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# Responsible Business Conduct in the European Union's Investment Policy

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## Abstract

This paper aims to characterize the role of responsible business conduct (RBC)/corporate social responsibility (CSR) within the European Union's (EU) common investment policy. It explores how the EU uses CSR/RBC to promote sustainable development in the context of foreign direct investment (FDI). The main research objectives include an assessment of the potential impact of the provisions on CSR/RBC included in the EU's international trade/investment agreements on achieving the sustainable goals in host and home countries of FDI, methods of implementing these provisions in international relations, and the future role of the World Trade Organization's (WTO) Investment Facilitation Framework for Development (IFD) Agreement in reshaping the EU's investment policy. The study employs qualitative methods, supported by the examination of examples of the EU's new generation of international trade and economic partnership agreements (Korea, Canada, and Japan). The EU treats RBC/CSR as a crucial tool for achieving the UN Agenda 2030's sustainable development goals. Responsible business behavior is promoted and supported by the instruments of the EU's trade and investment policies. Since RBC/CSR is voluntary, agreements are enforced through soft measures and actions. The only strong instrument, i.e., trade sanctions, is treated as the last resort and has not been used so far.
The newly negotiated WTO Investment Facilitation for Development (IFD) Agreement is expected to enhance the re-orientation of the EU's policy towards facilitating foreign investment in relations with developing countries. The paper's main contribution lies in its examination of the EU's approach towards CSR/RBC in its international trade/investment agreements. It also analyses the problems associated with implementing RBC/CSR provisions within these agreements.

Keywords: EU investment policy, foreign direct investment (FDI), international trade and investment agreements, responsible business conduct, corporate social responsibility, sustainable development

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## Introduction

The European Union (EU) conducts a common investment policy for foreign direct investment (FDI) based on the provisions of the Treaty on the Functioning of the European Union (TFEU), Articles 206 and 207. One key instrument of this policy is negotiating and signing international investment agreements (IIAs) with third countries. Recent IIAs include provisions related to sustainable development, with particular reference to environmental and social issues. This represents a novel approach compared to traditional IIAs between the EU and third countries.

Achieving the UN Agenda 2030's sustainable development goals (SDGs), which the EU strives for, requires public and private sector involvement at both EU and Member State levels. Responsible Business Conduct (RBC) or Corporate Social Responsibility (CSR) are treated as crucial factors of sustainable development strategies in the private sector.

The paper aims to assess:

- If CSR/RBC provisions included in EU's IIAs could help solve problems related to achieving the SDGs in the host and home countries of foreign direct investment (FDI).
- How the provisions of IIAs should be executed if CSR/RBC activities are voluntary.
- What the future role of the World Trade Organisation's (WTO) Investment Facilitation Framework for Development (IFD) Agreement might be in reshaping EU investment policy.

The paper will use official information on the EU's investment policy and independent analyses. It will also consider the potential impact of the newly negotiated WTO/IFD Agreement on changes in the EU's investment policy.

## Corporate Social Responsibility versus Responsible Business Conduct

According to the contemporary literature, CSR encompasses '[…] the economic, legal, ethical, and discretionary [later referred to as philanthropic] expectations that society has of organizations at a given point in time' (Carroll and Shabana 2010). Although various definitions of CSR exist, the following core characteristics are widely accepted (Bondy, Moon, and Matten 2012; Crane, Matten, and Spence 2014):

- CSR activities are voluntary.
- CSR focuses on integrating or managing the external effects that arise when products or services are delivered/rendered by companies.
- CSR targets various stakeholder groups (including stockholders and investors, employees, communities, competitors, and the media).
- CSR integrates social, environmental, and economic responsibility with everyday business operations and decision-making.
- CSR ideas are embedded in business practice and a company's system of values.
- CSR goes beyond philanthropy and focuses on operational considerations.

Significantly, the definitions of CSR embrace several aspects of the **voluntary** integration of social, economic, and environmental issues into a business's activities and its relationships with stakeholders. Another important aspect is the readiness of businesses to **sacrifice profit** for the sake of certain social interests (Benabou and Tirole 2010).

While the CSR concept mainly targets the business world, it has also garnered significant interest from governments and international organizations. These entities play a dual role, formulating their own CSR definitions and actively promoting the concept in both private and public sectors. Given the significance of CSR for the business world, 'corporate' social responsibility in the public sphere is less obvious. However, there are strong proponents for implementing CSR principles in the public sector as well.

Alternative terms related to business responsibility have been formulated alongside discussions on understanding the CSR concept and its practices: **responsible business conduct (RBC),** introduced by the OECD, and **Business and Human Rights**, endorsed by the UN (European Commission 2019a). The notion of RBC is articulated in the *OECD Guidelines for Multinational Enterprises*, which provide **voluntary** principles and standards of good practice for responsible business conduct that align with applicable laws and internationally recognized standards (OECD 2023). The Guidelines embrace several sections related to information disclosure, human rights, employment and industrial relations, the environment, combating bribery, bribe solicitation and extortion, consumer interests, science and technology, competition, and taxation. Although there is no formal definition of responsible business conduct, the OECD offers the following explanation: "[…] RBC principles and standards expect that all companies – regardless of their legal status, size, ownership or sector – should 1) make a positive contribution to the economic, environmental and social progress of the countries in which they operate and 2) avoid and address negative impacts of their activities, including in the supply chain." (OECD n.d.).

In other words, the responsible behavior of multinational enterprises should positively influence the societies and economies of both home and host countries and lead to sustainable development. At the same time, the OECD Guidelines foresee legally binding commitments for the governments that adhere to them. The Guidelines cover several areas, including setting up authorities (National Contact Points) to promote the idea of RBC, responding to inquiries, and providing mediation and conciliation platforms when the OECD Guidelines are not respected.

To provide practical support to companies in implementing RBC, *the OECD Due Diligence Guidance for Responsible Business Conduct* was adopted in 2018 (OECD 2018; Shavin 2019). Its role is to promote a mutual understanding of RBC due diligence, give practical recommendations to businesses, and help them positively contribute to the UN Agenda 2030's SDGs.

Although the *OECD Guidelines for Multinational Enterprises* and associated *OECD Due Diligence Guidance* are considered soft law, they are seen as a valuable tool in promoting greater corporate responsibility regarding human rights and the environment, as well as strengthening the legal framework on corporate accountability (Ingrams and Booth 2023). A more stringent international regulation on the *Multilateral Treaty on Due Diligence* has been proposed (Yannaca-Small 2022). Countries would adopt and enforce laws that would be mandatory for companies under their jurisdiction. Consequently, the soft nature of the *OECD Due Diligence Guidance* would be changed.

Both CSR and RBC share the common characteristic of being **voluntary.** They also distinguish the same dimensions of business responsibility, i.e., **social, economic, and environmental issues**, which are significant for a country's sustainable development. However, the two approaches differ in their view of government roles. In CSR, the role of government is reduced to promoting the concept, while in RBC, governments are more active. They are expected to act as promotors, respond to inquiries, and mediate potential conflicts.

Despite the different perspectives on the role of governments, the key characteristics of CSR and RBC justify treating them as largely synonymous. For example, the European Union uses the notions of CSR[1] and RBC in its documents and analyses interchangeably (SWD 2019). Since the same dimensions of business responsibility are considered in these terms, this paper will also treat them as equivalent.

It is important to acknowledge the ongoing debate surrounding these concepts. Some argue that RBC is replacing CSR as the dominant concept because RBC refers not only to social issues but also to development issues (Sauvant 2022). However, as previously outlined, the concept of CSR also includes development aspects.

1 The EU defines CSR as "the responsibility of enterprises for their impact on society" (European Commission 2011, p. 6).

An alternative perspective suggests distinguishing three distinct social responsibility notions: **Corporate Social Responsibility, Responsible Business Conduct** and **Corporate Responsibility to Respect** (CRtoR) (Fasciglione 2020). The last one expresses the business and human rights approach of **the UN Guiding Principles on Business and Human Rights** (UNGPs) and is more regulatory-oriented than the other two.

The UNGPs, endorsed by the United Nations Human Rights Council in 2011, provide a framework for states and companies to prevent and address human rights abuses committed in business operations (UN 2011). They establish a clear division of responsibility: "…states have the duty to protect against human rights abuses by all actors in society, including businesses," while "[…] business enterprises have the responsibility to respect human rights wherever they operate and whatever their size or industry. This responsibility means companies must know their actual or potential impacts, prevent and mitigate abuses, and address adverse impacts with which they are involved" (UN 2011). The UN document interprets this responsibility within a broad legal context.

In light of the UN Guiding Principles, both states and enterprises have distinct but complementary responsibilities, which might be viewed as legal responsibility in "a pyramid of CSR" models, i.e., "After profit obligations" models or the legal domain in the "Three-Domain Model of CSR" (Schwartz and Carroll 2003).

## The European Union's general approach towards CSR/RBC

The EU has defined its attitude towards the concept and practice of CSR/RBC in official documents. Its support for CSR/RBC has a long history, beginning with the EU Lisbon Strategy, which emphasized the significance of CSR. The next steps embraced the European Commission's 2001 *Green Paper on Promoting a European Framework for Corporate Social Responsibility*, which launched a debate on CSR, and the follow-up introduction of the European strategy to promote CSR (European Commission 2001; 2002).

The EU's CSR policy was further developed in *A renewed EU Strategy 2011–14 for Corporate Social Responsibility* (European Commission 2011). It had a horizontal character and was interlinked with EU policies and global approaches to CSR. The EU's internal focus was on promoting CSR and adapting it to the individual characteristics of environmental and trade policies, public procurement, transparency reporting and sectors of economies. These activities aimed to enhance understanding of CSR, increase its visibility, disseminate good practices, encourage disclosure of social and environmental information, and reward companies for strong CSR performance.

The interaction between European and global approaches to CSR aims to integrate internationally recognized principles and guidelines into the EU's own CSR policies, implement the *UN Guiding Principles on Business and Human Rights,*

and positively impact the economies of third countries through the promotion of responsible business models.

The progress made under the 2011–2014 strategy was reviewed in the 2019 *Staff Working Document* (SWD 2019). The report highlights the EU institutions' efforts to ensure coherence between CSR/RBC actions, EU policies, and legal aspects arising from the UNGPs and the UN 2030 Agenda for Sustainable Development.

The EU has undertaken significant legal work that aligns with the legal domain of CSR/RBC. This resulted in the adoption of directives and regulations related to the protection and enforcement of fundamental rights, the prevention of and remedies for discrimination on any grounds, and data protection. The EU has also taken important steps to ensure due diligence in respecting human rights along the supply chain. Key actions include the EU Non-Financial Reporting Directives (European Union 2022), regulations on responsible sourcing of timber, minerals, and diamonds, as well as sectoral due diligence measures in textile, garment and leather supply chains, which were implemented in cooperation with international organizations (OECD, UN, ILO).

Beyond these activities, the EU promotes sustainable finance, encourages socially and environmentally friendly business practices, and promotes CSR/RBC and Business and Human Rights in multilateral fora and bilaterally. It also promotes these principles outside the EU through trade and development practices (SWD 2019).

## Promoting CSR/RBC through trade and investment outside the EU

The EU uses its involvement in global trade and FDI, as well as its trade and investment policies, to support the idea of CSR in international economic relations. **Trade policy** is one of the "old" policies, and the EU institutions have at their disposal a set of instruments allowing them to shape external trade relations. Some of them, i.e., Free Trade Agreements, Economic Partnership Agreements, and unilateral trade preferences, are used to promote CSR/RBC in economic relations with third countries. Apart from that, numerous actions and initiatives are undertaken to promote and, to a certain extent, execute this idea in global value chains (SWD 2019).

**The EU's common investment policy towards FDI**, based on Articles 206 and 207 of the Treaty on the Functioning of the European Union (TFEU 2012), is conducted on behalf of the EU Member States as part of the EU's common trade policy. One of the objectives of the investment policy is to '[…] encourage investment that supports sustainable development, respect for human rights and high labor and environmental standards – this includes promoting corporate social responsibility

and responsible business practices' (European Commission n.d., *Investment*). Therefore, one of the aims of this policy is to promote socially responsible behavior of international business in the EU's economic relations.

The EU's common investment policy instruments include trade agreements, which contain investment rules or standalone investment agreements, screening frameworks for FDI, rules of investment dispute settlements, and investment facilitation rules (European Commission n.d., *Investment*).

**Trade agreements containing investment rules or standalone investment agreements** are used as traditional instruments to encourage and facilitate foreign investment flows between countries, to protect foreign investors' interests without undermining the state's sovereign rights to regulate and protect citizens' interests, and to establish investor-to-state-settlement (ISDS) procedures. These agreements might also play a significant role in promoting and exercising responsible business conduct in bilateral relations.

Over the last 50 years, it is estimated that countries worldwide have signed more than 3200 bilateral investment treaties, 1400 of which involved EU Member States (European Commission 2015). Pursuant to the TFEU, the EU broadened its competencies and took responsibility for negotiating new trade and investment agreements with third countries. These agreements are either comprehensive, including provisions on investment, or focus solely on protecting and facilitating foreign investment. Since gaining competencies in investment policy, the EU has signed 17 treaties with investment provisions (UNCTAD 2023a). Existing bilateral investment agreements within the EU are expected to be terminated as they conflict with the single market principle of non-discrimination among EU investors under EU law (European Commission 2018).

**The screening framework for FDI** is a new EU instrument to protect key strategic industries and assets in the Member States (OJEU 2019). This framework allows Member States to assess whether investment projects are suitable for the strategic aims of a recipient country and evaluate how they will impact the economy. RBC is not explicitly enumerated in the Regulation of 2019 (Article 4) as a factor to be considered by the Member States or the Commission when determining whether foreign direct investment is likely to affect security or public order. However, the EU screening mechanism could be a useful tool, especially for assessing the potential consequences of FDI for the environment and human health. While the mechanism might appear restrictive towards FDI, it is a softer instrument than "negative lists". It also creates some opportunities to conduct responsible business practices in recipient countries.

**Investor-to-State-Dispute Settlements** (ISDS) constitute a severe problem that involves investors, states, and societies. Disputes might arise in different spheres, even those not regulated by law. In such cases, appealing to CSR might be a solution.

Although there is no global system of dispute settlements, attempts to deal with problems arising in investor-to-state relations are applied at international levels. They include arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), rules of transparency of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (the *Mauritius Convention on Transparency*), as well as procedures and rules used by the World Bank's International Centre for Settlements of Investment Disputes (ICSID) (UN 2015; UNCTAD 2023b; ICSID 2022).

However, since these rules and procedures lack clear and precise rules on investment protection or the state's right to regulate, the EU promotes its own approach to these issues. As a result of reforms, **the Investment Court System (the ICS)** was created to replace the old model of arbitral tribunals established *ad hoc* for specific disputes. Installing a permanent investment court system means that the parties can no longer choose their own arbitrators. The EU's new investment policy uses this institutionalized adjudicative body for dispute resolution. This new legal solution has been applied in **bilateral** investment negotiations. Its implementation in the Comprehensive Economic and Trade Agreement (CETA) with Canada paved the way for agreements with Vietnam, Singapore, and Mexico (European Commission 2023a). Additionally, the EU advocates for establishing a **Multilateral Investment Court** through intergovernmental discussions within the United Nations Commission on International Trade Law. However, the progress of reforming ISDS under the auspices of UNITRAL has been slow (EESC 2023).

Traditionally, both host and home countries have employed **investment facilitation measures** to attract foreign investors. These policies aimed to maximize the net benefits for the host countries while supporting the investment expansion of home countries. The objectives of the policies formulated within a traditional framework were sometimes hindered by unforeseen circumstances (UNCTAD 1999).

Investment facilitation was under the spotlight in international negotiations on *The Investment Facilitation for Development Agreement* within the WTO (IFD/WTO). In this context, investment facilitation is understood as "[…] the setting up of a more transparent, efficient and investment-friendly business climate […]" (WTO 2023, p. 2). Moreover, both the home and host countries seek cooperative and mutually beneficial approaches to promote more sustainable investment. Importantly, the IFD Agreement includes a section dedicated to RBC and anti-corruption measures. The WTO negotiations recognized the need to complement past liberalization efforts by streamlining administrative procedures and making information on investment rules public and easily available. The EU, representing the Member States, actively participated in the WTO negotiations on the new agreement. In the meantime, the European Commission announced its intention to pursue sustainable investment agreements with Africa and Southern Neighborhood countries (European Commission 2023b).

Therefore, the EU's trade and investment policies are intended not only to liberalize foreign trade and investment but also to achieve a broader goal, i.e., sustainable development on a global scale. Regarding CSR/RBC, the EU prioritizes human rights, labor rights, and social and environmental aspects in global value chains. Additionally, it expects Member States to enforce common regulations related to imported goods and services, as well as domestically manufactured products (European Commission 2015).

The EU's trade and investment strategy, entitled "Trade for all. Towards a more responsible trade and investment policy," adopted by the Commission in 2015, forms the basis for trade and investment policies for the benefit of both Member States and third countries. According to the EU Treaties, trade and investment policies should be consistent with other EU external actions (European Commission 2015).

The strategy was followed by numerous documents, programs and initiatives to promote CSR/RBC and business and human rights outside the EU. They included the updated *EU Aid for Trade strategy* of 2017, initiatives to promote fair and ethical trade, support for CSR/RBC throughout the value chains, as well as responsible investment, sustainable trade, and inclusive business models in partner countries. Specific programs were also conducted in some regions and countries, such as Asia and the South Mediterranean, including the Agriculture Financing Initiative, the Electrification Financing Initiative, and the SWITCH To Green program. Together with the International Labour Organization (ILO), the EU strives to eliminate and prevent forced and child labor and violations of freedom of association (European Commission 2019a). Finally, the recently concluded EU trade and investment agreements contain specific provisions committing the partners to promoting CSR/RBC, which are in line with the *Trade for all* strategy. The last issue will be discussed more thoroughly in the next section.

## Responsible business conduct in the EU's trade/investment agreements

According to the new rules introduced by the TFEU, the EU institutions draft negotiating mandates if the grouping plans to sign international trade or investment agreements. In the case of the newly negotiated agreements, more prominence in these mandates is given to provisions related to sustainable development and CSR/RBC issues. It is a novelty in comparison to traditional agreements. The "new generation" of trade/investment agreements promotes investment that is mindful of environmental and labor standards, human rights, RBC, and sustainable development. These agreements establish a legal framework to achieve these goals. This framework includes provisions that ensure that strong labor and environmental standards are incorporated into the national legal

frameworks of the agreement parties. These standards must align with internationally recognized principles. In turn, investors are also expected to comply with these standards and responsible business conduct principles, accordant with the internal legal systems. Therefore, investors are legally bound by all legal obligations of the host country, including the highest levels of environmental and labor protection standards (European Commission 2024).

In practice, enforcing responsible business conduct and sustainable development provisions in international trade and investment relations might pose problems that require special solutions.

**The Free Trade Agreement (FTA)** between the EU and **South Korea**, signed in 2010, is the first of the "new generation" agreements. While promoting FDI in bilateral relations, the agreement emphasizes that this activity must not undermine environmental, labor, or occupational health and safety standards set by the laws of the parties (Article 1.1 (h)). The Agreement contains a chapter related to trade and sustainable development issues, which also refers to investment and corporate social responsibility (Chapter 16) (OJEU 2011).

**The Comprehensive Economic and Trade Agreement (CETA)** between the EU and **Canada**, which contains a provision indicating the importance of addressing specific sustainable development issues (Article 22.3), foresees the commitments of both parties to review, monitor and assess the impact of the implementation of the Agreement on sustainable development in their territories. This should identify any need for action that may arise in connection with the Agreement (OJEU 2017).

**The Agreement between the EU and Japan for an Economic Partnership** includes a general statement related to creating a better climate for the development of trade and investment between the parties, as well as for the progressive and reciprocal liberalization of trade in services and investment, and cooperation on electronic commerce (Article 8.1.1). Furthermore, the Agreement confirms the parties' rights to adopt regulatory measures within their territories that are necessary for the protection of public health, safety, the environment, public morals, social or consumer protection, as well as the promotion and protection of cultural diversity (Article 8.1.2) (OJEU 2018).

Apart from the aforementioned agreements, the EU negotiated and signed several agreements that contain investment-related provisions. These include agreements with Colombia, Ecuador, and Peru (2012), Ukraine, Moldovia, Georgia (2014), Armenia (2017), Singapore and Vietnam (2018). The agreements with Singapore and Vietnam are targeted at investment protection between the cooperating parties (UNCTAD 2023a).

The EU also concluded in principle the negotiations on the Comprehensive Agreement on Investment (CAI) with China in 2020. According to information from the European Commission, both sides are now working towards finalizing the text of the agreement

(European Commission 2023c). It is China's first agreement that contains a section on "investment and sustainable development". China agreed to accept particularly important commitments related to labor, the environment, and climate. The agreement also includes the obligation not to lower environmental and labor standards to attract investment, as well as the obligation to promote responsible business conduct. The agreed commitments will be subject to a specifically constructed enforcement mechanism. Given a high degree of transparency, it involves an independent panel of experts and the participation of civil society (European Commission 2023c).

Due to its novelty, the CAI is expected to play a significant role in developing international economic policy. Chaisse (2022, p. 3) stated: "CAI's Section IV on investment and sustainable development can become a major source of inspiration for a new generation of trade and investment treaties worldwide."

To sum up, after gaining competence in investment policy, the EU has been striving to include sustainable development and RBC into the "new generation" of international trade and investment agreements. These agreements often include general clauses on sustainable development and RBC that emphasize:

- The importance of addressing specific sustainability issues and RBC/CSR,
- The promotion of FDI without lowering or reducing environmental and labor standards,
- The need for cooperation in the field of sustainable development.

While both parties retain their "rights to regulate" within the territories they treat as a vested interest, the enforcement mechanisms for these agreements are seen as relatively weak, often referred to as "soft law." These mechanisms include:

- Reviewing, monitoring, and assessing how implementing the agreements impacts sustainable development in their territories.
- Individual and joint assessments of how well the agreements' provisions are being followed.
- Consulting and seeking solutions to resolve problems arising between the parties.
- Appealing to a panel of experts established under the agreement's rules.

These options support the view that the current enforcement measures are not particularly strong. The only stronger action listed by the EU is 'Strengthening enforcement by means of trade sanctions as a measure of last resort' (European Commission 2023d). Nevertheless, the European Commission launched the first enforcement case regarding the labor commitments of South Korea under the EU–South Korea trade agreement (Van der Loo and Hahn 2020).

**Box 1**
**The EU–South Korea dispute settlements case under the EU–South Korea trade agreement**

On 17 December 2018, the EU requested **formal consultation** with the government of South Korea regarding the implementation of sustainable development commitments under the EU–South Korea FTA of 2010. The provisions of the Korean Trade Union Act appeared to be inconsistent with Korea's obligations related to multilateral labor standards and the Agreement with the EU.
On 4 July 2019, the second phase of arbitration started when the consultation did not provide a satisfactory solution. The EU requested **a panel of experts** to examine the problem.
On 25 January 2021, **the panel report** was published, confirming the EU's concerns that South Korea had not acted consistently with its trade and sustainable development obligations under the EU–South Korea trade agreement. The independent panel concluded that South Korea needed to adjust its labor laws and practices and swiftly continue ratifying four fundamental ILO Conventions to comply with the agreement.
The implementation of the panel's recommendations will be monitored by the Trade and Sustainable Development Committee created under the terms of the EU–South Korea trade agreement.

Source: European Commission n.d., *Korea…*; European Commission 2019b; 2021.

## The execution of corporate sustainability due diligence

The implementation of responsible business behavior presents problems that have motivated the EU to seek legal solutions in this field. The European Commission's proposal to implement *the Directive on Corporate Sustainability Due Diligence* can be viewed as an attempt to overcome these problems in value chains (European Commission 2022a).

The proposal is based on Articles 50 and 114 of the Treaty on the Functioning of the European Union. It aims to foster sustainable and responsible corporate behavior throughout global value chains with special reference to the effective protection of human rights and the environment. Unlike the previous voluntary approach to CSR/RBC, two groups of **EU companies and non-EU companies** that operate in the EU now face legal obligations regarding due diligence. To comply, companies must integrate due diligence into their policies, identify potential adverse impacts of their activities on human rights and the environment, and, where necessary, prevent, mitigate, or bring to an end these impacts.

Companies subject to this new law are defined by the number of employees and the amount of net turnover worldwide[2]. The proposal applies to the operations of these companies, their subsidiaries, and their value chains, which means that both direct and indirect established business relationships should be subject to the regulation. National

2 Group 1 includes all EU limited liability companies of substantial size and economic power (with 500+ employees and EUR 150 million+ in net turnover worldwide). Group 2: Other limited liability companies operating in defined high impact sectors, which do not meet both Group 1 thresholds, but have more than 250 employees and a net turnover of EUR 40 million worldwide and more (European Commission 2022b).

administrative authorities appointed by the Member States will enforce these mandatory rules. **Non-compliance** may result in fines and legal actions for damages by victims. The proposal also introduces directors' duties to establish and oversee the implementation of due diligence and to integrate it into the corporate strategy. Additionally, supporting measures are planned to help all companies adjust to the new legal situation, with special consideration for small and medium enterprises that might be indirectly affected by the new law (European Commission 2020a; 2022b).

While the legislative process for this directive is ongoing, with the final text yet to be determined, the character and potential role of the document can already be evaluated at this stage. The proposal can be seen as complementary to the existing **voluntary** international standards on RBC. Nevertheless, it will introduce **mandatory** human rights and environmental due diligence in value chains. This should better integrate social, environmental, and economic responsibility with everyday business operations and decision-making and embed CSR/RBC ideas in business practice and corporate value systems.

However, the shift from voluntary to mandatory RBC creates dissonance in the traditional understanding of CSR/RBC, which emphasizes voluntary action as an intrinsic feature.

The directive has both horizontal and sectoral dimensions. Its regulations target companies of substantial size and economic power, regardless of sector, as well as less economically powerful companies that operate in defined high-impact sectors. The directive foresees "strong" measures of enforcement, which contrast with the "soft" ones found in trade/investment treaties.

Some EU Member States have already introduced their own measures to deal with problems of due diligence, often using the existing international voluntary standards on responsible business conduct, while others are currently developing their own legal frameworks in this area. France and Germany have adopted mandatory national due diligence laws. However, this diversity in legal frameworks leads to fragmentation and barriers within the EU single market, creating additional burdens and costs for companies that operate across borders (Spinaci 2022). In this context, the EU's initiative to regulate due diligence in value chains might be viewed as a complementary element of the EU's investment policy.

## Negotiations on the WTO Agreement on Investment Facilitation for Development – the EU's position

FDI policies range from liberal to restrictive models of policymaking, depending on the global situation and the country's attitudes. With a recent trend towards more restrictive FDI policies, the WTO member states' initiative to negotiate an agreement on facilitating investment is a welcome development. The IFD Agreement covers all sectors, i.e., services and non-services sectors. However, it will not address issues such as market access, investment protection, or investor–state dispute settlements (ISDS) (WTO 2023).

Investment facilitation aims to create a more transparent, efficient, and investment-friendly business climate, making it easier for investors to invest, conduct everyday business, and develop existing investment projects. Both host and home countries benefit from mutually beneficial cooperation that supports and attracts sustainable investment. Investment facilitation will create conditions that are conducive for international investment flows.

An informal dialogue on investment facilitation started in the WTO in 2017 at the initiative of developing and least-developed countries. Formal negotiations were launched in 2020, and the single negotiating text, the "Draft IFD Agreement," was circulated among the participants of the negotiations in December 2022. In November 2023, the participants finalized the text of IFD Agreement. It should complement the WTO Members' efforts to facilitate investment undertaken so far (WTO 2023; 2024).

The IFD Agreement targets key areas for facilitating investment and addressing problems in this area. They include:

- Transparency of investment measures
- Streamlining and speeding up administrative procedures
- Establishing focal points
- Promoting domestic regulatory coherence and cross-border cooperation on investment facilitation
- Supplier-development programs
- Providing special and differential treatment for developing and least-developed countries
- Encouraging **sustainable investment**.

The section on sustainable investment focuses on responsible business conduct and anti-corruption measures (WTO 2024).

Sustainable investment is "investment that, while being commercially viable, involves best efforts towards directly making a reasonable contribution to the economic, social and environmental development of host countries, and takes place in the context of fair governance mechanisms" (Berger et al. 2021). Analyses suggest that the agreement offers limited measures to encourage the flow of such investment. Responsible business conduct, which could contribute to achieving sustainable development goals, will likely be promoted as a **voluntary** activity (Berger et al. 2021). Consequently, the measurable outcomes for achieving the Agreement's main objectives would be limited.

The EU has participated in the WTO's investment facilitation negotiations from the outset and has declared its commitment to this process (European Commission 2019a). This stance was confirmed by the EU's decision to open negotiations on an investment facilitation agreement with Angola, including all elements of the WTO/IFD Agreement's proposals. *The EU-Angola Sustainable Investment Facilitation Agreement* (SIFA) entered into force in 2023 (European Commission 2023e). These developments suggest that negotiations on the WTO/IFD agreement have already helped reorient the EU's investment policy towards facilitating sustainable development in host countries.

Regarding CSR/RBC, the EU supports promoting the adoption of these practices by enterprises and investors. This aims to contribute to sustainable development by disseminating and using relevant, internationally agreed instruments in this area and exchanging information and best practices related to responsible business behavior. However, the EU's stance on corporate sustainability due diligence, as presented in the previous section, indicates that it is pursuing stronger legal measures to enforce corporate sustainability.

## Conclusion

Corporate Social Responsibility and Responsible Business Conduct have a common feature: they are voluntary. Both approaches also recognize the same dimensions of business responsibility – social, economic, and environmental issues in business activities – which are significant for countries' sustainable development. Thus, it is justified to treat these notions as interchangeable. However, the two concepts treat the role of government differently. In CSR, the government's role is reduced to promoting the concept, while in RBC, governments have some commitments and are expected to act as promotors, respond to inquiries, and mediate potential conflicts.

The EU promotes CSR/RBC within the single market, implementing the subsequent strategies and undertaking numerous actions, and in international relations, using trade and investment cooperation. The EU sees CSR/RBC as a vital tool for achieving the UN Agenda 2030's SDGs. Hence, its trade/investment policy instruments

support voluntary responsible business behavior. One of them is trade agreements, which contain investment rules or standalone investment agreements negotiated and signed with third countries.

The EU has introduced special provisions on sustainable development and CSR/RBC into a new generation of trade/investment agreements, such as the agreements with South Korea, Canada, and Japan. The main motive behind this attitude is the desire to achieve environmental, social, and economic progress in sustainable development through international cooperation. The main problem with this strategy, however, is enforcing the obligations related to responsible business conduct.

All but one of the measures introduced in the new generation of trade/investment agreements should be categorized as soft. The only strong instrument, i.e., trade sanctions, is treated as a last resort and has not yet been used.

Adopting *the Directive on Corporate Sustainability Due Diligence* foresees a change in the character of responsible business conduct in value chains. The previously voluntary RBC will be replaced by mandatory human rights and environmental due diligence in value chains. The WTO's *Agreement on Investment Facilitation Framework for Development* faces the same problem that the EU is trying to address: the choice between voluntary and mandatory RBC. It is likely that RBC will be promoted as a voluntary activity.

The EU's common investment policy is adapting to address new challenges in international economic relations. The new instruments are used to liberalize and facilitate foreign direct investment and to support the achievement of a broader goal, which is sustainable development on a global scale. The negotiations on the WTO/IFD Agreement could further accelerate the re-orientation of the EU's policy.

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## Odpowiedzialne prowadzenie działalności biznesowej w świetle polityki inwestycji Unii Europejskiej

Celem artykułu jest zbadanie roli odpowiedzialnego prowadzenia biznesu (RBC)/społecznej odpowiedzialności biznesu (CSR) we wspólnej polityce inwestycji Unii Europejskiej (UE) w odniesieniu do bezpośrednich inwestycji zagranicznych (BIZ), w kontekście szerszego celu, jakim jest zrównoważony rozwój. Unia prowadzi wspólną politykę inwestycji na mocy Traktatu o funkcjonowaniu Unii Europejskiej. W ramach tej polityki UE wykorzystuje swoje prawo do negocjowania nowej generacji umów o handlu i inwestycjach. Nowym rozwiązaniem w tych umowach jest uwzględnienie postanowień o zrównoważonym rozwoju oraz RBC/CSR. W artykule prezentowane są przykłady takich postanowień, zawartych w umowach między UE a Republiką Korei, Kanadą i Japonią. Unia postrzega RBC/CSR jako ważny środek osiągnięcia celów zrównoważonego rozwoju, ustanowionych w Agendzie 2030. Odpowiedzialne prowadzenie działalności biznesowej jest promowane i wspierane przez instrumenty polityki handlowej i inwestycyjnej UE. Ze względu na fakt, że RBC/CSR mają dobrowolny charakter, wdrożenie umownych zobowiązań może polegać jedynie na „miękkich" środkach i działaniach. Jedyny „silniejszy" instrument pozostający do dyspozycji stron umowy, tj. sankcje handlowe, jest traktowany jako wyjątkowy i nie był dotychczas wykorzystywany. Oczekuje się, że zakończone negocjacje w ramach WTO, dotyczące umowy o ułatwieniach dla inwestycji, wzmocnią reorientację polityki UE w kierunku ułatwiania inwestycji w stosunkach z krajami rozwijającymi się.

Słowa kluczowe: polityka inwestycyjna UE, bezpośrednie inwestycje zagraniczne (BIZ), handel międzynarodowy, odpowiedzialne prowadzenie działalności biznesowej, społeczna odpowiedzialność przedsiębiorstw, zrównoważony rozwój