

ARTICLE

DUE DILIGENCE IN GLOBAL SUPPLY CHAINS: THE TROUBLED JOURNEY OF THE EU LEGISLATION AND THE GLOBAL PERSPECTIVE

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ABSTRACT

Global supply chains are undergoing a profound transformation. The traditional model, built around geographical fragmentation, functional specialization, and cost-efficiency outsourcing, is increasingly challenged by a new regulatory and technological environment shaped by resilience, accountability, and control. The evolution of supply chains in the European Union is driven by the intersection of two closely connected developments: the growing centrality of digital technologies and data value chains, and the emergence of mandatory sustainability due diligence obligations. Digitalization is not merely reshaping the organization of supply chains; it is also influencing the informational and contractual infrastructure through which due diligence can be implemented, monitored, and enforced.

Against this background, the Article offers three main contributions. First, it redefines the place of global supply chains within the EU regulatory agenda by showing how digital regulation and sustainability regulation increasingly rely on a common ex ante, risk-based logic. In this perspective, data flows, algorithmic systems, and compliance technologies become integral to the governance of supply chains, while sustainability due diligence extends the regulatory approach to human rights and environmental harms

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across chains of activities. Second, the Article examines the simplification turn introduced by the Omnibus I package. It argues that, while formally preserving the core architecture of the CS3D, the reform narrows the scope and intensity of due diligence obligations and reveals the tension between regulatory effectiveness and the political objective of reducing compliance and administrative burdens. Third, it shows that the effectiveness of due diligence ultimately depends on private law instruments and enforcement design. It analyzes how commercial contracts operationalize due diligence through cascading obligations, model clauses, monitoring duties, and remedial mechanisms, and how administrative and judicial enforcement interact in a complementary way to ensure prevention, correction, and compensation.

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I. INTRODUCTION: GLOBAL SUPPLY CHAINS IN THE EU REGULATORY AGENDA

Over the past several decades, global value chains have represented the dominant organizational model of production and international trade.¹ Geographical fragmentation, functional specialization, and cost-efficiency outsourcing represented the core characteristics of this model. While typically consolidating a strategic coordination role of a single enterprise (chain leader), supply chains have progressively decentralized production and distribution across networks in different jurisdictions and continents.²

Today, however, this model is undergoing a profound transformation.³ Geopolitical tensions, environmental and health crises, evolving regulatory frameworks, and growing sustainability expectations are restructuring the architecture of global supply

1. See HANDBOOK ON GLOBAL VALUE CHAINS 1–2 (Stefano Ponte, Gary Gereffi, & Gale Raj-Reichert, eds., Edward Elgar 2019).

2. Stefano Ponte, Timothy J. Sturgeon & Mark P. Dallas, *Governance and Power in Global Value Chains*, HANDBOOK ON GLOBAL VALUE CHAINS, *supra* note 1, at 120; Hugh Collins, *Introduction to Networks as Connected Contracts*, in GUNTHER TEUBNER, NETWORKS AS CONNECTED CONTRACTS 1 (Hugh Collins ed., Michelle Everson trans., Hart 2011); CONTRACTUAL NETWORKS, INTERFIRM COOPERATION AND ECONOMIC GROWTH 5–7 (Fabrizio Cafaggi ed., 2011).

3. Gary Gereffi, *Foreword: Rethinking the Governance of Global Value Chains*, in SUSTAINABILITY, DUE DILIGENCE AND VALUE CHAIN GOVERNANCE xiii (Fabrizio Cafaggi, Paola Iamiceli & Federico Pistelli eds., 2025) [hereinafter SUSTAINABILITY AND VALUE CHAIN GOVERNANCE].

chains. The traditional paradigm, primarily based on cost minimization and extensive delocalization, is increasingly complemented, and at times challenged, by concerns related to resilience, accountability, and control.

Two key tendencies are currently contributing to reshaping the structure and organization of global supply chains. These two tendencies should not be regarded as analytically separate. The digital transformation of supply chains is reshaping their organization and providing the infrastructural conditions through which new sustainability due diligence obligations can be implemented, monitored, and enforced.⁴

The fundamental role of technologies and digitalization for supply chain management is rapidly emerging.⁵ While global value chains remain transnational in scope, digital technologies enable the chain leader to regain oversight, coordination, and monitoring powers across the entire network. Advanced data analytics, traceability systems, integrated digital procurement platforms, and artificial intelligence tools provide unprecedented visibility of suppliers, subcontractors, and business partners.⁶ The value chain is no longer a linear channel for the production of goods and services; it increasingly functions as an informational infrastructure, with the data value chain at its core.⁷ Like physical goods, data are generated, collected, processed, transferred, and monetized by interconnected actors. Control over data flows becomes as critical as control over material flows and physical assets. The entity that retains data effectively strengthens its strategic position within the chain and in the market.⁸ This technological reconfiguration is not only relevant from a market and governance perspective. It also becomes legally significant,

4. See Federico Pistelli & Fabrizio Cafaggi, *Governing Due Diligence in Global Supply Chains After the Omnibus Directive*, 2026 J. EUR. CONSUMER & MKT. L. 57 (2026).

5. See Giovanna Culot, Matteo Podrecca & Guido Nassimbeni, *Artificial Intelligence in Supply Chain Management: A Systematic Literature Review of Empirical Studies and Research Directions*, 162 COMPUT. INDUS. art. 104132 (2024).

6. See Markus Burger et al., *Hybrid Intelligent Supply Chains: Leveraging Human and Artificial Intelligence for Enhanced Supply Chain Resilience*, in SUPPLY MANAGEMENT RESEARCH 105 (Christoph Bode, Ronald Bogaschewsky, Michael Eßig & Rainer Lasch eds., Springer Gabler 2025).

7. See Carla L. Reyes & Kishanthi Parella, *Data Supply Chains* (SMU Dedman Sch. of L. Legal Stud. Rsch. Paper No. 725, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6098767.

8. *Id.* at 4.

because due diligence obligations increasingly depend on data collection, traceability tools, risk-mapping systems, and digital forms of contractual and administrative monitoring.

This transformation in architecture, governance, and resource allocation across global value chains is also closely intertwined with the growing centrality of sustainability concerns.⁹ During the last decade, the outbreak of a series of scandals—beginning with the Rana Plaza collapse and followed by Dieselgate—channeled public attention toward this phenomenon. In particular, greenwashing and the abuse of green labels have undermined market confidence in multinationals' sustainability programs.¹⁰ The lack of effective protection for victims of supply chains' environmental and social harms further highlights the challenges of holding multinational companies accountable for their own conduct and that of their suppliers and business partners.¹¹ Until recently, the lack of due diligence legal obligations has not only overemphasized the role of reputation as the main driver for sustainability, but also limited the role of public enforcement, with special regard to administrative authorities as guardians of compliance. Voluntary due diligence frameworks have also largely failed to prevent harm, and instead have prioritized reputational management and formal compliance over rigorous assessment of whether engaged policies produce meaningful results. Moreover, a full coordination of transnational private and national public regulation and their cumulative effects is still lacking.¹²

9. A global perspective on due diligence enforcement also requires moving beyond the assumption that private-law innovation travels only from the Global North to the Global South. Recent comparative scholarship on legal heterodoxy shows that Global South jurisdictions may develop distinctive private-law solutions that respond to inequality, weak state capacity, environmental externalities, and the North–South distribution of corporate power. See Kevin E. Davis & Mariana Pargendler, *Legal Heterodoxy in the Global South: Adapting Private Laws to Local Contexts*, in LEGAL HETERODOXY IN THE GLOBAL SOUTH 1 (Kevin E. Davis & Mariana Pargendler eds., 2025).

10. See Jennifer Bair, Mark Anner & Jeremy Blasi, *The Political Economy of Private and Public Regulation in Post-Rana Plaza Bangladesh*, 73 ILR REV. 969, 990 (2020).

11. Cees van Dam, *Tort Law and Human Rights: Brothers in Arms on the Role of Tort Law in the Area of Business and Human Rights*, 2 J. EUR. TORT L. 221 (2011).

12. John Gerard Ruggie, *Multinationals as Global Institution: Power, Authority and Relative Autonomy*, 12 REG. & GOVERNANCE 317, 326 (2018).

Both these transformations are currently at the core of the EU political agenda, which introduced new obligations for companies operating in the EU market and their value chains.

A. New Technologies and Data Value Chains

In its attempt to gain controlling power over digital space (“digital sovereignty”)¹³, the European Union has recently adopted several new pieces of legislation (“Acts”)¹⁴ regarding the competitive position of gatekeepers (“Digital Markets Act”)¹⁵, the transparency in providing digital services (“Digital Services Act”)¹⁶, the fair access and use of data (“Data Act”)¹⁷, the data sharing and reuse of data (“Data Governance Act”)¹⁸ and the development and use of artificial intelligence systems (“AI Act”).¹⁹ These acts complement the existing legislation on personal data flow (“General Data Protection Regulation”).²⁰

These new laws are strongly characterized by their *ex ante* and risk-based approach,²¹ which focuses on procedural and due diligence obligations. This is the case, for instance, with the duty of large platforms to periodically identify, analyze, and assess significant systemic risks stemming from the functioning and use

13. See Giusella Finocchiaro, *La Sovranità Digitale*, 2022 *DIRITTO PUBBLICO* 809, 810; see also Luciano Floridi, *The Fight for Digital Sovereignty: What It Is, and Why It Matters, Especially for the EU*, 33 *PHIL. & TECH.* 369, 370 (2020).

14. Commentators observe a parallelism with the use of Acts in this context and the use of the same word by the US Securities Act and Securities Exchange Act for the overarching reform of financial markets in 1933–1934. See Martin Eifert, Axel Metzger, Heike Schweitzer & Gerhard Wagner, *Taming The Giants: The DMA/DSA Package*, 58 *COMMON MKT. L. REV.* 987 (2021).

15. Regulation (EU) 2022/1925 of the European Parliament and of the Council, 2022 O.J. (L 265) 1 [hereinafter Digital Markets Act].

16. Regulation (EU) 2022/2065 of the European Parliament and of the Council, 2022 O.J. (L 277) 1 [hereinafter Digital Services Act].

17. Regulation (EU) 2023/2854 of the European Parliament and of the Council, 2023 O.J. (L) 1 [hereinafter Data Act].

18. Regulation (EU) 2022/868 of the European Parliament and of the Council, 2022 O.J. (L 152) 1 [hereinafter Data Governance Act].

19. Regulation (EU) 2024/1689 of the European Parliament and of the Council, 2024 O.J. (L) 1 [hereinafter AI Act].

20. Regulation (EU) 2016/679 of the European Parliament and of the Council, 2016 O.J. (L 119) 1 [hereinafter GDPR].

21. Cary Coglianese, *The Law and Economics of Risk Regulation*, in *WILEY ENCYCLOPEDIA OF OPERATIONS RESEARCH AND MANAGEMENT SCIENCE* (James J. Cochran ed., Wiley 2011).

of their services in the European Union.²² Moreover, these acts consider that the use of digital technologies and the large-scale generation and circulation of data significantly increase the complexity of global value chains. The integration of algorithmic systems, cloud infrastructures, and data-driven services reshapes traditional supply chain relationships, leading to the entry of new actors, such as AI developers, data providers, and intermediary platforms, into previous linear production and distribution structures. Compliance architecture thus becomes dependent on an ecosystem that is fragmented both technologically and contractually. This structural transformation calls for clearer rules on the allocation of responsibilities along the value chain. In this respect, the AI Act introduces a novel framework that distributes obligations among different operators, including providers, deployers, importers, and distributors of AI systems, according to their specific role and degree of control over the technology.²³ Other legislation focuses on contractual architecture, providing harmonized rules and model clauses for data sharing agreements.²⁴

B. Sustainability Due Diligence Obligations

In a similar vein, the European legislator has extended this regulatory approach to prevent, mitigate, and remediate the human rights and adverse environmental impacts of global supply chains. The new legislative framework adopted by the European Union and several Member States builds upon the principles set out in the United Nations Guiding Principles on Business and Human Rights (“UNGP 2011”) and comparable standards.²⁵ Before the introduction of a comprehensive framework, mandatory due

22. Digital Services Act, *supra* note 16, arts. 34–35.

23. AI Act, *supra* note 19, art. 25.

24. See Teresa Rodriguez de Las Heras Ballell, *Drafting Model Contractual Terms for Voluntary B2B Data Sharing: A Tool to Deal with Unfairness*, in PRIVATE LAW AND THE DATA ACT 127, 127–28 (Sebastian Lohsse, Reiner Schulze & Dirk Staudenmayer eds., Nomos 2024).

25. See Org. for Econ. Coop. & Dev. [OECD], *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD/LEGAL/0144 (2023) (initially adopted in 1976 and most recently amended in 2023, the OECD Guidelines set out non-binding principles and standards for implementing responsible business conduct, covering a wide range of areas including human rights, environment, anti-bribery, and consumer interests) [hereinafter OECD Guidelines].

diligence requirements had already been established in specific sectors or for particular risks and commodities through various EU instruments, such as the Conflict Minerals Regulation,²⁶ the Deforestation Regulation,²⁷ the Battery Regulation,²⁸ and the Regulation prohibiting products made with forced labor on the EU market.²⁹

Directive (EU) 2024/1760 (“CS3D”) complements these sectoral measures by introducing a horizontal, risk-based sustainability due diligence regime.³⁰ It sets out obligations concerning actual and potential human rights violations and adverse environmental and social impacts in relation to companies’ own operations, those of their subsidiaries, and those carried out by their business partners within their chains of activities.³¹ The notion of “chain of activities” encompasses both subsidiaries and business partners, including direct and indirect partners.³² While contractual arrangements are a key means of establishing business relationships, they are not the sole determining factor.

Under the CS3D, companies must conduct risk-based human rights and environmental due diligence.³³ Lead companies within a chain are required to map and assess risks inherent in supply chain activities, including those stemming from irresponsible purchasing practices.³⁴ Their obligations extend to preventing, mitigating, and remediating adverse impacts, as well as providing compensation when harm occurs.³⁵ Adverse impact should be

26. Regulation (EU) 2017/821 of the European Parliament and of the Council, 2017 O.J. (L 130) 1 [hereinafter Conflict Minerals Regulation].

27. Regulation (EU) 2023/1115 of the European Parliament and of the Council, 2023 O.J. (L 150) 206 [hereinafter Deforestation Regulation].

28. Regulation (EU) 2023/1542 of the European Parliament and of the Council, 2023 O.J. (L 191) 1 [hereinafter Battery Regulation].

29. Regulation (EU) 2024/3015 of the European Parliament and of the Council, 2024 O.J. (L) 1 [hereinafter Forced Labor Regulation].

30. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, 2024 O.J. (L) 1 [hereinafter CS3D].

31. *Id.* art. 8(1).

32. *Id.* art. 3(1)(g).

33. *Id.* arts. 5, 7–13, 15–16, 19.

34. *Id.* art. 10–11.

35. *Id.* arts. 10–12.

prioritized even where it implicates conflicting interests, such as the stability of production in global supply chains.³⁶

The role of collaboration between enterprises in prevention and remediation is highly relevant to harness effective regulatory instruments.³⁷ Due diligence must be embedded into corporate policies and risk management systems, notably through the adoption of codes of conduct whose standards apply throughout the chain.³⁸ Companies must identify and assess actual or potential adverse impacts and, where appropriate, prioritize them according to their severity, measured by the magnitude of harm and likelihood of occurrence. A failure to define the severity of risks and their likelihood results in a violation of due diligence obligations, which, at the same time, constitutes an administrative offense³⁹ and a civil wrongdoing under the CS3D.⁴⁰

II. SIMPLIFYING REGULATORY AND ADMINISTRATIVE BURDENS THROUGH OMNIBUS

The regulations described above have significantly increased compliance burdens for undertakings operating in the EU market, introducing new documentation duties, internal control mechanisms, risk assessment procedures, and reporting obligations.⁴¹

36. *Id.* art. 9.

37. *Id.* arts. 10–12.

38. *Id.* art. 7(2)(b)–(c).

39. *Id.* arts. 24–27.

40. *Id.* art. 29.

41. Critics of the CS3D have argued that due diligence raises costs without generating benefits for the companies. There is fear that the application of mandatory due diligence may negatively affect competitiveness and firms' performances. For many companies, particularly those acting as chain leaders or operating across multiple sectors, compliance has become more complex, resource-intensive, and costly. However, empirical studies suggest that profitability and performances are not negatively affected by mandatory due diligence. See Bernhard Reinsberg & Christoph Valentin Steinert, *The French Duty of Vigilance Law: Reconciling Human Rights and Firm Profitability*, 32 REV. INT'L POL. ECON. 2213, 2221 (2025) (examining the potential substitution effect of mandatory due diligence). Recent analysis estimates that European companies will have to bear compliance costs ranging from €150,000 for non-listed undertakings to €1,000,000 for listed ones. See EFRAG, COST-BENEFIT ANALYSIS OF THE FIRST SET OF DRAFT EUROPEAN SUSTAINABILITY REPORTING STANDARDS 91 (prepared by CEPS & Milieu, 2022), <https://www.ceps.eu/ceps-publications/cost-benefit-analysis-of-the-first-set-of-draft-european-sustainability-reporting-standards/> [<https://perma.cc/SS4H-BAGD>].

Moreover, the areas of overlap between different pieces of legislation have been the subject of criticism, mainly from the industry. Several of these instruments pursue partially convergent objectives but rely on distinct definitions, procedural standards, supervisory mechanisms, and reporting timelines.⁴² This fragmentation has generated coordination difficulties, legal uncertainty, and the risk of duplicative obligations.

These concerns have contributed to reshaping the policy agenda during Von der Leyen's second EU Commission presidency, with a renewed focus on regulatory and administrative simplification. By 2030, the European Commission aims to achieve a significant reduction in administrative burdens—25% across all businesses and 35% for Small and Medium Enterprises (“SMEs”)—through an ambitious agenda expected to deliver €37.5 billion in recurring cost savings. This initiative is a direct response to long-standing requests from Member States for regulatory relief to strengthen Europe's industrial competitiveness, as prominently reflected in the November 2024 Budapest Declaration on the New European Competitiveness Deal, which builds on the findings of the September 2024 Draghi Report on EU Competitiveness.⁴³

Since 2025, the European Commission has promoted a new wave of simplification initiatives.⁴⁴ This has resulted in the presentation of several so-called “Omnibus packages” designed to streamline overlapping requirements, enhance consistency across legal instruments, clarify the allocation of responsibilities, and improve the overall coherence of the regulatory framework. Among these initiatives, the Omnibus I package is dedicated to the sustainability framework,⁴⁵ while the Omnibus VII package focuses

42. VDMA, EUR. OFF. ENVTL. AFF. & SUSTAINABILITY, *Position Paper on the Commission Proposal for an Omnibus Regulation on CS3D, CSRD and EU-Taxonomy* (Jan. 2025), https://www.vdma.eu/documents/34570/83902961/2025-01_VDMA_Position_Omnibus_final_en.pdf/068f4246-82de-f6aa-dd23-031d36669f02?t=1738054076351 [https://perma.cc/H6XB-28YC].

43. See MARIO DRAGHI, THE FUTURE OF EUROPEAN COMPETITIVENESS, EUR. COMM'N, Part A (Sept. 9, 2024), https://commission.europa.eu/topics/competitiveness/draghi-report_en#paragraph_47059 [https://perma.cc/F7JX-ADSV].

44. European Commission Press Release IP/25/2414, Commission Unveils 2026 Work Programme (Oct. 1, 2025), https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2414 [https://perma.cc/58WG-QTY3].

45. See *Proposal for a Directive of the European Parliament and of the Council Amending Directives (EU) 2022/2464 and (EU) 2024/1760 as Regards the Dates from Which Member States Are to Apply Certain Corporate Sustainability Reporting and Due Diligence*

on the digital framework.⁴⁶ At the time of this publication, the Omnibus I has already been published in the Official Journal of the European Union and will have to be transposed by Member States starting in 2027.⁴⁷ By contrast, the proposal for the Omnibus VII package is still at an early stage of the negotiation process.

In the context of EU law, the simplification stances have been at the core of the Better Regulation Agenda adopted by the European Commission in 2015⁴⁸ and subsequently implemented by a new Communication on April 29, 2021,⁴⁹ a set of Guidelines⁵⁰ and a Toolbox.⁵¹ Simplification is a cross-cutting principle that runs throughout the entire policy cycle by combining different strategies that include improving the cost-benefit analysis in the impact assessments, easing stakeholders' participation, increasing evidence-gathering, ensuring coherence among different pieces of legislation, and assessing the overall adequacy of EU policies over

Requirements, COM (2025) 80 final (Feb. 26, 2025); *Proposal for a Directive of the European Parliament and of the Council Amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as Regards Certain Corporate Sustainability Reporting and Due Diligence Requirements*, COM (2025) 81 final (Feb. 26, 2025) [hereinafter Omnibus I].

46. See *Proposal for a Regulation of the European Parliament and of the Council Amending Regulations (EU) 2024/1689 and (EU) 2018/1139 as Regards the Simplification of the Implementation of Harmonised Rules on Artificial Intelligence (Digital Omnibus on AI)*, COM (2025) 836 final (Nov. 19, 2025); *Proposal for a Regulation of the European Parliament and of the Council Amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as Regards the Simplification of the Digital Legislative Framework, and Repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868, and Directive (EU) 2019/1024 (Digital Omnibus)*, COM (2025) 837 final (Nov. 19, 2025) [hereinafter Omnibus VII].

47. See Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 Amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as Regards Certain Corporate Sustainability Reporting Requirements and Certain Corporate Sustainability Due Diligence Requirements, 2026 O.J. (L) 1 [hereinafter Omnibus I Directive].

48. See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Better Regulation for Better Results – An EU Agenda*, COM (2015) 215 final (May 19, 2015).

49. See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Better Regulation: Joining Forces to Make Better Laws*, COM (2021) 219 final (Apr. 29, 2021).

50. See *Commission Staff Working Document Better Regulation Guidelines*, SWD (2021) 205 final (Nov. 3, 2021).

51. See EUR. COMM'N, BETTER REGULATION TOOLBOX (Dec. 2025) (complementing the Better Regulation Guidelines), https://commission.europa.eu/document/download/9c8d2189-8abd-4f29-84e9-abc843cc68e0_en?filename=BR%20toolbox%20-%20December%202025.pdf [https://perma.cc/UEK8-DA9F].

time (Regulatory Fitness and Performance Programme, or “REFIT”).⁵² The REFIT program is not a vehicle for deregulation,⁵³ but functions as a means to modernize old regulatory frameworks that, for different reasons, have become obsolete and generate unjustified compliance burdens. Technological innovation may, for instance, prompt a fitness check on ineffective policies and support a simplification proposal.⁵⁴

The use of the Omnibus legislative technique has proven controversial, particularly given its limited prior use by EU policymakers.⁵⁵ The absence of an impact assessment—justified by the urgency of the initiative and the existence of prior assessments in the original legislation⁵⁶—has precluded an in-depth evaluation of the proportionality principle, leaving Omnibus I vulnerable to annulment.⁵⁷

Against this background, external economic and geopolitical considerations have also played a significant role in redefining the approach taken for the CS3D. In particular, the Joint Statement on a United States-European Union Framework on an Agreement on Reciprocal, Fair and Balanced Trade has contributed to reshaping the broader transatlantic economic context within which EU regulatory policy now operates.⁵⁸ The Joint Statement—which reaffirms the mutual commitment to reciprocal market openness,

52. Felice Simonelli & Nadina Iacob, *Can We Better the European Union Better Regulation Agenda?*, 12 EUR. J. RISK REG. 849–51 (2021).

53. *Communication from the Commission, Better Regulation for Better Results – An EU Agenda*, COM (2015) 215 final, § 4.1.

54. *Id.* § 4.

55. See Alberto Alemanno, *The Legality of Omnibus Legislation Under EU Law: A Preliminary Analysis of Omnibus I Simplification Directive of CSRD and CSDD and its Legal Consequences on the EU Legal Order* 24 (HEC Paris Research Paper No. LAW-2025-1588, Nov. 9, 2025), <https://ssrn.com/abstract=5727822> (the Omnibus has migrated from being an occasional administrative convenience to becoming the preferred vehicle for implementing a comprehensive deregulatory agenda) [<https://perma.cc/E5Z7-NTT2>].

56. Omnibus I, COM (2025) 81 final, at 12.

57. *Id.* Impact assessments are neither mandatory nor binding *per se* but are a fundamental tool for the evaluation of the proportionality principle. See Consolidated Version of the Treaty on European Union art. 5(4), 2012 O.J. (C 326) 13, 18 [hereinafter TEU]; see also Case C-482/17, Czech Rep. v. Parliament & Council, ECLI:EU:C:2019:321, ¶ 98 (Apr. 11, 2019) (Opinion of Advocate General Sharpston).

58. See European Commission, Joint Statement on a United States-European Union Framework on an Agreement on Reciprocal, Fair and Balanced Trade (Aug. 21, 2025), https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21_en [<https://perma.cc/T2DW-3H69>] [hereinafter Framework Agreement].

fair competitive conditions, and the avoidance of unnecessary trade barriers—has reinforced the strategic importance of regulatory cooperation and competitiveness in transatlantic relations. In a context marked by concerns over trade frictions and the risk of retaliatory measures, European policymakers have become increasingly attentive to the potential extraterritorial and market access effects of EU rules on US-based undertakings operating within the internal market. In this sense, simplification has not merely been framed as an efficiency-oriented exercise, but also as a means to ensure that EU regulation remains compatible with international economic commitments and does not undermine the European Union's attractiveness toward foreign investments. The emphasis on competitiveness in the Draghi Report and the Budapest Declaration thus intersects with the transatlantic dimension of EU economic governance: simplification serves both internal market efficiency and external trade policy objectives. One key term of the agreement is dedicated to the sustainability framework.⁵⁹ The European Union has indicated that it will seek to ensure that the implementation of the CS3D does not result in undue restrictions on transatlantic trade. The European Union has referred to efforts aimed at reducing administrative burdens for businesses, including SMEs, and at considering possible revisions to the provisions concerning a harmonized civil liability regime for due diligence failures and obligations related to climate transition plans. In addition, the European Union has acknowledged concerns raised by the United States in relation to the application of CS3D requirements to companies established in third countries that are subject to regulatory frameworks regarded as comparably robust.

III. SUSTAINABILITY DUE DILIGENCE OBLIGATIONS IN THE OMNIBUS I

The Omnibus I package introduces several substantial amendments to the CS3D, the Corporate Sustainability Reporting

59. *Id.* ¶ 12.

Directive (“CSRD”),⁶⁰ and the Taxonomy Regulation,⁶¹ and postpones the entry into force of due diligence obligations.⁶²

The Omnibus I maintains the original core CS3D’s infrastructure. First, it confirms the transition from a voluntary to a mandatory sustainability due diligence regime, thereby consolidating the regulatory shift towards binding corporate responsibilities. It also reaffirms the obligation to embed environmental and social considerations within corporate governance structures and throughout companies’ chains of activities. The Directive reinforces a risk-based approach to sustainability obligations (Recital 40 Omnibus I). Particular attention is paid to company size, both as an indicator of the capacity to influence decision-making along the chain and as a justification for differentiated support mechanisms, especially for smaller undertakings facing the transition towards more sustainable operations and a fairer allocation of related costs. In addition, the Omnibus framework maintains the focus on contractual governance mechanisms as tools for cascading sustainability obligations across value chains. It also preserves the prohibition of unfair purchasing practices, recognizing their potential to exacerbate environmental and human rights harms. Finally, it upholds the establishment of an administrative enforcement system, combining sanctions and remedial measures that complement contractual and non-contractual liability regimes, while prioritizing corrective remedies in cases where adverse impacts have materialized over measures that would entail the suspension of existing business relationships.

At the same time, the Omnibus I seems to go way beyond the mere intent of simplifying compliance requirements and coordinating different pieces of the sustainability regulatory

60. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting, 2022 O.J. (L 322) 15 [hereinafter CSRD].

61. Regulation (EU) 2020/852 of the European Parliament and of the Council, 2020 O.J. (L 198) 13 [hereinafter Taxonomy Regulation].

62. Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 Amending Directives (EU) 2022/2464 and (EU) 2024/1760 as Regards the Dates From Which Member States Are to Apply Certain Corporate Sustainability Reporting and Due Diligence Requirements, 2025 O.J. (L) 1.

framework in the European Union.⁶³ Regarding the scope of application, it introduces higher thresholds and a more restrictive definition of in-scope entities, thus narrowing the number of companies subject to due diligence obligations.⁶⁴ With a view to reducing fragmentation across MS and creating a level playing field in the internal market, the proposal limits MS's power to impose more severe standards, by expanding the space of full harmonization for some due diligence requirements.⁶⁵ Despite this intent, the Omnibus I leaves out Article 5 of the CS3D from the full harmonization clause,⁶⁶ thus allowing MSs to introduce a more stringent regime concerning the scope of due diligence obligations. It is worth, however, underlining that only those rights and prohibitions enshrined in the international human rights and environmental instruments listed in the CS3D's Annex fall within the scope of due diligence obligations.⁶⁷

The Omnibus I also reduces the depth and, to some extent, the scope of due diligence obligations. While retaining a risk-based approach, the original version of the CS3D required the chain leader to undertake a comprehensive mapping of the entire chain of activities, encompassing both direct and indirect business partners.⁶⁸ The amendments introduced by Omnibus I bring the framework much closer to the solution adopted by the German *Lieferkettensorgfaltspflichtengesetz* (LkSG, typically referred to as the "German Supply Chain Act").

63. See Alemanno, *supra* note 55, at 27.

64. Omnibus I Directive, *supra* note 47, art. 4(2).

65. *Id.* art. 4(4).

66. *Id.* ¶ 1 ("Member States shall not introduce, in their national law, provisions within the field covered by this Directive laying down human rights and environmental due diligence obligations diverging from those laid down in Articles 6, 8 and 9, Article 10(1) to (5), Article 11(1) to (6) and Articles 14 to 16.").

67. The link between due diligence obligations and specific legally protected interests ("geschützte Rechtspositionen") follows the choice made by the German legislator. See Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten [LkSG] [Act on Corporate Due Diligence Obligations in Supply Chains] § 2 (Ger.) [hereinafter LkSG]; see also Holger Fleischer, *Grundstrukturen der Lieferkettenrechtlichen Sorgfaltspflichten* [Fundamental Structures of Supply Chain Due Diligence Obligations], CCZ 205, 211 (2022) (the undertaking cannot be required to adopt due diligence measures other than those falling within the list set out in § 3, ¶ 1, nos. 1–9).

68. CS3D, *supra* note 30, art. 3(1)(f)(i)–(ii) (defining "direct" and "indirect" business partners).

The German Supply Chain Act is inspired by a principle of progressivity (“Progressivitätsprinzip”),⁶⁹ whereby the intensity of the duty of care increases in proportion to the strength of the legal relationship between the chain leader and the supplier concerned. The closer the legal nexus between the parent company and the supplying undertaking, the more demanding the due diligence obligations imposed on the former. This approach is reflected in the distinction of three categories: (i) companies operating within the undertaking’s own business area (“Unternehmen im eigenen Geschäftsbereich”); (ii) direct suppliers (“unmittelbaren Zulieferers”); and (iii) indirect suppliers (“mittelbaren Zulieferers”). With regard to direct suppliers, the chain leader is not only required to ensure that they adopt measures to safeguard human rights and environmental standards, prevent risks⁷⁰, and implement remedial plans in the event of violations⁷¹, but also to ensure that such measures are effectively implemented throughout the supplier’s own value chain⁷². By contrast, in relation to indirect suppliers, the chain leader is merely required to develop a strategy (“Konzept”) for the prevention, cessation, or minimization of risks where it has substantiated knowledge (“substantiierte Kenntnis”) of potential violations.⁷³

In a similar vein, the Omnibus I shifts the due diligence focus to risk factors at the level of subsidiaries and tier-1 suppliers. Oversight on lower tiers of the supply chain is subject to a scoping exercise based solely on reasonably available information.⁷⁴ Moreover, this exercise covers only the identification of general areas of business partners’ activities where adverse impacts are most likely to occur and to be most severe.

Under the CS3D original version, the chain leader was required to terminate the business relationship where there was no reasonable expectation that the action plan would succeed and

69. See LkSG § 2, ¶ 5; Giesela Rühl & Constantin Knauer, *Zivilrechtlicher Menschenrechtsschutz? Das Deutsche Lieferkettengesetz und die Hoffnung auf den Europäischen Gesetzgeber* [Civil Law Human Rights Protection? The German Supply Chain Act and the Hope for the European Legislator], 77 JURISTEN Z. 105, 107 (2022).

70. LkSG § 6, ¶ 4.

71. *Id.* § 7, ¶ 1.

72. LkSG § 6, ¶ 4(2).

73. *Id.* § 9, ¶ 3.

74. Omnibus I Directive, *supra* note 47, art. 4(8).

the potential adverse impact was severe.⁷⁵ Omnibus I removes the chain leader's obligation to terminate the business relationship, though termination remains available as a response to contractual breach.⁷⁶ As a measure of last resort to address such impacts, the chain leader should instead suspend the relationship with the business partner, unless such suspension would result in more severe adverse impacts.

Another significant amendment introduced by the Omnibus I concerns stakeholder engagement.⁷⁷ Pursuant to Article 13 CS3D, stakeholders should be meaningfully engaged throughout the due diligence cycle, including the identification and prioritization of risks, the development of prevention and correction plans, the decision to suspend or terminate a business relationship and the adoption of remediation measures.⁷⁸

The original CS3D encompassed a broad definition of stakeholders,⁷⁹ which was widely regarded as excessively burdensome and disproportionate for chain leaders.⁸⁰ The Omnibus I, in contrast, requires chain leaders to engage only with relevant stakeholders for a more limited set of actions in the performance of due diligence obligations.⁸¹

The Omnibus I removes the original CS3D's EU-wide liability regime, a choice justified in its recitals by reference to the principle of subsidiarity.⁸² In matters of shared competence, EU action is warranted only where Member States acting individually cannot achieve the objectives pursued, or where divergent national approaches would generate fragmentation liable to undermine the proper functioning of the internal market. The deletion of a harmonized liability regime is thus presented as restoring regulatory discretion to the Member States while avoiding undue

75. CS3D, *supra* note 30, art. 12.

76. Omnibus I Directive, *supra* note 47 (amending CS3D art. 10(6)).

77. See Kishanthi Parella, *Protecting Third Parties in Contracts*, 58 AM. BUS. L.J. 327 (2021) (arguing that meaningful stakeholder engagement should inform contract design by enabling firms to identify foreseeable harms to affected third parties and draft clauses responsive to those risks).

78. See generally Martijn Scheltema, *European Model Clauses and the Corporate Sustainability Due Diligence Directive*, in SUSTAINABILITY AND VALUE CHAIN GOVERNANCE, *supra* note 3, at 283.

79. CS3D, *supra* note 30, art. 3(1)(n).

80. Omnibus I Directive, *supra* note 47, recital 45.

81. *Id.* arts. 4(3)(a), 4(10).

82. *Id.* recital 49.

interference from the European Union. Moreover, this amendment formed part of the broader political compromise reflected in the Joint Statement on a United States–European Union framework for an agreement on reciprocal, fair, and balanced trade between the United States and the European Union.⁸³ It is thus left to Member States to introduce an *ad hoc* liability regime for damages caused by a failure to comply with due diligence requirements or to rely on general tort law.⁸⁴ The revised Article 29 CS3D only partially harmonizes the private enforcement regime. It excludes the possibility for national courts to award punitive damages,⁸⁵ establishes uniform rules on limitation periods,⁸⁶ and introduces joint and several liability where harm results from the conduct of multiple tortfeasors.⁸⁷

As discussed above, Omnibus I introduces substantial amendments that are expected to influence the transposition and enforcement of the CS3D at the Member State level.⁸⁸ The following sections address the role of transnational commercial contracts and the design of a multileveled enforcement regime and propose possible ways forward.

IV. TRANSNATIONAL COMMERCIAL CONTRACTS IN SUPPLY CHAINS: THE IMPLEMENTATION OF DUE DILIGENCE

The shift from voluntary to mandatory due diligence is changing the implementation of obligations through contracts, making supply chains a vehicle to achieve public and private standards relating to sustainability and fundamental rights.⁸⁹

The architecture of contracting constitutes a fundamental part of the due diligence process, beginning with the selection of

83. Framework Agreement, *supra* note 58, ¶ 12.

84. CS3D, *supra* note 30, art. 29 (as amended by Omnibus I Directive, *supra* note 47, art. 4(20)). See generally Stefano Troiano, *The EU Approach to Corporate Sustainable Due Diligence and Its Impact on Member States' Legislation: A First Comparative Analysis*, in SUSTAINABILITY AND VALUE CHAIN GOVERNANCE, *supra* note 3, at 109.

85. Omnibus I Directive, *supra* note 47, art. 29(2).

86. *Id.* art. 29(3)(a).

87. *Id.* art. 29(5).

88. The amendments introduced by the Omnibus I package extend beyond those discussed above. For the purposes of this analysis, however, we focus only on those changes that most significantly affect the issues examined in the following section.

89. CS3D, *supra* note 30, art. 5.

the participants through procurement and the use of certain types of contracts related to different business relationships. The choice of private regulatory instruments to design and implement due diligence should reflect the shape of the chain and the structure of inner relationships.⁹⁰ A one-size-fits-all private regulatory strategy would not be appropriate. Two common supply chain structures include the spider, where multiple suppliers simultaneously provide inputs to a single assembler, and the snake, where production proceeds sequentially and individual performances are highly interdependent.⁹¹ It should, however, be highlighted that often the two models co-exist within the same chain.

Commercial contracts within the chain incorporate measures from prevention, corrective, and remediation plans and impose enforceable obligations grounded in general human rights and sustainability principles.

Contractualization of mandatory due diligence reinforces the regulatory functions of contracts. It additionally calls for contract law reform when the principles of regulation are in conflict with those of private autonomy. The private power to regulate due diligence is not only constrained but also influenced by the duty and the attached responsibility. The following sections unpack these arguments in three steps.

Section A examines how transnational commercial contracts perform regulatory functions by translating due diligence plans into contractual obligations and by adapting those obligations to different supply chain structures and contractual settings. Section B turns to the role of model clauses and general terms and conditions, highlighting both their potential and limits in governing interconnected contractual relationships across the chain. Section C addresses monitoring and enforcement, focusing

90. See HANDBOOK ON GLOBAL VALUE CHAINS, *supra* note 1 (examining differences among global value chains and the role played by suppliers); see also GARY GEREFFI, GLOBAL VALUE CHAINS AND DEVELOPMENT: REDEFINING THE CONTOURS OF 21ST CENTURY CAPITALISM (2018) (emphasizing that GVC governance depends on the structure of inter-firm linkages and on transaction characteristics such as complexity, codifiability, and supplier capabilities).

91. See Richard Baldwin & Anthony J. Venables, *Spiders and Snakes: Offshoring and Agglomeration in the Global Economy*, 90 J. INT'L ECON. 245, 246 (2013); see also Fabrizio Cafaggi, *Contractual Networks and the Small Business Act: Towards European Principles?*, 4 EUR. REV. CONTRACT L. 493 (2008) (discussing the two supply chain models and their influence on contracting).

on the different instruments available where control is direct or indirect. This section explores the tensions between conventional and regulatory contract law, using suspension and termination as examples of the remedial challenges raised by the contractualization of due diligence.

*A. Due Diligence and the Regulatory
Functions of Commercial Contracts*

Long before the emergence of administrative regulation, contracts governed product quality and safety.⁹² More recently the regulatory function includes process and, in particular, environmental⁹³ and social standards. For instance, violations concerning child or forced labor, working hours, decent pay, or health and safety generate negative externalities that sanctions and remedies aim to internalize.⁹⁴ Similarly, the use of pesticides or other hazardous and toxic substances may create adverse impacts on the environment.

Due diligence focuses primarily on process regulation, adding complementary functions to contractual product regulation.⁹⁵ The

92. See Fabrizio Cafaggi, *The Regulatory Functions of Transnational Commercial Contracts: New Architectures*, 36 *FORDHAM INT'L L.J.* 1557 (2013) (on the regulatory function of warranties and more broadly of contract law). Significant differences have characterized the evolution of warranty of merchantability in common and civil law and the regulation of quality and safety. It is only in the past two centuries that the notion of warranty has emerged at common law whereas its origins go back to Roman law and have characterized the evolution of civil law ever since. See also REINHARD ZIMMERMANN, *THE LAW OF OBLIGATIONS: ROMAN FOUNDATIONS OF THE CIVILIAN TRADITION* (Juta & Co. 1990).

93. MICHAEL P. VANDENBERGH, SARAH E. LIGHT & JAMES SALZMAN, *PRIVATE ENVIRONMENTAL GOVERNANCE* (Foundation Press 2024); Michael P. Vandenberg et al., *Model Environmental Supply Chain Contracts*, in *CONTRACTS FOR RESPONSIBLE AND SUSTAINABLE SUPPLY CHAINS: MODEL CONTRACT CLAUSES, LEGAL ANALYSIS, AND PRACTICAL PERSPECTIVES* 163 (Susan A. Maslow & David V. Snyder eds., ABA 2023) (explaining that contracts have long regulated product attributes such as quality and safety, and that contemporary supply chain contracting increasingly extends this private regulatory function to production processes, including environmental performance).

94. See Parella, *supra* note 77, at 327 (distinguishing between externalities resulting from contract performance (Type I externality) and those resulting from a contractual breach (Type II externality)).

95. See Douglas A. Kysar, *Preferences for Processes: The Process/Product Distinction and the Regulation of Consumer Choice*, 118 *HARV. L. REV.* 526, 530 (2004); David V. Snyder, *Contracting for Process*, 85 *L. & CONTEMP. PROBS.* 255, 260 (2022). On the distinction between product and process contractual regulation, see also Fabrizio Cafaggi, *Sales in Global Supply Chains: A New Architecture of the International Sales Law*, in *RESEARCH*

regulatory function also highlights the increasing protection of third parties' interests with contracts.⁹⁶ How this regulatory function is performed depends on the architecture of the supply chain and on the type of contractual relationship at issue.⁹⁷

How should contractualization of due diligence be operationalized? The type of contracts and the content of provisions represent relevant turning points.

The difference between spot and long-term contracts should be considered in the design of due diligence implementation.⁹⁸ Performance of due diligence obligations requires long-term investments and participation in collaborative projects aimed at identifying and mitigating adverse impacts. The involvement of long-term business partners in due diligence facilitates the contractualization of due diligence obligations compared to spot contracts.

Sustainability principles encompass not only prohibitions but also affirmative obligations. Contractualization therefore extends beyond the prohibition of harmful practices and may also include the promotion of desirable forms of conduct. Chain leaders may promote the use of renewable energy, enhancing biodiversity, circular economy, water-use reduction, reduction of plastic, and recycling. In that vein, prohibition needs to be translated into contract terms different from promotion of environmentally friendly practices.

HANDBOOK ON INTERNATIONAL AND COMPARATIVE SALE OF GOODS LAW 334, 336 (Djakhongir Saidov ed., Edward Elgar 2019); Cafaggi, *supra* note 92.

96. See Aditi Bagchi, *Other People's Contracts*, 32 YALE J. ON REG. 211, 220 (2015); Aditi Bagchi, *Interpreting Contracts in a Regulatory State*, 54 U.S.F. L. REV. 35, 40 (2020); David A. Hoffman & Cathy Hwang, *The Social Cost of Contract*, 121 COLUM. L. REV. 979, 988 (2021); Kishanathi Parella, *Contractual Stakeholderism*, 102 B.U. L. REV. 865, 874 (2022); Sarah Dadush, *Prosocial Contracts: Making Relational Contracts More Relational*, 85 L. & CONTEMP. PROBS. 153, 160 (2022); Omri Ben-Shahar, David Hoffman & Cathy Hwang, *Nonparty Interests in Contract Law*, 171 U. PA. L. REV. 1095, 1100 (2023).

97. See Lisa Bernstein & Brad Peterson, *Managerial Contracting: A Preliminary Study*, 14 J. LEGAL ANALYSIS 176 (2022) (discussing how differences in contractual provisions may depend on whether control is based on property or contract).

98. See Oliver E. Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 J.L. & ECON. 233 (1979) (discussing the distinction between property and contract as bases for control in transaction cost economics); see also Pol Antràs & Davin Chor, *Global Value Chains*, in 5 HANDBOOK OF INTERNATIONAL ECONOMICS: INTERNATIONAL TRADE 297 (Gita Gopinath, Elhanan Helpman & Kenneth Rogoff eds., Elsevier 2022) (analysing relational contracts in supply chains).

Regarding prohibition specifically, principles may be defined differently. For example, child labor and slavery are typically subject to zero-tolerance prohibitions, whereas standards governing hours and wages require only that conditions be fair.⁹⁹ A strict prohibition can be regulated by a simple rule, whereas prohibitions that require flexibility can be regulated by open-ended terms like fairness and reasonableness. Promotions may be associated with rewards that consist of new market opportunities for suppliers who meet the targets.

Implementation of due diligence requires engagement in regulatory activities, encompassing enterprises located in different jurisdictions. The chain leaders set chain-wide policies and provide instructions on their application. They regulate compliance with due diligence obligations, the architecture of contracting, the allocation of tasks and responsibilities among the various participants in the chain. They provide general guidance on remedial actions that have to be determined when specific risks arise.

Principles are “translated” into practice through plans that must in turn be incorporated into commercial contracts. Whether the objective is to prohibit harmful conduct or to promote virtuous practices, these regulatory goals must still be translated into contractual language. General terms and conditions (“GTCs”) offer an initial framework, but they cannot avoid further specification where due diligence plans are tied to concrete and context-specific risks.¹⁰⁰ Suppliers of the same commodities located in different

99. See, e.g., DANONE, *Sustainable Sourcing Policy*, at 13 (June 1, 2024), <https://www.danone.com/content/dam/corp/global/danonecom/about-us-impact/policies-and-commitments/en/2024/sustainable-sourcing-policy-june-2024.pdf> [https://perma.cc/5AQA-MP9S].

100. See, e.g., NESTLÉ, *Exigences Fondamentales de Nestlé en Matière d'Achats Responsables* [Nestlé's Fundamental Requirements for Responsible Sourcing] 3, <https://www.nestle.ch/sites/g/files/pydnoa506/files/2025-03/NRS%20Core%20Requirements%202024%20%5BFR%5D.pdf> (“Les outils utilisés pour évaluer la conformité dépendent, à la discrétion de Nestlé, du niveau de chaîne d'approvisionnement et du niveau de risque. Le risque est évalué en tenant compte de différents critères, tels que le(s) pays d'activité et d'origine (pour les matières premières et ingrédients), le niveau des dépenses et le type de biens ou de services fournis à Nestlé.”) [“The tools used to assess compliance depend, at Nestlé's discretion, on the level of the supply chain and the level of risk. Risk is assessed taking into account various criteria, such as the country(ies) of activity and origin (for raw materials and ingredients), the level of expenditure, and the type of goods or services supplied to Nestlé.”] [https://perma.cc/9WWC-GZHW].

jurisdictions may present varying forms and levels of risk. Contracts are often accompanied by schedules and purchase orders that specify the content of performances. Where plans are not followed, remedies must be designed to reduce and mitigate the relevant risks and redress any resulting harm. Hence, contracts must customize terms and due diligence obligations.¹⁰¹

Even if the plans are drafted by the chain leader, their implementation requires collaboration among the enterprises. Collaboration gives rise to a duty to cooperate and to forms of shared liability where cooperation fails and violations occur. The duty to cooperate imposed on the chain leader operates both before and after the violation, to prevent and to reduce the adverse impact.¹⁰²

Collaboration is necessary to adapt precautionary measures to evolving risks. Indicators measure the evolution of risks over time, reflecting an assessment process grounded in the principle of continuous improvement.¹⁰³ They are used in plans and must be translated into measures of contractual performances. Key Performance Indicators (“KPIs”) measure the compliance with the regulatory targets defined by the chain leader. Plans may foresee the emergence and modification of risks, but the allocation of tasks between the parties may require revision at the time of contract execution if the contractual distribution does not reflect the evolving risks. Engaging in prevention and mitigation—and when needed, correction—requires cooperation between chain leaders,

101. Adaptation of contracts may require changes in performance when the level of risks increases to an extent that imposes, for example, changes in technology. This is clear in agriculture where for example the detection of soil or water pollution may impose corrective measures that require change of processes whose features have to be internalized in the contracts. Even when contracts are highly standardized there might be a significant degree of customization related to the specificity of the context within which the contractual relationship operates. AI and in particular hybrid AI can contribute to the adaptation of contracts determined by the modifications of plans driven by changes of risks. AI can ensure consistency in adaptation where risk evolution differs depending on the context.

102. Fabrizio Cafaggi, *Creditor's Fault: In Search of a Comparative Frame*, in *FAULT IN AMERICAN CONTRACT LAW* 237 (Omri Ben-Shahar & Ariel Porat eds., 2010).

103. See OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 17–18, 31–33 (2018) (describing due diligence as preventive, risk-based, dynamic, and involving feedback loops and progressive improvement; recommending that enterprises support or collaborate with business relationships in developing corrective action plans with qualitative and quantitative indicators to define and measure improvement; and requiring enterprises to track implementation and effectiveness of due-diligence measures).

suppliers, and subcontractors. To that end, contractual architecture should reflect risk evolution both for one-shot and for long-term contracts.

To account for context specificity, delegation of regulatory power takes place. The degree to which the chain leader delegates due diligence obligations to suppliers through cascading may vary.¹⁰⁴ The CS3D requires chain leaders and subsidiaries to seek contractual assurances from direct business partners.¹⁰⁵ Tier 1 suppliers must apply these principles and flow down these clauses to tier 2 suppliers, who must do the same with lower-tier suppliers.¹⁰⁶ Cascading extends due diligence obligations into contractual relationships in which the chain leader is not a party. It transmits knowledge and contributes to coordinating the implementation of common principles along the chain. Cascading is compatible with some degree of discretion by the parties who can adjust the content of obligations to the specific risks associated with the activity they perform.¹⁰⁷

104. See, e.g., *Sustainable Sourcing Policy*, *supra* note 99, at 8 (“Cascading SSP’s mandatory requirements (or Suppliers’ requirements at least equivalent to SSP) within the extended supply chain requires, without limitation, the following actions: communicating, informing and explaining, monitoring compliance (notably through reporting processes and audits as much as practically possible), sharing significant issues or residual risks with Danone, and generally enforcing SSP (or Suppliers’ requirements at least equivalent to SSP) to the fullest extent possible”); NESTLÉ, *Exigences Fondamentales de Nestlé en Matière d’Achats Responsables* [Nestlé’s Fundamental Requirements for Responsible Sourcing], *supra* note 100, at 4 (“1.6.4 Les fournisseurs directs ont mis en place un processus de dialogue permanent avec leurs propres fournisseurs, qui comprend la transmission en cascade des exigences HREDD, l’évaluation des performances de leurs propres fournisseurs, l’approbation des plans d’action de leurs fournisseurs, le suivi des progrès et la prise de mesures” [“1.6.4 Direct suppliers have established a process of ongoing dialogue with their own suppliers, which includes the cascading of HREDD requirements, the assessment of their own suppliers’ performance, the approval of their suppliers’ action plans, the monitoring of progress, and the taking of measures”]); WALMART, *Standards For Suppliers*, at 5 <https://corporate.walmart.com/content/dam/corporate/documents/suppliers/requirements/standards-for-suppliers-english.pdf> (“Suppliers are responsible for compliance with these Standards throughout their business and throughout the process of providing products to Walmart. This includes responsibility for the conduct of any suppliers, subcontractors, and agents they use as part of their Walmart business (including, for example, factories, processing facilities, and raw material, component, ingredient providers and labor recruitment agents)”) [<https://perma.cc/R57D-9UUE>].

105. See Sarah Dadush, Daniel Schönfelder & Michaela Streibelt, *What Does the EU CSDDD Say About Contracts?*, 21 N.Y.U. J.L. & BUS. 245, 263 (2025).

106. CS3D, *supra* note 30, arts. 10–11.

107. The cascading process can be remarkably improved by AI. Control over the cascading process may be costly and the use of digital technologies may remarkably reduce

Delegation through cascading compliance has its shortcomings.¹⁰⁸ Contractual incentives to enforce the duty are very limited and only extracontractual liability provides adequate incentives. Where a level 1 supplier delivers conforming goods and services, the chain leader has limited incentive to seek redress for that supplier's failure to apply due diligence obligations to its subcontractors. Where the chain leader or first-tier suppliers fail to obtain adequate contractual assurances, they may be held liable to third parties for due diligence violations.

When dealing with large input providers, especially in the case of data collectors and digital platform managers, delegation of regulatory power can combine with other strategies. The role of strategic suppliers may determine a higher level of collaboration and can translate into product and process co-design.¹⁰⁹ Outsourcing is no longer limited to standardized activities, but now includes core competencies. Data collection and management are provided by specialized firms that collaborate with the chain leader. The use of digital platforms has increased effectiveness of cooperation allowing more effective performances of suppliers and their subcontractors.¹¹⁰

costs and increase efficacy. See, e.g., NESTLÉ, *Exigences Fondamentales de Nestlé en Matière d'Achats Responsables* [Nestlé's Fundamental Requirements for Responsible Sourcing], *supra* note 100, at 3 ("Nous vérifions l'alignement et le respect de ces Exigences à l'aide de différentes méthodes, à différents niveaux de la chaîne d'approvisionnement. Il s'agit notamment de l'auto-déclaration, des évaluations documentaires et des audits ou des évaluations de sites de seconde ou tierce partie" ["We verify alignment with and compliance with these Requirements using different methods at different levels of the supply chain. These include self-declaration, documentary assessments, and second- or third-party site audits or assessments."]).

108. See Ari Van Assche & Rajneesh Narula, *Internalization Strikes Back? Global Value Chains, and the Rising Costs of Effective Cascading Compliance*, 50 J. INDUS. & BUS. ECON. 161 (2023); Vivek Soundararajan, *The Dark Side of the Cascading Compliance Model in Global Value Chains*, 50 J. INDUS. & BUS. ECON. 209 (2023); Valentina De Marchi, *Knowing Your Supply Chain To Implement Environmental Sustainability Effectively*, in HANDBOOK ON CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY 264 (Michel Magnan & Giovanna Michelson eds., 2024).

109. See Mari Sako & Ezequiel Zylberberg, *Firm-level Strategy and Global Value Chains*, in HANDBOOK ON GLOBAL VALUE CHAINS, *supra* note 1, at 340; see also Trang (Mae) Nguyen, *Hidden Power in Global Supply Chains*, 64 HARV. INT'L L.J. 35, 40 (2023).

110. See, e.g., Alya Alhajri et al., *Walmart's Retail Link Supply Chain: A Case Study Solution*, 10 INT'L J. SUPPLY CHAIN MGMT. 52 (2025) (examining the Retail Link digital platform deployed by Walmart to coordinate suppliers with buyers).

B. Model Clauses and Contractual Governance of Supply Chains

Customization requires a careful balance between contractual consistency across the supply chain and the variations demanded by different applicable laws. For this reason, contracts in a supply chain are often designed on the basis of GTCs that include model clauses.

GTCs do not distinguish between various contracts deployed in the chain. Spot and long-term contracts require distinct approaches to due diligence: in the former, the exchange is discrete while due diligence obligations are ongoing; in the latter, both the exchange and the due diligence obligations extend over time. Clearly, compliance with process requirements in sale contracts may demand a different approach from supply contracts.

Not only should GTCs differentiate according to the type and structure of contracts but also on how sustainability principles should be implemented.

GTCs drafted by chain leaders often incorporate standards by reference,¹¹¹ which also define the seriousness of violations and indicate when they constitute a material breach that can lead to contractual termination. Incorporating principles by reference into GTCs creates problems that are often overlooked. The mere reference to a standard in the supply contract is insufficient to define with specificity the parties' obligations and the content of contractual performance. The methodology used to implement sustainability principles in GTCs is often opaque and leaves wide discretion.

111. See, e.g., UNILEVER, *Global Purchasing General Terms and Conditions* § 8.1, <https://www.unilever.com/files/global-purchasing-gtcs-english.pdf> (Version March 2026) [hereinafter UNILEVER GTCs] ("Supplier represents and undertakes that it will, at all times, comply with all applicable laws and regulations, including, without limitation, all anti-tax evasion, anti-fraud, antibribery and corruption, and financial sanctions, trade sanctions and export or import controls ["Applicable Law"]. Applicable law shall include all laws of the European Union, United Kingdom and United States together with any other applicable laws. Supplier shall use best endeavours to ensure that any person performing services for or on behalf of Buyer complies with Applicable Laws. Supplier further represents and undertakes that it has obtained and will maintain all necessary licenses, permits, authorizations, consents, and approvals required for the supply of Products/Services under Applicable Laws, and that Supplier will provide Buyer with copies of such documents, including screening results, at Buyer's reasonable request, in order to verify compliance with Applicable Laws.") [<https://perma.cc/7TF7-5WUS>].

Sustainability principles must be translated into contractual rules. To give concrete effect to due diligence obligations, contractual model clauses have been developed for inclusion in GTCs. These clauses transform broad principles into more specific rules, thereby reducing the uncertainty created by mere incorporation by reference. Principles are formulated in different ways. Some are highly open-ended; others are rather narrow. Hence, techniques to translate principles into model clauses must differ depending on how the principle is defined.

Model clauses must be coordinated with the GTCs deployed by chain leaders to regulate contracting with suppliers and between suppliers and subcontractors in supply chains. Internal consistency and coherence with the principles are necessary.

In the United States, the American Bar Association (“ABA”) has published model contract clauses.¹¹² After the first publication (“MC 1.0”), the ABA drafted a second set of clauses (“MC 2.0”), significantly changing the approach.¹¹³ The MC 2.0 clauses specifically refer to social standards; an open question concerns their applicability to environmental standards and fundamental rights.¹¹⁴

A similar initiative has been undertaken with the European Model clauses (“EMCs”), published in 2025.¹¹⁵ The CS3D states that the EU Commission will publish model clauses to implement due

112. MCCs 2.0, the current version, appears in David V. Snyder, Susan A. Maslow & Sarah Dadush, *Balancing Buyer and Supplier Responsibilities: Model Contract Clauses to Protect Workers in International Supply Chains, Version 2.0*, at 3, and MCCs 1.0 appear in David V. Snyder & Susan A. Maslow, *Human Rights Protections in International Supply Chains: Protecting Workers and Managing Company Risk*, at 75, both in *CONTRACTS FOR RESPONSIBLE AND SUSTAINABLE SUPPLY CHAINS*, *supra* note 93.

113. See David V. Snyder, *An American Experiment in Contracts, Human Rights, and Environmental Protection*, in *SUSTAINABILITY AND VALUE CHAIN GOVERNANCE*, *supra* note 3, at 240 (analyzing the evolution from MCCs 1.0 to MCCs 2.0); see also David Snyder, *The New Social Contracts in International Supply Chains*, 68 AM. U. L. REV. 1869, 1870 (2019) (describing contracts with the objective of protecting workers in global supply chains).

114. There are significant differences between the implementation of social and environmental standards along supply chains and different contract clauses should be designed to implement and ensure compliance with the standards.

115. See Responsible Contracting Project, *Introductory Text to the Zero Draft for Consultation Version of the European Model Clauses* ¶ 4.1, https://www.responsiblecontracting.org/_files/ugd/fcee10_ab31cbc7b9eb4572a7f9321bc4d5a208.pdf [<https://perma.cc/CV8X-TYN8>]. For a description, see also Scheltema, *supra* note 78, at 280.

diligence obligations. It is likely that EMC will be a reference for the clauses drafted by the EU Commission.

Model clauses represent an important step forward to specify the content of the due diligence obligations and demonstrate the shortcomings of the incorporation by reference.¹¹⁶ There is a need to define how contracts implement sustainability standards both in relation to environmental and social protection. Incorporating principles into GTCs by reference is insufficient for transitioning to binding rules, as it requires specification and adaptation.

Model clauses provide a useful starting point that requires further development in two respects. Commercial contracts in global supply chains are not the same. Depending on the nature of the transaction, sale contracts, supply contracts, network contracts, or more specific contracts concerning data sharing and other digital technologies may be appropriate.

MC 2.0 and EMC focus mainly on individual transactions without regulating the linkages between contracts and the cascading effects. Contracting in supply chains requires coordination of due diligence obligations among various connected contracts. Breaches and remedies for harm arising from due diligence violations are typically associated with plans whose application extends to the entire chain rather than to individual contracting parties. This is very relevant in the context of process requirements concerning environmental protection. Hence, it is necessary that model clauses address the contractual interdependences of due diligence obligations and the consequences of the breaches. The use of different contracts within the chain makes coordination more difficult, but all the more necessary.

The drafters of the model clauses have advocated the introduction of fault-based liability of the chain leader for the breach of due diligence obligations.¹¹⁷ It is unclear whether fault should also apply to the supplier who is subject to the warranty regime for product-related features. If a generalized fault-based regime applies, there would be a dichotomy: one regime for

116. Currently most of the GTCs require incorporation by reference to the standards defined by soft law international principles and by supplier codes.

117. See Snyder, Maslow & Dadush, *supra* note 112, at 3.

product regulation, based on warranty, and one for process regulation, based on fault.¹¹⁸

The published model clauses introduce the concept of shared liability between the parties, recognizing that supplier violations often stem from irresponsible purchasing practices.¹¹⁹ Where a supplier violates obligations to prevent adverse impacts or remediate environmental and social harm, the chain leader may be held contributorily negligent if it contributed to the breach, in which case comparative negligence principles apply.¹²⁰ The application of comparative negligence translates into a duty to adopt precautionary measures by both parties or, at least, in cost-sharing between them.¹²¹ Cost-sharing may result in an obligation to pay part of the expenses incurred to prevent or mitigate adverse impacts.

The easy cases are those where the chain leader supplies defective or dangerous inputs and the supplier does not inform the chain leader about the defective nature of the input that causes environmental harm. More complicated cases concern the use of digital technologies aimed at monitoring the activity of the suppliers that turn out to be defective. But contribution by the

118. This conclusion should be partially revisited if the idea that fault has a stronger role in contract law were subscribed. See David V. Snyder, *The Continuum of Contractual Commitment*, 53 PEPP. L. REV. 525 (2026); Sarah Dadush, *Shared Responsibility in American Contract Law* 49 (Jan. 1, 2026) (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6064549. For an earlier analysis, see Melvin Aron Eisenberg, *The Role of Fault in Contract Law: Unconscionability, Unexpected Circumstances, Interpretation, Mistake, and Nonperformance*, in *FAULT IN AMERICAN CONTRACT LAW*, *supra* note 102, at 82.

119. See Dadush, Schönfelder & Streibelt, *supra* note 105, at 263.

120. See Responsible Contracting Project, *Zero Draft for Consultation Version of the European Model Clauses (EMCs)* art. 3.4(b), https://www.responsiblecontracting.org/_files/ugd/fcee10_ab31cbc7b9eb4572a7f9321bc4d5a208.pdf (July 2024) [hereinafter EMC] [<https://perma.cc/FCP8-NZGK>] (“Comparative Fault: Notwithstanding Section 3.4(a) (Indemnification), a party’s obligation to indemnify shall be reduced in proportion to the degree that the Indemnified Party caused or jointly caused the breach. If the parties [‘HREDD Contact Points] do not agree as to the degree of contribution, they will proceed to resolve the issue through the dispute resolution process set out in Article 5 (Dispute Resolution with Stakeholders).”).

121. Cost sharing should occur when it is more effective that one party takes the measure. For example, if the supplier adopts a process technology that reduces environmental adverse impact, the buyer may contribute to the additional costs of that technology compared to the conventional technology. Similarly, if the promotion of a safer working environment requires a different precautionary technology, the additional costs should be shared.

chain leader can also stem from failure to instruct suppliers and their subcontractors when a risk, unknown at time of contracting, becomes known at time of execution.

Comparative negligence promotes cooperation between the parties, unlike unilateral liability which favors risk-shifting.¹²² Shared liability, including comparative negligence, more effectively designs incentives for precautionary behavior than unilateral liability. Comparative negligence also includes failure to take precautionary measures that protect third parties.¹²³

Clearly not all the violations committed by the supplier entail shared liability. For shared liability to apply, the buyer must have contributed to the breach of due diligence obligations. The meaning of contribution depends partly on the distribution of power between the parties, for example, whether the breach is the result of a power imbalance that forces the supplier to breach its obligations to protect third parties to fulfill the contract and deliver the requested goods in time. It is important to move away from a factual approach to causation and adopt a more sophisticated definition of contribution that includes how decisions are made about compliance with due diligence. Contribution should consider the distribution of decision-making power and may be extended to omission.

The open question is whether there is a duty to prevent the other party's (or parties') breach. The duty of care in tort law encompasses a duty to prevent violations and breaches by enterprises in the chain where control exists.¹²⁴ Does the scope of tortious liability extend to contractual liability or is the latter narrower than the former? If there is coincidence, the failure to prevent the breach amounts to comparative negligence. If there is no coincidence, failure to prevent cannot be considered relevant for distributing the liability. Where the violation is determined by the chain leader's contribution, comparative negligence applies,

122. See Ariel Porat, *Contributory Negligence in Contract Law: Toward a Principled Approach*, 28 U. BRIT. COLUM. L. REV. 141 (1994) (examining the influence of contributory negligence on cooperation between contracting parties); see also Cafaggi, *supra* note 92, at 1557.

123. See Dadush, *supra* note 118, at 45–46 (addressing the temporal dimension concerning the decision-making structure between contracting parties and contending that joint contribution is more efficient than the cheapest cost-avoider rule and especially effective when third-party harms occur).

124. See *infra* § V.B.3.

extending to remedies in kind beyond compensation. This is true for both contractual product and process regulation.

Comparative negligence is usually deployed to apportion damages, but in the case of due diligence violations remedies are usually in-kind. They call for precautionary measures that prevent the occurrence of harm. Accordingly, the doctrine of comparative negligence must be broadened to non-compensatory remedies. The chain leader must bear the costs proportionally to its contribution to the breach, even when damage has yet to occur.¹²⁵ Where prevention has been absent or inadequate, remedies may require chain leaders and suppliers to use substances that are safe for both the environment and workers' health. Inadequate waste management by enterprises in the chain requires the adoption of precautionary measures, including technologies that reduce waste and promote a circular economy. The remedy for such failures calls for changes to production processes, with associated costs shared between the contracting parties and incorporated into the pricing system.¹²⁶

In enforcing the supplier's obligation, the chain leader advances not only its own interests but also those of harmed parties whose ability to seek contractual redress is constrained by the limitations of third-party beneficiary doctrines.¹²⁷ The buyer's damage may stem from the rejection of a performance tainted by human rights violations. The harm to third parties may concern human rights or environmental violations. When compensation for third party injuries is paid to the buyer (here, the "chain leader"), the question is how the sums are transferred to the injured parties.¹²⁸ The MC 2.0 and the EMC define a principle that prohibits unjust enrichment but do not indicate whether a duty exists to transfer and whether that duty is enforceable.¹²⁹

125. An interesting provision of MC 2.0 concerns comparative negligence in relation to remediation. See MCCs 2.0, *supra* note 112, art. 3 (setting a duty to contribute to the remediation plan and to contribute proportionally to the contribution to the breach, such that the principle of proportionality would be the criterion to apportion remediation measures and the corresponding costs).

126. *Id.* art. 1.3.

127. See Fabrizio Cafaggi, *Regulatory Contracts, Fundamental Rights and Third Parties' Protection*, in *SUSTAINABILITY AND VALUE CHAIN GOVERNANCE*, *supra* note 3, at 210.

128. *Id.* See also Dadush, *supra* note 118, at 41 (proposing, for the US system, to consider third-party harms as consequential damages).

129. See Snyder, Maslow & Dadush, *Balancing Buyer and Supplier Responsibilities*, *supra* note 112, at 30 (discussing art. 6.3 of the ABA MC 2.0.).

The chain leaders' incentives to act as an agent of third parties may, however, be limited.¹³⁰ If contractual incentives are insufficient, the duty of care in torts may operate as a complementary device. Whether a duty to enforce due diligence obligations — and liability for omission — falls within the scope of due diligence obligations remains an open question.

Model clauses are likely to play important roles in the contractualization of due diligence. They must be adapted to the structure of the contract (spot/long-term) and to the type of rule (general principle/specific conduct imposed or promoted).

C. Monitoring Contractual Compliance with Due Diligence Obligations in Global Supply Chains

Proprietary and contractual control within global chains call for distinct monitoring and enforcement instruments: in the former, the chain leader exercises direct control and may act on violations directly; in the latter, only indirect influence is available.¹³¹

In the context of contractual control, the chain leader can only recommend courses of action and, in cases of omission, can seek remedies against the business partners. Clearly, there is a remarkable difference as to whether contractual control is direct (i.e., there is a contractual relationship) or indirect (the contractual relationship is between a supplier and a subcontractor).¹³²

130. See Cafaggi, *supra* note 127, at 210.

131. See L'Oréal, *Vigilance Plan 2024*, at 14 (Mar. 19, 2024) <https://www.loreal.com/-/media/project/loreal/brand-sites/corp/master/lcorp/documentsmedia/publications/lorealplanvigilance2023uk0.pdf?rev=76964c2468ca4bab86bb0a123275c102> [hereinafter *Vigilance Plan*] [<https://perma.cc/ER8D-2BCV>] ("In the event of a non-conformity (Needs Continuous Improvement, Needs Immediate Action, Zero Tolerance), corrective action plans must be implemented which are then audited at the level of the Subsidiary or Supplier. Failure to implement a corrective action plan can, in the case of a Subsidiary, result in an alert being sent to the Country Manager. Subsidiaries can decide to link part or all of the remuneration of their managers and/or of their performance evaluation to the implementation of the Applicable Rules. In the case of Suppliers, serious non-conformities (Needs Immediate Action, Zero Tolerance and Access Denied) or the failure to implement corrective action can result in the non-listing of a new Supplier or the suspension or termination of commercial relations with a listed Supplier.").

132. See Mark P. Dallas, Stefano Ponte & Timothy Sturgeon, *Power in Global Value Chains*, 26 *REV. INT'L POL. ECON.* 666 (2019) (distinguishing between direct and diffuse power). We use instead the legal distinction between direct and indirect power, while also focusing on instruments and distinguishing between qualification systems and supplier codes. We disagree that bargaining power is dyadic; rather, bargaining power concerns

Noncompliance with due diligence obligations may constitute a breach of the qualification system, leading in extreme cases to suspension or forced exit from the chain.

*D. Tensions Between Conventional and
Regulatory Contract Law and The Example
of Performance Suspension and Contract Termination*

The use of commercial contracts to implement due diligence obligations poses daunting challenges to the conventional principles of private autonomy and freedom of contract. The need to protect third-party interests requires integrating rules governing exchanges with those aimed at preventing and addressing externalities.¹³³ Often, the principles of commercial contracts do not coincide with those of regulatory contract law.¹³⁴

The preventative objective requires that suppliers adopt precautionary measures and, if they fail, take alternative precautions that minimize the potential harm to third parties caused by the failure. Compensatory remedies, and damages in particular, do not perform these functions.¹³⁵ In-kind remedies, specifically corrective remedies, are instead more consistent with the objectives of due diligence.

the power to determine entry and exit from the chain and the regulation of contractual content, and thus refers to the group belonging to the chain as a whole. For discussion of how regulatory power is exercised in global supply chains, see Fabrizio Cafaggi, *Transnational Private Regulation of Environmental Sustainability through Commercial Contracts. Reassessing Contractual Governance in Global Supply Chains*, 20 EUR. REV. CONTRACT L. 25, 30 (2024).

133. There is a long tradition of mandatory rules mainly coming from other areas of the law including criminal, competition, environmental, data protection laws. For an analysis of the distinction between mandatory and default provisions to protect third parties, see Omri Ben-Shahar, David Hoffman & Cathy Hwang, *Nonparty Interests in Contract Law*, *supra* note 96, at 1102.

134. However, recent contributions have shown how relevant third-party or non-party interests can be even in conventional contract law. See Bagchi, *Other People's Contracts*, *supra* note 96, at 211; Alan Schwartz & Robert E. Scott, *Third-Party Beneficiaries and Contractual Networks*, 7 J. LEGAL ANALYSIS 325 (2015); Parella, *supra* note 77, at 327; Dadush, *supra* note 96, at 153; Hanoch Dagan & Mark P. Gergen, *The Many Beneficiaries of Liberal Contract*, 4 (June 1, 2025) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5284381.

135. See David V. Snyder, Susan A. Maslow & Sarah Dadush, *Balancing Buyer and Supplier Responsibilities: Model Contract Clauses to Protect Workers in International Supply Chains, Version 2.0*, 77 BUS. LAW. 115, 120 (2021).

Likewise, the pursuit of regulatory objectives embedded in the contractualization of due diligence requires expanding contractual remedies beyond damages and specific performance. Model contract clauses concerning due diligence obligations must define the contractual remedies consistently with the objectives of due diligence since default contract rules are not suitable in case parties fail to indicate the available remedies in case of breach. Indeed, they are usually limited to damages and specific performance, whereas prevention and correction require the application of affirmative injunctions. In the European Union, an additional set of principles—namely effectiveness, proportionality, and dissuasiveness—must be applied to contractual remedies.

Incentives present a separate challenge. When suppliers breach environmental or labor obligations undertaken in their contracts with the chain leader, the available remedies are those the chain leader may choose to pursue. These are typically process requirements that may be accompanied by the delivery of conforming goods. Rejecting the goods and seeking compensation may be a difficult choice for the buyer; absent direct tortious liability toward third parties, the claim often goes unpursued for lack of incentives.¹³⁶ Rather, incentives to seek contractual remedies arise only where the failure is sanctioned by administrative or civil liability.

Contractual suspension and termination offer good examples of the regulatory functions of contracts and the potential tensions with the trading provisions. Suspension and termination are regulated by supplier codes or sourcing principles. The chain leader reserves the right to suspend or terminate the relationship when violations occur.¹³⁷ Typically, the right is discretionary, and

136. See Cafaggi, *supra* note 127, at 215.

137. See, e.g., NESTLÉ, *supra* note 100 (“Nestlé se réserve le droit de mettre fin à la relation commerciale avec le fournisseur direct conformément au contrat concerné, ou d’exercer tout autre recours prévu dans le contrat concerné ou en vertu de la législation applicable, dans le cas où (i) le plan d’action semble inadapté pour améliorer les pratiques jusqu’au niveau requis, (ii) le fournisseur direct n’accepte pas d’élaborer et de mettre en œuvre un plan d’action, (iii) le plan d’action convenu n’a pas été exécuté ou mis en œuvre de manière satisfaisante ou (iv) le fournisseur direct n’apporte pas la preuve de l’amélioration des pratiques dans un délai raisonnable.”) [“Nestlé reserves the right to terminate the business relationship with the direct supplier in accordance with the relevant contract, or to exercise any other remedy provided for in the relevant contract or under applicable law, where (i) the action plan appears inadequate to improve practices

its exercise does not incorporate the necessity to consider third party interests.

The suspension regime introduced by the CS3D and modified by Omnibus I illustrates how, when due diligence obligations are violated, the trading relationship may be suspended while due diligence obligations toward third parties remain in force. The CS3D permits a party to suspend the relationship while requiring the breaching party to design, submit, and implement corrective and remediation plans.¹³⁸ The suspension of the relationship concerns the commercial part (namely, the exchange of goods and services) without affecting the regulatory obligations towards third parties that include prevention, mitigation, and remediation.¹³⁹ By contrast, suspension is paired with a duty to

to the required level, (ii) the direct supplier does not agree to develop and implement an action plan, (iii) the agreed action plan has not been satisfactorily executed or implemented, or (iv) the direct supplier does not provide evidence of improvement in practices within a reasonable time.”)].

138. See CS3D, *supra* note 30, arts. 10(5), 11.

139. See, e.g., NESTLÉ, *supra* note 100, n.89 (“Les non-conformités identifiées par les mécanismes de vérification décrits ci-dessus ou de toute autre manière doivent être traitées par l’entité concernée au moyen d’un plan d’action assorti d’échéances et convenu avec Nestlé, qui comprendra des actions de prévention, d’atténuation et de remédiation, le cas échéant. Nestlé peut décider, à sa seule discrétion et sans aucune responsabilité, de suspendre la relation avec le fournisseur direct ou d’exiger la suspension des sites, sous-traitants ou fournisseurs de niveau inférieur non conformes du fournisseur direct jusqu’à ce qu’un plan d’action soit convenu, ou pendant l’exécution du plan d’action, si les échéances ou les actions sont retardées ou ne sont pas exécutées comme convenu. En cas de suspension, le fournisseur direct, les sites, les sous-traitants ou les fournisseurs de rang inférieur peuvent être autorisés à réintégrer la chaîne d’approvisionnement de Nestlé s’il est clairement prouvé, comme l’exige Nestlé, que les pratiques se sont améliorées pour atteindre le niveau requis.”) [“Non-conformities identified by the verification mechanisms described above or in any other manner must be addressed by the relevant entity through an action plan with deadlines agreed with Nestlé, which will include prevention, mitigation and remediation actions, as appropriate. Nestlé may decide, at its sole discretion and without any liability, to suspend the relationship with the direct supplier or to require the suspension of non-compliant sites, subcontractors or lower-tier suppliers of the direct supplier until an action plan is agreed, or during the execution of the action plan, if deadlines or actions are delayed or not executed as agreed. In the event of suspension, the direct supplier, sites, subcontractors or lower-tier suppliers may be permitted to rejoin Nestlé’s supply chain if there is clear evidence, as required by Nestlé, that practices have improved to the required level.”)]; see also Walmart, *supra* note 104, at 5 (“Anyone who violates the Standards may be subject to consequences, up to and including termination of business with Walmart. Walmart reserves the right to audit or inspect suppliers at any time to determine whether they are complying with these Standards.”); Unilever GTCs, *supra* note 111, §8.2 (“Supplier undertakes to notify Buyer as soon as reasonably practicable if it has reasonable cause to suspect that any breach of Applicable Laws has occurred or will occur. If Supplier becomes aware of any breach of Applicable Laws, it shall

submit prevention and correction plans aimed at reducing or eliminating adverse impact.¹⁴⁰

The party who submits the plan must comply with it. Until compliance is ensured, the trading relationship is suspended. If the party does not comply with the plan, the other party can enforce the obligations to redress harmed third parties while the contract is suspended. As a last resort, if non-compliance persists, the party can terminate the relationship but still enforce the due diligence obligations.¹⁴¹ The new rules modified by the Omnibus I concern only suspension, whereas the 2024 version of the Directive included termination.¹⁴²

The CS3D established a similar regime for termination, requiring the terminating party to conduct a comparative analysis weighing the benefits of termination against the costs to third parties. The Omnibus I repealed this provision. Hence, termination of contracts that include due diligence obligations is now regulated by Member State legislation.

Exit must be responsible. Contract termination for violation of due diligence obligations reflects a different balance of interests from that conventionally struck by contract law in commercial contracts. In commercial contracts, termination operates as a last resort remedy for material or fundamental breaches related to performance, available only where the terminating party considers continuation of the relationship impossible.¹⁴³ It applies not only

take any measures stipulated by Buyer to remedy the breach. If Buyer considers, at its sole discretion, that the breach cannot be remedied, Buyer shall have the right without Buyer liability arising to: (a) suspend immediately any and all services and payments under any PO and/or the Agreement; and/or (b) terminate immediately any PO and/or the Agreement.”).

140. See CS3D, *supra* note 30, recital 50, art. 10. The decision to suspend must be made following a comparative analysis of the effects of suspension against those of continuation. Where the adverse impact of suspension exceeds that anticipated from continued performance, the non-breaching party is not required to suspend; it retains the right to choose between suspending and continuing the relationship. This comparative structure is based on the premise that suspension itself may produce effects on the adverse impact at issue – such that, in certain circumstances, suspending performance may have more negative consequences on third parties than continuing to perform the contract.

141. See Cafaggi, *supra* note 127, at 215.

142. See CS3D, *supra* note 30, arts. 10–11 (as modified by Omnibus I).

143. See, e.g., UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS art. 7.3.1 (2016) [hereinafter UNIDROIT PRINCIPLES] (addressing the right to terminate the contract).

to product violations but also to process violations, such as zero-tolerance breaches related to working conditions.¹⁴⁴

Termination of contract usually ends the parties' performance obligations. Where third parties have suffered harm, however, the breaching party's obligations to provide redress may survive the termination of its obligations toward the non-breaching party.¹⁴⁵ According to the regulatory perspective, in the case of due diligence violations, the choice of termination must consider not only the interest of the breaching party but, more importantly, that of the third party (or parties) who suffered harm. Termination can be allowed only when the benefits outweigh the costs for both the third parties and the breaching party.

Contractualization of due diligence requires implementing a regulatory approach along the supply chain that may be in tension with conventional private autonomy. Specific principles concerning liability and remedies for non-performance are needed. Model clauses can contribute to standardizing the process but they should have a modular approach that distinguishes between spot and long-term contracts and between prohibition and promotion.

V. A MULTILEVELED ENFORCEMENT REGIME

Contractualization of due diligence goes hand in hand with the enforcement regimes. The violation of due diligence obligations can result both in an administrative offense and a civil wrongdoing.¹⁴⁶ Mandatory due diligence transforms control from

144. See, e.g., Snyder, Maslow & Dadush, *supra* note 112, art. 3.3 ("[Cancellation.] [Avoidance.]. The following shall be deemed to [substantially impair the value of this Agreement to Buyer] [constitute a fundamental breach of the entire Agreement] and Buyer may [cancel] [avoid] this entire Agreement with immediate effect and without penalty and/or may exercise its right to indemnification and all other remedies: (a) a breach by Supplier of Schedule P that relates to a Zero Tolerance Activity, or (b) Supplier's failure to timely complete its obligations under a Remediation Plan. Buyer shall have no liability to Supplier for such [cancellation] [avoidance] but shall employ commercially reasonable efforts to comply with Section 3(f).").

145. See Cafaggi, *supra* note 127, at 220.

146. The criminal aspects are regulated at the national level and, while they form part of the tripartite structure of due diligence and enforcement, fall beyond the scope of this contribution. The administrative and civil judicial aspects concerning remedies complement each other to ensure both deterrence and compensation. The enforcement gap creates a misalignment between decision-making power and accountability.

an independent to a dependent variable.¹⁴⁷ Control by the chain leader over compliance with due diligence obligations has become an element of the duty of care. Failure to exercise control results in a breach and triggers remedies for those affected by the adverse impact.

Building on the German and French models, the original framework of the CS3D structured the enforcement regime for due diligence obligations along two complementary pillars: administrative and judicial enforcement. Their combination should at least partially fill the enforcement gap, thereby realigning powers and liabilities.

Each pillar can operate simultaneously or sequentially. Their coordination both at the national and transnational level is required to avoid divergences. Furthermore, it would be important to define the persuasive effect of one enforcement decision over the other when one precedes the other. Following the example of competition law, the question is whether private parties can refer in litigation to the conclusions reached by the administrative enforcer. In the process of the Omnibus I transposition, we strongly recommend determining both the procedural and substantive aspects of enforcement coordination to avoid conflicts and optimize deterrence by using the principle of proportionality. We strongly recommend introducing in the process of transposition mechanisms of coordination.

When dealing with enforcement in global supply chains, extraterritoriality is one of the challenges, since decisions and effects often occur in different jurisdictions, whereas the enforcers have limited territorial power.¹⁴⁸ We recommend regulating extraterritorial effects of decisions and judgments.

147. In the world of voluntary due diligence, the premise of liability was the existence of control in the chain. In the world of mandatory due diligence, it is the duty imposed on the chain leader that requires both the exercise of control and its effectiveness.

148. In the German system, concerns have been raised regarding the effectiveness of the supervisory authority's extraterritorial powers. See Gerhard Wagner, *Lieferkettenverantwortlichkeit – alles eine Frage der Durchsetzung*, 2023 ZEUP 525 (arguing that the control exercised by the Bundesamt für Wirtschaft und Ausfuhrkontrolle ("BAFA") over the due diligence adopted by companies with respect to suppliers located in Global South countries is ultimately limited to what is mentioned in documentation produced by the parent company, thereby depriving it of effectiveness). For further discussion of the risk of an enforcement gap, see Sandra Clavel, *Private International Law, Value Chains and Enforcement of Due Diligence Obligations*, in *SUSTAINABILITY AND VALUE CHAIN GOVERNANCE*, *supra* note 3, at 57.

Remedies and sanctions for breaching due diligence obligations must reflect the underlying regulatory objectives, ensuring full internalization of the negative externalities generated by violations of environmental and social standards. Under the “voluntary regime scheme”, due diligence obligations suffered a clear enforcement gap, especially for the protection of human rights.¹⁴⁹ The underenforcement resulting from limited resources, inadequate competences, and a narrow array of available remedies has prompted the introduction of robust administrative enforcement.¹⁵⁰

The CS3D attached primary importance to administrative supervision¹⁵¹, dedicating more-limited attention to extracontractual liability subject to minimum harmonization¹⁵². By contrast, issues relating to contractual liability and the coordination of enforcement mechanisms were largely left to the discretion of the Member States.¹⁵³

Omnibus I has significantly reshaped the enforcement structure for due diligence obligations by redefining the relationship between administrative and judicial enforcement. While Omnibus I narrows the scope of EU legislative intervention on liability for due diligence violations, the complementarity between administrative and judicial enforcement remains a fundamental pillar of the EU due diligence regime.¹⁵⁴

Administrative sanctions alone are not sufficient to achieve the full internalization of negative externalities. They leave costs where they fall. The chain leader must mitigate not only its own harm but also, and perhaps more importantly, the harm caused to third parties.¹⁵⁵ The scope of prevention and that of mitigation concern the adverse impacts on third parties. Addressing risk

149. See Fabrizio Cafaggi, *Realigning Power and Responsibilities in Global Supply Chains*, in *THE CAMBRIDGE HANDBOOK OF LAW AND RESPONSIBLE BUSINESS* (Ricardo García Antón et al. eds., Cambridge Univ. Press, forthcoming 2026); Van Dam, *supra* note 11, at 230.

150. CS3D, *supra* note 30, art. 25.

151. *Id.* arts. 25–28.

152. *Id.* art. 29.

153. *Id.* art. 4 (original version).

154. Omnibus I Directive, *supra* note 47, arts. 4, 29.

155. This suggestion expands the current scope of the duty to mitigate, which typically refers to the harm caused to the duty holder itself. For a similar proposal in relation to American contract law, see Dadush, *supra* note 118, at 47–55.

management approaches that inadequately tackle adverse impacts requires supplementing conventional compensatory remedies with prohibitory and affirmative injunctions and reparatory measures.¹⁵⁶ Correction requires modifying the plans through which the chain leader exercises control where a violation has gone undetected; remedies addressing adverse impact must be tailored to the specific harm caused. Likewise, remediation of adverse impacts and harm calls for in-kind remedies at both the administrative and judicial level. Compensation has not been specifically regulated by CS3D, save for the prohibition on overcompensation through punitive damages;¹⁵⁷ damages are therefore recoverable according to national regimes.

The complementarity between administrative and judicial enforcement reflects important distinctions. Administrative remedies are decided and administered by the enforcer, whereas civil remedies are sought by the injured parties in the courts. The interests of harmed parties may conflict, and the balance struck by administrative enforcers between prevention and remediation may not align with that reached by courts, which are driven by the demands of the parties before them. For example, when both environmental and social standards have been violated, judicial remedies may involve different objectives, such as in the case of

156. In relation to prevention plans, litigation has expanded the array of available remedies to include injunctions ordering the author of the plan to supplement its content and refine its risk assessment. *See La Poste v. Sud PTT*, Cour d'appel de Paris [CA Paris] [Court of Appeal of Paris], Pôle 5, ch. 12, June 17, 2025, No. RG 24/05193, at 11 (Fr.) (“The initial risk-mapping stage of the 2021 vigilance plan was not in conformity with the requirements of Article L.225-102-4 of the Commercial Code; accordingly, the court granted the injunction sought by the Sud PTT federation requiring the vigilance plan to be completed with a risk map aimed at identifying, analyzing, and prioritizing the risks.” [En conséquence c’est à juste titre que les premiers juges ont retenu que l’étape initiale de cartographie des risques du plan de vigilance 2021 n’était pas conforme aux exigences de l’article L.225-102-4 du code de commerce et ont fait droit à la demande d’injonction de la fédération Sud PTT tendant à compléter le plan de vigilance par une cartographie des risques destinée à leur identification, leur analyse et leur hiérarchisation.]).

157. *See* CS3D, *supra* note 30, art. 29; *see also* *Sherpa et al. v. Laboratoires de Biologie Végétale Yves Rocher*, Tribunal judiciaire de Paris [TJ Paris] [Paris Judicial Court], 34th Chamber, Mar. 12, 2026, No. RG 22/04017, at 31 (Fr.) (holding that, once fault, harm, and causation were established, former employees were entitled to full compensation, and quantifying moral and economic damages by reference to their attestations, salaries, and length of employment).

community displacement incident to environmental harm.¹⁵⁸ Hence, coordination between enforcement regimes is paramount to ensure consistency, in addition to respect for the principle of effectiveness and proportionality.¹⁵⁹

The interplay between administrative and judicial enforcement in the field of mandatory due diligence does not reflect the *ex ante* (administrative) versus *ex post* (judicial) distinction. The preventive function of affirmative injunctions and the use of corrective remedies require a clearer functional distinction between administrative and judicial enforcement to optimize the effectiveness of their interaction. This distinction is premised on the common objective of regulating adverse impacts according to supply chain due diligence.

The following section addresses a set of interrelated problems that cut across both administrative and judicial enforcement of due diligence obligations in global supply chains.

First, it raises the issue of the allocation of liability between States and private actors, and, within the latter category, among the various participants in the chain. This requires clarifying the

158. Depending on whether the lawsuit is brought by environmental NGOs or labor organizations, the remedies sought may differ, as the priorities of each type of claimant are not identical.

159. See Fabrizio Cafaggi & Paola Iamiceli, *The Architecture of EU Law Enforcement: The Complementarity of Remedies and Sanctions in Light of Effectiveness, Proportionality, and Dissuasiveness*, 33 EUR. REV. PRIV. L. 603, 610 (2025); Fabrizio Cafaggi & Paola Iamiceli, *The Principles of Effectiveness, Proportionality and Dissuasiveness in the Enforcement of EU Consumer Law: The Impact of a Triad on the Choice of Civil Remedies and Administrative Sanctions*, 25 EUR. REV. PRIV. L. 575, 580 (2017). The Shell litigation offers a useful illustration of how to assess the relationship between effectiveness and proportionality. See Case 200.302.332/01, *Vereniging Milieudefensie v. Shell Plc*, ECLI:NL:GHDHA:2024:2100 (Nov. 12, 2024) (rejecting the view that Shell had no influence over its Scope 3 emissions as “too easy” and emphasizing that any responsibility concerned Shell’s own conduct, but, because the first-instance order left Shell free to choose how to comply and no cross-appeal challenged that point, assuming that Shell could comply simply by reducing resale of fossil fuels bought from third parties; finding no proof that such a reduction would lower global emissions rather than shift sales to other intermediaries, so that the requested order was insufficiently effective to protect the claimants’ interest; treating any indirect signaling or precedent-setting effects as too speculative and remote; and reasoning more generally that injunctive or corrective relief requires a concrete nexus between the ordered conduct and the protection of the legal interest at stake, such that claimants must show how the remedy would produce a real, non-speculative benefit, particularly where a mandatory injunction risks substituting judicial direction for business strategy). Further on discussion, see Elbert de Jong, *Civil Law Torts*, in *THE OXFORD HANDBOOK OF CLIMATE CHANGE AND PRIVATE LAW* (Douglas Kysar & Ernest Lim eds., Oxford Univ. Press, forthcoming 2026).

criteria of attribution of responsibility, particularly where harm results from a combination of failures to prevent, mitigate, and remedy adverse impacts. A central question concerns whether a hierarchy should be established between prevention and mitigation, and how their respective failures should be measured when they jointly contribute to harm.

Second, the analysis examines the role of chain-wide policies in shaping liability: whether their mandatory or voluntary nature, as well as the binding or default character of the rules they contain, affects the attribution and distribution of responsibility among actors.

Third, the section considers the extent to which epistemic uncertainty in causal attribution should justify equal or proportional sharing of liability. These questions acquire different relevance depending on the nature of the remedies sought. They are particularly acute in the context of compensatory and reparatory remedies, where the allocation of liability directly determines the distribution of costs, whereas they play a more limited role in the case of injunctive relief, which is often directed at the entire chain, although issues of cost allocation for preventive measures may still arise. This suggests that the criteria for attributing liability should not be always the same but instead may vary depending on whether enforcement is oriented towards prevention, correction, or reparation. Finally, the section engages with the distinction between backward-looking and forward-looking litigation, as articulated in recent scholarship, to assess whether and how this distinction affects the allocation of responsibility in supply chain contexts.

A. Administrative Enforcement

Administrative enforcement includes sanctions, which can be individual or collective, and remedies, such as injunctions ordering to bring violations to an end and reparation.¹⁶⁰ However, in compliance with the principle of legality characterizing

160. An open question concerns the nature of administrative liability and whether negligence or intention is required. Connected to this is the question whether the same liability regime must govern both administrative sanctions and administrative remedies. The answers to these questions bear directly on the complementarity between administrative and judicial enforcement.

administrative action, the range of administrative remedies is limited by the list of powers and may not lead to full internalization.

The specific remedies can be inferred from the list of administrative powers under Article 25 that is not subject to complete harmonization under Article 4 CS3D.¹⁶¹ They reflect the preventive and deterring function of enforcement, the elimination of the causes of excessive risks, and the reparation objective, when adverse impacts result in actual harm.

As in the judicial setting, administrative liability may be shared among several actors, with sanctions allocated according to the role each undertaking effectively played in the commission of the infringement. The same principle applies to administrative remedies. The costs of remedial measures should be allocated according to the causal contribution to the offense.

Administrative enforcement may be triggered even before harm has fully materialized. The occurrence of damage is thus not a necessary precondition for intervention. In this respect, the Directive's reference to "adverse impacts" highlights the essentially preventive and deterrent logic of administrative enforcement. Yet precisely because the notion of adverse impacts is open-ended, its use may generate tension with the principle of legality, especially for sanctions. Legality requires a sufficiently clear and foreseeable definition of the relevant infringements and of the circumstances in which sanctioning powers may be exercised, thereby limiting the discretion of administrative authorities.¹⁶²

According to Article 25 CS3D, supervisory powers should not be limited to the formal assessment of policies and procedures, but instead extend to the substantive effectiveness of the mechanisms put in place to prevent and mitigate adverse impacts.¹⁶³

The increasing reliance on digital tools, data-driven monitoring systems, risk-mapping software, and AI-based compliance infrastructures extends the mandate to the power to

161. See CS3D, *supra* note 30, art. 25(5).

162. See *infra* § V.E. (discussing the repercussions of the principle of legality on the nature of the international conventions listed in the CS3D Annex).

163. Thus, for example, preventive measures through affirmative injunctions may be combined with an order to cease the violation and an obligation to remedy the harm caused.

assess the adequacy of the technological architecture underpinning such systems. In particular, such scrutiny also encompasses the design, functionality, and governance of the technological instruments through which risks are identified, prioritized, and addressed across the value chain.

Administrative authorities shall also assess whether the monitoring compliance system set out by the chain leader is proportionate to the company's size, risk profile, and sector. Monitoring compliance with the plans also includes monitoring contracts and their performance. Administrative enforcement should ensure effective contractualization of due diligence.

Administrative enforcement suffers from multiple limitations. The ability to detect violations depends on resources and on the monitoring strategy. Stark differences exist between prevention and remediation oversight. Failure to prevent or inadequate prevention is readily detectable where prevention plans are communicated or submitted for prior approval. Since supplier violations occur predominantly outside the territorial jurisdiction, direct self-reporting will be rare; effective oversight depends largely on local NGOs submitting complaints related to suppliers' infringements. Therefore, in global chains, the operation of administrative enforcement relies on stakeholders' collaboration.

The supervisory focus on technological architecture of chain's due diligence offers a way to mitigate the structural challenges posed by the extraterritorial reach of the obligations. Rather than directly intervening in foreign jurisdictions or attempting to regulate suppliers located abroad, authorities must concentrate their control on the regulated entity established within their jurisdiction. By scrutinizing the compliance systems and digital tools deployed by the chain leader along the chain, the authority indirectly influences the governance of the entire value chain. Control over compliance with cascading obligations permits indirect control over risk regulation alongside the entire chain. Whether and how data flow from the periphery to the center and are processed is part of the due diligence process. Failure to acquire and process information and transform data into preventive and remediating actions results in an administrative offense.

An important question concerns the role of administrative enforcement in relation to the architecture of contracting. A failure

to properly design contractualization by defective or wrongful design may result in an administrative violation calling for remedial intervention. A complex issue arises when the supervisory authority finds that the contracts between the chain leader and its business partners do not contain adequate assurances of compliance by suppliers with due diligence obligations. Can the enforcer fill the gap, or should the contract be declared void? The authority may recommend changes to plans and clauses and, where the infringer fails to comply, may intervene directly or bring proceedings before courts to achieve the desired result.

In transposing mandatory due diligence, MS legislators should empower the enforcer to fill gaps in the framework; however, conventional contract law's commitment to private autonomy resists this solution. We recommend explicit regulation of remedial powers by MSs concerning the adequacy of contractual and technological architecture of the chain to comply with due diligence.

Whereas damage compensation shall remain an important complement of the enforcement system envisaged by the CS3D, the primary objectives remain prevention and correction, even when adverse impact has materialized. This is why Article 25 CS3D empowers administrative enforcement authorities to adopt injunctive and corrective measures *ex officio*, while Article 29(3)(c) CS3D enables claimants to seek those same measures before the competent authority.

We contend that cooperative administrative enforcement is more likely to be effective than command and control since it increases the ability to identify violations. In the transposition process, we strongly recommend broadening administrative powers and specifying administrative remedies linked to the distinct instruments regulated by preventive, corrective, and remediation plans. Tailored remedies may thus be administered where plans are not implemented or commitments are not fulfilled. Collective enforcement, where multiple defendants are involved because they contributed to the violation, should be regulated by MSs in their transposing acts to ensure that sanctions will be effectively distributed among wrongdoers.

B. Judicial Enforcement and Tortious Liability

The exclusive use of administrative sanctions would neither adequately prevent adverse impact nor repair the harm. Thus, it is necessary to ensure the right to an effective remedy¹⁶⁴. To that end, judicial enforcement includes both contractual and extracontractual liability. In this section, we focus on extracontractual liability for the protection of third parties' interests harmed by the violations of due diligence obligations. Given the changes made by the Omnibus I, it is necessary to examine the national laws in order to evaluate the complementarity between EU administrative enforcement and national judicial enforcement.

The liability of chain leaders for violations of due diligence often refers to wrongdoing by suppliers and their subcontractors. Liability is typically joint. However, it may rest exclusively with the chain leader where it failed to adequately prevent the relevant risks, or exclusively with the supplier where the chain leader exercised reasonable care.

The regulatory function of due diligence affects both the scope and content of the duty of care and the array of remedies.¹⁶⁵ Mandatory due diligence has led to a reconfiguration of the duty of care that includes both an organizational and a regulatory function related to the supply chain operations.¹⁶⁶

Civil law and common law systems have typically approached the problem of corporate liability for the wrongdoing of foreign

164. Charter of Fundamental Rights of the European Union art. 47, Dec. 7, 2000, 2012 O.J. (C 326) 391 [hereinafter EUCFR].

165. For analyses of the different perspectives on the regulatory functions of torts, see Douglas A. Kysar, *The Public Life of Private Law: Tort Law as a Risk Regulation Mechanism*, 9 EUR. J. RISK REG. 48 (2018); Lord Sales, *Climate Change and the Future of Tort Law: Responding to Systemic Risk and Expanding Liability*, Planning & Environment Bar Ass'n Annual Conference (May 9, 2025), https://supremecourt.uk/uploads/speech_lord_sales_09052025_c1487cceb.pdf [<https://perma.cc/P3AW-2VHX>].

166. In relation to the duty of care in climate change litigation, see Douglas A. Kysar, *The Duty of Climate Care*, 73 DEPAUL L. REV. 487 (2024); Christina Voigt & Joe Udell, *Duty of Care*, in THE CAMBRIDGE HANDBOOK ON CLIMATE LITIGATION 223 (Margaretha Wewerinke-Singh & Sarah Mead eds., 2025); Dalia Palombo, *Business, Human Rights and Climate Change: The Gradual Expansion of the Duty of Care*, 44 OXFORD J. LEGAL STUD. 889 (2024). For the regulatory function of tort law in the context of climate change litigation, see Hans-W. Micklitz, *Risk, Tort and Liability*, in NEW PRIVATE LAW THEORY: A PLURALIST APPROACH 272 (Stefan Grundmann, Hans-W. Micklitz & Moritz Renner eds., 2021).

subsidiaries and independent contractors in a similar way,¹⁶⁷ namely through the lenses of parent companies.¹⁶⁸ The significant limitations on the liability of the parent company or the buyer within a commercial relationship stem primarily from the principle of separate legal personality, which admits only very limited exceptions.¹⁶⁹

Unlike the parent company, the chain leader—the CS3D’s primary reference point—bears responsibility for chain activities including those of business partners connected through contractual rather than proprietary linkages. The relevant unit of analysis for defining the scope of the duty is the entire chain, not the bilateral relationship with any individual subsidiary or supplier. The inquiry related to the duty of care must examine the adequacy of the regulatory instruments concerning prevention, correction, remediation along the chain.¹⁷⁰

In the CS3D, chain leader liability concerns the control or influence exercised over the policies and decisions related to risks regulation by the participants in the chain. The Directive distinguishes causation within the meaning of civil liability from causality of due diligence obligations. The former is explicitly not addressed by the CS3D and will therefore continue to be interpreted in accordance with the applicable national laws. The latter depends largely on the notion of causation in the international framework, which is designed to cover a much wider spectrum of relationships between companies’ conduct and adverse impacts. According to Recitals 5, 45 and 53 CS3D, any reference to “causing” shall be interpreted as covering three levels of the company’s involvement in the occurrence of an actual or potential adverse impact. Due diligence measures should address

167. *But see* Kysar, *supra* note 166, at 492 (offering comparative observations on the duty of climate care).

168. *See* Nicholas Bueno & Claire Bright, *Implementing Human Rights Due Diligence Through Corporate Civil Liability*, 69 INT’L & COMPAR. L. Q. 789 (2020).

169. *See* Paul L. Davies, *Corporate Liability for Wrongdoing Within (Foreign) Subsidiaries: Mechanisms from Corporate Law, Tort and Regulation*, (Nat’l U. Sing. Fac. of L., Working Paper No. 2023/007, 2023); Van Dam, *supra* note 11, at 230; JENNIFER A. ZERK, MULTINATIONALS AND CORPORATE SOCIAL RESPONSIBILITY 104 (2006).

170. The content of the duty of care is defined by the due diligence obligations set out in Article 5 of the CS3D and by the rules concerning plans in Articles 10, 11, and 12. The incorporation into the duty of care of the obligations to prevent, mitigate, remediate adverse impacts, and to correct failures is a clear illustration of the regulatory function of civil liability.

adverse impacts that companies “cause” by themselves (causation), “contribute to cause” together with its subsidiaries or business partners (contribution), or that are “directly linked to” a company’s chain of activities (linkage).¹⁷¹

The nature and instruments of control have been examined by national courts applying domestic laws.¹⁷² The enterprises involved in due diligence are independent legal entities and their relationships can be based on various forms of control encompassing both company and contractual instruments. Contractual influence over small suppliers — whose revenue depends entirely on the chain leader — may exceed corporate control over large subsidiaries, which can supply multiple enterprises beyond the chain leader.

There is a clear correlation between the control and the power of the chain leader. For liability purposes, a concrete investigation into the allocation of power among the wrongdoers is necessary. The greater the power held by the enterprises, the stronger their liability share. The distribution of decision-making power is often unrelated to the proprietary or contractual relationship. Indeed, chain leaders may have stronger power and greater control (contractual) over suppliers than (corporate) over the subsidiaries.

Civil liability has undergone significant developments in recent years, adapting to the evolving architecture of global value chains and to the growing prominence of human rights and environmental protection. Although driven by a common pressure—namely the growing mismatch between the classic, bilateral model of tort law and the fragmented governance of risk in global value chains—common law and civil law systems have responded with distinct legal instruments. Given the lack of

171. OECD Guidelines, *supra* note 25, pt. I, ch. II, ¶¶ 12–14 (stipulating the tripartition); U.N. Office of the High Comm’r for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, at 14, 17, 24, U.N. Doc. HR/PUB/11/04 (2011) [hereinafter UNGPs] (setting out Guiding Principles 13, 17, and 22 on the corporate responsibility to avoid causing or contributing to adverse impacts, to conduct human rights due diligence, and to provide remediation).

172. See, e.g., *Shell Plc.*, *supra* note 159; *Greenpeace O.N.L.U.S et al. v. ENI S.p.A. et al.*, Cass. Civ., Sez. Un. [Court of Cassation], 21 Jul. 2025, n. 20381 (It.) (addressing primarily jurisdictional issues and holding that Italian courts had jurisdiction over climate-change claims brought against ENI and related state-affiliated entities).

common EU principles, it is necessary to describe the evolution of national case law. The relevance of the United Kingdom in the development of the judicial approaches requires a comparative analysis that includes also non-EU legal systems to identify the main features of tortious liability for breach of due diligence obligations.

In common law systems, several theories have been suggested to support the idea that, under certain circumstances, the chain leader bears the consequences of extraterritorial human rights and environmental violations perpetrated by subsidiaries and independent contractors.¹⁷³ To different extents, all these theories link the chain leader's liability to the potential or actual exercise of control over the conduct of enterprises operating along the chain.¹⁷⁴ Where factual or material causation between the harm and the chain leader's conduct is absent, responsibility may nonetheless be grounded in the chain leader's assumption of control (or even failure to assume control) over its supply chain's activities.¹⁷⁵ Such responsibility allows the victims of environmental and human rights harms to hold the chain leader accountable, despite the absence of proximity with them.¹⁷⁶

The potential sources of such liability correspond to two main models: i.) vicarious liability, which focuses on the existence of a relationship between the chain leader and the material contributor; and ii.) direct liability, that looks at the relationship between the chain leader and the victims.¹⁷⁷

173. See David Krebs, *Environmental Due Diligence Obligations in Home State Law with Regard to Transnational Value Chains*, in *CORPORATE LIABILITY FOR TRANSBOUNDARY ENVIRONMENTAL HARM: AN INTERNATIONAL AND TRANSNATIONAL PERSPECTIVE* 250 (Peter Gailhofer et al. eds., 2023).

174. See Vibe Ulfbeck, *From Voluntary To Mandatory Control in Global Value Chains: Interplay Between Contract and Tort in a New Framework*, in *SUSTAINABILITY AND VALUE CHAIN GOVERNANCE*, *supra* note 3 at 183.

175. See Peter Rott, *Supply Chain Liability of Multinational Corporations?*, 23 *EUR. REV. PRIV. L.* 418 (2015).

176. See Palombo, *supra* note 166.

177. See *PRINCIPLES OF EUROPEAN TORT LAW*, art. 4:103 ("[a] duty to act positively to protect others from damage may exist if law so provides, or if the actor creates or controls a dangerous situation, or when there is a special relationship between parties or when the seriousness of the harm on the one side and the ease of avoiding the damage on the other side point towards such a duty.").

1. Vicarious Liability

The first theory (*sub i*) frames the chain leader's liability under the parent-subsidiary scheme. Traditionally, the principle of separation between different legal entities prevents parent companies from being held accountable for subsidiaries' obligations.¹⁷⁸ In appropriate circumstances, the law may however create exceptions to this principle, by making parent companies liable for subsidiaries' conduct ("piercing the corporate veil").¹⁷⁹ Typically, for a company to be held liable for the conduct of other companies, two elements must be satisfied: a business relationship between the tortfeasors (an employment contract or a partnership) and a wrongdoing in the scope of that relationship.¹⁸⁰

However, courts have always been reluctant to hold the parent company vicariously liable for its subsidiaries' misconduct.¹⁸¹ This approach is usually expressed by requiring stringent conditions with regards to the relationship between the two enterprises. This is, for instance, the case when courts require the claimant to demonstrate that the establishment of a subsidiary was aimed at fulfilling an already existing obligation on the parent (sham company),¹⁸² or that the holding company fully managed the activity of a subsidiary, so that they can be considered a single

178. See *United States v. Bestfoods*, 524 U.S. 51, 61 (1998) (holding under U.S. law that "[i]t is a general principle of corporate law deeply 'ingrained in our economic and legal systems' that a parent corporation . . . is not liable for the acts of its subsidiaries.").

179. See generally Mariana Pargendler, *The New Corporate Law of Corporate Groups*, 14 HARV. BUS. L. REV. 339 (2024); Mariana Pargendler, *Veil Peeking: The Corporation as a Nexus for Regulation*, 169 U. PA. L. REV. 717 (2021); Mariana Pargendler, *Regulatory Partitioning as a Key Function of Corporate Personality*, in RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD 263 (Elizabeth Pollman & Robert B. Thompson eds., 2021); Henry Hansmann & Richard Squire, *External and Internal Asset Partitioning: Corporations and Their Subsidiaries*, in THE OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE 251 (Jeffrey N. Gordon & Wolf-Georg Ringe eds., 2018); Giuseppe Dari-Mattiacci et al., *The Emergence of the Corporate Form*, 33 J.L. ECON. & ORG. 193 (2017).

180. See *Barclays Bank plc v. Various Claimants* [2020] UKSC 13, ¶ 27 (Eng.).

181. See *Adams v. Cape Indus. plc* [1990] Ch 433 (CA) (Eng.) (holding that a parent company is generally not liable for the actions of its subsidiaries and refusing to pierce the corporate veil on a "single economic unit" argument, establishing that a corporate group does not constitute a single legal entity unless a company is a mere facade or acting strictly as an agent).

182. See *Gilford Motor Co. Ltd. v. Horne* [1933] Ch 935 (CA) (Eng.) (establishing that courts may pierce the corporate veil when a company is used as a sham or façade to evade legal obligations).

economic unit (also known as *alter ego* doctrine).¹⁸³ In such scenarios, the holding company would be considered vicariously responsible for the abuses perpetrated by its affiliate, simply because of the relationship with the material contributor of the wrongful act, irrespective of fault.¹⁸⁴

Given the formal independence between buyers and suppliers, such a scheme would not apply in the context of global supply chains, especially when contract-based relationships are involved.¹⁸⁵ The obstacles to establishing indirect liability through a parent company within a corporate group are generally perceived as insurmountable.¹⁸⁶

2. Direct Liability and Duties of Care in Common Law Systems

A second approach is direct liability. It makes the chain leader directly liable for its own conduct, namely, for failing to prevent human rights or environmental abuses in its corporate group (fault-based liability) and lately on the supply chain (*sub ii*).¹⁸⁷ This approach builds on the concrete level of control or supervision of a parent company over the management of its subsidiary to

183. See *DHN Food Distribs. Ltd. v. Tower Hamlets London Borough Council* [1976] 1 WLR 852 (CA) (Eng.) (holding that a parent company (DHN) and its wholly-owned subsidiaries may be treated as a single economic entity to claim for compensation purposes where the subsidiary serves merely as a vehicle for the parent's assets and all companies share the same directors and control, thereby lifting the corporate veil); *RRX Indus., Inc. v. Lab-Con, Inc.*, 772 F.2d 543, 545 (9th Cir. 1985) (holding that when a limited remedy fails its essential purpose, a contractual limitation on consequential damages is unenforceable).

184. See PAULA GILIKER, VICARIOUS LIABILITY IN TORT: A COMPARATIVE PERSPECTIVE 22 (2010); see also CEES VAN DAM, EUROPEAN TORT LAW 300 (2d ed. 2013) (discussing the relationship between vicarious liability and strict liability).

185. For the proposition that supply chain liability should apply irrespective of the chain's structure, see generally Fabrizio Cafaggi & Paola Iamiceli, *Regulating Contracting in Global Value Chains. Institutional Alternatives and their Implications for Transnational Contract Law*, 16 EUR. REV. CONTRACT L. 44 (2020); Carolijn Terwindt et al., *Supply Chain Liability: Pushing the Boundaries of the Common Law*, 8 J. EUR. TORT L. 261 (2018).

186. See MICHAEL KOEBELE, CORPORATE RESPONSIBILITY UNDER THE ALIEN TORT STATUTE: ENFORCEMENT OF INTERNATIONAL LAW THROUGH US TORTS LAW 302 (2009); Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. CHI. L. REV. 89, 89 (1985) ("'Piercing' seems to happen freakishly. Like lightning it is rare, severe, and unprincipled.").

187. CLERK & LINDSELL ON TORTS ¶ 12-08 (Andrew Tettenborn ed., 24th ed. 2023).

establish a direct duty of care.¹⁸⁸ Unlike in the CS3D, in these cases the existence of the power is the basis of liability. The application of direct liability to supply chain relationships has recently been examined in a series of important decisions of the UK courts.

In *Chandler v. Cape plc*,¹⁸⁹ the Appeals Court made clear that no “piercing the corporate veil” argument concerned the liability of the parent company for the exposure to asbestos of the subsidiary’s employees. A direct duty of care was owed by the defendant towards the claimants on the sole application of ordinary negligence principle, stemming from the proximity between the parent and the subsidiary. Such assumption of responsibility may be established through a series of indicia enumerated in *Chandler v. Cape*¹⁹⁰:

a) the business of the parent and subsidiary are, in a relevant respect, the same;

b) the parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry;

c) the subsidiary’s system of work is unsafe as the parent company knew, or ought to have known;

d) the parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees’ protection.

Overall, the liability of the parent corporation depends on its “omission to take steps or to give advice” to the subsidiary, which violates its duty of care. Such assessment of proximity is hardly compatible with an abstract list of criteria and should therefore be conducted on a case-by-case basis, for instance, by evaluating the frequency and intensity of the orders given by the parent to the subsidiary. These criteria are not exhaustive, but illustrative of the requirements that the relationship between parent and subsidiary

188. See Palombo, *supra* note 166, at 908 (“[t]he essence of the duty of care lies in the control that the UK company has over the harm inflicted on a victim.”).

189. [2012] EWCA (Civ) 525 (Eng.); see also Martin Petrin, *Assumption of Responsibility in Corporate Groups: Chandler v. Cape Plc*, 76 MOD. L. REV. 603 (2013). This case builds up on *Caparo Indus. plc v. Dickman* [1990] 2 AC (HL) 605 (Eng.) (establishing a three-stage test for duty of care — foreseeability, proximity, and fairness — and holding that auditors owe no duty of care to potential investors or individual shareholders relying on audit reports for investment decisions absent a sufficiently close relationship).

190. See *Chandler* [2012] EWCA (Civ) 525, [80].

must meet to establish the former's responsibility for the latter's misconduct.¹⁹¹

The approach taken in *Chandler v. Cape* has been reconsidered in two subsequent judgments. Although both decisions only concern jurisdiction, they are relevant to determine how control's *indicia* can be used for an *ex post facto* assessment of liability.

In *Vedanta Res. PLC v. Lungowe*,¹⁹² the claimants alleged that the UK-based parent company and its local subsidiary in Zambia were responsible for extensive pollution caused by toxic discharges from a copper mine into watercourses. The Supreme Court of the United Kingdom clarified that vicarious liability was not in question. Instead, the focus was on whether the parent company had assumed a direct duty of care.¹⁹³ The potential liability of a parent company for the acts of its subsidiary does not arise from any special or separate category within the law of negligence. Rather, it depends on the degree and manner in which the parent has chosen to involve itself in the subsidiary's operations, for example by assuming control, intervening in management, supervising activities, or providing guidance.¹⁹⁴ However, Lord Briggs criticized the approach taken by Sales LJ in the earlier *AAA v. Unilever PLC*,¹⁹⁵ highlighting that there is no limit to the models of management and control exercised within a multinational group of companies. A much broader set of factors points towards the assumption of a duty of care, for instance, if the parent takes active steps in designing, supervising and enforcing group-wide policies. The parent may bear responsibility to third parties where it can exercise significant supervision and control over its subsidiaries, even if it failed to do so when it should have.

191. See, e.g., *Thompson v. Renwick Grp. Plc* [2014] EWCA (Civ) 635, [37] (Eng.) (interpreting the criterion of superior knowledge in the context of a parent company's duty of care to protect a subsidiary's employees).

192. [2019] UKSC 20, [1] (Eng.).

193. *Id.* [55] ("The essence of the claimants' case against Vedanta is that it exercised a sufficiently high level of supervision and control . . . as to incur a duty of care to the claimants.").

194. *Id.* [49].

195. [2018] EWCA (Civ) 1532, [2018] BCC 959, [36] (Eng.) (Sales LJ) (finding that cases where a parent company may incur a duty of care to third parties harmed by a subsidiary's activities fall into two basic types: (i) where the parent has effectively taken over management of the subsidiary's actions, and (ii) where the parent has given relevant advice to the subsidiary about how it should manage a risk).

In *Okpabi v. Royal Dutch Shell Plc*,¹⁹⁶ the UK Supreme Court further reinforced the principles outlined in *Vedanta*. Following numerous oil spills near farming and fishing communities in Nigeria, an action was brought against the UK parent company for breaching its duty of care.¹⁹⁷ The alleged violation had been identified in the failure to exercise adequate control over material aspects of the local subsidiary's operations (e.g., promulgation and imposition of mandatory health, safety and environmental policies, standards and manuals which failed to protect the appellants against the risk of foreseeable harm). Interestingly, the UK Supreme Court points out that control is just a starting point. The question is whether the parent took over or shared with the subsidiary the management of the relevant activity. That may or may not be demonstrated by the parent controlling the subsidiary because, to different extents, all parents control their subsidiaries. Thus, control of a company and *de facto* management of part of its activities are two different things, since a subsidiary may maintain *de jure* control of its activities but nonetheless delegate *de facto* management of part of them to emissaries of its parent. In assessing whether the parent company owes a duty of care, these circumstances are more significant than the corporate structure of the group.

A further, and partly distinct, extension of direct liability beyond the parent-subsidiary setting emerges in *Begum v. Maran (UK) Ltd*.¹⁹⁸ In that case, the English Court of Appeal stated that a duty of care could arguably arise where the defendant had created or significantly contributed to the creation of a dangerous situation that was then exploited by third parties, causing harm to the claimant. The significance of *Begum* lies in the fact that liability was not premised on corporate control over a subsidiary, nor on any

196. [2021] UKSC 3 (Eng.).

197. *Id.* [3] ("The appeal concerns two sets of proceedings, the Ogale proceedings and the Bille proceedings. In the Ogale proceedings the appellant claimants are a Nigerian farming and fishing community of approximately 40,000 individuals in Rivers State, Nigeria. The claim is brought by the leadership of the Ogale Community, namely the King, HRH Emere Godwin Bebe Okpabi, and the Council of Chiefs, suing both for themselves and in a representative capacity on behalf of the people of the Ogale Kingdom. In the Bille proceedings the appellant claimants are 2,335 individuals who live in the Bille Kingdom, a remote riverine community in Rivers State, Nigeria.").

198. [2021] EWCA (Civ) 326 (Eng.) (concerning the sale of a tanker for dismantling at a Bangladeshi beaching yard operating under unsafe conditions, in which the claimant's husband died during breaking-up operations).

form of veil piercing, but on the defendant's own conduct in setting in motion a highly hazardous process while being aware of the serious risks associated with the chosen method of disposal. In this respect, the decision is narrower than the *Chandler-Vedanta-Okpabi* line, because it does not rest on managerial control or assumption of responsibility in the governance of another entity's activities. At the same time, it demonstrates that direct liability may arise in relation to contractors and subcontractors even where the chain leader does not directly manage the harmful activity. Liability may nonetheless attach where the chain leader materially contributes to creating the risk and fails to adopt available contractual or organizational safeguards. The case therefore suggests that direct liability may develop along two partly complementary paths: one based on the assumption of responsibility through control, supervision, advice, or enforcement of policies; the other based on the creation of a dangerous situation subsequently acted upon by contractual partners.

The UK High Court's case-management judgment in *Dyson Technology* further confirms the centrality of fact-finding and the rejection of shortcuts based on abstract reconstructions of control.¹⁹⁹ The proceedings—brought by twenty-four Nepalese and Bangladeshi migrant workers employed in Malaysian facilities operating within Dyson's supply chain—concerned the liability of the parent companies for the allegedly abusive working and living conditions at suppliers' factories. The claimants framed their claim, consistently with the above-mentioned evolution of the case law, around the breach of the chain leader's duty of care, rejecting characterization as a case of vicarious liability or "piercing the corporate veil." The UK High Court implicitly reiterated that control is only a starting point; what matters is whether the parent company has, in fact, assumed or shared the management of the relevant activities and whether that generated a duty of care towards potentially harmed third parties.

199. *Limbu & Ors v. Dyson Tech. Ltd.* [2026] EWHC 38 (KB) (Eng.) (concerning claims by twenty-four Nepalese and Bangladeshi migrant workers against English and Malaysian Dyson entities for unlawful trafficking, forced labor, and exploitative working and living conditions—and, in some cases, detention, torture, and beating—at two Malaysian factories manufacturing components for the Dyson supply chain).

A similar reasoning has been recently provided in the case *Município de Mariana v. BHP Group*.²⁰⁰ The English High Court, applying Brazilian law, examined whether parent or controlling companies could be held liable for environmental damage caused by a catastrophic dam collapse, including on grounds of strict environmental liability, fault-based liability, and abuse of power by controlling shareholders.

The judgments related to environmental and social violations represent important progress in the definition of chain leader's liability. The duty of care rests not only on control and the failure to exercise corresponding powers, but also on the design and implementation of chain-wide policies whose deficiencies may themselves cause adverse impact. Tort liability can permit judicial control of private regulatory policymaking in global supply chains.

3. Tort Liability for Breaching Due Diligence Obligations

Common law cases primarily frame tort liability *ex post* through the ordinary tools of "negligence" (assumption of responsibility, proximity, breach). The potential "control" exercised by the parent company—for instance through mandatory group policies, supervision, training, auditing and enforcement—is considered a proxy for assumption of responsibility, and the legal question becomes whether the parent's concrete involvement makes it fair, just, and reasonable to impose a duty. The aim is to ensure a correlation between the concrete exercise of, or failure to exercise, legal powers translating into control or influence and the corresponding liability. Civil law systems have, in several respects, proved more receptive than common law jurisdictions to the expansion of sustainability-related duties of care through the general law of torts. With the partial exception of German law,²⁰¹ they have traditionally relied less on closed categories of actionable wrongs and more on broadly framed clauses of extra-contractual liability, capable of incorporating evolving standards of socially expected conduct. This structural openness has facilitated the identification of a general duty of care within the law of delict. That duty may extend

200. [2025] EWHC 3001 (TCC) (Eng.).

201. See BASIL S. MARKESINIS, JOHN BELL & ANDRÉ JANSSEN, *MARKESINIS'S GERMAN LAW OF TORTS* 29 (4th ed. 2019).

to chain leaders whose organizational choices, commercial strategies, or governance failures contribute to human rights or environmental harms across the chain of activities. These systems have arrived at these duties not through the construction of special doctrines of parental or supply chain liability, but through the reinterpretation of general tort clauses in civil codes. They have emphasized the preventive and regulatory functions increasingly assigned to private law.

The French duty of vigilance has stimulated litigation concerning compliance with the rules introduced in 2017. In *La Poste*,²⁰² the claim was brought primarily for injunctive relief, seeking compliance orders aimed at remedying structural shortcomings in the company's plan de vigilance. These shortcomings concerned risk mapping, procedures for assessing suppliers and subcontractors, the alert mechanism, and monitoring arrangements. Notably, judicial protection was not made dependent on the prior occurrence or proof of harm.²⁰³ The court, interpreting the commercial code, treats risk mapping of the chain as the cornerstone of the entire system.²⁰⁴ The chain leader

202. *La Poste*, *supra* note 156.

203. *Id.* at 9 ("Article L.225-102-4 of the Commercial Code does not place the companies concerned under an obligation to prevent or mitigate all impacts of their activities, but only 'serious risks or harm' [...].") [*L'article L.225-102-4 du code de commerce ne met pas les entreprises concernées en situation de devoir prévenir ou atténuer tous les impacts de leur activité, mais seulement les "risques ou atteintes graves" [...].*].

204. *Id.* ("As the first-instance judges correctly noted, the law of 27 March 2017 placed risk mapping at the forefront of the measures to be included in a company's vigilance plan, since it is upon risk mapping that the determination of the actions to be taken to reduce risks, prevent serious harm, and implement their monitoring depends." [*Comme l'ont exactement relevé les premiers juges, la loi du 27 mars 2017 a placé la cartographie des risques au premier rang des mesures à prévoir dans le plan de vigilance d'une entreprise, puisque de celle-ci dépend la détermination des actions à mener pour réduire les risques, prévenir les atteintes graves et mettre en œuvre leur suivi.*]). The Court makes explicit reference to the Commercial Code to define the scope of risk mapping ("Before enumerating the five measures that the vigilance plan must include, paragraph I of Article L.225-102-4 of the Commercial Code specifies that the plan shall contain 'reasonable vigilance measures designed to identify risks and prevent serious harm to human rights and fundamental freedoms, the health and safety of persons, and the environment, arising from the activities of the company and those of the companies it controls within the meaning of Article L.233-16(II), directly or indirectly, as well as from the activities of subcontractors or suppliers with whom an established commercial relationship is maintained.'" [*Avant d'énumérer les cinq mesures que doit comporter le plan de vigilance, le paragraphe I de l'article L.225-102-4 du code de commerce précise que le plan comporte "les mesures de vigilance raisonnables propres à identifier les risques et à prévenir les atteintes graves envers les droits humains et les libertés fondamentales, la santé et la*

must assess the risks and give priorities defining a hierarchy that shall guide the adoption of preventive measures by the chain participants, including the suppliers.²⁰⁵ The aim is to restructure the due diligence process by imposing minimum standards of specificity, traceability, and engagement with stakeholders. The remedy issued by the court is structurally preventive: it targets the company's corporate strategy and governance choices (i.e., how it "determines" group policy and deploys its leverage), thereby turning the tort standard into a tool to correct organizational inadequacies and align future conduct with the required level of care.²⁰⁶

Likewise, climate change litigation has made a fundamental contribution to this development. Unlike the previous cases, in which claimants came from African or Asian countries, the claimants in these cases are European and often citizens of the State in which the court is located.

For example, the Dutch courts in *Milieudefensie* deployed a new definition of the duty of care.²⁰⁷ Earlier human-rights-based

sécurité des personnes ainsi que l'environnement, résultant des activités de la société et de celles des sociétés qu'elle contrôle au sens du II de l'article L. 233-16, directement ou indirectement, ainsi que des activités des sous-traitants ou fournisseurs avec lesquels est entretenue une relation commerciale établie.]].

205. *Id.* at 12 ("Accordingly, the judgment under appeal shall be upheld insofar as it ordered La Poste to establish procedures for the evaluation of subcontractors precisely identified by the risk mapping." [*En conséquence, le jugement déferé sera confirmé en ce qu'il a enjoint à la société La Poste d'établir des procédures d'évaluation des sous-traitants précis et identifiés par la cartographie des risques.*]).

206. *Id.* at 11 ("Consequently, the first-instance judges were right to hold that the initial risk-mapping stage of the 2021 vigilance plan did not comply with the requirements of Article L.225-102-4 of the Commercial Code, and to grant the injunction sought by the Sud PTT federation requiring the vigilance plan to be completed with a risk map aimed at identifying, analysing, and prioritizing the risks." [*En conséquence c'est à juste titre que les premiers juges ont retenu que l'étape initiale de cartographie des risques du plan de vigilance 2021 n'était pas conforme aux exigences de l'article L.225-102-4 du code de commerce et ont fait droit à la demande d'injonction de la fédération Sud PTT tendant à compléter le plan de vigilance par une cartographie des risques destinée à leur identification, leur analyse et leur hiérarchisation.*]).

207. See *Milieudefensie*, *supra* note 159 (representing the last in a series of judgments of the Hague district and appellate courts on Shell's climate-related obligations); see also 200.302.332/01, *Oguru v. Shell Petroleum Dev. Co.*, Gerechtshof Den Haag [Hof Den Haag] [Hague Court of Appeal], ECLI:NL:GHDHA:2021:132 (Jan. 29, 2021) (Neth.); *Dooh v. Royal Dutch Shell*, Gerechtshof Den Haag [Hof Den Haag] [Hague Court of Appeal], ECLI:NL:GHDHA:2015:3586, ¶ 3.2 (Dec. 18, 2015) (Neth.) (both concerning Shell's liability for environmental damage caused by oil spills from its Nigerian subsidiary's pipelines).

climate adjudication played a fundamental role in this respect.²⁰⁸ *Urgenda Foundation v. State of the Netherlands* established, under Dutch law, that Articles 2 and 8 of the European Convention on Human Rights may impose positive obligations on States to act against dangerous climate change.²⁰⁹ More recently, the Grand Chamber of the European Court of Human Rights in *Verein KlimaSeniorinnen Schweiz v. Switzerland* confirmed that Article 8 encompasses a right to effective protection by public authorities against the serious adverse effects of climate change on life, health, well-being, and quality of life.²¹⁰

These decisions helped consolidate a broader legal framework in which climate change is a source of legally relevant risk capable of triggering positive duties of protection. Within this framework, *Milieudefensie* represents a further step, as it transposes the preventive and rights-informed logic from the sphere of public authorities to that of corporate conduct, using the open-textured social duty of care under Dutch tort law as the doctrinal vehicle for articulating sustainability obligations.²¹¹ At the same time, this model underscores strengths and limits. The Dutch Court of Appeal of the Hague confirmed that Shell is subject to a human-rights-informed social duty of care to contribute to combating dangerous climate change, and rejected the view that Shell had no influence at all over its Scope 3 emissions.²¹² Yet it declined to translate that standard into a sufficiently concrete reduction obligation for Scope 3, both because it considered the available scientific and regulatory materials insufficient to derive an absolute reduction obligation applicable to Shell, and because it

208. See Claire Bright, *The Civil Liability of the Parent Company for the Acts or Omissions of Its Subsidiary: The Example of the Shell Cases in the UK and in the Netherlands*, in BUSINESS AND HUMAN RIGHTS IN EUROPE: INTERNATIONAL LAW CHALLENGES 215 (Angelica Bonfanti ed., 2019).

209. Hoge Raad [HR] [Supreme Court of the Netherlands], ECLI:NL:HR:2019:2006 (Dec. 20, 2019) (Neth.) (English translation at https://www.climatecasechart.com/documents/urgenda-foundation-v-state-of-the-netherlands-judgment_ed17).

210. App. No. 53600/20, ¶ 240 (Apr. 8, 2024), <https://hudoc.echr.coe.int/?i=001-233206>.

211. See Cees van Dam, *Shell/Milieudefensie: een norm zonder verplichting en schendingen zonder remedie* [*Shell/Milieudefensie: A Norm Without Obligation and Violations Without Remedy*], 13 AV&S 65 (2025); Benoit Mayer, *The Duty of Care of Fossil-Fuel Producers for Climate Change Mitigation: Milieudefensie v. Royal Dutch Shell District Court of the Hague (The Netherlands)*, 11 TRANSNAT'L ENV'T L. 407 (2022).

212. *Milieudefensie*, *supra* note 159, ¶¶ 7.58–7.62.

found that the particular reduction order sought had not been shown to be effective in reducing global emissions.

A recent German decision in *Luciano Lliuya v. RWE AG* points in a similar direction, though in distinct doctrinal terms.²¹³ According to the German § 3, Abs. 3, S. 1 LkSG, a violation of the duty of care (“*Sorgfaltspflicht*”) does not give rise to any liability under civil law. However, the same provision also states that “any liability under civil law arising independently of this Act remains unaffected.”²¹⁴ Yet, some authors have contended that this provision is not meant to create a zone of immunity shielding companies from liability; rather, it merely sought to exclude the application of the more claimant-friendly evidentiary regime available to the victim of a tort where § 823(2) BGB is applied.²¹⁵ The Oberlandesgericht Hamm ultimately dismissed the claim on the facts, because the plaintiff had failed to establish the imminence of the flood risk threatening his property. Yet the decision confirmed that major emitters may, in principle, be held liable under German private law for climate-related harms or hazards.²¹⁶ The German court accepted that climate attribution science may provide a sufficiently robust basis for establishing causation and for quantifying the emitter’s contribution according to the principle of several liability. At the same time, it showed that a duty of care may be framed not through a broad social standard akin to the Dutch type, but instead through the internal resources of German tort doctrine, in particular by construing climate liability as a form of production-related environmental liability and by extending to major emitters a duty to monitor, warn, and,

213. Case No. I-5 U 15/17, Oberlandesgericht Hamm [OLG Hamm] [Hamm Higher Regional Court], 5th Civil Senate, Verdict (May 28, 2025) (Ger.).

214. Act on Corporate Due Diligence Obligations in Supply Chains (Ger.) (official English translation provided by the Federal Ministry of Labour and Social Affairs), https://www.csr-in-deutschland.de/SharedDocs/Downloads/EN/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile [https://perma.cc/DX75-MY2Q].

215. See Federico Pistelli, *Obblighi di cura e responsabilità nella legge tedesca sulle catene di fornitura (LkSG)* [Duties of Care and Liability in the German Supply Chain Act (LkSG)], 4 NUOVE LEGGI CIV. COMM. 1046 (2024); ANNA HEINEN, DELIKTISCHE SORGFALTPFLICHTEN IN TRANSNATIONALEN LIEFERKETTEN: ANSÄTZE EINER HAFTUNG FÜR MENSCHENRECHTSBEEINTRÄCHTIGUNGEN DURCH UNTERNEHMEN [TORTIOUS DUTIES OF CARE IN TRANSNATIONAL SUPPLY CHAINS: APPROACHES TO CORPORATE LIABILITY FOR HUMAN RIGHTS VIOLATIONS] 920 (2022).

216. See Jan-Erik Schirmer, *Climate Liability after Lliuya v RWE: Causation and Duty Demystified*, 16 J. EUR. TORT L. 270 (2025).

where possible, reduce harmful practices. In this respect, *Lliuya* seems to suggest that the emergence of such duties does not depend exclusively on highly open-ended clauses. On the remedial side, the claim was based on § 1004, Abs. 1 BGB, since German law allows reimbursement of mitigation costs where the defendant has contributed to an imminent hazard and the claimant, instead of seeking an injunction, pursues protective measures directly. The normative basis of liability, however, was developed through general principles of private environmental liability, construed independently from public-law compliance.

If cases such as *Milieudefensie* and *Lliuya* demonstrate how civil law systems can derive sustainability duties of care from general private-law principles, the French duty of vigilance case law reveals a further development for the enforcement of due diligence plans.

C. The EU Approach to Extracontractual Liability in Light of National Developments

According to the initial version of Article 29 CS3D, natural and legal persons who suffered damage were entitled to claim full compensation when the infringer(s) intentionally or negligently failed to comply with their due diligence obligations.

CS3D clearly rejected the solution of making the company vicariously liable for its subsidiaries' or business partners' conduct, by opting instead for a direct liability regime based on the violations of the listed prohibitions, obligations and rights causing damage to a person's legal interest protected under national law. The chain leader is therefore held liable both in cases where it alone caused the damage, as well as where it contributed to damage caused by its suppliers or business partners.²¹⁷ In this second scenario, the company, its subsidiaries, and direct and indirect business partners can be held jointly and severally liable, according to national law. It is thus left to Member States to concretely define the rules governing the allocation of responsibility between multiple tortfeasors, following the framework defined by the CS3D and applying the general principles of tort law. The objective is to establish a link between

217. See CS3D, *supra* note 30, art. 29(5).

joint responsibility in conducting due diligence and liability for harm resulting from the failure to adopt appropriate measures.²¹⁸ While Article 29 is focused on compensation, this protection should not be limited to cases where adverse impact has resulted in concrete damages caused by negligent or intentional breaches. The mere occurrence of an adverse impact should suffice as a prerequisite for injunctive and corrective measures, even where remedies are sought by individual or collective claimants. This is a logical conclusion of the application of liability to the violation of the commitments in regulatory instruments such as prevention, correction, and remediation plans.²¹⁹

The extracontractual liability for violations of due diligence has been substantially modified by the Omnibus I, leaving a higher degree of discretion to Member States. In other words, while the Omnibus I preserves the core features of the due diligence duty,²²⁰ the civil liability regime is no longer based on an EU harmonized liability model: core choices regarding the conditions of liability, the interaction with domestic tort liability, and the concrete architecture of remedies are channeled back to national legal orders.

Building on this convergence, we propose a structural reconsideration of civil liability in the transposition process. The central question is how liability must be reconfigured to adequately address breaches of due diligence obligations. This new paradigm will necessarily depart from the classical tort model in at least two respects.

First, it reconfigures the trigger of judicial protection. Traditional tort liability is typically based on harm. In other words, there is no liability without actual harm. By contrast, due diligence-based liability increasingly operates through an anticipatory logic, in which the relevant reference point is not (or not only) actual harm, but the materialization of an adverse impact. Adverse impact

218. See Chiara Macchi & Nadia Bernaz, *Business, Human Rights and Climate Due Diligence: Understanding the Responsibility of Banks*, SUSTAINABILITY 8391–99 (2021), <https://doi.org/10.3390/su13158391> [<https://perma.cc/RV9D-RADU>] (distinguishing between corporate liability for directly causing harm and liability for contributing to harm caused by subsidiaries or business partners in supply chains).

219. *But see* CS3D, *supra* note 30, art. 29 (text silent on joint and several liability for violations of prevention, correction, and remediation plan obligations, leaving this conclusion to be established in Member States' transposition acts).

220. *Id.* art. 5.

generates an increase in risks beyond what is legally acceptable in relation to individual and collective interests. It refers to potential harm; according to the new national legislation, adverse impact suffices to trigger injunctive relief, especially for prevention and correction.²²¹ Liability is therefore connected to the regulatory function of due diligence: the duty is organizational and *ex ante*, and thus the legal response is progressively decoupled from the requirement of *ex post* loss.

Second, this evolution entails a reordering of remedies. In the classical hierarchy of tort law, monetary compensation is the typical and primary response to wrongdoing, while injunctive relief is often residual, exceptional, or procedurally constrained. In the due diligence context, that hierarchy is reversed. Compensation remains relevant, particularly where adverse impacts have already resulted in quantifiable losses, but it becomes complementary to anticipatory and corrective measures. The core objective is no longer to transfer the cost of past harm, but to stop the wrongdoing, mitigate the consequences, and correct the corporate practices and governance failures that have generated or perpetuated the adverse impact. In this sense, civil liability is not merely backward-looking; it becomes a forward-looking tool, aimed at restoring compliance and preventing recurrence by requiring companies to adjust their risk-mapping, monitoring, leverage strategies, and remediation processes. It becomes an organizational instrument for the supply chain.

D. The Complementarity between Enforcement Regimes for Due Diligence Obligations

The complementarity of enforcement regimes requires coordination within and between Member States. Failure to coordinate can lead to conflicting decisions between the enforcers, especially if they operate across countries. Coordination would be desirable to prevent divergent or conflicting outcomes, as the disparities arising from Dieselgate illustrate.²²²

221. See generally *La Poste*, *supra* note 156.

222. For the different outcomes of administrative and judicial enforcement in the context of Dieselgate, see Ilaria Garaci & Roberta Montinaro, *Public and Private Law Enforcement in Italy of EU Consumer Legislation after Dieselgate*, 8 J. EUR. CONSUMER & MKT. L. 29 (2019).

Not only do administrative and judicial enforcement regimes deter and remedy adverse impact, but they also provide chain leaders with a prospective regulatory strategy for managing risks in global supply chains. By ensuring effective prevention and remediation, both administrative and judicial enforcement perform important regulatory functions. Enforcement should assess the potential outcomes leaving relative discretion on instruments' choice within the legislative framework.

The instruments of enforcement differ and consequently they exert a complementary influence on prevention and remediation. Administrative enforcement includes both sanctions and remedies. Judicial enforcement instead is limited to remedies, but the array is broader, especially in relation to reparation and compensation.

Against this background, the increased discretion left to Member States does not necessarily lead to regulatory fragmentation. Rather, it suggests that national legislations after transposition might converge around core principles for the enforcement of due diligence obligations. In the CS3D, both Article 5, defining due diligence obligations, and Article 29 are not covered by the full harmonization clause in Article 4, which results in Member States having a margin of discretion as to how they transpose the enforcement rules. For instance, Article 4 does not prevent Member States from introducing stricter liability regimes for harm caused by a breach of due diligence obligations. Nor does it prevent Member States from eliminating the requirement of harm for the enforceability of remedies under extracontractual liability. As such, we suggest that some innovative measures should be taken by the Member States in the process of the transposition of the CS3D, after the Omnibus I amendments.

The transposition strategies should be based on the premise that administrative and judicial enforcement are complementary and contribute to the achievement of the regulatory objectives concerning the protection of human rights and the promotion of environmental and social sustainability. Each regime has intrinsic limits. Administrative supervision can be selective, resource-constrained, and limited by extraterritorial boundaries; judicial enforcement can be episodic, claimant-driven, and often tethered to traditional tort thresholds. Accordingly, if Member States

transpose Article 25 and Article 29 without properly calibrating how these two tracks interact, the enforcement gap will persist.

*E. The Process of Transposition
and Some Modest Recommendations*

The transposition of CS3D by Member States should provide an integrated framework to make enforcement effective. Contractualization of due diligence requires a chain governance grounded on an effective architecture of contracting. The duty to control imposed on the chain leader by mandatory due diligence must be translated into legal power that ensures compliance with due diligence obligations. Private regulatory instruments must be incorporated into contractual clauses beyond the mere incorporation. A differentiated strategy for principles and rules is necessary. Enforcement is a strategic pillar for the implementation of mandatory due diligence, but the process of transposition requires important interventions.

A first recommendation, therefore, is to ensure that liability mirrors the Directive's risk-based logic. Priority should be given to the prevention of adverse impacts and remediation should prevail over compensation when harm materializes. Stakeholders' involvement should likewise be warranted in both risk assessment and risk management.

The CS3D does not correlate a breach of due diligence obligation with the occurrence of a harm. It structures due diligence around a sequence of prevention, mitigation, and remediation obligations, each corresponding to distinct factual situations and, most importantly, distinct remedial needs.²²³

At the prevention and mitigation stages, what is at stake is often not an injury, but rather a risk of adverse impact that must be identified and addressed through organizational measures. Where the transposition of the CS3D fails to correlate the liability regime with the deterrence function, broaden the spectrum of available remedies, and anticipate their enforceability at the time of adverse impact, there is a risk that judicial enforcement of the preventive function will remain merely ancillary. By contrast, as one approaches remediation, the notions of adverse impact and

223. See Scheltema, *supra* note 78, at 278.

harm progressively overlap: the adverse impact materializes into an infringement that may entail loss, and monetary compensation becomes more central, though not necessarily exhaustive. This suggests that Member States should avoid treating extracontractual liability under the CS3D as a single and uniform tort model. Instead, transposition should differentiate the liability and remedial rules along the three objectives reflected in Articles 10, 11 and 12 CS3D. In other terms:

- (i) a first scenario in which the company fails to detect and integrate a relevant risk into its due diligence architecture (a failure to “map” the risk). This violation extends to the case of failure to modify the prevention plan when new risks have emerged;
- (ii) a second scenario in which the company has identified the risk, but fails to address it adequately through appropriate precautionary measures (a failure to “act” on the risk and correct the approach if shortcomings have emerged); and
- (iii) a third scenario in which measures exist on paper but are not implemented or enforced effectively (a failure to “execute the plan” and to follow up). This failure relates to remediation.

The closer the situation is to Article 12-type remediation, the more the traditional harm concepts operate. As regards prevention and correction, however, insisting on harm as a prerequisite effectively disables judicial protection and channels the entire enforcement burden onto administrative authorities. That would contradict the directive’s two-pillar architecture, making administrative enforcement the only practically viable strategy.

A second recommendation concerns the choice of the appropriate remedy, distinguishing nonfeasance from misfeasance in value-chain governance. Some breaches are omissions, such as failure to establish a risk-mapping, failure to set up an effective alert mechanism, and failure to monitor the risks within the chain and adjust plans accordingly. Others are active forms of inadequate governance, for instance adopting measures that are manifestly insufficient, or maintaining group policies that structurally perpetuate the exceeding risk.

Extracontractual liability should therefore provide a graduated toolbox of injunctive and corrective measures that can: (a) require the company to identify and operationalize measures against a risk that is missing from its plans; (b) correct the content of measures that exist but are inadequate in light of the identified risk; and (c) modify remedial strategies by compelling implementation and follow-up when the company's plan is not translated into practice. These remedies address the chain leader's conduct, whether omission or action, and are aligned with the directive's preventive rationale.

Parallel specifications are needed on the public enforcement side. Member States should more precisely articulate the link between the supervisory powers in Article 25 CS3D (injunctive orders, corrective action, and sanctions) and the substantive obligations in Articles 10–12 CS3D. This matters because administrative enforcement under the directive is meant to operate less as a purely hierarchical sanctioning model and more as a cooperative compliance framework for large undertakings: it creates space for engaging in a dialogue between supervisor and supervised entity, and it can generate incentives for companies to bring their due diligence architecture, and particularly their prevention and transition planning, into a structured dialogue with the authority.²²⁴ The Omnibus I choice to remove Article 22 CS3D—which envisaged the obligation on the chain leader to notify climate transition plans—goes against this perspective. Mandatory notification could have served as a blueprint for this cooperative model: it would have enabled *ex ante* regulatory dialogue, reduced uncertainty for companies, and supported the progressive development of administrative expertise through cross-sector comparison of plans, methodologies, and best practices among undertakings subject to the CS3D. That expertise, in turn, is crucial for both the enforcement regimes. It strengthens administrative capacity and can indirectly inform judicial assessment of what constitutes appropriate measures under a risk-based standard of care.

224. See Fabrizio Cafaggi, *Private Regulation, Supply Chain and Contractual Networks: The Case of Food Safety* 10 (Eur. U. Inst., Robert Schuman Ctr. for Advanced Stud., Working Paper No. RSCAS 2010/10, 2010), <https://ssrn.com/abstract=1554329>.

A third recommendation concerns the legal status of the list of prohibitions and obligations contained in the Annex to the CS3D.

As regards administrative enforcement, the Annex should be treated as binding and exhaustive. The principle of legality requires that the conditions under which a supervisory authority may exercise investigative, corrective, and sanctioning powers be defined in a sufficiently clear and determinate manner. Since administrative intervention under Article 25 CS3D is tied to the breach of due diligence obligations laid down by the Directive, the scope of adverse impacts that triggers public enforcement cannot be expanded beyond the situations normatively identified by the Directive and its Annex.

By contrast, the position is more nuanced in relation to judicial enforcement. The definition of risk in the CS3D may suggest, at first glance, that only risks linked to the rights, prohibitions, and obligations expressly referred to in the Annex fall within the scope of due diligence. However, Recital 32 points to a broader direction, certainly with regard to human rights impacts. It states that an abuse of a human right not specifically listed in Part I, Section 1, of the Annex may nevertheless fall within the Directive where it directly impairs a legal interest protected by the instruments listed in Part I, Section 2, provided that the company could reasonably have foreseen the risk in light of all relevant circumstances, including the nature and extent of its operations, its chain of activities, the economic sector, and the geographical and operational context. In light of the evolution of the social standard of care, this supports the view that, at least for the purposes of judicial enforcement, the Annex cannot be regarded as exhaustive. Rather, in the human rights field, it may operate as a structured but non-exhaustive reference point, allowing courts to consider reasonably foreseeable risks not expressly enumerated in the Annex where they are functionally connected to the protective rationale of the Directive.²²⁵

225. See *Notre Affaire à Tous et al. v. TotalEnergies SE*, Tribunal judiciaire de Paris [TJ Paris] [Paris Judicial Court], 34th Chamber, June 25, 2026, No. RG 22/03403, at 37–39 (holding that the term “environment” in the French Duty of Vigilance Act must be interpreted broadly to include climate change caused by GHG emissions, and that climate risks must be taken into account in vigilance plans as part of the prevention of serious environmental and human-rights harms).

The guiding objective of transposition should, thus, ensure that both enforcement systems can mutually compensate for each other's weaknesses, so that prevention, mitigation, and remediation are each matched with effective remedies, and the risk-based logic of the CS3D does not result in an enforcement gap.

VI. CONCLUSION

Global supply chains are being reshaped by regulatory and technological transformations. The traditional paradigm of geographically fragmented and cost-driven production is increasingly challenged by a model centered on resilience, accountability, and control.

This Article has advanced three main claims. First, it has shown that the EU regulatory agenda fosters due diligence prevention, risk mapping, and continuous monitoring. Second, it has examined the simplification turn embodied in the Omnibus I and contended that, although the reform formally preserves the core architecture of the CS3D, it narrows the scope and intensity of due diligence obligations and reveals an unresolved tension between regulatory effectiveness and the political objective of reducing compliance and administrative burdens. Third, it has argued that the effectiveness of mandatory due diligence ultimately depends on the interaction between regulatory private law instruments, administrative and judicial enforcement design. The relationship between administrative and judicial enforcement does not reflect the conventional distinction between *ex ante/ex post*. Both regimes have preventive and corrective functions, and their new complementarity should be expressly structured in the transposition process.

Due diligence is implemented through contracts, but it can only become effective if supported by a complementary system of administrative and judicial enforcement. The contractual dimension should not be treated as merely ancillary to enforcement. Prevention, corrective, and remediation plans are the instruments through which the chain leader identifies risks, prioritizes adverse impacts, and defines the measures needed to prevent, mitigate, or remediate them. Yet plans cannot govern the chain unless they are translated into contractual obligations capable of binding suppliers and subcontractors. Contracts therefore operate as the implementation layer of due diligence:

they transform risk assessments and regulatory objectives into duties of performance, cooperation, information sharing, monitoring, corrective action, and responsible exit. This connection between plans and contracts is crucial for the effectiveness of mandatory due diligence. Plans define the regulatory content of due diligence, while contracts allocate tasks, distribute responsibilities, and provide the remedial mechanisms through which those plans are carried out across the chain.

In the European Union, this transformation is mainly driven by the shift from voluntary to mandatory due diligence. Under the former model, due diligence was primarily based on reputational incentives, private CSR programs, and soft governance that often encouraged formal compliance creating an enforcement gap. The move to the mandatory regime partly realigns powers and liability. Due diligence becomes a duty to identify, prioritize, prevent, mitigate, and where necessary remediate adverse human rights and environmental impacts throughout the chain of activities. The distribution of regulatory power is a dependent variable of the duty of care.

This shift will profoundly influence the contractual architecture of supply chain relationships and its technological features. Digital governance will gain strategic relevance. Mandatory due diligence reinforces the regulatory function of transnational commercial contracts by requiring that general sustainability principles, prevention plans, corrective measures, and remediation strategies be translated into enforceable contractual obligations. Contracts become the main vehicle through which due diligence obligations are cascaded along the chain, specified in relation to risks, and adapted to different supply chain architectures and business relationships. At the same time, the article has shown that incorporation by reference of principles into contracts is not sufficient. Effective contractualization of due diligence obligations requires model clauses, tailored schedules, monitoring duties, and remedial mechanisms capable of addressing both process-related breaches and harm to third parties. The rise of mandatory due diligence thus increases the need for cooperation, precaution, corrective remedies, and responsible exit.

This shift also changes the legal assessment of responsibility. Before the emergence of mandatory due diligence regimes, control

was mainly relevant as a factual precondition for liability and the exercise of power was scrutinized primarily when it became abusive. Liability was therefore often triggered by the improper use of influence or decision-making authority within the group or the chain. Mandatory due diligence partly reverses this perspective. The exercise of power is no longer merely the condition that activates responsibility; the failure to exercise available control may itself become the object of legal scrutiny. Due diligence obligations transform control into a duty: companies are required to identify, monitor, prevent, mitigate, and remediate adverse impacts within their chain of activities. As a result, omissions in the exercise of control, such as failures to map risks, monitor suppliers, enforce contractual assurances, or adopt corrective measures, may be assessed both by supervisory authorities and by courts. This shift to mandatory due diligence is equally significant for administrative enforcement. The Article has shown that the CS3D, even after Omnibus I, continues to rely on the role of supervisory authorities, to address the structural underdeterrence of voluntary regimes. Administrative authorities assess the adequacy and effectiveness of risk-management systems, monitoring structures, and technological tools deployed by chain leaders. This is especially relevant in global supply chains, where extraterritorial direct intervention is limited whereas supervisory authorities can influence the governance of the chain indirectly by scrutinizing the compliance architecture of the regulated undertakings from their jurisdiction. Thus, administrative enforcement is preventive and corrective rather than punitive: it should ensure that risks are properly identified, that plans are effectively implemented, and that adverse impacts are brought to an end through tailored injunctive and remedial measures.

Major consequences are also expected on the judicial enforcement's side. A breach of due diligence obligations may ground a court's intervention to adjudicate contractual remedies and civil liability, especially for the benefit of harmed parties. Even though Omnibus I removes the original EU-wide civil liability regime and restores broader Member State discretion, judicial enforcement remains an indispensable complement to administrative supervision. Effective protection requires access to courts, compensatory and reparatory remedies, and injunctive relief.

This need for effective complementarity becomes even more pressing after Omnibus I. By narrowing the scope of due diligence obligations, reducing the depth of chain-wide scrutiny, limiting stakeholder engagement, and eliminating the harmonized civil liability regime, the reform increases the importance of national choices in transposition. The effectiveness of the Directive will therefore depend on how Member States shape contractual implementation, administrative powers, remedies, procedural coordination, and private enforcement.

For these reasons, we have identified six priorities for the transposition process. First, Member States should clarify how prevention, corrective, and remediation plans must be incorporated into commercial contracts, how contractual assurances should be adapted to the structure of the chain, and how contractual remedies should operate where non-compliance with the plan creates or aggravates adverse impacts. Second, Member States should define precisely the coordination between administrative and judicial enforcement, both procedurally and substantively, to avoid conflicting outcomes and strengthen deterrence through proportional and complementary remedies. Third, they should regulate the extraterritorial effects of administrative and judicial decisions, since due diligence violations in global supply chains frequently involve conduct, damage, and evidence located in different jurisdictions. Fourth, in conformity with the principle of legality, transposition of the Directive should expressly broaden and specify administrative remedial powers, linking them to failures in prevention, correction, and remediation plans rather than relying predominantly on pecuniary administrative sanctions. Fifth, national laws should clarify the powers of administrative supervisory authorities in relation to the adequacy of due diligence contractual architecture, including the possibility to address defective contractual design and ineffective cascading related to insufficient compliance assurances. Sixth, collective enforcement and the allocation of responsibility among multiple actors involved in the same infringement should be more clearly regulated to preserve individual and collective incentives to comply with due diligence obligations, so that sanctions and remedies can be distributed consistently with each actor's causal contribution.