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**A Chance for Sustainable Development  
or an Unwanted Burden? Implementing  
the Due Diligence Directive in Poland\***

**Contents:** 1. Opening remarks. 2. Polish companies in European production and supply chains. 3. The law, collective bargaining, and policies. Implementing CSR standards in Poland. 4. Transposing the CS3D into the Polish legal system. Expectations, obstacles, potential impact. 5. Conclusions.

1. *Opening remarks*

Adopting Directive (EU) 2024/1760 of 13 June 2024 on corporate sustainability due diligence (CS3D) has boosted a discussion about due diligence standards<sup>1</sup> and their implementation by companies operating in the European Union<sup>2</sup>. The Member States (MSs) face the problem of transposing CS3D standards into their domestic legal systems. However, the transposition must be seen in a broader perspective. On the one hand, it is a step forward in creating a framework for sustainable development and fair dual transition, with corporate social responsibility (CSR) being part of it<sup>3</sup>. On the other

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<sup>1</sup> See e.g. RUGGIE, *Multinationals as global institution: Power, authority and relative autonomy*, in *R&G*, 2018, Vol. 12, 3, pp. 317–333.

<sup>2</sup> SCHILLING-VACAFLOR, LENSCHOW, *Hardening foreign corporate accountability through mandatory due diligence in the European Union? New trends and persisting challenges*, in *R&G*, 2023, Vol. 17, 3, pp. 677–693.

<sup>3</sup> Due diligence standards have been adopted by various international institutions. See e.g. United Nations Human Rights Council, *The Guiding Principles on Business and Human Rights*, <https://www.undp.org/sites/g/files/zskgke326/files/migration/in/UNGP-Brochure.pdf>; United

hand, national circumstances deserve appropriate consideration. Some MSs have already adopted certain due diligence standards<sup>4</sup>; in some, there are autonomous solutions negotiated by the national social partners, while in others, setting up a legal framework has already begun<sup>5</sup>. Differences reflect a diversity of European economies and a variety of collective bargaining systems<sup>6</sup>. Despite increasing convergence, there are still significant dissimilarities between the West and the East, including the Central and Eastern European countries that joined the European Union in 2004. The headquarters of multinational companies (MNCs) are situated mainly in Western and Northern Europe. Central and Eastern European countries are dominated by small and medium-sized enterprises (SMEs). In many cases, they are either subsidiaries or contractors of the multinationals. There are also significant differences as regards the position of social partners and the role of social dialogue, including collective bargaining (sectoral v. company-level negotiations, coverage level)<sup>7</sup>, as well as the participation of workers' representatives in business matters. These phenomena will affect both the importance of the directive and the way it is implemented in various MSs.

Poland, the largest economy in Central and Eastern Europe, can serve as an instructive example of the directive being transposed in a country that hosts subsidiaries rather than central management<sup>8</sup>, and where industrial re-

Nations, *The Corporate Responsibility to Protect Human Rights, An Interpretive Guide*, New York–Geneva, 2012, [https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf); OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>; OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, Paris: OECD Publishing, 2023, <https://doi.org/10.1787/81f92357-en>.

<sup>4</sup> GUSTAFSSON, SCHILLING–VACAFLOR, LENSCHOW, *Foreign corporate accountability: The contested institutionalization of mandatory due diligence in France and Germany*, in *R&G*, 2023, Vol. 17, 4, pp. 891–908.

<sup>5</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY REPUBLIC OF POLAND, *Corporate Sustainability Due Diligence Directive*, <https://www.gov.pl/web/fundusze-regiony/dyrektywa-w-sprawie-nalezytej-starannosci>.

<sup>6</sup> See e.g. LIUKKUNEN, *The Role of Collective Bargaining in Labour Law Regimes: A Global Approach*, in LIUKKUNEN (ed.), *The Role of Collective Bargaining in Labour Law Regimes. A Global Perspective*, Springer, 2019, pp. 1–64.

<sup>7</sup> T. MÜLLER, *Collective bargaining systems in Europe. Some stylised facts*, 2021, <https://www.uni-europa.org/old-uploads/2021/04/CB-Systems-in-Europe-EN.pdf>.

<sup>8</sup> EUROSTAT, *Structure of multinational enterprise groups in the EU*, 2024, [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Structure\\_of\\_multina-](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Structure_of_multina-)

lations are in a deep crisis<sup>9</sup>. A question arises about how these factors may influence the establishment of common CSR standards. The article begins by outlining the structural conditions for the functioning of Polish companies, including their potential and position in the activity chains, which can be crucial for implementing the CS3D. Next, the paper discusses statutory and autonomous measures adopted to implement the existing due diligence standards. Finally, the article considers what amendments, if any, will be required to comply with the obligations set out in the CS3D. Minimal source material is an issue. The discussion on implementing the CS3D in Poland has not begun yet. There are very few references to the topic. The government has not submitted any comprehensive drafts for future legislation. The author takes into account the position of the Polish government proposed while adopting the CS3D, other governments' statements, and documents adopted by the Corporate Social Responsibility Team that has been in operation since 2009. Regarding autonomous CSR standards, the results of two research projects, including interviews with social partners, have been considered<sup>10</sup>. A reference point is also the way of implementing other directives transposed into the Polish legal system in recent years, particularly those which set up standards of corporate responsibility, like Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (Whistleblower Directive, WD).

## 2. Polish companies in European production and supply chains

Three phenomena profoundly influenced the Polish economy and its structure: 1) their peripheral nature; 2) the legacy of communism, and 3) the neo-liberal agenda adopted during the first phase of the political and economic transformation (after 1989). Like some other Central and Eastern Eu-

tional\_enterprise\_groups\_in\_the\_EU; EUROSTAT, *Multinational enterprise groups in EU-EFTA countries by controlling country – experimental statistics*, 2024, [https://ec.europa.eu/eurostat/data-browser/product/page/EGR\\_MNE](https://ec.europa.eu/eurostat/data-browser/product/page/EGR_MNE).

<sup>9</sup> See e.g. KAHANCOVÁ, MROZOWICKI, ŠČEPANOVIĆ, *20 years after: perspectives on industrial relations in Central and Eastern Europe since EU enlargement*, in *Transfer Eur. Rev. Labour Res.*, 2024, Vol. 30, 1, pp. 3-14; PISARCZYK, *The Crisis of the Collective Bargaining System in Poland*, in *IJ-CLLIR*, 2019, Vol. 35, 1, pp. 57-77.

<sup>10</sup> MAĐRZYCKI, PISARCZYK, *Ekspertyza układy zbiorowe (Expert opinion on collective agreements)*, 2022, <https://www.gov.pl/web/dialog/krajowy-plan-odbudowy>.

ropean systems, the Polish economy was peripheral, far from economic and innovation centers<sup>11</sup>. For centuries, the main branch of the Polish economy was agriculture<sup>12</sup>. The adoption of modern technologies (from the steam engine to computer tools) has been delayed. Poland was a relatively poor and underdeveloped country where production was an ancillary branch of the economy. It was often an element of the economic structure with its center outside Poland. As a consequence of World War II, the communist regime was established. The communists took over full political power. The so-called socialist democracy was only a façade, while in reality, there was no room (especially in the first, Stalinist, period before 1956) for any independent activity. The communist government initiated the process of industrialization<sup>13</sup>. A centrally planned economy was established. Not only politically, but also economically, the system was dependent on the Soviet Union, which absorbed a large part of the Polish production. Specifically located investments (heavy industry) failed to develop the Polish economy sufficiently. In the 1970s, the government, perceived as more liberal, obtained large loans and licenses for producing various goods from the West. However, the investments were unsuccessful (obsolete or useless technologies). The Polish economy plunged into a deep crisis. Social discontent led to the suppression of the workers' movement ("Solidarno" [Polish Trade Union "Solidarity"]) through the introduction of martial law (1981)<sup>14</sup>. Throughout the 1980s, the Polish economy struggled with severe difficulties. The industry was inefficient, while the standard of living decreased. In 1989, when the systemic changes began, the Polish economy was on the verge of bankruptcy.

The new democratic government faced the need for deep economic and social reforms. A large number of unprofitable enterprises were privatized and subsequently taken over by Western capital<sup>15</sup>. Poland did not see a financial oligarchy form, as some countries in the region did. In principle, only the state retained control over some large enterprises. The Polish in-

<sup>11</sup> See e.g. LESZCZYŃSKI, *Ludowa historia Polski (People's history of Poland)*, W.A.B., 2020; KULIGOWSKI, *A history of Polish serfdom*, in *Czas Kultury*, 2016, <https://www.eurozine.com/a-history-of-polish-serfdom>.

<sup>12</sup> Relatively many people still live and work in rural areas.

<sup>13</sup> The main focus of investment was heavy industry.

<sup>14</sup> SEWERYŃSKI, *Polish labour law from communism to democracy*, Dom Wydawniczy ABC, 1999.

<sup>15</sup> BEREND, *Social shock in transforming Central and Eastern Europe*, in *Communist Post-Communist Stud.*, 2007, Vol. 40, 3, pp. 269–280.

dustry became part of the global production with its centers in the West. Car assembly plants and component production became Poland's hallmark. These activities depend on the capital center and are associated with a low margin. Polish companies are mainly dependent entities. They do not influence the actual decision-making processes, or this influence is negligible. For many years, Poland was also a country of cheap labour to encourage Western capital to invest in the country<sup>16</sup> (an escape can currently be observed to "cheaper" locations, such as Bulgaria, Romania, or outside Europe). Large companies controlled by the Polish capital are mainly state-owned companies<sup>17</sup>. The state has retained control over some sectors. The process of renationalization has also occurred in recent years<sup>18</sup>. Large state-owned companies are active in gas and oil production as well as in banking. Polish private companies are mainly SMEs. Their economic and technological potential does not allow them to compete with MNCs effectively. They naturally remain, or become, dependent entities. Polish companies are not major players on the global market. They do not build their position on the benefits of operating in countries with undeveloped employment standards. Therefore, the directive does not fundamentally affect their market situation<sup>19</sup>.

Despite significant economic growth and improvement in the financial landscape, it has not been possible to accumulate the capital that would permit a fundamental change in the position of Polish enterprises and an escape from the middle-income trap. For political reasons, the state has chosen an agenda of social transfers addressed to broad social groups<sup>20</sup>. The

<sup>16</sup> EUROSTAT, *Multinational enterprise groups in EU-EFTA countries by controlling country – experimental statistics*, 2024, [https://ec.europa.eu/eurostat/databrowser/product/page/-EGR\\_MNE](https://ec.europa.eu/eurostat/databrowser/product/page/-EGR_MNE).

<sup>17</sup> KRAWIEC, *1000 najwi kszych firm w Polsce. Powstał nowy ranking "Wprost" (1000 the largest companies in Poland. New rating by Wprost)*, in *Wprost*, <https://eff.wprost.pl/11837982/1000-najwiekszych-polskich-firm-wyprzedza-jeden-walmart-dwie-trzecie-pkb.html>.

<sup>18</sup> ÅSLUND, *The Biggest Problem in Post-Communist Transition: The Privatization of Large Enterprises*, CASE Working Papers 2021, 16 (140), [https://www.case-research.eu/files/?id\\_plik=6857](https://www.case-research.eu/files/?id_plik=6857).

<sup>19</sup> Eurostat, *Multinational enterprise groups in EU-EFTA countries by controlling country – experimental statistics*, 2024, [https://ec.europa.eu/eurostat/databrowser/product/page/EGR\\_MNE](https://ec.europa.eu/eurostat/databrowser/product/page/EGR_MNE).

<sup>20</sup> BECKER, *Governing neo-nationalism, trade unions and industrial relations: the cases of Hungary and Poland*, in *Transfer Eur. Rev. Labour Res.*, 2024, Vol. 39, 1, pp. 51–65; GYULAVÁRI, PISARCZYK, *Populist Reforms in Hungary and Poland: Same Song, Different Melodies*, in *IJCLIR*, 2023, Vol. 39, 1, pp. 49–70.

debate about investments and development strategies continues; yet, it is stifled by the need to implement populist promises. Nonetheless, the government has assumed that around 700 Polish companies may be covered by the obligations arising from the CS3D. The estimates do not cover the construction industry, which was not part of the original version of the project<sup>21</sup>. Still, the structure of the Polish market means that the directive will have the most significant indirect impact on SMEs that are part of the supply and/or production chains. The government has not yet presented any comprehensive data on the potential impact of the directive on the SME sector.

At the same time, the implementation process will be affected by the position of the social partners and the quality of industrial relations. The quality of industrial relations is crucial for establishing and efficiently operating CSR procedures. Unfortunately, industrial relations in Poland, i.e., collective bargaining and information and consultation procedures, are facing a deep crisis. The prerequisite for the existence of cheap labour was a low level of wages and the lack of a collective bargaining system<sup>22</sup>. As a result, in Poland, like in most other CEECs, no comprehensive collective bargaining system covers large groups of workers. Sectoral collective agreements are almost non-existent. Collective bargaining focuses on the company level and covers a relatively small group of workers (up to 20 per cent)<sup>23</sup>. Workers' councils, although set up to implement Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community, are also niche, with minimal competencies. Information exchange and social dialogue take place only in certain areas and to a limited extent. Moreover, industrial relations have not been supported by the state. Even at the time when a shift from neo-liberal to social policy occurred, the state often chose a direct intervention in economic and social matters (leg-

<sup>21</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY OF THE REPUBLIC OF POLAND, *Opinion of the Polish Government to the draft directive on corporate sustainability due diligence*, <https://www.gov.pl/web/fundusze-regiony/dyrektywa-w-sprawie-nalezytej-starannosci>. The first opinion was submitted in 2022 and then modified (2024) after the draft directive had been amended.

<sup>22</sup> See e.g. EUROFOUND, *Collective bargaining coverage*, 2022, <https://www.eurofound.europa.eu/en/european-industrial-relations-dictionary/collective-bargaining-coverage>; KAHANCOVÁ, MROZOWICKI, ŠČEPANOVIĆ, *cit.*, pp. 3–14.

<sup>23</sup> MAŁDZYCKI, PIŚARCZYK, *cit.*

islative changes, social transfers)<sup>24</sup>. As a result, no widespread or efficient mechanisms can be used to implement the CS3D.

### 3. *The law, collective bargaining, and policies. Implementing CSR standards in Poland*

The Polish government has declared that it will be involved in implementing CSR standards. On the one hand, companies, including MNCs, benefit from globalization and technological development. On the other hand, their activities may affect human rights and the natural environment<sup>25</sup>. This is particularly true for regions like CEECs, where MNCs dominate local markets and transfer profits abroad<sup>26</sup>. Although local communities contribute to generated profits, they receive insufficient benefits in return. Therefore, the Polish government expects MNCs to conduct their activities and adopt business models that consider sustainable development issues and the recommendations of international organizations in this area. The government stresses that CSR is not an issue of promoting philanthropy or sponsorship, but economic and social justice<sup>27</sup>. In particular, workers' interests and needs should be considered. Workers should participate in the benefits they help create. CSR means respecting and implementing decent working conditions. It means increasing wages, improving other working conditions, and, particularly in Poland, not abusing atypical forms of employment, including non-employee status.

It should be assumed that the position of MNCs in various countries will determine the method of implementing CSR standards. In Poland, MNCs play an essential role as investors and employers. They import new technologies and introduce new methods of organizing work. Moreover,

<sup>24</sup> BECKER, *cit.*, pp. 51–65; GYULAVÁRI, PISARCZYK, *Populist Reforms in Hungary and Poland: Same Song, Different Melodies*, in *IJCLLIR*, 2023, Vol. 39, 1, pp. 49–70.

<sup>25</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY OF THE REPUBLIC OF POLAND, *cit.*

<sup>26</sup> EUROSTAT, *Multinational enterprise groups in EU-EFTA countries by controlling country – experimental statistics*, 2024, [https://ec.europa.eu/eurostat/databrowser/product/page/-/EGR\\_MNE](https://ec.europa.eu/eurostat/databrowser/product/page/-/EGR_MNE).

<sup>27</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY OF THE REPUBLIC OF POLAND, *cit.*

these entities are supported not only by capital but also by the political environment. In the past, specific legislative initiatives were challenged by the US administration<sup>28</sup>. The state cares about capital, technology, jobs, and good relations with the countries where the central management of MNCs is located. On the one hand, MNCs' import standards and corporate values that can improve employment conditions, bring them closer to the Western level, and revive relations with organized labour. On the other hand, investing in Poland was to reduce production costs. An increase in these costs will encourage the search for different locations. Due to financial and political influence and fear of negative social consequences (closing down plants, collective redundancies), the state will be very cautious in implementing CSR standards. It should be expected that they will be enforced to the minimum extent necessary, considering investors' interests. Therefore, it has become increasingly clear that some CEECs refrain from adopting radical measures (e.g., tax measures) towards MNCs due to political, economic, and legal reasons. Despite the political declarations, the solutions adopted so far do not align with the strategy of a just transformation that considers the interests of not only companies but also their stakeholders. Sustainable development is difficult to reconcile with current economic and financial interests, particularly in markets where MNCs hold a significant dominance over other participants.

So far, the government's efforts to promote CSR have included the dissemination of international standards for responsible business conduct developed by the OECD, the UN, the ILO, the EU, and the Council of Europe, as well as the dissemination of knowledge and information on non-financial reporting and responsible supply chains<sup>29</sup>. The government has also established a special platform for dialogue with stakeholders in due diligence: the Team for Sustainable Development and Corporate Social Responsibility (the Team), which has been operating since 2009<sup>30</sup>. It comprises representatives of the government administration, employers' organizations, trade unions,

<sup>28</sup> <https://www.politico.eu/article/polands-government-takes-aim-at-us-owned-broadcaster/>, accessed 1 June 2025.

<sup>29</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY OF THE REPUBLIC OF POLAND, *dit.*

<sup>30</sup> The operation of the Team is based on the regulation of the Minister of Investment and Development of 10 May 2018. The Team is an auxiliary body of the Minister of Development Funds and Regional Policy.



industry and sector associations, NGOs, and academics. Nearly 70 institutions and organizations participate in the Team's work. The Team's primary objective is to create a space for dialogue and exchange of experiences between public administration and various stakeholders in developing CSR practices in the Polish market<sup>31</sup>. The Team's role is to promote solidarity and find a balance between the competitiveness of the economy, care for the natural environment, and quality of life. The Team recommends implementing the Strategy for Responsible Development to achieve these goals. The Team's tasks are carried out within specialized working groups<sup>32</sup>. The Team offers open membership in the working groups for institutions and organizations (like NGOs). Working groups are expected to develop proposals for specific market instruments and tools to support enterprises and other organizations in implementing social responsibility practices and due diligence policies, making it possible to conduct daily business operations<sup>33</sup>. The public administration effectively supports the implementation of tools and instruments developed by working groups. On the one hand, the importance of the Team should not be underestimated. On the other hand, its influence on the promotion and implementation of due diligence standards is limited. Its recommendations are not binding. There is no data on the impact of the Team's recommendations on companies' operations, strategies, or adopted policies.

The Polish law, unlike some other legal systems<sup>34</sup>, does not establish a system of guarantees and obligations in the field of CSR. Despite a number of specific standards or requirements that could be classified as implementing CSR standards, there is no comprehensive statutory model that could be confronted with the requirements under the CS3D.

The role of collective bargaining in developing CSR has also remained limited. The first reason is the approach of Polish trade unions. Some union members have regarded the idea as pure propaganda imported from the West

<sup>31</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY OF THE REPUBLIC OF POLAND, *cit.*

<sup>32</sup> Working group for consumer issues; Working group for innovation for sustainable development and CSR; Working group for social responsibility of universities; Working group for social responsibility of administration; Working group for relations with persons providing employment.

<sup>33</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY OF THE REPUBLIC OF POLAND, *cit.*

<sup>34</sup> GUSTAFSSON, SCHILLING-VACAFLOR, LENSCHOW, *cit.*, pp. 891–908.

and used instrumentally by companies. They have not believed in the positive impact of such strategies. Due to the state of social and economic development, CSR issues are sometimes perceived as incidental. Consequently, trade unions have not treated CSR matters as a strategic priority<sup>35</sup>. Secondly, negotiating CSR cannot develop due to the weakness of industrial relations. In Poland, collective agreements that could establish common standards across industries or sectors hardly exist. As revealed by the research, CSR matters are rarely addressed in company-level agreements. Workers' representatives concentrate on a traditional bargaining agenda covering wages, other work-related benefits, OHS, and working time. Employers are reluctant to develop CSR standards so as not to impede their market position (due to the lack of multi-company agreements, companies compete on labour costs). As a result, social responsibility matters are not addressed at all or are regulated only partially. The adopted solutions usually do not meet the conditions stipulated for enterprises in the directive.

Moreover, company-level collective agreements cover only around 15–20 per cent<sup>36</sup>. Collective agreements have been concluded in specific sectors and companies (e.g., state-owned companies). It fundamentally limits the role of collective bargaining as a tool to establish CSR strategies. CSR standards, if adopted, are usually issued unilaterally by companies as codes of conduct or policies. In the case of Polish subsidiaries, the documents are typically issued by central management outside Poland. Although sometimes adjusted to local conditions, they predominantly respect the interests of MNCs.

This fundamentally differs from the situation in Poland and countries where organized labour can take the initiative in actions for sustainable development. Given the weakness and passivity of trade unions in Poland, the state will dominate the implementation process. As a result, the implementation model will depend on the current political configuration. In recent years, the state has taken initiatives to promote collective bargaining. This results from the implementation of milestones within the National Recovery Plan and the implementation of the directive (regardless of its future until the Court rules on the complaint and the Advocate General issues an opin-

<sup>35</sup> REES, PREUSS, GOLD, *European trade unions and CSR: common dilemmas, different responses*, Routledge, 2015, p. 9.

<sup>36</sup> MAŁDRZYCKI, PIŚARCZYK, *cit.*

ion). The government has presented a reform proposal. However, they are conservative and will not lead to a fundamental change in socio-economic relations. We should not expect a significant intensification of collective bargaining either. The participation of social partners in sustainable transformation will therefore depend on their adoption of appropriate strategies and determination to implement them. The experience of social dialogue practice in recent years does not provide grounds to expect a significant influence of trade unions in implementing CSR standards. The level of influence may be political relations and attempts to influence the government. The situation may change if the government adopts new legislation promoting collective bargaining. Trade unions may also be involved in other actions and campaigns supporting sustainable development, e.g., in collaboration with NGOs<sup>37</sup>.

Theoretically, transnational collective agreements (TCAs) concluded between the central management of MNCs and workers' representatives<sup>38</sup> could also play a role in implementing CSR standards about subsidiaries (including Polish subsidiaries)<sup>39</sup>. In the past, TCAs were perceived as an opportunity to promote employment conditions and, as a result, more sustainable development in the social area. Their practical importance remained, however, limited. Moreover, the idea of cross-border collective bargaining has significantly slowed down. In particular, the European Commission and social partners have temporarily abandoned adopting a voluntary legal framework for TCAs. The idea was challenged by companies, which maintained that cross-border collective bargaining should remain an element of autonomous relations between social partners. However, the lack of a legal framework that facilitates negotiations and supports resolving potential disputes is perceived as an obstacle to strengthening transnational social dialogue. An analysis of the agreements covering Polish companies reveals rather limited participation in due diligence matters. Environmental issues are not addressed at all. Social matters constitute the core of the agreements. Nev-

<sup>37</sup> REES, PREUSS, GOLD, *cit.*, p. 14.

<sup>38</sup> See e.g. SCHÖMANN, *Transnational Company Agreements: towards an internationalisation of industrial relations*, in *Transnat. Coll. Barg. Co. Level*, European Trade Union Confederation, 2012, pp. 197-217; SCIARRA et al., *Towards a legal framework for Transnational Company Agreements*, European Trade Union Confederation, 2014; TER HAAR, *The EU and transnational company agreements*, in TER HAAR, KUN (eds.), *EU collective labour law*, Edward Elgar Publishing, pp. 275-291.

<sup>39</sup> TER HAAR, *Transnational Company Agreements: Past, present and future. A play in three acts*, <https://global-workplace-law-and-policy.kluwerlawonline.com/author/berlyterhaart/>.

ertheless, the practical importance is limited. First, it is because of developed statutory standards. Second, the involvement of Polish social partners in adopting TCAs is usually marginal. Third, communication problems between central management and subsidiaries have been reported. Fourth, Polish law does not recognize TCAs as normative agreements (sources). In order to be binding for the companies, they must be implemented by national laws<sup>40</sup>. However, Polish employers, searching for greater flexibility, are usually reluctant to implement standards that increase their obligations<sup>41</sup>. As a result, implementing TCA standards, including those which could be qualified as CSR standards and extending the already existing statutory standards, is relatively rare. Fifth (and maybe the most important), TCAs usually do not deal with pay issues, while differences in remuneration are among the key factors differentiating the position of workers in various regions. Sixth, the number of Polish companies covered by cross-border standards remained relatively low. To summarize, the role of TCAs as an emanation of CSR and an instrument of sustainable development in the social area has remained relatively limited.

In Poland, there are neither statutory nor autonomous standards that would meet the directive's requirements. The system is coordinated mainly by soft law instruments. As a result, CSR standards are diversified and fragmented.

#### 4. *Transposing the CS3D into the Polish legal system. Expectations, obstacles, potential impact*

Due to the lack of a sufficient legal framework, the transposition of the CS3D into national law will require the development of new regulations in the national legal system. However, there is currently no work underway on the implementation. The government has not presented any proposals or even an outline of the future implementation. Due to the directive's content, the government must prepare the draft law. The social partners will participate in the legislative work. Representative trade unions and representative

<sup>40</sup> BOGUSKA, *Europejskie układy ramowe* (European framework agreements), PhD thesis, Warszawa 2022.

<sup>41</sup> MAŁDRZYCKI, PISARCZYK, *cit.*

employer organizations will be able to present their position. The topic will also be discussed within the Social Dialogue Council<sup>42</sup>. Taking into account the experience with implementing other recently adopted directives<sup>43</sup>, it should be expected that implementation will occur no earlier than the end of the period provided for the Member States.

The government has expressed specific predictions and expectations regarding the effects of the implementation. They may imply the main directions of the future draft. First, the government expects the implementation to entail a change in the attitudes of entrepreneurs and other stakeholders. Due diligence procedures will require companies to adopt detailed documentation covering human rights and environmental policies. The ultimate aim is a modern business model heading towards a sustainable economy and assuming proper relations between economic growth, environmental care, and quality of life. Companies will be expected to adopt procedures to prevent violations of human rights in the activities of enterprises, promote a responsible approach to the business, and emphasize their role as leaders not only in the pursuit of profits, but also in the proper approach towards employees, customers, subcontractors, and natural resources alike<sup>44</sup>. This opinion is interesting since Poland has been skeptical about European climate policy and the Green Deal<sup>45</sup>. Much greater emphasis has been placed on the need to protect, for example, workers' rights (as an element of a new social policy). The government does not recognize the potential impact of implementing the directive on the competitiveness of Polish companies. However, this may decrease with the unification of protection standards within supply chains (production). The government expresses disappointment due to the lack of guarantees concerning freedom of association and the right to strike. Moreover, the government expects companies to be more aware of and familiar with other documents of so-

<sup>42</sup> See e.g. HAJN, MITRUS, *Poland*, in BLANPAIN R. (ed.), *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, Kluwer Law International, 2016; BARAN, *Outline of the Polish Labour Law System*, Wolters Kluwer, 2016.

<sup>43</sup> For instance, the WD was implemented in 2024 – two years after the implementation deadline expired.

<sup>44</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY OF THE REPUBLIC OF POLAND, *dit*.

<sup>45</sup> See e.g. ARAK, *Why Poland can't and won't hit 2050 EU Green Deal target*, Polish Economic Institute, <https://pie.net.pl/en/why-poland-cant-and-wont-hit-2050-eu-green-deal-target/>.

called soft international law, such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. As a result, the implemented standards are expected to reduce the risk of discrimination or other human rights violations resulting from the enterprise's activities and reduce the risk of adverse impact of business on the natural environment. At the same time, the government declares its support for solutions that do not increase expenditure or reduce the revenues of public finance sector entities, including the state budget<sup>46</sup>. It can be interpreted as a declaration to avoid solutions expanding the obligations and costs borne by Polish companies. CSR standards may be perceived mainly as improving the position of Polish stakeholders whose participation in the development is insufficient. The experience with transposing other recently adopted EU directives also allows us to make certain assumptions regarding the implementation technique. So far, Polish legislators have usually chosen the literal transposition of EU standards. This happened even in areas where legislation existed and EU standards could be incorporated into the existing solutions. Literal transposition took place all the more when national law did not regulate a given area. This is also the case with the WD, where no statutory standards of whistleblower protection have existed so far. Therefore, a literal transposition technique should be expected. The personal scope of the future regulation will be affected by rules indicating the State that is competent to regulate matters covered by the CS3D<sup>47</sup>. The law will apply directly to a relatively small group of companies covered by the CS3D, with their registered offices in Poland. It is unlikely that Poland will extend the application scope to smaller companies. It would mean expanding the obligations of Polish entrepreneurs, who seek more flexibility in order to remain competitive with MNCs. As a result, one can expect that the application standards arising from the CS3D will be copied.

<sup>46</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY OF THE REPUBLIC OF POLAND, *cit.*

<sup>47</sup> As regards the companies referred to in paragraph 1, the Member State competent to regulate matters covered by this Directive shall be the Member State in which the company has its registered office (Art. 2.6 CS3D). As regards a company as referred to in par. 2, the Member State competent to regulate matters covered by this Directive shall be the Member State in which that company has a branch. If a company does not have a branch in any Member State, or has branches located in different Member States, the Member State competent to regulate matters covered by this Directive shall be that in which that company generated the highest net turnover in the Union in the financial year preceding the last financial year (Art. 2.7 CS3D).

Paradoxically, for numerous Polish companies, implementing the CS3D may turn out to be crucial. It will affect their market position, including their ability to compete. Although the CS3D does not apply to SMEs directly, implementing standards may have a significant impact on SMEs in large enterprises' supply/production chains<sup>48</sup>. Most SMEs currently do not have the appropriate systems and procedures to meet the draft directive's requirements. There is no way that large enterprises will transfer their due diligence obligations to SMEs as suppliers. Hence, it will be necessary to consider solutions to mitigate potential negative consequences for SMEs when implementing the provisions of the directive, among others, in the scope of accompanying measures that MSs will have to implement<sup>49</sup>. At the same time, other MS, where the headquarters of TNCs are situated, may adopt solutions affecting Polish subsidiaries in a way that would be positive or negative for them. For instance, MSs may allow parent companies to fulfil the obligations set out in Articles 7 to 11 and Article 22 on behalf of companies which are subsidiaries of those parent companies and fall under the scope of the CS3D (Article 6 CS3D). Companies may be required to take appropriate measures to identify and assess actual and potential adverse impacts arising not only from their operations but also those of their subsidiaries and, where related to their chains of activities, those of their business partners (Article 8.1). Moreover, Polish entities and workers may benefit from meaningful stakeholder engagement (Article 13). At the same time, Polish subsidiaries may be affected by complaints (Article 14) and monitoring (Article 15) procedures established in other MSs for parent companies and dependent units. Although Polish enterprises will not be directly subject to the application of foreign regulations, they may be affected by the results of policies adopted by central management and implemented using corporate instruments. Polish companies may be obliged to adapt their policies within supply/production chains<sup>50</sup>. At the same time, it

<sup>48</sup> Fundacja Instytut Przedsí biorczo ci Społecznej (Foundation Institute of Social Entrepreneurship), *Dyrektywa w sprawie nale ytej staranno ci przedsí biorstw w zakresie zrównowa onego rozwoju (CSDDD) – Nowe wyzwania i obowi zki* (Corporate Sustainability Due Diligence Directive (CSDDD) – New challenges and obligations), <https://fips.pl/dyrektywa-w-sprawie-nalezytej-starannosci-przedsiębiorstw-w-zakresie-zrównowazonego-rozwoju-csddd-nowe-wyzwania-i-obowiązki/>.

<sup>49</sup> MINISTRY OF DEVELOPMENT FUNDS AND REGIONAL POLICY OF THE REPUBLIC OF POLAND, *cit.*

<sup>50</sup> MODZELEWSKA, *Niedługo nowe obowi zki dla firm. Wa na dyrektywa nadchodzi* (New obligations for companies soon. An important directive is coming), in *Money.pl*,

is expected that the implementation of the directive will standardize the relations of Polish companies with German or French companies, which have so far been subject to different due diligence standards<sup>51</sup>.

The future Polish draft will probably start by defining the main concepts using the definitions laid down in Article 3 CS3D. As confirmed by previous implementations, a literal transposition should be expected. It is also reasonable to expect that the draft will oblige companies that conduct risk-based human rights and environmental due diligence by, among others, integrating due diligence into their policies and risk management systems (Article 7); identifying and assessing actual or potential adverse impacts (Article 8); (where necessary) prioritizing actual and potential adverse impacts (Article 9); preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimizing their extent (Articles 10 and 11); providing remediation for actual adverse impacts (Article 12); carrying out meaningful engagement with stakeholders (Article 13); establishing and maintaining a notification mechanism and a complaints procedure (Article 14); monitoring the effectiveness of their due diligence policy and measures (Article 15); publicly communicating on due diligence (Article 16). There are, however, some matters where the transposition will require considering national conditions. An important example is the workers' representation model. Due diligence policies will be established after consultations with the company's employees and representatives. Poland has no comprehensive representation system by works councils or other elected bodies. The legislator usually prioritizes trade unions. This has been evidenced by the implementation of other recently adopted EU directives. While implementing the WD, the Polish legislator provided that a legal entity should establish an internal reporting procedure after consultation with: 1) the company trade union or company trade unions if more than one company trade union operates in the legal entity, or 2) representatives of persons performing work for the legal entity, elected in the manner adopted in the legal entity, if no company trade union operates in it (no involvement of works councils has been provided for). Considering the existing model of workers' representation, such a way of implementation also seems likely in the case of due diligence procedures.

<https://www.money.pl/gospodarka/wazna-dyrektywa-ktora-wplywa-na-biznesy-co-trzeba-oniej-wiedziec-7074933063928576a.html>.

<sup>51</sup> *Fundacja Instytut Przedsí biorczo ci Społecznej*, cit.



The policies' required content will probably be a copy of Article 7.3 CS3D. Another problem is a narrow definition of an employee and the lack of an efficient mechanism to requalify civil law contracts into employment contracts. As a result, many workers working in an employee-like model do not enjoy the employee status<sup>52</sup>. Consequently, they can be deprived of protection under the CS3D. Although the directive does not define the employee concept, Polish standards may be considered insufficient in the light of CJEU judgments defining workers (employees). The problem could be solved by adopting a presumption of the employment relationship, which is considered to implement Directive (EU) 2024/2831 on improving working conditions in platform work (Platform Work Directive, PWD). No proposals on publishing annual company statements (Article 16) have yet been submitted. The government has not launched any website or portal to provide information and support to companies, their business partners, and stakeholders (Article 20). Another issue concerns the supervisory authorities to supervise compliance with the obligations laid down in the provisions of the implementation of Articles 7 to 16 and Article 22 of the CS3D (Article 24), which will be adopted in Poland. A possible choice will be between the Ombudsman and one of the central administration governmental bodies (ministers). Since the supervisory authorities are obliged, among others, to deal with substantial concerns submitted by natural and legal persons, it would be reasonable to recommend the Ombudsman, who is independent in public administration and whose main task is to protect fundamental rights. According to regulations implementing the WD, the Ombudsman was recognized as a competent authority for external reporting. Regarding penalties for non-compliance with due diligence duties, one can expect the imposition of financial fines that should be effective, proportionate, and dissuasive (Article 27). The draft may provide for administrative penalties by the CS3D. Polish law also provides for offences and criminal liability to strengthen the protection. At the same time, non-compliance with due diligence standards could be treated as a tort, which makes it possible to claim compensation for damage (Article 29). A person or entity that has inflicted damage to another person or entity by their fault shall be obliged to redress it (Article 415

<sup>52</sup> Compare EUROSTAT, *Self-employment: outline and latest developments*, Archive: Employment in detail – quarterly statistics – Statistics Explained – Eurostat. See also MITRUS, *Poland*, in WAAS, HIESSL, (eds), *Collective bargaining for self-employed workers in Europe*, Wolters Kluwer, pp. 199–216.

of the Civil Code)<sup>53</sup>. The concept of fault covers both willful misconduct and negligence. Negligence is understood as the lack of due diligence. In contractual relationships, due diligence means diligence which is generally required in the relations of a given kind (Article 355 § 1 of the Civil Code). Without a different statutory provision, the damage redress shall involve losses the injured party has suffered and profits it could have obtained, if no damage were inflicted (Article 361 § 2 of the Civil Code). It is, as a rule, consistent with CS3D standards.

Due to the crisis of collective relations, no serious hopes should be associated with autonomous implementation. This also applies to transnational collective bargaining, as previous experience prevents them from being seen as a real mechanism for implementing EU standards.

## 5. *Conclusions*

The current state of due diligence regulations in Poland means that the transposition of the CS3D will require the creation of a new, comprehensive legal framework. Due to the subject of the regulation, a separate act regulating this issue should be expected. By reason of the structure of Polish enterprises, the new regulation has not aroused much interest for now. As a result, it should be expected that the government will propose a kind of 'literal' implementation by directly transposing the standards resulting from the directive into national law. The opposition of the social partners, in particular employers, may focus on the new obligations. The strong position of MNCs and, as a result, the government's fear of adopting solutions that could provoke their protests or even withdrawal from the Polish market may be necessary for the implementation method. At the same time, economic interests should not prevail over workers' rights. Probable models of solutions can be sought in the existing implementing regulations. There should not be much hope for autonomous implementation by the social partners. At the same time, solutions adopted in the countries where the headquarters are located may interest Polish companies.

<sup>53</sup> English translation of the Civil Code: LEX, Wolters Kluwer, <https://sip.lex.pl/#/act-translation/1459620615>.

## **Abstract**

The article presents the challenges of implementing Directive (EU) 2024/1760 on corporate sustainability due diligence (CS3D) in Poland. It highlights structural constraints of the Polish economy, including Poland's peripheral economic position, the predominance of SMEs, and the structural weakness of collective bargaining institutions that hinder the effective adoption of CSR standards. The authors argue that the Polish transposition of the CS3D is likely to be "literal", replicating the EU provisions with minimal obligations and narrow applicability, partly due to the strong position of multinational corporations (MNCs) and the government's fear of adopting solutions that would provoke their protest. Nevertheless, the directive may indirectly affect SMEs involved in the supply chains of larger companies. The article critically assesses the absence of binding CSR obligations and the limited role of autonomous implementation mechanisms, such as collective agreements or transnational company agreements (TCAs). Poland's current state of due diligence regulations will require a new comprehensive legal framework. The analysis contributes to the broader debate on sustainable development and the CS3D implementation in Central and Eastern Europe.

## **Keywords**

Corporate Sustainability Due Diligence, CS3D, Corporate Social Responsibility.

