

Human rights due diligence and disclosure regulations relevant to banks

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Supply chain and human rights law

UN Guiding Principles on Business and Human Rights

OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

United States and Canada

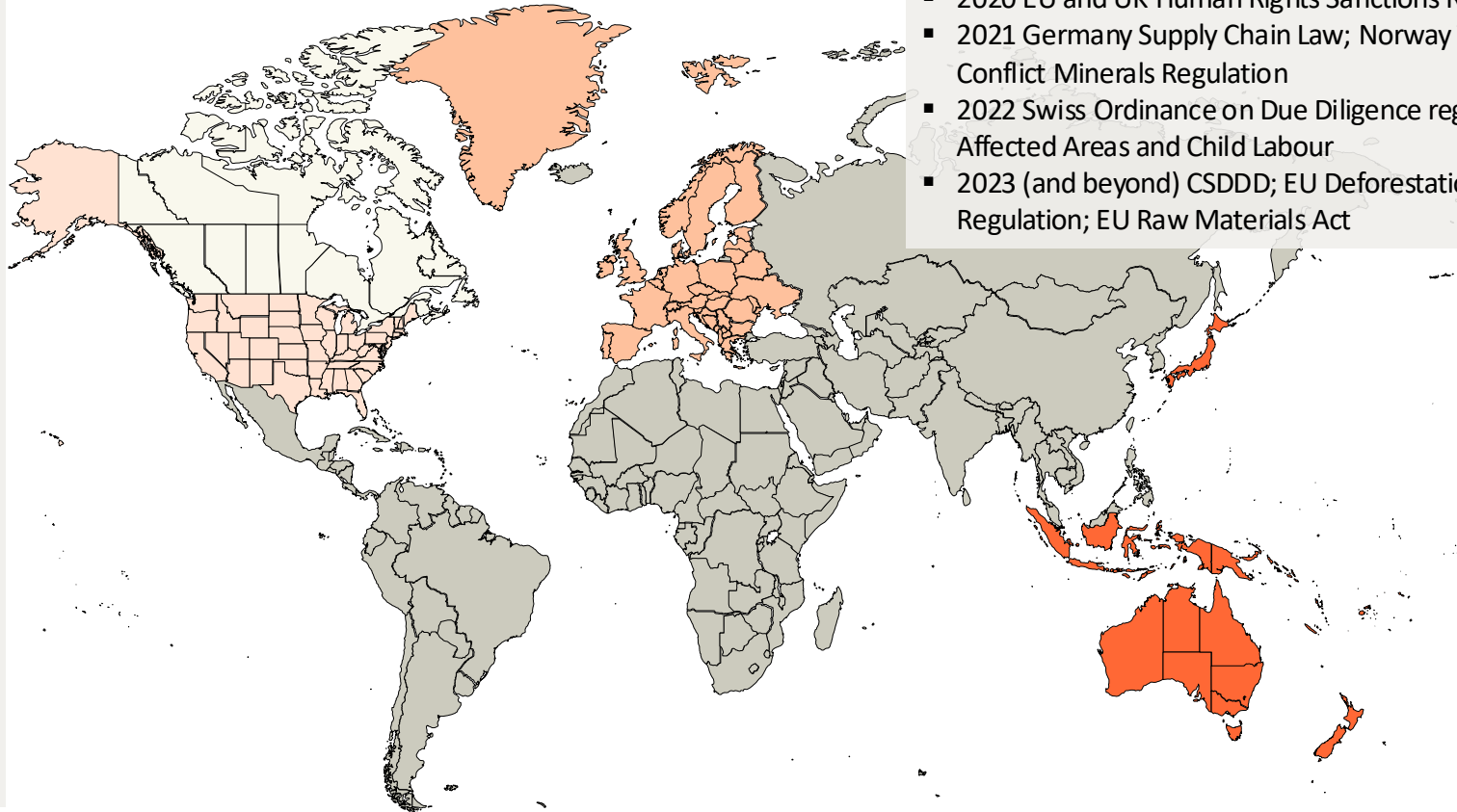
- 1930 US Tariff Act Section 307
- 2010 California Transparency in Supply Chains Act
- 2010 US Dodd-Frank Act on conflict minerals
- 2012 Strengthening Protections Against Trafficking in Persons in Federal Contracts
- 2021 Uyghur Forced Labor Prevention Act
- 2023 Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act

Europe

- 2011 UK Companies Act (Strategic Report and Directors' Report) Regulations
- 2014 EU Non-Financial Reporting Directive
- 2015 UK Modern Slavery Act
- 2017 France Duty of Vigilance Law
- 2019 Dutch Child Labour Due Diligence Act (unlikely to become effective)
- 2020 EU and UK Human Rights Sanctions Regime
- 2021 Germany Supply Chain Law; Norway Transparency Act; EU Conflict Minerals Regulation
- 2022 Swiss Ordinance on Due Diligence regarding Minerals and Metals from Conflict-Affected Areas and Child Labour
- 2023 (and beyond) CSDDD; EU Deforestation Regulation; EU Batteries Regulation; EU Raw Materials Act

Asia-Pacific

- 2018 Australian Modern Slavery Act
- 2022 Japanese Guidelines on Corporate Human Rights Due Diligence



Sustainability disclosure globally

Regulators globally are stepping up their efforts to increase transparency of companies and their supply chains, as well as addressing investors' demands for more complete, comparable and publicly verifiable sustainability-related information. Multinational companies must accordingly be prepared to navigate different standards with varying levels of alignment.

United States

- In March 2024, the SEC adopted new rules to standardize climate-related disclosures by public companies and in-public offerings (stayed pending judicial review); future is uncertain under Trump administration
- In 2023, California enacted new climate disclosure requirements:
 - California mandatory GHG emissions reporting, begins in 2026, based on GHG Protocol (includes scope 3 from 2027).
 - California climate-related financial risk disclosure, begins in 2026, based on TCFD and ISSB.
 - California transparency disclosures for carbon reduction claims and the voluntary carbon offset market.

United Kingdom

- Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022.
- TCFD reporting is mandatory for all listed companies.
- UK Sustainability Disclosure Standards (UK SDS), based on IFRS's ISSB are expected by during 2025.

Global

There are several global reporting standards which can be required by investors or in other jurisdictions:

- IFRS Foundation's ISSB Sustainability Standards (**ISSB Standards**) published 26 June 2023 (which consolidates some of the other global reporting standards);
- Task Force on Climate-related Financial Disclosures (**TCFD**) recommendations;
- Sustainability Accounting Standards Board (**SASB**) standards;
- Climate Disclosure Standards Board (**CDSB**) framework; and
- Global Reporting Initiative (**GRI**) standards.

European Union

- Accounting and Transparency Directives, as amended by the **CSRD** and European Sustainability Reporting Standards (ESRS).
- EU Taxonomy: Companies subject to NFRD or CSRD are required to disclose information on how and to what extent their activities qualify as environmentally sustainable according to science-based criteria. This is assessed with a view to turnover, capital expenditure and operating expenditure and reported as a percentage.

Switzerland

- Implemented reporting obligations in accordance with EU's NFRD and is planning to adapt to CSRD (consultation period ended on 31 October 2024).

Hong Kong

- In June 2024, the Hong Kong Stock Exchange announced to bring in new climate-related disclosure requirements for listed issuers. These requirements, which closely align with **IFRS S2**, will be implemented in phases starting from the 2025 reporting year.
- The HKICPA has proposed full convergence of HKFRS S1 and S2 with **IFRS S1 and S2** in its exposure drafts published for public consultation in September 2024, with implementation expected to begin in August 2025.

India

- Business Responsibility and Sustainability Report (BRSR).
- India is consulting on standards based on ISSB.

Australia

- Legislation adopted in September 2024 which provides for standardised climate-related risks and opportunities disclosure requirements for heavy emitters, large entities and asset owners starting from 2025 onwards.
- Standards are developed based on the IFRS.

The wider landscape: examples of supply chain regulation

Jurisdiction	Law	Area of focus	Applies to	Obligations	Penalties
Supply chain laws					
Germany	German Supply Chain Duty of Care Act, 2021	<ul style="list-style-type: none"> Human rights Certain environmental risks 	German companies with at least 1,000 employees in Germany	<ul style="list-style-type: none"> Due diligence obligations: conducting risk analysis; implementing prevention measures and grievance mechanisms as well as providing access to remedies Reporting obligation: reporting on due diligence and record-keeping for seven years 	<ul style="list-style-type: none"> Administrative fines – up to €8m or 2% of company's annual turnover Exclusion from procurement
France	Duty of Vigilance Law, 2017	<ul style="list-style-type: none"> Human rights Environment 	French companies (i) headquartered in France, with 5,000+ employees, or (ii) headquartered abroad, with 10,000+ employees	Due diligence/reporting obligations: companies must create a 'vigilance plan' detailing steps the company will take (i) to detect environmental/human rights-related risk, and (ii) to prevent human-rights violations/environmental harm resulting from the acts of the company, its subsidiaries, subcontractors, suppliers	<ul style="list-style-type: none"> Injunctive measures Compensation for victims for any harm relating to non-compliance with the law
Reporting laws					
United Kingdom	Modern Slavery Act 2015	<ul style="list-style-type: none"> Slavery and human trafficking in supply chains 	Commercial enterprises doing business in the UK, supplying goods or services and with global turnover of £36m or more	Reporting obligation: annual statement outlining steps taken to address slavery and human trafficking in business and supply chain	<ul style="list-style-type: none"> Government can seek an injunction requiring company to publish a statement
Canada	Fighting Against Forced Labour and Child Labour in Supply Chains Act, 2023	<ul style="list-style-type: none"> Human rights Slavery and human trafficking in supply chains 	Companies which produce, sell or import goods and (i) have at least CA \$20m in assets, or (ii) have at least CA \$40m in revenue, or (iii) employ an average of 250 employees	Reporting obligation: annual reports to be submitted concerning the steps taken to prevent and reduce forced labour or child labour at any stage during the production process	<ul style="list-style-type: none"> Offence on summary conviction and liable to fines of no more than CA \$250,000 if a business fails to report
California	Transparency in Supply Chains Act, 2010	<ul style="list-style-type: none"> Slavery and human trafficking in supply chains 	Retailers and manufacturers doing business in California that have annual worldwide gross receipts exceeding US \$100m	Reporting obligation: disclose information on efforts to eradicate human trafficking and slavery within supply chain across five areas – verification, audits, certification, internal accountability and training	<ul style="list-style-type: none"> Attorney General can seek injunctive relief
Laws imposing forced labour import bans					
United States	Section 307 of the Tariff Act of 1930	<ul style="list-style-type: none"> Forced labour 	All goods entering the United States	Import restrictions: prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured labor	<ul style="list-style-type: none"> Withhold release orders; forced labour findings allowing seizure of detained imports

An increasing regulatory environment

1.

There are increasing mandatory human rights due diligence and disclosure requirements.

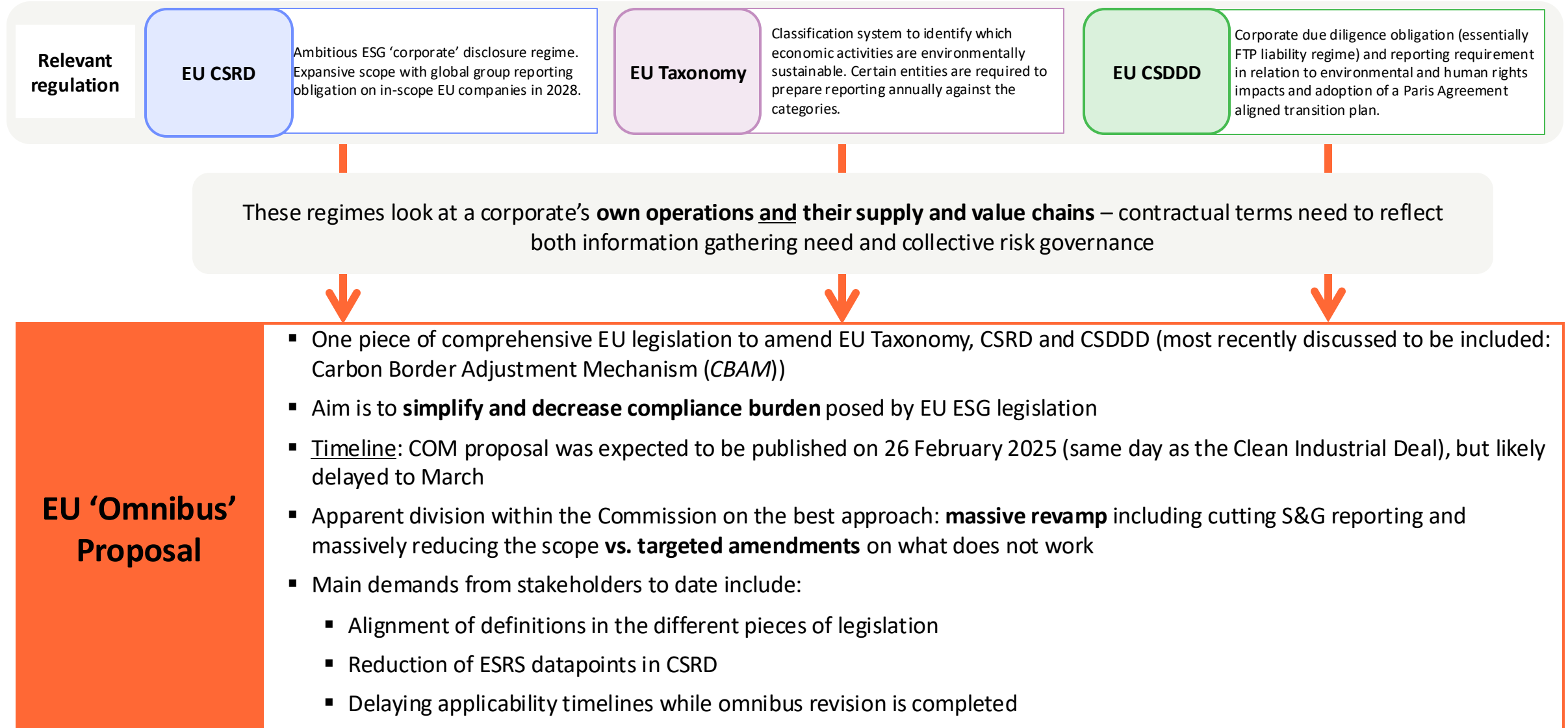
2.

There is a growing impact on value chains worldwide with Europe leading as a global standard setter.

3.

Anyone operating in more than one market faces challenge of regulation that is not aligned/open to interpretation. This creates more opportunities for claims.

Political & regulatory snapshot: EU ‘omnishambles’



EU Corporate Sustainability Due Diligence Directive (CSDDD)

Companies in scope (EU and Non-EU companies)

- Large companies
- Ultimate parent companies
- Franchising or licensing arrangements


Financial institutions: CSDDD generally applies to regulated financial undertakings


According to the deal reached in December 2023, regulated financial undertakings are **not** obliged to comply with due diligence duties relating to their customers as downstream activities

However, regulated financial undertakings should consider adverse impacts and use their 'leverage' to influence companies (e.g., shareholder rights, Rec. 51).

Obligations

 Incorporate due diligence into policy and risk management system	 Identify and assess actual and potential adverse impacts	 Prevent and mitigate potential adverse impacts	 End, mitigate and remedy actual adverse impacts
 Publicly communicating on due diligence	 Carry out meaningful engagement with stakeholders	 Establish a notification mechanism and complaints procedure	 Monitor and assess the effectiveness of measures


Upstream activities
Activities of a company' upstream business partners related to the production of goods or the provision of services by that company, including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of products and the development of the product or the service (Art. 3(1)(g)(i) CSDDD)


Climate change transition plan
Adopt, put into effect and update a climate change transition plan to ensure compatibility of company's business model with transition to sustainable economy and with limiting global warming to 1.5°C in line with the Paris Agreement

EU Corporate Sustainability Reporting Directive (CSRD)

What: The CSRD establishes (more) **stringent and comprehensive sustainability reporting obligations**.

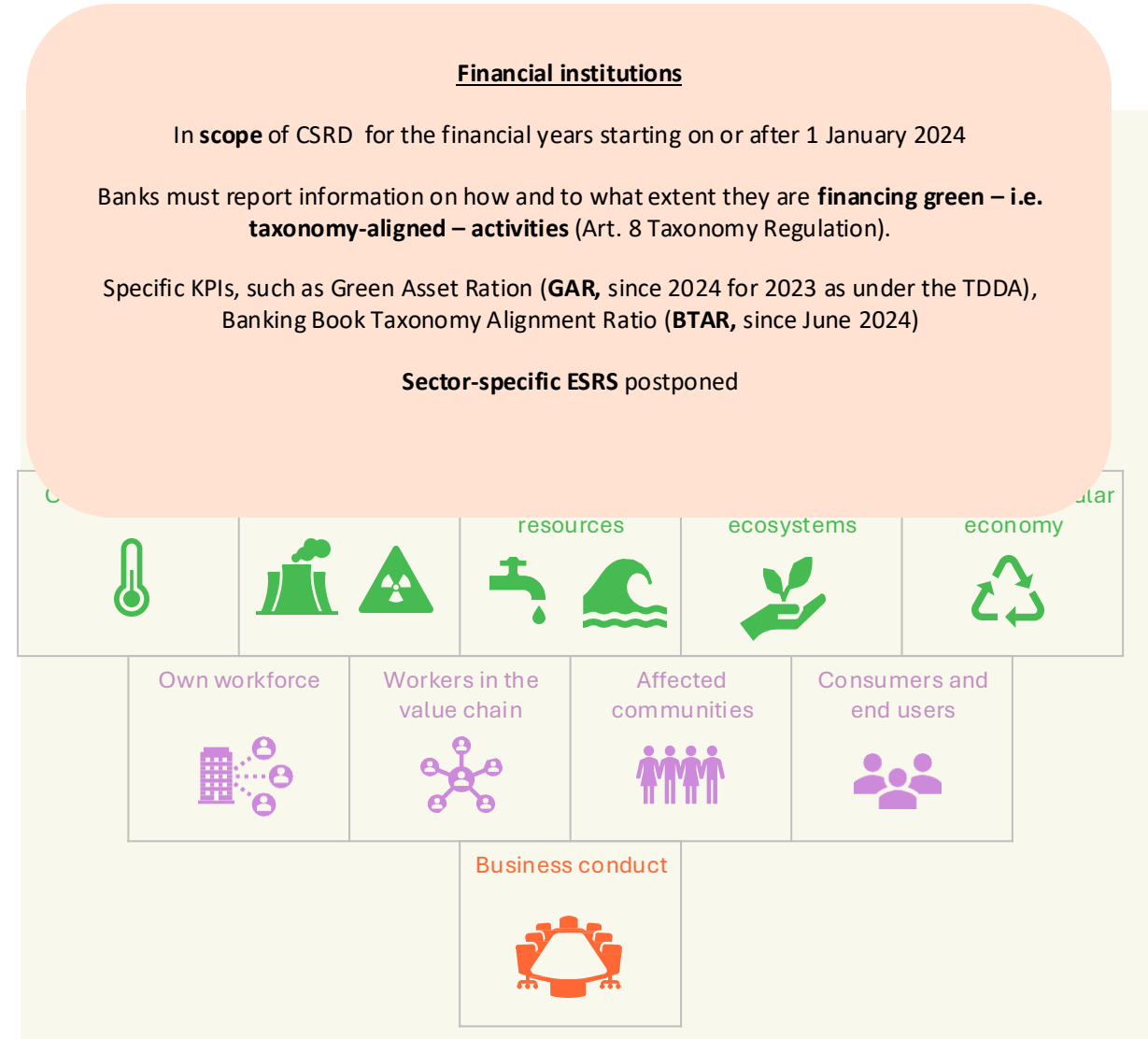
Who: PIE companies, Large EU companies; parents of EU large groups; certain small/medium EU PIE companies; subsidiaries/branches of non-EU companies; EU or non-EU entities that issue EU securities (all above certain thresholds).

When: In force since 5 January 2023; transposition period for Member States ended in July 2024; pending infringement proceedings against 17 Member States for not transposing the CSRD (e.g., Germany, Austria, Spain); staggered application with first companies covered as of 2025 for FY2024.

Where: The **annual (group) management report** will be required to include a wide range of sustainability information and datapoints; the report needs to be assured by auditors.

Content: 12 standards provide the framework for reporting. Reporting under CSRD is driven by a **double materiality assessment** (i.e. matters that have been assessed as „material“ following a due diligence process).

Standards for reporting: Technical details are provided in the European Sustainability Reporting Standards (**ESRS**). The **first set of ESRS** were adopted by the European Commission in July 2023. More standards are expected to follow in 2026.



Pillar III reporting

What:

- Disclosure of financially material information, **Art. 435 ff. CRR**: ESG risks can materialise in typically material risks (credit, market, liquidity, operational risk)
- ESG-Specific disclosures, **Art. 449a CRR**: qualitative and quantitative information (e.g. GAR, from 2024 for 2023 as under the TDDA)
- EBA has specified these requirements in a technical implementation standard

Who:

- Initially for large, capital market-oriented institutions –
- Applicable to **all CRR institutions** from 2025.

Interaction between CSRD and Pillar III reporting:

- ESG risks need to be disclosed within Pillar 3 and CSRD reporting,
- CSRD requires disclosures that go beyond risk-focus with double materiality approach
- Intersections but also potential inconsistencies

	Material Requirements	Disclosure Requirements
Prudential	CRD V: Focus on risk management/financial stability	CRR II: Mandatory Pillar 3 Risk Disclosures
	CRD VI: Introducing clarifications and new requirements	CRR III: Extending the scope of CRR II
Non-Prudential	eg LkSG National legislation regarding supply chain due diligence	CSRD: Mandatory Transparency
	eg CSDDD: Narrower Scope, Broader Obligations	

* The legislative acts highlighted in light green are not yet applicable or still in the legislative process.

EU Taxonomy Regulation

- **What:** EU Taxonomy and associated acts introduced an EU classification system to classify “environmentally sustainable” economic activities and set transparency requirements regarding these activities for certain non-financial and financial undertakings.
- **Who:** Companies subject to sustainability reporting obligations, including CSRD.
(with certain additional obligations for financial market participants making available financial products)
- **When:** In force since 2020; gradual expansion of obligations until 2026.
- **Obligations:** Obligation to disclose information on how and to what extent the company’s business activities qualify as “environmentally sustainable” (activity-based approach).
- **Enforcement:** “Indirect” enforcement driver: Customers, suppliers and stakeholders may, when taking decisions, increasingly consider to what extent a company is undertaking EU Taxonomy “aligned” activities.
(Market surveillance and enforcement by national competent authorities regarding obligations of financial market participants)

Classification provisions

Four-step approach to define “environmentally sustainable” economic activities and assess Taxonomy alignment

Definition of six environmental objectives (e.g. climate change mitigation)

Define minimum compliance safeguards for business activities

Define Technical Screening Criteria (TSC) for business activities.



Art. 18 Taxonomy Regulation

Companies are expected to **adhere to standards for responsible business conduct** (amongst others the OECD Guidelines).

Compliance with these standards must be ensured through appropriate procedures, the implementation of which should account for the principle of "avoiding significant harm" as set out in the SFDR.

The **final report of the Platform on Sustainable Finance**, published in October 2022, provides important guidance for companies and financial market participants:

- “**Negative test**” stipulates that the minimum safeguards required under Article 18 are generally not met if (1) a company has not established appropriate procedures that meet the requirements, or (2) the company has been found liable through a legally binding conviction for violations of relevant laws in the areas of human rights, labor and consumer rights, anti-corruption, competition, and taxation.
- Provides **specific recommendations for banks** and insurance companies.

Value chain scrutiny



New legislation and focus by regulators

- Recent **CMA** investigation in UK
- **EU - CSDDD**: far-reaching public enforcement powers relating to due diligence and reporting obligations
- **Germany - Supply Chain Act**: enforcement action by BAFA
- **FCA – Sustainability Disclosure Requirements**: revised ‘naming and marketing’ and disclosure rules for UK firms



New legislation increasing litigation risk

- **France - Duty of Vigilance**: law widely used by NGOs
- **EU - CSDDD**: introduction of a civil liability framework for failure to comply with diligence and prevention obligations accompanied by new procedural rules to ensure access to justice
- **FCA – anti-greenwashing rule**: stronger requirements for firms to ensure references to sustainability characters are fair, clear, and not misleading



‘Quasi-litigation’

- **NCP complaints** and **UN Special Rapporteurs** - cost effective, low risk and public
- **Advertising standards complaints**: growing numbers of ‘green claim’ allegations and customer friendly regulators



Tort-based allegations in innovative claims

- **Município de Mariana**: the Court of Appeal allowed a 200,00+ claimant class action against BHP Group for the collapse of Brazil’s Fundão dam (the trial is ongoing until March 2025)
- **Limbu v Dyson**: a claim by employees of a Malaysian supplier to Dyson who allege forced labour was allowed to proceed in the English Courts, despite a jurisdictional dispute

Human rights-related litigation against banks

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1.

Key & Developing Litigation

Imposition of a ‘societal duty of care’

ie Milieudéfensie et al. v. Royal Dutch Shell plc

- While the Court of Appeal ruled in favour of Shell in November 2024, it confirmed some aspects of Milieudéfensie’s arguments.
- The decision reinforced the interpretation of a ‘societal duty of care’ imposed on corporations in Dutch civil law.
- This has encouraged similar litigation, ie as threatened against ING bank.



‘Duty of vigilance’ claims

ie Notre Affaire à Tous Les Amis de la Terre, and Oxfam France v. BNP Paribas; Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas

- A 2017 French law requires relevant companies to draft ‘vigilance plans’ complying with UN due diligence procedures.
- The plans should aim to identify and mitigate ESG risks – human rights violations and environmental harms – and companies can be held liable for inadequate or incorrect plans.
- Similar legislation has been passed or campaigned for across Europe.
- Both claims against BNP Paribas allege violations of this law.



Liability of parent companies for subsidiaries and value chain risks

ie Limbu and others (Respondents) v Dyson Technology Limited and others (Appellants)

- A Court of Appeal decision from December 2024 retained a tortious liability claim in the English courts against Dyson Technology for alleged human rights abuses.
- The court found England was the relevant forum for the case, despite the factories being located in Malaysia and not owned by the Dyson Group.
- The English courts show a willingness to retain ESG-related cases in jurisdictional disputes.

Tortious liability can exist throughout a company's value chain, including abroad, and including aspects of the value chain which are not legally owned by a company.

Questions of 'degree of control' and the drafting and enforcement of policies by the company are relevant considerations for potential liability.

2.

OECD complaints

Specific Instances before NCPs

- Complaints are brought under the OECD Guidelines on Responsible Business via a National Contact Point (NCP).
- These complaints often target lending relationships with companies alleged to be causing adverse human rights impacts and/or investments into those companies.
- Examples:
 - *EC and IDI vs. Australia and New Zealand Banking Group (2014)*
 - *Milieudefensie et al vs. ING (2019)*
 - *Divest Invest Protect, Indigenous Peoples Law and Policy Program, and Women's Earth and Climate Action Network vs. Credit Suisse Group (2020)*
 - *Society for Threatened Peoples Switzerland vs. UBS Group - OECD Watch (2020)*
 - *Inclusive Development International et al v Marsh (2023)*
 - *Friends of the Earth US and The Articulation of Indigenous Peoples of Brazil (APIB) vs BlackRock (2024)*
 - *BankTrack et al., vs. UBS Group, Swiss National Bank, Barclays, and HSBC (2024)*
- Care needs to be taken in way complaint defended given the potential for follow-on litigation.

Thank you