The Shift from Soft Law to Hard Law: CSR, HRDD, and the International Trend Toward Mandatory Corporate Responsibility

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Abstract. CSR depended voluntary soft law in a long period, but the frequent damage of human rights and environmental issues made CSR transform to hard law of enforceability in the worldwide supply chains, leading the HRDD become a core tool. This study explores that this transformation how to rebuild the boundary of CSR. Taking the CSDDD as a core, this study will analyze its core requirements and taking the French "Duty of Vigilance Law" as a forward-looking case. Compared with it, America places extra emphasis on regulations of specific industries and did not establish a law of HRDD including all of industries, otherwise China guide CSR for enterprises through policies and did not establish any laws of HRDD. This study points out that transformation could bring some serious problems such as the increased cost of enterprises, the dim boundary of responsibility and potential trade barrier, provide some adapted suggestions such as integration between audit and CSDDD for Chinese enterprises exporting to Europe. The conclusion holds that the transformation from CSR to HRDD landmarks a canonical change from soft law to hard law in the management of worldwide enterprises.

Keywords: CSR, HRDD, Mandatory Corporate Responsibility.

1. Introduction

In the past thirty years, the structure of corporate responsibility has been profound revolute, from the voluntary moral commitment to the legally binding obligations. In history, corporate social responsibility (CSR) was view as a canonical form of soft laws. Although these tools improved the cognition of human rights and environmental impacts for enterprises, its effectiveness was limited by systemic defect such as implementation imbalance, weak enforcement mechanism. The highly publicized scandal such as abuses of labors, environmental degradation caused by extractive industry exposed shortcomings of soft laws from the perspective of stopping harmful activities of enterprises and led to a louder voice for stricter supervision.

There is a trend transforming to hard laws around world, its characteristic is that establish an enforceability law, stipulate enterprises that have the legal obligations to solve the impact to society or environment. Some representative cases include “Parent Company and Order Receiving Company Vigilance Duty Law” in French in 2017, “The Directive on Due Diligence for Sustainable

Corporate Development (CSDDD)" in EU in 2024 and "The Supply Chain Due Diligence Act" in Germany in 2023.

These laws landmark the crucial turn: they legally started the policy of human rights due diligence (HRDD), mitigate risks of supply chains, provide some solutions for the damage caused by itself, impose a fine to those enterprises which have an illegal behavior and, investigate and affix the responsibility or restrict market access and entry for enterprises.

"French Duty of Vigilance Law" in French compel enterprises to formulate the vigilance plan through an establishment of a law, taking the abstract human rights obligations into an effective regulation of laws, providing a direct temple for the establishment of CSDDD in the EU. The pioneering exploration of "French Duty of Vigilance Law" in French boosted reference, expansion and reinforcement to CSDDD in the EU. However, extraterritoriality in the law led to query, and was criticized as a tool of neocolonialism, because it imposed European values on the global supply chain.

"The Supply Chain Due Diligence Act" in Germany, which is effective in 2023 and "The Due Diligence Act" in Dutch are learned from the frame of the French law, but there is a difference at the scope of obligations and the intensity of punishment, forming a trend of regionalization of hard law.

"French Duty of Vigilance Law" in French have proved that hard law can drive the practice of CSR through a closed cycle of "legislation-judiciary-compliance", but there is a need to balance the effectiveness of a law and enterprises competitiveness. Disputes over extraterritorial effect of "French Duty of Vigilance Law" in French shows that hard law should increase the legality via communication around the world to avoid the unilateralist conflict [1].

Despite the growing momentum, research gaps still exist. Current literature analyzed individual laws in a fragmented manner, lacking systematic exploration to a trend from soft laws to soft laws. Regarding some problems such as the different way of different scope of law and the actual influences in multinational enterprises operating in a multielement environment, still are not solved. All in all, this article will be conducted to a problem about how the boundary of corporate responsibility changes based on legalization of CSR to fill in the above blanks.

This article will adopt the way of analyzing legal doctrines to detect hard law, ensure the core obligations of hard law, enforcement mechanism and the scope of administer. What is more, through comparison among EU, the selected member states and regulatory paths of non-EU scope of law, it will reveal that there are some same points, different points and the perfect practices from CSR to HRDD. It is significant for government to come up with some suggestions based on the evidence so that the government will complete the designment and implement of mandatory due diligence system.

2. Manuscript preparation

2.1. The traditional model of CSR

CSR is an idea that an enterprise volunteer to incorporate the problem of society and environment into business operations and interactions with interested parties according to European Commission. Taking responsibilities for society signifies meeting legal expectations and represents transcending compliance requirements [2].

2.2. The shortcomings of the traditional CSR model

From a corporate operational rationale perspective, there is a prevalence of low voluntary participation rates while enterprises primarily engage in CSR activities as a passive response. According to the concept proposed by Carroll in 1991, The Pyramid of CSR shows that at the lowest and most fundamental level lies profit of enterprises. All of CSR activities are inevitably for commercial purposes and it is also stopping optimization of CSR benefits. The penultimate tier of the pyramid lies the law of country. Most of enterprise took CSR activities to improve enterprise competitiveness to mitigating the risk of penalties resulting from non-compliance or addressing public opinion pressure [3]. This showed that the traditional CSR model is essentially too soft in nature, which leads to the failure to fully realize the original intention of CSR being proposed. The probability of enterprises integrating CSR in society remains at an extreme-low level. This sharply warns that it is important to come up with a series of solutions or measures to resolve the softening nature of CSR. Due to this reality, European Commission had come up with CSR and led to the establishment of CSDDD.

3. New requirements of CSDDD

3.1. The regulatory provisions on supply chain due diligence in CSDDD

In accordance with the provisions of CSDDD, the scope of application of CSDDD include EU-based enterprises that have more than 1000 employees and a global net turnover of more than 450-million-euro, non-EU enterprises that meet the above threshold and enterprises of phased implementation. EU member states should turn CSDDD into domestic law before July 2026 and establish supervisory bodies to start investigating the situations of each enterprise. According to CSDDD aims to standardize crucial legislation of corporate supply chain environment and human rights responsibilities. The coverage area of the supply chain includes upstream elements, such as raw and processed materials, and downstream elements, like products, among others. Member states have a responsibility to ensure relevant enterprise conduct due diligence. These corporations are obligated to incorporate due diligence into their policies. These enterprises should ensure practical and potential adverse effects; prevent and mitigation potential adverse effects; end practical adverse effects, minimize the scope and implement remediation measures; establish and maintain notification and complaint procedure; based on monitoring the efficiency of the policy and measures, communicate in public the solutions. The most critical prerequisite is that representing the company to undertake or be undertaken by the corporate representative. The enterprises need to formulate a transition plan as same as “Paris Agreement”to reduce emission of the greenhouse gases including the goal in 2030 and 2050, decarbonization investment strategies and climate progress reports. CSDDD also includes a cross obligation, which is engage in substantive consultations with interested parties at different stages of the process of due diligence [4]. EU-wide due diligence legislation would firstly create a level playing field for enterprises within the European Union. Meanwhile, it would reduce legal fragmentation and uncertainty arising from independent actions by member states [5]. The most important is that CSDDD represents a landmark shift to mandatory supply chain accountability in the EU [6].

3.2. Provisions on human rights and environmental protection obligations in CSDDD

The core of due diligence obligations includes risk identification and assessment, preventive measures, remediation, stakeholder engagement and transparency reporting. To specify in detail, the obligation to protect human rights and the environment is taking responsibilities to formulate a long-term due diligence policy and consultation with employees. Meanwhile, enterprises need to develop a code of conduct applicable to enterprise, its subsidiaries, and business partners. Furthermore, enterprises also should take solutions to recognize, forecast, and reduce human rights and environment risk, like prohibition of child labor, forced labor, and other human rights violations, as well as environmental degradation issues such as pollutant emissions and indiscriminate deforestation. Besides, effective communication to business partners, transparent complaint mechanism established, the annual report published, are important. Under the circumstance of one of the most pressing challenges in this era, provisions on human rights and environmental protection obligations are becoming a crucial tool to answer climate change [7].

3.3. Consequences of non-compliance with the CSDDD

Point at those enterprises do not legal openness and transparency or do not fulfill obligations of due diligence, they should be sanctioned sharply. Punitive measures include products of enterprises faced a challenge to withdraw the market of EU; enterprises faced a fine of not less than 5% of the global net turnover. Regarding non-EU enterprises, they may be prohibited participating in public procurement of EU. If regulators detect that the enterprises have engage in illegal activities, the enterprises are instructed that stop the relevant behaviors or take actions to make its behaviors up to specification and formulate relevant improvement strategies [8]. From the perspective of law, victims, including individuals, non-governmental organizations, can file a lawsuit and demand compensation according to a behavior the enterprises did not avoid the damaging behavior in supply chain. This also includes indirect impacts caused by subcontractors, such as environmental degradation. The enterprises cannot entrust the due diligence work to a third party to weasel out, such as by conducting an audit or entering a contract. What is more, if the damaging behavior is caused jointly by the enterprises and its subsidiaries or business partners, the enterprises should be investigated and affixed the responsibility for this thing. For example, a tradesman in France purchased cobalt from Congo mine site, the tradesman may be prosecuted with mine operator because of the issue of child labor. From the perspective of the enterprises themselves, they may face damage to reputation. Due to the government public notice, transparencies will undermine trust between enterprises and interest parties, especially those investors of focusing environment, society and government or some consumers concentrating on environmental issues. Another point needed to mention is that enterprises may need to terminate their cooperative relationships with high-risk suppliers so that should delay production and increase the cost.

4. A comparative perspective: the United States and China

4.1. The perspective of the United States

CSDDD represent the transformative development of supervision of worldwide ESG. These ambitious tasks are cores of the European Green Deal of the European Union. CSDDD imposes significant environmental and human rights obligations on both EU enterprises and thousands of non-EU enterprises with business connections to the EU. Different from law in America, law in

America is trapped in a debate about the importance of finance, and it also received a lot of restriction of anti-regulatory sentiment and anti-majority. EU instructed to make the sustainability as an independent goal of law. These commands viewed EU as a rule maker of worldwide ESG and replaced the influence of reforms based on the corporate government of American companies. Law in America regarding provisions related to CSDDD only is mainly subject to industry regulation, do not enact comprehensive legislation. Compared with shareholder-driven approach of America, the uniform and binding rules in EU could provide sustainability a more effective and democratic way [9].

4.2. The perspective of the China

For China, China do not have any law directly corresponding to CSDDD. China mainly encourages enterprises to comply with local environmental protection laws and labor regulations through some guidance documents such as the "guidelines for overseas integrity and compliance of enterprises", but that is not enforceability. Leading enterprises in China putting into effect of environmental, social and government (ESG) showed the voluntary problems and the issues of formulization [10].

5. Insights and challenges

The existing sustainable supply chain of China legally keeps the people-centered human rights concept, relying on soft law mechanisms such as industry standard and incentive policies. CSDDD fully shows that the lawmakers in EU formulate an intention of "EU standards" having practical guiding significance in the perspective of supply chain due diligence obligations, making a great influence on China enterprises that have already or are about to conduct business behaviors in the market of EU. However, due to the shortcoming of specific expression of definition of CSDDD, may lead to abuse discretionary power, do not conform to principle of proportionality and may have discrimination. so there has a risk of violation of both domestic and international laws, having a big difference to existing law system of China, especially for definition of core interests of an enterprise. although the establishment of CSDDD improved an intension of the protection of environment and human rights in supply chains, may lead to increase supply chain compliance costs, especially for the enterprises in developing countries, impacting the global development cooperation landscape. Anti-Foreign Sanctions Law allows enterprises of China safeguard rights and interests through the way of judicature, but the European export enterprises of China need to satisfy the regulations of CSDDD, otherwise those enterprises will be faced the limitation of market access. This is an extreme and great stress for export enterprises. Consequently, China needs to suitably take example for the regulations of CSDDD under the premise to keep the existing soft model mainly based on financing incentives and existing industry regulations, basing the social responsibility provisions of the New Company Law and China should generally and legally push the sustainable supply chain to shift from soft law to hard law. China enterprises also need to balance between EU compliance pressure and domestic supply chain security demands, using the counter-sanctions tools to protect themselves rights.

6. Conclusion

This has proved that a definite worldwide trend: CSR is transforming a enforceability HRDD supporting by hard law from a voluntary model of soft law relying on self-regulation and non-binding guidelines. The core conclusions are concluded three points. First, CSDDD in the EU and

“French Duty of Vigilance Law” in French are the model examples in the period of transformation. Secondly, compared with two different ways, it shows that the system of govern will affect the choice of regulatory models. Thirdly, the trend from CSR to HRDD will rebuild the accountability mechanism of enterprises, the legal obligations are replaced by voluntary promises, and taking the main part of responsibility transforms post-damage response into preventive measures before risks occur.

This study has both two sides significance, which is theoretical importance and practical importance. From the perspective of theory, it enriches the academic study of the transformation from soft law to hard law in the management around the world. From the perspective of practice, it provides an actionable insight: for policy makers, the balanced model of "strictness plus phased implementation" in the EU can serve as a reference to designing effective hard laws; for enterprises of China, which is export products to the EU, it can help reduce the risk of trade barriers. This study emphasizes that HRDD is both a supervisory requirement and a new standard for sustainable business. The most important thing is that promote the enterprises take the CSR into the core strategies of the enterprises.

It is more important in the future to study the international coordination mechanism so that could solve the problem of fragmentation of regulation, helping provide a measure to establish a more unified global mandatory liability framework. Furthermore, from the side of this study, which is mentioned the compared cases study directing at the high-risk industries such as textile industry and mining industry in the EU, America, China, some researchers may make attempts to investigate and find the influence of culture factor or market factors on HRDD also could investigate these factors how to influence the activities of enterprises.

Consequently, with the hard law becoming a main current, sustainable study and corporation is a key to ensure that promote the worldwide trade of the protection of human rights and environmental sustainability

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