

Global Workplace Law & Policy

Embracing sustainability in value chains through EU legislation: the labour rights perspective

Aria Huys (Institute for Labour Law – KU Leuven (Belgium)) · Wednesday, June 12th, 2024



Introduction

Anyone who comes in contact with the European Union (EU) legislative process will have noticed the EU and its Member States shifting into high gear to improve sustainability in their global value chains. The prime example is the recent hard-fought battle for the adoption of the [Corporate Sustainability Due Diligence Directive \(CS3D\)](#), which was finally concluded on 24 May 2024. This is one of a number of initiatives, demonstrating how the EU is embracing the idea that an economy benefiting from an international production process should not only consider the negative externalities this process generates, but should also hold a degree of responsibility for them. The EU's involvement in this issue reflects a similar trend towards greater awareness and transparency on an international plane, with organizations such as the United Nations (UN), the Organization for Economic Co-operation and Development (OECD) and the International Labour Organization

(ILO) as major proponents, whose initiatives will be addressed below.

Until now, the goal of creating more sustainable value chains was mostly confined to voluntary soft law initiatives. With its recent legislative initiatives, the EU is among the first to convert these standards into hard law legislation. While facing similar challenges as the soft law initiatives, the transition to a hard law context poses its own additional challenges, some of which are likely still to emerge. With the regulatory embrace of value chain sustainability now in full swing, this blog post takes a step back to reflect on where we have come from and what lies ahead.

In what follows, the aim is to (re)introduce the reader to the value chain sustainability dimension of EU law-making, taking on a labour rights perspective. First, this blog post contains a short overview and explanation of the terminology used. Second, it provides a more detailed outline of the EU's upcoming sustainability legislation, highlighting specific initiatives and their relation with international labour law. Third, it considers these initiatives in the context of the ongoing international legal debate on sustainability, value chain theories and international labour law and, at the same time, it critically reflects on the initiatives and their meaning for global labour law and policy.

Decoding value chain sustainability: the terminology

The term 'sustainability' is used here as a [catch-all for everything related to the long-term needs of the planet and its inhabitants](#). In the literature and in practice, sustainability is also referred to as ESG, which stands for 'Environment, Social and Governance'. Unlike the notion of sustainability, which has an environmental background, ESG was designed to stress a more holistic view, equally emphasizing all dimensions. Although often used in an investment context, ESG frameworks can be applied in all areas of theory, policy-making, and practice. Accordingly, ESG frameworks can cover labour rights and themes such as pay transparency, anti-discrimination, safe and healthy working environments, remote working possibilities, employee engagement and worker activism.

Sustainability is to be incorporated into the EU legal framework and practices through the so-called global value chains. Although 'global value chains' is a widely used concept, it has no fixed definition or terminology, which complicates the institutionalization of global value chains in EU law. Case in point is the fact that multiple terms are used to refer to the same concept, such as 'global supply chains', 'global production networks', and the reconciling 'chain of activities'. The concept of 'global value chains' is generally understood to represent international production processes, structuring the systems and resources required for these processes in linear, interconnected chains. As a result of industrial and technical innovation, as well as explicit political and economic policy choices, almost all international companies have come to rely on such value chains. However, these value chains often give rise to adverse impacts such as environmental damage, harm to local communities and other stakeholders, and violations of certain international labour rights.

A vital part of sustainability in value chains is the idea that States are not the only entities responsible for the negative externalities of world trade. This is reflected in the long-existing notions of 'corporate social responsibility' and 'responsible business conduct', which focus on the voluntary behaviour of companies as a key to achieving widespread sustainability. In the last decades, it has been increasingly argued that States are, in general, less well suited to prompt sustainability in value chains due to their limited transnational regulatory powers, their lack of adequate enforcement mechanisms (particularly in developing countries), and various other

reasons. In addition to States, companies would be equally if not better placed in achieving this aim. However, as long as corporate responsibility resides in a soft law dimension, negative externalities are unlikely to be adequately remedied. Consequently, the corporate responsibility paradigm is diminishing in importance compared to the notions of corporate accountability and liability. This shift is clearly reflected in the recent EU sustainability law-making, as discussed hereafter.

Regulating value chain sustainability: the initiatives

Regulating sustainability in global value chains is not a new idea. The first, non-binding initiatives date back to [OECD](#) and [ILO](#) documents from, respectively, 1976 and 1977. Both initially focused more on good practices and responsible conduct. The ILO Tripartite Declaration specifically centres around the implementation of decent work through respect for the ILO's (now) five fundamental labour rights: [the freedom of association and collective bargaining](#), [a safe and healthy working environment](#), and [the prohibition of child labour, forced labour and discrimination](#). Both instruments have since been consistently updated. Nevertheless, it was not until the two UN initiatives – the [Global Compact](#) in 2000 and especially the [Guiding Principles](#) in 2011 – that the idea for value chain sustainability gained some traction. The latter initiative was unanimously endorsed by the UN Human Rights Council and elaborated on the preceding [UN Three Pillar Framework](#), which focused on a State's duty to protect, the companies' responsibility to respect and the access to remedy. As a method for value chain sustainability, it also introduced the concept of environmental and human rights due diligence, which was a conciliating notion that resonates with both companies and environmental advocates. The latest momentum resulted from the [UN 2030 Agenda for Sustainable Development](#), which has been set out in 2015 and incorporates many of the concepts the other soft law initiatives use in a broader goal of global partnerships. All of these soft law instruments generally focus on the positive contributions that global stakeholders could and should make towards economic, environmental and social progress, albeit the terminology remains variable, and the instruments do not always correspond well. Both EU Member States and third countries such as the [US](#), the [UK](#) and [Australia](#), have taken these standards as an inspiration and introduced national rules on sustainability in value chains, with [France](#) and [Germany](#) as frontrunners in the EU. However, the differences between these acts in, among others, scope, risks covered, remedies, enforcement and liability, create uncertainty for all actors involved.

Considering all of the above, the EU acknowledged the weight these instruments and principles carried in the international legal order and the need for a harmonized approach on, at least, the EU level. The EU initially aimed to incorporate the idea of value chain sustainability via two distinct legislative initiatives, dividing it into two perspectives. The first perspective considered the need for more sustainable corporate governance. In this [initiative](#), companies would have been required to better manage sustainability-related matters in their own operations and value chains. The second perspective concerned the previously mentioned consensus that voluntary corporate mechanisms had failed. This resulted in their [initiative](#) on mandatory human rights and environmental due diligence, as a step to bring these mechanisms closer to hard law.

However, the EU soon came to the conclusion that these distinct perspectives were two sides of the same coin, as a call for sustainable corporate governance partly relies on cross-sector value chain due diligence. Hence, they merged the two legislative tracks to create one comprehensive directive proposal, the Sustainable Corporate Governance Directive Proposal, now known as the CS3D mentioned above. This is only one part of the recent influx of sustainability and value chain

legislation. Others include, non-exhaustively, the [Corporate Sustainability Reporting Directive \(CSRD\)](#), the [Taxonomy Regulation](#), the [Deforestation Regulation](#), the [Conflict Minerals Regulation](#), the [Batteries Regulation](#) and the Commission's proposal on a [Forced Labour Regulation](#). Although they concern many measures, topics and areas of law, all of these initiatives have sustainability ingrained as a core value. Focusing on the labour law perspective, the following initiatives will play a key role:

- **CS3D:** This recently approved directive imposes mandatory human rights due diligence on large companies in the EU, to combat adverse impacts resulting from companies' activities and the activities of their subsidiaries or business partners. This method of due diligence holds that, soon, companies should actively investigate their value chains for these impacts. The EU acknowledges this might be a challenge, given the significant number of suppliers in the EU and in third countries, and the general complexity of the subject. Comments of this kind resulted in a watered-down final version of the CS3D. This meant, among others, a reduced scope, civil liability for adverse impacts solely on the basis of member state law, and a removal of the high-risk sectors category and the directors responsibility or duty of care. Nevertheless, with this directive, due diligence has arrived in hard law, and consequently, a basis has been established to further discuss and explore sustainability in value chains.
- **CSRD:** Whereas the CS3D focuses on actively identifying and addressing adverse impacts, the Corporate Sustainability Reporting Directive foresees publishing, transparency and auditing requirements for companies about ESG-related information. As the successor of the [Non-Financial Reporting Directive](#), it accentuates the notion of sustainability from two perspectives: on the one hand, the risks and opportunities of ESG factors for the company (outside-in), and on the other hand, the companies' impacts on ESG matters (inside-out). Companies can hereby rely on the [European Sustainability Reporting Standards](#), four of which are social norms, one explicitly addressing '[Workers in the Value Chain](#)'. Moreover, when publishing a report with sustainability information, companies within the scope of this directive are required to consult an external, certified auditor to monitor and verify the process.
- **FLR:** With this proposed regulation, the EU plans to tackle the issues of forced labour and child labour within value chains to foster a more sustainable international production process. Instead of focusing on the actors involved, as the EU did with the CS3D and the CSRD, this regulation targets the product itself. Through the due diligence processes required by the other initiatives, products entering the EU value chains will need to be constantly examined for signs of these labour rights violations, with the possibility of withdrawing the product from the EU market at any time when a violation is discovered. Products coming from high-risk areas – which are still to be identified – will be subject to stricter investigations.

Although each of these initiatives faced considerable opposition, the EU showed determination in its effort for more sustainability in international production processes. Ever since the CS3D was approved, this paradigm in law making seems to have been established. With it, the attention for international labour rights as a key part of sustainability is increasing.

Considering value chain sustainability: the labour law perspective

The EU presents mandatory human rights due diligence obligations for companies as the next solution to achieve more sustainable global value chains. However necessary the idea, it now needs to be moved from theory to practice. Given that the implementation of this concept and its relation to existing standards and instruments raise challenges for all actors involved, this blog post considers the current ways in which labour law is used as a support for the due diligence discourse,

and the ways labour law could strengthen it.

First, insofar as labour law is involved when implementing due diligence, labour rights (initiatives) seem to be primarily used as an aid to support future due diligence schemes. For example, with regard to the channels for claimants and impacted stakeholders which need to be created and improved, the EU itself has reserved an important role for the [Whistleblowing Directive](#). In addition, the adverse impacts companies would need to investigate and mitigate heavily rely on existing labour rights standards and instruments. This can be observed in the definition of forced labour in the FLR, which simply refers to the corresponding ILO Convention, and in the CS3D's Annex, which points to a list of international labour standards such as the International Bill of Human Rights and 'the International Labour Organization's core/fundamental conventions'. A critical caveat here is that the European legislator somewhat conveniently assumes these standards effortlessly transfer to other legal systems, and even to a context in which private actors would be liable for their interpretation and implementation of these standards.

Second, insofar as labour rights can further enhance the due diligence paradigm, they could address frequent commentaries on the current discourse, as well as play a role in the challenges which are yet to emerge. For example, when it comes to the actors involved in the due diligence process, a frequently heard concern – mostly voiced by academics, trade unions and civil society organisations – is the insufficient involvement of stakeholders at all stages. The CS3D enables meaningful stakeholder engagement through dialogue and consultation at various stages of the due diligence process, leaving further elaboration to the Member States. Perhaps here, labour law can lead as an example with its longstanding tripartite systems. Another foreseeable challenge concerns the data collection necessary for the due diligence process. In this case, digital tools will play an important role, as a last-minute addendum to the CS3D reveals. However, for labour rights, specific expertise on how to distil these hard-to-quantify rights into usable data will be key.

Conclusion

The EU's embrace of value chain sustainability has firmly established this paradigm – and its implementation through due diligence processes – within hard law legislation, marking a significant shift from the previous era of voluntary soft law initiatives. As the EU continues to refine and implement its sustainability initiatives, the emphasis currently lies on transparency and accountability. This new focus in law making not only aims to raise awareness for and transparency on the adverse environmental and societal impacts, it also signals an end to the era of (feigned) ignorance by demanding that companies take active responsibility for their global value chains. **Despite labour rights being integral to this sustainability discourse and being increasingly recognized as such in upcoming legislative initiatives, the labour law perspective so far remains somewhat overlooked. The ongoing evolutions in this area promise to increase the importance of labour law, both as an aid to value chain sustainability and as an inspiration for (the implementation of) existing and future EU legislation.**

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