

## **How the EU Sustainability Due Diligence Directive Could Reshape Corporate America**

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One of the most important developments in corporate governance is the growing divide between the US and the EU on issues of corporate social responsibility. The starkest example of this divide comes from the new EU Directive on Corporate Sustainability Due Diligence (CS3D). The Directive holds large corporations legally accountable for how they protect numerous human rights and environmental issues, such as forced labor, collective bargaining, biodiversity, and pollution. In fact, companies are required to prevent and remediate these social and environmental harms not just in their own operations, but also in the operations of their subsidiaries and even their suppliers and distributors. Importantly, the CS3D directly applies also to American corporations that generate significant revenues in the European market. The stakes of understanding how the Directive will be implemented and enforced outside the EU therefore cannot be higher. This Article examines the question of the CS3D's applicability to US companies and makes three contributions.

First, the Article delineates the core requirements of the CS3D, and its territorial outreach. The upshot is that most large American corporations are affected by the Directive. But the Directive does not mandate specific corporate conduct or expect companies to guarantee outcomes. Instead, the Directive requires each company to design a due diligence process that fits its specific circumstances. Such a regulatory regime runs the risk of turning into a tick-box exercise, without affecting real change in corporate behavior. This is where the second contribution of the Article comes in, examining whether directors and officers could face personal liability if their company fails to comply in earnest with the Directive's requirements. Here the Article spotlights the interplay between the revamped oversight duty doctrine in the US and the CS3D. The main point is that the CS3D significantly increases directors' exposure to failure-of-oversight claims. Finally, the Article explains how the unique combination of the EU's ambitious regulation and the US's robust private enforcement landscape could reshape the way that American corporations are conducting business across the globe.