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

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

# Sustainability is possible with legislative reform supporting the transition

Research Group **Companies, Markets & Sustainability**(the Company Law Group):

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