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Towards more sustainable global supply chains? Company compliance with new human rights and environmental due diligence laws

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ABSTRACT

Binding regulations have, recently, emerged in the Global North with the aim of holding companies accountable for environmental and/or human rights impacts throughout their supply chains. This article develops and applies an analytical framework to analyze corporate accountability dynamics in global trade, with a focus on the French Duty of Vigilance (DV) law. We analyze how companies in the agri-food sector have complied with the law as well as the emergence of new accountability dynamics. We find that while companies have improved their due diligence systems over time, they enjoy much discretion to interpret their obligations according to a managerial logic and to disclose information selectively. Nevertheless, the DV law has contributed to new accountability dynamics, wherein civil society can use civil liability to pressure companies to comply. Overall, the article advances our understanding of company compliance with new supply chain regulations and the accountability dynamics activated by such rules.

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KEYWORDS business and human rights; due diligence; environmental governance; French Duty of Vigilance law; supply chains; public policy

1. Introduction

Global supply chains have not only contributed to economic development, but also to environmental damages and human rights violations in often distant places of production. To govern complex supply chains has, however, proven challenging due to knowledge deficits, divergent interests, high transaction costs and a lack of legal liability of

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transnational companies for the impacts of their subsidiaries and suppliers (Ruggie 2018, Newig *et al.* 2020). Voluntary measures have been insufficient to prevent severe environmental degradation and human rights abuses (e.g. Dauvergne and Lister 2012, LeBaron *et al.* 2017, Gustafsson 2018), and researchers and policymakers increasingly argue that legally binding regulations on the demand-side are needed to coerce companies into compliance (Lenschow *et al.* 2016, Moser and Leipold 2021). Responding to such calls, a wave of new supply chain regulations has emerged in countries from the Global North (Gustafsson *et al.* 2023). Mandatory human rights and environmental due diligence (HREDD) laws that build on the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the Organization of Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises have been presented as a particularly promising way to govern global supply chains (Smit *et al.* 2020).

The pioneering French Duty of Vigilance law (DV law), adopted in 2017, is the first HREDD law worldwide that is comprehensive in its scope, covering environmental and human rights issues, and that establishes the legal liability of large companies for negative impacts caused abroad. It is high time to analyze how companies comply with the DV law and how civil society actors have deployed it to enhance corporate accountability in global supply chains. In line with managerial compliance theorists, we understand compliance as a complex process to define a response and adjust to a rule (Edelman *et al.* 1991, Tallberg 2002). To understand how companies construct the meaning of compliance with HREDD, we focus on rule interpretation, organizational practices and capacity building. Herein, we follow Monciardini *et al.* (2021) and seek to distinguish between symbolic compliance and more profound changes in company practices.

This article theorizes and empirically analyzes company compliance and corporate accountability in the context of new supply chain regulations. For doing so, we developed and applied a framework that distinguishes between different stages and mechanisms of accountability. Our study focuses on French companies in the agri-food sector, which has a major impact on climate change, biodiversity loss and human rights abuses (Clapp 2020). Importantly, inspired by the DV law, Germany and Norway adopted HREDD laws in 2021 and the EU is about to adopt a regulation on deforestation-free products and a corporate sustainability due diligence directive, which also includes civil liability. Our study, thus, provides important findings concerning new HREDD laws, which are of relevance far beyond the French borders.

2. Theory

This study draws on and contributes to literatures on corporate accountability in the fields of environmental governance and business and human rights. We first briefly outline the state of the art, and thereafter present our analytical framework.

2.1. Corporate accountability in global supply chains

Accountability is typically understood as a specific relationship involving an obligation to meet certain standards, justify conduct, and face consequences if failing to comply (Grant and Keohane 2005, Bovens 2010). Theories of accountability have focused mainly on either national or international levels (Grant and Keohane 2005, Bovens 2010), overlooking the transnational supply chain dimension. Generally, it has been difficult to hold companies legally accountable for adverse impacts caused by their subsidiaries and suppliers (Ruggie 2018). There is no binding international treaty and voluntary private initiatives have been insufficient to address the adverse impacts of multinational firms (LeBaron *et al.* 2017, Bartley 2018).

Literatures on accountability in global or transnational settings have pointed to the lack of effectiveness of existing accountability regimes to improve environmental and human rights standards, which has been explained with these regimes' lack of teeth (Kramarz and Park 2016, p. 19), or, in the words of Grant and Keohane (2005, p. 41), the fact that 'sanctions remain the weak point in global accountability since they can only be implemented by the powerful'. Koenig-Archibugi (2010) and Macdonald (2014) have emphasized that whereas the core meaning of accountability is similar at national and transnational scale, 'transnational accountability' is much more challenging to achieve.

Accountability relationships in a transnational governance setting are often part of larger chains of accountability, by which accountability-holders are linked to accountability wielders, often via actors and background institutions that sanction power wielders (Rubenstein 2007, Koenig-Archibugi 2010). In consequence, intermediated (proxy or surrogate) forms of accountability are more frequent in transnational governance (Koenig-Archibugi and Macdonald 2013, Partzsch 2021). Within proxy or surrogate accountability constellations, due to the presence of huge power asymmetries and social and physical distance between decision-makers and those affected, other actors represent accountability holders in accountability processes (Rubenstein 2007). In HREDD regimes, civil society actors or consumers in the EU can hold companies accountable for adverse impacts on behalf of rightsholders from the Global South, but the risk is that they misinterpret the needs and interests of rightsholders (Rubenstein 2007, Kramarz *et al.* 2022).

Hence, the quality of transnational accountability arrangements depends on how well surrogates represent accountability holders, and they should, therefore, engage with and be receptive to rightholders (Rubenstein 2007). In the absence of centralized constitutional frameworks for resolving competing claims, contestations related to policy solutions and questions of who power wielders ought to be held accountable to and for what are particularly contested in transnational settings (Krisch 2006, Koenig-Archibugi and Macdonald 2013).

Building on these insights, we will analyze how companies have complied with new legal obligations and which accountability dynamics have been activated in the sustainability governance of global supply chains. Given the recency of adopted HREDD laws, most previous research has focused on policy-making processes and the laws' institutional design (Schilling-Vacaflor and Lenschow 2021, Gustafsson *et al.* 2022).

2.2. Analytical framework: stages and mechanisms of accountability

To analyze to what extent and how the French law has fostered corporate accountability, we developed an analytical framework that builds on key

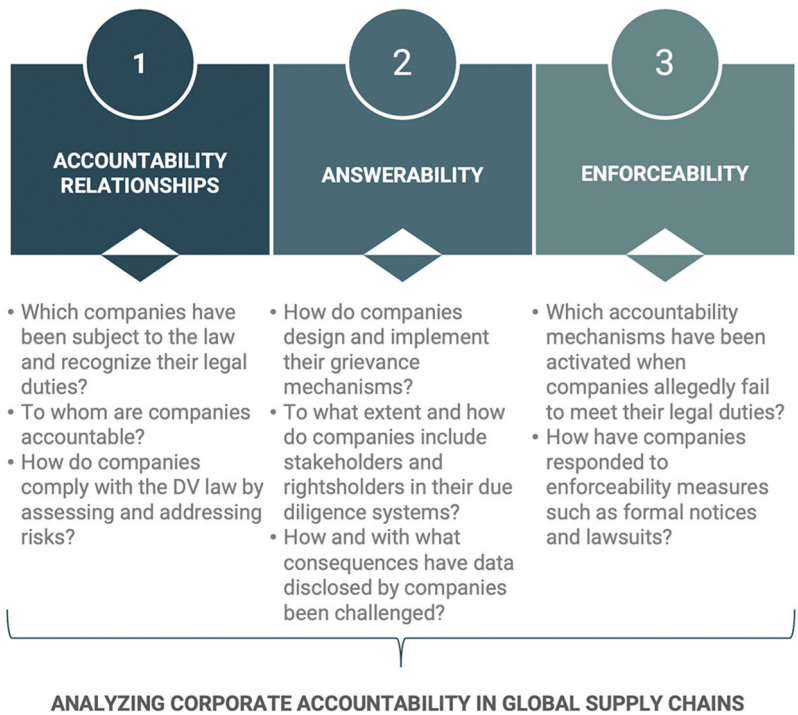

Figure 1. Analytical framework.

concepts related to accountability (see Figure 1). We follow Bovens (2010, see also Newell 2008) in distinguishing between three stages of accountability: (1) the company must feel obliged to inform accountability-holders about their conduct and justify its conduct ('accountability relationship'), (2) accountability-holders must be able to interrogate the actor and verify the adequacy of the disclosed information or the legitimacy of the companies' conduct ('answerability') and (3) accountability-holders should be able to pass a judgement on the conduct of the companies, which might be associated with positive or negative consequences ('enforceability'). However, in our study we do not just focus on diadic forms of accountability (i.e. relationships between accountability holder – accountability wielder), but rather on triadic forms of accountability, wherein the accountability relationships are mediated by different accountability forums or surrogates in the Global North. We therefore analyze the relationships between surrogates and accountability holders in the different stages.

Within these three stages of accountability, different 'accountability mechanisms' can be activated: supervisory, fiscal, legal, market, peer and reputational accountability (Keohane 2003, Grant and Keohane 2005). *Supervisory accountability* refers to supervision by state agencies, *fiscal accountability* to accountability through the granting of public funds, *legal accountability* to legal means for holding actors accountable, *market accountability* to accountability by investors or consumers, *peer accountability* to the consequential evaluation of the performance of 'peers' (e.g. companies) and *reputational accountability* to civil society campaigns to pressure companies (Keohane 2003, Grant and Keohane 2005). We will study which mechanisms have been activated in the three stages of accountability and how they interact with each other. Given that the French law includes civil liability, we will pay special attention to legal mechanisms of accountability.

2.2.1. Accountability relationships

At the core of this first stage is that companies acknowledge their legal duty to provide accountability holders or forums with data about due diligence systems. As accountability claimants often live in distant jurisdictions, European actors (e.g. supervisory state agencies, courts, consumers, investors or citizens) will often act on behalf of accountability holders. We will focus on the question of who is accountable to whom and analyze how companies construct the meaning of compliance with the law by putting due diligence systems into practice and reporting about them. For being meaningful, the disclosed data must be adequate, clear and relevant for understanding supply chains (e.g. traceability) and their impacts at different scales and places (cf. Gardner *et al.* 2019).

2.2.2. Answerability

Transparency can reduce information asymmetries and enhance the capacity of accountability claimants to evaluate the justifications made by companies (Mason 2020). Through transparency and stakeholder involvement, 'openness and reflexivity can be induced in political and administrative systems that might otherwise be primarily inward-looking', which can push a power-wielder to 'learn and to improve its performance' (Bovens 2010, p. 956). International norms and the French DV law foresee two important mechanisms for accountability holders to influence due diligence systems: grievance mechanisms and stakeholder consultations. Furthermore, as we expect that external pressures can contribute to enhance transparency and answerability, we also analyze the extent to which stakeholders challenge the information disclosed by companies. The answerability stage can play a critical role for generating information that can later be used as evidence for sanctioning non-compliant companies, thereby contributing to law enforcement.

2.2.3. Enforceability

In line with Bovens (2010), we define different types of sanctions as being a constitutive element of accountability. Indeed, scholars argued that civil liability is crucial for avoiding that due diligence becomes a 'tick-box exercise' (LeBaron and Rühmkorf 2017, Bueno and Bright 2020). Whereas litigation processes often generate media coverage of corporate malpractices and pressures on companies to comply, some researchers have raised concerns regarding the capacity and legitimacy of courts to police corporate conduct (Bertram 2022b). Complex transnational lawsuits are associated with important challenges, such as access to courts and the burden of proof for victims (Schilling-Vacaflor 2021). As victims need support from foreign NGOs or law firms for filing lawsuits, the hurdles to do so are high, and for Bertram (2022a) transnational litigation ultimately represents a form of 'environmental justice light'. While civil society campaigns can contribute to influence corporate behavior, we still know little about the actual effects of civil liability on company compliance (Baars 2016, Bertram 2022a). Companies may develop skills to demonstrate that they have followed the protocols, a sort of 'due diligence defence' (Baars 2016, p. 151), but without necessarily effectively reducing the risks.

3. Methods

To carry out the study, we first selected all agri-food companies headquartered in France, which are included in Global Canopy's database 'Forest 500' on the most influential companies in terms of market share (see Table 1). These companies import or process products such as beef and soy, palm oil and/or timber from places like Brazil or Indonesia, which are associated with

Table 1. Sustainability scores and inclusion in the 'radar of vigilance' of ten agri-food companies headquartered in France (own elaboration based on FOREST500 and 'radar de vigilance' data). Available here: https://forest500.org/rankings/companies.

Company	Included in 'radar of vigilance' list	Vigilance plans disclosed	Total score in database 'Forest500' in % (out of 100%, 2021)
Danone	Yes	Yes	55
Carrefour	Yes	Yes	49
Casino Group	Yes	Yes	32
Groupe Avril	Yes in 2020 and No in 2022 (contested)	No	28
Association Familiale Mulliez	No	No	26
Savencia	Yes	Yes	7
Fleury Michon	No	No	4
Le Gouessant	No	No	1
InVivo	No	No	2
Lactalis	No in 2020 and Yes in 2022 (contested)	No	2

deforestation and other adverse socio-environmental impacts (Pendrill *et al.* 2019). We then identified which companies from this sample are covered by the law and acknowledge their legal obligations by submitting yearly vigilance plans. These companies were Carrefour, Casino Group, Danone and Savencia. We developed a coding scheme (Appendix A) to code these companies' annual vigilance plans between 2017 and 2021 (totally 20 vigilance plans, see Appendix B). Moreover, we carried out 22 semi-structured interviews with company representatives, business associations, consultants of companies, audit companies and civil society organizations. This material enabled an in-depth analysis of how companies have complied with the law as well as the emergence of new accountability dynamics. Due to the expertise of both authors on soy and beef from Brazil and the fact that environmental and human rights impacts in these supply chains have been particularly severe, we had a closer look at them in our analysis.

To explore to what extent our findings are relevant beyond the agri-food sector, we carried out five interviews with company representatives from other economic sectors, such as energy, textiles and telecommunication, as well as coordinaters of multi-stakeholder initiatives involving French companies. We coded our data with the software ATLAS.ti.

4. Due diligence according to international norms and the French DV law

For complying with their legal obligations outlined in the DV law, the concept of HREDD, as outlined in the UNGPs and the OECD Guidelines for Multinational Enterprises, has been a key reference.

4.1. Due diligence as defined in international soft norms

The UNGPs were unanimously adopted by the UN Human Rights Council in 2011 and have since then constituted the authoritative global standard on human rights due diligence. In 2011, the OECD aligned its Guidelines for Multinational Enterprises with the UNGPs and outlines company duties to exercise human rights and environmental due diligence (Operation and Development OECD 2018). These norms require companies to carry out HREDD to assess and address the risks and impacts associated with their business activities, including the operations of subsidiaries and suppliers. All companies should exercise HREDD and report upon their efforts, but larger companies and those with higher risks should implement more rigorous systems. Stakeholder involvement, including consultation with right-sholders, independent experts, trade unions, human rights defenders and other civil society groups, should be a key component in all stages of a due diligence process. Finally, companies should assure the existence of effective grievance mechanisms for individuals and communities who may be adversely impacted (OHCHR 2011).

4.2. The French DV law

After a 4-year long struggle of French civil society organizations and their allies in the Congress, the 'Duty of Vigilance of Parent and Instructing Companies' (Law No. 2017–399) was finally adopted in 2017. The law covers French companies that employ at least 5,000 employees in France, or 10,000 employees worldwide. It establishes that companies have to implement HREDD systems in their supply chains and report on these systems in yearly vigilance plans. The plan shall be developed in collaboration with relevant stakeholders and include: a risk mapping, appropriate actions to mitigate or prevent risks and impacts, a grievance mechanism, and a system to monitor the effectiveness of adopted measures.

The DV law is enforced through a combination of financial penalties and civil liability, but it does not foresee a public agency in France that supervises company compliance. There are two ways to enforce the law. First, if a company does not publish a vigilance plan, or provides for incomplete or inaccurate information, any person with legitimate interests can send a formal notice to the company. Ultimately, a judge determines whether the vigilance plan or the adopted measures comply with the law or not. Second, the company can be held liable if harm occurs. The main challenge to hold companies accountable is that the burden of proof is on the victims who need to provide for evidence that the damage occurred is the result of a flawed vigilance plan or of shortcomings in its implementation.

5. Company compliance and corporate accountability dynamics

In this section, we will analyze how companies have complied with the DV law and what accountability dynamics have been activated in the three stages of accountability.

5.1. Accountability relationships

The existence of clear accountability relationships, which includes the recognition of new legal duties by companies, is the first critical stage of accountability.

5.1.1. Which companies have been subject to the law and recognize their legal duties?

The basic question of *Who is accountable?* is not straightforward to answer in the case of the DV law. Due to the confidentiality of corporate data and the absence of an official list of companies subject to the law, it has been very difficult to know which companies are covered. A NGO representative explained:

> [W]e don't know which companies are covered by the law. The thresholds are complicated because they look at the numbers of employees at the corporate level. But there is a complete lack of transparency in France about this information. Private companies do not have an obligation to report on the number of employees. So even the state does not know. (interview, 10 February, 2021).

French NGOs have compiled a provisional list of companies subject to the law.[1] According to this database, the following four companies from our sample are covered by the law and have published their vigilance plans: Carrefour, Danone, Casino Group and Savencia. In other cases, such as the Groupe Avril and Lactalis, it has been contested whether they are subject to the law or not. While these companies were included in the database, they have not recognized their duties or published any vigilance plan (interview with French NGO, 10 February 2021). Civil society organizations argued that from the 263 companies covered by the list, in 2021 there were still 44 companies (17%) breaking the law by not publishing vigilance plans (CCFD Solidaire & Sherpa 2021).

Importantly, evidence suggests that companies that are not subject to the law tend to score worse regarding their human rights and environmental performance than the companies covered (see Table 1).[2] However, more research is needed on the actual practices and impacts of companies in specific contexts.

Civil society actors have pressured companies to recognize their legal duties (interview with French NGO, April 2022). Relatedly, the percentage of companies that are subject to the DV law, but do not recognize their legal duties by publishing their vigilance plans, has decreased over the years (CCFD Solidaire & Sherpa 2021).

5.1.2. How have companies assessed and addressed risks associated with their subsidiaries and suppliers?

As the DV law has only stipulated a general obligation to disclose information, companies have had much discretion of how to operationalize HREDD and how to report upon their practices. According to a human rights manager of an agri-food company: 'Businesses tend to be very transparent about things they do really well. And they are not transparent about things that they don't do very well' (interview, February 2022).

Despite the fact that the UNGPs already entered into force in 2011, our empirical analysis revealed that some of the companies in our sample have been struggling to understand the meaning of HREDD or the extent of their obligations according to the DV law. For instance, the vigilance plans of all the companies in our sample in the first two years have been very short and insufficient for explaining how companies have assessed and addressed risks (Appendix B). As expressed by a representative from an agri-food company: 'I am really surprised when discussing with peers from other French multinationals who have to comply with the vigilance law and still many, many have no clue on where to start and what to do concretely' (interview, February 2022).

Our analysis showed that the four companies have strengthened their risk assessment procedures and included additional prevention and mitigation measures (Appendix B). In 2017, Casino Group established a 'Duty of Care Committee' and in 2018 Savencia announced the establishment of an 'Ethics and Culture Committee' for the proper implementation of the DV law (Casino Group 2018, Savencia 2018). Company representatives explained that the law had driven changes of sustainability management structures and practices. As explained by one interviewee: 'The fact that the Duty of Vigilance law is now applied in France advises the company to listen more. The legal risk linked to the reputational risks are now something that has a weight when carrying out a risk assessment.' (interview, February 2022). Our data suggest that companies have mainly disclosed data for accountability forums or surrogates in the Global North, as translations of their vigilance plans into other languages or public disseminations of HREDD systems in the Global South have been missing (interviews with French company representatives and Brazilian NGOs, January to August 2022).

In general, the analyzed companies combined different tools for assessing the risks in their supply chains, such as in-house risk assessments based on available databases (e.g. Human Development Index; the Environmental Performance Index; Worldwide Governance Indicators; WWF Water Risk Filter) and assessments provided by third parties (e.g. Ecovadis). Interestingly, Casino Group and Carrefour have also integrated new forms of risk assessments based on in-house analysis of NGO reports and newspaper articles on risks in specific supply chains (Appendix B). All companies

from our sample have prioritized certain products and impacts, but the methodology used behind their prioritization has not been transparent. Danone and Carrefour have also been working with self-assessment tools for suppliers. However, these companies have faced the difficulty that many suppliers have not participated in self-assessment campaigns or refused to be evaluated by EcoVadis (Appendix B).

While the vigilance plans suggest that companies have aimed to gain better knowledge and control over their activities abroad, important shortcomings remain. For instance, it is questionable to what extent the use of databases, services from rating providers and (selective) self-assessments of suppliers help to detect instances of human rights violations or environmental damages. Indeed, the triangulation of such data mainly helps to estimate risks according to product category and producing regions. In 2020, Savencia acknowledged that it was still uncertain about the actual risks in its supply chains:

> SAVENCIA Fromage & Dairy carried out an initial risk mapping exercise in 2017 in order to meet the requirements of the law on the duty of vigilance.[. . .] This consolidated list constitutes an initial mapping of the specific, but theoretical, risks [. . .] These are macroscopic risks found in certain supply countries. Further work will have to determine whether these risks are found in SAVENCIA Fromage & Dairy's value chains. (Savencia 2020).

Furthermore, representatives from agri-food companies stressed that it has generally been easier to assess environmental risks that can be quantitatively measured (e.g. deforestation), while assessing human rights risks from afar has been particularly challenging (interviews, January and February 2022).

To illustrate the challenges of assessing specific risks, it helps to have a closer look at soy and beef from Brazil. To map the risks in these sectors, companies must be able to trace the origins of products in their supply chains. For instance, Carrefour and Danone have made efforts to map their beef and soy supply chains and identify risky suppliers by using geo-monitoring systems, available databases, self-assessments and audits (Appendix B). Still, Carrefour (2018) recognizes that the monitoring of indirect suppliers has been challenging. Danone just estimates how much of the soy used as animal feed for producing dairy products in Brazil comes from regions with high risks of deforestation and buys credits from certification standards like the Round Table on Responsible Soy (RTRS) and ProTerra to compensate for its potential negative impacts (Appendix B). As Danone has only prioritized deforestation in relation to its soy supply chain, it does not report upon human rights risks in this sector (Carrefour 2018). This decision would certainly be challenged by rightsholders in the Global South whose rights to land or a healthy environment are affected by

the expansive soy business (Interviews with Brazilian grassroots organizations, March to August 2023).

In line with the results of diverse risk assessment tools, all companies from our sample have conducted audits of high-risk suppliers and adopted action plans in the case of non-compliance. For preventing and mitigating risks, Carrefour, Casino Group and Danone have also included sustainability requirements in contractual clauses with subsidiaries and suppliers (see Appendix B). Relatedly, Casino Group reported upon the exclusion of suppliers that did not comply with the company's sustainability requirements (Carrefour 2018). Furthermore, these companies have organized training courses on sustainability standards for their employees, subsidiaries and suppliers. They have also referred to the use of different sustainability certification standards for addressing risks in their supply chains (e.g. RTRS, RSPO, ProTerra, ABVTex). Pointing to the strategy of companies to avoid working in high-risk areas, Carrefour, Casino Group and Danone formulated the goal to decrease the share of products imported from high-risk countries or regions.

While we observed an interesting dynamism of companies aiming to establish and improve due diligence systems, we lack knowledge on the real influence of the adopted measures on the ground. The indicators and data provided by companies have usually provided insights about the percentage or number of subsidiaries or suppliers who participated in diverse initiatives, but not on the outcome of such activities. Interviewees from agri-food companies have shared our concern in relation to the difficulty to know whether the adopted measures have actually prevented or mitigated harm, arguing for instance:

> When your supply chain is so long, you feel like you run, run, run and you try your hardest, but you actually don't know, if it is going to make that person's life better? [. . .] We put processes and tools in place, but you don't know, you don't see their consequences physically. Sometimes it's hard to kind of visualize that, also for our colleagues [. . .] They want to see what you do and whether it makes a difference. But when something is so remote, that's really difficult. (interview, February 2022)

5.2. Processes of answerability

The DV law relies mainly on grievance mechanisms and stakeholder consultations for fostering accountability in the answerability stage, but civil society organizations have also played an important role by challenging companies' vigilance plans and due diligence systems.

5.2.1. Grievance mechanisms

Grievance mechanisms refer to a '[. . .] process through which grievances concerning business-related human rights abuse can be raised and remedy

can be sought.' (OHCHR 2011). Grievance mechanisms must be legitimate, accessible for workers and actors potentially affected by business activities, predictable, equitable, transparent, rights-compatible, and be used as a source of continuous learning and based on engagement and dialogue (OHCHR 2011). All of the companies in our sample except for Savencia already reported upon having a grievance mechanism in place in their first vigilance plan in 2017 (Appendix B).

Companies have made changes of their grievance mechanisms to comply with the DV law. Casino Group and Danone reported upon having extended their internal mechanism for employees to external stakeholders and they have developed decentralized grievance mechanisms (ibid.). Moreover, to comply with the law, all companies have extended the scope of their grievance mechanisms to cover all types of human rights and environmental damages. All companies except for Savencia, have also gradually included provisions on whistleblower protection (OHCHR 2011).

However, as grievance mechanisms are controlled by companies, civil society organizations have observed that rightsholders from the Global South are often reluctant to submit their complaints, due to lack of knowledge about or trust in such business-dominated instruments (interview with French NGO, February 2021; interview with Brazilian grassroots organization, August 2018). In turn, interviewees from French companies explained that they have increasingly received questions in relation to different alerts from investors (January 2022). In recent years, Carrefour, Casino Group and Danone have started to report upon the number of alerts they have received, but argued that very few of them were related to a breach of the DV law. An interviewee from the human rights department of an agri-food company critically reflected:

> Our grievance mechanism has been extended to include human rights and environmental issues. We tick the box of the DV law for that [. . .] But when we end up with the fact that after a few years over 90% of the people using this mechanism are our employees, do we still tick the box or not? (interview, February 2022)

This quote points to some of the limitations of grievance mechanisms to identify and address risks in the companies' supply chains. Whereas Savencia and Danone have not been transparent about the details of complaints and how they handled them, Casino Group and Carrefour have started to report upon how they have handled specific alerts. However, the latter only report upon selected cases wherein NGOs have drawn attention to corporate malpractices, and in response to critique, the companies referred to the vigilance plans to provide for evidence of technical compliance with the law. For instance, they listed their participation in different types of multistakeholder

initiatives and dialogues as evidence of their efforts to address negative impacts, but without proving the effectiveness of such measures.

5.2.2. Stakeholder consultations

According to the UNGPs, consultations with rightholders and stakeholders, should enable companies to accurately assess their human rights impacts and the effectiveness of adopted prevention and mitigation measures. Carrefour and Danone have generally been more specific in their reporting upon stakeholder consultation compared to Casino Group and Savencia. The former report upon the involvement of specific stakeholders, such as trade unions, large NGOs or multi-stakeholder initiatives in their due diligence systems. However, none of the companies reported upon consultations with (potentially) affected rightsholders or grassroots organizations, leaving such key actors without the possibility to influence risk assessments or the adopted measures.

Moreover, there has generally been a lack of information about what has been discussed and if consultations led to any changes in the companies' due diligence systems. Only Carrefour's latest vigilance plan from 2021 specifies the number of meetings with stakeholders and themes discussed (Carrefour 2022).

5.2.3. Critique of external actors and company responses

The DV law has created new opportunities for civil society organizations to interrogate the information disclosed by companies and deploy reputational accountability. French NGOs have criticized the vigilance plans for being superficial and insufficient for adequately assessing and addressing risks, and developed guidelines on how to improve them (e.g. Sherpa 2019). For scrutinizing the appropriateness of company reports, civil society organizations at both ends of supply chains have enhanced their efforts to trace the supply chains of specific companies and their impacts (Barreto *et al.* 2017, Steinweg *et al.* 2019; interview with Brazilian NGO, June 2022). Casino Group and Carrefour responded to such pressures by incorporating more detailed information about human rights and environmental impacts that had been identified in civil society reports. Such contestations have in the Casino Group case preceded the initiation of a lawsuit, illustrating the important interplay between reputational and legal accountability mechanisms across the different stages.

Indeed, both representatives of civil society organizations and companies expressed the view that companies have faced increasing pressures mainly from civil society. A representative from an agri-food company argued 'The vigilance law is positive in the sense that it has brought about the scrutiny from civil society. We have had NGOs contacting us and quoting the law

[. . .] I think that scrutiny is really healthy' (interview, February 2022). An interviewee from an energy company emphasized that stakeholders from producing sites have also started to contact them directly:

> What I observed is that now some regional organizations come directly to the parent company. So, you are based in France and a small NGO based somewhere in Asia you don't really know asks you 'Well, you have an operation here. So, we know that this DV law exists. Please, can you tell us what you're doing on that aspect?' [. . .]. People are getting more aware of these issues, and they want to know more. (interview, January 2022)

In a similar vein, a representative from a French NGO narrated that since the adoption of the DV law many people from the Global South contacted them to provide information on negative impacts associated with supply chains to France (interview, April 2022). This suggests that the legal obligations of companies have spurred processes of reputational accountability. Yet, an important limitation is that there are no access to information rights towards companies. Given the selective and vague nature of much information disclosed, it has been very difficult for civil society actors to link specific impacts in producing sites to French companies and to assess the adequacy of their due diligence systems.

Besides civil society actors, investors have also increasingly asked French companies about their human rights and environmental performance, but according to our interviewees such requests of information have often been unrelated to specific obligations under the DV law (interviews January and February 2022). Due to the absence of a supervisory authority in France, the role of state actors in answerability processes has been very limited (Barreto *et al.* 2017, Steinweg *et al.* 2019).

5.3. Enforceability

As mentioned above, sanctions and legal accountability are important for the effectiveness of HREDD regimes. As there is no supervisory authority in France, enforceability of the DV law depends on interested parties filing lawsuits.

5.3.1. Civil liability

Until the end of 2022, NGOs sent seven formal notices to companies and filed six lawsuits referring to the DV law to French courts. [3] One of these cases was filed against Casino Group and targets the agricultural sector, more specifically, beef from Colombia and Brazil.

The Casino Group case: In June 2020, the French NGO Envol Vert published a report with evidence that the meat sold in the company's stores in Brazil had been purchased from suppliers involved in

deforestation and land grabbing. Envol Vert also sent a letter to Casino Group requesting the company to improve the risk-mapping and traceability in its beef supply chains, as well as to ensure stakeholder participation (Envol Vert 2020). Casino Group dismissed the accusations as 'unfounded and completely unacceptable' (Casino Group 2020b). From the companies' point of view, it had adopted appropriate measures to minimize the risks for deforestation in its supply chains by overseeing its direct suppliers (Casino Group 2020b). Casino Group has delegated the responsibility to trace the origins of the products to its Brazilian subsidiary Grupo Pao de Acucar (GPA). To ensure traceability, GPA has relied on trainings and guidelines, but also required suppliers to use geo-monitoring systems (Casino Group 2020b).

Soon after the accusations, GPA adopted a stricter beef sourcing policy, but as no additional measures were adopted, a coalition of French and Brazilian civil society organizations initiated a lawsuit against the company in March 2021. They demanded access to remedy for victims and that the company takes further action to exclude beef suppliers involved in deforestation, land grabbing, and violation of Indigenous rights from its supply chains. It is now up to the judge to define whether the company has complied with its legal duties or not. Anyhow, it is already clear that the lawsuits have been surrounded by large and highly visible campaigns, and have thus activated reputational accountability.

5.3.2. Company responses to legal risks and legal claims against them

Casino Group had already in 2014 identified Brazilian beef supply as a possible source of human rights abuses and environmental harm, and prioritized related risks in its vigilance plans (Appendix B). To mitigate these risks, the company referred to the cattle agreement that was signed between Brazil's public prosecutors, meatpacking companies and Greenpeace after the publication of the Greenpeace report *Slaugthering the Amazon* in 2009. The company also referred extensively to the Beef on track-initiative, a protocol developed by the NGO Imaflora. None of these initiatives have, however, been able to effectively reduce deforestation and avoid human rights abuses as it is currently not possible to trace indirect suppliers (Pereira *et al.* 2020). Still, Casino Group has continued to refer to these initiatives as main measures to address the risks associated with Brazilian beef suppliers (Casino Group 2020a).

In its 2021 vigilance plan, five pages were dedicated to Brazilian beef, providing for multiple examples of how the company has participated in different initiatives, multistakeholder dialogues, and webinars to better control their direct suppliers. The company also recognized the difficulty to trace indirect suppliers and it has joined different pilot projects for improving traceability (Casino Group 2021). It is, however, hard to verify the

effectiveness of the adopted measures. Such technical justifications of compliance could be seen as a form of 'due diligence defence', which aims to demonstrate that companies have followed the protocols, but without necessarily reducing existing risks.

Beside the analysis of the Casino Group case, we also interviewed two companies from other sectors that have been involved in lawsuits in relation to the DV law to ask them about their experiences with and responses to lawsuits. An interviewee told us that in response to the lawsuit, the company has created new units working on human rights and due diligence (interview, April 2022). The other interviewee explained that in response to the lawsuit against its company, the responsibility to comply with the DV law was transferred from the CSR and human rights units to the legal unit (interview, April 2022). A consultant of companies on sustainability issues explained that it has been a more general trend that instead of becoming more transparent, many companies have become more cautious to disclose information:

> One of the backlash effects of the law of Duty of Vigilance is that before that, we used to be more open on our practices, and with the law of Duty of Vigilance, the legal department has in a way recommended to be careful on the information we are disclosing, because this could be used against us. (interview, February 2022)

Hence, while the DV law should in theory contribute to transparency and processes of answerability, the law has also had the paradoxical effect of turning companies less willing to disclose sensitive data in order to reduce the risk of legal repercussions.

6. Discussion and conclusion

This article analyses company compliance and the emergence of new accountability dynamics surrounding the pioneering DV law. While the recognition of the duties of companies to uphold environmental and human rights standards across borders is an important step toward global justice (Young 2006), we argue that it is important to have a closer look at the specific ways companies comply and related accountability dynamics. We show that while companies have improved their HREDD systems over time, they enjoy much discretion to interpret their obligations and disclose information selectively. However, the law has created new opportunities for civil society to hold companies accountable through legal and reputational mechanisms. Below, we will discuss the broader implications of our findings.

First, while HREDD laws have often been presented as an important step for creating a level playing field and for empowering the victims of adverse impacts in the Global South, the rather high threshold of companies covered

by the DV law and the lack of clear and transparent information regarding the companies subject to it, reveals that it has created fragmented and unclear accountability relationships. Importantly, many companies with low sustainability commitments have not been covered by the law or denied to be subject to it.

The companies that have recognized their legal obligations are accountable to diverse accountability forums, such as French courts, consumers, investors and civil society organizations. Hence, the DV law has mainly activated surrogate forms of accountability. Accountability holders such as affected communities from the Global South have to date played rather limited roles in the emergent HREDD regime in France. Rightholders have seldom been consulted by companies and rarely use their grievance mechanisms. As the quality of surrogate constellations of accountability strongly relies on the engagement with and receptiveness toward accountability holders, more research is needed about the question of how stakeholder participation can be enhanced in all stages of accountability.

Second, whereas some scholars have emphasized that civil liability mechanisms can improve the effectiveness of supply chain regulations, others have highlighted the limitations and risks associated with transnational litigation. Our paper reveals interesting new findings about the interactions between legal and reputational mechanisms of accountability. We show that civil society actors have pressured companies to recognize their legal duties and to improve their due diligence systems; have collected data to challenge company reports; and have filed lawsuits. New legal accountability dynamics in transnational spaces are an interesting novelty, as due to the predominance of soft law norms, legal accountability has previously been rare in such settings (Koenig-Archibugi 2010).

Still, it is important to acknowledge the limitations of civil liability mechanisms. As companies handle information in a confidential manner and the burden of proof in lawsuits is on the victims, it represents a significant challenge to initiate and win a lawsuit against a company. Moreover, we still do not know how courts will interpret companies' due diligence obligations. These decisions will have important repercussions for processes of answerability, as they might either legitimize symbolic forms of compliance with the law or push companies towards more substantive compliance. Whereas, our analysis has emphasized the relationship between legal and reputational accountability, future research could also explore more in detail how other mechanisms of accountability unfold in HREDD regimes. For instance, in-depth research into peer and market mechanisms of accountability are still missing. Furthermore, while in the French case a competent authority that supervises company compliance has been absent, such a state agency has been established in Germany for supervising the

Geman Supply Chain Due Diligence act. This constitutes an interesting case for studying supervisory accountability processes and their interaction with other mechanisms of accountability.

Third, our findings also advance discussions about the links between transparency and accountability. Previous research has shown that transparency has rarely changed the behavior of power-holders (Mason 2020). These studies have, however, focused on transparency arrangements and reporting obligations without legal liability, i.e. without a 'shadow of hierarchy' (e.LeBaron *et al.* 2017, Monciardini *et al.* 2021). Even though our findings are based on a limited sample of companies, they suggest that the threat of being held legally accountable can result in companies becoming more reluctant to disclose information. Disclosed information has often been superficial and selective and it has been difficult for affected parties to verify the functioning and effectiveness of due diligence systems. Hence, we observe the risk that companies develop skills to demonstrate compliance, but without effectively reducing risks. Such practices tend to undermine attempts to harden foreign corporate accountability. Against this background, it is of crucial importance that future research on HREDD regimes goes beyond the study of company compliance and asks to what extent new structures and processes are actually able to address urgent sustainability problems and contribute to more just and sustainable development.

Notes

1. Available here: https://vigilance-plan.org. Accessed on 2 July 2021.
2. The 'Forest 500' database analyzes the environmental and social commitments of companies and actions to implement them as well as the related data disclosure.
3. For updates on formal notices and lawsuits under the Duty of Vigilance law, see: https://www.business-humanrights.org/en/latest-news/frances-duty-of-vigilance-law/. Accessed on 6 December 2022.

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Ethics approval

This research has been approved by Swedish Ethics Review Agency (approval no. -2022–00434–01).

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