

PELS RIJCKEN

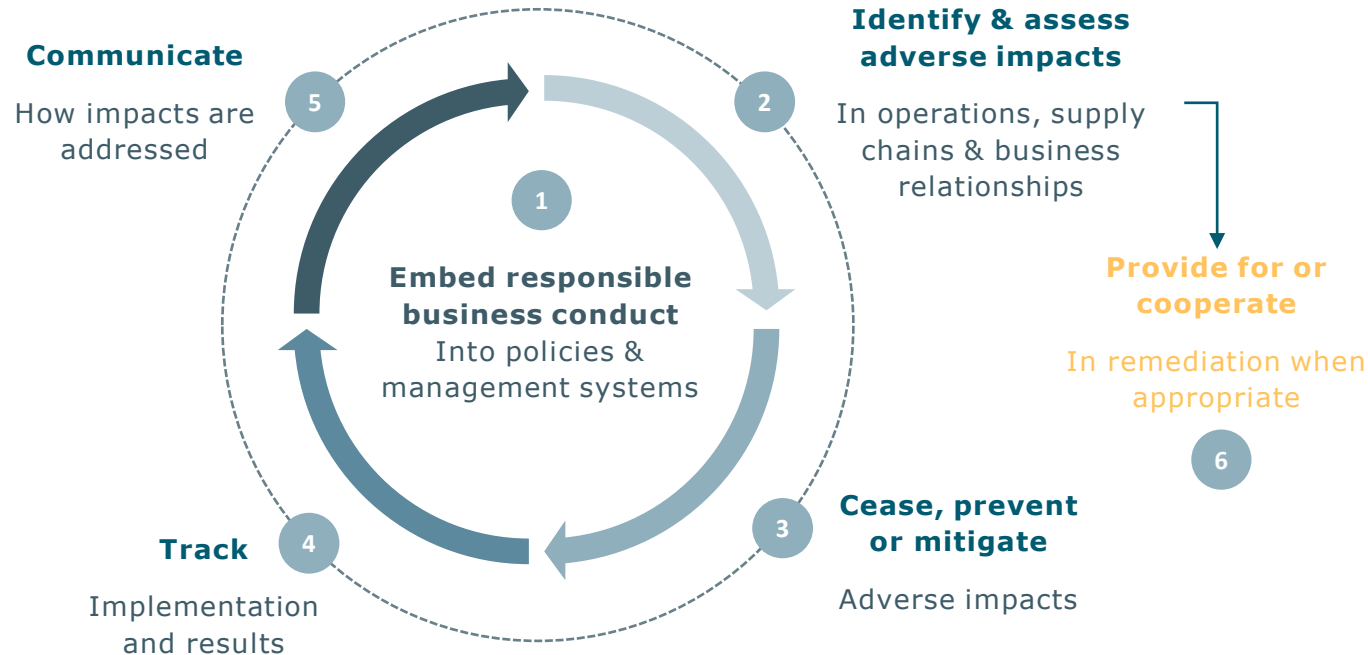


European model clauses

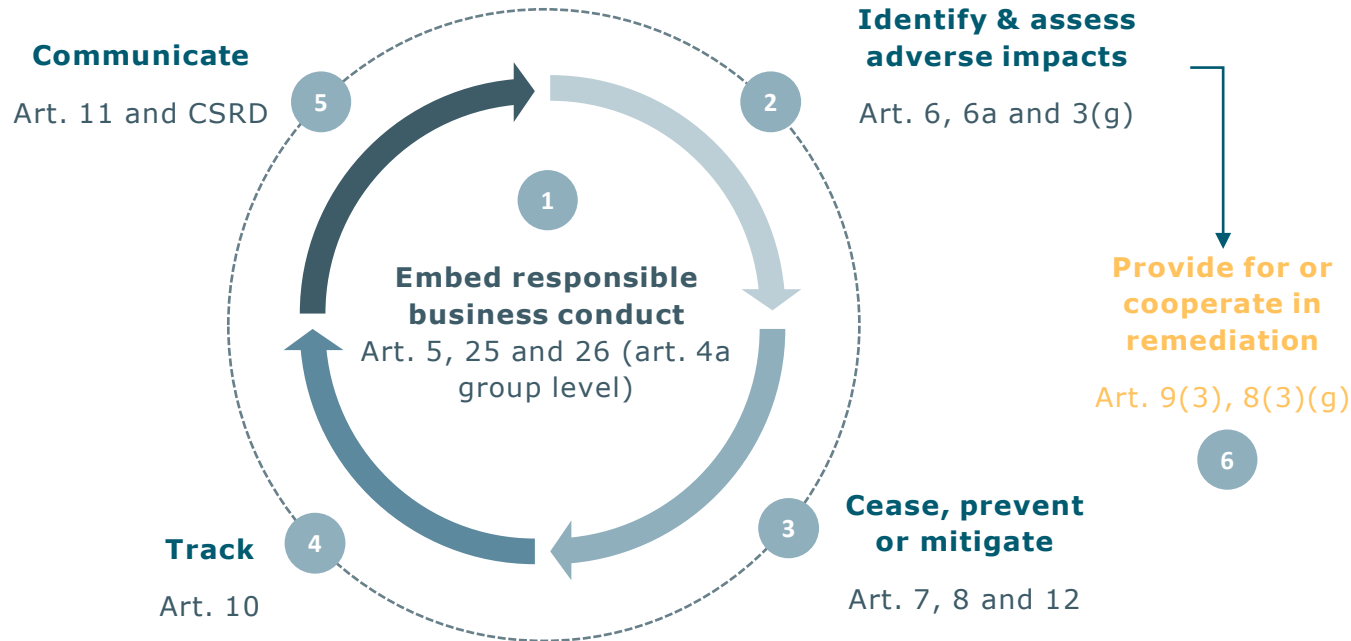
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Human rights and environmental due diligence



Art. 4 CSDDD



CSDDD Directive EU and contracting

- * limited to supply chains, distribution, transport and waste management (art. 3 g), option for prioritization (art. 6 sec. 1a and thorough assessment after first mapping)
- * contractual assurances from business partners and contractual cascading in supply chain (art. 7 (sec. 2(b)), art. 8 (sec. 3(c))
- * conclude contract with indirect business partner (e.g. remediation plan, art. 7 (sec. 3) and art. 8 (sec. 4))
- * contractual assurances should be accompanied by measures to verify (art. 7 (sec. 4) and art. 8 (sec. 5), with SME buyer bears cost of audits)
- * termination as last resort (art. 7 (sec. 5 and 7 (termination exacerbates situation or no alternative, obligation to monitor situation) and art. 8 (sec. 6 and 8), no new relationships)
- * art. 12 guidance of European Commission for model clauses

Current contractual practices

- * **Current contractual strategies often exacerbate situation because of sourcing practices (assurance is given, but e.g. price pressure, last moment alteration of specifications, no guarantee of subsequent orders etc.)**
- * **CSDDD: provide support to SME's (art. 7 (sec. 2d) and art. 8 (sec. 3e)), buyer bears cost of audits with SME's (art. 7 (sec. 4) and 8 (sec. 5))**
- * **More generally speaking, more responsible contracting practices in supply chain required with emphasis on collaboration and shared responsibility instead of risk shifting and termination**

European model clauses

- * Consultation version on <https://www.eur.nl/en/esl/events/consultation-european-model-clauses-supply-chains-project-2023-10-23>
- * Build on model developed by American Bar Association working group, https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/mccs-full-report.pdf
- * Aligned with CSDDD and European contract law
- * Provides practical guidance and guidance for specifics of contract law in member states
- * Departs from ABA model, especially more collaborative and less default oriented