

The EU's New Due Diligence and Corporate Responsibility Frameworks on the Businesses: A New Milestone in Turkey-EU Relations?

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“As the landscape of international trade is evolving with an increasing emphasis on the ethical and environmental implications of business operations, this evolution has led to the introduction of due diligence standards by the EU. These standards aim to ensure that private sector entities and trading partners adhere to stringent criteria for human rights and environmental protection.”

The European Union (EU) is Turkey's foremost trading partner and this relationship is crucial for the economic prosperity of both sides. Strengthening this link is particularly vital in the context of trade with key EU countries such as Germany, which has a strong role in Turkey's international trade commitments. However, the landscape of international trade is also evolving with an increasing emphasis on the ethical and environmental implications of business operations. This evolution has led to the introduction of due diligence standards by the EU, aimed at ensuring that companies operating within its borders and by extension, its trading partners, adhere to stringent human rights and environmental protection criteria.¹ Recent legislative initiatives, including the EU's Corporate Sustainability Due Diligence Directive (CSDDD) and Germany's Supply Chain Act (*Lieferkettensorgfaltspflichtengesetz* – LkSG), are preparing to significantly change the dynamics of international trade and corporate accountability.² These regulations are particularly pertinent for Turkish companies engaged in commerce with the EU, especially those exceeding specific size thresholds. This shift in regulatory landscape introduces a novel aspect to the trade relations between Turkey and the EU, compelling Turkish companies to adapt to these emerging norms. Furthermore, as a

¹ European Parliament. "Corporate Due Diligence Rules Agreed to Safeguard Human Rights and Environment". Last accessed March 30, 2024. <https://www.europarl.europa.eu/news/en/pressroom/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment>.

² Cleary Gottlieb. "Supply Chain Due Diligence Obligations in Germany, France, and the EU: An Overview". April 1, 2024. <https://www.clearygottlieb.com/news-and-insights/publication-listing/supply-chain-due-diligenceobligations-in-germany-france-and-the-eu-an-overview>.

member of the Organization for Economic Co-operation and Development (OECD), Turkey is expected to comply with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines). In response to these developments, both the Turkish government and businesses recognize the significance of emphasizing due diligence endeavors in conjunction with the alignment to the European Green Deal (EGD), a priority they have upheld since 2019. This alignment transcends mere regulatory compliance, representing a strategic maneuver to preserve and augment Turkey's trade engagements with the EU. Through the adoption of these due diligence standards, Turkey is taking a decisive step towards ensuring that its trade practices are not only sustainable and responsible but also in harmony with global benchmarks.

Aligning the Modernization of the Customs Union with CSDDD

In 2022, Turkey was the EU's seventh largest trading partner, accounting for 3.3% of the EU's total trade in goods, with bilateral trade amounting to €198.1 billion.³ The EU is Turkey's foremost trade partner, receiving 41% of Turkish exports and providing 26% of its imports, with key sectors including machinery, transport equipment, and textiles. This relationship is not only a testament to the economic interdependence between Turkey and the EU but also highlights the strategic importance of Turkey in the European market.⁴ Within the EU, in 2023, Turkey's exports to Germany soared to \$21.07 billion, positioning Germany as Turkey's primary export market within the EU.⁵ The trade between Turkey and Germany covered a wide array of products, including vehicles, machinery, textiles, and electronic devices, indicating the depth of industrial and manufacturing connections between the two countries.⁶

The Customs Union (CU) between Turkey and the EU serves as a cornerstone in Turkey's economic and commercial relations with the EU, facilitating the exchange of industrial products while excluding sectors such as agriculture, services, and public procurement.⁷ This arrangement has significantly contributed to the integration of Turkish businesses into European markets and value-chains, promoting economic expansion and diversification across Turkey. Parallel to the CSDDD, the proposed modernization of the CU offers an opportunity to improve alignment with EU regulatory frameworks, enhancing corporate governance and sustainability standards.⁸ This alignment is crucial for enabling Turkish businesses to compete effectively in the EU by adhering to the increasing expectations for sustainable and ethical business practices, thereby boosting trade and deepening economic

³ European Commission. "EU trade relations with Türkiye". Last accessed April 5, 2024. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/turkiye_en.

⁴ *Ibid.*

⁵ Turkish Statistical Institute. "Foreign Trade Statistics, January 2023". Last accessed April 6, 2024. <https://data.tuik.gov.tr/Bulten/Index?p=Foreign-Trade-Statistics-January-2023-49621>.

⁶ *Ibid.*

⁷ EDAM. "Modernizing the Türkiye-EU Customs Union: The Digital Agenda and the Green Deal". Last accessed March 30, 2024. <https://edam.org.tr/en/economics-and-energy/modernizing-the-Turkiye-eu-customs-unionthe-digital-agenda-and-the-green-deal>.

⁸ *Ibid.*

ties.⁹ Consequently, modernization of the CU could trigger widespread legislative changes in Turkey, advancing progress in corporate sustainability and human rights compliance.¹⁰ Specifically, for Turkey's textile sector, a significant exporter to the EU, the modernization of the CU would necessitate the adoption of higher environmental and labor standards in line with EU policies.¹¹ Turkish textile manufacturers would be compelled to adopt sustainable methods, including the use of eco-friendly materials and ensuring fair working conditions, to comply with the CSDDD. This compliance would not only enable Turkish textile producers to maintain their market presence in the EU under an updated CU but also increase the appeal of Turkish textile products among European consumers who prefer ethically produced goods. Therefore, the modernization of the CU and compliance with the CSDDD are poised to promote significant reforms, aligning Turkish sectors with EU standards, encouraging ethical trade practices, and supporting sustainable development goals. Furthermore, these reforms will not only bolster Turkey's exports to the EU but also streamline trade operations, making them more efficient and enhancing competitiveness globally.

The Regulatory Landscape in Turkey

The regulatory landscape concerning due diligence in Turkey is a multifaceted structure that integrates both national regulations and international standards covering sustainability, human rights, anti-money laundering (AML), and corporate responsibility. Turkish law does not currently have specific provisions that directly regulate the due diligence process within the Turkish Commercial Code or the Turkish Code of Obligations.¹² However, Turkish Labor Law establishes parameters for employment contracts, encompassing provisions related to termination, discrimination and harassment, pertinent to due diligence in labor rights.¹³ The country's alignment with the EU's sustainability efforts is evident in the Presidential Circular No. 2021/15, which outlines Turkey's commitment to the EGD. The Green Deal Action Plan is aimed at ensuring compliance with sustainability principles, particularly for publicly traded joint stock companies, in accordance with the Capital Markets Board's sustainability principles compliance framework.¹⁴ The legal framework for AML in Turkey mandates that obliged entities, particularly financial institutions, conduct customer due diligence for their customers

⁹ Yalcin Erdal and Gabriel Felbermayr. "The EU-Türkiye Customs Union". Policy Department for External Policies, European Parliament. June 7, 2021.

[https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653640/EXPO_IDA\(2021\)653640_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653640/EXPO_IDA(2021)653640_EN.pdf).

¹⁰ Ahmet Emre Usta. "Modernizing the EU-Türkiye Customs Union". Economic Development Foundation, April 2022. https://www.ikv.org.tr/images/files/Modernizing_the_EU_Turkiye_Customs_Union.pdf.

¹¹ Yalcin Erdal and Gabriel Felbermayr. "The EU-Türkiye Customs Union". Policy Department for External Policies, European Parliament. June 7, 2021.

[https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653640/EXPO_IDA\(2021\)653640_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/653640/EXPO_IDA(2021)653640_EN.pdf).

¹² Mondaq, "Due Diligence and Types of Due Diligence", Mondaq, Last accessed April 9, 2024,

<https://www.mondaq.com/turkey/contracts-and-commercial-law/1170960/due-diligence-and-types-of-due-diligence>.

¹³ OECD. "Employment Outlook 2020 - Türkiye". 2020. <https://www.oecd.org/els/emp/Turkiye.pdf>

¹⁴ Ministry of Treasury and Finance of Türkiye. "ESG Framework Investor Presentation". 2023. https://ms.hmb.gov.tr/uploads/sites/2/2023/05/2021_ESG-Framework-Investor-Presentation.pdf.

to mitigate the risks associated with money laundering and terrorist financing.¹⁵ Furthermore, Turkey's due diligence framework is shaped by international guidelines such as the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. These guidelines offer a comprehensive framework for conducting detailed due diligence, which is essential for responsible supply chain management.¹⁶ To fully align with EU standards and effectively compete in the EU market, Turkey needs to undertake comprehensive legal and regulatory reforms. These reforms should not only address the direct requirements of the CS3D and the LkSG but also encompass broader principles of responsible business conduct as outlined in the OECD Guidelines.

EU Legislation and International Standards

Turkey, as a part of international value chains, is affected by due diligence standards set by the OECD and legislative requirements of the EU. First, the EU has taken proactive measures to ensure that businesses operating within its borders engage in practices that are responsible and sustainable, with a particular focus on safeguarding human rights and the environment. The CSDDD is a significant step in this direction. This directive requires significant EU-based corporations, specifically those employing over 500 employees and achieving a global net turnover of more than €150 million, to conduct thorough due diligence assessments concerning the impacts of their activities on human rights and the environment throughout their entire operational and supply chain networks.¹⁷ Additionally, non-EU companies that generate €150 million in revenue within the EU are also encompassed by this directive.¹⁸ The proposal for the CSDDD was unveiled on 23 February 2022, and following its ratification by the European Parliament and the Council, Member States of the EU will be allotted a two-year timeframe to integrate the directive into their respective national legal frameworks.¹⁹ Moreover, within the EU, national legislation of Germany, such as the LkSG, lays down specific requirements for corporations to actively prevent violations of human rights and environmental degradation. The LkSG is applicable to German companies with a workforce exceeding 3,000 employees initially, and subsequently, it will extend to those with more than 1,000 employees.²⁰ This law is set to be enforced from 1 January 2023 for larger corporations

¹⁵ FATF. "Anti-money laundering and counter-terrorist financing measures - Türkiye". Fourth Round Mutual Evaluation Report. FATF, Paris, 2019. <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-Türkiye-2019.html>

¹⁶ OECD. "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition". Éditions OCDE, Paris, 2016. <https://doi.org/10.1787/9789264252479-en>.

¹⁷ European Parliament. "Corporate Due Diligence Rules Agreed to Safeguard Human Rights and Environment". Last accessed March 30, 2024. <https://www.europarl.europa.eu/news/en/pressroom/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment>.

¹⁸ *Ibid.*

¹⁹ Jon McGowan. "After Delays, EU Approves Corporate Sustainability Due Diligence Law". Forbes. March 15, 2024. <https://www.forbes.com/sites/jonmcgowan/2024/03/15/after-delays-eu-approves-corporate-sustainability-due-diligence-law/?sh=58db38607f33>.

²⁰ Cleary Gottlieb. "Supply Chain Due Diligence Obligations in Germany, France, and the EU: An Overview". April 1, 2024. <https://www.clearygottlieb.com/news-and-insights/publication-listing/supply-chain-due-diligence-obligations-in-germany-france-and-the-eu-an-overview>.

and from 1 January 2024 for smaller entities.²¹ Non-EU companies are subject to the regulations of both the LkSG and the CSDDD. The LkSG is relevant for non-EU businesses that operate a branch in Germany and have a workforce of 1,000 or more. On the other hand, the CSDDD extends its reach to companies lacking an EU establishment, contingent upon their achievement of specified revenue benchmarks within the EU.²² On the other hand, the OECD lays out Guidelines, covering aspects such as human rights, labor, environment and anti-corruption across all sectors.²³ These guidelines, regularly updated to address contemporary societal challenges and business practices, include recommendations for due diligence.²⁴

Towards Compliance with Due Diligence European and Turkish Critiques

Turkey, an OECD member, is expected to abide by these Guidelines and integrate them into its national framework, serving as a benchmark for multinational companies operating in or from Turkey, guiding them towards responsible business practices aligned with global standards. The objective is to amplify positive impacts on sustainable development and societal progress while mitigating negative ones. Turkey's adherence to these guidelines necessitates embedding Responsible Business Conduct principles into its domestic laws and encouraging Turkish multinational corporations to conform to international norms.²⁵ The active OECD Guidelines have both direct and indirect effects on Turkish businesses. Directly, Turkish businesses are required to comply with these guiding principles and indirectly, as participants in global value chains, they may be asked to comply with updated OECD standards signaling a significant change by international partners. During the revision of the OECD Guidelines, the discourse focused on the interaction with EU legislation, along with concerns about potential political impulses to fully align EU laws with the OECD's voluntary guiding principles.²⁶ However, due to the mandatory nature of EU legislation in contrast to the voluntary status of the OECD Guidelines, this alignment was considered impractical. The OECD's environmental guiding principles, suitable for detailed and voluntary commitment, could introduce complexities if made mandatory. To clarify their non-binding status, the preface of the OECD Guidelines was modified to underline their voluntary structures that allow for ambitious goals without legal obligation and prevent the guiding principles from being misinterpreted as legal templates.²⁷

Additionally, the CSDDD has also faced criticism, particularly regarding its potential impact on small and medium-sized enterprises (SMEs). BusinessEurope, the organization

²¹ *Ibid.*

²² Baker McKenzie. "Supply Chain Due Diligence in the EU and Germany: Navigating the Evolving Landscape". Last accessed April 9, 2024. <https://supplychaincompliance.bakermckenzie.com/2024/02/01/supply-chain-duediligence-in-the-eu-and-germany-navigating-the-evolving-landscape/>.

²³ OECD. "OECD Guidelines for Multinational Enterprises on Responsible Business Conduct". Éditions OCDE, Paris, 2023. <https://doi.org/10.1787/81f92357-en>.

²⁴ *Ibid.*

²⁵ Interview with OECD/BIAC staff, Paris, March 21, 2024.

²⁶ Interview with EU official, Brussels, March 5, 2024.

²⁷ *Ibid.*

representing EU businesses, has expressed concerns about CSDDD.²⁸ They argue that the directive places heavy burdens and strict penalties on companies, which could lead to significant existential threats and increase the risk of facing legal actions worldwide. BusinessEurope points out that even though SMEs may not be directly targeted by the directive, they could still suffer negative consequences due to their essential roles in supply chains. The organization's criticism also touches on the directive's perceived ambiguities, the need for better harmonization, and fair enforcement.²⁹ The abstention of 10 EU Member States, which represent a significant segment of the EU's population, suggests that the current compromise is not yet accepted as a satisfactory solution.³⁰

There are also apprehensions about the directive's method of engaging public consultation and participatory decision-making, which could particularly impact businesses in Turkey. Moreover, the directive's bold framework has been a point of debate, with some considering it a contentious step towards sustainable finance and trade within the EU.³¹ The implementation of these regulations by European companies could lead to increased scrutiny and due diligence requirements for Turkish suppliers and business partners. This scenario may require Turkish companies to align their business practices, especially regarding human rights and environmental protection, with the high standards expected by their European counterparts. To maintain access to European markets and comply with these evolving international standards, Turkish companies may need to enhance their compliance systems and due diligence processes. This compliance involves not only meeting the direct requirements of European legislation but also aligning with the broader principles outlined in the OECD Guidelines.³²

Actionable Policy Recommendations

Aligning Legal and Judicial Systems with EU Standards	Turkey should work towards aligning its legal and judicial systems with EU standards, particularly in the areas of human rights and environmental protection. This includes adopting and implementing legislation that mirrors the CSDDD and the LkSG. In this way, Turkey can ensure that human rights are respected and protected within its borders and in its trade practices. This alignment will also facilitate Turkey's trade with the EU by meeting the due diligence requirements that EU
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²⁸ BusinessEurope, "EU's due diligence rules must be workable for companies and must not weaken the internal market", September 7, 2023, <https://www.businesseurope.eu/publications/eus-due-diligence-rules-must-be-workable-companies-and-must-not-weaken-internal-market>.

²⁹ BusinessEurope, "Agreement on EU due diligence: still far from a workable solution", March 15, 2024, <https://www.businesseurope.eu/publications/agreement-eu-due-diligence-still-far-workable-solution>.

³⁰ *Ibid.*

³¹ "The Sustainability Regulations and Associated Risks and Opportunities Encountered By Companies Operating in Türkiye - Corporate Governance - Türkiye." Mondaq. April 3, 2024. <https://www.mondaq.com/Türkiye/corporate-governance/1380468/the-sustainability-regulations-and-associated-risks-and-opportunities-encountered-by-companies-operating-in-Türkiye>.

³² *Ibid.*

	<p>companies are increasingly expected to enforce within their supply chains.</p>
<p>Enhancing Corporate Sustainability and Due Diligence</p>	<p>Turkish companies, especially those engaged in trade with the EU, should enhance their corporate sustainability and due diligence processes. This involves adopting practices that comply with the OECD Guidelines. By proactively managing risks related to human rights and the environment, Turkish companies can maintain access to European markets and meet the rising demand for sustainable and responsible business conduct. This also includes focusing on sectors like textiles, where the adoption of enhanced environmental and labor standards in line with EU regulations will be crucial.</p>
<p>Modernizing the Customs Union and Fostering Economic Integration</p>	<p>Turkey should prioritize the modernization of the CU to enhance regulatory harmonization and elevate corporate governance and sustainability standards. Modernizing the CU will require Turkey's regulatory alignment with EU standards, potentially including adherence to the stringent CSDDD requirements. This harmonization is essential for facilitating increased trade and economic integration, as well as ensuring that Turkish companies remain competitive in the EU market.</p> <p>The modernization of the CU could act as a catalyst for comprehensive regulatory reforms in Turkey, leading to advancements in corporate sustainability and human rights practices.</p>