

從歐盟《企業永續盡職調查指令》論投資協定中投資人義務之再建構

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摘要

國際投資法體系（包括雙邊投資協定、經貿協定投資章及投資人與國家間爭端解決機制）近年來正當性備受質疑。傳統投資協定主要賦予跨國投資人超越本國投資者的保障，允許其逕向國際仲裁提起訴訟，卻鮮少規範投資人應遵守地主國法律、尊重社會文化或避免侵害人權與環境的義務，被批評為北方國家延續對南方國家經濟支配的工具。為回應此批評，聯合國、經合組織、國際勞工組織提出多項軟法文件，逐步界定跨國企業於國際人權與環境法下的責任，近期投資協定亦開始納入投資人責任條款。然而，多屬軟法性質或低度義務，能否真正矯正傳統架構的不均衡，實有疑問。

相較之下，歐盟 2025 年通過的《企業永續盡職調查指令》提供更具體規範模式，將原為軟法的企業社會責任與永續要求轉化為強制法規，適用於達一定門檻的歐盟及非歐盟企業，並擴及子公司與供應鏈。未來指令通過後，歐盟成員國即負有將指令所揭示之目標轉化為國內法之義務，例如，要求企業執行人權及環境盡職調查、設置申訴機制，違者將受罰並負法律責任。在歐盟企業廣泛涉入跨國投資且歐盟成員國與其他國家間存在有大量投資協定的背景下，該指令將如何影響投資協定中投資人義務條款的詮釋與適用，值得深入探究。

本文首先盤點國際上關於企業社會責任與永續發展的軟法倡議及其在新投資協定中的規範概況，接著分析歐盟指令如何強化企業盡職調查義務以防止對地主國及利害關係人的負面影響。最後指出，該指令可能對未來國際投資法形成「布魯塞爾效應」，影響投資協定相關條款之發展。

關鍵字：國際投資協定、投資人義務與責任條款、企業社會責任、企業永續盡職調查指令

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Rethinking Investors' Duties under Investment Treaties through the Lens of the EU Corporate Sustainability Due Diligence Directive

Abstract

The international investment law regime has witnessed increasing scholarly scrutiny regarding the lack of substantive investor obligations under international investment agreements (IIAs). Critics argue that while IIAs robustly protect foreign investors through mechanisms such as investor-state dispute settlement (ISDS), they seldom impose parallel obligations on investors to mitigate the negative externalities of their activities in host states. Even in “new generation” IIAs that offer greater policy space for host countries, provisions addressing investor conduct are typically limited to non-binding references to corporate social responsibility, lacking enforceable standards, legal consequences for non-compliance, or remedies for affected communities. This imbalance reinforces structural asymmetries in international investment governance.

In parallel, in 2024, the European Union adopted the Corporate Sustainability Due Diligence Directive (CSDDD), establishing a comprehensive legal framework that mandates corporations to identify, prevent, and address actual or potential adverse human rights and environmental impacts across their operations, subsidiaries, and business partners within their supply chains. Notably, the CSDDD's scope extends beyond EU-based entities to include third-country companies whose business activities substantially affect the EU market, thereby reflecting the directive's extraterritorial ambition.

This article argues that the CSDDD offers a compelling normative model for integrating Environmental, Social, and Governance (ESG) obligations into investment law. Although an EU directive, the CSDDD intersects with international investment law by imposing binding obligations on transnational corporations engaged in cross-border investment, extending due diligence requirements into their supply chains. This development signals a shift toward holding corporations accountable for the broader impacts of their investment activities. The article first surveys over 3,300 IIAs to identify provisions that explicitly or implicitly address investor responsibilities, and evaluates their effectiveness in remedying the normative deficiencies of the current regime. It then provides a structured analysis of the CSDDD's objectives, scope, and interaction with international legal frameworks, especially investment law. Ultimately, this study contributes to the evolving discourse on harmonizing international investment with sustainable development. By reorienting regulatory focus from state-centric obligations to corporate responsibilities—including those throughout supply chains—the CSDDD introduces a novel framework capable of addressing long-standing critiques of imbalance in global investment governance.

Keywords: International investment agreements, Investors' duties and obligations, CSR, CSDDD