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DUE DILIGENCE

BEYOND COMPLIANCE WITH THE LAW



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Pogust Goodhead and
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for Collective Justice (ILAJUC)

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RESEARCH AND AUTHORSHIP

Jaciele Davi Neto
Jessica Pineda
Lavinia Spieß
Matthew Hunt
Sarah Voulaz
Tacy Matias Correia
Elisa Mousinho Gomes Carvalho Silva
Leonardo Machado
Matteus Carvalho Ferreira

GRAMMAR CHECK

Andreia Fernandes Costa

GRAPHIC DESIGN AND LAYOUT

Breno Crispino Lima

PROOFREADING

Ana Carolina Salomão
Caio Borges
Ciro Brito
Luísa Luz de Sousa

TEXT

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ENGLISH TRANSLATION

Gustavo Alexandria

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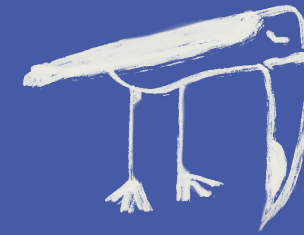
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PRESENTATION



Doing business, buying and selling, communicating, and moving around is no longer the same as it was at the beginning of commercial operations. If in the beginning, the time required for extraction, manufacture and marketing of goods and services was too long and had no protection of human rights or concern for the sustainability of natural resources. Nowadays we can say that we have almost completely overcome the practical obstacles of extraction, production, marketing of goods and provision of services. However, despite huge technological advances over the years, basic rights are still violated, and preventable environmental degradation still takes place.

In order to guarantee a balanced environment for present and future generations as well as the protection of human rights within the business activity, it is essential to analyze the national and international context, taking into account its nuances and specificities. This will enable to identify the gaps related to monitoring, check business activity transparency, as well as what accountability and mitigation measures are being adopted.

In this context, **the concept of DUE DILIGENCE** arises, which translates into the diligent practice of companies in identifying, preventing, mitigating and stopping potential and actual damage that their business activity might cause, not only individually but also in the supply and value chain that may be related to socio-environmental impacts.

In this regard, due diligence is in line with the global trend that requires large companies to adopt, in their strategic planning, the Sustainable Development Goals (SDGs), which are part of the United Nations 2030 Agenda with guidelines both for companies and for countries when issuing regulation.

Aware of this situation, the Latin American Institute for Collective Justice (ILAJUC) in partnership with the Institute for Climate and Society (ICS) and the law firm Pogust Goodhead made this booklet to explore and present the new global demands in due diligence concerning human rights, environment, and climate protection. emphasizing the case of Brazil, a Latin American country that has a significant presence in the international market.

BUSINESS ACTIVITY AND ITS CHAINS

1





In order to reach the shelves and the homes of consumers, a product requires a series of activities, inputs and services that belong to one or several chains. This means that there is a chain of activity of legal entities and natural persons acting under the management of a central legal person - the "parent company", responsible for the final product or service.

This set of activities that involves getting a product or service from the supplier to the customer, which is usually the central company, is called a **supply chain**. The supply chain is considered a part of the **production or manufacturing chain**, which in turn refers to the process of turning raw materials into finished products. The production chain includes manufacturing, design, production, packaging and storage of the end product, and usually takes place within a single company or organization.¹



In contrast, we are also interested in understanding the concept of the **value chain**, as it translates into a broader and more strategic view of a company's or organization's value-creation process. It can also involve multiple companies, their subsidiaries, and organizations working together to create a product or service. As a consequence, value chain refers to the set of activities that add value to a product or service. This includes manufacturing activities as well as other activities such as marketing, sales, research and development, and customer support.

Michael Porter,² one of the leading theorists on the subject, states that the value of a firm and the way it carries out individual activities are "a reflection of its history, its strategy, its approach to implementing its strategy, and the underlying economics of the activities themselves". He also states that a firm's competitive value can be measured by the amount buyers are willing to pay for what it provides.

THE CONCEPT OF DUE DILIGENCE IN BUSINESS CONDUCT

2



Technological advances and ease of travel have enabled the **internationalization of people's lives and businesses**. This requires civil society, businesses, governments, legal experts, and legislators to be more sensitive to the problems of the globalized world, multiculturalism, and pay to attention to the protection of fundamental human rights and the environment at a transnational level.

In the business sphere, as geographical distances become increasingly shorter, companies have demanded more specialization from their service providers, selecting them in different parts of the world, while aiming to reduce their internal costs and consequently increase profit margins. These factors have driven the development of global supply chains.

In this way, large companies form their supply chains with the presence of several suppliers that may be in the same national territory or not. In addition, several subsidiaries and joint ventures can be created around the world to cover all activities and demands related to the central company or group of companies. However, the expansion of business activities in different parts of the world has sometimes been associated with several violations, including human rights violations, destruction of ecosystems or tax and antitrust violations.

These transgressions have compelled States and civil society to require companies to monitor, supervise and include the risks that activities employed within production and supply chains create in their internal costs, even if the violation of the law has been carried out by a third party. In other words, there was a need to require companies to **develop a set of practices**

and prescriptions for companies to implement mechanisms to prevent and mitigate risks and negative impacts, which has been referred to as due diligence.

In business circles, due diligence is commonly understood as referring to a process of investigation conducted by a company to identify and manage business risks.³ Similarly, due diligence in Brazil also refers to the process of investigating a business opportunity that the investor must accept in order to be able to assess the risks of a business transaction.⁴

Within the framework of the Organization for Economic Co-operation and Development (OECD) Guidelines for multinational companies, the concept of due diligence is translated as a set of recommendations based on the risks inherent to its activities, i.e., they indicate the need to incor-

porate, into company procedures, the mechanisms for monitoring, evaluating, preventing and mitigating damages that business practice can generate.⁵



WHAT IS THE DIFFERENCE BETWEEN DILIGENT CONDUCT AND MERE COMPLIANCE WITH THE LAW?

2.1

Not violating human rights, not polluting ecosystems, not attacking fauna and flora, among other prescriptions found in Brazilian laws and international treaties and conventions, is no more than the duty not to violate the legal system of the place where one lives or carries out business acts.

In contrast, **due diligence is about the attitude of anticipating possible negative impacts.** That is, it is related to the development of monitoring and transparency mechanisms that allow not only to repair the damage caused, but also to anticipate them, and furthermore, not only those that relate directly to the company's headquarters or main activity, but also implies the duty to monitor the entire chain of activities surrounding the main work or product.

In this sense, **due diligence has become a reference for a wide range of international obligations in different legal areas; for national and international courts; and can lead to liability since the lack of due diligence is indicated as one of the possible types of fault, negligence.**⁶ Negligence, including culpable negligence, can be briefly characterized as a failure to comply with the legal duty to show a certain degree of care.

Beyond the technical definitions, the fact is that **due diligence**, as a guiding concept of conduct, **is aligned with the global trend that compels large companies to adopt the Sustainable Development Goals (SDGs) in their strategic planning, which are part of the United Nations 2030 Agenda.**⁷



SOCIO- ENVIRONMENTAL IMPACTS OF LACK OF DUE DILIGENCE

3



The existence of international supply chains involving several service and product providers has allowed specialization of the activity and capillarity of the central company's business. However, proportionally to the increase in the size of these chains, there is an increase in the potential to cause significant socio-environmental impacts at all stages of the process, from the extraction of raw materials to the final supply of products.

Since the late 19th century, the oil industry, for example, has consistently been one of the world's largest in financial terms in several countries, but is also an industry with one of the longest and bloodiest histories involving land disputes, colonial conquests, military coups, wars and corruption. It also the sector that generates the most greenhouse gas emissions.

The case of the Anglo-Dutch oil company Shell Company in Nigeria, for example, is well documented: a single company that generates 75% of Nigerian government revenues and about 35% of GDP, but which also causes negative socio-environmental impacts in the region where it operates, the Niger Delta.⁸ In January 2021, the company was found guilty by the Dutch courts for an oil spill in the Niger Delta caused by the activity of its Nigerian subsidiary. The contamination of water wells with potentially cancer-causing chemicals has generated, in addition to the environmental impact of contamination, the devastation of mangrove vegetation, damage to the local community, harm to farmers in the region, and prevention of recreational and subsistence use of water.⁹

In Latin America, similarly, there are countless cases of human rights violations and environmental damage associated with large companies with long supply chains. Around 29.000 Quekchí indigenous people in the Alta Verapaz region of Guatemala, for example, are in a territory threatened by the building of the Renace Hydroelectric Complex in the Cahabó River basin. This project is being implemented by Corporación Multi-Inversiones, which belongs to the Spanish Cobra Grupo.¹⁰

Like other indigenous peoples, the Quekchí have experienced conflicts with landowners for generations and faced discrimination by the mestizo population. Some of the aggravating factors of this marginalization is that most of them live scattered in 450 remote rural communities with poor

communication with the rest of the region, and many do not speak Spanish or understand it with difficulty.¹¹

In Ecuador, in a landmark decision, the court ordered the Japanese company Furukawa to pay compensation to 123 of its former employees, who sued the company for the terrible conditions in which they worked and lived. The company's main activity is the extraction of abaca fiber, which, due to its high durability, is used for textile products, considered one of the most important raw materials for rope making.¹² Ecuador exports about 7,000 tons of abaca fiber annually to the United States, Europe and Asia, generating more than US\$17 million.¹³ Investigations show that within the farms owned by Furukawa, camps have been built where entire families live,

including women, children and the elderly. And they work exclusively to extract abaca fiber in exchange for low wages. The living conditions in these farms are extremely poor and undignified. The families lack basic services and most people who live there are illiterate, which deepens the historical difficulty of these people in changing their condition. It was also identified that most families working on Furukawa farms have African ancestry, which also implies racial discrimination.¹⁴

Brazil, for its part, does not set the best examples in this regard either. The livestock and agriculture sector, in addition to being one of the main sectors involved in situations of rescue of workers in situations of forced labour, is the largest contributor to deforestation due to soybean and corn crops - grown mainly to feed industrial farm animals - and due to the opening of pasture areas for livestock, in the Cerrado and Amazon biomes.¹⁵

Brazil competes with the United States as the largest soybean producer on the planet and is the third largest corn producer. A bulletin¹⁶ released in October 2022 by Repórter Brasil,

an organization that shares research on production chains, raises concerns about the monitoring system used by large companies in the industry. The bulletin reveals evidence that inputs are being sourced from areas where deforestation is illegal.

Timber extraction is also a major Brazilian economic activity, but it also suffers from illegal practices that impact native Brazilian vegetation. The Federal Police's Operation Archimedes, for example, was initiated after an alert issued by the Brazilian Federal Revenue Service and the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) in 2017, which found an unusual increase in the transportation of wood through Chibatão Port, in Manaus (AM).

The essence of fraud in the timber trade lies in circumventing the Document of Forest Origin (DOF), a document that must accompany the timber from origin to destination. Ibama found that companies were issuing DOFs for native wood from two different areas and that the regions indicated were pastures, i.e., without trees to be cut down.¹⁷

In addition to environmental damage, there are production chains connected with alleged human rights violations, as reported in the report that analyzes the relationship between slave labor and the meat industry¹⁸ prepared by an independent research group focused on environmental and labor issues. The report¹⁹ shows that cattle ranchers, who are part of the supply chain of some of Brazil's largest beef industries, are accused of having people working in conditions analogous to slavery on their farms.

Recently, the world has been shocked by the socio-environmental impacts caused by illegal mining near the Yanomami Indigenous Land (TIY), which causes violent conflicts, deaths and diseases, as well as soil and water contamination by the mercury used in the activity.²⁰ According to investigations by the Federal Police, Brazilian and even Italian companies buy, refine and purify illegally mined gold and sell it to several other companies around the world. They even sell to the world's leading smartphone and laptop manufacturers, such as Apple, Google, Microsoft, and Amazon.²¹

In today's global economy, companies across various industries operate within intricate supply chains that often stretch across multiple countries. Each country has its unique laws, business practices, and environmental and human rights regulations. Unfortunately, this complexity can create loopholes that allow for illegal practices to occur without accountability for those who engage in or benefit from them.

It is important to understand that the natural world is not constrained by political borders, and even geographical boundaries no longer prevent socio-environmental impacts. Pollution of a river in one country, for example, can reach territories in other countries, just as climate change affects everyone. Similarly, the fight against human rights violations needs to involve public and private actors of different nationalities. Large companies

should prioritize implementing due diligence measures, even if they are not legally required in a particular location. This is important for reasons like ethics, competitiveness, and the survival of the company. Around the world, laws targeting business chains are increasingly prevalent. This means that multinational corporations must prioritize cross-border accountability in their decision-making processes.



INTERNALIZED CLIMATE RISKS

3.1

According to the organization Forest Trends,²² it is estimated that commercial agriculture is responsible for 70% of forest destruction in tropical and subtropical countries. From 1985 to 2021, Brazil's native vegetation, such as forests, savannas, and other non-forest formations, decreased by 13.1%. This land was largely replaced by agriculture, which now makes up one-third of the country's land use.²³

Based on information provided by the Greenhouse Gas Emissions and Removal Estimation System, Brazil experienced a 9.5% surge in gross greenhouse gas emissions (GHGs) in 2020. This was in stark contrast to the global trend, which saw a nearly 7% decrease in emissions due to the economic slowdown caused by the Covid-19 pandemic. The main factor explaining this increase was high rates of deforestation, especially in the Amazon and Brazilian Savanna (Cerrado).

It should be noted that **the effects of the climate crisis know no political or geographical boundaries**. Due to the increase in global temperatures and heat waves, there has been a rise in adverse weather conditions such as droughts and floods. This is causing significant harm to wildlife and plant life, leading to mass mortality of various tree and coral species. Climate extremes are occurring simultaneously, causing cascading impacts that are increasingly difficult to predict and manage. These impacts have led millions of people to intense hunger and water insecurity, especially in Africa, Asia, South and Central America, the Small Islands and the Arctic.²⁴

The situation in Brazil is no exception, as there have been multiple instances of severe weather events that are linked to global warming and the resulting climate crisis. One effect concerning the impact of global warming in Brazil is the fluctuation of the hydrological cycle. This results in more prolonged and more severe droughts, as well as unpredictable rainy seasons.²⁵

An example of is the situation that happened during the summer of 2020 in São Paulo, heavy rainfall caused the Tietê and Pinheiros rivers to overflow in just one day. In just 24 hours, the volume of rainfall in São Paulo reached 92.4mm - equivalent to 42.6% of the 216.7mm average for February and on another day in the same month it rained 215.5mm, or 99.4% of the expected for February of that year. The information was provided by the Center for Climate Emergency Management (CGE), of the city of São Paulo.²⁶

In the same year in Minas Gerais more than 100 cities were in a state of alert. In the capital, Belo Horizonte, it rained 935.2 millimeters in January, a historical record for the month according to the National Institute of Meteorology (Inmet) and more than half the annual average. The year 2021 was marked by environmental tragedies such as

the floods in Bahia and the immense clouds of dust in the Southeast that came from the fires in the Pantanal and Amazon.

Between the end of May and the beginning of June in 2022, the Northeast region of Brazil experienced an increase in rainfall intensity caused by the climate crisis. This was particularly evident in the state of Pernambuco, where, within a 24-hour period, more than 70% of the expected monthly rainfall occurred, resulting in the death of at least 129 people.²⁷

In view of this, the World Meteorological Organization (WMO) launched in July 2022²⁸ the report "State of the Climate in Latin America and the Caribbean: partnerships to strengthen multi-hazard early warning systems".²⁹ The report, among several conclusions, highlighted that the warming trend continued in 2021 in Latin America and the Caribbean Islands, with the average

temperature increase being about 0.2°C/decade between 1991 and 2021, compared to 0.1°C/decade between 1961 and 1990.³⁰

The report also found that sea levels in the Latin America and Caribbean region continued to rise at a faster pace than in other regions, notably along the Atlantic coast of South America south of the equator. **Rising sea levels threaten a large proportion of the population concentrated in coastal areas and contaminate freshwater aquifers, erode coastlines, cause flooding in low-lying areas, and increase storm risks.**³¹

²⁸ During the RA III (South America) Regional Conference on Data Policy and other parallel activities in Cartagena.



That said, it is necessary to highlight that **the right of all to a balanced environment, constitutionally provided for in Brazil in article 225, cannot be partially granted or prioritized only for some groups. Practice shows that the effects of environmental damage and the climate crisis are felt in different ways by different social groups, especially more severely by more vulnerable populations. This scenario led to the creation of the concept of climate justice, which is an offshoot of environmental justice.**

The term 'climate justice' specifically highlights the disproportionate impacts of climate change on different social groups. It aims to make sure that the effects of climate change are analyzed and tackled by holding accountable those who

have **actually** caused the imbalance found and those who can best address them.

Thus, a new way of doing business must be created. One must avoid burdening society with the effects of climate change while businesses reap the economic benefits. Companies must consider their contribution to the climate crisis as a risk factor and address it diligently in their business practices. This risk should be accounted for in internal risk assessments.



GLOBAL CHAINS REQUIRE A GLOBAL OUTLOOK

4



Companies act as groups, under the direction and guidance of one or more parent companies that are in countries other than those of their subsidiaries or manage contracts with suppliers of different nationalities. **It can be seen that the model of transnational corporations has already overcome nations' legal borders, which implies the need to be subject to a jurisdiction that is also global in nature.**³²

The term transnational companies is used to characterize companies that operate in different countries, that is, they have headquarters in the country of origin and expand their field of action through the establishment of subsidiaries or *joint ventures*. Although transnational corporations operate internationally, they are not considered subjects of international law and end up being regulated and supervised locally, i.e., they follow the laws and regulations of the place where their subsidiary is located or where the business activity takes place.

From another point of view, it is also common for large companies not only to be established in different states or countries, but also to have an international supply chain, i.e., a global network of suppliers and service providers that supply the goods and services necessary for the company to operate. Thus, the choice of location of suppliers in a supply chain³³ is extremely important, as it has a major impact on the overall risk and profit of the company.

For example, transportation costs alone can amount to up to 25% of the product's selling price, depending on the product and the type of production or service adopted. Other costs that can be influenced by location include

taxes, wages, raw material costs and rents. When all costs are considered, location can change the total expenditure by up to 50%.³⁴

As previously discussed in the topic regarding the negative effects of negligent behavior, cost-cutting measures in the production process can result in violations of human rights and environmental damage that are not accounted for in the company's expenses or remedied for the benefit of society and the affected ecosystem.

Since 1995, the Brazilian federal government has openly acknowledged the presence of modern-day slavery within its borders to both its citizens and the International Labor Organization (ILO). This made Brazil one of the earliest countries to acknowledge the existence of this issue within its territory. The Monitor Report³⁵ revealed that based on data collected by the Pastoral Land Commission and the


Federal Government, over half of the incidents of forced labor identified in Brazil from 1995 to 2020 occurred in the livestock industry. There were 1,950 incidents, accounting for 51% of the total cases.

The Brazilian agribusiness sector has a troubling history of conflicts and invasion of indigenous and quilombola lands, as well as deforestation and contamination of biomes. This is not limited to cases of labor resembling slavery. Big farms are expanding into previously untouched regions of Brazilian biomes, specifically the Cerrado and the Amazon, to acquire additional land for grazing and monoculture purposes.

³³ A production chain is a set of consecutive steps along which the various inputs undergo some kind of transformation, until the making of a product (good or service) and its placement on the market.

EUROPEAN UNION

4.1



Thus, once again, the difference between complying with local legislation and diligent action is noticeable since the Brazilian problem is not the absence of local legislation prohibiting these practices, but the absence of traceability mechanisms to identify the "suppliers of suppliers" which significantly reduces the effectiveness of control measures.

On the other hand, government initiatives to implement legal mechanisms that give companies a relevant role in combating, preventing, and controlling human rights violations, environmental damage and corruption have rightly grown at the international level in recent decades, despite the difficulty of creating legislation that takes into account the dynamics of current business relations.

The European Parliament, on February 23, 2022, adopted a Directive on corporate sustainability due diligence. The idea behind creating a unified standard for all European Union member states (EU) was to promote respect for human rights and environmental protection. It would also create a fair environment for businesses within the bloc and prevent fragmentation of practices caused by isolated actions of individual Member States. **The directive also provides for the inclusion of non-EU companies based on the turnover criterion, meaning that companies that are outside the economic bloc but operate in the EU market will also be covered by the effects of the regulation.**

The proposal for a directive in the European Union holds significant importance as it will impact not only business practices in the EU but also in other countries and regional blocs. This directive will encourage compliance with ESG criteria (environmental, social, and corporate governance Sustainability)



and the implementation of due diligence in production chains to maintain negotiations with the European market.

As such, the European Parliament employed a primarily quantitative approach in selecting the application criteria for the Directive. **The number of employees or annual net turnover were typically used to determine which companies would be included.** The European Parliament has included a qualitative criterion for companies operating in sensitive and relevant sectors that do not fit into the quantitative cut-offs. This includes sectors such as **textile, agricultural, food, and extraction, which are of great impact and should be reached by the law.**³⁶

The quantitative criterion is also applied to foreign companies, as it was understood that the turnover criterion should be chosen, which would be an indicator of the effects that the activities of these companies could have on the European internal market by creating a **territorial link between companies from other countries and the territory of the Union.**

Throughout the directive, the European Parliament highlighted the role of member states in ensuring that companies exercise human rights and environmental due diligence. In order to achieve its objective, the Directive covers crucial topics such as identifying, preventing, and mitigating the potential or actual negative impacts of business activities. It also includes guidance on establishing and maintaining an effective complaints process, as well as ensuring transparency in information regarding due diligence.

³⁶ The following sectors are considered to have a major impact for the EU directive: manufacture of textiles, leather and related products (including footwear) and wholesale trade in textiles, clothing and footwear; agriculture, forestry, fishing (including aquaculture), manufacture of food products and wholesale trade in agricultural raw materials, live animals, wood, food and beverages; the extraction of mineral resources wherever they are extracted (including crude oil, natural gas, coal, lignite, metals and metal ores as well as all other non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and manufactured metal products (except machinery and equipment) and the wholesale trade of mineral resources, basic and intermediate mineral products (including metal ores and metals, construction materials, fuels, chemicals and other intermediate products).

In line with the current need to promote a global effort to mitigate the effects of the climate crisis, **the European Union directive expressly mentions that Member States must ensure that companies adopt a plan to ensure that the company's business model and strategy are compatible with the transition to a sustainable economy and with limiting global warming to 1.5°C** in accordance with the Paris Agreement. Member States should further ensure that if climate change is or should have been identified as a major risk or a major impact on the company's operations, the company should include emission reduction targets in its business plan.

Moving in the same direction, **the European Parliament presented**

a legislative proposal, published on November 17, 2021, that aims to curb deforestation and forest degradation driven by the European Union.³⁷ The proposal aims to compel companies to verify that products placed on the bloc's market have not caused deforestation and forest degradation anywhere in the world after December 31, 2020. The products covered by the legislation are **cattle, cocoa, coffee, palm oil, soybeans, and timber.** It is noteworthy, however, that such legislation is flawed by focusing only on forest environments, and that grassland and savannah environments are not adequately addressed in the regulations, despite their great biological importance and the provision of ecosystem services.

GERMANY

4.2

The European Parliament has already stated that **the Directive on Corporate Sustainability and Due Diligence is one of the cornerstones of the European Green Deal and the Sustainable Finance Agenda** and, together with other regulations being developed and approved, is part of a broader EU policy to commit companies to respect human rights and reduce their impact on the planet.³⁸

The European bloc, therefore, takes an important step towards ensuring that different business activities pay attention to due diligence within their production and supply chains, even if these chains are interregional or even intercontinental. The Directive is remarkable for explicitly naming the notable sectors that have a significant impact - textiles, agriculture, food, and extractive industries. This is either due to reports of human rights violations and environmental harm caused by these industries, or because they are sectors that could contribute to the increase of greenhouse gas emissions if not managed properly. This concern is rightfully addressed in the Directive.

Germany applies principles for environmental protection similar to those used in Brazil. These include the principles of prevention and precaution, the "polluter pays" principle, the principle of cooperation (where private parties have a role in public decisions), and the principle of sustainable development. This similarity of fundamental principles makes it possible to analyze German legislation with a comprehensive view that allows importing what is appropriate for the Brazilian legal system.

Effective January 1, 2023, Germany enacted a law titled **Corporate Due Diligence in Supply Chains ("Lieferkettensorgfalts-pflichtengesetz", "GSCA")** and will apply to companies that: 1) **have their headquarters, their principal place of business, their administrative headquarters or their registered office in Germany** and 2) **generally employ at least 3,000 employees in Germany,** including seconded employees.



In addition, the law **applies also to companies that have a subsidiary in the country and employ at least 3,000 employees**, and as of January 1, 2024, the threshold will be reduced to 1,000 employees. Temporary workers must be included in the number of employees if the length of the assignment exceeds six months. According to a projection by the country's Federal Ministry for Economic Cooperation and Development, **the law will apply to around 900 companies before 2024 and from 2024 onwards to around 4,800 companies.**

It can be seen from the outset that the criterion for applying corporate due diligence law in Germany is exclusively quantitative and formal. It only takes into account the size of the company based on the number of employees hired and not the legal form of the company since the law does not impose any requirement on the way the company is set up. Thus, **non-profit companies as well as church-run companies are also covered by the law.**

The GSCA criteria also do not include the risk potential of the company's activity. Unlike the European Parliament's Directive on Corporate Sustainability, which partially links its applicability to specific business activities that are considered riskier, the German law focuses only on formal criteria and the nature of the company's activities is irrelevant.

The GSCA mandates companies to exercise due diligence in their supply chains, which covers all internal and external steps necessary for producing products and providing services. **However, even though the GSCA comprehensively includes all supply chain members, it links due diligence obligations to the company's informed knowledge, and gross negligence is insufficient.**³⁹

Preceding the GSCA, Germany initiated the movement to incorporate due diligence into its national legislation through the "**Agricultural Organizations and Supply Chain Act**"⁴⁰ (**Agrarorganisationen- und Lieferketten-Gesetz, AgrarOLkG**), in force since 9 June 2021.

This law contains obligations for all companies in the agricultural and food supply chain - from primary producers to retailers - and compels them to adapt their trade compliance programs significantly. Unlike the GSCA, which encourages the protection of human rights by companies in the supply chain, AgrarOLkG protects companies from each other.

In summary, Germany already has a legal provision that requires companies to take appropriate measures to prevent, end or minimize possible violations of human rights and environmental obligations when the business activity causes or contributes to the occurrence of such risks within the production chain.

³⁹ There is a legal understanding, mainly in European courts such as Portugal, that gross negligence must be understood not only from the perspective of guilt, but also from the perspective of the tort of negligence, considering that the agent's behavior must be analyzed both by a reprehensible attitude or carelessness of the agent and by the danger of the behavior itself and the probability of the result in the light of the conduct adopted. Only particularly reprehensible behavior that postpones basic care, shows a high degree of thoughtlessness or foolishness, and creates almost certain danger should be considered gross negligence.

⁴⁰ Free translation.

UNITED KINGDOM

4.3

England and Wales began drafting stronger human rights guidelines focused on business practices in **2015**, with a law that introduced a series of offenses criminalizing modern slavery. The **Modern Slavery Act (the “MSA”)** defined what slavery, servitude, forced or compulsory labor and human trafficking (so-called “modern slavery”) comprises. It outlined measures for the protection of victims of modern slavery and appointed an independent anti-slavery commissioner. The MSA was the first piece of legislation in Europe to address modern slavery.

In turn, since 2006, more broadly, the **Companies Act (“CA 2006”)** requires directors of UK companies to prepare a strategic report for each financial year, which must contain a fair review of the company’s business and a description of the principal risks and uncertainties facing the company.

In the case of a **UK-listed company**, the strategic report must, among other things, **include information on social, community and human rights issues** and for certain **banking and insurance companies**, the strategic report must include a non-financial and sustainability information statement, providing clarification on the company’s impact on at least environment, **company employees, social issues, human rights, and anti-corruption efforts**.

After the UK left the EU, rules on nature protection, water quality, clean air and other environmental protections that originally came from Brussels were undermined, so it was necessary to fill this gap by aligning global demands and the concept of due diligence. Accordingly, **in 2021 the UK Environment Act⁴¹** was enacted, which establishes an important new set of measures to tackle imported deforestation by

requiring **companies to implement due diligence systems (“DDS”)** for forest-risk commodities in their supply chains. The aim of this legislation is to prevent large companies from growing forest-risk commodities (e.g., beef, soy) on land that has been illegally deforested. The aim of this legislation is to prevent large companies from growing forest-risk commodities (e.g., beef, soy) on land that has been illegally deforested.

⁴¹ Secondary legislation will be required to implement the regulations of this Act, which will make it illegal for large UK companies to use forest risk commodities that are listed if they have not been produced in accordance with relevant local laws and will require due diligence on company supply chains to ensure this. This legislation will specify several key issues, including: (i) which commodities will be in the scope of the regulations; (ii) which companies will be within the scope of the provisions; (iii) which companies in scope will be required to undertake and report on their exercise of due diligence; (iv) the exemption threshold; and (v) how the requirements will be enforced.

In the same direction, the United Kingdom enacted the **UK Timber Regulation ("UKTR")**, effective since **January 1, 2021**, to replace the EU Timber Regulation after Brexit. The UKTR is broadly similar to the EUTR in that it **reduces the trade in illegal timber entering the UK**. Companies across the UK should continue to implement a system of due diligence to ensure that imported timber products have been legally harvested, traded and exported in the country of harvesting.

Timber supply chains are regulated to ensure harvesting practices are legal, encourage sustainable harvesting practices and support global forest governance. Companies trading in timber and timber products must take steps to ensure that they come from legal sources, and operators in this market may develop their own due diligence system or use a system provided by an approved monitoring organization, and this should comprise three steps: 1) information gathering; 2) risk assessment and where it is applicable; 3) risk mitigation.

Finally, the UKTR provides that the police power responsible for ensuring the implementation of the Act will be The Office for Product Safety and Standards (OPSS). The OPSS has the authority to issue **legal notices, monetary penalties and decide on prosecution, or to report a case to Prosecutors** in the case of an infringement in Scotland or Northern Ireland.



FRANCE

4.4

France is historically recognized as one of the precursor countries in the drafting of a charter containing a list of human rights, since in 1789, the French people promoted the abolition of the absolute monarchy and adopted the Declaration of the Rights of Man and the Citizen (Déclaration des droits de l'Homme et du citoyen), drafted by the National Constituent Assembly, was the first step towards the creation of a constitution for the Republic of France.

Similarly to Germany and Brazil, in environmental matters, France establishes fundamental principles of environmental **protection at the constitutional level**. These include the **precautionary principle**, which requires measures to be taken to avoid environmental damage before undertaking any activity likely to cause it; **the polluter pays principle**, which states that the polluter must bear costs resulting from pollution; and the **prevention principle**, which uses prior scientific knowledge and serves as a guide for the registration, authorization,


and execution of potentially polluting activities.

France, therefore, based on its constitutional principles and in line with the global effort to attribute legal responsibility to the acts of companies that violate human rights or cause environmental damage, enacted the "**the Duty of Vigilance Act**" (Loi sur Le Devoir de Vigilance), enacted on March 27, 2017. This law addresses **the harmful impact of multinational companies on human rights and the environment**, including deforestation, and therefore creates **binding obligations for companies**, providing possible **legal remedies** for victims.

Under French law, **parent companies must prevent and remedy human rights abuses and environmental violations in their supply chains** and this **applies to all subsidiaries**. Companies that fall under the scope of the Duty of Vigilance

Act must therefore: (i) establish; (ii) implement; and (iii) publish a Vigilance Plan that must "identify risks and prevent serious impacts on human rights and fundamental freedoms, the health and safety of persons and on the environment".

This law has already been applied to seek civil liability in cases that have become famous in the legal sphere and in civil society. The first case is the case against the French oil company **Total** for failure to comply with legal obligations to prevent human rights violations and environmental damage under the Duty of Vigilance at its mining project in Uganda. There is also the case against **Casino Guichard-Perrachon S. A.** (the "Casino Group"), over allegations that the sale of beef in the supermarket is contributing to illegal deforestation linked to the cattle industry in Brazil and Colombia, also in breach of the Duty of Vigilance Act.



The French law further innovates by providing that **financial institutions, which finance supply chains exposed to environmental and human rights risks, may fall within the scope of the Duty of Vigilance Act**, such as the banks BNP Paribas, BNP Paribas Personal Finance or Crédit Agricole, thus allowing to **hold such financial institutions liable** under the "duty of vigilance" for not addressing environmental and human rights risks within their Vigilance Plans or, finally, **for being involved in financing supply chains involved in activities that cause environmental and human rights harm.**

In order to help identify companies that must comply with the requirements of the French Duty of Vigilance Act, the French civil society organizations Sherpa and CCFD-Terre Solidaire have created a platform called "Le radar du devoir

de vigilance" which, based on open data, identified several companies - approximately 260⁴² that fall within the scope of the law and had their names and vigilance plans published on the platform.⁴³



NETHERLANDS

4.5

In **March 2021**, members of the Dutch parliament proposed The Responsible and Sustainable International Business Conduct bill (RSIBC). The RSIBC bill seeks to introduce obligations for certain companies to prevent or mitigate the (potential) impact of their international activities on human rights, labor rights and the environment. The parliamentary debate on the RSIBC bill is still ongoing.

The RSIBC bill stipulates two types of obligations in relation to responsible and sustainable international business conduct. First, the Bill imposes a **general duty of care** on all Dutch companies and on "large" non-Dutch companies, but with marketing activities or products in the Netherlands that meet at least two of several quantitative criteria set by the legislator, such as net turnover, number of employees, and figures from the company's balance sheet.

Although there are no approved regulations yet, it is evident that discussions about a global perspective have already begun in the Netherlands. This includes national and international companies that operate within the country. It is worth noting that the Dutch government is working on its own proposal for national legislation on mandatory due diligence in relation to international corporate social responsibility (separate from the RSIBC bill proposed by some members of the Dutch parliament) and has further stated that for such a proposal it will consider the recent Directive on Due Diligence and Corporate Sustainability of the European Parliament.

SPAIN

4.6

In February 2022, the Spanish government published its **legislative plan for 2022** (Plan normativo anual 2022), which included a **national law requiring Spanish transnational companies to carry out human rights and environmental due diligence in their supply chain**.

This project should already have as a reference the Directive on corporate sustainability due diligence of the European bloc and could go further, as it has been argued that it should include a proposal for **due diligence throughout the value chain, a system of sanctions against companies that do not comply with their obligations and guaranteed access to justice for communities that have been victims of human rights violations and environmental damages** derived from the activities carried out by companies in their supply chains.

Also in 2021, Spain approved **Law No. 7/2021 on climate change and energy transition** which provides in article 32 that all companies that are obliged to include a "Non-Financial Information Statement" will have to publish in this document (and on their corporate website) another annual report containing the assessment of the **financial impact on the company of the risks associated with climate change**, including the risks associated with the transition to a sustainable economy and any measures that are taken to address these challenges.

JAPAN

4.7

Outside the European continent, Japan's Minister of Economy, Trade and Industry, Hagiuda Koichi, in **February 2022 announced that the Japanese government would provide comprehensive guidelines to Japanese companies to help them identify and address potential human rights abuses in their global supply chains.**

The guidelines will help fulfill the commitment made by the Japanese government in its **2020 National Action Plan (NAP) on Business and Human Rights** and by G7 trade ministers,⁴⁴ in December 2021. The guidelines will outline the steps Japanese companies should take in

accordance with the United Nations Guiding Principles on Business and Human Rights and the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Companies to prevent, mitigate and remedy potential harm that companies may cause or contribute to. Although these guidelines are voluntary, Minister Hagiuda indicated that the government may also consider adopting binding legislation.

UNITED STATES

4.8

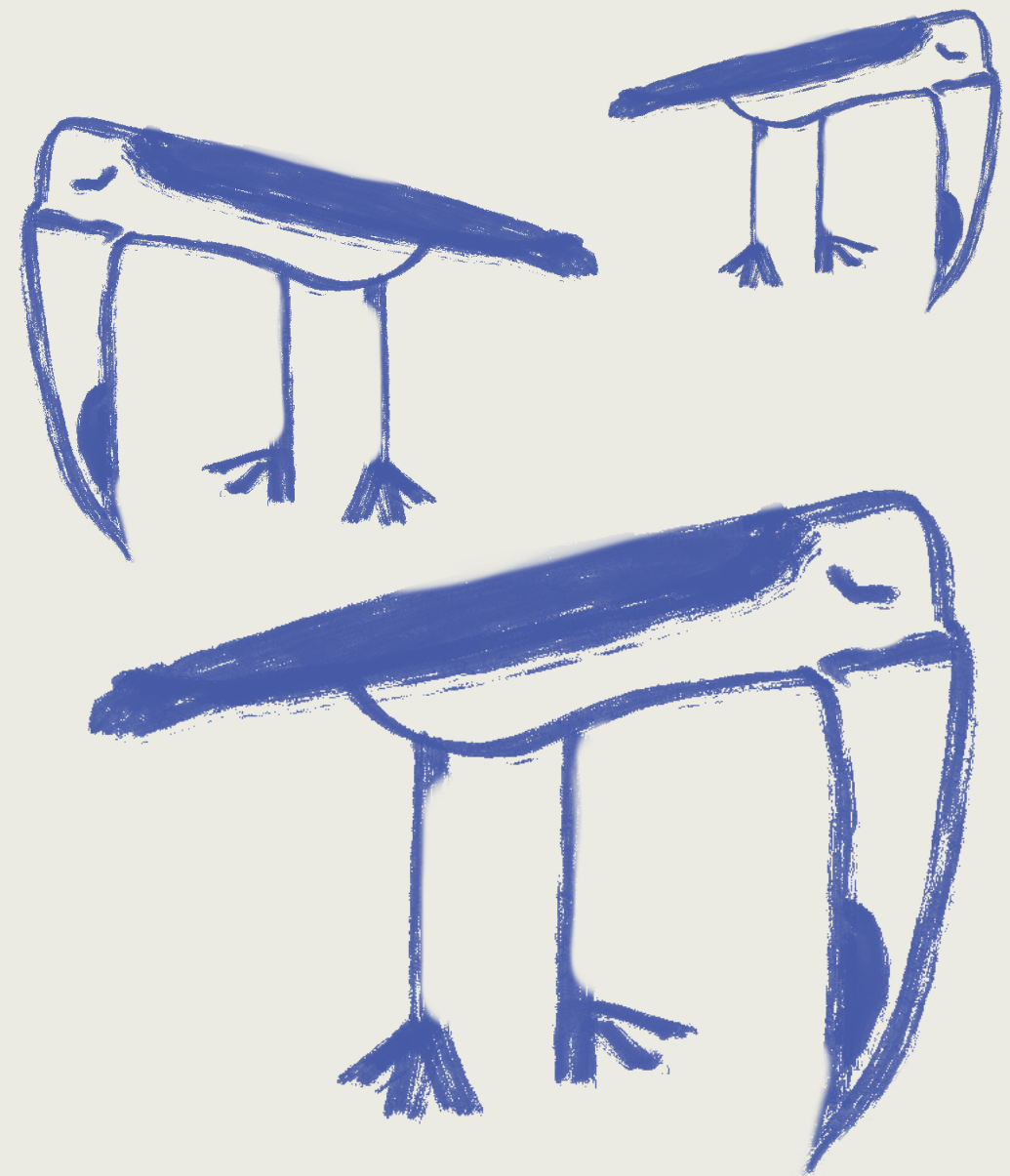
Also in the distant **1930s**, the United States enacted the Tariff Act, which **prohibits the import of goods extracted, produced or manufactured in any foreign country by forced labor**, defined as "all labor or service required of any person under threat of any penalty for noncompliance and for which the worker does not volunteer".

Similar to that, there is the (**Trafficking Victims Protection Reauthorization Act TVPRA**) of 2005, which **forbids corporations with a presence in the US** from benefiting from participation in an enterprise, knowingly or recklessly, **involved in human trafficking**, including forced labour obtained through harm, threats or abuse of the legal system.⁴⁵ The law also provides for an individual civil remedy against a party who knew or should have known that the enterprise was engaged in human trafficking.

California, meanwhile, is the only state that imposes a duty on companies to report on efforts to combat forced labor. through the California Transparency in Supply Chains Act of 2010. The law requires companies subject to the law to disclose information about their efforts to eradicate human trafficking and slavery within their supply chains on their website or, if a company does not have a website, through written disclosures.

Companies subject to the Transparency in Supply Chains Act must disclose the extent of their efforts in five areas: **verification, audits, certification, internal accountability, and training**. In relation to contractors present in the companies' supply chain, they must also prove:

- » Whether they participate in the verification of product supply chains to assess and address the risks of human trafficking and slavery and whether such verification has not been carried out by a third party.
- » Whether they conduct supplier audits to assess supplier compliance with company standards for trafficking and slavery in supply chains.
- » If direct suppliers are required to certify that materials incorporated into the product comply with the slavery and human trafficking laws of the country or countries in which they are doing business.
- » Whether they maintain internal accountability standards and procedures for employees or contractors who fail to comply with company standards in relation to slavery and trafficking.
- » And whether they provide company staff and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly in relation to risk mitigation within product supply chains.



WHAT ABOUT BRAZIL?

4.9

In this regard, Brazil does not have an approved legislation that expressly mentions the terminology due diligence and contemplates this duty of care within a company's supply or value chain. Nevertheless, the Brazilian legal system is robust regarding prohibitions on human rights violations, accountability for environmental damage, and rules against financial crimes.

Legal practitioners in Brazil must now learn how to "sew together" all the fragmented norms for the protection of human rights and environmental damage that are scattered throughout various codes, statutes, ordinary laws, and infralegal documents. Therefore, it seems beneficial to develop in the country **rules capable of ensuring the regulation of the performance of chain companies, especially large international chains, so that it is possible to hold them accountable for violations from all agents who, because they are contractually linked to a supply chain, contributed to the occurrence of the damage.**

This gap, nowadays, tries to be filled by the courts, especially in the environmental field, highlighting the remarkable decision in Special Appeal No. 650.728 / SC in which Minister Herman Benjamin states that in "[...] **the determination of the causal link in environmental damage, those who do, those who do not do when they should do, those who let them do, those who do not care that they do, those who finance them to do, and those who benefit when others do, are on equal footing.**"

In 2022, Bill (PL) No. 572/2022 was presented to create the **national framework on Human Rights and Business**. This project aims to establish guidelines for the promotion of public policies on the subject, and because it is intended to be a legal framework, the Project provides for regulations that cover not only the private sector but also the Brazilian State and civil society.

The Bill makes express mention of the duty of companies to follow due diligence in their internal processes, precisely:

"Art. 7. Companies should conduct **due diligence** to identify, prevent, monitor and remedy human rights violations, including social, labor and environmental rights, and should, at a minimum:

I - Cover those that the company can cause or contribute to, through its own activities, or that are directly related to its activities and operation, products or services through its business relationships.

(...)"

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has even issued a technical opinion⁴⁶ on Bill no. 572/2022, in which it recommends that there should be restrictions on access to public funding and bidding processes if the company commits human rights violations⁴⁷ Furthermore, recommends that it be included in Article 7 of the Bill, mentioned above the **obligation to carry out Human Rights Due Diligence (HRDD)**, in order to identify, prevent, monitor and remedy violations.

⁴⁷The report suggests that a company that has been convicted of working in conditions analogous to slavery or child labor in its supply chain, for example, could be banned from contracting with the government or receiving public funding for five or ten years.



**FINANCIAL
MARKET AS
A DRIVER
OF DILIGENT
CONDUCT**

5





In addition to the development of laws that create obligations for companies, another effective way to prevent violations in supply and production chains is to improve control mechanisms for the supply of financial credit. In 2010, for example, the Central Bank published **Resolution No. 3,876**⁴⁸ which restricts the granting of rural credit to individuals or legal entities that have been included in the "dirty list" of contemporary slave labor.

However, this Central Bank regulation alone cannot curb this criminal practice, since the inclusion of specific agents on the list does not cover the entire economic activity, given that the production process has several other suppliers and service providers in addition to the one assessed and placed on the list.

The Brazilian stock exchange also formulated the **Corporate Sustainability Index (ISE B3)**,⁴⁹ which aims to be the indicator of the average performance of the asset prices of companies selected for their recognized commitment to corporate sustainability.



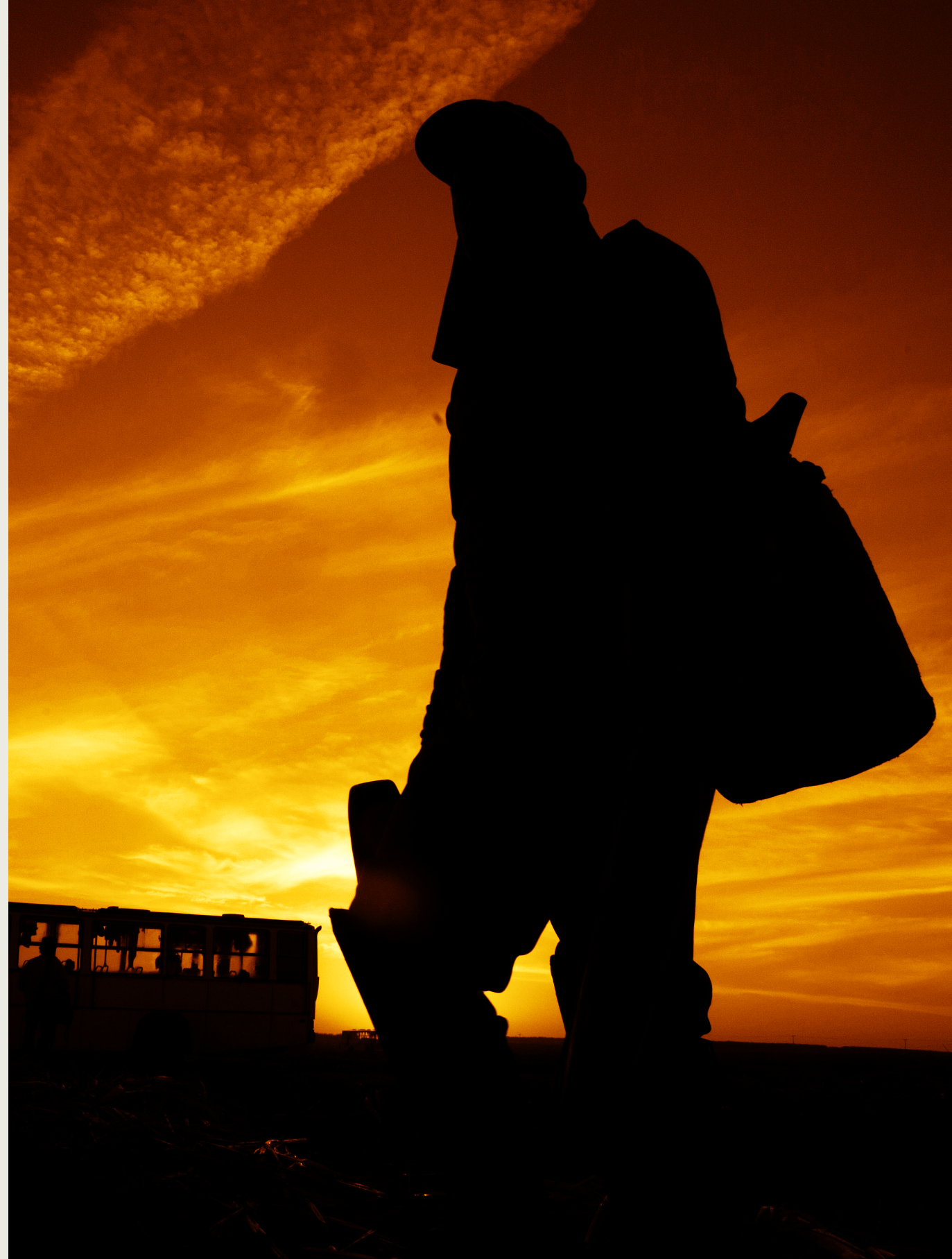
In the procedure for inserting companies in the ISE B3 portfolio, a questionnaire is filled out **voluntarily and self-reporting**, with questions that go through the dimensions of: Human Capital, Corporate Governance, Business Model and Innovation, Social Capital and Environment. Its topics range from labor practices and care for workers' health and safety, to environmental management policies and practices and ecological impacts.⁵⁰

Companies must answer the questionnaire in a thorough and cautious manner. For economic groups, both the central company (holding) and its subsidiaries, which account for a minimum of 80% of the economic group's revenues, are required to provide answers.⁵¹

While advances are needed, such **financial and non-judicial mechanisms play an essential role** in seeking private sector compliance with best practices to avoid and mitigate negative adverse human rights impacts and environmental ones.

**WAYS TO
DEVELOP
DILIGENT
INTERNAL
PROCEDURES**

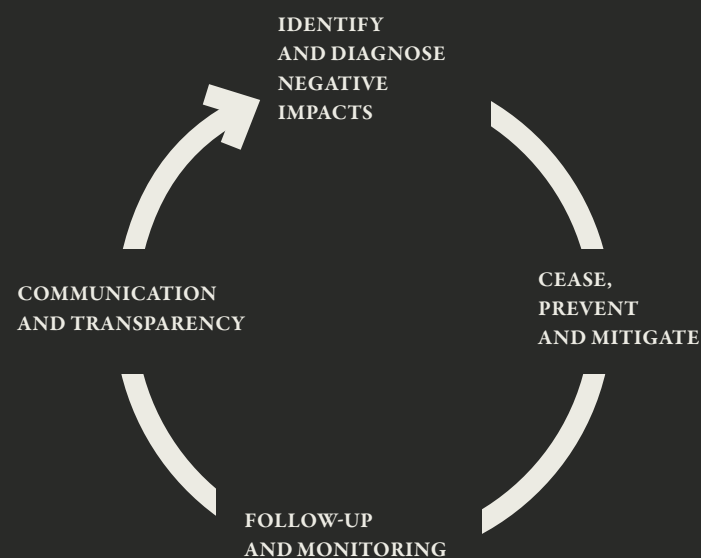
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The OECD, for its part, has produced a guide in response to the G7 Leaders' Declaration adopted on June 7-8, 2015, in Schloss Elmau, Germany.⁵² It recognized the **importance of establishing a consensus on due diligence, especially for small and medium-sized companies.** The development of the Guide was overseen by the OECD Working Group on Responsible Business Conduct (WGRBC) and involved multiple stakeholders in a process with OECD and non-OECD member countries, as well as representatives from business, labor unions and civil society.⁵³

As a result, and in line with the aforementioned agreement, **the OECD has set out the procedure that should be adopted to implement due diligence in the internal processes of companies, and which we summarize here as follows:**

Image 1: Summary diagram of OECD due diligence recommendations.



Source: adapted from the OECD Due Diligence Guidance for Responsible Business Conduct.



Adopting responsible conduct in internal policies and management systems as the axis of business activity, the path for the procedures to be adopted would be, first, to carry out a **diagnosis after identifying and classifying the risks and negative adversities that the company may cause or contribute to the occurrence.** After this, it is possible to start implementing the measures necessary to **cease, prevent or mitigate the negative impacts.**

Therefore, the **follow-up and monitoring of internal processes should be constant,** to assess the success of the measures already implemented and to check for the emergence of new potentially negative impacts. All these actions must be based on **transparency and broad communication** with all the company's stakeholders, including civil society.



In addition to **reviewing and updating internal company policies** to align them with responsible business conduct (e.g., decent work, human rights, environment, transparency, consumer protection, governance, anti-bribery and anti-corruption standards), these aspects should also be communicated to suppliers and other members of the supply chain. **These should also be communicated to suppliers and others in the supply chain**, including by **including** sections on conditions and expectations for diligent and responsible business conduct **in contracts**. In order to establish and effectively implement the above processes, effective governance is required, **with oversight by company management and the board of directors**.

Detailing the steps that a company must follow in order to have an adequate and diligent action, which is capable of mitigating and ceasing negative impacts that may occur because of its business activity, according to the OECD guidelines, we can list them, for example, as follows:

Image 2: Exemplary model of the interlinking of activities managed by a central company



Source: Canal Agro⁵⁴

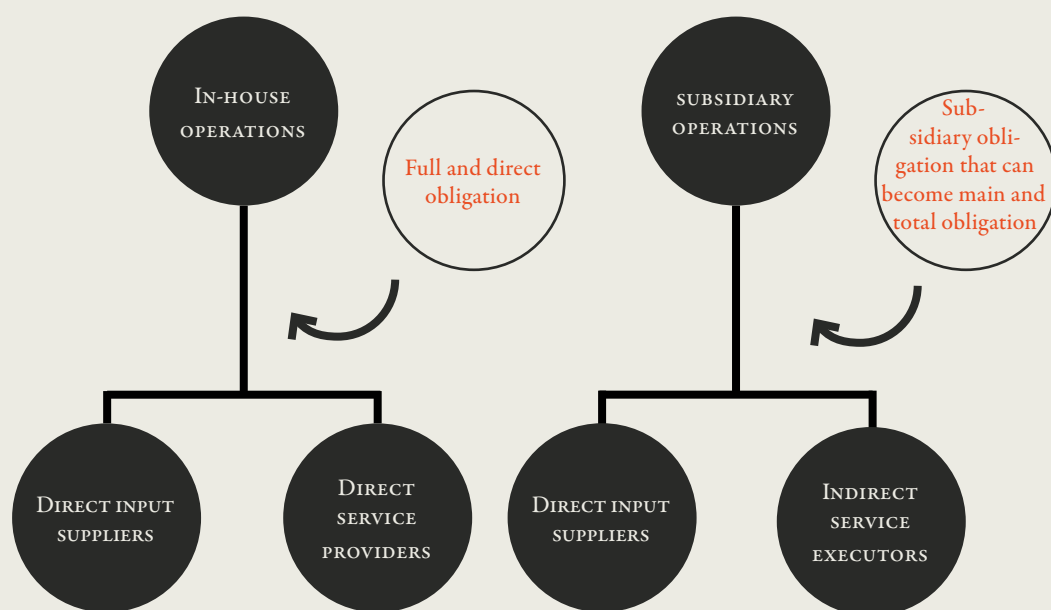


» IDENTIFY AND DIAGNOSE

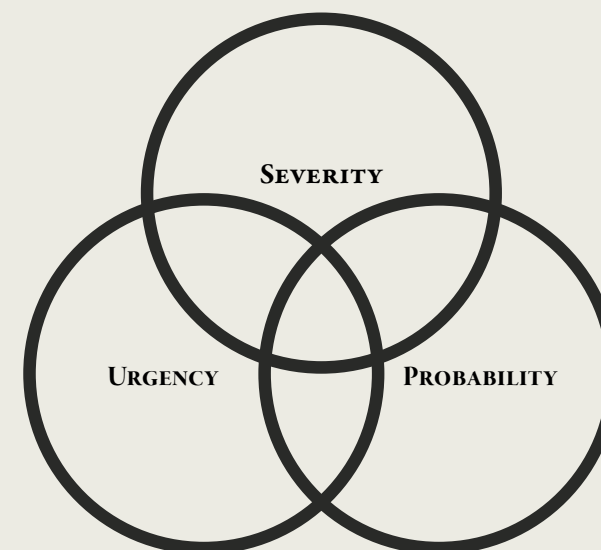
First, the company needs to identify all possible risks and impacts that may exist in its chain of activities.

Here we will use the term activity chain⁵⁵, which is aligned with the term indicated by the Council of the European Union, because, although it is not as comprehensive as the value chain, it contemplates the entire supply and production chain of the business activity.

In this sense, to identify and diagnose it is necessary above all to unravel the activities and their executors or suppliers, and categorize them between:



The suppliers and direct executors of the service are fundamentally those who **directly commercialize the input** that the company needs to achieve its end product or, it is the one who **directly provides the final service of the company**, even if it will use a representative, agent or employee.



For own operations, the company's obligation to avoid and repair possible negative impacts in Brazil, on human rights, is total and for cases of damage to the environment, it must also be integral. There are similar deliberations in the rules of other countries, mainly in Europe.

In the case of subsidiary operations, i.e. the hiring of contractors to perform services, or even the suppliers of direct suppliers, **even if the company does not have direct management over the service or contract administration, companies need to identify, prevent and mitigate impacts if they have substantiated knowledge of abuses and violations**

of any kind. The claim of ignorance of the occurrence of possible abuse or violation, however, may only be raised in cases where, even employing all monitoring and due diligence practices, the harm would still remain unknown.

After identifying the points in the chain of activities that cause, or may cause, negative impacts, it is necessary to categorize them according to the level of **severity, probability of occurrence and urgency.**

» **MEASURES TO BE TAKEN IN THE LIGHT OF POSSIBLE IDENTIFIED IMPACTS**

Following the identification and diagnosis of the impacts that the chain of activities may cause, it is necessary to implement measures to eliminate such impacts or when not possible, mitigate them. Thus, it is first necessary to develop or improve the internal documents that will define the company's governance and social and environmental responsibility policy.

The internal commitments should describe the activities carried out by the units that make up the company, the activity chain trail, the mechanisms and internal controls that will be adopted to ensure management compliance and guarantee the achievement of the planned objectives, as well as the corrective activities.

After this internal definition, and **to prevent possible damages**, it is necessary to ensure that subsidiaries and direct and indirect suppliers implement policies in line with due diligence and even with the possible net zero strategy adopted by the company, either by:

- » Developing and implementing policies and procedures to ensure that due diligence is carried out consistently and effectively throughout the organization, including **codes of conduct and specific contractual clauses for individuals and entities** in the chain of activities.
- » **Adequate training** for team members responsible for managing internal monitoring and enforcement activities.
- » Use of tools and technology to help **collect, analyze and store information** in a more efficient and integrated way.
- » Conducting **regular internal audits** to assess the effectiveness of the due diligence process and identify areas for improvement along the chain of activities.

- » **Continuous review** of the process to ensure it is up to date and relevant to the needs of the organization, addressing issues and being continuously adapted based on advancing best practices in due diligence.
- » **Commitment from senior management** must ensure that the measures are effectively implemented and followed throughout the organization.

However, where there are **real** negative impacts identified, even if they are still ongoing, further action should be taken:

| PRELIMINARY MEASURES | IMMEDIATE MEASURES | MITIGATION MEASURES | REMEDIATION MEASURES |
|---|---|--|---|
| Establish an early warning system; Community communication and training for harm reduction, with dates and methods defined jointly with local leaders for greater effectiveness. | Delimit and fence the impacted area; Disciplinary measures in relation to the direct agents causing the damage; Notify the competent authorities and immediately cease the impacts caused; Immediate assistance to affected communities. | Provide transparent and responsive information on what impacts have occurred and what is being done to mitigate them, as well as recommendations for affected communities. | Create a channel to listen to affected communities to obtain information about damages suffered, guidance on the next steps in the reparation process and what measures the population should take to reduce exposure to risk (if it still exists). |

» REPORTING AND MONITORING

For effective representation and control of how these procedures are being implemented, all information must be well catalogued, detailed in appropriate documents and integrated with a monitoring scheme that allows the efficiency of the implemented measures to be assessed.

In addition to specific reports, it is relevant to carry out the:

- » Development and updating of an **ombudsman channel** to meet the demands related to the community adjacent to the company.
- » Development of a **Social License Monitoring Program** that tracks the acceptance of activities by local communities and addresses their concerns, in compliance with Convention 169 of the International Labor Organization.
- » Development of a **Climate Change Due Diligence Plan** with specific indication of the measures the company will take to be aligned with the target set by the Paris Agreement.

At this stage, it is appropriate to mention the importance of a professional, or a team of professionals, dedicated exclusively to the coordination, implementation and monitoring of the company's due diligence measures, which will be demonstrated in the company's reports and other relevant channels.

⁵⁶ ILO Convention 169 defines who are the indigenous and tribal peoples mentioned in the document and affirms the obligation of governments to recognize and protect the social, cultural, religious and spiritual values and practices of these peoples. The Convention also addresses the importance of free, prior and informed consultation whenever any work, action, policy or program is to be developed that affects traditional peoples, whether by public or private initiative.

» COMMUNICATION AND TRANSPARENCY

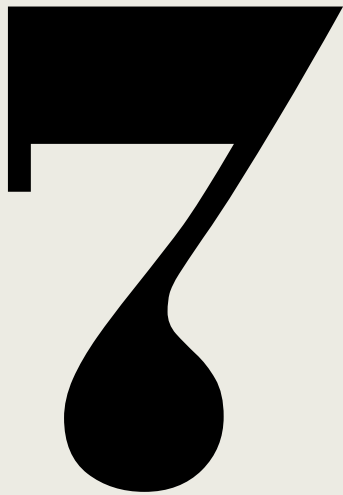
The last but not least relevant step in a complete due diligence process in the chain of activities is the step of communicating the measures taken, reporting the results obtained, and exposing the data collected, except for those that may violate industrial secrecy.

Among the possible measures for good communication and transparency, it is recommended to publish reports, separately or integrated, that address the aspect of **governance** adopted; the **environmental responsibility** measures practiced and the positive **social impact**; as well as the measures for the mitigation of the negative ones, arising from the business activity; regularly.

In view of the climate crisis and the recommendation of SDG 17, which sets the goal of revitalizing the global partnership for sustainable development among all actors, it is recommended to publish the company's Net Zero strategy, which must be pragmatic and effective. Then, periodically, indicate the progress made on the defined strategy.

In addition, for proper environmental due diligence, it is necessary to demonstrate what conduct has been adopted and due diligence carried out to **avoid any acts or statements that could be considered greenwashing**, i.e. corrections and removals or any misleading statements or that could lead society, investors and all stakeholders into error regarding the Net Zero strategy or the measures implemented to combat climate change. In addition, corrections and removals or any misleading statement or statement that could mislead society, investors and all stakeholders regarding the Net Zero strategy or the measures implemented to combat climate change must also be carried out.

**DUE DILIGENCE
AS AN IMPERA-
TIVE FOR THE
PERMANENCE
OF BUSINESS
AND LIFE ON
PLANET EARTH**





The implementation of internal procedures **that incorporate best practices in the private sector of investigation, diagnosis, mitigation, and transparency** to identify and manage business risks is not only within the scope of best practice recommendations. **The point to note is that performing due diligence in business activities is now vital for companies to succeed and last in the market.**

Globally, there is a rise in cases where human rights violations and environmental damage are being brought to court. One common factor is the identification of individuals involved in international chains. Brazil, with its robust economy and active participation in the global market, cannot afford to ignore the growing emphasis on enforcing due diligence requirements for companies. It is essential for Brazil to adopt legal mechanisms that ensure compliance with these requirements.

The European Union, as pointed out, is at the forefront in the search for the strengthening of standards and mechanisms to enable States and the private sector to establish a relationship of supervision and monitoring in order to avoid commercial risks. However, the other seven countries mentioned (Germany, Spain, United Kingdom, France, United States, Japan and the Netherlands) are also working on their own legislation that **will directly reflect the way they establish their trade with Brazil.**



Similarly, legislation cannot fail to take into account that the climate crisis is a fundamental threat to the human rights of present and future generations, including the right to health, access to water and food, and the right to an adequate quality of life. In this sense, there is a call for regulations to explicitly require **companies to include actions to mitigate their climate impacts in their internal costs with reference to the targets set in the Paris Agreement.**

In Brazil, there are countless cases of companies belonging to international chains that have been involved in human rights violations and environmental disasters, such as the silver rain that affected residents around the industrial-steel complex

The point to note is that performing due diligence in business activities is now vital for companies to succeed and last in the market.

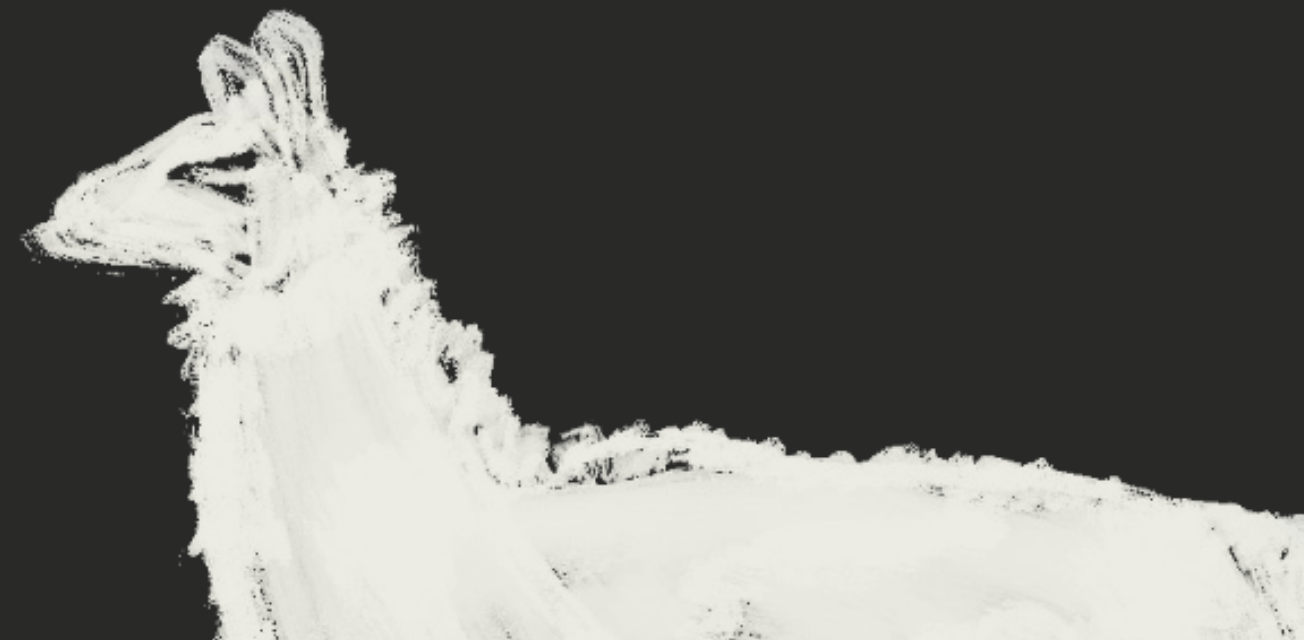


of Sepetiba Bay / RJ (2012); the compulsory dispersion of residents of neighborhoods in the city of Maceió / AL, due to the extraction of rock salt in the region (2018); the rupture of mining tailings dams in Mariana/MG (2015), Brumadinho/MG (2019) and Barcarena/PA (2018); the oil spill on the northeastern coast of Brazil (2018); and the northeastern coast (2019); as well as the decades-long threat to the lives and livelihoods of traditional peoples in areas of land conflict, among others.

Global demands are also knocking on the door of the Brazilian legislature, which is currently analyzing Bill No. 572/2022, which aims to be a national framework on Human Rights and Business and establishes guidelines for the promotion of public policies on the subject. Notoriously, the international community is attentive to the steps taken by the

Brazilian State and the performance of national companies.

For these reasons, **the global movement to embed the concept of due diligence in companies' internal procedures, business relationships, and countries' regulations in a practical way is crystal clear.** It's important to stop seeing this concept as a burden, but rather as a signal of changes in business practices. This shift can lead to **decreased legal and operational risks, increased competitiveness, and innovation.** It can also improve **recognition from all stakeholders who value diligence and responsibility in a company's activities.**



COMPARISON OF SOME INTERNATIONAL LAWS

ANNEX

TABLE WITH SOME MODERN LEGISLATIONS THAT ARE
BASED ON DUE DILIGENCE TO DELINEATE CORPORATE
RESPONSIBILITY IN SUPPLY CHAINS.



WHO DOES IT APPLY TO?

Companies incorporated under the law of the Member State and fulfilling one of the following conditions:

(a) the company had more than 500 employees on average and a worldwide net turnover of more than EUR 150 million in the last financial year and annual financial statements prepared for that year.

(b) the company that did not meet the thresholds under (a), but had more than 250 employees on average and a worldwide net turnover of more than €40 million in the last financial year for which annual financial statements were prepared, provided that at least 50% of that net turnover was generated in one or more of the following sectors: textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear; agriculture, forestry, fishing (including aquaculture), and the wholesale trade of food products, wholesale trade of agricultural raw materials, live animals, timber, food and beverages; extraction of mineral resources irrespective of the place of extraction crude oil, natural gas, coal, lignite, metals and metal ores, as well as all other non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and manufactured metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CORPORATE SUSTAINABILITY AND DUE DILIGENCE

⁵⁷The Duty of Vigilance Act does not specifically list or describe what the requirements for a company to fall within a "prescribed corporate form" are. However, it can be determined on the basis of the provisions of the law in the Commercial Code, which states that the law applies to SAs (Sociétés Anonymes), SCAs (Sociétés en Commandite par Actions) and SEs (Sociétés Européennes). The inclusion of SASs (Sociétés en Commandite par Actions Simplifiées) within the scope of the Act remains subject to debate, although most scholars and practitioners suggest that SASs fall within the scope of the Act's Duty of Vigilance.

WHO DOES IT APPLY TO?

CORPORATE DUE DILIGENCE IN SUPPLY CHAINS IN GERMANY ("LIEFERKETTEN-SORGFALTS-PFLICHTGESETZ", "GSCA")

Companies that: 1) have their registered office, main place of business, administrative headquarters or registered office in Germany and; 2) generally employ at least 3,000 staff in Germany; including staff seconded abroad.

UK TIMBER REGULATION (UKTR)

Any operator or trader within the timber supply chain. However, the obligations imposed by the UKTR are different at different points in the supply chain, and it is necessary to differentiate between the 'operator' and the 'trader'.

An operator is one who is responsible for placing timber or timber-related products on the UK market for the first time, making such products available for distribution or for use in their own business. If timber is being imported into the UK from outside the country, the operator's information will be recorded and stored in the UK customs records.

In relation to traders, the legislation states that any person who, based in the UK and during commercial activity, sells or buys timber already placed on the UK market, is referred to in the UKTR as a trader and must therefore comply with obligations in relation to timber traceability. When a company first places timber on the UK market and then goes on to sell that timber, it is acting as an operator in relation to placing the timber on the market and as a trader in relation to selling the timber.

DUTY OF VIGILANCE LAW IN FRANCE

The duty of the Vigilance Act focuses on medium and large companies, requiring that companies must be of a prescribed corporate form⁵⁷ and had more than 5,000 employees (if their headquarters are located within French territory) or 10,000 employees (if their headquarters are located within French territory or abroad) employed for two consecutive years.

HOW DO YOU IDENTIFY AND MONITOR ACTUAL AND POTENTIAL VIOLATIONS?

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| <p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CORPORATE SUSTAINABILITY AND DUE DILIGENCE</p> | <p>Member States should ensure that companies take appropriate measures to identify actual and potential adverse human rights impacts and adverse environmental impacts arising from their own operations or those of their subsidiaries and, when impacts are related to their value chains, from their established business relationships.</p> <p>Companies to which the Directive applies when providing credit, loan or other financial services, the identification of actual and potential adverse human rights impacts and adverse environmental impacts will be carried out only before providing that service.</p> <p>Companies which do not fall into the category of those with more than 500 employees on average and a worldwide net turnover of more than EUR 150 million, but which had more than 250 employees on average and a worldwide net turnover of more than EUR 40 million, will only be required to identify actual and potential serious adverse impacts relevant to the textile, agriculture and mineral resource extraction sectors.</p> <p>The directive also indicates that companies should, when relevant, hold consultations with potentially affected groups, including workers and other relevant stakeholders, to gather information on actual or potential adverse impacts.</p> |
| <p>CORPORATE DUE DILIGENCE IN SUPPLY CHAINS IN GERMANY ("LIEFERKETTEN-SORGFALTS-PFLICHTGESETZ", "GSCA")</p> | <p>Compliance with due diligence obligations must be documented and the documentation must be kept for seven years. In order to make the impact of the GSCA known to the public, there is an obligation to prepare an annual report on compliance with due diligence obligations in the previous business year; this report must then be published on the company's website no later than four months after the end of the business year.</p> |

HOW DO YOU IDENTIFY AND MONITOR ACTUAL AND POTENTIAL VIOLATIONS?

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| <p>UK TIMBER REGULATION (UKTR)</p> | <p>Operators may develop their own due diligence system or use a system provided by an approved monitoring organization, and this should comprise three steps: 1) information gathering; 2) risk assessment and where applicable; 3) risk mitigation.</p> <p>The trader must keep records identifying the operator or trader who supplied the timber for at least five years and must provide the information on request. In addition, a trader must also, where applicable, identify any trader to whom he has supplied the timber.</p> |
| <p>DUTY OF VIGILANCE LAW IN FRANCE</p> | <p>Companies that fall under the scope of the Law must: (i) establish; (ii) implement; and (iii) publish a Vigilance Plan which must "identify risks and prevent serious impacts on human rights and fundamental freedoms, the health and safety of persons and on the environment". The Vigilance Plan is public and must be included in the company's annual report.</p> <p>The Vigilance Plan should include the following elements: 1) a mapping exercise, identifying, analyzing and classifying risks; 2) procedures for regularly assessing, in accordance with the mapping exercise, the activities of the company's subsidiaries, subcontractors or suppliers; 3) appropriate actions to mitigate risks or prevent serious breaches; 4) an alert mechanism to collect information on the presence of potential risks, developed by representatives of the company's trade union organizations; and 5) a monitoring scheme to assess the effectiveness of the measures that have been implemented.</p> |



WHAT MEASURES PREVENT ACTUAL AND POTENTIAL VIOLATIONS?

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CORPORATE SUSTAINABILITY AND DUE DILIGENCE

Whenever necessary, due to the nature or complexity of the thematic measures required for prevention, develop and implement a prevention action plan, with reasonable and clearly defined timelines for action and qualitative and quantitative indicators to measure improvement. The prevention action plan should be developed in consultation with affected stakeholders:

Seek contractual assurances from a business partner with whom you have a direct business relationship that guarantees compliance with the company's code of conduct and, if necessary, the prevention action plan, as well as seeking corresponding contractual assurances from its partners to the extent that their activities are part of the company's value chain (contractual cascade);

Make the necessary investments, such as in management or production processes and infrastructure;

Provide targeted and proportional support to what is called Small and mid-size enterprises (SMEs) with which the company has an established business relationship, where compliance with the code of conduct or prevention action plan would jeopardize the viability of the SME;

With regard to potential adverse impacts that could not be avoided or adequately mitigated by the measures already described, the company may seek to enter into a contract with a partner with whom it has an indirect relationship, with the aim of achieving compliance with the company's code of conduct or a prevention action plan.

WHAT MEASURES PREVENT ACTUAL AND POTENTIAL VIOLATIONS?

CORPORATE DUE DILIGENCE IN SUPPLY CHAINS IN GERMANY ("LIEFERKETTEN-SORGFALTS-PFLICHTENGESETZ", "GSCA")

Companies should adopt preventive measures in relation to direct suppliers, in the form of contractual guarantees or contractually agreed control mechanisms, as well as take into account human rights and environmental expectations when selecting suppliers, and if necessary, screen suppliers already contracted.

UK TIMBER REGULATION (UKTR)

Traders should identify the country of harvest, understand the applicable legislation and ensure that the timber has been harvested in accordance with the national legislation applicable to that specific country.

The trader must keep records identifying the operator or trader who supplied the timber for at least five years and must provide the information when requested. In addition, a trader must also, where applicable, identify any trader to whom he has supplied the timber.

DUTY OF VIGILANCE LAW IN FRANCE

The legislation provides for a two-step enforcement mechanism, which can be triggered regardless of whether damage was caused. This two-step mechanism consists of: 1) a formal notice to comply with the law (*mise en demeure*); 2) a request asking the competent court to order an injunction with mandatory monetary penalties (*astreintes*).

The law also provides for a third remediation mechanism consisting of a civil liability action (*responsabilité civile*).

These three mechanisms are available to all parties that have standing, including stakeholders affected by a company's failure to comply with its duty of vigilance (i.e., local communities, employees, consumers, trade unions, associations or NGOs).





WHAT IS THE COMPLAINTS PROCEDURE?

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| <p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CORPORATE SUSTAINABILITY AND DUE DILIGENCE</p> | <p>Member States should ensure that companies provide the possibility for the following individuals and organizations to submit complaints to them when they have legitimate concerns regarding their own operations, their subsidiaries' operations and their value chains. The following people and organizations should be able to raise complaints with them when they have legitimate concerns about actual or potential adverse human rights impacts and adverse impacts on the environment, respecting their own operations, the operations of their subsidiaries and their value chains:</p> <p>Individuals affected or who have reasonable grounds to believe that they may be affected by an adverse impact; trade unions and other workers' representatives representing individuals working in the value chain concerned; civil society organizations active in areas related to the value chain concerned.</p> <p>Member States shall ensure that complainants have the right to:</p> <p>Request appropriate follow-up to the complaint from the company with which they have lodged a complaint; meet with company representatives at an appropriate level to discuss potential or actual serious adverse impacts that are the subject of the complaint.</p> |
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WHAT IS THE COMPLAINTS PROCEDURE?

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| <p>CORPORATE DUE DILIGENCE IN SUPPLY CHAINS IN GERMANY ("LIEFERKETTEN-SORGFALTS-PFLICHTGESETZ", "GSCA")</p> | <p>The competent authority is the Federal Office of Economics and Export Control ("BAFA"), which monitors company reports and follows up on complaints. The body can act <i>ex officio</i> or upon request and the group of persons entitled to submit an application includes all persons affected by the economic activity of a company or one of its suppliers, such as the local community. BAFA has the prerogative to enter companies for inspection purposes and, at the request of the authority, companies must provide information and documents, as well as must tolerate official inspections and, if necessary, cooperate with them.</p> |
| <p>UK TIMBER REGULATION (UKTR)</p> | <p>—</p> |
| <p>DUTY OF VIGILANCE LAW IN FRANCE</p> | <p>—</p> |



SANCTIONS AND CIVIL LIABILITY

DIRECTIVE OF
THE EUROPEAN
PARLIAMENT AND
OF THE COUNCIL
ON CORPORATE
SUSTAINABILITY
AND DUE
DILIGENCE

Each Member State shall lay down the rules on penalties applicable to violations of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. **The sanctions provided for must be effective, proportionate and dissuasive.**

CORPORATE DUE
DILIGENCE IN
SUPPLY CHAINS IN
GERMANY
("LIEFERKETTEN-
SORGFALTS-PFLI-
CHTENGESATZ",
"GSCA")

The GSCA explicitly states that a breach of statutory duty of care does not give rise to civil liability. This also excludes the personal liability of executive directors for damages to the company based on a breach of the GSCA (e.g., for fines), unless liability arises from another legal ground.

SANCTIONS AND CIVIL LIABILITY

UK TIMBER
REGULATION
(UKTR)

Ensuring the implementation of the law will be through The Office for Product Safety and Standards (OPSS). The OPSS has the authority to issue legal notices, monetary penalties and make a decision on prosecution, or to report a case to the Prosecutor in the case of an infringement in Scotland or Northern Ireland.

In the event that a monetary penalty is imposed, OPSS will determine what level of penalty is reasonable and proportionate, based on its assessment of the nature, gravity and circumstances of the case.

DUTY OF
VIGILANCE LAW IN
FRANCE

Civil liability is based on the French general civil liability law. Claimants must establish a company's civil liability on the basis of three conditions: 1) a breach (lack of reasonable care); 2) damage; and 3) a causal link between the two.

The law further imposes the payment of periodic penalties if companies within its scope fail to comply with the obligation to (1) establish, (2) publish and (3) implement the Vigilance Plan. Periodic penalty payments are inhibitory fines that are paid on a daily basis until the company complies with its obligations in relation to the Vigilance Plan. The amount of the periodic penalty payment must be decided by the French judge.

DOES IT MENTION CLIMATE CHANGE?

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| <p>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CORPORATE SUSTAINABILITY AND DUE DILIGENCE</p> | <p>Member States should ensure that companies adopt a plan to ensure that the company's business model and strategy are compatible with the transition to a sustainable economy and with limiting global warming to 1.5°C, in line with the Paris Agreement. This plan should identify, based on information reasonably available to the company, the extent to which climate change is a risk to, or an impact on, the company's operations.</p> <p>Member States should ensure that, where climate change is or should have been identified as a major risk or a major impact of the company's operations, the company includes emission reduction targets in its plan.</p> |
| <p>CORPORATE DUE DILIGENCE IN SUPPLY CHAINS IN GERMANY ("LIEFERKETTEN-SORGFALTS-PFLICHTGESETZ", "GSCA")</p> | <p>No.</p> |
| <p>UK TIMBER REGULATION (UKTR)</p> | <p>No.</p> |
| <p>DUTY OF VIGILANCE LAW IN FRANCE</p> | <p>No.</p> |



NOTES

¹MOKI. Value chain: Cadeia de valor: O que é, vantagens e como implementar. Available at: <<https://site.moki.com.br/cadeia=-de-valor/#:~:text=It%20is%20worth%20emphasizing%20that%20productive%20chain,associated%20with%20each%20of%20them.>>. Accessed on: 04/04/2023.

²PORTER, Michael. Vantagem competitiva: Criando e Sustentando um Desempenho Superior. 1ed. São Paulo: GEN Atlas, 1989.

³McCorquodale, Robert; Bonnitcha, Jonathan. The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights. The European Journal of International Law Vol. 28 no. 3, 2017. 2017. Published by Oxford University Press on behalf of EJIL Ltd.

⁴BRAZIL. Guias da OCDE sobre a devida diligência. Available at: <<https://www.gov.br/produktividade-e-comercio-exterior/pt-br/assuntos/camex/pcn/guias-da-ocde-sobre-a-devida-diligencia>> Accessed on: 03/10/2022.

⁵OECD. Guia da OCDE de devida diligência para uma conduta empresarial responsável Conduct. Available at: <<http://mneguidelines.oecd.org/guia-da-ocde-de-devida-diligencia-para-uma-conduta-empresarial-responsavel-2.pdf>>. Accessed on: 03/10/2022.

⁶JOSÉ DA COSTA, Dilvanir. O sistema da responsabilidade civil e o novo Código. Brasília a. 39 n. 156 Oct./Dec. 2002. Available at: <<https://www2.senado.leg.br/bdsf/bitstream/handle/id/826/R156-17.pdf?sequence=4&isAllowed=y>>. Accessed on: 10/04/2023.

⁷Agenda 2030 is the United Nations Human Rights agenda, approved by the United Nations General Assembly in 2018, under Resolution, adopted by 193 countries, including Brazil, which incorporated the 8 Millennium Development Goals (Agenda 2015 - period 2000/2015), expanding them to the 17 Sustainable Development Goals (Agenda 2030 - period 2016/2030).

⁸POVOAS, Leo Benaventana. A instabilidade política na Nigéria e a atuação da Shell na região. Monografia apresentada como requisito para conclusão do curso de Bacharelado em Relações Internacionais. Centro Universitário de Brasília, UNICEUB. Brasília, 2015. page 35.

⁹REUTERS. Dutch appeals court rules Shell Nigeria unit responsible for oil leaks. Available at: <<https://www.reuters.com/article/shell-nigeria-court-appeal/dutch-appeals-court-rules-shell-nigeria-unit-responsible-for-oil-leaks-idUS-S8N2GP025>>. Accessed on: 04/04/2023.

¹⁰ALIANZA POR LA SOLIDARIDAD. La hidroeléctrica que destruye derechos en Guatemala: Caso Renace-Cobra (ACS). Available at: <<https://www.alianzaporlasolidaridad.org/axs2020/wp-content/uploads/Maq-Tierra3.pdf>>. Accessed on: 04/04/2023.

¹¹ALIANZA POR LA SOLIDARIEDAD. La hidroeléctrica que destruye derechos en Guatemala: Caso Renace-Cobra (ACS). Available at: <<https://www.alianzaporlasolidaridad.org/axs2020/wp-content/uploads/Maq-Tierra3.pdf>>. Accessed on: 04/04/2023. Acesso em: 10/04/2023.



¹²KNOOW. Abacá. Available at: <<https://knoow.net/ciencterravida/botanica/abaca/>>. Accessed on: 10/04/2023.

¹³BUSINESS-HR. Ecuador: Empresa Furukawa clausurada por condiciones de trabajo catalogadas de esclavitud moderna. Available at: <<https://www.business-humanrights.org/pt/%C3%BAltimas-not%C3%ADcias/ecuador-empresa-furukawa-clausurada-por-condiciones-de-trabajo-catalogadas-de-esclavitud-moderna/>>. Accessed on: 04/04/2023.

¹⁴COMITÉ DE SOLIDARIDAD FNM. Furukawa nunca más. Available at: <<https://www.furukawanuncamas.org/documentacion>>. Accessed on: 04/04/2023.

¹⁵SEEG. Análise das emissões de gases de efeito estufa e suas implicações para as metas climáticas do Brasil: 1970-2021. Available at: <<https://seeg.eco.br/wp-content/uploads/2023/03/SEEG-10-anos-v4.pdf>>. Accessed on: 04/04/2023.

¹⁶REPORTER BRASIL. Floresta Racionada: Soja e milho utilizados como ração animal estão aumentando o desmatamento no Brasil. Monitor #17. São Paulo/SP: October 2022. Available at: <<https://reporterbrasil.org.br/wp-content/uploads/2022/10/220926-Monitor-Ra%C3%A7%C3%A3o-Animal-PT-07.pdf>>. Accessed on: 24/10/2022.

¹⁷CAMARGOS, Daniel. Presidente da Fundação Renova é denunciado pelo Ministério Público por comércio ilegal de madeira na Amazônia. Repórter Brasil. Available at: <<https://reporterbrasil.org.br/2019/05/presidente-da-fundacao-renova-e-denun>



ciado-pelo-ministerio-publico-por-comercio-ilegal-de-madeira-na-amazonia/>. Accessed on: 09/09/2022.

¹⁸REPORTER BRASIL. Trabalho escravo na indústria da carne. Monitor #8: January/2021. Available at: <https://reporterbrasil.org.br/wp-content/uploads/2020/12/Monitor-8_Trabalho-escravo-na-ind%C3%BAstria-da-carne.pdf>. Accessed on: 09/09/2022.

¹⁹REPORTER BRASIL. Trabalho escravo na indústria da carne. Monitor #8: January/2021. Available at: <https://reporterbrasil.org.br/wp-content/uploads/2020/12/Monitor-8_Trabalho-escravo-na-ind%C3%BAstria-da-carne.pdf>. Accessed on: 09/09/2022.

²⁰SUMAUMA. Não estamos conseguindo contar os corpos. Available at: <<https://sumauma.com/nao-estamos-conseguindo-contar-os-corpos/>>. Accessed on: 04/04/2023.

²¹REPORTER BRASIL. Apple, Google, Microsoft e Amazon usaram ouro ilegal de terras indígenas brasileiras. Available at: <<https://reporterbrasil.org.br/2022/07/exclusivo-apple-google-microsoft-e-amazon-usaram-ouro-ilegal-de-terras-indigenas-brasileiras/>>. Accessed on: 04/04/2023.

²²FOREST TRENDS. Supply Chain and Forest. Available at: <<https://www.forest-trends.org/topics/forests/>>. Accessed on: 26/08/2022.

²³Observatório do Clima. Um terço da perda de vegetação nativa do Brasil aconteceu nos últimos 37 anos: Área ocupada pela agricultura cresceu 228% entre 1985 e 2021, revela MapBiomias. Available at: <<https://www.oc.eco.br/um-terco-da-perda>



-de-vegetacao-nativa-do-brasil-aconteceu-nos-ultimos-37-anos/>. Accessed on: 06/09/2022.

²⁴ ONU BRASIL. Mudanças climáticas: ameaça ao bem-estar humano e à saúde do planeta. Available at: <<https://brasil.un.org/pt-br/173693-mudancas-climaticas-ameaca-ao-bem-estar-humano-e-saude-do-planeta>>. Accessed on: 02/09/2022.

²⁵ NATIONAL GEOGRAPHIC BRAZIL. Brasil já sente impactos das mudanças climáticas e situação pode se agravar. Available at: <<https://www.nationalgeographicbrasil.com/meio-ambiente/2020/02/brasil-ja-sente-impactos-das-mudancas-climaticas-e-situacao-pode-se-agravar>>. Accessed on: 06/09/2022.

²⁶ NATIONAL GEOGRAPHIC BRAZIL. Brasil já sente impactos das mudanças climáticas e situação pode se agravar. Available at: <Brazil already feeling impacts of climate change and situation may worsen | National Geographic (nationalgeographicbrasil.com)>. Accessed on: 06/09/2022.

²⁷ FOLHA DE S. PAULO. Mudança climática aumentou intensidade de chuvas no Nordeste, dizem cientistas. Available at: <<https://www1.folha.uol.com.br/ambiente/2022/07/mudanca-climatica-aumentou-intensidade-de-chuvas-no-nordeste-dizem-cientistas.shtml>>. Accessed on: 12/09/2022.

²⁸ During the RA III (South America) Regional Conference on Data Policy and other parallel activities in Cartagena.

²⁹ WMO. State of the Climate in Latin America and the Caribbean 2021. Available at: <

https://library.wmo.int/doc_num.php?expl-num_id=11270>. Accessed on: 12/09/2022.

³⁰ WMO. State of the Climate in Latin America and the Caribbean 2021. Available at: <https://library.wmo.int/doc_num.php?expl-num_id=11270>. Accessed on: 12/09/2022.

³¹ WMO. State of the Climate in Latin America and the Caribbean 2021. Available at: <https://library.wmo.int/doc_num.php?expl-num_id=11270>. Accessed on: 12/09/2022.

³² DIAS, Rosa M. Pellegrini Baptista. A responsabilidade internacional das empresas transnacionais por ofensas aos Direitos Humanos. Dissertation presented to the Pontifical Catholic University of São Paulo, as a partial requirement for obtaining the title of Master of Laws. São Paulo/SP, 2009.

³³ A production chain is a set of consecutive steps along which the various inputs undergo some kind of transformation, until the making of a product (good or service) and its placement on the market.

³⁴ HEIZER, Jay; MUNSON, Chuck; RENDER, Barry. Principles of Operations Management: Sustainability and Supply Chain Management. Tenth edition, global edition. Pearson Education Limited: England, 2017.

³⁵ REPORTER BRASIL. Trabalho escravo na indústria da carne. Monitor #8, January 2021. Available at: <https://reporterbrasil.org.br/wp-content/uploads/2020/12/Monitor-8_Trabalho-escravo-na-ind%C3%A9stria-da-carne.pdf>. Accessed on: 20/09/2022.

³⁶ The following sectors are considered to have a major impact for the EU directive: manufacture of textiles, leather and related products (including footwear) and wholesale trade in textiles, clothing and footwear; agriculture, forestry, fishing (including aquaculture), manufacture of food products and wholesale trade in agricultural raw materials, live animals, wood, food and beverages; the extraction of mineral resources wherever they are extracted (including crude oil, natural gas, coal, lignite, metals and metal ores as well as all other non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and manufactured metal products (except machinery and equipment) and the wholesale trade of mineral resources, basic and intermediate mineral products (including metal ores and metals, construction materials, fuels, chemicals and other intermediate products).

³⁷ EUROPEAN COMMISSION. Proposal for a regulation on deforestation-free products. Available at: <Proposal for a regulation on deforestation-free products (europa.eu)>. Accessed on: 15/12/2022.

³⁸ Sustainable economy: Parliament adopts new reporting rules for multinationals | News | European Parliament (europa.eu)

³⁹ There is a legal understanding, mainly in European courts such as Portugal, that gross negligence must be understood not only from the perspective of guilt, but also from the perspective of the tort of negligence, considering that the agent's behavior must be analyzed both by a reprehensible attitude or carelessness of the agent and by the danger of the behavior itself and the probability of the result in the light of the conduct

adopted. Only particularly reprehensible behavior that postpones basic care, shows a high degree of thoughtlessness or foolishness, and creates almost certain danger should be considered gross negligence.

⁴⁰ Free translation.

⁴¹ Secondary legislation will be required to implement the regulations of this Act, which will make it illegal for large UK companies to use forest risk commodities that are listed if they have not been produced in accordance with relevant local laws and will require due diligence on company supply chains to ensure this. This legislation will specify several key issues, including: (i) which commodities will be in the scope of the regulations; (ii) which companies will be within the scope of the provisions; (iii) which companies in scope will be required to undertake and report on their exercise of due diligence; (iv) the exemption threshold; and (v) how the requirements will be enforced.

⁴² Sherpa and CCFD Terre Solidaire. Le radar du devoir de vigilance, identifier les entreprises soumises à la loi. June 2020. Available at: <<https://plan-vigilance.org/wp-content/uploads/2020/06/2020-06-25-Radar-DDV-Edition-2020.pdf>>.

⁴³ Sherpa, CCFD Terre Solidaire and Business and Human Rights Resource Centre, 'Duty of Vigilance Radar', <<https://vigilance-plan.org/>>.

⁴⁴ The Group of Seven (G7) is the group of the world's most industrialized countries, consisting of: Canada, France, Germany, Italy, Japan, the United Kingdom and the United States.

⁴⁵ US DEPARTMENT OF JUSTICE. Key Legislation, Human Trafficking. Available at: <<https://www.justice.gov/humantrafficking/key-legislation>>. Accessed on: 31/03/2023.

⁴⁶ C MARA DOS DEPUTADOS. ACNUDH manifesta-se sobre proposta de marco legal de direitos humanos em empresas. Available at: <<https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/acnudh-manifesta-se-sobre-proposta-de-marco-legal-de-direitos-humanos-em-empresas>>. Accessed on: 12/01/2023.

⁴⁷ The report suggests that a company that has been convicted of working in conditions analogous to slavery or child labor in its supply chain, for example, could be banned from contracting with the government or receiving public funding for five or ten years.

⁴⁸ BCB. Resolução nº 3876. Available at: https://www.bcb.gov.br/pre/normativos/res/2010/pdf/res_3876_v1_O.pdf. Accessed on: 02/03/2023.

⁴⁹ B3. Índice de Sustentabilidade Empresarial ISE B3. Available at: <https://www.b3.com.br/pt_br/market-data-e-indices/indices/indices-de-sustentabilidade/indice-de-sustentabilidade-empresarial-ise-b3.htm>. Accessed on: 23/02/2023.

⁵⁰ B3. Diretrizes do Sustentabilidade Empresarial ISE B3. Available at: <https://www.b3.com.br/data/files/EE/92/37/F2/483338101E311E28A-C094EA8/ISE%20B3_Diretrizes_05092022.pdf>. Accessed on: 23/02/2023.

⁵¹ B3. Diretrizes do Sustentabilidade Empresarial ISE B3. Available at: <https://www.b3.com.br/data/files/EE/92/37/F2/483338101E311E28A-C094EA8/ISE%20B3_Diretrizes_05092022.pdf>. Accessed on: 23/02/2023.

⁵² CUE. Cimeira do G7, Schloss Elmau, Alemanha, 07-08/06/2015. Available at: <<https://www.consilium.europa.eu/pt/meetings/international-summit/2015/06/07-08/>>. Accessed on: 16/01/2023.

⁵³ OECD. OECD Due Diligence Guidance for Responsible Business Conduct. Available at: <<https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/pcn/produtos/outros/Guia-da-ocdedevidadiligenciaparaumacondutaempresarialresponsavel2.pdf>>. Accessed on: 10/01/2023.

⁵⁴ CANAL AGRO. Entenda a cadeia produtiva do agronegócio. Available at: <<https://summitagro.esta-dao.com.br/noticias-do-campo/entenda-a-cadeia-produtiva-do-agronegocio/>>. Accessed on: 01/03/2023.

⁵⁵ CONSILIUM. Council adopts position on due diligence rules for large companies. Available at: <<https://www.consilium.europa.eu/en/press/press-releases/2022/12/01/council-adopts-position-on-due-diligence-rules-for-large-companies/>>. Accessed on: 03/03/2023.

⁵⁶ ILO Convention 169 defines who are the indigenous and tribal peoples mentioned in the document and affirms the obligation of governments to recognize and protect the social, cultural, religious and spiritual values and practices of these peoples. The Convention also addresses the importance of free, prior and informed

consultation whenever any work, action, policy or program is to be developed that affects traditional peoples, whether by public or private initiative.

⁵⁷ The Duty of Vigilance Act does not specifically list or describe what the requirements for a company to fall within a "prescribed corporate form" are. However, it can be determined on the basis of the provisions of the law in the Commercial Code, which states that the law applies to SAs (Sociétés Anonymes), SCAs (Sociétés en Commandite par Actions) and SEs (Sociétés en Commandite par Actions Simplifiées) within the scope of the Act remains subject to debate, although most scholars and practitioners suggest that SASs fall within the scope of the Act's Duty of Vigilance.

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