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DUE DILIGENCE AS AN INSTRUMENT TO ENFORCE ENVIRONMENTAL PROTECTION:

analysis of the regulatory proposal in european law^{1/2/3}

Stephanie Cristina de Sousa Vieira⁴

ABSTRACT: The accountability of companies for causing environmental damage is a global challenge. Considering this and the worsening climate change, the European Commission has adopted a directive proposal on corporate sustainability due diligence. This will allow for the assessment and monitoring of business activities' risks to protect human rights, prevent environmental damage, and promote access to justice. In light of this, the following question arises: what are the limitations of European due diligence in terms of the effective protection of the environment? This research aims to understand the obstacles to be faced and the prospects of this instrument regarding the materialization of environmental protection in the EU. To this end, this research explains the spread of the instrument in the EU and the justification for its regional regulation, in order to understand the challenges that due diligence might face, based on the directive proposed by the European Commission. The methodology is qualitative in nature, applying inductive and deductive reasoning through literature review and document analysis of international norms and regional instruments. As a result, it is found that the regulation could contribute to regional and global progress in environmental matters, human rights, and good governance, but may face limitations in its effectiveness due to the approval of a less ambitious legal text and therefore inadequate to address the issues, especially those related to climate, the complexity of companies' value chains, and difficulties in controlling and monitoring compliance with the regulations. It is concluded that this is an important instrument given the current climate circumstances, despite the need for joint action with other mechanisms and improvement of its provi-

1. S.C.S. Vieira, *Due Diligence as an Instrument to Enforce Environmental Protection: Analysis of the Regulatory Proposal in European Law*, v. 4, n. 2, 2024, p. 349 *et seq.*
2. This work was awarded third place in the "IV Jean Monnet Social Science Prize," an initiative of the Jean Monnet Network Policy Debate "BRIDGE Watch" project with funding from the Erasmus + Programme of the European Commission.
3. This research is the result of a Master's dissertation in Law, defended and approved within the scope of the Graduate Program in Law at the Federal University of Ceará (PPGD-UFC), under the guidance of Prof. Dr. Tarin Cristino Frota Mont'Alverne (UFC), Prof. Dr. João Luis Nogueira Matias (UFC), and Prof. Dr. Julia Motte-Baumvol (Université Paris Cité), to whom the author expresses gratitude for their valuable guidance, which continues to this day..
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sions, so that environmental protection is effectively achieved.

Keywords: Due diligence; Environmental protection; European Union Law.

O DEVER DE DILIGÊNCIA COMO INSTRUMENTO DE EFETIVAÇÃO DA PROTEÇÃO DO MEIO AMBIENTE: ANÁLISE DA PROPOSTA DE REGULAMENTAÇÃO NO DIREITO EUROPEU

RESUMO: A responsabilização das empresas em razão da provocação de danos ao meio ambiente é um desafio global. Considerando essa realidade e o agravamento das mudanças climáticas, a Comissão Europeia adotou uma proposta de diretiva sobre o dever de diligência das empresas em matéria de sustentabilidade. Isso permitirá a avaliação e o acompanhamento dos riscos das atividades empresariais para que se protejam direitos humanos, previnam-se danos ambientais e promova-se acesso à justiça. A partir disso, questiona-se: quais as limitações do dever de diligência europeu no que diz respeito à efetivação da proteção do meio ambiente? O objetivo desta pesquisa é compreender os obstáculos a serem enfrentados e as perspectivas do referido instrumento quanto à materialização da tutela ambiental na UE. Para tanto, esta pesquisa explica a propagação do instrumento na UE, assim como a fundamentação relativa à necessidade de sua regulamentação regional, para que sejam compreendidos os desafios que o dever de diligência poderá enfrentar, tendo como base a proposta de diretiva adotada pela Comissão Europeia. A metodologia apresenta natureza qualitativa com a aplicação dos raciocínios indutivo e dedutivo, mediante revisão bibliográfica, bem como por análise documental de normas internacionais e instrumentos regionais. Como resultado, tem-se que a regulamentação poderá colaborar para o progresso regional e mundial em matéria de meio ambiente, direitos humanos e boa governança, mas poderá encontrar limitações em sua efetividade, devido à aprovação de texto legal menos ambicioso e, portanto, inadequado ao enfrentamento das problemáticas, especialmente as relacionadas ao clima, à complexidade das cadeias de valor das empresas e às dificuldades quanto ao controle e fiscalização do cumprimento das disposições normatizadas. Conclui-se que se trata de importante instrumento diante das circunstâncias atuais, não obstante a necessidade de atuação conjunta com outros mecanismos e aprimoramento das suas disposições, a fim de que a proteção do meio ambiente seja efetivada.

PALAVRAS-CHAVE: Dever de diligência; Proteção ambiental; Direito da União Europeia.

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INTRODUCTION

The understanding of the concept of development has been subverted over the last few decades. Despite encompassing various dimensions such as social, economic, and environmental aspects, the notion of development has been reduced to mere economic growth. In this context, where ends seem to justify the means, countless damages, some even irreversible,⁵ are caused to nature and to the society within it.

The emission of polluting gases has reached such high levels that, in a short period, it has caused an unprecedented increase in global temperature.⁶ The functioning of terrestrial and marine systems has been altered, and scientists have declared that the planet is facing a climate emergency.⁷ Thus, despite recurrent warnings about the need for environmental and climate protection, as well as decades of international negotiations on the subject, the insufficiency of efforts and measures taken is evident.⁸

Due to this situation, some states and regions, albeit belatedly, are awakening and seeking ways to redirect the situation. A notable example is the European Green Deal: an ambitious and comprehensive European strategy of a cross-sectoral nature, involving various transformations aimed at achieving climate neutrality by 2050.⁹

Announced in December 2019, the strategy is a public policy focused on climate, based on the premise of economic growth decoupled from resource use, ensuring that no one and no region is left behind. It aims to overcome the

5. Intergovernmental Panel on Climate Change, *Climate Change 2021 Synthesis Report Summary for Policymakers*. Intergovernmental Panel on Climate Change. Geneva: IPCC, 2021, available at https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf.
6. Intergovernmental Panel on Climate Change, *Climate Change 2021 Synthesis Report Summary for Policymakers*, cit.
7. W. J. Ripple, et al, *World Scientists' warning of a climate emergency*, in *BioScience*, vol.70, e. 1, 2020, p. 8 et seq.; J. Kotzé, R. E. Kim, *Earth system law: The juridical dimensions of earth system Governance*, in *Earth system Governance*, vol. 1, 2019.
8. International Monetary Fund; Organisation for Economic Cooperation and Development, *Tax policy and climate change*. Rome: IMF/OECD, 2021, available at www.oecd.org/tax/tax-policy/imf-oecd-g20-report-tax-policy-and-climate-change.htm.
9. European Commission, *A European Green Deal: Striving to be the first climate-neutral continent*, available at https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

challenges posed by climate change,¹⁰ recognizing the complexity of the current context and the indispensability of actions across different areas and transformations in various sectors, among which the corporate sector is highlighted in this research.

On the international stage, corporations are assuming a significant role due to their power, which exceeds that of some states. In 2017, based on revenue, research showed that 157 of the top 200 economic entities were companies, not countries. The fact that certain companies have annual revenues exceeding the Gross Domestic Product (GDP) of entire nations means that the loss of investments from these actors poses a significant threat to the economies of host countries.¹¹

Furthermore, transnational companies (TNCs), those with headquarters and affiliated establishments located in more than one state,¹² hold considerable responsibility for global warming. Between 1965 and 2018, just 20 corporations were responsible for more than a third of global pollution.¹³ Therefore, it is not feasible to address environmental protection and combat climate change without involving a group with such global influence, which has significantly degraded the planet and continues to do so.

The European Green Deal takes these aspects into account, recognizing that, although most of these companies are headquartered in already developed countries, they operate extensively in developing countries,¹⁴ where conditions allow for socially and environmentally irresponsible activities. Thus, holding transnational companies accountable proves to be a challenge to environmental

10. Comissão Europeia, *Pacto Ecológico Europeu, a nossa ambição: ser o primeiro continente com um impacto neutro no clima*, available at https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_pt.

11. J. H Zubizarreta, P. Ramiro, *Against the 'Lex Mercatoria': proposals and alternatives for controlling transnational corporations*. Madrid: OMAL, 2016, available at https://omal.info/IMG/pdf/against_lex_mercatoria.pdf.

12. J. I. Charney, *Transnational Corporations and Developing Public International Law*, in *Duke Law Journal*, vol. 1983, n. 4, 1983, p. 748 et seq.

13. R. Heed, *Climate Accountability Institute Press Release on Carbon Majors Update 1965-2018*, Publications, 2020, available at <https://climateaccountability.org/wp-content/uploads/2020/12/CAI-PressRelease-Dec20.pdf>.

14. J. I. Charney, *Transnational Corporations and Developing Public International Law*, cit., p. 748 et seq.

protection. Based on this, the EU is regulating due diligence, aimed at ensuring the outcomes sought by the Deal.

Due diligence is an instrument that imposes on companies the duty to continuously map and monitor the risks of their activities across their entire value chain, as well as to adopt appropriate measures to prevent potential negative effects or, if prevention is not feasible, to mitigate these effects. In other words, it is an instrument of an essentially extraterritorial nature¹⁵ and promises to reduce issues related to corporate accountability.

However, it should be noted that this is not an innovative and original proposal of the European Green Deal. Although voluntary, there are international documents on the subject, such as the Due Diligence Guidance for Responsible Business Conduct, published in 2018 by the Organization for Economic Co-operation and Development (OECD),¹⁶ and within the EU itself, since 2010, there are binding normative instruments on due diligence, such as Regulation (EU) N° 995/2010 of the European Parliament and Council¹⁷ and Regulation (EU) 2017/821 of the European Parliament and Council.¹⁸

It is important to clarify that the interest in regulating this instrument has also been demonstrated by different Member States. France, the Netherlands, and Germany have already adopted legislation on due diligence, and Austria, Sweden, Finland, Denmark, and Luxembourg are considering adopting similar regulations.¹⁹ Nevertheless, the European Parliament and Council have recog-

15. O. Schutter, *Extraterritorial Jurisdiction as a Tool for Improving the Human Rights Accountability of Transnational Corporations*, in *Business & Human Rights Resource Centre*, 2006, p. 06 et seq.

16. Organisation for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises*: Edition 2011. Paris: OECD Publishing, 2013, p.17, available at https://www.oecd-ilibrary.org/governance/oecd-guidelines-for-multinational-enterprises_9789264115415-en.

17. Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance.

18. Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

19. Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.

nized the insufficiency of fragmented legislative initiatives, which regulate only certain sectors and/or are limited to specific countries in the region.

Thus, in February 2022, the European Commission adopted a proposal for a directive on corporate sustainability due diligence (CSDDD), highlighting that its objective is to promote sustainable and responsible corporate behavior, as well as to ground human rights and environmental issues in corporate operations and governance. According to the document, the new rules could ensure that these actors are held accountable for the impacts of their actions, whether in the EU or third countries.²⁰

From this arises the following question: What are the limitations of European due diligence concerning the effectiveness of environmental protection? Consequently, this research aims to understand the obstacles to be faced and the prospects of this instrument concerning the effectiveness of environmental protection in the EU, considering its proposed regulation at the regional level.

The main hypothesis is that the due diligence directive in the EU could contribute to regional and even global progress in environmental matters, human rights, and good governance, but, on the other hand, it may encounter limitations in its effectiveness, especially due to the complexity of corporate value chains.

To confirm or refute the aforementioned hypothesis, qualitative research is developed using inductive and deductive reasoning, through a bibliographic review in national and international databases, as well as documentary analysis of international norms on human rights and business concerning due diligence, in addition to the CSDDD Proposal and other related EU documents. Data analysis from reports on the topic is also conducted.

The text is divided into two parts. The first part addresses the spread of due diligence in the European Union (1.1), beginning with a discussion on the establishment of norms regarding the mechanism in Member States, as well as the reasoning behind the need for its regional regulation (1.2). The second part,

20. European Commission, *Corporate sustainability due diligence - Fostering sustainability in corporate governance and management systems*, available at https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en.

based on the directive proposal adopted by the European Commission and the General Approach of the Council (2.1), focuses on identifying the challenges that due diligence, once legally established, may face in its implementation, as well as the prospects for environmental protection (2.2).

1. THE SPREAD OF DUE DILIGENCE IN THE EUROPEAN UNION: WHY REGULATE IT?

Corporate accountability and the pursuit of sustainability in value chains have proven to be a global trend. Despite the difficulty in achieving this, movements have been observed in some countries, particularly within the EU. However, this spread has raised questions about, for example, the fragmentation of laws on the subject in the region, the need for standardization, greater control over production chains, ensuring access to justice, and uniting efforts for the adequate accountability of companies and the effective protection of the environment.²¹

Thus, the diffusion of this instrument in the EU will be addressed, and subsequently, the reasoning for regulating due diligence at the regional level will be analyzed. This will allow for a later understanding of the challenges for the implementation of a norm on this subject in the EU, as well as clarification of the relevance of its establishment.

1.1. Motivations for the expansion of due diligence in the European Union

Over the past few decades, there has been a push for the voluntary implementation of due diligence from a social perspective, through international documents addressing the issue. However, it is important to mention that they are all soft laws.

Regulation through such documents has advantages but also limitations. Its establishment for the business sector has shown positive aspects such as the ease of reaching consensus on its provisions; a global shift towards governance

21. Proposal for a directive COM(2022)71, *cit.*

marked by a participatory regulatory system that includes the influence of public and private actors;²² actions that go beyond legal mechanisms, including political, social, economic, and even psychological pressures; and its use as a precursor to the introduction of hard law.²³

Despite being norms that provide significant guidelines for corporate action, they are not binding. Being voluntary provisions, these agents can simply choose not to follow them, follow them in the most convenient way, comply only with what is most favorable to them, or simply disregard the content of the texts. What has prevailed in recent years, however, is this indifferent attitude toward the intrinsic relationship between corporate activities and human rights.²⁴

Adding to this context is a deficiency in legal certainty, both for companies and for victims in case of damages,²⁵ leading to criticism of the insufficiency of the current international regime on business and human rights. Researchers explain that transnational corporations are protected by a mandatory legal system, but on the other hand, their duties are set out in soft law texts, which constitute regulations incapable of holding them accountable precisely because of the absence of a binding nature. This results in an indirect encouragement of systematic violations and contributes to the "architecture of impunity," as TNCs, aware of the minimal possibility of accountability, continue to carry out their activities in the most profitable way, even if it exacerbates climate change and violates various basic rights.²⁶

It is noteworthy that this occurs despite the EU, in addition to international instruments, having established regional norms that mandate due diligence. The

22. J. Nolan, *The corporate responsibility to respect human rights: Soft law or not law?*, In S. Deva, D. Bilchitz (org.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?*, Cambridge: Cambridge University Press, 2013, p. 05 et seq.; L. Baccaro, V. Mele, *For lack of anything better? international organizations and global corporate codes*, in *Public Administration*, vol. 89, n. 2, 2018, p. 451.

23. J. Nolan, *Hardening Soft Law*, cit.

24. S. Latouche, *Pequeno Tratado do Decrescimento Sereno*, São Paulo: WMF Martins Fontes, 2009.

25. Proposal for a directive COM(2022)71, cit.

26. Our translation of: "arquitectura de la impunidad". M. C. Roland, *El valor del "consenso" en la elaboración de normas sobre empresas y derechos humanos*, in *Homa Publica - Revista Internacional de Derechos Humanos y Empresas*, vol. 2, n. 2, 2018, p. 1 et seq.; J. H. Zubizarreta, P. Ramiro, *Against the 'Lex Mercatoria'*, cit.

problem lies in the fact that one of the binding regional regulations currently in place does not cover the entire value chain and follows a descriptive pattern, requiring companies with more than 500 employees to provide information about their policies.²⁷ The others, on the other hand, are restricted to certain areas and do not cover all sectors. Thus, the mechanism applies in a binding manner only to the timber market and related products,²⁸ as well as to imports of tin, tungsten and their ores, tantalum, and gold originating from conflict and high-risk zones.²⁹

Alongside the voluntary nature of the international regulatory framework and the national and/or regional dependence on companies, the application of the principle of limited liability is identified as another obstacle to ensuring that TNCs are adequately held accountable for the violations they cause. When a TNC establishes itself in a host country, it must observe that country's legal system, subjecting itself to the jurisdiction of the state in which it is located. However, the parent company, headquartered in another, usually developed, country, is not subject to the same legal condemnation, and, consequently, the entity with the most power is not properly held accountable.³⁰

It is understood that a transnational corporation is, in reality, "a large number of limited liability companies established in a plurality of jurisdictions."³¹ It is argued, therefore, that each segment of the company has its own autonomy and is therefore only partially responsible for its actions, with no discussion, for example, of the accountability of the parent company. However, this restriction disregards "the presumption of economic unity between the parent company

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

28. Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance.

29. Regulation (EU) 2017/821, *cit*.

30. B. Stephens, *The Amoralty of Profit: Transnational Corporations and Human Rights*, in: *Human Rights and Corporations*, vol. 20, n. 1, 2009, p. 01 *et seq*.

31. Our translation of: "uma grande quantidade de sociedades empresárias de responsabilidade limitada estabelecida em uma pluralidade de jurisdições". M. C. Roland *et al*, *Desafios e perspectivas para a construção de um instrumento jurídico vinculante em direitos humanos e empresas*, in *Revista Direito GV [online]*, vol. 14, n. 2, 2018, p. 406 *et seq*.

and its subsidiaries,” which does not make sense given that the absence of dependence or the lack of unity among these entities undermines the transnational nature of the corporation.³²

Thus, the limitation that has been claimed, in addition to being contradictory, also aligns with the architecture of impunity. This is due to the fact that TNCs, under the argument that their subsidiaries operate in a fragmented and autonomous manner, exempt themselves from adequately repairing the damage they cause.

In light of this situation, different countries have adopted or are discussing the adoption of legislation that regulates due diligence at the national level, so that companies headquartered in their territory are held accountable for their activities throughout the entire value chain. However, a significant number of companies operating in the EU have their value chains expanded to other Member States and, increasingly, to third countries. Thus, the EU recognizes that it is “unlikely that Member State legislation alone will be sufficient and effective,” especially when dealing with cross-border issues.³³

1.2. Rationale for regulating due diligence at the regional level

Addressing violations and damages that extend to other territories is a complex challenge. The borders and sovereignty of states are not capable of containing them, and often, harm caused in one country affects others that were not involved in the specific situation. It becomes, then, unfeasible for states to solve the problem in isolation. Therefore, the proposal for a regional regulation on due diligence has been seen as an appropriate strategy to tackle the challenges related to human rights and environmental protection.

In addition to the importance of joint action by states, a directive on this issue highlights the need for the involvement of other actors to achieve improvements

32. Our translation of: “a presunção de unidade econômica entre a sociedade controladora e suas subsidiárias”. M. C. Roland *et al*, *Desafios e perspectivas para a construção de um instrumento jurídico vinculante em direitos humanos e empresas*, *cit.*, p. 406 *et seq.*

33. Our translation of: “pouco provável que a legislação dos Estados-Membros, por si só, seja suficiente e eficiente”. M. C. Roland *et al*, *Desafios e perspectivas*, *cit.*, p. 406 *et seq.*

in basic rights and environmental protection. It is recognized that the current fragmented regulatory framework in the European region will not be able to adequately address the risks, often with cross-border impacts, to human rights and the environment that permeate corporate value chains.

Furthermore, considering the divergence of legal requirements among national laws, this can lead to unfair competition, "legal uncertainty, fragmentation of the single market, additional costs and complexity for companies and their investors operating across borders as well as for other stakeholders."³⁴ In this context, the European Commission proposes, through the establishment of a directive on due diligence, to avoid the aforementioned problems and promote the evolution of policies at a global level.³⁵ It is also important to highlight that this has been a trend in the region for several years.³⁶

The commission believes that regulation on this topic will make it possible to promote equitable operating conditions within the EU. When each country establishes its own regulations, there will inevitably be more stringent and more lenient laws. This will likely encourage, albeit indirectly, companies to relocate to those Member States with more lenient regulations. Therefore, considering this possibility of relocation and consequent harm to the economy, governments may end up refraining from drafting more effective legislation to maintain global competitiveness, even if it comes at the expense of promoting human rights and, more importantly, protecting the environment, which is repeatedly neglected.

The proposed CSDDD aims to contribute to the improvement of corporate governance practices, with the goal of better integrating management processes and mitigating risks related to human rights and the environment, taking into account value chains and the business strategies of these agents. In this sense, it seeks to increase corporate accountability for the negative impacts caused by

34. Proposal for a directive COM(2022)71, cit.

35. Proposal for a directive COM(2022)71, cit, p. 14.

36. J. Motte-Baumvol, D. Dero-Bugny, *Shaping EU External Relations Beyond Treaty-Making: the Scope of Extraterritorial EU Regulations and their Enforcement Challenges*, In E. Kassoti, *EU external relations: Tackling global challenges?*. Asser Institute, The Netherlands, 2020, p. 3.

their activities, ensuring coherence between corporate actions and European initiatives regarding responsible business conduct.³⁷

Additionally, the instrument proposes improving access to remedies for those affected by the negative impacts of corporate activities. The proposal adopted by the European Commission states that companies must provide the possibility for individuals and organizations to file complaints directly with them in cases of legitimate concerns about potential or actual negative effects on human rights and the environment.³⁸

In summary, it is clear that the rationale for adopting a directive on due diligence is based on the need to address the fragmentation of laws on this subject in the region, the necessity of uniformity, greater control over value chains, ensuring access to justice and reparations, and joining forces to tackle the challenges related to corporate accountability, thus contributing to the effective protection of the environment, particularly the climate, in accordance with the principles of the European Green Deal.

Given this, the rationale is based on sustainability. However, the regulation of this instrument may face challenges in terms of implementation. Beyond the possibilities related to environmental protection, a complex situation arises, especially concerning global market value chains. Therefore, these aspects will be analyzed with the aim of addressing the potential problems identified and ensuring that the regional instrument achieves its objectives.

2. LIMITS AND POSSIBILITIES OF A EUROPEAN DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE

With the foundations for the proposed regional regulation established, we will now delve deeper into the directive and its sustainable perspective, discussing the resistance to its adoption, the complexity of climate change, sustainability, corporate organization, regulation, and the potential environmental impacts if the regulation is implemented. Finally, the research will conclude with a reflec-

37. Proposal for a directive COM(2022)71, cit.

38. Proposal for a directive COM(2022)71, cit., art. 9°.

tion on the relevance of this regulatory instrument, considering its underlying principles, possible challenges, and potential benefits for the environment.

2.1. The proposed directive adopted by the European Commission and the three-dimensional complexity

Given the insufficiency of the current legal protections regarding corporations and human rights,³⁹ as well as the duty of companies to respect basic rights and the responsibility of states to enforce this duty, in March 2021, the European Parliament recommended that the European Commission adopt, in the form of a directive, a norm on corporate sustainability due diligence. This legal document would require companies to identify, prevent or mitigate, and remedy the impacts of their activities on the environment and human rights.

This recommendation stems not only from the European Green Deal but also from the legal provision that the EU has a duty to protect human rights in its relations with other states and to promote sustainable development and fair trade, as outlined in the Treaty on European Union (TEU).⁴⁰ Moreover, the EU has to consider the objectives of development cooperation when implementing policies that affect developing countries, according to the Treaty on the Functioning of the European Union (TFEU).⁴¹

In light of this, the European Commission followed the recommendation and, in February 2022, adopted the proposed directive on due diligence. Unlike the French instrument, this proposal is sharply focused on sustainability, aiming to promote responsible corporate behavior based on environmental and human rights protection through adequate oversight and management of corporate operations and governance. The goal is for these entities to assume respon-

39. E. A. D. Netto Junior, M. A. Weichert, R. P. Nunes, *A desconstrução do caráter vinculante das normas sobre Empresas e Direitos Humanos: da natureza voluntária dos Princípios Ruggie à voluntariedade das diretrizes nacionais*, in *Homa Publica - Revista Internacional de Derechos Humanos y Empresas*, vol. 3, n. 2, 2019.

40. Treaty on European Union (TEU), July 29, 1992.

41. Treaty on the Functioning of the European Union (TFEU), December 29, 2007.

sibility for, control, and/or remedy the impacts of their actions, whether within the EU or in third countries.⁴²

Notably, the text of the proposal not only formally addresses sustainability but also demonstrates that some of the issues identified in regulations implemented in member states, such as in France,⁴³ which hinder their effectiveness, have already been considered to ensure that the European regulation meets its climate, environmental, and human rights objectives. This is done through a balance and complementarity with existing soft law instruments.

Analyzing the proposal, it is clear that the regional instrument aims to address issues related to enforcement, as the document stipulates that each Member State will designate at least one authority for this purpose.⁴⁴ Furthermore, it is presumed that these authorities will be responsible for creating and regularly updating a list of companies subject to the law, as effective monitoring of compliance is only possible with a maintained roster of entities that must adhere to the regulation. This type of verification, for example, is not included in Law n°. 2017-399, which is being implemented in France.⁴⁵

Given that the regulation applies to all Member States,⁴⁶ including those with existing legislation on the matter, the adoption of the directive will ensure that France and other countries do not propagate the same deficiencies, allowing the instrument to contribute to environmental and human rights protection against corporate violations. The elimination of fragmentation and the harmonization of the instrument are key justifications supporting the directive.

Regarding supervisory authorities, their significance lies in their ability to initiate investigations when there are indications of non-compliance with the

42. European Commission, *Corporate sustainability due diligence - Fostering sustainability in corporate governance and management systems*, cit.

43. S. C. S. Vieira, T. C. F. Mont'alverne, *A (des)necessidade de regulamentação do dever de diligência na União Europeia para a implementação do Pacto Ecológico Europeu: uma análise pautada na paradigmática lei francesa n° 2017-399*, In: J. Motte-Baumvol, T. C. F. Mont'alverne, *Coletânea de Estudos de Direito da União Europeia*, Belo Horizonte: Arraes Editores, 2023.

44. Proposal for a directive COM(2022)71, cit., art. 17.º.

45. RÉPUBLIQUE FRANÇAISE. *Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*. Légifrance, 2017. Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000034290626/>.

46. Proposal for a directive COM(2022)71, cit., art. 2.º.

directive. These authorities also have the power to adopt additional measures while exercising their functions.⁴⁷ As a result, the responsibility for enforcing legal provisions does not solely rest with the judiciary.

The avoidance of resorting to the courts to prohibit violative conduct, as well as to impose financial penalties, makes corporate accountability faster and more effective. The volume of cases in the courts is typically high, and their proceedings often take a considerable amount of time. Therefore, administrative resolution, when possible, is more appropriate, especially considering that “litigation should take a back seat.”⁴⁸

To strengthen the work of these supervisory authorities, the European Commission’s proposal includes the creation of a European Network of Supervisory Authorities. This network would be composed of representatives from the supervisory authorities designated by Member States and, if necessary, by other Union agencies with specialized expertise to facilitate and ensure “the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, sharing of information among them.”⁴⁹

Continuing the discussion on non-compliance with the legal document, it is worth mentioning that the proposal includes a complaint procedure in Article 9. This means that all Member States must ensure that companies provide the possibility for individuals and organizations specified in the directive⁵⁰ to submit complaints whenever there are “legitimate concerns regarding actual or potential adverse human rights impacts and adverse environmental impacts with respect to their own operations, the operations of their subsidiaries and their value chains.”⁵¹ Additionally, countries must also ensure that complainants have the right “to request appropriate follow-up on the complaint from the

47. Proposal for a directive COM(2022)71, cit., p. 69.

48. J. L. N. Matias, S. C. S. Vieira, *Climate litigation, human rights and transnational corporations, in Veredas do Direito*, vol. 19, n. 44, 2022, p. 349.

49. Proposal for a directive COM(2022)71, cit., art. 21°

50. Proposal for a directive COM(2022)71, cit., art. 9°.

51. Proposal for a directive COM(2022)71, cit., art. 9°.

company with which they have filed a complaint pursuant” and “to meet with the company’s representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint.”⁵²

Another aspect necessary for due diligence to achieve its intended effects is the provision of guidance, support, and assistance to the companies subject to the directive. Some of these entities are interested in developing vigilance plans and complying with the legal document, even as a way to promote their image, given the demands of investors and society. This interest can be observed in the willingness of companies “in favor of clear and mandatory rules for stakeholder consultation.”⁵³ The CSDDD proposal adopted by the Commission also addresses this gap by including provisions aimed at providing support to companies.⁵⁴

Regarding corporate compliance with the directive, the proposal does not specify how companies should fulfill their obligations, leaving room for interpretation. This flexibility can be negative, as it may lead many to do the bare minimum. On the other hand, it prevents the rigidification of corporate social responsibility, which could result from a pre-established bureaucratic structure.⁵⁵ Moreover, each company has its own particularities, with varying complexities in its value chains,⁵⁶ making it unfeasible to impose a specific standard. The development of a regulatory system that is flexible in some areas and firm in others is a challenge.⁵⁷ Therefore, the document provides more general guidelines to be followed through company-specific regimes and initiatives.

52. Proposal for a directive COM(2022)71, cit., art. 9°.

53. C. Patz, *The EU’s Draft Corporate Sustainability Due Diligence Directive: A First Assessment*, Cambridge: Cambridge University Press, in *Business and Human Rights Journal*, 2022, p. 297.

54. Proposal for a directive COM(2022)71, cit., art. 12.° e 14.°.

55. European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)).

56. Organisation for Economic Cooperation and Development, *Principles of Corporate Governance*, Paris: OECD Publishing, 2015.

57. R.J. Lazarus, *Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*, in *Georgetown University Law Center*, 2009, p. 1153 et seq.

The global market is characterized by networks of contractors and subcontractors,⁵⁸ where many parent companies operate through subsidiaries in different locations,⁵⁹ presenting supply chains with multiple layers and dimensions in a fragmented production system with fluid and dynamic arrangements.⁶⁰ To illustrate this complexity, one can look at the example of Apple.

The production of the iPhone does not take place in a single, isolated location but involves eight countries and seventeen companies,⁶¹ which maintain commercial relationships with numerous other entities. In other words, a single smartphone requires a production chain made up of many interrelated parts, constantly changing and interdependent. This does not even “include Apple’s marketing and distribution arrangements around the world that add another level of complex interrelationships and dependencies”.⁶²

Consequently, the trend is for supply chains to become increasingly complex, both horizontally, vertically, and geographically. Regulatory uncertainties and challenges are likely to worsen, making oversight and control even more challenging in various aspects, especially when it comes to sustainability, which represents another dimension of complexity.

Given this significant challenge, studies have been conducted to identify new tools for managing this phenomenon.⁶³ Although the search for solutions is motivated by business concerns, improving the control of these chains could converge with sustainability efforts by enabling a more detailed mapping of activities, helping to prevent damage more effectively.

58. P. Fleming, C. S. Zyglidopoulos, *Charting Corporate Corruption: Agency, Structure and Escalation*, in Edward Elgar Publishing, 2009.

59. P. Blumberg, *Accountability of Multinational Corporations: The Barriers Presented by Concepts of the Corporate Juridical Entity*, in *Hastings International and Comparative Law Review*, 2001, p. 297.

60. S. Serdarasan, *A Review of Supply Chain Complexity Drivers*, in *Elsevier: Computers and Industrial Engineering*, vol. 66, n. 3, 2013, p. 533 et seq.

61. Countries: United States, Japan, Taiwan, South Korea, Netherlands, France, China, and Brazil. Empresas: GT Advanced Technologies, Samsung, Global Foundries, Texas Instruments, Maxim Integrated Corning, Japan Display Inc Innolux, LG, Toshiba, SK Hynix, TSMC, NXP, ST Microelectronics Invensense Foxconn, Pegatron. J. Zinkin, *The Challenge of Sustainability: Corporate Governance in a Complicated World*, Berlin: De Gruyter, 2020, p. 197 et seq.

62. J. Zinkin, *The Challenge of Sustainability*, cit., p. 198.

63. A. Sharma et al, *Complexity in a multinational enterprise’s global supply chain*, cit.

However, it should be noted that this complexity has two sides: one beneficial and protective, and the other threatening and problematic. The first perspective is evident in the protection against threats, such as climate change, which has the potential to disrupt their activities. The second perspective, on the other hand, relates to the fact that, at times, organizational complexity is deliberately constructed to avoid responsibilities, exploit regulatory loopholes, and conceal problems.⁶⁴ As discussed earlier, some corporations use their transnational operations to evade accountability for the impacts of their activities and escape the consequences of the damage they cause.⁶⁵ This is one of the justifications for establishing due diligence directive in the EU.

Moreover, it is important to emphasize that this corporate organizational complexity exacerbates the complexity of the directive. The more complicated the supply chain, the more challenging it becomes to develop and implement regulations that govern it. In this scenario, the regulatory response must recognize and accept some of the complexity as necessary for producing a social benefit, while eliminating the complexity that is dishonestly used to conceal harm.⁶⁶

Thus, based on the arguments supporting the CSDDD in the EU, it is evident that the complexity of today's world is taken into account, particularly regarding climate change, sustainability, corporate organization, and regulation. Furthermore, the proposed directive adopted by the European Commission addresses some of the issues identified in the implementation of regulations in Member States, suggesting that the CSDDD is grounded in sustainability and has the potential to achieve positive outcomes. However, to achieve these goals, challenges must be recognized and addressed. These challenges will be discussed along with the prospects for the environment under the proposed directive.

64. C. Villiers, *New Directions in the European Union's Regulatory Framework for Corporate Reporting, Due Diligence and Accountability: The Challenge of Complexity*, in *European Journal of Risk Regulation*, Cambridge University Press, 2022, p. 551.

65. C. Villiers, *New Directions in the European Union's Regulatory Framework for Corporate Reporting*, *cit.*, p. 553.

66. C. Villiers, *New Directions in the European Union's Regulatory Framework for Corporate Reporting*, *cit.*, p. 553.

2.2. Challenges for implementing due diligence and ensuring protection

Despite the EU's proposed directive on corporate sustainability due diligence in showing awareness of the complexity of the current landscape, especially concerning value chains, its implementation may face significant challenges, starting with the approval of the legislation itself. Some Member States have resisted certain provisions of the proposed text.

Contrary to expectations, France played a significant role in weakening the proposal, contributing, for instance, to the EU Council's guidance that excludes parts of the value chain from the scope of the instrument.⁶⁷ Ironically, the country that implemented legislation inspiring many other States in this area has resisted legal conditions that could better address the issue, indicating a stance that contradicts the proposal's core premise: sustainability. This suggests that nature is not central, and economic aspects are prioritized. This is even more evident because the same country fought to exempt the financial sector from the due diligence requirement. As a compromise to pressure from France and other States, the EU Council recommended making the inclusion of such services optional for Member States.⁶⁸

Due to the power of certain corporations, more dependent countries become beholden to these entities. However, even developed States may be affected if they adopt more stringent measures. While they may not be entirely dependent on these actors, their significant role in domestic economic growth cannot be ignored. The EU, for example, recognizes the necessity of aligning actions aimed at climate neutrality with the notion of a just transition, to avoid disproportionately impacting the region's economy.⁶⁹

67. Sherpa, *European Directive on Corporate Due Diligence: the Council of the European Union approves a text weakened by France*, available at <https://www.asso-sherpa.org/european-directive-corporate-due-diligence-council-approves-text-weakened-by-france>.

68. Proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 - General Approach.

69. European Commission, *Internal Market, Industry, Entrepreneurship and SMEs*, available at https://ec.europa.eu/growth/industry_en.

Thus, the establishment of more stringent mechanisms could exacerbate corporate flight to countries with laxer laws and weaker enforcement. Consequently, many European countries may exclude the financial sector from the instrument's scope to avoid harming national competitiveness,⁷⁰ thereby exempting an important group from the responsibility to map and monitor their business activities. This is a result of another modification to the proposal, which also deviates from the sustainability ideal.

The text initially adopted by the European Commission focused on value chains, which encompass the various activities involved in delivering a service or product from conception to final consumer use and post-use.⁷¹ However, this broad scope did not please everyone and was altered to include a neutral term, chain of activities, reflecting modified content that does not fit as either a value chain or a supply chain.⁷²

Regarding terminology changes, it is worth noting that the Council's General Approach replaced "business relationship" with "business partner," further narrowing the CSDDD's scope.⁷³ The new term, for instance, does not extend to entities that provide financing, insurance, or reinsurance, as the original proposal intended.⁷⁴ This limitation reduces the instrument's impact and, consequently, the protection of the environment and other human rights.

Furthermore, another aspect may complicate holding companies accountable in court. Restrictions were added to the text concerning civil liability. It now specifies that companies can be held civilly liable for violating the directive's

70. Euractiv, *EU ministers exclude finance from due diligence law in victory for France*, available at <https://www.euractiv.com/section/economy-jobs/news/eu-ministers-exclude-finance-from-due-diligence-law-in-victory-for-france/>.

71. M. S. Santos, M. S. A. Leite, A. D. Lucena, T. F. G. Junior, *Evoluindo da cadeia de valor para cadeia de suprimentos*, in *Revista Produção Online*, vol. 10, n. 4, 2010, p. 753 et seq.; R. Kaplinsky, M. Morris, J. Readman, *The globalization of product markets and immiserising growth: lessons from the South African furniture industry*, in Brighton: University of Sussex/IDS/CRIM, 2001.

72. Proposal for a directive COM(2022)71, cit.

73. White Case, *Due Diligence in Supply Chains – Update on corporate human rights and environmental due diligence requirements in the EU and Germany*, available at <https://www.whitecase.com/insight-alert/due-diligence-supply-chains-update-corporate-human-rights-and-environmental-due>.

74. Proposal for a directive COM(2022)71, cit.

provisions only in cases of intent or negligence.⁷⁵ This represents another move in favor of economic actors, as intent or negligence must now be proven for civil liability to be assigned to those who fail to comply with due diligence regulations. Before the Council's approval, civil society organizations across Europe sent a letter to ambassadors criticizing this addition.⁷⁶

These issues spark an important debate. Recognizing the challenges surrounding the regulation of corporate activities is necessary for ensuring that legal provisions address real-world needs. However, efforts should be made to avoid the misconception that adopting a directive or fulfilling a formal requirement absolves the State of its responsibilities. This "sense of accomplishment" seems to be present in France.

As discussed, France enacted pioneering legislation on duty of vigilance, considered an inspiration for corporate responsibility regarding human rights. However, its implementation has encountered problems that could have been partially mitigated, yet the State has shown little effort to do so, especially after resisting important provisions of the CSDDD proposal, indicating a lack of genuine interest in addressing the issue.

This appears to be a mere "ticking the boxes" exercise, where a regulation was created to appease civil society, which has long fought for such legislation, allowing the State to shirk its responsibilities. This scenario can only be avoided if "broader visions of economic and political reform" are constructed.⁷⁷ Otherwise, it becomes difficult to see "how companies would be incentivized to integrate care for social and ecological boundaries in their business models".⁷⁸

The lessons from the French experience and other limitations now emerging are crucial to understanding the magnitude of the challenge in implementing

75. Proposal for a directive COM(2022)71, cit.

76. Euractiv, *NGOs warn against watering down access to justice in due diligence rules*, available at https://www.euractiv.com/section/economy-jobs/news/ngos-warn-against-watering-down-access-to-justice-in-due-diligence-rules/?_ga=2.28472572.1735256229.1669941925-1710987414.1669941925.

77. C. Mark, *Corporate sustainability due diligence: More than ticking the boxes?*, in *Maastricht Journal of European and Comparative Law*, vol. 29, n. 3, 2022, p. 302.

78. C. Mark, *Corporate sustainability due diligence: More than ticking the boxes?*, cit., p. 302.

the due diligence directive at the EU level. The success of legislation does not depend on its mere publication. In reality, this is only an initial step that must be followed by various measures, such as detailed inspections and controls.

In this regard, the role of supervisory authorities should be revisited. These are important actors with powers that could help resolve issues identified in French legislation, for instance. The document in question adds that the authority to enforce legal provisions does not need to rest solely with the judiciary,⁷⁹ but if a Member State prefers, enforcement can be left to the courts, as is already happening in France. Considering the likelihood of corporate flight, many countries are likely to opt for this slower judicial route, leaving the judiciary responsible for imposing sanctions.

It is worth reiterating the challenge related to the complexity of corporate structures, especially concerning their activity chains. As discussed, today's global market is characterized by extensive networks of contractors and sub-contractors.⁸⁰ Many parent companies operate with subsidiaries across various locations,⁸¹ with supply chains involving multiple layers and dimensions, leading to fragmented production.⁸²

This complexity already poses a significant obstacle to corporate accountability. While the implementation of this instrument will improve this situation, it will also face complications, as the mapping, continuous monitoring, and control of activities become opaque, presenting a challenge that could limit the effectiveness of European due diligence. This is difficult for many companies to monitor, but it also can be used by some as a strategy to evade the obligations imposed by the instrument, thus benefiting these actors.

This situation affects the extraterritorial effects of the directive as well. The complexity of activity chains and the difficulties in maintaining adequate control become more severe when dealing with different locations. Each country has

79. Proposal for a directive COM(2022)71, cit.

80. P. Fleming, C. S. Zyglidopoulos, *Charting Corporate Corruption*, cit.

81. P. Blumberg, *Accountability of Multinational Corporations*, cit.

82. S. Serdarasan, *A Review of Supply Chain Complexity Drivers*, cit.

its own conditions and regulations. Therefore, it is expected that the CSDDD's implementation will face challenges when involving other States. Furthermore, resistance is likely from these actors, especially those in development, as the instrument could have negative consequences within their jurisdictions. It is important to highlight that extraterritorial norms inherently face various obstacles.

Nonetheless, such a tool is essential for improving the accountability of transnational corporations for human rights violations. Moreover, establishing extraterritorial norms is increasingly necessary, which ultimately could lead to an understanding among States that they must unite efforts to address certain collective problems, such as international or transnational crimes or unethical corporate behavior in their overseas operations.⁸³

Returning to the aspects that favor companies, the Council suggests approving a text that gives them the freedom to delay the prevention or cessation of human rights and environmental abuses.⁸⁴ This is possible in situations where entities choose to prioritize addressing the most severe harms first.⁸⁵

Therefore, whenever there are multiple impacts, companies have legal backing to initially address the most severe ones, leaving others to be resolved later. This provision presents an opportunity for companies to feel relieved of due diligence. Given the freedom to focus on more significant situations, they may repeatedly delay the prevention and cessation of ongoing violations. Moreover, the absence of specific criteria for selecting the most severe adverse impacts could exacerbate corporate non-compliance and contribute to a landscape rife with arbitrariness.

This represents a challenge not only to the directive's effectiveness but also to the due diligence outcomes, given its premises, and to achieving climate neutrality, as sought by the EU's Green Deal. Its success depends on concrete actions that significantly reduce pollutant emissions. The Council's adopted

83. O. Schutter, *Extraterritorial Jurisdiction as a Tool*, cit., p. 06 et seq.

84. Sherpa, *European Directive on Corporate Due Diligence: the Council of the European Union approves a text weakened by France*, available at <https://www.asso-sherpa.org/european-directive-corporate-due-diligence-council-approves-text-weakened-by-france>.

85. Proposal for a directive COM(2022)71, cit.

text does include an article on combating climate change. However, while it references a sustainable economy, limiting global temperature rise to 1.5°C in line with the Paris Agreement, and climate neutrality, its emphasis on economic aspects is clear.⁸⁶

Human activities have altered Earth's functioning, causing irreversible damage, particularly related to climate change.⁸⁷ This is an emergency, and everyone must act for the environment to avoid various disasters. Nonetheless, the article stipulates that companies must include emission reduction targets in their plans if implications for their operations are identified. In reality, such targets should be mandatory not because of potential impacts on business operations, but due to the global damage already being caused, especially to vulnerable populations.

Everyone is affected by climate change, but the impacts are felt disproportionately. Thus, those in vulnerable situations experience these effects much more severely.⁸⁸ Considering a GHG emission reduction plan only if companies themselves feel the effects overlooks all the human rights violations that have occurred, particularly indirect ones resulting from their activities. The judiciary has recognized this reality, as illustrated by the *Milieudéfensie v. Royal Dutch Shell (RDS)* case, where the entire group was ordered to reduce its CO₂ emissions by 45% by 2030 compared to 2019 levels, in accordance with the Paris Agreement.⁸⁹

In other words, courts are increasingly recognizing the importance of the environment, issuing decisions that align with sustainability. In this case, RDS group companies will not implement a reduction plan because their business is affected by climate change, prioritizing the economy, but because of the violations they have caused to nature and human rights. This highlights the

86. Proposal for a directive COM(2022)71, cit., art. 15.

87. J. Kotzé, R. E. Kim, *Earth system law: The juridical dimensions of earth system Governance*, cit.; Intergovernmental Panel on Climate Change, *Climate Change 2021 Synthesis Report Summary for Policymakers*, cit.

88. M. C. Tonetto, *Aplicando a ética do discurso de Apel: corresponsabilidade na justiça climática global*, In: *Ethic@*, vol.19, n. 3, 2020, p. 642.

89. The Hague District Court, Process C/09/571932/HA ZA 19-379, *Milieudéfensie et al. v. Royal Dutch Shell*, judgment of May 26, 2021.

inadequacy of this provision in the approved proposal, particularly given that the CSDDD should aim, among other things, for climate neutrality.

Further distancing from the sustainability perspective, the approved text makes no mention of ecological integrity. Although theoretically focused on sustainability, as the directive's title suggests, the text does not convey a commitment to preserving the substance of ecological systems, as advocated by Bosselman.⁹⁰ Thus, even though the instrument is promoted as being linked to sustainability, the document reveals that this is not its true foundation, lacking a genuine pursuit of sustainable development.

It is worth emphasizing that if the EU intends to achieve truly sustainable development, its priorities must shift to be structured around sustainability, understanding that "any talk of balancing development and the environment, the two-dimension model, the 'three pillars model,' or the 'magic triangle' is pure ideology."⁹¹ There is no way to simultaneously achieve economic, social, and environmental development in equal measure. One aspect will always take precedence, and in recent decades, it has been economic growth,⁹² as identified through the analysis of aspects of the adopted proposal.

FINAL CONSIDERATIONS

Human activities have altered the functioning of the Earth, and the damage caused to the environment has reached alarming proportions. The emissions of polluting gases by companies and the resulting human rights violations have become significant and intolerable. In this context, adopting measures to combat this issue, especially considering the long-standing architecture of impunity, is critical.

90. K. Bosselmann, *O princípio da sustentabilidade: Transformando direito e governança*, São Paulo: Revista dos Tribunais (RT), 2015.

91. Our translation of: "qualquer conversa sobre a importância da igualdade entre desenvolvimento e meio ambiente, o modelo das duas dimensões, 'modelo dos três pilares' ou 'triângulo mágico', é pura ideologia" K. Bosselmann, *O princípio da sustentabilidade*, cit., p. 56.

92. K. Bosselmann, *O princípio da sustentabilidade*, cit.

One growing trend, particularly in the EU, is the enactment of national laws that impose obligations on companies to continuously map and monitor the risks associated with their activities across their entire value chain, even if these extend to other countries. These laws also require companies to prevent potential negative impacts or mitigate them where prevention is not feasible. Given this trend and the need to green value chains while ensuring that judicial intervention remains a secondary option, the EU proposed the adoption of an instrument along these lines.

The rationale for establishing a directive on corporate sustainability due diligence is based on the following identified needs: (i) addressing regulatory fragmentation across the region; (ii) promoting uniformity; (iii) gaining greater control over value chains; (iv) ensuring adequate access to justice and remediation; and (v) uniting efforts to tackle the difficulties of corporate accountability, thereby enhancing environmental protection, particularly regarding climate, in line with the goals of the European Green Deal.

While the draft adopted by the European Commission conveys the concept of due diligence from a sustainability perspective, the legislative process has not followed the same path, revealing that the directive's realization may face limitations. Some Member States have disagreed with certain provisions in the proposed text. The European Council itself has recommended the adoption of a weakened version, which limits the effectiveness of the due diligence framework in ensuring robust environmental protection.

Despite the identified limitations and the apparent divergence from a truly sustainable approach, the implementation of this measure can still serve as one of many necessary responses to the current situation. It holds the potential to trigger positive outcomes, even if it does not fully resolve the issues related to corporate accountability. Regardless of the shortcomings and omissions in the regulatory text, this directive can still represent progress. Additionally, the proposed directive addresses certain deficiencies in national laws, suggesting that, although significant changes are needed to truly advance sustainability, the

regulation could still result in improvements in environmental protection, both domestically and globally, through the enhanced accountability of companies.

Finally, it is important to highlight that after the conclusion of this work, the Corporate Sustainability Due Diligence Directive entered into force on July 25, 2024. This development makes further research on the topic highly relevant, now focusing on the final approved text.

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