

FROM STATES TO FIRMS: CORPORATE DUE DILIGENCE AND THE LIMITS OF TRADE-BASED LABOUR GOVERNANCE UNDER THE EVFTA

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ABSTRACT

This article examines whether the Corporate Sustainability Due Diligence Directive (CS3D) can overcome the structural limitations of labour governance embedded in EU free trade agreements, with particular reference to the EU–Vietnam Free Trade Agreement (EVFTA). It argues that the ineffectiveness of trade-based labour provisions is not a technical failing but the manifestation of a deeper structural misalignment: free trade agreements bind states, while labour violations occur within private, transnational production networks that treaty law cannot directly reach. The CS3D responds to this gap by relocating legal responsibility from states to the corporate actors that effectively control supply chain conditions — converting due diligence from a voluntary standard into an enforceable obligation supported by administrative supervision and civil liability. The article characterises the resulting relationship between the two regimes as one of asymmetrical integration rather than substitution, and identifies an internal contradiction within EU policy that existing scholarship has not directly addressed: the CS3D imposes obligations to prevent supply chain harms driven by cost pressures, while EU trade instruments — including the EVFTA — continue to structurally generate those same pressures. Unless resolved, this contradiction risks transforming mandatory due diligence into a compliance architecture that legitimises existing asymmetries rather than dismantling them.

Keywords: Corporate Sustainability due Diligence Directive, EU–Vietnam Free Trade Agreement, Trade and Sustainable Development, Global Value Chains, Transnational Labour Governance, Business and Human Rights, Extraterritoriality, Asymmetrical Integration

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INTRODUCTION

The integration of labour and human rights considerations into international trade law has become a defining feature of the European Union's external economic policy. Through the progressive incorporation of Trade and Sustainable Development (TSD) chapters into its free trade agreements, the European Union has sought to reconcile market liberalization with the promotion of internationally recognized labour standards, particularly those developed under the auspices of the International Labour Organization (ILO). This approach reflects a broader ambition often described as the exercise of the Union's "normative power," whereby trade policy is mobilized as a vector for the diffusion of fundamental values beyond its borders¹.

Yet, despite the increasing density of such normative commitments, their practical effectiveness remains deeply contested. The structural weaknesses inherent in the design of TSD chapters — their predominantly non-binding formulation, their reliance on cooperative rather than coercive enforcement mechanisms, and their systematic exclusion from general dispute settlement frameworks — are particularly visible in the EU–Vietnam Free Trade Agreement (EVFTA), treated here as a *critical case study*: an institutionally developed TSD chapter, concluded with a partner formally aligned on the core ILO standards, whose limits cannot be attributed to weak drafting or to an unwilling counterpart, but reflect structural features of the EU model itself².

The limitations of trade-based labour governance are therefore not merely technical. They stem from a structural misalignment between the addressees of free trade agreements and the actors that shape labour conditions in production networks. While free trade agreements (FTAs) bind states, labour risks are generated within privately organised supply chains, where enforcement depends on domestic capacity, political will and indirect economic incentives rather than on treaty-based compulsion.

This limitation explains the turn toward corporate due diligence. The Corporate Sustainability Due Diligence Directive (CS3D) shifts part of the regulatory burden from inter-state cooperation to corporate obligations. By requiring companies to identify, prevent, mitigate and remedy adverse impacts, it translates soft law standards - particularly the United Nations Guiding Principles on Business and Human Rights (UNGPs) - into enforceable duties within the European legal order³.

The question is therefore whether binding corporate obligations merely reinforce trade-based normativity, or reconfigure the paradigm itself. The CS3D does the latter: it relocates responsibility from international trade law toward corporate accountability — a pragmatic response to the structural limits of trade-based mechanisms, raising in turn questions of extraterritoriality, enforcement capacity and regulatory fragmentation.

The method is doctrinal — TSD chapters, the CS3D, and the soft-law sources informing it — coupled with a structural reading of their interaction rather than a formal commentary on each. Three steps follow: the structural ineffectiveness of trade-based labour governance (Part I); the juridification of corporate responsibility (Part II); the CS3D's emergence as a new model of transnational labour regulation (Part III).

¹ Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40(2) *Journal of Common Market Studies* 235.

² James Harrison and others, 'Labour Standards Provisions in EU Free Trade Agreements: Reflections on the European Commission's Reform Agenda' (2019) 18(4) *World Trade Review* 639.

³ John Gerard Ruggie, 'Multinationals as Global Institution: Power, Authority and Relative Autonomy' (2017) 12 *Regulation & Governance* 317.

I. The Structural Ineffectiveness of Trade-Based Labour Governance

1) The Ambiguous Normativity of Labour Standards in EU Trade Agreements

The structural weakness of trade-based labor governance lies less in normative scarcity than in its legal qualification and enforcement architecture. EU trade agreements incorporate labour standards extensively, yet these commitments remain predominantly obligations of conduct, lacking the coercive mechanisms attached to commercial provisions. As summarized by Harrison et al., labour provisions in EU FTAs are characterized by a “cooperative and promotional logic”, relying on dialogue-based mechanisms rather than enforceable obligations, which limits their capacity to generate legal responsibility⁴.

The result is a hierarchised regime in which market access rules operate under binding dispute settlement, while labour standards are governed by soft, cooperative procedures.

This configuration projects the EU as a normative power - shaping standards of legitimacy rather than imposing them coercively⁵. It works through attraction, conditionality and institutionalised cooperation, anchored in Articles 3(5) and 21 of the Treaty on European Union (TEU) and operationalised through the Common Commercial Policy (Article 207 of the Treaty on the Functioning of the European Union (TFEU)), with labour rights routed via Trade and Sustainable Development (TSD) chapters incorporating ILO standards by reference⁶.

This development is also reflected in the Union’s policy documents, notably the Commission’s *Trade for All* strategy (2015) and the subsequent *Open, Sustainable and Assertive Trade Policy* (2021), which frame sustainable development as an intrinsic component of EU trade policy and account for the systematic use of TSD chapters as the main vehicle for integrating labour rights into trade agreements⁷.

This technique produces a derivative normativity: labour obligations are incorporated by reference and remain dependent on domestic implementation. Empirical scholarship confirms that their inclusion in FTAs rarely produces measurable improvements in labour practices, exposing the limited practical effect of formally recognised commitments⁸.

This gap is reinforced by the institutional design of TSD chapters. Dialogue, monitoring and expert panels embody a logic of best-efforts obligations rather than enforceable duties⁹. In contrast to sanction-based models, as those used in United States trade agreements, the EU adopts an incentive-based model, privileging cooperation over constraint. Politically pragmatic, this choice entrenches an attenuated justiciability where compliance depends on political will rather than legal compulsion.

A central doctrinal divide emerges at this point. Some authors view this architecture as a deliberate extension of the EU’s normative identity. From this perspective, the effectiveness of labour provisions should not be measured solely by direct enforcement outcomes, but also by their intermediate effects—institutional development, civil society empowerment, and progressive legal convergence¹⁰. Norm diffusion, rather than coercion, is the relevant metric of success.

Conversely, a critical strand argues that the EU model underperforms because it targets states while labour conditions are shaped by firms. As Ruggie shows, multinational enterprises operate through decentralised networks protected by limited liability and fragmented legal

⁴ Harrison and others (n 2).

⁵ Manners (n 1).

⁶ Maria Garcia, ‘From Bottom of the Pyramid to Top Priority: Explaining Asia in the EU’s Free Trade Agreement (FTA) Strategy’ (2012) 4 (1) *Australian and New Zealand Journal of European Studies*, 42.

⁷ L Johan Eliasson and P Garcia-Duran, ‘New is Old? The EU’s Open, Sustainable and Assertive Trade Policy’ (2023) 14 (suppl.3) *Global Policy* 9.

⁸ Jan Orbie and Gerda Van Roozendaal, ‘Labour Standards and Trade: In Search of Impact and Alternative Instruments’ (2017) 5 (4) *Politics and Governance* 1.

⁹ Harrison and others (n 2).

¹⁰ Orbie and Van Roozendaal (n 8).

personality¹¹. Barbu et al. similarly locate decision-making power in lead firms rather than in the states formally bound by FTAs¹². Soft-law approaches may therefore legitimise regulatory evasion rather than correct it.

The present analysis aligns with the second approach. The EU model combines dense normative references with weak enforcement, producing a hybrid regime without effective accountability.

The mismatch is also conceptual: embedding labour standards within a sustainable-development agenda weakens their legal specificity, recasting them as programmatic commitments. The UNGPs sharpen the critique by already allocating responsibilities between states and companies — anticipating the move from state-centred treaty governance to corporate due diligence.

Labour standards enter trade law, but they do so through a legal architecture that preserves a hierarchy between commercial obligations and social commitments—a hierarchy the EVFTA exemplifies with particular clarity.

2) The EVFTA and the Limits of Enforceability

The EVFTA crystallizes the central ambiguity of EU trade-based labour governance: labour standards are incorporated into a binding treaty, but placed within a legally attenuated enforcement regime. Chapter 13 gives social commitments formal treaty status, yet its operative logic remains promotional rather than coercive. The legal issue is therefore not the absence of labour norms, but their weaker juridical qualification.

The first limitation lies in the wording of the obligations themselves. Once interpreted under the standard rules of treaty interpretation (Article 31 of the Vienna Convention on the Law of Treaties (VCLT) — good faith, ordinary meaning, context, purpose), Chapter 13 displays a structure in which different provisions carry markedly different legal weight. The strongest formulations are negative and trade-related: Article 13.3(2)–(3) provides that "*a Party shall not waive or derogate from*" its labour laws "*in a manner affecting trade and investment*", nor "*fail to effectively enforce*" them through "*a sustained or recurring course of action or inaction*" as an encouragement for trade. These non-derogation and non-enforcement clauses, modelled on US FTA practice, are textually capable of supporting a finding of breach. The substantive labour commitments of Article 13.4 are, by contrast, framed in conduct-based terms: each Party "*reaffirms its commitments*" (§2) to "*respect, promote and effectively implement*" the ILO fundamental principles, and "*shall make continued and sustained efforts towards ratifying*" the fundamental ILO conventions (§3(a)) — merely "*considering the ratification*" of other up-to-date conventions (§3(b)). Article 13.2(2) likewise imposes only a duty to "*endeavour*". These are obligations of conduct, not of result — that is, obligations to act in good faith towards a goal rather than to deliver it. A breach is legally possible, but only on demanding evidentiary grounds: a complainant must show the absence of sustained efforts over time, not merely the absence of the targeted outcome. These textual findings converge with the broader literature situating this regime within the EU's 'promotional' approach, whose principal weakness lies in the absence of pre-ratification conditionality and sanction-based enforcement¹³.

This weakness is textually consolidated by the dispute settlement architecture. Article 13.16(1) provides that "*Chapter 15 (Dispute Settlement) and its Annex 15-C (Mediation Mechanism) do not apply to this Chapter*", channelling all TSD disagreements toward government consultations and, ultimately, a Panel of Experts (Article 13.17). The Panel issues reports

¹¹ Ruggie (n 3).

¹² Mirela Barbu and others, 'The Trade-Labour Nexus: Global Value Chains and Labour Provisions in EU FTAs' (2018) 9 (3) *Global Labour Journal* 258.

¹³ Kristoffer Marslev and Cornelia Staritz, 'Towards a Stronger EU Approach on the Trade-Labor Nexus? The EU–Vietnam Free Trade Agreement, Domestic Labor Reforms and Social Struggles in Vietnam' (ie Working Paper No 12, University of Vienna 2021).

containing only "*findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations*" (Article 13.17(8)); the Parties merely "*shall discuss appropriate actions or measures*" in light of those recommendations (Article 13.17(9)). No binding remedy, no economic sanction and no compulsory implementation are foreseen. The dual normative regime — hard-law enforceability for commercial obligations, soft-law compliance for social ones — is therefore not an interpretive consequence but a textual choice of the EVFTA itself. This segmentation reflects, more broadly, the post-Lisbon reconfiguration of EU trade policy, in which the European Parliament's increased normative ambition was not matched by a corresponding transformation of the Common Commercial Policy's enforcement architecture¹⁴.

This soft-law reading must, however, be tempered by the EU–Korea Panel of Experts report of 20 January 2021 — the only TSD interpretative precedent presently available — which held that the analogous "*sustained and continued efforts*" obligation produced a binding obligation of means whose breach was established on the facts¹⁵. TSD commitments are therefore legally cognizable; what is absent is the binding remedy, not the binding norm. The asymmetry is sharpened by a deliberate architectural choice: the EU–Vietnam Investment Protection Agreement (IPA, signed 30 June 2019), negotiated as a separate treaty, subjects investment-protection standards to compulsory adjudication before the Investment Court System, while Chapter 13's labour commitments remain outside any analogous mechanism — institutionalising, within a single trade-and-investment relationship, a structural disparity between protected commercial interests and recognised social standards¹⁶. The Vietnamese case shows that legal reform cannot be understood as a simple effect of external norm diffusion. Evans demonstrates that export incentives can open space for labour reforms only when they interact with domestic mobilization and reformist actors within the state apparatus¹⁷. Vietnam's 2019 Labour Code and ratification of several ILO conventions are therefore not symbolic, but they evidence legal-institutional convergence rather than operational compliance.

This distinction is decisive because Vietnam's domestic state structure remains ambivalent. Kerkvliet's notion of the "responsive-repressive state" captures this context: the Vietnamese state may respond to social and economic pressures, while repressing actors perceived as threatening political stability or Communist Party dominance¹⁸. From a legal perspective, this limits the practical effect of freedom of association and worker representation. The EVFTA therefore relies on domestic mechanisms whose capacity to enforce labour rights remains politically constrained.

The textile and garment sector makes this limitation concrete. Tran and Nørlund show that Vietnam's integration into export manufacturing has relied on labour-intensive production, low wages and weak working conditions¹⁹. Cascading subcontracting, tight deadlines and price pressure from international buyers constrain suppliers' capacity to improve standards. Labour

¹⁴ Lore Van den Putte, Ferdi De Ville and Jan Orbie, 'The European Parliament as an International Actor in Trade: From Power to Impact' in *The European Parliament and its International Relations*, in Stelios Stavridis, Daniela Irrera *The European Parliament and its International Relations* Routledge (2015) 52.

¹⁵ Panel of Experts Proceeding Constituted under art 13.15 of the EU–Korea Free Trade Agreement, Report of the Panel of Experts (20 January 2021).

¹⁶ Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part [2020] OJ L186/319.

¹⁷ Alice Evans, 'Export Incentives, Domestic Mobilization, & Labor Reforms' (2021) 28(5) *Review of International Political Economy* 1332.

¹⁸ Benedict J Tria Kerkvliet, 'Governance, Development, and the Responsive-Repressive State in Vietnam' (2010) 37(1) *Forum for Development Studies* 33.

¹⁹ Angie Ngoc Tran and Irene Nørlund, 'Globalization, Industrialization, and Labor Markets in Vietnam' (2015) 20(1) *Journal of the Asia Pacific Economy* 143.

violations therefore cannot be reduced to defective legal transposition; they are partly produced by the commercial organisation of production itself.

Tran and Jeppesen confirm this at firm level. Vietnamese textile, garment and footwear small and medium-sized enterprises (SMEs) operate under public regulation, private codes and unequal buyer pressure; they are often required to comply with standards imposed by multinational buyers without receiving the resources needed to do so²⁰. The EVFTA can only address these dynamics indirectly, since the decisive pressure comes from private contractual relationships rather than from the treaty itself.

O'Brien and Ford's analysis clarifies the point: global market integration disrupts the classical state-centred model of human rights implementation because harms arise within transnational corporate networks, while remedies remain anchored in national institutions²¹. The EVFTA illustrates this difficulty rather than resolving it.

The institutional mechanisms of Chapter 13 — the Trade and Sustainable Development Committee, Domestic Advisory Groups and civil society forum — lack coercive authority and depend on conditions of civil society independence that remain limited in Vietnam. They do not overcome the structural mismatch.

The EVFTA therefore illustrates the limits of a model in which labour standards are legalised without being fully judicialised. International commitments depend on domestic enforcement, while the economic conditions of compliance are shaped by actors beyond the treaty's direct reach. The decisive question is no longer whether labour standards are included in FTAs, but whether the relevant legal regime binds the actors capable of changing working conditions.

II. The Juridification of Corporate Responsibility in Global Value Chains

1) From State Obligations to Corporate Responsibility

This misalignment has gradually redirected legal reasoning toward corporate responsibility within multi-level governance²².

This transformation originates in the consolidation of soft law instruments that redefined the legal position of corporations. The UNGPs distinguish the state duty to protect from the corporate responsibility to respect, operationalised through due diligence. Although formally non-binding, this responsibility functions as a structured obligation of means: companies must identify, prevent, mitigate and account for adverse impacts. Its significance lies in the requalification of corporate conduct as legally assessable behaviour within transnational governance²³.

Parallel developments within the Organisation for Economic Co-operation and Development (OECD) reinforce this trajectory. The OECD Guidelines and Due Diligence Guidance further specify the content of corporate obligations, while institutional mechanisms such as National Contact Points contribute to their quasi-justiciability. As Coulée notes, these instruments, though formally non-binding, have contributed to the emergence of a normative expectation structuring corporate conduct beyond mere voluntarism, thereby blurring the distinction between soft and hard law²⁴. Due diligence thereby operates as a normative interface between private governance and public regulation.

²⁰ Angie Ngoc Tran and Søren Jeppesen, 'SMEs in their Own Right: The Views of Managers and Workers in Vietnamese Textiles, Garment, and Footwear Companies' (2016) 137 *Journal of Business Ethics* 589.

²¹ Claire Methven O'Brien and Jolyon Ford, 'Business and Human Rights: From Domestic Institutionalisation to Transnational Governance and Back Again' (2019) 37(3) *Nordic Journal of Human Rights* 216.

²² Louise Curran, Matthew Alford and Khalid Nadvi, 'Contestation and Compromise in Shaping the European Union's Corporate Sustainability Due Diligence Directive' (2026) 0 *Regulation & Governance*, 1.

²³ Ruggie (n 3).

²⁴ Frédérique Coulée, 'Participation de la France au groupe de travail sur les sociétés transnationales et les droits de l'homme' (2018) 64 *Annuaire français de droit international*, 749.

Two doctrinal readings compete. Ruggie treats corporate responsibility as hybrid and necessarily limited — neither corporate social responsibility (CSR) nor binding regulation can fully internalise global externalities given the autonomy of multinational enterprises²⁵. Business-and-human-rights scholarship, by contrast, emphasises regulatory pluralism: domestic law and transnational governance interact to produce enforceable normative expectations²⁶. Corporate due diligence is, on the latter view, a hybrid regime combining obligations of conduct, procedural enforceability and potential civil liability — partially re-internalising externalities without eliminating supply-chain asymmetries.

National legislative developments illustrate this juridification process. The French *Loi sur le devoir de vigilance* constitutes a paradigmatic case, introducing an extended obligation of vigilance detached from formal corporate control and grounded instead in risk influence across subsidiaries and supply chains. Although evidentiary and procedural barriers—especially in civil liability—still constrain its effectiveness, its normative contribution is decisive: it transforms due diligence from a voluntary standard into a legally enforceable obligation, albeit one whose content and scope remain indeterminate²⁷. As Curran, Alford and Nadvi demonstrate, this type of legislation emerges precisely from the recognised insufficiency of private governance mechanisms and reflects a broader rebalancing between public and private regulation in global value chains²⁸.

By contrast, CSR mechanisms illustrate the limits of voluntarism. As a form of private self-regulation, CSR depends on reputational incentives and lacks coercive enforceability²⁹. Empirical studies of global value chains highlight its limited capacity to transform underlying economic dynamics, particularly where lead firms externalize social costs onto suppliers. Private social audits exemplify this limitation: they generate regulatory visibility without effective control, addressing neither structural drivers such as pricing pressures nor producing enforceable consequences³⁰. In some contexts, as evidenced by labour mobilisations in Vietnam, improvements in working conditions have resulted less from voluntary corporate mechanisms than from collective action and state responses, underscoring the insufficiency of purely private governance³¹.

The cumulative effect is a stratified normative order combining state obligations, soft law standards and emerging corporate duties. This is not a complete paradigm substitution. It is a functional relocation of responsibility toward actors capable of influencing production conditions. Due diligence thereby aligns legal obligation with economic power.

This reconfiguration also challenges the classical reading of the European Union as a “normative power.” While trade instruments have historically diffused labour standards through non-coercive mechanisms, their effectiveness has been constrained by institutional fragmentation and competing economic interests³². The shift toward binding corporate obligations therefore signals not merely a continuation, but a qualification of normative power through enforceability.

Corporate accountability becomes legally significant insofar as it addresses the structural dislocation inherent in trade-based governance: the separation between the formal holder of obligations and the economic actor capable of shaping working conditions.

²⁵ Ruggie (n 3).

²⁶ O’Brien and Ford (n 21).

²⁷ Begüm Kilimcioğlu, ‘The French Duty of Vigilance Law: A Reference Guide for the Transposition of the Corporate Sustainability Due Diligence Directive’ (2025) 43(1) *Netherlands Quarterly of Human Rights* 31.

²⁸ Curran, Alford and Nadvi (n 22).

²⁹ Ruggie (n 3).

³⁰ Curran, Alford and Nadvi (n 22).

³¹ Angie Ngoc Tran, ‘Alternatives to the “Race to the Bottom” in Vietnam’ (2007) 32 *Labor Studies Journal* 430.

³² Daniela Sicurelli, ‘The EU as a Promoter of Human Rights in Bilateral Trade Agreements’ (2015) 11(2) *Journal of Contemporary European Research* 230-245.

2) The Structural Dislocation Between Legal Obligation and Economic Control

Labour provisions in FTAs are state-centred obligations of conduct. Their addressees are sovereign actors, whereas the risks they regulate arise within privately coordinated production systems. As the trade–labour nexus literature shows, their effectiveness depends not only on formal incorporation but also on power asymmetries between lead firms and suppliers³³. The EVFTA exemplifies this configuration: it binds the European Union and Vietnam, while labour conditions are shaped by contractual relations within production networks.

Contemporary production operates through multi-layered contractual systems. Economic coordination is exercised across legally distinct entities. Multinational enterprises rely on subsidiaries, contractors and suppliers in ways that separate economic control from legal responsibility³⁴. Lead firms influence prices, sourcing and delivery conditions while remaining formally external to the employment relationship.

The Vietnamese textile sector epitomises this dynamic: integration into global value chains (GVCs) generates growth but subjects suppliers to intense cost pressures, limiting their capacity to comply with labour standards. As empirical studies show, the “business space” for improving working conditions may be structurally constrained by inter-firm power relations³⁵. This challenges the assumption that labour violations mainly result from weak domestic enforcement. They may also be produced by supply-chain economics. FTAs address labour risks through inter-state commitments, but the causal mechanisms — pricing, sourcing and contractual flexibility — remain governed by private actors. Public norms are therefore disconnected from the commercial practices that shape labour conditions.

The fragmentation of responsibility also complicates attribution. In vertically integrated systems, liability can follow control. In GVCs, responsibility is dispersed among legally distinct but economically interdependent actors. Lead firms, suppliers and subcontractors operate within separate legal perimeters, enabling the diffusion of accountability. This reflects Ruggie’s analysis of multinational enterprises as relatively autonomous institutions whose organisational complexity exceeds traditional state-based regulation³⁶.

Private governance mechanisms have attempted to compensate for these deficiencies but remain normatively and functionally insufficient. Codes of conduct, social audits and certification schemes operate as forms of *voluntary self-regulation*, lacking the coercive force and institutional guarantees of public law³⁷. Empirical research highlights their limited effectiveness, particularly where they focus on first-tier suppliers and fail to address underlying commercial pressures or hidden subcontracting practices³⁸. They reproduce a structural blind spot: monitoring compliance at the production site without regulating the upstream decisions that generate compliance risks.

The difficulty is therefore legal, economic and institutional. It is legal because treaty obligations bind states but not firms; economic because lead firms influence production without assuming formal employment responsibility; and institutional because enforcement depends on domestic capacities shaped by political and economic constraints. In Vietnam, the human rights discourse illustrates the tension between formal recognition and practical

³³ Barbu and others (n 12).

³⁴ Ruggie (n 3).

³⁵ Barbu and others (n 12).

³⁶ Ruggie (n 3).

³⁷ Ruggie (n 3).

³⁸ Curran, Alford and Nadvi (n 22).

implementation³⁹. Rights limitation, when justified by broader social and economic objectives, further complicates the realisation of labour standards⁴⁰.

Voluntary CSR proved structurally limited for three reasons. It relied on reputational sanction rather than legal duty; it generated visibility through audits without effective control over compliance; and it remained blind to the upstream commercial pressures — pricing, lead times, sourcing flexibility — that produce supply-chain harm in the first place. These failures explain both the gradual juridification of due diligence in soft-law instruments and the architectural choices of the binding regime that follows.

Where CSR left companies free to define and publicise their own compliance, the CS3D substitutes a sequenced procedural duty whose adequacy is reviewable *ex post* and whose breach is sanctionable through administrative supervision and civil liability. The shift is twofold: from obligations imposed on formal holders of corporate control to obligations imposed on the actors that economically shape working conditions, and from voluntary self-regulation to a binding procedural duty. It is this architecture that the following analysis examines.

III. The CS3D and the Emergence of a New Model of Transnational Labour Regulation

1) Reconstructing Legal Responsibility Along the Chain of Activities

The CS3D gives legal form to this reallocation of responsibility. By imposing binding due diligence obligations on companies, it aligns legal accountability with economic influence. It thereby addresses a limitation that trade-based governance cannot overcome through inter-state obligations alone.

At the core of this reconfiguration lies the notion of "chain of activities," legally defined in Article 3 of the Directive. This concept marks a deliberate departure from traditional corporate law approaches grounded in control or ownership: it substitutes a functional criterion based on economic interdependence and the capacity to influence.

Article 3(1)(g) defines the chain of activities by a deliberate textual asymmetry: upstream, it covers "*the activities of a company's upstream business partners related to the production of goods or the provision of services... including the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of products, and the development of the product or service*"; downstream, it covers only "*the distribution, transport and storage of a product... where the business partners carry out those activities for the company or on behalf of the company*". End-use, disposal and recycling — included in the 2022 Commission Proposal as part of a broader "value chain" — are deliberately excluded. The notion is narrower than the "supply chain" of the UNGPs and the French *loi de vigilance* — which extend to all relationships of established commercial control — and narrower still than the OECD's "sphere of influence" criterion. As Mastaki, Darondeau and Tariqui document, the two-tier asymmetry is the product of a political compromise⁴¹; Curran, Alford and Nadvi show how the terminological shift from "value chain" to "chain of activities" was deliberately engineered to give traditional business actors "more wiggle room" while preserving an implicit acceptance of responsibility beyond direct suppliers — narrowing the Directive's material reach in the more fragmented segments of complex value chains⁴².

³⁹ T H Bui, 'Deconstructing the "Socialist" Rule of Law in Vietnam' (2014) 36(1) *Contemporary Southeast Asia* 77.

⁴⁰ Nguyen Linh Giang, 'Human Rights Limitation in the Rule of Law from Vietnam's Practice' in M. Deguchi and K. Yakushiji *Europe and Asia as a Legal Area for Fundamental Rights* (Springer 2023), 93.

⁴¹ Gabriel Ajabu Mastaki, Styven Darondeau and Amine Tariqui, 'Le devoir de vigilance des entreprises en matière de durabilité : quel avenir avec la CS3D ?' (2024) *HAL Open Science*, hal-04577023v2.

⁴² Curran, Alford and Nadvi (n 22).

Two conceptions of corporate responsibility are at stake: one anchored in formal control (subsidiaries, direct contracts), the other extending obligations according to economic position within networks of interdependence regardless of corporate structure. The CS3D partly subscribes to the latter — a qualitative advance over ownership-based models, even if narrowed by the compromises identified by Mastaki et al.

Substantively, Articles 5 to 13 establish a sequenced procedural architecture: integration of due diligence into corporate policies and risk-management systems (Article 7); identification and assessment of actual and potential adverse impacts (Article 8); prevention of potential impacts (Article 10); cessation of actual impacts (Article 11); remediation (Article 12); and meaningful engagement with affected stakeholders (Article 13). The sequence is not neutral: it qualifies the regime as a *proceduralised obligation of conduct* — companies are not required to deliver an absence of harm, but to demonstrate a structured, traceable and stakeholder-informed process whose adequacy is reviewable *ex post*. The combination of this procedural duty with the fault-based civil liability of Article 29 produces a distinctive doctrinal configuration: liability does not arise from the occurrence of harm, but from a demonstrable failure in the mandated procedural architecture — a contour whose practical limits remain to be settled by national courts. Article 22 adds a *sui generis* obligation: companies must adopt and implement a climate transition plan aligned with the 1.5°C objective, with explicit articulation to the variable remuneration of directors — an experimental hinge between corporate-governance law, environmental law and climate law.

A central interpretive risk follows. Vague benchmarks may invite companies to confine their assessments to "most likely and most severe" impacts, obscuring common labour-rights violations such as anti-union discrimination⁴³. Flexibility is defensible at the mitigation stage, but a severity filter at the identification stage marginalises labour rights within the Directive's architecture.

Two enforcement mechanisms anchor these obligations: administrative supervision, with fines of up to 5% of global net turnover⁴⁴, and civil liability under Article 29. As Vogt and Subasinghe note, unless courts treat irresponsible purchasing practices as a basis for joint causation, EU-based companies may evade liability for harms occurring at production level — making Article 29 dependent on judicial willingness to give substantive effect to due diligence in asymmetrical supply chains.

From a systemic perspective, the CS3D internalises within corporate governance the social costs traditionally externalised in global production systems. It does not merely supplement trade-based labour governance — it alters its underlying logic by relocating enforcement mechanisms from inter-state channels to the corporate structures where labour risks are generated and managed.

This systemic ambition is, however, already politically contested. On 26 February 2025, the European Commission presented an 'Omnibus simplification package' amending the CS3D less than a year after its adoption⁴⁵. Justified by competitiveness concerns, the proposal would restrict mandatory due diligence to direct business partners (Tier 1) by default, remove the harmonised civil liability standard of Article 29 by referring liability to national law, raise the company-size thresholds and postpone transposition. The trajectory itself — a regulatory pillar partially dismantled within months of adoption, in direct response to commercial-policy

⁴³ Jeffrey Vogt and Ruwan Subasinghe, 'Protecting Workers' Rights in Global Supply Chains: Will the EU's Corporate Sustainability Due Diligence Directive Make a Meaningful Difference?' (2024) 57(1) *Cornell International Law Journal* 209.

⁴⁴ Curran, Alford and Nadvi (n 22).

⁴⁵ European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards certain sustainability reporting and due diligence requirements, COM(2025) 81 final (26 February 2025).

pressures — is a manifestation of the structural tension qualified below. What follows therefore takes the CS3D in its adopted form, while reading the Omnibus trajectory as empirical confirmation of the contradiction.

2) The Hardening of Due Diligence: From Normative Expectation to Legal Obligation

The CS3D's central contribution is the conversion of due diligence from a voluntary standard into a legally enforceable obligation. This is not a technical adjustment. It marks a qualitative shift in the legal treatment of labour rights in supply chains. Tenreira describes this as the “agentivity” of corporate best practices: their operational force within transnational networks is translated into binding legal normativity⁴⁶.

The previous normative landscape was dominated by the UNGPs and the OECD Guidelines for Multinational Enterprises. These instruments were conceptually decisive but formally non-binding. Ruggie acknowledged the limits of this architecture: neither CSR nor treaty-based approaches could fully regulate multinational enterprises without a political analysis of their institutional autonomy⁴⁷. Implementation depended on voluntary adherence, reputational incentives and quasi-judicial mechanisms such as National Contact Points. O'Brien and Ford show that these mechanisms remain limited because they cannot impose binding remedies or sanctions⁴⁸. Empirical evidence confirms the point: a 2024 survey of 2,000 influential companies found that 80% scored zero on the initial steps of human rights due diligence (HRDD) implementation, while more than a decade of UNGP promotion has not produced measurable increases in union density or collective bargaining coverage⁴⁹.

The CS3D fundamentally reconfigures this landscape. Tenreira identifies the juridification of due diligence as operating through two distinct mechanisms: the conversion of corporate best practices into a condition for the *application* of the legal obligation (failure to refer to best practices constitutes an autonomous breach), and their elevation into a *standard of assessment* against which corporate conduct is evaluated in concreto by reference to international human rights and environmental law⁵⁰. This dual function — simultaneously constituting the event giving rise to liability and defining the standard of the “vigilant transnational company” — represents a structural innovation that distinguishes the CS3D from its national predecessors. Camy notes that relative to the French *loi de vigilance*, the Directive introduces a “triple trigger” mechanism — adding company support measures alongside prevention and sanction — that deepens the normative architecture of mandatory due diligence⁵¹.

The early French jurisprudence under the *loi de vigilance* offers an interpretive matrix for Article 29 CS3D. In *Sud PTT v La Poste* (Tribunal judiciaire (TJ) de Paris, 5 December 2023), the court extended judicial review to the *substantive* adequacy of vigilance plans, rejecting the “tick-the-box” approach to compliance and confirming that risk maps may be assessed on their merits. In the *TotalEnergies / EACOP*⁵² litigation (TJ Paris, ord. of 28 February 2023), the court refined the *mise en demeure* préalable as a procedural condition of admissibility, illustrating the procedural hurdles that flank substantive review. The CS3D's own fault standard — “*intentional or negligent failure*” to comply (Article 29.1) — is best characterised not as a

⁴⁶ Luca Tenreira, ‘Corporate Best Practice from Soft Law to Hard Law: The Case of the Corporate Sustainability and Due Diligence Directive (CS3D)’ (2024) 2 *International Business Law Journal* 269.

⁴⁷ Ruggie (n 3).

⁴⁸ O'Brien and Ford (n 21).

⁴⁹ Vogt and Subasinghe (n 43).

⁵⁰ Tenreira (n 46).

⁵¹ J Camy, ‘Quelles perspectives pour des chaînes d’approvisionnement soutenables ? L’exemple de la proposition de Directive européenne sur le devoir de vigilance des entreprises en matière de durabilité et modifiant la Directive (UE) 2019/1937’ (2023) 28(3) *Lex Electronica* 105-115.

⁵² EACOP (East African Crude Oil Pipeline), litigation initiated by French and Ugandan NGOs against TotalEnergies under the French *loi de vigilance* of 27 March 2017 concerning human rights and environmental risks linked to the EACOP project.

classical civil fault but as a *special fault for breach of a statutory organisational duty*, of the kind already familiar in EU competition and data-protection law. The May 2024 text raised the evidentiary bar above the 2022 Commission Proposal, as Vogt and Subasinghe note, while leaving open the possibility of collective redress through Article 29(3)(d) read with Directive (EU) 2020/1828). A further structural innovation, often overlooked, is Article 29(7): by qualifying the national rules transposing civil liability as overriding mandatory provisions within the meaning of Article 16 Rome II, the Directive neutralises the *lex loci damni* rule of Article 4 Rome II — which would otherwise refer a Vietnamese victim's claim to Vietnamese law and largely defeat the regime's extraterritorial reach.

The doctrinal debate cannot be reduced to optimism versus scepticism. O'Brien and Ford's multi-level governance framework treats juridification as a meaningful but partial advance: it extends human rights norms into corporate governance, creates new regulatory leverage and modifies business incentives, even where immediate enforcement remains limited⁵³. Vogt and Subasinghe's labour-centred critique is more demanding. They argue that HRDD remains insufficient where it follows a risk-management logic, fails to correct power asymmetries between multinational enterprises and workers, and does not treat collective bargaining and freedom of association as enabling rights⁵⁴. The position defended here is synthetic. The CS3D marks a genuine qualitative shift, but its transformative potential depends on substantive enforcement by courts and regulators, and on national transposition choices that resist the dilutions already visible in the final text.

The transition from soft law to hard law thus involves a broader reconfiguration: the CS3D integrates the conceptual vocabulary of soft law - due diligence, risk mapping, stakeholder engagement – into a hybrid mandatory due diligence regime that combines four mechanisms. First, a statutory duty of *vigilance*: companies are bound by the risks they can influence, not by what they formally own or control. Second, a civil liability action (Article 29.1) based on intentional or negligent breach, made operational by two procedural devices — judicial disclosure of evidence (Article 29.3.e) and a uniform five-year limitation period (Article 29.3.d). Third, an administrative pillar: national supervisory authorities may impose fines of up to 5% of global net turnover (Articles 25-27). Fourth, a conflict-of-laws clause: Article 29.7 designates the national rules implementing civil liability as overriding mandatory provisions, meaning they apply even where Article 4 of the Rome II Regulation would otherwise refer the matter to the law of the country where the harm occurred — typically a non-EU production State. Taken together, these four elements form what may be termed a *regulatory liability regime*: civil liability functions not only as a remedy for victims, but as a private enforcement mechanism serving a *public policy objective*. The Directive thereby reconfigures trade-based normativity at its operational core: labour standards are no longer mediated solely by inter-state commitments but become enforceable through duties imposed on the economic actors that govern production conditions. Beyond its internal legal architecture, the Directive also transforms the broader regulatory landscape in which trade-based labour governance operates.

3) Corporate Due Diligence and the Transformation of Trade-Based Normativity

The CS3D does not abolish trade-based labour governance; it changes its function. The relationship between the two regimes is not simple complementarity. It is asymmetrical integration: the Directive supplies an enforcement pathway that FTAs lack, while FTAs continue to inform the substantive content of due diligence obligations.

(a) Complementarity or Substitution?

At first glance, the CS3D and the EVFTA appear mutually reinforcing: both promote labour standards within economic globalisation. But this complementarity reading is incomplete.

⁵³ O'Brien and Ford (n 21).

⁵⁴ Vogt and Subasinghe (n 43).

Trade agreements address states; the CS3D addresses companies. The two regimes therefore operate at different points of the regulatory chain.

Harrison shows that most sustainability provisions in FTAs impose obligations on governments rather than on the corporations that influence production conditions⁵⁵. O'Brien and Ford identify the same tension in business and human rights governance: transnational regulatory ambitions continue to depend on national institutions that often lack effective reach⁵⁶.

The CS3D directly addresses this gap. By relocating legal obligations at the level of corporate actors, it reduces reliance on state-mediated enforcement and introduces a form of regulation that operates within the structures where violations occur. In this sense, the Directive performs a *substitutive function* with respect to the enforcement dimension of trade-based governance, even as it presupposes and reinforces the normative content those agreements define. The locus of enforceability shifts away from inter-state dispute settlement toward domestic courts and supervisory authorities applying corporate due diligence obligations — a shift that aligns legal responsibility with economic power in the manner Ruggie identified as the central failing of pre-existing frameworks.

This asymmetry has systemic implications. As Tenreira observes, the contractual cascade mechanism transmits due diligence obligations through supply chains by flow-down clauses. It operates as indirect extraterritoriality: obligations are imposed on EU-market actors, but their effects are felt in third-country production systems⁵⁷. This partly compensates for the limits of trade agreements, while raising sovereignty concerns.

(b) The Vietnamese Textile Sector: A Critical Test Case

The Vietnamese textile sector provides a particularly relevant context for assessing these dynamics. Under the EVFTA, the regulation of labour risks relies primarily on state commitments: Vietnam is encouraged to align domestic legislation with ILO standards and to strengthen institutional frameworks governing worker representation. As previously demonstrated, these commitments are constrained by domestic implementation capacities, the politically managed character of labour relations identified in Kerkvliet's "responsive-repressive state" analysis, and the cost-competitive pressures that structure GVC participation for Vietnamese suppliers.

The CS3D alters this regulatory dynamic by shifting pressure from diplomatic channels to commercial relationships. European companies sourcing from Vietnam must integrate labour considerations into their sourcing strategies, procurement practices and contractual arrangements — thereby internalising social costs that were previously externalised within supply chains. The Directive's requirement to adapt purchasing practices where they contribute to adverse impacts is particularly significant in this regard: as Vogt and Subasinghe document with respect to global supply chains more broadly, unsustainable purchasing practices — excessive price pressure, short lead times, last-minute order changes — are among the primary structural drivers of labour violations at the production level⁵⁸. Whether courts and supervisory authorities will treat these practices as a basis for joint causation of harm under Article 29 will be decisive for the Directive's practical impact in sectors like Vietnamese textiles.

The CS3D's effects on suppliers must nevertheless be assessed with nuance. Tran and Nørlund show that Vietnam's textile and garment integration into GVCs has rested on low-skilled, cost-competitive assembly, with suppliers exposed to intense buyer pressure⁵⁹. Tran and Jeppesen similarly show that SMEs often absorb compliance costs imposed by multinational buyers

⁵⁵ James Harrison, 'Trade Agreements and Sustainability: Exploring the Potential of Global Value Chain (GVC) Obligations' (2023) 26 *Journal of International Economic Law* 199.

⁵⁶ O'Brien and Ford (n 21).

⁵⁷ Tenreira (n 46).

⁵⁸ Vogt and Subasinghe (n 43).

⁵⁹ Tran and Nørlund (n 19).

without receiving adequate financial or technical support⁶⁰. CS3D compliance may therefore create upgrading opportunities for capable first-tier suppliers, but also exclude smaller subcontractors unable to bear these costs. Tran's work on minimum wage strikes further suggests that labour improvements in Vietnam have often resulted less from external normative frameworks than from worker mobilisation⁶¹. Reporting obligations and complaint mechanisms may strengthen bottom-up accountability, but only if workers and civil society actors retain sufficient autonomy to use them.

(c) Limits and Challenges

Despite its transformative potential, the CS3D remains vulnerable to four limits. First, variations in national transposition and supervisory capacity may produce uneven enforcement across the Union⁶². Second, the risk-based architecture leaves discretionary space that companies may use to minimise obligations, especially after the final text elevated severity thresholds and abandoned high-risk sector provisions⁶³. Third, companies may engage in strategic avoidance through sourcing restructuring, intermediary use or chain shortening. Fourth, Curran, Alford and Nadvi warn that the Omnibus process, reopened under industry pressure, may restrict due diligence to Tier 1 partners only, potentially reversing the compromise achieved by the original text⁶⁴. Finally, the Directive's market-based extraterritorial projection may generate sovereignty tensions with partner countries.

Beyond these practical limits lies a more fundamental difficulty. The tension between the CS3D and EU commercial policy is not only a political problem; it is also a legal one. Article 7 TFEU requires the Union to ensure consistency between its different policies, and Article 21(3) TEU extends this requirement to external action. Yet the Union pursues two opposing aims at once: through FTAs such as the EVFTA it promotes cost-driven liberalisation, while under the CS3D it requires companies to manage the supply-chain risks generated by that very competition.

This contradiction can be characterised as an *internal normative incoherence* of EU external economic governance — a divide between the Union's commercial competence (Article 207 TFEU) and its regulatory competence over corporate conduct (Articles 50 and 114 TFEU, the legal bases of the Directive). It cannot simply be resolved by interpretation: it reflects how EU external action is built, with its commercial and regulatory pillars developed in institutional isolation from one another. Three legal consequences follow.

First, the duty of consistency under Article 7 TFEU cannot be directly enforced before the Court of Justice: the Court treats it as a guiding objective rather than as a ground for annulling a measure. An FTA cannot, therefore, be challenged in court simply on the ground that it contradicts the CS3D. *Second*, the duty nonetheless has interpretive force. National courts applying the civil liability regime of Article 29 must, as far as possible, read 'appropriate measures' (Articles 8–10) in line with the labour standards already incorporated into Chapter 13 of the EVFTA. *Third*, a more demanding control remains available before ratification: under Article 218(11) TFEU, future trade agreements may be referred to the Court of Justice on the ground that their commercial provisions undermine the regulatory objectives of the CS3D — a procedurally narrow channel, but one capable of disciplining the negotiation of future FTAs. The CS3D therefore opens a process it cannot finish on its own. It turns corporate due diligence into binding law, but cannot, by its own force, restore the coherence of an EU external action whose commercial and regulatory branches remain institutionally separated.

⁶⁰ Tran and Jeppesen (n 20).

⁶¹ Tran (n 31).

⁶² Mastaki, Darondeau and Tariqui (n 41).

⁶³ Vogt and Subasinghe (n 43).

⁶⁴ Curran, Alford and Nadvi (n 22).

CONCLUSION

This article has examined whether the CS3D can overcome the limits of labour governance embedded in EU trade agreements, with particular reference to the EVFTA. The analysis has shown that these limits are not merely technical. FTAs bind public actors, while labour conditions are shaped within private production networks structured by corporate relationships⁶⁵.

The CS3D responds by imposing obligations on economic actors capable of influencing production conditions. It transforms corporate responsibility from voluntary compliance into enforceable legal obligation, supported by administrative supervision and civil liability. It therefore marks the transition from soft law to hard law in business and human rights⁶⁶. Companies become not only regulated subjects, but also vectors of regulation through their own chains of activities.

This reconfiguration does not render trade-based normativity obsolete. Trade agreements retain an important role in defining the substantive content of labour standards and structuring diplomatic engagement between states. Their function is nonetheless transformed: rather than serving as primary instruments of enforcement, they increasingly operate as normative frameworks informing the application of corporate due diligence obligations. The relationship between the two regimes is therefore best described as one of asymmetrical integration rather than substitution⁶⁷.

This reconfiguration also raises an extraterritoriality issue. The CS3D formally applies to companies within EU jurisdiction, but its effects extend to third-country production systems through what Bernard-Apéré terms *mediated extraterritoriality*⁶⁸ - the projection of EU standards through contractual cascades rather than direct legal command, a form distinct both from classical direct extraterritoriality and from the *territorial extension* described by Scott⁶⁹. This is consistent with Bradford's "Brussels Effect", whereby market access operates as a lever for regulatory diffusion⁷⁰. Its legitimacy rests on the fact that the Directive regulates companies connected to the EU market, not third States as such⁷¹.

The deeper tension, identified by Herranz-Surrallés, Damro and Eckert within the broader "geoeconomic turn" of EU regulatory power, is whether unilateral corporate due diligence crowds out genuine multilateral engagement rather than complementing it⁷². Harrison points toward a possible synthesis: the CS3D and multilateral labour governance need not be alternatives — they may function as stratified layers of a single regulatory architecture, provided the former does not offer importing states a reputational substitute for the latter⁷³. Whether that condition is met will depend on choices — institutional, judicial and political — that extend well beyond the text of the Directive itself⁷⁴.

⁶⁵ Barbu and others (n 12) 258–261.

⁶⁶ Tenreira (n 46).

⁶⁷ Harrison (n 55).

⁶⁸ Lise Bernard-Apéré, 'Une analyse contemporaine du principe d'extraterritorialité en droit de l'Union européenne et en droit international économique' (2024) 37(1) *Revue québécoise de droit international* 14.

⁶⁹ Joanne Scott, 'Extraterritoriality and Territorial Extension in EU Law' (2014) 62(1) *American Journal of Comparative Law* 87.

⁷⁰ Anu Bradford, 'The Brussels Effect' (2012) 107(1) *Northwestern University Law Review*.

⁷¹ Ruggie (n 3).

⁷² Anna Herranz-Surrallés, Chad Damro and Sandra Eckert, 'The Geoeconomic Turn of the Single European Market?' (2024) 62(4) *Journal of Common Market Studies* 919.

⁷³ Harrison (n 55).

⁷⁴ Iulianna Romanchyshyna, 'Tackling Labour Rights and Environmental Protection through Trade and Sustainable Development Chapters: The European Approach' in *Contestation and Polarization in Global Governance* (Edward Elgar Publishing 2021) 343.

This question, moreover, is inseparable from a wider regulatory pattern. Together with the Carbon Border Adjustment Mechanism (CBAM)⁷⁵, the EU Deforestation Regulation (EUDR)⁷⁶, the Forced Labour Regulation (2024), the Foreign Subsidies Regulation (FSR)⁷⁷ and the Corporate Sustainability Reporting Directive (CSRD)⁷⁸, the CS3D belongs to what Herranz-Surrallés *et al.* describe as the 'geoeconomic turn' of the Single Market — a coordinated projection of EU standards through market access conditionality. Yet this emerging regulatory architecture coexists, within the same external policy, with trade agreements that continue to liberalise on cost-competitive grounds. The contradiction analysed above is therefore not peculiar to the CS3D–EVFTA pairing: it is a recurrent feature of post-2020 EU external action, whose constitutional treatment — including its World Trade Organization (WTO) compatibility and its articulation with EU investment protection agreements — exceeds the scope of this article and warrants dedicated study elsewhere.

The position defended here is that this integration remains weakened by what may be qualified, as developed in Part III.3, as an *internal normative incoherence* of EU external economic action — a structural fragmentation between the Union's commercial competence (Article 207 TFEU) and its regulatory competence over corporate conduct (Articles 50 and 114 TFEU), in apparent tension with the consistency requirements of Articles 7 TFEU and 21(3) TEU. The CS3D requires companies to map, prevent and remediate adverse impacts linked to supply-chain practices, including pricing, delivery schedules and sourcing decisions. Yet EU trade policy, including agreements such as the EVFTA, continues to encourage cost competition and production flexibility. The Directive is therefore significant, but its transformative potential depends on the Union's willingness to reconcile its regulatory and commercial ambitions⁷⁹. The 2025 Omnibus simplification trajectory is the most visible manifestation of this incoherence: less than a year after adoption, the Directive's regulatory pillar is being trimmed in direct response to the commercial-policy pressures it was, in part, designed to discipline.

A further risk deserves explicit recognition: that of *social-washing*. By tethering compliance to a procedural architecture reviewable through risk maps, audits and disclosure, the Directive may shield EU lead firms behind formal conformity while transferring the operational and financial burden of vigilance upstream — typically onto Vietnamese SMEs whose capacity to absorb compliance costs is limited and whose bargaining position vis-à-vis European buyers remains structurally weak. The asymmetrical integration identified above risks, in this respect, exacerbating the very marginalisation it claims to address. From a Global South vantage point, the Directive's promise of accountability becomes substantive only insofar as it is matched by purchasing-practice obligations and shared-cost arrangements that prevent its transmutation into a procedural surcharge borne by those least equipped to carry it.

If this contradiction persists, mandatory due diligence may become less a tool of rights protection than a compliance architecture that legitimises existing asymmetries while shifting costs onto suppliers and affected communities.

Ultimately, the CS3D represents a meaningful step toward a model of labour governance better aligned with the realities of global production. But its effectiveness will depend on judicial and regulatory actors willing to operationalise it substantively, on national transposition choices

⁷⁵ Regulation (EU) 2023/956 of 10 May 2023 establishing a carbon border adjustment mechanism, OJ L 130, 16 May 2023, p. 52.

⁷⁶ EUDR — EU Deforestation Regulation. Regulation (EU) 2023/1115 of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation, OJ L 150, 9 June 2023, p. 206.

⁷⁷ Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market [2022] OJ L330/1.

⁷⁸ Directive (EU) 2022/2464 as regards corporate sustainability reporting [2022] OJ L322/15.

⁷⁹ Curran, Alford and Nadvi (n 22).

that resist the dilutions already visible in the final text, and — most fundamentally — on a coherence of European policy that the present institutional architecture does not yet guarantee.

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