

Enact[®]

Remedy

FIBS event

12.1.2023



**“True peace is not
merely the absence of
war, it is the presence
of justice,”**

- Jane Addams, the second woman to win the Nobel Peace Prize, 1931.

What is remedy?

Put simply

*When someone is harmed,
that someone needs to have resolution.*

What would it mean for you?

FAQ

- Beyond compensation, what can remedy be?
- What is the difference between a hotline/ whistleblowing, and a grievance mechanism?
- If we pay out once, won't there be a risk that we will forever be seen as an open wallet for stakeholders?

What is remedy?

Remediation/remedy is;

The **process** of providing remedy for a negative human rights impact

The **substantive outcomes** that can counteract, or make good, the negative impact.

Such as:

- apologies,
- restitution,
- rehabilitation,
- financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the
- prevention of harm through, for example, injunctions or guarantees of non-repetition.

Interpretative Guide, OHCHR

https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf

**How does remedy relate
to due diligence?**

UNGP 11:

Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

Standard of expected business conduct

A company should *know* and *show* that it respects human rights.

- **Know** – have systems in place to find issues and address the impacts
- **Show** – be transparent to stakeholders



Policy



Grievance and Remediation



Human Rights Due Diligence

Human Rights Due Diligence is like any risk management process

With two differences:

- HRDD is a risk assessment process that focuses on **risks to people** instead of risks to the business.
- HRDD is a risk management process where **consultation with stakeholders** is an intrinsic part of the risk management.

OECD Guidelines for Multinational Enterprises

Fully aligned with the UNGPs

IV. Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. **Respect human rights**, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

2. Within the context of their own activities, **avoid causing or contributing** to adverse human rights impacts and address such impacts when they occur.

3. Seek ways to prevent or mitigate adverse human rights impacts that are directly **linked to their business operations**, products or services by a business relationship, even if they do not contribute to those impacts.

4. Have a policy commitment to respect human rights.

5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

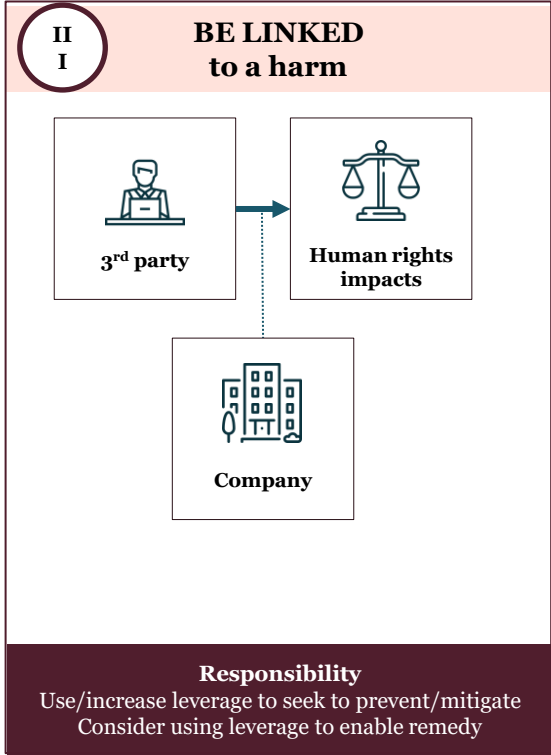
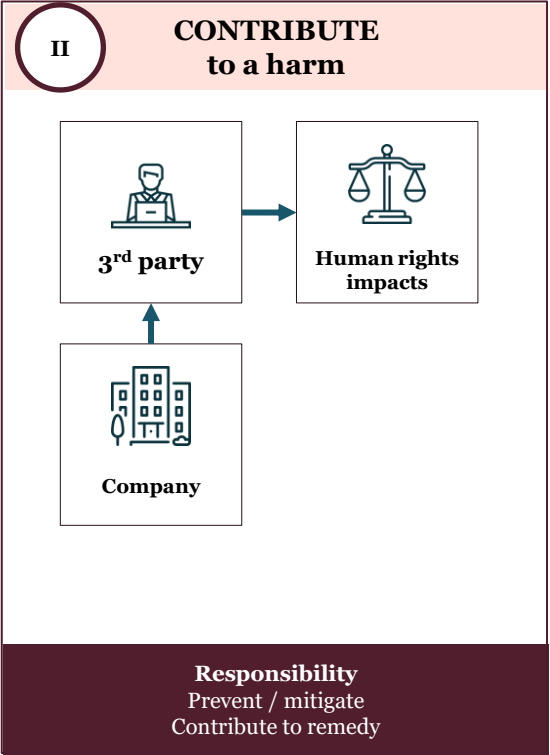
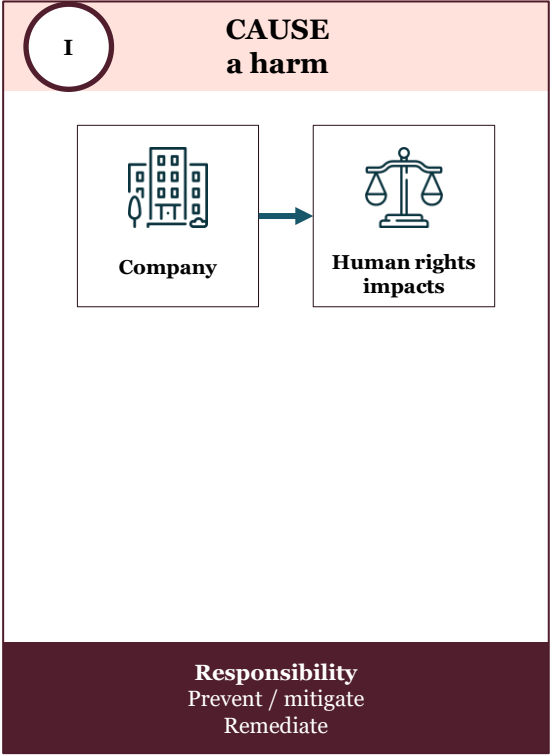
*Commentaries 36-46
elaborate on details*



Aktuell Hållbarhet

Utbildning

Responsibility to respect human rights extends throughout the value chain



Extent of responsibility

	Prevent / Avoid	Cease	Mitigate	Remediate	Use Leverage
Cause	x	x	x	x	
Contribute	x	x	x	x	x
Linked to	x		x		x

**What do the intl
standards actually say?**

UNGP 22

When harm, provide remedy

Remediation 22.

Where business enterprises identify that they have **caused or contributed** to adverse impacts, they should **provide for or cooperate** in their remediation through legitimate processes.

Commentary

Even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent. Where a business enterprise identifies such a situation, whether through its human rights due diligence process or other means, its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors. Operational-level grievance mechanisms for those potentially impacted by the business enterprise's activities can be one effective means of enabling remediation when they meet certain core criteria, as set out in Principle 31. Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, 25 products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so. Some situations, in particular where crimes are alleged, typically will require cooperation with judicial mechanisms. Further guidance on mechanisms through which remediation may be sought, including where allegations of adverse human rights impacts are contested, is included in chapter III on access to remedy.

UNGP 29 and 30

Grievance mechanism

29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should **establish or participate in effective operational-level grievance mechanisms** for individuals and communities who may be adversely impacted.

30. **Industry, multi-stakeholder and other collaborative initiatives** that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

UNGP 31

Quality of a Grievance Mechanism

Effectiveness criteria for non-judicial grievance mechanisms

31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

- (a) **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Corporate Human Rights Benchmark - examples of indicators

C.1 Grievance mechanism(s) for workers

C.2 Grievance mechanism(s) for external individuals and communities

C.3 Users are involved in the design and performance of the mechanism(s)

C.4 Procedures related to the grievance mechanism(s) are equitable, publicly available and explained

C.5 Prohibition of retaliation for raising complaints or concerns

C.6 Company involvement with state-based judicial and nonjudicial grievance mechanisms

C.7 Remediating adverse impacts

C.8 Communication on the effectiveness of grievance mechanism(s) and incorporating lessons learned

Evaluation of

- Design
- Revising
- Assessing

... a GM.

CHRB – examples of indicator C.7 - remedy

https://assets.worldbenchmarkalliance.org/app/uploads/2021/12/CHRB-Methodology_291121_Apparel_FINAL.pdf

Measurement theme C: Remedies and grievance mechanisms (20%)

C.7 Remedying adverse impacts

The company provides for or cooperates in remediation to victims where it has identified that it has caused or contributed to adverse human rights impacts (or others have brought such information to the company's attention, such as through its grievance mechanism(s)). It also incorporates changes to systems, processes (e.g., human rights due diligence processes) and practices to prevent similar adverse impacts in the future.

Score 1

For adverse human rights impacts which it has caused or to which it has contributed, the **company describes the approach it took to provide or enable a timely remedy for victims** OR if no adverse impacts have been identified then the company describes the **approach it would take to provide** or enable timely remedy for victims.

Score 2

For adverse human rights impacts which it has caused or to which it has contributed, the company also describes **changes to systems, processes and practices to prevent similar adverse impacts in the future** AND the company describes its approach to **monitoring implementation** of the agreed remedy OR if no adverse impacts have been identified then the company describes the approach it would take to review and change systems, processes or practices to prevent similar adverse impacts in the future.

**So what is remedy,
actually?**

Interpretative Guide on the UNGPs

Remediation/remedy is;

The **process** of providing remedy for a negative human rights impact

The **substantive outcomes** that can counteract, or make good, the negative impact.

Such as:

- apologies,
- restitution,
- rehabilitation,
- financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the
- prevention of harm through, for example, injunctions or guarantees of non-repetition.

The view of the affected stakeholder

Interpretative Guide, OHCHR

https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf

UN Working Group report on remedy 2017 A/72/162

Right to effective remedy

Bouquet of remedies

All roads to remedy

1. Restitution
2. Compensation
3. Rehabilitation
4. Satisfaction
5. Guarantees of non-repetition
6. Other preventive remedies

The view of the affected stakeholder

In practice – what can it be?

Short, medium, long term

- Restitution to situation before harm
- Apology
- Provisions to ensure that the harm cannot recur
- Financial compensation
- Work compensation (new job)
- Other compensation
- Support for livelihood, housing, basic needs
- Ending a harmful activity
- Ending a business relationship
- Other forms of remedy agreed by the parties

The view of the affected stakeholder

Let's take a look

Example:

Adidas

Process

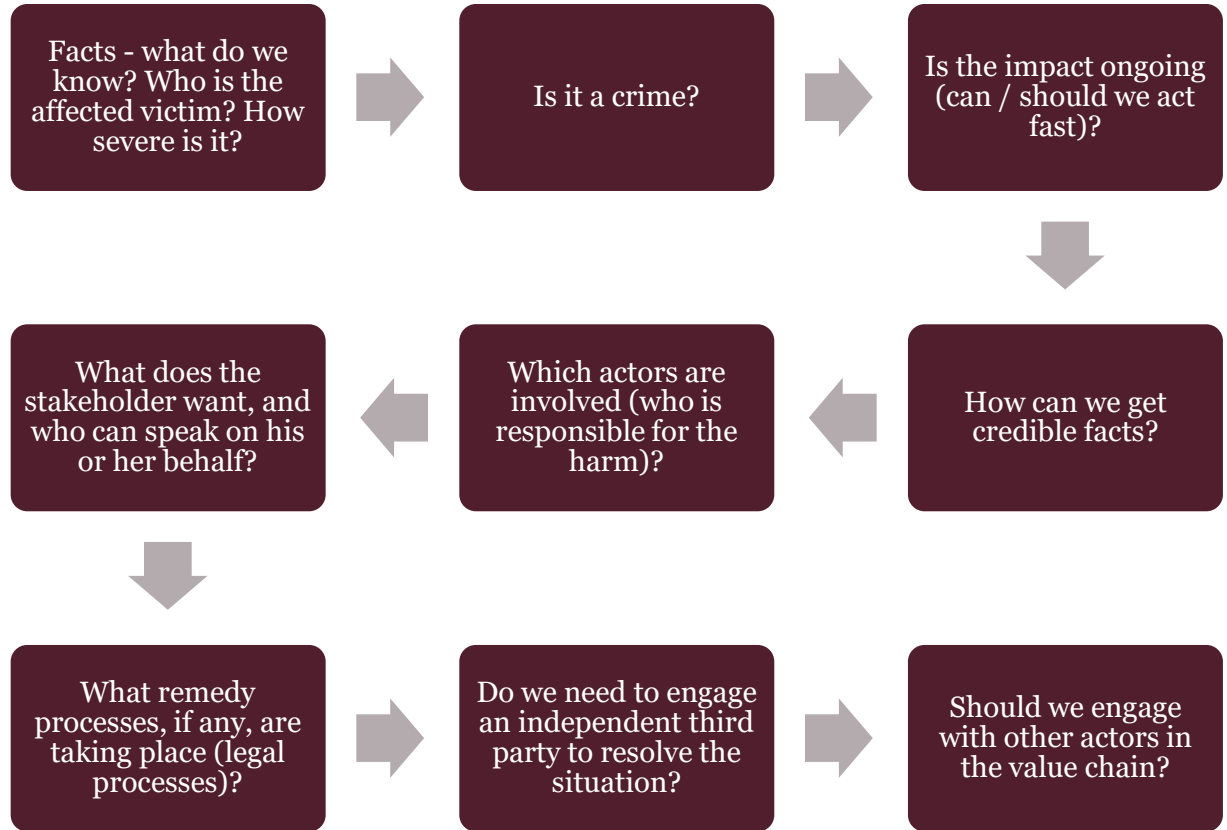
[https://www.adidas-group.com/media/filer_public/49/b3/49b3e456-5a3d-4439-a3cb-c37fe4c9e2fo/summary of third party complaint process adidasgroup march 2017.pdf](https://www.adidas-group.com/media/filer_public/49/b3/49b3e456-5a3d-4439-a3cb-c37fe4c9e2fo/summary_of_third_party_complaint_process_adidasgroup_march_2017.pdf)

Cases and resolution

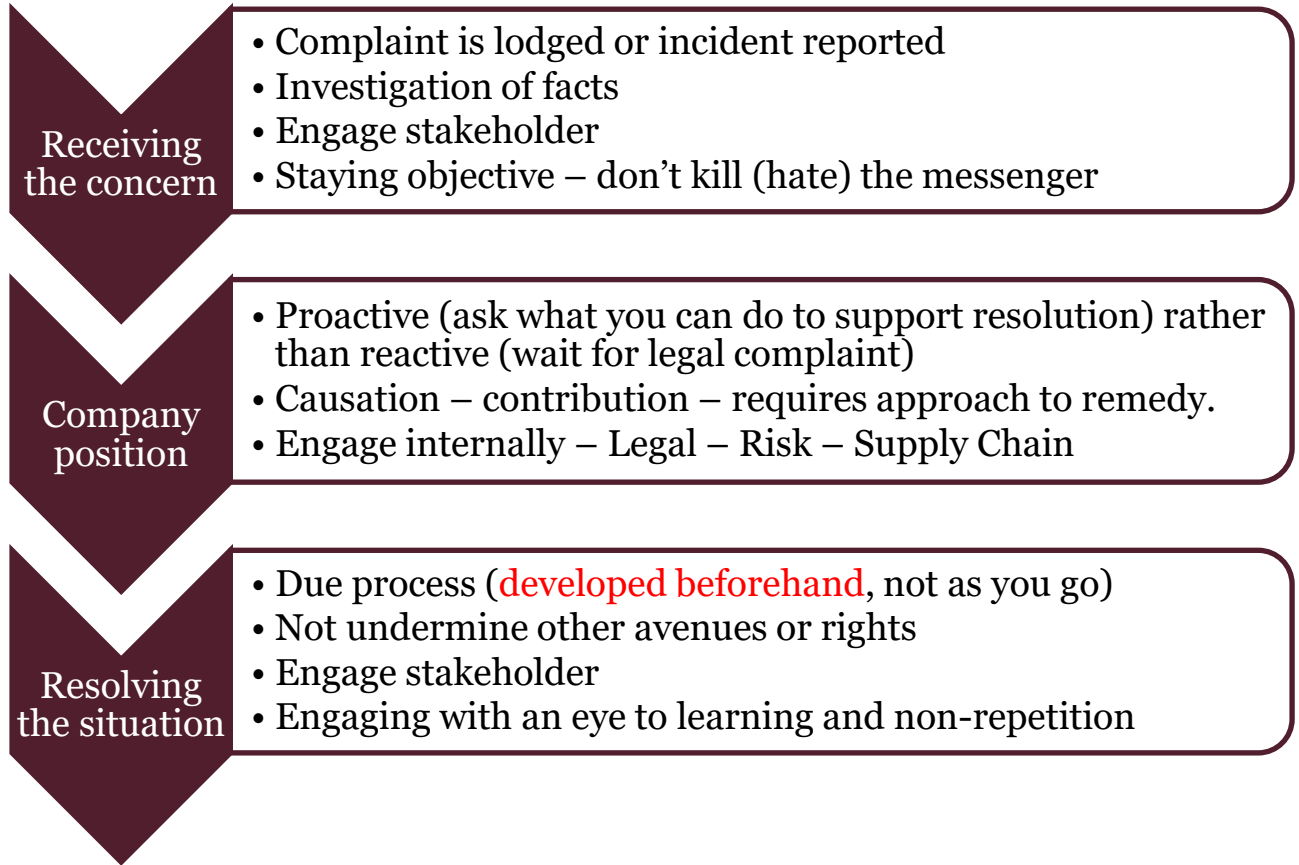
[https://www.adidas-group.com/media/filer_public/a1/db/a1db897b-4a50-4b6f-8b1d-e37a78a6a9b8/summary of human rights complaints handled by adidas group in 2016.pdf](https://www.adidas-group.com/media/filer_public/a1/db/a1db897b-4a50-4b6f-8b1d-e37a78a6a9b8/summary_of_human_rights_complaints_handled_by_adidas_group_in_2016.pdf)

Applying a human rights lens to resolving a complaint or grievance

A complaint might actually be a grievance



Resolving a claim



What is remedy?

Remediation/remedy

Remediation and remedy refer to both the processes of providing remedy for an adverse human rights impact and the substantive outcomes that can counteract, or make good, the adverse impact. These outcomes may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

What next?

6 questions for you to ponder to consider how you may advance your work

1. How can stakeholders lodge a complaint, today?
2. Do we have a grievance mechanism with the union?
3. Where do we receive incident reports or information that might be “hiding” a grievance (e.g. stakeholders do not have a voice to file one)?
4. Who might want to lodge a grievance about our business, and how do they access information? How might we reach out to them to understand more?
5. What concerns might they want to raise (include extended supply chain)? And how do that relate to our salient issues / high human rights risks?
6. Is there something we can do to improve access to lodge grievances on short notice (what or who may complain to our whistleblowing / hotline)?

Korjaavat toimenpiteet

Types of remedies

- Anteeksiopynnöt (apologies)
- Palautukset (restitution)
- Kunnostus (rehabilitation)
- Taloudelliset korvaukset (financial compensation)
- Rangaistuksenluontoiset seuraamukset: rikosoikeudelliset tai hallinnolliset, kuten esimerkiksi sakot. (Punitive sanctions, whether criminal or administrative, such as fines.)
- Haitan toteutumisen estäminen (prevention of harm through, f.ex. guarantees of non-repetition)

- changing hospital procedures to better protect patients
- providing psychological support for someone suffering from post-traumatic stress
- the truth-telling
- oral and written apology for the wrong done
- acknowledgement of a grave
- provision of residence permits
- reinstatement in public service employment
- assistance with finding jobs
- provision of housing
- Truth and Reconciliation Commissions

**“Nothing is settled
permanently that is not
settled right.”**

– Anonymous proverb

Integration into EU legislation

Corporate Sustainability Reporting Directive

European Sustainability Reporting Standards

Ex Social 1 Own workforce

Disclosure Requirement S1-3 –

Processes to remediate negative impacts and channels for own workers to raise concerns

31. The undertaking shall describe the processes it has in place to provide for or cooperate in the remediation of negative impacts on own workers that the undertaking has identified it has caused or contributed to, as well as channels available to own workers to raise concerns and have them addressed.

32. The objective of this Disclosure Requirement is to enable an understanding of the formal means by which own workers can make their concerns and needs known directly to the undertaking and/or through which the undertaking supports the availability of such channels (for example, grievance mechanisms) in the workplace of own workers, and how follow up is performed with these workers regarding the issues raised and the effectiveness of these channels.

Corporate Sustainability Reporting Directive

European Sustainability Reporting Standards Ex Social 1 Own workforce

Disclosure Requirement S1-3 –

Processes to remediate negative impacts and channels for own workers to raise concerns

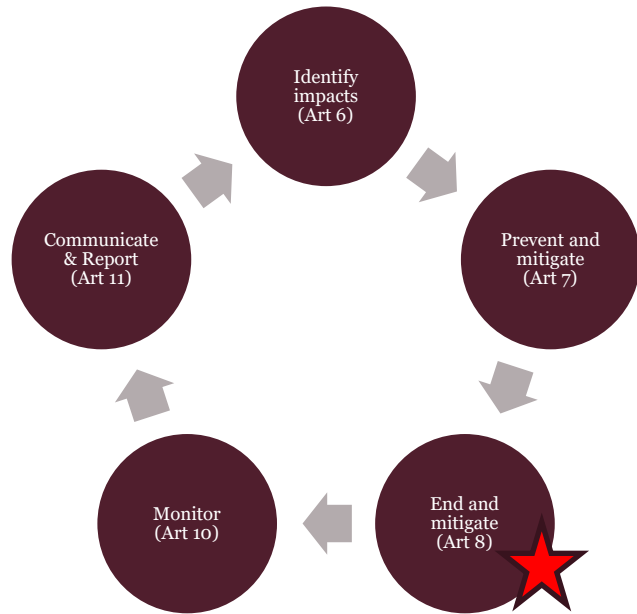
33. The undertaking shall describe the processes in place to cover the matters defined within paragraph 2 of the Objective section by disclosing the following information:

- (a) its **general approach to and processes for providing or contributing to remedy** where it has identified that it has caused or contributed to a material negative impact on own workers, including whether and how the undertaking assesses that remedy provided is effective;
- (b) any **specific channels** it has in place for own workers to raise their concerns or needs directly with the undertaking and have them addressed, including whether these are established by the undertaking itself and/or through participation in third-party mechanisms;
- (c) the **lack of grievance/complaints handling mechanisms** related to employee matters;
- (d) its processes through which the undertaking supports or requires the availability of such channels through the workplace of own workers; and how it tracks **and monitors issues raised and addressed**, and, how it ensures the **effectiveness** of the channels, including through the involvement of stakeholders who are intended users.

34. The undertaking shall disclose whether and how it assesses that **own workers are aware of, and trust**, these structures or processes as a way to raise their concerns or needs and have them addressed. In addition, the undertaking shall disclose whether the undertaking has policies in place regarding the protection of individuals that use them, including workers' representatives, against retaliation.

35. If the undertaking cannot disclose the above required information because it **has not adopted** a channel for raising concerns and/or does not support the availability of mechanism in the workplace for own workers, it shall disclose this to be the case. It may disclose a timeframe in which it aims to have such a channel to be in place.

ARTICLE 8



Bringing actual adverse impacts to an end

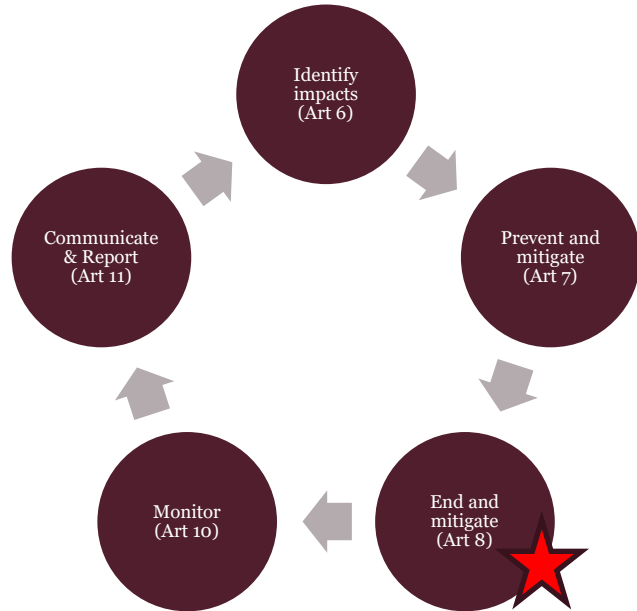
Member States shall ensure that companies take appropriate measures to bring actual adverse impacts that have been, or should have been, identified pursuant to Article 6 to an end, in accordance with paragraphs 2 to 6 of this Article.

2. Where the adverse impact cannot be brought to an end, Member States shall ensure that companies minimise the extent of such an impact.

3. Companies shall be required to take the following actions, where relevant:

(a) neutralise the adverse impact or minimise its extent, including by the **payment of damages** to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the contribution of the company's conduct to the adverse impact;

ARTICLE 8



Bringing actual adverse impacts to an end

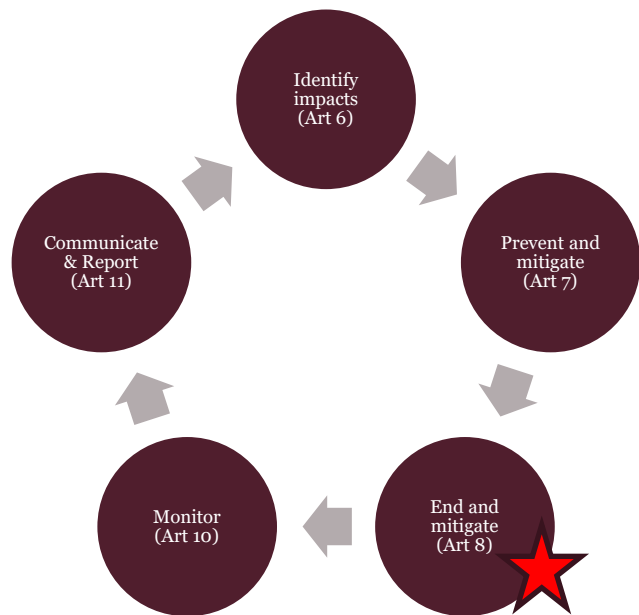
(continues)

(b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, develop and implement a **corrective action plan** with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. Where relevant, the corrective action plan shall be developed in consultation with stakeholders;

(c) seek **contractual assurances** from a direct partner with whom it has an established business relationship that it will ensure compliance with the code of conduct and, as necessary, a corrective action plan, including by seeking corresponding contractual assurances from its partners, to the extent that they are part of the value chain (contractual cascading). When such contractual assurances are obtained, paragraph 5 shall apply.

(d) make **necessary investments**, such as into management or production processes and infrastructures to comply with paragraphs 1, 2 and 3;

ARTICLE 8



Bringing actual adverse impacts to an end

Member States shall ensure that companies take appropriate measures to bring actual adverse impacts that have been, or should have been, identified pursuant to Article 6 to an end, in accordance with paragraphs 2 to 6 of this Article.

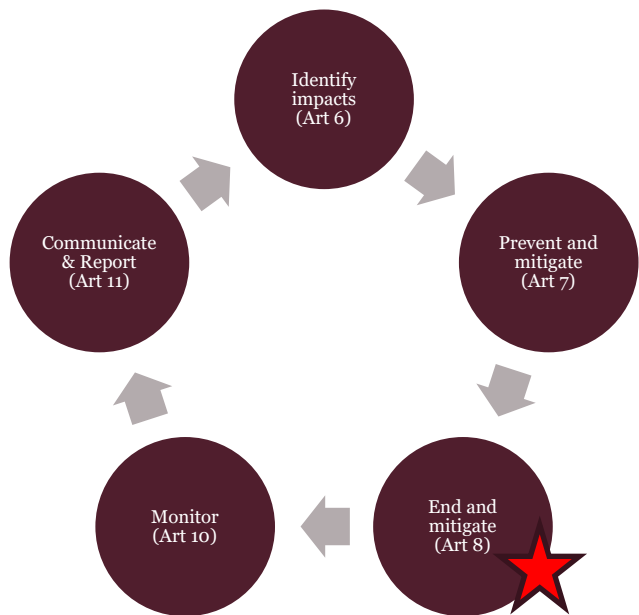
2. Where the adverse impact cannot be brought to an end, Member States shall ensure that companies minimise the extent of such an impact.

3. Companies shall be required to take the following actions, where relevant:

(a) neutralise the adverse impact or minimise its extent, including by the **payment of damages** to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the contribution of the company's conduct to the adverse impact;

(b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, develop and implement a **corrective action plan** with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. Where relevant, the corrective action plan shall be developed in consultation with stakeholders;

ARTICLE 8



Bringing actual adverse impacts to an end

(continues)

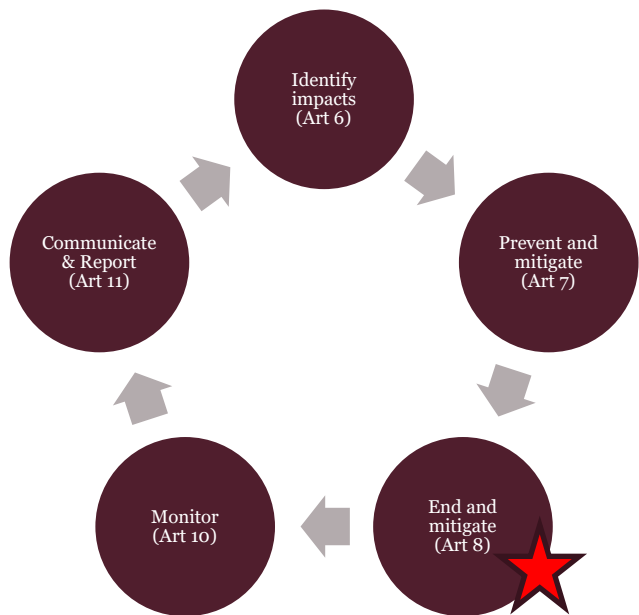
(e) provide targeted and proportionate **support for an SME** with which the company has an established business relationship, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME;

(f) in compliance with Union law including competition law, **collaborate** with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end, in particular where no other action is suitable or effective.

4. As regards actual adverse impacts that could not be brought to an end or adequately mitigated by the measures in paragraph 3, the company may **seek to conclude a contract** with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company's code of conduct or a corrective action plan. When such a contract is concluded, paragraph 5 shall apply.

5. The contractual assurances or the contract shall be accompanied by the appropriate measures to **verify compliance**. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification. When contractual assurances are obtained from one or

ARTICLE 8



Bringing actual adverse impacts to an end

(continues)

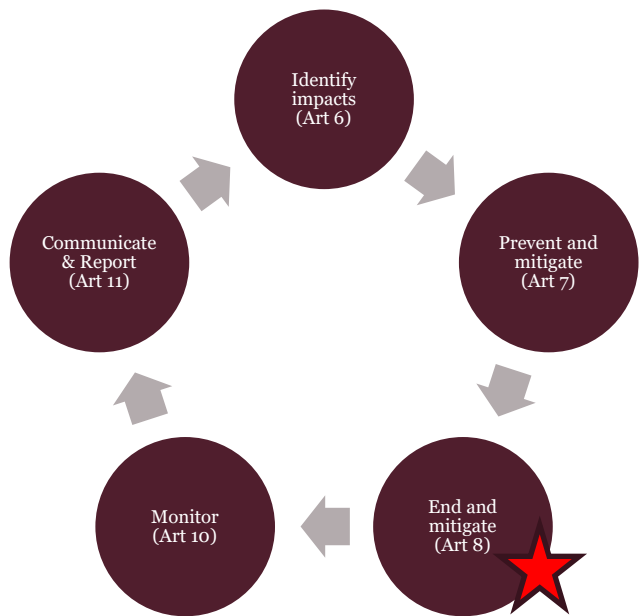
(e) provide targeted and proportionate **support for an SME** with which the company has an established business relationship, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME;

(f) in compliance with Union law including competition law, **collaborate** with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end, in particular where no other action is suitable or effective.

4. As regards actual adverse impacts that could not be brought to an end or adequately mitigated by the measures in paragraph 3, the company may **seek to conclude a contract** with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company's code of conduct or a corrective action plan. When such a contract is concluded, paragraph 5 shall apply.

5. The contractual assurances or the contract shall be accompanied by the appropriate measures to **verify compliance**. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification. When contractual assurances are obtained from one or

ARTICLE 8



Bringing actual adverse impacts to an end

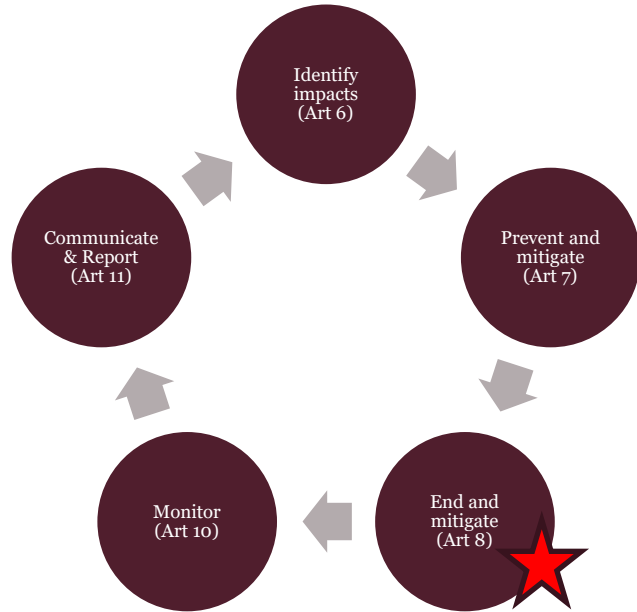
(continues)

(e) provide targeted and proportionate **support for an SME** with which the company has an established business relationship, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME;

(f) in compliance with Union law including competition law, **collaborate** with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end, in particular where no other action is suitable or effective.

4. As regards actual adverse impacts that could not be brought to an end or adequately mitigated by the measures in paragraph 3, the company may **seek to conclude a contract** with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company's code of conduct or a corrective action plan. When such a contract is concluded, paragraph 5 shall apply.

ARTICLE 8



Bringing actual adverse impacts to an end

(continues)

5. The contractual assurances or the contract shall be accompanied by the appropriate measures to **verify compliance**. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification. (...)

6. As regards actual adverse impacts within the meaning of paragraph 1 that could not be brought to an end or the extent of which could not be minimised by the measures provided for in paragraphs 3, 4 and 5, the company shall **refrain from entering into new or extending existing relations with the partner** in connection to or in the value chain of which the impact has arisen and shall, where the law governing their relations so entitles them to, take one of the following actions: (a) temporarily suspend commercial relationships with the partner in question, while pursuing efforts to bring to an end or minimise the extent of the adverse impact, or (b) terminate the business relationship with respect to the activities concerned, if the adverse impact is considered severe. Member States shall provide for the availability of an option to terminate the business relationship in contracts governed by their laws. (...)

Enact[®]

Thanks for today!

Enact Sustainable
Strategies Group AB
www.enact.se

Vasagatan 7
S-111 20 Stockholm, Sweden
Tel. +46 8 522 03 450

Kyrkogatan 3
70210 Örebro, Sweden
Tel. +46 8 522 03 450

UMA, Lautatarhankatu 10,
00580 Helsinki, Finland
Tel. +358 400 011 211

James Wattstraat 100, 8th floor
1097 DM Amsterdam, The Netherlands

No. 181, Sichuan Middle Road,
Shanghai, 200002, China
Tel. +86 1381-637-0747