



International Implications of the EU Corporate Sustainability Due Diligence Directive

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1. Towards the directive

- Context
- Rationale
- Timeline



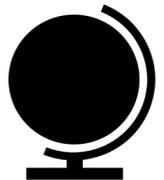
2. Contents

- Who?
- What?
- How?



3. Implications beyond the EU

- Exporting EU values?
- Brussels effect
- Business and human rights treaty



1. Towards the directive

What is due diligence legislation?



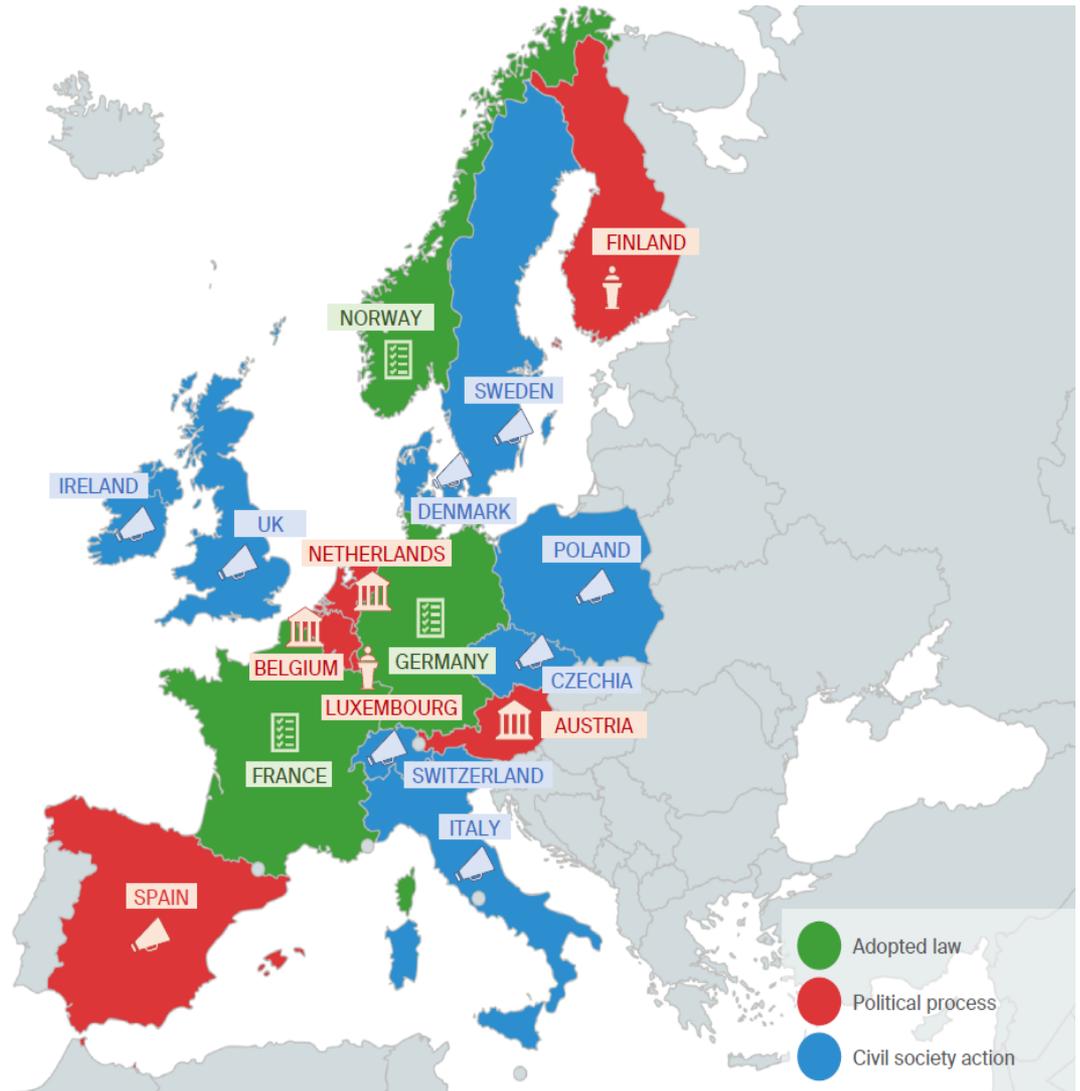
Inspired by
2011 UN
Guiding
Principles

Legislation that requires large companies to identify and address their negative human rights and environmental impacts

Due diligence legislation in Europe

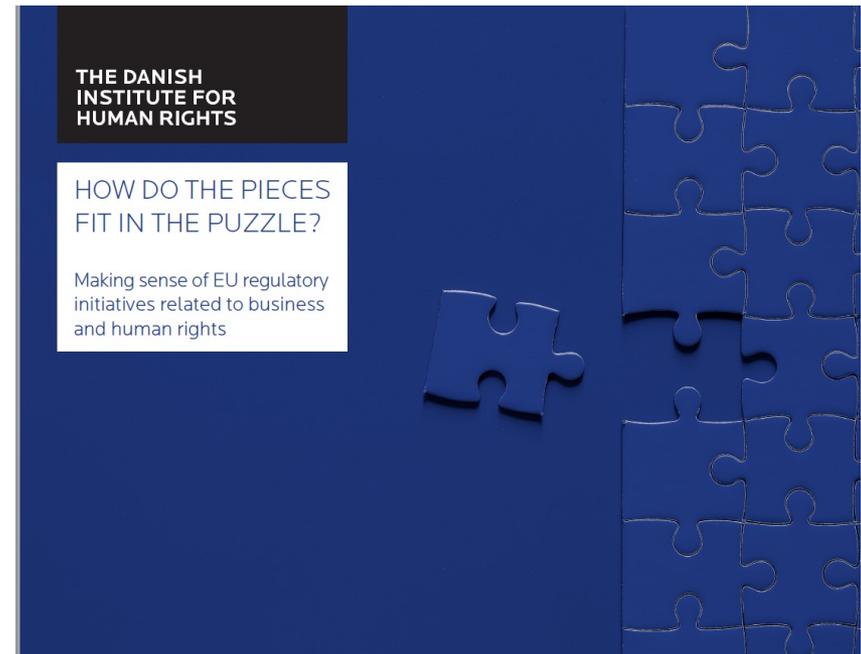


- FRANCE** Law on the duty of vigilance of parent and outsourcing companies
- GERMANY** Law on the corporate duty of care in supply chains
- NETHERLANDS** Law on child labour due diligence
- NORWAY** Law on business transparency and human rights and decent working conditions
- AUSTRIA** Parliamentary proposal for a supply chain law
- BELGIUM** Parliamentary proposal on the corporate duty of vigilance and care in value chains
- FINLAND** Government commitment to due diligence legislation
- LUXEMBOURG** Government commitment to due diligence legislation
- NETHERLANDS** Government commitment to due diligence legislation
Parliamentary proposal on responsible and sustainable international business conduct
- SPAIN** Government's Annual Regulatory Plan includes a legislative initiative on due diligence



Context: one of many EU initiatives

- Many EU regulatory initiatives connected to Business, human rights and the environment
- E.g. Import control measures (forced labour, deforestation, etc.), reporting, taxonomy, etc.



Rationale: harmonizing!

“The fragmented landscape of regulatory measures governing responsible management of supply chains and due diligence has led to a need for further harmonisation efforts at EU level” (Agenda for Action, Finnish Presidency of the EU, 2019)



Corporate Sustainability Due Diligence Directive (CSDDD) timeline

Feb 22
Commission proposal

Dec 22
Council general approach

June 23
Parliament position

June-Dec 23
Trilogue

March 24
Adoption by Council

April 24
Adoption by Parliament

24-26
Transposition

26 - onwards
Implementation

We are here!

2. Contents: Who? What? How?

CSDDD key elements: who does what & how?

Which companies?

- Large EU + non-EU companies (>€450m turnover in the EU)

Value chain scope

- Own operations and subsidiaries'
- + of its business partners in its "chain of activities" = upstream + some downstream

Material scope

- Adverse environmental impact (list of relevant provisions of certain conventions in Annex – **NO** Paris Agreement – different provision (Art 15) on climate)
- Adverse human rights impact- list of rights + list of conventions

- | | |
|--------------------|---|
| Obligations | <ul style="list-style-type: none">• Article 4 - Identify, prevent, mitigate, bring to an end adverse human rights + environmental impacts arising from own operations, subsidiaries and business partner in chain of activities |
| Compliance | <ul style="list-style-type: none">• National supervisory authorities• Investigation + sanctions |
| Liability | <ul style="list-style-type: none">• Liability arises from: (1) negligent or intentional failure to comply with obligation the prevent/end harm; AND (2) causation between failure and damage |

3. Implications beyond the EU

1. Exporting EU values?

2. Brussels effect

3. Business and human rights treaty

1. Exporting EU values?

- **Extraterritorial reach:** applies to large foreign companies + will impact smaller companies in larger companies' chain of activities.
- = example of a "measure with extraterritorial implications" (Ruggie's mandate)
- History of + literature on such measures in the United States: anti-communist legislation (1970s), anti-apartheid legislation (1980s), and business and human rights legislation (Massachusetts, re. Myanmar 1990s).



EU values

- Para 1 preamble: **EU values** and the **universality of human rights** “should guide the Union’s action on the international scene”, which includes “**fostering the sustainable economic, social and environmental development of developing countries.**”
- **Clear goals**: ensuring rights protection and economic development **in third countries.**



Key issues with CSDDD's extraterritorial reach

- **Debatable efficacy** of such legislation (see Bartley, *Rules without Rights*, OUP, 2018)
- **Compliance will be a challenge:** risk of *managerialization of law*: Monciardini et al, 2019, *Business and Society*).
- **Narrative of moralization** among directive supporters (see Thorens et al, forthcoming 2024) but some have characterized due diligence laws as **neo-colonial** (see next slide)
- Chinese Chamber of Commerce: the CSDDD will create “too much bureaucracy”

Critical/TWAIL perspectives on due diligence legislation

Business
Human
Rights
Journal

Business and Human Rights Journal (2023), 8, 18–42
doi:10.1017/bhj.2023.6

SCHOLARLY ARTICLE

Decentring Narratives around Business and Human Rights Instruments: An Example of the French *Devoir de Vigilance* Law

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Abstract

There has been tremendous momentum in adoption of business and human rights regulations, specifically national legislation that mandate human rights due diligence. While these laws have been heralded as the torchbearers of progress, this article approaches national legislation on business and human rights by placing them in context of a North–South divide through a Third World Approaches to International Law (TWAIL) lens. It looks at the form of regulation of transnational corporations (national/international) – not the substance – and illustrates the neo-colonial flavour of these laws by diving into the narrative behind the adoption of the French *devoir de vigilance* law. It illustrates that the French law can also be read as an attempt to universalise European values while reinforcing power hierarchies. The claim of this article is that national legislation cannot be a substitute for a treaty but only a path towards one, because national legislation structurally lacks means to take the Global South participation seriously.



Regulation & Governance (2023)

doi:10.1111/rego.12538

An integrated approach to corporate due diligence from a human rights, environmental, and TWAIL perspective

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Abstract

Ten years since the adoption of the UN Guiding Principles on Business and Human Rights, we have witnessed an increasing trend in Europe toward the adoption of mandatory human rights and environmental due diligence. Focusing on due diligence legislation from France, Germany, Norway, and the EU, this article examines the extent to which these laws are laying the foundations for the articulation of an integrated, comprehensive, and robust framework that effectively fosters corporate accountability through preventing, addressing, and remedying corporate-related human rights and environmental harms. In this examination, we draw on international human rights and environmental standards and Third World Approaches to International Law, to identify the lessons learned from current approaches and that ought to be considered in future frameworks.

(Laws) Made in the ‘First World’: A TWAIL Critique of the Use of Domestic Legislation to Extraterritorially Regulate Global Value Chains

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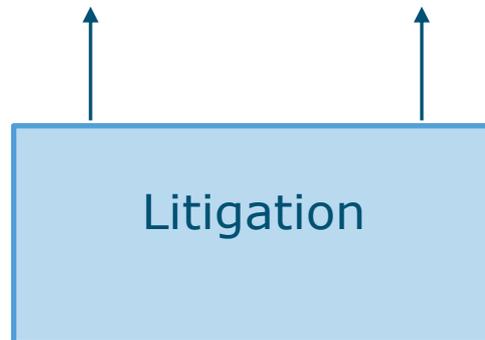
Abstract

In the last ten or so years a ‘new kid on the block’ has arrived on the Business and Human Rights scene; that is, the use of domestic legislation to regulate the Global Value Chains (GVCs) of Transnational Corporations (TNCs). The intention behind these so called ‘supply chain laws’ is to (begin to) hold TNCs accountable for violations of human rights and environmental norms within the context of their operations. This need for national legislation can be partly attributed to the fact that the international level has been plagued with paralysis in attempting to come up with binding rules to regulate the behaviour of

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1. Exporting EU values?
- 2. Brussels effect**
3. Business and human rights treaty

Brussels effect : timeline



“Brussels effect”

Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP, 2020).

De facto

- Changes in policies + practices of companies to keep + further develop business relationships with companies in directive scope
- Changes can be required by contracts
- Documented in other areas e.g. health and safety

De jure

- Third countries to adopt legislation in response to CSDDD to level the playing field between exporting companies and companies who operate domestically.
- E.g. Chambers & Birchall, “How European Human Rights Law will Reshape US Business” (2024), *Hastings Business Law Journal*

1. Exporting EU values?
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Business and human rights treaty

- Adoption of CSDDD = possible to turn parts of soft law instruments (UNGPs) into binding legislation, even if compromises are needed
- Future changes in the EU's (lack of) engagement in the treaty negotiation?
- Complementarity between the CSDDD and the treaty



Bernaz et al., "The UN Legally Binding Instrument and the EU Proposal for a Corporate Sustainability Due Diligence Directive: Competences, Comparison and Complementarity", Friends of the Earth Report (2022).

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Business, Human Rights and the Environment: The Evolving Agenda

Chiara Macchi

Foreword by Prof. Olga Martin-Ortega

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