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# Looking past the E: mandatory human rights due diligence in finance

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In collaboration with:

Finance &  
Human Rights

LABEL R.

**Löning** Human Rights &  
Responsible Business

Luxembourg,  
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## The speakers



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Label R

# Welcome

- Isabelle Lebbe

# Human Rights in the EU sustainable governance agenda

- Charles Muller



Charles Muller

## EU definition – sustainable finance



“Although there is no definitive list of which issues or factors are covered by the terms "ESG", they are, according to UNEP Inquiry and the PRI, broadly defined as follows: (i) Environmental (E) issues relate to the quality and functioning of the natural environment and natural systems; (ii) Social (S) issues relate to the rights, well-being and interests of people and communities; and (iii) Governance (G) issues relate to the governance of companies and other investee entities.”



Charles Muller

# What are human rights?

Human rights as defined in *the Universal Declaration on Human Rights*, *core international human rights instruments* and *labour standards* set out by the International Labour Organisation (ILO).

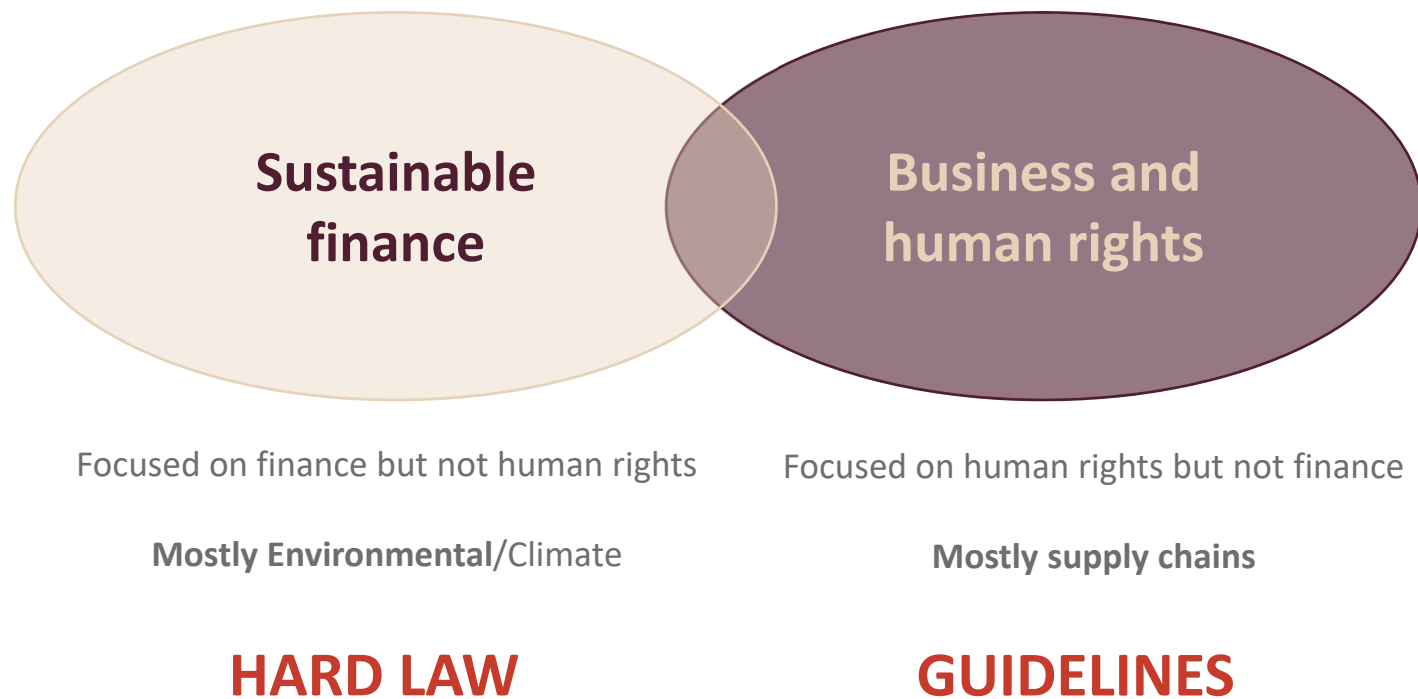
- Right to liberty and security of person
- Right to due process of law
- Right to freedom of movement
- Right to freedom of thought
- Right to non-discrimination
- Prohibition of forced or compulsory labour
- Right to safety and health
- Right to property
- Right to freedom of religion
- Right to freedom of expression
- Right to peaceful assembly
- Right to freedom of association
- Right to an adequate standard of living
- Right to privacy





Charles Muller

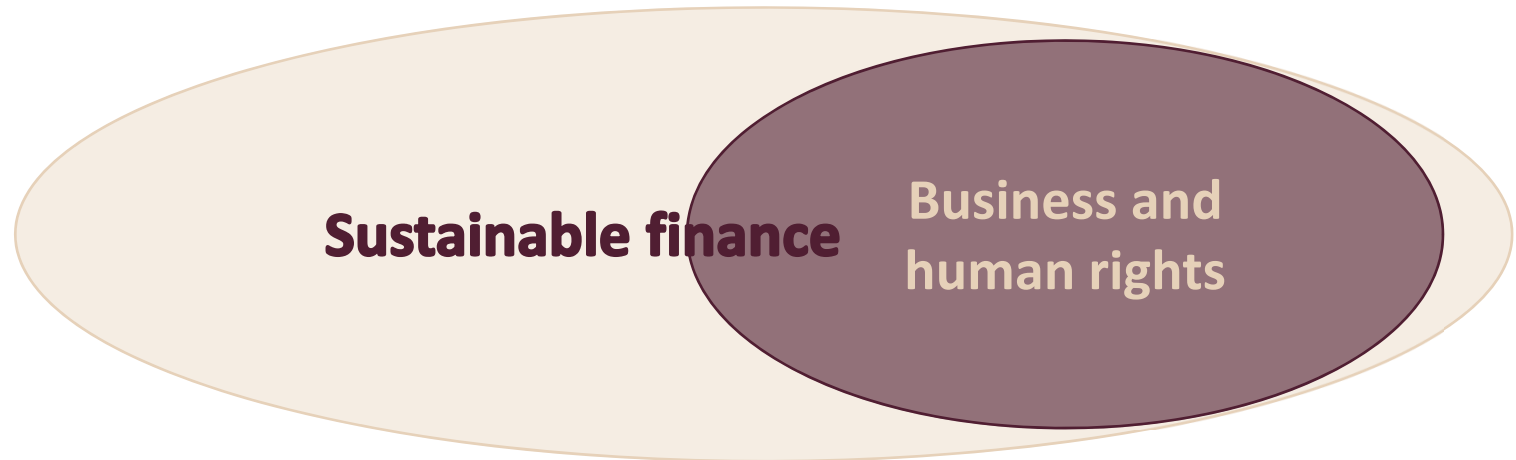
# Finance and human rights





Charles Muller

## Evolution 1: Sustainable finance incorporates business and human rights



**HARD LAW**





Charles Muller

# EU sustainability disclosure regulation



## Human rights are an integral part of sustainability

The aim of Regulation 2019/2088 is to present “harmonized rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products”. These rules will apply from March 2021.

While most of the focus of policy makers and the industry has been on environmental and especially climate-related considerations, social and governance aspects, and specifically human rights are also included:

**Art 2 (17) ‘sustainable investment’** means (...) an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities (...)

**Art 2 (21) ‘sustainability risk’** means an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment

**Art 2 (24) ‘sustainability factors’** mean environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters.



Charles Muller

# The human rights aspect of the EU Taxonomy



For an activity to be considered as “environmentally sustainable”, the activity must:

Substantially  
contribute to at least  
one of the six  
environmental  
objectives

Do no significant  
harm to any of the  
other five  
environmental  
objectives

Comply with **minimum social safeguards**

- **UN Guiding Principles on business and human rights**
- OECD guidelines
- ILO & International Bill of Human Rights (art. 18.1)



Charles Muller

# EU Commissioner McGuinness

*“The COVID crisis reminds us that we cannot leave behind the social, the ‘S’ of ESG. We want to make the social element more important in our Strategy. The public and private sector experts in the Platform on Sustainable Finance are assessing how a social taxonomy could work.*

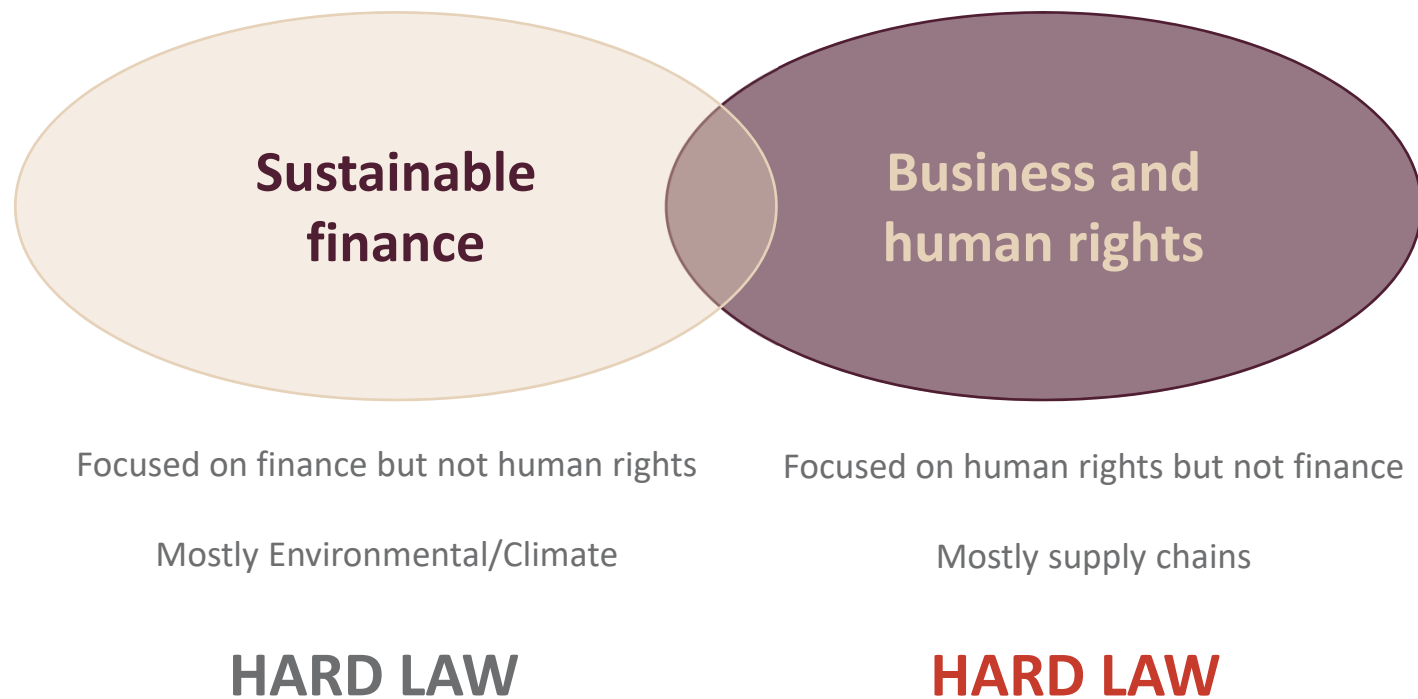
*The Commission will also put more emphasis on the ‘G’ – governance, via a new initiative in 2021 on sustainable corporate governance.”*

Climate Finance Day, Paris (October 2020)



Charles Muller

## Evolution 2: Guidelines become hard law





Charles Muller

## Evolution 2: Guidelines become hard law

### **Laws in:**

- France
- Netherlands
- UK

### **Discussions in:**

- Germany
- Switzerland
- Luxembourg
- ....

**PARLIAMENT: Proposal** for a Directive on Corporate Due Diligence and Corporate Accountability



**COMMISSION: Consultation** on sustainable corporate governance (closed) followed by proposed directive (Summer 2021)



Charles Muller

# Supply chain or value chain?

## UN Guiding principles (article 13)

The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their **operations, products or services** by their business relationships, even if they have not contributed to those impacts.

## EU consultation on sustainable governance

“Supply chain” is understood within the broad definition of a company’s **“business relationships”** and includes subsidiaries as well as suppliers and subcontractors.



Charles Muller

# EU sustainable governance

The European Green Deal sets out that “sustainability should be further embedded into the corporate governance framework, as many companies still **focus too much on short-term financial performance** compared to their long-term development and sustainability aspects.”

Sustainability in corporate governance encompasses encouraging businesses to frame decisions in terms of their environmental (including climate, biodiversity), social, human and economic impact, as well as in terms of the company’s development in the longer term (beyond 3-5 years), rather than focusing on short term gains.



Charles Muller

# 1) Directors' duty of care

shareholders vs  
other stakeholders (employees, clients,  
society ... )

- Identify and balance stakeholders' interests
- Integrate risks and opportunities into strategy
- Enforcement
- Engagement
- Remuneration and shareholding
- Expertise





Charles Muller

## 2) Due diligence duty

refers to the **legal requirement** for companies to establish and implement adequate processes with a view to prevent, mitigate and account for **human rights** (including labour rights and working conditions), health and environmental impacts, including relating to climate change, both in the company's own operations and in the company's the supply chain.

Due diligence is inherently **risk-based, proportionate and context specific**. This implies that the extent of implementing actions should depend on the risks of adverse impacts the company is possibly causing, contributing to or should foresee.

- Scope topics: human rights/ climate change...
- Scope actors: SMEs / Non-EU businesses / level-playing field
- Enforcement



Charles Muller

# The EU Council calls on the Commission to ...

- **45. Launch an EU Action Plan by 2021** focusing on shaping global supply chains sustainably, promoting human rights, social and environmental due diligence standards and transparency and which takes the experiences and lessons learned from the COVID-19 pandemic into account. This supports the **coherent implementation of the UN Guiding Principles on Business and Human Rights**, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises. (...)
- **46. Table a proposal for an EU legal framework** on sustainable corporate governance, **including cross-sector corporate due diligence obligations along global supply chains**. This could include a definition of what kind of risk management process companies need to follow to identify, prevent, mitigate and account for its adverse human and labour rights and environmental impacts (...)

EU Council Conclusions on Human Rights and Decent Work in Global Supply Chains (1 December 2020)



Charles Muller

## Evolution 3: Voluntary frameworks are becoming more demanding

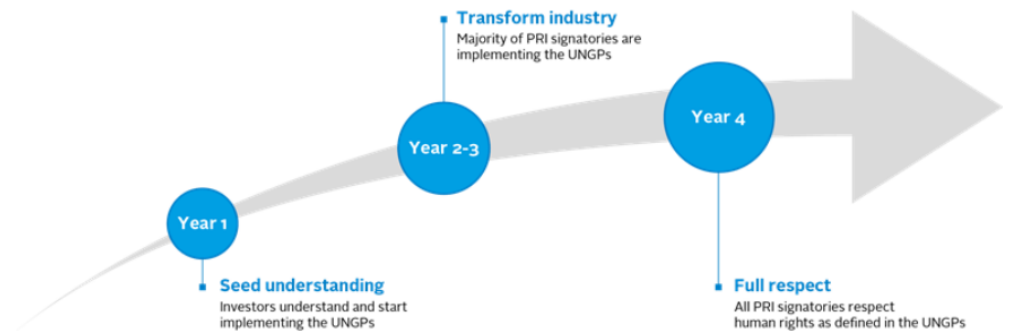
**Institutional investors' responsibility** to respect human rights encompasses both their own operational activities – for example in relation to employees, clients, communities, and contractors – and the outcomes they are connected to through their **investments**.

Institutional investors should meet their responsibility to respect human rights by publishing a policy commitment, having due diligence processes and enabling or providing access to remedy.



### Next steps for the PRI

We are setting out a multi-year agenda for our work towards respect for human rights being implemented in the financial system.





Charles Muller

## Evolution 4: Links to existing legislation

FINANCE AGAINST SLAVERY

AND TRAFFICKING

The prohibition of slavery is one of the strongest norms in international law. It has been translated into a wide range of international and domestic legal regimes.

**Laundering** the proceeds of modern slavery and human trafficking is also a crime in most jurisdictions.

(art 506 - Code Pénal) Sont punis d'un emprisonnement d'un à cinq ans et d'une amende de 1.250 euros à 1.250.000 euros, ou de l'une de ces peines seulement ceux qui ont sciemment facilité, par tout moyen, la justification mensongère de la nature, de l'origine, de l'emplacement, de la disposition, du mouvement ou de la propriété des biens visés à l'article 31, paragraphe 2, point 1°, formant l'objet ou le produit, direct ou indirect de toute infraction punie d'une peine privative de liberté d'un minimum supérieur à 6 mois;



Charles Muller

# Toolkit



INVESTOR ALLIANCE  
FOR HUMAN RIGHTS  
AN INITIATIVE OF ICCR

NewsEventsContact

WHO WE AREWHAT WE DOGET INVOLVEDRESOURCESJOIN THE ALLIANCE



INVESTOR  
TOOLKIT  
ON HUMAN  
RIGHTS

## Investor Toolkit on Human Rights

Amid COVID-19, the Investor Alliance's latest guidance helps investors get the 'people part' of ESG right.

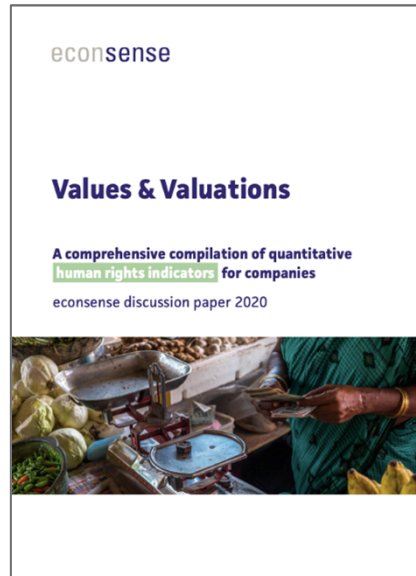
Resources

[Investor Alliance for Human Rights: Investor Toolkit on Human Rights](#)



Charles Muller

# Measuring human rights



econsense: Values & Valuations – A comprehensive compilation of quantitative human rights indicators for companies

## 5. Excerpt of the compilation of human rights indicators

Human rights issues*	Source
<b>Abolition of Worst Forms of Child Labor</b>	<a href="#">ILO fundamental convention No. 182</a> ; <a href="#">ICESCR Art. 10</a>
<b>Equal Remuneration</b>	<a href="#">ILO fundamental convention No. 100</a>
<b>Freedom from Discrimination</b>	<a href="#">ILO fundamental convention No. 111</a> ; <a href="#">Universal Declaration of Human Rights Art. 2</a> ; <a href="#">ICCPR Art. 2</a> ; <a href="#">ICESCR Art. 2</a>
<b>Freedom from Slavery</b> (incl. Freedom from Forced or Other Compulsory Labor)	<a href="#">ILO fundamental conventions No. 29 and 105</a> ; <a href="#">Universal Declaration of Human Rights Art. 4</a> ; <a href="#">ICCPR Art. 8</a>
<b>Freedom of Assembly and Association</b>	<a href="#">ILO fundamental convention No. 87</a> ; <a href="#">Universal Declaration of Human Rights Art. 20</a> ; <a href="#">ICCPR Art. 21 &amp; 22</a>
<b>Freedom of Opinion and Expression</b>	<a href="#">Universal Declaration of Human Rights Art. 19</a> ; <a href="#">ICCPR Art. 19</a>
<b>Minimum Working Age</b>	<a href="#">ILO fundamental convention No. 138</a>
<b>Minority Rights to Culture, Religious Practice, and Language</b>	<a href="#">ICCPR Art. 27</a>
<b>Right to Adequate Standard of Living</b> (incl. Right to Adequate Food, Clothing, Housing and Distribution of Food)	<a href="#">Universal Declaration of Human Rights Art. 25</a> ; <a href="#">ICESCR Art. 11</a>
<b>Right to Education</b> (incl. Right to Vocational Guidance and Training)	<a href="#">Universal Declaration of Human Rights Art. 26</a> ; <a href="#">ICESCR Art. 6 &amp; 13</a>
<b>Right to Fair Working Conditions</b> (incl. Minimum Wage, Equal Pay and Safe and Healthy Working Conditions)	<a href="#">ICESCR Art. 7</a>
<b>Right to Form and Join Trade Unions and Right to Strike</b>	<a href="#">ICESCR Art. 8</a>
<b>Right to Marry and to Found a Family</b> (incl. Right to Maternity Leave)	<a href="#">Universal Declaration of Human Rights Art. 16</a> ; <a href="#">ICCPR Art. 23 &amp; 24</a>
<b>Right to Organize and Collective Bargaining</b>	<a href="#">ILO fundamental convention No. 98</a>
<b>Right to Privacy</b>	<a href="#">Universal Declaration of Human Rights Art. 12</a> ; <a href="#">ICCPR Art. 17</a>
<b>Right to Remedy</b>	<a href="#">Universal Declaration of Human Rights Art. 8</a> ; <a href="#">ICCPR Art. 2</a>

## Human Rights in the EU sustainable finance agenda

- Francis Kass

## Set the scene for panel discussion on human rights due diligence

- **Human rights:** Point out **social aspects** already in place today in the ESG regulations currently in force
- **Due diligence:** in context of **governance processes** to be implemented by financial market participants e.g. when promoting social objectives



## Predominant focus on environmental aspects (so far)

- **Taxonomy Regulation**: sets out criteria for the purpose of establishing when an investment is **environmentally** sustainable (art 3 taxonomy)
- **Benchmarks regulation**: new EU **Climate Transition** Benchmarks and **EU Paris-aligned** Benchmarks

## Social (including human rights) aspects are already very much present

### – SFDR

- The obvious cases:
    - Products promoting, among others, environmental or **social characteristics** (art 8 SFDR)
    - Products having sustainable investment as their objective, i.e. an investment that contributes to an environmental or **social objective** (art 9 SFDR)
  - But even for standard products (art 6 SFDR)
    - Disclosure of
      - the manner in which **sustainability risks** are integrated into the investment decisions; and
      - the **likely impacts of sustainability risks** on the returns
- ‘sustainability risk’** means an environmental, governance or **social** event that could cause a negative impact on the value of the investment

## Social (including human rights) aspects are already very much present

### – Taxonomy

To qualify as environmentally sustainable, an economic activity must be carried out in compliance with the **minimum safeguards**

- alignment with the OECD Guidelines and UN Guiding Principles
- including **Fundamental Principles and Rights at Work** as well as **Human Rights** (art 3 Taxonomy)

### – NFRD

Certain public-interest entities must disclose information on their activity, including information on **social and employee matters** as well as **respect for human rights**

## Governance processes to be put in place by financial market participants

### – What does governance mean?

- **Processes** to be put in place by the **board** in order to:
  - set the organization's objectives;
  - monitor the performance; and
  - evaluate the results
- Board of directors is **ultimately responsible** if:
  - Financial product does not meet sustainability criteria promised to investors
  - Regulatory requirements not complied with
- Important for the board to **document**
  - **what** has been done
  - **which measures** have been taken
  - **why**

## Governance processes to be put in place by financial market participants

### – Governance aspects foreseen by SFDR

- **due diligence policies** must be implemented, where principal adverse impacts of investment decisions on sustainability factors they consider (art 4 SFDR)
- **investment decision process** must be amended, to integrate sustainability risks (art 3 SFDR)
- **remuneration policy** must be updated, for the purpose of integration of sustainability risks (art 5 SFDR)
- **methodologies** must be put in place **to measure and monitor** the **sustainability characteristics** (art 10 SFDR)

## Governance processes to be put in place by financial market participants

- Proposed amendments to level 2 UCITS Directive and AIFM Regulation
- Requirement for **UCITS** mancos and **AIFMs** to take into account **sustainability risks** in the context of:
  - **decision-making procedures**
  - **reporting lines**
  - **internal control mechanisms**
- Ensure relevant persons are **aware** of applicable procedures
- Maintain adequate **records** of the business and internal organisation

## Governance processes to be put in place by financial market participants

### – CSSF Thematic Review on climate-related disclosures for issuers

- Different context (NFRD), but useful source of inspiration when assessing procedures to be put in place by financial market participants

### a) Determination of business model :

- Identify the **product classification**
- Define **investment policies** for certain products
- Identify sustainability **risks and opportunities**
- Recommended to be **specific**. Avoid boilerplate or generic information
- **Explain the reason** behind the choice
- Evaluate the need to appoint **specialised external organizations to assist in the process**

## Governance processes to be put in place by financial market participants

### – CSSF Thematic Review on issuers' climate-related disclosures

#### b) Determining the governance processes to be put in place

- Implement a **real action plan** beyond vague / generic commitments
- Identify **persons** within the organisation **responsible for** implementing and monitoring a specific **policy**
- Describe to what extent sustainability issues receive **attention of the board**, how **management** is involved
- Determine **reporting** to the board / management, in particular :
  - **Processes and frequency** by which the board is informed
  - How the board **monitors progress made** against goals and targets
  - **Metrics used** to assess sustainability risks and opportunities
- **Due diligence policies** also part of these governance processes



## **Panel discussion : Due diligence in practice**

- Isabelle Lebbe (moderator)
- Markus Löning
- Oriane Schoonbroodt



Markus Löning

# Human Rights Due Diligence – what's the aim?

***"identify, prevent, mitigate and account** for how  
you address your actual and potential adverse  
impacts as an integral part of business decision-  
making and risk management systems"*

*OECD Guidelines*



Markus Löning

# Human Rights Due Diligence for different roles

**Employer & own Operations**

**Service Provider**

**Lender**

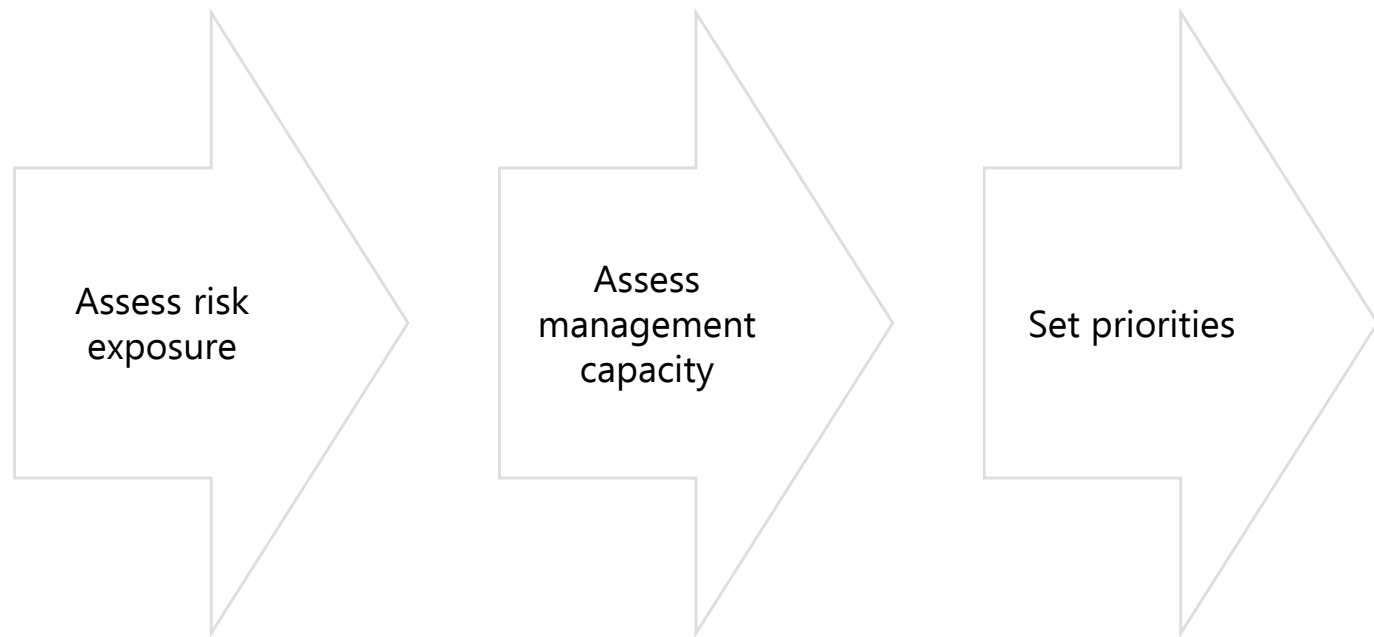
**Investor/  
Investment advisor**

1. Human rights statement, policies and management systems
2. Robust risk identification
3. Use leverage to influence investee companies
4. Report how impacts are addressed
5. Communicate results
6. Enable remediation



Markus Löning

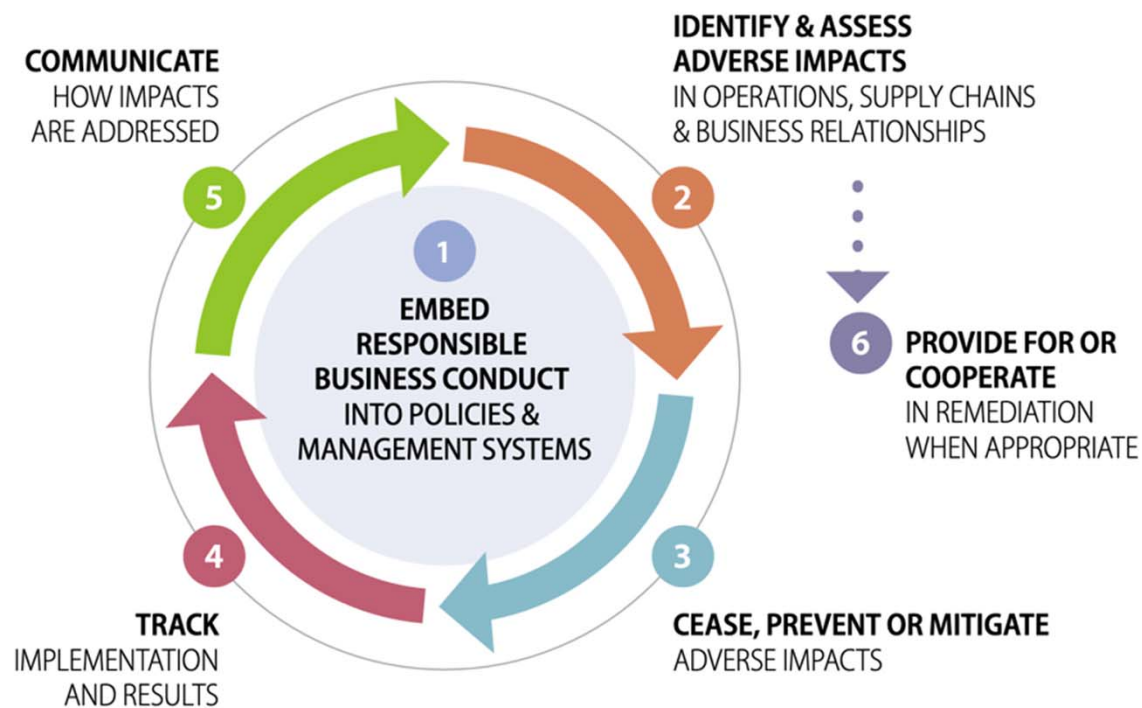
# Human Rights Due Diligence – how to start





Markus Löning

# Human Rights Due Diligence – how to build it



## Human Rights Due Diligence Opportunities

- Enhance supply chain visibility and intelligence
- Promote supply protection with reduced risk of disruption
- Promote supplier performance management system
- Increase efficiency
- Reduce employee turnover
- Improve recruiting and training
- Improve reputation and credibility
- Secure long-term competitive advantage
- Promote well-being , health and safety

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