THE CONSTITUTIONAL RIGHT TO A HEALTHY ENVIRONMENT AND ITS REFLECTION IN CORPORATE DUE DILIGENCE OBLIGATIONS IN EUROPEAN UNION LAW

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ABSTRACT: *The recognition of the right to a healthy environment as a constitutional principle represents one of the most significant evolutions of contemporary legal systems. Simultaneously, European Union law has undergone a profound transformation through the adoption of Directive (EU) 2024/1760 on corporate sustainability due diligence (CS3D), which shifts the regulatory paradigm from voluntary corporate social responsibility toward binding obligations.*

This paper examines the interaction between constitutional environmental rights and corporate due diligence obligations, highlighting the processes of antinormativity that connect constitutional law, EU law, and transnational regulatory frameworks. It argues that the constitutionalising of environmental protection contributes to the normative foundation of corporate sustainability duties, reinforcing the preventive function of due diligence mechanisms.

The analysis explores how soft law instruments — particularly the UN Guiding Principles on Business and Human Rights and the OECD Guidelines — have influenced the emergence of binding EU legislation, thereby reshaping the legal understanding of corporate responsibility. Special attention is given to the environmental and climate dimensions of due diligence, as well as to the evolving standard of corporate conduct.

Ultimately, the study demonstrates that corporate due diligence obligations may be understood not merely as regulatory compliance tools, but as legal expressions of fundamental constitutional values.

KEYWORDS: *constitutional right to a healthy environment; corporate sustainability due diligence; Directive (EU) 2024/1760 (CS3D); European Union Law; antinormativity; corporate responsibility; environmental protection; climate obligations.*
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1. INTRODUCTION

Recent developments in European Union law concerning corporate responsibility for the environmental impact of their activities reflect a profound transformation in how the relationship between economic activity and environmental protection is conceived. At the core of this evolution lies the progressive recognition of environmental protection as a

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fundamental legal value, enshrined not only at the level of international and European Union law, but also in the constitutions of Member States. In this context, the right to a healthy environment has acquired the status of a genuine constitutional principle, capable of influencing the development of other branches of law, including company law and business law.

In Romanian law, this constitutional recognition is achieved through Article 35 of the Constitution of Romania, which provides that "the state recognizes the right of every person to a healthy and ecologically balanced environment," while also establishing the obligation of the state to ensure the legislative framework necessary for the exercise of this right. At the same time, the Constitution enshrines the obligation of both natural and legal persons to protect and improve the environment.

This constitutional provision reflects the evolution of the legal conception of the environment, which is no longer perceived exclusively as a public good administered by state authorities, but as a fundamental value of the constitutional order.

The constitutionalising of environmental protection has inevitably led to the extension of legal responsibilities beyond the sphere of public authorities. In a globalized economy, large corporations and corporate groups exert a significant influence on the environment, both through their own activities and through those carried out by their subsidiaries, subcontractors, or suppliers. Under these conditions, the effective realization of the right to a healthy environment cannot be conceived exclusively through traditional mechanisms of environmental law, but requires the integration of environmental protection requirements into the regulation of economic activity.

This trend is particularly reflected in recent developments in European Union law, which has established a complex normative framework aimed at holding companies accountable for the environmental and human rights impacts of their activities. A key moment in this evolution is the adoption of Directive (EU) 2024/1760 on corporate sustainability due diligence (Corporate Sustainability Due Diligence Directive – CSDD). Through this regulation, the European Union moves beyond the traditional paradigm of voluntary corporate social responsibility and introduces a system of binding obligations that require companies to identify, prevent, and remedy the negative impacts of their activities on the environment and on fundamental rights.

From this perspective, due diligence obligations may be interpreted as legal instruments through which constitutional principles of environmental protection are transposed into the field of economic activity. They reflect the general trend of constitutionalizing environmental law and integrating constitutional values into various branches of law, including European Union law and business law. In this sense, the analysis of the evolution of corporate due diligence obligations provides a relevant perspective on how the constitutional right to a healthy environment influences the transformation of the legal framework applicable to economic activities within the European space.

2. REGULATORY PREMISES OF DIRECTIVE (EU) 2024/1760 ON CORPORATE SUSTAINABILITY DUE DILIGENCE

The Directive of 13 June 2024 on corporate due diligence obligations constitutes a historic event[1]. From now on, large companies are no longer bound solely by reporting obligations regarding human rights and environmental issues; they are required to act, to prevent, and to remedy. Such an objective explains the considerable breadth of the text, with its 39 articles, 99 recitals, and annex. Breaking with the traditional autonomy of company law, this act concerns not only this branch of private law, but also the law of civil liability, fundamental rights and freedoms, environmental law, labour law, contract law, and private international law.

This normative development must also be analysed from the perspective of the constitutional values that underpin environmental protection. In numerous European legal systems, the right to a healthy environment is recognized as a fundamental right, and the constitutions of Member States impose on the state the obligation to ensure the legal framework necessary for the protection and restoration of the environment. In Romanian law, Article 35 of the Constitution expressly enshrines the right of every person to a healthy and ecologically balanced environment,

while also establishing the obligation of the state to ensure the legislative framework necessary for the exercise of this right.

Everything began in France with Law No. 420 of 15 May 2001 on new economic regulations, which introduced the obligation for large companies to provide, in their management reports, information regarding the social and environmental consequences of their activities.

From this perspective, the development of legal mechanisms for holding companies accountable may be interpreted as an expression of the broader process of constitutionalizing environmental protection. Whereas, traditionally, environmental protection obligations were primarily addressed to public authorities, recent developments in European law demonstrate the extension of these obligations to economic actors as well. In this context, corporate due diligence emerges as a legal instrument through which constitutional requirements of environmental protection are integrated into economic activity.

Since then, there has been an avalanche of legislative texts, the information covered extending not only to environmental and labor matters, but also to diversity, food, corruption, or even tax evasion.[2]

This proliferation of regulations reflects the progressive shift in the legal paradigm concerning corporate responsibility. The impact of economic activities on the environment has become a central issue of contemporary law, and the effective realization of the constitutional right to a healthy environment requires the adoption of legal mechanisms capable of preventing and limiting the negative effects of economic activities on the environment.

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[1] Directive (EU) 2024/1760 of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, referred to as the "Due Diligence Directive" or CSDD.

[2] Benoît Lecourt (coord.), Le devoir européen de vigilance des sociétés. La prise en compte par les sociétés des droits de l'homme et de l'environnement dans les chaînes d'activités, Lefebvre Dalloz, Paris, 2025, p. 4.

At the European level, CSR (corporate social responsibility) made a cautious entry into the corporate world through a directive adopted in 2003[3] which, following a 2001 recommendation[4], imposed reporting obligations regarding environmental and employee-related issues, while also allowing Member States to grant companies exemptions from this obligation.

The issue of shaping CSR measures involves multiple stakes. For companies, above all, measuring CSR constitutes a condition sine qua non for understanding their own social responsibility and, consequently, for controlling the impacts of their social performance.[5]

The European Commission promotes a social and ethical commitment of companies, enshrined under the more specific term "corporate social responsibility."

In the Green Paper entitled "Promoting a European framework for corporate social responsibility", published on 18 July 2001, the Commission states that "the concept of corporate social responsibility essentially means that companies decide, on their own initiative, to contribute to a better society and a cleaner environment."

Although corporate social responsibility was initially conceived as a voluntary mechanism, recent developments in European Union law demonstrate the tendency to transform it into a system of legal obligations. In this regard, the due diligence obligations imposed on companies represent an important step in consolidating a legal framework aimed at ensuring the compatibility of economic activities with the constitutional requirements of environmental protection and sustainable development.

Thus, this implies not only full compliance with applicable legal obligations, but also going beyond them and investing, to a greater extent, in human capital, the environment, and relationships with stakeholders.[6]

Just over a decade later, the economic and political context underwent a complete transformation: the financial crisis challenged the short-term focus and, above all, the climate emergency eventually became the subject of global awareness.

This evolution of the economic and climate context led to a reconfiguration of the way in which the law addresses the responsibility of economic actors toward the environment. In numerous European legal systems, environmental protection has acquired constitutional status, which implies not only obligations for public authorities, but also the need to establish legal mechanisms capable of holding accountable those economic actors whose activities may generate significant environmental risks.

Thus, in the autumn of 2014, a directive was adopted — the NFRD[7] — which required large companies to disclose information: the companies concerned were "public-interest entities."

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[3] Directive 2003/51/EC of the European Parliament and of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual accounts and consolidated accounts of certain types of companies, banks and other financial institutions, as well as insurance undertakings.

[4] Commission Recommendation No. 2001/453/EC of 30 May 2001 on the recognition, measurement and disclosure of environmental issues in the annual accounts and annual reports of companies.

[5] Jean-Pascal Gond, Jacques Igalens, Corporate Social Responsibility (La responsabilité sociale de l'entreprise), Presses Universitaires de France (PUF), Paris, 2023, p. 62.

[6] Pierre Serrand, Piotr Szwedo, Wojciech Zagorski and Lena Helinska, La durabilité saisie par le droit, Mare & Martin, 2023, p. 191.

[7] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. [8] Benoît Lecourt (coord.), Le devoir européen de vigilance des sociétés. La prise en compte par les

In this constitutional and normative context, the reporting obligations imposed on companies regarding the impact of their activities on the environment represent a first step toward consolidating corporate responsibility. These mechanisms allow for the identification and assessment of risks generated by economic activities and contribute to the effective realization of the fundamental right to a healthy environment, by integrating environmental protection requirements into corporate governance and strategy.

This European term — "public-interest entities" — which refers to listed companies, banks, and insurance undertakings, already suggested that European authorities intended to impose more stringent obligations on companies whose activities are likely to have repercussions on the general interest. These companies were thus required to disclose information regarding the impacts of their activities on the environment and on human rights.

A few years later, the context changed once again entirely. From a climate perspective, the situation became highly alarming. In 2015, the Paris Agreement was adopted, an international treaty on climate change mitigation and adaptation, negotiated by 196 parties and, once ratified by the European Union and a sufficient number of states, it entered into force in November 2016. By the end of 2021, 193 members of the United Nations Framework Convention on Climate Change were parties to the agreement. The objective of the Paris Agreement is to limit global warming to 1.5°C by the year 2030.[8]

Moreover, a directive came to replace the one adopted in 2014: the "CSRD" Directive, published at the end of 2022.[8]

The European Corporate Sustainability Reporting Directive (CSRD) aims to harmonize the non-financial reporting of European companies by establishing new standards and obligations. It applies to large companies and to listed small and medium-sized enterprises (SMEs).

Its objective is to encourage the sustainable development of companies by assessing the impact of their activities on the environment.[9]

This normative orientation must also be interpreted in light of the constitutional principles that enshrine environmental protection as a fundamental value. The constitutional right to a healthy environment entails not only obligations for public authorities, but also the need to establish legal mechanisms capable of holding accountable economic actors whose activities may generate significant environmental impacts. In this sense, European regulations on sustainability reporting and due diligence contribute to the effective realization of this right.

The reform has indeed been far-reaching, extending even to the modification of the vocabulary previously used. From now on, the term that prevails is that of "sustainability."

With the adoption of Directive (EU) 2024/1760 of 13 June 2024 on corporate due diligence obligations in the field of sustainability, large companies will no longer be

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sociétés des droits de l'homme et de l'environnement dans les chaînes d'activités, Lefebvre Dalloz, Paris, 2025, p. 5.

[8] "Corporate Sustainability Reporting Directive" – Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) No. 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU as regards corporate sustainability reporting.

[9] Sebastien Pondruel, Maud Geslot and Aurore Milliotte (under the direction of Hubert Tondeur), La responsabilité sociétale de l'entreprise en infographies, Revue Fiduciaire, Paris Cedex, 2025, p. 165.

subject solely to reporting obligations. They will be required to act, by adopting concrete measures.

Corporate due diligence obligations represent one of the most significant legal innovations in the field of corporate responsibility for environmental protection. They entail the identification, prevention, and management of environmental risks generated by economic activities throughout the entire value chain of companies. By establishing such obligations, European Union law contributes to the consolidation of a legal framework that enables the effective realization of the constitutional right to a healthy environment and the integration of sustainable development principles into economic activity.

Thus, whereas for a long time the protection of social and environmental issues fell within the domain of external public policies (primarily environmental law), company law is now being mobilized to require the companies concerned to design and implement concrete actions.[10]

Even before the European text was adopted, the threshold consisting in the imposition of obligations to act — going beyond the mere provision of information — had already been crossed in two Member States, which enacted two specific laws. These served as an important source of inspiration for the European legislator in drafting its own text.

On the one hand, we may mention the French Law No. 2017-399 of 27 March 2017, which was the first legislative act in the European Union to establish a mechanism concerning the corporate duty of vigilance; on the other hand, the German law of 16 July 2021.[11]

The French law on the duty of vigilance aimed to confer genuine normative force on two sets of international soft law principles, thus appearing as an illustration of the movement to strengthen CSR. The explanatory memorandum to the bill of 11 February 2015 stated in this regard that: "In accordance with the United Nations Guiding Principles on Business and Human Rights, unanimously endorsed by the United Nations Human Rights Council in June 2011, and with the OECD Guidelines, the objective of this legislative proposal is to establish a duty of vigilance for companies of parent companies and of undertakings that exercise control over their subsidiaries, subcontractors, and suppliers."[12]

In this context, corporate due diligence emerges as an essential legal instrument for preventing the risks generated by economic activities with respect to both the environment and fundamental rights. By establishing mechanisms for identifying, assessing, and managing environmental risks, these regulations contribute to the effective realization of the right to a healthy environment and to the integration of sustainable development principles into corporate activity.

The French law of 2017 on the duty of vigilance of parent companies and ordering undertakings was the first legislation to confer a binding character on the UN Guiding Principles on Business and Human Rights with regard to due diligence obligations within

[10] Benoît Lecourt (coord.), Le devoir européen de vigilance des sociétés. La prise en compte par les sociétés des droits de l'homme et de l'environnement dans les chaînes d'activités, Lefebvre Dalloz, Paris, 2025, p. 6.
[11] Lieferkettensorgfaltspflichtengesetz (LkSG) – German Act on Corporate Due Diligence Obligations in Supply Chains.
[12] Benoît Lecourt (coord.), Le devoir européen de vigilance des sociétés. La prise en compte par les sociétés des droits de l'homme et de l'environnement dans les chaînes d'activités, Lefebvre Dalloz, Paris, 2025, p. 20.

the value chain, followed by Germany, Norway, and the Netherlands.[13] This law fully aligns with the implementation of the United Nations Guiding Principles on Business and Human Rights[14] and, moreover, through its 2017 National Action Plan, France committed to promoting the concept of due diligence at the European level.[15] This law was pioneering and inspired other states, as well as the European Parliament[16] and the European Commission. It also inspired the work of the United Nations Human Rights Council, due in part to France's interventions within the sessions of the intergovernmental working group tasked with drafting a binding instrument on business and human rights.

The explanatory memorandum to the French legislative proposal of February 2015 on the duty of vigilance leaves no doubt as to the legislator's intention: to overcome, or at least to mitigate, the barrier created by the legal personality of parent companies and controlling undertakings, in order to hold them accountable and to enable them to act so as to prevent CSR related risks throughout the entire value chain.

Indeed, given their financial and economic power, parent companies hold decision-making authority or, at the very least, a significant degree of influence over the behaviour of all entities involved in the value chain. They must therefore make use of this power to prevent risks related to human rights, workers' health and safety, and environmental protection. This raises the issue of the emergence of a legal regime governing corporate groups. The problem is well known: although corporate groups represent an evident economic reality, the legal system encounters difficulties in capturing them, due to the so-called "magic" of the legal personality of subsidiaries, according to which each entity remains legally independent and autonomous.

Consequently, the economic power exercised within the group is dissociated from the legal responsibility, which rests autonomously with each company composing it, thereby creating a genuine asymmetry of positions. Only highly economic areas of law, such as tax law or

competition law, have begun to recognize the reality of corporate groups and to produce legal effects, without such an approach, marked by pragmatism, having yet been transposed into the law of civil liability.

Yet, it is precisely this accountability of corporate conduct throughout their entire value chain that is enshrined by international soft law principles, whether those of the OECD or of the United Nations. By providing a new normative dimension to these principles, or at least by consolidating them, they enable the establishment of a framework of responsibility within multinational enterprises. Due diligence standards also allow for the creation of a common framework.

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[13] Laurent Vidal, Le devoir de vigilance des entreprises, Bruylant, 2024, p. 45.

[14] CNCDH (National Consultative Commission on Human Rights) recommended in 2013 that France make due diligence (reasonable diligence) a legal obligation for companies. See CNCDH, Entreprises et droits de l'Homme: avis sur les enjeux de l'application par la France des Principes directeurs des Nations Unies, Plenary Assembly of 24 October 2013, JORF no. 0266 of 16 November 2013, text no. 56, §§ 33 et seq.

[15] France's National Action Plan for the implementation of the United Nations Guiding Principles on Business and Human Rights (PNAEDH), adopted by the Ministry for Europe and Foreign Affairs and the Ministry of Economy and Finance on 26 April 2017, available at: https://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/droits-del-homme/entreprises-et-droits-de-l-homme/article/plan-national-d-action-pour-la-mise-en-oeuvre-des-principesdirecteurs-des

[16] European Parliament Resolution of 10 March 2021 containing recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL).

From this perspective, due diligence standards represent a legal mechanism through which constitutional principles of environmental protection are transposed into the sphere of economic activity. By imposing obligations to prevent negative environmental impacts throughout the value chain, these regulations contribute to consolidating a model of corporate governance compatible with the requirements of constitutional environmental law and with the principles of sustainable development.

3. CONCLUSIONS

Recent developments in European Union law concerning corporate responsibility for the environmental impact of their activities highlight a profound transformation in how the relationship between economic activity and environmental protection is conceived. While, traditionally, environmental protection was primarily regarded as the responsibility of public authorities, normative developments in recent decades demonstrate a progressive extension of this responsibility to economic actors as well. In this context, the due diligence obligations imposed on companies represent one of the most important legal instruments aimed at preventing and limiting the negative impact of economic activities on the environment and on fundamental rights.

This evolution must also be analysed in light of the broader process of constitutionalizing of environmental protection. In numerous contemporary legal systems, the right to a healthy environment has acquired the status of a fundamental right, enshrined at constitutional level. In Romanian law, Article 35 of the Constitution expressly recognizes the right of every person to a healthy and ecologically balanced environment, while also establishing the obligation of the state to ensure the legislative framework necessary for the exercise of this right. Therefore, the effective realization of this right cannot be conceived exclusively through the traditional mechanisms of environmental law, but requires the development of legal instruments capable of influencing the behaviour of all social actors, including companies.

From this perspective, the adoption of Directive (EU) 2024/1760 on corporate sustainability due diligence marks a significant moment in the evolution of European law. By establishing legal obligations that go beyond mere reporting requirements and that compel companies to identify, prevent, and remedy the negative impacts generated by their activities, this regulation contributes to consolidating a legal framework oriented toward holding economic actors accountable. At the same time, it reflects the tendency to integrate constitutional principles of environmental protection into various branches of law, including business law and company law.

In this sense, due diligence obligations may be interpreted as a legal mechanism through which constitutional requirements of environmental protection are transposed into the sphere of economic activity. By imposing obligations of assessment and management of environmental risks throughout corporate value chains, European legislation contributes to consolidating a model of corporate governance compatible with the principles of sustainable development and with the protection of fundamental rights. Thus, corporate responsibility is no longer no longer conceived exclusively in economic terms but is integrated into a broader legal framework oriented toward the protection of the general interest.

In conclusion, the analysis of the interaction between the constitutional right to a healthy environment and corporate due diligence obligations highlights the existence of a complex process of normative interconnection across different levels of the legal order. The constitutionalising of environmental protection contributes to the legal grounding of corporate responsibility and to the development of normative mechanisms aimed at preventing risks generated by economic activities. In this context, Directive (EU) 2024/1760 may be understood not only as an instrument of economic regulation, but also as an expression of the integration of the constitutional values of environmental protection into European Union law.

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