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**Crônica:**

**Should Non-European Union  
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about the E.U Corporate  
Sustainability Due Diligence  
Directive?**

Nitish Monebhurrun

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# Should Non-European Union Member States be Cautious about the E.U Corporate Sustainability Due Diligence Directive?

Nitish Monebhurrin\*

**The CSDD's object.** In July 2024, the European Union's Directive 2024/1760 on Corporate Sustainability Due Diligence Directive (CSDD) came into force. After extensive deliberation regarding its scope, the final version of the Directive has restricted its application to limited liability companies incorporated in the European Union (E.U.) that employ more than 1,000 individuals and generate a net worldwide turnover of at least 450 million euros, as well as to non-E.U. companies that achieve a net turnover of 450 million euros within the EU. These companies are required to identify, mitigate, and address the adverse human rights and environmental risks and impacts arising from their own operations, as well as those of their subsidiaries and business partners across their value chains. To this end, they must implement a due diligence plan.

**The CSDD's scope.** The Directive imposes an ongoing duty of due diligence on these companies to monitor their global value chains. A National Supervisory Authority will be established in each E.U. member state to oversee compliance with the Directive. This Authority will have the competence to conduct investigations and impose penalties on non-compliant companies. Once transposed into national law by member States, the Directive allows for parent companies to be held liable in the courts of their home states for failures in due diligence that lead to environmental damage or human rights violations within their value chains. Consequently, parent companies could be held accountable for harm caused by their affiliated business partners operating in third countries.

**The CSDD Directive's extraterritorial reach.** The CSDD Directive challenges the traditional principle of separate legal personality and circumvents the often-invoked *forum non conveniens* doctrine in cases concerning corporate liability for transnational human rights or environmental harm linked to business activities. From the perspective of those affected by harm within value chains, the Directive is a significant innovation. However, it also carries negative legal and political ramifications for non-E.U. countries, particularly those in the Global South. These ramifications arise primarily from the extraterritorial reach of the Directive, which imposes compliance obligations on companies regardless of their geographical location.

**Jurisdictional concentration in the hands of E.U. States' domestic courts.** The extraterritorial scope of the CSDD Directive potentially undermines the jurisdictional authority of domestic courts in non-E.U. member States where European corporate entities are implicated in environmental damage or human rights violations. This situation arises because the parent company of a multinational group may be sued before the courts of E.U. Member States, irrespective of the location where the harm occurred. In many cases, suing the parent company rather than local subsidiaries or business partners is a strategic decision, as the parent company is typically better resourced to satisfy any potential reparations. As a result, potential

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claimants, including victims, their legal representatives, and especially non-governmental organizations, may be inclined to target the parent company in an effort to secure compensation. This trend could lead to a concentration of litigation in the courts of E.U. member States, thus marginalizing the judicial authority of the tribunals in the countries where the environmental or human rights damage originally took place. Such a shift in jurisdiction raises concerns that the legal framework established by the CSDD Directive may disproportionately favor the legal systems of E.U. States, thereby sidelining the domestic courts of non-E.U. States from adjudicating these matters. This phenomenon cannot be easily understood within the traditional framework of private international law, as it seems to align less with the goal of legal harmonization between E.U. and non-E.U. jurisdictions and more with a form of extraterritorial overreach or legal imperialism.

**The establishment of a globalized E.U. standard of corporate due diligence.** The CSDD Directive establishes a European standard for due diligence, which, due to its extraterritorial scope, is expected to have a global impact. This standard will be applied to the global value chains of European companies, regardless of the geographical location of their operations. According to the Directive, these companies are empowered to negotiate contractual assurances with both direct and indirect business partners, requiring them to adhere to the companies' due diligence plans in accordance with the provisions of the Directive. Should such partners refuse to provide these assurances, European companies may sever their business relationships with them. A notable illustration of a similar phenomenon can be found in the controversy surrounding the French retail group Carrefour, which publicly stated its intention to cease purchasing meat from Brazilian and other Mercosur suppliers in response to concerns about sustainability and human rights in its value chains.

**The acknowledged superiority of the CSDD Directive.** Article 29(7) of the CSDD Directive states that "Member States shall ensure that the provisions of national law transposing this Article are of overriding mandatory application in cases where the law applicable to claims to that effect is not the national law of a Member State". This provision effectively means that, in the event of a conflict of laws between the domestic law of a Member State implementing the Directive and the law of a third country, the national law of the Member State

will prevail, even if the foreign law is more favorable or contains higher standards of corporate due diligence. In this regard, the Directive asserts its primacy over other legal frameworks, positioning itself not only as the European but also as the global standard for due diligence. The European Commission has qualified the Directive as a positive step toward supporting sustainable practices in developing countries; these countries were not consulted during the drafting process. This posture, while presented as benevolent, may be perceived as patronizing. It imposes European standards on non-European jurisdictions without regard for their legal, social, or economic contexts.

**The CSDD Directive's extraterritorial effects must be contained by non E.U. States.** In light of these developments, despite the Directive's important contributions and innovative aspects, it can be seen as embodying a form of indelible legal imperialism. The extraterritorial reach of the Directive represents a significant challenge for sovereign States, particularly those in the Global South. In November 2023, Brazil adopted Decree 11.772, which establishes a National Policy on Human Rights and Business. Ongoing interministerial consultations and civil society engagements are being conducted to shape the policy. However, the extraterritorial effects of the CSDD Directive have yet to be fully considered by Brazilian authorities, raising concerns about the potential clash between national policies and the European framework.

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