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The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls

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1. Introduction

Last year, the European Commission issued a proposal for a Corporate Sustainability Due Diligence Directive (CSDDD) aiming to improve corporate governance practices in order to deliver on an economy that works for people, including to improve the regulatory framework on sustainable corporate governance. If adopted, it will introduce several environmental and human rights due diligence duties applicable to companies and their directors along the entire value chain.

The proposed Directive is remarkable for its extraterritorial scope: the covered companies not only have to monitor their own impacts and those of their subsidiaries, but also impacts caused by entities that are part of their value chain and with which they have an established direct or indirect business relationship wherever those entities may be located or incorporated. Supporters see this wide geographic remit as a necessity to avoid the offshoring of unethical and unsustainable practices; critics question it as a "matter of principle", worrying about its legal and economic implications, its impact on developing countries, the repercussions of transferring authority (and accountability) from the state to corporations, as well as the potential for unintended consequences.

As this legislative proposal advances through the Trilogue process, the present report aims to inform the political discussion by surveying the relevant literature and evaluating the arguments presented for and against the broad scope envisioned under the proposed Directive.

2. The Proposed CSDDD: Rationale and Evolution

2.1. Context: Corporate Sustainability Due Diligence as Part of a Broader Trend

Corporate sustainability due diligence can be defined as a company's commitment to responsible conduct in the execution of its economic activities, regardless of their geographic occurrence.[1] This commitment entails the establishment of procedures that enable companies to identify, prevent, mitigate, and account for how they address both current and potential adverse impacts.[2] Within this framework, corporate supply chain due diligence encompasses a legal duty of care, which requires companies to monitor their global supply chains to prevent the occurrence of human rights violations and significant environmental harm and, when deemed necessary, implementing suitable measures to mitigate these risks. As a consequence, such actions can lead to the imposition of penalties on the companies and may give rise to compensation for the harm experienced by the affected parties.[3]

The mandatory requirement for multinational corporations to comply with human rights and environmental protection standards has evolved significantly and widely over the past two decades, taking on various forms at both the national and international levels. This evolution includes initiatives along a spectrum from voluntary to increasingly mandatory standards, namely: the United Nations

[1] It is worth recalling that the concept of due diligence has its roots in International public law where it provides for "an obligation of conduct on the part of a subject of law (Subjects of International Law)". See Timo Koivurova, Due Diligence, in *Max Planck Encyclopedia of Public International Law* (2010).

[2] OECD (2023), *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, chapter II – general policies, §11, https://doi.org/10.1787/81f92357-en.

[3] United Nations Guiding Principles on Business and Human Rights (2011), Implementing the United Nations "Protect, Respect and Remedy" Framework, New York and Geneva, 2011. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

and OECD due diligence standards[4]; the imposition of "due diligence processes in relation to slavery and human trafficking" on British companies as outlined in the Modern Slavery Act of 2015[5]; the establishment of the "Duty of Vigilance Act" (*Loi sur le devoir de vigilance*) under French law[6]; the 2019 Child labour due diligence law adopted by the Netherlands requiring enterprises to make sure no child labour occurs in their supply chains[7]; the adoption of a law on due diligence by Germany – the *Lieferkettensorgfaltspflichtengesetz* (LKSG) – in July 2021[8]; and the 2021 Norwegian Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions.

Several EU countries are increasingly embracing the implementation of mandatory human rights and environmental due diligence (mHREDD) as a means of regulating negative impacts of corporate activities. Nevertheless, there is no harmonized or universally accepted model for corporate due diligence currently in place. The concept and its legal framework vary depending on the specific applicable legislation within the relevant jurisdiction: their differences in terms of scope, risks covered, level of detail, enforcement and liability can pose challenges to EU companies operating in the EU single market.

Within EU Law, only specific sectoral due diligence obligations are currently in force for companies operating in the internal market regarding their international supply chain, for instance in the field of timber[9] or trade in precious minerals.[10] EU environmental law typically does not extend to value chains located outside the EU, despite the fact that these supply chains are potentially responsible for a significant portion of the environmental damage resulting from EU production, accounting for up to 80-90%.[11] The Environmental Liability Directive[12] was established to provide a framework for environmental liability concerning the prevention and remediation of environmental harm, and is rooted in the "polluter pays" principle; however, it exclusively applies to companies' own operations, leaving complex international value chains outside of its substantive scope.[13]

As a result, the material and geographic scope of corporate due diligence in the EU has remained limited. Progressive fragmentation of the EU single market from unilateral action by the Member States threatens an increase in trade barriers and administrative expenses for companies engaged in cross-border operations, however. A legal act at the EU level thus not only promises to provide greater legal certainty, but could also ensure a level playing field for companies operating within the single

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[4] The UN Guiding Principles on Business and Human Rights, op. cit.; OECD Guidelines on Responsible Business Conduct (2018), op. cit.

[5] See Part 6, Sec. 54 referring to "*due diligence processes in relation to slavery and human trafficking in its business and supply chains*". For the full citation and further discussion, see below, Section 3.2.1.3.

[6] See Loi n.° 2017-399, 27 March 2017 *("relative au devoir de vigilance des sociétés mère et entreprises donneuses d'ordre")*.

[7] Available at: https://zoek.officielebekendmakingen.nl/stb-2019-401.html.

[8] After a survey of German companies with more than 500 employees between 2018 and 2019 showed that less than 20% sufficiently integrate voluntary due diligence in their management, the legislator adopted the LKSG. For the full citation and further discussion, see below, Section 3.2.1.2.

[9] European Union, Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market. *Official Journal of the European Union*, L 295 (2010): 23-34. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995.

[10] Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0821&from=EN.

[11] See impact assessment report, Section 1.2.2, pp. 3-4, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2022%3A42%3AFIN&qid=16457245216490181.

[12] Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. Available at: https://eur-lex.europa.eu/eli/dir/2004/35/oj/eng.

[13] Cf. Stefano Spinaci, Briefing EU Legislation in Progress '*Corporate sustainability due diligence: How to integrate human rights and environmental concerns in value chains*', EPRS | European Parliamentary Research Service, PE 729.424 (October 2023), p. 2.

market.[14] Against that backdrop, the EU has decided to address the perceived gap, especially given that EU primary law stipulates that the Union advance its objectives and values in its relations with the rest of the world, in particular by contributing to the protection of human rights and sustainable development on an international scale.[15]

2.2. History and Evolution of the Proposed CSDDD

In the summer of 2020, the European Commission initiated a preparatory phase for a legislative procedure focused on sustainable corporate governance. The primary goal of this initiative was to enhance the regulatory framework of EU company law and corporate governance, with a particular emphasis on assisting companies in better managing sustainability-related aspects within their operations and value chains, including social and human rights, climate change, and environmental concerns.[16]

Following the open public consultation on the sustainable corporate governance initiative, launched by the Commission on 26 October 2020, the European Parliament adopted: (i) on 17 December 2020, a non-legislative own-initiative resolution on sustainable corporate governance;[17] and (ii) on 10 March 2021, a Resolution recommending that the Commission initiate a legislative proposal concerning corporate due diligence and corporate accountability.[18] Similarly, on 3 December 2020, the Council in its conclusions called on the Commission to present a proposal for an EU legal framework on sustainable corporate governance, including cross-sector corporate due diligence along global value chains.

The Commission's legislative proposal for a Corporate Sustainability Due Diligence Directive (CSDDD), originally anticipated in the autumn of 2021, was eventually unveiled on 23 February 2022[19] accompanied by the revised[20] impact assessment (IA)[21]. In preparing the proposal, the Commission also considered the broad base of evidence collected through two commissioned studies on directors' duties and sustainable corporate governance (July 2020)[22] and on due diligence requirements in the supply chain (February 2020).[23] The proposal sets out obligations for companies regarding "actual and potential" adverse impacts on human rights and the environment, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with which the company has a business relationship. The CSDDD proposal also includes penalties and

[14] Ibid. p. 3.
[15] Articles 3, §5 and 21 TEU. See the 2012 Action Plan of the Council of the EU on the EU Strategic Framework on Human Rights and Democracy and more recently the Joint Communication of the European Commission to the European Parliament and the Council titled "EU Action Plan on Human Rights and Democracy 2020-2024", 25 March 2020.
[16] "Have your Say" (for published initiatives) webpage of the European Commission, topic "Sustainable corporate governance", available at: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate- governance_en]. See also Inception impact assessment – Ares (2020)4034032.
[17] Cf. https://www.europarl.europa.eu/doceo/document/TA-9-2020-0372_EN.html.
[18] EP Resolution P9_TA(2021)0073, following the procedure 2020/2129(INL).
[19] Proposal for a Directive on corporate sustainability due diligence, COM(2022)71 final, 23 February 2022.
[20] A first draft impact assessment was submitted to the Commission's Regulatory Scrutiny Board (RSB) on 9 April 2021. After the RSB issued a negative opinion, a revised impact assessment was submitted to it for a second opinion on 8 November 2021. While noting the significant changes made to the report in response to its first round of remarks, the RSB nevertheless issued a second negative opinion on 26 November 2021.
[21] Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2022%3A42%3AFIN&qid=16457245216490181.
[22] See https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en.
[23] See https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en.

civic liability for violations of the obligations. The civil liability introduced by the CSDDD, therefore, serves as a complementary measure to the Environmental Liability Directive.

So far, requirements pertaining to sustainable corporate governance have primarily centred around defining reporting requirements through the Non-Financial Reporting Directive (NFRD), which encompassed aspects related to environmental, social, and human rights risks, impacts, measures (including due diligence), and policies. The NFRD, initially enacted in 2014, has recently been succeeded by the Corporate Sustainability Reporting Directive (CSRD), which came into effect on 5 January 2023. The CSRD broadened the scope of companies subject to the NFRD's requirements (from 11,700 to approximately 50,000) and integrated sustainability reporting into the corporate due diligence process. It introduced guidelines concerning actual or potential adverse impacts along the company's value chain, which encompasses its operations, products, services, business relationships, and supply chain. The directive also outlined rules governing the actions taken and their outcomes in order to prevent, mitigate, or rectify such actual or potential adverse impacts.[24]

The CSRD and the CSDDD are closely intertwined and serve to complement each other. Additionally, the CSDDD should complement the Sustainable Finance Disclosure Regulation (SFDR)[25] and the Taxonomy Regulation[26] by mandating that companies provide data and information regarding risks within their value chains related to human rights or environmental impacts.

Finally, the proposed directive intends to complement various other legal instruments, such as Directive 2011/36/EU addressing the prevention and combat of human trafficking and the protection of its victims,[27] the Employers' Sanctions Directive,[28] the Conflict Minerals Regulation,[29] the proposal for a regulation focused on deforestation-free supply chains,[30] the proposal for a new batteries regulation,[31] the forthcoming sustainable products initiative (SPI),[32] and the communication on the significance of trade partnerships.[33]

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[24] See Article 19a2.(e) of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM(2021)189.

[25] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, *Official Journal of the European Union*, L 317 (2019): 1-16. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R2088.

[26] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, *Official Journal of the European Union*, L 198 (2020): 13-43. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0852.

[27] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0036.

[28] Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0052&qid=1645109593843.

[29] (n 10).

[30] Proposal for a Regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010. Brussels, 17.11.2021 COM(2021) 706 final 2021/0366 (COD). Available at: https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products_en.

[31] Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC, *Official Journal of the European Union*, L 191 (2023): 1-117.

[32] See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative_en.

[33] The Commission communication on the power of trade partnerships: together for green and just economic growth identifies how to enhance the contribution of EU trade agreements to promoting the protection of the environment and labour rights worldwide. It fosters shared ownership by all EU institutions and Member States to achieve concrete changes,

3. Extending the Regulatory Reach of the EU: Promise and Pitfalls

3.1. Achieving EU Policy Objectives Abroad through Unilateral Regulation

This section describes some paradigmatic examples of EU policy with extraterritorial impacts and an intended "territorial extension" of European norms and regulatory standards. Specifically, it addresses the inclusion of international aviation in the EU Emissions Trading System (EU ETS) in 2012, EU rules on timber and biofuel imports, the Regulation on the Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) of 2006, and the Carbon Border Adjustment Mechanism (CBAM). All these have allowed the EU to extend its influence beyond its borders, addressing global challenges and setting standards that often become global norms in a manifestation to the "Brussels Effect" (see Section 4.1. below).

3.1.1. International Aviation and its Inclusion in the EU ETS

The EU initiative to include international aviation in its Emissions Trading System (EU ETS) is an early illustration of the "Brussels Effect", demonstrating efforts by the EU to extend the effects of its environmental regulations beyond its territorial borders. The initiative sought to regulate greenhouse gas (GHG) emissions from international flights entering and leaving European airspace, a move that elicited significant international debate and resistance from third countries and international airlines, leading to its provisional suspension for flights to and from non-EU countries with the so-called "Stop the Clock" decision.[34] Tellingly, the resistance against this initiative was primarily owed to concerns over national sovereignty and the perception that EU law was being applied extraterritorially.[35]

Despite its suspension, the attempt to include international aviation in the EU ETS remains a significant case study of its normative influence in global environmental policy. It highlighted the complexities and challenges of implementing regulations with extraterritorial effects in a highly globalized sector like aviation. More importantly, it also spurred renewed multilateral discussions on how to govern emissions from international aviation, and contributed to the development of the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) under the International Civil Aviation Organization (ICAO).[36] Despite the headwinds faced from other countries and international stakeholders, thus, this episode illustrates the role of the EU as a normative power in climate policy, willing to extend its environmental regulations beyond its borders to address global challenges like climate change.

3.1.2. Regulating the Sustainability of Timber and Biofuel Imports

The EU Timber Regulation, adopted in 2010, seeks to implement the European commitment to combating illegal logging and promoting sustainable forest management by prohibiting the placement

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including by means of sanctions.

[34] Janina Scheelhaase, Sven Maertens, Wolfgang Grimme and Martin Jung, "EU ETS versus CORSIA: A Critical Assessment of Two Approaches to Limit Air Transport's CO_2 Emissions by Market-Based Measures." *Journal of Air Transport Management*, Vol. 67: 55–62 (2018). https://doi.org/10.1016/j.jairtraman.2017.11.007.

[35] Jacques Hartmann, "A Battle for the Skies: Applying the European Emissions Trading System to International Aviation." *Nordic Journal of International Law*, Vol. 82, No. 2 (2013): 187–220. https://doi.org/10.1163/15718107-08202001.

[36] Chris Lyle, "Beyond the ICAO's CORSIA: Towards a More Climatically Effective Strategy for Mitigation of Civil-Aviation Emissions." *Climate Law*, Vol. 8, No. 1–2 (2018): 104–27. https://doi.org/10.1163/18786561-00801004.

of illegally harvested timber and timber products in the EU market.[37] Its extraterritorial impact is significant, as it requires operators in the EU to exercise due diligence to ensure the legality of timber products, thereby influencing forestry practices and trade beyond the EU. Likewise, timber-exporting countries have aligned their forestry and trade practices to secure access to the EU market. Over time, this influence has led to shifts in global timber supply chains and served as a catalyst for change in forestry practices beyond the EU. Still, the extraterritorial reach of the Timber Regulation has not been without criticism: concerns have been raised about its impact on small-scale producers and the potential for creating trade barriers for developing countries. Another unintended effect could be a chilling effect on participation in more ambitious, but voluntary timber certification schemes.[38]

Similarly, the EU Renewable Energy Directive (RED) serves as a further example of the intentional exercise by the EU of normative influence beyond its borders through regulatory measures in the area of sustainability criteria for biofuel imports. Most recently revised in 2018, the RED and an accompanying delegated act set out environmental criteria for biofuels used in the EU, including sustainability requirements to ensure that biofuel production does not contribute to deforestation or biodiversity loss through direct and indirect land-use change.[39] These criteria have had extraterritorial ripple effects, influencing agricultural and land-use practices in biofuel exporting countries – especially in developing countries – and shaping global biofuel markets. Again, however, they have also been contested, prompting judicial action against the EU[40] and concerns about how they might narrow the range of eligible biofuels and potentially constrain future supplies.[41]

3.1.3. Globalizing EU Chemicals Rules: The REACH Regulation

The Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation, effective since 2007, is a landmark EU legislation that exemplifies the Brussels Effect in the realm of chemical safety. REACH aims to ensure a high level of protection for human health and the environment from risks posed by chemicals, and requires companies to assess and manage the risks associated with the chemicals they manufacture and market in the EU.[42] It changed the nature of chemical regulation by requiring industry to demonstrate the safety of chemicals. Its global influence is evident as companies worldwide, including those outside the EU, have to comply with REACH standards to access the EU market. This has led to a global shift in chemical management practices, and has also inspired similar legislative efforts in other countries,[43] setting a *de facto* global benchmark for chemical safety and management. Unsurprisingly, REACH has also faced criticism, particularly regarding its complexity and

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[37] (n 9).

[38] Overdevest, Christine, and Jonathan Zeitlin, "Assembling an Experimentalist Regime: Transnational Governance Interactions in the Forest Sector." *Regulation & Governance*, Vol. 8, Issue 1 (2014): 22-48. https://doi.org/10.1111/j.1748-5991.2012.01133.x.

[39] European Union, Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the Promotion of the Use of Energy from Renewable Sources. *Official Journal of the European Union*, L 328 (2018): 82-209. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L2001.

[40] Stefan Mayr, Birgit Hollaus and Verena Madner, "Palm Oil, the RED II and WTO law: EU Sustainable Biofuel Policy Tangled up in Green?" *Review of European, Comparative & International Environmental Law*, Vol. 30, Issue 2 (2021): 233-248. https://doi.org/10.1111/reel.12386.

[41] Sean Goulding Carroll, "EU's strict green criteria for biofuels will hinder supply, MEPs warn." *EurActiv*, 8 November 2021. https://www.euractiv.com/section/biofuels/news/eus-strict-green-criteria-for-biofuels-will-hinder-supply-meps-warn.

[42] European Union, Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency. *Official Journal of the European Union*, L 396 (2006): 1-849. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1907.

[43] Sunanda Banerjee, "Reach-like regulations enacted globally." ICIS.com. 26 May 2010. https://www.icis.com/explore/resources/news/2010/05/31/9362538/reach-like-regulations-enacted-globally.

the burden it places on businesses, especially small and medium-sized enterprises.[44] Despite these challenges, REACH remains a key example of how EU legislation can drive global change in industry standards and practices.[45]

3.1.4. Extending Carbon Pricing to Imported Goods: The Carbon Border Adjustment Mechanism (CBAM)

The EU Carbon Border Adjustment Mechanism (CBAM) is a pivotal example of the EU's regulatory influence extending beyond its borders, particularly in the realm of climate policy. Part of the EU Green Deal, the CBAM aims to impose a carbon cost on imports from countries with less stringent climate policies. It is designed to prevent carbon leakage and level the playing field for European producers of six categories of goods – aluminium, cement, electricity, fertilizer, hydrogen, and iron and steel – by ensuring that imported goods bear a carbon cost comparable to those produced within the EU.[46] The extraterritorial impact of the CBAM is already proving significant, incentivizing countries outside the EU to adopt carbon pricing in order to avoid the carbon adjustment cost (World Bank 2022). Supporters hope that the CBAM will catalyse global climate action and contribute to the harmonization of climate efforts worldwide. At the same time, the CBAM also faces significant headwinds, sparking concerns about its compatibility with World Trade Organization (WTO) rules and announcements of future judicial challenges.[47] In addition to trade conflicts and political tensions that could undermine international cooperation in other areas, such as climate diplomacy, the CBAM also raises questions about its effectiveness and domestic impacts, for instance due to export-related leakage, downstream cost increases and value chain substitution, and circumvention tactics by trade partners.

3.2. Experiences under National Due Diligence Legislation

3.2.1. Relevant Legislation in Europe and Beyond

As previously mentioned, countries from Europe and beyond are turning towards the adoption of mHREDD as part of a global trend. This section explores the scope, features and implementation of national due diligence legislation foreseeing mHREDD, namely the 2017 *Loi sur le Devoir de Vigilance* (France); the 2021 *Lieferkettensorgfaltspflichtengesetz* (Germany); the 2015 Modern Slavery Act (United Kingdom); the 2022 Federal Uyghur Forced Labour Prevention Act and the 2023 California Climate Corporate Data Accountability Act (United States). Lastly, we look at the EU CSDDD Proposal through the comparative length of the described national legislation.

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[44] Thomas Hartung and Costanza Rovida, "Chemical regulators have overreached." *Nature*, Vol. 460 (2009): 1080–1081. https://doi.org/10.1038/4601080a.
[45] David Vogel, *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States*. Princeton University Press, 2012.
[46] European Union, Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism. *Official Journal of the European Union*, L 130 (2023): 52-104. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0956.
[47] Manoj Kumar and Neha Arora, "India plans to challenge EU carbon tax at WTO." *Reuters*, 16 May 2023. https://www.reuters.com/world/india/india-plans-challenge-eu-carbon-tax-wto-sources-2023-05-16.

3.2.2. France: Loi sur le Devoir de Vigilance (LdV)

The 2017 French Duty of Vigilance of Parent and Instructing Companies Law – *Loi de Vigilance* (LdV) – covers large companies with over 5000 employees in France (and over 10 000 in the world) as well as activities of companies under direct and indirect control, and of all contractors and suppliers to which there is "an established commercial relation".

The LdV provides that due diligence should encompass "severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks" (art. L. 225-102-4 (I)). The substantive scope of the LdV thus includes both human rights and environmental impacts, but in an isolated manner.[48] This is evident from the lack of clarity within the law's provisions, which fail to define and distinguish between the two issues. Do "human rights and fundamental freedoms" encompass those that are not enshrined in any international human rights treaty, such as the right to a healthy environment? What constitutes serious environmental damage? Could it include environmental damage arising from corporate contributions to climate change[49] or biodiversity loss? The consequence of this is a fragmentated approach to due diligence in which companies may selectively address specific human rights and environmental issues while neglecting others.

A review of the vigilance plans of four French companies involved in soy and beef supply chains from Brazil revealed that companies prioritized certain human rights and environmental impacts such as deforestation or labour rights, while neglecting others such as biodiversity loss and rights to water, health, or food.[50] Those impacts that had been prioritized by companies were high on the global agenda and prominent in the environmental discourse of Global North states, while those impacts which were neglected were those that were of concern to local communities in Brazil.[51] The choice to employ a selective approach to due diligence in this context not only reflects asymmetric power dynamics that have disadvantaged actors from the Global South, but more importantly illustrates the need for both an integrated approach to the impacts covered, and clarity in defining these impacts.

The LdV foresees the adoption of a monitoring mechanism for tracking the implementation and results of the due diligence and to provide for the opportunity to follow up to effectively address corporate human rights and environmental impacts, all of which must be disclosed in annual accounts or reports (LdV, art. L. 255-102-4 (I)). However, the French Law does not monitor via a public body. Instead, this role has been undertaken by concerned actors such as NGOs, trade unions, and impacted rights-holders who have been issuing formal notices to companies or filing civil litigation against companies for violation of vigilance obligations.[52] Both NGOs and the General Council of Economy have noted this as a weakness in the effectiveness of the law's current implementation, and recommended for an independent body to promote and monitor effective implementation.[53]

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[48] Fatimazahra Dehbi and Olga Martin-Ortega, '*An integrated approach to corporate due diligence from a human rights, environmental, and TWAIL perspective*' in Regulation & Governance (2023) 17, 927–943; https://doi:10.1111/rego.12538.
[49] Duty of Vigilance Radar, Follow Up On Current Cases (2023). Retrieved from https://vigilance-plan.org/court-cases-under-the-duty-of-vigilance-law/. See Clotilde Henriot, '*EU and French perspectives on due diligence for climate change impacts*', In L. Smit & I. Alogna (Eds.), Human rights due diligence for climate change impacts: Webinar series report. British Institute of International and Comparative Law (BIICL), p. 15-17. Available at: https://www.biicl.org/documents/125_hrdd_for_climate_change_impacts_webinar_series_report_8_jan_2020.pdf.
[50] Almut Schilling-Vacaflor, 'Integrating human rights and the environment in supply chain regulations', in Sustainability, 13(17), 2021, 9666; https://doi.org/10.3390/su13179666.
[51] Ibid.
[52] (n 63).
[53] Elsa Savourey and Stephane Brabant 'The French law on the duty of vigilance: Theoretical and practical challenges since its adoption', Business and Human Rights Journal, 6(1), (2021) pp. 150-151.

Regarding disclosure provisions, the obligation to produce a vigilance plan under the French Law has been widely interpreted as including an obligation for companies to publish the plan and the report of its effective implementation to the public and in their annual management report (art. L. 225-102-4).

Lastly, the LdV adopts a two-stage enforcement mechanism, which can be utilized by any person with legitimate interest (art. L. 255-102-4(II))[54]. As with monitoring, enforcement falls on the shoulders of stakeholders such as NGOs, trade unions, or impacted rightsholders who would trigger this mechanism. The first stage consists of a formal notice issued by the interested person to the company to comply with their vigilance duties. Second, where three or more months have lapsed since receiving the formal notice and a company still has failed to meet its obligations, a competent court can be requested to issue an injunction ordering compliance and payment of a fine (art. L. 255-102-4(II)). The French law also provides for civil liability where a company has failed to comply with its duties. Since 2019, when the enforcement mechanism could first be triggered, there have been over a dozen formal notices issued, with some of them progressing to the filing of civil lawsuits.[55] In particular, these lawsuits concern human rights and environmental issues, such as impacts on indigenous peoples and local community rights, biodiversity, and contamination of water sources,[56] which demonstrates the potential of this mechanism in addressing corporate accountability for human rights and environmental harm in an integrated manner, despite the lack of an integrated approach in the text of the law itself.

3.2.3. Germany: *Lieferkettensorgfaltspflichtengesetz* (LKSG)

The 2021 German Act on Corporate Due Diligence Obligations for the Prevention of Human Rights in Violations in the Supply Chain – the *Lieferkettensorgfaltspflichtengesetz* ("LKSG" or "German Act") – covers, as subjects, enterprises with more than 3,000 employees (1,000 employees from 1 January 2024) that have their central administration, principal place of business, administrative headquarters, statutory seat or branch office in Germany; as well as companies' own operations and supply chain operations (direct and indirect suppliers).

Regarding its substantive scope, the LKSG is broader than the LdV. A human rights risk is defined as any situation that with "sufficient probability" may result in the violation of an internationally recognised human right such as child labour or prohibiting employees from forming or joining trade unions (section 2(2)), which is defined with reference to international treaties (Annex). Therefore, through this definition, the LKSG includes causing any harm to the environment (pollution to soil, water, or air) which significantly impacts human health, the natural environment, and the production of food, or which denies an individual access to safe and clean drinking water, or sanitary facilities; as well as the violation of rights of indigenous and local communities, such as unlawful eviction or acquisition of land and water on which those persons are dependent for their livelihood (sections 2(2)(9)–(2)(10)).

Furthermore, the German Act also covers environmental risks, defined as "*a situation that violates prohibitions relating to the use and manufacture of mercury, the irresponsible handling and disposal*

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[54] Nicolas Bueno and Claire Bright, 'Implementing human rights due diligence through corporate civil liability', in International & Comparative Law Quarterly, 69(4), 2020, p. 801; https:// doi:10.1017/S0020589320000305.
[55] Business and Human Rights Resource Centre (BHRRC), France's Duty of Vigilance Law, 2023. Available at: https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/frances-duty-of-vigilance-law/.
[56] n 65, p. 931.

of waste, and the export of hazardous waste". However, environmental risks are limited to actions which contravene specific international environmental treaties to which Germany is party to (section 2(3) and Annex). For example, among the treaties cited in the Act, there is no reference to the Paris Agreement or the Convention on Biological Diversity (CBD) (1992), leaving climate change and biodiversity-related impacts outside of its scope.

The German law provides for monitoring to be undertaken by public bodies. The LKSG confers responsibility for monitoring and enforcing corporate compliance with due diligence on the Federal Office for Economic Affairs and Export Control (s. 19). The Federal Office evaluates corporate reports to verify their compliance with the standards mandated by the Act (sections 12-13). It possesses the authority to identify, halt, and prevent breaches of obligations through various measures, including summoning individuals (section 15(1)), soliciting additional information from companies (sections 15(2), 17), compelling companies to take specific actions to fulfil their duties (section 15(3)), and conducting inspections of company facilities (section 16). The LKSG requires companies to prepare and publish on their website an annual report on the fulfilment of their due diligence obligations in the previous year, promoting further transparency by requiring that annual reports are publicly available on companies' websites for 7 years (section 10). Where a company is found to have violated its due diligence obligations, the monitoring body has the authority to order cessation of any violations and that specific action be adopted (such as remedial action) to ensure the fulfilment of due diligence obligations, as well as to impose financial penalties (sections 15, 24).

While enforcement actions can be triggered primarily at the discretion of the relevant body, there is also a possibility of enforcement being triggered on the request of persons who rights have been or will be imminently violated due to noncompliance (section 14(1)). Furthermore, sanctions for noncompliance with due diligence obligations are not only financial but also include exclusions from public procurement (section 22).

One noteworthy observation from the implementation of the LKSG is the tendency of covered companies to shift responsibility for due diligence throughout the supply chain to domestic and foreign suppliers of these companies by way of standard clauses in purchasing contracts holding the suppliers responsible for any violations of the obligations under the LKSG. If this trend expands to become a more universal way of implementing such corporate due diligence frameworks, it may incur the unintended transfer and concentration of compliance burdens at the level of suppliers, who in many cases will be less equipped and capable to meet the objectives of such legislation, especially in the case of SMEs in lower income countries. This may further exacerbate concerns about governments outsourcing responsibility for corporate sustainability to the private sector, and from there – through such contractual delegation – to some of the weakest actors in the private sector.

3.2.4. United Kingdom: Modern Slavery Act

In 2015, the United Kingdom adopted the Modern Slavery Act,[57] which represents a contested legislative effort to combat modern slavery and human trafficking, both within the UK and in relation

[57] Modern Slavery Act 2015, c.30. An Act to make provision about slavery, servitude and forced or compulsory labour and about human trafficking, including provision for the protection of victims; to make provision for an Independent Anti-slavery Commissioner; and for connected purposes. 26 March 2015. https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted.

to activities of companies operating in the UK but engaging in activities abroad.[58] The Act defines modern slavery to include slavery, servitude, forced or compulsory labor, and human trafficking. It sets out a range of measures to prevent modern slavery, ensure the prosecution of offenders, and protect victims. Companies with revenues of at least £36 million have to ensure that they do not exploit workers and that their supply chains comply with British law. One of the more innovative aspects of the Act is its transparency in supply chains provision (Section 54), which requires certain businesses to disclose the steps they have taken to ensure their business and supply chains are free from modern slavery.

Section 54 of the Act applies to any business, regardless of where it is based, that supplies goods or services in the UK and has an annual turnover exceeding a stipulated amount. This means that multinational corporations with operations or supply chains extending outside the UK must comply with this requirement, and have to produce an annual statement detailing actions taken to identify and address modern slavery risks in their operations and supply chains. This provision has prompted many businesses to scrutinize their supply chains more closely, leading to enhanced due diligence processes and influencing corporate social responsibility practices.[59]

While the Act has been lauded for raising awareness and prompting action against modern slavery, it has also faced criticism. Critics argue that its requirements are too lenient, as there are no legal penalties for companies that fail to comply with the transparency requirement. Furthermore, the effectiveness of the Act is limited by its reliance on self-reporting by businesses, which can lead to inconsistent and superficial compliance. Still, the Modern Slavery Act of 2015 has resulted in a marked increase in the number of relevant crimes being reported and investigated, and has also prompted over 80,000 companies to sign up for an open-data register demonstrating that they and their suppliers make no use of forced labor. [60] As one of the earliest laws addressing transparency and due diligence in supply chains, it has also influenced other jurisdictions and their legislative efforts, such as Australia, which passed its own Modern Slavery Act in 2018.

3.2.5. The United States: National and Subnational Developments

In the United States, the Federal Uyghur Forced Labor Prevention Act (UFLPA)[61] and the California Climate Corporate Data Accountability Act (CCDAA)[62] are measures that exemplify legislative initiatives on human rights and environmental responsibility that have extraterritorial effect. Signed into law on 23 December 2021 and effective from 21 June 2022, the UFLPA aims to prevent the importation of goods made with forced labour from the Xinjiang Uyghur Autonomous Region (XUAR)

[58] Genevieve LeBaron and Andreas Rühmkorf, "The domestic politics of corporate accountability legislation: struggles over the 2015 UK Modern Slavery Act", *Socio-Economic Review*, Volume 17, Issue 3 (2019): 709-743. https://doi.org/10.1093/ser/mwx047.

[59] Quintin Lake, Nadine Page, Matthew Gitsham, Jamie MacAlister, and Cindy Berman, *Corporate leadership on modern slavery: How have companies responded to the Modern Slavery Act one year on?* London: Hult International Business School,2016. https://www.ethicaltrade.org/sites/default/files/shared_resources/corporate_leadership_on_modern_slavery_full_report_2016.pdf.

[60] The Economist, "Modern slavery is disturbingly common", 20 September 2017. https://www.economist.com/graphic-detail/2017/09/20/modern-slavery-is-disturbingly-common.

[61] United States, 117th Congress. Uyghur Forced Labor Prevention Act. Public Law No: 117-78, 2021. https://www.congress.gov/117/plaws/publ78/PLAW-117publ78.pdf.

[62] California, Senate Bill 253: Climate Corporate Data Accountability Act, An act to add Section 38532 to the Health and Safety Code, relating to greenhouse gases, and making an appropriation therefor, SB-253 of 7 October 2023. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB253.

of China or by certain entities. Importers are required to provide evidence that their goods are not produced using forced labour to overcome the presumption of prohibition. As such, the UFLPA pressures companies to ensure ethical supply chains, with a significant extraterritorial effect as it impacts any company importing goods into the U.S. that are produced wholly or in part in Xinjiang or by entities using forced labour. This requirement also extends to companies operating outside the U.S. but importing goods into the country. Possible drawbacks from the application of this act include potential disruptions to global supply chains, increased costs for importers who must provide evidence that their products are not made with forced labour, and more generally the risk of escalating trade tensions with China.

Enacted by California on 7 October 2023, the CCDAA requires certain companies to disclose their direct (Scope 1), indirect (Scope 2), and value chain (Scope 3) greenhouse gas emissions. Starting in 2026, covered entities must disclose their Scope 1 and 2 emissions, and from 2027, their Scope 3 emissions as well. In doing so, the act seeks to promote greater transparency of corporate environmental impacts, encouraging companies to take responsibility for their greenhouse gas emissions and contributing to more environmentally conscious business practices and investment decisions. Like other legislation discussed in this section, the CCDAA affects large U.S. companies exceeding annual revenue thresholds and doing business in California, which includes many multinational corporations. By requiring these entities to disclose their global greenhouse gas emissions, the act extends its influence beyond California's borders, potentially affecting business practices and environmental reporting standards internationally. Critics have however objected that the legislation could impose significant reporting burdens on companies, especially those not yet equipped to measure and disclose this detailed level of information. Concerns have also been voiced about the accuracy and comparability of reported data. Interestingly, however, the Californian approach also introduces some compliance flexibility by recognizing as equivalent relevant disclosures made under mandatory disclosure rules of third-party jurisdictions, rather than mandating all covered entities, whether domestic or foreign, to comply with the full reporting standards imposed inside California. Such flexibility may be an important way to reduce cross-border transaction costs and improve the interoperability of a growing number of divergent compliance frameworks across different jurisdictions.

3.2.6. The EU CSDD Directive Proposal: Comparison with National Legislation

The proposed EU CSDD Directive would apply to all EU limited liability companies with 500+ employees and 150 million+ euros in net turnover worldwide (EU companies Group 1); as well as other limited liability companies operating in defined high-impact sectors, with 250+ employees and 40 million+ in net turnover worldwide (EU companies Group 2 – rules would start to apply 2 years later than for group 1); and, finally, to non-EU companies active in the EU, with a threshold for turnover generated in the EU aligned with groups 1 and 2.

The proposal takes a comprehensive approach to addressing human rights and environmental concerns. Human rights impacts are defined as any harm caused to individuals protected under the rights and prohibitions listed in the Annex or established in international treaties included in the Annex (art. 3 (c)). These international treaties comprise the International Covenants, ILO Conventions, the Convention on the Rights of the Child, and the UN Declaration on the Rights of Indigenous Peoples (Annex, Part I). Prohibitions encompass activities that result in “measurable” environmental deterioration, such as harmful changes in soil, water or air pollution, and detrimental emissions, impacting the natural environment in terms of its ecological integrity, food production, human health, and safety, as well as an individual's access to safe and clean drinking water, sanitation facilities, and the normal use of their property or land (Annex, Part I).

The CSDDD defines environmental impacts as any "adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in Annex, Part II" (art. 3(b)). Unlike the German LKSG, which references a narrower set of environmental treaties, the CSDDD draws from a broader array of environmental treaties, such as the CBD. However, the Annex doesn't list these international environmental treaties in the same manner as human rights treaties. Instead, it cites specific provisions within these environmental treaties, creating a more limited reference to environmental impacts. For instance, the Annex only alludes to the CBD concerning the obligation to take necessary measures in the use of biological resources to prevent or minimize adverse impacts on biodiversity, in accordance with Article 10(b).[63]

In addition, the Annex does not mention the Paris Agreement (PA). Instead, the PA is explicitly referred to in the CSDDD main text, placing an obligation on applicable companies to establish a plan that aligns their business model and strategy with the transition to a sustainable economy and the goal of limiting global warming to 1.5°C in accordance with the PA (art. 15(1)). The absence of climate change or the PA in the Annex coupled with its mention in art. 15(1) suggests a distinction between climate impacts and other environmental impacts. This differentiation may potentially lead companies to prioritize climate impacts while overlooking other environmental concerns, even when they intersect with human rights impacts. This narrow focus on obligations could limit the overall scope of the CSDDD.

Under the CSDDD, Member States are required to appoint a minimum of one supervisory authority responsible for overseeing and enforcing compliance with corporate obligations (art. 17). These supervisory authorities are empowered to request information, launch investigations, and conduct inspections of company premises if there is sufficient information suggesting a potential breach of obligations by a company. They can also take remedial action to mitigate further harm, including ordering the cessation of violations and implementing interim measures to prevent the risk of severe and irreversible damage (arts. 18(1)– (3), 18(5)(a), 18(5)(c)). Furthermore, the EU Directive establishes a framework for cooperation among supervisory authorities. This cooperation involves obligations such as providing mutual assistance in information requests, conducting collaborative investigations and inspections within their respective member states, and the formation of a European Network of Supervisory Authorities (arts. 18(3), 21). However, the CSDDD does not address collaboration beyond the EU, leaving ambiguity regarding the extent to which further collaboration, such as engagement with affected stakeholders outside the EU or cooperation between home and host states, can be pursued.

Similarly to the German law, the CSDDD would: (i) require companies to prepare and publish on their website an annual report on the fulfilment of their due diligence obligations in the previous year (art. 11); (ii) primarily be operationalized by the Member States' supervisory authority (EU); (iii) where a company is found to have violated its due diligence obligations, the relevant body would have the authority to order cessation of any violations and that specific action be adopted (such as remedial action) to ensure the fulfilment of due diligence obligations, as well as impose financial penalties (arts. 18(5), 20). While enforcement actions can be triggered primarily at the discretion of the relevant body, there is also a possibility of enforcement being triggered on the request of persons who have reason

[63] It can be argued that this omission prevents the incorporation of other relevant provisions, such as Article 10(e), which pertains to the cooperation of state actors and the private sector in developing methods for the sustainable use of biological resources. This comprehensive approach is essential to ensure that corporate environmental impacts are effectively prevented, mitigated, and addressed.

to believe that a company is failing to comply with their obligations (art. 19). Moreover, sanctions for noncompliance with due diligence obligations are not only financial but also include exclusions from public support (art. 24). Finally, the EU Directive would provide for enforcement via the triggering of civil liability where a company has failed to comply with their obligations and this failure has resulted in harm, much like the French law.

4. Open Questions and Contested Issues in the Legislative Debate

4.1. Issues of Principle and the "Brussels Effect" in a Globalized World

The proposed CSDDD has prompted political debate on various design and implementation aspects, encompassing policy, economic, and legal considerations. One of the primary issues within the corporate due diligence debate revolves around its geographical scope of application.

The provisions set out by the proposed CSDDD are designed to regulate the conduct of economic actors – which include, indirectly, suppliers, subcontractors, and distributors – on a global scale. To achieve this, a "transnational link" is automatically established between the relevant corporate behaviour and affected parent companies or customers, manifested in the specific concept of the supply or value chain. This concept enables the inclusion of all activities, investments, and economic interactions carried out globally in support of the "anchor" company. Consequently, it substantially broadens the spatial scope of the applicable legislation, the underlying standards, and, if applicable, the company's liability, without any territorial restrictions – which closely aligns or resonates with the concept of extraterritoriality. Correspondingly, the proposed CSDDD has given rise to questions about the legitimacy of its extraterritorial reach, or territorial extension, in light of fundamental tenets of EU law, particularly in the context of a European duty of care.

Past experiences with EU legislation seeking extraterritorial reach (see Section 3.1. above) as well as Member State initiatives to advance domestic supply chain due diligence obligations (see Section 3.2. above) suggest that the CSDDD will have far-reaching economic, legal, and financial impacts touching on matters of principle.

Indeed, this territorial extension may collide, for instance, not only with fundamental principles of national sovereignty under the UN Charter as well as of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) under the UNFCCC and Paris Agreement (PA), but also with the fact that defining sustainable development was initially a national prerogative as envisioned by the Rio Declaration on Environment and Development.

To further illustrate the international concerns about unilateral measures with extraterritorial reach, the EU itself has in the past been highly critical of foreign efforts in this regard. On 6 June 2018, for instance, the Commission adopted a delegated act – Regulation (EU) 2018/1100 – updating the Annex to the 'Blocking Regulation' – Council Regulation (EC) No 2271/96 of 22 November 1996. The regulation: (i) counteracts the effects of the extra-territorial application of laws, including regulations and other legislative instruments adopted by third countries, and of actions based thereon or resulting therefrom, where such application affects the interests of natural and legal persons in the Union engaging in international trade and/or the movement of capital and related commercial activities between the Union and third countries; and (ii) acknowledges that by their extra-territorial application, such instruments violate international law.

A number of principled questions can be raised against this backdrop: by advancing the proposed CSDDD, is the EU adopting a legal framework that is inconsistent with its own past rejection of extraterritorial measures from third countries? Is the EU transferring state obligations it has entered under international treaties (notably the Paris Agreement) to subjects that are not directly addressed by these treaties, namely private corporations? Is the EU, by imposing obligations on companies based outside its territory and prompting third countries to respond through legal and regulatory change, undermining fundamental tenets of the Paris Agreement, including its decentralized, nationally determined architecture as expressed through NDCs? And, at a more philosophical level, does the EU possess the intent – and the authority – to impose its fundamental values, including the enforcement of human rights, on transnational economic activities linked to the internal market? In other words, does the EU have the legitimacy to shape not only corporate conduct, but also e.g. the conduct of developing countries regarding human rights and environmental standards?

While the EU can point to the international human rights instruments and international environmental treaties listed in the Annex to the proposed CSDDD in order to argue that it is merely requiring what other countries have already committed to in spirit, there is a risk of contravening international law – not all affected companies will be based in countries that are parties to all relevant treaties – as well as of prioritizing Eurocentric legal principles and interpretations over developing nations' values and laws. Therefore, in an unintended turn, it may neglect the preferences and views of those very countries most directly affected by the potential harmful effects of corporate actions.

Of course, this phenomenon is not entirely new. In the landscape of international regulation, the EU has traditionally stood out for its approach to policymaking, characterized by an increasing trend towards seeking a global reach of its legislative and regulatory efforts. This trend, exemplified by the ability of the EU to influence global markets and regulatory practices beyond its borders, is a reflection of its strategic positioning as a normative power in global governance, often referred to as the "Brussels Effect". It is justified with a commitment to upholding core European values and principles, such as high standards in environmental protection, human rights, and fair-trade practices. Just as the foundational objectives of the EU, particularly its focus on internal market harmonization, enabled it to expand its domestic regulatory scope to include new issue areas such as environmental policy, the EU has now begun to leverage its market power to address global challenges that transcend national borders, such as environmental sustainability, data privacy, and social responsibility. Without question, however, this strategic shift also helps advance European interests as it addresses interconnected transboundary challenges in a globalized world: by setting high standards within its own market, the EU effectively nudges other countries and global companies toward these standards.

Some of the earliest efforts in this regard originated in the area of sustainability, where challenges are often by definition global, and the EU has acknowledged that the environmental impacts of activities within its territory – including both production and consumption decisions – are increasingly manifesting themselves in third countries or in international spaces. Such negative spillover effects can be considerable, with EU consumption estimated to account for 17% of tropical deforestation worldwide, and almost half the greenhouse gas (GHGs) emissions incurred by domestic consumption generated abroad. Growing demand for imported raw materials, energy, and manufactured goods will continue to fuel unsustainable practices in other parts of the world, prompting concern among EU policy makers that Europe might only achieve its sustainability objectives by outsourcing unsustainable activities to third countries.

This trend is not limited to environmental sustainability and extraterritorial impacts on the environment. As mentioned already, it also extends to social and human rights issues such as modern slavery and child labor and has more recently expanded to new and evolving areas such as digitalization, artificial intelligence, and data privacy. An illustrative example is the General Data Protection Regulation (GDPR), which has set a new standard for data protection and privacy that extends far beyond the EU, affecting companies worldwide and prompting third countries to align their data protection laws with EU requirements, demonstrating both 'de facto' and 'de jure' Brussels effects. Similarly, the proposed Artificial Intelligence (AI) Act demonstrates an EU ambition to lead global digital governance on high-risk AI systems, transparency requirements, and the regulation of AI interacting with humans, thereby inspiring similar legislation worldwide.

Regulatory interest in the social and environmental implications of corporate supply chains began with the broader trend towards corporate social responsibility (CSR), as evidenced by the Corporate Social Responsibility Strategy, which encouraged enterprises to take responsibility for their broader impact on society and the environment. Because they largely relied on voluntary compliance, however, these initial efforts were widely seen as insufficient, prompting a shift towards compliance obligations. An example are the mandatory disclosure requirements introduced for large companies under the Non-Financial Reporting Directive (European Union 2014). Still, while these measures already encompassed activities outside the EU, they have not been considered sufficient to address social and environmental impacts across global value chains, where – as the proposal for the CSDDD argues – "up to 80-90% of the environmental harm of EU production may occur."

Alongside this growing preoccupation with the extraterritorial effects of corporate activity – including through international supply chains – EU policy debates also began exploring the role of corporate governance in the long-term economic, environmental, and social sustainability of European businesses, and ways to focus corporate decision making away from short-term shareholder value maximization to the promotion of longer-term stakeholder interests. An influential study prepared on behalf of the European Commission identified several features of company law and corporate governance that were both problem drivers and potential levers for change. Among other intervention options, the study recommended new legislation expanding directors' duties and their enforcement, and legislation requiring better integration and disclosure of sustainability aspects in business strategy. Both dimensions – the global impacts of corporate supply chains, and the role of corporate governance and strategy – have, accordingly, informed the elaboration of the CSDDD proposal, which pursues a scope that extends beyond the EU and deploys a due diligence obligation operating through mandatory changes to corporate governance.

Scott has argued that the focus on impacts and activities outside the EU does not constitute genuine extraterritorial regulation, and instead represents a "territorial extension" of EU policy making to gain regulatory traction over activities that take place abroad and thereby govern transactions that are not centred upon the territory of the EU. Even if the EU may be pursuing objectives that have been internationally agreed rather than purely seeking to export its own norms, the approach it is increasingly choosing actively influences the nature and content of third country and international law. Ironically, the EU has itself been critical of other countries – notably the United States – when these have deployed unilateral measures with extraterritorial or global reach. However, this approach is not without challenges and has raised concerns about regulatory overreach and implications for international trade and national sovereignty. What is more, the effectiveness of the Brussels Effect is contingent on the EU maintaining its regulatory leadership and market attractiveness.

4.2. Operational Issues of Due Diligence Legislation

The proposed CSDDD represents a significant regulatory development for companies operating in the EU, and while the intentions behind may be commendable, its operationalization is complex, and the potential economic and political implications are multifaceted. In order to avoid exacerbating inequalities or creating trade barriers, the CSDDD design and implementation must be sensitive to the different capacities and scales of businesses, particularly small and medium-sized enterprises, as well as suppliers in developing countries.

Furthermore, considering companies covered by the CSDDD scope of application are susceptible of being responsible/face liability for value chains over which they have no reasonable control in any part of the world, EU decision makers should be mindful of potential impacts on the attractiveness of Europe as a competitive location for economic activity, and the possibility that the CSDDD might prompt relocation of such activity or deter investment. A multinational company operating in the EU may be confronted with an intricate scenario of multiple and overlapping due diligence obligations outside of the EU, which brings additional uncertainty to stakeholders.

Finally, there is the need to carefully define civil liability – should it remain in the CSDDD – namely when it comes to legal standing: this should be limited to those that are directly affected and not left to ambiguous interpretation allowing intervention that could lead to stopping activities due to strategic litigation or threat of litigation.

4.2.1. Cost Implications, Risk and Uncertainty for Business and Management

As previously mentioned, the directive, if adopted, would require companies to implement due diligence processes to identify, prevent, mitigate, and account for how they address their impacts on human rights and the environment. This process involves conducting risk assessments, integrating findings into business strategies, tracking effectiveness, and reporting publicly on due diligence efforts. The associated costs are not trivial, as they could encompass everything from system upgrades and compliance management to the operational costs of monitoring supply chains and retaining legal expertise to navigate the evolving regulatory landscape. For instance, risk assessments to identify adverse impacts might require third-party audits, new internal compliance teams, or both, leading to increased overheads for businesses. The costs are not uniform across all businesses and could disproportionately affect smaller companies, potentially widening the competitiveness gap between large and small enterprises. For small and medium-sized enterprises (SMEs), these costs could potentially impact their competitiveness or even viability.

By design, the potential legal risks under the proposed CSDDD are also significant. Companies that fail to comply with the due diligence obligations may be held accountable for failing to prevent or mitigate adverse impacts, raising the threat of litigation, which carries not only the potential for financial penalties but also the costs associated with legal proceedings and reputational damage. Moreover, the directive's broad definition of “adverse impacts” could subject companies to a wider range of liabilities, including those associated with indirect business relationships. Similarly, the expanded duty of care for directors will require them to integrate considerations of human rights, climate change, and environmental consequences into their fiduciary duties.

France has already seen a rise in litigation under its LdV (see Section 3.2.2. above), indicating a trend toward increased accountability and legal action related to due diligence. An increased risk of litigation, in turn, results in a direct financial risk for companies, as they might face lawsuits not only from within the EU but also from parties in third countries affected by their operations. Additionally, the requirement to disclose due diligence findings might expose companies to reputational risks, which can translate into financial risks if consumers or investors respond negatively.

The CSDDD would also introduce new layers of legal uncertainty. For instance, the extraterritorial scope means that non-EU companies active in the EU market will need to comply with the directive, raising questions about its enforceability outside the EU and potential for conflict with third country legal systems. Moreover, the directive leaves some room for interpretation, particularly concerning the scope and depth of the due diligence required, the aforementioned definition of "adverse impacts", and what constitutes sufficient measures to address these impacts. This ambiguity could lead to uneven application and enforcement across Member States, creating a more unpredictable business environment.

Finally, from a broader economic perspective, the proposed directive could lead to significant shifts in the market. Although intended to achieve the objectives of the directive, the potential for market exclusion if companies fail to comply could lead to a loss of business opportunities, especially in industries where sustainability is increasingly a prerequisite for market access. There may be a reconfiguration of supply chains as companies seek to minimize their exposure to risk by favouring suppliers that can demonstrate compliance and moving away from high-risk areas. Similarly, investors are likely to scrutinize the due diligence reports of companies more closely, affecting the flow of capital into businesses deemed non-compliant or high-risk. While this should contribute to more sustainable practices, it also risks causing economic harm to suppliers in developing countries that may be unable to meet the new standards within the proposed implementation timeline. Similarly, while larger companies may be better positioned to absorb the new requirements under the proposed directive, the CSDDD could also exacerbate existing market inequalities.

4.2.2. Potential Impacts on EU Competitiveness

As a result of the potential economic, legal and financial impacts described in the previous section, the proposed CSDDD could also reshape the competitive landscape for businesses operating within the EU. This can have profound implications for the attractiveness of the EU as a business location. While high standards of corporate responsibility should bolster the image of the EU as a leader in sustainability, the additional compliance burden and operational costs could prompt companies to reconsider existing operations within the region. For foreign companies, the CSDDD and the administrative burden it entails could result in significant barriers to entry into the European market or add further complexities to their operations within the EU. Sectors deemed high-impact, such as manufacturing textiles, agriculture, and mineral resource extraction, would be particularly vulnerable to such impacts.

Such ramifications could even trickle through to the management of companies and the willingness or ability of individuals to serve on the board of directors, given the additional complexities and increased risk profile they would face. From a competitiveness standpoint, the CSDDD could thus disadvantage EU businesses relative to their international counterparts, especially if similar due diligence requirements are not adopted in competing foreign markets. Likewise, the requirement to comply with the CSDDD could make the EU a less attractive destination for foreign direct investment, potentially leading to relocation of operations to jurisdictions with less onerous regulatory frameworks to avoid the extensive obligations. If such impacts occur, the associated loss of investment, employment, and tax revenue could have negative implications for the EU and its Member States, and also undermine public support for the high stringency and regulatory density advanced by the EU in the area of corporate sustainability.

5. Conclusions and Recommendations

The proposed CSDDD marks a pivotal development in the political and regulatory landscape of corporate accountability. At its heart lies the necessity to establish a uniform standard for corporate supply chain due diligence, driven by increased recognition of the significant impacts that corporate activities can have on human rights and the environment, and a broader trend towards mandatory human rights and environmental due diligence requirements adopted at the level of individual Member States and third countries. The introduction of the CSDDD is seen as a necessary response to the lack of a cohesive approach within the EU, where existing legal frameworks are varied and have been criticized for being inadequate to address the foregoing challenges. A harmonized approach at the EU level promises to preempt further fragmentation of the legal frameworks governing corporate chain due diligence across the EU, and thereby reducing legal uncertainty, risk and associated costs. This report has offered a brief analysis of the proposed CSDDD and the broader trend it forms part of, exploring its rationale, evolution, potential impact, and the broader implications for human rights and environmental standards.

As the report highlights, the evolution of the CSDDD can be traced back to preparatory work on the part of the European Commission, especially after 2020, when several Member States had already embarked on their own legislative agendas, and the European Green Deal (EGD) had triggered a broader review of the parameters of sustainable finance and corporate non-financial disclosure rules. Resolutions adopted by the European Parliament and the Council solidified the momentum towards elaboration of an EU-wide legal framework for corporate sustainability due diligence. Echoing key structural elements of previously adopted national legislation, the resulting CSDDD proposal would create obligations for companies to address adverse impacts on human rights and the environment within their supply chains, and outlines penalties and civil liability provisions for violations, marking a significant step towards greater corporate accountability across the EU.

In the past, the EU extended its regulatory influence globally by setting high standards that global markets are incentivized or required to follow. Other EU regulations with territorial extension beyond the EU borders, such as the attempted inclusion of international aviation in the EU ETS, the REACH regulation on chemical safety, sustainability criteria for timber and biofuels, and the recently adopted CBAM, have similarly sought to promote high social and environmental standards beyond the EU, yet their implementation has been complicated – and at times thwarted – by diplomatic tensions and resistance due to concerns over national sovereignty and practical enforceability, and has also been accompanied by a number of unintended effects.

National due diligence legislation adopted in various countries or subnational jurisdictions likewise sets out a mixed track record, while further underscoring the broader trend towards an increased density and scope of mandatory rules on corporate sustainability and due diligence. Examples include France's LVD, Germany's LKSG, the UK's Modern Slavery Act, as well as the federal Uyghur Forced Labor Prevention Act in the U.S., and the Climate Corporate Data Accountability Act in California. These examples highlight the diverse approaches to due diligence across different jurisdictions, including ambiguities and gaps in the concepts applied. Their practical implementation has also evidenced a rise in litigation against corporations, as seen in France, but also practices – as witnessed in Germany – that merely relegate the burden of compliance with due diligence requirements to upstream suppliers in their supply chain, which are often located in developing countries and possess more limited financial and technical capacities to ensure full compliance.

Prior instances of EU legislation attempting extraterritorial impact, often referred to as the "Brussels Effect", and Member State endeavors to advance local supply chain diligence obligations indicate that the CSDDD will wield significant repercussions, potentially threatening fundamental principles of EU governance and international cooperation. The CSDDD's potential consequences may intersect with core notions of national sovereignty outlined in the UN Charter and of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) under UNFCCC and PA.

By potentially transforming Member States' duties under the PA and other international treaties into obligations for individual companies on both domestic and international fronts, the CSDDD diverges from the original intent of the PA. In addition, given that the PA operates on a foundation of nationally determined contributions (NDCs) as part of a collective effort, the EU's approach might be viewed as undermining the very essence of the agreement. This challenges the premise of the PA as a commitment made by multiple parties based on their respective national determinations.

This shift, while being to some degree inconsistent with e.g. the adopted EU Blocking Regulation, could carry multifaceted implications, especially considering political and trade viewpoints from developing nations. It can be argued that the imposition of EU sustainable development standards on non-EU countries contradicts the notion that sustainable development is a national prerogative initially established by the Rio Declaration. Such actions could frame sustainable development as a tool wielded by developed countries, which risks infringing upon the national sovereignty of developing and other nations. This could provoke counterreactions, similar to the US law that banned airlines from complying with the EU ETS in aviation.

Concerning operational matters, economic and political impacts of the CSDDD are likely to be manifold. While only comprehensive modeling of impacts – which the regulatory impact analysis conducted alongside the legislative proposal arguably fails to provide – or a retrospective analysis of the implementation experiences can offer reliable data, the CSDDD is almost certain to introduce increased compliance costs and legal risks for businesses, creating a landscape of greater uncertainty. It could further alter market dynamics and competitiveness within the EU, potentially leading to shifts in supply chains and investment flows. The directive's implications on small and medium-sized enterprises and suppliers in developing countries are particularly concerning, as these entities might face disproportionate challenges in adapting to the new standards.

The CSDDD will require businesses to navigate a complex web of legal obligations and societal expectations. Its design must consider past regulatory experiences, and ensure clear guidelines and effective enforcement mechanisms to avoid imposing undue burdens on businesses while achieving its sustainability objectives. The analysis in this report suggests that while the CSDDD could lead to a more sustainable and responsible business environment, it must be implemented thoughtfully to balance its ambitious goals with practical business realities in an increasingly competitive and fragmented global economy and marketplace. In particular, it should acknowledge the complexities and challenges inherent in implementing such wide-reaching due diligence legislation, and consider the interests of and impacts on a diverse set of affected stakeholders both within and outside the EU, including businesses, consumers, and communities impacted by corporate activities.

In terms of recommendations for future policy action, several key points emerge. First, there is an acknowledged need for harmonization of due diligence laws within the EU to avoid a patchwork of national compliance frameworks that could exacerbate legal uncertainties and increased compliance costs for businesses operating across multiple jurisdictions. This harmonization should be sensitive to the different capacities and scales of businesses, however, including in particular small and medium-sized enterprises.

Second, the potential extraterritorial reach of the CSDDD, as seen through the lens of the much-discussed "Brussels Effect", suggests that EU policymakers need to better consider the global implications of their decisions. This includes the impact on developing countries and the need to ensure that such legislation does not inadvertently create trade barriers or exacerbate inequalities. It also raises questions about the practical viability – and, by extension, the legitimacy – of its extremely broad scope, for instance its broad definition of "adverse impacts", the inclusion of indirect business relationships, and the substantially expanded duty of care for directors.

Third, while the inclusion of robust mechanisms for enforcement and accountability is justified, the many – and currently not sufficiently delineated – ways in which action can be brought against companies subject to the CSDDD is likely to give rise to legal uncertainty and potentially a significant increase in litigation from various stakeholders, further increasing costs and inducing a chilling effect. In this context, the role of civil society and stakeholders in monitoring and reporting violations needs to be carefully described, and weighed against the likelihood of unintended impacts and an increasing cost burden on businesses that will also be passed through to consumers.

Lastly, while the EU sees an opportunity to extend its leadership in the area of corporate sustainability and can ideally set a precedent that stimulates greater alignment of the regulatory parameters of economic activity across other regions and countries, it should be mindful of the potential impacts of increased operational costs and compliance burdens, which could impose a strain on the economic landscape of the EU, particularly affecting SMEs and foreign companies, and at worst inadvertently stimulate offshoring or deter investment, eroding Europe's position as a competitive business hub.

All this points to the merits of an outcome that balances ambition with pragmatic enforcement, fostering sustainability without compromising economic vitality, and which is embedded in active engagement with stakeholders within and outside the EU through international dialogues and collaboration to ensure the greatest possible degree of alignment.

6. Bibliography

Banerjee, Sunanda. 2010. “Reach-like regulations enacted globally.” 26 May 2010. https://www.icis.com/explore/resources/news/2010/05/31/9362538/reach-like-regulations-enacted-globally.

Bueno, Nicolas, and Bright, Claire. 2020. Implementing human rights due diligence through corporate civil liability. International & Comparative Law Quarterly, 69(4), 789–818. https://doi:10.1017/S0020589320000305.

Business and Human Rights Resource Centre (BHRRC). 2023. France’s Duty of Vigilance Law. https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/frances-duty-of-vigilance-law.

Bradford, Anu. 2020. *The Brussels Effect: How the European Union Rules the World*. Oxford University Press.

Brookings Institution. 2023. “The EU AI Act will have global impact, but a limited Brussels Effect.” https://www.brookings.edu/articles/the-eu-ai-act-will-have-global-impact-but-a-limited-brussels-effect.

Dehbi Fatimazahra and Martin-Ortega, Olga. 2023. ‘An integrated approach to corporate due diligence from a human rights, environmental, and TWAIL perspective’ in Regulation & Governance 17, 927–943. https://doi:10.1111/rego.12538.

European Commission. 2022. Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts. COM(2021) 206 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0206.

European Commission. 2020. “Study on Directors’ Duties and Sustainable Corporate Governance.” July 2020. https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en.

European Commission. 2011. A Renewed EU Strategy 2011-14 for Corporate Social Responsibility. COM(2011) 681 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0681.

European Union. 2023. Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism. *Official Journal of the European Union*, L 130 (2023): 52-104. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0956.

European Union. 2016. Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation). *Official Journal of the European Union*, L 119 (2016): 1-88. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679.

European Union. 2014. Directive 2014/95/EU of the European Parliament and the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. *Official Journal of the European Union*, L 330 (2014): 1-9. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0095.

European Union. 2010. Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market. *Official Journal of the European Union*, L 295 (2010): 23-34. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0995.

European Union. 2006. Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency. *Official Journal of the European Union*, L 396 (2006): 1-849. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1907.

Goulding Carroll, Sean. 2021. "EU's strict green criteria for biofuels will hinder supply, MEPs warn." *EurActiv*, 8 November 2021. https://www.euractiv.com/section/biofuels/news/eus-strict-green-criteria-for-biofuels-will-hinder-supply-meps-warn.

Hartmann, Jacques. 2013. "A Battle for the Skies: Applying the European Emissions Trading System to International Aviation." *Nordic Journal of International Law*, Vol. 82, No. 2: 187–220. https://doi.org/10.1163/15718107-08202001.

Hartung, Thomas and Costanza Rovida. 2009. "Chemical regulators have overreached." *Nature*, Vol. 460: 1080–1081. https://doi.org/10.1038/4601080a.

Kumar, Manoj and Neha Arora. 2023. "India plans to challenge EU carbon tax at WTO." *Reuters*, 16 May 2023. https://www.reuters.com/world/india/india-plans-challenge-eu-carbon-tax-wto-sources-2023-05-16.

Kuner, Christopher. 2017. "The European Union and the Search for an International Data Protection Framework." *Groningen Journal of International Law*, Vol. 2 No. 2: 55-71.

Lyle, Chris. 2018. "Beyond the ICAO's CORSIA: Towards a More Climatically Effective Strategy for Mitigation of Civil-Aviation Emissions." *Climate Law*, Vol. 8, No. 1–2: 104–27. https://doi.org/10.1163/18786561-00801004.

Mayr, Stefan, Birgit Hollaus and Verena Madner. 2021. "Palm Oil, the RED II and WTO law: EU Sustainable Biofuel Policy Tangled up in Green?" *Review of European, Comparative & International Environmental Law*, Vol. 30, Issue 2: 233-248. https://doi.org/10.1111/reel.12386.

Overdevest, Christine, and Jonathan Zeitlin. 2014. "Assembling an Experimentalist Regime: Transnational Governance Interactions in the Forest Sector." *Regulation & Governance*, Vol. 8, Issue 1: 22-48. https://doi.org/10.1111/j.1748-5991.2012.01133.x.

Sachs, Jeffrey, Guillaume Lafortune, Christian Kroll, Grayson Fuller, and Finn Woelm. 2022. *From Crisis to Sustainable Development: the SDGs as Roadmap to 2030 and Beyond. Sustainable Development Report 2022*. Cambridge: Cambridge University Press.

Savourey, Elsa, & Brabant, Stephane. 2021. The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. Business and Human Rights Journal, 6(1), 141-152. https://doi:10.1017/bhj.2020.30.

Scheelhaase, Janina, Sven Maertens, Wolfgang Grimme, and Martin Jung. 2018. "EU ETS versus CORSIA: A Critical Assessment of Two Approaches to Limit Air Transport's CO_2 Emissions by Market-Based Measures." *Journal of Air Transport Management*, Vol. 67: 55–62. https://doi.org/10.1016/j.jairtraman.2017.11.007.

Schilling-Vacaflor, Almut. 2021. Integrating human rights and the environment in supply chain regulations. Sustainability, 13(17), 9666. https://doi.org/10.3390/su13179666.

Scott, Joanne. 2019. "The Global Reach of EU Law." in Marise Cremona, and Joanne Scott (eds), *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law*. 21-63. Oxford: Oxford University Press.

Scott, Joanne. 2014. "Extraterritoriality and Territorial Extension in EU Law." *American Journal of Comparative Law*, Vol. 62, No. 1: 87–126.

Leyen, Ursula von der. 2020. Political Guidelines for the Next European Commission 2019-2024. Luxembourg: Publications Office of the European Union. https://data.europa.eu/doi/10.2775/101756.

Vogel, David. 2012. *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States*. Princeton University Press, 2012.

World Bank. 2022. *State and Trends of Carbon Pricing 2022*. Washington, DC: World Bank. https://doi.org/10.1596/978-1-4648-1728-1.

Young, Alasdair R. 2025. "The European Union as a Global Regulator? Context and Comparison." *Journal of European Public Policy*, Vol. 22, No. 9: 1233-1252.