

Dissertation Module Code: 7FFLA903

Module Title: LLM Dissertation, 60 Credit

Dissertation Title:

**The European Union Corporate Sustainability Due Diligence Directive Articles 5 and 22:
*Environmental Due Diligence and a Transition Plan to Combat Climate Change – Obligations
for Norwegian Companies and Implementation into the Norwegian Transparency Act.***

Candidate Number: AE30184

LLM Pathway/Specialism: LLM in Transnational Law

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Submission Date: 30 August 2024

Word Count: 14 724

ABSTRACT

“Creating a strong business and building a better world are not conflicting goals – they are both *essential ingredients for long-term success*.”¹ The idea of giving businesses responsibilities in protecting and improving fundamental human rights, the environment and the climate has slowly and steadily developed from the dawn of the 21st century. The early 2020s saw a sudden increase in the adoption of binding domestic laws on corporate sustainability and human rights, like the Norwegian Transparency Act. In that respect, perhaps it was not surprising that the European Parliament ultimately voted in favour of adopting the Corporate Sustainability Due Diligence Directive (CSDDD) on 24 April 2024.

The CSDDD imposes several binding obligations upon EU/EEA businesses to ensure a green supply chain management, including an obligation to perform environmental due diligence (Article 5) and an obligation to adopt and put into effect a transition plan to combat climate change (Article 22). On an EU level, this dissertation analyses the environmental and climate-related obligations in CSDDD with a focus on critical evaluation and practical outcomes for Norwegian companies. On a domestic level, this dissertation discusses the relationship between the Norwegian Transparency Act and CSDDD and suggests potential amendments to the Act to promote harmonisation, and in some cases to require a more stringent standard than CSDDD.

This dissertation illustrates and concludes that although CSDDD is certainly a step in the right direction in terms of corporate responsibility over the environment and the climate, both Articles 5 and 22 leave room for improvement. Norwegian authorities must implement a separate chapter into the Norwegian Transparency Act where the non-human-rights-related environmental due diligence and a climate combatting transition plan should be implemented.

¹ William Clay Ford Jr, executive chair of Ford Motor Company; Author’s italicization

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1 Introduction

Following an uncertain and suspenseful period of disagreements, the European Parliament (EP) of the European Union (EU) voted in favour of the final text of the Corporate Sustainability Due Diligence directive (CSDDD)² on 24 April 2024.³ The Directive entered into force for Member States (MS) on 25 July with the aim “to foster sustainable and responsible corporate behaviour in companies’ operations and across their global value chains.”⁴ CSDDD is marked as relevant for the European Economic Area (EEA) Agreement⁵, which Norway is party to. MS must transpose the Directive into national law by 26 July 2026. It is still unknown when the Directive must be transposed into the national law of EEA-parties.

Norway adopted the Transparency Act⁶ (*åpenhetsloven*) on 1 July 2022. *Åpenhetsloven* imposes due diligence obligations on “fundamental human rights and decent working conditions.”⁷ The Act is short of two features that CSDDD imposes upon companies: due diligence obligations on adverse environmental impact and a transition plan for climate change mitigation.⁸

The thesis statement of this dissertation is twofold. On an EU level, the dissertation examines the content and scope of the environmental and climate-related obligations in CSDDD. On a domestic level, the dissertation examines whether *åpenhetsloven* must be amended to be in accordance with CSDDD and if the Directive should be revised to be more stringent in Norwegian law. Following a general chapter of first observations, the thesis statement will be answered in two parts. Part A will focus on interpreting environmental due diligence and Annex Parts I and II of CSDDD and discuss how these should be transposed into *åpenhetsloven*. Part B will discuss the design of the climate change combatting transition plan in Article 22 and transposition of this into *åpenhetsloven*.

² Directive (EU) 2024/1760

³ European Parliament, “Agenda Strasbourg” (24.04.24, *Europarl*)

https://www.europarl.europa.eu/doceo/document/OJQ-9-2024-04-24_EN.html 17.06.24; The text is watered down compared to the initial proposal; Silvia Ciacchi, “The newly-adopted Corporate Sustainability Due Diligence Directive: an overview of the lawmaking process and analysis of the final text” (2025) 25 ERA Forum 29,31

⁴ European Commission, “Corporate sustainability due diligence” (*Commission*, July 2024)

https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en 20.08.24

⁵ Agreement on the European Economic Area 1.3.1994

⁶ Act relating to enterprises’ transparency and work on fundamental human rights and decent working conditions LOV-2021-06-18-99

⁷ Section 4(1)(b)

⁸ CSDDD Articles 1, 5 and 22; *Åpenhetsloven* Section 4

1.1 Methodology

This dissertation will consider Norwegian, EU and treaty law. The examination will also have a social scientific perspective with corporate considerations and concrete examples of Norwegian companies.

The EU method of interpretation is developed by the Court of Justice of the EU. It begins with a textual interpretation, both by comparing different language versions and, when these are in accordance with one another, accentuating EU-specific terminology.⁹ Then there is a systematic interpretation¹⁰ and a teleological interpretation.¹¹ The text must occasionally be interpreted historically, though the Court has expressed reservations of this. Typically, the Court uses several ways of interpretation notwithstanding the clarity of the wording.¹² A teleological interpretation “characterises the Court.”¹³

The starting point of interpreting Norwegian legislation is, similarly to the EU, a textual interpretation.¹⁴ However, Norwegian legislation is often more concise with the relevant provisions clarified in preparatory works and Supreme Court jurisprudence.¹⁵ When those sources do not sufficiently describe the legal position, international obligations, customary law and legal literature are of importance.¹⁶ In addition, the Human Rights Act¹⁷ Section 2 states that *inter alia* the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural rights (ICESCR) and the European Human Rights Convention (ECHR) “shall have the force of Norwegian law”. The Constitution¹⁸ Article 92 further states that the “authorities of the State shall respect and ensure human rights as they are expressed [...] in the treaties concerning human rights that are binding for Norway.”

⁹ Sorina Doroga and Alexandra Mercesu, “A Call to Impossibility: The Methodology of Interpretation at the European Court of Justice and the PSPP Ruling” (2021) 13(2) EJLS 99

¹⁰ C-25/19 *Corporis* 33.

¹¹ Jan Komárek, 'Legal Reasoning in EU Law' in Damian Chalmers and Anthony Arnall (eds), *The Oxford Handbook of European Union Law* (Oxford University Press 2015) 49

¹² I.e. C-202/82 *Merck Hauptzollamt Hamburg-Jonas* 12

¹³ Koen Lenaerts and José A. Gutiérrez-Fons *Les méthodes d'interprétation de la Cour de justice de l'Union européenne* (Bruylant, 2020) 54

¹⁴ Alf Petter Høgberg et.al, *Juridisk metode og tenkemåte* (Universitetsforlaget 2019) 80

¹⁵ n14 84-91

¹⁶ n14 95-108

¹⁷ Act relating to the strengthening of the status of human rights in Norwegian law (LOV-2014-05-09-21-30)

¹⁸ Constitution of the Kingdom of Norway (1814)

Interpretation of treaties is governed by the Vienna Convention.¹⁹ Article 31(1) states that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.” When interpreting treaties, I will focus on the ordinary meaning of the provisions, as well as their context and purpose. Moreover, General Comments and individual complaints to the Human Rights Committee (CCPR) and by the Committee on Economic, Social and Cultural Rights (CECSR) are guiding for the interpretation of the United Nations (UN) human rights conventions.²⁰

2 First Observations

2.1 The Relationship Between CSDDD and the Transparency Act – An EU/EEA Affair

This chapter will bridge the gap between EU law, EEA law and Norwegian law and establish CSDDD’s current position in this realm. The Norwegian EEA Act²¹ Article 1 states that the EEA shall “apply as Norwegian law.”²² The EEA Agreement between EEA-parties, EU-parties and the EU guarantees EEA-parties access to the EU internal market with free movement of goods, people, services, and capital.²³

The EEA Joint Committee decides whether EU regulations or Directives shall be implemented into the Agreement. The EEA-Agreement Article 7 decides that these decisions “shall be binding upon the Contracting parties and be, or be made, part of their internal legal order.” This means that Norway is legally bound to implement any EU legislation the Committee deems EEA-relevant. Article 7(b) states that “an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.” Accordingly, Norwegian authorities are free to decide *how* CSDDD is implemented.

The process to the Joint Committee reaching a decision includes several steps, as illustrated below.²⁴

¹⁹ Vienna Convention on the law of treaties (1969)

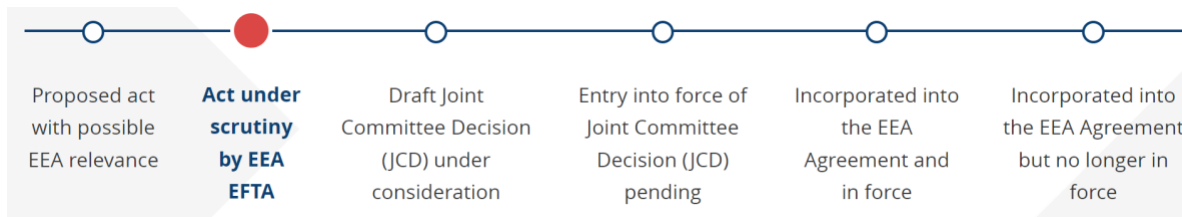
²⁰ Marius Emberland, “Betydningen av praksis fra FN’s menneskerettighetskomiteer” (2022) 61 Lov og rett 543

²¹ Lov om gjennomføring i norsk rett av hoveddelen i avtale om Det europeiske økonomiske samarbeidsområde (EØS) *Act on incorporation in Norwegian law of the EEA Agreement* LOV-2014-04-11-11

²² Author’s translation

²³ Halvard Haukeland Fredriksen and Gjermund Mathisen, “Oversikt over den materielle EØS-retten” in *EØS-rett* (Fagbokforlaget 2018); EEA Agreement Article 1(2)

²⁴ EFTA, “Factsheet – 32024L1760” (*EFTA.int*, 2024) <https://www.efta.int/eea-lex/3202411760> 19.08.24



As of now, CSDDD is under scrutiny, meaning that it is not yet deemed EEA-relevant by the Joint Committee.²⁵ It is therefore not decided whether the Directive will apply in Norway. However, there are strong indications from both the EU and Norwegian authorities. The headline of CSDDD in the Official Journal writes “(text with EEA relevance)”, and the Norwegian Ministry of Children and Families, that formulated the proposition for *åpenhetsloven*, stated that the “Norwegian government welcomes the Commission’s proposal for a Directive on Corporate Sustainability Due Diligence”.²⁶

2.2 CSDDD as a Minimum Standard

To fully elucidate how CSDDD can be implemented into Norwegian law, it is necessary to elaborate on what options the authorities have when transposing the Directive.

The Treaty on the Functioning of the European Union (TFEU)²⁷ Article 288(3) states that a “directive shall be binding, as to the result to be achieved.” This indicates that directives must either be incorporated word for word or transposed in accordance with the minimum standard. Therefore, the question is whether CSDDD allows MS to transpose stricter regulations into national law. According to Article 4(2), the Directive does not preclude MS:

“from introducing, in their national law, *more stringent provisions* [...], or provisions that are more specific in terms of the objective of the field covered, in order to achieve a *different level or protection* of [...] the environment or the climate.”²⁸

The wording “different level of protection” indicates that MS are at liberty to decide whether the level of protection should be higher or lower than the threshold described in the Articles of the

²⁵ n24

²⁶ Royal Norwegian Ministry of Children and Families, “Norwegian Position paper on the Commission Proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937” (*Regjeringen*, 21.11.22) <https://www.regjeringen.no/no/tema/forbruker/norwegian-position-paper-on-the-commission-proposal-for-a-directive-on-corporate-sustainability-due-diligence-and-amending-directive-eu-20191937/id2947851/> 03.07.24; EFTA, “Factsheet - 323682” (*EFTA.int*, 2024) <https://www.efta.int/eea-lex/323682> 03.07.24

²⁷ C 326/47 (1958) consolidated 2012

²⁸ Author’s italicization

Directive. This is, however, inconsistent with TFEU Article 288. Rather, the wording “more stringent provisions”, entails an opportunity for MS to set forward stricter obligations than those listed in CSDDD. This understanding is concurrent with the purpose of CSDDD to ensure corporate liability. Accordingly, CSDDD should be considered a minimum standard which MS can implement as-is or amend to be more stringent.

2.3 Combatting Different Scopes

One large incompatibility between the CSDDD and *åpenhetsloven* are their different personal scopes. CSDDD Article 2(1)²⁹ requires a company to fulfil one of the conditions stated in letters (a) to (c) for two consecutive years for the Directive to apply:

(a) has “more than 1.000 employees” and “a net worldwide turnover of more than EUR 450,000,000” in the last financial year,

(b) the company does reach the mentioned thresholds, but is “the ultimate parent company of a group that reached those thresholds” in the last financial year or

(c) the company entered into or is the ultimate parent company of a group that entered into “franchising or licensing agreements” in the Union “in return for royalties with independent third-party companies”, where those agreements “ensure a common identity, a common business concept and the application of uniform business methods, where those “royalties amounted to more than EUR 22.500.000.”

The criteria are severely restricted compared to the informal agreement between the European Council and the European Parliament in December 2023. Consequently, only approximately 5.400 EU-companies, i.e. 0,005 % of all EU-companies,³⁰ and approximately 300 Norwegian companies³¹ fall within the scope of CSDDD.

²⁹ I will only consider Article 2(1) due to the scope of this dissertation.

³⁰ Michael Wiedmann, “The Corporate Sustainability Due Diligence Directive (CSDDD) is coming” (*Dgs*, 30.04.24) <https://www.dqsglobal.com/intl/learn/blog/CSDDD-overview-and-timeline#:~:text=Scope%20of%20application%20and%20implementation&text=With%20the%20criteria%20agreed%20in,0.005%25%20of%20all%20EU%20companies.> 11.07.24

³¹ Line Gjerstad Tjelflaat, “EUs forslag til direktiv for virksomheters aktsomhetsvurderinger for menneskerettigheter, klima og miljø – ett skritt frem og to tilbake eller et sidesprang?” (*Juridika*, 10.03.22) <https://juridika.no/innsikt/eus-forslag-til-direktiv-for-virksomheters-aktsomhetsvurderinger-for-menneskerettigheter-klima-og-milj%C3%B8> 24.06.24; The Consumer Authority, “Consultation response on the EU-Commissions proposal on due diligence for sustainability for companies and revision of directive, (EU) 2019/1937” 26.04.2022 2

The personal scope of *åpenhetsloven* is aimed at “larger enterprises”. This term is defined in Section 3(a) as enterprises “covered by Section 1-5” of the Norwegian Accounting Act³² (*regnskapsloven*). These enterprises are either public limited liability companies, or enterprises that on the date of financial statements exceed the threshold for two of the following three conditions:

- i. over NOK 70 million.³³ in sales revenues,
- ii. over NOK 35 million³⁴ in balance sheet total and
- iii. over 50 full-time equivalent average number of employees in the financial year.

Approximately 9.000 Norwegian companies fulfil these criteria. Considering that only 300 Norwegian companies are covered by CSDDD, an issue arises in the implementation of how the scopes shall be harmonised. There are three potential solutions:

- i. Limiting the scope of *åpenhetsloven* to reflect CSDDD.
- ii. Applying the material scope of CSDDD to all companies comprised by *åpenhetsloven*.
- iii. Creating a separate chapter in *åpenhetsloven* for CSDDD companies.

The discussion is characterized by two conflicting considerations. On one hand, the implementation should ensure the best possible protection of human rights, the environment and the climate by being extremely stringent. On the other hand, authorities must ensure compliance by the companies to actively aid in making a difference by having an attainable and reasonable legislation.³⁵

Alternative (ii) of expanding the material scope for all companies regulated in *åpenhetsloven* would impose more stringent obligations on smaller Norwegian companies not comprised by CSDDD. Though this would create an even playing field domestically, the playing field between smaller EU companies and smaller Norwegian companies would be uneven because the Norwegian companies would have more obligations. This inequality would create time and resource disadvantages for Norwegian companies, and it is therefore likely that the business

³² Lov om årsregnskap m.v. (*Act on yearly accounting*) LOV-1998-07-17-56

³³ Approx. EUR 6.170.000

³⁴ Approx. EUR 3.084.000

³⁵ Giuditta Cordero-Moss, “Konkurranseretten og de ordre public” in Giuditta Cordero-Moss (ed.) *Norske ordre public som skranke for partsautonomi i internasjonale kontrakter* (Universitetsforlaget 2018)

community would protest this approach. Additionally, if it was implemented, the same arguments entail that an efficient compliance is unlikely. This could create a domino-effect where companies comprised by CSDDD decide not to comply with the Directive because their respective industries do not. For those reasons, expanding the material scope of *åpenhetsloven* is not ideal.

Alternative (i) of limiting the personal scope of *åpenhetsloven* to reflect CSDDD would hinder Norwegian companies being put at a disadvantage and thus remedy the aforementioned arguments. However, this downscaling is negative for the protection of human rights because it reduces the existing number of human rights due diligences in *åpenhetsloven* from 9000 to 300. This is an unlikely approach by Norwegian authorities because Norwegian companies are getting accustomed to *åpenhetsloven* and the Consumer Authority has begun enforcing the Act.³⁶ Moreover, *åpenhetsloven* has a distinct information requirement that cannot be found in CSDDD which would be severely restricted by this option.³⁷ The information requirement is vastly favoured amongst consumers who are likely object of this.³⁸

The aforementioned arguments leave alternative (iii) of creating a separate chapter in *åpenhetsloven* for companies within the scope of CSDDD. Creating a separate chapter can be positive for both the business and the supply chain. Firstly, it ensures equality with EU-companies by only imposing stringent obligations on companies comprised by CSDDD. Secondly, compliance reflects positively on the supply chains as human rights, environmental impact and climate changing factors would be regulated by internal company policy. This solution is also equitable because the larger companies often play big societal roles due to their far-reaching conduct. For example, the Norwegian food solutions company *Yara International ASA*³⁹ operates in over 60 countries in four regions. Implementing CSDDD in a way that to the fullest extent ensures compliance encourages a positive influence on all these operations.

³⁶ Cathrine Halsaa, "Åpenhetsloven i praksis – erfaringer fra første året med rapportering" (*EY*, 26.09.23) https://www.ey.com/no_no/climate-change-sustainability-services/apenhetsloven-i-praksis-erfaringer-fra-forste-aret-med-rapportering 03.07.24; Ministry of Children and Families, "Evaluering av åpenhetsloven og gjennomføring av aktsomhetsdirektivet (Corporate Sustainability Due Diligence Directive (CSDDD) i norsk rett" (*Regjeringen*, 30.05.24) <https://www.regjeringen.no/no/tema/forbruker/apenhetsloven/evaluering-av-apenhetsloven-og-gjennomforing-av-aktsomhetsdirektivet-corporate-sustainability-due-diligence-directive-CSDDD-i-norsk-rett/id3041086/> 03.07.24

³⁷ Åpenhetsloven Section 6

³⁸ I.e. complaint case to the Consumer Authority; *Fremtiden i våre hender v Lager 157* (23/14881) 2024

³⁹ Yara had a turnover of over 15 billion USD and 18.000 employees in 2023 and falls within the scope of CSDDD; Yara, *Yara Integrated Report 2023 Building resilience and a nature-positive food future* 11.07.24 9, 13-14

In addition, CSDDD Article 1 states that the Directive lays down obligations upon companies for “their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in the chains of activities of those companies.” In practice, this means that many of the companies that exclusively fall within the scope of *åpenhetsloven* may still be bound by the obligations of CSDDD through their parent company. For instance, *Aker Solutions ASA*⁴⁰ directly or indirectly controls more than 50% of 56 smaller companies worldwide, including 13 Norwegian companies.⁴¹ All these companies must comply with the material obligations of CSDDD.

In the author’s view, CSDDD should be implemented into *åpenhetsloven* by creating a separate chapter for companies within the personal scope of CSDDD. In the following, any addition to *åpenhetsloven* will therefore only be applicable *de lege lata* for the 300 Norwegian companies comprised by both *åpenhetsloven* and CSDDD.⁴²

PART A DUE DILIGENCE ON ADVERSE ENVIRONMENTAL IMPACT

CSDDD lays down an environmental due diligence obligation upon companies. Article 1(1)(a) states that the Directive lays down rules “on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts.” Article 5 affirms that “Member States shall ensure that companies conduct risk-based human rights and environmental due diligence.” Article 3(1)(b) defines “adverse environmental impact” as:

“an adverse impact on the environment resulting from the breach of the prohibitions and obligations listed in Part I, Section 1, points 15 and 16, and Part II of Annex I, taking into account national legislation linked to the provisions of the instruments listed therein.”

To fully examine the material substance of what environmental due diligence specifically requires for Norwegian companies, this part will respectively examine Annex Parts I and II and compare them to *åpenhetsloven*. I will use these discussions to decide whether *åpenhetsloven* must be

⁴⁰ Aker had a turnover of 36.262 million NOK and 11.473 employees in 2023 and falls within the scope of CSDDD; Aker Solutions, *Annual Report 2023* 15.07.24 3-4

⁴¹ Aker, “List of companies directly or indirectly controlled by more than 50% by Aker Solutions ASA” (*Akersolutions*, 23.11.23) https://www.akersolutions.com/globalassets/global/data-protection/akersolutions_group_companies_november_-2023.pdf 15.07.24

⁴² n31

amended and if the relevant CSDDD obligations should be made more stringent upon implementation.

3 Rights and Prohibitions in International Human Rights Instruments (Annex Part I)

3.1 Examining Annex Part 1 Points 15 and 16

This chapter presents Annex I points 15 and 16 and the human rights obligations these points refer to.

Point 15 describes the:

“prohibition of causing any measurable environmental degradation, such as harmful soil change, water or air pollution, harmful emissions, excessive water consumption, degradation of land, or other impact on natural resources, such as deforestation, that:

- (a) substantially impairs the natural bases for the preservation and production of *food*;
- (b) denies a person access to safe and clean drinking *water*;
- (c) makes it difficult for a person to access *sanitary facilities* or destroys them;
- (d) harms a person’s *health, safety*, normal use of *land* or lawfully acquired *possessions*,
- (e) substantially adversely affects *ecosystem* services through which an ecosystem contributes directly or indirectly to human wellbeing;

interpreted in line with Article 6(1) of the International Covenant on Civil and Political Rights and Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.”⁴³

Point 16 describes the:

“right of individuals, groupings and communities to lands and resources and the right not to be deprived of means of subsistence, which entails the prohibition to unlawfully evict or take land, forests and waters when acquiring, developing or otherwise using land, forests and waters, including by deforestation, the use of which secures the livelihood of a person, interpreted in line with Article 1 and 27 of the International Covenant on Civil and Political

⁴³ Author’s italicization

Rights and Article 1, 2 and 11 of the International Covenant on Economic, Social and Cultural Rights.”⁴⁴

The rights set forward in the aforementioned Articles of the ICCPR and ICESCR in both points are described in the table below.⁴⁵

Human Right	Definition/content
ICCPR Article 1 and ICESCR Article 1	
“All peoples have the right of <i>self-determination</i> .”	People’s right to “freely determine their political status and freely pursue their economic, social and cultural development.” ⁴⁶
ICCPR Article 6	
“Every human being has the inherent <i>right to life</i> . This right shall be protected by law. No one shall be arbitrary deprived of his life.”	The right to <i>life</i> “concerns the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.” ⁴⁷
ICESCR Article 11	
“[...] the right of everyone to an <i>adequate standard of living</i> for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”	The scope of Article 11 is immensely wide and contains several rights, predominantly <ul style="list-style-type: none"> • The right to availability and access to <i>food</i>,⁴⁸ • The right to “sufficient, safe, acceptable, physically accessible and affordable <i>water</i> for personal and domestic use”⁴⁹ • The right to “live somewhere in security, peace and dignity”; the right to housing.⁵⁰
ICESCR Article 12	
“[...] the right of everyone to the enjoyment of the highest attainable standard of <i>physical and mental health</i> .”	The right to <i>health</i> entails “the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.” ⁵¹
ICCPR Article 27	
Ethnic, religious or linguistic minorities shall not be denied the right to “in community with	The right of <i>minorities</i> “conferred on individuals as such” who “belong to a group and who share in common a culture, a religion and/or a language.” ⁵²

⁴⁴ Author’s italicization

⁴⁵ An analysis of each right is beyond the scope of this dissertation.

⁴⁶ CCPR General Comment No. 12 *On the right to self-determination* (1984) 1

⁴⁷ CCPR General Comment No. 36 *On the right to life* (CCPR/C/GC/36) 3

⁴⁸ CCPR General Comment No. 11 *On the right to adequate food* (E/C.12/1999/5) 7

⁴⁹ CESCR, General Comment No. 15 *On the right to water* (E/C.12/2002/11) 2

⁵⁰ CCPR General Comment No. 4 *On the right to adequate housing* (E/1992/23) 7

⁵¹ CCPR General Comment No. 14 *On the Right to the highest attainable standard of health* (E/C.12/2000/4) 8

⁵² CCPR General Comment No. 23 *On the Rights of Minorities* (CCPR/C/21/Rev.1/Add.5) 3.1 and 5.1

the other members of their group, enjoy their own culture, to profess and practice their own religion or to use their own language.”	
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3.1.1 Point 15: Measurable Environmental Degradation Affecting Human Rights

The wording of Annex I point 15 entails that an “adverse environmental impact” includes any process conducted by a company where the natural environment is comprised *and* that affects peoples’ access to food, water, sanitary facilities, health or substantially affects an ecosystem that is important for the wellbeing of humans. Combined with ICCPR Article 6(1) and ICESCR Articles 11 and 12, point 15 defines “adverse environmental impacts” as measurable environmental degradations that violate the right to life, impairs or denies an adequate standard of living, harms the health of humans or adversely effects an ecosystem. This broad spectrum of fundamental rights imposes a strict obligation on companies in their environmental due diligence because they cannot cause any measurable environmental degradation that negatively affects any element of these rights. This understanding is consistent with the aim of CSDDD to foster sustainable and responsible corporate behaviour.

CSDDD is the first legally binding international instrument on corporate liability for human rights and environmental protection and companies might be unaware on how to meet the obligations in practice. One way to properly understand the obligations Annex I imposes on companies is to disclose how similar obligations have unfolded for States previously. This can be done by examining individual complaints to the Human Rights Committee (CCPR). Practice from the CCPR is of interest due to its supervisory role in monitoring the ICCPR.⁵³ *Portillo Cáceres v. Paraguay* regarding local pollution is highly relevant for point 15.⁵⁴

In *Portillo Cáceres*, a *campesino*⁵⁵ family in Paraguay argued that mass use of agrotoxins by nearby large agrobusinesses poisoned many local residents and caused nausea, fever and even death of one family member. The family *inter alia* claimed that Paraguay violated their right to life, physical integrity and a life with dignity under ICCPR Article 6. CCPR concluded that

⁵³ The CCPR only has four decisions regarding this intersection.

⁵⁴ *Portillo Cáceres and Others v. Paraguay* (2751/2016)

⁵⁵ Meaning: Peasant or farmer

Paraguay violated ICCPR Article 6 and to their General Comment No. 36⁵⁶, “in which it has established that the right to life also concerns the entitlement of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death.”⁵⁷ This decision is a relevant precedent that States can be held responsible for human right violations where this is a direct or indirect consequence of environmental harm. Of relevance to Annex I point 15, *Portillo Cáceres* illustrates that companies must assess whether air pollution from their factories affects the health or life of nearby humans.

What this means for Norwegian companies can be illustrated through the energy and aluminium company *Norsk Hydro ASA*.⁵⁸ Hydro is a top 10 polluter in Norway, meaning that it causes an ample amount of measurable environmental degradation.⁵⁹ One particular example is their aluminium plants in Sunndal Municipality. In 2023, this plant released 646,90 thousand tons of carbon dioxide.⁶⁰ Point 15, interpreted in light of *Portillo Cáceres*, obliges Hydro to assess whether these CO₂-emission violates rights to life and/or health of the inhabitants of Sunndal.

Considering both the theoretical understanding of point 15 and the practical disclosure of how it *can* unfold in practice, it is clear that point 15 provides a broad definition of “adverse environmental impact”. In fact, this broadness is reminiscent of the right to a clean, healthy and sustainable environment. The UN Human Rights Office *et.al.* defines the right to a healthy environment as an umbrella term with substantive and procedural elements.

“The substantive elements include clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems. The procedural elements include access to information, the right to participation in decision-

⁵⁶ n47

⁵⁷ Para 7.3

⁵⁸ Hydro falls within the scope of CSDDD with 33.000 employees and a turnover of NOK 193.6 billion in 2023; Hydro, *Integriert årsrapport 2023* (13.02.24), 10, 112

⁵⁹ Ida Grieg Riisnæs and Marie von Krogh, “De forurenser mest - får titalls milliarder i statsstøtte” (*DN*, 03.07.24) <https://www.dn.no/industri/co2-utslipp/co2-kompensasjon/energi/de-forurenser-mest-far-titalls-milliarder-i-statsstotte/2-1-1639238> 04.07.24

⁶⁰ Hydro, “Sunndal” (*Hydro*, 2024) <https://www.hydro.com/no/global/om-hydro/hydro-locations-worldwide/europe/norway/sunndal/> 08.07.24; Norwegian Environment Agency, “Hydro Aluminium Sunndal” (*Norske Utslipp*, 2024) <https://www.norskeutslipp.no/no/Diverse/Virksomhet/?CompanyID=5309&ComponentPageID=180> 14.08.24

making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation.”⁶¹

At present, the right to a healthy environment is not included in a legally binding international instrument so EU lawmakers did not have legal authority to include it in CSDDD. Nonetheless, the aforementioned analysis illustrates that point 15 comprises all the substantive elements of the right to a healthy environment. The main difference is that point 15 does not provide procedural rights.

Interestingly, the General Assembly recognised the right to a healthy environment in July 2022⁶² and the Drafting Group on Human Rights and the Environment (CDDH/ENV) at the Council of Europe are discussing “feasibility of a further instrument on human rights and the environment.”⁶³ Considering the content of point 15, when/if the right to a healthy environment is recognised in international instruments, CSDDD would already partially be in accordance with this right. The similarity between point 15 and the right to a healthy environment underline that point 15 is broad and comprehensive and thus has a measurable impact on companies’ supply chains.

3.1.2 Point 16: Deprivation of Land and Resources Affecting Human Rights

The wording of Annex I point 16 entails that an “adverse environmental impact” includes usage of land, forests and waters that deprives or destroys said resources from a minority. In combination with the referenced ICCPR Articles 1 and 27 and ICESCR Articles 1, 2 and 11, the wording implies that companies must assess whether they violate the rights of minorities, including for example indigenous peoples, to practice their culture and traditions. This understanding warrants sustainable and corporate behaviour in companies’ operations and is therefore consistent with the aim of CSDDD. How this responsibility can unfold in practice is well illustrated in the following CCPR-decisions and Norwegian Supreme Court case.

*Benito Oliveira et al. v. Paraguay*⁶⁴ was submitted on behalf of The Campo Agua’ẽ indigenous community in Paraguay. They claimed that fumigation with toxic agrochemicals by the expansion of mechanised farming of genetically modified crops reduced the biodiversity of the indigenous

⁶¹ OHCHR, UNEP and UNDP, “What is the Right to a Healthy Environment?” Information Note, 2022

⁶² UNGA, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022)

⁶³ CDDH-ENV, [Draft] Revised CDDH report on the need for and feasibility of a further instrument or instruments on human rights and the environment. 29.04.24

⁶⁴ Benito Oliveira Pereira and Lucio Guillermo Sosa Benega v Paraguay (2552/2015)

territory and destroyed natural sources of food and origin of ancestral cultural practices. This contaminated water and crops and caused “obvious symptoms of poisoning [...] in the community.”⁶⁵ The CCPR found that Paraguay had violated ICESCR Article 27 by not protecting the rights of The Campo Agua’ẽ as a minority. This decision establishes that States can be held responsible for fumigation that affects the livestock and cultural practices of indigenous peoples. Annex I point 16 establishes that this is also prevailing for companies. In a broader sense, *Benito Oliveira* emphasises that companies are responsible for any environmental impact that noticeably and obviously affects the cultural and traditional practice of indigenous peoples.

This is particularly relevant for Norwegian energy and resource companies and their operations in indigenous territories, such as Hydro’s Alunorte installation in Barcarena, Brazil. In 2018, a heavy downpour in Pará caused emissions and damages at Alunorte. Following this event, 11.000 families of the indigenous Quilombo-people filed a lawsuit, *inter alia* claiming that the fumigation from the factory contaminated waters and rivers they needed to survive.⁶⁶ In July 2024, the Brazilian lower court in Belem fined Hydro with BRL 50 million in moral damages, which Hydro will appeal.⁶⁷ Hydro did not have any due diligence obligations in 2018 that required them to assess the risk of fumigation from their factory contaminating the waters and rivers of the Quilombo-people. However, upon implementation of CSDDD, Hydro must carry out this due diligence.

*Daniel Billy v Australia*⁶⁸ regarded a petition by the indigenous Torres Strait Islanders who claimed that changes in weather patterns directly harmed their livelihood, culture and traditional way of life. The CCPR concluded that Australia failed to protect the people from foreseeable threats to climate change and stated that the State had failed to

“adopt timely adequate adaptation measures to protect the authors’ collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the

⁶⁵ Paras 2.8-2.10

⁶⁶ Malene Emilie Rustad, “Fem år etter Hydro-skandalen i Brasil” (*E24*, 07.04.23) <https://e24.no/energi-og-klima/i/JQL1jj/fem-aar-etter-hydro-skandalen-i-brasil-som-om-vi-ikke-eksisterer> 07.08.24

⁶⁷ David Bach and Malene Birkeland, “Fersk dom: Hydro-Alunorte må betale 197 millioner kroner etter regn” (*E24*, 13.07.24) <https://e24.no/naeringsliv/i/8qJ3bG/fersk-dom-hydro-alunorte-maa-betale-197-millioner-kroner-etter-regn> 14.08.24

⁶⁸ Daniel Billy and others v Australia (Torres Strait Islanders Petition) (CCPR/C/135/D/3624/2019)

State party's positive obligation to protect the authors' right to enjoy their minority culture."⁶⁹

Daniel Billy indicates a positive obligation to prevent adverse environmental impact or climate change to obstruct practice of culture and tradition of indigenous people. This creates an expansive obligation for companies because they must assess whether their adverse impact on the environment indirectly interferes with indigenous rights, for instance by part-taking in adverse impacts that change the weather pattern.

The general conclusion from *Daniel Billy* can be more concretised by the Norwegian Supreme Court case of *Fosen v Ministry of Energy, Fosen Vind, Statkraft and Aneo*.⁷⁰ *Fosen* concerned the validity of licence and expropriation permissions operators received by the Ministry of Petroleum and Energy to construct four wind power plants in an area used by Sámi reindeer herders. The question was whether the windfarms interfered with the reindeer herders' right to enjoy their culture under ICCPR Article 27. The Supreme Court unanimously found that the windfarms negatively affected the reindeer herders' possibility to enjoy their culture and held that the licences and expropriation permissions given by the Ministry violated Article 27.⁷¹ The case principally indicates that Norway, and now Norwegian companies, must assess whether their environmental impact interferes with the Sámi reindeer husbandry. Notwithstanding, the case cannot solely be interpreted to be applicable for reindeer husbandry. On the contrary, it indicates a more general protection of the cultural and traditional practice of the Sámi people.

The implication *Daniel Billy* and *Fosen* have on the practical meaning of point 16 is further concretised by calling attention to how the Sámi people are already adversely affected by climate change and adverse environmental impact in the Arctic, for instance by permafrost thaw, loss of ice on land and sea and extreme weather events.⁷² These changes have severely impacted Sámi culture and tradition in form of reindeer herding, fishing, and their mental and physical health. The effects are presumed to worsen in the future.⁷³ *Daniel Billy* and *Fosen* indicate that Norwegian

⁶⁹ Para 8.14

⁷⁰ HR-2021-1975-S

⁷¹ Paras 157-161

⁷² IPCC, AR6 WGI *The Physical Science Basis: Summary for Policymakers* (2021) 15

⁷³ NNHRI *Canary in the Coal Mine* (2024) 24-31; AR6 WGII *Impacts, Adaptation and Vulnerability* (2022) 761

companies must perform environmental due diligence on whether their conduct affects the Arctic climate and environment and in turn the culture, tradition and health of the Sámi people.

Seen as a whole, point 16 indicates a broad responsibility for companies to assess whether any element of their supply chain hinders cultural and traditional practice of minorities domestically or extraterritorially.

3.2 Points 15 and 16 are Comprised by the Transparency Act

Having developed an understanding of what obligations Annex I point 15 and 16 impose on Norwegian companies, the question is whether or not these obligations go further than *åpenhetsloven*.

Åpenhetsloven Section 1 states that the Act “shall promote enterprises’ respect for fundamental human rights and decent working conditions.” Section 4(b) states that:

“The enterprises shall carry out due diligence [...]. For the purposes of this Act, due diligence means to

[...]

b. identify and assess actual and potential adverse impacts *on fundamental human rights and decent working conditions* that the enterprise has either caused or contributed toward, or that are directly linked with the enterprise’s operations, products or services via the supply chain or business partners.”⁷⁴

Environmental due diligence is not part of *åpenhetsloven*’s aim nor is it specifically mentioned as a due diligence obligation. This indicates that Annex I point 15 and 16 go further than the Act. However, due to the correlation points 15 and 16 require between human rights and environmental impact, it can be discussed whether the rights *indirectly* exist in *åpenhetsloven*. Section 3(b) defines fundamental human rights as:

“the internationally recognized human rights that are enshrined, among other places, in the International Covenant on Economic, Social and Cultural Rights of 1966, the International

⁷⁴ Author’s italicization

Covenant on Civil and Political Rights of 1966 and the ILO's core conventions on fundamental principles and rights at work.”

The definition of fundamental human rights includes references to ICCPR and ICESCR, which are also referenced in Annex I points 15 and 16. The CCPR case law illustrates how States can be held accountable for adverse environmental impact where this directly violates a human right referred to in ICCPR. This indicates that points 15 and 16 are comprised by *åpenhetsloven* due to their required correlation between environmental impact and human right violations. However, this conclusion is not evident by the wording itself and the interpretation must be supplemented by preparatory work.

The proposition for *åpenhetsloven*, set forward by the Ministry of Children and Families in *Prop. 150 L (2020-2021)* is the Act's main preparatory work.⁷⁵ The Ministry explicitly excluded environmental impact for two reasons. Firstly, the mandate given to the Ethics Information Committee for assessing whether Norway should such an act was limited to fundamental human rights. Secondly, political pressure and a social need for prompt and concrete rules inclined the Ministry to, at least preliminarily, exclude environmental impact.⁷⁶ This explicit exclusion of environmental impact indicates that points 15 and 16 go further than the Act.

Conversely, the Ministry stated that “environmental harm that leads to human rights violations should be included in the definition of fundamental human rights.”⁷⁷ This indicates that, though companies do not have an independent duty of environmental due diligence, *åpenhetsloven* requires due diligence on how fundamental human rights as defined in Section 3(b) can be violated by environmental impact. This indicates that points 15 and 16 are consistent with *åpenhetsloven*.

The recently decided European Court of Human Rights (ECtHR) case of *KlimaSeniorinnen v Switzerland*⁷⁸ supports this argument. *KlimaSeniorinnen* affirmed a legal correlation between human rights and the environment. The case is only legally binding for Switzerland but has interpretative significance for ECHR. The Convention is not explicitly referred to in *åpenhetsloven* Section 3(b). However, the wording “internationally recognized human rights that are enshrined,

⁷⁵ Parliament, “Hvor er saken nå?” (*Stortinget*, 2021) <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=84474> 08.07.21

⁷⁶ Prop.150 L (2020-2021) 43-44; Innst. 603 L (2020-2021) 6

⁷⁷ Author's translation; Prop.150 42

⁷⁸ Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (53600/20) 09.04.24

among other places” indicates that the list is non-exhaustive. This is affirmed in the preparatory work.⁷⁹ Accordingly ECHR and, intrinsically ECtHR case law, is relevant for defining fundamental human rights in *åpenhetsloven*.

In *KlimaSeniorinnen*, an association of elderly women claimed that the Swiss authorities had failed to adequately mitigate climate change, adversely impacting their rights to life and respect for private and family life under ECHR Articles 2 and 8.⁸⁰ The Court found that Switzerland had violated the right to private and family life and stated that Article 8 encompasses “a right for individuals to effective protection by the state authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.”⁸¹ Thus, the ECtHR held Switzerland accountable for an adverse environmental impact with a direct link to human rights violations. *KlimaSeniorinnen* indicates that “fundamental human rights” in *åpenhetsloven* must be interpreted to include adverse environmental impact where this violates a human right.

Seen as a whole, the wording of *åpenhetsloven*, the preparatory works and ECtHR case law affirm that *åpenhetsloven* Section 4(1)(b) imposes due diligence obligations upon companies over environmental adverse impacts where there is a direct link to fundamental human rights. This understanding is similar to the interpretation of Annex I points 15 and 16, which define “environmental adverse impact” as a negative impact on the environment that violates the rights to life, health land and resources. To illustrate, Hydro is already responsible for assessing health risks with air pollution in Sunndal, Norway, and water pollution in Barcarena, Brazil under *åpenhetsloven*. The difference between *åpenhetsloven* and CSDDD is that the former goes further by holding Norwegian companies accountable wherever their environmental impact has a negative influence on any fundamental human right.

The foregoing interpretation of *åpenhetsloven* indicates that the Act sets forward the same obligations as interpreted in Annex I point 15 and 16. Resultingly, points 15 and 16 do not require amendments to *åpenhetsloven*.

⁷⁹ Prop.150 42 and 107

⁸⁰ Para 296

⁸¹ Para 119

4 Prohibitions and Obligations in Environmental Instruments (Annex Part II)

This chapter will consider Annex Part II (Annex II), namely “Prohibitions and obligations included in environmental instruments” by firstly critically examining its content and secondly discussing if and how *åpenhetsloven* should be amended upon implementation.

4.1 Examining Annex Part II

Annex II sets forward 16 obligations and prohibitions relating to specific environmental aspects and corresponding legal instruments. These are illustrated in the table below. The question is how companies are to understand this extensive list.

Prohibition/Obligation	Legal Instrument
Obligations	
Avoid/minimize impacts on biological diversity.	<ul style="list-style-type: none"> • CBD⁸² Article 10(b) • National law⁸³ • Cartagena Protocol⁸⁴ • Nagoya Protocol⁸⁵
Avoid/minimize adverse impacts on the properties delineated as natural heritages.	<ul style="list-style-type: none"> • World Heritage Convention⁸⁶ Article 5(d) • National law⁸⁷
Avoid/minimize adverse impacts on wetlands.	<ul style="list-style-type: none"> • Ramsar Convention⁸⁸ Articles 1 and 4(1) • National law⁸⁹
Prevent pollution from ships, including the prohibition of (a) discharge into the sea of oil or oily mixtures, noxious liquid substances and sewage (b) unlawful pollution by harmful substances carried by sea in packaged form	MARPOL ⁹⁰ , respectively (a) <ul style="list-style-type: none"> • Annex I: Regulations 1 and 9-11, • Annex II: Regulations 1(6) and 5-6 • Annex IV: and Regulations 8 and 9 (b) Annex III: Regulations 1 to 7

⁸² Convention on Biological Diversity (1992)

⁸³ Nature Diversity Act (*naturmangfoldloven*) (2009)

⁸⁴ Cartagena Protocol on Biosafety (2003)

⁸⁵ Nagoya Protocol on Access and Benefit-sharing (2014)

⁸⁶ The World Heritage Convention (1972)

⁸⁷ Act concerning the cultural heritage (1979)

⁸⁸ Ramsar Convention on Wetlands (1971)

⁸⁹ Regulation on sustainable forestry; Act on forestry; Planning and Building Act; Specific Regulations on nature reserves; Ministry of Climate and Environment, “Derfor er myr og våtmark viktige” (*Regjeringen*, 07.10.21) <https://www.regjeringen.no/no/tema/klima-og-miljo/naturmangfold/innsiktsartikler-naturmangfold/vatmark/id2339659/> 22.08.24

⁹⁰ The International Convention for the Prevention of Pollution from Ships (1973)/(1978)

(c) unlawful pollution by garbage from ships	(c) Annex V: Regulations 1 and 3-6
Prevent, reduce and control pollution of the marine environment by dumping.	<ul style="list-style-type: none"> • UNCLOS⁹¹ • National law⁹².
Prohibitions	
Import, export, re-export or introduction of protected specimen of the sea.	CITES ⁹³ Articles III, IV and V and Appendices I-III.
Manufacture, import and export of mercury-added products.	Minamata Convention ⁹⁴ Article 4(1) and Annex A Part I.
Use of mercury or mercury compounds in the manufacturing processes.	Minamata Convention Article 4(2) and Annex B Part I.
Unlawful treatment of mercury waste.	<ul style="list-style-type: none"> • Minamata Convention Article 11(3) • Regulation (EU) 2017/852⁹⁵ Article 13
Production and use of chemicals.	<ul style="list-style-type: none"> • POP⁹⁶ Article 3(1)(a) and Annex A • Regulation (EU) 2019/1021⁹⁷ point (i)
Unlawful handling, collection, storage and disposal of waste.	<ul style="list-style-type: none"> • POP Convention Article 6(1)(d)(i)-(ii) • Regulation (EU) 2019/1021 Article 7.
Import or export of a chemical.	Rotterdam Convention ⁹⁸ Articles 10(1), 11(1)(b) and 11(2).
Unlawful production, consumption, import and export of controlled substances.	<ul style="list-style-type: none"> • Montreal Protocol⁹⁹ Annexes A, B, C and E; Article 4B • Licensing provisions under national law
Export of hazardous or other waste. (a) to a party of the Convention that has prohibited the import of such waste	<ul style="list-style-type: none"> • Basel Convention¹⁰⁰ Articles 1(1) and (2), 4(1)(b), 4(1)(c) and 4(5) • Regulation (EC) No 1013/2006¹⁰¹

⁹¹ United Nations Convention on the Law of the Sea (1994)

⁹² UNCLOS is fully transposed into Norwegian law

⁹³ Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)

⁹⁴ Minamata Convention on Mercury (2013)

⁹⁵ Regulation on mercury (2017)

⁹⁶ Stockholm Convention on Persistent Organic Pollutants (2004)

⁹⁷ Regulation on persistent organic pollutants (2019)

⁹⁸ Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (2004)

⁹⁹ Montreal Protocol on substances that deplete the Ozone Layer to the Vienna Convention for the protection of the Ozone Layer (1987)

¹⁰⁰ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)

¹⁰¹ Regulation on shipment of waste (2006)

(b) to a state of import that does not consent in writing to the specific import, in the case where the state of import has not prohibited the import of such waste	
(c) to a non-party to the Basel Convention	
Export of hazardous waste from certain countries.	<ul style="list-style-type: none"> • Basel Convention Article 4A and Annex VII • Regulation (EC) No 1013/2006 Articles 34 and 36.
Import of hazardous wastes and other wastes from a non-party that has not ratified the Basil Convention.	Basel Convention Article 4(5)

4.1.1 Advantages and Disadvantages

In short, Annex II defines “adverse environmental impact” as an action regulated by the obligations and prohibitions in the instruments listed above. As opposed to Annex I points 15 and 16, the imposition of these obligations and prohibitions is applicable regardless of any possible human right violation. The inclusion of specific references to international instruments makes the list not only extensive in matters included but also detailed in terms of what each right entails. As such, the list inflicts 16 concrete responsibilities upon companies. Notably, the wording of Article 5 nd Annex II indicates that the list is exhaustive. Companies must ensure that all these grounds are fully accounted for when performing their environmental due diligence.

A potential benefit of including an exhaustive list of relevant instruments and provisions, as well as a description of the applicable obligations, is that it prevents companies from making arbitrary or misinformed assessments on the scope and content of relevant obligations, which would undermine the CSDDD aim of fostering sustainable and responsible corporate behaviour.¹⁰² It can, therefore, be argued that tidy and thorough guidelines are easier to understand for companies and ensure a level playing field, whereas a non-exhaustive list could create both uncertainty and inequality among companies.

Annex II being exhaustive restricts environmental due diligence to 16 specific obligations and prohibitions. On one hand, this is unfortunate because the approach encourages a ‘check-box compliance’, is undynamic and excludes other potentially relevant conventions.¹⁰³ A non-

¹⁰² CSDDD Article 1

¹⁰³ Nicolas Bueno et.al., “The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise” (2024) BHRJ 1, 4

exhaustive list could create both uncertainty and inequality among companies as it is precisely the concrete exhaustive list that makes the content of environmental due diligence simpler to understand for companies. On the other hand, CSDDD is the first international hard law instrument that imposes specific due diligence obligations upon companies. Seeing that the area of law is still under development, there is arguably a need for a more dynamic approach. Besides, “environmental law is by necessity dynamic. The sense of urgency invited by contemporary environmental challenges drives innovation and encourages experimentation [...]”¹⁰⁴ This means that as earth’s environment changes, new scientific discoveries are made or existing international instruments are deemed insufficient, it is likely that new conventions will be adopted albeit the exhaustive nature of CSDDD does not allow an expansion of the prohibitions and obligations imposed on companies.

Annex II excludes several obligations and prohibitions that could be of relevance. For instance, the list does not impose any direct responsibility over adverse environmental impact on air or water. The list could have included the UNECE Convention on Long-Range Transboundary Air pollution that imposes an obligation to reduce and prevent air pollution¹⁰⁵ and/or the Convention on the Protection and Use of Transboundary Watercourses and International Lakes that imposes the obligation to prevent, control and reduce pollution of waters and reasonable and equitable usage of transboundary waters.¹⁰⁶ These conventions could ensure a more holistic approach to environmental due diligence.

Furthermore, the absence of these obligations could cause inconsistencies within CSDDD because Annex I point 15 requires due diligence on water and air pollution where this relates to human rights, but Annex II does not require an independent assessment of pollution from an environmental standpoint. In practice, this entails that a company like Hydro is only obliged to perform due diligence on how fumigation from their plants could violate the right to health or life but not how it could affect the environment itself. However, the practical significance of this

¹⁰⁴ Thijs Etty et.al., “The Challenge of Keeping Environmental Law Dynamic” (2015) 4(1) *Transnational Environmental Law* 1, 2; Sandra Cassotta, “The Development of Environmental Law within a Changing Environmental Governance Context: Towards a New Paradigm Shift in the Anthropocene Era.” (2021) 30(1) *YIEL* 54

¹⁰⁵ UNECE Convention on Long-Range Transboundary Air Pollution 1979 Article 2 and its protocols as well as Directive 2008/50/EC Articles 1 and 3

¹⁰⁶ Convention on the Protection and Use of Transboundary Watercourses and International Lakes Article 2

potential inconsistency is arguably minimal. Firstly, point 15 requires assessment of any measurable environmental degradation to uncover potential human rights violation and, secondly, air and water pollution are indirectly also part of the climate transition plan, which I will return to in Part II.

4.1.2 Example: Biodiversity and Seadrill Ltd.

Having discussed positive and negative aspects of Annex II at a more general level, the question is how Norwegian companies must conduct themselves in regard to this list. Of importance for this process is Article 5(1)(a)-(c), which states that companies shall ensure due diligence by carrying out the following actions:

- (a) *integrating* due diligence into their policies and risk management system in accordance with Article 7;
- (b) *identifying and assessing* actual or potential adverse impacts in accordance with Article 8, and, where necessary, prioritising actual and potential adverse impacts in accordance with Article 9; and
- (c) *preventing and mitigating* potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 10 and 11

The wording implies that companies must integrate due diligence policies that allow identification of adverse impacts in order to put in measures to prevent them. In short, the:

“required supply chain due diligence under the CSDDD is risk-based, meaning that it must be *mapped* and *prioritised* in a way that is proportionate to the likelihood and severity of the impact. Once a potential or actual impact has been identified, companies are required to *prevent, mitigate and/or end* the impact by means of the measures outlined in the CSDDD.”¹⁰⁷

¹⁰⁷ Lois Elhof, “Corporate Sustainability Due Diligence and EU Competition Law” (2024) 15 Journal of European Competition Law & Practice 168, 170

I will illustrate how this process can take place in practice by assessing the obligation of the Norwegian drilling company *Seadrill Ltd.*¹⁰⁸ to avoid or minimize adverse impact on biological diversity in Annex II point 1.

When approaching the question of environmental due diligence in Annex II, Seadrill must first ascertain two things:

- i. Which obligations and prohibition does Annex Part II include?
- ii. Which of those obligations and prohibitions are relevant for the company's operations?

By ascertaining these points, Seadrill can separate out points of the list that are irrelevant for their business. CBD Article 2 defines biodiversity as:

“variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.”

Seadrill is an offshore drilling contractor, meaning that they undertake assignments to drill for oil and gas in the seabed. Offshore drilling can impact “marine and other aquatic ecosystems and the ecological complexes of which they are part.” Resultingly, Seadrill must perform due diligence in accordance with Annex II point 1.

- iii. What is the substance of this obligation/prohibition in light of the listed instruments and provisions?

According to Annex II point 1, the obligation to protect biodiversity must be interpreted in line with the Convention on Biological Diversity (CBD) Article 10(b), national law, the Cartagena Protocol¹⁰⁹ and the Nagoya Protocol.

CBD Article 10(b) imposes an obligation to, as far as possible and as appropriate, “adopt measures relating to the use of biological resource to avoid or minimize adverse impacts on biological diversity.” The wording “avoid *or* minimize” indicates a room for discretion based on achievability. Accordingly, Article 10(b) conveys a general duty to safeguard biodiversity by

¹⁰⁸ Seadrill had a turnover of € 1,46B and approximately 2500 employees in 2023 and is within the scope of CSDDD; Global Data, “Seadrill Ltd: Overview” (*GlobalData*, 2024) <https://www.globaldata.com/company-profile/seadrill-ltd/> 19.08.24

¹⁰⁹ Concerns living modified organisms, not applicable.

preventing harm to the possible extent. This means that companies' due diligence must assess whether they impact biodiversity more adversely than necessary. Considering the aim of CSDDD, this involves fostering a sustainable and responsible corporate behaviour on biodiversity to ensure a mindful approach.

Moreover, the Nagoya Protocol Article 5 requires "benefits from the utilization of genetic resources to be shared in a fair and equitable way with the Party providing such resources." This Article distinctly recognises the rights of indigenous and local communities to resources, similarly to Annex I point 16. However, as opposed to point 16, the Nagoya Protocol requires benefit-sharing. The focus is not on how the business affects the minorities but on whether companies are depriving minorities or local communities of resources at the expense of their biodiversity. Companies must therefore ensure that they are sharing the benefits with the country/community they are retrieving from.

In terms of Norwegian law, the Nature Diversity Act is relevant. Article 6 requires everyone to "act diligent and do anything reasonable to prevent damage to the biodiversity in conflict with Articles 4 and 5."¹¹⁰ Articles 4 and 5 concern concrete administration goals and thus provide a lower limit for what is considered damage. The Act sets forward the same principle as the CBD; companies must safeguard biodiversity to the extent possible.

In sum, the aforementioned provisions obliges companies to assess whether they are treating biodiversity in a pensive manner to ensure as much prevention of harm as possible, both to the biodiversity itself and in terms of purloining resources from local communities. Having accounted for the instruments and provisions listed alongside the obligation to avoid or minimise adverse impact on biological diversity, the fourth and last question is:

iv. How do we integrate this substance into our due diligence assessment?

Seadrill is a contractor and therefore drills in different areas of the world. The interpreted substance of Annex II point 1 must be implemented into the due diligence assessments of all these operations. One of these operations is their current management of three ultra-deepwater drill ships on behalf of *Sonadrill* in Angola.¹¹¹ In this operation, Seadrill must carry out due diligence on whether their

¹¹⁰ Author's translation

¹¹¹ Offshore Technology, "Seadrill-Sonangol JV secures drillship contract in Angola" (*OffshoreTechnology*, 26.04.22) <https://www.offshore-technology.com/news/seadrill-sonangol-contract-angola/?cf-view> 15.08.24

drilling is harming the marine ecosystem more than necessary and whether benefits of the drilling is being appropriately shared with local communities.

The account of Annex II point 1 provides an example of how companies *can* approach Annex II in an appropriate manner. Additionally, the account illustrates the thoroughness of each assessment because CSDDD Article 5 and Annex II collectively require companies to analyse the Annex, relevant conventions and national law before applying those obligations to their own supply chain.

4.2 Transposing Annex II Into Norwegian Law: Implementing the Right to a Healthy Environment Alongside Annex II

This chapter will discuss implementation of Annex II Into Norwegian Law, regarding revision of *åpenhetsloven* and amendment of Annex II. As concluded in chapter 3.2, *åpenhetsloven* only imposes an environmental due diligence obligation where there is a direct link between an environmental impact and a human rights violation. This understanding is concurrent with *åpenhetsloven's* preparatory work. At present, *åpenhetsloven* does not contain an environmental due diligence for companies as described in Annex II. This is already accepted in the preparatory work as the Ministry opened up for “an evaluation of the Act after some time and an assessment of opposing arguments over time.”¹¹² Additionally, early discussions of CSDDD are also mentioned with an acknowledgement that adoption of the Directive will “entail a need for amendments in Norwegian law.”¹¹³ Consequently, Annex II must be transposed into *åpenhetsloven* in the separate chapter for CSDDD obligations.

The question is if Annex II should be revised upon transposition into *åpenhetsloven*. The starting point of this discussion is Annex II being exhaustive and non-dynamic. It is essential that implementation of CSDDD is as concurrent to the existing legislation as possible to ensure that *åpenhetsloven* remains cohesive. Thus, the question is whether Norwegian authorities should amend Annex II to become non-exhaustive upon implementation of CSDDD to ensure both a dynamic approach and the possibility to include other conventions and, if so, how this is best achieved.

Åpenhetsloven has a more dynamic approach than CSDDD. Section 3(b) defines fundamental human rights as “the internationally recognized human rights that are enshrined, *among other*

¹¹² Prop.150 44; Author’s translation

¹¹³ Prop.150 44; Author’s translation

places”¹¹⁴ in the ICESCR and the ICCPR. The wording “among other places” refers to an open and dynamic interpretation both in terms of relevant existing conventions and in terms of future conventions that regulate human rights. Systematic considerations indicate that the definition of environmental due diligence should follow the same pattern as the definition of fundamental human rights.

Moreover, the question of exhaustion was discussed in the preparatory work of *åpenhetsloven*. The decisive arguments for making the definition of fundamental human rights non-exhaustive were that:

“an exhaustive list of international and national frameworks, including their substantive provisions, would *require regular updates* and make the law *less dynamic than is desirable*. An exhaustive list could also result in *relevant legal instruments being excluded*, and that any new instruments would not be covered by the Act without *legislative or regulatory amendment*. The Ministry also refers to the fact that which standards are relevant will depend on various circumstances, and the list of relevant legal instruments will therefore *differ from business to business*.”¹¹⁵

These arguments focus on having a dynamic approach and preventing exclusion of important instruments and the consequences of these aspects. Though the discussion is in context of defining “fundamental human rights”, the arguments are as relevant for defining “adverse environmental impact”. Implementing Annex II as is would make *åpenhetsloven* less dynamic than is desired by Norwegian authorities and risk exclusion of other relevant instruments. Moreover, adoption of new environmental instruments is probable and would require amendments to the Act. Besides, the example of *Seadrill* emphasises how different environmental aspects are relevant for different businesses.

Considering the wording of *åpenhetsloven* Section 3, its preparatory work and a systematic understanding of the Act, Annex II must be revised to be non-exhaustive upon implementation into the Act. There are two options as to how Norwegian authorities can approach this.

¹¹⁴ Author’s italicization

¹¹⁵ Prop.150 42-43; Author’s italicization; Author’s translation

The first option is to take a similar approach to *åpenhetsloven*'s definition of fundamental human rights when defining adverse environmental impact. This can be done by supplementing Section 3 with a letter (f) and revising the headline of Annex II:

Section 3. Definitions

*f. Environmental adverse impact means the internationally recognized prohibitions and obligations that are enshrined, **among other places**, in the Conventions listed in the Annex Part II.*

And:

Annex Part II

*Prohibitions and obligations included in environmental instruments, **include***

This approach deflects the concerns of having an exhaustive list and has a harmonising effect by having identical approaches to defining human rights and environmental adverse impact. However, this approach could become too comprehensive and complex for companies due to lack of concrete points of reference. As opposed to human rights, which often have a common denominator and are based on the same fundamental concept of fundamental rights¹¹⁶, environmental instruments are more segregated and regulate more concrete aspects of the environment. This is illustrated in the overview of Annex II¹¹⁷, where each obligation and prohibition concerns very narrow and specific aspects of the environment. Therefore, wordings like “among other places” and “include” would require extensive research to find relevant conventions. This is a resource-consuming job which is unlikely that companies will do. This solution could, henceforth, ultimately result in Annex II being utilized as an exhaustive list regardless. For those reasons, there is a need for a more tangible approach.

The second option is to implement Annex II alongside a broader right to a clean, healthy and sustainable environment. This right was defined and scarcely discussed in chapter 3.1, which demonstrated that the right to a healthy environment is extensive. Substantially, it comprises a general responsibility to prevent and/or reduce environmental harm to hinder violation of any

¹¹⁶ For instance, the majority of the rights in the ICCPR and ICESCR can be found in ECHR.

¹¹⁷ Chapter 4.1

human right. Procedurally, it provides individuals with resources to maintain and enforce the substance. This option could prove more tangible because it would require due diligence on how any environmental impact by a company could violate human rights.

As mentioned, the right to a healthy environment is not internationally recognised and there is no international statutory authority to implement such a right. The question is whether a statutory authority can be found in Norwegian law and whether it could realistically be implemented. The Constitution Article 112 paragraphs one and three state that:

“Every person has the right to an environment that is *conductive to health and to a natural environment whose productivity and diversity are maintained*. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

[...]

The authorities of the state shall take measures for the implementation of these principles”

The wording of Article 112(1) indicates that every individual has a fundamental right to a healthy and liveable environment. The wording is coherent with the UN’s definition of the substantial elements of the right. The preparatory work is also concurrent with this understanding, stating that the first paragraph “represents a legal barrier for authorities, while at the same time having a human right basis.”¹¹⁸ Intrinsically, the paragraph sets a limit for what authorities can allow of environmental harm based on how it affects the human rights of Norwegian inhabitants.

The wording of Article 112(3) indicates that authorities must ensure execution and maintenance of the principles in the first paragraph. This is affirmed by the preparatory work, which states that the provision should “clarify that the authorities have an active duty to protect the environment through various forms of measures.”¹¹⁹ Accordingly, the paragraph obliges Norwegian authorities to comply with the substantive right in the first paragraph, hereunder forming a legal system in accordance with the provision.

¹¹⁸ Dok.nr.16 (2011-2012) 245; Author’s translation

¹¹⁹ Dok.nr.16 246; Author’s translation

The Constitution Article 112 was also discussed by the Supreme Court in HR-2020-2472-P, regarding whether State's approval of drilling for petroleum in the Barents Sea was in conflict with Article 112. The Court partially affirmed the mentioned interpretation of Article 112 but supplemented that the lack of further discussion of the topic in the preparatory work indicated that the government "wanted to commit to a certain extent, but in general would not relinquish its political room for latitude."¹²⁰ In regard to implementing the right to health alongside Annex II, this statement indicates that the government, realistically, will only do so if it is politically in their favour.

As a starting point, solely obliging Norwegian companies to maintain the right to a healthy environment could interfere with the even playing field CSDDD is meant to create. This would undeniably cause discontentment amongst businesses and incline the government to not expand on Annex II. However, three points counter this argument.

Firstly, as demonstrated in chapter 3.1, the obligation put upon companies in Annex I point 15 is substantially similar to the right to a healthy environment. The main difference is that point 15 limits the act to "measurable environmental degradation" and the relevant human rights to the right to life and health, though these are hypernyms for many other rights, like the right to food and clean water. Consequently, CSDDD already imposes an obligation similar to the right to a healthy environment upon all MS. Implementing a slightly broader obligation through the right to a healthy environment would not remarkably uneven the playing field.

Secondly, as concluded in Chapter 3.2, *åpenhetsloven* section 4(b) requires companies to perform due diligence on whether an environmental adverse impact violates a human right. Accordingly, Norwegian companies already have an obligation similar to the right to a healthy environment, without this being specifically stated. This indicates that the playing field will not be (further) uneven. Thirdly, the right to a healthy environment is under development internationally and 19 out of 27 MS have enshrined the right in their constitutions.¹²¹ It is not implausible that the right will be imposed upon more or all EU companies either upon the implementation of CSDDD or through other international or domestic legislation in the foreseeable future.

¹²⁰ Para 140; Author's translation

¹²¹ European Union, "A universal right to a healthy environment" (*Europarl*, 2021)

[https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA\(2021\)698846_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf) 16.08.24

In sum, implementing the right to a healthy environment alongside Annex II is the recommended approach to making Annex II non-exhaustive upon implementation into Norwegian law.

PART B A TRANSITION PLAN TO COMBAT CLIMATE CHANGE

This part will discuss CSDDD Article 22 regarding the obligation of forming a transition plan to combat climate change with a focus on the design of the plan in regard to emission reduction targets.

5 CSDDD Article 22

CSDDD Article 22(1) states that MS shall ensure that companies within the personal scope of CSDDD shall:

“adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through best efforts, that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5°C in line with the Paris Agreement and the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119, including its intermediate and 2050 climate neutrality targets, and where relevant, the exposure of the company to coal-, oil- and gas-related activities”.¹²²

The provision’s wording of obliging companies to “adopt and put into effect” a transition plan indicates a passive obligation to *create* a transition plan and an active obligation to *comply* with this plan. This comprehensive far-reaching obligation will have a large impact on Norwegian companies. Since Norway’s Oil and Gas Industry is considered the largest and most important in the country¹²³ and plays “a vital role in the Norwegian economy and the financing of the Norwegian welfare state”¹²⁴, it is particularly relevant to discuss how this industry will be affected. Of particular interest is the regulations of Greenhouse gas (GHG) emissions.¹²⁵ Considering all

¹²² Author’s italicization

¹²³ Government, “Oil and Gas” (*Regjeringen*) <https://www.regjeringen.no/en/topics/energy/oil-and-gas/id1003/> 06.08.24; Of the largest Norwegian Oil and gas companies are Shell PLC, Exxon Mobil Corporation, Equinor ASA, TotalEnergies SE and Aker BP ASA; Mordor Intelligence, “Norway Oil and Gas Companies (2024-2029)” (*MordorIntelligence*, 2024) <https://www.mordorintelligence.com/industry-reports/norway-oil-and-gas-market/companies> 07.08.24

¹²⁴ Norwegian Petroleum, “Government’s Revenues” (*norskpetroleum*, 16.05.24) <https://www.regjeringen.no/en/topics/energy/oil-and-gas/id1003/> 06.08.24

¹²⁵ International Energy Agency *Emission from Oil and Gas Operations in Net Zero Transitions* May 2023 8

this, the focus of this chapter will be on what requirements the design of the transition plan sets for GHG emission targets. I will firstly discuss the two types of reduction targets before determining which target CSDDD Article 22 imposes.¹²⁶

5.1 Absolute Reduction Targets versus Intensity-based Reduction Targets

Reduction targets can roughly be categorised in two: absolute targets and relative, or so-called intensity-based, targets. I will firstly explain the classification of GHG emissions and secondly compare the two reduction targets.

The GHG Protocol divides emissions into three scopes.¹²⁷ Scope 1 is defined as “direct GHG emissions”, scope 2 as “electricity indirect GHG emissions” and scope 3 as “other indirect GHG emissions”.¹²⁸ Essentially, scope 1 emissions are “direct emissions that result from activities within the organisation’s control”, scope 2 emissions are “indirect emissions from any electricity from the grid, and heat or steam that the company purchases and uses” and scope 3 emissions are “indirect emissions from sources outside the company’s direct control and emissions embodied in the production of goods and services.”¹²⁹

The practical meaning of this classification can be illustrated by categorising the emissions of a specific company, like the Norwegian energy company *Equinor ASA*.¹³⁰ Gas emissions from exploration, development and production, and processing and refining are direct and indirect consequences of extraction, development and processing. Therefore, they are scope 1 and 2 emissions. The usage of sold products, like fuel, are scope 3 emissions because they occur from sources not controlled by the company but with oil or gas extracted by it.¹³¹ This account illustrates that the classification of GHG emissions covers all aspects of emissions from a company and exemplifies that Equinor, as an energy company, has emissions in every scope.

¹²⁶ A further analysis of the other formal requirements for the transition plan is beyond the scope of this essay.

¹²⁷ Greenhouse Gas Protocol (1990) 24-25

¹²⁸ n127 24-25

¹²⁹ Gregor Radonjić and Saša Tompa, “Carbon footprint calculation in telecommunication companies – the importance and relevance of scope 3 greenhouse gases emissions” (2018) 98 *Renewable and Sustainable Energy Reviews* 361, 365

¹³⁰ Equinor is a Norwegian energy company with a large portfolio within oil and gas. Equinor falls within the scope of the CSDDD with approximately 23.000 employees and a turnover of 107.2 USD billion in 2023.; Equinor, *2022 Integrated Annual Report* 2023 5, 10

¹³¹ Equinor *2021 Sustainability Report* 8

Absolute reduction targets are targets that focus “on decreasing a company’s total GHG emissions by a set quantity within a defined timeframe.”¹³² These targets require companies to have specifically quantified reduction goals for all three scopes of emissions for 2030 in their transition plan. Considering the aforementioned classification of emissions, it is evident that an absolute emission reduction target for each scope is a highly ambitious and challenging goal. This is especially the case for companies like Equinor with GHG emissions in every scope. However, absolute reduction targets constitute an effective design for the transition plan because they enable a positive effect on climate change as the companies *must* decrease their emissions.¹³³ This is illustrated in the following calculation.

Absolute Reduction Targets
$GHG\ Reduction = GHG\ (current) - GHG\ (target)$
$GHG\ Reduction = 1000\ tons\ CO_2e - 800\ tons\ CO_2e = 200\ tons\ CO_2e$
The company must reduce its total emissions by 200 tons of CO_2e to meet its target.

Intensity-based reduction targets, on the contrary, “measure a company’s emissions of greenhouse gases in relation to a physical or economic metric.”¹³⁴ This means that the *overall percentage* of GHG emissions must be reduced. These targets give companies and shareholders an overall view of their business alongside the reduction targets and therefore motivate economic growth.¹³⁵ The challenge with intensity-based reduction targets, however, is that they per definition permit the same or more GHG emissions if the business is expanded. This is illustrated in the following calculation.

¹³² Sweep, “Absolute vs intensity based carbon targets – The lowdown” (*Sweep*, 10.07.24) <https://www.sweep.net/insights/absolute-vs-intensity-based-carbon-targets-the-lowdown>. 06.08.24

¹³³ Denny Ellerman and Ian Sue Wing, “Absolute versus intensity-based emission caps” (2003) 3(2) *Climate Policy* 7, 10

¹³⁴ Sweep, “Absolute vs intensity-based carbon targets” <https://www.sweep.net/insights/absolute-vs-intensity-based-carbon-targets-the-lowdown>. 06.08.24

¹³⁵ William A. Pizer, “The case for intensity targets” (2005) 5 *Climate Policy* 455, 456

Intensity-based Reduction Targets

$$GHG\ Intensity = \frac{Total\ GHG\ Emissions}{Revenue\ or\ Production}$$

$$Total\ Emissions = GHG\ Intensity \times Revenue$$

Before intensity target

$$Total\ Emissions = 0.5\ tons\ CO_2e\ per\ million\ NOK \times 2\ million\ NOK = 1\ ton\ CO_2e$$

After intensity target

$$Total\ Emissions = 0.3\ tons\ CO_2e\ per\ million\ NOK \times 4\ million\ NOK = 1.2\ tons\ CO_2e$$

Though the intensity is reduced from 0.5 to 0.3 tons CO_2e per million NOK, total emissions have increased from 1 ton of CO_2e to 1.2 tons because of increased business activity.

As opposed to absolute emission reduction targets, intensity-based reduction targets do not guarantee reduction in GHG emissions.

The different approaches to reduction targets are well illustrated in Equinor's transition plan from 2022. This transition plan states that reduction of emissions from their production of oil and gas shall be done by "cutting scope 1 and 2 emissions by net 50% on group level by 2023."¹³⁶ This is an *absolute* reduction goal because it is specifically quantified within a set timeframe. Scope 3 emissions, however, are only included in their more overall goal regarding all scopes of reducing "net carbon intensity by 20%."¹³⁷ Carbon intensity "refers to how many grams of carbon dioxide (CO_2) are released to produce a kilowatt hour (kWh) of electricity."¹³⁸ Equinor's reduction target for scope 3 is *intensity-based*. Interestingly, Equinor has conducted precisely the challenge illustrated above. Instead of reducing their scope 3 emissions, they expanded their business with more renewable energy hence lowering the percentage of GHG emissions.¹³⁹ This is a crucial flaw, because scope 3 is normally the largest category. For example, scope 3 emissions constitute approximately 95% of all emissions related to oil and gas extraction.¹⁴⁰

¹³⁶ Equinor, *2022 Energy transition plan* 22.03.22 13

¹³⁷ n136 12

¹³⁸ Nationalgrid, "What is carbon intensity?" (*Nationalgrid*, 17.05.22) <https://www.nationalgrid.com/stories/energy-explained/what-is-carbon-intensity> 05.08.24

¹³⁹ Equinor *Annual Report*, 146

¹⁴⁰ HR-2020-2472-P 155

5.2 What does Article 22 require?

Having accounted for absolute reduction targets and intensity-based reduction targets, the question is what CSDDD Article 22 obliges upon companies. Articles 22(1) and 22(2) are portrayed as two separate options of designing the transition plan. The first point of discussion is whether these options are compatible in terms of their proposed reduction targets.

Article 22(1)(a) requires

“(a) time-bound targets related to climate change for 2030 and in five-year steps up to 2050 based on conclusive scientific evidence and, where appropriate, *absolute emission reduction targets* for greenhouse gas for scope 1, scope 2 and scope 3 greenhouse gas emissions for each significant category;”¹⁴¹

The wording of Article 22(1) indicates that companies must implement *absolute* reduction targets for all three scopes of emissions. These targets must be implemented near-term for 2030 and long-term in five-year intervals until 2050. The provision is short of referencing intensity-based targets, which indicates that companies are not obliged to implement those but that they *can* be implemented if in accordance with the absolute targets. This understanding is in accordance with the purpose of CSDDD “to foster sustainable and responsible corporate behaviour in companies’ operations and across their global value chains”¹⁴² because the absolute targets warrant reduction in GHG emissions. As such, the first design option for the transition plan in Article 22(1) obliges companies to *at least* implement absolute reduction goals for all three scopes of emissions.

Article 22(2) states that companies

“that report a transition plan for climate change mitigation in accordance with 19a [...] of Directive 2013/34/EU shall be deemed to have complied with the obligation to adopt a transition plan for climate change mitigation referred to in paragraph 1.”

As opposed to Article 22(1), the wording of Article 22(2) does not refer to a specific target. This could indicate that it permits companies to decide between intensity-based or absolute reduction targets. However, the provision refers to Directive 2013/23/EU Article 19a. Directive

¹⁴¹ Author’s italicization

¹⁴² n4

2013/23/EU is amended by the Corporate Sustainability Reporting Directive (CSRD).¹⁴³ CSRD is a non-financial reporting Directive that requires “large companies and listed companies to publish regular reports on the social and environmental risks they face, and on how their activities impact people and the environment.”¹⁴⁴ CSRD Article 19a(1) states that

“Large undertakings, and small and medium-sized undertakings, except micro undertakings, which are public-interest entities as defined in point (a) of point (1) of Article 2 shall include in the *management report information* necessary to understand the undertaking’s impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking’s development, performance and position.”

Article 19a(2)(b) further states that the information referred to in the first paragraph shall contain

“a description of the time-bound targets related to sustainability matters set by the undertaking, including, where appropriate, *absolute greenhouse gas emission reduction targets* at least for 2030 and 2050 [...]”

The wording of CSRD Article 19a(2)(b) indicates that CSRD, identically to CSDDD, requires absolute reduction targets. Once more, these targets must be short-term for 2030 and long-term in 5-year intervals until 2050. This interpretation is supported by the European Sustainability Reporting Standards (ESRS)¹⁴⁵ E1-4 para 34(a), which states that “GHG emission reduction targets shall be disclosed in *absolute value*.”¹⁴⁶ The wording “absolute value” indicates that companies must set number-specific goals, as opposed to relative goals found in intensity-based targets. The interpretation of CSRD, referenced in CSDDD Article 22(2), indicates that the second design option for the transition plan also requires absolute reduction targets. Articles 22(1) and 22(2) are compatible.

¹⁴³ Directive (EU) 2022/2464

¹⁴⁴ European Council, “Corporate sustainability reporting” (*Finance.ec*, 2024) https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en#:~:text=EU%20law%20requires%20all%20large,on%20people%20and%20the%20environment.30.07.24

¹⁴⁵ European Sustainability Reporting Standards (2023); sets reporting standards for sustainability in accordance with CSRD Article 29b.

¹⁴⁶ Author’s italicization

Having concluded that the design options are compatible in terms of reduction goals, one may ask why both options are included in CSDDD. Essentially, CSRD applies to large public-interest companies¹⁴⁷ that exceed two of the following three criteria:¹⁴⁸

- i. €50 million in net revenue,
- ii. €25 million in total assets
- iii. 250 employees

The personal scope of CSDDD is wider than CSDDD¹⁴⁹, so every company within the scope of CSDDD also falls within the scope of CSRD. Because CSRD entered into force gradually from January 2023, it is probably that many of these companies have already begun designing transition plans in accordance with CSRD. For that reason, CSDDD Article 22(2) makes the adjustments into corporate liability for the climate more approachable for companies.

In sum, CSDDD Article 22 requires companies within the scope of CSDDD to implement absolute reduction targets for scope 1, scope 2 and scope 3 emissions, notwithstanding which design the company adopts. The practical implication of this can be illustrated by Equinor's aforementioned transition plan.¹⁵⁰ The company has absolute reduction targets for both scope 1 and scope 2 emissions, which are in accordance with CSDDD. However, their intensity-based target for scope 3 emission is contrary to Article 22. This means that implementation of the Directive will require Equinor to implement absolute reduction targets for scope 3 emissions.¹⁵¹

Nonetheless, the foregoing account emphasises that CSDDD Article 22 will have an immense impact on Norwegian companies that fall within the scope of CSDDD, specifically energy companies within the Oil and Gas Industry. Seeing as Article 22 not only obliges companies to “adopt” these targets on paper, but also actively “put [...] them into effect”, the Directive will highly affect how the business is run. Companies will be necessitated to gradually transition into

¹⁴⁷ Public-interest entities are defined in CSRD Article 2(1)(a). An analysis is beyond the scope of this dissertation.

¹⁴⁸ Alexander Schmidt and Evan Farbstein, “Corporate Sustainability Reporting Directive, explained?” (*Normative*, 19.08.24) <https://normative.io/insight/csr-d-explained/> 21.08.24

¹⁴⁹ See Chapter 3.2.1

¹⁵⁰ n135

¹⁵¹ It could be argued that Equinor is not in accordance with CSRD with their reduction targets for scope 3 emissions. A further discussion of this is beyond the scope of this essay.

greener supply chains with less GHG emissions. This development will actively mitigate climate change because absolute reduction targets guarantee reduction.

From a corporate standpoint, one downside of CSDDD only requiring absolute reduction targets is that these do not give a full overview of the business. Whereas absolute targets “enable a clear readability on the capacity of the company’s strategy”¹⁵², “intensity targets are a complementary tool that can be used to relate decarbonisation efforts to the evolution of the given business.”¹⁵³ Intensity target’s nature of expressing themselves in ratio enables companies to evaluate whether their economic efficiency. For that reason, an ideal approach could be to implement intensity-based targets alongside absolute reduction targets. This approach would be in accordance with CSDDD Article 22 and mend the inherent flaw of intensity-based targets *de facto* allowing the same amount of GHG emissions. In addition, it would “address different stakeholders’ information requirements and provide a full-picture view of their decarbonization efforts”¹⁵⁴ and enable businesses to have a full overview of their business. Accordingly, I encourage companies to implement intensity-based reduction targets alongside the absolute ones to ensure a full-picture view of their business.¹⁵⁵

5.2 Transposing the Transition Plan Into Norwegian Law

5.2.1 The Accounting Act or the Transparency Act?

Åpenhetsloven does not have an evident equivalent to a climate combating transition plan, whereas the transition plan of CSRD is implemented into *regnskapsloven* Articles 3-3a to 3-3b.¹⁵⁶ The first point of discussion is which Act CSDDD Article 22 should be transposed into.

The provisions of *regnskapsloven* already concern transition plans. The considerations of ensuring a synchronised legislation and making companies’ obligations simple to identify entail that CSDDD Article 22 should be implemented into *regnskapsloven*. Additionally, because Article 22(2) refers to the transition plan that is already implemented into *regnskapsloven*, the manoeuvre between different provisions regarding the same obligation would be more coherent by transposing Article 22 into *regnskapsloven*. Conversely, and in favour of implementation into *åpenhetsloven*,

¹⁵² The World Wide Fund for Nature, *Corporate Climate Targets*, February 2024 20

¹⁵³ n152 20

¹⁵⁴ n152 19

¹⁵⁵ n138

¹⁵⁶ Prop. 57 L (2023-2024) Endringer i regnskapsloven mv.; NOU 2023:15 Bærekraftsrapportering Gjennomføring av direktivet om bærekraftsrapportering (CSRD)

CSRD and *regnskapsloven* have a wider scope than CSDDD.¹⁵⁷ For *regnskapsloven* to efficiently protect corporate *and* climate considerations, it would require a separate provision with a distinct scope. This is not the case for *åpenhetsloven* because the narrow scope of CSDDD already necessitates a separate chapter.¹⁵⁸ *Åpenhetsloven* is therefore better facilitated to implement Article 22.

Furthermore, it is of interest to follow the EU's pattern of separating the obligations of non-financial reporting and general corporate sustainability. CSRD and CSDDD concern two different aspects of corporate liability. CSRD describes environmental, social and governance-related issues as a more general topic purely related to reporting. Correspondingly, *regnskapsloven* concerns how companies must report their account. CSDDD, thereagainst, specifically focuses on companies' passive and active role in protecting human rights and defying adverse environmental and climate impact. Equally, *åpenhetsloven* concerns companies' role in improving fundamental human rights and soon adverse environmental impact. Accordingly, implementing CSDDD Article 22 into *åpenhetsloven* would reflect this division made by the EU.

Notwithstanding, the authorities must ensure an easy alternation between the implemented CSDDD Article 22 in *åpenhetsloven* and the existing provisions in *regnskapsloven* regarding transition plans, particularly considering that CSDDD Article 22(2) refers to those obligations. This can for instance be done through the proposed amended wording of the transposed version of Article 22(2) in *åpenhetsloven*:

“Companies that report a transition plan for climate change mitigation in accordance with Article 19a, 29a or 40a, as the case may be, of Directive 2013/34/EU, as described in the Accounting Act Articles 3-3a to 3-3c, shall be deemed to have complied with the obligation to adopt a transition plan for climate change mitigation referred to in paragraph 1 of this Article.”

5.2.2 Addressing the Anticipated Objections

As concluded in Chapter 5.2, CSDDD Article 22 requires absolute reduction targets for all three scopes of GHG emissions. This is comprehensive and invasive will likely cause objections from

¹⁵⁷ The personal scope of the Accounting Act goes beyond that of CSRD, see *Regnskapsloven* Articles 1-1 and 1-2

¹⁵⁸ Chapter 2.3

Norwegian companies, specifically those within the Oil and Gas Industry.¹⁵⁹ This chapter addresses arguments that have previously been brought up by companies in similar discussion regarding the climate.¹⁶⁰

Firstly, companies may claim that international agreements contain “a clear principle that each state is responsible for emissions *on their own territory*”¹⁶¹ to argue that they are not responsible for extraterritorial emissions. This point is particularly relevant for Scope 3 emissions because of their indirect nature of being emitted by the consumer of the company’s products and not by the company itself. For example, the majority of Equinor’s products are “exported to continental Europe, [...] the UK, North America and Asia”¹⁶², meaning that the majority of their Scope 3 emissions are extraterritorial. Deriving from the example of how Equinor’s transition plan must be amended to include absolute reduction goals for Scope 3 emissions, Equinor and similar companies could argue that removing Article 22(2) would effectively entail responsibility over emissions beyond Norwegian territory, in accordance with Article 22(1).

Nevertheless, this claim can be countered by Article 22 itself. Article 22 refers to the Paris agreement, which is developed upon the “no harm”-principle, as is referred to in the UN Framework Convention on Climate Change (UNFCCC).¹⁶³ The no-harm principle entails that a State is “duty-bound to prevent, reduce and control the risk of environmental harm to other states”.¹⁶⁴ The purpose of the Paris Agreement, cf. UNFCCC, is to prevent climate change and to limit temperature increases beyond 1,5 °C. Obtaining this goal requires inclusion of Scope 3 emissions and, therefore, interpretation of these treaties in good faith and in light of its object and purpose¹⁶⁵, entails that absolute reduction targets of Scope 3 emissions should be obligatory for Norwegian companies. Resultingly, the UNFCCC and the Paris Agreement counter the argument of Norwegian companies only being responsible on Norwegian territory.¹⁶⁶

¹⁵⁹ The author recognizes that CSDDD will be implemented regardless of objections.

¹⁶⁰ Norwegian NHRI, *Grunnloven § 112 og plan for utbygging og drift av petroleumsforkomster* 15-16 in a requested letter from the Ministry of Energy.

¹⁶¹ Author’s italicization; Supreme Court, HR-2020-2472-P 159; Author’s translation

¹⁶² n139

¹⁶³ Preamble, 8

¹⁶⁴ Ian Brownlie, *Principles of Public International Law* (Oxford University Press 2008) 275-285

¹⁶⁵ Vienna Convention Article 31

¹⁶⁶ As argued in Norwegian NHRI, *Grunnloven § 112 og plan for utbygging og drift av petroleumsforkomster* 15-16 in a requested letter from the Ministry of Energy.

The CCPR case of *Teitiota v New Zealand*¹⁶⁷ illustrates how not including extraterritorial emission in the reduction targets may cause issues for people outside a country's territory and how this in turn can create obligations upon the country. *Teitiota* regarded a national of the Republic of Kiribati who claimed that climate change and sea level rise forced him to migrate to New Zealand but was denied asylum. Though the CCPR found the denial lawful, the Committee underlined that “without robust national and international efforts, the effects of the climate change in receiving States may expose individuals to a violation of their rights [...], thereby triggering the non-refoulement obligations of sending States.”¹⁶⁸

As a receiving state, it is of Norwegian authorities' own interest to minimise climate change that can displace people. One distinct way to obtain this interest is by limiting extraterritorial emissions, meaning Scope 3 emissions, because they negatively impact the climate and create potential a scenario where, for instance, rising sea levels forces people to seek refuge in Norway. In sum, the claim that states are only responsible for emissions on their own territory is not sufficiently substantiated.

However, energy companies like Equinor may still argue that the concept of “gross effect” will come into play. Gross effect is explained by the UN Environmental Program as “reducing a production in one location will simply lead to an equal amount being produced elsewhere.”¹⁶⁹ For Equinor, this would mean that even if they stopped extracting, producing and exporting oil and gas, other smaller companies that are not within the scope of could take their position and thus the overall climate adverse impact would be the same. Though it may be true that another company could begin extracting and exporting oil and gas from the oilfields Equinor is currently occupying, the argument lacks nuance. The argument relativises any attempt to manage climate change because there is always a risk of another actor coming in and doing similar or more damage. As was exceptionally stated by a court in New Zealand:

“There is also a logical flaw in the market substitution assumption. If a development will cause an environmental impact that is found to be unacceptable, the environmental impact does not become acceptable because a hypothetical and uncertain alternative development

¹⁶⁷ *Ioane Teitiota v New Zealand* (CCPR/C/127/D/2728/2016)

¹⁶⁸ Para 9.11

¹⁶⁹ UNEP, “The Production Gap: The discrepancy between countries' planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C” (2019 Report) 50

might also cause the same unacceptable environmental impact. *The environmental impact remains unacceptable regardless of where it is caused.*¹⁷⁰

As such, the argument of gross effect does not sufficiently argue against the obligations in Article 22. On the contrary, the foregoing argumentation indicates that any possible measure made towards improving climate change should be attempted regardless.¹⁷¹

As a whole, probable arguments from Norwegian companies are not sufficient to argue against CSDDD Article 22 and its purpose. The provision ensures that the Norwegian authorities strive towards fulfilling their obligations in international instruments like the Paris Agreement by ensuring that companies, who play a big role in GHG emissions, have quantified targets for reduction.

6 Conclusive remarks

The thesis statement for this dissertation was bilateral. Firstly, I set out to determine what environmental and climate-related obligations CSDDD puts upon Norwegian companies.

CSDDD Article 5 obliges companies to perform environmental due diligence and Article 3(b) defines “adverse environmental impact” as the breach of prohibition and obligations listed in Annex Parts I and II. Annex I obliges companies to assess whether they perform measurable environmental degradation or use land and resources in a manner that violates the rights to health and life and the right of minorities. Annex II sets forward more specific obligations and prohibitions derived from environmental instruments. This list is exhaustive and undynamic. Article 22 imposes an obligation to “adopt and put into effect” a transition plan to combat climate change. The transition plan must contain absolute reduction targets which enable mitigation of climate change. In order to secure economic growth, companies’ plans should also set intensity-based targets.

Secondly, I wanted to determine whether *åpenhetsloven* must be amended to be in accordance with CSDDD and if the Directive should be revised to be more stringent in the process of implementation.

¹⁷⁰ Author’s italicization; Gloucester Resources Ltd v. Minister for Planning (2019) 234 LGERA 257 545

¹⁷¹ n152 16-19

Åpenhetsloven imposes environmental due diligence obligations when any human right is violated and is thus in accordance with CSDDD Annex I points 15 and 16. Apart from this, all environmental and climate-related obligations must be implemented into a separate chapter of *åpenhetsloven* for companies comprised by the personal scope of CSDDD. Upon this implementation, Norwegian authorities should supplement Annex II alongside the right to a healthy environment to ensure a dynamic approach in accordance with the existing Norwegian law. Article 22 should be implemented into *åpenhetsloven in lieu of regnskapsloven*.

Going forward, it will be interesting to see how CSDDD Articles 5 and 22 play out in practice on both an EU level and in terms of transposition into Norwegian law. Following these milestones, the debate of enforcement in accordance with Article 7(1) will likely commence. This discussion will undoubtedly be affected by the same contradictory considerations the discussions of Articles 5 and 22 have accentuated: Political sensitivity, efficient business and satisfactory protection of fundamental rights, the environment and the planet.

7 Bibliography

7.1 Books

Alf Petter Høgberg et.al, *Juridisk metode og tenkemåte* (Universitetsforlaget 2019)

Giuditta Cordero-Moss, “Konkurranseretten og de ordre public” in Giuditta Cordero-Moss (ed.) *Norske ordre public som skranke for partsautonomi i internasjonale kontrakter* (Universitetsforlaget 2018)

Halvard Haukeland Fredriksen and Gjermund Mathisen, “Oversikt over den materielle EØS-retten” in *EØS-rett* (Fagbokforlaget 2018)

Ian Brownlie, *Principles of Public International Law* (Oxford University Press 2008)

Jan Komárek, 'Legal Reasoning in EU Law' in Damian Chalmers and Anthony Arnall (eds), *The Oxford Handbook of European Union Law* (Oxford University Press 2015)

Koen Lenaerts and José A. Gutiérrez-Fons *Les méthodes d'interprétation de la Cour de justice de l'Union européenne* (Bruylant, 2020)

OHCHR, UNEP and UNDP, “What is the Right to a Healthy Environment?” Information Note, 2022

7.2 Case Law

European Court of Human Rights *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* (53600/20) 09.04.24

Fremtiden i våre hender v Lager 157 (23/14881) 2024

Human Rights Committee *Benito Oliveira Pereira and Lucio Guillermo Sosa Benega v Paraguay* (2552/2015)

Human Rights Committee *Daniel Billy and others v Australia* (Torres Strait Islanders Petition) (CCPR/C/135/D/3624/2019)

Human Rights Committee *Ioane Teitiota v New Zealand* (CCPR/C/127/D/2728/2016)

Human Rights Committee *Portillo Cáceres and Others v. Paraguay* (2751/2016)

Land and Environment Court of New South Wales *Gloucester Resources Ltd v. Minister for Planning* (2019) 234 LGERA 257

Norwegian Supreme Court *Fosen v Ministry of Energy, Fosen Vind, Statkraft and Aneo* HR-2021-1975-S

Norwegian Supreme Court *Klimasøksmålet* HR-2020-2472-P

The Court of Justice of the EU *Corporis* C-25/19

The Court of Justice of the EU *Gérard Roudolff* C-803/79

The Court of Justice of the EU *Merck Hauptzollamt Hamburg* C-202/82

7.3 Company Reports

Aker Solutions, *Annual Report 2023* 15.07.24 3-4

Equinor *2021 Sustainability Report*

Equinor, *2022 Energy transition plan*

Equinor, *2022 Integrated Annual Report 2023*

Hydro, *Integrert årsrapport 2023* (13.02.24)

Yara, *Yara Integrated Report 2023 Building resilience and a nature-positive food future* 11.07.24

7.4 International and Transnational Legislation and Soft Law

Agreement on the European Economic Area (OJ No L 1, 2.1.1994)

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)

C 326/47 Treaty on the Functioning of the European Union (1958), consolidated 2012

Cartagena Protocol on Biosafety to the Convention on Biological Diversity (2003)

Convention concerning the Protection of the World Cultural and Natural Heritage Development (1972)

Convention on Biological Diversity (1992)

Convention on International Trade in Endangered Species of Wilt Fauna and Flora (1973)

Declaration of the United Nations Conference on the Human Environment (1972)

Directive (EU) 2022/2464 Corporate Sustainability Reporting Directive

Directive (EU) 2024/1760 on corporate sustainability due diligence

Directive 2008/50/EC on ambient air quality and cleaner air for Europe

Greenhouse Gas Protocol (1990)

International Convention for the Prevention of Pollution from Ships (1973)/(1978)

International Energy Agency *Emission from Oil and Gas Operations in Net Zero Transitions* May 2023

Minamata Convention on Mercury (2013)

Montreal Protocol on substances that deplete the Ozone Layer to the Vienna Convention for the protection of the Ozone Layer (1987)

Nagoya Protocol on Access and Benefit-sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (2014)

Regulation (EC) No 1013/2006 on shipment of waste (2006)

Regulation (EU) 2017/852 on mercury

Regulation (EU) 2019/1021 Regulation on persistent organic pollutants (2019)

Rio Declaration on Environment and Development (1992)

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (2004)

The Convention on Wetlands (1971)

The European Convention on Human Rights (1953)

The International Covenant on Civil and Political Rights (1976)

The International Covenant on Economic, Social and Cultural Rights (1966)

The United Nations Convention on the Law of Sea (1982)

The Vienna Convention on the Law of Treaties (1969)

UNECE Convention on Long-Range Transboundary Air Pollution (1979)

UNGA, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022)

7.5 Journal Articles

Denny Ellerman and Ian Sue Wing, “Absolute versus intensity-based emission caps” (2003) 3(2) *Climate Policy* 7

Gregor Radonjič and Saša Tompa, “Carbon footprint calculation in telecommunication companies – the importance and relevance of scope 3 greenhouse gases emissions” (2018) 98 *Renewable and Sustainable Energy Reviews* 361

Kenneth Gillingham, “Carbon Calculus” (2019) 56(4) *Finance & Development* 7

Lois Elhof, “Corporate Sustainability Due Diligence and EU Competition Law” (2024) 15 Journal of European Competition Law & Practice 168

Marius Emberland, “Betydningen av praksis fra FNs menneskerettighetskomiteer” (2022) 61 Lov og rett 543

Nicolas Bueno et.al., “The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise” (2024) BHRJ 1

Sandra Cassotta, “The Development of Environmental Law within a Changing Environmental Governance Context: Towards a New Paradigm Shift in the Anthropocene Era.” (2021) 30(1) YIEL 54

Silvia Ciacchi, “The newly-adopted Corporate Sustainability Due Diligence Directive: an overview of the lawmaking process and analysis of the final text” (2025) 25 ERA Forum

Sorina Doroga and Alexandra Mercesu, “A Call to Impossibility: The Methodology of Interpretation at the European Court of Justice and the PSPP Ruling” (2021) 13(2) EJLS

Thijs Etty et.al., “The Challenge of Keeping Environmental Law Dynamic” (2015) 4(1) Transnational Environmental Law 1

William A. Pizer, “The case for intensity targets” (2005) 5 Climate Policy 455

7.6 Norwegian Legislation and preparatory work

Act Concerning the cultural heritage *kulturminneloven* (LOV-1978-06-09-50). Entry into force 15.02.1979

Act on forestry *skogbrukslova* (LOV-2005-05-27-31). Entry into force 01.01.2005

Act on Management of Nature’s Diversity *naturmangfoldloven* (LOV-2009-06-19-100). Entry into force 01.07.2009

Act on Planning and Building Act *plan- og bygningsloven* (LOV-2008-06-27-71) 01.01.2013

Act relating to enterprises’ transparency and work on fundamental human rights and working conditions *åpenhetsloven* (LOV-2021-06-18-99) 18.06.22

Act relating to the strengthening of the status of human rights in Norwegian law (LOV-2014-05-09-21-30) Entry into force 21.05.99, consolidated 01.08.21

Dok.nr.16 (2011-2012) Rapport fra Menneskerettighetsutvalget om menneskerettigheter i Grunnloven

Innst. 603 L (2020-2021) Innstilling fra familie- og kulturkomiteen om Lov om virksomheters åpenhet og arbeid med grunnleggende menneskerettigheter og anstendige arbeidsforhold (åpenhetsloven)

Lov om årsregnskap m.v. (Act on Accounting) *regnskapsloven* (LOV-1998-07-17-56). Entry into force 21.02.23

Lov om gjennomføring i norsk rett av hoveddelen i avtale om Det europeiske økonomiske samarbeidsområde (EØS) (Act on incorporation in Norwegian law of the EEA Agreement) *EØS-loven* LOV-2014-04-11-11

NOU 2023:15 Bærekraftsrapportering Gjennomføring av direktivet om bærekraftsrapportering (CSRD)

Prop. 57 L (2023-2024) Endringer i regnskapsloven mv.

Prop.150 L (2020-2021) Lov om virksomheters åpenhet og arbeid med grunnleggende menneskerettigheter og anstendige arbeidsforhold (åpenhetsloven)

Regulation on sustainable forestry *Forskrift om bærekraftig skogbruk* (FOR-2006-06-07-593) 01.07.2006

The Constitution on the Kingdom of Norway (LOV-1814-05-17), consolidated 21. May 2024

7.7 Other

CDDH-ENV, *[Draft] Revised CDDH report on the need for and feasibility of a further instrument or instruments on human rights and the environment.* 29.04.24

Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (E/C.12/2002/11)

ENNHRI *ENNHRI calls on Council of Europe Member States to adopt a binding instrument on the right to a healthy environment*, ENNHRI statement ahead of the 100th meeting of the Council of Europe Steering Committee for Human Rights

Human Rights Committee, General Comment No. 12: Article 1 (Right to Self-determination), The Right to Self-determination of Peoples (1984)

Human Rights Committee, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant) (E/C.12/1999/5)

Human Rights Committee, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant) (E/C.12/2000/4)

Human Rights Committee, General Comment No. 23: Article 27 (Rights of Minorities) (CCPR/C/21/Rev.1/Add.5)

Human Rights Committee, General Comment No. 36 on article 6: right to life (CCPR/C/GC/36)

Human Rights Committee, General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant) (E/1992/23)

IPCC, AR6 WGI *The Physical Science Basis: Summary for Policymakers* (2021)

NNHRI *Canary in the Coal Mine* (2024) 24-31; AR6 WGII *Impacts, Adaptation and Vulnerability* (2022)

Norwegian NHRI, *Grunnloven § 112 og plan for utbygging og drift av petroleumsforekomster*, requested letter from the Ministry of Energy.

The Consumer Authority, “Consultation response on the EU-Commissions proposal on due diligence for sustainability for companies and revision of directive, (EU) 2019/1937” 26.04.2022

The World Wide Fund for Nature, *Corporate Climate Targets*, February 2024

UNEP, “The Production Gap: The discrepancy between countries’ planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C” (2019 Report)

William Clay Ford Jr, executive chair of Ford Motor Company

7.8 Websites

57 of the world’s biggest companies were responsible for 80 % of greenhouse gas emissions between 2016 and 2024; Jonathan Watts, “Just 57 companies linked to 80% of greenhouse gas emissions since 2016” (*The Guardian*, 04.04.24) <https://www.theguardian.com/environment/2024/apr/04/just-57-companies-linked-to-80-of-greenhouse-gas-emissions-since-2016> 08.07.24

Aker, “List of companies directly or indirectly controlled by more than 50% by Aker Solutions ASA” (*Akersolutions*, 23.11.23) https://www.akersolutions.com/globalassets/global/data-protection/akersolutions_group_companies_november_-2023.pdf 15.07.24

Alexander Schmidt and Evan Farbstein, “Corporate Sustainability Reporting Directive, explained?” (*Normative*, 19.08.24) <https://normative.io/insight/csr-d-explained/> 21.08.24

Cathrine Halsaa, ”Åpenhetsloven i praksis – erfaringer fra første året med rapportering” (*EY*, 26.09.23) https://www.ey.com/no_no/climate-change-sustainability-services/apenhetsloven-i-praksis-erfaringer-fra-forste-aret-med-rapportering 03.07.24

David Bach and Malene Birkeland, “Fersk dom: Hydro-Alunorte må betale 197 millioner kroner etter regn” (*E24*, 13.07.24) <https://e24.no/naeringsliv/i/8qJ3bG/fersk-dom-hydro-alunorte-maa-betale-197-millioner-kroner-etter-regn> 14.08.24

EFTA, “Factsheet – 32024L1760” (*EFTA.int*, 2024) <https://www.efta.int/eea-lex/3202411760/19.08.24>

EFTA, “Factsheet - 323682” (*EFTA.int*, 2024) <https://www.efta.int/eea-lex/323682> 03.07.24

ENNHRI, “ENNHRI repeats call for a binding Protocol to the European Convention on Human Rights to recognize the right to a healthy environment” (*ENNHRI*, 28.06.24)

<https://ennhri.org/news-and-blog/ennhri-repeats-call-for-a-binding-protocol-to-the-european-convention-on-human-rights-to-recognise-the-right-to-a-healthy-environment/> 15.08.24

European Commission, “Corporate sustainability due diligence” (*Commission*, July 2024) https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en 20.08.24

European Council, “Corporate sustainability reporting” (*Finance.ec*, 2024) https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en#:~:text=EU%20law%20requires%20all%20large,on%20people%20and%20the%20environment. 30.07.24

European Parliament, “Agenda Strasbourg” (24.04.24, *Europarl*) https://www.europarl.europa.eu/doceo/document/OJQ-9-2024-04-24_EN.html 17.06.24

European Union, “A universal right to a healthy environment” (*Europarl*, 2021) [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA\(2021\)698846_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf) 16.08.24

Global Data, “Seadrill Ltd: Overview” (*GlobalData*, 2024) <https://www.globaldata.com/company-profile/seadrill-ltd/> 19.08.24

Government, “Oil and Gas” (*Regjeringen*) <https://www.regjeringen.no/en/topics/energy/oil-and-gas/id1003/> 06.08.24

Hydro, “Sunndal” (*Hydro*, 2024) <https://www.hydro.com/no/global/om-hydro/hydro-locations-worldwide/europe/norway/sunndal/> 08.07.24

Ida Grieg Riisnæs and Marie von Krogh, “De forurensere mest - får titalls milliarder i statsstøtte” (*DN*, 03.07.24) <https://www.dn.no/industri/co2-utslipp/co2-kompensasjon/energi/de-forurensere-mest-far-titalls-milliarder-i-statsstotte/2-1-1639238> 04.07.24

Line Gjerstad Tjelflaat, “EUs forslag til direktiv for virksomheters aktsomhetsvurderinger for menneskerettigheter, klima og miljø – ett skritt frem og to tilbake eller et sidesprang?” (*Juridika* 10.03.22) <https://juridika.no/innsikt/eus-forslag-til-direktiv-for-virksomheters-aktsomhetsvurderinger-for-menneskerettigheter-klima-og-milj%C3%B8> 24.06.24

Malene Emilie Rustad, “Fem år etter Hydro-skandalen i Brasil” (*E24*, 07.04.23) <https://e24.no/energi-og-klima/i/JQL1jj/fem-aar-etter-hydro-skandalen-i-brasil-som-om-vi-ikke-eksisterer> 07.08.24

Michael Wiedmann, “The Corporate Sustainability Due Diligence Directive (CSDDD) is coming” (*Dgs*, 30.04.24) <https://www.dqsglobal.com/intl/learn/blog/CSDDD-overview-and-timeline#:~:text=Scope%20of%20application%20and%20implementation&text=With%20the%200criteria%20agreed%20in,0.005%25%20of%20all%20EU%20companies.> 11.07.24

Ministry of Children and Families, "Evaluering av åpenhetsloven og gjennomføring av aktsomhetsdirektivet (Corporate Sustainability Due Diligence Directive (CSDDDD)) i norsk rett" (*Regjeringen*, 30.05.24) <https://www.regjeringen.no/no/tema/forbruker/apenhetsloven/evaluering-av-apenhetsloven-og-gjennomforing-av-aktsomhetsdirektivet-corporate-sustainability-due-diligence-directive-CSDDDD-i-norsk-rett/id3041086/> 03.07.24

Ministry of Climate and Environment, "Derfor er myr og våtmark viktige" (*Regjeringen*, 07.10.21) <https://www.regjeringen.no/no/tema/klima-og-miljo/naturmangfold/innsiktsartikler-naturmangfold/vatmark/id2339659/> 22.08.24

Mordor Intelligence, "Norway Oil and Gas Companies (2024-2029)" (*MordorIntelligence*, 2024) <https://www.mordorintelligence.com/industry-reports/norway-oil-and-gas-market/companies> 07.08.24

Nationalgrid, "What is carbon intensity?" (*Nationalgrid*, 17.05.22) <https://www.nationalgrid.com/stories/energy-explained/what-is-carbon-intensity> 05.08.24

Norwegian Environment Agency, "Hydro Aluminium Sunndal" (*Norske Utslipp*, 2024) <https://www.norskeutslipp.no/no/Diverse/Virksomhet/?CompanyID=5309&ComponentPageID=180> 14.08.24

Norwegian Petroleum, "Government's Revenues" (*norskpetroleum*, 16.05.24) <https://www.regjeringen.no/en/topics/energy/oil-and-gas/id1003/> 06.08.24

Offshore Technology, "Seadrill-Sonangol JV secures drillship contract in Angola" (*OffshoreTechnology*, 26.04.22) <https://www.offshore-technology.com/news/seadrill-sonangol-contract-angola/?cf-view> 15.08.24

Parliament, "Hvor er saken nå?" (*Stortinget*, 2021) <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=84474> 08.07.21

Royal Norwegian Ministry of Children and Families, "Norwegian Position paper on the Commission Proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937" (*Regjeringen*, 21.11.22) <https://www.regjeringen.no/no/tema/forbruker/norwegian-position-paper-on-the-commission-proposal-for-a-directive-on-corporate-sustainability-due-diligence-and-amending-directive-eu-20191937/id2947851/> 03.07.24;

Sweep, "Absolute vs intensity based carbon targets – The lowdown" (*Sweep*, 10.07.24) <https://www.sweep.net/insights/absolute-vs-intensity-based-carbon-targets-the-lowdown> 06.08.24