

Changing of the guard: a paradigm shift for more sustainable supply chains

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European legislation that can greatly influence how supply chains are governed is receiving increased attention regionally and globally. After France adopted a 2017 Corporate Duty on Vigilance law, a proposed German mandatory due diligence law is expected to be passed later this year, coming into force in 2023. The German law is initially relevant for companies headquartered in Germany with over 3000 employees. The law seeks to ensure that human rights and environmental standards are enforced across the supply chains of large German companies. It has some teeth: fines proposed for non-compliance could reach 2% of annual sales (Solomon, 2021). Whether this penalty will cause true substantive and lasting change is debatable.

Some easing of these laws may occur due to lobbying by industry, shifting attention away from upstream supply chain liability and limiting the focus to direct suppliers only. A neo-liberal argument that voluntary initiatives are sufficient seems to be driving attempts to mitigate the law's penalty and coverage. Yet, many in legislatures, non-governmental organizations (NGOs) and other stakeholders have discounted this argument. These new laws represent a powerful legislative advance implicating sustainable supply governance.

At the European Union (EU) level, new legislation—namely the EU Corporate Due Diligence and Corporate Accountability Initiative—is also in preparation (Navarra, 2020); the EU parliament voted on it on March 11, 2021. It too will take more time to come to pass as more contentious aspects are debated and the proposal has already been watered down—for example, on criminal penalties and requirement for board level sign off—much to the chagrin of supporters of a tougher stance.

Yet, it is not too early to provide some thoughts on this emergent legislative *tour-de-force*. The EU proposal is meant to address some gaps in the German law: lack of clear mechanisms to

determine liabilities (zivilrechtliche Haftung) in cases of human rights violations along supply chains.

The EU Directive reach is likely to go beyond companies domiciled in the EU to include non-EU companies operating in the EU. Upstream and downstream suppliers will be required to align with an EU's organization's own due diligence. In short, global supply chains will be directly affected. The Directive extends to customers and end users and includes human rights, environmental risks and governance risks.

Environmental risks, for example, are multi-faceted and wide ranging, including temporary or permanent impacts on the production of waste, pollution and carbon emissions that lead to above 1.5 degrees C warming from pre-industrial levels, deforestation, air, soil, and water quality, the sustainable use of nature resources, biodiversity and ecosystems. The Directive will stress and stretch companies. The required knowledge and know-how, tools and techniques, policies and processes are likely to be beyond all but the most progressive companies. Few organizations—if any—currently have such capabilities.

Partly driven by this new regulation, Europe is also experiencing a massive shift in its financial sector towards sustainable investing. Investors are aware of the high risk in unsustainable supply chains and the requirement for organizations to tackle those risks effectively.

Interestingly, although this situation represents a major shift in the sustainable supply chain institutional field—the shift could be considered reactionary—away from flexible and voluntary measures to a more coercive approach for managing supply chain sustainability, especially given the global nature of modern supply chains.

Up to now a more neo-liberal perspective of letting industry self-regulate was the *modus operandi* for supply chain sustainability governance (Mathai et al., 2020), and these initiatives will certainly continue to play a key role. But, could this precipitate a wider changing of the guard? Will the EU—once again—be a harbinger of new and emergent future global governance norms and standards?

What does it mean to research directions—and practical considerations for organizations, their supply chains and policy makers—with respect to future resources, conservation and recycling sustainable supply chain and broader issues? How does it relate to the circular economy and resources management?

1. Further research of supply chain mapping, especially with respect to environmental and social issues. This research will also need to include the development of tools for companies to ensure coverage and rigor. A major operational feasibility concern is determining the boundary or sphere of influence. There are many potentially responsible parties--using terminology from the United States superfund law—and identifying them in a globally networked supply chain could result in substantial litigation costs.

2. Investigating the use of emergent information technologies to support information reliability and visibility for monitoring. Many of these technologies are inter-organizational and link multiple stakeholders and participants in the supply chain. Could electronic product passports—conceived for tracking the source of materials and products across the value chain—also convey data about human rights and governance?
3. Identification of gaps in knowledge and know-how with respect to due diligence of human rights, environmental risk and governance risk in supply chains. What are the roles of international guidelines such as various UN and OECD Guiding Principles on Business, Human rights, and supply chains?
4. Evaluation of whether the shift to more mandatory coercive requirements leads to improved performance on environmental and social sustainability; in addition to greater eco-innovation (Borsatto and Amui, 2019). Where are the blind spots of the legislation? Will resources depletion and excessive non-sustainable exploitation be emphasized in the legislation?
5. Before other regions catch up with the EU, what are the short-term and long-term financial costs and benefits for early adopters of this change in the rules of the game? Will freeriding occur—disadvantaging the competitiveness of early adopters?
6. What are the implications for localization efforts from the perspective of control and monitoring? Will geographic proximity allow more straightforward (less costly) control of potential liabilities and risks? What will happen to supply chain network designs as various sustainability elements are included or removed in these regulatory acts?
7. To what extent will companies with circular business models find themselves at an advantage when the legislative environment changes? Will the legislation precipitate a groundswell in circular businesses, especially given the central role of transition to a circular economy in the European Green Deal? An important issue related to mapping the circular economy is to determine who is responsible for events given the circular nature of products and materials. Theoretically, the notion of upstream and downstream supply chain may lose meaning.
8. To what extent will the due diligence legislation help strengthen non-financial reporting obligations, which have so far proved insufficient in supporting far reaching sustainability initiatives?
9. Will coercive regulatory measures cause greater adoption of voluntary standards for supply chain sustainability measures as part of 'good-faith' efforts to limit liability? The interrelationships of institutional isomorphic pressures will require investigation given complex socio-environmental linkages.

10. What is required, in general, to 'effectively' regulate supply chains based on the above and international law, culture and frameworks? It is commonly thought that the most effective type of regulation is stringent, flexible and enforceable. How could those three characteristics be upheld as the legislative and regulatory process continues to ensure a significant step forward for more sustainable supply chains?

The guard is changing and institutional field dynamics from new legislative measures provide numerous speculative concerns and research directions. In our perspective, we set the stage for sustainable supply chain, circular economy, and resources management issues as supply chain legislation for sustainability dimensions emerges—catalyzing efforts to a more circular and sustainable society (Jaeger-Erben, et al., 2021).

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