

C L I F F O R D
C H A N C E



ETHICS INTERNATIONAL ACADEMY – ESG REGULATION

ESG-RELATED DUE DILIGENCE OBLIGATIONS

29 APRIL 2024

DR. THOMAS VOLAND, LL.M.

CONTENT



1 BACKGROUND



2 GERMAN SUPPLY CHAIN ACT



3 EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE



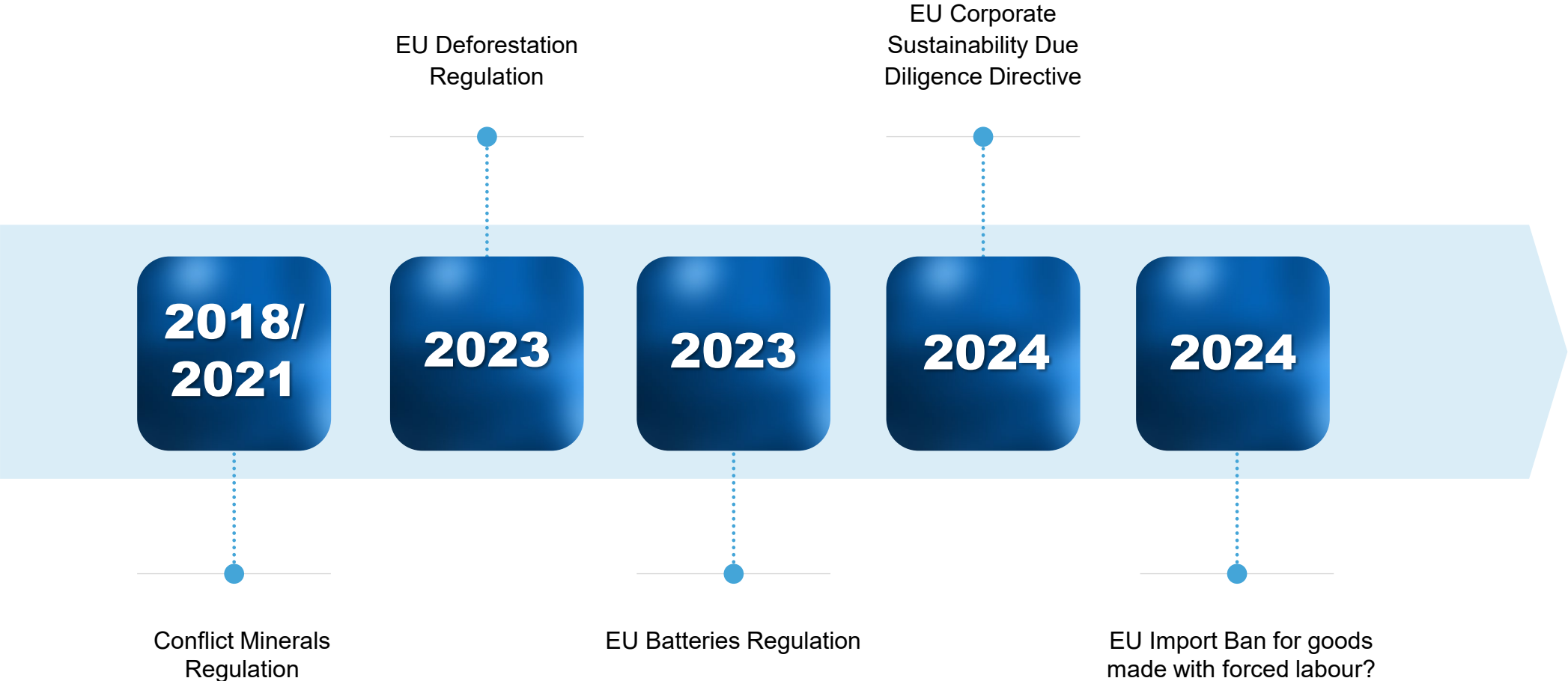
4 CONCLUSION



BACKGROUND

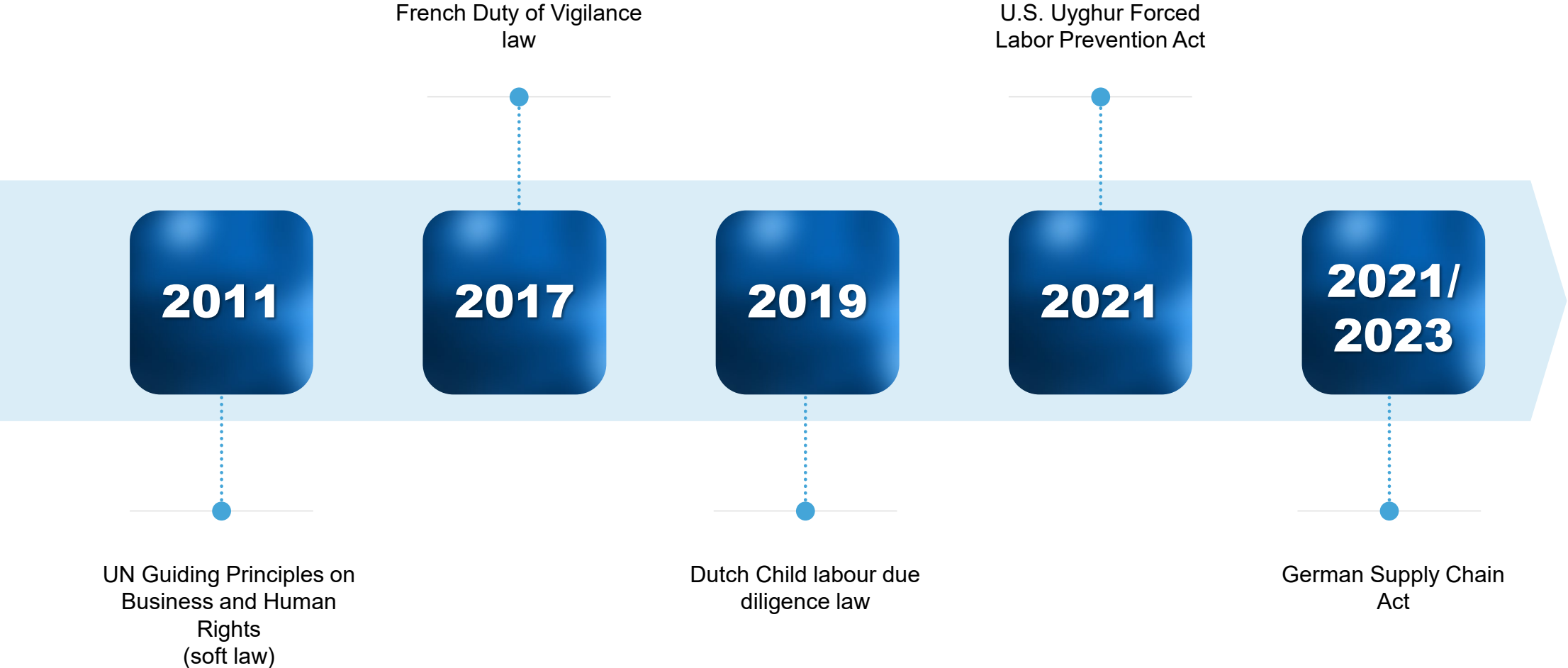
BACKGROUND

INCREASING SUPPLY CHAIN DUE DILIGENCE LEGISLATION AT EU LEVEL



BACKGROUND

INCREASING SUPPLY CHAIN DUE DILIGENCE LEGISLATION AT NATIONAL LEVEL





THE GERMAN SUPPLY CHAIN ACT

THE GERMAN SUPPLY CHAIN ACT (GSCA)

OVERVIEW AND SCOPE OF APPLICATION



The GSCA came into force on 1 January 2023.

Practical challenges:

- Determination of number of employees (relevant point in time, part-time workers, apprentices, etc.)?
- Reach of obligations/supply chain in case of mere branches in Germany?



It places in-scope companies under the obligation to respect human rights by implementing defined due diligence obligations.



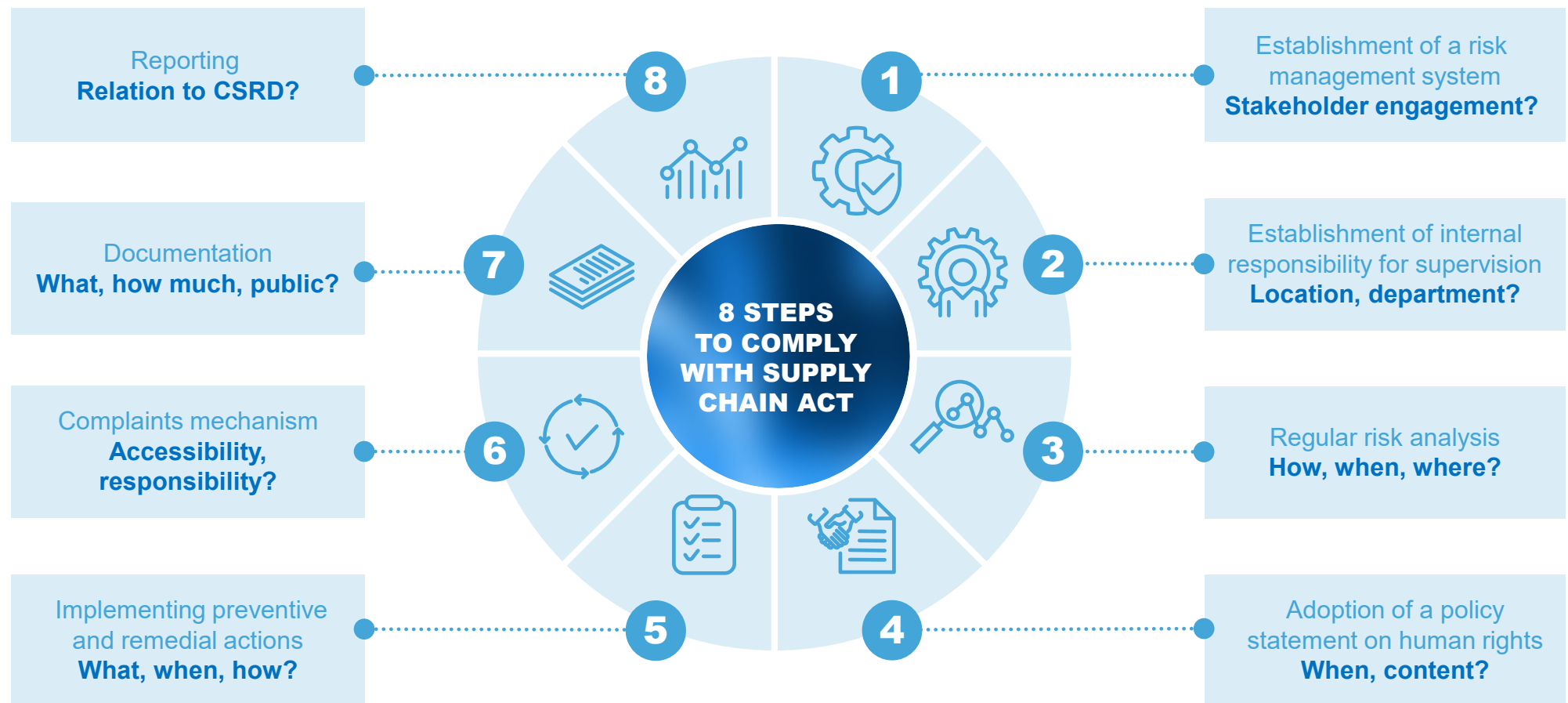
It applies to companies that

- have their central administration, principal place of business, administrative headquarters, statutory seat or a branch office in Germany, and
- that employ at least 1,000 employees in Germany.

THE GERMAN SUPPLY CHAIN ACT

OVERVIEW OF OBLIGATIONS

Steps that must be taken by companies with regard to their supply chain:



PARTS OF THE SUPPLY CHAIN



OWN BUSINESS AREA

- Any activity to achieve the company's objectives
- Any activity for the production and distribution of products and the provision of services
- Irrelevant whether conducted in Germany or abroad
- Includes all actions conducted at the headquarter, statutory seat or subsidiary



DIRECT SUPPLIERS (TIER-1-SUPPLIERS)

- Contractual partner whose supplies are necessary for the manufacture of the product or for the provision and use of the service
- Tier 1 suppliers



INDIRECT SUPPLIERS

- Any company which is not a direct supplier and
- whose supplies are necessary for the manufacture of the product or for the provision and use of the service
- Tier 2 – tier n suppliers

Challenges:

- Mere trading as supply?
- Delegation of duties throughout supply chain?
- Logistics services for distribution as supply?

REGULATORY ENFORCEMENT

GERMAN SUPPLY CHAIN ACT



SANCTIONS

- **Competent authority:** Federal Office for Economic Affairs and Export Control (BAFA)
- **Non-compliance is in general a regulatory offence**
 - Fines up to EUR 8 million or to 2 % of the average (global) annual turnover, whichever is higher
 - Exclusion from public procurement up to 3 years



CIVIL LIABILITY

- No special liability under civil law
- General rules of the German Civil Code applicable
- Domestic trade union or NGOs may file actions against companies on behalf of affected persons under general civil law

Challenges:

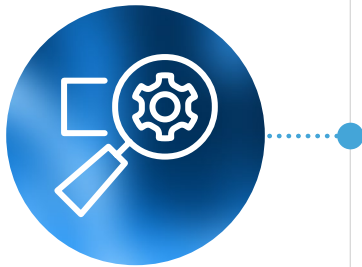
- First complaints, esp. from NGOs.
 - Usually addressed to company first – how much information sharing and dialogue?
- First investigations from BAFA – triggered by complaints.
- Numerous information requests from BAFA.



**THE EU
CORPORATE SUSTAINABILITY
DUE DILIGENCE DIRECTIVE**

THE EU DRAFT CSDDD

OVERVIEW AND SCOPE OF APPLICATION



- The CSDDD applies to **EU companies** that
 - have more than 1,000 employees and
 - EUR 450 million worldwide net turnover in the last financial year.
- Companies that do not reach these thresholds but are the ultimate parent of a group which as group reaches the thresholds on a consolidated basis in the previous financial year are also in scope.
- The CSDDD also applies to **non-EU companies or groups** that generate an annual net turnover of more than EUR 450 million in the EU in the financial year preceding the last financial year.

THE EU DRAFT CSDDD

OVERVIEW AND SCOPE OF APPLICATION (3)



- Once adopted, the CSDDD will need to be transposed into national law by the EU member states within 2 years
- The draft CSDDD provides for a gradual application of the obligations depending, *inter alia*, on the size of the company and on its origin (i.e. whether) they are an EU or non-EU company (Art. 30 draft CSDDD):.

TYPE OF COMPANY <small>*The employee threshold only applies to EU companies ** For EU companies, the worldwide net turnover is decisive; for non-EU companies the net turnover in the EU is decisive</small>	HREDD OBLIGATIONS	REPORTING OBLIGATIONS
> 5000 employees* and > EUR 1500 million net turnover** Or a parent company of a group of companies which as group reaches this threshold.	3 years after entry into force (likely mid-May 2027)	FY starting on or after 1 January 2028
5000 > 3000 employees* and EUR 1500 > EUR 900 million net turnover** Or a parent company of a group of companies reaching this threshold.	4 years after entry into force (likely mid-May 2028)	FY starting on or after 1 January 2029
3000 > 1000 employees* and EUR 900 > EUR 450 million net turnover** Or a parent company of a group of companies reaching this threshold	5 years after entry into force (likely mid-May 2029)	FY starting on or after 1 January 2029
Franchising company with net turnover of > EUR 80 million. and Agreements ensuring > EUR 22.5 million in royalties in the EU. Or a parent company of a group of companies reaching this threshold.	5 years after entry into force (likely mid-May 2029)	FY starting on or after 1 January 2029

THE EU DRAFT CSDDD

OVERVIEW OF OBLIGATIONS



CLIMATE
TRANSITION
PLAN (Art. 15)





CONCLUSION

CALL FOR ACTION



COMPLEXITY

- DD obligations to be implemented in various business operations for numerous topics (human rights, environment, diversity, compliance, etc.)
- Mix of legally binding and non-binding requirements
- Prioritization necessary



MEASURES

- Governance measures
- ESG risk assessment
- Implementation of ESG risk avoidance measures / strategy



TIMING

- The earlier, the better
- Start with gap analysis, prioritize implementation
- Legal deadlines plus immediate market expectations

THANK YOU FOR YOUR ATTENTION.
YOUR CONTACT FOR FURTHER QUESTIONS:



DR. THOMAS VOLAND, LL.M.
CLIFFORD CHANCE PARTMBB
PARTNER
DÜSSELDORF

T +49 211 4355 5642
M +49 160 9774 7012
E thomas.voland
@cliffordchance.com



**BACK-UP: SUPPORT FOR
IMPLEMENTATION OF THE
GERMAN SUPPLY CHAIN ACT**

IMMEDIATE STEPS FOR IMPLEMENTATION OF DD OBLIGATIONS

Determination of scope of requirements and risk heat mapping



Assignment of responsibilities (board level and responsible person)



Adaptation of documentation, esp. code of conduct and supplier agreements

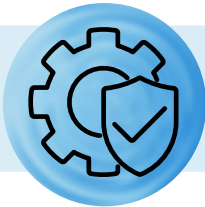


Establishment or expansion of grievance mechanism



Adaptation of measures for due diligence, risk prevention and mitigation

SPECIFICATION OF LEGAL REQUIREMENTS BY AUTHORITIES



BAFA-Informationen

© 28. April 2022

Fragen und Antworten zum
Lieferkettengesetz

**FRAGEN
ANTWORTEN &**



Lieferkettensorgfalts-
pflichtengesetz (LkSG)

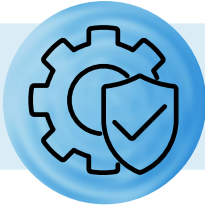
Fragenkatalog zur Berichterstattung
gemäß § 10 Abs. 2 LkSG

ETHICS ACADEMY - ESG-RELATED DUE DILIGENCE OBLIGATIONS

**Risiken
ermitteln,
gewichten
und
priorisieren**

Handreichung zur Umsetzung
einer Risikoanalyse nach den
Vorgaben des Lieferkettensorg-
faltspflichtengesetzes

GUIDELINES FROM INDUSTRY ASSOCIATIONS (1/2)



Chemical and automotive industry

Der Chemie³-Branchenstandard für nachhaltige Wertschöpfung

Modul I Grundsaterklärung & Governance	Modul II Risikoidentifikation & -priorisierung	Modul III Präventions- & Abhilfemaßnahmen	Modul IV Berichterstattung zu Sorgfaltsprozessen	Modul V Beschwerde- verfahren
Liegt vor	In Arbeit	Folgt	Folgt	Folgt

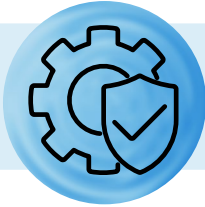
Bundesministerium für Arbeit und Soziales
 BRANCHENDIALOG Automobilindustrie
 Wirtschaft & Menschenrechte

Die Achtung der Menschenrechte entlang der globalen Liefer- und Wertschöpfungsketten der deutschen Automobilindustrie

Handlungsanleitungen zur Integration von Anforderungen an Sorgfaltspflichten in betriebliche Managementprozesse

Einleitungsband

GUIDELINES FROM INDUSTRY ASSOCIATIONS (2/2)



Healthcare industry



BVMed-Handreichung zum LkSG
Modul I – Textbausteine zur Umsetzung des
Lieferkettensorgfaltspflichtengesetzes (1/5)



BVMed-Handreichung zum LkSG
Modul II – Erarbeitung von Vorschlägen für die Ausgestaltung der
Corporate Governance und des Beschwerdemechanismus (2/5)





C L I F F O R D
C H A N C E

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2024

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

WWW.CLIFFORDCHANCE.COM