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NOT AN EXCEPTION, BUT A PATTERN? THE EU OMNIBUS I AND CORPORATE ACCOUNTABILITY IN TRANSNATIONAL GOVERNANCE

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Abstract: While the EU Omnibus I, and particularly its amendments to the Corporate Sustainability Due Diligence Directive (CSDDD), has largely been framed as a significant rollback of recent corporate accountability efforts, this paper situates it within the longer history of attempts to regulate corporate power in transnational governance. Drawing on critical legal and political economy scholarship, it traces the evolution of corporate accountability debates from the consolidation of the public/private divide and postcolonial efforts to establish a New International Economic Order (NIEO), to the rise of Corporate Social Responsibility (CSR), the UN Guiding Principles on Business and Human Rights (UNGPs) and mandatory human rights due diligence. In doing so, the article argues that the Omnibus I is not an exceptional development, but part of a recurring pattern in which regulatory initiatives are contested and reconfigured through geopolitical shifts, the framing of corporations as key drivers of economic growth and the influence of corporate actors in rule-making processes. In light of this, it also problematises recent corporate accountability proposals, highlighting a persistent paradox: corporations are framed both as the source of harm and as actors expected to deliver solutions, despite ongoing questions about their legitimacy and unwillingness to assume such roles. Ultimately, the question of corporate accountability remains unresolved not only at the level of legal design, but also in relation to the underlying distribution of economic and political power that law is expected to regulate.

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Keywords: Corporate Accountability; Business and Human Rights; EU Omnibus I; Corporate Sustainability Due Diligence (CSDDD).

Resumo: Embora o Omnibus I da UE, e em especial as suas alterações à Diretiva relativa à Devida Diligência em matéria de Sustentabilidade Empresarial (CSDDD), tenha sido considerado, em grande medida, como um retrocesso significativo nos recentes esforços de responsabilização empresarial, este artigo insere-o no contexto da história alargada das tentativas de regulamentar o poder empresarial na governação transnacional. Com base na investigação crítica nas áreas do direito e da economia política, o artigo traça a evolução dos debates sobre a responsabilização das empresas, desde a consolidação da divisão entre os setores público e privado e os esforços pós-coloniais para estabelecer uma Nova Ordem Económica Internacional (NOEI) até à emergência da Responsabilidade Social das Empresas (RSE), dos Princípios Orientadores das Nações Unidas sobre Empresas e Direitos Humanos (UNGPs) e da devida diligência obrigatória em matéria de direitos humanos. Ao fazê-lo, o artigo defende que a Omnibus I não constitui um desenvolvimento excecional, mas sim parte de um padrão recorrente em que as iniciativas regulatórias são contestadas e reconfiguradas através de mudanças geopolíticas, da caracterização das empresas como motores-chave do crescimento económico e da influência dos atores empresariais nos processos de elaboração de regras. À luz do exposto, o artigo também questiona as recentes propostas de responsabilização das empresas, realçando um paradoxo persistente: as empresas são vistas tanto como a fonte do dano como os atores de quem se espera que apresentem soluções, apesar das dúvidas persistentes sobre a sua legitimidade e da sua relutância em assumir tais papéis. Em última análise, a questão da responsabilização das empresas permanece por resolver, não só ao nível da conceção jurídica, mas também no que diz respeito à distribuição subjacente do poder económico e político que a lei deve regular.

Palavras-chave: Responsabilidade das Empresas; Empresas e Direitos Humanos; Omnibus I da UE; Devida Diligência em Matéria de Sustentabilidade Empresarial (CSDDD).

1. Introduction

On 26 February, Directive 2026/470 EU ("Omnibus I") was published in the Official Journal of the European Union (EU), following its adoption by the Council of the EU two days earlier. Presented as part of a broader effort to "simplify" the administrative and financial burden imposed on companies and enhance European competitiveness, the Omnibus I introduced substantial amendments to the Taxonomy Regulation, the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD). Regarding the latter, among other changes, the reform narrowed the personal scope, eliminated obligations related to climate transition plans and harmonised civil liability provisions, weakened the approach to risk identification, reduced the maximum pecuniary penalties and delayed implementation timelines (Boafo et al., 2026).

The reform generated immediate criticism from scholars, civil society organisations, trade unions and even businesses that had already begun adapting to the original legislative framework. Beyond concerns regarding the substantive weakening of corporate accountability obligations, criticism also focused on the legislative process itself and the influence of corporate lobbying in shaping the reform (Corporate Europe Observatory, ECCJ, Friends of the Earth Europe, 2021; Social LobbyMap, 2025; SOMO, 2025; Corporate Europe Observatory, 2026). Concerns were further reinforced when the European Ombudsman concluded that procedural shortcomings in the development of the Omnibus amounted to maladministration (European Ombudsman, 2025). At the same time, and despite the perceived setbacks, experts defended the continued importance of the CSDDD, arguing that due diligence frameworks remain an important step toward stronger forms of corporate accountability (Meyer, 2025; Business and Human Rights Resource Centre, 2026; Hautala, 2026).

Against this background, this paper argues that the Omnibus should not be understood as an exceptional rollback of an otherwise linear progression toward stronger corporate accountability. Rather, it reflects a broader and recurring pattern in the regulation of corporate power in transnational governance. Drawing on critical legal scholarship and political economy approaches, the paper situates the Omnibus within a longer genealogy of attempts to constrain transnational corporations, from the postcolonial aspirations of the New International Economic Order (NIEO) and the failed

UN Code of Conduct on Transnational Corporations to the emergence of softer governance frameworks through the OECD Guidelines, Corporate Social Responsibility (CSR), the UN Guiding Principles on Business and Human Rights (UNGPs) and contemporary due diligence regimes.

The paper argues that regulatory initiatives are repeatedly contested and reconfigured through geopolitical shifts, the framing of corporations as key drivers of economic growth and the influence of corporate actors in rule-making processes. In light of this, it problematises recent corporate accountability proposals in the literature, highlighting a persistent paradox: corporations are simultaneously framed as the source of harm and as actors expected to deliver solutions, despite ongoing questions about their legitimacy and willingness to assume such roles. This dual framing reinforces a broader tension in corporate accountability debates, where efforts to impose positive obligations on corporations under international human rights law challenge the traditional public/private divide, but still sit uneasily with the fact that corporations remain primarily oriented towards profit-making and resistant to state-like responsibilities.

To do so, the paper is structured as follows. Section 2. briefly revisits the historical relationship between corporations and international law, focusing on the evolution of the public/private divide from chartered companies to the rise of free incorporation. Section 3. examines the shift from the structural aspirations of the NIEO towards softer and more market-compatible forms of corporate governance through CSR initiatives and the UNGPs. Section 4. analyses the CSDDD and the Omnibus I within this broader genealogy, using them as an illustration of how similar constraints and conceptual limitations continue to shape contemporary attempts to regulate corporate power. Finally, the paper offers some concluding reflections.

2. The Public/Private Divide: From Chartered Companies to Free Incorporation

It is generally accepted that the recognition of the corporation as a separate legal entity distinct from its members dates back to the eleventh and twelfth centuries, when incorporation was granted to religious orders, universities, guilds, towns and cities before eventually being extended to the great trading companies of the sixteenth and seventeenth centuries (May, 2006:

5; Cutler, 2008: 193). During this period, incorporation was regarded as a privilege granted under a charter, and the great trading companies, such as the British and Dutch East India Companies, served to advance the political and colonial interests of the great economic powers (ibid; Lustig, 2020; Stern, 2017). Among other powers, they were granted the authority to trade, to war, to administer territories and to create money (Cutler, 2008: 194), blurring the distinction between "public" state authority and "private" commercial activity that structures contemporary legal thought (Stern, 2017; Ciepley, 2013).

By the end of the seventeenth century, colonial expansion was in full force and investment in joint-stock companies increased significantly (Cutler, 2008: 194). It was also during this period that the foundations of corporate law were being developed in Britain, including the publication of the first book on the "law of corporations" in 1702, which recognised that the independent corporate form and limited liability of shareholders to the value of their initial share purchase were conditional upon a clear public-regarding role in promoting economic development (ibid; May, 2006: 6). These statutes governing joint stock companies and limited liability were passed in the late nineteenth century, with several authors observing that, from the eighteenth century onward, limited liability became a key mechanism enabling the growth in size and resources of corporations (May, 2006: 7).

Although the legitimacy of corporations was increasingly questioned following events such as the Glorious Revolution and the American Revolutionary War, alongside the emergence of anti-charter ideas and the critiques of theorists such as Adam Smith, the corporation did not disappear. On the one hand, in non-colonial settings, the joint-stock company progressively assumed a central role in public works and industrial development projects, including the construction of canals and railways (Cutler, 2008: 194). On the other hand, in colonial settings, from 1879 onward European powers once again resorted to chartered companies in their "scramble for Africa" as a means of establishing territorial control without bearing the full financial burdens of empire. At the Berlin West Africa Conference of 1884–1885, the Berlin Act established relatively limited requirements for claims of sovereignty in Africa and imperial powers frequently interpreted these requirements loosely, arguing that chartered companies with only limited administrative presence were sufficient to establish sovereignty claims (Lustig, 2024: 95).

However, this new modality of the chartered company differed from its early modern predecessors. It contained a peculiar blend of features of the old colonial corporation with the emerging logic of “free incorporation”. This meant that the companies generally operated without formal monopolies or state funding while being portrayed as compatible with the contemporary ideals of free trade and the “civilizing mission” (ibid: 96).

In this sense, during the nineteenth century, particularly in the United States and later across Europe, the corporation came to be understood less as a privilege granted by the state and more as a private right. The corporate form was increasingly naturalised as the ordinary mode of conducting business rather than as a special creature of the state, and corporations came to be recognised as private “persons” entitled to rights and privileges comparable to those of natural persons (Horwitz, 1987: 20–24; Cutler, 2008: 195).

In this context, the revival of chartered companies during the colonisation of Africa was viewed critically by many international lawyers and theorists precisely because these corporations resembled the earlier chartered companies of the seventeenth century. International lawyers increasingly defended the sovereignty as territoriality and the distinction between public rule (*imperium*) and private property (*dominium*), arguing that representative governments could not legitimately delegate sovereign powers to private commercial entities. They were concerned that these contemporary chartered companies were primarily driven by profit and market interests, often generating violence and resistance from local populations (Lustig, 2024: 97).

However, as Doreen Lustig explains, legal scholars “focused their critique on these companies’ entanglement in public affairs through the vehicle of the charter” and “assumed that if only governments would exclude corporations from handling public affairs, the ‘problem’ of the chartered company would be solved.” The problem, however, was that the eventual decline of the charter did not terminate the close and privileged relationship between corporations and political power, nor did it produce a clear separation between public and private spheres. Rather, it gave rise to a more flexible and legally invisible alliance between governments and private corporations (ibid: 102).

At the same time, the consolidation of the formal public/private divide in international law conceived states as the central accountable actors and assumed that states were powerful enough to regulate everything within their jurisdiction but did not produce stronger mechanisms for holding corporations accountable. Quite the opposite: corporations continued to operate successfully in colonial and postcolonial settings while benefiting from legal mechanisms such as diplomatic protection and concession agreements, without becoming the subject of sustained theoretical scrutiny in international law until the late 1960s (Lustig, 2020: 25).

3. From Structural Reform to Voluntary Governance: The NIEO and Corporate Social Responsibility

The consolidation of the public/private divide, together with the conception of the state as the central actor of international law, also shaped how the responsibility of corporations and corporate officials was understood during the twentieth century. An emblematic example can be found in the Industrialist Cases of the Nuremberg Tribunals, which sought to hold economic collaborators of the Nazi regime accountable. Although these cases exposed the significant role played by corporations in war, exploitation, and mass violence, corporations themselves were not prosecuted as legal entities, and the trials ultimately failed to produce a coherent framework for corporate responsibility under international law (Pietropaoli, 2020: 18–49; Ramasastry, 2002). As scholars have observed, the limited conceptualisation of both the Nazi state and the complex organisational structure of the "private business corporation" constrained the understanding of both individual and corporate responsibility (Lustig, 2020: 69-143).

The momentum for developing stronger forms of corporate accountability after Nuremberg faded. Yet, during the decades that followed, the regulation of the newly termed multinational corporations (MNCs) or transnational corporations (TNCs) emerged for the first time as a central issue within international law. This shift was closely linked to decolonisation and the emergence of newly independent states, which increasingly sought to advance their own agendas within the international legal order in a context that appeared more favourable to their claims. Postcolonial states now constituted a majority within the United Nations (UN) while decisions of the

International Court of Justice, such as the *Anglo-Iranian Oil Co.* and *Barcelona Traction* cases, were perceived by many of these states as signals of the end of an era in which international law was dictated by the interests of major powers alone (Abi-Saab, 1971; Lustig, 2020: 204). In parallel, postcolonial states increasingly turned toward nationalisation of foreign companies and collective forms of mobilisation and cooperation, exemplified by the Bandung Conference of 1955, the creation of the Group of 77 in 1964, the Andean Pact of 1969, and the establishment of the Organization of the Petroleum Exporting Countries (OPEC) in 1960, whose 1973 oil embargo contributed to the first oil shock of 1973–1974. These developments coincided with increasing public scrutiny of multinational corporations in the Global North, fuelled by scandals such as Watergate and the US-backed coup in Chile, as well as broader geopolitical tensions between Europe and the United States surrounding the Vietnam War and the collapse of the Bretton Woods system.

The confluence of these factors culminated in the efforts of developing countries, supported by socialist states, to establish a New International Economic Order (NIEO). During the Sixth Special Session of the UN General Assembly in 1974, two landmark resolutions were adopted and explicitly referred to the need to regulate TNCs, as did the Charter of Economic Rights and Duties of States adopted later that same year (Sacerdoti, 2015). On the one hand, Resolution 3201 (Declaration on the Establishment of a New International Economic Order) set out twenty principles upon which the new order should be founded. As Sacerdoti notes, these principles can be grouped around several core ideas: the sovereign equality of states and their right to determine their own economic and social systems; permanent sovereignty over natural resources and economic activities, including the right to nationalise foreign property and regulate transnational corporations operating within their territories; the participation of developing countries on an equal footing in international economic relations; preferential treatment for developing countries; more equitable terms of trade; and greater access to development assistance, financial resources, and technology transfers. On the other hand, Resolution 3202 constituted a Programme of Action that identified ten areas in which "all efforts" should be made to implement the objectives of the Declaration (ibid.).

Following these developments, the UN established in 1975 the Commission on Transnational Corporations and the Centre on Transnational

Corporations, which in turn recommended the creation of an Intergovernmental Working Group to formulate a Code of Conduct on Transnational Corporations which sought to address both the conduct of transnational corporations and the regulation of foreign direct investment (FDI). In 1978, the Working Group produced a first draft of the Code. However, negotiations continued for more than a decade and the project was ultimately abandoned in 1992.

Much has been written about the promises and eventual failure of the NIEO and the proposed Code of Conduct on Transnational Corporations. One important explanation emphasises the changing position of developing countries themselves. As Sauvant observes (1981), a shift is already visible between the 1974 NIEO resolutions and the Resolution on Development and International Economic Cooperation adopted in 1975. Whereas the former stressed the need to regulate and control transnational enterprises, the latter increasingly sought their cooperation in the development process. This evolution reflected both deteriorating economic conditions following the 1974–1975 recession and a reassessment of the role of transnational corporations in development. Many of the NIEO's broader objectives, such as access to markets and transfer of technology and resources, appeared difficult to achieve without the participation of transnational corporations. As a result, a number of developing countries gradually shifted from a position of suspicion towards one of active engagement with foreign investment and transnational corporations (Sauvant, 1981: 116–133; Sagafi-Nejad, 2008: 87). On the other hand, important disagreements persisted between countries regarding the purpose and content of the Code of Conduct. While postcolonial states sought to preserve regulatory autonomy and control over foreign investors, global north countries were primarily concerned with protecting their corporations abroad and ensuring that investment protections were reflected in any future arrangement (Sauvant, 2015: 21-27).

Meanwhile, industrialised countries increasingly redirected discussions concerning foreign investment and multinational enterprises away from the UN and towards forums in which they exercised greater influence (Lustig, 2020: 214). Significantly, negotiations within the OECD led to the adoption of the 1976 Declaration on International Investment and Multinational Enterprises. This parallel initiative was negotiated and adopted before the UN process on the Code of Conduct officially started and its existence reduced pressure on OECD countries to engage with more ambitious proposals and allowed them to define acceptable standards within a smaller and more like-minded negotiating forum (ibid; Sauvant, 2015: 31). At the same time, investment governance increasingly developed through bilateral investment treaties (BITs), investor-state dispute settlement mechanisms, and institutions such as ICSID. The result, again, was a fragmented regulatory architecture in which investors acquired increasingly robust international protections, while efforts to establish corresponding international obligations for transnational corporations stalled (Lustig, 2020: 217-218).

Importantly, however, corporations were not merely passive actors in this shifting institutional landscape. As Caitlin Murphy argues, corporations actively responded to postcolonial challenges to the international economic order through a range of strategies. These included, first, collaboration with efforts to destabilise governments that threatened their interests, as well as legal and political claims for substantial compensation in cases of nationalisation or expropriation, framed as takings of private property; second, the framing of foreign investment as development-enhancing, a narrative that proved particularly successful within emerging UN partnerships; and, finally, the reorganisation of production structures through strategies of diversification and "value-added" production, shifting away from vertically integrated models towards fragmented corporate arrangements distributed across multiple jurisdictions. This form of horizontal integration enabled firms to maintain control over production networks while making strategic assets more difficult to nationalise or regulate (Murphy, 2026).

All in all, by the mid-1980s, broader political and economic transformations further weakened support for comprehensive international regulation of multinational corporations. The rise of neoliberal economic policies associated with Reagan and Thatcher, combined with the debt crises affecting many developing countries and the eventual collapse of the Soviet bloc, contributed to a political environment in which foreign investment came to be viewed less as a threat and more as a prerequisite for development (Sagafi-Nejad, 2008: 87). Within this context, international human rights emerged as the principal normative framework and the language of control and economic sovereignty that had characterised the NIEO gradually gave way to approaches centred on voluntary corporate responsibility and self-regulation (Lustig, 2020: 226).

4. From Soft to Hard Law: UNGC, UNGPs and Mandatory Human Rights Due Diligence

The 1990s witnessed a new wave of concern regarding the growing power of transnational corporations and the perceived declining capacity of states in a globalised world (Strange, 1996; Haufler, 2008: 229). However, these concerns about corporate power were now articulated through the language of human rights and scholarly debates focused on whether corporations could, and should, be regarded as subjects of international law capable of bearing direct responsibility for human rights violations (Lustig, 2020). At the policy level, the dominant response took the form of Corporate Social Responsibility (CSR). Rather than seeking binding international obligations, CSR promoted a pragmatic and effective approach aimed at encouraging corporations to voluntarily integrate social, environmental and human rights concerns into their business practices.

The limitations of this model have been extensively documented, including its voluntary character, weak enforcement mechanisms, susceptibility to corporate capture and greenwashing and its tendency to prioritise effectiveness, consensus and business participation over questions of power, accountability and structural reform (Shamir, 2004; Vogel, 2005; Cutler, 2008; Rhodes, Fleming, 2020; Reitmaier, Schultze, Vollmer, 2025).

Within the UN, the most prominent expression of this voluntary and partnership-based approach was the UN Global Compact (UNGC), launched in 2000 by Secretary-General Kofi Annan. Conceived as a voluntary multi-stakeholder initiative promoting public-private collaboration, the UNGC encouraged companies to align their operations with ten principles relating to human rights, labour standards, environmental protection and anti-corruption (Rasche, 2021). Although the initiative attracted significant corporate participation, critics argued that its lack of monitoring and enforcement mechanisms allowed companies to improve their public image without necessarily changing their behaviour, a phenomenon described as "blue-washing" (Sagafi-Nejad, 2008: 207). Furthermore, this initiative highlights the trend in the business and human rights governance, where the close collaboration between the UN and the private sector has enhanced corporate influence, granting corporations privileged access to institutions and decision-making processes compared to other non-state actors (Deva, 2006; Deva, 2020: 6–7).

Eleven years later, the UN Guiding Principles on Business and Human Rights (UNGPs) were unanimously endorsed by the UN Human Rights Council in 2011. Drafted under the mandate of the UN Special Representative John Ruggie between 2005 and 2011, the UNGPs have since become the central global framework for corporate accountability and are widely regarded as a watershed moment in efforts to align business conduct with human rights (Shivji, 2025: 407).

Built around three pillars—the State duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy for victims of abuse—the UNGPs contributed to the alignment of standards and expectations across jurisdictions while fostering the socialisation of human rights norms among business actors (Deva, 2023; Shivji, 2025: 407). However, fifteen years after their adoption, they have also been the subject of sustained critique, much of which echoes earlier concerns raised in relation to CSR. Scholars have pointed to the indeterminate normative foundations of the UNGPs, shaped by Ruggie's pragmatic and consensus-oriented approach, as well as their limited enforcement architecture and their inability to produce significant material change for rightsholders on the ground (Deva, Bilchitz, 2013; Deva, 2020; Shivji, 2025).

Beyond questions of effectiveness, critics have argued that the conceptual separation between the State duty to protect and the corporate responsibility to respect reproduces an artificial public/private divide, thereby reinforcing a statist and market-compatible understanding of human rights governance within the broader neoliberal order (Karp, 2023). Relatedly, the fact that corporate responsibility under the UNGPs seems to be primarily framed as a responsibility to respect, or to “do no harm”, has been criticised for obscuring the central role that corporations play in providing and denying access to essential resources (ibid; Macchi, Birchall, Bernaz, 2025: 63-67).

Against this background, a growing body of scholarship has proposed alternative normative foundations for business and human rights in an attempt to move beyond the limits of the UNGP framework and strengthen corporate accountability. These approaches share a broadly realist understanding of corporate power in the global economic order, but differ in how that power should be constrained or redirected.

For instance, one strand advances a teleological rule of law perspective, arguing that if corporations exercise forms of power comparable to that of states, then rule of law principles should not only protect them from state interference but also constrain their exercise of power (Kampourakis, Taekema, Arcuri, 2023; Krygier, 2023). Another group of theories, including capacity-based, publicness, and functionalist approaches, conceptualises corporations as potential bearers of positive human rights obligations, albeit on different grounds. While the capacity approach suggests that responsibilities should be assigned to those, including corporations, who in a given context are best placed to respect, protect or fulfil human rights (Meckled-Garcia, 2009), the publicness approach argues that in situations where corporations perform public functions or provide essential services, they may assume responsibilities traditionally associated with the state (Karp, 2014). The functionalist approach, in turn, emphasises the exercise of control over specific functions and relationships, arguing that corporate human rights obligations should attach to the rights they can factually impact and should vary according to the factual and legal context (Macchi, Birchall, Bernaz, 2025).

A further set of contributions critiques the consensus-oriented nature of the UNGPs and broader business and human rights governance, proposing alternative frameworks such as critical dialogic accountability, worker-driven social responsibility and prefigurative political approaches (Shivji, 2025). In a similar vein, other scholars have drawn on the capabilities approach to shift corporate engagement with stakeholders from minimal procedural consultation towards more substantive forms of empowerment and agency (Bitar, Schrempf-Stirling, 2025; Horbachevska-Konstankevych, Uvarova, 2026). Finally, there have also been calls for more structural reforms, including changes to investment and development law (Deva, 2020), as well as a reorientation of corporate law away from shareholder primacy and profit maximisation as the core objective of corporations towards "sustainable value creation" (Sjåfjell, 2025).

While these approaches offer valuable insights for a more substantive conceptual foundation and may inform future developments in international and EU law, their translation into legal and governance frameworks remains limited, particularly in light of broader political and economic constraints. And indeed, despite these normative critiques, one of the UNGPs' most influential contributions—the concept of human rights due diligence—has become the dominant framework translated into national and regional regulation.

This is particularly evident in the Corporate Sustainability Due Diligence Directive (CSDDD), which, drawing on both the OECD Guidelines and the UNGPs, was initially received with high expectations as a step towards a harmonised and horizontal regime of corporate due diligence across global value chains. But, although mandatory human rights due diligence is often presented as a paradigm shift from voluntary to binding corporate accountability, it has also been criticised for reproducing many of the limitations of the frameworks from which it emerges, including risks of corporate capture and its potential to become a "tick-box" exercise rather than leading to meaningful change in practice (Deva, 2023; Lichuma, 2023; Paricio Montesinos, 2026). What is more, the recent Omnibus I developments have further exposed how corporate accountability remains deeply embedded in broader configurations of political and economic power, bringing the discussion back to the structural tensions and recurring dynamics explored in the previous sections.

5. Omnibus I and Corporate Power in EU Sustainability Governance

In April 2024, the final text of the CSDDD was adopted and published in the Official Journal of the EU. Seven months later, President of the European Commission Ursula von der Leyen announced that the Commission would prepare an Omnibus proposal to simplify several EU sustainability laws. In February 2026, Omnibus I was adopted, amending the CSDDD, CSRD and the EU Taxonomy Regulation.

Although much of the subsequent debate focused on the changes introduced by Omnibus I, it is important to recall that the final compromise text of the CSDDD had already been the product of intense political negotiation and sustained lobbying (Sjåfjell, Mähönen, 2024). As I have argued elsewhere, traditional rule of law concerns, especially those relating to legal certainty and clarity, played an important role in shaping the final compromise (Paricio Montesinos, 2026). This reveals a recurring paradox within corporate accountability debates: while the CSDDD was intended to constrain corporate power, corporations continued to be framed primarily as actors requiring protection from state intervention, echoing the persistence of the public/private divide discussed in previous sections. At the same time, reports produced during and after the negotiations documented extensive lobbying by corporate actors and business associations. Although some companies publicly supported the directive, these developments highlight the significant influence that corporate actors continue to exercise over the design and content of EU sustainability legislation (Corporate Europe Observatory, ECCJ, Friends of the Earth Europe, 2021; Social LobbyMap, 2025; Corporate Europe Observatory, 2026).

In fact, the SOMO report illustrates the significant role played by business associations, as well as by ExxonMobil, the American oil and gas company, in advocating for an Omnibus initiative aimed at "correcting" EU sustainability legislation. According to the report, ExxonMobil pursued this objective through a variety of channels, including direct lobbying of policymakers, engagement through business associations, sponsorship of media events and strategic communications campaigns and the funding of think tanks. It also reportedly pressured the EU by threatening to reconsider part of its planned €20 billion investment package in Europe if the CSDDD was not withdrawn or substantially revised, while contributing to broader US resistance to the legislation (SOMO, 2025).

Among the principal changes sought by the company were the complete removal of obligations relating to climate transition plans (Article 22), the elimination of the civil liability regime (Article 29), the restriction of due diligence obligations to direct suppliers (Tier 1) and the limitation of due diligence obligations for non-EU companies to activities taking place within the EU. Although not all of these demands were fully reflected in the final text, the final Omnibus I package largely incorporated them, particularly the first two (ibid).

This development also occurred in a broader political context marked by a gradual shift in the EU from a sustainability-oriented agenda, reflected in the 2019 European Green Deal, towards a stronger competitiveness and industrial policy focus, as illustrated by the 2024 Draghi report and the 2025 Clean Industrial Deal. In this emerging configuration, strategic autonomy and the securitisation of critical raw materials have gained prominence, shaped in part by concerns over dependency exposed by the Russian invasion of Ukraine and its impact on energy supplies. Within this more geopolitically charged environment, characterised by intensified economic competition and supply chain security concerns linked to the twin transitions and the defence sector, corporate accountability seems to be increasingly sidelined and, in some instances, deprioritised (Balch, 2026; Boafo et al., 2026).

Moreover, the Omnibus I appears to have had an impact on academic and civil society discourse, a preliminary observation that requires more systematic empirical research. During the negotiation of the CSDDD, critiques were frequently directed at its normative foundations, the procedural nature of due diligence and concerns regarding corporate capture and postcolonial dynamics (Deva, 2023; Bose, 2023; Lichuma, 2021, 2023; Dehbi, Martin-Ortega, 2023; Li, Xiang, 2025; Paricio Montesinos, 2026). However, following the announcement of the Omnibus I package and the perceived risk of regulatory rollback, critical positions that had emphasised the directive's limitations and transformative shortcomings became less visible in public debate. They were, in part, reoriented towards critiquing the rollback itself and defending the directive against further deregulation[2].

In addition, "business case" arguments emphasising legal certainty and the economic benefits of due diligence gained prominence. While civil society actors had already mobilised such arguments during the CSDDD negotiations, as they were aware of structural power asymmetries and the relative receptiveness of economic rationales in policy-making arenas (Thorens, Bernaz, Hospes, 2025), this framing appears to have become even more visible during the Omnibus debate. This is illustrated, for example, by the recurrent reliance on reports such as the UNDP's (2025) *Human Rights vs. Competitiveness: A False Dilemma?*.

After its adoption, many experts continued to defend the importance of the CSDDD, arguing that mandatory due diligence frameworks remain a significant step towards stronger forms of corporate accountability (Meyer, 2025; Business and Human Rights Resource Centre, 2026; Hautala, 2026). Attention now appears to have shifted towards ensuring a robust and progressive transposition of the directive at the Member State level (Danish Institute for Human Rights, 2026).

This dynamic reflects structural power asymmetries across the different forums in which business and human rights are discussed, from the UN to the EU, where claims relating to human rights and environmental protection

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2. See e.g. call to sign for supporting the CSDDD, available at: https://www.business-humanrights.org/en/latest-news/omnibus-letter-bhr-professionals/

need to be translated into market-compatible language in order to be heard. It also shows how corporate influence and changing political priorities shape what kinds of arguments are considered realistic or acceptable, narrowing the space for critique and pushing actors towards defending limited regulatory gains in the name of pragmatism.

The problem is that a small step now does not necessarily mean that it will translate into greater corporate accountability in the future. In other words, the history of regulating corporate accountability does not appear to follow a linear progression. The Omnibus I episode makes visible a recurring pattern familiar to scholars of corporate power and international economic governance: regulatory efforts aimed at constraining corporate activity are repeatedly shaped by, first, shifts in geopolitics that portray corporations as central agents of development and economic growth; second, by the disproportionate influence of corporate actors over rule-making processes relative to other non-state actors; and, third, by enduring alignments between corporate and state interests.

At the same time, corporate accountability debates in academia fall into the paradox of framing corporations as both the problem and the solution. That is, they identify corporate abuses and, in light of the significant power corporations already exercise, advocate for the imposition of positive obligations under international law, particularly international human rights law. This dual framing, while challenging the traditional public/private divide and offering compelling normative arguments, still sits uneasily with questions of legitimacy, particularly given that corporations remain primarily oriented towards profit-making, as well as their persistent resistance to assuming such positive obligations and state-like responsibilities. It also raises a more fundamental question about why corporations occupy a position in which they can and are expected to deliver outcomes closely linked to public functions, including access to essential resources and services. In this context, the question of corporate accountability remains unresolved not only at the level of legal design, but also in relation to the underlying distribution of economic and political power that we expect the law to regulate.

6. Concluding remarks

This article has sought to situate the EU Omnibus I package within the longer history of attempts to regulate corporate power. Across its four sections, it has shown how different regulatory initiatives have repeatedly encountered similar questions regarding the role of corporations, as well as recurring structural and conceptual constraints.

Section 1. traced the transition from chartered companies to free incorporation and the consolidation of the public/private divide, showing how this development obscured forms of private economic power while simultaneously positioning states as the primary addressees of international legal responsibility. Section 2. examined postcolonial attempts to reform the international economic order through the NIEO and how these efforts were gradually weakened by changing geopolitical conditions, the role assigned to corporations in economic development, the relocation of regulatory discussions to institutional forums more favourable to industrialised countries and the ability of corporate actors to adapt to and contest regulatory pressures. The result was a gradual shift away from structural reform and towards more managerial and market-compatible approaches to corporate governance.

Building on this, Section 3. traced how concerns regarding corporate power re-emerged in the 1990s through debates on globalisation and increasingly came to be articulated through the language of human rights. It showed how the dominant regulatory response developed through CSR initiatives and eventually culminated in the UNGPs, a framework characterised by a pragmatic and consensus-oriented approach. The section also examined scholarly efforts to develop alternative foundations for corporate accountability. Yet despite these critiques and proposals, mandatory human rights due diligence largely developed within the conceptual framework established by the UNGPs. Finally, Section 4. used the Omnibus I package as a contemporary case study through which to revisit the broader historical dynamics identified throughout the paper. It argued that the recent rollback of parts of the CSDDD is not simply the result of a technical legislative revision, but reflects the continuing influence of geopolitical shifts, corporate lobbying, competitiveness concerns and enduring tensions regarding the role of corporations in society.

Taken together, these developments suggest that the history of corporate accountability is not one of linear progression. Regulatory gains remain contingent and reversible, and periods of apparent advancement may be followed by retrenchment or reconfiguration. It remains to be seen how ongoing negotiations regarding the legally binding instrument on business and human rights at the UN level will unfold, whether they are encountering similar forms of resistance and whether they can overcome these obstacles.

All in all, if the histories traced in this paper reveal anything, it is that debates on corporate accountability are not merely debates about legal technique or about how best to guide corporations towards compliance. They are ultimately debates about the distribution of economic and political power in society and about the extent to which legal frameworks can meaningfully constrain actors that simultaneously participate in shaping the very rules that govern them.

References

Abi-Saab G. The international law of multinational corporations: a critique of American legal doctrines. Annales d'études internationales. 1971: 97-122.

Balch O. EU 'shooting itself in the foot' by backsliding on sustainability, says MEP Lara Wolters. 2026. Available at: https://www.reuters.com/sustainability/boards-policy-regulation/eu-shooting-itself-foot-by-backsliding-sustainability-says-mep-lara-wolters--ecmii-2026-05-06/.

Bitar R, Schrempf-Stirling J. From Critique to Action: A Capability Approach to Reimagining Human Rights Due Diligence. J Bus Ethics. 2025. Available at: https://doi.org/10.1007/s10551-025-06175-7.

Boafo J, et al. Undermining sustainability: the EU's push for competitiveness and its consequences for Africa's critical minerals sector. Renewable and Sustainable Energy Transition. 2026; 9.

Bose D. Decentring Narratives around Business and Human Rights Instruments: An Example of the French Devoir de Vigilance Law. Business and Human Rights Journal. 2023; 8(1): 18–42. Available at: https://doi.org/10.1017/bhj.2023.6.

Business and Human Rights Resource Centre. EU Corporate Sustainability Due Diligence Directive (CSDDD): Omnibus I amendments officially enter into force. 2026. Available at: https://www.business-humanrights.org/en/latest-news/csddd-omnibus/.

Ciepley D. Beyond Public and Private: Toward a Political Theory of the Corporation. American Political Science Review. 2013; 107(1): 139–158. Available at: https://doi.org/10.1017/S0003055412000536.

Corporate Europe Observatory, ECCJ, Friends of the Earth Europe. Off the hook? How business lobbies against liability for human rights and environmental abuses. 2021. Available at: https://corporatejustice.org/publications/off-the-hook-how-business-lobbies-against-liability-for-human-rights-and-environmental-abuses/.

Corporate Europe Observatory. This is what corporate capture looks like! How corporations run the EU deregulation agenda. 2026. Available at: https://corporateeurope.org/en/2026/04/what-corporate-capture-looks.

Cutler C. Problematizing Corporate Social Responsibility under Conditions of Late Capitalism and Postmodernity. In: Rittberger V, Nettesheim M, coordinators. Authority in the Global Political Economy. Palgrave Macmillan; 2008.

Danish Institute for Human Rights. Transposition of the Corporate Sustainability Due Diligence Directive: A practical guide for national human rights institutions. 2026. Available at: https://www.humanrights.dk/publications/transposition-corporate-sustainability-due-diligence-directive-practical-guide-0.

Dehbi F, Martin-Ortega O. An integrated approach to corporate due diligence from a human rights, environmental, and TWAIL perspective. Regulation & Governance. 2023; 17: 927-943. Available at: https://doi.org/10.1111/rego.12538.

Deva S, Bilchitz D. Human rights obligations of business: beyond the corporate responsibility to respect? Cambridge: Cambridge University Press; 2013.

Deva S. Global Compact: A Critique of UN's "Public-Private" Partnership for Promoting
Corporate Citizenship. Syracuse Journal of International Law & Commerce. 2006; 34: 107-151.

Deva S. From ‘business or human rights’ to ‘business and human rights’: what next? In: Deva S, Birchall D, coordinators. Research Handbook on Human Rights and Business. Edward Elgar Publishing; 2020.

Deva S. Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? Leiden Journal of International Law. 2023; 36(2): 389–414. Available at: https://doi.org/10.1017/S0922156522000802.

European Ombudsman. Ombudsman finds maladministration in how Commission prepared urgent legislative proposals. 2025. Available at: https://www.ombudsman.europa.eu/en/press-release/en/215989.

Haufler V. MNCs and the International Community: Conflict, Conflict Prevention and the Privatization of Diplomacy. In: Rittberger V, Nettesheim M, coordinators. Authority in the Global Political Economy. Palgrave Macmillan; 2008.

Hautala H. Staying True to the Compass: How the UNGPs Shaped the EU Due Diligence Law. 2026. Available at: https://shiftproject.org/staying-true-to-the-compass-how-the-ungps-shaped-the-eu-due-diligence-law/.

Horbachevska-Konstankevych T, Uvarova O. Reimagining Heightened Human Rights Due Diligence: A Capability Approach Informed by Women’s Experiences in Wartime Ukraine. Journal of Human Development and Capabilities. 2026; 27(2): 192–216. Available at: https://doi.org/10.1080/19452829.2026.2615965.

Horwitz M. Santa Clara Revisited: the Development of Corporate Theory. In: Samuels W, Miller A, coordinators. Corporations and Society: Power and Responsibility. New York: Greenwood Press; 1987.

Kampourakis I, Taekema S, Arcuri A. Reappropriating the Rule of Law: Between Constituting and Limiting Private Power. Jurisprudence. 2023; 14(1): 76–94. Available at: https://doi.org/10.1080/20403313.2022.2119016.

Karp DJ. Responsibility for human rights: transnational corporations in imperfect States. Cambridge: Cambridge University Press; 2014.

Karp DJ. Business and Human Rights in a Changing World Order: Beyond the Ethics of Disembedded Liberalism. Business and Human Rights Journal. 2023; 8: 135-150. Available at: https://doi.org/10.1017/bhj.2023.10.

Krygier M. The Ideal of the Rule of Law and Private Power. Central European University and Democracy Institute Working Papers 2023/09. 2023.

Li Z, Xiang Y. Domestic Mandatory Human Rights Due Diligence Laws as Global Business and Human Rights Regulation. American University International Law Review. 2025; 40(2): 319-415. Available at: https://digitalcommons.wcl.american.edu/auilr/vol40/iss2/2/.

Lichuma C. (Laws) Made in the 'First World': A TWAIL Critique of the Use of Domestic Legislation to Extraterritorially Regulate Global Value Chains. ZaöRV. 2021; 81: 497-532. Available at: https://doi.org/10.17104/0044-2348-2021-2-497.

Lichuma C. Mandatory Human Rights Due Diligence Laws Caught Between Rituals and Ritualism: The Forms and Limits of Business Authority in the Global Governance of Business and Human Rights. Business and Human Rights Journal. 2023; 9(2): 250–269. Available at: https://doi.org/10.1017/bhj.2023.47.

Lustig D. Veiled Power. International Law and the Private Corporation, 1886-1981. Oxford: Oxford University Press; 2020.

Lustig D. The Enduring Charter: Corporations, States, and International Law. In: Durkee MJ, organizer. States, Firms, and Their Legal Fictions: Attributing Identity and Responsibility to Artificial Entities. Cambridge: Cambridge University Press; 2024. pp. 87–110.

Macchi C, Birchall D, Bernaz N. Rethinking corporate human rights responsibility: a functional model. 2025; 22: 60-81. Available at: https://doi.org/10.5102/rdi.v22i1.9819.

May C. Introduction. In: May C, organizer. Global Corporate Power. International Political Economy Yearbook. Boulder, CO: Lynne Rienner Publications; 2006.

Meckled-Garcia S. Do transnational economic effects violate human rights? Ethics and Global Politics. 2009; 2(3): 259-276.

Meyer G. Omnibus or Not, the ESG Train Isn't Slowing Down- Neither Should You. 2025. Available at: https://www.esgspotlight.ch/blog/omnibus-or-not.

Murphy C. Corporations and the supply chain as political ordering: a story from the UNIDO and UNCTC archives. 2026. Available at:

https://twailr.com/corporations-and-the-supply-chain-as-political-ordering-a-story-from-the-unido-and-unctc-archives/.

Paricio Montesinos M. Tempering or legitimising corporate power? The rule of law and the EU Corporate Sustainability Due Diligence Directive. In: Peeters M, et al., coordinators. Greening the EU and the Rule of Law Opportunities and Limits of the EU's Legal Powers. Edward Elgar Publishing; 2026. pp. 254–276.

Pietropaoli I. Business, Human Rights and Transitional Justice. Routledge; 2020.

Ramasastry A. Corporate Complicity: From Nuremberg to Rangoon – An Examination of Forced Labor Cases and their Impact on the Liability of Multinational Corporations. Berkeley Journal of International Law. 2002; 20(91): 91–159. Available at: https://digitalcommons.law.uw.edu/faculty-articles/741.

Rasche A. The UN Global Compact and the OECD Guidelines on Multinational Enterprises and their Enforcement Mechanisms. In: Bantekas I, Stein ME, coordinators. The Cambridge Companion to Business & Human Rights Law. Cambridge et al.: Cambridge University Press; 2021.

Reitmaier C, Schultze W, Vollmer J. Corporate responsibility and corporate misbehavior: are CSR reporting firms indeed responsible? Rev Account Stud. 2025; 30: 1804–1872. Available at: https://doi.org/10.1007/s11142-024-09850-8.

Rhodes C, Fleming P. Forget Political Corporate Social Responsibility. Organization. 2020; 27(6): 1-9. Available at: https://doi.org/10.1177/1350508420928526.

Sacerdoti G. New International Economic Order (NIEO). Max Planck Encyclopedia of Public International Law. 2015. Available at: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1542?rskey=gvJVZ2&result=1&prd=MPIL#.

Sagafi-Nejad T. The UN and transnational corporations: from code of conduct to Global Compact. Indiana University Press; 2008.

Sauvant KP. The Role of Transitional Enterprises in the Establishment of the NIEO: A critical view. In: Green R, Lozoya JA, coordinators. International trade, industrialization, and the new international economic order. Pergamon Press; 1981. pp. 109-170.

Sauvant KP. The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned. J. World Inv. & Trade. 2015; 16: 11–87.

Shamir R. The De-Radicalization of Corporate Social Responsibility. Critical Sociology. 2004; 30(3): 669-689. Available at: https://doi.org/10.1163/1569163042119831.

Shivji AKE. Time for a Break from the UNGPs? Reimagining the Future of Business and Human Rights. Business and Human Rights Journal. 2025; 10(2–3): 407–419. Available at: https://doi.org/10.1017/bhj.2025.10032.

Sjåfjell B, Mähönen J. The Story behind the Torturous Road towards the EU's Corporate Sustainability Due Diligence Directive. 2024. Available at: https://www.jus.uio.no/english/research/areas/sustainabilitylaw/blog/2024/story-behind-road-towards-eu-csddd.html.

Sjåfjell B. Conceptualising Corporate Sustainability Law. Transnational Legal Theory. 2025; 16(3): 281–326. Available at: https://doi.org/10.1080/20414005.2025.2559542.

Social LobbyMap. Corporate Influence on the CSDDD. Who Lobbied the EU on Human Rights Due Diligence? A Social LobbyMap Analysis. 2025. Available at: https://sociallobbymap.org/social-lobbymap-report-how-lobbying-diluted-europes-human-rights-commitments/.

SOMO. How Big Oil kills sustainability and climate legislation. Inside ExxonMobil's lobby campaign to take down the EU's CSDDD. 2025. Available at: https://www.somo.nl/how-big-oil-kills-sustainability-and-climate-legislation/.

Stern PJ. The Corporation in History. In: Baars G, Spicer A, coordinators. The Corporation: A critical, multi-disciplinary handbook. Cambridge: Cambridge University Press; 2017.

Strange S. The Retreat of the State: the Diffusion of Power in the World Economy. Cambridge: Cambridge University Press; 1996.

Thorens M, Bernaz N, Hospes O. Advocating for the EU Corporate Sustainability Due Diligence Directive Against the Odds: Strategies and

Legitimation. JCMS: Journal of Common Market Studies. 2025; 63: 606–623. Available at: https://doi.org/10.1111/jcms.13623.

UNDP. Human Rights vs. Competitiveness: A False Dilemma? 2025. Available at: https://www.undp.org/publications/human-rights-vs-competitiveness-false-dilemma.

Vogel D. The Market for Virtue: The Potential and Limits of Corporate Social Responsibility. Washington DC: Brookings Institution Press; 2005.