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"Corporate Sustainability in Flux: the Legal Architecture of Mandatory Due Diligence in the EU"

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Introduction

As a result of growing global awareness around environmental degradation, human rights, violations, and unethical corporate behaviour, the role of businesses in shaping sustainable and just communities has become more critical than ever.
Over the past decades, the concept of Corporate Social Responsibility has evolved from being a voluntary, philanthropic exercise into a sophisticated system of moral standards, stakeholder involvement, and, more recently, binding regulatory obligations. This transition is a response to the increasing demand for businesses to be held responsible not only for their financial performance but also for their activities' effects on society and the environment.

The conflict between voluntarism and regulation is at the core of this process. Although Corporate Social Responsibility was first defined by discretionary initiatives motivated by ethical aspirations, its shortcomings – such as its lack of transparency and enforceability – quickly became evident. Voluntary codes of conduct and self-regulatory measures were unable to prevent or remedy harm as global supply chains grew and public scrutiny intensified. The idea of corporate due diligence is at the forefront of contemporary regulatory discourse as a result of the wider trend to incorporate social responsibility concepts into formal legal obligations.

This transition has been shaped in large part by international frameworks. Widely accepted guidelines for ethical business practices have been developed by instruments such as the United Nations Global Compact, the OECD Guidelines for Multinational Enterprises, and the United Nations Guiding Principles on Business and Human Rights. These efforts have created a global consensus around ethics and the importance of risk-based due diligence, even if they are not legally binding. However, their overall efficacy has been constrained by the lack of enforcement tools and varying levels in corporate commitment.
By examining the development of corporate social responsibility, the rise of due diligence as a regulatory instrument, and the European legislative environment that is redefining parameters of corporate responsibility, this thesis explores this ongoing transformation.

Through the chapters it will be analysed the conceptual and historical evolution of corporate social responsibility; the Corporate Sustainability Due Diligence Directive's goals, procedural requirements, and enforcement mechanisms; as wells as the Directive's conversion of corporate social responsibility's voluntary character into a legally binding framework, with particular attention paid to accountability, compliance strategies, and future governance implications.

The ultimate goal of this study is to determine whether the shift from voluntary ethics to imposed due diligence actually improves corporate responsibility or if it is just a reorganization of preexisting standards. By doing this, it seeks to contribute to the ongoing discussion in academia and politics about how to strike the right balance between corporate autonomy and regulatory intervention in the pursuit of sustainable and responsible business practices.

CHAPTER 1: The Evolution of Corporate Social Responsibility and the European Regulatory Landscape

I. What is Corporate Social Responsibility ("*CSR*")?

The link between business and society at large is outlined by the concept of Corporate Social Responsibility ("*CSR*")[1]. Since this notion covers a wide range of topics, such as organisational governance, human rights, labour practices, the environment, fair operating practices, consumer issues, and community involvement and development, business actors, as members of society, take into account more than just financial and economic considerations[2].

Originating in the 1950s, CSR has gained prominence and significance, emerging as a global concept which embodies a language and a perspective that are globally recognized. Over the past several decades, corporate social responsibility has undergone a remarkable evolution, evolving from a relatively modest expectation of corporate philanthropy to a comprehensive and dynamic framework for business conduct in modern society[3].

Although CSR has far older origins, its current form was primarily developed in the years following World War II era, gaining significant momentum in the 1960s as social movements like the civil rights movement gained traction. These societal shifts questioned the long-held belief that a company's sole obligation was to generate profit for its shareholders, progressively embedding the idea that businesses also have ethical, social, and environmental responsibilities to a wider group of stakeholders[4]. The idea was that the firm's responsibility should extend beyond its legal and commercial obligations and should take an interest in politics, social welfare of the community, as well as the education and satisfaction of employees. Throughout the 1970s and 1980s, CSR changed from being a philanthropic and compliance-focused strategy to becoming one more institutionalized and defined by formalized rules[5]. By the 1990s CSR had been integrated

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[1] Adhikari, Arjun. (2014). Corporate Social Responsibility: Voluntary or Mandatory. *NJA Law Journal, 8*

[2] Lament, M. 2015. Trends in corporate social responsibility (CSR) reporting. *International Journal of Economic Practices and Theories*, *5*(5)

[3] Carroll, A. B. (2015). Corporate social responsibility: The centerpiece of competing and complementary frameworks. *Organizational Dynamics, 44*(2)

[4] Preuss, L. (2013). Corporate Social Responsibility. In: Idowu, S.O., Capaldi, N., Zu, L., Gupta, A.D. (eds) Encyclopedia of Corporate Social Responsibility. Springer, Berlin, Heidelberg

[5] Ibid.

into business practices through policies, worldwide application, and strategic integration. By combining economic success with legal compliance, ethical standards, and discretionary efforts aiming at societal well-being, corporate social responsibility had firmly established its position as a key component of corporate strategy in the 21st century.

Businesses now prioritize the welfare of their stakeholders, including workers, customers, suppliers, management, and the society at large, rather than just maximising profit. In the debate on CSR, one of the most sophisticated definitions is proposed by David L. Engel, who in a 1979 article identified the essence of corporate social responsibility in the voluntary renunciation of profit to pursue social ends[6]. Since CSR is true corporate altruism, it raises serious concerns regarding its validity and acceptability. Engel argues that one cannot discuss CSR when the activity is mandated by legislation or driven by a long-term calculation. The question of whether it is truly beneficial for a business to choose, on its own initiative, to forego the interests of shareholders in the service of a societal goal is raised by such a critical approach.

This perspective paves the way for a shift from voluntary CSR to sustainable due diligence as a regulatory tool to institutionalise social responsibility and reduce the ambiguity between private interest and collective good.

II. From voluntary ethics to legal instruments: the rise of due diligence

Corporate social responsibility, as it is today, stands out for its dual nature: on one hand as a moral obligation initiated voluntarily by businesses; on the other hand as a set of responsibilities increasingly codified through legal instruments[7]. The evolution of corporate social responsibility from a purely voluntary set of ethical norms to a legally embedded framework represents a pivotal transformation in the governance of corporate conduct.

Voluntary CSR rests on the premise that businesses will adopt responsible practices of their own accord, often through self-imposed codes of conduct, ethical guidelines, and multi-stakeholder initiatives. This model emphasizes corporate autonomy, innovation,

[6] Engel, D. L. (1979). An Approach to Corporate Social Responsibility. *Stanford Law Review, 32*(1), 1
[7] Adhikari, Arjun. (2014). Corporate Social Responsibility: Voluntary or Mandatory. *NJA Law Journal, 8,* p.187

and reputation management. It allows companies to tailor their CSR strategies to their specific operational contexts, often yielding creative and context-sensitive solutions to complex global challenges. However, the voluntary sphere of CSR carries some limitations such as the lack of enforcement mechanisms, the absence of uniform standards, and susceptibility to superficial compliance, due to the fragmented and inconsistent nature of voluntary codes.
As explained and underlined before, the nature of CSR is certainly spontaneous and voluntary, but the trajectory is clearly towards formalization and legal codification. When it comes to CSR, the coexistence of a voluntary and mandatory approach is crucial where voluntary standards continue to push the frontier of ethical innovation, while legal regulations establish the minimum baseline and ensure accountability[8].

This dynamic coexistence has set the stage for the emergence of a more structured and enforceable approach: corporate due diligence. While CSR has traditionally emphasized the moral and reputational incentives for businesses to act responsibly, the concept of due diligence shifts the focus toward proactive risk identification and legal accountability. Rooted in Roman Law as a standard of care according to which a wrongdoer was held liable for failure to comply with the standards of behaviour, and later evolved into a legal concept focused on reducing commercial and financial risk, due diligence has expanded its scope to encompass a wide range of topics. It has a chameleonic nature which allows it to adapt its meaning to different contexts. In international law, due diligence provides a standard of care against which fault can be assessed. The focus is on the behaviour of the accountable rather than in the outcome of that behaviour, making it a duty of conduct rather than a duty of result[9]. Within the realm of international law, due diligence recognizes the desirability that states comply with certain behavioural standards[10].
Moving to another environment, the corporate one, the concept of due diligence takes on yet another meaning, obviously adapted to the subjects to which it is applied. In a business context, it is generally understood to be an investigation process carried out by a corporation to identify and manage risks to the business. Its purpose is to establish the

[8] Ibid.
[9] ILA Study Group (2016). ILA Study Group on Due Diligence in International Law
[10] Ibid.

facts of a commercial transaction in order to assess its value, price and risk[11]. Organizing and performing due diligence investigations is crucial in activities such as a merger between two or more companies; an acquisition of a business; a management buyout; or an investment in another company[12]. There are multiple reasons for a company to perform a due diligence investigation, which are embedded in legislations and stock exchange rules, or are more of a practical nature. In any case, it is a process that assists negotiators in making any material risk transparent[13].

As such, due diligence – originally conceived as a tool for financial or commercial risk management – has gradually evolved into a central mechanism for implementing corporate social responsibility objectives in a more systematic, accountable, and legally enforceable manner. The growing global corporate concern over corporate complicity in human rights abuses, environmental degradation, and unethical labor practices has led to the expansion of due diligence into the social and environmental domains, effectively bridging the gap between abstract CSR commitments and operational accountability. In this sense, due diligence acts as a translational instrument: it translates the aspirational principles of CSR into concrete business processes capable of identifying, preventing, mitigating, and accounting for adverse impacts across a company's operations and value chains.

This functional evolution of due diligence – from financial scrutiny to a broader mechanism for social responsibility – has not occurred in isolation. Rather, it has been strongly influenced and reinforced by a growing body of international frameworks and regulatory initiatives that aim to clarify, guide, and, increasingly, mandate responsible corporate behaviour. Over the past two decades, a number of soft law instruments and voluntary guidelines have emerged on the global stage, laying the groundwork for more structured expectations around corporate conduct. International law initiatives and industry-specific standards have played a critical role in shaping the normative landscape of CSR. These frameworks do not only promote ethical conduct as a moral imperative but also help institutionalize it by embedding CSR principles into risk management,

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[11] Martin-Ortega, Olga (2014) Human rights due diligence for corporations: from voluntary standards to hard law at last? *Netherlands Quarterly of Human Rights,* Vol. 32 (1), p.51

[12] Lambooy, T. (2010). Corporate Due Diligence as a Tool to Respect Human Rights. *Netherlands Quarterly of Human Rights*, *28*(3), p.6

[13] Ibid.

supply chain governance, and stakeholder practices. They provide the normative scaffolding for companies to structure their due diligence processes and align their operations with evolving global expectations regarding sustainability, human rights, and ethical governance.

III. Regulation of CSR and International Frameworks

After having analysed the concepts of corporate social responsibility, when and how it was born, its importance for companies; and of due diligence as a more structured and formalized approach to CSR which implements the principles of CSR in a more enforceable manner, it is pivotal to analyse and deepen the most common and applied guidelines to implement CSR within the international realm.

As previously said, most companies have been encouraged to conduct due diligence on a voluntary basis and international frameworks have been established to help companies integrate due diligence strategies into their businesses.

It has become evident the necessity to develop more efficient regulations that establish a clearly delineated framework and impose tangible obligations on companies to oversee their global operations in a responsible manner. In order to meet this need and the demand for regulation of corporate conduct, international organizations have formulated recommendations and EU countries have adopted binding regulatory initiatives designed to reinforce ethical and legal responsibility of multinational corporations towards the community and individuals involved in their production processes.

Therefore, this paragraph aims to analyse what are some of the most relevant regulatory proposals that represent paradigmatic examples of this regulatory trend. Starting from the United Nations Global Compact (the "*UNGC*") role in putting CSR on the agenda, the aim of this section is to analyse the international realm which regulates CSR deepening into the United Nations *Guiding Principles on Business and Human Rights* (the "*UNGPs*")[14] and the OECD *Guidelines for Multinational Enterprises on Responsible Business Conduct*[15]. These regulations, aimed at creating a unified set of incentives for business decisions, represent a substantial effort to establish a more coherent and effective regulatory framework, as previously emphasized.

[14] United Nations, "Guiding Principles on Business and Human Rights" (2011) UN Doc A/HRC717/31.
[15] OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris

III.I UN Global Compact

In order to address the social and environmental obligations of multinational firms, the UNGC was established in 2000 as a voluntary global governance project[16]. Since its foundation, the intention was to establish a mechanism of dialogue with businesses to support the broader UN goals. Therefore, this mechanism is guaranteed by the fact that corporations participating in the UNGC abide by ten principles[17] that address labour rights, human rights, environmental protection, and anti-corruption efforts guarantees this process[18]. The UNGC has evolved into a significant turning point in the history of corporate social responsibility worldwide. The rising demands on multinational firms to be accountable for their social and environmental effects have become a focal point of public discourse, scholarly investigations, and business operations. As a result, a new global infrastructure centred on CSR has developed, including industry-led standards, multilateral efforts, and specialised organisations that provide certification, advising, and monitoring services in the fields of sustainability and social responsibility. The program has been instrumental in mainstreaming CSR and has expanded into the greatest global forum for business self-regulation. Its framework facilitates communication between companies, governments, civil society, and international organisations by encouraging both local adaptation and global coordination through a network of regional branches[19]. While the UNGC has also been the subject of critical scrutiny – especially for its enforcement procedures and its voluntary nature – it nonetheless sparks discussion around corporate responsibility and remains a benchmark for international CSR engagement.

In addition to a real network such as the UNGC that provides CSR a prominent role, international legal initiatives exist that establish guidelines for the growth and

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[16] Voegtlin, C., & Pless, N. M. (2014). Global Governance: CSR and the role of the UN Global Compact. *Journal of Business Ethics*, *122*(2), p. 179

[17] United Nations Global Compact (2000), *The Ten Principles of the UN Global Compact* **"Human Rights**: *Principle 1*: Businesses should support and respect the protection of internationally proclaimed human rights; and *Principle 2*: make sure that they are not complicit in human rights abuses. **Labour:** *Principle 3*: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; *Principle 4*: the elimination of all forms of forced and compulsory labour; *Principle 5*: the effective abolition of child labour; and *Principle 6*: the elimination of discrimination in respect of employment and occupation. **Environment:** *Principle 7*: Businesses should support a precautionary approach to environmental challenges; *Principle 8*: undertake initiatives to promote greater environmental responsibility; and *Principle 9:* encourage the development and diffusion of environmentally friendly technologies. **Anti-Corruption:** *Principle 10*: Businesses should work against corruption in all its forms, including extortion and bribery"

[18] Halkos, G. E., & Nomikos, S. N. (2021). Reviewing the status of corporate social responsibility (CSR) legal framework. *Management of Environmental Quality an International Journal*, *32*(4), p.703

[19] Voegtlin, C., & Pless, N. M. (2014). Global Governance: CSR and the role of the UN Global Compact. *Journal of Business Ethics*, *122*(2), p. 182

development of CSR. As previously stated, the UN Guiding Principles play a key role in the regulation of this area.

III.II UN Guiding Principles on Business and Human Rights

The *Guiding Principles on Business and Human Rights* were adopted by the UN Human Rights Council in 2011 following six years of consultation with governments, corporations, and civil society. One may consider this normative tool to represent the point where international economic activity and human rights converge. It was born in a context in which there were emerging a set of business-related responsibility initiatives. The latter formed an infrastructure designed to put pressure on companies to be more responsible in their business activities. The UNGPs on Business and Human Rights formed part of an emerging CSR infrastructure, exemplified a form of what has been called collaborative governance and built on what went before how to deal with human rights abuses.

The above-mentioned principles are based on three main pillars: (1) nation states have a duty to *protect* against human rights abuses by third parties, (2) businesses have the (independent) responsibility to *respect* human rights, and (3) victims need to be able to access *remedy* when human rights abuses have taken place[20]. The aim of these principles was to represent a common global platform for action which complemented the burgeoning CSR infrastructure. The State's involvement, which requires taking a proactive stance to stop human rights abuses, is the subject of the first pillar. In what ways may a State intervene in the prevention of human rights violations? Through the adoption of measures including laws, regulations, sanctions and remedies for human rights abuses. Together with trade, investment, and development policies, these public policies must be a consistent mechanism for protecting human rights. Since the purely regulatory approach of enacting laws and regulations may not be sufficient to address the challenges intrinsically linked to human rights in the context of global operations, the UNGPs suggest the application of the so-called *smart mix*[21]. The latter is the combination of voluntary and mandatory measures, where companies cooperate with States through the

[20] Human Rights Council, (2011). "Guiding Principles on Business and Human Rights: Implementing the United Nations "protect, Respect and Remedy" Framework, A/HRC/17/31
[21] Ibid., 6.

introduction of voluntary initiatives that complement the normative aspect performed by the State.

The second pillar focuses on another subject: corporations. In this regard, the UNGPs establish that it is up to companies to avoid causing or contributing to human rights violations through their operations[22]. This responsibility must be operationalized since companies are demanded to comply with human rights due diligence in a chronological order that begins with the identification of risks and negative impacts on human rights that the company may cause or contribute. Once the due diligence has been conducted, processes and policies must be put in place to mitigate such impacts and consequently monitored ensuring total transparency and accountability. Certainly, this second pillar has spread awareness and urged enterprises to assess their labour and human rights impacts through an appropriate due diligence process.

The final pillar shed light on the victims of human rights violations related to the companies' activities. This third pillar combines both the duties of the State[23] and the duties of firms[24]. As far as the first is concerned, States must ensure the existence of judicial and non-judicial mechanisms that are accessible and reliable to enable victims to obtain justice for the harms suffered. The companies' duties are instead related to establish legitimate, accessible, predictable, equitable and transparent non-judicial grievance mechanisms to ensure victims of human rights violations to have genuine opportunity to obtain remedy.

These three guiding concepts have therefore guided in the development of the UN Guiding Principles on Business and Human Rights. Despite the efforts to reconcile a legal instrument with voluntary business commitment, this set of principles has been criticized. First of all, scholars argue that the UNGPs are based on a *consensus* rhetoric since they

[22] II. The Corporate Responsibility to respect Human Rights, A. Foundational Principles, 13. *The responsibility to respect human rights requires that business enterprises: (a) avoid causing or contributing to adverse rights impacts through their own activities, and address such impacts when they occur; (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.* Human Rights Council, (2011). "Guiding Principles on Business and Human Rights: Implementing the United Nations "protect, Respect and Remedy" Framework, A/HRC/17/31

[23] III. Access to Remedy, A. Foundational Principle, 25. *As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy*. Human Rights Council, (2011). "Guiding Principles on Business and Human Rights: Implementing the United Nations "protect, Respect and Remedy" Framework, A/HRC/17/31

[24] III. Access to Remedy, A. Operational Principles, Effectiveness criteria for non-judicial grievance mechanisms, 31. Human Rights Council, (2011). "Guiding Principles on Business and Human Rights: Implementing the United Nations "protect, Respect and Remedy" Framework, A/HRC/17/3

do not rely on a strong agreement, but rather on a fragile consensus created by managing objections[25]. Such fragility renders these principles a weak and vague instrument to protect human rights. However, at the same time, as part of a more complex framework of CSR regulation, the UNGPs seek to reduce conceptual confusion in this area and aim to be a springboard for the application of human rights within corporations, seeking to be a tool to better discuss and assess possible violations of them.

III.III OECD Guidelines for MNCs on Responsible Business Conduct

One of the most developed governmental codes of conduct for CSR is the OECD Guidelines for Multinational Enterprises (MNCs) on Responsible Business Conduct (the "*OECD Guidelines*"). They have been the first attempt *to promote responsible business conduct in the changing landscape of global economy*[26]. The Guidelines' history is traced back to 1976, since their inception, they underwent continuous modifications and evolutions until the most recent update in 2023, but the most crucial version was that of 2011, the same year in which the UNGPs were established.

The voluntary or non-enforceable character of CSR initiatives seems to be set aside by these OECD Guidelines which seemed to have the potential of being more effective and relevant[27]. In a legal environment in which the debate is around whether CSR standards have or ought to have a hard law nature, the Guidelines represent a governmental initiative through which the adhering countries can determine how to change and implement them. Unlike many voluntary CSR initiatives, the OECD Guidelines are supported by an institutional implementation mechanism – the National Contact Points (the "*NCPs*") – which play a pivotal role in promoting the Guidelines and resolving issues arising from their interpretation and application[28].

The document is divided in two sections: the first one is aimed at guiding the corporate behaviour through the application of general principles in line with applicable laws and

[25] Rasche, A., & Waddock, S. (2021). The UN Guiding Principles on Business and Human Rights: Implications for Corporate Social Responsibility research. *Business and Human Rights Journal*, *6*(2), p. 235
[26] OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris
[27] Davarnejad, Leyla. (2011). In the shadow of soft law: the handling of corporate social responsibility disputes under the OECD Guidelines for Multinational Enterprises. *Journal of Dispute Resolution*, 2011(2), p. 352
[28] OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris, Preface, para.2.

internationally recognised standards; the second one is the practical section in which are settled the procedures to implement such guidelines.
The principles cover a wide range of topics including human rights, environmental protection, anti-corruption, consumer interests, taxation, and corporate governance. The core objective of the Guidelines is to enhance the positive contributions of MNCs to sustainable development while minimizing adverse effects on people, the planet, and society[29]. A cornerstone of this document is the emphasis on risk-based due diligence, on which the OECD Guidelines have been placing particular emphasis since 2011. Enterprises are expected to identify, mitigate, and account for how they address actual and potential adverse effects in their own operations and through their business relationships[30]. This due diligence process constitutes a systematic obligation and is outlined as an integral part of corporate risk management that applies across sectors and issues including human rights, the environment, and labour.
The second section of the document instead concerns all the procedures for implementing the Guidelines and the mechanisms through which they are applied and monitored. These mechanisms are formalized in the Decision of the OECD Council on the Guidelines and consist of the National Contact Points established by each adhering government[31]. These NPCs are *ad hoc* bodies which serve as non-judicial grievance mechanisms and platforms for dialogue established in each country adhering to the Guidelines, in order to promote and implement them at the national level. The implementation procedures outlines in the second section of the Guidelines detail the functions of the NPCs, also emphasizing the importance of the various member states to cooperate by sharing information and participating in peer reviews to promote coherence and effectiveness across jurisdictions. Although the NPCs are responsible for encouraging adherence to the Guidelines at the national level, the Investment Committee, which represents a more strategic level, is the second governance system of the Guidelines. It is a collegial body made up of representatives from OECD member nations and is in charge of monitoring the implementation and the evolution of the Guidelines, as well as providing genuine

[29] Ibid., para.1
[30] Ibid., Chapter II, paras. 11-13
[31] Ibid., Preface, para. 2; Chapter I, para.11

interpretations and clarifications of them, and encouraging collaboration between member nations and other international organisations[32].

III.IV The Soft Law Pillars of CSR: Comparing the OECD Guidelines, UNGPs, and UNGC

The previous paragraphs have examined the soft law tools that make up the framework of global CSR governance. All of these frameworks together represent the most authoritative expressions of international standards for ethical corporate practices, even though none of them are legally enforceable. Each represents the transition from voluntary ethics to normative governance and makes a distinct contribution to the regulatory environment of CSR.

The OECD Guidelines are the most thorough and structured of the three since they are recommendations issued jointly by member governments and MNCs. Although the Guidelines are voluntary in nature, the NPCs, as an institutional enforcement system that enables the interested parties to submit specific complaints and participate in mediation, support the Guidelines notwithstanding their voluntary character. This mechanism makes the Guidelines unique among soft law instruments, as it adds the procedural accountability element and facilitates dispute resolution.

The UNGPs, on the other hand, are based on the tripartite framework of “Protect, Respect, and Remedy” which offers a broader conceptual and normative basis for CSR. They clarify the obligations States and corporations have with regard to human rights, calling on companies to implement human rights due diligence in all aspects of their supply chain and operations. UNGPs validity stems from their incorporation into national action plans and international policy tools, despite the fact that they lack and institutional enforcement body like the OECD NPCs.

Of the three systems, the UN Global Compact’s Ten Principles are the most voluntary and aspirational. Companies are encouraged by the UNGC to align their operations and strategy with these principles. Its primary strength is its capacity to inspire business involvement on a worldwide scale, which makes it the biggest voluntary CSR initiative.

[32] Ibid., Part II: Implementation Procedures of the OECD Guidelines for Multinational Enterprises on Responsible Business Conducts – II. The Investment Committee and the Working Party on Responsible Business Conduct

However, other from social pressure and recurring reporting, the Global Compact lacks official enforcement measures. Criticism has focused on the risk of *bluewashing*, where companies affiliate with the UNGC without undertaking significant commitments or reforms[33].

These frameworks, despite their differences, agree on important aspects of ethical business practices. All three emphasize how crucial it is to uphold human rights, encourage environmental sustainability, and fight corruption. Despite differing levels of specificity and enforceability, they share a commitment to transparency, stakeholder participation, and due diligence. Additionally, each system emphasises how crucial it is to include CSR into core company operations rather than viewing it as peripheral or philanthropic. Their institutional architecture and legal weight are where they diverge the most. The UNGC is notable for its worldwide reach and networked approach to corporate learning and peer accountability, the UNGPs for their normative clarity and effect on legally binding legislation, and the OECD Guidelines for their quasi-institutional character. Their collective strength is the increasing convergence of soft law norms with new national and regional legislation, but their common weakness is the absence of legally obligatory enforcement mechanisms.

A broader global shift toward regulating corporate influence on society is reflected in the growing involvement of the United Nations and the OECD in establishing minimum standards of conduct for companies. These institutions help in defining what ethical business practices should look like in the eyes of the global society by outlining precise standards and providing helpful advice. Governmental and intergovernmental actors are increasingly steering corporate activities through global standards and frameworks, even if enterprises still retain discretion over many of their internal decisions. In today's environment, a firm's long-term viability depends on both its financial success and its compliance with changing ethical and regulatory expectations. Meeting regulatory requirements and aligning with societal values can enhance a company's reputation and satisfy stakeholders' demands. Conversely, businesses that fail to address these

[33] Voegtlin, C., & Pless, N. M. (2014). Global Governance: CSR and the role of the UN Global Compact. *Journal of Business Ethics*, *122*(2)

expectations risk losing legitimacy and credibility. This emphasizes how companies are expected to include CSR into their core strategy, regardless if there is a firm's legal obligation[34].

Having examined the evolution of CSR and the development of key international frameworks such as the UNGC, UNGPs, and OECD Guidelines, it becomes essential to explore how these global principles have shaped regional approaches – particularly within the European Union.

IV. The European approach to due diligence and CSR

Once analysed the international regulatory framework that aims to implement CSR and help companies to integrate due diligence strategies and practices into their operations, this section focuses on EU's progressive role in embedding due diligence and sustainability into corporate governance through a series of *ad hoc* legal tools. By tracing these regulatory developments, the analysis will clarify how the EU has fostered a culture of corporate accountability culminating in instruments like the Corporate Sustainability Due Diligence Directive.

As widely known, the EU has long declared the objective of overcoming past divisions and building a cohesive future rooted in cooperation among European peoples and markets, as well as to achieve sustainable development.
In addition to voluntary initiatives, the EU has introduced mandatory due diligence legislation to tackle human rights and environmental abuses in certain sectors that are traditionally worst affected.

The aim of this section is therefore to dig into the regulatory steps within the EU to integrate sustainability at company level.

[34] Halkos, G. E., & Nomikos, S. N. (2021). Reviewing the status of corporate social responsibility (CSR) legal framework. *Management of Environmental Quality an International Journal*, *32*(4), p. 710

IV.I Non-Financial Reporting Directive (Directive 2014/95/EU)

Non-financial reporting ("*NFR*") is becoming an integral part of corporate accountability, reflecting the increasing recognition that non-financial issues are essential to long-term business performance. The adoption of Directive (EU) 2014/95[35], marked a significant regulatory milestone in the EU, making NFR mandatory for large and public interest corporations with more than 500 employees. These companies were now required to disclose information on environmental impact, social responsibility, human rights, anti-corruption, and diversity policies. As the first binding EU-level framework for NFR, the Directive pushed companies to rethink their internal accounting, compliance, and sustainability mechanisms to align with the new expectations of transparency.

Prior to its adoption, non-financial reporting was largely voluntary and driven by stakeholder pressure or reputational concerns, leading to inconsistent practices and a lack of comparability across firms and sectors. By introducing a mandatory reporting obligation, the Directive sought to formalize and standardize ESG disclosures across the EU. However, it did so without imposing detailed reporting standards or metrics, which ultimately limited its effectiveness in achieving genuine comparability or consistency in disclosures.

Despite its value in promoting transparency, this lack of specific reporting standards under the Directive raised concerns that mandatory reporting, absent a harmonized framework, might result in symbolic compliance rather than meaningful transparency. In many cases, companies met the minimum legal requirements without offering useful or verifiable insights to stakeholders[36].

However, the regulation of NFR represented an opportunity to strengthen the link between corporate financial profitability and sustainability performance by increasing the attention and awareness of managers, stakeholders and investors regarding the relevance of non-financial issues in business management[37].

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[35] Directive (EU) 2014/95 of the European Parliament and of the Council of 22 October 2014 amending Directive (EU) 2013/34 as regards disclosure of non-financial and diversity information by certain large undertakings and groups

[36] Breijer, R., & Orij, R. P. (2022). The Comparability of Non-Financial Information: An Exploration of the impact of the Non-Financial Reporting Directive (NFRD, 2014/95/EU). *Accounting in Europe*, *19*(2)

[37] Cupertino, S., Vitale, G., & Ruggiero, P. (2021). Performance and (non) mandatory disclosure: the moderating role of the Directive 2014/95/EU. *Journal of Applied Accounting Research*, *23*(1), p. 164

IV.II The Whistleblower Protection Directive (Directive (EU) 2019/1937)

In order to analyse the regulatory actions that led to the development of a CSR culture and more specifically corporate due diligence in the European dimension, it is necessary to take a look at another provision that came into force in the EU, namely the Whistleblower Protection Directive[38].

First, it is crucial to define who is referred to by the term *whistleblower*, who is a person who reports or publicly discloses information on breaches acquired in the context of his or her work-related activities, whose reason is mostly attributable to a conflicting feeling of duty or a sense of personal risk[39].

On 23rd October 2019, the EU enacted a directive protecting whistleblowers across the Union, establishing a uniform level of protection across EU Member States for individuals who expose wrongdoings in both public and private sectors in a context in which lacked a unified legal approach to whistleblowing.

The primary goal of the Directive is to encourage reporting of illegal or unethical activities by ensuring robust safeguards for whistleblowers acting in good faith against retaliation, such as dismissal, demotion, or any discriminatory treatment, and member states must provide access to legal, psychological, and financial support[40]. In order to promote transparency and accountability within the EU, the Directive establishes the obligation for organizations with more than 50 employees to establish secure, confidential, and reliable reporting channels to enable early detection and resolution of potential misconduct[41]. Whistleblowers may also report externally to authorities or, in certain cases, disclose publicly, and such mechanism provides them accessible and trustworthy pathways, tailored to the circumstances they face[42]. The key issue of such Directive is the new opportunity given to set a minimum threshold for whistleblower protection in the EU. In those EU Member States where protection was insufficient or

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[38] Directive (EU) 2019/1937 of The European Parliament and of The Council of 23 October 2019 on the protection of persons who report breaches of Union Law

[39] Teichmann, F. M., & Wittmann, C. (2022). Whistleblowing: procedural and dogmatic problems in the implementation of directive (EU) 2019/1937. *Journal of Financial Regulation and Compliance*, *30*(5), p.553

[40] Van Waeyenberge, A., & Davies, Z. (2020). The Whistleblower Protection Directive (2019/1937): A satisfactory but incomplete system. *European Journal of Risk Regulation*, *12*(1), p. 241

[41] Directive (EU) 2019/1937, Art. 8

[42] Ibid., Art. 11

non-existent, this document was a starting point, while in others, int standardised the applicable rules by imposing higher standards of protection[43].

The true innovation of this Directive, which is a pillar in the promotion of accountability in Europe, lies in the strengthening of its enforcement mechanisms, most notably through the reversal of the burden of proof in retaliation claims. When a whistleblower reports having suffered retaliatory measures, the employer must demonstrate that any detrimental action was unrelated to the disclosure[44], offering a real chance for remedy, enhancing security, and reducing the chilling effect that fear of reprisal might have. This procedural change is not only a protective measure, since it also opens a new and significant pathway for corporate due diligence. By legally requiring companies to justify their actions and internal responses in whistleblower cases, the Directive compels firms to establish traceable, fair, and transparent internal processes.

Thus, the reason why it was deemed necessary in this work to examine this Directive for the purpose of exploring the subject of corporate due diligence, is that it enhances a company's ability to handle risks associated to environmental harm, corporate misconduct, and human rights, all of which are essential components of ethical business practices.

The Whistleblower Protection Directive facilitates the early detection of risk, and, like the UNGPs and the OECD Guidelines, helps companies in mandating secure, confidential reporting channels, in protecting those who raise concerns, which align directly with the duty to engage with stakeholders and remediate harm. Together with the Non-Financial Reporting Directive, it helped to evolve and strengthen due diligence practice, by making it more participative, credible, and inclusive.

IV.III A more strategic approach: the European Green Deal

The process that the EU has carried out was the review of the entire legal framework that supported the monitoring of businesses behaviour on sustainability issues. In this analysis aimed at examining the European legal framework on CSR, another player emerged in

[43] Van Waeyenberge, A., & Davies, Z. (2020). The Whistleblower Protection Directive (2019/1937): A satisfactory but incomplete system. *European Journal of Risk Regulation*, *12*(1), p. 244

[44] Directive (EU) 2019/1937, Art. 21(5)

the same year that the previously examined Directive came into force: the European Green Deal[45].

In December 2019, the EU unveiled a fundamental strategy to address climate and environmental challenges which introduced several financial instruments and support mechanisms aimed at addressing climate-related challenges while promoting economic growth and social equity. This strategy is articulated around several key objectives: reducing greenhouse gas emissions, promoting circular economy principles, restoring biodiversity, and enhancing the EU's natural capital[46]. One of the financial instruments, adopted to support the transition to a sustainable economy, was the *Just Transition Fund*, which ensures that those affected by the shift to a green economy are assisted. To incentivize transformation, the Green Deal integrates sustainability into EU investment policies, notably through the *European Green Deal Investment Plan* and the *Sustainable Europe Investment Plan*, aiming to mobilize at least €1 trillion in sustainable investments over the next decade[47]. Overall, the European Green Deal is not only an environmental initiative but a comprehensive socio-economic transformation strategy, reinforcing the EU's leadership in global climate governance and the alignment of corporate responsibility with ecological sustainability.

The EU Green Deal's objectives are closely intertwined with the corporate due diligence purposes as pillars of the EU's evolving sustainability governance framework. This strategy has sparked a regulatory shift, particularly around how companies are expected to recognise, mitigate and report negative effects on human rights and the environment[48]. The Green Deal was also an initiative to persuade legislators that this transition cannot be driven by public policy alone but must be fully integrated into the private sector. This view reinterprets the responsibilities of companies as agents of social and ecological change in addition to their roles as market actors.

[45] European Commission. (2019). The European Green Deal (COM(2019) 640 final).Brussels: European Commission.
[46] Ibid., pp. 2-5
[47] Ibid., p,4
[48] Mares, R. (2023). Directors' duties during the green transition under EU law: Reform and ramifications from corporate sustainability due diligence. *Nordic Journal of European Law*, *6*(2)

IV.IV Corporate Sustainability Reporting (Directive (EU) 2022/2464)

As previously discussed in this work, the first binding measure within the European legal system pertaining to the reporting of non-financial matters was the Non-Financial Reporting Directive. The next step taken by the EU, after realising that there was "ample evidence" that the information reported by companies was not sufficient, was the adoption of the Directive on *Corporate Sustainability Reporting* (the "*CSRD*") in 2022[49].

The Directive was designed to fill gaps in previous legislation and to make businesses more transparent about their effects on the environment, human rights, and society. First and foremost the CSRD's innovations include a broader scope of application, as it applies to all large companies, as well as small and medium-sized enterprises, listed on regulated markets with a minimum of 250 employees, which would be required to report on sustainability[50]. This expansion is expected to increase the number of reporting entities from around 11.600 to approximately 50.000 across the EU.

A significant conceptual innovation of the CSRD is the requirement to report under the principle of *double materiality*[51]. Companies must evaluate sustainability from two perspectives: inside-out, focusing on how operations affect people and the environment (also known as impact materiality); and outside-in, considering how sustainability concerns affect the company's financial performance (also known as financial materiality). The rising understanding that a company's sustainability performance is both a risk factor and a measure of its responsibility is reflected in this dual focus[52].

Regarding the disclosure content, companies are required to provide both qualitative and quantitative data on their business strategy, sustainability goals and processes, governance and incentive systems, as well as the implementation of relevant policies and action plans, on the short, medium and long term. The limited assurance requirement is one of the CSRD's key innovations. Independent auditors or assurance providers are required to perform limited assurance on reported sustainability information for all

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[49] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

[50] Kaminski, R. (2023). Directive (EU) 2022/2464 on Corporate Sustainability Reporting. *ResearchGate,* p.9

[51] European Commission (2019). Non-Binding Guidelines on Non-Financial Reporting and reiterated in Directive 2014/95/EU: "*Companies should report on how sustainability issues affect their business and, conversely, how their activities impact people and the environment*."

[52] Kaminski, R. (2023). Directive (EU) 2022/2464 on Corporate Sustainability Reporting. *ResearchGate,* p.10

organisations within the scope of the investigation. Over time, this requirement is expected to evolve into reasonable assurance, enhancing the credibility and reliability of reported data.

The Corporate Sustainability Reporting Directive of 2022, which expands the range of companies that must report, deepens the type of sustainability data that must be disclosed, and introduces stronger governance and assurance mechanisms, represents a significant evolution in the EU's regulatory approach to corporate transparency. The foundation for a more methodical and proactive approach to identifying and controlling sustainability-related risks and impacts has been successfully established by the CSRD. In this way, it has paved the way for a transition from transparency to accountability, while simultaneously broadening the scope of CSR. Understanding this shift is essential to comprehend the logic behind the **Corporate Sustainability Due Diligence Directive (the "*CSDDD*")**, which is the focus of this work. Therefore, the CSRD, may be viewed as the final foundational stage in the EU's evolving sustainability framework prior to the formal institutionalization of due diligence responsibilities under the forthcoming directive.

IV.V Proposal for a New Directive: the shift from voluntary to mandatory due diligence

The necessity to advance broader due diligence processes and move beyond the present standards arose from the review of all national, international, and European initiatives aimed at addressing environmental sustainability and human rights challenges. The examination of the Corporate Sustainability Due Diligence Directive (the "*CSDDD*") in this work starts with this assumption.

On 23rd February 2022 the European Commission presented its proposal for a Directive on Corporate Sustainability Due Diligence, to create an obligatory legislative framework that requires corporations to perform due diligence efforts in their operations and along their supply chains. In order to comprehend the genesis of this proposal, one must go back to 2018, when the Commission unveiled its *Action Plan on Financing Sustainable*

Growth[53]. The EU Commission should "*carry out analytical and consultative work with relevant stakeholders to assess: (i) the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout the supply chain, and measurable sustainability targets; and (ii) the possible need to clarify the rules according to which directors are expected to act in the company's long-term interest"*[54]. As a result, on 20th February 2020, the British Institute of International and Comparative Law (the "*BIICL*"), in collaboration with LSE Consulting and Civic Consulting[55], conducted a research on due diligence standards throughout the supply chain. Based on stakeholders' opinions, the research aimed to evaluate the probable development of regulatory measures on the subject of due diligence at the European level. The study's findings confirmed that voluntary measures had failed, and the proposal to impose new, mandatory due diligence criteria was the most popular one[56]. It was widely acknowledged that this proposal might have a significant positive impact on the firms, the industry, and the society as a whole.

The need of establishing a legally enforceable framework for due diligence was highlighted by the 2018 Action Plan and the aforementioned 2020 study, which prompted the Commission to take action and present a legal framework for due diligence obligations.

The proposed Directive seeks to: strengthen corporate responsibility for adverse effects; prevent the fragmentation of due diligence obligations in the internal market and provide legal certainty for companies regarding expected conduct and liability[57]; enhance governance practices and the mitigation of human rights and environmental risks within business processes; and support access to remedies for individuals who have been harmed by a company's operations. Only a corporation's own activities, those of its subsidiaries, and "*value chain transactions carried out by entities with which the company has an*

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[53] Crespin, J. (2022), EU Directive on Corporate Sustainability Due Diligence: critical analysis and limitations of the European Commission's Proposal. *Louvain School of Management, Universitè Catholique de Louvain*

[54] European Commission. (2018). Action Plan: Financing Sustainable Growth, COM(2018) 97 final, Brussels.

[55] Study on due diligence requirements through the supply chain: Final Report. Available at: https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en

[56] Crespin, J. (2022), EU Directive on Corporate Sustainability Due Diligence: critical analysis and limitations of the European Commission's Proposal. *Louvain School of Management, Universitè Catholique de Louvain*

[57] Corvese, C.G. (2022). La sostenibilità ambientale e sociale delle società nella proposta di Corporate Sustainability Due Diligence Directive (dalla «insostenibile leggerezza» dello scopo sociale alla «obbligatoria sostenibilità» della Due Diligence*). BANCA IMPRESA SOCIETÀ*, 41(3)

established business relationship" are subject to the proposed Directive's due diligence requirements. Upstream and downstream operations are included in value chain transactions that are executed by organisations with which the firm has a long-standing commercial connection[58].

The analysis of the scope and objectives of the proposed Directive is now worth continuing. Initially, the proposed Directive's subjective scope encompassed all large EU companies. It was further divided into two groups: the first group would include companies with more than 500 employees and a global net turnover exceeding €150 million, and the second group would include companies with more than 250 employees and a global net turnover exceeding €40 million, as long as at least 50% of this turnover was generated in sectors deemed to have high impact[59]. Although small and medium-sized enterprises were not specifically addressed by the proposal, it was acknowledged that they were a part of the supply chains of larger corporations that were under its jurisdiction. As a result, the obligations would indirectly apply to them[60].

Both civil responsibility and administrative monitoring would have been used to enforce the rules: the proposal called for substantial penalties and private enforcement of the obligations through civil responsibility in the case of non-compliance[61], and Member States would have been required to guarantee that directors functioned as guarantors of the efficacy of the duty of care[62].

The European Commission started the consultation process with the European Parliament and the EU Council once the first proposal was presented, and they looked over it. Following the examination, on 1st June 2023, the European Parliament proposed certain amendments to the proposal. In addition to imposing obligations on parent companies of groups with at least 500 employees and a turnover of over €150 million, the Parliament proposed to expand the scope of the Directive to include all companies with more than 250 employees and a global net turnover of at least €40 million regardless of the sector. It stated that the number of employees and turnover of subsidiaries that had places of

[58] Patz, C. (2022). The EU's Draft Corporate Sustainability Due Diligence Directive: A first Assessment. *Business and Human Rights Journal*, *7*(2).
[59] Art. 2, European Commission. (2022). *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937* (COM/2022/71 final).
[60] Ibid., Art. 8
[61] Ibid., Art. 22
[62] Ibid., Art. 26

business separate from the central headquarters but were still legally dependent on the holding company should have been included in the calculation of thresholds. Additionally, human rights were given more importance with the introduction of amendments to improve their protection, especially with regard to the rights of local communities and workers in global supply chains. Furthermore, more stringent transparency requirements were put in place, which call for thorough reporting on due diligence procedures as well as the results of their application and the tangible effects of the actions taken. Lastly, harsher sanctions were suggested for non-compliant businesses, including parent companies that were responsible for a subsidiary, where the latter fell within the scope at the time of the adverse impact and was dissolved by the parent company itself to avoid liability.

After these consultations and these amendments, the European Parliament and the Council of the EU achieved a preliminary agreement on the Directive on 14th December of the same year, taking into account the Parliament's changes. A final compromise text on the CSDDD was approved by the Council on 15th March 2024.

In order to provide a level playing field for businesses operating in the EU, the CSDDD seeks to create a common horizontal framework that subjects all corporations to the same set of requirements[63].

IV.VI From Innovation to Compromise: the Dilution of the CSDDD's Regulatory Ambitions

The innovative scope of the Corporate Sustainability Due Diligence Directive was significantly curtailed following its inclusion in the so-called *Omnibus Package*[64], a broader legislative initiative aimed at streamlining and simplifying the EU's sustainability regulatory framework. This integration diluted several of the original ambitions of the European Commission's proposal, particularly those aimed at establishing a rigorous and enforceable system of corporate accountability along global value chains.

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[63] Crespin, J. (2022), EU Directive on Corporate Sustainability Due Diligence: critical analysis and limitations of the European Commission's Proposal. *Louvain School of Management, Universitè Catholique de Louvain*

[64] Council of the European Union. (2024, March 15). *Corporate sustainability due diligence: Council adopts new rules on corporate responsibility throughout value chains* [Press release]. https://www.consilium.europa.eu/en/press/press-releases/2024/03/15/corporate-sustainability-due-diligence-council-adopts-new-rules-on-corporate-responsibility-throughout-value-chains/

In the political negotiations leading up to the final adoption of the Directive, sustained pressures from industry lobbies, multinational corporations, and several Member States led to a push for reducing the perceived regulatory burden on companies. Responding to this, tthe European Commission launched a broader effort to simplify existing legislation, reduce administrative complexity, and foster economic competitiveness, particularly in a period marked by geopolitical and economic uncertainty. Within this context, the CSDDD was folded into the larger *Omnibus Package*[65] -an initiative not aimed at deregulation, but rather at rationalising and harmonising sustainability-related obligations across various EU legislative instruments[66].
The *Omnibus Package* encompasses key regulatory acts, including:

- the *Corporate Sustainability Reporting Directive* (EU 2022/2464 *CSRD*);
- the *Corporate Sustainability Due Diligence Directive* (2024/1760 *CSDDD*);
- the *EU Taxonomy Regulation* (EU 2020/852);
- the *Carbon Border Adjustment Mechanism* (2023/956 *CBAM*); and
- the *InvestEU Regulation*.

While intended as a simplification tool, the package's consolidation of sustainability rules resulted in a notable softening of obligations imposed on companies. In the case of the CSDDD, the regulatory scope was significantly narrowed. The Directive now focuses primarily on direct business relationship, thereby limiting corporate responsibiloty for adverse human rights and environmental impacts occurring further upstream or downstream in the chain of activities – areas often associated with the highest risk, especially in globalised industries.

Moreover, the frequency of due diligence assessments was reduced from an annual obligation to terminate contracts with non-compliant suppliers has been eliminated. One of the most prpgressive features of the original proposal – civil liability for failure to implement due diigence obligations – has been considerably diluted. The final text

[65] Louison, C. (2025). Rendicontazione di sostenibilità: cosa cambia con il pacchetto omnibus. IPSOA.
[66] Bellini M. (2025), Pacchetto Omnibus UE: rendicontazione, tassonomia e due diligence più semplici. *ESG360.it.*

includes more lenient provisions on liability and enforcement, thus diminishing the Directive's deterrent effect.

In parallel, the climate dimension of the CSDDD has also been weakened. The requirements related to corporate clinate transition plans – initially conceived to align business strategies with the objectives of the Paris Agreement[67] – were sclaed back, reducing the Directive's transformative potential on corporate climate governance.
In summary, the inclusion of the CSDDD in the *Omnibus Package* transformed it from a pontentially groundbraking instrument into a more cautious and politically palatable compromise, shaped by intra-European negotiations and economic concerns. Nonetheless, despite these mitigations the Directive still introduces a novel and structured approach to sustainability governance within EU legal framework.

The following chapters will examine in detail the oblogations and remaining innovations introduced by the CSDDD, with a view to assessing its regulatory significance and practical implications. Following an analysis of the steps taken within the European legislative framework to achieve an efficient implementation and enforcement of the due diligence practice, this work will delve deeper into the CSDDD's analysis and, subsequently, how the introduction of this new legal tool has changed the concept of accountability.

[67] United Nations. (2015). *Paris Agreement.* United Nations Framework Convention on Climate Change (UNFCCC). https://unfccc.int/sites/default/files/english_paris_agreement.pdf. It is a legally binding treaty that commits its Parties to *hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C*". It requires each Party to submit and periodically strengthen nationally determined contributions, promotes adaptation and climate-resilience measures, establishes a five yearly global stocktake to assess collective progress.

CHAPTER 2: A comprehensive Analysis of the Corporate Sustainability Due Diligence Directive (CSDDD)

Building on the contextual foundation established in the first chapter, this one instead offers an in-depth examination of the Corporate Sustainability Due Diligence Directive (the "*CSDDD*"), as adopted within the European Union's evolving regulatory landscape.

While the previous chapter provided an overview of the Directive's goal and its broader implications for harmonizing business practices across Member States, the following sections will critically assess the substantive provisions and structural mechanisms embedded in the Directive.
This chapter aims to unpack the core elements of the CSDDD, exploring its scope, obligations imposed to companies, and the legal instruments through which sustainability-related responsibilities are being formalized. Particular attention will be given to the Directive's due diligence requirements across environmental, human rights, and governance dimensions, as well as its enforcement architecture and supervisory mechanisms.

Through this comprehensive analysis, this section seeks to provide a clear understanding of how the Directive redefines the boundaries of corporate responsibility and operational conduct in the pursuit of sustainable and ethical business practices.

I. Objectives and motivation of the CSDDD

On 24th April 2024, the European Parliament's resolution approved the new CSDDD, following the acceptance of amendments proposed by the Council. Subsequently, on May 2024, the Council of the European Union gave its final approval, and the Directive was officially published on 5th July 2024 in the Official Journal of the EU[68] and on 26th July it finally entered into force.

[68] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, 5 July 2024

The adoption of the CSDDD is part of the European Union's long-standing tradition of promoting peace, security, and sustainability through legislative action. As with many legal instruments enacted within the EU framework, the Directive is deeply rooted in the core values enshrined in the Union's legal and political order – namely, respect for human dignity, freedom, democracy, equality, the rule of law, and fundamental human rights. It reflects the EU's broader commitment to safeguarding the environment and promoting socially responsible business conduct.

According to the European Commission's 2022 Proposal, the Directive "*aims to ensure that companies active in the internal market contribute to sustainable development and the sustainability transition of economies and societies through the identification, prevention and mitigation, bringing to an end and minimisation of potential or actual adverse human rights and environmental impacts connected with companies' own operations, subsidiaries and value chains*"[69]. This expanded responsibility illustrates a shift from traditional shareholder-focused corporate governance models towards a more inclusive and sustainability-oriented approach, wherein environmental and social concerns are treated as central to long-term corporate strategy.

The CSDDD thus marks a clear transformation in the nature of corporate due diligence: from being a largely voluntary and aspirational practice to a binding legal obligation[70]. This evolution signals a broader paradigm shift in regulatory philosophy. It addresses the limitations of voluntary self-regulation, which, while once considered sufficient, has proven inadequate in ensuring accountability in the face of complex global value chains and transnational corporate operations. Voluntary mechanisms often emerged in contexts where state authority over economic actors was diminishing, yet such systems failed to provide consistent and enforceable standards across jurisdictions. The Directive responds to this regulatory vacuum by introducing a binding, horizontal framework that transcends

[69] Art. 2, European Commission. (2022). *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937* (COM/2022/71 final), p. 31

[70] Leite E., Koporcic N., Markovic S. (2024). Corporate Sustainability Reporting: Shifting From Optional Due Diligence to Mandatory Duty. *John Wiley & Sons Ltd, Business Ethics, the Environment & Resposnibility,* p. 2

national boundaries and imposes legally enforceable obligations on large corporate actors[71].

The Directive was also conceived as a response to the growing regulatory fragmentation among Member States, which has led to an inconsistent patchwork of due diligence requirements across the EU. By introducing a unified set of rules, the CSDDD aims to harmonize national legislation, thereby reducing legal uncertainty for companies and ensuring a level playing field in the internal market. This is also the reason why its legal basis lies in Articles 50[72] and 144[73] of the Treaty on the Functioning of the European Union in combination, which enable the EU to adopt measures aimed at the proper functioning of the internal market, particularly in cases where fragmentation poses a threat to fair competition.
In concrete terms, companies falling within the scope of the Directive are required to take measures to identify, prevent, mitigate or halt actual or potential negative impacts on human rights or the environment, not only in relation to their internal activities and operations, but also those of their affiliates and business partners, both direct and indirect, along the entire chain of activity[74].

The CSDDD pursues several key objectives. First, it aims to enhance corporate governance by embedding risk identification and mitigation practices related to human rights and environmental harm into core business strategies. Second, it seeks to reduce legal fragmentation within the internal market, thus providing greater legal clarity and predictability for both companies and stakeholders. Third, the Directive is intended to strengthen corporate accountability for adverse impacts, aligning company obligations with a growing body of EU initiatives on responsible business conduct. Fourth, it aims to improve access to justice for individuals and communities adversely affected by corporate actions. Lastly, as a horizontal legislative instrument, the CSDDD operates alongside

[71] Degl'Innocenti, F. (2024). Globalizzazione, catene produttive, regole di sostenibilità. Il perimetro applicativo della Direttiva Europea 2024/1760. *Ianus Diritto e Finanza*
[72] *See*: Consolidated Version of the Treaty on the Functioning of the European Union, Article 50, OJ C 115, 09 May 2008, p. 68.
[73] *See*: Consolidated Version of the Treaty on the Functioning of the European Union, Article 114, OJ C 115, 09 May 2008, pp. 94–95.
[74] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, 5 July 2024, Art. 1(a)

sector-specific initiatives, complementing existing EU measures aimed at addressing sustainability-related challenges.
Ultimately the Directive, highlights the dual responsibility of public authorities and private companies in achieving the EU's sustainability and human rights goals. It underscores the indispensable role of corporate behaviour in attaining sustainability goals, emphasizing that sustainable and ethical business conduct is not only a matter of corporate discretion but of legal obligation.

In light of these objectives and the legal and ethical imperatives underpinning the CSDDD, it becomes essential to examine more closely the scope of the Directive – that is, the categories of companies it applies to, the nature of their obligations, and the breadth of their responsibilities across complex value chains.

II. The CSDDD personal scope

Having examined the objectives of the new Directive, it is therefore crucial to analyse how the subjects to which it applies function as the main drivers of the achievement of these goals.

In the initial proposal, the threshold for a "Public Interest Entity" (PIE) subject to the CSDDD was lower than in the final text, which extended its reach to companies in specific sectors and categories. The scope of the Directive covers large EU limited liability companies and partnerships of substantial size and economic influence with more than 1.000 employees and at least €450 million in global net turnover; franchises operating in the EU with a turnover of more than €80 million, of which at least 22.5€ million is derived from royalties; as well as parent companies that, even if they do not meet the minimum thresholds, are at the head of a group that meets them[75]. What is new in the final text compared to the Proposal is that the reference to impactful activities – those operating in sensitive sectors, such as textile and leather manufacturing, forestry, livestock farming, and mining – has been removed. So this goes to emphasise that the Directive applies irrespective of the product sector of reference, in a cross-cutting way, to companies that meet the aforementioned requirements.

[75] Art. 2, Directive (EU) 2024/1760

Similarly, the CSDDD involves large non-EU companies with at least €450 million in net turnover generated in the European Union[76]. The applicability of the Directive is also guaranteed to corporate groups, whether based within or outside the EU. It applies in particular to parent companies that meet at least one of the following criteria:

- the company serves as the ultimate parent of a group which, on a consolidated basis, exceeded the relevant threshold during the financial year prior to the last completed financial year[77];
- the company, or a group where it is the ultimate parent, has established franchising or licensing arrangements with independent third parties within the EU, where such agreements create a unified brand identity, a shared business model, and standardized operational practices. If the royalties from these agreements surpassed €22.5 million in the EU during the financial year before the most recent one, this criterion is fulfilled[78];
- the company, or the groups it ultimately controls, achieved a net turnover of over €80 million within the EU during the financial year preceding the last[79].

This broad yet clearly personal scope ensures that the Directive targets those entities most capable of exerting meaningful influence over global value chains, thereby positioning them as key actors in the implementation of responsible and sustainable business practice.

III. The CSDDD material scope

In parallel with its carefully delineated personal scope, the Directive also establishes a material scope that defines the specific activities and operational domains subject to due diligence obligations.

The recent legislative framework assumes a distinctive organizational model that extends its influence across the entire spectrum of *chain of activities*, and the use of this terminology is not accidental. This concept complements, but is not entirely synonymous

[76] Ibid., (2)
[77] Art. 2(2)(b), Directive (EU) 2024/1760
[78] Ibid.,(c)
[79] Ibid.

with, the notion of *value chain*, a term frequently employed in the Directive as well[80]. The value chain encompasses all operations related to the production of goods or the delivery of services by an enterprise. It includes not only the development phase of a product or service but also the various activities associated with upstream and downstream business relationships – ranging from the sourcing of raw materials to the distribution of the final production to the end consumer.

Article 3 of the current Directive provides a precise and narrowly defined interpretation of the term *chain of activities*, concentrating on the specific functions performed by both upstream and downstream commercial partners. This definition is restricted to activities such as production, transportation, storage, and distribution that are directly linked to the undertaking's business operations[81]. Notably, it expressly excludes the transport, storage, and distribution of goods subject to export controls once such exports have received official authorization. The exclusion of the product use phase or the service provision stage from the definition of the *chain of activities* appears stem from a deliberate legislative choice. This limitation arguably reduced the effectiveness of the CSDDD in terms of its preventive and deterrent capacities, as it places beyond the oversight of the parent company certain stages that may entail substantial social and environmental risks. This is particularly relevant when the end user of the product or service, or the client receiving credit, operates within a high-risk or impactful sector. Nevertheless, this narrowing of the operational scope seems primarily driven by the necessity to achieve a political compromise among the stakeholders involved in the legislative process[82].

Due diligence in the CSDDD officially consists of identifying, preventing, mitigating, remedying actual or potential negative effects of companies' activities on human rights and the environment arising from their operations[83]. Article 3 of the Directive provides the definitional framework for understanding the material scope of these obligations,

[80] Degl'Innocenti, F. (2024). Globalizzazione, catene produttive, regole di sostenibilità. Il perimetro applicativo della Direttiva Europea 2024/1760. *Ianus Diritto e Finanza*
[81] Art. 3, Directive (EU) 2024/1760
[82] Degl'Innocenti, F. (2024). Globalizzazione, catene produttive, regole di sostenibilità. Il perimetro applicativo della Direttiva Europea 2024/1760. *Ianus Diritto e Finanza*
[83] Art. 5, Directive (EU) 2024/1760

specifying that adverse impacts are those which constitute violations of international environmental and human rights standards as outlined in the Annex to the Directive[84]. Such impacts fall within the Directive's scope provided that: the right in question may be violated through corporate activity; it pertains to a legal interest safeguarded by one of the instruments; and the company could have reasonably foreseen the risk of such an impact[85]. Similarly, environmental impact is defined as an impact resulting from non-compliance with international environmental obligations described in the Annex.

In addition to general adverse impacts, the Directive introduces the notion of *severe adverse impacts*, referring to particularly serious harm due either the nature of the impact – such as threats to human life, health, or personal freedom – or to the magnitude, scope, or irreversible nature of damage. The assessment of severity takes into account factors such as the number of individuals potentially or actually affected, the extent of environmental degradation, the permanence of the harm, and the feasibility of restoring people or ecosystems to their original condition within a reasonable timeframe[86].

The aforementioned Article 3 of the CSDDD also plays a pivotal role in delineating the boundaries of the Directive's material scope. Within the purpose of the Directive, such Article emphasizes that due diligence obligations shall apply to both direct and indirect business partners. The first ones are entities with whom the company maintains a contractual relationship in connection with its operations, products, or services, including those involved as actors within the broader chain of activities; and entities that may not present themselves as formal business partners, yet are nonetheless engaged in commercial transactions linked to the company's operations, products or services[87]. Clearly, with respect to indirect business partners, the company's duties are weakened, since the assessment of the appropriateness of the measures to be taken to prevent, mitigate or halt negative impacts, first, and of the company's liability, then, are calibrated to the degree of influence or leverage that the company should exercise[88].

[84] Annex I, Part I, Sections I-II, Directive (EU) 2024/1760
[85] Art. 3(1)(c)(ii), Directive (EU) 2024/1760
[86] Ibid., (l)
[87] Ibid., (f)(i)
[88] Ibid., (ii)

The notion of *appropriateness* is central to the Directive and is explicitly referenced in Article 3 in relation to the requirement for *appropriate measures*. The latter are measures that the company can adopt to effectively address human rights and environmental impacts. Their appropriateness must be evaluated on a case-by-case basis, taking into account the probability and severity of the potential harm, as well as the broader contextual circumstances[89].

This comprehensive approach to corporate due diligence reflects a growing consensus in regulatory and academic circles: that companies should no longer be assessed solely on their financial performance, but also on their contribution to sustainable development. This dual responsibility is captured through the integration of both an *inside-out* and *outside-in* perspective; on the one hand, the Directive's compels companies to consider the impact of their operations on society and the environment; on the other, it requires them to assess how social and environmental developments may, in turn, affect their own operations and long-term viability.

IV. Directive's obligations and the due diligence approach

In the CSDDD the European legislator wilfully conceptualizes due diligence primarily as a procedural obligation, classifying it as a duty of means rather than a duty of results[90]. Within this framework, sustainability due diligence is understood as the process through which companies identify, implement, and assess measures aimed at preventing, ceasing or minimizing actual and potential adverse human rights and environmental impacts. Crucially, the Directive emphasizes not only the adoption of preventive actions but also the continuous monitoring and evaluation of their effectiveness over time.

The CSDDD entrusts companies with significant autonomy in defining specific measures they consider appropriate to pursue sustainability objectives. This discretion, however, is coupled with binding obligations to establish and formalize such measures in accordance with the Directive's requirements. Thus, while the content of due diligence obligations may vary across sectors and business models, their procedural implementation is compulsory.

[89] Ibid., (o)
[90] Ruggeri L. (2024). Corporate Due Diligence Between the Needs for the Implementation of Sustainability and Protection of Human Rights. *The Italian Law Journal*

In the context of corporate due diligence, the duty of care is not merely a formal criterion to verify whether a certain behaviour was performed; rather it constitutes a substantive standard for evaluating whether the behaviour adopted was adequate in light of the specific risks involved[91]. The risk that a company may formally conduct due diligence processes – such as risk assessment or impact evaluation – without implementing adequate remedial or preventive actions does not fall solely on the company. Stakeholders retain the ability to challenge such conduct by demonstrating that, despite the fulfilment of formalities, the company failed to take appropriate or meaningful action in response to identified risks.

For this reason, in this paper, the obligation to conduct an impact assessment in a proper due diligence process, as well as the adoption of measures to address sustainability risks, is not considered merely aspiration, but a legally enforceable component of corporate conduct under the CSDDD.

This thesis will then proceed with the analysis of the core due diligence obligations which are outlined primarily in Articles 5 through 12 of the Directive and are deeply inspired by international standards such as those analysed in the previous chapter, namely the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. These obligations reflect a significant shift in EU corporate governance policy, transforming previously voluntary practices into enforceable legal duties.

This analysis proposes to lead an understanding of the shift of perspective from being appropriated for firms to voluntarily perform due diligence, toward having a duty of undertaking due diligence[92].

IV.I Between Regulation and Autonomy: the Hybrid Governance Model of the CSDDD (*Art.5*)

Due diligence Directive is explicitly risk-based, thereby introducing a more targeted approach based on the assessment of the risk of adverse impacts.

[91] Ibid.

[92] Leite E., Koporcic N., Markovic S. (2024). Corporate Sustainability Reporting: Shifting From Optional Due Diligence to Mandatory Duty. *John Wiley & Sons Ltd, Business Ethics, the Environment & Resposnibility*

In particular, Article 5 of the CSDDD emphasizes such risk-based nature of sustainability due diligence, in stronger alignment with the international soft law framework for human rights due diligence. It introduces a comprehensive and binding regulatory framework mandating large companies to undertake due diligence in respect of adverse human rights and environmental impacts.

Under Article 5, companies within the scope of the Directive must adopt and implement a due diligence policy, which serves as the foundation of their sustainability strategy[93]. This policy must include a description of the company's approach to due diligence, a code of conduct, and a description of processes aimed at integrating due diligence into corporate policies and risk management systems[94]. Art. 5 CSDDD does not provide a precise or exhaustive definition of what constitutes due diligence in operational terms. Rather, it requires companies to adopt and implement a due diligence policy that includes, *inter alia*, a code of conduct outlining the rules and principles to be observed throughout the company, its subsidiaries and its direct and indirect business partners which represents an essential regulatory instrument[95], serving both as a normative guide and as an operational framework for managing sustainability-related risks.

While due diligence is formally adopted through a top-down legislative mandate, its substantive implementation is delegated to the discretion of the individual corporation. Each company, in cooperation with its partners, retains significant autonomy in identifying what constitutes an "adverse impact" within the meaning of the Directive, and in determining the specific processes and measures by which such risks are to be managed[96]. In this respect, the Directive relies heavily on self-regulatory mechanisms. The result is a hybrid model of governance in which legally binding obligations are mediated by company-specific practices, thereby enabling a flexible integration of overarching EU sustainability goals with the operational realities and governance structures of individual market actors.

This dynamic reflects a deliberate alignment between public regulatory objectives and private economic autonomy. By allowing companies to tailor their due diligence

[93] Art. 5, Directive (EU) 2024/1760

[94] Ibid.

[95] Ruggeri L. (2024). Corporate Due Diligence Between the Needs for the Implementation of Sustainability and Protection of Human Rights. *The Italian Law Journal*

[96] Ibid.

frameworks in accordance with their sectoral, geographical, and organisational contexts, the Directive facilitates a form of regulated self-governance. Consequently, while the Directive provides a binding legal architecture, the practical execution of due diligence is characterised by a high degree of decentralisation and adaptability to market-specific conditions.

IV. II Risk-based Prioritization and Iterative Assessment in Sustainability Due Diligence (*Art.6*)

The iterative and dynamic structure of the due diligence process under the Corporate Sustainability Due Diligence Directive is one of its essential features. This is referred to the Directive's approach to problem-solving, which entails iterating through a sequence of phases, each of which builds on the previous one. In this sense, due diligence is structured as an ongoing, cyclical process rather than a one-time, static activity that requires companies to continuously assess, adapt, and enhance their strategies to avoiding and mitigating negative human rights and environmental consequences.

According to Article 6, the identification and assessment of actual and potential adverse human rights and environmental impacts must be carried out through a proactive, risk-based, and iterative process, requiring companies to conduct mapping and dynamic risk assessment that consider both the likelihood and severity of adverse impacts[97]. This consideration means that companies are not expected to address all risks simultaneously or equally. Instead, the CSDDD introduces a risk-based methodology that guides companies in determining where to focus their resources and efforts. The combined consideration of severity – namely the gravity of the potential or actual harm – as well as likelihood – the probability that a harm may occur – allows companies to rank and address the most pressing risk first, ensuring an efficient allocation of due diligence measures. This procedural obligation implies that risk assessment must be regularly updated to reflect new information, changes in business activities, and shifting risk profiles. The features of this article reveal the flexible nature of this Directive, which acknowledges that sustainability risks are neither uniform nor static but are context-specific and subject to change over time.

[97] Art. 6, Directive (EU) 2024/1760

Article 6 CSDDD also introduces the permission to parent companies to support or carry out due diligence functions on behalf of their subsidiaries[98]. This provision is tailor-made to meet the complexity of corporate groups and the reality that due diligence requires coordination across multiple entities. To ensure effective implementation, subsidiaries must integrate the parent company's due diligence policy into their own risk management systems and remain engaged in the ongoing execution of due diligence tasks[99].

Overall, the iterative and coordinated nature of due diligence process under the CSDDD represents a sophisticated regulatory model since it balances flexibility with mandatory procedural rigor, an approach that seeks to promote effective compliance.

IV.III Embedding Due Diligence into Corporate Governance (*Artt.7 & 8*)

The procedural obligations are provided by substantive duties in Articles 7 and 8.
Article 7 requires companies to integrate due diligence into their corporate policies and risk management systems[100]. This Article does not only prescribe the adoption of a formal due diligence policy but outlines substantive measures to guarantee corporate social responsibility. At the core of the due diligence policies lies an instrument already mentioned in this work, namely the code of conduct[101], which serves as a normative reference point for the conduct of the company, its subsidiaries, and its business partners. This code must outline the processes implemented to integrate these principles into daily operations, including mechanisms for verifying compliance and extending the application of the code to third parties in the chain of activities.

To prevent and mitigate adverse impacts, companies are expected to take a broad range of operational, contractual, and organizational initiatives. Among the most prominent tools mentioned in the Directive and elaborated in Articles 10 and 11 are:

- *Contractual assurances*: businesses are encouraged to demand contractual commitments from their business partners to respect the company's code of conduct, especially from those operating in high-risk sectors or geographical

[98] Ibid., (2)(b)
[99] Ibid., (c)
[100] Art.7, Directive (EU) 2024/1760
[101] Ibid., (2)(b),

areas. These assurances might be in the shape of sustainability provisions, supplier codes of conduct, or comprehensive contractual annexes requiring compliance to human rights and environmental standards. Crucially, the Directive highlights that without verification mechanisms, contractual provisions by themselves are insufficient[102].

- *Training and capacity building*: to ensure that businesses are not only legally bound but also practically capable of implementing due diligence standards, undertakings must provide training, guidance, or other forms of technical support. This reflects an understanding that many suppliers may lack the resources or expertise necessary to comply with EU-based sustainability framework. Training becomes both a compliance tool and a development strategy for enhancing responsible business conduct across the chain of activities[103].
- *Monitoring risk controls*: preventive and mitigating measures must also include ongoing risk monitoring, audits, impact assessments, and the application of early warning systems to detect and address potential breaches before they materialize in actual harm[104].

The effectiveness of these measures is assessed primarily against the company's own code of conduct, as outlined in Article 7(2)(c). The code functions not only as a declaratory document but also as a benchmark for internal compliance verification and external stakeholder accountability. Companies are required to establish processes to ensure the implementation and monitoring of the code of conduct throughout their chain of activities.

Furthermore, the CSDDD mandates that companies must update their due diligence policy without undue delay following any significant changes in their risk profile or business model, and in any event must review and revise it at least every 24 months[105].

Even though the due diligence obligations are logical, the actual implementation of the Directive is entrusted to a self-regulation instrument whose content can be created

[102] Articles 10(2)(b); 10(4); 11(3)(c); 11(5), Directive (EU) 2024/1760
[103] Articles 10(2)(e); 11(f), Directive (EU) 2024/1760
[104] Art. 15, Directive (EU) 2024/1760
[105] Art.7(3), Directive (EU) 2024/1760

independently by the company[106]. This requirement underlines the Directive's emphasis on adaptive governance, in which policies are expected to evolve dynamically in response to new information, stakeholder input, or material changes in operations.
Practically, Article 7 embodies a regulatory approach through which internal policy integration, external contractual grievance, and continuous evaluation against the company's code of conduct are combined to constitute a multi-layered system of responsibility and oversight.

While the aforementioned Article concentrates on the integration of due diligence in the company's policies, Article 8 CSDDD prescribes the *ad* hoc methodology for identifying both actual and potential adverse impacts[107]. It establishes a framework for risk evaluation that is both proactive and evidence-based and forms a crucial prerequisite for the adoption of effective preventive and remedial measures under subsequent articles.
The appropriate measures set out in Article 8 arise from three different sources: the company's operations; the operations of the company's subsidiaries; and the operations of the business partners within the company's chain of activities.
Within the context of risk assessment, the Directive proposes a two-stage approach. The first requires companies to map their operations in order to identify areas where risks are more likely to occur and to be severe[108], considering risk factors like geographic location, sector-specific vulnerabilities, and the nature of the business relationship. The second stage instead depends on the outcome of the first one, since companies must conduct a targeted assessment in the areas identified to determine whether environmental or human rights violations are present or imminent[109].
In order to ensure the identification of such risks, the CSDDD reinforces its procedural integrity by allowing businesses to make use of appropriate external sources, including independent reports, quantitative and qualitative data, as well as information received through notification and complaints mechanisms[110]. This provision is certainly aimed at

[106] Ruggeri L. (2024). Corporate Due Diligence Between the Needs for the Implementation of Sustainability and Protection of Human Rights. *The Italian Law Journal*
[107] Art.8(1), Directive (EU) 2024/1760
[108] Ibid., (2)(a)
[109] Ibid., (2)(b)
[110] Ibid., (3)

ensuring transparency and stakeholder engagement to guarantee that impacted communities and society actors contribute to the identification of risks.
Finally, this Article introduces a pragmatic and targeted information-gathering strategy. The latter is referred to the prioritization of direct engagement with business partners situated in the areas where the risk is most concentrated, where the critical information is located[111]. This approach strengthens the central role of risk assessment based on proportionality and appropriateness, whereby companies must focus where they can have the highest impacts.

In conclusion, these provisions promote a data-driven, risk-based, and participatory approach to corporate social responsibility, through the combination of internal due diligence and external collaboration.

IV.IV Addressing and Managing Adverse Impacts: From Prioritization to Remediation (*Artt. 9; 10; 11*)

While the recently analysed articles deal with how due diligence practices are adapted to corporate governance, the core structure of the Directive investigated in this study is comprised of Articles 9, 10 and 11 which govern how companies must address the risks of detrimental human rights and environmental impacts. These provisions operationalize the due diligence process through a graduated approach that distinguishes between potential and actual repercussions and prescribes escalating obligations.

Remaining on the concept outlined in Article 8 of prioritization of the risk, the following article emphasizes such concept as a necessary procedural response to the complexity of the chains of activity. More specifically, when it is not possible for companies to address all identified adverse impacts simultaneously, it is required to prioritize those effects[112]. These different levels of attention suggest a hierarchical approach used by the legislator, compelling companies to act and proceed to manage lesser risks.

[111] Ibid., (4)
[112] Art.9, Directive (EU) 2024/1760

Following the identification and prioritization of risks, Article 10 sets out companies' obligations in relation to possible negative effects. Member states must ensure that companies take appropriate measures either to prevent such effects from occurring or, where prevention is not immediately possible, to adequately mitigate them[113]. This article introduces a nuanced, contextual assessment of responsibility, requiring companies to take into account the following factors: whether the potential impact comes from the company, its subsidiaries, or its business partners; the risk's precise location within the chain of activities; and the extent of influence or leverage the company can realistically exert over the entity involved[114].
Based on these considerations, companies are required to implement a combination of measures, which may include developing action plans, modifying internal business operations, and supporting small and medium-sized enterprise partners through technical or financial assistance[115].
Where prevention or mitigation cannot be guaranteed despite these efforts, the undertaking has the duty to implement stricter procedures. In addition to the appropriate measures discussed in the previous paragraph as contractual assurances, or support to business partners, companies are expected to suspend or terminate business relationships in connection with the activities concerned, provided such action does not itself lead to more severe consequences[116]. For this reason, businesses must assess and weight the collateral outcome of withdrawal to ensure that it does not exacerbate the harm it seeks to prevent.

As it has just been discussed, Article 10's key word is *prevention*, while the focus of the next Article is on the *ending* of adverse impacts. More precisely, where actual harm has already occurred, Article 11 imposes a clear duty on companies to bring those impacts to an end or, where immediate cessation is not possible, to minimize their extent. The obligations set out in this Article follow the same reasoning of Article 10, requiring companies to assess the source of the impact; its location in the chain of activities; and the company's capacity to influence the responsible entity.

[113] Art.10, Directive (EU) 2024/1760
[114] Ibid., (1)(a), (b), (c)
[115] Ibid., (2)(e)
[116] Ibid., (6)

Although they are tailored to repair rather than prevention, the measures to be taken closely resemble those described for possible impacts. Businesses must act swiftly to reduce or neutralise the harm, and where it is not possible, they must put in place a corrective action plan. Timelines, performance indicators, and reporting procedures must all be included in the plan, which should be proportionate to the severity of the harm and the company's involvement[117].

Where such measures fail and the company is unable to adequately bring the negative effect to an end or reduce its seriousness, it must, as a final step, terminate the business relationship, unless such measure would result in even greater harm[118]. In such cases, companies are expected to justify their decision and maintain ongoing monitoring of the unresolved negative effects.

IV.V Integrating Climate Strategy into Corporate Governance (*Art. 22*)

Within the context of the CSDDD, particularly significant is the integration of climate-related obligations within the broader due diligence framework.

Article 22 introduces a requirement for EU and non-EU companies operating in the Union to contribute to the fight against climate change through an adequate transition plan for climate change mitigation. This provision aligns business model and strategy with the goals of the Paris Agreement – most notably, the limitation of global warming to 1.5°C above pre-industrial levels, and the achievement of climate neutrality by 2050.

The transition plan, which places a strategic obligation on corporate actors to realign their long-term activities and investments with a scientifically grounded decarbonisation pathway, is aimed at fostering a low-carbon economy. This plan must include time-bound targets grounded in conclusive scientific evidence and may include GHG emissions reduction targets for direct emissions; indirect emissions from energy use; and all other indirect emissions across the chain of activities[119]. A substantive part of the transition strategy is constituted by the key actions which may include shifts in product and service portfolios, or the adoption of new technologies planned to achieve decarbonisation

[117] Art.11(3), Directive (EU) 2024/1760
[118] Ibid., (7)
[119] Art.22(1)(a), Directive (EU) 2024/176

targets[120]; as well as a quantification of the investments and fundings required to support the transition which concretely states how the resources should be allocated[121].
Notably, for companies that are subject to reporting obligations under the Corporate Sustainability Reporting Directive, Art. 15(2) allows for integration of the transition plan within those existing reports, thus fostering coherence and minimizing administrative burden.
To ensure accountability and progressive realization of climate objectives, companies must update their transition plan annually, providing a description of the progress made in achieving the set targets. This aspect reflects the dynamic and cyclical dimension of the Directive since this "update obligation" ensures that climate-related due diligence is not static.

The inclusion of climate-related obligations as a central component of the Directive marks a significant evolution in EU sustainability law, signalling a move from aspirational policy to enforceable legal standards[122]. This elevation of climate transition planning to a legally binding duty may foreshadow regulatory developments in the area of sustainable finance and corporate responsibility.

The CSDDD establishes a robust due diligence regime grounded in international norms, with clear legal obligations for large companies to identify, prevent, and address detrimental effects on human rights, the environment, and the climate. By institutionalizing sustainability and liability mechanisms, the Directive aims to embed responsible business conduct into the operational fabric of the European and global value chains.

V. The Enforcement Mechanism

After thoroughly examining the Directive's obligations and how they simultaneously differ and are similar not only in the pursuit of a common goal, but also in their approach to the problem, it is crucial to proceed with the analysis of the methods for verifying that

[120] Ibid., (b)
[121] Ibid., (c)
[122] Ciacchi, S. (2024). The newly-adopted Corporate Sustainability Due Diligencetive: an overview of the lawmaking process and analysis of the final text. *ERA Forum*, *25*(1).

businesses have complied with these obligations, i.e. the enforcement mechanisms. The CSDDD establishes a structured enforcement mechanism to ensure that companies are monitored, held accountable, and sanctioned where necessary. This mechanisms relies on national supervisory authorities, a regime of sanctions, and procedures for stakeholder engagement, as articulated in Articles 25 to 30 of the Directive.

V.I Supervisory Authorities and Their Enforcement Powers (*Art. 25*)

Starting from the authoritative dimension, under Article 25 of the CSDDD, each Member State is required to designate one or more national supervisory authorities, endowing them with a comprehensive set of powers to ensure compliance with the Directive's substantive and procedural obligations[123]. This provision reflects the will of the legislator to translate the abstract duties into enforceable norms subject to regulatory oversight.

These supervisory authorities should be equipped with adequate powers, such as the one to request information and carry out investigations related to company's compliance and supervision of the adoption of an *ad hoc* transition plan, according to the recently mentioned Article 22[124]. Member States have discretion over how supervisory powers are exercised directly by the authority, in cooperation with other bodies, or via judicial application.

After the investigations carried out by the supervisory authorities, when non-compliance is identified, the latter must grant to the undertaking the opportunity to remedy the failure[125] – approach that balances corrective and punitive objectives, encouraging voluntary rectification. In any case, these authorities are subject to transparency duties, especially because they are required to document their investigations and enforcement actions.

This provision sets the starting point of the Directive's willingness to establish a truly enforcement architecture, granting a combination of corrective, investigative and coercive powers.

[123] Art.25, Directive (EU) 2024/1760
[124] Ibid., (1)
[125] Ibid., (4)

V.II Sanctions and Supervisory Cooperation (*Artt. 27 & 28*)

Apart from the imposition of substantive obligations on companies, the CSDDD, as it has been started to mention, establishes a robust enforcement regime.

Article 27 concentrates on a crucial matter: sanctions. Penalties for infringement of the Directive must be effective, proportionate, and dissuasive. These sanctions, to be adequately fair, are based on a list of contextual factors that national authorities must considers including: the nature, gravity, and duration of the impacts; prior remedial actions or investments made by the company; whether the company has cooperated with stakeholders or other entities to mitigate the harm; the company's previous violations and eventual financial benefit obtained from the infringement[126].

This Article mandates that Member States establish pecuniary penalties, which should be based on the company's net worldwide turnover, in order to ensure harmonization and rigour; and the maximum limit must not be less than 5% of the company's global turnover in the previous financial year[127].

Additionally, to promote regulatory convergence, cooperation, and consistent enforcement, which is not only an objective of the CSDDD, but a primary goal of the Union within the internal market, Article 28 establishes the European Network of Supervisory Authorities. The latter is endowed with different functions that include: coordinating investigations and sanctions, particularly where corporate operations involve multiple jurisdictions; information exchange; elaborating an information sharing system for turnover data and jurisdictional determination[128].

As previously stated, the aim of such institutional body is to foster cooperation, and for this reason, according to Article 28, national authorities should guarantee mutual assistance in relation to inspections and information requests which do not charge fees between supervisory authorities.

These Articles together strengthen the CSDDD ambition to establish coherent and transnational enforcement mechanism aimed at guaranteeing turnover-based fair sanctions, as well as cross-border supervision through institutional cooperation.

[126] Art.27(2), Directive (EU) 2024/1760
[127] Ibid., (4)
[128] Art.28(2), Directive (EU) 2024/1760

In this section, the purpose of the work has been focused on how the Directive is equipped with an enforcement framework. It has explored how the Directive seeks to ensure the practical effectiveness of the obligations of the CSDDD by establishing a coherent set of supervisory, sanctioning, and compliance mechanisms.
Through its detailed provisions on corporate duties, oversight by national authorities, the role of the European Network of Supervisory Authorities, and the imposition of proportionate and dissuasive penalties, the Directive reflects a regulatory effort to translate sustainability goals into enforceable legal obligations.

However, this chapter's analysis is intentionally limited to the structural and operational contents of the Directive. The following chapter will turn to a key element that calls for independent and critical attention: the introduction of a civil liability regime. This instrument, which is central to the Directive's broader ambition of accountability, will be examined not only in terms of its intended legal effects but also with regard to the CSDDD's controversial inclusion in the *omnibus package*. As previously outlined in Chapter One, the insertion of civil liability provisions has been the subject of intense political negotiation and raises fundamental questions about the balance between public supervision and private enforcement.
The following chapter will therefore assess whether the civil liability mechanism enhances the Directive's effectiveness or, conversely, undermines its coherence within the broader framework of EU corporate sustainability governance.

CHAPTER 3: Legal Transformation and Corporate Accountability Under the EU Corporate Sustainability Due Diligence Directive

The introduction of civil liability regime within the CSDDD marks a significant and contentious development in the EU's approach to corporate accountability. Positioned at the intersection of regulatory innovation and political compromise, the liability mechanism serves as both a legal tool and a normative signal – intended to enforce corporate due diligence obligations through judicial recourse. This chapter undertakes a critical analysis of the civil liability provisions embedded in the Directive, with a view to unpacking their legal design, underlying rationale, and broader systemic implications.

While civil liability is often framed as a natural extension of corporate responsibility, its integration into the CSDDD has provoked intense debate among policymakers, businesses, and civil society actors alike. On one hand, it promises enhanced access to justice for affected stakeholders and reinforces the credibility of the due diligence obligations imposed on companies. On the other hand, it introduces potential legal uncertainty and risks fragmenting enforcement across Member States – thereby raising questions about coherence of the EU's sustainability agenda.

This chapter will first delineate the substantive and procedural contours of the liability regime as enshrined in the CSDDD, highlighting both its scope and its limitations. It will subsequently engage in a critical assessment of whether the inclusion of this mechanism genuinely strengthens the Directive's transformative potential by providing victims with meaningful access to justice and effective remedies, or whether it rather reflects a political compromise that dilutes its regulatory clarity and effectiveness. In doing so, particular attention will be devoted to the complex balance the Directive seeks to strike between corporate autonomy, legal certainty, and victim protection. Ultimately, the analysis will place the civil liability regime within the broader legislative framework of the so-called *Omnibus Package I*, in order to clarify how this legislative process has reshaped the concept, scope, and practical enforceability of civil liability, and to evaluate its validity as a cornerstone of the EU's emerging model of corporate accountability.

I. From Voluntary Standards to Binding Liability: The Civil Dimension of the CSDDD

Before engaging in a critical analysis of the role of civil liability within the CSDDD, it is necessary to provide a detailed account of the substantive provisions enshrined in the Directive itself. Article 29 of the CSDDD constitutes the central framework for civil liability, which serves as a cornerstone of the Directive's enforcement architecture. This provision not only codifies the conditions under which companies may incur liability for breaches of their due diligence obligations but also sets out the corresponding rights of affected parties to claim compensation. A thorough understanding of the scope, structure, and procedural guarantees embedded in this liability regime is an indispensable preliminary step to assess the transformative impact of the Directive on corporate accountability and access to justice within the EU legal order.

The due diligence duty imposed by the Directive is a type of legal obligation aimed at safeguarding public interests, including the protection of human rights and the environment. In the CSDDD civil liability arises where a company fails to comply with the obligations set out in Articles 10 and 11 – specifically, where it intentionally or negligently fails to adopt appropriate preventive or remedial measures – and such failure results in damage to natural or legal person whose rights are protected under the Directive[129]. The causal link between failure and the damage must relate to one of the rights, prohibitions, or obligations listed in the Annex. Importantly, Article 29 clearly confines liability to the company itself: if the harm is caused solely by a business partner without any failure attributable to the company, no liability arises.

Paragraph 2 of Article 29 outlines the consequences for victims in cases where a company is found liable for damages under the first paragraph, thereby introducing the right to full compensation in accordance with national civil law[130]. The precise interpretation of this

[129] Art.29 (1), Directive (EU) 2024/1760
[130] Ibid. (2)

is to be determined by the legislation of the Member States that are implementing the CSDDD[131]. While the Directive lays down a harmonized framework for liability, it refrains from prescribing a uniform method for determining compensation, allowing flexibility for Member States, while respecting the Directive's general principles, to retain their legal traditions in damage compensation[132]. The sole limitation is that compensation must not result in overcompensation; the remedy is restorative rather than punitive, ensuring that victims should be restored to their pre-damage position without receiving amounts exceeding the actual harm suffered.

To render civil claims practically accessible and to ensure efficacious access to justice for victims of corporate due diligence violations, Article 29 requires Member States to adopt national procedural rules that remove undue barriers. Primarily, it establishes that limitation periods must not be unduly restrictive and must last at least five years, commencing only when the infringement and its impacts are known or should reasonably have been known[133]. Financial barriers must also be addresses, ensuring that legal costs are not prohibitively high[134]. Furthermore, victims must be entitled to seek injunctive relief – including through summary proceedings – to halt ongoing breaches[135].

A notable innovation is contained in subparagraph (d) which allows third-parties representation of claimants – by trade unions, NGOs, or national human rights institutions. This mechanism facilitates access to justice for individuals who might otherwise be unable to pursue legal action independently, whether for financial reasons or due to a lack of legal knowledge[136].

The Directive also addresses one of the most significant challenges in litigating against large companies: evidentiary asymmetry. National procedural rules must permit courts to

[131] Sinnig, J., & Zetzsche, D. A. (2025). The EU's Corporate Sustainability Due Diligence Directive: From disclosure to Mandatory Prevention of adverse sustainability impacts in supply chains. *European Journal of Risk Regulation*, 1–25.
[132] European Commission. (2025). Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements. COM (2025) 80 final, 2025/0044 (COD). Brussels, 26 February 2025.
[133] Ibid. (3)(a)
[134] Ibid. (b)
[135] Ibid. (c)
[136] Ibid. (d)

order the disclosure of relevant documents held by companies where plaintiffs demonstrate that such information is under the control of the defendant and present sufficient initial evidence (i.e. the plausibility standard). While confidentiality is to be preserved, it does not preclude disclosure where necessary for the administration of justice[137].

Participation in industry initiatives, multi-stakeholder platforms, or the adoption of contractual clauses and third-party verification does not shield a company from civil liability[138]. Such initiatives, while potentially valuable in promoting corporate responsibility, do not in themselves guarantee compliance with sustainability regulations and the Directive's due diligence obligations, and cannot serve as a defence against civil claims. This ensures that companies remain fully accountable and cannot rely solely on formalistic measures or delegated responsibilities to evade their legal duties.

The final paragraphs of Article address joint and several liability, as well as cross-border application of the rules.
In cases where damage results from the combined actions or omissions of a company and its subsidiary or business partner, joint and several liability applies, subject to national rules on recourse and allocation of responsibility[139]. This approach strengthens protection for victims by preventing legal fragmentation along the supply chains.
To avoid jurisdictional manipulation through "forum shopping", Article 29 further establishes that the civil liability rules implementing the directive are of overriding mandatory application, even where another legal system would ordinarily govern under private international law[140]. This ensures the Directive's effectiveness in cross-border contexts, particularly with regard to third-country companies operating in the EU.

In sum, Article 29 introduces a robust, victim-centred liability regime designed to enhance access to justice and reinforce corporate legal accountability. By linking due diligence requirements to tangible repercussions — namely legal liability and

[137] Ibid. (e)
[138] Ibid. (4)
[139] Ibid. (5)
[140] Ibid. (7)

compensation — the Directive strengthens the enforceable character of corporate sustainability duties. At the same time, the provision strikes a careful balance between safeguarding the legitimate interests of businesses and ensuring effective remedies for impacted persons, guaranteeing that responsibility is based on precise procedural and substantive requirements.

Having established the substantive and procedural framework for civil liability under Article 29 of the CSDDD, the analysis may turn to the potential implications for corporations arising from non-compliance with these obligations. Particular attention will be devoted to assessing how the initial stringency of the liability regime may be mitigated following the amendments introduces through the Omnibus Package I, and whether such modifications recalibrate – or potentially dilute – the Directive's intended deterrent effect on corporate misconduct.

II. A Critical Analysis of the Civil Liability Regime under CSDDD

In the context of this thesis, the Directive under examination can be seen as the result of a legislative process aimed at addressing the reality that "many EU companies continue to base their due diligence efforts mainly or exclusively on social audits and third-party certifications. European buyers incorporate their sustainability expectations in supplier codes of conduct and contracts, then monitor compliance through audits"[141]. For this reason, the civil liability regime of the CSDDD reflects an evolution from soft law to hard law, translating due diligence from process-based risk management into enforceable legal obligations[142].

The specific provision on civil liability in cases of human rights or environmental harm caused by a company falling within the scope of the CSDDD was designed to ensure that the due diligence obligations outlined in the Directive would not be rendered ineffective. The Directive's emphasis on *appropriate measures* and context-specific obligations implies that liability depends not just on outcomes, but on the adequacy of preventive

[141] Bueno, N., & Ngueuleu, I. (2025). Civil Liability in the EU Corporate Sustainability Due Diligence Directive: A "Brussels effect" on international Investment law? *Brill | Nijhoff eBooks*
[142] Touw N. (2024). The CSDDD: Beyond remedies in civil litigation. *Academy of European Law, European Society of International Law paper.*

conduct. This means that companies must do more than adopt policies – they must implement them effectively.

Following an analysis of the civil liability regime as established in the text of the Directive, it becomes clear that the legislative intention was to guarantee that victims of such adverse impacts would have meaningful access to justice and to compensation. However, for the purpose of this thesis, the analysis has also revealed several critical aspects, such as the limited scope of liability – confined to breaches of only certain due diligence obligations – the reliance on national legal systems for key definitions and enforcement procedures. These critical elements raise concerns regarding the consistency, enforceability, and overall effectiveness of the civil liability framework as envisaged by the Directive.

One of the most significant critiques of the CSDDD's civil liability regime lies in its limited scope and definitional vagueness. While, has it has been examined before, Article 29 introduces a cause of action allowing victims to claim compensation for damage caused by a company's failure to prevent or end adverse human rights or environmental impacts, this liability is not comprehensive[143].

Firstly, liability is strictly tied to a breach of procedural obligations, rather than to the occurrence of harm per se. A company is not liable simply because harm occurred within its supply chain – it must be demonstrated that the company intentionally or negligently failed to meet its due diligence obligations. This limits the ability to bring successful claims, as proving intent or negligence is often challenging, especially in complex global supply chains.

Secondly, liability applies only when the right or interest harmed corresponds to a legal interest protected under national law. This introduces significant fragmentation, as the availability and strength of remedies will depend on the national tort law of each Member State, undermining legal certainty and consistency across the EU. Victims may face procedural hurdles due to differences in access to justice, legal standing, and evidentiary standards among Member States.

[143] Sinnig, J., & Zetzsche, D. A. (2025). The EU's Corporate Sustainability Due Diligence Directive: From disclosure to Mandatory Prevention of adverse sustainability impacts in supply chains. *European Journal of Risk Regulation*

Moreover, ambiguous terms such as *appropriate measures* or *reasonable time* are not fully defined in the Directive. These allow companies discretion in interpreting and implementing their due diligence obligations, but they also create uncertainty as to when a company may be found liable. Furthermore, the Directive exempts companies from liability where harm was caused solely by a business partner in the value chain, unless the company is jointly responsible or failed to act upon identified risks. This caveat severely limits the reach of the liability framework, particularly in sectors where downstream impacts are common.

As mentioned above, the inclusion of civil liability in the CSDDD was politically and symbolically significant since it marked a clear shift from voluntary compliance to enforceable corporate accountability from human rights and environmental harm. It is certainly a new and challenging mechanism, and for this reason the effectiveness of this process remains in doubt.
From a symbolic standpoint, the civil liability clause is meant to demonstrate the EU's commitment to embedding corporate responsibility within its legal framework. It also aims to address longstanding criticisms from civil society and affected communities about the impunity of corporations for harms committed along their global supply chains[144].

The doubt referred to above is therefore to what extent this mechanism is more declaratory than operational. The burden of proof remains heavily on claimants, who must establish not only the occurrence of harm but also the company's breach off specific obligations, causation, and fault. Moreover, the absence of a general duty of care, which would impose liability for harm irrespective of fault, limits the deterrent effect of the regime. Victims of corporate abuse might still be left without effective remedies, especially if key due diligence failures are difficult to demonstrate or fall outside narrowly defined scope of Article 10 and 11.

Additionally, the absence of EU-wide procedural standards for facilitating access to justice means that effectiveness largely depends on the willingness of national courts to interpret the directive in a robust, victim-oriented manner. Without stronger

[144] Ibid.

harmonization or direct effect, the Directive's liability framework will not fulfil its transformative promise.

Finally, while the civil liability provisions of the CSDDD are symbolically powerful, their practical impact is likely to be uneven and limited unless supported by stronger judicial interpretation, national implementation, and complementary procedural reforms.

The risk is that civil liability regime remains a normative gesture rather than an effective accountability tool, and this will be properly examined in the following paragraph, which will attempt to reflect on why and how the initial intention of the CSDDD to establish a strict liability regime has faded.

III. The Omnibus Package I and Its Implications for Civil Liability under the CSDDD

The debate around civil liability under the CSDDD cannot be fully appreciated without considering the recent Omnibus I Package[145], which substantially is aimed at reshaping the Directive's scope and enforcement architecture. While originally conceived as a cornerstone of the EU's strategy to harden corporate accountability, the civil liability regime of the CSDDD is now at risk of being diluted through the deregulatory thrust of Omnibus I. The package not only postpones the application of due diligence obligations but also narrows their substantive reach, weakens enforcement mechanisms, and removes the EU-wide civil liability framework in favour of fragmented national approaches. These changes mark a significant departure from the Directive's original ambition to guarantee meaningful remedies for victims of corporate abuse across global supply chains. In this light, examining civil liability under the CSDDD requires a critical reflection on how Omnibus I Package undermines the Directive provisions' coherence, consistency, and effectiveness.

On 26 February 2025, the European Commission released a comprehensive package of Omnibus proposals designed to simplify EU regulations, enhance competitiveness, and

[145] European Commission. (2025). Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements. COM (2025) 80 final, 2025/0044 (COD). Brussels, 26 February 2025.

unlock additional investment capacity[146]. This initiative had the scope of fostering a more supportive business environment, aimed at enabling European companies to grow, innovate, and generate quality employment. These Omnibus Packages consolidate proposals across several interconnected legislative areas, delivering broad simplification measures in sustainable finance reporting, corporate sustainability due diligence, the EU Taxonomy framework, the Carbon Border Adjustment Mechanism, and the European investment programmes[147].

The reforms seek to streamline the regulatory landscape for all businesses by reducing administrative complexity while concentrating the most stringent requirements on larger firms with the greatest environmental and climate impact. At the same time, the framework ensures continued access to sustainable finance tools, thereby supporting companies in advancing their transition to a greener economy.

Given the focus of this thesis, the Omnibus I Package, and, in particular, its consequences will be the main theme of the analysis that follows.

The CSDDD is expected to undergo the largest modifications from the original plan. The CSDDD would significantly alter its obligations and responsibility frameworks while keeping its present size thresholds. The restriction of due diligence to subsidiaries and direct business partners only, rather than the whole value chain[148], is one significant proposed provision under the Omnibus I Package. The Commission justifies these amendments on grounds of simplification and cost reduction; however, a closer examination reveals that the price of such simplification may well be the weakening of the Directive's normative force and its alignment with international due diligence standards[149]. The focus of this last part of the work is precisely to attempt to analyse how the limitations of the Omnibus I Package could undermine its effectiveness in practice.

One of the most striking proposals is the narrowing of the due diligence obligation. Instead of covering the entirety of the value chain, as initially envisioned, companies

[146] O'Driscoll M. (2025). The EU Omnibus and business and human rights risks. *International Bar Association*. https://www.ibanet.org/eu-omnibus-and-business-and-human-rights-risks

[147] Directorate-General for Financial Stability, Financial Services and Capital Markets Union (2025), *Omnibus I package - Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief*

[148] European Commission (2025). COM (2025) 81 final, 2025/0045 (COD). Art. 4(4)(b)

[149] European Commission (2025). COM (2025) 81 final, 2025/0045 (COD).

would be required to monitor only subsidiaries and direct business partners[150]. Indirect business partners would fall under scrutiny only if there were "plausible information" of risks or violations[151]. This "tier one" approach is undoubtedly attractive to corporations, as it reduces administrative burden and complexity[152]. Yet, from a substantive perspective, it risks hollowing out the very essence of due diligence: many of the most severe human rights and environmental harms in global supply chains occur precisely in the lower tiers, where oversight is weakest and corporate leverage limited. Restricting the obligation to first-tier relationships effectively narrows companies' responsibility and may incentivize deeper systemic issues.

In parallel, the proposal allows companies to reduce the frequency of monitoring and policy reviews from annual updates to a five-year interval[153]. Again, this is presented as a rational cost-saving measure[154]. However, the impact on accuracy and timeliness of information could be severe. Social and environmental risks evolve rapidly, often in response to political instability, market dynamics, or technological innovation. A five-year gap risks rendering corporate assessments obsolete, undermining the Directive's goal of fostering continuous vigilance and adaptation.

Another critical area of revision lies in stakeholder engagement. The proposed amendments substantially limit participation by narrowing the range of stakeholders to those directly affected, while excluding civil society organisations, trade unions, human rights NGOs, and consumer representatives[155]. This reduction not only silences vital actors in the oversight process but also undermines the legitimacy and inclusiveness of due diligence. By closing the door to broader stakeholder voices, the Directive risks shifting from a participatory, dialogic model of corporate accountability to a more managerial one, where companies consult only those already within their operational sphere.

[150] Ibid., 4(4)(b)
[151] European Commission. (2025). Questions & Answers on Simplification Omnibus I and II. https://ec.europa.eu/commission/presscorner/detail/en/qanda_25_615
[152] Raval S., Baumler J. (2025). How the Omnibus Package Fails Vulnerable Workers from Informal Economies. *Verfassungsblog on matters constitutional.*
[153] European Commission (2025). COM (2025) 81 final, 2025/0045 (COD). Art. 4(8)
[154] Ibid., p.19
[155] Ibid., pp.18-19

Climate obligations under the CSDDD would also be softened. Whereas the initial Directive required the preparation, regular update, and effective implementation of climate transition plans, the revised version limits the duty only to the adoption of such plans, with updates every five years[156]. The obligation to implement the plan is eliminated altogether. This represents a symbolic but significant retreat: it transforms transition planning from a binding instrument of corporate climate action into little more than a declaratory exercise. Such a change risks fuelling a form of "greenwashing", where companies produce plans without genuine commitment to follow through.

Perhaps the most consequential amendments concern penalties and liability. The original CSDDD contained provisions for harmonized sanctions across the Union, including a minimum cap of 5% of global turnover for financial penalties and an EU-wide civil liability regime. These elements were crucial in ensuring deterrence and consistency across Member States. Their removal represents a decisive shift towards decentralization, leaving enforcement largely in the hands of national regimes. While this increases flexibility, it risks fragmenting the legal landscape, undermining the Directive's harmonizing function, and creating incentives for forum shopping by companies seeking lenient jurisdictions.

Taken together, these proposed changes suggest a reorientation of the CSDDD from a strong accountability framework towards a lighter, more voluntary model of compliance. They respond to corporate concerns about costs and complexity but simultaneously erode the Directive's potential to drive systemic change in business conduct. The Directive risks losing coherence with international standards such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, both of which emphasize risk-based due diligence across the entire value chain.

Therefore, these amendments embody a tension between competitiveness and accountability. On the one hand, they reflect a pragmatic effort to reduce burdens on European firms during a turbulent economic period. On the other, they risk undermining

[156] Ibid., Art.4(10)

the credibility of the EU's sustainability framework by weakening its enforceability, reducing stakeholder participation, and diluting its climate ambitions. If the CSDDD is to retain its legitimacy as a cornerstone of corporate responsibility in Europe, it must balance simplification with substantive obligations that reflect the real challenges of global supply chains. Otherwise, the Omnibus I package could represent not a step towards smarter regulation, but a retreat from the EU's leadership in sustainable corporate governance.
Having explored what the changes proposed by Omnibus I Package would undermine, this work aims to examine how this package could undermine the concrete development of due diligence in the RU and how the Directive is increasingly reconcilign itself with its legal predecessors on due diligence, which were intended to be a tool for compliance.

IV. Omnibus I Package Amendments: A Step Back?

The Omnibus I package was introduced with the declared purpose of reducing administrative burdens and ensuring a smoother transition into the EU's sustainability framework. Yet, once the proposals are analysed in detail, questions emerge as to whether these adjustments genuinely promote coherence or whether they risk weakening the Union's broader sustainability ambitions. At the heart of this debate lies a tension: how to reconcile the EU's declared ambition of global leadership in sustainability with the clear deregulatory drift of the amendments.

The first act, which delays the application of the CSDDD, illustrates this tension well. On one hand, postponements appear inconsistent with the EU's declared objectives under the Green Deal and the 2030 Agenda, since every year of inaction in climate and sustainability policy has irreversible consequences[157]. On the other hand, a temporary delay could be justified as a pragmatic measure, allowing businesses more time to adapt, allocate resources, and streamline reporting obligations. In this sense, coherence may be understood less as strict temporal alignment with EU goals and more as an effort to balance urgency with feasibility. EU companies' ability to successful contribute to long-term decarbonisation targets may be compromised if they become less competitive a s a

[157] ClientEarth. (2025). NGOs challenge European Commission's undemocratic Omnibus process. *ClientEarth*. https://www.clientearth.org/latest/press-office/press-releases/ngos-challenge-european-commission-s-undemocratic-omnibus-process/

result of onerous laws that are enacted too soon. Thus, it may be argued that suitable and well-balanced changes to the legislative framework are required to guarantee overall coherence. Nevertheless, such postponements risk being perceived not as preparation but as inertia[158], and their legitimacy will depend on whether they are used constructively to genuinely facilitate implementation or simply to defer compliance, as an excuse for inaction[159].

The second act of the Omnibus I Package, introducing substantive changes to the CSDDD, presents an even greater challenge. Simplification can, in principle, improve coherence by aligning thresholds and requirements across the EU legal instruments, thereby reducing fragmentation[160]. For instance, the alignment of size criteria and climate obligations between different EU directives and regulations could, at first glance, enhance consistency. For instance, limiting the information that large companies can request from SMEs may create proportionality and protect smaller actors from disproportionate burdens.

However, this appearance of coherence is undermined by the broader deregulatory thrust of the proposals[161]. The removal of EU-wide civil liability, the elimination of the minimum cap on penalties, all reduce the degree of harmonisation[162]. Instead of fostering convergence, these measures risk generating fragmentation across the Union, where enforcement and liability will vary according to national choices. This weakens legal certainty and undermines one of the central objectives of EU-level legislation: the establishment of a common baseline for corporate accountability. From a substantive perspective, coherence is also jeopardised by the weakening of core obligations.

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[158] International Federation for Human Rights. (2025). Disastrous Omnibus proposal erodes EU's corporate accountability commitments and slashes human rights and environmental protections. https://www.fidh.org/en/issues/business-human-rights-environment/business-and-human-rights/disastrous-omnibus-proposal-erodes-eu-corporate-accountability

[159] Winters E., Schlag C. (2025). EU's Omnibus Package: Simplifying Sustainability Reporting and Administrative Burdens.*Nixon Peabody.* https://www.nixonpeabody.com/insights/articles/2025/03/10/eus-omnibus-package-simplifying-sustainability-reporting-and-administrative-burdens

[160] European Commission. (2025). Questions & Answers on Simplification Omnibus I and II. https://ec.europa.eu/commission/presscorner/detail/en/qanda_25_615

[161] Baumuller J. (2025). EU Omnibus package on sustainability – something we don't want to ride (yet)? "Omnibus I", CSRD (new) and the revised future of sustainability reporting in the EU: Evidence from Austria, p. 3

[162] International Federation for Human Rights. (2025). Disastrous Omnibus proposal erodes EU's corporate accountability commitments and slashes human rights and environmental protections. https://www.fidh.org/en/issues/business-human-rights-environment/business-and-human-rights/disastrous-omnibus-proposal-erodes-eu-corporate-accountability

Reducing due diligence to tier-one suppliers, allowing climate plans to remain aspirational rather than implemented, and drastically limiting stakeholder engagement all diminish the effectiveness of the framework.

Moreover, there is an evident paradox: measures that claim to reduce bureaucracy may, in practice, foster unproductive compliance. A climate transition plan that only needs to be adopted, but not implemented, risks becoming an exercise in paperwork with little tangible effect. Similarly, limiting due diligence responsibilities could push companies toward superficial box-ticking, rather than encouraging meaningful engagement with systemic issues in their supply chains. Such outcomes not only undermine effectiveness but also foster the very type of "inefficient bureaucracy" the reforms were supposed to avoid.

Finally, the absence of a fresh impact assessment raises concerns about proportionality and democratic legitimacy. The original CSDDD was a product of years of negotiation, compromise, and evidence-based evaluation. Reopening them so soon, without a full analysis of potential consequences, risks destabilising the regulatory environment and privileging short-term competitiveness over long-term resilience. This perception is reinforced by the limited consultations that preceded the proposals, which appear to have excluded significant segments of civil society.

IV.I Divergence from International Standards: UNGPs and OECD Guidelines

To return to the analysis of the due diligence environment not only at European level but also internationally, it should be emphasised that these changes not only dilute the transformative ambition of the Directive but also distance the EU from internationally recognised standards[163]. Both the OECD Guidelines and the UN Guiding Principles on Business and Human Rights serve as the cornerstones of the international corporate responsibility framework, and both rest on principles that go beyond what the Omnibus amendments now proposes.

[163] O'Driscoll M. (2025). The EU Omnibus and business and human rights risks. *International Bar Association*. https://www.ibanet.org/eu-omnibus-and-business-and-human-rights-risks

As examined in the previous chapters, at the core of the UNGPs is the risk-based approach to due diligence which requires companies to identify, prevent, mitigate and account for adverse human rights impacts across their entire value chains, regardless of the proximity of the business partner. This approach recognised that the most severe risks for human rights and the environment are often embedded deeper in global supply chains rather than at the level of direct subsidiaries or first-tier suppliers. By restricting the CSDDD' scope to subsidiaries and immediate business partners, unless "plausible information" suggests otherwise, the Omnibus I proposal undermines the very logic of risk-based due diligence: it replaces proactive identification of risks with a reactive model dependent on surface-level information[164]. This shift risks creating blind spots precisely where risks are most acute.
Similarly, the OECD Guidelines articulates that companies should conduct due diligence proportionate to the severity and likelihood of the harm, not merely to the convenience of contractual proximity. They emphasise that responsibility does not stop at the first tier of suppliers but extends across the value chain wherever companies are linked to adverse impacts throigh their operations, products or services. In narrowing the CSDDD obligations, the Omnibus I package risks creating a disconnection between EU law and the OECD framework, which many multinational companies already consider the international reference point for responsible business conduct[165].

Another dimension where the EU diverges concerns stakeholder engagement. Both the UNGPs and OECD Guidelines underline that meaningful consultation with affected stakeholders — including workers, trade unions, local communities, human rights defenders, and civil society organisations — is indispensable for credible due diligence.

The rationale is clear: those directly or indirectly affected by corporate activities are often best placed to identify risks and propose effective mitigation strategies. The Omnibus proposal, however, drastically reduces this participatory element, restricting engagement largely to directly affected individuals and communities while excluding civil society

[164] Raval S., Baumler J. (2025). How the Omnibus Package Fails Vulnerable Workers from Informal Economies. *Verfassungsblog on matters constitutional*
[165] Business and Human Rights Resource Centre. (2025). EU Omnibus Simplification Package should align with UN Guiding Principles on business and human rights. https://www.business-humanrights.org/en/latest-news/eu-un-experts-warn-omnibus-simplification-package-undermines-un-guiding-principles-on-business-and-human-rights/

actors and NGOs. Such an exclusion not only silences critical voices but also weakens the participatory legitimacy of the due diligence process. It risks turning engagement into a narrow managerial exercise rather than a forum for dialogue and accountability.

Finally, both the UNGPs and OECD Guidelines stress the importance of remediation when companies are linked to harm. Under these international standards, businesses should use their leverage to prevent and address adverse impacts and, where appropriate, terminate relationships with non-compliant partners. The Omnibus, by removing the "last resort" obligation to terminate business relationships, softens this expectation and risks perpetuating harmful relationships under the guise of temporary suspension[166]. This contrasts with the international consensus that effective remediation sometimes requires the decisive step of disengagement to avoid complicity in ongoing harm.

Taken together, these divergences highlight how the weakened CSDDD risks becoming misaligned with the international framework it was originally meant to consolidate. Instead of serving as a binding European translation of the UNGPs and OECD Guidelines, the Directive risks becoming a less ambitious companion piece, offering only partial implementation of principles already well established in soft law[167]. The EU thus runs the risk of moving from a potential global leader in embedding sustainability standards into binding law, to a laggard that struggles to meet the very baseline that international norms have set. In this way, the Omnibus proposals may produce formal coherence across EU directives at the cost of substantive incoherence with broader policy commitments and international benchmarks.

In light of these considerations, the coherence of the Omnibus I package seems fragile. While certain elements do create technical alignment, the broader picture points to a step back: coherence in form, but incoherence in substance. The danger is that in the pursuit of simplification, the EU may erode the credibility of its sustainability framework, reduce harmonisation among Member States, and weaken its leadership role in global climate and human rights governance.

[166] Ibid.
[167] Ibid.

Conclusion

The analysis developed in this thesis has shown how corporate social responsibility has undergone a profound transformation, evolving from a voluntary and philanthropic practice into a structured and institutionalised legal framework. The early stages of CSR, rooted in the post-war period and consolidated during the second half of the twentieth century, were characterised by the voluntary commitment of companies to pursue ethical, social, and environmental goals beyond profit maximisation. This voluntarist approach, though significant in raising awareness and encouraging innovation, soon revealed its structural weaknesses: the absence of enforceability, the prevalence of symbolic adherence, and the inability to prevent or remedy serious violations along increasingly globalised value chains. International legal instruments such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and the UN Guiding Principles on Business and Human Rights played a pivotal role in consolidating a common language and providing companies with normative reference points. Nevertheless, their voluntary character limited their effectiveness, leaving the question of how to guarantee genuine accountability.

It is within this context that the European Union intervened, progressively shifting the balance from voluntary CSR to mandatory due diligence. The Corporate Sustainability Due Diligence Directive represents the most ambitious attempt to date to institutionalise sustainability obligations in corporate governance. The Directive obliges companies of considerable size and turnover, including non-EU undertakings operating in the European internal market, to identify, prevent, mitigate, and remedy actual or potential adverse effects on human rights and the environment throughout their chain of activities. In this respect, it establishes a procedural duty of care which, although flexible and adaptable to different sectors and organisational models, is legally binding. The Directive thus signals the transition from CSR as a discretionary matter of company reputation to CSR as a core component of legal compliance and corporate strategy.

The CSDDD is emblematic of the EU's hybrid governance model, since it combines mandatory obligations with spaces of autonomy left to companies in determining appropriate measures. This balance allows undertakings to adapt procedures to their specific contexts, while subjecting them to supervisory authorities and sanctions in case of non-compliance. The risk-based and iterative structure of the Directive demonstrates a sophisticated understanding of sustainability risks as dynamic and variable across time and geography. Furthermore, the integration of climate transition planning into corporate duties aligns company strategies with international climate objectives and signals the embedding of ecological imperatives into the legal architecture of corporate governance.

At the same time, the Directive's ambitions have been tempered by political compromise. Its incorporation into the Omnibus Package resulted in the narrowing of its scope and the dilution of some of its more progressive provisions, such as those related to liability, obligations towards indirect business partners, and the rigor of climate transition requirements. This softening reflects the tensions that inevitably arise between the EU's aspirations to be a global leader in sustainability and the concerns of Member States and industry actors regarding competitiveness and regulatory burdens. The outcome is a legal instrument that represents significant progress compared to the voluntary framework of the past, but which nonetheless stops short of fully realising its transformative potential.

The question of civil liability, analysed in Chapter 3, epitomises this ambivalence. In theory, liability constitutes the strongest mechanism to ensure accountability, allowing victims of corporate misconduct to obtain remedies and providing companies with a powerful incentive to take their obligations seriously. In practice, however, the final version of the Directive has limited the scope and intensity of liability provisions. Companies may invoke the proportionality and appropriateness of their measures as a defence, thereby weakening the deterrent effect and creating uncertainty for victims. Moreover, the discretion left to Member States in transposing liability rules risks perpetuating the fragmentation that the Directive sought to overcome. The result is a compromise solution, which acknowledges the necessity of civil liability but does not provide it with the coherence and robustness necessary to ensure its effectiveness across the Union.

The broader implications of these developments are ambivalent. On the one hand, the CSDDD represents a milestone in the trajectory of corporate responsibility. It crystallises the idea that sustainability and respect for human rights are not optional extras, but fundamental obligations that companies must integrate into their business models. It also positions the European Union as a normative leader, capable of setting standards that will likely reverberate beyond its borders and influence global value chains. On the other hand, the Directive's reliance on procedural obligations, its weakened liability regime, and the compromises embedded in its final text raise the risk that due diligence may degenerate into a formal exercise in compliance, without necessarily producing substantive changes in corporate behaviour.

Ultimately, the success of the Directive will depend on its implementation. The ability of national supervisory authorities to apply sanctions effectively and of the European Network of Supervisory Authorities to guarantee cross-border coherence will be decisive. Equally important will be the degree of harmonisation of civil liability regimes across Member States, which will determine whether individuals and communities affected by corporate misconduct can truly access justice. Finally, the cultural internalisation of sustainability within companies themselves will be crucial: only if businesses perceive due diligence not merely as a legal burden but as a strategic and ethical imperative will the Directive achieve its full potential.

This study has sought to answer whether the passage from voluntary ethics to mandatory due diligence truly enhances corporate responsibility or merely reconfigures existing standards. The conclusion is necessarily nuanced. The CSDDD represents a significant step forward compared to the voluntarist model, as it introduces enforceable duties, clarifies expectations, and strengthens supervisory and sanctioning mechanisms. However, it remains a compromise instrument, whose effectiveness will be tested in practice. Its ultimate significance lies not only in its text but in its implementation and in the broader cultural shift it embodies: the gradual but unmistakable movement towards conceiving business as a social actor bound by legal responsibilities towards human beings and the environment. In this sense, the Directive is both a milestone and a starting point, a moment of consolidation and a prelude to further developments in the ongoing project of aligning economic activity with the imperatives of sustainability and human digni

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