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# Mitigating the corporate and financial risks of unsustainability through sustainability due diligence

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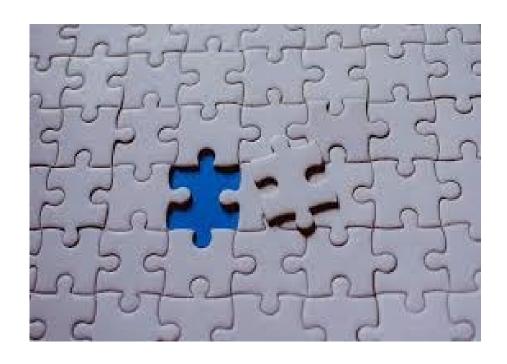


# From CSR to corporate sustainability?

- 2011: Paradigm shift in CSR definition
- 2014: Directive on 'Non-Financial' Reporting (NFRD)
- 2017: Shareholder Rights Directive II
- 2018- Renewed Sustainable Finance Strategy, including:
  - 2019: Disclosure Regulation
  - 2020: Taxonomy Regulation
- 2021: Revision of the NFRD
  - Two reports published 8 March (roadmap for EU
     Sustainability Reporting Standards & changes to EFRAG)
  - Directive proposal to reform NFRD expected 21 April



# Company law as the missing piece





# From UNGPs to mandatory due diligence as a board duty?

- The UN Guiding Principles for Business and Human Rights (2011)
- Integrated into <u>OECD Guidelines for Multinational Enterprises</u> in 2011; <u>OECD Guidance for Due Diligence</u> (2018)
- Integrated into <u>The ILO Tripartite Declaration of Principles</u> concerning <u>Multinational Enterprises and Social Policy</u> in 2017
- Various Member States' initiatives, including German proposal
- EU <u>Action Plan on sustainable finance</u>, Action 10 (2018)
- EU Commission <u>Sustainable Corporate Governance</u> (2020), directive proposal expected spring 2021
- <u>Draft European Parliament proposal 11 February 2021</u> and <u>to</u>
   <u>be voted on 10 March 2021</u>



#### Mitigating risks of unsustainability

- For legislation to be effective, this requires:
  - Duty for the company and for the board
    - The 'director duties' discussion
  - Specification of all sustainability aspects
    - Environmental, social & governance with solid foundation
  - Scope:
    - All undertakings; no threshold but SME scalability
    - Including the whole global value chain
  - Verification, auditing & enforcement
    - From 'SDG washing' to reliable & relevant information
    - Public enforcement, national and European
    - Private enforcement, procedural and substantive rules
- Legal certainty and level playing field



### **Topics for discussion**

 Sustainability due diligence with best practice examples from business

 How can we secure a level playing field and legal certainty for all involved?



### **Further reading**

- L. Smith et al., <u>Study on due diligence requirements through the supply chain</u> (2020)
- L. Smith & C. Bright, <u>The concept of a 'safe harbor' and mandatory</u> <u>human rights due diligence</u> (2020)
- J. Mähönen, <u>Comprehensive Approach to Relevant and Reliable</u> <u>Reporting in Europe: A Dream Impossible?</u> <u>Sustainability</u> 2020, 12(13), 5277
- B. Sjåfjell, T. Häyhä, and S. Cornell, <u>A Research-Based Approach to the UN Sustainable Development Goals. A Prerequisite to Sustainable Business</u> (28 Jan. 2020). University of Oslo Faculty of Law Research Paper No. 2020-02
- B. Sjåfjell and J. Mähönen, <u>Mandatory Sustainability Due Diligence is</u> <u>Key to a Sustainable Future</u>, *Blogging for Sustainability*, 19 Feb. 2021



# Sustainability is possible with legislative reform supporting the transition

Research Group Companies, Markets & Sustainability(the Company Law Group): jus.uio.no/companies

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