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THE PROTECTION OF HUMAN DIGNITY THROUGH THE EUROPEAN DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE

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Abstract: *In June 2024, the European Union adopted a directive on corporate sustainability due diligence, which aims to provide a framework for the respect for human rights, including human dignity, and environmental rights by major European companies or those operating in Europe, which are required to institute due diligence protocols in their operational frameworks and transnational value chains with a view to preventing, mitigating and identifying actual and potential negative impacts. To ensure the effectiveness of the system, the European directive on corporate sustainability due diligence provides for the appointment of an independent authority responsible for ensuring compliance with the duty of vigilance and with powers of investigation, inspection, and sanction. Without being exhaustive, the text expressly provides for different types of sanctions in the event of failure to comply with the duty of vigilance.*

Key words: *human rights - duty of care - multinational companies - due diligence – corporate social responsibility (CSR*)

1. Introduction

For several years, civil society, and NGOs in particular, have been denouncing cases of human rights violations committed by transnational corporations, as well as the many restrictions on access to justice for victims, particularly for communities subject to structural discrimination, such as women and indigenous peoples. Various international events have highlighted the difficulties faced by multinational companies in identifying and mitigating risks related to human rights and environmental impacts within their global value chains.

Companies in the European Union operate in a complex environment and, particularly the largest ones, rely on global value chains. Given the large number of suppliers in the European Union and third countries and the overall complexity of value chains, EU companies may encounter difficulties in identifying and mitigating risks related to human rights or environmental impacts in their value chains.

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Building on existing voluntary international standards for responsible business conduct, primarily the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, a growing number of companies in the European Union are using duty of care as a tool to try to prevent violations of human rights and fundamental freedoms, protect people's health and safety, and remedy environmental damage caused by all entities.

However, these voluntary measures taken by certain companies, based on international soft law standards, have proven insufficient, and the voluntary measures implemented by these companies do not seem to have led to large-scale improvements across all sectors. The Rana Plaza tragedy on April 24, 2013, in Bangladesh is a striking example of this and has led international organizations to recommend the adoption of more binding obligations at the international and national levels.

It is at the national level, particularly in Europe, that corporate accountability in terms of human rights and the environment has become more stringent, and France has played a pioneering role in this area by being the first European country to establish a duty of care for companies throughout their value chain (Law No. 2017-399 of March 27, 2017). Some European countries, in particular Germany (Act on Corporate Due Diligence Obligations in supply chains, adopted on 11 June 2021) have followed suit and others are considering doing so, demonstrating a European consensus. With the aim of harmonizing due diligence at the European level and avoiding distortions of competition between Member States, in June 2024 the European Union adopted a directive on corporate sustainability due diligence (Directive (EU) 2024/1760).

This text aims to promote sustainable and responsible behaviour by companies throughout global value chains by requiring states to impose a series of significant obligations on the companies concerned: obligations to prevent and address their negative impacts on human rights and the environment imposed on large European companies, but also on third-party companies operating in the European market; the designation of a supervisory authority; the implementation of a cross-border complaints mechanism; economic and financial sanctions; civil liability to ensure the effectiveness of the system; and, last but not least, dialogue with stakeholders, imposed to varying degrees. Despite the numerous criticisms levelled against it, the directive establishes a particularly ambitious duty of care that will, for the first time in history, impose CSR standards on companies that will extend beyond European borders.

2. The scope of the European duty of care

The adoption of a directive on the duty of care in relation to sustainability has been particularly divisive among European states, with opposition focusing mainly on the scope of the directive. Several countries considered that the proposed directive placed excessive financial, administrative, and legal burdens on small and medium-sized enterprises. The originality of the European text compared to other national standards lies in the fact that the duty of care also affects non-European companies conducting economic activities on European territory.

The text provides for the gradual implementation of rules on the duty of care, which will apply to companies with more than 1,000 employees and a global net turnover of more than €450 million, as well as companies from third countries with a turnover in the EU of more than €450 million.

Another distinctive feature of the text is that the activities concerned are not only those of the company, but also those of its subsidiaries and business partners in the chains of activities of these companies, in particular subcontractors and suppliers.

Although SMEs are not directly targeted by the text, it should be noted that small businesses operating in the value chains of covered companies around the world will be affected due to the contractual requirements imposed on them by their clients, who are themselves subject to the duty of care. Nevertheless, the directive protects SMEs by providing support and assistance mechanisms that have the merit of reducing the requirements mentioned above.

3. The content of the European duty of care

The European directive requires companies to adopt and effectively implement all necessary measures to prevent, mitigate risks, and put an end to human rights violations and environmental damage caused by their entire group and value chain.

3.1. Implementation of due diligence measures

The Due Diligence Directive requires affected companies to establish due diligence protocols within their operational frameworks and transnational value chains in order to prevent, mitigate, and identify actual and potential negative impacts. The text specifically targets the areas to be addressed: forced labor, exploitation of workers, child labor, fair and favorable working conditions, decent and adequate wages, unequal treatment in employment and the right to freedom of association, and environmental issues such as emissions, deforestation, pollution, waste and hazardous chemicals management, ozone layer protection, pollution, mercury use, and water use.

The main due diligence obligations set out in the directive are as follows:

3.1.1. *Development of a due diligence policy*

The directive requires companies to incorporate due diligence into their internal policies and governance. As such, Member States will have to ensure that companies are transparent. Companies will be required to describe their long-term approach to this issue and their internal processes, and to publish their code of conduct on an annual basis. The choice of a code of conduct as a basis for the rules and principles to be followed in terms of due diligence is questionable insofar as these are only flexible standards.

3.1.2. ***Identification of actual or potential adverse impacts on human rights and the environment***

The companies concerned will also have to put in place appropriate measures to identify and assess the actual or potential negative impacts arising from their own activities or those of their subsidiaries and, where linked to their business chains, those of their business partners.

3.1.3. ***A ranking of the actual and potential negative impacts identified***

When it is not possible to prevent, mitigate, eliminate, or minimize all identified adverse impacts simultaneously and in their entirety, companies must prioritize the identified adverse impacts for the purposes of complying with obligations to prevent potential adverse impacts and eliminate actual adverse impacts.

3.1.4. ***Prevention and reduction of potential negative impacts through a prevention plan***

The companies concerned will also have to put in place appropriate measures to prevent or, where prevention is not possible or not immediately possible, to adequately mitigate potential negative impacts on human rights and the environment. To this end, a prevention plan must be drawn up, in consultation with the relevant stakeholders, when complex and specific measures are necessary to prevent or reduce potential negative impacts. Companies must ensure, through contractual clauses, that partners with whom they have established direct business relationships comply with the code of conduct and, where applicable, the prevention plan. However, the text is pragmatic in that it considers cases where a company is unlikely to prevent or minimize the risks of the aforementioned infringements. It then provides Member States with guidelines for requiring companies to suspend or terminate a business relationship.

3.1.5. ***Neutralizing or reducing actual negative impacts through a corrective action plan***

Companies will also have to put an end to actual negative impacts, or if this is impossible, minimize their extent, and pay financial compensation to victims. If they are unable to put an immediate end to the negative impact, companies will have to draw up a corrective action plan specifying deadlines for action and qualitative and quantitative indicators to measure improvement. The mechanism is similar to that provided for preventing potential negative impacts: use of contractual tools to verify that direct business partners comply with the code of conduct or corrective action plan, use of independent third parties to verify compliance, making the necessary investments, providing financial support to SMEs, concluding a contract with a partner in an indirect relationship, not establishing new relationships with a partner, temporarily suspending business relationships with a partner, and terminating the business relationship with regard to the activities concerned in the event of a serious negative impact.

3.1.6. ***Compensation for actual negative impacts***

The directive expressly states that a company that has caused, alone or jointly, a real

negative impact must remedy it. In the event that the real negative impact is caused solely by the company's business partner, the company may take the initiative, on a voluntary basis, to remedy it. It may also put pressure on the business partner causing the negative impact to remedy it.

3.1.7. The implementation of an alert procedure

The directive stipulates that companies must also establish a procedure for reporting actual or potential negative impacts on human rights and the environment. This procedure would be widely accessible, namely to persons affected by a negative impact, trade unions and other representatives of persons working in the value chain, and civil society organizations active in areas related to the value chain concerned.

3.1.8. Monitoring the effectiveness of policy and vigilance measures

Companies subject to the duty of vigilance must be able to regularly assess their internal systems. They must therefore put in place procedures for regularly assessing their own situation, that of their subsidiaries, and their business relationships, in order to monitor the effectiveness of identifying, preventing, mitigating, eliminating, and minimizing adverse impacts on human rights and the environment. These assessments must be carried out annually and whenever there are reasonable grounds to believe that new significant risks related to these negative impacts may arise. The results of these assessments will lead to an update of the duty of care policy.

3.2. A requirement to communicate on the duty of care

The European directive stipulates that the companies concerned must publish an annual statement on their website in a language commonly used in international business. Details on the content and criteria applicable to reporting requirements, specifying information on the description of the duty of care, potential and actual adverse impacts, and measures taken in response to them, will be set out in a delegated act.

3.3. The need for dialogue with stakeholders

In a fairly innovative move, the directive requires dialogue and consultation with stakeholders at all stages of the due diligence process. This provision therefore makes consultation with potentially affected stakeholders a condition for the effective implementation of the duty of care.

3.4. Support for companies subject to the European duty of care

The European directive also provides for accompanying measures for the companies concerned, but also for SMEs indirectly affected by the duty of care.

In order to help companies fulfill their duty of care, the directive provides for the adoption of guidelines on voluntary standard contractual clauses.

In addition, in order to support companies in applying all of these provisions, the

directive envisages publishing guidelines in consultation with Member States, stakeholders, the European Union Agency for Fundamental Rights, the European Environment Agency and, where appropriate, international bodies with specific expertise.

In order to support the various companies, their business partners, and stakeholders, Member States will need to set up dedicated websites, platforms, or portals. In this regard, particular attention is being paid to SMEs, as they may be affected by due diligence measures if they are part of a company's value chain. Collaboration with stakeholders would be particularly beneficial, as they could help companies meet their obligations by providing them with significant expertise.

3.5. The fight against climate change

The directive also introduces an obligation for companies subject to the duty of care to adopt and implement, to the best of their ability, a climate transition plan to ensure that their business model and strategy are compatible with limiting global warming to 1.5°C in accordance with the Paris Agreement. The text also requires that the transition plan be updated annually and contain a description of the progress made by the company in achieving its objectives.

4. A preventive control device

In order to ensure the effectiveness of the mechanism, the European directive on corporate sustainability due diligence requires each Member State to designate an independent authority responsible for ensuring compliance with due diligence obligations and equipped with powers of investigation, inspection and sanction.

For companies from third countries, the competent supervisory authority will be that of the Member State in which the company has a branch office. If the company does not have a branch office in a Member State or has branches in several Member States, the supervisory authority will be that in which the company has achieved the majority of its turnover. It should be noted that this provision will be complicated to implement and will complicate monitoring of supervision, as the Member State in which the company has achieved the said turnover may vary from one financial year to another.

This supervisory authority must be independent and have the resources and investigative powers necessary to carry out its mission. It will have broad investigative powers and the authority to conduct on-site inspections. It will have the option of doing so on its own initiative, and therefore of taking up cases on its own motion, or following reports made by persons who have legitimate grounds to believe that a company may have committed a breach. If the authority finds that a company is not complying with the provisions of the law, it may grant the company a period of time to take corrective measures, which would not preclude administrative sanctions and civil liability. It may also order provisional measures to avoid the risk of serious and irreparable harm. Finally, it could order any measure aimed at putting an end to the breach and impose financial penalties based on turnover. The text also stipulates that any decision by the

supervisory authority to penalize a breach of the duty of vigilance will be published.

A European network of supervisory authorities, composed of representatives of national authorities, will be established. Its purpose will be to facilitate cooperation between supervisory authorities and coordination of regulatory, investigative, sanctioning, and supervisory practices.

5. Penalties incurred for failure to exercise due diligence

The European directive on corporate sustainability due diligence requires Member States to ensure that companies comply with their new obligations. According to a well-known principle in European law, the penalties provided for must be "effective, proportionate, and dissuasive." It provides for various types of penalties for breaches of due diligence.

The directive provides for the possibility for supervisory authorities to impose financial penalties of up to 5% of their global net turnover. However, this is not an obligation and it will be up to Member States to set the rules relating to these penalties.

At the same time, the directive confers particularly stringent administrative powers on the supervisory authority, in that it empowers it to impose provisional measures designed to prevent a risk of serious and irreparable damage, which may include the temporary suspension of the parent company's activities.

The directive also aims to hold companies liable in the event of a breach of their obligations. In order to ensure the effectiveness of the mechanism, the directive provides that in the event of non-compliance with the prescribed measures (intentional misconduct or negligence) and where, as a result of such non-compliance, a negative impact has not been identified, prevented, eliminated, or mitigated and has caused damage, victims may bring civil liability proceedings against the companies. It thus enables victims of such abuses, both inside and outside the EU, to access justice and obtain redress. However, liability proceedings require victims to prove intentional misconduct or negligence in order to establish a breach.

This liability may be incurred in the event of damage related to the activities of the company itself, but also of a subsidiary and its business partners. However, the company will not be held liable if the damage was caused solely by a business partner in its chain of activity. It must therefore have contributed to and participated in the damage in order to be held liable. The text specifies that these rules will not prevent the application of national regimes with stricter provisions.

However, the directive does not provide for the possibility of bringing a case before a judge before any damage has occurred, in order to require a company to comply with its prevention obligations. In practice, this role is entrusted to the supervisory authority.

6. A challenge to the European duty of care

In recent months, various European regulations on Corporate Social Responsibility (CSR) have been the subject of fierce criticism, accused in particular of hampering the competitiveness of European companies. The main governments of the EU Member

States have therefore called for the European directive on the duty of care to be relaxed and simplified. Member States were required to transpose it by July 26, 2026, but a directive dated April 14, 2025(4), known as "Stop the clock," ultimately postponed the deadline for transposing the directive and its first phase of implementation by one year to July 26, 2027. More recently, the European Parliament adopted drastic simplification measures for the European duty of care directive, in a vote on November 13, 2025, which raise the threshold for applicability of the directive to 5,000 employees and €1.5 billion in turnover. This means that tens of thousands of companies will no longer be subject to European obligations. In addition, Parliament is abolishing the harmonized civil liability regime at the European Union level and making financial penalties optional. Trilateral negotiations between Parliament, the Council, and the Commission began.

7. Conclusions

The adoption of the duty of care for multinational companies by member states sent a strong message, recognizing the need to shift the governance model of European companies towards greater sustainability, particularly with a view to protecting human dignity. Faced with this weakening of the regulatory framework for CSR, many players from the economic and financial world are nevertheless mobilizing to defend this regulatory change, which is considered essential to the financial stability, transparency, and competitiveness of the European Union. Wait and see!

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