



“DDTrO, LkSG, CSDDD – what the heck?”

How to deal with national & international supply chain due diligence regulations”

OR

“Leverage Supply Chain DD to gain competitive advantage”

# Agenda

1. Setting the stage: EU Green Deal
2. CO/DDTrO & CSRD & CSDD & EUDR
3. Outlook

# European Green Deal (2019)

## Purpose

- New growth strategy to transform the EU into a:
  - **fair and prosperous society** with a
  - **modern, resource-efficient and competitive economy,**
  - with **zero net greenhouse gas emissions** in **2050** and
  - **decoupling economic growth from resource use**
- It **takes 25 years** to **transform** an industrial sector and the entire value chains.
- To achieve this by 2050, **decisions and measures must be taken in the next five years.**

# European Green Deal Many Regulations

**CircuLaw** EUROPEAN GREEN DEAL  
Click on the title link to view the law

This document was last updated on: 19/07/2024

**CLIMATE NEUTRAL BY 2050**  
The European Union aims to become climate neutral by 2050 as a ambition that underpins the Green Deal. Click on the Green Deal a great deal of regulations is being prepared - several already enacted.

**Instrument status (as of November 2023):**

**Instrument referenced in:**  
 - Circular Economy Action Plan  
 - Biodiversity Strategy  
 - Fit for 55 Package  
 - Farm to Fork Strategy  
 - Sustainable & Smart Mobility Strategy

WASTE	PRODUCTS & MATERIALS	CONSUMER GOODS	REPORTING
<b>Common Charger Directive</b> no. 2022/2380 Meer over Nederlandse implementatie	<b>Batteries Regulation</b> no. 2023/1842	<b>Air Services Regulation</b> no. 1008/2008	<b>Aarhus Regulation</b> no. 2021/787
<b>End-of-Life Vehicles Directive</b> no. 2000/53/EC Meer over Nederlandse implementatie	<b>Construction Products Regulation</b> no. 305/2011	<b>Cohesion Policy</b> no. 2023/1058	<b>Corporate Sustainability Due Diligence Directive</b> no. 2023/0051(COD)
<b>Landfill Directive</b> no. 2018/850 Meer over Nederlandse implementatie	<b>Critical Raw Materials Act</b> no. 2024/1252	<b>Common Markets Organisation Regulation</b> no. 2021/2117	<b>Corporate Sustainability Reporting Directive</b> no. 2023/2444 Meer over Nederlandse implementatie
<b>Packaging Directive</b> no. 94/62/EC Meer over Nederlandse implementatie	<b>Deforestation-Free Products Regulation</b> no. 2023/116	<b>Consumer Rights Directive</b> no. Meer over Nederlandse implementatie	<b>Directive on Cross-Border Enforcement of Traffic Rules</b> no. 2023/0052(COD)
<b>Recycled Food Contact Materials Regulation</b> no. 2022/1416	<b>Ecodesign Regulation</b> no. COM/2023/142	<b>Cybersecurity Act</b> no. 881/2019	<b>Directive on Driving Disqualifications</b> no. 2023/0056(COD)
<b>Ship Recycling Regulation</b> no. 1257/2013	<b>European Accessibility Act</b> no. 2019/882 Meer over Nederlandse implementatie	<b>Ecolabel Regulation</b> no. 66/2010	<b>Directive on Public Access to Environmental Information</b> no. 2003/4/EC
<b>Single Use Plastics Directive</b> no. 2019/904 Meer over Nederlandse implementatie	<b>Right to Repair Directive</b> no. COM/2023/155	<b>Electricity Market Regulation</b> no. 2019/943	<b>Directive on Registration Documents for Vehicles</b> no. 1999/57/EC
<b>Waste Electrical and Electronic Equipment</b>		<b>Electricity Market Directive</b> no. 2019/944 Meer over Nederlandse implementatie	

[European green deal.pdf \(circulaw.nl\)](https://www.circulaw.nl/european-green-deal.pdf)

# „The Future of European Competitiveness“

„Draghi-Report“ published September 9, 2024

Top **three regulatory difficulties** encountered by companies:

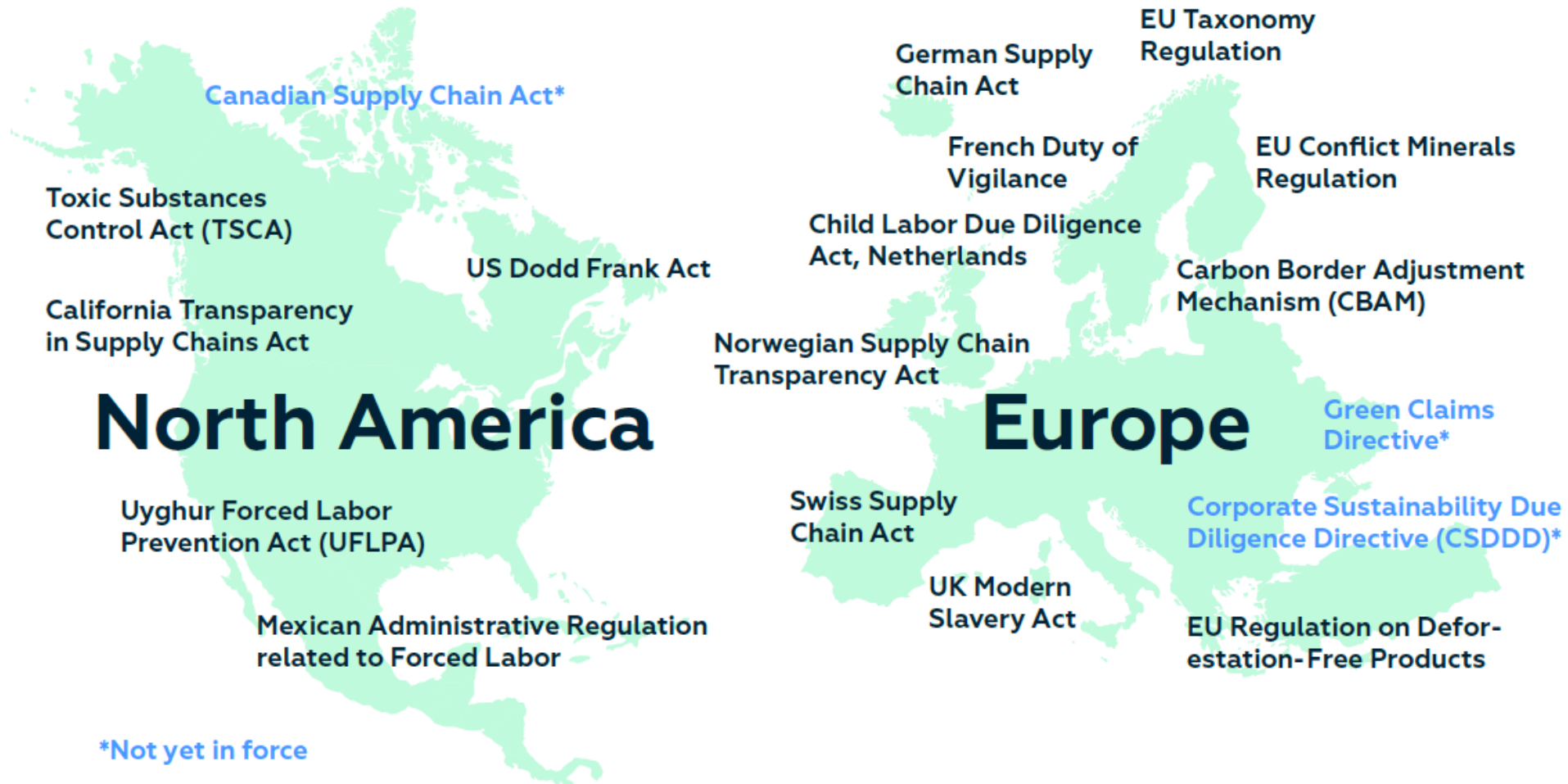
- Complying with the accumulation of EU legislation and its frequent changes over time, translating into **regulatory overlap and inconsistencies**.
- The extra burden added by **national transposition and enforcement**, including Member States ‘gold-plating’ EU legislation, as well as diverging implementing requirements and standards in different Member States.
- The proportionally higher regulatory burden faced by **SMEs** and small mid-caps compared to larger companies

## Recommendations:

- Minimise the cost of Member State **transposition** and enhance enforcement of **Single Market legislation**
- Uphold **proportionality** for **SMEs**

# North America - Europe

DD-related regulatory initiatives



\*Not yet in force

Source: IntegrityNext

# Switzerland: Regulatory Landscape

Non-financial Reporting	Conflict Minerals (Gold, Tin, Tungsten, Tantalum)	Child Labour	Greenwashing	FINMA / SNB
Art. 964a-c Corporate Law ESG Reporting	Art. 964j Corporate Law Transparency and DD obligations		Unfair Competition Law	Strategic supervisory goals
Art. 325ter Criminal Code False statements or failure to report Fines (also for negligence) Official offense			Misleading	FINMA Supervisory Note 05/2021 (Greenwashing), 03/2022 and 01/2023 (Climate risk); FINMA Circular 2016/01-02
Ordinance on mandatory climate disclosures for large companies («TCFD»)	DDTrO Regulation on due diligence and transparency regarding minerals and metals from conflict areas and child labor  Supply chain policy, traceability, escalation procedures, risk management, reporting.		New proposal Art. 3 Abs. 1 lit.x UWG (obligation to substantiate green claims)	Self-regulation (SBVg; AMAS)
<i>Tightening proposed by Federal Council (similar EU)</i>  <i>EU Corporate Sustainability Reporting Directive (CSRD)</i>	<i>Tightning expected (similar CSDDD)</i>  <i>Supply Chain DD Law (LKSG) (GER 2023);</i> <i>Loi de vigilance (France 2017)</i> <i>Corporate Sustainability Due Diligence Directive (CSDDD);</i> <i>EU Deforestation Regulation (EUDR);</i> <i>EU directive on ban on goods made using forced labour;</i>  <i>UNGP on Business &amp; Human Rights/ OECD Guidelines for Multinational Enterprises on Responsible Business Conduct</i>		<i>EU Green Claims Directive</i>	<i>Sustainable Finance Disclosure Regulation (SFDR)</i>

# Switzerland: Code of Obligations 964j & DDTro

## Child Labour

## Conflicts Minerals

### Due diligence & reporting requirements

1. Companies shall operate a (supply chain) **management system** regarding conflict minerals and child labour which specifies: Supply chain **policy**; a **system to trace** back the supply chain
2. **Risk assessment** about adverse impact along the (upstream) supply chain, **risk management plan** and **measures** to minimize risks
3. **Annual reporting** on compliance with due diligence obligations → annual re-evaluation

### Formal requirements

- Audit of compliance with due diligence obligations: **external audit mandatory** for **conflict minerals** but not for child labour
- No requirement for separate reporting on child labour / conflict minerals – can be included in existing reporting / annual report

### Alternative to the implementation of the Swiss regulation:

Application of international standards in their entirety

- ILO Conventions No. 138 and 182 and the ILO-IOE Child Labour Guidance Tool for Business of 15 December 2015, **and**
- OECD Due Diligence Guidance for Responsible Business Conduct of 30 May 2018 **or**
- UN Guiding Principles on Business and Human Rights

### Alternative to the implementation of the Swiss regulation:

Application of international standards in their entirety

- OECD Due Diligence Guidance on Promoting Responsible Supply Chains for Minerals from Conflict and High-Risk Areas **or**
- Regulation (EU) 2017/821 on conflict minerals



# Corporate Sustainability Reporting Directive (CSRD)

## Applicability and phased approach

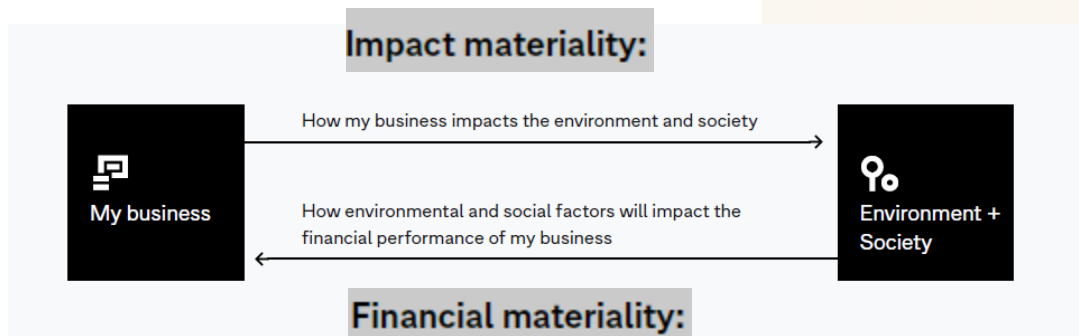
- Companies with **listed securities on an EU-regulated market** (**excluding** micro-undertakings that do not meet two of the following three size criteria for two consecutive balance sheet dates: 1) €450,000 in total assets; 2) €900,000 in net turnover; 3) Average of 10 employees)
- **EU-based large undertakings**, regardless of listed status.  
A large undertaking has **two of the three following characteristics** on two consecutive balance sheet dates:
  - An annual **net turnover** exceeding €50 million
  - A **balance sheet** (assets) exceeding €25 million
  - At least 250 **employees** on average throughout the year
- The **EU-based parent** of a group of entities that meet the large undertaking criteria as a whole
- **Parent companies from a third country** (including the Switzerland) that in consolidation **generate more than €150 million in net turnover in the EU and** meet any of the following criteria:
  - Owns a subsidiary that is considered a large undertaking in the EU
  - Owns a subsidiary with debt or equity securities listed on an EU-regulated exchange
  - Owns a significant EU branch with net turnover exceeding €40 million



# CSRD requires companies to apply ESRS

Double Materiality Assessment (DMA) as basis of disclosure

## In total, there's 1178 datapoints



# Consultation on „transparency on sustainability aspects“

Amendment to the Swiss Code of Obligations (June 26, 2024)

3 scenarios assessed:

1. Maintaining the status quo
2. Full implementation of the CSRD in Swiss law
3. Partial implementation of the CSRD:
  1. restriction of the scope of application to large companies with 500 full-time employees as in the current law 
  2. waiver of mandatory compliance with the standards specified by the EU or the possibility of using comparable standards 
  3. waiver of the audit of sustainability reports 
  4. expansion of the group of companies authorized to audit sustainability reports 
  5. Waiver of third country regulation (Drittstaatenregelung) 
4. CSDDD: await study in fall 2024 as basis for further actions by the Federal Council

# Corporate Sustainability Due Diligence Directive (CSDDD)

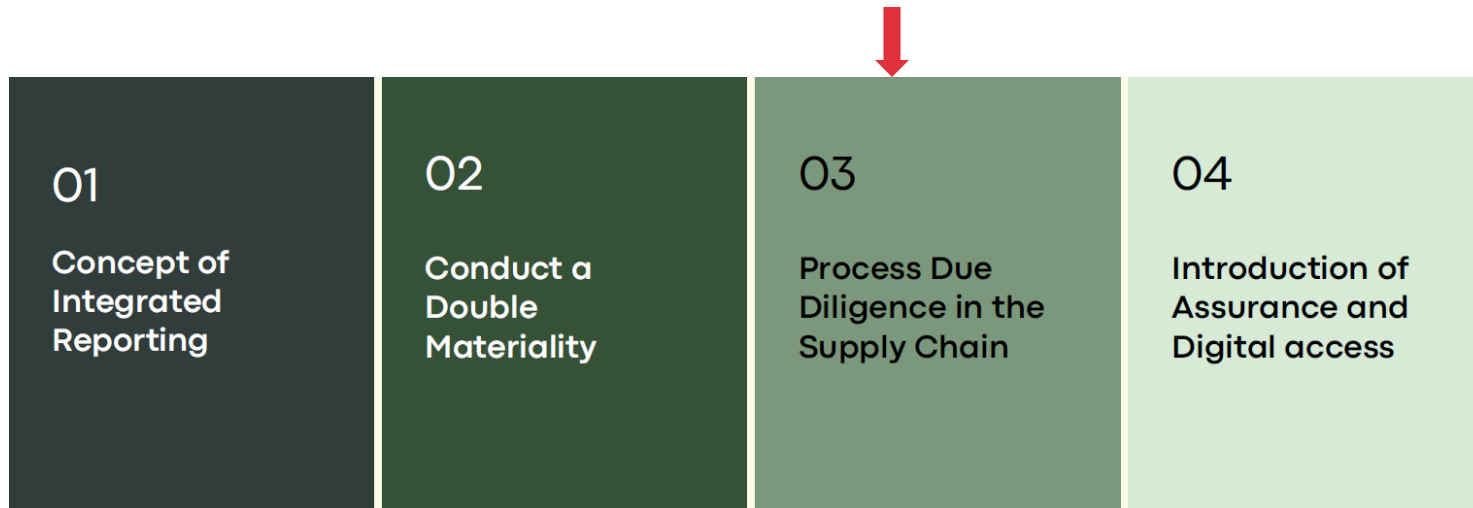
## Interplay CSRD and CSDDD

- **CSDDD** is part of the EU's effort to **enhance the protection of the environment and human rights**
- **EU member states** now have until July 26th, **2026 to transpose** the CSDDD into national law.
- CSDDD (lex generalis) **complements other EU initiatives** aimed at protecting human rights and the environment, such as the EU Deforestation Regulation (**EUDR**) or the Forced Labour Regulation (lex specialis)
- **CSDDD** establishes rules for companies to **identify, prevent, mitigate, and account** for adverse environmental and human rights impacts in their operations and activity chains.
- **CSDDD requires** meaningful **stakeholder engagement**
- **CSRD** does **not require** companies to **act** on material impacts, but to **report** on how they manage impacts
- **CSDDD requires** companies to **act** on impacts and provides a clear operational framework what appropriate action looks like
- **CSDDD** leaves **flexibility** for companies to **tailor** their **actions** to address impacts.

# Corporate Sustainability Due Diligence Directive (CSDDD)

## Interplay CSRD and CSDDD

- The **additional requirement** imposed by the CSDDD for companies already subject to the CSRD is for companies to **describe how they carry out due diligence** as provided for the CSDDD.



- Will be **supervised** by member state **authorities** (a \*European Network of Supervisory Authorities\* will be set up as well)

# Corporate Sustainability Due Diligence Directive (CSDDD)

## Application

### **For companies based in the EU:**

- 5,000+ employees and €1.5 billion net turnover (**worldwide**), comply by the end of July 2027.
- 3,000+ employees and €900 million turnover, comply by the end of July 2028.
- 1,000+ employees and €450 million turnover, comply by the end of July 2029.

### **For companies outside of the EU (No Employee Threshold!):**

- net turnover of more than €1.5 billion **in the EU**, comply by the end of July 2027.
- net turnover of more than €900 million in the EU, comply by the end of July 2028.
- net turnover of more than €450 million in the EU, comply by the end of July 2029.

### **Franchising or licensing business model**

- Additionally, companies with a franchising or licensing business model that meet specified size thresholds will come within the scope of the Directive.

**Financial institutions:** CSDDD requires the EU Commission to assess the needs for tailored due diligence requirements to be developed for financial services and investment activities, considering existing legislative acts that apply to regulated financial undertakings. Results of this assessment will need to be reported by May 2026.

# Corporate Sustainability Due Diligence Directive (CSDDD)

## High-level Obligations

- Companies will have to **conduct risk-based due diligence\***, covering the following aspects:
  - **Policies & management systems:** integrate due diligence into all relevant policies and risk management systems and adopt a due diligence policy to ensure a risk-based due diligence;
  - **Risk & impact assessment:** identify, assess and prioritize actual and potential adverse impacts on human rights and the environment;
  - **Measures:** take measures to prevent and mitigate potential impacts and minimize or end actual negative impacts;
  - **Remediation:** provide remediation to actual adverse impacts;
  - **Stakeholder engagement:** carry out meaningful engagement with stakeholders;
  - **Grievance:** establish and maintain a notification mechanism and complaints procedure;
  - **Monitor** the effectiveness of their due diligence policy and measures;
  - **Report:** communicate publicly through an annual statement on the due diligence process. Companies that are subject to the CSRD will already meet their reporting obligations via the CSRD (no additional reporting required).
- Furthermore, companies have to adopt and implement a **transition plan for climate change** to ensure compatibility of the business model and strategy with limiting global warming to 1.5° C.

\*means on the one hand the companies can **prioritize** their actions when they cannot address all impacts and on the other hand that they **have to adopt appropriate measures** when identifying and addressing **adverse** impacts.

# Corporate Sustainability Due Diligence Directive (CSDDD)

What is covered?

- Due diligence obligations apply to the so-called “chain of activity”:
  - the activities of a company’s **upstream** business partners related to the production of goods or the provision of services by the company and
  - the company’s **downstream** business partners related to the **distribution, transport and storage** of product of that company where the *business partners carry out those activities for the company or on behalf of the company*
- The CSDDD does **not cover** the **disposal** of the product, nor the **activities of the downstream** business partners related to the services provided by that company
- For **financial undertakings only the upstream** but not the downstream part of their chains of activities are covered by the CSDDD.



# EU Deforestation Regulation (EUDR)

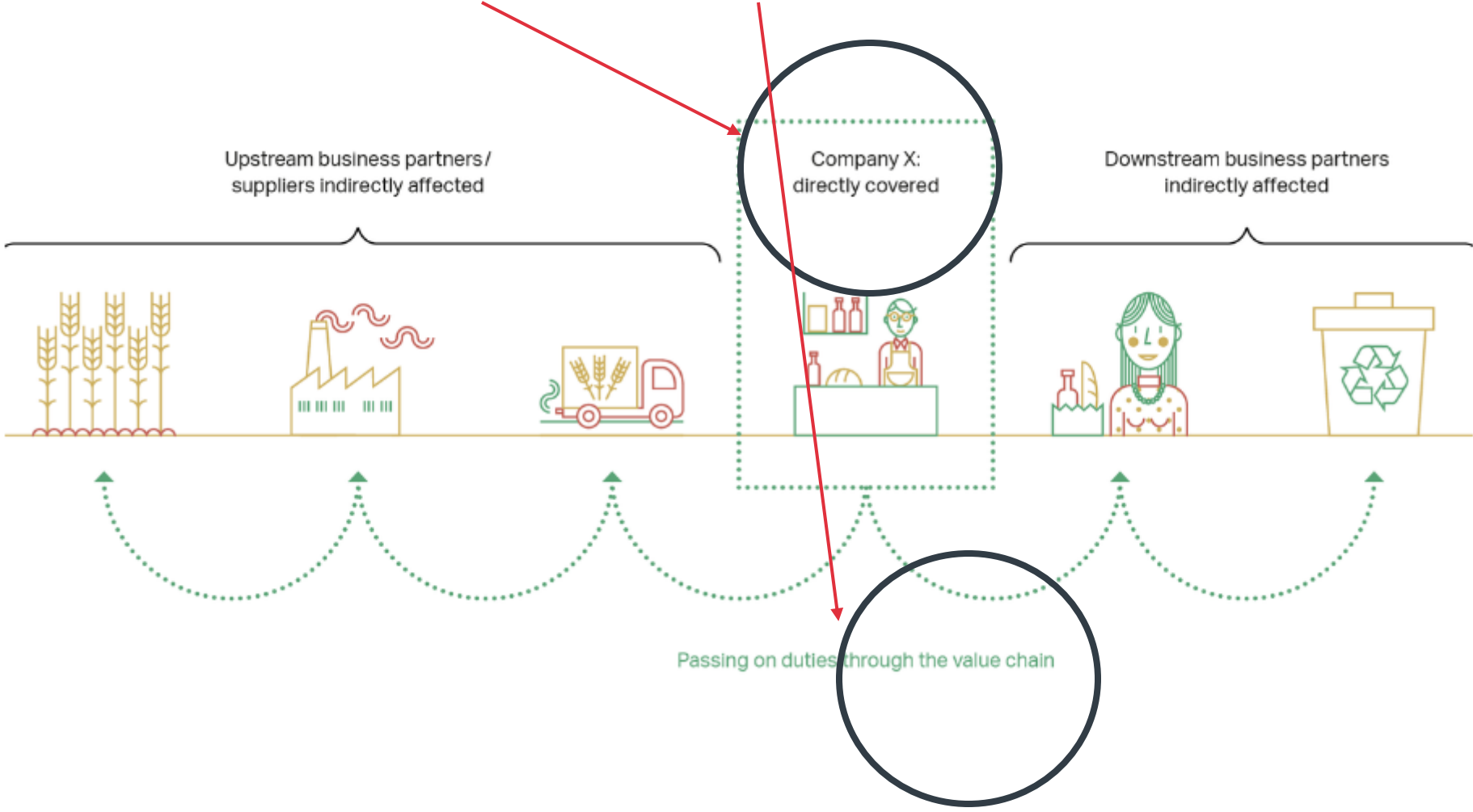
December 30, 2024, is fast approaching (too fast?)

- Aims to combat deforestation on a global scale
- To place a relevant commodity on the EU market, or exporting from it, EUDR requires:
  - Commodity to be **deforestation-free**.
  - In compliance with relevant **national laws**.
  - Covered by a **Due Diligence Statement (DDS)** (incl. geo-location).
  - DDS included in the EU-wide **Information System**.
- **Initial focus on coffee, cocoa, cattle, palm oil, soya, rubber and wood**, as well as a large number of **derived products**, such as leather goods, tires, seals, chocolate, roasted coffee, soya oil, furniture and various paper and print products.
- The European Commission has developed the **Deforestation Due Diligence Registry**, an **online** tool to streamline the creation and submission of these statements.  
This registry will be open to all users starting December 2024



**German  
Chancellor Scholz  
pushes to delay  
EUDR to avoid  
supply chain  
disruptions**

# EU-Regulation: direct or indirect impact on Swiss Companies

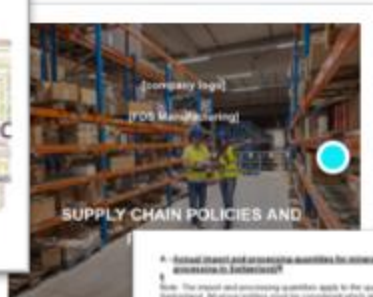
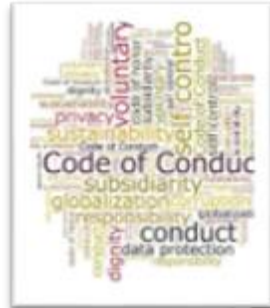


Based on «focusright»

# Be ready: Governance of DD and Reporting Documents

## Recommended Documentation and Data Management

- Code of Conduct (Commitments)
- Supply Chain DD Policy (Roles & Responsibilities)
- DD Documents (Checks performed and documented)
- Internal Reporting (Sign-off internally to Mgt /Board)
- External Reporting (Non-Financial Reporting or separate full Report)
- Supplier Code of Conduct (Expectations of Suppliers)



**A - General check and assurance activities for materials and materials derived in and outside its factories?**

Note: The report and processing quantities apply to the quantities reported to be processed by Switzerland. All other quantities must be considered which are reporting or processing outside and within Switzerland.

Material	Self-check and processing quantities in CHF 000'000 of annual report	Self-check and processing quantities before and including the reporting and reporting obligations (report)	Self-check and processing quantities before and including the reporting and reporting obligations (report)
Aluminum	2000000	2000000	2000000
Steel	1000000	1000000	1000000
Other	500000	500000	500000
Total	3500000	3500000	3500000

I confirm to the best of my knowledge and belief that I have carefully carried out the checks described above and that the above statements are true and correct.¶

The Group has established processes to ensure compliance with Swiss legislation in relation to child labour. The Group is exempt from the Swiss due diligence and reporting requirements in relation to child labour.\*

### Code of Conduct for Suppliers

We are committed to maintaining ethical, sustainable operations and business development in all our activities by following international-recognised principles and laws relating to anti-corruption, human rights, diversity, child labour, health, safety, and the environment as stated in our Corporate Code of Conduct policy.

When conducting business with us, the activities and business practices of our suppliers may have considerable influence to our company. Therefore, we expect all our suppliers, their employees, and subcontractors to stringently adhere to the same

# „Scalable Governance“

## Some concluding thoughts

- “**Scalable** Governance”: policies, processes, roles & responsibilities – set up once and adjust to new requirements (e.g. today child labor DD; next broader HR DD) incl. **Data management** (data pool)
- Sustainability due diligence has become a **legal responsibility** for management and for board with penalties (Swiss Penal Code).
- Ensuring an effective response calls for **clear governance structures**, cross-organizational collaboration, and access to expertise.
- **Boards** may need to add members with relevant subject matter **expertise** or establish advisory bodies.
- **Senior management** should have formalized **responsibilities** and likewise draw on internal and external sustainability expertise.
- Risk of “**intransparency**” through (too much) transparency! Report what is “material”.
- Keep an eye on “**Greenwashing**” risk
- **Seek the opportunities**: Swiss quality / supply chain reliability (regionalization) / decision-making / choices / reputation supports retaining and gaining employees and customers: profitability & prosperity!

# MME «Walks the ESG-Talk»

MME published as first Swiss law firm a comprehensive ESG Report based on GRI Standard

- MME is a pioneer in legal, tax and compliance advice on the topic of sustainability.
- Not only do we advise our clients with the highest level of professionalism, as a company we also firmly believe in ESG (Environmental, Social, and Governance) and the UN Development Goals (SDG).
- MME also wants to be a role model in ESG and “walk the talk”. We have already achieved a lot, but we are not standing still. We have also set ourselves ambitious goals for the next few years.
- Everyone can contribute to sustainability



[MME Nachhaltigkeitsbericht 2022](#)



# Adrian Peyer

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Passionate about fighting to achieve a positive impact: in the environmental, social and governance sectors.

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## Profile

Adrian Peyer is an experienced advisor in the legal, compliance, ethics, regulation, BoD secretariat, environmental, social and governance (ESG) as well as risk management sectors.

With his unique background as an experienced general counsel, BoD secretary and start-up entrepreneur in ESG, artificial intelligence (AI) and natural language processing (NLP), Adrian Peyer advises companies of all sizes on their ESG journey – from strategy to pragmatic implementation and from governance to regulatory reporting.



# Dr. Martin Eckert

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Martin Eckert is a founding partner and the "E" of MME: Renowned expert, climate law and ESG pioneer advising global technology and trading companies.

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## Profile

As one of MME's three founding partners, Dr. Martin Eckert is a generalist. He brings extensive experience advising internationally oriented data, technology and trading companies - including M&A. He is a renowned climate law and Environmental, Social, and Governance (ESG) pioneer.

# MME ESG Team



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ESG general



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