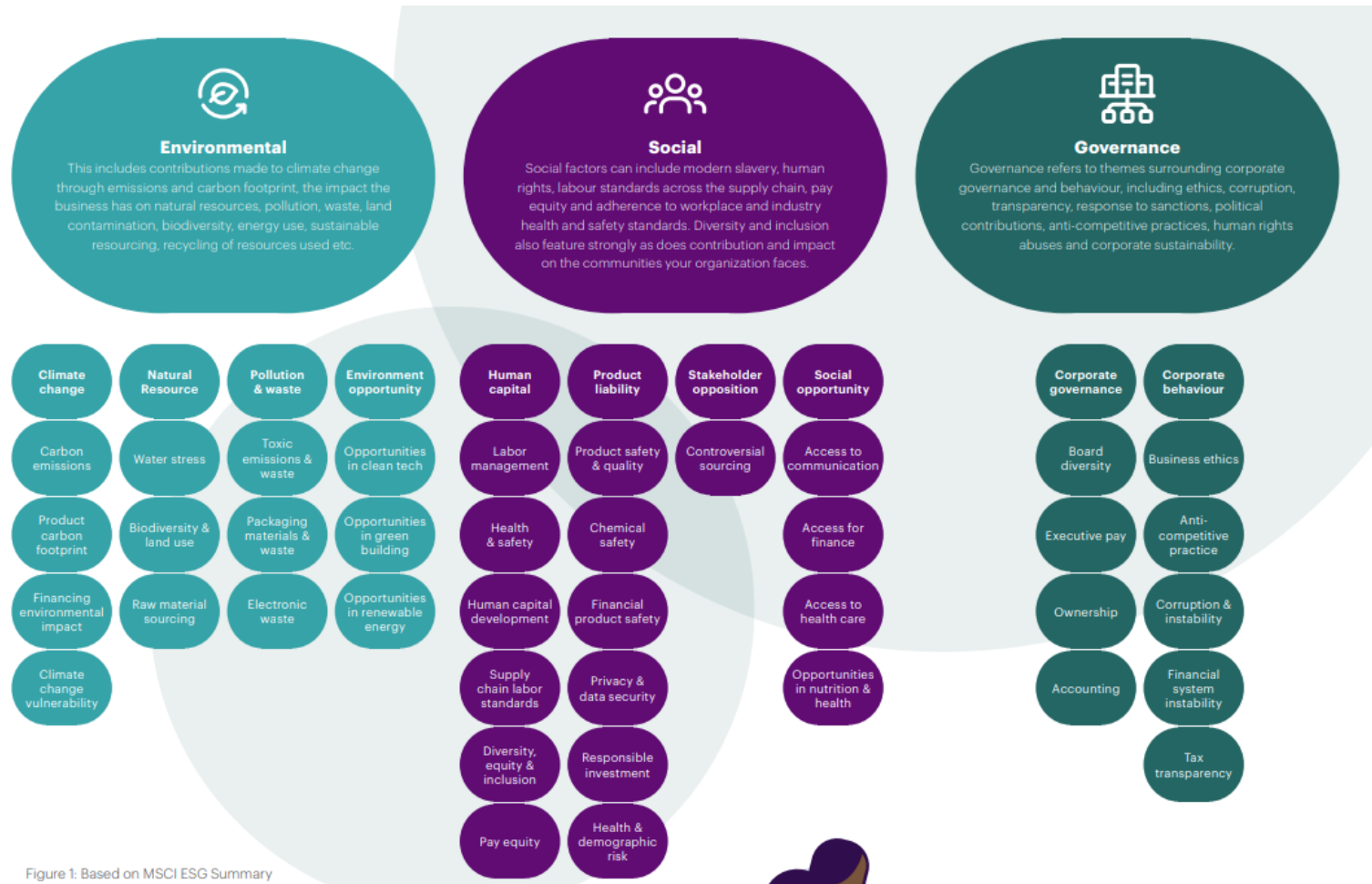
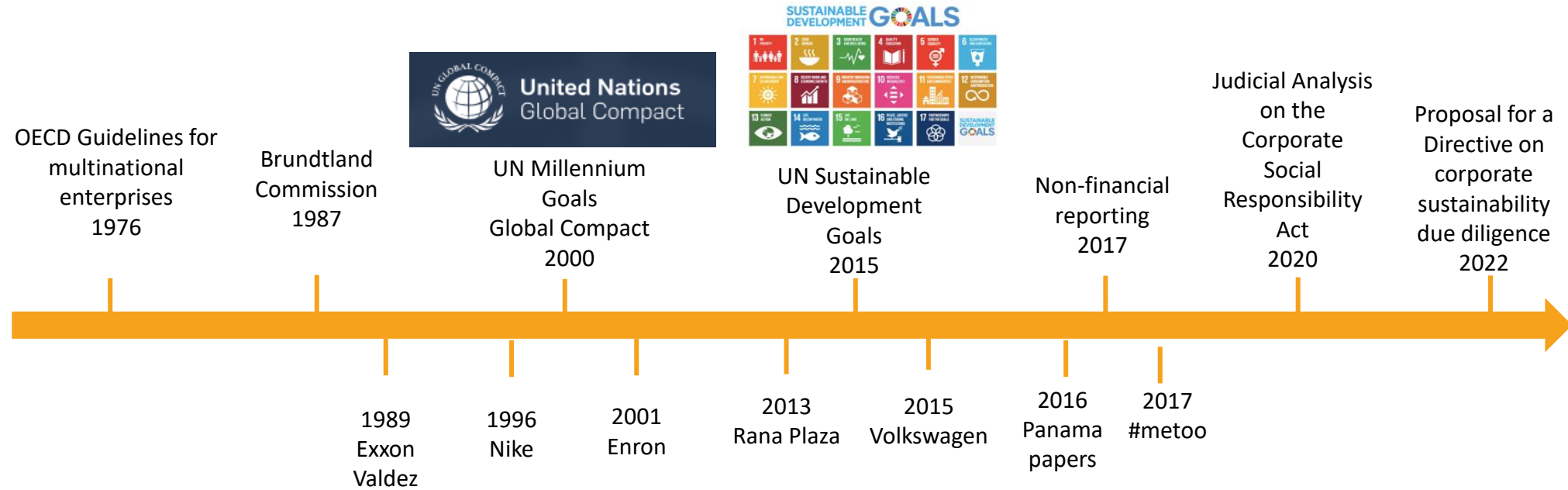


Figure 1: Based on MSCI ESG Summary

Source: ESG: what boards, directors & GCs need to know, Dentons, July 2021. Based on MSCI ESG Summary.

EVOLUTION



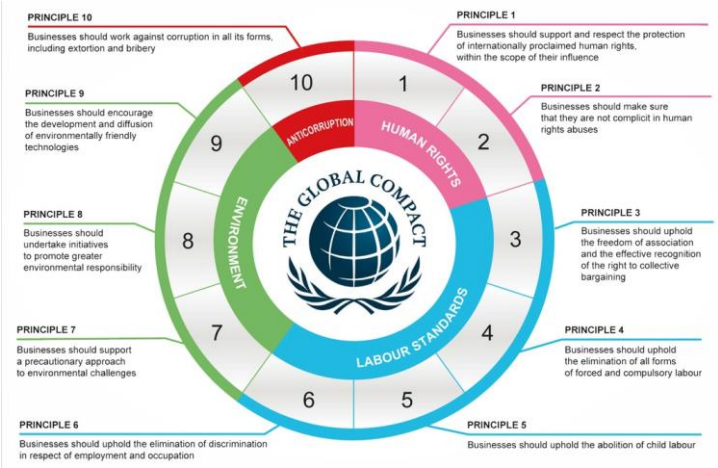
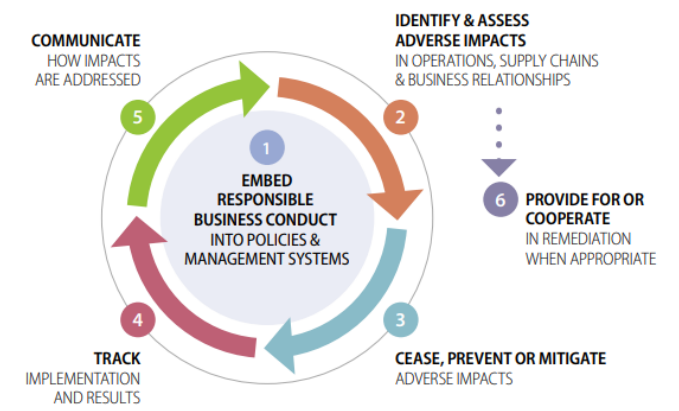


FIGURE 1. DUE DILIGENCE PROCESS & SUPPORTING MEASURES



FROM SOFT LAW...

...TO HARD LAW

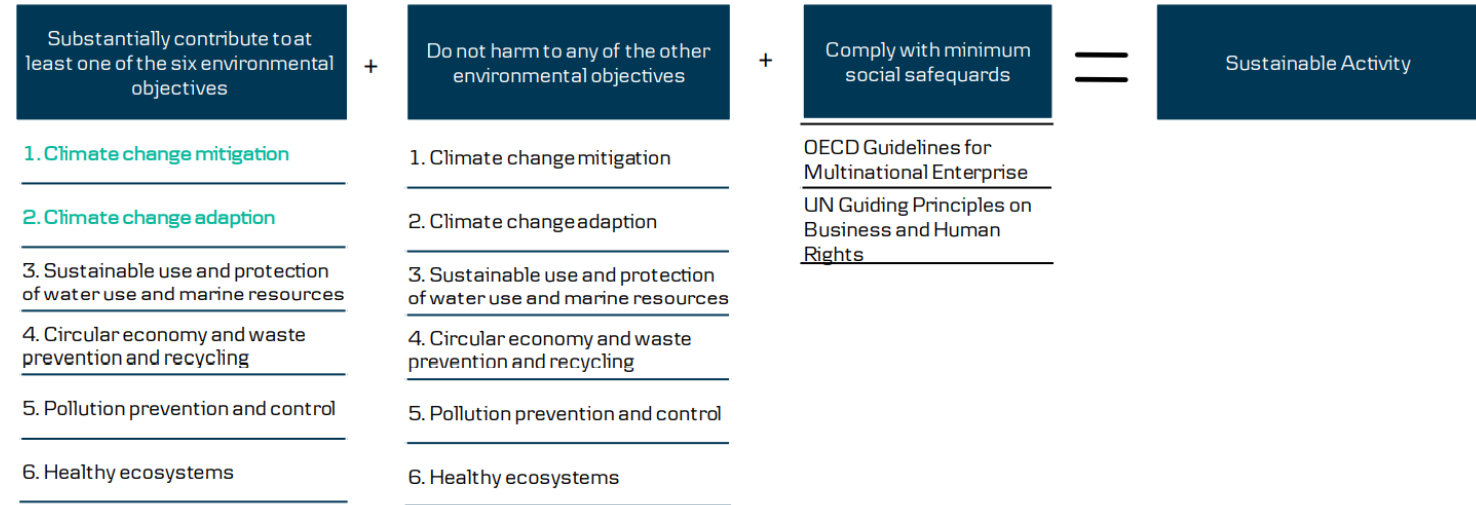
EU
Taxonomy

Corporate
Sustainability
Reporting

Corporate
Sustainability
Due
Diligence

EU TAXONOMY

The EU taxonomy is a classification system, establishing a list of environmentally sustainable economic activities. It could play an important role helping the EU scale up sustainable investment and implement the European green deal.



Source: Danske Bank

Current situation	What's new? (proposal)	What next?
<ul style="list-style-type: none"> • Non-Financial Reporting Directive (NFRD) – lays down the rules on disclosure of non-financial and diversity information by certain large companies. • On 21 April 2021, the Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD), which would amend the existing reporting requirements of the NFRD. 	<ol style="list-style-type: none"> 1. New name NFRD → Corporate Sustainable Reporting Directive (CSRD) 2. Extends the scope to all large companies 3. Introduces more detailed reporting requirements in accordance with sustainable reporting standards (drafts available here) 4. Requires the audit (assurance) of reported information 5. Requires companies to digitally 'tag' the reported information, so it is machine readable 	<ul style="list-style-type: none"> • The next step is for the European Parliament, and the Member States in the Council, to negotiate a final legislative text on the basis of the Commission's proposal. • Timetable subject to the negotiations - > into force earliest reporting 2024, covering 2023.

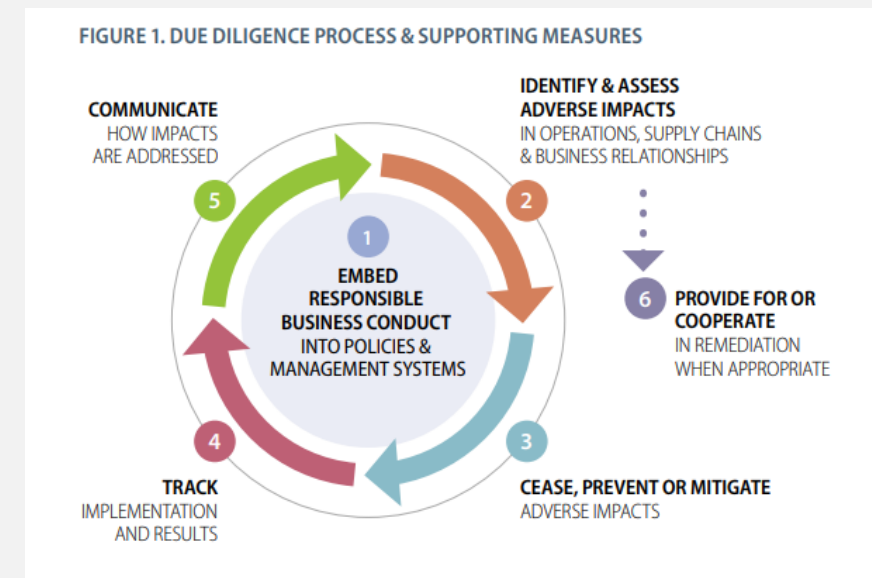
CORPORATE SUSTAINABILITY REPORTING

CORPORATE SUSTAINABILITY DUE DILIGENCE

CURRENT SITUATION

- Businesses play a key role in creating a sustainable and fair economy and society. There is a need to act and take measures to address adverse effects of their actions on human rights or the environment, but progress is slow and uneven.
- Voluntary frameworks and mechanisms are not enough.
- The fragmentation of national rules is problematic.

SOLUTION / PROPOSAL



CORPORATE SUSTAINABILITY DUE DILIGENCE

SCOPE OF APPLICATION

- Large EU limited liability companies:
 - GROUP 1: 500+ employees and net EUR 150 million+ turnover worldwide.
 - Group 2: 250+ employees and net EUR 40+ million turnover worldwide, and operating in defined high impact sectors, e.g. textiles, agriculture, extraction of minerals.
- Non-EU companies:
 - Third country companies active in the EU with turnover threshold aligned with Group 1 and 2, generated in the EU.

CONTENT

- This Directive establishes a corporate due diligence duty.
- The core elements of this duty are identifying, bringing to an end, preventing, mitigating and accounting for negative human rights and environmental impacts in the company's own operations, their subsidiaries and their value chains.
- In addition, certain large companies need to have a plan to ensure that their business strategy is compatible with limiting global warming to 1.5 °C in line with the Paris Agreement.

CORPORATE SUSTAINABILITY DUE DILIGENCE

SUPERVISION

- National Authorities
- European Network of Supervisory Authorities
- Sanctions
- Civil liability + damages

ENTRY INTO FORCE

- Negotiations ongoing
- Earliest 2025?

SUSTAINABILITY & LAWYERS?



GOVERNANCE



COMPLIANCE



COMMERCIAL
CONTRACTS



M&A



IPO



ESG
LITIGATION

Shell: Netherlands court orders oil giant to cut emissions

© 26 May 2021



Activists hugged in court after the judge delivered the verdict

Lähde: BBC 26.5.2021

KiK: German court rejects Pakistani lawsuit over deadly fire

A German court has rejected a lawsuit from Pakistanis against German retailer KiK over responsibility for a factory fire in Karachi. KiK said the blaze was an act of terrorism. Shamil Shams reports from Dortmund.



Lähde: DW 10.1.2019

HSBC faces greenwashing accusations from UK advertising watchdog

Draft conclusions find two of bank's adverts misled customers by selectively promoting its green initiatives



The UK advertising watchdog is preparing to order HSBC to be more transparent about its contribution to climate change

Lähde: Financial Times 29.4.2022

ESG LITIGATION RISING

WHY SUSTAINABILITY
SHOULD INTEREST
LAWYERS?

Development from
soft law to hard law

Direction to the
strategic sustainability

ESG litigations rising



THANK YOU!

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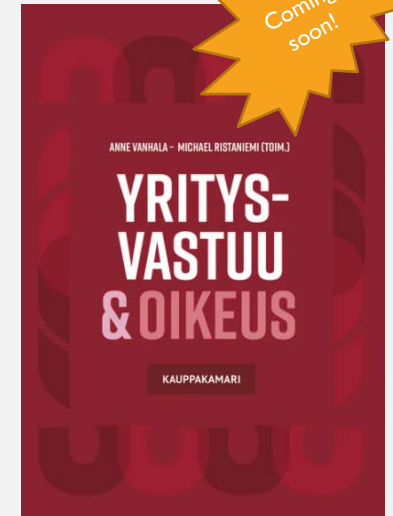
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