table of contents

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Regulating Corporate Due Diligence: from Transnational Social Dialogue to EU Binding Rules (and Back?)

Summary: **1.** Global Trade and Working Conditions: Comprehensive Tools for Global Governance. **2.** Transnational Social Dialogue. **3.** Global Framework Agreements. **4.** Supporting Transnational Social Dialogue. **5.** The Due Diligence Regimes. **5.1.** Definition. **5.2.** Models. **6.** Claims under the French Duty of Vigilance Law. **6.1.** The Total Case. **6.2.** The Teleperformance Case. **7.** Proposal for EU Binding Regulation on Due Diligence. **8.** Concluding Remarks.

1. *Global Trade and Working Conditions: Comprehensive Tools for Global Governance*

To guarantee a basic core of fair working conditions in global value chains led by multinational enterprises (MNEs), an increasingly important number of instruments, of both public and private origin, has been implemented.

First of all, the "quasi" legal international Corporate Social Responsibility (CSR) norms[1] should be mentioned, which include UN Guiding Principles on Business and Human Resources of 2011; the OECD Guidelines for MNEs of 2011; and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of 2017 (last update).

As far as private regulation is concerned, either unilateral sources of CSR, such as codes of conduct and auditing scheme, or negotiated instruments, like Global Framework Agreements (GFAs) and social clauses in bilateral and multilateral Free Trade Agreements, have been developed.

[1] Ter Haar, *Corporate social responsibility in times of the COVID-19 pandemic*, in *Z Problematyki Prawa Pracy i Polityki Socjalnej*, T. 2(19). Katowice, 2021, (2), 1 ff.

As is well known, attempts to address labour rights violations and improve working conditions made by MNEs in their global supply chains through private regulation have not resulted in sustainable improvements in working conditions or advancements in workers' rights.

One of the reasons which can explain this lack of progress is the *opaque* nature of private regulation. In a recent study, the main weaknesses of private regulation have been identified in terms of: *behavioural invisibility*, which refers to the difficulty in observing and measuring the behaviour of actors since suppliers have a low incentive to disguise their non-compliance "pretend[ing] to be substantively compliant"; *practice multiplicity*, which signifies the diversity of practices adopted by actors across different geographic, institutional, economic and cultural contexts, which makes it difficult to identify and engage in compliant behaviour; and *causal complexity*, involving the difficulty in understanding what drives compliant behaviour and inhibits lead firms' ability to implement effective practices[2].

This essay aims to analyse the role of Transnational Social Dialogue and GFAs in enhancing working conditions in Global Supply Chains from the perspective of what synergies can be established among them and the other instruments of global governance of MNEs[3]. More precisely, it is worth considering in this respect the impact of the forthcoming EU legislative initiative on mandatory due diligence.

2. *Transnational Social Dialogue*

Developing an enhancing social dialogue at transnational level is highly recommended by the ILO, even more so since the Covid-19 pandemic has exposed the fragility of global supply chains and dramatically worsened the living conditions of miners, farmers, workers in the garment industry and

[2] Lowell Jackson, Burger, Judd, *Mapping Social Dialogue in Apparel,* Cornell University School of Industrial and Labor Relations & The Strategic Partnership for Garment Supply Chain Transformation, January 2021, pp. 3-4.

[3] On this topic in the most recent Italian debate see, at least: Brino, *Diritto del lavoro e catene globali del valore*, Giappichelli, 2020; Guarriello, Nogler, *Violazioni extraterritoriali dei diritti umani sul lavoro: un itinerario di ricerca tra rimedi nazionali e contrattazione collettiva transnazionale*, in *DLRI*, 2020, 2, p. 173 ff.; Borelli, Izzi, Speziale, *Quali responsabilità per l'impresa sostenibile?*, in *RGL*, 2021, I, p. 489 ff.

many others around the world. The ILO strategy for sustainable and equitable recovery is based on four pillars, which include social dialogue, since this consensus building mechanism of participation supports a human-centred response to the crisis[4].

However, there are major barriers that can prevent or hinder an impactful social dialogue, starting from diverse legal frameworks and several degrees of coordination among suppliers, unions, governments and other actors, shifting to industrial relations systems characterised by different structures of work organization not less than the peculiar habits of social dialogue and democratic interaction.

Therefore, the real added value of transnational collective bargaining can be found in the ability of union networks, under the aegis of Global Union Federations, to link the different levels of workers' representatives inside global companies. In particular, the involvement of local actors appears to be of fundamental relevance for the implementation of GFAs, in order to let them cover all workers along the supply chain.

3. *Global Framework Agreements*

GFAs represent the development of forms of bargaining coordination across national borders as a consequence of the social partners' role in redirecting the proliferating private corporate codes of conduct away from unilateral and discretionary forms of CSR towards global social dialogue and industrial relations.

Transnational collective agreements are based on voluntary and autonomous negotiation among social partners, as a legitimate exercise of the freedom of association and the right to collective bargaining enshrined in the ILO Conventions (n. 98/1949; n. 154/1981) and the EU Charter of Fundamental Rights (art. 28)[5].

The widespread use of these agreements relies on the existence of convenient reasons for the signatory parties to engage in negotiation. On

[4] ILO, *The role of social dialogue in formulating social protection responses to the COVID-19 crisis*, Social Protection Spotlights, 6 October 2020.

[5] According to their scope of application, Global Framework Agreements are usually classified as International Framework Agreements (IFAs) and European Framework Agreements (EFAs).

the MNEs' side, a major concern in this respect is linked to the willingness to gain social reputation by investing in trustworthy economic relations, or is a consequence of any kind of institutional pressure or legal obligation[6]. For trade unions, the conclusion of GFAs is intrinsically linked to forging solidarity links and facilitating unionization as well as linkages between trade union networks.

Most GFAs signed between an MNE and a global union, applicable in the global value chain, make reference to the ILO instruments – mainly those concerning fundamental principles and rights at work, such as Freedom of association/collective bargaining, non-discrimination, child labour, and forced labour. Less frequently they go beyond the core labour standard, dealing with wages and working time; health and safety; training, and restructuring.

Since the beginning of this century, a constant growth in the number of GFAs can be appreciated, but what is more, there is a qualitative evolution of the topics dealt with. According to a content analysis of 54 GFAs signed between 2009 and 2015, in comparison to prior agreements two trends are visible: an increasing number of GFAs – about 80 per cent – include a reference to the global supply chain, and an increasing number of MNEs – about 30 per cent – treat the respect of provisions in GFAs as a criterion for establishing and continuing business relations with suppliers and subcontractors. What these two trends suggest is a growing need for more effective social regulation in global supply chains, with respect to which GFAs and sound labour relations might represent an added value[7].

Some examples of best practice worth are mentioning. The *Inditex-IndustriALL* agreement makes reference to the entire supply chain when establishing the MNE's commitment to the enforcement of the International Labour Standard. All workers are concerned, "whether they are directly employed by Inditex or by its external manufactures or/and suppliers". The *ENI-IndustriALL* agreement foresees the potential termination of the contractual relationship with the company concerned in case of "any serious violations, also concerning health and safety of

[6] Giaconi, Giasanti, Varva, *The Value of "Social" Reputation: The Protection of MNE Workers from the Consumer's Perspective*, in *GJ*, 2021, available online: https://www.degruyter.com/document/doi/10.1515/gj-2020-0076/html.

[7] Hadwiger, *Global Framework Agreements. Achieving Decent Work in Global Supply Chains*, Geneva: ILO, 2016.

employees, regulations on protection of the environment or human rights, which are not eliminated". The *LUKOIL-IndustriALL* agreement provides for continuous consultation meetings, which may address the following topics: "LUKOIL's general corporate health, safety and environment policy that covers personnel of LUKOIL Group organizations and, where appropriate, personnel of organizations related to LUKOIL, including suppliers and subcontractors".

The main limit of GFAs concerns the nature of the commitments made and their scope. Such agreements ordinarily generate fiduciary obligations, which create a legitimate expectation of their application, without giving them the characteristic of enforcement. The efficacy of the clauses for each company of the group (and, therefore, in labour relations) is left mainly to the next stage of collective bargaining at national level or, from the employers' side, to the directives coming from the parent company to the subsidiaries.

Bargaining at trans-national level is a dynamic process, depending very much on the initiative of the actors. Thus, a fundamental role is played by the attitude of the home country towards industrial relations.

The involvement of Global/European Trade Union Federations is pursued as an essential guarantee of the implementation of the trans-national collective agreements by the subsidiaries because they can obtain a formal negotiating mandate from their national partners. Nevertheless, workers' representatives such as Global Work Councils or European Work Councils, being involved in discussing, challenging and influencing companies' strategies, can play a key role, especially in preparing and facilitating the negotiation.

National trade unions are only sometimes signatory parties; more often they benefit from TCAs as a means of spreading the positive gains achieved, especially in those countries where they are weaker.

Creating a synergy among all these actors is not an easy goal, even if building a solidarity strategy beyond borders appears to be helpful in protecting labour rights. Moreover, implementing TCAs could prevent social dumping inside the company group and along the supply chain.

4. *Supporting Transnational Social Dialogue*

Notwithstanding the limits described above, Global Framework Agreements are considered by the OECD and the ILO to be particularly suitable tools for strengthening the CSR processes in supply chains, creating a bond of trust between the various stakeholders.

This was the case, for example, in the clothing sector with the Agreement on Fire and Building Safety in Bangladesh in 2013 following the Rana Plaza tragedy, with the Honduras Labour Framework and with the Indonesia Freedom of Association Protocol, as well as with the IFAs signed by multinational companies Inditex and H&M with the international federation IndustriAll[8].

The ILO has confirmed the key role of social dialogue in formulating social protection responses to the Covid-19 crisis, joining the call for action made by International Organisation of Employers (IOE), International Trade Union Confederation (ITUC) and IndustriAll with the aim of supporting business continuity as well as the livelihoods of workers in the garment industry during this disruptive period[9].

On the contrary, the external support for Transnational Collective Bargaining by the European Union has seen a progressive decline. At the very beginning of its development, the increasingly central role of private actors as rule-makers in a multi-level system of governance was not hindered but actually endorsed by the European institutions[10].

According to the European Commission: "providing an optional framework for transnational collective bargaining at either enterprise level or sectoral level could support companies and sectors to handle challenges dealing with issues such as work organization, employment, working conditions, training. It will give the social partners a basis for increasing

[8] Guarriello, *Learning by doing: negotiating (without rules) in the global dimension*, in Guarriello, Stanzani (eds.), *Trade union and collective bargaining in multinationals*, Franco Angeli, 2018.

[9] In October 2021, the *Code of practice on health and safety in textiles, clothing, leather and footwear* was adopted to provide comprehensive and practical advice on how to eliminate, reduce and control all major hazards and risks. It is a milestone in these industries, which have been hit hard by the Covid-19 crisis.

[10] GFA *database* of EU Commission http://ec.europa.eu/social/main.jsp?catId=978 updated May 2019.

their capacity to act at transnational level. It will provide an innovative tool to adapt to changing circumstances, and provide cost-effective transnational responses"[11].

However, initiatives undertaken by the European Commission towards the introduction of an optional European framework[12] for transnational negotiations remained in the background, even as a complementary tool, considering that the EU Commission itself has shown a declining interest in the possibility of an EU regulation of TCAs.

From the perspective of protecting workers' rights in the global supply chain, the due diligence regimes have gained major attention at EU level. The European Commission has undertaken some preliminary steps, including publishing a study and conducting public consultations, towards a possible legislative initiative on mandatory due diligence. Its 2021 work programme includes a proposal for a directive on sustainable corporate governance that would also cover human rights and environmental due diligence. It has been planned as an essential part of the European Green Deal and the Covid-19 recovery package.

5. *The Due Diligence Regimes*

5.1. Definition

The concept of due diligence introduced by the United Nations Guiding Principles on Business and Human Rights and the ILO Tripartite declaration of Principles Concerning Multinational Enterprises and Social Policy, later incorporated into the OECD Guidelines for Multinational Enterprises, is the main reference in the current international context.

According to these documents due diligence processes must "identify, prevent, mitigate and account for" adverse corporate impacts on human rights and the environment, with an extension to other areas of responsible business conduct (UN Guiding Principle 2011, p. 17).

[11] Communication from the European Commission on the Social Agenda 2005-2010, available at eur-lex.europa.eu/LexUriserv/LexUriser.do?uri=COM:2005:33:FIN:EN:PDF.

[12] Ales, *Transnational collective agreements: the role of trade unions and employers' associations*, Comm. UE, DG Employment, March 2018, available at https://eu.eventscloud.com/-file_uploads/185fe09c1a16e079ad008e8927fc6c8a_Ales_Final_EN3.pdf.

The due diligence practice is based on risk management systems, which MNEs carry out to avoid causing or contributing to adverse impacts through their own activities and address such impacts when they occur, even when those impacts are directly linked to their operations, products or services by means of a business relationship (OECD Guidelines for MNE, Ch. 2- General policies, pp. 10-12).

For the purpose of achieving the aims identified by the international legal framework on MNCs' due diligence, this process should involve meaningful consultation with potentially affected groups and other relevant stakeholders, including workers' organisations, as appropriate to the size of the enterprise and the nature and context of the operation. The due diligence process "should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue as an ongoing process" (ILO Tripartite Declaration of Principles on MNE, General Policies, p. 10, lett. c, d, e).

5.2. Models

Businesses can play a major role in contributing to economic, environmental and social progress, especially when they minimise the adverse impacts of their operations, supply chains and other business relationships. In this respect, two broad approaches of due diligence for responsible business conduct have been identified: the *reporting* model, based on disclosure, typified by the *UK Modern Slavery Act*; and the *mandatory human rights due diligence* model, illustrated by the *French Duty of Vigilance Law*[13].

The *UK Modern Slavery Act* of 2015 was designed to tackle slavery and human trafficking through the consolidation of previous legislation and the introduction of new measures. According to the UK Government's issued guidance, any organisation in any part of a group structure will be required to comply with the Act provisions and produce a statement if it is: a body corporate or a partnership, wherever incorporated; carries on a business, or

[13] BRIGHT, *Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains*, in DELAUTRE, MANRIQUE, FENWICK (eds.), *Decent Work in Globalised Economy: Lessons from Public and Private Initiatives*, ILO: Geneva, Switzerland, 2021, p. 75 ff. Available online: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_771481.pdf.

part of a business, in the UK; supplies goods or services; has an annual turnover of £ 36,000,000 or more.

Any organisation must produce an annual statement setting out the steps it has taken to ensure there is no slavery in its business and supply chains. Among the required information, there is the effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against some performance indicators as considered appropriate. If no steps have been taken, it must be declared.

If a business fails to produce a slavery and human trafficking statement for a particular financial year, the Secretary of State may seek an injunction through the High Court requiring the organisation to comply. If the organisation fails to comply with the injunction, they will be in contempt of a court order, which is punishable by an unlimited fine[14].

The *French Duty of Vigilance Law* of 2017 was the first to require companies to establish a vigilance plan to identify and prevent violations[15]. Plans must cover their own activities and those of subcontractors and suppliers, with whom they maintain a commercial relationship. The legislation seeks to prevent large companies from hiding behind their status as buyers. It establishes liability between the parent company of a corporation and its subsidiaries and subcontractors in the event of human or environmental rights violations. In other words, it puts limits to the "corporate veil" doctrine, under which companies were always seen as a collection of separate legal entities, even in the case of parent companies and subsidiaries, and, as a consequence, a parent company could not be held liable for misbehaviour of the lower echelons of a production or services chain. The law imposes a duty of vigilance on large companies employing 5,000 employees in France, or 10,000 globally. As the law provides for civil remedies, it is the first to move from a *soft* to a *hard* law approach[16].

However, according to the findings of a survey of a dozen companies and an analysis of vigilance plans published in 2018 and 2019 to explore how companies internalise and operationalise their obligations, some authors have shown that the law leaves companies significant room to interpret the scope

[14] Https://www.gov.uk/government/collections/modern-slavery.

[15] Moreau (dir.), *Dossier "Le devoir de vigilance"*, in *DS*, 2017, p. 792 ff.

[16] Lyon Caen, *Verso un obbligo legale di vigilanza in capo alle imprese multinazionali?*, in *RGL*, 2018, 2, p. 240 ff. In the same vein, see the *Supply Chain Due Diligence Act* passed by the German Parliament on June 2021, which will come into force in 2023.

of their obligations[17]. Hence, companies tend to define risk management around their existing actions – rather than in terms of human rights outcomes – and the risk mapping they undertake varies widely. There is also only limited consultation with key stakeholders, including unions, in elaborating the plans[18].

6. *Claims under the French Duty of Vigilance Law*

The normative force of the law on the duty of vigilance also rests on a judicial dynamic. The following two cases show the lights and shadows of the due diligence approach, which should be taken into account by the EU legislator in the forthcoming directive.

6.1. The Total Case

A first legal action was brought by six French and Ugandan NGOs against Total on the basis of Article L.225-102-4-II of the Commercial Code. Non-governmental organizations denounced a project to exploit oil in Uganda in which Total was a shareholder, as well as the future 1,400 km pipeline that will transport crude from this landlocked country in Central Africa to Tanzania. The conditions for compensating displaced families were at the centre of their criticism. After putting Total on formal notice to comply with its duty of vigilance, non-governmental organizations took the company to court.

Two aspects require attention in this lawsuit. First, the judges considered that a French union has an interest in taking action when human rights and the environment are at stake. Then, on two occasions, the judges considered that the dispute falls within the competence of the commercial courts, the implementation of the duty of vigilance being qualified as "an act of management"[19].

[17] Cremers, Houwerzijl, *Subcontracting and Social Liability*, Tilburg University-ETUC, September 2021, pp. 17-18.

[18] Barraud de Lagerie *et al.*, *Mise en oeuvre de la loi sur le devoir de vigilance. Rapport sur les premiers plans adoptés par les entreprises*, HAL Id: hal-02819496, 6 June 2020, available online: https://hal.archives-ouvertes.fr/ hal-02819496.

[19] Court of Appeal of Versailles, December 2020.

However, according to the French jurisdiction, the duty of vigilance escaping the ordinary civil courts risks weakening the judicial basis of it and of retaining a reductive assessment of the duty of vigilance, which would be a simple obligation of means.

In such a legal liability regime, human rights due diligence could thus be considered as a ground for excluding corporate liability. Thus, the most widespread fear is that human rights due diligence could become a "shield" for the company, a sort of "safe harbour", which the company could use to exclude its responsibility for violations of the human rights rules accomplished within its value chain.

However, a teleological interpretation of the legal obligation would make it possible to see it as an obligation of reinforced means and would lead the judge to rule on the relevance of the preventive procedures put in place by the company in the vigilance plan.

6.2. The Teleperformance Case

Teleperformance is the Paris-based world's largest provider of outsourced customer service for clients like Apple, Facebook, Amazon and Google, with 331,000 employees in 80 countries. It is the second largest French employer outside of France and the majority of its workforce operates in countries with a high risk of labour rights violations.

In a complaint filed with the French government on 17 April 2020, a coalition of labour unions has called for immediate intervention to stop violations of workers' right to a safe workplace at Teleperformance. UNI Global Union filed the complaint along with its French union affiliates: CFDT Fédérationcommunication conseil culture, CGT-FAPT, CGT Fédération des Sociétés d'Etudes, and FO-FEC.

The complaint, delivered to the French OECD National Contact Point (NCP) in Paris, is the first-ever filed under the OECD Guidelines for Multinational Enterprises alleging workers' rights violations during the Covid-19 crisis. It documents unsanitary conditions, such as hundreds of workers having to sleep on crowded call centre floors and multiple employees sharing equipment such as headsets during the coronavirus crisis. The complaint also alleges retaliation against workers who organized for basic personal protections and dismissals of trade union leaders.

The issues are the company's compliance with local law, the duty of

vigilance, human rights, occupational health and safety, and the workers' freedom of association and collective bargaining.

In its defence, Teleperformance claimed that it has a code of ethics and a vigilance plan, is a member of the Global Compact, has very high extra-financial ratings, and was awarded a very good rating on 1 April 2020 by the Central Works Council for compliance with employee hygiene and safety standards at its worksites in Europe.

Nevertheless, in a 26 June 2020 statement, the French NCP decided to pursue the specific instance procedure and offer mediation to the parties.

One of the aims that Uni Global Union pursued through calling in the law of the duty of vigilance, on one side, and referring to the NCP for mediation and reconciliation, on the other, was to compel the multinational to consult with unions about the vigilance plan and open negotiations on an International Framework Agreement, which the company had refused to bargain in 2018.

Indeed, signing an agreement is a possible – even if not a necessary – outcome of the specific instance procedure. From this perspective, the OECD guidelines, as well as the French law on the duty of vigilance, may offer relevant support for opening or consolidating various forms of international social dialogue[20].

In August 2021, the French OECD National Contact Point issued recommendations for Teleperformance to better address workers' health and safety concerns, and to ensure the right of freedom of association of workers is respected throughout its global operations. These recommendations included strengthening due diligence processes and engagement with stakeholders.

7. *Proposal for EU Binding Regulation on Due Diligence*

On 10 March 2021 the EU Parliament adopted a recommendation for drawing up a Directive on Due Diligence and Corporate Accountability[21].

According to its expected intrinsic positive impact, such legislation

[20] DAUGAREILH, *Covid-19 and Workers' Rights: The Téléperformance Case*, in *ILRCL*, 2021, p. 129.

[21] P9_TA(2021)0073.

would provide for important advantages, in terms of creating a *level playing field* among all companies operating on the EU market; bringing legal clarity and establishing effective *enforcement and sanction* mechanisms, while possibly improving *access to remedy* for those affected, by establishing civil and legal liability for companies.

Drawing some lessons from the French experience, the draft Directive has adopted a procedural approach towards mandatory due diligence, consistent with the regulatory role the EU is willing and committed to play in the global scenario, according to the European Green Deal Strategy.

Under the proposed text, companies would be required to carry out due diligence "aimed at identifying, ceasing, preventing, mitigating, monitoring, disclosing, accounting for, addressing, and remediating" the risks related to the operations of their global supply chains. The covered risks are threefold: *human rights,* including social and labour rights; the *environment*, including climate change; and *good governance* (art. 3).

Rather than impose requirements on specific companies above a certain size, the EU law would bind companies across all sectors of economic activity and all firms that are either registered under the laws of an EU Member State, or that are registered outside the EU but nevertheless maintain operations within the single market.

For the purpose of this study, the more interesting provision is article 5, concerning the involvement and consultation of the stakeholders, including trade unions. More precisely, "Member States shall ensure that undertakings carry out in good faith effective, meaningful and informed consultations with stakeholders when establishing and implementing their due diligence strategy in a manner that is appropriate to their size and the nature and context of their operations, and shall guarantee, in particular, the right for trade unions at the relevant level to be involved in the establishment and implementation of the due diligence strategy in good faith with their undertaking" (par. 1). In addition to that (par. 5), workers or their representatives shall be informed and consulted on the due diligence strategy of their undertaking in accordance with all Directives on democracy at work (2002/14/EC; 2009/38/EC; 2001/86/EC). Finally, in case an undertaking "refuses to carry out consultations with stakeholders, fails to involve trade unions in good faith, or does not adequately inform and consult workers or their representatives", Member States shall ensure that stakeholders and trade unions may refer the matter to the competent national authority (par. 6).

8. *Concluding Remarks*

In light of the above, the EU is surely setting the stage for new legislation on supply chain due diligence[22], but the legislative process is going slowly[23]. The European Commission's proposal for a directive on sustainable corporate governance was originally expected in June, then should have been released in October 2021, but was postponed to 8 December and remains outstanding at the time of writing.

In the meantime, the Office of the UN High Commissioner for Human Rights (OHCHR)[24] issued Recommendations to the European Commission on 2 July 2021, in order to ensure alignment with the United Nations Guiding Principles on Business and Human Rights (UNGPs) in the Commission's forthcoming legislative proposal. The OHCHR note draws attention to some critical issues emerging from the European Parliament model legislation, which concern, among other aspects, stakeholders' engagement, companies' role of leverage in addressing risks, liability and enforcement mechanisms.

Regarding stakeholders, the OHCHR highlights that the European Parliament Proposal does not make any reference to the need to consult them when business enterprises "identify and assess" their adverse impacts, since stakeholder engagement is required only *after* the identification stage (Art. 4(2)). According to OHCHR, postponing the involvement of potentially affected stakeholders, which is necessary to understand their concern, can weaken the effectiveness of the law. More precisely, "this is particularly problematic as undertakings that conclude they have not caused or contributed to, and are not directly linked to, adverse impacts do not need to establish and implement a due diligence strategy".

Trade unions and workers' representatives shall be included among stakeholders according to art. 5 of the Draft Directive, which enforces their

[22] The most recent step in this direction is the new *Guidance on due diligence for EU companies to address the risk of forced labor in their operations and supply chains*, released on 12 July 2021 by the EU Commission and the European External Action Service (EEAS). The document builds upon the OECD due diligence framework as a best practice example, offering some good insights into the common indicators – *"red flags"* – of forced labour.

[23] See the ETUC criticism, available online https://www.etuc.org/en/time-act-human-rights-due-diligence-and-responsible-business-conduct.

[24] OHCHR is the UN agency responsible for leading the business and human rights agenda within the UN system.

participation to the due diligence process providing for all Directives on democracy at work shall apply. Organisational issues – such as risk management practices – have to be dealt with by workers' representatives, where they exist. Therefore, Global Work Councils and European Work Councils can open the floor to collective bargaining at transnational level, jointly with the unions, as a result of the information and consultation procedure on due diligence regimes. Trade unions' and worker representatives' roles can even be enhanced, acting for example as internal supervisors involved in shaping and monitoring the vigilance plan[25].

Indeed, mandatory human rights due diligence regimes may have a very important role to play as part of a "smart mix" of measures to effectively foster business respect for human rights. Taking into account the broader environmental, social, and governance concerns at EU level, the due diligence regulation needs to keep up. The effective enforcement of mandatory human rights and environmental due diligence legislation, when paired with strengthened social dialogue, would be conducive to a more equitable and sustainable industry in global supply chains[26].

[25] CLERC, *The French 'Duty of Vigilance' Law: Lessons for an EU directive on due diligence in multinational supply chains*, ETUI Policy Brief, No. 1/2021, p. 5. According to this proposal, "an internal 'vigilance committee' should be set up to prepare the vigilance plan and monitor its implementation. This committee should be independent by design and be provided with the appropriate legal and financial means to carry out its duties".

[26] JUDD, JACKSON, *Repeat, Regain, Renegotiate? The Post-COVID Future of the Apparel Industry*, Better Work Discussion Paper No. 43, July 2021, Geneva: ILO and IFC.

Abstract

The added value of EU mandatory regulation requiring companies to carry out due diligence on social and environmental risks in their operations and supply chains will be to overcome the insufficient voluntary approach, proposed by the international regulatory framework. As far as the involvement of workers' representatives and trade unions is expected to be fully recognised by the forthcoming Directive on Corporate Due Diligence and Corporate Accountability, the social dialogue practises foreseen by transnational collective agreements shall not be overlooked. The effective enforcement of mandatory human rights and environmental due diligence legislation, when paired with strengthened social dialogue, could be conducive to a more equitable and sustainable industry in global supply chains.

Keywords

Global supply chain, corporate social responsibility, transnational social dialogue, due diligence, EU directive proposal.