

Unpacking Germany's New Supply Chain Due Diligence Act

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Study of Corporate Social Responsibility
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TEAM LÖNING

Human rights due diligence calls for human rights expertise.

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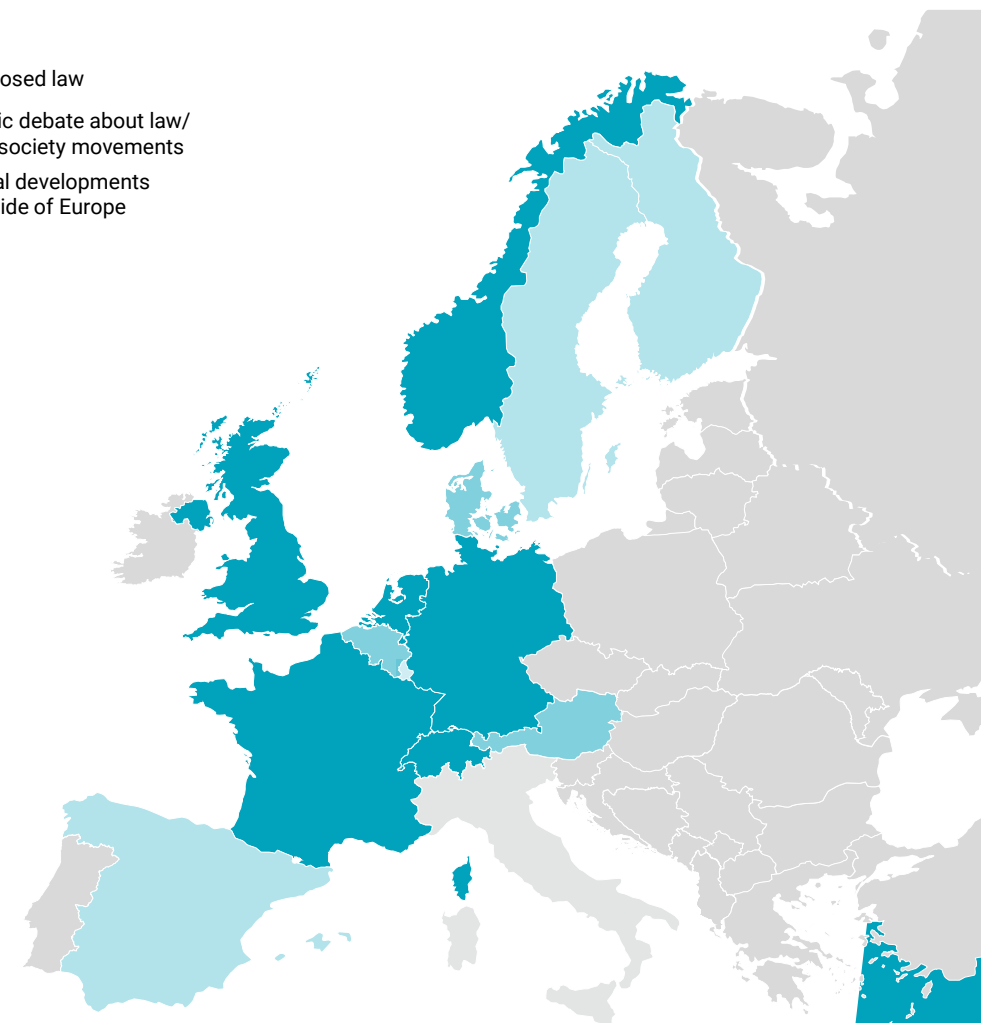
*We are an
international team of
human rights experts,
with multidisciplinary
backgrounds and skill
sets.*

*We create project
teams according to
the client's needs
and select team
members with the
most relevant
experiences.*

A confusing variety of regulations

France The French <i>Loi de Vigilance</i> (2017)	Austria <ul style="list-style-type: none"> • Bills for Social (2020) Responsibility Act • Supply Chain Law (2021) (proposed laws) 	Denmark Parliamentary motion requesting to develop a legislative proposal on mandatory HRDD and corporate liability (2019)	Australia Modern Slavery Act 2018
Germany The Act on Corporate Due Diligence Obligations in Supply Chain (LkSG) (2021)	Belgium <ul style="list-style-type: none"> • Duty of vigilance and remediation in supply chains proposal (2022) (proposed law) 	Finland <ul style="list-style-type: none"> • Government committed to mHDD (2019) • Working group to support the drafting began work (2022) 	Canada Senate forced labour bill (Bill 211: An Act to enact the Fighting against Forced Labour and Child Labour in Supply Chains Act and to amend to Customs Tariff) (2022)
Netherlands <ul style="list-style-type: none"> • Child Labour Due Diligence Law (2019) • Responsible and Sustainable International Business Conduct Act (2022) (proposed law) 	United Kingdom <ul style="list-style-type: none"> • UK MSA (2015) • In 2020, an MP put forward an amendment to the Environment Bill which would have required the Gov to publish a draft bill on mHREDD • In October 2021, civil society groups released principal elements to be considered for a new mHREDD national law • In Nov. 2021, the Environment Bill <u>passed into law</u> (sector specific) 	Luxembourg <ul style="list-style-type: none"> • CSO initiative calling for mHRDD • The 2018 coalition agreement committing the government to supporting initiatives that strengthen the human rights responsibilities of companies • Ministry of Foreign Affairs commissions study to examine possibilities of due diligence legislation (2021) 	Mexico The General Law of Corporate Responsibility and Corporate DD (proposed law) 2020
Norway Transparency Act (2021)			US <ul style="list-style-type: none"> • US Section 307 of the Tariff Act of 1930 (as amended by the Trade Facilitation and Trade Enforcement Act of 2015) • Uyghur Forced Labor Prevention Act (2021) • US Dodd-Frank Act Section 1502 • US California Transparency in Supply Chains Act (2010) • Slave-Free Business Certification Act (2022) (proposed law)
Switzerland Indirect counter-proposal to the Responsible Business Initiative (RBI) (2022)	Spain The Preliminary Draft Law for the Protection of Human Rights, Sustainability and Due Diligence in Transnational Business Activities (2022)	Japan Draft Guidelines on the Respect for Human Rights in Responsible Supply Chains (2022)	
Sweden <ul style="list-style-type: none"> • State agency recommending mandatory human rights due diligence law (2018) • CSO campaign calling for mHRDD (2020) 			

- Law
- Proposed law
- Public debate about law/civil society movements
- Legal developments outside of Europe



Sources: [the European Coalition for Corporate Justice \(ECCJ\) 2022](#); [The Business & Human Rights Resource Centre \(2022\)](#)

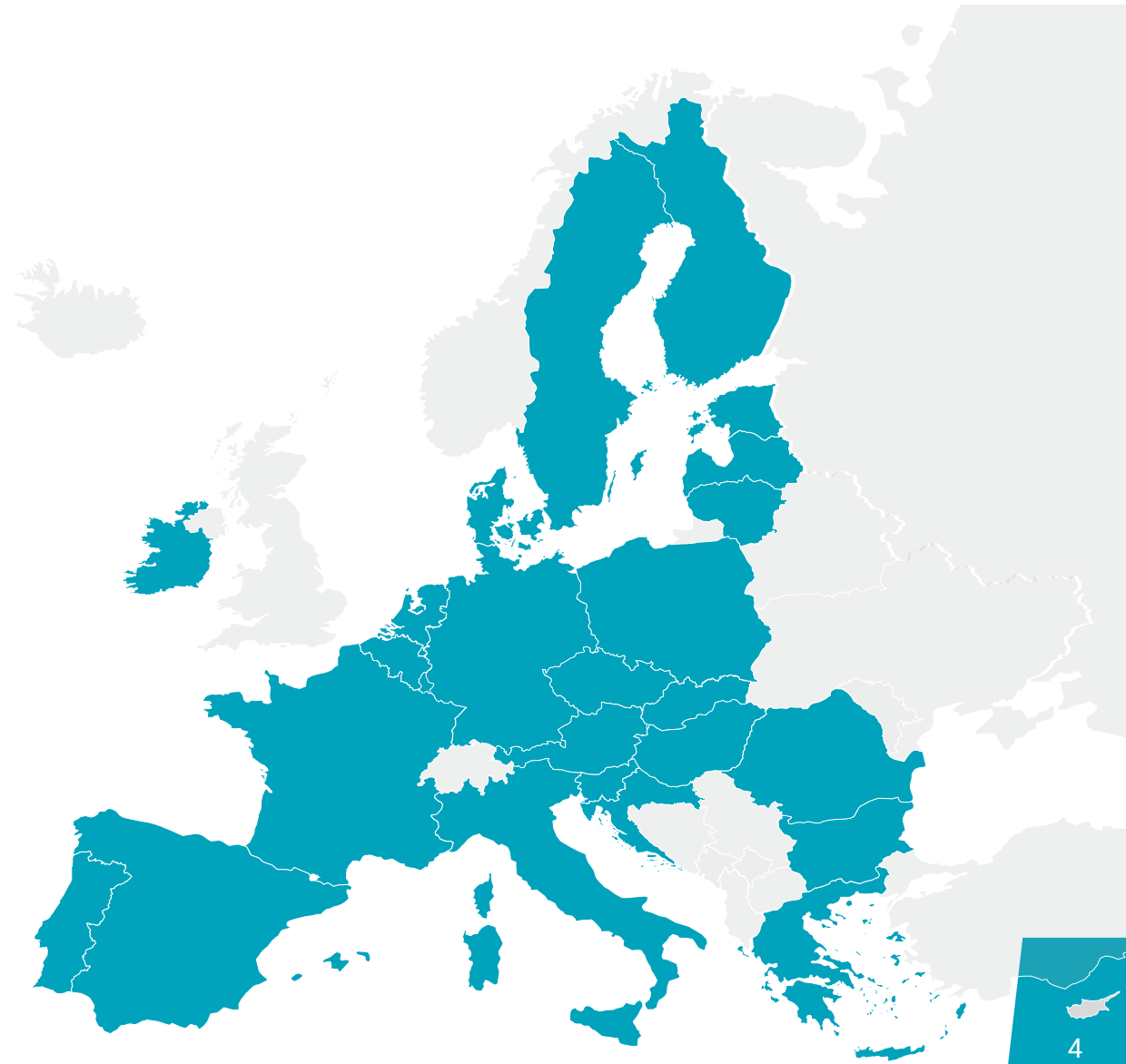
A comprehensive but complex set of regulations

EXISTING:

- EU Regulation on Conflict Minerals
- EU Sustainable Finance Disclosure Regulation (Financial Market Participants)
- EU Taxonomy Regulation
- EU Non-Financial Reporting Directive (NFRD)

FORTHCOMING:

- **Corporate Sustainability Reporting Directive** (adopted)
- **Corporate Sustainability Due Diligence Directive** (draft proposal published in Feb 2022)
- **EU Regulation to ban products made with forced labour on the EU Market** (draft proposal)



The German Supply Chain Due Diligence Act – processes required



Establishing **responsibilities**

2023: companies > 3000 MA
2024: companies > 1000 MA

Formulating a **Policy Statement**

Human rights and environmental risks

Conducting regular **risk analyses**

Own operations, direct & indirect suppliers

Implementing **preventive measures**

Appropriate & effective

Taking **remedial action**

Prevent, end or minimise

Setting up **grievance mechanism**

Available to all stakeholders

Thorough **documentation**

Keep for 7 years

Annual **report**

Publicly available

The German Supply Chain Due Diligence Act – risks addressed

11 + 1 Human Rights Risks

3 Environmental Risks



Child labour – Minimum age of employment



Worst forms of child labour



Forced labour



All forms of slavery



Occupational health and safety



Freedom of association



Unequal treatment



Adequate living wage



Adverse effects due to environmental changes (soil, water, air, noise)



Land rights - Unlawful eviction and deprivation of natural livelihoods



Security forces



any other protected legal position that goes beyond 1-11



Related-risks on mercury as prohibited in the Minamata Convention.

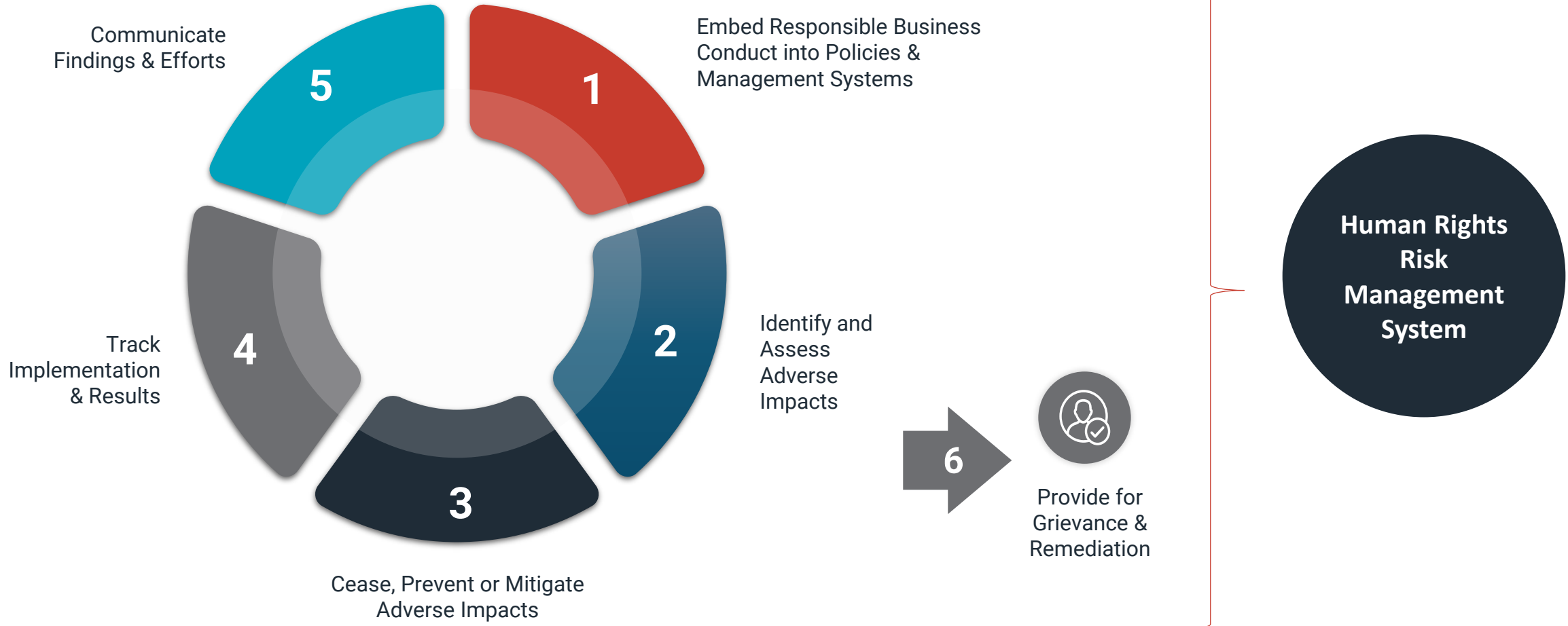


Related-risks on persistent organic pollutants (POPs) as prohibited in the Stockholm Convention.



Import and export of hazardous wastes as prohibited in the Basel Convention.

Human Rights Risk Management System: focus on risks to people not to business



How to start building a Human Rights Risk Management system

1. CREATE A RISK OVERVIEW

What is company's exposure to human rights risks in own operations, upstream and downstream supply chains? **Take a risk-based approach!**

2. ASSESS MANAGEMENT CAPACITY

How effective is the company at identifying and managing human rights risks?

3. ESTABLISHING THE MANAGEMENT SYSTEM

Close gaps or build from scratch

1. Creating a Risk Overview – Questions to answer

From “High-Level” to “Deep Dive”



1. Illustration: risk overview & prioritization

1 – What business areas are there in our company?

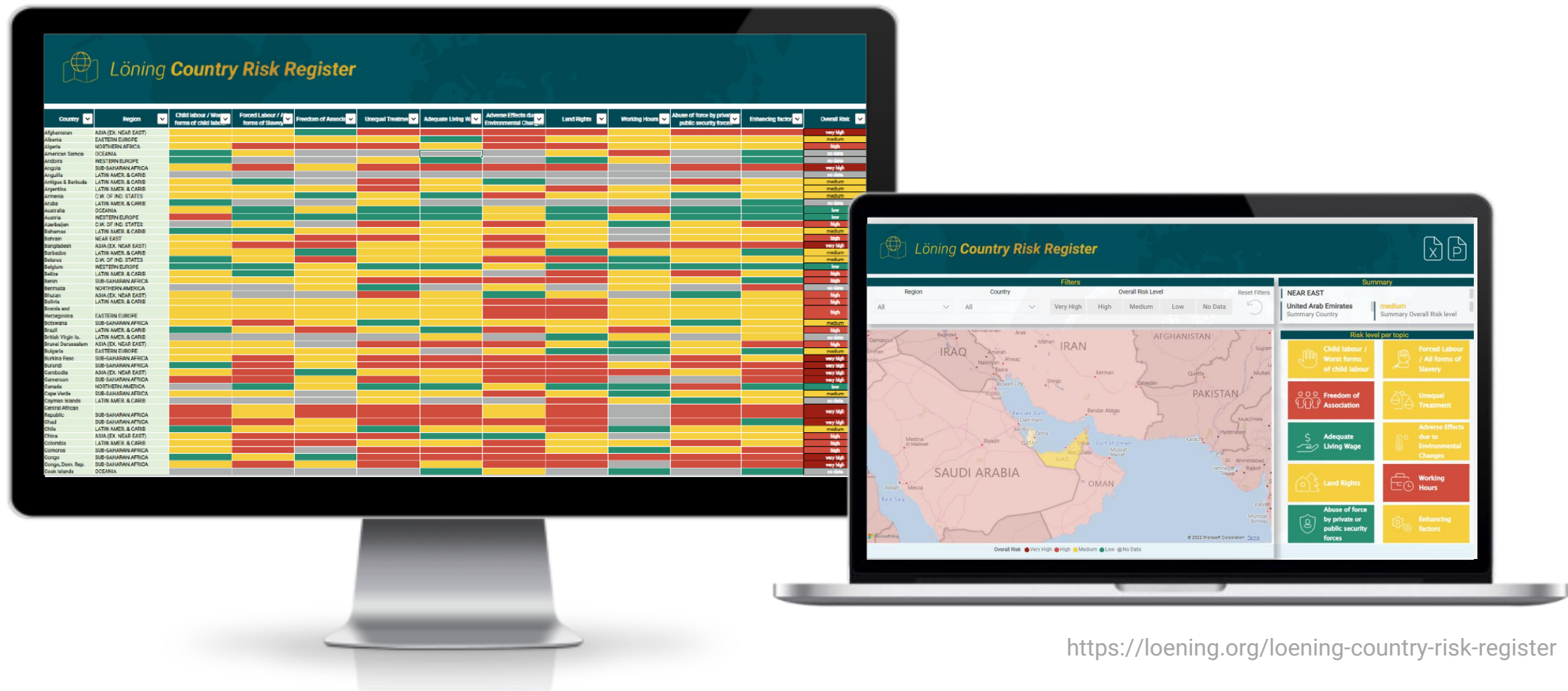
2- Who are the rights-holders?

3- Identification of risk areas

4- Risk assessment and guidance for measures

1		2		3		4									
	Rightsholders	Risk topics	Description of the risk	Scale and Irremediability	Scope	(1) Severity -automatic-	(2.a) Likelihood connected to the nature and extent of the business activities	INHERENT RISK -automatic-	(2.b) Management capacity (reduces likelihood)	NET RISK -automatic-	(3) Nature of the causal contribution	(4) Leverage	GUIDANCE FOR APPROPRIATE ACTION -automatic-		Immediate action recommended
Human Rights - Own operations	Workers in own operations (own employees and workers of third-parties)	Child labour/Worst forms of child labour		medium	very high	high	low	medium	medium capacity	medium	Caused	low or medium leverage	Remedy actual impact. Cease or prevent potential impact.	Increase leverage.	
		Force labour and all forms of slavery		high	very high	very high	medium	very high	medium capacity	high	Caused	high leverage	Remedy actual impact. Cease or prevent potential impact.	Use leverage.	Immediate Action
		Unequal treatment		low	medium	low	low	low	medium capacity	low	Directly linked	low or medium leverage	Use leverage to influence the entity causing the adverse impact.	Increase leverage.	
		Occupational health and safety		high	very high	very high	medium	very high	low capacity	very high	Contributed to	low or medium leverage	Cease or prevent contribution. Use leverage to mitigate any adverse impact.	Increase leverage.	Priority for increasing leverage
		Freedom of association		high	medium	high	medium	high	high capacity	low	Contributed to	low or medium leverage	Cease or prevent contribution. Use leverage to mitigate any adverse impact.	Increase leverage.	
		Living wage /minimum wage													
		Abuse of force by private or public security forces													
	Local communities in the surroundings of own operations	Environmental impacts (soil change, water pollution, air pollution, harmful noise emission or excessive water consumption)													
		Land rights (incl. unlawful eviction and the unlawful taking of land, forests and waters)													
		Abuse of force by private or public security forces													

1. Löning Country Risk Register as an example of data tools



2. Assess Management Capacity

The framework

Regulatory requirements need to be translated into **hands-on business solutions**.

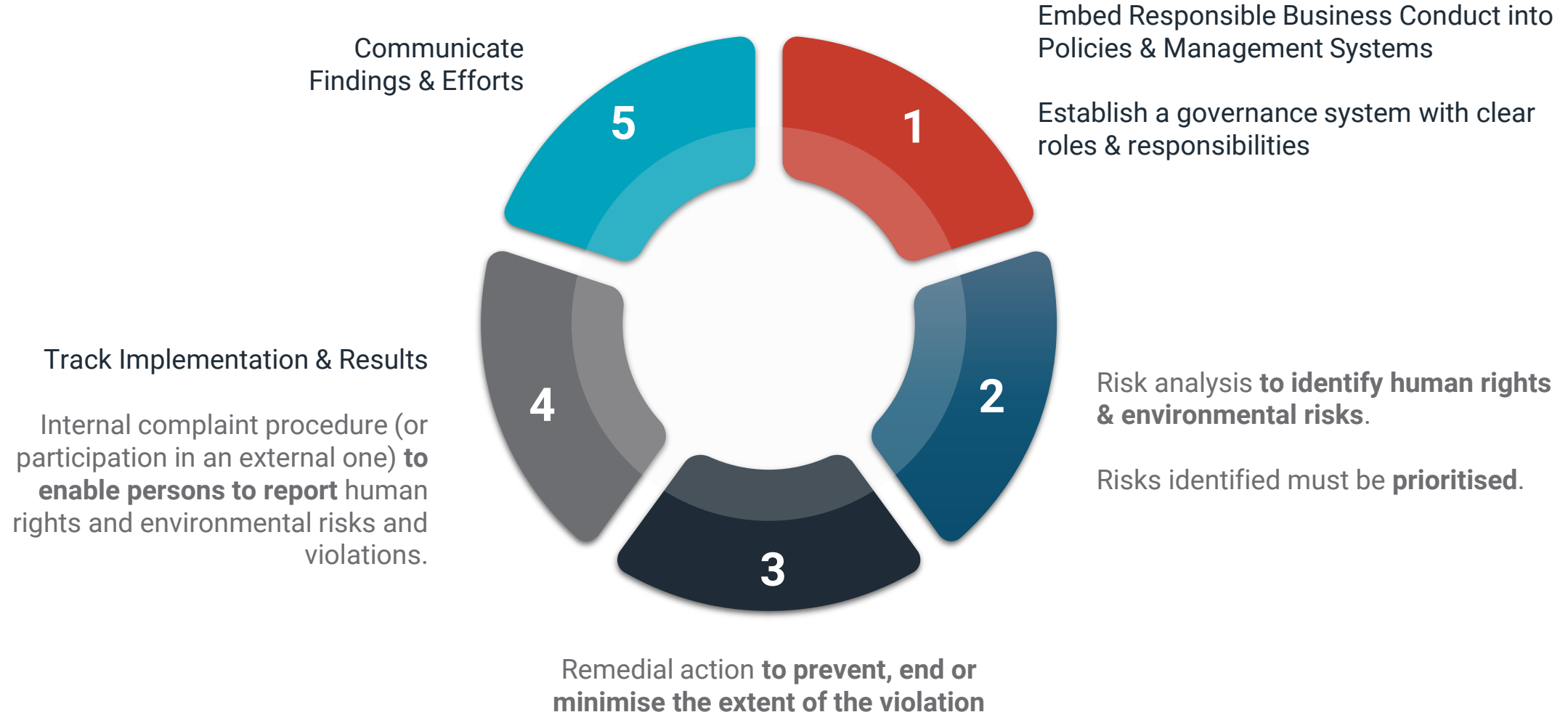
- The LkSG elements are translated into business practice requirements, composing the **Assessment Framework**.
- **Go beyond** by incorporation best practices and expected developments (e.g., EU Directive)
- Make sure to take the **salient topics** into account

The assessment

Companies should assess **existing practices** against the Framework, to identify their **maturity level** and provide **practical recommendations** to close gaps.

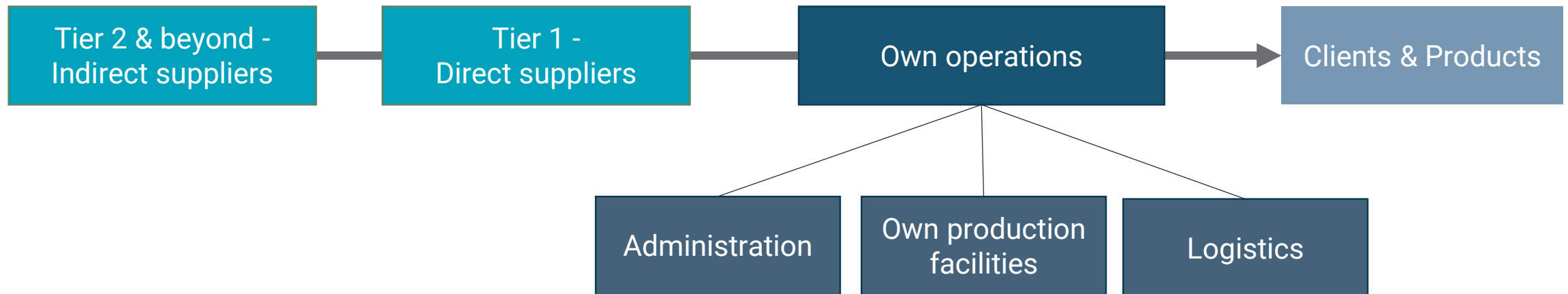
LkSG Gap Assessment Framework			
#	Topic	Requirement	
1	Risk Management System	Has the company established a risk management system of human rights and environmental aspects? <i>Note: According to the LkSG, a risk management system includes: (a) designating a responsible person or persons within the enterprise, (b) performing regular risk analyses, (c) issuing a policy statement, (d) laying</i>	ital aspects? nsible person or statement, (d) laying
2	Risk Management System	Does the company consider the interests of its employees, employees within its supply chains and those who may otherwise be directly affected when establishing and implement the risk management system?	y chains and those who ent system?
3	Risk Management System	Is the risk management system enshrined in all relevant business processes?	
4	Risk Management System	Has the company determined who within the enterprise is responsible for monitoring the risk management system?	he risk management
5	Risk Management System	Does the senior management seek information on a regular basis, at least once a year, about the work of the responsible person or persons?	bout the work of the
6	Risk Analysis	Has the company conducted risk analysis on human rights and environmental aspects?	
7	Risk Analysis	Does the risk analysis cover own business area?	
8	Risk Analysis	Does the risk analysis covers direct suppliers? <i>Note: In cases where an enterprise has structured a direct supplier relationship in an improper manner or has engaged in a transaction in order to circumvent the due diligence obligations with regard to the direct supplier, an indirect supplier is deemed to be a direct supplier.</i>	roper manner or has d to the direct supplier,
9	Risk Analysis / Indirect suppliers	Does the risk analysis cover indirect suppliers of whom there is actual indications that suggest that a violation at indirect suppliers may be possible (substantiated knowledge)?	uggest that a violation at
10	Risk Analysis	Does the risk analysis cover all relevant human rights risks established in LkSG Section 2 (2)?	(2)?
11	Risk Analysis	1. Child labour – Minimum age of employment - see the text of the law >>	

3. Establish a Human Rights Risks Management System

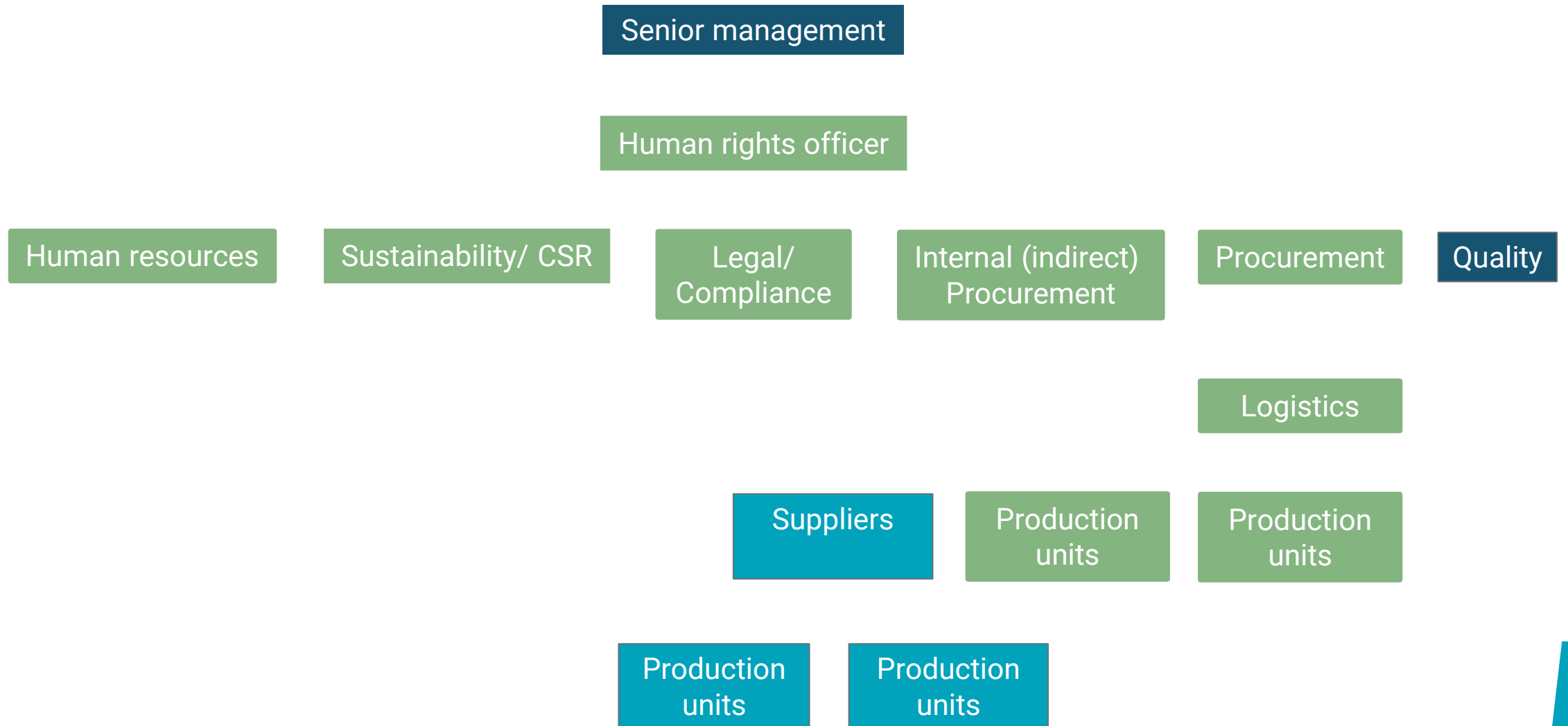


3. Illustration: Scope of GER & EU Regulations

- It refers to **all products and services of an enterprise**. It includes **all steps in Germany and abroad that are necessary to produce the products and provide the services**, starting from the extraction of the raw materials to the delivery to the end customer and includes
 1. the actions of an enterprise in **its own business area**,
 2. the actions of **direct suppliers** and
 3. the actions of **indirect suppliers**.
- EU regulation adds downstream responsibility

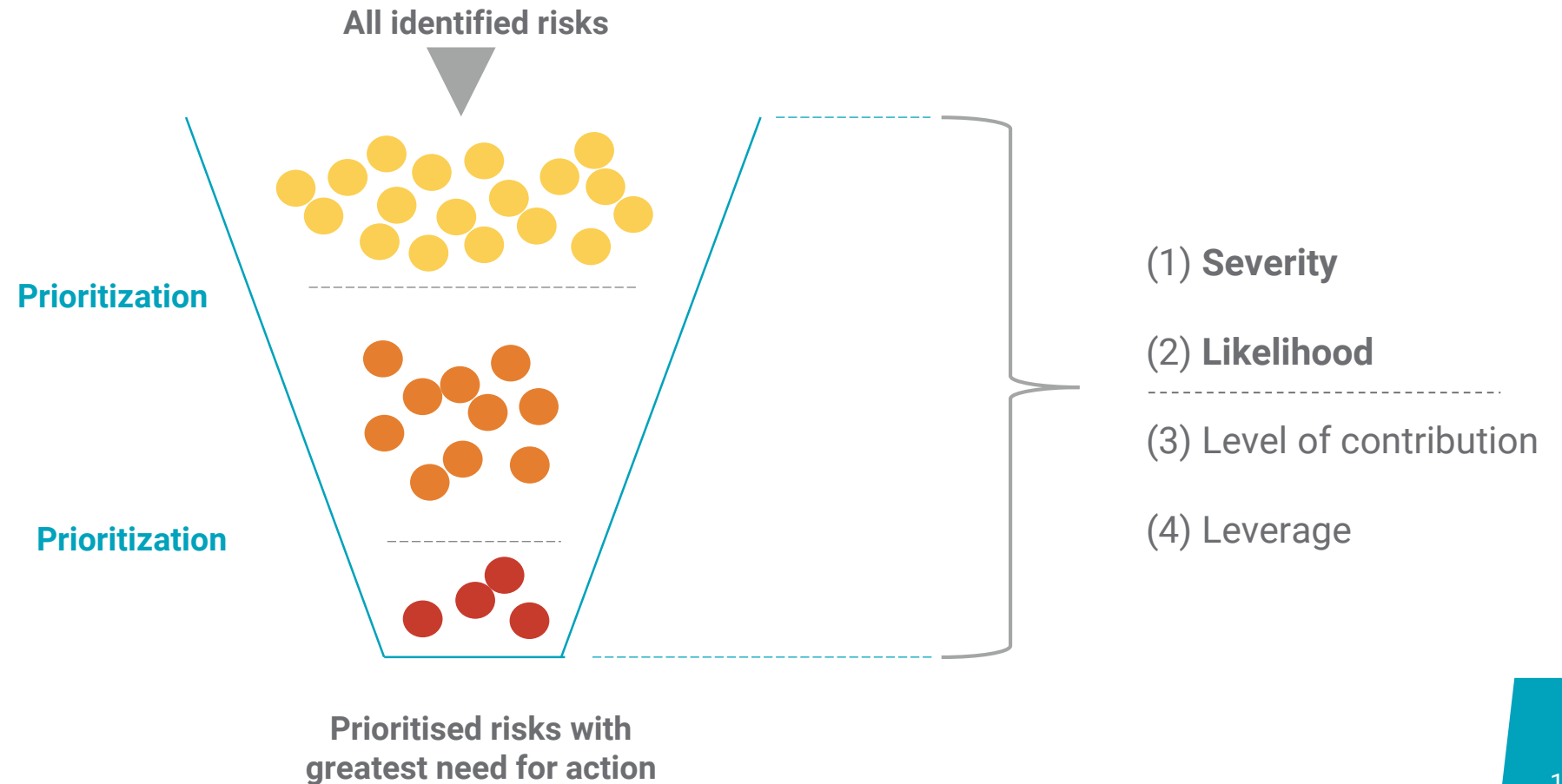


3. Illustration: Governance



3. Illustration: Risk Prioritization

A risk-based approach means prioritising risks with the **greatest need for action**, based on the following criteria:



3. Illustration: Risk Prioritization



High / medium / low,
depending on:

- Severity of potential risk (scale & irreversibility, scope)
- Likelihood: Probability of occurrence depending on sector / industry

High / medium / low,
depending on whether the company has implemented effective prevention measures (probability of occurrence depends on management capacity)

A high net risks describes a severe risk with a high probability of occurrence (depending on sector / industry and management capacity)

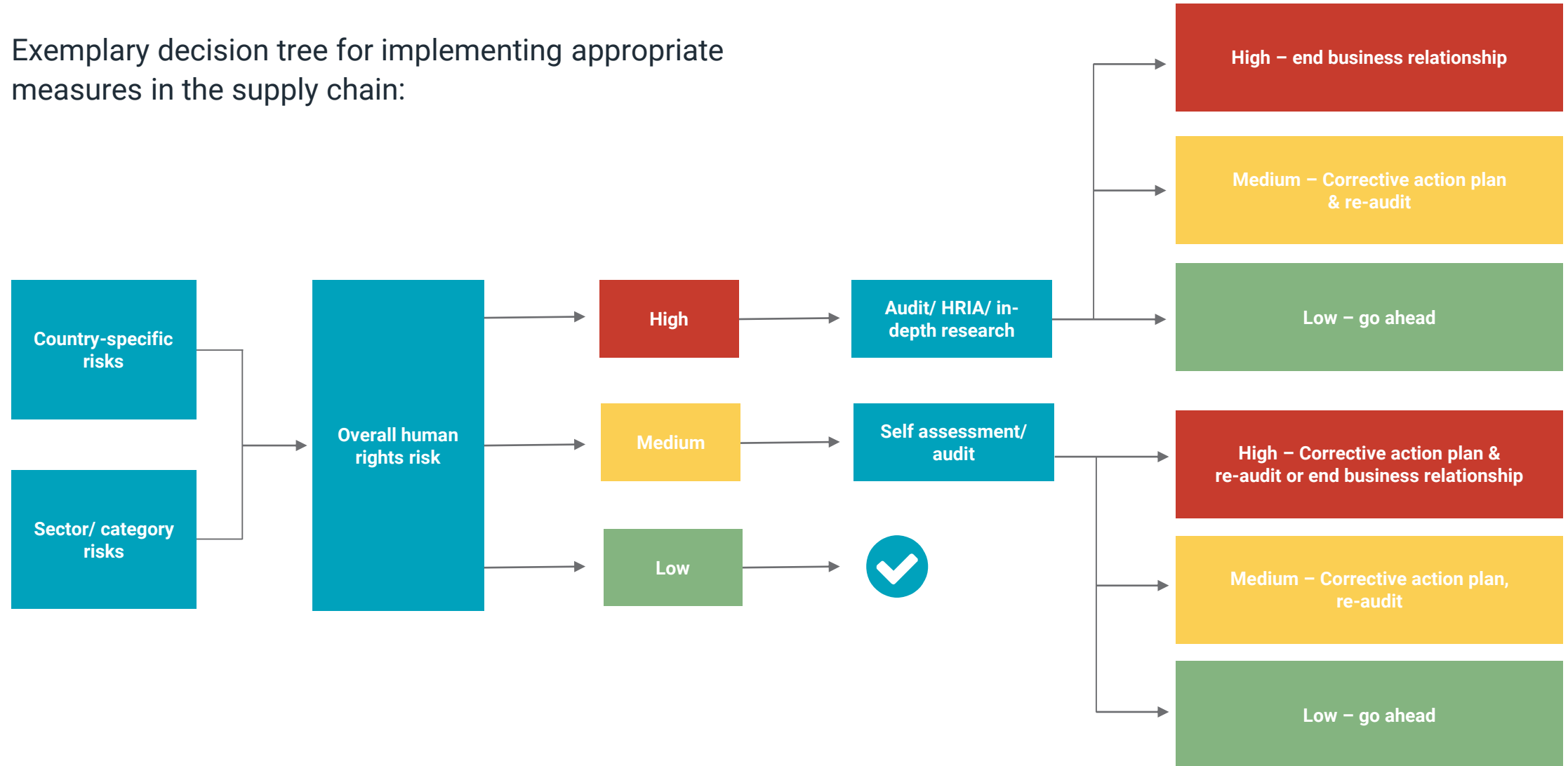
High / medium / low,
depending on:

- ... Whether the company causes, contributes to, or is associated with the impact
- ... how high the leverage of the company is to minimize the risk / to end or recover from impacts

Indicates which risks should be addressed as a priority / where there is a need for more detailed risk analysis

3. Illustration: decision tree risk management

Exemplary decision tree for implementing appropriate measures in the supply chain:



3. Illustration: (Preventive) Measures

Formulation of expectations & requirements

- Company Code of Conduct, Human Rights Policy Statement, Responsible Sourcing Policy, Modern Slavery Statement
- Adding sustainability goals to purchasing roles next to price and quality
- Supplier Code of Conduct, Standards for Production

Training and capacity building for respective positions

- Human Resources, Purchasing roles, Health & Safety responsible
- Supplier training on requirements

Monitoring of implementation status

- Supplier questionnaires to verify adherence to requirements
- Audits, Human Rights Impact Assessments

Reviewing procurement practices

- Reliable and long term orders
- Restructuring on supply chains
- Supply chain financing based on ESG standards

The future of business is responsible.



- ✓ Thinking ahead and starting to work on a human rights strategy after the first year
- ✓ Taking a structured and systematic approach
- ✓ Technology cannot replace responsibility and a structured approach
- ✓ Business & human rights knowledge is still under development.
- ✓ Involving and convincing internal stakeholders, including board members
- ✓ Co-operation with civil society and competitors
- ✓ Compliance is not good enough

Löning

*Human Rights &
Responsible Business*



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