

CORPORATE GROUPS AND DUE DILIGENCE: RETHINKING LIABILITY IN EUROPEAN COMPANY LAW

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This paper examines how mandatory due diligence obligations interact with the allocation of responsibility and liability within corporate groups in Europe. The principles of separate legal personality and limited liability continue to shield parent companies from the harms or violations of their subsidiaries, but recent legislation in France, Germany, and at European Union (EU) level introduces preventive due diligence obligations that require parent companies to identify and manage risks across their own operations, as well as those of their subsidiaries and value chains. These obligations do not disregard the separate legal personality of each company or create new forms of liability within corporate groups, but they influence its scope by defining the standard of responsible conduct expected of parent companies. In this way, due diligence establishes a link between responsibility and liability by connecting due diligence obligations to the capacity to control and oversee risk, without changing the existing framework of company law. The paper argues that while this development signals a better reflection of how corporate groups operate in practice, whether it will lead to a more coherent understanding of group liability within the legal framework in the EU is yet to be seen.

1 INTRODUCTION

Corporate groups are the structure behind many of the world's most well-known companies. From Unilever to Samsung, these groups operate as collections of legally distinct entities under a single corporate umbrella.¹ The parent company usually holds the majority of voting rights and makes the decisions about the group's strategy, while subsidiaries carry out business activities in different sectors or jurisdictions. This structure allows groups to expand across borders, manage their risks, and remain legally independent through the principle of separate legal personality.² A corporate group typically refers to a collection of legally distinct entities that are linked by shared ownership, contracts, or other mechanisms of control and coordination.³ The integration of economic activities across the group is usually facilitated by the parent or holding companies owning all or part of the equity in their subsidiary

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¹ As an example see Samsung Electronics Co Ltd, '2024 Business Report', 21 <<https://www.samsung.com/global/ir/reports-disclosures/public-disclosure-view.84359/>> accessed 20 October 2025

² Shalom Belenzon, Hyejin Lee, and Andrea Pataconi, 'Managing Risk in Corporate Groups: Limited Liability, Asset Partitioning, and Risk Compartmentalization' (2023) 44(12) Strategic Management Journal 2888, 2889–2890.

³ Virginia Harper Ho, Gerlinde Berger-Walliser, and Rachel Chambers, 'Toward Corporate Group Accountability' in Martin Petrin and Christian Witting (eds), *Research Handbook on Corporate Liability* (Edward Elgar 2023) 293.

entities.⁴ However, such coordination can also take place through means other than ownership, such as contractual agreements, joint ventures, or supply chain relationships which can blur the boundaries of the group structure.⁵

Despite this high level of coordination and the blurred boundaries between group entities, most legal systems continue to treat each company within a corporate group as a separate legal entity. With limited exceptions such as in German law, the group as a whole is not recognised as a single legal subject, and there is no unified definition of what constitutes a corporate group.⁶ This creates a disconnect between the way groups function in practice and how they are treated under the law. Even when group companies act together to pursue common strategies or operate under the direction of a parent company, the principle of separate legal personality means that each entity remains legally independent. This has important implications for how responsibility is allocated, particularly when harm occurs within the group.

Courts have attempted to address these challenges posed by corporate group structures through different doctrines such as piercing the corporate veil or recognising a duty of care in tort.⁷ These mechanisms are intended to extend liability to the parent company in cases where it exercises significant control over the subsidiary or where the subsidiary operates as a mere façade. In practice, however, both approaches are narrow in scope and difficult to establish. Their application varies across jurisdictions and they are rarely effective in complex or cross-border cases. Scholars have also noted that these limitations reflect a deeper structural issue. In this regard, Mares observes that the current framework allows parent companies to compartmentalise risk while avoiding liability, even when their influence over subsidiaries is substantial.⁸ Muchlinski similarly highlights the resulting imbalance in which parent companies benefit from the operations of the group but remain legally insulated when harm occurs.⁹

In recent years, however, there has been a shift in how legal systems approach corporate responsibility, particularly in the context of global business operations. A number of jurisdictions have adopted mandatory human rights and environmental due diligence laws, which require companies to identify, assess, and mitigate risks of harm not only in their own operations but also in the activities of their subsidiaries, suppliers, and other business partners. While this legislation was not introduced to regulate corporate groups, it nonetheless expands the scope of corporate responsibility in ways that may have implications for group structures. By placing preventative due diligence obligations on parent companies with respect to risks arising across their business relationships, due diligence laws suggest a broader recognition of the integrated nature of corporate groups, even though each entity

⁴ Harper Ho, Berger-Walliser, and Chambers (n 3).

⁵ *ibid.*

⁶ For an overview of the German legal framework on corporate groups see Sebastian Mock, 'National Report on Germany' in Rafael Mariano Manóvil (ed), *Groups of Companies: A Comparative Law Overview* (Springer International Publishing 2020) 303–398.

⁷ See *Adams v Cape Industries plc* [1990] Ch 433 (CA) on veil piercing and *Chandler v Cape plc* [2012] EWCA Civ 525, [2012] 1 WLR 3111 on parent company duty of care in UK.

⁸ Radu Mares, 'Liability within Corporate Groups: Parent Companies' Accountability for Subsidiary Human Rights Abuses' in Surya Deva and David Birchall (eds), *Research Handbook on Human Rights and Business* (Edward Elgar Publishing 2020) 446, 469–70.

⁹ Peter T Muchlinski, 'Multinational Group Liability and Directors' Duties' in *Multinational Enterprises and the Law* (3rd edn, Oxford University Press 2021) 300–335.

within the structure continue to be a separate legal person.

While the scope and enforcement mechanisms of these legislations differ across jurisdictions, they all impose an obligation on companies to identify and address risks before harm occurs. Instruments such as the French Duty of Vigilance Law¹⁰ and the German Supply Chain Act¹¹ extend due diligence obligations beyond a company's own operations to include subsidiaries and certain business partners. At the European Union (EU) level, the Corporate Sustainability Due Diligence Directive (CSDDD)¹² is a step toward embedding such obligations within the broader framework of European company law. Although these measures do not change the company's separate legal personality, they signal a shift toward placing more obligations on parent companies in relation to risks arising within their corporate groups and supply chains.

Against this background, the main question this paper seeks to answer is: *To what extent do mandatory due diligence obligations challenge or reinforce the traditional liability framework governing corporate groups?* It examines whether the emerging legal landscape introduces new forms of parent company liability, or whether it ultimately preserves separate legal personality and limited liability as the core principles of corporate law. The analysis focuses on France, Germany, and the EU as examples of jurisdictions that have adopted mandatory due diligence legislation.

The paper proceeds as follows: Section 2 outlines the traditional liability framework that applies to corporate groups, with a focus on the principle of separate legal personality. Section 3 introduces the concept of due diligence and traces its evolution in legal and policy debates. Section 4 compares the national legislation adopted in France and Germany. Section 5 examines the EU directive and its potential implications for corporate group structures. Section 6 reflects on whether these developments represent a shift in how liability is allocated within corporate group structures. Section 7 discusses some concluding remarks.

2 CORPORATE GROUPS AND THE TRADITIONAL LIABILITY FRAMEWORK

Corporate group structures are attractive to businesses precisely because they allow economic coordination without full legal exposure.¹³ This is made possible by two main features of corporate law: the ability of companies to hold shares in other companies, and the principle that each legal entity within the group is treated as separate, with its own limited liability.¹⁴ Together, these principles enable parent companies to construct layered group structures through full or partial ownership, often spanning multiple jurisdictions.

¹⁰ Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (JO, 28 March 2017, texte n° 1)

<<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626>> accessed 20 October 2025.

¹¹ Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten (Lieferkettensorgfaltspflichtengesetz – LkSG) BGBl I 2021, 2959 <<https://www.gesetze-im-internet.de/lksg/LkSG.pdf>> accessed 20 October 2025.

¹² Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L2024/1760.

¹³ Harper Ho, Berger-Wallisser, and Chambers (n 3) 293.

¹⁴ *ibid* 294. See also: Henry Hansmann and Reinier Kraakman, 'The End of History for Corporate Law' (2001) 89 *Georgetown LJ* 439, 439–440.

As Blumberg has observed, this model allows each tier in the group to operate behind its own legal shield, with upper-tier companies insulated from the liabilities of lower-tier entities sometimes through four or five layers of ownership.¹⁵

This legal framework has facilitated the growth of global corporate groups, making it easier to scale operations, diversify risk, and enter new markets. But the same mechanisms that allow for business integration can also be used to insulate the parent company from responsibility when harm occurs within the group. In most legal systems, the parent company is not liable for the legal violations or financial obligations of its subsidiaries, even when it owns all or nearly all of their shares.¹⁶ This separation tends not to raise concerns when subsidiaries remain solvent and can be directly sued. However, when a subsidiary is undercapitalised, dissolved, or incorporated in a jurisdiction with weak enforcement, affected individuals may be left without an effective remedy.¹⁷ This disconnect between economic integration and legal structure of corporate groups allows parent companies to extract value from the group while avoiding responsibility for its external impacts.¹⁸ This section considers how courts and legal systems have responded to this gap through doctrines such as veil piercing, agency theory, and parent company liability in tort.

One of the exceptions to the principle of separate legal personality which applies equally to companies within a corporate group is the doctrine of piercing the corporate veil. This allows courts to disregard the separate legal personality of a company in exceptional cases typically where the company structure has been used for fraud or to evade legal obligations.¹⁹ In the UK courts have long upheld the principle of separate legal personality, beginning with *Salomon v A Salomon & Co Ltd*, which established that a properly incorporated company is distinct from its shareholders even if fully owned and controlled by them.²⁰ In *Adams v Cape Industries*, the court of appeal reaffirmed this position, refusing to pierce the veil simply because the group operated as a single economic unit.²¹ This position was later also confirmed in *Prest v Petrodel Resources*, where the UK supreme court held that veil piercing is only available when an existing legal obligation has been deliberately evaded through the use of a company.²²

Civil law jurisdictions take a similarly cautious approach. For instance, Dutch law recognises the concept of *vereenzelviging*, a similar doctrine that allows courts to disregard legal separateness in narrowly defined cases. It is typically used where liabilities are shifted within the group in a way that leaves one company as an empty shell while operations continue through another.²³ In France also the doctrine is applied only in exceptional circumstances

¹⁵ Phillip I Blumberg, *The Multinational Challenge to Corporation Law: The Search for a New Corporate Personality* (Oxford University Press 1993) 59.

¹⁶ Martin Petrin and Barnali Choudhury, 'Group Company Liability' (2018) 19 *European Business Organization Law Review* 772.

¹⁷ *ibid.*

¹⁸ See: Phillip Blumberg, 'Limited Liability and Corporate Groups' (1986) 11 *Journal of Corporation Law* 630-631; Christian A Witting, 'Structuring of Corporate Group Relations' in Christian A Witting (ed), *Liability of Corporate Groups and Networks* (Cambridge University Press 2018) 100-101.

¹⁹ See Alastair Hudson, 'The Salomon Principle' in Alastair Hudson, *Understanding Company Law* (3rd edn, Routledge 2025) 29-34.

²⁰ *Salomon v A Salomon & Co Ltd* [1897] AC 22 (HL).

²¹ *Adams v Cape Industries plc* [1990] Ch 433 (CA).

²² *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [2013] 2 AC 415.

²³ Mieke Olaerts, 'National Report on the Netherlands' in Rodolfo M Manóvil (ed), *Groups of Companies: A Comparative Law Overview* (Springer 2020) 442.

in corporate groups, such as in cases involving unusual financial relationships like systematic transfers of assets without proper consideration, while routine group practices such as cash-pooling, staff exchanges, or extended internal loans are not seen as sufficient grounds for piercing the corporate veil.²⁴ Given these limitations, veil piercing offers only a narrow route to parent company liability within corporate groups.

Another possibility is agency theory, which has mainly developed in the United States. This approach does not require piercing the corporate veil. Instead, the parent company may be held liable on the basis that the subsidiary acted as its agent. To establish liability on this basis, courts generally require a high level of control by the parent over the subsidiary. In this regard, the New York court of appeals has held that the parent's involvement must be so extensive, and its influence so direct, that the parent qualifies as the principal and the subsidiary as its agent.²⁵ The requirements were further clarified in *Transamerica Leasing v La República de Venezuela*, where the court held that the parent must intend for the subsidiary to act on its behalf, the subsidiary must agree to do so, the parent must retain the right to direct the subsidiary's conduct in the relevant matters, and the level of control must go beyond ordinary shareholder rights such as voting powers or appointing directors.²⁶ In Delaware, another set of factors including overlapping directors, financial arrangements between the companies, how daily management responsibilities are divided, and how each company generates its business are considered when establishing an agency relationship.²⁷ Considering these examples, although agency theory offers a way to establish parent company liability without piercing the corporate veil, the level of control required is so high and specific that successful claims will probably continue to be rare.

A more promising possibility has been the development of direct liability, where the parent is held liable not for the acts of the subsidiary, but for its own failure to prevent harm. This approach does not require veil piercing or an agency relationship. Instead, it focuses on the parent's involvement in managing the specific risks that caused the harm. In *Chandler v Cape plc*, the court found that a duty of care could arise where the parent had assumed responsibility or exercised control.²⁸ It outlined four relevant factors: whether the parent and subsidiary operated in the same area of business, whether the parent had greater knowledge of the health and safety risks involved, whether it knew or ought to have known that the subsidiary's practices were unsafe, and whether it was reasonable for the subsidiary or its employees to rely on the parent's expertise.²⁹ According to the facts, the court found these elements were present and imposed liability based on the parent's failure to act where it clearly could have done so.

This reasoning was developed further in *Vedanta v Lungowe*, where the supreme court confirmed that a duty of care may arise if the parent takes active steps to manage the risks in question.³⁰ The mere existence of group-wide policies is not enough. But if the parent goes further by training staff, supervising compliance, or enforcing standards, it may be held

²⁴ Pierre-Henri Conac, 'National Report on France' in Rodolfo M Manóvil (ed), *Groups of Companies: A Comparative Law Overview* (Springer International Publishing 2020) 101–102.

²⁵ *Berkey v Third Avenue Railway Co* 155 NE 58 (NY 1926).

²⁶ *Transamerica Leasing Inc v La República de Venezuela*, 200 F.3d 843 (DC Cir 2000).

²⁷ *Applied Biosystems Inc v Cruachem Ltd* 772 F Supp 1458 (D Del 1991).

²⁸ *Chandler v Cape plc* [2012] EWCA Civ 525.

²⁹ *ibid* at 80.

³⁰ *Vedanta Resources plc v Lungowe* [2019] UKSC 20, [2020] AC 1045.

directly responsible.³¹ The same applies where the parent publicly presents itself as overseeing its subsidiaries in those areas, even if that oversight is limited in practice.³² This approach was reaffirmed in *Okpabi v Shell*, where the supreme court stressed that the key question is whether the parent company exercised a sufficient level of control over the operations that caused the harm.³³ A duty may arise where the parent directed, advised on, or implemented policies that influenced the operation of the subsidiary.³⁴

The cases above show that courts have developed a number of tools to address the liability gap within corporate groups, but these remain limited in both scope and application. Veil piercing is available only in exceptional circumstances, and liability through agency is very jurisdiction-specific and rarely established due to the high level of control required. Even where courts are willing to recognise a direct duty of care, this is generally restricted to situations where the parent has taken clear steps to manage the risks in question. As Muchlinski points out, the legal framework continues to reflect the model of each company as a separate entity, and legal systems tend to respond through offering minor modifications to existing doctrines rather than systemic change.³⁵ As a result, significant obstacles remain for claimants seeking redress in cross border group structures. In light of these limitations, some scholars have suggested due diligence obligations as a way to support parent company liability within the context of corporate groups.³⁶ While these obligations do not alter the principle of separate legal personality, they may impose new responsibilities on parent companies to identify and address risks within the group. Whether this represents a shift in how liability is understood or simply reinforce the existing framework remains an open question. The next section traces the development of due diligence as a legal obligation and considers how it fits within, or departs from, the traditional liability framework.

3 THE EVOLUTION OF DUE DILIGENCE AS A LEGAL OBLIGATION

The modern concept of corporate due diligence in law originated in the work of John Ruggie, whose 2008 *Protect, Respect and Remedy* framework, developed as United Nations Special Representative on Business and Human Rights, distinguished the corporate responsibility to respect human rights from the state duty to protect them.³⁷ This framework was further developed in the *United Nations Guiding Principles on Business and Human Rights* (UNGPs), endorsed by the Human Rights Council in 2011.³⁸ The UNGPs define due diligence as

³¹ *Vedanta v Lungowe* (n 30) at 53.

³² *ibid.*

³³ *Okpabi v Royal Dutch Shell plc* [2021] UKSC 3, [2021] 1 WLR 1294.

³⁴ *ibid* at 157.

³⁵ Muchlinski (n 9) 335.

³⁶ Harper Ho, Berger-Walliser, and Chambers (n 3) 313.

³⁷ John Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises* (UN Human Rights Council, A/HRC/8/5, 7 April 2008) <<https://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>> accessed 8 August 2025.

³⁸ John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN Doc HR/PUB/11/04, 2011) <https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> accessed 8 August 2025.

an ongoing process through which companies identify, prevent, mitigate, and account for adverse human rights impacts connected to their activities.³⁹ This process extends beyond a company's own operations to cover risks arising from its subsidiaries and business relationships, reflecting the nature of business operations.⁴⁰

The *OECD Guidelines for Multinational Enterprises* build on the same approach.⁴¹ They call on companies to integrate risk-based due diligence into their management systems to identify, prevent, and mitigate actual or potential adverse impacts, and to disclose the measures taken in response to them.⁴² Both instruments describe due diligence as an ongoing process rather than a one-off exercise.⁴³ The UNGPs outline the main steps of due diligence to be identifying and assessing risks, taking measures to address them, monitoring their effectiveness, and communicating the results.⁴⁴ The OECD Guidelines further specify that companies should prioritise risks according to their severity and likelihood, adapt their responses as circumstances change, and embed these processes within their broader governance structures.⁴⁵

Although the UNGPs and OECD Guidelines have shaped global expectations for responsible business conduct, they remain voluntary instruments and their implementation ultimately depends on corporation's willingness rather than legal enforcement. Empirical studies have suggested that many companies have yet to meet the standards they set. A 2018 survey of more than 350 firms found that while 37 per cent had adopted human rights due diligence processes, only half extended them across their full value chains, and many limited their scope to specific issues such as health, safety, labour, and environment.⁴⁶ Similarly, the Corporate Human Rights Benchmark 2020 report highlighted that only a minority of companies demonstrate the willingness and commitment to take human rights seriously and there is a disconnect between commitments and processes on the one hand and actual performance and results on the other.⁴⁷

As result of these limitations, some jurisdictions have begun to make due diligence a legal obligation with penalties for non-compliance and, in some cases, the possibility of civil liability. Many of these laws build on the principles developed in existing voluntary international standards but make them binding. Some focus on specific issues, such as the UK Modern Slavery Act,⁴⁸ the Australian Modern Slavery Act,⁴⁹ and the EU Conflict

³⁹ UNGPs (n 38) Principles 17–21.

⁴⁰ *ibid* Principles 13 and 18.

⁴¹ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing 2023) <<https://doi.org/10.1787/81f92357-en>> accessed 8 August 2025.

⁴² OECD Guidelines (n 41) General policies, para 11.

⁴³ UNGPs (n 38) Principle 17; OECD Guidelines (n 41) Commentary on General policies, para 15.

⁴⁴ UNGPs (n 38) Principle 17–21.

⁴⁵ OECD Guidelines (n 41) Commentary on General policies, para 15–16 and 20.

⁴⁶ Liesbeth Smit, Claire Bright and Robert McCorquodale et al, *Study on Due Diligence Requirements Through the Supply Chain* (European Commission 2020) 48–50 <<https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>> accessed 20 October 2025.

⁴⁷ Corporate Human Rights Benchmark (CHRB), World Benchmarking Alliance, *Corporate Human Rights Benchmark: Key Findings Report 2020* (2020) <<https://www.worldbenchmarkingalliance.org/research/corporate-human-rights-benchmark-2020-key-findings-report/>> accessed 20 October 2025.

⁴⁸ Modern Slavery Act 2015 (UK).

⁴⁹ Modern Slavery Act 2018 (Cth).

Minerals Regulation.⁵⁰ Others take a broader approach, including the French Duty of Vigilance Law,⁵¹ the German Supply Chain Act,⁵² and the EU CSDDD,⁵³ extending due diligence obligations in the scope they cover as well as reaching across a company's own operations, subsidiaries, and certain business relationships. This mandatory due diligence legislation has attracted both support and criticism. Civil society organisations view them as an essential tool for addressing corporate misconduct, while many business associations have warned that such measures create economic burdens and reduce competitiveness.⁵⁴ Empirical research on the French vigilance law, however, indicates that firms subjected to the legislation performed no worse financially than those outside its scope, suggesting that the law is unlikely to undermine business prospects.⁵⁵

While these laws were not designed specifically to regulate corporate groups, they have direct implications for liability within group structures. The UNGPs clearly indicate that the corporate responsibility to respect human rights is distinct from legal liability, which is to be determined by domestic law in each jurisdiction.⁵⁶ Nevertheless, subsequent guidance has emphasised that national liability regimes should clearly define the standards of management and supervision expected of different companies within a group structure, particularly in relation to the different stages of the human rights due diligence process, taking into account each entity's role and position within the group.⁵⁷ Within this framework, scholars have argued that human rights due diligence can provide a means for companies to demonstrate that they have exercised reasonable care in addressing harms linked to the operations of their subsidiaries or business partners, thereby serving as a defence for companies accused of breaching their duty of care.⁵⁸ Moreover, it has been suggested that imposing a legal duty on parent companies to conduct human rights due diligence, aligned with international standards with the possibility of civil liability where the parent exercises control over the entity causing the harm, could increase legal certainty regarding liability within corporate groups.⁵⁹

In this way, due diligence does not replace the principle of separate legal personality but reveals an evolution in how responsibility and liability are understood within corporate

⁵⁰ Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers [2017] OJ L130/1.

⁵¹ French Duty of Vigilance Law (n 10).

⁵² German Supply Chain Act (n 11).

⁵³ Corporate Sustainability Due Diligence Directive (n 12).

⁵⁴ See: Maria-Therese Gustafsson, Almut Schilling-Vacafloer, and Andrea Lenschow, 'Foreign Corporate Accountability: The Contested Institutionalisation of Mandatory Due Diligence in France and Germany' (2023) 17(4) *Regulation & Governance* 891; David Weihrauch, Sophia Carodenuto, and Sina Leipold, 'From Voluntary to Mandatory Corporate Accountability: The Politics of the German Supply Chain Due Diligence Act' (2023) 17(4) *Regulation & Governance* 909; Lars Feld, 'Ich schaue mit großem Entsetzen auf das Lieferkettengesetz' (*Frankfurter Allgemeine Zeitung*, 26 August 2020) <<https://www.faz.net/aktuell/wirtschaft/wirtschaftsweiser-feld-kritisiert-lieferkettengesetz-16921530.html>> accessed 8 August 2025.

⁵⁵ Bernhard Reinsberg and Christoph Volbert Steinert, 'The French Duty of Vigilance Law: Reconciling Human Rights and Firm Profitability' (2025) 32(6) *Review of International Political Economy* 1, 23.

⁵⁶ UNGPs (n 38) Principle 12 commentary.

⁵⁷ OHCHR, *Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse: Explanatory Notes for Guidance* UN Doc A/HRC/32/19/Add.1 (10 May 2016) para 12.3.

⁵⁸ Claire Bright, Axel Marx, Nina Pineau, and Jan Wouters, 'Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Global Value Chains?' (2020) 22 *Business and Politics* 667, 691.

⁵⁹ Nicolas Bueno and Claire Bright, 'Implementing Human Rights Due Diligence through Corporate Civil Liability' (2020) 69 *International and Comparative Law Quarterly* 789, 816.

groups. By requiring parent companies to identify and mitigate risks arising from the activities of entities under their control or influence, due diligence highlights the preventive focus of corporate responsibility and complements existing fault-based liability mechanisms within group structures. This development signals a gradual movement from *ex post* liability to *ex ante* responsibility, without disregarding separate legal personality and limited liability as the foundational principles of corporate law. Whether this evolution ultimately challenges or reinforces the traditional framework of liability within corporate groups depends on how these due diligence obligations are implemented and enforced in national legislation. The next section turns to France and Germany, where due diligence obligations have been incorporated into national law, to examine how this shift has taken shape in practice.

4 COMPARATIVE ANALYSIS: FRANCE AND GERMANY

4.1 FRANCE-DUTY OF VIGILANCE LAW

The French duty of vigilance law was developed through close cooperation between civil society organisations, trade unions, academics, lawyers, and members of parliament.⁶⁰ A first proposal was ready by November 2013, but it faced strong opposition from business groups, leading to a three-and-a-half-year debate between the National Assembly and the Senate.⁶¹ The law was ultimately adopted on 21 February 2017 in a modified form. France thus became the first EU Member State to introduce binding human rights and environmental due diligence obligations for large companies, requiring them to prevent serious human rights abuses and environmental harm throughout their global value chains.⁶² The law's scope extends beyond corporation's domestic operations, indicating an attempt to address global risks and to align corporate responsibility with the capacity of parent companies to exercise influence across their group structure.

Under Article 1 of the law, companies incorporated in France that meet the employee thresholds must establish and implement an effective vigilance plan. The obligation applies to companies with at least 5,000 employees in France, including subsidiaries, or 10,000 employees worldwide. The plan must contain reasonable measures to identify risks and prevent severe violations of human rights and fundamental freedoms, serious bodily injury, and environmental or health damage. It covers harm resulting directly or indirectly from the company's own operations, its subsidiaries and from those of subcontractors or suppliers with whom it maintains an established commercial relationship. The law therefore places the parent company at the centre of a risk-prevention system that extends across its corporate group and value chain. The vigilance plan must include five elements: a risk mapping to identify and prioritise risks, procedures to assess the situation of subsidiaries, subcontractors, and suppliers, preventive and mitigation actions, an alert mechanism for reporting risks, and a system to monitor and evaluate the measures taken. By requiring

⁶⁰ Claire Bright, 'Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: Is the French Duty of Vigilance Law the Way Forward?' (2020) EUI MWP Working Paper 2020/01, 4 <<https://cadmus.eui.eu/entities/publication/e8e92094-23e1-5665-8107-d0860f0ef253>> accessed 10 April 2026.

⁶¹ *ibid.*

⁶² Begüm Kilimcioglu, 'The French Duty of Vigilance Law: A Reference Guide for the Transposition of the Corporate Sustainability Due Diligence Directive' (2025) 43 *Netherlands Quarterly of Human Rights* 31, 32.

companies to make the plan public in their annual management report and update it regularly, the law embeds due diligence into corporate governance and transform what was previously a voluntary standard into a legal duty of prevention.

The law provides two avenues for enforcement. Parties with a legitimate interest may first send a formal notice to a company alleging noncompliance with its obligations. If the company fails to respond or take action within three months, the claimant may apply to the court for an injunction. This mechanism focuses on the preventive aspect of the duty of vigilance, allowing for stakeholders' intervention before any harm has taken place and encouraging companies to address shortcomings in their vigilance plans. Where harm has already occurred, Article 2 establishes a civil liability regime in which a company that causes damage which could have been avoided through appropriate due diligence is required to provide compensation. Such claims would be decided under Articles 1240 and 1241 of the French civil code which include the general framework of liability.

There have not been many cases brought under the law since it entered into force. Between 2017 and 2024, approximately thirty formal notices and thirteen lawsuits were filed, mostly against France's largest multinationals and some state-owned companies.⁶³ In the first years following its adoption, only a small number of cases resulted in decisions addressing the merits of vigilance plans. In *La Poste*, the court found that the company's vigilance plan failed to adequately address the risk of subcontractors employing undocumented workers.⁶⁴ It ordered improvements to risk mapping, subcontractor assessments, and alert mechanisms in cooperation with trade unions but refrained from requiring any specific measures to combat illegal employment.⁶⁵ The *SNCF* case was dismissed because the claimants had not clearly identified which risks were not included in the plan.⁶⁶ These early cases highlight both the preventive goal and the practical limitations of the duty of vigilance law. While courts have acknowledged the enforceability of the due diligence obligations, they have shown caution in defining their substantive content at this stage of implementation.

Most decisions so far have focused on procedural rather than substantive issues. Early rulings, such as in *Total Uganda*, interpreted these requirements narrowly, often dismissing claims that extended beyond the scope of the formal notice or where companies had issued updated vigilance plans during proceedings.⁶⁷ In June 2024, the Paris court of appeal clarified these procedural rules, confirming that the three-month notice period is intended to allow companies to address possible shortcomings of their plans and that claims may concern a more recent vigilance plan than the one in the notice, preventing companies from avoiding review by issuing new vigilance plans during proceedings.⁶⁸ The *Suez* appeal is particularly

⁶³ CCFD-Terre Solidaire and Sherpa, *Mise à jour 2024 : une opacité persistante et des entreprises toujours sans plan (Radar du devoir de vigilance)*, 10 October 2024) 4–5 <<https://www.amisdela terre.org/IMG/pdf/end-of-the-road-for-tncs-foef-aaf-oct17.pdf>> accessed 9 August 2025.

⁶⁴ Tribunal judiciaire de Paris (1^{re} ch., 4^e sect., pôle social), 5 December 2023, n° RG 21/15827 (*SUD PTT c/ La Poste*).

⁶⁵ *ibid.*

⁶⁶ Tribunal judiciaire de Paris (34^e ch., “Régulation économique, sociale et environnementale”) 13 February 2025, n° RG 24/11283 (*CFDT c/ SNCF*).

⁶⁷ Tribunal judiciaire de Paris (référé), 28 February 2023, n° RG 22/53942 and 22/53943 (*TotalEnergies SE c/ Les Amis de la Terre France et Survie*); Tribunal judiciaire de Paris (référé), 30 November 2021, n° RG 20/10246 (*Comunidad Unión Hidalgo c/ EDF*); Tribunal judiciaire de Paris (référé), 1 June 2023, n° RG 22/07100 (*Les Amis de la Terre France et Survie c/ Suez*).

⁶⁸ Cour d'appel de Paris (ch. 5-12), 18 June 2024, n° RG 23/14348 (*Les Amis de la Terre France et Survie c/*

important for understanding liability within corporate groups. The court of appeal dismissed proceedings on the ground that the wrong entity had been sued.⁶⁹ The summons targeted a subsidiary, whereas the vigilance plan had been prepared and implemented by the parent company.⁷⁰ The court identified the parent as the entity responsible for publishing and implementing the plan, confirming that the duty is assigned to the company that determines and oversees its implementation.⁷¹ This approach aligns liability with the company's capacity to identify and address risks, while also showing how separate legal personality continues to limit access to remedy.

More recently, the Paris court delivered an important decision in *Sherpa et al. v Laboratoires de Biologie Végétale Yves Rocher*.⁷² The court held that the parent company had failed to comply with its obligations under the Duty of Vigilance Law by failing to identify and address the risk of violations of trade union freedom within its Turkish subsidiary. In particular, the court found that the company's vigilance plans for 2017 and 2018 had not adequately assessed the risk of infringements of workers' freedom of association, despite the availability of information indicating such risks. As a result, the court ordered the company to compensate the Petrol-Is trade union and six former employees, while awarding symbolic damages of one euro to the claimant NGOs Sherpa and ActionAid. However, the majority of employees' claims were deemed inadmissible because they had previously signed settlement agreements with the subsidiary in 2019. The ruling is significant as one of the first decisions finding a parent company liable under the Duty of Vigilance Law for failures in its vigilance plan relating to human rights risks within a foreign subsidiary, while also highlighting the procedural barriers that continue to limit access to remedies for affected workers.

4.2 GERMANY-SUPPLY CHAIN ACT

The German Supply Chain Act (*Lieferkettensorgfaltspflichtengesetz*, LkSG) emerged from the gradual shift in Germany from voluntary to mandatory human rights due diligence.⁷³ The Act builds on the framework set out in the UNGPs, translating their soft-law expectations into binding obligations. Germany's 2016 national action plan had initially promoted voluntary implementation, with a review planned to assess progress after several years.⁷⁴ When a 2020 survey revealed that only a small proportion of companies had adopted

TotalEnergies SE (Total – Climate Change); Cour d'appel de Paris (ch. 5-12), 18 June 2024, n° RG 21/22319 (*Comunidad Unión Hidalgo c/ EDF*).

⁶⁹ Cour d'appel de Paris (ch. 5-12), 18 June 2024, n° RG 22/18933 (*Les Amis de la Terre France et Survie c/ Suez*).

⁷⁰ Tribunal judiciaire de Paris (référé), 1 June 2023, n° RG 22/07100 (*Les Amis de la Terre France et Survie c/ Suez*).

⁷¹ Cour d'appel de Paris (ch. 5-12), 18 June 2024, n° RG 22/18933 (*Les Amis de la Terre France et Survie c/ Suez*).

⁷² Tribunal judiciaire de Paris (34e ch.), 12 March 2026, n° RG 22/04017 (*Sherpa et al. c/ Laboratoires de Biologie Végétale Yves Rocher*). See also: Sherpa, 'Workers' rights: The Yves Rocher Group found liable for failing in its duty of vigilance in Türkiye' (*Press Release*, 12 March 2026) <<https://www.asso-sherpa.org/verdict-yves-rocher-turkiye>> accessed 16 March 2026.

⁷³ German Supply Chain Act (n 11) adopted 16 July 2021, entered into force 1 January 2023.

⁷⁴ Federal Government, 'National Action Plan: Implementation of the UN Guiding Principles on Business and Human Rights 2016–2020' (Federal Foreign Office 2016) <<https://www.auswaertiges-amt.de/resource/blob/610714/fb740510e8c2fa4d7217436accc7/nap-wirtschaft-menschenrechte-engl->

meaningful due diligence processes, the government initiated the legislative process that resulted in the adoption of the legislation in June 2021.⁷⁵

The law applies to companies of any legal form that have their central administration, principal place of business, administrative headquarters, statutory seat, or a branch office in Germany, provided they meet the employee threshold [Section 1(1)]. Upon its entry into force on 1 January 2023, the threshold was set at 3,000 employees in Germany, including those posted abroad and employees of German subsidiaries of foreign companies, and was lowered to 1,000 employees from January 2024. In the case of corporate groups, the total number of employees across all German entities is included in the threshold, ensuring that obligations extend to parent companies exercising control over group operations [Section 1(3)]. The law establishes human rights and environmental due diligence obligations, set out in Section 3 and detailed in Sections 4–10, requiring companies to identify, prevent, and mitigate risks to protected legal interests throughout their supply chains. The term ‘supply chain’ includes all products and services, from raw material extraction to delivery to the end customer, both within Germany and abroad. These obligations apply to a company’s own operations, those of its direct suppliers, and, in certain circumstances, its indirect suppliers. In the latter case, duties are triggered only when the company has ‘substantiated knowledge’ of potential violations, which then requires it to conduct a risk analysis and adopt preventive or remedial measures [Section 2(5)-(8) and 9(3)].

The law incorporates a set of human rights and environmental standards drawn from international conventions listed in its annex. These include prohibitions on child labour, forced labour, slavery, breaches of occupational health and safety law, and restrictions on freedom of association, as well as environmental risks such as the use of mercury in manufacturing and the improper disposal of hazardous waste. It conceptualises risk as a sufficient probability that such a violation may occur, which in turn triggers a company’s preventive obligations. Where a violation has already taken place or is imminent, the company must take immediate remedial action. The due diligence process under the Act is comprehensive, with obligations to establish a risk management system, designate a responsible person, conduct regular risk analyses, adopt a policy statement, and implement preventive and remedial measures both in the company’s own operations and across its supply chain. It also requires the establishment of a complaints mechanism, due diligence for indirect suppliers where necessary, and documentation and public reporting on compliance. Annual reports must be published on the company’s website and remain accessible for seven years, ensuring a degree of transparency that complements the preventive focus of the regime.

Enforcement of the Act is through the Federal Office for Economic Affairs and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*, BAFA), which monitors compliance by requesting information, conducting on-site inspections, and reviewing documentation [Section 14]. Where a breach is established, BAFA may order remedial measures and impose administrative fines for companies with an annual turnover exceeding

[data.pdf](#)> accessed 11 August 2025.

⁷⁵ See: German Federal Foreign Office, ‘Monitoring the National Action Plan for Business and Human Rights (NAP)’ (13 October 2020) <[https://www.auswaertiges-amt.de/de/aussenpolitik/themen/aussenwirtschaft/wirtschaft-und-menschenrechte/monitoring-
nap/2131054](https://www.auswaertiges-amt.de/de/aussenpolitik/themen/aussenwirtschaft/wirtschaft-und-menschenrechte/monitoring-
nap/2131054)> accessed 11 August 2025.

€400 million up to two per cent of global turnover [Section 24]. Companies may also be excluded from public procurement for up to three years [Section 22]. Unlike the French law, the German supply chain act does not establish civil liability and enforcement is purely administrative. The act also does not provide affected individuals with a direct right to bring action before the courts. Instead, it creates an administrative complaints procedure, allowing affected persons, trade unions, and NGOs to submit complaints to BAFA, including on behalf of others. Upon receipt, BAFA must examine whether the company has breached its obligations and take appropriate action. This administrative model promotes consistency in enforcement by entrusting a single authority with oversight, but it also limits access to justice for affected individuals and reduces the deterrent effect that civil liability could provide.

According to BAFA's 2023 accountability report, the authority carried out 492 inspections, 406 of which were risk-based and 86 were triggered by specific events, and received 30 complaints concerning 40 companies.⁷⁶ Some complaints were dismissed because the alleged issues fell outside BAFA's capacity under the legislation, for instance where companies did not meet the employee threshold or the claims were unrelated to the covered human rights or environmental obligations. Others were rejected for insufficient substantiation, while several resulted in preventive or remedial measures.⁷⁷ Notably, BAFA did not impose any fines in 2023, instead focusing on encouraging companies to improve their internal procedures.⁷⁸ This early enforcement pattern suggests that the authority's initial approach has been primarily educational rather than punitive, aimed at fostering compliance and establishing interpretive guidance on the act's new due diligence requirements.

In May 2025, the German government announced in its coalition agreement an intention to abolish the supply chain act as part of a broader effort to reduce regulatory burdens.⁷⁹ The agreement itself has no legal effect, as repealing a law requires the introduction of a bill and completion of the full legislative process. However, its signal led a political shift in Germany's approach to mandatory human rights due diligence. On 2 September 2025, the government published a draft bill proposing amendments to the legislation. Rather than a full repeal, the proposal seeks to reduce the administrative and liability burden on companies during the transition period preceding the transposition of the CSDDD.⁸⁰ The draft removes the obligation to submit reports to BAFA and to publish them online, while companies would still be required to document their due diligence

⁷⁶ Federal Office for Economic Affairs and Export Control, 'Accountability Report 2023 on the German Supply Chain Due Diligence Act' (BAFA 2023) 11–12, 15–16 <https://www.bafa.de/SharedDocs/Downloads/EN/Supply_Chain_Act/accountability_report_2023.html> accessed 11 August 2025.

⁷⁷ *ibid.* 17.

⁷⁸ *ibid.*

⁷⁹ Due Diligence Design, 'Germany's New Government Signs Coalition Agreement Including Plan to Repeal Supply Chain Due Diligence Act' (5 May 2025) <<https://duediligence.design/germanys-new-government-signs-coalition-agreement-including-plan-to-repeal-supply-chain-due-diligence-act/>> accessed 11 August 2025.

⁸⁰ Due Diligence Design, 'German Government Published Draft Bill to Remove Reporting Obligation' (24 September 2025) <<https://duediligence.design/german-government-published-draft-bill-to-remove-reporting-obligation/>> accessed 31 October 2025. See also *Entwurf eines Gesetzes zur Änderung des Lieferkettensorgfaltspflichtengesetzes* (Draft Bill) <https://www.bmas.de/SharedDocs/Downloads/DE/Gesetze/Regierungsentwuerfe/reg-gesetz-zur-aenderung-des-lieferkettensorgfaltspflichtengesetzes.pdf?__blob=publicationFile&v=1> accessed 31 October 2025.

processes internally. It also limits fines to serious breaches concerning preventive or remedial duties, excluding violations related to risk analysis and environmental risks. The government estimates that these changes would reduce annual compliance costs by approximately EUR 4.1 million. The bill must still pass through Parliament before entering into force, but its publication reflects a shift in Germany's regulatory direction and raises questions about the continuity and coherence of corporate due diligence obligations across the EU.

The proposed amendments to the German supply chain act could have important implications for corporate groups. Under the existing framework, employee thresholds are calculated across all German entities within a group, and the parent company bears responsibility for compliance where it exercises decisive influence [Section 1(3) and Section 2(6)]. This approach recognises that monitoring human rights and environmental risks is most effective when conducted at group level. By contrast, the draft bill's reduction of reporting obligations and limitation of liability risks weakening this group-wide accountability. Without the requirement to disclose due diligence measures publicly or to maintain comprehensive risk assessments, the incentive for parent companies to monitor the activities of their subsidiaries and supply chain may decline. This shift marks a move away from the preventive and transparent model that forms the basis of both the German and French frameworks, potentially narrowing the law's capacity to drive behavioural change within corporate groups.

National due diligence laws in Europe are at least indirectly challenging the structural limits of traditional corporate liability. Although they differ in scope, enforcement mechanisms, and legal effects, these regimes share a common goal to extend corporate responsibility beyond individual legal entities and attach obligations to companies that exercise control within a group. In doing so, they begin to redefine the role of parent companies in relation to their subsidiaries and global value chains, not by disregarding separate legal personality, but by aligning responsibility with the capacity to control and monitor. However, these national frameworks have also resulted in a fragmented legal landscape with different procedures and enforcement mechanisms. The EU CSDDD seeks to address this fragmentation by establishing a common baseline of obligations. The next section examines whether the Directive provides a coherent and effective framework for allocating responsibility within corporate groups and how it compares to existing national approaches.

5 THE EU DIRECTIVE AND THE CHALLENGE OF HARMONISATION

The CSDDD was developed as part of the EU's broader effort to move beyond fragmented national approaches and establish a harmonised legal framework for responsible business conduct within the internal market.⁸¹ In 2021, the European Parliament called for legislation introducing mandatory due diligence obligations, and the European Commission followed with a formal proposal in February 2022.⁸² The proposal aimed to harmonise Member State

⁸¹ Corporate Sustainability Due Diligence Directive (CSDDD) (n 12).

⁸² European Parliament, 'European Parliament Resolution of 10 March 2021 with Recommendations to the Commission on Corporate Due Diligence and Corporate Accountability' [2021] OJ C385/2; European Commission, 'Proposal for a Directive of the European Parliament and of the Council on Corporate

approaches by imposing obligations on large companies to identify, prevent, and address human rights and environmental risks throughout their operations and value chains. Over the course of the legislative process, several provisions were amended to accommodate Member State concerns about the scope of the directive and the potential administrative burden on companies. Following the proposal, both the Parliament and the Council adopted their own positions, each introducing further modifications to the draft text.⁸³ A provisional political agreement was reached in December 2023, but the adoption process was delayed in early 2024 when several Member States, including Germany and Italy, withdrew support over competitiveness and subsidiarity concerns.⁸⁴ After further negotiations, a revised text was endorsed by the Council's Committee of Permanent Representatives (COREPER) in March 2024 and subsequently approved by the European Parliament in April 2024. The legislative process itself reflects the underlying tension between the EU's aim to establish a consistent due diligence framework and the desire of Member States to preserve flexibility in implementation, a balance that continues to influence the directive.

The directive applies to EU companies with more than 1,000 employees and a net worldwide turnover of at least EUR 450 million in the preceding financial year, as well as to non-EU companies generating at least EUR 450 million within the EU [Article 2(1) and(2)]. These thresholds must be met for two consecutive financial years and apply at group level, meaning that an ultimate parent company falls within scope where the group as a whole satisfies the criteria [Article 2(3) and (5)]. The obligations cover a company's own operations, those of its subsidiaries, and the activities of direct and indirect business partners within its chain of activities [Article 1(1)(a)]. The chain of activities includes upstream partners involved in producing goods or providing services for the company and downstream partners engaged in distribution, transport, or storage of its products. It excludes certain export-controlled goods and, as recital 26 clarifies, downstream service-related activities, including those of financial institutions. The Directive's focus on the ultimate parent company as the entity responsible for compliance also raises concerns about potential regulatory arbitrage within the EU. Because the CSDDD is a minimum harmonisation instrument under Article 4, Member States keep discretion in transposing its provisions, which may lead to uneven national standards, which in turn could lead to corporate groups to locate or restructure their parent companies strategically in jurisdictions with less demanding due diligence requirements.⁸⁵ While implementation is still at an early stage, such differences could weaken the Directive's harmonising effect and limit its ability to ensure consistent implementation

Sustainability Due Diligence and Amending Directive (EU) 2019/1937 COM' (2022) 71 final.

⁸³ European Parliament, 'Amendments Adopted by the European Parliament on 1 June 2023 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' P9_TA(2023)0209 [2023]; Council of the European Union, 'General Approach on the Proposal for a Directive on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937' 15024/1/22 REV 1 [2023].

⁸⁴ European Parliament, 'Corporate Due Diligence Rules Agreed to Safeguard Human Rights and Environment' (5 December 2023) <<https://www.europarl.europa.eu/news/en/press-room/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment>> accessed 13 August 2025; Alessandra Silveira Giacchi, 'The Newly-Adopted Corporate Sustainability Due Diligence Directive: An Overview of the Lawmaking Process and Analysis of the Final Text' (2024) 25 ERA Forum 29, 34–35.

⁸⁵ Karsten Engsig Sørensen, 'Applying CSDDD in Corporate Groups' (2025) Nordic & European Company Law Working Paper No 25-03, 134.

across the Member States.

Article 5 of the Directive requires Member States to ensure that companies conduct risk-based human rights and environmental due diligence as laid down in Articles 7 to 16. This involves integrating due diligence into corporate policies and risk management systems, identifying and assessing actual or potential adverse impacts, and engaging meaningfully with stakeholders. Companies must identify and assess actual and potential adverse impacts connected to their operations, subsidiaries, and business partners in the chain of activities, using appropriate measures to map and evaluate risks. Where all risks cannot be addressed simultaneously, Article 9 permits prioritisation according to severity and likelihood. Additionally, companies must take measures to prevent or mitigate potential adverse impacts and to bring actual impacts to an end or minimise their extent, considering the source of the harm, the relationship to the company, and their ability to influence business partners. In this regard, appropriate measures may include stakeholder engagement, contractual assurances, capacity building, cooperation in industry initiatives, and, as a last resort, ending the business relationship.

Article 6 of the Directive clarifies how due diligence obligations function within corporate groups. It allows in-scope subsidiaries to delegate their obligations to an in-scope parent company, usually the ultimate parent, provided that the parent can ensure effective compliance. This mechanism is intended to avoid overlapping due diligence processes across entities within the same group and to concentrate responsibility at the company best positioned to oversee risks across operations and subsidiaries.⁸⁶ The delegation is dependent on cooperation and information sharing between the parent and subsidiary, as required under Article 6(2)(a) to (e). This means that while the parent company may take primary responsibility for compliance, effective implementation still depends on active engagement and information exchange within the group structure.

Once due diligence systems are established, the Directive requires companies to address actual and potential harms. Under Article 12, companies that cause or contribute to an adverse impact must provide remediation, while those indirectly linked to the harm must use their leverage to enable it. Article 13 emphasise the role of meaningful stakeholder engagement and accessible complaints mechanisms, providing an avenue for affected persons, trade unions, and NGOs to raise concerns. Together, these provisions strengthen the link between due diligence and access to remedy, laying the foundation for the Directive's enforcement mechanisms.

The Directive establishes a dual enforcement regime combining administrative supervision and civil liability. Member States must designate one or more supervisory authorities with powers to monitor compliance with the obligations adopted by national law with regards to the provisions of the directive [Article 24(1)]. Where breaches are found, authorities may impose penalties proportionate to the company's global turnover set at no less than five per cent and may exclude companies from public procurement. Additionally, Article 29 provides that persons suffering damage as a result of a company's intentional or negligent failure to prevent or end adverse impacts must have access to a civil liability regime. Together these mechanisms turn due diligence duties into enforceable standards by connecting administrative monitoring with potential liability for non-compliance.

⁸⁶ Engsig Sørensen (n 85) 142.

Nevertheless, the current version of the Directive is still subjected to ongoing political and legislative debate. In early 2025, the Commission proposed a set of amendments through the Omnibus initiative to simplify the EU's sustainability framework and reduce compliance burdens.⁸⁷ The proposal removes the harmonised civil liability regime in Article 29, leaving Member States to decide whether and how to provide for liability under national law. Additionally, it removes the EU-level minimum penalty requirement, introduces a stronger risk-based approach to due diligence allowing companies to prioritise direct business partners, and limits stakeholder participation to employees, workers, trade unions, and directly affected communities. There is also greater flexibility for companies to continue business relationships despite serious risks, provided that credible mitigation plans exist. Finally, the implementation timeline is delayed by one year, with obligations for large companies postponed to 2028.

The Council's subsequent mandate went even further by proposing a higher applicability threshold and shifting towards a more flexible, risk-based approach to due diligence.⁸⁸ In October 2025, the European Parliament rejected the Legal Affairs Committee's proposal for simplified reporting rules, with a revised text scheduled for plenary discussion in November.⁸⁹ Following further negotiations, the Parliament approved a provisional agreement with the Council in December 2025 introducing simplified sustainability reporting and due diligence requirements.⁹⁰ The Council subsequently gave its final approval in February 2026, limiting the CSDDD to companies with more than 5,000 employees and EUR 1.5 billion in turnover.⁹¹ The revised framework also removes the obligation for companies to adopt climate transition plans, caps penalties at 3% of a company's net worldwide turnover, postpones the transposition deadline to 26 July 2028, and requires companies to comply with the due diligence obligations from July 2029.⁹² These developments reveal the continuous tension between the EU's objective of strengthening corporate sustainability obligations and the political push to reduce regulatory burdens in order to enhance European competitiveness.

⁸⁷ European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2024/1760, (EU) 2024/1762, (EU) 2024/1761, (EU) 2024/1763 and (EU) 2024/1764 as regards their alignment to the requirements of Union law and reduction of administrative burdens' COM(2025) 81 final, 1.

⁸⁸ Council of the European Union, 'Simplification: Council agrees position on sustainability reporting and due diligence requirements to boost EU competitiveness' (*Council Press Release*, 23 June 2025) <<https://www.consilium.europa.eu/en/press/press-releases/2025/06/23/simplification-council-agrees-position-on-sustainability-reporting-and-due-diligence-requirements-to-boost-eu-competitiveness/>> accessed 13 August 2025.

⁸⁹ European Parliament, 'MEPs to vote on simplified sustainability and due diligence rules in November' (*Press Release*, 22 October 2025) <<https://www.europarl.europa.eu/news/en/press-room/20251016IPR30956/meps-to-vote-on-simplified-sustainability-and-due-diligence-rules-in-november>> accessed 3 November 2025.

⁹⁰ European Parliament, 'Simplified sustainability reporting and due diligence rules for businesses' (*Press Release*, 16 December 2025) <<https://www.europarl.europa.eu/news/en/press-room/20251211IPR32164/simplified-sustainability-reporting-and-due-diligence-rules-for-businesses>> accessed 05 March 2026.

⁹¹ Council of the European Union, 'Council signs off simplification of sustainability reporting and due diligence requirements to boost EU competitiveness' (*Council Press Release*, 24 February 2026) <<https://www.consilium.europa.eu/en/press/press-releases/2026/02/24/council-signs-off-simplification-of-sustainability-reporting-and-due-diligence-requirements-to-boost-eu-competitiveness/>> accessed 5 March 2026.

⁹² *ibid.*

The CSDDD can be viewed as the EU's effort to move beyond fragmented national approaches and integrate due diligence obligations into the broader framework of European company law. By extending these obligations across subsidiaries and value chains, it signals a reform in how oversight and compliance operate within corporate groups, placing responsibility with the company that is in the position to exercise control. Even if the final text leaves civil liability to national discretion, the Directive will make liability more likely by introducing an obligation to conduct due diligence.⁹³ This is a gradual shift that would not replace or disregard the principle of separate legal personality but reduces its insulating effect by linking legal expectations more closely to the capacity to influence and control. Considering the evolving soft law framework and legislative examples in France and Germany, the Directive reflects an emerging European approach in which parent companies are increasingly expected to manage group-wide risks and may face consequences when they fail to do so. The next section situates this development within the broader debate on how liability in corporate groups is being redefined across Europe.

6 RETHINKING GROUP LIABILITY IN EUROPEAN COMPANY LAW

Considering the developments in France, Germany, and the EU, due diligence legislation is gradually reshaping how responsibility is understood within corporate groups. While these frameworks do not fundamentally challenge the principle of separate legal personality, they allocate obligations in a way that reflects how corporate groups operate in practice. Rather than holding parent companies automatically liable for the acts of their subsidiaries, they impose preventive duties on parent companies to manage and oversee risk where they have the capacity and influence to do so. This is evident across all of the examined frameworks. According to French duty of vigilance case law, responsibility lies with the company that designs and implements the vigilance plan.⁹⁴ The German supply chain act also requires parent companies to establish appropriate and effective risk management within their own business area, which also extends to subsidiaries where the parent exercises decisive influence.⁹⁵ At EU level, the CSDDD builds on the same principle by allowing parent companies to fulfil due diligence obligations on behalf of their subsidiaries, provided there is sufficient coordination and access to information in Article 6. These frameworks indicate a shift from a formal separation of entities to a more functional understanding of responsibility, grounded in the capacity to influence and control risk across the group.

This shift suggests a rather slow redefinition of how liability and fault are understood within corporate groups. Traditionally, liability depended on showing direct wrongdoing or actual control through doctrines such as veil piercing, agency, or duty of care. The emerging due diligence regimes are more preventive and process based. They require companies to show that they have taken steps to identify, prevent, or mitigate risks, even where no harm

⁹³ Engsig Sørensen (n 85) 163.

⁹⁴ *Suez case* (n° RG 22/18933).

⁹⁵ Federal Office for Economic Affairs and Export Control (BAFA), 'FAQ on the Supply Chain Due Diligence Act (LkSG)' (2024), question 4.10 <<https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/FAQ/faq.html#doc3a956fcc-c35c-4655-a96a-6a39a1a0a2cbodyText3>> accessed 18 August 2025.

has yet occurred. In this way, companies are responsible to take action before any actual damage or harm occurs, which can lead to another layer of liability if they fail to fulfil their obligations. This form of liability would depend less on the formal relationship between entities and more on whether the company in a position of control has met its obligations. At the same time, the principle of separate legal personality continues to define the boundaries of corporate responsibility. Legislators, courts, and public authorities have avoided extending liability purely on the basis of group structure or economic control so far. The French and German frameworks both confirm that, in principle, each company remains responsible for its own obligations unless the parent company exercises decisive influence or implements a group-wide due diligence policy. The EU directive adopts a similar approach, permitting subsidiaries to delegate due diligence to a parent company only where the parent can ensure compliance. This would preserve the formal autonomy of each legal entity while recognising that in case of coordination and influence parent companies are better positioned to manage risks within the context of corporate groups. This is not necessarily a departure from foundation of company law but rather an adaptation to reflect how corporate groups function in practice.

These developments show that the focus of liability in corporate groups is slowly moving from a formal approach based on legal structure to one that considers how decisions are made and risks are managed in practice. Due diligence obligations do not make parent companies directly liable for the acts of their subsidiaries, but they require them to take active steps to prevent and address risks within their sphere of control. As a result, due diligence links the company's organisational capacity with its legal responsibility. However, the relationship between these new duties and traditional forms of liability remains uncertain. While these preventive due diligence obligations are now being embedded in law, the legal consequences of failing to meet them are still limited. Enforcement largely depends on administrative supervision, with claims of civil liability being either unavailable or rarely successful. Additionally, failure to meet due diligence obligations can indirectly serve as evidence of negligence in tort claims. This shows that although corporate responsibility is expanding in scope, the legal framework still falls short of establishing a clear and consistent model of group liability.

At the same time, the legal framework of due diligence in Europe is still developing, and its implications for liability are yet to be determined. While these instruments have moved corporate responsibility beyond voluntary standards, they do not yet establish a uniform or enforceable model of group liability. The French, German, and EU frameworks share a common understanding of due diligence obligations but differ in how these obligations are enforced, resulting in a fragmented enforcement landscape. The EU's effort to create a level playing field through the CSDDD has also raised concerns about competitiveness and remains subject to ongoing negotiation. Finally, the extent to which these duties will influence future interpretations of fault and control will depend on how national authorities and courts apply them in practice. For now, due diligence legislation represents an important step towards embedding corporate responsibility in law, even if its effect on liability within corporate groups remains limited.

7 CONCLUSION

This paper has examined whether mandatory due diligence obligations challenge or reinforce the traditional liability framework governing corporate groups. While the principles of separate legal personality and limited liability remain core features of corporate law, the analysis suggests that recent developments are slowly reshaping how responsibility is understood within the context of corporate groups. The due diligence frameworks in France, Germany, and at EU level do not impose liability solely based the group's legal structure and the formal separation between different entities within the group. Instead, they assign obligations to parent companies where they have the capacity to oversee and influence risk. This reflects a more functional understanding of responsibility that links legal duties to the practical exercise of influence and control, even as the formal legal separation between group entities remains in place.

At the same time, these frameworks do not lead to a new model of group liability. The French and German regimes, as well as the EU directive, continue to operate within the confines of the company law framework, which mostly maintain the separate legal personality of each entity within the group. While parent companies might take over due diligence obligations from their subsidiaries, this is only the case if certain conditions such as sufficient coordination and information sharing between the two entities are met. Moreover, enforcement remains largely administrative, with civil liability cases being rare and mostly unsuccessful. In this sense, the shift in responsibility does not translate into a similar shift in liability from subsidiaries to parent companies, nor does it provide a clear or consistent basis for liability within group structures.

In this context, due diligence legislation does not replace the traditional liability framework, but neither does it leave it entirely unchanged. Instead, it introduces an additional layer of preventive obligations that may increase the likelihood of liability for parent companies in certain circumstances. Whether these developments will lead to a more coherent understanding of corporate group responsibility and liability remains uncertain and will depend on how domestic courts and authorities interpret and apply these obligations in the coming years.

LIST OF REFERENCES

Blumberg P I, 'Limited Liability and Corporate Groups' (1986) 11 *Journal of Corporation Law* 573

— —, *The Multinational Challenge to Corporation Law: The Search for a New Corporate Personality* (Oxford University Press 1993)

DOI: <https://doi.org/10.1093/oso/9780195070613.001.0001>

Bright C, 'Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: Is the French Duty of Vigilance Law the Way Forward?' (2020) EUI MWP Working Paper 2020/01

DOI: <https://doi.org/10.2139/ssrn.3262787>

Bright C, Marx A, Pineau N, and Wouters J, 'Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Global Value Chains?' (2020) 22(4) *Business and Politics* 667

DOI: <https://doi.org/10.1017/bap.2020.15>

Bueno N and Bright C, 'Implementing Human Rights Due Diligence through Corporate Civil Liability' (2020) 69(4) *International & Comparative Law Quarterly* 789

DOI: <https://doi.org/10.1017/S0020589320000305>

Ciacchi S, 'The Newly-Adopted Corporate Sustainability Due Diligence Directive: An Overview of the Lawmaking Process and Analysis of the Final Text' (2024) 25 *ERA Forum* 29

DOI: <https://doi.org/10.1007/s12027-024-00791-y>

Conac P-H, 'National Report on France' in Manóvil R M (ed), *Groups of Companies: A Comparative Law Overview* (Springer International Publishing 2020) 87

DOI: https://doi.org/10.1007/978-3-030-36697-1_3

Gustafsson M-T, Schilling-Vacaflor A, and Lenschow A, 'Foreign Corporate Accountability: The Contested Institutionalisation of Mandatory Due Diligence in France and Germany' (2023) 17(4) *Regulation & Governance* 891

DOI: <https://doi.org/10.1111/rego.12498>

Hansmann H and Kraakman R, 'The End of History for Corporate Law' (2001) 89 *Georgetown Law Journal* 439

DOI: <https://doi.org/10.2139/ssrn.204528>

Harper Ho V, Berger-Walliser G, and Chambers R, 'Toward Corporate Group Accountability' in Petrin M and Witting C (eds), *Research Handbook on Corporate Liability* (Edward Elgar 2023)

DOI: <https://doi.org/10.4337/9781800371286.00025>

Hudson A, 'The Salomon Principle' in *Understanding Company Law* (3rd edn, Routledge 2025)

DOI: <https://doi.org/10.4324/9781003536505>

Kilimcioglu B, 'The French Duty of Vigilance Law: A Reference Guide for the Transposition of the Corporate Sustainability Due Diligence Directive' (2025) 43 *Netherlands Quarterly of Human Rights* 31

DOI: <https://doi.org/10.1177/09240519251318136>

Muchlinski P T, 'Multinational Group Liability and Directors' Duties' in *Multinational Enterprises and the Law* (3rd edn, Oxford University Press 2021)

DOI: <https://doi.org/10.1093/law/9780198824138.003.0008>

Mares R, 'Liability within Corporate Groups: Parent Companies' Accountability for Subsidiary Human Rights Abuses' in Deva S and Birchall D (eds), *Research Handbook on Human Rights and Business* (Edward Elgar 2020)

DOI: <https://doi.org/10.4337/9781786436405.00031>

Mock S, 'National Report on Germany' in Manóvil R M (ed), *Groups of Companies. Ius Comparatum – Global Studies in Comparative Law*, vol 43 (Springer 2020)

DOI: https://doi.org/10.1007/978-3-030-36697-1_13

Olaerts M, 'National Report on the Netherlands' in Manóvil R M (ed), *Groups of Companies: A Comparative Law Overview* (Springer 2020)

DOI: https://doi.org/10.1007/978-3-030-36697-1_15

Petrin M and Choudhury B, 'Group Company Liability' (2018) 19(4) *European Business Organization Law Review* 771

DOI: <https://doi.org/10.1007/s40804-018-0121-7>

Reinsberg B and Steinert C V, 'The French Duty of Vigilance Law: Reconciling Human Rights and Firm Profitability' (2025) 1 *Review of International Political Economy* 23

DOI: <https://doi.org/10.1080/09692290.2025.2519189>

Smit L, Bright C and McCorquodale R (et al), 'Study on Due Diligence Requirements Through the Supply Chain' (European Commission 2020)

DOI: <https://doi.org/10.2838/39830>

Sørensen K E, 'Applying CSDDD in Corporate Groups' (2025) Nordic & European Company Law Working Paper No 25-03 134

DOI: <https://doi.org/10.2139/ssrn.5200102>

Weihrauch D, Carodenuto S and Leipold S, 'From Voluntary to Mandatory Corporate Accountability: The Politics of the German Supply Chain Due Diligence Act' (2023) 17(4) Regulation & Governance 909

DOI: <https://doi.org/10.1111/rego.12501>

Witting C A, 'Structuring of Corporate Group Relations' in Witting C A, *Liability of Corporate Groups and Networks* (Cambridge University Press 2018)

DOI: <https://doi.org/10.1017/9781139626828.003>