

Introduction: From Soft Law to Hard Law

SSF Event

"How New Soft and Hard Law Requirements Challenge the Financial Sector"

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Olivier Jaeggi
Managing Director

Tel. +41 44 350 60 62
olivier.jaeggi@ecofact.com

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Voluntary Guidelines Are Transitioning to Soft and Hard Law

The Challenge

→ The financial sector is facing **unprecedented change** in its regulatory environment where corporate responsibility and sustainability are concerned. New regulatory requirements are **mushrooming** across all jurisdictions and at multiple policy levels.

The ECOFACT Policy Outlook Tool™

- Understand regulatory developments. Identify **changes in the risk landscape** and potential **opportunities**.
- Receive **early warnings**. Identify **windows of opportunity** to contribute to the public discourse on emerging regulation.
- Use information to **engage** with internal units, regulatory bodies, and clients.
- Produce internal and external **reports and briefings**.

Global Trends a Financial Sector Expert Must Be Aware Of

1. OECD standards require financial institutions to conduct **environmental and human rights due diligence**.
2. **Fiduciary duty** requires investors to consider environmental, social and governance risks (ESG risks) where these are material.

Risks are considered to be **financially material** if they might potentially have a significant positive or negative effect on the financial performance of the investment.

3. Additional **disclosure requirements** are emerging at the national and international levels.

Core Issue

(In)famous quotation from Milton Friedman:

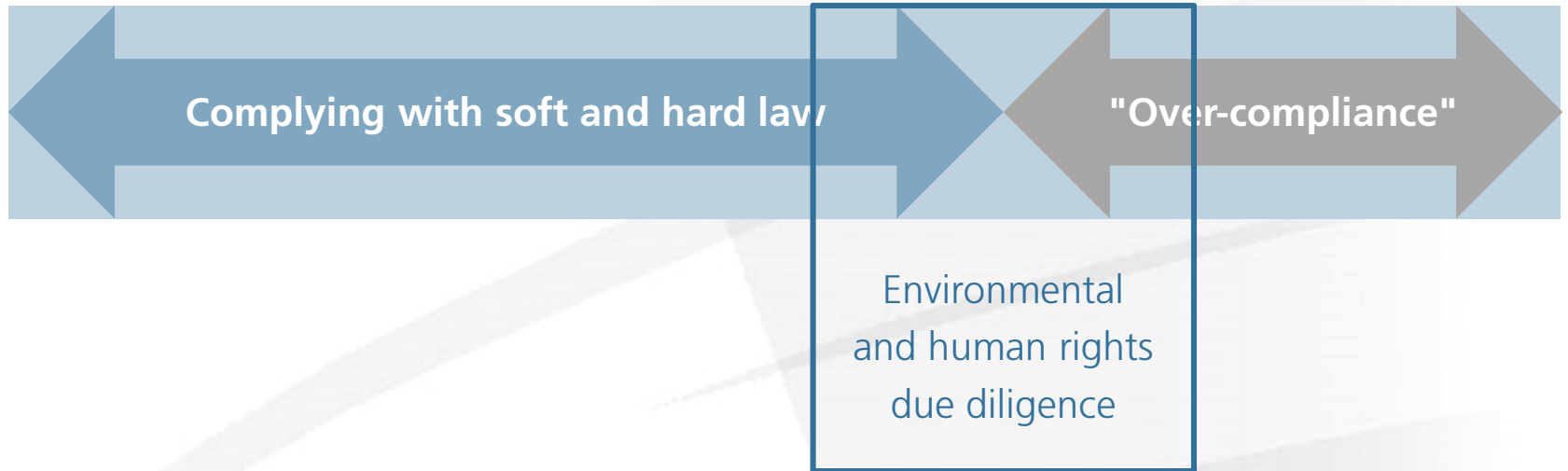
A business's responsibility is to "make as much money as possible while conforming to the [basic rules of society](#), both those embodied in law and those embodied in ethical custom" (1970).

- What are those "[basic rules of the society](#)" and how far do they go?
- Where does "[over-compliance](#)" start?

Core Issue



Core Issue



Core Issue



Core Issue



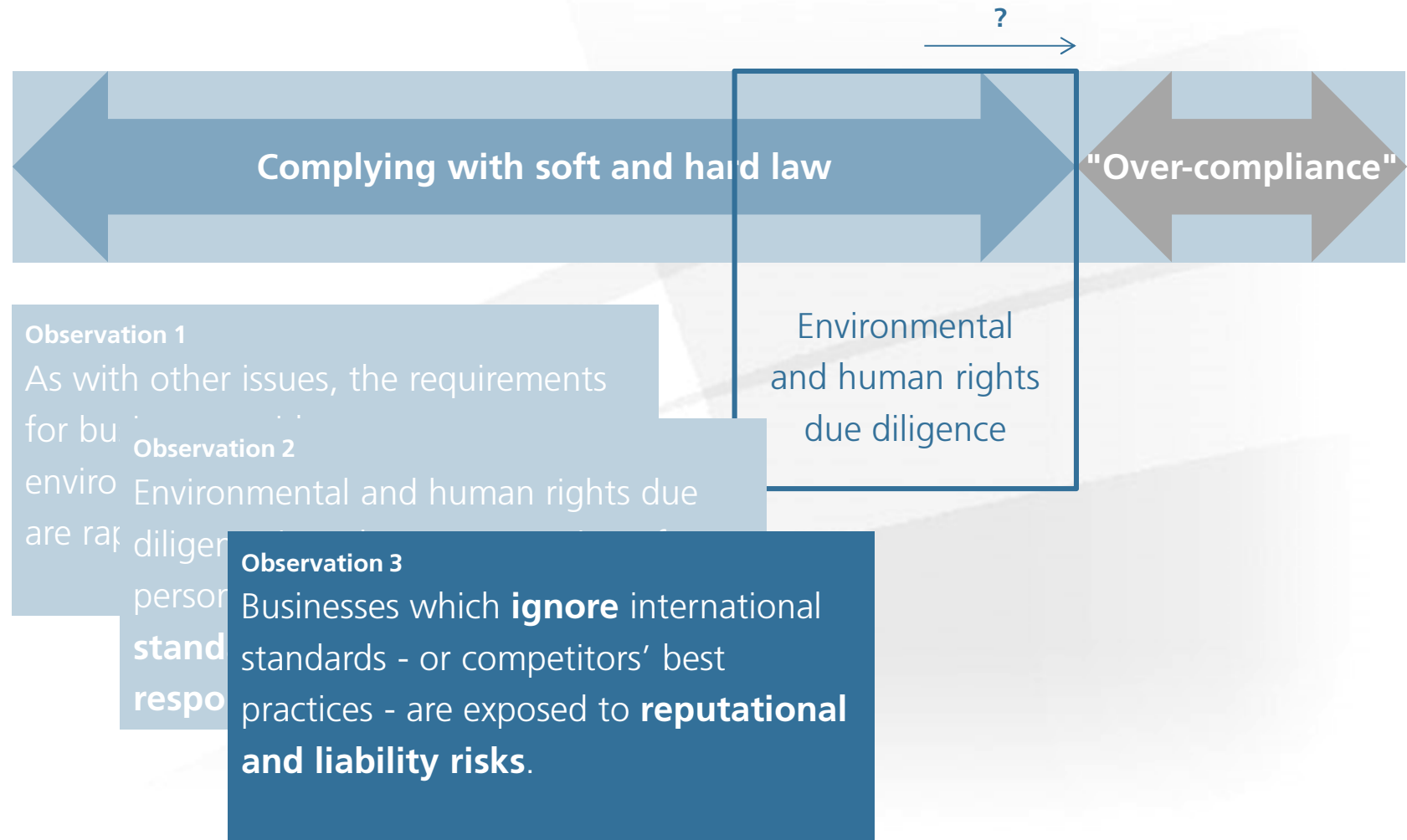
Observation 1

As with other issues, the requirements for businesses with respect to environmental and human rights risks are evolving rapidly.

Core Issue



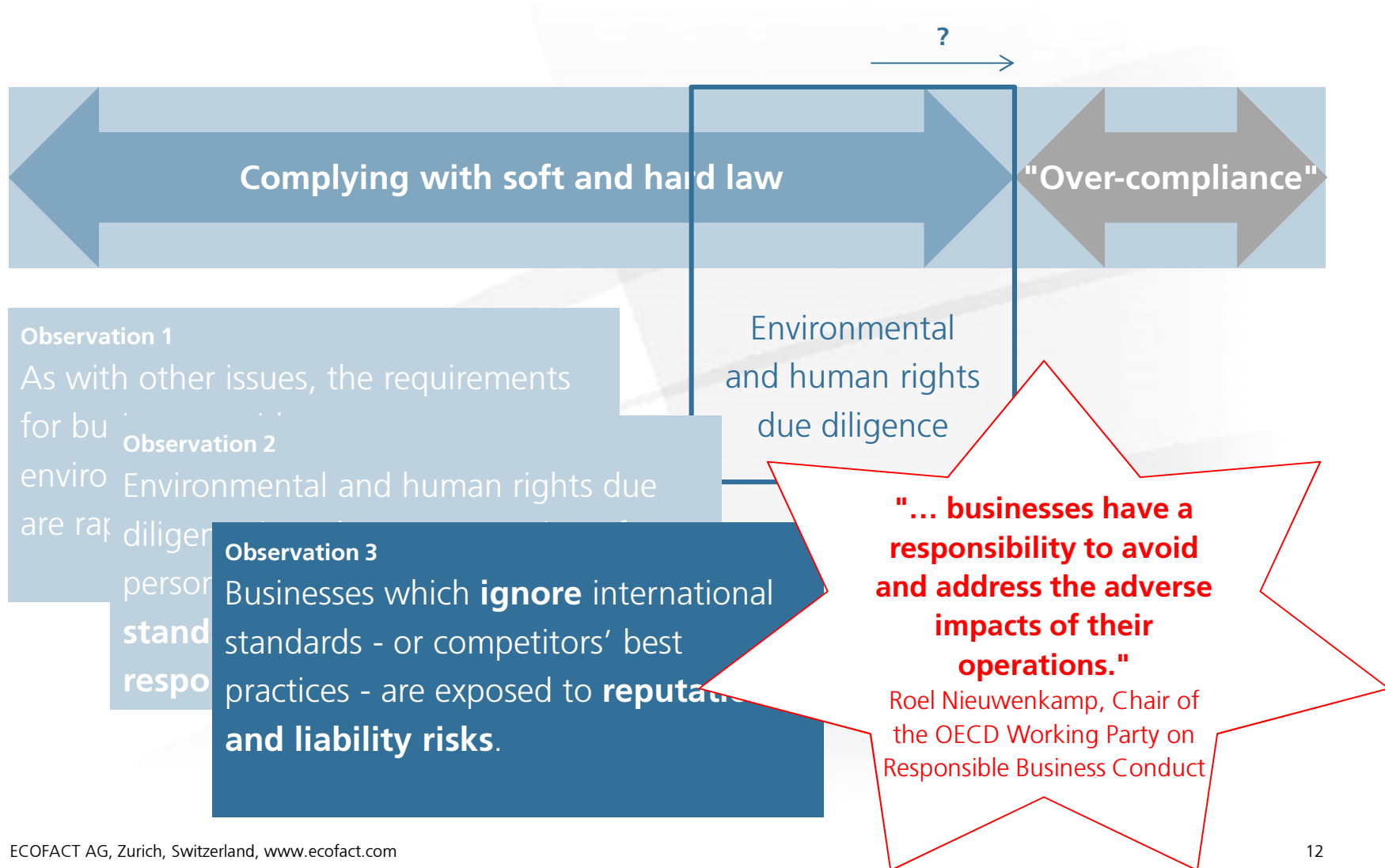
Core Issue



Core Issue



Core Issue



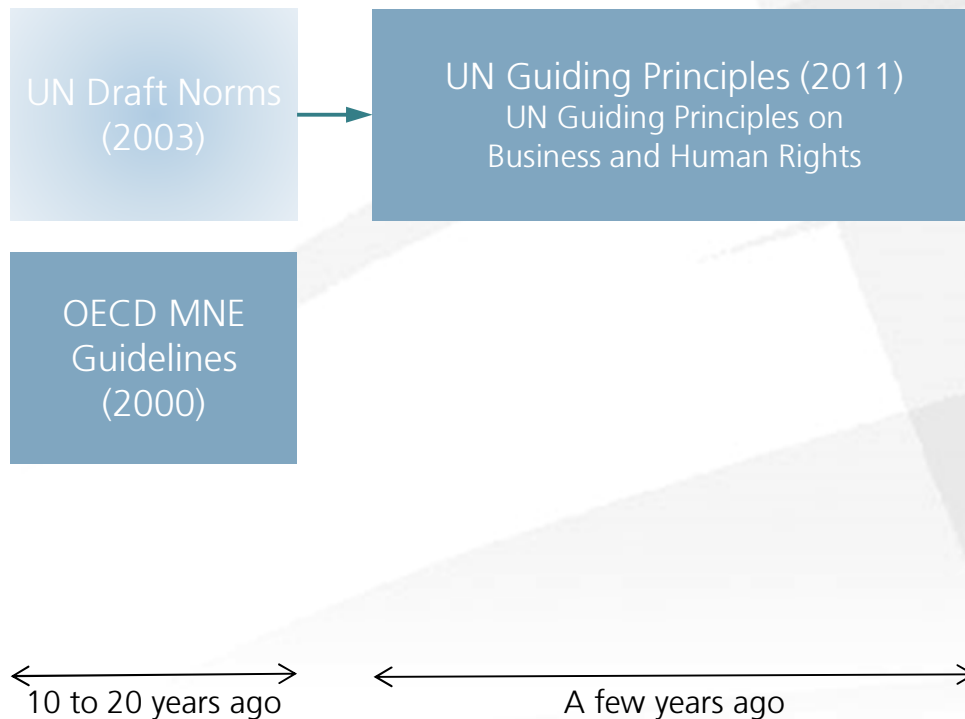
Evolving Soft and Hard Law

UN Draft Norms (2003)
Norms on the responsibilities of
transnational corporations and other
business enterprises
with regard to human rights

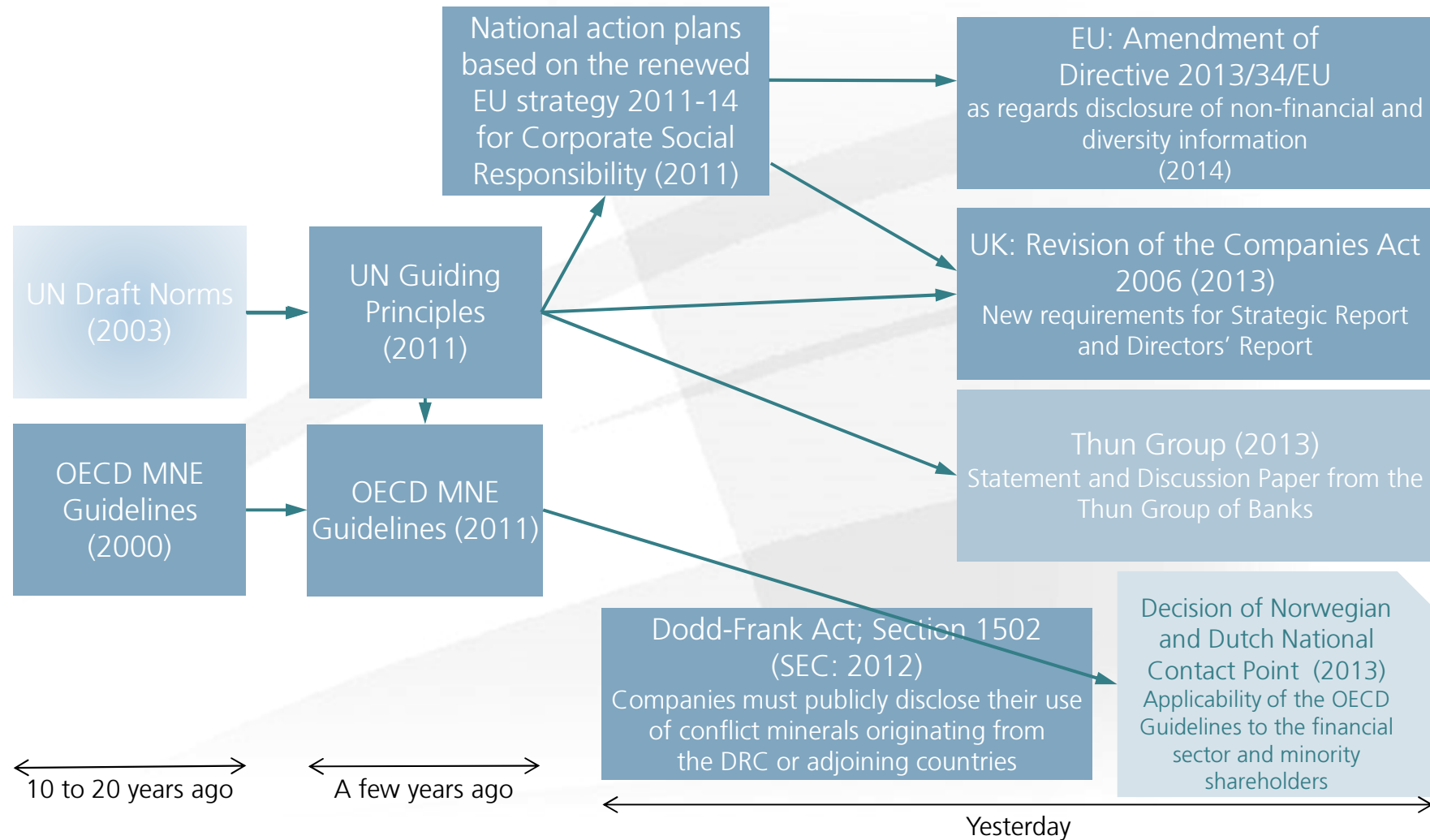
OECD MNE Guidelines (2000)
Guidelines for Multinational Enterprises
adopted by the OECD in 1976 and revised
in 1979, 1982, 1984, 1991, 2000

← 10 to 20 years ago →

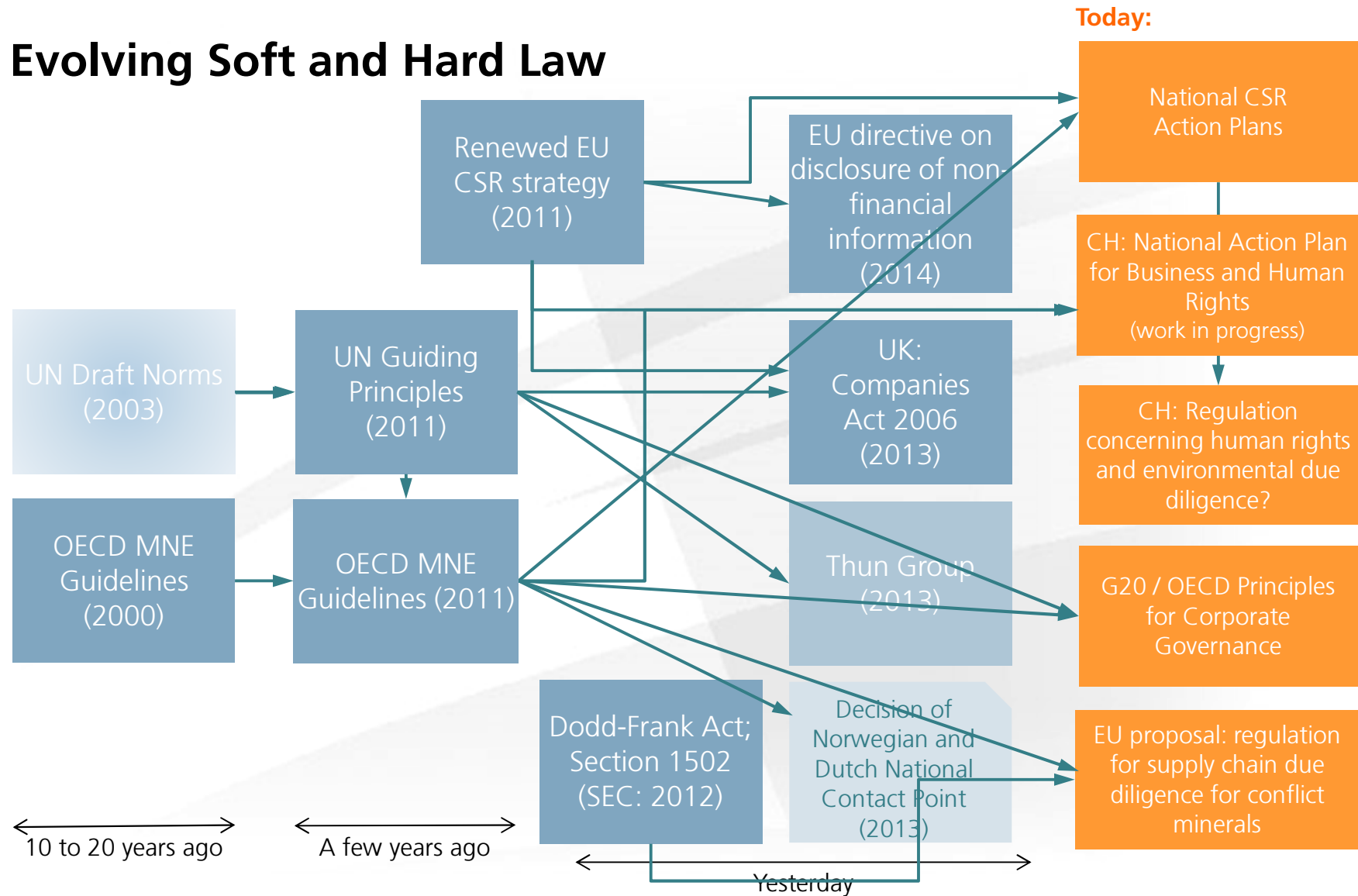
Evolving Soft and Hard Law



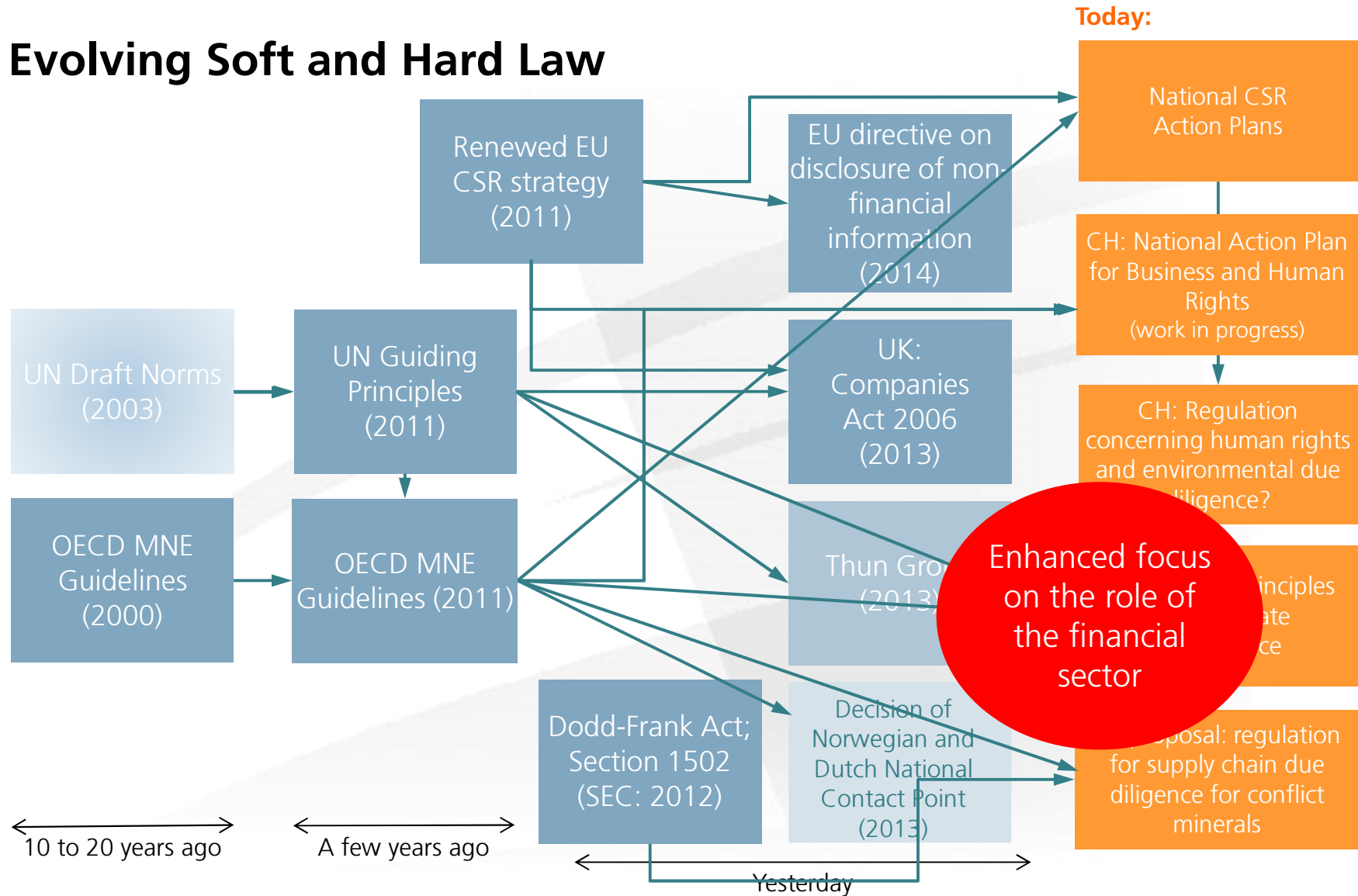
Evolving Soft and Hard Law



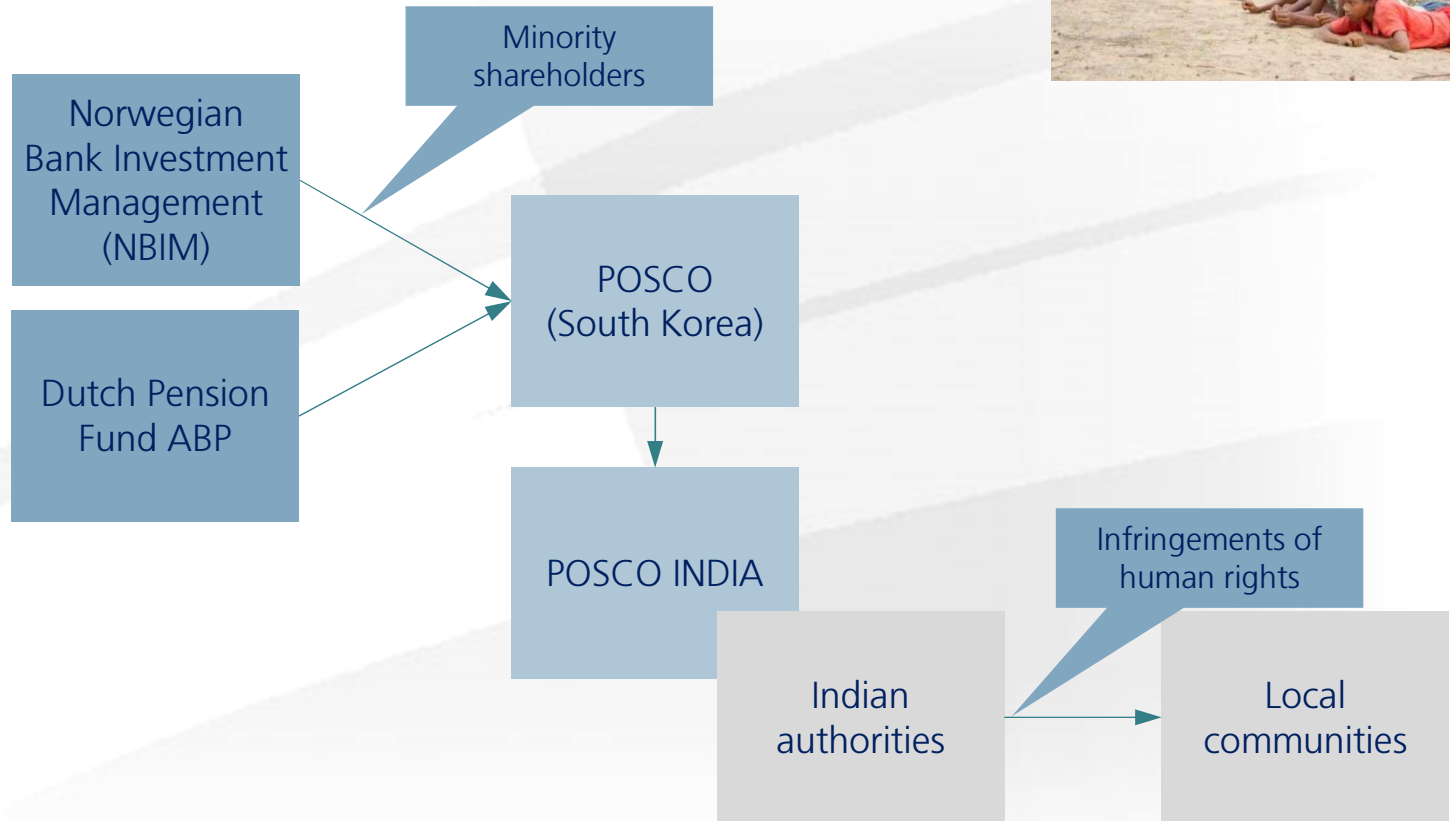
Evolving Soft and Hard Law



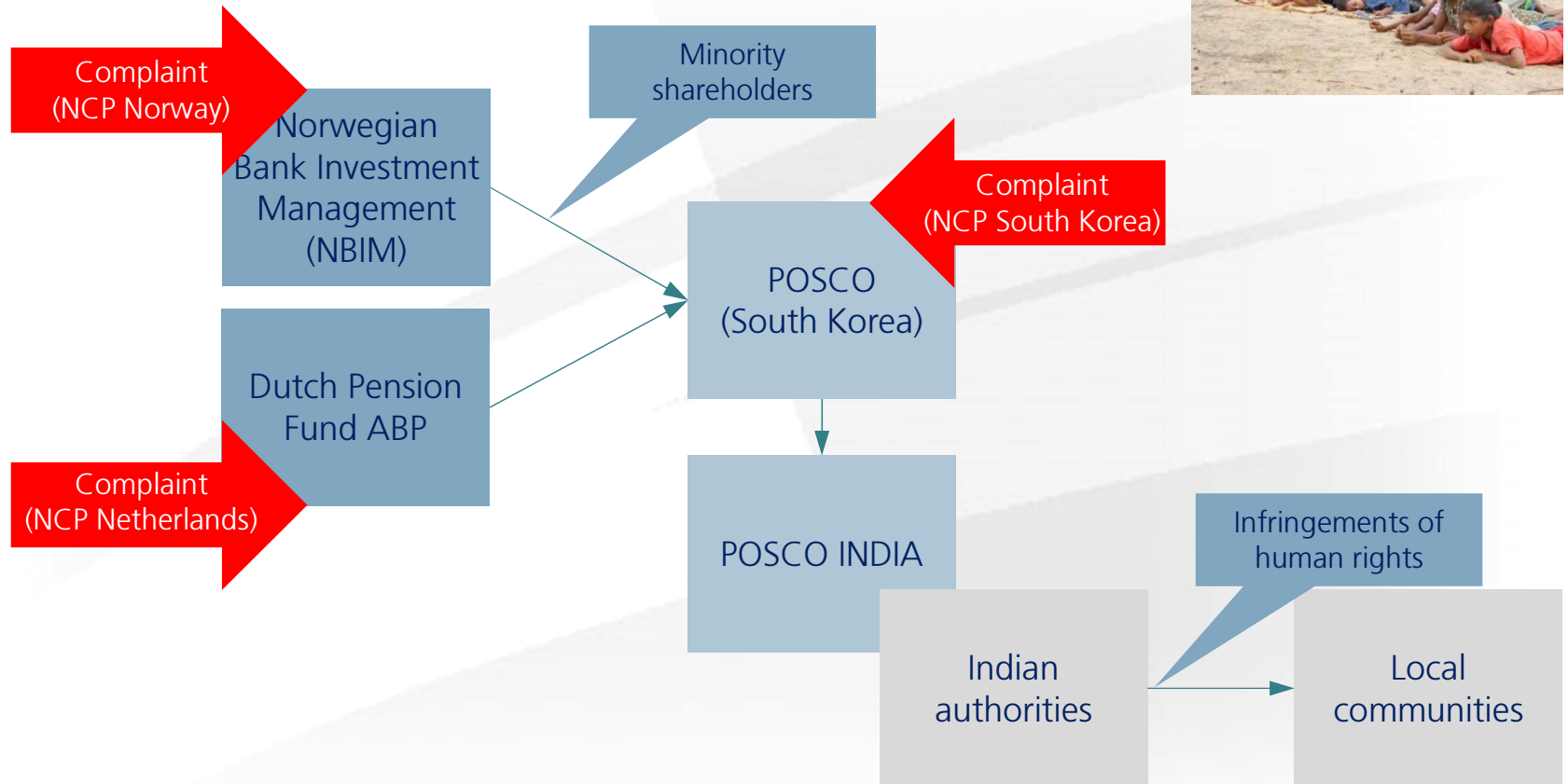
Evolving Soft and Hard Law



POSCO Case



POSCO Case



POSCO Case

- Final statements of the Dutch and the Norwegian NCPs:
The OECD MNE Guidelines...
 - ... apply to **all sectors**, incl. the financial sector.
 - ... apply to **minority shareholders**.

- Expert letters issued upon request by the OECD confirmed that:
 - **Minority ownership creates direct linkage** to human rights impacts;
 - **Lack of leverage** does not affect the **responsibility to carry out due diligence** and/or to mitigate adverse impacts.





Government.no

Responsible investments

Government Pension Fund

Ministry of Finance

STANDARD SETTING

We aim to contribute to the development of market practices that will benefit the long-term interest of the fund. These include standards for corporate governance, sustainable business practices and the functioning of financial markets. Our principles and expectations build on internationally recognised standards. Research increases understanding of factors that can affect future returns.

OWNERSHIP

We are an active owner and use our voting rights to safeguard the fund's investments. This includes voting to promote sustainable development and good corporate governance. As a large, long-term investor, we engage directly with companies' board and management.

RISK MANAGEMENT

We monitor and analyse risks relating to environmental, social and governance issues. Risk assessments may lead to adjustments to the portfolio. We follow up selected issues across companies in the portfolio and emphasise the development of high-quality data.

Investment Policy Guidelines

Investment Policy Guidelines of the Swiss National Bank (SNB)

3.2 Equities

Shares in listed companies from advanced and emerging economies that feature in the leading share indices are eligible.

The SNB does not pursue any strategic interests in its equity investments and as a general rule does not engage in any stock selection. Shares are managed passively by replicating a combination of different indices. Investments in shares of medium and large-cap banks and quasi-bank institutions are generally avoided in order to exclude possible conflicts of interest. The SNB also avoids shares in companies which produce internationally banned weapons, seriously violate fundamental human rights or systematically cause severe environmental damage.



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Controversial Activities: Where UBS will not do business

UBS will not knowingly provide financial or advisory services to corporate clients whose primary business activity, or where the proposed transaction, is associated with severe environmental or social damage to or through use of:



endangered species of wild flora and fauna listed in Appendix 1 of the [Convention on International Trade in Endangered Species \(CITES\)](#)



world heritage sites as classified by the [United Nations Educational, Scientific and Cultural Organization \(UNESCO\)](#)



high-conservation-value forests as defined by the six categories of the [Forest Stewardship Council \(FSC\)](#)



child labor as defined by the [International Labor Organization's Conventions 138 \(minimum age\) and 182 \(worst forms\)](#)



uncontrolled and / or illegal use of fire for land clearance



forced labor as defined by the [International Labor Organization's Convention 29](#)



illegal logging, including the purchase of illegally harvested timber (logs or roundwood)



indigenous peoples' rights as defined by the [International Finance Corporation's Performance Standard 7](#)



wetlands on the [Ramsar](#) List of Wetlands of International Importance

Conclusions and Outlook

- Financial institutions are facing **unprecedented change in their regulatory environment**.
- Some of these require financial institutions to:
 - conduct **environmental and human rights due diligence**;
 - take **material ESG risks** into account;
 - meet **new disclosure requirements**.
- The growing materiality of ESG risks will only **increase public expectations of banks** in addressing these risks.
- Meanwhile, **greater transparency** makes it easier to compare a financial institution's business practices. These practices are shaped by new and stricter minimum requirements and by the business practices of sector leaders.
- Financial institutions that ignore these risks and the evolving regulatory environment take a **significant risk**.