

IASP-AIPS

DP-14/2025 Corporate obligations and civil liability under the directive on due diligence in transnational organizations

Leonida Gragnoli[1]

Index

1. *The cross - border activity of companies and the effects on the protection of workers' rights and the environment*. 2. *The recent corporate sustainability due diligence directive and the liability model introduced*. 3. *The duty of due diligence in European Union law.* 4. *Corporate liability in the new directive*. 5. *The so-called ‖means"obligations and the degree of due diligence in the supervisory activity according to the new European regulation*.

[1] PhD student in Civil Law, Università degli studi di Bologna, Italy.

1. ***The cross - border activity of companies and the effects on the protection of workers and the environment[2].***

Directive 2024/1760/EU of 13 June 2024 of the European Parliament and of the Council aims at defining uniform obligations for companies in the so - called due diligence procedure with regard to the protection of the fundamental rights of workers and to the safeguard of the environment. This choice was induced by the contemporary economic context, in which Western companies prefer a production process characterised by an ever - increasing decentralisation[3], which involves operators in different States, both companies subject to the coordinating power of the parent one and enterprises linked by stable collaborative relationships[4], with coordinated activities conceived for the achievement of the final result. Such a frequent organisational model is facilitated by the combination of two factors; on the one hand, there is an openness to international trade and foreign investment in many Countries with a recent capitalistic culture, so that collaboration with European corporates takes place more easily and at a lower cost[5]. On the other hand, cross - border relationships are facilitated logistically by fast transport, especially if it does not significantly affect the final price.

There is a well - known dependence of many companies in States with a more fragile economy on the dominant ones, which are able to impose sometimes onerous conditions on the former, with a possible prejudice for the weaker subjects and, above all, with the danger of consequences on third parties[6], especially in the case of damage to the environment. Thus, a globally diffuse activity increases the risks, given the impossibility of ensuring for all stages of production a corresponding protection of fundamental rights[7]

---

[2] This essay purports to offer an analysis of the text of directive 2024 / 1760 / EU nowadays in force. While the essay was in draft form, the European Commission submitted the directive proposal 2025 / 81 / COM of 26 February 2025, which contains substantial amendments concerning the scope of due diligence obligations and the elimination of the unitary liability regime. This proposal will not be discussed here.

[3] Cf. I. DAUGAREILH, *Responsabilidad social de las empresas transnacionales: anàlisis crìtico y prospectiva jurìdica*, in *Cuad. rel. lab.*, 2009, 90 ff., and, by the same A., *La responsabilité sociale des entreprises, un projet européen en panne*, in *Soc. trav.*, 2009, 501 ff.

[4] See L. KANO, E. TSANG, H. WAI - CHUNG, *Global value chains: a review of the multidisciplinary literature*, in *Journ. int. bus. stud.*, 2020, 577 ff.; V. BORGHI, L. DORIGATTI, L. GRECO, *Il lavoro e le catene globali del valore*, Rome, 2017, 25 ss..

[5] See W. SANGUINETI RAYMOND, *Teorìa del derecho transnacional del trabajo*, Cizur Menor, 2022, 20 ff.

[6] With regard to the perception of public opinion in various European states about the events at *Rana Plaza*, see C. DOHMEN, *Lieferketten: Risiken globaler Arbeitsteilung für Mensch und Natur*, Berlin, 2021, 10 ff.; I. DAUGAREILH, *La legge francese sul dovere di vigilanza al vaglio della giurisprudenza*, in *Giorn. dir. lav. rel. ind.*, 2021, 160 ff..

[7] Cf. L. NOGLER, Lieferkettensorgfaltspflichtengesetz*: perché è nata e quali sono i suoi principali contenuti*, in *Giorn. dir. lav. rel. ind.*, 2022, 2 ff.

and considered the inadequacy of traditional safeguard systems. Some[8] have traced this problem to the lack of governance. In fact, the activities of Western companies go far beyond the borders of their law systems and involve operators from different States. In turn, the latter have limited resources to influence the activities of foreign corporates and, moreover, are not very interested in doing so, given the risk of dispersion of investments[9].

The global nature of the phenomenon highlights two fragilities; on the one hand, the action of multinational groups challenges the boundaries of State systems, with frequent problems both on the choice of the applicable law and on the determination of the judge having jurisdiction, issues to be resolved by reference to the principles of private and procedural international law or to conventions of uniform law[10]. On the other hand, the production system is so articulated that it may be difficult to identify the tortfeasor on the basis of traditional civil liability rules[11]. In fact, the activity breaks down into various autonomous relationships or functions, which can be traced back to the authority of a dominant company, without it being possible to identify an enterprise to which the unlawful conduct can be attributed, which is the result of the contribution of various corporates, not always part of a group[12]. Moreover, such collaboration ties expose the commercial image of the multinational corporate to risks. The need for regulation to safeguard fundamental rights is desirable not only in the interest of those living in Countries with low social protection, but also on the side of the European undertakings, which are forced to defend their reputation[13].

---

[8] See M. MURGO, Global value chains *e diritto del lavoro: problemi e prospettive*, Padua, 2021, 22 ff.; F. MICHELI, *Il lavoro nelle catene globali del valore*, Turin, 2023, 20 ff.; J. A. BAZ TEJEDOR, *La responsabilidad civil de las empresas transnacionales por impactos negativos en los derechos humanos laborales*, in AA. VV., *La dimensiòn laboral de la diligencia debida en materia de derechos humanos*, edited by W. SANGUINETI RAYMOND, J. B. VIVERO SERRANO, Cizur Menor, 2023, 82 ff.; K. KOLBEN, *Transnational labour regulation and the limits of governance*, in *Theoretical inquiries in law*, 2011, 406 ff.

[9] See G. GEREFFI, F. MAYER, *Globalization and the demand for governance*, in AA. VV., *The new offshoring of jobs and global development*, edited by G. GEREFFI, *International institute for labour studies*, 2006, 47 ff.

[10] Cf. J. A. BAZ TEJEDOR, *Acerca de la certidumbre jurìdica del trabajo decente en las cadenas globales de valor*, in AA. VV., *Diligencia debida y trabajo decente en las cadenas globales de valor*, edited by W. SANGUINETI RAYMOND, J. B. VIVERO SERRANO, Cizur Menor, 2022, 90 ff.

[11] See M. MURGO, Global value chains *e diritto del lavoro: problemi e prospettive*, *cit.*, 45 ff.; J. A. BAZ TEJEDOR, *La responsabilidad civil de las empresas transnacionales por impactos negativos en los derechos humanos laborales, loc. cit.*, 86 ff.

[12] Cf. J. A. BAZ TEJEDOR, *La responsabilidad civil de las empresas transnacionales por impactos negativos en los derechos humanos laborales, loc. cit.*, 87 ff., who speaks of a frustration of the traditional discipline of civil liability. In fact, this institution would lose its original restorative function in order to fulfil the objective of achieving distributive justice. Also, cf. J. A. GARCÌA AMADO, *El fundamento del derecho de daños. Una propuesta*, in *Revista jurídica de la Universidad de Palermo*, 2019, 18 ff.

[13] Cf. K. WERNER, H. WEISS, *El libro negro de las marcas. El lado oscuro de las empresas globales*, Madrid, 2006, 19 ff.; W. SANGUINETI RAYMOND, *Teorìa del derecho transnacional del trabajo, cit.*, 44 ff.

It was precisely the significant consequences of the transnational coordination of companies that led to the development of the concept of "due diligence" and the expression has taken on an exemplary and innovative value. This criterion, introduced with the *Guiding Principles on Business and Human Rights*[14], is borrowed from the lexicon of economic sciences and refers to the duty of the dominant party to adopt processes that do not only pursue profit, but limit the negative consequences on third parties, particularly in terms of labour relations and environmental protection[15]. The influence induced by the economic strength of some enterprises leads them to be self - responsible[16], *i. e*. to fulfil an obligation to supervise all parts of the process, so that the object of the analysis extends to the actions of subsidiaries, contractors or stable suppliers[17]. Thus, a link is identified between the initiatives of western employers and the possible infringement of fundamental rights, and any damage may entail the liability of the dominant enterprise, provided that the event can be traced back to its initiative or omissions[18]. The articulation of the obligation to perform due diligence controls depends on the business relationship and the surveillance[19] must be implemented, as control postulates organisational reasoning in which risks are identified and prevention strategies are found.

Therefore, limiting the impact of global business activity affects corporate responsibility[20]. The objective is to enforce respect for fundamental rights in a complex social context, characterised by the interaction of different actors along an articulated production chain. However, if, initially, it relied on the self - responsibility of companies

---

[14] The *Guiding principles on business and human rights* are a soft law act, drafted within the framework of the work of the United Nations Human Rights Council following a report by the special representative appointed by the High Commissioner for Human Rights to propose the adoption of an integrated approach on corporate responsibility. See M. MURGO, Global value chains *e diritto del lavoro: problemi e prospettive*, *cit.*, 83 ff.; K. BUHMANN, *Business and human rights: understanding the UN guiding principles from the perspective of transnational business governance interactions*, in *Transnational legal theory*, 2015, 399 ff.

[15] See R. MCCORQUODALE, *Corporate social responsibility and international human rights law*, in *Journ. bus. eth.*, 2009, 392 ff.

[16] For an examination of these mechanisms encouraging the development of a corporate culture, see M. FERRARESI, *L'adempimento datoriale degli obblighi giuslavoristici: strumenti volontari e incentivanti tra diritto e responsabilità sociale dell'impresa*, in *Variaz. temi dir. lav.*, 2018, 443 ff.

[17] See W. SANGUINETI RAYMOND, *Teorìa del derecho transnacional del trabajo, cit.*, 44 ff.

[18] See L. LOEVE, *Etude sphère d'influence versus due diligence*, 2010, available at https://www.diplomatie.gouv.fr/IMG/pdf/1_2PESP_1_Etude_sphere_dinfluence_versus_due_diligence_cle874ee9.pdf.

[19] See S. BIJLMAKERS, *Corporate social responsibility, human rights and the law*, London, 2018, 102 ff.

[20] See W. SANGUINETI RAYMOND, *Teorìa del derecho transnacional del trabajo, cit.*, 45 ff.; C. MACCHI, C. BRIGHT, *Hardening soft law: the implementation of human rights due diligence requirements in domestic legislation*, in AA. VV., *Legal sources: in business and human rights. Evolving dynamics in international and European law*, edited by M. BUSCEMI, N. LAZZERINI, L. MAGI, Leiden, 2020, 5 ff.

and their spontaneous commitment to repress any illegal conduct[21], with directive 2024 / 1760 / EU various virtuous behaviours are imposed[22]. Both in the national systems and at European Union level, supervisory obligations are imagined, which are covered by administrative sanctions and, above all, by forms of civil liability. This calls for a rethinking of the categories of private law and, in particular, one must question how the concept of due diligence defines the scope of these obligations[23]. In other words, it is necessary to understand the intensity of the effort expected, as this is the only way in which the company's liability is conceived, when negative impacts on the environment or workers' rights occur.

2. *The recent corporate sustainability due diligence directive and the liability model introduced.*

The objective of directive 2024 / 1760 / EU is made explicit in recital 31, that is, to guarantee all companies operating in the internal market parity for a sustainable activity, *i. e*. attentive to workers' rights and environmental protection, without the proliferation of national regulations being a hindrance to the creation of a common system and to the definition of unequivocal obligations of diligent control[24]. The intention is to establish a regulatory framework based on certain cardinal principles, such as the obligation to adopt measures to prevent and halt the negative impacts of the activity, the need to establish dialogue with supra - individual stakeholders and, above all, the civil liability of the parent company; this requires the overcoming of national laws and, in general, the adaptation of each system, without prejudice to the possibility of stricter regimes[25].

---

[21] Cf. J. GORELLI HERNANDEZ, *Bases para l'armonizàcion de la diligencia debida en derechos humanos. Anàlisis de la directiva sobre diligencia debida*, in *Rev. min. trab. econ. soc.*, 2025, 105 ff.

[22] Cf. F. GUARRIELLO, Take due diligence seriously*: commento alla direttiva 2024 / 1760*, in *Giorn. dir. lav. rel. ind.*, 2024, 249 ff.

[23] Cf. F. MICHELI, *Il lavoro nelle catene globali del valore, cit.*, 58 ff.

[24] For an analysis of the objectives highlighted in the proposal of the directive, see F. DEGL'INNOCENTI, *Nuove sfide regolatorie del diritto privato europeo nel prisma della sostenibilità. La proposta di direttiva sulla* Corporate Sustainability due diligence, in *Act. jur. ib. amer.*, 2023, 812 ff.; M. ZARRO, *Tutela dell'ambiente e responsabilità dell'impresa nella recente proposta di direttiva sulla* due diligence *aziendale*, in *Rass. dir. civ.*, 2022, 1212 ff.; A. SCOTTI, *Proposta di direttiva "*due diligence*": le incertezze del legislatore europeo sul rapporto tra gli obiettivi di sostenibilità dell'attività di impresa, il contratto e i codici di condotta*, in Liber Amicorum *per Paolo Zatti*, Napoli, 2023, vol. I, 563 ff..

[25] See M. LIBERTINI, *Gestione "sostenibile" delle imprese e limiti alla discrezionalità imprenditoriale*, in *Contr. impr*., 2023, 63 ff., and, by the same Author, *Sulla proposta di direttiva dell'Unione Europea su "dovere di diligenza e responsabilità delle imprese"*, in *Riv. soc*., 2021, 334 ff.; P. SALAZAR, G. LEARDI, *Un nuovo strumento verso la reale sostenibilità ambientale*, in *Dir. prat. lav*, 2024, 2309 ff.; M. CALLEGARI,

The innovative nature of the directive emerges from its structure, as it is not akin to any of the models of individual Countries[26], but combines the discretional features of each in an original logic, as is already evident from the sphere of application. In fact, under German law[27], not only companies from a Member State, but also those from third Countries are identified as recipients, provided that they carry out a significant part of their activities in the single market. Article 2, paragraph 1, takes into account companies with more than thousand employees and a worldwide net turnover of more than EUR 450,000,000.00 in the last financial year, or which have concluded licensing agreements of more than EUR 22,500,000.00, if they are involved in an activity under a common identity in cooperation with enterprises with a worldwide net turnover of more than EUR 80,000,000.00. For companies from third States, the parameter changes, as initiatives started and agreements concluded within the territory of the European Union have to be taken into account.

The directive follows in the wake of the aforementioned national laws, as it does not merely bind large corporates or groups, but its effects extend to the entire production chain[28]. As recital 69 makes clear, small and medium - sized structures may be affected if they are contractors or suppliers of the companies mentioned in Article 2[29], clearly inspired by the French and German models[30]. Similarly, Article 6, under the heading "due

---

Sostenibilità, supply chain *e intelligenza artificiale*, in *Giur. it.*, 2024, 7 ff.; S. ADDAMO, *Le novità del testo finale della* corporate sustainability due diligence directive*: un cambio di passo per la politica di sostenibilità dell'Unione europea*, in *Nuove leggi civ. comm.*, 2024, 1259 ff..

[26] See C. CORVESE*, La proposta di direttiva sulla* Corporate Sustainability Due Diligence *e i suoi (presumibili) effetti sul diritto societario italiano*, in XIV *Convegno annuale ODC l'mprese, mercati e sostenibilità: nuove sfide per il diritto commerciale"- 26 e 27 maggio 2023 - Università degli studi Roma tre - atti del convegno*, 2023, 9 ff, and, by the same A., *La sostenibilità ambientale e sociale delle società nella proposta di* Corporate Sustainability Due Diligence Directive *(dalla l'nsostenibile leggerezza"dello scopo sociale alla ßbbligatoria sostenibilità"della due diligence)*, in *Banca impr. soc.*, 2022, 391 ff.

[27] For an insight of the German perspective, see L. NOGLER, Lieferkettensorgfaltspflichtengesetz*: perché è nata e quali sono i suoi principali contenuti*, *loc. cit.*, 4 ff.; A. C. MITTWOCH*, Die Notwendigkeit eines Lieferkettengesetzes aus der Sicht des Internationalen Privatrechts*, in *RIW*, 2020, 397 ff.; S. LORENZEN, *Lieferkettengesetz - wie wird es wirksam*, in *WSI - Mitteilungen*, 2021, 66 ff.; F. BORDIGA, A. DE MARIA, *Tutela dei diritti umani nelle catene di approvvigionamento nell'ordinamneto tedesco: la* Lieferkettensorgfaltspfichtengesetz, in *Riv. soc*., 2022, 971 ff..

[28] See F. DEGL'INNOCENTI, *Globalizzazione, catene produttive, regole di sostenibilità. Il perimetro applicativo della direttiva europea 2024 / 1760*, in *Ianus*, 2024, 40 ff..

[29] Cf. P. SALAZAR, G. LEARDI, *Un nuovo strumento verso la "reale" sostenibilità ambientale*, *loc. cit.*, 2311 ff..

[30] For the german perspective, see P. WIATER*, Unternehmerische Menschenrechtsbindung nach Maßgabe des Lieferkettengesetzes*, in *JZ*, 2022, 859 ff.; T. KREBS, *Menschenrechtliche und umweltbezogene Sorgfaltspflicht: der Wettlauf zwischen europäischer und deutscher Rechtssetzung*, in *ZUR*, 2021, 396 ff.; P. TSCHÄPE, D. TREFZGER*, Die Sorgfaltspflicht des Lieferkettengesetzes - Rechtsnatur, Inhalt und Haftung*, in *ZfBR*, 2023, 429 ff.; F. PISTELLI, *Obblighi di cura e responsabilità nella legge tedesca sulle catene di fornitura*, in *Nuove leggi civ. comm.*, 2024, 1042 ff.. Under French law, see T. SACHS, J. TRICOT, *La loi sur le devoir de vigilance: un modèle pour (re)penser la responsabilité des enterprises*, in *Droit soc.*, 2020, 683 ff.; P. BARRAUD DE LAGERIE, É. BETHOUX, A. MIAS, É. PENALVA - ICHER, *La mise en œuvre du devoir de*

diligence support at a group level", allows larger companies to fulfil their supervisory obligations on behalf of their subsidiaries, so that effective compliance with the requirements is ensured and any gaps in their plans are filled[31]. In any case, the obligations are designed for an articulated economic phenomenon, integrated by different functions, isolated in formal terms, but all aimed at achieving a single goal.

Due diligence procedure is divided into six steps, identified in Article 5 and whose content corresponds to the obligations set out in Articles 7 - 16 and 22, incumbent on all players in the aforementioned production chains[32]. Similar to the German law[33], a distinction is made between so - called direct and indirect employees, depending on the level of participation in the production process and the degree of proximity to the main enterprise. If the prescriptions are addressed to the parent corporate, their implementation presupposes an assessment of the overall activity, with the necessary cooperation of both subsidiaries and contractors or suppliers. For instance, the codes of conduct referred to in Article 7 must dictate binding rules along the entire chain and, as part of the identification of risks, Article 8 requires that the likely negative impacts of the work of all actors be taken into account.

Due diligence procedure culminates in the prevention of potential negative consequences and the neutralisation of actual ones, as provided for in Articles 10 and 11. Recital 19 suggests that "the main obligations (...) should be (...) of means"[34], in the belief that undertakings should not prevent absolutely any harm, but reduce the likelihood of its materialisation, having regard to the ability of the larger company to influence the conduct of its subsidiaries. Articles 10 and 11 follow the approach of French law[35] and, therefore,

---

vigilance: une managérialisation de la loi?, ibid., 2020, 699 ff. ; G. DELALIEUX, *La loi sur le devoir de vigilance des sociétés multinationales: parcours d'une loi improbable*, *ibid.*, 2020, 649 ff..

[31] See G. SCOGNAMIGLIO, *Sulla tutela dei diritti umani nell'impresa e sul dovere di vigilanza dell'impresa capogruppo. Considerazioni a margine di un confronto fra la legislazione francese e quella italiana*, in *Riv. it. sc. giur.*, 2019, 545 ff..

[32] See R. IBBA, *L'introduzione di obblighi concernenti i* fattori evironmental social and governance *a livello dell'Unione Europea: dalla direttiva 2014 / 95 alla proposta di direttiva sulla* Corporate sustainability due diligence, in *Banc. bors. tit. cred.*, 2023, 454 ff..

[33] See D. LEUERING, D. RUBNER, *Lieferkettensorgfaltspflichtengesetz*, in *NJW - Spezial*, 2021, 400 ff.; G. RÜHL, C. KNAUER, *Zivilrechtlicher Menschenschutz? Das deutsche Lieferkettengesetz und die Hoffnung auf den europäischen Gesetzgeber*, in *JZ*, 2022, 106 ff..

[34] The expression "obligations of means" also appears in the German discipline, which defines prevention obligations as *Bemühenspflichten* and not as *Erfolgspflichten* with the exclusion of forms of *Garantiehaftung*, *i*. *e*. strict liability of the company for the occurrence of damage. On this point, see F. BORDIGA, A. DE MARIA, *Tutela dei diritti umani nelle catene di approvvigionamento nell'ordinamento tedesco: la* Lieferkettensorgfaltspfichtengesetz, *loc. cit.*, 976 ff.; D. LEUERING, D. RUBNER, *Lieferkettensorgfaltspflichtengesetz*, *loc. cit*., 401 ff..

[35] In light of the French *loi de vigilance*, see L. D'AMBROSIO, *Le devoir de vigilance : une innovation juridique entre continuités et ruptures*, in *Droit soc.*, 2020, 645 ss.; T. SACHS, *La loi sur le devoir de*

the appropriateness of the measures themselves must be commensurate with a prior assessment of the dangers, so that the adoption of the measures indicated in the text does not exhaust the duty of supervision. In fact, European law merely suggests organisational initiatives, such as the preparation of an action plan or, as set forth in Article 10, paragraph 5, and in Article 11, paragraph 4, the demand for obligations from suppliers or contractors for compliance with the code of conduct; in this way, precautionary rules are imposed to give substance to the concept of control. The object of the obligation is the creation of an organisation capable of foreseeing threats; when an injury occurs, it is necessary to assess whether it would have been avoidable and, secondly, whether the measures taken were sufficient[36].

Compliance with these obligations is protected by two sets of safeguards[37]. On the one hand, Article 24 requires the establishment of an administrative authority, with the power to carry out investigations and sanction any irregularities. On the other hand, Article 29 envisages civil liability for damage caused. In this case, compensation is due if the wilful or negligent failure to comply with the obligations of Articles 10 and 11 affects one of the fundamental rights listed in the annex to the directive and protected by national laws. Thus, the focus is on the causal link between the breach of the duty of vigilance and the injury. Moreover, as suggested by the second sentence of Article 29, paragraph 1, the parent company is not liable in absolute terms for any unlawful conduct of its subsidiaries, but only if the damage is a direct consequence of the failure to provide an adequate organisational model; otherwise, the obligation to pay compensation rests solely on the subsidiaries, contractors or suppliers.

In defining the measures, Article 10, paragraph 1, letter b), and Article 11, paragraph 1, letter b), suggest that the main company must establish which negative impacts it could directly cause and which could result from the actions of the other

vigilance des sociétés mères et sociétés donneuses d'ordre : les ingrédients d'une corégulation, in *Rev. droit trav*, 2017, 384 ff. ; I. PARACHKEVOVA - RACINE, J. B. RACINE*, L'entreprise vigilante: promesses et perspectives*, in *Rev. int. droit écon.*, 2023, 177 ff.

[36] See E. DEL PRATO, *Sostenibilità, precauzione, sussidiarietà*, in *Contr. impr. Eur.*, 2023, 412 ff.; E. ORLANDO, *Sviluppo sostenibile, catene di valore e responsabilità ambientale di impresa: evoluzione del quadro normativo a livello internazionale e prime riflessioni sui nuovi sviluppi in diritto*, in *Ianus*, 2023, 68 ff..

[37] See S. ADDAMO, *Le novità del testo finale della* corporate sustainability due diligence directive*: un cambio di passo per la politica di sostenibilità dell'Unione europea, loc. cit.*, 1277 ff.

operators[38]. The directive aims at introducing fault - based liability[39], since it is not sufficient to complain of having suffered damage, but it must be proved that it is the direct effect of a breach of a precautionary rule[40]. Then, it must be demonstrated whether this breach is attributable to the parent company and its failure to establish sufficient preventive measures. In any event, pursuant to Article 29, paragraph 5, its liability does not eliminate that of the subsidiaries for their sole actions. However, for injuries caused by several parties, their joint and several liability is imposed.

A reference to French law[41] is to be found in the role recognised by Article 29, paragraph 3, letter d), for interest bearers, such as trade unions or non - governmental organisations, who may be authorised by the possible injured party to take legal action in the event of danger. This is intended to introduce a protection inspired by the *mise en demeure*[42], confirming the importance of the role played by the exponential subjects of super - individual interests[43]. Similarly, Article 13 prescribes their consultation in the definition of the various phases of the fulfilment of the duty of supervision, so as to allow for a more rapid circulation of information and a joint definition of organisational measures. In contrast, Article 14 allows stakeholders to report additional threats not taken into account in the plans[44].

---

[38] See S. BRUNO, *Il ruolo della spa. per una economia giusta e sostenibile: la proposta di direttiva dell'Unione europea su "*corporate sustainability due diligence". *Nasce la* stakeholder company*?*, in *Riv. dir. comp.*, 2022, 303 ff.; C. CORVESE, *La sostenibilità ambientale e sociale delle società nella proposta di* Corporate Sustainability Due Diligence Directive *(dalla l'nsostenibile leggerezza"dello scopo sociale alla ŏbbligatoria sostenibilità"della due diligence), loc. cit.*, 424 ff..

[39] See F. GUARRIELLO, Take due diligence seriously*; commento alla direttiva 2024 / 1760*, *loc. cit.*, 288 ff..

[40] See S. ADDAMO, *Le novità del testo finale della* corporate sustainability due diligence directive*: un cambio di passo per la politica di sostenibilità dell'Unione europea*, *loc. cit*., 1281 ff.; G. D. MOSCO, R. FELICETTI, *Prime riflessioni sulla proposta di direttiva dell'Unione europea in materia di* Corporate sustainability due diligence, in *Anal. giur. econ*., 2022, 195 ff.; M. LIBERTINI, *Gestione "sostenibile" delle imprese e limiti alla discrezionalità imprenditoriale*, *loc. cit.*, 65 ff..

[41] See Cour d'appel de Paris 18 giugno 2024, n. 23 / 14348, in *Dal. act.*, 2024, per cui "*ce délai de trois mois a pour but de permettre à l'entreprise, si elle l'estime nécessaire, de mettre son plan en conformité avec les mesures visées dans la mise en demeure, afin d'éviter une saisine du juge*".

[42] Understood as the power of stakeholders to warn the multinational company to adopt "*de moyens tendant tout de même vers un résultat concret et raisonnable de prévention et de réduction des risques et atteintes graves*". On this point, see K. MARTIN - CHENUT, R. DE QUENAUDON*, La responsabilité sociale des entreprises saisie par le droit*, Paris, 2016, 26 ff.; L. D'AMBROSIO*, Le devoir de vigilance: une innovation juridique entre continuités et ruptures, loc. cit.*, 644 ff..

[43] Cf. G. BEVIVINO, *Nuovi* inputs *euro - unitari. La sostenibilità come ponderazione normativa degli interessi di* shareholders *e* stakeholders, in *Anal. giur. econ.*, 2022, 115 ff..

[44] Cf. G. STRAMPELLI, *La strategia dell'Unione europea per il capitalismo sostenibile: l'oscillazione del pendolo tra amministratori, soci e* stakeholders, in *Riv. soc.*, 2021, 365 ff.

Finally, from models of common law[45] origin, the directive has borrowed the obligation to publish an annual declaration setting out the initiatives taken, as provided for in Article 16. Such publicity ensures greater transparency in relations between affiliated undertakings and stakeholders[46]. Furthermore, Article 22 requires the adoption and publication of the transition plan for climate change mitigation, with a description of the measures taken to reduce carbon dioxide emissions.

3. *The duty of vigilance with due diligence in European Union law.*

Directive 2024 / 1760 / EU is the climax of the implementation of the supervisory obligations of parent companies into binding legal acts, first of all into national law[47] and later into European Union regulations. Recently, the latter has intervened in the discipline of particular sectors, characterised by highly dangerous products, and introduced constraints for large companies in their relations with subsidiaries, in order to avoid damage to the environment or persons. These acts are not superseded by directive 2024 / 1760 / EU, but its recital 17 lays the foundations for a coexistence of similar approaches, as it provides for the non - application of the directive itself if sectoral regulations impose stricter duties, designed by reason of the nature of the activity. The intention is to enhance a uniform notion of supervision with due diligence, as the proliferation of supranational regulations presupposes their integration and, therefore, they differ in the intensity and pervasiveness of the obligations, while the fundamental pillars of the legal framework remain unchanged.

It is necessary to start with European Union regulation No. 821 of 2017 of the European Parliament and of the Council on supply chain obligations for European

[45] Reference is to be made to the Californian Transparency in Supply Chains Act of 2010 and to the English Modern slavery act of 2015. On this point, see A. PROKOPETS, *Trafficking in information: evaluating the effectiveness of the California transparency in supply chains act of 2010*, in *Hastings int. comp. law rev.*, 2014, 354 ff.; D. GREENFIELD, L. COMPA, *International labor law and violations of human rights standards at Bridgerstone Firestone rubber plantation in Liberia*, in *Variaz. temi dir. lav.*, 2025, 500 ff., in particular 526 ss..

[46] See G. LEBARON, J. LISTER, P. DAUVERGNE, *Governing global supply chain sustainability through the ethical audit regime*, in *Glob.*, 2017, 958 ff.

[47] See A. HATCHUEL, B. SEGRESTIN, *Devoir de vigilance: la norme de gestion comme source de droit?*, in *Droit soc.*, 2020, 667 ss.; V. BRINO, *Diritto del lavoro e catene globali del valore*, Giappichelli, Torino, 2020, 109 ss.; J. SALMINEN, M. RAJAVUORI, *Transnational sustainability laws and the regulation of global value chains: comparison and a framework for analysis*, in *Maastricht jour. europ. comp. law*, 2019, 615 ss..

companies importing minerals extracted from war zones or high - risk ones[48]. This act is characterised by its narrow scope of application, limited to dealings with suppliers from Countries with a precarious security level, a scope counterbalanced by a strict obligation of vigilance for European Union corporates. The provision is intended to prevent illegitimate conduct in the territory of third States, so that the marketing of precious minerals does not aggravate pre - existing economic and political imbalances[49]. The regulation[50] introduces a control procedure divided into four stages, for each of which it prescribes precise mandatory conducts, both in the preparation of the prevention system and in relationships with other operators and the public.

Thus, on the one hand, companies must first develop a strategy to identify hazards, prioritise them and, above all, design an action plan. On the other hand, this reflection must involve third party stakeholders, sometimes identified in the entrepreneurs involved in the production processes, who are heard when the operational decisions are taken, sometimes in individuals outside the company organisation, who must be allowed to express an assessment of the content and effectiveness of the organisational protective models.

Both of these aspects inform the provisions of the new directive 2024 / 1760 / EU. Consider also the European Union regulation No. 1115 of 2023 of the European Parliament and of the Council, an act that repeals the previous European Union regulation No. 995 of 2010 and imposes due diligence obligations on companies involved in the import of timber. The aim is to counter the danger of deforestation and, as recital 49 makes clear, a systematic approach is required, articulated in measures that facilitate the circulation of information, as well as risk assessment and mitigation, and ensure along the entire value chain the placing on the market of a product with a limited impact on the environment. To this end, Articles 8 - 13 provide indications on the proper implementation of the organisational model; however, beyond the precise list of possible measures, the

[48] See P. OKOWA, *The pitfalls of unilateral legislation in international law: lessons from conflicts minerals legislation*, in *Int. comp. law quart.*, 2020, 685 ff.

[49] See E. ORLANDO, *Sviluppo sostenibile, catene di valore e responsabilità ambientale di impresa: evoluzione del quadro normativo a livello internazionale e prime riflessioni sui nuovi sviluppi in diritto*, *loc. cit.*, 83 ff..

[50] See Article 2, paragraph 1, lett. d) of European Union regulation 2017 / 821 / EU, whereby, in defining the supply chain due diligence, it refers to the "obligations of Union importers of tin, tantalum and tungsten, their ores, and gold in relation to their management systems, risk management, independent third - party audits and disclosure of information with a view to identifying and addressing actual and potential risks linked to conflict - affected and high - risk areas to prevent or mitigate adverse impacts associated with their sourcing activities".

structure of the obligations is unclear. In fact, in identifying the recipient of these requirements, the regulation employs the generic term "operator", referring to whoever imports or sells the goods, without specifying whether, in the case of several companies subject to the same power of management and control, a single model drawn up by the parent company is sufficient, or whether each subsidiary must draw up its own plan. This question is now the subject of a case[51], pending before the Court of Justice. However, with the entry into force of the new regulation 2024 / 1760 / EU, the problem should be overcome, as Article 6 allows the parent company to substitute its subsidiaries.

In any case, the European law preferred to offer a detailed description of the organisational arrangements to be adopted, as does European Union regulation No. 1542 of 2023 of the European Parliament and of the Council on the storage of batteries and disposal of their waste. In fact, Articles 47 - 53 consider the activity of supervision, which ends with the setting up of a system capable of having pieces of information circulating between operators and stakeholders, so that a joint procedure for identifying dangers and suitable countermeasures is created.

What all these disciplines have in common is the desire to impose an obligation of disclosure on companies. Thus, following the common law tradition[52], an annual report on the choices adopted to prevent risks must be made available on the sites. This obligation originates from directive 2014 / 95 / EU of 22 October 2014 of the European Parliament and of the Council, which amended directive 2013 / 34 / EU of 26 June 2013 of the European Parliament and of the Council on financial reporting, with the introduction of Article 29, paragraph 1, letter a)[53], concerning the display of a consolidated non - financial statement[54]. Large companies must disclose the initiatives

[51] V. Reference for a preliminary ruling from the Fovarosi torvenyszék of 14 February 2024, Case C No. 117 of 2024, *JYSK Kereskedelmi Kft*. v. *Nemzeti èlelmiszelànc - biztonsagi Hivatal*.

[52] Cfr. A. M. DEBRAH, *Modern slavery act 2015: The silence around labour and the failure to protect*, in *City law rev.*, 2020, 148 ss.; R. LINDSAY, A. KIRKPATRICK, J. EN LOW, *Hardly soft law: the modern slavery act 2015 and the trend towards mandatory reporting on human rights*, in *Bus. law int.*, 2017, 35 ss.; C. SPINELLI, *Regulating corporate due diligence: from transnational social dialogue to EU binding rules (and back)*, in *Dir. lav. mer. int.*, 2022, 110 ss..

[53] See Article 29, section 1, letter a), of directive 2013 / 34 / EU, according to which "public interest entities which are parent undertakings of a large group and which, at the balance sheet date, have an average number of employees employed during the financial year of 500 on a consolidated basis shall include in the consolidated annual report a consolidated non - financial statement containing at least environmental information, social, personnel, respect for human rights, and the fight against active and passive corruption to the extent necessary for an understanding of the group's performance, position and the impact of its activities".

[54] See M. MOLINARI, J. CARUNGU, *Rendicontazione non finanziaria: dalla forma alla sostanza*, in *Controllo di gestione*, 2019, 5 ff..

and policies adopted to prevent the negative impacts of their business[55]. The aforementioned directive, implemented in the Italian legal system by legislative decree 30 December 2016, no. 254, and recently amended by directive 2022 / 2464 / EU of 14 December 2022 of the European Parliament and of the Council[56], starts from the assumption, borrowed from the Dodd - Frank Wall Street Reform Act of 2010[57], that corporate decisions affect the position of indefinite stakeholders; their participation in deliberative processes must be guaranteed and everyone should be put in a position to get to know the chosen organisational model[58].

Although the succession of such regulations has helped to clarify the meaning of due diligence, there has been a lack of organic discipline, particularly having regard to liability. In fact, breaches of conduct obligations have always been associated with the imposition of mere administrative fines, with considerable difficulty for injured parties wishing to obtain compensation for the damage suffered. Compensation for non - compliance with control obligations is only recognised in some national systems[59]. This is the turning point of the new directive 2024 / 1670 / EU, which combines risk prevention systems with a duty to compensate for the damage caused[60].

4. *Company liability in the new directive.*

Directive 2024 / 1760 / EU is the crucial moment in the process of concretising the theory of corporate social responsibility into binding rules[61]. According to this

---

[55] Cf. A. ABBASCIANO, *Strumenti volontari e* due diligence *per la costruzione di una filiera agroalimentare sostenibile*, in *Variaz. temi dir. lav.*, 2024, 873 ff..

[56] On the subject, see C. FALERI, *Diritti di informazione e principio di trasparenza per una* governance *societaria sostenibile*, in *Lav. dir.*, 2023, 545 ff.; G. O' DONOVAN, *Environmental disclosures in the annual report*, in *Acc. aud. accountab. journ.*, 2002, 344 ff. For an initial comment on directive 2022 / 2464 / EU, see S. BORELLI, F. M. MUCCIARELLI, *La direttiva sulla rendicontazione di sostenibilità: fra trasparenza e partecipazione*, in *Riv. giur. lav. prev. soc.*, 2024, 492 ff.

[57] Cf. B. KRAFT, D. BOGUSZ, *Disclosure created accountability: an analysis of the national environmental policy act and the Dood - Frank wall street reform and consumer protection act*, in *Georgetown journ. law pub. pol.*, 2015, 463 ff.

[58] Cf. C. FALERI, *Diritti di informazione e principio di trasparenza per una* governance *societaria sostenibile*, *loc. cit.*, 546 ff.; M. BORZAGA, F. MUSSI, *Luci e ombre della recente proposta di direttiva relativa al dovere di* due diligence *delle imprese in materia di sostenibilità*, in *Lav. dir.*, 2023, 495 ff..

[59] See R. GRECO, *Corporate human rights due diligence and civil liability: steps forward towards effective protection?*, in *Dir. um. dir. int.*, 2023, 27 ff.; N. BUENO, C. BRIGHT, *Implementing human rights due diligence through corporate civil liability*, in *Int. comp. law quart.*, 2020, 2 ff.

[60] See C. HIESSL, *Labour rights and their enforcement in global value chains*, in *ERA forum*, 2023, 207 ff.

[61] See M. LIBERTINI, *Gestione "sostenibile" delle imprese e limiti alla discrezionalità imprenditoriale, loc. cit.*, 54 ff. and, by the same author, *Sulla proposta della direttiva dell'Unione europea su "dovere di diligenza e responsabilità delle imprese"*, in *Riv. soc.*, 2021, 328 ff.; E. BARCELLONA, *La* sustainable corporate

approach, which is a corollary of the stakeholder's theory, the company is not only a stable organisation, aimed at guaranteeing investors a return on capital, but also pursues wide - ranging objectives, participating in the creation of the common wealth[62]. Accompanied by the emergence of negotiation practices, such as models of corporate governance[63], the idea of sustainable management, which does not only pursue utilitarian aims, but also promote shared values, such as the protection of the environment and the wellbeing of workers[64], has become established.

Therefore, if at first the expression "responsibility" was used in an atechnical meaning and alluded to the spontaneous or incentivised assumption of a duty relevant on an ethical level, having as its object initiatives attentive to interests extraneous to the logic of mere profit, with the new European discipline the concept acquires a more precise legal value[65]. In fact, the codification of obligations of diligent control is accompanied by a sanctioning mechanism, so that the adoption of profitable organisational models, once optional, becomes mandatory; conducts contrary to the criteria of environmental sustainability and the basic interests of workers are no longer merely reprehensible on a social level, but illegitimate[66], and the directive defines the due behaviour[67].

Such an approach also leads to a rethinking of the role of managers, as desired by the Italian Civil Code. While a reading of Articles 2247 and 2497 of the Italian Civil Code reveals the idea of a management aimed at enhancing the interest of the shareholders, the new directive 2024 / 1760 / EU imposes a focus on dynamics unrelated to profit. Corporate social responsibility wants to overcome the single entity approach[68], so that

---

governance *nelle proposte di riforma del diritto europeo: a proposito dei limiti strutturali del c. d.* stakeholderism*, ibid*., 2022, 3 ff.; E. RICCIARDIELLO, *Sustainability and going concern, ibid*., 2022, 53 ff..

[62] Cf. D. CRISTALLO, *Responsabilità sociale d'impresa e strumenti giuridici della filiera agroalimentare per la costruzione di un "agire responsabile"*, in *Riv. dir. agr.*, 2022, 64 ff.; M. STELLA RICHTER JR., Corporate sustainability due diligence*: noterelle semiserie su problemi serissimi*, in *Riv. soc.*, 2022, 716 ff.; P. MARCHIETTI, *Il bicchiere mezzo pieno*, *ibid.*, 2021, 336 ff..

[63] Cf. E. D'ORAZIO*, Codici etici, cultura e responsabilità dell'impresa*, in *Politeia*, 2003, 127 ff.; A. ADDANTE, *Autonomia privata e responsabilità sociale dell'impresa*, Naples, 2012, 307 ff.

[64] See M. FERRARESI, *Responsabilità sociale dell'impresa e diritto del lavoro*, Padua, 2012, 54 ff..

[65] See G. CONTE, *L'impresa responsabile*, Milan, 2018, 7 ff.; R. ROLLI, *L'impatto dei fattori environmental, social and governance sull'impresa - modelli di governance e nuove responsabilità*, Bologna, 2021, 35 ff.; S. ROSSI, *Il diritto della* corporate social responsability, in *Orizz. dir. comm.*, 2021, 120 ff.

[66] See M. LIBERTINI, *Gestione "sostenibile" delle imprese e limiti alla discrezionalità imprenditoriale, loc. cit.*, 66 ff.; R. IBBA, *L'introduzione di obblighi riguardanti i fattori* environmental, social and governance *a livello dell'Unione europea: dalla direttiva 2014 / 95 alla proposta di direttiva sulla* Corporate sustainability due diligence, *loc. cit.*, 462 ff.; M. CAMPOBASSO, *Gli amministratori, il successo sostenibile e la pietra di Spinoza*, in *Banc. bors. tit. cred.*, 2024, 16 ff.

[67] See G. RACUGNO, D. SCANO, *Il dovere di diligenza delle imprese ai fini della sostenibilità: verso un* green deal *europeo*, in *Riv. soc*., 2022, 736 ss.; U. TOMBARI*, La proposta di direttiva sulla* corporate due diligence *e sulla* corporate accountability*: prove (incerte) di un "capitalismo sostenibile"*, *ibid*., 2021, 375 ss.

[68] See E. RICCIARDIELLO*, Sustainability and going concern, loc. cit.*, 75 ff.

responsibility must be referred to the overall business. Consequently, the actions of the managers must be combined with the required degree of diligence.

Recital 79 of directive 2024 / 1760 / EU leaves it to the Member States to adapt their systems to this new responsibility. This raises some concerns[69], as the solution has original features. Indeed, the unlawful conduct of the parent company must affect one of the goods of life listed in the annex summarising the rights protected in the main international treaties[70]. For the purposes of Article 29, it is not sufficient that the parent company fails to comply with its supervisory obligations, but such a breach must cause damage. However, it is difficult to provide evidence of the causal link between the lack of vigilance and the damage[71] and this reduces the hypotheses of effective liability, especially in the field of environmental protection, an area in which goods with evanescent boundaries, such as values linked to climate change, and subject to threats that cannot always be predetermined, are protected[72]. A recent ruling[73] condemned a company to reduce the level of carbon dioxide emissions in the entire production chain, in the absence of injury, but for the mere potential for it. In fact, the governing position of the parent company, able to influence several operators located in many Countries[74], was considered a sufficient reason for liability. Therefore, specific effects have not been deemed necessary, since pollution would already represent an injury[75].

---

[69] Cf. M. VENTORUZZO, *Note minime sulla responsabilità civile nel progetto di direttiva* due diligence, in *Riv. soc.*, 2021, 381 ff., who, in commenting on the draft directive, considers this approach to be "a source of significant uncertainties, liability risks that are difficult to mitigate and of doubtful fairness and efficiency, but also of specious actions (...) that could engage the European courts in very complex litigation".

[70] See S. ADDAMO, *Le novità del testo finale della* corporate sustainability due diligence directive*: un cambio di passo per la politica di sostenibilità dell'Unione europea, loc. cit.*, 1281 ff..

[71] Doubts already existed when the draft directive was adopted. Cf. D. CASSEL, *The new draft treaty on business and human rights: how best to optimise the incentives?*, available at www.media.business-humanrights.org., 2021, 3 ff.; R. GRECO, *Corporate human rights due diligence and civil liability: steps forward towards effective protection?*, *loc. cit.*, 21 ff.; M. VENTORUZZO, *Note minime sulla responsabilità civile nel progetto di direttiva* due diligence, *loc. cit.*, 382 ff..

[72] Cf. G. D. MOSCO, R. FELICETTI, *Prime riflessioni sulla proposta di direttiva dell'Unione europea in materia di* Corporate sustainability due diligence, *loc. cit.*, 201 ff.; G. RACUGNO, D. SCANO, *Il dovere di diligenza delle imprese ai fini della sostenibilità: verso un* green deal *europeo*, *loc. cit.*, 733 ff..

[73] V. App. The Hague 29 January 2021, *Oruma, Efanta and Milieudefensie* v. *Royal Dutch shell*, ECLI:NL:GHDHA:2021:132.

[74] In this sense, the Dutch court favours the recognition of a so - called "result" obligation on the part of the parent company, *i. e.*, in this dispute, to take every technical measure at its disposal to achieve the reduction of carbon dioxide emissions along the entire production chain, so as to put an end to such health - threatening conduct. For a commentary on this judgment, see G. ALPA, *Tre casi paradigmatici di responsabilità sociale delle imprese per violazione di diritti fondamentali:* Vedanta*,* Okpabi*,* Milieudefensie, in *Contr. impr. Eur.*, 2021, 265 ff.; N. BUENO, C. BRIGHT, *Implementing human rights due diligence through corporate civil liability, loc. cit.*, 20 ff.

[75] See G. CARELLA, *La responsabilità civile dell'impresa transnazionale per violazioni ambientali e di diritti umani: il contributo della proposta di direttiva sulla* due diligence *aziendale ai fini della sostenibilità*, in

The approach of directive 2024 / 1760 / EU is the opposite. With regard to negative environmental impacts, recital 89 allows compensation for polluting conduct only if it is accompanied by the infringement of one of the fundamental rights mentioned in the annex. Therefore, Article 29 does not introduce any strict liability[76]; moreover, it is not sufficient to prove damage and to complain that the plan did not comply with the requirements. Instead, it is necessary to show that the supervision was negligent and this had consequences on the entire community[77] or, in any case, on the holders of protected rights.

For the fulfilment of obligations to be assessed, the adequacy of organisational arrangements must be tested. The directive provides companies with mere guidelines on the basis of which they can conform their plan, but its refinement requires an assessment of risks and possible prevention strategies[78]. Liability results from the inability of the organisation to foresee and avoid an injury and is based on fault; it does not require the identification of all precautionary rules, but only those that can be seen through due diligence. Therefore, the parameter to be used must be selected considering the required effort.

Reference should be made to recital 32, for which due diligence "should be carried out with respect to adverse human rights impacts (...) resulting from the abuse of one of the rights as enshrined in the international instruments listed in Part I, Section 1, of the Annex to this Directive", if "a legal interest (...) is affected (...), provided that the company concerned could have reasonably foreseen the risk". The sentence is convoluted, but an interpretation is possible. In fact, all circumstances are relevant, including the nature and scope of the activities, the economic sector and the geographical context. Thus, supervision is limited to the prevention of risks that can be reasonably controlled[79]. When

---

Freed. sec. just., 2022, 18 ff.; M. FASCIGLIONE, *Verso un regime europeo uniforme di responsabilità civile delle imprese per violazioni dei diritti umani: riflessioni sulla proposta di direttiva europea sulla* corporate sustainability due diligence, in *Quaderni di SIDIBlog*, 2022, 499 ff..

[76] See S. ADDAMO, *Le novità del testo finale della* corporate sustainability due diligence directive*: un cambio di passo per la politica di sostenibilità dell'Unione europea*, *loc. cit.*, 1283 ff..

[77] For a critical view of this approach, see M. VENTORUZZO, *Note minime sulla responsabilità civile nel progetto di direttiva* due diligence*, loc. cit.*, 382 ff., for whom "the concept of good governance, although articulated in self - regulatory instruments, principles and practices (...) is very malleable", and consequently, "there is a strong risk that any damage caused by a company, if judged with hindsight, could be ascribed to a lack of good governance".

[78] Cf. F. FIMMANÒ, *Art. 41 della Costituzione e valori environmental, social and governance: esiste davvero una responsabilità sociale dell'impresa*, in *Giur. comm.*, 2023, 801 ff..

[79] Cf. E. BARCELLONA, *La* sustainable corporate governance *nelle proposte di riforma del diritto europeo: a proposito dei limiti strutturali del c. d.* stakeholderism*, loc. cit.*, 22 ff.; M. STELLA RICHTER JR., Corporate sustainability due diligence*: noterelle semiserie su problemi serissimi, loc. cit.* 722 ff.; A.. M. PACCES,

defining strategies, the parent company must limit itself to phenomena that are identifiable in advance, so that it is not liable for damages caused by abnormal events, as these are not attributable to typical hazards.

Furthermore, according to recital 40, the appropriate measures must be designed "in a manner commensurate to the degree of severity and the likelihood of the adverse impact, and reasonably available (…) taking into account the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors". Even if the parent company examines a peril in the plan, its materialisation does not in itself give rise to liability, but it must be assessed whether the occurrence of harm was facilitated by the ineffectiveness of the measures introduced. There is liability only for so - called controllable impacts, when the tort results from the culpable inadequacy of the organisational system[80]. In essence, in line with the French experience and the decisions adopted in that system[81], the directive does not want the identification of all precautionary rules, but a conscious effort by a prudent operator, with large economic resources, with a complex structure and with the objective difficulty of governing supranational companies. Liability is by fault and presupposes a difficult elaboration of guiding criteria, since they must take into account both the difficulty of the problem and the size of the resources, hence indicators of the opposite sign. It is doubtful whether the national law can specify the concept.

5. *The so - called "means" obligations and the degree of diligence in the supervisory activity according to the new European framework.*

Recital 19 uses the term "obligations of means". This concept is taken up in national thinking. Thus, in condemning a company to supplement an incomplete plan, a French Court[82] considered that the activity is exhausted by "*la définition et les modalités des mesures adéquates propres à mieux (...) prévenir ou atténuer (les risques identifiés)*", without them having to be suitable to prevent any harmful event, since "*l'obligation de*

Supply chain liability in the corporate sustainability due diligence directive proposal, in *Oxford business law blog*, accessible at https://blogs.law.ox.ac.uk/business-law-blog.

[80] See P. MARCHIETTI, *Il bicchiere mezzo pieno*, *loc. cit.*, 2021, 342 ff..

[81] See Cour d'appel de Paris 18 giugno 2024, n. 23 / 14348, *cit.*; Cour d'appel de Paris 18 giugno 2024, n. 23 / 10583, in *Dal. act.*, 2024; Cour d'appel de Paris 18 giugno 2024, n. 21 / 22319, *ibid.*, 2024.

[82] See Tribunal judiciaire de Paris 5 December 2023, no. 21 / 15827, in *Dal. act.*, 2023. For a commentary on this decision, see L. LOMBARDI, *La prima sentenza di condanna in relazione al c. d.* devoir de vigilance *delle società francesi*, in *Riv. soc.*, 2024, 229 ff..

vigilance est de moyens, et non de résultat (...) et les atteintes doivent être prises en considérations et atténuées autant que de possible". This idea, taken up by the commentators of the *Lieferkettensorgfaltspflichtengesetz* under the term *Bemühenspflicht*[83], is now considered by European Union law and, according to recital 19, "the directive should not require companies to guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped". Therefore, the multinational company is obliged to adopt appropriate instruments, so that, once this obligation is fulfilled, it would not be liable.

The reference to obligations of "means" is not convincing. In the reflection on non - performance, this conception has now lost its original systematic relevance[84] and reproposing it leads to perplexity[85]. Indeed, in empirical reality there is no clear distinction between means and result, given the relative nature of the two concepts[86]. If one breaks down a complex process into a series of connected events, one and the same episode can be seen, at the same time, as the product of an organisational choice and the condition for achieving a further objective[87]. Thus, diligent control implies the succession of measures that are mutually presupposed, as they originate from choices on account of typical risks. It is unconvincing to emphasise only the instrumental nature of supervision, since the decisions are blended into a flow of executive operations of a unitary project, devoted to the pursuit of an ultimate interest.

---

[83] See the Explanatory Memorandum to the *Lieferkettensorgfaltspflichtengesetz*, whereby "*das Gesetz begründet eine Bemühenspflicht, aber weder eine Erfolgspflicht noch eine Garantiehaftung*". See, further, D. LEUERING, D. RUBNER, *Lieferkettensorgfaltspflichtengesetz, loc. cit*, 399 ff.; E. EHMANN, D. F. BERG, *Das Lieferkettensorgfaltspflichtengesetz (LkSG): ein erster Überblick*, in *GWR*, 2021, 288 ff.; E. WAGNER, M. RUTLOFF, *Das Lieferkettensorgfaltspflichtengesetz - eine erste Einordnung*, in *NJW*, 2021, 2145 ff.; G. RÜHL, C. KNAUER, *Zivilrechtlicher Menschenschutz? Das deutsche Lieferkettengesetz und die Hoffnung auf den europäischen Gesetzgeber, loc. cit*., 111 ff..

[84] For the first judgement against the distinction between obligations of "means" and obligations of "result", see Cass. 28 July 2005, n. 15781, in *Mass. giur. it.*, 2005, and, furthermore, for a commentary on the judgement, see A. NICOLUSSI, *Il commiato della giurisprudenza dalla distinzione tra obbligazioni di risultato e obbligazioni di mezzi*, in *Eur. dir. priv.*, 2006, 797 ff.. The transposition of this principle in case law is now a given and, for other compliant rulings, see Cass. 11 January 2008, no. 577, in *Giur. it*., 2008, 1652; Cass. 7 February 2014, no. 2863, in *Giust. civ. mass.*, 2014; Cass. 5 August 2013, no. 18612, *ibid*., 2013; Cass. 20 December 2013, no. 28575, *ibid*., 2013.

[85] Cf. C. CASTRONOVO, *Profili della responsabilità medica*, in *Vita not.*, 1997, 1226 ss.; L. NIVARRA, *La responsabilità civile dei professionisti (medici, avvocati, notai): il punto della giurisprudenza*, in *Eur. dir. priv.*, 2000, 518 ss.; V. CARBONE, *Obbligazioni di mezzi e di risultato tra progetti e tatuaggi*, in *Corr. giur.*, 1997, 550 ff.

[86] Cf. U. BRECCIA, *Le obbligazioni*, in *Tratt. dir. priv.*, edited by G. IUDICA, P. ZATTI, Milan, 1991, 137 ff., where "the distinction is based on two different notions of result; one that influences from the outside the reason for being of the performance, but remains extraneous to the obligation (...); the other that is, instead, certainly included in the sphere of performance, but is the result of conduct that is equally due and constitutes an essential moment of the content of the obligation".

[87] See L. MENGONI, *Obbligazioni di risultato e obbligazioni di mezzi*, in *Riv. dir. comm.*, 1954, 188 ff.

Above all, as Article 1174 of the Italian Civil Code makes clear, in civil obligations performance consists in the pursuit of an interest of the creditor, so that a mere attempt is not sufficient, but the achievement of a useful result is required[88]. In other words, arguing for the existence of the "obligations of means" induces to overlap two different concepts, which are the satisfactory conduct in its strict sense and the degree of diligence required during its performance[89]. The latter alludes to the parameter to be used to evaluate the fulfilment of the obligations. Thus, the object of the relationship can never be the mere undertaking to carry out one's duties unless it is for the benefit of the aggrieved party. Instead, performance presupposes the satisfaction of the interest and, if this is not the case, the observance of the canon of diligence must be investigated, to see whether the behaviour is reprehensible.

The same reasoning applies to the obligations introduced by the directive, albeit outside the obligatory relationship in the strict sense. They are not "*obbligazioni senza precetto*"[90], as they set forth measures to be adopted. However, it is not enough to comply with the requirements, as a diligent organisation must be in place, so that appropriate measures have to be chosen, as specified in recital 19, *i. e*. designed to deal effectively with hazards, to be compared with the likelihood of their occurrence. Thus, recital 19 does not discuss the matter of supervision, as this follows from Articles 7 to 16; rather, the term "appropriate due diligence measures" is used with a descriptive purpose, so that the manner of supervision, *i. e*. the relevant standard of care, is defined.

For example, the canon adopted is opposite to that of Article 2087 of the Italian Civil Code[91], the closing rule of the Italian regulations on safety protection in the workplace[92]. The prevention of accidents and occupational diseases requires diligence

[88] See A. NICOLUSSI*, Il commiato della giurisprudenza dalla distinzione tra obbligazioni di risultato e obbligazioni di mezzi, loc. cit.*, 801 ff..

[89] Cf. C. CASTRONOVO, *La responsabilità per inadempimento da Osti a Mengoni*, in *Eur. dir. priv.*, 2008, 7 ff.; F. PIRAINO, *obbligazioni di risultato e obbligazioni di mezzi, ovvero dell'inadempimento incontrovertibile e dell'adempimento controvertibile, ibid.*, 2008, 85 ff.

[90] The expression is in F. FIMMANÒ, *Art. 41 della Costituzione e valori environmental, social and governance: esiste davvero una responsabilità sociale dell'impresa*, *loc. cit.*, 803 ff..

[91] See Article 2087 of the Italian Civil code, which states that "the entrepreneur is required to adopt in the exercise of the business the measures which, according to the particular nature of the work, experience and technique, are necessary to protect the physical integrity and moral personality of the employees".

[92] See G. NATULLO, *Principi generali della prevenzione e confini dell'obbligo di sicurezza*, in AA. VV., *Diritto del lavoro, commentario*, diretto da F. CARINCI, vol. VIII, Turin, 2007, 120 ff. Also, see Cass. 21 September 2021, no. 25597, in *Giur. it. rep.*, 2021; Cass. 8 October 2018, no. 24742*, ibid*., 2018; Cass. 3 August 2012, no. 13956*, ibid*., 2012.

superior to that of the *pater familias*, since the maximum expertise available is required[93], read in light of the particular service and, above all, the best technical knowledge available[94]. Moreover, the obligation does not end with the introduction of certain suitable precautionary rules. From the company's position of guarantee derives a duty to take every measure to avoid any damage[95]. No strict liability is imagined, because the harmful event must always be the result of at least a culpable conduct, with the violation of predeterminable precautionary rules suggested by law and the best technique[96].

The contrast between obligations "of means" and "of result" must be interpreted in this light. While the criterion introduced by Article 2087 of the Italian Civil Code is stringent, in that the adoption of the most up - to - date precautionary rules that everyone can discover[97] and ensure the "result" is imposed, the effort set forth by the directive is less demanding. Adequacy must be determined by objective parameters, set in a transnational dimension, since companies from different backgrounds and with uneven resources must be coordinated. Consequently, the obligations are fulfilled if, notwithstanding the damages, the parent corporate employs the maximum effort required and structures its organisation with the correct resources, not in absolute terms, but on the basis of the scientific, technical and patrimonial possibilities used according to criteria of

[93] Cf. P. PUTRIGNANO, *Obblighi di sicurezza: oggetto e ripartizione dell'onere della prova*, in *Arg. dir. lav.*, 2013, 440 ff; C. TIMELLINI, *Il contenuto dell'obbligo di sicurezza*, in AA. VV., *Il testo unico in materia di salute e sicurezza sul lavoro*, edited by L. GALANTINO, Turin, 2009, 62 ff.

[94] V. Cass. 2 May 2000, no. 5491, in *Riv. crit. dir. lav.*, 2000, 778, for which "the company must inspire its conduct to the acquisitions of the best science and experience". See also App. Cagliari 13 February 1999, in *Riv. giur. sarda*, 2000, 691; Cass. 6 July 2002, no. 9856, in *Arch. giur.*, 2003, 545. See also D. GAROFALO, *L'art. 2087 cod. civ. tra* vis espansiva *e responsabilità oggettiva*, in *Mass. giur. lav.*, 2024, 626 ff..

[95] Cf. M. FRANCO, *Diritto alla salute e responsabilità civile del datore di lavoro*, Milan, 1995, 123 ff.; V. MARINO, *La responsabilità del datore di lavoro*, Milan, 1990, 86 ff. On the need for the injury to the protected good to derive causally from the violation of predetermined obligations of conduct, see Cass. 11 February 2020, no. 3282, in *Onelegale*, 2020; Cass. 15 June 2020, no. 11546*, ibid*., 2020; Cass. 10 June 2016, no. 11891, in *Giur. it. rep.*, 2016.

[96] Cf. D. GAROFALO, *L'art. 2087 cod. civ. tra* vis espansiva *e responsabilità oggettiva, loc. cit.*, 627 ff.; M. PERSIANI*, Introduzione*, in Aa. VV., *Problemi della sicurezza nei luoghi di lavoro*, in *Quad. arg. dir. lav.*, Padova, 2003, 4 ff.; C. SMURAGLIA, *La tutela della salute del lavoratore tra principi costituzionali, norme vigenti e prospettive di riforma*, in *Riv. it. dir. lav.*, 1988, 415 ff.; G. COSTAGLIOLA, A. CULOTTA, M. DI LECCE, *Le norme di prevenzione per la sicurezza sul lavoro*, Milano, 1990, 36 ff.

[97] V. Cass. 23 May 2003, no. 8204, in *Mass. giur. lav.*, 2003, 699; Trib. Milano 14 March 2003, in *Riv. crit. dir. lav.*, 2003, 674. See also L. MONTUSCHI, *La Corte costituzionale e gli* standard *di sicurezza del lavoro*, in *Arg. dir. lav.*, 2006, 5 ff.; M. LANOTTE, *Profili evolutivi dell'obbligo di sicurezza nell'evoluzione giurisprudenziale*, in *Dir. rel. ind.*, 2002, 133 ff.

social normality[98] and, therefore, in compliance with the canon of expertise of *homo eiusdem generis et qualitatis*[99].

It is precisely the comparison with Article 2087 of the Italian Civil Code, which invokes the absolute best available knowledge, that shows the different attitude of the obligations arising from the position of guarantee conceived by the directive. In this case, the preparation of the plan does not require the most intense effort possible, but those measures expected from a sensible operator. Thus, there is a delimitation of the due conduct according to criteria consistent with the French experience[100]. Although the wording of the directive is not always clear, as the reference to "obligations of means" shows, this expression has a reconstructive value of the overall approach.

[98] V. Trib. Bologna 5 October 2004, in *Guida dir.*, 2004, 5, 64; Cass. 30 July 2003, no. 11704, in *Arch. civ.*, 2004, 665; Cass. 19 August 2003, no. 12138*, ibid*., 2004, 801.

[99] See E. BARCELLONA, *La* sustainable corporate governance *nelle proposte di riforma del diritto europeo: a proposito dei limiti strutturali del c. d.* stakeholderism*, loc. cit.*, 48 ff; G. RACUGNO, D. SCANO, *Il dovere di diligenza delle imprese ai fini della sostenibilità: verso un* green deal *europeo*, *loc. cit.*, 733 ff.

[100] See A. LYON – CAEN, T. SACHS, *The responsibility of multinational enterprises: a constitutionalization process in action*, in AA. VV., *Multinationals and the constitutionalization of the world power system*, a cura di J. P. ROBÉ, A. LYON – CAEN, S. VERNAC, Routledge, Londra, 2016, 204 ss.