

A Perspective for Human Rights Due Diligence Legislation in International Business and the Implications for Korea

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Abstract The European Union has legislated the Corporate Due Diligence and Corporate Accountability (CDDCA) Act, which unified different contents among the members related to protecting human rights and the environment. CDDCA binds compulsorily and applies to the largest pool of firms. As CDDCA requires that the final-good manufacturers or service providers are responsible for the due diligence of the entire participants in the supply chain, the relevant firms should monitor and supervise tiers of suppliers and subcontractors. The CDDCA approach responds to the global pressure that calls for more than risk management. While human rights protection is being legislated globally, Korea has no legal guidance. While Korean firms need to prepare a code of behavior, the necessary legislation has been delayed, weakening the competitiveness of Korean exports.

Keywords Human Rights · Global Supply Chain · European Union (EU) · Corporate Due Diligence and Corporate Accountability Act (CDDCAA) · Labor Law

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Introduction

In recent years, international business (IB) scholars have paid extra attention to the macro-economic changes in the business environment. Most notably, the determinants and consequences of the topics of trade conflicts (Evenett, 2020; Rodrik, 2018; Witt, 2019), wars (Albino-Pimentel et al., 2021; Li et al., 2020), sustainable development (Kolk et al., 2018; Shapiro et al., 2018; Van Zanten et al., 2018), corruption (Bahoo et al., 2020), or environmental, social, and governance (ESG) framework (Tashman et al., 2019; Linnenluecke, 2022) have been discussed as an important research theme. We witness the growing importance of human rights issues in trades and foreign direct investment (FDI) (Bowie, 2019; Buhmann et al., 2019; Nersessian, 2018).

Human rights have been a traditional topic, mainly in law and international politics. However, as the European Union has strictly reinforced protection for human rights using the framework of the global supply network, human rights are finally integrated into the business area of multinational enterprises (MNEs) (Flacks, 2022). The outcome of the collective efforts is that the *Corporate Due Diligence and Corporate Accountability* (CDDCA) Act was proposed in 2021 to be valid in 2024. The CDDCA has unified and evolved from the laws of several members, such as *the Act on Corporate Due Diligence* in Germany (valid as of 2023), *Child Labor Due Diligence* in the Netherlands (valid as of 2022), or *Corporate Duty of Vigilance Law* in France (valid as of 2017).

The most visible challenge with CDDCA is that a branded firm, although not committed directly, is responsible for any problem in human rights protection found in the suppliers and should physically fulfill inspection every year. It was a sharp contrast to the past when only an offender was subject to punishment. The bill also imposes significant responsibility on final goods manufacturers (European Union, 2022).

The fundamental message of this action is that businesses should respect all types of internationally recognized human rights. Moreover, to this end, firms should make a policy of respecting human rights, conducting human rights due diligence, and taking remedies for those violations (Lee, 2020; Lee, 2015).

Not only the EU but also the US has tightened supply network management. For example, *the Transparency in Supply Chains Act* has been in effect in California since 2012. At the federal government level, *the Slave-Free Business Certification Act* was introduced in 2020 and re-introduced in 2022 (NBC, 2022).

Based on these observations, this study asks the following questions: What would the institutional changes suggest? More importantly, what should Korean firms do? To answer these questions, we examine how countries have tried to prevent corporate violation of human rights protection and institutionalized the efforts. As a methodology, we analyze the contents of the legal arrangement and discuss the implications.

In the following sections, we explore the essence of CDDCA and compare it with the US approach. We subsequently discuss the implications for the Korean firms and conclude the paper.

Toward the Corporate Due Diligence and Corporate Accountability Act

EU's Setting the Human Rights Norms for Business

As an economic actor, firms have tried to find a solution in a format of self-regulation, not legal arrangement. Under the argument that single nation-states cannot regulate global economic activities, codes of ethics, social monitoring activities, certification systems, and multi-stakeholder approaches have been presented as forms of private governance (Ryu and Kim, 2015).

Over the past 20 years, there have been numerous reports about human rights violations by firms. The reports show increasing cases that firms provided practical helps to human rights violations by the third parties or that firms got benefits by riding on human rights violations by the third parties (United Nations, 2011; Lee, 2017). However, the recent growth of income inequality and the global accidents caused by firms (for example, Bhopal gas leak tragedy in India, Niger Delta oil spill in Nigeria, or Rana Plaza collapse in Bangladesh) clearly show the limitations of the private-led approach (Chatelain, 2021).

Most human rights violations by firms are committed by multinational enterprises (MNEs) in developing countries (Ryu and Kim, 2015). However, those developing countries do not have the power or the firm will to regulate the violation cases. The advanced countries, most of which are the home countries for MNEs, are passive in regulating such behaviors outside of the national border. Therefore, there is a regulatory gap regarding MNEs' human rights violations (United Nations, 2008; Lee, 2017).

Aware of the need for further action, the European Union has sought suggestions from the headquarters of several relevant international organizations within the region for human rights protection. Since the Organization of Economic Cooperation and Development (OECD), located in Paris, first defined corporate social responsibility in *Guidelines for Multinational Enterprises* (1976), the relevant international organizations have continued to strengthen guidelines for corporate code of behaviors in the area of human rights.

As the social pillar of the environmental, social, and governance (ESG) framework becomes important due to the growing economic disparity, the EU members have agreed on the need for higher domestic human rights law levels since the late 2010s. The consensus has led the EU to integrate the domestic laws to provide consistent and uniform due diligence criteria for the members.

The CDDCA in the EU is conceptually based on two international principles, which are *United Nations Guiding Principles on Business and Human Rights* (2011) and *OECD Due Diligence Guidance for Responsible Business Conduct* (2018). Both suggest the directives of human rights, environment, and ethics that firms should follow in doing business. In particular, the proposed directives have been used for due diligence indicators in the dimension of risk confirmation and evaluation.

Despite the active discourse and suggestions, the directives and the guidelines show serious a limitation that they do not have a binding power. As a result, firms rarely complied, which drove several EU members into adopting the compulsory due diligence framework. For example, France, Germany, and the Netherlands facilitated enacting domestic law relevant with due diligence, and Austria, Sweden, Finland, Denmark, and Luxembourg are discussing legislation.

Table 1 presents the French approach to due diligence. The act mandates the submission of due diligence reports and the establishment of due diligence practices fulfilling the law. Due diligence in all industries is obligatory; however, only large firms with more than 5,000 people are applicable.

Table 1 Duty of Vigilance of Parent and Ordering Companies in France (effective in 2017)

Targets	(1) Those who have headquarters in France, and hire more than 5,000 employees including the firm, and its direct and indirect affiliates (2) Regardless of the location, those who hire more than 10,000 employees including the service firm, and its direct and indirect affiliates
International basis	United Nations Guiding Principles on Business and Human Rights (2011)
Due diligence items	Human rights in general
Due diligence scope	One's business places, all subsidiaries and affiliates, suppliers and subcontractors
Obligation	Security of foodstuffs
Punishment	Pro environmental development

Note: Prepared by Author, based on Duty of Vigilance of Parent and Ordering Companies.

Another legislative example is found in the Netherlands. The due diligence law in the Netherlands characteristically focuses on the children labor. As suggested below in Table 2, the Netherlands strictly bans harsh work for people under the age of 18. Those older than the age of 13 and younger than the age of 15 are supposed to engage in light work. Nevertheless, the Dutch approach also has the weakness that the directives are concerned only with the children's labor. The directives apply to all firms on the supply chain. That violation on the supply network does not require relational termination with the violator partner.

Table 2 Child Labor Due Diligence Act in Netherlands (legislated in 2019, effective in 2022)

Targets	All firms and legal persons, including private or public firms, associations and foundations, that sell and supply goods and services to Dutch consumers, regardless of registered location, legal forms or size
International basis	Worst Forms of Child Labor Convention (1999), Minimum Age Convention (1999), United Nations Guiding Principles on Business and Human Rights (2011), Child Labor Guidance Tool for Business (2016).
Due diligence items	Children labor
Due diligence scope	Throughout supply chain
Obligation	Submission of a statement on the eradication and prevention of children labor
Punishment	After six months, the responsible authority is involved and provides a legal binding policy of action. Unless a firm comply with the policy or completes it within the given time, a fine is imposed: (1) Fine up to 8,200 EUROS for non-compliance or statement non-submission; (2) Fine up to 820,000 EUROS or 10% of global sales for non-compliance or unsatisfactory compliance with the due diligence or action policy; (3) Imprisonment for less than two years for corporate directors if fines are imposed twice within five years for violating the law.

Note: Prepared by Author, based on Child Labor Due Diligence Act.

Germany also legislated the Act on Corporate Due Diligence in Supply Chain. It is the most recent and the most comprehensive among the EU member laws. As its name articulates, the Act on Corporate Due Diligence in Supply Chains in Table 3, as its name articulates, designates the applicable targets extended to the participants in the entire supply chain.

Table 3 Act on Corporate Due Diligence in Supply Chain in Germany (legislated in 2021)

Targets	A firm headquartered in Germany, or a third-country firm doing major businesses in Germany, or a firm ¹
International basis	United Nations Guiding Principles on Business and Human Rights (2011), OECD Due Diligence Guidance for Responsible Business Conduct (2018)
Due diligence items	Human rights in general
Due diligence scope	Entire business areas and throughout supply chain
Obligation	Conduct supply chain due diligence and submit the report within four months of the end of the fiscal year
Punishment	If a report is not submitted, the firm should pay up to two% of gross sales or up to 8 million EUROS when the annual sales revenue exceeds 400 million EUROS; up to 0.35% of gross sales or up to 2 million EUROS when annual sales revenue are less than 400 million EUROS; in case of serious violations, participation in transportation, construction, and public procurement service is excluded for up to three years as an administrative sanction.

Note: Prepared by Author, based on Act on Corporate Due Diligence in Supply Chain.

At the same time, given that this act requires that any firms with more than 3,000 employees (and their supply chain participants) should comply, more firms will be affected. The German approach is thus more extensive in terms of target pool size and more enforcing than any other EU member because punishment and administrative sanctions will work for violation.

While the Act on Corporate Due Diligence in Supply Chain has furthered legal attempts toward human rights protection, it also has limitations because it was an outcome of political negotiation (Leifker, 2021). For example, while the target firms should be those with more than 3,000 employees, firms with less than 1,000 employees have significant weaknesses in their compliance with labor law or environmental law (Leifker, 2021).

Further, the definition of “violation of human rights” should follow the domestic law in a country where the production activity occurs. Under this situation, violations from the German perspective may not be regarded as problematic. Also, environmental protection has been only slightly discussed, neglecting crucial issues such as climate change or biodiversity preservation.

Overall, the different domestic legal systems and the legal baseline increased institutional uncertainty and administration costs (Lee, 2020; Ryu and Kim 2015). Given such variations, the EU in 2021 proposed a bill that unified the member laws to the Parliamentary. As Table 4 informs the details, it is more extensive than the French or German acts in that the law plays regardless of the size.

Also, although human rights are the primary realm of regulation, it considers environmental protection because EU Green Deal and Paris Agreement were considered on a legal basis. Therefore, the CDDCA has contributed to the EU history that it completes the efforts to have a harmonized system (Lee, 2020; Lee, 2015). At the same time, it has a compulsory power, which will make firms essentially comply.

¹ From 2024, this category will be expanded to the firms with more than 1,000 employees.

Table 4 Corporate Due Diligence and Corporate Accountability (submitted to EU Parliament in 2021)

Targets	A firm headquartered in Germany, or a third-country firm doing major businesses in Germany, or a firm ²
International basis	United Nations Guiding Principles on Business and Human Rights (2011), OECD Due Diligence Guidance for Responsible Business Conduct (2018)
Due diligence items	Human rights in general
Due diligence scope	Entire business areas and throughout supply chain
Obligation	Conduct supply chain due diligence and submit the report within four months of the end of the fiscal year
Punishment	If a report is not submitted, the firm should pay up to two% of gross sales or up to 8 million EUROS when the annual sales revenue exceeds 400 million EUROS; up to 0.35% of gross sales or up to 2 million EUROS when annual sales revenue are less than 400 million EUROS; in case of serious violations, participation in transportation, construction, and public procurement service is excluded for up to three years as an administrative sanction.

Note: Prepared by Author, based on Act on Corporate Due Diligence in Supply Chain.

Further, since the CDDCA applies to all participants in one's supply chain, final-good manufacturers should supervise the global production network. The suppliers in developing countries are expected to be heavily monitored or regulated by the final-good manufacturers as the final-good manufacturers should reinforce internal due diligence manuals.

Among the top 30 exporting countries, there are several developing countries (defined by International Monetary Fund) active in exporting activities, including China (\$2.720 trillion), India (\$0.49 trillion), Mexico (\$0.43 trillion), United Arab Emirates (\$0.40 trillion), Russia (\$0.37 trillion), Poland (\$0.33 trillion), Vietnam (\$ 0.28 trillion), Thailand (\$0.25 trillion), Brazil (\$0.24 trillion), and Malaysia (\$0.20 trillion) (World Bank Database, 2020). Suppliers and subcontractors in these export-oriented developing countries will be affected by CDDCA, as they would be replaced by those in developed countries or through automation (or smart manufacturing). It seems that China will be attacked most seriously, given that the collectivistic society has prioritized state over individual values (human rights). However, the CDDCA itself was not designed to pinpoint China and other developing countries.

Comparison with the United States Approach

In the 1990s, the U.S. adopted a 'trade-labor-human rights' linkage strategy that included the U.S., developing countries, and the ILO (Kim, 2021). The first case was the 'Trade Agreement on Textile and Apparel' in 1999, connecting trade and human rights between the U.S. and Cambodia. The agreement stipulates that the quota for garments exported from Cambodia to the U.S. will be increased every year to improve the human rights of workers in the garment industry.

Since the 2010s, the U.S. and EU have selected the trade-labor-human rights framework and have confirmed the labor chapter in the free trade agreement. While the EU has legislated CDDCA in the context that there are intra-regional needs to adjust institutional differences

² From 2024, this category will be expanded to the firms with more than 1,000 employees.

among the members, the U.S. has pushed the enactment of human rights protection from protectionism.

The U.S.-China trade dispute that occurred under the Trump Administration has continued after the change in the political leadership in the United States. The U.S. Democratic Party traditionally defends rule-based values such as multi-lateral talks, support for the World Trade Organization, and advocacy of human rights and democracy. The Biden Administration has maintained high tariff rates and technical regulations on Chinese imports, particularly in intellectual property rights, environment, and human rights.

There was a strong sentiment in Washington D.C. that the U.S. was responsible for China's growth without any change in the attitude toward democracy, human rights, or global standards. The U.S. and the Western countries were willing to buy and import Chinese goods, hoping that economic growth would 'refine' the country, but in no vain (The Economist, 2018). Upon ignition of the trade war, the U.S. and the Western countries clearly exposed their political stances that a 'different' system of order should not be allowed and that human rights are a critical part of the order.

The recent official documents that deliver the U.S. stance clearly state that the rule-based order is the commerce system. The nature of the rule-based order has been well articulated in a paper authored by President Biden:

Who writes the rules that govern trade? Who will make sure they protect workers, the environment, transparency, and middle-class wages? The United States, not China, should be leading that effort...The most effective way to meet that challenge is to build a united front of U.S. allies and partners to confront China's abusive behaviors and human rights violations, even as we seek to cooperate with Beijing on issues where our interests converge, such as climate change, nonproliferation, and global health security...
(Biden, 2020, p.71).

According to Biden, the U.S. is the rule maker and would not allow China to set a new norm in the trading regime. The U.S. has a strong will to cooperate with other countries to prevent China from looking beyond its position in this regime, and human rights are one of the tools to isolate China. China resists this stance, blaming that the so-called system and the rule only a few advocates are not the international rule (Money Today, 2021). Using the same logic, Biden further assures that China and Russia should not write the rules of the digital age.

In the U.S., the Slave-Free Business Certification Act (SFBCA) was proposed in 2020 to the Senate. This bill requires compliance behaviors like those demanded by the CDDCA. Businesses with annual revenue greater than \$500 million must audit their supply chains for labor practices or human trafficking activities that violate specified national or international standards and report the results to the Department of Labor.

The difference between SFBCA and CDDCA lies that SFBCA opposes China, as the U.S. accuses China of 'serious harm to workers through trade and expands the number of Chinese firms on the trade sanction list. Most Chinese firms on such blacklists are engaged in the digital industries. Overall, the U.S. approach is fundamentally aligned against China, preparing for the digital norm-setting.

Implications for Korean Firms

Prospect for the Human Rights Legislation in Korea

In the legal system of Korea, several laws address human rights protection. The Constitution Law highlights human rights in the preamble, and the National Human Rights Commission of Korea also has its own laws and directives. Human rights are related to several individual laws, such as Labor Law or Administrative Trial Act.

These laws have been developed for demographic value; however, they did not mention corporate due diligence. While firms' due diligence for human rights protection is mentioned mainly by Labor Law, Labor Law focuses on hiring, managing, and laying off employees, which occurs with the employees and the within-firm activities.

Therefore, no legal arrangement touches on firms' role in protecting human rights for those out of the corporate boundary. Accordingly, the CDDCA in the EU and the SFBCA in the U.S. are critical directives that may drastically change the business environment for Korean firms.

Responding to the global atmosphere and domestic calls for a better quality of life, the legislative efforts for linking human rights and businesses have emerged. The National Assembly plans a bill temporarily called Human Rights Fundamental Law (HRFL). This bill under discussion includes the establishment of necessary committees and governmental bureaus, human rights education in all academic institutions, and domestic implementation of the international human rights agreement.

As the National Assembly announced legislation in June 2021 and passed the Cabinet meeting in December 2021, the enactment is pending. HRFL is designed to include two manifestos, state obligation for human rights protection and corporate responsibility for respecting human rights. For example, the corporate responsibility features with clause 22, "Firms shall not infringe on the human rights of others at home or abroad, or shall not engage in violation of the third-party human rights through their business activities."

The above clause is interpreted as that corporate infringement on human rights will be approached using as broad a context as possible. The stance makes further progress from the current relevant law because the current law does not suggest any legal basis for punishment when firms have suppliers or subcontractors and these partners on the supply chain violate human rights.

Previously, corporate infringement on human rights used to be guilty when direct intention or negligence was verified with proof. Under HRFL, coming into effect, a failure to fulfill due diligence for human rights protection may sufficiently demonstrate the existence of direct intention or negligence, even linking the infringement to civil law, torts, or labor law. However, if HRFL becomes effective, the boundary of corporate responsibility will expand beyond the ownership.

The legislation under discussion may lead to the adoption of due diligence law like the EU because the draft defines the state's role as a regulator and protector of human rights. For example, clause 21 specifies that the "government and the local governments should encourage and support the practice of corporate responsibility to respect human rights."

Although clause 21 does not provide details about the state action, it implies the enactment of a more reinforcing law, given that the draft refers to the regulatory obligation of the state.

EU has the same experience that a strong law like CDDCA has been established out of the soft law (Kang, 2021).

When it is effective, HRFL will prompt influence on Korean firms. Clause 23, section 1 manifests that the government shall prepare and disseminate guidelines to promote corporate responsibility to respect human rights. The following clause 23, section 2, specifies that the government should prepare information disclosure standards so that firms can disclose information related to their corporate responsibility to respect human rights.

Corporate Responses and the Issues

HRFL is the first attempt to connect corporate due diligence with human rights protection in a broader context in Korea. At the same time, the bill also contains some contents controversial in Korea, such as the fair treatment of LGBT (Lesbian, Gay, Bisexual, and Transgender), multi-cultural groups, and gender equality.

Aware of the controversy and the sensitivity, the members of the National Assembly have acted slowly with making progress in legislation. The national consensus is not yet fully built. As a result, hundreds of thousands of petitions have been posted on the Presidential House website, demanding the cancellation of the HRFL enactment.

Because in the absence of the corporate due diligence directive in human rights protection in Korea, the CDDCA legislation in the EU is expected to be a trade barrier for Korean firms. Large firms started to prepare for a code of conduct. As Table 5 shows, the large firms have managed to manualize the code of conduct, adapting to changes in their target markets, industries, and consumers.

Table 5 Due Diligence Practices by Korean Chaebol

LG Energy Solution	<ul style="list-style-type: none"> - The supply chain management process is in place, and the code of conduct for business partners established in 2016 has been applied. - ESG evaluation of new and existing business affiliates is being conducted regularly.
Hyundai Motors	<ul style="list-style-type: none"> - Suggestion of guidelines such as ESG, particularly human rights-based management for business partners, operation of mutually beneficial FIVE star system, is under operation.
Samsung Electronics	<ul style="list-style-type: none"> - Responsible management such as supplier evaluation system, mutually beneficial cooperation program, supplier labor environment management, and supply chain minerals is being implemented. - The firm was ranked second in 2020 in the information and communication technology (ICT) sector in the supply chain, in area of human rights assessment.
SK Innovation	<ul style="list-style-type: none"> - Implementation of human rights protection and due diligence policy including systematic supply chain management policy.
POSCO	<ul style="list-style-type: none"> - Human rights management guidelines that reflect international human rights standards such as those released by UN and OECD are being implemented. - The Corporate Citizenship Charter was announced in 2019. - Process of human rights grievance settlement is in operation.
CJ	<ul style="list-style-type: none"> - In 2021, CJ Cheil Chedang announced its participation into the ILO Global Action Plan to eliminate child labor and declared human rights management that has details for the rules to eradicate child labor.
KT	<ul style="list-style-type: none"> - Human rights due diligence process is being developed and operate. - 'Supplier Sustainable Guidelines' was established to spread respects for human rights

Note: The Federation of the Korean Industries (2021).

Nevertheless, even the large firms have no guidance for the overseas suppliers and subcontractors on the value chain, which violates human rights. There is no legal basis in Korea that forces contract termination with ‘indirect’ participants in the supply chain.

Further, many Korean small and middle-sized enterprises (SMEs) have relocated overseas to lower production costs. These Korean SMEs thus favor entries into the developing countries in Asia, mainly China, Vietnam, Malaysia, or Thailand. While they are subject to the international due diligence pressure, they do not have enough resources to prepare for CDDCA internally but are waiting for legislation in Korea.

Human rights issues become an important risk factor affecting a firm’s financial performance (Lee, 2015). While firms have identified and managed those risks, the upcoming business environment requires more than risk management but demands physical actions. As firms operate a larger-scale global business, they should discover more actual and potential human rights violations and take measures in advance to prevent them from negatively affecting financial performance. In this sense, due diligence is a more active concept that Korean firms are unfamiliar with. Because due diligence is costly, it is not necessarily aligned with the profits for the firms. However, as governments of important markets for Korean firms facilitate due diligence requirements, Korean firms cannot avoid adopting the due diligence framework.

Conclusion

This study examines the current legislation movements for human rights protection in the EU and compares them with the U.S. approach. As an outcome of the member state agreement, CDDCA Act passed the EU Parliament and will become effective. The CDDCA Act requires that firms of a specific size inspect human rights due diligence for all participants in the supply chain and submit a report. As the U.S. has a similar bill pending, MNEs should consider human rights protection in doing global business.

While human rights have emerged critical in trades and investments, Korea has no legal basis. While large firms are preparing for an internal code of conduct, most SMEs operating overseas production facilities in developing countries are embarrassed. The global pressure not only reminds the need for risk management related to human rights but also further demands inspection and due diligence. The Korean government should legislate relevant directives and provide clear guidance.

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