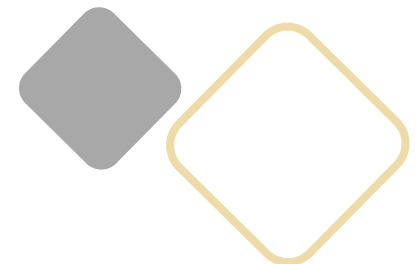
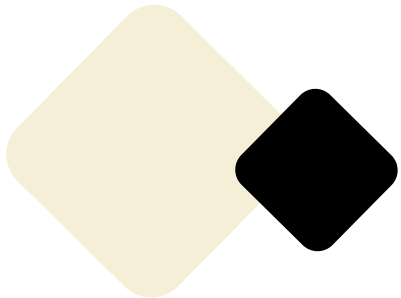




# The EU's Supply Chain Directive and Its Relevance for Exporters from Hong Kong and Mainland China: An Update

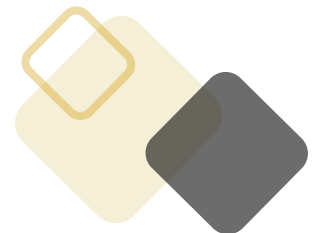
Ulrich G. Schroeter  
Professor of Private Law  
University of Basel, Switzerland



# Introduction

## The EU Supply Chain Directive (CS3D): Basics (1)

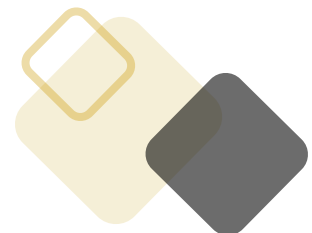
- **Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859**
  - commonly abbreviated as ‘CSDDD’ or ‘**CS3D**’
- due to its nature as an EU directive, the CS3D has to be **implemented** by all EU States into their **national laws**
  - deadline for implementation: 26 July 2026 ⇒ work on implementations is currently pending
  - **national implementing law** will then be **applied** to in-scope companies, not the CS3D directly
- recent development: ‘Omnibus’ proposal (with amendments to CS3D)



# Introduction

## The EU Supply Chain Directive (CS3D): Basics (2)

- The **CS3D** obliges **large EU companies** to observe **human rights** and **environmental standards** throughout their **entire international supply chains**
  - legal tools *inter alia*:
    - due diligence obligations
    - need to obtain contractual assurances from suppliers
    - in case of adverse impacts, as a last resort suspension/termination of contracts
  - no direct obligations for foreign (non-EU) suppliers
- **Relevance of CS3D for Chinese exporters (and manufacturers):**
  - **direct application** of CS3D also to some (**very large**) non-EU companies
  - mostly **indirect effect**, because CS3D-regulated supply chain leaders have to observe CS3D when negotiating future supply chain contracts (**‘trickle down effect’**)



# Introduction

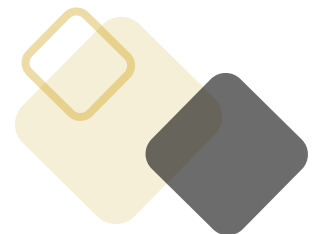
## The 'Omnibus' proposal: Possible amendments to the CS3D



## Introduction

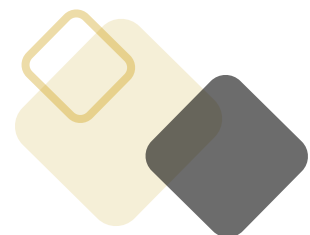
### The 'Omnibus' proposal: Possible amendments to the CS3D

- on 26 February 2025, the EU Commission published a **proposal** to **amend** the CS3D
  - commonly referred to as 'Omnibus' proposal
  - objectives: to simplify regulatory framework; to reduce burden on companies
- discussions about Omnibus proposal are currently **pending**; **adoption** in EU legislative process (with or without modifications) **uncertain**



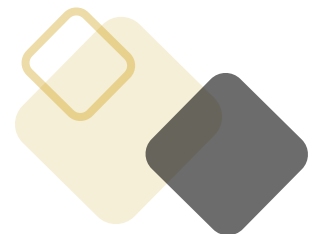
## What will today's talk cover? (1)

- **Scope of the CS3D**
- not: all obligations of CS3D-regulated chain leaders
- instead: selected **obligations of CS3D-regulated chain leaders** that **affect** international **suppliers** – each to be addressed in **three steps**:
  - According to the current CS3D
  - Effect on suppliers
  - Changes according to the Omnibus proposal



## What will today's talk cover? (2)

- **Chain leaders' obligations covered:**
  - Obligation to identify adverse impacts
  - Obligation to prevent potential adverse impacts
  - Obligations if adverse impacts cannot be prevented
  - Obligation to monitor the supply chain
  - Civil liability towards third persons



# Subject matter (purpose) of the CS3D

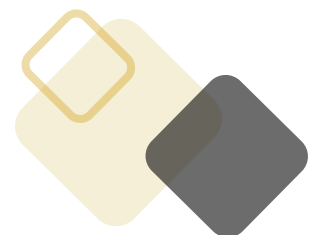
## Article 1 CS3D – Subject matter

- (1) This Directive lays down rules on:
  - (a) **obligations for companies** regarding actual and potential **human rights adverse impacts** and **environmental adverse impacts**, with respect to their own operations, the operations of their subsidiaries, and **the operations carried out by their business partners in the chains of activities** of those companies;
  - (b) **liability** for violations of the obligations as referred to in point (a); and
  - (c) the obligation for companies to adopt and put into effect a **transition plan** for **climate change mitigation** which aims to ensure, through best efforts, compatibility of the business model [...] with the limiting of global warming to 1,5° C in line with the Paris Agreement.

## Scope: Supply chain leaders regulated by the CS3D

According to the current CS3D

- **CS3D applies to large companies**
  - EU companies (formed in accordance with the legislation of an EU State)
  - non-EU companies (formed in accordance with the legislation of a third country)
- **EU companies**
  - from July 2027 onwards: companies with (1) a net annual (worldwide) turnover of more than 1.5 billion euro and (2) more than 5,000 employees
  - from July 2028 onwards: companies with (1) a net annual (worldwide) turnover of more than 900 million euro and (2) more than 3,000 employees
  - from July 2029 onwards: companies with (1) a **net annual (worldwide) turnover** of more than **450 million** euro and (2) more than 1,000 employees
    - approx. 7,000 EU companies (= 0.005% of all EU companies)

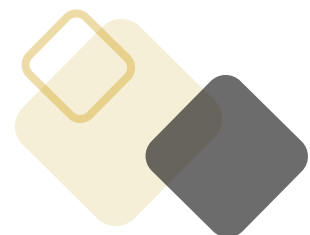


## Scope: Supply chain leaders regulated by the CS3D

According to the current CS3D

- **non-EU companies**

- from July 2027 onwards: companies with a net annual turnover (in the EU) of more than 1.5 billion euro
  - number of employees irrelevant for non-EU companies
- from July 2028 onwards: companies with a net annual turnover (in the EU) of more than 900 million euro
- from July 2029 onwards: companies with a **net annual turnover (in the EU)** of more than **450 million euro**
  - approx. 900 non-EU companies
  - approx. 56 PRC companies; approx. 11 Hong Kong companies
- implementing law applicable to non-EU company: (1) EU State in which it has a branch; (2) otherwise: EU State in which it generates highest turnover



# Scope: Supply chain leaders regulated by the CS3D

## According to the current CS3D

- **non-EU companies**
  - recent reaction: Bill proposed in U.S. Senate ('PROTECT USA Act of 2025')

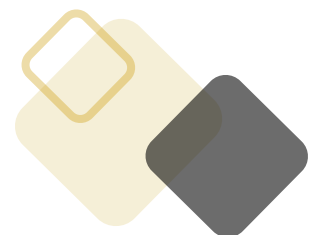
### **A BILL**

To prohibit entities integral to the national interests of the United States from participating in any foreign sustainability due diligence regulation, including the Corporate Sustainability Due Diligence Directive of the European Union, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

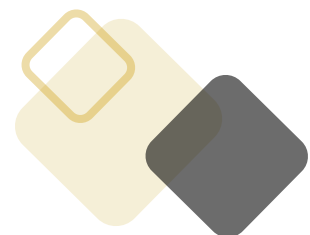
4 This Act may be cited as the "Prevent Regulatory  
5 Overreach from Turning Essential Companies into Tar-  
6 gets Act of 2025" or the "PROTECT USA Act of 2025".



## Scope: Supply chain leaders regulated by the CS3D

Changes according to the Omnibus proposal

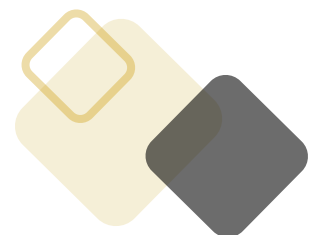
- **‘Stop the clock’ proposal: postponing** of implementation/application deadlines **by one year**
- EU States only have to **implement** the CS3D into national law **by 26 July 2027**
  - under current CS3D: by 26 July 2026
- **first application:** to companies with net annual turnover of more than 900 million euro **from July 2028** onwards
  - application from July 2027 onwards to even larger companies (with turnover of more than 1.5 billion) **deleted**
  - thresholds (turnover/employees) otherwise remain the same



# Obligations of CS3D-regulated supply chain leaders

What part of their supply chains do obligations extend to?

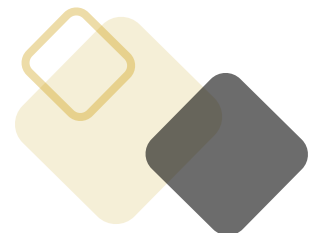
- **CS3D imposes obligations on supply chain leaders**
  - regarding their own operations
  - regarding the operations of their subsidiaries
  - regarding their **entire ‘chains of activities’**
- **Chains of activities include**
  - activities of the supply chain leader’s upstream business partners
  - activities of the supply chain leader’s downstream business partners related to distribution, transport and storage
- **Business partners are**
  - direct business partners (tier 1 suppliers)
  - indirect business partners (tier 2 sub-suppliers, tier 3 sub-sub-suppliers, ...)



## Obligations of CS3D-regulated supply chain leaders

What human rights/environmental impacts do they have to prevent?

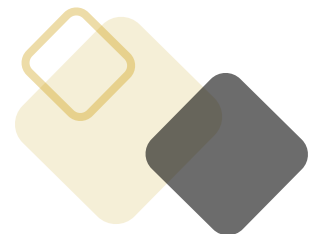
- **‘adverse environmental impact’**, Article 3(1)(b) CS3D = adverse impact resulting from the breach of **international environmental instruments** listed in the Annex to the CS3D
  - Annex to CS3D lists 11 environmental instruments
  - all of these instruments have been ratified by the PRC
  - all of these instruments are applicable in the Hong Kong SAR
- **‘adverse human rights impact’**, Article 3(1)(c) CS3D = adverse impact resulting from the abuse of a human right protected by **international human rights instruments** listed in the Annex to the CS3D
  - Annex to CS3D lists 11 human rights instruments
  - 8 of these instruments have been ratified by the PRC
  - 9 of these instruments are applicable in the Hong Kong SAR



## Obligations of CS3D-regulated supply chain leaders

Which of their CS3D obligations are relevant for suppliers?

- Obligation to **identify** adverse impacts
- Obligation to **prevent** potential adverse impacts
- Obligations if **adverse impacts cannot be prevented**
- Obligation to **monitor** the supply chain
- **Civil liability** towards third persons

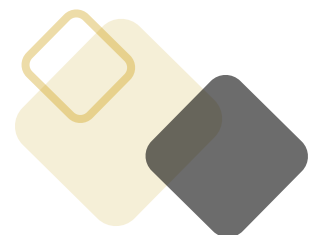


# Chain leaders' obligation to identify adverse impacts

According to the current CS3D (1)

## Article 8 CS3D – Identifying and assessing actual and potential adverse impacts

- (1) [General obligation to take appropriate measures to identify and assess actual and potential adverse impacts]
- (2) As part of the obligation set out in paragraph 1, taking into account relevant risk factors, companies shall take appropriate measures to:
  - (a) **map** their own **operations**, those of their subsidiaries and, where related to their chains of activities, those **of their business partners**, in order to identify general areas where adverse impacts **are most likely to occur** and to be most severe;



# Chain leaders' obligation to identify adverse impacts

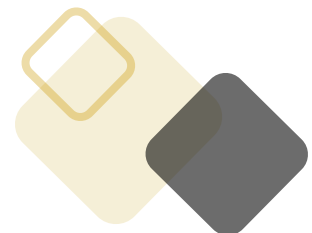
According to the current CS3D (2)

## Article 8 CS3D – Identifying and assessing actual and potential adverse impacts

(2) [...]

(a) [...]

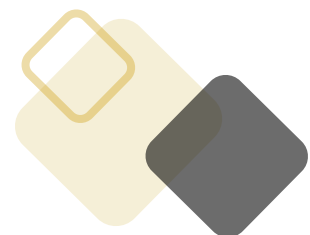
(b) based on the results of the mapping as referred to in point (a), carry out an **in-depth assessment of their own operations**, those of their subsidiaries and, where related to their chains of activities, those **of their business partners**, in the areas where adverse impacts were identified to be most likely to occur and most severe.



# Chain leaders' obligation to identify adverse impacts

## Effect on suppliers (1)

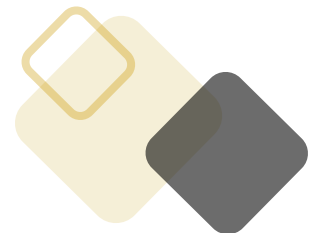
- **mapping** and (even more) **in-depth assessment** of **suppliers' operations**  
⇒ chain leader needs **information** about suppliers' operations
- **supplier** as source of information
  - contractual disclosure obligations
    - but: compatibility with local law? ⇒ data protection laws; national security laws; blocking statutes
    - but: compatibility with confidentiality obligations towards other parties (NDAs)?
    - risk for business or trade secrets
  - chain leader's contractual right to directly access supplier's data
    - but: compatibility with local law? ⇒ same as above
  - chain leader's contractual right to conduct audits of suppliers



# Chain leaders' obligation to identify adverse impacts

## Effect on suppliers (2)

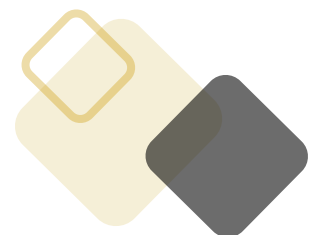
- **third parties** as source of information
  - NGOs, audit companies, other third-party verifiers, whistle blowers
  - supplier's contractual obligation to give access to third parties and to cooperate
    - but: compatibility with local law? ⇔ same as above



# Chain leaders' obligation to identify adverse impacts

Changes according to the Omnibus proposal

- Article 8(2)(b) CS3D: **in-depth assessments to be limited** to direct business partners, i.e. **tier 1-suppliers** (currently: direct and indirect business partners, i.e. entire supply chain)
- but: **in-depth assessment of indirect business partners** remains necessary **if**:
  - chain leader has '**plausible information**' about adverse impacts at indirect supplier
    - information can come from any source (including NGOs)
    - unclear when information is 'plausible'
  - indirectness of sub-supplier is an artificial arrangement (= **circumvention**)
    - increasing use of traders as tier-1 suppliers? standard practice or circumvention?



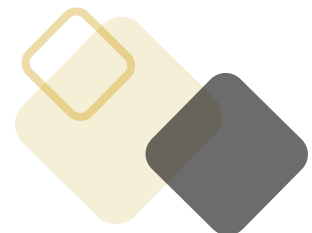
# Chain leaders' obligation to prevent potential adverse impacts

## According to the current CS3D (1)

### Article 10 CS3D – Preventing potential adverse impacts

(1) Member States shall ensure that companies **take appropriate measures to prevent**, or where prevention is not possible or not immediately possible, **adequately mitigate, potential adverse impacts** that have been, or should have been, identified pursuant to Article 8, in accordance with Article 9 and with this Article.

- **Article 11 CS3D – Obligation to bring actual adverse impacts to an end**
  - essentially mirrors Article 10 CS3D

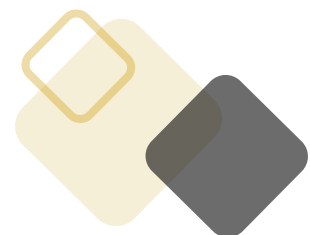


# Chain leaders' obligation to prevent potential adverse impacts

According to the current CS3D (2)

## Article 10 CS3D – Preventing potential adverse impacts

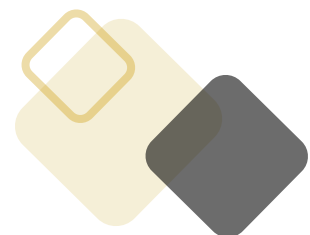
- (2) Companies shall be required to take the following appropriate measures, where relevant:
- (a) [...]
  - (b) **seek contractual assurances** from a **direct business partner** that it will ensure **compliance** with the **company's code of conduct** and, as necessary, a prevention action plan, including by establishing **corresponding contractual assurances** from **its partners**, to the extent that their activities are part of the company's chain of activities; when such contractual assurances are obtained, paragraph 5 shall apply;



# Chain leaders' obligation to prevent potential adverse impacts

## Effect on suppliers (1)

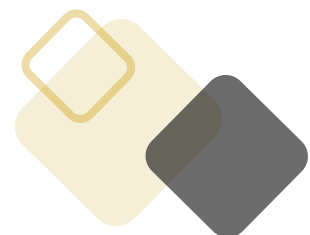
- chain leaders will seek to include **suppliers' 'contractual assurances'** into contracts ⇒ contractual obligation to comply with **chain leader's Code of conduct**
  - Recital 46 of CS3D: 'However, the company should only be obliged to seek the contractual assurances, as obtaining them may depend on the circumstances.'
- **challenges** for suppliers:
  - compliance with Code of conduct may be **burdensome**
  - contractual promise to comply with foreign chain leader's Code of conduct may **violate law** of supplier's home country
  - supplier may be party to **more than one** supply chain ⇒ **conflicts** between Codes of conduct of **different chain leaders** possible



## Chain leaders' obligation to prevent potential adverse impacts

### Effect on suppliers (2)

- CS3D envisages '**contractual cascading**' throughout supply chain ⇒ contractual obligation of supplier to oblige **its own supplier** to comply with **chain leader's Code of conduct**
  - supplier must re-negotiate existing contracts with its own suppliers
  - may be challenging ⇒ sub-supplier may not agree
  - sub-supplier may face same problems as supplier (in particular in case of multiple conflicting Codes of conduct)
  - chain leader may try to include a 'nominated sub-supplier clause' into the contract with the supplier, giving the chain leader control over the supplier's choice of its sub-suppliers



# Chain leaders' obligation to prevent potential adverse impacts

According to the current CS3D (3)

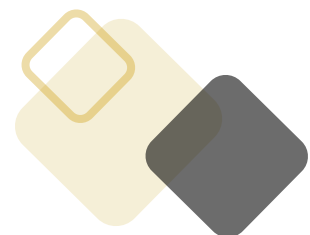
## Article 10 CS3D – Preventing potential adverse impacts

- (4) As regards potential adverse impacts that could not be prevented or adequately mitigated by the appropriate measures listed in paragraph 2, the company may **seek contractual assurances** from an **indirect business partner**, with a view to achieving compliance with the company's code of conduct or a prevention action plan. When such contractual assurances are obtained, paragraph 5 shall apply.
- (5) The contractual assurances referred to in paragraph 2, point (b), and in paragraph 4, shall be **accompanied by appropriate measures to verify compliance**. For the purposes of verifying compliance, the company may refer to **independent third-party verification**, including through industry or multi-stakeholder initiatives.

# Chain leaders' obligation to prevent potential adverse impacts

## Effect on suppliers (3)

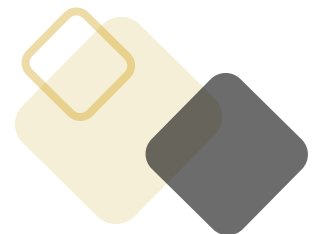
- chain leader seeking **direct contractual assurances** from **sub-suppliers**
  - can trigger commercial risks for supplier (circumvention, 'cutting out the intermediary')
  - supplier's obligation to disclose identity of sub-suppliers? ⇨ no obligation in CS3D; contractual disclosure clauses conceivable (but: will they be agreed?)
  - Recital 49 of CS3D: direct collaboration between chain leader and sub-suppliers must respect applicable contract law
- **verification of supplier's compliance** with chain leader's Code of conduct
  - contractual provisions on supplier's cooperation necessary
  - in case of 'independent third-party verification' ⇨ supplier's obligation to provide information, allow access to premises, allow interviews of staff?



# Chain leaders' obligation to prevent potential adverse impacts

Changes according to the Omnibus proposal

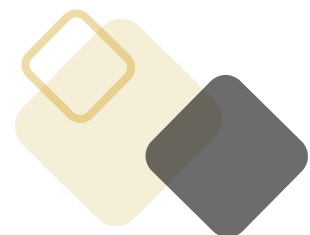
- none (Omnibus proposal doesn't change provisions on point)



# Chain leaders' obligations if adverse impacts cannot be prevented

According to the current CS3D

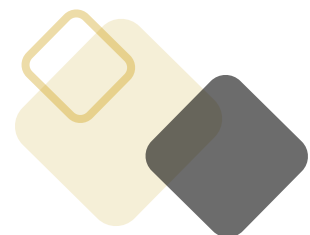
- **if adverse impacts cannot be prevented or adequately mitigated (Article 10(6) CS3D) or brought to an end (Article 11(7) CS3D)**
  - 'as a last resort'
  - where the (contract) law governing the relation entitles them
- obligation to **refrain** from **entering** into **new**/extending existing relations with supplier
- obligation to **temporarily suspend** business relationship
- obligation to **terminate** business relationship



# Chain leaders' obligations if adverse impacts cannot be prevented

## Effect on suppliers

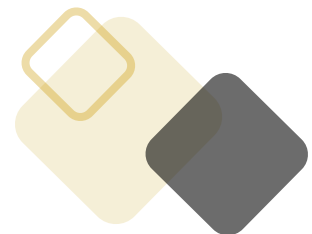
- **business relationships** with CS3D-regulated chain leaders **at risk** if adverse human rights/environmental impacts occur at supplier
- but:
  - suspension or termination **only** if supply chain contract/contract law **so allows** ⇒ chain leaders will try to negotiate **contractual suspension/termination rights**
  - adoption/implementation of 'enhanced prevention action plan'/'enhanced prevention action' plan as first resort under CS3D ⇒ **cooperation** between supplier and chain leader as preferred approach



# Chain leaders' obligations if adverse impacts cannot be prevented

Changes according to the Omnibus proposal

- obligation to **terminate** business relationship to be **struck out**
- obligation to **temporarily suspend** business relationship as new '**last resort**'



# Chain leaders' obligation to monitor the supply chain

According to the current CS3D

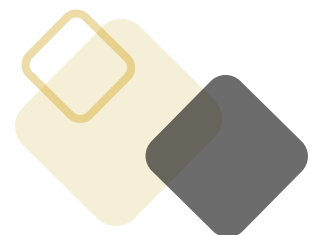
## Article 15 CS3D – Monitoring

Member States shall ensure that companies **carry out periodic assessments of** their own **operations and measures**, those of their subsidiaries and, where related to the chain of activities of the company, those **of their business partners**, to assess the implementation and to monitor the adequacy and effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of adverse impacts. Such assessments shall be based, where appropriate, on qualitative and quantitative indicators and be carried out without undue delay after a significant change occurs, **but at least every 12 months** and whenever there are reasonable grounds to believe that new risks of the occurrence of those adverse impacts may arise. [...]

# Chain leaders' obligation to monitor the supply chain

Effect on suppliers & Changes according to the Omnibus proposal

- **Effect on suppliers**
  - largely similar to chain leader's obligation to map suppliers' operations (Article 8(2)(a) CS3D)
- **Changes according to the Omnibus proposal**
  - monitoring at least every 5 years (currently: every 12 months)



# Chain leaders' civil liability towards third persons

According to the current CS3D (1)

## Article 29 CS3D – Civil liability of companies and the right to full compensation

- (1) Member States shall ensure that a company can be held **liable for damage** caused **to a natural or legal person**, provided that:
- (a) the company intentionally or negligently **failed to comply with the obligations** laid down in Articles 10 and 11, when the right, prohibition or obligation listed in the Annex to this Directive is aimed at protecting the natural or legal person; and
  - (b) as a result of the failure referred to in point (a), **damage** to the natural or legal person's legal interests that are protected under national law was caused.
- A company cannot be held liable if the damage was caused only by its business partners in its chain of activities.

## Chain leaders' civil liability towards third persons

According to the current CS3D (2)

### Article 29 CS3D – Civil liability of companies and the right to full compensation

(3) Member States shall ensure that:

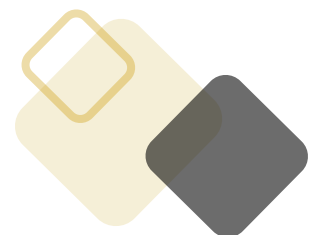
(d) reasonable conditions are provided for under which any alleged injured party **may authorise** a trade union, **non-governmental human rights or environmental organisation** or other non-governmental organisation, and, in accordance with national law, national human rights' institutions, based in a Member State **to bring actions to enforce the rights of the alleged injured party**, without prejudice to national rules of civil procedure; [...]

(7) Member States shall ensure that the provisions of national law transposing this Article are of **overriding mandatory application** in cases where the law applicable to claims to that effect is not the national law of a Member State.

# Chain leaders' civil liability towards third persons

## Effect on suppliers

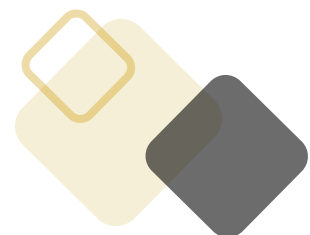
- **no direct effect** – CS3D does not impose any civil liability on suppliers
- but: CS3D requires **NGOs** to be able to **bring civil liability actions** ⇒ NGOs likely to also **scrutinize suppliers' operations**
  - may indirectly increase likelihood of claims **against suppliers**
- but: chain leaders will likely try to include **contractual indemnification clauses** into their supply chain contracts
  - CS3D does not prohibit such clauses
  - but: agreement of supplier necessary ⇒ bargaining power?
  - **validity** of indemnification clauses is governed by **applicable contract law**



## Chain leaders' civil liability towards third persons

Changes according to the Omnibus proposal

- **civil liability** of chain leaders under CS3D to be **struck out**
- only civil liability **under national laws** of EU States remains (where it exists)
- **overriding mandatory application** of (national) civil liability rules to be **struck out** ⇒ without it, liability law of EU States will typically not apply under conflict of laws rules ⇒ instead, liability law at place of business of supplier (place where damage occurred) will likely apply



**Thank you for your attention!**

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