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ASPECTS OF DUE DILIGENCE IN THE FIELD OF CORPORATE SUSTAINABILITY

A.R. BULARCA[1] I. NICOLAIE[2]

Abstract: *The behavior of businesses in all sectors of the economy is essential for the success of the European Union's sustainability objectives, as businesses, especially large ones, rely on global value chains. It is also in the interest of businesses to protect human rights and the environment, given the growing concern of consumers and investors on these topics. Directive (EU) 2024/1760 on due diligence in the field of corporate sustainability also contributes to the European Pillar of Social Rights, which promotes rights ensuring fair working conditions. This study aims to analyse the novelties that this Directive brings to European Union law, by highlighting the social component of business.*

Key words: *enterprise, investor, consumer, sustainability, diligence*

1. Introduction

According to Article 2 of the Treaty on European Union (TEU), the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, as enshrined in the Charter of Fundamental Rights of the European Union.

In the European Parliament's Communication of 14 January 2020 entitled *"A Strong Social Europe for Just Transitions"*, the European Commission committed to modernising Europe's social market economy in order to achieve a fair transition towards sustainability, ensuring that no one is left behind.

The purpose of Directive 1760/13-June-2024 on corporate sustainability due diligence (hereinafter "the Directive") is also to contribute to the European Pillar of Social Rights, which promotes rights ensuring fair working conditions. It is part of the EU's policies and strategies to promote decent work globally, including in global value chains, as stated in the European Commission Communication of 23 February 2022 on *Decent Work Worldwide*.

Existing international standards on responsible business conduct stipulate that enterprises should protect human rights and set out how they should address environmental protection within their operations and value chains. These are consistent with Article 191 of the Treaty on the Functioning of the European Union (TFEU), which requires a high level of protection and improvement of the quality of the environment,

[1]Transilvania University of Braşov, roxana.bularca@unitbv.ro, corresponding author
[2]Transilvania University of Braşov, ioana.nicolaie@unitbv.ro, corresponding author

as well as the promotion of fundamental European values, as provided in the European Commission Communication of 11 December 2019 on the *European Green Deal*. These objectives require the involvement not only of public authorities but also of private actors, in particular businesses.

2. Subject of the Directive

Directive 1760/13-June-2024 on corporate sustainability due diligence lays down rules concerning:

a) the obligations of companies regarding actual and potential adverse impacts on human rights and the environment in connection with their own operations, those of their subsidiaries, and those carried out by their business partners in their chains of activities;
b) liability for breaches of the above-mentioned obligations; and
c) the obligation for companies to adopt and implement a transition plan to mitigate climate change, aimed at ensuring, through the utmost efforts, the compatibility of the company's business model and strategy with the transition to a sustainable economy and with limiting global warming to 1.5°C, in accordance with the Paris Agreement under the United Nations Framework Convention on Climate Change, adopted on 12 December 2015.

The Directive shall not be construed as a justification for lowering the level of protection of human rights, labour and social rights, or environmental or climate protection provided for under the domestic law of Member States or applicable collective agreements at the time of its adoption.

The Directive is without prejudice to obligations relating to human rights, labour and social rights, or to environmental and climate protection under other Union legislation.

In the event of a conflict between a provision of this Directive and that of another Union legislative act pursuing the same objectives and providing for more extensive or specific obligations, the latter shall prevail and apply with respect to those specific obligations. Thus, from a legal perspective, the Directive does not include special or derogatory rules.

By adopting this Directive, the EU aims to safeguard human rights and the environment. In this regard, Article 3(1)(b) defines "adverse impact on human rights" as an impact on individuals resulting from an abuse of a human right protected under Part I of the Annex to the Directive. Whenever the term "adverse impact" is mentioned, it refers both to abuses against human rights and abuses against the environment.

3. Scope of the Directive

The Directive applies to large companies established in the European Union and to certain non-EU companies operating on the European market.

Thus, according to Article 2(1), the Directive applies to large companies incorporated under the law of a Member State that meet one of the following conditions:

- they have more than 1,000 employees and achieve a net worldwide turnover of over EUR 450 million;

- parent companies that meet the same criteria at group (consolidated) level;
- companies that have concluded franchise, license, or similar agreements when they: achieve a net turnover of over EUR 80 million within the EU and receive royalties exceeding EUR 22.5 million.

According to Article 2(2), the Directive also applies to companies established outside the Union (third-country companies) that:

- generate within the EU a net turnover exceeding EUR 450 million, regardless of the number of employees; or
- are parent companies of a group exceeding that threshold; or
- operate under franchise or licensing arrangements exceeding the thresholds mentioned above (EUR 80 million / EUR 22.5 million).

The Directive imposes due diligence obligations across the entire chain of activities, which includes:

- the company's own activities;
- subsidiaries (affiliates, branches, etc.);
- business partners in the upstream supply chain — production, extraction, suppliers of raw materials;
- downstream partners — distribution, transport, storage, recycling. Excluded from this scope are completely independent services (e.g. postal, financial, or telecommunications services that do not affect the value chain).

Due diligence obligations apply with respect to:

- respect for human rights (according to international instruments listed in Annex I, such as the United Nations Declaration, the International Labour Organization conventions, etc.);
- environmental and climate protection, including the reduction of greenhouse gas emissions;
- responsible corporate governance through the integration of due diligence into companies' internal policies;
- prevention and remediation of adverse impacts (e.g. pollution, exploitation, forced labour, deforestation, etc.).

Only legal entities may qualify as "enterprises" under the Directive, as exemplified in Article 3(1)(a) (e.g. credit institutions, investment firms, alternative fund managers, reinsurance companies, central securities depositories, electronic money institutions, etc.).

Consequently, professionals operating as natural persons are not included in this category.

4. The concept of Due Diligence

Sustainability due diligence means the process by which companies identify, prevent, mitigate, cease, and address actual or potential adverse impacts on human rights and the environment arising from their own activities, those of their subsidiaries, or their business partners within their chain of activities.

In short, due diligence is not merely a one-off analysis (as in traditional civil or commercial law) but an ongoing process of managing the risks of social and environmental adverse impacts within a company's economic activity.

This involves: identifying risks of abuse (e.g. forced labour, pollution, illegal deforestation, corruption); assessing their severity and likelihood; preventing and mitigating them through internal policies and measures; monitoring and periodic reporting; remedying any damage caused (Morris, 2025, p.53).

The objectives of the Directive are to create a framework in which companies:

- act responsibly towards people and the environment;
- integrate non-financial (social, environmental, ethical) risks into economic decision-making;
- contribute to a green and fair transition of the European economy.

Due diligence does not imply mere legal compliance. The Directive goes beyond the obligation of compliance with the law: it requires proactive analysis and preventive measures, even in situations where no concrete violation has yet occurred. For example, a company must check how its suppliers in Asia or Africa respect workers' rights, impose contractual clauses of responsibility, and publish climate transition plans (Principale, 2023, p.39).

From a theoretical standpoint, in classical legal interpretation, the concept of due diligence resembles an "obligation of means" rather than an "obligation of result": a company is not liable for the mere occurrence of a violation but for failing to exercise reasonable diligence to prevent it.

In other words, a firm is not guilty for every incident, but only if it failed to do everything reasonably possible to prevent it.

In conclusion, due diligence appears to represent a legal obligation of responsible governance — a systematic process for managing human rights and environmental impact risks throughout the company's value chain.

One might define "due diligence in corporate sustainability" as the set of legal, organizational, and operational measures through which a company identifies, prevents, mitigates, monitors, and remedies the actual or potential adverse effects of its own activities, those of its subsidiaries, or its value chain partners on human rights, the environment, and corporate governance.

The concept entails an obligation of means, not of result, and reflects a proactive approach to corporate responsibility, integrating social and environmental considerations into business strategy in line with international standards established by the UN, OECD, and ILO. Through this regulation, the European Union establishes a unified framework for sustainable governance, transforming due diligence from a voluntary corporate social responsibility practice into a legal obligation of responsible conduct across global value chains.

Evidently, the practical application of this Directive, once implemented into the national legislation of Member States, will generate a *Guideline of Best Practices*, which will be essential to ensure the consistent application of the terms and concepts defined and addressed by the Directive.

5. Implementation of the Due Diligence Obligation

The Directive establishes a series of mechanisms for fulfilling the companies' due diligence obligations, namely:

a) Integration of due diligence into company policies and risk management systems. This requires companies to integrate due diligence into all their policies and relevant risk management systems and to implement a due diligence policy ensuring a risk-based approach. This policy is to be developed through prior consultation with employees and their representatives and must include:

- a description of the company's approach to due diligence;
- a code of conduct setting out the rules and principles to be respected throughout the entire company, its subsidiaries, and by its direct and indirect business partners;
- a description of the processes established to integrate due diligence into relevant company policies and to implement the due diligence obligation, including measures to verify compliance with the code of conduct and to extend its application to business partners.

b) Identification and assessment of actual and potential adverse impacts arising from the company's own operations or those of its subsidiaries, and, where linked to the chain of activities, from its business partners' operations.

This involves mapping the company's own operations, subsidiaries, and, where linked to the chain of activities, its business partners, to identify the general areas where adverse impacts are most likely to occur and most severe. Based on this mapping, an in-depth assessment of operations is to be carried out, relying on solid quantitative and qualitative data.

c) Prioritisation of identified actual and potential adverse impacts.

Where it is not feasible to prevent, mitigate, cease, or minimise all identified adverse impacts at the same time and in full, companies must establish a prioritisation order in accordance with Article 8 of the Directive, so as to fulfil the obligations provided in Articles 10 and 11.

d) Prevention of potential adverse impacts through appropriate measures such as:

- developing and implementing a prevention action plan with clear, reasonable timelines for implementation and qualitative and quantitative indicators to measure improvements;
- obtaining contractual assurances from direct business partners guaranteeing compliance with the company's code of conduct and, where applicable, the prevention plan, including cascading such guarantees to their own partners, insofar as their activities are part of the company's chain of activities;
- making necessary financial or non-financial investments, modifications, or updates, e.g. in structures, production, or operational infrastructures;
- adapting business plans, strategies, and overall operations, including procurement, design, and distribution practices;
- providing targeted and proportionate support to microenterprises that are business partners, where necessary, taking into account their resources, knowledge, and constraints — including capacity building, training, or modernization of management systems — and, where compliance with the code of conduct or prevention plan would endanger the viability of the microenterprise, by offering targeted financial support such as direct funding, low-interest loans, supply guarantees, or assistance in securing financing;

- collaborating with other entities, including, where appropriate, to enhance the company's capacity to prevent or mitigate adverse impacts, especially when no other measure is suitable or effective, in compliance with EU law, including competition law. Companies may also adopt additional appropriate measures, such as engaging with business partners on expectations regarding prevention and mitigation of potential adverse impacts, or facilitating capacity building, advice, administrative and financial support, including loans or funding, considering the resources, knowledge, and constraints of the business partner.

Where potential adverse impacts cannot be adequately prevented or mitigated through these measures, the company may seek contractual assurances from indirect business partners to ensure compliance with its code of conduct or prevention plan.

If potential adverse impacts still cannot be adequately prevented or mitigated, the company must ultimately refrain from entering into new or extending existing relationships with the business partner concerned or within whose chain of activities the impact occurred.

Before temporarily suspending or terminating the relationship, the company must assess whether it can be reasonably foreseen that the adverse impacts of such action would be clearly more severe than the unprevented or unmitigated adverse impact.

In such cases, the company is not obliged to suspend or terminate the business relationship and may inform the competent supervisory authority of the duly justified reasons for its decision.

Member States may provide for the possibility of temporarily suspending or terminating business relationships governed by their national law, except for contracts that parties are legally required to conclude.

e) Cessation of actual adverse impacts that have been or should have been identified. Where an adverse impact cannot be immediately stopped, Member States must ensure that companies minimise its extent. Companies are required to take appropriate measures, such as:

- neutralising or minimising the impact, in proportion to its severity and to the company's involvement;
- if immediate cessation is not possible, developing and implementing, without undue delay, a corrective action plan with a clear, reasonable timeline and measurable indicators of improvement;
- designing corrective action plans in cooperation with sectoral or multi-stakeholder initiatives;
- obtaining contractual assurances from direct business partners to ensure compliance with the company's code of conduct and, where applicable, corrective action plan, including cascading such guarantees;
- making necessary financial or non-financial investments, or operational updates;
- adapting business plans, strategies, and operations, including procurement, design, and distribution;
- providing targeted and proportionate support to microenterprises, including capacity-building, training, or management system modernization, and, where necessary, targeted financial support such as funding, low-interest loans, or supply guarantees;

- collaborating with other entities to enhance capacity to cease or minimise adverse impacts, especially when no other measure is effective;
- ensuring remediation.
- Companies may also adopt additional measures, such as engaging with partners on expectations regarding cessation or minimisation of adverse impacts, or providing access to capacity building, counselling, administrative or financial assistance. Where actual adverse impacts could not be ceased or adequately minimised through these measures, the company may seek contractual assurances with an indirect business partner to ensure compliance with its code of conduct or corrective action plan.

f) Remediation of actual adverse impacts by a company, individually or jointly.

If the actual adverse impact was caused solely by the company's business partner, the company may ensure voluntary remediation. It may also use its influence over the business partner responsible for the adverse impact to secure remediation (Usman Rasa, 2025, p.21).

6. Liability of Companies for Non-Compliance with the Due Diligence Obligation

As a general principle, the Directive establishes *civil liability* for companies that breach their due diligence obligations.

Member States are required to monitor and facilitate the pursuit of civil liability against entities covered by the Directive that violate its obligations *intentionally or negligently.*

In other words, liability operates according to general civil law principles concerning fault.

A company becomes liable only when, by breaching its due diligence obligation, it causes harm to a natural or legal person protected by the Directive.

The Directive also introduces *derogations from common civil law*, such as:

- a *longer limitation period* of five years;
- *standing for representative actions*, allowing claims to be brought not only by affected individuals but also by organizations protecting human rights, trade unions, non-governmental organizations, and others;
- *judicial powers to order disclosure of evidence* ex officio from the liable company, ensuring that such evidence remains confidential.

Member States are required, when transposing the Directive into national law, to ensure the *priority application* of the provisions regarding the civil liability of companies.

In addition to civil liability determined by national courts, the Directive also provides for *sanctions* for companies that breach its obligations — effectively introducing a regime similar to *administrative or contraventional liability.*

The Directive stipulates that, in order to ensure the effective enforcement of national provisions transposing it, Member States must establish *dissuasive, proportionate, and effective sanctions* for violations of its measures.

To make such a sanctions regime effective, these must include *pecuniary penalties* and *public statements* identifying the responsible company and the nature of the

infringement, where the company fails to comply with a monetary sanction decision within the applicable deadline.

Member States must ensure that, when imposed, the pecuniary sanction is *proportionate to the company's worldwide net turnover.*

However, this does not oblige Member States to base all sanctions solely on turnover in every case.

They may decide, in accordance with national law, whether sanctions are to be imposed directly by supervisory authorities, in cooperation with other authorities, or by referral to competent judicial authorities.

To ensure *public oversight of enforcement*, decisions by supervisory authorities imposing sanctions for non-compliance with national provisions transposing the Directive must be published, communicated to the *European Network of Supervisory Authorities*, and remain publicly available for *at least three years.*

7. Conclusions

Directive 1760/13-June-2024 on Corporate Sustainability Due Diligence is a legislative act of European Union law that must be transposed into the national legal systems of the Member States *by 26 July 2027.*

It represents a significant effort to protect both *natural and legal persons* within the Member States of the European Union, as well as those *outside* its territory.

As already indicated, the Directive may also apply to companies *established outside the European Union* that enter into or carry out commercial activities within the EU market.

In our view, the implementation of this Directive across all Member States demonstrates the continued commitment of the *cradle of global civilization — the European Union* — to protect the most important contemporary human values: *human rights, the environment, and climate conditions.*

Undoubtedly, as with any bold undertaking, the application of these regulations will not be free of difficulties.

However, as in all meaningful endeavours, in order to reach the desired result, one must begin the journey.

We hope that this journey will embody the path toward the *balance* proposed by the Directive itself, considering that the values it upholds are *of global and contemporary significance.*

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