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Due diligence frameworks



What is due diligence?

Human rights and environmental due diligence (HREDD) refers to **the actions taken by a company to both identify and act upon actual and potential human rights risks** for workers in its operations, supply chains and the services it uses

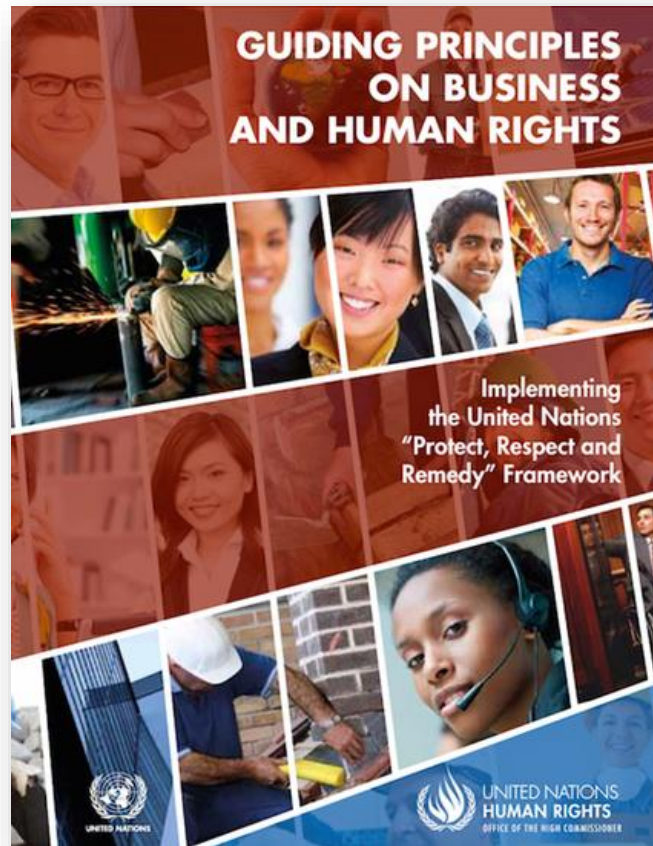


International Legal Framework

UN Guiding Principles (UNGPs)

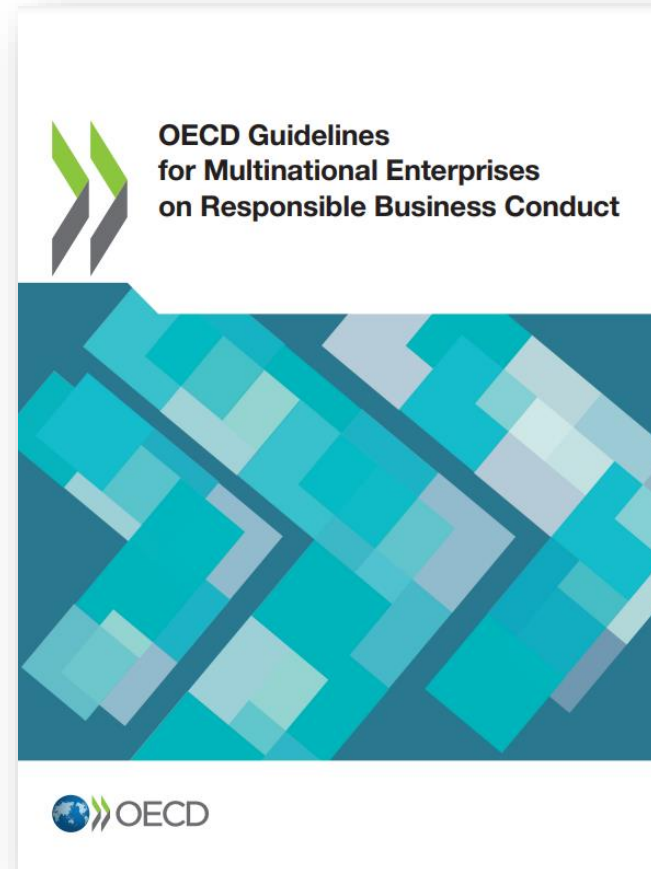
“Know and show”

Combined, these two documents provide the **guidance** for businesses, setting out how to implement management systems for social compliance, or “human rights due diligence”



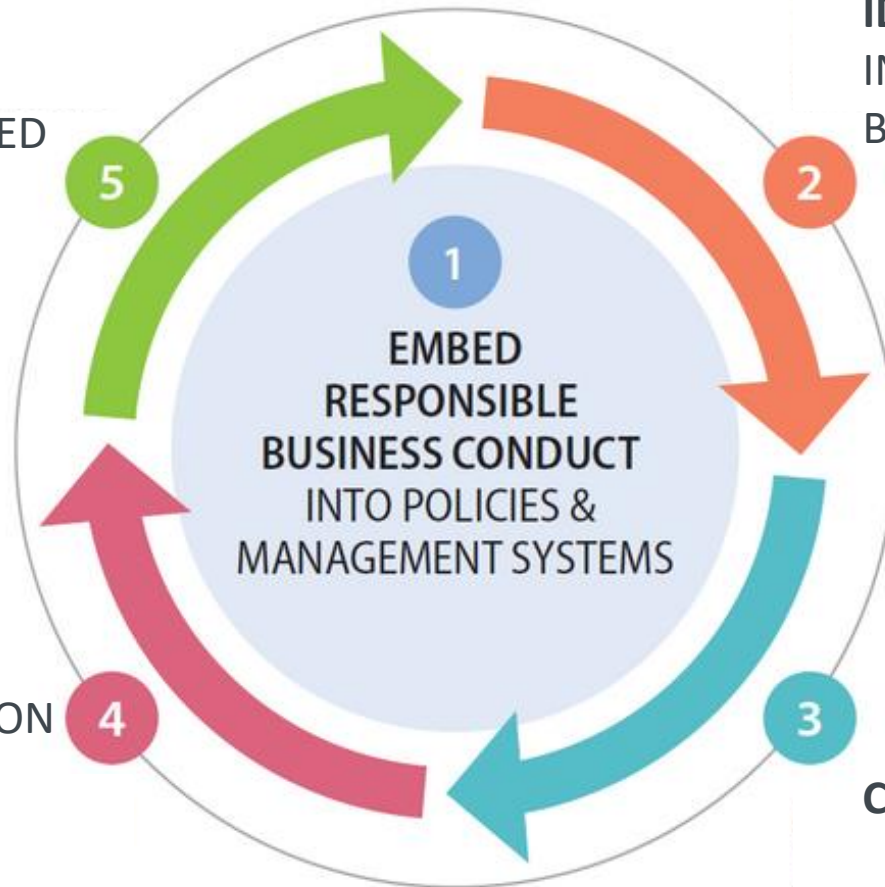
OECD Guidelines (OECD Cycle)

“In good faith”



Human rights and environmental due diligence

**COMMUNICATE HOW
IMPACTS ARE ADDRESSED**



**IDENTIFY & ASSESS ADVERSE IMPACTS
IN OPERATIONS, SUPPLY CHAINS &
BUSINESS RELATIONSHIPS**



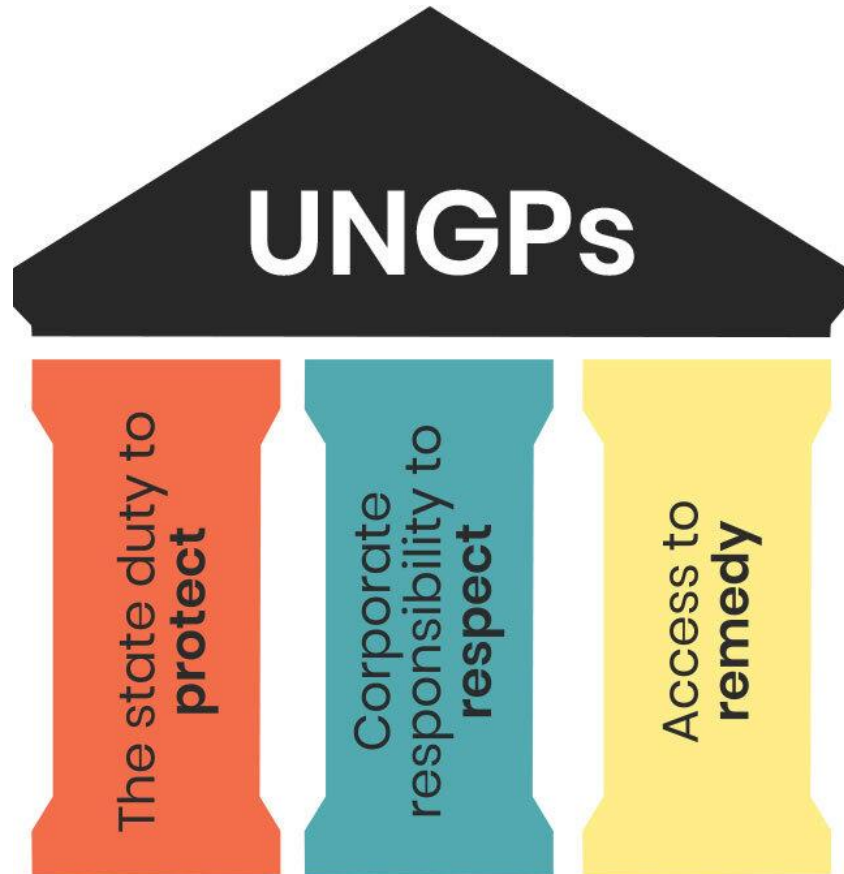
**6
PROVIDE FOR OR COOPERATE IN
REMEDIATION WHEN APPROPRIATE**

**TRACK IMPLEMENTATION
AND RESULTS**

CEASE, PREVENT OR MITIGATE ADVERSE IMPACTS

THREE PILLARS of the UN GUIDING PRINCIPLES





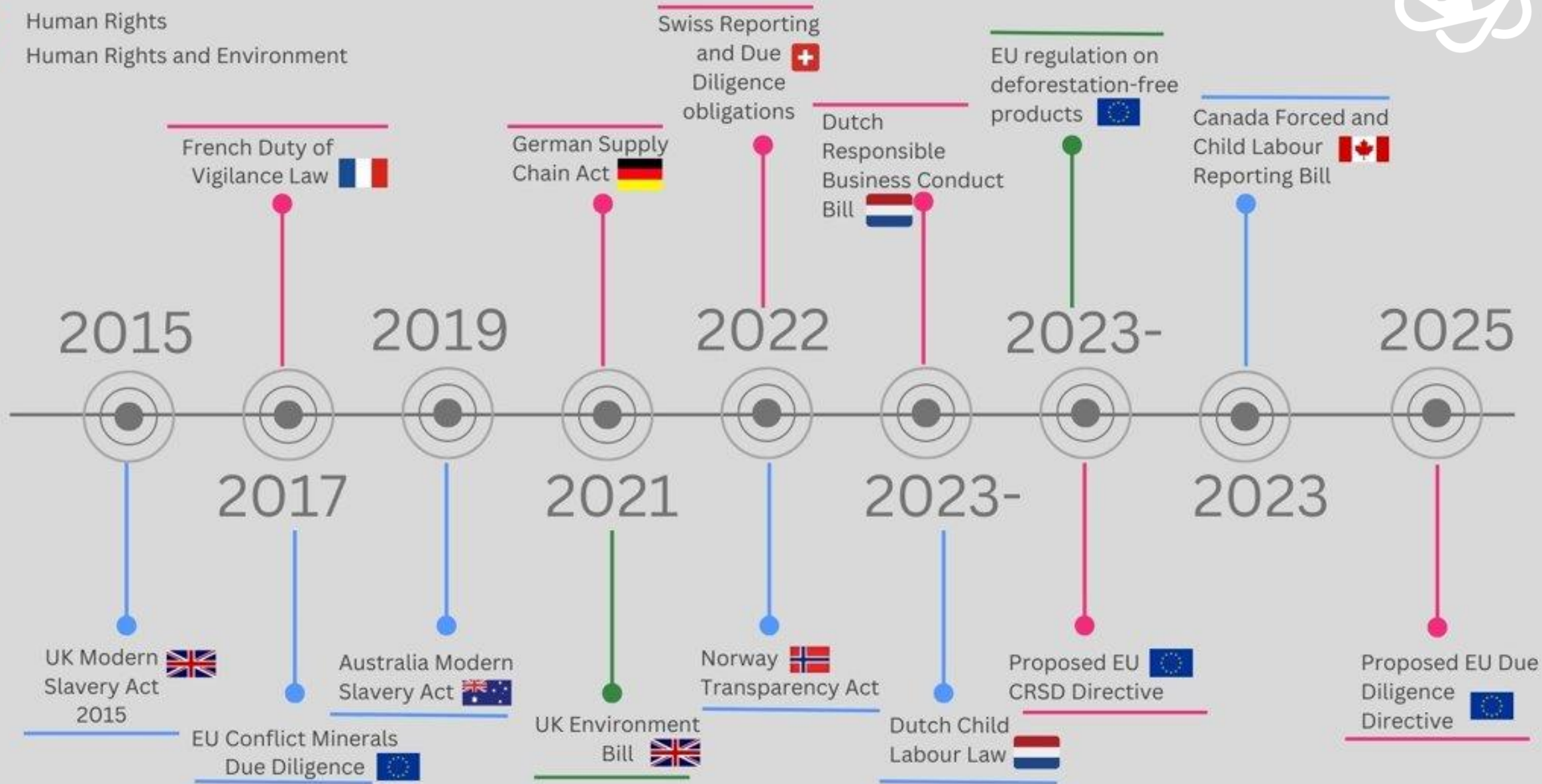
National and International Laws



Human Rights and Environmental Legislative Landscape



- Environment
- Human Rights
- Human Rights and Environment



EU Corporate Sustainability Due Diligence Directive (CS3D)

After weeks of uncertainty, on Friday 15 March, EU member states voted in favour of the CS3D.

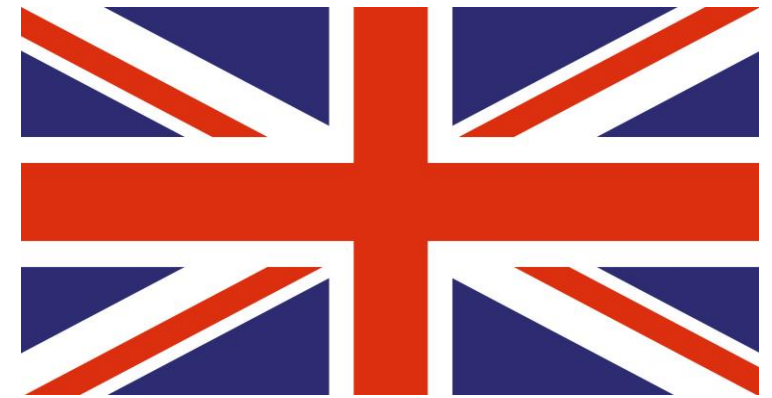
The latest draft:

- Applies to companies with over 1000 employees
- Applies to companies with a turnover threshold of over €450 million
- Removes civil liability provisions that would allow trade unions to sue noncompliant firms



UK Commercial Organisations and Public Authorities Duty (Human Rights and Environmental Bill)

- Introduced in November 2023, this Bill, if passed, would introduce mandatory human rights and environmental due diligence into UK law.
- Applies to any business doing business in UK
- It would require businesses to conduct and publish human rights and environmental due diligence assessments on their own operations, subsidiaries, and value chains
- Duty of care for Directors



Common trends in the legislation

Require annual reporting

Based on OECD framework
and guidelines

Require impact assessments
of violations of human
rights risks / issues

Companies must make an
effort to assess actual and
potential impact

Must have evidence of the
measures taken to prevent
and mitigate negative
impacts

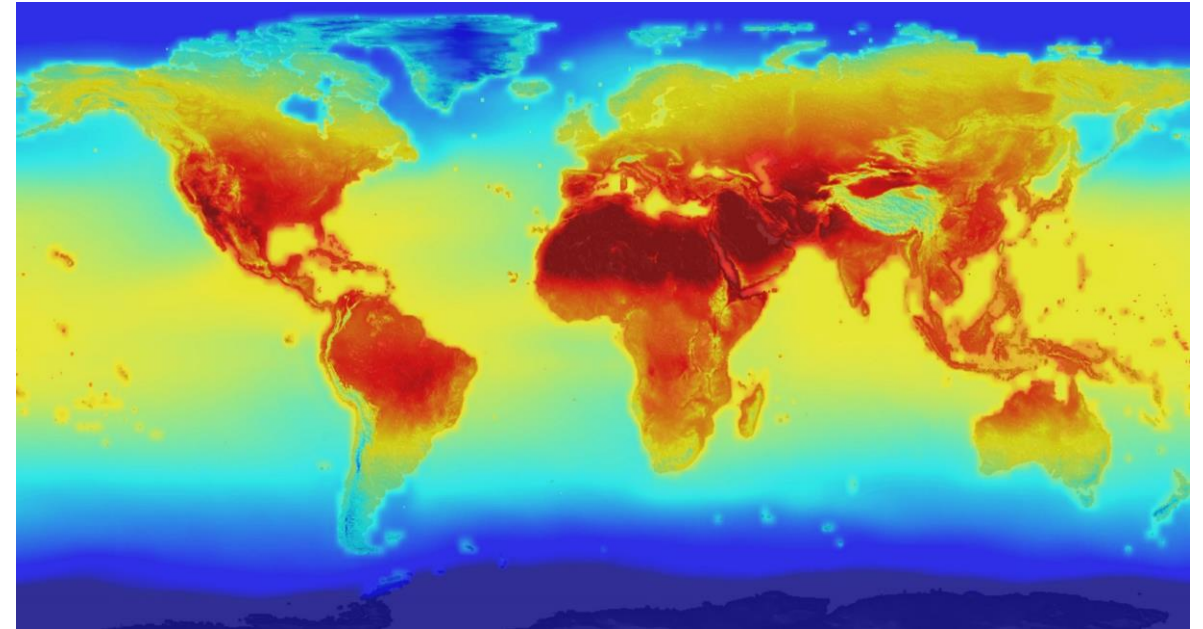
02

Greenwashing and sustainability claims



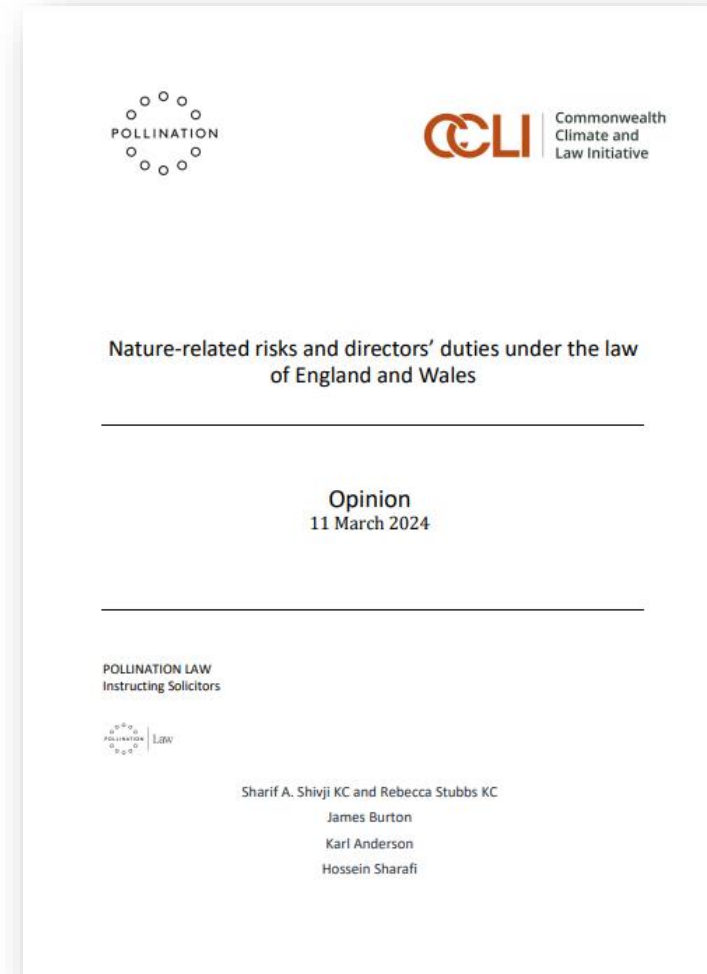
What is greenwashing?

- Greenwashing is the process of conveying a false impression or misleading information about how a company's products are environmentally sound.
- Greenwashing involves making an unsubstantiated claim to deceive consumers into believing that a company's products are environmentally friendly or have a greater positive environmental impact than they actually do.



Director's duties

- A landmark English law legal opinion found that nature-related risks are relevant to directors' duties under sections 172 and 174 of the Companies Act 2006.
- A director who 'greenwashes' the company is likely to expose the company to:
 - (i) financial risks,
 - (ii) the risk of shareholder and investor claims (including for deceit) and
 - (iii) reputational risk.



Green claims standards

BRIEFING

EU Legislation in Progress



European Parliament

'Green claims' directive

Protecting consumers from greenwashing

OVERVIEW

In the absence of specific rules on claims regarding the 'green' nature of products, how can consumers be sure that such claims are reliable, comparable and verifiable throughout the EU?

On 22 March 2023, the European Commission put forward a proposal for a directive on green claims. The proposed directive would require companies to substantiate the voluntary green claims they make in business-to-consumer commercial practices, by complying with a number of requirements regarding their assessment (e.g. taking a life-cycle perspective).

The proposal is now in the hands of the co-legislators. In Parliament, the file was allocated jointly to the Committees on Internal Market and Consumer Protection (IMCO) and on Environment, Public Health and Food Safety (ENVI). Parliament is expected to vote on the report adopted jointly by ENVI and IMCO during its 2024 March plenary session.

Proposal for a directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (green claims directive)		
Committees responsible: (Joint committee)	Committee on Internal Market and Consumer Protection (IMCO) and Committee on the Environment, Public Health and Food Safety (ENVI)	COM(2023) 166 22.3.2023 2023/0085(COD)
Co-rapporteurs:	Andrus Ansip (Renew, Estonia) Cyrus Engerer (S&D, Malta) Arba Kokalari (EPP, Sweden)	Ordinary legislative procedure (COD)
Shadow rapporteurs:	Pemille Weiss (EPP, Denmark) Laura Ballarín Cereza (S&D, Spain) Emma Wiesner (Renew, Sweden) Malte Giallé (Greens/EFA, Germany) Kim Van Sparrentak (Greens/EFA, Netherlands) Virginie Joron (ID, France) Annalisa Tardino (ID, Italy) Carlo Fidanza (ECR, Italy) Pietro Ficocchi (ECR, Italy) Anne-Sophie Pelletier (The Left, France)	(Parliament and Council on equal footing – formerly 'co-decision')
Next steps expected:	Vote in plenary on joint committee report	

Commission proposal

Parliamentary opinions

EEA and/or ECR opinions

Draft report

Committee vote

Submitted to plenary

Voted in plenary

Trialogue

Second reading


Adoption

GOV.UK

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Competition & Markets Authority

Guidance

Making environmental claims on goods and services

Published 20 September 2021

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Principles

Applying the principles – types of claims and material information

Appendix - Legal framework

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Summary

Consumers are increasingly demanding products and services which minimise harm to, or have a positive effect on, the environment. As a result, there has been a proliferation of products, services and businesses which claim to meet that demand.

Consumer protection law does not prevent businesses from making environmental claims about their products and services, provided they do not mislead consumers. It provides a framework for businesses to make environmental claims that help consumers make informed choices. Consumer protection law therefore gives consumers important protection in relation to environmental claims.

In protecting consumers from misleading environmental claims, consumer protection law also protects businesses from unfair competition. It creates a level playing field for those businesses whose products genuinely represent a better choice for the environment and who can make truthful environmental claims. In addition, there is separate legislation which directly protects businesses from misleading marketing.

The law also therefore has the effect of encouraging businesses to invest in the environmental performance of their products. It enables businesses to communicate these genuine efforts to consumers transparently and to reap the commercial benefits.

The purpose of this guidance is to help businesses understand and comply with their existing obligations under consumer protection law when making environmental claims. We hope it will give confidence to those businesses whose products are genuinely 'green' to provide consumers with the information they need to make informed decisions.

Case study: Sustainability claims

A 2021 claim alleged that ALDI made deceptive sustainability claims in marketing its fresh Atlantic salmon products.

It claimed that Aldi's fresh Atlantic salmon products are not sustainably sourced as advertised.

The lawsuit claimed Aldi intended for consumers to rely on its "sustainable" claim for the Atlantic salmon and has deceived buyers about the nature and sourcing of the products

This was one of two claims brought in 2021 which were eventually dismissed



Case study: Sustainability claims

A class-action fraud lawsuit alleges that the restaurant chain Red Lobster sold Maine lobster and farmed shrimp that is not as sustainable as the company claims.

The plaintiffs took issue with some of Red Lobster's marketing strategies, including its use of statements like "Seafood with Standards" and "Traceable. Sustainable. Responsible."

In January 2024, a federal judge denied Red Lobster's motion to dismiss the claim.



Avoiding greenwashing

Review the quality of
evidence/ data collection

Exercise caution in the use of
sustainability language

Conducting audits/
inspections of supplier sites



Cross-verify all supply chain
information gathered

Consult internal/ external
experts

Be transparent, but be
specific

Three key takeaways

1. Due diligence frameworks are being translated into hard law at EU and national levels
2. Aligning to voluntary HREDD frameworks can significantly reduce legal and reputational risks
3. Greenwashing claims are likely to become more common – so its critical that any claims about products are accurate



Thank you

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