

# The Global ESG Landscape: Europe and UK

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# Corporate Purpose

## World Economic Forum

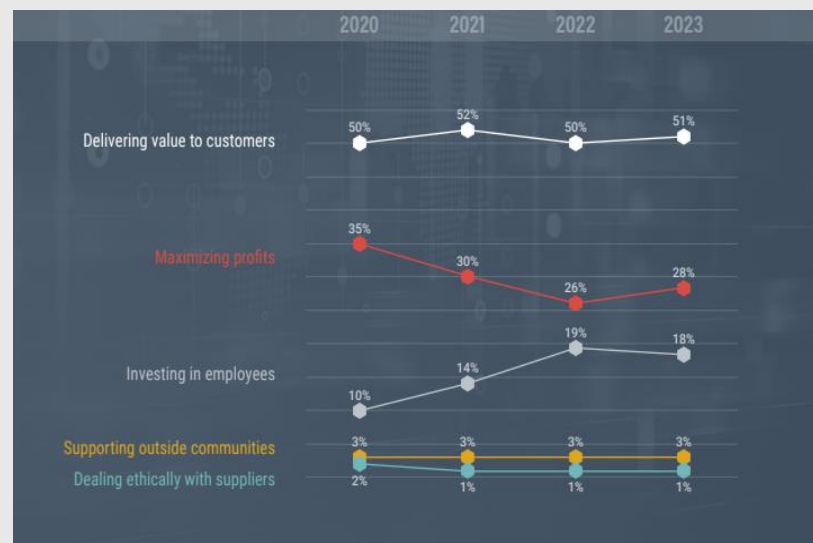
“Business has now to fully embrace stakeholder capitalism, which means not only maximizing profits, but use their capabilities and resources in cooperation with governments and civil society to address the key issues of this decade. They have to actively contribute to a more cohesive and sustainable world,” Klaus Schwab, Founder and Executive Chairman of the World Economic Forum.

# Some Data by the Association of Corporate Counsel

## ACC 2023 Survey

- 21% of CLOs expect legal challenges related to Climate and Environmental changes
- 32% of CLOs in public companies in finance and banking, and 20% of those in manufacturing reported pressure from investors for taking a stand or refraining to do so on social and political matters
- 57% CLOs indicated that their department had increased its expenditures for regulatory compliance ( including ESG)

## Organisation Priorities for Next 5 Years

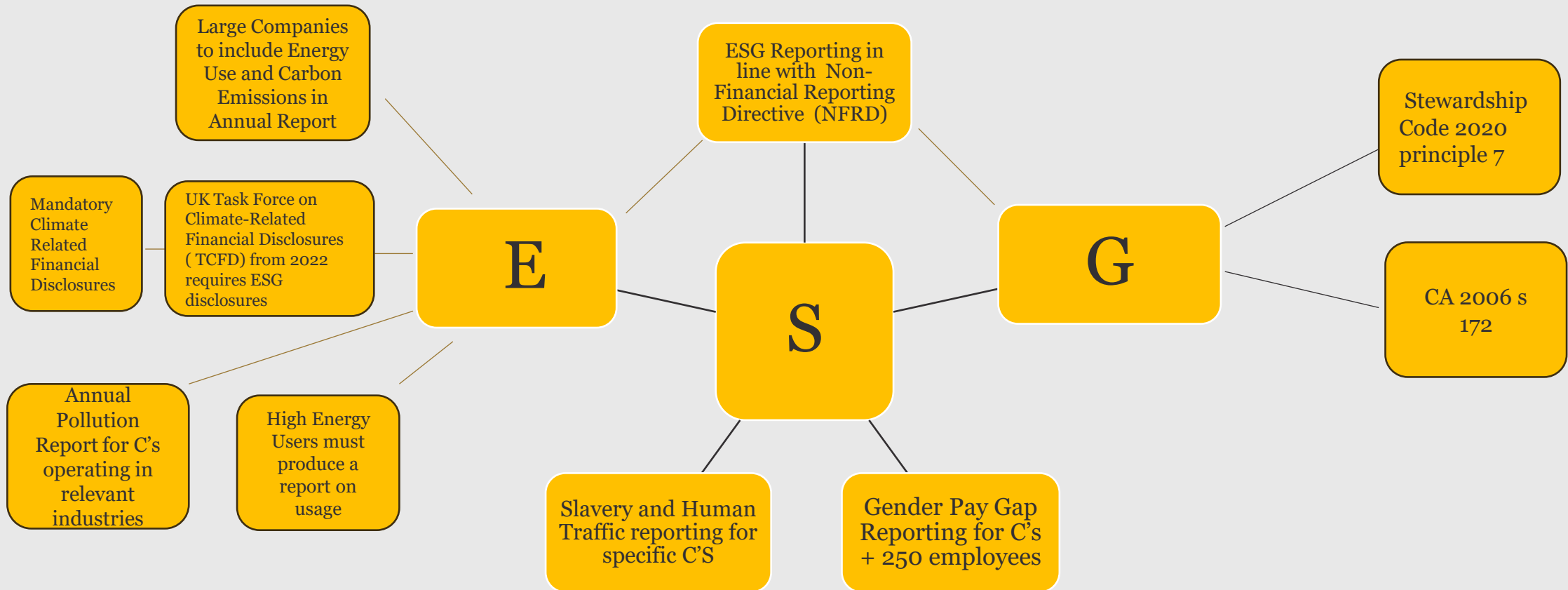


### FOCUS ON ESG

- Changing regulations on emissions
- Customer and investor pressures
- Customer focus on DEI/ESG related to the supply chain
- Customer pressure on carbon neutral plans
- Demands for transparency
- Environmental compliance requirements

# ESG Regulation

## United Kingdom



# The UK

## The Stewardship Code 2020

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### Principle 7

Signatories systematically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfil their responsibilities

## The Companies Act 2006 ss 170/172

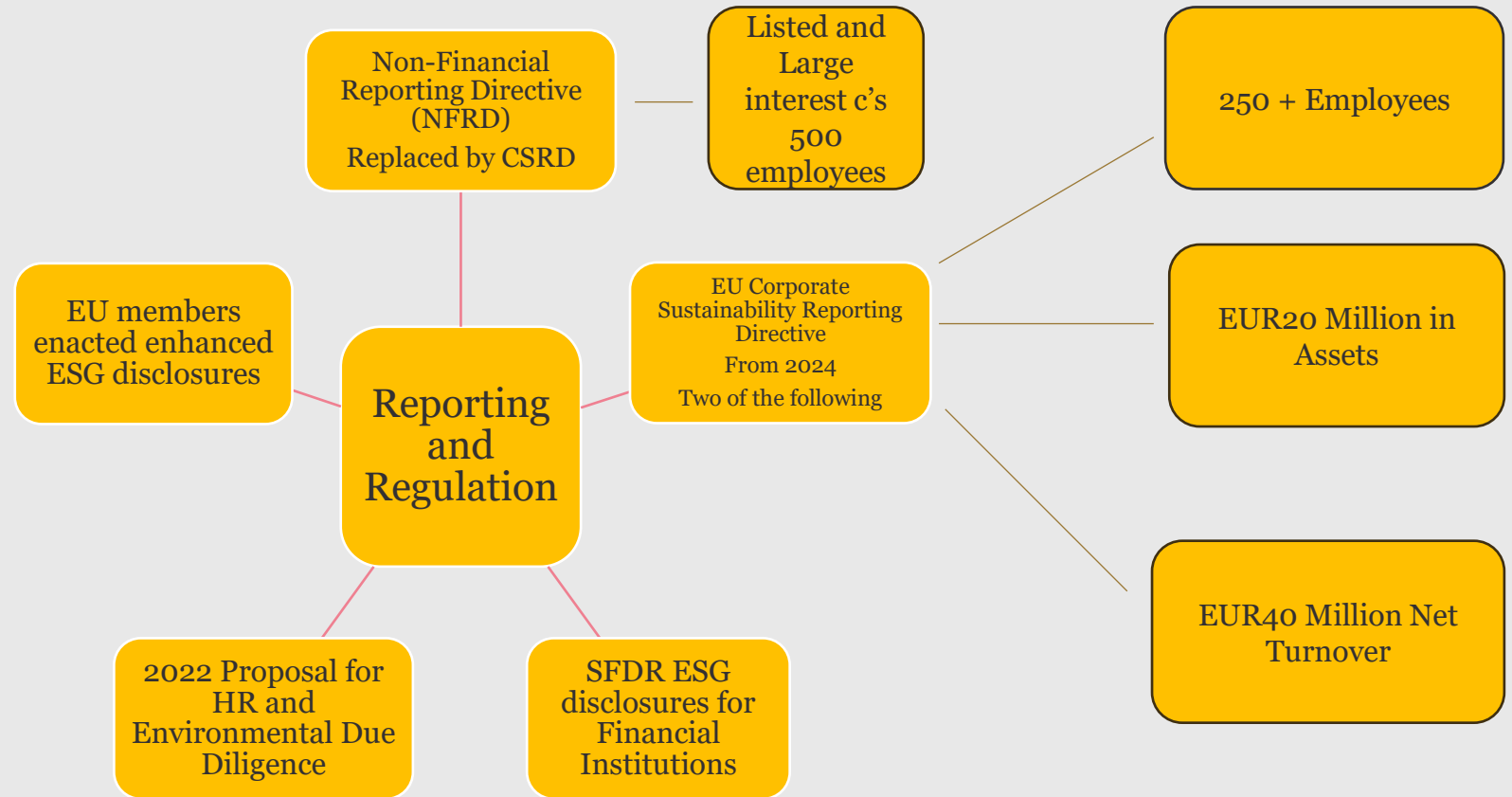
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- S 172: Duty to promote the success of the company/enlightened shareholder value/ the problem with creditors: IA 1986 wrongful and fraudulent trading
- Enforceability: s170
- Derivative Actions?
- Reflective Losses



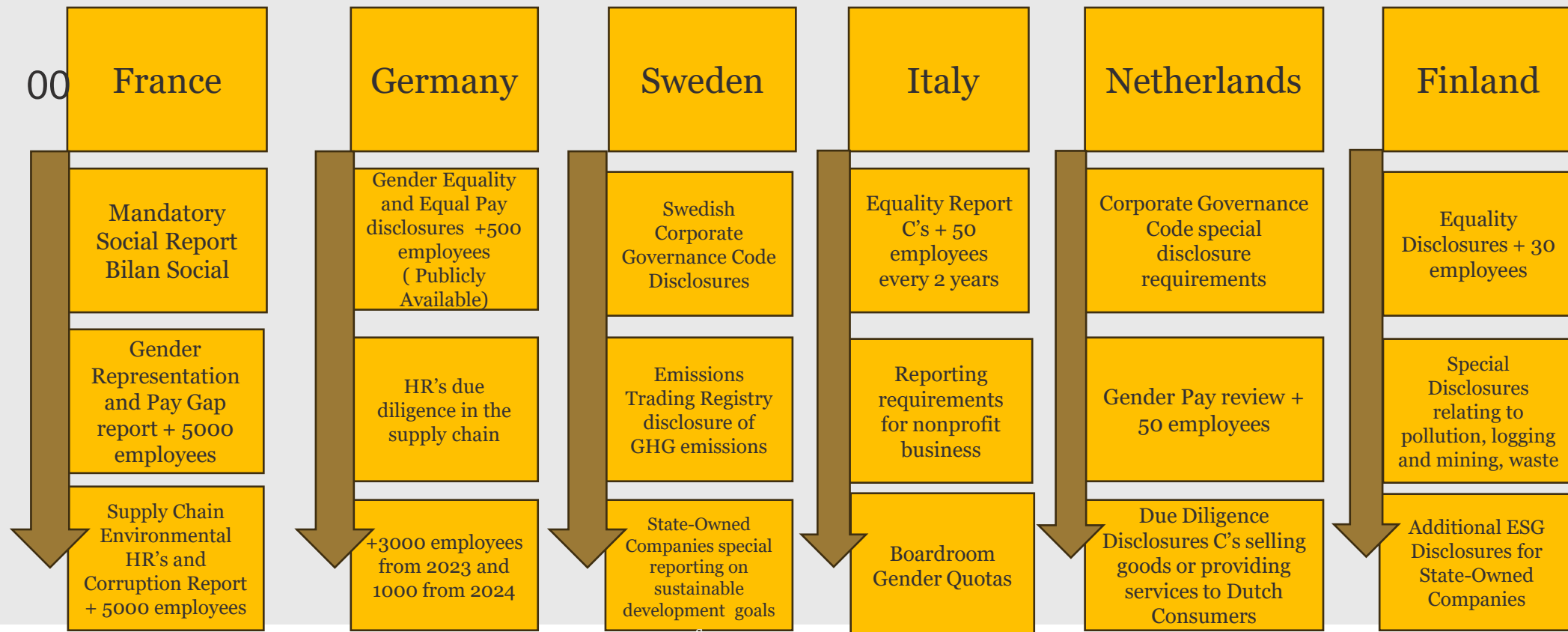
# ESG Regulation

## Europe



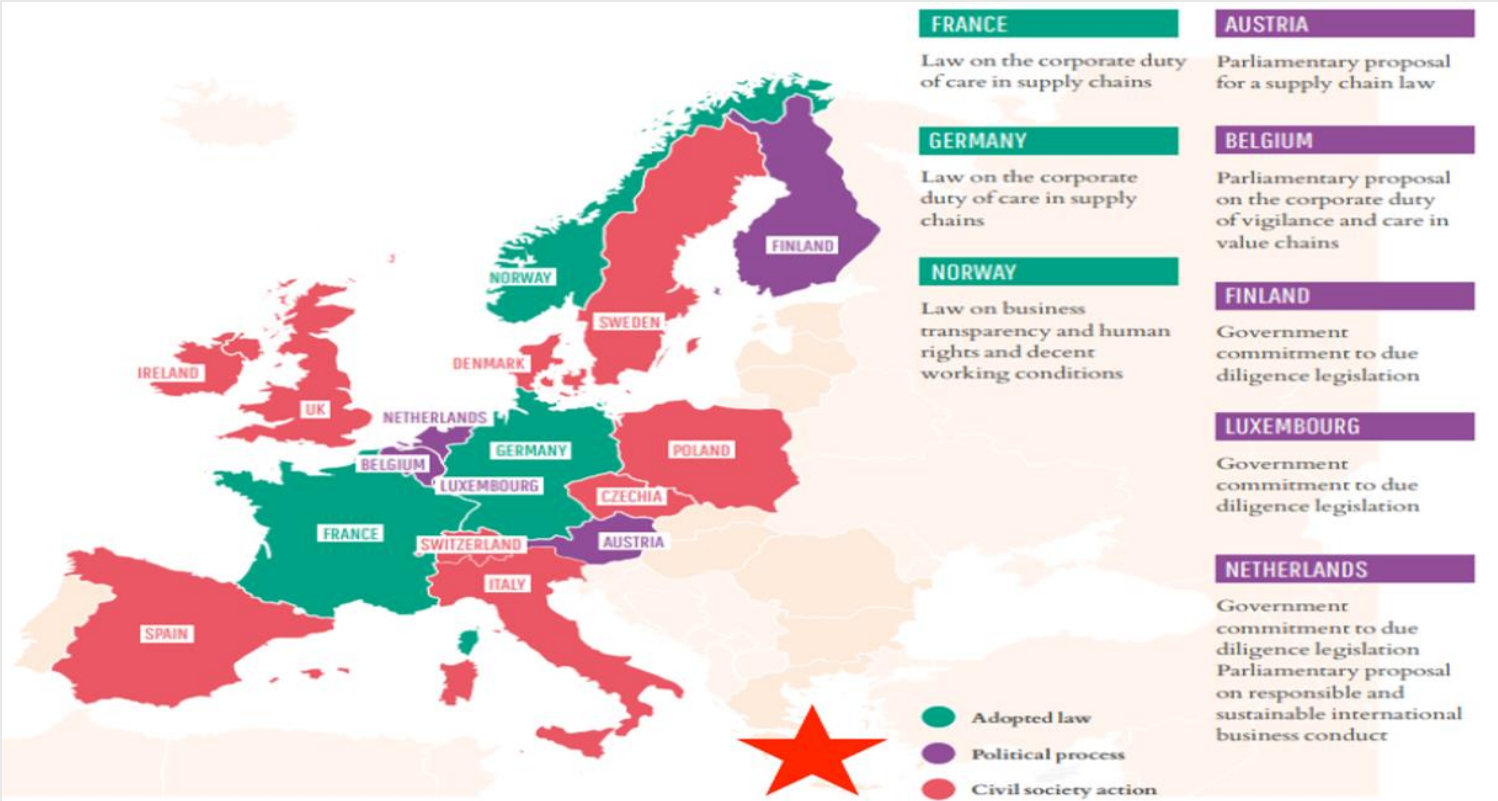
# Europe ESG Regulations

## Some ESG Enhanced Provisions By Country



# EU ESG Regulation

## EU countries' national corporate due diligence legislation



Source: [Unpacking the upcoming EU law to stop corporate abuse. Press kit](#), joint NGOs, November 2021.



# EU/ESG and The Future

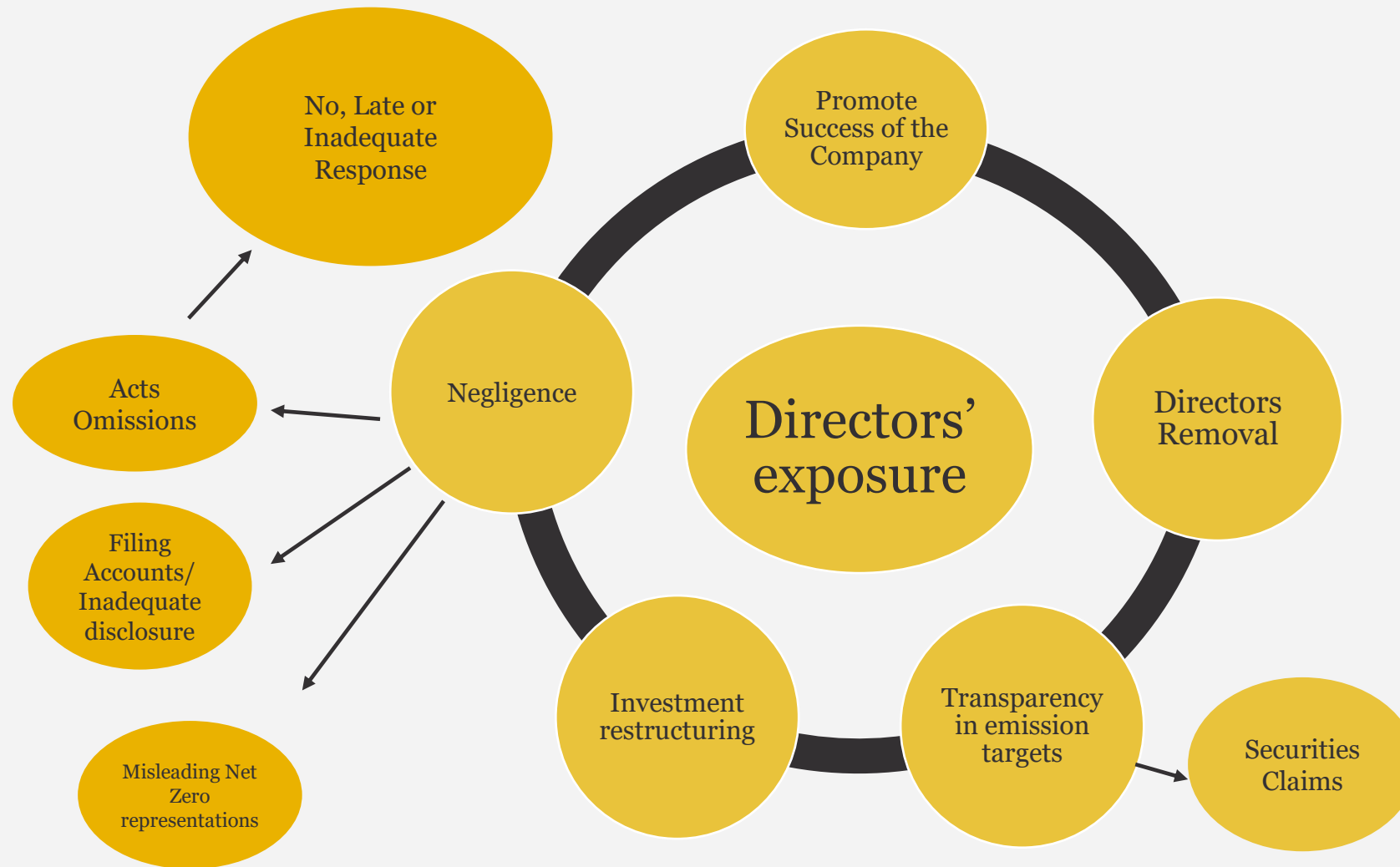
## Immediate Reaction

- Introduce mandatory human rights and environmental due diligence
- Duty for Directors to set up and oversee the implementation of due diligence
- Integrate due diligence into corporate strategy
- Companies' liability if they fail to comply with obligations to prevent, mitigate, minimise or end adverse impacts. ( No liability would arise indirectly e.g., through partners)
- EU members states would have to amend directors' duties laws to include consequences for breaching human rights, climate change and other environmental issues.

# D&O Insurance

## Will it be in the spotlight?

- Directors and Officers could face claims for non-compliance or **failure to achieve promises/objectives**
- Majority of claims are not filed against companies ( D&Os) who move slowly towards ESG
- **Claims are filed against ESG proactive companies who fell short in achieving goals.**
- More regulation expected: UK ( large companies to publish Net Zero emissions plans by 2023) EU ( Directive Corporate Due Diligence and Corporate Accountability)
- ESG compliance or credentials may appear to be good D&O risks yet reality shows that in companies with ESG credentials, falling short of objectives has been the main source of claims





# Directorial Duties: ESG Real Risk

Is ESG forcing Corporate Law to change the Nature of Directorship?

Obligations  
of Means

ESG

Obligations  
of Result

# Thank You

## Questions?

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<https://aidainsurance.org/>

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# Sources

## As appeared in the slides

[https://www.acc.com/sites/default/files/2023-01/ACC\\_2023\\_CLO\\_Survey\\_Report.pdf](https://www.acc.com/sites/default/files/2023-01/ACC_2023_CLO_Survey_Report.pdf)

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