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CSDDD - A New Order in International Trade?

Extraterritorial Effects Understood from the Corporate Sustainability Due Diligence Directive

Rasmus Engström

DEPARTMENT OF BUSINESS LAW

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Abstract

This thesis investigates the implications of the Corporate Sustainability Due Diligence Directive (CSDDD) on the principle of sovereignty and economic regulation within the international legal framework. By employing a legal dogmatic method, the research systematically analyses primary and secondary legal sources to understand and explain the evolving nature of state sovereignty and extraterritorial legislation and potential impacts of the Directive. Part 2.1 provides a historical and theoretical exploration of sovereignty, illustrating its transition from classical to contemporary understanding. Part 2.2 delves into extraterritorial legislation, examining various academic perspectives and identifying the current normative landscape. Part 2.3 focuses on the Brussels Effect, with a particular emphasis on the works of Anu Bradford, to understand the EU's role as a global regulatory power.

The study finds that the CSDDD challenges traditional notions of sovereignty by imposing extraterritorial obligations on companies, compelling them to address adverse impacts on human rights, environmental, and social issues throughout their value chains. This directive signifies a shift towards more unilateral regulatory actions by the EU, potentially leading to legal and economic controversies, particularly regarding the balance between state sovereignty and international cooperation. The CSDDD exemplifies the Brussels Effect by setting global regulatory standards yet raises concerns about regulatory overreach and the imposition of EU standards on other jurisdictions.

The research concludes that while the CSDDD represents a significant step towards integrating sustainability into global corporate governance, its success and acceptance will depend on the balance between respecting state sovereignty and enforcing global standards. The findings underscore the evolving nature of sovereignty in the 21st century, where external sovereignty is increasingly defined by adherence to international legal frameworks and cooperative governance. This study contributes to the broader discourse on the balance between sovereignty and global regulatory practices, offering insights into the potential future trajectory of international economic regulation.

Keywords: Principle of Sovereignty, Extraterritoriality, International Law, Brussels Effect, CSDDD, Directive, Regulation

Abbreviations

CJEU	Court of Justice of the European Union
CSDDD	Corporate Sustainability Due Diligence Directive
CSRD	Corporate Sustainability Reporting Directive
EU	European Union
GDPR	General Data Protection Regulation
ICJ	International Court of Justice
NFRD	Non-financial Reporting Directive
PCIJ	Permanent Court of International Justice
UN	United Nations
WTO	World Trade Organisation

1 Introduction

1.1 Background

The European Union has is in the process of passing new type of directive for corporate due diligence, the Corporate Sustainability Due Diligence Directive (CSDDD) which will require companies to track and uphold sustainability and human rights standards across their value chains. A continuation of other directives from the EU such as the reporting directive CSRD and the Non-Financial Reporting Directive (NFRD), this piece of legislation goes even further for companies' obligations toward their value chains.[1] When looked at from the perspective other similar legislation, CSDDD goes further than many similar legislative instruments do before. This may be viewed as a natural development in the bolder European Union in the field of international law and the implications recent directives have outside its jurisdiction, a Brussels Effect through mainly market mechanisms as opposed to directly applicable regulation.[2] The EU is known for having high standards for imports when it comes to sustainability, environmental regulation, and health in food and medicine. Due to the size of the EU's market, it is often better for companies to harmonize all of their production to meet the standard within its shared market as opposed to having separate production lines (one for non-EU markets, one for EU markets)[3]. The logic is that if a company meets the EU's requirements it meets the requirements of most if not all markets around the world as regulation are laxer in other places making it often a more prudent choice to simply adhere to EU rules.

Thus, could the new obligations placed upon companies be seen as an emboldening of the Brussels Effect? A consideration that one may also make is whether or not CSDDD is going too far and setting a new precedent within international trade law, and certainly also what ripple effects it may bring. It is therefore also relevant to compare with the principle of sovereignty for affected States. With the WTO system weakening and bilateral and unilateral solutions on the rise it may be a symptom of a reconstruction of the multilateral tradition of old.[4] It is therefore interesting to study the CSDDD particularly if and how it differs other extraterritorial pieces of legislation or standards, whether the Brussels effect is strengthening, and whether this is indeed a symptom of regional trade regions doing more to bi- or unilaterally affecting the trade around them.

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[1] European Commission, COM(2022) 71 final, 2022/0051(COD), Brussels, 23/2/2022, p. 2.

[2] Bradford, Anu, , *The Brussels Effect: How the European Union Rules the World* (New York, 2020; online edn, Oxford Academic, 19 Dec. 2019) p. 235–264.

[3] David Vogel & Robert A. Kagan, Introduction to Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies 4–5 (David Vogel & Robert A. Kagan eds., 2004, p.4-5.

[4] Acharya Rohini via WTO, *Regional Trade Agreements and the Multilateral Trading System*, Cambridge University Press, UK, 2016, p. 703-706.

1.2 Purpose and research questions

The purpose of my research is to delineate and assess the implications of the Corporate Sustainability Due Diligence Directive (CSDDD) on the principle of sovereignty and economic regulation within the international legal framework. This study begins by providing a detailed exposition of how the principle of sovereignty has evolved in international law, emphasizing the shift from classical notions of absolute state authority to contemporary understandings that incorporate responsibilities towards international cooperation and adherence to public international law.

Subsequently, this thesis explores the extraterritorial reach of the CSDDD, examining its impact on corporate governance and regulatory practices across global value chains. It evaluates how the directive imposes obligations on companies to mitigate adverse impacts on human rights, environmental, and social issues, regardless of geographic boundaries, and the potential legal and economic controversies that may arise from its implementation.

In addition, this study investigates the CSDDD's alignment with the normative principles of extraterritorial legislation, particularly focusing on the principles of nationality and universality. By analysing the directive's approach in relation to existing extraterritorial norms, the research aims to discern whether the CSDDD represents a genuine extraterritorial regulation or a territorial extension of EU policymaking.

Furthermore, this thesis delves into the Brussels Effect, assessing how the CSDDD exemplifies this phenomenon by setting global regulatory standards and influencing markets beyond the EU's borders. The study also considers potential countermeasures from third countries, such as blocking regulations, and their implications for international trade and the EU's regulatory agenda.

Lastly, this research attempts to contribute to the broader discourse on the balance between state sovereignty and international regulatory standards. It examines whether the CSDDD's approach to sustainability in corporate governance effectively addresses global challenges or whether it overreaches, potentially inviting resistance and undermining its objectives. To address these purposes, this research seeks to respond to the following research questions: What are some implications of the Corporate Sustainability Due Diligence directive for the principle of sovereignty and economic regulation?

With sub questions:

Could the CSDDD invite a turn toward more uni- or bilateral international trade?

Does the CSDDD contradict the current norm extraterritorial legislation?

What are the extraterritorial impacts of the directive and when compared to other extraterritorial legislation, what parts of it is potentially controversial?

1.3 Delimitations

Firstly, this thesis will not discuss the legal basis for the directive as this would be outside the scope of this thesis and time available. For readers who are interested in the legal background and what articles and treaties the Directive is based upon should read further in the Commission's proposal (COM (2022) 71 final 2022/0051 (COD)), p. 10-18. In addition, the research concerns a Directive which has not yet entered into force the thesis will primarily be based in primary legal sources as well as academic papers and books on the topics covered rather than including empirical examples.

This naturally restricts the possible research questions and methodology and findings to a speculative nature as there can be no measurement of the effects of CSDDD at this stage. Furthermore, when discussing the Directive in chapter 3., the most recent* text version available of the Directive is used. In presenting its contents prioritization of what to include have been made with considerations to provide a sufficient basis for the eventual discussion and conclusion. Such prioritization also means that some of the Articles are cut short when presented verbatim in favour of more relevant parts, as well as summaries when verbatim presentation would be unnecessary. Lastly, the analysis and conclusions are based entirely on the research questions which also may limit the transferability of the findings to other contexts requiring future research on the implications of CSDDD for additional conclusions to be made.

1.4 Method and materials

This thesis primarily utilizes a legal dogmatic approach, which is suitable for the analysis of primary and secondary legal sources. The legal dogmatic method involves a systematic study and interpretation of legal texts, jurisprudence, and scholarly literature to understand and explain the current state of the law.[6] This methodology is appropriate for the exploration of the principles of sovereignty, extraterritorial legislation, and the Corporate Sustainability Due Diligence Directive (CSDDD) within the international legal framework for the scope of this thesis.

Part 2.1: Principle of Sovereignty and Statehood

The discussion of the principle of sovereignty and statehood in Part 2.1 relies heavily on secondary sources and academic works from experts in the field. Given the long historical pretext of sovereignty, which has been developing since the conception of statehood, this section uses historical and theoretical analyses from established scholars to provide a comprehensive overview. By consulting a broad range of secondary sources, the thesis aims to present a well-rounded perspective on the evolution and current understanding of sovereignty in international law.

* European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071.

[6] Smits, Jan M., *What is Legal Doctrine? On the Aims and Methods of Legal Dogmatic Research,* Maastricht European Private Law Institute Working Paper No. 2015/06, 1/9/2015, p. 207-228

Part 2.2: Extraterritorial Legislation

Similarly, the section on extraterritorial legislation in Part 2.2 is closely tied to the concept of sovereignty. This part of the thesis examines the development and normative landscape of extraterritoriality by analysing various academic viewpoints and legal precedents. Recognizing that there are multiple interpretations of extraterritoriality, the thesis seeks to identify common denominators among the secondary sources to present the most widely accepted current normative framework. This approach ensures a balanced and informed discussion of extraterritorial legislation's limits and applications.

Part 2.3: The Brussels Effect

The analysis of the Brussels Effect in Part 2.3 primarily draws on the works of Anu Bradford, who coined the term and is a leading scholar in the field. Given the relatively recent introduction of this concept into the legal sphere, Bradford's writings provide the foundational structure and conceptualization of the Brussels Effect. To ensure the integrity and independence of this section, the thesis also incorporates additional secondary sources where possible. This approach allows for a broader understanding of the Brussels Effect while maintaining the core insights provided by Bradford.

Chapter 3: Corporate Sustainability Due Diligence Directive (CSDDD)

The handling of the CSDDD in Part 3 is primarily based on the most recent available version of the Directive proposal. This section focuses on the legal text itself, analysing its provisions and intended impacts. The primary source is supplemented with secondary sources, including academic commentary and analyses, to contextualize the Directive within the broader legal and regulatory landscape. This combination of primary and secondary sources ensures a thorough examination of the CSDDD's objectives, mechanisms, and potential implications.

In summary, this thesis employs a legal dogmatic approach to systematically analyse the principles of sovereignty, extraterritorial legislation, the Brussels Effect, and the Corporate Sustainability Due Diligence Directive. By leveraging a combination of primary legal texts and a wide range of secondary sources, the research provides a comprehensive and nuanced understanding of these complex legal concepts and their interrelations within the international legal framework.

2 The current normative landscape in international law

2.1 The Principle of Sovereignty in International Law

Sovereign states are a relatively new concept when looked at from the alms of history. Largely a topic in the legal domain, it can be traced to jurists such as Bodin, Hobbes, and Pufendorf in the 16 - and 17th century where the concept was more directly tied to a sovereign ruler and his judicial legitimacy to autonomously determine the laws of the state which he also stood over, more primitively sovereignty was the power of the supreme to make laws binding upon the subject.[7] This version of the concept is known as classical sovereignty and Hobbes Leviathan further defined this to the extreme "*Law is what sovereigns command, and it cannot limit their power: sovereign power is absolute. In the international sphere this condition led to a perpetual state of war, as sovereigns tried to impose their will by force on all other sovereigns*."[89] In some regard this is still the sentiment of some nations, where there is emphasis to enforce war, mistreat citizens in a way that suits the rulers, and an economic policy that has little regard for its effect of other states.[10] However while these are more akin to the common sentiment in classical sovereignty where absolutism was an accepted part of statehood – today it might still be salient in cases of totalitarian states, but far from the normative case in contemporary international law.[11] With democratization and globalization, sovereignty has changed its meaning.

Legal thinking changed with the understanding that avoiding war and conflicts require boundaries on States' internal sovereignty for a better functioning external international system.[12] Thus, international organizations grew forth in the 20th century with the North Atlantic Treaty organization (NATO), United Nations (UN), and the Treaty on Non-Proliferation of Nuclear Weapons (NPT) to name a few. Relativization of sovereignty could also be detected prior with writers such as Fiore who propagated the sentiment that for an international system to function well, states cannot be bound by the laws of other states but strictly through international law.[13]

Contemporary International law is now largely concerned with delimiting the geographical impact of nations within their own boarders; the right to decide over

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[7] Panahi, Louise Kazemi Shariat *Historical Comparison of Sovereignty in International Law* pp, 128, 2021/09/04.
[8] Ibid.
[9] Britannica – *Sovereignty and International Law,* date N/A.
[10] Ibid.
[11] [11] Panahi, Louise Kazemi Shariat *Historical Comparison of Sovereignty in International Law* pp, 141, 2021/09/04
[12] Ibid.
[13] Ibid.

their own resources is crucial for guaranteeing the principle of self-determination. [14] The principle of sovereignty – or supreme authority within a territory – is thus a fundamental part of the contemporary international legal order.[15] The right to self-determination is not without responsibility. Following a considerable harmonization post World War II, international organizations with stronger legal effects have emerged, such as the World Trade Organization (WTO) and the European Union (EU). This has meant in many cases that international law has developed in a way that demands Sovereign states not only to coexist but to actively cooperate.[16] In the case of the UN, the principle of equality between states is also paramount.[17] Since the end of the cold war the world stage has also seen a growing interdependence among nations, areas of law that previously was strictly domestic has expanded to be international such as economic, trade, human rights, and environmental law. [18]

Inevitably the development of this international order has put constraints on nations' ability to govern their Sovereignty both internationally and domestically as the interdependence deepens. Perhaps the most conclusive example of this was following the "Van Gend en Loos" case (Case 26/62), decided by the European Court of Justice (ECJ) in 1963 that established the springboard for the EU legal order.

Perhaps because of the changing sentiment in international law, it is difficult to find an exact definition of the principle of sovereignty and many academics differ on the topic.[19] Nevertheless, the historical discussion revolved around three dimensions that define the concept; the subject of sovereignty (person or function); the nature of sovereignty (absolute or limited); and the source of sovereignty (law-based or not).[20] With the emergence of today's international legal order it is evident that to exercise full control over its relationships with other sovereign states within a community of equals and to maintain external sovereignty, a state must adhere to public international law. [21] The emergence of public international law relies on independent sovereign states freely agreeing to mutual rights, obligations, and regulations.[22] Consequently, external sovereignty inherently carries limitations, as its existence implies the recognition of public international law. While a sovereign state cannot be constrained by the laws of another state, it may be constrained when those laws arise from the collective will of all states within a system it has agreed to. Separating the concepts of external sovereignty within international law may thereby not be possible in the 21st century.

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[14] Cornell Law Legal Information Institute, *Self-determination (International law)*.

[15] Samantha Besson in Oxford Public International Law, *Max Planck Encyclopedias of International Law [MPIL] – Sovereignty*, §1-7, 2011.

[16] Samantha Besson in Oxford Public International Law, *Max Planck Encyclopedias of International Law [MPIL] – Sovereignty*, § 45-50, 2011.

[17] UN *United Nations Charter, Preamble Chapter 1 Art. 1 §2.*

[18] Samantha Besson in Oxford Public International Law, *Max Planck Encyclopedias of International Law [MPIL] – Sovereignty*, § 45-50, 2011.

[19] Anna Stilz, Territorial Sovereignty, A Philosophical Exploration – Chapter 1.2 *A morally justified System?* 2019/10/29, pp N/A.

[20] Eckes, Christina. The reflexive relationship between internal and external sovereignty. Irish Journal of European Law, 18(1), 33-47. (2015).

[21] Ibid.

[22] Samantha Besson in Oxford Public International Law, *Max Planck Encyclopedias of International Law [MPIL] – Sovereignty*, § 45-50.

When conceptualizing internal and external sovereignty it is helpful to separate the two via the following definition: *“'Internal'* refers to the position within the sovereign entity and hence under domestic law. *'External'* refers to the relationship of the sovereign entity with the outside world, i.e. in international relations and under international law.”[23].

To uphold these principles and ensure that both are respected as much as is feasible under the current system, the UN has an important role to play through the International Court of Justice (ICJ) – however prior to the founding of these institutions their predecessors decided on a seminal case on which international law would be based on; and important for the understanding further of the intersection of Sovereignty and territoriality. *The Case of the S.S. "Lotus" (France v. Turkey)* (1927) decided by the League of Nation’s *Permanent Court of International Justice* (PCIJ) concerned a dispute following a lethal collision on the high seas between a Turkish and French vessel. “The 10 survivors of the Boz-Kourt (including its captain) were taken to Turkey on board the Lotus. In Turkey, the officer on watch of *the Lotus* (Demons), and the captain of the Turkish ship were charged with manslaughter. Demons, a French national, was sentenced to 80 days of imprisonment and a fine. The French government protested, demanding the release of Demons or the transfer of his case to the French Courts. Turkey and France agreed to refer this dispute on the jurisdiction to the *Permanent Court of International Justic*e (PCIJ)”[24].

The question before the court “Did Turkey violate international law when Turkish courts exercised jurisdiction over a crime committed by a French national, outside Turkey? If yes, should Turkey pay compensation to France?”[25] to which the PCIJ answered in the negative but furthermore also established two major principles:

1. “A State cannot exercise its power in any form in the territory of another State; unless, an international treaty or customary law permits it to do so”[26].

2. “Within its territory, a State may exercise its jurisdiction, on any matter, even if there is no specific rule of international law permitting it to do so. In these instances, States have a wide measure of discretion, which is only limited by the prohibitive rules of international law. The state can exercise its jurisdiction based on the nationality of the victim or perpetrator;[…] where the state’s security interests are affected by acts committed abroad;[…] or where individuals have commit certain serious crimes”[…][27]

[23] Eckes, Christina. The reflexive relationship between internal and external sovereignty. Irish Journal of European Law, 18(1), 33-47. (2015).
[24] Ruwanthika Gunaratne, *Lotus Case (Summary),* 2012.
[25] Ibid.
[26] Ibid.
[27] Ibid.

In order the exceptions of the second principle known as passive personality and nationality, protective principle and universal jurisdiction will be more duly handled in section 2.2 which directly addressed extraterritorial legislation.

As shown by this chapter, the principle of sovereignty has changed fundamentally alongside the concept of statehood and international law. From first being synonymous with the concept of absolute power and a supreme ruler of a state, it now has taken on a more complex definition composed of different sub-parts. Two of these being the external and internal parts of the concept. One thing does remain clear however, it is almost impossible to separate sovereignty in the contemporary system of international law with the concession of some of the competences of full autonomy that internal sovereignty entails. Thus, internal sovereignty is unable to be guaranteed without a compromise of some of the external powers which nations of old could exercise with less obstacles. We have arrived at a situation where nations concede, through treaties and membership of international organizations, to a world order where the principle of sovereignty can sometimes be disregarded. But to proceed further with addressing the research questions, one must understand how that process works more closely, meaning I must outline the normative state of extra territorial legislation and the concept of territoriality.

2.2 The Current Norm for Extraterritorial Legislation

With a discussion on sovereignty behind us, we turn to territoriality and extra-territoriality. Already in the affix ‘extra’, the concept perhaps foretells of an understanding that territoriality is the normal state of affairs of governance. This would mean that extraterritoriality is the exception and in need of further authorization from other sources than the state itself.[28] Extraterritoriality can be seen as a challenge to the basic ordering principle of modern international law, namely that political and legal authority is, in principle, exercised over territorially delimited portions of the world.[29]

Recall that the classical view of international law viewed nations as a set of neatly bordered geographical entities with full sovereignty over their territory. Territoriality, as institutionally understood as the State exercising territorial sovereignty, is a social and historical phenomenon, which nevertheless has become fixed and engrained since in the understanding of its concept since. Certainly, from the alms of history, this development has roots in Western powers imposing a territorial State model in their colonies.[30] Through a development of the concept, it is more or less agreed upon that *territoriality* is the most suitable political technology to bring order in the chaos surrounding global affairs, bearing in mind that peace and order are the main functions of classic international law.[31] However, the

[28] Anna Stilz, Territorial Sovereignty, A Philosophical Exploration – Chapter 1.2 *A morally justified System?* 2019/10/29, pp N/A.

[29] Austen Parrish & Caedric Ryngaert *Research Handbook on Extraterritoriality in International Law,* 2023 p. 14

[30]Anna Stilz, Territorial Sovereignty, A Philosophical Exploration – Chapter 1.2 *A morally justified System?* 2019/10/29, pp N/A.

[31] Ibid.

counterargument to the territoriality system is that it leads to four fundamental issues:[32]

1. *Threat of conflicts* – Perhaps counterintuitively, formation of state systems may make individuals less secure by enabling a potential of scaled interstate war, certainly over the very land that the territoriality principle is based upon for a recent example Russia and Ukraine comes to mind.

2. *Restrictions on the freedom of movement* – By being assigned a State at birth, these States have the power both to grant and restrict free movement, sometimes either restricting citizens from leaving (East Germany), or restricting entry to the country (USA) which could hamper the positive influence of globalization.

3. *Inequality* – As certain states naturally are more developed the "membership" in a state with limited opportunity and poor economic outlook also limits the opportunities of the residents within that territory.

4. *Limited Collective Action* – When power is dispersed among a great number of States – as is the case today – there are considerable difficulties with responding to contemporary shared issues, such as environmental threats, health crises, and the handling of refugees, among others. The individuality of sovereign States invite disagreement which complicates processes where global policy coordination is important. A contemporary example of the results of such disagreement is the paralysation of the WTO's appellate body.

Despite these issues, it appears difficult to see any other possible system in place that is not contingent on a system of sovereign States – a global democracy would be a truly difficult undertaking indeed, as the different values, priorities, languages, culture, and shared history is as varied as it is complex. The next best solution is the treaty-based international system in place now where international cooperation and equality are two central tenets.[33] The *Lotus Case* as discussed in the previous section was instrumental in developing the reach that states have on their territoriality, although its conclusions invites at least an ambiguous conception of possible jurisdiction allowing for some degree of even extraterritorial legislation: "The Court famously held 'Far from laying down a general prohibition to the effect that States may not Extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules".[34] This means that extraterritorial legislation, despite the principle of sovereignty and system of territoriality is possibly permitted as long as it does not break agreed-upon

[32] Stilz Anna, Territorial Sovereignty, A Philosophical Exploration – Chapter 1.1 *The Contingency of the Territorial State* 2019/10/29, pp N/A.
[33] Ryngaert Caedric et. al. *Research Handbook on Extraterritoriality in International Law,* 2023 p. 3.
[34] Ibid.

international rules. Indeed, there are five principles where extraterritorial jurisdiction is even normatively accepted, though within the realm of criminal law.

Although there could certainly be more lesser principles in the realm, these five principles of; territorial, nationality, passive personality, protective and universality principles are entrenched within criminal law and exemplified in *Harvard Draft on Jurisdiction with respect to Crime.*[35]

1.The principle of *Territorial jurisdiction* – means a state has jurisdiction to address any crime committed in part or in whole within its territory, the jurisdiction is valid even if the crime committed falls under either (a) participation in the crime occurred outside of the State's territory; or (b) an attempt was made to outside of the territory to commit a crime in whole or in part within its territory.[36]

2. The Principle of *Nationality* – is concerned with the State possessing jurisdiction with respect crimes committed outside its territory if the perpetrator(s) can be linked to the state by nationality as seen in Art 5 Jurisdiction applies if (a) (the crime was committed) *By a natural person who was a national of that State when the crime was committed or who is a national of that State when prosecuted or punished; or (b) By a corporation or other juristic person which had the national character of that State when the crime was committed.*[37]

3. The Principle of *Passive personality* – In accordance with the *Nationality* this also extends to jurisdiction over "aliens"* that commit crimes that harms a state's nationals. The passive personality principle of jurisdiction serves as a foundation for the application of a state's laws to actions carried out beyond its borders.[38] States have employed this doctrine to safeguard the interests of their citizens abroad.[39] Despite its recognition in international law, there remains considerable debate regarding the types of offenses to which it extends.[40] Essentially, the passive personality principle rests on a State's obligation to ensure the welfare of its nationals overseas. In this framework, the focus of the asserting sovereign is on the impact of the crime, rather than its location of occurrence.

4. The Principle of *Protection* – In order to assure the security of the state jurisdiction is accepted as a means to shield against any threats against the nation regardless of background as seen in Article 7-8 of the draft.[41] Art 7 states: "state has jurisdiction with respect to any crime committed outside its territory by an alien against the security, territorial integrity or political independence of that State, provided that the act or omission which constitutes the crime was not committed in exercise of a liberty guaranteed the alien by the law of the place where it was committed.*"*[42] And

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[35] *Harvard Draft on Jurisdiction with respect to Crime* in The American Journal of International Law, Vol. 29, Supplement: Research in International Law (1935), p. iii-656.

[36] *Harvard Draft Convention on Jurisdiction with Respect to Crime,* (1935), Art.3 Territorial Jurisdiction.

[37] *Harvard Draft Convention on Jurisdiction with Respect to Crime,* (1935), Art.5 Jurisdiction over Nationals.

[38]John G. McCarthy, *The Passive Personality Principle and Its Use in Combatting International Terrorism* in Fordham International Law Journal Volume 13, Issue 3 1989 Article 3, p. 299-301.

[39] Ibid.

*Archaic form to refer to non-citizens of a country - *Englishman in New York*, anyone?

[40] Ibid.

[41] *Harvard Draft Convention on Jurisdiction with Respect to Crime,* (1935).

[42] *Harvard Draft Convention on Jurisdiction with Respect to Crime,* (1935), Art. 6 Protection – Security of the State.

Art 7: “A state has jurisdiction with respect to any crime committed outside its territory by an alien which consists of falsification or counterfeiting, or an uttering of falsified copies or counterfeits, of the seals, currency, instruments of credit, stamps, passports, or public documents, issued by that State or under its authority.”

5. The principle of *Universality* - Universal jurisdiction is a legal principle enabling a state to prosecute certain crimes regardless of where they occur or the nationality of those involved. In Article 9 of the draft piracy is given as an example: “A state has jurisdiction with respect to any crime committed outside its territory by an alien which constitutes piracy by international law”[43] Article 10 then lists a heap of other examples. What these have in common is that, unlike traditional criminal jurisdiction, which typically requires a territorial or personal connection to the crime, universal jurisdiction is rooted in the belief that certain offenses are so detrimental to global interests that any state has the right, and sometimes the duty, to pursue legal action against the perpetrator, regardless of jurisdictional boundaries.[44] This empowers the trial of international crimes such as terrorism committed by any individual anywhere in the world.

In the greater discussion of extraterritorial legislation and jurisdiction, despite its accepted principles, it has received criticism as being a concept that mostly empowers the already powerful states. An example of this is found from the Third World Approaches to International Law (TWAIL) approach, who labels extraterritoriality as a mere a “post-colonial technique of domination that allows ‘the West’ to impose its own values and life-projects on the rest of the world, thereby eroding the hard-won sovereignty of newly independent States.”[45] Another assertation states that extraterritoriality is an sub-optimal solution of unilateral legal political action that harms the more favoured international consent-based multilateralism with asymmetric effects to weaker states.[46] Though dissenters aren’t the only commentators on the issue. There is also considerable support for extraterritoriality. Supportive scholars argue that strict interpretations of territoriality may inhibit accountability where there is extraterritorial harm such as human rights abuses and environmental dumping by locally incorporated firms. [47]

However, while traditional claims of territorial jurisdiction within criminal law have faced minimal to no international opposition the scenario shifts notably in the realm of economic regulation.[48] When states utilize a territorial "hook" to assert jurisdiction over a transnational or global business activity, other states may interpret this assertiveness as encroachment on their own authority to regulate socio-economic matters within their borders.[49] Within the sphere of economic regulation, (Western) states have recently begun employing territoriality to enact extraterritorial changes. Concepts like "territorial extension," the "Brussels Effect," or "internal measures

[43] Harvard Draft Convention on Jurisdiction with Respect to Crime, (1935), Art. 9. Universality – Piracy.

[44] Xavier Philippe, *The principles of universal jurisdiction and complementarity: how do the two principles intermesh?* via International Review of the Red Cross, Volume 88 Number 862, June 2006.

[45] Austen Parrish & Caedric Ryngaert *Research Handbook on Extraterritoriality in International Law,* 2023 p. 6.

[46] Ibid.

[47] Ibid.

[48] Ibid.

[49] Bradford, Anu, , *The Brussels Effect: How the European Union Rules the World* (New York, 2020; online edn, Oxford Academic, 19 Dec. 2019) p. 235–264.

with extraterritorial impact" describe this phenomenon, which employs a territorial hook (such as importing a product into the territory or providing services within the territory) to regulate a transnational business activity domestically.[50] Nations or regional blocs with significant consumer markets, like the EU and the US, can utilize this regulatory approach to influence global or foreign activities. For instance, the EU mandates that global data controllers seeking access to the EU market adhere to strict EU data protection regulations, effectively setting a global standard for data protection in the instance of General Data Protection Regulation (GDPR).[51] Both the EU and the US have also linked the importation of consumer goods to compliance with sustainability and human rights standards, aiming to elevate these standards globally. In doing so, they unilaterally exploit territoriality (manifested through importing goods and services) to exert global governance.[52] These governance tactics could breed serious jurisdictional concerns, potentially seen as the hegemonic imposition of the priorities of economically advanced nations on less developed ones, echoing the colonial legacy of the West's civilizing mission.[53] While they have sparked some international opposition, it is arguably less than anticipated given the potentially intrusive nature of such regulations; the muted international resistance may stem from the global interests that are served by such regulations – like being pro-environment or human rights - coupled with their "thoughtful design" which may include exemptions and deference to local regulations.[54]

[50] Bradford, Anu, *The Brussels Effect: How the European Union Rules the World* (New York, 2020; online edn, Oxford Academic, 19 Dec. 2019) p. xiii–xx.

[51] GDPR Advisor, *Does GDPR Affect US Companies?,* date N/A https://www.gdpradvisor.co.uk/does-gdpr-affect-us-companies.

[52] Austen Parrish & Caedric Ryngaert *Research Handbook on Extraterritoriality in International Law,* 2023 p. 7-9.

[53] Bradford, Anu, *The Brussels Effect: How the European Union Rules the World* (New York, 2020; online edn, Oxford Academic, 19 Dec. 2019) pp. 235–264.

[54] Austen Parrish & Caedric Ryngaert *Research Handbook on Extraterritoriality in International Law,* 2023 p. 7-9.

2.3 The Brussels Effect and Economic regulation

While much development has occurred in extraterritorial jurisdiction in the last century in regard to criminal law and the role of institutions, it has also reshaped the way nations can regulate their trade and markets. To start, the contemporary playing field for the world economy is radically different than the times before the GATT and event of the WTO. These institutions have played a revolutionary role in liberalizing trades between nations by reducing trade barriers, increasing transparency, settling disputes between nations, and negotiating trade policy.[55] Despite this, the reduction of trade barriers such as tariffs has led to another challenge entirely for regulators. The steady expansion of domestic health, safety, and environmental regulations, coupled with the reduction of traditional trade barriers such as tariffs, has made protective regulations more significant as non-tariff barriers.[56] As a result, trade agreements aimed at liberalizing both regional and international trade are facing the dichotomy in balancing the importance of consumer and environmental standards with the goal of reducing trade barriers.[57] This tension raises questions about the extent to which trade liberalization erodes national regulatory sovereignty as well, as the complexity of the system increases and less power is in the hands of the State(s).

Indeed, it is difficult to imagine the current regulatory framework as anything else but a cooperative exercise: the landscape of environmental and consumer regulation is undergoing a profound shift, no longer confined within national borders. Rather, it's increasingly shaped by a complex interplay of political and economic forces transcending the nation-state.[58] Trade and its associated agreements emerge as fundamental drivers, promoting regionalization and globalization of regulatory policymaking; these agreements serve as conduits through which producers, environmental advocates, and consumer groups exert influence across borders, leading to a convergence of regulatory standards.[59] Consequently, conflicts over environmental and consumer regulation, once internal affairs, are now unfolding on an international stage, and perhaps could only properly be done inter-nationally as opposed to intra-nationally. International trade is built upon a complex latticework of preferential trade agreements (PTAs) and States generally value economic sovereignty highly.[60]

Furthermore, economic regulation has been influenced by other external factors such as NGOs but also a new array of stakeholders, namely consumer and environmental organizations. Their emergence as active participants in shaping trade policy is a new development indeed.[61] Unlike producers or workers, these non-governmental organizations (NGOs) prioritize concerns regarding consumer health, safety, and

[55] Yoto Yotov, José-Antonio Monteiro, Roberta Piermartini, and Mario Larch via CEPR.*ORG Trade effects of WTO: They're real and they're spectacular,* 20/11/2019.

[56] Vogel, David, *Trading Up – Consumer and Environmental Regulation in a Global Economy,* Harvard University Press, 01/07/2009, p. 1-23.

[57] Ibid.

[58] Ibid.

[59] Ibid.

[60] Dadush Uri, Dominguez Prostbreugel Enzo via Breugel.org The problem with preferential trade agreements, 9/5/2023

[61] Steve Charnovitz, *Participation of Nongovernmental Organizations in the World Trade Organization*, 17 U. Pa. J. Int'l L. 331-357 (1996). https://scholarship.law.upenn.edu/jil/vol17/iss1/11.

environmental quality, not solely focusing on the economic implications of trade policies.[62] Their interests extend beyond their own countries, often encompassing global impacts. As a result, NGOs have also started to extend their scrutiny from domestic markets to global ones.[63] Partnerships between protectionist producers and NGOs have become common in regions like the United States, Western Europe, and Japan, forming significant opposition blocs against trade liberalization, though not "as such" but rather they advocate for responsible trade liberalization.[64] Simultaneously, consumer and environmental organizations wield increasing influence in shaping the terms of specific trade agreements, striving to align them with the maintenance or enhancement of both domestic and international regulatory standards. This dual role underscores their evolving significance in trade policy formulation.[65] With this in mind it is not hard to see the complexity of contemporary regulation as it stands with many goals of different stakeholders being conflicting and the multilateral nature putting constraints on any one State's possibility to regulate their own market. Despite this, if a State or sovereign entity possesses the right combination of attributes it may be possible to cut through the red tape and wield a considerable influence as a regulatory power. In recent years, this is precisely what the European Union has concerned itself with.[66]

For an institution or state to gain extraterritorial economic effects of its regulatory activities size is needed – the influence of an economic power comes with having a high trade flow and lucrative consumers and producers that makes the participation in the market hard to pass up on for other market actors.[67] However, mere size alone is not sufficient to truly be regarded as a global regulatory power, there also has to be some level of intent. Otherwise, conceptions such as a "Washington"- or "Beijing Effect" would also exist in the jurisdictional conversation alongside the Brussels Effect. The pre-requisite for unilateral regulatory power requires distinct political choices made by a large economy.[68] Thus, the EU has taken the mantle of a global regulator not simply because of the size of the internal market, but because the EU moulded an institutional latticework that has converted its impressive market size into a salient regulatory influence.[69] The key stakeholders of the institution have further embraced stringent regulation as an important jigsaw piece for a better society, giving the critical political backing for an ambitious regulatory agenda that is increasingly seen.[70] The possibility and power enabling the EU to unilaterally set the standards of some economic dimensions; such as in data privacy with legal instruments *GDPR* or chemicals with *REACH* (Registration, Evaluation, Authorisation and Restriction of Chemicals) is what Bradford, coiner of the term,

[62] Steve Charnovitz, *Participation of Nongovernmental Organizations in the World Trade Organization*, 17 U. Pa. J. Int'l L. 331-357 (1996). https://scholarship.law.upenn.edu/jil/vol17/iss1/11.
[63] Ibid.
[64] Ibid.
[65] Ibid.
[66] Bradford, Anu, 'The Brussels Effect', The Brussels Effect: How the European Union Rules the World (New York, 2020; online edn, Oxford Academic, 19/12/2019, p. 25-66.
[67] Bradford, Anu, 'The Brussels Effect', The Brussels Effect: How the European Union Rules the World (New York, 2020; online edn, Oxford Academic, 19/12/2019, p. 25-66.
[68] Ibid.
[69] Ibid.
[70] Ibid.

means when defining the Brussels Effect.[71] The interest in the phenomenon stems from how the Brussels Effect is different for how global trade regulation works normatively. As discussed above, political globalization of regulatory standards is a cooperative endeavour where regulatory convergence is a result of negotiation between sovereign States leading to binding standards: often producing international treaties or agreements among states or regulatory authorities.

Indeed, this norm, with States allocating some of its external sovereignty to organizations such as the WTO, UN or certainly in the case of Europe, the European Union is the status quo as discussed above. Detractors of globalization argue that trade liberalization erodes domestic regulation following the more liberal trade regime that harmonization has produced; fears around the concept of the "race to the bottom," positing that nations reduce their regulatory standards to bolster their competitive standing in the global market is also a result.[72] However, recent developments have debunked many assumptions underpinning this influential narrative. Concerns such as businesses flocking to pollution havens or capital flight due to increased corporate taxation have largely failed to materialize on a significant scale.[73] In fact, scholars have demonstrated that international trade often catalyses a "race to the top," where domestic regulations tighten as global economic integration deepens.[74] This is similar to the “California Effect” that has been described by authors such as David Vogel, where US companies seem to be more keen to meet the stringent standards of the state of California, instead of less stringent states such as Delaware where theory predicts most companies would want to incorporate due to lax standards.[75]

In addition the theory behind unilateral regulatory globalization presumes that there are considerable positive aspects in driving a uniform global standard as opposed to adhering to multiple, including laxer, regulatory standards.[76] This is the case in particular when the firms’ conduct or production is non-divisible, meaning that it is not legally or technically feasible, or economically viable, for the firm to maintain different standards in different markets. Non-divisibility is also a reality that could be seen as forcing firms to adopt the more demanding standards that (in most cases) the EU has. Being the second largest economy in the world with a nominal GDP of 16.5 trillion USD*[77] after the United States (25.5 trillion USD*)[78], as well as having arguably the most market power in the world[79], it is difficult for companies to ignore

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[71] Bradford, Anu, 'The Brussels Effect', *The Brussels Effect: How the European Union Rules the World* (New York, 2020; online edn, Oxford Academic, 19 Dec. 2019, p. 1-24.

[72] Bradford, Anu, *The Brussels Effect*, Northwestern University Law Review Vol. 107, No. 1, 2012.

[73] Ibid.

[74] David Vogel & Robert A. Kagan, Introduction to Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies 4–5 (David Vogel & Robert A. Kagan eds., 2004, p.4-5

[75] Vogel, David, *Trading Up – Consumer and Environmental Regulation in a Global Economy,* Harvard University Press, 1997, p. 1-23.

[76] Ibid.

*GDP for 2022.

[77] Statista *European Union: Gross Domestic Product (GDP) from 2018 to 2028,* *https://www.statista.com/statistics/527869/european-union-gross-domestic-product-forecast/, 2022.*

*GDP for 2022.

[78] Statista, *North Armerica: Gross Domestic Product (GDP) of Canada and the United States from 2018to 2028, https://www.statista.com/statistics/527955/north-america-gross-domestic-product-forecast/, 2022.*

[79] European Commission, *EU position in world trade, date N/A, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-position-world-trade_en.*

the standards that are set by the EU making the distinction of judicial extraterritoriality and economic extraterritoriality an arbitrary distinction in my estimation.

Thus, the process for a "Brussels Effect" to occur depend on the prevalence of the five factors of *market power, regulatory capacity, preference for strict rules,* (a)*predisposition to regulate inelastic targets, and non-divisibility of standards.* Disregarding market power as this has been discussed, regulatory capacity is the second factor that enables the effect to occur (coupled with a degree of deliberate choice made by the state/institution).[80] Not all large-market states become global standards setters—they also need regulatory expertise and resources to enforce rules, without these they lack authority and influence over market players.[81] Regulatory capacity, including the ability to impose sanctions, is crucial and thus many growing Asian economies lack this capacity, despite their economic growth.[82] Few jurisdictions beyond the US or the EU have the ability to regulate globally due to sophisticated regulatory institutions they possess, the US and the EU stand out for this reason: the US has well-established administrative agencies, while the EU has developed substantial regulatory capacity, especially through its institutions like the Council, the Parliament, and the Commission.[83] The EU's regulatory authority has expanded over time, particularly in trade and competition policy, this is a direct reflection of the ongoing integration of the single market and the combined power it wields globally.[84] However, its influence varies across policy areas, with more limitations in fields like foreign and security policy, where member states retain significant authority still and where the EU has little legal competence.[85] Overall, the EU's global regulatory power is confined to areas where member states have delegated regulatory authority to it.

Thirdly an appetite for stricter regulation must be present within the state, Citizens higher income nations have a higher propensity toward strict controls.[86] In the European case this is also true as there have been scandals in various areas that have informed public opinion; dioxin in Belgian Chicken feed, tainted blood uncovered in French blood banks, Mad Cow Disease (BSE), and the prevalence of GMOs have all affected the appetite for regulation in public health and food products.[87] Additionally the sentiment has been present for more regulation in areas such as environmental protection and safety standards.[88] Increasing income levels explain a part of the increased interest; as consumers' wealth increases, so too does demand for guarantees for cleaner air and water and better sanitation – as politicians seek to supply more of these goods and services, they will also explore more efficient ways

[80] Bradford, Anu, *The Brussels Effect*, Northwestern University Law Review Vol. 107, No. 1, 2012, p. 13-15.

[81] Ibid.

[82] Ibid.

[83] Ibid.

[84] Ibid.

[85] Eur.Lex, *Division of competences in the European Union – SUMMARY OF Article 2 of the Treaty on the Functioning of the European Union – categories and areas of EU competence, Date N/A, https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html.*

[86] Guasch, J. L., & Hahn, R. W. (1999). *The Costs and Benefits of Regulation: Implications for Developing Countries. The World Bank Research Observer*, 14(1), p. 137–158.

[87] J. Luis Guasch & Robert W. Hahn, The Costs and Benefits of Regulation: Implications for Developing Countries, 14 WORLD BANK RES. OBSERVER 137, 138 (1999).

[88] Ibid.

of supplying them.[89] One may also consider bold action from the Commission to have an effect in sentiment. An example after the *Cassis de Dijon* case there was a certain fear that the principle of *mutual recognition** would lead to a race to the bottom in the form of mass-deregulation echoed by the Bureau of European Consumer Unions (BEUC); thus the Commission considered it prudent to assure consumers that progress for a single market would not lead to lax standards and low protection.[90] In addition, there was also a view that non-harmonious national health and safety regulations would undermine the improvements in market efficiency the Commission hoped to achieve from the single market.[91] Both it and the ECJ has since taken steps in favour of, rather than against further integration and single market efficiencies.[92]This has not been a very controversial development as “European consumers rank environment and food safety higher than crime and terrorism when asked to evaluate various risks, leading to distinctly high levels of consumer and environmental protection.”[93]

The fourth enabler is the *predisposition to regulate inelastic targets.* Similarly to the fear of a “race to the bottom” stricter domestic regulations as a global standard setter is possibly only when they are also effective in the domestic sphere and its subjects are unable to escape by moving to another jurisdiction. This is why there also is a limit to where EU can exert its Brussel effect and where it proves more difficult. The preference thereby has been to primarily regulate consumer-related markets (public health, food safety) and not more mobile parts of the economy such as capital.[94] To illustrate if a corporation wants to sell their products to the internal single market they have to meet the regulatory requirements as the firm cannot move the 500 million consumers; conversely if an attempt instead was made to harmonize an excessive corporate tax, it would have less effect as firms could choose to incorporate somewhere else.[95]

Lastly, meeting the above conditions merely enables a strict jurisdiction to regulate beyond its borders; it doesn't guarantee the global adoption of its standards. The "Brussels Effect" comes into play only when exporters, having adjusted their products or practices to meet these strict standards, choose to apply them worldwide. Essentially, global standards emerge when corporations voluntarily adhere to the most stringent regulation as there is much to gain from maintaining a uniform production process.[96] Therefore, unilateral regulatory globalization only occurs if it follows from a widespread non-divisibility of a corporation’s production or conduct.

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[89] Ibid.

*”*Nations were free to maintain and enforce their own regulations for products produced within their jurisdiction, but could not prevent their citizens from consuming products that met the legal standards of another member state*”

[90] Ragnar E. Löfstedt & David Vogel, The Changing Character of Regulation: A Comparison of Europe and the United States, 21 RISK ANALYSIS, 2001, p. 399–403.

[91] Vogel, David, *Trading Up: Consumer and Environmental Regulation in a Global Economy, Harvard University Press,* 1997, p.32-33.

[92] Auer Stefan, Bergsen Pepijn,Kundnani Hans via Chatham House, *The law as a tool for EU integration could be ending,* 21/12/2021.

[93] Bradford, Anu, The Brussels Effect, Northwestern University Law Review Vol. 107, No. 1, 2012, p.15.

[94] Bradford, Anu, The Brussels Effect, Northwestern University Law Review Vol. 107, No. 1, 2012, p.17.

[95] Ibid.

[96] Bradford, Anu, The Brussels Effect, Northwestern University Law Review Vol. 107, No. 1, 2012, p.18.

Another example of the Brussels Effect is when the EU attempted to exert extraterritorial effects in the sustainability by including international aviation in its Emissions Trading System (EU ETS).[97] The attempt showcase the willingness of the EU to extend effects past its traditional jurisdictional territory and sought to limit greenhouse gas (GHG) emitted from international flights leaving and entering European airspace, an attempt that brought international debate and resistance from the third countries and international airlines affected – leading to a provisional suspension of for flights to and from non-EU countries following the "stop the clock" decision.[98] Perhaps not surprisingly, resistance arouse against the inclusion of international aviation most prominently by concerns over national sovereignty and a perception that EU law as being applied extraterritorially. However, as we shall see the backlash received did not stop the EU from seeking similar effects with future directives and trying to further the positive impacts it hopes to have on various shared issues in the global arena.

[97] Marcu Anderi, Mehling Michael, and Ruiz Ana via ERCST Roundtable on Climate Change and Sustainable Transition, *The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls,* 2023, p. 5.
[98] Ibid.

3 CSDDD and its Extraterritorial Effects

3.1 An Overview of the Corporate Sustainability Due Diligence Directive

Progress, improvement, and cohesion are some of the main purposes of the EU's existence.[99] A central aim for the EU is to promote and uphold the fundamental values on which the Union was built, ensuring peace, security and sustainability.[100] The EU is a value-driven enterprise, stemming from the ashes of World War II and hope for a brighter future among its Member States. This is reflected in much of the EU's legislation which often includes sections on the larger purposes and aims of any legal instrument. It also explains the purpose-driven, or teleological approach that the European Court of Justice uses to interpret legislation.[101]

The recently proposed *Corporate Sustainability Due Diligence Directive* (CSDDD*)* follows this tradition. In its opening paragraph, the General Secretariat of the Council writes "As stated in Article 2 of the Treaty on the European Union, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights as enshrined in the EU Charter of Fundamental Rights. These core values, that have inspired the Union's own creation - as well as the universality and indivisibility of human rights - and respect for the principles of the United Nations Charter and international law, should guide the Union's action on the international scene. Such action includes fostering the sustainable economic, social, and environmental development of developing countries.".[102]

Subsequent sections of the Directive emphasize these fundamental values, aligning with the EU's commitment to safeguarding the environment and promoting core values outlined in the *European Green Deal*, *the Communication on a Strong Social Europe for Just Transition, Fit for 55,* and *The Paris Agreement*.[103] The Directive highlights the critical role of both public authorities and private companies in achieving a sustainable transition while ensuring fair working conditions. It underscores the significance of corporate behaviour in attaining sustainability goals and upholding human rights and environmental protection.[104]

Furthermore, The CSDDD builds upon existing international standards and guidelines, such as the *UN Guiding Principles on Business and Human Rights* and

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[99] European Union, *Aims and values, https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_en, (date N/A).*

[100] Ibid.

[101] Fennelly Nial, *Legal Interpretation at the European Court of Justice*, Fordham International Law Journal Volume 20, Issue 3, Article 4, 1996 .

[102] European Parliament, Corporate Sustainability Due Diligence. European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive, (EU) 2019/1937, (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD)) P9_TA(2024)0329. Recital (1-2) **hereinafter referenced as "CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM)(2022)0071" .**

[103] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, (1-10).

[104] Ibid.

the OECD Guidelines for Multinational Enterprises, to promote responsible business conduct and due diligence across operations and value chains.[105] The Directive places an obligation upon companies to identify, prevent, and mitigate adverse impacts that their business operations have on social, environmental, and human rights dimensions.[106]

Notably, the Directive also has precedent in the legislation of Member States already, such as the Netherlands' *2019 child labour due diligence law* adopted by the Netherlands; the UK's *Modern Slavery Act* of 2015; and Germany's law on due diligence of 2021, *Lieferkettensorgfaltspflichtengesetz (LKSG)*.[107] It will also complement existing directives in place to address similar adverse impacts among companies. Most notably the Corporate Sustainability Reporting Directive, CSRD which makes an important springboard for companies to assess and identify adverse impacts and risks in their value chains".[108]

The Commission hopes to achieve five objectives with CSDDD that will enable the European Union and its Member States to meet agreed upon targets: [109]

1. Improve corporate governance practices by integrating human rights and environmental risk management and mitigation into corporate strategies, including value chains

2. Avoid fragmentation of due diligence requirements in the single market, providing legal certainty for businesses and stakeholders.

3. Increase corporate accountability for adverse impacts, ensuring coherence with existing and proposed EU initiatives on responsible business conduct.

4. Improve access to remedies for those affected by adverse human rights and environmental impacts of corporate behavior.

5. Complement other measures addressing specific sustainability challenges or sectors within the Union by focusing on business processes and applying to value chains.

3.1.1 CSDDD, Obligations for Corporations

Practically, CSDDD imposes obligations for large corporations to mitigate potential and actual adverse impacts on environment and human rights throughout their value chains. It finds its roots from the EU's increasing emphasis on mandatory obligations for sustainability effects as opposed to the voluntary requirements that have been the standard in years past. This shift from a voluntary to mandatory base stems largely from an understanding of the Commission earlier legal instruments have been

[105] Ibid

[106] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, recital (1-19).

[107] Marcu Anderi, Mehling Michael, and Ruiz Ana via ERCST Roundtable on Climate Change and Sustainable Transition, *The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls,* 2023, p. 2. & European Commission, COM(2022) 71

[108] European Commission, COM(2022) 71 final, 2022/0051(COD), Brussels, 23/2/2022, p.3.

[109] Ibid.

ineffective in producing large scale improvements.[110] The specification to what is considered a large company and thus covered by the Directive is seen in Article 2:[111]

1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State, and which fulfil one of the following conditions:*

    a. the company had more than 1000 employees on average and had a net worldwide turnover of more than EUR 450 million in the last financial year for which annual financial statements have been or should have been adopted;

    b. the company did not reach the thresholds under (a) but is the ultimate parent company of a group that reaches the thresholds in the last financial year for which consolidated annual financial statements have been or should have been adopted;

2. This Directive shall also apply to companies which are formed in accordance with the legislation of a third country, and fulfil one of the following conditions: ** [112]

    a. generated a net turnover of more than EUR 450 million in the Union in the financial year preceding the last financial year;

    b. the company did not reach the thresholds under point (a) but is the ultimate parent company of a group that on a consolidated basis reaches the thresholds under (a) in the financial year preceding the last financial year;

Article 2 §1 (c) & §2 (c) CSDDD then roughly states that if the main activity of the ultimate parent company is only holding shares in operational subsidiaries and it doesn't make decisions affecting the group, it can be exempt from certain obligations.[113] However, one of its subsidiaries in the EU must be designated to fulfil these obligations on its behalf, with necessary authority and means. The ultimate parent company needs to apply for this exemption to the relevant authority (which is either the member state in which it is incorporated, or if not incorporated the one in which it has generated the highest net-turnover). If granted, the ultimate parent company remains jointly liable with the designated subsidiary for any failure to comply.

Additionally, part-time employees are to be counted on a full-time equivalent basis, and workers in non-standard employment should be included in the calculation of the number of employees for the sake of Article 2 CSDDD. The compliance programmes of the companies should then independently be verified by a third party without the threat of a conflict of interest, or other external influence that has

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[110] European Commission, COM(2022) 71 final, 2022/0051(COD), Brussels, 23/2/2022, p.2.

[111] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Art. 2 §1-8.

*Franchising/royalties are also included in certain circumstances under Art 2. § 1(ba).

**Franchising/royalties are also included in certain circumstances under Art 2. § 2(ba).

[112] Ibid.

[113] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Art. 2

competence enough to be considered *expert* in either human rights or environmental matters.[114]

The Directive's due diligence duty extends both upstream and downstream throughout the value chain, giving it an extensive reach in the vast business networks multinational-companies operate through.[115] This due diligence duty is a core element for addressing many of the challenges faced by multinational companies, particularly when trading with and operating within developing countries as risks for abuse of human rights, environment, and negative social impact is most prominent in such regions.

CSDDD is reflection of EU's belief that "all businesses have a responsibility to respect human rights, which are universal, indivisible, interdependent and interrelated.*"*[116]*,* which can explain why corporations are the target of a Directive which hopes to fulfil the promises the EU as an entity has concluded and not necessarily the companies themselves. The due diligence process corporations must follow is a comprehensive approach of six steps defined by the OECD guidelines' Due Diligence Guidance for Responsible Business Conduct,[117] namely:

1. integrating due diligence into policies and management systems.

2. identifying and assessing adverse human rights and environmental impacts.

3. preventing, ceasing, or minimising actual and potential adverse human rights and environmental impacts.

4. monitoring and assessing the effectiveness of measures.

5. communicating with stakeholders.

6. providing remediation for victims."[118]

Therefore articles 5-11, which detail the due diligence operations. are largely based in these principles.[119]

Being a directive, CSDDD leaves it up for the member states a legislative act to develop solutions to achieve the directive's goals.[120] CSDDD is interesting as it not only targets individual entities but also their value chains, those of their subsidiaries, and their direct and indirect business partners throughout their chains – guaranteeing accountability of the entire network.[121] Despite this, it is still important to note that CSDDD will not require companies to guarantee an absolute elimination of adverse

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[114] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Art. 3 §1(h).

[115] Council of the European Union, *Corporate Sustainability Due Diligence: Council and Parliament Strike Deal to Protect Environment and Human Rights,* 14/12/2024. & European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Art. 5-11.

[116] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, (7).

[117] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, recital (20). & OECD OECD Due Diligence Guidance for Responsible Business Conduct, https://web-archive.oecd.org/2018-11-27/485071-OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf.

[118] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, recital (20.).

[119] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Art.5-11.

[120] European Union, *Types of legislation,* date N/A.

[121] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, recital (19).

impacts from their vast networks as this may at times be unfeasible (an example is where State intervention makes it a difficult ambition in the host state).[122]

Rather, the Directive orders an obligation based on what is appropriate according to the means available.[123] "The company should take the appropriate measures which are capable of achieving the objectives of due diligence by effectively addressing adverse impacts, in a manner commensurate to the degree of severity and the likelihood of the adverse impact."[124] The references of likelihood and severity here are meaningful as it allows for a prioritisation for the companies and certain freedom in achieving the goals allows the Directive to be more practical in permitting companies to, from each according to their ability adhere to the commitments set out to where they can make the most impact after independent assessment. Clarification is given on how one should judge the ability of an undertaking to impact its value chain in accordance with CSDDD in recital 19:

"Account should be taken of the circumstances of the specific case, the nature and extent of the adverse impact and relevant risk factors, including, in preventing and minimising adverse impacts, the specificities of the company's business operations and its chain of activities, sector or geographical area in which its business partners operate, the company's power to influence its direct and indirect business partners, and whether the company could increase its power of influence."[125]

Notably, the directive will not cover small and medium-sized enterprises (SMEs) directly. This gives the directive limited scope as SMEs account for 99% of companies in the Union. The reasoning is that placing due diligence duty on these entities could place an undue burden when there are few resources to carry out sufficient due diligence.[126] However indirect effects are likely for SMEs both in Europe and in Third countries through business relationships where large companies are expected to pass on demands to their suppliers.[127] Hence, the directive places an obligation for affected undertakings to financially and operationally support SMEs when necessary.[128] Companies whose business partner is an SME, are also required to support them in fulfilling the due diligence requirements, in case such requirements would jeopardize the viability of the SME.[129]

The penalty for non-compliance under CSDDD is fines enforced by national measures. Member States are to install a regime for dissuasive, proportionate* and effective penalties imposed by the national supervisory authority with a possibility for pecuniary penalties if a statutory beach is committed for the original fine imposed.[130]

[122] Ibid.
[123] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Art 10. §1-6.
[124] Ibid.
[125] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, recital (19).
[126] European Commission, COM(2022) 71 final, 2022/0051(COD), Brussels , 23/2/2022, p.14.
[127] Ibid.
[128] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Art. 11 §3(f).
[129] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Art. 2.
*Calculated from net turnover.
[130] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)007, recital (76).

Thus, the CSDDD will apply to large companies and require extensive due diligence efforts in mitigating what it calls “adverse impacts” in all parts of the value chains, even if the subsidiaries are not themselves registered within EU jurisdiction giving it automatic extraterritorial effects for entities that normally would not be affected under EU jurisdiction. Even further the directive also extends the responsibility of parent companies to scour their supply chains so adjacent business partners and suppliers within the supply chain adheres to the policy. This could potentially lead to controversies and effects within host countries that result in backlash or countermeasures, potentially hampering the accountability the European Union hopes to install within global value chains.

3.2 A Closer Look into the Extraterritorial Effects of CSDDD

The focus on social and environmental impacts of corporate supply chains began with the trend towards corporate social responsibility (CSR) stemming from not only the Paris Agreement but also various UN treaties and OECD guidelines.[131] The CSR Strategy encouraged companies to take responsibility for their impact on society and the environment mostly by voluntary basis.[132] However, voluntary compliance was seen as insufficient, leading to a shift towards mandatory compliance. For instance, the Non-Financial Reporting Directive *requires* large companies to disclose social and environmental information.[133] Despite these efforts, the institution has not fully addressed the impacts across global value chains, where a significant portion of environmental harm from EU production may occur which is what this directive aims to do.

EU policy debates have also explored the role of corporate governance in promoting long-term sustainability in European businesses, moving away from short-term shareholder value towards longer-term stakeholder interests - a study for the European Commission highlighted issues in company law and corporate governance that need addressing.[134] It recommended new legislation to expand directors’ duties and enforce them, and to require better integration and disclosure of sustainability aspects in business strategy. These considerations have no doubt shaped the Corporate Sustainability Due Diligence Directive (CSDDD) proposal, which extends beyond the EU and includes mandatory changes to corporate governance.[135]

Recall, the Corporate Sustainability Due Diligence Directive has a notable extraterritorial scope, requiring covered companies to monitor not only their own impacts and those of their subsidiaries but also impacts caused by entities in their value chain, regardless of location. Companies with part of the ownership structure of a European undertaking is also equally directly bound by the Directive.[136]

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[131] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071.

[132] Ibid.

[133] Directive 2014/95/EU of the European Parliament and of the council, 22/10/2014, (1-23).

[134] Marcu Anderi, Mehling Michael, and Ruiz Ana via ERCST Roundtable on Climate Change and Sustainable Transition, *The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls,* 2023, p. 17.

[135] Ibid.

[136] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)007, recital. (34).

To secure the third-country enforcement, those companies must designate an appropriate representative who provides the supervisory authority with effective oversight and information.[137] Furthermore the representative should also be able to act as a "point of contact" provided the requirements of the Directive is adhered to. However, if this cannot be done it is up to the Member state that either is the host of the parent company, or the Member state where the most net turnover is generated (in case of the company being incorporated elsewhere than the EU, yet still covered by the directive) to ensure sufficient oversight.[138] The powers of the supervisory authority also extends to at least have the power to order: the ceasing of infringements of the provisions of national law adopted pursuant to this CSDDD by performing an action or ceasing conduct; (ii) refrain from any repetition of the relevant conduct; and (iii) where appropriate, provide remediation proportionate to the infringement and necessary to bring it to an end; but also adoption of interim measures in the event of "severe and irreparable harm".[139]

Furthermore, enforcement shall also be guaranteed by the possibility of persons and organizations affected by adverse impacts to submit complaints directly to the company responsible for such impacts.[140] This is true even for persons who have *reasonable grounds* to believe that they might be affected – thus companies need to establish a procedure for fair, publicly available, accessible, predictable and transparent for dealing with the claims, including the duty to provide relevant information to workers, trade unions and representatives for such workers about such procedures ensuring remediation for victims, regardless of nationality.[141] The remediation process may also include liability in full for damage caused to natural or legal persons for negligence to prevent adverse impacts.[142]

CSDDD emphasizes a great deal of contractual cascading to achieve its intended effects mentioned in recitals (34-41a) of the Annex. Companies are expected to seek contractual assurances in unison with implementing a *prevention action plan* with their direct business partners and other such partners that constitute the parent company's chain of activities that by design should designate the responsibility to mitigate adverse impacts as a joint responsibility.[143] Justifying shared responsibility the Union writes "[…] by better sharing the value along the chain of activities, responsible purchasing or distribution practices contribute to fighting against child labour, which often arises in countries or territories with high poverty levels. Companies should also provide targeted and proportionate support for an SME which is a business partner of the company, where necessary considering the resource, knowledge, and constraints of the SME […]".[144]

[137] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Article 23.
[138] Ibid.
[139] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, Article 25. §5 (a-c).
[140] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, recital (59)
[141] Ibid.
[142] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071,) Article 29
[143] CSDDD, Annex, (34-41a) https://data.consilium.europa.eu/doc/document/ST-6145-2024-INIT/en/pdf.
[144] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, recital (46).

Undertakings are expected to provide targeted and proportionate financial support where mitigation efforts would threaten the SME's continued survival.[145] It may appear then that there are few possibilities for third country entities to escape the grasp of the Directive when all European companies affected by the directive needs to guarantee that their business partners also comply via contracts. One can say then that these SMEs may then not be bound *de jure* by CSDDD, but there are considerable arguments to make for *de facto* effects even if when the entity is a non-subsidy of a European Undertaking.

Furthermore, when direct or indirect business partners fail to meet the standards set by the Directive an obligation under the directive is placed for companies to (as a last resort) avoid entering into new contracts or extending existing relations with the non-complying partner – using the threat of termination of the business relationship as leverage stating "Companies should suspend their business relationships with the business partner, which increases their leverage and increases the chances that the impact is addressed. Where there is no reasonable expectation that these efforts would succeed, for instance, in situations of state-imposed forced labour, or where the implementation of the enhanced prevention action plan failed to prevent or mitigate the adverse impact, the company should be required to terminate the business relationship [...]".[146] Such obligations and risk of losing business is also a considerable factor in the effects of the directive in third countries.

[145] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)0071, recital (34).

[146] European Parliament, CSDDD - P9_TA (2024)0329 of (COD)(2022)0051 & (COM(2022)007, recital. (36) & Article 7.

3.3 The discussion around the Extraterritorial Effects of CSDDD

For a directive with such far reaching effects under threat of fines and the payment of damages to victims affected by their operations it is easy to understand that CSDDD has met with some controversy. Considering the challenges targeted by the EU in CSDDD are global, one may also see the directive in a more positive light. Seeking to remedy the spill over effects of its production and consumption that often manifest in third countries (accounting for 17% of deforestation worldwide and close to half of the greenhouse gas (GHGs) emissions by domestic consumption generated abroad) the regulation does not originate from ill-intent even though its execution can be criticized.[147]

This trend is not merely limited to environmental sustainability and global environmental impacts. The CSDDD as discussed so far reflects the effects the institution hopes to reduce social and human rights issues like modern slavery and child labor, and has recently expanded to areas such as digitalization, artificial intelligence, and data privacy.[148] For example, the past regulation GDPR set a worldwide standard for data protection and privacy and prompted other countries to align their data protection laws with those of the EU. Similarly, the proposed Artificial Intelligence (AI) Act aims to position the EU as a leader in global digital governance by setting standards for high-risk AI systems, transparency, and AI-human interactions, inspiring similar laws globally.[149] Questions that may arise as a result could be along the lines of "If the intention of the cooperative agenda was for each nation to share responsivity and do what they can in their own territories, why is the EU pushing an unilateral, global agenda? Would it be okay if similar proposals would come from other sources?

An example that delegitimizes the EU's efforts is its past efforts to undermine similar attempts from foreign entities: "with Regulation (EU) 2019/1100-updating the Annex to the 'Blocking Regulation' – Council Regulation (EC) No 2271/96 of 22 November 1996. The regulation: (i) counteracts the effects of the extra-territorial application of laws, including regulations and other legislative instruments adopted by third countries, and of actions based thereon or resulting therefrom, where such application affects the interest of natural and legal persons in the Union engaging in international trade and/or the movement of capital and related commercial activities between the Union and Third countries; and (ii) acknowledges that by their extra-territorial application, such instruments violate international law."[150] Furthermore this breeds questions as well as whether or not the EU – apart from acting hypocritical by adopting the CSDDD in regards to the past rejection – also detracts

[147] Marcu Anderi, Mehling Michael, and Ruiz Ana via ERCST Roundtable on Climate Change and Sustainable Transition, *The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls,* 2023, p. 16.

[148] European Commission, 2022/0051 (COD), Brussels, 23/2/2022, p.14 & Ibid.

[149] Ibid.

[150] Marcu Anderi, Mehling Michael, and Ruiz Ana via ERCST Roundtable on Climate Change and Sustainable Transition, *The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls,* 2023, p. 15.

from its treaties and puts the international responsibilities (such as those in the PA)on entities that themselves are not directly bound by the treaties, corporations.

Some criticism has also been directed at the EU as it will pin commitments it has agreed to upon the corporations within its Economic Jurisdiction.[151] However, one may ask whether or not such joint responsibility is even the EU's to delegate in the first place and whether or not this places pressure on third-country SMEs and responsibility for large European companies to both support, guide, and lead mitigation projects in certain instances.

Interestingly, the impact assessment and survey done by the Commission did not mention any discussion on its extraterritorial effects.[152] However, when asking stakeholders ranging from; affected companies, company interest groups and NGOs, when asked if due diligence rules should also apply third-country companies not established in the EU (but carrying out activities in the EU) an overwhelming majority of overall respondents who expressed an opinion agreed (711 respondents, 97%).[153] Most of them (570 respondents, 90.9%) also agreed that EU due diligence duty should be accompanied by other measures to foster a more level playing field between EU and third country companies.[154] The creation of equal and fair market conditions as well as reducing adverse impacts thus seem to underpin CSDDD more than a consideration on sovereignty or extraterritorial impacts.

Certainly, these measures are not predicated on amoral goals from the EU, but the method at which they are incorporated into the directive and affect the expected conduct of European Undertakings could inspire much criticism from the affected third countries and perhaps adoption of legislation similarly to what the EU did with *Regulation (EU) 2019/1100* mentioned above to block its effect.

Supporters argue the breadth of the legislation is necessary to prevent the offshoring of unethical practices, while critics raise voice opposition both on principle and for having concerns about its legal, economic, and global implications. Potential repercussions on developing countries, the shift of authority from state to corporations, and the possibility of unintended consequences. Most notable are concerns regarding the geographical scope of application when seeking to regulate operations of its undertakings which will indirectly include supplier, subcontractors, and distributors globally. Therefore, the risk of collision with other fundamental principles discussed above such as the fundamental principles of national sovereignty and with other areas of cooperation, such as the Common but Differentiated Responsibilities and Respective Capabilities' (CBDR-RC) under the UNFCCC Paris Agreement is high.

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[151] Marcu Anderi, Mehling Michael, and Ruiz Ana via ERCST Roundtable on Climate Change and Sustainable Transition, The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls, 2023, p. 16

[152] European Commission, *Proposal for legislation fostering more sustainable corporation governance in companies*, Dokument Ares(2021)3297206 & European Commission, *Inception Impact Assessment,* Dokument Ares(2020)4034032.

[153] European Commission, *Proposal for legislation fostering more sustainable corporation governance in companies*, Dokument Ares(2021)3297206.

[154] Ibid.

Lastly, when compared with the five principles of extraterritorial jurisdiction discussed in chapter 2.2 I believe there is little overlap in direct applicability for CSDDD. Despite this, one could argue that it could be possible to apply the principle of nationality (crimes committed by a corporation abroad can be prosecuted in its host country) and *universality principle* (crimes that are internationally recognized as being of an extra reprehensible character may be prosecuted extraterritorially). Issues of an human rights, environmental and social character can fall under these categories as many nations have signed treaties calling for cooperative action. But in order to fully defend the Directive's effect for such far reaching effects of external sovereignty, international treaties would need to back it up. With a lack of an agreement from third countries as it stands today, one may see a great amount of discussion following the directives implementation with considerations being placed on future preferential trade agreements (PTAs) and possible exceptions for certain countries for its implementation.

4 Concluding remarks

The CSDDD challenges the traditional notion of state sovereignty by imposing extraterritorial obligations on companies to oversee and mitigate adverse impacts on human rights, environmental, and social issues throughout their value chains. The Directive signifies a move towards more unilateral regulatory actions by the EU, setting global standards that potentially encroach on the regulatory domains of other sovereign states. Such an approach necessitates balancing the principle of sovereignty with the need for international cooperation and adherence to public international law. How such a conflict of jurisdiction will be solved is hard to predict when the Directive is still not in its final version – perhaps more concessions will have to be made, perhaps we will see resolutions to conflicts in bilateral treaties. This is an area that future research could look into.

The CSDDD exemplifies the Brussels Effect, as its effect is by nature global and far-reaching. However, the CSDDD's ambitious scope may overreaching, leading to concerns about the imposition of EU standards and 'mission' on other jurisdictions. As have been seen when discussing past regulations of the EU, many of its past agreements have been voluntary in nature. With CSDDD and other recent directives such as CSRD and GDPR the shift is clear from the EU that more demanding regulation is the new norm. The Brussels Effect, with its de jure & de facto mix of effects could thus perhaps force countermeasures in the form of blocking regulations like what the EU has done before*[155] and this may significantly hamper the EU's aim to positively affect its adverse impacts and reach goals such as being carbon neutral by 2050. A question for the future will therefore also be how far from the EU will be able to push their regulatory agenda abroad before recipients of its Brussels Effect treats it as hostile. Perhaps overextending in the extraterritorial domain could also inspire economic giants like China or the US to gain similar ambitions leading to Beijing or Washington effects respectively. Such development would fragment the realm of International Trade even further than a dysfunctional WTO and rise of PTAs.

The CSDDD does not necessarily contradict existing norms of extraterritorial legislation but rather extends their application by focusing on corporate accountability for adverse impacts globally. However, its implementation could lead to legal and economic controversies despite this as while the goal may be shared among nations, e.g. the Directive's method of reaching those goal can invite disagreement whether EU's approach is correct. An important part of its reception internationally will depend upon the interpretation of the third countries who will be affected. Regarding normative extraterritoriality we can also recall the five principles to which I assess *nationality* and *universality* most applicable. While the principle of nationality allows for the prosecution of crimes committed by corporations abroad, it may be a reach to also include corporations of third countries in the manner the

[155] Recall "Regulation (EU) 2019/1100-updating the Annex to the 'Blocking Regulation' – Council Regulation (EC) No 2271/96 of 22 November 1996" mentioned on p. 31

Directive does. Furthermore, while the universality principle enables the prosecution of particularly egregious crimes recognized internationally - even a duty to prosecute in some instances – I interpret this principle to be the duty of the "host country" to prosecute when companies in their jurisdiction produce adverse impacts on value chains. Meaning it is not the role for the EU to meddle in, else it might inspire such labels as have been echoed in chapter 2.2: Legal imperialism. The directive's extensive reach may also also cause tensions in international trade relations, particularly with developing countries that might face increased compliance costs and operational burdens, even when support is given from European Undertakings. However, certain precedence does exist for legislation within the realm of human rights- and environmental targets which might help Directive's success.

While the EU may argue that it is aligning with existing international commitments, there is a risk of disregarding the preferences and views of affected countries, prioritizing Eurocentric legal principles. The EU's strategic positioning reflects its commitment to upholding core European values globally. This approach extends to various areas beyond environmental sustainability, including social responsibility and digital governance, influencing global markets and regulatory practices. Indeed, the CSDDD proposal reflects growing concerns about the extraterritorial effects of corporate activities and aims to address gaps in corporate governance regarding sustainability. However, some argue that it represents a territorial extension of EU policymaking rather than genuine extraterritorial regulation. While the EU's approach may align with international objectives, it raises concerns about regulatory overreach, implications for international trade, and challenges to national sovereignty. The effectiveness of the Brussels Effect depends on the EU's regulatory leadership and market attractiveness. While the CSDDD aims to prevent the offshoring of unethical practices, it also places significant responsibilities on corporations, effectively shifting some regulatory burdens from states to private entities. Who will be obliged to "unofficially" bind their business partners to the Directive via contractual cascading or cease business with non-complying entities. Being the second largest market and arguably the most politically powerful market, some affected third country companies may not have the resources to seek other business partners. This calls to question how much possibility such entities really possess whether to comply with CSDDD or not, creating an illusion of choice.

In conclusion, the CSDDD represents a significant step towards integrating sustainability into global corporate governance, challenging traditional notions of sovereignty, and emphasizing the importance of international cooperation. As nations navigate these changes, the balance between respecting state sovereignty and enforcing global standards will be crucial to the directive's success and acceptance The CSDDD highlights the EU's role in setting global regulatory standards, underscoring the evolving nature of sovereignty in the 21st century, where external sovereignty is increasingly defined by adherence to international legal frameworks and cooperative governance, but may also be a symptom of a potential fractured, unilateral trend. Lastly, while my interpretation is relatively negative it is important to remember that the Directive is still being developed and its application will be a gradual one with much consideration on its effect after passing. How this will affect the final product remains to be seen.

References

Official documents

EU, *Directive 2014/95/EU of the European Parliament and of the council*, 22/10/2014. Available online: https://eur-lex.europa.eu/eli/dir/2014/95/oj [accessed online 8/5/2024]

European Commission, *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 2022/0051 (COD)*, Brussels, 23/2/2022, available online: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071&qid=1715977842791, [accessed 2024/05/18]

European Commission, *Proposal for legislation fostering more sustainable corporation governance in companies*, Dokument Ares(2021)3297206. Available online: https://eur-lex.europa.eu/legal-content/SV/TXT/?uri=pi_com%3AAres%282021%293297206 [accessed 16/5/2024]

European Commission, *Inception Impact Assessment*, Dokument Ares(2020)4034032. Available online: https://eur-lex.europa.eu/legal-content/EN/PIN/?uri=PI_COM%3AAres%282020%294034032 [accessed 16/5/2024]

European Parliament, *P9_TA(2024)0329 Corporate Sustainability Due Diligence European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD)),* 24/04/2024, available online:https://www.europarl.europa.eu/RegistreWeb/search/simpleSearchHome.htm?relations=NUTA%23%23T9-0329%2F2024&sortAndOrder=DATE_DOCU_DESC [accessed 2024/05/17]

Marcu Anderi, Mehling Michael, and Ruiz Ana via ERCST Roundtable on Climate Change and Sustainable Transition, *The EU Corporate Sustainability Due Diligence Directive and its Extraterritorial Effect: Promise and Pitfalls,* 2023. Available online: https://ercst.org/download/the-eu-corporate-sustainability-due-diligence-directive-and-its-extraterritorial-effect-promise-and-pitfalls/ [accessed online 7/5/2024]

UN *United Nations Charter, Preamble.* Available online: https://www.un.org/en/about-us/un-charter/full-text

Literature

Acharya Rohini via WTO, *Regional Trade Agreements and the Multilateral Trading System*, Cambridge University Press, UK, 2016

Bradford, Anu, , *The Brussels Effect: How the European Union Rules the World*, New York, 2020; online edn, Oxford Academic, 19 Dec. 2019. doi: https://doi.org/10.1093/oso/9780190088583.003.0003

Löfstedt, Ragnar E. & David Vogel, The Changing Character of Regulation: A Comparison of Europe and the United States, 21 RISK ANALYSIS, 2001. Available online: https://www.researchgate.net/publication/11776695_The_changing_character_of_regulation_a_comparison_of_Europe_and_the_United_States [accessed 6/5/2024]

Panahi, Louise Kazemi Shariat Historical Comparison of Sovereignty in International Law, 9 Russ. L.J. 128 (2021) / Russian Law Journal, Vol. 9, Issue 4, 2021/09/04,doi: https://heinonline.org/HOL/Page?handle=hein.journals/russlj9&div=34

Parrish, Austen & Ryngaert Caedric *Research Handbook on Extraterritoriality in International Law,* Edward Elgar Publishing, Cheltenham, UK, 2023.

Stilz, Anna, 'Introduction: The Normative Bases for Territorial Sovereignty', Territorial Sovereignty: A Philosophical Exploration, Oxford Political Theory (Oxford, 2019; online edn, Oxford Academic,24/11/2019), https://doi.org/10.1093/oso/9780198833536.003.0001, accessed 7/5/2024.

Vogel David & Kagan Robert A., Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies 4–5 (David Vogel & Robert A. Kagan eds., 2004.

Vogel, David, Trading Up – Consumer and Environmental Regulation in a Global Economy, Harvard University Press, 1997.

Journals

Bradford, Anu, *The Brussels Effect*, Northwestern University Law Review Vol. 107, No. 1, 2012.

Charnovitz Steve, Participation of Nongovernmental Organizations in the World Trade Organization, 17 U. Pa. J. Int'l L. 331-357 (1996). https://scholarship.law.upenn.edu/jil/vol17/iss1/11.

Eckes, Christina. *The reflexive relationship between internal and external sovereignty*. Irish Journal of European Law, 18(1), 33-47. (2015).

Fennelly Nial, *Legal Interpretation at the European Court of Justice*, Fordham International Law Journal Volume 20, Issue 3, Article 4, 1996. Available online: https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1526&context=ilj [accessed online 4/5/2024]

Guasch, J. L., & Hahn, R. W. (1999). The Costs and Benefits of Regulation: Implications for Developing Countries. The World Bank Research Observer, 14(1). Available online: https://www.researchgate.net/publication/5217894_The_Costs_and_Benefits_of_Regulation_Implications_for_Developing_Countries [accessed 4/5/2024]

Harvard Draft on Jurisdiction with respect to Crime in The American Journal of International Law, Vol. 29, Supplement: Research in International Law (1935), p. iii-656.

McCarthy, John G. *The Passive Personality Principle and Its Use in Combatting International Terrorism* in Fordham International Law Journal Volume 13, Issue 3, 1989, available online: https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1242&context=ilj&sei-redir=1 [accessed 12/5/2024

Smits, Jan M., What is Legal Doctrine? On the Aims and Methods of Legal Dogmatic Research (September 1, 2015). Rob van Gestel, Hans-W. Micklitz & Edward L. Rubin (eds.), Rethinking Legal Scholarship: A Transatlantic Dialogue, New York [Cambridge University Press] 2017, pp. 207-228, Maastricht European Private Law Institute Working Paper No. 2015/06, Available at SSRN: https://ssrn.com/abstract=2644088 or http://dx.doi.org/10.2139/ssrn.2644088

Samantha Besson in Oxford Public International Law, *Sovereignty,* Max Planck Encyclopedias of International Law [MPIL], 2011. doi: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1472?prd=MPIL

Xavier Philippe, The principles of universal jurisdiction and complementarity: how do the two principles intermesh? via International Review of the Red Cross, Volume 88 Number 862, June 2006. Available online: https://www.icrc.org/en/doc/assets/files/other/irrc_862_philippe.pdf [accessed 15/5/2024]

Articles

Auer Stefan, Bergsen Pepijn,Kundnani Hans via Chatham House, *The law as a tool for EU integration could be ending,* 21/12/2021. Available online: https://www.chathamhouse.org/2021/10/law-tool-eu-integration-could-be-ending [accessed 18/5/2024]

Britannica – *Sovereignty and International Law,* date N/A. Available online: https://www.britannica.com/topic/sovereignty/Sovereignty-and-international-law, [accessed 19/5/2024]

Cornell Law Legal Information Institute, *Self-determination (International law)*. Available online: https://www.law.cornell.edu/wex/self_determination_(international_law), [accessed 18/5/2024]

Dadush Uri, Dominguez Prostbreugel Enzo via Breugel.org *The problem with preferential trade agreements,* 9/5/2023. Available online: https://www.bruegel.org/sites/default/files/2023-06/the-problem-with-preferential-trade-agreements--%289033%29_0.pdf

European Union, *Aims and values,* (date N/A). Available online: *https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_en,* [accessed 28/04/2024]

European Commission, *EU position in world trade, date N/A,* Available online: *https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/eu-position-world-trade_en*. [accessed 8/5/2024]

EU, Division of competences in the European Union – SUMMARY OF Article 2 of the Treaty on the Functioning of the European Union – categories and areas of EU competence, Date N/A, Available online: https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html [accessed 7/5/2024]

GDPR Advisor, *Does GDPR Affect US Companies?,* date N/A. Available online: https://www.gdpradvisor.co.uk/does-gdpr-affect-us-companies [accessed 14/5/2024]

Ruwanthika Gunaratne, *Lotus Case (Summary),* 2012. Available online: https://ruwanthikagunaratne.wordpress.com/2012/07/27/lotus-case-summary/ [accessed 15/5/2024]

Statista *European Union: Gross Domestic Product (GDP) from 2018 to 2028, 2022 https://www.statista.com/statistics/527869/european-union-gross-domestic-product-forecast/*

Statista, *North Armerica: Gross Domestic Product (GDP) of Canada and the United States from 2018to 2028,* 2022. Available online: *https://www.statista.com/statistics/527955/north-america-gross-domestic-product-forecast/*. [accessed 9/5/2024]

Yoto Yotov, José-Antonio Monteiro, Roberta Piermartini, and Mario Larch via CEPR.ORG *Trade effects of WTO: They're real and they're spectacular,* 20/11/2019. Availabe online: https://cepr.org/voxeu/columns/trade-effects-wto-theyre-real-and-theyre-spectacular [accessed 12/5/2023]