

Chapter 8

Environmental and Human Rights Due Diligence in the EU: Proposal for the Corporate Due Diligence Directive

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ABSTRACT

The proposal for a corporate due diligence directive foresees important material duties of companies and members of their bodies. One of these duties is the duty of certain larger companies to which the directive will apply to implement suitable measures to identify, prevent, and eliminate actual and potential adverse impacts on human rights and the environment throughout their value chain. Violations of due diligence will not only be sanctioned in the public-legal field, but also with civil-legal liability. The author draws attention to the problem of the indefinite definition of prohibitions, duties, and rights in international conventions on human rights and the environment, the violation of which is relevant for the emergence of the liability for damages. According to the author's opinion, courts, when specifying abstract provisions of international conventions, should take into consideration the local legislation, provided that a preliminary examination shows that the local legislation ensures adequate levels of protection.

DOI: 10.4018/979-8-3693-2325-0.ch008

INTRODUCTION

Disclosures have so far been the instrument with which the European legislator has sought to accelerate the implementation of corporate governance geared towards sustainable business operation. The regulation of disclosures ranges from the amendments to the 4th Balance Sheet Directive in 2003¹ to the Corporate Sustainability Reporting Directive², which entered into force on 5 January 2023, and shall be implemented by Member States by 6 July 2024 at the latest.

However, this regulatory framework, determined by reporting requirements, has undergone a major breakthrough in recent years since the Commission's activities have increasingly been moving towards setting requirements of a substantive nature. Therefore, on 23 February 2022, the Commission published its long-awaited proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (hereinafter: the CSDDD-P), which provides for important substantive duties on companies and members of their bodies. One of these is also the duty of companies that will be subject to this directive to put in place appropriate measures to identify, prevent, and remedy actual and potential adverse impacts on human rights and environment throughout their value chain (due diligence measures).

The purpose of this contribution is to present the development of EU sustainability legislation from disclosure to substantive requirements and analyse individual due diligence measures and their fundamental legal characteristics. Violations of due diligence, specified in the CSDDD-P, will not only be sanctioned in the public-law field, but also with civil-law liability. The civil-law liability raises various legal-dogmatic issues. In this contribution, I will give my opinion about the problem, outlining possible solutions and arguments. Because the CSDDD-P is another step towards increasing the politicisation of corporate law, arguments regarding the justification of using corporate legal instruments to protect the environment and human rights need to be highlighted first.

METHODOLOGY

In this chapter, classical research methods in the field of law are utilised: normative-dogmatic, comparative, and historical methods. With the assistance of grammatical, formal-logical, and systematic analysis (these analyses are employed within the framework of the normative-dogmatic method), the content of individual provisions of the CSDDD-P relating to environmental and human rights due diligence, including civil liability, is analysed. Based on this analysis, the fundamental legal characteristics of environmental and human rights due diligence, as well as deficiencies in the regulation of civil liability, are then identified. The comparative method is employed

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